

## THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2019

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### MODULE 2.04 – HONG KONG OPTION

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#### ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

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TIME ALLOWED – 3¼ HOURS

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This paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total.

You must answer:

- **Both** questions in **Part A** (25 marks each)
- **The** question in **Part B** (20 marks)
- **Two** questions from **Part C** (15 marks each)

#### Further instructions

- All workings should be made to the nearest month and in Hong Kong Dollars, unless otherwise stated.
- Start each answer on a new page and clearly indicate which question you are answering. If you are using the on-screen method to complete your exam, you must provide appropriate line breaks between each question, and clearly indicate the start of each new question using the formatting tools available.
- Marks may be allocated for clarity of presentation of your answers.
- The time you spend answering questions should correspond broadly to the number of marks available for that question. You should therefore aim to spend approximately half of your time answering Part A, and the other half answering questions in Parts B and C.
- The first 15 minutes of the exam is reading time. You will be allowed to annotate the question paper during this time; however, you will **not** be permitted to start writing or typing your answer. The Presiding Officer will inform you when you can start answering the questions.

For your information this paper includes:

- **Appendix: Agreement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation (Extracts)**

**Tax Rates and Allowances**

Year of Assessment	<u>2018/19</u>
<u>Tax Rates</u>	
Standard rate	15%
Corporate profits tax rate (First \$2 million in profits)*	8.25%
(Profits exceeding \$2 million)*	16.5%
*subject to satisfying necessary conditions. Otherwise, 16.5% applies	
Progressive rates	
First \$50,000	2%
Next \$50,000	6%
Next \$50,000	10%
Next \$50,000	14%
Remainder	17%
<u>Tax Reduction (where applicable)</u>	
Percentage of reduction	75%
Maximum per case	\$20,000
<u>Personal Allowances</u>	
	\$
Basic	132,000
Married person's	264,000
Child – 1 <sup>st</sup> to 9 <sup>th</sup> (each)	120,000
Additional (for year of birth, each)	120,000
Dependent parent / grandparent (each)	
Basic	50,000
(aged 55 or above but below 60: \$23,000)	
Additional	50,000
(aged 55 or above but below 60: \$23,000)	
Dependent brother / sister (each)	37,500
Single parent	132,000
Personal disability allowance	75,000
Disabled dependant (each)	75,000
<u>Deductions (maximum limits)</u>	
Self-education expenses	100,000
Elderly residential care expenses	100,000
Home loan interest	100,000
Contributions to recognised retirement schemes	18,000

### Depreciation Allowance

#### Plant and machinery

Initial – 60%

Annual – Air-conditioning plant: 10%

Furniture and fixtures, office equipment, room air-conditioning unit,  
domestic appliance, packaging machine: 20%

Motor vehicle, electronic data processing equipment (computer),  
manufacturing machine, production mould: 30%

#### Industrial building

Initial – 20%

Annual – 4% or formula

#### Commercial building

Annual – 4% or formula

### Stamp Duty rates

Sale or transfer of immovable property

#### Ad valorem Stamp Duty (AVD)

##### Scale 1

Part 1 of Scale 1: A flat rate of 15%*	
Part 2 of Scale 1 as below:	
<u>Consideration (round up to nearest \$1)</u>	<u>Rates of Scale 1 (Part 2)</u>
Up to \$2,000,000	1.5%
\$2,000,001 - \$2,176,470	\$30,000 + 20% of excess over \$2,000,000
\$2,176,571 - \$3,000,000	3%
\$3,000,001 - 3,290,330	\$90,000 + 20% of excess over \$3,000,000
\$3,290,331 - \$4,000,000	4.5%
\$4,000,001 - \$4,428,580	\$180,000 + 20% of excess over \$4,000,000
\$4,428,581 - \$6,000,000	6%
\$6,000,001 - \$6,720,000	\$360,000 + 20% of excess over \$6,000,000
\$6,720,001 - \$20,000,000	7.5%
\$20,000,001 - \$21,739,130	\$1,500,000 + 20% of excess over \$20,000,000
Over \$21,739,130	8.5%

