**L.N. 125 of 2010**

# Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (Republic of Austria) Order

(Made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112))

## 1. Commencement

This Order comes into operation on 9 December 2010.

## 2. Declaration under section 49(1A)

For the purposes of section 49(1A) of the Ordinance, it is declared—

(a) that the arrangements specified in section 3(1) have been made with the Government of the Republic of Austria with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of the Republic; and

(b) that it is expedient that those arrangements should have effect.

## 3. Arrangements specified

(1) The arrangements specified for the purposes of section 2(a) are the arrangements in—

(a) Articles 1 to 28 of the agreement titled "Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Austria for the Avoidance of Double Taxation and the

Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital" (which title is translated into Chinese as "《中華人民共和國香港特別行政區政府與奧地利共和國政府就收入及資本税項避免雙重課税和防止逃税協定》" in this Order), done in duplicate at Hong Kong on 25 May 2010 in the English language; and

(b) Paragraphs I to IV of the protocol to the agreement, done in duplicate at Hong Kong on 25 May 2010 in the English language.

(2) The English text of the Articles is reproduced in Part 1 of the Schedule; a Chinese translation of the Articles is also set out in that Part.

(3) The English text of the Paragraphs is reproduced in Part 2 of the Schedule; a Chinese translation of the Paragraphs is also set out in that Part.

# Schedule [s. 3]

# Part 1

# Articles 1 to 28 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital

## Article 1

## Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

## Article 2

## Taxes Covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting Party or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are:

(a) in the case of the Hong Kong Special Administrative Region:

(i) profits tax;

(ii) salaries tax; and

(iii) property tax,

whether or not charged under personal assessment;

(b) in the case of Austria:

(i) the income tax (die Einkommensteuer);

(ii) the corporation tax (die Körperschaftsteuer);

(iii) the land tax (die Grundsteuer);

(iv) the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben); and

(v) the tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstücken).

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify

each other of any significant changes that have been made in their taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of this Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "Austrian tax", as the context requires.

## Article 3

## General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) (i) the term "Hong Kong Special Administrative Region" means any territory where the tax laws of the Hong Kong Special Administrative Region apply;

(ii) the term "Austria" means the Republic of Austria;

(b) the term "business" includes the performance of professional services and of other activities of an independent character;

(c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(d) the term "competent authority" means:

(i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative;

(ii) in the case of Austria, the Federal Minister of Finance or his authorized representative;

(e) the term "Contracting Party" or "Party" means the Hong Kong Special Administrative Region or Austria, as the context requires;

(f) the term "enterprise" applies to the carrying on of any business;

(g) the terms "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;

(i) the term "national", in relation to Austria, means:

(i) any individual possessing the nationality or citizenship of Austria; and

(ii) any legal person, partnership or association deriving its status as such from the laws in force in Austria;

(j) the term "person" includes an individual, a company and any other body of persons;

(k) the term "tax" means Hong Kong Special Administrative Region tax or Austrian tax, as the context requires.

2. In this Agreement, the terms "Hong Kong Special Administrative Region tax" and "Austrian tax" do not include any penalty or interest imposed under the laws in force in either Contracting Party relating to the taxes to which the Agreement applies by virtue of Article 2.

3. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## Article 4

## Resident

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means:

(a) in the case of the Hong Kong Special Administrative Region:

(i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;

(ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;

(iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

(iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

(b) in the case of Austria, any person who, under the laws of Austria, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes Austria and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in Austria in respect only of income from sources in Austria or capital situated therein;

(c) in the case of either Contracting Party, the Government of that Party.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer ("centre of vital interests");

(b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;

(c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party in which he has the right of abode (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Austria);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Austria, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Austria, the competent authorities of the Contracting Parties shall endeavour to settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

## Article 5

## Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" also encompasses:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

(b) the furnishing of services, including consultancy services, by an enterprise directly or through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 183 days within any twelve-month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## Article 6

## Income from Immovable Property

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to explore for or work, mineral deposits, quarries, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. Any property or right referred to in paragraph 2 shall be regarded as situated where the land, standing timber, mineral deposits, quarries, sources or natural resources, as the case may be, are situated or where the exploration or working may take place.

4. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

5. The provisions of paragraphs 1 and 4 shall also apply to the income from immovable property of an enterprise.

## Article 7

## Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, or on the basis of such other method as may be prescribed by the laws of that Party, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such an apportionment or other method; such an apportionment or other method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## Article 8

## Shipping and Air Transport

1. Profits of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include in particular:

   (a) revenues and gross receipts from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic including:

      (i) income derived from the lease of ships or aircraft on a bareboat charter basis where such lease is incidental to the operation of ships or aircraft in international traffic;

      (ii) income derived from the sale of tickets and the provision of services connected with such transport whether for the enterprise itself or for any other enterprise, provided that in the case of provision of services, such provision is incidental to the operation of ships and aircraft in international traffic;

   (b) interest on funds directly connected with the operation of ships or aircraft in international traffic;

(c) profits from the lease of containers by the enterprise, when such lease is incidental to the operation of ships or aircraft in international traffic.

## Article 9

## Associated Enterprises

1. Where:

(a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall

make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting Parties shall if necessary consult each other.

## Article 10

## Dividends

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other Party.

2. (a) However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

   (b) If the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends, such dividends shall be taxable only in the Contracting Party of which the beneficial owner of the dividends is a resident.

   This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to

the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

## Article 11

## Interest

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party shall be taxable only in that other Party if such resident is the beneficial owner of the interest.

2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage

and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

## Article 12

## Royalties

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 3 per cent of the gross amount of the royalties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting

Party or not, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

## Article 13

## Capital Gains

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.

3. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Party.

4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares:

(a) quoted on such stock exchange as may be agreed between the Parties; or

(b) alienated or exchanged in the framework of a reorganisation of a company, a merger, a scission or a similar operation; or

(c) in a company deriving more than 50 per cent of its asset value from immovable property in which it carries on its business.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting Party of which the alienator is a resident.

## Article 14

## Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the

other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:

(a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and

(c) the remuneration is not borne by a permanent establishment which the employer has in the other Party.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.

## Article 15

## Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

## Article 16

## Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

## Article 17

## Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or self-employment shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including a lump sum payment) made under a pension or retirement scheme which is:

   (a) a public scheme which is part of the social security system of a Contracting Party; or

(b) a scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in a Contracting Party,

shall be taxable only in that Contracting Party.

