

## Inland Revenue Ordinance

### (Cap. 112)

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To impose a tax on property, earnings and profits.

*(Amended 26 of 1969 s. 2; 17 of 1989 s. 2)*

[3 May 1947]

*(Format changes—E.R. 1 of 2012)*

## Part 1

### Introductory

#### 1. Short title

This Ordinance may be cited as the Inland Revenue Ordinance.

#### 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

**active partner** (積極參與的合夥人), in relation to a partnership, means a partner who takes an active part in the control, management, or conduct of the trade or business of such partnership;

**agent** (代理人), in relation to a non-resident person or to a partnership in which any partner is a non-resident person, includes—

- (a) the agent, attorney, factor, receiver, or manager in Hong Kong of such person or partnership, and
- (b) any person in Hong Kong through whom such person or partnership is in receipt of any profits or income arising in or derived from Hong Kong;

**aircraft leasing tax concessions provisions** (飛機租賃稅務寬減條文) means sections 14G, 14H, 14I, 14J, 14K, 14L, 14M and 14N; (*Added 9 of 2017 s. 3*)

**approved charitable donation** (認可慈善捐款) means a donation of money to any charitable institution or trust of a public character which is exempt from tax under section 88 or to the Government, for charitable purposes; (*Replaced 13 of 1971 s. 2. Amended 76 of 1975 s. 2; 74 of 1981 s. 4; 30 of 1990 s. 2; 78 of 1999 s. 7*)

**arrangement** (安排) includes—

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action or course of action or course of conduct; (*Added 32 of 1998 s. 3*)

**assessable income** (應評稅入息) means the assessable income of a person in any year of assessment as ascertained in accordance with sections 11B, 11C and 11D; and **net assessable income** (應評稅入息實額) means assessable income as adjusted in accordance with section 12; (*Replaced 71 of 1983 s. 2*)

**assessable profits** (應評稅利潤) means the profits in respect of which a person is chargeable to tax for the basis period for any year of assessment, calculated in accordance with the provisions of Part 4; (*Replaced 28 of 1964 s. 2*)

**assessor** (評稅主任) means an assessor appointed under this Ordinance;

**assistant commissioner** (助理局長) means an assistant commissioner of Inland Revenue appointed under this Ordinance;

**authorized representative** (獲授權代表) means a person authorized in writing by any other person to act on his behalf for the purposes of this Ordinance; (*Replaced 7 of 1975 s. 2*)

**banking business** (銀行業務) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155); (*Added 22 of 2016 s. 3*)

**basis period** (評稅基期) for any year of assessment is the period on the income or the profits of which tax for that year ultimately falls to be computed; (*Amended 36 of 1955 s. 3*)

**bill of sale** (賣據) means a bill of sale registrable under the Bills of Sale Ordinance (Cap. 20);

**Board of Review** (稅務上訴委員會) means the Board of Review referred to in section 65; (*Added 4 of 2010 s. 2*)

**body of persons** (團體) means any body politic, corporate or collegiate and any company, fraternity, fellowship and society of persons whether corporate or not corporate; (*Added 36 of 1955 s. 3*)

**business** (業務) includes agricultural undertaking, poultry and pig rearing and the letting or sub-letting by any corporation to any person of any premises or portion thereof, and the sub-letting by any other person of any premises or portion of any premises held by him under a lease or tenancy other than from the Government; (*Replaced 35 of 1965 s. 2. Amended 19 of 1996 s. 15*)

**certificate of deposit** (存款證) means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable, and, in the case of any such document which

is a prescribed instrument by virtue of paragraph (a) of the definition of **prescribed instrument** (訂明的票據) in section 137B of the Banking Ordinance (Cap. 155), includes any right or interest referred to in paragraph (b) of that definition in respect of such document; (*Added 30 of 1981 s. 2. Amended 94 of 1993 s. 36*)

**Commissioner** (局長) means the Commissioner of Inland Revenue appointed under this Ordinance; (*Replaced 26 of 1969 s. 3*)

**Commissioner for I&T** (創科署署長) means the Commissioner for Innovation and Technology; (*Added 29 of 2018 s. 3*)

**common parts** (公用部分), in relation to any land or buildings or land and buildings—

- (a) means the whole of the land or buildings or land and buildings, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and
- (b) includes, unless so specified or designated in the instrument mentioned in paragraph (a), those parts of a building specified in Schedule 1 to the Building Management Ordinance (Cap. 344); (*Added 4 of 2010 s. 2*)

**conditional sale agreement** (有條件售賣協議) means an agreement for the sale of goods under which the purchase price or part of the purchase price is payable by instalments, and the property in the goods remains in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled; (*Added 32 of 1998 s. 3*)

**corporation** (法團) means any company which is either incorporated or registered under any enactment or charter in



force in Hong Kong or elsewhere but does not include a co-operative society or a trade union; (*Amended 2 of 1971 s. 2*)

**debenture** (債權證), in relation to a corporation, includes debenture stock, bond and any other debt security of the corporation, whether or not constituting a charge on the assets of the corporation; (*Replaced 12 of 2016 s. 11*)

**deposit** (存款) means a deposit as defined in section 2(1) of the Banking Ordinance (Cap. 155); (*Added 29 of 1982 s. 2. Amended 27 of 1986 s. 137*)

**deputy commissioner** (副局長) means a deputy commissioner of Inland Revenue appointed under this Ordinance; (*Amended 48 of 1995 s. 2*)

**digital signature** (數碼簽署) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 5 of 2003 s. 2*)

**electronic record** (電子紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 5 of 2003 s. 2*)

**executor** (遺囑執行人) means any executor, administrator, or other person administering the estate of a deceased person, and includes a trustee acting under a trust created by the last will of the author of the trust;

**financial institution** (財務機構), except in Part 8A and Schedules 17C and 17D, means— (*Amended 22 of 2016 s. 3*)

- (a) an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155);
- (b) any associated corporation of such an authorized institution which, being exempt by virtue of section 3(2)(a) or (b) or (c) of the Banking Ordinance (Cap. 155), would have been liable to be authorized as a deposit-taking company or restricted licence bank under



that Ordinance had it not been so exempt; (*Replaced 27 of 1986 s. 137. Amended 3 of 1990 s. 55; 49 of 1995 s. 53*)

***grandparent or grandparent of his or her spouse*** (該人的或其配偶的祖父母或外祖父母), in relation to any person, means—

- (a) a natural grandfather or grandmother of the person or his or her spouse;
- (b) an adoptive grandparent of the person or his or her spouse (whether an adoptive parent of a natural parent, adoptive parent or step parent of the person or his or her spouse, or a natural parent of an adoptive parent of the person or his or her spouse);
- (c) a step grandparent of the person or his or her spouse (whether a step parent of a natural parent, adoptive parent or step parent of the person or his or her spouse, or a natural parent of a step parent of the person or his or her spouse); or
- (d) in the case of a deceased spouse, a person who would have been the grandparent of the person's spouse by reason of any of the provisions of paragraphs (a) to (c) if the spouse had not died; (*Added 31 of 1998 s. 3*)

***hire-purchase agreement*** (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee; (*Added 32 of 1998 s. 3*)

***Hong Kong currency*** (港幣) means money which is legal tender in Hong Kong; (*Added 29 of 1982 s. 2*)

***husband*** (丈夫) means a married man whose marriage is a marriage within the meaning of this section; (*Added 43 of 1989 s. 2*)

***incapacitated person*** (無行為能力的人) means any minor, lunatic, idiot, or person of unsound mind;

***inspector*** (稅務督察) means an inspector appointed under this Ordinance; (*Added 36 of 1955 s. 3*)

***lease*** (租約), except in the aircraft leasing tax concessions provisions and Schedule 17F, in relation to any machinery or plant, includes— (*Amended 9 of 2017 s. 3*)

- (a) any arrangement under which a right to use the machinery or plant is granted by the owner of the machinery or plant to another person; and
- (b) any arrangement under which a right to use the machinery or plant, being a right derived directly or indirectly from a right referred to in paragraph (a), is granted by a person to another person,

but does not include a hire-purchase agreement or a conditional sale agreement unless, in the opinion of the Commissioner, the right under the agreement to purchase or obtain the property in the goods would reasonably be expected not to be exercised; (*Added 32 of 1998 s. 3*)

***limited partnership*** (有限責任合夥) has the same meaning as in section 3 of the Limited Partnerships Ordinance (Cap. 37); (*Added 47 of 1992 s. 2*)

***mandatory contributions*** (強制性供款), in relation to a mandatory provident fund scheme, means mandatory contributions paid to the scheme in accordance with the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (*Added 4 of 1998 s. 6*)

***mandatory provident fund scheme*** (強制性公積金計劃) means a provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (*Added 4 of 1998 s. 6*)

***marriage*** (婚姻) means—

- (a) any marriage recognized by the law of Hong Kong; or
- (b) any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so,

but shall not, in the case of a marriage which is both potentially and actually polygamous, include marriage between a man and any wife other than the principal wife, and *married* (結婚) shall be construed accordingly; (*Added 43 of 1989 s. 2*)

**mortgage** (按揭) means a security by way of mortgage or equitable mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money thereafter to be lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be, and includes—

- (a) conditional surrender by way of mortgage, or further charge, of or affecting any property whatsoever; and
- (b) any conveyance of any property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; and
- (c) any instrument for defeating or making redeemable, or explaining or qualifying any conveyance, transfer or disposition of any property whatsoever, apparently absolute, but intended only as a security; and
- (d) any instrument relating to the deposit of any title deeds or instruments constituting or being evidence of the title

to any property whatsoever or creating a charge on any property whatsoever; and

- (e) any mortgage by an equitable owner of his equitable rights; and
- (f) any warrant of attorney to enter up judgment; (*Replaced 79 of 1979 s. 2) [cf. 1891 c. 39 s. 86 U.K.]*)

**net chargeable income** (應課稅入息實額) means net chargeable income calculated in accordance with section 12B; (*Added 71 of 1983 s. 2*)

**occupational retirement scheme** (職業退休計劃) has the meaning assigned to it by section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426); (*Added 76 of 1993 s. 2*)

**open-ended fund company** (開放式基金型公司) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571); (*Added 16 of 2016 s. 25*)

**owner** (擁有人), in respect of land or buildings or land and buildings, includes—

- (a) a person holding the land or buildings or land and buildings directly from the Government;
- (b) a beneficial owner;
- (c) a tenant for life;
- (d) a mortgagor;
- (e) a mortgagee in possession;
- (f) a person with adverse title to land receiving rent from buildings or other structures erected on that land;
- (g) a person who is making payments to a co-operative society registered under the Co-operative Societies Ordinance (Cap. 33) for the purpose of the purchase of the land or buildings or land and buildings;

- (h) a person who holds land or buildings or land and buildings subject to a ground rent or other annual charge;
- (i) (in so far as common parts are concerned) a corporation registered under section 8 of the Building Management Ordinance (Cap. 344) or a person who, on the person's own behalf or on behalf of another person, receives any consideration, in money or money's worth, in respect of the right of use of any common parts solely or with another; and
- (j) an executor of the estate of an owner; (*Replaced 4 of 2010 s. 2*)

***parent or parent of his or her spouse*** (該人的或其配偶的父或母), in relation to any person, means—

- (a) a parent of whose marriage the person or his or her spouse is the child;
- (b) the natural father or mother of the person or his or her spouse;
- (c) a parent by whom the person or his or her spouse was adopted;
- (d) a step parent of the person or his or her spouse; or
- (e) in the case of a deceased spouse, a person who would have been the parent of the person's spouse by reason of any of the provisions of paragraphs (a) to (d) if the spouse had not died; (*Added 31 of 1998 s. 3*)

***password*** (通行密碼) means any combination of letters, characters, numbers or other symbols selected by a person and approved by the Commissioner for use in systems designated by the Commissioner for the purpose of authenticating the person's identification in communicating with the Commissioner

in relation to a return required to be furnished under this Ordinance; (*Added 5 of 2003 s. 2*)

**person** (人、人士) includes a corporation, partnership, trustee, whether incorporated or unincorporated, or body of persons; (*Amended 2 of 1971 s. 2; 30 of 1981 s. 2*)

**precedent partner** (首合夥人) means the partner who, of the active partners resident in Hong Kong—

- (a) is first named in the agreement of partnership; or
- (b) if there is no agreement, is specified by name or initials singly or with precedence to the other partners in the usual name of the partnership; or
- (c) is first named in any statutory statement of the names of the partners;

**profits arising in or derived from Hong Kong** (於香港產生或得自香港的利潤) for the purposes of Part 4 shall, without in any way limiting the meaning of the term, include all profits from business transacted in Hong Kong, whether directly or through an agent;

**receiver** (接管人) includes any receiver, provisional liquidator or liquidator, and any assignee, trustee, or other person having the possession or control of the property of any person by reason of insolvency or bankruptcy; (*Amended 16 of 2016 s. 25*)

**recognized certificate** (認可證書) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 5 of 2003 s. 2*)

**recognized occupational retirement scheme** (認可職業退休計劃) means an occupational retirement scheme—

- (a) which, prior to the commencement\* of section 2 of the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993), was a retirement scheme approved by the



- Commissioner under section 87A where such approval has not subsequently been withdrawn;
- (b) registered for the time being under section 18 of the Occupational Retirement Schemes Ordinance (Cap. 426);
  - (c) in respect of which an exemption certificate has been issued under section 7(1) of the Occupational Retirement Schemes Ordinance (Cap. 426) and has not been withdrawn;
  - (d) which is operated by an employer who is—
    - (i) the government of a country or territory outside Hong Kong; or
    - (ii) any agency or undertaking of or by such a government which is not operated for the purpose of gain; or (*Amended 19 of 1996 s. 3*)
  - (e) contained in or otherwise established by an Ordinance other than the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (*Added 76 of 1993 s. 2. Amended 4 of 1998 s. 6*)

***recognized retirement scheme*** (認可退休計劃) means—

- (a) a recognized occupational retirement scheme; or
- (b) a mandatory provident fund scheme; (*Added 31 of 1998 s. 3*)

***regulatory capital security*** (監管資本證券) has the meaning given by section 17A; (*Added 12 of 2016 s. 11*)

***reportable account*** (須申報帳戶) has the meaning given by section 50A; (*Added 22 of 2016 s. 3*)

***reportable jurisdiction*** (申報稅務管轄區) has the meaning given by section 50A; (*Added 22 of 2016 s. 3*)

**reporting financial institution** (申報財務機構) has the meaning given by section 50A; (*Added 22 of 2016 s. 3*)

**return** (報稅表) includes any return furnished under section 51AA, irrespective of the manner in which that return is furnished; (*Added 5 of 2003 s. 2*)

**river trade limits** (內河航限) has the same meaning as in the Merchant Shipping Ordinance (Cap. 281); (*Added 47 of 1992 s. 2*)

**service provider** (服務提供者)—

(a) except in relation to a provision of Part 9A, has the meaning given by section 50A(1);

(b) in relation to a provision of Part 9A, has the meaning given by section 58B(2); (*Replaced 27 of 2018 s. 19*)

**specified form** (指明的格式) means a form specified under section 86; (*Added 43 of 1989 s. 2. Amended 5 of 2003 s. 2*)

**spouse** (配偶) means a husband or wife; (*Added 43 of 1989 s. 2*)

**standard rate** (標準稅率) means the rate specified in Schedule 1; (*Added 30 of 1950 Schedule*)

**tax** (稅、稅款、稅項) except for the purposes of Parts 12 and 13, means any tax imposed by this Ordinance (including provisional salaries tax charged under Part 10A, provisional profits tax charged under Part 10B and provisional property tax charged under Part 10C) other than additional tax, but for the purposes of Parts 12 and 13 **tax** (稅、稅款、稅項) includes additional tax; (*Replaced 26 of 1969 s. 3. Amended 8 of 1973 s. 2; 7 of 1975 s. 2; 8 of 1983 s. 2*)

**teletyping system** (電話報稅系統) means a system that enables a person to furnish to the Commissioner certain returns or information by using a telephone; (*Added 5 of 2003 s. 2*)

**trade** (行業、生意) includes every trade and manufacture, and every adventure and concern in the nature of trade;



**trustee** (受託人) includes any trustee, guardian, curator, manager, or other person having the direction, control, or management of any property on behalf of any person, but does not include an executor;

**voluntary contributions** (自願性供款), in relation to a mandatory provident fund scheme, means voluntary contributions paid to the scheme in accordance with section 11 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (*Added 4 of 1998 s. 6*)

**wife** (妻子) means a married woman whose marriage is a marriage within the meaning of this section; (*Replaced 43 of 1989 s. 2*)

**year of assessment** (課稅年度) means the period of 12 months commencing on 1 April in any year; (*Replaced 30 of 1950 Schedule*)

**year preceding a year of assessment** (任何課稅年度的上一年) means the period of 12 months ending on 31 March immediately prior to such year of assessment.

(*Amended 36 of 1955 s. 3; 9 of 1958 s. 2; 26 of 1969 s. 3; 7 of 1986 s. 12; 76 of 1993 s. 2; 12 of 1999 s. 3*)

(2) For the purposes of the definition of **financial institution** (財務機構) in subsection (1)—

**associated corporation** (相聯法團), in relation to an authorized institution, means—

- (a) a corporation over which the institution has control;
- (b) a corporation which has control over the institution; or
- (c) a corporation which is under the control of the same person as is the institution; (*Replaced 49 of 1995 s. 53*)

**control** (控制), in relation to a corporation, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

*(Added 73 of 1978 s. 2)*

(2A) For the purposes of the definition of ***recognized occupational retirement scheme*** (認可職業退休計劃) in subsection (1)—

- (a) a scheme which is registered for the time being under section 18 of the Occupational Retirement Schemes Ordinance (Cap. 426) shall upon registration be regarded as a recognized occupational retirement scheme as from—
  - (i) the date on which the application for such registration was made; or
  - (ii) the date on which the terms of the scheme came into effect,

whichever is the earlier; and
- (b) a scheme in respect of which an exemption certificate has been issued under section 7(1) of the Occupational Retirement Schemes Ordinance (Cap. 426) and has not been withdrawn shall upon the issue of the certificate be regarded as a recognized occupational retirement scheme as from—
  - (i) the date on which the application for the certificate was made; or
  - (ii) the date on which the terms of the scheme came into effect,

whichever is the earlier:

Provided that if such date is earlier than the first commencement date of the Occupational Retirement Schemes Ordinance (Cap. 426), the scheme shall be regarded as a recognized occupational retirement scheme as from such commencement date. *(Added 76 of 1993 s. 2)*

- (3) For the purposes of this Ordinance a husband and wife shall be deemed to be living apart when they are living apart—
- (a) under a decree or order of a competent court in or outside Hong Kong;
  - (b) under a duly executed deed of separation or any instrument of similar effect; or
  - (c) in such circumstances that the Commissioner is of the opinion the separation is likely to be permanent. *(Added 43 of 1989 s. 2)*
- (4) Whether or not a person who is or was formerly a member of a mandatory provident fund scheme has permanently departed from Hong Kong is, for the purposes of this Ordinance, to be determined by reference to regulations in force under the Mandatory Provident Fund Schemes Ordinance (Cap. 485). *(Added 4 of 1998 s. 6)*
- (5) In this Ordinance, a reference to the act of signing a return required to be furnished under this Ordinance includes a reference to—
- (a) the affixing of a digital signature to; or *(Amended 14 of 2004 s. 29)*
  - (b) the inclusion of a password with,  
the return for the purpose of authenticating or approving it. *(Added 5 of 2003 s. 2)*
- (6) For the purposes of subsection (5)(a), a digital signature shall be—

- (a) supported by a recognized certificate;
  - (b) generated within the validity of that certificate; and
  - (c) used in accordance with the terms of that certificate.  
*(Added 14 of 2004 s. 29)*
- (7) For the purposes of subsection (6)(a), a digital signature is taken to be supported by a recognized certificate if it is taken to be supported by that certificate under section 2(2) of the Electronic Transactions Ordinance (Cap. 553). *(Added 14 of 2004 s. 29)*
- (8) In subsection (6)(b), ***within the validity of that certificate*** (在該證書的有效期內) has the meaning assigned to it by section 6(2) of the Electronic Transactions Ordinance (Cap. 553). *(Added 14 of 2004 s. 29)*

*(Amended E.R. 1 of 2012)*

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Editorial Note:

\* Commencement date: 19 November 1993.

### **3. Establishment of Board of Inland Revenue. Power of Chief Executive to appoint a Commissioner and other officers**

- (1) (a) There shall be a Board of Inland Revenue composed of the Financial Secretary and 4 other members appointed by the Chief Executive, of whom not more than one shall be an official in the employment of the Government. A member so appointed shall hold office until he shall resign or be removed from office by the Chief Executive. *(Amended 12 of 1999 s. 3)*
- (aa) The Board of Inland Revenue shall have a secretary who shall be a deputy commissioner. *(Added 8 of 1983 s. 3. Amended 48 of 1995 s. 3)*

- (b) 3 members of the Board of Inland Revenue shall form a quorum for the transaction of business and when the Financial Secretary is present he shall be the chairman.
  - (c) All matters coming before the Board of Inland Revenue shall be decided by a majority of votes, and in the case of an equality of votes the chairman or presiding member shall have a second or a casting vote.
  - (d) The Board of Inland Revenue may transact any of its business by the circulation of papers without meeting; and a resolution signed by a majority of the members shall be as valid and effective as if it had been passed at a meeting by the votes of the members so signing.  
*(Added 8 of 1983 s. 3)*
- (2) For the purposes of this Ordinance, the Chief Executive may appoint a Commissioner, deputy commissioners, assistant commissioners, assessors and inspectors. *(Amended 36 of 1955 s. 4; 48 of 1995 s. 3; 12 of 1999 s. 3)*
  - (3) An assistant commissioner exercising or performing any power, duty, or function of the Commissioner under this Ordinance shall be deemed for all purposes to be authorized to exercise or perform the same until the contrary is proved.
  - (4) All powers conferred upon an assessor by this Ordinance may be exercised by an assistant commissioner.

### **3A. Exercise of powers and duties**

- (1) Where under this Ordinance any power is conferred or any duty is imposed on the Commissioner and so long as it is not provided that the power or duty shall be exercised or performed by the Commissioner personally, such power may be exercised or such duty may be performed by a deputy commissioner or by an assistant commissioner. *(Amended 48 of 1995 s. 4)*

- (2) Except where a provision of this Ordinance provides that a power or duty shall be exercised or performed by the Commissioner personally, the Commissioner may, subject to such limitations as he may think fit, authorize in writing any public officer to exercise any power or perform any duty conferred or imposed upon him by this Ordinance.

*(Added 26 of 1969 s. 4)*

#### **4. Official secrecy**

- (1) Except in the performance of his duties under this Ordinance, every person who has been appointed under or who is or has been employed in carrying out or in assisting any persons to carry out the provisions of this Ordinance shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under this Ordinance, and shall not communicate any such matter to any person other than the person to whom such matter relates or his executor or the authorized representative of such person or such executor, nor suffer or permit any person to have access to any records in the possession, custody or control of the Commissioner.  
*(Amended 9 of 1958 s. 3)*
- (2) Every person appointed under or employed in carrying out the provisions of this Ordinance, shall before acting under this Ordinance take and subscribe before a commissioner for oaths an oath of secrecy in such form as the Board of Inland Revenue may specify. *(Amended 39 of 1969 s. 2; 47 of 1997 s. 10)*
- (3) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document, or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this

Ordinance, except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance.

- (4) Notwithstanding anything contained in this section, the Commissioner or any officer of the Inland Revenue Department authorized by the Commissioner in that behalf may communicate any matter which comes to his knowledge, including a copy of any return, accounts or other document submitted to him in connection with this Ordinance—
- (a) to the Commissioner of Rating and Valuation, to the Collector of Stamp Revenue, or to the Estate Duty Commissioner; (*Amended 20 of 1948 s. 4; 29 of 2018 s. 4*)
  - (b) (*Repealed 12 of 1999 s. 3*)
  - (c) to the Secretary for Justice, or a public officer authorized by the Secretary for Justice, for the purpose of reporting under section 68(5) an appeal to the Board of Review; (*Added 2 of 1971 s. 3. Amended 79 of 1992 s. 10; L.N. 362 of 1997; 29 of 2018 s. 4*)
  - (d) to any person appointed under or employed in carrying out the provisions of the Business Registration Ordinance (Cap. 310), as regards any matter required to be notified to the Commissioner pursuant to section 8 of that Ordinance by the person submitting such return, accounts or other document; or (*Added 79 of 1992 s. 10. Amended 13 of 2010 s. 26; 29 of 2018 s. 4*)
  - (e) to the Commissioner for I&T, or a public officer authorized by the Commissioner for I&T, for the purpose of seeking advice under section 18 of Schedule 45. (*Added 29 of 2018 s. 4*)
- (5) Notwithstanding anything contained in this section, the Commissioner may permit the Director of Audit or any officer of that department duly authorized by the Director of Audit in



that behalf to have such access to any records or documents as may be necessary for the performance of his official duties. The Director of Audit or any officer so authorized shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purpose of subsection (2).

- (6) Notwithstanding anything contained in this section, where the Commissioner is of the opinion that any tax deemed to be in default under the provisions of section 71(1) has for the time being become irrecoverable, he may communicate to the Financial Secretary the names and descriptions of the persons charged with such tax together with particulars of the tax in default. *(Added 9 of 1958 s. 3)*

*(Amended 9 of 1958 s. 3)*

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## Part 2

### Property Tax

#### 5. Charge of property tax

- (1) Property tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person being the owner of any land or buildings or land and buildings wherever situate in Hong Kong and shall be computed at the standard rate on the net assessable value of such land or buildings or land and buildings for each such year. (*Amended 35 of 1965 s. 3; 76 of 1975 s. 3; 8 of 1983 s. 4; 7 of 1986 s. 12*)

Provided that—

- (a) (*Repealed 76 of 1975 s. 3*)
- (b) where the owner of the land is not the owner of the buildings thereon, separate assessments shall be made for the land and for the buildings;
- (c) (*Repealed 26 of 1969 s. 5*)
- (d) (*Repealed 76 of 1975 s. 3*)
- (e) (*Repealed 56 of 1993 s. 2*)

*(Replaced 36 of 1955 s. 6)*

- (1A) In subsection (1), **net assessable value** (應評稅淨值) means the assessable value of land or buildings or land and buildings, ascertained in accordance with section 5B—
- (a) (*Repealed 56 of 1993 s. 2*)
  - (b) less—

- (i) where the owner agrees to pay the rates in respect of the land or buildings or land and buildings, those rates paid by him; and
  - (ii) an allowance for repairs and outgoings of 20% of that assessable value after deduction of any rates under subparagraph (i). *(Added 76 of 1975 s. 3. Amended 8 of 1983 s. 4; 56 of 1993 s. 2)*
- (1B) The percentage allowance specified in subsection (1A) may be amended by resolution of the Legislative Council. *(Added 76 of 1975 s. 3)*
- (2) (a) Notwithstanding subsection (1), any corporation carrying on a trade, profession or business in Hong Kong shall, on application made in writing to the Commissioner and on proof of the facts to the satisfaction of the Commissioner, be entitled to exemption from the property tax for any year of assessment in respect of any land or buildings or land and buildings owned by the corporation where the corporation would be entitled under section 25 to a set-off of the property tax which, if exemption were not granted under this subsection, would be paid by the corporation; and the property shall be and remain exempted from property tax for each year of assessment in which the circumstances are such as to qualify the property for such exemption for that year. *(Amended 7 of 1986 s. 12; 56 of 1993 s. 2)*
- (b) *(Repealed 56 of 1993 s. 2)*
- (c) Every corporation exempted from property tax under this subsection in respect of any land or buildings or land and buildings shall, within 30 days after the event, notify the Commissioner in writing of any change in the ownership or use thereof or in any other circumstances affecting such exemption. *(Added 35 of 1965 s. 3)*

(2A)-(5) *(Repealed 56 of 1993 s. 2)*

**5A.** *(Repealed 56 of 1993 s. 3)*

**5B. Ascertainment of assessable value on or after 1 April 1983**

- (1) This section shall apply to any year of assessment commencing or after 1 April 1983. *(Amended 56 of 1993 s. 4)*
- (2) The assessable value of land or buildings or land and buildings for each year of assessment shall be the consideration, in money or money's worth, payable in that year to, to the order of, or for the benefit of, the owner in respect of the right of use of that land or buildings or land and buildings.
- (3) Any consideration payable before the year of assessment commencing on 1 April 1983 in respect of a period of the right of use which starts after, or extends beyond, 1 April 1983 shall, for the purposes of this section, be deemed to be payable in equal monthly instalments during the period of the right of use or during a period of 3 years ending on 31 March 1986, whichever is the shorter.
- (4) Any consideration payable in respect of a period of the right of use which is not contained within any one year of assessment shall, for the purposes of this section, be deemed to be payable in equal monthly instalments during the period of the right of use or during a period of 3 years commencing at the start of the period of the right of use to which the consideration relates, whichever is the shorter.
- (5) *(Repealed 56 of 1993 s. 4)*
- (6) In this section, **consideration** (代價) includes any consideration payable in respect of the provision of any services or benefits connected with or related to the right of use.

(7) Section 22 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section. *(Added 10 of 2013 s. 5)*

*(Added 8 of 1983 s. 6)*

6. *(Repealed 8 of 1983 s. 7)*

7. *(Repealed 56 of 1993 s. 5)*

**7A. Interpretation**

In this Part—

***buildings*** (建築物), except for the purposes of section 5(2), includes any part of a building; *(Replaced 35 of 1965 s. 4. Amended 56 of 1993 s. 6)*

***land or buildings or land and buildings*** (土地或建築物或土地連建築物) includes piers, wharves and other structures;

***occupied*** (佔用), in relation to land or buildings or land and buildings, means land or buildings or land and buildings which are being put to beneficial use. *(Replaced 76 of 1975 s. 6)*

*(Added 36 of 1955 s. 9)*

**7B.** *(Repealed 56 of 1993 s. 7)*

**7C. Bad debts**

(1) In ascertaining the assessable value of any land or buildings or land and buildings under this Part for any year of assessment commencing on or after 1 April 1983, there shall be deducted any consideration in money or money's worth, payable or deemed to be payable on or after 1 April 1983 to, to the order of, or for the benefit of, the owner in respect of the right of use of that land or buildings or that land and

buildings and proved to the satisfaction of the assessor to have become irrecoverable during that year of assessment.

- (2) Consideration previously deducted as irrecoverable and recovered during any year of assessment shall be treated as consideration mentioned in section 5B(2) payable in that year of assessment in respect of the right of use of the land or buildings or land and buildings in respect of which that consideration was payable.
- (3) Notwithstanding section 70, where a person is entitled to deduct any consideration under subsection (1) but the land or buildings or land and buildings has no or insufficient assessable value from which to deduct that consideration in the year of assessment in which, under that subsection, that consideration is deductible, that consideration, or that consideration to the extent to which it cannot be deducted in that year, shall be deducted from the assessable value of that land or buildings or that land and buildings in the latest year of assessment in which that assessable value is sufficient.

*(Added 8 of 1983 s. 9)*

**7D. Part 8AA applies**

Part 8AA applies for the purposes of calculation of property tax.

*(Added 27 of 2018 s. 11)*

## Part 3

### Salaries Tax

*(Amended 36 of 1955 s. 10)*

#### 8. Charge of salaries tax

- (1) Salaries tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person in respect of his income arising in or derived from Hong Kong from the following sources—
  - (a) any office or employment of profit; and
  - (b) any pension.
- (1A) For the purposes of this Part, income arising in or derived from Hong Kong from any employment—
  - (a) includes, without in any way limiting the meaning of the expression and subject to paragraph (b), all income derived from services rendered in Hong Kong including leave pay attributable to such services; *(Amended 69 of 1987 s. 2)*
  - (b) excludes income derived from services rendered by a person who—
    - (i) is not employed by the Government or as master or member of the crew of a ship or as commander or member of the crew of an aircraft; and
    - (ii) renders outside Hong Kong all the services in connection with his employment; and *(Added 2 of 1971 s. 5. Amended 69 of 1987 s. 2)*
  - (c) subject to subsection (1C) and section 50AA, excludes income derived by a person from services rendered

- by him in any territory outside Hong Kong where—  
*(Amended 27 of 2018 s. 3)*
- (i) by the laws of the territory where the services are rendered, the income is chargeable to tax of substantially the same nature as salaries tax under this Ordinance; and
  - (ii) the Commissioner is satisfied that that person has, by deduction or otherwise, paid tax of that nature in that territory in respect of the income. *(Added 69 of 1987 s. 2)*
- (1B) In determining whether or not all services are rendered outside Hong Kong for the purposes of subsection (1A) no account shall be taken of services rendered in Hong Kong during visits not exceeding a total of 60 days in the basis period for the year of assessment. *(Added 2 of 1971 s. 5)*
- (1C) Subsection (1A)(c) does not apply in relation to income derived by a person from services rendered by the person in a territory if—
- (a) the territory is a DTA territory (as defined by section 48A); and
  - (b) under section 50, tax payable in the territory by a Hong Kong resident person in respect of income derived from services rendered by him or her in the territory is to be allowed as a credit against tax payable in Hong Kong by the Hong Kong resident person in respect of that income. *(Added 27 of 2018 s. 3)*
- (2) In computing the income of any person for the purposes of subsection (1) there shall be excluded the following—
- (a) *(Repealed 130 of 1997 s. 2)*



- (b) the official emoluments of consuls, vice-consuls and persons employed on the staff of any consulate, who are subjects or citizens of the state which they represent;
- (c) subject to subsection (4) any sum received by way of commutation of pension under—
  - (i) a recognized occupational retirement scheme upon termination of service, death, incapacity, terminal illness or retirement; (*Amended 1 of 2015 s. 58*)
  - (ii) the Pensions Ordinance (Cap. 89);
  - (iii) the Pension Benefits Ordinance (Cap. 99); or
  - (iv) the Pension Benefits (Judicial Officers) Ordinance (Cap. 401); (*Replaced 76 of 1993 s. 3*)
- (ca) in the case of a pension attributable to services rendered in any office or employment, other than employment by the Government, so much of the pension as is not attributable to services rendered in Hong Kong; (*Added 2 of 1971 s. 5*)
- (cb) so much of accrued benefits received from the approved trustee of a mandatory provident fund scheme, whether in a lump sum or (if applicable) as an instalment, on the ground of a person's retirement from employment, death, incapacity, terminal illness or permanent departure from Hong Kong as is attributable to mandatory contributions; (*Replaced 4 of 1998 s. 6. Amended 1 of 2015 s. 58*)
- (cc) subject to subsections (4) and (5)—
  - (i) any sum (not being a pension) withdrawn from a recognized occupational retirement scheme on retirement, death, incapacity, terminal illness or termination of service; and (*Amended 1 of 2015 s. 58*)



- (ii) a sum equal to so much of the accrued benefit received from the approved trustee of a mandatory provident fund scheme, whether in a lump sum or (if applicable) as an instalment, on the ground of retirement, death, incapacity, terminal illness, termination of service, or taken to have been received from the approved trustee of such a scheme as provided by subsection (9), as is attributable to voluntary contributions paid to the scheme by an employer; (*Added 4 of 1998 s. 6. Amended 1 of 2015 s. 58*)
- (d) the emoluments payable by the Central People's Government to members of the Chinese People's Liberation Army, and to persons in the permanent service of that Government in Hong Kong in respect of their offices under that Government; (*Replaced 2 of 2012 s. 3*)
- (e) wound and disability pensions granted to members of the Chinese People's Liberation Army; (*Amended 2 of 2012 s. 3*)
- (f) gratuities granted to members of the Chinese People's Liberation Army in respect of services rendered during war; (*Amended 2 of 2012 s. 3*)
- (fa) the Hong Kong War Memorial Pensions and additional benefits paid under the Hong Kong War Memorial Pensions Ordinance (Cap. 386); (*Added 51 of 1991 s. 24*)
- (g) any amount arising from a scholarship, exhibition, bursary, or other similar educational endowment held by that person where he is receiving full time instruction at a university, college, school, or other similar educational establishment; (*Replaced 26 of 1969 s. 9. Amended 1 of 1991 s. 2*)

- (h) the emoluments payable by the Central People's Government to persons in the temporary service of that Government who are in the opinion of the Commissioner serving in Hong Kong on Mainland of China based terms whereby they are normally employed in the Mainland of China but are liable for service elsewhere or are recruited in the Mainland of China specially for service in Hong Kong; (*Added 26 of 1969 s. 9. Amended 23 of 1998 s. 2; 12 of 1999 s. 3*)
  - (i) any amount received by way of periodical payments in the nature of alimony or maintenance by a person from his or her spouse or former spouse; (*Added 35 of 1965 s. 5. Amended 2 of 1971 s. 5; 19 of 1991 s. 2*)
  - (j) income derived from services rendered as master or member of the crew of a ship or as commander or member of the crew of an aircraft by a person who was present in Hong Kong on not more than—
    - (i) a total of 60 days in the basis period for that year of assessment; and
    - (ii) a total of 120 days falling partly within each of the basis periods for 2 consecutive years of assessment, one of which is that year of assessment; (*Added 2 of 1971 s. 5. Amended 7 of 1986 s. 3*)
  - (k) any salary or other remuneration paid by another person who is chargeable to profits tax under Part 4 which, but for section 17(2), would be deductible in computing the profits or losses of such other person for the purposes of that Part. (*Added 7 of 1986 s. 3*)
- (2A) In computing the income of any person for the purposes of subsection (1) there is to be excluded any amount that, had it been payable immediately before the date of commencement\* of section 17 of Schedule 1 to the Adaptation of Laws

(Military References) Ordinance 2012 (2 of 2012), would have been excluded under subsection (2)(e) or (f) as in force immediately before that date. (*Added 2 of 2012 s. 3*)

- (3) For the purposes of subsection (2)(c) and (cc)— (*Amended 4 of 1998 s. 6*)

**incapacity** (無行為能力) means permanent unfitness to perform the kind of work that a person was last performing before becoming incapacitated; (*Added 1 of 2015 s. 58*)

**retirement** (退休) means—

- (a) a retirement from the service of the employer at some specified age of not less than 45 years; or
- (b) a retirement after some specified period of service with the employer of not less than 10 years; or
- (c) the attainment of the age of 60 years or some specified age of retirement, whichever is the later;

**terminal illness** (罹患末期疾病) means a terminal illness within the meaning of section 158(3) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A); (*Added 1 of 2015 s. 58*)

**termination of service** (服務終止) means a termination of employment with the employer other than upon retirement, death, incapacity or terminal illness. (*Added 76 of 1993 s. 3. Amended 1 of 2015 s. 58*)

- (4) For the purposes of paragraphs (c) and (cc) of subsection (2), an amount that a person—
- (a) has received from a recognized occupational retirement scheme on the person's termination of service; or
  - (b) has received, or is taken to have received, from a mandatory provident fund scheme on termination of service,

may be excluded under those paragraphs to the extent that it is attributable to voluntary contributions made by the person's employer and does not exceed the proportionate benefit calculated in accordance with subsection (5). However, where, in the case of a recognized occupational retirement scheme approved by the Commissioner under section 87A before its repeal by the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993), an amount payable on termination of service in accordance with the rules of the scheme (as approved by the Commissioner before that repeal) exceeds the proportionate benefit so calculated, that amount is to be taken to be the proportionate benefit. (*Replaced 4 of 1998 s. 6*)

- (5) For the purposes of subsection (4), the formula for calculating the proportionate benefit is—

$$PB = \frac{CMS}{120} \times AB$$

where—

PB is the proportionate benefit to be calculated;

CMS is the number of completed months of service that the person has completed with the employer; and

AB the amount of the person's accrued benefit. (*Added 4 of 1998 s. 6*)

- (6) In subsection (5), **accrued benefit** (累算權益), in relation to a person, means—

- (a) if the person is a member of a recognized occupational retirement scheme, the maximum benefit that the person would have been entitled to receive from the scheme for the person's service recognized for the purposes of the scheme if, at the date on which the person's employment

was terminated, the person had retired (within the meaning of subsection (3)); and

- (b) if the person is a member of a mandatory provident fund scheme, the person's accrued benefits attributable to voluntary contributions paid to the scheme in respect of the person for that service. *(Added 4 of 1998 s. 6)*

(7) If—

- (a) the recognized occupational retirement scheme referred to in subsection (2)(cc)(i) is established by an employer who is not chargeable to tax under Part 4; or
- (b) the employer who contributes to the mandatory provident fund scheme referred to in subsection (2)(cc)(ii) is not so chargeable,

the sum excluded by subsection (2)(cc) must not, with respect to the part of the sum that is attributable to the employer's voluntary contributions to the scheme, exceed the amount calculated in accordance with subsection (8). *(Added 4 of 1998 s. 6)*

(8) For the purposes of subsection (7), the formula is—

$$A = [(EI \times \frac{15}{100}) \times YCS] - RAB$$

where—

- A is the amount to be calculated;
- EI is the employee's income from the employee's office or employment for the period of 12 months preceding the date on which the relevant benefit is received or taken to have been received;
- YCS is the employee's completed years of service with the employee's employer;
- RAB is—
- (a) in the case of a recognized occupational retirement scheme, zero; or

- (b) in the case of a mandatory provident fund scheme, so much of the relevant accrued benefit that the employee has received from the scheme as is attributable to mandatory contributions paid to the scheme by the person's employer. *(Added 4 of 1998 s. 6. Amended E.R. 4 of 2017)*
- (9) If—
- (a) the service of a person in respect of whom an employer has paid voluntary contributions to a mandatory provident fund scheme is terminated; and
- (b) the accrued benefit attributable to those contributions is retained within the scheme or is transferred to another mandatory provident fund scheme,
- the person is, for the purposes of subsection (2)(cc), taken to have received from the scheme on the date of termination of service such part of the person's accrued benefit as is attributable to those contributions. *(Added 4 of 1998 s. 6)*
- (10) Subsection (4) does not apply to a part of a person's accrued benefit in a mandatory provident fund scheme that has previously been taken to have been paid to the person because of the operation of subsection (9). *(Added 4 of 1998 s. 6)*
- (Replaced 36 of 1955 s. 11. Amended 15 of 1966 s. 2; 7 of 1986 s. 12; E.R. 1 of 2012)*
- (Format changes—E.R. 2 of 2012)*

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Editorial Note:

\* Commencement date: 1 July 1997.

## 9. Definition of income from employment\*

- (1) Income from any office or employment includes—

- (a) any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite, or allowance, whether derived from the employer or others, except—
- (i)-(iii) *(Repealed 24 of 2003 s. 3)*
  - (iv) subject to subsection (2A), any amount paid by the employer to or for the credit of a person other than the employee in discharge of a sole and primary liability of the employer to that other person, not being a liability for which any person was surety; *(Added 1 of 1991 s. 3)*
- (aa) so much of any amount (other than a pension falling under section 8(1)(b)) received by an employee before or after his employment ceases, whether by way of commutation or otherwise, from a pension or provident fund, scheme or society, other than a recognized occupational retirement scheme or mandatory provident fund scheme, as is attributable to the employer's contributions to that fund, scheme or society; *(Added 2 of 1971 s. 6. Amended 76 of 1993 s. 4; 4 of 1998 s. 6)*
- (ab) so much of any amount (other than a pension falling under section 8(1)(b)) received by an employee, whether by way of commutation or otherwise, under a recognized occupational retirement scheme—
- (i) otherwise than because of termination of service, death, incapacity, terminal illness or retirement of the employee as is attributable to the employer's contributions under the scheme in respect of the employee; or *(Amended 1 of 2015 s. 59)*
  - (ii) by reason of termination of service as is attributable to such part of the employer's contributions under the scheme in respect of the employee that exceeds the proportionate benefit



calculated in accordance with section 8(5); (*Added 76 of 1993 s. 4. Amended 4 of 1998 s. 6*)

- (ac) any payment received by an employee pursuant to a judgment given under section 57(3)(b) of the Occupational Retirement Schemes Ordinance (Cap. 426) that is attributable to his employer's contributions to the occupational retirement scheme in respect of which the judgment was given; (*Added 76 of 1993 s. 4*)
- (ad) so much of the accrued benefit that an employee has received, or is taken to have received, from a mandatory provident fund scheme (otherwise than on the ground of retirement, death, incapacity, terminal illness or termination of service, whether in a lump sum or (if applicable) as an instalment) as is attributable to contributions paid to the scheme by the employee's employer; (*Added 4 of 1998 s. 6. Amended 1 of 2015 s. 59*)
- (ae) so much of the accrued benefit that an employee has received, or is taken to have received, from a mandatory provident fund scheme as is attributable to voluntary contributions paid to the scheme by the employee's employer that exceeds the proportionate benefit calculated in accordance with section 8(5); (*Added 4 of 1998 s. 6*)
- (b) the rental value of any place of residence provided rent-free by the employer or an associated corporation; (*Amended 38 of 1975 s. 2*)
- (c) where a place of residence is provided by an employer or an associated corporation at a rent less than the rental value, the excess of the rental value over such rent; (*Amended 2 of 1971 s. 6; 38 of 1975 s. 2*)



- (d) any gain realized by the exercise of, or by the assignment or release of, a right to acquire shares or stock in a corporation obtained by a person as the holder of an office in or an employee of that or any other corporation. (*Added 2 of 1971 s. 6*)
- (1A) (a) Notwithstanding subsection (1)(a), where an employer or an associated corporation—
- (i) pays all or part of the rent payable by the employee; or
  - (ii) refunds all or part of the rent paid by the employee, such payment or refund shall be deemed not to be income; (*Replaced 1 of 1991 s. 3*)
- (b) a place of residence in respect of which an employer or associated corporation has paid or refunded all the rent therefor shall be deemed for the purposes of subsection (1) to be provided rent free by the employer or associated corporation; (*Amended 1 of 1991 s. 3*)
- (c) a place of residence in respect of which an employer or associated corporation has paid or refunded part of the rent therefor shall be deemed for the purposes of subsection (1) to be provided by the employer or associated corporation for a rent equal to the difference between the rent payable or paid by the employee and the part thereof paid or refunded by the employer or associated corporation. (*Added 36 of 1954 s. 2. Amended 38 of 1975 s. 2; 1 of 1991 s. 3*)
- (2) The rental value of any place of residence provided by the employer or an associated corporation shall be deemed to be 10% of the income as described in subsection (1)(a) derived from the employer for the period during which a place of residence is provided after deducting the outgoings, expenses and allowances provided for in section 12(1)(a) and (b) to the

extent to which they are incurred during the period for which the place of residence is provided and any lump sum payment or gratuity paid or granted upon the retirement or termination of employment of the employee: (*Amended 35 of 1965 s. 6; 26 of 1969 s. 10; 7 of 1975 s. 3; 38 of 1975 s. 2*)

Provided that—

- (a) if such place of residence be a hotel, hostel or boarding house the rental value shall be deemed to be 8% of the income aforesaid where the accommodation consists of not more than 2 rooms and 4% where the accommodation consists of not more than one room; (*Replaced 10 of 1950 s. 3. Amended 38 of 1975 s. 2*)
  - (b) if such place of residence be other than a hotel, hostel or boarding house any person may elect to have, in respect of the years of assessment commencing on or after 1 April 1983, the rateable value included in the valuation list prepared under section 12 of the Rating Ordinance (Cap. 116) or, if the place of residence is not so included, the rateable value ascertained in accordance with Part III of that Ordinance, substituted for rental value at 10% as aforesaid. (*Replaced 19 of 1996 s. 4*)
- (2A) Subsection (1)(a)(iv) shall not operate to exclude—
- (a) any benefit that is—
    - (i) provided by an employer otherwise than in connection with a holiday journey; and
    - (ii) capable of being converted into money by the recipient; (*Replaced 24 of 2003 s. 3*)
  - (b) any amount paid by an employer in connection with the education of a child of an employee; or (*Amended 24 of 2003 s. 3*)

- (c) any amount paid by an employer in connection with a holiday journey, (*Added 24 of 2003 s. 3*)  
from income from any office or employment. (*Added 1 of 1991 s. 3*)
- (3) A pension shall include a pension which is voluntary or is capable of being discontinued. (*Replaced 36 of 1955 s. 13*)
- (4) For the purposes of subsection (1)—
- (a) the gain realized by the exercise at any time of such a right as is referred to in paragraph (d) of that subsection shall be taken to be the difference between the amount which a person might reasonably expect to obtain from a sale in the open market at that time of the shares or stock acquired and the amount or value of the consideration given whether for them or for the grant of the right or for both; and
- (b) the gain realized by the assignment or release of such a right as is referred to in paragraph (d) of that subsection shall be taken to be the difference between the amount or value of the consideration for the assignment or release and the amount or value of the consideration given for the grant of the right,

(a just apportionment being made of any entire consideration given for the grant of the right to acquire the said shares or stock and other shares or stock or otherwise for the grant of the right to acquire those shares or stock and for something beside):

Provided that neither the consideration given for the grant of the right nor any such entire consideration shall be taken to include the performance of any duties in or in connection with the office or employment by reason of which the right was granted, and no part of the amount or value of the

consideration given for the grant shall be deducted more than once under this subsection. (*Replaced 2 of 1971 s. 6*)

(5) Where salaries tax may by virtue of subsection (1)(d) become chargeable in respect of any gain which may be realized by the exercise of a right, salaries tax shall not be chargeable under any other provision of this Ordinance in respect of the receipt of the right. (*Added 2 of 1971 s. 6. Amended L.N. 65 of 1986*)

(6) For the purposes of this section—

**accrued benefit** (累算權益) has the same meaning as in section 8(6); (*Added 4 of 1998 s. 6*)

**associated corporation** (相聯法團) means—

- (a) a corporation over which the employer has control;
- (b) if the employer is a corporation—
  - (i) a corporation which has control over the employer; or
  - (ii) a corporation which is under the control of the same person as is the employer;

**child of an employee** (僱員的子女) means any child of an employee or of his or her spouse or former spouse, whether or not born in wedlock, and includes the adopted or step child of either or both of them; (*Added 1 of 1991 s. 3*)

**control** (控制), in relation to a corporation, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;  
(*Added 38 of 1975 s. 2*)

**employee** (僱員) includes a holder of an office; (*Added 1 of 1991 s. 3*)

**holiday journey** (度假旅程) means—

- (a) a journey taken for holiday purposes; or
- (b) where a journey is taken for holiday and other purposes, the part of the journey taken for holiday purposes;  
(*Added 24 of 2003 s. 3*)

**incapacity** (無行為能力) has the meaning given by section 8(3);  
(*Added 1 of 2015 s. 59*)

**place of residence** (居住地方) includes a residence provided by an employer or an associated corporation notwithstanding that the employee is required to occupy that place of residence by or under his terms of employment and whether or not by doing so he can better perform his duties; (*Added 48 of 1979 s. 2. Amended 76 of 1993 s. 4*)

**retirement** (退休) and **termination of service** (服務終止) have the same meaning as in section 8(3); (*Added 76 of 1993 s. 4. Amended 1 of 2015 s. 59*)

**terminal illness** (罹患末期疾病) means a terminal illness within the meaning of section 158(3) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A).  
(*Added 1 of 2015 s. 59*)

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Editorial Note:

- \* The amendments made by 24 of 2003 to section 9(1)(a)(i) to (iii), (2A)(a) and (c) and (6) apply in relation to the year of assessment commencing on 1 April 2003 and to all subsequent years of assessment. (Please see 24 of 2003 s. 2).

**9A. Remuneration under certain agreements treated as being income derived from an employment of profit**

- (1) Where a person (*relevant person*) carrying on (or deemed under this Ordinance to be carrying on) a trade, profession or business, or prescribed activity, has entered into an agreement, whether before, on or after the appointed day, under which any remuneration for any services carried out under the agreement on or after that day by an individual (*relevant individual*) for the relevant person or any other person is paid or credited on or after that day to—
- (a) a corporation controlled by—
    - (i) the relevant individual;
    - (ii) an associate or associates of the relevant individual; or
    - (iii) the relevant individual together with an associate or associates of the relevant individual;
  - (b) a trustee of a trust estate under which the relevant individual or an associate or associates of the relevant individual is a beneficiary, or are beneficiaries, as the case may be, under the trust; or
  - (c) a corporation controlled by such a trustee,
- then, subject to subsections (3) and (4), for the purposes of this Ordinance—
- (i) the relevant individual shall be treated as having an employment of profit with the relevant person—
    - (A) commencing on—
      - (I) in the case of the trade, profession or business, the day the relevant individual commenced to carry out any of those services or the appointed day, whichever is the later;

- 
- (II) in the case of the prescribed activity, the day the notice concerned under subsection (6) commenced or the day the relevant individual commenced to carry out any of those services, whichever is the later;
- (B) until the agreement terminates without the relevant individual continuing to carry out any of those services as an employee of the relevant person;
- (ii) the relevant individual shall be treated as an employee of the relevant person, and the relevant person shall be treated as the employer of the relevant individual, whilst the relevant individual is treated, under paragraph (i), as having an employment of profit with the relevant person; and
- (iii) any such remuneration shall be treated as being—
- (A) income derived by the relevant individual from an employment of profit with the relevant person; and
- (B) received by and accrued to the relevant individual at the time that it is paid or credited to the corporation or trustee concerned referred to in paragraph (a), (b) or (c),
- and the other provisions of this Ordinance (including section 52) shall be construed accordingly.
- (2) Where an agreement referred to in subsection (1) does not specify or otherwise identify the amount of any remuneration referred to in that subsection which is from time to time to be paid or credited to the corporation or trustee referred to in paragraph (a), (b) or (c) of that subsection, then any sum which under that agreement is paid or credited to that corporation or trustee, as the case may be, shall be deemed



to be such remuneration (and the other provisions of this Ordinance, including that subsection, shall apply accordingly) except any such sum or part thereof in respect of which the relevant individual concerned or the relevant person establishes to the satisfaction of the Commissioner that it was not in substance remuneration for any services carried out under that agreement on or after the appointed day by the relevant individual for the relevant person or any other person.

- (3) Paragraphs (i), (ii) and (iii) of subsection (1) shall not apply where—
- (a) neither the agreement referred to in that subsection nor any related undertaking (and whether or not the agreement refers to that undertaking) provides for any remuneration for any of those services to include or to be the provision of annual leave, passage allowance, sick leave, pension entitlements, medical payments or accommodation, or any similar benefit, or any benefit (including money) in lieu thereof;
  - (b) if the agreement referred to in that subsection or any related undertaking (and whether or not the agreement refers to that undertaking) requires any of the services referred to in that subsection to be carried out personally by the relevant individual, the relevant individual carries out the same or similar services—
    - (i) for persons other than any person for whom those first-mentioned services are carried out under that agreement; and
    - (ii) during the term of that agreement or undertaking, as the case may be;



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- (c) the performance by the relevant individual of any of those services is not subject to any control or supervision—
- (i) which may be commonly exercised by an employer in relation to the performance of his employee's duties; and
  - (ii) by any person (including the relevant person) other than the corporation or trustee concerned referred to in subsection (1)(a), (b) or (c);
- (d) the remuneration referred to in that subsection is not paid or credited periodically and calculated on a basis commonly used in relation to the payment or crediting and calculation of remuneration under a contract of employment;
- (e) the relevant person does not have the right to cause any of those services to cease to be carried out in a manner, or for a reason, commonly provided for in relation to the dismissal of an employee under a contract of employment; and
- (f) the relevant individual is not held out to the public to be an officer or employee of the relevant person.
- (4) Paragraphs (i), (ii) and (iii) of subsection (1) shall not apply where the relevant individual establishes to the satisfaction of the Commissioner that at all relevant times the carrying out of the services referred to in that subsection was not in substance the holding by him of an office or employment of profit with the relevant person.
- (5) It is hereby declared that where, by virtue of the operation of this section, the relevant individual is chargeable to salaries tax on remuneration referred to in subsection (1), then—
- (a) the corporation or trustee concerned referred to in paragraph (a), (b) or (c) of that subsection to whom that

- remuneration is paid or credited is not chargeable to tax thereon; and
- (b) the relevant individual is not chargeable to tax on any remuneration paid or credited to him by that corporation or trustee, as the case may be—
- (i) in respect of any office or employment of profit he has with that corporation or trustee, as the case may be; and
  - (ii) to the extent that the remuneration referred to in this paragraph is attributable to any of the services referred to in that subsection.
- (6) The Commissioner may, by notice in the Gazette, prescribe an activity for the purposes of this section.
- (7) For the avoidance of doubt, it is hereby declared that—
- (a) where there are 2 or more relevant individuals under an agreement referred to in subsection (1), then that subsection shall apply to them individually and not collectively, and the other provisions of this section (including subsection (2)) shall be construed accordingly;
  - (b) paragraphs (i), (ii) and (iii) of subsection (1) shall not apply where under an agreement referred to in that subsection—
    - (i) the relevant person is also the relevant individual; or
    - (ii) the relevant person is a partnership and the relevant individual is a partner of the partnership.
- (8) In this section—

***appointed day*** (指定日期) means the day appointed under section 1(2) of the Inland Revenue (Amendment) (No. 2) Ordinance 1995 (54 of 1995);

**associate** (相聯者), in relation to the relevant individual, means—

- (a) a relative of the relevant individual;
- (b) a partner of the relevant individual and any relative of that partner;
- (c) a partnership in which the relevant individual is a partner;
- (d) any corporation controlled by the relevant individual, by a partner of the relevant individual or by a partnership in which the relevant individual is a partner;
- (e) any director or principal officer of a corporation referred to in paragraph (d);
- (f) another relevant individual who is such an individual under the agreement referred to in subsection (1) under which the first-mentioned relevant individual is also such an individual;

**beneficiary** (受益人), in relation to a trust estate, means any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income;

**control** (控制), in relation to a corporation, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

**prescribed activity** (訂明活動) means any activity prescribed in a notice under subsection (6);

**principal officer** (主要職員) means—

- (a) a person employed by a corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

**relative** (親屬) means the spouse, parent, child, brother or sister of the person concerned, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent.

*(Added 54 of 1995 s. 2)*

## **10. Salaries tax on spouses to be paid separately unless they elect to be jointly assessed**

- (1) In the case of a husband and wife, unless an election is made under subsection (2), salaries tax shall be payable on the net chargeable income of each spouse ascertained under this Part by the spouse to whom the income has accrued.
- (2) Where in any year of assessment a husband and wife, not being a wife living apart from her husband, both have assessable income and—
  - (a) either the husband or wife is entitled to deductions under Part 4A and allowances under Part 5 which, in

aggregate, are in excess of his or her net assessable income; or (*Amended 31 of 1998 s. 4*)

- (b) both also have a net chargeable income and the aggregate of the salaries tax which would be payable by them if subsection (1) applies exceeds the salaries tax which would be payable if an election is made under this subsection,

an election may be made by them, subject to section 11, to be assessed to salaries tax in the manner specified in subsection (3).

- (3) Where an election is made by a husband and wife under subsection (2) salaries tax shall be payable on their aggregated net chargeable income as ascertained under section 12B(2) and in the case of an election—
- (a) under subsection (2)(a), the spouse who would have been chargeable to salaries tax in the absence of such an election;
- (b) under subsection (2)(b), the spouse who is nominated by them,

shall be chargeable to salaries tax in respect of such aggregated net chargeable income.

- (4) Where a husband or wife is deceased an executor shall have the same right to make an election under subsection (2) as the deceased would have had if the deceased had not died.
- (5) For the purposes of subsection (3), where an election is made under subsection (2) by a husband and wife who married one another in the year of assessment to which the election relates, they shall be deemed, for the purposes of ascertaining their aggregated net chargeable income for that year, to have married at the commencement of that year.

*(Replaced 43 of 1989 s. 3. Amended E.R. 1 of 2012)*

**11. The time and manner in which an election or the withdrawal of an election for joint assessment is to be made**

- (1) An election shall be made in the specified form jointly by the husband and wife and, subject to subsection (3), may be withdrawn by them jointly by notice in writing given to the Commissioner.
- (2) An election shall relate to the year of assessment specified in such form and it, and any withdrawal thereof under this section, may be made at any time—
  - (a) within that year of assessment or the following year of assessment; or
  - (b) before the expiration of a period of one month following the time when the assessment for the year of assessment becomes final and conclusive under section 70,  
whichever is the later, or within such further time, if any, as the Commissioner may allow as being reasonable in the circumstances.
- (3) Where an election is withdrawn under this section it shall, for the purpose of assessing the net chargeable income of the husband and wife, be deemed never to have been made and any assessment made prior to such withdrawal on the basis of the election may be adjusted by the Commissioner to take account of the withdrawal.
- (4) A husband and wife who under this section have withdrawn an election may not again make an election in relation to the year of assessment to which the withdrawn election relates.
- (5) In this section *election* (選擇) means an election made under section 10(2) and, where a nomination under section 10(3)(b) is required, includes such nomination.

*(Added 43 of 1989 s. 3)*

**11A.** *(Repealed 71 of 1983 s. 4)*

**11B. Ascertainment of assessable income**

The assessable income of a person in any year of assessment shall be the aggregate amount of income accruing to him from all sources in that year of assessment.

*(Added 8 of 1973 s. 5. Amended 71 of 1983 s. 5)*

**11C. Office or employment of profit**

For the purpose of section 11B, a person shall be deemed to commence or cease, as the case may be, to derive income from a source whenever and as often as he commences or ceases—

- (a) to hold any office or employment of profit; or
- (b) to become entitled to a pension.

*(Replaced 71 of 1983 s. 6)*

**11D. Receipt of income**

For the purpose of section 11B—

- (a) income which has accrued to a person during the basis period for a year of assessment but which has not been received by him in such basis period shall not be included in his assessable income for that year of assessment until such time as he shall have received such income, when notwithstanding anything contained in this Ordinance, an additional assessment shall be raised in respect of such income:

Provided that for the purposes of this paragraph income which has either been made available to the person to whom it has accrued or has been dealt with on his



behalf or according to his directions shall be deemed to have been received by such person;

- (b) income accrues to a person when he becomes entitled to claim payment thereof:

Provided that—

- (i) any lump sum payment received on or after 1 April 1966, being a lump sum payment or gratuity paid or granted upon the retirement from or termination of any office or employment or any contract of employment of an employee or a lump sum payment of deferred pay or arrears of pay arising from an award of salary or wages, whether such a payment is paid by an employer to a person during employment or after that person has left his employ, shall upon the application in writing of the person entitled to claim payment thereof within 2 years after the end of the year of assessment in which the payment is made be related back and shall then be deemed to be income which has accrued during the periods in which the services or employment, in respect of which the payment was made, were performed or exercised, or, if the relevant periods of service or employment exceed 3 years, the payment shall be deemed to be income accruing at a constant rate over the 3 years ending on the date on which the person became entitled to claim payment thereof or ending on the last day of employment, whichever is the earlier; and, notwithstanding section 70, an application made by any person under this proviso for the adjustment of an assessment shall, to that extent, be regarded as a valid objection to the assessment under section 64; and



- (ii) subject to proviso (i), any payment made by an employer to a person after that person has ceased or been deemed to cease to derive income which, if it had been made on the last day of the period during which he derived income, would have been included in that person's assessable income for the year of assessment in which he ceased or is deemed to cease to derive income from that employment, shall be deemed to have accrued to that person on the last day of that employment.

*(Added 8 of 1973 s. 5. Amended 71 of 1983 s. 7)*

## **12. Adjustments to assessable income**

- (1) In ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person—
- (a) all outgoings and expenses, other than expenses of a domestic or private nature and capital expenditure, wholly, exclusively and necessarily incurred in the production of the assessable income;
  - (b) allowances calculated in accordance with Part 6 in respect of capital expenditure on machinery or plant the use of which is essential to the production of the assessable income;
  - (c) the amount of any excess carried forward to that year of assessment in accordance with section 12A(3);
  - (d) the amount of any excess required by subsection (3) to be deducted;
  - (e) the amount of the expenses of self-education paid in the year of assessment not exceeding the amount prescribed in subsection (6). *(Added 24 of 1996 s. 3)*

- (2) Where any machinery or plant is not used wholly and exclusively in the production of assessable income, the amount of the allowances provided for in subsection (1)(b) shall be reduced in the proportion considered by the assessor to be fair and reasonable.
- (3) If in the case of a husband and wife who have made an election under section 10(2), the aggregate of deductions claimed for any year of assessment by either spouse under subsection (1)(a), (b) and (c) exceeds the assessable income of that spouse in that year, the excess shall be deducted from the assessable income of the other spouse for the purpose of determining the net assessable income of that other spouse in that year. (*Amended 43 of 1989 s. 4*)
- (4) (*Repealed 71 of 1983 s. 8*)
- (5) The amount of assessable income for any year of assessment of a person shall, for the purposes of ascertaining his net assessable income, be increased by the amount of any balancing charge directed to be made under Part 6 on that person in respect of the machinery or plant used in the production of the assessable income.
- (6) For the purposes of subsection (1)(e)—
- (a) the total amount that may be deducted in any year of assessment shall not exceed the amount specified in relation to that year in Schedule 3A; (*Amended 42 of 1997 s. 3*)
- \***(b) *expenses of self-education*** (個人進修開支) means expenses paid by the taxpayer as—
- (i) fees, including tuition and examination fees, in connection with a prescribed course of education undertaken by the taxpayer; or
- (ii) fees in respect of an examination set by an education provider or a trade, professional or

business association, and undertaken by the taxpayer to gain or maintain qualifications for use in any employment,

but does not include—

- (A) expenses for which a deduction is allowable or has been allowed to the taxpayer in any year of assessment under any other provision of this Ordinance; or
  - (B) expenses to the extent to which they have been reimbursed or are reimbursable to the taxpayer by his employer or any other person unless the reimbursement has been or will be included in the assessable income of the taxpayer; (*Replaced 12 of 2004 s. 4*)
- \***(c) *prescribed course of education*** (訂明教育課程) means a course undertaken to gain or maintain qualifications for use in any employment and being—
- (i) a course of education provided by an education provider;
  - (ii) a training or development course provided by a trade, professional or business association; or
  - +**(iii)** a training or development course accredited or recognized by an institution specified in Schedule 13; (*Replaced 12 of 2004 s. 4*)
- \***(d) *education provider*** (教育提供者) means—
- (i) a university, university college or technical college;
  - (ii) a place of education to which the Education Ordinance (Cap. 279) does not apply by virtue of section 2 of that Ordinance;
  - (iii) a school registered under section 13(a) of the Education Ordinance (Cap. 279);

- (iv) a school exempted from registration under section 9(1) of the Education Ordinance (Cap. 279);
- (v) an institution approved by the Commissioner for the purposes of section 16C; or
- (vi) an institution approved by the Commissioner under paragraph (e); *(Replaced 12 of 2004 s. 4)*
- \***(e)** the Commissioner may in writing approve an institution as an education provider and the approval may operate from a date, whether before or after the date of approval, specified in the instrument of approval and may be withdrawn at any time; *(Added 12 of 2004 s. 4)*
- +**(f)** the Secretary for Financial Services and the Treasury may by order amend Schedule 13. *(Added 12 of 2004 s. 4)*

*(Replaced 7 of 1975 s. 4. Amended 71 of 1983 s. 8; E.R. 1 of 2012)*

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Editorial Note:

\* Section 12(6)(b), (c)(except paragraph (c)(iii)), (d) and (e) applies in relation to the year of assessment 2000/01 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(1))

+ Section 12(6)(c)(iii) and (f) applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(4))

## **12A. Treatment of losses**

- (1) Where in any year of assessment the aggregate of the outgoings, expenses and allowances deductible under section 12(1)(a) and (b) from the assessable income of a person exceeds the amount of his assessable income, the amount of the excess shall, subject to subsection (4), be carried forward and set off against his assessable income in subsequent years of assessment.

- (2) The aggregate amount set off against a person's assessable income in subsequent years of assessment shall not exceed the amount of any excess under subsection (1).
- (3) Subject to subsection (4), a set off by a person under this section shall first be made against his assessable income for the year of assessment next succeeding the year of assessment in respect of which the excess occurred and, so far as it cannot be so made, against his assessable income for the next year of assessment and so on until the excess has been completely set off.
- (4) Where in any year of assessment the net chargeable incomes of the husband and wife are aggregated by reason of an election made under section 10(2), any excess carried forward into that year under this section shall—
- (a) be set off primarily against the assessable income of the spouse whose deductions resulted in the excess and then, so far as it cannot be so set off, against the assessable income of the other spouse; and
  - (b) then, and so far as it cannot be set off in accordance with paragraph (a)—
    - (i) where no election is made under section 10(2) in respect of the following year of assessment, in accordance with subsection (3); or
    - (ii) where an election is made under section 10(2) in respect of the following year of assessment, in accordance with paragraph (a),
- and so on from year to year until the excess has been completely set off. *(Replaced 43 of 1989 s. 5)*  
*(Replaced 7 of 1975 s. 4. Amended 71 of 1983 s. 9)*

**12B. Ascertainment of net chargeable income**

- (1) The net chargeable income of a person for any year of assessment shall, subject to subsection (2), be such amount as is arrived at after deducting from his net assessable income—
  - (a) such deductions as are under Part 4A allowable to that person; and *(Replaced 31 of 1998 s. 5)*
  - (b) such allowances as are under Part 5 permitted for that person. *(Amended 43 of 1989 s. 6)*
- (2) In the case of a person chargeable to salaries tax under section 10(3), that person and his or her spouse shall have but one net chargeable income, and it shall be the amount arrived at after deducting from the aggregate of their net assessable incomes—
  - (a) such deductions as are under Part 4A allowable to them; and *(Replaced 31 of 1998 s. 5)*
  - (b) such allowances as are under Part 5 permitted in their case. *(Replaced 43 of 1989 s. 6)*
- (3) *(Repealed 43 of 1989 s. 6)*  
*(Replaced 71 of 1983 s. 10. Amended E.R. 1 of 2012)*

**12BA.** *(Repealed 31 of 1998 s. 6)*

### **13. Calculation of salaries tax**

- (1) Subject to subsection (2), salaries tax shall be charged at the rates specified in Schedule 2 on the net chargeable income of a person for each year of assessment ascertained in accordance with this Part. *(Amended L.N. 350 of 1990)*
- (2) The amount of salaries tax so charged shall not exceed the amount which would have been chargeable had the standard rate been charged on the whole of—
  - (a) the net assessable income as reduced by such deductions as are under Part 4A allowable to the person; or

- (b) in the case of a spouse chargeable to salaries tax under section 10(3), the aggregate amount of his or her net assessable income and that of his or her spouse as reduced by such deductions as are under Part 4A allowable to them. (*Amended 31 of 1998 s. 7*)
- (3) Notwithstanding subsections (1) and (2), the amount of salaries tax charged under this section for the year of assessment commencing on 1 April 2006 shall be reduced by an amount equivalent to—
- (a) 50% of the amount of the tax as computed under subsection (1) read together with subsection (2); or

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(b) \$15,000,

whichever is the less. *(Added 10 of 2007 s. 3)*

*(Replaced 43 of 1989 s. 8. Amended E.R. 1 of 2012)*

**13A. Part 8AA applies**

Part 8AA applies for the purposes of calculation of salaries tax.

*(Added 27 of 2018 s. 12)*

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## Part 4

### Profits Tax

#### 14. Charge of profits tax

- (1) Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part. *(Replaced 2 of 1971 s. 9. Amended 7 of 1986 s. 12; 56 of 1993 s. 8; 13 of 2018 s. 3)*
- (2) For a person other than a corporation, the tax is to be charged on the assessable profits of the person—
  - (a) for any year of assessment commencing before 1 April 2018—at the standard rate; or
  - (b) for any year of assessment commencing on or after 1 April 2018—in accordance with section 2 of Schedule 8A. *(Replaced 13 of 2018 s. 3)*
- (3) For a corporation, the tax is to be charged, subject to subsections (4) and (5), on the assessable profits of the corporation—
  - (a) for any year of assessment commencing before 1 April 2018—at the rate specified in Schedule 8; or
  - (b) for any year of assessment commencing on or after 1 April 2018—in accordance with section 2(a) of Schedule 8B. *(Added 13 of 2018 s. 3)*

- (4) If a corporation is a partner in a partnership, in relation to any share of assessable profits of the partnership apportioned to the corporation under section 22A, the tax is to be charged—
- (a) for any year of assessment commencing before 1 April 2018—at the rate specified in Schedule 8; or
  - (b) for any year of assessment commencing on or after 1 April 2018—in accordance with section 2(b) of Schedule 8B. (*Added 13 of 2018 s. 3*)
- (5) If a corporation has made an election under section 14B(2)(a), 14D(5)(b), 14H(4)(b) or 14J(5)(b) in respect of a portion of its assessable profits, then, in relation to the rest of its assessable profits, the tax is to be charged at the rate specified in Schedule 8. (*Added 13 of 2018 s. 3*)

#### 14AA. Interpretation

- (1) In this section and sections 14AAB and 14AAC—

**entity** (實體) means—

- (a) a natural person;
- (b) a body of persons; or
- (c) a legal arrangement, including—
  - (i) a corporation;
  - (ii) a partnership; and
  - (iii) a trust;

**sole proprietorship business** (獨資經營業務), in relation to a natural person, means a trade, profession or business carried on by the person as a sole proprietor.

- (2) For the purposes of section 14AAB(1)(c), if a natural person carries on more than one sole proprietorship business, the person is taken to be a separate entity in relation to each sole proprietorship business.

(Added 13 of 2018 s. 4)

**14AAB. Meaning of *connected entity***

- (1) For the purposes of section 14AAC, an entity is a connected entity of another entity if—
  - (a) one of them has control over the other;
  - (b) both of them are under the control of the same entity; or
  - (c) in the case of the first entity being a natural person carrying on a sole proprietorship business—the other entity is the same person carrying on another sole proprietorship business.
- (2) For the purposes of subsection (1), an entity (*entity A*) has control over another entity (*entity B*) if—
  - (a) in the case of entity B being a trust—entity A is entitled to a vested interest in more than 50% of the capital of the property of the trust—
    - (i) whether the interest is in possession or in remainder or reversion; and
    - (ii) whether the interest is defeasible or not; or
  - (b) in any other case—entity A has a specified interest in entity B.
- (3) However, entity A does not have control over entity B if it falls within the description in subsection (2)(a) or (b) in respect of entity B solely by acting in the capacity of a trustee.
- (4) For the purposes of subsection (2)(b), entity A has a specified interest in entity B if entity A, whether directly or indirectly through one or more than one other entity (*interposed entity*)—

- 
- (a) owns or controls more than 50% in aggregate of the issued share capital of entity B;
  - (b) is entitled to exercise or control the exercise of more than 50% in aggregate of the voting rights in entity B; or
  - (c) is entitled to more than 50% in aggregate of the capital or profits of entity B.
- (5) For the purposes of subsection (4), the extent of any indirect interest of entity A in entity B is—
- (a) if there is 1 interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the direct interest of entity A in the interposed entity by the percentage representing the extent of the direct interest of the interposed entity in entity B; or
  - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the direct interest of entity A in the first interposed entity in the series by—
    - (i) the percentage representing the extent of the direct interest of each interposed entity (other than the last interposed entity) in the next interposed entity in the series; and
    - (ii) the percentage representing the extent of the direct interest of the last interposed entity in entity B.
- (6) For the purposes of subsection (5), the extent of the direct interest of an entity in another entity is—
- (a) in relation to issued share capital—the percentage of the issued share capital of the other entity directly owned or directly controlled by the first entity;
  - (b) in relation to voting rights—the percentage of the voting rights in the other entity that the first entity is directly

entitled to exercise, or over which the first entity is directly entitled to control the exercise; or

- (c) in relation to capital or profits—the percentage of the capital or profits of the other entity that the first entity is directly entitled to.
- (7) For the purposes of this section, if an entity is a corporation, a reference to the exercise of the voting rights in the entity is to be construed as a reference to the exercise of the voting rights at general meetings of the entity.

*(Added 13 of 2018 s. 4)*

#### **14AAC. Charge of profits tax for connected entities**

- (1) This section applies to an entity in relation to any year of assessment commencing on or after 1 April 2018 (*specified year of assessment*) if, at the end of the basis period of the entity for that year of assessment, the entity has any connected entity.
- (2) Section 14 applies to the entity subject to any applicable modifications specified in subsection (3).
- (3) The modifications are—
  - (a) for an entity other than a corporation—the reference in section 14(2)(b) to “in accordance with section 2 of Schedule 8A” is taken to be a reference to “at the standard rate”;
  - (b) for a corporation—the reference in section 14(3)(b) to “in accordance with section 2(a) of Schedule 8B” is taken to be a reference to “at the rate specified in Schedule 8”; and
  - (c) for a corporation that is a partner in a partnership—the reference in section 14(4)(b) to “in accordance with

section 2(b) of Schedule 8B” is taken to be a reference to “at the rate specified in Schedule 8”.

- (4) However, the Commissioner may exempt an entity from subsection (2) for a specified year of assessment if the entity has elected in writing to be so exempted.
- (5) The election, once made, is irrevocable.
- (6) Subsection (4) does not apply to an entity (*entity A*) for a specified year of assessment if—
  - (a) entity A is a connected entity of another entity (*entity B*) at the end of the basis period of entity A for that year of assessment; and
  - (b) entity B has been exempted under that subsection for that year of assessment.

*(Added 13 of 2018 s. 4)*

**14A. Qualifying debt instruments\*#**

- (1) For the purposes of this Part the assessable profits of a person for sums received by or accrued to the person as—
  - (a) interest paid or payable on a medium term debt instrument or short term debt instrument; or
  - (b) any gain or profit on the sale or other disposal or on the redemption on maturity or presentment of the medium term debt instrument or short term debt instrument,

are chargeable to tax under this Part at one-half of the rate specified in Schedule 1 or Schedule 8, as the case may be.  
*(Amended 4 of 2011 s. 3)*
- (1A) In relation to—
  - (a) a medium term debt instrument issued on or after 25 March 2011; or *(Amended 32 of 2018 s. 18)*
  - (b) a short term debt instrument,

subsection (1) does not apply in respect of any sums received by or accrued to a person as referred to in that subsection if, at the time the sums are so received or accrued, the person is an associate of the issuer of the debt instrument. (*Added 4 of 2011 s. 3*)

(1B) For the purposes of this Part—

- (a) interest paid or payable on a debt instrument issued on or after 1 April 2018; and
- (b) any gain or profit on the sale or other disposal, or on the redemption on maturity or presentment, of the debt instrument,

received by or accrued to a person are not chargeable to tax under this Part. (*Added 32 of 2018 s. 18*)

(1C) Subsection (1B) does not apply in relation to a debt instrument if, at the time the interest or gain or profit relating to the debt instrument is received by or accrued to a person, the person is an associate of the issuer of the debt instrument. (*Added 32 of 2018 s. 18*)

(2)-(3) (*Repealed 32 of 1998 s. 4*)

(4) In this section— (*Amended 34 of 2003 s. 3*)

**associate** (相聯者), in relation to the issuer of a debt instrument, means—

- (a) if the issuer is a natural person—
  - (i) any relative of the issuer;
  - (ii) any partner of the issuer;
  - (iii) if a partner of the issuer is a natural person, any relative of that partner;
  - (iv) any partnership of which the issuer is a partner;
  - (v) any corporation controlled by—

- (A) the issuer;
  - (B) a partner of the issuer;
  - (C) if a partner of the issuer is a natural person, any relative of that partner; or
  - (D) a partnership of which the issuer is a partner; or
- (vi) any director or principal officer of a corporation referred to in subparagraph (v);
- (b) if the issuer is a corporation—
    - (i) any associated corporation;
    - (ii) any person who controls the issuer;
    - (iii) any partner of a person who controls the issuer;
    - (iv) if a person who controls the issuer is a natural person, any relative of that person;
    - (v) if a partner referred to in subparagraph (iii) is a natural person, any relative of that partner;
    - (vi) any director or principal officer of the issuer or of any associated corporation;
    - (vii) any relative of a director or principal officer referred to in subparagraph (vi);
    - (viii) any partner of the issuer; or
    - (ix) if a partner of the issuer is a natural person, any relative of that partner; or
  - (c) if the issuer is a partnership—
    - (i) any partner of the issuer;
    - (ii) if a partner of the issuer is a partnership, any partner (*Partner A*) of that partnership or any partner (*Partner B*) with that partnership in any other partnership;



- (iii) if Partner A is a partnership, any partner of Partner A;
- (iv) if Partner B is a partnership, any partner of Partner B;
- (v) if a partner of, or with, or in any of the partnerships referred to in subparagraph (ii), (iii) or (iv) is a natural person, any relative of that partner;
- (vi) any corporation controlled by—
  - (A) the issuer;
  - (B) a partner of the issuer;
  - (C) if a partner of the issuer is a natural person, any relative of that partner; or
  - (D) a partnership of which the issuer is a partner;
- (vii) any director or principal officer of a corporation referred to in subparagraph (vi); or
- (viii) any corporation of which any partner of the issuer is a director or principal officer; (*Added 4 of 2011 s. 3*)

***associated corporation*** (相聯法團), in relation to the issuer of a debt instrument which is a corporation, means—

- (a) a corporation over which the issuer has control;
- (b) a corporation which has control over the issuer; or
- (c) a corporation which is under the control of the same person as is the issuer; (*Added 4 of 2011 s. 3*)

***control*** (控制), in relation to a corporation, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or

- (b) by virtue of any power conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;  
*(Added 4 of 2011 s. 3)*

**debt instrument** (債務票據) means an instrument specified in Part 1 of Schedule 6 that— *(Amended 34 of 2003 s. 3)*

- (a) is—
- (i) in respect of a debt issue which in its entirety has been lodged with and cleared by the Central Moneymarkets Unit operated by the Monetary Authority; or
  - (ii) listed on a stock exchange in Hong Kong;  
*(Replaced 32 of 2018 s. 18)*
- (b) subject to subsection (5), is issued by a person and has at all relevant times a credit rating acceptable to the Monetary Authority from a credit rating agency recognized by the Monetary Authority;
- (c) *(Repealed 34 of 2003 s. 3)*
- (d) subject to subsection (5), has—
- (i) where it is issued before 1 April 1999, a minimum denomination of \$500,000 or its equivalent in a foreign currency; or
  - (ii) where it is issued on or after 1 April 1999, a minimum denomination of \$50,000 or its equivalent in a foreign currency; *(Replaced L.N. 90 of 1999 and 44 of 1999 s. 11)*
- (e) is, at issuance, issued in Hong Kong to—
- (i) 10 or more persons; or

- (ii) less than 10 persons none of whom is an associate of the issuer of the instrument; (*Replaced 4 of 2011 s. 3*)
- (f) if it is a scripless instrument, it is one that would qualify in the terms of this definition if it were in a physical form; (*Amended 34 of 2003 s. 3*)
- (g) is issued on or after 24 May 1996; (*Amended 34 of 2003 s. 3; 4 of 2011 s. 3; 10 of 2013 s. 6*)

**medium term debt instrument** (中期債務票據) means—

- (a) a debt instrument that—
  - (i) is issued before 5 March 2003;
  - (ii) has an original maturity of not less than 5 years or is undated; and
  - (iii) cannot be redeemed within 5 years from the date of its issue; or
- (b) a debt instrument that—
  - (i) is issued on or after 5 March 2003 but before 1 April 2018; (*Amended 32 of 2018 s. 18*)
  - (ii) has an original maturity of less than 7 years but not less than 3 years or is undated; and
  - (iii) can be redeemed within 7 years from the date of its issue but not within the first 3 years; (*Added 34 of 2003 s. 3. Amended 4 of 2011 s. 3*)

**principal officer** (主要職員), in relation to a corporation, means—

- (a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or

- (b) a person employed by the corporation who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;  
(*Added 4 of 2011 s. 3*)

**relative** (親屬), in relation to a person, means the spouse, parent, child, brother or sister of that person, and, in deducing such a relationship—

- (a) an adopted child is regarded as a child of both the natural parents and the adopting parents; and
- (b) a step child is regarded as a child of both the natural parents and the step parents; (*Added 4 of 2011 s. 3*)

**short term debt instrument** (短期債務票據) means a debt instrument that—

- (a) is issued on or after 25 March 2011 but before 1 April 2018; (*Amended 32 of 2018 s. 18*)
- (b) has an original maturity of less than 3 years or is undated; and
- (c) can be redeemed within 3 years from the date of its issue; (*Added 4 of 2011 s. 3*)

**wholly owned subsidiary** (全資附屬公司) has the same meaning as it is given for the purposes of Part 9 of the Companies Ordinance (Cap. 622) by section 357(3) of that Ordinance.  
(*Added 4 of 2011 s. 3. Amended 28 of 2012 ss. 912 & 920*)

(4A) For the purposes of paragraph (c) of the definition of **associated corporation** in subsection (4), a corporation is not regarded as being under the control of the same person as is the issuer of a debt instrument issued on or after 25 March 2011 by reason only that— (*Amended 32 of 2018 s. 18*)

- (a) both the corporation and the issuer are wholly owned by—

- (i) the Government of Hong Kong; or
    - (ii) the central government of the same country;
  - (b) more than 50% of the voting power in the corporation and more than 50% of the voting power in the issuer are held or controlled by—
    - (i) one or more than one corporation which is established and wholly owned by the Government of Hong Kong or the central government of the same country for the purpose of carrying on the business of investment (***government investment vehicle***); or
    - (ii) a wholly owned subsidiary of a government investment vehicle; or
  - (c) more than 50% of the voting power in the corporation is held or controlled by a corporation wholly owned by the Government of Hong Kong or the central government of the same country (***government enterprise***) and more than 50% of the voting power in the issuer is held or controlled by another government enterprise. (*Added 4 of 2011 s. 3*)
- (5) For the purposes of the definition of ***debt instrument*** in subsection (4), the Financial Secretary may by order—
- (a) declare that the provisions relating to a credit rating mentioned in paragraph (b) of that definition do not apply;
  - (b) fix an amount of minimum denomination different from the amount mentioned in paragraph (d)(i) or (ii), as the case may be, of that definition, (*Amended L.N. 90 of 1999 and 44 of 1999 s. 11*)

in respect of a debt instrument issued by such person as may be specified in the order.

- (6) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section. *(Added 10 of 2013 s. 6)*
- (7) An amount of loss incurred or sustained by a person from a transaction in or related to a debt instrument issued on or after 1 April 2018 in a year of assessment cannot be set off against the person's assessable profits for the year of assessment or any subsequent year of assessment. *(Added 32 of 2018 s. 18)*
- (8) To avoid doubt, paragraph (a) of the definition of **debt instrument** in subsection (4) as in force on the commencement date<sup>@</sup> of the Inland Revenue (Amendment) (No. 9) Ordinance 2018 (32 of 2018) applies to an instrument issued within the period from 1 April 2018 to the day before that commencement date<sup>@</sup>. *(Added 32 of 2018 s. 18)*

*(Added 25 of 1996 s. 2. Amended 34 of 2003 s. 3; E.R. 1 of 2012; E.R. 2 of 2014)*

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Editorial Note:

\* The amendments made by 34 of 2003 to section 14A(1)(a) and (b), (4) and (5) apply in relation to the year of assessment commencing on 1 April 2003 and to all subsequent years of assessment. *(Please see 34 of 2003 s. 2)*

# The operation of this section is affected by s. 6 of 10 of 2013. That section is reproduced as follows—

**“6. Section 14A amended (qualifying debt instruments)**

(1) Section 14A(4), definition of debt instrument, paragraph (g)—

**Repeal**

“14 November 2003”

**Substitute**

“24 May 1996”.

(2) A relevant instrument is to be regarded as a debt instrument within the meaning of section 14A of the IRO in relation to a year of assessment to the extent to which it would have been such a debt instrument if paragraph (g) of the definition of debt instrument in subsection (4) of that section, as amended by subsection (1) of this section, had always been in force.

(3) If, for the purposes of an assessment made before the date of commencement\*\* of subsection (1), a relevant instrument was regarded as a debt instrument within the meaning of section 14A of the IRO, the assessment is to be regarded as valid to the extent to which it would have been valid if subsection (4) of that section, as amended by subsection (1) of this section, had always been in force.

(4) For the purposes of subsections (2) and (3)—

***IRO*** (《條例》) means the Inland Revenue Ordinance (Cap. 112);

***relevant instrument*** (相關票據) means an instrument issued on or after 24 May 1996 but before 14 November 2003.

(5) After section 14A(5)—

**Add**

“(6) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”

\*\* Commencement date: 19 July 2013.

@ Commencement date: 23 November 2018

## **14B. Qualifying reinsurance business and captive insurance business\***

*(Amended 3 of 2014 s. 4)*

(1) For the purposes of this Part, the assessable profits of a corporation are, subject to subsection (2) and section 26AB,



chargeable to tax under this Part at one-half of the rate specified in Schedule 8 to the extent to which those profits are— (*Amended 3 of 2014 s. 4; 27 of 2018 s. 25*)

- (a) the assessable profits of the corporation derived from the business of reinsurance as a professional reinsurer; or
  - (b) the assessable profits of the corporation derived from the business of insurance as an authorized captive insurer. (*Amended 3 of 2014 s. 4; 27 of 2018 s. 25*)
- (2) Subsection (1) applies to a corporation for a year of assessment only if—
- (a) in that year of assessment, the activities that produce the corporation's assessable profits that fall within subsection (1)(a) or (b) in that year are—
    - (i) carried out in Hong Kong by the corporation; or
    - (ii) arranged by the corporation to be carried out in Hong Kong; and
  - (b) the corporation has elected in writing that subsection (1) applies to it. (*Replaced 27 of 2018 s. 25*)
- (3) An election under subsection (2)(b), once made, is irrevocable. (*Added 27 of 2018 s. 25*)

(4) In this section—

***authorized captive insurer*** (獲授權專屬自保保險人) means a company that—

- (a) is a captive insurer as defined by section 2(7)(a) of the Insurance Ordinance (Cap. 41); and
- (b) is authorized under section 8 of that Ordinance to carry on in or from Hong Kong insurance business as such a captive insurer;

***professional reinsurer*** (專業再保險人) means a company authorized under section 8 of the Insurance Ordinance



(Cap. 41) to carry on in or from Hong Kong reinsurance business only. (*Added 27 of 2018 s. 25*)

(*Added 32 of 1998 s. 5*)

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Editorial Note:

\* The amendments made by 3 of 2014 to section 14B(1) and (2) and its heading apply in relation to the year of assessment commencing on 1 April 2013 and to all subsequent years of assessment. (Please see 3 of 2014 s. 3)

#### 14C. Qualifying corporate treasury centre: interpretation

(1) In this section and sections 14D, 14E and 14F—

***associated corporation*** (相聯法團), in relation to a corporation, means—

- (a) another corporation over which the corporation has control;
- (b) another corporation that has control over the corporation; or
- (c) another corporation that is under the control of the same person as is the corporation;

***corporate treasury activity*** (企業財資活動) means—

- (a) carrying on an intra-group financing business;
- (b) providing a corporate treasury service; or
- (c) entering into a corporate treasury transaction;

***corporate treasury asset*** (企業財資資產), in relation to a corporation, means an asset of the corporation used by it to carry out a corporate treasury activity;

***corporate treasury profits*** (企業財資利潤), in relation to a corporation, means any profits of the corporation that are derived from a corporate treasury activity;

**corporate treasury service** (企業財資服務)—see section 1 of Schedule 17B;

**corporate treasury transaction** (企業財資交易)—see section 2 of Schedule 17B;

**intra-group financing business** (集團內部融資業務), in relation to a corporation, means the business of the borrowing of money from and lending of money to its associated corporations;

**intra-group lending transaction** (集團內部貸款交易), in relation to a corporation, means a transaction under which the corporation lends money, in the ordinary course of its intra-group financing business, to its associated corporation; (*Added 27 of 2018 s. 26*)

**prescribed asset percentage** (訂明資產百分率)—see section 4 of Schedule 17B;

**prescribed profits percentage** (訂明利潤百分率)—see section 3 of Schedule 17B;

**qualifying corporate treasury centre** (合資格企業財資中心)—see section 14D(2) and (9);

**qualifying profits** (合資格利潤), in relation to a corporation, means the assessable profits of the corporation that fall within section 14D(1)(a), (b) or (c).

(*Amended 27 of 2018 s. 26*)

- (2) For the purposes of the definition of **associated corporation** in subsection (1), a person has control over a corporation if the person has the power to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
  - (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

(3)-(4) *(Repealed 27 of 2018 s. 26)*

(5) The Secretary for Financial Services and the Treasury may by order published in the Gazette amend Schedule 17B.

*(Added 12 of 2016 s. 3)*

#### **14D. Qualifying corporate treasury centre: profits tax concession**

- (1) For the purposes of this Part, the assessable profits of a corporation that is a qualifying corporate treasury centre for a year of assessment are, subject to subsection (5) and section 26AB, chargeable to tax under this Part at one-half of the rate specified in Schedule 8 to the extent to which those profits are— *(Amended 27 of 2018 s. 27)*
  - (a) assessable profits derived from its intra-group lending transaction;
  - (b) assessable profits derived from its corporate treasury service; or
  - (c) assessable profits derived from its corporate treasury transaction. *(Amended 27 of 2018 s. 27)*
- (2) A corporation is a qualifying corporate treasury centre for a year of assessment if, for that year of assessment—
  - (a) it satisfies the conditions specified in subsection (3);
  - (b) it satisfies the safe harbour rule under section 14E; or
  - (c) it has obtained the Commissioner's determination under section 14F(1).
- (3) The conditions specified for the purposes of subsection (2)(a) are that, in the basis period for the year of assessment, the corporation—

- (a) has carried out in Hong Kong one or more corporate treasury activities; and
  - (b) has not carried out in Hong Kong any activity other than a corporate treasury activity.
- (4) For the purposes of subsection (3)(b), in determining whether a corporation has carried out any activity other than a corporate treasury activity, only activities that generate income to the corporation are to be taken into account.
- (5) Subsection (1) applies to a corporation for a year of assessment only if—
- (a) in that year of assessment—
    - (i) the central management and control of the corporation is exercised in Hong Kong; and
    - (ii) the activities that produce its qualifying profits in that year are—
      - (A) carried out in Hong Kong by the corporation; or
      - (B) arranged by the corporation to be carried out in Hong Kong; and
  - (b) the corporation has elected in writing that subsection (1) applies to it.
- (6) An election under subsection (5)(b), once made, is irrevocable.
- (7) If subsection (1) does not apply to a corporation for a year of assessment (*cessation year*) while it did for the previous year of assessment—
- (a) the election made by the corporation under subsection (5)(b) ceases to be effective; and

- (b) despite anything in this section, subsection (1) is not to apply to the corporation for the year of assessment that follows the cessation year.
- (8) *(Repealed 27 of 2018 s. 27)*
- (9) Despite subsection (2), a financial institution is not eligible to be a qualifying corporate treasury centre.
- (Added 12 of 2016 s. 3)*

#### **14E. Qualifying corporate treasury centre: safe harbour rule**

- (1) For the purposes of section 14D(2)(b), a corporation satisfies the safe harbour rule for a year of assessment (*subject year*) if the corporation falls within—
- (a) the 1-year safe harbour under subsection (2); or
  - (b) the multiple-year safe harbour under subsection (3).
- (2) A corporation falls within the 1-year safe harbour if, for the subject year—
- (a) its CTP percentage is not lower than the prescribed profits percentage; and
  - (b) its CTA percentage is not lower than the prescribed asset percentage.
- (3) A corporation falls within the multiple-year safe harbour if, for the specified years—
- (a) its average CTP percentage is not lower than the prescribed profits percentage; and
  - (b) its average CTA percentage is not lower than the prescribed asset percentage.
- (4) In subsections (3), (7) and (8), the *specified years* (指明年度) for a corporation means—
- (a) if the corporation has carried on a trade, profession or business in Hong Kong for less than 2 consecutive years

of assessment immediately before the subject year—the subject year and the preceding year of assessment (*the 2 years*); or

- (b) if the corporation has carried on a trade, profession or business in Hong Kong for 2 or more consecutive years of assessment immediately before the subject year—the subject year and the preceding 2 years of assessment (*the 3 years*).

- (5) The *CTP percentage* (企業財資利潤總額百分率) of a corporation for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{CTP}}{\text{P}}$$

- where: CTP means the aggregate amount of the corporate treasury profits of the corporation in the basis period for the year of assessment; and
- P means the aggregate amount of profits accruing to the corporation from all sources, whether in Hong Kong or not, in the basis period for the year of assessment.

- (6) The *CTA percentage* (企業財資資產總值百分率) of a corporation for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{CTA}}{\text{A}}$$

where: CTA means the aggregate value of the corporate treasury assets of the corporation as at the end of the basis period for the year of assessment; and

A means the aggregate value of all assets, whether in Hong Kong or not, of the corporation as at the end of the basis period for the year of assessment.

- (7) The *average CTP percentage* (企業財資利潤總額平均百分率) of a corporation for the specified years means the percentage arrived at by—
- (a) if subsection (4)(a) applies—dividing the sum of the CTP percentages of the corporation for the 2 years by 2; or
  - (b) if subsection (4)(b) applies—dividing the sum of the CTP percentages of the corporation for the 3 years by 3.
- (8) The *average CTA percentage* (企業財資資產總值平均百分率) of a corporation for the specified years means the percentage arrived at by—
- (a) if subsection (4)(a) applies—dividing the sum of the CTA percentages of the corporation for the 2 years by 2; or
  - (b) if subsection (4)(b) applies—dividing the sum of the CTA percentages of the corporation for the 3 years by 3.
- (9) For the purposes of subsection (6), in computing the aggregate value of the corporate treasury assets of a corporation, if a corporate treasury asset is used partly to carry out a corporate treasury activity and partly for another purpose, only the part of the value of the asset that is proportionate to the extent to which the asset is used to carry out a corporate treasury activity is to be taken into account.



(Added 12 of 2016 s. 3)

**14F. Qualifying corporate treasury centre: Commissioner's determination**

- (1) For the purposes of section 14D(2)(c), the Commissioner may, on application by a corporation, determine that the corporation is a qualifying corporate treasury centre for a year of assessment.
- (2) A corporation may apply for the Commissioner's determination under subsection (1) only if—
  - (a) it is not a financial institution; and
  - (b) for the year of assessment, it satisfies neither of the following—
    - (i) the conditions specified in section 14D(3);
    - (ii) the safe harbour rule under section 14E.
- (3) The Commissioner may make a determination under subsection (1) only if the Commissioner is of the opinion that the conditions specified in section 14D(3), or the safe harbour rule under section 14E, would, in the ordinary course of business of the corporation, have been satisfied for the year of assessment.

(Added 12 of 2016 s. 3)

**14G. Aircraft leasing tax concessions: interpretation**

- (1) In the aircraft leasing tax concessions provisions—

***actual residual value*** (實際剩餘價值), in relation to an aircraft, means the actual fair market value of the aircraft at the end of the term of a lease or its useful economic life;

***aircraft*** (飛機)—



- (a) includes an aeroplane, airframe, aircraft engine and helicopter; but
- (b) does not include an aircraft solely for military use, airship, spacecraft or satellite;

***aircraft engine*** (飛機引擎) means an engine—

- (a) that is used or to be used in an aircraft; and
- (b) that—
  - (i) is powered by jet propulsion and has at least 1 750 lb of thrust or its equivalent; or
  - (ii) is powered by turbine or piston technology and has at least 550 rated take-off shaft horsepower or its equivalent,

together with any aircraft engine component;

***aircraft engine component*** (飛機引擎組件), in relation to an engine, means—

- (a) a module or other installed, incorporated or attached accessory, part or equipment of the engine; or
- (b) data, manual or record relating to the engine;

***aircraft leasing activity*** (飛機租賃活動)—see section 1(1) of Schedule 17F;

***aircraft leasing management activity*** (飛機租賃管理活動)—see section 1(1) of Schedule 17F;

***aircraft leasing management asset*** (飛機租賃管理資產), in relation to a corporation, means an asset of the corporation used by it to carry out a qualifying aircraft leasing management activity;

***aircraft leasing management profits*** (飛機租賃管理利潤), in relation to a corporation, means any profits of the corporation that are derived from a qualifying aircraft leasing management activity;

***aircraft operation business*** (飛機營運業務)—

- (a) means a business of operating aircraft as an owner or a charterer for providing services for the carriage by air of passengers, cargo or mail; but
- (b) does not include dealing in aircraft or agency business in connection with air transport;

***aircraft operator*** (飛機營運商) means a person carrying on an aircraft operation business;

***associate*** (相聯者), in relation to a corporation, means—

- (a) a person who has control over the corporation;
- (b) a partner of the person mentioned in paragraph (a);
- (c) if a person mentioned in paragraph (a) is a natural person, a relative of the person;
- (d) if a partner mentioned in paragraph (b) is a natural person, a relative of the partner;
- (e) a director or principal officer of—
  - (i) the corporation; or
  - (ii) an associated corporation of the corporation;
- (f) a relative of a director (if the director is a natural person) or principal officer mentioned in paragraph (e);
- (g) a partner of the corporation;
- (h) if a partner of the corporation is a natural person, a relative of the partner;
- (i) a partnership in which the corporation is a partner; or
- (j) an associated corporation of the corporation;

***associated corporation*** (相聯法團), in relation to a corporation, means—

- (a) another corporation over which the corporation has control;
- (b) another corporation that has control over the corporation; or
- (c) another corporation that is under the control of the same person as is the corporation;

***connected person*** (有關連者), in relation to a corporation, means—

- (a) an associated corporation of the corporation;
- (b) a person (other than a corporation)—
  - (i) over whom the corporation has control;
  - (ii) who has control over the corporation; or
  - (iii) who is under the control of the same person as is the corporation; or
- (c) a partnership in which the corporation or its associate is a partner;

***control*** (控制), in relation to the definitions of ***associate***, ***associated corporation*** and ***connected person***—see subsection (2);

***dry lease*** (淨租機租約) means an arrangement under which—

- (a) an aircraft is bona fide demised, let or hired out, or a right to use an aircraft is otherwise granted, by a person (***lessor***) to another person for a term exceeding 1 year;
- (b) the lessor is not responsible for ensuring the airworthiness of the aircraft; and
- (c) no member of the crew of the aircraft is employed by the lessor;

***estimated residual value*** (估計剩餘價值), in relation to an aircraft, means an estimated fair market value of the aircraft at the end of the term of a lease or its useful economic life;

***funding lease*** (融購租約) means a dry lease of an aircraft—

- (a) that satisfies one of the following conditions at its inception—
  - (i) the dry lease is accounted for as a finance lease or loan by the lessor in accordance with—
    - (A) the Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants, as in force from time to time; or
    - (B) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force from time to time;
  - (ii) the present value of the aggregate minimum lease payments (whether or not they are periodic payments and including any sum payable under a residual value guarantee) during the term of the dry lease is equal to or more than 80% of the fair market value of the aircraft;
  - (iii) the term of the dry lease is equal to or more than 65% of the remaining useful economic life of the aircraft; and
- (b) under which the property in the aircraft will or may pass to the lessee at the end of its term,

and includes an arrangement or agreement in connection with such a dry lease;

**Note—**

See also subsections (3) and (4).

***lease*** (租約), when used as a noun—

- (a) means a dry lease; but

- (b) does not include a dry lease that is a funding lease, hire-purchase agreement or conditional sale agreement, and *lease* (租賃), when used as a verb, is to be construed accordingly;

**Note—**

See also subsection (5).

***own*** (擁有) includes—

- (a) to hold as a lessee under a funding lease;
- (b) to hold as a bailee under a hire-purchase agreement; and
- (c) to hold as a buyer under a conditional sale agreement;

**Note—**

See also subsection (5).

***permanent establishment*** (常設機構)—

- (a) means a branch, management or other place of business; but
- (b) does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the principal;

***prescribed asset percentage*** (訂明資產百分率)—see section 4 of Schedule 17F;

***prescribed profits percentage*** (訂明利潤百分率)—see section 3 of Schedule 17F;

***principal officer*** (主要職員), in relation to a corporation, means—

- (a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or

- (b) a person employed by the corporation who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

**qualifying aircraft leasing activity** (合資格飛機租賃活動)—see subsection (6);

**qualifying aircraft leasing management activity** (合資格飛機租賃管理活動)—see subsection (7);

**qualifying aircraft leasing manager** (合資格飛機租賃管理商)—see section 14J(2);

**qualifying aircraft lessor** (合資格飛機出租商)—see section 14H(2);

**relative** (親屬), in relation to a person, means the spouse, parent, child, brother or sister of the person, and, in deducing such a relationship—

- (a) an adopted child is to be regarded as a child of both the natural parents and any adopting parent; and
- (b) a step child is to be regarded as a child of both the natural parents and any step parent;

**residual value guarantee** (剩餘價值擔保), in relation to an aircraft, means a financial commitment to pay a sum by reference to the amount by which the estimated residual value of the aircraft exceeds the actual residual value of the aircraft.

(2) For the purposes of the definitions of **associate**, **associated corporation** and **connected person** in subsection (1)—

- (a) a person has control over a corporation if the person has the power to secure—
- (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or

- 
- (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,
- that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person; and
- (b) a person (*first-mentioned person*) has control over another person (other than a corporation) (*second-mentioned person*) if the second-mentioned person is accustomed or under an obligation (whether express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings) to act, in relation to the investment or business affairs of the second-mentioned person, in accordance with the directions, instructions or wishes of the first-mentioned person.
- (3) For the purposes of the definition of *funding lease* in subsection (1), subsection (4) applies if, under 2 or more dry leases, an aircraft is demised, let or hired out, or a right to use an aircraft is otherwise granted—
- (a) to a corporation; or
- (b) to a corporation and to its associate or associates,
- unless, in the opinion of the Commissioner, the dry leases do not form part of a single arrangement.
- (4) Regardless of whether the term of one of the dry leases mentioned in subsection (3) is immediately followed by that of another, the dry leases are to be treated as one single dry lease—
- (a) for computing the present value of the aggregate minimum lease payments under paragraph (a)(ii) of that definition; and



- (b) for computing the term of the dry lease under paragraph (a)(iii) of that definition.
- (5) In the definitions of *lease* and *own* in subsection (1), a reference to a funding lease, hire-purchase agreement or conditional sale agreement does not include one under which, in the opinion of the Commissioner, the property in the aircraft concerned would reasonably be expected not to pass to the lessee, bailee or buyer (as the case may be).
- (6) An aircraft leasing activity carried out by a corporation in respect of an aircraft is a qualifying aircraft leasing activity if—
- (a) the activity is carried out in the ordinary course of the corporation's business carried on in Hong Kong; and
  - (b) the aircraft is owned by the corporation when the activity is carried out.
- (7) An aircraft leasing management activity carried out by a corporation in respect of an aircraft is a qualifying aircraft leasing management activity if—
- (a) the activity is carried out in the ordinary course of the corporation's business carried on in Hong Kong;
  - (b) the activity is carried out for another corporation in the basis period of the other corporation for a year of assessment;
  - (c) the other corporation is a qualifying aircraft lessor for that year of assessment; and
  - (d) the aircraft is owned by the other corporation, and is leased to an aircraft operator, when the activity is carried out.
- (8) A note located in the text of this section is provided for information only and has no legislative effect.

*(Added 9 of 2017 s. 4)*



**14H. Aircraft leasing tax concessions: concession for qualifying aircraft lessor**

- (1) For the purposes of this Part and subject to subsections (4) and (6) and section 26AB, the assessable profits of a corporation that is a qualifying aircraft lessor for a year of assessment are chargeable to tax under this Part at one-half of the rate specified in Schedule 8 to the extent to which those profits are assessable profits derived from its qualifying aircraft leasing activity. (*Amended 27 of 2018 s. 28*)
- (2) A corporation is a qualifying aircraft lessor for a year of assessment if, in the basis period for that year of assessment—
  - (a) it is not an aircraft operator;
  - (b) it has carried out in Hong Kong one or more qualifying aircraft leasing activities; and
  - (c) it has not carried out in Hong Kong any activity other than a qualifying aircraft leasing activity.
- (3) For the purposes of subsection (2)(c), in determining whether a corporation has carried out any activity other than a qualifying aircraft leasing activity, only activities that generate income to the corporation are to be taken into account.
- (4) Subsection (1) applies to a corporation for a year of assessment only if—
  - (a) in that year of assessment—
    - (i) the central management and control of the corporation is exercised in Hong Kong;
    - (ii) the activities that produce its qualifying profits in that year are—
      - (A) carried out in Hong Kong by the corporation;
  - or

- (B) arranged by the corporation to be carried out in Hong Kong; and
  - (iii) those activities are not carried out by a permanent establishment outside Hong Kong; and
  - (b) the corporation has elected in writing that subsection (1) applies to it.
- (5) An election under subsection (4)(b), once made, is irrevocable.
- (6) If subsection (1) does not apply to a corporation for a year of assessment (*cessation year*) while it did for the previous year of assessment—
  - (a) the election made by the corporation under subsection (4)(b) ceases to be effective; and
  - (b) despite anything in this section, subsection (1) is not to apply to the corporation for the year of assessment that follows the cessation year.
- (7) If subsection (1) applies to a corporation for a year of assessment, the corporation is not entitled to be granted any allowance under Part 6 for that year of assessment in respect of the capital expenditure incurred on the provision of the aircraft concerned.
- (8) An aircraft owned by a corporation is to be treated as a capital asset of the corporation for the purposes of this Part if—
  - (a) the corporation uses the aircraft for carrying out a qualifying aircraft leasing activity for a continuous period of not less than 3 years immediately before it disposes of the aircraft; and
  - (b) subsection (1) applies in relation to that activity for any year of assessment.
- (9) In this section—

*qualifying profits* (合資格利潤), in relation to a corporation, means the assessable profits of the corporation that fall within subsection (1).

*(Added 9 of 2017 s. 4)*

**14I. Aircraft leasing tax concessions: calculation of net lease payments**

- (1) If section 14H(1) applies to a corporation that is a qualifying aircraft lessor for a year of assessment, then subsection (2) applies for computing the assessable profits of the corporation derived from its qualifying aircraft leasing activity in relation to a lease for that year of assessment.
- (2) The net lease payments for the right to use an aircraft under the lease are to be calculated in accordance with the following formula—

$$A = (B - C) \times D$$

where: A means the net lease payments;

B means the aggregate amount of the gross lease payments (whether or not they are periodic payments and including any sum payable under a residual value guarantee) earned by or accrued to the corporation under the lease during the basis period for the year of assessment;

C means the aggregate amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for the year of assessment by the corporation in the production of those gross lease payments (*relevant outgoings and expenses*); and

D means the percentage prescribed in section 2 of Schedule 17F.

- (3) Despite subsection (1), subsection (2) does not apply to a corporation for a year of assessment if—
- (a) the corporation has not incurred capital expenditure on the provision of the aircraft concerned;
  - (b) allowances under Part 6 have been granted to the corporation or a connected person of the corporation in respect of the capital expenditure incurred on the provision of the aircraft concerned; or
  - (c) capital allowances are granted to a connected person of the corporation, whether in Hong Kong or in a territory outside Hong Kong, for that year of assessment in respect of the capital expenditure on the provision of the aircraft concerned.
- (4) If an aircraft is leased to an aircraft operator together with other dealings in pursuance of one bargain, then for calculating the net lease payments under subsection (2), the Commissioner must, having regard to all the circumstances of the bargain, allocate an amount of gross lease payments for the right to use the aircraft under the lease.
- (5) If subsection (2) applies, the relevant outgoings and expenses may not be claimed for deduction under this Part otherwise than for calculating the net lease payments under that subsection.

*(Added 9 of 2017 s. 4)*

**14J. Aircraft leasing tax concessions: concession for qualifying aircraft leasing manager**

- (1) For the purposes of this Part and subject to subsections (5) and (7) and section 26AB, the assessable profits of a

corporation that is a qualifying aircraft leasing manager for a year of assessment are chargeable to tax under this Part at one-half of the rate specified in Schedule 8 to the extent to which those profits are assessable profits derived from its qualifying aircraft leasing management activity. (*Amended 27 of 2018 s. 29*)

- (2) A corporation is a qualifying aircraft leasing manager for a year of assessment if—
  - (a) in the basis period for that year of assessment, it is not an aircraft operator; and
  - (b) for that year of assessment—
    - (i) it satisfies the conditions specified in subsection (3);
    - (ii) it satisfies the safe harbour rule under section 14K; or
    - (iii) it has obtained the Commissioner's determination under section 14L(1).
- (3) For the purposes of subsection (2)(b)(i), the conditions are that, in the basis period for the year of assessment, the corporation—
  - (a) has carried out in Hong Kong one or more qualifying aircraft leasing management activities; and
  - (b) has not carried out in Hong Kong any activity other than a qualifying aircraft leasing management activity.
- (4) For the purposes of subsection (3)(b), in determining whether a corporation has carried out any activity other than a qualifying aircraft leasing management activity, only activities that generate income to the corporation are to be taken into account.
- (5) Subsection (1) applies to a corporation for a year of assessment only if—

- (a) in that year of assessment—
    - (i) the central management and control of the corporation is exercised in Hong Kong;
    - (ii) the activities that produce its qualifying profits in that year are—
      - (A) carried out in Hong Kong by the corporation; or
      - (B) arranged by the corporation to be carried out in Hong Kong; and
    - (iii) those activities are not carried out by a permanent establishment outside Hong Kong; and
  - (b) the corporation has elected in writing that subsection (1) applies to it.
- (6) An election under subsection (5)(b), once made, is irrevocable.
- (7) If subsection (1) does not apply to a corporation for a year of assessment (*cessation year*) while it did for the previous year of assessment—
- (a) the election made by the corporation under subsection (5)(b) ceases to be effective; and
  - (b) despite anything in this section, subsection (1) is not to apply to the corporation for the year of assessment that follows the cessation year.
- (8) In this section—
- qualifying profits* (合資格利潤), in relation to a corporation, means the assessable profits of the corporation that fall within subsection (1).

(Added 9 of 2017 s. 4)

#### 14K. Aircraft leasing tax concessions: safe harbour rule

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- (1) For the purposes of section 14J(2)(b)(ii), a corporation satisfies the safe harbour rule for a year of assessment (*subject year*) if the corporation falls within—
    - (a) the 1-year safe harbour under subsection (2); or
    - (b) the multiple-year safe harbour under subsection (3).
  - (2) A corporation falls within the 1-year safe harbour if, for the subject year—
    - (a) its ALMP percentage is not lower than the prescribed profits percentage; and
    - (b) its ALMA percentage is not lower than the prescribed asset percentage.
  - (3) A corporation falls within the multiple-year safe harbour if, for the specified years—
    - (a) its average ALMP percentage is not lower than the prescribed profits percentage; and
    - (b) its average ALMA percentage is not lower than the prescribed asset percentage.
  - (4) In this section, a reference to the specified years for a corporation is a reference to—
    - (a) if the corporation has carried on a trade, profession or business in Hong Kong for less than 2 consecutive years of assessment immediately before the subject year—the subject year and the preceding year of assessment (*the 2 years*); or
    - (b) if the corporation has carried on a trade, profession or business in Hong Kong for 2 or more consecutive years of assessment immediately before the subject year—the subject year and the preceding 2 years of assessment (*the 3 years*).

