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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (KINGDOM OF SPAIN) ORDER

INTRODUCTION

At the meeting of the Executive Council on 8 November 2011, the Council ADVISED and the Acting Chief Executive ORDERED that the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of Spain) Order (the Order), at
A Annex A, should be made under section 49(1A) of the Inland Revenue Ordinance, Cap. 112 (the Ordinance). The Order implements the Agreement between the Hong Kong Special Administrative Region (HKSAR) and the Kingdom of Spain (Spain) for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion signed on 1 April 2011 (the Spanish Agreement).

JUSTIFICATIONS

Benefits of Comprehensive Agreements for Avoidance of Double Taxation

2. Double taxation refers to the imposition of comparable taxes in more than one tax jurisdiction in respect of the same source of income. The international community generally recognises that double taxation hinders the exchange of goods and services, movements of capital, technology and human resources, and poses an obstacle to the development of economic

relations between economies. As a business facilitation initiative, it is our policy to enter into Comprehensive Agreements for Avoidance of Double Taxation (CDTAs) with our trading and investment partners so as to minimise double taxation.

3. Hong Kong adopts the territorial concept of taxation whereby only income sourced from Hong Kong is subject to tax. A local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation. Double taxation may occur where a foreign jurisdiction taxes its own residents' income derived from Hong Kong. Although many jurisdictions do provide their residents with unilateral tax relief for the Hong Kong tax they paid on income derived therefrom, the existence of a CDTA will provide enhanced certainty and stability in respect of the elimination of double taxation. Besides, the tax relief provided under a CDTA may exceed the level provided unilaterally by a tax jurisdiction.

Benefits of the Spanish Agreement

4. In the absence of the Spanish Agreement, profits of Hong Kong companies doing business through a permanent establishment, such as a sales outlet, in Spain may be taxed in both places if the income is Hong Kong sourced. Under the Spanish Agreement, double taxation is avoided in that any Spanish tax paid by the companies shall be allowed as a credit against the tax payable in Hong Kong.

5. Under the Spanish Agreement, the income received by a Hong Kong resident, which is not paid by (or on behalf of) and borne by a Spanish entity, from employment exercised in Spain will be exempted from Spanish income tax if his or her aggregate stay in Spain in any relevant 12-month period does not exceed 183 days.

6. In the absence of a CDTA, Hong Kong residents receiving dividends from Spain not attributable to a permanent establishment there are subject to Spanish withholding tax currently at 19%. Under the Spanish Agreement, such withholding tax will be capped at 10%. The withholding tax on dividends will be further reduced to 0% if the beneficial owner of the dividends is a company (other than a partnership) holding directly at least 25% of the capital of the company paying the dividends. Also, currently Hong Kong residents receiving royalties from Spain are subject to withholding tax at 24% in Spain. Under the Spanish Agreement, the withholding tax on royalties will be capped at 5%. Moreover, the Branch Profits Tax on after-tax profits remitted by a Spanish permanent establishment to its foreign head office (the current withholding rate is 19%)

will cease to apply to Hong Kong residents under the Spanish Agreement. The Spanish withholding tax on interest for Hong Kong residents will be reduced from the current rate of 19% to 5%. Such withholding tax will be exempted if the recipient is the HKSAR Government, the Hong Kong Monetary Authority, a financial institution or an approved pension fund, if the interest is paid by the Spanish government, or if the interest is paid in respect of a loan that is owed to, or made, provided, guaranteed or insured by, the Spanish government.

7. Under the Spanish Agreement, Hong Kong airlines operating flights to and from Spain will be taxed in Hong Kong only at Hong Kong's corporation tax rate (which is lower than that of Spain). Profits from international shipping transport earned by Hong Kong residents that arise in Spain, which are currently subject to tax there, will enjoy tax exemption in Spain under the Spanish Agreement.

8. Overall speaking, the Spanish Agreement sets out clearly the allocation of taxing rights between the two jurisdictions and the relief on tax rates on different types of income. It will help investors of the two economies to better assess their potential tax liabilities from cross-border economic activities, foster closer economic and trade links between the two places, and provide added incentives for enterprises of Spain to do business with or invest in Hong Kong, and vice versa.

Exchange of Information Article under the Spanish Agreement

9. The Inland Revenue (Amendment) Ordinance 2010 which enables Hong Kong to adopt the Organisation for Economic Co-operation and Development (OECD) 2004 version of the Exchange of Information (EoI) Article in our CDTAs came into operation in March 2010. During the scrutiny of the relevant bill, the Government presented a sample EoI Article (Annex B) to the Bills Committee and undertook to highlight any deviation from the text in any CDTA that we have signed when we submit the CDTA for vetting.