## Article 18

## Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting Party or the Government of a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:

(i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of Austria, is a national thereof; or

(ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. Any pension (including a lump sum payment) paid by, or paid out of funds created or contributed by, a Contracting Party or the Government of a Contracting Party or a political subdivision or a local authority thereof to an individual in

respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

3. The provisions of paragraph 1 of this Article shall also apply to remuneration derived by members of permanent delegations of foreign trade and commerce of a Contracting Party in the other Contracting Party.

4. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions (including a lump sum payment) in respect of services rendered in connection with a business carried on by a Contracting Party or the Government of a Contracting Party or a political subdivision or a local authority thereof.

## Article 19

## Students

Payments which a student who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

## Article 20

## Other Income

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

## Article 21

## Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting Party and situated in the other Contracting Party, may be taxed in that other Party.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party may be taxed in that other Party.

3. Capital represented by ships and aircraft owned and operated by an enterprise of a Contracting Party in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that Party.

4. All other elements of capital of a resident of a Contracting Party shall be taxable only in that Party.

## Article 22

## Methods for Elimination of Double Taxation

Double taxation shall be eliminated as follows:

1. in the case of the Hong Kong Special Administrative Region:

   subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Austrian tax paid under the laws of Austria and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in Austria, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region;

2. in the case of Austria:

   (a) where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region and are subject to tax therein, Austria shall, subject to the provisions of subparagraphs (b) to (e), exempt such income or capital from tax;

(b) where a resident of Austria derives items of income which, in accordance with the provisions of Articles 10, 12 and paragraph 4 of Article 13, may be taxed in the Hong Kong Special Administrative Region, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the Hong Kong Special Administrative Region. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from the Hong Kong Special Administrative Region;

(c) dividends in the sense of subparagraph (b) of paragraph 2 of Article 10 paid by a company which is a resident of the Hong Kong Special Administrative Region to a company which is a resident of Austria shall be exempt from tax in Austria, subject to the relevant provisions of the domestic law of Austria but irrespective of any deviating minimum holding requirements provided for by that law;

(d) where in accordance with any provision of the Agreement income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital;

(e) the provisions of subparagraph (a) shall not apply to income derived or capital owned by a resident of Austria where the Hong Kong Special Administrative Region applies the provisions of this Agreement to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 or 12 to such income.

## Article 23

## Non-Discrimination

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of Austria, are nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is Austria) in the same circumstances, in particular with respect to residence, are or may be subjected.

2. Stateless persons who are residents of a Contracting Party shall not be subjected in either Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode in the Party (where the Party is the Hong Kong Special Administrative Region) or nationals of the Party (where the Party is Austria) in the same circumstances, in particular with respect to residence, are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and

reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party. Similarly, any debts of an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned Party.

5. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## Article 24

## Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not

in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Austria). The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## Article 25

## Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## Article 26

## Members of Government Missions

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

## Article 27

## Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the first day of the month next following the date of the later of these notifications.

2. The provisions of this Agreement shall thereupon have effect:

   (a) in the Hong Kong Special Administrative Region:

   in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which this Agreement enters into force;

   (b) in Austria:

   in respect of Austrian tax, for any fiscal year beginning on or after 1 January in the calendar year next following that in which this Agreement enters into force.

## Article 28

## Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year after the fifth year

from the date of entry into force of the Agreement. In such event, this Agreement shall cease to have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice is given;

(b) in Austria:

in respect of Austrian tax, for any fiscal year beginning on or after 1 January in the calendar year next following that in which the notice is given.

**(Chinese Translation)**

**第一條**

**所涵蓋的人**

本協定適用於屬締約一方的居民或同時屬締約雙方的居民的人。

**第二條**

**所涵蓋的税項**

1. 本協定適用於代締約方或其政治分部或地區主管當局課徵的收入及資本税項，不論該等税項以何種方式徵收。

2. 對總收入、總資本或收入或資本的組成部分課徵的所有税項，包括對自轉讓動產或不動產所得的收益、企業支付的工資或薪金總額以及資本增值所課徵的税項，須視為收入及資本税項。

3. 本協定適用於以下現有稅項：

(a) 就香港特別行政區而言：

(i) 利得稅；

(ii) 薪俸稅；及

(iii) 物業稅，

不論是否按個人入息課稅徵收；

(b) 就奧地利而言：

(i) 所得稅 (die Einkommensteuer)；

(ii) 公司稅 (die Körperschaftsteuer)；

(iii) 土地稅 (die Grundsteuer)；

(iv) 農林企業稅 (die Abgabe von land- und forstwirtschaftlichen Betrieben)；及

(v) 閒置土地價值稅 (die Abgabe vom Bodenwert bei unbebauten Grundstücken)。

4. 本協定亦適用於在本協定的簽訂日期後，在現有稅項以外課徵或為取代現有稅項而課徵的任何與現有稅項相同或實質上類似的稅項，以及適用於締約方將來課徵而又屬本條第 1 及 2 款所指的任何其他稅項。締約雙方的主管當局須將其稅務法律的任何重大改變，通知對方的主管當局。

5. 現有稅項連同在本協定簽訂後課徵的稅項，以下稱為“香港特別行政區稅項”或“奧地利稅項”，按文意所需而定。

## 第三條

## 一般定義

1. 就本協定而言，除文意另有所指外：

(a) (i) “香港特別行政區”一詞指香港特別行政區的稅務法律所適用的任何地區；

(ii) “奧地利”一詞指奧地利共和國；

(b) “業務”一詞包括進行專業服務及其他具獨立性質的活動；

(c) “公司”一詞指任何法團或就稅收而言視作法團的任何實體；

(d) “主管當局”一詞：

(i) 就香港特別行政區而言，指稅務局局長或其獲授權代表；

(ii) 就奧地利而言，指聯邦財政部長或其獲授權代表；

(e) “締約方”或“一方”一詞指香港特別行政區或奧地利，按文意所需而定；

(f) “企業”一詞適用於任何業務的經營；

(g) “締約方的企業”及“另一締約方的企業”兩詞分別指締約方的居民所經營的企業和另一締約方的居民所經營的企業；

(h) “國際運輸”一詞指由締約方的企業營運的船舶或航空器進行的任何載運，但如該船舶或航空器只在另一締約方內的不同地點之間營運，則屬例外；

(i) “國民”一詞，就奧地利而言，指：

(i) 擁有奧地利國籍或公民身分的任何個人；及

(ii) 藉奧地利現行的法律而取得法人、合夥或組織地位的任何法人、合夥或組織；

(j) “人”一詞包括個人、公司及任何其他團體；

(k) “稅項”一詞指香港特別行政區稅項或奧地利稅項，按文意所需而定。

2. 在本協定中，“香港特別行政區稅項”及“奧地利稅項”兩詞不包括根據任何締約方有關現行法律所徵收的任何罰款或利息。有關現行法律，是指關乎本協定適用 ( 屬憑藉第二條而適用 ) 的稅項的法律。