AVD  
Scale 2

<u>Consideration (round up to nearest \$1)</u>	<u>Rates of Scale 2</u>
Up to \$2,000,000	\$100
\$2,000,001 - \$2,351,760	\$100+ 10% of excess over \$2,000,000
\$2,351,761 - \$3,000,000	1.50%
\$3,000,001 - 3,290,320	\$45,000 + 10% of excess over \$3,000,000
\$3,290,321 - \$4,000,000	2.25%
\$4,000,001 - \$4,428,570	\$90,000 + 10% of excess over \$4,000,000
\$4,428,571 - \$6,000,000	3%
\$6,000,001 - \$6,720,000	\$180,000 + 10% of excess over \$6,000,000
\$6,720,000 - \$20,000,000	3.75%
\$20,000,001 - \$21,739,120	\$750,000 + 10% of excess over \$20,000,000
Over \$21,739,120	4.25%

\*Effective 5 November 2016, all residential property: 15%, unless exemption or relief applies.

Special Stamp Duty (SSD)

<b><i>Property which has been held for</i></b>	<b><i>Acquired on or after 27 October 2012</i></b>
6 months or less	20%
> 6 months but 12 months or less	15%
> 12 months but 36 months or less	10%

Buyer's Stamp Duty (BSD): 15%

Lease

<u>Term of lease</u>	<u>Rate</u>
Not defined or uncertain	0.25% of yearly or average yearly rent
Not exceeding 1 year	0.25% on total rent payable over lease term
Between 1 to 3 years	0.5% on yearly or average yearly rent
Exceeding 3 years	1% on yearly or average yearly rent
Key money, construction fee etc. mentioned in the lease	4.25% of the consideration if rent is also payable under the lease. Otherwise, same duty as for a sale of immovable property

Transfer of Hong Kong Stock

<u>Nature of Document</u>	<u>Rate</u>
Contract Note for sale or purchase of any Hong Kong stock	0.1% of the amount of the consideration or of its value on every sold note and every bought note
Transfer operating as a voluntary disposition inter vivos	\$5 + 0.2% of the value of the stock to be transferred
Transfer of any other kind	\$5

## PART A

**You are required to answer BOTH questions from this Part.**

1. Muffin HK Ltd (MHKL) was incorporated in Hong Kong and carries on a business of distributing dairy products in both Hong Kong and mainland China. For the mainland China market, MHKL has purchased a small office in Shenzhen where goods are displayed for promotion purpose.

MHKL and Ready China Ltd (RCL), a related company of MHKL in mainland China, have entered into a service agreement under which RCL is responsible for rendering sales services to MHKL, attracting business and negotiating with customers in mainland China for MHKL.

RCL frequently accepts orders for and on behalf of MHKL in mainland China, emailing the accepted orders to ML for further processing. MHKL purchases products from suppliers located in Japan and South Korea. Purchase orders are sent from MHKL's Hong Kong office via email. Goods are delivered directly from Japan or South Korea, while trade financing and marketing works are handled by MHKL in Hong Kong.

MHKL has made arrangements to send three marketing managers to provide training to RCL's staff at various hotels in Shenzhen and Guangzhou for a fee of RMB2 million. The following table shows the servicing period of the three managers.

