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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME) (KINGDOM OF SAUDI ARABIA) ORDER

INTRODUCTION

At the meeting of the Executive Council on 8 May 2018, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Double Taxation Relief and Prevention of Tax Evasion with respect to Taxes on Income) (Kingdom of Saudi Arabia) Order ("the Order"),
A at **Annex A**, should be made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) ("IRO"). The Order implements the Comprehensive Avoidance of Double Taxation Agreement ("CDTA") signed between Hong Kong and Saudi Arabia on 24 August 2017.

JUSTIFICATIONS

Benefits of CDTAs in General

2. Double taxation refers to the imposition of comparable taxes by more than one tax jurisdiction in respect of the same source of income. The international community generally recognises that double taxation hinders the exchange of goods and services, movements of capital, technology and human resources, and undermines the development of economic relations between economies. As a business facilitation initiative, it is our policy to enter into CDTAs with our trading and investment partners so as to minimise double taxation.

3. Hong Kong adopts the territorial principle of taxation whereby only income sourced from Hong Kong is subject to tax. A local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation. Double taxation may however occur where a foreign jurisdiction taxes its residents' income derived from Hong Kong. Although many jurisdictions provide their residents with unilateral tax relief for the Hong Kong tax paid on

income derived therefrom, CDTAs will enhance the certainty in respect of the elimination of double taxation. Besides, the tax relief available under CDTAs may exceed the level provided unilaterally by the tax jurisdictions concerned.

Benefits of the CDTA with Saudi Arabia

4. The CDTA with Saudi Arabia sets out the allocation of taxing rights between Hong Kong and Saudi Arabia and the relief on tax rates on different types of income. It will help investors better assess their potential tax liabilities from cross-border economic activities, foster economic and trade links, and provide incentives for enterprises of Saudi Arabia to conduct business or invest in Hong Kong, and vice versa.

5. In the absence of a CDTA with Saudi Arabia, income earned by Saudi Arabian residents in Hong Kong is subject to tax in both Hong Kong and Saudi Arabia. Moreover, profits of Hong Kong companies doing business through a permanent establishment in Saudi Arabia may be taxed in both Hong Kong and Saudi Arabia if the income is Hong Kong-sourced.

6. Under the CDTA with Saudi Arabia, tax paid in Hong Kong will be allowed as a deduction against tax payable in Saudi Arabia in respect of the income. Also, any Saudi Arabian tax paid by Hong Kong companies will be allowed as a credit against the tax payable in Hong Kong in respect of the income, subject to the provisions of the tax laws of Hong Kong.

7. Income derived by a Hong Kong resident, which is not paid by (or on behalf of) and borne by a Saudi Arabian entity, from employment exercised in Saudi Arabia will be exempt from Saudi Arabian tax if the resident's aggregate stay in Saudi Arabia in any relevant 12-month period does not exceed 183 days. Profits from international shipping transport earned by Hong Kong residents arising from Saudi Arabia, which are currently subject to tax in Saudi Arabia, will not be taxed in Saudi Arabia under the CDTA. Further, Hong Kong air carriers operating flights to Saudi Arabia will be taxed in Hong Kong only at Hong Kong's corporation tax rate of 16.5% (which is lower than that of 20% in Saudi Arabia).

8. Under the CDTA with Saudi Arabia, the Saudi Arabian withholding tax rate on royalties, currently at 15 percent, will be capped at 8 percent, and a lower rate of 5 percent will apply if the royalties are for the use of, or the right to use industrial, commercial or scientific equipment. Withholding tax rates applicable to Hong Kong residents are summarised below –

Caps on withholding tax rates set out in the CDTA with Saudi Arabia (compared with the current applicable tax rates in Saudi Arabia)		
Interest(s)	**Royalties**	**Dividends**
N.A.	5% or 8% (15%)	5% (5%)

9. The CDTA with Saudi Arabia includes a "Teachers and Researchers" ("T&R") Article, which provides that remuneration paid by the government of the resident jurisdiction to teachers and researchers visiting the other jurisdiction for the sole purpose of teaching or research at an education institution shall be taxed in the resident jurisdiction for a time-limited duration of two years. In other words, the taxing right of the visiting teachers and researchers is allocated to the resident jurisdiction for the first two years of their stay. We expect that revenue loss arising from exempting Hong Kong-sourced income of teachers and researchers employed by the Government of Saudi Arabia from Hong Kong tax for two years would be insignificant.

