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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF WITH RESPECT TO TAXES ON INCOME AND PREVENTION OF TAX EVASION AND AVOIDANCE) (REPUBLIC OF ESTONIA) ORDER

INTRODUCTION

At the meeting of the Executive Council on 8 October 2019, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Estonia) Order
A ("Order"), at **Annex A**, should be made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) ("IRO").

2. The Order implements the Comprehensive Avoidance of Double Taxation Agreement which Hong Kong signed with Estonia in September 2019 ("Estonia CDTA").

JUSTIFICATIONS

Benefits of Comprehensive Avoidance of Double Taxation Agreements/Arrangements ("CDTAs") in General

3. 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 as well as 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.

4. 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 jurisdictions concerned.

Benefits of the Estonia CDTA

5. The Estonia CDTA sets out the allocation of taxing rights between Hong Kong and Estonia 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 Estonia to conduct business or invest in Hong Kong, and vice versa.

6. In the absence of the Estonia CDTA, profits of Hong Kong companies conducting business through a permanent establishment in Estonia may be taxed in both Hong Kong and Estonia if the income is Hong Kong-sourced. Moreover, income earned by Estonian residents in Hong Kong is subject to tax in both Hong Kong and Estonia.

7. Under the Estonia CDTA, any Estonian tax paid by Hong Kong residents in respect of income derived from sources in Estonia will be allowed as a credit against the Hong Kong tax payable on the same income, subject to the provisions of our tax laws. For Estonian residents, double taxation will be avoided by way of exemption of the income taxed in Hong Kong from Estonian tax, or deduction of Hong Kong tax paid from Estonian tax in respect of the same income.

8. Income derived by a Hong Kong resident, which is not paid by (or on behalf of) and borne by an Estonian entity, from employment exercised in Estonia will be exempt from tax in Estonia if the resident's aggregate stay in Estonia in any relevant 12-month period does not exceed 183 days.

9. Profits from the operation of ships or aircraft in international traffic earned by enterprises of Hong Kong arising from Estonia are currently subject to tax at 20% in Estonia when they are distributed. They will not be taxed in Estonia under the Estonia CDTA.

10. The withholding tax rate applicable to royalties received by Hong Kong residents from Estonia is capped at 5% under the Estonia CDTA, which is lower than the current applicable rate of 10% in Estonia. Estonia does not impose withholding tax on interest and dividends now. If, however, Estonia imposes withholding tax on either passive income in future, the applicable tax rate will be capped at 10% for most of the Hong Kong residents[1] based on the Estonia CDTA.

Exchange of Information ("EoI")

11. Every CDTA entered into by Hong Kong contains an EoI Article to facilitate exchange of tax information for meeting the requirements of the Organisation for Economic Co-operation and Development ("OECD"). 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.

12. Under the Estonia CDTA, 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 the tax authorities concerned should be treated as confidential;

(c) information will only be disclosed to the tax authorities concerned or their oversight bodies[2];

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[1] The withholding tax rate will be zero if the beneficial owner is a company; or if the interest/dividends is/are paid to the Hong Kong Special Administrative Region ("HKSAR") Government, the Hong Kong Monetary Authority, the Exchange Fund or an institution wholly or mainly owned by the HKSAR Government and mutually agreed upon by the competent authorities of Hong Kong and Estonia.

[2] In relation to the disclosure of information to the oversight bodies of the tax authorities concerned, the Estonia CDTA follows the formulation of the Convention on Mutual Administrative Assistance in Tax Matters, which was promulgated by the OECD and entered into force in respect of Hong Kong in September 2018. Estonia advised that the authorities who can act as oversight bodies in relation to the tax authority in Estonia (in addition to the courts) are the National Audit Office and the Parliament.

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

(e) there is no obligation to supply information under certain circumstances, for example, where the supply of information would disclose any trade, business, industrial, commercial or professional secret or trade process (including such information covered by legal professional privilege); and

(f) the tax information exchanged pursuant to the CDTA is allowed for certain non-tax related purposes[3] only if such purposes are allowed under the laws of both Hong Kong and Estonia and the tax authority of the supplying party authorises such use.

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

Legal Basis

14. 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, only arrangements 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 any territory concerned; and/or implementing an initiative of international tax co-operation may be specified in an order under section 49(1A) of the IRO. To bring the Estonia CDTA into effect, the CE-in-C has to declare by order that the arrangements with Estonia on double taxation relief have been made.

