Inland Revenue Department
The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

NO. 32 (Revised)

ARRANGEMENT BETWEEN THE MAINLAND OF CHINA AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE AVOIDANCE OF DOUBLE TAXATION ON INCOME

These notes are issued for the information of taxpayers and their tax representatives. They contain the Department's interpretation and practices in relation to the law as it stood at the date of publication. Taxpayers are reminded that their right of objection against the assessment and their right of appeal to the Commissioner, the Board of Review or the Court are not affected by the application of these notes.

These notes replace those issued in June 1998.

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Commissioner of Inland Revenue

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INTRODUCTION

Article 108 of The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China specifies that the Hong Kong Special Administrative Region ("Hong Kong") shall have its own taxation system. Over recent years, with increasing activities between the Mainland of China ("the Mainland") and Hong Kong, businessmen in Hong Kong have, from time to time, encountered taxation difficulties when carrying on business in the Mainland. Differences in the taxation systems of the Mainland and Hong Kong have led to instances of double taxation. With a view to resolving such problems the governments of the Mainland and Hong Kong carried out consultations. The two Sides (i.e. the Mainland and Hong Kong) subsequently reached consensus in relation to a number of areas which are detailed in the "Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income" ("the Arrangement"). On 11 February 1998 representatives of the two Sides signed the Memorandum to which the Arrangement is attached as an Annex.

ARRANGEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION

2. For the purpose of giving effect to the Arrangement, the Specification of Arrangements (Arrangements with the Mainland of China for the Avoidance of Double Taxation on Income) Order ("the Order") was made by the Chief Executive in Council on 24 February 1998 under section 49 of the Inland Revenue Ordinance ("the IRO"). The Order was published in the Gazette as Legal Notice 126 of 1998 (at Annex). Section 1 of the Order, in effect, declares that arrangements have been made with the Mainland for the avoidance of double taxation. Section 2 specifies that the Arrangement is set out in the Memorandum signed between the State Administration of Taxation of the Mainland of China and the Finance Bureau of the Hong Kong Special Administrative Region. The Memorandum together with the Arrangement is set out in the Schedule to the Order.

3. The purpose of the Arrangement is to allocate the right to tax between the two jurisdictions on a basis that avoids double taxation of income. The provisions of the Arrangement have been made by reference to the Model

Taxation Conventions of the Organization for Economic Co-operation and Development and the United Nations that reflect international experience in dealing with taxation relations between countries and are well known to practitioners handling the taxation affairs of multi-national businesses. Appropriate modifications have been made to cope with the particular requirements of the Mainland and Hong Kong and to help ensure effective implementation of the Arrangement.

RELATIONSHIP BETWEEN THE ARRANGEMENT AND THE INLAND REVENUE ORDINANCE

4. The Arrangement has been implemented in accordance with section 49 of the IRO. It is regarded as an integral part of the IRO and accordingly as having the same legal effect. The Arrangement and the IRO (including subsidiary legislation) are interrelated and complement each other. The Arrangement allocates the right to tax between the two tax jurisdictions. Both Sides shall continue to refer to their respective domestic taxation laws to resolve problems of tax administration and enforcement, such as in deciding whether certain income should be subject to tax, and in the computation of assessable income and tax payable. Resolution of these matters will help to ensure the correct and effective implementation of the Arrangement. Matters not covered by the Arrangement shall continue to be dealt with in accordance with the laws and regulations of both Sides.

5. In handling problems arising from any inconsistency between the Arrangement and the IRO, priority will generally be accorded to the Arrangement. However, where the terms of the Arrangement are less favourable than those under the general provisions of the IRO the matter in question will normally be dealt with in accordance with the general provisions.

6. The Arrangement should not affect existing concessional practices. Take for example the case of a Hong Kong manufacturer who concludes a processing arrangement with a Mainland entity. In accordance with paragraphs 30 to 44 of Departmental Interpretation & Practice Notes No. 21 (Revised 2009), 50% of his profits may be regarded as profits arising outside Hong Kong and not chargeable to profits tax in Hong Kong. This method of apportioning profits that arise both inside and outside Hong Kong on a 50:50

basis remains applicable. On a strict interpretation of the Arrangement, the Mainland processing factory could be regarded as a permanent establishment of the Hong Kong manufacturer in the Mainland and liable to tax there. However, it is noted that it is not the present intention of the Mainland to change the way it taxes profits derived from this type of operation.

IMPLEMENTATION DATES

7. The Arrangement entered into force on 10 April 1998, the date by which the two Sides had notified each other that their requisite approval procedures had been completed. The Arrangement has effect in respect of income derived from the Mainland on or after 1 July 1998 and to income derived from Hong Kong in any year of assessment commencing on or after 1 April 1998. The Mainland adopts the calendar year as its taxation year whilst Hong Kong adopts as its year of assessment the period of 12 months commencing 1 April. The different dates of effect are necessary to comply with the respective domestic laws of the two Sides. Although the dates of effect are 3 months apart, this is not expected to give rise to any problems. Tax paid in the Mainland by a Hong Kong resident, in respect of income derived from the Mainland for the period from 1 April to June 30 1998, will be allowed for set off as a tax credit pursuant to Article 4 (Methods of elimination of double taxation) of the Arrangement.

8. A Hong Kong enterprise may adopt as its accounting date 31 March or any other date within a year of assessment. The “basis period” for the enterprise will be the year ending on the accounting date that falls within that year of assessment. The basis period for the year of assessment 1998/99 may therefore commence as early as 2 April 1997 (i.e. the period from 2 April 1997 to 1 April 1998). Income derived during that basis period will be dealt with in accordance with the provisions of the Arrangement. Pursuant to section 18E(1) of the IRO, the Commissioner of the Inland Revenue (“the Commissioner”) will determine the basis period as he thinks fit in any case where an enterprise changes its accounting date during the year of assessment 1998/99.

ARTICLE 1 A PERMANENT ESTABLISHMENT AND ITS BUSINESS PROFITS

The concept of a permanent establishment

9. Hong Kong adopts the "territorial source principle" in charging profits tax. Profits arising in or derived from Hong Kong are assessable to tax whilst profits arising in a territory outside Hong Kong are not chargeable to tax. With regard to profits generated from a Hong Kong business involving cross-border activities, it is sometimes not easy to ascertain whether the profits have a source in the Mainland or in Hong Kong, because activities have taken place in both places. This may result in double taxation.

10. In common with many double taxation agreements, the Arrangement uses the concept of a "permanent establishment" to determine where tax is to be imposed and hence addresses the issue of double taxation. Paragraph 1 of Article 1 provides that "*profits of an enterprise of One Side shall be taxable only on that Side unless the enterprise carries on business on the Other Side through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed on the Other Side but only so much of them as is attributable to that permanent establishment*." The criterion for determining whether One Side can impose tax on profits derived by an enterprise of the Other Side is whether the business activities of the enterprise are of such a nature that they constitute a permanent establishment.

11. Three concepts, namely, space (a fixed place of business), time (continuous or aggregate periods) and function (activities of a preparatory or auxiliary character), are used to ascertain whether the activities of an enterprise of One Side constitute a permanent establishment on the Other Side. Paragraph 2 of Article 1 generally explains that a permanent establishment is a fixed place of business through which the business activities of the enterprise are carried on. There is no qualification on the scale or the form of the place of business. A permanent establishment will normally have the following features:

(1) It must be a place of business. This may include a house, a site, equipment or facilities (such as machinery and

equipment), a warehouse, a stall, etc., for the carrying out of business activities, whether owned by the enterprise or rented.

(2) It must be a fixed place of business of a permanent nature. The temporary interruption or suspension of business activities conducted at a fixed place of business shall not affect the existence of a permanent establishment.

(3) The enterprise must carry on the whole or a part of its business activities at the place of business.

12. Paragraph 3 of Article 1 provides that the term "permanent establishment" includes in particular "*a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources*". This list is not exhaustive, but illustrates several of the main examples of what, prima facie, constitute a permanent establishment. It does not preclude the determination of any other place of business as a permanent establishment in accordance with the general definition of the term.

13. The "place of management" mentioned indicates that some supervisory responsibilities for the enterprise may be exercised from that place of business. It is not a reference to the "head office" or "place of effective management" that is used to identify where a company is resident. Paragraph 8 specifically provides that a company which is a resident of One Side will not be a permanent establishment of a company of the Other Side just because it controls or is controlled by that company, which is a resident of the Other Side, or which carries on business on that Other Side.

A building site, a construction, assembly or installation project

14. Paragraph 4 of Article 1 provides that a permanent establishment also includes "*a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 6 months*". The IRO imposes tax on income derived from contracting work carried out in Hong Kong in accordance with the territorial source principle. The duration of the work is not a relevant factor. However, pursuant to the Arrangement,

chargeability of profits in respect of contracting work carried out in Hong Kong by a resident of the Mainland will be governed by the duration of the work. The Arrangement provides that a building site, a construction, assembly or installation project will only be regarded as constituting a permanent establishment in Hong Kong (and therefore be subject to tax) if it lasts for more than six months. Profits from a project that does not last for more than six months will not be subject to tax in Hong Kong. Similarly, a Hong Kong resident who has a project in the Mainland that does not last for more than six months will also not be regarded as having a permanent establishment in the Mainland and accordingly will not be subject to tax there.

15. The period for which a project is carried out is counted from the date the contractor commences work (including all preparatory activities) up until the date of completion of the work and the hand over of the work completed. If the period covers two years, the period is counted on a continuous basis over the years in question. In a case where two or more sub-projects are contracted for by a person at the same site or for the same project, the period is counted from the date of commencement of the first sub-project to the date of completion of the last subproject of that person. In other words, it is considered that where two or more sub-projects are contracted for at the same site or for the same project they are but part of a single project. On the other hand, where the sub-projects are situated at different localities and are contracted for different projects, the respective periods may be counted separately. In such a case a permanent establishment would not be considered to exist if the project does not exceed the time limit of six months. Similarly, a project that does not last for more than six months will not be regarded as a permanent establishment merely because another project of the enterprise constitutes a permanent establishment.

16. Where, after commencement of work, a project is suspended, (e.g. pending the arrival of equipment and materials or because of bad weather), the project will not normally be treated as terminated. The duration of the project will, in such a case, be counted continuously without any deduction for the days the project is suspended.

17. If the enterprise subcontracts part of a project to a subcontractor who commences work earlier than the contractor, then in accordance with paragraph 15 above, the duration of the entire project is counted from the date the

subcontractor commences work up to the date of completion and hand over of the work completed. This method of counting the period for the contractor does not affect the independent determination of whether the subcontractor has a permanent establishment. If the period of the subcontracted works does not last longer than six months it will not constitute a permanent establishment and exemption from profits tax in Hong Kong can be granted under the Arrangement if the subcontractor is a resident of the Mainland.

Provision of services by an enterprise

18. Paragraph 4 of Article 1 provides that a permanent establishment also includes "*services, including consultancy services, furnished by an enterprise of One Side, through employees or other personnel on the Other Side, provided that such services have been furnished for the same project or a connected project for a period or periods exceeding in the aggregate 6 months in any 12-month period*."

19. The scope of consultancy services includes:

(1) improvement of production facilities and products, selection of technical know-how, or enhancement of supervisory and management skills, etc.;

(2) the feasibility analysis of investment projects and the selection of design plans.

20. The counting of "a period or periods exceeding in the aggregate 6 months in any 12-month period" may commence with any month during the course of a service contract. Where services have been furnished by an enterprise through employees or other personnel on the other Side for a continuous or cumulative period of more than six months in any 12-month period, a permanent establishment is regarded as being present on the other Side, and the income derived from rendering those services will be subject to tax.

The place where preparatory or auxiliary activities are conducted

21. In defining a permanent establishment, the Arrangement excludes a

fixed place of business whose activities, for the enterprise, are purely of a preparatory or auxiliary character. This reflects the fact that activities which are of a preparatory or auxiliary character do not themselves directly produce profits.

