

Avoidance of Double Taxation

5th Protocol

The Fifth Protocol to the “Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income” Order have been signed between the Mainland of China and the Hong Kong Special Administrative Region on 19 July 2019.

Effective date	
Mainland of China	Income derived in the taxable years beginning on or after 1 January in the calendar year next following the year in which this Protocol enters into force (i.e. 1 January 2020).
Hong Kong Special Administrative Region	Income derived in the years of assessment beginning on or after 1 April in the calendar year next following the year in which this Protocol enters into force (i.e. 1 March 2020 or year of assessment 2020/21).

Major new/amended provisions in the order are as follows:

Article 18A – Teachers and Researchers	
<New Provision>	New provision:
Article 18A – Teachers and Researchers	<p>A qualified teacher or researcher, who is employed in Hong Kong or the Mainland and engages in teaching and research activities on the other side, shall be exempt from taxation on that other side for a period of three years, provided that the relevant income has been subject to tax on the side where the person concerned is employed.</p> <p>The period of “three years” provided 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 as above effective date, whichever is the later.</p> <p>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.</p>



Paragraph 8 to Article 5 – Permanent Establishment

<New Provision>	New provision:
Paragraph 8 to Article 5 – Permanent Establishment	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.

Paragraph 4 of Article 13 – Capital gain

<Amended Provision>	Amended provision:
Paragraph 4 of Article 13 – Capital gain	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.”
	Original provision
	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.

Article 24A - Entitlement to Benefits under the Arrangement

<New Provision>	New provision:
Article 24A - Entitlement to Benefits under the 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.

“Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income” Arrangements between the Mainland of China and the Hong Kong Special Administrative Region:

Nature	Comprehensive Double Taxation Arrangement				
Date of Signature of Arrangement	19.07.2019 (5th Protocol)	01.04.2015 (4th Protocol)	27.05.2010 (3rd Protocol)	30.01.2008 (2nd Protocol)	21.08.2006
Date of S49 Order	17.09.2019	22.09.2015	28.09.2010	15.04.2008	17.10.2006
Date of Entry into Force	06.12.2019	29.12.2015	20.12.2010	11.06.2008	08.12.2006
Effective From	Year of Assessment 2020/2021	29.12.2015	20.12.2010	11.06.2008	Year of Assessment 2007/2008
IRO Sub-legislation Reference	<u>DH</u>	<u>CU</u>	<u>BR</u>	<u>BB</u>	<u>AY</u>

Reference: <https://www.ird.gov.hk/chi/ppr/archives/19071901.htm>

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