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[3] Under the laws of Hong Kong, tax information may only be used for limited non-tax related purposes, covering purposes relating to recovery of proceeds from drug trafficking, organised and serious crimes and terrorist acts under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organised and Serious Crimes Ordinance (Cap. 455) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) respectively. Hence, Estonia may only use the tax information exchanged under the Estonia CDTA for the said limited non-tax related purposes if it also has similar laws permitting the use of tax information for the same purposes, and if the Commissioner of Inland Revenue (or his authorised representative) authorises such use. Estonia cannot use the tax information exchanged for other purposes even if permitted under their laws because to do so will go beyond the permitted use under the laws of Hong Kong.

OTHER OPTIONS

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

THE ORDER

16. **Section 3** of the Order declares that the arrangements in the Estonia CDTA have been made and that it is expedient that those arrangements should have effect. The Estonia CDTA was done in the English language. Its text is set out in the English text of the **Schedule** to the Order, whereas a Chinese translation is set out in the Chinese text of the **Schedule**.

LEGISLATIVE TIMETABLE

17. The legislative timetable is as follows –

Publication in the Gazette	11 October 2019
Tabling at Legislative Council	16 October 2019
Commencement of the Order	6 December 2019

IMPLICATIONS OF THE PROPOSAL

18. 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

19. The business and professional sectors have all along supported our policy to conclude more CDTAs with the trading and investment partners of Hong Kong.

PUBLICITY

20. We issued a press release on the signing of the Estonia CDTA on 25 September 2019. A spokesperson is available to answer enquiries.

BACKGROUND

21. As at 30 September 2019, we have signed CDTAs with 42 jurisdictions, including Estonia. A list of Hong Kong's CDTA partners is at **Annex C**. A summary of the main provisions of the Estonia CDTA is at **Annex D**.

C

D

22. We will continue to expand our CDTA network and seek to conclude CDTAs with the economies along the Belt and Road in particular. Our goal is to bring the total number of CDTAs to 50 over the next few years.

ENQUIRIES

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

Financial Services and the Treasury Bureau
9 October 2019

LEGISLATIVE COUNCIL BRIEF

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(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF WITH RESPECT TO TAXES ON INCOME AND PREVENTION OF TAX EVASION AND AVOIDANCE) (REPUBLIC OF ESTONIA) ORDER

ANNEXES

Annex A	-	Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Estonia) Order
Annex B	-	Financial, Economic, Civil Service and Family Implications of the Proposal
Annex C	-	List of Jurisdictions with which Hong Kong has entered into Comprehensive Avoidance of Double Taxation Agreements/ Arrangements
Annex D	-	Summary of the Main Provisions 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 Republic of Estonia for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Estonia) 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 6 December 2019.

2. Interpretation

In this Order—

Agreement (《協定》) means the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Estonia for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance, done in duplicate at Tallinn on 25 September 2019 in the English language;

Protocol (《議定書》) means the protocol to the Agreement, done in duplicate at Tallinn on 25 September 2019 in the English language.

3. Declaration under section 49(1A)

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

(a) that the arrangements in the Agreement and the Protocol have been made; and

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

(2) The English text of the Agreement is reproduced in the English text of Part 1 of the Schedule. A Chinese translation of the Agreement is set out in the Chinese text of that Part.

(3) The English text of the Protocol is reproduced in the English text of Part 2 of the Schedule. A Chinese translation of the Protocol is set out in the Chinese text of that Part.

Schedule

[s. 3]

Part 1

Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Estonia for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Estonia,

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

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 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.

3. The existing taxes to which the Agreement shall apply are in particular:

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

      (i) profits tax;

      (ii) salaries tax; and

      (iii) property tax

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

   (b) in the case of Estonia, the income tax

(hereinafter referred to as "Estonian tax").

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective 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 place where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;

(b) the term "Estonia" means the Republic of Estonia and, when used in the geographical sense, the territory of Estonia and any other area adjacent to the territorial waters of Estonia within which, under the laws of Estonia and in accordance with international law, the rights of Estonia may be exercised with respect to the seabed and its subsoil and their natural resources;

(c) the term "business" includes the performance of professional services and of other activities of an independent character;

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

(e) the term "competent authority" means:

(i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative; and

(ii) in the case of Estonia, the Minister of Finance or his authorised representative;

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

(g) the term "enterprise" applies to the carrying on of any business;

(h) 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;

(i) the term "international traffic" means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting Party and the enterprise that operates the ship or aircraft is not an enterprise of that Party;

(j) the term "national", in relation to Estonia means:

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

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

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

2. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 23, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the 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;

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

(b) in the case of Estonia,

(i) any individual whose place of residence is in Estonia;

(ii) an Estonian diplomat who is in foreign service;

(iii) any individual who stays in Estonia for at least 183 days over the course of a period of 12 consecutive calendar months;

(iv) a company incorporated in Estonia;

(v) any other person who is a resident of Estonia under the tax laws of Estonia;

(vi) the Government of Estonia and any local authority thereof;

(c) in the case of either Contracting Party, an investment fund that is established and regulated according to the laws of a Contracting Party.