B

10. The Spanish Agreement, which contains an EoI Article (the Article) based on the OECD 2004 version, has adopted all the safeguards in the sample EoI Article, in particular -

(a) the Article only obliges the Contracting Parties to exchange information upon receipt of specific request. It does not require the Contracting Parties to exchange information on an automatic or spontaneous basis;

(b) the scope of information exchange is confined to taxes covered

by the Spanish Agreement;

(c) the information sought should be foreseeably relevant, i.e. there will be no fishing expedition;

(d) confidentiality requirements and restrictions on the usage of the information exchanged are as set out in the sample EoI Article;

(e) information will only be disclosed to the tax authorities and not for release to their oversight body;

(f) the information requested shall not be disclosed to a third jurisdiction; and

(g) there is no obligation to supply information under certain circumstances as set out in the sample EoI Article.

Legal Basis

11. Under section 49(1A) of the Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong 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 that territory. Following the signing of the Spanish Agreement, it is necessary for the Chief Executive in Council to declare by order that arrangements with Spain on double taxation relief have been made so as to put the Spanish Agreement into effect.

OTHER OPTIONS

12. An Order made by the Chief Executive in Council under section 49(1A) of the Ordinance is the only way to give effect to the Spanish Agreement. There is no other option.

THE ORDER

13. **Section 2** of the Order declares that the arrangements specified in section 3 for double taxation relief in relation to income tax and any tax of a similar character imposed by the laws of Spain have been made and that those arrangements should take effect. **Section 3** states that the arrangements are those in Articles 1 to 27 of the Spanish Agreement as well as Paragraphs 1 to 7 of the Protocol to the Spanish Agreement, the text of which Articles and Paragraphs is set out in the **Schedule** to the Order.

LEGISLATIVE TIMETABLE

14. The legislative timetable is as follows –

Publication in the Gazette	18 November 2011
Tabling at Legislative Council	23 November 2011
Commencement of the Order	12 January 2012

IMPLICATIONS OF THE PROPOSAL

15. The proposal has financial, economic and civil service implications as set out in Annex C. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation. It has no productivity, environmental or sustainability implications.

C

PUBLIC CONSULTATION

16. The business and professional sectors have all along supported our policy to conclude more CDTAs with our trading and investment partners.

PUBLICITY

17. Publicity was arranged for the signing of the Spanish Agreement on 1 April 2011. A spokesman will be available to answer media and public enquiries.

BACKGROUND

18. The Spanish Agreement is the twentieth CDTA concluded by Hong Kong with another jurisdiction. A summary of the main provisions of the Agreement is at Annex D.

D

19. We entered into a CDTA with Belgium in December 2003, with Thailand in September 2005, with the Mainland of China in August 2006, with Luxembourg in November 2007, with Vietnam in December 2008, with Brunei, the Netherlands and Indonesia in March 2010, with Hungary, Kuwait and Austria in May 2010, with the United Kingdom and Ireland in June 2010, with Liechtenstein in August 2010, with France in October 2010, with Japan in November 2010, with New Zealand and Switzerland in December 2010, with Portugal in March 2011, with Spain in April 2011, with the Czech Republic in June 2011 and with Malta in November 2011.

ENQUIRY

20. In case of enquiries about this Brief, please contact Ms Shirley Kwan, Principal Assistant Secretary for Financial Services and the Treasury

(Treasury), at 2810 2370.

Financial Services and the Treasury Bureau
16 November 2011

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (KINGDOM OF SPAIN) ORDER

ANNEXES

Annex A	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of Spain) Order
Annex B	Sample Exchange of Information Article
Annex C	Financial, Economic and Civil Service Implications of the Proposal
Annex D	Summary of the main provisions of the Comprehensive Double Taxation Agreement between Hong Kong and Spain

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of Spain) 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 12 January 2012.

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 Kingdom of Spain 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 Kingdom; 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 27 of the agreement titled "Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" (which title is translated into Chinese as "《中華人民共和國香港特別行政區與西班牙王國就收入稅項避免雙重課稅和防止逃稅協定》" in this Order),

done in duplicate at Hong Kong on 1 April 2011 in the English and Spanish languages; and

(b) Paragraphs 1 to 7 of the protocol to the agreement, done in duplicate at Hong Kong on 1 April 2011 in the English and Spanish languages.

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

(3) The English text of the Paragraphs referred to in subsection (1)(b) is reproduced in Part 2 of the Schedule and a Chinese translation of the Paragraphs is also set out in that Part.

Schedule [s. 3]

Part 1

Articles 1 to 27 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

CHAPTER I

SCOPE OF THE AGREEMENT

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 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 all taxes imposed on total income, or on elements of income, 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 the 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 Spain:

(i) the income tax on individuals;

(ii) the corporation tax;

(iii) the income tax on non residents; and

(iv) local taxes on income.

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 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 the Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "Spanish tax", as the context requires.