22. Paragraph 5 of Article 1 lists various activities of a preparatory or auxiliary character that may be carried out for the enterprise without constituting a permanent establishment. They 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 advertising, 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 of a preparatory or auxiliary character;

(6) the maintenance of a fixed place of business solely for any combination of the activities mentioned in items (1) to (5) above, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

23. The purpose of paragraph 5 is to clarify what are genuine "representative offices" that are not regarded as permanent establishments and subject to tax. However, attention should be drawn to the following:

(1) The activities should be for the enterprise itself;

(2) The activities should not directly generate profits;

(3) The function of the place of business should only be of a supportive nature. If the fixed place of business conducts certain supervisory management functions for the enterprise or manages certain business operations, its activities would not be regarded as being of the required character. In this event, the fixed place of business would be regarded as a permanent establishment.

Where the activities carried out by a representative office go beyond the activities set out in sub-paragraphs (1) to (6) of paragraph 5, that representative office shall be regarded as a permanent establishment. The business profits of the office will be taxed in accordance with the relevant regulations of the Mainland or Hong Kong.

Business agent

24. Paragraph 6 of Article 1 provides that an agent, other than an agent of an independent status (i.e. an agent acting under the control and leadership of an enterprise of One Side), who regularly acts on behalf of that enterprise on the Other Side and has an authority to conclude contracts (including participation and decision making in the negotiation of the contract terms), shall be regarded as a permanent establishment of that enterprise. This is the case even though the agent is not the final signatory to the contract. Paragraph 7 states that the activities of an enterprise conducted through an independent agent shall not be regarded as constituting a permanent establishment. However, when the agent is acting wholly or almost wholly on behalf of the enterprise, he will not be regarded as an agent of independent status. The scope of his duties and responsibilities and whether he has the right to conclude contracts on behalf of the enterprise will determine whether or not the agent is considered a permanent establishment of the enterprise.

The meaning of business profits

25. The term “profits” in paragraph 1 of Article 1 is not defined in the

Arrangement. Its meaning is to be ascertained in accordance with the laws of both Sides. In the Mainland, profits refer to all profits derived by an enterprise directly from its business activities. In Hong Kong, profits refer to the business profits derived by an enterprise and are computed in accordance with generally accepted accounting principles and the provisions of the IRO.

26. The Arrangement currently only includes those items on which consensus has been reached. The treatment of other items such as interest and royalties has yet to be resolved. Furthermore, items that do not arise from the carrying on of a business, such as gains from immovable property, rent and gains of a capital nature, have not been given special mention in the Arrangement as double taxation does not generally arise. The ordinary provisions of the respective tax laws remain applicable. The chargeability of such passive income will depend on whether they are derived from a business carried on by an enterprise through a permanent establishment or a fixed base. Thus, if the derivation by a Hong Kong resident of the above items is substantially connected with a permanent establishment or a fixed base situated in the Mainland, these items would be regarded as part of the business profits of the permanent establishment and be subject to tax in the Mainland. However, if the Hong Kong resident does not have a permanent establishment in the Mainland, his business profits will not be subject to tax there. Nevertheless, other items such as dividends, interest, royalties, capital gains, and rent derived from the Mainland will be subject to tax (including withholding tax) in accordance with the tax law of the Mainland.

ARTICLE 2 SHIPPING, AIR AND LAND TRANSPORT

27. Article 2 provides that revenue and profits from the operation of ships, aircraft or land transport vehicles carried on by an enterprise of One Side shall be exempt from tax on the Other Side insofar as the revenue and profits are derived from an international or cross-border transportation business. The taxes exempted in the Mainland include Enterprises Income Tax and Business Tax. Enterprises Income Tax is calculated by reference to profits whereas Business Tax is calculated by reference to revenue. Accordingly, the Article specifically includes revenue and profits in the scope of the exemption. Revenue and profits of an enterprise, derived from services other than international or cross-border transportation, will not be exempt by the Other

Side if such services are provided through a permanent establishment situated on that Other Side. The exemption under this Article also covers revenue and profits derived from participation in a pool, a joint business or an international operating agency.

Shipping transport

28. Article 2 is regarded as having application to a Hong Kong enterprise that carries on a business (by reference to section 23B of the IRO) as an owner of ships and:

(1) the business of the enterprise is normally controlled or managed in Hong Kong; or

(2) the enterprise is a company incorporated in Hong Kong,

29. The terms of the Arrangement provide that Hong Kong has the right to impose tax on a Hong Kong enterprise in respect of profits derived from its shipping business. However, section 23B provides that, for an enterprise deemed to be carrying on a business in Hong Kong as an owner of ships, "relevant sums" (as defined in Section 23B (12)) does not include any sums derived from, attributable to, or in respect of any relevant carriage shipped aboard a "registered ship" (as defined in Section 23B (12)) at any location within the waters of Hong Kong. The ratio of relevant sums to total shipping revenue is used to apportion the world-wide shipping profits of the Hong Kong shipowner and calculate the assessable shipping profits derived from Hong Kong. Sums from relevant carriage shipped aboard a registered ship at any location within the waters of Hong Kong by a Hong Kong enterprise will continue to be exempt from tax in Hong Kong.

Air transport

30. Article 2 is regarded as having application to a Hong Kong enterprise that carries on a business (by reference to section 23C of the IRO) as an owner of aircraft and:

(1) the business of the enterprise is normally controlled or managed in Hong Kong; or

(2) the enterprise is a company incorporated in Hong Kong.

31. Hong Kong has the right to impose tax on a Hong Kong air transport enterprise in respect of the revenue derived from the operation of an air transport business. According to section 23C, "relevant sums" (as defined in Section 23C (5)) includes any sums derived from, attributable to, or in respect of any relevant carriage shipped in Hong Kong and any relevant charter hire. The proportion of relevant sums to total revenue is used to apportion world-wide aircraft profits and calculate assessable aircraft profits derived from Hong Kong. By virtue of section 23C(2A), sums from relevant carriage and charter hire from the Mainland derived by a Hong Kong air transport enterprise, that are exempt from tax in the Mainland under the Arrangement, are included as relevant sums in calculating profits chargeable to tax in Hong Kong.

Land transport

32. Article 2 is regarded as having application to a Hong Kong enterprise that carries on a business of land transport. A land transport business is subject to tax under section 14 of the IRO. That is, any person who carries on a land transport business in Hong Kong is chargeable to tax on the profits arising in or derived from Hong Kong.

33. The Arrangement provides that a Hong Kong land transport enterprise will only be subject to tax in Hong Kong and will be exempt from Enterprises Income Tax and Business Tax in the Mainland. Similarly, revenue earned by a Mainland land transport enterprise from Hong Kong uplifts to the Mainland will also be exempt from profits tax in Hong Kong.

34. A cross-border land transport business between the Mainland and Hong Kong usually takes the form of a co-operative enterprise. Typically the Hong Kong participant will make his investment in the form of vehicles and capital. The Mainland participant will be responsible for the application of permits and licences, tax compliance and other management services. The Hong Kong participant will be responsible for Hong Kong uplifts and the Mainland participant for uplifts in the Mainland. Occasionally, the Hong Kong participant may enter into a contract with the customer for the return trip. This kind of cooperative enterprise is regarded as a joint business of cross-border transport operated by residents of both Sides. It follows,

pursuant to paragraph 2 of Article 2, that the respective share of profits derived by each participant from the joint business operation will be exempt from tax by the Other Side and will be taxed on the Side of which the participant is a resident in accordance with its taxation laws.

ARTICLE 3 PERSONAL SERVICES

35. With the development of capital, technological and cultural exchanges, and increasing trading relationships, between the Mainland and Hong Kong, more and more people from various walks of life (e.g. sales personnel, engineers, self-employed persons, artistes, and athletes), have become involved in cross-border businesses, professions and trades and in the provision of services. The situation may be complicated because some persons may stay for a short period of time whilst others may stay on a long term basis. Some persons may even be regarded as residents in accordance with the taxation laws of both Sides. Two situations are dealt with in the Arrangement - independent personal services and dependent personal services.

Independent personal services

36. The term "independent personal services" as used in the Article generally refers to professional services and other activities of an independent character (e.g. scientific, literary, artistic, educational and teaching activities, as well as the professional activities of physicians, lawyers, engineers, architects and accountants) exercised by an individual independently. The term does not include professional services performed as an employee.

37. Paragraph 1 of Article 3 provides that income derived by a resident of One Side in respect of professional services or other activities of an independent character shall be taxable only on that Side. However, where either of the following conditions is satisfied, the income may be taxed on the Other Side:

(1) if the resident has a fixed base regularly available to him on the Other Side for the purpose of performing professional services or other activities of an independent character, but only so much of the income as is attributable to that fixed base;

(2) if the resident stays on the Other Side for a period or periods exceeding in the aggregate 183 days in the calendar year concerned, but only so much of the income as is derived from activities performed on that Other Side.

38. The Mainland interprets the term "in the calendar year concerned" as the period from 1 January to 31 December of any single calendar year. So far as Hong Kong is concerned, a resident of the Mainland who is in Hong Kong for a period or periods exceeding in the aggregate 183 days in a calendar year is chargeable to Hong Kong profits tax on income from independent professional services exercised in Hong Kong. When the period exceeds 183 days, the profits will be assessed in Hong Kong by reference to the year of assessment in which they accrue to the person. For example, during the calendar year 1 January to 31 December 1999 a Mainland resident stays in Hong Kong for more than 183 days during the period from 1 January to 31 July. Income derived during the period 1 January to 31 March 1999 would be assessed in the year of assessment 1998/1999. Income derived during the period 1 April to 31 July 1999 would be assessed in the year of assessment 1999/2000. If applicable, regard will be had to the accounting period adopted by the person for the purpose of determining the relevant basis period.

Dependent personal services

39. The term "dependent personal services" as used in the Article, refers to an employment exercised by an individual with an employer (i.e. as an employee). Paragraph 2(1) of this Article provides that "*salaries, wages and other similar remuneration derived by a resident of One Side in respect of an employment shall be taxable only on that Side unless the employment is exercised on the Other Side. If the employment is so exercised, such remuneration as is derived therefrom may be taxed on the Other Side*." However, remuneration derived by a resident of One Side in respect of an employment exercised on the Other Side will be exempt from tax on that Other Side if the following three conditions set out in paragraph 2(2) of this Article are satisfied:

(1) the recipient stays on that Other Side for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned;

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

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

40. A resident of One Side who is assigned to the Other Side to act as the representative or as a staff member of a representative office of an enterprise is to be treated as a permanent staff member with a fixed employment on the Other Side. The tax exemption for stays "not exceeding 183 days" does not apply to such a person regardless of who pays his salary or wages or where he is paid. The exemption also does not apply to a period of preparatory work done by a permanent representative before he is formally appointed, or to the period of work done by a staff member before his formal appointment. However, if the person is ultimately not appointed as a permanent representative or as a staff member of the representative office, he can be treated as a staff member staying for a short period of time. Provided the other conditions of the Article are satisfied (such as the requirement that the stay not exceed 183 days), the person's salary and wages derived from the Other Side will be exempt from tax on the Other Side.

41. Paragraph 4(2) of Article 1 provides that consultancy services furnished by an enterprise of One Side through employees on the Other Side for a period or periods exceeding in the aggregate 6 months in any 12-month period constitutes a permanent establishment on that Other Side. This remains the case even where individual employees stay on that Other Side for a period not exceeding 183 days in the calendar year concerned. Their services are regarded as having been provided by that permanent establishment. In practice, income derived by such employees from the provision of services on that Other Side may be regarded as borne by the permanent establishment (because condition (2) or (3) above is not satisfied) and accordingly be taxed in accordance with the law of that Other Side.

42. A resident who is employed or engaged in independent professional services in a territory outside the Mainland and Hong Kong, or who is assigned by an enterprise of either the Mainland or Hong Kong to work elsewhere will cease to be entitled to the exemption offered by the Arrangement if he is liable to tax in that territory as a resident in accordance with the laws of that territory governing the periods of his residence.