Manager A	1 July 2018 – 30 September 2018
Manager B	1 December 2018 – 28 February 2019
Manager C	15 August 2019 to 31 December 2019

**You are required to:**

- 1) **Comment on the Hong Kong Profits Tax position of MHKL in relation to its sales to customers in mainland China.** (13)
- 2) **Comment on the China Enterprise Income Tax position of MHKL in relation to its sales to customers in mainland China, in the context of the China and Hong Kong Avoidance of Double Taxation Arrangement.** (6)
- 3) **Comment on the China Enterprise Income Tax position of MHKL in respect of its training services provided to RCL, in the context of the double taxation agreement between mainland China and Hong Kong.** (6)

Total (25)

2. Banana HK Ltd (BHKL) is incorporated in Hong Kong, where it has principally carried on a business distributing and trading a wide range of products. BHKL's holding company, Avocado UK Ltd (AUKL), is a United Kingdom-based company. BHKL's draft income statement for the year ended 31 March 2019 shows the following information:

<u>Income</u>	\$
Net royalty income	2,000,000
Other income	2,120,000
Gain on disposal of a know-how	300,000
<u>Expenditure</u>	
Financial expenses	400,000

#### Net royalty income

BHKL paid a sum of \$3 million to AUKL, for the right to use a trademark in mainland China and Hong Kong. BHKL used the trademark in running its Hong Kong trading business and sub-licensed the right to use the trademark in mainland China to an unrelated company, Carrot China Ltd (CCL). For the right to use the trademark, CCL paid BHKL a fee, which is calculated at 1% of CCL's sales of goods bearing the trademark in the mainland China market. In this regard, BHKL received \$5 million from CCL for the year ended 31 March 2019. Chinese income tax of 7% and VAT of 6% were charged on the \$5 million sum, and were paid by BHKL via CCL; however the tax payments have not yet been reflected in the accounts. BHKL negotiated and concluded the relevant licence contracts with AUKL and CCL in Hong Kong.

#### Other income

<u>Income</u>	\$
Interest derived from a bank deposit in Hong Kong, secured for a loan borrowed by AUKL	80,000
Interest from debentures listed in New York (which BHKL purchased from a bank in Hong Kong)	10,000
Property disposal gain*	2,000,000
Gain on redemption of qualifying debt instrument (7 year)	<u>30,000</u>
Total per accounts	<u>\$2,120,000</u>

\* BHKL sold a property located in Australia to a Hong Kong company and derived a gain of \$2 million. The property had been held for two years. The sale contract was signed in Hong Kong.

#### Gain on disposal of intellectual property

During 2015, BHKL bought the proprietary interest of an intellectual property (IP) right relating to a production process at a price of \$2 million from AUKL. The IP was used by a subcontractor in the production of goods for BHKL. During 2018/19, BHKL sold the IP at a price of \$2,300,000, making a gain of \$300,000. As a separate matter, BHKL incurred costs of \$500,000 in conducting a feasibility study prior to the launch of a new range of products under new brand names. According to the study, the new products will have a product life of around ten years. The cost of \$500,000 has not been reflected in the above income statement.

Continuation

## 2. Continued

Financial expenses

<u>Expenditure</u>	<u>\$</u>
Bank charges on ordinary trading transactions	20,000
Unrealised revaluation loss on trading securities (listed on the Hong Kong Stock Exchange)	40,000
Interest on a loan borrowed from AUKL (Loan 1)	100,000
Interest on a bank loan (Loan 2) secured by AUKL's bank deposit and property in the UK	<u>240,000</u>
Total per accounts	<u>\$400,000</u>

Loan 1 was applied for purchase of a machine. AUKL raised the loan funding from the issue of debt instruments, which were marketed on the London Stock Exchange, and AUKL paid interest expenses of \$120,000 to the instrument holders during the year.

Loan 2, totalling \$2 million, was borrowed on 1 April 2018 and was used to purchase trading stock in BHKL. The loan was secured with two assets: a \$2 million deposit made with a bank in the UK; and a property located in the UK with a market value of \$2 million. AUKL received interest income of \$200,000 from the deposit and rental income of \$80,000 from the property for the year ended 31 March 2019.

