L.N. 149 of 2013

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Italian Republic) 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 29 November 2013.

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 Italian Republic; and

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

3. Arrangements specified

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

(a) Articles 1 to 29 of the agreement titled "Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Italian Republic for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion" (which title is translated into Chinese as "《中華人民共和國香港特別行政區政府與意大利共和國政府關於對收入稅項避免雙重課稅和防止逃稅的協定》"

in this Order), done in duplicate at Hong Kong on 14 January 2013 in the English and Italian languages; and

(b) Paragraphs 1 to 6 (including the chapeau immediately before these Paragraphs) of the protocol to the agreement, done in duplicate at Hong Kong on 14 January 2013 in the English and Italian languages.

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

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

Schedule [s. 3]

Part 1

Articles 1 to 29 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Italian Republic for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion

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 or administrative 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 this Agreement shall apply are in particular:

(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 Italy,

(i) the personal income tax;

(ii) the corporate income tax;

(iii) the regional tax on productive activities;

whether or not they are collected by withholding at source.

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

5. The existing taxes, together with the taxes imposed after the signature of this Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "Italian 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) 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 "Italy" means the Italian Republic and includes any area beyond the territorial waters which is designated as an area within which Italy, in compliance with its legislation and in conformity with international law, may exercise sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;

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

(d) the term "competent authority" means:

(i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative or any person or body authorized to perform any functions at present exercisable by the Commissioner or similar functions;

(ii) in the case of Italy, the Ministry of Economy and Finance;

(e) the terms "a Contracting Party" and "the other Contracting Party" mean the Hong Kong Special Administrative Region or Italy, as the context requires;

(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 "national", in relation to Italy, means:

(i) any individual possessing the citizenship of Italy; and

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

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

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

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

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

Article 4

RESIDENT

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

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

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

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

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

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

(b) in the case of Italy, any person who, under the laws of Italy, 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 Italy in respect only of income from sources in Italy;

(c) in the case of either Contracting Party, the Government or any of its political or administrative subdivision or local authority.

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, 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, the competent authorities of the Contracting Parties shall endeavour to settle the question by mutual agreement having regard to its place of effective management. In the absence of such agreement, such person shall not be entitled to claim any relief or exemption from tax provided for by this Agreement.

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, through employees or other personnel engaged by the enterprise for such purpose, in connection with a site, a project or supervisory activities referred to in subparagraph (a), if those services continue within a Contracting Party in connection with such site, project or activities for a period or periods aggregating more than six months 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.

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 shall also be considered as "immovable property". 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 and to the income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. 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 that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other Party.

2. For the purposes of this Article and Article 22, the profits that are attributable in each Contracting Party to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

3. Where, in accordance with paragraph 2, a Contracting Party adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Parties and taxes accordingly profits of the enterprise that have been charged to tax in the other Party, the other Contracting Party shall, to the extent necessary to eliminate double taxation, make an appropriate adjustment if it agrees with the adjustment made by the first-mentioned Party; if the other Contracting Party does not so agree, the Contracting Parties shall eliminate any double taxation resulting therefrom by mutual agreement.

4. 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. Any such adjustment shall be made only in accordance with the mutual agreement procedure provided for by Article 24 of this Agreement.

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 10 per cent of the gross amount of the dividends.

The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation. 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 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 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 or performs in that other Party independent personal services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, 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 or a fixed base 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.

6. The provisions of this Article 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 the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

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 12.5 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 exempt from tax in that Party if:

   (a) the said resident is the beneficial owner of the interest and the interest is paid by the Government of that Contracting Party or a local authority thereof; or

   (b) the interest is paid to the Government of the other Contracting Party or any of its political or administrative subdivision or local authority; or

(c) the interest is paid to any agency or instrumentality (including a financial institution) wholly owned or appointed by the Government of a Contracting Party or any of its political or administrative subdivision or local authority and which carries out activities of a governmental nature.

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 to 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, or performs in that other Party independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Party in which the permanent establishment or fixed base 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.

8. The provisions of this Article 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 the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

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 15 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 software, 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, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, 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 or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Party in which the permanent establishment or fixed base 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.