Exchange of Information Article under the CDTA with Saudi Arabia

10. Hong Kong adopts the Organisation for Economic Co-operation and Development 2004 version of the Exchange of Information ("EoI") Article in our CDTAs to facilitate exchange of tax information for meeting the international standard. In order to protect taxpayers' privacy and confidentiality of any information exchanged, the Government will continue to adopt highly prudent safeguard measures in our CDTAs.

11. The CDTA with Saudi Arabia contains an EoI Article. We have agreed with Saudi Arabia that the following safeguards would be adopted –

(a) the information sought should be foreseeably relevant, i.e. there will be no fishing expeditions;
(b) information received by Saudi Arabia should be treated as confidential;
(c) information will only be disclosed to the tax authorities concerned and will not be released to their oversight bodies unless there are legitimate reasons;
(d) information requested should not be disclosed to a third jurisdiction; and
(e) 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.

12. The scope of tax types for the purpose of EoI is confined to the taxes covered by the CDTA.

Legal Basis

13. Under section 49(1A) of the IRO, if the Chief Executive in Council ("CE-in-C"), by order, declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect, those arrangements shall have effect. Under section 49(1B) of the IRO, arrangements specified in an order under section 49(1A) of the IRO may be made for the purposes of affording relief from double taxation; exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned; and/or implementing an initiative of international tax co-operation. Following the signing of the CDTA with Saudi Arabia, it is necessary for the CE-in-C to declare by order that arrangements with Saudi Arabia on double taxation relief have been made so as to bring the CDTA into effect.

OTHER OPTIONS

14. An order made by the CE-in-C under section 49(1A) of the IRO is the only way to give effect to the CDTA with Saudi Arabia. There is no other option.

THE SAUDI ARABIAN ORDER

15. **Section 2** of the Order declares that the arrangements specified in section 3(1) have been made and that it is expedient that those arrangements should have effect. **Section 3(1)** states that the arrangements are those in Articles 1 to 29 of the CDTA with Saudi Arabia as well as Paragraphs 1 to 7 of the Protocol to the CDTA. The text of the Articles and the Paragraphs is set out in the **Schedule** to the Order.

LEGISLATIVE TIMETABLE

16. The legislative timetable is as follows –

Publication in the Gazette	18 May 2018
Tabling at Legislative Council	23 May 2018
Commencement of the Order	13 July 2018

IMPLICATIONS OF THE PROPOSAL

17. 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 IRO and its subsidiary legislation. It has no environmental, gender or productivity implications, and no sustainability implications other than those set out in the economic implications paragraph in Annex B. The financial, economic, civil service and family implications of the proposal are set out in **Annex B**.

B

PUBLIC CONSULTATION

18. The business and professional sectors have all along supported our policy to conclude more CDTAs with our trading and investment partners.

PUBLIC REACTION

19. Relevant stakeholders in the business communities of Hong Kong and Saudi Arabia generally welcome the conclusion of the CDTA.

PUBLICITY

20. We issued a press release on the signing of the CDTA on 24 August 2017. A spokesperson will be available to answer media and public enquiries.

BACKGROUND

21. As at 30 April 2018, we have entered into CDTAs with 39 jurisdictions, including the one concluded with Saudi Arabia. A summary
C of the main provisions of the CDTA with Saudi Arabia is at **Annex C**. A
D list of Hong Kong's CDTA partners is at **Annex D**. Hong Kong will continue to press ahead with its efforts to expand its CDTA network, in particular with the economies along the Belt and Road. Our goal is to bring the total number of CDTAs to 50 over the next few years.