**You are required to explain the Hong Kong Profits Tax treatment of the following items:**

- 1) **The net royalty income of \$2 million;** (10)
  - 2) **The \$80,000 in interest from the bank deposit in Hong Kong and \$2 million property disposal gain;** (4)
  - 3) **The \$300,000 gain and \$2,300,000 proceeds from disposal of the IP, and \$500,000 feasibility study costs; and** (4)
  - 4) **The interest expenses incurred in servicing Loan 1 and Loan 2.** (7)
- Total (25)

**PART B**

**You are required to answer THIS question.**

3. Edelweiss HK Ltd (EHKL) is a Hong Kong-based company, which carries on a business licensing the usage rights of software programs. EHKL engaged its wholly owned subsidiary, Rose Overseas Ltd (ROL), to develop software programs outside Hong Kong in exchange for a service fee.

ROL is based in Country A, where the income tax rate is one tenth that of Hong Kong. As the effective income tax rate for ROL is significantly lower than that of EHKL, ROL had been charging EHKL at a level which almost double the normal market price. The management of EHKL have learned that the Hong Kong authorities have introduced new rules combating unreasonable related party transactions, and seek your advice in this regard.

**You are required to discuss:**

- 1) **The applicability of the new rules to the transactions made between EHKL and ROL.** (10)
- 2) **The authority upon which the Hong Kong Inland Revenue Department can rely, if any, in addressing the transactions between EHKL and ROL before the new rules become effective.** (10)

Total (20)



**PART C**

**You are required to answer TWO questions from this Part.**

4.

- 1) On 17 February 2019, Mr Chan entered into a provisional agreement for sale and purchase to acquire an office at a price of \$2 million from Chan Ltd (CL), which is wholly owned by Mr Chan. CL acquired the office on 17 February 2017. Mr Chan owned a residential property in Hong Kong at the time of acquiring the office. The agreement for sale and purchase and the assignment were signed on 28 March 2019 and 28 October 2019 respectively.

**Explain whether, and to what extent, the transaction is subject to Stamp Duty under the Hong Kong Stamp Duty Ordinance, showing your calculations where applicable.** (4)

- 2) Ms Wong entered into an agreement for sale and purchase on 1 January 2019 to acquire a residential property and two car parking spaces at a price of \$15 million from Mr Cheung. The deed of assignment was executed on 1 February 2019. The respective values of the residential property and combined parking spaces are \$13 million and \$2 million. The residential property and parking spaces may be sold separately. Ms Wong holds a Hong Kong permanent identity card and lives in Hong Kong for approximately 150 days per year. Ms Wong was acting on her own behalf in acquiring the properties and did not own any other residential property in Hong Kong on the date of acquisition. Mr Cheung acquired the residential property and the two parking spaces by entering into an agreement for sale and purchase on 1 January 2016 and a deed of assignment on 1 February 2016.

**Explain whether, and to what extent, the transfer of the property and parking spaces from Mr Cheung to Ms Wong is subject to Stamp Duty under the Hong Kong Stamp Duty Ordinance, showing your calculations where applicable.** (6)

- 3) M Ltd held 100% of the issued share capital of N Ltd, and N Ltd in turn held 80% of the share capital of K Ltd. The remaining 20% of the share capital of K Ltd was owned by L Ltd. M Ltd also held 95% of the issued share capital of P Ltd, which in turn held 95% of the issued share capital of L Ltd.

On 14 December 2016, K Ltd assigned its factory premises in Hong Kong to L Ltd for a consideration of \$12 million. The market value of the factory premises on the date of sale was \$15 million.

On 1 December 2018, M Ltd sold 15% of the share capital of N Ltd to an unrelated third party, Q Ltd.

**Explain whether, and to what extent, the transfer of the factory is subject to Stamp Duty under the Hong Kong Stamp Duty Ordinance, showing your calculations where applicable.** (5)

Total (15)

5. Matthew's Groceries Ltd (MGL) carries on a distribution business in Hong Kong. Watson Shop Ltd (WSL) was one of MGL's customers. MGL purchased goods from suppliers in mainland China, Japan and South Korea. WSL ran into financial difficulties and accumulated loss of over \$20 million.