- (5) The ALMP percentage of a corporation for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{ALMP}}{\text{P}}$$

where: ALMP means the aggregate amount of the aircraft leasing management profits of the corporation in the basis period for the year of assessment; and

P means the aggregate amount of profits accruing to the corporation from all sources, whether in Hong Kong or not, in the basis period for the year of assessment.

- (6) The ALMA percentage of a corporation for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{ALMA}}{\text{A}}$$

where: ALMA means the aggregate value of the aircraft leasing management assets of the corporation as at the end of the basis period for the year of assessment; and

A means the aggregate value of all assets, whether in Hong Kong or not, of the corporation as at the end of the basis period for the year of assessment.

- (7) For the purposes of subsection (6), in computing the aggregate value of the aircraft leasing management assets of a corporation, if an aircraft leasing management asset is used



partly to carry out a qualifying aircraft leasing management activity and partly for another purpose, only the part of the value of the asset that is proportionate to the extent to which the asset is used to carry out a qualifying aircraft leasing management activity is to be taken into account.

- (8) A reference to the average ALMP percentage of a corporation for the specified years is a reference to the percentage arrived at by—
- (a) if subsection (4)(a) applies—dividing the sum of the ALMP percentages of the corporation for the 2 years by 2; or
  - (b) if subsection (4)(b) applies—dividing the sum of the ALMP percentages of the corporation for the 3 years by 3.
- (9) A reference to the average ALMA percentage of a corporation for the specified years is a reference to the percentage arrived at by—
- (a) if subsection (4)(a) applies—dividing the sum of the ALMA percentages of the corporation for the 2 years by 2; or
  - (b) if subsection (4)(b) applies—dividing the sum of the ALMA percentages of the corporation for the 3 years by 3.

*(Added 9 of 2017 s. 4)*

**14L. Aircraft leasing tax concessions: Commissioner's determination**

- (1) For the purposes of section 14J(2)(b)(iii), the Commissioner may, on application by a corporation, determine that the corporation is a qualifying aircraft leasing manager for a year of assessment.

- (2) A corporation may apply for the Commissioner's determination under subsection (1) only if—
  - (a) it is not an aircraft operator; and
  - (b) for the year of assessment, it satisfies neither of the following—
    - (i) the conditions specified in section 14J(3);
    - (ii) the safe harbour rule under section 14K.
- (3) The Commissioner may make a determination under subsection (1) only if the Commissioner is of the opinion that the conditions specified in section 14J(3), or the safe harbour rule under section 14K, would, in the ordinary course of business of the corporation, have been satisfied for the year of assessment.

*(Added 9 of 2017 s. 4)*

**14M. Aircraft leasing tax concessions: anti-avoidance provisions**

- (1) Subsection (2) applies if—
  - (a) conditions are made or imposed between a corporation that is a qualifying aircraft lessor and a person who is an associate of that corporation, in their commercial or financial relations in connection with a qualifying aircraft leasing activity; and
  - (b) the conditions differ from those that would be made if the person were not such an associate.
- (2) Any profits that, but for the conditions referred to in subsection (1)(a), would have accrued to the corporation or the person and, by reason of those conditions, have not so accrued, are to be included in the profits of the corporation or the person and taxed in accordance with this Part.
- (3) Subsection (4) applies if—

- (a) conditions are made or imposed between a corporation that is a qualifying aircraft leasing manager and a person who is an associate of that corporation, in their commercial or financial relations in connection with a qualifying aircraft leasing management activity; and
  - (b) the conditions differ from those that would be made if the person were not such an associate.
- (4) Any profits that, but for the conditions referred to in subsection (3)(a), would have accrued to the corporation or the person and, by reason of those conditions, have not so accrued, are to be included in the profits of the corporation or the person and taxed in accordance with this Part.
- (5) If—
- (a) an aircraft is owned by a corporation that is a qualifying aircraft lessor under an arrangement (*ownership arrangement*); and
  - (b) the corporation enters into an arrangement (*release arrangement*) under which—
    - (i) it is released from the primary obligation under the ownership arrangement; and
    - (ii) that obligation is assumed by another person,
- the aircraft leasing tax concessions provisions are to have effect as if the corporation had ceased to own the aircraft during the time when the release arrangement is in force.

*(Added 9 of 2017 s. 4)*

**14N. Aircraft leasing tax concessions: power to amend Schedule 17F**

The Commissioner may by order published in the Gazette amend Schedule 17F.

*(Added 9 of 2017 s. 4)*

**15. Certain amounts deemed trading receipts**

- (1) For the purposes of this Ordinance, the sums described in the following paragraphs shall be deemed to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong—
- (a) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person from the exhibition or use in Hong Kong of cinematograph or television film or tape, any sound recording, or any advertising material connected with such film, tape or recording;
  - (b) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person for the use, or the right to the use, in Hong Kong of any patent, design, trade mark, copyright material, layout-design (topography) of an integrated circuit, performer's right, plant variety right, secret process or formula, or other property or right of a similar nature, or for imparting or undertaking to impart knowledge directly or indirectly connected with the use in Hong Kong of any such patent, design, trade mark, copyright material, layout-design (topography) of an integrated circuit, performer's right, plant variety right, secret process or formula, or other property or right; (*Replaced 12 of 2004 s. 5. Amended 21 of 2011 s. 3; 24 of 2018 s. 3*)
  - (ba) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person for the use, or the right to the use, outside Hong Kong of any patent, design, trade mark, copyright material, layout-design (topography) of an integrated circuit, performer's right, plant variety right, secret process or formula, or other property or right of a similar nature, or for imparting or undertaking to impart knowledge directly or indirectly

connected with the use outside Hong Kong of any such patent, design, trade mark, copyright material, layout-design (topography) of an integrated circuit, performer's right, plant variety right, secret process or formula, or other property or right, which are deductible in ascertaining the assessable profits of a person under this Part; (*Added 12 of 2004 s. 5. Amended 21 of 2011 s. 3; 24 of 2018 s. 3*)

- (bb) sums, not otherwise chargeable to tax under this Part, received by or accrued to a performer or an organizer for an assignment of, or an agreement to assign, a performer's right in relation to a performance given by the performer in Hong Kong on or after the day on which the Inland Revenue (Amendment) (No. 5) Ordinance 2018 (24 of 2018) comes into operation; (*Added 24 of 2018 s. 3*)
- (bc) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person—
  - (i) for the use, or the right to the use, outside Hong Kong of any intellectual property or know-how generated from any R&D activity in respect of which a deduction is allowable under section 16B in ascertaining profits of the person under this Part; or
  - (ii) for imparting or undertaking to impart knowledge directly or indirectly connected with the use outside Hong Kong of any such property or know-how; (*Added 29 of 2018 s. 5*)
- (c) sums received by or accrued to a person by way of grant, subsidy or similar financial assistance in connection with the carrying on of a trade, profession or business in Hong Kong, other than sums in connection

- with capital expenditure made or to be made by the person;
- (d) sums received by or accrued to a person by way of hire, rental or similar charges for the use of movable property in Hong Kong or the right to use movable property in Hong Kong;
  - (e) *(Repealed 7 of 1975 s. 7)*
  - (f) sums received by or accrued to a corporation carrying on a trade, profession or business in Hong Kong by way of interest derived from Hong Kong; *(Replaced 19 of 1986 s. 2)*
  - (g) sums received by or accrued to a person, other than a corporation, carrying on a trade, profession or business in Hong Kong by way of interest derived from Hong Kong which interest is in respect of the funds of the trade, profession or business; *(Replaced 19 of 1986 s. 2. Amended 17 of 1989 s. 4)*
  - (h) sums received by or accrued to a person as a refund to the person of—
    - (i) contributions paid as an employer to a recognized occupational retirement scheme; or
    - (ii) voluntary contributions paid as an employer to a mandatory provident fund scheme,but only to the extent that the sums are allowed as deductions in ascertaining the person's assessable profits under this Part; *(Replaced 4 of 1998 s. 6)*
  - (i) sums, not otherwise chargeable to tax under this Part, received by or accrued to a financial institution by way of interest which arises through or from the carrying on by the financial institution of its business in Hong Kong, notwithstanding that the moneys in respect of which the

interest is received or accrues are made available outside Hong Kong; (*Added 73 of 1978 s. 3*)

- (ia) sums, not otherwise chargeable to tax under this Part, received by or accrued to a corporation (other than a financial institution), by way of interest that arises through or from the carrying on in Hong Kong by the corporation of its intra-group financing business within the meaning of section 16(3), even if the moneys in respect of which the interest is received or accrues are made available outside Hong Kong; (*Added 12 of 2016 s. 7*)
- (j) sums received by or accrued to a corporation carrying on a trade, profession or business in Hong Kong by way of gains or profits arising in or derived from Hong Kong from the sale or other disposal or on the redemption, on maturity or presentment or otherwise, of a certificate of deposit, bill of exchange or regulatory capital security; (*Replaced 19 of 1986 s. 2. Amended 12 of 2016 s. 12*)
- (k) sums received by or accrued to a person, other than a corporation, carrying on a trade, profession or business in Hong Kong by way of gains or profits arising in or derived from Hong Kong from the sale or other disposal or on the redemption, on maturity or presentment or otherwise, of a certificate of deposit, bill of exchange or regulatory capital security where such gains or profits are in respect of the funds of the trade, profession or business; (*Replaced 19 of 1986 s. 2. Amended 28 of 1987 s. 3; 17 of 1989 s. 4; 12 of 2016 s. 12*)
- (l) sums, not otherwise chargeable to tax under this Part, received by or accrued to a financial institution by way of gains or profits arising through or from the carrying on by the financial institution of its business in Hong Kong from the sale or other disposal or on the



- redemption, on maturity or presentment or otherwise, of a certificate of deposit, bill of exchange or regulatory capital security even if— (*Amended 12 of 2016 s. 12*)
- (i) the moneys laid out for the acquisition of the certificate, bill or security were made available outside Hong Kong; or (*Amended 12 of 2016 s. 12*)
  - (ii) the sale, disposal or redemption is effected outside Hong Kong; (*Added 19 of 1986 s. 2. Amended 28 of 1987 s. 3; 12 of 2016 s. 7*)
- (la) sums, not otherwise chargeable to tax under this Part, received by or accrued to a corporation (other than a financial institution), by way of gains or profits arising through or from the carrying on in Hong Kong by the corporation of its intra-group financing business within the meaning of section 16(3), from the sale or other disposal or on the redemption, on maturity or presentment or otherwise, of a certificate of deposit, bill of exchange or regulatory capital security, even if—
- (i) the moneys laid out for the acquisition of the certificate, bill or security were made available outside Hong Kong; or
  - (ii) the sale, disposal or redemption is effected outside Hong Kong; (*Added 12 of 2016 s. 7. Amended 9 of 2017 s. 5*)
- (m) sums received or receivable by a person as consideration in respect of the transfer of a right to receive income, as provided for in section 15A; and (*Added 28 of 1987 s. 3. Amended 9 of 2017 s. 5*)
- (n) sums, not otherwise chargeable to tax under this Part, received by or accrued to a corporation by way of gains or profits (other than those arising from the sale of



capital assets) arising through or from the carrying on in Hong Kong by the corporation of—

- (i) its business of granting a right to use an aircraft to another person (*aircraft business*), even if the aircraft is used outside Hong Kong; or
  - (ii) its business of managing a corporation carrying on an aircraft business or of managing an aircraft business, even if the aircraft concerned is used outside Hong Kong. (*Added 9 of 2017 s. 5*)
- (1A) Subsection (1)(j) or (k) shall not apply to gains or profits arising in or derived from Hong Kong, other than gains or profits received by or accrued to a person whose trade, profession or business comprises or includes trading in certificates of deposit or bills of exchange, to the extent to which such gains or profits relate to a period prior to 1 April 1981; and gains or profits received by or accrued to any person from the sale or other disposal or on the redemption on maturity or presentment, on or after 1 April 1981, of a certificate of deposit or bill of exchange purchased or otherwise acquired by that person before that date, shall be determined by reference to such amount as the Commissioner may consider such certificate of deposit or bill of exchange would have realized if it had been sold in the open market at the close of business on 31 March 1981 and not by reference to the amount, if any, paid by that person in so purchasing or otherwise acquiring such certificate of deposit or bill of exchange. (*Added 30 of 1981 s. 3*)
- (1B) (*Repealed 36 of 1984 s. 3*)
- (1C) Subsection (1)(f), (g), (i), (ia), (j), (k), (l) and (la) applies, subject to sections 17B, 17C, 17D, 17E, 17F and 17G, in relation to a regulatory capital security. (*Added 12 of 2016 s. 12*)

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- (2) Where, in ascertaining for the purposes of this Part the profits of a trade, profession or business carried on in Hong Kong, a deduction has been allowed for any debt incurred for the purposes of the trade, profession or business, then, if the whole or any part of that debt is thereafter released, the amount released shall be deemed to be a receipt of the trade, profession or business arising in or derived from Hong Kong at the time when the release was effected.
- (3) Where in the basis period for any year of assessment a financial institution was not a financial institution for the whole of that period, in that, if the institution is a bank it was not licensed for the whole of that period or if the institution is a deposit-taking company it was not registered for the whole of that period, then subsection (1)(i) and (l) shall apply only in respect of such part of the basis period during which the bank or deposit-taking company was licensed or registered, as the case may be. (*Added 73 of 1978 s. 3. Amended 19 of 1986 s. 2*)
- (3A) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to subsection (1)(j), (k) and (l). (*Added 10 of 2013 s. 7*)
- (4) The amendments to this section effected by the Inland Revenue (Amendment) Ordinance 1984 (36 of 1984) shall not have the effect of rendering chargeable to tax sums received or accrued to any person prior to 1 April 1984 which were not chargeable to tax immediately prior to the coming into force of that Ordinance. (*Added 36 of 1984 s. 3*)
- (5) The amendments to this section effected by the Inland Revenue (Amendment) (No. 2) Ordinance 1986 (19 of 1986) shall apply to sums received or accrued by way of interest, gains or profits on or after 1 April 1986, and the provisions of this section in force immediately prior to the coming into force of that Ordinance shall continue to apply to such

sums received or accrued prior to 1 April 1986 as if such amendments had not been enacted. (*Added 19 of 1986 s. 2*)

- (6) The amendment made to subsection (1) by section 5(a)(ii) of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) does not apply to sums described in subsection (1)(ba) which were received by or which accrued to a person before the commencement\* of that Ordinance. (*Added 12 of 2004 s. 5*)
- (7) The amendments made to this section by the Inland Revenue (Amendment) (No. 5) Ordinance 2018 (24 of 2018) do not have the effect of rendering chargeable to tax sums received by or accrued to a person before the day on which that Ordinance comes into operation which were not otherwise chargeable to tax. (*Added 24 of 2018 s. 3*)
- (7A) The amendments made to this section by the Inland Revenue (Amendment) (No. 7) Ordinance 2018 (29 of 2018) do not have the effect of rendering chargeable to tax sums received by or accrued to a person before the day on which that Ordinance comes into operation which were not otherwise chargeable to tax. (*Added 29 of 2018 s. 5*)
- (8) In this section—
- intellectual property*** (知識產權) includes—
- (a) copyright material;
  - (b) a design;
  - (c) a layout-design (topography) of an integrated circuit;
  - (d) a patent;
  - (e) a plant variety right;
  - (f) a secret process or formula; and
  - (g) any other property or right of a similar nature; (*Added 29 of 2018 s. 5*)

**know-how** (工業知識) means any industrial information or techniques likely to assist in the manufacture or processing of goods or materials; (*Added 29 of 2018 s. 5*)

**organizer** (籌辦人) means a person who obtains a performer's right in a performance in Hong Kong through arranging the participation of the performer in the performance or managing the performance;

**performance** (表演) has the meaning given by section 200(2) of the Copyright Ordinance (Cap. 528);

**performer** (表演者) has the meaning given by section 200(2) of the Copyright Ordinance (Cap. 528); (*Added 24 of 2018 s. 3. Amended 29 of 2018 s. 5*)

**R&D activity** (研發活動) has the meaning given by section 2 of Schedule 45. (*Added 29 of 2018 s. 5*)

(*Replaced 2 of 1971 s. 9. Amended 7 of 1986 s. 12*)

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Editorial Note:

\* Commencement date: 25 June 2004.

## 15A. Transfer of right to receive income

- (1) Subject to subsection (3) where—
- (a) a right to receive income from property is transferred by a person to another person; and
  - (b) consideration has been received or is receivable in respect of the transfer,

the amount of the consideration shall, notwithstanding the exclusion relating to the sale of capital assets contained in section 14, be treated as a trading receipt arising in or derived from Hong Kong by the transferor from a trade, profession or business carried on in Hong Kong.

- (2) The reference in subsection (1) to the amount of consideration shall, in the case where consideration is paid or given otherwise than in cash, be construed as a reference to the money value of the consideration.
- (3) Subsection (1) shall not apply in relation to a transfer of a right to receive income from property where the right arose from the ownership by the transferor of a legal or equitable estate or interest in the property and, before or at the time of that transfer, the transferor also transferred that estate or interest to the transferee.
- (4) In this section—
- income* (入息) means any profits, rent, interest or royalty chargeable to tax under Part 4;
- property* (財產) means any property whatsoever;
- right to receive income from property* (從財產收取入息的權利) means a right to have income that will or may be derived from property paid to, or applied or accumulated for the benefit of, the person owning the right.
- (5) This section shall apply to any agreement made for the transfer of a right to receive income from property within the meaning of subsection (4) entered into or effected after 25 February 1987 other than an agreement made in pursuance of a legally enforceable obligation incurred on or before that date.

*(Added 28 of 1987 s. 4. Amended E.R. 1 of 2012)*

**15B.** *(Repealed 71 of 1983 s. 13)*

**15BA. Changes in trading stock**

- (1) In this section—

*trade* (行業) means a trade or business;

*trading stock* (營業存貨), in relation to a trade—

- (a) means anything (whether movable property or immovable property) that—
    - (i) is sold in the ordinary course of trade; or
    - (ii) would be so sold if it were mature or its manufacture, preparation or construction were complete; but
  - (b) does not include—
    - (i) materials used in the manufacture, preparation or construction of any such thing;
    - (ii) any services performed in the ordinary course of the trade; or
    - (iii) any article produced, or any material used, in the performance of any such services.
- (2) If trading stock of a person's trade is appropriated by the person for non-trade purpose, then in calculating the profits of the trade—
- (a) the amount that the trading stock appropriated would have realized if sold in the open market at the time of the appropriation is brought into account as a receipt;
  - (b) the value of anything in fact received from the appropriation of the trading stock is left out of account; and
  - (c) the receipt referred to in paragraph (a) is treated as arising on the date of the appropriation.
- (3) If something that belongs to a person carrying on a trade, but that is not trading stock of the trade, becomes trading stock of the trade, then in calculating the profits of the trade—

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- (a) the cost of the stock is taken to be the amount that it would have realized if sold in the open market at the time it became trading stock of the trade;
  - (b) the value of anything in fact given for it becoming trading stock of the trade is left out of account; and
  - (c) the cost referred to in paragraph (a) is treated as being incurred on the date it became trading stock of the trade.
- (4) If trading stock of a trade is disposed of otherwise than in the course of trade and subsection (2) does not apply, then in calculating the profits of the trade—
- (a) the amount that the trading stock disposed of would have realized if sold in the open market at the time of the disposal is brought into account as the receipt;
  - (b) any consideration obtained for the disposal of the trading stock is left out of account; and
  - (c) the receipt referred to in paragraph (a) is treated as arising on the date of the disposal.
- (5) If trading stock of a trade has been acquired otherwise than in the course of trade and subsection (3) does not apply, then in calculating the profits of the trade—
- (a) the cost of the stock is taken to be the amount that it would have realized if sold in the open market at the time of the acquisition;
  - (b) the value of anything in fact given for the acquisition of the trading stock is left out of account; and
  - (c) the cost referred to in paragraph (a) is treated as being incurred on the date of the acquisition.
- (6) Subsection (4) does not apply in relation to a disposal, and subsection (5) does not apply in relation to an acquisition, of any trading stock if section 15C applies in relation to the trading stock.



*(Added 27 of 2018 s. 13)*

### **15C. Valuation of trading stock on cessation of business**

Where a person ceases to carry on a trade or business in Hong Kong the trading stock of the trade or business at the date of cessation shall be valued for the purpose of computing the profits in respect of which that person is chargeable to tax under this Part as follows— *(Amended 28 of 1964 s. 6; 26 of 1969 s. 12)*

- (a) in the case of any such trading stock—
  - (i) which is sold or transferred for valuable consideration to a person who carries on or intends to carry on a trade or business in Hong Kong; and
  - (ii) the cost whereof may be deducted by the purchaser as an expense in computing the profits from such trade or business in respect of which such purchaser is chargeable to tax under this Part,

the value thereof shall be taken to be the amount realized on the sale or the value of the consideration given for the transfer; *(Amended 28 of 1964 s. 6)*

- (b) in the case of any other such trading stock, the value thereof shall be taken to be the amount which it would have realized if it had been sold in the open market at the date of cessation.

*(Added 36 of 1955 s. 22. Amended 7 of 1986 s. 12)*

### **15D. Post-cessation receipts and payments**

- (1) Where a person who has ceased to carry on a trade, profession or business in Hong Kong, receives any sum which, if it had been received before such cessation, would have been included in the profits of the trade, profession or business in respect of which the person is chargeable to tax under this Part, then to the extent to which the sum has not already been



included in such profits that sum shall be deemed to be profits of the trade, profession or business for the year of assessment in which the cessation occurred.

- (2) Where a person who has ceased to carry on a trade, profession or business in Hong Kong pays any sum which, if it had been paid before such cessation, would have been deductible in computing the profits of the trade, profession or business in respect of which the person is chargeable to tax under this Part, then to the extent to which the sum has not already been deducted in computing such profits, that sum shall be deducted in ascertaining his profits for the year of assessment in which the cessation occurred.

*(Added 26 of 1969 s. 13. Amended 7 of 1986 s. 12)*

### **15E. Stock borrowing and lending**

- (1) This section applies where—
- (a) in relation to a stock borrowing under a stock borrowing and lending agreement, the borrower has used the borrowed stock obtained from a lender for one or more than one specified purpose and has effected a stock return;
  - (b) if any distribution is made or a right or option is issued in respect of the borrowed stock during the borrowing period, regardless of whether that event occurs before or after the borrowed stock is disposed of by the borrower to a third party, the lender receives from the borrower the distribution or identical property, the right or option or an identical right or option, or a compensatory payment equal to the value of the distribution or the value of the right or option;
  - (c) the lender does not dispose of, whether by transfer, declaration of trust or otherwise, the right to receive any

- part of the total consideration payable or to be given by the borrower under the stock borrowing and lending agreement;
- (d) both the borrower and the lender were dealing with each other at arm's length in relation to the stock borrowing and the stock return; and
  - (e) the lender does not enter into the stock borrowing with the purpose, or main purpose, of avoiding or deferring the inclusion of any amount in profits in respect of which the lender is chargeable to tax under this Part.
- (2) For the purpose of determining whether an amount, other than any fee payable under a stock borrowing and lending agreement, should be taken into account in ascertaining the profits in respect of which a lender is chargeable to tax under this Part in respect of a stock borrowing or a stock return, the lender is to be treated as if—
- (a) the stock borrowing, to the extent of the quantity and description of the borrowed stock in respect of which the stock return is subsequently made, had not been entered into;
  - (b) the stock return had not been made;
  - (c) the lender had, at all times during the relevant borrowing period, held the borrowed stock in respect of which the stock return is made; and
  - (d) the stock which is the subject of the stock return were the borrowed stock in respect of which the stock return is made.
- (3) Where—
- (a) a lender receives from a borrower in relation to the borrowed stock a distribution or identical property or a right or option or identical property; and

(b) had the borrowed stock continued to be held by the lender at all times during the borrowing period an amount would have been included or excluded, as the case may be, in ascertaining for a year of assessment the profits in respect of which the lender is chargeable to tax under this Part in respect of the distribution or the right or option,

then an equal amount shall be likewise treated in ascertaining the chargeable profits of the lender for that year of assessment.

- (4) Where a lender receives from a borrower in relation to the borrowed stock a compensatory payment in respect of a distribution made or right or option issued during the borrowing period, then in determining whether an amount is to be included or excluded, as the case may be, in ascertaining for a year of assessment the profits in respect of which the lender is chargeable to tax under this Part in respect of the compensatory payment, the lender is to be treated as if—
- (a) the distribution had been made, or the right or option had been issued directly to him in respect of the borrowed stock; and
  - (b) he had disposed of the distribution or right or option immediately after its making or issue, as the case may be, for a consideration equal to that compensatory payment.
- (5) In determining the amount, if any, other than a fee payable under a stock borrowing and lending agreement, to be taken into account in ascertaining the profits in respect of which a borrower is chargeable to tax under this Part in respect of a stock borrowing or a stock return, the borrower is to be treated as if the stock borrowing and the stock return respectively had been carried out for a consideration equal

to the market value of the borrowed stock at the time of the relevant stock borrowing.

- (6) Where a person has entered into a stock borrowing and lending agreement under which a stock borrowing has been effected, and at the time of making an assessment of profits tax on that person for any year of assessment the assessor is of the opinion that the requirements specified in subsection (1) have been or will be satisfied, the assessor may make the assessment on the basis that this section is applicable.
- (7) Where—
- (a) an assessment has been made on the basis that this section is applicable; and
  - (b) after the making of the assessment, the assessor becomes satisfied that this section is not applicable,
- then the assessor may accordingly adjust the assessment.

- (8) In this section—

*borrower* (借用人), *borrowed stock* (被借用證券), *lender* (借出人), *recognized stock market* (認可證券市場), *specified purpose* (指明用途), *stock borrowing* (證券借用), *stock borrowing and lending agreement* (證券借用及借出協議) and *stock return* (證券交還), subject to subsection (9), have the same meanings as in the Stamp Duty Ordinance (Cap. 117); (*Amended 56 of 1996 s. 2; 5 of 2002 s. 407*)

*borrowing period* (借用期間), in relation to any borrowed stock, means the period commencing when that stock was borrowed under a stock borrowing and ending when a stock return is effected in relation to that stock;

*distribution* (派發) includes—

- (a) an interest payment;
- (b) a dividend;

- (c) a share issued by a company to a shareholder in the company where the share is issued as a bonus share;
- (d) an amount credited by the trustee of a unit trust to a unit holder other than by way of redemption, realization or liquidation;
- (e) a unit issued by the trustee of a unit trust;

**option** (認購權) includes—

- (a) in relation to a company, an option to acquire shares in the company;
- (b) in relation to a unit trust, an option to acquire units in the unit trust;

**right** (權利) includes—

- (a) in relation to a company, a right to acquire shares in the company or to acquire an option;
- (b) in relation to a unit trust, a right to acquire units in the unit trust or to acquire an option;

**specified securities** (指明證券) means any of the following, not being Hong Kong stock the sale and purchase of which in Hong Kong are subject to the rules and practices of a recognized stock market— (*Amended 5 of 2002 s. 407*)

- (a) any shares, stocks, debentures, loan stocks, funds, bonds or notes of or issued by any body, whether corporate or unincorporate, or any government or local government authority, or any other similar investment of any description;
- (b) any units under a unit trust scheme;
- (c) any right, option or interest in or in respect of any security referred to in paragraph (a) or (b),

which the Commissioner may specify in writing, either generally or in any particular case, for the purposes of this section. (*Added 56 of 1996 s. 2*)

- (9) For the purposes of construing a term by reference to the Stamp Duty Ordinance (Cap. 117) in subsection (8), a reference in the corresponding term in the Stamp Duty Ordinance (Cap. 117) to “Hong Kong stock” or to “Hong Kong stock the sale and purchase of which in Hong Kong are subject to the rules and practices of a recognized stock market”, is construed as including a reference to specified securities that the Commissioner has specified under subsection (8). (*Added 56 of 1996 s. 2. Amended 5 of 2002 s. 407*)
- (10) For the purpose of the definition of *specified securities* in subsection (8), the terms *Hong Kong stock*, *unit* and *unit trust scheme* have the same meanings as in the Stamp Duty Ordinance (Cap. 117). (*Added 56 of 1996 s. 2*)

(*Added 71 of 1994 s. 2*)

**15F. Sums derived from intellectual property by non-Hong Kong resident associates**

- (1) For the purposes of this section, a person makes value creation contributions in relation to any intellectual property if the person has made contributions in relation to the intellectual property through—
- (a) performing the functions of and assuming risks relating to the development, enhancement, maintenance, protection or exploitation of the intellectual property; or
  - (b) providing assets in and assuming risks relating to the development, enhancement, maintenance, protection or exploitation of the intellectual property.
- (2) This section applies if—

- (a) a person has made value creation contributions in Hong Kong in relation to any intellectual property;
  - (b) a sum (*relevant sum*) accrues to an associate of the person, or is received by or for the benefit of the associate, in respect of—
    - (i) the exhibition or use of, or a right to exhibit or use, (whether in or outside Hong Kong) the intellectual property; or
    - (ii) the imparting or undertaking to impart knowledge directly or indirectly connected with the use (whether in or outside Hong Kong) of the intellectual property; and
  - (c) the associate is a non-Hong Kong resident person.
- (3) The part of the relevant sum that is attributable to the person's value creation contributions in Hong Kong (*attributable amount*) is to be regarded as a trading receipt arising in or derived from Hong Kong by the person from a trade, profession or business carried on in Hong Kong and the person is accordingly chargeable to profits tax in respect of the attributable amount.
- (4) The associate is not to be chargeable to profits tax in respect of the attributable amount.
- (5) In this section—

*associate* (相聯者) has the meaning given by section 20AC(6);

*intellectual property* (知識產權) means—

- (a) cinematograph or television film or tape, any sound recording, any advertising material connected with such film, tape or recording; or
- (b) patent, design, trade mark, copyright material, layout-design (topography) of an integrated circuit, performer's



right, plant variety right, secret process or formula, or other property or right of a similar nature;

***non-Hong Kong resident person*** (非香港居民人士) has the meaning given by section 50AAC(1);

***performer*** (表演者) has the meaning given by section 200(2) of the Copyright Ordinance (Cap. 528).

*(Added 27 of 2018 s. 14)*

## 16. Ascertainment of chargeable profits

- (1) In ascertaining the profits in respect of which a person is chargeable to tax under this Part for any year of assessment there shall be deducted all outgoings and expenses to the extent to which they are incurred during the basis period for that year of assessment by such person in the production of profits in respect of which he is chargeable to tax under this Part for any period, including—
- (a) where the condition for the application of this paragraph is satisfied under subsection (2), and subject to subsections (2A), (2B), (2C), (2CA) and (2CC), sums payable by such person by way of interest on any money borrowed by him for the purpose of producing such profits, and sums payable by such person by way of legal fees, procurator fees, stamp duties and other expenses in connection with such borrowing; *(Replaced 2 of 1971 s. 11. Amended 36 of 1984 s. 4; 12 of 2004 s. 6; 12 of 2016 s. 8)*
  - (b) rent paid by any tenant of land or buildings occupied by him for the purpose of producing such profits, but not exceeding, in the case of rent paid to the tenant's spouse, or by a partnership to one or more of the partners thereof or to a spouse of any such partner, an amount equal to the assessable value of the land or buildings;



*(Amended 76 of 1975 s. 8; 8 of 1983 s. 11; 71 of 1983 s. 14)*

- (c) subject to subsection (2J) and section 50AA, tax of substantially the same nature as tax imposed under this Ordinance, proved to the satisfaction of the Commissioner to have been paid elsewhere, whether by deduction or otherwise, by any corporation or by a person other than a corporation who carries on a trade, profession or business in Hong Kong, during the basis period for the year of assessment in respect of profits chargeable to tax by virtue of section 15(1)(f), (g), (i), (ia), (j), (k), (l) or (la); *(Amended 7 of 1986 s. 12; 19 of 1986 s. 3; 63 of 1997 s. 2(a); 12 of 2016 s. 8; 27 of 2018 s. 4)*
- (d) bad debts incurred in any trade, business or profession, proved to the satisfaction of the assessor to have become bad during the basis period for the year of assessment, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the assessor to have become bad during the said basis period notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said basis period:

Provided that—

- (i) deductions under this paragraph shall be limited to debts which were included as a trading receipt in ascertaining the profits, in respect of which the person claiming the deduction is chargeable to tax under this Part, of the period within which they arose, and debts in respect of money lent, in the ordinary course of the business of the lending of money within Hong Kong, by a person who carries on that business; *(Amended 7 of 1986 s. 12)*

- (ii) all sums recovered during the said basis period on account of amounts previously allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as part of the profits of the trade, business or profession for that basis period;
- (e) expenditure incurred in the repair of any premises, plant, machinery, implement, utensil or article employed in the production of such profits;
- (f) expenditure incurred in the replacement of any implement, utensil or article employed in the production of such profits:
- Provided that no allowances have been or shall be made under the provisions of Part 6 in respect of such implement, utensil or article;
- (g) despite section 17, a sum expended for the registration of a trade mark or design, or the registration or grant of a patent or plant variety right, used in the trade, profession or business which produces such profits; *(Replaced 26 of 1969 s. 14. Amended 52 of 1997 s. 160; 24 of 2018 s. 4; 29 of 2018 s. 6)*
- \*(ga) the payments and expenditure specified in sections 16AA, 16C, 16E, 16EA, 16F, 16G and 16I, as provided in those sections; *(Added 35 of 1965 s. 9. Amended 56 of 1993 s. 9; 31 of 1998 s. 8; 32 of 1998 s. 6; 21 of 2011 s. 4; 29 of 2018 s. 6)*
- (gb) despite section 17, any deduction allowed under section 16B; *(Added 29 of 2018 s. 6)*
- (h) such other deductions as may be prescribed by any rule made under this Ordinance.
- (1A) In computing the amount of deduction of a person's outgoings and expenses for the purposes of subsection (1), if—

- (a) the person is a connected person of a corporation;
- (b) a sum is payable by the person to the corporation, whether directly or through an interposed person; and
- (c) the sum is included in the assessable profits of the corporation chargeable at a reduced tax rate under section 14B(1), 14D(1), 14H(1) or 14J(1) for a year of assessment, (*Amended 27 of 2018 s. 30*)

the amount of deduction in respect of the sum is to be reduced such that the profits tax payable by the person is increased by reference to the amount of the reduction in the profits tax payable by the corporation in respect of the sum for the year of assessment or any subsequent year of assessment. (*Added 9 of 2017 s. 6*)

- (1B) However, subsection (1A) does not apply in relation to a person for a year of assessment if, had the sum mentioned in subsection (1A)(b) not been so payable, it would have been included in the assessable profits of the person chargeable at a reduced rate under section 14B(1), 14D(1), 14H(1) or 14J(1) for the year of assessment. (*Added 27 of 2018 s. 30*)
- (1C) For subsection (1A), a person is a connected person of a corporation if the person is—
  - (a) an associated corporation of the corporation; or
  - (b) a person (other than a corporation)—
    - (i) over whom the corporation has control;
    - (ii) who has control over the corporation; or
    - (iii) who is under the control of the same person as is the corporation. (*Added 27 of 2018 s. 30*)
- (1D) For subsection (1A), a person is also a connected person of a corporation in relation to a case where a sum is included in the corporation's assessable profits chargeable at a reduced rate under section 14H(1) or 14J(1) for a year of assessment

if the person is a partnership in which the corporation or its associate (as defined by section 14G(1)) is a partner. (*Added 27 of 2018 s. 30*)

- (2) The condition for the application of subsection (1)(a) is satisfied if— (*Amended 12 of 2004 s. 6*)
- (a) the money has been borrowed by a financial institution;
  - (b) the money has been borrowed by a public utility company specified in Schedule 3 at a rate of interest not exceeding the rate specified by the Financial Secretary by notice in the Gazette; (*Amended 17 of 1989 s. 5*)
  - (c) the money has been borrowed from a person other than a financial institution or an overseas financial institution and the sums payable by way of interest are chargeable to tax under this Ordinance;
  - (d) the money has been borrowed from a financial institution or an overseas financial institution; (*Replaced 12 of 2004 s. 6*)
  - (e) the money has been borrowed wholly and exclusively to finance—
    - (i) capital expenditure incurred by the borrower on the provision of—
      - (A) any machinery or plant, where the expenditure qualifies for an allowance under Part 6;
      - (B) any machinery or plant for R&D activities within the meaning of section 2 of Schedule 45, where the expenditure may be deducted under section 16B; (*Amended 29 of 2018 s.6*)
      - (C) a prescribed fixed asset (as defined in section 16G(6)), where the expenditure may be deducted under section 16G; or

- (D) any environmental protection machinery or environment-friendly vehicle (as defined in section 16H(1)), where the expenditure may be deducted under section 16I; or (*Replaced 4 of 2010 s. 4. Amended 10 of 2010 s. 2*)
- (ii) the purchase of trading stock by the borrower, where the trading stock purchased is used by the borrower in the production of profits chargeable to tax under this Part,
- and—
- (iii) the lender is not an associate of the borrower; and
- (iv) where the lender is a trustee of a trust estate or a corporation controlled by such a trustee, neither the trustee nor the corporation nor any beneficiary under the trust is the borrower or an associate of the borrower; (*Replaced 12 of 2004 s. 6. Amended 12 of 2016 s. 8*)
- (f) the borrower is a corporation and the deduction claimed is in respect of interest payable by it—
- (i) on debentures listed on a stock exchange in Hong Kong or on any other stock exchange recognized by the Commissioner for the purposes of this subparagraph;
- (ii) on instruments (other than debentures described in subparagraph (i))—
- (A) issued bona fide and in the course of carrying on business and marketed in Hong Kong or in a major financial centre outside Hong Kong recognized by the Commissioner for the purposes of this sub-subparagraph; or

- (B) issued pursuant to any agreement or arrangements, where the issue of an advertisement, invitation or document in respect of the agreement or arrangements has been authorized by the Securities and Futures Commission under section 105 of the Securities and Futures Ordinance (Cap. 571), and the advertisement, invitation or document has been issued to the public; or
- (iii) on money borrowed from an associated corporation of the borrower, where the money borrowed in the hands of the associated corporation arises entirely from the proceeds of an issue by the associated corporation of debentures described in subparagraph (i) or of instruments described in subparagraph (ii), in an amount not exceeding the interest payable by the associated corporation to the holders of such debentures or instruments; or  
*(Replaced 12 of 2004 s. 6. Amended 12 of 2016 s. 8)*
- (g) the borrower is a corporation carrying on in Hong Kong an intra-group financing business and—
- (i) the deduction claimed is in respect of interest payable by it on money borrowed from a non-Hong Kong associated corporation (*lender*) in the ordinary course of that business;
- (ii) the lender is, in respect of the interest, subject to a similar tax in a territory outside Hong Kong at a rate that is not lower than the reference rate; and
- (iii) the lender's right to use and enjoy that interest is not constrained by a contractual or legal obligation to pass that interest to any other person, unless the obligation arises as a result of a transaction

between the lender and a person other than the borrower dealing with each other at arm's length.

**Note—**

See subsection (2I) for elaboration on how a person is regarded as subject to a tax at a certain rate and the meanings of *similar tax* and *reference rate*. (*Added 12 of 2016 s. 8*)

- (2AA) Subsections (1)(a) and (2)(a) apply, subject to sections 17B, 17C, 17D, 17E, 17F and 17G, in relation to a sum payable by a financial institution in respect of a regulatory capital security issued by the financial institution. (*Added 12 of 2016 s. 13*)
- (2A) Where—
- (a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(c), (d) or (e);
  - (b) at any time during the basis period of the borrower for the year of assessment concerned, the payment of any sum payable by way of principal or interest in respect of the money borrowed is secured or guaranteed, whether wholly or in part and whether directly or indirectly, by a deposit or loan made by the borrower or an associate of the borrower with or to—
    - (i) the lender or an associate of the lender;
    - (ii) a financial institution or an associate of a financial institution; or
    - (iii) an overseas financial institution or an associate of an overseas financial institution; and
  - (c) any sum payable by way of interest on the deposit or loan is not chargeable to tax under this Ordinance,
- the amount of the deduction which, but for this subsection and subsections (2B), (2C) and (2CA), would have been allowed under subsection (1)(a) for the year of assessment



concerned in respect of sums payable by the borrower by way of interest on the money borrowed shall be reduced, having regard to the sum payable by way of interest on the deposit or loan, by an amount calculated on such basis as is most reasonable and appropriate in the circumstances of the case. *(Added 12 of 2004 s. 6. Amended 12 of 2016 s. 8)*

(2B) Where—

- (a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(c), (d) or (e); and
- (b) at any time during the basis period of the borrower for the year of assessment concerned, arrangements are in place, whether between the borrower and the lender or otherwise, whereby any sum payable by way of interest on the money borrowed or on any part of the money borrowed is payable, whether directly or through any interposed person, to the borrower or to a person (other than the lender) who is connected with the borrower and in either case the borrower or the person, as the case may be, is not an excepted person as defined in subsection (2E)(c),

the amount of the deduction which, but for this subsection and subsections (2A) , (2C) and (2CA), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of sums payable by the borrower by way of interest on the money borrowed or on the relevant part of the money borrowed, as the case may be, shall be reduced by an amount calculated in accordance with the following formula— *(Amended 12 of 2016 s. 8)*

$$\frac{A}{B} \times C$$



- where:
- A means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the money borrowed or in respect of the relevant part of the money borrowed, as the case may be, is outstanding and the arrangements are in place;
  - B means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the money borrowed or in respect of the relevant part of the money borrowed, as the case may be, is outstanding; and
  - C means the total amount of sums payable by the borrower by way of interest on the money borrowed or on the relevant part of the money borrowed, as the case may be, which, but for this subsection and subsections (2A) , (2C) and (2CA), would have been deductible under subsection (1)(a) for the year of assessment concerned. *(Added 12 of 2004 s. 6. Amended 12 of 2016 s. 8)*

- (2C) Subject to subsection (2G), where—
- (a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f); and
  - (b) at any time during the basis period of the borrower for the year of assessment concerned, arrangements are in place, whether between the borrower and the holders of the debentures or instruments concerned or otherwise,

whereby any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned is payable, whether directly or through any interposed person, to the borrower or to a person who is connected with the borrower and in either case the borrower or the person, as the case may be, is not an excepted person as defined in subsection (2F)(c),

the amount of the deduction which, but for this subsection and subsections (2A) , (2B) and (2CA), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of— (*Amended 12 of 2016 s. 8*)

- (c) (where the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f)(i) or (ii)) the sum payable by the borrower by way of interest on the debentures or instruments concerned or on the relevant interest in the debentures or instruments concerned, as the case may be; or
- (d) (where the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f)(iii)) the sum payable by the borrower by way of interest on money borrowed from the associated corporation, being money arising entirely from the proceeds of the issue of the debentures or instruments concerned or of the relevant interest in the debentures or instruments concerned, as the case may be,

shall be reduced by an amount calculated in accordance with the following formula—

$$\frac{X}{Y} \times Z$$

- where:
- X means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the debentures or instruments concerned or in respect of the relevant interest in the debentures or instruments concerned, as the case may be, is outstanding and the arrangements are in place;
  - Y means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the debentures or instruments concerned or in respect of the relevant interest in the debentures or instruments concerned, as the case may be, is outstanding; and
  - Z means the total amount of sums referred to in paragraph (c) or (d), as the case may be, which, but for this subsection and subsections (2A), (2B) and (2CA), would have been deductible under subsection (1)(a) for the year of assessment concerned. *(Added 12 of 2004 s. 6. Amended 12 of 2016 s. 8)*

- (2CA) Where the condition for the application of subsection (1)(a) is satisfied under subsection (2)(g), the application of subsection (1)(a) is nevertheless qualified by subsection (2CB) if—
- (a) at any time during the basis period of the borrower for the year of assessment concerned, arrangements are in place, whether between the borrower and the lender or otherwise, by which any sum payable by way of interest

on the money borrowed or on any part of the money borrowed is payable, whether directly or through any interposed person, to a related person; and

- (b) the related person is, in respect of the sum—
- (i) neither subject to profits tax in Hong Kong, nor subject to a similar tax in any territory outside Hong Kong; or
  - (ii) subject to profits tax in Hong Kong, or subject to a similar tax in a territory outside Hong Kong, but no rate at which the person is subject to such tax is equal to or higher than the reference rate.

**Note—**

See subsection (2I) for elaboration on how a person is regarded as subject to a tax at a certain rate and the meanings of *similar tax*, *reference rate* and *related person*. (*Added 12 of 2016 s. 8*)

- (2CB) For the purposes of subsection (2CA), the amount of the deduction that, but for subsections (2A), (2B), (2C) and (2CA), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of sums payable by the borrower by way of interest on the money borrowed or on the relevant part of the money borrowed, as the case may be, is to be reduced by an amount calculated in accordance with the following formula—

$$\frac{A}{B} \times C$$

- where:
- A means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the money borrowed or in respect of the relevant part of the money borrowed, as the case may be, is outstanding and the arrangements mentioned in subsection (2CA)(a) are in place;
  - B means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the money borrowed or in respect of the relevant part of the money borrowed, as the case may be, is outstanding; and
  - C means the total amount of sums payable by the borrower by way of interest on the money borrowed or on the relevant part of the money borrowed, as the case may be, that, but for subsections (2A), (2B), (2C) and (2CA), would have been deductible under subsection (1)(a) for the year of assessment concerned. (*Added 12 of 2016 s. 8*)

- (2CC) Where a deduction under subsection (1)(a) is claimed, by virtue of subsection (2)(g), for a year of assessment in respect of interest payable on money borrowed by a corporation, no deduction is to be allowed in respect of the interest if the Commissioner is satisfied that the main purpose, or one of the main purposes, of the borrowing of the money is to utilize a loss to avoid, postpone or reduce any liability, whether of

the corporation or another person, to profits tax under this Ordinance. (*Added 12 of 2016 s. 8*)

(2CD) In subsection (2CC)—

*loss* (虧損)——

- (a) means a loss sustained by a related person within the meaning of subsection (2I)(d)(ii) or (iii) in a trade, profession or business, whether in Hong Kong or elsewhere; and
- (b) includes any balance of such loss. (*Added 12 of 2016 s. 8*)

(2D) For the purposes of subsection (2A), if a deposit or loan is made by a trustee of a trust estate or a corporation controlled by such a trustee, the deposit or loan shall be deemed to have been made by each of the trustee, the corporation and the beneficiary under the trust. (*Added 12 of 2004 s. 6*)

(2E) For the purposes of subsections (2B) and (2CA)— (*Amended 12 of 2016 s. 8*)

- (a) any reference in those subsections to any sum payable by way of interest on the money borrowed or on any part of the money borrowed, however described, shall be construed as including a reference to any sum payable by way of principal or interest in respect of any other loan, where the payment of such sum is— (*Amended 12 of 2016 s. 8*)
  - (i) secured or guaranteed, whether wholly or in part and whether directly or indirectly, by any sum payable by way of principal or interest in respect of the money borrowed or in respect of any part of the money borrowed; or
  - (ii) conditional, whether wholly or in part and whether directly or indirectly, on the payment of any sum

payable by way of principal or interest in respect of the money borrowed or in respect of any part of the money borrowed;

- (b) if any sum payable by way of interest on the money borrowed or on any part of the money borrowed, as construed in accordance with paragraph (a), is payable, whether directly or through any interposed person, to a trustee of a trust estate or a corporation controlled by such a trustee, such sum shall be deemed to be so payable to each of the trustee, the corporation and the beneficiary under the trust; and
- (c) ***excepted person*** (除外人士) means—
- (i) a person who is chargeable to tax under this Ordinance in respect of any sum payable by way of interest on the money borrowed or on any part of the money borrowed, as construed in accordance with paragraph (a);
  - (ii) in the case of a person (other than the lender) who is connected with the borrower—
    - (A) a person who is entitled to any sum referred to in subparagraph (i) in the capacity of—
      - (I) a person acting as a trustee of a trust estate or holding property belonging to others pursuant to the terms of a contract, where the person is not beneficially entitled to the sum in question;
      - (II) a beneficiary of a unit trust to which section 26A(1A)(a)(i) or (ii) applies, where the sum in question is payable to a trustee of the unit trust in respect of a



- specified investment scheme referred to in section 26A(1A)(b); or
- (III) a member of a retirement scheme which is either a recognized retirement scheme or a substantially similar retirement scheme established outside Hong Kong, where the Commissioner is satisfied that the latter scheme complies with the requirements of a supervisory authority within an acceptable regulatory regime;
- (B) a public body;
- (C) a body corporate, where the Government owns beneficially more than half of the issued share capital of that body corporate for the time being; or (*Amended 28 of 2012 ss. 912 & 920*)
- (D) a financial institution or an overseas financial institution. (*Added 12 of 2004 s. 6*)
- (2F) For the purposes of subsection (2C)—
- (a) any reference in that subsection to any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, however described, shall be construed as including a reference to any sum payable by way of principal or interest in respect of any other loan, where the payment of such sum is—
- (i) secured or guaranteed, whether wholly or in part and whether directly or indirectly, by any sum payable by way of principal or interest in respect of the debentures or instruments concerned or in respect of any interest in the debentures or instruments concerned; or



- (ii) conditional, whether wholly or in part and whether directly or indirectly, on the payment of any sum payable by way of principal or interest in respect of the debentures or instruments concerned or in respect of any interest in the debentures or instruments concerned;
- (b) if any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, as construed in accordance with paragraph (a), is payable, whether directly or through any interposed person, to a trustee of a trust estate or a corporation controlled by such a trustee, such sum shall be deemed to be so payable to each of the trustee, the corporation and the beneficiary under the trust; and
- (c) ***excepted person*** (除外人士) means—
  - (i) a person who is chargeable to tax under this Ordinance in respect of any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, as construed in accordance with paragraph (a);
  - (ii) in the case of a person who is connected with the borrower—
    - (A) a person who is entitled to any sum referred to in subparagraph (i) in the capacity of—
      - (I) a person acting as a trustee of a trust estate or holding property belonging to others pursuant to the terms of a contract, where the person is not beneficially entitled to the sum in question;

- 
- (II) a beneficiary of a unit trust to which section 26A(1A)(a)(i) or (ii) applies, where the sum in question is payable to a trustee of the unit trust in respect of a specified investment scheme referred to in section 26A(1A)(b); or
- (III) a member of a retirement scheme which is either a recognized retirement scheme or a substantially similar retirement scheme established outside Hong Kong, where the Commissioner is satisfied that the latter scheme complies with the requirements of a supervisory authority within an acceptable regulatory regime;
- (B) a public body;
- (C) a body corporate, where the Government owns beneficially more than half of the issued share capital of that body corporate for the time being; or (*Amended 28 of 2012 ss. 912 & 920*)
- (D) a financial institution or an overseas financial institution. (*Added 12 of 2004 s. 6*)
- (2G) Subsection (2C) shall not apply where under the relevant arrangements, the relevant sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned is payable to a market maker who, in the ordinary course of conduct of his trade, profession or business in respect of market making, holds such debentures or instruments or such interest for the purpose of providing liquidity thereof. (*Added 12 of 2004 s. 6*)
- (2H) In subsection (2G), **market maker** (市場莊家) means a person who—

- (a) is licensed or registered for dealing in securities under the Securities and Futures Ordinance (Cap. 571) or authorized to do so by a regulatory authority in a major financial centre outside Hong Kong recognized by the Commissioner for the purposes of subsection (2)(f)(ii)(A);
  - (b) in the ordinary course of conduct of his trade, profession or business in respect of market making holds himself out as being willing to buy and sell securities for his own account and on a regular basis; and
  - (c) is actively involved in market making in securities issued by a wide range of unrelated institutions. (*Added 12 of 2004 s. 6*)
- (2I) For the purposes of this subsection and subsections (2)(g) and (2CA)—
- (a) a person is, in respect of an interest or a sum, subject to a tax at a certain rate in a territory if the Commissioner is satisfied that—
    - (i) for a similar tax in a territory outside Hong Kong as mentioned in subsections (2)(g)(ii) and (2CA)(b)(i) and (ii)—tax of that nature has been paid or will be paid, whether by deduction or otherwise, at that rate by that person in respect of the interest or sum concerned in that territory as required by the laws of that territory; or
    - (ii) for profits tax in Hong Kong as mentioned in subsection (2CA)(b)(i) and (ii)—profits tax under this Ordinance has been paid or will be paid at that rate by that person in respect of the sum concerned in Hong Kong;

- (b) **similar tax** (類似稅項) means a tax that is of substantially the same nature as profits tax under this Ordinance;
- (c) **reference rate** (參考稅率) means—
- (i) the rate specified in Schedule 8 for the year of assessment concerned; or
  - (ii) if section 14D(1) applies in respect of the borrower for the year of assessment concerned, the rate applicable under that section; and
- (d) **related person** (有關連人士) means—
- (i) the borrower;
  - (ii) a person (other than the lender) who is connected with the borrower; or
  - (iii) a person (other than the borrower) who is connected with the lender. (*Added 12 of 2016 s. 8*)
- (2J) Subsection (1)(c) does not apply in relation to any tax paid in a territory by a person in respect of profits referred to in that subsection if—
- (a) the territory is a DTA territory (as defined by section 48A); and
  - (b) under section 50, tax payable in the territory by a Hong Kong resident person in respect of the profits is to be allowed as a credit against tax payable in Hong Kong by the Hong Kong resident person in respect of the profits. (*Added 27 of 2018 s. 4*)
- (3) In this section— (*Amended 12 of 2004 s. 6*)
- associate** (相聯者), in relation to a person, means—
- (a) where the person is a natural person—
    - (i) a relative of the person;

- 
- (ii) a partner of the person and any relative of that partner;
  - (iii) a partnership in which the person is a partner;
  - (iv) any corporation controlled by the person, by a partner of the person or by a partnership in which the person is a partner;
  - (v) any director or principal officer of any such corporation as is referred to in subparagraph (iv);
- (b) where the person is a corporation—
- (i) any associated corporation;
  - (ii) any person who controls the corporation and any partner of such person, and, where either such person is a natural person, any relative of such person;
  - (iii) any director or principal officer of that corporation or of any associated corporation and any relative of any such director or officer;
  - (iv) any partner of the corporation and, where such partner is a natural person, any relative of such partner;
- (c) where the person is a partnership—
- (i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;

- (ii) any corporation controlled by the partnership or by any partner thereof or, where such a partner is a natural person, any relative of such partner;
- (iii) any corporation of which any partner is a director or principal officer;
- (iv) any director or principal officer of a corporation referred to in subparagraph (ii);

***associated corporation*** (相聯法團), in relation to a person, means—

- (a) a corporation over which the person has control;
- (b) if the person is a corporation—
  - (i) a corporation which has control over the person; or
  - (ii) a corporation which is under the control of the same person as is the first-mentioned person;

***beneficiary under the trust*** (信託的受益人) means any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under a trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income;

***intra-group financing business*** (集團內部融資業務), in relation to a corporation, means the business of the borrowing of money from and lending of money to its associated corporations; (Added 12 of 2016 s. 8)

***non-Hong Kong associated corporation*** (非香港相聯法團) means an associated corporation that does not carry on any trade, profession or business in Hong Kong; (Added 12 of 2016 s. 8)

***overseas financial institution*** (海外財務機構) means a person carrying on the business of banking or deposit-taking outside Hong Kong other than a person whom the Commissioner has,

in accordance with the powers vested in him by subsection (4), determined shall not be recognized for the purposes of this section as an overseas financial institution; (*Amended 12 of 2004 s. 6*)

***principal officer*** (主要職員) means—

- (a) a person employed by a corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

***relative*** (親屬) means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent. (*Replaced 63 of 1997 s. 2*)

(3A) In this section—

- (a) a corporation shall be regarded as being controlled by a person if the person has the power to secure—
  - (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
  - (ii) by virtue of any power conferred by the articles of association or any other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with his wishes; and



- (b) a person (other than a corporation) shall be regarded as being controlled by another person if the first-mentioned person is accustomed or under an obligation, whether express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings, to act, in relation to his investment or business affairs, in accordance with the directions, instructions or wishes of that other person. *(Added 12 of 2004 s. 6)*
- (3B) In this section, a person is regarded as being connected with a borrower if the person is— *(Amended 12 of 2016 s. 8)*
- (a) an associated corporation of the borrower; or *(Amended 12 of 2016 s. 8)*
- (b) a person (other than a corporation)—
- (i) who controls the borrower;
- (ii) who is controlled by the borrower; or
- (iii) who is under the control of the same person as is the borrower. *(Added 12 of 2004 s. 6)*
- (3C) In this section, a person is regarded as being connected with a lender if the person is—
- (a) an associated corporation of the lender; or
- (b) a person (other than a corporation)—
- (i) who controls the lender;
- (ii) who is controlled by the lender; or
- (iii) who is under the control of the same person as is the lender. *(Added 12 of 2016 s. 8)*
- (4) The Commissioner may for the purposes of this section determine that a person shall not be recognized as an overseas financial institution if he is of the opinion that that person's banking or deposit-taking business is not adequately



supervised by a supervisory authority. (*Added 36 of 1984 s. 4. Amended 12 of 2004 s. 6*)

- (4A) Sections 21 and 22 of Schedule 17A (specified alternative bond scheme and its tax treatment) provide for modifications to subsection (2)(f). (*Added 10 of 2013 s. 8*)
- (5) The amendments to this section effected by the Inland Revenue (Amendment) Ordinance 1984 (36 of 1984) shall not have the effect of disallowing any deduction under subsection (1)(a) which could lawfully have been made immediately prior to the coming into force of that Ordinance where the deduction is in respect of sums payable prior to 1 April 1984. (*Added 36 of 1984 s. 4. Amended 7 of 1986 s. 4*)
- (5A) The amendments made to this section by section 6(a), (b), (c), (d), (e) and (f) of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) (*the Amendment Ordinance*) do not apply to sums described in subsection (1)(a) which were incurred—
- (a) before the commencement# of the Amendment Ordinance;
  - (b) under a transaction which was the subject of an application for advance clearance made to the Commissioner before 1 April 1998, and the Commissioner has before the commencement# of the Amendment Ordinance expressed the opinion that the transaction would not fall within the terms of section 61A; or
  - (c) under an arrangement which was the subject of an application made to the Commissioner under section 88A, and the Commissioner has before the commencement# of the Amendment Ordinance made a ruling under that section that the arrangement would not

fall within the terms of section 61A. (*Added 12 of 2004 s. 6*)

- (5B) The amendment made to subsection (1)(g) by the Inland Revenue (Amendment) (No. 5) Ordinance 2018 (24 of 2018) applies only in relation to a year of assessment beginning on or after 1 April 2018. (*Added 24 of 2018 s. 4*)
- (6) The Chief Executive in Council may, by notice in the Gazette, amend Schedule 3. (*Added 17 of 1989 s. 5. Amended 12 of 1999 s. 3*)
- (7) The Secretary for Financial Services and the Treasury may by order published in the Gazette amend the definition of **reference rate** in subsection (2I)(c). (*Added 12 of 2016 s. 8*)
- (*Replaced 28 of 1964 s. 7. Amended 35 of 1965 s. 9; 12 of 2004 s. 6; E.R. 1 of 2012*)

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Editorial Note:

\* The amendment made by Ord. No. 31 of 1998 to section 16(1)(ga) applies in relation to the year of assessment commencing on 1 April 2000 and to all subsequent years of assessment. (*31 of 1998 s. 2(2); L.N. 175 of 2000*)

# Commencement date: 25 June 2004.

**16A. Special payment under an approved retirement scheme allowable as a deduction**

- (1) Subject to section 17(1)(k), where a person carrying on a trade, profession or business in Hong Kong makes a payment which is either— (*Amended 7 of 1986 s. 12*)
- (a) a contribution, other than an ordinary annual contribution, to a fund duly established under a recognized occupational retirement scheme; or

- (b) a premium, other than an ordinary annual premium, in respect of a contract of insurance under a recognized occupational retirement scheme; or (*Amended 4 of 1998 s. 6*)
- (c) a contribution, other than regular contributions, paid to a mandatory provident fund scheme, (*Added 4 of 1998 s. 6*)

such payment shall, to the extent that it is made in respect of individuals employed by such person for the purposes of producing profits in respect of which he is chargeable to tax under this Part and that it is not excessive in view of all the relevant circumstances, be deemed to be an expense wholly and exclusively incurred in the production of such profits and shall be allowed as a deduction therefrom in accordance with subsection (2). (*Amended 76 of 1993 s. 6*)

- (2) For the purpose of making the deduction provided for in subsection (1), one fifth part of the payment shall be deemed to have been expended during the basis period in which the payment was actually made and the remaining 4 parts shall be deemed to have been expended at the rate of one part in the basis period for each of the succeeding 4 years of assessment: Provided that in no case shall the total amount of the deductions exceed the amount of the payment.
- (3) For the purposes of subsection (1)(c), contributions are regular contributions if they are made to the mandatory provident fund scheme at regular intervals and are either of similar or substantially similar amounts or of amounts calculated by reference to a scale or a fixed percentage of a person's salary or other remuneration. (*Added 4 of 1998 s. 6*)  
(*Replaced 49 of 1956 s. 12*)

#### **16AA. Mandatory contributions in self-employment cases allowable as**

**a deduction\***

- (1) Subject to subsection (2), where a person carrying on a trade, profession or business in Hong Kong as a sole proprietor or as a partner in a partnership pays any mandatory contributions in the basis period for any year of assessment in respect of any liability of himself to pay such contributions as a self-employed person under the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the payment shall be deemed to be an expense wholly and exclusively incurred in the production of the profits of that trade, profession or business chargeable to tax under this Part and shall be allowed as a deduction from such profits for that year of assessment.
- (2) A deduction shall not be allowable to a person under subsection (1) for any year of assessment—
  - (a) in respect of any sum which is allowable as a deduction under any other sections of this Part or section 26G;
  - (b) in excess of the amount specified in Schedule 3B in relation to that year of assessment, as reduced by the amount of any sum which is allowable to that person as a deduction under any other sections of this Part or section 26G.

*(Added 31 of 1998 s. 9)*

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**Editorial Note:**

\* Section 16AA applies in relation to the year of assessment commencing on 1 April 2000 and to all subsequent years of assessment. *(31 of 1998 s. 2(2); L.N. 175 of 2000)*

**16B. Expenditures on R&D activities**

- (1) This section applies despite section 17.
- (2) In ascertaining the profits from a trade, profession or business in respect of which a person is chargeable to tax under this

Part for a year of assessment, a deduction in relation to R&D activities is to be allowed under this section for payments made, and other expenditures incurred, by the person during the basis period for the year of assessment.

- (3) The total amount of deduction to be allowed under this section is to be determined in accordance with Schedule 45.
- (4) However, no deduction is to be allowed under this section for an amount that is allowable as a deduction apart from this section.
- (5) The proceeds of sale of any plant or machinery for, and rights generated from, R&D activities are to be treated as a trading receipt in accordance with Schedule 45.
- (6) In this section—

**R&D activity** (研發活動) has the meaning given by section 2 of Schedule 45.

*(Replaced 29 of 2018 s. 7)*

#### **16C. Payments for technical education**

- (1) Notwithstanding anything in section 17, where a person carrying on a trade, profession or business in Hong Kong makes any payment to be used for the purposes of technical education related to that trade, profession or business at any university, university college, technical college or other similar institution which is approved in writing for the purposes of this section by the Commissioner (being an amount which is not otherwise allowable as a deduction under this Ordinance), the payment shall be deducted as an expense in ascertaining the profits from that trade, profession or business for the year of assessment in the basis period of which the payment was made. *(Amended 7 of 1986 s. 12; 24 of 1996 s. 6)*

- (2) For the purposes of this section, technical education shall be deemed to be related to a trade, profession or business, if, and only if, it is technical education of a kind specially requisite for persons employed in the class of trade, profession or business to which that trade, profession or business belongs.
- (3) An approval for the purposes of subsection (1) may—
  - (a) operate as from a date, whether before or after the date of approval, specified in the instrument of approval; and
  - (b) be withdrawn at any time.

*(Added 35 of 1965 s. 10. Amended 32 of 1998 s. 8)*

**16D. Approved charitable donations (Part 4)**

*(Amended 21 of 2008 s. 3)*

- (1) Subject to subsection (2), a person chargeable to tax under this Part may deduct the aggregate of approved charitable donations made by that person in the basis period for a year of assessment, if such aggregate is not less than \$100, from what would otherwise have been the assessable profits of such person for that year of assessment.
- (2) A person shall not be entitled under subsection (1) to deduct— *(Amended 21 of 2008 s. 3)*
  - (a) for any year of assessment, any sum which is allowable as a deduction under section 16, 16B, or 16C; *(Amended 56 of 1993 s. 11; 31 of 1998 s. 10; 21 of 2008 s. 3)*
  - (aa) for any year of assessment, any sum which is allowable as a deduction under Part 4A; *(Added 31 of 1998 s. 10. Amended 21 of 2008 s. 3)*
  - (b) for any year of assessment up to and including the year of assessment commencing on 1 April 2002, a sum in excess of 10% of the balance of that person's assessable profits after making any adjustment for the allowances

and charges provided under Part 6; (*Replaced 21 of 2008 s. 3*)

- (c) for the year of assessment commencing on 1 April 2003 or any subsequent year of assessment up to and including the year of assessment commencing on 1 April 2007, a sum in excess of 25% of the balance of that person's assessable profits after making any adjustment for the allowances and charges provided under Part 6; (*Added 21 of 2008 s. 3*)
- (d) for any year of assessment commencing on or after 1 April 2008, a sum in excess of 35% of the balance of that person's assessable profits after making any adjustment for the allowances and charges provided under Part 6. (*Added 21 of 2008 s. 3*)

*(Added 7 of 1975 s. 10. Amended E.R. 1 of 2012)*

**16E. Purchase and sale of patent rights, etc.**

- (1) Notwithstanding anything in section 17, in ascertaining the profits from any trade, profession or business in respect of which a person is chargeable to tax under this Part for any year of assessment there shall, subject to subsections (2) and (6), be deducted any capital expenditure incurred by such person during the basis period for that year of assessment (other than any amount which is allowable as a deduction apart from this section) on the purchase of patent rights or rights to any know-how, for use in the trade, profession or business in the production of such profits. (*Amended 7 of 1986 s. 12; 15 of 1992 s. 2; 21 of 2011 s. 5*)
- (1A) A deduction allowable under subsection (1) includes legal expenses and valuation fees incurred in connection with the purchase of any rights of a kind referred to in that subsection. (*Added 21 of 2011 s. 5*)



- (2) If any rights of a kind referred to in subsection (1) are used partly in the production of profits chargeable to tax under this Part and partly for any other purposes, the deduction allowable under this section is that part of the capital expenditure referred to in subsection (1) that is proportionate to the extent of the use of the rights in the production of the profits chargeable to tax under this Part. *(Replaced 21 of 2011 s. 5)*
- (2A)-(2B) *(Repealed 21 of 2011 s. 5)*
- (3) Despite the exclusion relating to the sale of capital assets in section 14, where any rights of a kind referred to in subsection (1) in respect of which a deduction has been allowed to any person under that subsection in ascertaining the profits from a trade, profession or business are subsequently sold by the person, the relevant proceeds of sale are, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, to be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
- (a) at the time of sale; or
  - (b) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the discontinuance. *(Replaced 21 of 2011 s. 5)*
- (3A) For the purposes of this section, any capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on the trade, profession or business is to be treated as if it had been incurred by that person on the first day on which the person carries on the trade, profession or business. *(Added 21 of 2011 s. 5)*
- (4) In this section—

**know-how** (工業知識) means any industrial information or techniques likely to assist in the manufacture or processing of goods or materials;

**patent rights** (專利權) means the right to do or authorize the doing of anything which would, but for that right, be an infringement of a patent;

**relevant proceeds of sale** (有關售賣得益), in relation to any rights of a kind referred to in subsection (1) in respect of which a deduction has been allowed under that subsection, means—

- (a) if subsection (2) does not apply, the proceeds of sale of the rights; or
- (b) if subsection (2) applies, that part of the proceeds of sale of the rights that is proportionate to the extent to which the deduction has been allowed. (*Added 21 of 2011 s. 5*)

*(Amended 21 of 2011 s. 5)*

- (5) In this section, a reference to the purchase or sale of rights of a kind referred to in subsection (1) includes a reference to the purchase or sale of a share or interest in any such rights. (*Added 15 of 1992 s. 2*)
- (6) The amendments made to this section by the Inland Revenue (Amendment) Ordinance 1992 (15 of 1992) apply to patent rights or rights to any know-how purchased under contracts entered into on or after 18 April 1991 and the provisions of this section that were in force immediately before the commencement of that Ordinance continue to apply to patent rights or rights to any trade mark or design purchased under contracts entered into before 18 April 1991 and also to proceeds received from the sale of those rights whether before or after 18 April 1991 as if the amendments had not been enacted. (*Added 15 of 1992 s. 2*)
- (7) If any rights of a kind referred to in subsection (1) are purchased or sold together or with any other assets for one

consideration, the Commissioner may, for the purposes of the calculation of the deduction under subsection (1) or the calculation of the trading receipt under subsection (3), and having regard to all the circumstances of the transaction, allocate a consideration for the purchase or sale of each individual asset. *(Added 21 of 2011 s. 5)*

- (8) For the purposes of this section, if the Commissioner is of the opinion that the consideration for the purchase or sale of any rights of a kind referred to in subsection (1) does not represent the true market value of those rights at the time of that purchase or sale, the Commissioner may determine the true market value, and the amount so determined is to be treated—
- (a) for the purposes of subsection (1), as the capital expenditure incurred on purchase; and
  - (b) for the purposes of subsection (3), as the proceeds of sale, and a reference to relevant proceeds of sale is to be construed accordingly. *(Added 21 of 2011 s. 5)*
- (9) To avoid doubt, any expenditure incurred on the acquisition of a licence (as defined by section 16EC(8)) of any rights of a kind referred to in subsection (1) is not deductible under that subsection. *(Added 21 of 2011 s. 5)*

#### **16EA. Purchase of specified intellectual property rights**

- (1) Despite section 17, this section applies in ascertaining the profits from a trade, profession or business in respect of which a person is chargeable to tax under this Part for any year of assessment.
- (2) Any specified capital expenditure incurred by the person during the basis period for a year of assessment is to be deducted if the specified intellectual property right concerned is purchased for use in the trade, profession or business in

the production of profits in respect of which the person is chargeable to tax under this Part.

- (3) Unless subsection (4) applies and subject to subsections (5) and (6), a deduction allowable under subsection (2) is to be deducted by 5 equal amounts—
  - (a) one for the year of assessment in the basis period for which the specified capital expenditure is incurred; and
  - (b) one for each of the next succeeding 4 years of assessment.
- (4) If the specified intellectual property right—
  - (a) is a copyright, performer's economic right, protected layout-design (topography) right, protected plant variety right or registered design; and (*Replaced 24 of 2018 s. 5*)
  - (b) is due to expire at the end of its maximum period of protection, and that expiry is to occur before the expiry of the basis period for the last of the 5 succeeding years of assessment mentioned in subsection (3),subject to subsections (5) and (6), a deduction allowable under subsection (2) is to be deducted by a number of equal amounts—
  - (c) one for the year of assessment in the basis period for which the specified capital expenditure is incurred; and
  - (d) one for each of the next succeeding years a part or the whole of the basis period of each of which years coincides with a part or the whole of the remaining part of the maximum period of protection.
- (5) A deduction mentioned in subsection (3) or (4) is allowable only if, at the end of the basis period for a year of assessment for which an amount is to be deducted, the specified intellectual property right concerned has not been sold by the person who incurred the specified capital expenditure.

- (6) A deduction mentioned in subsection (3) or (4) is allowable only if—
- (a) the specified intellectual property right concerned has been used in the trade, profession or business in the production of profits in respect of which the person who incurred the specified capital expenditure is chargeable to tax under this Part;
  - (b) (in the case of the specified intellectual property right being a copyright) the copyright subsists;
  - (ba) (in the case of the specified intellectual property right being a performer's economic right) the performer's economic right has not expired; (*Added 24 of 2018 s. 5*)
  - (bb) (in the case of the specified intellectual property right being a protected layout-design (topography) right) the protection of the layout-design has not ceased; (*Added 24 of 2018 s. 5*)
  - (bc) (in the case of the specified intellectual property right being a protected plant variety right) the grant of the protected plant variety right is in force; (*Added 24 of 2018 s. 5*)
  - (c) (in the case of the specified intellectual property right being a registered design) the registration of the design is in force; and
  - (d) (in the case of the specified intellectual property right being a registered trade mark) the registration of the trade mark is in force,
- during a part or the whole of the basis period for a year of assessment for which an amount is deducted.
- (7) If any specified intellectual property right is used partly in the production of profits chargeable to tax under this Part and partly for any other purposes, the deduction allowable under

this section is that part of the specified capital expenditure that is proportionate to the extent of the use of the specified intellectual property right in the production of the profits chargeable to tax under this Part.

- (8) If any specified intellectual property rights in respect of which a deduction is allowable under this section are purchased or sold together or with any other assets for one consideration, the Commissioner may, for the purposes of the calculation of the deduction under subsection (2) or the calculation of the trading receipt under section 16EB(2), and having regard to all the circumstances of the transaction, allocate a consideration for the purchase or sale of each individual asset.
- (9) For the purposes of this section and section 16EB, if the Commissioner is of the opinion that the consideration for the purchase or sale of any specified intellectual property right does not represent the true market value of the specified intellectual property right at the time of that purchase or sale, the Commissioner may determine the true market value, and the amount so determined is to be treated—
  - (a) for the purposes of subsection (2), as the specified capital expenditure; and
  - (b) for the purposes of section 16EB(2), as the proceeds of sale of the specified intellectual property right, and a reference to relevant proceeds of sale is to be construed accordingly.
- (10) For the purposes of this section, any specified capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on the trade, profession or business is to be treated as if it had been incurred by that person on the first day on which the person carries on the trade, profession or business.
- (11) In this section and sections 16EB and 16EC—



**copyright** (版權) means—

- (a) a copyright within the meaning of section 2(1) of the Copyright Ordinance (Cap. 528), including an unregistered corresponding design as defined by section 87(5)(b) of that Ordinance; or
- (b) any right that—
  - (i) subsists under the law of a place outside Hong Kong in any work in which a copyright referred to in paragraph (a) may subsist; and
  - (ii) corresponds to a copyright referred to in paragraph (a);

**maximum period of protection** (最長保護限期) means—

- (a) in the case of a specified intellectual property right that is a copyright—
  - (i) (if the copyright subsists under the Copyright Ordinance (Cap. 528)) the maximum period for which the copyright may subsist under that Ordinance; or
  - (ii) (if the copyright subsists under the law of a place outside Hong Kong) the maximum period for which the copyright may subsist under the law of that place;
- (ab) in the case of a specified intellectual property right that is a performer's economic right—
  - (i) (if the right is conferred by Part III of the Copyright Ordinance (Cap. 528)) the maximum period for which the right may be conferred under that Ordinance; or
  - (ii) (if the right subsists under the law of a place outside Hong Kong) the maximum period for



- which the right may subsist under the law of that place; (*Added 24 of 2018 s. 5*)
- (ac) in the case of a specified intellectual property right that is a protected layout-design (topography) right—
- (i) (if the right is in a layout-design (topography) that is protected under section 3 of the Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445)) the maximum period for which the layout-design may be protected under that Ordinance; or
- (ii) (if the right subsists under the law of a place outside Hong Kong) the maximum period for which the right may subsist under the law of that place; (*Added 24 of 2018 s. 5*)
- (ad) in the case of a specified intellectual property right that is a protected plant variety right—
- (i) (if the right is granted under Part III of the Plant Varieties Protection Ordinance (Cap. 490)) the maximum period for which the grant of the right may be in force under that Ordinance; or
- (ii) (if the right subsists under the law of a place outside Hong Kong) the maximum period for which the right may subsist under the law of that place; (*Added 24 of 2018 s. 5*)
- (b) in the case of a specified intellectual property right that is a registered design—
- (i) (if the design is registered under the Registered Designs Ordinance (Cap. 522)) the maximum period for which the design may be registered under that Ordinance; or

- (ii) (if the design is registered under the law of a place outside Hong Kong) the maximum period for which the design may be registered under the law of that place;

**performer** (表演者) has the meaning given by section 200(2) of the Copyright Ordinance (Cap. 528); (*Added 24 of 2018 s. 5*)

**performer's economic right** (表演者的經濟權利) means—

- (a) a right mentioned in section 215(1)(a), (b), (c) or (d) of the Copyright Ordinance (Cap. 528) and conferred by Part III of that Ordinance on a performer; or
- (b) a right that corresponds to the right mentioned in paragraph (a) and subsists under the law of a place outside Hong Kong; (*Added 24 of 2018 s. 5*)

**protected layout-design (topography) right** (受保護的布圖設計(拓樸圖)權利) means—

- (a) a right in a layout-design (topography) that is protected under section 3 of the Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445); or
- (b) a right that corresponds to the right mentioned in paragraph (a) and subsists under the law of a place outside Hong Kong; (*Added 24 of 2018 s. 5*)

**protected plant variety right** (受保護植物品種權利) means—

- (a) a right granted under Part III of the Plant Varieties Protection Ordinance (Cap. 490); or
- (b) a right that corresponds to the right mentioned in paragraph (a) and subsists under the law of a place outside Hong Kong; (*Added 24 of 2018 s. 5*)

**registered design** (註冊外觀設計) means a design registered under section 25 of the Registered Designs Ordinance (Cap. 522) or under the law of any place outside Hong Kong;

**registered trade mark** (註冊商標) means a trade mark registered under section 47 of the Trade Marks Ordinance (Cap. 559) or under the law of any place outside Hong Kong;

**specified capital expenditure** (指明資本開支)—

- (a) means any capital expenditure incurred on the purchase of any specified intellectual property right and includes legal expenses and valuation fees incurred in connection with the purchase; but
- (b) does not include any capital expenditure that may be deducted under any other section of this Part;

**Note—**

Please also see subsection (14). (*Added 24 of 2018 s. 5*)

**specified intellectual property right** (指明知識產權) means a copyright, performer's economic right, protected layout-design (topography) right, protected plant variety right, registered design or registered trade mark. (*Replaced 24 of 2018 s. 5*)

- (12) In this section and sections 16EB and 16EC, a reference to the purchase or sale of any specified intellectual property right includes the purchase or sale of a share or interest in the specified intellectual property right.
- (13) To avoid doubt, any expenditure incurred on the acquisition of a licence (as defined by section 16EC(8)) of any specified intellectual property right is not deductible under this section.
- (14) In this section, a reference to specified capital expenditure is—
  - (a) if specified capital expenditure is incurred in relation to a copyright, registered design or registered trade mark— a reference to specified capital expenditure incurred during a year of assessment beginning on or after 1 April 2011; or

- (b) if specified capital expenditure is incurred in relation to a performer's economic right, protected layout-design (topography) right or protected plant variety right—a reference to specified capital expenditure incurred during a year of assessment beginning on or after 1 April 2018.  
*(Replaced 24 of 2018 s. 5)*

*(Added 21 of 2011 s. 6)*

**16EB. Proceeds of sale of specified intellectual property rights to be treated as trading receipts**

- (1) This section applies despite the exclusion relating to the sale of capital assets in section 14.
- (2) Where any specified intellectual property right in respect of which a deduction has been allowed to any person under section 16EA in ascertaining the profits from a trade, profession or business is subsequently sold by the person—
- (a) if there is an unallowed amount that exceeds the relevant proceeds of sale, the excess is to be deducted for the year of assessment in the basis period for which the sale occurs;
- (b) if there is an unallowed amount but the relevant proceeds of sale exceed that amount, the excess is, to the extent that it is not chargeable to tax under any other section of this Part and does not exceed the amount of the deduction, to be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
- (i) at the time of the sale; or
- (ii) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the discontinuance; or

- (c) if there is not an unallowed amount, the relevant proceeds of sale are, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, to be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
- (i) at the time of the sale; or
  - (ii) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the discontinuance.

(3) In this section—

***relevant proceeds of sale*** (有關售賣得益), in relation to any specified intellectual property right in respect of which a deduction has been allowed under section 16EA, means—

- (a) if section 16EA(7) does not apply, the proceeds of sale of the specified intellectual property right; or
- (b) if section 16EA(7) applies, that part of the proceeds of sale of the specified intellectual property right that is proportionate to the extent to which the deduction has been allowed;

***unallowed amount*** (未獲容許扣除額), in relation to any specified intellectual property right in respect of which a deduction has been allowed under section 16EA and which is subsequently sold, means—

- (a) if section 16EA(7) does not apply, the amount of specified capital expenditure incurred in relation to the specified intellectual property right that is still unallowed as at the time of the sale; or

- (b) if section 16EA(7) applies, that part of the amount referred to in paragraph (a) that is proportionate to the extent to which the deduction has been allowed.

*(Added 21 of 2011 s. 6)*

**16EC. Deduction under section 16E or 16EA not allowable under certain circumstances**

- (1) No deduction is allowable under section 16EA in respect of any specified intellectual property right purchased by a person if—
  - (a) at any time before the commencement date, the specified intellectual property right had been used by the person under a licence the expiry date of which fell on or after the commencement date;
  - (b) the licence was terminated before that expiry date; and
  - (c) the Commissioner is of the opinion that, having regard to the early termination of the licence, the consideration for the purchase is not reasonable consideration in the circumstances of the case.
- (2) No deduction is allowable under section 16E or 16EA in respect of any relevant right purchased by a person wholly or partly from an associate.
- (3) For the purposes of subsection (2), any relevant right that is purchased or sold by a trustee of a trust estate or a corporation controlled by the trustee is deemed to have been purchased or sold by each of the trustee, the corporation and the beneficiary under the trust.
- (4) No deduction is allowable under section 16E or 16EA in respect of any relevant right purchased by a person (*taxpayer*) if at a time when the relevant right is owned by the taxpayer, a person holds rights as a licensee under a licence of the relevant right, and—

- 
- (a) the relevant right was, before it was purchased by the taxpayer, owned and used by that person (whether alone or with others) or any associate of that person (which person or any such associate is referred to in this section as *the end-user*);
  - (b) the relevant right is, while the licence is in force, used wholly or principally outside Hong Kong by a person other than the taxpayer; or
  - (c) the whole or a predominant part of the consideration for the purchase of the relevant right was financed directly or indirectly by a non-recourse debt.
- (5) Subsection (4)(a) does not apply if—
- (a) the relevant right was purchased by the taxpayer from the end-user with a consideration not more than the consideration paid by the end-user to the supplier for purchasing the relevant right from the supplier (not being a supplier who is an end-user);
  - (b) the purchase referred to in paragraph (a) by the end-user from the supplier occurred on or after the commencement date; and
  - (c) no deduction under section 16E or 16EA has been allowed to the end-user in respect of the relevant right at any time before the purchase of the relevant right by the taxpayer.
- (6) For the purposes of subsection (5), a deduction is deemed not to have been made if the end-user, by notice in writing to the Commissioner within a period of 3 months beginning on the day on which the capital expenditure or specified capital expenditure is incurred in relation to the relevant right giving rise to the deduction, or within a further period that the Commissioner may in any particular case permit, disclaims the deduction.



- (7) For the purposes of subsections (4) and (5), if a trustee of a trust estate or a corporation controlled by the trustee—
- (a) owns any relevant right; or
  - (b) holds rights as a licensee under a licence of the relevant right,
- the trustee, the corporation and the beneficiary under the trust are each deemed to be—
- (c) the owner of the relevant right; or
  - (d) the holder of rights as a licensee of the relevant right (as the case may be).
- (8) In this section—
- associate** (相聯者), in relation to a person who purchases a relevant right or holds rights as a licensee under a licence of a relevant right (including a person who is deemed to have purchased a relevant right or deemed to be holding rights as such licensee) (**first-mentioned person**), means—
- (a) if the first-mentioned person is a natural person—
    - (i) any relative of the first-mentioned person;
    - (ii) any partner of the first-mentioned person;
    - (iii) if a partner of the first-mentioned person is a natural person, any relative of that partner;
    - (iv) any partnership of which the first-mentioned person is a partner;
    - (v) any corporation controlled by—
      - (A) the first-mentioned person;
      - (B) a relative of the first-mentioned person;
      - (C) a partner of the first-mentioned person;

- (D) if a partner of the first-mentioned person is a natural person, any relative of that partner; or
- (E) a partnership of which the first-mentioned person is a partner; or
- (vi) any director or principal officer of a corporation referred to in subparagraph (v);
- (b) if the first-mentioned person is a corporation—
  - (i) any associated corporation;
  - (ii) any person who controls the first-mentioned person;
  - (iii) any partner of a person who controls the first-mentioned person;
  - (iv) if a person who controls the first-mentioned person is a natural person, any relative of that person;
  - (v) if a partner referred to in subparagraph (iii) is a natural person, any relative of that partner;
  - (vi) any director or principal officer of the first-mentioned person or of any associated corporation;
  - (vii) any relative of a director or principal officer referred to in subparagraph (vi);
  - (viii) any partner of the first-mentioned person; or
  - (ix) if a partner of the first-mentioned person is a natural person, any relative of that partner; or
- (c) if the first-mentioned person is a partnership—
  - (i) any partner of the first-mentioned person;
  - (ii) if a partner of the first-mentioned person is a partnership, any partner (*Partner A*) of that partnership or any partner (*Partner B*) with that partnership in any other partnership;

- (iii) if Partner A is a partnership, any partner of Partner A;
- (iv) if Partner B is a partnership, any partner of Partner B;
- (v) if a partner of, or with, or in any of the partnerships referred to in subparagraph (ii), (iii) or (iv) is a natural person, any relative of that partner;
- (vi) any corporation controlled by—
  - (A) the first-mentioned person;
  - (B) a partner of the first-mentioned person;
  - (C) if a partner of the first-mentioned person is a natural person, any relative of that partner; or
  - (D) a partnership of which the first-mentioned person is a partner;
- (vii) any director or principal officer of a corporation referred to in subparagraph (vi); or
- (viii) any corporation of which any partner of the first-mentioned person is a director or principal officer;

***associated corporation*** (相聯法團), in relation to a person who purchases a relevant right or holds rights as a licensee under a licence of a relevant right (including a person who is deemed to have purchased a relevant right or deemed to be holding rights as such licensee) (***first-mentioned person***), means—

- (a) a corporation over which the first-mentioned person has control;
- (b) a corporation which has control over the first-mentioned person; or
- (c) a corporation which is under the control of the same person as is the first-mentioned person;

***beneficiary under the trust*** (信託的受益人) means any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under a trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income;

***commencement date*** (生效日期) means—

- (a) in relation to a specified intellectual property right that is a copyright, registered design or registered trade mark—16 December 2011;
- (b) in relation to a specified intellectual property right that is a performer's economic right, protected layout-design (topography) right or protected plant variety right—the day on which the Inland Revenue (Amendment) (No. 5) Ordinance 2018 (24 of 2018) comes into operation\*;  
(Replaced 24 of 2018 s. 6)

***control*** (控制), in relation to a corporation (***first-mentioned corporation***), means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to the first-mentioned corporation or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating the first-mentioned corporation or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

***end-user*** (最終使用者) means any person (whether alone or with others) holding rights as a licensee under a licence of any relevant right or any associate of the person;

***licence*** (特許), in relation to a relevant right—

- (a) means a licence (however described and whether general or limited) authorizing the licensee to use the relevant right in the manner authorized by the licence; but
- (b) does not include an agreement under which the ownership of the relevant right will or may be sold to or pass to the licensee unless, in the opinion of the Commissioner, the right under the agreement to purchase or obtain the ownership of the relevant right would reasonably be expected not to be exercised,

and *licensee* (特許持有人) is to be construed accordingly;

***non-recourse debt*** (無追索權債項), in relation to the financing of the whole or a predominant part of the consideration for the purchase of any relevant right, means a debt where the rights of the creditor in the event of default in the repayment of principal or payment of interest—

- (a) are limited wholly or predominantly to any or all of the following—
  - (i) rights (including a right to moneys payable) in relation to the relevant right or the use of the relevant right;
  - (ii) rights (including a right to moneys payable) in relation to goods or services that are produced, supplied or provided using the relevant right;
  - (iii) rights (including a right to moneys payable) in relation to the loss or disposal of the whole or a part of—
    - (A) the relevant right; or
    - (B) the taxpayer's interest in the relevant right;
  - (iv) any conjunction of those rights referred to in subparagraphs (i), (ii) and (iii);

- (v) rights in respect of a mortgage or other security over the relevant right;
  - (vi) rights arising out of any arrangement relating to the financial obligations of the end-user of the relevant right towards the taxpayer, being financial obligations in relation to the relevant right;
- (b) are in the opinion of the Commissioner capable of being limited as described in paragraph (a), having regard to either or both of the following—
- (i) the assets of the taxpayer;
  - (ii) any arrangement to which the taxpayer is a party;
- or
- (c) if paragraphs (a) and (b) do not apply, are limited by reason that not all of the assets of the taxpayer (not being assets that are security for a debt of the taxpayer other than a debt arising in relation to the financing of the whole or part of the consideration for the purchase of the relevant right) would be available for the purpose of the discharge of the whole of the debt so arising (including the payment of interest) in the event of any action or actions by the creditor or creditors against the taxpayer arising out of the debt;

***principal officer*** (主要職員), in relation to a corporation, means—

- (a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person employed by the corporation who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

**relative** (親屬), in relation to a person, means the spouse, parent, child, brother or sister of that person, and, in deducing such a relationship—

- (a) an adopted child is regarded as a child of both the natural parents and the adopting parents; and
- (b) a step child is regarded as a child of both the natural parents and the step parents;

**relevant right** (有關權利) means any patent rights (as defined by section 16E(4)), rights to any know-how (as defined by section 16E(4)) or specified intellectual property right.

*(Added 21 of 2011 s. 6)*

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Editorial Note:

\* In operation on 29 June 2018.

## **16F. Expenditure on building refurbishment**

- (1) Notwithstanding anything in section 17, in the basis period for any year of assessment, a person who incurs capital expenditure on the renovation or refurbishment of a building or structure other than a domestic building or structure may claim the expenditure as an outgoing or expense, to the extent that it is incurred in the production of profits chargeable to tax under this Part, as an expense incurred in the production of profits and a deduction from those profits is allowed in accordance with this section. *(Amended 32 of 1998 s. 9)*
- (2) For the purposes of subsection (1), a deduction is allowed for one-fifth of the expenditure in the basis period in which the expenditure was actually incurred and the remaining part is to be allowed by 4 equal deductions, one in each of the basis periods for the next succeeding 4 years of assessment.
- (3) The person is not entitled to the allowances under Part 6 for any capital expenditure incurred on the renovation or



refurbishment of a building or structure where a deduction for the expenditure is allowed under this section. (*Amended 32 of 1998 s. 9*)

- (4) This section does not apply to—
- (a) capital expenditure incurred for a building or structure which is used or intended to be used as a domestic building or structure;
  - (b) capital expenditure incurred by a person to enable a building or structure to be first used substantially by the person for the production of profits in respect of which the person is chargeable to tax under this Part;
  - (c) capital expenditure incurred by a person to enable a building or structure to be used for a purpose different from that for which it was used immediately before the capital expenditure was incurred. (*Replaced 32 of 1998 s. 9*)

- (5) In this section—

***building or structure*** (建築物或構築物) includes part of a building or structure;

***domestic building or structure*** (住用建築物或構築物) means any building or structure used for habitation, but does not include any building or structure used as a hotel or guesthouse, or any part of a hotel or guesthouse;

***hotel*** and ***guesthouse*** (旅館) have the same meaning as in the Hotel and Guesthouse Accommodation Ordinance (Cap. 349). (*Replaced 32 of 1998 s. 9*)

(*Added 24 of 1996 s. 7. Amended E.R. 1 of 2012*)

## **16G. Capital expenditure on the provision of a prescribed fixed asset**

- (1) Notwithstanding anything in section 17, in ascertaining the profits of a person from any trade, profession or business

in respect of which the person is chargeable to tax under this Part for any year of assessment, there shall, subject to subsections (2) and (3), be deducted any specified capital expenditure incurred by the person during the basis period for that year of assessment.

- (2) Where a prescribed fixed asset in respect of which any specified capital expenditure is incurred is used partly in the production of profits chargeable to tax under this Part and partly for any other purposes, the deduction allowable under this section shall be such part of the specified capital expenditure as is proportionate to the extent of the use of the asset in the production of the profits so chargeable to tax under this Part.
- (3) (a) Notwithstanding the exclusion relating to the sale of capital assets contained in section 14, where any prescribed fixed asset in respect of which any specified capital expenditure has been allowed as a deduction to any person under this section in ascertaining the profits from a trade, profession or business is thereafter sold by him—
- (i) subject to subparagraph (ii), the proceeds of sale;
  - (ii) if the deduction has been allowed in accordance with subsection (2), such part of the proceeds of sale as is proportionate to the extent to which the specified capital expenditure has been allowed as a deduction in respect of that asset in accordance with that subsection,

shall, to the extent that the proceeds of sale or the part of the proceeds of sale, as the case may be, is not otherwise chargeable to tax under this Part and does not exceed the amount of the deduction, be treated as a trading receipt arising in or derived from Hong Kong of the trade, profession or business accruing at

the time of the sale or, if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, accruing immediately before the discontinuance.

- (b) For the purposes of paragraph (a), where any prescribed fixed asset in respect of which any specified capital expenditure has been allowed as a deduction to any person under this section in ascertaining the profits from a trade, profession or business is thereafter destroyed, the asset shall be treated as if it had been sold immediately before the destruction thereof, and any insurance moneys or other compensation of any description received by the person in respect of the destruction and any moneys received by him in respect of the remains of the asset shall be treated as if they were proceeds of that sale.
- (c) Where, in relation to the sale of a prescribed fixed asset, which is referred to in paragraph (a)—
- (i) the buyer is a person over whom the seller has control;
  - (ii) the seller is a person over whom the buyer has control;
  - (iii) both the seller and the buyer are persons over both of whom some other person has control; or
  - (iv) the sale is between a husband and his wife, not being a wife living apart from her husband,

the Commissioner shall, if he is of the opinion that the sale price of the asset does not represent its true market value at the time of the sale, determine such true market value, and the amount so determined shall, for the purposes of this subsection, be deemed to be the proceeds of sale of the asset.

- (d) For the purposes of this subsection, the reference to the time of the sale, in relation to a prescribed fixed asset, shall be construed as a reference to the time of completion of the sale of the asset, or the time when possession of the asset is given, whichever is earlier.
- (4) (a) Subject to paragraph (c), where, immediately prior to the commencement of this section, a person owned and had in use any machinery or plant which is a prescribed fixed asset, that person shall, for the purposes of this section, be deemed to have incurred, at the time of the commencement of this section, specified capital expenditure in relation to that machinery or plant.
- (b) The specified capital expenditure deemed to have been incurred by a person in relation to any machinery or plant under paragraph (a) shall be the capital expenditure incurred on the provision of that machinery or plant, as reduced by the aggregate of—
- (i) the amount of the initial allowances, if any, under section 37(1), 37A(1) or 39B(1); and
  - (ii) the amount of the annual allowances, if any, under section 37(2), 37A(3) or 39B(2),
- made to the person in respect of the capital expenditure in all prior years of assessment.
- (c) (i) Paragraph (a) shall only apply to a person where the person has elected in writing that the paragraph shall so apply to him, at any time before the expiration of one month after the date on which a notice of the assessment made in respect of the person for the year of assessment commencing on 1 April 1998 under section 59 is given under section 62.

- (ii) An election under subparagraph (i), once made, is irrevocable.
- (5) For the purposes of this section, any specified capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on such trade, profession or business shall be treated as if it had been incurred by that person on the first day on which he does carry on such trade, profession or business.
- (6) In this section—
- excluded fixed asset*** (例外固定資產) means a fixed asset in which any person holds rights as a lessee under a lease;
- prescribed fixed asset*** (訂明固定資產) means—
- (a) such of the machinery or plant specified in items 16, 20, 24, 26, 28, 29, 31, 33 and 35 of the First Part of the Table annexed to rule 2 of the Inland Revenue Rules (Cap. 112 sub. leg. A) as is used specifically and directly for any manufacturing process;
  - (b) computer hardware, other than that which is an integral part of any machinery or plant;
  - (c) computer software and computer systems,
- but does not include an excluded fixed asset;
- specified capital expenditure*** (指明資本開支), in relation to a person, means any capital expenditure incurred by the person on the provision of a prescribed fixed asset, but does not include—
- (a) capital expenditure that may be deducted under any other section in this Part;
  - (b) capital expenditure incurred under a hire-purchase agreement.

(Added 32 of 1998 s. 10)

**16H. Definitions and general provisions applicable to this section and sections 16I, 16J and 16K**

(1) In this section and sections 16I, 16J and 16K—

***building or structure*** (建築物或構築物) means—

- (a) any commercial building or structure as defined in section 40(1); or
- (b) any industrial building or structure as defined in section 40(1);

***capital expenditure*** (資本開支) has the meaning assigned to it by section 40(1);

***environment-friendly vehicle*** (環保車輛)—

- (a) means any vehicle that is specified in Part 3 of Schedule 17; but
- (b) does not include any vehicle in which any person holds rights as a lessee under a lease; (*Added 10 of 2010 s. 3*)

***environmental protection facility*** (環保設施) means—

- (a) any environmental protection machinery;
- (b) any environmental protection installation; or
- (c) any environment-friendly vehicle; (*Replaced 10 of 2010 s. 3*)

***environmental protection installation*** (環保裝置) means any installation, or part of any installation, that is specified in Part 2 of Schedule 17 and forms a building or structure;

***environmental protection machinery*** (環保機械)—

- (a) means any machinery or plant that is specified in Part 1 of Schedule 17; but
- (b) does not include any machinery or plant in which any person holds rights as a lessee under a lease;

**relevant interest** (有關權益) has the meaning assigned to it by section 40(1);

**relevant proceeds of sale** (有關售賣得益), in relation to an environmental protection facility in respect of which a deduction has been allowed under section 16I, means—

- (a) if section 16I(4) does not apply, the proceeds of sale of the facility; or
- (b) if section 16I(4) applies, such part of the proceeds of sale of the facility as is proportionate to the extent to which the deduction has been allowed;

**residue of expenditure** (開支剩餘額) has the meaning assigned to it by section 40(1);

**specified capital expenditure** (指明資本開支)—

- (a) means any capital expenditure incurred on—
  - (i) the provision of any environmental protection machinery or environment-friendly vehicle; or  
(Amended 10 of 2010 s. 3)
  - (ii) the construction of any environmental protection installation; but
- (b) does not include—
  - (i) any capital expenditure that may be deducted under any other section of this Part; or
  - (ii) any capital expenditure incurred under a hire-purchase agreement;

**unallowed amount** (未獲容許扣除款額), in relation to an environmental protection installation in respect of which a deduction has been allowed under section 16I and which is subsequently sold, means—



- (a) if section 16I(4) does not apply, the amount of specified capital expenditure incurred in relation to the installation that is still unallowed as at the time of the sale; or
- (b) if section 16I(4) applies, such part of the amount referred to in paragraph (a) as is proportionate to the extent to which the deduction has been allowed.

*(Amended 10 of 2010 s. 3)*

- (2) In this section and section 16K—
  - (a) a reference to capital expenditure incurred on the provision of any environmental protection machinery or any machinery or plant includes capital expenditure incurred on alterations to an existing building incidental to the installation of that environmental protection machinery or that machinery or plant, as the case may be; and
  - (b) a reference to capital expenditure incurred on the construction of any environmental protection installation or any building or structure does not include any expenditure incurred on the acquisition of, or of rights in or over, any land.
- (3) The Secretary for Financial Services and the Treasury may, after consultation with the Director of Environmental Protection, by notice published in the Gazette, amend Schedule 17.

*(Added 21 of 2008 s. 4)*

**16I. Deductions for specified capital expenditure incurred in relation to environmental protection facilities**

- (1) Notwithstanding section 17, this section applies in ascertaining the profits from any trade, profession or business in respect of which a person is chargeable to tax under this

Part for any year of assessment (referred to in this section as *that year of assessment*).

- (2) Any specified capital expenditure incurred by the person during the basis period for that year of assessment in relation to any environmental protection machinery or environment-friendly vehicle shall be deducted. (*Amended 10 of 2010 s. 4*)
- (3) If that year of assessment commences on or before 1 April 2017, any specified capital expenditure incurred by the person during the basis period for that year of assessment in relation to any environmental protection installation shall be deducted as follows— (*Amended 32 of 2018 s. 14*)
  - (a) 20% shall be deducted for that year of assessment; and
  - (b) the remaining part shall be deducted by 4 equal amounts, one for each of the next succeeding 4 years of assessment, so long as the installation has not been sold at the end of the basis period for the year of assessment concerned.
- (3A) Despite subsection (3)(b), any part of a specified capital expenditure that remains to be deducted for any year of assessment commencing on or after 1 April 2018 may be deducted in the year of assessment commencing on that date so long as the installation has not been sold on or before that date. (*Added 32 of 2018 s. 14*)
- (3B) If that year of assessment commences on or after 1 April 2018, any specified capital expenditure incurred by the person during the basis period for that year of assessment in relation to any environmental protection installation is to be deducted. (*Added 32 of 2018 s. 14*)
- (4) If an environmental protection facility is used partly in the production of profits chargeable to tax under this Part and partly for any other purposes, the amount that shall be deducted under subsection (2), (3), (3A) or (3B) is the

amount of specified capital expenditure that is proportionate to the extent of the use of the facility in the production of those profits. (*Amended 32 of 2018 s. 14*)

- (5) A person is not entitled to the allowances under Part 6 in respect of any specified capital expenditure if a deduction for any part of the expenditure is allowed under this section.
- (6) For the purposes of this section, any specified capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on the trade, profession or business shall be treated as if it had been incurred by that person on the first day on which he carries on the trade, profession or business.

*(Added 21 of 2008 s. 4. Amended E.R. 1 of 2012)*

**16J. Proceeds of sale of environmental protection facilities to be treated as trading receipts**

- (1) This section applies notwithstanding the exclusion relating to the sale of capital assets in section 14.
- (2) If any environmental protection machinery in respect of which a deduction has been allowed under section 16I in ascertaining the profits from a trade, profession or business is subsequently sold, the relevant proceeds of sale shall, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
  - (a) at the time of the sale; or
  - (b) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the date of discontinuance.

- (2A) If any environment-friendly vehicle in respect of which a deduction has been allowed under section 16I in ascertaining the profits from a trade, profession or business is sold before the cessation of the trade, profession or business, the relevant proceeds of sale, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, are to be treated as trading receipts of the trade, profession or business, arising in or derived from Hong Kong and accruing at the time of the sale. (*Added 10 of 2010 s. 5*)
- (3) If any environmental protection installation in respect of which a deduction has been allowed under section 16I(3), (3A), or (4) in ascertaining the profits from a trade, profession or business is subsequently sold— (*Amended 32 of 2018 s. 15*)
- (a) if there is an unallowed amount that exceeds the relevant proceeds of sale, the excess shall be deducted for the year of assessment in the basis period for which the sale occurs;
  - (b) if there is an unallowed amount but the relevant proceeds of sale exceed that amount, the excess shall, to the extent that it is not chargeable to tax under any other section of this Part and does not exceed the amount of the deduction, be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
    - (i) at the time of the sale; or
    - (ii) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the date of discontinuance; or

- (c) if there is not an unallowed amount, the relevant proceeds of sale shall, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
- (i) at the time of the sale; or
  - (ii) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the date of discontinuance.
- (3A) If an environmental protection installation for which a deduction has been allowed under section 16I(3B) or (4) is subsequently sold, the relevant proceeds of sale are, if the conditions specified in subsection (3B) are met, to be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
- (a) if the trade, profession or business is permanently discontinued and the sale occurs on or after the date of discontinuance—immediately before the date of discontinuance; or
  - (b) otherwise—at the time of the sale. (*Added 32 of 2018 s. 15*)
- (3B) The conditions are—
- (a) that the proceeds of sale are not chargeable to tax under any other provision of this Part; and
  - (b) that the proceeds of sale do not exceed the amount of the deduction under section 16I(3B) or (4). (*Added 32 of 2018 s. 15*)

- (4) If, in relation to the sale of an environmental protection facility as referred to in subsection (2), (2A), (3) or (3A)— (*Amended 10 of 2010 s. 5; 32 of 2018 s. 15*)
- (a) the buyer is a person over whom the seller has control;
  - (b) the seller is a person over whom the buyer has control;
  - (c) both the seller and the buyer are persons over both of whom some other person has control; or
  - (d) the sale is between a husband and his wife, not being a wife living apart from her husband,
- the Commissioner shall, if he is of the opinion that the sale price of the facility does not represent its true market value at the time of the sale, determine such true market value, and the amount so determined shall, for the purposes of subsection (2), (2A), (3) or (3A), as the case may be, be treated as the proceeds of that sale. (*Amended 10 of 2010 s. 5; 32 of 2018 s. 15*)
- (5) For the purposes of subsections (2), (3) and (3A), if any environmental protection machinery or environmental protection installation in respect of which a deduction has been allowed to a person under section 16I in ascertaining the profits from a trade, profession or business is subsequently destroyed— (*Amended 10 of 2010 s. 5; 32 of 2018 s. 15*)
- (a) the machinery or installation is deemed to have been sold immediately before the destruction; and
  - (b) any insurance money, other compensation of any description and any money derived from the remains of the machinery or installation that are received by the person in respect of the destruction are to be treated as the proceeds of that sale. (*Amended 10 of 2010 s. 5*)
- (5A) For the purposes of subsection (2A), if an environment-friendly vehicle in respect of which a deduction has been

allowed to a person under section 16I in ascertaining the profits from a trade, profession or business is destroyed or stolen before the cessation of the trade, profession or business—

- (a) the vehicle is deemed to have been sold immediately before it was destroyed or stolen; and
  - (b) any insurance money, other compensation of any description and any money derived from the remains of the vehicle that are received by the person in respect of the destruction or theft are to be treated as the proceeds of that sale. (*Added 10 of 2010 s. 5*)
- (5B) For the purposes of subsection (2A), if an environment-friendly vehicle in respect of which a deduction has been allowed to a person under section 16I in ascertaining the profits from a trade, profession or business has not been sold, destroyed or stolen before the cessation of the trade, profession or business—
- (a) the vehicle is deemed to have been sold immediately before the cessation; and
  - (b) the person is deemed to have received immediately before the cessation the proceeds of that sale. (*Added 10 of 2010 s. 5*)
- (5C) The amount of proceeds of sale deemed to have been received under subsection (5B)(b) is such amount as the Commissioner may consider the vehicle would have realized had it been sold in the open market at the time of cessation. (*Added 10 of 2010 s. 5*)
- (5D) If the environment-friendly vehicle referred to in subsection (5B) is sold, destroyed or stolen on, or within 12 months after, the cessation of the trade, profession or business, the person may claim an adjustment to the amount deemed to



have been received under subsection (5C). *(Added 10 of 2010 s. 5)*

(5E) Despite section 70, an assessor may make any necessary correction to any assessment due to an adjustment under subsection (5D). *(Added 10 of 2010 s. 5)*

(6) For the purposes of this section, a reference to the time of the sale, in relation to an environmental protection facility, shall be construed as a reference to the time of completion of the sale of the facility, or the time when possession of the facility is given, whichever is the earlier.

*(Added 21 of 2008 s. 4)*

**16K. Environmental protection facilities owned as at certain date**

*(Amended 32 of 2018 s. 16)*

(1) Subject to subsection (7), if, immediately before the commencement date, a person owned and had in use any machinery or plant that is environmental protection machinery or any vehicle that is an environment-friendly vehicle, that person is, for the purposes of section 16I, deemed to have incurred, on the commencement date, specified capital expenditure in relation to that machinery, plant or vehicle. *(Amended 10 of 2010 s. 6)*

(2) Subject to subsection (7), if, immediately before the commencement date, a person owned and had in use any machinery or plant that would otherwise have qualified as environmental protection machinery but for the fact that that machinery or plant does not comply with the registration or other requirements under Part 1 of Schedule 17, that person shall, for the purposes of section 16I, be deemed to have incurred specified capital expenditure in relation to that machinery or plant on the date on which the registration or other requirements are complied with.

- (3) The specified capital expenditure deemed to have been incurred by a person in relation to any machinery, plant or vehicle under subsection (1) or (2) shall be the capital expenditure incurred on the provision of that machinery, plant or vehicle reduced by the aggregate of— (*Amended 10 of 2010 s. 6*)
- (a) the amount of the initial allowances, if any, under section 37(1), 37A(1) or 39B(1); and
  - (b) the amount of the annual allowances, if any, under section 37(2), 37A(2) or 39B(2), (*Amended 10 of 2010 s. 6*)
- made to the person in respect of the capital expenditure in all prior years of assessment.
- (4) Subject to subsection (7), if—
- (a) immediately before the commencement date, a person is entitled to an interest in any building or structure that is an environmental protection installation; and
  - (b) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure,
- that person shall, for the purposes of section 16I(3) or (4), be deemed to have incurred, on the commencement date, specified capital expenditure in relation to that building or structure. (*Amended 32 of 2018 s. 16*)
- (5) Subject to subsection (7), if—
- (a) immediately before the commencement date, a person is entitled to an interest in any building or structure that would otherwise have qualified as an environmental protection installation but for the fact that that building or structure does not comply with the registration requirement under Part 2 of Schedule 17; and

- (b) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure,
- that person shall, for the purposes of section 16I(3) or (4), be deemed to have incurred specified capital expenditure in relation to that building or structure on the date on which the registration requirement is complied with. (*Amended 32 of 2018 s. 16*)
- (6) The specified capital expenditure deemed to have been incurred in relation to any building or structure under subsection (4) or (5) shall be the residue of expenditure in relation to that building or structure immediately before the commencement date, or the residue of expenditure in relation to that building or structure immediately before the date on which the registration requirement under Part 2 of Schedule 17 is complied with, whichever is applicable.
- (7) Where a person is deemed to have incurred specified capital expenditure under any of subsections (1), (2), (4) and (5) (referred to in this subsection as ***the relevant provision***) in the basis period for any year of assessment, the relevant provision applies to him only if he, at any time within one month after the date on which a notice of the assessment made in respect of that year of assessment under section 59 is given under section 62, elects in writing that the relevant provision shall so apply to him.
- (8) An election under subsection (7), once made, is irrevocable.
- (9) In this section, ***commencement date*** (生效日期)—
- (a) in relation to any machinery, plant, building or structure, means 27 June 2008;
- (b) in relation to any vehicle, means the date on which the Inland Revenue (Amendment) (No. 3) Ordinance 2010

(10 of 2010) came into operation\*. (*Added 10 of 2010 s. 6*)

(*Added 21 of 2008 s. 4*)

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Editorial Note:

\* In operation on 18 June 2010.

**16L. Environmental protection installations owned before 1 April 2018**

- (1) If—
- (a) a person has incurred capital expenditure (or is otherwise entitled to the relevant interest in relation to the capital expenditure incurred) on the construction of a building or structure before 1 April 2018;
  - (b) the building or structure is an environmental protection installation; and
  - (c) no deduction has previously been allowed under this Part for the expenditure,
- the person is, for the purposes of section 16I(3B), taken to have incurred specified capital expenditure in relation to the building or structure on 1 April 2018.
- (2) The specified capital expenditure is to be the residue of expenditure incurred in relation to the building or structure immediately before 1 April 2018.
- (3) The person may elect in writing for this section to apply if the person wishes to claim a deduction under section 16I(3B) in relation to the specified capital expenditure for the year of assessment commencing on 1 April 2018.
- (4) An election may only be made within 1 month after a notice of assessment for the year of assessment is given to the person under section 62.

- (5) An election is irrevocable.