ENQUIRIES

22. In case of enquiries about this Brief, please contact Mr Stephen Lo, Principal Assistant Secretary for Financial Services and the Treasury (Treasury)(R2), at 2810-2317.

Financial Services and the Treasury Bureau
16 May 2018

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME) (KINGDOM OF SAUDI ARABIA) ORDER

ANNEXES

Annex A	Inland Revenue (Double Taxation Relief and Prevention of Tax Evasion with respect to Taxes on Income) (Kingdom of Saudi Arabia) Order
Annex B	Financial, Economic, Civil Service and Family Implications of the Proposal
Annex C	Summary of the main provisions of the Saudi Arabian Agreement
Annex D	List of jurisdictions with which Hong Kong has entered into CDTAs

Annex A

Inland Revenue (Double Taxation Relief and Prevention of Tax Evasion with respect to Taxes on Income) (Kingdom of Saudi Arabia) 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 13 July 2018.

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 Kingdom of Saudi Arabia; 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 Kingdom of Saudi Arabia for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income", done in duplicate at Hong Kong on 24 August 2017 in the Chinese, Arabic and English languages; and

(b) Paragraphs 1 to 7 of the protocol to the agreement, done in duplicate at Hong Kong on 24 August 2017 in the Chinese, Arabic and English languages.

(2) The text of the Articles referred to in subsection (1)(a) is reproduced in Part 1 of the Schedule.

(3) The text of the Paragraphs referred to in subsection (1)(b) is reproduced in Part 2 of the Schedule.

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 Kingdom of Saudi Arabia for the Avoidance of Double Taxation and the Prevention of Tax 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 or of its 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:

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

      (i) profits tax;

      (ii) salaries tax;

      (iii) property tax;

      whether or not charged under personal assessment

      (hereinafter referred to as "Hong Kong Special Administrative Region tax");

   (b) in the case of the Kingdom of Saudi Arabia:

      (i) the Zakat;

      (ii) the income tax including the natural gas investment tax

      (hereinafter referred to as "Saudi tax").

4. This Agreement shall apply also to any identical or substantially similar taxes which 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.

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 area where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;

(b) the term "Kingdom of Saudi Arabia" means the territory of the Kingdom of Saudi Arabia which also includes the area outside the territorial waters, where the Kingdom of Saudi Arabia exercises its sovereign and jurisdictional rights in their waters, sea bed, sub-soil and natural resources by virtue of its law and international law;

(c) the term "company" means any body corporate or any entity which 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;

(ii) in the case of the Kingdom of Saudi Arabia, the Ministry of Finance represented by the Minister of Finance or his authorized representative;

(e) the terms "a Contracting Party" and "the other Contracting Party" mean the Hong Kong Special Administrative Region or the Kingdom of Saudi Arabia, 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 the case of the Kingdom of Saudi Arabia, means:

(i) any individual possessing the nationality of the Kingdom of Saudi Arabia; and

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

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

2. 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 Contracting Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means any person who, under the laws of that Contracting Party, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 of this Article, 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 Contracting Party in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting Parties, he shall be deemed to be a resident only of the Contracting Party with which his personal and economic relations are closer ("centre of vital interests");

(b) if the Contracting 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 Contracting Party, he shall be

deemed to be a resident only of the Contracting Party in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting Parties or in neither of them, he shall be deemed to be a resident only of the Contracting 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 the Kingdom of Saudi Arabia);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of the Kingdom of Saudi Arabia, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of the Kingdom of Saudi Arabia, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article, a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Contracting Party in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) any place of extraction of natural resources.

3. The term “permanent establishment” also includes:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where 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 where activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 183 days within any twelve-month period.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage 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;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (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 of this Article, where a person - other than an agent of an independent status to whom paragraph 6 of this Article 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 of this Article 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 Contracting Party a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise of a Contracting Party shall not be deemed to have a permanent establishment in the other Contracting Party merely because it carries on business in that other Contracting 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 Contracting 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 Contracting Party.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, quarries, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article 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 Contracting 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 Contracting Party, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting 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 income from debt-claims with regard to moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for 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 income from debt-claims with regard to 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, or on the basis of such other method as may be prescribed by the laws of that Contracting Party, nothing in paragraph 2 of this Article shall preclude that Contracting Party from determining the profits to be taxed by such apportionment or other method; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs of this Article, 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 Contracting Party.