3. 在締約方於任何時候施行本協定時，凡有任何詞語在本協定中並無界定，則除文意另有所指外，該詞語須具有它當其時根據該方就本協定適用的稅項而施行的法律所具有的涵義，而在根據該方適用的稅務法律給予該詞語的任何涵義與根據該方的其他法律給予該詞語的涵義兩者中，以前者為準。

## 第四條

## 居民

1. 就本協定而言，“締約方的居民”一詞：

(a) 就香港特別行政區而言，指：

(i) 通常居住於香港特別行政區的任何個人；

(ii) 在某課稅年度內在香港特別行政區逗留超過 180 天或在連續兩個課稅年度 ( 其中一個是有關的課稅年度 ) 內在香港特別行政區逗留超過 300 天的任何個人；

(iii) 在香港特別行政區成立為法團的公司，或在香港特別行政區以外成立為法團而通常在香港特別行政區內受管理或控制的公司；

(iv) 根據香港特別行政區的法律組成的任何其他人，或在香港特別行政區以外組成而通常在香港特別行政區內受管理或控制的任何其他人；

(b) 就奧地利而言，指根據奧地利的法律，因其居籍、居所、管理工作地點，或任何性質類似的其他準則而有在奧地利繳稅的法律責任的人；亦包括奧地利及其任何政治分部或地區主管當局。然而，該詞並不包括僅就以奧地利為來源的收入或處於奧地利的資本而有在該方繳稅的法律責任的任何人；

(c) 就任何締約方而言，指該方政府。

2. 如任何個人因第 1 款的規定而同時屬締約雙方的居民，則該人的身分須按照以下規定斷定：

(a) 如該人在其中一方有可供他使用的永久性住所，則該人須當作只是該方的居民；如該人在雙方均有可供他使用的永久性住所，則該人須當作只是與其個人及經濟關係較為密切的一方 (“重要利益中心”) 的居民；

(b) 如無法斷定該人在哪一方有重要利益中心，或該人在任何一方均沒有可供他使用的永久性住所，則該人須當作只是他的慣常居所所在的一方的居民；

(c) 如該人在雙方均有或均沒有慣常居所，則該人須當作只是他擁有居留權 ( 就香港特別行政區而言 ) 的一方或他屬其國民 ( 就奧地利而言 ) 的一方的居民；

(d) 如該人既擁有香港特別行政區的居留權亦屬奧地利的國民，或該人既沒有香港特別行政區的居留權亦不屬奧地利的國民，則締約雙方的主管當局須致力透過共同協商解決該問題。

3. 如並非個人的人因第 1 款的規定而同時屬締約雙方的居民，則該人須當作僅屬其實際管理工作地點所處的一方的居民。

## 第五條

## 常設機構

1. 就本協定而言，“常設機構”一詞在企業透過某固定營業場所進行全部或部分業務的情況下，指該固定營業場所。

2. “常設機構”一詞尤其包括：

(a) 管理工作地點；

(b) 分支機構；

(c) 辦事處；

(d) 工廠；

(e) 作業場所；及

(f) 礦場、油井或氣井、石礦場或任何其他開採自然資源的場所。

3. “常設機構”一詞亦包括：

(a) 建築工地或建築、裝配或安裝工程，或與之有關連的監督管理活動，但僅限於該工地、工程或活動持續六個月以上的情況；

(b) 企業提供的服務 ( 包括顧問服務 )，該等服務可由該企業直接提供，亦可透過僱員或其他由該企業為提供該等服務而聘用的人員提供，但前提是屬該等性質的活動須於任何十二個月的期間內，在締約方 ( 為同一個項目或相關連的項目 ) 持續一段超過 183 天的期間或累計超過 183 天的多段期間。

4. 儘管有本條上述的規定，“常設機構”一詞須當作不包括：

(a) 純粹為了貯存、陳列或交付屬於有關企業的貨物或商品的目的而使用設施；

(b) 純粹為了貯存、陳列或交付的目的而維持屬於有關企業的貨物或商品的存貨；

(c) 純粹為了由另一企業作加工的目的而維持屬於有關企業的貨物或商品的存貨；

(d) 純粹為了為有關企業採購貨物或商品或收集資訊的目的而維持固定營業場所；

(e) 純粹為了為有關企業進行任何其他屬準備性質或輔助性質的活動而維持固定營業場所；

(f) 純粹為了 (a) 至 (e) 段所述的活動的任何組合而維持固定營業場所，但該固定營業場所因該活動組合而產生的整體活動，須屬準備性質或輔助性質。

5. 儘管有第 1 及 2 款的規定，如某人 ( 第 6 款適用的具獨立地位的代理人除外 ) 代表某企業行事，並在某締約方擁有並慣常行使以該企業名義訂立合約的權限，則就該人為該企業所進行的任何活動而言，該企業須當作在該方設有常設機構，但如該人的活動局限於第 4 款所述的活動 ( 假若該等活動透過固定營業場所進行，則根據該款的規定，該固定營業場所不會成為常設機構 )，則屬例外。

6. 凡某企業透過經紀、一般佣金代理人或任何其他具獨立地位的代理人在某締約方經營業務，則只要該等人士是在其業務的通常運作中行事的，該企業不得僅因它如此經營業務而被當作在該方設有常設機構。

7. 如屬某締約方的居民的某公司，控制屬另一締約方的居民的其他公司或在該另一締約方 ( 不論是透過常設機構或以其他方式 ) 經營業務的其他公司，或受該其他公司所控制，此項事實本身並不會令上述其中一間公司成為另一間公司的常設機構。

## 第六條

## 來自不動產的收入

1. 某締約方的居民自位於另一締約方的不動產取得的收入 ( 包括自農業或林業取得的收入 )，可在該另一方徵稅。

2. “不動產” 一詞具有該詞根據有關財產所處的締約方的法律而具有的涵義。該詞在任何情況下須包括：附屬於不動產的財產、用於農業及林業的牲畜和設備、關於房地產的一般法律規定適用的權利、不動產的使用收益權，以及作為開採或有權勘探或開採礦藏、石礦、源頭及其他自然資源的代價而取得不固定或固定收入的權利；船舶、船艇及航空器不得視為不動產。

