

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2023

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)
- **One** question from **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.
- 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. Maverick HK Ltd (MHKL) was incorporated in Hong Kong, and trades in low value electronic products in both Hong Kong and mainland China. For the mainland China market, MHKL has rented a warehouse in Shenzhen for the storage of goods for quick delivery to clients.

MHKL and Rose China Ltd (RCL), a related company of MHKL in mainland China, have entered into a service agreement under which RCL is responsible for providing sales services to MHKL, attracting business and negotiating with customers in mainland China for MHKL based on MHKL's standard trading terms.

If the customers accept the standard trading terms, RCL will instruct the customers to place their orders with MHKL for official acceptance and processing. RCL does not accept orders for and on behalf of MHKL in mainland China. MHKL purchases products from suppliers located in Japan and South Korea. Purchase orders are sent from MHKL's Hong Kong office via email. For the mainland China market, goods are delivered directly from Japan or South Korea to the warehouse in Shenzhen, while trade financing and marketing works are handled by MHKL in Hong Kong.

In addition to the trading business described above, MHKL has arranged to send three marketing managers to provide consultancy services to RCL. The servicing periods of the three managers were as follows:

Manager A	1 July – 30 September 2021
Manager B	1 December 2021 – 28 February 2022
Manager C	15 August – 31 December 2022

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 double tax agreement (DTA) between China and Hong Kong.** (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 DTA between mainland China and Hong Kong.** (6)

Total (25)

2. Blueberry Ltd (BL) has conducted the following two types of businesses in Hong Kong.

Transportation business

BL carried on a transportation business for the carriage of passengers between Hong Kong and various cities in southern mainland China. During the year ending 31 March 2022, BL derived the following two types of transportation income:

Type A	Journeys commencing in Hong Kong and finishing in various cities in mainland China
Type B	Journeys commencing in mainland Chinese cities and finishing in Hong Kong

For Type A income, about 70% of the tickets were sold through BL's online ticketing system with the server located in Shenzhen, while the remaining 30% were sold at its Hong Kong office. For Type B income, 90% of the tickets were sold through the online ticketing system, with the remaining 10% sold through the office of BL's agent in mainland China.

Trading business

BL also carried on a trading business for selling goods to customers in Country B. All trading profits derived in this regard were sourced from Hong Kong. For the year ending 31 March 2022, BL paid a royalty fee of \$5 million to its overseas holding company, Hugo Ltd (HL), in return for the right to sell goods bearing the trademark TMH1, which is owned by HL. For the year ending 31 March 2022, BL paid \$500,000 in sales tax which was charged, based on the gross sales value, in Country B. Before setting up BL in Hong Kong, HL had maintained a branch in Hong Kong to handle the sale to Country B. Upon the establishment of BL, HL transferred all sale business of the Hong Kong branch to BL and ceased all business of the branch. HL will not elect for two-tiered tax rate in Hong Kong if it is subject to Hong Kong Profits Tax. There is no double tax agreement (DTA) between Hong Kong and Country B.

For the year ending 31 March 2022, BL paid interest expenses of \$900,000 in relation to a \$20 million loan borrowed from a bank in Country B. The loan was taken out on 1 April 2021 to purchase a computerised sale system for use in BL's trading business. HL provided all securities for the loan, including debentures listed on the Singapore Stock Exchange valued at \$20 million and property in Singapore valued at \$10 million throughout all relevant times. HL received interest income of \$600,000 from the debentures and rental income of \$400,000 from the property for the year ending 31 March 2022.

You are required to.

- 1) **Explain the Hong Kong Profits Tax treatment, as well as the Chinese income tax and VAT treatment, of BL's transportation income, in the context of the DTA between mainland China and Hong Kong.** (9)
 - 2) **Explain the Hong Kong Profits Tax implications of the following items:**
 - a) **The \$5 million royalty fee to HL and \$500,000 sales tax in Country B; and** (11)
 - b) **The \$900,000 interest expenses on the bank loan.** (5)
- Total (25)

PART B

You are required to answer ONE question in this Part.

