

Notice of the State Administration of Taxation on Issues Concerning the Implementation of Protocol II to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

(Letter No. 685 [2008] of the State Administration of Taxation)

The state taxation bureaus and local taxation bureaus of all provinces, autonomous regions, municipalities directly under the Central Government and cities under separate state planning,

You are hereby notified of some issues with respect to the implementation of Protocol II to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (hereinafter referred to as the Arrangement) and with respect to the exchanged letters between the Mainland and Hong Kong taxation authorities:

About the time of setup of permanent establishments

The provision on replacing the phrase “6 months” in Item (2), Paragraph 3, Article 5 of the Arrangement with the phrase “183 days” in Article 3 of Protocol II shall apply to the services starting after this Protocol has come into effect and to the persons who come to the Mainland to provide such services. Whether those which began the provision of services prior to the date of this Protocol’s entry into force constitute permanent establishments shall still be determined on the basis of the previously prescribed time for computation.

About how to determine whether a company’s properties mainly consist of immovable properties

Article 4 of Protocol II provides that at least 50% of the properties of a company within the 3 years prior to the transfer of shares of the company by relevant shareholders should have ever been immovable properties and Article 2 of the letters exchanged expressly state that when implementing the Arrangement, the said immovable properties should be determined on the basis of the account data at the end of the taxable year.

III. About the taxation treatments relating to the transfer of a company’s shares or other interests

In accordance with Article 5 of Protocol II, when implementing the provisions of Paragraph 5 of Article 13 of the Arrangement, where a Hong Kong resident obtains any gains from the transfer of his shares or other interests in a Mainland resident company, if he, within 12 months prior to the said transfer, has ever directly or indirectly owned 25 % or more of the shares of the aforesaid Mainland company, the Mainland has the power to levy taxes under relevant tax laws and regulations.

If any interpretation previously made to the Arrangement contravenes this Notice, this Notice shall prevail.

State Administration of Taxation

July 19, 2008