43. Apart from the provisions of the Arrangement, income derived by a Hong Kong resident from a Hong Kong employment in respect of services rendered by him in any territory outside Hong Kong (including the Mainland) may continue to be exempt from Salaries Tax under section 8(1A)(c) of the IRO. This is subject to the proviso that the Hong Kong resident has paid tax of substantially the same nature as Salaries Tax in respect of that income in the territory where the services are rendered. A resident of Hong Kong can therefore be granted exemption in respect of the income derived from services rendered in the Mainland which is chargeable to Individual Income Tax in the Mainland. Double taxation of such income should therefore not arise.

44. A resident of Hong Kong who has declared and paid Salaries Tax on his employment income and who has paid Individual Income Tax in the Mainland because he has rendered services there, can apply, under section 70A of the IRO, to have his assessment revised in accordance with the provisions of section 8(1A)(c).

Other personal services

(I) Directors' fees

45. Paragraph 3 of Article 3 provides that directors' fees and other similar payments derived by a resident of one Side in his capacity as a member of the board of directors of a company which is a resident of the Other Side may be taxed on that Other Side. Thus directors' fees received by a resident of Hong Kong from a company resident in the Mainland may be taxed in the Mainland. Likewise, directors' fees received by a resident of the Mainland from a company resident in Hong Kong may be taxed in Hong Kong. This applies regardless of the period of stay of the director concerned on the Other Side or the place where the services are rendered. "Directors' fees and other similar payments" do not include wages, salaries and other remuneration derived by a director as an employee, a consultant, etc. Such wages, salaries and other remuneration are taxed as remuneration from dependent personal services. They are not included as "directors' fees and other similar payments" derived as a member of the board of directors.

(II) Artistes and athletes

46. Paragraph 4(1) of this Article provides that "*income derived by a resident of One Side as an entertainer ....., or a musician, or as an athlete, from his personal activities as such exercised on the Other Side may be taxed on that Other Side*." An entertainer, a musician, or an athlete, resident of One Side, who performs on the Other Side may derive substantial amounts of income. However, their stay may only be for a short period of time, usually less than 183 days, and they may not have a fixed base. Therefore they will not be subject to the provisions relating to independent or dependent personal services set out in the Arrangement and the Side where they provide their services would not be able to tax their income. Accordingly, paragraph 4(1) provides that income derived by such a person from his activities may be taxed on the Side where his activities are exercised. Paragraph 4(2) stipulates that the income in respect of the personal activities of such a person, whether accruing to himself or to "another person" will be taxed on the Side where his activities are exercised. The term "another person" includes a company or an enterprise. This is intended to ensure that all income derived by such a person from performance activities can be taxed on the Side where the activities are exercised.

ARTICLE 4 METHODS OF ELIMINATION OF DOUBLE TAXATION

47. Article 4 provides that double taxation can be eliminated under the Arrangement by the allowance of a tax credit. In the case of a Hong Kong resident deriving income that is subject to tax in Hong Kong, any tax paid in the Mainland in respect of that income shall be allowed as a credit (in accordance with the provisions of the Arrangement) against the Hong Kong tax payable on that income. The amount of the tax credit cannot exceed the amount of tax payable in respect of that income, computed in accordance with the provisions of the IRO.

48. The Arrangement provides that the method of elimination of double taxation adopted in Hong Kong shall be subject to the provisions of the IRO regarding the allowance of a deduction or a credit. Section 50 of the IRO provides for the allowance of a tax credit in respect of arrangements having

effect under section 49. This section provides the basis for the granting of a tax credit in relation to an item of income stipulated in the Arrangement and in respect of which tax has been paid in the Mainland. Only tax paid in the Mainland can be allowed as a credit under the Arrangement against Hong Kong tax. In accordance with section 50(2), an applicant for a tax credit must be a resident in Hong Kong for the year of assessment in which the income is earned. However, if income derived by a Hong Kong resident from the Mainland does not arise from Hong Kong it will not be chargeable to tax in Hong Kong. No tax credit will be allowed as the question of double taxation does not arise. In the case of a Hong Kong manufacturer whose profits are apportioned on a 50:50 basis, only half of the profits will be taxed in Hong Kong. The other half is regarded as having been derived from the Mainland thus not chargeable to tax in Hong Kong. Under such circumstances, where tax has been paid in the Mainland in respect of half or less than half of the profits, such tax shall not be allowed as a credit against Hong Kong tax payable. If more than one half of the profits are regarded by the Mainland as profits derived therefrom, then the tax paid in the Mainland in respect of such profits, in excess of one half of the total profits, will be allowed as a credit against the tax payable in Hong Kong.

49. The tax credit in respect of tax paid in the Mainland allowable for set off in Hong Kong is computed in accordance with sections 50(3) and 50(5) of the IRO as follows:

[Example 1]

			Hong Kong	The Mainland
Total assessable income (Gross)			$1,500	
Including income in respect of which tax has been paid in the Mainland in accordance with the Arrangement				$500
Tax rate			16%	33%
Tax payable				
Hong Kong	:	$1,500 x 16%	$240	
The Mainland	:	$500 x 33%		$165

Total tax liabilities of the two Sides before allowance of credit

$240 + $165 = $405

Less: Tax credit					
- Tax paid in the Mainland		$165			
or			$80 (Note 2)		
- The tax credit limit (Note 1)					
$500 x 16%	=	$80			
whichever is smaller					
Total tax liabilities of the two Sides after allowance of tax credit		$325	$160	+	$165

(Note 1) In accordance with section 50(5), the amount of tax paid in the Mainland not allowed as a tax credit, i.e. $102 ($165 - $63), can be allowed as a deduction as shown in the detailed computation below:

		$	$
Mainland tax paid			165
Net income from the Mainland grossed up at effective Hong Kong tax rate	$335 x $\frac{100\%}{(100\% - 16\%)}$	398	
Less: Net Income from the Mainland after deduction of tax	$(500 - 165)	335	
Tax credit limit for tax paid in the Mainland			63
Amount not allowed as a tax credit			102
Hong Kong tax payable before tax credit $[1,000 + (500 - 102)] x 16% = $(1,000 + 398) x 16%			223
Less: Tax credit limit in respect of tax paid in the Mainland			63
Hong Kong tax payable after allowance of tax credit			160

(Note 2) The formula of the credit limit is based on section 50(3) and 50(5) of the IRO. If the tax payable by a taxpayer is computed at flat rate, the following simplified formula can be used to compute the credit limit:

$$\text{Credit limit of tax paid in the Mainland} = \text{Income in the Mainland} \times \frac{\text{Tax payable in Hong Kong}}{\text{Total assessable income}}$$

Income from the Mainland	$500
Tax payable in Hong Kong before allowance of tax credit	$240
Total assessable income	$1,500

Tax credit limit in respect of tax paid in the Mainland = $500 x $\frac{240}{1500}$

= $80

50. In the case of an individual taxpayer whose tax is computed at progressive tax rates, the tax credit is computed as follows:

[Example 2]

Total Hong Kong income	$200,000
Including gross income from the Mainland	$120,000
Tax paid in the Mainland	$10,000
Tax rate in the Mainland	8.33%
Net income after tax from the Mainland	$110,000

The effective tax rate in Hong Kong and the tax credit are computed as follows:

		$
Total Hong Kong assessable income		200,000
Less: Deductible items		12,000
Net Assessable income		188,000
Less: Personal allowance		108,000
Net Chargeable income		80,000
Tax payable on		
The first	$35,000 x 2%	700
The second	$35,000 x 7%	2,450
The remaining	$10,000 x 12%	1,200
	$80,000	4,350

$$\text{The effective tax rate in Hong Kong} = \frac{\text{Tax payable}}{\text{Net assessable income}} \times 100\%$$

$$= \frac{4{,}350}{188{,}000} \times 100\%$$

$$= 2.31\%$$

Gross income from the Mainland, grossed up at the effective tax rate in Hong Kong (Note 1)

	$
$110,000 x $\frac{100\%}{(100\% - 2.31\%)}$	112,601
Less: Income from the Mainland after deduction of tax	110,000
Tax credit limit of tax paid in the Mainland	2,601

Under section 50(5), the actual tax payable in Hong Kong is computed as follows:

		$	$
Assessable income (Hong Kong)			80,000
Assessable income (the Mainland) after deduction of tax		110,000	
Add: tax deducted in the Mainland		10,000	
Gross income from the Mainland			120,000
Total Hong Kong assessable income			200,000
Less: amount not allowed as a tax credit (Note 1)			7,399
			192,601
Less: Deductible items			12,000
			180,601
Less: Personal allowance			108,000
Net chargeable income			72,601
Tax payable on			
The first	$35,000 x 2%		700
The second	$35,000 x 7%		2,450
The remaining	$2,601 x 12%		312
	$72,601		3,462
Less: tax credit allowed			2,601
Hong Kong tax payable			861

(Note 1) Under section 50(5), tax paid in the Mainland which is not allowed as a tax credit can be deducted from the income

Amount not allowed as a tax credit	$10,000 - $2,601	=	$7,399
Income from the Mainland (grossed up at effective tax rate in Hong Kong)	$120,000 - $7,399	=	$112,601

51. The computation of tax credits where the Mainland has deemed service income to be derived from the Mainland:

[Example 3]

Hong Kong Resident Company

Total business receipts (from Hong Kong and the Mainland)		$15,000,000
Total assessable profits		$1,000,000
Profits tax rate (Corporation) 16%		
Tax payable	$1,000,000 x 16% =	$160,000

Mainland Contract

Contract price for the sale of machinery and equipment including installation (which takes more than 6 months to complete) to the Special Economic Zone of the Mainland (Tax rate: 15%)	$2,000,000
Deemed percentage of installation fee over total contract price	5%
Deemed income in respect of installation work	$2,000,000 x 5% = $100,000
Deemed profit margin	10%
Deemed profits	$100,000 x 10% = $10,000
Enterprises Income Tax in the Mainland	= $10,000 x 15% = $1,500

Tax credit in respect of deemed income from installation work in the Mainland

$$= \text{Tax payable} \times \frac{\text{Deemed profits of installation work in the Mainland}}{\text{Total assessable profits}}$$

$$= \$160{,}000 \times \frac{\$10{,}000}{\$1{,}000{,}000}$$

= $1,600

Actual tax credit allowed is to be restricted to the actual tax paid in the Mainland, i.e. $1,500

52. Section 50(4) of the IRO provides that the total tax credit to be allowed to a Hong Kong resident for a year of assessment in respect of foreign tax paid shall not exceed the total tax payable in Hong Kong for that year of assessment. Therefore, if a Hong Kong resident suffers a loss in a year of assessment and does not pay any Hong Kong tax, the tax paid by him in the Mainland will not be allowed as a credit. Moreover, if a Hong Kong company with a branch in the Mainland suffers an overall loss, whereas the branch records a profit, no tax credit will be allowed in Hong Kong for any tax paid in the Mainland, notwithstanding the fact that the trading results of the branch have been included in the Hong Kong accounts. It should be noted that under the territorial source principle, profits derived from the Mainland by a Hong Kong taxpayer generally fall to be excluded from the computation of assessable profits in Hong Kong. Therefore, the allowance of a tax credit should not arise.

53. Under section 50(5) the amount of tax paid in the Mainland is included in computing profits or income subject to tax in Hong Kong. However, due to the differences in tax rates between the Mainland and Hong Kong, the tax paid in the Mainland may exceed the amount of the tax credit. In such circumstances, the excess is allowed as a deduction. Any tax paid in the Mainland that is not allowed as a credit is not available to be carried forward to subsequent years of assessment. A claim for a tax credit is, in accordance with section 50(9), to be made within 2 years after the end of the relevant year of assessment. The claim can be submitted with the tax return for the relevant year of assessment or made separately in writing. A dispute over the allowance of a tax credit is to be dealt with in accordance with the objection and appeal provisions of the IRO.

54. A Hong Kong resident who considers that the tax credit is excessive or insufficient because of an adjustment to the amount of tax payable by either Side can make a claim within 2 years from the time when the assessment, adjustment or determination has been made. The period for lodging the claim will not be limited by the time for raising an assessment or for lodgement of any other claim under the IRO. The relevant assessment, adjustment or determination must be material in determining whether and to what extent a tax credit is allowable.

