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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) (MACAO SPECIAL ADMINISTRATIVE REGION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 12 May 2020, 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) (Macao Special Administrative Region) Order ("Order"), at **Annex A**, should be made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) ("IRO")

A

2. The Order implements the Comprehensive Avoidance of Double Taxation Arrangement between Hong Kong and Macao and a Protocol thereto signed in November 2019 ("Macao 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. As a local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong, it would not be subject to double taxation. Double taxation may however occur where a jurisdiction outside Hong Kong 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 Macao CDTA

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

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

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

8. Income derived by a Hong Kong resident from employment exercised in Macao, which is paid by (or on behalf of) a non-Macao employer and is not borne by a Macao permanent establishment or fixed base of the employer, will be exempt from tax in Macao under the Macao CDTA if the resident's aggregate stay in Macao in any relevant 12-month period does not exceed 183 days.

9. Profits from the operation of ships, aircraft or land transport vehicles in cross-boundary shipping, air and land transport earned by enterprises of Hong Kong arising from Macao will not be taxed in Macao under the Macao CDTA.

10. Macao does not impose withholding tax on dividends, interest and royalties now. If, however, Macao imposes withholding tax on Hong Kong residents for these passive incomes in future, the applicable tax rates will be capped at 5% for dividends and interest[1] and 3% for royalties based on the Macao CDTA.

11. The Macao CDTA includes a Teachers and Researchers Article ("Teachers Article") to promote academic exchange and co-operation in research and development ("R&D"). Under this article, if an individual employed by a recognised educational or scientific research institution of Hong Kong visits Macao and stays there for the primary purpose of teaching or conducting research at a recognised educational or scientific research institution of Macao[2], his/her remuneration for such teaching or research to the extent it is paid by or on behalf of his/her Hong Kong employer shall be exempt from tax in Macao for a period not exceeding three years, provided that such remuneration is subject to tax in Hong Kong and (in relation to remuneration for research) the research is undertaken in the public interest. A reciprocal arrangement will apply to eligible Macao teachers and researchers who visit Hong Kong. The Teachers Article will reduce the tax burden of eligible teachers and researchers who work across the boundary and, in particular, facilitate R&D co-operation in the Greater Bay Area.

Exchange of Information ("EoI")

12. 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.

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[1] The withholding tax will be exempt if the dividends/interest are/is paid to the Government of the Hong Kong Special Administrative Region ("HKSAR"), the Hong Kong Monetary Authority, the Exchange Fund or an institution wholly or mainly owned by the HKSAR Government as may be agreed between the competent authorities of Hong Kong and Macao.

[2] Macao advised that the educational institutions regulated under Decree Law No. 11/91/M and Decree Law No. 38/93/M of Macao are considered as recognised educational or scientific research institutions of Macao for the purposes of the Teachers Article.

13. Under the Macao 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[3];

(d) information requested should not be disclosed to a third jurisdiction without the consent of the side originally furnishing the information;

(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 Macao CDTA is allowed for certain non-tax related purposes[4] only if such purposes are allowed under the laws of both Hong Kong and Macao and the competent authority of the supplying side authorises such use.

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

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[3] In relation to the disclosure of information to the oversight bodies of the tax authorities concerned, the Macao 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 both Hong Kong and Macao in September 2018. Macao advised that the oversight bodies of the tax authority in Macao are the Chief Executive and the Secretary for Economy and Finance.

[4] 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, Macao may only use the tax information exchanged under the Macao 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. Macao 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.

Legal Basis

15. 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 Macao CDTA into effect, the CE-in-C has to declare by order that the arrangements with Macao on double taxation relief and exchange of information have been made.

OTHER OPTIONS

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

THE ORDER

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

LEGISLATIVE TIMETABLE

18. The legislative timetable is as follows –

Publication in the Gazette	22 May 2020
Tabling at Legislative Council	27 May 2020
Commencement of the Order	17 July 2020

IMPLICATIONS OF THE PROPOSAL

19. 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 also set out in **Annex B**.

B

PUBLIC CONSULTATION

20. 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

21. We issued a press release on the signing of the Macao CDTA on 25 November 2019. A spokesperson will be available to answer enquiries.