2. The provisions of paragraph 1 of this Article 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 Contracting Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Contracting Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting 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 Contracting 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 Contracting Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed 5 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 these limitations.

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 Contracting Party of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 of this Article 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 Contracting 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 of this Agreement, 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 Contracting 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 Contracting 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

Contracting 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 Contracting Party.

Article 11

Income from Debt-Claims

1. Income from debt-claims arising in a Contracting Party and paid to a resident of the other Contracting Party shall be taxable only in that other Contracting Party.

2. The term "income from debt-claims" 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 income from debt-claims for the purpose of this Article.

3. The provisions of paragraph 1 of this Article shall not apply if the beneficial owner of the income from debt-claims, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the income from debt-claims arises through a permanent establishment situated therein, or performs in that other Contracting Party independent personal services from a fixed base situated therein, and the debt-claim in respect of which such income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.

4. 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 income from debt-claims exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Contracting 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 recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

   (a) 5 per cent of the gross amount of the royalties which are paid for the use of, or the right to use, industrial, commercial, or scientific equipment;

   (b) 8 per cent of the gross amount of the royalties in all other cases.

The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of these limitations.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article 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 Contracting 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 of this Agreement, 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 Contracting 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 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 Contracting 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.

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 of this Agreement and situated in the other Contracting Party may be taxed in that other Contracting 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 Contracting 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 Contracting 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 Contracting Party.

5. Gains from the alienation of shares, other than those mentioned in paragraph 4 of this Article, of a company which is a resident of a Contracting Party derived by a resident of the other Contracting Party who owns 10 per cent or more of shares of that company may be taxed in the first-mentioned Contracting Party.

6. Gains derived from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5 of this Article, 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 Contracting 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 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, 20 and 21 of this Agreement, 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 Contracting 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 Contracting Party.

2. Notwithstanding the provisions of paragraph 1 of this Article, 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 Contracting Party if:

(a) the recipient is present in the other Contracting 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 Contracting Party, and

(c) the remuneration is not borne by a permanent establishment or fixed base which the employer has in the other Contracting 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 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 Contracting Party.

Article 17

Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 14 and 15 of this Agreement, 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 sportsperson, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Contracting Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 of this Agreement, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the preceding provisions of this Article, income derived by entertainers or sportspersons who are residents of a Contracting Party from activities exercised 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 of this Agreement, 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 of this Article, pensions and other similar remuneration (including a lump sum payment) made under a pension or retirement scheme which is:

   (a) a public scheme which is part of the social security system of a Contracting Party or an administrative subdivision or a local authority thereof, or

   (b) a scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in a Contracting Party,

   shall be taxable only in that Contracting Party.

Article 19

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting Party or an administrative subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting 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 Contracting Party and the individual is a resident of that other Contracting Party who:

(i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of the Kingdom of Saudi Arabia, is a national thereof, or

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

2. Any pension (including a lump sum payment) paid by, or paid out of funds created or contributed by, a Contracting Party or an administrative subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.

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

Article 20

Students

Payments which a student, business apprentice or trainee 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 Contracting Party, provided that such payments arise from sources outside that Contracting Party.

Article 21

Teachers and Researchers

Remuneration which an individual 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 teaching or research at an educational institution in the first-mentioned Party receives from that other Party or an administrative subdivision or local authority thereof in respect of such teaching or research shall be taxable only in that other Party for a period of two years from the date of his first arrival in the first-mentioned Party.

Article 22

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 Contracting Party.

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 of this Agreement, 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 Contracting 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 of this Agreement, as the case may be, shall apply.