*(Added 32 of 2018 s. 17)*

## 17. Deductions not allowed

- (1) For the purpose of ascertaining profits in respect of which a person is chargeable to tax under this Part no deduction shall be allowed in respect of— *(Amended 36 of 1955 s. 25; 49 of 1956 s. 13)*
- (a) domestic or private expenses, including—
    - (i) the cost of travelling between the person's residence and place of business; and
    - \**(ii)* subject to section 16AA, contributions made to a mandatory provident fund scheme in the person's capacity as a member of the scheme; *(Replaced 4 of 1998 s. 6. Amended 31 of 1998 s. 25)*
  - \**(b)* subject to section 16AA, any disbursements or expenses not being money expended for the purpose of producing such profits; *(Amended 36 of 1955 s. 25; 31 of 1998 s. 11)*
  - (c) any expenditure of a capital nature or any loss or withdrawal of capital;
  - (d) the cost of any improvements;
  - (e) any sum recoverable under an insurance or contract of indemnity;
  - (f) rent of, or expenses in connection with, any premises or part of premises not occupied or used for the purpose of producing such profits; *(Amended 36 of 1955 s. 25)*
  - (g) any tax paid or payable under this Ordinance other than salaries tax paid in respect of employees' remuneration; *(Replaced 3 of 1949 s. 7. Amended 36 of 1955 s. 25)*

- (h) any sums that the person has, as an employer, paid in respect of an employee as—
- (i) an ordinary annual contribution to a fund established under a recognized occupational retirement scheme; or
  - (ii) an ordinary annual premium for a contract of insurance under such a scheme; or
  - (iii) regular contributions paid to a mandatory provident fund scheme,  
to the extent that the total of the payments exceeds 15 per cent of the total emoluments of the employee for the period to which the payments relate; (*Replaced 4 of 1998 s. 6*)
- (i) any provision made for the payment in respect of an employee of any sum referred to in paragraph (h), to the extent that the aggregate of such provision and any such payment as is referred to in that paragraph exceeds 15% of the total emoluments of that employee for the period in respect of which the provision is made; (*Added 7 of 1986 s. 5. Amended 76 of 1993 s. 7*)
- (j) any provision made in respect of an occupational retirement scheme other than for the payment of any sum referred to in paragraph (h); (*Added 7 of 1986 s. 5. Amended 76 of 1993 s. 7*)
- (k) any sum that the person has, as an employer, paid in respect of an employee as—
- (i) a contribution to a fund established under a recognized occupational retirement scheme; or
  - (ii) a premium for a contract of insurance under such a scheme; or

- (iii) a contribution to a mandatory provident fund scheme,  
where provision for payment of the sum has been made in a prior year of assessment and a deduction has been allowed for the provision in that or another prior year of assessment; or (*Replaced 4 of 1998 s. 6*)
- (l) any—
- (i) contribution that the person has, as an employer, made to the funds of; or
- (ii) payment that that person has made as an employer for the purposes of the operation of,  
an occupational retirement scheme other than a recognized occupational retirement scheme. (*Added 76 of 1993 s. 7. Amended 4 of 1998 s. 6*)
- (2) In computing the profits or losses of a person carrying on a trade, profession or business, no deduction is allowable for—
- (a) salaries or other remuneration of the person's spouse; or
- (b) interest on capital or loans provided by that spouse; or
- (c) a contribution made to a mandatory provident fund scheme in respect of that spouse; or
- (d) in the case of a partnership—
- (i) salaries or other remuneration of a partner or a partner's spouse; or
- (ii) interest on capital or loans provided by a partner or by a partner's spouse; or
- \* (iii) subject to section 16AA, a contribution made to a mandatory provident fund scheme in respect of a partner or a partner's spouse. (*Replaced 4 of 1998 s. 6. Amended 31 of 1998 s. 25*)
- (3) In this section—



*regular contributions* (固定供款) has the same meaning as in section 16A(3). (*Added 4 of 1998 s. 6*)

Editorial Note:

\* The amendments made by Ord. No. 31 of 1998 to section 17(1)(a)(ii) and (b) and (2)(d)(iii) apply in relation to the year of assessment commencing on 1 April 2000 and to all subsequent years of assessment. (*31 of 1998 s. 2(2); L.N. 175 of 2000*)

#### 17A. Financial institution: interpretation

(1) In this section and sections 17B, 17C, 17D, 17E, 17F and 17G—

*Additional Tier 1 capital instrument* (額外一級資本票據) means a capital instrument that qualifies as Additional Tier 1 capital under Schedule 4B to the Banking (Capital) Rules (Cap. 155 sub. leg. L), or under the equivalent laws or regulatory requirements of another member jurisdiction of the Basel Committee;

*associate* (相聯者) has the meaning given by section 16(3);

*associated corporation* (相聯法團) has the meaning given by section 16(3);

*Basel Committee* (巴塞爾委員會) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

*Common Equity Tier 1 capital instrument* ((普通股權一級資本票據) means a capital instrument that qualifies as Common Equity Tier 1 capital under Schedule 4A to the Banking (Capital) Rules (Cap. 155 sub. leg. L), or under the equivalent laws or regulatory requirements of another member jurisdiction of the Basel Committee;

*debt instrument* (債務票據) means an instrument specified in Part 1 of Schedule 6 that is in respect of a debt issue;

*fair value* (公平價值)—

- (a) in relation to a person's asset, means the amount that, at the time as at which the value of the asset is to be determined, the person would obtain from a knowledgeable and willing person dealing at arm's length for the sale of the asset;
- (b) in relation to a person's liability, means the amount that, at the time as at which the value of the liability is to be determined, the person would have to pay to a knowledgeable and willing person dealing at arm's length for the transfer or release of the liability;

***fair value accounting*** (公平價值會計) means a basis of accounting under which assets and liabilities are shown in a balance sheet at their fair value;

***paid-up amount*** (已付數額), in relation to a regulatory capital security or debenture or debt instrument, means the sum paid to the issuer for the issue of the security or debenture or instrument;

***regulatory capital security*** (監管資本證券) means a security—

- (a) that qualifies or has qualified as an Additional Tier 1 capital instrument, and that forms or formed a component of Additional Tier 1 capital, for the purposes of the Banking (Capital) Rules (Cap. 155 sub. leg. L) or of the equivalent laws or regulatory requirements of another member jurisdiction of the Basel Committee; or
- (b) that qualifies or has qualified as a Tier 2 capital instrument, and that forms or formed a component of Tier 2 capital, for the purposes of the Banking (Capital) Rules (Cap. 155 sub. leg. L) or of the equivalent laws or regulatory requirements of another member jurisdiction of the Basel Committee;

***Tier 2 capital instrument*** (二級資本票據) means a capital instrument that qualifies as Tier 2 capital under Schedule

4C to the Banking (Capital) Rules (Cap. 155 sub. leg. L), or under the equivalent laws or regulatory requirements of another member jurisdiction of the Basel Committee.

- (2) For the purposes of the definition *regulatory capital security* in subsection (1)—

*security* (證券) does not include—

- (a) a share;
  - (b) any debt instrument the terms and conditions of which provide for the issuer of the instrument converting, or having an option to convert, the instrument into a Common Equity Tier 1 capital instrument of the issuer or any other corporation after a certain period of time; or
  - (c) subject to subsection (3), any debt instrument—
    - (i) that carries a contractual right to any distribution or redemption payment that depends to any extent on the results of the business of the issuer of the instrument or of any part of that business; or
    - (ii) that provides discretion to the issuer of the instrument to make any distribution or redemption payment that depends to any extent on the results of the business of that issuer or of any part of that business.
- (3) A debt instrument does not fall within paragraph (c) of the definition of *security* in subsection (2) by reason only that the terms and conditions of the instrument provide for the reduction in distribution or redemption payment if the results of the business of the issuer of the instrument, or of any part of that business, worsen.

*(Added 12 of 2016 s. 14)*

**17B. Financial institution: regulatory capital security treated as debt security**

- (1) For the purposes of this Part—
  - (a) a regulatory capital security is to be treated as a debt security; and
  - (b) any sum payable in respect of a regulatory capital security by its issuer, other than a repayment of the paid-up amount of the security, is to be treated as interest payable on money borrowed by the issuer of an amount equal to the paid-up amount of the security.
- (2) Subsection (1) has effect subject to sections 17C, 17D, 17E, 17F and 17G.

*(Added 12 of 2016 s. 14)*

**17C. Financial institution: general provisions on issuer of regulatory capital security**

- (1) This section applies in ascertaining profits in respect of which the issuer of a regulatory capital security is chargeable to tax under this Part for a year of assessment.
- (2) Profits of the issuer are to be determined as if fair value accounting were not generally accepted accounting practice in relation to the security or part of the security.
- (3) A sum representing—
  - (a) the paid-up amount of the security being written down on a permanent or temporary basis in accordance with any laws or regulatory requirements or the terms and conditions of the security; or
  - (b) the paid-up amount of the security being converted to a Common Equity Tier 1 capital instrument in accordance

with any laws or regulatory requirements or the terms and conditions of the security,

is not to be treated as a receipt arising in or derived from Hong Kong by the issuer from a trade, profession or business carried on in Hong Kong.

- (4) No deduction is to be allowed to the issuer under section 16(1) for any sum representing the paid-up amount of the security being written up in accordance with any laws or regulatory requirements or the terms and conditions of the security, following a write-down of the paid-up amount on a temporary basis in accordance with those laws or requirements or those terms and conditions.

*(Added 12 of 2016 s. 14)*

**17D. Financial institution: general provisions on regulatory capital security held by, or for benefit of, issuer's specified connected person**

- (1) This section applies in ascertaining profits in respect of which a specified connected person of the issuer of a regulatory capital security is chargeable to tax under this Part for a year of assessment if, during the basis period for the year of assessment, the security is held by or for the benefit of the specified connected person.
- (2) Profits of the specified connected person are to be determined as if fair value accounting were not generally accepted accounting practice in relation to the security or part of the security.
- (3) No deduction is to be allowed to the specified connected person under section 16(1) for any sum representing—
- (a) the paid-up amount of the security being written down on a permanent or temporary basis in accordance with

- any laws or regulatory requirements or the terms and conditions of the security; or
- (b) the paid-up amount of the security being converted to a Common Equity Tier 1 capital instrument in accordance with any laws or regulatory requirements or the terms and conditions of the security.
- (4) A sum representing the paid-up amount of the security being written up in accordance with any laws or regulatory requirements or the terms and conditions of the security, following a write-down of the paid-up amount on a temporary basis in accordance with those laws or requirements or those terms and conditions, is not to be treated as a receipt arising in or derived from Hong Kong by the specified connected person from a trade, profession or business carried on in Hong Kong.
- (5) In this section—
- connected person** (有關連者), in relation to the issuer of a regulatory capital security, means—
- (a) an associated corporation of the issuer; or
- (b) a person (other than a corporation) who—
- (i) controls the issuer;
- (ii) is controlled by the issuer; or
- (iii) is under the control of the same person as is the issuer;

**market maker** (市場莊家) means a person who—

- (a) is licensed or registered for dealing in securities under the Securities and Futures Ordinance (Cap. 571) or is authorized to do so by a regulatory authority in a major financial centre outside Hong Kong recognized by the Commissioner for the purposes of this section;

- (b) in the ordinary course of conduct of the person's trade, profession or business in respect of market making, holds oneself out as being willing to buy and sell securities for the person's own account and on a regular basis; and
- (c) is actively involved in market making in securities issued by a wide range of unrelated institutions;

***specified connected person*** (指明有關連者), in relation to the issuer of a regulatory capital security, means a connected person of the issuer who is not excepted within the meaning of subsection (6).

- (6) In this section, a connected person of the issuer of a regulatory capital security is excepted if the connected person—
  - (a) is chargeable to tax under this Part in respect of a sum payable in respect of the security;
  - (b) is entitled to a sum payable in respect of the security in the capacity of—
    - (i) a person acting as a trustee of a trust estate, or holding property belonging to others pursuant to the terms of a contract, where the person is not beneficially entitled to the sum;
    - (ii) a beneficiary of a unit trust to which section 26A(1A)(a)(i) or (ii) applies, where the sum is payable to a trustee of the unit trust in respect of a specified investment scheme referred to in section 26A(1A)(b); or
    - (iii) a member of a retirement scheme that is either a recognized retirement scheme or a substantially similar retirement scheme established outside Hong Kong, where the Commissioner is satisfied that the latter scheme complies with the requirements



of a supervisory authority within an acceptable regulatory regime;

- (c) is a market maker who, in the ordinary course of conduct of the market maker's trade, profession or business in respect of market making, holds the security for the purpose of providing liquidity for the security;
- (d) is a public body; or
- (e) is a body corporate, where the Government owns beneficially more than half of the issued share capital of that body corporate for the time being.

*(Added 12 of 2016 s. 14)*

**17E. Financial institution: profits adjusted if associates deal not at arm's length in connection with regulatory capital security**

- (1) This section applies if—
  - (a) conditions are made or imposed between a financial institution and a person who is an associate of the financial institution, in their commercial or financial relations in connection with a regulatory capital security; and
  - (b) the conditions differ from those that would be made if the person were not such an associate.
- (2) Any profits that, but for the conditions referred to in subsection (1)(a), would have accrued to the financial institution or the person and, by reason of those conditions, have not so accrued, are to be included in the profits of the financial institution or the person and taxed in accordance with this Part.

*(Added 12 of 2016 s. 14)*

**17F. Financial institution: issuer's deduction if regulatory capital**

**security is issued to, held by or issued or held for benefit of specified connected person**

- (1) No deduction is to be allowed to the issuer of a regulatory capital security (*specified issuer*) under section 16(1) for any sum payable in respect of the security if it is issued to, held by or issued or held for the benefit of a specified connected person of the specified issuer.
- (2) Subsection (1) does not apply to a sum payable in respect of a regulatory capital security issued to or for the benefit of a specified connected person of the specified issuer if both of the following conditions are met—
  - (a) the money paid by or on behalf of the specified connected person for the issue of the security has been entirely funded, either directly or indirectly, by the proceeds of an external issue of a regulatory capital security or debenture or debt instrument by the specified connected person or an associated corporation of the specified issuer;
  - (b) the externally issued regulatory capital security or debenture or debt instrument is not, at any time during the basis period of the specified issuer for the year of assessment concerned, held by or for the benefit of a specified connected person of the specified issuer.
- (3) The amount of any deduction allowable under subsection (2) is not to exceed the sum payable by the specified connected person or associated corporation (as the case requires) in respect of the externally issued regulatory capital security or debenture or debt instrument (other than the repayment of the paid-up amount).
- (4) Subsection (5) applies to a deduction allowable under subsection (2) if the externally issued regulatory capital security or debenture or debt instrument is held by or for

the benefit of an associate (other than a specified connected person) of the specified issuer.

- (5) The amount of the deduction that, but for this subsection, would have been allowed under section 16(1) is to be reduced by any amount by which the sum payable to, or for the benefit of, that associate exceeds a reasonable commercial return on money borrowed of an amount equal to the paid-up amount for the externally issued regulatory capital security or debenture or debt instrument.
- (6) For the purposes of subsection (5), a reasonable commercial return means a return that, at the time the security or debenture or instrument was issued, would be regarded in the prevailing market conditions as a reasonable commercial return between persons dealing with each other at arm's length in the open market.
- (7) In this section, a regulatory capital security or debenture or debt instrument is externally issued if the security or debenture or instrument is not issued to, or for the benefit of, a specified connected person of the specified issuer.
- (8) Subject to subsections (9) and (10), section 17D(5) and (6) applies to this section.
- (9) The definition of *market maker* in section 17D(5) applies as if a reference to "this section" in paragraph (a) of that definition were a reference to this section.
- (10) Section 17D(6) applies for the purposes of construing a reference to specified connected person appearing in subsection (2)(b), (4) or (7) as if—
  - (a) the reference to "the issuer of a regulatory capital security" in section 17D(6) were a reference to the specified issuer; and
  - (b) each reference to "the security" in section 17D(6)(a), (b) or (c) were a reference to the externally issued

regulatory capital security or debenture or debt instrument referred to in subsection (2)(b), (4) or (7) (as the case requires).

*(Added 12 of 2016 s. 14)*

**17G. Financial institution: non-resident financial institution's Hong Kong branch treated as separate enterprise**

- (1) This section applies in ascertaining profits in respect of which a non-resident financial institution with capital raised through the issue of a regulatory capital security is chargeable to tax under this Part in relation to its Hong Kong branch.
- (2) The profits of the Hong Kong branch of the non-resident financial institution are those that the Hong Kong branch would have made if it were a distinct and separate enterprise that—
  - (a) engaged in the same or similar activities under the same or similar conditions; and
  - (b) dealt wholly independently of the non-resident financial institution.
- (3) In applying subsection (2), account is to be taken of the functions performed, assets used and risks assumed by the non-resident financial institution—
  - (a) through the Hong Kong branch; and
  - (b) through the other parts of the non-resident financial institution.
- (4) In applying subsection (2), it is to be assumed that the Hong Kong branch—
  - (a) has the same credit rating as the non-resident financial institution; and

- (b) has such equity and loan capital as it could reasonably be expected to have if it were a distinct and separate enterprise as described in that subsection.
- (5) In accordance with subsection (2), transactions in connection with a regulatory capital security between the Hong Kong branch and any other part of the non-resident financial institution are treated as taking place on such terms and conditions as would have been agreed between parties dealing at arm's length.
- (6) No deduction is to be allowed for costs and expenses in excess of those that would have been incurred on the assumptions in subsection (4).
- (7) In this section—
- (a) ***non-resident financial institution*** (境外財務機構) means any financial institution whose head office is situated outside Hong Kong;
- (b) ***Hong Kong branch*** (香港分行) means any business carried on in Hong Kong by a non-resident financial institution.

*(Added 12 of 2016 s. 14)*

## 18. Basis for computing profits

- (1) Save as provided in this section, the assessable profits for any year of assessment from any trade, profession or business carried on in Hong Kong shall be computed on the full amount of the profits therefrom arising in or derived from Hong Kong during the year preceding the year of assessment.
- (2) Where the Commissioner is satisfied that the accounts of a trade, profession or business carried on in Hong Kong are usually made up to some day other than 31 March, he may direct that the assessable profits from that source be computed on the amount of the profits therefrom arising in or derived

from Hong Kong during the year ending on that day in the year preceding the year of assessment. Where, however, the assessable profits from any trade, profession or business have been computed by reference to an account made up to a certain day, and no account is made up to the corresponding day in the year following, the assessable profits from that source both for the year of assessment in which such failure occurs and for the 2 years of assessment following shall be computed on such basis as the Commissioner in his discretion thinks fit.

- (3) Subject to section 18C, where a person commences to carry on a trade, profession or business in Hong Kong on a day within a year of assessment, the assessable profits from that source for such year of assessment shall be computed on the amount of the profits therefrom arising in or derived from Hong Kong during the period beginning on the date of commencement and ending on the last day of that year of assessment. (*Amended 7 of 1975 s. 11*)
- (4) Where a person has commenced to carry on a trade, profession or business in Hong Kong on a day within the year preceding a year of assessment, the assessable profits from that source for that year of assessment shall be computed on the amount of the profits therefrom arising in or derived from Hong Kong for 1 year from such day:

Provided that such person may claim, by giving notice in writing to the Commissioner, to have the assessable profits from the source for that year of assessment and for the following year of assessment (but not for one or other of those years) recomputed on the basis of the actual profits therefrom arising in or derived from Hong Kong during each such year respectively, but where the commencement is in the year of assessment commencing on 1 April 1973, such claim

for recomputation shall relate only to the year of assessment commencing on 1 April 1974. (*Amended 7 of 1975 s. 11*)

- (5) Where a person ceases to carry on a trade, profession or business in Hong Kong the assessable profits from that source for the year of assessment in which the cessation occurs shall be computed on the amount of the profits therefrom arising in or derived from Hong Kong during the period beginning on 1 April in that year and ending on the date of cessation:

Provided that where the profits arising in or derived from Hong Kong from that source during the year of assessment immediately preceding the year in which the cessation occurs exceed what would otherwise have been the assessable profits from that source for that preceding year such assessable profits shall be recomputed on the basis of the actual profits therefrom arising in or derived from Hong Kong during that preceding year and an additional assessment shall be made accordingly.

- (6) Notwithstanding the provisions of section 70 a claim made for an adjustment of any assessment because of a change in the basis period required or authorized under the provisions of this section shall be entertained if it is made in writing within 2 years after the end of the relevant year of assessment or, where the claim has been made under the proviso to subsection (4), within 2 years after the end of the second of the 2 years of assessment referred to in such proviso. A claim so made shall be regarded as an objection to an assessment under section 64 for the purposes of Part 11. (*Amended 35 of 1965 s. 11*)
- (7) This section shall apply to the years of assessment up to and including the year of assessment commencing on 1 April 1974. (*Replaced 7 of 1975 s. 11*)

(*Replaced 49 of 1956 s. 14. Amended 7 of 1986 s. 12; E.R. 1 of 2012*)



**18A. Assessable profits for the year of assessment 1974/5**

- (1) Where the assessable profits for the year of assessment commencing on 1 April 1974 from any trade, profession or business fall to be computed under section 18(1) but the actual profits from that source for that year of assessment exceed those assessable profits as so computed, then, notwithstanding section 18, the assessable profits for the year of assessment commencing on 1 April 1974 shall be computed on the basis of those actual profits.
- (2) Where the assessable profits for the year of assessment commencing on 1 April 1974 from any trade, profession or business fall to be computed under section 18(2) on the amount of profits from that source for the year ending on a day other than 31 March in the year preceding that year of assessment but the actual profits from that source—
  - (a) for the year ending on the corresponding day in the year of assessment; or
  - (b) if the accounts for that trade, profession or business were made up to more than 1 day in the year of assessment, for the year ending on such of those days as the Commissioner may direct,exceed those assessable profits as so computed, then, notwithstanding section 18, the assessable profits for the year of assessment commencing on 1 April 1974 shall be computed on the basis of those actual profits.
- (3) Where the assessable profits for the year of assessment commencing on 1 April 1974 from any trade, profession or business fall to be computed under section 18(4) but the lesser of the actual profits from that source for—

- (a) the year ending on the day in that year of assessment to which the accounts of that trade, profession or business were made up; or
- (b) that year of assessment,
- exceed those assessable profits as so computed, then notwithstanding section 18, the assessable profits for the year of assessment commencing on 1 April 1974 shall be computed on the basis of those actual profits.
- (4) For the purposes of applying this section there shall be disregarded any loss brought forward to the year of assessment commencing on 1 April 1974 under section 19(2).

*(Added 7 of 1975 s. 12)*

**18B. Basis for computing assessable profit for years of assessment commencing on 1 April 1975**

- (1) Subject to subsection (2) and to sections 18C, 18D and 18E, the assessable profits for any year of assessment commencing on or after 1 April 1975 from any trade, profession or business carried on in Hong Kong shall be computed on the full amount of the profits therefrom arising in or derived from Hong Kong during the year of assessment.
- (2) Subject to sections 18C, 18D and 18E, where the Commissioner is satisfied that the accounts of a trade, profession or business carried on in Hong Kong are made up to some day other than 31 March, he may direct that the assessable profits from that source for any year of assessment be computed on the full amount of profits therefrom arising in or derived from Hong Kong during the year ending on that day in the year of assessment.

*(Added 7 of 1975 s. 12. Amended 7 of 1986 s. 12)*

**18C. Commencement of source of profits in years of assessment**

**commencing on or after 1 April 1974**

- (1) Subject to subsection (2) where a person commences to carry on a trade, profession or business in Hong Kong within any year of assessment commencing on or after 1 April 1974 and the Commissioner is satisfied that the first accounts of such trade, profession or business after its commencement are made up to some day other than 31 March, the assessable profits from that source for that year of assessment shall—
  - (a) if the first accounts are made up to a day within that year of assessment, be computed on the full amount of the profits from that source arising in or derived from Hong Kong during the period beginning on the day of commencement and ending on the day to which the accounts are made up; or
  - (b) if the first accounts are for a period in excess of a year and are made up to a day within a year of assessment following that in which the commencement occurred, be computed on such basis as the Commissioner thinks fit.  
*(Amended 7 of 1986 s. 12)*
- (2) Where the first accounts of a trade, profession or business commenced in any year of assessment commencing on or after 1 April 1974 are for a period of 1 year or less and are made up to a day within the year of assessment following that in which the commencement occurred, there shall be deemed to be no assessable profits for the year of assessment in which the commencement occurred.

*(Added 7 of 1975 s. 12)*

**18D. Cessation of source of profits in years of assessment commencing on 1 April 1975**

- (1) Save as provided in this section, where, in any year of assessment commencing on or after 1 April 1975, a person

ceases to carry on a trade, profession or business in Hong Kong, the assessable profits from that source for the year of assessment in which the cessation occurs shall be computed on the amount of the profits therefrom arising in or derived from Hong Kong during the period beginning on the day following the end of the basis period for the year preceding the year of assessment and ending on the date of cessation.

- (2) Where in any year of assessment commencing on or after 1 April 1975 a person ceases to carry on a trade, profession or business in Hong Kong which was commenced by him in Hong Kong before 1 April 1974, the assessable profits from that source for the year of assessment in which the cessation occurs shall be computed on the amount of the profits therefrom arising in or derived from Hong Kong during the period beginning on 1 April in that year and ending on the date of cessation:

Provided that where a person ceases to carry on such trade, profession or business in Hong Kong other than by reason of the death of an individual previously carrying on a trade, profession or business as the sole proprietor thereof, and the trade, profession or business, or any part thereof, is transferred to or carried on by any other person as his trade, profession or business, this subsection shall not apply, but the cessation shall be deemed to be a cessation for the purposes of subsection (1). (*Amended 71 of 1983 s. 16; 4 of 2010 s. 5*)

- (2A) Where a person ceases to carry on a relevant trade, profession or business on or after 1 April 1979, the following amount shall be treated as assessable profits therefrom for the year of assessment in which the cessation occurs and shall be in addition to the assessable profits therefrom which, apart from this subsection, fall to be computed for that year of assessment—

- (a) in the case of an excepted trade, profession or business, the amount, if any, by which the relevant profits therefrom arising in or derived from Hong Kong during the relevant period exceed the transitional amount;
- (b) in the case of any other relevant trade, profession or business, the full amount of any relevant profits therefrom arising in or derived from Hong Kong during the relevant period,

and, for the purposes of this subsection, profits are *relevant profits* if, but for subsection (2) and apart from Part 6, the assessable profits for that year of assessment would have included those profits, and—

*excepted trade, profession or business* (特定行業、專業或業務) means a relevant trade, profession or business referred to in the definition in this subsection of *transitional amount*;

*relevant period* (有關期間) means the period beginning on the day next following the end of the basis period for the year preceding the year of assessment in which the cessation occurs and ending on 31 March in the year preceding the year of assessment in which the cessation occurs;

*relevant trade, profession or business* (有關行業、專業或業務) means a trade, profession or business to which subsection (2) applies and in the case of which the basis period for the year preceding the year of assessment in which the cessation occurs ends on a day other than 31 March;

*transitional amount* (過渡期款額) means—

- (a) where the assessable profits from a relevant trade, profession or business for the year of assessment commencing on 1 April 1974 fell to be computed under section 18(2) on the amount of profits therefrom for the year ending on a day other than 31 March in the year preceding that year of assessment, the amount of profits

from the relevant trade, profession or business arising in or derived from Hong Kong during the period beginning on the day next following the corresponding day in that year of assessment and ending on 31 March 1975;

- (b) where the assessable profits from a relevant trade, profession or business for the year of assessment commencing on 1 April 1974 fell to be computed under section 18A(2), the amount of profits from the relevant trade, profession or business arising in or derived from Hong Kong during the period beginning on the day next following the end of the basis period for that year of assessment and ending on 31 March 1975,

and where a loss was incurred in the carrying on of a relevant trade, profession or business referred to in paragraph (a) or (b) of this definition during the period therein referred to, ***transitional amount***, in relation to that trade, profession or business, shall be construed to mean a nil amount. (*Added 34 of 1980 s. 2*)

(3)-(4) (*Repealed 56 of 1993 s. 12*)

- (5) Where a person who commenced to carry on a trade, profession or business in Hong Kong in a year of assessment commencing on or after 1 April 1975—

- (a) ceases to carry on such trade, profession or business in the year of assessment following that in which such commencement occurred; and
- (b) by virtue of section 18C(2), there has been deemed to be no assessable profits for the year of assessment in which the commencement occurred,

the assessable profits for the year of assessment in which the cessation occurs shall be recomputed on the basis of the actual profits arising in or derived from Hong Kong from the date of the commencement to the date of cessation.



(6)-(7) *(Repealed 19 of 1996 s. 6)*

*(Added 7 of 1975 s. 12. Amended 7 of 1986 s. 12; E.R. 1 of 2012)*

**18E. Change of accounting date and apportionments**

- (1) Where the assessable profits of a person from any trade, profession or business carried on in Hong Kong have been computed by reference to an account made up to a certain day in any year of assessment and either— *(Amended 7 of 1986 s. 12)*
- (a) that person fails to make up an account to the corresponding day in the following year of assessment; or
  - (b) that person makes up accounts to more than one day in the following year of assessment,
- then—
- (i) the assessable profits from that source for the year of assessment in which the circumstances described in either paragraph (a) or (b) prevail shall be computed on such basis as the Commissioner thinks fit; and
  - (ii) the assessable profits for the year preceding that year of assessment shall be recomputed on such basis as the Commissioner thinks fit.
- (2) For the purposes of subsection (1)—
- (a) where the accounts of any trade, profession or business are made up to the end of the Lunar year, the Commissioner may accept those accounts as being made up to a corresponding day in each year of assessment; and
  - (b) in the case of a trade, profession or business which was commenced on or after 1 April 1974, the Commissioner may, if he considers it necessary, make a computation



under subsection (1) in respect of a basis period which exceeds 12 months.

- (3) For the purposes of this Part, where in the case of a trade, profession or business it is necessary in order to arrive at the assessable profits or the losses for any year of assessment to divide or apportion to specific periods the profits and losses for any period for which accounts have been made up, or to aggregate any such profits or losses or any apportioned parts thereof, it shall be lawful to make such division and apportionment or aggregation, and any such apportionment shall be made in proportion to the number of days or months in the respective periods unless the Commissioner, having regard to any special circumstances, otherwise directs.
- (4) For the purposes of section 18D(2A), where in the case of a trade, profession or business it is necessary in order to arrive at the profits or losses for any period to divide or apportion to specific periods the profits and losses for any period for which accounts have been made up, or to aggregate any such profits or losses or any apportioned parts thereof, the Commissioner may make such division and apportionment or aggregation as he may deem proper in that case. *(Added 34 of 1980 s. 3)*

*(Added 7 of 1975 s. 12)*

#### **18F. Adjustment of assessable profits**

- (1) The amount of assessable profits for any year of assessment of a person chargeable to tax under this Part shall be increased by the amount of any balancing charge directed to be made on that person under Part 6 and decreased by the allowances made to that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the assessable profits.
- (2) When in any year of assessment the amount of the allowances made under Part 6 to any person chargeable to tax under

this Part exceeds the total amount of that person's assessable profits, as increased by any balancing charge, the amount of such excess shall, for the purposes of section 19C, be deemed to be a loss of that person for that year of assessment.

- (3) This section shall apply to the year of assessment commencing on 1 April 1975 and to subsequent years of assessment.

*(Added 7 of 1975 s. 12. Amended E.R. 1 of 2012)*

## 19. Treatment of losses

- (1) Where a loss is incurred in any year of assessment up to and including the year of assessment commencing on 1 April 1974 by a person chargeable to tax under this Part the amount of such loss attributable to activities in Hong Kong shall notwithstanding the provisions of section 70 be set off against what would otherwise have been the assessable profits of such person for that year of assessment. *(Amended 49 of 1956 s. 15; 7 of 1975 s. 13; 7 of 1986 s. 12; 32 of 1998 s. 11)*
- (2) Where the amount of loss which may set off under subsection (1) is such that it cannot be wholly set off against the assessable profits of a person chargeable to tax under this Part for the year of assessment in which the loss occurred, the amount not so set off shall be carried forward and shall be set off against what would otherwise have been assessable profits of that person for the future years of assessment in succession:

Provided that—

- (a) the amount of any such loss allowed to be set off in computing the assessable profits for any year of assessment shall not be set off in computing the assessable profits for any other year of assessment; and

- (b) where a loss is set off under this subsection in respect of the year of assessment commencing on 1 April 1975 or any subsequent year of assessment, that loss shall be set off before the set off of any loss under section 19C.  
*(Replaced 7 of 1975 s. 13)*

(3)-(4) *(Repealed 56 of 1993 s. 13)*

*(Replaced 36 of 1955 s. 28)*

**19A.** *(Repealed 56 of 1993 s. 14)*

**19B.** *(Repealed 56 of 1993 s. 15)*

**19C. Treatment of losses after 1 April 1975\***

- (1) Subject to section 19CB, where in any year of assessment—
- (a) an individual sustains a loss in any trade, profession or business carried on by him; and
  - (b) either of the following conditions is met—
    - (i) the individual (whether married or not) does not elect for personal assessment under section 41(1) for the year of assessment;
    - (ii) the individual and the individual's spouse do not jointly elect for personal assessment under section 41(1A) for the year of assessment, *(Replaced 32 of 2018 s. 4)*

the amount of that loss shall be carried forward and set off against the amount of his assessable profits from that trade, profession or business for subsequent years of assessment.  
*(Amended 71 of 1983 s. 17; 43 of 1989 s. 9)*

- (2) Subject to section 19CB, where in any year of assessment—

- (a) an individual incurs a share of a loss of a partnership in any trade, profession or business carried on by that partnership; and
- (b) either of the following conditions is met—
  - (i) the individual (whether married or not) does not elect for personal assessment under section 41(1) for the year of assessment;
  - (ii) the individual and the individual's spouse do not jointly elect for personal assessment under section 41(1A) for the year of assessment, (*Replaced 32 of 2018 s. 4*)

the amount of that share of the loss shall be carried forward and set off against the amount of his share of assessable profits of the partnership from that trade, profession or business for subsequent years of assessment: (*Amended 71 of 1983 s. 17; 43 of 1989 s. 9*)

Provided that where at the end of the year of assessment commencing on 1 April 1983 a share of a loss to be carried forward under this subsection is one that was incurred by a husband and wife, not being a wife living apart from her husband, in partnership with each other, whether or not also with other persons—

- (i) the share of the loss shall be deemed to be apportioned between the husband and wife in the proportions in which they were entitled to share profits between themselves as at the last day of the basis period for that year of assessment; and
- (ii) each such portion of the share of the loss shall be carried forward and set off against the husband's or, as the case may be, the wife's respective share of assessable profits of the partnership from that trade, profession or business

for subsequent years of assessment. (*Added 71 of 1983 s. 17*)

- (3) Subject to subsection (3A), where in any year of assessment an individual has sustained a loss or has incurred a share of a loss of a partnership and—
- (a) the individual (whether married or not) is personally assessed under Part 7; or (*Replaced 32 of 2018 s. 4*)
  - (b) the individual and the individual's spouse have jointly elected to be personally assessed under Part 7, (*Replaced 32 of 2018 s. 4*)

the amount of the loss or share of the loss shall be dealt with in accordance with that Part. (*Replaced 71 of 1983 s. 17*)

- (3A) For the purposes of Part 7, where the loss or the share of the loss referred to in subsection (3) consists solely of the balance of an unabsorbed loss calculated in accordance with section 19CA(2)(b), the amount of the loss or the share of the loss shall be deemed to be the amount arrived at by dividing such balance by the adjustment factor within the meaning of section 19CA. (*Added 32 of 1998 s. 12*)
- (4) Subject to section 19CB, where in any year of assessment a corporation or a person, who is not an individual, a partnership or a corporation, carrying on a trade, profession or business sustains a loss in that trade, profession or business, the amount of that loss shall be set off against the assessable profits of the corporation or person (including its share of the assessable profits of a partnership in which it is a partner) for that year of assessment and to the extent not so set off, shall be carried forward and set off against the corporation's or the person's assessable profits and its share of assessable profits of such a partnership for subsequent years of assessment.
- (5) Subject to section 19CB, where—

- (a) a trade, profession or business is carried on in Hong Kong by persons in partnership and any one of those persons is a corporation or is a person who is not an individual, a partnership or a corporation; and (*Amended 7 of 1986 s. 12*)
- (b) in any year of assessment a loss is incurred in that trade, profession or business,

then the corporation's or the person's share of that loss shall be set off against the assessable profits of the corporation or the person for the year of assessment in which the loss was incurred and to the extent not so set off, be carried forward and, for subsequent years of assessment, be set off first against the corporation's or the person's share of the assessable profits of such partnership and, to the extent not so set off, then against the assessable profits of the corporation or the person.

- (6) For the purposes of this section—
  - (a) the amount of any loss set off in computing the assessable profits for any year of assessment shall not be set off in computing the assessable profits for any other year of assessment;
  - (b) the amount of any loss carried forward to any year of assessment to be set off against the assessable profits for that year shall not be set off more than once in that year of assessment;
  - (c) the total amount set off against assessable profits shall not exceed the amount of the loss;
  - (d) the amount of any loss to be set off under this section shall be the loss attributable to activities in Hong Kong; (*Amended 30 of 1981 s. 4; 7 of 1986 s. 12*)
  - (e) the amount of any loss sustained in any trade, profession or business carried on for the benefit of a trust by a

person in his capacity as trustee shall not be available for set off except against the assessable profits of that trust from that trade, profession or business for subsequent years of assessment. (*Added 30 of 1981 s. 4*)

(7) (*Repealed 30 of 2004 s. 3*)

(8) This section shall apply to the year of assessment commencing on 1 April 1975 and to subsequent years of assessment.

(*Added 7 of 1975 s. 16. Amended 32 of 1998 s. 12; E.R. 1 of 2012*)

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Editorial Note:

\* The amendments made by Part 2 of Ord. No. 32 of 2018 to this section apply in relation to all years of assessment commencing on or after 1 April 2018. (Please see 32 of 2018 s. 3)

### **19CA. Treatment of losses: concessionary trading receipts\***

(1) This section shall apply to any person who derives concessionary trading receipts and normal trading receipts for any year of assessment.

(2) Where, for any year of assessment, there is an unabsorbed loss in respect of the concessionary trading receipts of a person to whom this section applies, and the person has chargeable normal trading receipts for that year of assessment, the unabsorbed loss shall be treated in accordance with the following provisions—

(a) where the amount of the unabsorbed loss does not exceed the amount of the chargeable normal trading receipts as multiplied by the adjustment factor, the amount of the chargeable normal trading receipts shall, for the purpose of ascertaining the assessable profits of the person, be deemed to be reduced by an amount arrived at by dividing the amount of the unabsorbed loss by the adjustment factor, and the amount of the



- unabsorbed loss shall, for any other purposes, be deemed to be nil;
- (b) in any other case, the amount of the unabsorbed loss shall, for the purpose of ascertaining the loss sustained by the person, be deemed to be reduced by an amount arrived at by multiplying the amount of the chargeable normal trading receipts by the adjustment factor, and the balance of the unabsorbed loss so reduced shall be dealt with in accordance with sections 19C and 19CB, and the amount of the chargeable normal trading receipts shall, for any other purposes, be deemed to be nil.
- (3) Where, for any year of assessment, there is an unabsorbed loss in respect of the normal trading receipts of a person to whom this section applies, and the person has chargeable concessionary trading receipts for that year of assessment, the unabsorbed loss shall be treated in accordance with the following provisions—
- (a) where the amount of the unabsorbed loss does not exceed the amount of the chargeable concessionary trading receipts as divided by the adjustment factor, the amount of the chargeable concessionary trading receipts shall, for the purpose of ascertaining the assessable profits of the person, be deemed to be reduced by an amount arrived at by multiplying the amount of the unabsorbed loss by the adjustment factor, and the amount of the unabsorbed loss shall, for any other purposes, be deemed to be nil;
- (b) in any other case, the amount of the unabsorbed loss shall, for the purpose of ascertaining the loss sustained by the person, be deemed to be reduced by an amount arrived at by dividing the amount of the chargeable concessionary trading receipts by the adjustment factor, and the balance of the unabsorbed loss so reduced shall

be dealt with in accordance with sections 19C and 19CB, and the amount of the chargeable concessionary trading receipts shall, for any other purposes, be deemed to be nil.

- (4) In this section, ***adjustment factor*** (調整分數), in relation to any year of assessment, means the factor ascertained in accordance with the following formula:

$$\frac{A}{B}$$

- where: A means the rate specified in Schedule 1 or 8, as the case may be, for that year of assessment; and
- B, in relation to any concessionary trading receipts, means the rate specified in the relevant concession provision for that year of assessment. (*Amended 12 of 2016 s. 4; 9 of 2017 s. 7*)

- (5) In this section—

***chargeable concessionary trading receipts*** (應課稅的獲特惠的營業收入), in relation to any person for any year of assessment, means—

- (a) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in a concession provision (other than section 14B), the amount of such concessionary trading receipts as— (*Amended 9 of 2017 s. 7*)
- (i) reduced by the aggregate of—
- (A) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the

- person in the production of the concessionary trading receipts; and
- (B) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the concessionary trading receipts; and
- (ii) increased by the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the concessionary trading receipts;
- (b) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in section 14B, the amount of the assessable profits ascertained in accordance with section 23A(2) or (2A); (*Amended 3 of 2014 s. 5*)
- (c) (*Repealed 9 of 2017 s. 7*)

***chargeable normal trading receipts*** (應課稅的一般營業收入), in relation to any person for any year of assessment, means the amount of the normal trading receipts as—

- (a) reduced by the aggregate of—
- (i) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the normal trading receipts; and
- (ii) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during

the basis period for that year of assessment in the production of the normal trading receipts; and

- (b) increased by the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the normal trading receipts;

**concession provision** (寬減條文) means one of the following provisions—

- (a) section 14A(1); (*Amended 32 of 2018 s. 19*)
- (b) section 14B;
- (c) section 14D;
- (d) section 14H;
- (e) section 14J; (*Added 9 of 2017 s. 7*)

**concessionary trading receipts** (獲特惠的營業收入) means the trading receipts and other sums in respect of which assessable profits are chargeable to tax at the rate specified in a concession provision; (*Amended 12 of 2016 s. 4; 9 of 2017 s. 7*)

**normal trading receipts** (一般營業收入) means any trading receipts and other sums, other than concessionary trading receipts; (*Replaced 13 of 2018 s. 5*)

**unabsorbed loss in respect of the concessionary trading receipts** (關乎獲特惠的營業收入的未吸納虧損), in relation to any person for any year of assessment, means—

- (a) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in a concession provision (other than section 14B), the loss ascertained by— (*Amended 9 of 2017 s. 7*)

- (i) adding to the amount of the concessionary trading receipts the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the concessionary trading receipts; and
- (ii) reducing from the resulting amount the aggregate of—
  - (A) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the concessionary trading receipts; and
  - (B) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the concessionary trading receipts;
- (b) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in section 14B, the loss arrived at in accordance with sections 19D and 23A(2) or (2A);  
*(Amended 3 of 2014 s. 5)*
- (c) *(Repealed 9 of 2017 s. 7)*

***unabsorbed loss in respect of the normal trading receipts*** (關乎一般營業收入的未吸納虧損), in relation to any person for any year of assessment, means the loss ascertained by—

- (a) adding to the amount of the normal trading receipts the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to

- the extent to which the relevant assets are used in the production of the normal trading receipts; and
- (b) reducing from the resulting amount the aggregate of—
- (i) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the normal trading receipts; and
  - (ii) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the normal trading receipts.

*(Added 32 of 1998 s. 13. Amended E.R. 1 of 2012)*

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Editorial Note:

\* The amendments made by 3 of 2014 to section 19CA(5) apply in relation to the year of assessment commencing on 1 April 2013 and to all subsequent years of assessment. (Please see 3 of 2014 s. 3)

**19CB. Set off: concessionary trading receipts**

- (1) Where, in accordance with section 19C(1), (2), (4) or (5), a loss is to be set off against assessable profits for any year of assessment, this section shall apply for the purpose of ascertaining the amount of the loss set off and the resulting reduction in the assessable profits.
- (2) Where the loss is in respect of concessionary trading receipts and it is to be set off against the assessable profits in respect of normal trading receipts—
  - (a) where the amount of the loss does not exceed the amount of the assessable profits in respect of normal trading receipts as multiplied by the adjustment factor,

- the amount of the assessable profits in respect of normal trading receipts shall, for the purpose of ascertaining the assessable profits of the person, be deemed to be reduced by the amount arrived at by dividing the amount of the loss by the adjustment factor, and the loss shall, for any other purposes, be deemed to have been fully set off;
- (b) in any other case, the loss shall, for the purpose of the set off, be deemed to have been set off to the extent of the amount arrived at by multiplying the amount of the assessable profits in respect of normal trading receipts by the adjustment factor, and the amount of the assessable profits in respect of normal trading receipts shall, for any other purposes, be deemed to be nil.
- (3) Where the loss is in respect of normal trading receipts and it is to be set off against the assessable profits in respect of concessionary trading receipts—
- (a) where the amount of the loss does not exceed the amount of the assessable profits in respect of concessionary trading receipts as divided by the adjustment factor, the amount of the assessable profits in respect of concessionary trading receipts shall, for the purpose of ascertaining the assessable profits of the person, be deemed to be reduced by the amount arrived at by multiplying the amount of the loss by the adjustment factor, and the loss shall, for any other purposes, be deemed to have been fully set off;
- (b) in any other case, the loss shall, for the purpose of the set off, be deemed to have been set off to the extent of the amount arrived at by dividing the amount of the assessable profits in respect of concessionary trading receipts by the adjustment factor, and the amount of the assessable profits in respect of concessionary trading



receipts shall, for any other purposes, be deemed to be nil.

(4) In this section—

*adjustment factor* (調整分數), *concessionary trading receipts* (獲特惠的營業收入) and *normal trading receipts* (一般營業收入) have the meanings respectively assigned to them in section 19CA(4) and (5);

*loss* (虧損) includes part of a loss.

*(Added 32 of 1998 s. 13)*

#### **19D. Computation of losses after 1 April 1975**

- (1) For the purposes of section 19C, the amount of loss incurred by a person chargeable to tax under this Part for any year of assessment shall be computed in like manner and for such basis period as the assessable profits for that year of assessment would have been computed.
- (2) This section shall apply to the year of assessment commencing on 1 April 1975 and to subsequent years of assessment.

*(Added 7 of 1975 s. 16)*

#### **19E. Adjustment of losses**

- (1) For the purposes of section 19D, the amount of loss for any year of assessment of any person chargeable to tax under this Part shall be increased by the allowances made to that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the losses and decreased by the amount of any balancing charge directed to be made on that person under Part 6.
- (2) Where in any year of assessment the amount of the balancing charge made under Part 6 to a person chargeable to tax under

this Part exceeds the total amount of that person's losses, as increased by any allowances, the amount of such excess shall be deemed to be assessable profits of that person for that year of assessment.

- (3) This section shall apply to the year of assessment commencing on 1 April 1975 and to subsequent years of assessment.

*(Added 7 of 1975 s. 16. Amended E.R. 1 of 2012)*

**20.** *(Repealed 27 of 2018 s. 15)*

**20A. Persons chargeable on behalf of a non-resident**

- (1) A non-resident person shall be chargeable to tax either directly or in the name of his agent in respect of all his profits arising in or derived from Hong Kong from any trade, profession or business carried on in Hong Kong whether such agent has the receipt of the profits or not, and the tax so charged whether directly or in the name of the agent shall be recoverable by all means provided in this Ordinance out of the assets of the non-resident person or from the agent. Where there are more agents than one they may be charged to tax jointly or severally in respect of the profits of the non-resident person and shall be jointly and severally liable for the tax thereon. *(Amended 7 of 1986 s. 12)*
- (2) Every person chargeable to tax as agent, or from whom tax is recoverable in respect of the profits of another person, shall retain out of any assets coming into his possession or control on behalf of such other person or in his capacity as agent so much thereof as shall be sufficient to produce the amount of such tax, and he shall be and is hereby indemnified against any person whomsoever in respect of his retention of such assets.

- (3) Notwithstanding anything contained in subsections (1) and (2), any person who sells any goods in Hong Kong on behalf of a non-resident person shall furnish quarterly to the Commissioner a return showing the gross proceeds from such sales and shall at the same time pay to the Commissioner a sum equal to 1% of such proceeds or such lesser sum as may have been agreed with the Commissioner. On receipt of such sum the Commissioner shall issue a certificate in the form specified by the Board of Inland Revenue: (*Amended 39 of 1969 s. 3; 7 of 1986 s. 12*)

Provided that the Commissioner may exempt any such person from the provisions of this subsection on such conditions as he may consider fit.

*(Added 49 of 1956 s. 17)*

#### **20AA. Persons not treated as agents**

- (1) For the purposes of section 20A, the following persons are deemed not to be an agent of a non-resident person—
- (a) where profits are chargeable to tax under this Part by reference to so much of any trade, profession or business as relates to transactions carried out through a broker and falling within subsection (2), the broker;
  - (b) where profits are chargeable to tax under this Part by reference to so much of any trade, profession or business as relates to transactions carried out through an approved investment adviser and falling within subsection (3), the approved investment adviser.
- (2) Where any profits are chargeable to tax under this Part by reference to so much of any trade, profession or business as relates to a transaction carried out through a broker, the transaction is taken, in relation to the profits (the *taxable profits*), to fall within this subsection if—

- 
- (a) at the time of the transaction, the broker was carrying on the business of a broker;
  - (b) the transaction was carried out by the broker for the non-resident person in the ordinary course of the business;
  - (c) the remuneration that the broker received for providing the services of a broker to the non-resident person for the transaction was at a rate not less than the one customary for the class of business;
  - (d) the non-resident person does not fall (apart from this paragraph) to be treated as having the broker as his agent in relation to any other profits not included in the taxable profits under this subsection or subsection (3) but chargeable to tax under this Part for the same year of assessment; and
  - (e) the broker was not an associate of the non-resident person during the year of assessment.
- (3) Where any profits are chargeable to tax under this Part by reference to so much of any trade, profession or business as relates to a transaction carried out through an approved investment adviser, the transaction is taken, in relation to the profits (the *taxable profits*), to have been carried out through the approved investment adviser and to fall within this subsection if—
- (a) *(Repealed 32 of 1998 s. 14)*
  - (b) at the time of the transaction, the approved investment adviser was carrying on the business of an approved investment adviser;
  - (c) the transaction was carried out by the approved investment adviser for the non-resident person in the ordinary course of the business;

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- (d) the remuneration that the approved investment adviser received for providing the services of an approved investment adviser to the non-resident person for the transaction was at a rate not less than the one customary for the class of business;
- (e) the non-resident person does not fall (apart from this paragraph) to be treated as having the approved investment adviser as his agent in relation to any other profits not included in the taxable profits under this subsection or subsection (2) but chargeable to tax under this Part for the same year of assessment;
- (f) the approved investment adviser was not an associate of the non-resident person during the year of assessment; and
- (g) the approved investment adviser, when he acted for the non-resident person in the transaction, did so in an independent capacity.
- (4) This section applies to a person who acts as a broker or provides services as an approved investment adviser as part only of a business and as if that part is a separate business.
- (5) For the purposes of this section, an approved investment adviser is not regarded as acting in an independent capacity when acting on behalf of the non-resident person unless, having regard to the legal, financial and commercial characteristics of the relationship between them, it is a relationship between persons carrying on independent businesses dealing with each other at arm's length.
- (6) In this section—
- approved investment adviser*** (認可投資顧問) means—
- (a) a corporation licensed to carry on a business in advising on securities or asset management under Part V of the Securities and Futures Ordinance (Cap. 571); or

- (b) an authorized financial institution registered for carrying on such a business under that Part, only to the extent that the institution carries on such a business; (*Replaced 5 of 2002 s. 407*)

**associate** (相聯者), in relation to a non-resident person, means—

- (a) where the person is a natural person—
  - (i) a relative of the person;
  - (ii) a partner of the person and any relative of that partner;
  - (iii) a partnership in which the person is a partner;
  - (iv) any corporation controlled by the person, by a partner of the person or by a partnership in which the person is a partner;
  - (v) any director or principal officer of any such corporation as is referred to in subparagraph (iv);
- (b) where the person is a corporation—
  - (i) any associated corporation;
  - (ii) any person who controls the corporation and any partner of such person, and, where either such person is a natural person, any relative of such person;
  - (iii) any director or principal officer of that corporation or of any associated corporation and any relative of any such director or officer;
  - (iv) any partner of the corporation and, where such partner is a natural person, any relative of such partner;
- (c) where the person is a partnership—
  - (i) any partner of the partnership and where such partner is a partnership any partner of that

partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;

- (ii) any corporation controlled by the partnership or by any partner thereof or, where such a partner is a natural person, any relative of such partner;
- (iii) any corporation of which any partner is a director or principal officer;
- (iv) any director or principal officer of a corporation referred to in subparagraph (ii);

***associated corporation*** (相聯法團) in relation to a person means—

- (a) a corporation over which the person has control;
- (b) a corporation which has control over such a person, being a corporation; or
- (c) a corporation which is under the control of the same person, being a corporation;

***broker*** (經紀) means—

- (a) a corporation licensed to carry on a business in dealing in securities under Part V of the Securities and Futures Ordinance (Cap. 571); or
- (b) an authorized financial institution registered for carrying on such a business under that Part, only to the extent that the institution carries on such a business; (*Replaced 5 of 2002 s. 407*)

***control*** (控制), in relation to a corporation, means the power of a person to secure—



- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;  
*(Replaced 9 of 2017 s. 8)*

***principal officer*** (主要職員) means—

- (a) a person employed by a corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the body corporate or a person to whom paragraph (a) applies, exercises managerial functions in respect of the body corporate;

***relative*** (親屬) means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent.  
*(Amended 32 of 1998 s. 14)*

*(Added 56 of 1996 s. 3)*

**20AB. Interpretation of sections 20AC, 20ACA, 20AD, 20AE, 20AF, 20AG, 20AH, 20AI, 20AJ, 20AK and 20AL and Schedules 15, 15A, 15B, 16A and 16B**

*(Amended 13 of 2015 s. 3; 12 of 2018 s. 3)*

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- (1) This section applies to the interpretation of sections 20AC, 20ACA, 20AD, 20AE, 20AF, 20AG, 20AH, 20AI, 20AJ, 20AK and 20AL and Schedules 15, 15A, 15B, 16A and 16B. *(Amended 13 of 2015 s. 3; 12 of 2018 s. 3)*
- (2) In relation to any year of assessment, a person is to be regarded as a resident person if—
- (a) where the person is a natural person who is not a trustee of a trust estate, the person—
    - (i) ordinarily resides in Hong Kong in that year of assessment; or
    - (ii) stays in Hong Kong for a period or a number of periods amounting to more than 180 days during that year of assessment or for a period or a number of periods amounting to more than 300 days in 2 consecutive years of assessment one of which is that year of assessment;
  - (b) where the person is a corporation that is not a trustee of a trust estate, the central management and control of the corporation is exercised in Hong Kong in that year of assessment;
  - (c) where the person is a partnership that is not a trustee of a trust estate, the central management and control of the partnership is exercised in Hong Kong in that year of assessment; or
  - (d) where the person is a trustee of a trust estate, the central management and control of the trust estate is exercised in Hong Kong in that year of assessment.
- (3) In relation to any year of assessment, a person is a non-resident person if he is not a resident person in relation to that year of assessment.

- (4) A person is to be regarded as having a direct beneficial interest in another person if—
- (a) where the other person is a corporation that is not a trustee of a trust estate, the person holds any of the issued share capital (however described) of the corporation;
  - (b) where the other person is a partnership that is not a trustee of a trust estate, the person, as a partner in the partnership, is entitled to any of the profits of the partnership; (*Amended 13 of 2015 s. 3*)
  - (c) where the other person is a trustee of a trust estate, the person—
    - (i) benefits under the trust estate; or
    - (ii) not being a trustee of the trust estate or, where the trustee is a corporation, a director of the trustee, is able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income, otherwise than through another person; or (*Amended 13 of 2015 s. 3*)
  - (d) where the other person is an entity that does not fall within any of paragraphs (a), (b) and (c), the person has any of the ownership interests in the entity. (*Added 13 of 2015 s. 3*)
- (5) A person (*the first person*) is to be regarded as having an indirect beneficial interest in another person (*the second person*) if—
- (a) where the second person is a corporation that is not a trustee of a trust estate, the first person is interested in any of the issued share capital (however described) of the corporation;

- (b) where the second person is a partnership that is not a trustee of a trust estate, the first person is entitled to any of the profits of the partnership; (*Amended 13 of 2015 s. 3*)
- (c) where the second person is a trustee of a trust estate, the first person—
  - (i) benefits under the trust estate; or
  - (ii) not being a trustee of the trust estate or, where the trustee is a corporation, a director of the trustee, is able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income; or (*Amended 13 of 2015 s. 3*)
- (d) where the second person is an entity that does not fall within any of paragraphs (a), (b) and (c), the first person has any of the ownership interests in the entity, (*Added 13 of 2015 s. 3*)

through another person (*interposed person*) or through a series of 2 or more interposed persons who is or are related to the first person and the second person in the manner described in subsections (6) and (7).

- (6) Where there is one interposed person—
  - (a) the first person has a direct beneficial interest in the interposed person; and
  - (b) the interposed person has a direct beneficial interest in the second person.
- (7) Where there is a series of 2 or more interposed persons—
  - (a) the first person has a direct beneficial interest in the first interposed person in the series;

- (b) each interposed person (other than the last interposed person) in the series has a direct beneficial interest in the next interposed person in the series; and
  - (c) the last interposed person in the series has a direct beneficial interest in the second person.
- (8) A reference to an entitlement to the profits of a partnership is, in the case where the partners in a partnership are not entitled to its profits but are only entitled to a distribution of its assets upon its dissolution, to be construed as a reference to an entitlement to a distribution of the assets of the partnership upon its dissolution.
- (9) A reference to the issued share capital of a corporation does not include a reference to the shares comprised in the issued share capital that do not entitle their holders to receive dividends, whether in cash or in kind, and a distribution of the corporation's assets upon its dissolution other than a return of capital.

*(Added 4 of 2006 s. 2)*

**20AC. Certain profits of non-resident persons exempt from tax**

- (1) Subject to subsections (3), (4) and (5A), a non-resident person is exempt from tax chargeable under this Part in respect of his assessable profits, for any year of assessment commencing on or after 1 April 1996, from— *(Amended 13 of 2015 s. 4)*
  - (a) transactions falling within subsection (2); and
  - (b) transactions incidental to the carrying out of the transactions referred to in paragraph (a).
- (2) A transaction falls within this subsection if— *(Amended 13 of 2015 s. 4)*
  - (a) the transaction is a transaction specified in Part 1 of Schedule 16; and

- (b) either of the following conditions is satisfied—
- (i) the transaction has been carried out through or arranged by a specified person;
  - (ii) the non-resident person is a qualifying fund.  
*(Amended 13 of 2015 s. 4)*
- (3) Subsection (1) does not apply to a non-resident person in a year of assessment if, at any time in that year of assessment, the person carries on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in that subsection.
- (4) Subsection (1)(b) does not apply to a non-resident person in a year of assessment if, in that year of assessment, his trading receipts from the incidental transactions referred to in that subsection exceed 5% of the total trading receipts from the transactions referred to in subsection (1)(a) and (b).
- (5) The Commissioner may by notice published in the Gazette amend Schedule 16.
- (5A) This section does not apply to a special purpose vehicle as defined by section 20ACA(2) that is a non-resident person.  
*(Added 13 of 2015 s. 4)*
- (5B) To avoid doubt, subsection (2) as in force on the date of commencement<sup>#</sup> of the Inland Revenue (Amendment) (No. 2) Ordinance 2015 (13 of 2015) applies to transactions carried out within the period from 1 April 2015 to the day before that date of commencement<sup>#</sup>. *(Added 13 of 2015 s. 4)*
- (6) In this section—
- aggregate capital commitment** (資本認繳總額), in relation to a fund, means the total of the capital commitments made by the investors, the originator and the originator's associates;
- associate** (相聯者)—
- (a) in relation to a natural person, means—

- (i) a relative of the person;
  - (ii) a partner of the person;
  - (iii) if a partner of the person is a natural person, a relative of that partner;
  - (iv) a partnership in which the person is a partner;
  - (v) a corporation controlled by—
    - (A) the person;
    - (B) a relative of the person;
    - (C) a partner of the person;
    - (D) if a partner of the person is a natural person, a relative of that partner; or
    - (E) a partnership in which the person is a partner; or
  - (vi) a director or principal officer of the corporation mentioned in subparagraph (v);
- (b) in relation to a corporation, means—
- (i) a person who controls the corporation;
  - (ii) a partner of the person mentioned in subparagraph (i);
  - (iii) if the person mentioned in subparagraph (i) is a natural person, a relative of that person;
  - (iv) if the partner mentioned in subparagraph (ii) is a natural person, a relative of that partner;
  - (v) a director or principal officer of—
    - (A) the corporation; or
    - (B) an associated corporation of the corporation;
  - (vi) a relative of the director or principal officer mentioned in subparagraph (v);



- (vii) a partner of the corporation;
- (viii) if a partner of the corporation is a natural person, a relative of that partner;
- (ix) a partnership in which the corporation is a partner;  
or
- (x) an associated corporation of the corporation;
- (c) in relation to a partnership, means—
  - (i) a partner in the partnership;
  - (ii) if a partner in the partnership is a natural person, a relative of that partner;
  - (iii) if a partner in the partnership is another partnership—
    - (A) a partner in that other partnership (*Partner A*);  
or
    - (B) a partner with that other partnership in any other partnership (*Partner B*);
  - (iv) if Partner A is a partnership, a partner in Partner A (*Partner C*);
  - (v) if Partner B is a partnership, a partner in Partner B (*Partner D*);
  - (vi) if Partner A, Partner B, Partner C or Partner D is a natural person, a relative of that partner;
  - (vii) a corporation controlled by—
    - (A) the partnership;
    - (B) a partner in the partnership;
    - (C) if a partner in the partnership is a natural person, a relative of that partner; or
    - (D) a partnership in which the partnership is a partner;

- (viii) a director or principal officer of the corporation mentioned in subparagraph (vii);
- (ix) a corporation of which a partner in the partnership is a director or principal officer; or
- (x) an associated partnership of the partnership;

***associated corporation*** (相聯法團), in relation to a corporation, means—

- (a) another corporation over which the corporation has control;
- (b) another corporation that has control over the corporation; or
- (c) another corporation that is under the control of the same person as is the corporation;

***associated partnership*** (相聯合夥), in relation to a partnership, means—

- (a) another partnership over which the partnership has control;
- (b) another partnership that has control over the partnership; or
- (c) another partnership that is under the control of the same person as is the partnership;

***capital commitment*** (資本認繳), in relation to a fund, means a commitment—

- (a) that is in the form of an amount of money payable by an investor, the originator or the originator's associate to the fund under an agreement governing the operation of the fund; and
- (b) in respect of which the originator may make capital calls from time to time according to the terms of the agreement;

**control** (控制)—

- (a) in relation to a corporation, means the power of a person to secure—
  - (i) by means of the holding of shares or the possession of voting power in or in relation to that corporation or any other corporation; or
  - (ii) by virtue of any powers conferred by the articles of association or other document regulating that corporation or any other corporation,  
that the affairs of that corporation are conducted in accordance with the wishes of the person;
- (b) in relation to a partnership, means the power of a person to secure—
  - (i) by means of the holding of interests or the possession of voting power in or in relation to that partnership or any other partnership; or
  - (ii) by virtue of any powers conferred by the partnership agreement or other document regulating that partnership or any other partnership,  
that the affairs of that partnership are conducted in accordance with the wishes of the person;

**final closing of sale of interests** (權益出售最終截止日), in relation to a fund, means the date on which the originator last accepts subscriptions from investors for making capital commitments;

**investor** (投資者), in relation to a fund, means a person, other than the originator or the originator's associates, who makes capital commitment to the fund;

**net proceeds** (淨收益), in relation to a fund at a particular time, means an amount calculated by—

- (a) adding together—
  - (i) the sum of the cumulative distributions received by the investors, the originator and the originator's associates from the fund; and
  - (ii) the value at that time of all assets, if any, held by the fund; and
- (b) subtracting from the sum calculated under paragraph (a) the cumulative capital contributions of the investors, the originator and the originator's associates;

**originator** (發起人), in relation to a fund, means a person who directly or indirectly—

- (a) originates or sponsors the fund; and
- (b) has the power to make investment decisions on behalf of the fund;

**principal officer** (主要職員), in relation to a corporation, means—

- (a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

**qualifying fund** (符合資格的基金) means a fund that falls within the following descriptions—

- (a) at all times after the final closing of sale of interests—
  - (i) the number of investors exceeds 4; and
  - (ii) the capital commitments made by investors exceed 90% of the aggregate capital commitments; and

- (b) the portion of the net proceeds arising out of the transactions of the fund to be received by the originator and the originator's associates, after deducting the portion attributable to their capital contributions (which is proportionate to that attributable to the investors' capital contributions), is agreed under an agreement governing the operation of the fund to be an amount not exceeding 30% of the net proceeds;

**relative** (親屬), in relation to a person, means the spouse, parent, child, brother or sister of the person, and, in deducing such a relationship—

- (a) an adopted child is to be regarded as a child of both the natural parents and the adopting parent; and
- (b) a step child is to be regarded as a child of both the natural parents and any step parent;

**specified person** (指明人士)—

- (a) in relation to a transaction carried out before 1 April 2003, means—
- (i) a bank as defined by section 2(1) of the Banking Ordinance (Cap. 155);
- (ii) a person registered as a dealer or commodity trading adviser under Part IV of the Commodities Trading Ordinance (Cap. 250) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571);
- (iii) a person registered as a dealer or an investment adviser under Part VI, or as a securities margin financier under Part XA, of the Securities Ordinance (Cap. 333) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571); or

- (iv) a person licensed as a leveraged foreign exchange trader under Part IV of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571);
- (b) in relation to a transaction carried out on or after 1 April 2003, means a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on, or an authorized financial institution registered under that Part for carrying on, a business in any regulated activity as defined by Part 1 of Schedule 5 to that Ordinance. *(Replaced 13 of 2015 s. 4)*
- (7) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section. *(Added 10 of 2013 s. 9)*
- (Added 4 of 2006 s. 2)*

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Editorial Note:

# Commencement date: 17 July 2015.

**20ACA. Certain profits of special purpose vehicles exempt from payment of tax**

- (1) A special purpose vehicle is exempt, to an extent corresponding to the percentage of shares or interests that a non-resident person exempted under section 20AC(1) holds in the vehicle, from the payment of tax chargeable under this Part in respect of its assessable profits, if any, for any year of assessment commencing on or after 1 April 2015, from—
- (a) transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, an interposed special purpose vehicle or an excepted private company;

- (b) transactions in rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes; and
- (c) transactions in certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes.

(2) In this section—

***excepted private company*** (例外私人公司) means a private company incorporated outside Hong Kong that, at all times within the 3 years before a transaction falling within subsection (1)(a), (b) or (c) is carried out—

- (a) did not carry on any business through or from a permanent establishment in Hong Kong;
- (b) falls within either of the following descriptions—
  - (i) it did not hold (whether directly or indirectly) share capital (however described) in one or more private companies carrying on any business through or from a permanent establishment in Hong Kong;
  - (ii) it held such share capital, but the aggregate value of the holding of the capital is equivalent to not more than 10% of the value of its own assets; and
- (c) falls within either of the following descriptions—
  - (i) it neither held immovable property in Hong Kong, nor held (whether directly or indirectly) share capital (however described) in one or more private companies with direct or indirect holding of immovable property in Hong Kong;
  - (ii) it held such immovable property or share capital (or both), but the aggregate value of the holding of the



property and capital is equivalent to not more than 10% of the value of its own assets;

***interposed special purpose vehicle*** (中間特定目的工具)—

- (a) in relation to a special purpose vehicle that has an indirect beneficial interest in an excepted private company through an interposed person that is a special purpose vehicle, means the interposed person;
- (b) in relation to a special purpose vehicle that has an indirect beneficial interest in an excepted private company through a series of 2 or more interposed persons that are special purpose vehicles, means any of the interposed persons;

***permanent establishment*** (常設機構)—see section 20ACB;

***private company*** (私人公司) means a company incorporated in or outside Hong Kong that is not allowed to issue any invitation to the public to subscribe for any shares or debentures of the company;

***special purpose vehicle*** (特定目的工具) means a corporation, partnership, trustee of a trust estate or any other entity that—

- (a) is wholly or partially owned by a non-resident person;
- (b) is established solely for the purpose of holding, directly or indirectly, and administering one or more excepted private companies;
- (c) is incorporated, registered or appointed in or outside Hong Kong;
- (d) does not carry on any trade or activities except for the purpose of holding, directly or indirectly, and administering one or more excepted private companies; and
- (e) is not itself an excepted private company.

*(Added 13 of 2015 s. 5)*

**20ACB. Permanent establishment of private company**

- (1) For a private company, a permanent establishment is a fixed place of business through which activities of the company are carried on (including a branch and a place of management).
- (2) Subject to subsection (3), a private company is regarded as having a permanent establishment in Hong Kong if the company has an agent carrying on activities in Hong Kong who—
  - (a) has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the company; or
  - (b) has a stock of merchandise from which the agent regularly fills orders on behalf of the company.
- (3) In relation to the business of the company as a whole, the activities mentioned in subsections (1) and (2) exclude—
  - (a) the use of facilities solely for storage, display or delivery of goods or merchandise belonging to the company;
  - (b) the maintenance of a stock of goods or merchandise belonging to the company solely for storage, display or delivery, or for processing by another business; and
  - (c) the maintenance of a fixed place of business solely for purchasing goods or merchandise or for collecting information, for the company.
- (4) In this section—

*private company* (私人公司) has the meaning given by section 20ACA(2).

*(Added 13 of 2015 s. 5)*

**20AD. Loss from transactions referred to in sections 20AC(1) and**

**20ACA(1) not available for set off**

Despite anything in this Part—

- (a) any loss sustained by a non-resident person from a transaction referred to in section 20AC(1) in a year of assessment in which the non-resident person has not at any time carried on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in that section, is not available for set off against any of the person's assessable profits for any subsequent year of assessment; and
- (b) any loss sustained by a special purpose vehicle as defined by section 20ACA(2) from a transaction referred to in section 20ACA(1) in a year of assessment in which the special purpose vehicle has not at any time carried on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in section 20ACA(1), is not available for set off against any of its assessable profits for any subsequent year of assessment.

*(Replaced 13 of 2015 s. 6)*

**20AE. Assessable profits of non-resident persons regarded as assessable profits of resident persons**

- (1) Where, in the year of assessment following the year of assessment in which the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 (4 of 2006) commences\* or in any subsequent year of assessment—
  - (a) a resident person has, during any period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person to the extent set out in subsection (2); and

- (b) the non-resident person is exempt from tax under section 20AC,
- the assessable profits of the non-resident person for that period of time that would have been chargeable to tax under this Part but for that section are to be regarded as the assessable profits arising in or derived from Hong Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (2) The extent of a resident person's beneficial interest in a non-resident person referred to in subsection (1) is that the resident person, either alone or jointly with any of his associates (whether a resident person or not)—
- (a) where the non-resident person is a corporation that is not a trustee of a trust estate, holds or is interested in not less than 30% of the issued share capital (however described) of the corporation;
- (b) where the non-resident person is a partnership that is not a trustee of a trust estate, is entitled to not less than 30% of the profits of the partnership; or
- (c) where the non-resident person is a trustee of a trust estate, is interested in not less than 30% in value of the trust estate.
- (3) Where, in the year of assessment following the year of assessment in which the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 (4 of 2006) commences or in any subsequent year of assessment—
- (a) a resident person has, during any period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person who is exempt from tax under section 20AC; and

- (b) the non-resident person is an associate of the resident person,
- the assessable profits of the non-resident person for that period of time that would have been chargeable to tax under this Part but for that section are to be regarded as the assessable profits arising in or derived from Hong Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (4) Subsections (1) and (3) apply in relation to a resident person irrespective of whether the person has received, or will receive, directly or indirectly, from the non-resident person concerned any money or other property representing the profits of the non-resident person for the relevant year of assessment.
- (5) A resident person who has a direct or indirect beneficial interest in a trustee of a trust estate by reason of the fact that he is able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income is, for the purposes of this section, to be regarded as being interested in 100% in value of the trust estate.
- (6) The extent of a resident person's beneficial interest in a non-resident person is to be determined in accordance with the provisions in Part 2 of Schedule 15.
- (7) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (3) is to be ascertained in accordance with the provisions in Schedule 15.
- (8) Subsection (1) or (3) does not apply in relation to a resident person who has a direct or indirect beneficial interest in a non-resident person if the Commissioner is satisfied that

beneficial interests in the non-resident person are bona fide widely held.

- (9) Where a resident person is liable to tax under subsection (1) or (3) in respect of the profits of a non-resident person by reason of his having an indirect beneficial interest in the non-resident person through an interposed person or through a series of 2 or more interposed persons, if the interposed person or any of the interposed persons is a resident person who is also liable to tax under that subsection in respect of the same profits, the first-mentioned resident person is discharged from his liability to tax under that subsection in respect of those profits.
- (10) In this section—

*associate* (相聯者) has the meaning given by section 20AC(6).  
(Replaced 13 of 2015 s. 7)

(Added 4 of 2006 s. 2)

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Editorial Note:

\* Commencement date: 10 March 2006.

**20AF. Assessable profits of special purpose vehicles held by non-resident persons regarded as assessable profits of resident persons**

- (1) If, in a year of assessment commencing on or after 1 April 2015—
- (a) a resident person has, during a period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person to the extent set out in section 20AE(2);
- (b) the non-resident person is exempt from tax under section 20AC;

- (c) the non-resident person has, during that period of time, a beneficial interest, whether direct or indirect or both, in a special purpose vehicle as defined by section 20ACA(2); and
- (d) the special purpose vehicle is exempt from the payment of tax under section 20ACA,

the assessable profits of the special purpose vehicle for that period of time that are chargeable to tax under this Part and in respect of which tax would have been payable but for section 20ACA, are to be regarded as the assessable profits arising in or derived from Hong Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.

- (2) If, in a year of assessment commencing on or after 1 April 2015—

- (a) a resident person has, during a period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person who is exempt from tax under section 20AC;
- (b) the non-resident person is an associate of the resident person;
- (c) the non-resident person has, during that period of time, a beneficial interest, whether direct or indirect or both, in a special purpose vehicle as defined by section 20ACA(2); and
- (d) the special purpose vehicle is exempt from the payment of tax under section 20ACA,

the assessable profits of the special purpose vehicle for that period of time that are chargeable to tax under this Part and in respect of which tax would have been payable but for section 20ACA, are to be regarded as the assessable profits arising in or derived from Hong Kong of the resident person for



that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.

- (3) Subsections (1) and (2) apply in relation to a resident person irrespective of whether the person has received, or will receive, directly or indirectly, from the special purpose vehicle concerned any money or other property representing the profits of the special purpose vehicle for the relevant year of assessment.
- (4) A resident person who has a direct or indirect beneficial interest in a trustee of a trust estate by reason of the fact that the person is able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income is, for the purposes of this section, to be regarded as being interested in 100% in value of the trust estate.
- (5) The extent of a non-resident person's beneficial interest in a special purpose vehicle is to be determined in accordance with Part 2 of Schedule 15A.
- (6) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (2) is to be ascertained in accordance with Schedule 15A.
- (7) Subsections (1) and (2) do not apply in relation to a resident person who has a direct or indirect beneficial interest in a non-resident person if the Commissioner is satisfied that beneficial interests in the non-resident person are bona fide widely held.
- (8) If—
  - (a) a resident person is liable to tax under subsection (1) or (2) in respect of the profits of a special purpose vehicle by reason of the person's having an indirect beneficial interest in the special purpose vehicle through an interposed person or through a series of 2 or more

interposed persons (excluding the non-resident person);  
and

- (b) the interposed person or any of the interposed persons is a resident person who is also liable to tax under that subsection in respect of the profits,

the resident person mentioned in paragraph (a) is discharged from the person's liability to tax under that subsection in respect of those profits.

- (9) In this section—

*associate* (相聯者) has the meaning given by section 20AC(6).

*(Added 13 of 2015 s. 8)*

#### **20AG. Sub-funds of open-ended fund companies**

- (1) If the instrument of incorporation of an open-ended fund company (*main company*) provides for the division of its scheme property into separate parts (each of which is a *sub-fund*), then, when applying section 14 to the main company—
- (a) a reference to assessable profits in that section is a reference to the total of the assessable profits of all of its sub-funds; and
- (b) for computing the assessable profits of the sub-funds—
- (i) each sub-fund is to be regarded as an open-ended fund company;
- (ii) the main company is to be regarded as not being an open-ended fund company; and
- (iii) the provisions of this Part apply to a sub-fund as if it were an open-ended fund company.
- (2) The part of the profits tax chargeable on a main company that is attributable to the assessable profits of one of its sub-funds may only be paid out of the assets of the sub-fund.

- (3) If the conditions for exemption from payment of tax under section 20AH are met (or regarded under this Part as having been met) in respect of a sub-fund, the sub-fund is exempt under that section even if the conditions are not met (or not regarded under this Part as having been met) in respect of another sub-fund of the same main company.
- (4) Any loss sustained by a sub-fund is not available for set off against any assessable profits of another sub-fund of the same main company.
- (5) In this section—
- scheme property* (計劃財產) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571).

*(Added 12 of 2018 s. 4)*

**20AH. Certain profits of certain open-ended fund companies exempt from payment of tax**

- (1) If, in respect of an open-ended fund company, all the conditions set out in subsection (2) are met, or regarded under this Part as having been met, at all times during the basis period for a year of assessment, the company is exempt from the payment of tax otherwise chargeable under this Part in respect of its assessable profits for the period from—
- (a) qualifying transactions within the meaning of subsection (3);
  - (b) subject to subsection (4), transactions incidental to the carrying out of qualifying transactions (*incidental transactions*); and
  - (c) transactions in assets of a non-Schedule 16A class if the activities that produce assessable profits from the transactions—

- (i) are carried out in Hong Kong by or through a qualified person; or
  - (ii) are arranged in Hong Kong by a qualified person.
- (2) The conditions are—
  - (a) that the company is a resident person; and
  - (b) that the company is non-closely held.
- (3) For the purposes of this section, a transaction is a qualifying transaction if—
  - (a) it is a transaction in assets of a class specified in Schedule 16A; and
  - (b) the activities that produce assessable profits from the transaction—
    - (i) are carried out in Hong Kong by or through a qualified person; or
    - (ii) are arranged in Hong Kong by a qualified person.
- (4) The company is not exempt under subsection (1) from the payment of tax in respect of its assessable profits for the basis period from incidental transactions if the percentage calculated according to the following formula exceeds 5%—

$$A/B \times 100\%$$

where—

A = the company's trading receipts from incidental transactions in the period;

B = the total of the company's trading receipts from qualifying transactions and incidental transactions in the period.

- (5) Despite subsection (1), if, during the basis period for a year of assessment—

- (a) an open-ended fund company carries on a trade, profession or business that involves transactions in shares of, or debentures issued by, a private company (*company concerned*); and
- (b) the company concerned holds (whether directly or indirectly) immovable property in Hong Kong or share capital (however described) in one or more private companies with direct or indirect holding of immovable property in Hong Kong, and the aggregate value of the holding of the property (if any) and the share capital (if any) is equivalent to more than 10% of the value of the company concerned's assets,

the open-ended fund company is not exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the period from the transactions.

- (6) Despite subsection (1), if, during the basis period for a year of assessment—
  - (a) an open-ended fund company carries on a trade, profession or business that involves transactions in shares of, or debentures issued by, a private company (other than a private company with a holding or shareholding referred to in subsection (5)(b)) and has control over the private company;
  - (b) the private company holds (whether directly or indirectly) short-term assets;
  - (c) the aggregate value of the short-term assets is equivalent to more than 50% of the value of the private company's assets; and
  - (d) the open-ended fund company disposes of the shares or debentures through a transaction or a series of transactions,

the open-ended fund company is not exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the period from the transactions.

(7) Despite subsection (1), if, during the basis period for a year of assessment, an open-ended fund company—

(a) carries on a direct trading or a direct business undertaking in Hong Kong in assets of a non-Schedule 16A class; or

(b) holds assets of a non-Schedule 16A class and the assets are being utilized with a view to generating income,

the open-ended fund company is not exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the period from the direct trading, direct business undertaking or utilization of assets.

(8) Despite subsection (1), if the company is exempt under that subsection because the company is regarded as non-closely held, and the company has not become non-closely held within 24 months after the day on which it accepts its first investor, the exemption is to be regarded as never having been granted.

(9) Despite subsection (1), if the company is exempt under that subsection because the company is regarded as non-closely held, and—

(a) within 24 months after the first day on which the company is regarded as non-closely held, the company becomes non-closely held (*qualifying event*); and

(b) within 24 months after the day of the qualifying event—

(i) the company ceases to carry on a trade, profession or business in Hong Kong; or

(ii) the company ceases to be non-closely held,

the exemption is to be regarded as never having been granted.

- (10) Despite subsection (1), if the company is exempt under that subsection because the company has become non-closely held (*material event*), and within 24 months after the day of the material event—
- (a) the company ceases to carry on a trade, profession or business in Hong Kong; or
  - (b) the company ceases to be non-closely held,
- the exemption is to be regarded as never having been granted.
- (11) The Commissioner may by notice published in the Gazette amend Schedule 16A.
- (12) In this section—
- control* (控制) has the meaning given by section 20AC;
- non-Schedule 16A class* (非附表16A類別) means a class that is not specified in Schedule 16A;
- private company* (私人公司) has the meaning given by section 20ACA;
- qualified person* (合資格人士) means a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on, or an authorized financial institution registered under that Part for carrying on, a business in Type 9 regulated activity as referred to in Part 1 of Schedule 5 to that Ordinance;
- short-term asset* (短期資產), in relation to a private company the shares or debentures of which are being disposed of by an open-ended fund company, means an asset—
- (a) that is of a non-Schedule 16A class;
  - (b) that is not immovable property in Hong Kong; and
  - (c) that has been held by the private company for less than 3 consecutive years before the date of disposal.
- (13) For the purposes of subsections (8), (9) and (10)—



- (a) *non-closely held* (非集中擁有)—see section 20AI(2); and
- (b) *regarded as non-closely held* (視為非集中擁有)—see section 20AI(3).

*(Added 12 of 2018 s. 4)*

**20AI. Interpretation of section 20AH: meaning of non-closely held**

- (1) This section applies to the interpretation of section 20AH.
- (2) An open-ended fund company is non-closely held if all the following conditions are met in good faith by the company—
  - (a) for a company that does not have any qualified investor—
    - (i) the company has at least the number of investors specified in Schedule 16B;
    - (ii) for at least 10 investors of the company, the participation interest of each of them exceeds the amount specified in Schedule 16B;
    - (iii) the participation interest of each investor does not exceed the percentage of the company's issued share capital specified in Schedule 16B; and
    - (iv) the participation interest of the originators and their associates does not exceed the percentage of the company's issued share capital specified in Schedule 16B;
  - (b) for a company that has one or more qualified investors—
    - (i) the company has at least the number of investors specified in Schedule 16B;
    - (ii) the participation interest of each qualified investor exceeds the amount specified in Schedule 16B;

- (iii) for at least 4 investors (not being qualified investors) of the company, the participation interest of each of them exceeds the amount specified in Schedule 16B;
  - (iv) the participation interest of each investor (not being a qualified investor) does not exceed the percentage of the company's issued share capital specified in Schedule 16B; and
  - (v) the participation interest of the originators and their associates does not exceed the percentage of the company's issued share capital specified in Schedule 16B;
- (c) the company's instrument of incorporation and its prospectus contain—
- (i) a statement that the company is non-closely held; and
  - (ii) a specification of the intended categories of investors of the company (*specification*);
- (d) the specification, or other terms and conditions (whether or not contained in the instrument or prospectus referred to in paragraph (c)) governing participation in the company, do not have the effect of—
- (i) limiting the investors of the company to a specific group of associates; or
  - (ii) deterring a reasonable investor belonging to an intended category of investors of the company from investing in the company.
- (3) Further, the company is regarded as non-closely held during the period beginning on the day the company accepts its first investor and ending on whichever is the earlier of the following dates—

- (a) the date on which the company becomes non-closely held under subsection (2);
  - (b) the expiry date of the period of 24 months after the day on which the company accepts its first investor.
- (4) Subsection (3) does not apply to an open-ended fund company if—
- (a) the Commissioner is of the opinion that—
    - (i) the company has failed to take any active steps to meet the conditions set out in subsection (2); and
    - (ii) the main purpose, or one of the main purposes, of such failure is to avoid, postpone or reduce the company's liability to tax under this Part; or
  - (b) the company has indicated to the Commissioner that it intends subsection (3) not to apply to it.
- (5) The Commissioner may by notice published in the Gazette amend Schedule 16B.
- (6) In this section and Schedule 16B—

**associate** (相聯者) has the meaning given by section 20AC;

**central bank** (中央銀行) has the meaning given by section 50A;

**entity** (實體) has the meaning given by section 50A;

**governmental entity** (政府實體) has the meaning given by section 50A but does not include a governmental entity that exercises commercial functions;

**international organization** (國際組織) has the meaning given by section 50A;

**investor** (投資者), in relation to an open-ended fund company, means a person who makes capital commitment to the company, other than the originators or their associates;

***jurisdiction of residence*** (居留司法管轄區) has the meaning given by section 50A;

***originator*** (發起人), in relation to an open-ended fund company, means a person who directly or indirectly—

- (a) originates or sponsors the company; and
- (b) has the power to make investment decisions on behalf of the company;

***participation interest*** (參與權益), in relation to an open-ended fund company, means the issued share capital of the company held by the company's investors, originators or originators' associates;

***qualified investor*** (合資格投資者), in relation to an open-ended fund company, means any of the following—

- (a) an institutional investor that meets all of the following conditions—
  - (i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic or educational purposes;
  - (ii) it is exempt from income tax in its jurisdiction of residence;
  - (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - (iv) its formation documents or the applicable laws of its jurisdiction of residence do not permit its income or assets to be distributed to, or applied for the benefit of, a private person or non-charitable entity—
    - (A) other than pursuant to the conduct of the institutional investor's charitable activities;

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- (B) other than as payment of reasonable compensation for services rendered; or
  - (C) other than as payment representing the fair market value of a property which the institutional investor has purchased;
  - (v) its formation documents or the applicable laws of its jurisdiction of residence require all of its assets to be distributed to a governmental entity or other non-profit organization, or to be escheated to the government of the jurisdiction or a political subdivision of the government, on the institutional investor's liquidation or dissolution;
- (b) a scheme—
    - (i) that is a collective investment scheme authorized under section 104 of the Securities and Futures Ordinance (Cap. 571); or
    - (ii) that is similarly constituted under the law of a place outside Hong Kong and, if it is regulated under the law of the place, is permitted to be operated under the law of the place;
  - (c) a registered scheme, or its constituent fund, as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), or—
    - (i) a person who, in relation to a registered scheme, is an approved trustee or service provider, as defined by section 2(1) of that Ordinance; or
    - (ii) a person who is an investment manager of a registered scheme or constituent fund;
  - (d) an entity established to provide retirement, disability or death benefits (or a combination of any of them) to beneficiaries who are current or former employees (or

persons designated by such employees) of one or more employers in consideration for services rendered, and—

- (i) the entity does not have a single beneficiary with a right to more than 5% of the entity's assets;
- (ii) the entity is subject to government regulation and provides information reporting to the tax authorities; and
- (iii) the entity meets any of the following conditions—
  - (A) the entity is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, owing to the entity's status as a retirement or pension plan;
  - (B) the entity receives at least 50% of its total contributions (other than transfers of assets from other entities described in this paragraph) from the sponsoring employers;
  - (C) distributions or withdrawals from the entity are allowed only on the occurrence of specified events related to retirement, disability or death (except rollover distributions to other entities described in this paragraph or to funds described in paragraph (f)), or penalties apply to distributions or withdrawals made before such specified events;
  - (D) contributions (other than certain permitted make-up contributions) by an employee to the entity are limited by reference to the earned income of the employee;
- (e) a governmental entity;

- (f) a fund established by a governmental entity, international organization, central bank or the Hong Kong Monetary Authority to provide retirement, disability or death benefits to beneficiaries or participants who—
  - (i) are current or former employees (or persons designated by such employees); or
  - (ii) are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration for personal services rendered for the governmental entity, international organization, central bank or the Hong Kong Monetary Authority;
- (g) an investment arrangement, which is commonly known as a sovereign wealth fund, established and funded by a state or government (or any political subdivision or local authority of a state or government) for the purposes of—
  - (i) carrying out financial activities; and
  - (ii) holding and managing a pool of assets, for the benefit of the state or government (or the political subdivision or local authority).

*(Added 12 of 2018 s. 4)*

#### **20AJ. Supplementary provisions for section 20AH**

- (1) If the condition set out in section 20AH(2)(b) is not met in respect of an open-ended fund company (*failure*), the Commissioner may, on application by the company, nevertheless regard the condition as having been met in respect of the company if—
  - (a) the Commissioner is satisfied that—
    - (i) the failure is due to the winding down of the company's activities and investments; and



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- (ii) the company has notified its investors that its activities and investments are being wound down; or
  - (b) the Commissioner is satisfied that—
    - (i) the failure is due to circumstances not reasonably foreseeable by the company;
    - (ii) the failure is temporary; and
    - (iii) it is fair and reasonable to regard the failure as not having occurred after taking into account all relevant factors, including—
      - (A) the cause, nature, extent and duration of the failure; and
      - (B) the remedial actions taken by the company to address the failure, and the speed of taking such actions.
- (2) If an open-ended fund company is not exempt from the payment of tax chargeable under this Part in a year of assessment, then despite section 26(a), the consideration or remuneration that a person received, in the form of a dividend from the company, for providing any services in Hong Kong, directly or indirectly, to the company is chargeable to tax under this Part.
- (3) In this section—
- services** (服務), in relation to an open-ended fund company, includes—
- (a) seeking funds for the company from participants or potential participants;
  - (b) researching potential investments to be made for the company;

- (c) acquiring, holding, managing or disposing of property for the company; and
- (d) acting for the company with a view to assisting an entity in which the company has made an investment to raise funds.

*(Added 12 of 2018 s. 4)*

**20AK. Assessable profits of open-ended fund companies regarded as assessable profits of resident person**

- (1) If—
  - (a) a resident person has, during any period of time, a beneficial interest, whether direct or indirect or both, in an open-ended fund company to the extent set out in subsection (2); and
  - (b) the company is exempt from the payment of tax under section 20AH,the assessable profits of the company for the period of time that would have been chargeable to tax under this Part but for that section are to be regarded as the assessable profits arising in or derived from Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (2) The extent is that the resident person, either alone or jointly with any of the resident person's associates (whether a resident person or not), holds or is interested in not less than 30% of the issued share capital of the company.
- (3) If—
  - (a) a resident person has, during any period of time, a beneficial interest, whether direct or indirect or both, in an open-ended fund company that is exempt from the payment of tax under section 20AH; and

- (b) the company is an associate of the resident person, the assessable profits of the company for the period of time that would have been chargeable to tax under this Part but for that section are to be regarded as the assessable profits arising in or derived from Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (4) Subsections (1) and (3) apply in relation to a resident person irrespective of whether the person has received, or will receive, directly or indirectly, from the open-ended fund company concerned any money or other property representing the profits of the company for the relevant year of assessment.
- (5) The extent of a resident person's beneficial interest in an open-ended fund company is to be determined in accordance with Part 2 of Schedule 15B.
- (6) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (3) is to be ascertained in accordance with Schedule 15B.
- (7) If—
- (a) a resident person is liable to tax in respect of the profits of an open-ended fund company by the operation of subsection (1) or (3) by reason of the person's having an indirect beneficial interest in the company through an interposed person or through a series of 2 or more interposed persons; and
- (b) the interposed person or any of the interposed persons is a resident person who is also liable to tax in respect of the profits by the operation of subsection (1) or (3), the resident person mentioned in paragraph (a) is discharged from the person's liability to tax in respect of the profits.
- (8) In this section—

*associate* (相聯者) has the meaning given by section 20AC.

*(Added 12 of 2018 s. 4)*

**20AL. Losses sustained by open-ended fund companies**

- (1) If an open-ended fund company is exempt from the payment of tax under section 20AH in respect of its assessable profits in a year of assessment, any loss sustained by the company from a transaction referred to in section 20AH(1)(a), (b) or (c) in the year of assessment is not available for set off against any assessable profits of the company in the year of assessment or any subsequent year of assessment.
- (2) If an open-ended fund company is not exempt from the payment of tax under section 20AH (other than because of subsection (5), (6) or (7) of that section) in respect of its assessable profits in a year of assessment, any loss sustained by the company from a transaction referred to in section 20AH(1)(a), (b) or (c) in the year of assessment is only available for set off against any assessable profits of the company from transactions referred to in section 20AH(1)(a), (b) or (c) in the year of assessment or any subsequent year of assessment.
- (3) Any loss sustained by an open-ended fund company from a transaction, a direct trading, a direct business undertaking or utilization of assets, in respect of which there is not an exemption from the payment of tax for assessable profits under section 20AH(5), (6) or (7) in a year of assessment is only available for set off against any assessable profits of the company from the transaction, direct trading, direct business undertaking or utilization of assets in the year of assessment or any subsequent year of assessment.

*(Added 12 of 2018 s. 4)*

**20B. Persons chargeable in respect of certain profits of a non-**

**resident**

- (1) Without prejudice to section 20A, this section applies in respect of a non-resident person who is chargeable to tax in respect of—
  - (a) sums deemed by virtue of section 15(1)(a), (b), (ba) or (bb) to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong; or (*Amended 12 of 2004 s. 7; 24 of 2018 s. 7*)
  - (b) sums received in respect of, or which in any way derive directly or indirectly from, the performance in Hong Kong by a non-resident entertainer or sportsman (whether or not he is the non-resident person who is so chargeable) of an activity in his character as entertainer or sportsman on or in connection with a commercial occasion or event, including—
    - (i) any appearance of the entertainer or sportsman by way of or in connection with the promotion of any such occasion or event; and
    - (ii) any participation by the entertainer or sportsman in or for sound recording, films, videos, radio, television or other similar transmissions (whether live or recorded).
- (2) Where this section applies, the non-resident person is chargeable to tax in respect of the sums described in subsection (1) in the name of any person in Hong Kong who paid or credited those sums to that or any other non-resident person, and the tax so charged shall be recoverable by all means provided in this Ordinance from that person in Hong Kong.
- (3) Where a person in Hong Kong from whom tax is recoverable by virtue of this section pays or credits to a non-resident

person (whether or not he is the non-resident person who is chargeable to tax) sums described in subsection (1) he shall, at the time he makes the payment or credit, deduct from those sums so much thereof as is sufficient to produce the amount of such tax, and he is hereby indemnified against any person in respect of his deduction of such sum.

(4) In this section—

**commercial occasion or event** (商業場合或事項) includes any description of occasion or event—

- (a) for which an entertainer or sportsman (or other person) might, by virtue of his performance of the activity, receive or become entitled to receive anything by way of cash or any other form of property; or
- (b) which is designed to promote commercial sales or activity by advertising, the endorsement of goods or services, sponsorship, or other promotional means of any kind;

**entertainer or sportsman** (演藝人員或運動員) means a person, other than a corporation, who gives performances (whether alone or with others) in his character as entertainer or sportsman in any kind of entertainment or sport, including any activity of a physical kind which (whether in a live or recorded form) the public or any section of the public is or may be permitted (whether for payment or not) to see or hear.

*(Added 4 of 1989 s. 2)*

## 21. **Assessable profits of certain businesses to be computed on a percentage of the turnover**

Where the true amount of the assessable profits arising in or derived from Hong Kong of a non-resident person in respect of a trade, profession or business carried on in Hong Kong cannot be readily ascertained, such assessable profits may be computed on

a fair percentage of the turnover of that trade or business in Hong Kong.

*(Amended 36 of 1955 s. 30; 7 of 1975 s. 17; 7 of 1986 s. 12)*

**21A. Computation of assessable profits from cinematograph films, patents, trade marks, etc.**

*(Amended 21 of 2011 s. 7)*

- (1) The assessable profits of a person arising in or derived from Hong Kong in respect of a sum deemed by section 15(1)(a), (b) or (ba) to be a receipt arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong shall, for the purposes of this Ordinance and notwithstanding any other provisions of this Part, be taken to be— *(Amended 12 of 2004 s. 7)*
- (a) 100% of the sum in the case of a sum derived from an associate:
- Provided that this paragraph shall not apply in the case where the Commissioner is satisfied that no person carrying on a trade, profession or business in Hong Kong has at any time wholly or partly owned the property in respect of which the sum is paid; or
- (b) the following percentages of the sum in any other case, including any case of the description mentioned in the proviso to paragraph (a)—
- (i) for any sum received by or accrued to the person before 1 April 2003, 10%;
- (ii) for any sum received by or accrued to the person on or after 1 April 2003, 30%. *(Replaced 24 of 2003 s. 5)*
- (2) For the purpose of ascertaining whether a sum was derived from an associate in the application of subsection (1), where



the sum was derived from or by a trustee of a trust estate or a corporation controlled by such a trustee, that sum shall be deemed to have been derived from or by, as the case may be, each of the trustee, the corporation and the beneficiary under the trust.

(3) In this section—

*associate* (相聯者), in relation to a person, means—

- (a) where the person is a natural person—
  - (i) a relative of the person;
  - (ii) a partner of the person and any relative of that partner;
  - (iii) a partnership in which the person is a partner;
  - (iv) any corporation controlled by the person, by a partner of the person or by a partnership in which the person is a partner;
  - (v) any director or principal officer of any such corporation as is referred to in subparagraph (iv);
- (b) where the person is a corporation—
  - (i) any associated corporation;
  - (ii) any person who controls the corporation and any partner of such person, and, where either such person is a natural person, any relative of such person;
  - (iii) any director or principal officer of that corporation or of any associated corporation and any relative of any such director or officer;
  - (iv) any partner of the corporation and, where such partner is a natural person, any relative of such partner;
- (c) where the person is a partnership—

- (i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;
- (ii) any corporation controlled by the partnership or by any partner thereof or, where such a partner is a natural person, any relative of such partner;
- (iii) any corporation of which any partner is a director or principal officer;
- (iv) any director or principal officer of a corporation referred to in subparagraph (ii);

***associated corporation*** (相聯法團), in relation to a person, means—

- (a) a corporation over which the person has control;
- (b) if the person is a corporation—
  - (i) a corporation which has control over the person; or
  - (ii) a corporation which is under the control of the same person as is the first-mentioned person;

***beneficiary under the trust*** (信託的受益人) means any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under a trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income;

***control*** (控制), in relation to a corporation, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

***principal officer*** (主要職員) means—

- (a) a person employed by a corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

***relative*** (親屬) means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent.

*(Replaced 65 of 1993 s. 3)*

## **21B. Transitional**

- (1) Subject to subsection (2), the amendments to section 21A effected by the Inland Revenue (Amendment) (No. 4) Ordinance 1993 (65 of 1993) shall apply to any sum received by or accrued to any person on or after 4 March 1993.
- (2) The provisions of section 21A in force immediately prior to the coming into operation of the Inland Revenue (Amendment)

(No. 4) Ordinance 1993 (65 of 1993) shall continue to apply to any sum received by or accrued to any person prior to 4 March 1993 as if that Ordinance had not been enacted.

*(Added 65 of 1993 s. 3)*

## **22. Assessment of partnerships**

- (1) Where a trade, profession or business is carried on by 2 or more persons jointly the assessable profits therefrom shall be computed in one sum and the tax in respect thereof shall be charged in the partnership name. *(Replaced 36 of 1955 s. 31)*
- (2) The precedent partner shall make and deliver a statement of the profits or losses of such trade, profession or business, on behalf of the partnership, ascertained in accordance with the provisions of this Part relating to the ascertainment of profits. Where no active partner is resident in Hong Kong the return shall be furnished by the manager or agent of the partnership in Hong Kong. *(Amended 7 of 1986 s. 12)*
- (3) If a change occurs in a partnership of persons carrying on any trade, profession or business, by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or business continue to be engaged therein, or if a person previously engaged in any trade, profession or business on his own account continues to be engaged in it, but as a partner in a partnership, the tax payable by the person or persons who carry on the trade, profession or business after that time shall, notwithstanding the change be computed on what would otherwise have been the assessable profits of such person or persons or the aggregation of such assessable profits as if no such change had occurred. *(Amended 30 of 1950 Schedule; 36*

*of 1955 s. 31; 49 of 1956 s. 18; 7 of 1975 s. 19; 56 of 1993 s. 16)*

- (4) Tax upon the partnership shall be recoverable by all means provided in this Ordinance out of the assets of the partnership, or from any partner. *(Amended 36 of 1955 s. 31)*
- (5) Tax may be assessed on the profits of a partnership notwithstanding the cessation or dissolution of such partnership and shall be recoverable from the former partners and from the assets of the partnership at the time of its cessation.

**22A. Ascertainment of share of partnership profits or losses**

- (1) In order to ascertain the share of a partner of the assessable profits or losses of a partnership, such assessable profits or losses for the relevant year of assessment shall be apportioned amongst the persons who were partners during the basis period in the ratio in which the profits or losses of the basis period for that year of assessment were divided; and the profits or losses as so apportioned shall constitute the shares of the assessable profits and losses of the individual partners for that year of assessment.
- (2) For the purposes of subsection (1), there shall be excluded from the assessable profits of a partnership any loss brought forward under section 19C.
- (3) *(Repealed 30 of 2004 s. 3)*

*(Added 7 of 1975 s. 20)*

**22B. Limited partner loss relief**

- (1) In this section—

***limited partner*** (有限責任合夥人) means a person who is a partner in a partnership which is carrying on a trade, profession or business and that person is—

- (a) a limited partner in a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37);
- (b) a general partner in a partnership in which he is not entitled to or does not take part in the management of the partnership but is entitled to have his liabilities, or his liabilities beyond a certain limit, for debts or obligations incurred by the partnership for the purposes of the trade, profession or business discharged or reimbursed by some other person; or
- (c) under the law of any place outside Hong Kong, not entitled to or does not take part in the management of the partnership and is not liable beyond a certain limit for debts or obligations incurred by the partnership for the purposes of the trade, profession or business;

**relevant sum** (有關款項) means the amount of the person's contribution to the partnership as at the end of the relevant year of assessment in which the loss is sustained, except that where the person ceased to be a partner in the partnership during that year of assessment it is the time when he so ceased.

- (2) For the purposes of this section, a person's contribution to the partnership at any time is the aggregate of—
  - (a) the amount which he has contributed to it as capital less the sum of—
    - (i) the amounts of capital that he has directly or indirectly drawn out or received back; and
    - (ii) anything that he is or may be entitled at any time while the partnership carries on the trade, profession or business to draw out, receive back or be reimbursed from another person, whether or not the entitlement is enforceable or is pursuant to an unenforceable undertaking or practice; and

- (b) the amount of any profits or gains of the partnership to which he is entitled but which he has not received in money or money's worth.
- (3) Notwithstanding section 19C, where in any year of assessment a person who is a limited partner in a partnership has incurred a share of a loss of that partnership the amount of the loss which may be set off against the assessable profits of the person is limited to the lesser of—
- (a) the amount of the loss; or
- (b) the relevant sum.
- (4) This section applies to years of assessment that commence on or after 1 April 1991 and to that part of any basis period for a year of assessment that occurs on or after 15 November 1990 but before 1 April 1991 but does not apply in respect of a share of a loss incurred under a transaction which was the subject of an application for advance clearance made to the Commissioner before 15 November 1990 and the Commissioner before or after that date expressed the opinion that the transaction would not fall within the terms of section 61A or, where no such application was made in respect of a loss incurred under a transaction entered into before that date, the transaction is, in the Commissioner's opinion, of the same type as any for which, in the circumstances prevailing as at 14 November 1990, he would have expressed the opinion that the transaction would not fall within the terms of section 61A.

*(Added 15 of 1992 s. 3)*

**22C. Transitional: partnerships consisting of more than 20 members**

Where a partnership, which immediately before the commencement\* of sections 6, 7, 8 and 9 of Part 2 of Schedule 4 to the Companies (Amendment) Ordinance 2004 (30 of 2004), was



a person, but was not an individual, a corporation or a partnership as defined in sections 19C(7) and 22A(3) that were in force immediately before that commencement, has any losses brought forward under section 19C(4), then, notwithstanding section 22A(2)—

- (a) any such losses shall be used to set off against the assessable profits of that partnership in the subsequent years of assessment the basis periods of which are ended after that commencement until those losses are fully utilized; and
- (b) the assessable profits of that partnership for a year of assessment the basis period of which is ended after that commencement shall be reduced by the amount of loss set off mentioned in paragraph (a) before they are apportioned amongst the partners of that partnership in accordance with section 22A(1).

*(Added 30 of 2004 s. 3)*

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Editorial Note:

\* Commencement date: 14 December 2007.

### **23. Ascertainment of assessable profits of life insurance corporations**

- (1) The assessable profits for any year of assessment of a corporation, whether mutual or proprietary, from the business of life insurance, shall—
  - (a) be deemed to be 5% of the premiums from life insurance business in Hong Kong of the corporation during the basis period for that year; or *(Amended 7 of 1986 s. 12)*
  - (b) should the corporation so elect, be that part of the adjusted surplus ascertained in accordance with the provisions of subsections (2) to (7) deemed to arise in

the basis period for that year less any dividend received which is required to be excluded by virtue of section 26(a): *(Amended 49 of 1956 s. 19)*

Provided that—

- (i) any such election once made shall be irrevocable and in addition shall be deemed to apply to all future years of assessment; and *(Added 49 of 1956 s. 19)*
  - (ii) until such part of the adjusted surplus is ascertained, the assessable profits shall be calculated provisionally in accordance with paragraph (a) of this subsection, and tax charged and collected as if no such election had been made. *(Amended 49 of 1956 s. 19)*
- (2) A corporation which elects to be assessed in the manner provided in subsection (1)(b) shall submit to the Commissioner a certified true copy of the latest abstract of the report of the actuary submitted to the Insurance Authority under section 18 of the Insurance Ordinance (Cap. 41). *(Replaced 11 of 1985 s. 2. Amended 12 of 2015 s. 103; 17 of 2018 s. 49)*
- (3) Any election under subsection (1)(b) shall be effective only if the actuarial report is submitted not later than 2 years after the end of the period in respect of which it is made. Where an effective election has been made it shall be lawful to give effect to such election notwithstanding the provisions of section 70. *(Amended 49 of 1956 s. 19)*
- (4) (a) The surplus shall be the amount by which the life insurance fund exceeds the estimated liability of the corporation on the life insurance fund at the end of the period in respect of which any actuarial report is made.

- (b) The adjusted surplus shall be ascertained by adding to the surplus—
- (i) any deficit in respect of a period prior to the period in respect of which the relevant actuarial report is made where such deficit is included in such report;
  - (ii) any outgoing or expense charged against the life insurance fund in the relevant actuarial report which is not such that it would be allowed as a deduction in ascertaining assessable profits under the provisions of section 16;
  - (iii) any expense disbursement or loss charged against the life insurance fund in the relevant actuarial report which is such that it would not be allowed as a deduction in ascertaining assessable profits by reason of the provisions of section 17;
  - (iv) any income or profits of the corporation arising in the period in respect of which the relevant actuarial report is made, not being profits from the business of insurance other than life insurance, and not credited to the life insurance fund in such report;
  - (v) any appropriations of profits or transfers to reserve charged against the fund during the period in respect of which the relevant actuarial report is made, other than appropriations or transfers to policy holders in their capacity as such;
  - (va) the amount of a balancing charge directed to be made under Part 6; (*Added 7 of 1975 s. 21*)
- and by deducting therefrom—
- (vi) any surplus disclosed by a previous actuarial report which has been retained in the life insurance fund in the relevant actuarial report;

- (vii) any transfer or appropriation to policy holders in their capacity as such, effected during the period in respect of which the relevant actuarial report is made where such transfer or appropriation has not been charged against the life insurance fund in such report;
  - (viii) any outgoing or expenses not charged against the life insurance fund during the period in respect of which the relevant actuarial report is made which is such that it would be deducted in ascertaining assessable profits under the provisions of section 16;
  - (ix) any receipt of a capital nature, or transfer from reserve, credited to the life insurance fund during the period in respect of which the relevant actuarial report is made; (*Amended 7 of 1975 s. 21*)
  - (x) the allowances provided by Part 6 to the extent to which the relevant assets are used in the production of the adjusted surplus. (*Added 7 of 1975 s. 21*)
- (5) Notwithstanding anything contained in subsection (4) the adjusted surplus of a corporation which transacts life insurance business both within Hong Kong and elsewhere shall be the adjusted surplus ascertained in accordance with the provisions of the said subsection (4) less that portion of such adjusted surplus as is not deemed under the provisions of subsection (6) to be profits arising in or derived from Hong Kong. (*Amended 7 of 1986 s. 12*)
- (6) Where a corporation transacts life insurance business both within Hong Kong and elsewhere, the portion of the adjusted surplus ascertained in accordance with the provisions of subsection (4) which shall be deemed to be profits arising in or derived from Hong Kong is the amount which bears the same proportion to the adjusted surplus so ascertained as

the aggregate of the premiums from life insurance business in Hong Kong for the period of the relevant actuarial report bears to the aggregate of the premiums from the whole of the corporation's life insurance business for that period. (*Amended 7 of 1986 s. 12*)

- (7) Any adjusted surplus ascertained in accordance with the foregoing provisions shall be deemed to arise during the years or other periods which make up the period in respect of which the relevant actuarial report is made in the proportion which the aggregate of the premiums from life insurance business in Hong Kong in each such period bears to the aggregate of such premiums for the total period in respect of which the relevant actuarial report is made. (*Amended 49 of 1956 s. 19; 7 of 1986 s. 12*)
- (8) (a) Where the making of the adjustments required by subsection (4) results in a deficit, such deficit shall be deemed to be the loss sustained by the corporation during the period in respect of which the relevant actuarial report is made.
- (b) In ascertaining for the purposes of sections 19 and 19C what part of such loss so calculated is attributable to activities in Hong Kong the provisions of subsections (5) and (6) shall apply mutatis mutandis. (*Amended 11 of 1985 s. 2*)
- (c) Any such loss attributable to activities in Hong Kong shall be deemed to have been sustained during the years which make up the period in respect of which the relevant actuarial report is made in the proportion which the aggregate of the premiums from life insurance business in Hong Kong in each such year bears to the aggregate of such premiums for the total period in respect of which the relevant actuarial report is made. (*Amended 49 of 1956 s. 19; 7 of 1986 s. 12*)

(9) In this section—

**actuarial report** (精算師報告) means any abstract referred to in subsection (2); (*Added 11 of 1985 s. 2*)

**life insurance business** (人壽保險業務) means business of the following classes as specified in Part 2 of Schedule 1 to the Insurance Ordinance (Cap. 41)— (*Amended 12 of 2015 s. 103*)

- A Life and annuity
- B Marriage and birth;
- C Linked long term;
- D Tontines,

and references to a **life insurance fund** (人壽保險基金) shall be construed accordingly; (*Replaced 11 of 1985 s. 2*)

**premiums from life insurance business in Hong Kong** (從在香港經營人壽保險業務所得的保費) includes—

- (a) all premiums received or receivable in Hong Kong from both residents and non-residents; and
- (b) all premiums receivable outside Hong Kong from residents of Hong Kong where such premiums are in respect of policies the proposals for which were received by the corporation in Hong Kong:

Provided that any such premiums returned to the insured and any corresponding premiums paid on reinsurance shall be deducted from the premiums so receivable. (*Amended 7 of 1986 s. 12*)

(*Replaced 36 of 1955 s. 32. Amended E.R. 1 of 2012*)

### **23A. Ascertainment of assessable profits of insurance corporations other than life insurance corporations\***

- (1) The assessable profits of a corporation, whether mutual or proprietary, from the business of insurance other than life

insurance, shall be ascertained by taking the gross premiums from such insurance business in Hong Kong less any such premiums returned to the insured and any premiums paid on corresponding reinsurance and adding thereto any interest or other income arising in or derived from Hong Kong and the amount of any balancing charge directed to be made under Part 6, and deducting therefrom a reserve for unexpired risks at the percentage adopted by that corporation in relation to its operations as a whole for such risks at the end of the period for which such profits are ascertained, and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of such period, and from the amount so arrived at deducting the actual losses less the amount recoverable in respect thereof under reinsurance, the agency expenses in Hong Kong and the allowances provided under Part 6 to the extent to which the relevant assets are used in the production of such profits, and a fair proportion of the expenses of the head office of the corporation: (*Amended 49 of 1956 s. 20; 7 of 1975 s. 22*)

Provided that where the Commissioner is satisfied that, by reason of the limited extent of such business transacted in Hong Kong by a non-resident insurance corporation it would be unreasonable to require such corporation to furnish the particulars necessary for the application of this section, he may permit the assessable profits of the corporation to be ascertained by reference to the proportion of the total profits and income of the corporation corresponding to the proportion which its premiums from insurance business in Hong Kong bear to its total premiums or on any other basis which appears to him to be equitable.

- (2) (*Repealed 27 of 2018 s. 31*)
- (2A) (*Repealed 27 of 2018 s. 31*)
- (3) For the purposes of this section—



*premiums from insurance business in Hong Kong* (得自香港保險業務的保費) includes—

- (a) all premiums in respect of contracts of insurance, other than life insurance, made in Hong Kong; and
- (b) all premiums on contracts of insurance, other than life insurance, the proposals for which were made to a corporation in Hong Kong. (*Amended 27 of 2018 s. 31*)

*(Amended 27 of 2018 s. 31)*

*(Added 36 of 1955 s. 33. Amended 7 of 1986 s. 12; E.R. 1 of 2012)*

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\* The new section 23A(2A) added and amendments made to section 23A(3) by 3 of 2014 apply in relation to the year of assessment commencing on 1 April 2013 and to all subsequent years of assessment. (Please see 3 of 2014 s. 3)

### **23AA. Mutual insurance corporations**

For the purposes of this Part, a mutual insurance corporation shall be deemed to carry on an insurance business the surplus from which shall be ascertained in the manner provided in sections 23 and 23A for ascertaining assessable profits and shall be deemed to be assessable profits chargeable to tax under section 14.

*(Added 26 of 1969 s. 15)*

### **23B. Ascertainment of the assessable profits of a ship-owner carrying on business in Hong Kong\***

- (1) Where a person carries on a business as an owner of ships and—
  - (a) the business is normally controlled or managed in Hong Kong; or
  - (b) the person is a company incorporated in Hong Kong, that person shall be deemed to be carrying on that business in Hong Kong.

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- (2) Subject to subsection (6), where a person to whom subsection (1) does not apply carries on a business as an owner of ships, and any ship owned by that person calls at any location within the waters of Hong Kong, that person shall be deemed to be carrying on that business in Hong Kong.
- (3) Subject to subsections (4), (4AA) and (5) and section 26AB, where a person is deemed to be carrying on a business as an owner of ships in Hong Kong under subsection (1) or (2), as the case may be, the assessable profits of that person from that business for a year of assessment shall be the sum bearing the same ratio to the aggregate of the relevant sums earned by or accrued to that person during the basis period for that year of assessment as that person's total shipping profits for the basis period bear to the aggregate of the total shipping income earned by or accrued to that person during that basis period for that year of assessment. (*Amended 27 of 2018 s. 32*)
- (4) Subject to subsections (4AA) and (5) and section 26AB, where in the opinion of the assessor the provisions in subsection (3) for computing assessable profits cannot for any reason be satisfactorily applied in the case of a person to whom subsection (2) applies, the assessable profits of that person for any year of assessment may instead be computed on a fair percentage of the aggregate of the relevant sums earned by or accrued to that person during the basis period for that year of assessment. (*Amended 27 of 2018 s. 32*)
- (4AA) For the purposes of subsection (3) or (4), in determining the amount of relevant sums earned by or accrued to a person during the basis period for a year of assessment, the exempt sums are to be excluded if, in that period, the activities that produce the exempt sums are—
- (a) carried out in Hong Kong by the person; or

- (b) arranged by the person to be carried out in Hong Kong.  
*(Added 27 of 2018 s. 32)*
- (4A) For the purposes of this section, where a person who is deemed to be carrying on a business as an owner of ships in Hong Kong under subsection (2) is resident in any territory outside Hong Kong, he shall be regarded as having a reciprocity status, if the Commissioner is satisfied that any profits earned by or accrued to a person to whom subsection (1) applies from a business carried on in the territory as an owner of ships are, under the laws of that territory, exempt from a tax which is of substantially the same nature as the tax chargeable under this Part. *(Added 32 of 1998 s. 16)*
- (5) Notwithstanding section 70, where the assessable profits of any person have been computed for any year of assessment in accordance with subsection (4), the person shall, upon the submission to the assessor of accounts computed in accordance with the provisions of this Part relating to the ascertainment of assessable profits, be entitled to elect at any time within 2 years from the end of the year of assessment that his assessable profits for that year be re-computed in accordance with subsection (3).
- (6) Where the Commissioner is satisfied that the call at any location within the waters of Hong Kong of any ship owned by a person to whom subsection (2) applies is of a casual nature, and that further calls at any location within those waters by that or any other ship in the same ownership are improbable, he may in his discretion direct that that person shall be deemed not to be carrying on a business as an owner of ships in Hong Kong under subsection (2) by reason of the casual call of that ship and accordingly, in the event of his making such a direction, that person shall be so deemed not to be carrying on that business.