CHAPTER II

DEFINITIONS

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" when used in a geographical sense, means the land and sea comprised within the boundary of the Hong Kong Special Administrative Region of the People's Republic of China and any other place where the laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;

(ii) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including inland waters, the air space, the territorial sea and any area outside the territorial sea upon which, in accordance with international law and on application of its domestic

legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;

(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 authorised representative;

(ii) in the case of Spain, the Minister of Economy and Finance or his authorised representative;

(e) the terms "a Contracting Party" and "the other Contracting Party" mean the Hong Kong Special Administrative Region or Spain, 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 Spain means:

(i) any individual possessing the nationality of Spain; and

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

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

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

2. As regards the application of the 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 law of that Party for the purposes of the taxes to which the 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 provided that he has personal and economic relations with the Hong Kong Special Administrative Region;

(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; and

(v) the Government of the Hong Kong Special Administrative Region;

(b) in the case of Spain, any person who, under the laws of Spain, 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 that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in Spain in respect only of income from sources in Spain.

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 Spain);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Spain, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Spain, the competent authorities of the Contracting Parties shall 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. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than nine months.

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.

CHAPTER III

TAXATION OF INCOME

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 law 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 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 are situated.

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. Where the ownership of shares or other rights directly or indirectly entitles the owner of such shares or rights to the enjoyment of immovable property, the income derived from the direct use, letting or use in any other form of such right to the enjoyment may be taxed in the Contracting Party in which the immovable property is situated.

6. The provisions of paragraphs 1, 4 and 5 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 apportionment or other method; the 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.

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 for this purpose 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. 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:

   (a) 0 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership)

which holds directly at least 25 per cent of the capital of the company paying the dividends;

(b) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of these limitations.

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 may be taxed in that other Party.

2. However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 5 per cent of the gross amount of the interest. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, 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 the said resident is the beneficial owner of the interest and:

(a) is that Contracting Party or the central bank, a political subdivision or local authority thereof;

(b) the interest is paid by the Contracting Party in which the interest arises or by a political subdivision, a local authority or statutory body thereof;

(c) the interest is paid in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by,

that Contracting Party or a political subdivision, local authority or export facilitating agency thereof;

(d) is a financial institution;

(e) is a pension fund that is approved for tax purposes by that other Contracting Party and the income of that fund is generally exempt from tax in that other Party.

4. 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.

5. The provisions of paragraphs 1, 2 and 3 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.

6. 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.

7. 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 5 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, tapes and other means of image or sound reproduction, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, 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 or comparable interests deriving more than 50 per cent of their 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 quoted on a stock exchange of either Contracting Party or any other stock exchange as may be agreed between the competent authorities of the Contracting Parties.

5. Gains from the alienation of shares or other rights, which directly or indirectly entitle the owner of such shares or rights to the enjoyment of immovable property situated in a Contracting Party, may be taxed in that Party.

6. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5, 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 may be taxed 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

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.

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration paid by 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 Spain, is a national thereof; or

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

2. (a) Notwithstanding the provisions of paragraph 1, pensions (including a lump sum payment) and other similar remuneration paid by, or paid out of funds created or contributed by, 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, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within subparagraph (b) of paragraph 1, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that other Contracting Party.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions (including a lump sum payment) and other similar remuneration in respect of services rendered in connection with a business carried on by 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 receives for the purpose of his maintenance or education 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.

3. Alimony or other maintenance payment paid by a resident of a Contracting Party to a resident of the other Contracting Party shall, to the extent it is not allowable as a deduction to the payer in the first-mentioned Party, be taxable only in that Party.

CHAPTER IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 21

Elimination of Double Taxation

1. 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), Spanish tax paid under the laws of Spain 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 Spain, 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 Spain, double taxation shall be avoided following either the provisions of its internal legislation or the following provisions in accordance with the internal legislation of Spain:

(a) Where a resident of Spain derives income which, in accordance with the provisions of the Agreement, may be taxed in the Hong Kong Special Administrative Region, Spain shall allow:

(i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Hong Kong Special Administrative Region;

(ii) the deduction of the underlying corporation tax in accordance with the internal legislation of Spain.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the Hong Kong Special Administrative Region.

(b) Where in accordance with any provision of the Agreement income derived by a resident of Spain is exempt from tax in Spain, Spain may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

CHAPTER V

SPECIAL PROVISIONS

Article 22

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 Spain, are Spanish 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 Spain) in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. 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.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 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.

4. 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.

Article 23

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 law 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 22, 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 Spain). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 the

Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 24

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 the 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, or 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. Information shall not be disclosed to any third jurisdiction for any purpose.

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 25

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.

CHAPTER VI

FINAL PROVISIONS

Article 26

Entry into Force

1. Each of the Contracting Parties shall notify the other in writing through appropriate channels that the internal procedures required by each Contracting Party for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force after a period of three months following the date of receipt of the later of the notifications referred to in paragraph 1.