BACKGROUND

22. As at 30 April 2020, we have signed CDTAs with 43 jurisdictions, including Macao. A list of Hong Kong's CDTA partners is at **Annex C**. A summary of the main provisions of the Macao CDTA is at **Annex D**.

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D

23. We will continue to expand our CDTA network and seek to conclude CDTAs with the economies participating in the Belt and Road Initiative in particular. Our goal is to bring the total number of CDTAs to 50 by end-2022.

ENQUIRIES

24. 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
20 May 2020

Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Macao Special Administrative Region) 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 17 July 2020.

2. Interpretation

In this Order—

Arrangement (《安排》) means the Arrangement between the Hong Kong Special Administrative Region and the Macao Special Administrative Region for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (a translation of "《香港特別行政區和澳門特別行政區關於對所得消除雙重徵稅和防止逃避稅的安排》"), done in duplicate in November 2019 in the Chinese language;

Protocol (《議定書》) means the protocol to the Arrangement, done in duplicate in November 2019 in the Chinese 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 Arrangement and the Protocol have been made; and

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

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

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

Schedule

[s. 3]

Part 1

Arrangement between the Hong Kong Special Administrative Region and the Macao Special Administrative Region for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

(English Translation)

The Hong Kong Special Administrative Region and the Macao Special Administrative Region, desiring to further develop their economic relationship and to enhance their co-operation in tax matters, intending to conclude an Arrangement 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 Arrangement for the indirect benefit of residents of third jurisdictions), have agreed as follows:

Article 1

Persons Covered

1. This Arrangement shall apply to persons who are residents of One Side or both Sides.

2. In the Arrangement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent (非稅務法人或某程度屬非稅務法人(完全透明或部分透明))[1] under the tax law of either Side shall be considered to be income of a resident of One Side but only to the extent that the income is treated, for purposes of taxation by that Side, as the income of a resident of that Side.

3. The Arrangement shall not affect the taxation, by One Side, of its residents except with respect to the benefits granted under paragraph 2 of Article 9 and Articles 19, 20, 21, 23, 24 and 25.

Article 2

Taxes Covered

1. This Arrangement shall apply to taxes on income imposed on behalf of One Side, irrespective of the manner in which they are levied.

[1] The two expressions "非稅務法人或某程度屬非稅務法人" and "完全透明或部分透明" are different expressions used by the two Sides to convey the same meaning. The former is the expression used by the Hong Kong Special Administrative Region, whereas the latter is the expression used by the Macao Special Administrative Region.

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 the Arrangement shall apply are in particular:

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

(i) Profits Tax;

(ii) Salaries Tax; and

(iii) Property Tax;

whether or not charged under personal assessment;

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

(2) in the case of the Macao Special Administrative Region,

(i) Complementary Tax;

(ii) Professional Tax; and

(iii) Urban Property Tax;

(hereinafter referred to as "Macao Special Administrative Region tax").

4. The Arrangement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Arrangement in addition to, or in place of, the existing taxes. The competent authorities of both Sides shall notify each other of any significant changes that have been made in their respective taxation laws.

Article 3

General Definitions

1. In this Arrangement, unless the context otherwise requires:

(1) the term "One Side", "the Other Side" or "Side" means the Hong Kong Special Administrative Region or the Macao Special Administrative Region, as the context requires;

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

(3) 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 Macao Special Administrative Region, the Chief Executive or his authorized representative;

(4) the terms "enterprise of One Side" and "enterprise of the Other Side" mean respectively an enterprise carried on by a resident of One Side and an enterprise carried on by a resident of the Other Side;

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

(6) the term "recognized pension fund" of One Side means an entity or arrangement established in that Side that is treated as a separate person under the taxation laws of that Side and:

(i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that Side; or

(ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i);

(7) the term "shipping, air and land transport" means any transport by a ship, aircraft or land transport vehicle except when the ship, aircraft or land transport vehicle is operated solely between places in One Side and the enterprise that operates the ship, aircraft or land transport vehicle is not an enterprise of that Side;

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

2. As regards the application of the Arrangement at any time by One Side, any term not defined therein shall, unless the context otherwise requires or the competent authorities of both Sides agree to a different meaning pursuant to the provisions of Article 25, have the meaning that it has at that time under the law of that Side for the purposes of the taxes to which the Arrangement applies, any meaning under the applicable tax laws of that Side prevailing over a meaning given to the term under other laws of that Side.