7. The provisions of this Article 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 the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

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 or of movable property pertaining to a fixed base available to a resident of a Contracting Party in the other Contracting Party for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, 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 quoted on a stock exchange of either Contracting Party or any other stock exchange as may be agreed between the competent authorities.

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

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting Party in respect of professional services or other independent activities of a similar character shall be taxable only in that Party except in the following circumstances, when such income may also be taxed in the other Contracting Party:

   (a) if he has a fixed base regularly available to him in the other Contracting Party for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting Party; or

   (b) if his stay in the other Contracting Party is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting Party may be taxed in that other Contracting Party.

2. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 20, 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 or a fixed base which the employer has in the other Party.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised

aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.

4. If a resident of a Contracting Party becomes a resident of the other Contracting Party, payments received by such resident by virtue of his employment in the first-mentioned Party as severance indemnity or other similar lump sum payments, are taxed in that Contracting Party.

Article 16

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 17

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 14 and 15, 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,

14 and 15, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

Article 18

PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting Party in consideration of past employment shall be taxable only in that Party. However, such pensions and other similar remuneration may also be taxed in the other Contracting Party if they arise in that Party.

2. Pensions and other similar remuneration arising in a Contracting Party include payment out of a pension fund or scheme in which individuals may participate in order to secure retirement benefits, where such pension fund or scheme is recognised for tax purposes or regulated in accordance with the laws of that Contracting Party.

Article 19

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party or a political or administrative 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 Italy, is a national thereof; or

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

2. (a) Any pension paid by, or paid out of funds created or contributed by, the Government of a Contracting Party or a political or administrative 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 pension may also be taxed in the other Contracting Party if the individual is a resident of that Party and

(i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein;

(ii) in the case of Italy, is a national thereof.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration, in respect of services rendered in connection with a business carried on by a Contracting Party or a political or administrative subdivision or a local authority thereof.

Article 20

STUDENTS

1. 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 Contracting Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

2. The benefits of this Article shall extend only for a period not exceeding six consecutive years from the date of his arrival in the first-mentioned Party.

Article 21

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, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Where, by reason of a special relationship between the persons who have carried on activities from which income referred to in paragraph 1 are derived, the payment for such activities exceeds the amount which would have been agreed upon by independent persons, the provisions of paragraph 1 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.

4. The provisions of this Article 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 the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

Chapter IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 22

ELIMINATION OF DOUBLE TAXATION

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.

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), Italian tax paid under the laws of Italy 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 Italy, 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.

3. In the case of Italy:

If a resident of Italy owns items of income which are taxable in the Hong Kong Special Administrative Region, Italy, in determining its income taxes specified in Article 2 of this Agreement, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Agreement otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the income tax paid in the Hong Kong Special Administrative Region but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

The tax paid in the Hong Kong Special Administrative Region for which deduction is granted is only the pro rata amount corresponding to the foreign income which is included in the aggregate income.

However, no deduction shall be granted if the item of income is subjected in Italy to a substitute tax or to a final withholding tax, or to substitute taxation at the same rate as the final withholding tax, also by request of the recipient, in accordance with the Italian law.

4. Where in accordance with any provision of this Agreement income derived by a resident of a Contracting Party is exempt from tax in that Party, such Party 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 23

NON-DISCRIMINATION

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of Italy, are Italian 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 Italy) 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, paragraph 6 of Article 12, or paragraph 3 of Article 21, 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 24

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic 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 23, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Italy). The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

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

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

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

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 this 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 for arbitration upon request by the person and subject to both competent authorities and the person agreeing 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 Contracting Parties with respect to that case and shall be implemented notwithstanding any time limits in the domestic laws of these Parties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this paragraph.

Article 25

EXCHANGE OF INFORMATION

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

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 the 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 purpose. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.

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

Article 26

MEMBERS OF GOVERNMENT MISSIONS

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

Article 27

MISCELLANEOUS

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its domestic laws and measures to prevent fiscal evasion and tax avoidance, whether or not described as such.

Chapter VI

FINAL PROVISIONS

Article 28

ENTRY INTO FORCE

Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of receipt of the later of these notifications and shall thereupon have effect:

(a) in Italy:

(i) in respect of taxes withheld at source, to income derived on or after 1st January in the calendar year next following that in which this Agreement enters into force;

(ii) in respect of other taxes on income, to taxes chargeable on or after 1st January in the calendar year next following that in which this 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 1st April in the calendar year next following that in which this Agreement enters into force.