3. 第 2 款所提述的任何財產或權利，須視為位於有關土地、未伐的木材、礦藏、石礦、源頭或自然資源 ( 視屬何情況而定 ) 的所在地，或位於可進行勘探或開採的地方。

4. 第 1 款的規定適用於自直接使用、出租或以任何其他形式使用不動產而取得的收入。

5. 第 1 及 4 款的規定亦適用於來自企業的不動產的收入。

## 第七條

## 營業利潤

1. 某締約方的企業的利潤僅在該方徵稅，但如該企業透過位於另一締約方的常設機構在該另一方經營業務則除外。如該企業如前述般經營業務，其利潤可在該另一方徵稅，但以該等利潤中可歸因於該常設機構的利潤為限。

2. 在符合第 3 款的規定下，如某締約方的企業透過位於另一締約方的常設機構在該另一方經營業務，則須在每一締約方將該常設機構在某些情況下可預計獲得的利潤歸因於該機構，該等情況是指假設該常設機構是一間可區分且獨立的企業，在相同或類似的條件下從事相同或類似的活動，並在完全獨立的情況下，與首述企業進行交易。

3. 在斷定某常設機構的利潤時，為該常設機構的目的而招致的開支 ( 包括如此招致的行政和一般管理開支 ) 須容許扣除，不論該等開支是在該常設機構所處的一方或其他地方招致的。

4. 如某締約方習慣上是按照將某企業的總利潤分攤予其不同部分的基準、或按照該方的法律訂明的其他方法的基準，而斷定須歸因於有關常設機構的利潤，則第 2 款並不阻止該締約方按此分攤方法或其他方法斷定該等應課稅的利潤；但採用的分攤方法或其他方法，須令所得結果符合本條所載列的原則。

5. 不得僅因為某常設機構為有關企業採購貨物或商品，而將利潤歸因於該常設機構。

6. 就上述各款而言，除非有良好而充分的理由需要改變方法，否則每年須採用相同的方法斷定須歸因於有關常設機構的利潤。

7. 如利潤包括在本協定其他條文另有規定的收入項目，該等條文的規定不受本條的規定影響。

## 第八條

## 航運和空運

1. 某締約方的企業自營運船舶或航空器從事國際運輸所得的利潤，僅在該方徵稅。

2. 第 1 款的規定亦適用於來自參與聯營、聯合業務或國際營運機構的利潤。

3. 就本條而言，來自營運船舶或航空器從事國際運輸的利潤尤其包括：

(a) 營運船舶或航空器從事國際運輸以載運乘客、禽畜、貨物、郵件或商品所得的收益及收入總額，包括：

(i) 來自以包船或包機形式出租空船舶或空航空器所得的收入，但該等出租須屬附帶於營運船舶或航空器從事國際運輸的；

(ii) 來自為有關企業本身或為任何其他企業出售與上述載運有關連的船票或機票以及提供與上述載運有關連的服務的收入，但就提供服務而言，該等服務的提供須屬附帶於營運船舶及航空器從事國際運輸的；

(b) 與營運船舶或航空器從事國際運輸有直接關連的資金所孳生的利息；

(c) 來自有關企業出租貨櫃的利潤，但該等出租須屬附帶於營運船舶或航空器從事國際運輸的。

## 第九條

## 相聯企業

1. 凡：

(a) 某締約方的企業直接或間接參與另一締約方的企業的管理、控制或資本，或

(b) 相同的人直接或間接參與某締約方的企業的和另一締約方的企業的管理、控制或資本，

而在上述任何一種情況下，該兩間企業之間在商業或財務關係上訂立或施加的條件，是有別於互相獨立的企業之間所訂立的條件的，則若非因該等條件便本應會產生而歸於其中一間企業、但因該等條件而未有產生而歸於該企業的利潤，可計算在該企業的利潤之內，並據此徵稅。

2. 凡某締約方將某些利潤計算在該方的某企業的利潤之內，並據此徵稅，而另一締約方的某企業已在該另一方就該等被計算在內的利潤課稅，如假設上述兩間企業之間訂立的條件正如互相獨立的企業之間所訂立的條件一樣，該等被計算在內的利潤是會產生而歸於首述一方的該企業的，則該另一方須就其對該等利潤徵收的稅額，作出適當的調整。在釐定上述調整時，須充分顧及本協定的其他規定，而締約雙方的主管當局在有必要的情況下須共同磋商。

## 第十條

## 股息

1. 由屬某締約方的居民的公司支付予另一締約方的居民的股息，可在該另一方徵税。

2. (a) 然而，如支付股息的公司屬某締約方的居民，上述股息亦可在該締約方按照該方的法律徵税，但如該等股息的實益擁有人是另一締約方的居民，則如此徵收的税款不得超過該等股息總額的百分之十。

(b) 如有關實益擁有人是一間公司 ( 合夥除外 )，而且直接持有支付股息的公司的股本至少百分之十，則如該等股息的實益擁有人屬某締約方的居民，該等股息僅在該締約方徵税。

如某公司從利潤中支付股息，本款並不影響就該等利潤對該公司徵税。

3. "股息"一詞用於本條中時，指來自股份、分享利潤股份或分享利潤權利、礦務股份、創辦人股份或其他分享利潤的權利 ( 但並非債權 ) 的收入；如作出派發的公司屬某方的居民，而按該方的法律，有某項收入須與來自股份的收入受到相同的税務待遇，則"股息"亦包括該項收入。

4. 凡就某股份支付的股息的實益擁有人是某締約方的居民，支付該股息的公司則是另一締約方的居民，而該擁有人在該另一締約方內透過位於該另一方的常設機構經營業務，且持有該股份是與該常設機構有實際關連的，則第 1 及 2 款的規定並不適用。在此情況下，第七條的規定適用。

5. 如某公司是某締約方的居民，並自另一締約方取得利潤或收入，則該另一方不得對該公司就某股份支付的股息徵税 ( 但在有關股息是支付予該另一方的居民的範圍內，或在持有該

股份是與位於該另一方的常設機構有實際關連的範圍內，則屬例外)，而即使支付的股息或未派發利潤的全部或部分，是在該另一方產生的利潤或收入，該另一方亦不得對該公司的未派發利潤徵收未派發利潤的稅項。

