**檔案編號: TsyB R 183/800-1-1/94/0 (C)**

# 立法會參考資料摘要

《稅務條例》
(第 112 章)

## 《稅務(關於收入稅項的雙重課稅寬免和防止逃稅)(根西島)令》

## 引言

在二零一三年九月二十四日的會議上，行政會議**建議**，行政長官**指令**根據《稅務條例》(第 112 章)(《條例》)第 49(1A)條，制定《稅務(關於收入稅項的雙重課稅寬免和防止逃稅)(根西島)令》(命令)(載於附件A)。命令旨在實施香港特別行政區在二零一三年四月二十二日與根西島簽訂有關就收入稅項避免雙重課稅及防止逃稅的協定(根西島協定)。

A

## 理據

### 全面性避免雙重課稅協定的好處

2. 雙重課稅是指同一項收入在一個以上的稅務管轄區被徵收類似的稅項。國際社會一般認同，雙重課稅對貨品和服務交流，以及資金、科技和人才的流動造成障礙，而且窒礙各經濟體系之間經貿關係的發展。作為一項方便營商措施，政府的政策是與貿易及投資伙伴簽訂全面性避免雙重課稅協定(全面性協定)，以盡量避免雙重課稅。

3. 香港採用地域來源原則徵稅，即只就源自香港的收入徵稅。香港居民無須就香港以外來源所得的收入在港繳稅，因而不會被雙重徵稅。然而，如外地政府向其居民就源自香港的收入徵稅，就可能出現雙重課稅的情況。雖然許多地區都會就已在香港繳稅的收入向其居民提供單方面的稅務寬免，但簽訂全面性協定，可在避免雙重課稅方面提供更明確的依據及更穩定的環境。此外，全面性協定提供的稅務寬免，可能較某些稅務管轄區單方面給予的寬免更為優厚。

### 根西島協定的好處

4. 如沒有根西島協定，根西島居民在香港賺取的收入會同時被香港和根西島徵收入息稅。根據根西島協定，在香港所繳納的稅款，可以從根西島所徵收的相關稅項中抵免。

5. 如沒有根西島協定，香港公司從設於根西島的常設機構所得的利潤，如果源自香港，就可能須在兩地課稅。根據根西島協定，這些公司在根西島所繳納的稅款，將可以根據香港的稅務法例，從香港就有關收入徵收的稅項中抵免，從而避免雙重課稅。

6. 根據根西島協定，香港居民受僱在根西島工作，如果其收入並非由一個根西島實體(或其代表)支付和承擔，而他於相關的 12 個月內，在根西島逗留累計不超過 183 天，則無須在根西島繳稅。

7. 整體來說，根西島協定明確劃分了兩地的徵稅權，並訂明各類收入的稅率寬免。這會有助兩地的投資者更有效地評估其跨境經濟活動的潛在稅務負擔，加強兩地的經濟貿易連繫，以及進一步鼓勵根西島和香港企業在彼此的地方營商或投資。

**根西島協定的資料交換條文**

8. 香港在其全面性協定中採用經濟合作與發展組織二零零四年版本的資料交換條文，以便交換稅務資料，使之符合國際標準。為保障納稅人的私隱和所交換的資料能予以保密，政府曾向立法會承諾，會繼續在全面性協定內採取下列高度縝密的保障措施。同時，當我們把全面性協定提交立法會進行先訂立後審議的立法程序時，我們會指出所提交的全面性協定內容與該等保障措施有何不同(如有的話)。該等保障措施包括：

(a) 我們只在接獲要求後交換資料，不會自動或自發交換資料；

(b) 所索取的資料應為可預見相關的資料，即不得作打探性質的資料交換請求；

(c) 全面性協定伙伴所獲取的資料應予保密；

(d) 資料只可向稅務當局披露，不得透露予其監督機關，除非全面性協定伙伴提出充分理由，則作別論；

(e) 所索取的資料不得向第三司法管轄區披露；以及

(f) 在一些情況下沒有責任提供資料，例如資料會披露任何貿易、業務、工業、商業或專業秘密或貿易程序，又或有關資料屬法律專業特權涵蓋範圍等。

9. 根西島協定內的資料交換條文，已採用上述所有保障措施。此外，資料交換範圍限於該協定所涵蓋的稅項，即所得稅。

## 法理依據

10. 根據《條例》第 49(1A)條，行政長官會同行政會議可藉命令宣布，已與香港以外地區的政府訂立安排。根據《條例》第 49(1B)條，只有為給予雙重課稅寬免及／或就香港或有關地區的法律所施加的稅項交換資料兩類目的，方可根據《條例》第 49(1A)條作出命令，以訂立有關安排。在根西島協定簽訂後，行政長官會同行政會議需要藉命令宣布已與根西島訂立相關安排，而該等安排的生效有利於實施根西島協定。