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 Estonia);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Estonia, or if he does not have the right of abode in the Hong Kong Special

Administrative Region nor is he a national of Estonia, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, the competent authorities of the Contracting Parties shall settle the question 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; and

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

3. The term "permanent establishment" also encompasses:

(a) a building site or a construction or installation project, but only if such site or project lasts more than twelve months;

(b) the furnishing of services, including consultancy or managerial services, by an enterprise of a Contracting Party in the other Contracting Party, but only if such activities continue (for the same or a connected project) in that other Party for a period or periods aggregating more than 183 days in any twelve month period.

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

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),

provided that such activity or, in the case of subparagraph (f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

5. Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting Party and

(a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or

(b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

6. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a

Contracting Party on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are

(a) in the name of the enterprise, or

(b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

(c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 5 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. Paragraph 6 shall not apply where the person acting in a Contracting Party on behalf of an enterprise of the other Contracting Party carries on business in the first-mentioned Party as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

8. 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.

9. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

Article 6

Income from Immovable Property

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

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

Article 7

Business Profits

1. Profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other Party.

2. For the purposes of this Article and Article 21, the profits that are attributable in each Contracting Party to the permanent

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

3. Where, in accordance with paragraph 2, a Contracting Party adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Parties and taxes accordingly profits of the enterprise that have been charged to tax in the other Party, the other Party shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting Parties shall if necessary consult each other.

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

Article 8

International 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 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:

(a) 0 per cent of the gross amount of the dividends if the beneficial owner is a company;

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

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2 of this Article, dividends arising in a Contracting Party are exempt from tax in that Party, if they are paid to:

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

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

(ii) the Hong Kong Monetary Authority;

(iii) the Exchange Fund;

(iv) any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;

(b) in the case of Estonia:

(i) the Government of Estonia or a local authority thereof;

(ii) the Bank of Estonia;

(iii) the Rural Development Foundation;

(iv) the Estonian Credit and Export Guarantee Agency;

(v) the Enterprise Estonia Foundation;

(vi) any institution wholly or mainly owned by the Government of Estonia as may be agreed from time to

time between the competent authorities of the Contracting Parties;

(c) in the case of either Contracting Party, an investment fund as referred to in paragraph 1 of Article 4.

4. 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 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.

5. The provisions of paragraphs 1, 2 and 3 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. 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 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:

   (a) 0 per cent of the gross amount of the interest, if the beneficial owner is a company;

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

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting Party is exempt from tax in that Party, if it is paid to:

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

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

      (ii) the Hong Kong Monetary Authority;

      (iii) the Exchange Fund;

      (iv) any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;

   (b) in the case of Estonia:

      (i) the Government of Estonia or a local authority thereof;

      (ii) the Bank of Estonia;

      (iii) the Rural Development Foundation;

      (iv) the Estonian Credit and Export Guarantee Agency;

      (v) the Enterprise Estonia Foundation;

      (vi) any institution wholly or mainly owned by the Government of Estonia as may be agreed from time to time between the competent authorities of the Contracting Parties;

   (c) in the case of either Contracting Party, an investment fund as referred to in paragraph 1 of Article 4.

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. The term "interest" shall not include any income, which is treated as a dividend under the

provisions of Article 10. 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 a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment 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 Contracting Party.

2. However, royalties arising in a Contracting Party may also be taxed in that Contracting Party according to the laws of that Contracting Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

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, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such

royalties shall be deemed to arise in the Party in which the permanent establishment 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

Capital Gains

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.

3. Gains that an enterprise of a Contracting Party that operates ships or aircraft in international traffic derives from the alienation of such

ships or aircraft, or of 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 or comparable interests, such as interests in a partnership, trust or investment fund, may be taxed in the other Contracting Party if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other Contracting Party. However, this paragraph does not apply to gains derived from the alienation of shares quoted on a stock exchange of:

   (a) a member state of the Organisation for Economic Co-operation and Development;

   (b) a member state of the European Economic Area;

   (c) the Hong Kong Special Administrative Region;

   (d) any other jurisdiction as may be agreed between the competent authorities of the Contracting Parties.

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

Article 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, 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 all the following conditions are met:

   (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the taxable period concerned;

   (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party;

   (c) the remuneration is not borne by a permanent establishment 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 may be taxed in that Party.

