

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2021

MODULE 2.04 – HONG KONG OPTION

ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

TIME ALLOWED – 3¼ HOURS

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

You need to answer **five** questions in total. You will **not** receive marks for any additional answers.

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.
- As you are using the online 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.
- There is no separate reading time, so you can start typing your answers as soon as the exam begins. However, we recommend that you set aside some time to thoroughly read each question and plan each of your answers.

For your information this paper includes:

Hong Kong Tax Rates and Allowances

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

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

1. Alpha Company (AC) is a Hong Kong-based company and part of the Alpha Group, that provides services as a buying agent to Alpha Group customers. AC also carried on a trading business in Hong Kong. AC has its headquarters in Hong Kong, with many of its most senior staff based in Hong Kong for decision-making purposes.

AC has entered into agency agreements with its customers, as a result of the efforts undertaken by its senior staff in Hong Kong. Under the terms of the agency agreements, AC provides the following services:

- Locating suppliers, arranging manufacturing of the relevant merchandise by the suppliers, and placing orders in the suppliers' territory on behalf of customers;
- Monitoring suppliers' production schedules;
- Performing quality control on the relevant merchandise;
- Arranging shipments and assisting suppliers with the preparation of all relevant export documentation;
- Attempting to settle possible merchandise claims on behalf of its customers;
- Keeping customers abreast of new developments in the suppliers' markets; and
- Signing or countersigning contracts, purchase orders and commitments on the customers' behalf.

When both customers and suppliers are located in China, AC asks its Chinese affiliate companies to perform most of the relevant services under separate service agreements between AC and the affiliates. The senior staff in Hong Kong make all decisions in relation to the fee income. AC's Hong Kong office provides all back-up and administration support to the Chinese affiliates. AC derived a sourcing agency fee of \$20 million during the 2020 calendar year.

AC has signed a licence agreement with a China-based company, Sally Cherry Manufacturing Company Ltd (SCMC), granting SCMC the right, using a patent owned by AC, to produce products which would be sold to AC. For the right to use AC's patent, SCMC paid a royalty fee of \$5 million to AC for the 2020 calendar year. AC developed the patent in Hong Kong during 2020, and incurred research and development staff costs of \$2 million and equipment costs of \$1.5 million in this regard. In 2020, AC purchased a manufacturing machine at a price of \$1.5 million and rented it to SCMC for an annual rental fee of \$3 million. The machine was used by SCMC for the production of goods, which were then sold to AC.

You are required to:

- 1) **Critically analyse the Hong Kong Profits Tax implications to AC of its sourcing agency fee of \$20 million in 2020.** (8)
- 2) **Critically analyse the China Enterprise Income Tax implications to AC of the sourcing agency fee, in the context of the double tax agreement between China and Hong Kong.** (4)
- 3) **Critically analyse the China Enterprise Income Tax implications of the royalty fee and rental fee which AC received from SCMC.** (6)
- 4) **Critically analyse the Hong Kong Profits Tax implications to AC of the royalty fee and rental fee.** (7)

Total (25)

2. Strawberry Ltd (SL) has undertaken a number of business activities in Hong Kong. Its provisional income statement for the year ended 31 March 2020 shows the following income and expenses:

<u>Income</u>	<u>Note</u>	<u>\$</u>
Net royalty income	1	2,000,000
Interest income	2	750,000
<u>Expenditure</u>		
Interest expenses	3	1,000,000
Repair expenses	4	100,000

Explanatory Notes

1. SL paid a sum of \$3 million to its holding company, Holding Ltd (HL), which is incorporated and based in the United States, for the right to exhibit certain advertising videos on TV and social media in mainland China and Hong Kong. SL exhibited these videos in Hong Kong in promotion of its Hong Kong trading business, and sub-licensed the right to exhibit the videos in mainland China to an unrelated company, Unrelated Ltd (UL). All profits derived from the Hong Kong trading business are liable for Profits Tax. In return for the right to exhibit the videos, SL received a fee of \$5 million from UL for the year ending 31 March 2020. China Enterprise Income Tax and Value Added Tax have been paid on the \$5 million sum by SL via UL, at rates of 7% and 6% respectively. SL negotiated and concluded the relevant licence contracts with HL and UL in Hong Kong.

2.