Article 4

Resident

1. In this Arrangement, the term "resident of One Side" means:

(1) 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;

(2) in the case of the Macao Special Administrative Region, any person who, under the laws of the Macao Special Administrative Region, 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. This term, however, does not include any person who is liable to tax in the Macao Special Administrative Region in respect only of income from sources in the Macao Special Administrative Region;

(3) in the case of either Side, the Government of that Side as well as a recognized pension fund of that Side.

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

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

(2) if the Side 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 Side, he shall be deemed to be a resident only of the Side in which he has an habitual abode;

(3) if he has an habitual abode in both Sides or in neither of them, he shall be deemed to be a resident only of the Side in which he has the right of abode;

(4) if he has the right of abode in both Sides or in neither of them, the competent authorities of both Sides 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 Sides, the competent authorities of both Sides shall endeavour to determine by mutual agreement the Side of which such person shall be deemed to be a resident for the purposes of the Arrangement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Arrangement, except to the extent and in such manner as may be agreed upon by the competent authorities of both Sides.

Article 5

Permanent Establishment

1. In this Arrangement, 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:

    (1) a place of management;

    (2) a branch;

    (3) an office;

    (4) a factory;

    (5) a workshop; and

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

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 6 months.

4. For the sole purpose of determining whether the 6-month period referred to in paragraph 3 has been exceeded,

    (1) where an enterprise of One Side carries on activities in the Other Side at a place that constitutes a building site or construction or installation project, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding 6 months, and

    (2) connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

    these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project.

5. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of One Side performs services in the Other Side:

    (1) through an individual who is present in that Other Side for a period or periods exceeding in the aggregate 183 days in any 12-month period, or

    (2) for a period or periods exceeding in the aggregate 183 days in any 12-month period, and these services are performed for the same project or for connected projects through one or more individuals who are present and performing such services in that Other Side,

    the activities carried on in that Other Side in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that Other Side, unless these services are limited to those mentioned in paragraph 7 which, if performed through a fixed place of business (other than a fixed place of business to which paragraph 8 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph. In this paragraph, services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that

individual, unless that other enterprise supervises, directs or controls the manner in which these services are performed by the individual.

6. In paragraph 5, where an enterprise of One Side that is performing services in the Other Side is, during a period of time, closely related to another enterprise that performs substantially similar services in that Other Side for the same project or for connected projects through one or more individuals who, during that period, are present and performing such services in that Side, the first-mentioned enterprise shall be deemed, during that period of time, to be performing services in the Other Side for that same project or for connected projects through these individuals.

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

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

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

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

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

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

(6) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (1) to (5),

provided that such activity or, in the case of subparagraph (6), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

8. Paragraph 7 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 Side and:

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

(2) 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.

9. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 10, where a person is acting in One Side

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:

(1) in the name of the enterprise, or

(2) 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

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

that enterprise shall be deemed to have a permanent establishment in that Side 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 7 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 8 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

10. Paragraph 9 shall not apply where the person carries on business in One Side as an independent agent and acts in that One Side on behalf of an enterprise of the Other Side 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 that person 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.

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

12. In 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% of the beneficial interest in the other (or, in the case of a company, more than 50% of the voting rights 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% of the beneficial interest (or, in the case of a company, more than 50% of the voting rights 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 One Side from immovable property (including income from agriculture or forestry) situated in the Other Side may be taxed in that Other Side.

2. The term "immovable property" shall have the meaning which it has under the law of the Side 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, 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 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 One Side shall be taxable only in that Side unless the enterprise carries on business in the Other Side 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 Side but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of One Side carries on business in the Other Side through a permanent establishment situated therein, there shall in each Side 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 permanent establishment, including executive and general administrative expenses so incurred, whether in the Side in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in One Side to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Side from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. 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, 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 Arrangement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping, Air and Land Transport

1. Profits of an enterprise of One Side from the operation of ships, aircraft or land transport vehicles in shipping, air and land transport shall be taxable only in that Side.