## 其他方案

11. 由行政長官會同行政會議根據《條例》第 49(1A)條作出命令，是實施根西島協定的唯一方法。除此之外，沒有其他方案。

## 命令

12. 命令**第 2 條**宣布，已訂立第 3 條所指明的雙重課稅寬免安排，而該等安排的生效是屬於有利的。**第 3 條**述明，有關安排是載於根西島協定的第一至二十八條及根西島協定議定書的第 1 至 3 段的安排。有關協定條文和議定書條文，載於命令的**附表**。

## 立法程序時間表

13. 立法程序時間表如下 –

| | |
|---|---|
| 刊登憲報日期 | 二零一三年十月四日 |
| 提交立法會日期 | 二零一三年十月九日 |
| 命令生效日期 | 二零一三年十一月二十九日 |

## 建議的影響

B

14. 建議對財政、經濟、公務員及家庭會有影響，詳情見附件 B。建議符合《基本法》，包括有關人權的條文。建議不會影響《條例》現有條文及其附屬法例的約束力。建議對生產力、環境和可持續發展沒有影響。

## 公眾諮詢

15. 商界和專業界別一向都支持我們與貿易及投資伙伴訂立全面性協定這項政策。

## 宣傳

16. 在二零一三年四月二十二日簽訂根西島協定後，我們已於二零一三年四月二十三日發出新聞稿。我們會安排發言人回答傳媒和公眾查詢。

## 背景

17. 根西島協定是香港與另一個稅務管轄區訂立的第二十八份全面性協定。該協定的主要條文摘要載於附件 C。

C

18. 截至二零一三年九月十五日，我們已與二十九個稅務管轄區訂立全面性協定。附件 D 載列已與我們簽訂全面性協定的稅務管轄區。

D

## 查詢

19. 如對本摘要有任何查詢，請聯絡財經事務及庫務局首席助理秘書長(庫務)關如璧女士(電話：2810 2370)。

**財經事務及庫務局**
**二零一三年十月二日**

# 立法會參考資料摘要

**《稅務條例》**
**(第 112 章)**

## 《稅務(關於收入稅項的雙重課稅寬免和防止逃稅)(根西島)令》

## 附件

附件 A　　《稅務(關於收入稅項的雙重課稅寬免和防止逃稅) (根西島)令》

附件 B　　建議對財政、經濟、公務員及家庭的影響

附件 C　　香港與根西島簽訂的全面性避免雙重課稅協定主要條文摘要

附件 D　　與香港簽訂全面性避免雙重課稅協定的稅務管轄區一覽表

# 《稅務(關於收入稅項的雙重課稅寬免和防止逃稅)(根西島)令》

(由行政長官會同行政會議根據《稅務條例》(第 112 章)第 49(1A)條作出)

**1. 生效日期**

本命令自 2013 年 11 月 29 日起實施。

**2. 根據第 49(1A)條作出的宣布**

為施行本條例第 49(1A)條，現宣布 —

(a) 已與根西島政府訂立第 3(1)條所指明的安排；而

(b) 該等安排的生效是屬於有利的。

**3. 指明的安排**

(1) 為第 2(a)條的目的而指明的安排是載於 —

(a) 在 2013 年 4 月以英文一式兩份簽訂的、名為"Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Guernsey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income"的協定(在本命令中，該協定的中文譯名為"《中華人民共和國香港特別行政區政府與根西島政府關於對收入稅項避免雙重課稅和防止逃稅的協定》")的第一至二十八條的安排；及

(b) 在 2013 年 4 月以英文一式兩份簽訂的、該協定的議定書的第 1 至 3 段的安排。

(2) 第(1)(a)款提述的協定條文的英文文本載錄於附表第 1 部；其中文譯本亦於該部列明。



(3) 第(1)(b)款提述的議定書條文的英文文本載錄於附表第 2 部；其中文譯本亦於該部列明。

# 附表 [第 3 條]

## 第 1 部

## 《中華人民共和國香港特別行政區政府與根西島政府關於對收入稅項避免雙重課稅和防止逃稅的協定》第一至二十八條

### 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, 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 and taxes on the total amounts of wages or salaries paid by enterprises.