Interest from a Hong Kong bank deposit (Deposit 1). The deposit has been used to secure a bank loan (see note 3).	\$ 300,000
Interest from an overseas bank deposit (Deposit 2). The deposit has been used to secure another bank loan (see note 3).	<u>450,000</u>
Total per accounts	<u>\$750,000</u>

3.

Interest expense on a bank loan (Loan 1)*, secured with Deposit 1.	\$ 400,000
Interest expense on another bank loan (Loan 2)†, secured with Deposit 2.	<u>600,000</u>
Total per accounts	<u>\$1,000,000</u>

* Loan 1 was used to buy trading stock. The amount of Deposit 1 was the same as that of Loan 1 at all relevant times.

† Loan 2 totalled \$5 million, and was borrowed on 1 April 2019 and used to purchase a computer system. This loan was secured with Deposit 2 (also totalling \$5 million), as well as shares valued at \$2.5 million and listed on the Singapore stock exchange, at all relevant times.

4. The repair expenses of \$100,000 related to an initial repair of a second-hand environmental protection installation, which was acquired during the year at a price of \$1 million. The repair was for the purpose of restoring the installation to an operable condition, in order to obtain the relevant licence from the government.

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

- | | |
|---|-------------|
| 1) The net royalty income and interest income; | (16) |
| 2) The interest expenses relating to the two bank loans; and | (6) |
| 3) The acquisition and repair costs relating to the environmental protection installation. | (3) |

Total (25)

PART B

You are required to answer THIS question.

3. Reality Company Ltd (RCL) is resident in Country R. RCL was set up by Horizon Co Ltd (HCL), a Hong Kong-resident company.

HCL has recently incurred costs of \$10 million in developing a new patent (Patent A) for the manufacture of Product A. The proprietary interest of Patent A was vested in RCL, which has granted the right to use Patent A to various affiliated companies in return for a royalty fee. The corporate income tax rate in Country R is 5%.

In recent years HCL has completed construction on two blocks of residential housing units in Hong Kong and placed the units for sale. Due to the adverse economic climate, the management of HCL determined that the units might not be sold at a sufficiently high price and chose instead to redecorate the units and turn them into guesthouses for leasing. To this end, HCL signed a joint venture agreement with a hotel management company, Leisure Company Ltd (LCL). After one year, the redecoration was completed and HCL began operating the guesthouses jointly with LCL.

The construction costs of the units totaled \$100 million. The redecoration costs for modifying the residential units into guesthouses amounted to \$50 million. The market value of the residential units on the commencement date of the joint venture agreement was \$110 million. The market value of the guesthouses upon completion of the redecoration was \$200 million.

- 1) You are required to discuss HCL’s Hong Kong Profits Tax position, in relation to the activities described. (10)**

Larry Co Ltd (LC) and Sherry HK Ltd (SHK) are wholly owned by Blueberry HK Ltd (BHK). BHK and SHK both undertake business in Hong Kong, with all profits liable for Profits Tax. LC is based in Country L, where the corporate income tax rate is 1%.

In recent years, LC has sustained large losses while SHK has accumulated substantial retained earnings. The management team of BHK, LC and SHK are considering the following arrangements to improve LC’s financial position.

Proposal 1

Under this proposal, the price for all goods sold by LC to SHK will be increased by 30%. In accordance with existing trade terms, SHK will make all shipping arrangements and advertise extensively in Hong Kong the brand goods which it purchases from LC. SHK will also pay all purchase considerations fully to LC, immediately upon delivery of the goods by LC.

Proposal 2

Under this proposal, SHK will withdraw a substantial amount of the deposits which it holds with a bank in Hong Kong and will advance the funds to LC on an interest-free basis. LC will place the funds with a bank in its home country, to earn interest income. SHK is not carrying on a money lending business, and the management team do not want to charge any interest on the loan.

- 2) You are required to discuss the Hong Kong Profits Tax implications of the two proposals. (10)**

Total (20)

PART C

You are required to answer TWO questions from this Part.

4. Superb Investment Ltd has constructed a three-storey building, which it has rented to three different tenants.

The ground floor tenant operates a restaurant business. Half of the floor has been turned into a dining area, while the other half comprises the kitchen.

The first floor tenant is a furniture manufacturer. A production line has been installed on this floor, and production began during the relevant period.