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:

   (1) an enterprise of One Side participates directly or indirectly in the management, control or capital of an enterprise of the Other Side, or

   (2) the same persons participate directly or indirectly in the management, control or capital of an enterprise of One Side and an enterprise of the Other Side,

   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 One Side includes in the profits of an enterprise of that One Side—and taxes accordingly—profits on which an enterprise of the Other Side has been charged to tax in that Other Side and the profits so included are profits which would have accrued to the enterprise of that One Side if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that Other Side 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 Arrangement and the competent authorities of both Sides shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of One Side to a resident of the Other Side may be taxed in that Other Side.

2. However, dividends paid by a company which is a resident of One Side may also be taxed in that Side according to the laws of that Side, but if the beneficial owner of the dividends is a resident of the Other Side, the tax so charged shall not exceed 5% of the gross amount of the dividends.

   The competent authorities of both Sides shall by mutual agreement settle the mode of application of this limitation. 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 One Side are exempt from tax in that Side, if they are paid to:

(1) 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;

(2) in the case of the Macao Special Administrative Region,

(i) the Government of the Macao Special Administrative Region;

(ii) the Monetary Authority of Macao;

(iii) the Pension Fund;

(iv) the Social Security Fund;

(3) in the case of either Side, any institution wholly or mainly owned by the Government of that Side as may be agreed from time to time between the competent authorities of both Sides.

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 corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Side 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 One Side, carries on business in the Other Side of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that Other Side independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of One Side derives profits or income from the Other Side, that Other Side 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 Side 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 Side, 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 Side.

Article 11

Interest

1. Interest arising in One Side and paid to a resident of the Other Side may be taxed in that Other Side.

2. However, interest arising in One Side may also be taxed in that Side according to the laws of that Side, but if the beneficial owner of the interest is a resident of the Other Side, the tax so charged shall not exceed 5% of the gross amount of the interest. The competent authorities of both Sides shall by mutual agreement settle the mode of application of this limitation.

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

   (1) 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;

   (2) in the case of the Macao Special Administrative Region,

      (i) the Government of the Macao Special Administrative Region;

      (ii) the Monetary Authority of Macao;

      (iii) the Pension Fund;

      (iv) the Social Security Fund;

   (3) in the case of either Side, any institution wholly or mainly owned by the Government of that Side as may be agreed from time to time between the competent authorities of both Sides.

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

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of One Side, carries on business in the Other Side in which the interest arises, through a permanent establishment situated therein, or performs in that Other Side independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

such interest shall be deemed to arise in the Side in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Side, due regard being had to the other provisions of this Arrangement.

Article 12

Royalties

1. Royalties arising in One Side and paid to a resident of the Other Side may be taxed in that Other Side.

2. However, royalties arising in One Side may also be taxed in that Side according to the laws of that Side, but if the beneficial owner of the royalties is a resident of the Other Side, the tax so charged shall not exceed 3% of the gross amount of the royalties. The competent authorities of both Sides shall by mutual agreement settle the mode of application of this limitation.

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, 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 One Side, carries on business in the Other Side in which the royalties arise, through a permanent establishment situated therein, or performs in that Other Side 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, as the case may be, shall apply.

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Side, due regard being had to the other provisions of this Arrangement.

Article 13

Capital Gains

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of One Side has in the Other Side or of movable property pertaining to a fixed base available to a resident of One Side in the Other Side 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 a fixed base, may be taxed in that Other Side.

3. Gains that an enterprise of One Side that operates ships, aircraft or land transport vehicles in shipping, air and land transport derives from the alienation of such ships, aircraft or land transport vehicles, or of movable property pertaining to the operation of such ships, aircraft or land transport vehicles, shall be taxable only in that Side.

4. Gains derived by a resident of One Side from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the Other Side if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50% of their value directly or indirectly from immovable property, as defined in Article 6, situated in that Other Side.

