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By fax: 2877 5029

5 December 2011

Ms Carrie WONG
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
Legislative Council Road
Central, Hong Kong

Dear Ms WONG,

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion
with respect to Taxes on Income) Orders re the Portuguese Republic,
Kingdom of Spain and Czech Republic Orders (L.N. 155 – L.N. 157)**

Thank you for your letter of 1 December 2011 on the captioned Orders.
Our responses to your question are set out in the following paragraphs.

2. An international agreement does not have legislative effect for jurisdictions that have a dualist approach (Hong Kong adopts this approach). The entry into force of the agreement accordingly does not have legislative effect. The Entry Into Force Article of a comprehensive avoidance of double taxation agreement (CDTA) (and very often other bilateral agreements) is structured in

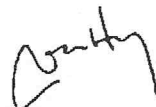
such a way to allow parties to the agreement to pursue whatever procedure that may be required by their domestic law to allow expression of consent to be bound by the agreement which has, more often than not, been negotiated by the administrative arm of the government. In the case of Hong Kong (and quite a lot of other jurisdictions), enactment of the CDTA as a piece of local legislation would be the relevant procedure. Where legislation is required, such should always be done before the agreement enters into force for that party, otherwise it risks being in breach of its treaty obligations. The entry into force of the international agreement is on a different plane and may be significantly later than the date specified for the commencement of the domestic legislation.

3. The commencement date for the implementing legislation is a matter of domestic law. For Hong Kong, in the case of an order under section 49(1) or (1A) of Cap. 112 implementing a CDTA, the commencement date is usually specified to be a date after the expiry of the time for negative vetting.

4. The Entry Into Force Article under the CDTA, which forms part of the subsidiary legislation made by virtue of an order under section 49(1) or (1A), categorically determines when the arrangements under the CDTA are to take effect. It is therefore not necessary for the making of a Commencement Notice (subsidiary legislation which determines when the arrangements are to take effect). Further, in accordance with the Entry Into Force Article, a notice of the date on which the CDTA enters into force could in practice be made only after the entry into force of the CDTA. In the absence of a clear authority in Cap. 112, it is doubtful if the CE in Council is empowered to make subsidiary legislation with retrospective effect.

5. The announcement of the effective date of the arrangements under the CDTA (as determined in accordance with the relevant provisions) on the website of the Inland Revenue Department is considered to be one of the most effective and efficient ways of bringing such information to the notice of the taxpayers.

Yours sincerely,



(Ms Joan Hung)
for Secretary for Financial Services
and the Treasury

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