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



(a) in the case of Guernsey, income tax;

(b) 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.

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 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 the Agreement, are hereinafter referred to as "Guernsey tax" or "Hong Kong Special Administrative Region 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 "Guernsey" means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law, save that any reference to the law of Guernsey is to the law of the island of Guernsey as it applies there and in the islands of Alderney and Herm;

(ii) the term "Hong Kong Special Administrative Region" means any territory where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;

(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 Guernsey, the Director of Income Tax or his authorised representative;

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

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

(f) 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;

(g) 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;

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

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

2. In the Agreement, the terms "Guernsey tax" and "Hong Kong Special Administrative Region tax" do not include any penalty or interest (including, in the case of the Hong Kong Special Administrative Region, any sum added to 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 either Contracting Party relating to the taxes to which the Agreement applies by virtue of Article 2.

3. 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 Guernsey, any person who, under the laws of Guernsey, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Guernsey in respect only of income from sources in Guernsey;

(b) 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;

(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;

(d) if he has the right of abode in both Parties or in neither of them, 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. 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 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, boats and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 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 the 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 and beneficially



owned by that resident of the other Party shall be taxable only in that other Party.

2. Paragraph 1 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, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights 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 paragraph 1 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 beneficially owned by a resident of the other Contracting Party shall be taxable only in that other Party.

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 four 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 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 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 a recognised stock exchange; 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; and



(d) the remuneration is taxable in the first-mentioned Party according to the laws in force in that 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**

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 the Government of a Contracting Party to an



individual in respect of services rendered to that Party 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) has the right of abode in that Party; or

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

2. (a) Any pension (including a lump sum payment) paid by, or paid out of funds created or contributed by, the Government of a Contracting Party to an individual in respect of services rendered to that Party 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 of this Article, 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 the Government of a Contracting Party.

**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.



4. Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds, for whatever reasons, the amount (if any) which would have been agreed upon between them 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 income shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of the Agreement.

**Article 21**

**Methods for Elimination of Double Taxation**

1. In the case of Guernsey, subject to the provisions of the laws of Guernsey regarding the allowance as a credit against Guernsey tax of tax payable in a territory outside Guernsey (which shall not affect the general principle hereof):

   (a) subject to the provisions of subparagraph (c), where a resident of Guernsey derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, Guernsey shall allow as a deduction from the tax payable in respect of that income, an amount equal to the tax paid in the Hong Kong Special Administrative Region;

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

(c) where a resident of Guernsey derives income which, in accordance with the provisions of the Agreement shall be taxable only in the Hong Kong Special Administrative Region, Guernsey may include this income in calculating the amount of tax on the remaining income of such resident.

2. 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), Guernsey tax paid under the laws of Guernsey and in accordance with the 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 Guernsey, 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.

**Article 22**

**Non-Discrimination**

1. Persons who have the right of abode in a Contracting Party or are incorporated or otherwise constituted therein 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 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 5 of Article 11, paragraph 6 of Article 12, or paragraph 4 of Article 20 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.

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

**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. 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, 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.

5. Where,

   (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting Party on the basis that the actions of one or both of the Contracting Parties have resulted for that person in taxation not in accordance with the provisions of the Agreement, and

   (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting Party,

any unresolved issues arising from the case shall be submitted to arbitration if both competent authorities and the taxpayer agree and the taxpayer agrees in writing to be bound by the decision of the arbitration board. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Party. The decision of the arbitration board in a particular case shall be binding on both Parties with respect to that case. The procedure shall be established in an exchange of notes between the Parties.

**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.

**Article 26**

**Miscellaneous Rules**

Nothing in this 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.

**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. The Agreement shall enter into force on the date of the later of these notifications.

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

   (a) in Guernsey:

   in respect of Guernsey tax, for any year of charge beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force;

   (b) 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.

**Article 28**

**Termination**



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

in respect of Guernsey tax, for any year of charge beginning on or after 1 January in the calendar year next following that in which the notice is given;

(b) 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.