## 第十一條

## 利息

1. 如產生於某締約方的利息是支付予另一締約方的居民的，而該居民是該利息的實益擁有人，則該利息僅可在該另一方徵稅。

2. "利息"一詞用於本條中時，指來自任何類別的債權的收入，不論該債權是否以按揭作抵押，亦不論該債權是否附有分享債務人的利潤的權利，並尤其指來自政府證券和來自債券或債權證的收入，包括該等證券、債券或債權證所附帶的溢價及獎賞。就本條而言，逾期付款的罰款不被視作利息。

3. 凡就某項債權支付的利息的實益擁有人是某締約方的居民，並在該利息產生所在的另一締約方內，透過位於該另一方的常設機構經營業務，而該債權是與該常設機構有實際關連的，則第 1 款的規定並不適用。在此情況下，第七條的規定適用。

4. 如就某項債務支付利息的人是某締約方的居民，則該利息須當作是在該方產生。但如支付利息的人在某締約方設有常設機構(不論他是否某締約方的居民)，而該債務是在與該機構有關連的情況下招致的，且該利息是由該機構負擔的，則該利息須當作是在該機構所在的一方產生。

5. 凡因支付人與實益擁有人之間或他們兩人與某其他人之間的特殊關係，以致所支付的利息的款額，無論因何理由屬超出支付人與實益擁有人在沒有上述關係時會同意的款額，則本條的規定只適用於該會同意的款額。在此情況下，多付的部分仍須在充分顧及本協定的其他規定下，按照每一締約方的法律徵稅。

## 第十二條

## 特許權使用費

1. 產生於某締約方而支付予另一締約方的居民的特許權使用費，可在該另一方徵税。

2. 然而，在某締約方產生的上述特許權使用費亦可在該締約方按照該方的法律徵税；但如該等特許權使用費的實益擁有人是另一締約方的居民，則如此徵收的税款不得超過該等特許權使用費總額的百分之三。締約雙方的主管當局須透過雙方協商確定實施該限制税率的方式。

3. "特許權使用費"一詞用於本條中時，指作為使用或有權使用文學作品、藝術作品或科學作品(包括電影影片或電台或電視廣播使用的膠片或磁帶)的任何版權、任何專利、商標、設計或模型、圖則、秘密程式或程序的代價，或作為取得關於工業、商業或科學經驗的資料的代價，因而收取的各種付款。

4. 凡就某權利或財產支付的特許權使用費的實益擁有人是某締約方的居民，並在該特許權使用費產生所在的另一締約方內，透過位於該另一方的常設機構經營業務，且該權利或財產是與該常設機構有實際關連的，則第1及2款的規定並不適用。在此情況下，第七條的規定適用。

5. 如支付特許權使用費的人是某締約方的居民，則該特許權使用費須當作是在該方產生。但如支付特許權使用費的人在某締約方設有常設機構(不論他是否某締約方的居民)，而支付該特許權使用費的法律責任，是在與該機構有關連的情況下招致的，且該特許權使用費是由該機構負擔的，則該特許權使用費須當作是在該機構所在的一方產生。

6. 凡因支付人與實益擁有人之間或他們兩人與某其他人之間的特殊關係，以致所支付的特許權使用費的款額，無論因何理由屬超出支付人與實益擁有人在沒有上述關係時會同意的款

額，則本條的規定只適用於該會同意的款額。在此情況下，多付的部分仍須在充分顧及本協定的其他規定下，按照每一締約方的法律徵税。

## 第十三條

## 資本收益

1. 某締約方的居民自轉讓位於另一締約方並屬第六條所提述的不動產所得的收益，可在該另一方徵税。

2. 如某動產屬某常設機構的業務財產的一部分，而該機構是某締約方的企業在另一締約方設立的，則自轉讓該動產所得的收益，包括自轉讓該機構 ( 單獨或隨同整個企業 ) 所得的收益，可在該另一方徵税。

3. 某締約方的企業自轉讓被營運從事國際運輸的船舶或航空器所得的收益，或自轉讓與上述船舶或航空器的營運有關的動產所得的收益，只可在該方徵税。

4. 如某締約方的居民自轉讓公司的股份而取得收益，而該公司超過百分之五十的資產值是直接或間接來自位於另一締約方的不動產的，則該收益可在該另一方徵税。然而，本款不適用於來自轉讓以下股份的收益：

(a) 在雙方議定的證券交易所上市的股份；或

(b) 在一間公司重組、合併、分拆或同類行動的框架內轉讓或交換的股份；或

(c) 符合以下説明的公司的股份：該公司有超過百分之五十的資產值，是來自其進行業務所在的不動產。

5. 凡有關轉讓人是某締約方的居民，自轉讓第1、2、3及4款所提述的財產以外的任何財產所得的收益，只可在該方徵稅。

## 第十四條

## 來自受僱工作的入息

1. 除第十五、十七及十八條另有規定外，某締約方的居民自受僱工作取得的薪金、工資及其他類似報酬，只可在該方徵稅，但如受僱工作是在另一締約方進行則除外。如受僱工作是在另一締約方進行，則自該受僱工作取得的報酬可在該另一方徵稅。

2. 儘管有第1款的規定，某締約方的居民自於另一締約方進行的受僱工作而取得的報酬如符合以下條件，則只可在首述一方徵稅：

(a) 收款人在於有關的課稅期內開始或結束的任何十二個月的期間中，在該另一方的逗留期間(如多於一段期間則可累計)不超過183天，及

(b) 該報酬由一名並非該另一方的居民的僱主支付，或由他人代該僱主支付，及

(c) 該報酬並非由該僱主在該另一方設有的常設機構所負擔。

3. 儘管有本條上述各款的規定，自於某締約方的企業所營運從事國際運輸的船舶或航空器上進行受僱工作而取得的報酬，只可在該方徵稅。

## 第十五條

## 董事酬金

某締約方的居民以其作為屬另一締約方的居民的公司的董事會的成員身分所取得的董事酬金及其他同類付款，可在該另一方徵稅。

## 第十六條

## 藝人及運動員

1. 儘管有第七及十四條的規定，某締約方的居民作為演藝人員 ( 例如戲劇、電影、電台或電視藝人，或樂師 ) 或作為運動員在另一締約方以上述身分進行其個人活動所取得的收入，可在該另一方徵稅。

2. 演藝人員或運動員以其演藝人員或運動員的身分在某締約方進行個人活動所取得的收入，如並非歸於該演藝人員或運動員本人，而是歸於另一人，則儘管有第七及十四條的規定，該收入可在該締約方徵稅。