- (7) For the purposes of this section, it is declared that where a ship is operated during the basis period for a year of assessment by a person deemed to be carrying on a business as an owner of ships in Hong Kong under subsection (1) or (2), as the case may be—
- (a) if the ship is a registered ship (in respect of which paragraph (a) of the definition of *exempt sums* (豁免款項) applies) at any time during that basis period, only losses incurred by that person in respect of the operation of that ship while it is not such a registered ship shall be set off against the assessable profits of that person in accordance with section 19C; (*Amended 32 of 1998 s. 16*)
  - (b) sections 18F and 19E shall apply in respect of the operation of the ship (treated as machinery or plant for the purposes of Part 6) by that person, and—
    - (i) subject to subsections (8) and (9), in the case of any initial allowance or annual allowance, as the case may be, that may be made to that person under Part 6, that allowance shall only be made in respect of that portion of the basis period during which the ship is not a registered ship (in respect of which paragraph (a) of the definition of *exempt sums* (豁免款項) applies) to the extent that that ship is operated in that portion of that basis period for that year of assessment for the purpose of producing assessable profits; (*Amended 32 of 1998 s. 16*)
    - (ii) in the case of any balancing allowance or balancing charge, as the case may be, that may be made to that person under Part 6, that allowance or charge shall be limited to a sum which is in the same proportion as the aggregate of the

initial and annual allowances made to that person in computing his assessable profits since the acquisition of the ship bears to the aggregate of the initial and annual allowances that would have been made had the ship been operated by that person at all times since its acquisition for the purpose of producing assessable profits.

- (8) Where in the basis period for any year of assessment a registered ship (in respect of which paragraph (a) of the definition of *exempt sums* (豁免款項) applies) ceases to be a registered ship, any allowances that may be made under Part 6 in respect of the operation of that ship (treated as machinery or plant for the purposes of that Part) for that year of assessment and subsequent years, shall be computed on the reducing value of the ship after taking into account the amounts of— (*Amended 32 of 1998 s. 16*)
- (a) any initial allowance made under section 37(1), 37A(1) or 39B(1); and
  - (b) subject to subsection (9), any annual allowance that would have been made under section 37(2), 37A(2) or 39B(2) had the ship, since its acquisition by a person deemed to be carrying on a business as an owner of ships in Hong Kong under subsection (1) or (2), as the case may be, been operated for the purpose of producing assessable profits.
- (9) For the purposes of subsections (7)(b)(i) and (8)(b)—
- (a) in the case of subsection (7)(b)(i), the reference to Part 6 (which Part contains sections 37(2) and 37A(2) amongst others); and
  - (b) in the case of subsection (8)(b), the reference to sections 37(2) and 37A(2),

shall, in both cases, be construed as if the words “at the end of the basis period” (在評稅基期結束時) (in the first place where they appear in section 37(2), and where they appear in section 37A(2)) read “during the basis period” (在該評稅基期內).

- (10) For the purposes of this section, any sums earned by or accrued to the owner of a ship under a charter-party that does not, or does not purport to, extend to the whole of that ship shall, to the extent that those sums are derived from, attributable to, or in respect of, any voyage or voyages of that ship commencing from any location within the waters of Hong Kong, be deemed to be derived from, attributable to, or in respect of, any relevant carriage shipped in Hong Kong.
- (11) A copy of, or extract from, the register of ships in legible form issued and certified under the Merchant Shipping (Registration) Ordinance (Cap. 415) shall—
- (a) in relation to any year of assessment, be proof that a ship was a registered ship or was not a registered ship, or be proof that a ship had commenced to be a registered ship or had ceased to be a registered ship, as the case may be; and
- (b) in relation to the date of the provisional registration of that ship under that Ordinance, be proof that that registered ship was so registered from that date of provisional registration.
- (12) In this section—

**bill of lading** (提單) has the same meaning as in the Import and Export Ordinance (Cap. 60), but does not include a bill of lading which describes any port or other location within the waters of Hong Kong as the port of origin or the port of destination;



***business as an owner of ships*** (以船舶擁有人身分經營業務) means a business of chartering or operating ships, but does not include dealing in ships or agency business in connection with shipping;

***charter hire*** (租船費) means any sums earned by or accrued to an owner of a ship under a charter-party in respect of the operation of the ship, but does not include any sums so earned or accrued where that charter-party does not, or does not purport to, extend to the whole of that ship;

***exempt sums*** (豁免款項)—

- (a) means any sums derived from, attributable to, or in respect of—
  - (i) any relevant carriage shipped aboard a registered ship at any location within the waters of Hong Kong and proceeding to sea from that location or any other location within those waters; or
  - (ii) any towage operation undertaken by a registered ship proceeding to sea from any location within the waters of Hong Kong;
- (b) in relation to a person who has a reciprocity status, means any sums derived from, attributable to, or in respect of—
  - (i) any relevant carriage shipped aboard a ship at any location within the waters of Hong Kong and proceeding to sea from that location or any other location within those waters; or
  - (ii) any towage operation undertaken by a ship proceeding to sea from any location within the waters of Hong Kong; (*Replaced 32 of 1998 s. 16*)

***goods*** (貨品) includes livestock and mails;



**goods in transit** (過境貨品), in relation to the shipment of goods aboard a ship, means goods—

- (a) specified in a bill of lading;
- (b) brought to Hong Kong by sea solely for the purpose of the onward carriage of those goods; and
- (c) in respect of which any freight charges for that onward carriage are not paid or payable in Hong Kong;

**operation** (營運), in relation to a ship, includes the use or possession of the ship, and **operated** (運作) shall be construed accordingly;

**owner** (擁有人), in relation to a ship, includes a charterer of the ship under a charter-party;

**passengers** (乘客) does not include re-embarking passengers;

**re-embarking passengers** (重新登船的乘客), in relation to a voyage of a ship, means passengers whose passenger tickets in respect of the voyage do not specify Hong Kong as the place of departure or as the place of destination;

**registered ship** (註冊船舶) means a ship registered under the Merchant Shipping (Registration) Ordinance (Cap. 415);

**relevant carriage** (有關運載), in relation to a ship, means the carriage by sea of passengers or goods, or both passengers and goods, as the case may be, but does not include the carriage of goods in transit;

**relevant limited partnership** (有關的有限責任合夥) means a limited partnership—

- (a) registered in accordance with the provisions of the Limited Partnerships Ordinance (Cap. 37) on or before 2 December 1990 and continuing to be so registered after that date; and

- (b) whose principal assets include any ship, or any interest therein, acquired by or on behalf of that partnership on or before that date;

**relevant sums** (有關款項) means—

- (a) any sums derived from, attributable to, or in respect of—
- (i) any relevant carriage shipped in Hong Kong;
  - (ii) any towage operation undertaken by a ship within the waters of Hong Kong, or any towage operation undertaken by that ship commencing from any location within those waters, as the case may be;
  - (iii) any dredging operation undertaken by a ship within the waters of Hong Kong;
  - (iv) any charter hire in respect of—
    - (A) the operation of a ship navigating solely or mainly within the waters of Hong Kong; or
    - (B) a charter-party where one of the parties thereto is a relevant limited partnership;
- (b) one half of any sums derived from, attributable to, or in respect of, any charter hire in respect of the operation of a ship navigating between any location within the waters of Hong Kong and any location within river trade waters; (*Amended 27 of 2018 s. 32*)

**river trade waters** (內河貿易水域) means the waters contained within river trade limits other than the waters of Hong Kong contained within those limits;

**sea** (海), except in relation to relevant carriage, means the waters of the sea other than those contained within river trade limits;

**ship** (船舶) includes any dynamically supported craft within the meaning of the Shipping and Port Control Ordinance (Cap. 313);

**shipped** (裝運), in the case of passengers, means embarked;

**shipped in Hong Kong** (在香港裝運的), in relation to the shipment of relevant carriage, means shipped aboard a ship at any location within the waters of Hong Kong;

**total shipping income** (總航運入息), in relation to any basis period, means the worldwide income of a person from the person's business as an owner of ships, and indicated as such by that person's accounts for that period;

**total shipping profits** (總航運利潤), in relation to any basis period, means the worldwide profits of a person from the person's business as an owner of ships, and indicated as such by that person's accounts for that period.

*(Replaced 47 of 1992 s. 3. Amended E.R. 1 of 2012)*

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Editorial Note:

\* As to the operation of this section, see 47 of 1992 s. 1(3).

### **23C. Ascertainment of the assessable profits of a resident aircraft-owner**

- (1) Where a person carries on a business as an owner of aircraft and—
  - (a) the business is normally controlled or managed in Hong Kong; or
  - (b) the person is a company incorporated in Hong Kong, that person shall be deemed to be carrying on that business in Hong Kong.
- (2) Where a person is deemed to be carrying on a business as an owner of aircraft in Hong Kong under this section

the assessable profits from that business for any year of assessment shall be the sum bearing the same ratio to the aggregate of the relevant sums earned by or accrued to that person during the basis period for that year of assessment as that person's total aircraft profits for the basis period bear to the aggregate of the total aircraft income earned by or accrued to that person during that basis period for that year of assessment.

- (2A) For the purposes of subsection (2) and the expression “relevant sums” in that subsection and in subsection (5), where any arrangement for relief from double taxation has effect by virtue of section 49 in respect of any person of the description mentioned in subsection (1), the relevant sums earned by or accrued to that person shall include any sums derived from, attributable to, or in respect of any relevant carriage shipped in an arrangement territory, any relevant charter hire attributable to an arrangement territory and charter hire in respect of the operation of an aircraft flying between aerodromes or airports within an arrangement territory. (*Added 19 of 1996 s. 7*)
- (2B) Where any arrangement for relief from double taxation has effect in the circumstances mentioned in subsection (2A), then in determining the relevant sums earned by or accrued to a person for the purposes of that subsection—
- (a) subsections (3) and (4), the definitions *air waybill*, *goods in transit*, *passengers in transit*, *post office delivery bill*, and paragraph (a) of the definition *relevant charter hire* in subsection (5) shall apply as though in those subsections and definitions and in that paragraph, the words “an arrangement territory” were substituted for the expression “Hong Kong”; and
  - (b) the remainder of the definition *relevant charter hire* in subsection (5) shall apply as though in that definition

the words “outside an arrangement territory” were substituted for the words “outside Hong Kong”. (*Added 19 of 1996 s. 7*)

- (2C) The provisions relating to paragraph (a) of the definition **relevant charter hire** in subsection (2B) shall not be construed so as to exclude from the definition **relevant sums** in subsection (5), any sum derived from, or attributable to, or in respect of any charter hire in respect of the operation of an aircraft flying between aerodromes or airports within Hong Kong. (*Added 19 of 1996 s. 7*)
- (2D) Subsection (2A) shall not apply to any sums derived from, attributable to, or in respect of any relevant carriage shipped in an arrangement territory and any relevant charter hire attributable to an arrangement territory where such sums are chargeable to tax in an arrangement territory. (*Added 19 of 1996 s. 7*)
- (3) For the purposes of this section, any sums earned by or accrued to the owner of an aircraft under a charter-party (whether by demise or not) that does not, or does not purport to, extent to the whole of that aircraft shall, to the extent that those sums are derived from, attributable to, or in respect of, any outward flight or flights of that aircraft commencing from any aerodrome or airport within Hong Kong, be deemed to be derived from, attributable to, or in respect of, any relevant carriage shipped in Hong Kong.
- (4) For the purposes of this section, the following sums earned by or accrued to an owner of aircraft under a charter-party otherwise than by demise shall be deemed to be derived from, attributable to, or in respect of, any relevant carriage shipped in Hong Kong—
- (a) in the case of a charter-party which is a flight charter, any sums earned by or accrued to that owner under that charter-party and derived from, attributable to, or in

respect of, any outward flight or flights of that aircraft commencing from any aerodrome or airport within Hong Kong;

- (b) in the case of a charter-party which is a time charter, the sum bearing the same ratio to the aggregate of the sums earned by or accrued to that owner under that charter-party as the total number of flying hours of that aircraft flown in respect of all outward flights of that aircraft commencing from any aerodrome or airport within Hong Kong to the final destinations of those flights bear to the aggregate of the total number of flying hours of that aircraft flown in respect of all flights of that aircraft under that charter-party.

(5) In this section—

***aerodrome or airport*** (機坪或飛機場) includes any helipad;

***air waybill*** (空運路單) has the same meaning as in the Import and Export Ordinance (Cap. 60), but does not include an air waybill which describes any aerodrome or airport in Hong Kong as the aerodrome or airport of departure or the aerodrome or airport of destination;

***aircraft*** (飛機) includes a helicopter;

***\*arrangement territory*** (安排地區), in relation to an arrangement for the relief of double taxation, means any territory outside Hong Kong where an arrangement for the relief of double taxation has effect by virtue of section 49 in respect of any person of the description mentioned in subsection (1), deemed to be carrying on a business as an owner of aircraft in Hong Kong; (*Added 19 of 1996 s. 7*)

***business as an owner of aircraft*** (以飛機擁有人身分經營業務) means a business of chartering or operating aircraft, but does not include dealing in aircraft or agency business in connection with air transport;



**charter hire** (租機費) means any sums earned by or accrued to an owner of an aircraft under a charter-party by demise in respect of the operation of the aircraft, but does not include any sums so earned or accrued where that charter-party does not, or does not purport to, extend to the whole of that aircraft;

**goods** (貨品) includes livestock and mails;

**goods in transit** (過境貨品), in relation to the shipment of goods aboard an aircraft, means goods—

- (a) specified in an air waybill (issued by or on behalf of an owner of aircraft) or a post office delivery bill;
- (b) brought to Hong Kong by air solely for the purpose of the onward carriage of those goods; and
- (c) in respect of which any freight charges for that onward carriage are not paid or payable in Hong Kong;

**operation** (營運), in relation to an aircraft, includes the use or possession of the aircraft;

**owner** (擁有人), in relation to an aircraft, includes a charterer of the aircraft under a charter-party;

**passengers** (乘客) does not include passengers in transit;

**passengers in transit** (過境乘客), in relation to a flight of an aircraft, means passengers—

- (a) whose passenger tickets in respect of the flight do not specify Hong Kong as the place of departure or as the place of destination; or
- (b) who—
  - (i) travel to Hong Kong in any aircraft owned by an owner of aircraft and leave Hong Kong in that or any other aircraft in the same ownership; and



- (ii) not more than 24 hours after travelling to and arriving at Hong Kong, leave Hong Kong for a destination other than the one from which they had travelled;

***permanent establishment*** (永久機構) means a branch, management or other place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of his principal;

***post office delivery bill*** (郵政局交接清單), in relation to the carriage of mails, means any document (whether referred to as an “AV7 bill” or otherwise) which does not describe Hong Kong, or the General Post Office of Hong Kong, as the office of origin or the office of destination in respect of those mails;

***relevant carriage*** (有關運載), in relation to an aircraft, means the carriage by air of passengers or goods, or both passengers and goods, as the case may be, but does not include the carriage of goods in transit;

***relevant charter hire*** (有關的租機費) means charter hire other than charter hire attributable to a permanent establishment maintained outside Hong Kong by a person deemed to be carrying on a business as an owner of aircraft in Hong Kong under this section, but does not include—

- (a) charter hire in respect of the operation of an aircraft flying between aerodromes or airports within Hong Kong; or
- (b) charter hire in respect of the operation of an aircraft flying between any aerodrome or airport within Hong Kong and any aerodrome or airport within Macau;

***relevant sums*** (有關款項) means—

- (a) any sums derived from, attributable to, or in respect of—

- (i) any relevant carriage shipped in Hong Kong;
  - (ii) any relevant charter hire;
  - (iii) any charter hire in respect of the operation of an aircraft flying between aerodromes or airports within Hong Kong;
- (b) one half of any sums derived from, attributable to, or in respect of, any charter hire in respect of the operation of an aircraft flying between any aerodrome or airport within Hong Kong and any aerodrome or airport within Macau;

***shipped*** (裝運), in the case of passengers, means embarked;

***shipped in an arrangement territory*** (在安排地區裝運的), in relation to the shipment of relevant carriage, means shipped aboard an aircraft at any aerodrome or airport within an arrangement territory; (*Added 19 of 1996 s. 7*)

***shipped in Hong Kong*** (在香港裝運的), in relation to the shipment of relevant carriage, means shipped aboard an aircraft at any aerodrome or airport within Hong Kong;

***total aircraft income*** (總空運入息), in relation to any basis period, means the worldwide income of a person from the person's business as an owner of aircraft, and indicated as such by that person's accounts for that period.

***total aircraft profits*** (總空運利潤), in relation to any basis period, means the worldwide profits of a person from the person's business as an owner of aircraft, and indicated as such by that person's accounts for that period.

(*Replaced 47 of 1992 s. 3*)

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Editorial Note:

- \* For application of s. 23C(2A), (2B), (2C) and (2D) in respect of any arrangement with an arrangement territory, please note s. 2 of 19 of 1996, the text of which is reproduced below—

**“2. Application of amendments affected by section 7**

Notwithstanding section 1(2), the amendments to section 23C of the principal Ordinance effected by section 7 of this Ordinance shall, in respect of any arrangement with an arrangement territory as defined in section 23C of the principal Ordinance following its amendment by this Ordinance, be deemed to apply and to have always applied in accordance with the terms specified in that arrangement.”.

**23D. Ascertainment of the assessable profits of a non-resident aircraft-owner**

- (1) Subject to subsection (5), where a person to whom section 23C does not apply carries on a business as an owner of aircraft, and any aircraft owned by that person lands at any aerodrome or airport within Hong Kong, that person shall be deemed to be carrying on that business in Hong Kong.
- (2) Subject to subsections (3) and (4), where a person is deemed to be carrying on a business as an owner of aircraft under this section the assessable profits of that person from that business for any year of assessment shall be the sum bearing the same ratio to the aggregate of the relevant sums earned by or accrued to that person during the basis period for that year of assessment as that person’s total aircraft profits for the basis period bear to the aggregate of the total aircraft income earned by or accrued to that person during that basis period for that year of assessment.
- (3) Subject to subsection (4), where in the opinion of the assessor the provisions in subsection (2) for computing assessable profits cannot for any reason be satisfactorily applied in the case of a person to whom this section applies, the assessable profits of that person for any year of assessment may instead be computed on a fair percentage of the aggregate of the

relevant sums earned by or accrued to that person during the basis period for that year of assessment.

- (4) Notwithstanding section 70, where the assessable profits of any person have been computed for any year of assessment in accordance with subsection (3), the person shall, upon the submission to the assessor of accounts computed in accordance with the provisions of this Part relating to the ascertainment of assessable profits, be entitled to elect at any time within 2 years from the end of the year of assessment that his assessable profits for that year be re-computed in accordance with subsection (2).
- (5) Where the Commissioner is satisfied that the landing at any aerodrome or airport within Hong Kong of any aircraft owned by a person to whom this section applies is of a casual nature, and that further landings at any aerodrome or airport within Hong Kong by that or any other aircraft in the same ownership are improbable, he may in his discretion direct that that person shall be deemed not to be carrying on a business as an owner of aircraft in Hong Kong under this section by reason of the casual landing of that aircraft and accordingly, in the event of his making such a direction, that person shall be so deemed not to be carrying on that business.
- (6) For the purposes of this section, any sums earned by or accrued to the owner of an aircraft under a charter-party (whether by demise or not) that does not, or does not purport to, extend to the whole of that aircraft shall, to the extent that those sums are derived from, attributable to, or in respect of, any outward flight or flights of that aircraft commencing from any aerodrome or airport within Hong Kong, be deemed to be derived from, attributable to, or in respect of, any relevant carriage shipped in Hong Kong.
- (7) For the purposes of this section, the following sums earned by or accrued to an owner of an aircraft under a charter-party

otherwise than by demise shall be deemed to be derived from, attributable to, or in respect of, any relevant carriage shipped in Hong Kong—

- (a) in the case of a charter-party which is a flight charter, any sums earned by or accrued to that owner under that charter-party and derived from, attributable to, or in respect of, any outward flight or flights of that aircraft commencing from any aerodrome or airport within Hong Kong;
- (b) in the case of a charter-party which is a time charter, the sum bearing the same ratio to the aggregate of the sums earned by or accrued to that owner under that charter-party as the total number of flying hours of that aircraft flown in respect of all outward flights of that aircraft commencing from any aerodrome or airport within Hong Kong to the final destinations of those flights bear to the aggregate of the total number of flying hours of that aircraft flown in respect of all flights of that aircraft under that charter-party.

(8) In this section—

***aerodrome or airport*** (機坪或飛機場) includes any helipad;

***air waybill*** (空運路單) has the same meaning as in the Import and Export Ordinance (Cap. 60), but does not include an air waybill which describes any aerodrome or airport in Hong Kong as the aerodrome or airport of departure or the aerodrome or airport of destination;

***aircraft*** (飛機) includes a helicopter;

***business as an owner of aircraft*** (以飛機擁有人身分經營業務) means a business of chartering or operating aircraft, but does not include dealing in aircraft or agency business in connection with air transport;

**charter hire** (租機費) means any sums earned by or accrued to an owner of an aircraft under a charter-party by demise in respect of the operation of the aircraft, but does not include any sums so earned or accrued where that charter-party does not, or does not purport to, extend to the whole of that aircraft;

**goods** (貨品) includes livestock and mails;

**goods in transit** (過境貨品), in relation to the shipment of goods aboard an aircraft, means goods—

- (a) specified in an air waybill (issued by or on behalf of an owner or aircraft) or a post office delivery bill;
- (b) brought to Hong Kong by air solely for the purpose of the onward carriage of those goods; and
- (c) in respect of which any freight charges for that onward carriage are not paid or payable in Hong Kong;

**operation** (營運), in relation to an aircraft, includes the use or possession of the aircraft;

**owner** (擁有人), in relation to an aircraft, includes a charterer of the aircraft under a charter-party;

**passengers** (乘客) does not include passengers in transit;

**passengers in transit** (過境乘客), in relation to a flight of an aircraft, means passengers—

- (a) whose passenger tickets in respect of the flight do not specify Hong Kong as the place of departure or as the place of destination; or
- (b) who—
  - (i) travel to Hong Kong in any aircraft owned by an owner of aircraft and leave Hong Kong in that or any other aircraft in the same ownership; and



- (ii) not more than 24 hours after travelling to and arriving at Hong Kong, leave Hong Kong for a destination other than the one from which they had travelled;

***permanent establishment*** (永久機構) means a branch, management or other place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of his principal;

***post office delivery bill*** (郵政局交接清單), in relation to the carriage of mails means any document (whether referred to as an “AV7 bill” or otherwise) which does not describe Hong Kong, or the General Post Office of Hong Kong, as the office of origin or the office of destination in respect of those mails;

***relevant carriage*** (有關運載), in relation to an aircraft, means the carriage by air of passengers or goods, or both passengers and goods, as the case may be, but does not include the carriage of goods in transit;

***relevant charter hire*** (有關的租機費) means charter hire attributable to a permanent establishment maintained in Hong Kong by a person deemed to be carrying on a business as an owner of aircraft in Hong Kong under this section, but does not include—

- (a) charter hire in respect of the operation of an aircraft flying between aerodromes or airports within Hong Kong; or
- (b) charter hire in respect of the operation of an aircraft flying between any aerodrome or airport within Hong Kong and any aerodrome or airport within Macau;

***relevant sums*** (有關款項) means—

- (a) any sums derived from, attributable to, or in respect of—



- (i) any relevant carriage shipped in Hong Kong;
  - (ii) any relevant charter hire;
  - (iii) any charter hire in respect of the operation of an aircraft flying between aerodromes or airports within Hong Kong;
- (b) one half of any sums derived from, attributable to, or in respect of, any charter hire in respect of the operation of an aircraft flying between any aerodrome or airport within Hong Kong and any aerodrome or airport within Macau;

*shipped* (裝運), in the case of passengers, means embarked;

*shipped in Hong Kong* (在香港裝運的), in relation to the shipment of relevant carriage, means shipped aboard an aircraft at any aerodrome or airport within Hong Kong;

*total aircraft income* (總空運入息), in relation to any basis period, means the worldwide income of a person from the person's business as an owner of aircraft, and indicated as such by that person's accounts for that period;

*total aircraft profits* (總空運利潤), in relation to any basis period, means the worldwide profits of a person from the person's business as an owner of aircraft, and indicated as such by that person's accounts for that period.

(Added 47 of 1992 s. 3)

**23E. Alternative computation of “total shipping profits” and “total aircraft profits”**

Where total shipping profits within the meaning of section 23B(12) or total aircraft profits within the meaning of section 23C(5) or 23D(8), as the case may be, have been computed on a basis which differs materially from that provided for in this Part for the ascertainment of assessable profits in respect of which a person is

chargeable to tax, those profits may be adjusted so as to correspond as nearly as may be to the sum that would have been arrived at had they been computed in accordance with the provisions of this Part relating to the ascertainment of assessable profits in respect of which a person is chargeable to tax.

*(Added 47 of 1992 s. 3)*

**24. Clubs, trade associations, etc.**

- (1) Where a person carries on a club or similar institution which receives from its members not less than half of its gross receipts on revenue account (including entrance fees and subscriptions), such person shall be deemed not to carry on a business; but where less than half of its gross receipts are received from members, the whole of the income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and such person shall be chargeable in respect of the profits therefrom. *(Amended 36 of 1955 s. 23; 49 of 1956 s. 22)*
- (2) Where a person carries on a trade, professional or business association in such circumstances that more than half its receipts by way of subscriptions are from persons who claim or would be entitled to claim that such sums were allowable deductions for the purposes of section 16, such person shall be deemed to carry on a business, and the whole of the income of such association from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from business, and such person shall be chargeable in respect of the profits therefrom. *(Amended 36 of 1955 s. 34; 2 of 1971 s. 17; 40 of 1972 s. 3)*
- (3) In this section, **members** (會員) means those persons entitled to vote at a general meeting of the club, or similar institution,

or trade, professional or business association. *(Replaced 36 of 1955 s. 34. Amended 40 of 1972 s. 3)*

**25. Deduction of property tax from profits tax**

Where property tax is payable for any year of assessment under Part 2 in respect of any land or buildings owned by a person carrying on a trade, profession or business, any profits tax payable by such person in respect of that year of assessment shall be reduced by a sum not exceeding the amount of such property tax paid by him:

Provided that—

- (a) no reduction shall be allowed unless either the profits derived from such property are part of the profits of the trade, profession or business carried on by such person or the property is occupied or used by him for the purposes of producing profits in respect of which he is chargeable to tax under this Part; *(Replaced 11 of 1961 s. 5. Amended 35 of 1965 s. 14)*
- (b) if the amount of property tax paid for a year of assessment exceeds the profits tax payable, the amount so paid in excess shall be refunded in accordance with the provisions of section 79; *(Replaced 11 of 1961 s. 5)*
- (c) *(Repealed 19 of 1996 s. 8)*

*(Replaced 3 of 1949 s. 9. Amended E.R. 1 of 2012)*

**26. Exclusion of certain dividends and profits from the assessable profits of other persons**

For the purposes of this Part—

- (a) a dividend from a corporation which is chargeable to tax under this Part shall not be included in the profits in respect of which any other person is chargeable to tax under this Part; and

- (b) save as otherwise provided no part of the profits or losses of a trade, profession or business carried on by a person who is chargeable to tax under this Part shall be included in ascertaining the profits in respect of which any other person is chargeable to tax under this Part. *(Added 2 of 1971 s. 18)*

*(Replaced 16 of 1951 s. 5. Amended 28 of 1964 s. 10; 2 of 1971 s. 18; 7 of 1975 s. 25; 62 of 1975 s. 2)*

**26A. Exclusion of certain profits from tax<sup>#</sup>**

- (1) For the purposes of this Part—
- (a) interest paid or payable on a Tax Reserve Certificate issued by the Commissioner;
  - (b) interest paid or payable on a bond issued under the Loans Ordinance (Cap. 61) or the Loans (Government Bonds) Ordinance (Cap. 64); *(Amended 48 of 1991 s. 2)*
  - (c) any profit on the sale or other disposal or on the redemption on maturity or presentment of such a bond; *(Amended 48 of 1991 s. 2)*
  - (ca) additional payments paid or payable on an alternative bond issued in connection with a borrowing by the Government within the meaning of section 2A(2) of the Loans Ordinance (Cap. 61); *(Added 7 of 2014 s. 8)*
  - (cb) any profit on the sale or other disposal of, or on the receipt of redemption payment for, such an alternative bond; *(Added 7 of 2014 s. 8)*
  - (d) interest paid or payable on an Exchange Fund debt instrument; *(Added 9 of 1990 s. 2. Amended 17 of 1992 s. 2)*

- (e) any profit on the sale or other disposal or on the redemption on maturity or presentment of such an Exchange Fund debt instrument; (*Added 9 of 1990 s. 2*)
- (f) interest paid or payable on a Hong Kong dollar denominated multilateral agency debt instrument; (*Added 17 of 1992 s. 2. Amended 34 of 2003 s. 4*)
- (g) any profit on the sale or other disposal or on the redemption or maturity or presentment of such a Hong Kong dollar denominated multilateral agency debt instrument; (*Added 17 of 1992 s. 2. Amended 34 of 2003 s. 4*)
- (h) interest paid or payable on a long term debt instrument; and (*Added 34 of 2003 s. 4*)
- (i) any gain or profit on the sale or other disposal or on the redemption on maturity or presentment of a long term debt instrument, (*Added 34 of 2003 s. 4*)

shall not be included in the profits of any corporation or other person chargeable to tax under this Part. (*Amended 9 of 1990 s. 2*)

- (1A) (a) For the purposes of this Part, there shall not be included in the profits to which a person is chargeable to tax under this Part any sums received or accrued in respect of a specified investment scheme by or to the person as—
  - (i) a person chargeable to tax under this Part in respect of a mutual fund, unit trust or similar investment scheme that is authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (Cap. 571); or (*Replaced 5 of 2002 s. 407*)
  - (ii) a person chargeable to tax under this Part in respect of a mutual fund, unit trust or similar investment

scheme where the Commissioner is satisfied that the mutual fund, unit trust or investment scheme is a bona fide widely held investment scheme which complies with the requirements of a supervisory authority within an acceptable regulatory regime.  
*(Replaced 5 of 2002 s. 407)*

(iii)-(v) *(Repealed 5 of 2002 s. 407)*

(b) For the purposes of paragraph (a), a specified investment scheme is an investment scheme carried on—

(i) for the purposes for which the investment scheme was stated to be carried on in the constitutive documents approved in respect of the investment scheme by—

(A) in the case of paragraph (a)(i), the Commission;

(B) in the case of paragraph (a)(ii), the supervisory authority within the acceptable regulatory regime; and

(ii) in accordance with—

(A) in the case of paragraph (a)(i), the requirements of the Commission;

(B) in the case of paragraph (a)(ii), the requirements of the supervisory authority within the acceptable regulatory regime.  
*(Replaced 32 of 1998 s. 17. Amended 5 of 2002 s. 407)*

(1B) In relation to a long term debt instrument issued on or after 25 March 2011, subsection (1) does not apply in respect of—  
*(Amended 32 of 2018 s. 20)*

(a) any interest referred to in paragraph (h) of that subsection; or

(b) any gain or profit referred to in paragraph (i) of that subsection,

if, at the time the interest or gain or profit is received by or accrued to any corporation or other person, that corporation or person is an associate (as defined in section 14A(4)) of the issuer of the debt instrument. (*Added 4 of 2011 s. 4*)

(2) In this section—

**additional payments** (額外付款) has the same meaning as it has in Schedule 17A; (*Added 7 of 2014 s. 8*)

**Commission** (證監會) means the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571); (*Added 32 of 1998 s. 17. Amended 5 of 2002 s. 407*)

**computer** (電腦) means any device for storing, processing or retrieving information;

**Exchange Fund** (外匯基金) means the fund of that name established under section 3(1) of the Exchange Fund Ordinance (Cap. 66);

**Exchange Fund debt instrument** (外匯基金債務票據) means any instrument (whether described as an “Exchange Fund Bill” or otherwise) issued under the Exchange Fund Ordinance (Cap. 66) evidencing the deposit of a sum of money in Hong Kong currency with the Monetary Authority for the account of the Exchange Fund, being an instrument which recognizes an obligation to pay a stated amount, with or without interest, and which is transferable in a manner specified by that Authority; (*Amended 82 of 1992 s. 9*)

**instrument** (票據) includes—

- (a) every written document;
- (b) any information recorded in the form of an entry in a book of account; and



- (c) any information which is recorded (whether by means of a computer or otherwise) in a non-legible form but is capable of being reproduced in a legible form;

**long term debt instrument** (長期債務票據) means a debt instrument as defined in section 14A that—

- (a) is issued on or after 5 March 2003 but before 1 April 2018; (*Amended 32 of 2018 s. 20*)
- (b) has an original maturity of not less than 7 years or is undated; and
- (c) cannot be redeemed within 7 years from the date of its issue; (*Added 34 of 2003 s. 4*)

**multilateral agency debt instrument** (多邊代理機構債務票據) means an instrument specified in Part 1 of Schedule 6 issued by a body specified in Part 2 of that Schedule; (*Added 17 of 1992 s. 2*)

**mutual fund** (互惠基金) means any arrangement made for the purpose, or having the effect, of providing facilities for investment in shares in a corporation which is or hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities and which is offering for sale or has outstanding any redeemable shares of which it is the issuer; (*Added 5 of 2002 s. 407*)

**redemption payment** (贖債付款) has the same meaning as it has in Schedule 17A; (*Added 7 of 2014 s. 8*)

**unit trust** (單位信託) means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever. (*Replaced 5 of 2002 s. 407*)

- (3) The Legislative Council may by resolution amend Schedule 6.  
*(Added 17 of 1992 s. 2)*
- (4) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section. *(Added 10 of 2013 s. 10)*  
*(Replaced 62 of 1975 s. 3. Amended 32 of 1998 s. 17; 5 of 2002 s. 407; E.R. 1 of 2012)*

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Editorial Note:

# The amendments made by 34 of 2003 to section 26A(1) and (2) apply in relation to the year of assessment commencing on 1 April 2003 and to all subsequent years of assessment. *(Please see 34 of 2003 s. 2)*

**26AB. Threshold requirements relating to concession condition provisions**

- (1) The Commissioner may, by notice published in the Gazette, prescribe a threshold requirement for determining whether, for the purposes of a concession condition provision, an activity producing—
- (a) the assessable profits of a corporation that fall within section 14B(1)(a) or (b), 14D(1)(a), (b) or (c), 14H(1) or 14J(1); or
- (b) the exempt sums mentioned in section 23B(4AA),  
is carried out in Hong Kong by the corporation or the person concerned (*taxpayer*) or is arranged by the taxpayer to be carried out in Hong Kong for a year of assessment or a basis period.
- (2) If a threshold requirement is prescribed for an activity, the activity is not, for the purposes of a concession condition provision, considered to be carried out in Hong Kong by

the taxpayer or arranged by the taxpayer to be carried out in Hong Kong for the year of assessment or the basis period unless the threshold requirement is met.

- (3) To avoid doubt, the fact that the threshold requirement is not met for the purposes of subsection (2) does not imply that the assessable profits or the exempt sums under subsection (1)(a) or (b) do not arise in or are not derived from Hong Kong.
- (4) In this section—

***concession condition provision*** (寬減條件條文) means section 14B(2)(a), 14D(5)(a)(ii), 14H(4)(a)(ii), 14J(5)(a)(ii) or 23B(4AA);

**Note (with no legislative effect)**—

Section 14B(2)(a), 14D(5)(a)(ii), 14H(4)(a)(ii), 14J(5)(a)(ii) or 23B(4AA) imposes a condition for activities producing the assessable profits or the exempt sums concerned to be carried out in Hong Kong or arranged to be carried out in Hong Kong. The condition must be met in order for the tax concession under section 14B(1), 14D(1), 14H(1), 14J(1) or 23B(4AA) to apply.

***threshold requirement*** (門檻要求), in relation to an activity, means the level of the activity in Hong Kong as measured by various indicators, such as—

- (a) the number of full time employees in Hong Kong who carry out the activity and have the qualifications necessary for doing so; and
- (b) the amount of operating expenditure incurred in Hong Kong for the activity.

*(Added 27 of 2018 s. 33)*

#### **26AC. Part 8AA applies**

Part 8AA applies for the purposes of calculation of profits tax.

Inland Revenue Ordinance

Part 4

4-534

Section 26AC

Cap. 112

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*(Added 27 of 2018 s. 16)*

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## Part 4A

### Concessionary Deductions

*(Part 4A added 31 of 1998 s. 12)*

#### 26B. Concessionary deductions, general provisions

- (1) This Part prescribes the deductions which shall be allowable to persons chargeable to tax under Part 3 or 7 and the circumstances in which such deductions shall be so allowable.
- (2) Every person who claims a deduction under this Part shall make his claim in the specified form and the person shall be allowed a deduction only if the claim contains such particulars and is supported by such proof as the Commissioner may require.
- (3) In this Part—

**deduction** (扣除) means a deduction allowable under this Part;

**person** (人) means a person chargeable to tax under Part 3 or 7, as the case may be.

*(Amended E.R. 1 of 2012)*

#### 26C. Approved charitable donations (Part 4A)\*

*(Amended 21 of 2008 s. 5)*

- (1) Subject to the other provisions of this section, where a person or his or her spouse, not being a spouse living apart from the person, makes any approved charitable donations during any year of assessment, a deduction in respect of the aggregate amount of the approved charitable donations shall be allowable to the person for that year of assessment, if in any case such aggregate amount is not less than \$100.

- (2) (a) Subject to paragraph (b), where a person is chargeable to tax under Part 3, no deduction shall be allowable to the person under subsection (1) for any year of assessment in respect of—
- (i) any sum which is allowable as a deduction under Part 4;
  - (ii) any sum by which the aggregate amount of the approved charitable donations within the meaning of subsection (1) is in excess of the percentage specified in subsection (2A) of— (*Amended 24 of 2003 s. 6*)
    - (A) subject to sub-subparagraph (B), the assessable income of the person for that year of assessment as reduced by the deductions provided for under section 12(1)(a) and (b) for that year of assessment; or
    - (B) where the person and his or her spouse have made an election under section 10(2) for that year of assessment, the aggregate of their assessable incomes for that year of assessment as reduced in each case by the deductions provided for under section 12(1)(a) and (b) for that year of assessment.
- (b) Where a person has made an election under section 41 in respect of any year of assessment, no deduction shall be allowable to the person under subsection (1) for that year of assessment in respect of—
- (i) any sum which is allowable as a deduction under Part 4;
  - (ii) any sum which has been allowed as a deduction to his or her spouse against the total income of that spouse under Part 7; (*Amended 32 of 2018 s. 5*)

- (iii) any sum by which the aggregate amount of the approved charitable donations within the meaning of subsection (1) is, when aggregated with any sum that is allowable as a deduction under section 16D for that year of assessment, in excess of the percentage specified in subsection (2A) of the total amount of— (*Amended 24 of 2003 s. 6*)
- (A) the total income of the person for that year of assessment;
- (B) any sum which is allowable as a deduction under section 16D for that year of assessment; and
- (C) any sum which is allowable as a deduction under section 12(1)(e) for that year of assessment.
- (2A) The percentages specified for the purposes of subsection (2)(a)(ii) and (b)(iii) shall be—
- (a) for any year of assessment up to and including the year of assessment commencing on 1 April 2002, 10%;
- (b) for the year of assessment commencing on 1 April 2003 or any subsequent year of assessment up to and including the year of assessment commencing on 1 April 2007, 25%; (*Replaced 21 of 2008 s. 5*)
- (c) for any year of assessment commencing on or after 1 April 2008, 35%. (*Added 21 of 2008 s. 5*)
- (Added 24 of 2003 s. 6)*
- (3) (a) Subject to paragraph (b), the same approved charitable donation shall not be allowable as a deduction under this section in ascertaining the net chargeable income or the total income of more than one person.



- (b) Where a deduction of the same approved charitable donation is claimed or allowed in ascertaining the net chargeable income or the total income of more than one person, section 33(2) to (4) shall apply with the necessary modifications to such a deduction as it does to a dependent parent allowance, a dependent grandparent allowance, a dependent brother or dependent sister allowance, a child allowance or a disabled dependant allowance; and section 33 shall, where this paragraph applies, be construed as if a reference therein to such an allowance included, in the case of an approved charitable donation so claimed, a reference to an allowance to which section 33(2) applies and, in the case of an approved charitable donation so allowed, a reference to an allowance to which section 33(3) applies.

*(Amended E.R. 1 of 2012)*

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Editorial Note:

- \* The amendment made by Part 2 of Ord. No. 32 of 2018 to this section applies in relation to all years of assessment commencing on or after 1 April 2018. (Please see 32 of 2018 s. 3)

## **26D. Elderly residential care expenses**

- (1) Subject to the other provisions of this section, where a person or his or her spouse, not being a spouse living apart from the person, pays during any year of assessment any residential care expenses in respect of a parent or grandparent of the person who at any time in that year of assessment is aged 60 or more or, being under the age of 60, is eligible to claim an allowance under the Government's Disability Allowance Scheme, a deduction in respect of the residential care expenses shall be allowable to that person for that year of assessment.

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- (2) A deduction under subsection (1) is allowable to a person in respect of each parent or grandparent of the person, in so far as any residential care expenses described in that subsection have been paid by the person or his or her spouse in respect of that parent or grandparent.
- (3) A deduction allowable to a person under subsection (1) in respect of each parent or grandparent of the person for any year of assessment shall not exceed the amount specified in Schedule 3C in relation to that year of assessment.
- (4) (a) Subject to paragraph (b), a deduction in respect of any residential care expenses shall not be allowable under this section to more than one person for any year of assessment in respect of the same parent or grandparent.
- (b) Where a deduction in respect of any residential care expenses is claimed by or allowed to more than one person for any year of assessment in respect of the same parent or grandparent, section 33(2) to (4) shall apply with the necessary modifications to such a deduction as it does to a dependent parent allowance, a dependent grandparent allowance, a dependent brother or dependent sister allowance, a child allowance or a disabled dependant allowance; and section 33 shall, where this paragraph applies, be construed as if a reference therein to such an allowance included, in the case of any residential care expenses so claimed, a reference to an allowance to which section 33(2) applies and, in the case of any residential care expenses so allowed, a reference to an allowance to which section 33(3) applies.
- (5) In this section—  
***parent or grandparent*** (父母或祖父母), in relation to any person, means—

- (a) a parent or parent of his or her spouse; or
- (b) a grandparent or grandparent of his or her spouse;

***residential care expenses*** (住宿照顧開支) means any expenses payable in respect of the residential care received at a residential care home and paid to that residential care home or any other person acting on its behalf;

***residential care home*** (院舍) means any premises— (*Amended 12 of 2011 s. 26*)

- (a) in respect of which a licence issued or renewed under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) is for the time being in force;
- (b) in respect of which a certificate of exemption issued or renewed under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) is for the time being in force; (*Amended 12 of 2011 s. 26*)
- (c) to which the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) does not apply by virtue of section 3 of that Ordinance; (*Replaced 12 of 2011 s. 26*)
- (d) which is a nursing home in respect of which any person has been registered under section 3 of the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165); (*Amended 12 of 2011 s. 26*)
- (e) in respect of which a licence issued or renewed under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) is for the time being in force; or (*Added 12 of 2011 s. 26*)
- (f) in respect of which a certificate of exemption issued or renewed under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) is for the time being in force. (*Added 12 of 2011 s. 26*)

**26E. Home loan interest**

- (1) Subject to the other provisions of this section and to section 26F, where a person pays during any year of assessment any home loan interest for the purposes of a home loan obtained in respect of a dwelling which is used at any time in that year of assessment by the person exclusively or partly as his place of residence, a deduction in respect of the home loan interest shall be allowable to that person for that year of assessment.
- (2) (a) Subject to paragraphs (b) and (c) and subsection (3), a deduction allowable to a person under subsection (1) in respect of any home loan interest paid by the person during any year of assessment shall be—
  - (i) (A) where the dwelling is used by the person exclusively as his place of residence during the whole of that year of assessment, the amount of the home loan interest paid; or
  - (B) in any other case, such amount (whether representing the full amount of the home loan interest paid or any part thereof) as is reasonable in the circumstances of the case; or
  - (ii) the amount specified in Schedule 3D in relation to that year of assessment,  
whichever is of the lesser amount.
- (b) For the purposes of this section, where a dwelling is held by a person otherwise than as a sole owner, the amount of the home loan interest paid referred to in paragraph (a)(i) shall be regarded as having been paid—
  - (i) where the dwelling is held by the person as a joint tenant, by the joint tenants each in proportion to the number of the joint tenants; or

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- (ii) where the dwelling is held by the person as a tenant in common, by the tenants in common each in proportion to his or her share in the ownership in the dwelling.
- (c) For the purposes of paragraph (a), where a dwelling is held by a person otherwise than as a sole owner, the relevant amount specified in Schedule 3D referred to in paragraph (a)(ii) shall be regarded as having been reduced—
- (i) where the dwelling is held by the person as a joint tenant, in proportion to the number of the joint tenants; or
- (ii) where the dwelling is held by the person as a tenant in common, between the tenants in common each in proportion to his or her share in the ownership in the dwelling.
- (3) (a) Where any home loan interest is paid by a person during any year of assessment for the purposes of a home loan obtained in respect of a dwelling which is used at any time in that year of assessment by that person exclusively or partly as his place of residence, but the loan was not applied wholly for the acquisition of the dwelling, the deduction allowable to the person under subsection (1) for that year of assessment in respect of the home loan interest paid shall be such part of the amount of the home loan interest paid as is reasonable in the circumstances of the case.
- (b) Where any home loan interest is paid by a person during any year of assessment for the purposes of a home loan obtained in respect of a dwelling which is used at any time in that year of assessment by that person exclusively or partly as his place of residence, but the person has paid during that year of assessment

any other home loan interest for the purposes of a home loan obtained in respect of any other dwelling which is also used at any time in that year of assessment by that person exclusively or partly as his place of residence, a deduction shall, subject to subsection (4), be allowable to the person under subsection (1) for that year of assessment in respect of both the first-mentioned home loan interest and the second-mentioned home loan interest, and the deduction so allowable shall be such amount (whether representing the full amount of the aggregate of the respective amounts of the first-mentioned home loan interest and the second-mentioned home loan interest or any part thereof) as is reasonable in the circumstances of the case.

- (4) A deduction shall not be allowable under this section to a person in respect of any home loan interest paid during any year of assessment for the purposes of a home loan obtained in respect of a dwelling where—
- (a) the sum representing the home loan interest is allowable as a deduction under any other section of this Ordinance;
  - (b) any other home loan interest paid in respect of any other dwelling has been allowed to the person as a deduction for that year of assessment under this section other than by virtue of subsection (3)(b); (*Amended 21 of 2012 s. 3*)
  - (c) a deduction has been allowed to the person under this section, whether in respect of the same dwelling or in respect of any other dwelling, for 20 years of assessment (whether continuous or not); or (*Amended 9 of 2004 s. 3; 13 of 2006 s. 2; 21 of 2012 s. 3; 3 of 2017 s. 3*)
  - (d) that year of assessment is earlier than the year of assessment commencing on 1 April 2012 and the following occur—

- (i) a deduction has been allowed to the person under this section, whether in respect of the same dwelling or in respect of any other dwelling, for 10 years of assessment (whether continuous or not); and
  - (ii) those 10 years of assessment are all earlier than the year of assessment commencing on 1 April 2012.  
*(Added 21 of 2012 s. 3)*
- (5) For the purposes of subsection (4)(c) and (d), where a deduction allowable to a person under this section has been taken into account in any year of assessment in ascertaining— *(Amended 21 of 2012 s. 3)*
  - (a) subject to paragraphs (b) and (c), the net chargeable income of the person;
  - (b) where the person and his or her spouse have made an election under section 10(2), the aggregated net chargeable income of the person and his or her spouse; or
  - (c) where the person or the person and his or her spouse have made an election under section 41, the amount of the assessment made under section 42A(1) in respect of the person or the person and his or her spouse,

the person shall be deemed to have been allowed the deduction under this section for that year of assessment.
- (6)
  - (a) A claim by a person to a deduction allowable to him under this section may only be revoked by the person by notice in writing to the Commissioner within 6 months after the date on which the deduction is allowed to him under this section.
  - (b) Where a claim is revoked under paragraph (a), the claim shall be deemed not to have been made.



- (6A) If a person revokes a claim under subsection (6) after 6 years from the expiration of the year of assessment to which the claim relates, an assessor may, within 2 years after the revocation, make an additional assessment of the tax payable in consequence of the revocation and for this purpose, section 60(1) applies to the additional assessment as if it were an assessment made under that section. (*Added 4 of 2010 s. 7*)
- (7) The Commissioner may, for the purposes of this section, approve in writing any organization or association as a recognized organization or association.
- \* (8) For the purposes of this section, where a person pays any home loan interest for the purposes of a home loan obtained in respect of a dwelling which is used by that person exclusively or partly as his place of residence in the circumstances described in subsection (1), and the home loan was applied also for the acquisition of a car parking space, the car parking space shall be deemed— (*Amended 12 of 2004 s. 8*)
- (a) to be part and parcel of the dwelling; and
  - (b) to be used by that person in the same manner and to the same extent as the dwelling is used as his place of residence.
- (9) In this section—
- dwelling** (住宅) means any building or any part of a building—
- (a) which is designed and constructed for use exclusively or partly for residential purposes; and
  - (b) the rateable value of which is separately estimated under section 10 of the Rating Ordinance (Cap. 116);
- home loan** (居所貸款), in relation to a person claiming a deduction under this section for any year of assessment, means a loan of money which is—

- (a) applied wholly or partly for the acquisition of a dwelling which—
  - (i) during any period of time in that year of assessment is held by the person as a sole owner, or as a joint tenant or tenant in common; and
  - (ii) during that period of time is used by the person exclusively or partly as his place of residence; and
- (b) secured during that period of time by a mortgage or charge over that dwelling or any other property in Hong Kong;

**home loan interest** (居所貸款利息), in relation to a person claiming a deduction in respect of a dwelling under this section, means interest paid by the person as a sole owner, or as a joint tenant or tenant in common of the dwelling for the purposes of a home loan to—

- (a) the Government;
- (b) a financial institution;
- (c) a credit union registered under the Credit Unions Ordinance (Cap. 119);
- (d) a money lender licensed under the Money Lenders Ordinance (Cap. 163);
- (e) the Hong Kong Housing Society;
- (f) an employer of the person; or
- (g) any recognized organization or association;

**place of residence** (居住地方), in relation to a person who has more than one place of residence, means his principal place of residence;

**recognized organization or association** (認可組織或協會) means any organization or association approved as such by the Commissioner under subsection (7).

- (10) To avoid doubt, if a person—
- (a) has been allowed a deduction under the provisions of this section—
    - (i) in force immediately before 1 April 2003;
    - (ii) in force immediately before 1 April 2005;  
*(Amended 3 of 2017 s. 3)*
    - (iii) in force immediately before 1 April 2012; or
    - (iv) in force immediately before 1 April 2017; or *(Added 3 of 2017 s. 3)*
  - (b) has been regarded as having been allowed such a deduction by virtue of section 26F(2)(b),  
for any year of assessment, that year of assessment is regarded as a year of assessment for which a deduction has been allowed for the purposes of subsection (4)(c) and (d).  
*(Replaced 21 of 2012 s. 3)*

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Editorial Note:

\*The amendment made by 12 of 2004 to this subsection applies in relation to the year of assessment 1998/99 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(2))

## **26F. Nomination for purposes of section 26E**

- (1) Where—
- (a) a deduction is allowable to a person under section 26E for any year of assessment; and
  - (b) the person has no income, property or profits chargeable to tax under this Ordinance for that year of assessment,  
the person may nominate his or her spouse, being a spouse not living apart from the person, to claim the deduction for that year of assessment.

- (2) Where a person has in accordance with subsection (1) made a nomination in respect of a deduction allowable to him under section 26E for any year of assessment—
- (a) (i) the deduction shall cease to be allowable to that person; and
  - (ii) the deduction shall be allowable to the spouse of that person; and
  - (b) subject to subsection (4)(b), the person but not that spouse shall, for the purposes of section 26E(4)(c) and (d), be regarded as having been allowed the deduction under section 26E for that year of assessment. (*Amended 21 of 2012 s. 4*)
- (3) Where a person has in accordance with subsection (1) made a nomination in respect of a deduction allowable to the person under section 26E for any year of assessment, and the deduction has been allowed to his or her spouse for that year of assessment, the Commissioner shall give written notification thereof to the person making the nomination.
- (4) (a) A nomination made by a person under subsection (1) in respect of a deduction allowable to him under section 26E may only be revoked by the person by notice in writing to the Commissioner within 6 months after the date on which the Commissioner has given notification to the person in respect of the deduction in accordance with subsection (3).
- (b) Where a nomination is revoked under paragraph (a), the nomination shall be deemed not to have been made.

**26G. Contributions to recognized retirement schemes\***

- (1) Subject to the other provisions of this section, where a person pays any contributions to a recognized retirement scheme during any year of assessment, a deduction in respect of the

contributions shall be allowable to that person for that year of assessment.

- (2) A deduction shall not be allowable to a person under subsection (1) for any year of assessment—
- (a) in respect of any sum which is allowable as a deduction under Part 4;
  - (b) in excess of the amount specified in Schedule 3B in relation to that year of assessment.
- (3) Subject to subsection (2), the amount of the deduction allowable under this section in respect of any contributions to a recognized retirement scheme, in relation to a person, shall be—
- (a) in the case of a recognized occupational retirement scheme—
    - (i) the amount of the contributions paid by the person as an employee to the scheme; or
    - (ii) the amount of the mandatory contributions that the person would have been required to pay as an employee if at all times whilst an employee during the year of assessment in question he had contributed as a participant in a mandatory provident fund scheme.
- whichever is of the lesser amount;
- (b) in the case of a mandatory provident fund scheme, the amount of the mandatory contributions paid by the person as an employee.

*(Amended E.R. 1 of 2012)*

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Editorial Note:

## Inland Revenue Ordinance

Part 4A

4A-32

Section 26G

Cap. 112

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\*Section 26G applies in relation to the year of assessment commencing on 1 April 2000 and to all subsequent years of assessment. (31 of 1998 s. 2(2); L.N. 175 of 2000)

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## Part 5

### Allowances

*(Part 5 added 43 of 1989 s. 10)*

#### 27. Allowances, general provisions

- (1) This Part prescribes the allowances which shall be granted to persons chargeable to tax under Parts 3 and 7 and the circumstances in which such allowances are grantable.
- (2) Every person who claims an allowance under this Part shall make his claim in the specified form and an allowance shall be granted only if the claim contains such particulars and is supported by such proof as the Commissioner may require.
- (3) In this Part—

***adopted*** (領養) means adopted in any manner recognized by the laws of Hong Kong;

***allowance*** (免稅額) means an allowance granted under this Part;

***child*** (子女) means any child of a person chargeable to tax or of his or her spouse or former spouse whether or not born in wedlock and includes the adopted or step child of either or both of them;

***person*** (人) means a person chargeable to tax under Part 3 or, as the case may be, Part 7;

***prescribed amount*** (訂明款額) and ***prescribed percentage*** (訂明百分率) mean the amount and percentage specified in the second column of Schedule 4 in relation to the provisions of this Part specified in the first column of that Schedule.  
*(Amended 48 of 1995 s. 6)*

*(Amended E.R. 1 of 2012)*



**28. Basic allowance**

- (1) The following allowance (*basic allowance*) shall be granted in any year of assessment—
  - (a) an allowance of the prescribed amount;
  - (b) *(Repealed 31 of 1998 s. 13)*
- (2) No person may be granted—
  - (a) both a basic allowance and a married person's allowance; or
  - (b) a basic allowance where his or her spouse has claimed a married person's allowance.

**28A. Personal disability allowance**

An allowance of the prescribed amount is to be granted in any year of assessment to a person who is eligible to claim an allowance under the Government's Disability Allowance Scheme in the year of assessment.

*(Added 20 of 2018 s. 3)*

**29. Married person's allowance\***

- (1) An allowance (*married person's allowance*) is to be granted to a person in any year of assessment if—
  - (a) the person is, at any time during the year of assessment, married; and
  - (b) either of the following conditions is met—
    - (i) the person's spouse—
      - (A) did not have assessable income in the year of assessment; and
      - (B) has not made an election under section 41(1) for the year of assessment;

- (ii) the person and the spouse have made an election under section 10(2) for the year of assessment.  
*(Replaced 32 of 2018 s. 6)*
- (1A) A married person's allowance is to be granted to a person and the person's spouse in any year of assessment if—
- (a) their marriage subsists at any time during the year of assessment; and
  - (b) they have jointly elected to be personally assessed under Part 7. *(Added 32 of 2018 s. 6)*
- (2) Where an election has been made under section 10(2) a married person's allowance shall be granted to the person chargeable to salaries tax under section 10(3).
- (3) A married person's allowance grantable under this section is—
- (a) an allowance of the prescribed amount;
  - (b) *(Repealed 31 of 1998 s. 14)*
- (4) Where husband and wife are living apart a married person's allowance shall only be granted where the spouse claiming the allowance is maintaining or supporting the other.
- (5) Where a married person's allowance is granted in respect of a husband and wife living apart, the husband and wife shall be treated as not living apart for the purposes of Part 7.
- (6) Any claim to an allowance to which subsection (4) applies may be revoked by the claimant within the year of assessment in respect of which it was made or within 6 years after the expiration of that year.

*(Amended E.R. 1 of 2012)*

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Editorial Note:

\* The amendments made by Part 2 of Ord. No. 32 of 2018 to this section apply in relation to all years of assessment commencing on or after 1 April 2018. (Please see 32 of 2018 s. 3)

### 30. Dependent parent allowance\*

(1AA) In this section, *dependent parent allowance* means an allowance granted under subsection (1) or (1A). (*Added 8 of 2005 s. 3*)

(1) An allowance shall be granted in any year of assessment to a person—

(a) if—

(i) the person; or

(ii) his or her spouse who is not living apart from that person,

maintains a parent or a parent of his or her spouse in that year; and

(b) if that parent—

(i) was ordinarily resident in Hong Kong; and

(ii) was—

(A) aged 60 or more; or

(B) under the age of 60 and was eligible to claim an allowance under the Government's Disability Allowance Scheme,

at any time in that year. (*Replaced 8 of 2005 s. 3*)

(1A) An allowance shall be granted in any year of assessment to a person—

(a) if—

(i) the person; or

(ii) his or her spouse who is not living apart from that person,

- maintains a parent or a parent of his or her spouse in that year; and
- (b) if that parent—
- (i) at any time in that year was ordinarily resident in Hong Kong;
  - (ii) at any time in that year was aged 55 or more but was under the age of 60;
  - (iii) did not attain the age of 60 in that year; and
  - (iv) was, throughout that year, not eligible to claim an allowance under the Government's Disability Allowance Scheme. (*Added 8 of 2005 s. 3*)
- (2) A dependent parent allowance may be granted in respect of each such parent who is so maintained.
- (3) A dependent parent allowance grantable in respect of a parent under subsection (1) is— (*Amended 8 of 2005 s. 3*)
- (a) an allowance of the prescribed amount;
  - (b) an additional allowance of the prescribed amount if that parent resided, otherwise than for full valuable consideration, with the person who is eligible to claim the allowance under paragraph (a) for a year of assessment continuously throughout that year. (*Amended 8 of 2005 s. 3*)
- (3A) A dependent parent allowance grantable in respect of a parent under subsection (1A) is—
- (a) an allowance of the prescribed amount;
  - (b) an additional allowance of the prescribed amount if that parent resided, otherwise than for full valuable consideration, with the person who is eligible to claim the allowance under paragraph (a) for a year of

assessment continuously throughout that year. (*Added 8 of 2005 s. 3*)

- (4) For the purposes of this section—
- (a) a parent shall only be treated as being maintained by a person or his or her spouse if—
- (i) the parent resides, otherwise than for full valuable consideration, with that person and his or her spouse for a continuous period of not less than 6 months in the year of assessment; or
- (ii) the person or his or her spouse contributes not less than the prescribed amount in money towards the maintenance of that parent in the year of assessment;
- (b) (*Repealed 31 of 1998 s. 15*)
- (5) Where a deduction has been allowed to a person under section 26D for any year of assessment in respect of a parent or parent of his or her spouse, no person shall be granted a dependent parent allowance under this section for that year of assessment in respect of the same parent. (*Added 31 of 1998 s. 15*)

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Editorial Note:

\*The amendments made by s. 3 of 8 of 2005 to this section apply in relation to the year of assessment commencing on 1 April 2005 and to all subsequent years of assessment. (Please see 8 of 2005 s. 2)

**30A. Dependent grandparent allowance\***

- (1AA) In this section, *dependent grandparent allowance* means an allowance granted under subsection (1) or (1A). (*Added 8 of 2005 s. 4*)
- (1) An allowance shall be granted in any year of assessment to a person—

- (a) if—
- (i) the person; or
  - (ii) his or her spouse who is not living apart from that person,  
maintains a grandparent or a grandparent of his or her spouse in that year; and
- (b) if that grandparent—
- (i) was ordinarily resident in Hong Kong; and
  - (ii) was—
    - (A) aged 60 or more; or
    - (B) under the age of 60 and was eligible to claim an allowance under the Government's Disability Allowance Scheme,  
at any time in that year. *(Replaced 8 of 2005 s. 4)*
- (1A) An allowance shall be granted in any year of assessment to a person—
- (a) if—
- (i) the person; or
  - (ii) his or her spouse who is not living apart from that person,  
maintains a grandparent or a grandparent of his or her spouse in that year; and
- (b) if that grandparent—
- (i) at any time in that year was ordinarily resident in Hong Kong;
  - (ii) at any time in that year was aged 55 or more but was under the age of 60;
  - (iii) did not attain the age of 60 in that year; and

- (iv) was, throughout that year, not eligible to claim an allowance under the Government's Disability Allowance Scheme. (*Added 8 of 2005 s. 4*)
- (2) A dependent grandparent allowance may be granted in respect of each such grandparent who is so maintained.
- (3) A dependent grandparent allowance grantable in respect of a grandparent under subsection (1) is— (*Amended 8 of 2005 s. 4*)
- (a) an allowance of the prescribed amount;
- (b) an additional allowance of the prescribed amount if that grandparent resided, otherwise than for full valuable consideration, with the person who is eligible to claim the allowance under paragraph (a) for a year of assessment continuously throughout that year. (*Amended 8 of 2005 s. 4*)
- (3A) A dependent grandparent allowance grantable in respect of a grandparent under subsection (1A) is—
- (a) an allowance of the prescribed amount;
- (b) an additional allowance of the prescribed amount if that grandparent resided, otherwise than for full valuable consideration, with the person who is eligible to claim the allowance under paragraph (a) for a year of assessment continuously throughout that year. (*Added 8 of 2005 s. 4*)
- (4) For the purposes of this section—
- (a) a grandparent shall only be treated as being maintained by a person or his or her spouse if—
- (i) the grandparent resides, otherwise than for full valuable consideration, with that person and his or her spouse for a continuous period of not less than 6 months in the year of assessment; or



(ii) the person or his or her spouse contributes not less than the prescribed amount in money towards the maintenance of that grandparent in the year of assessment;

(b) *(Repealed 31 of 1998 s. 16)*

(5) Where a deduction has been allowed to a person under section 26D for any year of assessment in respect of a grandparent or grandparent of his or her spouse, no person shall be granted a dependent grandparent allowance under this section for that year of assessment in respect of the same grandparent. *(Added 31 of 1998 s. 16)*

*(Added 37 of 1994 s. 4)*

Editorial Note:

\*The amendments made by s. 4 of 8 of 2005 to this section apply in relation to the year of assessment commencing on 1 April 2005 and to all subsequent years of assessment. (Please see 8 of 2005 s. 2)

**30B. Dependent brother or dependent sister allowance**

(1) An allowance (*dependent brother or dependent sister allowance*) shall be granted under this section in the prescribed amount in any year of assessment if a person or the spouse of the person, not being a spouse living apart from the person, maintains an unmarried brother or unmarried sister, or an unmarried brother or unmarried sister of the spouse of the person, in the year of assessment and the person so maintained at any time in the year of assessment was—

(a) under the age of 18 years;

(b) of or over the age of 18 years but under the age of 25 years and was receiving full time education at a university, college, school or other similar educational establishment; or

- (c) of or over the age of 18 years and was, by reason of physical or mental disability, incapacitated for work.
- (2) A dependent brother or dependent sister allowance may be granted for each brother or sister or brother or sister of the spouse maintained.
- (3) For the purposes of this section—
- (a) a brother or sister of the person or a brother or sister of the spouse of the person is only treated as maintained by the person or by the spouse of the person if, at any time during the year, the person or the spouse had sole or predominant care of the brother or sister or of the brother or sister of the spouse;
- (b) ***brother or sister or brother or sister of the spouse*** (兄弟姊妹或配偶的兄弟姊妹) means, in relation to any person—
- (i) a natural brother or natural sister of the person or the spouse;
- (ii) an adopted brother or adopted sister of the person or the spouse;
- (iii) a step brother or step sister of the person or the spouse;
- (iv) in the case of a deceased spouse, a person who would have been the brother or sister of the spouse under subparagraph (i), (ii) or (iii) if the spouse had not died.

*(Added 24 of 1996 s. 8)*

### 31. Child allowance\*

- (1) An allowance (***child allowance***) shall be granted under this section in the prescribed amount in any year of assessment if

the person had living and was maintaining at any time during the year of assessment an unmarried child who was—

- (a) under the age of 18;
  - (b) of or over the age of 18 years but under the age of 25 years and was receiving full time education at a university, college, school or other similar educational establishment; or
  - (c) of or over the age of 18 years and was, by reason of physical or mental disability, incapacitated for work.
- (1A) A child allowance granted in respect of a child under subsection (1) shall be increased in the year of assessment in which the child is born by the prescribed amount. (*Added 10 of 2007 s. 4*)
- (2) Subject to subsection (3), where more than one person is entitled to claim a child allowance under this section in respect of the same child for the same year of assessment, the allowance due shall be apportioned on such basis as the Commissioner may decide having regard to the contributions made by each individual to the maintenance and education of the child during the year of assessment.
- (3) In the case of a husband and wife, not being a husband and wife living apart, chargeable to tax under Part 3 or 7— (*Amended 32 of 2018 s. 7*)
- (a) all child allowances grantable under this section shall be claimed by one spouse; and
  - (b) the claim shall be made by such spouse as the spouses may nominate.
- (4) A nomination under subsection (3)(b) made in relation to any year of assessment shall not be revoked save with the consent of the Commissioner whose decision in the matter shall be final and not subject to objection or appeal.

- (5) The total of the child allowances granted to a person in respect of his or her children shall not exceed the prescribed amount.

*(Amended E.R. 1 of 2012)*

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Editorial Note:

- \* The amendment made by Part 2 of Ord. No. 32 of 2018 to this section applies in relation to all years of assessment commencing on or after 1 April 2018. (Please see 32 of 2018 s. 3)

**31A. Disabled dependant allowance\***

- (1) An allowance (*disabled dependant allowance*) of the prescribed amount shall be granted in any year of assessment to a person in respect of every dependant of his or hers who is eligible to claim an allowance under the Government's Disability Allowance Scheme.
- (2) Where a child allowance in respect of a child who is eligible to claim an allowance under the Government's Disability Allowance Scheme is apportioned under section 31(2) and granted to more than one person, the disabled dependant allowance in respect of the child grantable under this section shall be apportioned between the persons on the same basis of apportionment as that used under section 31(2) in relation to the child allowance.
- (3) In the case of a husband and wife, not being a husband and wife living apart, chargeable to tax under Part 3 or 7, all disabled dependant allowances grantable under this section in respect of their children shall be claimed by the spouse nominated under section 31(3). *(Amended 32 of 2018 s. 8)*
- (4) For the purposes of this section, *dependant* (受養人), in relation to a person, means—

- (a) a spouse in respect of whom the person is entitled to be granted an allowance under section 29 for the year of assessment;
- (b) a parent or a parent of his or her spouse in respect of whom the person is entitled to be granted a deduction under section 26D or an allowance under section 30 for the year of assessment; (*Amended 31 of 1998 s. 17*)
- (c) a grandparent or a grandparent of his or her spouse in respect of whom the person is entitled to be granted a deduction under section 26D or an allowance under section 30A for the year of assessment; (*Amended 24 of 1996 s. 9; 31 of 1998 s. 17*)
- (d) a child in respect of whom the person is entitled to be granted an allowance under section 31 for the year of assessment; or (*Amended 24 of 1996 s. 9*)
- (e) a brother or sister, or a brother or sister of the person's spouse, for whom the person is entitled to be granted an allowance under section 30B for the year of assessment. (*Added 24 of 1996 s. 9*)

*(Added 48 of 1995 s. 7. Amended E.R. 1 of 2012)*

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Editorial Note:

- \* The amendment made by Part 2 of Ord. No. 32 of 2018 to this section applies in relation to all years of assessment commencing on or after 1 April 2018. (Please see 32 of 2018 s. 3)

### **32. Single parent allowance**

- (1) An allowance (*single parent allowance*) of the prescribed amount shall be granted if at any time during the year of assessment the person had the sole or predominant care of a child in respect of whom the person was entitled during the year of assessment to be granted a child allowance.

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- (2) A person shall not be entitled to claim single parent allowance—
- (a) if at any time during the year of assessment the person was married and not living apart from his or her spouse;
  - (b) by reason only that the person made contributions to the maintenance and education of the child during the year of assessment; or
  - (c) in respect of any 2nd or subsequent child.
- (3) Where 2 or more persons are entitled to claim single parent allowance in respect of the same child for the same year of assessment, the allowance due shall be apportioned on such basis as the Commissioner may decide—
- (a) having regard to the respective periods for which each person had the sole or predominant care of the child during the year of assessment; or
  - (b) if, in the opinion of the Commissioner, those periods are uncertain, on such basis as the Commissioner may decide as being just.

**33. Provisions supplementary to sections 30, 30A, 30B, 31 and 31A**

- (1) Subject to sections 31(2) and 31A(2), a dependent parent allowance, a dependent grandparent allowance, a dependent brother or dependent sister allowance, a child allowance or a disabled dependant allowance shall not be given to more than one person in any year of assessment in respect of the same parent, grandparent, brother, sister or child. (*Amended 48 of 1995 s. 8*)
- (1A) In any year of assessment—
- (a) a dependent parent allowance and a dependent grandparent allowance; or

(b) a dependent brother or dependent sister allowance and a child allowance,

shall not both be given for the same dependent person.  
*(Replaced 24 of 1996 s. 10)*

(2) Subject to sections 31(2) and (3) and 31A(2) and (3), where the Commissioner has reason to believe that 2 or more persons are eligible to claim such an allowance in respect of the same parent, grandparent, brother, sister or child for the same year of assessment, the Commissioner shall not consider any claim until he is satisfied that the claimants have agreed which of them shall be entitled to claim in that year. *(Amended 48 of 1995 s. 8)*

(3) Where a dependent parent allowance, a dependent grandparent allowance, a dependent brother or dependent sister allowance, a child allowance or a disabled dependant allowance has been granted— *(Amended 48 of 1995 s. 8)*

(a) otherwise than under section 31(2) or 31A(2) to 2 or more persons in respect of the same parent, grandparent, brother, sister or child; or *(Amended 48 of 1995 s. 8)*

(b) to both a husband and wife, contrary to section 31(3) or 31A(3); or *(Amended 48 of 1995 s. 8)*

(c) to a person and, within 6 months of such allowance being granted, another person appears to the Commissioner to be eligible to be granted that allowance in respect of the same parent, grandparent, brother, sister or child for the same year of assessment,

the Commissioner shall invite the persons to whom the allowance has been granted and any other individual who appears to the Commissioner to be eligible to be granted the allowance to agree which of them is to have the allowance (being an agreement consistent with the provisions of this Part) and the Commissioner may in consequence of such



agreement, or if the individuals do not so agree within a reasonable time, within the period specified in section 60, raise additional assessments under that section.

(3A) Where the Commissioner has reason to believe that there are persons eligible to claim, respectively—

(a) a dependent parent allowance and a dependent grandparent allowance; or

(b) a dependent brother or dependent sister allowance and a child allowance,

in respect of the same dependent person for the same year of assessment, the Commissioner shall not consider any claim until he is satisfied that the claimants have agreed which of the allowances shall be claimed in that year. (*Added 37 of 1994 s. 5*)

(3B) Where—

(a) a dependent parent allowance and a dependent grandparent allowance; or

(b) a dependent brother or dependent sister allowance and a child allowance,

have both been granted in respect of the same dependent person contrary to subsection (1A), the Commissioner shall invite the persons to whom the allowances have been granted to agree which of the allowances is to be given (being an agreement consistent with the provisions of this Part) and the Commissioner may in consequence of such agreement, or if the individuals do not so agree within a reasonable time, within the period specified in section 60, raise additional assessments under that section. (*Added 37 of 1994 s. 5*)

(3C) Where—

- (a) a dependent parent allowance or a dependent grandparent allowance has been granted for a dependent person; or
- (b) a dependent brother or dependent sister allowance or a child allowance has been granted for a dependent person,

and, within 6 months of the allowance being granted, another person appears to the Commissioner to be eligible to be granted the other allowance for the same dependent person for the same year of assessment, the Commissioner is to invite the person to whom the allowance has been granted and any other person who appears to the Commissioner to be eligible to be granted the other allowance for the same dependent person to agree which of the allowances is to be granted (being an agreement consistent with this Part). *(Replaced 24 of 1996 s. 10)*

- (3D) The Commissioner may, in consequence of an agreement under subsection (3C), or, if the persons do not agree under that subsection within a reasonable time, within the time specified in section 60, raise additional assessments under section 60. *(Added 24 of 1996 s. 10)*
- (4) The Commissioner shall exercise his powers under this section in such manner as may appear to him to be just having regard to such information only as may be in his possession at the time when he exercises those powers.

*(Amended 37 of 1994 s. 5; 24 of 1996 s. 10)*

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## Part 6

### Depreciation, etc.

#### 33A. Annual allowances, commercial buildings and structures

- (1) Where any person is, at the end of the basis period for any year of assessment, entitled to an interest in a building or structure which is a commercial building or structure and where that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure, an allowance for depreciation by wear and tear of that building or structure, to be known as an “annual allowance”, of an amount equal to, subject to subsection (2), one-twenty-fifth of the expenditure, shall be made to the person for that year of assessment. *(Amended 12 of 2004 s. 9)*
- \* (2) Where the interest in a building or structure, which is the relevant interest in relation to any expenditure, is sold and where the building or structure has been used at any time before the sale, whether as a commercial building or structure or otherwise, the annual allowance, in the years of assessment the basis periods for which end after the time of the sale, shall be computed by reference to the residue of expenditure immediately after the sale and shall be the fraction of that residue of expenditure the numerator of which is 1 and the denominator of which is the number of years of assessment comprised in the period which— *(Amended 12 of 2004 s. 9)*
  - (a) begins with the year of assessment in the basis period for which the sale takes place; and *(Replaced 12 of 2004 s. 9)*
  - (b) ends with the year of assessment which is—

- (i) in the case of a building or structure to which subsection (4) applies, the 25th year after the year of assessment commencing on 1 April 1998; (*Amended 12 of 2004 s. 9*)
- (ii) in any other case, the 25th year after the year of assessment in which the building or structure was first used,

and so on for any subsequent sales.

- (3) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount of an annual allowance for any year of assessment in respect of any expenditure exceed such amount as, apart from the writing off falling to be made by reason of the making of that allowance, would be the residue of expenditure at the end of the basis period for that year of assessment.
- (4) For the purposes of this section, where immediately prior to the commencement<sup>#</sup> of the Inland Revenue (Amendment) (No. 2) Ordinance 1998 (32 of 1998), a person was entitled to an interest in a building or structure which is a commercial building or structure and where that interest is the relevant interest in relation to the capital expenditure incurred on the construction of the building or structure— (*Amended 12 of 2004 s. 9*)
  - (a) the capital expenditure incurred on the construction of the building or structure shall be deemed to have been reduced by the aggregate of the amount of the rebuilding allowances that would have been made to the person under section 36 in respect of that building or structure in all prior years of assessment if at all times during the period of the person's entitlement to the relevant interest it had been used for the purposes of producing profits chargeable to tax under Part 4; and

- (b) the year of assessment commencing on 1 April 1998 shall be deemed to be the year of assessment in which the building or structure was first used.

*(Added 32 of 1998 s. 18. Amended E.R. 1 of 2012)*

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Editorial Note:

\* The amendments made by 12 of 2004 to this subsection apply in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))

# Commencement date: 17 April 1998.

**33B.** *(Repealed 12 of 2004 s. 10)\**

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Editorial Note:

\* This section was repealed by 12 of 2004. The repeal applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))

**34. Initial and annual allowances, industrial buildings and structures**

- (1) Where a person incurs capital expenditure on the construction of a building or structure which is to be an industrial building or structure occupied for the purposes of a trade there shall be made to the person who incurred the expenditure for the year of assessment in the basis period for which the expenditure was incurred an allowance to be known as an “initial allowance” equal to one-fifth thereof: *(Amended 30 of 1950 Schedule; 35 of 1965 s. 17)*

Provided that—

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- (a) no initial allowance shall be made for the 8 successive years of assessment commencing on 1 April in each of the years 1957 to 1964;
- (b) where any initial allowance has been made in relation to capital expenditure on a building or structure under this subsection before such building or structure comes to be used and when it first comes to be used it is not an industrial building or structure, such allowance shall be disallowed and such additional assessments as may be necessary consequent thereon shall be made. *(Replaced 35 of 1965 s. 17)*
- (2) (a) Where any person is, at the end of the basis period for any year of assessment, entitled to an interest in a building or structure which is an industrial building or structure and where that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure, an allowance for depreciation by wear and tear, to be known as an “annual allowance”, of an amount equal to, subject to paragraph (b), one-twenty-fifth of that expenditure, shall be made to him for that year of assessment. *(Amended 36 of 1955 s. 41; 35 of 1965 s. 17)*
- \* (b) Where the interest in a building or structure, which is the relevant interest in relation to any expenditure, is sold and where the building or structure has been used at any time before the sale, whether as an industrial building or structure or otherwise, the annual allowance, in the years of assessment the basis periods for which end after the time of that sale, shall be computed by reference to the residue of expenditure immediately after the sale and shall be the fraction of the said residue the numerator of which is 2, where the building or structure was first used before the commencement of the basis

period for the year of assessment commencing on 1 April 1965, and one, where the building or structure was first used on or after the commencement of such basis period, and the denominator of which is the number of years of assessment comprised in the period which— (*Amended 12 of 2004 s. 11*)

- <sup>#</sup>(i) begins with the year of assessment in the basis period for which the sale takes place; and (*Replaced 12 of 2004 s. 11*)
- (ii) ends with the year of assessment which, where the building or structure was first used before the commencement of the basis period for the year of assessment commencing on 1 April 1965, is the 50th year after the year of assessment in which the building or structure was first used, and where the building or structure was first used on or after the commencement of such basis period, is the 25th year after the year of assessment in which the building or structure was first used, and so on for any subsequent sales. (*Replaced 35 of 1965 s. 17*)
- (c) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount of an annual allowance for any year of assessment in respect of any expenditure exceed such amount as, apart from the writing off falling to be made by reason of the making of that allowance, would be the residue of expenditure at the end of the basis period for that year of assessment. (*Amended 12 of 2004 s. 11*)

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Editorial Note:



\* The amendment made by 12 of 2004 to this paragraph applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))

# Section 34(2)(b)(i) applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))

### **35. Balancing allowances and charges, buildings and structures\***

(1) Where—

(a) any of the following events occurs in relation to a building or structure—

(i) the relevant interest in the building or structure is sold;

(ii) the relevant interest in the building or structure, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon; or

(iii) the building or structure is demolished or destroyed or, without being demolished or destroyed, ceases altogether to be used; and

(b) the building or structure has been a commercial building or structure or an industrial building or structure at any time before the occurrence of such event,

an allowance, to be known as a “balancing allowance”, or a charge, to be known as a “balancing charge”, shall, in the circumstances mentioned in this section, be made to or, as the case may be, on the person entitled to the relevant interest in the building or structure immediately before the occurrence of such event for the year of assessment in the basis period for which such event occurs.

- (2) (a) Where—
- (i) there are no sale, insurance, salvage or compensation moneys arising in respect of the occurrence of an event referred to in subsection (1)(a); or
  - (ii) the residue of expenditure immediately before the occurrence of such event exceeds those moneys, a balancing allowance shall be made and the amount thereof shall be the amount of—
    - (A) in the case of subparagraph (i), the residue of expenditure; or
    - (B) in the case of subparagraph (ii), the excess of the residue of expenditure over those moneys.
- (b) Notwithstanding anything in this section, a balancing allowance shall not be made to a person where—
- (i) an event referred to in subsection (1)(a) occurs in relation to a building or structure and the building or structure was not a commercial building or structure or an industrial building or structure immediately before the occurrence of such event; or
  - (ii) a commercial building or structure or an industrial building or structure is demolished for purposes unconnected with, or not in the ordinary course of conduct of, the trade, profession or business for the purposes of which the building or structure was used before the demolition in circumstances qualifying for annual allowances under section 33A or 34(2), as the case may be.
- (3) (a) Where the sale, insurance, salvage or compensation moneys arising in respect of the occurrence of an event

referred to in subsection (1)(a) exceed the residue of expenditure immediately before the occurrence of such event, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the excess of those moneys over the residue of expenditure.

- (b) Notwithstanding anything in paragraph (a), in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the allowances, if any, made to him under sections 33A and 34 in respect of the expenditure in question.

*(Replaced 12 of 2004 s. 12)*

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Editorial Note:

\* Section 35 applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))

### **35A. Special provisions on termination of leasehold interest**

Where, on the termination of a leasehold interest—

- (a) a lessee of any building or structure remains in possession thereof with the consent of the lessor without a new lease being granted to him, the leasehold interest shall be deemed for the purposes of this Part to continue so long as he so remains in possession;
- (b) a new lease is granted to the lessee either by way of regrant or in pursuance of an option available to him under the terms of the first lease, this Part shall have effect as if the second lease were a continuation of the first lease.

*(Added 2 of 1971 s. 27)*

### **35B. Buildings and structures bought unused**

Where capital expenditure is incurred on the construction of a

building or structure and, before that building or structure is used, the relevant interest therein is sold—

- (a) the expenditure actually incurred on the construction thereof shall be left out of account for the purposes of this Part and any initial allowance made under section 34 shall be disallowed and such additional assessments as may be necessary consequent thereon shall be made; but
- (b)
  - (i) in a case where the person who sells that interest incurred that expenditure and made that sale in the course of a trade which consists, in whole or part, in the construction or development of buildings or structures for the purpose of sale, the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, capital expenditure on the construction thereof equal to the net price paid by him for that interest; and
  - (ii) in any other case, the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, capital expenditure on the construction thereof equal to the expenditure actually incurred on the construction of the building or structure or to the net price paid by him for that interest, whichever is the less: (*Replaced 29 of 1982 s. 7*)

Provided that—

- (a) where in a case to which paragraph (b)(i) applies the relevant interest in the building or structure is sold more than once before the building or structure is used, only the person who buys that interest on the occasion of the last of those

sales shall be deemed to have incurred capital expenditure on the construction of the building or structure and that capital expenditure shall be equal to the net price paid on the first sale or the net price paid by him, whichever is the less;

- (b) where in a case to which paragraph (b)(ii) applies the relevant interest in the building or structure is sold more than once before the building or structure is used, that paragraph shall have effect only in relation to the last of those sales. *(Replaced 29 of 1982 s. 7)*

*(Added 2 of 1971 s. 27)*

**36. Rebuilding allowance for a commercial building or structure up to and including the year of assessment commencing on 1 April 1997**

- (1) Subject to subsection (2), where at the end of the basis period for any year of assessment a person is entitled to an interest in a commercial building or structure and where that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure, an allowance to be known as a “rebuilding allowance” equal to 2% of the capital expenditure incurred on the construction of such building or structure shall be made to him for that year of assessment.
- (2) No allowance shall be made to any person under subsection (1) for a year of assessment if the basis period for that year of assessment is subsequent to the basis period for the year of assessment commencing on 1 April 1997. *(Added 32 of 1998 s. 20)*

*(Replaced 36 of 1955 s. 42. Amended 26 of 1969 s. 18; 30 of 1990 s. 3; 32 of 1998 s. 20)*

**36A. Application of provisions to machinery or plant**

- (1) Except where otherwise provided, in relation to the initial and annual allowances on machinery or plant—
  - (a) sections 37, 37A, 38 and 39 shall apply to the years of assessment up to and including the year of assessment commencing on 1 April 1979; and
  - (b) sections 39B, 39C and 39D shall apply to the year of assessment commencing on 1 April 1980 and to subsequent years of assessment.
- (2) Where in relation to any machinery or plant the Commissioner is satisfied that in respect of any year of assessment commencing on or after 1 April 1980 the application of any of the provisions of the sections referred to in subsection (1)(b) is impracticable or inequitable, he may direct that the provisions of the sections referred to in subsection (1)(a) shall apply to the extent and for the duration specified in the direction.
- (3) Where under subsection (2) the Commissioner directs that the provisions of section 37 shall apply to any machinery or plant in respect of—
  - (a) the year of assessment commencing on 1 April 1980, the initial allowance shall be equal to 35% of the expenditure referred to in subsection (1) of that section;
  - (b) any year of assessment commencing on or after 1 April 1981, the initial allowance shall be equal to 55% of the expenditure referred to in subsection (1) of that section.  
*(Replaced 29 of 1982 s. 8)*
  - (c) any year of assessment commencing on or after 1 April 1989, the initial allowance shall be equal to 60% of the expenditure referred to in subsection (1) of that section.  
*(Added 56 of 1993 s. 17)*

*(Added 63 of 1980 s. 2)*

**37. Initial and annual allowances, machinery or plant**

(1) Where a person carrying on a trade, profession or business incurs capital expenditure on the provision of machinery or plant for the purposes of producing profits chargeable to tax under Part 4 then, except where such expenditure is expenditure of a kind described in section 6(1)(c) of Schedule 45 or section 16G, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred, an allowance, to be known as an “initial allowance”.  
*(Amended 30 of 1950 Schedule; 35 of 1965 s. 19; 26 of 1969 s. 19; 23 of 1974 s. 2; 32 of 1998 s. 21; 29 of 2018 s. 8)*

(1A) For the purposes of subsection (1), the initial allowance shall be—

(a) in respect of a year of assessment up to and including the year of assessment commencing on 1 April 1973, equal to one-fifth of the expenditure referred to in subsection (1); and

(b) in respect of the year of assessment commencing on 1 April 1974 and all subsequent years of assessment up to and including the year of assessment commencing on 1 April 1979, equal to one-quarter of such expenditure.  
*(Added 23 of 1974 s. 2. Amended 32 of 1981 s. 4)*

(2) Where at the end of the basis period for any year of assessment a person owns and has in use machinery or plant for the purposes of producing profits chargeable to tax under Part 4 there shall be made to him in respect of that year of assessment an allowance to be known “annual allowance” for depreciation by wear and tear of those assets. The allowance shall be calculated at the rates prescribed by the Board of Inland Revenue and shall be computed on the reducing value of the asset, which shall be the cost of the asset reduced by—



- (a) any initial allowance computed in accordance with the provisions of this section; and
- (b) the annual allowances computed under the provisions of this section: (*Amended 56 of 1993 s. 18*)

Provided that—

- (a) (*Repealed 32 of 1998 s. 21*)
  - (b) the Commissioner may in his discretion allow a higher rate than that prescribed by the Board of Inland Revenue. (*Amended 16 of 1951 s. 7; 35 of 1965 s. 19; 26 of 1969 s. 19*)
- (2A) For the purposes of subsection (2), in any case where machinery or plant is owned and used by a person for any period immediately before he uses it for the purposes of producing profits chargeable to tax under Part 4, **cost of the asset** (資產成本) means the sum computed by deducting from the actual cost the notional amount of the annual allowances which would have been made under subsection (2) to the owner if since acquiring the asset he had used it for the purpose of producing profits chargeable to tax under Part 4. (*Added 26 of 1969 s. 19*)
- (2B) Subsection (2C) applies if an aircraft was owned and used by a corporation for carrying out a qualifying aircraft leasing activity in respect of which section 14H(1) applies before the corporation uses it in another trade, profession or business to produce profits chargeable to tax under Part 4. (*Added 9 of 2017 s. 9*)
- (2C) For the purposes of subsection (2), the cost of the asset, in relation to the aircraft, is the sum computed by deducting from the actual cost the notional amount of annual allowances that would have been made under that subsection to the corporation if such annual allowances had been available

to the corporation since it acquired the aircraft. (*Added 9 of 2017 s. 9*)

(2D) In subsections (2B) and (2C)—

***aircraft*** (飛機) has the meaning given by section 14G(1);

***qualifying aircraft leasing activity*** (合資格飛機租賃活動) has the meaning given by section 14G(6). (*Added 9 of 2017 s. 9*)

(3) Nothing in subsection (2) shall apply in respect of any machinery or plant owned and used by a person for the purposes of the person's trade, profession or business where the machinery or plant represents expenditure or expenditures of a capital nature which have been allowed under section 16B or 16G as a deduction or deductions in ascertaining the profits from such trade, profession or business in respect of which such person is chargeable to tax under Part 4 for any year of assessment. (*Added 35 of 1965 s. 19. Amended 32 of 1998 s. 21; 29 of 2018 s. 8*)

(4) If a person succeeds to any trade, profession or business which immediately before the succession—

(a) was carried on by another person; and

(b) made use of machinery or plant for the purpose of producing profits chargeable to tax under Part 4,

and, immediately after the succession, such machinery or plant, without being sold to the successor, is in use in that trade, profession or business for the same purpose, the reduced value of such machinery or plant shall, for the purpose of computing annual allowances under subsection (2), be taken to be the reduced value thereof still unallowed to that other person as at the time of the succession. (*Added 2 of 1971 s. 28*)

- (5) Notwithstanding subsection (4), no initial allowance shall be made under this Part by virtue of subsection (4). (*Added 2 of 1971 s. 28*)

(*Amended E.R. 1 of 2012*)

**37A. Initial and annual allowances in respect of machinery and plant acquired under hire purchase agreement**

- (1) Where a person carrying on a trade, profession or business incurs capital expenditure under a hire purchase agreement on the provision of machinery or plant for the purposes of producing profits chargeable to tax under Part 4 then, except where such expenditure is expenditure of a kind described in section 6(1)(c) of Schedule 45, there shall be made to him for each year of assessment in the basis period for which he has made an instalment payment under such agreement, an initial allowance. (*Amended 35 of 1965 s. 20; 26 of 1969 s. 20; 23 of 1974 s. 3; 29 of 2018 s. 9*)
- (1A) For the purposes of subsection (1), the initial allowance shall be—
- (a) in respect of a year of assessment up to and including the year of assessment commencing on 1 April 1973, equal to one-fifth of the capital portion only of the instalment payment referred to in subsection (1);
  - (b) in respect of the year of assessment commencing on 1 April 1974 and all subsequent years of assessment up to and including the year of assessment commencing on 1 April 1979, equal to one-quarter of the capital portion only of such payment;
  - (c) in respect of the year of assessment commencing on 1 April 1980 equal to 35% of the capital portion only of such payment; and (*Replaced 29 of 1982 s. 9*)

- (d) in respect of the year of assessment commencing on 1 April 1981 and all subsequent years of assessment up to and including the year of assessment commencing on 1 April 1988, equal to 55% of the capital portion only of such payment. (*Added 29 of 1982 s. 9. Amended 17 of 1989 s. 8*)
- (e) in respect of any year of assessment commencing on or after 1 April 1989, equal to 60% of the capital portion only of such payment. (*Added 17 of 1989 s. 8*)
- (2) Where at the end of the basis period for any year of assessment a person has in use for the purposes of producing profits chargeable to tax under Part 4, machinery or plant acquired by him under a hire purchase agreement there shall be made to him in respect of that year of assessment an annual allowance for depreciation by wear and tear on such machinery or plant. (*Amended 26 of 1969 s. 20*)
- (3) An annual allowance under this section shall be calculated at rates prescribed by the Board of Inland Revenue and shall be computed on the reducing value of such machinery or plant which shall be the full cost thereof, excluding any interest which may be included in such cost under the terms of the agreement and reduced by any initial or previous annual allowances computed under this section: (*Amended 35 of 1965 s. 20*)

Provided that the Commissioner may in his discretion allow a higher rate than that prescribed by the Board of Inland Revenue.

- \* (4) Nothing in subsection (2) shall apply in respect of any machinery or plant used by a person for the purposes of the person's trade, profession or business where the machinery or plant represents expenditure or expenditures of a capital nature which have been allowed under section 16B as a deduction or deductions in ascertaining the profits from such

trade, profession or business in respect of which such person is chargeable to tax under Part 4 for any year of assessment. *(Added 35 of 1965 s. 20. Amended 32 of 1998 s. 22; 9 of 2004 s. 4; 29 of 2018 s. 9)*

*(Added 36 of 1955 s. 43. Amended E.R. 1 of 2012)*

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Editorial Note:

\* The amendment made to this section 37A(4) by 9 of 2004 applies in relation to the year of assessment commencing on 1 April 2004 and to all subsequent years of assessment. (Please see 9 of 2004 s. 1(2))

**38. Balancing allowances and charges, machinery or plant**

(1) Where any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or an annual allowance has been made for any year of assessment to a person carrying on a trade, profession or business, that is to say, either— *(Amended 30 of 1950 Schedule)*

- (a) the machinery or plant is sold, whether while still in use or not; or
- (b) the machinery or plant is destroyed; or
- (c) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required,

and the event in question occurs either whilst the person is carrying on his trade, profession or business or at the time when he ceases so to do, an allowance or charge, to be known as a “balancing allowance” or a “balancing charge”, shall in the circumstances mentioned in this section, be made to or, as the case may be, on that person for the year of assessment in his basis period for which that event occurs. *(Amended 36 of 1955 s. 44)*

- (2) Where there are no sale, insurance, salvage or compensation moneys or where the amount of the capital expenditure of the person in question on the provision of the plant or machinery still unallowed as at the time of the event exceeds those moneys, a balancing allowance shall be made, and the amount thereof shall be the amount of the expenditure still unallowed as aforesaid or, as the case may be, the excess thereof over the said moneys; but in a case where an annual allowance has been computed on the cost of the asset as determined in accordance with section 37(2A) or (2C), the cost of the asset as computed in accordance with that section shall be deemed to be the capital expenditure for the purposes of this subsection and in a case where an annual allowance has been computed in accordance with section 37(4), the reduced value used for the purpose of that section shall be deemed to be the capital expenditure for the purposes of this subsection. *(Amended 26 of 1969 s. 21; 2 of 1971 s. 29; 9 of 2017 s. 10)*
- (3) If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said moneys.
- (4) Where by reason of a person ceasing to carry on his trade, profession or business, machinery or plant in respect of which an initial or an annual allowance has been made is put out of use, such person shall be deemed to have received immediately prior to such cessation, sale moneys for such machinery or plant of such an amount as the Commissioner may consider it would have realized had it been sold in the open market at the time of cessation:

Provided that if such person sells such machinery or plant within 12 months of the date of cessation he may claim the



adjustment of any balancing allowance or charge which may have been made to or on him as if such sale had taken place immediately prior to the date of cessation and notwithstanding the provisions of section 70 an assessor shall make any necessary correction to any assessment. (*Added 36 of 1955 s. 44. Amended 35 of 1965 s. 21*)

- (5) Notwithstanding anything contained in this section, in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the following amounts, that is to say— (*Amended 36 of 1955 s. 44*)
- (a) the amount of the initial allowance, if any, made to him in respect of the expenditure in question;
  - (b) the amount of the annual allowances, if any, made to him in respect of the expenditure in question, including any allowance computed under proviso (b) to section 37(2) at a rate higher than that prescribed by the Board of Inland Revenue. (*Amended 3 of 1949 s. 13*)

**38A. Determination of cost of individual assets sold together for one price**

Where assets which qualify for initial or annual allowances under this Part are sold together or with other assets in pursuance of one bargain the Commissioner shall for the purposes of the calculation of the allowances and charges provided for in this Part, and having regard to all the circumstances of the transaction allocate a purchase price to each individual asset.

*(Added 36 of 1955 s. 45)*

**38B. Commissioner's power to determine the true value of an asset on sale**

Where an asset which qualifies for initial or annual allowances is sold, and—



- (a) the buyer is a person over whom the seller has control;  
or
- (b) the seller is a person over whom the buyer has control;  
or
- (c) both the seller and the buyer are persons over both of whom some other person has control; or (*Amended 71 of 1983 s. 18*)
- (d) the sale is between a husband and wife, not being a wife living apart from her husband, (*Added 71 of 1983 s. 18*)

the Commissioner shall, if he is of the opinion that the sale price of such asset does not represent its true market value at the time of such sale, determine such true market value and the amount so determined shall be deemed to be the sale price of such asset for the purpose of calculating the allowances and charges provided for in this Part.

*(Added 36 of 1955 s. 45)*

**38C.** (*Repealed 19 of 1996 s. 9*)

**39. Replacement of machinery or plant**

Where machinery or plant in the case of which any of the events mentioned in section 38(1) has occurred is replaced by the owner thereof and a balancing charge falls to be made on him by reason of that event or, but for the provisions of this section, would have fallen to be made on him by reason thereof, then, if by notice in writing to the Commissioner he so elects, the following provisions shall have effect, that is to say— (*Amended 30 of 1950 Schedule*)

- (a) if the amount on which the charge would have been made is greater than the capital expenditure on providing the new machinery or plant—
  - (i) the charge shall be made only on an amount equal to the difference; and

- (ii) no initial allowance, no balancing allowance and no annual allowance shall be made or allowed in respect of the new machinery or plant or the expenditure on the provision thereof; and
  - (iii) in considering whether any, and, if so, what balancing charge falls to be made in respect of the expenditure on the new machinery or plant, there shall be deemed to have been made in respect of that expenditure an initial allowance equal to the full amount of that expenditure;
- (b) if the capital expenditure on providing the new machinery or plant is equal to or greater than the amount on which the charge would have been made—
- (i) the charge shall not be made; and
  - (ii) the amount of any initial allowance in respect of the said expenditure shall be calculated as if the expenditure had been reduced by the amount on which the charge would have been made; and
  - (iii) in considering what annual allowance is to be made in respect of the new machinery or plant, there shall be left out of account a proportion of the machinery or plant equal to the proportion which the amount on which the charge would have been made bears to the amount of the said expenditure; and
  - (iv) in considering whether any and, if so, what balancing allowance or balancing charge falls to be made in respect of the new machinery or plant, the initial allowance in respect thereof shall be deemed to have been increased by an amount equal to the amount on which the charge would have been made.

**39A. Reduction of allowances not to affect calculation of subsequent allowances**

Where, by virtue of section 12(2), section 18F(1) or section 19E(1), the amount of any allowance provided for under this Part is reduced, such reduction shall not affect the calculation of subsequent allowances which shall be computed in the first place as if the full amount of the allowance had been granted and shall then where appropriate be apportioned in relation to the extent to which the relevant assets are or have been used in the production of assessable income or assessable profits.

*(Added 7 of 1975 s. 27)*

**39B. Initial and annual allowances on machinery or plant under the pooling system**

- (1) Where a person carrying on a trade, profession or business incurs capital expenditure on the provision of machinery or plant for the purposes of producing profits chargeable to tax under Part 4 then, except where such expenditure is expenditure of a kind described in section 6(1)(c) of Schedule 45 or section 16G, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred, an allowance, to be known as an “initial allowance”.  
*(Amended 32 of 1981 s. 6; 32 of 1998 s. 23; 29 of 2018 s. 10)*
- (1A) For the purposes of subsection (1), the initial allowance shall be equal to the following percentages of the expenditure referred to in that subsection—
  - (a) for the year of assessment commencing on 1 April 1980, 35%;
  - (b) for the year of assessment commencing on 1 April 1981 and all subsequent years of assessment up to and

including the year of assessment commencing on 1 April 1988, 55%; (*Amended 17 of 1989 s. 9*)

- (c) for any year of assessment commencing on or after 1 April 1989, 60%. (*Added 17 of 1989 s. 9*)

(*Replaced 29 of 1982 s. 10*)

- (2) Where during the basis period for any year of assessment or during the basis period for any earlier year of assessment a person owns or has owned and has in use or has had in use any machinery or plant for the purposes of producing profits chargeable to tax under Part 4, there shall be made to him in respect of each class of machinery or plant for that year of assessment an allowance, to be known as an “annual allowance”, for depreciation by wear and tear of such machinery or plant. (*Amended L.N. 262 of 1985*)
- (3) The annual allowance shall be calculated at the rates of depreciation prescribed by the Board of Inland Revenue and shall be computed on the reducing value of each class of machinery or plant.
- (4) Subject to subsections (5), (6), (6B) and (7), the reducing value of a class of machinery or plant shall be the aggregate capital expenditure incurred on the provision of the machinery or plant belonging to that class reduced by— (*Amended 9 of 2017 s. 11*)
- (a) the aggregate of any initial allowances computed in accordance with section 37 in respect of any machinery or plant belonging to that class;
- (b) the aggregate of any annual allowances computed in accordance with section 37 in respect of any machinery or plant belonging to that class;
- (c) the aggregate of any initial allowances computed in accordance with this section in respect of any machinery or plant belonging to that class;

- 
- (d) any annual allowance computed in accordance with this section;
  - (e) any sale, insurance, salvage or compensation moneys received in respect of any machinery or plant belonging to that class; and
  - (f) any reducing value of machinery or plant excluded from the total reducing value of a class of machinery or plant under section 39C(3).
- (5) Where, prior to the commencement of the Inland Revenue (Amendment)(No. 4) Ordinance 1980 (63 of 1980), any machinery or plant has been the subject of a balancing allowance or balancing charge computed in accordance with section 38, such machinery or plant shall, for the purposes of subsection (4), be excluded from the class of machinery or plant.
- (6) Where any machinery or plant is owned and used by a person for any period immediately before he uses it for the purposes of producing profits chargeable to tax under Part 4, the capital expenditure incurred on the provision of the machinery or plant for the purposes of subsection (4) shall be computed by deducting from the actual cost the notional amount of the annual allowances which would have been made under section 37 to the owner if since acquiring the machinery or plant he had used it for the purpose of producing profits chargeable to tax under Part 4.
- (6A) Subsection (6B) applies if an aircraft was owned and used by a corporation for carrying out a qualifying aircraft leasing activity in respect of which section 14H(1) applies before the corporation uses it in another trade, profession or business to produce profits chargeable to tax under Part 4. *(Added 9 of 2017 s. 11)*

- (6B) For the purposes of subsection (4), the capital expenditure incurred on the provision of the aircraft is to be computed by deducting from the actual cost the notional amount of annual allowances that would have been made under section 37(2) to the corporation if such annual allowances had been available to the corporation since it acquired the aircraft. (*Added 9 of 2017 s. 11*)
- (6C) In subsections (6A) and (6B)—
- aircraft*** (飛機) has the meaning given by section 14G(1);
- qualifying aircraft leasing activity*** (合資格飛機租賃活動) has the meaning given by section 14G(6). (*Added 9 of 2017 s. 11*)
- (7) If a person succeeds to any trade, profession or business which immediately before the succession—
- (a) was carried on by another person; and
- (b) the machinery or plant that was used at any time by that other person for the purpose of producing profits chargeable to tax under Part 4 is not sold to the successor,
- the reducing value of such machinery or plant shall, for the purpose of computing annual allowances under subsection (3) be taken to be the reducing value thereof still unallowed to that other person as at the time of succession.
- (8) Notwithstanding subsection (7), no initial allowance shall be made under this Part by virtue of subsection (7).
- (9) No annual allowance shall be made where the reductions made under subsection (4) exceed the aggregate capital expenditure incurred on the provision of the class of machinery or plant.
- (10) Nothing in subsection (2) shall apply in respect of any machinery or plant owned and used by a person for the purposes of the person's trade, profession or business where

the machinery or plant represents expenditure or expenditures of a capital nature which have been allowed under section 16B or 16G as a deduction or deductions in ascertaining the profits from such trade, profession or business in respect of which such person is chargeable to tax under Part 4 for any year of assessment. (*Amended 32 of 1998 s. 23; 29 of 2018 s. 10*)

- (11) The Commissioner may in his discretion allow a higher rate of depreciation in respect of any class of machinery or plant than that prescribed by the Board of Inland Revenue.

*(Added 63 of 1980 s. 3. Amended E.R. 1 of 2012)*

### **39C. Pooling system when not to apply**

- (1) The provisions of this Part which applied immediately prior to the commencement of the Inland Revenue (Amendment) (No. 4) Ordinance 1980 (63 of 1980) shall continue to apply—
- (a) subject to subsection (2), in respect of machinery or plant to which section 37A applies;
  - (b) in respect of machinery or plant to which section 39A applies.
- (2) Where, pursuant to the terms and conditions of a hire purchase agreement, machinery or plant to which section 37A applies passes into the ownership of the person carrying on a trade, profession or business who incurred the capital expenditure under the hire purchase agreement, the reducing value of such machinery or plant computed in accordance with that section shall be included in the class of machinery or plant for the purposes of section 39B for the years of assessment following the year of assessment during the basis period for which the machinery or plant passed into the ownership of that person.



- (3) Where any machinery or plant which is included in a class of machinery or plant for the purposes of section 39B and which was used wholly and exclusively in the production of profits chargeable to tax under Part 4 is subsequently not so used wholly and exclusively in the production of such profits, the provisions of this Part which applied immediately prior to the commencement of the Inland Revenue (Amendment) (No. 4) Ordinance 1980 (63 of 1980) shall apply to such machinery or plant in respect of the year of assessment during the basis period for which the machinery or plant is subsequently not used wholly and exclusively in the production of profits chargeable to tax under Part 4, and the reducing value of such machinery or plant shall be deemed to be such an amount as the Commissioner may consider it would have realized had it been sold in the open market at the time it ceased to be used wholly and exclusively in the production of such profits, and such reducing value shall be excluded from the total reducing value of that class of machinery or plant.
- (4) For the purposes of subsection (2), in the application of section 37A, subsection (2) of that section shall be read as if “during the basis period” was substituted for “at the end of the basis period”.

*(Added 63 of 1980 s. 3. Amended E.R. 1 of 2012)*

**39D. Balancing allowances and charges under the pooling system**

- (1) Where at the end of a basis period for a year of assessment the aggregate reductions made under section 39B(4) in respect of a class of machinery or plant exceed the aggregate capital expenditure incurred by a person on the provision of machinery or plant belonging to that class—
- (a) a charge, to be known as a “balancing charge”, shall be made on him, and the amount on which it is made shall be an amount equal to the excess; and

- (b) the reducing value at the end of the basis period for that year of assessment shall be nil.
- (2) Subject to subsection (3) and except where subsection (4) applies, where a person ceases to carry on his trade, profession or business in a year of assessment, the aggregate of the sale, insurance, salvage or compensation moneys, if any, of the machinery or plant in respect of which an initial allowance or annual allowance has been made shall be compared with the amount of the reducing value of the class of machinery or plant at the end of the basis period for that year of assessment and—
- (a) where there are no sale, insurance, salvage or compensation moneys, or where the amount of the reducing value exceeds the aggregate of such moneys, an allowance, to be known as a “balancing allowance”, shall be made to him, and the amount thereof shall be the amount of the reducing value or, as the case may be, the excess thereof over the aggregate of the said moneys; or
- (b) where there are sale, insurance, salvage or compensation moneys, and the aggregate of such moneys exceeds the amount, if any, of the reducing value, a charge, to be known as a “balancing charge”, shall be made on him, and the amount on which it is made shall be an amount equal to the excess or, where the reducing value is nil, to the aggregate of the said moneys.
- (3) Subsection (2) shall not apply on the occasion on which any machinery or plant, to which section 39B(7) applies, passes by way of succession.
- (4) Where by reason of a person ceasing to carry on his trade, profession or business machinery or plant in respect of which an initial allowance or annual allowance has been made is put out of use and there are no sale, insurance, salvage

or compensation moneys, such person shall, subject to subsection (5), be deemed to have received immediately prior to such cessation, sale moneys for such machinery or plant of such an amount as the Commissioner may consider it would have realized had it been sold in the open market at the time of cessation.