Article 29

TERMINATION

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement, by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year after the period of five years from the date on which this Agreement enters into force. In such event, this Agreement shall cease to have effect:

(a) in Italy:

(i) in respect of taxes withheld at source, to income derived on or after 1st January in the calendar year next following that in which the notice is given;

(ii) in respect of other taxes on income, to taxes chargeable for any taxable period beginning on or after 1st 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 1st April in the calendar year next following that in which the notice is given.

(Chinese Translation)

第 I 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或其政治或行政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. 本協定尤其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) 就意大利而言，

(i) 個人所得稅；

(ii) 公司所得稅；

(iii) 對具生產力的活動課徵的區域性稅項；

不論它們是否透過來源預扣收取。

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“香港特別行政區稅項”或“意大利稅項”，按文意所需而定。

第 II 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) “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) "意大利"一詞指意大利共和國，並包括意大利在遵照其法例並符合國際法的前提下，就海牀、底土及上覆水域的自然資源的勘探及開發，可行使主權權利的意大利領海以外的指定區域；

(c) "公司"一詞指任何法團或就稅收而言視作法團的任何實體；

(d) "主管當局"一詞：

(i) 就香港特別行政區而言，指稅務局局長或其獲授權代表，或獲授權執行現時可由該局長執行的職能或類似職能的人士或機構；

(ii) 就意大利而言，指經濟和財政部；

(e) "締約方"及"另一締約方"兩詞指香港特別行政區或意大利，按文意所需而定；

(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) "國民"一詞，就意大利而言，指：

(i) 擁有意大利國籍的任何個人；及

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

(i) "人"一詞包括個人、公司及任何其他團體；

(j) "稅項"一詞指香港特別行政區稅項或意大利稅項，按文意所需而定。

2. 在本協定中，"香港特別行政區稅項"及"意大利稅項"兩詞不包括根據任何締約方的有關法律所課徵的任何作為罰款或利息的款額。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) 就香港特別行政區而言，指，

(i) 通常居住於香港特別行政區的任何個人；

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

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

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

(b) 就意大利而言，指根據意大利法律，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意大利繳稅的法律責任的人。然而，該詞並不包括僅就源自意大利的收入而有在意大利繳稅的法律責任的任何人；

(c) 就締約一方而言，指政府或其任何政治或行政分部或地方當局。

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，則締約雙方的主管當局須在顧及其實際管理工作地點的情況下，致力共同協商解決該問題。如未能達成協議，則該人無權申索本協定規定的任何稅務寬免或豁免。

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) 企業在與 (a) 項所述的工地、工程或監督管理活動有關連的情況下，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)，但前提是該等服務須於任何十二個月的期間內，在與該工地、工程或活動有關連的情況下，在某締約方持續一段或多於一段期間，而該段期間超過六個月，或該等期間累計超過六個月。

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 III 章

收入稅項

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，亦視為 "不動產"。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，以及為從事獨立個人勞務而使用的不動產所帶來的收入。

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，按照第 2 款的規定可歸因於該常設機構的利潤，可在該另一方徵稅。

2. 為本條及第二十二條的目的，在每一締約方內可歸因於第 1 款所述的常設機構的利潤，指在顧及有關企業透過常設機構及該企業的其他部分所執行的職能、使用的資產，以及承擔的風險後，該機構預期可賺取的利潤 (尤其是假使該機構是一間獨立及自主的企業，在相同或類似的條件下從事相同或類似的活動，該機構從與企業其他部分的業務中賺取的利潤)。

3. 如締約一方按照第 2 款，對可歸因於其中一個締約方的企業的常設機構的利潤作出調整，並據此對該企業已在另一方徵稅的利潤徵稅，則如另一締約方同意首述一方所作的調整，該另一締約方須在為消除雙重課稅而有需要的範圍內，作出適當的調整；如該另一締約方不同意該項調整，締約雙方須透過共同協商消除由此而產生的任何雙重課稅。

