

L.N. 96 of 2005**SPECIFICATION OF ARRANGEMENTS (SWISS FEDERAL COUNCIL) (AVOIDANCE OF DOUBLE TAXATION ON INCOME FROM AIRCRAFT OPERATION) ORDER**

(Made by the Chief Executive in Council under section 49 of the Inland Revenue Ordinance (Cap. 112))

1. Declaration under section 49

For the purposes of section 49 of the Ordinance, it is declared—

- (a) that the arrangements specified in section 2 have been made with the Swiss Federal Council with a view to affording relief from double taxation in relation to income tax and other taxes of a similar character imposed by the laws of Switzerland; and
- (b) that it is expedient that those arrangements should have effect.

2. Arrangements specified

The arrangements specified for the purposes of section 1(a) are the arrangements in Article 10 bis of the Agreement between the Government of Hong Kong and the Swiss Federal Council concerning Air Services done in duplicate at Hong Kong on 26 January 1988 in the English and French languages*. That Article 10 bis, the English text of which is reproduced in the Schedule, was added to the Agreement by an exchange of letters between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Swiss Federal Council on 7 June 2004 and 21 July 2004.

* The Agreement between the Government of Hong Kong and the Swiss Federal Council concerning Air Services was established in a single original in the English and French languages. Both the English and French language texts of the Agreement are available for inspection at the Economic Development and Labour Bureau of the Government of the HKSAR.

SCHEDULE

[s. 2]

ARTICLE 10 BIS OF THE AGREEMENT BETWEEN THE
GOVERNMENT OF HONG KONG AND THE SWISS
FEDERAL COUNCIL CONCERNING AIR SERVICES**ARTICLE 10 bis****Avoidance of Double Taxation**

- (1) Income or profits derived from the operation of aircraft in international traffic by an airline of one Contracting Party, including participation in a pool service, a joint business or an international operating agency, shall be taxable only in that Contracting Party.
- (2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be taxable only in that Contracting Party.
- (3) Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Contracting Party shall be taxable only in that Contracting Party.
- (4) For the purposes of this Article:
 - (a) the term “income or profits” includes revenues and gross receipts from the operation of aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic including:
 - (i) income and profits derived from the charter or rental of aircraft provided that such charter or rental is incidental to the operation of aircraft in international traffic;
 - (ii) interest on funds directly connected with the operation of aircraft in international traffic, but limited to interest on such funds as are reasonably necessary to manage the local operation in the area of the other Contracting Party;
 - (b) the term “international traffic” means any transport by an aircraft except when the aircraft is operated solely between places in the other Contracting Party;
 - (c) the term “airline of one Contracting Party” means, in the case of the Hong Kong Special Administrative Region, an airline incorporated and having its principal place of business in the Hong Kong Special Administrative Region and, in the case of Switzerland, an airline whose place of effective management is situated in Switzerland;

- (d) the term “competent authority” means, in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative, or any person or body authorised to perform any functions at present exercisable by the Commissioner or similar functions, and, in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative.
- (5) The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any disputes regarding the interpretation or application of this Article. Article 17 (Settlement of Disputes) shall not apply to any such dispute.
- (6) Notwithstanding Article 21 (Entry into Force) each Contracting Party shall notify to the other the completion of the procedures required by its law for the bringing into force of this Article and the Article shall enter into force on the date of the last notification and shall thereupon have effect:
- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year in which this Article enters into force;
 - (b) in Switzerland, for any taxable year beginning on or after 1st January in the calendar year in which this Article enters into force.
- (7) Notwithstanding Article 19 (Termination) where notice of termination of this Agreement is given under that Article, this Article shall cease to have effect:
- (a) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which notice is given;
 - (b) in Switzerland, for any taxable year beginning on or after 1st January in the calendar year next following that in which notice is given.
- (8) This Article shall cease to have effect in the event that an agreement for the avoidance of double taxation with respect to taxes on income, providing for similar exemptions to those in this Article, enters into force between the Contracting Parties.

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
7 June 2005

Explanatory Note

The Government of Hong Kong and the Swiss Federal Council signed an agreement concerning air services on 26 January 1988 (“Agreement”). The Agreement was amended by an exchange of letters on 7 June 2004 and 21 July 2004 to include, among other things, a provision on double taxation relief. This Order specifies the arrangements in that provision as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The effect of such a declaration is that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) notwithstanding anything in any enactment.