

L.N. 99 of 2005

**SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF
THE REPUBLIC OF KENYA) (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 Government of the Republic of Kenya 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 the Republic; 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 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 Kenya concerning Air Services done in duplicate at Hong Kong on 21 May 2004 in the English language, the text of which Article is reproduced in the Schedule.

SCHEDULE

[s. 2]

ARTICLE 10 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 KENYA
CONCERNING
AIR SERVICES

Article 10**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 air transport operation or an international operating agency, which are subject to tax in the area of that Contracting Party shall be exempt from income tax, profits tax and all other taxes on income or profits imposed in the area of the other Contracting Party.
- (2) Capital and assets of an airline of one Contracting Party relating to the operation of aircraft in international traffic shall be exempt from taxes of every kind and description on capital and assets imposed in the area of the other 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 exempt from any tax on gains imposed in the area of the other 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 carriage of persons, livestock, goods, mail or merchandise in international traffic including:
 - (i) the charter or rental of aircraft;
 - (ii) the sale of tickets or similar documents, and the provision of services connected with such carriage, either for the airline itself or for any other airline; and
 - (iii) interest on funds directly connected with the operation of aircraft in international traffic;

- (b) the term “international traffic” means any carriage by an aircraft except when such carriage is solely between places in the area of 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 Kenya, an airline substantially owned and effectively controlled by the Government of Kenya or its nationals;
- (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 Kenya, the Minister for Finance or any person or body authorised to perform any functions at present exercisable by the Minister for Finance or similar functions.

(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 19 (Settlement of Disputes) shall not apply to any such dispute.

(6) Notwithstanding Article 23 (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 written notification. The Article shall then be applied:

- (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 this Agreement or this Article enters into force, whichever is the later;
- (b) in Kenya, for any year of assessment beginning on or after 1st July in the calendar year next following that in which this Agreement or this Article enters into force, whichever is the later.

(7) Notwithstanding Article 21 (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 Kenya, for any year of assessment beginning on or after 1st July 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 the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Kenya signed an agreement concerning air services on 21 May 2004 ("Agreement"). This Order specifies the arrangements in Article 10 of the Agreement 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.