Article 23

Methods for Elimination of Double Taxation

Double taxation shall be eliminated as follows:

(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), Saudi tax paid under the laws of the Kingdom of Saudi Arabia 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 the Kingdom of Saudi Arabia, 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) in the case of the Kingdom of Saudi Arabia:

where a resident of the Kingdom of Saudi Arabia derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, the Kingdom of Saudi Arabia shall allow as a deduction from the tax on the income of that resident 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, as computed before the deduction is given, which is attributable to such income derived from the Hong Kong Special Administrative Region.

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 internal laws of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident. 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 internal 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 for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

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 internal 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 of this Agreement.

2. Any information received under paragraph 1 of this Article by a Contracting Party shall be treated as secret in the same manner as information obtained under the internal laws of that Contracting 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.

3. In no case shall the provisions of paragraphs 1 and 2 of this Article 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.

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 Contracting 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 of this Article 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 of this Article 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 Provisions

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its internal laws and measures concerning tax avoidance and tax evasion.

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 law for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the month in which the later of these notifications was received.

2. The provisions of this Agreement shall have effect:

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

   in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after the first day

   of April in the calendar year next following that in which this Agreement enters into force;

   (b) in the case of the Kingdom of Saudi Arabia:

      (i) with regard to taxes withheld at source, in respect of amounts paid on or after the first day of January next following the date upon which this Agreement enters into force; and

      (ii) with regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the date upon which this Agreement enters into force.

Article 29

Termination

1. 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 not later than 30 June of any calendar year starting five years after the year in which this Agreement entered into force.

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

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

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

(b) in the case of the Kingdom of Saudi Arabia:

(i) with regard to taxes withheld at source, in respect of amounts paid after the end of the calendar year in which the notice is given; and

(ii) with regard to other taxes, in respect of taxable years beginning after the end of the calendar year in which the notice is given.

Part 2

Paragraphs 1 to 7 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 Kingdom of Saudi Arabia for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income

1. With reference to Article 2 of the Agreement:

It is understood that the terms "Hong Kong Special Administrative Region tax" and "Saudi tax" do not include any penalty (including, in the case of the Hong Kong Special Administrative Region, any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith and "additional tax"

under section 82A of the Inland Revenue Ordinance) imposed under the laws of either Contracting Party.

2. With reference to paragraph 1(i) of Article 3 of the Agreement:

It is understood that the term "person" also includes the Contracting Party and its administrative subdivisions or local authorities.

3. With reference to paragraph 1 of Article 4 of the Agreement, it is understood that:

(a) in the case of the Hong Kong Special Administrative Region, the term "resident of a Contracting Party" shall mean:

(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;

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

(b) in the case of the Kingdom of Saudi Arabia, the term "resident of a Contracting Party" also includes:

(i) the Government of the Kingdom of Saudi Arabia and any administrative subdivision, local authority or governmental statutory body thereof;

(ii) any legal person organized under the laws of the Kingdom of Saudi Arabia and that is generally exempt from or not subject to tax in the Kingdom of Saudi Arabia and is established and maintained in the Kingdom of Saudi Arabia either:

- exclusively for a religious, charitable, educational, scientific, or other similar purpose; or

- to provide pensions or other similar benefits to employees pursuant to a plan;

(c) the term "resident of a Contracting Party" does not include any person who is liable to tax in the Kingdom of Saudi Arabia in respect only of income from sources in the Kingdom of Saudi Arabia.

4. With reference to Article 7 of the Agreement:

(a) the profits derived by an enterprise of a Contracting Party from the exportation of merchandise to the other Contracting Party shall not be taxed in that other Contracting Party. Where export contracts include other activities carried on in the other Contracting Party through a permanent establishment, profits derived from such activities may be taxed in the other Contracting Party;

(b) the term "business profits" includes, but is not limited to, income derived from manufacturing, mercantile, banking, insurance, from the operation of inland transportation and the furnishing of services. This term does not cover the performance of personal services by an individual either as an employee or in an independent capacity;

(c) each Contracting Party shall apply its internal law with regard to insurance activities.

5. With reference to Article 23 of the Agreement:

In the case of the Kingdom of Saudi Arabia, the methods for elimination of double taxation will not prejudice the provisions of the Zakat collection regime as regards Saudi nationals.