4. 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。任何該等調整只可按照本協定第二十四條訂定的共同協商程序作出。

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的股息，可在該另一方徵税。

2. 然而，如支付上述股息的公司屬締約一方的居民，該等股息亦可在該締約方按照該方的法律徵税，但如該等股息的實益擁有人是另一締約方的居民，則如此徵收的税款不得超過該等股息總額的百分之十。

   締約雙方的主管當局須藉共同協商，確定實施上述限制税率的方式。如有關公司從利潤中支付股息，本款並不影響就該等利潤對該公司徵税。

3. "股息"一詞用於本條中時，指來自股份、分享利潤股份或分享利潤權利、礦務股份、創辦人股份或其他分享利潤的權利 (但並非債權) 的收入；如作出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税務待遇，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，或在該另一方內自位於該另一方的固定基地從事獨立個人勞務，且持有該股份是與該常設機構或固定基地有實際關連的，則第 1 款及第 2 款的規定並不適用。在此情況下，第七條或第十四條 (視屬何情況而定) 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税 (但在有關股息是支付予該另一方的居民的範圍內，或在持有該股份是與位於該另一方的常設機構或固定基地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。

6. 如與產生或轉讓孳生股息的股份或其他權利有關的任何人的主要目的或主要目的之一，是藉着產生或轉讓該等股份或權利而利用本條獲益，則本條的規定並不適用。

第十一條

利息

1. 產生於締約一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，在締約一方產生的上述利息，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十二點五。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. 儘管有第 2 款的規定，在締約一方產生而支付予另一締約方的居民的利息，如有以下情況，可在首述一方獲豁免繳稅：

(a) 該居民是利息的實益擁有人，而該等利息由首述一方的政府或其地方當局支付；或

(b) 該等利息是支付予該另一締約方的政府或其任何政治或行政分部或地方當局；或

(c) 該等利息是支付予任何由締約一方的政府或其任何政治或行政分部或地方當局全權擁有或委出的機構或部門 (包括財務機構)，且該機構或部門執行屬政府性質活動。

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，或在該另一方內自位於該另一方的固定基地從事獨立個人勞務，而該債權是與該常設機構或固定基地有實際關連的，則第 1 款至第 3 款的規定並不適用。在此情況下，第七條或第十四條 (視屬何情況而定) 的規定適用。

6. 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或固定基地 (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或固定基地有關連的情況下招致的，且該等利息是由該常設機構或固定基地負擔的，則該等利息須當作是在該常設機構或固定基地所在的一方產生。

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。

8. 如與產生或轉讓孳生利息的債權有關的任何人的主要目的或主要目的之一，是藉着產生或轉讓該債權而利用本條獲益，則本條的規定並不適用。

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，可在該另一方徵税。

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税，但如該等特許權使用費的實益擁有人是另一締約方的居民，則如此徵收的税款不得超過該等特許權使用費總額的百分之十五。締約雙方的主管當局須藉共同協商，確定實施上述限制税率的方式。

3. "特許權使用費"一詞用於本條中時，指作為使用或有權使用文學作品、藝術作品或科學作品 (包括軟件、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，或在該另一方內自位於該另一方的固定基地從事獨立個人勞務，而該權利或財產是與該常設機構或固定基地有實際關連的，則第 1 款及第 2 款的規定並不適用。在此情況下，第七條或第十四條 (視屬何情況而定) 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或固定基地 (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，是在與該常設機構或固定基地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或固定基地負擔的，則該等特許權使用費須當作是在該常設機構或固定基地所在的一方產生。

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。

7. 如與產生或轉讓孳生特許權使用費的權利有關的任何人的主要目的或主要目的之一，是藉着產生或轉讓該等權利而利用本條獲益，則本條的規定並不適用。

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，或某動產是與某固定基地有關的，而該固定基地是供締約一方的居民在另一締約方用作從事獨立個人勞務用途的，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) 或自轉讓該固定基地所得的收益，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在締約一方的證券交易所上市的股份的收益，或在雙方主管當局議定的任何其他證券交易所上市的股份的收益。