The second floor tenant is a food trading company, which uses this floor as a warehouse. Goods purchased from overseas suppliers are stored, sorted, repackaged and, if necessary, repaired in this warehouse before being distributed to local retailers.

You are required to discuss whether Superb Investment Ltd is entitled to industrial building allowances in respect of each of the three floors. (15)

5. Mr Wong is the director of Global Trading Ltd, a Hong Kong-based company. Mr Wong is considering a restructure of the salary package for all of the company's employees. He intends to ensure that all fringe benefits provided by the company are provided in a tax-efficient manner.

Global Trading Ltd provides the following fringe benefits to its employees:

- provision of a domestic helper;
- a low interest loan;
- payment of club membership fees; and
- payment of children's education fees.

You are required to:

- 1) **Explain to Mr Wong the general principles for ascertaining the taxability of fringe benefits under the Salaries Tax regime.** (3)
- 2) **Advise Mr Wong on how to provide each of the four fringe benefits to his employees in a tax-efficient manner.** (12)

Total (15)

6. On 1 March 2021, Emma sought to lodge an objection or an 'error and omission' claim against her Salaries Tax assessment, which was issued based on her filed tax return. She overstated her annual income by 20% in the return because she wanted to make a larger tax payment in support of her immigration application to Country A at the time when she completed the tax return. Emma has since changed her plans and would like to rectify the situation.

The notice of assessment was issued on 25 January 2021, with a tax payment due date of 31 March 2021.

You are required to advise Emma on whether her objection and 'error and omission' claim can be accepted by the Hong Kong Inland Revenue Department. Your answer should cite relevant Inland Revenue Ordinance provisions and case law in support of your analysis and advice. You may assume that today is 1 March 2021. (15)

7. Watson Ltd (WL) has undertaken business activities in Hong Kong, producing and selling a range of electronic products with all sales profits liable for Hong Kong Profits Tax. WL's directors are considering the construction of a laboratory for the research and development of new products.

A quote for the proposed construction has been received from a construction company, Beta Construction Ltd (BCL). The laboratory will include certain environmental protection features. The estimated cost of construction of the laboratory and installation of the research equipment is approximately \$100 million. BCL's price quotation to WL shows the following details:

To: Directors of Watson Ltd
From: Beta Construction Ltd

RE: Quotation of research laboratory construction price

Construction costs of research laboratory
(including related research equipment): \$100 million

WL plans to obtain a loan of \$150 million from a bank in Hong Kong, to finance both the \$100 million construction cost of the laboratory and working capital of \$50 million for its operation. The annual interest rate of the bank loan will be 5%. HoldCo, an overseas company, is the holding company of WL. The bank loan will be secured at an annual interest rate of 3% with an equivalent amount of debentures, held by HoldCo and listed on the Singapore stock exchange.

You are required to critically analyse the deductibility of the proposed construction and loan interest costs, and recommend strategies to improve the tax efficiency of the planned activities for WL. (15)

Tax Rates and Allowances

Year of Assessment	<u>2019/20</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	
<u>Progressive rates</u>	
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	100%
Maximum per case	\$20,000
<u>Personal Allowances</u>	
	\$
Basic	132,000
Married person's	264,000
Child – 1 st to 9 th (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
Mandatory contributions to recognised retirement schemes	18,000
Qualifying premium paid under voluntary health insurance scheme policy (for each insured person)	8,000
Qualifying annuity premiums and tax deductible MPF voluntary contributions	60,000
Approved charitable donations	35%

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 (note)

Part 1 of Scale 1: A flat rate of 15%*	
Part 2 of Scale 1 as below:	
Consideration (round up to nearest \$1)	Rates of Scale 1 (Part 2)
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%

Note: Any instrument executed on or after 26 November 2020 for the sale and purchase or transfer of non-residential property will be subject to AVD at the rates under Scale 2.

AVD

Scale 2

Consideration (round up to nearest \$1)	Rates of Scale 2
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)

Property which has been held for	<i>Acquired on or after 27 October 2012</i>
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

Agreement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation (Extracts) [for the years of assessment up to and including 2019/20]

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.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific works including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment or for information concerning industrial, commercial or scientific experience.

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.

Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, an aircraft or a land transport vehicle operated in shipping, air and land transport by an enterprise of One Side shall be taxable only in that Side.