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

Article 14

Independent Personal Services

1. Income derived by a resident of One Side in respect of professional services or other activities of an independent character shall be taxable only in that Side except in the following circumstances, when such income may also be taxed in the Other Side:

   (1) if he has a fixed base regularly available to him in the Other Side 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 Side, or

   (2) if his stay in the Other Side is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned; in that case, only so much of the income as is derived from his activities performed in that Other Side may be taxed in that Other Side.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of One Side in respect of an employment shall be taxable only in that Side unless the employment is exercised in the Other Side. If the employment is exercised in the Other Side, such remuneration as is derived therefrom may be taxed in that Other Side.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of One Side in respect of an employment exercised in the Other Side shall be taxable only in the first-mentioned Side if all the following 3 conditions are satisfied:

   (1) the recipient is present in the Other Side for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned, and

   (2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the Other Side, and

   (3) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the Other Side.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of One Side in respect of an employment, as a member of the regular complement of a ship, aircraft or land transport vehicle, that is exercised aboard a ship, aircraft or land transport vehicle operated in shipping, air and land transport shall be taxable only in that Side. Where, however, the ship, aircraft or land transport vehicle is operated by an enterprise of the Other Side, such remuneration may also be taxed in the Other Side.

Article 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of One Side in his capacity as a member of the board of directors of a company which is a resident of the Other Side may be taxed in that Other Side.

Article 17

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of One Side 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 Side, may be taxed in that Other Side.

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 14 and 15, be taxed in the Side in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from the activities referred to in paragraph 1 performed

under a cultural arrangement between both Sides shall be exempted from tax in the Side in which the activities are exercised if the visit to that Side is wholly or substantially supported by public or government funds of either Side for non-profit making purpose.

Article 18

Pensions

Pensions and other similar remuneration (including a lump sum payment), arising in One Side and paid to a resident of the Other Side in consideration of past employment or self-employment, may be taxed in the first-mentioned Side.

Article 19

Government Service

1. (1) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of One Side to an individual in respect of services rendered to that Government shall be taxable only in that Side.

(2) However, such salaries, wages and other similar remuneration shall be taxable only in the Other Side if the services are rendered in that Side and the individual is a resident of that Side who:

(i) has the right of abode in that Side; or

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

2. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by the Government of One Side.

Article 20

Teachers and Researchers

1. Where an individual is employed by a university, college, school in One Side or by an educational institution or scientific research institution recognized by the Government of One Side and is, or was immediately before visiting the Other Side, a resident of that One Side and is present in that Other Side for the primary purpose of teaching or research at a university, college, school in that Other Side or at an educational institution or scientific research institution recognized by the Government of that Other Side, the remuneration derived by the individual in respect of such teaching or research, to the extent it is paid by, or on behalf of, the employer of that One Side, shall not be taxed in that Other Side for a period of 3 years, provided that such remuneration is subject to tax in that One Side.

2. The period of "3 years" provided in paragraph 1 of this Article shall begin on the date of the individual's first arrival in the Other Side for the above purpose or the date from which the provisions begin to apply under paragraph 2 of Article 28 of this Arrangement, whichever is the later.

3. Paragraph 1 of this Article shall not apply to income derived from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 21

Students

Payments which a student or business apprentice who is or was immediately before visiting One Side a resident of the Other Side and who is present in the first-mentioned Side 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 Side, provided that such payments arise from sources outside that Side.

Article 22

Other Income

1. Items of income of a resident of One Side, wherever arising, not dealt with in the foregoing Articles of this Arrangement shall be taxable only in that Side.

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 One Side, carries on business in the Other Side through a permanent establishment situated therein, or performs in that Other Side independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed

base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of One Side not dealt with in the foregoing Articles of the Arrangement and arising in the Other Side may also be taxed in that Other Side according to the laws of that Other Side.

Article 23

Methods for Elimination of Double Taxation

1. In the case of the Hong Kong Special Administrative Region, double taxation shall be eliminated as follows:

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), Macao Special Administrative Region tax paid under the laws of the Macao Special Administrative Region and in accordance with the provisions of this Arrangement (except to the extent that these provisions allow taxation by the Macao Special Administrative Region solely because the income is also income derived by a resident of the Macao Special Administrative Region), 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 Macao Special Administrative Region, 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 the Macao Special Administrative Region, double taxation shall be eliminated as follows:

(1) Where the income derived by a resident of the Macao Special Administrative Region may be taxed in the Hong Kong Special Administrative Region in accordance with the provisions of the Arrangement, except where the provisions of subparagraph (2) apply, that income shall be exempted from tax in the Macao Special Administrative Region.