- 3.
- 1) Dandelion HK Ltd (DHK) is based and operates in Hong Kong. During 2022, DHK incurred staff costs of \$5 million in developing a new product design. The research and development (R&D) of the product design was carried out at DHK's research centre in Hong Kong.

Upon completion of the product design, the proprietary interest of the product design was vested in DHK's wholly owned subsidiary company, Sakura OV Ltd (SOV). SOV is a resident company of Country S, which imposes corporate income tax at a rate of 3%. SOV has granted the right to use the product design to various affiliated companies in return for a royalty. SOV has paid 10% of the royalty to DHK as reimbursement of DHK's R&D expenses relating to the product design.

DHK has been holding an office building for trading purposes for two years. During the course of 2022, DHK's directors decided to change the office building into a long-term investment property for rental income. The office building was bought by DHK at a price of \$100 million. DHK had redecorated the building to make it more attractive to potential tenants, incurring costs of \$50 million in this regard. The market value of the building at the date on which the board of directors' met and decided to change the usage of the building was \$110 million. The market value of the building on the date of the redecoration's completion was \$200 million.

You are required to discuss DHK's tax position in Hong Kong. (10)

- 2) Brown Ltd has been carrying on trading business in Hong Kong for more than ten years. In recent years, it incurred substantial operating losses due to the loss of some major customers. Cheer Ltd, one of Brown's suppliers in Hong Kong, has proposed acquiring two-thirds of the share capital of Brown Ltd.

You are required to discuss the tax implications for Brown Ltd of this proposal, in the specific context of the relevant Hong Kong anti-tax avoidance provision. You are not required to include discussion of the general anti-avoidance rules. (10)

(Total 20)

4. Loganberry Ltd (LL) carried on a trading business in Hong Kong, with all trading profits chargeable to Profits Tax in Hong Kong. Its provisional income statement for the year ending 31 March 2022 shows a net profit before taxation of \$17 million, after crediting the following income and charging the following expenses:

<u>Income</u>	<u>Note</u>	<u>\$</u>
Interest income	1)	750,000
 <u>Expenditure</u>		
Product research expenses	2)	2,000,000
Interest expenses	3)	400,000
Repair expenses	4)	100,000

Explanatory Notes

- 1) \$
Interest income from a Hong Kong bank deposit (Deposit 1). 300,000
The deposit has been used to secure a bank loan (see note (3))
- Interest income from qualifying debt instruments issued on 1 450,000
May 2021, with five-year maturity period
- Total per accounts 750,000
- 2) The product research expenses of \$2 million consisted of the following items for qualifying research activities conducted in Hong Kong:
- | | |
|--------------------------------|------------------|
| | <u>\$</u> |
| Research director remuneration | 1,000,000 |
| Research staff salary | 600,000 |
| Consumables for research | <u>400,000</u> |
| Total per accounts | <u>2,000,000</u> |
- 3) The interest expenses of \$400,000 were incurred in respect of a bank loan (Loan 1), secured by Deposit 1. Loan 1 was used to finance the construction costs of a shopping mall, which was completed and put into use in January 2023. The amount of Deposit 1 was the same as that of Loan 1 throughout all relevant times.
- 4) The repair expenses of \$100,000 related to initial repairs for a second hand environmental protection machine. The machine was acquired during the year at a price of \$1 million. The repairs were carried out in order to return the machine to the operable condition necessary to obtain the relevant licence from the government. The acquisition price of \$1 million was not recorded in the draft income statement but recorded as an asset in the financial position statement.

You are required to:

- 1) **Calculate the Profits Tax payable by LL for the year of assessment 2021/22, ignoring provisional tax.** (8)
- 2) **Explain the Profits Tax treatments of the following items:**
- a) **The interest income from Deposit 1;** (3)
- b) **The product research expenses;** (3)
- c) **The interest expenses on Loan 1; and** (3)
- d) **The repair expenses.** (3)
- Total (20)

PART C

You are required to answer TWO questions from this Part.

