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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (SOCIALIST REPUBLIC OF VIETNAM) (AMENDMENT) ORDER 2014

INTRODUCTION

At the meeting of the Executive Council on 30 September 2014, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Socialist Republic of Vietnam) (Amendment) Order 2014 (the Order), at Annex A, should be made under section 49 of the Inland Revenue Ordinance, Cap. 112 (the Ordinance). The Order implements the Second Protocol to the Agreement between the Government of the Hong Kong Special Administrative Region and the Government of the Socialist Republic of Vietnam on the subject (the Vietnamese Second Protocol) signed on 13 January 2014.

A

JUSTIFICATIONS

Purpose of the Vietnamese Second Protocol

2. Hong Kong and Vietnam signed an 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 Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" (the Vietnamese Agreement) on 16 December 2008. The Vietnamese Agreement was given effect in Hong Kong by the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on

Income) (Socialist Republic of Vietnam) Order (Cap. 112 sub. leg. BE) (the
B principal order) (at Annex B).

3. The Vietnamese Second Protocol, signed on 13 January 2014, modifies the Vietnamese Agreement by removing the domestic tax interest requirement in the Exchange of Information (EoI) article. The Second Protocol enables the EoI arrangement under the Vietnamese Agreement to be compliant with the Organisation for Economic Cooperation and Development (OECD) standard on tax transparency. It should be read together with the Vietnamese Agreement and shall form an integral part of the Vietnamese Agreement.

4. According to the prevailing international standard, exchange of tax information should be conducted regardless of a domestic tax interest[1]. Before 2010, Hong Kong could not adopt the prevailing international standard on EoI in our Comprehensive Agreements for Avoidance of Double Taxation (CDTAs) because of the then legal constraint in the Ordinance that EoI could only be conducted when there was domestic tax interest at stake. In March 2010, the Inland Revenue (Amendment) Ordinance 2010 came into effect, which liberalised our EoI arrangement under the CDTAs by removing the domestic tax interest requirement for the purpose of EoI. Since then, it has been our policy to adopt the 2004 version of the OECD EoI article in our CDTAs so as to meet the international standard. As the Vietnamese Agreement was signed in 2008, the EoI article of the Vietnamese Agreement adopts the old version of the OECD EoI article which contains domestic tax interest requirement and is not up to the prevailing international standard.

EoI Article under the Vietnamese Second Protocol

5. Currently, our EoI regime is generally based on the 2004 version of the OECD EoI article, except for certain modifications to address local needs. The Inland Revenue (Amendment) (No. 2) Ordinance 2013, amongst others, further enhances the EoI arrangement under CDTAs in terms of tax types and limitation on disclosure. In order to protect taxpayers' privacy and confidentiality of any information exchanged, the Government has undertaken to the Legislative Council (LegCo) that we will continue to adopt highly prudent safeguard measures in our CDTAs and when we submit the CDTAs to the LegCo for negative vetting, we will highlight deviations (if any) from safeguards set out below –

(a) we will only exchange information upon receipt of request and

[1] The concept of domestic tax interest describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own purposes.

no information will be exchanged on an automatic or spontaneous basis;

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

(c) information received by our CDTA partners should be treated as confidential;

(d) information will only be disclosed to the tax authorities and not for release to their oversight bodies unless there are legitimate reasons given by the CDTA partners;

(e) information requested should not be disclosed to a third jurisdiction; and

(f) there is no obligation to supply information under certain circumstances, for example, where the information would disclose any trade, business, industrial, commercial or professional secret or trade process, or which would be covered by legal professional privilege, etc.

6. The Vietnamese Second Protocol has adopted all the above safeguards.

Legal Basis

7. Under section 49(1A) of the Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong. Under section 49(1B) of the Ordinance, arrangements made in an order under section 49(1A) of the Ordinance may only specify for the purposes of affording relief from double taxation and/or exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned. Following the signing of the Vietnamese Second Protocol, it is necessary for the Chief Executive in Council to declare by order that arrangements with Vietnam set out in the Vietnamese Second Protocol have been made so as to bring the Vietnamese Second Protocol into effect.

OTHER OPTIONS

8. An Order made by the Chief Executive in Council under section 49 of the Ordinance is the only way to give effect to the Vietnamese Second Protocol. There is no other option.