(2) Where the income derived by a resident of the Macao Special Administrative Region may be taxed in the Hong Kong Special Administrative Region in accordance with the provisions of Articles 10, 11 and 12, the amount of tax paid in the Hong Kong Special Administrative Region in respect of that income shall be allowed as a credit against Macao Special Administrative Region tax imposed on that resident. The amount of credit, however, shall not exceed the amount of Macao Special Administrative Region tax payable in respect of that income as computed by the Macao Special Administrative Region.

Article 24

Non-Discrimination

1. Persons who have the right of abode or are incorporated or otherwise constituted in One Side shall not be subjected in the Other Side 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 Side 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 Side or both Sides.

2. The taxation on a permanent establishment which an enterprise of One Side has in the Other Side shall not be less favourably levied in that Other Side than the taxation levied on enterprises of that Other Side carrying on the same activities. This provision shall not be construed as obliging One Side to grant to residents of the Other Side any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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 One Side to a resident of the Other Side 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 Side.

4. Enterprises of One Side, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the Other Side, shall not be subjected in the first-mentioned Side 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 Side are or may be subjected.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of One Side or both Sides result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the internal laws of those Sides, present his case to the competent authority of either Side. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the Arrangement.

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 Side, with a view to the avoidance of taxation which is not in accordance with the Arrangement. Any agreement reached shall be implemented notwithstanding any time limits in the internal laws of both Sides.

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

4. The competent authorities of both Sides 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 26

Exchange of Information

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

2. Any information received under paragraph 1 by One Side shall be treated as secret in the same manner as information obtained under the internal laws of that Side 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 One Side may be used for other purposes when such information may be used for such other purposes under the laws of both Sides and the competent authority of the supplying Side authorizes such use. Information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Side originally furnishing the information.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on One Side the obligation:

(1) to carry out administrative measures at variance with the laws and administrative practice of that or of the Other Side;

(2) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the Other Side;

(3) 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 One Side in accordance with this Article, the Other Side shall use its information gathering measures to obtain the requested information, even though that Other Side 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 One Side to decline to supply information solely because there is no tax interest in such information to that Side.

5. In no case shall the provisions of paragraph 3 be construed to permit One Side 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 27

Entitlement to Benefits under the Arrangement

1. Where an enterprise of One Side derives income from the Other Side and the first-mentioned Side treats that income as profits attributable to a permanent establishment situated in a third jurisdiction, the benefits of this Arrangement shall not apply to that income.

2. Notwithstanding the other provisions of the Arrangement, a benefit under the Arrangement 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 Arrangement.

3. Nothing in the Arrangement shall prejudice the right of each Side to apply its internal laws and measures concerning tax evasion or avoidance, whether or not described as such.

Article 28

Entry into Force

1. One Side shall notify the Other Side in writing of the completion of the procedures required by its laws for the bringing into force of this Arrangement. The Arrangement shall enter into force on the date of the later of these notifications.

2. The provisions of the Arrangement shall thereupon have effect:

(1) in the Hong Kong Special Administrative Region,

in respect of taxes on income derived for any year of assessment beginning on or after the first day of April in the next calendar year in which the Arrangement enters into force;

(2) in the Macao Special Administrative Region,

(i) in respect of taxes withheld at source, in relation to taxable amounts derived on or after the first day of January in the next calendar year in which the Arrangement enters into force;

(ii) in respect of other taxes, on income derived on or after the first day of January in the next calendar year in which the Arrangement enters into force.

Article 29

Termination

This Arrangement shall remain in force until terminated by One Side. One Side may terminate the Arrangement by giving the Other Side written notice of termination at least 6 months before the end of any calendar year after the expiration of a period of 5 years from the date of its entry into force. In such event, the Arrangement shall cease to have effect:

(1) in the Hong Kong Special Administrative Region,

in respect of taxes on income derived for any year of assessment beginning on or after the first day of April in the next calendar year in which the notice of termination is given;

(2) in the Macao Special Administrative Region,

(i) in respect of taxes withheld at source, in relation to taxable amounts derived on or after the first day of January in the next calendar year in which the notice of termination is given;

(ii) in respect of other taxes, on income derived on or after the first day of January in the next calendar year in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Arrangement.