Article 15

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 or any other similar organ of a company which is a resident of the other Contracting Party may be taxed in that other Party.

Article 16

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, 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 that resident's 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 sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities exercised in a Contracting Party by an entertainer or a sportsperson if the visit to that Party is mainly financed by one or both of the Contracting Parties or local authorities thereof. In such case, the income shall be taxable only in the Contracting Party of which the entertainer or sportsperson is a resident.

Article 17

Pensions

1. Pensions and other similar remuneration, including a lump sum payment, arising in a Contracting Party and paid to a resident of the other Contracting Party shall be taxable only in the first-mentioned Party.

2. For the purposes of this Article, the term "pensions and other similar remuneration" includes payments resulting from contributions made to a pension or retirement scheme by a self-employed person.

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration, paid by a Contracting Party or a local authority thereof to an individual in respect of services rendered to that Party or authority shall be taxable only in that Party.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who has fulfilled one of the following conditions:

(i) the individual, in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of Estonia, is a national thereof; or

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

2. The provisions of Articles 14, 15 and 16 shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a local authority thereof.

Article 19

Students

Payments which a student 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 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.

Article 20

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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 21

Methods for Elimination of Double Taxation

1. 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), double taxation shall be avoided as follows:

Estonian tax paid under the laws of Estonia and in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by Estonia solely because the income is also income derived by a resident of Estonia), 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 Estonia, 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.

2. In the case of Estonia, double taxation shall be avoided in accordance with the provisions and subject to the limitations of the laws of Estonia (as it may be amended from time to time without changing the general principle hereof), as follows:

(a) where a resident of Estonia derives income which, in accordance with the provisions of this Agreement, has been taxed in the Hong Kong Special Administrative Region, Estonia shall, subject to the provisions of subparagraphs (b) and (c), exempt such income from tax;

(b) where a resident of Estonia derives income which in accordance with paragraph 2 of Articles 10, 11 and 12, paragraphs 1 and 2 of Article 16 may be taxed in the Hong Kong Special Administrative Region, Estonia 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 income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the Hong Kong Special Administrative Region;

(c) where in accordance with any provision of the Agreement income derived by a resident of Estonia is exempt from tax in Estonia, Estonia may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 22

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 Estonia, are Estonian 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 Estonia) in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities.

3. Except where the provisions of paragraph 1 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. The provisions of this Article shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

Article 23

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 either Contracting Party. 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 the 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 within a period of two years after the question was formally raised, with a view to

the avoidance of taxation which is not in accordance with the 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the 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 24

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 Article 2 of the Agreement and the Protocol, 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 internal 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, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting Party may be used for other purposes when such information may be used for such other purposes under the laws of both Parties and the competent authority of the supplying Party authorises such use. Information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting Party originally furnishing the information.

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 there is no tax interest in such information to that Party.

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 25

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 26

Entitlement to Benefits

1. Notwithstanding the other provisions of the Agreement, a benefit under the Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted

directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

2. Nothing in the Agreement shall prejudice the right of each Contracting Party to apply its internal laws and measures concerning tax avoidance, whether or not described as such.

Article 27

Entry into Force

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

2. The provisions of the Agreement shall have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any taxable period beginning on or after the first day of April next following the year in which the Agreement enters into force;

(b) in Estonia:

in respect of Estonian tax chargeable, for any taxable period beginning on or after the first day of January next following the year in which the Agreement enters into force.

Article 28

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving the other Contracting Party written notice of termination not later than the 30 June of any calendar year from the fifth year following that in which the Agreement entered into force. In such event, the 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 taxable period beginning on or after the first day of April next following the year in which the notice is given;

(b) in Estonia:

in respect of Estonian tax chargeable, for any taxable period beginning on or after the first day of January next following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Tallinn, on 25 September 2019, in the English language.

[SIGNED]

Part 2

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 Republic of Estonia for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

At the time of signing 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 Republic of Estonia for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (hereinafter referred to as the "Agreement"), the two Governments have agreed upon the following provisions which shall form an integral part of the Agreement:

With reference to Article 24 (Exchange of Information)

It is understood that, in addition to the taxes covered by the Agreement, the provisions of this Article shall also apply to the value-added tax and excise duties that are chargeable in Estonia, for any taxable period beginning on or after the first day of January next following the year in which the Agreement enters into force. In case of termination under Article 28 of the Agreement, the provisions of this Article shall cease to apply to the above mentioned taxes for any taxable period beginning on or after the first day of January next following the year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Tallinn, on 25 September 2019, in the English language.