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

獨立個人勞務

1. 締約一方的居民自專業服務或其他類似性質的獨立活動取得的收入，只可在該方徵稅；但如有以下情況，該收入也可在另一締約方徵稅：

(a) 如該人在另一締約方有可供該人經常使用的固定基地讓其從事其活動；在此情況下，該收入中只有屬可歸因於該固定基地的收入可在該另一締約方徵稅；或

(b) 如該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，在另一締約方逗留一段或多於一段期間，而該段期間達或超過 (如多於一段期間則須累計)183 天；在此情況下，該收入中只有自在該另一締約方從事的活動取得的收入可在該另一締約方徵稅。

2. “專業服務” 一詞特別包括獨立的科學、文學、藝術、教育或教學活動，以及醫生、律師、工程師、建築師、牙醫及會計師的獨立活動。

第十五條

非獨立個人勞務

1. 除第十六條、第十八條、第十九條及第二十條另有規定外，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或固定基地所負擔。

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，只可在該方徵稅。

4. 凡締約一方的居民成為另一締約方的居民，該居民憑藉其在首述一方的受僱工作而收取的遣散彌償或其他類似的整筆付款，均在該方徵稅。

第十六條

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。

第十七條

藝人及運動員

1. 儘管有第十四條及第十五條的規定，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、第十四條及第十五條的規定，該收入可在該締約方徵稅。

第十八條

退休金

1. 除第十九條第 2 款另有規定外，因過往的受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，只可在該方徵稅。然而，如該退休金及其他類似報酬是在另一締約方產生的，則可在該另一方徵稅。

2. 在締約一方產生的退休金及其他類似報酬，包括從退休金基金或計劃中支付的款項，而該退休金基金或計劃可讓個人參與以確保取得退休福利，並按照該方的法律為稅務目的而獲認可或受規管。

第十九條

政府服務

1. (a) 締約一方的政府或其政治或行政分部或地方當局，就提供予該方或該分部或該當局的服務而向任何個人支付的薪金、工資及其他類似報酬 (退休金除外)，只可在該方徵稅。

(b) 然而，如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) 就香港特別行政區而言，擁有香港特別行政區的居留權；以及就意大利而言，屬意大利的國民；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另一締約方徵稅。

2. (a) 締約一方的政府或其政治或行政分部或地方當局，就提供予該方或該分部或該當局的服務而向任何個人支付的退休金，或就該等服務而從該方的政府或其政治或行政分部或地方當局所設立或供款的基金向任何個人支付的退休金，只可在該方徵稅。

(b) 然而，如上述個人屬另一締約方的居民，而該個人——

(i) 就香港特別行政區而言，擁有香港特別行政區的居留權；

(ii) 就意大利而言，屬意大利的國民，

則該退休金亦可在該另一締約方徵稅。

3. 第十五條、第十六條、第十七條及第十八條的規定，適用於就在與締約一方或其政治或行政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、退休金及其他類似報酬。

第二十條

學生

1. 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或培訓，則該學生為了維持其生活、教育或培訓的目的而收取的款項，如是在首述一方以外的來源產生，則不得在該方徵稅。

2. 本條的利益只延展至自有關學生抵達首述一方當日起計不超過連續六年的期間。

第二十一條

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，或在該另一方內自位於該另一方的固定基地從事獨立個人勞務，且該權利或財產是與該常設機構或固定基地有實際關連的，則第 1 款的規定不適用於該收入。在此情況下，第七條或第十四條 (視屬何情況而定) 的規定適用。

3. 凡因進行帶來第 1 款所述的收入的活動的人之間的特殊關係，以致所支付該等活動的款額，超出獨立人士之間會議定的款額，則第 1 款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。

4. 如與產生或轉讓孳生收入的權利有關的任何人的主要目的或主要目的之一，是藉着產生或轉讓該等權利而利用本條獲益，則本條的規定並不適用。

第 IV 章

消除雙重課稅的方法

第二十二條

消除雙重課稅

1. 現同意按照本條以下各款避免雙重課稅。

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，如已根據意大利法律和按照本協定，就屬香港特別行政區居民的人自意大利的來源取得的收入繳付意大利稅項，則不論是直接繳付或以扣除的方式繳付，所繳付的意大利稅項須容許用作抵免就該收入而須繳付的香港特別行政區稅項，但如此獲容許抵免的款額，不得超過按照香港特別行政區的稅務法律就該收入計算所得的香港特別行政區稅項的款額。