## 第十七條

## 退休金

1. 除第十八條第 2 款另有規定外，作為過往的受僱工作或過往的自僱工作的代價而支付予某締約方的居民的退休金及其他類似報酬 ( 包括整筆付款 )，只可在該方徵稅。

2. 儘管有第 1 款的規定，就根據退休金計劃或退休計劃支付的退休金及其他類似報酬 ( 包括整筆付款 ) 而言，如有關計劃屬：

   (a) 一項公共計劃，而該公共計劃是某締約方的社會保障制度的一部分；或

(b) 一項可讓個人參與以確保取得退休福利、且在某締約方為稅務目的而獲認可的計劃，

則該等退休金及其他類似報酬只可在該締約方徵稅。

## 第十八條

## 政府服務

1. (a) 某締約方或某締約方的政府或其政治分部或地區主管當局就提供予該方、分部或主管當局的服務而向任何個人支付的薪金、工資及其他類似報酬 ( 退休金除外 )，只可在該方徵稅。

(b) 然而，如該等服務是在另一締約方提供，而該人屬該另一方的居民，並且：

(i) 就香港特別行政區而言，擁有香港特別行政區的居留權；而就奧地利而言，屬奧地利的國民；或

(ii) 不是純粹為提供該等服務而成為該另一方的居民，

則該等薪金、工資及其他類似報酬只可在該另一方徵稅。

2. 某締約方或某締約方的政府或其政治分部或地區主管當局就提供予該方、分部或主管當局的服務而向任何個人支付的任何退休金 ( 包括整筆付款 )，或就上述服務而從該方、該方的政府、分部或主管當局所設立或供款的基金支付予任何個人的任何退休金 ( 包括整筆付款 )，只可在該方徵稅。

3. 本條第 1 款的規定，亦適用於某締約方的對外貿易及商業的常駐代表團成員在另一締約方取得的報酬。

4. 第十四、十五、十六及十七條的規定，適用於就在與某締約方或某締約方的政府或其政治分部或地區主管當局所經營的

業務有關連的情況下提供的服務而取得的薪金、工資及其他類似報酬，以及退休金 ( 包括整筆付款 )。

## 第十九條

## 學生

如學生在緊接前往某締約方之前是或曾是另一締約方的居民，而他逗留在首述一方純粹是為了接受教育或培訓，則該學生為了維持其生活、教育或培訓的目的而收取的款項，如是在首述一方以外的來源產生，則不得在該方徵稅。

## 第二十條

## 其他收入

1. 某締約方的居民的各項收入無論在何處產生，如在本協定位於本條之前的各條中未有規定，均只可在該方徵稅。

2. 就某權利或財產支付的收入如非來自第六條第 2 款所界定的不動產的收入，而收款人是某締約方的居民，並在另一締約方內透過位於該另一方的常設機構經營業務，且該權利或財產是與該機構有實際關連的，則第 1 款的規定不適用於該收入。在此情況下，第七條的規定適用。

## 第二十一條

## 資本

1. 第六條所提述的不動產所代表的資本如由某締約方的居民擁有並處於另一締約方，則可在該另一方徵稅。

2. 如任何動產構成某常設機構的業務財產的一部分，而該常設機構是某締約方的企業在另一締約方設立的，則該動產所代表的資本，可在該另一方徵稅。

3. 由某締約方的企業擁有及營運從事國際運輸的船舶及航空器所代表的資本，以及關乎該等船舶及航空器的營運的動產所代表的資本，均只可在該方徵稅。

4. 某締約方的居民的所有其他資本組成部分，只可在該方徵稅。

## 第二十二條

## 消除雙重課稅的方法

雙重課稅須按以下方式消除：

1. 就香港特別行政區而言：

在不抵觸香港特別行政區的法律中關乎容許在香港特別行政區以外的管轄區繳付的稅項用作抵免香港特別行政區稅項的規定 ( 該等規定並不影響本條的一般性原則 ) 的情況下，如已根據奧地利的法律和按照本協定，就屬香港特別行政區居民的人自奧地利的來源取得的收入繳付奧地利稅項，則不論是直接繳付或以扣除的方式繳付，所繳付的奧地利稅項須容許用作抵免就該收入而須繳付的香港特別行政區稅項，但如此獲容許抵免的款額，不得超過按照香港特別行政區的稅務法律就該收入計算所得的香港特別行政區稅項的款額；

2. 就奧地利而言：

(a) 凡按照本協定的規定，某奧地利的居民取得的收入或擁有的資本是可在香港特別行政區徵稅的，並須在其內徵稅，則除 (b) 至 (e) 段另有規定外，奧地利須豁免對該收入或資本徵稅；

(b) 如某奧地利居民取得的收入項目按照第十條、第十二條及第十三條第 4 款是可在香港特別行政區徵稅的，奧地利須容許在就該居民的收入徵收的稅項中，扣除一筆相等於已在香港特別行政區繳付的稅項的款額。然而，該項扣除不得超過該筆稅項 ( 即在給予扣除前計算的稅項 ) 中可歸因於來自香港特別行政區的收入項目的部分；

(c) 屬第十條第 2 款 (b) 段所指者的股息，如是由屬香港特別行政區居民的公司支付予屬奧地利居民的公司，須在奧地利當地法律的有關規定 ( 不論該法律是否有任何關於偏離最低持股要求的規定 ) 的規限下，在奧地利獲豁免徵稅；

(d) 凡按照本協定任何規定，某奧地利居民所取得的收入或所擁有的資本獲豁免無須在奧地利徵稅，奧地利在計算該居民其餘收入或資本的稅項的款額時，仍可將獲豁免的收入或資本計算在內；

(e) 如香港特別行政區應用本協定的規定豁免對某奧地利居民所取得的收入或所擁有的資本徵稅，或就該收入應用第十條第 2 款或第十二條第 2 款，則 (a) 段的規定不適用於該收入或資本。

## 第二十三條

## 反歧視條文

1. 任何人如就香港特別行政區而言享有該處的居留權或在該處成立為法團或以其他方式組成，而就奧地利而言屬國民，則該人在另一締約方不得受符合以下説明的任何課稅或與之有關連的任何規定所規限：該課稅是有別於在該另一方 ( 如該另一方是香港特別行政區 ) 享有該處的居留權或在該處成立為法團或以其他方式組成的人，或有別於屬該另一方 ( 如該另一方是奧地利 ) 的國民，在相同情況下 ( 尤其是在居住方面 ) 須接受或可接受的課稅及與之有關連的規定，或較之為嚴苛。