THE ORDER

9. The Order makes the following amendments to the principal order –

(a) new **sections 2(2), 3(2) and 3(3)** are added for declaring that the arrangements in the Vietnamese Second Protocol have been made with the government of Vietnam and that it is expedient that those arrangements shall have effect;

(b) a new **Schedule 2** is added to set out the arrangements in the Vietnamese Second Protocol; and

(c) consequential amendments are also made to the principal order.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows –

Publication in the Gazette	17 October 2014
Tabling at LegCo	22 October 2014
Commencement of the Order	12 December 2014

IMPLICATIONS OF THE PROPOSAL

11. The proposal is technical in nature. It has no financial, civil service, economic, productivity, environmental, sustainability or family perspective implications. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation.

PUBLIC CONSULTATION

12. The business and professional sectors have all along supported our policy to align the EoI arrangement with the international standard on tax transparency.

PUBLICITY

13. We issued a press release on the signing of the Vietnamese Second Protocol on 13 January 2014. A spokesperson will be available to answer

media and public enquiries.

BACKGROUND

14. The Vietnamese Agreement is the fifth CDTA concluded by Hong Kong with another jurisdiction. It entered into force on 12 August 2009 and has effect in Hong Kong for any year of assessment beginning on or after 1 April 2010.

C

15. As at 30 September 2014, we have entered into CDTAs with 30 jurisdictions. A list of these jurisdictions is at Annex C.

ENQUIRY

16. In case of enquiries about this Brief, please contact Ms Shirley Kwan, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2370.

Financial Services and the Treasury Bureau
15 October 2014

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (SOCIALIST REPUBLIC OF VIETNAM) (AMENDMENT) ORDER 2014

ANNEXES

Annex A	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Socialist Republic of Vietnam) (Amendment) Order 2014
Annex B	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Socialist Republic of Vietnam) Order
Annex C	List of jurisdictions with which Hong Kong has entered into CDTAs

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Socialist Republic of Vietnam) (Amendment) Order 2014

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

1. Commencement

This Order comes into operation on 12 December 2014.

2. Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Socialist Republic of Vietnam) Order amended

The Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Socialist Republic of Vietnam) Order (Cap. 112 sub. leg. BE) is amended as set out in sections 3 to 6.

3. Section 2 amended (declaration under section 49)

(1) Section 2—

Renumber the section as section 2(1).

(2) Section 2(1)—

Repeal

"section 49"

Substitute

"section 49(1)".

(3) Section 2(1)(a)—

Repeal

"section 3"

Substitute

"section 3(1)".

(4) After section 2(1)—

Add

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

(a) that the arrangements specified in section 3(2) have been made with the Government of the Socialist Republic of Vietnam; and

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

4. Section 3 amended (arrangements specified)

(1) Section 3—

Renumber the section as section 3(1).

(2) Section 3(1)—

Repeal

"section 2(a)"

Substitute

"section 2(1)(a)".

(3) Section 3(1)—

Repeal

"the Schedule" (wherever appearing)

Substitute

"Schedule 1".

(4) After section 3(1)—

Add

"(2) The arrangements specified for the purposes of section 2(2)(a) are the arrangements in Articles 1 to 3 of the protocol titled "Second 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 Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income", done in duplicate at Hong Kong on 13 January 2014 in the English and Vietnamese languages (the title of which protocol is translated into Chinese as "《中華人民共和國香港特別行政區政府與越南社會主義共和國政府就收入稅項避免雙重課稅和防止逃稅協定的第二議定書》" in this Order).

(3) The English text of Articles 1 to 3 of the Second Protocol referred to in subsection (2) is reproduced in Schedule 2; a Chinese translation of the Articles is also set out in that Schedule.".

5. Schedule heading amended

The Schedule, heading—

Repeal

"SCHEDULE"

Substitute

"Schedule 1".

6. Schedule 2 added

After Schedule 1—

Add

"Schedule 2 [s. 3]

Articles 1 to 3 of the Second 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 Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

Article 1

The text of Article 25 of the Agreement is deleted and replaced by the following:

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

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, 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, including, in the case of the Hong Kong Special Administrative Region, the decisions of the Board of Review. 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 2

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 Protocol. The Protocol shall enter into force on the date of the later of these notifications and its provisions shall have effect:

(a) in the Hong Kong Special Administrative Region:

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

(b) in Vietnam:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after 1 January in the calendar year next following that in which this Protocol enters into force; and

(ii) with regard to other taxes, in respect of taxable years beginning on or after 1 January in the calendar year next following that in which this Protocol enters into force.

Article 3

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and shall apply as long as the Agreement itself is applicable.