Concerned that WSL might be liquidated and that the company might be unable to collect outstanding trade debts of \$5 million, and attributing WSL's losses to poor management, MGL's leadership team is considering acquiring a 50% shareholding in WSL and then transferring MGL's marketing staff to WSL. After the acquisition, MGL plans to lower its selling prices to WSL by 30% in order to eliminate the losses as quickly as possible.

In addition to the potential acquisition of WSL, MGL is considering the consolidation of all of its sourcing work in an overseas company, which will be set-up in Country A. The effective income tax rate in Country A is 5%. Currently MGL buys products directly from overseas suppliers. Following the consolidation, the suppliers will sell products to the overseas sourcing company which will then sell the products on to MGL at a 30% mark-up on cost.

**You are required to analyse the tax implications to MGL of the proposed acquisition of WSL and establishment of the new overseas sourcing company. (15)**

6. Ms Murdock is the Human Resource Director of Talent HK Ltd (THKL). Salaries for all THKL employees are currently paid in cash. Ms Murdock is considering possible approaches to adapting the salary structure in order to reduce the salaries tax liability for THKL and its staff.

Under the proposed restructuring, the following fringe benefits would be provided to THKL's employees:

- A domestic helper;
- A low interest loan; and
- An education allowance.

**You are required to advise Ms Murdock on how to provide each of these fringe benefits to THKL's employees in a tax efficient manner. (15)**

7. Bravo Consultancy HK Ltd (BCHKL) is incorporated in Hong Kong and provides marketing consultancy services in mainland China and Hong Kong. For the year ended 31 March 2019, BCHKL has reported consultancy fee income of \$3 million as taxable in mainland China to the Chinese tax authority; this income has been agreed by the Hong Kong Inland Revenue Department as derived outside Hong Kong and non-taxable in its annual tax filing for the applicable year.

However, the Chinese tax authority recently initiated a tax audit and opined that the consultancy fee income subject to Chinese income tax should be adjusted upward to \$4 million, after transfer pricing adjustment. After negotiation, BCHKL has accepted the adjustment made by the Chinese tax authority.

**You are required to advise BCHKL's management team of the Hong Kong tax implications of the adjustment made by the Chinese tax authority, and any appropriate action which BCHKL can take in Hong Kong. (15)**

## Appendix

### Agreement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation (Extracts)

#### Article 5

##### Permanent Establishment

1. In this Arrangement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

- (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.

3. The term “permanent establishment” also encompasses:

(1) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than 6 months;

(2) the furnishing of services, including consultancy services, by an enterprise of One Side in the Other Side, directly or through employees or other personnel engaged by the enterprise, but only if such activities continue (for the same or a connected project) for a period or periods aggregating more than 183 days within any 12-month period.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

(1) facilities used solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(2) a stock of goods or merchandise belonging to the enterprise kept solely for the purpose of storage, display or delivery;

(3) a stock of goods or merchandise belonging to the enterprise kept solely for the purpose of processing by another enterprise;

(4) a fixed place of business established solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(5) a fixed place of business established solely for the purpose of carrying on any other activity of a preparatory or auxiliary character for the enterprise;

(6) a fixed place of business established solely for any combination of the activities mentioned in subparagraphs (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.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person, other than an agent of an independent status to whom paragraph 6 applies, is acting in One Side on behalf of an enterprise of the Other Side, and the person has, and habitually exercises, an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that One Side in respect of any activities which that person undertakes for that enterprise, unless the activities of such person exercised through a fixed place of business are limited to those provided for in

paragraph 4 and under the provision of that paragraph such fixed place of business shall not be deemed to be a permanent establishment.

6. An enterprise of One Side shall not be deemed to have a permanent establishment in the Other Side only because it carries on business in that Other Side through a broker, general commission agent or any other agent of an independent status who are acting in the ordinary course of their business. However, when the activities of such an agent are wholly or almost wholly performed on behalf of that enterprise, he shall not be deemed to be an agent of an independent status within the meaning of this paragraph.