2. 無國籍的人如屬某締約方的居民，則該等人士在任何締約方不得受符合以下説明的任何課税或與之有關連的任何規定所規限：該課税是有別於在該方 ( 如該方是香港特別行政區 ) 享有該處的居留權的人，或有別於該方 ( 如該方是奧地利 ) 的國民，在相同情況下 ( 尤其是在居住方面 ) 須接受或可接受的課税及與之有關連的規定，或較之為嚴苛。

3. 某締約方的企業設於另一締約方的常設機構在該另一方的課税待遇，不得遜於進行相同活動的該另一方的企業的課税待遇。凡某締約方以公民身分或家庭責任的理由，而為課税的目的授予其本身的居民任何個人免税額、税務寬免及扣減，本條的規定不得解釋為使該締約方有責任將該免税額、税務寬免及扣減授予另一締約方的居民。

4. 除第九條第 1 款、第十一條第 5 款或第十二條第 6 款的規定適用的情況外，某締約方的企業支付予另一締約方的居民的利息、特許權使用費及其他支出，為斷定該企業的須課税利潤的目的，須根據相同的條件而可予扣除，猶如該等款項是支付予首述一方的居民一樣。同樣地，由某締約方的企業欠另一締約方的居民的債務，為斷定該企業的須課税資本的目的，須根據相同的條件而可予扣除，猶如該等債務是欠首述一方的居民一樣。

5. 如某締約方的企業的資本的全部或部分，是由另一締約方的一名或多於一名居民直接或間接擁有或控制，則該企業在首述一方不得受符合以下説明的任何課税或與之有關連的任何規定所規限：該課税是有別於首述一方的其他類似企業須接受或可接受的課税及與之有關連的規定，或較之為嚴苛。

6. 儘管有第二條的規定，本條的規定適用於所有種類和名目的税項。

## 第二十四條

## 雙方協商程序

1. 如任何人認為任何締約方或締約雙方的行動導致或將導致對他作出不符合本協定規定的課稅時，則無論該等締約方的當地法律的補救辦法如何，該人如屬某締約方的居民，可將其案件呈交該締約方的主管當局；如其案件屬第二十三條第1款的情況，而他享有某締約方的居留權或在某締約方成立為法團或以其他方式組成(就香港特別行政區而言)，或他屬某締約方的國民(就奧地利而言)，則他可將其案件呈交該締約方的主管當局。該案件必須於就導致不符合本協定規定課稅的行動發出首次通知之時起計的三年內呈交。

2. 如有關主管當局覺得所提反對屬有理可據，而它不能獨力達致令人滿意的解決方案，它須致力與另一締約方的主管當局共同協商解決該個案，以避免不符合本協定的課稅。任何達成的協議均須予以執行，不論締約雙方的當地法律所設的時限為何。

3. 締約雙方的主管當局須致力共同協商，解決就本協定的詮釋或適用而產生的任何困難或疑問。締約雙方的主管當局亦可共同磋商，以消除在本協定沒有訂明的情況下的雙重課稅。

4. 締約雙方的主管當局可為達成以上各款條文所述的協議而直接(包括透過由締約雙方的主管當局或其代表組成的聯合委員會)與對方聯絡。

## 第二十五條

## 資料交換

1. 締約雙方的主管當局須交換可預見攸關實施本協定的規定或施行或強制執行締約雙方關乎本協定所涵蓋的稅項的當地法

律的規定 ( 但以根據該等法律作出的課稅不違反本協定者為限 ) 的資料。該項資料交換不受第一條的規定所限制。

2. 某締約方根據第 1 款收到的任何資料須保密處理，其方式須與處理根據該方的當地法律而取得的資料相同，該資料只可向與第 1 款所提述的稅項的評估或徵收、執行或檢控有關，或與關乎該等稅項的上訴的裁決有關的人員或當局 ( 包括法院及行政機關 ) 披露。該等人員或當局只可為該等目的使用該資料。他們可在公眾法庭的法律程序中或在司法裁定中披露該資料。

3. 在任何情況下，第 1 及 2 款的規定均不得解釋為向某締約方施加採取以下行動的責任：

(a) 實施有異於該締約方或另一締約方的法律及行政慣例的行政措施；

(b) 提供根據該締約方或另一締約方的法律或在該締約方或另一締約方的正常行政運作過程中不能獲取的資料；

(c) 提供會將任何貿易、業務、工業、商業或專業秘密或貿易程序披露的資料，或提供若遭披露即屬違反公共政策的資料。

4. 如某締約方按照本條請求提供資料，則即使另一締約方未必為其本身的稅務目的而需要該等資料，該另一方仍須以其收集資料措施取得所請求的資料。前述句子所載的責任須受第 3 款的限制所規限，但在任何情況下，該等限制不得解釋為容許某締約方純粹因資料對其本土利益無關而拒絕提供該等資料。

5. 在任何情況下，第 3 款的規定不得解釋為容許某締約方純粹因資料是由某銀行、其他金融機構、代名人或以代理人或受信人身分行事的人所持有，或純粹因資料關乎某人的擁有權權益而拒絕提供該等資料。

## 第二十六條

## 政府代表團成員

本協定並不影響政府代表團 ( 包括領館 ) 成員根據國際法的一般規則或特別協定的規定享有的財政特權。

## 第二十七條

## 協定的生效

1. 每一締約方均須以書面通知另一締約方已完成其法律規定的使本協定生效的程序。本協定自收到上述通知的較後一份之後的月份的第一天起生效。

2. 本協定的條文一旦生效，隨即就下述年度具有效力：

(a) 在香港特別行政區：

就香港特別行政區稅項而言，於本協定生效的公曆年的翌年 4 月 1 日或之後開始的任何課稅年度；

(b) 在奧地利：

就奧地利稅項而言，於本協定生效的公曆年的翌年 1 月 1 日或之後開始的任何財政年度。

## 第二十八條

## 終止協定

本協定維持有效，直至被任何締約方終止為止。任何締約方均可在本協定生效日期後第五年之後的任何公曆年完結的最少六個月之前，

藉向另一締約方發出書面終止通知，終止本協定。凡有該情況，本協定不再就下述年度具有效力：

(a) 在香港特別行政區：

就香港特別行政區税項而言，於有關通知發出的公曆年的翌年4月1日或之後開始的任何課税年度；

(b) 在奧地利：

就奧地利税項而言，於有關通知發出的公曆年的翌年1月1日或之後開始的任何財政年度。

# Part 2

## Paragraphs I to IV of the Protocol to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital

I. With reference to Article 3

1. For the purposes of paragraph 1(j) of Article 3, the term "person" includes a trust and a partnership.

2. For the purposes of paragraph 2 of Article 3, the term "penalty or interest", in the case of the Hong Kong Special Administrative Region, includes, without limitation, any sum added to Hong Kong Special Administrative Region tax by reason of default and recovered therewith, and additional tax

assessed for infringement of or failure to comply with its tax laws.

