L.N. 210 of 2020

Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Capital and Prevention of Tax Evasion and Avoidance) (Republic of Serbia) 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 18 December 2020.

2. Interpretation

In this Order—

Agreement (《協定》) means the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Serbia for the Elimination of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Tax Evasion and Avoidance, done in duplicate in August 2020 in the Chinese, Serbian and English languages;

Protocol (《議定書》) means the protocol to the Agreement, done in duplicate in August 2020 in the Chinese, Serbian and English languages.

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 text of the Agreement is reproduced in Part 1 of the Schedule.

(3) The text of the Protocol is reproduced in Part 2 of the Schedule.

Schedule

[s. 3]

Part 1

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

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

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

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

Have agreed as follows:

Article 1

Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting Party or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, 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 Agreement shall apply are in particular:

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

        (1) profits tax;

        (2) salaries tax; and

(3) property tax;

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

2) in the case of Serbia,

(1) the corporate income tax;

(2) the personal income tax; and

(3) the tax on capital;

(hereinafter referred to as "Serbian 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:

1) 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;

2) the term "Serbia" means the Republic of Serbia, and when used in a geographical sense it means the territory of the Republic of Serbia;

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

4) the term "competent authority" means:

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

(2) in the case of Serbia, the Ministry of Finance or its authorised representative;

5) the term "Contracting Party", "the other Contracting Party", "Party" or "the other Party" means the Hong Kong Special Administrative Region or Serbia, as the context requires;

6) 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;

7) the term "fixed base" means a fixed place such as an office or a room, through which the activity of an individual performing independent personal services is wholly or partly carried on;

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

9) the term "national", in relation to Serbia, means:

(1) any individual possessing the nationality of Serbia; and

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

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

11) the term "tax" means the Hong Kong Special Administrative Region tax or Serbian tax, as the context requires.

2. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 25, 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:

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

        (1) any individual who ordinarily resides in the Hong Kong Special Administrative Region;

        (2) 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;

        (3) 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;

        (4) 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 Serbia, any person who, under the laws of Serbia, is liable to tax therein by reason of his domicile, residence, 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 Serbia in respect only of income from sources in Serbia or capital situated therein;

3) in the case of either Contracting Party, the Government of that Party and any political subdivision or 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:

1) 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);

2) 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;

3) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party in which he has the right of abode (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Serbia);

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

In the absence of such agreement, such individual shall not be entitled to any relief or exemption from tax provided by the Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting Parties.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, the competent authorities of the Contracting Parties shall endeavour to determine by mutual agreement the Contracting Party of which such person shall be deemed to be a resident for the purposes of the Agreement, 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 Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting Parties.

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:

   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. The term "permanent establishment" also encompasses:

   1) 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 twelve months;

   2) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting

Party for a period or periods aggregating more than 183 days in any twelve month period commencing or ending in the taxable period or fiscal year concerned.

4. For the sole purpose of determining whether the twelve month period referred to in subparagraph 1) of paragraph 3 has been exceeded,

1) where an enterprise of a Contracting Party carries on activities in the other Contracting Party at a place that constitutes a building site or construction, assembly or installation project or supervisory activities in connection therewith and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding twelve months, and

2) connected activities are carried on at the same building site, or construction, assembly or installation project or supervisory activities in connection therewith, 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, assembly or installation project or supervisory activities in connection therewith.

5. 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.

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

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.

7. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 8, where a person is acting in a Contracting Party on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are

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 Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 6 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

9. 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.

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

in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

Article 6

Income from Immovable Property

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, 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 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 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 Party in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting Party 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

International Traffic

1. Profits of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where:

   1) 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

   2) 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:

    1) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);

2) 10 per cent of the gross amount of the dividends in all other cases.