**(中文譯本)**

**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、以及企業支付的工資或薪金總額課徵的稅項，須視為收入稅項。

3. 本協定適用於以下現有稅項：

(a) 就根西島而言，所得稅；

(b) 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。

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，以及適用於締約方日後課徵而又屬本條第 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"根西島稅項"或"香港特別行政區稅項"，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) "根西島"一詞指根西島、奧爾德尼島及赫姆島，包括按照國際法與這些島嶼毗鄰的領海，但凡提及根西島法律，指適用於根西島以及奧爾德尼島和赫姆島的根西島法律；

(ii) "香港特別行政區"一詞指中華人民共和國香港特別行政區的稅務法律所適用的任何地區；

(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) 就根西島而言，指所得稅管理局局長或其獲授權代表；

(ii) 就香港特別行政區而言，指稅務局局長或其獲授權代表；

(e) "企業"一詞適用於任何業務的經營；

(f) "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；

(g) "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；

(h) "人"一詞包括個人、公司、合夥及任何其他團體；

(i) "稅項"一詞指根西島稅項或香港特別行政區稅項，按文意所需而定。

2. 在本協定中，"根西島稅項"及"香港特別行政區稅項"兩詞不包括根據任何締約方的有關法律所課徵的任何罰款或利息(就香港特別行政區而言，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(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) 就根西島而言，指根據根西島法律，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根西島繳稅的法律責任的人。然而，該詞並不包括僅就源自根西島的收入而有在根西島繳稅的法律責任的任何人；

(b) 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；

(c) 就締約一方而言，指該方的政府。

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其使用的永久性住所，則該人須當作只是該方的居民；如該人在雙方均有可供其使用的永久性

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其使用的永久性住所，則該人須當作只是其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，則該人須當作只是其擁有居留權的一方的居民；

(d) 如該人在雙方均擁有或均不擁有居留權，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經營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) 企業直接提供，或透過由該企業為此而聘用的僱員或其他人員，提供服務(包括顧問服務)，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)持續一段或多於一段期間，而該段期間超過 183 天，或該等期間累計超過 183 天。

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)至(e)項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，並在締約一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締約一方經營業務，則只要該人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. 即使屬締約一方的居民的某公司，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. 締約一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、船艇及航空器不得視為不動產。

3. 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。

4. 第 1 款及第 3 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. 締約一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，如締約一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. 如締約一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，或是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的，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各條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. 締約一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) 締約一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締約一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. 凡締約一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，而締約雙方的主管當局在有必要的情況下須為此目的與對方磋商。

## 第十條

## 股息

1. 由屬締約一方的居民的公司支付予另一締約方的居民，並由該另一締約方的居民實益擁有的股息，只可在該另一方徵稅。

2. 如某公司從利潤中支付股息，第 1 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，指來自股份或其他分享利潤的權利(但並非債權)的收入；如作出分派的公司屬一方的居民，而按該方的法律，來自其他法團權利的收入，須與來自股份的收入受到相同的稅務待遇，則"股息"亦包括該等來自其他法團權利的收入。

4. 凡就某股份支付的股息的實益擁有人是締約一方的居民，而支付該股息的公司則是另一締約方的居民，如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. 如某公司是締約一方的居民，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分派利潤的全部或部分，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分派利潤徵收未分派利潤的稅項。

## 第十一條

## 利息

1. 產生於締約一方而由另一締約方的居民實益擁有的利息，只可在該另一方徵稅。

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締約一方的居民，並在該等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. 凡就某項債務支付利息的人是締約一方的居民，則該等利息須當作是在該方產生。然而，如支付利息的人在締約一方設有常設機構(不論該人是否締約一方的居民)，而該債務是在與該常設機構有關連的情況下招致的，且該等利息是由該常設機構負擔的，則該等利息須當作是在該常設機構所在的一方產生。

5. 凡因支付人與實益擁有人之間，或他們兩人與其他人之間的特殊關係，以致所支付的利息的款額，不論因何理由，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. 產生於締約一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，在締約一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四。締約雙方的主管當局須藉共同協商，確定實施上述限制稅率的方式。

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(包括電影影片或供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締約一方的居民，並在該等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. 凡支付特許權使用費的人是締約一方的居民，則該等特許權使用費須當作是在該方產生。然而，如支付特許權使用費的人在締約一方設有常設機構(不論該人是否締約一方的居民)，而支付該等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，且該等特許權使用費是由該常設機構負擔的，則該等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，不論因何理由，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. 締約一方的居民自轉讓位於另一締約方並屬第六條所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，而該常設機構是締約一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. 締約一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，或自轉讓關於上述船舶或航空器的營運的動產所得的收益，只可在該方徵稅。

4. 如締約一方的居民自轉讓一間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稅。然而，本款不適用於來自轉讓以下股份的收益：

(a) 在認可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) 符合以下說明的公司的股份：該公司超過百分之五十的資產值，是來自其經營業務所在的不動產。