55. Before a tax credit is allowed it will need to be established to the satisfaction of the Inland Revenue Department ("the Department") that the tax has been paid by the person in the Mainland. The person will need to submit the tax computation issued by the tax authority of the Mainland (showing details of the relevant income and tax paid thereon) together with a certificate to the effect that the tax has been paid and is not subject to any further adjustment.

ARTICLE 5 CONSULTATION

56. The Arrangement is a bilateral agreement made after consultation between representatives of the Mainland and Hong Kong which allocates the right to tax between the two jurisdictions. It sets out mainly matters of principle. In the course of applying the Arrangement, it is possible that problems or uncertainties in respect of particular provisions may be encountered. For this reason, Article 5 provides that the competent authorities of the two Sides shall endeavour to resolve by consultation any difficulties or doubts arising in relation to the interpretation or application of the Arrangement. They may also consult together for the elimination of double taxation in respect of issues not provided for in the Arrangement. To facilitate reaching consensus, consultation may take the form of an oral exchange of opinions. Consultation in respect of the Arrangement shall be dealt with centrally by the State Administration of Taxation of the Mainland and by the Inland Revenue Department of Hong Kong.

57. The Arrangement does not set out the procedures a taxpayer should follow when he is of the view that the Arrangement should be applied. Where a taxpayer wishes to make a claim, the competent authorities of both Sides have agreed that the claim should first be lodged with the tax authority of the Side which the taxpayer believes has not imposed tax in conformity with the Arrangement. In practice, the procedures and time limit for lodging a claim are based on the provisions regarding objections and appeals of the tax laws of the relevant Side. Some claims are expected to be resolved unilaterally. In the event that a claim cannot be settled unilaterally or is not dealt with expeditiously through normal procedures of that Side, the taxpayer may ask the competent authority of the Side of which he is a resident, in accordance with legal procedures and time limits, to deal with the problem through mutual

consultation. If, at any stage, the competent authority receiving the claim considers that it is reasonable, but nevertheless cannot settle the claim satisfactorily, it will try to resolve the problem by consultation with the competent authority of the Other Side. Once agreement is reached as to how the claim is to be dealt with, it will be processed without regard to any time limit which might otherwise apply under the laws of either Side.

58. A resident of the Mainland who considers that an assessment, raised by the Department, is not in conformity with the provisions of the Arrangement should first lodge a written objection with the Commissioner within one month from the date of issue of the assessment. The objection will then be dealt with in accordance with the objection and appeal provisions of the IRO.

59. Where a resident of Hong Kong has lodged a claim in the Mainland, and it is not settled expeditiously, the person may forward a copy of the letter of claim to the Commissioner. The person should also provide the Commissioner with all information relevant to the case (e.g. details of the activities carried out in the Mainland and details of negotiations with the competent authority of the Mainland including copies of documents, letters, notices of assessment and demand notes). Where appropriate the Commissioner will consult the competent authority of the Mainland. A decision reached after such consultation is not subject to further appeal.

60. The secrecy provisions of section 4 of the IRO only allow the Commissioner to provide information to the competent authority of the Mainland where the disclosure has been authorized in writing by the Hong Kong resident. The Commissioner may also decline to consult with the competent authority of the Mainland if insufficient information is provided by the person, or the grounds of the claim are not valid, or the person does not authorize the Commissioner in writing to disclose the relevant information.

ARTICLE 6 PERSONAL SCOPE AND TAXES COVERED

Personal scope

61. The purpose of the Arrangement is for the avoidance of double taxation in the Mainland and Hong Kong. The Arrangement only has

application to a person who is a resident of either Side. Paragraph 1 of Article 6 of the Arrangement states that the term "resident" means *"any person who is liable to tax of One Side by reason of his residence, domicile, place of effective management, place of head office or any other criterion of a similar nature in accordance with the laws of the respective Sides"*. In relation to the definition, "residence" and "domicile" are of relevance to individuals, whereas the "place of effective management" and "place of head office" are pertinent to persons other than individuals.

62. The term resident is not defined in the IRO, but is commonly used in relation to taxation. In the case of an individual, the meaning of the term and related expressions has been considered on a number of occasions by the Courts and the Board of Review. In relation to a claim for dependent parent allowance, the Board of Review held in decision D13/90:

> *" To be a permanent resident a person must be physically present in Hong Kong on a permanent basis or having been physically in Hong Kong and having established permanent residence and the duration of absence from Hong Kong is on a temporary basis only."*

Board of Review cases D20/83 and D57/87 have also been concerned with the same issue.

63. For the purposes of the Arrangement, in determining whether a "person" is a "resident", and may thus enjoy the benefits of the Arrangement, regard will be had to the following criteria:

(I) Resident "individual"

An individual is considered to be a resident of Hong Kong if he is liable to tax in Hong Kong and he is:

(1) of or above the age of 18 years, or under that age if both parents are deceased; and

(2) a permanent or temporary resident.

64. Reflecting existing definitions in the IRO, it is accepted that in this context a "permanent resident" means an individual who ordinarily resides in Hong Kong. A "temporary resident" means an individual who stays in Hong Kong for a period or a number of periods amounting to more than 180 days in the year of assessment or for a period or periods amounting to more than 300 days in 2 consecutive years of assessment (one of which is the year of assessment in respect of which the claim is made). It is generally considered that an individual "ordinarily resides" in Hong Kong if he has a permanent home in Hong Kong where he or his family lives.

(II) Resident "company"

65. The definition of "person" in Article 7 provides that the term includes a "company". Further, the definition states that "the term 'company' means any body corporate or any entity which is treated as a body corporate for tax purposes". Whilst neither the Arrangement nor the IRO contains a definition of a "resident company" the concept is a familiar one in relation to taxation matters. In this regard, it is accepted that a company is resident in Hong Kong if its central management and control is in Hong Kong (i.e. satisfying "any other criterion of a similar nature" as set out in the definition of "resident" in paragraph 1(1) of Article 6). This position reflects case law.

66. According to precedent cases, the residence of a company is wholly a question of fact (*Bullock v. The Unit Construction Co., Ltd.* 38 TC 712 at page 741). Also, according to the judgement of Lord Loreburn in *De Beers Consolidated Mine, Limited v. Howe* (5 TC 198 at page 213), the place of central management and control is the place where the real business is carried on:

> *".... a company resides, for the purposes of Income Tax, where its real business is carried on. .... I regard that as the true rule; and the real business is carried on where the central management and control actually abides."*

67. The issue of whether a company was centrally managed and controlled outside Hong Kong or in Hong Kong was critically examined in Board of Review Decision Case No. *D123/02, 18 IRBRD 150*. In ascertaining where a limited company resides, the Department will follow the guiding

principles mentioned in paragraphs 16 to 18 of the Departmental Interpretation & Practice Notes No. 10 (Revised 2007).

68. Decisions of the Courts and the Board of Review have emphasized that the place of central management and control is wholly a question of fact. Any such decision by the Board of Review can only be subsequently set aside if it is held that the Board has not observed proper legal principles.

69. In *Swedish Central Railway Company Limited v. Thompson* (9 TC 342) it was held that:

> "*When the central management and control of a company abides in a particular place, the company is held for purposes of Income Tax to have a residence in that place, but it does not follow that it cannot have a residence elsewhere.... The central management and control of a company may be divided, and if so it may 'keep house and do business' in more than one place; and if so, it may have more than one residence.*"

70. The place of registration or incorporation of a company is not in itself conclusive of the place where the central management and control is exercised and is therefore not conclusive of the place where the company is resident (*Todd v. Egyptian Delta Land and Investment Co. Ltd.* 14 TC 119).

71. Some decisions have attached importance to the place where the company's board of directors meet. However, this is not necessarily conclusive. If the central management and control is exercised by a single individual, the company will be resident where that individual exercises his powers. In this situation, the Department may have to look at the place where that individual ordinarily resides in ascertaining the place of residence of the company. The place of directors' meetings is significant only insofar as those meetings constitute the medium through which central management and control is exercised. If the directors of a company are actively engaged in a particular place in running a business wholly located in that place, the company will not be regarded as resident outside that place merely because the directors hold meetings outside that place. The conclusion is wholly one of fact, depending on the relative weight to be given to various factors. It is not possible to lay down rigid guidelines.

72. The central management and control of a company does not depend upon the power of supreme command or final arbitrament. It can be found where there are not only substantial business operations in a given place, but some part of the superior and directing authority of the company are also present *(Union Corporation Limited v. CIR 34 TC 207).*

73. Where a subsidiary company operates in a different territory to its parent company, the Department will not, as a matter of course, seek to argue that the central management and control of the company is located where the parent company is resident. However, this will not be the case if the parent company assumes the functions of the board of the subsidiary, or if the board of the subsidiary automatically endorses decisions of the parent company without giving them independent consideration. In determining whether the board of a subsidiary company itself exercises central management and control, the Department will examine the degree of autonomy of the directors in conducting the business of the subsidiary. Regard will be had to factors such as the extent to which the directors make decisions on their own authority in relation to, where applicable, investment, production, marketing and procurement activities of the subsidiary.

74. When making a decision in accordance with case law principles, only factors which exist for genuine commercial reasons will be accepted. Where it appears to the Department that a major objective underlying the existence of certain factors is the obtaining of a tax benefit, the facts will be examined closely to ensure that any appearance of central management and control in a particular place matches the reality.

(III) Resident "body of persons"

75. Apart from referring to an "individual" and a "company", the definition of "person" in Article 7 also includes "any other body of persons". In the latter regard partnerships are the category most likely to be encountered. A partnership is treated as an independent entity for tax purposes in Hong Kong. The Department considers that a partnership is resident where its effective management and control is located. In considering this question, regard will be had to factors such as the place where the partnership is established, the place where its day-to-day business is carried out, the place of residence of the managing partners and the place where the general meetings of the partners are held.

Certification of resident status

76. In applying the Arrangement, the tax authority of the Mainland may require an individual, a company, or a body of persons to produce a certificate from the Department certifying that the person is a "resident" of Hong Kong. This would generally only be required where there is a possibility that the person is a resident of both Sides, or there is a need to verify the resident status of the person. Such a certificate will only be issued by the Department if required by the tax authority of the Mainland. In this regard, the tax authority of the Mainland will first request the person to complete an "Application for Treatment Under Double Taxation Agreement". After it has been approved and stamped by the Mainland tax authority, this application form is to be submitted by the person to the Department together with the "Application for Certification of Resident Status" which can be obtained from the Department. Specimens of the certification application forms are at Appendix 1 (for an individual) and Appendix 2 (for a company or a body of persons). Explanatory notes for completion are printed on the reverse of the actual forms.

77. The Department will examine the information supplied by the person, and if it is sufficient issue a Certificate of Hong Kong Resident Status for purposes of the Arrangement (specimen certificates are at Appendices 3, 4 and 5). Where the information submitted is insufficient the Department will advise the person of the additional material required.

78. On the other hand, where the Department is unable to ascertain that a person is a resident of the Mainland and entitled to the benefits of the Arrangement, it will require that person to furnish a certificate of resident status from a tax authority of the Mainland. If the person is unable to produce such a certificate from the tax authority of the Mainland, he will not be entitled to the benefits of the Arrangement.

79. Where an individual is regarded as a resident of both the Mainland and Hong Kong, his status, for the purposes of the Arrangement, will be determined in accordance with paragraph 1(2) of Article 6:

> *"(i) he shall be regarded as a resident of the Side on which he has a permanent home available to him; if he has a permanent home available to him on both Sides, he shall be regarded as a resident of*

the Side with which his personal and economic relations are closer ('centre of vital interests');

(ii) if the Side on which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him on either Side, he shall be regarded as a resident of the Side on which he has an habitual abode;

(iii) if he has an habitual abode on both Sides or on neither of them, the competent authorities of the two Sides shall settle the question by consultation."

80. Paragraph 1(3) provides that where a person other than an individual (e.g. a company or a partnership) is a resident of both Sides, the competent authorities of the two Sides shall determine its residential status by consultation.