DONE in duplicate at Hong Kong on the 22nd day of November 2019 and at Macao on the 25th day of November 2019, in the Chinese language.

[SIGNED]

Part 2

Protocol to the Arrangement between the Hong Kong Special Administrative Region and the Macao Special Administrative Region for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

(English Translation)

At the time of signing the Arrangement between the Hong Kong Special Administrative Region and the Macao Special Administrative Region 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 "Arrangement"), both Sides have agreed on the following provisions which shall form an integral part of the Arrangement.

With reference to Article 7 (Business Profits)

It is understood that:

(1) in applying Article 7, both Sides may follow the approach as explained in:

(i) the Report on the Attribution of Profits to Permanent Establishments approved by the Organisation for Economic Co-operation and Development (hereinafter referred to as the "OECD") on 22 July 2010 (hereinafter referred to as the "Report");

(ii) the Commentary on Article 7 of the Model Tax Convention on Income and on Capital approved by the OECD on 21 November 2017 (hereinafter referred to as the "Commentary"); and

(iii) any other version of the Report or the Commentary, or any other document including any update, guidance or supplement to the Report or the Commentary, as approved by the OECD from time to time;

(2) where One Side adjusts the profits that are attributable to a permanent establishment of an enterprise of either Side and taxes accordingly profits of the enterprise that have been charged to tax in the Other Side, the Other Side 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 both Sides shall if necessary consult each other;

(3) the benefits under Article 7, in the case of tax evasion or avoidance, shall not apply to the profits of an enterprise of One Side if the interests in the enterprise are not beneficially owned by residents of that Side.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Hong Kong on the 22nd day of November 2019 and at Macao on the 25th day of November 2019, in the Chinese language.

[SIGNED]

Clerk to the Executive Council

COUNCIL CHAMBER

2020

Explanatory Note

1. The Hong Kong Special Administrative Region and the Macao Special Administrative Region signed an arrangement for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance (***Arrangement***) together with a protocol to the Arrangement (***Protocol***) in November 2019.

2. This Order specifies the arrangements in the Arrangement 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 Arrangement and the Protocol were done in the Chinese language and are reproduced in the Chinese text of the Schedule to this Order. English translations of the Arrangement and the Protocol are set out in the English 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 Macao, have effect in relation to any tax of Macao 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 Macao resident companies not attributable to a permanent establishment in Hong Kong, profits of Macao operators from shipping and land transport, as well as income of visiting teachers and researchers from Macao.

Economic Implications

2. The Macao CDTA will facilitate business activities between Hong Kong and Macao, and contribute to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Macao by providing enhanced certainty to the tax liabilities of businessmen and investors. It will also promote academic exchange and facilitate co-operation in R&D between Hong Kong and Macao.

Civil Service Implications

3. There will be additional work for the Inland Revenue Department in handling requests for exchange of information from Macao under the Macao 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 Macao CDTA, the proposal may have positive impact on the financial situation of these families.

Annex C

List of jurisdictions with which Hong Kong has entered into Comprehensive Avoidance of Double Taxation Agreements/Arrangements
(as at 30 April 2020)

	Jurisdictions	Month of Signing
1	Belgium	December 2003
2	Thailand	September 2005
3	Mainland of 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
43	Macao Special Administrative Region[#]	November 2019

[#] The CDTA with the Macao Special Administrative Region has not yet entered into force pending completion of the ratification procedures.

Annex D

Arrangement between the Hong Kong Special Administrative Region and the Macao Special Administrative Region for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance ("Macao CDTA")

Summary of Main Provisions

The Macao CDTA covers the following types of taxes:

(a) in respect of the Hong Kong Special Administrative Region ("Hong Kong") –
  (i) profits tax;
  (ii) salaries tax; and
  (iii) property tax;

(b) in respect of the Macao Special Administrative Region ("Macao") –
  (i) complementary tax;
  (ii) professional tax; and
  (iii) urban property tax.