5. Mr Ip owns a residential property in Hong Kong for letting purposes. He has let out the property to Ms May on the following terms:

- The lease term is two years, beginning on 1 April 2021.
- The rent is \$16,000 per month, payable on the first day of each month.
- A rental deposit of \$32,000 is payable on signing the tenancy agreement.
- A lease premium of \$50,000 is payable on signing the tenancy agreement.
- There is a rent-free period of one month from the commencement of the lease.
- A furniture fee of \$1,000 per month is charged for the use of furniture and air conditioners provided in the property, payable on the first day of each month. The owner is responsible for all related repair and maintenance expenses.
- Rates and government rent of \$2,700 and \$1,620 respectively, per quarter, are payable by the owner to the Hong Kong Government.
- A management fee of \$1,200 per month is payable by the tenant to the building management company.

In addition to the rates and government rent, Mr Ip also paid the following amounts during the year ended 31 March 2022 in relation to this property:

- An agency fee of \$16,000 to the estate agency for introducing the tenant;
- \$5,000 to replace a window which was damaged as a result of a typhoon; and
- Interest of \$93,400 on a loan borrowed to finance the acquisition of the property.

In September 2021 Ms May paid \$1,000 to repair the air conditioner provided by Mr Ip, but she did not claim a reimbursement from Mr Ip.

You are required to:

- 1) **Compute Mr Ip’s Hong Kong Property Tax liability for the year of assessment 2021/22. You may ignore provisional tax, and an explanatory note is not required.** (8)
- 2) **Advise Mr Ip on the total amount of Stamp Duty payable on the lease into which he has entered with Ms May, the time limit for stamping the lease, and the penalty for failing to stamp the lease on time.** (7)

Total (15)

6. Ready Ltd (RL) is resident in Country R for tax purposes, and is principally engaged in the sale of machinery for furniture production. RL currently maintains an office in Hong Kong (Office R), solely for the delivery of spare machinery parts to its customers in Hong Kong. Sale orders are accepted in Country R, and the machines are exported directly to the customers in Hong Kong. To provide a better after sale service, RL plans to provide maintenance and repair services at Office R.

Sandy Ltd (SL) is a resident of Hong Kong for tax purposes and a related company of RL. SL plans to use its own internal funds to provide an interest-free loan to RL which will finance RL’s operating expenses relating to Office R’s maintenance and repair services. SL has not provided any loans to other related parties.

There is no double tax agreement between Hong Kong and Country R.

You are required to discuss the Hong Kong Profits Tax implications for RL and SL of the activities described. (15)

7.

- 1) Ms Cheung has signed a contract with a club for the delivery of piano performance services. Her terms of engagement, agreed with the club, are as follows:
- Ms Cheung is paid \$20,000 per month and is required to perform for 20 hours per week.
 - Ms Cheung is permitted to work for other venues and clients on a particular day or night only if she is not required to work for the club on that day or night.
 - There is no fixed period of engagement, but either party must give one month’s prior notice for termination of the agreement.
 - Ms Cheung is not entitled to sick leave or other fringe benefits.
 - A piano is provided by the club for performance purposes, but Ms Cheung practises at home using her own piano.

You are required to discuss whether Miss Cheung’s income from the club is subject to Salaries Tax or Profits Tax. (8)

- 2) Mr Poon is the financial controller of Mega Holdings Ltd (Mega). The following information about Mr Poon is provided, for the year ending 31 March 2022:
- Mr Poon purchased a painting from an antiques shop for \$5,000. The bill was paid by Mega in recognition of Mr Poon’s contribution to the company. Mr Poon subsequently found that the painting was the work of a famous artist and had a market value of \$30,000.
 - Mr Poon is a member of the Association of Chartered Certified Accountants (ACCA) and the Hong Kong Institute of Certified Public Accountants (HKICPA). He paid annual subscription fees of \$2,800 and \$2,500 to these two bodies respectively.

You are required to explain to Mr Poon the Hong Kong Salaries Tax treatment of:

- a) **the bill of the painting paid by Mega;** and (3)
- b) **the subscriptions fees paid to the professional bodies of which he is a member.** (4)

Total (15)

8. On 1 February 2023 Emma was appointed as the financial director of Zee Ltd (ZL). On 1 March 2023 Emma sought to lodge an objection or an ‘error and omission’ claim against ZL’s Profits Tax assessment, for the year of assessment 2020/21.