3. The provisions of the 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 the Agreement enters into force;

   (b) in Spain:

   (i) in respect of taxes withheld at source, on amounts paid or credited to non-residents, on or after 1 April in the calendar year next following that in which the Agreement enters into force;

   (ii) in respect of other taxes, for taxation years beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force; and

   (iii) in all other cases, on or after 1 April in the calendar year next following that in which the Agreement enters into force.

Article 27

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, through appropriate channels, by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year beginning on or after the expiration of a period of five years from the date of its entry into force. In such event, the 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 Spain:

(i) in respect of taxes withheld at source, on amounts paid or credited to non-residents, on or after 1 April in the calendar year next following that in which the notice is given;

(ii) in respect of other taxes, for taxation years beginning on or after 1 April in the calendar year next following that in which the notice is given; and

(iii) in all other cases, on or after 1 April in the calendar year next following that in which the notice is given.

(Chinese Translation)

第一章

協定的範圍

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

所涵蓋的稅項

1. 本協定適用於代締約方、其政治分部或地方當局課徵的收入稅項，不論該等稅項以何種方式徵收。

2. 對總收入或收入的組成部分課徵的所有稅項，包括對得自轉讓動產或不動產的收益、企業支付的工資或薪金總額以及資本增值課徵的稅項，須視為收入稅項。

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) 就西班牙而言：

(i) 個人所得稅；

(ii) 公司稅；

(iii) 對非居民徵收的所得稅；及

(iv) 地方徵收的收入稅項。

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第 1 款及第 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"西班牙稅項"，按文意所需而定。

第二章

定義

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"一詞用於地理概念時，指中華人民共和國香港特別行政區境內的陸地及海域，以及中華人民共和國香港特別行政區的法律所適用的任何其他地區；

(ii) "西班牙"一詞指西班牙王國，而該詞用於地理概念時，則指西班牙王國的領土，包括內陸水域、上空、領海，以及符合以下描述而位於領海以外的地區：西班牙王國按照國際法及藉施行其當地法例而對該地(或可於將來對該地)行使在有關海床、其底土及上覆水域，以及它們的自然資源方面的管轄權或主權權利；

(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務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) 就西班牙而言，指經濟及財政部部長或其獲授權代表；

(e) "締約方"及"另一締約方"兩詞指香港特別行政區或西班牙，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，就西班牙而言，指：

(i) 擁有西班牙國籍的任何個人；及

(ii) 藉西班牙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、合夥及任何其他團體；

(k) "稅項"一詞指香港特別行政區稅項或西班牙稅項，按文意所需而定。

2. 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，但該人須與香港特別行政區有個人及經濟關係；

(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；及

(v) 香港特別行政區政府；

(b) 就西班牙而言，指根據西班牙的法律，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西班牙繳稅的法律責任的人。該詞亦包括該國家及其任何政治分部或地方當局。然而，該詞並不包括僅就源自西班牙的收入而有在西班牙繳稅的法律責任的任何人。

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(就西班牙而言)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西班牙的國民，或該人既沒有香港特別行政區的居留權亦不屬西班牙的國民，則締約雙方的主管當局須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，則該人須當作只是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. 建築工地或建築或安裝工程須持續超過九個月，才可構成常設機構。

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而使用設施；

(b) 純粹為了貯存、陳列或交付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)段至(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 款及第 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. 即使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，或受上述任何一類其他公司所控制，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。

第三章

收入稅項

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、源頭或自然資源的所在地。

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. 凡擁有任何股份或其他權利的人直接或間接因該項擁有權而有權享用不動產，則自直接使用、出租或以任何其他形式使用該項享用權而取得的收入，可在該不動產所在的締約方徵稅。

6. 第 1 款、第 4 款及第 5 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部分為限。

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有關情況下可預計獲得的利潤歸因於該機構，上述有關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；但採用的方法，須令所得結果符合本條所載的原則。

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。

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，則該另一方須適當地調整其對該等利潤徵收的稅額。在釐定上述調整時，須充分顧及本協定的其他規定，而為此目的，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，可在該另一方徵稅。

2. 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稅，但如該等股息的實益擁有人是另一締約方的居民，則如此徵收的稅款不得超過：

(a) (如該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二十五)該等股息總額的百分之零；

(b) (在所有其他情況下)該等股息總額的百分之十。

締約雙方的主管當局須藉雙方協商確定實施該等限制稅率的方式。

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稅。

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稅務待遇，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，而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 款及第 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稅(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. 產生於某締約方而支付予另一締約方的居民的利息，可在該另一方徵稅。

2. 然而，在某締約方產生的上述利息，亦可在該締約方按照該方的法律徵稅，但如該等利息的實益擁有人是另一締約方的居民，則

如此徵收的稅款不得超過該等利息總額的百分之五。締約雙方的主管當局須藉雙方協商確定實施該限制稅率的方式。

3. 儘管有第 2 款的規定，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，則在以下情況下，該利息只可在該另一方徵稅：