5. 凡有關轉讓人是締約一方的居民，自轉讓第 1 款、第 2 款、第 3 款及第 4 款所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，締約一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，締約一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) 收款人於在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不超過(如多於一段期間則須累計)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；及

(d) 該報酬可按照首述一方的現行法律在該方徵稅。

3. 儘管有本條的上述規定，自於締約一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

締約一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，締約一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締約一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

1. 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締約一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，如退休金及其他類似報酬(包括整筆付款)是根據退休金計劃或退休計劃作出的，而有關計劃屬：

(a) 一項公共計劃，而該項公共計劃是締約一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、且在締約一方為稅務目的而獲認可的計劃，

則該等退休金及報酬只可在該締約方徵稅。

## 第十八條



## 政府服務

1. (a) 締約一方的政府就提供予該方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，如上述服務是在另一締約方提供，而上述個人屬該方的居民，並且：

(i) 擁有該方的居留權；或

(ii) 不是純粹為提供該等服務而成為該方的居民，

則該等薪金、工資及其他類似報酬只可在該方徵稅。

2. (a) 締約一方的政府就提供予該方的服務而向任何個人支付的退休金(包括整筆付款)，或就該等服務而從該方的政府所設立或供款的基金向任何個人支付的退休金(包括整筆付款)，只可在該方徵稅。

(b) 然而，如該提供服務的個人是另一締約方的居民，而個案情況符合本條第 1 款(b)項的描述，則相應的退休金(不論是整筆支付或以分期支付)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，適用於就在與締約一方的政府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

如學生在緊接前往締約一方之前是或曾是另一締約方的居民，而該學生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. 締約一方的居民的各項收入無論在何處產生，如在本協定以上各條未有規定，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)的收款人是締約一方的居民，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. 由締約一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。

4. 凡因第 1 款所述的居民與其他人之間，或他們兩人與第三者之間的特殊關係，以致該款所述的收入的款額，不論因何理由，屬超出他們在沒有上述關係時會議定的款額(如有的話)，則本條的規定只適用於該議定的款額。在此情況下，該收入中超出該議定的款額的部分，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。



## 第二十一條

## 消除雙重課稅的方法

1. 就根西島而言，在不抵觸根西島法律中關乎容許在根西島以外的地區須繳付的稅項用作抵免根西島稅項的規定(該等規定不得影響本條的一般性原則)的情況下：

   (a) 除(c)項另有規定外，凡根西島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，根西島須容許在就該收入須繳付的稅項中，扣除一筆相等於已在香港特別行政區繳付的稅款；

   (b) 然而，該項扣除不得超過在給予扣除前計算的所得稅中可歸因於可在香港特別行政區徵稅的收入的部分；

   (c) 如某根西島居民取得的收入按照本協定的規定只可在香港特別行政區徵稅，根西島在計算該居民其餘收入的稅款時，可將該收入計算在內。

2. 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司法管轄區繳付的稅項用作抵免香港特別行政區稅項的規定(該等規定不得影響本條的一般性原則)的情況下，如已根據根西島法律和按照本協定，就屬香港特別行政區居民的人自根西島的來源取得的收入繳付根西島稅項，則不論是直接繳付或以扣除的方式繳付，所繳付的根西島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。

## 第二十二條

## 無差別待遇

1. 任何人如擁有締約一方的居留權或在該處成立為法團或以其他方式組成，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：該課稅或規定是有別於擁有該另一方的居留權或在該處成立為法團或以其他方式組成的人，在相同情況下(尤其是在居民身分方面)須受或可受的課稅及與之有關連的規定，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. 締約一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。凡締約一方以民事地位或家庭責任的理由，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，本規定不得解釋為該締約方也須將該免稅額、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 5 款、第十二條第 6 款或第二十條第 4 款的規定適用的情況外，締約一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，須按猶如該等款項是支付予首述一方的居民一樣的相同條件而可予扣除。

4. 如締約一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：該課稅或規定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，或較之為嚴苛。



5. 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稅項。

## 第二十三條

## 相互協商程序

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該人作出不符合本協定規定的課稅，則無論該等締約方的本土法律的補救辦法如何，該人如屬締約一方的居民，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，則可將其個案呈交該人擁有居留權或在該處成立為法團或以其他方式組成的締約方的主管當局。該個案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. 如有關主管當局認為反對屬有理可據，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有關個案，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，不論締約雙方的本土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，解決就本協定的解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所述的協議而直接(包括透過由雙方的主管當局或其代表組成的聯合委員會)與對方聯絡。