(Chinese Translation)

第一條

刪去本協定第二十五條的文本，而代以：

"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(就香港特別行政區而言，包括稅務上訴委員會的裁定)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。”

第二條

每一締約方均須以書面通知另一締約方已完成其法律規定的使本議定書生效的程序。本議定書自上述通知的較後一份的日期起生效，而其條文：

(a) 在香港特別行政區：

就香港特別行政區稅項而言，對在本議定書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；

(b) 在越南：

(i) 就在來源預扣的稅項而言，對在本議定書生效的公曆年的翌年 1 月 1 日或之後支付或存入貸方帳户的款項具有效力；及

(ii) 就其他稅項而言，對在本議定書生效的公曆年的翌年 1 月 1 日或之後的任何稅務年度具有效力。

第三條

本議定書構成本協定整體的一部分，在本協定有效期間有效，並在本協定適用期間適用。”。

Clerk to the Executive Council

COUNCIL CHAMBER

2014

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Socialist Republic of Vietnam signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (***Agreement***) together with a protocol to the Agreement (***Protocol***) on 16 December 2008. The arrangements in the Agreement and the Protocol have effect by virtue of the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Socialist Republic of Vietnam) Order (Cap. 112 sub. leg. BE) (***principal order***).

2. On 13 January 2014, the two Governments signed another protocol (***Second Protocol***) to modify the Agreement. This Order amends the principal order by adding new provisions that declare the arrangements in Articles 1 to 3 of the Second Protocol to be double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and that it is expedient that those arrangements should have effect. The Second Protocol was signed in the English and Vietnamese languages. The Chinese text set out in the new Schedule 2 to the principal order is a translation.

3. The effects of the new provisions are—

(a) that the arrangements referred to in paragraph 2 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 Socialist Republic of Vietnam, have effect in relation to any tax of the Republic that is the subject of that provision.

4. This Order also makes consequential amendments to the principal order.

Chapter:	112BE	**INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (SOCIALIST REPUBLIC OF VIETNAM) ORDER**	Gazette Number	Version Date

		Empowering section	L.N. 82 of 2009	25/06/2009

(Cap 112, section 49)

[25 June 2009]

(Originally L.N. 82 of 2009)

Section:	1	**(Omitted as spent)**	L.N. 82 of 2009	25/06/2009

(Omitted as spent)

Section:	2	**Declaration under section 49**	L.N. 82 of 2009	25/06/2009

For the purposes of section 49 of the Ordinance, it is declared—

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

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

Section:	3	**Arrangements specified**	L.N. 82 of 2009	25/06/2009

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

(a) 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 Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, done in duplicate at Hanoi on 16 December 2008 in the English and Vietnamese languages, the English text of which Articles is reproduced in Part 1 of the Schedule; and

(b) Paragraphs 1 to 3 of the Protocol to that Agreement, the English text of which Paragraphs is reproduced in Part 2 of the Schedule.

Schedule:		**SCHEDULE**	L.N. 82 of 2009	25/06/2009

[section 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 SOCIALIST REPUBLIC OF VIETNAM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

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

      (i) profits tax;

      (ii) salaries tax; and

      (iii) property tax,

      whether or not charged under personal assessment;

   (b) in the case of the Socialist Republic of Vietnam:

      (i) business income tax; and

      (ii) personal income tax.

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" and "Vietnamese tax" respectively.

Article 3

General Definitions

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

   (a) (i) the term "Hong Kong Special Administrative Region" means the Hong Kong Special Administrative Region of the People's Republic of China;

      (ii) the term "Vietnam" means the Socialist Republic of Vietnam; when used in a geographical sense, it means its land territory, islands, internal waters, territorial sea and airspace above them, the maritime areas beyond territorial sea including seabed and subsoil thereof over which the Socialist Republic of Vietnam exercises sovereignty, sovereign rights and jurisdiction in accordance with national

legislation and international law;

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

(c) 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 Vietnam, the Minister of Finance or his authorized representative;

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

(e) 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;

(f) 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;

(g) the term "national", in relation to Vietnam, means:

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

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

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

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

2. In this Agreement, the terms "Hong Kong Special Administrative Region tax" and "Vietnamese tax" do not include any penalty or interest imposed under the laws in force in 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 laws of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

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

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

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

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

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

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

(b) in the case of Vietnam, any person who, under the laws of Vietnam, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of registration, 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 Vietnam in respect only of income from sources in Vietnam.

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

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

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

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

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Vietnam, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Vietnam, 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 the competent authorities of the Contracting Parties shall determine that the person is a resident of a Contracting Party for the purposes of this Agreement by mutual 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;

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

(g) a warehouse, in relation to a person supplying storage facilities for others; and

(h) an installation structure, or equipment used for the exploration 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, 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 180 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 or display 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 or display;

(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.