The 2020/21 assessment had been based on the Profits Tax return signed and filed by ZL’s ex-director, Mr Chan. Mr Chan had overstated ZL’s accounting profits and chargeable profits by 20% in order to receive a larger bonus, which was calculated based on the company’s accounting profits. Emma discovered the overstatement upon her appointment in February 2023, and would like to rectify the situation.

The notice of assessment was issued on 28 November 2022. All tax demanded by the assessment was paid.

You are required to.

- 1) **Advise Emma on whether an objection and ‘error and omission’ claim could be accepted by the Inland Revenue Department, citing appropriate Inland Revenue Ordinance provisions and case law in support of your analysis. You should assume that today is 1 March 2023.** (15)

Tax Rates and Allowances

Year of Assessment	<u>2021/22</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	\$10,000
<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 AllowancePlant 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 ratesConveyance on sale of immovable property Ad valorem Stamp Duty (AVD)

Consideration	Scale 1	Scale 2
Not exceeding \$2,000,000	15%	\$100
\$2,000,001 – \$3,000,000		1.5%
\$3,000,001 – \$4,000,000		2.25%
\$4,000,001 – \$6,000,000		3%
\$6,000,001 – \$20,000,000		3.75%
Over \$20,000,000		4.25%

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

Term of lease	Rate
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

Nature of Document	Rate
Contract Note	0.13%
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 upto and including 2021/22]

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 but subject to the provisions of paragraph 6, where a person is acting in One Side on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:
 - (1) in the name of the enterprise; or
 - (2) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
 - (3) for the provision of services by that 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 the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make the fixed place of business a permanent establishment under the provisions of that paragraph.
6. Paragraph 5 shall not apply where the person carries on business in One Side as an independent agent and acts in that One Side on behalf of an enterprise of the Other Side in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which that person is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.”
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.
8. For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50% of the beneficial interest in the other (or, in the case of a company, more than 50% of the voting rights and value of the company’s shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50% of the beneficial interest (or, in the case of a company, more than 50% of the voting rights and value of the company’s shares or of the beneficial equity interest in the company) in the person and the enterprise.”

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 8

Shipping, Air and Land Transport

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 shall be exempt from tax (including value added tax in the Mainland of China) in the Other Side (except where the ships, aircrafts or land transport vehicles are solely operated between places of the Other Side).
2. The provisions of paragraph 1 of this Article shall also apply to income and profits derived from participation in partnership business, joint venture business or international business agency, to the extent of the income and profits that is proportional to the shareholding of such business.

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 by a resident of One Side from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the Other Side if, at any time during the three years preceding the alienation, these shares or comparable interests derived more than 50% of their value directly or indirectly from immovable property, as defined in Article 6, situated in that Other Side.
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, 18A, 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 One 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.establishment which the employer has in the Other Side.

Article 18A

Teachers and Researchers

1. Where an individual is employed by a university, college, school in One Side or by an educational institution or scientific research institution recognized by the Government of One Side and is, or was immediately before visiting the Other Side, a resident of that One Side and is present in that Other Side for the primary purpose of teaching or research at a university, college, school in that Other Side or at an educational institution or scientific research institution recognized by the Government of that Other Side, the remuneration derived by the individual in respect of such teaching or research, to the extent it is paid by, or on behalf of, the employer of that One Side, shall not be taxed in that Other Side for a period of three years, provided that such remuneration is subject to tax in that One Side.
2. The period of “three years” provided in paragraph 1 of this Article shall begin on the date of the individual’s first arrival in the Other Side for the above purpose or the date from which the provisions begin to apply under paragraph 2 of Article 7 of this Protocol, whichever is the later.

3. Paragraph 1 of this Article shall not apply to income derived from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.”

Article 24A

Entitlement to Benefits under the Arrangement

Notwithstanding the other provisions of this Arrangement, a benefit under this Arrangement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Arrangement.