Taxes covered

81. Paragraph 2 of Article 6 specifies the taxes to which the Arrangement applies. For the Mainland, the applicable taxes are direct taxes, namely, Individual Income Tax, Foreign Investment Enterprises Income Tax and Foreign Enterprises Income Tax. Business Tax is also specifically included by virtue of Article 2 in connection with shipping, air and land transport. For Hong Kong, the applicable taxes are Profits Tax, Salaries Tax and tax charged under Personal Assessment. Other taxes are not included in the scope of the Arrangement.

82. Although the Mainland taxes include Foreign Investment Enterprises Income Tax and Foreign Enterprises Income Tax, not all revenue items covered by these taxes enjoy the benefits of the Arrangement. Only those items of income specifically included in the Articles of the Arrangement enjoy the benefits of the Arrangement. Similarly in Hong Kong, the benefits accorded to residents of the Mainland and the tax credits available to residents of Hong Kong will only be granted in accordance with the provisions of the Arrangement.

ARTICLE 7 GENERAL DEFINITIONS

The meaning of the term "person"

83. The term "person" has a wide meaning in the Arrangement. It includes an individual, a company and any other body of persons. The term "any other body of persons" is not defined in the Arrangement, but it is considered to include a partnership.

The meaning of the term "company"

84. The term "company" also has a wide meaning. The Arrangement provides that the term means *"any body corporate or any entity which is treated as a body corporate for tax purposes"*.

"Enterprise of One Side" and "enterprise of the Other Side"

85. The Arrangement does not define what is meant by the term "enterprise"; it is construed in accordance with the laws of the two Sides. The terms "enterprise of One Side" and "enterprise of the Other Side" respectively mean *"an enterprise carried on by a resident of One Side and an enterprise carried on by a resident of the Other Side"*. An enterprise may be carried on by a resident company, or a resident individual, while the enterprise itself may not be a resident.

CONCLUSION

86. It is believed that the Arrangement will help to resolve problems of double taxation faced by residents of the Mainland and Hong Kong and promote commercial and trading activities between the two Sides. The Arrangement provides a channel for communication between the tax authorities of the two Sides. In the future, if it is necessary, the scope of the Arrangement can be extended, through consultation, to cover other items subject to double taxation.

1998 年第 126 號法律公告

安排指明(與中國內地訂立的關於對所得避免雙重徵稅的安排)令

(由行政長官會同行政會議根據《稅務條例》(第 112 章)第 49 條訂立)

1. 根據第 49 條作出的宣布

為施行本條例第 49 條，現宣布：已與香港以外某地區的政府訂立第 2 條所提述的安排，旨在就該地區的法律所施加的入息稅及其他相類似性質的稅項給予雙重課稅寬免，而該等安排的生效是有利的。

2. 指明的安排

第 1 條所述並於附表列明的安排，載於中國內地國家稅務總局與香港特別行政區庫務局於 1998 年 2 月 11 日在香港特別行政區以一式兩份的方式以中文所簽訂的有關中國內地和香港特別行政區關於對所得避免雙重徵稅的安排的備忘錄，而該等安排按該備忘錄的意旨而具有效力。

附表 [第 2 條]

中國內地國家稅務總局與香港特別行政區庫務局簽訂的有關中國內地和香港特別行政區關於對所得避免雙重徵稅的安排的備忘錄

備忘錄

國家稅務總局代表團和香港特別行政區政府稅務代表團於 1998 年 2 月 11 日在香港特別行政區就內地和香港特別行政區避免雙重徵稅問題進行了磋商。雙方已就附後的《內地和香港特別行政區關於對所得避免雙重徵稅的安排》(以下簡稱"本安排")達成一致意見。

L.N. 126 of 1998

SPECIFICATION OF ARRANGEMENTS (ARRANGEMENTS WITH THE MAINLAND OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION ON INCOME) 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 that the arrangements referred to in section 2 have been made with the Government of a territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect.

2. Arrangements specified

The arrangements mentioned in section 1 are in the Memorandum between the State Administration of Taxation of the Mainland of China and the Finance Bureau of the Hong Kong Special Administrative Region concerning the Arrangement Between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income done in duplicate in the Hong Kong Special Administrative Region on 11 February 1998 in the Chinese language, as set out in the Schedule, and having effect according to the tenor of that Memorandum.

SCHEDULE [s. 2]

MEMORANDUM BETWEEN THE STATE ADMINISTRATION OF TAXATION OF THE MAINLAND OF CHINA AND THE FINANCE BUREAU OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION CONCERNING THE ARRANGEMENT BETWEEN THE MAINLAND OF CHINA AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE AVOIDANCE OF DOUBLE TAXATION ON INCOME

備忘錄

國家稅務總局代表團和香港特別行政區政府稅務代表團於 1998 年 2 月 11 日在香港特別行政區就內地和香港特別行政區避免雙重徵稅問題進行了磋商。雙方已就附後的《內地和香港特別行政區關於對所得避免雙重徵稅的安排》(以下簡稱"本安排")達成一致意見。

雙方同意本安排應在各自履行必要的批准程序，互相書面通知後，自最後一方發出通知之日起生效。本安排適用於：

一、在內地：1998 年 7 月 1 日或以後取得的所得；

二、在香港特別行政區：1998 年 4 月 1 日或以後開始的課稅年度中取得的所得。

本安排應長期有效。但一方可以在本安排生效之日起五年後任何曆年 6 月 30 日或以前，書面通知另一方終止本安排。在這種情況下，本安排對終止通知發出年度的次年 1 月 1 日或以後開始的課(納)稅年度中取得的所得停止有效。

本備忘錄於 1998 年 2 月 11 日在香港特別行政區簽署，一式兩份。

香港特別行政區政府
庫務局局長鄺其志

國家稅務總局
副局長楊崇春

雙方同意本安排應在各自履行必要的批准程序，互相書面通知後，自最後一方發出通知之日起生效。本安排適用於：

一、在內地：1998 年 7 月 1 日或以後取得的所得；

二、在香港特別行政區：1998 年 4 月 1 日或以後開始的課稅年度中取得的所得。

本安排應長期有效。但一方可以在本安排生效之日起五年後任何曆年 6 月 30 日或以前，書面通知另一方終止本安排。在這種情況下，本安排對終止通知發出年度的次年 1 月 1 日或以後開始的課(納)稅年度中取得的所得停止有效。

本備忘錄於 1998 年 2 月 11 日在香港特別行政區簽署，一式兩份。

香港特別行政區政府
庫務局局長鄺其志

國家稅務總局
副局長楊崇春

內地和香港特別行政區
關於對所得避免雙重徵稅的安排

第一條 常設機構及其營業利潤

一、一方企業的利潤應僅在該一方徵稅，但該企業通過設在另一方的常設機構在另一方進行營業的除外。如果該企業通過設在該另一方的常設機構在該另一方進行營業，其利潤可以在該另一方徵稅，但應僅以屬於該常設機構的利潤為限。

二、"常設機構"一語是指企業進行全部或部分營業的固定營業場所。

三、"常設機構"一語特別包括：
(一) 管理場所；
(二) 分支機構；
(三) 辦事處；
(四) 工廠；
(五) 作業場所；
(六) 礦場、油井或氣井、採石場或其它開採自然資源的場所。

四、"常設機構"一語還包括：
(一) 建築工地，建築、裝配或安裝工程，或者與其有關的監督管理活動，但僅以該工地、工程或活動連續六個月以上的為限；
(二) 一方企業通過僱員或者僱用的其他人員，在另一方為同一個項目或者相關聯的項目提供的勞務，包括諮詢勞務，僅以在任何十二個月中連續或累計超過六個月的為限。

五、雖有本條第二款至第四款的規定，"常設機構"一語應認為不包括：
(一) 專為儲存、陳列或者交付本企業貨物或者商品的目的而使用的設施；
(二) 專為儲存、陳列或者交付的目的而保存本企業貨物或者商品的庫存；
(三) 專為另一企業加工的目的而保存本企業貨物或者商品的庫存；
(四) 專為本企業採購貨物或者商品，或者作廣告或者搜集資料的目的所設的固定營業場所；
(五) 專為本企業進行其它準備性或輔助性活動的目的所設的固定營業場所；
(六) 專為本款第(一)項至第(五)項活動的結合所設的固定營業場所，如果由於這種結合使該固定營業場所的全部活動屬於準備性質或輔助性質。

六、雖有本條第二款和第三款的規定，當一個人(除適用本條第七款規定的獨立代理人以外)在一方代表另一方的企業進行活動，有權並經常行使這種權力以該企業的名義簽訂合同，這個人為該企業進行的任何活動，應認為該企業在該一方設有常設機構。除非這個人通過固定營業場所進行的活動限於本條第五款的規定，按照該規定，不應認為該固定營業場所是常設機構。

七、一方企業僅通過按常規經營本身業務的經紀人、一般佣金代理人或者任何其他獨立代理人在另一方進行營業，不應認為在另一方設有常設機構。但如果這個代理人的活動全部或幾乎全部代表該企業，不應認為是本款所指的獨立代理人。

八、一方居民公司，控制或被控制於另一方居民公司或者在該另一方進行營業的公司(不論是否通過常設機構)，此項事實不能據以使任何一方公司構成另一方公司的常設機構。

內地和香港特別行政區
關於對所得避免雙重徵稅的安排

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(六) 專為本款第(一)項至第(五)項活動的結合所設的固定營業場所，如果由於這種結合使該固定營業場所的全部活動屬於準備性質或輔助性質。

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七、一方企業僅通過按常規經營本身業務的經紀人、一般佣金代理人或者任何其他獨立代理人在另一方進行營業，不應認為在另一方設有常設機構。但如果這個代理人的活動全部或幾乎全部代表該企業，不應認為是本款所指的獨立代理人。

八、一方居民公司，控制或被控制於另一方居民公司或者在該另一方進行營業的公司(不論是否通過常設機構)，此項事實不能據以使任何一方公司構成另一方公司的常設機構。

第二條 海運、空運和陸運

一、一方企業在另一方以船舶、飛機或陸運車輛經營的運輸業務所取得的收入和利潤，該另一方應予免稅(在內地，包括營業稅)。

二、本條第一款的規定也適用於參加合伙經營、聯合經營或參加國際經營機構取得的收入和利潤。

第三條 個人勞務

一、獨立個人勞務

(一)一方居民由於專業性勞務或者其它獨立性活動取得的所得，應僅在該一方徵稅。但具有以下情況之一的，可以在另一方徵稅：

1、在另一方為從事上述活動設有經常使用的固定基地。在這種情況下，該另一方可以僅對屬於該固定基地的所得徵稅；

2、在有關曆年中在另一方停留連續或累計超過一百八十三天。在這種情況下，該另一方可以僅對在該另一方進行活動取得的所得徵稅。

(二)"專業性勞務"一語特別包括獨立的科學、文學、藝術、教育或教學活動，以及醫師、律師、工程師、建築師、牙醫師和會計師的獨立活動。

二、非獨立個人勞務

(一)除適用本條第三款的規定以外，一方居民因受僱取得的薪金、工資和其它類似報酬，除在另一方從事受僱的活動以外，應僅在該一方徵稅。在該另一方從事受僱的活動取得的報酬，可以在該另一方徵稅。

(二)雖有本款第(一)項的規定，一方居民因在另一方從事受僱的活動取得的報酬，同時具有以下三個條件的，應僅在該一方徵稅：

1、收款人在有關曆年中在該另一方停留連續或累計不超過一百八十三天；

2、該項報酬由並非該另一方居民的僱主支付或代表該僱主支付；

3、該項報酬不是由僱主設在該另一方的常設機構或固定基地所負擔。

(三)雖有本款第(一)項和第(二)項的規定，在一方企業經營國際運輸的船舶、飛機或陸運車輛上從事受僱的活動取得的報酬，應僅在該企業所在一方徵稅。

三、董事費

雖有本條第一款和第二款的規定，一方居民作為另一方居民公司的董事會成員取得的董事費和其它類似款項，可以在該另一方徵稅。

四、藝術家和運動員

雖有本條第一款和第二款的規定，

(一)一方居民作為表演家，如戲劇、電影、廣播或電視藝術家、音樂家或作為運動員，在另一方從事其個人活動取得的所得，可以在該另一方徵稅。

(二)表演家或運動員從事其個人活動取得的所得，並非歸屬表演家或運動員本人，而是歸屬於其他人，可以在該表演家或運動員從事其活動的一方徵稅。

第四條 消除雙重徵稅方法

一、在內地，消除雙重徵稅如下：

內地居民從香港特別行政區取得的所得，按照本安排規定在香港特別行政區繳納的稅額，允許在對該居民徵收的內地稅收中抵免。但是，抵免額不應超過對該項所得按照內地稅法和規章計算的內地稅收數額。