2. The Macao CDTA deals with the taxing of income of the resident of one side ("resident jurisdiction") derived from the other side ("source jurisdiction").

Exclusive Taxing Right

3. Where the right to tax income is allocated exclusively to one side under the Macao CDTA (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Macao 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 (generally 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, aircraft or land transport vehicles in shipping, air and land transport, and

gains derived by an enterprise from the alienation of such ships, aircraft or land transport vehicles, or of movable property pertaining to the operation of such ships, aircraft or land transport vehicles;

(c) income from professional services, including services performed in the source jurisdiction, except where the services are performed through a fixed base in the source jurisdiction or where the person stays in the source jurisdiction for a period or periods amounting to or exceeding in the aggregate 183 days in any relevant 12-month period;

(d) 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;

(e) remuneration from non-government employment, as a member of the regular complement of a ship, aircraft or land transport vehicle, exercised aboard a ship, aircraft or land transport vehicle operated in shipping, air and land transport, except where the ship, aircraft or land transport vehicle is operated by an enterprise of the source jurisdiction;

(f) income of entertainers and sportspersons from their personal activities as such exercised in the source jurisdiction under a cultural arrangement between the two sides if the visit to the source jurisdiction is wholly or substantially supported by public or government funds of either side for non-profit making purpose;

(g) capital gains not expressly dealt with in the Macao CDTA; and

(h) other income not expressly dealt with in the Macao CDTA, except where the income is derived from the source jurisdiction.

4. Salaries, wages and other similar remuneration other than a pension paid by the Government of one side in respect of services rendered thereto is, in general, taxable only in that side (source jurisdiction).

Shared Taxing Rights

5. Where both sides are given the right to tax the same item of income, the resident jurisdiction is required under the Macao 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 Macao CDTA that the following types of income may be taxed in both sides –

(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 dividends are paid to the Government of either side; the Hong Kong Monetary Authority and the Exchange Fund in respect of Hong Kong; the Monetary Authority of Macao, the Pension Fund and the Social Security Fund in respect of Macao; or an institution wholly or mainly owned by the Government of either side as may be agreed between the competent authorities of Hong Kong and Macao, and 5% in all other cases;

- for interest, 0% if the interest is paid to the Government of either side; the Hong Kong Monetary Authority and the Exchange Fund in respect of Hong Kong; the Monetary Authority of Macao, the Pension Fund and the Social Security Fund in respect of Macao; or an institution wholly or mainly owned by the Government of either side as may be agreed between the competent authorities of Hong Kong and Macao, and 5% in all other cases;

- for royalties, 3%;

(d) gains from the alienation of shares or comparable interests, such as interests in a partnership or trust, if at any time during the 365 days preceding the alienation these shares or comparable interests derived more than 50% of their value directly or indirectly from immovable property situated in the source jurisdiction;

(e) income from professional services performed in the source jurisdiction where the services are performed through a fixed base therein (to the extent that such income is attributable to the fixed base) or where the person stays in the source jurisdiction for a period or periods amounting to or exceeding in the aggregate 183 days in any relevant 12-month period, and gains from the alienation of movable property pertaining to a fixed base available to the person in the source jurisdiction for the purpose of performing services;

(f) 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;

(g) remuneration from non-government employment, as a member of the regular complement of a ship, aircraft or land transport vehicle, exercised aboard a ship, aircraft or land transport vehicle operated in shipping, air and land transport by an enterprise of the source jurisdiction;

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

(i) income of entertainers and sportspersons from their personal activities as such exercised in the source jurisdiction, except where the activities are performed under a cultural arrangement between the two sides and the visit to the source jurisdiction is wholly or substantially supported by public or government funds of either side for non-profit making purpose;

(j) pensions (including a lump sum payment) arising in the source jurisdiction in consideration of past employment or self-employment; and

(k) other income not expressly dealt with in the Macao CDTA if it is derived from 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. Hong Kong will provide double taxation relief for its residents by the credit method whilst Macao will provide double taxation relief for its residents by the credit method (for dividends, interest and royalties) or exemption method (for other income, gains or profits).