

**L.N. 117 of 2019**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of Cambodia) 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 Kingdom of Cambodia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, done in duplicate in June 2019 in the English language;

**Protocol** (《議定書》) means the protocol to the Agreement, done in duplicate in June 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 Kingdom of Cambodia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income**

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

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

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 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 and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are in particular:
  - (a) in the case of Cambodia,
    - (i) Tax on Income including Withholding Tax, Minimum Tax, Additional Profit Tax on Dividend Distribution and Capital Gains Tax; and
    - (ii) Tax on Salary;  
(hereinafter referred to as “Cambodian tax”);
  - (b) 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”).

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 taxation laws.

### **Article 3**

#### **General Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
- (a) (i) the term “Cambodia” means the territory of the Kingdom of Cambodia, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limits of the territorial sea and airspace over which the Kingdom of Cambodia exercises, in accordance with international law, sovereign rights or jurisdiction;
- (ii) 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 “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (c) the term “competent authority” means:
  - (i) in the case of Cambodia, the Minister of Economy and Finance or his authorised representative; and
  - (ii) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative;
- (d) the term “Contracting Party” or “Party” means Cambodia or the Hong Kong Special Administrative Region, as the context requires;
- (e) 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;
- (f) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;
- (g) the term “national” for Cambodia means:
  - (i) any individual possessing the nationality of Cambodia; and

- (ii) any legal person, partnership or association deriving its status as such from the laws in force in Cambodia; and
  - (h) 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, 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 Cambodia, any person who, under the laws of Cambodia, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management, principal place of business or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Cambodia in respect only of income from sources in Cambodia;
  - (b) 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;
- (c) in the case of either Contracting Party, the Government of that Party and any local authority thereof.
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 of which he is a national (in the case of Cambodia) or in which he has the right of abode (in the case of the Hong Kong Special Administrative Region);
  - (d) if he is a national of Cambodia and has also the right of abode in the Hong Kong Special Administrative Region, or if he is not a national of Cambodia nor does he have the right of abode in the Hong Kong Special Administrative Region, 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, then the competent authorities of the Contracting Parties shall resolve 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;
  - (f) a warehouse, in relation to a person providing storage facilities for others;
  - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
  - (h) a farm or plantation.
3. The term “permanent establishment” also encompasses:
  - (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

- (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting Party through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within the other Contracting Party for a period or periods aggregating more than 183 days in any twelve-month period; and
  - (c) the carrying on of activities (including the operation of substantial equipment) in the other Contracting Party for the exploration or for exploitation of natural resources for a period or periods aggregating more than 90 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 or display of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
- 5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person:
  - (a) has and habitually exercises in the first-mentioned Party an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
  - (b) has no such authority, but habitually maintains in the first-mentioned Party a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.
- 6. An enterprise of a Contracting Party shall not be deemed to have a permanent establishment in the other Contracting Party

merely because it carries on business in that other Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

## **Article 6**

### **Income from Immovable Property**

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which

the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, quarries, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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 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 of the enterprise may be taxed in the other Party 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 a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be

expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.
4. 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.
5. Nothing in this Article shall affect the application of any law of a Contracting Party relating to tax imposed on income from insurance, other than re-insurance, of non-resident insurers with a permanent establishment in the Contracting Party.
6. 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 Transport**

1. Profits of an enterprise of a Contracting Party from the operation of aircraft in international traffic shall be taxable only in that Party.
2. Profits of an enterprise of a Contracting Party derived in the other Contracting Party from the operation of ships in international traffic may be taxed in the other Contracting Party but the tax so charged shall be reduced by an amount equal to 50 per cent thereof.
3. The provisions of paragraphs 1 and 2 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 10 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other 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 or a fixed base 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 10 per cent of the gross amount of the interest.
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 Cambodia,
    - (i) the Government of the Kingdom of Cambodia;
    - (ii) the National Bank of Cambodia;
    - (iii) the Rural Development Bank;
    - (iv) the National Social Security Fund;

- (v) a financial establishment appointed by the Government of the Kingdom of Cambodia and mutually agreed upon by the competent authorities of the two Contracting Parties;
  - (b) 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) a financial establishment appointed by the Government of the Hong Kong Special Administrative Region and mutually agreed upon by the competent authorities of the two Contracting Parties.
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, as well as any other amounts treated as income from money lent by the taxation laws of the Contracting Party in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1 and 2 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, or performs in that other Party 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 15, as the case may be, 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 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 Party 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 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 Party.
2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 10 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 including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or 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 Party in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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**

#### **Fees for Technical Services**

1. Fees for technical services 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 fees for technical services may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the fees for

technical services is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the fees for technical services.

3. The term “fees for technical services” as used in this Article means payments of any kind received as a consideration for the rendering of any managerial, technical or consultancy services, including the provision of technical services by an enterprise or other personnel, but does not include payments for services to which the provisions of paragraph 1(a) of Article 15, paragraph 1(b) of Article 15 or Article 16 of this Agreement apply.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the fees for technical services arise through a permanent establishment situated therein, and the fees for technical services are effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Fees for technical services shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the fees for technical services, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the liability to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.



6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the fees for technical services, having regard to the services 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 the Agreement.

## **Article 14**

### **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 or of movable property pertaining to a fixed base available to a resident of a Contracting Party in the other Contracting Party for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Party.

3. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Party.
4. Gains derived by a resident of a Contracting Party from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party.
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 Contracting Party of which the alienator is a resident.