第二條 海運、空運和陸運

一、一方企業在另一方以船舶、飛機或陸運車輛經營的運輸業務所取得的收入和利潤，該另一方應予免稅(在內地，包括營業稅)。

二、本條第一款的規定也適用於參加合伙經營、聯合經營或參加國際經營機構取得的收入和利潤。

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1、在另一方為從事上述活動設有經常使用的固定基地。在這種情況下，該另一方可以僅對屬於該固定基地的所得徵稅；

2、在有關曆年中在另一方停留連續或累計超過一百八十三天。在這種情況下，該另一方可以僅對在該另一方進行活動取得的所得徵稅。

(二)"專業性勞務"一語特別包括獨立的科學、文學、藝術、教育或教學活動，以及醫師、律師、工程師、建築師、牙醫師和會計師的獨立活動。

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(一)除適用本條第三款的規定以外，一方居民因受僱取得的薪金、工資和其它類似報酬，除在另一方從事受僱的活動以外，應僅在該一方徵稅。在該另一方從事受僱的活動取得的報酬，可以在該另一方徵稅。

(二)雖有本款第(一)項的規定，一方居民因在另一方從事受僱的活動取得的報酬，同時具有以下三個條件的，應僅在該一方徵稅：

1、收款人在有關曆年中在該另一方停留連續或累計不超過一百八十三天；

2、該項報酬由並非該另一方居民的僱主支付或代表該僱主支付；

3、該項報酬不是由僱主設在該另一方的常設機構或固定基地所負擔。

(三)雖有本款第(一)項和第(二)項的規定，在一方企業經營國際運輸的船舶、飛機或陸運車輛上從事受僱的活動取得的報酬，應僅在該企業所在一方徵稅。

三、董事費

雖有本條第一款和第二款的規定，一方居民作為另一方居民公司的董事會成員取得的董事費和其它類似款項，可以在該另一方徵稅。

四、藝術家和運動員

雖有本條第一款和第二款的規定，

(一)一方居民作為表演家，如戲劇、電影、廣播或電視藝術家、音樂家或作為運動員，在另一方從事其個人活動取得的所得，可以在該另一方徵稅。

(二)表演家或運動員從事其個人活動取得的所得，並非歸屬表演家或運動員本人，而是歸屬於其他人，可以在該表演家或運動員從事其活動的一方徵稅。

第四條 消除雙重徵稅方法

一、在內地，消除雙重徵稅如下：

內地居民從香港特別行政區取得的所得，按照本安排規定在香港特別行政區繳納的稅額，允許在對該居民徵收的內地稅收中抵免。但是，抵免額不應超過對該項所得按照內地稅法和規章計算的內地稅收數額。

二、在香港特別行政區，消除雙重徵稅如下：

除香港特別行政區稅法給予香港特別行政區以外的任何地區繳納的稅收扣除和抵免的法規另有規定外，香港特別行政區居民從內地取得的所得，按照本安排規定在內地繳納的稅額，允許在對該居民徵收的香港特別行政區稅收中抵免。但是，抵免額不應超過對該項所得按照香港特別行政區稅法和規章計算的香港特別行政區稅收數額。

第五條 協商

雙方主管當局應通過協商設法解決在解釋或實施本安排時所發生的困難或疑義，也可以對本安排未作規定的消除雙重徵稅問題進行協商。為有助於達成一致意見，雙方主管當局的代表可以進行磋商，口頭交換意見。

第六條 適用人和稅種的範圍

一、人的範圍

(一) 本安排適用於一方或者同時為雙方居民的人。"居民"一語是指按照雙方法律，由於住所、居所、實際管理機構或總機構所在地，或者其它類似的標準，在一方負有納稅義務的人。

(二) 由於本款第(一)項的規定，同時為雙方居民的個人，其身分應按以下規則確定：

1、應認為是其有永久性住所所在一方的居民；如果在雙方同時有永久性住所，應認為是與其個人和經濟關係更密切(重要利益中心)所在一方的居民；

2、如果其重要利益中心所在一方無法確定，或其在任何一方都沒有永久性住所，應認為是其有習慣性居處所在一方的居民；

3、如果其在雙方都有或者都沒有習慣性居處，雙方主管當局應通過協商解決。

(三) 由於本款第(一)項的規定，除個人以外，同時為雙方居民的人，應通過雙方主管當局協商解決。

二、稅種的範圍

除另有規定外，本安排適用的現行稅種是：

(一) 在內地：

1、個人所得稅；

2、外商投資企業和外國企業所得稅；

(簡稱"內地稅收")

(二) 在香港特別行政區：

1、利得稅；

2、薪俸稅；

3、個人入息課稅。

(簡稱"香港特別行政區稅收")

(三) 本安排也適用於本安排實施之日後徵收的屬於增加或者代替上述所列現行稅種的相同或者實質相似的稅收。雙方主管當局應將各自稅法所作出的實質變動，在其變動後的適當時間內通知對方。

第七條 一般定義

一、在本安排中，除上下文另有解釋的以外：

(一) "一方"和"另一方"的用語，按照上下文，是指內地或者香港特別行政區；

(二) "人"一語包括個人、公司或其他團體；

(三) "公司"一語是指法人團體或者在稅收上視同法人團體的實體；

二、在香港特別行政區，消除雙重徵稅如下：

除香港特別行政區稅法給予香港特別行政區以外的任何地區繳納的稅收扣除和抵免的法規另有規定外，香港特別行政區居民從內地取得的所得，按照本安排規定在內地繳納的稅額，允許在對該居民徵收的香港特別行政區稅收中抵免。但是，抵免額不應超過對該項所得按照香港特別行政區稅法和規章計算的香港特別行政區稅收數額。

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(一) 本安排適用於一方或者同時為雙方居民的人。"居民"一語是指按照雙方法律，由於住所、居所、實際管理機構或總機構所在地，或者其它類似的標準，在一方負有納稅義務的人。

(二) 由於本款第(一)項的規定，同時為雙方居民的個人，其身分應按以下規則確定：

1、應認為是其有永久性住所所在一方的居民；如果在雙方同時有永久性住所，應認為是與其個人和經濟關係更密切(重要利益中心)所在一方的居民；

2、如果其重要利益中心所在一方無法確定，或其在任何一方都沒有永久性住所，應認為是其有習慣性居處所在一方的居民；

3、如果其在雙方都有或者都沒有習慣性居處，雙方主管當局應通過協商解決。

(三) 由於本款第(一)項的規定，除個人以外，同時為雙方居民的人，應通過雙方主管當局協商解決。

二、稅種的範圍

除另有規定外，本安排適用的現行稅種是：

(一) 在內地：

1、個人所得稅；

2、外商投資企業和外國企業所得稅；

(簡稱"內地稅收")

(二) 在香港特別行政區：

1、利得稅；

2、薪俸稅；

3、個人入息課稅。

(簡稱"香港特別行政區稅收")

(三) 本安排也適用於本安排實施之日後徵收的屬於增加或者代替上述所列現行稅種的相同或者實質相似的稅收。雙方主管當局應將各自稅法所作出的實質變動，在其變動後的適當時間內通知對方。

第七條 一般定義

一、在本安排中，除上下文另有解釋的以外：

(一) "一方"和"另一方"的用語，按照上下文，是指內地或者香港特別行政區；

(二) "人"一語包括個人、公司或其他團體；

(三) "公司"一語是指法人團體或者在稅收上視同法人團體的實體；

(四) "一方企業" 和 "另一方企業" 的用語，分別指一方居民經營的企業和另一方居民經營的企業；

(五) "海運、空運和陸運" 一語是指一方企業以船舶、飛機或陸運車輛經營的運輸，不包括僅在另一方各地之間以船舶、飛機或陸運車輛經營的運輸；

(六) "主管當局" 一語，在內地方面是指國家稅務總局或其授權的代表；在香港特別行政區方面是指香港特別行政區政府稅務局局長或其授權的代表。

二、一方在實施本安排時，對於未經本安排明確定義的用語，除上下文另有解釋的以外，應當具有該一方適用於本安排的稅種的法律所規定的含義。

(英文譯本)

Memorandum

The State Administration of Taxation Delegation and the Hong Kong Special Administrative Region Government Tax Delegation carried out consultation on the avoidance of double taxation between the Mainland of China and the Hong Kong Special Administrative Region in the Hong Kong Special Administrative Region on 11 February 1998. The two Sides reached consensus on the "Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income" (hereinafter referred to as "Arrangement") at the Annex.

The two Sides agreed to arrange for completion at their respective ends of the requisite approval procedure and to notify each other in writing thereof and that this Arrangement shall enter into force on the date on which the last of such notifications is given. This Arrangement shall have effect:

(1) in the Mainland of China, in respect of income derived on or after 1 July 1998;

(2) in the Hong Kong Special Administrative Region, in respect of income derived in any year of assessment commencing on or after 1 April 1998.

This Arrangement shall continue in effect indefinitely but either Side may, on or before 30 June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Side a written notice to terminate this Arrangement. In such event, this Arrangement shall cease to have effect in respect of income derived in any taxable year or any year of assessment commencing on or after 1 January in the year next following the year in which the notice of termination is given.

Done in duplicate in the Hong Kong Special Administrative Region on 11 February 1998.

Hong Kong
Special Administrative Region Government
Finance Bureau
Secretary for the Treasury
Kwong Ki-chi

State Administration of
Taxation
Deputy Commissioner
Yang Chongchun

(四) "一方企業" 和 "另一方企業" 的用語，分別指一方居民經營的企業和另一方居民經營的企業；

(五) "海運、空運和陸運" 一語是指一方企業以船舶、飛機或陸運車輛經營的運輸，不包括僅在另一方各地之間以船舶、飛機或陸運車輛經營的運輸；

(六) "主管當局" 一語，在內地方面是指國家稅務總局或其授權的代表；在香港特別行政區方面是指香港特別行政區政府稅務局局長或其授權的代表。

二、一方在實施本安排時，對於未經本安排明確定義的用語，除上下文另有解釋的以外，應當具有該一方適用於本安排的稅種的法律所規定的含義。

(English Translation)

Memorandum

The State Administration of Taxation Delegation and the Hong Kong Special Administrative Region Government Tax Delegation carried out consultation on the avoidance of double taxation between the Mainland of China and the Hong Kong Special Administrative Region in the Hong Kong Special Administrative Region on 11 February 1998. The two Sides reached consensus on the "Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income" (hereinafter referred to as "Arrangement") at the Annex.

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Kwong Ki-chi

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Taxation
Deputy Commissioner
Yang Chongchun

ARRANGEMENT BETWEEN THE MAINLAND OF CHINA AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE AVOIDANCE OF DOUBLE TAXATION ON INCOME

Article 1

Permanent establishment and its business profits

1. The profits of an enterprise of One Side shall be taxable only on that Side unless the enterprise carries on business on the Other Side through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed on the Other Side but only so much of them as is attributable to that permanent establishment.

2. The term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

3. The term "permanent establishment" includes in particular:
(1) a place of management;
(2) a branch;
(3) an office;
(4) a factory;
(5) a workshop;
(6) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

4. The term "permanent establishment" also includes:
(1) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 6 months;
(2) services, including consultancy services, furnished by an enterprise of One Side, through employees or other personnel on the Other Side, provided that such services have been furnished for the same project or a connected project for a period or periods exceeding in the aggregate 6 months in any 12-month period.