6. With reference to Article 25 of the Agreement, it is understood that:

(a) information received in accordance with this Article shall be used only for the purposes of the taxes covered by the Agreement, and shall not be disclosed to any third jurisdiction for any purpose;

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

(c) this Article has covered all types of taxes on income imposed by both Contracting Parties. If a Contracting Party introduces any other type of tax in future, both Contracting Parties shall enter into negotiations on the application of this Article to such type of tax.

7. In the case in which the Kingdom of Saudi Arabia introduces an income tax applicable to its nationals who are residents of the Kingdom of Saudi Arabia, or where its existing taxes will be modified accordingly, or that the Kingdom of Saudi Arabia includes an Article on non-discrimination in an agreement for the avoidance of double taxation with any country or jurisdiction other than a country that is a member of the Gulf Cooperation Council or of the League of Arab States, the Contracting Parties shall enter into negotiations in order to introduce provisions on non-discrimination into the Agreement.

Clerk to the Executive Council

COUNCIL CHAMBER

2018

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Kingdom of Saudi Arabia signed an agreement for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income (***Agreement***) together with a protocol to the Agreement (***Protocol***) on 24 August 2017.

2. This Order specifies the arrangements in Articles 1 to 29 of the Agreement and Paragraphs 1 to 7 of the 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 Agreement and Protocol were signed in the Chinese, Arabic and English languages.

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 Saudi Arabia, have effect in relation to any tax of Saudi Arabia that is the subject of that provision.

Annex B

Financial, Economic, Civil Service and Family Implications of the Proposal

Financial Implications

The Government would have to forgo some revenue which is currently being collected in respect of profits of Saudi Arabian resident companies not attributable to a permanent establishment in Hong Kong, as well as shipping and air services profits of Saudi Arabian operators. The Government would also forgo the income of personnel employed by the Government of Saudi Arabia who visit Hong Kong solely for purpose of teaching or research for their first two years of stay in Hong Kong. However, the overall financial implications would be insignificant.

Economic Implications

2. The CDTA with Saudi Arabia will facilitate business development between Hong Kong and Saudi Arabia, and contribute positively to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Saudi Arabia by providing enhanced certainty to the tax liabilities of businessmen and investors.

Civil Service Implications

3. There will be additional work for the Inland Revenue Department in handling requests for exchange of information from Saudi Arabia under the CDTA, which will be absorbed by the existing resources as far as possible. Where necessary, additional manpower resources would be sought in accordance with the established resources allocation mechanism.

Family Implications

4. Given that the tax burden of some individuals may be relieved under the CDTA, the proposal may have positive implications for the financial situation of those families.

Annex C

Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Saudi Arabia for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income ("Saudi Arabian Agreement")

Summary of Main Provisions

The Saudi Arabian Agreement covers the following types of taxes:

(a) in respect of Hong Kong –
- (i) profits tax;
- (ii) salaries tax; and
- (iii) property tax.

(b) in respect of Saudi Arabia –
- (i) the Zakat[1]; and
- (ii) the income tax including the natural gas investment tax.

2. The Saudi Arabian Agreement deals with the taxing of income of the resident of one Contracting Party ("resident jurisdiction") derived from another Contracting Party ("source jurisdiction").

Exclusive Taxing Rights

3. Where the right to tax income is allocated exclusively to one Contracting Party under the Saudi Arabian Agreement (i.e. either the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Saudi Arabian Agreement that the following types of income shall only be taxed in the resident jurisdiction –

(a) profits of an enterprise, unless the enterprise carries on business in the source jurisdiction through a permanent establishment therein (i.e. a fixed place of business through which the business of an enterprise is wholly or partly carried on);

(b) profits from operation of ships and aircraft in international traffic and gains from the alienation of ships or aircraft operated

[1] Zakat is a religious obligation with which every Muslim has to comply. Both companies and individuals have to pay Zakat. It is in the nature of a tax on both income and capital.

in international traffic or movable property pertaining to the operation of such ships or aircraft;

