*Draft Order in Council laid before the House of Commons under section 5(2) of the Taxation (International and Other Provisions) Act 2010 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.*

DRAFT STATUTORY INSTRUMENTS

# 2010 No.

# CAPITAL GAINS TAX
# CORPORATION TAX
# INCOME TAX

## The Double Taxation Relief and International Tax Enforcement (Hong Kong) Order 2010

*Made - - - - [date] [Month] 2010*

At the Court at Buckingham Palace, the [date] day of [Month] 2010

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 5(2) of the Taxation (International and Other Provisions) Act 2010(**1**) and section 173(7) of the Finance Act 2006(**2**) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010 and section 173(1) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

### Citation

**1.** This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Hong Kong) Order 2010.

### Double taxation and international tax enforcement arrangements to have effect

**2.** It is declared that—

(**1**) 2010 c. 8.
(**2**) 2006 c. 25.

(a) the arrangements specified in the Agreement set out in Part 1 of the Schedule to this Order and the Protocol set out in Part 2 of that Schedule have been made with the Government of the Hong Kong Special Administrative Region of the People's Republic of China;

(b) the arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, capital gains tax and taxes of a similar character imposed by the laws of the Hong Kong Special Administrative Region and for the purposes of assisting international tax enforcement; and

(c) it is expedient that those arrangements should have effect.

*Name*
Clerk of the Privy Council

SCHEDULE Article 2

## PART 1

# 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 AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

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 and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

Have agreed as follows:

### ARTICLE 1

### Persons Covered

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

### ARTICLE 2

### Taxes Covered

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

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are:

(a) in the case of the Hong Kong Special Administrative Region:

(i) profits tax;

(ii) salaries tax; and

(iii) property tax;

whether or not charged under personal assessment;

(b) in the case of the United Kingdom:



(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax.

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of this Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "United Kingdom tax", as the context requires.

ARTICLE 3

**General Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) (i) the term "Hong Kong Special Administrative Region" means any territory where the tax laws of the Hong Kong Special Administrative Region apply;

(ii) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the sea bed and subsoil and their natural resources may be exercised;

(b) the term "business" includes the performance of professional services and of other activities of an independent character;

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

(d) the term "competent authority" means:

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

(ii) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;

(e) the term "Contracting Party" or "Party" means the Hong Kong Special Administrative Region or the United Kingdom, as the context requires;

(f) the term "enterprise" applies to the carrying on of any business;

(g) the terms "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;



(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting Party except when the ship or aircraft is operated solely

between places in the other Contracting Party;

(i) the term "national" in relation to the United Kingdom means any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom;

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

(k) the term "tax" means the Hong Kong Special Administrative Region tax or United Kingdom tax, as the context requires.

2. In this Agreement, the terms "Hong Kong Special Administrative Region tax" and "United Kingdom tax" do not include any penalty or interest (including, in the case of the Hong Kong Special Administrative Region, any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith and "additional tax" under section 82A of the Inland Revenue Ordinance) imposed under the laws of either Contracting Party relating to the taxes to which this Agreement applies by virtue of Article 2.

3. 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 law 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 4

**Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means:

(a) in the case of the Hong Kong Special Administrative Region:

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

(ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;

(iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being centrally managed and controlled in the Hong Kong Special Administrative Region;

(iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being centrally managed and controlled in the Hong Kong Special Administrative Region;

(b) in the case of the United Kingdom, any person who, under the laws of the United Kingdom, is liable to tax therein by reason of his domicile, residence, place of