5. 凡：

(a) 任何人根據第 1 款，以締約一方或締約雙方的行動已導致對該人作出不符合本協定規定的課稅為理由，將個案呈交締約一方的主管當局，而

(b) 在個案呈交予另一締約方的主管當局的兩年內，締約雙方的主管當局未能依據第 2 款達成協議解決該個案，

則如締約雙方的主管當局及納稅人同意，且納稅人書面同意受有關仲裁委員會的裁決約束，因該個案而產生的任何尚未解決的爭議點可提交仲裁。但如已有任何一方的法院或行政審裁處就此等尚未解決的爭議點作出裁定，該等爭議點不得提交仲裁。有關仲裁委員會在某個案中的裁決，須就該個案而言對雙方均具約束力。有關程序須通過雙方互換照會訂立。

## 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本土法律的資料，但以根據該等法律作出的課稅不違反本協定者為限。該項資料交換不受第一條所限制。

2. 締約一方根據第 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本土法律而取得的資料相同，該資料只可向與第 1 款所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(包括法院及行政部門)披露。該等人員或當局只可為該等目的使用該資料。他們可在公開的法庭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締約一方施加採取以下行動的義務：

(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正常行政運作不能獲取的資料；

(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(*公共秩序*)的資料。

4. 如締約一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。前句所載的義務須受第 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締約一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締約一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

## 政府使團成員

本協定並不影響政府使團(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。

**第二十六條**

**雜項規則**

本協定並不損害每一締約方施行其關於規避繳稅的本土法律及措施(不論其稱謂是否如此)的權利。

**第二十七條**

**生效**

1. 締約雙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。本協定自較後一份通知的日期起生效。

2. 本協定一旦生效，其規定即：

(a) 在根西島：

就根西島稅項而言，就始於本協定生效的公曆年的翌年 1 月 1 日或之後的任何課稅年度具有效力；

(b) 在香港特別行政區：

就香港特別行政區稅項而言，就始於本協定生效的公曆年的翌年 4 月 1 日或之後的任何課稅年度具有效力。



**第二十八條**

**終止**

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當日起計五年後的任何公曆年完結的最少六個月之前，發出書面終止通知而終止本協定。在該情況下：

(a) 在根西島：

就根西島稅項而言，本協定不再就始於有關通知發出的公曆年的翌年 1 月 1 日或之後的任何課稅年度具有效力；

(b) 在香港特別行政區：

就香港特別行政區稅項而言，本協定不再就始於有關通知發出的公曆年的翌年 4 月 1 日或之後的任何課稅年度具有效力。

# 第 2 部

## 《中華人民共和國香港特別行政區政府與根西島政府關於對收入稅項避免雙重課稅和防止逃稅的協定》的議定書第 1 至 3 段

1. For the purposes of the Agreement, an item of income, profit or gain derived through a person that is fiscally transparent under the laws of either Contracting Party, shall be considered to be derived by a resident of a Contracting Party to the extent that the item is

treated for the purposes of the taxation laws of such Contracting Party as the income, profit or gain of that resident. It is understood that this paragraph shall not affect the taxation by a Contracting Party of its residents.

2. With respect to subparagraph (a) of paragraph 4 of Article 13, it is understood that the term "recognised stock exchange" means:

(a) the Channel Islands Stock Exchange and any Guernsey stock exchange recognised under the laws of Guernsey;

(b) the Stock Exchange of Hong Kong Limited and any Hong Kong Special Administrative Region stock exchange recognised under the laws of the Hong Kong Special Administrative Region;

(c) any other stock exchange agreed upon by the competent authorities.

3. With respect to Article 24, it is understood that:

(a) the Article does not oblige the Contracting Parties to exchange information on an automatic or a spontaneous basis;

(b) a Contracting Party may only request information relating to taxable periods for which the provisions of the Agreement have effect for that Party;

(c) in the case of Guernsey, the competent authority may disclose information, insofar as, and to the extent that, it may be necessary:



(i) to those officials of the Treasury and Resources Department who are involved in the conduct of official internal audit of the Guernsey Income Tax Office and have for that purpose taken an oath under section 206(1)(d) of the Income Tax (Guernsey) Law, 1975, as amended, and

(ii) for the purposes of a hearing, connected with a taxation matter, under the Administrative Decisions (Review) (Guernsey) Law, 1986, as amended.