[SIGNED]

Clerk to the Executive Council

COUNCIL CHAMBER

2019

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Republic of Estonia signed an agreement for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance (***Agreement***) together with a protocol to the Agreement (***Protocol***) on 25 September 2019.

2. This Order specifies the arrangements in the Agreement and the Protocol (***arrangements***) as 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 the Protocol were done in the English language and are reproduced in the English text of the Schedule to this Order. Chinese translations of the Agreement and the Protocol are set out in the Chinese text of the Schedule to this Order.

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

Annex B

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

Financial Implications

The Government would forgo a very small sum of revenue which is currently being collected in respect of profits of Estonian resident companies not attributable to a permanent establishment in Hong Kong, and shipping and air services profits of Estonian operators.

Economic Implications

2. The Estonia CDTA will facilitate business activities between Hong Kong and Estonia, and contribute to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Estonia 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 Estonia under the Estonia CDTA, which will be absorbed within existing resources as far as possible. Where necessary, additional manpower resources will be sought with justifications in accordance with the established resource allocation mechanism.

Family Implications

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

Annex C

List of jurisdictions with which Hong Kong has entered into Comprehensive Avoidance of Double Taxation Agreements/Arrangements
(as at 30 September 2019)

	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
40	Finland	May 2018
41	Cambodia[#]	June 2019
42	Estonia[#]	September 2019

[#] The CDTAs with Cambodia and Estonia have not yet entered into force pending completion of the respective ratification procedures.

Annex D

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

Summary of Main Provisions

The Estonia CDTA 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 Estonia – income tax.

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

Exclusive taxing right

3. Where the right to tax income is allocated exclusively to one Contracting Party under the Estonia CDTA (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Estonia CDTA 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 situated therein (i.e. a fixed place of business through which the business of an enterprise is wholly or partly carried on);

(b) profits of an enterprise from the operation of ships or aircraft in international traffic, and gains derived by an enterprise from the alienation of ships or aircraft operated in international traffic, or of movable property pertaining to the operation of such ships or aircraft;

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

(d) income of entertainers and sportspersons from their personal activities exercised in the source jurisdiction if the visit to the source jurisdiction is mainly financed by one or both of the Contracting Parties or their local authorities;

(e) capital gains not expressly dealt with in the Estonia CDTA; and

(f) other income not expressly dealt with in the Estonia CDTA.

4. Pensions (including a lump sum payment) are taxable only in the source jurisdiction. Salaries, wages and other similar remuneration paid by the Government or a local authority of a Contracting Party in respect of services rendered thereto is, in general, taxable only in that Party (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 Estonia CDTA 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 Estonia CDTA that the following types of income may be taxed in both jurisdictions:

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

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

(c) passive income of dividends, interest and royalties received from residents of the source jurisdiction. The source jurisdiction's right to tax is subject to specified caps on the withholding tax rates as follows:

- for dividends, 0% if the beneficial owner is a company, or if the dividends are paid to the Government or a local authority of either Hong Kong or Estonia; the Hong Kong Monetary Authority; the Exchange Fund; the Bank of Estonia; the Rural Development Foundation; the Estonian Credit and Export Guarantee Agency; the Enterprise Estonia Foundation; or an institution wholly or mainly owned by the Government of Hong Kong or Estonia and mutually agreed upon by the competent authorities of Hong Kong and Estonia, and 10% in all other cases;

- for interest, 0% if the beneficial owner is a company, or if the interest is paid to the Government or a local authority of either Hong Kong or Estonia; the Hong Kong Monetary Authority; the Exchange Fund; the Bank of Estonia; the Rural Development Foundation; the Estonian Credit and Export Guarantee Agency; the Enterprise Estonia Foundation; or an institution wholly or mainly owned by the Government of Hong Kong or Estonia and mutually agreed upon by the competent authorities of Hong Kong and Estonia, and 10% in all other cases;

- for royalties, 5%;

(d) gains from the alienation of shares (other than quoted shares) or comparable interests, such as interests in a partnership, trust or investment fund, deriving more than 50% of their value directly or indirectly from immovable property situated in the source jurisdiction;

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

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

(g) income of entertainers and sportspersons from their personal activities exercised in the source jurisdiction, except where the visit to the source jurisdiction is mainly financed by one or both of the Contracting Parties or their local authorities.

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. Hong Kong will provide double taxation relief for its residents by the credit method whilst Estonia will provide double taxation relief for its residents by the credit method (for dividends, interest, royalties and income of entertainers and sportspersons) or exemption method (for other income, gains or profits).