

**L.N. 120 of 2014**

**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戶的款項具有效力；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。”。

Kinnie WONG

Clerk to the Executive Council

COUNCIL CHAMBER

30 September 2014

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## 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

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(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.