

2015 年第 189 號法律公告

**《安排指明 (中國內地) (對所得避免雙重徵稅和防止
偷漏稅) (第四議定書) 令》**

(由行政長官會同行政會議根據《稅務條例》(第 112 章) 第 49(1A) 條
作出)

1. 生效日期

本命令自 2015 年 12 月 4 日起實施。

2. 根據第 49(1A) 條作出的宣布

為施行本條例第 49(1A) 條，現宣布——

- (a) 已訂立第 3(1) 條所指明的安排；而
- (b) 該等安排的生效是屬於有利的。

3. 指明的安排

- (1) 為第 2(a) 條的目的而指明的安排，是載於在 2015 年 4 月 1 日在香港以中文一式兩份簽訂的、名為“《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》第四議定書”的文書 (在本命令中，該文書的英文譯名為 “The Fourth Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of

Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”) 的第一至六條的安排。

- (2) 第 (1) 款提述的文書條文的中文文本載錄於附表，其英文譯本亦於附表列明。
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附表

[第3條]

《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》第四議定書第一至六條

第一條

取消《安排》第八條第一款，用下列規定代替：

“一、一方企業在另一方以船舶、飛機或陸運車輛經營海運、空運和陸運運輸所取得的收入和利潤，該另一方應予免稅(在內地包括增值稅及其它類似稅種)。”

第二條

關於《安排》第十二條第二款，對飛機和船舶租賃業務支付的特許權使用費，所徵稅款不應超過特許權使用費總額的5%。

第三條

取消《安排》第十三條第六款，用下列規定代替：

“六、雖有第四款和第五款的規定，一方居民轉讓在被認可的證券交易所上市的另一方居民公司股票取得的收益，應僅在轉讓者為其居民的一方徵稅。該項轉讓僅限於在同一證券交易所買入並賣出的情況。

符合下列條件的投資基金應視為一方居民投資基金，適用本款規定：

- (一) 依其所在一方相關法律設立，獲得一方行業監管機構認可，並接受其監管；
- (二) 投資基金的管理人應為在該一方註冊成立的公司或組成的其它人，並按照該一方行業監管機構的規定對投資基金實施管理；和
- (三) 百分之八十五以上的資金通過該一方市場募集。投資基金使用以下方式募集資金應視為通過該一方市場募集：
 - 1. 在該一方的證券交易所掛牌交易；
 - 2. 在該一方通過具有經營實質的金融機構銷售或配售；
 - 3. 在該一方直接向投資者銷售或配售；
 - 4. 使用雙方主管當局同意的其它方式。

七、轉讓第一款至第五款所述財產以外的其它財產取得的收益，應僅在轉讓者為其居民的一方徵稅。”

第四條

關於《安排》第十條、第十一條、第十二條和第十三條，如果涉及的所得權益的產生或配置，是由任何人以取得上述相關條款利益為主要目的而安排的，則相關條款規定不適用。

第五條

關於《安排》第二十四條，雙方同意，交換的信息除涉及《安排》適用的稅種外，還包括內地執行及實施的下列其它稅種：

- (一) 增值稅；
- (二) 消費稅；
- (三) 營業稅；
- (四) 土地增值稅；
- (五) 房產稅。

第六條

本議定書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。

(英文譯本)

Article 1

To repeal paragraph 1 of Article 8 of the Arrangement and substitute:

“1. Income and profits derived by an enterprise of One Side from the operation of ships, aircraft or land transport vehicles in shipping, air and land transport in the Other Side shall be exempt from tax (including value added tax and other similar taxes in the Mainland of China) in that Other Side.”

Article 2

In relation to paragraph 2 of Article 12 of the Arrangement, for royalties paid to an aircraft and ship leasing business, the tax charged shall not exceed 5% of the gross amount of the royalties.

Article 3

To repeal paragraph 6 of Article 13 of the Arrangement and substitute:

“6. Notwithstanding the provisions of paragraphs 4 and 5, gains derived by a resident of One Side from the alienation of shares of a company that is a resident of the Other Side quoted on a recognized stock exchange shall be taxable only in the Side of which the alienator is a resident. The alienation is limited to cases where the shares are bought and sold in the same stock exchange.

An investment fund that meets the following conditions shall be regarded as an investment fund that is a resident of One Side, and this paragraph shall apply to such an investment fund:

- (1) the investment fund is one established under the relevant laws of the Side in which the investment fund is situated, and is recognized by an industry regulatory body of that Side and subject to the supervision of the body;
- (2) the manager of the investment fund shall either be a company registered and incorporated in that Side or other persons constituted in that Side, and shall manage the investment fund in accordance with the requirements of the industry regulatory body of that Side; and

- (3) more than 85% of the funds are raised through the market of that Side. Investment funds that raise funds in the following manners shall be regarded as raising funds through the market of that Side:
 - (i) being listed for trading on the stock exchange of that Side;
 - (ii) by sale or placement in that Side through a financial institution that carries on a substantive business;
 - (iii) by sale or placement in that Side directly to investors;
 - (iv) any other manner as agreed by the competent authorities of both Sides.

7. Gains derived from the alienation of any property, other than that referred to in paragraphs 1 to 5, shall be taxable only in the Side of which the alienator is a resident.”

Article 4

In relation to Articles 10, 11, 12 and 13 of the Arrangement, if the creation or disposition of the interests acquired is caused by any person with the main purpose of taking advantages of any of such Articles, the Article shall not apply.

Article 5

In relation to Article 24 of the Arrangement, both Sides agree that in addition to taxes to which the Arrangement applies, the

information to be exchanged shall cover the following other taxes enforced and imposed in the Mainland of China:

- (1) value added tax;
- (2) consumption tax;
- (3) business tax;
- (4) land appreciation tax;
- (5) real estate tax.

Article 6

This Protocol shall, upon written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications.

行政會議秘書
黃潔怡

行政會議廳

2015 年 9 月 22 日

註釋

中國內地和香港特別行政區(雙方)於 2006 年 8 月 21 日訂立關於對所得避免雙重徵稅和防止偷漏稅的安排(《安排》)以及《安排》的議定書。雙方分別於 2008 年 1 月 30 日及 2010 年 5 月 27 日在北京訂立《安排》的《第二議定書》及《第三議定書》。於 2015 年 4 月 1 日,雙方在香港再訂立《安排》的另一議定書(《第四議定書》)。

2. 本命令指明《第四議定書》第一至六條中的安排(該等安排),為《稅務條例》(第 112 章)第 49(1A)條所指的雙重課稅寬免安排,並宣布該等安排的生效是屬於有利的。《第四議定書》是以中文簽訂的。列於附表的英文文本為譯本。
3. 上述宣布的效力是——
 - (a) 即使任何成文法則另有規定,該等安排仍就根據《稅務條例》(第 112 章)徵收的稅項而有效;及
 - (b) 就該等安排中規定披露關乎中國內地的稅項資料的條文而言,該等安排就該條文所關乎的內地的稅項有效。