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 in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person:

(a) has, and habitually exercises, in the first-mentioned Contracting Party an authority to conclude contracts in the name of 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; or

(b) has no such authority, but habitually maintains in the first-mentioned Party a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

Article 6

Income from Immovable Property

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

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to explore for or work, mineral deposits, quarries, sources and other natural resources; ships, 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 income from immovable property used for the performance of independent personal services.

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:

   (a) that permanent establishment;

   (b) sales in that other Party of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or

   (c) other business activities carried on in that other Party of the same or similar kind as those effected through that permanent establishment;

   provided that (b) or (c) shall not apply where an enterprise is able to demonstrate that the sales or business activities were carried out for reasons other than obtaining treaty benefits.

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 or with other enterprises with which it deals.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. If the information available to the taxation authority of a Contracting Party is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that Contracting Party relating to the determination of the tax liability of a person provided that that law shall be applied in accordance with the principles of this Article, so far as the information available to the taxation authority permits.

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

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

Article 8

Shipping and Air Transport

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

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

Article 9

Associated Enterprises

1. Where

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

of an enterprise of the other Contracting Party; or

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

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

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

Dividends

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

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

   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 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.

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 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article,

   (a) interest arising in the Hong Kong Special Administrative Region shall be exempt from Hong Kong Special Administrative Region tax if the interest is paid to:

      (i) the Government of Vietnam;

      (ii) the State Bank of Vietnam;

      (iii) the Bank for Foreign Trade of Vietnam;

      (iv) other financial institution the capital of which is wholly owned by the Government of Vietnam;

      (v) a financial establishment appointed by the Government of Vietnam and mutually agreed upon by the competent authorities of the two Contracting Parties;

   (b) interest arising in Vietnam shall be exempt from Vietnamese tax if the interest is paid to:

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

      (ii) the Hong Kong Monetary Authority;

      (iii) a financial establishment appointed by the Government of the Hong Kong Special Administrative Region and mutually agreed upon by the competent authorities of the two Contracting Parties.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being the Government of a Contracting Party or a resident of that 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of Article 7. In such cases 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 the Government of that Party or a resident of that Party. Where, however, the person paying the interest, whether he is the Government of a Contracting Party or a resident of that 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, having regard to the debt-claim for which it is paid, exceeds 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:

   (a) 7 per cent of the gross amount of the royalties if they are made as a consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process;

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

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 or discs used for radio or television broadcasting, any patent, trade mark, design or model, computer software program, 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 the Government of a Contracting Party or a resident of that 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of Article 7. In such cases 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 the Government of that Party or a resident of that Party. Where, however, the person paying the royalties, whether he is the Government of a Contracting Party or a resident of that 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, having regard to the use, right or information for which they are paid, exceeds 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

Gains from the Alienation of Property

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 or comparable participation in a company, the assets of which consist, directly or indirectly, mainly of immovable property situated in the other Contracting Party may be taxed in that other Party.

5. Gains derived from the alienation of shares, other than the shares referred to in paragraph 4, of not less than 15 per cent of the entire shareholding of a company which is a resident of a Contracting Party may be taxed in that Contracting Party.

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

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting Party in respect of professional services or other activities of an independent 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 fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other Party may be taxed in that other 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 fiscal year 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.

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.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or sportsmen who are residents of a Contracting Party from activities in the other Contracting Party under a plan of cultural exchange between the Governments of both Contracting Parties shall be exempt from tax in that other Contracting Party.

Article 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, 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 Contracting Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments (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) an arrangement 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 19

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 other 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 Vietnam, 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 (including a lump sum payment) paid by, or 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, such pension (including a lump sum payment) shall be taxable only in the other Contracting Party if the individual is a resident of that other Party and, in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of Vietnam, is a national thereof, and the pension (including a lump sum payment) is paid in respect of services referred to in sub-paragraph (b) of paragraph 1 of this Article.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions (including a lump sum payment), in respect of services rendered in connection with a business carried on by the Government of a Contracting Party.

Article 20

Students

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

2. Notwithstanding the provisions of Article 15, remuneration for services rendered by a student mentioned in the preceding paragraph in a Contracting Party shall not be taxed in that Party, provided that such services are in connection with his studies.

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. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting Party not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting Party may also be taxed in that other Party.

Article 22

Methods for Elimination of Double Taxation

1. (a) 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), Vietnamese tax paid under the laws of Vietnam 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 Vietnam, 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.

   (b) For the purpose of paragraph 1 (a) of this Article, the income tax paid in Vietnam shall be deemed to include any amount of tax which would have been payable as Vietnamese tax for any year but for an exemption from or a reduction of tax granted for that year or any part thereof as a result of the application of the provisions of Vietnamese law designed to extend time limited tax incentives to promote foreign investment for development purpose. The provision of this sub-paragraph shall only apply for a period of 10 years from the day on which this Agreement comes into effect according to paragraph 2 of Article 28.