- (5) If a person sells any machinery or plant referred to in subsection (4) within 12 months of the date of cessation he may claim the adjustment of any balancing allowance or balancing charge which may have been made to or on him as if such sale had taken place immediately prior to the date of cessation and notwithstanding section 70 an assessor shall make any necessary correction to any assessment.
- (6) Notwithstanding anything contained in this section, where the aggregate of any sale, insurance, salvage or compensation moneys in respect of any machinery or plant exceeds the capital expenditure incurred on the provision of that machinery or plant, the aggregate of such moneys shall—
  - (a) for the purposes of calculating a balancing charge under subsection (2)(b); and
  - (b) in calculating the reducing value of the class of machinery or plant under section 39B(4),  
not exceed the capital expenditure incurred on the provision of that machinery or plant.
- (7) For the purposes of subsection (6), the capital expenditure incurred on the provision of the machinery or plant shall be taken as— (*Amended 7 of 1986 s. 6*)
  - (a) in a case where section 37(2A) or (2C) applies, the “cost of the asset” computed in accordance with that section;
  - (b) in a case where section 39B(6) or (6B) applies, the capital expenditure computed in accordance with that section; or

- (c) in any other case, the aggregate capital expenditure incurred by the person in question on the provision of the machinery or plant for the purposes of producing profits chargeable to tax under Part 4. (*Amended 9 of 2017 s. 12*)

(*Added 63 of 1980 s. 3. Amended E.R. 1 of 2012*)

**39E. Allowances under this Part in respect of capital expenditure on leased machinery and plant**

- (1) Notwithstanding anything to the contrary in this Part, a person (in this section referred to as *the taxpayer*) who incurs capital expenditure on the provision of machinery or plant, being machinery or plant acquired by the taxpayer under a contract entered into after the commencement of the Inland Revenue (Amendment) Ordinance 1986 (7 of 1986), for the purpose of producing profits chargeable to tax under Part 4 shall not have made to him the initial or annual allowances prescribed in section 37, 37A or 39B if, at a time when the machinery or plant is owned by the taxpayer, a person holds rights as lessee under a lease of the machinery or plant, and—
- (a) the machinery or plant was, prior to its acquisition by the taxpayer, owned and used by that person (whether alone or with others), or any associate of that person (which person or any such associate is hereinafter referred to as *the end-user*); or
- (b) the machinery or plant, not being a ship or aircraft or any part thereof, is while the lease is in force—
- (i) used wholly or principally outside Hong Kong by a person other than the taxpayer; or (*Amended 15 of 1992 s. 4*)
- (ii) the whole or a predominant part of the cost of the acquisition or construction of the machinery or

- plant was financed directly or indirectly by a non-recourse debt; or
- (c) the machinery or plant is a ship or aircraft or any part thereof and—
    - (i) the person holding rights as lessee is not an operator of a Hong Kong ship or aircraft; or
    - (ii) the whole or a predominant part of the cost of acquisition or construction of the ship or aircraft or the part thereof was financed directly or indirectly by a non-recourse debt. (*Replaced 15 of 1992 s. 4*)
- (2) Subsection (1)(a) shall not apply where—
- (a) the machinery or plant was acquired by the taxpayer on payment from the end-user at not more than the price which the end-user paid to the supplier (not being a supplier who is himself an end-user); and
  - (b) no initial or annual allowances have at any time prior to the acquisition of the machinery or plant by the taxpayer been made under section 37, 37A or 39B to the end-user in respect of such machinery or plant.
- (3) For the purposes of subsection (2) an allowance shall be deemed not to have been made if the end-user, by notice in writing to the Commissioner within 3 months of the date on which the capital expenditure on the provision of machinery or plant giving rise to the allowance is incurred, or within such further time as the Commissioner may, in any particular case, permit, disclaims such allowance.
- (4) For the purposes of this section, where a trustee of a trust estate or a corporation controlled by such a trustee owns machinery or plant or holds rights as a lessee under a lease of machinery or plant, the trustee, the corporation and the beneficiary under the trust shall each be deemed to be the

owner or holder, as the case may be, of rights as a lessee of the machinery or plant. (*Replaced 15 of 1992 s. 4*)

(5) In this section—

**acquisition** (取得) means acquisition by a person as owner and includes holding or hiring under a hire-purchase agreement or, if the hire-purchase agreement is a conditional sale agreement, holding as purchaser;

**associate** (相聯者), in relation to a person holding rights as lessee under any lease of machinery or plant (including a person who is deemed to be holding such rights), means— (*Amended 15 of 1992 s. 4*)

- (a) where the person holding such rights is a natural person—
- (i) a relative of the person holding such rights;
  - (ii) a partner of the person holding such rights and any relative of that partner;
  - (iii) a partnership in which the person holding such rights is a partner;
  - (iv) any corporation controlled by the person holding such rights, by a partner of the person holding such rights or by a partnership in which the person holding such rights is a partner;
  - (v) any director or principal officer of any such corporation as is referred to in subparagraph (iv);
- (b) where the person holding such rights is a corporation—
- (i) any associated corporation;
  - (ii) any person who controls the corporation and any partner of such person, and, where either such person is a natural person, any relative of such person;

- (iii) any director or principal officer of that corporation or of any associated corporation and any relative of any such director or officer;
  - (iv) any partner of the corporation and, where such partner is a natural person, any relative of such partner;
- (c) where the person holding such rights is a partnership—
- (i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;  
*(Replaced 65 of 1993 s. 4)*
  - (ii) *(Repealed 65 of 1993 s. 4)*
  - (iii) any corporation controlled by the partnership or by any partner thereof or, where such a partner is a natural person, any relative of such partner;
  - (iv) any corporation of which any partner is a director or principal officer;
  - (v) any director or principal officer of a corporation referred to in subparagraph (iii);

***associated corporation*** (相聯法團) means—

- (a) a corporation over which the person holding rights under any lease of machinery or plant (including a person who is deemed to be holding such rights) has control;  
*(Amended 15 of 1992 s. 4)*
- (b) a corporation which has control over such person holding rights, being a corporation;



- (c) a corporation which is under the control of the same person as such person holding rights, being a corporation;

**beneficiary under the trust** (信託的受益人) means any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under a trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income; *(Replaced 15 of 1992 s. 4)*

**control** (控制), in relation to a corporation, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

**end-user** (最終使用者) means any person (whether alone or with others) holding rights as lessee under a lease of machinery or plant or any associate of such person;

**held for use** (持有以供使用) includes installed ready for use and held in reserve;

**non-recourse debt** (無追索權債項), in relation to the financing of the whole or a predominant part of the cost of the acquisition or construction of any machinery or plant, means a debt where the rights of the creditor in the event of default in the repayment of principal or payment of interest—

- 
- (a) are limited wholly or predominantly to any or all of the following—
- (i) rights (including a right to moneys payable) in relation to the machinery or plant or the use of the machinery or plant;
  - (ii) rights (including rights to moneys payable) in relation to goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the machinery or plant;
  - (iii) rights (including a right to moneys payable) in relation to the loss or disposal of the whole or a part of the machinery or plant or of the taxpayer's interest in the machinery or plant;
  - (iv) any conjunction of such rights as are referred to in subparagraphs (i), (ii) and (iii);
  - (v) rights in respect of a mortgage or other security over the machinery or plant; or
  - (vi) rights arising out of any arrangement relating to the financial obligations of the end-user of the machinery or plant towards the taxpayer, being financial obligations in relation to the machinery or plant;
- (b) are in the opinion of the Commissioner capable of being limited as described in paragraph (a), having regard to either or both of the following—
- (i) the assets of the taxpayer;
  - (ii) any arrangement to which the taxpayer is a party; or
- (c) where paragraphs (a) and (b) do not apply, are limited by reason that not all of the assets of the taxpayer (not being assets that are security for a debt of the taxpayer

other than a debt arising in relation to the financing of the whole or part of the cost of the acquisition of the machinery or plant) would be available for the purpose of the discharge of the whole of the debt so arising (including the payment of interest) in the event of any action or actions by the creditor or creditors against the taxpayer arising out of the debt;

***operator of a Hong Kong aircraft*** (香港飛機的經營者) means a person who—

- (a) holds an air operators' certificate issued under the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C); and (*Amended 12 of 1999 s. 3*)
- (b) carries on business as an operator of aircraft and the business is controlled and managed in Hong Kong; (*Amended 15 of 1992 s. 4*)

***operator of a Hong Kong ship*** (香港船舶的經營者) means a person who—

- (a) is responsible for defraying all or a substantial portion of the expenses of operating the ship and the ship operates mainly in the waters of Hong Kong or between the waters of Hong Kong and waters within the river trade limits; and
- (b) carries on business as an operator of ships and the business is controlled and managed in Hong Kong; (*Added 15 of 1992 s. 4*)

***principal officer*** (主要職員) means—

- (a) a person employed by a corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or

- (b) a person so employed who, under the immediate authority of a director of the body corporate or a person to whom paragraph (a) applies, exercises managerial functions in respect of the body corporate;

*relative* (親屬) means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent;

*used* (使用) includes held for use. (*Amended 32 of 1998 s. 24*)

- (6) The amendments made to this section by section 4(b) and (d) (iv) of the Inland Revenue (Amendment) Ordinance 1992 (15 of 1992) apply to capital expenditure on the provision of machinery or plant under a transaction entered into on or after 15 November 1990 except expenditure under a transaction which was the subject of an application for advance clearance made to the Commissioner before 15 November 1990 and the Commissioner before or after that date expressed the opinion that the transaction would not fall within the terms of section 61A or, where no such application was made in respect of a transaction entered into before 15 November 1990 under which expenditure was incurred on or after 15 November 1990, the transaction under which the expenditure was made is, in the Commissioner's opinion, of the same type as any for which, in the circumstances prevailing as at 14 November 1990, he would have expressed the opinion that the transaction would not fall within the terms of section 61A. (*Added 15 of 1992 s. 4*)

(*Added 7 of 1986 s. 7. Amended E.R. 1 of 2012*)

#### 40. Interpretation

- \* (1) In this Part—

***basis period*** (評稅基期) has the meaning assigned to it by section 2 except that—

- (a) where 2 basis periods overlap the period common to both shall be deemed to fall in the first basis period only, and
- (b) where there is an interval between the end of the basis period for one year of assessment and the beginning of the basis period for the next year of assessment the interval shall be deemed to fall in the second basis period but where, in respect of salaries tax, the interval is the year ending on 31 March 1973, that interval shall not be deemed to fall in the second basis period;  
(Replaced 49 of 1956 s. 28. Amended 8 of 1973 s. 8)

***capital expenditure*** (資本開支)—

- (a) includes interest paid and commitment fees incurred in respect of a loan made for the sole purpose of financing the provision of an industrial building or structure or commercial building or structure or machinery or plant; but
- (b) does not include expenditure which is reimbursed by way of or attributable to any grant, subsidy or similar financial assistance and in relation to the person incurring the expenditure does not include any expenditure which is allowed to be deducted in ascertaining for the purpose of Part 4 the profits of a trade, profession or business carried on by that person;  
(Replaced 30 of 1981 s. 7. Amended 32 of 1998 s. 25)

***capital expenditure on the provision of machinery or plant*** (在提供機械或工業裝置方面的資本開支) includes capital expenditure on alterations to an existing building incidental to the installation of that machinery or plant for the purposes of the trade, profession or business;

***class of machinery or plant*** (該類機械或工業裝置、類別的機械或工業裝置) means the items of machinery or plant for which the same rate of depreciation is prescribed by the Board of Inland Revenue; (*Added 63 of 1980 s. 4*)

***commercial building or structure*** (商業建築物或構築物) means any building or structure or part of any building or structure used by the person entitled to the relevant interest for the purposes of his trade, profession or business other than an industrial building or structure; (*Replaced 35 of 1965 s. 22. Amended 26 of 1969 s. 22*)

***industrial building or structure*** (工業建築物或構築物) means any building or structure or part of any building or structure used—

- (a) for the purposes of a trade carried on in a mill, factory or other similar premises; or
- (b) for the purposes of a transport, tunnel, dock, water, gas or electricity undertaking or a public telephonic or public telegraphic service; or (*Amended 39 of 1969 s. 5*)
- (c) for the purposes of a trade which consists of the manufacture of goods or materials or the subjection of goods or materials to any process; or
- (d) for the purposes of a trade which consists in the storage—
  - (i) of goods or materials which are to be used in the manufacture of other goods or materials; or
  - (ii) of goods or materials which are to be subjected in the course of a trade to any process; or
  - (iii) of goods or materials on their arrival into Hong Kong; or (*Amended 7 of 1986 s. 12*)
- (e) for the purposes of the business of farming;



- (f) for the purposes of R&D activities within the meaning of section 2 of Schedule 45 related to any trade, profession or business, (*Amended 32 of 1998 s. 25; 9 of 2004 s. 5; 29 of 2018 s. 11*)

and, in particular, the said expression includes any building or structure or part of any building or structure used by a person carrying on a trade, undertaking or business specified in paragraphs (a) to (e) of this definition and provided by him for the welfare of workers employed in his trade, undertaking or business and in use for that purpose:

Provided that—

- (i) where part of the whole of a building or structure is, and part thereof is not, an industrial building or structure, and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-tenth of the total capital expenditure which has been incurred on the construction of the whole building or structure, the whole building or structure and every part thereof shall be treated as an industrial building or structure; and
- (ii) subject to the provisions of paragraph (i) of this proviso but notwithstanding anything else contained in the foregoing provisions of this definition, the expression ***industrial building or structure*** (工業建築物或構築物) shall not include any building or structure or part of any building or structure used as a dwelling house (other than as a dwelling house for the housing of manual workers), retail shop, showroom, hotel or office; (*Replaced 35 of 1965 s. 22*)

***relevant interest*** (有關權益) means, in relation to any expenditure incurred on the construction of a building or structure the interest in that building or structure to which the person who



incurred the expenditure was entitled when he incurred it;  
(Amended 49 of 1956 s. 28)

+*residue of expenditure* (開支剩餘額)—

- (a) in relation to a commercial building or structure— (Amended 12 of 2004 s. 13)
- (i) subject to subparagraph (ii), means the amount of the capital expenditure incurred on the construction of the building or structure reduced by—
- (A) the amount of any initial allowance made under section 34(1);
- (B) the amount of any annual allowance made under section 33A or 34(2);
- (C) the amount of any balancing allowance made under section 35, or under section 33B or 35 that was in force immediately before the commencement<sup>#</sup> of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004), and increased by the amount of any balancing charge made under section 35, or under section 33B or 35 that was in force immediately before the commencement<sup>#</sup> of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004); or
- (ii) where the building or structure is a building or structure to which section 33A(4) applies, means the amount of the capital expenditure incurred on the construction of the building or structure as determined under section 33A(4)(a) reduced by—
- (A) the amount of any initial allowance made under section 34(1) in respect of any year of assessment commencing on or after 1 April 1998;

- (B) the amount of any annual allowance made under section 33A or 34(2) in respect of any year of assessment commencing on or after 1 April 1998;
- (C) the amount of any balancing allowance made under section 35, or under section 33B or 35 that was in force immediately before the commencement<sup>#</sup> of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004), in respect of any year of assessment commencing on or after 1 April 1998,

and increased by the amount of any balancing charge made under section 35, or under section 33B or 35 that was in force immediately before the commencement<sup>#</sup> of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004), in respect of any year of assessment commencing on or after 1 April 1998:

Provided that in computing the residue of expenditure there shall be written off, in respect of any year in which no allowance fell to be made under section 33A or 34, an amount of one-twenty-fifth of the capital expenditure, and for the purposes of this proviso *year* (年) means the period which would have comprised a year of assessment commencing on 1 April 1998 or any subsequent year of assessment in respect of which an annual allowance would have fallen to be made under section 33A if the building or structure had been in use as a commercial building or structure; (*Added 32 of 1998 s. 25*)

- (b) in relation to an industrial building or structure, means the amount of the capital expenditure incurred on the construction of the building or structure reduced by—

- (i) the amount of any initial allowance made under section 34(1);
- (ii) the amount of any annual allowance made under section 33A or 34(2);
- (iii) the amount of any balancing allowance made under section 35, or under section 33B or 35 that was in force immediately before the commencement<sup>#</sup> of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004),

and increased by the amount of any balancing charge made under section 35, or under section 33B or 35 that was in force immediately before the commencement<sup>#</sup> of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004):

Provided that in computing the residue of expenditure there shall be written off, in respect of any year in which no allowance fell to be made under section 33A or 34, an amount of one-fiftieth of the capital expenditure in the case of a year prior to the year of assessment commencing on 1 April 1965, and one-twenty-fifth of the capital expenditure in the case of such or any subsequent year of assessment, and for the purposes of this proviso *year* (年) means the period which would have comprised a year of assessment in respect of which an initial or annual allowance would have fallen to be made under section 34(1) or (2), as the case may be, if the building or structure had then been in use as an industrial building or structure and the provisions of section 34 had then been in force. (*Replaced 35 of 1965 s. 22. Amended 32 of 1998 s. 25; 12 of 2004 s. 13*)

- (2) For the purposes of this Part, any capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on such trade, profession or business shall be

treated as if it had been incurred by that person on the first day upon which he does carry on such trade, profession or business. (*Added 35 of 1965 s. 22*)

- (3) References in this Part to capital expenditure incurred on the construction of a building or structure do not include any expenditure incurred on the acquisition of, or of rights in or over, any land. (*Added 29 of 1982 s. 11*)

*(Replaced 36 of 1955 s. 46. Amended E.R. 1 of 2012)*

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Editorial Note:

\* The amendment made by 9 of 2004 to section 40(1) applies in relation to the year of assessment commencing on 1 April 2004 and to all subsequent years of assessment. (Please see 9 of 2004 s. 1(2))

+ The amendments made by 12 of 2004 to this definition apply in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))

# Commencement date: 25 June 2004.

**40A.** (*Repealed 56 of 1993 s. 19*)

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## **Part 6A**

### **Specified Alternative Bond Scheme and its Tax Treatment**

*(Part 6A added 10 of 2013 s. 3)*

**40AB. Schedule 17A: specified alternative bond scheme and its tax treatment**

Schedule 17A contains provisions about the tax treatment of specified alternative bond schemes within the meaning of that Schedule.

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## Part 7

### Personal Assessment

#### 40B. Interpretation

In this Part, unless the context otherwise requires—

**adjustment factor** (調整分數) has the same meaning as in section 19CA; (*Added 32 of 1998 s. 26*)

**concessionary trading receipts** (獲特惠的營業收入) has the same meaning as in section 19CA; (*Added 32 of 1998 s. 26*)

**income** (入息), in relation to any person, means income derived beneficially by that person;

**individual** (個人) means a person electing or who has elected to be chargeable to tax under this Part;

**joint total income** (共同入息總額) means joint total income calculated in accordance with section 42A;

**loss** and **losses** (虧損) do not include a loss sustained by a person acting in his capacity as trustee of a trust.

(*Replaced 43 of 1989 s. 11*)

#### 41. Election for personal assessment\*

(1) An individual—

(a) who is of or above the age of 18 years or is under that age if both parents are dead; and

(b) who is either ordinarily resident in Hong Kong or a temporary resident,

may elect for personal assessment on the individual's total income in accordance with this Part. (*Replaced 32 of 2018 s. 9*)

- (1A) If—
- (a) an individual is married and not living apart from the individual's spouse;
  - (b) both of them have income assessable under this Ordinance; and
  - (c) either one or both of them are eligible to make an election under subsection (1),
- they may jointly make an election for personal assessment. *(Replaced 32 of 2018 s. 9)*
- (1B) If an individual or the individual's spouse is chargeable to salaries tax under section 10(3), the individual may not make an election for personal assessment unless the individual and the spouse jointly make an election under subsection (1A). *(Added 32 of 2018 s. 9)*
- (2) Where an individual is deceased an executor shall have the same right to elect for personal assessment on the total income of the deceased as the deceased would have if he were alive. *(Replaced 35 of 1965 s. 23. Amended 71 of 1983 s. 20; 43 of 1989 s. 12)*
- (2A) Where—
- (a) a deceased individual, or his executor on his behalf, elected to be personally assessed for the year of assessment in which the deceased died; and
  - (b) that individual was a partner in a partnership; and
  - (c) that individual had a share of the partnership assessable profits or losses in the year of assessment following that in which he died,
- then his executor may claim to have that share of such assessable profits or losses computed in accordance with Part 4 included in the deceased's total income for the year of assessment in which he died. *(Added 7 of 1975 s. 29)*



- (3) Any election under this section shall be made in writing and lodged with the Commissioner not later than 2 years after the end of the year of assessment in respect of which the election is made or 1 month after an assessment of income or profits forming part of the individual's total income for such year of assessment becomes final and conclusive under section 70 or within such further period, if any, as the Commissioner may allow as being reasonable in the particular circumstances, whichever is the later. (*Amended 2 of 1971 s. 31*)
- (3A) An election made by an individual under subsection (1) may be withdrawn by the individual. An election made by an individual and his or her spouse under subsection (1A) may only be withdrawn by them jointly. (*Added 32 of 2018 s. 9*)
- (3B) A withdrawal under subsection (3A) must be effected by giving a notice in writing to the Commissioner—
- (a) within 6 months after the date on which a personal assessment is issued by the Commissioner pursuant to the election; or
  - (b) within another period that the Commissioner considers reasonable in the circumstances. (*Added 32 of 2018 s. 9*)
- (3C) An election withdrawn under subsection (3A) is to be regarded as not having been made. (*Added 32 of 2018 s. 9*)
- (3D) An individual who has (or the individual and his or her spouse who have) withdrawn under subsection (3A) an election made for a year of assessment may not make an election again for that year of assessment, unless the Commissioner considers it appropriate to allow a re-election. (*Added 32 of 2018 s. 9*)
- (4) In this section—
- temporary resident** (臨時居民) means an individual who stays in Hong Kong for a period or a number of periods amounting to more than 180 days during the year of assessment in respect of which the election is made or for a period or periods

amounting to more than 300 days in 2 consecutive years of assessment one of which is the year of assessment in respect of which the election is made.

*(Amended 32 of 2018 s. 9)*

*(Replaced 36 of 1955 s. 47. Amended 71 of 1983 s. 20; 7 of 1986 s. 12; 56 of 1993 s. 20; E.R. 1 of 2012)*

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Editorial Note:

\* The amendments made by Part 2 of Ord. No. 32 of 2018 to this section apply in relation to all years of assessment commencing on or after 1 April 2018. (Please see 32 of 2018 s. 3)

**42. Calculation of total income\***

(1) For the purposes of this Part the total income of an individual for any year of assessment shall be the aggregate of the following amounts— *(Amended 30 of 2004 s. 3)*

(a) (i) *(Repealed 56 of 1993 s. 21)*

(ii) in respect of the years of assessment commencing on or after 1 April 1983, the sum equivalent to the net assessable value as ascertained in accordance with sections 5(1A) and 5B: *(Added 8 of 1983 s. 12)*

Provided that where an individual is a joint owner or co-owner of property, that individual's share of the net assessable value shall be computed by apportioning the value ascertained in accordance with section 5(1A) or 5B—

(a) in the case of joint ownership, between the joint owners equally; and

(b) in the case of ownership in common, between the owners in common each in proportion to his share in such ownership; *(Added 52 of 1993 s. 3)*

- (b) the net assessable income of the individual for that year of assessment; and *(Replaced 71 of 1983 s. 21)*
- (c) subject to subsection (1A), the assessable profits of the individual for that year of assessment computed in accordance with Part 4: *(Amended 32 of 1998 s. 27)*
- (d) *(Repealed 17 of 1989 s. 10)*

Provided that there shall be deducted from that part of the total income arising from paragraph (a) the amount of any interest payable on any money borrowed for the purpose of producing that part of the total income where the amount of such interest has not been allowed and deducted under Part 4. *(Amended 17 of 1989 s. 10)*

- (1A) For the purposes of subsection (1)(c), any assessable profits in respect of concessionary trading receipts shall be deemed to be the amount arrived at by dividing such assessable profits by the adjustment factor. *(Added 32 of 1998 s. 27)*
- (2) There shall be deducted from the total income of an individual for any year of assessment—
  - (a) such deductions as are under Part 4A allowable to the individual; and *(Replaced 31 of 1998 s. 18)*
  - (b) the amount of the individual's loss or share of loss for that year of assessment computed in accordance with Part 4.
- (3)-(4) *(Repealed 31 of 1998 s. 18)*
- (5) (a) Where in any year of assessment the aggregate amount of the deductions under subsection (2)(a) and the loss under subsection (2)(b) for an individual exceeds the total income of the individual—
  - (i) subject to subparagraph (ii), that part of the amount of such excess not exceeding the amount of the loss under subsection (2)(b) for the individual for

- that year of assessment shall be carried forward to be set off against the total income of the individual for future years of assessment;
- (ii) where the total incomes of the individual and his or her spouse are required to be aggregated under section 42A(1), the amount of such excess shall be reduced as far as can be done by being set off against the total income of his or her spouse for that year of assessment as reduced under subsection (2), and that part of the amount of such excess not exceeding the amount of the loss under subsection (2)(b) for the individual for that year of assessment which is not so reduced shall be carried forward to be set off against the total income of the individual for future years of assessment.
- (b) Where paragraph (a) does not apply and in any year of assessment the amount of the loss under subsection (2)(b) for an individual exceeds the total income of the individual—
- (i) subject to subparagraph (ii), the amount of such excess shall be carried forward to be set off against the total income of the individual for future years of assessment;
- (ii) where the total incomes of the individual and his or her spouse are required to be aggregated under section 42A(1), the amount of such excess shall be reduced as far as can be done by being set off against the total income of his or her spouse for that year of assessment as reduced under subsection (2), and that part of the amount of such excess which is not so reduced shall be carried forward to be set off against the total income of the individual for future years of assessment.

- (c) Where paragraphs (a) and (b) do not apply and in any year of assessment the amount of the deductions under subsection (2)(a) for an individual exceeds the total income of the individual—
- (i) subject to subparagraph (ii), the amount of such excess shall not be carried forward to be set off against the total income of the individual for future years of assessment;
  - (ii) where the total incomes of the individual and his or her spouse are required to be aggregated under section 42A(1), the amount of such excess shall be reduced as far as can be done by being set off against the total income of his or her spouse for that year of assessment as reduced under subsection (2), and that part of the amount of such excess which is not so reduced shall not be carried forward to be set off against the total income of the individual for future years of assessment. *(Replaced 31 of 1998 s. 18)*
- (6) If—
- (a) an individual has income assessable under this Ordinance for a year of assessment;
  - (b) the individual's spouse does not have income assessable under this Ordinance for that year of assessment, but an amount of loss is carried forward from a previous year of assessment under this Part to that year of assessment;
  - (c) the individual and the spouse would have been able to jointly make an election for personal assessment under section 41(1A) had the spouse had income assessable under this Ordinance; and

(d) the individual has elected to be personally assessed under this Part,

subsection (5)(a)(ii) and (b)(ii) applies in relation to the individual and the spouse as if their total income had been required to be aggregated under section 42A(1). *(Replaced 32 of 2018 s. 10)*

(7) The amount of any excess set off under subsection (5) against an individual's total income or that of the individual's spouse for any year of assessment shall not be set off for any other year of assessment.

(8)-(9) *(Repealed 30 of 2004 s. 3)*

(10) Where an election is made by a husband and wife under section 41(1A) the total income (as reduced under subsections (2) and (5)) of each of them shall be separately calculated under this section before both incomes are aggregated under section 42A. *(Replaced 43 of 1989 s. 13)*

*(Replaced 7 of 1975 s. 30. Amended 71 of 1983 s. 21; 43 of 1989 s. 13; E.R. 1 of 2012; E.R. 2 of 2012)*

Editorial Note:

\* The amendment made by Part 2 of Ord. No. 32 of 2018 to this section applies in relation to all years of assessment commencing on or after 1 April 2018. (Please see 32 of 2018 s. 3)

**42A. Assessment to tax**

(1) In giving effect to an election under section 41 the assessor shall make a single assessment—

(a) in the sum of the total income, as reduced under section 42(2) and (5), of the individual making the election; or

(b) in the case of an election under section 41(1A), in the sum of the joint total income resulting from the

aggregation of the total income of the one spouse, as so reduced, with that of the other, as also so reduced, as reduced in each case by such of the allowances prescribed in Part 5 as may be appropriate.

- (2) In the case of an election under section 41(1A) by a husband and wife who married one another in the year of assessment to which the election relates, they shall be deemed for the purpose of ascertaining their joint total income under subsection (1)(b) to have married at the commencement of that year.

*(Replaced 43 of 1989 s. 14. Amended E.R. 1 of 2012)*

**42B.** *(Repealed 43 of 1989 s. 14)*

**43. Rates of charge**

- (1) Tax shall be charged on the amount of the assessment referred to in section 42A(1) and at the rates specified in Schedule 2— *(Amended L.N. 350 of 1990)*
- (a) on the individual; or
- (b) in the case of a husband and wife making an election under section 41(1A) on both of them subject to apportionment in the manner prescribed by subsection (2B). *(Replaced 43 of 1989 s. 15)*
- (1A) Notwithstanding subsection (1), the amount of tax charged under that subsection shall not in any case exceed the amount which would have been chargeable had the standard rate been charged on the total income (as reduced under section 42(2) and (5)) or, as the case may be, the joint total income. *(Added 65 of 1970 s. 8. Amended 7 of 1975 s. 32; 71 of 1983 s. 24)*
- (1B) Notwithstanding subsections (1) and (1A), for the year of assessment commencing on 1 April 2006, the amount of tax



charged under subsection (1) read together with subsection (1A) shall be reduced by an amount equivalent to—

- (a) 50% of the amount of the tax as computed under subsection (1) read together with subsection (1A); or
- (b) \$15,000,

whichever is the less. (*Added 10 of 2007 s. 5*)

- (2) Any property tax, any salaries tax and any profits tax paid under the provisions of Parts 2, 3 and 4 respectively shall, where the relevant amounts on which such taxes were calculated are included in the total income of the person who paid the tax, be set off for the purposes of collection against the tax charged under this Part on that person. (*Replaced 26 of 1969 s. 26. Amended 8 of 1973 s. 11; 8 of 1983 s. 13; 71 of 1983 s. 24; 17 of 1989 s. 12; 43 of 1989 s. 15*)

(2A) (*Repealed 17 of 1989 s. 12*)

- (2B) Any tax chargeable on a husband and wife under subsection (1)(b) in any year of assessment (as reduced, for the year of assessment commencing on 1 April 2006, under subsection (1B)) shall be apportioned between them so that each spouse shall, in respect of that year, be charged such proportion of the tax as the total income of that spouse (as reduced under section 42(2) and (5)) bears to joint total income of the husband and wife. (*Replaced 43 of 1989 s. 15. Amended 10 of 2007 s. 5*)

Provided that where an additional assessment is issued under section 60, the whole of the tax payable shall be charged on the individual assessed in respect of that income under Part 2, 3 or 4. (*Added 52 of 1993 s. 4*)

(2C) (*Repealed 43 of 1989 s. 15*)

- (3) Where the aggregate of the taxes which may be set off under subsection (2) exceeds the amount of tax charged under this

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Part, the Commissioner shall, on receipt of a claim from the person charged in the specified form and on being satisfied that the claim is in order, refund such excess to that person.

*(Added 36 of 1955 s. 50. Amended 26 of 1969 s. 26; 39 of 1969 s. 8; 30 of 1981 s. 8; 71 of 1983 s. 24; 17 of 1989 s. 12; 43 of 1989 s. 15)*

*(Amended E.R.1 of 2012)*

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**43A.** *(Repealed 19 of 1991 s. 4)*

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## Part 8

### Double Taxation Relief, Exchange of Information and Other International Tax Cooperation

(Amended 49 of 1956 s. 32; 9 of 2013 s. 3; 5 of 2018 s. 3)

44. (Repealed 49 of 1956 s. 33)

45. (Repealed 32 of 1998 s. 28)

46. (Repealed 12 of 1999 s. 3)

47-48. (Repealed 49 of 1956 s. 35)

#### 48A. Interpretation of Part 8

In this Part—

**double taxation arrangements** (雙重課稅安排) means arrangements that—

- (a) are made with the government of a territory outside Hong Kong with a view to affording relief from double taxation; and
- (b) have effect under section 49(1) or (1A);

**DTA territory** (有安排地區) means a territory outside Hong Kong with which double taxation arrangements have been made;

**DTA territory resident person** (有安排地區居民人士) means a person who is resident for tax purposes in a DTA territory;

**Hong Kong resident person** (香港居民人士) means a person who is resident for tax purposes in Hong Kong;

**resident for tax purposes** (稅務居民) in relation to any double taxation arrangements, has the meaning given by the

provisions of the arrangements relating to the determination of resident status.

*(Added 27 of 2018 s. 5)*

**49. Arrangements: relief from double taxation, exchange of information and other international tax cooperation**

*(Replaced 5 of 2018 s. 4)*

- (1) If the Chief Executive in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax under this Ordinance in accordance with subsection (1C) despite anything in any enactment. *(Amended 7 of 1986 s. 12; 12 of 1999 s. 3; 1 of 2010 s. 3; 27 of 2018 s. 6)*
- (1A) If the Chief Executive in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect, those arrangements shall have effect and, in particular— *(Amended 7 of 2013 s. 4)*
- (a) shall have effect in relation to tax under this Ordinance in accordance with subsection (1C) despite anything in any enactment; and *(Amended 27 of 2018 s. 6)*
- (b) for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of that territory, shall have effect in relation to any tax of that territory that is the subject of that provision. *(Added 1 of 2010 s. 3)*

- (1AB) Arrangements that may be specified in an order under subsection (1A) include—
- (a) arrangements that are made with more than one government; and
  - (b) arrangements that are made by the Central People's Government and applied to Hong Kong. (*Added 5 of 2018 s. 4*)
- (1B) But only arrangements made for one or more of the following purposes may be specified in an order under subsection (1A)— (*Amended 5 of 2018 s. 4*)
- (a) affording relief from double taxation;
  - (b) exchanging information in relation to any tax imposed by the laws of Hong Kong or any territory concerned; (*Added 9 of 2013 s. 4. Amended 5 of 2018 s. 4*)
  - (c) implementing an initiative of international tax cooperation. (*Added 5 of 2018 s. 4*)
- (1C) Arrangements specified in an order made under subsection (1) or (1A) have effect despite any provision in any enactment so far as the arrangements provide for—
- (a) affording relief from tax charged under this Ordinance;
  - (b) taxing income, profits or gains of DTA territory resident persons arising in, or derived from sources in, Hong Kong;
  - (c) taxing chargeable gains accruing to DTA territory resident persons on the disposal of assets in Hong Kong;
  - (d) determining income, profits or gains to be attributed to DTA territory resident persons;
  - (e) determining income, profits or gains to be attributed to permanent establishments in Hong Kong of DTA territory resident persons; or

- (f) determining income, profits or gains to be attributed to Hong Kong resident persons who have special relationships with DTA territory resident persons. (*Added 27 of 2018 s. 6*)
- (1D) In subsection (1C)—
- permanent establishment** (常設機構) has the meaning given by section 50AAC(5);
- special relationship** (特殊關係) has the meaning given by subsection (1E). (*Added 27 of 2018 s. 6*)
- (1E) A person has a special relationship with another person—
- (a) if both persons are individuals and one of the persons is—
- (i) the other person's spouse;
  - (ii) a relative of the other person;
  - (iii) a relative of the other person's spouse; or
  - (iv) the spouse of a person who falls within subparagraph (ii) or (iii); or
- (b) if—
- (i) one of the persons is not an individual or both persons are not individuals; and
  - (ii) the 2 persons are in a relationship by virtue of which the participation condition is met under section 50AAG. (*Added 27 of 2018 s. 6*)
- (1F) In subsection (1E)—
- relative** (親屬), in relation to a person, means the parent, child, brother or sister of the person, and, in deducing such a relationship—
- (a) an adopted child is regarded as a child of both the natural parents and the adopting parents; and



- (b) a step child is regarded as a child of both the natural parents and any step parent. (*Added 27 of 2018 s. 6*)
- (2) (*Repealed 49 of 1956 s. 36*)
- (3) (*Repealed 32 of 1998 s. 29*)
- (4) Any order made under this section may be revoked by a subsequent order.
- (5) Where any arrangements have effect by virtue of this section, the obligation as to secrecy imposed by section 4 shall not prevent the disclosure to any authorized officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.
- (6) The Chief Executive in Council may make rules for carrying out the provisions of any arrangements having effect under this section. (*Amended 12 of 1999 s. 3*)
- (7) Rules made under subsection (6) are subject to the approval of the Legislative Council. (*Added 1 of 2010 s. 3*)
- (*Amended 49 of 1956 s. 36*)

## 50. Tax credits

- (1) This section has effect if, under double taxation arrangements, tax payable in respect of any income in the DTA territory concerned is to be allowed as a credit against tax payable in respect of that income in Hong Kong. (*Replaced 27 of 2018 s. 7*)
- (1A) In this section—
- (a) ***foreign tax*** (外地稅款) means—
- (i) any tax—
- (A) that is payable in respect of any income in a DTA territory; and

- (B) that is, under the double taxation arrangements concerned, to be allowed as a credit against tax payable in respect of that income in Hong Kong; or
- (ii) any tax that would have been payable under the laws of a DTA territory but for relief—
- (A) given under the laws of the territory with a view to promoting investment or industrial, commercial, economic, scientific, educational or other development in the territory; and
- (B) provided for in the double taxation arrangements concerned;
- (b) **tax** (稅款), in relation to Hong Kong, means tax chargeable under this Ordinance; and
- (c) **income** (收入), in relation to a DTA territory, includes profits and gains within the meaning of the double taxation arrangements concerned. (*Added 27 of 2018 s. 7*)
- (1B) For the purposes of this section, **foreign tax** within the meaning of subsection (1A)(a)(ii) is treated as having been payable under the laws of the DTA territory concerned. (*Added 27 of 2018 s. 7*)
- (2) The amount of the tax chargeable in respect of the income shall be reduced by the amount of the credit:
- Provided that credit shall not be allowed against tax for any year of assessment unless the person entitled to the income is a Hong Kong resident person for that year. (*Amended 7 of 1986 s. 12; 27 of 2018 s. 7*)
- (3) The credit shall not exceed the amount which would be produced by computing the amount of the income in accordance with the provisions of this Ordinance and then

charging it to tax at a rate ascertained by dividing the tax chargeable (before allowance of credit under any double taxation arrangements) on the total income of the person entitled to the income by the amount of his total income. (*Amended 27 of 2018 s. 7*)

- (4) Without prejudice to the provisions of subsection (3), the total credit to be allowed to a person for any year of assessment for foreign tax under all double taxation arrangements shall not exceed the total tax payable by him for that year of assessment. (*Amended 17 of 1989 s. 13; 27 of 2018 s. 7*)
- (5) In computing the amount of the income—
- (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);
  - (b) where the tax chargeable depends on the amount received in Hong Kong, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the income; (*Amended 7 of 1986 s. 12*)
  - (c) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit,

but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

- (6) Subsection (5)(a) and (b) (but not the remainder thereof) shall apply to the computation of total income for the purposes of

determining the rate mentioned in subsection (3), and shall apply thereto in relation to all income in the case of which credit falls to be given for foreign tax under double taxation arrangements for the time being in force. (*Amended 27 of 2018 s. 7*)

(7) Where—

(a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls, directly or indirectly not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the income of any person for any year of assessment if he elects that credits shall not be allowed in the case of his income for that year.

(9) A claim for an allowance by way of credit may only be made before—

(a) the end of 6 years after the end of the year of assessment; or

(b) the end of 6 months after the date on which an assessment is made imposing liability or additional liability to tax in respect of the income on which foreign tax has been assessed,

whichever is the later. (*Replaced 27 of 2018 s. 7*)

- (9A) If a person makes a claim under subsection (9) for an allowance by way of credit and an assessor refuses to allow a credit pursuant to the claim, the assessor must give the person a written notice of the refusal and the person has the same rights of objection and appeal under Part 11 as if the notice were a notice of assessment. (*Added 27 of 2018 s. 7*)
- (10) (*Repealed 27 of 2018 s. 7*)

#### **50AA. General provisions on relief from double taxation**

- (1) This section applies if, in respect of tax (*foreign tax*) payable in a territory outside Hong Kong (*foreign territory*) on any income, profits or gains (*relevant income*), a person is entitled to any of the following relief (each of which is referred to in this section as *relief from double taxation*)—
- (a) relief under section 8(1A)(c) by way of exclusion of any amount of the relevant income;
  - (b) relief under section 16(1)(c) by way of deduction of any amount of the foreign tax;
  - (c) relief under section 50 by way of credit and deduction of any amount of the foreign tax.
- (2) The amount of any relief from double taxation granted must not exceed the amount of the relief that would be granted had all foreign tax minimization steps been taken.
- (3) For the purposes of subsection (2)—
- (a) all foreign tax minimization steps are taken only if all reasonable steps are taken under—
    - (i) the laws of the foreign territory; and
    - (ii) if subsection (1)(c) applies—the double taxation arrangements made with the foreign territory,

- to minimize the amount of foreign tax payable in the foreign territory in respect of the relevant income; and
- (b) the reasonable steps mentioned in paragraph (a) include—
    - (i) claiming, or otherwise securing the benefit of, relief, deductions, reductions or allowances; and
    - (ii) making elections for tax purposes.
- (4) For the purposes of subsections (2) and (3), a question as to the steps which it would have been reasonable for a person to take is to be determined on the basis of what the person might reasonably be expected to have done in the absence of the relief from double taxation.
- (5) If—
- (a) relief from double taxation has been granted to a person; and
  - (b) subsequently, the amount of the relief becomes excessive as a result of an adjustment to the amount of the foreign tax under the laws of the foreign territory,
- the person must give the Commissioner written notice of the adjustment within 3 months after the adjustment is made.
- (6) If the amount of the relief from double taxation becomes excessive or insufficient by reason of an adjustment to the amount of the foreign tax or tax payable in Hong Kong, an assessment, additional assessment or claim to which the adjustment gives rise may be made before—
- (a) the end of 2 years from the time when all assessments, adjustments and other determinations have been made, whether in the foreign territory or in Hong Kong, that are material in determining whether any, and if so what, relief is to be granted; or

- (b) the expiry of the time limit for making an assessment, additional assessment or claim for relief under this Ordinance,

whichever is the later.

*(Added 27 of 2018 s. 8)*

**50AAB. Mutual agreement procedure and arbitration under double taxation arrangements**

- (1) This section applies if a person (*taxpayer*) presents a case for mutual agreement procedure under double taxation arrangements made in relation to a DTA territory, with or without an issue in the case also being referred for arbitration under the arrangements.
- (2) The Commissioner may give a notice to the taxpayer requiring the taxpayer to provide information regarding the case that is in the possession, custody or control of the taxpayer.
- (3) The Commissioner may request the taxpayer—
  - (a) to pay any costs and reasonable expenses incurred by the Commissioner in relation to the mutual agreement procedure and, if an issue in the case is further referred for arbitration, in relation to the arbitration; or
  - (b) to reimburse the Commissioner for the costs and expenses.
- (4) Any amount payable or reimbursable under subsection (3) is recoverable as a civil debt due to the Government.
- (5) Subsection (6) applies if, for a case presented for mutual agreement procedure—
  - (a) the Commissioner arrives at a solution unilaterally;
  - (b) the competent authorities of Hong Kong and the DTA territory reach a mutual agreement; or



- (c) after the case or an issue in the case is referred for arbitration—
- (i) a solution is arrived at by the Commissioner unilaterally, or a mutual agreement is reached between the competent authorities of Hong Kong and the DTA territory, before a decision is delivered by the arbitrators; or
  - (ii) a decision is delivered by the arbitrators.
- (6) The Commissioner must give effect to the solution, agreement or decision (*MAP solution*) by making any adjustment (other than in relation to any additional tax, fines and penalties imposed under Part 14) that is appropriate as a result of the MAP solution, despite any provision in this Ordinance.
- (7) If the Commissioner considers it appropriate to do so having regard to a MAP solution, the Commissioner may adjust any additional tax imposed under Part 14 unless the Board of Review or the court has delivered a decision, opinion, determination or direction in respect of the assessment of the additional tax.
- (8) The Commissioner may decide the way in which an adjustment under subsection (6) or (7) is to be made, including by way of discharge or repayment of tax, the allowance of credit against tax payable in Hong Kong, or the making of an assessment.
- (9) In this section—

*arbitrator* (仲裁員) means a person who is appointed by mutual agreement between the competent authorities of Hong Kong and the DTA territory concerned to conduct arbitration;

*competent authority* (主管當局) has the meaning given by the double taxation arrangements concerned.

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*(Added 27 of 2018 s. 8)*

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## Part 8AA

# Transfer Pricing Rules, Relief and Advance Pricing Arrangement

*(Part 8AA added 27 of 2018 s. 9)*

**Note (with no legislative effect) providing an overview of Part 8AA—**

1. Apart from defining relevant terms, Division 1 applies Part 8AA to determining property tax, salaries tax and profits tax and requires the Part to be read in a way that best secures consistency between its effect and the effect given to Articles 7 and 9 of the Model Tax Convention on Income and on Capital approved by the Organisation for Economic Co-operation and Development. The expression *provision* is broadly equivalent to the expression *condition made or imposed* in Article 9.
2. Division 2 incorporates the international transfer pricing rules and has the following effect—
  - (a) in relation to a year of assessment beginning on or after 1 April 2018—
    - (i) a person's tax liability under this Ordinance is to be determined on the basis that a provision made or imposed between the person and the person's associated person is made or imposed on an arm's length basis;
    - (ii) in other words, a person who would have a Hong Kong tax advantage if taxed on the basis of a non-arm's length provision (*advantaged person*) will have income adjusted upwards or loss adjusted downwards;
  - (b) similarly, in relation to a year of assessment beginning on or after 1 April 2019, the income or loss of a non-Hong Kong resident person attributable to the person's permanent establishment in Hong Kong is to be determined as if

the permanent establishment were a distinct and separate enterprise.

3. The arm's length provision is to be determined in accordance with the OECD rules (as defined by section 50AAC(1)). It is possible that application of the OECD rules may not produce a single provision (such as an exact figure as the price) but may produce a range of provisions where each provision constitutes an arm's length provision.
4. Division 3 provides that, after adjustment to tax assessment is made on the advantaged person to reflect the arm's length provision, corresponding relief may be applied for by the disadvantaged person (that is, the person who would suffer a tax disadvantage if taxed on the basis of the non-arm's length provision) to avoid double taxation. Similar relief applies in relation to transactions between parts of the same enterprise in different territories.
5. Under Division 4, a person and the Commissioner may, by an advance pricing arrangement, agree in advance on a method for resolving issues arising from Division 2.

## **Division 1—Preliminary**

### **50AAC. Interpretation of Part 8AA**

(1) In this Part—

*actual provision* (實際條款)—

- (a) except in relation to section 50AAN, has the meaning given by section 50AAF(1); and
- (b) in relation to section 50AAN, has the meaning given by section 50AAN(1);

*advance pricing arrangement* (預先定價安排) has the meaning given by section 50AAP(1);

*affected person* (當事人)—

- (a) except in relation to section 50AAN, has the meaning given by section 50AAF(1); and
- (b) in relation to section 50AAN, has the meaning given by section 50AAN(1);

***arm's length provision*** (獨立交易條款)—

- (a) except in relation to section 50AAN, has the meaning given by section 50AAF(1); and
- (b) in relation to section 50AAN, has the meaning given by section 50AAN(1);

***associated enterprise*** (相聯企業) has the meaning given by subsection (3)(a);

***associated enterprises article*** (相聯企業條文) means the rules contained in Article 9 of the Model Tax Convention;

***associated person*** (相聯人士) has the meaning given by subsection (3)(a);

***business*** (業務) has the meaning given by section 2(1) and includes the performance of professional services and of other activities of an independent character;

***business profits article*** (營業利潤條文) means the rules contained in Article 7 of the Model Tax Convention;

***double taxation arrangements*** (雙重課稅安排)—

- (a) in relation to the computation of income or loss with respect to a provision made or imposed between 2 persons by means of a transaction or series of transactions—means double taxation arrangements (as defined by section 48A) that incorporate—
  - (i) the associated enterprises article and the mutual agreement procedure article; or
  - (ii) any rules in the same or equivalent terms as those articles;

- (b) in relation to the attribution of a person's income or loss to the person's permanent establishment in Hong Kong—means double taxation arrangements (as defined by section 48A) that incorporate—
- (i) the business profits article and the mutual agreement procedure article; or
  - (ii) any rules in the same or equivalent terms as those articles; or
- (c) in relation to the determination of the question whether a person has a permanent establishment in Hong Kong—means double taxation arrangements (as defined by section 48A) that incorporate—
- (i) the permanent establishment article; or
  - (ii) any rules in the same or equivalent terms as the article;

***DTA territory*** (有安排地區) means a territory outside Hong Kong with which double taxation arrangements have been made;

***DTA territory resident person*** (有安排地區居民人士) means a person who is resident for tax purposes in a DTA territory;

***enterprise*** (企業) means a person who carries on a trade, profession or business;

***foreign tax*** (外地稅項) means any tax that is—

- (a) chargeable in a territory outside Hong Kong; and
- (b) of substantially the same nature as Hong Kong tax;

***Hong Kong resident person*** (香港居民人士) means a person who is resident for tax purposes in Hong Kong;

***Hong Kong tax*** (香港稅項) means any tax imposed by this Ordinance other than additional tax charged under section 82A;

***income*** (收入) includes profits or gains;

***independent enterprise*** (獨立企業) has the meaning given by subsection (3)(b);

***independent person*** (獨立人士) has the meaning given by subsection (3)(b);

***mutual agreement procedure article*** (相互協商程序條文) means the rules contained in Article 25 of the Model Tax Convention;

***non-DTA territory*** (無安排地區) means a territory outside Hong Kong that is not a DTA territory;

***non-DTA territory resident person*** (無安排地區居民人士) means a person who is resident for tax purposes in a non-DTA territory;

***non-Hong Kong resident person*** (非香港居民人士) means a person who is not a Hong Kong resident person;

***OECD rules*** (《經合組織規則》) means—

- (a) the commentary on the associated enterprises article or the business profits article (as the case requires); and
- (b) the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the Organisation for Economic Co-operation and Development on 10 July 2017;

***permanent establishment*** (常設機構) has the meaning given by subsection (5);

***permanent establishment article*** (常設機構條文) means the rules contained in Article 5 of the Model Tax Convention;

***potential advantage*** (潛在利益) has the meaning given by section 50AAJ;

***recognized pension fund*** (認可退休基金), in relation to a territory, means an entity or arrangement established in the territory—



- (a) that is treated as a separate person under the taxation laws of the territory; and
- (b) either—
  - (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by the territory or one of its political subdivisions or local authorities; or
  - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements that meet the description in subparagraph (i);

***resident for tax purposes*** (稅務居民)—

- (a) in relation to Hong Kong, means—
  - (i) an individual who ordinarily resides in Hong Kong;
  - (ii) an individual who stays in Hong Kong—
    - (A) for a period or a number of periods amounting to more than 180 days during a year of assessment; or
    - (B) for a period or a number of periods amounting to more than 300 days in 2 consecutive years of assessment if one of the years is the year of assessment concerned;
  - (iii) a company incorporated in Hong Kong or, if incorporated outside Hong Kong, normally managed or controlled in Hong Kong;
  - (iv) a recognized pension fund of Hong Kong; or

- (v) any other person, or a trust, constituted under the laws of Hong Kong or, if otherwise constituted, normally managed or controlled in Hong Kong;
- (b) in relation to a DTA territory, has the meaning given by the provisions relating to the determination of resident status under the double taxation arrangements concerned;
- (c) in relation to a non-DTA territory—
  - (i) means a person who, under the laws of the territory, is liable to tax in the territory by reason of the person's domicile, residence, place of management or any other criterion of a similar nature; and
  - (ii) includes the territory, the government of the territory and any political subdivision and local authority of the territory as well as a recognized pension fund of the territory;

**transaction** (交易) and **series of transaction** (一系列交易) have the meanings given by section 50AAI.

- (2) For the purposes of the definitions of **associated enterprises article**, **business profits article**, **mutual agreement procedure article**, **OECD rules** and **permanent establishment article** in subsection (1)—
- (a) a reference to an article of the Model Tax Convention means the article of the Model Tax Convention on Income and on Capital as approved by the Organisation for Economic Co-operation and Development on 21 November 2017; and
  - (b) a reference to the commentary on the associated enterprises article or the business profits article means the commentary on the article so approved on that date.

- (3) For the purposes of this Part—
- (a) a person is taken to be associated with another person if, as between them, the participation condition is met under section 50AAG; and a reference to associated person or associated enterprise is to be read accordingly; and
  - (b) a person is taken to be independent of another person if, as between them, the participation condition is not met under section 50AAG; and a reference to independent person or independent enterprise is to be read accordingly.
- (4) In this Part—
- (a) an income means a positive or nil amount of income;
  - (b) a loss means a positive or nil amount of loss;
  - (c) a nil amount of income is a smaller amount of income than any other amount of income; and a reference to larger amount of income is to be read accordingly; and
  - (d) a nil amount of loss is a smaller amount of loss than any other amount of loss; and a reference to a larger amount of loss is to be read accordingly.
- (5) For the purposes of this Part—
- (a) Schedule 17G has effect for determining whether a non-Hong Kong resident person has a permanent establishment in Hong Kong; and
  - (b) a reference to a permanent establishment in Hong Kong, in relation to a non-Hong Kong resident person, is to be read accordingly.
- (6) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend—

- (a) the definitions of the following expressions in subsection (1)—
- associated enterprises article* (相聯企業條文);
  - business profits article* (營業利潤條文);
  - mutual agreement procedure article* (相互協商程序條文);
  - OECD rules* (《經合組織規則》);
  - permanent establishment article* (常設機構條文);
- (b) subsection (2); and
- (c) Schedule 17G.

#### **50AAD. Application of Part 8AA**

- (1) This Part applies in determining a person's liability for property tax, salaries tax and profits tax.
- (2) In so far as this Part relates to a provision made or imposed as between 2 persons by means of a transaction or series of transactions, subsection (1) has effect—
- (a) regardless of whether either person is, or both persons are, chargeable to foreign tax; and
  - (b) if either person is, or both persons are, chargeable to foreign tax—regardless of whether the foreign tax is chargeable in a DTA territory.
- (3) In so far as this Part relates to a non-Hong Kong resident person who has a permanent establishment in Hong Kong, subsection (1) has effect—
- (a) regardless of whether the person is chargeable to foreign tax in respect of income attributable to the permanent establishment or of other income; and

- (b) if the person is so chargeable to foreign tax—regardless of whether the foreign tax is chargeable in a DTA territory.
- (4) Subsections (2) and (3) do not apply to sections 50AAN and 50AAO.

**50AAE. Consistency with OECD rules**

This Part is to be read in the way that best secures—

- (a) consistency between—
  - (i) the effect given to sections 50AAF, 50AAG, 50AAM and 50AAN; and
  - (ii) the effect that, in accordance with the OECD rules, is to be given to double taxation arrangements that incorporate the associated enterprises article or any rules in the same or equivalent terms as that article; and
- (b) consistency between—
  - (i) the effect given to sections 50AAK and 50AAO; and
  - (ii) the effect that, in accordance with the OECD rules, is to be given to double taxation arrangements that incorporate the business profits article or any rules in the same or equivalent terms as that article.

**Division 2—Computation of Income or Loss**

**Subdivision 1—Provision between Associated Persons**

**50AAF.Rule 1: Arm’s length principle for provision between associated persons**

- (1) If the following circumstances happen—

- (a) a provision (*actual provision*) has been made or imposed as between 2 persons (each an *affected person*) by means of a transaction or series of transactions;
- (b) the participation condition is met under section 50AAG;
- (c) the actual provision differs from the provision that would have been made or imposed as between independent persons (*arm's length provision*); and
- (d) the actual provision confers a potential advantage in relation to Hong Kong tax on an affected person (*advantaged person*),

then, for the purposes of Hong Kong tax, the advantaged person's income or loss is to be computed as if the arm's length provision had been made or imposed instead of the actual provision. (The amount of income or loss computed in accordance with this subsection is referred to as the *arm's length amount*.)

- (2) The cases in which a provision made or imposed as between 2 persons is to be taken to differ from the provision that would have been made or imposed as between independent persons include a case in which provision is made or imposed as between 2 persons but no provision would have been made or imposed as between independent persons. References in this Part to arm's length provision are to be read accordingly.
- (3) An assessor may give a notice to the advantaged person requiring the person to prove, within a reasonable time stated in the notice and to the assessor's satisfaction, that the amount of the person's income or loss as stated in the person's tax return is the arm's length amount.
- (4) A notice may be given under subsection (3) whether or not any assessment has already been made on, or any computation of loss has already been issued in respect of, the advantaged person.

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- (5) If the advantaged person fails to prove to the assessor's satisfaction that the amount of the person's income or loss as stated in the person's tax return is the arm's length amount, the assessor must estimate an amount as the arm's length amount and, taking into account the estimated amount—
- (a) make an assessment or additional assessment on the person; or
  - (b) issue a computation of loss, or revise a computation of loss resulting in a smaller amount of computed loss, in respect of the person.
- (6) For all purposes of this Ordinance, the estimated amount under subsection (5) is taken to be the arm's length amount unless the advantaged person proves that another amount is an equally reliable measure, or a more reliable measure, of the arm's length amount.
- (7) Subsections (1) to (6) do not apply in relation to a provision made or imposed in relation to any disposal or acquisition of trading stock if section 15BA(4) or (5) applies in relation to the disposal or acquisition.
- (8) Subsections (1) to (6) do not apply in relation to a provision made or imposed in relation to any trading stock if section 15C applies in relation to the trading stock.

**50AAG. Interpretation: *participation condition***

As between affected persons, the participation condition is met if, at the time of the making or imposition of the actual provision—

- (a) one of the affected persons was participating in the management, control or capital of the other affected person within the meaning of section 50AAH; or
- (b) the same person or persons was or were participating in the management, control or capital of each of the affected persons within the meaning of section 50AAH.



**50AAH. Interpretation: *participation***

- (1) A person (*person A*) is participating in the management, control or capital of another person (*person B*) at a particular time only if, at that time, person B is—
  - (a) a corporation, partnership, trustee (whether incorporated or unincorporated) or a body of persons; and
  - (b) controlled by person A.
- (2) For the purposes of subsection (1)(b), person B is controlled by person A if—
  - (a) person A has the power to secure that the affairs of person B are conducted in accordance with the wishes of person A—
    - (i) because person A has more than half of the direct or indirect beneficial interest in or in relation to person B or any other corporation, partnership, trustee (whether incorporated or unincorporated) or a body of persons;
    - (ii) because person A is, directly or indirectly, entitled to exercise or control the exercise of more than half of the voting rights in or in relation to person B or any other corporation, partnership, trustee (whether incorporated or unincorporated) or a body of persons; or
    - (iii) because of powers conferred on person A by the constitutional document regulating person B or any other corporation, partnership, trustee (whether incorporated or unincorporated) or a body of persons; or
  - (b) person B is accustomed or under an obligation (whether express or implied, and whether or not enforceable or

- intended to be enforceable by legal proceedings) to act, in relation to person B's investment or business affairs, in accordance with the directions, instructions or wishes of person A.
- (3) In applying subsection (2), if person A has a direct beneficial interest in person B, the extent of the beneficial interest of person A in person B is—
- (a) if person B is a corporation that is not a trustee of a trust estate—the percentage of the issued share capital (however described) of the corporation held by person A;
  - (b) if person B is a partnership that is not a trustee of a trust estate—the percentage of the income of the partnership to which person A is entitled;
  - (c) if person B is a trustee of a trust estate—the percentage in value of the trust estate in which person A is interested; or
  - (d) if person B is an entity that does not fall within any of paragraphs (a), (b) and (c)—the percentage of person A's ownership interest in the entity.
- (4) In applying subsection (2), if person A has an indirect beneficial interest in, or is indirectly entitled to exercise or control the exercise of voting rights in, person B through another person (*interposed person*), the extent of the beneficial interest or voting rights of person A in person B is—
- (a) if there is only one interposed person—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest or voting rights of person A in the interposed person by the percentage representing the extent of the beneficial interest or voting rights of the interposed person in person B; or

- (b) if there is a series of 2 or more interposed persons—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest or voting rights of person A in the first interposed person in the series by—
- (i) the percentage representing the extent of the beneficial interest or voting rights of each interposed person (other than the last interposed person) in the series in the next interposed person in the series; and
  - (ii) the percentage representing the extent of the beneficial interest or voting rights of the last interposed person in the series in person B.
- (5) For the purposes of subsection (4)—
- (a) subsection (3) applies in determining the extent of the beneficial interest of person A in an interposed person as if references to person B in subsection (3) were references to an interposed person;
  - (b) subsection (3) applies in determining the extent of the beneficial interest of an interposed person in person B as if references to person A in subsection (3) were references to an interposed person; and
  - (c) subsection (3) applies in determining the extent of the beneficial interest of an interposed person (*interposed person X*) in another interposed person (*interposed person Y*) as if—
    - (i) references to person A in subsection (3) were references to interposed person X; and
    - (ii) references to person B in subsection (3) were references to interposed person Y.

- (6) In applying subsections (1) and (2), the rights and powers attributed to person A include all the rights and powers of persons other than person A so far as they are required, or may be required, to be exercised in any one or more of the following ways—
- (a) on behalf of person A;
  - (b) under the direction of person A;
  - (c) for the benefit of person A.
- (7) For the purposes of this section, a reference to the exercise of the voting rights in a corporation is to be read as a reference to the exercise of the voting rights at general meetings of the corporation.

**50AAI. Interpretation: *transaction and series of transactions***

- (1) In this Part, transaction includes any operation, scheme, arrangement, understanding and mutual practice (whether express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings).
- (2) References in this Part to a series of transactions include a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same matter.
- (3) A series of transactions is not prevented from being regarded as a series of transactions by means of which a provision has been made or imposed as between any 2 persons, even if one or more of the following applies—
- (a) there is no transaction in the series to which both those persons are parties;
  - (b) the parties to any arrangement or scheme in pursuance of which the transactions in the series are entered into do not include one or both of those persons;

- (c) there is one or more transactions in the series to which neither of those persons is a party.

**50AAJ. Interpretation: *potential advantage* in relation to tax**

- (1) An actual provision confers a potential advantage in relation to Hong Kong tax or foreign tax on a person if, disregarding this Division, making or imposing the actual provision, instead of the arm's length provision, would in relation to Hong Kong tax or foreign tax (as the case requires) have either or both of the following effects—
  - (a) a smaller amount would be taken to be the amount of the person's income;
  - (b) a larger amount would be taken to be the amount of the person's loss.
- (2) Despite subsection (1), an actual provision made or imposed as between 2 persons is not taken to confer a potential advantage in relation to Hong Kong tax on either of the affected persons if—
  - (a) the domestic nature condition is met as provided for in subsection (3);
  - (b) either the no actual tax difference condition is met as provided for in subsection (5), or the non-business loan condition is met as provided for in subsection (6); and
  - (c) the actual provision does not, under subsection (7), have a tax avoidance purpose.
- (3) The domestic nature condition is met—
  - (a) if the actual provision is made or imposed in connection with each affected person's trade, profession or business carried on in Hong Kong; or
  - (b) if—

- (i) the actual provision is made or imposed in connection with either affected person's trade, profession or business carried on in Hong Kong; and
  - (ii) the other affected person is resident for tax purposes in Hong Kong and the provision is not made or imposed in connection with that other person's trade, profession or business.
- (4) For the purposes of subsection (3), a trade, profession or business is not regarded as being carried on in Hong Kong by an affected person only because a sum received or receivable by or accrued to the person is deemed under section 15(1) to be a receipt arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong.
- (5) The no actual tax difference condition is met if—
  - (a) each affected person's income arising from the relevant activities is chargeable to Hong Kong tax or each affected person's loss so arising is allowable for the purposes of Hong Kong tax; and
  - (b) no concession or exemption for Hong Kong tax applies to any affected person's income or loss arising from the relevant activities.
- (6) The non-business loan condition is met if the actual provision relates to lending money otherwise than in the ordinary course of a business of lending money or an intra-group financing business (as defined by section 16(3)).
- (7) For the purposes of this section, an actual provision has a tax avoidance purpose if the Commissioner is satisfied that the main purpose, or one of the main purposes, of the provision is to utilize a loss sustained by an affected person to avoid, postpone or reduce any liability, whether of the other affected person or any other person, to Hong Kong tax.

(8) In this section—

*relevant activities* (有關活動) has the meaning given by section 50AAL.

### **Subdivision 2—Permanent Establishment in Hong Kong**

#### **50AAK. Rule 2: Separate enterprises principle for attributing income or loss of non-Hong Kong resident person**

(1) Without limiting section 14, a non-Hong Kong resident person who has a permanent establishment in Hong Kong is regarded as carrying on a trade, profession or business in Hong Kong for the purposes of charging profits tax.

(2) The income or loss of the person that is attributable to the permanent establishment of the person are those that the permanent establishment would have made in circumstances where it were a distinct and separate enterprise that—

(a) engaged in the same or similar activities under the same or similar conditions; and

(b) dealt wholly independently with the person.

(The amount of income or loss of the person that is attributed to the permanent establishment in accordance with this subsection is referred to as the *arm's length amount*.)

(3) In applying subsection (2), account is to be taken of the functions performed, assets used and risk assumed by the person—

(a) through the permanent establishment; and

(b) through the other parts of the person.

(4) In applying subsection (2), it is assumed that the permanent establishment—

(a) has the same credit rating as the person; and



- (b) has the equity and loan capital that it could reasonably be expected to have in the circumstances set out in that subsection.
- (5) In applying subsection (2), transactions between the permanent establishment and any other part of the person are treated as taking place on the terms that would have been agreed between parties dealing at arm's length.
- (6) No deduction is to be allowed for costs and expenses in excess of those that would have been incurred on the assumptions set out in subsection (4).
- (7) An assessor may give a notice to the person requiring the person to do the following within a reasonable time stated in the notice—
  - (a) to state the amount of income or loss attributed to the permanent establishment that has been taken into account in the amount of the person's income or loss as stated in the person's tax return; and
  - (b) to prove to the assessor's satisfaction that the amount of income or loss so attributed is the arm's length amount.
- (8) A notice may be given under subsection (7) whether or not any assessment has already been made on, or any computation of loss has already been issued in respect of, the person.
- (9) If the person fails to prove to the assessor's satisfaction that the amount of income or loss attributed as mentioned in subsection (7)(a) is the arm's length amount, the assessor must estimate an amount as the arm's length amount and, taking into account the estimated amount—
  - (a) make an assessment or additional assessment on the person; or

- (b) issue a computation of loss, or revise a computation of loss resulting in a smaller amount of computed loss, in respect of the person.
- (10) For all purposes of this Ordinance, the estimated amount under subsection (9) is taken to be the arm's length amount unless the person proves that another amount is an equally reliable measure, or a more reliable measure, of the arm's length amount.

### **Division 3—Relief Consequential on Transfer Pricing Adjustment**

#### **50AAL. Interpretation: *relevant activities***

- (1) In this Division—
- relevant activities* (有關活動), in relation to a person (*person A*) who is one of the persons as between whom any provision is made or imposed, means activities that—
- (a) are within subsection (2); and
  - (b) are not within subsection (3).
- (2) The activities within this subsection are those of person A's activities that comprise the activities in the course of which, or with respect to which, the provision is made or imposed.
- (3) The activities within this subsection are any of person A's activities carried on—
- (a) separately from the activities mentioned in subsection (2); or
  - (b) for the purposes of a different part of person A's business.

#### **50AAM. Corresponding relief not involving foreign tax**

- (1) This section applies if, in the circumstances set out in section

## 50AAF(1)—

- (a) the affected person on whom a potential advantage in relation to Hong Kong tax is conferred by the actual provision (*advantaged person*) has income arising from the relevant activities assessed to, or has loss so arising computed for the purposes of, Hong Kong tax on the basis of the arm's length provision; and
  - (b) the other affected person (*disadvantaged person*) has income or loss arising from the relevant activities to be computed for the purposes of Hong Kong tax.
- (2) On a claim by the disadvantaged person, the disadvantaged person's income or loss arising from the relevant activities is to be computed for the purposes of Hong Kong tax as if the arm's length provision had been made or imposed instead of the actual provision. (The amount of income or loss computed in accordance with this subsection is referred to as the *arm's length amount*.)
- (3) In applying subsection (2), the way in which the disadvantaged person's income or loss is to be computed on the basis of the arm's length provision must be consistent with the way in which the advantaged person's income has been assessed, or the advantaged person's loss has been computed, on that basis.
- (4) If—
  - (a) the disadvantaged person makes a claim seeking to have its income or loss computed for the purposes of Hong Kong tax on the basis of the arm's length provision under subsection (2); but
  - (b) the disadvantaged person's income has already been assessed to, or the disadvantaged person's loss has already been computed for the purposes of, Hong Kong tax other than on that basis,

an assessor must revise the assessment, or computation of loss, to reflect the arm's length provision.

- (5) A claim under subsection (2) must be made in writing and may only be made before—
- (a) the end of 6 years after the end of the relevant year of assessment;
  - (b) the end of 6 months after the date on which an assessment is made imposing liability or additional liability to Hong Kong tax on the advantaged person or the disadvantaged person taking into account the income or loss arising from the relevant activities; or
  - (c) the end of 6 months after the date on which a computation of loss, or a revised computation of loss resulting in a smaller amount of computed loss, in respect of the relevant activities is issued to the advantaged person or disadvantaged person,
- whichever is the latest.
- (6) For the purposes of subsection (2) or (4), an assessor may give a notice to the disadvantaged person requiring the disadvantaged person to prove, within a reasonable time stated in the notice and to the assessor's satisfaction, that the amount of the disadvantaged person's income or loss as stated in the disadvantaged person's claim under subsection (2) is the arm's length amount.
- (7) A notice may be given under subsection (6) whether or not any assessment has already been made on, or any computation of loss has already been issued in respect of, the disadvantaged person.
- (8) If the disadvantaged person fails to prove to the assessor's satisfaction that the amount of the disadvantaged person's income or loss as stated in the disadvantaged person's claim is the arm's length amount, the assessor may estimate an

- amount as the arm's length amount and, taking into account the estimated amount—
- (a) make or revise an assessment on the disadvantaged person; or
  - (b) issue or revise a computation of loss in respect of the disadvantaged person.
- (9) If an assessor refuses to revise the disadvantaged person's assessment under subsection (4)—
- (a) the assessor must give a written notice of the refusal to the disadvantaged person; and
  - (b) the disadvantaged person has the same rights of objection and appeal under Part 11 as if the notice of refusal were a notice of assessment.
- (10) For all purposes of this Ordinance, the estimated amount under subsection (8) is taken to be the arm's length amount unless the disadvantaged person proves that another amount is an equally reliable measure, or a more reliable measure, of the arm's length amount.
- (11) If an assessment on, or computation of loss in respect of, a disadvantaged person has been made, issued or revised under this section, the disadvantaged person must—
- (a) take reasonable steps to ensure the disadvantaged person has knowledge about any adjustment to the advantaged person's assessed income or computed loss arising from the relevant activities (*adjustment on advantaged person*); and
  - (b) give the Commissioner written notice of the adjustment on advantaged person within 3 months after the adjustment is made if the adjustment—

- (i) renders the disadvantaged person's assessed income arising from the relevant activities insufficient for the purposes of Hong Kong tax; or
  - (ii) renders the disadvantaged person's computed loss arising from the relevant activities excessive for the purposes of Hong Kong tax.
- (12) Subject to subsection (13), the following may be made or issued after the adjustment on advantaged person is made—
  - (a) a corresponding adjustment to the disadvantaged person's assessed income or computed loss arising from the relevant activities;
  - (b) an assessment or additional assessment on, or computation or revised computation of loss in respect of, the disadvantaged person to reflect the corresponding adjustment.
- (13) An adjustment to assessed income and an assessment or additional assessment made under subsection (12) may only be made before—
  - (a) the end of 2 years from the time when the adjustment on advantaged person is made; or
  - (b) the expiry of the time limit for making an assessment or additional assessment under this Ordinance,whichever is the later.

**50AAN. Corresponding relief involving foreign tax: disadvantaged person**

- (1) This section applies if—
  - (a) a provision (*actual provision*) has been made or imposed as between 2 persons (each an *affected person*) by means of a transaction or series of transactions;
  - (b) the participation condition is met under section 50AAG;

- (c) the actual provision differs from the provision that would have been made or imposed as between independent persons (*arm's length provision*);
  - (d) the actual provision confers a potential advantage in relation to foreign tax in a DTA territory on an affected person (*advantaged person*);
  - (e) the advantaged person has income arising from the relevant activities assessed to, or has loss so arising computed for the purposes of, foreign tax in the DTA territory and the assessment or computation relates to determining what the arm's length provision is; and
  - (f) the other affected person (*disadvantaged person*) has income or loss arising from the relevant activities to be computed for the purposes of Hong Kong tax.
- (2) If—
- (a) a claim is made by the disadvantaged person pursuant to the provisions relating to mutual agreement procedure under the double taxation arrangements concerned; and
  - (b) a MAP solution within the meaning of section 50AAB is arrived at and it includes a determination of what the arm's length provision is (*MAP arm's length provision*), the disadvantaged person's income arising from the relevant activities is to be assessed to, or the disadvantaged person's loss so arising is to be computed for the purposes of, Hong Kong tax as if the MAP arm's length provision had been made or imposed instead of the actual provision.
- (3) If a disadvantaged person's income or loss has been assessed or computed under subsection (2), the disadvantaged person must—
- (a) take reasonable steps to ensure the disadvantaged person has knowledge about any adjustment made after the date



- of the MAP solution to the advantaged person's assessed income or computed loss for the purposes of foreign tax in the DTA territory (*advantaged person's foreign tax-related adjustment*); and
- (b) give the Commissioner written notice of the advantaged person's foreign tax-related adjustment within 3 months after the adjustment is made if—
- (i) the adjustment relates to a determination of the arm's length provision (*newly determined arm's length provision*); and
  - (ii) computing the disadvantaged person's income or loss for the purposes of Hong Kong tax on the basis of the newly determined arm's length provision, instead of the MAP arm's length provision, will result in—
    - (A) a larger amount being computed as the disadvantaged person's income arising from the relevant activities; or
    - (B) a smaller amount being computed as the disadvantaged person's loss arising from the relevant activities.
- (4) Subject to subsection (5), the following may be made or issued after the advantaged person's foreign tax-related adjustment is made—
- (a) a corresponding adjustment to the disadvantaged person's assessed income or computed loss arising from the relevant activities;
  - (b) an assessment or additional assessment on, or computation or revised computation of loss in respect of, the disadvantaged person to reflect the corresponding adjustment.

- (5) An adjustment to assessed income and an assessment or additional assessment made under subsection (4) may only be made before—
- (a) the end of 2 years from the time when the advantaged person's foreign tax-related adjustment is made; or
  - (b) the expiry of the time limit for making an assessment or additional assessment under this Ordinance,
- whichever is the later.

**50AAO. Corresponding relief involving foreign tax: non-Hong Kong resident person's permanent establishment**

- (1) This section applies if—
- (a) a non-Hong Kong resident person has income or loss, attributable to a permanent establishment in Hong Kong of the person, to be computed for the purposes of Hong Kong tax; and
  - (b) the person's income has been assessed to, or the person's loss has been computed for the purposes of, foreign tax in a DTA territory and the assessment or computation relates to determining what amount of the person's income or loss is attributable to the permanent establishment in Hong Kong.
- (2) If—
- (a) a claim is made by the person pursuant to the provisions relating to mutual agreement procedure under the double taxation arrangements concerned; and
  - (b) a MAP solution within the meaning of section 50AAB is arrived at and it includes a determination of what amount of the person's income or loss is attributable to the permanent establishment in Hong Kong (*MAP attribution*),

the person's income is to be assessed to, or the person's loss is to be computed for the purposes of, Hong Kong tax in a way that is consistent with the MAP attribution.

- (3) If a non-Hong Kong resident person's income or loss has been assessed or computed under subsection (2), the person must—
- (a) take reasonable steps to ensure the person has knowledge about any adjustment made after the date of the MAP solution to the person's assessed income or computed loss for the purposes of foreign tax in the DTA territory (*foreign tax-related adjustment*); and
  - (b) give the Commissioner written notice of the foreign tax-related adjustment within 3 months after the adjustment is made if—
    - (i) the adjustment relates to a determination of the amount of the person's income or loss attributable to the person's permanent establishment in Hong Kong (*newly determined attribution*); and
    - (ii) computing the person's income or loss for the purposes of Hong Kong tax on the basis of the newly determined attribution, instead of the MAP attribution, will result in—
      - (A) a larger amount of the person's income being attributed to the person's permanent establishment in Hong Kong; or
      - (B) a smaller amount of the person's loss being attributed to the person's permanent establishment in Hong Kong.
- (4) Subject to subsection (5), the following may be made or issued after the foreign tax-related adjustment is made—

- (a) a corresponding adjustment to the person's income or loss attributed to the person's permanent establishment;
  - (b) an assessment or additional assessment on, or computation or revised computation of loss in respect of, the person to reflect the corresponding adjustment.
- (5) An adjustment to assessed income and an assessment or additional assessment made under subsection (4) may only be made before—
- (a) the end of 2 years from the time when the foreign tax-related adjustment is made; or
  - (b) the expiry of the time limit for making an assessment or additional assessment under this Ordinance,
- whichever is the later.

## **Division 4—Advance Pricing Arrangement**

### **50AAP. Advance pricing arrangement may be made**

- (1) On application by a person and if the Commissioner considers appropriate, the Commissioner may make an arrangement (*advance pricing arrangement*) with the person relating to how the person's income or loss is to be computed under section 50AAF or 50AAK for a fixed period of time.
- (2) The advance pricing arrangement must specify—
  - (a) the name of the person to which the arrangement applies;
  - (b) the transactions covered by the arrangement, if applicable;
  - (c) the period covered by the arrangement;

- (d) the methodology as agreed between the Commissioner and the person for determining the income or loss of the person;
  - (e) the critical assumptions on which the agreed methodology is based;
  - (f) the person's obligations under the arrangement, including obligations for providing reports on the matters, and at the intervals, as specified in the arrangement; and
  - (g) any other terms as agreed between the Commissioner and the person.
- (3) The Commissioner may refuse to make an advance pricing arrangement—
- (a) if—
    - (i) the arrangement is to apply to any provision made or imposed as between any persons any of whom (*specified person*)—
      - (A) has income or loss to be computed for the purposes of Hong Kong tax; but
      - (B) is not the person, or one of the persons, making the application for the arrangement; and
    - (ii) the specified person fails or refuses to join in the application; or
  - (b) if any fee payable under Schedule 17H for the application for the arrangement, or any deposit for the fee payable under that Schedule, is not paid.
- (4) Subsection (3) does not limit the grounds on which the Commissioner may refuse to make an advance pricing arrangement.

- (5) The Commissioner may make an advance pricing arrangement for a period that covers a period earlier than the date of the arrangement but—
- (a) liability for tax is not to be increased under this subsection after the expiry of the time limit for making an assessment or additional assessment under this Ordinance; and
  - (b) liability for tax is not to be reduced under this subsection after the expiry of the latest of the time limits for raising an objection or applying for relief or revision of assessment (as applicable) under this Ordinance or any relevant double taxation arrangements.

**50AAQ. Sections 50AAF and 50AAK to be applied in accordance with advance pricing arrangement**

- (1) This section applies if—
- (a) an advance pricing arrangement has been made in respect of a person for a period specified in the arrangement (*specified period*); and
  - (b) the person is required under this Ordinance to provide a return for a year of assessment (*year of assessment*) that includes all or part of the specified period.
- (2) The person must disclose in the return for the year of assessment—
- (a) the existence of the advance pricing arrangement;
  - (b) whether or not the person has relied on the arrangement in preparing and providing the return; and
  - (c) any material change to the facts and circumstances specified in the arrangement.
- (3) If the person has disclosed in the return for the year of assessment that the person has relied on the advance pricing

arrangement in preparing and providing the return, then, subject to section 50AAR, the Commissioner is to apply sections 50AAF and 50AAK in relation to the person in accordance with the arrangement for the year of assessment.

- (4) The Commissioner may, if the Commissioner considers appropriate, apply the principles developed in an advance pricing arrangement to a period earlier than the date of the arrangement but—
- (a) liability for tax is not to be increased under this subsection after the expiry of the time limit for making an assessment or additional assessment under this Ordinance; and
  - (b) liability for tax is not to be reduced under this subsection after the expiry of the latest of the time limits for raising an objection or applying for relief or revision of assessment (as applicable) under this Ordinance or any relevant double taxation arrangements.

**50AAR. Advance pricing arrangement may be revoked, cancelled or revised**

- (1) The Commissioner may revoke, cancel or revise an advance pricing arrangement made in respect of a person if—
- (a) any condition or critical assumption specified in the arrangement has not been met or is no longer met;
  - (b) the person has failed to comply with the person's obligations under the arrangement; or
  - (c) in connection with the application pursuant to which the arrangement was made, the person is found to have—
    - (i) made an incorrect statement;
    - (ii) provided incorrect information; or



- (iii) omitted to make a statement or provide information,  
and the statement or information is material to the application.
- (2) If the Commissioner revokes an advance pricing arrangement, the arrangement is to be treated as having never been made.
- (3) If the Commissioner cancels an advance pricing arrangement, the arrangement is to cease to apply from a date that the Commissioner determines.
- (4) If the Commissioner revises an advance pricing arrangement, the revision is to take effect from a date that the Commissioner determines.
- (5) Any revocation, cancellation or revision of an advance pricing arrangement because of a matter referred to in subsection (1) does not affect any criminal liability that may arise in respect of the matter.

**50AAS.Obligation to notify breach of critical assumption, etc.**

A person in respect of whom an advance pricing arrangement is made—

- (a) must notify the Commissioner of a breach of any critical assumption specified in the arrangement within a reasonable time after the breach; and
- (b) must provide the Commissioner from time to time with all reports and other information that the person may be required to provide under the arrangement.

**50AAT.Record keeping**

A person in respect of whom an advance pricing arrangement is made for a period (*specified period*) must retain, for a period of

not less than 7 years after the end of the specified period, all the records and data—

- (a) relied on in concluding the arrangement;
- (b) used in applying for the arrangement; and
- (c) referred to in any reports and other information provided to the Commissioner under the arrangement.

**50AAU. Advance pricing arrangement and double taxation arrangements**

- (1) If an advance pricing arrangement being applied for—
  - (a) either—
    - (i) is to cover a transaction in respect of which an applicant for the arrangement or an associated person of the applicant is likely to be liable to tax in a DTA territory; or
    - (ii) relates to the attribution of income or loss to a permanent establishment in Hong Kong of an applicant for the arrangement and the applicant is likely to be liable to tax in a DTA territory; and
  - (b) is relevant to the question how the applicant or the associated person is to be taxed (whether in Hong Kong or the territory) so as to accord with the double taxation arrangements concerned,

the Commissioner may resolve the question with the competent authority of the territory through the mutual agreement procedure mentioned in section 50AAB before making the advance pricing arrangement.
- (2) If a mutual agreement referred to in section 50AAB is not consistent with the terms of an advance pricing arrangement already made, the Commissioner must revise the arrangement so far as may be necessary for enabling effect to be given to

the mutual agreement in relation to the subject matter of the arrangement.

**50AAV. Application for advance pricing arrangement and application fees**

- (1) Schedule 17H provides for an application for an advance pricing arrangement and for fees payable for the application.
- (2) The Secretary for Financial Services and the Treasury may by order amend Schedule 17H.

**50AAW. Protection of public officer**

No liability is to rest on the Government, the Commissioner or any other public officer in respect of the exercise of any power or performance of any duty in good faith in relation to an advance pricing arrangement or an application for the arrangement.

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## Part 8A

### Returns by Reporting Financial Institutions

*(Part 8A added 22 of 2016 s. 4)*

#### 50A. Interpretation

(1) In this Part—

**account holder** (帳戶持有人), in relation to a financial account maintained by a financial institution—

- (a) subject to paragraphs (b) and (c), means the individual or entity listed or identified by the financial institution as the holder of the account;
- (b) if the account is held by an individual or entity, other than a financial institution, for the benefit or account of another individual or entity as an agent, custodian, nominee, signatory, investment advisor or intermediary, means that other individual or entity;
- (c) if the account is for a cash value insurance contract or an annuity contract that has yet to reach maturity, means—
  - (i) the individual or entity that is entitled to access the cash value, or change the beneficiary, of the contract; or
  - (ii) if there is no such individual or entity mentioned in subparagraph (i)—
    - (A) the individual or entity named as the owner in the contract (if any); and
    - (B) the individual or entity with a vested entitlement to payment under the terms of the contract (if any); or

- (d) if the account is for a cash value insurance contract or an annuity contract that has reached maturity, means the individual or entity that is entitled to receive a payment on the maturity;

**active NFE** (主動非財務實體) means an NFE that falls within any of the following descriptions—

- (a) in terms of the NFE's gross income and its assets—
  - (i) for the calendar year or other appropriate reporting period preceding the year in which the determination as to whether the NFE is an active NFE is made, less than 50% of the NFE's gross income is passive income; and
  - (ii) less than 50% of the assets held by the NFE during that calendar year or period are assets that produce, or are held for the production of, passive income;
- (b) the stock of the NFE or the related entity of the NFE is regularly traded on an established securities market;
- (c) the NFE is—
  - (i) a governmental entity;
  - (ii) an international organization;
  - (iii) a central bank; or
  - (iv) an entity wholly owned by one or more of the entities mentioned in subparagraphs (i), (ii) and (iii);
- (d) the NFE does not function, or does not hold itself out, as an investment fund (including a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies, and then to hold interests in those companies as capital assets for investment purposes) and—

- (i) 80% or more of the activities of the NFE consist of holding, in whole or in part, the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a financial institution (*holding or group finance activities*); or
  - (ii) if less than 80% of the activities of the NFE consist of the NFE's holding or group finance activities, the sum of the NFE's holding or group finance activities and the NFE's other activities that generate income other than passive income constitute in total 80% or more of the activities of the NFE;
- (e) not more than 24 months have elapsed since the date of the incorporation, formation or constitution of the NFE and the NFE—
  - (i) is not yet operating a business and has no prior operating history; and
  - (ii) is investing capital into assets with the intent to operate a business other than that of a financial institution;
- (f) the NFE was not a financial institution in the past 5 years, and is in the process of—
  - (i) liquidating its assets; or
  - (ii) is reorganizing with the intent to continue or recommence operations in a business other than that of a financial institution;
- (g) the NFE falls within all of the following descriptions—
  - (i) the NFE is primarily engaged in financing and hedging transactions with or for its related entities that are not financial institutions;

- (ii) the group of the related entities mentioned in subparagraph (i) is primarily engaged in a business other than that of a financial institution;
- (iii) the NFE does not provide financing or hedging services to any entity that is not its related entity;
- (h) the NFE falls within all of the following descriptions—
  - (i) the NFE is established and operated in its jurisdiction of residence, and—
    - (A) is established and operated exclusively for religious, charitable, scientific, artistic, cultural, athletic or educational purposes; or
    - (B) is a professional organization, business league, chamber of commerce, labour organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
  - (ii) the NFE is exempt from income tax in its jurisdiction of residence;
  - (iii) the NFE has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - (iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than—
    - (A) pursuant to the conduct of the NFE's charitable activities;
    - (B) as payment of reasonable compensation for services rendered; or



- (C) as payment representing the fair market value of a property which the NFE has purchased;
- (v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, on the NFE's liquidation or dissolution, all of its assets are to be distributed to a governmental entity or other non-profit organization, or be escheated to the government of that jurisdiction or any political subdivision of that government;

**Note—**

See also subsection (4).

***AML/KYC procedures*** (打擊洗錢暨認識客戶程序) means the customer due diligence procedures required to be carried out by a reporting financial institution pursuant to any anti-money laundering requirements or similar requirements (including requirements to know a customer) to which the reporting financial institution is subject;

***annuity contract*** (年金合約)—

- (a) means a contract under which its issuer agrees to make payments for a period of time determined, in whole or in part, by reference to the life expectancy of one or more individuals; and
- (b) includes a contract—
  - (i) that is considered to be an annuity contract in accordance with the law, regulation or practice of the jurisdiction in which the contract was issued; and
  - (ii) under which its issuer agrees to make payments for a term of years; (*Replaced 5 of 2018 s. 5*)

**calendar year** (公曆年) means a year that begins on 1 January and ends on 31 December;

**cash value** (現金值)—

- (a) means the greater of the following—
  - (i) the amount that the policyholder of an insurance contract or annuity contract is entitled to receive on surrender or termination of the contract (determined without reduction for any surrender charge or policy loan);
  - (ii) the amount that the policyholder can borrow under, or with regard to, the contract; but (*Amended 5 of 2018 s. 5*)
- (b) does not include an amount payable under an insurance contract—
  - (i) solely because of the death of an individual insured under a life insurance contract;
  - (ii) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred on the occurrence of the event insured against;
  - (iii) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an insurance contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
  - (iv) as a policyholder dividend (other than a termination dividend) if the dividend relates to an insurance

contract under which the only benefits payable are described in subparagraph (ii); or

- (v) as a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the returned amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract;

***cash value insurance contract*** (現金值保險合約) means an insurance contract, other than an indemnity reinsurance contract between 2 insurance companies, that has a cash value;

***central bank*** (中央銀行) means an institution in a jurisdiction that is, by law or government sanction, the principal authority in the jurisdiction, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency, and includes an instrumentality that is separate from the government of the jurisdiction, whether or not owned, in whole or in part, by the government of the jurisdiction;

***controlled entity*** (受控制實體), in relation to a jurisdiction, means an entity that falls within all of the following descriptions—

- (a) the entity is separate in form from the jurisdiction or otherwise constitutes a separate juridical entity;
- (b) the entity is wholly owned and controlled by one or more governmental entities of the jurisdiction directly or through other controlled entities;
- (c) the entity's net earnings are credited to its own account or to the accounts of other governmental entities of the jurisdiction, with no portion inuring to the benefit of any private person;
- (d) the entity's assets are vested in other governmental entities of the jurisdiction on dissolution of the entity;

**Note—**

See also subsection (5).

***controlling person*** (控權人)—

- (a) in relation to an entity, subject to paragraphs (b) and (c), means an individual who exercises control over the entity;
- (b) in relation to an entity that is a trust—
  - (i) means an individual who is the settlor, trustee, protector (if any), or a beneficiary or a member of the class of beneficiaries, of the trust; or
  - (ii) if the settlor, trustee, protector, or the beneficiary or the member of the class of beneficiaries, of the trust is another entity, means an individual who exercises control over that other entity; or
- (c) in relation to an entity that is a legal arrangement equivalent or similar to a trust but not in the name of a trust—
  - (i) means an individual who, in relation to the legal arrangement, is in a position similar to the settlor, trustee, protector (if any), or a beneficiary or a member of the class of beneficiaries, of a trust; or
  - (ii) if, in relation to the legal arrangement, another entity is in a position similar to the settlor, trustee, protector, or a beneficiary or a member of the class of beneficiaries, of a trust, means an individual who exercises control over that other entity;

**Note—**

See also subsection (6).

***custodial account*** (託管帳戶) means an account, other than an insurance contract or annuity contract, maintained by a

financial institution to hold one or more financial assets for the benefit of an individual or entity;

**custodial institution** (託管機構) means an entity that holds, as a substantial portion of its business, financial assets for the account of another individual or entity;

**Note—**

See also subsection (9).

**depository account** (存款帳戶) includes the following accounts maintained by a depository institution— (*Amended 5 of 2018 s. 5*)

- (a) a commercial, checking, savings, time and thrift account;
- (b) an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument; and
- (c) an amount held by an insurance company to pay or credit interest pursuant to a guaranteed investment contract or similar agreement;

**depository institution** (存款機構) means—

- (a) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155); or
- (b) an entity that accepts deposits in the ordinary course of a banking business or similar business;

**entity** (實體) means a body of persons (corporate or unincorporate) or a legal arrangement, and includes—

- (a) a corporation;
- (b) a partnership; and
- (c) a trust;

**equity interest** (股權權益)—

- (a) in relation to a partnership that is a financial institution, means either a capital or profits interest in the partnership;
- (b) in relation to a trust that is a financial institution, means—
  - (i) an interest held by a settlor or beneficiary of the whole, or any part, of the trust; or
  - (ii) an interest held by an individual exercising ultimate control over the trust; or
- (c) in relation to a company or corporation that is a financial institution, means an ownership interest in the company or corporation;

**Note—**

See also subsection (10).

***established securities market*** (具規模證券市場) means an exchange—

- (a) that is officially recognized and supervised by a government authority of a territory in which the exchange is located; and
- (b) that has an annual value of shares traded on it (or on its predecessor) exceeding \$7.8 billion during each of the 3 calendar years immediately preceding the calendar year in which the determination as to whether the exchange is an established securities market is made;

**Note—**

See also subsection (11).

***excluded account*** (豁除帳戶) means an account that is described as an excluded account in Part 3 of Schedule 17C;

***financial account*** (財務帳戶) means any of the following accounts maintained by a financial institution—

- (a) a custodial account;
- (b) a depository account;
- (c) (if the financial institution is an investment entity but not an advising manager within the meaning of subsection (12)) any equity interest or debt interest in the financial institution;
- (d) (if the financial institution is a custodial institution, depository institution or specified insurance company, or an advising manager within the meaning of subsection (12)) any equity interest or debt interest in the financial institution, if the class of interests was established with the purpose of avoiding reporting the required information under section 50F(1) and (2); (*Amended 5 of 2018 s. 5*)
- (e) any cash value insurance contract and any annuity contract issued or maintained by the financial institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is an excluded account,

but does not include an excluded account;

**Note—**

See also subsection (12).

***financial asset*** (財務資產) includes—

- (a) any security (including share units of a stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness);
- (b) partnership interest;
- (c) commodity;



- (d) swap (including interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements);
- (e) insurance contract or annuity contract; and
- (f) any interest (including a futures or forward contract or option) in any of the assets mentioned in paragraphs (a), (b), (c), (d) and (e),

but does not include a non-debt direct interest in real property;

***financial institution*** (財務機構) means—

- (a) a custodial institution;
- (b) a depository institution;
- (c) an investment entity; or
- (d) a specified insurance company;

***governmental entity*** (政府實體) means—

- (a) the government of a jurisdiction;
- (b) the political subdivision of a jurisdiction, including a state, a province, a county, and a municipality;
- (c) a wholly owned agency or instrumentality of a jurisdiction, or of any of the entities mentioned in paragraphs (a) and (b); or
- (d) an integral part, controlled entity or political subdivision of a jurisdiction;

***insurance company*** (保險公司) means any of the following—

- (a) an insurer authorized under the Insurance Ordinance (Cap. 41);
- (b) an entity the gross income of which arising from insurance, reinsurance and annuity contracts exceeds

50% of the entity's total gross income for the calendar year immediately preceding the calendar year in which the determination as to whether the entity is an insurance company is made;

- (c) an entity the aggregate value of the assets of which associated with insurance, reinsurance and annuity contracts exceeds 50% of the entity's total assets at any time during the calendar year immediately preceding the calendar year in which the determination as to whether the entity is an insurance company is made; (*Added 5 of 2018 s. 5*)

***insurance contract*** (保險合約) means a contract, other than an annuity contract, the issuer of which agrees to pay an amount on the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk;

***integral part*** (組成部分), in relation to a jurisdiction—

- (a) means a person, organization, agency, bureau, fund, instrumentality, or other body, however described—
- (i) that constitutes the jurisdiction's governing authority; and
- (ii) the net earnings of which must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person; but
- (b) does not include an individual who is a sovereign, official, or administrator of the jurisdiction acting in a private or personal capacity;

**Note—**

See also subsection (5).

***international organization*** (國際組織)—

- (a) means an international organization or its wholly owned agency or instrumentality; and
- (b) includes any inter-governmental organization (including a supranational organization)—
  - (i) that is composed primarily of governments;
  - (ii) that has in effect a headquarters agreement, or substantially similar agreement, applicable to Hong Kong; and
  - (iii) the income of which does not inure to the benefit of private persons;

***investment entity*** (投資實體) means—

- (a) a corporation licensed under the Securities and Futures Ordinance (Cap. 571) to carry out one or more of the following regulated activities (as defined by section 1 of Part 1 of Schedule 1 to that Ordinance)—
  - (i) dealing in securities;
  - (ii) trading in futures contracts;
  - (iii) leveraged foreign exchange trading;
  - (iv) asset management;
- (b) an institution registered under the Securities and Futures Ordinance (Cap. 571) to carry out one or more of the following regulated activities (as defined by section 1 of Part 1 of Schedule 1 to that Ordinance)—
  - (i) dealing in securities;
  - (ii) trading in futures contracts;
  - (iii) asset management;
- (c) a collective investment scheme authorized under the Securities and Futures Ordinance (Cap. 571);

- (d) an entity that primarily conducts as its business one or more of the following activities or operations for its customers—
- (i) trading in—
    - (A) money market instruments, including cheques, bills, certificates of deposit, and derivatives;
    - (B) foreign exchange;
    - (C) exchange, interest rate and index instruments;
    - (D) transferable securities; or
    - (E) commodity futures;
  - (ii) individual and collective portfolio management;
  - (iii) otherwise investing, administering, or managing financial assets or money on behalf of other entity or individual; or
- (e) an entity—
- (i) that is managed by a custodial institution, a depository institution, a specified insurance company, or an entity mentioned in paragraph (a), (b), (c) or (d); and
  - (ii) whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets,

but does not include an entity that is an active NFE solely because it falls within any of the descriptions in paragraphs (d), (e), (f) and (g) of the definition of *active NFE* in this subsection;

**Note—**

See also subsection (13).

***jurisdiction of residence*** (居留司法管轄區) means a territory of which an individual or entity is a resident for tax purposes;

**NFE** (非財務實體) means an entity that is not a financial institution;

**non-reporting financial institution** (免申報財務機構) means a financial institution that is described as a non-reporting financial institution in Part 2 of Schedule 17C;

**participating jurisdiction** (參與稅務管轄區) means a territory outside Hong Kong that is specified in Part 2 of Schedule 17E;

**participating jurisdiction financial institution** (參與稅務管轄區財務機構) means—

- (a) a financial institution that is resident in a participating jurisdiction (excluding any branch of the financial institution located outside the participating jurisdiction); or
- (b) a branch located in a participating jurisdiction of a financial institution that is not resident in the participating jurisdiction;

**passive income** (被動收入) means the portion of gross income that consists of—

- (a) dividend;
- (b) interest;
- (c) income equivalent to interest;
- (d) rent and royalties (other than rents and royalties derived from the active conduct of a business undertaken, at least in part, by the employees of an NFE);
- (e) annuities;
- (f) the excess of gains over losses from the sale or exchange of financial assets that gives rise to the passive income mentioned in any of paragraphs (a), (b), (c), (d) and (e);

- (g) the excess of gains over losses from transactions (including futures, forwards, options and similar transactions) in any financial assets;
- (h) the excess of foreign currency gains over foreign currency losses;
- (i) net income from swaps; or
- (j) amounts received under cash value insurance contracts;

***passive NFE*** (被動非財務實體) means—

- (a) an NFE that is not an active NFE; or
- (b) a financial institution that—
  - (i) falls within the description in paragraph (e) of the definition of ***investment entity*** in this subsection;
  - (ii) is not a participating jurisdiction financial institution; and
  - (iii) is not a financial institution in Hong Kong;

***pre-existing account*** (先前帳戶) means—

- (a) a financial account of an account holder maintained by a reporting financial institution as at 31 December 2016 (***old financial account***); or
- (b) a financial account of an account holder opened and maintained by a reporting financial institution on or after 1 January 2017 (***subsequent account***), if all of the following conditions are met—
  - (i) the account holder holds with the institution, or its related entity within Hong Kong, any old financial account;
  - (ii) on the opening of the subsequent account, the institution (and, as applicable, its related entity within Hong Kong) treats the subsequent account

and the following financial accounts as a single financial account—

- (A) one or more old financial accounts of the account holder maintained by the institution, or its related entity within Hong Kong; and  
*(Amended 5 of 2018 s. 5)*
  - (B) (if there exist one or more subsequent accounts that are treated as pre-existing accounts because all of the conditions in this subparagraph and subparagraphs (iii), (iv) and (v) are met) all of the subsequent accounts that are so treated;
- (iii) the institution (and, as applicable, its related entity within Hong Kong) acts in the manner described in subparagraph (ii) for the purposes of—
- (A) satisfying the requirement set out in section 2 of Part 7 of Schedule 17D; and
  - (B) calculating the balance or value of any of the accounts mentioned in that subparagraph to determine any of the account thresholds;
- (iv) the subsequent account is subject to AML/KYC procedures and the institution is permitted to carry out such AML/KYC procedures for the subsequent account by relying on the AML/KYC procedures carried out for the old financial account mentioned in subparagraph (ii)(A);
- (v) on the opening of the subsequent account, no new, additional or amended customer information is required to be provided by the account holder other than for the purpose of complying with sections 50B, 50C, 50F and 50G;



**regularly traded** (經常買賣), in relation to a class of stock traded during a calendar year, means that—

- (a) trades in the class of stock are effected, other than in de minimis quantities, on one or more established securities markets for at least 60 business days during the prior calendar year; and
- (b) the aggregate number of shares in the class of stock that are traded on such market or markets during the prior calendar year are at least 10% of the average number of shares outstanding in that class during the prior calendar year;

**reportable account** (須申報帳戶)—

- (a) means a financial account—
  - (i) that has been identified as such under the due diligence requirements in Schedule 17D; and
  - (ii) that is held by—
    - (A) at least one reportable person; or
    - (B) a passive NFE with at least one controlling person being a reportable person; and
- (b) for the purposes of sections 50C, 50D, 50F and 50G, includes a pre-existing account that must be reported as an undocumented account under the due diligence requirements in Schedule 17D;

**reportable jurisdiction** (申報稅務管轄區) means a territory outside Hong Kong that is specified in column 1 of Part 1 of Schedule 17E; (*Amended 4 of 2017 s. 3*)

**reportable person** (申報對象)—

- (a) means—
  - (i) an individual or entity that is a resident for tax purposes of a reportable jurisdiction; or

- (ii) an estate of a decedent who was a resident for tax purposes of a reportable jurisdiction; but
- (b) does not include—
  - (i) a corporation the stock of which is regularly traded on an established securities markets;
  - (ii) a corporation that is a related entity of a corporation mentioned in subparagraph (i);
  - (iii) a governmental entity;
  - (iv) an international organization;
  - (v) a central bank; or
  - (vi) a financial institution;

**reporting financial institution** (申報財務機構) means—

- (a) a financial institution that is resident in Hong Kong (excluding any branch of the financial institution located outside Hong Kong); or
- (b) a branch located in Hong Kong of a financial institution that is not resident in Hong Kong,

but does not include a non-reporting financial institution;

**Note—**

See also subsection (15).

**reporting year** (申報年), in relation to a reportable jurisdiction, means the year specified in column 2 of Part 1 of Schedule 17E opposite that jurisdiction;

**resident for tax purposes** (稅務居民), in relation to a territory, means—

- (a) an individual who is subject to taxation as a resident in the territory; or
- (b) an entity that—

- (i) is subject to taxation as a resident in the territory;  
or
- (ii) has its effective management situated in the territory and is not subject to taxation as a resident in any other territory;

**service provider** (服務提供者) means a service provider engaged to carry out the obligations of a reporting financial institution as referred to in section 50H(1);

**specified insurance company** (指明保險公司) means an entity that is an insurance company, or the holding company of an insurance company, that issues, or is obliged to make payments with respect to, a cash value insurance contract or an annuity contract; (*Amended 5 of 2018 s. 5*)

**TIN** (稅務編號) means—

- (a) a taxpayer identification number; or
  - (b) (if there is no taxpayer identification number) the functional equivalent to such number.
- (2) An entity is a related entity of another entity if—
- (a) either entity controls the other entity;
  - (b) the 2 entities are under common control; or
  - (c) the 2 entities are investment entities as described in paragraph (e) of the definition of **investment entity** in subsection (1) and—
    - (i) the entities are under common management; and
    - (ii) the management fulfils the due diligence requirements for the entities under Schedule 17D.
- (3) For subsection (2)(a) and (b), control of an entity means direct or indirect ownership of both of the following—
- (a) more than 50% of the voting rights in the entity;

- (b) more than 50% of the value of the shares in the entity.
- (4) For paragraph (d) of the definition of *active NFE* in subsection (1), a subsidiary of an NFE is an entity whose outstanding stock is either directly or indirectly held, in whole or in part, by the NFE.
- (5) For paragraph (c) of the definition of *controlled entity*, and paragraph (a) of the definition of *integral part*, in subsection (1)—
- (a) (subject to paragraph (b)) an income does not inure to the benefit of a private person if—
- (i) the person is the intended beneficiary of a governmental programme; and
- (ii) the programme is performed for the general public with respect to the common welfare, or related to the administration of some phase of government; and
- (b) an income is taken to inure to the benefit of a private person if the income is derived from the use of a governmental entity to conduct a commercial business that provides financial services to that private person.
- (6) For the definition of *controlling person* in subsection (1)—
- (a) where an entity is a corporation, an individual exercises control over the entity if—
- (i) the individual—
- (A) owns or controls, directly or indirectly, including through a trust or bearer share holding, more than the specified percentage of the issued share capital of the entity;
- (B) is, directly or indirectly, entitled to exercise or control the exercise of more than the

- specified percentage of the voting rights at general meetings of the entity;
- (C) exercises ultimate control over the management of the entity; or
  - (D) (if no individual falls within sub-subparagraph (A), (B) or (C)) holds the position of senior managing official of the entity; or (*Added 5 of 2018 s. 5*)
- (ii) the entity is acting on behalf of another person over whom the individual exercises control;
- (b) where an entity is a partnership, an individual exercises control over the entity if—
- (i) the individual—
    - (A) is entitled to or controls, directly or indirectly, more than the specified percentage of the capital or profits of the entity;
    - (B) is, directly or indirectly, entitled to exercise or control the exercise of more than the specified percentage of the voting rights in the entity;
    - (C) exercises ultimate control over the management of the entity; or
    - (D) (if no individual falls within sub-subparagraph (A), (B) or (C)) holds the position of senior managing official of the entity; or (*Added 5 of 2018 s. 5*)
  - (ii) the entity is acting on behalf of another person over whom the individual exercises control;
- (c) where an entity is a trust, an individual exercises control over the entity if the individual—

- (i) is entitled to a vested interest in more than the specified percentage of the capital of the property of the entity, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not;
  - (ii) is the settlor of the entity;
  - (iii) is the protector or enforcer of the entity; or
  - (iv) has ultimate control over the entity; or (*Replaced 5 of 2018 s. 5*)
- (d) where an entity is not a corporation, partnership or trust, an individual exercises control over the entity if—
  - (i) the individual ultimately owns or controls the entity; or
  - (ii) the entity is acting on behalf of another person over whom the individual exercises control. (*Amended 5 of 2018 s. 5*)
- (7) For subsection (6), the specified percentage is 25%.
- (8) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend the percentage in subsection (7).
- (9) For the definition of *custodial institution* in subsection (1), an entity holds financial assets for the account of another individual or entity as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity's gross income during the shorter of the following—
  - (a) the 3-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination as to whether the entity is a custodial institution is made;

- (b) the period during which the entity has been in existence.
- (10) For paragraph (b)(i) of the definition of **equity interest** in subsection (1), a person is the beneficiary of all, or a portion, of a trust if the person—
- (a) has the right to receive, directly or indirectly (including through a nominee), a mandatory distribution from the trust; or
- (b) may receive, directly or indirectly, a discretionary distribution from the trust.
- (11) For paragraph (b) of the definition of **established securities market** in subsection (1), if an exchange has more than one tier of market level on which stock may be separately listed or traded, each such tier is to be treated as a separate exchange.
- (12) For paragraphs (c) and (d) (in relation to an advising manager) of the definition of **financial account** in subsection (1), an advising manager is an entity that falls within the definition of **investment entity** in that subsection solely because it— (*Amended 5 of 2018 s. 5*)
- (a) renders investment advice to, and acts on behalf of; or
- (b) manages portfolios for, and acts on behalf of,  
a customer for the purpose of investing, administering, or managing financial assets deposited in the name of the customer with a financial institution other than the entity.
- (13) In relation to the definition of **investment entity** in subsection (1)—
- (a) for the purposes of paragraph (d) of the definition, an entity is treated as primarily conducting as its business one or more of the activities mentioned in that paragraph if it meets the criterion set out in subsection (14); or



- (b) for the purposes of paragraph (e) of the definition, an entity's gross income is treated as primarily attributable to investing, reinvesting, or trading in financial assets if it meets the criterion set out in subsection (14).
- (14) For subsection (13)(a) and (b), the criterion is that the entity's gross income attributable to the relevant activities equals or exceeds 50% of the entity's gross income during the shorter of the following—
- (a) the 3-year period that ends on 31 December prior to the year in which the determination as to whether the entity is an investment entity is made;
- (b) the period during which the entity has been in existence.
- (15) For paragraph (a) of the definition of *reporting financial institution* in subsection (1), a financial institution is resident in Hong Kong if—
- (a) where the financial institution is a company—it is incorporated in Hong Kong or, if incorporated outside Hong Kong, is normally managed or controlled in Hong Kong;
- (b) where the financial institution is a trust—
- (i) it is constituted under the laws of Hong Kong;
- (ii) if constituted outside Hong Kong, it is normally managed or controlled in Hong Kong; or
- (iii) if both of the descriptions in subparagraphs (i) and (ii) are not met, one or more of its trustees are resident in Hong Kong; or
- (c) where the financial institution is not a company or trust—it is constituted under the laws of Hong Kong or, if constituted outside Hong Kong, is normally managed or controlled in Hong Kong.

- (16) For subsection (15)(b), a trustee is resident in Hong Kong if—
- (a) (where the trustee is an individual) the trustee ordinarily resides in Hong Kong or stays in Hong Kong for—
    - (i) more than 180 days during a year of assessment; or
    - (ii) more than 300 days in 2 consecutive years of assessment one of which is the relevant year of assessment;
  - (b) (where the trustee is a company) the trustee—
    - (i) is incorporated in Hong Kong; or
    - (ii) (if incorporated outside Hong Kong) is normally managed or controlled in Hong Kong; or
  - (c) (where the trustee is any other entity) the trustee—
    - (i) is constituted under the laws of Hong Kong; or
    - (ii) (if constituted outside Hong Kong) is normally managed or controlled in Hong Kong.
- (17) A note located in the text of this section is provided for information only and has no legislative effect.

**50B. Due diligence obligations on reporting financial institutions**

- (1) A reporting financial institution must—
- (a) establish procedures that are designed to—
    - (i) identify the jurisdiction of residence of—
      - (A) the account holder of a financial account maintained with the institution; and
      - (B) (if the account holder is a passive NFE) the controlling person of the passive NFE;

- (ii) identify whether a financial account is a reportable account;
    - (iii) secure that any evidence relied on, and any record of the steps taken, for carrying out the procedures in relation to a financial account are kept for a period of 6 years beginning on the date on which the procedures are completed; and (*Amended 5 of 2018 s. 6*)
    - (iv) enable the institution to identify and collect the required information within the meaning of section 50C(3) (*required information*); and
  - (b) incorporate into those procedures the due diligence requirements in Schedule 17D.
- (2) A reporting financial institution must maintain and, for carrying out its obligations under this Part, apply the procedures established in compliance with subsection (1)(a) and (b) (*required procedures*)—
  - (a) to identify reportable accounts, and to identify and collect the required information; and
  - (b) to ensure that the purpose mentioned in subsection (1)(a)(iii) can be achieved.
- (3) A reporting financial institution may, in carrying out its obligations under this Part, apply the required procedures—
  - (a) in relation to any financial account, even if—
    - (i) the account holder of the financial account is a resident for tax purposes in a territory outside Hong Kong that is not a reportable jurisdiction; or
    - (ii) (if the account holder of the financial account is a passive NFE) any controlling person of the account holder is a resident for tax purposes in a

territory outside Hong Kong that is not a reportable jurisdiction; and

- (b) for identifying and collecting the required information in respect of any financial account as referred to in paragraph (a).

**50C. Obligations of reporting financial institutions to furnish returns**

- (1) A reporting financial institution must furnish a return in accordance with a notice given by an assessor under subsection (2) and in compliance with subsections (4) and (5).
- (2) An assessor may give a notice in writing to a reporting financial institution requiring it to furnish a return reporting the information referred to in subsection (3) (*required information*) in relation to reportable accounts with respect to any reportable jurisdiction that are maintained by the institution at any time during the period specified in the notice (*specified information period*), which must be either of the following—
  - (a) the calendar year preceding the year in which the date of the notice falls;
  - (b) such other period as the Commissioner may decide in appropriate cases.
- (2A) However, the specified information period for a reportable jurisdiction may not cover any period that is earlier than the date on which the jurisdiction becomes a reportable jurisdiction. (*Added 5 of 2018 s. 7*)
- (3) The required information is—
  - (a) the information referred to in sections 50F and 50G; and
  - (b) any other information that the Board of Inland Revenue specifies.
- (4) The return under subsection (1) must be furnished—

- (a) within the time specified in the notice;
  - (b) in the manner specified in the notice; and
  - (c) in the form of an electronic record that—
    - (i) is sent by using a system specified by the Board of Inland Revenue; or
    - (ii) contains the required information arranged in a form specified by the Board of Inland Revenue.
- (5) If, during the specified information period, the reporting financial institution maintains no reportable accounts, the institution must state that fact in the return.

**50D. Further obligations of reporting financial institutions relating to returns**

- (1) A reporting financial institution must keep sufficient records to enable the correctness and accuracy of the return furnished under section 50C(1) to be readily ascertained for a period of 6 years beginning on the date on which the return is furnished.
- (2) A reporting financial institution must give a notice to the Commissioner when any of the following events occur—
  - (a) the first occasion on which it commences to maintain a reportable account;
  - (b) one year has lapsed after it ceased to maintain even a single reportable account;
  - (c) the first occasion on which it commences to maintain a reportable account following the occurrence of an event described in paragraph (b).
- (3) If a reporting financial institution—
  - (a) has given a notice to the Commissioner under subsection (2)(a) or (c) (*first notice*); and

- (b) has changed its address after the first notice but before a notice is given under subsection (2)(b),  
it must notify the Commissioner of its new address.
- (4) A notice under subsection (2) or (3) must be given—
  - (a) in the form of an electronic record that is sent by using a system designated by the Commissioner;
  - (b) in the manner that the Commissioner specifies; and
  - (c) within the following period—
    - (i) for a notice under subsection (2)—3 months from the date on which the event occurred;
    - (ii) for a notice under subsection (3)—1 month from the change of the address.

**50E. Application of due diligence and other obligations to non-corporate reporting financial institutions**

In relation to a reporting financial institution that is not a corporation, sections 50B, 50C and 50D apply to a person who acts for the institution to maintain financial accounts as if the obligations under those sections were imposed on that person.

**50F. Required information under section 50C(3)**

- (1) A return furnished under section 50C must include the name and identifying number (if any) of the reporting financial institution.
- (2) The return must also include the following information in relation to each reportable account—
  - (a) if the account holder is an individual who is a reportable person—the name, address, jurisdiction of residence, TIN, and the date and place of birth, of the individual;

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- (b) if the account holder is an entity that is a reportable person—the name, address, jurisdiction of residence and TIN of the entity;
  - (c) if the account holder is an entity and at least one controlling person of the entity is a reportable person—
    - (i) the name, address, jurisdiction of residence and TIN of the entity; and
    - (ii) the name, address, jurisdiction of residence, TIN, and the date and place of birth, of each reportable person;
  - (d) the account number or (if there is no such number) its functional equivalent;
  - (e) the account balance or value (including, for a cash value insurance contract or an annuity contract, the cash value or surrender value) as at the end of the specified information period or other appropriate reporting period, or (if the account was closed during such period) the closure of the account;
  - (f) for a custodial account—
    - (i) the total gross amount of interest paid to the account, or in respect of the account, during the specified information period or other appropriate reporting period;
    - (ii) the total gross amount of dividends paid to the account, or in respect of the account, during the specified information period or other appropriate reporting period;
    - (iii) the total gross amount of other income generated in respect of the financial assets held in the account, and paid to the account, or in respect of the



- account, during the specified information period or other appropriate reporting period; and
- (iv) the total gross proceeds from the sale or redemption of financial assets paid to the account during the specified information period or other appropriate reporting period in respect of which the reporting financial institution acts as a custodian, broker, nominee, or otherwise as an agent for the account holder;
  - (g) for a depository account—the total gross amount of interest paid to the account during the specified information period or other appropriate reporting period;
  - (h) for any account in respect of which the reporting financial institution is the obligor or debtor, other than a custodial account or a depository account—the total gross amount paid to the account holder in respect of the account during the specified information period or other appropriate reporting period, including the aggregate amount of any redemption payments made to the account holder during that period.
- (3) For reporting the information referred to in subsection (2)—
- (a) references to the balance or value of a reportable account include a nil balance or value;
  - (b) references to paying an amount include crediting an amount; and
  - (c) in any reference to an amount, the currency in which the amount is denominated must be identified.
- (4) For subsection (2)(e), (f), (g) and (h)—
- (a) the specified information period means the period specified under section 50C(2); and

- (b) the appropriate reporting period is the period of 12 months as may be elected by the financial institution, and once the election is made, it is irrevocable.

**50G. Modifications of required information**

- (1) Despite section 50F(2)(a), (b) and (c)—
  - (a) for a reportable account that is a pre-existing account maintained by a reporting financial institution—
    - (i) if the TIN or date of birth is not kept in the records of the institution and is not otherwise required to be collected by the institution under the laws of Hong Kong, the TIN or date of birth is not required to be reported; but
    - (ii) subject to paragraph (b), the institution is required to use reasonable efforts to obtain the TIN and date of birth by the end of the second calendar year following the year in which the account is identified as a reportable account;
  - (b) for a reportable account, the TIN is not required to be reported if—
    - (i) a TIN is not issued by the relevant reportable jurisdiction; or
    - (ii) (where a TIN is issued by the relevant reportable jurisdiction) such TIN is not required to be collected under the domestic law of the jurisdiction;
  - (c) the place of birth is not required to be reported unless the reporting financial institution is otherwise required to obtain and report it under the laws of Hong Kong and it is available in the electronically searchable data maintained by the institution.

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- (2) Despite section 50F(2)(f)(iv), the information under that section—
- (a) is not required to be reported with respect to the calendar year of 2017; and
  - (b) is only required to be reported with respect to the calendar year of 2018 and onwards.

**50H. Engagement of service provider**

- (1) A service provider may be engaged to carry out, for or on behalf of a reporting financial institution, the institution's obligations under any, or all, of the following provisions—
- (a) section 50B(1);
  - (b) section 50B(2);
  - (c) section 50C(1).
- (2) To avoid doubt, even if a service provider has been engaged under subsection (1), the reporting financial institution is not relieved from its obligation under section 50B(1) or (2) or 50C(1), as the case requires.

**50I. Commissioner may designate system or specify requirements for electronic record, etc.**

- (1) The Commissioner may designate any system in respect of any communication with the Commissioner for the purposes of section 50C or 50D.
- (2) The Commissioner may by notice published in the Gazette specify requirements as to—
- (a) the manner of generating or sending an electronic record or any attachment required to be furnished with an electronic record;
  - (b) how a digital signature is to be affixed to a return furnished under section 50C(1); and

(c) the software and communication in relation to any attachment required to be furnished with an electronic record.

(3) A notice under subsection (2) is not subsidiary legislation.

**50J. Power to amend Schedules 17C, 17D and 17E**

The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 17C, 17D or 17E.

**50K. Use of information provided by reporting financial institutions**

To avoid doubt, any information reported in a return furnished under section 50C may be used for the administration or enforcement of this Ordinance.