5. Notwithstanding the provisions of paragraphs 2 to 4 of this Article, the term "permanent establishment" shall be regarded as not including:
(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 advertising, 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 of a preparatory or auxiliary character;
(6) the maintenance of a fixed place of business solely for any combination of the activities mentioned in sub-paragraphs (1) to (5) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, where a person, other than an agent of an independent status to whom the provisions of paragraph 7 of this Article apply, is acting on One Side on behalf of an enterprise of the Other Side and has, and habitually exercises, an authority to conclude contracts in the name of the enterprise, that enterprise shall be regarded as having a permanent establishment on the first-mentioned Side in respect of any activities which that person undertakes for the enterprise, unless his activities are limited to those mentioned in paragraph 5 of this Article 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.

ARRANGEMENT BETWEEN THE MAINLAND OF CHINA AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE AVOIDANCE OF DOUBLE TAXATION ON INCOME

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2. The term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

3. The term "permanent establishment" includes in particular:
(1) a place of management;
(2) a branch;
(3) an office;
(4) a factory;
(5) a workshop;
(6) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

4. The term "permanent establishment" also includes :
(1) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 6 months;
(2) services, including consultancy services, furnished by an enterprise of One Side, through employees or other personnel on the Other Side, provided that such services have been furnished for the same project or a connected project for a period or periods exceeding in the aggregate 6 months in any 12-month period.

5. Notwithstanding the provisions of paragraphs 2 to 4 of this Article, the term "permanent establishment" shall be regarded as not including:
(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 advertising, 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 of a preparatory or auxiliary character;
(6) the maintenance of a fixed place of business solely for any combination of the activities mentioned in sub-paragraphs (1) to (5) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, where a person, other than an agent of an independent status to whom the provisions of paragraph 7 of this Article apply, is acting on One Side on behalf of an enterprise of the Other Side and has, and habitually exercises, an authority to conclude contracts in the name of the enterprise, that enterprise shall be regarded as having a permanent establishment on the first-mentioned Side in respect of any activities which that person undertakes for the enterprise, unless his activities are limited to those mentioned in paragraph 5 of this Article 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.

7. An enterprise of One Side shall not be regarded as having a permanent establishment on the Other Side merely because it carries on business on that Other Side 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, he will not be regarded as an agent of an independent status within the meaning of this paragraph.

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

Article 2

Shipping, air and land transport

1. Revenue and profits from the operation of ships, aircraft or land transport vehicles carried on by an enterprise of One Side on the Other Side shall be exempt from tax (which, in the case of the Mainland of China, includes Business Tax) on the Other Side.

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

Article 3

Personal services

1. Independent personal services
(1) Income derived by a resident of One Side in respect of professional services or other activities of an independent character shall be taxable only on that Side except in any one of the following circumstances, where such income may also be taxed on the Other Side:
(i) if he has a fixed base regularly available to him on the Other Side for the purpose of performing his activities; in such case, only so much of the income as is attributable to that fixed base may be taxed on that Other Side;
(ii) if he stays on the Other Side for a period or periods exceeding in the aggregate 183 days in the calendar year concerned; in such case, only so much of the income as is derived from his activities performed on that Other Side may be taxed on that Other Side.
(2) The term "professional services", in particular, includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

2. Dependent personal services
(1) Subject to the provisions of paragraph 3 of this Article, salaries, wages and other similar remuneration derived by a resident of One Side in respect of an employment shall be taxable only on that Side unless the employment is exercised on the Other Side. If the employment is so exercised, such remuneration as is derived therefrom may be taxed on the Other Side.
(2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, remuneration derived by a resident of One Side in respect of an employment exercised on the Other Side shall be taxable only on the first-mentioned Side if:
(i) the recipient stays on that Other Side for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
(ii) the remuneration is paid by, or on behalf of, an employer who is not a resident of that Other Side; and
(iii) the remuneration is not borne by a permanent establishment or a fixed base which the employer has on that Other Side.

7. An enterprise of One Side shall not be regarded as having a permanent establishment on the Other Side merely because it carries on business on that Other Side 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, he will not be regarded as an agent of an independent status within the meaning of this paragraph.

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

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(ii) if he stays on the Other Side for a period or periods exceeding in the aggregate 183 days in the calendar year concerned; in such case, only so much of the income as is derived from his activities performed on that Other Side may be taxed on that Other Side.
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(2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, remuneration derived by a resident of One Side in respect of an employment exercised on the Other Side shall be taxable only on the first-mentioned Side if:
(i) the recipient stays on that Other Side for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
(ii) the remuneration is paid by, or on behalf of, an employer who is not a resident of that Other Side; and
(iii) the remuneration is not borne by a permanent establishment or a fixed base which the employer has on that Other Side.

(3) Notwithstanding the provisions of sub-paragraphs (1) and (2) of this paragraph, remuneration derived in respect of an employment exercised aboard a ship, an aircraft or a land transport vehicle operated in international traffic by an enterprise of One Side shall be taxable only on the Side in which the enterprise is situated.

3. Directors' fees

Notwithstanding the provisions of paragraphs 1 and 2 of this Article, directors' fees and other similar payments derived by a resident of One Side in his capacity as a member of the board of directors of a company which is a resident of the Other Side may be taxed on that Other Side.

4. Artistes and athletes

Notwithstanding the provisions of paragraphs 1 and 2 of this Article:

(1) income derived by a resident of One Side as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised on the Other Side may be taxed on that Other Side.

(2) where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may be taxed on the Side on which the activities of the entertainer or athlete are exercised.

Article 4

Methods of elimination of double taxation

1. In the Mainland of China, double taxation shall be eliminated as follows:

Where a resident of the Mainland of China derives income from the Hong Kong Special Administrative Region, the amount of tax paid in the Hong Kong Special Administrative Region in respect of that income in accordance with the provisions of this Arrangement shall be allowed as a credit against the Mainland tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Mainland tax computed in respect of that income in accordance with the taxation laws and regulations of the Mainland of China.

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

Subject to the provisions of the taxation laws and regulations of the Hong Kong Special Administrative Region regarding the allowance of deduction or credit against the Hong Kong Special Administrative Region tax of tax paid in any place other than the Hong Kong Special Administrative Region, where a resident of the Hong Kong Special Administrative Region derives income from the Mainland of China, the amount of tax paid in the Mainland of China in respect of that income in accordance with the provisions of this Arrangement shall be allowed as a credit against the Hong Kong Special Administrative Region tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the taxation laws and regulations of the Hong Kong Special Administrative Region.

Article 5

Consultation

The competent authorities of the two Sides shall endeavour to resolve by consultation any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in this Arrangement. In order to facilitate reaching consensus, representatives of the competent authorities of the two Sides may proceed with consultation by an oral exchange of opinions.

(3) Notwithstanding the provisions of sub-paragraphs (1) and (2) of this paragraph, remuneration derived in respect of an employment exercised aboard a ship, an aircraft or a land transport vehicle operated in international traffic by an enterprise of One Side shall be taxable only on the Side in which the enterprise is situated.

3. Directors' fees

Notwithstanding the provisions of paragraphs 1 and 2 of this Article, directors' fees and other similar payments derived by a resident of One Side in his capacity as a member of the board of directors of a company which is a resident of the Other Side may be taxed on that Other Side.

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(1) income derived by a resident of One Side as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised on the Other Side may be taxed on that Other Side.

(2) where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may be taxed on the Side on which the activities of the entertainer or athlete are exercised.

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1. In the Mainland of China, double taxation shall be eliminated as follows:

Where a resident of the Mainland of China derives income from the Hong Kong Special Administrative Region, the amount of tax paid in the Hong Kong Special Administrative Region in respect of that income in accordance with the provisions of this Arrangement shall be allowed as a credit against the Mainland tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Mainland tax computed in respect of that income in accordance with the taxation laws and regulations of the Mainland of China.

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

Subject to the provisions of the taxation laws and regulations of the Hong Kong Special Administrative Region regarding the allowance of deduction or credit against the Hong Kong Special Administrative Region tax of tax paid in any place other than the Hong Kong Special Administrative Region, where a resident of the Hong Kong Special Administrative Region derives income from the Mainland of China, the amount of tax paid in the Mainland of China in respect of that income in accordance with the provisions of this Arrangement shall be allowed as a credit against the Hong Kong Special Administrative Region tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the taxation laws and regulations of the Hong Kong Special Administrative Region.

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The competent authorities of the two Sides shall endeavour to resolve by consultation any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in this Arrangement. In order to facilitate reaching consensus, representatives of the competent authorities of the two Sides may proceed with consultation by an oral exchange of opinions.

Article 6

Personal Scope and Taxes Covered

1. Personal scope
(1) This Arrangement shall apply to a person who is a resident of One Side or a resident of both Sides. The term "resident" means any person who is liable to tax of One Side by reason of his residence, domicile, place of effective management, place of head office or any other criterion of a similar nature in accordance with the laws of the respective Sides.
(2) Where by reason of the provisions of sub-paragraph (1) of this paragraph an individual is a resident of both Sides, his status shall be determined as follows:
(i) he shall be regarded as a resident of the Side on which he has a permanent home available to him; if he has a permanent home available to him on both Sides, he shall be regarded as a resident of the Side with which his personal and economic relations are closer ("centre of vital interests");
(ii) if the Side on which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him on either Side, he shall be regarded as a resident of the Side on which he has an habitual abode;
(iii) if he has an habitual abode on both Sides or on neither of them, the competent authorities of the two Sides shall settle the question by consultation.
(3) Where by reason of the provisions of sub-paragraph (1) of this paragraph a person other than an individual is a resident of both Sides, the competent authorities of the two Sides shall determine its residential status by consultation.

2. Taxes covered
Subject to any other provisions, the existing taxes to which this Arrangement shall apply are:
(1) In the Mainland of China:
(i) Individual Income Tax;
(ii) Foreign Investment Enterprises Income Tax and Foreign Enterprises Income Tax
(herein referred to as "Mainland tax");
(2) In the Hong Kong Special Administrative Region:
(i) Profits Tax;
(ii) Salaries Tax;
(iii) Tax charged under Personal Assessment
(herein referred to as "Hong Kong Special Administrative Region tax").
(3) This Arrangement shall also apply to any identical or substantially similar taxes which are imposed after the date when this Arrangement comes into effect in addition to, or in place of, the existing taxes referred to above. The competent authorities of the two Sides shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 7

General definitions

1. For the purposes of this Arrangement, unless the context otherwise requires:
(1) the terms "One Side" and "the Other Side" mean the Mainland of China or the Hong Kong Special Administrative Region as the context requires;
(2) the term "person" includes an individual, a company and any other body of persons;
(3) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
(4) the terms "enterprise of One Side" and "enterprise of the Other Side" respectively mean an enterprise carried on by a resident of One Side and an enterprise carried on by a resident of the Other Side;

Article 6

Personal Scope and Taxes Covered

1. Personal scope
(1) This Arrangement shall apply to a person who is a resident of One Side or a resident of both Sides. The term "resident" means any person who is liable to tax of One Side by reason of his residence, domicile, place of effective management, place of head office or any other criterion of a similar nature in accordance with the laws of the respective Sides.
(2) Where by reason of the provisions of sub-paragraph (1) of this paragraph an individual is a resident of both Sides, his status shall be determined as follows:
(i) he shall be regarded as a resident of the Side on which he has a permanent home available to him; if he has a permanent home available to him on both Sides, he shall be regarded as a resident of the Side with which his personal and economic relations are closer("centre of vital interests");
(ii) if the Side on which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him on either Side, he shall be regarded as a resident of the Side on which he has an habitual abode;
(iii) if he has an habitual abode on both Sides or on neither of them, the competent authorities of the two Sides shall settle the question by consultation.
(3) Where by reason of the provisions of sub-paragraph (1) of this paragraph a person other than an individual is a resident of both Sides, the competent authorities of the two Sides shall determine its residential status by consultation.