2. (a) In the case of Vietnam, where a resident of Vietnam derives income, profits or gains which under the laws of the Hong Kong Special Administrative Region and in accordance with this Agreement may be taxed in the Hong Kong Special Administrative Region, Vietnam shall allow as a credit against its tax on the income, profits or gains an amount equal to the tax paid in the Hong Kong Special Administrative Region. Such deduction shall not, however, exceed that part of the tax on income, profits or gains, as computed before the deduction is given, which is attributable to the income, profits or gains which may be taxed in the Hong Kong Special Administrative Region.

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

3. Where a company which is a resident of a Contracting Party pays dividends to a company which is a resident of the other Contracting Party and the latter company, directly or indirectly, controls not less than 10 per cent of the shares of the company which pays the dividends, the credit that the company which is a resident of that other Party is entitled to shall include the tax paid by the company which pays the dividends in respect of the profits from which such dividends are derived (but not exceeding the appropriate portion of profits incidental to the derivation of such dividends).

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 Vietnam, are Vietnam 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 Vietnam) in the same circumstances, in particular with respect to residence, are or may be subjected.

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.

3. Except where the provisions of paragraph l of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

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

5. Nothing contained in this Article shall 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.

6. Notwithstanding the provisions of this Article, for so long as Vietnam continues to grant to investors licenses under the Law on Foreign Investment in Vietnam, which specify the taxation to which the investor shall be subjected, the imposition of such taxation shall not be regarded as breaching the terms of paragraphs 2 and 4 of this Article.

Article 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Vietnam). 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 this Agreement.

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

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

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

Article 25

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is necessary for carrying out the provisions of this Agreement or 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, as well as to prevent fiscal evasion in relation to such taxes. Any information received 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 covered by this Agreement. 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, including, in the case of the Hong Kong Special Administrative Region, the decisions of the Board of Review. Information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting Party originally furnishing the information.

2. In no case shall the provisions of paragraph 1 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.

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 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 28

Entry into Force

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

2. The provisions of this Agreement shall have effect:

(a) in the Hong Kong Special Administrative Region:

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

(b) in Vietnam:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after 1 January in the calendar year next following that in which this Agreement enters into force; and

(ii) with regard to other taxes, in respect of taxable years beginning on or after 1 January 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 on or before 30 June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force.

In such event, this Agreement shall cease to have effect:

(a) in the Hong Kong Special Administrative Region:

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

(b) in Vietnam:

(i) in respect of taxes withheld at source, in relation to taxable amount paid or credited on or after 1 January following the calendar year in which the notice of termination is given, and in any subsequent calendar years; and

(ii) in respect of other taxes, in relation to income, profits or gains arising in the calendar year following the calendar year in which the notice of termination is given, and in any subsequent calendar years.

PART 2

PARAGRAPHS 1 TO 3 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 SOCIALIST REPUBLIC OF VIETNAM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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

2. For the purposes of Article 7 paragraph 3, the term "banking enterprise" means, in the case of the Hong Kong

Special Administrative Region, a financial institution as defined under the Inland Revenue Ordinance, Chapter 112 of the Laws of Hong Kong.

3. For the purposes of Article 13 paragraph 4, the term "assets" shall be read as the value of the assets, and the term "mainly" shall be read as "not less than 50 per cent".

Annex C

List of jurisdictions with which Hong Kong has entered into CDTAs
(as at 30 September 2014)

	Jurisdictions	Date of Signing
1	Belgium	December 2003
2	Thailand	September 2005
3	Mainland China	August 2006
4	Luxembourg	November 2007
5	Vietnam	December 2008
6	Brunei	March 2010
7	The Netherlands	March 2010
8	Indonesia	March 2010
9	Hungary	May 2010
10	Kuwait	May 2010
11	Austria	May 2010
12	The United Kingdom	June 2010
13	Ireland	June 2010
14	Liechtenstein	August 2010
15	France	October 2010
16	Japan	November 2010
17	New Zealand	December 2010
18	Portugal	March 2011
19	Spain	April 2011
20	The Czech Republic	June 2011
21	Switzerland	October 2011
22	Malta	November 2011
23	Jersey	February 2012
24	Malaysia	April 2012
25	Mexico	June 2012
26	Canada	November 2012
27	Italy	January 2013
28	Guernsey	April 2013
29	Qatar	May 2013
30	Korea	July 2014