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## Part 9

### Returns, etc.

#### 51. Returns and information to be furnished\*

- (1) An assessor may give notice in writing to any person requiring him within a reasonable time stated in such notice to furnish any return which may be specified by the Board of Inland Revenue for—
  - (a) property tax, salaries tax or profits tax; or
  - (b) property tax, salaries tax and profits tax, under Parts 2, 3, 4, 10A, 10B, and 10C. *(Replaced 52 of 1993 s. 5. Amended 5 of 2003 s. 7)*
- (2) Every person chargeable to tax for any year of assessment shall inform the Commissioner in writing that he is so chargeable not later than 4 months after the end of the basis period for that year of assessment unless he has already been required to furnish a return under the provisions of subsection (1). *(Replaced 49 of 1956 s. 37)*
- (2A)-(2C) *(Repealed 32 of 2018 s. 11)*
- (3) An assessor may give notice in writing to any person when and as often as he thinks necessary requiring him within a reasonable time stated in such notice to furnish fuller or further returns respecting any matter of which a return is required or prescribed by this Ordinance.
- (4) For the purposes of obtaining full information in regard to any matter which may affect any liability, responsibility or obligation of any person under this Ordinance—
  - (a) an assessor or an inspector may give notice in writing to such person, or to any other person whom he considers

may be in possession or control of information or documents in regard to any such matter as aforesaid, requiring him within such reasonable time as is stated in the notice, and in the form and manner specified in it, to furnish all information in his possession or control respecting any such matter, and to produce for examination any deeds, plans, instruments, books, accounts, trade lists, stock lists, vouchers, bank statements or other documents which the assessor or inspector giving the notice considers are or may be relevant for the purpose aforesaid: (*Amended 9 of 2013 s. 5; 22 of 2016 s. 5*)

Provided that in the case of a notice under this paragraph requiring the production of any account kept by a solicitor and relating to the affairs of any client or clients of his, production of a copy of all relevant entries therein respecting any matter upon which information is sought shall be a sufficient compliance with the aforesaid requirement of the notice if the copy is certified by the solicitor as being a correct copy of all relevant entries in such account respecting the matter aforesaid;

- (b) an assistant commissioner may give notice in writing to such person, or to such other person, requiring him, at a time and place to be named by the assistant commissioner, to attend and be examined, and upon such examination to answer truthfully all questions put to him, respecting any such matter as aforesaid. (*Replaced 35 of 1965 s. 26. Amended 40 of 1972 s. 4*)

- (4AA) Subsection (4) also applies for the purposes of obtaining full information in regard to any matter (referred to in this subsection as *the matter concerned*) that may affect any liability, responsibility or obligation of any person (referred

to in this subsection as *the person concerned*) under the laws of a territory outside Hong Kong concerning any tax of that territory if—

- (a) arrangements having effect under section 49(1A) are made with the government of that territory; and
- (b) that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,

and, for the purposes of the application of subsection (4) under this subsection, references to “any such matter” and “any such matter as aforesaid” in subsection (4)(a) and (b) are to be construed as references to the matter concerned, and references to “such person” in subsection (4)(a) and (b) are to be construed as references to the person concerned. (*Added 1 of 2010 s. 5*)

- (4A) For the avoidance of doubt it is hereby declared that the powers conferred by subsection (4) include the power to require information from, and to require the attendance for the purpose of being examined of,—
  - (a) any person, or any employee of any person, who was a party to any particular land or property transaction;
  - (b) any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction;
  - (c) any person who either paid or received, directly or indirectly, any consideration, brokerage, commission or fee in respect of or in connection with any particular land or property transaction; and
  - (d) any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of



exchange, respecting any particular land or property transaction,

as to any of the following matters, that is to say—

- (i) the full names (including aliases) and addresses of any of the persons referred to in paragraphs (a) to (d) and any other information in his possession or control which may be helpful in identifying or locating any such persons; (*Amended 9 of 2013 s. 5*)
- (ii) any consideration, brokerage, commission or fee paid or received in respect of or in connection with any such land or property transaction; and
- (iii) the terms and conditions of any such land or property transaction;

and the existence in respect of any communication, whether oral or written, of privilege from disclosure shall not constitute any excuse for the non-disclosure of information as to any of the matters specified in paragraphs (i) to (iii) where disclosure thereof is required from any of the persons referred to in paragraphs (a) to (d), but except as aforesaid nothing in subsection (4) shall require disclosure by counsel or solicitor of any privileged information or communication given or made to him in that capacity. (*Added 35 of 1965 s. 26*)

- (4B) (a) Any person who without reasonable excuse, the burden of proof whereof shall lie upon him, fails to comply with the requirements of a notice given to him under subsection (4)(a) or fails to attend in answer to a notice issued under subsection (4)(b) or having attended fails to answer any questions put to him, being questions which under that paragraph may be put to him, shall be liable to a penalty at level 3 recoverable under section 75 as a civil debt due to the Government: (*Amended 11 of 1985 s. 3; L.N. 338 of 1995; 19 of 1996 s. 15*)

Provided that—

- (i) the Commissioner may compound any such penalty and may before judgment in proceedings therefor stay or compound such proceedings, or may refuse to accept payment of such penalty or any part thereof except under a judgment of the court in proceedings for the recovery thereof;
  - (ii) the court before which any proceedings for such penalty are brought may, if it thinks fit, give judgment for a less amount.
- (b) In addition to giving judgment for the penalty or any less amount as aforesaid, the court may order the person against whom the proceedings were brought to do, within a time specified in the order, the act which he has failed to do. (*Added 35 of 1965 s. 26*)
- (5) A return, statement, or form purporting to be furnished under this Ordinance by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement, or form shall be deemed to be cognizant of all matters therein.
- (6) Any person who ceases to carry on any trade, profession or business or who ceases to own any source of income or to be the owner of any land or buildings or land and buildings in respect of which tax is chargeable under the provisions of Part 2, 3, 4 or 7 shall so inform the Commissioner in writing within 1 month of such cessation. (*Replaced 49 of 1956 s. 37. Amended 8 of 1983 s. 14*)
- (7) Any person chargeable to tax under Part 3, 4 or 7 who is about to leave Hong Kong for any period exceeding 1 month shall give notice in writing to the Commissioner of his expected date of departure, and if he intends to return to

Hong Kong the approximate date of his return. Such notice shall be given not later than 1 month before the expected date of departure:

Provided that—

- (a) the Commissioner may accept such shorter notice as he may deem reasonable; and
  - (b) this subsection shall not apply in the case of an individual who is required in the course of his employment, business or profession to leave Hong Kong at frequent intervals. *(Added 49 of 1956 s. 37. Amended 7 of 1986 s. 12)*
- (8) Any person chargeable to tax under Part 2, 3, 4 or 7 who changes his address shall within 1 month inform the Commissioner in writing of the particulars of the change. *(Added 2 of 1971 s. 33. Amended 8 of 1983 s. 14)*
- (9) *(Repealed 43 of 1975 s. 2)*

*(Amended E.R. 1 of 2012)*

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Editorial Note:

- \* The amendment made by Part 2 of Ord. No. 32 of 2018 to this section applies in relation to all years of assessment commencing on or after 1 April 2018. (Please see 32 of 2018 s. 3)

**51AA. Form and manner of furnishing return, etc. under section 51**

- (1) Except as provided in subsection (2) or (3), a return required to be furnished under section 51(1)—
  - (a) shall be furnished in paper form using a printed form specified by the Board of Inland Revenue and provided by the Commissioner; and
  - (b) shall contain the particulars specified in the printed form.

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- (2) A return required to be furnished under section 51(1) may, in a case specified by the Commissioner, be furnished in the form of an electronic record that—
- (a) is sent using a system specified by the Board of Inland Revenue;
  - (b) uses a template specified by the Board of Inland Revenue and made available by the Commissioner; or
  - (c) contains the particulars specified by the Board of Inland Revenue that are arranged in a form specified by the Board of Inland Revenue.
- (3) A return required to be furnished under section 51(1) may, in a case specified by the Commissioner, be furnished by using a telefiling system which—
- (a) provides for the furnishing of such particulars as may be specified by the Board of Inland Revenue; and
  - (b) is made available by the Commissioner.
- (4) A return shall be regarded as furnished under subsection (3) when the particulars and the password are accepted by the telefiling system.
- (5) Any case to be specified by the Commissioner for the purposes of subsections (2) and (3)—
- (a) shall be specified by notice published in the Gazette; and
  - (b) may be specified by reference to a class or description of persons or returns.
- (6) The Commissioner may by notice published in the Gazette specify requirements as to—
- (a) the manner of generating or sending an electronic record or any attachment required to be furnished with an electronic record;

- (b) how a digital signature is to be affixed to, or a password is to be included with, a return furnished under this section; and
  - (c) the software and communication in relation to any attachment required to be furnished with an electronic record.
- (7) The Commissioner may approve a password and designate any system in respect of any communication with the Commissioner for the purposes of this section.
- (8) A notice under subsection (5) or (6) is not subsidiary legislation.

*(Added 5 of 2003 s. 8)*

**51A. Power to require statement of assets and liabilities, etc.**

- (1) Where the Commissioner or a deputy commissioner is personally of the opinion that a person has made an incorrect return or supplied false information having the effect of understating his income or profits chargeable to tax and has done so without reasonable excuse and not through an innocent oversight or omission, the Commissioner may, with the consent of the Board of Review, give notice in writing to such person requiring him to furnish within the time limited by such notice, not being less than 30 days from the date of service of the notice, a statement containing particulars of— *(Amended 43 of 1975 s. 3; L.N. 377 of 1980; 48 of 1995 s. 9)*
- (a) all assets which the person or his spouse possessed in Hong Kong, including any possessed jointly or severally with any other person, at such times as may be specified in the notice; and
  - (b) all liabilities to which the person or his spouse was subject in Hong Kong, including any to which he was

- subject jointly or severally with any other person, at such times as may be specified in the notice; and
- (c) all expenditure or disbursements from funds in Hong Kong, including remittances to places outside Hong Kong and gifts, incurred or made by the person or his spouse during such periods as may be specified in the notice; and (*Amended 23 of 1998 s. 2*)
  - (d) all sums, including remittances, gifts and legacies received in Hong Kong by the person or his spouse during such periods as may be specified in the notice. (*Amended 71 of 1983 s. 26; 7 of 1986 s. 12*)
- (2) A notice given under subsection (1) shall not specify any time or period earlier than 7 years before the commencement of the year of assessment in which it is given.
  - (3) An application for the consent of the Board of Review shall be made in writing by the Commissioner to the clerk of the Board and shall be accompanied by a statement of the material on the basis of which it is proposed to exercise the powers of the Commissioner or deputy commissioner under subsection (1).
  - (4) Upon receipt of an application under subsection (3), the Chairman of the Board of Review shall appoint 3 members from the panel of the Board of Review, one of whom shall be the Chairman or a deputy chairman, to consider the application.
  - (5) When the Board is considering an application, the Commissioner or his authorized representative may attend, but the person in respect of whom the application is made may not attend.
  - (6) Subject to subsection (7), neither in the application nor on the consideration thereof shall the identity of the person in

respect of whom the application is made be revealed to the Board of Review.

- (7) If the person on whom a notice under subsection (1) has been given so requests, the Commissioner shall furnish him with a certificate from the Chairman or deputy chairman of the Board of Review certifying that the Board's consent to the issue of the notice was given, and for the purpose of obtaining such a certificate the Commissioner shall reveal to the Chairman or deputy chairman the identity of that person.
- (8) The decision of the Board of Review to grant or refuse consent shall be final.

*(Added 26 of 1969 s. 28. Amended 40 of 1972 s. 5; 43 of 1975 s. 3)*

#### **51B. Power to issue search warrant**

- (1) If the Commissioner, or an officer of the Inland Revenue Department not below the rank of chief assessor authorized in writing by the Commissioner for the purpose (in this section referred to as *the authorized officer*), satisfies a magistrate, by statement made on oath,—
  - (a) that there are reasonable grounds for suspecting that a person has made an incorrect return or supplied false information having the effect of understating his income or profits chargeable to tax and has done so without reasonable excuse and not through an innocent oversight or omission; or
  - (b) that a person has failed to comply with an order of a court made under section 80(1) or (2A) directing him to comply with the requirements of a notice given to him under section 51(1) or (3), *(Amended 56 of 1993 s. 22)*

the magistrate may by warrant authorize the Commissioner or authorized officer to exercise the following powers—



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- (i) without previous notice at any reasonable time during the day, to enter and have free access to any land, buildings, or place where he suspects there to be any books, records, accounts or documents of that person, or of any other person, which may afford evidence material in assessing the liability of the first-mentioned person for tax, and there to search for and examine any books, records, accounts or documents; (*Amended 43 of 1975 s. 4*)
  - (ii) in carrying out any such search, to open or cause to be removed and opened, any article in which he suspects any books, records, accounts or documents to be contained;
  - (iii) to take possession of any books, records, accounts or documents of that person or that person's spouse, and to make copies of such parts of any books, records, accounts or documents of any other person, as may afford evidence material in assessing the liability of the first-mentioned person for tax; (*Replaced 43 of 1975 s. 4. Amended 71 of 1983 s. 27*)
  - (iv) to retain any such books, records, accounts or documents for as long as they may be reasonably required for any assessment to be made or for any proceedings under this Ordinance to be completed:

Provided that if the Commissioner or authorized officer shall retain any book, record, account or document for a period of more than 14 days, the person aggrieved may apply in writing to the Board of Review for an order directing the return thereof and the Board of Review, after hearing the applicant or his authorized representative and the Commissioner or his representative, may so order, either unconditionally or

subject to any condition which the Board may consider it proper to impose. (*Amended 7 of 1975 s. 34*)

(1AAA) If the Commissioner or authorized officer satisfies a magistrate, by statement made on oath—

- (a) that a reporting financial institution or its service provider (if any) has failed to comply with an order of a court made under section 80B(3)(a) or 80D(9)(a) directing the institution or its service provider (if any) to comply with a requirement under section 50C(1); or
- (b) that there are reasonable grounds for suspecting that a reporting financial institution or its service provider (if any) has failed to comply with section 50B(1) or (2) or 50C(1) and has done so without reasonable excuse and not through an innocent oversight or omission,

the magistrate may by warrant authorize the Commissioner or authorized officer to exercise the powers specified in subsection (1AAAB). (*Added 22 of 2016 s. 6*)

(1AAAB) The powers are for the Commissioner or authorized officer—

- (a) without previous notice at any reasonable time during the day, to enter and have free access to any land, buildings, or place where the Commissioner or authorized officer suspects there to be any articles or data of the reporting financial institution or its service provider (if any), or of any other person, that may afford evidence material in assessing—
  - (i) the liability of the institution or its service provider (if any) under this Ordinance; or
  - (ii) the liability of any other person for tax of a reportable jurisdiction,

and there to search for and examine such articles or data;

- (b) in carrying out any such search, to open or cause to be removed and opened, any article which the Commissioner or authorized officer suspects to be containing any articles or data;
  - (c) to—
    - (i) take possession of any articles or data of the reporting financial institution or its service provider (if any); and
    - (ii) make copies of such parts of any articles or data of any other person, as may afford evidence material in assessing the liability of the institution or its service provider (if any) under this Ordinance or the liability of any other person for tax of a reportable jurisdiction;
  - (d) to retain any such articles or data for as long as they may be reasonably required for any assessment to be made or for any proceedings under this Ordinance to be completed. *(Added 22 of 2016 s. 6)*
- (1AAAC) If the Commissioner or authorized officer retains any articles or data for a period of more than 14 days, the person aggrieved may apply in writing to the Board of Review for an order directing the return of such articles or data, and the Board, after hearing the applicant or the applicant's authorized representative and the Commissioner or the Commissioner's representative, may so order, either unconditionally or subject to any condition that the Board considers proper to impose. *(Added 22 of 2016 s. 6)*
- (1AAAD) If, on entering the land, buildings or place under the warrant issued under subsection (1AAA), an authorized officer is of the opinion that the reporting financial institution or service provider is likely to fail to carry out the obligations under section 50B(1) or (2) or 50C(1), the Commissioner or

authorized officer may give notice to the institution or service provider requiring it, within a reasonable time and in a manner specified in the notice, to take any action as specified in the notice that is necessary for rectifying its compliance system and process as defined by section 51BA(1). (*Added 22 of 2016 s. 6*)

(1AAAE) In subsections (1AAAB) and (1AAAC), references to articles or data are references to books, records, accounts or documents, or any information or data of the compliance system and process as defined by section 51BA(1). (*Added 22 of 2016 s. 6*)

(1AA) Subsection (1) also applies to any tax (referred to in this subsection as *the tax concerned*) of a territory outside Hong Kong if—

- (a) arrangements having effect under section 49(1A) are made with the government of that territory; and
- (b) the tax concerned is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,

and, for the purposes of the application of subsection (1) under this subsection, a reference to a person's income or profits chargeable to tax in subsection (1)(a) is to be construed as a reference to a person's income or profits chargeable to the tax concerned or any other sums or values in respect of which a person is chargeable to the tax concerned, and a reference to a person's liability for tax in subsection (1)(i) and (iii) is to be construed as a reference to a person's liability for the tax concerned. (*Added 1 of 2010 s. 6. Amended 9 of 2013 s. 6*)

(1A) Any officer of the Inland Revenue Department under the direction of the Commissioner or an authorized officer may assist the Commissioner or an authorized officer in the

execution of a warrant issued under subsection (1) or (1AAA) and may exercise any of the powers referred to in subsection (1)(i), (ii) and (iii) or (1AAAB)(a), (b) and (c). (*Added 40 of 1972 s. 6*)

- (2) When exercising any power under subsection (1) or (1AAAB), the Commissioner or authorized officer shall produce on demand the warrant issued to him under that subsection.
- (3) The person to whose affairs any books, records, accounts or documents, or any information or data of a compliance system and process as defined by section 51BA(1), as the case requires, taken possession of under subsection (1) or (1AAAB) relate shall be entitled to examine and make extracts from them at such times and under such conditions as the Commissioner may determine.
- (4) Any person who obstructs or hinders the Commissioner or an authorized officer acting in the discharge of his duty under subsection (1) or (1AAAB) or an officer assisting him under subsection (1A) commits an offence and is liable on conviction to a fine at level 3 and imprisonment for 6 months. (*Amended 56 of 1993 s. 22; L.N. 338 of 1995; 4 of 2010 s. 8*)  
(*Added 26 of 1969 s. 28. Amended 40 of 1972 s. 6*)

**51BA. Assessor's power to enter business premises of reporting financial institutions and service providers and inspect**

- (1) In this section—

*business premises* (業務處所) means the premises that an assessor has reason to believe—

- (a) in relation to a reporting financial institution, are used in connection with the carrying on of a business by or on behalf of the institution; or
- (b) in relation to a service provider, are used in connection with the carrying out of the obligations under section

50B(1) or (2) or 50C(1) by the service provider for a reporting financial institution concerned;

***compliance system and process*** (合規系統及程序) means the system and process, including any information or data that is recorded (whether by means of a computer or otherwise) in a legible or non-legible form, that relate to the procedures required to be applied by a reporting financial institution or service provider (as the case requires) for carrying out the obligations under section 50B(1) or (2) or 50C(1).

- (2) A reporting financial institution or service provider must allow an assessor to enter its business premises, and inspect its compliance system and process for the purpose of checking whether it is carrying out or has carried out, or is likely to be able to carry out, the obligations under section 50B(1) or (2) or 50C(1) if it receives a notice from an assessor requiring it to do so.
- (3) The notice under subsection (2) may be given only if the inspection is reasonably required for the purposes specified in that subsection.
- (4) The inspection may only be carried out—
  - (a) at a time agreed to by the reporting financial institution or service provider to whom the notice is given; or
  - (b) on a notice given to the reporting financial institution or service provider at least 7 days before the time of the inspection.
- (5) The notice under subsection (4)(b) must state the possible consequences under section 80B(1)(c) of obstructing or hindering an assessor in the exercise of the powers under subsection (2).
- (6) If, during the inspection, an assessor is of the opinion that the reporting financial institution or service provider is likely to fail to carry out the obligations under section 50B(1) or



(2) or 50C(1), the assessor may give notice to the institution or service provider requiring it, within a reasonable time and in a manner specified in the notice, to take any action as specified in the notice that is necessary for rectifying its compliance system and process.

*(Added 22 of 2016 s. 7)*

### **51C. Business records to be kept**

- (1) Subject to subsection (2), every person carrying on a trade, profession or business in Hong Kong shall keep sufficient records in the English or Chinese language of his income and expenditure to enable the assessable profits of such trade, profession or business to be readily ascertained and shall retain such records for a period of not less than 7 years after the completion of the transactions, acts or operations to which they relate. *(Amended 7 of 1986 s. 12)*
- (2) Subsection (1) shall not require the preservation of any records—
  - (a) which the Commissioner has specified need not be preserved; or
  - (b) of a corporation which has been dissolved.
- (3) For the purposes of this section, **records** (紀錄) includes—
  - (a) books of account (whether kept in a legible form, or in a non-legible form by means of a computer or otherwise) recording receipts and payments, or income and expenditure; and
  - (b) vouchers, bank statements, invoices, receipts, and such other documents as are necessary to verify the entries in the books of account referred to in paragraph (a). *(Added 48 of 1995 s. 10)*



- (4) Without limiting the generality of subsection (3), the records required to be kept and retained pursuant to subsection (1) in respect of any trade, profession or business carried on during any year of assessment by any person, include—
- (a) a record of the assets and liabilities of the person in relation to that trade, profession or business;
  - (b) a record of all entries from day to day of all sums of money received and expended by the person in relation to that trade, profession or business and the matters in respect of which the receipt and expenditure take place;
  - (c) where that trade, profession or business involves dealing in goods—
    - (i) a record of all goods purchased, and of all goods sold in the carrying on of that trade, profession or business (except those sold in the course of cash retail trading customarily conducted in a trade, profession or business of the kind of which that trade, profession or business is one) showing the goods, and the sellers and buyers in sufficient detail to enable the Commissioner to readily verify the quantities and values of the goods and the identities of the sellers and buyers; and all invoices relating thereto; and
    - (ii) statements (including quantities and values) of trading stock held by the person—
      - (A) at the end of each year of assessment; or
      - (B) where the Commissioner is satisfied that the accounts of such trade, profession or business are made up to a day other than 31 March, on that day in the year of assessment,

and all records of stocktakings from which any such statement of trading stock has been prepared; and

- (d) where that trade, profession or business involves the provision of services, records of the services provided in sufficient detail to enable the Commissioner to readily verify the entries referred to in paragraph (b). *(Added 48 of 1995 s. 10)*
- (5) Section 25 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section. *(Added 10 of 2013 s. 11)*

*(Added 26 of 1969 s. 28)*

**51D. Rent records to be kept**

- (1) Subject to subsection (2), every person who is the owner of land or buildings or land and buildings situated in Hong Kong shall keep sufficient records in the English or Chinese languages of the consideration, in money or money's worth, payable or deemed to be payable to him, to his order or for his benefit on or after 1 April 1983 in respect of the right of use of that land or buildings or land and buildings to enable the assessable value of that land or buildings or land and buildings to be readily ascertained and shall retain such records for a period of not less than 7 years after the completion of the transactions, acts or operations to which they relate.
- (2) Subsection (1) shall not require the preservation of any records—
  - (a) which the Commissioner has specified need not be preserved; or
  - (b) of a corporation which has been dissolved.

*(Added 8 of 1983 s. 15)*

**52. Information to be furnished by officials and employers**

- (1) The Commissioner may give notice in writing to any officer in the employment of the Government or of any public body requiring him within a reasonable time stated in such notice to furnish any particulars which he may require for the purposes of this Ordinance which may be in the possession or control of such officer: *(Amended 9 of 2013 s. 7)*

Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he is under any express statutory obligation to observe secrecy.

- (2) Every person who is an employer shall, when required to do so by notice in writing given by an assessor, furnish within a reasonable time stated in such notice a return containing the names and places of residence and the full amount of the remuneration, whether in cash or otherwise, for the period specified in the notice, of—
- (a) all persons employed by him in receipt of remuneration in excess of a minimum figure to be fixed by the assessor; and
- (b) any other person employed by him named by the assessor.
- (3) For the purposes of this section, any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed by the company. *(Amended 7 of 1986 s. 9)*
- (4) Where any person who is an employer commences to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part 3, or any married person, he shall give notice thereof in writing to the Commissioner not later than 3 months after the date of commencement of such employment, stating the full name and address of

the individual, the date of commencement and the terms of employment. (*Added 49 of 1956 s. 38. Amended 7 of 1986 s. 9; 43 of 1989 s. 17*)

- (5) Where any person who is an employer ceases or is about to cease to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part 3, or any married person, he shall give notice thereof in writing to the Commissioner not later than 1 month before such individual ceases to be employed in Hong Kong, stating the name and address of the individual and the expected date of cessation: (*Amended 7 of 1986 s. 9; 43 of 1989 s. 17*)

Provided that the Commissioner may accept such shorter notice as he may deem reasonable. (*Added 49 of 1956 s. 38*)

- (6) The employer of any individual who is chargeable to tax under Part 3 and is about to leave Hong Kong for any period exceeding 1 month shall give notice in writing to the Commissioner of the expected date of departure of such individual. Such notice shall be given not later than 1 month before the expected date of departure:

Provided that—

- (a) the Commissioner may accept such shorter notice as he may deem reasonable; and
- (b) this subsection shall not apply in the case of an individual who is required in the course of his employment to leave Hong Kong at frequent intervals. (*Added 49 of 1956 s. 38*)
- (7) An employer who is required by subsection (6) to give notice to the Commissioner of the expected departure of an individual shall not, in the case of an individual whom he has ceased, or is about to cease, to employ in Hong Kong, except with the consent in writing of the Commissioner or in the case of money paid to the Commissioner on the direction

of the individual, make any payment of money or money's worth to or for the benefit of the individual for a period of 1 month from the date on which he gave the notice; and compliance with this subsection shall constitute a defence in any proceedings against an employer in respect of his failure to make any payment to or for the benefit of the individual during the said period. *(Added 26 of 1969 s. 29. Amended 2 of 1971 s. 34)*

- (8) Notwithstanding anything to the contrary in subsections (4) and (5) an employer shall not be required to give notice under those subsections in respect of a married person if he has reasonable grounds for believing that neither that person nor his or her spouse are, or are likely to be, chargeable to tax under Part 3. *(Added 7 of 1986 s. 9. Amended 43 of 1989 s. 17)*

*(Amended 7 of 1986 s. 12; E.R. 1 of 2012)*

### **53. Who may act for incapacitated or non-resident persons**

An act or thing required by or under this Ordinance to be done by any person shall, if such person is an incapacitated or non-resident person, be deemed to be required to be done by the trustee of such incapacitated person or by the agent of such non-resident person, as the case may be.

### **54. Liability of executor of deceased taxpayer**

The executor of a deceased person shall be chargeable with the tax for all periods prior to the date of such person's death with which the said person would be chargeable if he were alive, and shall be liable to do all such acts, matters or things as the deceased person if he were alive would be liable to do under this Ordinance:

Provided that—

- (a) no proceedings, other than an assessment to additional tax under section 82A, shall be instituted against the executor under the provisions of Part 14 in respect of any act or default of the deceased person; (*Amended 43 of 1975 s. 5*)
  - (b) where the person dies before 11 February 2006, no assessment or additional assessment, other than an assessment to additional tax under section 82A, in respect of a period prior to the date of the person's death shall be made after— (*Amended 21 of 2005 s. 19; L.N. 210 of 2005*)
    - (i) the expiry of 1 year from such date of death; or
    - (ii) the expiry of 1 year from the date of filing any affidavit required under the Estate Duty Ordinance (Cap. 111),

whichever is the later; and (*Amended 26 of 1969 s. 30; 56 of 1993 s. 23; 21 of 2005 s. 19*)
  - (c) where the person dies at any time on or after 11 February 2006 in any year of assessment, no assessment or additional assessment (other than an assessment to additional tax under section 82A) in respect of a period prior to his death shall be made after the expiry of 3 years immediately after that year of assessment. (*Added 21 of 2005 s. 19. Amended L.N. 210 of 2005*)
- (Amended E.R. 1 of 2012)*

**55.** (*Repealed 49 of 1956 s. 39*)

**56. Precedent partner to act on behalf of partnership**

- (1) Wherever 2 or more persons in partnership act as agents, or are employers, or are persons in receipt of profits or act in any other capacity whatever, either on behalf of themselves or

of any other person, the precedent partner of such partnership shall be answerable for doing all such acts, matters and things as would be required to be done under the provisions of this Ordinance by an individual acting in such capacity: (*Amended 49 of 1956 s. 40*)

Provided that any person to whom a notice has been given under the provisions of this Ordinance as precedent partner of a partnership shall be deemed to be the precedent partner thereof unless he proves that he is not a partner in such partnership, or that some other person resident in Hong Kong is the precedent partner thereof. (*Amended 7 of 1986 s. 12*)

- (2) Where 2 or more persons who are not in partnership act jointly in any capacity mentioned in subsection (1), they shall be jointly and severally answerable for doing all such acts, matters, and things as would be required to be done under the provisions of this Ordinance by an individual acting in such capacity.

#### **56A. Joint owners and co-owners**

- (1) Where 2 or more persons are joint owners or owners in common of any land or buildings or land and buildings, any of those persons appearing from any deed, conveyance, judgment or other instrument in writing registered in the Land Registry under the Land Registration Ordinance (Cap. 128) to be such an owner shall be answerable for doing all such acts, matters and things as would be required to be done under the provisions of this Ordinance by a sole owner. (*Amended 56 of 1992 s. 20; 8 of 1993 s. 2*)
- (2) Nothing in subsection (1) shall relieve any person of any obligation under this Ordinance or affect any right and obligation of joint owners or owners in common as between themselves.



- (3) Where any person pays property tax under subsection (1) and that person is not, apart from that subsection, liable to that tax or part of it, that person may recover from any other person that tax or part of it to which that other person, apart from that subsection, is liable under this Ordinance.

*(Added 8 of 1983 s. 16)*

**57. Principal officer to act on behalf of a corporation or body of persons**

- (1) The following person is answerable for doing all the acts, matters or things that are required to be done under the provisions of this Ordinance by a corporation or body of persons—
- (a) for a corporation that is an open-ended fund company, any director or investment manager or the provisional liquidator or liquidator of the corporation;
  - (b) for any other corporation, the secretary, manager, any director or the provisional liquidator or liquidator of the corporation;
  - (c) for a body of persons, its principal officer. *(Replaced 16 of 2016 s. 26)*
- (2) If no person specified in subsection (1) is ordinarily resident in Hong Kong, the corporation or body of persons, as the case may be, shall inform the Commissioner, and keep him so informed at all times, of the name and address of an individual ordinarily resident in Hong Kong who shall be answerable for doing all such acts, matters, or things as are required to be done under the provisions of this Ordinance by such corporation or body of persons. *(Amended 7 of 1986 s. 12; 16 of 2016 s. 26)*
- (3) In this section—

*investment manager* (投資經理) means an investment manager within the meaning of section 112Z of the Securities and Futures Ordinance (Cap. 571). (*Added 16 of 2016 s. 26*)

(*Replaced 2 of 1971 s. 35*)

## 58. Signature and service of notices

- (1) Every notice to be given by the Commissioner, a deputy commissioner, an assistant commissioner, an assessor or an inspector under this Ordinance shall bear the name of the Commissioner, deputy commissioner, assistant commissioner, assessor or inspector, as the case may be, and every such notice shall be valid if the name of the Commissioner, deputy commissioner, assistant commissioner, assessor or inspector is duly printed or signed thereon. (*Replaced 19 of 1996 s. 10*)
- (2) Every notice given by virtue of this Ordinance may be served on a person either personally or by being delivered at, or sent by post to, his last known postal address, place of abode, business or employment or any place at which he is, or was during the year to which the notice relates, employed or carrying on business or the land or buildings or land and buildings in respect of which he is chargeable to tax under Part 2. (*Amended 49 of 1956 s. 42; 26 of 1969 s. 31; 8 of 1983 s. 17; 76 of 1993 s. 8*)
- (3) Any notice sent by post shall be deemed, unless the contrary is shown, to have been served on the day succeeding the day on which it would have been received in the ordinary course by post. (*Amended 76 of 1993 s. 8*)
- (4) In proving service by post it shall be sufficient to prove that the letter containing the notice was duly addressed and posted.
- (5) Every name printed or signed on any notice or signed on any certificate given or issued for the purposes of this Ordinance

which purports to be the name of the person authorized to give or issue the same shall be judicially noticed.

- (6) If a notice given under this Part requires something to be done within a time stated in the notice, the Commissioner or, in the case of a notice given by an assessor, an assessor may by notice in writing extend the time for complying with the notice. *(Added 2 of 1971 s. 36)*

*(Amended E.R. 1 of 2012)*

**58A.** *(Repealed 43 of 1989 s. 18)*

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## Part 9A

# Transfer Pricing Documentation Including Country-by-Country Reporting

(Part 9A added 27 of 2018 s. 17)

Note (with no legislative effect) providing an overview of Part 9A—

1. Division 1 provides for interpretation.
2. Division 2 requires a Hong Kong entity of a group in the extended sense to prepare, for each accounting period, a master file and a local file and to retain the files for 7 years.
3. Division 3 gives effect to the country-by-country reporting requirements of the Organisation for Economic Co-operation and Development.

## Division 1—Interpretation

### 58B. Interpretation of Part 9A

(1) Except for *permanent establishment*, an expression used in this Part, and defined or otherwise explained in Part 8AA, has the same meaning as in that Part.

(2) In this Part—

*accounting period* (會計期), in relation to Division 3 and a multinational enterprise group, means a period with respect to which the ultimate parent entity of the group prepares its financial statements;

*CbCR documents* (國別標準文件) means the following documents published by the Organisation for Economic Co-operation and Development—

- (a) the consolidated report, entitled Transfer Pricing Documentation and Country-by-Country Reporting,

on Action 13 of the OECD/ G20 Action Plan on Base Erosion and Profit Shifting published in 2015;

- (b) the document entitled Guidance on the Implementation of Country-by-Country Reporting – BEPS Action 13 published in 2018; and
- (c) the document entitled Country-by-Country Reporting: Handbook on Effective Implementation published in 2017;

***consolidated financial statements*** (綜合財務報表), in relation to a group in the usual sense, means the financial statements of the group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single economic entity;

***constituent entity*** (成員實體)—

- (a) in relation to a group in the usual sense, means—
  - (i) any separate business unit of the group that is included in the consolidated financial statements of the group for financial reporting purposes, or would be so included if equity interests in the business unit were traded on a public securities exchange;
  - (ii) any such business unit that is excluded from the consolidated financial statements of the group solely on size or materiality grounds; or
  - (iii) any permanent establishment of any separate business unit of the group included in subparagraph (i) or (ii) if the business unit prepares a separate financial statement for the permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes; or

- (b) in relation to a group in the extended sense that falls within paragraph (b) of the definition of *group in the extended sense* in this section, means—
- (i) the single enterprise referred to in paragraph (b) of that definition; or
  - (ii) any permanent establishment of the enterprise if the enterprise prepares a separate financial statement for the permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

**country-by-country report** (國別報告) means a country-by-country report—

- (a) to be filed annually in respect of a multinational enterprise group by a constituent entity of the group in accordance with the laws or regulations of the constituent entity's jurisdiction of tax residence; and
- (b) covering the items of information, and reflecting the format, set out in the CbCR documents;

**country-by-country return** (國別申報表), in relation to a multinational enterprise group, means a return for an accounting period of the group if the requirements of section 58K are met in respect of the return;

**entity** (實體) means a body of persons (corporate or unincorporate) or a legal arrangement, and includes—

- (a) a corporation;
- (b) a partnership;
- (c) a trust; and
- (d) a permanent establishment;

**file** (提交), in relation to a country-by-country return, means file with the Commissioner;

***filing deadline*** (提交期限) has the meaning given by subsections (3) and (4);

***group in the extended sense*** (廣義集團) means—

- (a) a group in the usual sense; or
- (b) a single enterprise if it is resident for tax purposes in one jurisdiction and is subject to tax in another jurisdiction with respect to the business carried out through a permanent establishment in that other jurisdiction;

***group in the usual sense*** (常義集團) means a collection of enterprises related through ownership or control such that—

- (a) it is required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles; or
- (b) it would be so required if equity interests in any of the enterprises were traded on a public securities exchange;

***HK ultimate parent entity*** (香港最終母實體), in relation to a multinational enterprise group, means the group's ultimate parent entity if the entity is resident for tax purposes in Hong Kong;

***Hong Kong entity*** (香港實體) means a constituent entity that—

- (a) is resident for tax purposes in Hong Kong; or
- (b) is a permanent establishment in Hong Kong;

***jurisdiction of tax residence*** (稅務居留地管轄區) is to be read in accordance with the meaning of ***resident for tax purposes***;

***multinational enterprise group*** (跨國企業集團) means a group in the usual sense that includes—

- (a) 2 or more enterprises the tax residence of which is in different jurisdictions; or
- (b) an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax in another jurisdiction



with respect to the business carried out through a permanent establishment in that other jurisdiction;

**period P** (指定期) and **period P-1** (對上期) have the same meanings as in section 58D(2);

**permanent establishment** (常設機構) has the meaning given by subsection (5);

**reportable group** (須申報集團) has the meaning given by section 58D(2);

**reporting entity** (申報實體) has the meaning given by section 58J;

**service provider** (服務提供者) means a service provider engaged to carry out the obligations of a reporting entity as referred to in section 58M(1);

**surrogate parent entity** (代母實體), in relation to a reportable group, means a constituent entity of the group appointed as the group's surrogate parent entity as mentioned in section 58I(3) or (4);

**tax residence** (稅務居留地) is to be read in accordance with the meaning of **resident for tax purposes**;

**ultimate parent entity** (最終母實體), in relation to a group in the usual sense, means a constituent entity (**constituent entity 1**) of the group that meets the following conditions—

- (a) it owns directly or indirectly a sufficient interest in one or more other constituent entities of the group such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
- (b) there is no other constituent entity of the group that owns directly or indirectly an interest described in paragraph (a) in constituent entity 1.

- (3) In this Part—
- filing deadline** (提交期限), in relation to a country-by-country return for an accounting period, means, subject to subsection (4), the earlier of the following dates—
- (a) the date on which a period of 12 months after the end of the accounting period expires;
  - (b) the date specified in a notice given under section 58G.
- (4) If—
- (a) a Hong Kong entity (not being a HK ultimate parent entity) required under section 58F to file a country-by-country return for an accounting period notifies the Commissioner in accordance with section 58H that the SPE-filing-elsewhere exception is to apply within the meaning of section 58I(2)(a); and
  - (b) the date by which a country-by-country report for the accounting period is required to be filed by the laws or regulations of the jurisdiction of tax residence of the surrogate parent entity concerned (**foreign filing date**) is later than the filing deadline under subsection (3),
- the filing deadline, in relation to the country-by-country return for the accounting period, is the foreign filing date.
- (5) For the purposes of this Part—
- (a) a business unit of a multinational enterprise group, or an enterprise, has a permanent establishment in a jurisdiction if—
    - (i) in the case where the jurisdiction is Hong Kong—the business unit or enterprise has a permanent establishment in Hong Kong under Schedule 17G; or
    - (ii) in the case where the jurisdiction is not Hong Kong—the business unit or enterprise is regarded

- as having a permanent establishment in the jurisdiction under the laws of the jurisdiction or under a bilateral or multilateral tax convention to which the jurisdiction is a party;
- (b) a reference to a permanent establishment in a jurisdiction, in relation to a business unit of a multinational enterprise group or to an enterprise, is to be read accordingly; and
  - (c) for the purposes of applying Schedule 17G to determine whether a business unit of a multinational enterprise group has a permanent establishment in Hong Kong, a reference to a person or to an enterprise—
    - (i) in paragraph (c) of the definition of *double taxation arrangements* in section 50AAC(1); or
    - (ii) in Schedule 17G,  
is to be construed as including such a business unit.
- (6) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend the definition of *CbCR documents* in subsection (2).

## **Division 2—Master File and Local File**

### **58C. Master file and local file to be retained**

- (1) This section applies to a Hong Kong entity of a group in the extended sense, except for an accounting period of the entity in respect of which any 2 of the following conditions are satisfied—
  - (a) the total amount of the entity's revenue for the accounting period, as reflected in the entity's financial statement for the accounting period, does not exceed the amount specified in section 4(a) of Schedule 17I;

- (b) the total value of the entity's assets at the end of the accounting period, as reflected in the entity's financial statement for the accounting period, does not exceed the amount specified in section 4(b) of Schedule 17I;
  - (c) the average number of the entity's employees during the accounting period does not exceed the number specified in section 4(c) of Schedule 17I.
- (2) The Hong Kong entity must—
- (a) prepare, within 9 months after the end of each accounting period of the entity, a file in respect of the accounting period (*local file*) and a file in respect of the corresponding accounting period of the group (*master file*); and
  - (b) retain the files for a period of not less than 7 years after the end of the accounting period of the entity.
- (3) The local file and master file must—
- (a) be in the English or Chinese language; and
  - (b) cover the items of information, and reflect the format (including terminology and order of presentation), set out in Divisions 1 and 2 of Part 3 of Schedule 17I.
- (4) Despite subsection (2)—
- (a) a local file of the Hong Kong entity in respect of an accounting period of the entity is not required to cover specified domestic transactions;
  - (b) a local file of the Hong Kong entity in respect of an accounting period of the entity is not required to cover a type of controlled transactions specified in section 5 of Schedule 17I if the total amount of that type of controlled transaction undertaken by the entity for the accounting period does not exceed the amount specified in relation to the type in section 5 of Schedule 17I; and

- (c) if, because of paragraph (b), all types of controlled transaction specified in section 5 of Schedule 17I undertaken by the Hong Kong entity for the accounting period are not required to be covered in the local file of the entity in respect of an accounting period, neither of the following is required to be prepared or retained by the entity—
- (i) the local file for the accounting period;
  - (ii) the master file for the corresponding accounting period of the group.
- (5) Specified domestic transactions are to be disregarded in computing, for the purposes of subsection (4)(b) or (c), the total amount of a type of controlled transaction specified in section 5 of Schedule 17I.
- (6) In this section, the following expressions have the meanings given by section 2 of Schedule 17I—
- accounting period* (會計期);
  - controlled transaction* (受管交易);
  - corresponding accounting period* (相應會計期);
  - specified domestic transaction* (指明本地交易).
- (7) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 17I.

### **Division 3—Country-by-Country Reporting**

#### **Note (with no legislative effect) providing an overview of Division 3—**

1. Division 3 gives effect to the country-by-country reporting requirements of the Organisation for Economic Co-operation and Development. Under those requirements, a country-by-country report (*CbC report*) must be filed in respect of a group (*reportable group*) whose annual consolidated group revenue reaches the specified threshold amount to provide, annually and for each tax jurisdiction

in which the group does business, information such as the amount of revenue, profit before tax, tax paid and accrued, capital and assets.

2. Under section 58D, the requirements for filing a country-by-country return (***CbC return***) (which must include a CbC report) only apply to a reportable group.
3. A reportable group's ultimate parent entity (***UPE***) is required to file a CbC return with the Commissioner for each accounting period beginning on or after 1 January 2018 if the UPE is resident for tax purposes in Hong Kong (section 58E(1)).
4. A Hong Kong entity of a reportable group whose UPE is not resident for tax purposes in Hong Kong is required to file a CbC return with the Commissioner if any of the following conditions is met—
  - (a) the UPE is not required to file a CbC report in its jurisdiction of tax residence (***jurisdiction U***);
  - (b) jurisdiction U has a current international agreement with Hong Kong providing for the automatic exchange of tax information but, by the deadline for filing the CbC return, there are no exchange arrangements in place between jurisdiction U and Hong Kong for CbC reports;
  - (c) there has been a systemic failure to exchange CbC reports by jurisdiction U, which has been notified to the Hong Kong entity by the Commissioner (sections 58F(1) and 58I(1)).
5. Even if one of the conditions mentioned in item 4 of this Note is met, the Hong Kong entity is not required to file a CbC return if—
  - (a) a CbC return for the relevant period is filed by another Hong Kong entity of the reportable group; or
  - (b) a CbC report is filed by the reportable group's surrogate parent entity resident in another jurisdiction (***jurisdiction S***) and exchange mechanisms are in place between jurisdiction S and Hong Kong.

This and the concept of *surrogate parent entity* are dealt with in sections 58F(2) and 58I(2) to (7).

6. Also, a reportable group's UPE resident for tax purposes in Hong Kong may voluntarily file a CbC return for an accounting period beginning on or after 1 January 2016 but before 1 January 2018 (section 58E(2)).

### **58D. Consistency with CbCR documents and application to reportable group**

- (1) This Division is to be read in the way that best secures its consistency with the requirements and guidance in the CbCR documents.
- (2) The provisions of this Division about filing a country-by-country return and notices in respect of an accounting period (*period P*) apply in relation to a multinational enterprise group that meets the threshold requirement in the immediately preceding accounting period (*period P-1*). (The group is referred to as a *reportable group* for period P.)
- (3) A multinational enterprise group meets the threshold requirement for the purposes of subsection (2) if—
  - (a) it has a total consolidated group revenue (as shown in its consolidated financial statements for period P-1) of at least the specified threshold amount; or
  - (b) it has a total consolidated group revenue (as would have been shown in its consolidated financial statements for period P-1 had the group been required to produce them by reason of the trading of equity interests in any of the enterprises in the group on a public securities exchange) of at least the specified threshold amount.
- (4) However, if—



- (a) a multinational enterprise group's ultimate parent entity is resident for tax purposes in a jurisdiction other than Hong Kong (*jurisdiction U*); and
  - (b) the group draws up its consolidated financial statements in respect of period P-1 in a currency of jurisdiction U (*currency U*) or would have drawn them up in currency U if the group had been required to produce them,
- the reference to specified threshold amount in subsection (3) has effect as if it were jurisdiction U's threshold amount.

(5) In this section—

*jurisdiction U's threshold amount* (終區門檻款額) means—

- (a) if jurisdiction U requires the filing of a country-by-country report in respect of period P by a multinational enterprise group that has a total consolidated group revenue for period P-1 of at least a threshold amount and that amount is specified under the laws or regulations of jurisdiction U—the threshold amount specified; or
- (b) in any other case—an amount, in currency U, that is equivalent to EUR 750 million as at January 2015;

*specified threshold amount* (指明門檻款額) means \$6.8 billion.

(6) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend the definitions in subsection (5).

**58E. HK ultimate parent entity required to file country-by-country returns**

- (1) A HK ultimate parent entity of a reportable group must file a country-by-country return in respect of period P by the filing deadline if period P begins on or after 1 January 2018.
- (2) A HK ultimate parent entity of a reportable group may file a country-by-country return in respect of period P by the filing

deadline if period P begins on or after 1 January 2016 but before 1 January 2018.

**58F. Other Hong Kong entities required to file country-by-country returns**

- (1) A Hong Kong entity of a reportable group that is not the group's ultimate parent entity must file a country-by-country return in respect of period P by the filing deadline if, in relation to the group, a condition precedent for Hong Kong to require a Hong Kong entity of the group that is not the ultimate parent entity to file a country-by-country report is met within the meaning of section 58I(1).
- (2) Subsection (1) does not apply if—
  - (a) the SPE-filing-elsewhere exception or SPE-filing-in-HK exception applies within the meaning of section 58I(2); or
  - (b) by the filing deadline, another Hong Kong entity of the group has filed a country-by-country return in accordance with this section in respect of period P.

**58G. Assessor's notice to entity**

- (1) An assessor may give a written notice to an entity requiring it to file a country-by-country return for an accounting period specified in the notice (*specified accounting period*) by a date specified in the notice.
- (2) An entity to whom an assessor has given a notice under subsection (1) is not required to comply with the notice if the entity satisfies the assessor—
  - (a) that the entity is not a Hong Kong entity of a reportable group in respect of the specified accounting period; or
  - (b) where the entity is a Hong Kong entity of a reportable group, any of the following—

- (i) both—
  - (A) the entity is not the group's HK ultimate parent entity; and
  - (B) in relation to the group, no condition precedent for Hong Kong to require a Hong Kong entity of the group that is not the ultimate parent entity to file a country-by-country report is met within the meaning of section 58I(1);
- (ii) by the filing deadline, another Hong Kong entity of the group has filed a country-by-country return in accordance with section 58E or 58F in respect of the specified accounting period;
- (iii) the SPE-filing-elsewhere exception or SPE-filing-in-HK exception applies within the meaning of section 58I(2) in respect of the specified accounting period.

**58H. Notice by Hong Kong entities**

- (1) Subject to subsection (3), each Hong Kong entity of a reportable group must file a written notice with the Commissioner, informing the Commissioner of the following in respect of period P—
  - (a) the name, address and business registration number of each of the group's Hong Kong entities, identifying among them (as applicable)—
    - (i) the HK ultimate parent entity;
    - (ii) the surrogate parent entity that is resident for tax purposes in Hong Kong; or

- (iii) a Hong Kong entity (not falling within subparagraph (i) or (ii)) that is to file a country-by-country return in accordance with section 58F;
- (b) if the group's ultimate parent entity is resident for tax purposes in a jurisdiction other than Hong Kong—
  - (i) the jurisdiction of tax residence of the ultimate parent entity (*jurisdiction U*);
  - (ii) the name, address and business registration number (or equivalent particulars) of the ultimate parent entity;
  - (iii) whether, in relation to the group, a condition precedent for Hong Kong to require a Hong Kong entity of the group that is not the ultimate parent entity to file a country-by-country report is met within the meaning of section 58I(1); and
  - (iv) whether the ultimate parent entity has notified the tax authority of jurisdiction U in accordance with the laws or regulations of jurisdiction U that it is the ultimate parent entity (if the laws or regulations of jurisdiction U require the notification);
- (c) if the SPE-filing-elsewhere exception is to apply within the meaning of section 58I(2)(a)—
  - (i) the jurisdiction of tax residence of the surrogate parent entity (*jurisdiction S*);
  - (ii) the name, address and business registration number (or equivalent particulars) of the surrogate parent entity; and
  - (iii) whether the surrogate parent entity has notified the tax authority of jurisdiction S in accordance with the laws or regulations of jurisdiction S that it is the surrogate parent entity (if the

- laws or regulations of jurisdiction S require the notification); and
- (d) any other information relevant for determining a Hong Kong entity's obligation to file a country-by-country return under this Division.
- (2) The notice required by subsection (1) must be filed within 3 months after the end of period P (*notification deadline*).
  - (3) A Hong Kong entity of a reportable group is not required to comply with subsection (1) if—
    - (a) it is none of the following—
      - (i) the HK ultimate parent entity of the group;
      - (ii) the group's surrogate parent entity resident for tax purposes in Hong Kong;
      - (iii) a Hong Kong entity of the group (not falling within subparagraph (i) or (ii)) that is to file a country-by-country return in accordance with section 58F in respect of period P; and
    - (b) by the notification deadline, another Hong Kong entity of the group (*notifying entity*) has filed a notice in accordance with subsection (1) which—
      - (i) identifies the notifying entity as an entity referred to in paragraph (a)(i), (ii) or (iii);
      - (ii) states that, in relation to the group, no condition precedent for Hong Kong to require a Hong Kong entity of the group that is not the ultimate parent entity to file a country-by-country report is met within the meaning of section 58I(1); or
      - (iii) states that the SPE-filing-elsewhere exception is to apply within the meaning of section 58I(2)(a).

**58I. Condition precedent for requiring local filing; SPE-filing**

**exceptions**

- (1) For the purposes of this Division, a condition precedent for a jurisdiction (*jurisdiction R*) to require a jurisdiction R entity of a reportable group that is not the ultimate parent entity to file a country-by-country report is met in relation to the group only if—
  - (a) the ultimate parent entity is not required to file a country-by-country report in the jurisdiction in which it is resident for tax purposes (*jurisdiction U*);
  - (b) jurisdiction U has entered into an international agreement but has no exchange arrangements in effect with jurisdiction R by the time by which the report is due to be filed in jurisdiction R; or
  - (c) jurisdiction U has exchange arrangements in effect with jurisdiction R but the tax authority of jurisdiction R has notified the jurisdiction R entity that jurisdiction U—
    - (i) has suspended automatic exchange of country-by-country reports (for reasons other than those that are in accordance with the terms of those arrangements); or
    - (ii) has otherwise persistently failed to automatically provide to jurisdiction R country-by-country reports, in jurisdiction U's possession, of reportable groups that have constituent entities in jurisdiction R.
- (2) In relation to a requirement under section 58F or 58G for a Hong Kong entity (*subject entity*) of a reportable group (*group*) to file a country-by-country return in respect of period P—
  - (a) the SPE-filing-elsewhere exception applies if—

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- (i) the surrogate parent entity is appointed as mentioned in subsection (3);
    - (ii) filing is effected after notification within the meaning of subsection (5); and
    - (iii) exchange mechanisms are in place within the meaning of subsection (7); and
  - (b) the SPE-filing-in-HK exception applies if—
    - (i) the surrogate parent entity is appointed as mentioned in subsection (4); and
    - (ii) filing is effected after notification within the meaning of subsection (6).
- (3) A constituent entity is appointed as the surrogate parent entity of the group concerned if—
- (a) it is resident for tax purposes in a jurisdiction other than Hong Kong (*jurisdiction S*); and
  - (b) it is appointed by the group as the sole substitute for the ultimate parent entity to file the country-by-country report in respect of period P in jurisdiction S on behalf of the group.
- (4) A constituent entity is appointed as the surrogate parent entity of the group concerned if—
- (a) it is resident for tax purposes in Hong Kong; and
  - (b) it is appointed by the group as the sole substitute for the ultimate parent entity to file the country-by-country return in respect of period P in Hong Kong on behalf of the group, when a condition precedent for Hong Kong to require a Hong Kong entity of a reportable group that is not the ultimate parent entity to file a country-by-country report is met within the meaning of subsection (1).



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- (5) Filing is effected after notification if—
- (a) a surrogate parent entity appointed under subsection (3) notifies the tax authority of jurisdiction S, in accordance with the laws or regulations of jurisdiction S, that it is the surrogate parent entity (if the laws or regulations of jurisdiction S require the notification);
  - (b) the surrogate parent entity's name, address and business registration number (or equivalent particulars) are notified to the Commissioner in accordance with section 58H; and
  - (c) by the filing deadline of the country-by-country return in respect of period P, the surrogate parent entity has filed, in jurisdiction S and in accordance with the laws or regulations of jurisdiction S, a country-by-country report in respect of period P.
- (6) Filing is also effected after notification if—
- (a) a surrogate parent entity appointed under subsection (4) has filed a notice with the Commissioner in accordance with section 58H; and
  - (b) by the filing deadline for the country-by-country return in respect of period P, the surrogate parent entity has filed a country-by-country return in accordance with section 58F in respect of period P.
- (7) For subsection (2)(a)(iii), exchange mechanisms are in place if—
- (a) jurisdiction S has entered into an international agreement;
  - (b) by the filing deadline of the country-by-country return in respect of period P, jurisdiction S has exchange arrangements in effect with Hong Kong; and

- (c) the Commissioner has not notified the subject entity that jurisdiction S—
- (i) has suspended automatic exchange of country-by-country reports (for reasons other than those that are in accordance with the terms of those arrangements); or
  - (ii) has otherwise persistently failed to automatically provide to Hong Kong country-by-country reports, in jurisdiction S's possession, of reportable groups that have Hong Kong entities.

(8) In this section—

**competent authority** (主管當局) has the meaning given by the international agreement concerned;

**exchange arrangements** (交換安排), means arrangements that—

- (a) are between the authorized representatives or competent authorities of those jurisdictions to which an international agreement applies; and
- (b) require the automatic exchange of the country-by-country reports between the jurisdictions;

**international agreement** (國際協議) means—

- (a) unless paragraph (b) applies—
  - (i) the Convention for Mutual Administrative Assistance in Tax Matters; or
  - (ii) any other arrangement or arrangements that—
    - (A) has or have effect under section 49(1) or (1A); and
    - (B) by its or their terms, provides or provide legal authority for the exchange of tax information between Hong Kong and the other territory or territories to which the arrangement or

arrangements applies or apply, including automatic exchange of the information; or

- (b) for the purposes of subsection (1) where jurisdiction R is not Hong Kong—
  - (i) the Convention for Mutual Administrative Assistance in Tax Matters; or
  - (ii) any bilateral or multilateral tax convention or any tax information exchange agreement—
    - (A) to which jurisdiction R is a party; and
    - (B) that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of the information;

***jurisdiction R entity*** (申報管轄區實體) means a constituent entity that—

- (a) is resident for tax purposes in jurisdiction R; or
- (b) is a permanent establishment in jurisdiction R;

***jurisdiction S entity*** (代母管轄區實體) means a constituent entity that—

- (a) is resident for tax purposes in jurisdiction S; or
- (b) is a permanent establishment in jurisdiction S.

## **58J. Reporting entities**

For the purposes of this Division, each of the following entities is a reporting entity—

- (a) a HK ultimate parent entity required to file a country-by-country return and provide a notice by sections 58E(1) and 58H;
- (b) a HK ultimate parent entity that files a country-by-country return under section 58E(2);

- (c) a Hong Kong entity (not being a HK ultimate parent entity) required to file a country-by-country return by section 58F or to provide a notice by section 58H;
- (d) an entity required to file a country-by-country return by a notice given under section 58G.

**58K. Further requirements concerning country-by-country return and notice**

- (1) A country-by-country return filed for the purposes of this Division for a reportable group must contain—
  - (a) a country-by-country report for the group; and
  - (b) any other information specified by the Board of Inland Revenue.
- (2) A country-by-country return filed for the purposes of this Division for a reportable group—
  - (a) must be filed in the form of an electronic record that—
    - (i) is sent by using a system designated by the Commissioner; and
    - (ii) contains the required information arranged in a form specified by the Commissioner; and
  - (b) if the return is filed because of a notice given under section 58G—must be filed in the way specified in the notice.
- (3) A notice filed for the purposes of section 58H for a reportable group must be filed—
  - (a) in the form of an electronic record that is sent by using a system designated by the Commissioner; and
  - (b) in the way that the Commissioner specifies.

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- (4) The Commissioner may designate a system for communication with the Commissioner for the purposes of subsections (2) and (3).
  - (5) The Commissioner may, by notice published in the Gazette, specify requirements as to—
    - (a) the way of generating or sending an electronic record for the purposes of this section or any attachment required to be given with such an electronic record;
    - (b) how a digital signature is to be affixed to a country-by-country return filed under this Division or to a notice filed under section 58H; and
    - (c) the software and communication in relation to any attachment required to be given with an electronic record.
  - (6) The Commissioner may, either generally or in a particular case, accept a country-by-country return for the purpose of this Division, despite a requirement under subsection (2) or (5) not being complied with in respect of the return.
  - (7) The Commissioner may, either generally or in a particular case, accept a notice for the purposes of section 58H, despite a requirement under subsection (3) or (5) not being complied with in respect of the notice.
  - (8) The Commissioner may, by a means that, the Commissioner considers appropriate, specify the circumstances or conditions in or under which a return or notice is to be accepted under subsection (6) or (7).
  - (9) Any notice or other thing that specifies any matter for the purposes of this section is not subsidiary legislation.

**58L. Record keeping and other obligations**

- (1) If a reporting entity has changed its address, it must give

notice of the change to the Commissioner within 1 month after the change of the address.

- (2) A reporting entity must—
  - (a) keep sufficient records to enable the accuracy and completeness of the country-by-country return filed under this Division to be readily ascertained; and
  - (b) retain the records for a period of 6 years beginning on the date on which the return is filed.
- (3) The Commissioner may give a notice to a reporting entity requiring it to provide information for the purposes of determining whether the information in a country-by-country return filed by the entity is accurate and complete.
- (4) A person who is required to provide information by a notice under subsection (3) must do so—
  - (a) within a period specified in the notice; and
  - (b) at a time, by a means and in a form (if any), specified in the notice.

#### **58M. Engagement of service provider**

- (1) A service provider may be engaged for or on behalf of a reporting entity—
  - (a) to comply with any requirement under—
    - (i) section 58E(1) or 58F;
    - (ii) section 58H; and
    - (iii) section 58L(1); or
  - (b) to file a country-by-country return under section 58E(2).
- (2) To avoid doubt, even if a service provider has been engaged under subsection (1) to comply with any requirement under a provision referred to in the subsection, the reporting entity is not relieved from its obligations under the provision.

## **Division 4—Provisions Applicable to this Part Generally**

### **58N. Application of obligations to non-corporate reporting entities**

- (1) In relation to a Hong Kong entity that is not a corporation, this Part applies to a person who acts for the entity or is responsible for the management of the entity as if the obligations under this Part were imposed on that person.
- (2) In relation to a Hong Kong entity that is a permanent establishment of an enterprise, this Part also applies to the enterprise as if the obligations under this Part were also imposed on that enterprise.

### **58O. Anti-avoidance of obligations under this Part**

If—

- (a) a person enters into any arrangements; and
- (b) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid any obligation under this Part,

this Part has effect as if the arrangements had not been entered into.



## Part 10

### Assessments

#### 59. Assessor to make assessments\*

- (1) Every person who is in the opinion of an assessor chargeable with tax under this Ordinance shall be assessed by him as soon as may be after the expiration of the time limited by the notice requiring him to furnish a return under section 51(1):

Provided that the assessor may assess any person at any time if he is of opinion that such person is about to leave Hong Kong, or that for any other reason it is expedient to do so.  
*(Amended 7 of 1986 s. 12)*

- (1A) Notwithstanding subsection (1), where an assessor is of the opinion that an election by an individual under section 41 for personal assessment on his total income would result in a refund becoming due of the whole of the amount which he might lawfully be assessed for property tax if such amount were paid, the assessor shall not be obliged to proceed to make an assessment in respect of that tax. *(Added 26 of 1969 s. 32)*
- (1B) Despite subsection (1), if an assessor is satisfied that—
- (a) an individual—
    - (i) carries on (other than jointly with another person) a trade, profession or business in Hong Kong; and
    - (ii) is eligible to elect for personal assessment under section 41 on the individual's total income;
  - (b) the assessable profits of the individual in respect of the trade, profession or business for any year of assessment do not exceed the amount specified for the year of

assessment in the second column of item 1 of Schedule 4;  
and

- (c) the individual has no income, property or profits chargeable to tax under this Ordinance for the year of assessment, other than that in respect of the trade, profession or business,

the assessor is not obliged to make an assessment of profits tax in respect of the assessable profits. (*Replaced 32 of 2018 s. 12*)

(1C) Despite subsection (1), if an assessor is satisfied that—

- (a) an individual—
  - (i) carries on a trade, profession or business in Hong Kong, either solely or jointly with another person; and
  - (ii) is eligible to elect for personal assessment under section 41 on the individual's total income;
- (b) the individual has no income, property or profits chargeable to tax under this Ordinance for the year of assessment, other than that in respect of the trade, profession or business; and
- (c) after taking into account the allowances that would have to be deducted under Part 5—
  - (i) if the individual carries on the trade, profession or business solely—the assessable profits of the individual in respect of the trade, profession or business for the year of assessment are such that no tax would be charged on the individual had the individual elected for personal assessment under section 41; or
  - (ii) if the individual carries on the trade, profession or business jointly with another person—the

individual's share of the profits in respect of the trade, profession or business for the year of assessment is such that no tax would be charged on the individual had the individual elected for personal assessment under section 41,

the assessor is not obliged to make an assessment of profits tax in respect of the assessable profits. (*Replaced 32 of 2018 s. 12*)

- (1D) Subsection (1E) applies if—
- (a) an assessor has made an assessment of profits tax in respect of the assessable profits of an individual for a year of assessment; and
  - (b) in relation to the individual, the assessor becomes satisfied of the matters specified in subsection (1C)(a), (b) and (c) for the year of assessment. (*Added 32 of 2018 s. 12*)
- (1E) The assessor may, despite section 70—
- (a) annul the assessment; or
  - (b) in case of an assessment of a partnership—reduce the assessment in so far as it relates to the share of profits of the individual. (*Added 32 of 2018 s. 12*)
- (2) Where a person has furnished a return in accordance with the provisions of section 51 the assessor may either— (*Amended 49 of 1956 s. 43*)
- (a) accept the return and make an assessment accordingly; or
  - (b) if he does not accept the return, estimate the sum in respect of which such person is chargeable to tax and make an assessment accordingly. (*Amended 49 of 1956 s. 43; 19 of 1996 s. 11*)
  - (c) (*Repealed 56 of 1993 s. 24*)

- (3) Where a person has not furnished a return and the assessor is of the opinion that such person is chargeable with tax, he may estimate the sum in respect of which such person is chargeable to tax and make an assessment accordingly, but such assessment shall not affect the liability of such person to a penalty by reason of his failure or neglect to deliver a return. *(Amended 49 of 1956 s. 43)*
- (4) In the case of profits from a trade or business, if accounts of such trade or business have not been kept in a satisfactory form, the assessor may assess the profits or income of such trade or business on the basis of the usual rate of net profit on the turnover of such trade or business, and the Board of Inland Revenue may prescribe the amounts of such usual rates of profits in particular classes of trade or business.

*(Amended E.R. 1 of 2012)*

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Editorial Note:

- \* The amendment made by Part 2 of Ord. No. 32 of 2018 to this section applies in relation to all years of assessment commencing on or after 1 April 2018. (Please see 32 of 2018 s. 3)

**59A.** *(Repealed 52 of 1993 s. 6)*

**60. Additional assessments**

- (1) Where it appears to an assessor that for any year of assessment any person chargeable with tax has not been assessed or has been assessed at less than the proper amount, the assessor may, within the year of assessment or within 6 years after the expiration thereof, assess such person at the amount or additional amount at which according to his judgment such person ought to have been assessed, and the provisions of this Ordinance as to notice of assessment, appeal and other proceedings shall apply to such assessment

or additional assessment and to the tax charged thereunder:  
(Amended 16 of 1951 s. 10; 49 of 1956 s. 44)

Provided that—

- (a) *(Repealed 2 of 1971 s. 39)*
  - (b) where the non-assessment or under-assessment of any person for any year of assessment is due to fraud or wilful evasion, such assessment or additional assessment may be made at any time within 10 years after the expiration of that year of assessment. *(Amended 49 of 1956 s. 44)*
- (2) Where it appears to an assessor that the whole or part of any tax repaid to a person (otherwise than in consequence of an assessment having been determined on objection or appeal) has been repaid by mistake, whether of fact or law, the assessor may, within the year of assessment to which the repayment relates or within 6 years after the expiration thereof, assess such person in the amount of tax so repaid by mistake, and the provisions of this Ordinance as to notice of assessment, objection, appeal and other proceedings shall apply to such assessment and to the tax charged thereunder. *(Added 2 of 1971 s. 39)*
- (3) No assessment shall be made under subsection (2) if the repayment was in fact made on the basis of, or in accordance with, the practice generally prevailing at the time when the repayment was made. *(Added 2 of 1971 s. 39)*
- (4) Section 27 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section. *(Added 10 of 2013 s. 12)*

## **61. Certain transactions and dispositions to be disregarded**

Where an assessor is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is

artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the person concerned shall be assessable accordingly.

**61A. Transactions designed to avoid liability for tax**

- (1) This section shall apply where any transaction has been entered into or effected after the commencement\* of the Inland Revenue (Amendment) Ordinance 1986 (7 of 1986) (other than a transaction in pursuance of a legally enforceable obligation incurred prior to such commencement) and that transaction has, or would have had but for this section, the effect of conferring a tax benefit on a person (in this section referred to as *the relevant person*), and, having regard to-
- (a) the manner in which the transaction was entered into or carried out;
  - (b) the form and substance of the transaction;
  - (c) the result in relation to the operation of this Ordinance that, but for this section, would have been achieved by the transaction;
  - (d) any change in the financial position of the relevant person that has resulted, will result, or may reasonably be expected to result, from the transaction;
  - (e) any change in the financial position of any person who has, or has had, any connection (whether of a business, family or other nature) with the relevant person, being a change that has resulted or may reasonably be expected to result from the transaction;
  - (f) whether the transaction has created rights or obligations which would not normally be created between persons dealing with each other at arm's length under a transaction of the kind in question; and

- (g) the participation in the transaction of a corporation resident or carrying on business outside Hong Kong, it would be concluded that the person, or one of the persons, who entered into or carried out the transaction, did so for the sole or dominant purpose of enabling the relevant person, either alone or in conjunction with other persons, to obtain a tax benefit.
- (2) Where subsection (1) applies, the powers conferred upon an assessor under Part 10 shall be exercised by an assistant commissioner, and such assistant commissioner shall, without derogation from the powers which he may exercise under that Part, assess the liability to tax of the relevant person—
- (a) as if the transaction or any part thereof had not been entered into or carried out; or
- (b) in such other manner as the assistant commissioner considers appropriate to counteract the tax benefit which would otherwise be obtained.
- (3) In this section—

**tax benefit** (稅項利益) means the avoidance or postponement of the liability to pay tax or the reduction in the amount thereof;

**transaction** (交易) includes a transaction, operation or scheme whether or not such transaction, operation or scheme is enforceable, or intended to be enforceable, by legal proceedings.

*(Added 7 of 1986 s. 10. Amended E.R. 1 of 2012)*

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Editorial Note:

\* Commencement date: 14 March 1986.

**61B. Utilization of losses to avoid tax**

Where the Commissioner is satisfied that—



- (a) any change in the shareholding in any corporation, as a direct or indirect result of which profits have been received by or accrued to that corporation during any year of assessment, has been effected by any person after the commencement\* of the Inland Revenue (Amendment) Ordinance 1986 (7 of 1986); and
- (b) the sole or dominant purpose of the change was for the purpose of utilizing any loss or any balance of any loss sustained in a trade, profession or business carried on by the corporation, in order to avoid liability on the part of that corporation or any other person for the payment of any tax or to reduce the amount thereof,

the set off of any such loss or balance of loss against any such profits shall be disallowed.

*(Added 7 of 1986 s. 10)*

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Editorial Note:

\* Commencement date: 14 March 1986.

**61C. Avoidance arrangement of no effect**

If—

- (a) a person enters into an arrangement; and
- (b) the main purpose, or one of the main purposes, of the arrangement is to avoid any obligation under section 50B(1) or (2) or 50C(1),

then those sections are to have effect as if the arrangement had not been entered into.

*(Added 22 of 2016 s. 8)*

**62. Notice to be issued by Commissioner**

- (1) The Commissioner shall give a notice of assessment to each

person who has been assessed stating the amount assessed, the amount of tax charged, and such due date for payment thereof as may be fixed by the Commissioner. (*Amended 2 of 1971 s. 40*)

(2) (*Repealed 52 of 1993 s. 6*)

(3) Where by reason of an amendment of the law it is necessary to vary the amount of tax charged in any notice of assessment the Commissioner may give such notification as may be necessary to the person assessed in that notice of assessment, and any notification so given shall, as regards any particulars of the assessment contained in the notification which have not been included in the notice of assessment, have effect as if the notification were a notice of assessment.

(*Amended 35 of 1965 s. 27*)

**63. Validity of assessments, etc.**

No notice, assessment, certificate, or other proceeding purporting to be in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

**63A.** (*Repealed 12 of 1999 s. 3*)

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## **Part 10A**

### **Provisional Salaries Tax**

*(Part 10A added 8 of 1973 s. 13)*

#### **63B. Liability for provisional salaries tax**

- (1) Every person who is chargeable to salaries tax under Part 3 in respect of any year of assessment shall be liable to pay provisional salaries tax in respect of that year of assessment in accordance with this Part.
- (2) In the case of a husband and wife, where either the husband or wife is assessed to salaries tax under section 10(3) on the aggregate of their net chargeable incomes in respect of the year of assessment preceding that in respect of which provisional salaries tax is payable—
  - (a) such provisional salaries tax shall be payable on the net chargeable income adjusted as necessary under section 63C(1); and
  - (b) the person who is assessed to salaries tax in respect of that preceding year of assessment shall be solely liable to pay that provisional salaries tax. *(Replaced 43 of 1989 s. 20)*

*(Replaced 71 of 1983 s. 30. Amended E.R. 1 of 2012)*

#### **63C. Amount of provisional salaries tax\***

- (1) Subject to subsections (2) and (3), provisional salaries tax in respect of any year of assessment shall be payable at the rates specified in Schedule 2 for that year of assessment by reference to the amount of the net chargeable income for the preceding year of assessment adjusted, for the purposes of this section, as follows—

- (a) any loss set off under section 12A in calculating the net assessable income, or net assessable incomes, on which that net chargeable income is based, shall be added; *(Amended 71 of 1983 s. 31(a)(i))*
- (b) any loss which may be set off under section 12A in the year of assessment shall be set off against that amount:

Provided that—

- (i) *(Repealed 20 of 2018 s. 4)*
  - (ii) in no case shall the amount of provisional salaries tax charged under this subsection exceed the amount which would have been chargeable had the standard rate been charged on the whole of— *(Amended 20 of 2018 s. 4)*
    - (A) the net assessable income for the preceding year of assessment as reduced by such deductions as are under Part 4A allowable to that person; or
    - (B) in the case of a husband and wife to whom section 63B(2) applies, the aggregate of their net assessable incomes for the preceding year of assessment as reduced by such deductions as are under Part 4A allowable to them. *(Replaced 43 of 1989 s. 21. Amended 31 of 1998 s. 19)*
- (1A) *(Repealed 43 of 1989 s. 21)*
- (2) If a person commences to derive income from a source on a day within any year of assessment, an assessor may estimate the sum in respect of which provisional salaries tax is payable in that year and the succeeding year of assessment. *(Amended 71 of 1983 s. 31)*
  - (3) If a person ceases to derive income from a source within any year of assessment an assessor may estimate the sum in respect of which provisional salaries tax is payable for that

year of assessment and for the year preceding that year of assessment. (*Amended 71 of 1983 s. 31*)

- (4) If a person is liable to pay provisional salaries tax, an assessor shall, as soon as may be after the expiration of the time limited by the notice requiring that person to furnish a return under section 51(1), assess or estimate the amount of the provisional salaries tax which he is liable to pay.
- (5) Notwithstanding subsection (4), an assessor may assess or estimate the amount of provisional salaries tax which any person is liable to pay if he is of the opinion that the person is about to leave Hong Kong or that for any other reason it is expedient to do so. (*Amended 7 of 1986 s. 12*)
- (6) When an assessor has assessed or estimated the amount of provisional salaries tax which a person is liable to pay, the Commissioner shall give a notice to that person stating the amount of provisional salaries tax to be paid, and such due date for payment thereof as may be fixed by the Commissioner.
- (6A) Where in any year of assessment a notice for payment of provisional salaries tax has been given under subsection (6) and thereafter any rate specified in Schedule 2, or any allowance provided for in Part 5, for that year of assessment is amended, the amount of provisional salaries tax stated in the notice shall nevertheless be payable. (*Added 32 of 1981 s. 9. Amended 43 of 1989 s. 21*)
- (7) For the purposes of Part 12, provisional salaries tax shall be deemed to be a tax charged under the provisions of this Ordinance and a notice under subsection (6) shall be deemed to be a notice of assessment.

(*Added 8 of 1973 s. 13. Amended 7 of 1975 s. 36; E.R. 1 of 2012*)

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Editorial Note:

\* For the calculation of net chargeable income under this section in order to ascertain provisional salaries tax in respect of the year of assessment commencing from 1 April 1990, 1 April 1991, 1 April 1992, 1 April 1993, 1 April 1994, 1 April 1995, 1 April 1996, 1 April 1997, 1 April 1998, 1 April 2003, 1 April 2004, 1 April 2007 or 1 April 2008, please also see the transitional provisions contained in 30 of 1990, 42 of 1991, 34 of 1992, 28 of 1993, 37 of 1994, 48 of 1995, 24 of 1996, 42 of 1997, 31 of 1998, 24 of 2003, 10 of 2007 or 21 of 2008 respectively.

**63CA. Calculating net chargeable income for computing provisional salaries tax: meaning of certain references**

- (1) This section applies for the purposes of calculating the net chargeable income of a person for the year preceding a year of assessment to ascertain the provisional salaries tax for the year of assessment (*relevant year of assessment*) under section 63C(1).
- (2) For the purposes of deducting any expenses of self-education (as defined by section 12(6)(b)) from a person's assessable income for the year preceding a year of assessment, the reference in section 12(1)(e) to "the amount prescribed in subsection (6)" is taken to be a reference to the amount specified in Schedule 3A for the relevant year of assessment.
- (3) For the purposes of deduction from a person's net assessable income for the year preceding a year of assessment, the reference in section 12B(1)(a) to "such deductions as are under Part 4A allowable to that person" is taken to be a reference to—
  - (a) the deduction under section 26D (elderly residential care expenses) allowable to that person not exceeding the amount specified in Schedule 3C for the relevant year of assessment;
  - (b) the deduction under section 26E (home loan interest) allowable to that person not exceeding the amount

- specified in Schedule 3D for the relevant year of assessment; and
- (c) the deduction under section 26G (contributions to recognized retirement schemes) allowable to that person not exceeding the amount specified in Schedule 3B for the relevant year of assessment.
- (4) For the purposes of deduction from the aggregate of the net assessable incomes of a person and the person's spouse for the year preceding a year of assessment, the reference in section 12B(2)(a) to "such deductions as are under Part 4A allowable to them" is taken to be a reference to—
- (a) the deduction under section 26D (elderly residential care expenses) allowable to them not exceeding the amount specified in Schedule 3C for the relevant year of assessment;
  - (b) the deduction under section 26E (home loan interest) allowable to them not exceeding the amount specified in Schedule 3D for the relevant year of assessment; and
  - (c) the deduction under section 26G (contributions to recognized retirement schemes) allowable to them not exceeding the amount specified in Schedule 3B for the relevant year of assessment.
- (5) For the purposes of deduction from a person's net assessable income for the year preceding a year of assessment, the reference in section 12B(1)(b) to "such allowances as are under Part 5 permitted for that person" is taken to be a reference to the allowances that may be granted to that person under Part 5 for the relevant year of assessment.
- (6) For the purposes of deduction from the aggregate of the net assessable incomes of a person and the person's spouse for the year preceding a year of assessment, the reference in section 12B(2)(b) to "such allowances as are under Part



5 permitted in their case” is taken to be a reference to the allowances that may be granted to them under Part 5 for the relevant year of assessment.

*(Added 20 of 2018 s. 5)*

**63D. Demands for provisional salaries tax**

- (1) In any year of assessment, a notice for payment of provisional salaries tax may be—
  - (a) given separately to any person liable to pay provisional salaries tax; or
  - (b) included in a notice of assessment to salaries tax.  
*(Amended 7 of 1975 s. 37)*
- (2) *(Repealed 7 of 1975 s. 37)*

*(Added 8 of 1973 s. 13)*

**63E. Holding over of payment of provisional salaries tax**

- (1) Where in relation to any year of assessment a person is liable to pay provisional salaries tax, he may, by notice in writing lodged with the Commissioner not later than—
  - (a) 28 days before the day by which the provisional salaries tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6),  
whichever is the later, apply to the Commissioner on any of the grounds specified in subsection (2) to have the payment of the whole or part of such tax held over until he is required to pay salaries tax for that year of assessment or, in the case of an application on the ground set out in subsection (2)(d), until—
    - (i) the determination of the objection or settlement thereof under section 64(3); or

(ii) he is required to pay salaries tax for that year of assessment,

whichever is the sooner. (*Replaced 52 of 1993 s. 7*)

#(2) The grounds referred to in subsection (1) are—

\*(a) that the person assessed to provisional salaries tax has become entitled during the year of assessment to an allowance under Part 5, which allowance was not taken into account in the ascertainment of his net chargeable income for the year preceding the year of assessment or in estimating the sum in respect of which such person is liable to pay provisional salaries tax; (*Amended 33 of 1973 s. 4; 79 of 1978 s. 3; 43 of 1989 s. 22*)

\*(b) that the net chargeable income during the year of assessment of the person assessed to provisional salaries tax is, or is likely to be, less than 90% of the net chargeable income for the year preceding the year of assessment or of the estimated sum in respect of which such person is liable to pay provisional salaries tax; (*Amended 7 of 1975 s. 38*)

(ba) that the person assessed to provisional salaries tax has paid or is likely to pay, during the year of assessment, expenses of self-education (as defined by section 12(6)(b)) that—

(i) are allowable for deduction under section 12; and

(ii) exceed or are likely to exceed the amount specified in Schedule 3A for the year preceding the year of assessment; (*Added 20 of 2018 s. 6*)

(bb) that the person assessed to provisional salaries tax has paid or is likely to pay, during the year of assessment, contributions to a recognized retirement scheme that—

(i) are allowable for deduction under section 26G; and

- (ii) exceed or are likely to exceed the amount specified in Schedule 3B for the year preceding the year of assessment; (*Added 20 of 2018 s. 6*)
- (bc) that the person assessed to provisional salaries tax, or the person's spouse (not being a spouse living apart from the person), has paid or is likely to pay, during the year of assessment, residential care expenses (as defined by section 26D(5)) that—
  - (i) are allowable for deduction under section 26D; and
  - (ii) exceed or are likely to exceed the amount specified in Schedule 3C for the year preceding the year of assessment; (*Added 20 of 2018 s. 6*)
- (bd) that the person assessed to provisional salaries tax, or the person's spouse (not being a spouse living apart from the person), has paid or is likely to pay, during the year of assessment, home loan interest (as defined by section 26E(9)) that—
  - (i) is allowable for deduction under section 26E; and
  - (ii) exceeds or is likely to exceed—
    - (A) if the dwelling to which the home loan interest relates is held by the person or the spouse as a sole owner—the amount specified in Schedule 3D for the year preceding the year of assessment;
    - (B) if the dwelling to which the home loan interest relates is held by the person or the spouse as a joint tenant—the amount specified in Schedule 3D for the year preceding the year of assessment as divided by the number of joint tenants; or

- (C) if the dwelling to which the home loan interest relates is held by the person or the spouse as a tenant in common—the amount specified in Schedule 3D for the year preceding the year of assessment as multiplied by the share of the person or the spouse in the ownership in the dwelling; *(Added 20 of 2018 s. 6)*
- (c) that the person assessed to provisional salaries tax has ceased, or will before the end of the year of assessment cease, to derive income chargeable to salaries tax; or *(Amended 7 of 1975 s. 38)*
- (d) that the person assessed to provisional salaries tax has objected under section 64 to his assessment to salaries tax for the year preceding the year of assessment. *(Added 7 of 1975 s. 38)*
- (2A) For the purposes of subsection (2)(a) and (b), a person's net chargeable income for the year preceding the year of assessment must be calculated with reference to section 63CA. *(Added 20 of 2018 s. 6)*
- (2B) The Commissioner may, if satisfied that it is appropriate, extend (either generally or in a particular case) the time within which an application may be made under subsection (1) on a ground specified in subsection (2)(ba), (bb), (bc) or (bd). *(Added 20 of 2018 s. 6)*
- (3) On receipt of an application under subsection (1), the Commissioner shall consider the same and may hold over the payment of the whole or part of the provisional salaries tax.
- (4) The Commissioner shall, by notice in writing, inform the person applying under subsection (1) of his decision.
- (5) *(Repealed 43 of 1989 s. 22)*
- (Added 8 of 1973 s. 13. Amended E.R. 1 of 2012)*

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**Editorial Note:**

# On additional grounds for making a hold over application in respect of the year of assessment commencing on 1 April 2003 or 1 April 2008, please see the transitional provisions in section 15(1), (2) and (5) to (7) of 24 of 2003 or section 17 of 21 of 2008 respectively.

\* For the calculation of the “net chargeable income for the year preceding the year of assessment” commencing on 1 April 2003 or 1 April 2004, 1 April 2007 or 1 April 2008, please see the transitional provisions in section 14 of 24 of 2003, section 9 of 10 of 2007 or section 16 of 21 of 2008 respectively.

**63F. Provisional salaries tax to be applied against salaries tax**

- (1) When any person had paid provisional salaries tax in respect of any year of assessment, the Commissioner shall, not later than when he gives notice of assessment of salaries tax, apply the amount of provisional salaries tax so paid in payment first of—
  - (a) the salaries tax payable by that person for that year of assessment; then
  - (b) the provisional salaries tax payable in respect of the year of assessment succeeding that year of assessment,and shall refund to the person paying the provisional salaries tax the amount of the provisional salaries tax not so applied.  
*(Replaced 7 of 1975 s. 39)*
- (2) *(Repealed 43 of 1989 s. 23)*

**Part 10B****Provisional Profits Tax**

*(Part 10B added 7 of 1975 s. 40)*

**63G. Liability for provisional profits tax**

Every person who is chargeable to profits tax under Part 4 in respect of the year of assessment commencing on 1 April 1975 or any succeeding year of assessment shall be liable to pay provisional profits tax in respect of that year of assessment in accordance with this Part.

*(Added 7 of 1975 s. 40. Amended E.R. 1 of 2012)*

**63H. Amount of provisional profits tax**

- (1) Subject to subsections (2), (3) and (4), provisional profits tax in respect of any year of assessment shall be payable by reference to the amount of assessable profits for the year preceding the year of assessment, but after the set off of any loss available for set off in the year of assessment under section 19 or 19C. *(Amended 56 of 1993 s. 25; 13 of 2018 s. 6)*
- (1A) For a person other than a corporation, the tax is to be charged on the assessable profits of the person—
  - (a) for any year of assessment commencing before 1 April 2018—at the standard rate; or
  - (b) for any year of assessment commencing on or after 1 April 2018—in accordance with section 2 of Schedule 8A. *(Replaced 13 of 2018 s. 6)*
- (1B) For a corporation, the tax is to be charged, subject to subsections (1C) and (1D), on the assessable profits of the corporation—

- (a) for any year of assessment commencing before 1 April 2018—at the rate specified in Schedule 8; or
  - (b) for any year of assessment commencing on or after 1 April 2018—in accordance with section 2(a) of Schedule 8B. *(Added 13 of 2018 s. 6)*
- (1C) If a corporation is a partner in a partnership, in relation to any share of assessable profits of the partnership apportioned to the corporation under section 22A, the tax is to be charged—
- (a) for any year of assessment commencing before 1 April 2018—at the rate specified in Schedule 8; or
  - (b) for any year of assessment commencing on or after 1 April 2018—in accordance with section 2(b) of Schedule 8B. *(Added 13 of 2018 s. 6)*
- (1D) If a corporation has made an election under section 14B(2)(a), 14D(5)(b), 14H(4)(b) or 14J(5)(b) in respect of a portion of its assessable profits, then, in relation to the rest of its assessable profits, the tax is to be charged at the rate specified in Schedule 8. *(Added 13 of 2018 s. 6)*
- (2) In calculating any assessable profits for a year preceding a year of assessment for the purposes of computing provisional profits tax under subsection (1), there shall be disregarded any loss available for set off in that year.
- (2A) Also, in calculating any assessable profits for the year preceding a year of assessment—
- (a) for the purposes of computing provisional profits tax under subsection (1), the reference in section 16AA(1) to “the basis period for any year of assessment” is taken to be a reference to the basis period for the year preceding the year of assessment; and
  - (b) for the purposes of computing provisional profits tax under subsection (1) in respect of the year of assessment



*(relevant year of assessment)*, the reference in section 16AA(2)(b) to “that year of assessment” is taken to be a reference to the relevant year of assessment. *(Added 20 of 2018 s. 7)*

- (3) Where the amount of assessable profits of a person for the year preceding the year of assessment was calculated on a basis period of more or less than 1 year, an assessor may estimate the sum in respect of which such person is liable to pay provisional profits tax in that year of assessment.
- (4) If a person commences to carry on a trade, profession or business in Hong Kong on a day within a year of assessment commencing on or after 1 April 1974, an assessor may estimate the sum in respect of which such person is liable to pay provisional profits tax in that year and the succeeding year of assessment. *(Amended 7 of 1986 s. 12)*
- (5) If a person is liable to pay provisional profits tax, an assessor shall, as soon as may be after the expiration of the time limited by the notice requiring that person to furnish a return under section 51(1), assess or estimate the amount of provisional profits tax which he is liable to pay.
- (6) Notwithstanding subsection (5), an assessor may assess or estimate the amount of provisional profits tax which any person is liable to pay if he is of the opinion that the person is about to leave Hong Kong or that for any other reason it is expedient to do so. *(Amended 7 of 1986 s. 12)*
- (7) When an assessor has assessed or estimated the amount of provisional profits tax which a person is liable to pay, the Commissioner shall give a notice to that person stating the amount of provisional profits tax to be paid, and such due date for payment thereof as may be fixed by the Commissioner.
- (7A) Where in any year of assessment a notice for payment of provisional profits tax has been given under subsection (7)

and thereafter the rate of provisional tax for that year of assessment is amended, the amount of provisional profits tax stated in the notice shall nevertheless be payable. (*Added 32 of 1981 s. 10*)

- (8) For the purposes of Part 12, provisional profits tax shall be deemed to be a tax charged under this Ordinance and a notice under subsection (7) shall be deemed to be a notice of assessment.

*(Added 7 of 1975 s. 40. Amended E.R. 1 of 2012)*

### **63HA. Amount of provisional profits tax for connected entities**

- (1) This section applies to an entity in relation to any year of assessment commencing on or after 1 April 2018 (*specified year of assessment*) if, at the end of the basis period of the entity for the year preceding that year of assessment, the entity has any connected entity.
- (2) Section 63H applies to the entity subject to any applicable modifications specified in subsection (3).
- (3) The modifications are—
- (a) for an entity other than a corporation—the reference in section 63H(1A)(b) to “in accordance with section 2 of Schedule 8A” is taken to be a reference to “at the standard rate”;
  - (b) for a corporation—the reference in section 63H(1B)(b) to “in accordance with section 2(a) of Schedule 8B” is taken to be a reference to “at the rate specified in Schedule 8”; and
  - (c) for a corporation that is a partner in a partnership—the reference in section 63H(1C)(b) to “in accordance with section 2(b) of Schedule 8B” is taken to be a reference to “at the rate specified in Schedule 8”.

- (4) However, the Commissioner may exempt an entity from subsection (2) for a specified year of assessment if the entity has elected in writing to be exempted from section 14AAC(2) for the year preceding that year of assessment.
- (5) Also, the Commissioner may exempt an entity from subsection (2) for the year of assessment commencing on 1 April 2018 if the entity has elected in writing to be so exempted.
- (6) Subsection (5) does not apply to an entity (*entity A*) if—
  - (a) entity A is a connected entity of another entity (*entity B*) at the end of the basis period of entity A for the year of assessment commencing on 1 April 2017; and
  - (b) entity B has been exempted under that subsection for the year of assessment commencing on 1 April 2018.
- (7) Sections 14AA and 14AAB apply for the interpretation of this section as they apply for the interpretation of section 14AAC.

*(Added 13 of 2018 s. 7)*

**63I. Demands for provisional profits tax**

In any year of assessment, a notice for payment of provisional profits tax may be—

- (a) given separately to the person liable to pay that provisional profits tax; or
- (b) included in a notice of assessment to profits tax.

*(Added 7 of 1975 s. 40)*

**63J. Holding over of payment of provisional profits tax**

- (1) Where in relation to any year of assessment a person is liable to pay provisional profits tax, he may, by notice in writing lodged with the Commissioner not later than—

- (a) 28 days before the day by which the provisional profits tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional profits tax under section 63H(7),
- whichever is the later, apply to the Commissioner on any of the grounds specified in subsection (2) to have the payment of the whole or part of such tax held over until he is required to pay profits tax for that year of assessment or, in the case of an application on the ground set out in subsection (2)(e), until—
- (i) the determination of the objection or settlement thereof under section 64(3); or
  - (ii) he is required to pay profits tax for that year of assessment,

whichever is the sooner. (*Replaced 52 of 1993 s. 8*)

\*<sup>(2)</sup> The grounds referred to in subsection (1) are—

- (a) that the assessable profits for the year of assessment of the person assessed to provisional profits tax are, or are likely to be, less than 90 per cent of the assessable profits for the year preceding the year of assessment or of the estimated sum in respect of which the person is liable to pay provisional profits tax;
- (ab) that the person assessed to provisional profits tax has paid or is likely to pay, during the year of assessment, mandatory contributions that the person is required to pay as a self-employed person under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the mandatory contributions—
  - (i) are allowable for deduction under section 16AA; and

- (ii) exceed or are likely to exceed the amount specified in Schedule 3B for the year preceding the year of assessment; (*Added 20 of 2018 s. 8*)
  - (b) that the amount of any loss brought forward for set off to that year of assessment under section 19 or 19C has been omitted or is incorrect;
  - (c) that the person assessed to provisional profits tax has ceased, or will before the end of the year of assessment cease, to carry on his trade, profession or business and that the assessable profits to be assessed under section 18D for that year of assessment are, or are likely to be, less than the assessable profits for the year preceding the year of assessment or of the estimated sum in respect of which the person is liable to pay provisional profits tax;
  - (d) that the person assessed to provisional profits tax has elected to be personally assessed under Part 7 for that year of assessment and that such personal assessment is likely to reduce his liability to tax; or (*Amended 19 of 1996 s. 12*)
  - (e) that the person assessed to provisional profits tax has objected under section 64 to his assessment to profits tax for the year preceding the year of assessment.
- (2A) For the purposes of subsection (2)(a), a person's assessable profits for the year preceding the year of assessment must be calculated with reference to section 63H(2A). (*Added 20 of 2018 s. 8*)
- (2B) The Commissioner may, if satisfied that it is appropriate, extend (either generally or in a particular case) the time within which an application may be made under subsection (1) on the ground specified in subsection (2)(ab). (*Added 20 of 2018 s. 8*)

- (3) On receipt of an application under subsection (1), the Commissioner shall consider the same and may hold over the payment of the whole or part of the provisional profits tax.
- (4) The Commissioner shall, by notice in writing, inform the person applying under subsection (1) of his decision.

*(Added 7 of 1975 s. 40. Amended E.R. 1 of 2012)*

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Editorial Note:

\* On the additional ground for making a hold over application in respect of the year of assessment commencing on 1 April 2003, please see the transitional provision in section 15(3) to (7) of 24 of 2003 or section 18 of 21 of 2008 respectively.

**63K. Provisional profits tax to be applied against profits tax**

When any person has paid provisional profits tax in respect of any year of assessment, the Commissioner shall, not later than when he gives notice of assessment of profits tax, apply the amount of provisional profits tax so paid in payment first of—

- (a) the profits tax payable by that person for that year of assessment; then
- (b) the provisional profits tax payable in respect of the year of assessment succeeding that year of assessment,

and shall refund to the person paying the provisional profits tax the amount thereof not so applied.

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## **Part 10C**

### **Provisional Property Tax**

*(Part 10C added 8 of 1983 s. 18)*

#### **63L. Liability for provisional property tax**

Every person who is chargeable to property tax under Part 2 in respect of any year of assessment commencing on or after 1 April 1983 shall be liable to pay provisional property tax in respect of that year of assessment in accordance with this Part.

*(Added 8 of 1983 s. 18. Amended E.R. 1 of 2012)*

#### **63M. Amount of provisional property tax**

- (1) Provisional property tax in respect of any year of assessment shall be payable at the standard rate on the net assessable value of land or buildings or land and buildings for the year preceding the year of assessment.
- (2) Where the amount of assessable value of land or buildings or land and buildings for the year preceding the year of assessment was calculated in respect of a period of less than one year, an assessor may estimate the assessable value in respect of which provisional property tax is payable.
- (3) Where a person becomes chargeable to property tax during a year of assessment, an assessor may estimate the assessable value in respect of which provisional property tax is payable in that year and the succeeding year of assessment.
- (4) Where a person is liable to pay provisional property tax, an assessor shall, as soon as may be after expiration of the time limited by the notice requiring that person to furnish a return under section 51(1), assess or estimate the amount of provisional property tax which he is liable to pay.



- (5) Notwithstanding subsection (4), an assessor may assess or estimate the amount of provisional property tax which any person is liable to pay if he is of the opinion that the person is about to leave Hong Kong or that for any other reason it is expedient to do so.
- (6) When an assessor has assessed or estimated the amount of provisional property tax which a person is liable to pay, the Commissioner shall give a notice to that person stating the amount of provisional property tax to be paid, and such due date for payment thereof as may be fixed by the Commissioner.
- (7) Where in any year of assessment a notice for payment of provisional property tax has been given under subsection (6) and thereafter the allowance mentioned in section 5(1A) or the rate of provisional property tax for that year of assessment is amended, the amount of provisional property tax stated in the notice shall nevertheless be payable.
- (8) For the purposes of Part 12, provisional property tax shall be deemed to be a tax charged under this Ordinance and a notice under subsection (6) shall be deemed to be a notice of assessment. *(Amended 24 of 2003 s. 7)*

*(Added 8 of 1983 s. 18. Amended E.R. 1 of 2012)*

**63N. Demands for provisional property tax**

In any year of assessment, a notice for payment of provisional property tax may be—

- (a) given separately to the person liable to pay that provisional property tax; or
- (b) included in a notice of assessment to property tax.

*(Added 8 of 1983 s. 18)*

**63O. Holding over of payment of provisional property tax**

- (1) Where in relation to any year of assessment a person is liable to pay provisional property tax, he may, by notice in writing lodged with the Commissioner not later than—
- (a) 28 days before the day by which the provisional property tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional property tax under section 63M(6),
- whichever is the later, apply to the Commissioner on any of the grounds specified in subsection (2) to have the payment of the whole or part of such tax held over until he is required to pay property tax for that year of assessment or, in the case of an application on the ground set out in subsection (2)(d), until—
- (i) the determination of the objection or settlement thereof under section 64(3); or
  - (ii) he is required to pay property tax for that year of assessment,
- whichever is the sooner. *(Replaced 52 of 1993 s. 9)*
- (2) The grounds referred to in subsection (1) are—
- (a) that the assessable value for the year of assessment is, or is likely to be, less than 90% of the assessable value for the year preceding the year of assessment or of the estimated assessable value in respect of which the person is liable to pay provisional property tax;
  - (b) that the person assessed to provisional property tax has ceased, or will before the end of the year of assessment cease, to be an owner of land or buildings or land and buildings and that the assessable value for the year of assessment is, or is likely to be, less than the assessable value for the year preceding the year of assessment or

- the estimated sum in respect of which the person is liable to pay provisional property tax;
- (c) that the person assessed to provisional property tax has elected to be personally assessed under Part 7 for that year of assessment and that such personal assessment is likely to reduce his liability to tax; or (*Amended 19 of 1996 s. 13*)
  - (d) that the person assessed to provisional property tax has objected under section 64 to his assessment to property tax for the year preceding the year of assessment.
- (3) On receipt of an application under subsection (1), the Commissioner shall consider the same and may hold over the payment of the whole or part of the provisional property tax.
- (4) The Commissioner shall, by notice in writing, inform the person applying under subsection (1) of his decision.
- (Added 8 of 1983 s. 18. Amended E.R. 1 of 2012)*

**63P. Provisional property tax to be applied against property tax**

When any person has paid provisional property tax in respect of any year of assessment, the Commissioner shall, not later than when he gives notice of assessment of property tax, apply the amount of provisional property tax so paid in payment first of—

- (a) the property tax payable by that person for that year of assessment; then
  - (b) the provisional property tax payable in respect of the year of assessment succeeding that year of assessment,
- and shall refund to the person paying the provisional property tax the amount thereof not so applied.

## Part 11

### Objections and Appeals

*(Amended 26 of 1969 s. 33)*

#### 64. Objections

- (1) Any person aggrieved by an assessment made under this Ordinance may, by notice in writing to the Commissioner, object to the assessment; but no such notice shall be valid unless it states precisely the grounds of objection to the assessment and is received by the Commissioner within 1 month after the date of the notice of assessment: *(Amended 2 of 1971 s. 41; 52 of 1993 s. 10; 24 of 2003 s. 8)*

Provided that—

- (a) if the Commissioner is satisfied that owing to absence from Hong Kong, sickness or other reasonable cause, the person objecting to the assessment was prevented from giving such notice within such period, the Commissioner shall extend the period as may be reasonable in the circumstances; *(Amended 7 of 1986 s. 12)*
- (b) where any assessment objected to has been made under section 59(3) in the absence of any return required under section 51, no notice of objection against such assessment shall be valid unless, in addition to such notice being valid in accordance with the foregoing provisions of this subsection, the return required as aforesaid has been made within the period provided by this subsection for objecting to the assessment or within such further period as the Commissioner may approve for the making of such return;

- (c) where the assessment is a reassessment of the tax due from a person having the effect of either increasing or reducing that person's liability to tax, the person so reassessed shall have no further right of objection than he would have had if the reassessment had not been made except to the extent to which, by reason of the reassessment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased or reduced. *(Replaced 2 of 1971 s. 41)*
- (1A) For the purposes of subsection (1), where a person chargeable to tax is assessed under section 59(2)(b) or 60(1) in circumstances that, if the person had no other income, property or profits chargeable to tax under this Ordinance, the assessment would have been made under section 59(3)—
- (a) the provisions of proviso (b) to subsection (1) shall apply to any objection made against that assessment to the extent to which that person has failed to comply with section 51; and
- (b) no notice of objection against such assessment shall be valid unless and until that person has complied with section 51. *(Added 52 of 1993 s. 10)*
- (2) On receipt of a valid notice of objection under subsection (1) the Commissioner shall consider the same and within a reasonable time may confirm, reduce, increase or annul the assessment objected to, and for the purpose of discharging his functions under this subsection may, by notice in writing, require the person giving the notice of objection to furnish such particulars as the Commissioner may deem necessary with respect to the matters which are the subject of the assessment and to produce all books or other documents in his custody or under his control relating to such matters, and may summon any person who in his opinion is able to give

evidence respecting the assessment to attend before him and may examine such person on oath or otherwise. Where the Commissioner proposes to examine any person on oath under this subsection, he shall, by prior notice in writing, afford a reasonable opportunity to the person giving the notice of objection or his authorized representative to be present at such examination.

- (3) In the event of the Commissioner agreeing with any person assessed, who has validly objected to an assessment made upon him, as to the amount at which such person is liable to be assessed, any necessary adjustment of the assessment shall be made.
- (4) In the event of the Commissioner failing to agree with any person assessed, who has validly objected to an assessment made upon him, as to the amount at which such person is liable to be assessed, the Commissioner shall, within 1 month after his determination of the objection, transmit in writing to the person objecting to the assessment his determination together with the reasons therefor and a statement of the facts upon which the determination was arrived at, and such person may appeal therefrom to the Board of Review as provided in section 66.
- (5) The Commissioner shall for the purpose of this section have the powers granted under section 4(1)(d), (e), (f) and (g) of the Commissions of Inquiry Ordinance (Cap. 86), subject to the provisions of section 80 of this Ordinance. (*Amended 26 of 1969 s. 34*)
- (6) Any person, other than the person giving the notice of objection or his authorized representative, may be allowed by the Commissioner any reasonable expenses necessarily incurred by him in attending before the Commissioner under subsection (2).

- (7) No objection by a person to a personal assessment on his total income under Part 7 shall—
- (a) extend the time for making any objection under any other provision of this Ordinance;
  - (b) make valid any objection which is otherwise invalid; or
  - (c) authorize the revision of any amount which has been included in the total income of an individual pursuant to the provisions of section 42(1), where such amount has been the subject of, or formed a part of, any assessment made under Part 2, 3 or 4 which has become final and conclusive under section 70: *(Amended 17 of 1989 s. 17)*
- Provided that nothing in this paragraph shall operate to prevent an objection by an individual on the grounds that an amount included in the calculation under section 42 of his total income as a share of the assessable profits or losses of a partnership has not been ascertained in accordance with section 22A. *(Replaced 7 of 1975 s. 41)*
- (Added 40 of 1972 s. 7)*
- (8) Where an individual makes an objection in the circumstances described in the proviso to subsection (7)(c), such objection shall be deemed to be an objection by all the partners as to the share of assessable profits or losses ascertained under section 22A and any determination or agreement made under this section as to such ascertainment shall be binding on all the partners. *(Added 7 of 1975 s. 41)*
- (9) For the purposes of subsection (1) where a person is chargeable to salaries tax under section 10(3)(a), the spouse of that person, shall have, subject to this subsection, the same right to object as has the person assessed, but any such objection shall be limited to the manner in which the assessable income or net assessable income of such spouse is to be determined, the entitlement of such spouse to any



allowance under Part 5 or other matters to which that spouse could have objected had that spouse been the person so chargeable. *(Added 43 of 1989 s. 24)*

- (10) Where an objection to which subsection (9) applies is made—
- (a) the powers of the Commissioner under subsection (2) shall include the power to annul such assessment and make an assessment against the person objecting;
  - (b) subsection (3) shall not apply but—
    - (i) where the Commissioner agrees with both the spouse who has objected and his or her spouse as to the amount at which either of them is liable to be assessed, any necessary adjustment of the assessment shall be made; and
    - (ii) where the Commissioner fails to come to any such agreement as is referred to in subparagraph (i), such agreement shall be deemed to be a failure to agree for the purposes of subsection (4), and the reference in that subsection to the person objecting shall be construed as a reference to the person objecting under paragraph (a) and his or her spouse, with the consequence that either or both of them may appeal to the Board of Review. *(Added 43 of 1989 s. 24)*
- (11) Section 27 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section. *(Added 10 of 2013 s. 13)*

*(Replaced 35 of 1965 s. 29. Amended E.R. 1 of 2012)*

## **65. Constitution of the Board of Review**

- (1) For the purpose of hearing and determining appeals in the manner hereinafter provided, there shall be a panel for a Board of Review consisting of a chairman and 10 deputy

chairmen, who shall be persons with legal training and experience, and not more than 150 other members, all of whom shall be appointed from time to time by the Chief Executive. The members of the panel shall hold office for a term of 3 years but shall be eligible for reappointment. *(Amended 49 of 1956 s. 48; 35 of 1965 s. 31; 51 of 1969 s. 2; 65 of 1970 s. 9; 32 of 1977 s. 3; 11 of 1985 s. 4; 4 of 1989 s. 3; 12 of 1999 s. 3; 4 of 2010 s. 9)*

- (2) There shall be a clerk to the Board who shall be appointed by the Chief Executive. *(Amended 12 of 1999 s. 3; 17 of 2015 s. 3)*
- (3) *(Repealed 49 of 1956 s. 48)*
- (4) For the purpose of hearing and determining an appeal—
  - (a) the Board comprises 3 or more members of the panel as follows—
    - (i) the chairman or a deputy chairman nominated by the chairman; and
    - (ii) at least 2 more members of the panel nominated by the chairman;
  - (b) the member mentioned in paragraph (a)(i) is to preside at the hearing;
  - (c) the clerk must summon the members mentioned in paragraph (a)(i) and (ii) to attend meetings of the Board at which the appeal is to be heard;
  - (d) the quorum for a meeting of the Board hearing the appeal is 3 members; and
  - (e) a matter arising at a meeting of the Board is determined by a majority of votes of the members present and voting on the matter and, if there is an equality of votes, the member presiding has a casting vote in addition to his or her original vote. *(Replaced 4 of 2010 s. 9)*

- (5) At the request of the Chief Secretary for Administration, the clerk to the Board shall summon a meeting of the Board consisting of all the members of the panel available in Hong Kong. At such a meeting a quorum shall consist of 5 members. (*Amended 7 of 1986 s. 12; L.N. 362 of 1997*)
- (6) The remuneration, if any, of the chairman, deputy chairmen and other members of the Board and the clerk to the Board shall be determined by the Chief Executive. (*Replaced 49 of 1956 s. 48. Amended 65 of 1970 s. 9; 12 of 1999 s. 3*)
- (7) If a person ceases to be the chairman, a deputy chairman or a member of the panel and, at the time of that event, the person is or has been involved in the hearing or determination of an appeal by the Board, that person may continue to—
- (a) hear and determine the appeal; or
  - (b) perform any other function as a member of the Board in relation to the appeal in accordance with section 68(2C), 69AA(1)(a)(ii) or 69A(3)(a)(ii) until the appeal is finally disposed of by the Board. (*Replaced 4 of 2010 s. 9. Amended 17 of 2015 s. 3*)

## **66. Right of appeal to the Board of Review**

- (1) Any person (hereinafter referred to as the appellant) who has validly objected to an assessment but with whom the Commissioner in considering the objection has failed to agree may within—
- (a) 1 month after the transmission to him under section 64(4) of the Commissioner's written determination together with the reasons therefor and the statement of facts; or
  - (b) such further period as the Board of Review may allow under subsection (1A), (*Amended 17 of 2015 s. 4*)

either himself or by his authorized representative give notice of appeal to the Board; but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by a copy of the Commissioner's written determination together with a copy of the reasons therefor and of the statement of facts and a statement of the grounds of appeal. *(Replaced 2 of 1971 s. 42)*

- (1A) If the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1). *(Added 2 of 1971 s. 42. Amended 7 of 1986 s. 12; 4 of 2010 s. 10)*
- (2) The appellant shall at the same time as he gives notice of appeal to the Board serve on the Commissioner a copy of such notice and of the statement of the grounds of appeal.
- (3) Save with the consent of the Board and on such terms as the Board may determine, an appellant may not at the hearing of his appeal rely on any grounds of appeal other than the grounds contained in his statement of grounds of appeal given in accordance with subsection (1).

*(Replaced 35 of 1965 s. 32)*

**67. Transfer of appeals under section 66 for hearing and determination by Court of First Instance instead of Board of Review**

- (1) Where notice of appeal is given to the Board of Review under section 66, the appellant or the Commissioner may give notice in writing in accordance with this section that he desires the appeal to be transferred to the Court of First Instance: *(Amended 17 of 2015 s. 5)*

Provided that if both the appellant and the Commissioner give such notice, the notice given by the Commissioner shall have no effect and shall be deemed not to have been given.

- (2) A notice under subsection (1) shall, if given by the appellant, be given to the Commissioner, or, if given by the Commissioner, be given to the appellant within—
- (a) 21 days after the date on which the notice of appeal is received by the clerk to the Board; or
  - (b) such further time as the Board may in any particular case permit upon application in writing by the appellant or the Commissioner,

and the person giving such notice shall at the same time send a copy thereof to the Board. (*Amended 63 of 1997 s. 5*)

- (3) If the person to whom notice is given under subsection (1) consents thereto, he shall, within—
- (a) 21 days after the date on which the notice is given; or
  - (b) such further time as the Board may in any particular case permit upon application in writing by the person,
- notify his consent in writing to the Board and serve a copy of such notification on the person giving the notice, and on receipt of such notification by the Board the clerk to the Board shall transmit the notice of appeal to the Court of First Instance together with the documents delivered to the Board under this section and section 66(1) in connection with the appeal. (*Amended L.N. 262 of 1985; 63 of 1997 s. 5*)
- (4) An appeal in respect of which notice of appeal is transmitted to the Court of First Instance under subsection (3) shall be heard and determined by the Court of First Instance as in all respects an appeal to the Court of First Instance against the determination to which the notice of appeal relates.

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- (5) The following provisions shall apply in relation to the hearing of an appeal under this section—
- (a) the Court of First Instance shall give 14 days' notice to the appellant and the Commissioner of the date fixed for the hearing of the appeal, and may adjourn the hearing to any other date as the Court of First Instance may deem fit; (*Amended 17 of 2015 s. 5*)
  - (b) the Commissioner shall be entitled to appear and be heard at the hearing of the appeal;
  - (c) save with the leave of the Court of First Instance and on such terms as to costs or otherwise as the Court of First Instance may order, the appellant shall not at the hearing of the appeal rely on any grounds of appeal other than the grounds contained in his statement of grounds of appeal given with the notice of appeal under section 66(1);
  - (d) the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant;
  - (e) the Court of First Instance may summon any person appearing to the Court of First Instance to be able to give evidence respecting the appeal to attend at the hearing of the appeal and may examine any such person as a witness on oath or otherwise.
- (6) An appeal in respect of which notice of appeal is transmitted to the Court of First Instance under subsection (3) shall not be withdrawn without the leave of the Court of First Instance and except on such terms as to costs or otherwise as the Court of First Instance may order.
- (7) In determining an appeal under this section, the Court of First Instance may—
- (a) confirm, reduce, increase or annul the assessment determined by the Commissioner;

- (b) make any assessment which the Commissioner was empowered to make at the time he determined the assessment, or direct the Commissioner to make such an assessment, in which case an assessment shall be made by the Commissioner so as to conform to that direction;
- (c) make such order as to costs as the Court of First Instance may deem fit.