II. With reference to Article 22

For the purposes of Article 22, Austria may, by virtue of a decree based on section 48 of the Austrian Federal Tax Proceedings Code (Bundesabgabenordnung), apply the credit method for the avoidance of double taxation in specified cases, due regard being had to the principles as laid down in Article 23B of the Organisation for Economic Co-operation and Development Model Tax Convention on Income and on Capital ("OECD Model Tax Convention"), if reciprocal application of the credit method should be in the public interest of Austria. It is agreed that such switch-over to the credit method shall take place only upon prior notification to the competent authority of the Hong Kong Special Administrative Region.

III. With reference to Article 25

1. The competent authority of the applicant Party shall provide, in particular, the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

(a) the identity of the person under examination or investigation;

(b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;

(c) the tax purpose for which the information is sought;

(d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;

(e) the name and address of any person believed to be in possession of the requested information;

(f) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. It is understood that the exchange of information provided in Article 25 does not include measures which constitute "fishing expeditions".

3. It is understood that Article 25 does not obligate the Contracting Parties to exchange information on a spontaneous or automatic basis.

4. It is understood that the information received by a Contracting Party may not be disclosed to a third jurisdiction.

IV. With reference to the Agreement

1. It is understood that nothing in the Agreement shall prejudice the right of each Contracting Party to apply its domestic laws and measures concerning tax avoidance, whether or not described as such.

2. Interpretation of the Agreement

It is understood that provisions of the Agreement which are drafted according to the corresponding provisions of the OECD

Model Tax Convention or United Nations Model Double Taxation Convention ("UN Model Tax Convention") shall generally be expected to have the same meaning as expressed in the OECD or UN Commentary thereon. The understanding in the preceding sentence will not apply with respect to the following:

(a) any reservations or observations to the OECD or UN Model Tax Convention or its Commentaries by either Contracting Party;

(b) any contrary interpretations in this Protocol;

(c) any contrary interpretation agreed to by the competent authorities after the entry into force of the Agreement.

The OECD or UN Commentary - as it may be revised from time to time - constitutes a means of interpretation in the sense of the Vienna Convention on the Law of Treaties 1969.

**(Chinese Translation)**

I. 就第三條而言

1. 為第三條第 1(j) 款的施行，"人"一詞包括信託及合夥。

2. 為第三條第 2 款的施行，"罰款或利息"一詞，就香港特別行政區而言，在不受任何局限下，包括因拖欠香港特別行政區稅項而加收並連同欠款一併追討的款項及因違反或沒有遵守其稅務法律而評定的補加稅。

II. 就第二十二條而言

為第二十二條的施行，奧地利可在充分顧及《經濟合作與發展組織收入及資本稅收協定範本》("《經合組織稅收協定範本》")

第 23B 條所訂原則下，憑藉一項根據《奧地利聯邦稅務程序守則》(Bundesabgabenordnung) 第四十八條作出的法令，在指明個案中應用抵免方法以避免雙重課稅，前提是交互運用抵免方法是符合奧地利的公眾利益的。締約雙方同意，如奧地利轉換採用抵免方法，須事先給予香港特別行政區的主管當局通知，方可進行。

III. 就第二十五條而言

1. 請求方的主管當局在根據本協定作出提供資料的請求時，尤其須提供以下資料予被請求方的主管當局，以證明所請求的資料與該請求的可預見相關性：

(a) 被審查或調查的人的身分；

(b) 一份述明所尋求的資料的陳述書，包括該等資料的性質及請求方欲以何形式收取被請求方提供的該等資料；

(c) 尋求該等資料的稅務目的；

(d) 相信被請求方持有所請求的資料的理由，或相信該等資料是由被請求方的管轄區內的某人管有或控制的理由；

(e) 相信管有被請求提供的資料的人的姓名或名稱及地址；

(f) 一項述明以下事宜的陳述：請求方已用盡在其地區內可用的方法以取得該等資料 ( 引致超乎比例的難處的方法除外 )。

2. 按締約雙方理解，第二十五條訂明的資料交換，不包括屬無預設目標的隨意探求舉動。

3. 按締約雙方理解，第二十五條並不規定締約雙方自發或自動交換資料。

4. 按締約雙方理解，某締約方收到的資料，不得向第三司法管轄區披露。

IV. 就本協定而言

1. 按締約雙方理解，本協定不損害每一締約方應用其關於規避繳稅的當地法律及措施的權利，不論是否如此描述。

2. 本協定的詮釋

按締約雙方理解，本協定的規定中按照《經合組織稅收協定範本》或《聯合國雙重徵稅稅收協定範本》("聯合國稅收協定範本")的相應規定而擬訂的規定的涵義，一般而言，與《經合組織稅收協定範本》或《聯合國稅收協定範本》的註釋中所述的該等相應規定的涵義相同。前述句子所述的理解，不就以下項目適用：

(a) 任何締約方就《經合組織稅收協定範本》或《聯合國稅收協定範本》或其註釋作出的任何保留或觀察；

(b) 本議定書所載的任何相反詮釋；

(c) 主管當局在本協定生效後議定的任何相反詮釋。

經不時修訂的《經合組織稅收協定範本》或《聯合國稅收協定範本》的註釋構成《1969年維也納條約法公約》所指的詮釋方法。

Manda CHAN
Clerk to the Executive Council

COUNCIL CHAMBER

28 September 2010

# Explanatory Note

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Austria signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital ("Agreement") together with a protocol to the Agreement ("Protocol") on 25 May 2010. This Order specifies the arrangements in Articles 1 to 28 of the Agreement and Paragraphs I to IV of the Protocol as double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The Agreement and Protocol were signed in English. The Chinese texts set out in the Schedule are translations.

2. The effects of the declaration are—

(a) that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) despite anything in any enactment; and

(b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of the Republic of Austria, have effect in relation to any tax of the Republic that is the subject of that provision.