(c) income from debt-claims arising in the source jurisdiction;

(d) income from professional services, including services performed in the source jurisdiction when the services are not provided through a fixed base in the source jurisdiction and the person is present in the source jurisdiction for aggregate periods not exceeding 183 days in any relevant 12 month period;

(e) remuneration from non-government employment, including employment exercised in the source jurisdiction provided that the employee is present in the source jurisdiction for aggregate periods not exceeding 183 days in any relevant 12-month period, etc.;

(f) remuneration from non-government employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of the resident jurisdiction;

(g) remuneration paid by the government of the resident jurisdiction to teachers and researchers visiting the other jurisdiction for the sole purpose of teaching or research at an educational institution, for a period of two years;

(h) capital gains not expressly dealt with in the Saudi Arabian Agreement; and

(i) other income not expressly dealt with in the Saudi Arabian Agreement.

4. Employment income and pensions paid by the government of a Contracting Party are, in general, taxable only in that Party (i.e. source jurisdiction). Pensions from non-government employment, including lump sum payments, are generally taxable only in the source jurisdiction.

Shared Taxing Rights

5. Where both tax jurisdictions are given the right to tax the same item of income, the resident jurisdiction is required under the Saudi Arabian Agreement to give double taxation relief to its resident for any income doubly assessed (i.e. the source jurisdiction has the primary right to tax and

the resident jurisdiction is left with a secondary right). It is provided in the Saudi Arabian Agreement that the following types of income may be taxed in both jurisdictions –

(a) income generated from immovable property and gains from the alienation of such property situated in the source jurisdiction;

(b) profits of an enterprise which carries on business in the source jurisdiction through a permanent establishment, to the extent that such profits are attributable to the permanent establishment, and gains from the alienation of the business property of such permanent establishment;

(c) dividends and royalties received from residents of a source jurisdiction, with the source jurisdiction's right to tax is subject to the specified limit in tax rates as follows:

- for dividends, 5%; and

- for royalties, 5% on the gross amount of the royalties (for the use of or the right to use industrial, commercial, or scientific equipment) or 8% on the gross amount of the royalties (in all other cases), if the recipient is the beneficial owner of the royalties;

(d) gains from the alienation of shares of a company deriving more than 50% of its asset value directly or indirectly from immovable property situated in the source jurisdiction;

(e) gains from the alienation of shares of company in the source jurisdiction by the other jurisdiction's resident who owns 10% or more of the shares in that company;

(f) income from professional services performed in the source jurisdiction through a fixed base in the source jurisdiction, or where the person is present in the source jurisdiction for aggregate periods exceeding 183 days in any relevant 12 month period, and gains from the alienation of movable property pertaining to the fixed base for performing such services;

(g) remuneration from non-government employment exercised in the source jurisdiction, where the employee is present in the source jurisdiction for aggregate periods exceeding 183 days in any relevant 12 month period, etc.;

(h) directors' fees from a company resident in the source jurisdiction; and

(i) income of entertainers and sportspersons who conduct their professional activities in the source jurisdiction.

6. In general, in case of shared taxing rights, double taxation relief may be given to a taxpayer either through the exemption method, where income taxable in the source jurisdiction is exempt from taxation in the resident jurisdiction; or through the credit method, where income taxable in the source jurisdiction is subject to tax in the resident jurisdiction but the tax levied in the source jurisdiction is credited against the tax levied in the resident jurisdiction on such income. Both Hong Kong and Saudi Arabia will provide double taxation relief for its residents by the credit method.

Annex D

List of jurisdictions with which Hong Kong has entered into Comprehensive Avoidance of Double Taxation Agreements
(as at 30 April 2018)

	Jurisdictions	Month 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
31	South Africa	October 2014
32	United Arab Emirates	December 2014

33	Romania	November 2015
34	Russia	January 2016
35	Latvia	April 2016
36	Belarus	January 2017
37	Pakistan	February 2017
38	Saudi Arabia*	August 2017
39	India*	March 2018

* The CDTAs with Saudi Arabia and India have not yet entered into force.