*(Added 12 of 1979 s. 3. Amended 25 of 1998 s. 2)*

**68. Hearing and disposal of appeals to the Board of Review**

(1) Except where—

- (a) a notification of consent in respect of the transfer of any appeal under section 67 is received by the Board of Review within the time allowed in that behalf by that section; or
- (b) the Board endorses under subsection (1B)(b) a settlement reached in respect of the relevant appeal,

every appeal under section 66 shall be heard by the Board in accordance with this section and the clerk to the Board shall, as soon as may be after the receipt of the notice of appeal, fix a time and place for the hearing of the appeal, and shall give 14 days' notice thereof to the appellant and the Commissioner: *(Amended 63 of 1997 s. 6; 17 of 2015 s. 6)*

Provided that the time so fixed for the hearing of the appeal shall not be earlier than—

- (a) in the case of an appeal in respect of which neither party to the appeal gives notice under section 67(1), the expiration of the time allowed by that section for giving such notice; or
- (b) in the case of an appeal in respect of which notice under section 67(1) is given—



- (i) by the appellant; or
  - (ii) by the Commissioner but not by the appellant,
- the expiration of a period of 21 days after the date on which such notice is given. *(Replaced 12 of 1979 s. 4)*
- (1A) At any time before the hearing of an appeal—
  - (a) the appellant may withdraw the appeal by notice in writing addressed to the clerk to the Board;
  - (b) the appellant and the Commissioner may reach a settlement on the amount at which the appellant is liable to be assessed. *(Added 63 of 1997 s. 6)*
- (1B) Where a settlement of an appeal is reached under subsection (1A)(b)—
  - (a) the terms of the settlement shall be reduced to writing in a form specified by the Board and signed by the appellant and the Commissioner; and
  - (b) the settlement shall be submitted to the Board for endorsement by it. *(Added 63 of 1997 s. 6)*
- (1C) Subject to subsection (1D), where a settlement is submitted to and endorsed by the Board, any necessary adjustment of the assessment shall be made and such assessment shall be final and conclusive for all purposes of this Ordinance as regards the amount of relevant assessable income or profits or net assessable value. *(Added 63 of 1997 s. 6)*
- (1D) Nothing in subsection (1A), (1B) or (1C) shall prevent an assessor from making an assessment or additional assessment for any year of assessment which does not involve re-opening any matter which has been endorsed by the Board under subsection (1B)(b) for the year. *(Added 63 of 1997 s. 6)*
- (1E) In the event that a settlement reached under subsection (1A)(b) is not endorsed by the Board, the relevant appeal shall be heard by it. *(Added 63 of 1997 s. 6)*

- (2) Subject to subsection (2B), an appellant shall attend at the meeting of the Board at which the appeal is heard in person or by an authorized representative. *(Amended 40 of 1972 s. 8)*
- (2A) *(Repealed 63 of 1997 s. 6)*
- (2B) If, on the date fixed for the hearing of an appeal, the appellant fails to attend at the meeting of the Board either in person or by his authorized representative the Board may—
- (a) if satisfied that the appellant's failure to attend was due to sickness or other reasonable cause, postpone or adjourn the hearing for such period as it thinks fit;
  - (b) proceed to hear the appeal under subsection (2D); or
  - (c) dismiss the appeal. *(Added 40 of 1972 s. 8)*
- (2C) If an appeal has been dismissed by the Board under subsection (2B)(c) the appellant may, within 30 days after the making of the order for dismissal by notice in writing addressed to the clerk to the Board, apply to the Board to review its order and the Board may, if satisfied that the appellant's failure to attend at the meeting of the Board for the hearing of the appeal was due to sickness or any other reasonable cause, set aside the order for dismissal and proceed to hear the appeal. *(Added 40 of 1972 s. 8)*
- (2D) The Board may, if satisfied that an appellant will be or is outside Hong Kong on the date fixed for the hearing of the appeal and is unlikely to be in Hong Kong within such period thereafter as the Board considers reasonable on the application of the appellant made by notice in writing addressed to the clerk to the Board and received by him at least 7 days prior to the date fixed for the hearing of the appeal, proceed to hear the appeal in the absence of the appellant or his authorized representative. *(Added 40 of 1972 s. 8. Amended 7 of 1986 s. 12)*

- (2E) The Board may, if it hears an appeal in the absence of an appellant or his authorized representative under subsection (2D), consider such written submissions as the appellant may submit to the Board. *(Added 40 of 1972 s. 8. Amended 7 of 1975 s. 42)*
- (3) The assessor who made the assessment appealed against or some other person authorized by the Commissioner shall attend such meeting of the Board in support of the assessment.
- (4) The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant. *(Replaced 35 of 1965 s. 34)*
- (5) All appeals shall be heard in camera, but any appeal may be reported in such publications as may be approved by the Secretary for Justice in such a manner that the identity of the appellant is not disclosed. *(Replaced 2 of 1971 s. 43. Amended L.N. 362 of 1997)*
- (6) The Board shall have power to summon to attend at the hearing any person whom it may consider able to give evidence respecting the appeal and may examine him as a witness either on oath or otherwise. Any person so attending may be allowed by the Board any reasonable expenses necessarily incurred by him in so attending.
- (7) At the hearing of the appeal the Board may, subject to the provisions of section 66(3), admit or reject any evidence adduced, whether oral or documentary, and the provisions of the Evidence Ordinance (Cap. 8), relating to the admissibility of evidence shall not apply.
- (8) (a) After hearing the appeal, the Board shall confirm, reduce, increase or annul the assessment appealed against or may remit the case to the Commissioner with the opinion of the Board thereon.

- (b) Where a case is so remitted by the Board, the Commissioner shall revise the assessment as the opinion of the Board may require and in accordance with such directions (if any) as the Board, at the request at any time of the Commissioner, may give concerning the revision required in order to give effect to such opinion. *(Replaced 35 of 1965 s. 34)*
- (9) Where under subsection (8), the Board does not reduce or annul such assessment, the Board may order the appellant to pay as costs of the Board a sum not exceeding the amount specified in Part 1 of Schedule 5, which shall be added to the tax charged and recovered therewith. *(Amended 11 of 1985 s. 5; 56 of 1993 s. 27; 12 of 2004 s. 14)*
- (9A) The Secretary for Financial Services and the Treasury may by order amend the amount specified in Part 1 of Schedule 5. *(Added 12 of 2004 s. 14)*
- (10) The Board shall for the purpose of this section have the powers granted under section 4(1)(d), (e), (f) and (g) of the Commissions of Inquiry Ordinance (Cap. 86), subject to the provisions of section 80 of this Ordinance. *(Added 35 of 1965 s. 34. Amended 26 of 1969 s. 35)*
- (11) Subject to section 69, the Board's decision on the appeal is final. *(Added 17 of 2015 s. 6)*

*(Amended E.R. 1 of 2012)*

#### **68AA. Directions on provision of documents and information**

- (1) Without limiting section 68, the person who is to preside, or is presiding, at the hearing of an appeal under section 66 (*presiding person*) may—
- (a) give directions on the provision of documents and information for the hearing; and

- 
- (b) refuse to admit in evidence any document or information that is not provided in compliance with directions given under paragraph (a).
- (2) If the presiding person decides to exercise the power under subsection (1)(b) to refuse to admit in evidence any document or information provided by a party (*defaulting party*), the presiding person must, as soon as practicable after making the decision, by notice in writing given to the party—
    - (a) notify the party of the decision; and
    - (b) give reasons for the decision.
  - (3) The defaulting party may, within 14 days after the date on which the notice is given to the party or within a longer period that the presiding person allows, apply to the presiding person for relief against the decision.
  - (4) The application for relief—
    - (a) does not suspend the decision;
    - (b) must be supported by evidence proving the statements made in the application; and
    - (c) may be determined without a hearing.
  - (5) The presiding person must, as soon as practicable after determining the application for relief, by notice in writing given to the defaulting party—
    - (a) notify the party of the determination; and
    - (b) give reasons for the determination.
  - (6) In determining the application for relief, the presiding person must consider all the circumstances, including—
    - (a) the interests of the administration of justice;
    - (b) whether the application has been made promptly;

- (c) whether the failure to comply with the directions given under subsection (1)(a) was intentional;
- (d) whether there is a good explanation for the failure;
- (e) the extent to which the defaulting party has complied with other directions of the presiding person;
- (f) whether the failure was caused by the defaulting party (or the party's authorized representative);
- (g) where the defaulting party is not legally represented—
  - (i) whether the party was unaware of the directions given under subsection (1)(a); or
  - (ii) if the party was aware of the directions given under subsection (1)(a), whether the party was able to comply with them without legal assistance;
- (h) whether the hearing date or the likely hearing date can still be met if relief is granted;
- (i) the effect that the failure had on each party; and
- (j) the effect that the granting of relief would have on each party.

*(Added 17 of 2015 s. 7)*

**68AAB. Privileges and immunities**

- (1) Subsection (2) applies to the chairman, a deputy chairman or any other member of the panel mentioned in section 65(1).
- (2) A person to whom this subsection applies has, in performing the person's duties under this Part, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that Court.
- (3) Subsection (4) applies to—
  - (a) a party to a hearing before the Board of Review; or

- (b) a witness, counsel, solicitor or person representing a party appearing before the Board.
- (4) A person to whom this subsection applies has the same privileges and immunities as the person would have in civil proceedings in the Court of First Instance.

*(Added 17 of 2015 s. 7)*

**68A. Power of Board of Review to correct clerical mistakes and other errors**

The Board of Review may correct—

- (a) any clerical mistake in any decision of the Board made in relation to an appeal; or
- (b) any error in any decision of the Board arising from any accidental slip or omission.

*(Added 4 of 2010 s. 11)*

**69. Appeal against Board of Review's decision: leave to appeal**

- (1) Where the Board of Review has made a decision on an appeal under section 68, the appellant or the Commissioner may appeal to the Court of First Instance against the Board's decision on a ground involving only a question of law.
- (2) No appeal may be made under subsection (1) unless leave to appeal has been granted, on the application of the appellant or the Commissioner—
  - (a) by the Court of First Instance; or
  - (b) if a further application is made under subsection (4), by the Court of Appeal.
- (3) For the purposes of an application to the Court of First Instance under subsection (2)(a) for leave to appeal—
  - (a) the application—



- 
- (i) must be lodged with the Registrar of the High Court, and served on the other party, within 1 month after the following date—
    - (A) subject to sub-subparagraph (B), the date on which the Board's decision is made;
    - (B) if the Board's decision is notified to the appellant or the Commissioner by notice in writing, the date of the communication by which the decision is notified; and
  - (ii) must be made by a summons supported by a statement setting out—
    - (A) the grounds of the appeal; and
    - (B) the reasons why leave should be granted;
  - (b) if the other party intends to resist the application, that party must, within 14 days after the date on which the application is served on that party, file in the Court of First Instance and serve on the applicant a statement as to why leave should not be granted;
  - (c) the Court of First Instance may—
    - (i) determine the application without a hearing on the basis of written submissions only; or
    - (ii) direct that the application be considered at a hearing,and, in both cases, the Court of First Instance may give any directions it thinks fit in relation to the application;
  - (d) if the Court of First Instance directs that the application be considered at a hearing, it must give 14 days' notice to the parties of the date and place fixed for the hearing;
  - (e) leave to appeal must not be granted unless the Court of First Instance is satisfied—

- (i) that a question of law is involved in the proposed appeal; and
- (ii) that—
  - (A) the proposed appeal has a reasonable prospect of success; or
  - (B) there is some other reason in the interests of justice why the proposed appeal should be heard;
- (f) if the Court of First Instance grants leave to appeal—
  - (i) it must give 14 days' notice to the parties of the date and place fixed for the hearing of the appeal; and
  - (ii) it may impose any terms it thinks fit;
- (g) if the application is determined by the Court of First Instance on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after the date on which the party is notified of the determination, request the Court of First Instance to reconsider the determination at a hearing inter partes; and
- (h) a hearing held in response to a request under paragraph (g) may be before the judge who has determined the application on the basis of written submissions only.
- (4) If the Court of First Instance refuses to grant leave to appeal, the applicant may make a further application to the Court of Appeal for leave to appeal against the Board's decision.
- (5) For the purposes of an application to the Court of Appeal under subsection (4) for leave to appeal—
  - (a) the application—

- (i) must be lodged with the Registrar of the High Court, and served on the other party, within 14 days after the date on which the Court of First Instance refuses to grant leave; and
- (ii) must be made by a summons supported by a statement setting out—
  - (A) the grounds of the appeal; and
  - (B) the reasons why leave should be granted;
- (b) if the other party intends to resist the application, that party must, within 14 days after the date on which the application is served on that party, file in the Court of Appeal and serve on the applicant a statement as to why leave should not be granted;
- (c) the Court of Appeal consisting of one or more Justices of Appeal may—
  - (i) determine the application without a hearing on the basis of written submissions only; or
  - (ii) direct that the application be considered at a hearing,

and, in both cases, the Court of Appeal may give any directions it thinks fit in relation to the application;
- (d) paragraphs (d), (e) and (f) of subsection (3) apply to the application as if references in those paragraphs to the Court of First Instance were references to the Court of Appeal;
- (e) subject to paragraph (f), if the application is determined by the Court of Appeal on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after the date on which the party is notified of the determination, request the Court of

Appeal to reconsider the determination at a hearing inter partes;

- (f) if—
  - (i) the application is determined by the Court of Appeal consisting of more than one Justice of Appeal on the basis of written submissions only; and
  - (ii) the Court of Appeal considers that the application is totally without merit,the Court of Appeal may make an order that no party may make a request under paragraph (e);
- (g) a hearing held in response to a request under paragraph (e) may be before the Court of Appeal consisting of—
  - (i) (if the application was determined by a single Justice of Appeal on the basis of written submissions only) that Justice of Appeal; or
  - (ii) (if the application was determined by more than one Justice of Appeal on the basis of written submissions only) one or more of those Justices of Appeal; and
- (h) subject to paragraph (e), after the Court of Appeal (whether or not consisting of a single Justice of Appeal only) has determined the application (whether or not on the basis of written submissions only), no further application may be made to the Court of Appeal for leave to appeal against the Board's decision.

*(Replaced 17 of 2015 s. 8)*

**69AA. Appeal against Board of Review's decision: hearing of appeal**

- (1) Where leave to appeal has been granted under section 69 in respect of a decision of the Board of Review, the Court of

First Instance, on hearing the appeal—

- (a) may—
  - (i) draw any inference of fact;
  - (ii) confirm, reduce, increase or annul the assessment determined by the Board, or remit the matter back to the Board with any directions (including a direction for a new hearing) that the Court of First Instance thinks fit; and
  - (iii) make any order as to costs that the Court of First Instance thinks fit; and
- (b) must not—
  - (i) receive any further evidence; or
  - (ii) reverse or vary any conclusion made by the Board on questions of fact unless the Court of First Instance finds that the conclusion is erroneous in point of law.

(2) Where—

- (a) the Court of First Instance has made a determination on an appeal for which leave has been granted under section 69; and
- (b) there is an appeal to the Court of Appeal against the Court of First Instance's determination,

paragraphs (a) and (b) of subsection (1) apply to the Court of Appeal on hearing the appeal as if references in those paragraphs to the Court of First Instance were references to the Court of Appeal.

(3) Subject to subsection (2), the High Court Ordinance (Cap. 4) applies to proceedings before the Court of Appeal under this section.

*(Added 17 of 2015 s. 9)*

**69A. Right to appeal directly to Court of Appeal against decision of Board of Review**

- (1) Where leave to appeal has been granted under section 69 in respect of a decision of the Board of Review, the appellant or the Commissioner may appeal directly to the Court of Appeal against the Board's decision. *(Replaced 17 of 2015 s. 10)*
- (1A) No appeal may be made under subsection (1) unless leave to appeal directly to the Court of Appeal has been granted, on the application of the appellant or the Commissioner, by the Court of Appeal. *(Added 17 of 2015 s. 10)*
- (2) Leave to appeal may be granted under subsection (1A) on the ground that in the opinion of the Court of Appeal it is desirable that, by reason of the amount of tax in dispute or of the general or public importance of the matter or its extraordinary difficulty or for any other reason, the appeal be heard and determined by the Court of Appeal instead of the Court of First Instance. *(Amended 17 of 2015 s. 10)*
- (3) On hearing an appeal for which leave has been granted under subsection (1A), the Court of Appeal—
  - (a) may—
    - (i) draw any inference of fact;
    - (ii) confirm, reduce, increase or annul the assessment determined by the Board, or remit the matter back to the Board with any directions (including a direction for a new hearing) that the Court of Appeal thinks fit; and
    - (iii) make any order as to costs that the Court of Appeal thinks fit; and
  - (b) must not—
    - (i) receive any further evidence; or

(ii) reverse or vary any conclusion made by the Board on questions of fact unless the Court of Appeal finds that the conclusion is erroneous in point of law. *(Replaced 17 of 2015 s. 10)*

(4) Subject to subsection (3), the High Court Ordinance (Cap. 4) applies to proceedings before the Court of Appeal under this section. *(Added 17 of 2015 s. 10)*

*(Added 12 of 1979 s. 5. Amended 25 of 1998 s. 2)*

#### **70. Assessments or amended assessments to be final**

Where no valid objection or appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the assessable income or profits or net assessable value assessed thereby, or where an appeal against an assessment has been withdrawn under section 68(1A)(a) or dismissed under subsection (2B) of that section, or where the amount of the assessable income or profits or net assessable value has been agreed to under section 64(3), or where the amount of such assessable income or profits or net assessable value has been determined on objection or appeal, the assessment as made or agreed to or determined on objection or appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income or profits or net assessable value: *(Amended 49 of 1956 s. 51; 35 of 1965 s. 35; 40 of 1972 s. 9; 7 of 1979 s. 4; 12 of 2004 s. 16)*

Provided that nothing in this Part shall prevent an assessor from making an assessment or additional assessment for any year of assessment which does not involve re-opening any matter which has been determined on objection or appeal for the year. *(Amended 35 of 1965 s. 35)*

#### **70A. Powers of assessor to correct errors**

(1) Notwithstanding the provisions of section 70, if, upon



application made within 6 years after the end of a year of assessment or within 6 months after the date on which the relative notice of assessment was served, whichever is the later, it is established to the satisfaction of an assessor that the tax charged for that year of assessment is excessive by reason of an error or omission in any return or statement submitted in respect thereof, or by reason of any arithmetical error or omission in the calculation of the amount of the net assessable value (within the meaning of section 5(1A)), assessable income or profits assessed or in the amount of the tax charged, the assessor shall correct such assessment: *(Amended 56 of 1993 s. 29)*

Provided that under this section no correction shall be made to any assessment in respect of an error or omission in any return or statement submitted in respect thereof as to the basis on which the liability to tax ought to have been computed where the return or statement was in fact made on the basis of or in accordance with the practice generally prevailing at the time when the return or statement was made.

- (2) Where an assessor refuses to correct an assessment in accordance with an application under this section he shall give notice thereof in writing to the person who made such application and such person shall thereupon have the same rights of objection and appeal under this Part as if such notice of refusal were a notice of assessment. *(Added 35 of 1965 s. 36)*

*(Replaced 28 of 1964 s. 11)*

**70AA. Revision of assessment due to commencement of section 4 or 8 of Inland Revenue (Amendment) Ordinance 2004**

- (1) Notwithstanding any other provisions of this Ordinance, if, upon application in respect of a year of assessment (*the relevant year*) that expires before the date of commencement\*

of section 4 or 8 of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) made within 12 months after that date, or within 6 years after the end of the relevant year, whichever is the later, it is established to the satisfaction of an assessor that the tax charged for the relevant year is excessive solely by reason of the commencement of that section, the assessor shall revise the assessment for the relevant year.

- (2) Where an assessor refuses to revise an assessment in accordance with an application under this section, he shall give notice thereof in writing to the person who made such application and such person shall thereupon have the same rights of objection and appeal under this Part as if such notice of refusal were a notice of assessment.

*(Added 12 of 2004 s. 17)*

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Editorial Note:

\* Commencement date: 25 June 2004.

**70AB. Revision of assessment due to commencement of section 2 of Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006**

- (1) Notwithstanding any other provisions of this Ordinance, if, upon application by a person in respect of a year of assessment (*the relevant year*) that expires before the date of commencement\* of section 2 of the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 (4 of 2006) made within 12 months after that date, or within 6 years after the end of the relevant year, whichever is the later, it is established to the satisfaction of an assessor that the tax charged for the relevant year exceeds the amount that the person would have had to pay had that section been in force, the assessor shall revise the assessment for the relevant year.

- (2) Where an assessor refuses to revise an assessment in accordance with an application made under this section, he shall give notice of the refusal in writing to the person who made the application and the person thereupon has the same rights of objection and appeal under this Part as if the notice of refusal were a notice of assessment.

*(Added 4 of 2006 s. 3)*

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Editorial Note:

\* Commencement date: 10 March 2006.

**70B. Husband and wife**

Where, following an election under section 41(1A) for personal assessment by a husband and wife, either spouse makes an objection, appeal or application under this Part in respect of any assessment made in consequence of the election—

- (a) the other spouse shall be deemed to be joined in the objection, appeal or application;
- (b) nothing in section 70 shall prevent a re-assessment being made in respect of either spouse; and
- (c) amended assessments may be issued to both spouses.

*(Added 71 of 1983 s. 34. Amended 43 of 1989 s. 25)*

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## Part 12

### Payment and Recovery of Tax

#### 71. Provisions regarding payment of tax

- (1) Tax charged under the provisions of this Ordinance shall be paid in the manner directed in the notice of assessment on or before a date specified in such notice. Any tax not so paid shall be deemed to be in default, and the person by whom such tax is payable, or where any tax is payable by more than one person or by a partnership then each of such persons or each partner in the partnership, shall be deemed to be a defaulter for the purposes of this Ordinance. *(Replaced 49 of 1956 s. 53)*
- (2) Tax shall be paid notwithstanding any notice of objection or appeal, unless the Commissioner orders that payment of tax or any part thereof be held over pending the result of such objection or appeal: *(Amended 7 of 1985 s. 2)*

Provided that where the Commissioner so orders he may do so conditionally upon the person who or on whose behalf the objection or appeal is made providing security for the payment of the amount of tax or any part thereof the payment of which is held over either—

- (a) by purchasing a certificate issued under the Tax Reserve Certificates Ordinance (Cap. 289); or
  - (b) by furnishing a banker's undertaking,  
as the Commissioner may require. *(Added 7 of 1985 s. 2)*
- (3) Where the Commissioner is of opinion either that the tax or any part thereof held over under subsection (2) is likely to become irrecoverable, or that the person objecting or appealing is unreasonably delaying the prosecution of his

objection or appeal, he may cancel any order made under that subsection and make such fresh order as the case may appear to him to require. (*Amended 49 of 1956 s. 53; 35 of 1965 s. 37*)

- (4) Where, upon the final determination of an objection or appeal under Part 11, or upon any order made by the Commissioner, any tax which has been held over under subsection (2) becomes payable or the tax charged is increased, the Commissioner shall give to the person objecting or appealing a notice in writing fixing a date on or before which any tax or balance of tax shall be paid. Any tax not so paid shall be deemed to be in default. (*Amended 30 of 1950 Schedule; 49 of 1956 s. 53; 35 of 1965 s. 37*)
- (5) Where any tax is in default, the Commissioner may in his discretion order that a sum or sums not exceeding 5% in all of the amount in default shall be added to the tax and recovered therewith.
- (5A) Where on the expiry of a period of 6 months from the date when any tax is deemed to be in default, whether such date was before or after 1 August 1984, there remains unpaid any amount of the aggregate of—
- (a) the tax deemed to be in default; and
  - (b) any sum added thereto under subsection (5),
- the Commissioner may order that a sum or sums not exceeding 10% in all of the unpaid amount shall be added to the unpaid amount and recovered therewith. (*Replaced 52 of 1984 s. 2*)
- (5B) (*Repealed 19 of 1996 s. 14*)
- (6) Notwithstanding anything contained in the previous subsections of this section the Commissioner may agree to accept payment of tax by instalments. (*Amended 49 of 1956 s. 53*)

- (7) Where the Commissioner exercises his powers under the proviso to subsection (2) and a person is required to purchase a certificate under paragraph (a) of that proviso—
- (a) a certificate in an amount equal to the tax or any part thereof the payment of which is held over shall be purchased within a period of 14 days from the date of the order of the Commissioner, or on or before the date for the payment of tax specified in the notice of the assessment, whichever is the later, failing which the provisions of subsection (2) shall apply as they would if there had been no order;
  - (b) the Commissioner shall, when he issues a certificate so purchased, note on it particulars sufficient to identify the objection or appeal to which it relates;
  - (c) upon the withdrawal or final determination of the objection or appeal a certificate or part of a certificate so purchased shall be accepted by the Commissioner in payment of so much of the tax held over as becomes or is found to become payable, and no interest shall be payable upon any certificate or part of a certificate so accepted;
  - (d) where, upon the final determination of the objection or appeal, and after all tax held over which becomes, or is found to be, payable has been paid in the manner specified in paragraph (c), any certificate or part of a certificate so purchased has not been accepted as payment by the Commissioner under paragraph (c), the Commissioner must repay to the holder of the certificate— *(Amended 4 of 2010 s. 12)*
    - (i) the principal value represented by the certificate or part of the certificate; and

- (ii) the interest on that value, calculated in accordance with the rules from the date of issue of the certificate to the date of the final determination of the objection or appeal; and (*Amended 4 of 2010 s. 12*)
  - (e) no certificate so purchased shall be valid for any purpose except as specified in the preceding paragraphs. (*Added 7 of 1985 s. 2*)
- (8) The provisions of subsection (7) shall apply notwithstanding anything to the contrary in the rules relating to such certificates made under the Tax Reserve Certificates Ordinance (Cap. 289) and any reference to the rules relating to such certificates in that subsection shall refer to the rules so made. (*Added 7 of 1985 s. 2*)
- (9) Where the Commissioner exercises his powers under the proviso to subsection (2) and a person is required to furnish a banker's undertaking under paragraph (b) of that proviso, the undertaking shall—
  - (a) be in a form acceptable to the Commissioner;
  - (b) be furnished to the Commissioner within a period of 14 days from the date of the order of the Commissioner, or on or before the date for the payment of the tax specified in the notice of assessment, whichever is the later;
  - (c) be given by a bank (as defined in the Banking Ordinance (Cap. 155));
  - (d) not be revocable without the consent of the Commissioner;
  - (e) be expressed to be an undertaking to pay—
    - (i) an amount equal to the tax or any part thereof the payment of which is held over; and



(ii) interest on that amount, from the date for the payment of the tax specified in the notice of assessment to the date of withdrawal or final determination of the objection or appeal, at the rate specified in subsection (11); and

(f) provide for payment to the Commissioner upon written notification to the bank by the Commissioner that the objection or appeal has been withdrawn or finally determined and that the amount, and interest, stated by him is now due,

and if such person fails to supply such an undertaking in such manner the provisions of subsection (2) shall apply as they would if there had been no order. *(Added 7 of 1985 s. 2)*

(10) Where the Commissioner makes an order under subsection (2) but does not exercise his powers under the proviso thereto, interest shall be payable on so much of the amount of the tax or any part thereof the payment of which is held over as becomes payable or is found to become payable upon the withdrawal or final determination of the objection or appeal, from the date for the payment of the tax specified in the notice of assessment or the date of the order, whichever is the later, to the date of withdrawal or final determination of the objection or appeal, at the rate specified in subsection (11). *(Added 7 of 1985 s. 2)*

(11) The rate of interest specified for the purposes of subsections (9)(e)(ii) and (10) shall be the rate determined by the Chief Justice by order under section 50(1)(b) of the District Court Ordinance (Cap. 336). *(Added 7 of 1985 s. 2. Amended 4 of 2010 s. 12)*

*(Amended E.R. 1 of 2012)*

**72. Tax to include fines, etc.**

In the succeeding sections of this Part, **tax** (稅款) includes any sum or sums added under section 71 (5) or (5A) by reason of default, together with any fines, penalties, fees, or costs incurred, and any interest payable under section 71 (9)(e)(ii) or (10).

*(Amended 23 of 1974 s. 5; 7 of 1985 s. 3)*

**73-74.** *(Repealed 49 of 1956 s. 54)*

**75. Tax recoverable as a civil debt through the District Court**

- (1) Tax due and payable under this Ordinance shall be recoverable as a civil debt due to the Government. *(Amended 19 of 1996 s. 15)*
- (2) Whenever any person makes default in payment of tax the Commissioner may recover the same by action in the District Court notwithstanding that the amount is in excess of the sum mentioned in section 33 of the District Court Ordinance (Cap. 336). *(Amended 35 of 1966 Schedule; 68 of 1973 s. 5; 79 of 1981 s. 3)*
- (3) In proceedings under this section for the recovery of tax the production of a certificate signed by the Commissioner stating the name and last known postal address of the defaulter and particulars of the tax due by him shall be sufficient evidence of the amount so due and sufficient authority for a District Court to give judgment for the said amount.
- (4) In proceedings under this section for the recovery of tax the court shall not entertain any plea that the tax is excessive, incorrect, subject to objection or under appeal, but nothing in this subsection shall be construed so as to derogate from the powers conferred by the proviso to section 51 (4B)(a) to give judgment for a less sum in the case of proceedings for the penalty specified therein. *(Amended 35 of 1965 s. 38)*

- (5) In any proceedings in the District Court under this section, the Commissioner may appear in person or may be represented either by a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87) or by any other person authorized by him in writing.

*(Replaced 49 of 1956 s. 55)*

**75A.** *(Repealed 43 of 1989 s. 26)*

**76. Recovery of tax from a debtor of the taxpayer**

- (1) Where tax payable by a person is in default, or a person charged to tax has quitted Hong Kong or in the opinion of the Commissioner is likely to quit Hong Kong without paying all the tax charged to him, and it appears to the Commissioner to be probable that any other person (hereinafter in this subsection referred to as *the third party*)— *(Amended 7 of 1986 s. 12)*
- (a) owes or is about to pay money to such person (hereinafter in this subsection referred to as *the taxpayer*); or
  - (b) holds money for or on account of the taxpayer; or
  - (c) holds money on account of some other person for payment to the taxpayer; or
  - (d) has authority from some other person to pay money to the taxpayer,

the Commissioner may give the third party notice in writing (a copy of which shall be sent by post to the taxpayer) requiring him to pay such moneys not exceeding the amount of tax in default or charged, as the case may be, to the officer named in the notice. The notice shall apply to all such moneys which are in the third party's hands or due from him or about to be paid by him at the date of receipt of such notice or which

come into his hands or become due from him or about to be paid by him at any time within a period of 30 days thereafter.  
*(Replaced 26 of 1969 s. 36)*

- (2) Any person who has made any payment in pursuance of this section shall be deemed to have acted under the authority of the person by whom the tax was payable or on whom it was charged and of all other persons concerned, and is hereby indemnified in respect of such payment against all proceedings civil or criminal notwithstanding the provisions of any written law, contract or agreement.
- (3) Any person to whom notice has been given under subsection (1) who is unable to comply therewith shall within 14 days of the expiration of the period of 30 days from the date of receipt of such notice give notice in writing to the Commissioner acquainting him with the facts.
- (4) Any person to whom a notice has been given under subsection (1) who could have complied therewith but failed to do so within 14 days after the expiration of the period referred to in subsection (1), shall be personally liable for the whole of the tax which he was required to pay, and such tax may be recovered from him by all means provided in this Ordinance for the recovery of tax from a person who has made default in payment.

*(Replaced 49 of 1956 s. 56)*

#### **77. Recovery of tax from persons leaving Hong Kong**

- (1) If the Commissioner, or an officer of the Inland Revenue Department not below the rank of chief assessor authorized in writing by the Commissioner for the purposes (*authorized officer*), satisfies a District Judge, by statement made on oath—
  - (a) that a person has not paid all tax assessed upon him; and

(b) that there are reasonable grounds for believing that the person intends to depart, or has departed, from Hong Kong to reside elsewhere,

and if the District Judge is satisfied that it is in the public interest to ensure that the person does not depart from Hong Kong or, if he returns, does not depart again, without first paying the tax or furnishing security to the satisfaction of the Commissioner for payment of that tax, he shall issue a direction (*departure prevention direction*) to the Director of Immigration and the Commissioner of Police directing them to prevent the person from departing from Hong Kong without paying such tax or furnishing such security.

(2) The District Judge shall, as soon as practicable after he makes a departure prevention direction under subsection (1), cause a copy of it to be served upon the person who is the subject of the direction, if he can be found, but, whether or not a copy is so served, the direction comes into force immediately upon being issued and continues in force until—

- (a) the tax is paid;
- (b) security is furnished to the satisfaction of the Commissioner for payment of the tax; or
- (c) the departure prevention direction is set aside by the Court of First Instance under subsection (9).

(3) Where—

(a) an immigration officer or immigration assistant (within the meaning of section 2(1) of the Immigration Ordinance (Cap. 115)); or

(b) a police officer,

believes on reasonable grounds that—

- (i) a person the subject of a departure prevention direction made under subsection (1) is about to depart from Hong Kong; and
- (ii) the Commissioner has not authorized the person to depart from Hong Kong nor has the Court of First Instance suspended or otherwise varied the departure prevention direction so as to permit the person to depart from Hong Kong,

he may take such measures including the use of such force as may be necessary to prevent the departure of that person from Hong Kong.

(4) Where—

- (a) a copy of a departure prevention direction has been served on the person the subject of it or the person has been verbally advised of its existence by a person referred to in subsection (3)(a) or (b); and
- (b) the Commissioner has not authorized the person to depart from Hong Kong nor has the Court of First Instance suspended or otherwise varied the departure prevention direction so as to permit the person to depart from Hong Kong,

the person commits an offence if he departs or attempts to depart from Hong Kong, and an immigration officer, immigration assistant or police officer may arrest him without a warrant.

- (5) Any person who commits an offence under subsection (4) is liable to a fine at level 4 and to imprisonment for 6 months.  
*(Amended L.N. 338 of 1995)*
- (6) Where a departure prevention direction made under this section is in force, the Commissioner may, if he thinks fit, on the written application of the person the subject of the direction or, in the absence of any such application, of his

own initiative, authorize, in writing, the person to depart from Hong Kong on one or more occasions as specified in the authorization.

- (7) Where—
- (a) the tax owing has been paid or security has been furnished to the satisfaction of the Commissioner for payment thereof;
  - (b) a departure prevention direction is set aside or temporarily suspended under this section; or
  - (c) the Commissioner authorizes a person to depart from Hong Kong on one or more occasions,
- the Commissioner shall, as soon as practicable, notify—
- (i) the Director of Immigration; and
  - (ii) the Commissioner of Police,
- that the person is permitted to depart from Hong Kong.
- (8) Where a person the subject of a departure prevention direction applies under subsection (6) and the Commissioner does not see fit to authorize his departure, the commissioner shall, as soon as practicable, serve a notice (*notice of decision*) upon the person.
- (9) A person aggrieved by a departure prevention direction under subsection (1) or a notice of decision under subsection (8), as the case may be, may appeal to the Court of First Instance which may—
- (a) make an order setting aside the departure prevention direction subject to such conditions as the Court may consider necessary, including the supplying of security to the Commissioner as specified by the Court;
  - (b) make an order temporarily suspending or otherwise varying the departure prevention direction, and the



Court may attach such conditions to the suspension or variation as it considers necessary; or

- (c) dismiss the appeal.
- (10) Service of—
- (a) a copy of a departure prevention direction under subsection (2) shall be effected personally on the person who is the subject of it;
  - (b) a notice of decision under subsection (8) may be effected personally on the person who is the subject of it or by post addressed to that person at his last known place of abode, business or employment.
- (11) Where a direction was issued by a District Judge under section 77 as repealed by the Inland Revenue (Amendment) (No. 3) Ordinance 1993 (56 of 1993), that direction shall be deemed to be a departure prevention direction issued under this section and the provisions of this section shall apply to it accordingly.
- (12) In this section, *Court of First Instance* (原訟法庭) has the same meaning as in section 2 of the High Court Ordinance (Cap. 4) and includes the Registrar and a Master as defined in that Ordinance.
- (13) In proceedings under this section, the production of a certificate signed by the Commissioner or an authorized officer stating the name and last known postal address of the person referred to in subsection (1) and particulars of the unpaid tax assessed upon him shall be sufficient evidence of the amount and a court shall not entertain any plea that the tax is excessive, incorrect, subject to objection or under appeal.
- (14) The Commissioner or an authorized officer may apply ex parte to the District Court for a departure prevention direction.

- (15) In any proceedings in the District Court under this section, the Commissioner or an authorized officer, as the case may be, may appear in person or may be represented either by a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87) or by any other person authorized in writing by the Commissioner.

*(Replaced 56 of 1993 s. 30. Amended 25 of 1998 s. 2)*

**77A. Refusal of clearance to ships and aircraft where tax is in default**

- (1) In addition to any other powers of collection and recovery provided by this Ordinance, where a person has been charged to tax in respect of his profits from the business of shipowner or charterer or aircraft owner or charterer and such tax is in default and whether such person has been assessed directly or in the name of some other person, the Commissioner, with the prior approval of the Chief Secretary for Administration, may issue to the Director of Marine, the Director-General of Civil Aviation or other authority by whom clearance may be granted, a certificate containing the name or names of the said person and the particulars of the tax in default.
- (2) On receipt of such certificate the Director of Marine, the Director-General of Civil Aviation, or other authority, shall be empowered and is hereby required to refuse clearance from any port, aerodrome or airport or place within Hong Kong to any ship or aircraft owned wholly or partly or chartered by such person until the said tax has been paid or until security for payment has been given to the satisfaction of the Commissioner. *(Amended 7 of 1986 s. 12)*
- (3) No civil or criminal proceedings shall be instituted or maintained against the Government, the Chief Secretary for Administration, the Commissioner, the Director of Marine, the Director-General of Civil Aviation or other authority, in

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respect of a refusal of clearance under this section, nor shall the fact that a ship or aircraft is detained under this section affect the liability of the owner, charterer or agent to harbour, airport or other dues and charges for the period of detention.  
*(Amended 19 of 1996 s. 15)*

*(Added 49 of 1956 s. 58. Amended L.N. 362 of 1997; L.N. 326 of 2000)*

**78.** *(Repealed 49 of 1956 s. 59)*

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## Part 13

### Repayment

#### 79. Tax paid in excess to be refunded

- (1) If it is proved to the satisfaction of the Commissioner by claim duly made in writing within 6 years of the end of a year of assessment or within 6 months after the date on which the relevant notice of assessment was served, whichever is the later, that any person has paid tax in excess of the amount with which he was properly chargeable for the year, such person shall be entitled to have refunded the amount so paid in excess: *(Amended 49 of 1956 s. 60)*

Provided that nothing in this section shall operate to extend or reduce any time limit for objection, appeal or repayment specified in any other section or to validate any objection or appeal which is otherwise invalid, or to authorize the revision of any assessment or other matter which has become final and conclusive. *(Amended 35 of 1965 s. 39)*

- (2) An executor, trustee or receiver shall have the same right to make a claim under the provisions of subsection (1) as the person whom he represents would have had if such person had not been prevented from making such claim by his death, incapacity, bankruptcy or liquidation and shall be entitled to have refunded to him for the benefit of such person or such person's estate any tax paid in excess within the meaning of subsection (1). *(Replaced 49 of 1956 s. 60)*
- (3) Where a non-resident person has been assessed in the name of another person under section 20A or 20B and the tax so assessed has been paid by the other person, the other person or the non-resident person, but not both, may make a claim under subsection (1) for a refund of tax overpaid. In the event

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of a refund being made to the other person his receipt shall be a valid discharge in respect of the amount of overpaid tax so refunded. *(Replaced 4 of 1989 s. 5)*

- (4) Section 27 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section. *(Added 10 of 2013 s. 14)*
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## Part 14

### Penalties and Offences

#### 80. Penalties for failure to make returns, making incorrect returns, etc.

- (1) Any person who without reasonable excuse—
- (a) fails to comply with the requirements of a notice given to him under section 51(3), 51A(1), 52(1) or (2), or 64(2); or
  - (b) fails to attend in answer to a summons issued under section 64(2) or 68(6), or having attended fails to answer any questions put to him, being questions which, under section 64(2) or 68(6), as the case may be, may be put to him; or
  - (c) fails to comply with the requirements of section 5(2)(c), 51(6), (7) or (8), 51D(1), 52(4), (5), (6) or (7), or 76(3), *(Amended 48 of 1995 s. 11)*

commits an offence and is liable on conviction to a fine at level 3, and the court may order the person convicted within a time specified in the order to do the act which he has failed to do. *(Replaced 35 of 1965 s. 40. Amended 26 of 1969 s. 37; 2 of 1971 s. 46; 43 of 1975 s. 6; 8 of 1983 s. 19; L.N. 411 of 1984; 17 of 1989 s. 18; 56 of 1993 s. 31; L.N. 338 of 1995; 4 of 2010 s. 13)*

- (1A) Any person who without reasonable excuse fails to comply with the requirements of section 51C commits an offence and is liable on conviction to a fine at level 6 and the court may order the person convicted within a time specified in the order to do the act which he has failed to do. *(Added 48 of 1995 s. 11. Amended 4 of 2010 s. 13)*

- (1AA) Without prejudice to the generality of the term “reasonable excuse” as it is used in subsection (1) in relation to section 52(4), (5), (6) or (7), where a person has failed to comply with the requirements of that section in the case of an individual in respect of whom that person is treated as the employer by virtue of the operation of section 9A, then it shall constitute a defence in any proceedings under this section against that person in respect of such failure if he shows that—
- (a) he did not comply with those requirements because he relied upon a statement in writing—
    - (i) by that individual; and
    - (ii) in the form specified under subsection (1AC); and
  - (b) it was reasonable for him to rely upon that statement.  
*(Added 54 of 1995 s. 3)*
- (1AB) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (1AA)(a) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 3. *(Added 54 of 1995 s. 3. Amended 4 of 2010 s. 13)*
- (1AC) The Commissioner may, by notice in the Gazette, specify a form for the purposes of subsection (1AA)(a). *(Added 54 of 1995 s. 3)*
- (1AD) For the avoidance of doubt, it is hereby declared that a form specified under subsection (1AC) is not subsidiary legislation. *(Added 54 of 1995 s. 3)*
- (2) Any person who without reasonable excuse—
- (a) makes an incorrect return by omitting or understating anything in respect of which he is required by this Ordinance to make a return, either on his behalf or on behalf of another person; *(Amended 1 of 2010 s. 7)*



- (b) makes an incorrect statement in connection with a claim for any deduction or allowance under this Ordinance;
- (c) gives any incorrect information in relation to any matter or thing affecting his own liability (or the liability of any other person) to tax; (*Amended 1 of 2010 s. 7*)
- (d) fails to comply with the requirements of a notice given to him under section 51(1) or (2A); or
- (e) fails to comply with section 51(2),  
commits an offence and is liable on conviction to a fine at level 3 and a further fine of treble the undercharged amount. (*Replaced 43 of 1975 s. 6. Amended L.N. 411 of 1984; 43 of 1989 s. 27; L.N. 338 of 1995; 4 of 2010 s. 13; 27 of 2018 s. 20*)
- (2A) In the case of an offence under subsection (2)(d), the court may order the person convicted to comply with the requirements of the notice given to him under section 51(1) or (2A) within such time as may be specified in the order. (*Added 43 of 1975 s. 6. Amended 43 of 1989 s. 27*)
- (2B) Any person who does not comply with an order of the court under subsection (1) or (2A) or under section 51(4B)(b) commits an offence and is liable on conviction to a fine at level 4. (*Added 43 of 1975 s. 6. Amended L.N. 338 of 1995; 4 of 2010 s. 13*)
- (2C) Any person who does not comply with an order of the court under subsection (1A) commits an offence and is liable on conviction to a fine at level 6. (*Added 48 of 1995 s. 11. Amended 4 of 2010 s. 13*)
- (2D) Any person who without reasonable excuse gives any incorrect information in relation to any matter or thing affecting the person's own liability (or the liability of any other person) to any tax of a territory outside Hong Kong commits an offence if—

- (a) arrangements having effect under section 49(1A) are made with the government of that territory; and
  - (b) that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,
- and is liable to a fine at level 3. (*Added 1 of 2010 s. 7*)
- (2E) A person commits an offence if the person, in making a self-certification that is required to be collected under Schedule 17D by a reporting financial institution—
- (a) makes a statement that is misleading, false or incorrect in a material particular; and
  - (b) knows, or is reckless as to whether, the statement is misleading, false or incorrect in a material particular. (*Added 22 of 2016 s. 9*)
- (2F) A person who commits an offence under subsection (2E) is liable on conviction to a fine at level 3. (*Added 22 of 2016 s. 9*)
- (2G) A person commits an offence—
- (a) if the person, without reasonable excuse, fails to comply with section 50AA(5);
  - (b) if the person, without reasonable excuse, fails to comply with a requirement of a notice given to the person under section 50AAB(2); or
  - (c) if—
    - (i) the person, without reasonable excuse—
      - (A) makes an incorrect statement, or provides incorrect information, in connection with any mutual agreement procedure or arbitration referred to in section 50AAB; or

- (B) omits anything from a statement or information made or provided in connection with the procedure or arbitration; and
- (ii) the statement or information referred to in subparagraph (i)(A), or the thing referred to in subparagraph (i)(B), is material to the case or issue to which the procedure or arbitration relates. (*Added 27 of 2018 s. 20*)
- (2H) A person who commits an offence under subsection (2G)(a) is liable on conviction to—
- (a) a fine at level 3; and
- (b) a further fine of the undercharged amount. (*Added 27 of 2018 s. 20*)
- (2I) A person who commits an offence under subsection (2G)(b) is liable on conviction to a fine at level 3, and the court may order the person to comply, within a time specified in the order, with the requirements of the notice given to the person under section 50AAB(2). (*Added 27 of 2018 s. 20*)
- (2J) If a person fails to comply with an order of the court under subsection (2I), the person commits an offence and is liable on conviction to a fine at level 4. (*Added 27 of 2018 s. 20*)
- (2K) A person who commits an offence under subsection (2G)(c) is liable on conviction to—
- (a) a fine at level 3; and
- (b) a further fine of treble the undercharged amount. (*Added 27 of 2018 s. 20*)
- (2L) A person commits an offence—
- (a) if the person, without reasonable excuse, fails to comply with a requirement under section 50AAM(11), 50AAN(3) or 50AAO(3);

- (b) if—
- (i) the person, without reasonable excuse, makes an incorrect statement or provides incorrect information in connection with the following claim or application, or omits anything from a statement made or information provided in connection with the following claim or application—
    - (A) the person's claim for relief under section 50AAM, 50AAN or 50AAO; or
    - (B) the person's application for an advance pricing arrangement under section 50AAP(1); and
  - (ii) the statement or information that is incorrect, or thing that is omitted, is material to the claim or application;
- (c) if the person, without reasonable excuse, fails to comply with a requirement under section 50AAS;
- (d) if—
- (i) the person either—
    - (A) without reasonable excuse and in purported compliance with a requirement under section 50AAS, provides incorrect information in relation to an advance pricing arrangement; or
    - (B) without reasonable excuse, omits anything from information provided, in relation to an advance pricing arrangement, in purported compliance with the requirement; and
  - (ii) the information referred to in subparagraph (i)(A), or the thing referred to in subparagraph (i)(B), is material to the arrangement;

- (e) if the person, without reasonable excuse, fails to comply with a requirement of section 50AAT; or
  - (f) if the person, without reasonable excuse, fails to comply with the requirement of a notice given to the person under section 3 of Schedule 17H. *(Added 27 of 2018 s. 20)*
- (2M) A person who commits an offence under subsection (2L)(a), (b), (c) or (d) is liable on conviction to—
- (a) a fine at level 3; and
  - (b) a further fine of the undercharged amount. *(Added 27 of 2018 s. 20)*
- (2N) A person who commits an offence under subsection (2L)(e) is liable on conviction to a fine at level 5, and the court may order the person to do, within a time specified in the order, the act that the person has failed to do. *(Added 27 of 2018 s. 20)*
- (2O) If a person fails to comply with an order of the court under subsection (2N), the person commits an offence and is liable on conviction to a fine at level 6. *(Added 27 of 2018 s. 20)*
- (2P) A person who commits an offence under subsection (2L)(f) is liable on conviction to a fine at level 3. *(Added 27 of 2018 s. 20)*
- (2Q) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement of section 58C. *(Added 27 of 2018 s. 20)*
- (2R) A person who commits an offence under subsection (2Q) is liable on conviction to a fine at level 5, and the court may order the person to do, within a time specified in the order, the act that the person has failed to do. *(Added 27 of 2018 s. 20)*

- (2S) If a person fails to comply with an order of the court under subsection (2R), the person commits an offence and is liable on conviction to a fine at level 6. *(Added 27 of 2018 s. 20)*
- (3) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made in the year of assessment in respect of or during which the offence was committed or within 6 years after the expiration thereof. *(Amended 49 of 1956 s. 61)*
- (4) Any person who aids, abets or incites another person to commit an offence under this section shall be deemed to have committed the same offence and to be liable to the same penalty. *(Added 49 of 1956 s. 61)*
- (5) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder. *(Amended 49 of 1956 s. 61)*
- (6) Sections 25 and 26 of Schedule 17A (specified alternative bond scheme and its tax treatment) provide for modifications to this section. *(Added 10 of 2013 s. 15)*
- (7) In this section—
- undercharged amount*** (少徵稅款)—
- (a) for an offence that relates to any incorrect return, statement or information or an omission from any statement or information—means the amount of tax that—
- (i) has been undercharged as a result of the incorrect return, statement or information or omission; or
- (ii) would have been so undercharged if the return, statement or information had been accepted as correct or the omission had not been detected;
- (b) for an offence that relates to a failure to comply with a provision of this Ordinance or with a notice under

the provision—means the amount of tax that has been undercharged as a result of the failure, or would have been so undercharged if the failure had not been detected; or

- (c) for any other offence—means the amount of tax that has been undercharged as a result of the offence, or would have been so undercharged had the offence not been detected. *(Added 27 of 2018 s. 20)*

**80A.** *(Repealed 17 of 1989 s. 19)*

**80B. Penalties for offences relating to reporting financial institutions**

- (1) A reporting financial institution commits an offence if the institution, without reasonable excuse—
- (a) fails to comply with a requirement under—
    - (i) section 50B(1) or (2);
    - (ii) section 50C(1); or
    - (iii) section 50D(1), (2), (3) or (4);
  - (b) fails to comply with a requirement of a notice given to it under section 51B(1AAAD) or 51BA(6); or
  - (c) obstructs or hinders an assessor in the exercise of the powers under section 51BA(2).
- (2) For subsection (1)(a)(i) and (ii), engaging a service provider under section 50H does not in itself constitute a reasonable excuse.
- (3) A reporting financial institution that commits an offence under subsection (1) is liable on conviction to a fine at level 3, and the court may order the institution, within the time specified in the order—
- (a) (for subsection (1)(a) or (b)) to do the act that the institution has failed to do; or



- (b) (for subsection (1)(c)) to allow and facilitate an assessor to exercise the powers under section 51BA(2).
- (4) In the case of an offence under—
- (a) subsection (1)(a)(ii) for contravening section 50C(1); or
  - (b) subsection (1)(b) for contravening section 51B(1AAAD) or 51BA(6),
- the reporting financial institution is liable to a further fine of \$500 for every day or part of a day during which the offence continues after conviction.
- (5) A reporting financial institution commits an offence if the institution does not comply with an order of the court under subsection (3), and is liable on conviction to a fine at level 4.
- (6) A reporting financial institution commits an offence if the institution—
- (a) in purported compliance with the requirement to furnish a return under section 50C(1), provides any information in the return that is misleading, false or inaccurate in a material particular, and—
    - (i) knows the information is misleading, false or inaccurate in a material particular;
    - (ii) is reckless as to whether the information is misleading, false or inaccurate in a material particular; or
    - (iii) has no reasonable ground to believe that the information is true or accurate; or
  - (b) after a return has been furnished to the Commissioner in purported compliance with section 50C(1)—
    - (i) discovers misleading, false or inaccurate information in the return; and

- (ii) without reasonable excuse, fails to notify the Commissioner of the discovery within a reasonable time.
- (7) A reporting financial institution that commits an offence under subsection (6) is liable on conviction to a fine at level 3.
- (8) A reporting financial institution commits an offence if the institution, with intent to defraud, provides any information that is misleading, false or inaccurate in a material particular in a return furnished under section 50C(1).
- (9) A reporting financial institution that commits an offence under subsection (8) is liable—
  - (a) on summary conviction to—
    - (i) a fine at level 3; and
    - (ii) imprisonment for 6 months; or
  - (b) on conviction on indictment to—
    - (i) a fine at level 5; and
    - (ii) imprisonment for 3 years.
- (10) In relation to a reporting financial institution that is not a corporation, this section applies to a person who acts for the institution to maintain financial accounts as if the references to a reporting financial institution were references to that person.

*(Added 22 of 2016 s. 10)*

**80C. Offences of persons employed by reporting financial institutions, etc.**

- (1) If a person—
  - (a) is an employee of a reporting financial institution or, as the case requires, an individual employed as an

employee in respect of a reporting financial institution that is not a corporation;

- (b) other than a service provider, is engaged to work for a reporting financial institution; or
- (c) is concerned in the management of a reporting financial institution,

the person commits an offence if the person, with intent to defraud, causes or allows the institution to provide any information that is misleading, false or inaccurate in a material particular in a return furnished under section 50C(1).

- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction to—
    - (i) a fine at level 3; and
    - (ii) imprisonment for 6 months; or
  - (b) on conviction on indictment to—
    - (i) a fine at level 5; and
    - (ii) imprisonment for 3 years.

*(Added 22 of 2016 s. 10)*

**80D. Offences of service provider**

- (1) A person who is a service provider engaged to carry out a reporting financial institution's obligations under section 50B(1) commits an offence if the person, without reasonable excuse, fails to—
  - (a) establish the procedures described in section 50B(1)(a); or
  - (b) incorporate into those procedures the due diligence requirements in Schedule 17D.

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- (2) A person who is a service provider engaged to carry out a reporting financial institution's obligations under section 50B(2) commits an offence if the person, without reasonable excuse, fails to maintain or apply the procedures established in compliance with section 50B(1)(a) and (b)—
- (a) to identify reportable accounts, and to identify and collect the required information within the meaning of section 50C(3); or
  - (b) to ensure that the purpose mentioned in section 50B(1)(a)(iii) can be achieved.
- (3) A person who is a service provider engaged to carry out a reporting financial institution's obligations under section 50C(1) commits an offence if the person, without reasonable excuse, fails to cause a return to be furnished as required by that section.
- (4) A person who is a service provider engaged to carry out a reporting financial institution's obligations under section 50B(1) or (2) or 50C(1) commits an offence if the person—
- (a) causes or allows the institution to provide, or in purported compliance with the requirement on the institution to furnish a return under section 50C(1), provides any information in the return that is misleading, false or inaccurate in a material particular, and—
    - (i) knows the information is misleading, false or inaccurate in a material particular;
    - (ii) is reckless as to whether the information is misleading, false or inaccurate in a material particular; or
    - (iii) has no reasonable ground to believe that the information is true or accurate; or

- (b) after a return has been furnished to the Commissioner in purported compliance with section 50C(1)—
    - (i) discovers misleading, false or inaccurate information in the return; and
    - (ii) without reasonable excuse, fails to notify the Commissioner of the discovery within a reasonable time.
- (5) A person who is a service provider commits an offence if the person, without reasonable excuse—
  - (a) fails to comply with a requirement of a notice given to it under section 51B(1AAAD) or 51BA(6); or
  - (b) obstructs or hinders an assessor in the exercise of the powers under section 51BA(2).
- (6) A person who commits an offence under subsection (1), (2), (3), (4) or (5) is liable on conviction to a fine at level 3.
- (7) A person who is a service provider engaged to carry out a reporting financial institution's obligations under section 50B(1) or (2) or 50C(1) commits an offence if the person, with intent to defraud, causes or allows the institution to provide any information that is misleading, false or inaccurate in a material particular in a return furnished under section 50C(1).
- (8) A person who commits an offence under subsection (7) is liable—
  - (a) on summary conviction to—
    - (i) a fine at level 3; and
    - (ii) imprisonment for 6 months; or
  - (b) on conviction on indictment to—
    - (i) a fine at level 5; and
    - (ii) imprisonment for 3 years.

- (9) The court may order a service provider that commits an offence under subsection (1), (2), (3) or (5), within the time specified in the order—
- (a) (for subsection (1), (2), (3) or (5)(a)) to do the act that the service provider has failed to do; or
  - (b) (for subsection (5)(b)) to allow and facilitate an assessor to exercise the powers under section 51BA(2).
- (10) A service provider commits an offence if the service provider does not comply with an order of the court under subsection (9), and is liable on conviction to a fine at level 4.

*(Added 22 of 2016 s. 10)*

**80E. Offences of directors, etc. of corporations**

If—

- (a) any of the following persons is a corporation—
  - (i) a reporting financial institution that commits an offence under section 80B(1), (5), (6) or (8);
  - (ii) a person who commits an offence under section 80B(1), (5), (6) or (8) pursuant to section 80B(10);
  - (iii) a service provider that commits an offence under section 80D(1), (2), (3), (4), (5), (7) or (10); and
- (b) the offence was committed with the consent or connivance of a director, or other officer concerned in the management, of the corporation, or any person purporting to act as such director or officer (*that person*),

the director or officer or that person, as the case requires, also commits the offence and is liable on conviction to the penalty provided for that offence.

*(Added 22 of 2016 s. 10)*

**80F. Miscellaneous provisions for certain offences relating to reporting financial institutions, etc.**

- (1) Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence under section 80B, 80C, 80D or 80E, other than an indictable offence, may be brought within 6 years after the date on which the offence was committed.
- (2) The Commissioner may compound an offence under section 80B, 80C, 80D or 80E, and may before judgment stay or compound any proceedings instituted for the offence.

*(Added 22 of 2016 s. 10)*

**80G. Offences of reporting entities in relation to country-by-country reporting**

- (1) A reporting entity commits an offence if the entity, without reasonable excuse—
  - (a) fails to comply with a requirement under—
    - (i) section 58E(1) or 58F;
    - (ii) section 58H;
    - (iii) section 58L(1); or
    - (iv) section 58L(2); or
  - (b) fails to comply with a requirement of a notice given to it under section 58L(3).
- (2) For subsection (1)(a)(i), (ii) and (iii), engaging a service provider does not in itself constitute a reasonable excuse.
- (3) A reporting entity that commits an offence under subsection (1) is liable on conviction to a fine at level 5, and the court may order the entity to do, within the time specified in the order, the act that the entity has failed to do.



- (4) In case of an offence under subsection (1)(a)(i) and (ii), the reporting entity is liable to a further fine of \$500 for every day or part of a day during which the offence continues after conviction.
- (5) If a reporting entity fails to comply with an order of the court under subsection (3), the entity commits an offence and is liable on conviction to a fine at level 6.
- (6) A reporting entity commits an offence if—
- (a) the entity—
    - (i) files, or causes or allows to be filed on its behalf, a specified document for a specified purpose and the document is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the document; or
    - (ii) in purported compliance with a requirement of a notice given to the entity under section 58L(3), provides any information that is misleading, false or inaccurate in a material particular, whether or not because anything is omitted from the information; and
  - (b) the entity—
    - (i) knows the document referred to in paragraph (a) (i), or the information referred to in paragraph (a) (ii), is misleading, false or inaccurate in a material particular;
    - (ii) is reckless as to whether the document or information is misleading, false or inaccurate in a material particular; or
    - (iii) has no reasonable ground to believe that the document or information is true or accurate.
- (7) A reporting entity commits an offence if the entity—

- (a) discovers that—
  - (i) a specified document that the entity has filed, or has caused or allowed to be filed on its behalf, for a specified purpose is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the document; or
  - (ii) any information provided, in purported compliance with a requirement of a notice given to the entity under section 58L(3), is misleading, false or inaccurate in a material particular, whether or not because anything is omitted from the information; and
- (b) without reasonable excuse, fails to notify the Commissioner of the discovery within a reasonable time.
- (8) A reporting entity that commits an offence under subsection (6) or (7) is liable on conviction to a fine at level 5.
- (9) A reporting entity commits an offence if the entity—
  - (a) with intent to defraud, files or causes or allows to be filed on its behalf, a specified document for a specified purpose and the document is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the document; or
  - (b) with intent to defraud and in purported compliance with a requirement of a notice given to the entity under section 58L(3), provides any information that is misleading, false or inaccurate in a material particular, whether or not because anything is omitted from the information.
- (10) A reporting entity that commits an offence under subsection (9) is liable—

- (a) on summary conviction to—
    - (i) a fine at level 3; and
    - (ii) imprisonment for 6 months; or
  - (b) on conviction on indictment to—
    - (i) a fine at level 5; and
    - (ii) imprisonment for 3 years.
- (11) In relation to a reporting entity that is not a corporation, this section applies to a person who acts for the entity or is responsible for the management of the entity as if references to a reporting entity were references to that person.
- (12) In relation to a reporting entity that is a permanent establishment of an enterprise, this section also applies to the enterprise as if references to a reporting entity were references to that enterprise.
- (13) In this section—
- (a) ***specified document*** (指明文件) means a return or notice; and
  - (b) a reference to filing a specified document for a specified purpose means—
    - (i) filing a return in purported compliance with section 58E(1) or 58F;
    - (ii) filing a return under section 58E(2); or
    - (iii) filing a notice in purported compliance with section 58H.

*(Added 27 of 2018 s. 21)*

**80H. Offences of service provider in relation to country-by-country reporting**

- (1) A person who is a service provider engaged by a reporting

- entity to carry out the entity's obligations commits an offence if—
- (a) where the engagement relates to obligations under section 58E(1) or 58F—the person, without reasonable excuse, fails to cause a country-by-country return to be filed as required under section 58E(1) or 58F; or
  - (b) where the engagement relates to obligations under section 58H—the person, without reasonable excuse, fails to cause a notice to be filed as required under section 58H.
- (2) A person who is a service provider engaged by a reporting entity commits an offence if—
- (a) the person files on behalf of the entity, or causes or allows the entity to file, a specified document for a specified purpose and the document is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the document; and
  - (b) the person—
    - (i) knows the document is misleading, false or inaccurate in a material particular;
    - (ii) is reckless as to whether the document is misleading, false or inaccurate in a material particular; or
    - (iii) has no reasonable ground to believe that the document is true or accurate.
- (3) A person who is a service provider engaged by a reporting entity commits an offence if the person—
- (a) discovers that a specified document that the person has filed on behalf of the entity, or has caused or allowed the entity to file, for a specified purpose is misleading, false

- or inaccurate in a material particular, whether or not because any information is omitted from the document; and
- (b) without reasonable excuse, fails to notify the Commissioner of the discovery within a reasonable time.
- (4) A person who commits an offence under subsection (1), (2) or (3) is liable on conviction to a fine at level 5.
- (5) A person who is a service provider engaged by a reporting entity commits an offence if the person, with intent to defraud, files on behalf of the entity, or causes or allows the entity to file, a specified document for a specified purpose and the document is misleading, false or inaccurate in a material particular, whether or not because any information is omitted from the document.
- (6) A person who commits an offence under subsection (5) is liable—
- (a) on summary conviction to—
- (i) a fine at level 3; and
- (ii) imprisonment for 6 months; or
- (b) on conviction on indictment to—
- (i) a fine at level 5; and
- (ii) imprisonment for 3 years.
- (7) The court may order a service provider who commits an offence under subsection (1) to do, within the time specified in the order, the act that the person has failed to do.
- (8) If a service provider fails to comply with an order of the court under subsection (7), the service provider commits an offence and is liable on conviction to a fine at level 6.
- (9) In this section—

- (a) *specified document* (指明文件) means a return or notice; and
- (b) a reference to filing a specified document for a specified purpose, in relation to a service provider engaged by a reporting entity, means—
  - (i) if the engagement relates to obligations under section 58E(1) or 58F—filing a return in purported compliance with that section;
  - (ii) if the engagement relates to filing a return under section 58E(2)—filing a return under that section; or
  - (iii) if the engagement relates to obligations under section 58H—filing a notice in purported compliance with that section.

*(Added 27 of 2018 s. 21)*

**80I. Offences of directors, etc. of reporting entities and service provider in relation to country-by-country reporting**

If—

- (a) any of the following persons is a corporation—
  - (i) a reporting entity that commits an offence under section 80G;
  - (ii) a person who commits an offence under section 80G by virtue of section 80G(11) or (12);
  - (iii) a service provider that commits an offence under section 80H; and
- (b) the offence was committed with the consent or connivance of a director, or other officer concerned in the management, of the corporation, or any person purporting to act as such director or officer (*specified person*),

the director or officer or specified person, as the case requires, also commits the offence and is liable on conviction to the penalty provided for that offence.

*(Added 27 of 2018 s. 21)*

**80J. Miscellaneous provisions for certain offences relating to country-by-country reporting**

- (1) Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence under section 80G, 80H or 80I, other than an indictable offence, may be brought within 6 years after the date on which the offence was committed.
- (2) The Commissioner may compound an offence under section 80G, 80H or 80I, and may, before judgment, stay or compound any proceedings instituted for the offence.

*(Added 27 of 2018 s. 21)*

**81. Breach of secrecy and other matters to be offences**

- (1) Any person who— *(Amended 4 of 2010 s. 14)*
  - (a) acts under this Ordinance without taking an oath of secrecy as required by section 4(2); or
  - (b) acts contrary to the provisions of section 4(1) or to an oath taken under section 4(2); or
  - (c) aids, abets, or incites any other person to act contrary to the provisions of section 4, *(Amended 49 of 1956 s. 62)*commits an offence and is liable on conviction to a fine at level 5. *(Amended 43 of 1975 s. 7; L.N. 338 of 1995; 4 of 2010 s. 14)*
- (2) Proceedings in respect of an offence under this section must not be commenced after 2 years from the commission of the offence. *(Added 4 of 2010 s. 14)*



- (3) Subsection (2) applies only to an offence committed on or after the commencement\* of the Inland Revenue (Amendment) (No. 2) Ordinance 2010 (4 of 2010). (*Added 4 of 2010 s. 14*)

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Editorial Note:

\* Commencement date: 12 February 2010.

**82. Penal provisions relating to fraud, etc.**

- (1) Any person who wilfully with intent to evade or to assist any other person to evade tax—
- (a) omits from a return made under this Ordinance any sum which should be included; or (*Amended 30 of 1950 Schedule*)
  - (b) makes any false statement or entry in any return made under this Ordinance; or
  - (c) makes any false statement in connection with a claim for any deduction or allowance under this Ordinance; or
  - (d) signs any statement or return furnished under this Ordinance without reasonable grounds for believing the same to be true; or
  - (e) gives any false answer whether verbally or in writing to any question or request for information asked or made in accordance with the provisions of this Ordinance; or
  - (f) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or records; or
  - (g) makes use of any fraud, art, or contrivance, whatsoever or authorizes the use of any such fraud, art, or contrivance,

commits an offence. (*Amended 49 of 1956 s. 63; 40 of 1972 s. 12; L.N. 411 of 1984; 50 of 1991 s. 4; L.N. 338 of 1995; 4 of 2010 s. 15*)

- (1AA) A person commits an offence if—
- (a) the person wilfully, with intent to evade tax or to assist any other person to evade tax—
    - (i) makes an incorrect statement, or provides incorrect information, in connection with any mutual agreement procedure or arbitration referred to in section 50AAB; or
    - (ii) omits anything from a statement or information made or provided in connection with the procedure or arbitration; and
  - (b) the statement or information referred to in paragraph (a)(i), or the thing referred to in paragraph (a)(ii), is material to the case or issue to which the procedure or arbitration relates. (*Added 27 of 2018 s. 22*)
- (1AAB) A person commits an offence if—
- (a) the person wilfully, with intent to evade tax or to assist any other person to evade tax, makes an incorrect statement or provides incorrect information in connection with the following claim or application, or omits anything from a statement made or information provided in connection with the following claim or application—
    - (i) the person's claim for relief under section 50AAM, 50AAN or 50AAO; or
    - (ii) the person's application for an advance pricing arrangement under section 50AAP(1); and

- (b) the statement or information that is incorrect, or thing that is omitted, is material to the claim or application. *(Added 27 of 2018 s. 22)*
- (1AAC) A person commits an offence if—
- (a) the person either—
- (i) wilfully, with intent to evade tax or to assist any other person to evade tax and in purported compliance with a requirement under section 50AAS, provides incorrect information in relation to an advance pricing arrangement; or
- (ii) wilfully, with intent to evade tax or to assist any other person to evade tax, omits anything from the information provided, in relation to an advance pricing arrangement, in purported compliance with the requirement; and
- (b) the information referred to in paragraph (a)(i), or the thing referred to in paragraph (a)(ii), is material to the arrangement. *(Added 27 of 2018 s. 22)*
- (1A) A person who commits an offence under subsection (1), (1AA), (1AAB) or (1AAC) is liable— *(Amended 27 of 2018 s. 22)*
- (a) on summary conviction to—
- (i) a fine at level 3;
- (ii) a further fine of treble the undercharged amount; and
- (iii) imprisonment for 6 months; and
- (b) on indictment to—
- (i) a fine at level 5;
- (ii) a further fine of treble the undercharged amount; and

- (iii) imprisonment for 3 years. (*Added 4 of 2010 s. 15. Amended 27 of 2018 s. 22*)
- (2) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder.
- (3) In this section—
- undercharged amount*** (少徵稅款), in relation to an offence, means the amount of tax that has been undercharged as a result of the offence, or would have been so undercharged had the offence not been detected. (*Added 27 of 2018 s. 22*)

#### **82A. Additional tax in certain cases**

- (1) Any person who without reasonable excuse—
- (a) makes an incorrect return by omitting or understating anything in respect of which he is required by this Ordinance to make a return, either on his behalf or on behalf of another person; or (*Amended 1 of 2010 s. 8*)
  - (b) makes an incorrect statement in connection with a claim for any deduction or allowance under this Ordinance; or
  - (c) gives any incorrect information in relation to any matter or thing affecting his own liability (or the liability of any other person) to tax; or (*Amended 1 of 2010 s. 8*)
  - (d) fails to comply with the requirements of a notice given to him under section 51(1) or (2A); or
  - (e) fails to comply with section 51(2),
- shall, if no prosecution under section 80(2) or 82(1) has been instituted in respect of the same facts, be liable to be assessed under this section to additional tax of an amount not exceeding treble the undercharged amount. (*Amended 43 of 1975 s. 8; 43 of 1989 s. 28; 27 of 2018 s. 23*)
- (1A) If—

- (a) a person, without reasonable excuse, fails to comply with section 50AA(5); and
- (b) no prosecution for an offence under section 80 has been instituted in respect of the same facts,

the person is liable to be assessed under this section to additional tax of an amount not exceeding the undercharged amount. *(Added 27 of 2018 s. 23)*

(1B) If—

- (a) a person, without reasonable excuse—
  - (i) makes an incorrect statement, or provides incorrect information, in connection with any mutual agreement procedure or arbitration referred to in section 50AAB; or
  - (ii) omits anything from a statement or information made or provided in connection with the procedure or arbitration;
- (b) the statement or information referred to in paragraph (a)(i), or the thing referred to in paragraph (a)(ii), is material to the case or issue to which the procedure or arbitration relates; and
- (c) no prosecution for an offence under section 80 or 82 has been instituted in respect of the same facts,

the person is liable to be assessed under this section to additional tax of an amount not exceeding treble the undercharged amount. *(Added 27 of 2018 s. 23)*

(1C) Subsection (1D) applies if—

- (a) an assessment or additional assessment made on a person under section 50AAF(5) or 50AAK(9) has become final and conclusive under section 70 (the assessment or additional assessment is referred to as the *relevant assessment*); and

- (b) the amount of the person's income as assessed under section 50AAF(5) or 50AAK(9) to which the relevant assessment relates (*the person's assessed income*) is larger than the amount of the person's income as stated in the person's tax return. (*Added 27 of 2018 s. 23*)
- (1D) The person is liable to be assessed to additional tax under this section of an amount not exceeding the difference between—
- (a) the amount of tax assessed on the basis of the amount of the person's assessed income; and
- (b) the amount of tax that would have been assessed if the amount of the person's income as stated in the person's tax return had been accepted for the purpose of assessment. (*Added 27 of 2018 s. 23*)
- (1E) Subsection (1F) applies if—
- (a) an assessment made on a person for a year of assessment (*subject year*) has become final and conclusive under section 70 and the assessment has taken into account the person's loss for an earlier year of assessment (*year of loss*) as computed under section 50AAF(5) or 50AAK(9) (*the person's computed loss*); and
- (b) the amount of the person's computed loss is smaller than the amount of the person's loss as stated in the person's tax return for the year of loss. (*Added 27 of 2018 s. 23*)
- (1F) The person is liable to be assessed to additional tax under this section for the subject year of an amount not exceeding the difference between—
- (a) the amount of tax assessed taking into account the amount of the person's computed loss; and
- (b) the amount of tax that would have been assessed if the amount of the person's loss as stated in the person's

tax return for the year of loss had been accepted for the purpose of assessment. (*Added 27 of 2018 s. 23*)

- (1G) A person is not liable to be assessed to additional tax under subsection (1D) or (1F) if the person proves that the person has made reasonable efforts to determine the arm's length amount under section 50AAF(1) or 50AAK(2). (*Added 27 of 2018 s. 23*)
- (1H) If—
- (a) any of the following applies—
    - (i) a person, without reasonable excuse, fails to comply with a requirement under section 50AAM(11), 50AAN(3) or 50AAO(3);
    - (ii) both—
      - (A) a person, without reasonable excuse, makes an incorrect statement or provides incorrect information in connection with the following claim or application, or omits anything from a statement made or information provided in connection with the following claim or application—
        - (I) the person's claim for relief under section 50AAM, 50AAN or 50AAO; or
        - (II) the person's application for an advance pricing arrangement under section 50AAP(1); and
      - (B) the statement or information that is incorrect, or thing that is omitted, is material to the claim or application;
    - (iii) a person, without reasonable excuse, fails to comply with a requirement under section 50AAS;
    - (iv) both—



- (A) a person either—
- (I) without reasonable excuse and in purported compliance with a requirement under section 50AAS, provides incorrect information in relation to an advance pricing arrangement; or
  - (II) without reasonable excuse, omits anything from information provided, in relation to an advance pricing arrangement, in purported compliance with the requirement; and
- (B) the information referred to in sub-subparagraph (A)(I), or the thing referred to in sub-subparagraph (A)(II), is material to the arrangement; and
- (b) no prosecution for an offence under section 80 or 82 has been instituted in respect of the same facts,
- the person is liable to be assessed under this section to additional tax of an amount not exceeding the undercharged amount. *(Added 27 of 2018 s. 23)*
- (2) Additional tax shall be payable in addition to any amount of tax payable under an assessment, or an additional assessment under section 60.
- (3) An assessment of additional tax may be made only by the Commissioner personally or a deputy commissioner personally (each is referred to as the *specified authority*). *(Amended 48 of 1995 s. 12; 27 of 2018 s. 23)*
- (4) Before making an assessment of additional tax, the specified authority must—
- (a) give notice to the person that the specified authority proposes to assess additional tax and the notice must—

- (i) inform the person of the following—
  - (A) for additional tax to be assessed under subsection (1)—the alleged incorrect return, incorrect statement or incorrect information or alleged failure to comply with a requirement of the notice given to the person under section 51(1) or (2A) or alleged failure to comply with section 51(2);
  - (B) for additional tax to be assessed under subsection (1A)—the alleged failure to comply with section 50AA(5);
  - (C) for additional tax to be assessed under subsection (1B)—the alleged incorrect statement, incorrect information or omission from any statement or information;
  - (D) for additional tax to be assessed under subsection (1D) or (1F)—the assessment or additional assessment made or computation of loss issued or revised under section 50AAF(5) or 50AAK(9);
  - (E) for additional tax to be assessed under subsection (1H)—the alleged failure to comply with a requirement under section 50AAM(11), 50AAN(3), 50AAO(3) or 50AAS or the alleged incorrect statement, incorrect information or omission from any statement or information;
- (ii) include a statement that, with regard to the proposed assessment on the person of additional tax, the person has the right—
  - (A) to submit written representations to the specified authority; and

- (B) for additional tax to be assessed under subsection (1D) or (1F)—to submit to the specified authority written representations and evidence for the purposes of subsection (1G); and
- (iii) specify the date, which must not be earlier than 21 days from the date of service of the notice, by which representations and evidence that the person may wish to submit under subparagraph (ii) must be received by the specified authority; and
- (b) consider and take into account any representations and evidence that the specified authority may receive under paragraph (a). *(Replaced 27 of 2018 s. 23)*
- (4A) Despite subsection (4), if the specified authority is of the opinion that the person the authority proposes to assess to additional tax under this section is about to leave Hong Kong, the authority may assess the person to additional tax under this section without giving the notice otherwise required to be given under subsection (4)(a). *(Replaced 27 of 2018 s. 23)*
- (5) Notice of intention to assess additional tax and notice of an assessment to additional tax shall be given in the same manner as is provided in section 58(2) in respect of a notice of assessment under section 62.
- (6) Where a person who is liable to be assessed to additional tax has died, an assessment to additional tax may be made on his executor, and the additional tax shall be recovered as a debt due from and payable out of the deceased person's estate.
- (7) A person who has been assessed to additional tax under this section is not liable to be charged on the same facts with an offence under section 80 or 82. *(Amended 27 of 2018 s. 23)*

(8) Section 26 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section. *(Added 10 of 2013 s. 16)*

(9) In this section—

***undercharged amount*** (少徵稅款)—

(a) for additional tax assessed because of any incorrect return, statement or information or an omission from any statement or information—means the amount of tax that—

(i) has been undercharged as a result of the incorrect return, statement or information or omission; or

(ii) would have been so undercharged if the return, statement or information had been accepted as correct or the omission had not been detected; or

(b) for additional tax assessed because of a failure to comply with a provision of this Ordinance or with a notice under the provision—means the amount of tax that has been undercharged as a result of the failure, or would have been so undercharged if the failure had not been detected. *(Added 27 of 2018 s. 23)*

*(Added 26 of 1969 s. 38)*

**82B. Appeals against assessment to additional tax to Board of Review**

(1) Any person who has been assessed to additional tax under section 82A may within—

(a) 1 month after the notice of assessment is given to him; or

(b) such further period as the Board of Review may allow under subsection (1A), *(Amended 17 of 2015 s. 11)*

either himself or by his authorized representative give notice of appeal to the Board; but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by—

- (i) a copy of the notice of assessment;
  - (ii) a statement of the grounds of appeal from the assessment;
  - (iii) a copy of the notice of intention to assess additional tax given under section 82A(4), if any such notice was given; and
  - (iv) a copy of any written representations made under section 82A(4). (*Replaced 12 of 2004 s. 18*)
- (1A) If the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1). This subsection shall apply to an appeal relating to any assessment in respect of which notice of assessment is given on or after the commencement\* of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004). (*Added 12 of 2004 s. 18*)
- (2) On an appeal against assessment to additional tax, it shall be open to the appellant to argue that—
- (a) he is not liable to additional tax;
  - (b) the amount of additional tax assessed on him exceeds the amount for which he is liable under section 82A;
  - (c) the amount of additional tax, although not in excess of that for which he is liable under section 82A, is excessive having regard to the circumstances.

- (3) Sections 66(2) and (3), 68, 68AA, 68AAB, 68A, 69 and 70 shall, so far as they are applicable, have effect with respect to appeals against additional tax as if such appeals were against assessments to tax other than additional tax. *(Amended 4 of 2010 s. 16; 17 of 2015 s. 11)*

*(Added 26 of 1969 s. 38)*

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Editorial Note:

\* Commencement date: 25 June 2004.

**83. Tax payable notwithstanding proceedings**

The institution of proceedings for, or the imposition of, a penalty, fine, or term of imprisonment under this Part shall not relieve any person from liability to assessment or payment of any tax for which he is or may be liable.

*(Amended 49 of 1956 s. 64)*

**84. Prosecutions, sanction of Commissioner**

- (1) No prosecution in respect of an offence under section 80 or 82 may be commenced except at the instance of or with the sanction of the Commissioner. *(Amended 26 of 1969 s. 39)*
- (2) Nothing in this section shall derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences. *(Added 26 of 1969 s. 39. Amended L.N. 362 of 1997)*

## Part 15

### General

#### 85. Power to make rules

- (1) The Board of Inland Revenue may from time to time make rules generally for carrying out the provisions of this Ordinance and for the ascertainment and determination of any class of income or profits. (*Amended 30 of 1950 Schedule*)
- (2) Without prejudice to the generality of the foregoing power such rules may—
  - (a) prescribe the procedure to be followed on application for refunds and relief;
  - (b) provide for any matter which by this Ordinance is to be or may be prescribed; (*Amended 35 of 1965 s. 41*)
  - (c) for the purpose of any of the provisions of this Ordinance, prescribe what is or is deemed to be included in, or excluded from, the expression ***machinery or plant*** (機械或工業裝置) and the expression ***implement, utensil or article*** (工具、器具或物品); (*Added 35 of 1965 s. 41. Amended 63 of 1997 s. 8*)
  - (d) prescribe any procedure to be followed in relation to an appeal to the Board of Review. (*Added 63 of 1997 s. 8*)
- (3) Such rules may prescribe fines recoverable on summary conviction for any contravention thereof or failure to comply therewith not exceeding in each case a fine at level 1. (*Amended L.N. 338 of 1995*)



- (4) All such rules made by the Board of Inland Revenue shall be submitted to the Chief Executive, and shall be subject to the approval of the Legislative Council. *(Amended 12 of 1999 s. 3)*

**86. Board of Inland Revenue to specify forms**

- (1) The Board of Inland Revenue may specify any forms or the form of any forms which may be necessary for carrying this Ordinance into effect. *(Amended 39 of 1969 s. 10; 8 of 1983 s. 20; 5 of 2003 s. 14)*
- (2) Where a specimen of any form bears an endorsement, purporting to be signed by the secretary to the Board of Inland Revenue, to the effect that the form is specified by the Board of Inland Revenue, it shall be presumed, until the contrary is proved, that the form is a form specified by the Board of Inland Revenue under subsection (1). *(Added 8 of 1983 s. 20)*

**87. General power of Chief Executive in Council to exempt**

The Chief Executive in Council may by order exempt any person, office or institution from payment of the whole or any portion of any tax chargeable under this Ordinance.

*(Amended 12 of 1999 s. 3)*

**87A.** *(Repealed 76 of 1993 s. 9)*

**88. Exemption of charitable bodies**

Notwithstanding anything to the contrary in this Ordinance contained there shall be exempt and there shall be deemed always to have been exempt from tax any charitable institution or trust of a public character:

Provided that where a trade or business is carried on by any such institution or trust the profits derived from such trade or business

shall be exempt and shall be deemed to have been exempt from tax only if such profits are applied solely for charitable purposes and are not expended substantially outside Hong Kong and either— (*Amended 7 of 1986 s. 12*)

- (a) the trade or business is exercised in the course of the actual carrying out of the expressed objects of such institution or trust; or
- (b) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution or trust is established.

(*Added 3 of 1949 s. 18. Amended 30 of 1950 Schedule; 49 of 1956 s. 66; 26 of 1969 s. 40; 65 of 1970 s. 10*)

#### **88A. Advance rulings**

- (1) The Commissioner may, on an application made by a person in accordance with Part 1 of Schedule 10, make a ruling on any of the matters specified in that Part in accordance with that Part.
- (2) Part 1 of Schedule 10 shall apply to and in connection with an application under subsection (1) and any ruling made by the Commissioner under that subsection.
- (3) The fees specified in Part 2 of Schedule 10 shall be payable in respect of any application under subsection (1).
- (4) If by reason of section 2 or 3 of Part 1 of Schedule 10, the Commissioner does not make a ruling under subsection (1), any fees paid under subsection (3) shall be refunded to the applicant.
- (5) The Commissioner may in exceptional circumstances at his discretion waive in whole or in part any fees payable by an applicant under subsection (3).

- (6) Any fees due and payable under subsection (3) shall be recoverable as a civil debt due to the Government.
- (7) The Secretary for Financial Services and the Treasury may by order amend Schedule 10. (*Amended L.N. 106 of 2002*)
- (8) No liability shall rest upon the Government, the Commissioner or any other public officer in respect of the bona fide exercise of any power or performance of any duty under and in accordance with Schedule 10.
- (9) In this section and in Schedule 10, **applicant** (申請人) means the person making an application under subsection (1).

*(Added 32 of 1998 s. 30. Amended E.R. 1 of 2012)*

**88B. Notice of no objection in respect of an application to deregister a private company under section 750 of the Companies Ordinance (Cap. 622)\***

- (1) On a request made by a person who is entitled to apply for the deregistration of a private company under section 750 of the Companies Ordinance (Cap. 622), the Commissioner may issue a written notice stating that he has no objection to the company being deregistered. (*Amended 28 of 2012 ss. 912 & 920*)
- (2) The fee specified in Schedule 11 shall be payable in respect of a request under subsection (1).
- (3) The Secretary for Financial Services and the Treasury may by order amend Schedule 11. (*Amended L.N. 106 of 2002*)

*(Added 30 of 1999 s. 44)*

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Editorial Note:

\* (*Amended 28 of 2012 ss. 912 & 920*)

**89. Transitional provisions**

- (1) *(Repealed 12 of 2004 s. 20)*
- (2) In relation to amendments made by the Inland Revenue (Amendment) (No. 2) Ordinance 1993 (52 of 1993)—
  - (a) it is declared that the amendments shall be without prejudice to the provisions of Part 14. *(Amended 4 of 2010 s. 17)*
  - (b) *(Repealed 4 of 2010 s. 17)*
- (3) The transitional provisions of Schedule 9 shall have effect in relation to recognized occupational retirement schemes approved under section 87A prior to the repeal of that section by the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993). *(Added 76 of 1993 s. 10)*
- (4) The transitional provisions of Schedule 12 shall have effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment 2001/02. *(Added 29 of 2001 s. 2)*
- (5) Schedule 14 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment 2005/06. *(Added 8 of 2005 s. 6)*
- (6) Schedule 21 has effect in relation to the amendments made by the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011). *(Added 4 of 2011 s. 5)*
- (7) Schedule 22 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2011. *(Added 9 of 2011 s. 3)*
- (8) Schedule 24 sets out transitional provisions that have effect for the purposes of the Inland Revenue (Amendment) (No. 3) Ordinance 2011 (21 of 2011). *(Added 21 of 2011 s. 8)*
- (9) Schedule 25 has effect in relation to the following persons—

- (a) a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2012 or the year of assessment commencing on 1 April 2013;
  - (b) a person liable to pay provisional profits tax in respect of the year of assessment commencing on 1 April 2012 or the year of assessment commencing on 1 April 2013.  
*(Added 21 of 2012 s. 5)*
- (10) Schedule 27 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2013. *(Added 5 of 2013 s. 3)*
- (11) Schedule 29 sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 (10 of 2013). *(Added 10 of 2013 s. 17)*
- (12) Schedule 30 has effect in relation to the following persons—
- (a) a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2014 or the year of assessment commencing on 1 April 2015;
  - (b) a person liable to pay provisional profits tax in respect of the year of assessment commencing on 1 April 2014 or the year of assessment commencing on 1 April 2015.  
*(Added 3 of 2014 s. 8)*
- (13) Schedule 31 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2014. *(Added 10 of 2014 s. 3)*
- (14) Schedule 33 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2015. *(Added 10 of 2015 s. 3)*
- (15) Schedule 35 sets out transitional provisions relating to appeals against decisions of the Board of Review made before the

commencement date of the Inland Revenue (Amendment) (No. 3) Ordinance 2015 (17 of 2015). *(Added 17 of 2015 s. 12)*

- (16) Schedule 36 sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue (Amendment) (No. 2) Ordinance 2016 (12 of 2016). *(Added 12 of 2016 s. 17)*
- (17) Schedule 37 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2016. *(Added 8 of 2016 s. 3)*
- (18) Schedule 39 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2017. *(Added 3 of 2017 s. 4)*
- (19) Schedule 41 sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue (Amendment) (No. 3) Ordinance 2017 (9 of 2017). *(Added 9 of 2017 s. 14)*
- (20) Schedule 42 has effect in relation to a person liable to pay provisional profits tax in respect of the year of assessment commencing on 1 April 2018. *(Added 13 of 2018 s. 8)*
- (21) Schedule 44 sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue (Amendment) (No. 6) Ordinance 2018 (27 of 2018). *(Added 27 of 2018 s. 34)*

*(Amended E.R. 1 of 2012)*

**90. Reduction of taxes for year of assessment 2007/08**

Schedule 18 contains provisions relating to the reduction of property tax, salaries tax, profits tax and tax under personal assessment for the year of assessment commencing on 1 April 2007.

*(Added 21 of 2008 s. 6)*

**91. Reduction of taxes for year of assessment 2008/09**

Schedule 19 contains provisions relating to the reduction of salaries tax and tax under personal assessment for the year of assessment commencing on 1 April 2008.

*(Added 8 of 2009 s. 2)*

**92. Reduction of taxes for year of assessment 2009/10**

Schedule 20 contains provisions relating to the reduction of salaries tax and tax under personal assessment for the year of assessment commencing on 1 April 2009.

*(Added 10 of 2010 s. 7)*

**93. Reduction of taxes for year of assessment 2010/11**

Schedule 23 contains provisions relating to the reduction of salaries tax and tax under personal assessment for the year of assessment commencing on 1 April 2010.

*(Added 9 of 2011 s. 4)*

**94. Reduction of taxes for year of assessment 2011/12**

Schedule 26 contains provisions relating to the reduction of salaries tax, profits tax and tax under personal assessment for the year of assessment commencing on 1 April 2011.

*(Added 21 of 2012 s. 6)*

**95. Reduction of taxes for year of assessment 2012/13**

Schedule 28 contains provisions relating to the reduction of salaries tax, profits tax and tax under personal assessment for the year of assessment commencing on 1 April 2012.

*(Added 5 of 2013 s. 4)*



**96. Reduction of taxes for year of assessment 2013/14**

Schedule 32 contains provisions relating to the reduction of salaries tax, profits tax and tax under personal assessment for the year of assessment commencing on 1 April 2013.

*(Added 10 of 2014 s. 4)*

**97. Reduction of taxes for year of assessment 2014/15**

Schedule 34 contains provisions relating to the reduction of salaries tax, profits tax and tax under personal assessment for the year of assessment commencing on 1 April 2014.

*(Added 10 of 2015 s. 4)*

**98. Reduction of taxes for year of assessment 2015/16**

Schedule 38 contains provisions relating to the reduction of salaries tax, profits tax and tax under personal assessment for the year of assessment commencing on 1 April 2015.

*(Added 8 of 2016 s. 4)*

**99. Reduction of taxes for year of assessment 2016/17**

Schedule 40 contains provisions relating to the reduction of salaries tax, profits tax and tax under personal assessment for the year of assessment commencing on 1 April 2016.

*(Added 3 of 2017 s. 5)*

**100. Reduction of taxes**

- (1) The amount of a person's salaries tax charged under Part 3 for a specified year of assessment is reduced by an amount equal to the lesser of—

- 
- (a) the prescribed percentage of the amount of the tax as computed under section 13(1) read together with section 13(2), as in force for the year of assessment; and
    - (b) the prescribed amount.
  - (2) The amount of a person's profits tax charged under Part 4 for a specified year of assessment is reduced by an amount equal to the lesser of—
    - (a) the prescribed percentage of the amount of the tax as computed under section 14(2) read together with sections 14A, 14B, 14D, 14H and 14J, as in force for the year of assessment; and
    - (b) the prescribed amount.
  - (3) For a trade, profession or business carried on by a partnership, the reduction under subsection (2) applies to the tax chargeable on the whole of the net assessable profits of the trade, profession or business, whether or not any of the partners has elected to be assessed in accordance with Part 7 for the specified year of assessment.
  - (4) The amount of tax charged under Part 7 for a specified year of assessment is reduced by an amount equal to the lesser of—
    - (a) the prescribed percentage of the amount of the tax as computed under section 43(1) read together with section 43(1A), as in force for the year of assessment; and
    - (b) the prescribed amount.
  - (5) For the purposes of section 43(2B), in ascertaining the portion of tax to be charged on each spouse in a specified year of assessment, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (4) for the year of assessment.
  - (6) In this section—

***prescribed amount*** (訂明款額) and ***prescribed percentage*** (訂明百分率), in relation to a specified year of assessment, mean the amount and percentage specified in column 2 of Schedule 43 opposite to, and for the purposes of, the provisions of this section specified in column 1 of that Schedule, for the specified year of assessment;

***specified year of assessment*** (指明課稅年度) means a year of assessment specified in Schedule 43.

*(Added 20 of 2018 s. 9)*

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## Schedule 1

[ss. 2(1), 14A(1) & 19CA(4)]

*(Amended 4 of 2011 s. 6; 13 of 2018 s. 9)*

### Standard Rate

For the years of assessment 1947/48 to  
1949/50 inclusive — 10%.

*(Amended 49 of 1956 s. 67)*

For the years of assessment 1950/51 to  
1965/66 inclusive — 12 1/2%.

*(Amended 15 of 1966 s. 4)*

For the years of assessment 1966/67 to  
1983/84 inclusive — 15%.

*(Added 15 of 1966 s. 4. Amended 36 of 1984 s. 7)*

For the years of assessment 1984/85 to  
1986/87 inclusive — 17%.

*(Added 36 of 1984 s. 7. Amended 28 of 1987 s. 8)*

For the year of assessment 1987/88 — 16 1/2%.

*(Added 28 of 1987 s. 8. Amended 28 of 1988 s. 7)*

For the year of assessment 1988/89 — 15 1/2%.

*(Added 28 of 1988 s. 7. Amended 17 of 1989 s. 20)*

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For the years of assessment 1989/90 to  
2002/03 inclusive — 15%.

*(Added 17 of 1989 s. 20. Amended 24 of 2003 s. 9)*

For the year of assessment 2003/04 — 15 1/2%.

*(Added 24 of 2003 s. 9)*

For the years of assessment 2004/05 to  
2007/08 inclusive — 16%.

*(Added 24 of 2003 s. 9. Amended 21 of 2008 s. 7)*

For the year of assessment 2008/09 and for  
each year after that year — 15%.

*(Added 21 of 2008 s. 7)*

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## Schedule 2

[ss. 13 & 43(1)]

*(Format changes—E.R. 3 of 2017)*

### Rates

For the years of assessment 1947/48 to 1949/50 inclusive

*(Amended 49 of 1956 s. 68)*

	Second Column	Third Column
(a)	Upon the first \$5,000	1/4 standard rate
(b)	Upon the next \$5,000	1/4 " "
(c)	— do —	3/4 " "
(d)	— do —	The full standard rate
(e)	— do —	1 1/4 standard rate
(f)	— do —	1 1/2 " "
(g)	— do —	1 3/4 " "
(h)	Upon the remainder	Twice the standard rate

Note:— Where a person is liable to the appropriate tax for a part only of any year of assessment the amounts in the Second Column against items (a) to (g) will be reduced in the proportion which the number of days he is so liable bears to the number of days in that year of assessment.

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For the years of assessment 1950/51 to 1965/66 inclusive

	Second Column	Third Column
(a)	Upon the first \$5,000	1/5 standard rate
(b)	Upon the next \$5,000	2/5 " "
(c)	— do —	3/5 " "
(d)	— do —	4/5 " "
(e)	— do —	The full standard rate
(f)	— do —	1 1/5 standard rate
(g)	— do —	1 2/5 " "
(h)	— do —	1 3/5 " "
(i)	— do —	1 4/5 " "
(j)	Upon the remainder	Twice the standard rate

*(Added 30 of 1950 Schedule. Amended 37 of 1950 Schedule; 15 of 1966 s. 5)*

For the years of assessment 1966/67 to 1971/72 inclusive

	Second Column	Third Column
(a)	Upon the first \$5,000	2 3/4%
(b)	Upon the next \$5,000	5 1/2%
(c)	— do —	8 1/4%
(d)	— do —	11%



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	Second Column	Third Column
(e)	— do —	14%
(f)	— do —	17%
(g)	— do —	20%
(h)	— do —	23%
(i)	— do —	26%
(j)	Upon the remainder	30%

*(Added 15 of 1966 s. 5. Amended 40 of 1972 s. 2)*

For the years of assessment 1972/73

	Second Column	Third Column
(a)	Upon the first \$5,000	2 1/2%
(b)	Upon the next \$5,000	5%
(c)	— do —	7 1/2%
(d)	— do —	10%
(e)	— do —	12 1/2%
(f)	— do —	15%
(g)	— do —	17 1/2%
(h)	— do —	20%
(i)	— do —	22 1/2%
(j)	— do —	25%
(k)	— do —	27 1/2%
(l)	Upon the remainder	30%

*(Added 26 of 1972 s. 2. Amended 33 of 1973 s. 5)*

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For the years of assessment 1973/74 to 1977/78 inclusive

	Second Column	Third Column
(a)	Upon the first \$10,000	5%
(b)	Upon the next \$10,000	10%
(c)	— do —	15%
(d)	— do —	20%
(e)	— do —	25%
(f)	Upon the remainder	30%

*(Added 33 of 1973 s. 5. Amended 29 of 1979 s. 3; L.N. 137 of 1981)*

For the years of assessment 1978/79 to 1984/85 inclusive

	Second Column	Third Column
(a)	Upon the first \$10,000	5%
(b)	Upon the next \$10,000	10%
(c)	— do —	15%
(d)	— do —	20%
(e)	Upon the remainder	25%

*(Added 29 of 1979 s. 3. Amended 21 of 1985 s. 3)*

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For the years of assessment 1985/86 to 1986/87 inclusive

Second Column	Third Column
(a) Upon the first \$10,000	5%
(b) Upon the next \$10,000	10%
(c) — do —	15%
(d) Upon the next \$20,000	20%
(e) Upon the remainder	25%

*(Added 21 of 1985 s. 3. Amended 28 of 1987 s. 9)*

For the year of assessment 1987/88

Second Column	Third Column
(a) Upon the first \$10,000	5%
(b) Upon the next \$10,000	10%
(c) Upon the next \$20,000	15%
(d) Upon the next \$20,000	20%
(e) Upon the remainder	25%

*(Added 28 of 1987 s. 9. Amended 28 of 1988 s. 8)*

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For the years of assessment 1988/89 and 1989/90

	Second Column	Third Column
(a)	Upon the first \$10,000	3%
(b)	Upon the next \$10,000	6%
(c)	— do —	9%
(d)	— do —	12%
(e)	— do —	15%
(f)	— do —	18%
(g)	— do —	21%
(h)	Upon the remainder	25%

*(Added 28 of 1988 s. 8. Amended 30 of 1990 s. 5)*

For the year of assessment 1990/91

	Second Column	Third Column
(a)	Upon the first \$10,000	2%
(b)	Upon the next \$10,000	4%
(c)	— do —	9%
(d)	— do —	12%
(e)	— do —	15%
(f)	— do —	18%
(g)	— do —	21%

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Second Column	Third Column
(h) Upon the remainder	25%

*(Added 30 of 1990 s. 5. Amended 42 of 1991 s. 2; E.R. 3 of 2017)*

For the years of assessment 1991/92 and 1992/93

Second Column	Third Column
(a) Upon the first \$20,000	2%
(b) Upon the next \$20,000	9%
(c) Upon the next \$20,000	17%
(d) Upon the remainder	25%

*(Added 42 of 1991 s. 2. Amended 28 of 1993 s. 2)*

For the year of assessment 1993/94

Second Column	Third Column
(a) Upon the first \$20,000	2%
(b) Upon the next \$30,000	9%
(c) Upon the next \$30,000	17%
(d) Upon the remainder	25%

*(Added 28 of 1993 s. 2. Amended 37 of 1994 s. 6)*

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For the years of assessment 1994/95 to 1996/97 inclusive

Second Column	Third Column
(a) Upon the first \$20,000	2%
(b) Upon the next \$30,000	9%
(c) Upon the next \$30,000	17%
(d) Upon the remainder	20%

*(Added 37 of 1994 s. 6. Amended 42 of 1997 s. 4)*

For the year of assessment 1997/98

Second Column	Third Column
(a) Upon the first \$30,000	2%
(b) Upon the next \$30,000	8%
(c) Upon the next \$30,000	14%
(d) Upon the remainder	20%

*(Added 42 of 1997 s. 4. Amended 31 of 1998 s. 20)*

For the years of assessment 1998/99 to 2002/03 inclusive

Second Column	Third Column
(a) Upon the first \$35,000	2%

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Second Column	Third Column
(b) Upon the next \$35,000	7%
(c) Upon the next \$35,000	12%
(d) Upon the remainder	17%

*(Added 31 of 1998 s. 20. Amended 24 of 2003 s. 10)*

For the year of assessment 2003/04

Second Column	Third Column
(a) Upon the first \$32,500	2%
(b) Upon the next \$32,500	7 1/2%
(c) Upon the next \$32,500	13%
(d) Upon the remainder	18 1/2%

*(Added 24 of 2003 s. 10)*

For the years of assessment of 2004/05 and 2005/06

Second Column	Third Column
(a) Upon the first \$30,000	2%
(b) Upon the next \$30,000	8%
(c) Upon the next \$30,000	14%
(d) Upon the remainder	20%

*(Added 24 of 2003 s. 10. Amended 13 of 2006 s. 3)*



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For the year of assessment 2006/07

Second Column	Third Column
(a) Upon the first \$30,000	2%
(b) Upon the next \$30,000	7%
(c) Upon the next \$30,000	13%
(d) Upon the remainder	19%

*(Added 13 of 2006 s. 3. Amended 10 of 2007 s. 6)*

For the year of assessment 2007/08

Second Column	Third Column
(a) Upon the first \$35,000	2%
(b) Upon the next \$35,000	7%
(c) Upon the next \$35,000	12%
(d) Upon the remainder	17%

*(Added 10 of 2007 s. 6. Amended 21 of 2008 s. 8)*

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For the years of assessment 2008/09 to 2016/17 inclusive

Second Column	Third Column
(a) Upon the first \$40,000	2%
(b) Upon the next \$40,000	7%
(c) Upon the next \$40,000	12%
(d) Upon the remainder	17%

*(Added 21 of 2008 s. 8. Amended 3 of 2017 s. 6)*

For the year of assessment 2017/18

Second Column	Third Column
(a) On the first \$45,000	2%
(b) On the next \$45,000	7%
(c) On the next \$45,000	12%
(d) On the remainder	17%

*(Added 3 of 2017 s. 6. Amended 20 of 2018 s. 10)*

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For the year of assessment 2018/19 and  
for each year after that year

Second Column	Third Column
(a) On the first \$50,000	2%
(b) On the next \$50,000	6%
(c) On the next \$50,000	10%
(d) On the next \$50,000	14%
(e) On the remainder	17%

*(Added 20 of 2018 s. 10)*

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## **Schedule 3**

[s. 16(2)(b) & (6)]

### **Public Utility Companies**

The Hong Kong Electric Company, Limited.

China Light and Power Company, Limited.

The Hong Kong and China Gas Company, Limited.

