

Draft Order in Council laid before the House of Commons under the Income and Corporation Taxes Act 1988, s788(10), for an Address to Her Majesty from that House praying that the Order be made.

DRAFT STATUTORY INSTRUMENTS

2000 No.

INCOME TAX

**The Double Taxation Relief (Shipping
Transport) (Hong Kong) Order 2000**

Made - - - - 2000

At the Court at , the day of 2000

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 788(10) of the Income and Corporation Taxes Act 1988(1), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 788 of the said Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Shipping Transport) (Hong Kong) Order 2000.

2. It is hereby declared—

- (a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the Hong Kong Special Administrative Region of the People's Republic of China with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of the Hong Kong Special Administrative Region; and
- (b) that it is expedient that those arrangements should have effect.

Clerk of the Privy Council

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION ON REVENUES ARISING FROM THE BUSINESS OF SHIPPING TRANSPORT

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China;

Desiring to conclude an Agreement for the avoidance of double taxation on revenues arising from the business of shipping transport;

Have agreed as follows:

Article 1

Taxes Covered

- (1) This Agreement shall apply to taxes on income and on capital.
- (2) The existing taxes to which this Agreement shall apply are in particular:
 - (a) in the case of the United Kingdom:
 - (i) the income tax;
 - (ii) the corporation tax; and
 - (iii) the capital gains tax;
 - (b) in the case of the Hong Kong Special Administrative Region, profits tax.
- (3) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting Party after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 2

General definitions

- (1) For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term "area" in respect of the United Kingdom means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised and in respect of the Hong Kong Special Administrative Region includes Hong Kong Island, Kowloon and the New Territories;
 - (b) the term "competent authority" means:
 - (i) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;
 - (ii) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative or any person or body authorised

to perform any functions at present exercisable by the Commissioner, or similar functions;

- (c) the term “Contracting Party” means the United Kingdom of Great Britain and Northern Ireland or the Hong Kong Special Administrative Region, as the context requires;
- (d) the term “enterprise of a Contracting Party” means:
 - (i) in the case of the United Kingdom of Great Britain and Northern Ireland a business carried on by a person who, under the law of the United Kingdom of Great Britain and Northern Ireland, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature;
 - (ii) in the case of the Hong Kong Special Administrative Region a business carried on by a person as an operator of ships and which is managed and controlled in the Hong Kong Special Administrative Region.

For the purposes of this sub-paragraph, the Government of a Contracting Party shall be deemed to be an individual resident of that Contracting Party, and an enterprise of one Contracting Party shall not at the same time be an enterprise of the other Contracting Party;

- (e) the term “international traffic” means any transport by a ship operated by an enterprise of a Contracting Party, except when the ship is operated solely between places in the area of the other Contracting Party;
- (f) the term “person” includes an individual, a company and any other body of persons, but does not include a partnership.

(2) As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 3

Shipping transport

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

(2) For the purposes of this Article, profits from the operation of ships in international traffic include:

- (a) revenues and gross receipts from the operation of ships for the transport of persons, livestock, goods, mail or merchandise;
- (b)
 - (i) profits from the rental on a full (time or voyage) or bareboat basis of ships; and
 - (ii) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships in international traffic; and

- (c) interest on funds directly connected with that operation.

(3) The provisions of paragraph (1) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

(4) Gains derived by an enterprise of a Contracting Party from the alienation of ships operated in international traffic by that enterprise, or movable property pertaining to the operation of such ships, shall be taxable only in the area of that Party.

(5) Capital of an enterprise of a Contracting Party represented by ships operated by that enterprise in international traffic, or by movable property pertaining to the operation of such ships, shall be taxable only in the area of that Party.

Article 4

Mutual agreement procedure

The competent authorities of the Contracting Parties shall, through consultation, endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

Article 5

Entry into force

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which this Agreement enters into force;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which this Agreement enters into force;
- (b) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which this Agreement enters into force.

Article 6

Termination

This Agreement shall remain in force until terminated by one of the Contracting Parties. Either Contracting Party may terminate this Agreement by giving written notice of termination at least six months before the end of any calendar year. In such event, this Agreement shall cease to have effect:

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;
- (b) in the Hong Kong Special Administrative Region, for any year of assessment beginning on or after 1st April in the calendar year next following that in which notice is given.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Hong Kong this 25th day of October 2000 in the English language.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

Sir James Hodge

For the Government of the Hong Kong Special Administrative Region of the People's Republic of China:

Ms Sandra Lee

EXPLANATORY NOTE

(This note is not part of the Order)

Under the Agreement with the Government of the Hong Kong Special Administrative Region of the People's Republic of China scheduled to this Order, profits derived from the business of international shipping transport by an enterprise of the United Kingdom or of the Hong Kong Special Administrative Region shall be exempt from tax in the area of the other Contracting Party. This exemption also applies to profits derived from participation in a pool, joint business or international operating agency, to gains derived from the alienation of ships or moveable property, and to capital represented by such ships and moveable property.

The Agreement will enter into force when each Contracting Party has notified the other of the completion of the procedures required by its law to bring it into force. The Agreement will then take effect in the United Kingdom for any financial year beginning on or after 1st April in respect of corporation tax, and for any year of assessment beginning on or after 6th April for income tax and capital gains tax, in the calendar year following that in which it enters into force. The date of entry into force will in due course be published in the *London, Edinburgh and Belfast Gazettes*.