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

3. 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 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 14, 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 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, interest arising in a Contracting Party and paid by that Party or political subdivisions or local authorities thereof, or by (in the case of the Hong Kong Special Administrative Region) the Hong Kong Monetary Authority or the Exchange Fund or (in the case of Serbia) the National Bank of Serbia, to a resident of the other Contracting Party shall be taxable only in that other Party if the beneficial owner of such interest is:

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

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

        (2) the Hong Kong Monetary Authority;

(3) the Exchange Fund;

2) in the case of Serbia,

(1) the Government of the Republic of Serbia or political subdivisions or local authorities thereof;

(2) the National Bank of Serbia.

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 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 14, 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 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:

    1) 5 per cent of the gross amount of the royalties within the meaning of subparagraph 1) of paragraph 3;

2) 10 per cent of the gross amount of the royalties within the meaning of subparagraph 2) of paragraph 3.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration:

1) 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;

2) for the use of, or the right to use, 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 14, 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 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

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 that an enterprise of a Contracting Party that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Party.

4. Gains derived by a resident of a Contracting Party from the alienation of shares or comparable interests of any kind, including interests in a partnership or trust, may be taxed in the other Contracting Party if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other 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 14

Independent Personal Services

1. Income derived by a resident of a Contracting Party in respect of professional services or other activities of an independent character shall be taxable only in that Party, unless:

1) 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

2) 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 or fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting Party may be taxed in that other Party.

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

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, 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:

1) 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 or fiscal year concerned, and

2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and

3) 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 by a resident of a Contracting Party in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of the other Contracting Party may be taxed in that other Party.

Article 16

Directors' Fees

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

Article 17

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7, 14 and 15, 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, 14 and 15, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting Party by entertainers or sportspersons if the visit to that Party is wholly or mainly supported by public funds of one or both of the Contracting Parties or political subdivisions or local authorities thereof or if the activities are exercised within the framework of a cultural or sports exchange programme approved by both Contracting Parties. In such a case, the income is taxable only in the Contracting Party of which the entertainer or sportsperson is a resident.

Article 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions (including lump sum payments) and other similar remuneration 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 (including lump sum payments) and other similar remuneration made under a pension or retirement scheme which is:

    1) a public scheme which is part of the social security system of a Contracting Party; or

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

    shall be taxable only in that Contracting Party.

Article 19

Government Service

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

2) 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:

(1) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of Serbia, is a national of Serbia; or

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

2. 1) Pensions (including lump sum payments) and other similar remuneration paid by, or out of funds created or contributed by, a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

2) However, if the individual who rendered the services is a resident of the other Contracting Party and his case falls within subparagraph 2) of paragraph 1, any corresponding pensions (including lump sum payments) and other similar remuneration shall be taxable only in that other Contracting Party.

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

Article 20

Students

Payments which a student or business 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 21

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 a 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 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 22

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting Party and situated in the other Contracting Party, may be taxed in that other Party.

2. Capital represented by 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 by 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, may be taxed in that other Party.

3. Capital of an enterprise of a Contracting Party that operates ships or aircraft in international traffic represented by ships or aircraft, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Party.

4. All other elements of capital of a resident of a Contracting Party shall be taxable only in that Party.

Article 23

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

   1) Where a resident of Serbia derives income or owns capital which, in accordance with the provisions of the Agreement, may be taxed in the Hong Kong Special Administrative Region, Serbia shall allow:

(1) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Hong Kong Special Administrative Region;

(2) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the Hong Kong Special Administrative Region.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in the Hong Kong Special Administrative Region.

2) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of Serbia is exempt from tax in Serbia, Serbia may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

3. For the purpose of allowance as a credit or deduction in a Contracting Party, the tax paid in the other Contracting Party shall be deemed to include the tax which is otherwise payable in that other Contracting Party but which has been reduced or waived by that Party under its legal provisions for tax incentives.

4. The provisions of paragraph 3 shall cease to have effect after five years from the taxable period or fiscal year beginning on or after the first day of January in the calendar year next following the year in which the Agreement enters into force. The competent authorities of the Contracting Parties may consult each other to determine whether this period shall be extended.