(a) 該居民是該締約方或其中央銀行、政治分部或地方當局；

(b) 該利息是由該利息產生所在的締約方或其政治分部、地方當局或法定團體支付的；

(c) 該利息是就該締約方或其政治分部、地方當局或促進出口機構被虧欠或所作出、提供、擔保或投保的貸款、債權或信貸而支付的；

(d) 該居民是金融機構；

(e) 該居民是獲該另一締約方為稅務目的而認可的退休基金，而且該基金的收入一般是在該另一方獲免稅的。

4. "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。

5. 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、

第 2 款及第 3 款的規定並不適用。在此情況下，第七條的規定適用。

6. 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)，而該債務是在與該常設機構有關連的情況下招致的，且該利息是由該常設機構負擔的，則該利息須當作是在該常設機構所在的一方產生。

7. 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議定的款額，則本條的規定只適用於該會議定的款額。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，可在該另一方徵稅。

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稅，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，則如此徵收的稅款不得超過該等特許權使用費總額的百分之五。締約雙方的主管當局須藉雙方協商確定實施該限制稅率的方式。

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，或膠片、磁帶及其他將影像或聲音重現的方法)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、作為使用或有權使用工業、商業或科學設備的代價，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，而該權利或財產是與該常設機構有實際關連的，則第 1 款及第 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，是在與該常設機構有關連的情況下招致的，且該特許權使用費是由該常設機構負擔的，則該特許權使用費須當作是在該常設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議定的款額，則本條的規定只適用於該會議定的款額。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，可在該另一方徵稅。

2. 如某動產屬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，則自轉讓該動產所得的收益，包括自轉讓該常設機構(單獨或隨同整個企業)所得的收益，可在該另一方徵稅。

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，只可在該方徵稅。

4. 如某締約方的居民自轉讓股份或相當於股份的權益而取得收益，而該等股份或權益超過百分之五十的價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稅。然而，本款不適用於自轉讓在締約任何一方的證券交易所(或締約雙方的主管當局議定的任何其他證券交易所)上市的股份而取得的收益。

5. 凡擁有任何股份或其他權利的人直接或間接因該等股份或權利而有權享用位於某締約方的不動產，則自轉讓該等股份或權利所得的收益，只可在該方徵稅。

6. 凡有關轉讓人是某締約方的居民，自轉讓第 1 款、第 2 款、第 3 款、第 4 款及第 5 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. 除第十五條、第十七條及第十八條另有規定外，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，則只可在首述的一方徵稅：

(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所設的常設機構所負擔。

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，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. 儘管有第七條及第十四條的規定，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，則儘管有第七條及第十四條的規定，該收入可在該締約方徵稅。

第十七條

退休金

除第十八條第 2 款另有規定外，因過往的受僱工作或過往的自僱工作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。

第十八條

政府服務

1. (a) 某締約方、其政治分部或地方當局就提供予該方、分部或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，只可在該方徵稅。

(b) 然而，如上述服務是在另一締約方提供，而該個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；而就西班牙而言，屬西班牙的國民；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. (a) 儘管有第 1 款的規定，某締約方、其政治分部或地方當局就提供予該方、分部或當局的服務而向任何個人支付的退休金(包括整筆付款)及其他類似報酬，或就上述服務而從該方、分部或當局所設立或供款的基金支付予任何個人的退休金(包括整筆付款)及其他類似報酬，只可在該方徵稅。

(b) 然而，如提供上述服務的個人屬另一締約方的居民，且情況符合第 1 款(b)段所述，則相應的退休金(不論是整筆支付或分期支付)只可在該另一締約方徵稅。

3. 第十四條、第十五條、第十六條及第十七條的規定，適用於就在與某締約方、其政治分部或地方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、退休金(包括整筆付款)及其他類似報酬。

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，則該學生為了維持其生活或教育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，如在本協定中在本條之前的各條中未有規定，均只可在該方徵稅。

2. 凡就某權利或財產支付的收入(來自第六條第 2 款所界定的不動產的收入除外)的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常設機構有實際關連的，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。

3. 由某締約方的居民支付予另一締約方的居民的生活費或其他贍養費，在該等款項於首述一方不容許作為付款人的稅項扣除的範圍內，只可在該方徵稅。

第四章

消除雙重課稅的方法

第二十一條

消除雙重課稅

1. 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，如已根據西班牙的法律和按照本協定，就屬香港特別行政區居民的人自西班牙的來源取得的收入繳付西班牙稅項，則不論是直接繳付或以扣除的方式繳付，所繳付的西班牙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. 在西班牙，雙重課稅須依循其內部法例的規定避免，或依循以下規定而按照西班牙的內部法例避免：