**(中文譯本)**

1. 為本協定的目的，透過根據任何締約方的法律屬非稅務法人的人而取得的收入、利潤或收益項目，須在該項目就締約一方的稅務法律而言被視為該締約方的某居民的收入、利潤或收益的範圍內，視為由該居民所得。按締約雙方理解，本段不影響締約一方向其居民徵稅。

2. 就第十三條第 4 款(a)項而言，按締約雙方理解，"認可證券交易所"一詞指：

(a) 海峽羣島證券交易所，以及根據根西島法律認可的任何根西島證券交易所；

(b) 香港聯合交易所有限公司，以及根據香港特別行政區法律認可的任何香港特別行政區證券交易所；

(c) 雙方主管當局議定的任何其他證券交易所。

3. 就第二十四條而言，按締約雙方理解：

(a) 該條並不規定締約雙方自動或自發交換資料；

(b) 締約一方只可請求提供關乎本協定的規定在該締約方具有效力的課稅期的資料；

(c) 就根西島而言，主管當局可：

(i) 在屬必需的範圍內向下述官員披露資料：財政和資源廳中參與對根西島所得稅管理局進行官方內部審計的官員，而該等官員已為上述目的根據經修訂的 1975 年《所得稅(根西島)法》第 206(1)(d)條宣誓，及

(ii) 在為下述聆訊的目的而屬必需的範圍內披露資料：根據經修訂的 1986 年《行政決定(覆核)(根西島)法》進行、並與稅務事宜有關連的聆訊。

行政會議秘書

行政會議廳

2013 年　　月　　日



## 註釋

香港特別行政區政府與根西島政府於 2013 年 4 月簽訂關於對收入稅項避免雙重課稅和防止逃稅的協定以及該協定的議定書。本命令指明該協定第一至二十八條中和該議定書第 1 至 3 段中的安排為《稅務條例》(第 112 章)第 49(1A)條所指的雙重課稅寬免安排，並宣布該等安排的生效是屬於有利的。該協定及議定書是以英文簽訂的。列於附表的中文文本為譯本。

