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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1374/21 – 2005 ජනවාරි 06 වැනි බ්‍රහස්පතින්දා – 2005.01.06

No. 1374/21 – THURSDAY, JANUARY 06, 2005

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PART I : SECTION (I) — GENERAL

Government Notification

THE INLAND REVENUE ACT, No. 38 OF 2000

Notice

IT is hereby notified under Section 92(1)(b) of the Inland Revenue Act, No. 38 of 2000, that the Agreement for affording relief from double taxation with respect to Income derived from shipping and air transport entered into on 26th March 2004 between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Hong Kong Special Administrative Region of the People's Republic of China and set out in the Schedule hereto, has been approved by Parliament by resolution passed on 5th August 2004.

P. B. JAYASUNDARA,
Secretary,
Ministry of Finance

Ministry of Finance,
Colombo 01.
23.12.2004

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME DERIVED FROM SHIPPING AND AIR TRANSPORT

The Government of the Democratic Socialist Republic of Sri Lanka 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 with respect to taxes on income derived from shipping and air transport,

Have agreed as follows:

ARTICLE I

Taxes Covered

- (1) The existing taxes to which this Agreement shall apply are:
 - (a) in the case of the Hong Kong Special Administrative Region, profits tax and salaries tax (hereinafter referred to as "Hong Kong Special Administrative Region Tax");
 - (b) in the case of the Democratic Socialist Republic of Sri Lanka, the income tax (hereinafter referred to as "Sri Lanka Tax").

- (2) 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. The competent authorities of the Contracting Parties shall notify each other of any substantial changes which have been made in their taxation laws and which may affect the application of this Agreement.

ARTICLE 2

General Definitions

- (1) For the purposes of this Agreement, unless the context otherwise requires:
- (a) the terms “a Contracting Party” and “the other Contracting Party” mean the Hong Kong Special Administrative Region of the People’s Republic of China or the Democratic Socialist Republic of Sri Lanka, as the context requires ;
 - (b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (c) the term “competent authority” means:
 - (i) in the case of Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative or any person or body authorized to perform any functions at present exercisable by the Commissioner or similar functions;
 - (ii) in the case of Sri Lanka, the Commissioner General of Inland Revenue;
 - (d) the term “enterprise of a Contracting Party” means:
 - (i) in the case of the Hong Kong Special Administrative Region, a business carried on by a person as an operator of ships or aircraft, and
 - (A) where the person is an operator of aircraft, that person is a company incorporated and has its principal place of business in the Hong Kong Special Administrative Region; or
 - (B) where the person in an operator of ships, the business is controlled or managed in the Hong Kong Special Administrative Region or the person is a company incorporated in the Hong Kong Special Administrative Region;
 - (ii) in the case of Sri Lanka,
 - (A) Sri Lanka Airlines or other designated airline(s) of Sri Lanka, operating air services in accordance with the Agreement between the Government of Hong Kong and the Government of the Democratic Socialist Republic of Sri Lanka concerning Air Services signed on 24th February 1993; or
 - (B) a business for the operation of ships carried on by a company or body of persons, where the company or body of persons has its registered or principal office in Sri Lanka, or where the control and management of the business are exercised in Sri Lanka;
 - (e) the term “international traffic” means any transport by ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the area of the other Contracting Party;
 - (f) the term “operator” includes an owner or a character;
 - (g) the term “person” includes an individual, a company, a trust, or any body of persons, whether incorporated or unincorporated, and in the case of the Hong Kong Special Administrative Region, also a partnership;
 - (h) the term “profits” includes revenues, gross receipts or income from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise including:

- (i) profits from the lease of ships or aircraft provided that such lease is incidental to the operation of ships or aircraft in international traffic;
 - (ii) profits from the sale of tickets or similar documents and the provisions of services connected with such transport either for the enterprise itself or on behalf of any other enterprise provided that the provision of services is incidental to the operation of ships or aircraft in international traffic;
 - (iii) interest on funds directly connected with the operation of ships or aircraft in international traffic;
- (i) the term “tax” means Hong Kong Special Administrative Region tax or Sri Lanka tax, as the context requires.
- (2) As regards the application of this Agreement at any time by a Contracting Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the law in force in the area of that Contracting Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 3

Avoidance of Double Taxation

- (1) Profits of an enterprise of a Contracting Party derived from the operation of aircraft in international traffic shall be taxable only in the area of that Contracting Party.
- (2) Profits of an enterprise of a Contracting Party derived in the area of the other Contracting Party from the operation of ships in international traffic may be taxed in the area of the other Contracting party but the tax so charged shall be reduced by an amount equal to fifty per centum thereof.
- (3) The provisions of paragraphs (1) and (2) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
- (4) Remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in the area of that Contracting Party.
- (5) Subject to the provisions of the law of the Hong Kong Special Administrative Region regarding the allowance as a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle hereof), tax paid under the law of Sri Lanka and in accordance with this Agreement, whether directly or by deduction, on profits of an enterprise of the Hong Kong Special Administrative Region derived in Sri Lanka from the operation of ships in international traffic shall be allowed as a credit against any Hong Kong Special Administrative Region tax payable in respect of the same profits, provided that the amount of credit shall not exceed the amount of Hong Kong Special Administrative Region tax attributable to such profits.
- (6) Subject to the provisions of the law of Sri Lanka regarding the allowance as a credit against Sri Lanka tax of tax paid in a jurisdiction outside Sri Lanka (which shall not affect the general principle hereof), tax paid under the law of the Hong Kong Special Administrative Region and in accordance with this Agreement, whether directly or by deduction, on profits of an enterprise of Sri Lanka derived in the Hong Kong Special Administrative Region from the operation of ships in international traffic shall be allowed as a credit against any Sri Lanka tax payable in respect of the same profits, provided that the amount of credit shall not exceed the amount of Sri Lanka tax attributable to such profits.

ARTICLE 4

Mutual Agreement Procedure

The competent authorities of the Contracting Parties shall endeavour to resolve by consultation any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the avoidance of double taxation in cases not provided for in this Agreement.

ARTICLE 5

Entry into Force

Each Contracting Party shall notify the other Contracting Party of 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 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 indefinitely but either Contracting Party may terminate this Agreement by giving written notice of termination to the other Contracting Party at least six months before the end of any calendar year after the fifth year following that in which it enters into force. In such event, this Agreement shall cease to have effect for any year assessment beginning on or after 1st April in the calendar year next following that in which notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Colombo this 26th day of March 2004 in the English and Sinhala languages, both texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

K. SUSEELAR

For the Government of the
Democratic Socialist Republic
of Sri Lanka.

I. P. STEPHEN

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