(a) 如某西班牙居民取得的收入按照本協定的規定是可在香港特別行政區徵稅的，西班牙須容許：

(i) 在就該居民的收入徵收的稅項中，扣除相當於已在香港特別行政區繳付的入息稅的款額；

(ii) 按照西班牙的內部法例扣除相關公司稅。

然而，該等扣除不得超過在扣除前計算的入息稅中可歸因於可在香港特別行政區徵稅的收入的部分。

(b) 凡按照本協定的任何規定，西班牙的某居民所取得的收入獲豁免無須在西班牙徵稅，西班牙在計算該居民其餘收入的稅項的款額時，仍可將獲豁免的收入計算在內。

第五章

特別條文

第二十二條

反歧視條文

1. 任何人如就香港特別行政區而言擁有該處的居留權或在該處成立為法團或以其他方式組成，而就西班牙而言屬西班牙國民，則該人在另一締約方不得受符合以下說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)擁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(如該另一方是西班牙)的國民，在相同情況下(尤其是在居住方面)須受或可受的課稅及與之有關連的規定所規限，或較之為嚴苛。儘管有第一條的規定，本規定亦適用於並非締約一方或雙方的居民的人。

2. 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稅待遇，不得遜於進行相同活動的該另一方的企業的課稅待遇。凡某締約方以公民身分或家庭責任的理由，而為課稅的目的授予其本身的居民任何個人免稅額、稅務寬免及扣減，本條的規定不得解釋為使該締約方有責任將該免稅額、稅務寬免及扣減授予另一締約方的居民。

3. 除第九條第 1 款、第十一條第 7 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稅利潤的目的，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。

4. 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說明的任何課稅或與之有關連的任何規定所規限：該課稅是有別於首述一方的其他類似企業須受或可受的課稅及與之有關連的規定所規限，或較之為嚴苛。

第二十三條

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，可將其個案呈交該締約方的主管當局；如其個案屬第二十二條第 1 款的情況，而他擁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(就西班牙而言)，則他可將其個案呈交該締約方的主管當局。該個案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對之作出規定的雙重課稅。

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與對方聯絡。

第二十四條

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。不得為任何目的向任何第三司法管轄區披露資料。

3. 在任何情況下，第 1 款及第 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。

第二十五條

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規定享有的財政特權。

第六章

最後條文

第二十六條

協定的生效

1. 每一締約方均須經適當渠道，書面通知對方，每一締約方對本協定生效而要求的內部程序已獲遵從。

2. 本協定自收到第 1 款所提述的通知中的較後一份的日期後的三個月之後開始生效。

3. 本協定的規定：

(a) 在香港特別行政區：

就香港特別行政區稅項而言，對在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具有效力；

(b) 在西班牙：

(i) 就在來源預扣的稅項而言，對在本協定生效的公曆年的翌年 4 月 1 日或之後支付予非居民或存入非居民貸方賬戶的款額具有效力；

(ii) 就其他稅項而言，對在本協定生效的公曆年的翌年 4 月 1 日或之後開始的稅務年度具有效力；及

(iii) 在所有其他情況下，在本協定生效的公曆年的翌年 4 月 1 日或之後具有效力。

第二十七條

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起的五年屆滿當日或之後開始的任何公曆年完結的最少六個月之前，經適當渠道，向另一締約方發出書面終止通知，終止本協定。在該情況下：

(a) 在香港特別行政區：

本協定就香港特別行政區稅項而言，不再對在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稅年度具有效力；

(b) 在西班牙：

(i) 本協定就在來源預扣的稅項而言，不再對在有關通知發出的公曆年的翌年 4 月 1 日或之後支付予非居民或存入非居民貸方賬戶的款額具有效力；

(ii) 本協定就其他稅項而言，不再對在有關通知發出的公曆年的翌年 4 月 1 日或之後開始的稅務年度具有效力；及

(iii) 在所有其他情況下，本協定在有關通知發出的公曆年的翌年 4 月 1 日或之後不再具有效力。

Part 2

Paragraphs 1 to 7 of the Protocol to the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

1. In the Agreement, the term "Hong Kong Special Administrative Region tax" does not include any penalty or interest (including any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith and "additional tax" under Section 82A of the Inland Revenue Ordinance) imposed under the laws of the Hong Kong Special Administrative Region relating to the taxes to which the Agreement applies by virtue of Article 2.

2. Nothing in the Agreement shall prevent each Contracting Party from applying its domestic laws and measures (including anti-abuse provisions) concerning tax avoidance, whether or not described as such.

3. Ad Articles 10, 11, 12, 13 and 20

The provisions of Articles 10, 11, 12, 13 and 20 shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of shares or other rights in respect of which the dividends are paid, the creation or assignment of debt-claim in respect of which the interest is paid, the creation or assignment of rights in respect of which the royalties are

paid, the alienation of property out of which the gains are made, the creation or assignment of rights in respect of which income is paid to take advantage of these Articles by means of that creation or assignment.

4. Ad Article 11

(a) In the case of the Hong Kong Special Administrative Region, the term "central bank" in subparagraph (a) of paragraph 3 refers to the Hong Kong Monetary Authority.