7. 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 in that Other Side (whether through a permanent establishment or otherwise), shall not of itself constitute any company of any One Side a permanent establishment of a company of the Other Side.

## **Article 7**

### **Taxation of Business Profits**

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

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of One Side carries on business in the Other Side through a permanent establishment situated therein, there shall in each Side be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the Side in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts (other than reimbursement of actual expenses) paid by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, remuneration, fees or any other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, for amounts (other than reimbursement of actual expenses) charged by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, remuneration, fees or any other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in One Side to determine the profits to be attributed to a permanent establishment by apportioning the total profits of the enterprise to its various units or by any other methods provided for in the laws, nothing in paragraph 2 shall preclude that Side from determining the profits to be taxed by such method. However, the result of adopting such method shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason only of the purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason for a deviation.

7. Where profits include items of income which are dealt with separately in other Articles of this Arrangement, then the provisions of those Articles shall not be affected by the provisions of this Article.

#### **Article 10 Dividends**

1. Dividends paid by a company which is a resident of One Side to a resident of the Other Side, may be taxed in that Other Side.

2. However, such dividends may also be taxed in the Side of which the company paying the dividends is a resident, and according to the laws of that Side, but if the beneficial owner of the dividends is a resident of the Other Side, the tax so charged shall not exceed:

(1) where the beneficial owner is a company directly owning at least 25% of the capital of the company which pays the dividends, 5% of the gross amount of the dividends;

(2) in any other case, 10% of the gross amount of the dividends.

The competent authorities of both Sides shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

#### **Article 12 Royalties**

1. Royalties arising in One Side and paid to a resident of the Other Side may be taxed in that Other Side.

2. However, such royalties may also be taxed in the Side in which they arise and according to the laws of that Side, but if the beneficial owner of the royalties is a resident of the Other Side the tax so charged shall not exceed 7% of the gross amount of the royalties. The competent authorities of both Sides shall by mutual agreement settle the mode of application of this limitation.

#### **Article 13 Capital Gains**

1. Gains derived by a resident of One Side from the alienation of immovable property referred to in Article 6 and situated in the Other Side may be taxed in that Other Side.

2. Gains derived from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of One Side has in the Other Side, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that Other Side.

3. Gains derived by an enterprise of One Side from the alienation of ships or aircraft or land transport vehicles operated in shipping, air and land transport or movable property pertaining to the operation of such ships, aircraft or land transport vehicles, shall be taxable only in that Side.

4. Gains derived from the alienation of shares in a company the assets of which are comprised, directly or indirectly, mainly of immovable property situated in One Side may be taxed in that

Side. (which refers to a company the assets of which comprise not less than 50% immovable property situated in One Side, shall be implemented in accordance with the following provision: Not less than 50% of the assets of the company must consist of immovable property at any time within the 3 years before the alienation of the shares of the company by the holder of the shares.)

5. Gains derived by a resident of One Side from the alienation of shares, other than the shares referred to in paragraph 4, or other rights in the capital of a company which is a resident of the Other Side may be taxed in that Other Side if, at any time within the 12 months before the alienation, the recipient of the gains had a participation, directly or indirectly, of not less than 25% of the capital of the company.”.

6. 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 14**

##### **Income from Employment**

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of One Side in respect of an employment shall be taxable only in that Side unless the employment is exercised in the Other Side. If the employment is exercised in the Other Side, such remuneration as is derived therefrom may be taxed in that Other Side.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of One Side in respect of an employment exercised in the Other Side shall be taxable only in that One Side if all the following 3 conditions are satisfied:

- (1) the recipient is present in the Other Side for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned;
- (2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the Other Side;
- (3) the remuneration is not borne by a permanent establishment which the employer has in the Other Side.