## **Article 15**

### **Independent Personal Services**

1. Subject to the provisions of Article 13, income derived by an individual who is a resident of a Contracting Party in respect of professional services or other activities of an independent character shall be taxable only in that Party except in the following circumstances, when such income may also be taxed in the other Contracting Party:
  - (a) if he has a fixed base regularly available to him in the other Contracting Party for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting Party; or

- (b) if his stay in the other Contracting Party is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned; in that case, only so much of the income as is derived from his activities performed in that other Party may be taxed in that other Party.
2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 16**

### **Dependent Personal Services**

1. Subject to the provisions of Articles 17, 19 and 20, 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:

- (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; and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party; and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base 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 shall be taxable only in that Party.

## **Article 17**

### **Directors' Fees**

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

## **Article 18**

### **Artistes and Sportspersons**

1. Notwithstanding the provisions of Articles 15 and 16, 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, 15 and 16, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.
  3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting Parties shall not be taxed in the Contracting Party in which the activities are exercised if the visit to that Party is wholly or substantially supported by funds of either Contracting Party or a local authority or public institution thereof.

## **Article 19**

### **Pensions and Social Security Payments**

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or self-employment shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including a lump sum payment) paid under a pension or retirement scheme which is:
- (a) a public scheme which is part of the social security system of a Contracting Party or a statutory body thereof; or
  - (b) a scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in a Contracting Party,
- shall be taxable only in that Contracting Party.

## **Article 20**

### **Government Service**

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of 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:
- (i) in the case of Cambodia, is a national thereof and in the case of the Hong Kong Special Administrative Region, has the right of abode therein; or

- (ii) did not become a resident of that Party solely for the purpose of rendering the services.
- 2.
  - (a) Any pension (including a lump sum payment) paid by, or paid out of funds created or contributed by, the Government of 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, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within sub-paragraph (b) of paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that other Contracting Party.
- 3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages, pensions (including a lump sum payment), and other similar remuneration in respect of services rendered in connection with a business carried on by the Government of a Contracting Party or a local authority thereof.

## **Article 21**

### **Students**

Payments which a student or business trainee or apprentice 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 22**

### **Other Income**

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that 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, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting Party not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting Party may also be taxed in that other Party.

## **Article 23**

### **Methods for Elimination of Double Taxation**

1. In the case of Cambodia, double taxation shall be eliminated as follows:



Where a resident of Cambodia derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, Cambodia 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 Cambodian tax, as computed before the deduction is given, which is attributable to that income.

2. 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), tax paid in Cambodia under the laws of Cambodia and in accordance with the Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in Cambodia, 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.

3. For the purposes of this Article, the term “tax paid” shall be deemed to include the amount of tax which would have been paid if the tax had not been exempted or reduced in accordance with the relevant incentives designed to promote economic

development in the laws or connected regulations of either Contracting Party. The provisions of this paragraph shall be effective for a period of 10 years starting from the entry into force of the Agreement. However, the period may be extended by mutual agreement of the competent authorities of the Contracting Parties.

## **Article 24**

### **Non-Discrimination**

1. Persons who, in the case of Cambodia, are Cambodian nationals, and, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, 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 nationals of that other Party (where that other Party is Cambodia) or 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) 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. This provision 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.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties, fees for technical services 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 apply to the taxes which are covered by Article 2 of this Agreement.

## **Article 25**

### **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 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, 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 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 for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## **Article 26**

### **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 laws of the Contracting Parties concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.
2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
  - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
- 4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because 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 27**

### **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 28**

### **Entry into Force**

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.
2. The Agreement shall have effect:
  - (a) in Cambodia,
    - (i) in respect of taxes withheld at source, in relation to taxable amount as derived on or after the first day of January following the calendar year in which the Agreement enters into force; and
    - (ii) in respect of other Cambodian taxes, in relation to income arising on or after the first day of January following the calendar year in which the Agreement enters into force; and

(b) in the Hong Kong Special Administrative Region,

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

## Article 29

### 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 at least six months before the end of any calendar year commencing after the expiration of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect:

(a) in Cambodia,

- (i) in respect of taxes withheld at source, in relation to taxable amount as derived on or after the first day of January following the calendar year in which the notice of termination is given; and
- (ii) in respect of other Cambodian taxes, in relation to income arising on or after the first day of January following the calendar year in which the notice of termination is given; and

(b) in the Hong Kong Special Administrative Region,



in respect of Hong Kong Special Administrative Region tax, for any taxable periods beginning on or after the first day of April following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Phnom Penh on 20<sup>th</sup> day of June 2019 and at Hong Kong on 26<sup>th</sup> day of June 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 Kingdom of Cambodia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income**

At the time of signing the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Cambodia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (the "Agreement"), the two Governments have agreed on the following provisions which shall form an integral part of the Agreement.

1. With reference to the Agreement, it is understood that nothing in the Agreement shall prejudice the right of each Contracting Party to apply its laws and measures concerning tax avoidance, whether or not described as such.
2. With reference to Article 26 (Exchange of Information), it is understood that the Cambodian competent authority may disclose information in accordance with its confidentiality provisions and Article 26 to the Legislature of Cambodia (National Assembly and Senate) and government bodies of Cambodia with a supervisory function over tax administration and enforcement, including the Office of the Council of Ministers, Ministry of Economy and Finance, Ministry of Interior, Ministry of National Assembly-Senate Relations and Inspection, and National Audit Authority.

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

DONE in duplicate at Phnom Penh on 20<sup>th</sup> day of June 2019 and at Hong Kong on 26<sup>th</sup> day of June 2019, in the English language.

[SIGNED]

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with  
respect to Taxes on Income) (Kingdom of Cambodia) Order

L.N. 117 of 2019

B2135

---

Wendy LEUNG  
Clerk to the Executive Council

COUNCIL CHAMBER

17 September 2019

---

## Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Kingdom of Cambodia signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (*Agreement*) together with a protocol to the Agreement (*Protocol*) in June 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 Cambodia, have effect in relation to any tax of Cambodia that is the subject of that provision.