(b) It is understood that "statutory body" in subparagraph (b) of paragraph 3 only refers to those that perform public functions and which are non-profit in nature.

5. Ad Article 18(2)(a)

It is understood that "funds contributed by" refers to payments that may be made by a Contracting Party to pension schemes recognized for tax purposes in that Contracting Party for the purpose of providing for retirement benefits for individuals who render services to that Party.

6. Ad Article 24

(a) Each Contracting Party shall ensure that its competent authority for the purposes specified in Article 24 (Exchange of Information) has the authority to obtain and provide upon request information regarding the legal and beneficial ownership of any person.

(b) The competent authority of a Contracting Party shall forward the requested information as promptly as possible to the other Contracting Party.

(c) In the case of Spain, should any appeal be made against the decision of the Government of the Hong Kong Special Administrative Region concerning the transmission of the information to Spain, any delay derived therefore will not be considered in computing the applicable time-limits established by the Tax Legislation in Spain concerning tax administration proceedings.

7. Ad Article 25

It is understood that the term "government missions" means, in the case of the Hong Kong Special Administrative Region, Economic and Trade Office, and in the case of Spain, diplomatic missions and consular posts.

(Chinese Translation)

1. 在本協定中，"香港特別行政區稅項"一詞不包括根據香港特別行政區有關法律所施加的任何罰款或利息(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，以及《稅務條例》第82A條所指的"補加稅")。有關法律，是指關乎本協定適用(屬憑藉第二條而適用)的稅項的法律。

2. 本協定並不妨礙每一締約方應用其關於規避繳稅的當地法律及措施(包括打擊濫用的規定)，不論其稱謂是否如此。

3. 就第十條、第十一條、第十二條、第十三條及第二十條而言

如產生或轉讓以下各項所關乎的任何人，即產生或轉讓孳生股息的股份或其他權利、產生或轉讓孳生利息的債權、產生或轉讓孳

生特許權使用費的權利、轉讓財產而取得收益，以及產生或轉讓孳生收入的權利，其主要目的或其中一個主要目的，是藉着該等產生或轉讓而自第十條、第十一條、第十二條、第十三條或第二十條獲益，則上述條文的規定並不適用。

4. 就第十一條而言

(a) 就香港特別行政區而言，第 3 款(a)段中"中央銀行"一詞指香港金融管理局。

(b) 按締約雙方理解，第 3 款(b)段中"法定團體"一詞只指執行公共職能且屬非牟利性質者。

5. 就第十八條第(2)款(a)段而言

按締約雙方理解，"供款的基金"一詞指某締約方為了向提供服務予該方的個人提供退休福利，因而對在該方為稅務目的而認可的退休金計劃作出的付款。

6. 就第二十四條而言

(a) 每一締約方均須確保其主管當局(就第二十四條(資料交換)所指明的目的而言者)有權限取得及應請求而提供關於任何人的法律及實益擁有權的資料。

(b) 締約方的主管當局須盡速向另一締約方送交所請求的資料。

(c) 就西班牙而言，如有人針對香港特別行政區政府關於傳送資料至西班牙的決定而提出任何上訴，則因此而產生的任何延

遲，均不會在計算適用的時限(即由西班牙的稅務法例訂立的關於稅務行政程序的時限)時予以考慮。

7. 就第二十五條而言

按締約雙方理解，"政府代表團"一詞就香港特別行政區而言，指經濟貿易辦事處，而就西班牙而言，則指使館和領館。

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of Spain signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (***Agreement***) together with a protocol to the Agreement (***Protocol***) on 1 April 2011. This Order specifies the arrangements in Articles 1 to 27 of the Agreement and Paragraphs 1 to 7 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 the English and Spanish languages. 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 Spain, have effect in relation to any tax of Spain that is the subject of that provision.

Annex B

Extracts of Hong Kong's Sample CDTA Text

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 concerning taxes of every kind and description imposed on behalf of the Contracting Parties, or of their political subdivisions or local or territorial authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1[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;

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[1] Article 1: "PERSONS COVERED: This Agreement shall apply to persons who are residents of one or both of the Contracting Parties."

(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 Contacting 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.

* * * *

PROTOCOL

At the time of signing of the Agreement between the Government of Country A and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion, the two Governments have agreed on the following provisions which shall form an integral part of the Agreement.

1-9. …..

10. It is understood that Article 25 does not create obligations as regards automatic or spontaneous exchanges of information between the Contracting Parties. In respect of the same Article, it is also understood that information requested shall not be disclosed to a third jurisdiction. In the case of the Hong Kong Special Administrative Region, the judicial decisions in which information may be disclosed include the decisions of the Board of Review.

* * * *

Annex C

Financial, Economic and Civil Service Implications of the Proposal

Financial Implications

The Government would have to forgo some revenue which is currently being collected in respect of profits of Spanish resident companies not attributable to a permanent establishment in Hong Kong, as well as shipping and air services profits of Spanish operators. However, the overall financial implications would be insignificant.

