

L.N. 189 of 2015

**Specification of Arrangements (The Mainland of China)
(Avoidance of Double Taxation and the Prevention of
Fiscal Evasion with respect to Taxes on Income) (Fourth
Protocol) 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 4 December 2015.

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; 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 Articles 1 to 6 of the instrument titled “《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》第四議定書” (which is translated into English as “The Fourth Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income” in this

Order), done in duplicate at Hong Kong on 1 April 2015 in the Chinese language.

- (2) The Chinese text of the Articles referred to in subsection (1) is reproduced in the Schedule. An English translation of the Articles is also set out in the Schedule.
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Schedule

[s. 3]

Articles 1 to 6 of The Fourth Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

第一條

取消《安排》第八條第一款，用下列規定代替：

“一、一方企業在另一方以船舶、飛機或陸運車輛經營海運、空運和陸運運輸所取得的收入和利潤，該另一方應予免稅（在內地包括增值稅及其它類似稅種）。”

第二條

關於《安排》第十二條第二款，對飛機和船舶租賃業務支付的特許權使用費，所徵稅款不應超過特許權使用費總額的5%。

第三條

取消《安排》第十三條第六款，用下列規定代替：

“六、雖有第四款和第五款的規定，一方居民轉讓在被認可的證券交易所上市的另一方居民公司股票取得的收益，應僅在轉讓者為其居民的一方徵稅。該項轉讓僅限於在同一證券交易所買入並賣出的情況。

符合下列條件的投資基金應視為一方居民投資基金，適用本款規定：

- (一) 依其所在一方相關法律設立，獲得一方行業監管機構認可，並接受其監管；
- (二) 投資基金的管理人應為在該一方註冊成立的公司或組成的其它人，並按照該一方行業監管機構的規定對投資基金實施管理；和
- (三) 百分之八十五以上的資金通過該一方市場募集。投資基金使用以下方式募集資金應視為通過該一方市場募集：
 1. 在該一方的證券交易所掛牌交易；
 2. 在該一方通過具有經營實質的金融機構銷售或配售；
 3. 在該一方直接向投資者銷售或配售；
 4. 使用雙方主管當局同意的其它方式。

七、轉讓第一款至第五款所述財產以外的其它財產取得的收益，應僅在轉讓者為其居民的一方徵稅。”

第四條

關於《安排》第十條、第十一條、第十二條和第十三條，如果涉及的所得權益的產生或配置，是由任何人以取得上述相關條款利益為主要目的而安排的，則相關條款規定不適用。

第五條

關於《安排》第二十四條，雙方同意，交換的信息除涉及《安排》適用的稅種外，還包括內地執行及實施的下列其它稅種：

- (一) 增值稅；
- (二) 消費稅；
- (三) 營業稅；
- (四) 土地增值稅；
- (五) 房產稅。

第六條

本議定書應在各自履行必要的批准程序，互相書面通知後，自最後一方發出通知之日起生效。

(English Translation)

Article 1

To repeal paragraph 1 of Article 8 of the Arrangement and substitute:

“1. Income and profits derived by an enterprise of One Side from the operation of ships, aircraft or land transport vehicles in shipping, air and land transport in the Other Side shall be exempt from tax (including value added tax and other similar taxes in the Mainland of China) in that Other Side.”

Article 2

In relation to paragraph 2 of Article 12 of the Arrangement, for royalties paid to an aircraft and ship leasing business, the tax charged shall not exceed 5% of the gross amount of the royalties.

Article 3

To repeal paragraph 6 of Article 13 of the Arrangement and substitute:

“6. Notwithstanding the provisions of paragraphs 4 and 5, gains derived by a resident of One Side from the alienation of shares of a company that is a resident of the Other Side quoted on a recognized stock exchange shall be taxable only in the Side of which the alienator is a resident. The alienation is limited to cases where the shares are bought and sold in the same stock exchange.

An investment fund that meets the following conditions shall be regarded as an investment fund that is a resident of One Side, and this paragraph shall apply to such an investment fund:

- (1) the investment fund is one established under the relevant laws of the Side in which the investment fund is situated, and is recognized by an industry regulatory body of that Side and subject to the supervision of the body;
- (2) the manager of the investment fund shall either be a company registered and incorporated in that Side or other persons constituted in that Side, and shall manage the investment fund in accordance with the requirements of the industry regulatory body of that Side; and

- (3) more than 85% of the funds are raised through the market of that Side. Investment funds that raise funds in the following manners shall be regarded as raising funds through the market of that Side:
- (i) being listed for trading on the stock exchange of that Side;
 - (ii) by sale or placement in that Side through a financial institution that carries on a substantive business;
 - (iii) by sale or placement in that Side directly to investors;
 - (iv) any other manner as agreed by the competent authorities of both Sides.

7. Gains derived from the alienation of any property, other than that referred to in paragraphs 1 to 5, shall be taxable only in the Side of which the alienator is a resident.”

Article 4

In relation to Articles 10, 11, 12 and 13 of the Arrangement, if the creation or disposition of the interests acquired is caused by any person with the main purpose of taking advantages of any of such Articles, the Article shall not apply.

Article 5

In relation to Article 24 of the Arrangement, both Sides agree that in addition to taxes to which the Arrangement applies, the

information to be exchanged shall cover the following other taxes enforced and imposed in the Mainland of China:

- (1) value added tax;
- (2) consumption tax;
- (3) business tax;
- (4) land appreciation tax;
- (5) real estate tax.

Article 6

This Protocol shall, upon written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications.

Kinnie WONG
Clerk to the Executive Council

COUNCIL CHAMBER

22 September 2015

Explanatory Note

The Mainland of China and the Hong Kong Special Administrative Region (*both Sides*) entered into an arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (*Arrangement*) together with a protocol to the Arrangement on 21 August 2006. Both Sides entered into the Second Protocol and the Third Protocol to the Arrangement both at Beijing on 30 January 2008 and 27 May 2010 respectively. On 1 April 2015, both Sides entered into another protocol (i.e. Fourth Protocol) to the Arrangement at Hong Kong.

2. This Order specifies the arrangements in Articles 1 to 6 of the Fourth Protocol (*arrangements*) 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 Fourth Protocol was signed in the Chinese language. The English text set out in the Schedule is a translation.
3. 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 the arrangements that requires disclosure of information concerning tax of the Mainland of China, have effect in relation to any tax of the Mainland that is the subject of that provision.