Article 24

Non-Discrimination

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of Serbia, are Serbian nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is Serbia) 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, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party. Similarly, any debts of an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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 referred to in Article 2.

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 internal laws of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Serbia). 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 internal laws of the Contracting Parties.

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

4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 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 internal 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 internal laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting Party may be used for other purposes when such information may be used for such other purposes under the laws of both Parties and the

competent authority of the supplying Party authorises such use. Information shall not be disclosed to any third jurisdiction for any purpose.

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

1) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

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 Contracting Party;

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 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 under the internal laws of 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

Entitlement to Benefits

1. Notwithstanding the other provisions of this Agreement, a benefit under the Agreement shall not be granted in respect of an item of income or of capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

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

Article 29

Entry into Force

1. The Contracting Parties shall notify each other in writing, through official channels, that the procedures required by their respective laws for the bringing into force of this Agreement have been completed.

2. The Agreement shall enter into force on the date of the later of these notifications and its provisions shall thereupon have effect:

   1) in the Hong Kong Special Administrative Region,

      in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following the year in which the Agreement enters into force;

   2) in Serbia,

      in respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which the Agreement enters into force.

3. The provisions of Article 10 (Avoidance of Double Taxation) of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Serbia Concerning Air Services signed at Belgrade on 4 October 2016 shall not have effect so long as this Agreement is in effect.

Article 30

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, through official channels, by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year after the fifth year from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

1) in the Hong Kong Special Administrative Region,

   in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following the year in which the notice of termination is given;

2) in Serbia,

   in respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which the notice of termination is given.

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

DONE at Belgrade this 14th day of August 2020 and at Hong Kong this 27th day of August 2020 in two originals, in the Chinese, Serbian and English languages, all texts being equally authentic.

[SIGNED]

Part 2

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

At the time of signing of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Serbia for the Elimination of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Tax Evasion and Avoidance (hereinafter referred to as the "Agreement"), the two Governments have agreed upon the following provisions which shall form an integral part of the Agreement:

1. With reference to paragraph 3 of Article 2 (Taxes Covered)

In the case of the Hong Kong Special Administrative Region, the term "property tax" refers to the tax that is based on the consideration, including rental income, payable to the owner in respect of the right of use of the immovable property located in the Hong Kong Special Administrative Region and such tax is not computed by reference to the value of the immovable property.

2. With reference to paragraph 3 of Article 11 (Interest)

In the case of the Hong Kong Special Administrative Region,

The Hong Kong Monetary Authority is the government authority responsible for maintaining monetary and banking stability in the Hong Kong Special Administrative Region;

The Exchange Fund refers to the fund established under the Exchange Fund Ordinance (Chapter 66 of the Laws of Hong Kong) which is primarily to affect, either directly or indirectly, the exchange value of the currency in the Hong Kong Special Administrative Region and to maintain the stability and integrity of the monetary and financial systems of the Hong Kong Special Administrative Region;

The Exchange Fund is managed by the Hong Kong Monetary Authority on behalf of the Government of the Hong Kong Special Administrative Region.

3. With reference to paragraph 1 of Article 25 (Mutual Agreement Procedure)

It is understood that the competent authority of the Contracting Party will implement a bilateral notification or consultation process with the competent authority of the other Contracting Party for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the person's objection to be justified.

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

DONE at Belgrade this 14th day of August 2020 and at Hong Kong this 27th day of August 2020 in two originals, in the Chinese, Serbian and English languages, all texts being equally authentic.

[SIGNED]

Wendy LEUNG
Clerk to the Executive Council

COUNCIL CHAMBER

20 October 2020

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Republic of Serbia signed an agreement for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance (***Agreement***) together with a protocol to the Agreement (***Protocol***) in August 2020.

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 Chinese, Serbian and English languages which are equally authentic.

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