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General definitions

1. For the purposes of this Arrangement, unless the context otherwise requires:
(1) the terms "One Side" and "the Other Side" mean the Mainland of China or the Hong Kong Special Administrative Region as the context requires;
(2) the term "person" includes an individual, a company and any other body of persons;
(3) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
(4) the terms "enterprise of One Side" and "enterprise of the Other Side" respectively mean an enterprise carried on by a resident of One Side and an enterprise carried on by a resident of the Other Side;

(5) the term "shipping, air and land transport" means any transport by ships, aircraft or land transport vehicles operated by an enterprise of One Side, except when the ships, aircraft or land transport vehicles are operated solely between places on the Other Side;

(6) the term "competent authority" means, in the case of the Mainland of China, the State Administration of Taxation or its authorized representatives and, in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue of the Hong Kong Special Administrative Region Government or his authorized representatives.

2. As regards the application of this Arrangement by One Side, any term not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Side concerning the taxes to which this Arrangement applies.

行政會議秘書
容偉雄

行政會議廳
1998 年 2 月 24 日

註 釋

本命令指明中國內地國家稅務總局與香港特別行政區庫務局於 1998 年 2 月 11 日在香港特別行政區所簽訂的有關中國內地和香港特別行政區關於對所得避免雙重徵稅的安排的備忘錄中所列的安排，為《稅務條例》(第 112 章) 第 49 條所指的雙重課稅寬免安排。

(5) the term "shipping, air and land transport" means any transport by ships, aircraft or land transport vehicles operated by an enterprise of One Side, except when the ships, aircraft or land transport vehicles are operated solely between places on the Other Side;

(6) the term "competent authority" means, in the case of the Mainland of China, the State Administration of Taxation or its authorized representatives and, in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue of the Hong Kong Special Administrative Region Government or his authorized representatives.

2. As regards the application of this Arrangement by One Side, any term not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Side concerning the taxes to which this Arrangement applies.

Philip YUNG Wai-hung
Clerk to the Executive Council

COUNCIL CHAMBER
24 February 1998

Explanatory Note

This Order specifies that the arrangements set out in the Memorandum between the State Administration of Taxation of the Mainland of China and the Finance Bureau of the Hong Kong Special Administrative Region in the Hong Kong Special Administrative Region on 11 February 1998 concerning the Arrangement Between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income shall be a double taxation relief arrangement under section 49 of the Inland Revenue Ordinance (Cap. 112).

居民證明書申請表
適用於與中國內地訂立的
關於對所得避免雙重徵稅的安排
(個人)

Application for Certification of Resident Status
Under the Arrangement with the Mainland of China
For the Avoidance of Double Taxation on Income
(Individuals)

Appendix 1

致： 香港特別行政區稅務局
To : Inland Revenue Department
Hong Kong Special Administrative Region

檔案編號
File No _____

I) 申請人事項
Details of Applicant

姓名（中文） Name (in Chinese)		姓名（英文） Name (in English)	
香港身分証號碼 Hong Kong Identity Card Number		護照號碼及國籍 (如非香港身分證持有人) Passport No & Nationality (If you are not a Hong Kong Identity Card holder)	
永久性居住地址 Permanent Residential Address			
其他居住地址(如與以上地址不同) Other Residential Address (if different from above address)			
通訊地址 Postal Address			
如你曾獲發給香港特別行政區稅務居民身分證明書，請敘明最近期之證明書的證件編號 If you have previously obtained a Certificate of Resident Status issued by the Inland Revenue Department of the Hong Kong Special Administrative Region, please state the Serial Number of the latest Certificate issued.			編號 Serial No.
你是否經常性在香港居住 Do you ordinarily reside in Hong Kong (如「是」，請申明留港年期） (If yes, please state the number of years of stay in Hong Kong)			*是/否 *Yes/No 年 years
在香港停留日期 (如非香港經常性居民,請填寫此項和遞交旅行証件副本) Period of Stay in Hong Kong (Please complete if you are not ordinarily residing in Hong Kong and submit copies of your travel document in support)			
(a) 本財政年度，在香港停留天數 Number of days when you are in Hong Kong during this fiscal year			天 days
(b) 過往一個財政年度，在香港停留天數 Number of days when you were in Hong Kong during the year before this fiscal year			天 days

II) 所得事項
Details of Income
甲： 獨立個人勞務
A : Independent Personal Services

稅務局檔案編號 (如有的話) Tax File Number with Inland Revenue Department (if any)		
經營業務名稱 Name of trade, profession or business carried on		商業登記號碼 (如有的話) Business Registration No. (if any)
主要業務地址 Main Business Address		

乙：非獨立個人勞務
B. Dependent Personal Services

稅務局檔案編號 (如有的話) Tax file number with Inland Revenue Department (if any)		
僱主名稱 Name of Employer(s)		受僱職位 Capacity Employed

III) 授權聲明
Authorization
爲施行避免雙重徵稅安排，我同意以上資料可向中國稅務機關透露。
I agree that the above information can be communicated to the tax authority of the Mainland of China for the purposes of effecting the Arrangement.

IV) 聲明書
Declaration
我謹此聲明以上事項均屬真確無誤及並無遺漏。
I hereby declare that to the best of my knowledge and belief, the above statements are true, correct and complete.

日期：
Date：_____

申請人簽署：
Signature of Applicant： _____

****

只供稅務局人員填寫
For official use only

收到申請表日期 Date of receipt of Application	
發出居民身分證明書日期 Date of Issue of Certificate	證件編號 Serial No.

居民證明書申請表
適用於與中國內地訂立的
關於對所得避免雙重徵稅的安排
(公司或其他團體)

Application for Certification of Resident Status
Under the Arrangement with the Mainland of China
For the Avoidance of Double Taxation on Income
(Company or Body of Persons)

Appendix 2

致：香港特別行政區稅務局
To : Inland Revenue Department
Hong Kong Special Administrative Region

檔案編號
File No_____

I) 申請人事項
Details of Applicant

申請人名稱 Name of Applicant		經營業務名稱 Name of Trade or business
香港通訊地址 Postal Address in Hong Kong		商業登記號碼 Business Registration No
如你曾獲發給香港特別行政區稅務居民身分證明書，請敘明最近期之證明書的證件編號 If you have previously obtained a Certificate of Resident Status issued by the Inland Revenue Department of the Hong Kong Special Administrative Region, please state the Serial Number of the latest Certificate issued.		編號 Serial No.

II) 在港常設機構事項
Permanent establishment in Hong Kong

主要固定營業地址 Main Business Address		
業務性質 Principal Business Activity		課稅基期 Basis Period
僱用職員 - 董事 - 高層管理 - 普通職員 - 其他 (請列明)	Staff employed - Directors - Management - General - Others (Please specify)	人數 Number of Persons
收入性質 Nature of Income		收入金額 Amount

	管理及控制所在地 Place of Management and Control	*是* *Yes*	*否* *No*
1	是否在香港註冊成立 Whether incorporated in Hong Kong		
2	如題一的答案爲「是」，其在香港公司註冊署號碼 If answer to 1 is yes, the registration number with Companies Registry		
3	如非在香港註冊成立，是否根據公司條例第 XI 部註冊爲海外公司 (請另註明註冊成立地點) If incorporated outside Hong Kong, whether registered as an overseas company under Part XI of the Companies Ordinance (Please specify the place of incorporation)		
4	主要業務是否在香港 Whether principal place of business in Hong Kong		
5	在香港以外是否有經營業務 (如答案爲「是」請另註明該等營業地點) Whether any other place of business maintained outside Hong Kong (Please specify the places if the answer is yes)		
6	所有董事/合夥人會議是否在香港舉行 Whether all the directors'/partners' meetings held in Hong Kong		
7	在香港舉行的董事/合夥人會議的數目及其性質（請另註明） Number of directors'/partners' meetings held in Hong Kong and the nature of each meeting (Please specify on a separate sheet)		
8	根據安排下的定義，所有董事/合夥人是否香港居民 (如答案是否定的，請另附上董事居住地資料) Whether all the directors/partners are residents in Hong Kong for the purposes of the Arrangement (Please give details of the residence on a separate sheet if the answer is negative)		
9	是否是另一公司的全資附屬公司 (請另附上母公司資料)，如答案是否定的，請答第十條 Whether a wholly-owned subsidiary of another company (Please give the details of the parent company on a separate sheet if the answer is in the affirmative). If the answer is negative, reply question No. 10.		
10	所有持有多於 10%股份的股東/合夥人是否都是香港居民(如答案是否定的，請另附上股東/合夥人居住地資料) Whether all the shareholders/partners holding more than 10% of the company's shares/partnership interest are residents in Hong Kong (Please give details of the residence of the shareholders/partners if the answer is in the negative)		

III) 授權聲明
Authorization
爲施行避免雙重徵稅安排，我同意以上資料可向中國稅務機關透露。
I agree that the above information can be communicated to the tax authority of the Mainland of China for the purposes of effecting the Arrangement.

IV) 聲明書
Declaration
我謹此聲明以上事項均屬真確無誤及並無遺漏
I hereby declare that to the best of my knowledge and belief, the above statements are true, correct and complete.

日期
Date _____

_____
簽署人姓名，其爲申請人
的秘書//經理/董事/清盤人/首席合夥人
Name and Signature of officer, being
Secretary/Manager/Director /Liquidator/Precedent Partner of the Applicant

****

只供稅務局人員填寫
For official use only

收到申請表日期 Date of receipt of Application	
發出居民身分證明書日期 Date of Issue of Certificate	證件編號 Serial No.

Appendix 3

香港特別行政區

永久性稅務居民身分證明書

(個人)

適用於與中國內地訂立的

關於對所得避免雙重徵稅的安排

Hong Kong Special Administrative Region

Certificate of Permanent Resident Status

(Individual)

Under the Arrangement with the Mainland of China

For the Avoidance of Double Taxation on Income

證件編號：_____ Serial No. : _____

檔號編號：_____ File No. : _____

證明書

茲證明 _____

根據現存資料，爲香港特別行政區永久性稅務居民。

Certification

On the basis of the information available, I am satisfied that _____ is a permanent resident of the Hong Kong Special Administrative Region for the purposes of the Arrangement with the Mainland of China for the Avoidance of Double Taxation on Income.

_____

香港特別行政區

稅務局局長

(**代行)**

日期

_____

for Commissioner of Inland Revenue

Hong Kong Special Administrative Region

Date

Appendix 4

香港特別行政區

臨時稅務居民身分證明書

(個人)

適用於與中國內地訂立的

關於對所得避免雙重徵稅的安排

Hong Kong Special Administrative Region

Certificate of Temporary Resident Status

(Individual)

Under the Arrangement with the Mainland of China

For the Avoidance of Double Taxation on Income

證件編號：_____ Serial No. : _____

檔號編號：_____ File No. : _____

證明書

茲證明 _____

根據現存資料在_____課稅年度，爲香港特別行政區臨時稅務居民。

Certification

On the basis of the information available, I am satisfied that _____ is a temporary resident of the Hong Kong Special Administrative Region for the purposes of the Arrangement with the Mainland of China for the Avoidance of Double Taxation on Income for the Year of Assessment _____.

_____

香港特別行政區

稅務局局長

(代行**)**

日期

_____

for Commissioner of Inland Revenue
Hong Kong Special Administrative Region

Date

Appendix 5

香港特別行政區

居民身分證明書

(公司或其他團體)

適用於與中國內地訂立的

關於對所得避免雙徵稅的安排

Hong Kong Special Administrative Region

Certificate of Resident Status

(Company or Body of Persons)

Under the Arrangement with the Mainland of China

For the Avoidance of Double Taxation on Income

證件編號 : _____ Serial No. : _____

檔案編號 : _____ File No. : _____

證明書

茲證明 _____

根據現存資料，在_____課稅年度，爲香港特別行政區稅務居民。

Certification

On the basis of the information available, I am satisfied that _____ is a resident of the Hong Kong Special Administrative Region for the purposes of the Arrangement with the Mainland of China for the Avoidance of Double Taxation on Income for the Year of Assessment _____.

_____

香港特別行政區

稅務局局長

(**代行)**

日期

_____

for Commissioner of Inland Revenue

Hong Kong Special Administrative Region

Date