

No. 26930

HONG KONG
(UNDER AN ENTRUSTMENT OF AUTHORITY
FROM THE UNITED KINGDOM GOVERNMENT)
and
UNITED STATES OF AMERICA

Exchange of notes constituting an agreement concerning tax exemptions from the income derived from the international operation of ships. Hong Kong, 1 and 16 August 1989

Authentic text: English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 22 November 1989.

HONG-KONG
(EN VERTU D'UNE DÉLÉGATION DE POUVOIRS
DE LA PART DU GOUVERNEMENT DU ROYAUME-UNI)
et
ÉTATS-UNIS D'AMÉRIQUE

Échange de notes constituant un accord concernant l'exemption fiscale des revenus provenant de l'exploitation internationale des navires. Hong-Kong, 1^{er} et 16 août 1989

Texte authentique : anglais.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 22 novembre 1989.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING TAX EXEMPTIONS FROM THE INCOME DERIVED FROM THE INTERNATIONAL OPERATION OF SHIPS

I

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA
HONG KONG

August 1, 1989

Sir:

On behalf of the Government of the United States of America, I have the honor to propose that the Government of the United States of America and the Government of Hong Kong conclude an agreement to exempt from income tax (which term for the purposes of the agreement in the case of Hong Kong refers to profits tax), on a reciprocal basis, income derived by residents of the other from the international operation of ships (which term for the purposes of the agreement shall not include aircraft). I further have the honor to inform you that the Government of the United States of America is prepared to conclude an agreement in the following terms:

1. The Government of the United States of America, in accordance with Sections 872(b) and 883(a) of the Internal Revenue Code, agrees to exempt from tax gross income derived from the international operation of ships by individuals who are residents of Hong Kong (other than U.S. citizens) and corporations which are incorporated in Hong Kong or controlled or managed in Hong Kong (other than corporations organized in the United States).

2. In the case of a corporation, the exemption granted by the Government of the United States of America shall apply only if the corporation meets either of the following conditions:

(a) The corporation's stock is primarily and regularly traded on an established securities market in Hong Kong, another country which grants an equivalent exemption to U.S. corporations, or the United States; or

(b) More than 50 percent of the value of the corporation's stock is owned, directly or indirectly, by individuals who are residents of Hong Kong or of a country which grants an equivalent exemption to U.S. corporations, or by a corporation organized in a country which grants an equivalent exemption to U.S. corporations and whose stock is primarily and regularly traded on an established securities market in that country, another country which grants an equivalent exemption to U.S. corporations, or the United States.

¹ Came into force on 16 August 1989, the date of the note in reply, with retroactive effect from 1 January 1987, in accordance with the provisions of the said notes.

For the purposes of sub-paragraph (b) the Government of Hong Kong shall be treated as an individual resident of Hong Kong, and stock of a corporation owned by another corporation, partnership, trust or estate shall be treated as owned proportionately by the beneficial owners.

3. For the purposes of applying the 50 percent test to a Hong Kong corporation, if the corporation is a U.S. controlled foreign corporation as defined in Section 957(a) of the United States Internal Revenue Code, the U.S. shareholders are treated as residents of Hong Kong.

4. The Government of Hong Kong agrees to exempt from tax gross income derived from the international operation of ships by U.S. residents and corporations organized in the United States (other than corporations which are subject to tax by Hong Kong on the basis of residence).

5. In the case of a corporation, the exemption granted by the Government of Hong Kong shall apply only if the corporation meets either of the following conditions:

(a) The corporation's stock is primarily and regularly traded on an established securities market in the United States, another country which grants an equivalent exemption to Hong Kong corporations, or Hong Kong; or

(b) More than 50 percent of the value of the corporation's stock is owned, directly or indirectly, by individuals who are residents of the United States or of another country which grants an equivalent exemption to Hong Kong's corporations, or by a corporation organized in a country which grants an equivalent exemption to Hong Kong corporations and whose stock is primarily and regularly traded on an established securities market in that country, another country which grants an equivalent exemption to Hong Kong corporations, or Hong Kong.

For the purposes of sub-paragraph (b), the Government of the United States of America shall be treated as an individual resident of the United States of America.

6. Gross income for the purposes of this agreement includes all income derived from the international operation of ships, including:

(a) Income from the rental of ships used in international transport on a full (time or voyage) or bareboat basis;

(b) Income from the rental of containers and related equipment used in international transport which is incidental to income from the international operation of ships;

(c) Income from the participation in marine transport pools which engage in international operation of ships; and

(d) Gains from the sale, disposal or other alienation of ships by a person primarily engaged in the international operation, lease or rental of ships.

7. If any difficulty or doubt as to the interpretation or application of this agreement should arise, the competent authorities of the two Governments shall seek to resolve such difficulty or doubt by mutual agreement. For this purpose, the competent authorities are:

(a) In the United States, the Secretary of the Treasury or his authorized representative; or any person or body authorized to perform any or similar functions at present exercisable by the above-mentioned office-bearer; and

(b) In Hong Kong, the Financial Secretary or his authorized representative; or any person or body authorized to perform any or similar functions at present exercisable by the above-mentioned office-bearer.

8. Either Government may terminate this agreement by giving written notice of termination.

If the foregoing is acceptable to the Government of Hong Kong, I have the honor to propose that this note, together with your reply in that sense, shall constitute an agreement between the Government of the United States of America and the Government of Hong Kong which shall enter into force on the date of your reply and shall have effect with respect to taxable years on or after 1 January 1987.

I avail myself of this opportunity to renew to you, Sir, the assurance of my highest consideration.

[Signed — Signé]¹

Mr. Anthony Au-Yeung, J.P.
Commissioner of Inland Revenue
Hong Kong

II

COMMISSIONER OF INLAND REVENUE
HONG KONG

16 August 1989

Sir:

On behalf of the Government of Hong Kong, I have the honour to acknowledge receipt of your note of 1 August 1989 which reads as follows:

[See note I]

I have the honour to inform you that the Government of Hong Kong has been duly authorised by the sovereign Government which is responsible for its foreign affairs to accept the foregoing proposal, and that the proposal is acceptable to the Government of Hong Kong, which therefore agrees that your note and the present reply shall constitute an agreement between the Government of Hong Kong and the Government of the United States of America which shall enter into force today and shall have effect with respect to taxable years on or after 1 January 1987.

I avail myself of this opportunity to renew to you, Sir, the assurance of my highest consideration.

[Signed]

ANTHONY AU-YEUNG

Mr. Donald M. Anderson
Consul General of the United States of America
Hong Kong

¹ Signed by Donald M. Anderson — Signé par Donald M. Anderson.