3. 就意大利而言：

如意大利的居民擁有可在香港特別行政區徵稅的收入項目，則除非本協定中的特定條文另有規定，否則意大利在斷定其於本協定第二條指明的所得稅時，可將上述的收入項目，包括在徵收該等稅項的基礎內。

在此情況下，意大利須在如此計算的稅項中，扣除已在香港特別行政區繳付的入息稅。然而，該項扣除不得超過就有關的收入項目在整體收入中所佔比例的上述意大利稅項。

已在香港特別行政區繳付並已獲扣稅的稅項，其款額只是相當於總收入內所含外來收入的比例。

然而，如按照意大利法律，有關收入項目在意大利經收款人的要求，亦可被徵替代稅或最終預扣稅，或與最終預扣稅的稅率相同的替代稅，則不可批予任何扣除。

4. 凡按照本協定的任何規定，締約一方的居民所取得的收入獲豁免而無須在該方徵稅，該方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 V 章

特別條文

第二十三條

無差別待遇

1. 任何人如擁有香港特別行政區的居留權或在該處成立為法團或以其他方式組成，或屬意大利的國民，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：該課稅或規定是有別於 (如該另一方是香港特別行政區) 擁有香港特別行政區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 (如該另一方是意大利) 意大利國民，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 7 款、第十二條第 6 款或第二十一條第 3 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。

第二十四條

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；如其個案屬第二十三條第 1 款的情況，則可將其個案呈交有關締約方的主管當局，有關締約方就擁有香港特別行政區居留權或在該處成立為法團或以其他方式組成的人而言，是指香港特別行政區；就意大利國民而言，則指意大利。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兩年內呈交。

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。

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，

則如該人提出要求，且締約雙方的主管當局及該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，須就該個案而言對締約雙方均具約束力，並須予以執行，不論締約雙方的本土法律所設的時限為何。締約雙方的主管當局須藉共同協商，確定實施本款的方式。

第二十五條

資料交換

1. 締約雙方的主管當局須交換可預見攸關實施本協定的規定或施行或強制執行締約雙方關乎本協定所涵蓋的稅項的本土法律的資料，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。

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。

第二十六條

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。

第二十七條

雜項

本協定並不損害每一締約方施行其本土法律及措施，以防止逃稅及規避繳稅 (不論其稱謂是否如此) 的權利。

第 VI 章

最後條文

第二十八條

生效

締約雙方均須通知另一締約方已完成其法律規定的使本協定生效的程序。本協定自收到較後一份通知的日期起生效，並即按以下規定具有效力：

(a) 在意大利：

(i) 就在來源預扣的稅項而言，就本協定生效的公曆年的翌年 1 月 1 日或之後取得的收入具有效力；

(ii) 就其他收入稅項而言，就本協定生效的公曆年的翌年 1 月 1 日或之後須徵收的稅項具有效力；

(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。

第二十九條

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，藉向另一締約方發出書面終止通知而終止本協定。在該情況下：

(a) 在意大利：

(i) 本協定就在來源預扣的稅項而言，不再就於有關通知發出的公曆年的翌年1月1日或之後取得的收入具有效力；

(ii) 本協定就其他收入稅項而言，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期須徵收的稅項具有效力；

(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。

Part 2

Paragraphs 1 to 6 (including the chapeau immediately before these Paragraphs) of the Protocol to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Italian Republic for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion

It is understood that:

1. with reference to paragraph 3(c) of Article 11, the competent authorities of the Contracting Parties shall inform each other in writing of the agencies or instrumentalities to which the paragraph applies.

2. with reference to paragraphs 1 and 2 of Article 19, remuneration paid to an individual in respect of services rendered to the Bank of Italy or to the Italian Foreign Trade Institution (I.C.E.), are covered by the provisions concerning government service.

3. with reference to paragraph 5 of Article 24, both Contracting Parties consider that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to the time limits prescribed by their domestic laws for commencement of procedures.