Economic Implications

2. The Spanish Agreement will facilitate business development between Hong Kong and Spain and contribute positively to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Spain by providing enhanced certainty and stability to the tax liabilities of investors.

Civil Service Implications

3. There will be additional work for the Inland Revenue Department (IRD) in handling requests for exchange of information from Spain under the Spanish Agreement. Additional manpower resources would be sought in accordance with the established resource allocation mechanism. IRD has also obtained the approval of the Finance Committee of the Legislative Council to create a supernumerary directorate post for three years with effect from 1 April 2011 to support the implementation of CDTA-related initiatives.

Annex D

Comprehensive Double Taxation Agreement (CDTA) Between Hong Kong and Spain

Summary of Main Provisions

1. The CDTA with Spain (the "Spanish Agreement") covers the following types of taxes:

(a) in respect of Hong Kong –
- (i) salaries tax;
- (ii) profits tax; and
- (iii) property tax;

(b) in respect of Spain –
- (i) income tax on individuals;
- (ii) corporation tax;
- (iii) income tax on non-residents; and
- (iv) local taxes on income.

2. The Spanish Agreement deals with the taxing of income of the resident of one Contracting Party ("resident jurisdiction") derived from another Contracting Party ("source jurisdiction").

Exclusive taxing right

3. Where the right to tax income is allocated exclusively to one Contracting Party under the Spanish Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Spanish Agreement that the following types of income shall only be taxed in the resident jurisdiction:

(a) profits of an enterprise, unless the enterprise carries on business in the source jurisdiction through a permanent establishment therein (i.e. a fixed place of business through which the business of an enterprise is wholly or partly carried on);

(b) profits from operation of ships and aircraft in international

traffic and gains from alienation of ships or aircraft operated in international traffic;

(c) interest income received by a Contracting Party or its central bank, political subdivision or local authority, a financial institution or an approved pension fund; and in all other cases, if the interest is paid by a Contracting Party or its political subdivision, local authority or statutory body, or if the interest is paid in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by, a Contracting Party or its political subdivision, local authority or export facilitating agency;

(d) income from non-government employment, including employment exercised in the source jurisdiction provided that the employee is present in the source jurisdiction for aggregate periods not exceeding 183 days in any relevant 12-month period, etc.;

(e) non-government pensions, including a lump sum payment;

(f) capital gains not expressly dealt with in the Spanish Agreement; and

(g) other income not expressly dealt with in the Spanish Agreement except where the article for business profits might apply to the income.

4. Employment income and pension paid by the government of a Contracting Party shall be, in general, taxable only in that Party (source jurisdiction).

Shared taxing rights

5. Where both tax jurisdictions are given the right to tax the same item of income, the resident jurisdiction is required under the Spanish Agreement to give double taxation relief to its resident for any income doubly assessed (i.e. the source jurisdiction has the primary right to tax

and the resident jurisdiction is left with a secondary right). It is provided in the Spanish Agreement that the following types of income may be taxed in both jurisdictions:

(a) income generated from immovable property situated in the source jurisdiction and gains from the alienation of such property;

(b) profits of an enterprise which carries on business in the source jurisdiction through a permanent establishment, to the extent that such profits are attributable to the permanent establishment, and gains from the alienation of the business property of such permanent establishment;

(c) passive income of dividends, interest and royalties received from residents of source jurisdiction. The source jurisdiction's right to tax is subject to a specified limit in tax rates:

- for dividends, 0% if the beneficial owner is a company which holds directly at least 25% of the capital of the paying company and 10% in all other cases;

- for interest, 5% (the general rate provided in Spanish treaties with other Asian countries is 10%);

- for royalties, 5%;

(d) gains from alienation of shares of a company deriving more than 50% of its asset value directly or indirectly from immovable property situated in the source jurisdiction (except for quoted shares);

(e) remuneration from non-government employment exercised in the source jurisdiction, where the employee is present in the source jurisdiction for aggregate periods exceeding 183 days in any relevant 12-month period, etc.;

(f) remuneration from non-government employment exercised aboard a ship or aircraft operated in international traffic;

(g) directors' fees from a company resident in the source jurisdiction; and

(h) income of entertainers and sportspersons who conduct their professional activities in the source jurisdiction.

6. In general, in case of shared taxing rights, double taxation relief may be given to a taxpayer either through the exemption method, where income taxable in the source jurisdiction is exempted from taxation in the resident jurisdiction; or through the credit method, where income taxable in the source jurisdiction is subject to tax in the resident jurisdiction but the tax levied in the source jurisdiction is credited against the tax levied in the resident jurisdiction on such income. Hong Kong provides double taxation relief for its residents by the credit method whereas Spain provides double taxation relief for its residents by the exemption and credit methods.