2. 該宣布的效力是 —

(a) 即使任何成文法則另有規定，該等安排對根據《稅務條例》(第 112 章)徵收的稅項仍屬有效；及

(b) 就該等安排中規定須披露關乎根西島的稅項資料的條文而言，該等安排對作為該條文標的之根西島的稅項有效。

**附件 B**

## 建議對財政、經濟、公務員及家庭的影響

### 對財政的影響

政府將須放棄目前徵收的部分稅收，當中涉及根西島駐港公司並非從香港的常設機構所得的利潤，以及根西島航運和空運營運者的利潤。不過，總的來說，有關協定對財政影響不大。

### 對經濟的影響

2. 根西島協定可促進香港與根西島之間的商業活動，並有助香港的經濟發展。該協定為投資者的稅務負擔提供更明確的依據和更穩定的環境，從而加強香港與根西島的經濟聯繫。

### 對公務員的影響

3. 在處理根西島根據根西島協定提出的資料交換要求方面，稅務局會有新增的工作，我們會盡量以現有的資源應付。如有需要，我們會按照既定機制，尋求額外的人手資源。

### 對家庭的影響

4. 由於部分人士的稅務負擔在根西島協定下或有所紓緩，因此該協定對家庭的經濟能力及其運作或有正面影響。

<u>附件 C</u>

**香港與根西島簽訂的**
**全面性避免雙重課稅協定(全面性協定)**

**主要條文摘要**

香港與根西島簽訂的全面性協定(根西島協定)涵蓋以下稅項：

(a) 就香港而言 — (i) 利得稅；
(ii) 薪俸稅；以及
(iii) 物業稅。

(b) 就根西島而言 — 所得稅。

2. 根西島協定處理締約方(居住地)的居民從締約另一方(來源地)所取得的收入的徵稅事宜。

**獨有徵稅權**

3. 如根西島協定只把對收入的徵稅權分配予締約的某一方(居住地或來源地)，就不會出現雙重課稅情況。根西島協定訂明，以下各類收入僅須在居住地課稅：

(a) 企業所得利潤，但企業透過設於來源地的常設機構(即企業進行全部或部分業務的固定營業場所)進行業務所得利潤則除外；

(b) 自營運船舶和航空器從事國際運輸業務所得的利潤，以及自轉讓被營運從事國際運輸業務的船舶或航空器所得的收益；

(c) 在來源地產生的股息收入；

(d) 在來源地產生的利息收入；

(e) 來自非政府的受僱工作所得的收入，包括在來源地從事該類工作所得的收入，但有關僱員在來源地的總逗留時間於有關的 12 個月內累計不超過 183 天等；

(f) 非政府退休金，但在來源地根據社會保障法例或為稅務目的而獲認可的退休福利計劃下支付的非政府退休金則除外；

(g) 並未在根西島協定內明文處理的資本收益；以及

(h) 並未在根西島協定內明文處理的其他收入。

4. 締約一方的政府所支付的受僱收入和退休金，通常只須在該方(來源地)課稅。

**共有徵稅權**

5. 倘若兩個稅務管轄區對同一項收入具有徵稅權，根據根西島協定的規定，居住地必須就其居民任何被雙重徵稅的收入提供雙重課稅寬免(即來源地擁有首先徵稅權，而居住地則只有第二徵稅權)。根西島協定訂明，以下各類收入在兩地均可被徵稅：

(a) 來自位於來源地的不動產的收入及來自轉讓該等財產的收益；

(b) 企業透過常設機構在來源地進行業務所得的利潤，但以可歸因於該常設機構的利潤為限，以及自轉讓該常設機構的業務財產的收益；

(c) 從來源地居民所收取的特許權使用費收入，來源地的徵稅權以特許權使用費總額的 4%為限；

(d) 來自轉讓一家公司的股份所取得的收益(來自轉讓上市的股份或因公司重組或合併而取得的收益除外)，而該公司超過 50%的資產值是直接或間接來自位於來源地的不動產(不包括公司用作經營業務的處所)；

(e) 在來源地從事非政府的受僱工作所得的報酬，但有關僱員在來源地的總逗留時間於有關的 12 個月內須累計超過 183 天等；

(f) 在居住地的企業所營運從事國際運輸的船舶或航空器上，從事非政府的受僱工作所得的報酬；

(g) 自來源地居民公司所取得的董事費；以及

(h) 演藝人員及運動員在來源地進行專業活動所取得的收入。

6. 一般而言，如兩地都擁有徵稅權，納稅人可藉以下其中一種方式獲得雙重課稅寬免：豁免方式，即來源地的應課稅收入在居住地可獲豁免

課稅；或抵免方式，即來源地的應課稅收入在居住地須課稅，但在來源地所徵收的稅款，可在居住地就該等收入徵收的稅款中抵免。香港和根西島都會以抵免方式為各自的居民提供雙重課稅寬免。

附件 **D**

## 與香港簽訂全面性避免雙重課稅協定的稅務管轄區一覽表
## **(截至 2013 年 9 月 15 日)**

| | 稅務管轄區 | 簽訂日期(年、月) |
|---|---|---|
| 1 | 比利時 | 2003 年 12 月 |
| 2 | 泰國 | 2005 年 9 月 |
| 3 | 中國內地 | 2006 年 8 月 |
| 4 | 盧森堡 | 2007 年 11 月 |
| 5 | 越南 | 2008 年 12 月 |
| 6 | 文萊 | 2010 年 3 月 |
| 7 | 荷蘭 | 2010 年 3 月 |
| 8 | 印尼 | 2010 年 3 月 |
| 9 | 匈牙利 | 2010 年 5 月 |
| 10 | 科威特 | 2010 年 5 月 |
| 11 | 奧地利 | 2010 年 5 月 |
| 12 | 英國 | 2010 年 6 月 |
| 13 | 愛爾蘭 | 2010 年 6 月 |
| 14 | 列支敦士登 | 2010 年 8 月 |
| 15 | 法國 | 2010 年 10 月 |
| 16 | 日本 | 2010 年 11 月 |
| 17 | 新西蘭 | 2010 年 12 月 |
| 18 | 葡萄牙 | 2011 年 3 月 |
| 19 | 西班牙 | 2011 年 4 月 |
| 20 | 捷克共和國 | 2011 年 6 月 |
| 21 | 瑞士 | 2011 年 10 月 |
| 22 | 馬耳他 | 2011 年 11 月 |
| 23 | 澤西島 | 2012 年 2 月 |
| 24 | 馬來西亞 | 2012 年 4 月 |
| 25 | 墨西哥 | 2012 年 6 月 |
| 26 | 加拿大 | 2012 年 11 月 |
| 27 | 意大利 | 2013 年 1 月 |
| 28 | 根西島 | 2013 年 4 月 |
| 29 | 卡塔爾 | 2013 年 5 月 |