4. with reference to Article 25, it does not prohibit the use by the tax authorities of the Italian Republic, for taxes that are administrated and enforced by such tax authorities, of materials such as assessments, calculations, tabulations, listings, reports and work product of a similar nature, which are derived from

the legitimate use of the information exchanged under paragraph 2 of Article 25.

It is further understood that, if at any time after the entry into force of the Agreement, under any agreement between the Hong Kong Special Administrative Region and a third jurisdiction which is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Hong Kong Special Administrative Region agrees to exchange information on taxes other than the taxes covered by the Agreement, then the Hong Kong Special Administrative Region will pursue with expedition a negotiation with the Italian Republic aiming to extend the scope of Article 25 to apply to such other taxes.

5. with reference to Article 25, information shall not be disclosed to any third jurisdiction for any purpose without the prior consent of the competent authority of the Contracting Party providing the information.

6. with reference to Italy:

(a) Taxes withheld at source in a Contracting Party will be refunded by request of the taxpayer or of the Party of which he is a resident if the right to collect the said taxes is affected by the provisions of the Agreement.

(b) Claims for refund, that shall be produced within the time limit fixed by the law of the Contracting Party which is obliged to carry out the refund, shall be accompanied by an official certificate of the Contracting Party of which the taxpayer is a resident certifying the existence of the conditions required for being entitled to the application of the allowances provided for by the Agreement.

(c) By mutual agreement, the competent authorities of the Contracting Parties shall settle the mode of application of this paragraph, in accordance with the provisions of Article 24 of the Agreement.

(d) The provisions of subparagraph (c) of this paragraph shall not prevent the competent authorities of the Contracting Parties from the carrying out, by mutual agreement, of other practices for the application of the limitations provided for in the Agreement.

(Chinese Translation)

按締約雙方理解：

1. 就第十一條第 3 款 (c) 項而言，締約雙方的主管當局須以書面通知對方該款適用的機構或部門。

2. 就第十九條第 1 款及第 2 款而言，關於政府服務的條文，涵蓋就提供予意大利銀行或意大利對外貿易委員會的服務而支付予個人的報酬。

3. 就第二十四條第 5 款而言，締約雙方認為在達成共同協議後執行的稅務寬免及退款，須與締約雙方的本土法律就開展程序而訂明的時限維持連繫。

4. 就第二十五條而言，該條並不禁止意大利共和國的稅務當局為施行及強制執行稅項而使用以下材料：例如評稅、計算、列表、清單、報告，以及類似性質的產品，而有關材料須來自正當使用根據第二十五條第 2 款交換的資料。

按締約雙方進一步理解，如在本協定生效後的任何時間，根據香港特別行政區與第三司法管轄區之間的協議 (而該司法管轄區是稅務透明化及有效交換資料全球論壇的成員)，香港特別行政區同意交換關於本協定所涵蓋的稅項以外的稅項的資料，則香港特

別行政區會從速與意大利共和國磋商，務求延展第二十五條的範圍以適用於該等其他稅項。

5. 就第二十五條而言，在未經提供資料的締約方的主管當局事先同意的情況下，有關資料不得為任何目的向任何第三司法管轄區披露。

6. 就意大利而言：

(a) 就締約一方在來源預扣的稅項而言，如收取該等稅項的權利受本協定的規定影響，該等稅項將應納稅人的要求而獲退還，或應納稅人在有關締約方是居民的一方的要求而獲退還。

(b) 須於有責任執行退稅的締約方的法律所規定的時限內提出的退稅申索，須隨附有關納稅人在有關締約方是居民的官方證明，證明享有本協定訂定的寬免適用的條件已存在。

(c) 締約雙方的主管當局須透過共同協商，按照本協定第二十四條的規定確定實施本段的方式。

(d) 本段(c)項中的規定，並不阻止締約雙方的主管當局透過共同協商，採取其他做法，以實施本協定訂定的限制。

Kinnie WONG
Clerk to the Executive Council

COUNCIL CHAMBER

24 September 2013

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Italian Republic signed an agreement for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion (***Agreement***) together with a protocol to the Agreement (***Protocol***) on 14 January 2013. This Order specifies the arrangements in Articles 1 to 29 of the Agreement and the Paragraphs and chapeau 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 Italian 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 the Italian Republic, have effect in relation to any tax of the Republic that is the subject of that provision.