*(Added 2 of 1971 s. 48. Amended 17 of 1989 s. 21)*

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## Schedule 3A

[ss. 12(6)(a), 63CA & 63E]  
*(Replaced 20 of 2018 s. 11)*

### Deduction for Expenses of Self-Education

Item	Year of assessment	Amount
1.	For the year of assessment 1996/97	\$12,000
2.	For the year of assessment 1997/98 <i>(Amended 31 of 1998 s. 21)</i>	\$20,000
3.	For the years of assessment 1998/99 to 2000/01 inclusive <i>(Replaced 15 of 2001 s. 2)</i>	\$30,000
4.	For the years of assessment 2001/02 to 2006/07 inclusive <i>(Replaced 10 of 2007 s. 7)</i>	\$40,000
5.	For the years of assessment 2007/08 to 2012/13 inclusive <i>(Replaced 5 of 2013 s. 5)</i>	\$60,000
6.	For the years of assessment 2013/14 to 2016/17 inclusive <i>(Replaced 3 of 2017 s. 7)</i>	\$80,000
7.	For the year of assessment 2017/18 and for each year after that year <i>(Added 3 of 2017 s. 7)</i>	\$100,000
		<i>(Added 42 of 1997 s. 5)</i>

## Schedule 3B

[ss. 16AA, 26G, 63CA, 63E  
& 63J]

*(Replaced 20 of 2018 s. 12)*

### Deduction for the Purposes of Section 16AA or 26G

- |    |  |          |
|----|--|----------|
| 1. | For the years of assessment 2000/01 to 2011/12 inclusive <i>(Replaced 21 of 2012 s. 7)</i>         | \$12,000 |
| 2. | For the year of assessment 2012/13 <i>(Added 21 of 2012 s. 7)</i>                                  | \$14,500 |
| 3. | For the year of assessment 2013/14 <i>(Added 21 of 2012 s. 7. Amended 3 of 2014 s. 7)</i>          | \$15,000 |
| 4. | For the year of assessment 2014/15 <i>(Added 3 of 2014 s. 7)</i>                                   | \$17,500 |
| 5. | For the year of assessment 2015/16 and for each year after that year <i>(Added 3 of 2014 s. 7)</i> | \$18,000 |
- (Added 31 of 1998 s. 22)*

## Schedule 3C

[ss. 26D, 63CA & 63E]  
(Replaced 20 of 2018 s. 13)

### Elderly Residential Care Expenses Deduction

1. For the years of assessment 1998/99 to 2010/11 inclusive (*Replaced 9 of 2011 s. 5*) \$ 60,000
  2. For the year of assessment 2011/12 (*Replaced 21 of 2012 s. 8*) \$ 72,000
  3. For the years of assessment 2012/13 and 2013/14 (*Replaced 10 of 2014 s. 5*) \$ 76,000
  4. For the years of assessment 2014/15 and 2015/16 (*Replaced 8 of 2016 s. 5*) \$ 80,000
  5. For the years of assessment 2016/17 and 2017/18 (*Replaced 20 of 2018 s. 13*) \$ 92,000
  6. For the year of assessment 2018/19 and for each year after that year (*Added 20 of 2018 s. 13*) \$100,000  
*(Added 31 of 1998 s. 22)*
-



## Schedule 3D

[ss. 26E, 63CA & 63E]

*(Replaced 20 of 2018 s. 14)*

### Home Loan Interest Deduction

1. For the years of assessment 1998/99 to 2000/01  
inclusive *(Replaced 29 of 2001 s. 3)* \$100,000
  2. For the years of assessment 2001/02 and 2002/03  
*(Added 29 of 2001 s. 3)* \$150,000
  3. For the year of assessment 2003/04 and for each  
year after that year *(Added 29 of 2001 s. 3)* \$100,000  
*(Added 31 of 1998 s. 22)*
-

## Schedule 4

[ss. 27 & 59]\*  
*(Replaced 32 of 2018 s. 13)*

### Allowances

*(Format changes—E.R. 4 of 2017)*

For the year of assessment 1989/90

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)—	
(a) subsection (1)(a)	\$ 32,000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7,000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 39,000
(d) subsection (1)(b), being the prescribed percentage	10%
2. Section 29 (married person's allowance)—	
(a) subsection (3)(a)	\$ 66,000

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First Column (section)	Second Column (the prescribed amount or percentage)
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14,000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$ 80,000
(d) subsection (3)(b), being the prescribed percentage	10%
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 11,000
(b) subsection (3)(b)	\$ 3,000
(c) subsection (4)(a)	\$ 1,200
4. Section 31 (child allowance)—	
(a) subsection (1)	(i) \$13,000 for the first child (ii) \$9,000 for the second child (iii) \$3,000 for the third child (iv) \$2,000 each for the fourth, fifth and sixth child (v) \$1,000 for each subsequent child
(b) subsection (5)	\$ 34,000
5. Section 32(1) (single parent allowance)	\$ 20,000

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*(Replaced 43 of 1989 s. 30. Amended 30 of 1990 s. 6)*

For the year of assessment 1990/91

	First Column (section)	Second Column (the prescribed amount or percentage)
1.	Section 28 (basic allowance)—	
	(a) subsection (1)(a)	\$ 32,000
	(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7,000
	(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 39,000
	(d) subsection (1)(b), being the prescribed percentage	0%

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First Column (section)	Second Column (the prescribed amount or percentage)
2. Section 29 (married person's allowance)—	
(a) subsection (3)(a)	\$ 66,000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14,000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$ 80,000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 12,000
(b) subsection (3)(b)	\$ 3,000
(c) subsection (4)(a)	\$ 1,200

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First Column (section)	Second Column (the prescribed amount or percentage)
4. Section 31 (child allowance)—	
(a) subsection (1)	(i) \$14,000 for the first child (ii) \$10,000 for the second child (iii) \$3,000 for the third child (iv) \$2,000 each for the fourth, fifth and sixth child (v) \$1,000 for each subsequent child
(b) subsection (5)	\$ 36,000
5. Section 32(1) (single parent allowance)	\$ 20,000

*(Added 30 of 1990 s. 6. Amended 42 of 1991 s. 3)*

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For the year of assessment 1991/92

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)—	
(a) subsection (1)(a)	\$ 34,000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7,000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 41,000
(d) subsection (1)(b), being the prescribed percentage	0%



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First Column (section)	Second Column (the prescribed amount or percentage)
2. Section 29 (married person's allowance)—	
(a) subsection (3)(a)	\$ 68,000
(b) subsection(3)(b), being the first reference to the prescribed amount	\$ 14,000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$ 82,000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependant parent allowance)—	
(a) subsection (3)(a)	\$ 12,000
(b) subsection (3)(b)	\$ 3,000
(c) subsection (4)(a)	\$ 1,200

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First Column (section)	Second Column (the prescribed amount or percentage)
4. Section 31 (child allowance)—	
(a) subsection (1)	(i) \$14,000 for the first child (ii) \$10,000 for the second child (iii) \$3,000 for the third child (iv) \$2,000 for the fourth, fifth and sixth child (v) \$1,000 for each subsequent child
(b) subsection (5)	\$ 36,000
5. Section 32(1) (single parent allowance)	\$ 20,000

*(Added 42 of 1991 s. 3. Amended 34 of 1992 s. 4)*

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For the year of assessment 1992/93

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)—	
(a) subsection (1)(a)	\$ 39,000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7,000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 46,000
(d) subsection (1)(b), being the prescribed percentage	0%

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First Column (section)	Second Column (the prescribed amount or percentage)
2. Section 29 (married person's allowance)—	
(a) subsection (3)(a)	\$ 78,000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14,000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$ 92,000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 13,500
(b) subsection (3)(b)	\$ 3,000
(c) subsection (4)(a)	\$ 1,200

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First Column (section)	Second Column (the prescribed amount or percentage)
4. Section 31 (child allowance)—	
(a) subsection (1)	(i) \$15,500 for the first child (ii) \$11,500 for the second child (iii) \$3,000 for the third child (iv) \$2,000 each for the fourth, fifth and sixth child (v) \$1,000 for each subsequent child
(b) subsection (5)	\$ 39,000
5. Section 32(1) (single parent allowance)	\$ 23,000

*(Added 34 of 1992 s. 4. Amended 28 of 1993 s. 3)*

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For the year of assessment 1993/94

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)—	
(a) subsection (1)(a)	\$ 49,000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7,000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 56,000
(d) subsection (1)(b), being the prescribed percentage	0%

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First Column (section)	Second Column (the prescribed amount or percentage)
2. Section 29 (married person's allowance)—	
(a) subsection (3)(a)	\$ 98,000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14,000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$112,000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 17,000
(b) subsection (3)(b)	\$ 3,000
(c) subsection (4)(a)	\$ 1,200



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First Column (section)	Second Column (the prescribed amount or percentage)
4. Section 31 (child allowance)—	
(a) subsection (1)	(i) \$17,000 for the first child (ii) \$17,000 for the second child (iii) \$3,000 for the third child (iv) \$2,000 each for the fourth, fifth and sixth child (v) \$1,000 for each subsequent child
(b) subsection (5)	\$ 46,000
5. Section 32(1) (single parent allowance)	\$ 27,000

*(Added 28 of 1993 s. 3. Amended 37 of 1994 s. 7)*

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For the year of assessment 1994/95

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)—	
(a) subsection (1)(a)	\$ 65,000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7,000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 72,000
(d) subsection (1)(b), being the prescribed percentage	0%

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First Column (section)	Second Column (the prescribed amount or percentage)
2. Section 29 (married person's allowance)—	
(a) subsection (3)(a)	\$130,000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14,000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$144,000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 20,000
(b) subsection (3)(b)	\$ 3,000
(c) subsection (4)(a)	\$ 1,200
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 20,000
(b) subsection (3)(b)	\$ 3,000
(c) subsection (4)(a)	\$ 1,200

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First Column (section)	Second Column (the prescribed amount or percentage)
5. Section 31 (child allowance)—	
(a) subsection (1)	(i) \$20,000 for the first child (ii) \$20,000 for the second child (iii) \$3,000 for the third child (iv) \$2,000 each for the fourth, fifth and sixth child (v) \$1,000 for each subsequent child
(b) subsection (5)	\$ 52,000
6. Section 32(1) (single parent allowance)	\$ 32,000

*(Added 37 of 1994 s. 7. Amended 48 of 1995 s. 13)*

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For the year of assessment 1995/96

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)—	
(a) subsection (1)(a)	\$ 72,000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7,000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 79,000
(d) subsection (1)(b), being the prescribed percentage	0%

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First Column (section)	Second Column (the prescribed amount or percentage)
2. Section 29 (married person's allowance)—	
(a) subsection (3)(a)	\$144,000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14,000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$158,000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 22,000
(b) subsection (3)(b)	\$ 6,000
(c) subsection (4)(a)	\$ 1,200
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 22,000
(b) subsection (3)(b)	\$ 6,000
(c) subsection (4)(a)	\$ 1,200

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First Column (section)	Second Column (the prescribed amount or percentage)
5. Section 31 (child allowance)—	
(a) subsection (1)	(i) \$22,000 for each of the first and the second child
	(ii) \$11,000 for each subsequent child
(b) subsection (5)	\$121,000
6. Section 31A(1) (disabled dependent allowance)	\$ 11,000
7. Section 32(1) (single parent allowance)	\$ 40,000

*(Added 48 of 1995 s. 13; Amended 24 of 1996 s. 11)*



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For the year of assessment 1996/97

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)—	
(a) subsection (1)(a)	\$ 83,000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7,000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 90,000
(d) subsection (1)(b), being the prescribed percentage	0%

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First Column (section)	Second Column (the prescribed amount or percentage)
2. Section 29 (married person's allowance)—	
(a) subsection (3)(a)	\$166,000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14,000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$180,000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 24,500
(b) subsection (3)(b)	\$ 7,000
(c) subsection (4)(a)	\$ 1,200
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 24,500
(b) subsection (3)(b)	\$ 7,000
(c) subsection (4)(a)	\$ 1,200
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 24,500

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First Column (section)	Second Column (the prescribed amount or percentage)
6. Section 31 (child allowance)—	
(a) subsection (1)	(i) \$24,500 for the first and second child
	(ii) \$12,500 for each subsequent child
(b) subsection (5)	\$136,500
7. Section 31A(1) (disabled dependent allowance)	\$ 15,000
8. Section 32(1) (single parent allowance)	\$ 45,000
<i>(Added 24 of 1996 s. 11. Amended 42 of 1997 s. 6)</i>	

For the year of assessment 1997/98

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)—	
(a) subsection (1)(a)	\$100,000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 0

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First Column (section)	Second Column (the prescribed amount or percentage)
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$100,000
(d) subsection (1)(b), being the prescribed percentage	0%
2. Section 29 (married person's allowance)—	
(a) subsection (3)(a)	\$200,000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 0
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$200,000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 27,000
(b) subsection (3)(b)	\$ 8,000
(c) subsection (4)(a)	\$ 1,200

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First Column (section)	Second Column (the prescribed amount or percentage)
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 27,000
(b) subsection (3)(b)	\$ 8,000
(c) subsection (4)(a)	\$ 1,200
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 27,000
6. Section 31 (child allowance)—	
(a) subsection (1)	(i) \$27,000 for the first and second child
	(ii) \$14,000 for each subsequent child
(b) subsection (5)	\$152,000
7. Section 31A(1) (disabled dependant allowance)	\$ 25,000
8. Section 32(1) (single parent allowance)	\$ 75,000

*(Added 42 of 1997 s. 6. Amended 31 of 1998 s. 23)*

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For the years of assessment 1998/99 to 2002/03 inclusive

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$108,000
2. Section 29 (married person's allowance)	\$216,000
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 30,000
(b) subsection (3)(b)	\$ 30,000
(c) subsection (4)(a)	\$ 12,000
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 30,000
(b) subsection (3)(b)	\$ 30,000
(c) subsection (4)(a)	\$ 12,000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30,000

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First Column (section)	Second Column (the prescribed amount)
6. Section 31 (child allowance)—	
(a) subsection (1)	(i) \$30,000 for each of the first and second children
	(ii) \$15,000 for each subsequent child
(b) subsection (5)	\$165,000
7. Section 31A(1) (disabled dependant allowance)	\$ 60,000
8. Section 32(1) (single parent allowance)	\$108,000
<i>(Added 31 of 1998 s. 23. Amended 24 of 2003 s. 11; 4 of 2010 s. 18)</i>	

For the year of assessment 2003/04

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$104,000
2. Section 29 (married person's allowance)	\$208,000



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First Column (section)	Second Column (the prescribed amount)
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 30,000
(b) subsection (3)(b)	\$ 30,000
(c) subsection (4)(a)	\$ 12,000
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 30,000
(b) subsection (3)(b)	\$ 30,000
(c) subsection (4)(a)	\$ 12,000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30,000
6. Section 31 (child allowance)—	
(a) subsection (1)	\$30,000 each for the first to the ninth child
(b) subsection (5)	\$270,000
7. Section 31A(1) (disabled dependant allowance)	\$ 60,000
8. Section 32(1) (single parent allowance)	\$104,000

*(Added 24 of 2003 s. 11)*

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For the year of assessment 2004/05

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$100,000
2. Section 29 (married person's allowance)	\$200,000
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 30,000
(b) subsection (3)(b)	\$ 30,000
(c) subsection (4)(a)	\$ 12,000
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 30,000
(b) subsection (3)(b)	\$ 30,000
(c) subsection (4)(a)	\$ 12,000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30,000
6. Section 31 (child allowance)—	
(a) subsection (1)	\$30,000 each for the first to the ninth child
(b) subsection (5)	\$270,000

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	First Column (section)	Second Column (the prescribed amount)
7.	Section 31A(1) (disabled dependant allowance)	\$ 60,000
8.	Section 32(1) (single parent allowance)	\$100,000

*(Added 24 of 2003 s. 11. Amended 8 of 2005 s. 5)*

For the years of assessment 2005/06 and 2006/07

	First Column (section)	Second Column (the prescribed amount)
1.	Section 28 (basic allowance)	\$100,000
2.	Section 29 (married person's allowance)	\$200,000
3.	Section 30 (dependent parent allowance)—	
	(a) subsection (3)(a)	\$ 30,000
	(b) subsection (3)(b)	\$ 30,000
	(c) subsection (3A)(a)	\$ 15,000
	(d) subsection (3A)(b)	\$ 15,000
	(e) subsection (4)(a)	\$ 12,000

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	First Column (section)	Second Column (the prescribed amount)
4.	Section 30A (dependent grandparent allowance)—	
	(a) subsection (3)(a)	\$ 30,000
	(b) subsection (3)(b)	\$ 30,000
	(c) subsection (3A)(a)	\$ 15,000
	(d) subsection (3A)(b)	\$ 15,000
	(e) subsection (4)(a)	\$ 12,000
5.	Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30,000
6.	Section 31 (child allowance)—	
	(a) subsection (1)	\$40,000 each for the first to the ninth child
	(b) subsection (5)	\$360,000
7.	Section 31A(1) (disabled dependant allowance)	\$ 60,000
8.	Section 32(1) (single parent allowance)	\$100,000

*(Added 8 of 2005 s. 5. Amended 10 of 2007 s. 8)*

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For the year of assessment 2007/08

	First Column (section)	Second Column (the prescribed amount)
1.	Section 28 (basic allowance)	\$100,000
2.	Section 29 (married person's allowance)	\$200,000
3.	Section 30 (dependent parent allowance)—	
	(a) subsection (3)(a)	\$ 30,000
	(b) subsection (3)(b)	\$ 30,000
	(c) subsection (3A)(a)	\$ 15,000
	(d) subsection (3A)(b)	\$ 15,000
	(e) subsection (4)(a)	\$ 12,000
4.	Section 30A (dependent grandparent allowance)—	
	(a) subsection (3)(a)	\$ 30,000
	(b) subsection (3)(b)	\$ 30,000
	(c) subsection (3A)(a)	\$ 15,000
	(d) subsection (3A)(b)	\$ 15,000
	(e) subsection (4)(a)	\$ 12,000
5.	Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30,000

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	First Column (section)	Second Column (the prescribed amount)
6.	Section 31 (child allowance)—	
	(a) subsection (1)	\$50,000 for each child
	(b) subsection (1A)	\$50,000 for each child
	(c) subsection (5) (in relation to subsection (1))	\$450,000
	(d) subsection (5) (in relation to subsection (1A))	\$450,000
7.	Section 31A(1) (disabled dependant allowance)	\$ 60,000
8.	Section 32(1) (single parent allowance)	\$100,000
	<i>(Added 10 of 2007 s. 8. Amended 21 of 2008 s. 9)</i>	

For the years of assessment 2008/09 to 2010/11 inclusive

	First Column (section)	Second Column (the prescribed amount)
1.	Section 28 (basic allowance)	\$108,000
2.	Section 29 (married person's allowance)	\$216,000

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First Column (section)	Second Column (the prescribed amount)
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 30,000
(b) subsection (3)(b)	\$ 30,000
(c) subsection (3A)(a)	\$ 15,000
(d) subsection (3A)(b)	\$ 15,000
(e) subsection (4)(a)	\$ 12,000
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 30,000
(b) subsection (3)(b)	\$ 30,000
(c) subsection (3A)(a)	\$ 15,000
(d) subsection (3A)(b)	\$ 15,000
(e) subsection (4)(a)	\$ 12,000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30,000
6. Section 31 (child allowance)—	
(a) subsection (1)	\$50,000 for each child
(b) subsection (1A)	\$50,000 for each child
(c) subsection (5) (in relation to subsection (1))	\$450,000
(d) subsection (5) (in relation to subsection (1A))	\$450,000



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	First Column (section)	Second Column (the prescribed amount)
7.	Section 31A(1) (disabled dependant allowance)	\$ 60,000
8.	Section 32(1) (single parent allowance)	\$108,000
<i>(Added 21 of 2008 s. 9. Amended 9 of 2011 s. 6)</i>		

For the year of assessment 2011/12

	First Column (section)	Second Column (the prescribed amount)
1.	Section 28 (basic allowance)	\$108,000
2.	Section 29 (married person's allowance)	\$216,000
3.	Section 30 (dependent parent allowance)—	
	(a) subsection (3)(a)	\$ 36,000
	(b) subsection (3)(b)	\$ 36,000
	(c) subsection (3A)(a)	\$ 18,000
	(d) subsection (3A)(b)	\$ 18,000
	(e) subsection (4)(a)	\$ 12,000

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First Column (section)	Second Column (the prescribed amount)
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 36,000
(b) subsection (3)(b)	\$ 36,000
(c) subsection (3A)(a)	\$ 18,000
(d) subsection (3A)(b)	\$ 18,000
(e) subsection (4)(a)	\$ 12,000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30,000
6. Section 31 (child allowance)—	
(a) subsection (1)	\$60,000 for each child
(b) subsection (1A)	\$60,000 for each child
(c) subsection (5) (in relation to subsection (1))	\$540,000
(d) subsection (5) (in relation to subsection (1A))	\$540,000
7. Section 31A(1) (disabled dependant allowance)	\$ 60,000
8. Section 32(1) (single parent allowance)	\$108,000

*(Added 9 of 2011 s. 6. Amended 21 of 2012 s. 9)*

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For the year of assessment 2012/13

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$120,000
2. Section 29 (married person's allowance)	\$240,000
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 38,000
(b) subsection (3)(b)	\$ 38,000
(c) subsection (3A)(a)	\$ 19,000
(d) subsection (3A)(b)	\$ 19,000
(e) subsection (4)(a)	\$ 12,000
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 38,000
(b) subsection (3)(b)	\$ 38,000
(c) subsection (3A)(a)	\$ 19,000
(d) subsection (3A)(b)	\$ 19,000
(e) subsection (4)(a)	\$ 12,000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 33,000

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	First Column (section)	Second Column (the prescribed amount)
6.	Section 31 (child allowance)—	
	(a) subsection (1)	\$63,000 for each child
	(b) subsection (1A)	\$63,000 for each child
	(c) subsection (5) (in relation to subsection (1))	\$567,000
	(d) subsection (5) (in relation to subsection (1A))	\$567,000
7.	Section 31A(1) (disabled dependant allowance)	\$ 66,000
8.	Section 32(1) (single parent allowance)	\$120,000
	<i>(Added 21 of 2012 s. 9. Amended 5 of 2013 s. 6)</i>	

For the year of assessment 2013/14

	First Column (section)	Second Column (the prescribed amount)
1.	Section 28 (basic allowance)	\$120,000
2.	Section 29 (married person's allowance)	\$240,000

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First Column (section)	Second Column (the prescribed amount)
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 38,000
(b) subsection (3)(b)	\$ 38,000
(c) subsection (3A)(a)	\$ 19,000
(d) subsection (3A)(b)	\$ 19,000
(e) subsection (4)(a)	\$ 12,000
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 38,000
(b) subsection (3)(b)	\$ 38,000
(c) subsection (3A)(a)	\$ 19,000
(d) subsection (3A)(b)	\$ 19,000
(e) subsection (4)(a)	\$ 12,000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 33,000
6. Section 31 (child allowance)—	
(a) subsection (1)	\$70,000 for each child
(b) subsection (1A)	\$70,000 for each child
(c) subsection (5) (in relation to subsection (1))	\$630,000
(d) subsection (5) (in relation to subsection (1A))	\$630,000

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	First Column (section)	Second Column (the prescribed amount)
7.	Section 31A(1) (disabled dependant allowance)	\$ 66,000
8.	Section 32(1) (single parent allowance)	\$120,000
	<i>(Added 5 of 2013 s. 6. Amended 10 of 2014 s. 6)</i>	

For the year of assessment 2014/15

	First Column (section)	Second Column (the prescribed amount)
1.	Section 28 (basic allowance)	\$120,000
2.	Section 29 (married person's allowance)	\$240,000
3.	Section 30 (dependent parent allowance)—	
	(a) subsection (3)(a)	\$ 40,000
	(b) subsection (3)(b)	\$ 40,000
	(c) subsection (3A)(a)	\$ 20,000
	(d) subsection (3A)(b)	\$ 20,000
	(e) subsection (4)(a)	\$ 12,000

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First Column (section)	Second Column (the prescribed amount)
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 40,000
(b) subsection (3)(b)	\$ 40,000
(c) subsection (3A)(a)	\$ 20,000
(d) subsection (3A)(b)	\$ 20,000
(e) subsection (4)(a)	\$ 12,000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 33,000
6. Section 31 (child allowance)—	
(a) subsection (1)	\$70,000 for each child
(b) subsection (1A)	\$70,000 for each child
(c) subsection (5) (in relation to subsection (1))	\$630,000
(d) subsection (5) (in relation to subsection (1A))	\$630,000
7. Section 31A(1) (disabled dependant allowance)	\$ 66,000
8. Section 32(1) (single parent allowance)	\$120,000

*(Added 10 of 2014 s. 6. Amended 10 of 2015 s. 5)*



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For the year of assessment 2015/16

	First Column (section)	Second Column (the prescribed amount)
1.	Section 28 (basic allowance)	\$120,000
2.	Section 29 (married person's allowance)	\$240,000
3.	Section 30 (dependent parent allowance)—	
	(a) subsection (3)(a)	\$ 40,000
	(b) subsection (3)(b)	\$ 40,000
	(c) subsection (3A)(a)	\$ 20,000
	(d) subsection (3A)(b)	\$ 20,000
	(e) subsection (4)(a)	\$ 12,000
4.	Section 30A (dependent grandparent allowance)—	
	(a) subsection (3)(a)	\$ 40,000
	(b) subsection (3)(b)	\$ 40,000
	(c) subsection (3A)(a)	\$ 20,000
	(d) subsection (3A)(b)	\$ 20,000
	(e) subsection (4)(a)	\$ 12,000
5.	Section 30B(1) (dependent brother or dependent sister allowance)	\$ 33,000

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First Column (section)	Second Column (the prescribed amount)
6. Section 31 (child allowance)—	
(a) subsection (1)	\$100,000 for each child
(b) subsection (1A)	\$100,000 for each child
(c) subsection (5) (in relation to subsection (1))	\$900,000
(d) subsection (5) (in relation to subsection (1A))	\$900,000
7. Section 31A(1) (disabled dependant allowance)	\$ 66,000
8. Section 32(1) (single parent allowance)	\$120,000
<i>(Added 10 of 2015 s. 5. Replaced 8 of 2016 s. 6)</i>	

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For the year of assessment 2016/17

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$132,000
2. Section 29 (married person's allowance)	\$264,000
3. Section 30 (dependent parent allowance)—	
(a) subsection (3)(a)	\$ 46,000
(b) subsection (3)(b)	\$ 46,000
(c) subsection (3A)(a)	\$ 23,000
(d) subsection (3A)(b)	\$ 23,000
(e) subsection (4)(a)	\$ 12,000
4. Section 30A (dependent grandparent allowance)—	
(a) subsection (3)(a)	\$ 46,000
(b) subsection (3)(b)	\$ 46,000
(c) subsection (3A)(a)	\$ 23,000
(d) subsection (3A)(b)	\$ 23,000
(e) subsection (4)(a)	\$ 12,000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 33,000

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	First Column (section)	Second Column (the prescribed amount)
6.	Section 31 (child allowance)—	
	(a) subsection (1)	\$100,000 for each child
	(b) subsection (1A)	\$100,000 for each child
	(c) subsection (5) (in relation to subsection (1))	\$900,000
	(d) subsection (5) (in relation to subsection (1A))	\$900,000
7.	Section 31A(1) (disabled dependant allowance)	\$ 66,000
8.	Section 32(1) (single parent allowance)	\$132,000

*(Added 8 of 2016 s. 6. Amended 3 of 2017 s. 8)*

For the year of assessment 2017/18

	First Column (section)	Second Column (the prescribed amount)
1.	Section 28 (basic allowance)	\$132,000
2.	Section 29 (married person's allowance)	\$264,000

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	First Column (section)	Second Column (the prescribed amount)
3.	Section 30 (dependent parent allowance)—	
	(a) subsection (3)(a)	\$ 46,000
	(b) subsection (3)(b)	\$ 46,000
	(c) subsection (3A)(a)	\$ 23,000
	(d) subsection (3A)(b)	\$ 23,000
	(e) subsection (4)(a)	\$ 12,000
4.	Section 30A (dependent grandparent allowance)—	
	(a) subsection (3)(a)	\$ 46,000
	(b) subsection (3)(b)	\$ 46,000
	(c) subsection (3A)(a)	\$ 23,000
	(d) subsection (3A)(b)	\$ 23,000
	(e) subsection (4)(a)	\$ 12,000
5.	Section 30B(1) (dependent brother or dependent sister allowance)	\$ 37,500
6.	Section 31 (child allowance)—	
	(a) subsection (1)	\$100,000 for each child
	(b) subsection (1A)	\$100,000 for each child
	(c) subsection (5) (in relation to subsection (1))	\$900,000
	(d) subsection (5) (in relation to subsection (1A))	\$900,000

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	First Column (section)	Second Column (the prescribed amount)
7.	Section 31A(1) (disabled dependant allowance)	\$ 75,000
8.	Section 32(1) (single parent allowance)	\$132,000
<i>(Added 3 of 2017 s. 8. Amended 20 of 2018 s. 15)</i>		

For the year of assessment 2018/19 and  
for each year after that year

	First Column (section)	Second Column (the prescribed amount)
1.	Section 28 (basic allowance)	\$ 132,000
2.	Section 28A (personal disability allowance)	\$ 75,000
3.	Section 29 (married person's allowance)	\$ 264,000
4.	Section 30 (dependent parent allowance)—	
	(a) subsection (3)(a)	\$ 50,000
	(b) subsection (3)(b)	\$ 50,000
	(c) subsection (3A)(a)	\$ 25,000
	(d) subsection (3A)(b)	\$ 25,000
	(e) subsection (4)(a)	\$ 12,000

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	First Column (section)	Second Column (the prescribed amount)
5.	Section 30A (dependent grandparent allowance)—	
	(a) subsection (3)(a)	\$ 50,000
	(b) subsection (3)(b)	\$ 50,000
	(c) subsection (3A)(a)	\$ 25,000
	(d) subsection (3A)(b)	\$ 25,000
	(e) subsection (4)(a)	\$ 12,000
6.	Section 30B(1) (dependent brother or dependent sister allowance)	\$ 37,500
7.	Section 31 (child allowance)—	
	(a) subsection (1)	\$120,000 for each child
	(b) subsection (1A)	\$120,000 for each child
	(c) subsection (5) (in relation to subsection (1))	\$1,080,000
	(d) subsection (5) (in relation to subsection (1A))	\$1,080,000
8.	Section 31A(1) (disabled dependant allowance)	\$ 75,000
9.	Section 32(1) (single parent allowance)	\$ 132,000

*(Added 20 of 2018 s. 15)*

Editorial Note:



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- \* The amendment made by Part 2 of Ord. No. 32 of 2018 to this Schedule applies in relation to all years of assessment commencing on or after 1 April 2018. (Please see 32 of 2018 s. 3)
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## **Schedule 5**

[s. 68]

*(Amended 17 of 2015 s. 13)*

*(Schedule 5 replaced 12 of 2004 s. 21)*

### **Part 1**

#### **Order for Appellant to Pay Costs**

1. Maximum amount which the Board of Review may order the appellant to pay as costs of the Board \$25,000  
*(Amended 17 of 2015 s. 13)*

### **Part 2**

*(Repealed 17 of 2015 s. 13)*

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## **Schedule 6**

[ss. 14A(4), 17A(1) & 26A(2)  
& (3) & Schs. 17A, 29 & 36]

*(Replaced 12 of 2016 s. 15)*

*(Schedule 6 added 17 of 1992 s. 3)*

### **Part 1**

#### **Instruments**

1. A bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19).
2. A promissory note within the meaning of section 89 of the Bills of Exchange Ordinance (Cap. 19).
3. Subject to section 21(3)(a) of Schedule 17A (specified alternative bond scheme and its tax treatment), any other instrument (other than a regulatory capital security) which evidences an obligation to pay a stated or determinable amount to bearer or to order, on or before a fixed time, with or without interest, being an instrument by the delivery of which, with or without endorsement, the right to receive that stated or determinable amount, with or without interest, is transferable. *(Amended 10 of 2013 s. 18; 12 of 2016 s. 15)*

## Part 2

### Bodies

1. The Asian Development Bank.
2. The International Bank for Reconstruction and Development.
3. The International Finance Corporation.
4. The European Investment Bank.
5. The European Bank for Reconstruction and Development. (*Added L.N. 478 of 1993*)
6. The Inter-American Development Bank. (*Added L.N. 478 of 1993*)
7. The Nordic Investment Bank. (*Added L.N. 478 of 1993*)
8. The European Company for the Financing of Railroad Rolling Stock. (*Added L.N. 654 of 1994*)
9. The Council of Europe Development Bank (formerly known as The Council of Europe Social Development Fund). (*Replaced 4 of 2010 s. 19*)

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10. The African Development Bank. (*Added L.N. 309 of 1997*)

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**Schedule 7**

*(Schedule 7 repealed 4 of 2010 s. 20)*

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## Schedule 8

[ss. 14, 14AAC, 14A, 14B,  
14D, 14H, 14J, 16, 19CA,  
63H & 63HA]

*(Replaced 13 of 2018 s. 10)*

### Rate of Profits Tax in respect of a Corporation

*(Schedule 8 added 56 of 1993 s. 32)*

For the years of assessment 1992/93 and 1993/94 17 1/2%

*(Amended 37 of 1994 s. 8)*

For the years of assessment 1994/95 to 1997/98 inclusive 16 1/2%

*(Added 37 of 1994 s. 8. Amended 32 of 1998 s. 31)*

For the years of assessment 1998/99 to 2002/03 inclusive 16%

*(Added 32 of 1998 s. 31. Amended 24 of 2003 s. 12)*

For the years of assessment 2003/04 to 2007/08 inclusive 17 1/2%

*(Added 24 of 2003 s. 12. Amended 21 of 2008 s. 10)*



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For the year of assessment 2008/09 and for each year after  
that year

16 1/2%

*(Added 21 of 2008 s. 10)*

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## Schedule 8A

[ss. 14, 14AAC, 63H & 63HA  
& Sch. 42]

### Two-tiered Rates of Profits Tax—Persons other than Corporations

1. In this Schedule—  
*section 14 assessable profits* (第14條應評稅利潤) means assessable profits to which section 14 applies.
2. For a year of assessment commencing on or after 1 April 2018, profits tax is chargeable in respect of each trade, profession or business—
  - (a) at the rate of 7.5% on the section 14 assessable profits from the trade, profession or business up to \$2,000,000; and
  - (b) at the rate of 15% on any part of the section 14 assessable profits over \$2,000,000 from the trade, profession or business.

*(Schedule 8A added 13 of 2018 s. 11)*

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## Schedule 8B

[ss. 14, 14AAC, 63H & 63HA  
& Sch. 42]

### Two-tiered Rates of Profits Tax—Corporations

1. In this Schedule—  
*section 14 assessable profits* (第14條應評稅利潤) means assessable profits to which section 14 applies;  
*threshold* (限額), for a corporation that is a partner in a partnership, means \$2,000,000 multiplied by the ratio at which the corporation shares the profits or losses of the partnership during the basis period for the year of assessment concerned.
2. For a year of assessment commencing on or after 1 April 2018, profits tax is chargeable—
  - (a) for a corporation—
    - (i) at the rate of 8.25% on section 14 assessable profits up to \$2,000,000; and
    - (ii) at the rate of 16.5% on any part of section 14 assessable profits over \$2,000,000; and
  - (b) for a corporation that is a partner in a partnership—
    - (i) at the rate of 8.25% on the net share of section 14 assessable profits concerned up to the threshold; and

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- (ii) at the rate of 16.5% on any part of the net share of section 14 assessable profits over the threshold.

*(Schedule 8B added 13 of 2018 s. 11)*

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## Schedule 9

[s. 89]

### Transitional Provisions Relating to the Inland Revenue (Amendment) (no. 5) Ordinance 1993

*(Schedule 9 added 76 of 1993 s. 11)*

1. In this Schedule—  
*amending Ordinance* (修訂條例) means the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993);  
*retirement scheme* (退休計劃) means a retirement scheme as defined in section 2(1) prior to the commencement of section 2 of the amending Ordinance.
2. Notwithstanding the repeal of section 87A by the amending Ordinance, where an application for approval of a retirement scheme under that section was received by the Commissioner before such repeal, the Commissioner may approve the scheme as if that section has not been repealed, and where such approval has been given the scheme shall be deemed to have been approved by the Commissioner under that section immediately prior to its repeal by the amending Ordinance.
3. The approval given by the Commissioner to any retirement scheme under section 87A prior to its repeal by the amending Ordinance shall—
  - (a) continue to be effective unless and until it is—
    - (i) deemed to have been withdrawn under subparagraph (b); or

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- (ii) withdrawn under paragraph 4;
  - (b) be deemed to have been withdrawn—
    - (i) upon the scheme becoming a recognized occupational retirement scheme other than by virtue of paragraph (a) of the definition of *recognized occupational retirement scheme* (認可職業退休計劃) in section 2(1);
    - (ii) where an application is made under section 7 or 15 of the Occupational Retirement Schemes Ordinance (Cap. 426) in respect of the scheme before the commencement of section 3 of that Ordinance but the application has not been disposed of prior to the commencement of that section, on the date on which the application is finally disposed of;
    - (iii) where an application made under section 7 or 15 of the Occupational Retirement Schemes Ordinance (Cap. 426) in respect of the scheme is rejected and an appeal (if any) against such rejection is dismissed before the commencement of section 3 of that Ordinance, on that date of commencement; or
    - (iv) where no application for registration or exemption under the Occupational Retirement Schemes Ordinance (Cap. 426) has been made prior to the date of commencement of section 3 of that Ordinance, on that date of commencement.
4. The Commissioner may withdraw the approval given to any retirement scheme under section 87A prior to its repeal by the amending Ordinance if any term or condition of the scheme is altered unless—

- (a) the alteration is made solely to secure the issue of an exemption certificate in respect of the scheme or registration of the scheme under section 7 or 18 of the Occupational Retirement Schemes Ordinance (Cap. 426); or
  - (b) in the case of any other alteration, the Commissioner is notified in writing of such alteration within 1 month after it is made and the scheme, as altered, complies substantially with the requirements set out in paragraph 7.
- 5. Where an application is made under section 7(1) or 15 of the Occupational Retirement Schemes Ordinance (Cap. 426) in respect of a retirement scheme which was approved for the time being by the Commissioner under section 87A before its repeal by the amending Ordinance, the employer who operates the scheme shall as soon as reasonably practicable after the determination of the application or appeal (if any) give a notice in writing to the Commissioner of the result of the application and, where an appeal has been made against the refusal of such application under section 19 of the Occupational Retirement Schemes Ordinance (Cap. 426), the result of such appeal.
- 6. Section 17(1)(j) applies to a retirement scheme as defined in section 2(1) prior to the commencement of section 2 of the amending Ordinance.
- 7. The requirements referred to in paragraph 4(b) are—
  - (a) the retirement scheme shall be exclusively for the benefit of the employee or employees and of the spouse, children, surviving dependants, or legal personal representatives of an employee;

- (b) each employee concerned shall be entitled to defined benefits and the terms and conditions of the retirement scheme shall have been made known to all the employees concerned;
- (c) the benefits afforded by the retirement scheme shall accrue only—
- (i) on retirement from the service of the employer at some specified age of not less than 45 years; or
  - (ii) on retirement after some specified period of service with the employer of not less than 10 years; or
  - (iii) on attaining the age of 60 years or some specified age for retirement whichever is the later; or
  - (iv) on earlier incapacity or death:
- Provided where, however, the retirement scheme provides for proportionate or reduced benefits in the event of an employee leaving the employer's service prior to attaining the specified age or completing the specified period of service, the provision for such benefits shall not in itself disqualify the scheme from retaining the approved status;
- (d) the nature of the benefits afforded by the retirement scheme shall be the same in relation to all the persons to whom the scheme relates but a scheme relating to more than one class of employee may be regarded as so many separate schemes for this purpose;
- (e) where the retirement scheme is conducted by a third party to whom the employer makes periodical contributions, the diversion of such contributions to any purposes (other than those of the scheme) and the refund of such contributions to the employer shall, except with the consent of the Commissioner and subject to subparagraph (f), be prohibited;



- (f) the employer shall have no lien on any sum or other benefit to which the employee would be entitled under the retirement scheme except—
    - (i) to the extent that the employer has suffered a loss due to a dishonest act committed by the employee; or
    - (ii) to the extent of a debt acknowledged in writing by the employee as owing to the employer.
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## Schedule 10

[s. 88A]

*(Schedule 10 added 32 of 1998 s. 32. Amended E.R. 1 of 2012)*

### Part 1

#### Advance Rulings

1. Subject to section 1A and on an application made by a person in accordance with this Part, the Commissioner may make a ruling on how a provision of this Ordinance applies to the applicant or to the arrangement described in the application, whether or not reference is made to that provision in the application.

*(Replaced 27 of 2018 s. 24)*

- 1A. A ruling is not to be made under section 1 on how a provision of this Ordinance applies if the provision relates to—
  - (a) the imposition or remission of a penalty;
  - (b) the correctness of a return or other information supplied by a person;
  - (c) the prosecution of a person;
  - (d) the recovery of a debt owing by a person; or
  - (e) the computation of income or loss under section 50AAF or 50AAK.

*(Added 27 of 2018 s. 24)*

2. The Commissioner may decline to make a ruling if—
- (a) the application seeking the ruling would require the Commissioner to determine or establish any question of fact;
  - (b) the Commissioner considers that the correctness of the ruling would depend on the making of assumptions, whether in respect of a future event or any other matter;
  - (c) the matter on which the ruling is sought is subject to an objection or appeal, whether in relation to the applicant or any other person; or
  - (d) the matter on which the ruling is sought is the subject of a return which has been or is due to be lodged under this Ordinance.
3. The Commissioner shall not make a ruling if—
- (a) the Commissioner considers that the arrangement in relation to which the ruling is sought is not seriously contemplated by the applicant;
  - (b) the application is frivolous or vexatious;
  - (c) the Commissioner is undertaking an audit on how any provision of this Ordinance applies to the applicant, or to an arrangement similar to the arrangement which is the subject of the application, during any period for which the proposed ruling would apply were the ruling to be made;
  - (d) the Commissioner considers that the applicant has not provided sufficient information in relation to the application; or
  - (e) the Commissioner considers that it would be unreasonable to make a ruling in view of the resources available to the Commissioner.

4. The Commissioner shall, where he has declined to make a ruling under section 2 or has not made a ruling by virtue of section 3, notify the applicant in writing of his decision and the reasons therefor.
  
5. Where the Commissioner has made a ruling to a person on the application of any provision of this Ordinance in relation to an arrangement, and—
  - (a) the ruling applies in relation to the arrangement during the whole or any part of the period specified in the ruling; and
  - (b) the person has under section 15 disclosed in the return provided under this Ordinance that he has relied on the ruling in preparing and providing the return,the Commissioner shall apply the provision in relation to the person and the arrangement in respect of the whole of the period or the part of the period, as the case may be, in accordance with the ruling.
  
6. A ruling shall apply in relation to an arrangement as a ruling on a provision of this Ordinance only if the provision is expressly referred to in the ruling and only for the period specified in the ruling.
  
7. A ruling shall not apply in relation to an arrangement if—
  - (a) the arrangement is materially different from the arrangement identified in the ruling;
  - (b) there was a material omission or misrepresentation in, or in connection with, the application seeking the ruling; or
  - (c) any assumption of the Commissioner in respect of a future event or any other matter that is stated in the ruling is incorrect.

8. An application for a ruling must—
  - (a) identify the applicant;
  - (b) disclose all relevant facts and documents relating to the arrangement in respect of which the ruling is sought;
  - (c) state the provision of this Ordinance in respect of which the ruling is sought;
  - (d) state the proposition of law (if any) which is relevant to the issues raised in the application;
  - (e) provide such other information as the Commissioner may specify in writing from time to time for the purposes of this section; and
  - (f) be accompanied by a draft ruling.
9. The Commissioner may at any time request further relevant information in respect of an application for a ruling.
10. Without prejudice to section 2, if the Commissioner considers that the correctness of a ruling would depend on the making of assumptions, whether in respect of a future event or any other matter, the Commissioner may, subject to section 11, make any assumption which he considers to be the most appropriate.
11. The Commissioner may not make any assumption in respect of information which the applicant can provide.
12. A ruling made by the Commissioner must state—
  - (a) the name of the person, the provision of this Ordinance, and the arrangement to which the ruling applies;
  - (b) the period for which the ruling applies; and

- (c) any material assumptions in respect of a future event or any other matter made by the Commissioner.
  
- 13. The Commissioner may at any time withdraw a ruling by notifying the person to whom the ruling applies in writing of the withdrawal and the reasons therefor.
  
- 14. If the Commissioner withdraws a ruling made in respect of an arrangement—
  - (a) the ruling shall cease to apply in relation to the arrangement if the arrangement is entered into or effected after the date of the withdrawal;
  - (b) if the arrangement has been entered into or effected on or before the date of the withdrawal—
    - (i) where the person to whom the ruling applies has under section 15 disclosed in the return provided under this Ordinance that he has relied on the ruling in preparing and providing the return, the ruling shall after the date of the withdrawal continue to apply in relation to the arrangement for the remainder of the period specified in the ruling;
    - (ii) in any other case, the ruling shall cease to apply in relation to the arrangement.
  
- 15. Where—
  - (a) a person has obtained a ruling;
  - (b) the person is required to provide a return under this Ordinance; and
  - (c) in preparing the return the person is required to take into account the way in which a provision of this Ordinance applies to the arrangement identified in the ruling,

the person must disclose in the return—

- (i) the existence of the ruling;
  - (ii) whether or not the person has relied on the ruling in preparing and providing the return; and
  - (iii) any material changes to the arrangement identified in the ruling.
16. (a) If any provision of this Ordinance that is the subject of or affects a ruling is repealed, the ruling shall cease to apply to the extent of, and from the effective date of, that repeal.
- (b) If any provision of this Ordinance that is the subject of a ruling is amended, or repealed in part only, so that the way in which the provision applies is altered, the ruling shall cease to apply to the extent of, and from the effective date of, the amendment or partial repeal.

## **Part 2**

### **Fees**

1. The fees specified in respect of an application for a ruling made in accordance with Part 1 are as follows—
- (a) application fee—
    - (i) for a ruling on whether profits are to be treated as chargeable to profits tax under section 14 of this Ordinance as arising in or derived from Hong Kong \$45,000

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- |       |   |          |
|-------|---|----------|
| (ii)  | for a ruling on whether remuneration is to be treated as chargeable to salaries tax by virtue of section 9A of this Ordinance | \$15,000 |
| (iii) | for any other ruling  | \$15,000 |
- (b) where the time spent in consideration of the application, including any time spent in consulting with the applicant, exceeds the time specified in section 3 for the type of rulings to which the ruling belongs, an additional fee calculated on the basis of each hour or any part thereof spent by—
- |       |   |         |
|-------|---|---------|
| (i)   | a Deputy Commissioner                           | \$2,650 |
| (ii)  | an Assistant Commissioner                       | \$2,240 |
| (iii) | any other person appointed under this Ordinance | \$1,730 |

*(Amended 27 of 2018 s. 24)*

2. (a) In an application for a ruling made in accordance with Part 1, reimbursement shall be made in respect of—
- (i) any fees paid by the Commissioner to any person, as a result of the Commissioner requiring any external advice in relation to the ruling; and
  - (ii) any costs and reasonable disbursements incurred by the Commissioner in relation to the ruling.
- (b) For the purposes of this Ordinance, the reimbursement required to be made under paragraph (a) shall, in addition to the fees specified in section 1, be regarded as the fees specified in respect of an application for a ruling made in accordance with Part 1.



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3. The time specified for the purposes of section 1(b) is as follows—
- (a) for a ruling on whether profits are to be treated as chargeable to profits tax under section 14 of this Ordinance as arising in or derived from Hong Kong 23 hours
  - (b) for a ruling on whether remuneration is to be treated as chargeable to salaries tax by virtue of section 9A of this Ordinance 11 hours
  - (c) for any other ruling 7 hours
4. Where an application for a ruling is withdrawn, the applicant is still liable to pay all the fees specified in this Part and incurred in respect of the application before the Commissioner receives notice of the withdrawal.
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## **Schedule 11**

[s. 88B]

### **Fee Payable on Request for Notice under Section 88B**

*(Schedule 11 added 30 of 1999 s. 44. Amended L.N. 3 of 2006)*

The fee payable in respect of a request under section 88B is \$270.

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**Schedule 12**

[s. 89]

**Transitional Provisions Relating to Provisional Salaries  
Tax in respect of the Year of Assessment 2001/02***(Schedule 12 added 29 of 2001 s. 4)*

1. In this Schedule—

***dwelling*** (住宅), ***place of residence*** (居住地方) and ***recognized organization or association*** (認可組織或協會) have the respective meanings assigned to them in section 26E(9);

***home loan*** (居所貸款), in relation to a person applying under paragraph 2, means a loan of money which is—

- (a) applied wholly or partly for the acquisition of a dwelling which—
  - (i) during any period of time in the year of assessment 2001/02 is held by the person as a sole owner, or as a joint tenant or tenant in common; and
  - (ii) during that period of time is used by the person exclusively or partly as his place of residence; and
- (b) secured during that period of time by a mortgage or charge over that dwelling or any other property in Hong Kong;

***home loan interest*** (居所貸款利息), in relation to a person applying under paragraph 2, means interest on a home loan which is payable by the person as a sole owner or as a joint tenant or tenant in common of the dwelling to which the home loan relates, to—

- (a) the Government;

- (b) a financial institution;
- (c) a credit union registered under the Credit Unions Ordinance (Cap. 119);
- (d) a money lender licensed under the Money Lenders Ordinance (Cap. 163);
- (e) the Hong Kong Housing Society;
- (f) an employer of the person; or
- (g) any recognized organization or association.

2. Without prejudice to section 63E, where in relation to the year of assessment 2001/02 a person is liable to pay provisional salaries tax, that person may, by notice in writing lodged with the Commissioner not later than—

- (a) 28 days before the day by which the provisional salaries tax is to be paid; or
- (b) 14 days after the date of the notice for payment of the provisional salaries tax given under section 63C(6),

whichever is the later, apply to have the payment of the whole or part of such tax held over until he is required to pay salaries tax for that year of assessment, on the ground that he has paid or is likely to pay during that year of assessment home loan interest of an amount which exceeds—

- (i) in a case where the dwelling to which the home loan interest relates is held by the person as a sole owner, \$100,000; or
- (ii) in a case where the dwelling to which the home loan interest relates is held by the person otherwise than as a sole owner, the amount calculated in accordance with paragraph 3.

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3. The amount referred to in paragraph 2(ii) shall be—
    - (a) in a case where the dwelling is held by the person as a joint tenant, \$100,000 as divided by the number of joint tenants; or
    - (b) in a case where the dwelling is held by the person as a tenant in common, \$100,000 as multiplied by his share in the ownership in the dwelling.
  
  4. Where the Commissioner is satisfied that it is appropriate to do so, he may, either generally or in a particular case, extend the time within which a person may apply under paragraph 2.
  
  5. On receipt of an application under paragraph 2, the Commissioner shall consider the application and may hold over the payment of the whole or part of the provisional salaries tax.
  
  6. The Commissioner shall, by notice in writing, inform the person applying under paragraph 2 of his decision.
-

## Schedule 13

[s. 12]

### **\*Institutions that may Accredite or Recognize Training or Development Courses for the Purpose of Section 12(6)(c)(iii)**

*(Schedule 13 added 12 of 2004 s. 22)*

Item	Institution
1.	The Architects Registration Board established by section 4 of the Architects Registration Ordinance (Cap. 408)
2.	The Chinese Medicine Council of Hong Kong established by section 3 of the Chinese Medicine Ordinance (Cap. 549)
3.	The Chiropractors Council established by section 3 of the Chiropractors Registration Ordinance (Cap. 428)
**3A.	The Construction Industry Council established by section 4 of the Construction Industry Council Ordinance (Cap. 587) <i>(Added 12 of 2006 s. 84)</i>
4.	The Construction Industry Training Authority established by section 4 of the Industrial Training (Construction Industry) Ordinance (Cap. 317) and in existence before the commencement# of section 71 of the Construction Industry Council Ordinance (Cap. 587) <i>(Amended 12 of 2006 s. 84)</i>
5.	The Dental Council of Hong Kong established by section 4 of the Dentists Registration Ordinance (Cap. 156)

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Item	Institution
6.	The Engineers Registration Board established by section 3 of the Engineers Registration Ordinance (Cap. 409)
7.	The Estate Agents Authority established by section 4 of the Estate Agents Ordinance (Cap. 511)
8.	The Hong Kong Academy of Medicine established by section 3 of the Hong Kong Academy of Medicine Ordinance (Cap. 419)
9.	The Hong Kong Bar Association referred to in section 2(1) of the Legal Practitioners Ordinance (Cap. 159)
10.	The Hong Kong Institute of Architects incorporated by section 3 of The Hong Kong Institute of Architects Incorporation Ordinance (Cap. 1147)
11.	The Hong Kong Institution of Engineers incorporated by section 3 of The Hong Kong Institution of Engineers Ordinance (Cap. 1105)
12.	The Hong Kong Institute of Housing incorporated by section 3 of The Hong Kong Institute of Housing Ordinance (Cap. 507)
13.	The Hong Kong Institute of Landscape Architects incorporated by section 3 of The Hong Kong Institute of Landscape Architects Incorporation Ordinance (Cap. 1162)
14.	The Hong Kong Institute of Planners incorporated by section 3 of The Hong Kong Institute of Planners Incorporation Ordinance (Cap. 1153)
15.	The Hong Kong Institute of Surveyors incorporated by section 3 of The Hong Kong Institute of Surveyors Ordinance (Cap. 1148)
16.	The Hong Kong Institute of Certified Public Accountants incorporated by section 3 of the Professional Accountants Ordinance (Cap. 50) ( <i>Amended 23 of 2004 s. 56</i> )

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Item	Institution
@17.	The Hong Kong Society of Notaries referred to in section 2(1) of the Legal Practitioners Ordinance (Cap. 159) as amended by section 5(1)(e) of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998)
18.	The Housing Managers Registration Board established by section 3 of the Housing Managers Registration Ordinance (Cap. 550)
19.	The Land Surveyors Registration Committee appointed under section 6 of the Land Survey Ordinance (Cap. 473)
20.	The Landscape Architects Registration Board established by section 3 of the Landscape Architects Registration Ordinance (Cap. 516)
21.	The Law Society of Hong Kong referred to in section 2(1) of the Legal Practitioners Ordinance (Cap. 159)
22.	The Medical Council of Hong Kong established by section 3 of the Medical Registration Ordinance (Cap. 161)
23.	The Medical Laboratory Technologists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
24.	The Midwives Council of Hong Kong established by section 3 of the Midwives Registration Ordinance (Cap. 162)
25.	The Nursing Council of Hong Kong established by section 3 of the Nurses Registration Ordinance (Cap. 164)
26.	The Occupational Therapists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
27.	The Optometrists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
28.	The Pharmacy and Poisons Board established by section 3 of the Pharmacy and Poisons Ordinance (Cap. 138)



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Item	Institution
29.	The Physiotherapists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
30.	The Planners Registration Board established by section 3 of the Planners Registration Ordinance (Cap. 418)
31.	The Radiographers Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
32.	The Security and Guarding Services Industry Authority established by section 4 of the Security and Guarding Services Ordinance (Cap. 460)
33.	The Social Workers Registration Board established by section 4 of the Social Workers Registration Ordinance (Cap. 505)
34.	The Surveyors Registration Board established by section 3 of the Surveyors Registration Ordinance (Cap. 417)
35.	The Travel Industry Council of Hong Kong referred to in section 32A(1) of the Travel Agents Ordinance (Cap. 218)
36.	The Veterinary Surgeons Board established by section 3 of the Veterinary Surgeons Registration Ordinance (Cap. 529)
37.	The Vocational Training Council established by section 4 of the Vocational Training Council Ordinance (Cap. 1130)
38.	The Hong Kong Council for Accreditation of Academic and Vocational Qualifications established by section 3(1) of the Hong Kong Council for Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 1150) ( <i>Added 6 of 2007 s. 49</i> )

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### Editorial Note:

\* Schedule 13 (except items 3A and 17) applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(5)(a) and 12 of 2006 s. 84)

\*\* Item 3A applies in relation to the year of assessment in which section 3 of Schedule 6 to the Construction Industry Council Ordinance (Cap. 587) comes into operation<sup>#</sup> and to all subsequent years of assessment. (Please see 12 of 2006 s. 84)

# Commencement date : 1 January 2008.

@ Item 17 applies in relation to the year of assessment in which section 5(1)(e) of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998) comes into operation<sup>+</sup> and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(5)(b))

+ Commencement date: 30 June 2005.

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## Schedule 14

[s. 89(5)]

### **Transitional Provisions Relating to Provisional Salaries Tax in respect of the Year of Assessment 2005/06**

*(Schedule 14 added 8 of 2005 s. 7. Amended E.R. 1 of 2012)*

1. For the purposes of section 63C(1) of the Ordinance, in calculating the net chargeable income of a person for the preceding year of assessment to ascertain the provisional salaries tax in respect of the year of assessment 2005/06—
  - (a) the reference to “such allowances as are under Part 5 permitted for that person” in section 12B(1)(b) of the Ordinance; and
  - (b) the reference to “such allowances as are under Part 5 permitted in their case” in section 12B(2)(b) of the Ordinance,

shall be construed to mean such allowances that may be granted to that person for the year of assessment 2005/06 under Part 5 of the Ordinance as amended by the Revenue (Allowances for Tax) Ordinance 2005 (8 of 2005).

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2. For the purposes of an application under section 63E(1) of the Ordinance to hold over the payment of provisional salaries tax in respect of the year of assessment 2005/06, the reference to “net chargeable income for the year preceding the year of assessment” in section 63E(2)(a) or (b) of the Ordinance shall be construed to mean the net chargeable income for the preceding year of assessment as calculated in accordance with paragraph 1.
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## Schedule 15

[ss. 20AB & 20AE &  
Sch. 15A]

*(Amended 13 of 2015 s. 9)*

### Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 20AE

*(Amended 13 of 2015 s. 9)*

*(Schedule 15 added 4 of 2006 s. 4. Amended E.R. 1 of 2012)*

#### Part 1

1. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the non-resident person that would have been chargeable to tax under Part 4 but for section 20AC (*exempt profits*) for each day in the period in that year of assessment during which the resident person has a direct or indirect beneficial interest in the non-resident person.

*(Amended 13 of 2015 s. 9)*

2. For the purposes of section 1 of this Part, the exempt profits of a non-resident person for a particular day in a year of assessment are to be ascertained in accordance with the following formula— *(Amended 13 of 2015 s. 9)*

$$A = \frac{B \times C}{D}$$

- where:
- A means the exempt profits of the non-resident person for a particular day in a year of assessment;
  - B means the extent of the resident person's beneficial interest in the non-resident person on the particular day, expressed as a percentage determined in accordance with Part 2 of this Schedule;
  - C means the exempt profits of the non-resident person for the accounting period of the non-resident person in which the particular day falls;
  - D means the total number of days in the accounting period of the non-resident person in which the particular day falls.

*(Amended 13 of 2015 s. 9)*

## Part 2

1. Where a resident person has a direct beneficial interest in a non-resident person, the extent of the beneficial interest of the resident person in the non-resident person is—
  - (a) where the non-resident person is a corporation that is not a trustee of a trust estate, the percentage of the issued share capital (however described) of the corporation held by the resident person;
  - (b) where the non-resident person is a partnership that is not a trustee of a trust estate, the percentage of the profits of the partnership to which the resident person is entitled;  
or
  - (c) where the non-resident person is a trustee of a trust estate, the percentage in value of the trust estate in which the resident person is interested.

2. Where a resident person has an indirect beneficial interest in a non-resident person, the extent of the beneficial interest of the resident person in the non-resident person is—
- (a) where there is one interposed person, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the interposed person by the percentage representing the extent of the beneficial interest of the interposed person in the non-resident person; or
  - (b) where there is a series of 2 or more interposed persons, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the first interposed person in the series by—
    - (i) the percentage representing the extent of the beneficial interest of each interposed person (other than the last interposed person) in the series in the next interposed person in the series; and
    - (ii) the percentage representing the extent of the beneficial interest of the last interposed person in the series in the non-resident person.

- 
3. For the purposes of section 2 of this Part— (*Amended 13 of 2015 s. 9*)
- (a) section 1 of this Part applies in determining the extent of the beneficial interest of a resident person in an interposed person as if references to a non-resident person in that section were references to an interposed person;
  - (b) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person in a non-resident person as if references to a resident person in that section were references to an interposed person;
  - (c) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person (*first-mentioned interposed person*) in another interposed person (*second-mentioned interposed person*) as if— (*Amended 13 of 2015 s. 9*)
    - (i) references to a resident person in that section were references to the first-mentioned interposed person; and
    - (ii) references to a non-resident person in that section were references to the second-mentioned interposed person.

*(Amended 13 of 2015 s. 9)*

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## Schedule 15A

[ss. 20AB & 20AF]

### Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 20AF

*(Schedule 15A added 13 of 2015 s. 10)*

#### Part 1

1. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the special purpose vehicle that are chargeable to tax under Part 4 and in respect of which tax would have been payable but for section 20ACA (*exempt profits*) for each day in the period in that year of assessment during which the resident person has an indirect beneficial interest in the special purpose vehicle.
2. For the purposes of section 1 of this Part, the exempt profits of a special purpose vehicle for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B1 \times B2 \times C}{D}$$

where: A means the exempt profits of the special purpose vehicle for a particular day in a year of assessment;

- B1 means the extent of the resident person's beneficial interest in the non-resident person on the particular day, expressed as a percentage determined in accordance with Part 2 of Schedule 15;
- B2 means the extent of the non-resident person's beneficial interest in the special purpose vehicle on the particular day, expressed as a percentage determined in accordance with Part 2 of this Schedule;
- C means the exempt profits of the special purpose vehicle for the accounting period of the special purpose vehicle in which the particular day falls;
- D means the total number of days in the accounting period of the special purpose vehicle in which the particular day falls.

3. In this Part—

*special purpose vehicle* (特定目的工具) has the meaning given by section 20ACA(2).

## Part 2

1. Where a non-resident person has a direct beneficial interest in a special purpose vehicle, the extent of the beneficial interest of the non-resident person in the special purpose vehicle is—
  - (a) if the special purpose vehicle is a corporation that is not a trustee of a trust estate, the percentage of the issued share capital (however described) of the corporation held by the non-resident person;

- 
- (b) if the special purpose vehicle is a partnership that is not a trustee of a trust estate, the percentage of the profits of the partnership to which the non-resident person is entitled;
- (c) if the special purpose vehicle is a trustee of a trust estate, the percentage in value of the trust estate in which the non-resident person is interested; or
- (d) if the special purpose vehicle is an entity that does not fall within any of paragraphs (a), (b) and (c), the percentage of ownership interests that the non-resident person has in the entity.
2. Where a non-resident person has an indirect beneficial interest in a special purpose vehicle, the extent of the beneficial interest of the non-resident person in the special purpose vehicle is—
- (a) if there is one interposed person, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the non-resident person in the interposed person by the percentage representing the extent of the beneficial interest of the interposed person in the special purpose vehicle; or
- (b) if there is a series of 2 or more interposed persons, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the non-resident person in the first interposed person in the series by—
- (i) the percentage representing the extent of the beneficial interest of each interposed person (other than the last interposed person) in the series in the next interposed person in the series; and

- (ii) the percentage representing the extent of the beneficial interest of the last interposed person in the series in the special purpose vehicle.

3. For the purposes of section 2 of this Part—

- (a) section 1 of this Part applies in determining the extent of the beneficial interest of a non-resident person in an interposed person as if references to a special purpose vehicle in that section were references to an interposed person;
- (b) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person in a special purpose vehicle as if references to a non-resident person in that section were references to an interposed person; and
- (c) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person (*Interposed Person A*) in another interposed person (*Interposed Person B*) as if—
  - (i) references to a non-resident person in that section were references to Interposed Person A; and
  - (ii) references to a special purpose vehicle in that section were references to Interposed Person B.

4. In this Part—

*special purpose vehicle* (特定目的工具) has the meaning given by section 20ACA(2).

**Schedule 15B**

[ss. 20AB &amp; 20AK]

**Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 20AK***(Schedule 15B added 12 of 2018 s. 5)***Part 1**

1. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the open-ended fund company that would have been chargeable to tax under Part 4 but for section 20AH (*exempt profits*) for each day in the period in the year of assessment during which the resident person has a direct or indirect beneficial interest in the company.
2. For the purposes of section 1 of this Part, the exempt profits of an open-ended fund company for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B \times C}{D}$$

where—

A = the exempt profits of the company for a particular day in a year of assessment;

B = the extent of the resident person's beneficial interest in the company on the particular day, expressed as a percentage determined in accordance with Part 2 of this Schedule;

C = the exempt profits of the company for the accounting period of the company in which the particular day falls;

D = the total number of days in the accounting period of the company in which the particular day falls.

## Part 2

1. Where a resident person has a direct beneficial interest in an open-ended fund company, the extent of the beneficial interest of the resident person in the company is the percentage of the issued share capital of the company held by the resident person.
2. Where a resident person has an indirect beneficial interest in an open-ended fund company, the extent of the beneficial interest of the resident person in the company is—
  - (a) if there is only one interposed person, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the interposed person by the percentage representing the extent of the beneficial interest of the interposed person in the company; or
  - (b) if there is a series of 2 or more interposed persons, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the first interposed person in the series by—
    - (i) the percentage representing the extent of the beneficial interest of each interposed person (other

than the last interposed person) in the series in the next interposed person in the series; and

- (ii) the percentage representing the extent of the beneficial interest of the last interposed person in the series in the company.

3. For the purposes of section 2 of this Part—

- (a) section 1 of this Part applies in determining the extent of the beneficial interest of a resident person in an interposed person as if references to an open-ended fund company in that section were references to an interposed person;
- (b) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person in an open-ended fund company as if references to a resident person in that section were references to an interposed person; and
- (c) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person (*Interposed Person A*) in another interposed person (*Interposed Person B*) as if—
  - (i) references to a resident person in that section were references to Interposed Person A; and
  - (ii) references to an open-ended fund company in that section were references to Interposed Person B.

## **Schedule 16**

[s. 20AC & Schs. 17A, 29 &  
36]

*(Amended 10 of 2013 s. 19; 12 of 2016 s. 16)*

### **Specified Transactions**

*(Schedule 16 added 4 of 2006 s. 5)*

#### **Part 1**

*(Added 13 of 2015 s. 11; Amended L.N. 69 of 2018)*

1. A transaction in securities.
2. A transaction in futures contracts.
3. A transaction in foreign exchange contracts.
4. A transaction consisting in the making of a deposit other than by way of a money-lending business.
5. A transaction in foreign currencies.
6. A transaction in exchange-traded commodities.
7. A transaction in an investee company's shares carried out through or arranged by a specified person for, or carried out by, a non-resident partner fund. *(Added L.N. 69 of 2018)*



## Part 2

*(Added 13 of 2015 s. 11)*

1. In this Schedule— *(Amended 13 of 2015 s. 11)*

***collective investment scheme*** (集體投資計劃) means arrangements in respect of any property—

- (a) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of the management;
- (b) under which—
  - (i) the property is managed as a whole by or on behalf of the person operating the arrangements;
  - (ii) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or
  - (iii) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and
- (c) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive—
  - (i) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property

or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or

- (ii) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property;

***contract for differences*** (差價合約) means an agreement the purpose or effect of which is to obtain a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the agreement;

***debenture*** (債權證) includes debenture stocks, bonds, and other debt securities of a corporation, whether constituting a charge on the assets of the corporation or not; (*Amended 8 of 2011 s. 27*)

***deposit*** (存款) means a loan of money—

- (a) at interest; or
- (b) repayable at a premium or repayable with any consideration in money or money's worth;

***exchange-traded commodity*** (在交易所買賣的商品) means gold or silver traded on a commodity exchange in Hong Kong to which the Commodity Exchanges (Prohibition) Ordinance (Cap. 82) does not apply by virtue of section 3(d) of that Ordinance;

***foreign exchange contract*** (外匯交易合約) means a contract other than a futures contract and an options contract, whereby the parties to the contract agree to exchange different currencies at a future time;

***futures contract*** (期貨合約) means—

- 
- (a) a contract or an option on a contract that is listed or traded on the Hong Kong Futures Exchange Limited; or
  - (b) any other contract for differences—
    - (i) that is listed on a specified stock exchange, or traded on a specified futures exchange, within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);
    - (ii) that an authorized institution within the meaning of the Banking Ordinance (Cap. 155) may enter into under that Ordinance; or
    - (iii) the transaction in respect of which is regulated by or under, or is carried out in compliance with, the Securities and Futures Ordinance (Cap. 571);

**investee company** (獲投資公司) means—

- (a) a corporation that has ITVFC and a partner fund as shareholders under the ITVF Scheme; or
- (b) a corporation that—
  - (i) had, at any time, ITVFC and a partner fund (**Fund A**) as shareholders under the ITVF Scheme; and
  - (ii) has, since that time, continued to have a partner fund (whether Fund A or another partner fund) as a shareholder; (*Added L.N. 69 of 2018*)

**ITVF Scheme** (創基計劃) means the Innovation and Technology Venture Fund Scheme established by the Innovation and Technology Commission; (*Added L.N. 69 of 2018*)

**ITVFC** (創基公司) means The Innovation and Technology Venture Fund Corporation incorporated under the Companies Ordinance (Cap. 622); (*Added L.N. 69 of 2018*)

***non-resident partner fund*** (非居港夥伴基金) means a partner fund that is a non-resident person within the meaning of section 20AB(3); (*Added L.N. 69 of 2018*)

***options contract*** (期權合約) means a contract that gives the holder of the contract the option or right, exercisable at or before a time specified in the contract to—

- (a) buy or sell—
  - (i) at an agreed consideration an agreed quantity of a specified futures contract, share or other property; or
  - (ii) an agreed value of a specified futures contract, share or other property; or
- (b) be paid an amount of money calculated by reference to the value of such futures contract, share or other property or by reference to the level of an index, as may be specified in the contract;

***partner fund*** (夥伴基金) means a fund that is a party (whether or not through an agent) to an agreement—

- (a) to which ITVFC is also a party;
- (b) that stipulates the overall rights and obligations of ITVFC and the fund in respect of their participation in the ITVF Scheme; and
- (c) that is valid and in force; (*Added L.N. 69 of 2018*)

***property*** (財產) includes—

- (a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

**securities** (證券) means—

- (a) subject to section 21(6) of Schedule 17A (specified alternative bond scheme and its tax treatment), shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority (excluding shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a private company which is not a special purpose vehicle or an excepted private company); (*Amended 10 of 2013 s. 19; 13 of 2015 s. 11*)
- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (d) interests in any collective investment scheme;
- (e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities; (*Amended 28 of 2012 ss. 912 & 920; 13 of 2015 s. 11*)

**share** (股份) means any share in the share capital of a corporation, and, except where a distinction between stock and shares is express or implied, includes stock; (*Amended L.N. 69 of 2018*)

**specified person** (指明人士) has the meaning given by section 20AC(6). (*Added L.N. 69 of 2018*)

2. For the purposes of the definition of **securities** in section 1 of this Part—

***excepted private company*** (例外私人公司) has the meaning given by section 20ACA(2);

***private company*** (私人公司) has the meaning given by section 20ACA(2);

***special purpose vehicle*** (特定目的工具) has the meaning given by section 20ACA(2).

*(Added 13 of 2015 s. 11)*

3. For the purposes of paragraphs (a), (b) and (c) of the definition of ***securities*** in section 1 of this Part, a regulatory capital security is treated as a bond. *(Added 12 of 2016 s. 16)*
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## **Schedule 16A**

[ss. 20AB & 20AH]

### **Classes of Assets Specified for Purposes of Section 20AH**

*(Schedule 16A added 12 of 2018 s. 6)*

1. Securities as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).
2. Shares of, or debentures issued by, a private company within the meaning of section 11 of the Companies Ordinance (Cap. 622).
3. Futures contracts as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).
4. Foreign exchange contract under which the parties to the contract agree to exchange different currencies on a particular date.
5. Deposits (as defined in section 2(1) of the Banking Ordinance (Cap. 155)) made with a bank (as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)).
6. Foreign currencies.
7. Certificates of deposit as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).
8. Cash.

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9. *(Addition not yet in operation—see 12 of 2018 s. 6)*

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## **Schedule 16B**

[ss. 20AB & 20AI]

### **Meaning of Non-closely Held**

*(Schedule 16B added 12 of 2018 s. 6)*

1. For an open-ended fund company that does not have any qualified investor—
  - (a) the company has at least 10 investors;
  - (b) for at least 10 investors of the company, the participation interest of each of them exceeds \$20,000,000;
  - (c) the participation interest of each investor does not exceed 50% of the company's issued share capital; and
  - (d) the participation interest of the originators and their associates does not exceed 30% of the company's issued share capital.
  
2. For an open-ended fund company that has one or more qualified investors—
  - (a) the company has at least 5 investors;
  - (b) the participation interest of each qualified investor exceeds \$200,000,000;
  - (c) for at least 4 investors (not being qualified investors) of the company, the participation interest of each of them exceeds \$20,000,000;
  - (d) the participation interest of each investor (not being a qualified investor) does not exceed 50% of the company's issued share capital; and

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- (e) the participation interest of the originators and their associates does not exceed 30% of the company's issued share capital.
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## **Schedule 17**

[ss. 16H & 16K]

### **Environmental Protection Facilities**

*(Schedule 17 added 21 of 2008 s. 11)*

#### **Part 1**

#### **Machinery or Plant**

1. Low noise construction machinery or plant registered under the Quality Powered Mechanical Equipment system administered by the Environmental Protection Department.
2. Air pollution control machinery or plant in compliance with the requirements under the Air Pollution Control Ordinance (Cap. 311).
3. Waste treatment machinery or plant in compliance with the requirements under the Waste Disposal Ordinance (Cap. 354).
4. Wastewater treatment machinery or plant in compliance with the requirements under the Water Pollution Control Ordinance (Cap. 358).

## **Part 2**

### **Installations**

1. Any of the following installations—
  - (a) solar water heating installations;
  - (b) solar photovoltaic installations;
  - (c) wind turbine installations;
  - (d) offshore wind farm installations;
  - (e) landfill gas installations;
  - (f) anaerobic digestion installations;
  - (g) thermal waste treatment installations;
  - (h) wave power installations;
  - (i) hydroelectric installations;
  - (j) bio-fuel installations;
  - (k) biomass combined-heat-and-power installations;
  - (l) geothermal installations.
  
2. Energy efficient building installations registered under the Hong Kong Energy Efficiency Registration Scheme for Buildings administered by the Electrical and Mechanical Services Department.

## **Part 3**

## Environment-friendly Vehicles

1. Any vehicle qualified for remission of first registration tax (as defined by section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)) under the following schemes administered by the Environmental Protection Department—
  - (a) the Tax Incentives Scheme for Environment-friendly Commercial Vehicles;
  - (b) the Tax Incentives Scheme for Environment-friendly Petrol Private Cars.
  
2. Any motor vehicle (as defined by section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)) that is capable of drawing energy from both of the following on-vehicle sources of stored energy or power for mechanical propulsion—
  - (a) consumable fuel;
  - (b) battery, capacitor, flywheel, generator or other electrical energy or power storage device.
  
3. Any motor vehicle (as defined by section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)) that is solely propelled by electric power and does not emit any exhaust gas.

*(Part 3 added 10 of 2010 s. 8)*

## **Schedule 17A**

[ss. 5B(7), 14A(6), 15(3A),  
16(4A), 20AC(7), 26A(2) &  
(4), 40AB, 51C(5), 60(4),  
64(11), 79(4), 80(6) & 82A(8)  
& Schs. 6, 16 & 29]  
*(Amended 7 of 2014 s. 9)*

### **Specified Alternative Bond Scheme and its Tax Treatment**

*(Schedule 17A added 10 of 2013 s. 4)*

**Note—**

The following is an overview of the content of this Schedule and does not have legislative effect—

- (a) This Schedule enables particular arrangements in a specified alternative bond scheme to be regarded as debt arrangements for the purposes of this Ordinance if certain conditions are met.
- (b) Sections 2 and 3 provide for the basic structure of an alternative bond scheme, which comprises a bond arrangement and an investment arrangement.
- (c) Under section 4, a specified alternative bond scheme is, in broad terms, an alternative bond scheme whose investment arrangement is always the same specified investment arrangement.
- (d) Different types of specified investment arrangements are set out in section 5. Sections 6 to 12 provide for the structures of those types of specified investment arrangements and for the calculation of the investment return under them. These

provisions may be amended by notice published in the Gazette under section 23.

- (e) Sections 13 to 20 provide for the conditions that must be met in order for the bond arrangement, and investment arrangement, in a specified alternative bond scheme to be regarded as debt arrangements for the purposes of this Ordinance. Sections 21 and 22 contain detailed provisions on the tax treatment of the arrangements.
- (f) Sections 24 to 29 provide for record-keeping, notifications, assessments and other miscellaneous matters.

## Part 1

### Preliminary

#### 1. Interpretation

- (1) In this Schedule, an expression specified in column 1 of the Table below is to be construed in accordance with the section of this Schedule specified opposite to it in column 2 of the Table—

#### Table

Column 1	Column 2
Expression	Section
<i>acquisition cost</i> (取得成本)	2

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Column 1	Column 2
Expression	Section
<i>additional payments</i> (額外付款)	2
<i>agency arrangement</i> (代理安排)	9
<i>alternative bond</i> (另類債券)	2
<i>alternative bond scheme</i> (另類債券計劃)	2
<i>arrangements performed according to terms condition</i> (按條款履行安排條件)	18
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<i>IA disqualifying event</i> (喪失投資安排資格事件)	13(5)
<i>investment arrangement</i> (投資安排)	2
<i>investment arrangement as financial liability condition</i> (投資安排作金融負債條件)	20
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Section 1

Cap. 112

Column 1	Column 2
Expression	Section
<i>maximum term length condition</i> (最長年期條件)	17
<i>originator</i> (發起人)	2
<i>proceeds of disposal</i> (處置所得)	2
<i>profits sharing arrangement</i> (分利安排)	7
<i>purchase and sale arrangement</i> (買賣安排)	8
<i>qualified bond arrangement</i> (合資格債券安排)	13(1)
<i>qualified investment arrangement</i> (合資格投資安排)	13(2)
<i>reasonable commercial return condition</i> (合理商業回報條件)	14
<i>redemption payment</i> (贖債付款)	2
<i>specified alternative bond scheme</i> (指明另類債券計劃)	4
<i>specified asset</i> (指明資產)—	
(a) in relation to an alternative bond scheme;	2
(b) in relation to a lease arrangement;	6
(c) in relation to a profits sharing arrangement;	7
(d) in relation to a purchase and sale arrangement;	8
(e) in relation to an agency arrangement	9
<i>specified asset transaction between O and BI</i> (發起人——發債人指明資產交易)—	

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Schedule 17A—Part 1

S17A-10

Section 1

Cap. 112

Column 1	Column 2
Expression	Section
(a) in relation to a lease arrangement;	6(3)
(b) in relation to a profits sharing arrangement;	7(3)
(c) in relation to a purchase and sale arrangement;	8(6)
(d) in relation to an agency arrangement	9(7)
<b><i>specified investment arrangement</i></b> (指明投資安排)	5
<b><i>specified term</i></b> (指明年期)	2
(2) In this Schedule—	
<b><i>asset</i></b> (資產) means any property or any class of property;	
<b><i>investment return</i></b> (投資回報)—	
(a) in relation to an investment arrangement, has the meaning given by section 2 of this Schedule;	
(b) in relation to a lease arrangement or a profits sharing arrangement, means the investment return calculated in accordance with section 10 of this Schedule;	
(c) in relation to a purchase and sale arrangement, means the investment return calculated in accordance with section 11 of this Schedule; and	
(d) in relation to an agency arrangement, means the investment return calculated in accordance with section 12 of this Schedule;	
<b><i>special purpose vehicle</i></b> (特定目的工具), in relation to any scheme or schemes, means a corporation, partnership or any other entity that—	

- (a) is established solely for the purposes of the scheme or schemes (as the case requires); and
- (b) does not carry on any trade or activities except for the purposes of the scheme or schemes (as the case requires).

## Part 2

### Specified Alternative Bond Scheme and its Tax Treatment

#### Division 1—Alternative Bond Scheme, Bond Arrangement and Investment Arrangement

- 2. **Alternative bond scheme, bond arrangement and investment arrangement**
  - (1) If a scheme comprises 2 arrangements (*arrangement A* and *arrangement B*), and the scheme and the arrangements meet the description in subsections (2), (3) and (4), then—
    - (a) the scheme is an *alternative bond scheme*;
    - (b) arrangement A is the *bond arrangement* in the scheme; and
    - (c) arrangement B is the *investment arrangement* in the scheme.
  - (2) The scheme (and arrangement A and arrangement B in it)—

- (a) commences on the date on which alternative bonds are issued under arrangement A, as referred to in subsection (3)(d); and
- (b) ends on the date on which the alternative bonds are to be fully redeemed or cancelled under the terms of arrangement A,
- (the period that so commences and ends is referred to as the *specified term*).
- (3) Under arrangement A—
- (a) one or more persons (each is referred to as an *initial bond-holder*) pay a sum of money (*bond proceeds*) to another person (*bond-issuer*);
- (b) the bond-issuer is a special purpose vehicle for the scheme;
- (c) on behalf of the initial bond-holders, the bond-issuer enters into arrangement B, as referred to in subsection (4);
- (d) the bond-issuer issues instruments (*alternative bonds*) to the initial bond-holders evidencing their rights and interests in or in relation to the specified asset referred to in subsection (4)(a);
- (e) if the alternative bonds are transferable from 1 person to another, transferees of any such alternative bonds become holders of the alternative bonds (*subsequent bond-holders*) because of the transfers (any initial bond-holder or subsequent bond-holder is referred to as a *bond-holder*); and
- (f) the bond-issuer undertakes—
- (i) to make a payment (*redemption payment*), whether or not by instalments, to the bond-holders during

or at the end of the specified term to redeem the alternative bonds;

- (ii) to make other payments (*additional payments*) to the bond-holders on one or more occasions during, or at the end of, the specified term; and
  - (iii) to use the investment return and the proceeds of disposal under arrangement B as referred to in subsection (4)(b) and (c), or part of these sums, for payment of the redemption payment and additional payments.
- (4) The bond-issuer enters into arrangement B with another person (*originator*), under which—
- (a) the bond-issuer uses the bond proceeds (*acquisition cost*) to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in section 3(2)(b), (3) and (4) of this Schedule, is referred to as the *specified asset*);
  - (b) the bond-issuer arranges for the management of the specified asset with a view to generating income or gains during the specified term (the income or gains are referred to as the *investment return*); and
  - (c) the bond-issuer is to dispose of the specified asset by the end of the specified term (the consideration received by the bond-issuer for the disposal of the specified asset is referred to as the *proceeds of disposal*).

### 3. Construction of references in section 2(3)(b) and (4)(b) of this Schedule

- (1) For the purposes of section 2(3)(b) of this Schedule, a special purpose vehicle for 2 or more schemes (whether existing or

- intended to be set up) is regarded as a special purpose vehicle for each of those schemes if—
- (a) each of the schemes would have been, or when set up would have been, an alternative bond scheme but for that section; and
  - (b) each of the schemes has, or is intended to have, that special purpose vehicle as the bond-issuer and the same other person as the originator.
- (2) A reference in section 2(4)(b) of this Schedule to the management of the specified asset includes—
- (a) its disposal; and
  - (b) a change of the specified asset described in subsection (3) with the consequences described in subsection (4).
- (3) A change of the specified asset refers to—
- (a) the asset that is at any time the specified asset under the scheme (*pre-change asset*) being disposed of, destroyed or lost, in whole or in part (the asset or part disposed of, destroyed or lost is referred to as the *outgoing asset*); and
  - (b) another asset (*incoming asset*) being acquired.
- (4) The consequences of the change of the specified asset are—
- (a) the outgoing asset ceases to be subject to the scheme; and
  - (b) either—
    - (i) if the outgoing asset constitutes the whole of the pre-change asset, the incoming asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (2)(b) and (3) and this subsection; or

- (ii) if the outgoing asset constitutes only part of the pre-change asset, the asset comprising the incoming asset and the remaining part of the pre-change asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (2)(b) and (3) and this subsection.

#### 4. Specified alternative bond scheme

A scheme is a *specified alternative bond scheme* at any time (*material time*) if at the material time, and from the commencement of the specified term of the scheme up to the material time—

- (a) the terms of the scheme are, and have always been, those as described of an alternative bond scheme in section 2 of this Schedule; and
- (b) the terms of the investment arrangement in the scheme are those as described of a specified investment arrangement in Division 2 of this Part, and have always been those as so described of the same specified investment arrangement.

### Division 2—Specified Investment Arrangements: Description and Calculation of Investment Return

#### 5. Specified investment arrangement

The investment arrangement in an alternative bond scheme is a *specified investment arrangement* if it is—

- (a) a lease arrangement;

- (b) a profits sharing arrangement;
- (c) a purchase and sale arrangement; or
- (d) an agency arrangement.

## 6. Lease arrangement

- (1) The investment arrangement in an alternative bond scheme is a *lease arrangement* if, under the investment arrangement—
- (a) the bond-issuer uses the acquisition cost to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in subsection (2), is referred to as the *specified asset*);
  - (b) subject to paragraph (d), the bond-issuer is to hold the specified asset until the end of the specified term;
  - (c) for the purposes of generating income or gains during the specified term, the bond-issuer leases the specified asset to the originator for a consideration (*specified income*); and
  - (d) the bond-issuer is to dispose of the specified asset to the originator, whether or not in stages, by the end of the specified term in return for the proceeds of disposal.
- (2) For the purposes of subsection (1), an asset that is at any time the specified asset under the scheme (*pre-replacement asset*) may be replaced in whole or in part (the asset or part replaced is referred to as the *replaced asset*, and any remainder is referred to as the *remainder asset*) by another asset (*replacing asset*) if—
- (a) either—
    - (i) the bond-issuer acquires the replacing asset from a person in consideration of the bond-issuer's disposal of the replaced asset to that person; or



- (ii) the replaced asset is destroyed or lost during the specified term with or without any remains, and the bond-issuer acquires the replacing asset from a person using—
    - (A) the consideration received by the bond-issuer for the disposal to that person of any remains of the replaced asset; and
    - (B) any insurance money or other compensation of any description arising in respect of the destruction or loss;
- (b) the person referred to in paragraph (a)(i) or (ii) is—
  - (i) the originator, whether or not subparagraph (ii) applies; or
  - (ii) if the asset acquired with the acquisition cost under subsection (1)(a) was acquired from a third party, the third party; and
- (c) on the replacement—
  - (i) the replaced asset ceases to be subject to the scheme; and
  - (ii) either—
    - (A) for a replacement in whole, the replacing asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in this subsection; or
    - (B) for a replacement in part, the asset comprising the replacing asset and the remainder asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in this subsection.

- (3) In relation to a lease arrangement, *specified asset transaction between O and BI* in section 22(3)(a) of this Schedule means—
- (a) any acquisition of an asset as, or as part of, the specified asset under subsection (1) or (2) from the originator;
  - (b) any leasing of an asset as, or as part of, the specified asset under subsection (1); or
  - (c) any disposal of an asset as, or as part of, the specified asset under subsection (1) or (2) to the originator.

## 7. Profits sharing arrangement

- (1) The investment arrangement in an alternative bond scheme is a *profits sharing arrangement* if, under the investment arrangement—
- (a) the bond-issuer and the originator form a business undertaking—
    - (i) by the bond-issuer contributing the acquisition cost to the business undertaking in return for an interest in it; and
    - (ii) by the originator contributing to the business undertaking in either of the following ways in return for an interest in it—
      - (A) contributing a sum of money or in kind or both;
      - (B) contributing expertise and management skills only,
- (the interest in the business undertaking acquired by the bond-issuer under subparagraph (i) is referred to as the *specified asset*);

- (b) subject to paragraph (f), the bond-issuer is to hold the specified asset until the end of the specified term;
  - (c) for the purposes of generating income or gains during the specified term, the business undertaking carries on business activities in accordance with the terms of the arrangement;
  - (d) for any profits generated, and any losses incurred, by the business undertaking—
    - (i) if paragraph (a)(ii)(A) applies, the bond-issuer shares with the originator—
      - (A) the profits in accordance with the profits sharing ratios set out in the arrangement; and
      - (B) the losses in proportion to the capital contributions of the bond-issuer and the originator; or
    - (ii) if paragraph (a)(ii)(B) applies, the bond-issuer—
      - (A) shares with the originator the profits in accordance with the profits sharing ratios set out in the arrangement; and
      - (B) bears the losses,
 (the profits due to the bond-issuer, less the losses borne by the bond-issuer, are referred to as the *specified return*);
  - (e) the bond-issuer may pay a portion of its share of the profits to the originator as an incentive fee; and
  - (f) the bond-issuer is to dispose of the specified asset to the originator, whether or not in stages, by the end of the specified term in return for the proceeds of disposal.
- (2) Business activities carried on by the business undertaking under subsection (1)(c) may include—

- (a) acquiring an asset;
  - (b) leasing an asset; and
  - (c) disposing of an asset.
- (3) In relation to a profits sharing arrangement—
- (a) ***asset transaction between O and BU*** in section 22(4)(b) of this Schedule means an acquisition of an asset by the business undertaking as a contribution in kind by the originator because of subsection (1)(a)(ii)(A), or any acquisition, leasing or disposal of an asset by the business undertaking from or to the originator referred to in subsection (2);
  - (b) ***specified asset transaction between O and BI*** in section 22(3)(a) of this Schedule means the disposal of the specified asset under subsection (1)(f).

## 8. Purchase and sale arrangement

- (1) The investment arrangement in an alternative bond scheme is a ***purchase and sale arrangement*** if it is an investment arrangement described in subsection (2) or (3).
- (2) An investment arrangement described in this subsection is one under which—
- (a) at the commencement of the specified term, the bond-issuer acquires an asset from a third party on immediate payment of the acquisition cost to that third party;
  - (b) for the purposes of generating income or gains, the bond-issuer, on acquiring the asset, immediately disposes of it onward to the originator in return for the proceeds of disposal, which—
    - (i) are of an amount equal to the acquisition cost plus a markup (***markup***); and

- (ii) are payable on deferred payment terms, in a lump sum or by instalments, by the end of the specified term; and
  - (c) on the acquisition of the asset from the bond-issuer, the originator either—
    - (i) immediately disposes of the asset onward to another third party against immediate payment of a price equal to the acquisition cost; or
    - (ii) retains the asset for the originator’s own use.
- (3) An investment arrangement described in this subsection is one under which—
  - (a) an acquisition and disposal of an asset by the bond-issuer and an onward disposal of it by the originator occur—
    - (i) at the commencement of the specified term; and
    - (ii) on each date (except the last one) on which an additional payment is payable under the bond arrangement in the scheme,
      - (a date on which transactions referred to in this paragraph occur is referred to as a *transaction date*); and
  - (b) the acquisitions, disposals and onward disposals of assets on the transaction dates meet the description in subsection (4).
- (4) Under an investment arrangement described in subsection (3)—
  - (a) on each transaction date (*material transaction date*), the bond-issuer acquires an asset (*asset of the material transaction date*) from a third party on immediate payment to that third party of—

- 
- (i) if the material transaction date is the 1st transaction date, the acquisition cost;
    - (ii) in any other case, an amount equal to the acquisition cost that is paid out of the proceeds of the bond-issuer's disposal of the asset of the preceding transaction date;
  - (b) for the purposes of generating income or gains, the bond-issuer, on acquiring the asset of the material transaction date, immediately disposes of it onward to the originator in return for an amount that—
    - (i) is equal to the acquisition cost plus a markup (*markup*); and
    - (ii) is payable in a lump sum—
      - (A) except if sub-subparagraph (B) applies, on the next transaction date; or
      - (B) if the material transaction date is the last transaction date, at the end of the specified term; and
  - (c) on the acquisition of the asset of the material transaction date from the bond-issuer, the originator immediately disposes of it onward to another third party against immediate payment of a price equal to the acquisition cost.
- (5) In relation to a purchase and sale arrangement described in subsection (2) or (3), each asset acquired and disposed of by the bond-issuer in accordance with subsection (2) or (4) (as the case requires) is, from the acquisition until the disposal, referred to as the *specified asset*.
  - (6) In section 22(3)(a) of this Schedule, *specified asset transaction between O and BI* means—

- (a) in relation to a purchase and sale arrangement described in subsection (2), the disposal of the specified asset under subsection (2)(b); or
- (b) in relation to a purchase and sale arrangement described in subsection (3), the disposal of a specified asset under subsection (4)(b) on a transaction date.

## 9. Agency arrangement

- (1) The investment arrangement in an alternative bond scheme is an *agency arrangement* if, under the investment arrangement—
  - (a) the bond-issuer appoints the originator, and the originator undertakes to act, as the bond-issuer's agent;
  - (b) subject to subsection (2), the originator as the bond-issuer's agent undertakes the matters specified below—
    - (i) using the acquisition cost to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in subsections (4), (5) and (6), is referred to as the *specified asset*);
    - (ii) subject to subparagraphs (iii) and (iv), holding the specified asset until the end of the specified term;
    - (iii) the management of the specified asset for the purposes of generating income or gains; and
    - (iv) disposing of the specified asset, whether or not in stages, by the end of the specified term in return for the proceeds of disposal; and
  - (c) the bond-issuer is entitled to the profits from the management of the specified asset (*specified return*), and the originator is entitled to an agency fee or an incentive fee, or both.

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- (2) For the purposes of subsection (1), the bond-issuer may act otherwise than through the originator as its agent—
- (a) partly in the matter specified in subsection (1)(b)(iii); and
  - (b) wholly or partly in the matters specified in subsection (1)(b)(i), (ii) and (iv).
- (3) For the purposes of this section, the management of the specified asset may include leasing and disposing of an asset as, or as part of, the specified asset.
- (4) For the purposes of this section, the management of the specified asset may also include a replacement described in subsection (5) with the consequences described in subsection (6).
- (5) A replacement refers to—
- (a) the asset that is at any time the specified asset under the scheme (*pre-replacement asset*) being disposed of, destroyed or lost, in whole or in part (the asset or part disposed of, destroyed or lost is referred to as the *replaced asset*, and any remainder is referred to as the *remainder asset*); and
  - (b) another asset (*replacing asset*) being acquired.
- (6) The consequences of a replacement are—
- (a) the replaced asset ceases to be subject to the scheme; and
  - (b) either—
    - (i) if the replaced asset constitutes the whole of the pre-replacement asset, the replacing asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (4) and (5) and this subsection; or



- (ii) if the replaced asset constitutes only part of the pre-replacement asset, the asset comprising the replacing asset and the remainder asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (4) and (5) and this subsection.
- (7) In relation to an agency arrangement, *specified asset transaction between O and BI* in section 22(3)(a) of this Schedule means any acquisition, leasing or disposal of an asset as, or as part of, the specified asset by the bond-issuer (whether or not acting through the originator as its agent) from or to the originator under subsection (1)(b) or (2).

**10. Lease arrangement and profits sharing arrangement—investment return**

- (1) This section applies to a specified investment arrangement that is—
- (a) a lease arrangement; or
  - (b) a profits sharing arrangement.
- (2) The investment return paid or payable under a specified investment arrangement to which this section applies in a period in the specified term is to be calculated in accordance with the following formula—
- $$A + B - C + D - E$$
- (3) If the formula is used for calculating the investment return paid under a specified investment arrangement in the period—
- A means—

- (a) for a lease arrangement, the total amount of specified income (referred to in section 6(1)(c) of this Schedule) paid under the arrangement in the period, plus any amount regarded under subsection (5)(b) as specified income paid under the arrangement in the period; or
- (b) for a profits sharing arrangement, the total amount of specified return (referred to in section 7(1)(d) of this Schedule) paid under the arrangement in the period;
- B means the specified proceeds of disposal paid under the arrangement in the period;
- C means the specified acquisition cost paid under the arrangement in the period;
- D means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period;
- E means—
- (a) for a lease arrangement, nil; or
- (b) for a profits sharing arrangement, the total amount of any incentive fee (referred to in section 7(1)(e) of this Schedule) that is paid by the bond-issuer to the originator under the arrangement in the period.
- (4) In this section, in relation to a specified investment arrangement in a specified alternative bond scheme—
- full redemption of bonds*** (全額贖回債券) means full redemption or cancellation of the alternative bonds under the bond arrangement in the scheme;
- partial redemption of bonds*** (局部贖回債券) means partial redemption or cancellation of the alternative bonds under the bond arrangement in the scheme;

***specified acquisition cost*** (指明取得成本), in relation to a period in the specified term, means the sum specified in paragraph (a) or (b) or the total amount of the sums specified in paragraphs (a) and (b) (as the case requires)—

- (a) if the specified proceeds of disposal is wholly or partly attributable to the consideration for the disposal of an asset as, or as part of, the specified asset—the acquisition cost or the part of the acquisition cost attributable to the asset disposed of (as the case requires);
- (b) if the specified proceeds of disposal is wholly or partly attributable to the money deemed under subsection (5)(c)(ii) to be the consideration for the deemed disposal of an asset as, or as part of, the specified asset—the acquisition cost or the part of the acquisition cost attributable to the asset deemed to be disposed of (as the case requires);

***specified proceeds of disposal*** (指明處置所得), in relation to a period in the specified term, means the sum specified in paragraph (a) or (b) or the total amount of the sums specified in paragraphs (a) and (b) (as the case requires)—

- (a) the consideration for the disposal of an asset as, or as part of, the specified asset if the consideration is used for full or partial redemption of bonds in the period;
  - (b) the money deemed under subsection (5)(c)(ii) to be the consideration for the deemed disposal of an asset as, or as part of, the specified asset.
- (5) If an asset (*asset A*) that is or forms part of the specified asset under a lease arrangement is destroyed or lost—
- (a) the money arising from the destruction or loss is the total amount of the following—

- (i) any insurance money or other compensation of any description arising in respect of the destruction or loss;
    - (ii) any consideration received for the disposal of any remains left of asset A after the destruction or loss;
  - (b) if in a period—
    - (i) the money arising from the destruction or loss is received by the bond-issuer but is not used for full or partial redemption of bonds; and
    - (ii) the money or part of it is not used for any acquisition of an asset as, or as part of, the specified asset referred to in section 6(2)(a)(ii) of this Schedule,  

then the unused money or part is to be regarded as specified income paid under the arrangement in the period for the purposes of subsection (3); and
  - (c) if the money arising from the destruction or loss is received by the bond-issuer who uses the money for full or partial redemption of bonds in a period, then—
    - (i) asset A is deemed to be disposed of in the period; and
    - (ii) the money arising from the destruction or loss is deemed to be consideration for the deemed disposal of asset A in the period.
- (6) If the formula is used for calculating the investment return payable under a specified investment arrangement in the period, then subsections (3), (4) and (5) apply with necessary modifications including—
  - (a) paid is to be read as payable;
  - (b) disposed of is to be read as to be disposed of;

- (c) received is to be read as receivable; and
- (d) used is to be read as to be used.

**11. Purchase and sale arrangement—investment return**

- (1) The investment return paid or payable under a purchase and sale arrangement in a period in the specified term is to be calculated in accordance with the following formula—

$$A + B$$

- (2) If the formula is used for calculating the investment return paid under a purchase and sale arrangement in the period—

A means—

- (a) for a purchase and sale arrangement described in section 8(2) of this Schedule, the markup referred to in that section, or part of it, that is paid under the arrangement in the period; or
- (b) for a purchase and sale arrangement described in section 8(3) of this Schedule, the total amount of the markups referred to in section 8(4)(b) of this Schedule paid under the arrangement in the period;

B means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period.

- (3) If the formula is used for calculating the investment return payable under a purchase and sale arrangement in the period, A and B have the meaning given by subsection (2), except that a reference in that subsection to paid is to be read as payable.

**12. Agency arrangement—investment return**

- (1) The investment return paid or payable under an agency arrangement in a period in the specified term is to be calculated in accordance with the following formula—

$$A + B - C$$

- (2) If the formula is used for calculating the investment return paid under an agency arrangement in the period—

A means the total amount of specified return (referred to in section 9(1)(c) of this Schedule) paid under the arrangement in the period;

B means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period;

C means the total amount of any agency fee and incentive fee (referred to in section 9(1)(c) of this Schedule) that is paid by the bond-issuer to the originator under the arrangement in the period.

- (3) If the formula is used for calculating the investment return payable under an agency arrangement in the period, A, B and C have the meaning given by subsection (2), except that a reference in that subsection to paid is to be read as payable.

### **Division 3—Qualified Bond Arrangement, and Qualified Investment Arrangement, in Specified Alternative Bond Scheme Regarded as Debt Arrangements**

#### **13. Qualified bond arrangement, and qualified investment arrangement, in specified alternative bond scheme**

- (1) Subject to subsection (3), the bond arrangement in a specified alternative bond scheme is a *qualified bond arrangement* at

any time (*material time*) if the scheme at the material time complies with, and from the commencement of the specified term of the scheme up to the material time has always complied with—

- (a) the reasonable commercial return condition;
  - (b) the bond arrangement as financial liability condition;
  - (c) the Hong Kong connection condition;
  - (d) the maximum term length condition; and
  - (e) the arrangements performed according to terms condition.
- (2) Subject to subsection (4), the specified investment arrangement in a specified alternative bond scheme is a *qualified investment arrangement* at any time (*material time*) if—
- (a) the bond arrangement in the scheme at the material time is, and from the commencement of the specified term of the scheme up to the material time has always been, a qualified bond arrangement; and
  - (b) the scheme at the material time complies with, and from the commencement of the specified term up to the material time has always complied with—
    - (i) the bond-issuer as conduit condition; and
    - (ii) the investment arrangement as financial liability condition.
- (3) Despite subsection (1) but subject to section 28 of this Schedule, an arrangement in a scheme is to be regarded as never having been a qualified bond arrangement in a specified alternative bond scheme if a BA disqualifying event occurs in relation to the arrangement at any time during the specified term.



(4) Despite subsection (2) but subject to section 28 of this Schedule, an arrangement in a scheme is to be regarded as never having been a qualified investment arrangement in a specified alternative bond scheme if an IA disqualifying event occurs in relation to the arrangement at any time during the specified term.

(5) In this section—

**BA disqualifying event** (喪失債券安排資格事件), in relation to an arrangement in a scheme that has been claimed or accepted to be a qualified bond arrangement in a specified alternative bond scheme for the purposes of ascertaining the tax chargeable on a person, means—

- (a) the scheme is not a specified alternative bond scheme at any time during the specified term of the scheme; or
- (b) although the scheme is a specified alternative bond scheme at all times during the specified term of the scheme, the scheme fails to comply with any of the conditions specified in subsection (1) at any time during the specified term;

**IA disqualifying event** (喪失投資安排資格事件), in relation to an arrangement in a scheme that has been claimed or accepted to be a qualified investment arrangement in a specified alternative bond scheme for the purposes of ascertaining the tax chargeable on a person, means—

- (a) the scheme is not a specified alternative bond scheme at any time during the specified term of the scheme; or
- (b) although the scheme is a specified alternative bond scheme at all times during the specified term of the scheme, the scheme fails to comply with any of the conditions specified in subsection (1) or (2)(b) at any time during the specified term.



**14. Reasonable commercial return condition**

- (1) A specified alternative bond scheme complies with the reasonable commercial return condition if the requirements in subsections (2) and (3) are met.
- (2) The Commissioner is satisfied that, in each period ending on a scheduled payment date, the maximum total amount of the bond return that may be payable under the terms of the bond arrangement in the scheme will not exceed an amount that would be a reasonable commercial return on money borrowed of an amount equal to the bond proceeds.
- (3) In each period ending on an actual payment date, the total amount of the bond return actually paid under the bond arrangement in the scheme does not exceed an amount that would be a reasonable commercial return on money borrowed of an amount equal to the bond proceeds.
- (4) In this section—

***period ending on a scheduled payment date*** (於預定付款日期告終的期間), in relation to a specified alternative bond scheme, means a period—

- (a) beginning on the commencement of the specified term of the scheme; and
- (b) ending on a date on which an additional payment, or the redemption payment or part of it, may be payable under the terms of the bond arrangement in the scheme;

***period ending on an actual payment date*** (於實際付款日期告終的期間), in relation to a specified alternative bond scheme, means a period—

- (a) beginning on the commencement of the specified term of the scheme; and

- (b) ending on a date on which an additional payment, or the redemption payment or part of it, is actually paid under the bond arrangement in the scheme.
- (5) For the purposes of this section, the bond return paid or payable under a bond arrangement in a period in the specified term is to be calculated in accordance with the following formula—
- $$(A - (B \times A / C)) + D$$
- (6) If the formula is used for calculating the bond return paid under a bond arrangement in the period—
- A is the amount of the redemption payment or part of it that is paid under the arrangement in the period;
- B is the whole amount of the bond proceeds under the arrangement;
- C is the whole amount of the redemption payment under the arrangement;
- D is the total amount of additional payments paid under the arrangement in the period.
- (7) If the formula is used for calculating the bond return payable under a bond arrangement in the period, A, B, C and D have the meaning given by subsection (6), except that a reference in that subsection to paid is to be read as payable.

**15. Bond arrangement as financial liability condition**

A specified alternative bond scheme complies with the bond arrangement as financial liability condition if the bond arrangement in the scheme—

- (a) is treated as a financial liability of the bond-issuer, in accordance with—

- (i) the Hong Kong Financial Reporting Standards (issued by the Hong Kong Institute of Certified Public Accountants); or
  - (ii) the International Financial Reporting Standards (issued by the International Accounting Standards Board); or
- (b) would be treated as a financial liability of the bond-issuer if the bond-issuer applied those standards.

**16. Hong Kong connection condition**

A specified alternative bond scheme complies with the Hong Kong connection condition if alternative bonds issued under the bond arrangement in the scheme—

- (a) are listed on a stock exchange in Hong Kong;
- (b) are issued in good faith and in the course of carrying on business in Hong Kong;
- (c) are marketed in Hong Kong; or
- (d) are lodged with and cleared by the Central Moneymarkets Unit operated by the Monetary Authority.

**17. Maximum term length condition**

- (1) A specified alternative bond scheme complies with the maximum term length condition if its specified term is not longer than 15 years.
- (2) The Financial Secretary may, by notice published in the Gazette, amend the period specified in subsection (1).

**18. Arrangements performed according to terms condition**

- (1) A specified alternative bond scheme complies with the arrangements performed according to terms condition if the bond arrangement and specified investment arrangement in the scheme are performed according to the terms of the arrangements as described—
  - (a) in section 2 of this Schedule; and
  - (b) in the provisions in Division 2 of this Part that describe the specified investment arrangement.
- (2) Despite subsection (1), a specified alternative bond scheme does not cease to comply with the arrangements performed according to terms condition solely because of a delay, of not more than 30 days, in disposing of the specified asset.

**19. Bond-issuer as conduit condition**

- (1) A specified alternative bond scheme complies with the bond-issuer as conduit condition if the requirements in subsections (2) and (3) are met.
- (2) The Commissioner is satisfied that, in each period ending on a scheduled payment date, the maximum total amount of the investment return that may be payable under the terms of the specified investment arrangement in the scheme will not exceed the maximum total amount of the bond return that may be payable under the terms of the bond arrangement in the scheme.
- (3) In each period ending on an actual payment date, the total amount of the investment return actually paid under the specified investment arrangement in the scheme does not exceed the total amount of the bond return actually paid under the bond arrangement in the scheme.

- (4) Section 14(4), (5), (6) and (7) of this Schedule applies for the purposes of this section in the same way it applies for the purposes of section 14 of this Schedule.

**20. Investment arrangement as financial liability condition**

A specified alternative bond scheme complies with the investment arrangement as financial liability condition if the specified investment arrangement in the scheme—

- (a) is treated as a financial liability of the originator, in accordance with—
  - (i) the Hong Kong Financial Reporting Standards (issued by the Hong Kong Institute of Certified Public Accountants); or
  - (ii) the International Financial Reporting Standards (issued by the International Accounting Standards Board); or
- (b) would be treated as a financial liability of the originator if the originator applied those standards.

**21. Qualified bond arrangement regarded as debt arrangement**

- (1) This Ordinance applies, with the modifications set out in this section, to a qualified bond arrangement in a specified alternative bond scheme.
- (2) For the purposes of this Ordinance, the qualified bond arrangement is to be regarded as a debt arrangement and—
  - (a) the bond proceeds paid by the bond-holders to the bond-issuer under the qualified bond arrangement are to be regarded as money borrowed by the bond-issuer from the bond-holders;

- (b) the additional payments payable by the bond-issuer to the bond-holders under the qualified bond arrangement are to be regarded as interest payable on the money borrowed by the bond-issuer from the bond-holders;
  - (c) the bond-issuer is to be regarded as not being a trustee in respect of the specified asset under the specified alternative bond scheme; and
  - (d) the bond-holders are to be regarded as not having any legal or beneficial interest in the specified asset under the specified alternative bond scheme.
- (3) For the purposes of sections 14A and 26A of this Ordinance—
- (a) if the rights in an alternative bond under the qualified bond arrangement are transferable by delivery of the alternative bond, with or without endorsement, the alternative bond is to be regarded as an instrument specified in item 3 of Part 1 of Schedule 6;
  - (b) the issue of alternative bonds under the qualified bond arrangement is to be regarded as a debt issue for the purpose of paragraph (a) of the definition of ***debt instrument*** in section 14A(4) of this Ordinance; and
  - (c) if an alternative bond is for the purposes of section 14A of this Ordinance regarded as a debt instrument because of paragraphs (a) and (b), the making of the redemption payment for the alternative bond is to be regarded as the redemption on maturity or presentment of a debt instrument.
- (4) For the purposes of section 15(1)(j), (k), (l) and (la) of this Ordinance— (*Amended 12 of 2016 s. 10*)
- (a) if the rights in an alternative bond under the qualified bond arrangement are transferable by delivery of the alternative bond, with or without endorsement, the

alternative bond is to be regarded as a certificate of deposit; and

- (b) the making of the redemption payment for the alternative bond is to be regarded as the redemption on maturity or presentment of a certificate of deposit.
- (5) Section 16(2)(f) of this Ordinance is to apply to additional payments payable on alternative bonds under the qualified bond arrangement by the bond-issuer as if they were interest payable on debentures or instruments by the bond-issuer.
- (6) Section 20AC of this Ordinance and item 1 of Part 1 of Schedule 16 are to apply as if alternative bonds issued under the qualified bond arrangement were bonds for the purposes of paragraph (a) of the definition of *securities* in that Schedule. (*Amended 13 of 2015 s. 12*)
- (7) For the purposes of section 26A of this Ordinance, the qualified bond arrangement is to be regarded as not being a mutual fund, unit trust or similar investment scheme described in subsection (1A)(a) of that section.

**22. Qualified investment arrangement regarded as debt arrangement**

- (1) This Ordinance applies, with the modifications set out in this section, to a qualified investment arrangement in a specified alternative bond scheme.
- (2) For the purposes of this Ordinance, the qualified investment arrangement is to be regarded as a debt arrangement in the following respects—
  - (a) the acquisition cost under the qualified investment arrangement is to be regarded as money borrowed by the originator from the bond-issuer;



- (b) the investment return payable under the qualified investment arrangement is to be regarded as interest payable on the money borrowed by the originator from the bond-issuer;
  - (c) the bond-issuer is to be regarded as not having any legal or beneficial interest in the specified asset under the specified alternative bond scheme.
- (3) For the purposes of this Ordinance, whether or not subsection (4) applies—
  - (a) any specified asset transaction between O and BI under the qualified investment arrangement is to be disregarded;
  - (b) if an asset is acquired as, or as part of, the specified asset under the qualified investment arrangement by the bond-issuer from a third party, the asset is to be regarded as acquired by the originator directly from the third party;
  - (c) if an asset is disposed of as, or as part of, the specified asset under the qualified investment arrangement by the bond-issuer to a third party, the asset is to be regarded as disposed of by the originator directly to the third party; and
  - (d) any income, expenditure, profits, gains or losses arising from or attributable to any asset as, or as part of, the specified asset under the qualified investment arrangement are to be regarded as income, expenditure, profits, gains or losses (as the case requires) of the originator.
- (4) If the qualified investment arrangement in the specified alternative bond scheme involves the bond-issuer holding, as the specified asset under the scheme, an interest in a business



undertaking that is formed by the originator and the bond-issuer, then for the purposes of this Ordinance—

- (a) without limiting subsection (3)(a), the business undertaking, the acquisition of the interest in the business undertaking as the specified asset by the bond-issuer and the disposal of that interest in favour of the originator, are to be disregarded;
  - (b) any asset transaction between O and BU under the qualified investment arrangement is to be disregarded;
  - (c) if an asset is acquired by the business undertaking from a third party, the asset is to be regarded as acquired by the originator directly from the third party;
  - (d) if an asset is disposed of by the business undertaking to a third party, the asset is to be regarded as disposed of by the originator directly to the third party;
  - (e) any other business activities carried on by the business undertaking during the specified term are to be regarded as business activities carried on by the originator directly; and
  - (f) any income, expenditure, profits, gains or losses arising from or attributable to—
    - (i) an asset held by the business undertaking during the specified term; or
    - (ii) other business activities carried on by the business undertaking during that specified term,are to be regarded as income, expenditure, profits, gains or losses (as the case requires) of the originator.
- (5) Without limiting subsection (2)(b), (3)(a) or (b) or (4)(b) or (c), the investment return, or any part of it, under the qualified investment arrangement that, but for this section, would have constituted consideration payable in respect of

the right of use of land or buildings, or both, for the purposes of section 5B of this Ordinance is to be regarded as not being such consideration.

- (6) In relation to a qualified investment arrangement, *specified asset transaction between O and BI* in subsection (3)(a) or *asset transaction between O and BU* in subsection (4)(b) (as the case requires) has the meaning given by the provisions in Division 2 of this Part in which the relevant specified investment arrangement is described.
- (7) Section 16(2)(f)(iii) of this Ordinance is to apply—
- (a) as if the alternative bonds issued under the qualified bond arrangement in the specified alternative bond scheme were debentures or instruments; and
  - (b) for the bond-issuer who is not an associated corporation of the originator, as if the bond-issuer were an associated corporation of the originator.
- (8) Subsection (7)(b) does not apply to a qualified investment arrangement in a specified alternative bond scheme to which section 3(1) of this Schedule applies if—
- (a) any of the other schemes referred to in that section is not, or is not intended to be, a specified alternative bond scheme; or
  - (b) although each of those other schemes is, or is intended to be, a specified alternative bond scheme, any of those other schemes does not comply, or is not intended to comply with—
    - (i) the reasonable commercial return condition; or
    - (ii) the bond-issuer as conduit condition.

#### **Division 4—Miscellaneous**

**23. Power to amend Division 2 of this Part, etc.**

The Financial Secretary may, by notice published in the Gazette—

- (a) amend Division 2 of this Part, including—
  - (i) adding any investment arrangement into that Division as a specified investment arrangement, and providing for calculation of its investment return; and
  - (ii) specifying any transaction as a specified asset transaction between O and BI or an asset transaction between O and BU; and
- (b) make amendments to section 1 of this Schedule if the amendments are consequential on or necessary as a result of any amendments made under paragraph (a).

## **Part 3**

### **Record-keeping, Notifications, Assessments and Other Miscellaneous Matters**

**24. Interpretation (Part 3 of this Schedule)**

- (1) Subsections (2), (3) and (4) apply for the purposes of this Part.
- (2) In relation to an arrangement in a scheme and for a year of assessment—

- (a) a person makes a BA claim if, for the purposes of ascertaining the tax chargeable on the person for the year of assessment, the person claims—
    - (i) that the arrangement is a qualified bond arrangement in a specified alternative bond scheme; and
    - (ii) that the person is the bond-issuer under the alleged specified alternative bond scheme; and
  - (b) a person makes an IA claim if, for the purposes of ascertaining the tax chargeable on the person for the year of assessment, the person claims—
    - (i) that the arrangement is a qualified investment arrangement in a specified alternative bond scheme; and
    - (ii) that the person is the originator or bond-issuer under the alleged specified alternative bond scheme.
- (3) A BA claim or IA claim by a person in relation to an arrangement in a scheme for a year of assessment is accepted if the matters specified in subsection (2)(a) or (b) (as the case requires) are accepted for the purposes specified in that subsection.
- (4) A reference to the disqualification of an arrangement is a reference to—
- (a) if the arrangement is one for which a BA claim by a person for a year of assessment has been accepted, the fact that the arrangement is under section 13(3) of this Schedule regarded as never having been a qualified bond arrangement in a specified alternative bond scheme; or
  - (b) if the arrangement is one for which an IA claim by a person for a year of assessment has been accepted, the

fact that the arrangement is under section 13(4) of this Schedule regarded as never having been a qualified investment arrangement in a specified alternative bond scheme.

(5) In this Part—

***specified assessment*** (指明評稅) has the meaning given by section 27(7)(c) of this Schedule;

***specified event*** (指明事件) means—

- (a) (for a person who has made a BA claim, or whose BA claim has been accepted, in relation to an arrangement in a scheme) a BA disqualifying event; or
- (b) (for a person who has made an IA claim, or whose IA claim has been accepted, in relation to an arrangement in a scheme) an IA disqualifying event.

## 25. Records to be kept

- (1) Section 51C of this Ordinance applies, with the modifications specified in subsection (2), to a person who makes a BA claim or IA claim in relation to an arrangement in a scheme (***alleged specified alternative bond scheme***) for the purposes of ascertaining the assessable profits of the trade, profession or business for any year of assessment.
- (2) The person must retain records relating to transactions, acts or operations relating to the alleged specified alternative bond scheme under section 51C(1) of this Ordinance at least until the later of the following—
  - (a) the expiry of 7 years after the completion of the transactions, acts or operations to which they relate; or
  - (b) the expiry of 3 years after the end of the specified term of the scheme.

- (3) Section 80 of this Ordinance applies to a failure to comply with section 51C of this Ordinance, as modified by subsection (2) in the same way that section 80 applies to a failure to comply with that section 51C.
- (4) Subsection (1) ceases to apply to the retention, by a person who makes a BA claim or IA claim in relation to an arrangement in an alleged specified alternative bond scheme, of records relating to transactions, acts or operations relating to the scheme if—
  - (a) one or more assessments have been made on the person on the basis that the claim is not accepted for any years of assessment, and the assessments have all become final and conclusive under section 70 of this Ordinance; or
  - (b) after the claim has been accepted for any years of assessment, one or more specified assessments have been made on the person because of the disqualification of the arrangement, and the specified assessments have all become final and conclusive under section 70 of this Ordinance.

**26. Obligation to inform Commissioner of disqualifying event**

- (1) A person who has made a BA claim or IA claim in relation to an arrangement in a scheme must inform the Commissioner, in writing, of any specified event that occurs in relation to the arrangement within 30 days after the occurrence.
- (2) The following provisions apply as if references in those provisions to a failure to comply with section 51(2) of this Ordinance included a failure to comply with subsection (1)—
  - (a) section 80 of this Ordinance;
  - (b) section 82A of this Ordinance.

- (3) A person who has made a BA claim or IA claim in relation to an arrangement in a scheme is not required to inform the Commissioner of a specified event in relation to the arrangement under subsection (1) if—
- (a) one or more assessments have been made on the person on the basis that the claim is not accepted for any years of assessment, and the assessments have all become final and conclusive under section 70 of this Ordinance; or
  - (b) after the claim has been accepted for any years of assessment, one or more specified assessments have been made on the person on the basis that the arrangement is disqualified because of an earlier specified event, and the specified assessments have all become final and conclusive under section 70 of this Ordinance.

**27. Additional assessments; tax paid in excess to be refunded**

- (1) In this section, an arrangement in a scheme is an *accepted arrangement* in relation to a person and a year of assessment if the person's BA claim or IA claim in relation to the arrangement has been accepted for the purposes of ascertaining the tax chargeable on the person for the year of assessment.
- (2) Section 60 of this Ordinance applies, with modifications specified in subsection (3), to the making of an assessment or additional assessment on a person for a year of assessment because of the disqualification of an accepted arrangement.
- (3) For the purposes of subsection (2), each of the following periods begins to run after the expiry of the year of disqualification if that year falls after the year of assessment—
- (a) 6 years referred to in section 60(1) of this Ordinance;



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- (b) 10 years referred to in paragraph (b) of the proviso to section 60(1) of this Ordinance; and
  - (c) 6 years referred to in section 60(2) of this Ordinance.
- (4) Section 79 of this Ordinance applies, with modifications specified in subsections (5) and (6), to an amount of tax that is, because of the disqualification of an accepted arrangement, found to be paid in excess by a person for a year of assessment.
- (5) For the purposes of subsection (4), the period of 6 years referred to in section 79(1) of this Ordinance begins to run after the end of the year of disqualification if that year falls after the year of assessment.
- (6) If—
  - (a) because of the disqualification of an accepted arrangement, an assessor makes an assessment or additional assessment under section 60 of this Ordinance on the person for a year of assessment; and
  - (b) it appears to the assessor that, because of the same disqualification, an amount of tax has been paid in excess by the person for another year of assessment, then, even in the absence of a claim in writing being made under section 79 of this Ordinance for the refund—
  - (c) a refund of that amount of tax paid in excess may be made under section 79 of this Ordinance; or
  - (d) the refundable amount may be set off against any amount payable under the assessment or additional assessment referred to in paragraph (a).
- (7) The provisions of this Ordinance relating to a notice of assessment, appeal and other proceedings that apply—



- (a) to an assessment, additional assessment or reassessment made under section 60 or 79 (as the case requires) of this Ordinance; and
  - (b) to any tax charged under it,
- are to apply—
- (c) to an assessment, additional assessment or reassessment (*specified assessment*) made under section 60 or 79 (as the case requires) of this Ordinance as modified by this section; and
  - (d) to any tax charged accordingly.
- (8) Despite subsection (7), if—
- (a) a specified assessment is made for a year of assessment because of the disqualification of an accepted arrangement; and
  - (b) a person makes an objection under section 64 of this Ordinance against the specified assessment, disputing the disqualification,
- the objection is to be regarded as objections so made by the person against all specified assessments made for all years of assessment because of that disqualification.
- (9) In this section—
- year of disqualification* (喪失資格年度), in relation to a person whose BA claim or IA claim in relation to an arrangement in a scheme has been accepted, means the year of assessment in which—
- (a) a specified event occurs in relation to the arrangement; or
  - (b) if there are 2 or more specified events, the earliest specified event occurs in relation to the arrangement.

**28. Delay in disposing of specified asset may be disregarded in certain circumstances**

- (1) Section 13(3) and (4) of this Schedule does not apply in relation to an arrangement in a scheme, despite the fact that a BA disqualifying event or IA disqualifying event occurs in relation to the arrangement, if—
  - (a) the scheme is at the time of the occurrence, and from the commencement of the specified term of the scheme up to that time has always been, a specified alternative bond scheme;
  - (b) among the conditions specified in section 13(1) and (2) (b) of this Schedule, the scheme only fails to comply with the arrangements performed according to terms condition; and
  - (c) the Commissioner disregards the non-compliance under subsection (2).
- (2) The Commissioner may disregard a non-compliance with the arrangements performed according to terms condition by a specified alternative bond scheme if—
  - (a) the non-compliance was solely constituted by a delay, of more than 30 days, in disposing of the specified asset; and
  - (b) it is proved to the satisfaction of the Commissioner that there was a reasonable excuse for the delay.

**29. Commissioner may apportion acquisition cost**

For the purposes of calculating, under Division 2 of Part 2 of this Schedule, the investment return under a specified investment arrangement in a specified alternative bond scheme under which the

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specified asset is or is to be disposed of in parts, the Commissioner may allocate a part of the acquisition cost as attributable to each part of the specified asset having regard to all the circumstances of the scheme.

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## Schedule 17B

[s. 14C]

### Qualifying Corporate Treasury Centre: Corporate Treasury Services, Corporate Treasury Transactions and Prescribed Percentages

*(Schedule 17B added 12 of 2016 s. 6)*

#### Part 1

#### Corporate Treasury Services

1. **Meaning of *corporate treasury service***

(1) For the purposes of sections 14C, 14D and 14E—

*corporate treasury service* (企業財資服務), in relation to a corporation, means any of the following services that is provided by the corporation to an associated corporation—

- (a) managing the cash and liquidity position, including cash forecasting or pooling, of the associated corporation and providing related advice;
- (b) processing payments to the vendors or suppliers of the associated corporation;
- (c) managing the associated corporation's relationships with financial institutions;
- (d) providing corporate finance advisory service, including—

- (i) activities supporting the raising of capital, such as by way of debt or equity, by the associated corporation; and
  - (ii) capital budgeting for the associated corporation;
- (e) advising on the management of the investment of the funds of the associated corporation;
- (f) managing investor relations regarding the investors in the debt or equity instruments issued by the associated corporation;
- (g) providing service in relation to—
  - (i) the provision of guarantees, performance bonds, standby letters of credit or other credit risk instruments to or on behalf of the associated corporation; or
  - (ii) remittances to or on behalf of the associated corporation;
- (h) providing advice or service in relation to the management of interest rate risk, foreign exchange risk, liquidity risk, credit risk, commodity risk or any other financial risk of the associated corporation;
- (i) providing assistance in the merger or acquisition of a business by the associated corporation;
- (j) providing advice or service in relation to the associated corporation's compliance with—
  - (i) accounting standards;
  - (ii) internal treasury policies; or
  - (iii) regulatory requirements in relation to treasury management;

- (k) providing advice or service in relation to the operations of the treasury management system of the associated corporation;
  - (l) providing business planning and co-ordination, including economic or investment research and analysis, for the associated corporation in connection with any of the activities specified in paragraphs (a) to (k).
- (2) In this section—  
*associated corporation* (相聯法團) has the meaning given by section 14C(1).

## Part 2

### Corporate Treasury Transactions

#### 2. Meaning of *corporate treasury transaction*

- (1) For the purposes of sections 14C, 14D and 14E—  
*corporate treasury transaction* (企業財資交易), in relation to a corporation, means any of the following transactions that is entered into by the corporation on its own account and related to the business of an associated corporation—
- (a) a transaction in relation to the provision of guarantees, performance bonds, standby letters of credit or other credit risk instruments in respect of the borrowing of money by the associated corporation;
  - (b) a transaction investing the funds of the corporation or the associated corporation in any of the following financial instruments for managing the cash and

liquidity position of the corporation or the associated corporation—

- (i) deposits;
- (ii) certificates of deposit;
- (iii) bonds;
- (iv) notes;
- (v) debentures;
- (vi) money-market funds;
- (vii) other financial instruments (except securities issued by a private company as defined by section 20ACA(2));

(c) a transaction in respect of any of the following contracts that are entered into for the purpose of hedging interest rate risk, foreign exchange risk, liquidity risk, credit risk, commodity risk or any other financial risk of the associated corporation—

- (i) contracts for difference;
- (ii) foreign exchange contracts;
- (iii) forward or futures contracts;
- (iv) swap contracts;
- (v) options contracts;

(d) a factoring or forfaiting transaction.

(2) In this section—

*associated corporation* (相聯法團) has the meaning given by section 14C(1).

### Part 3

## **Prescribed Percentages for Safe Harbour Rule**

**3. Prescribed profits percentage**

For the purposes of section 14E, the prescribed profits percentage is 75%.

**4. Prescribed asset percentage**

For the purposes of section 14E, the prescribed asset percentage is 75%.

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## Schedule 17C

[ss. 2(1), 50A(1) & 50J]

### Non-reporting Financial Institutions and Excluded Accounts

*(Schedule 17C added 22 of 2016 s. 11)*

#### Part 1

#### Interpretation

##### 1. Interpretation

In this Schedule—

*account holder* (帳戶持有人) has the meaning given by section 50A;

*annuity contract* (年金合約) has the meaning given by section 50A;

*cash value insurance contract* (現金值保險合約) has the meaning given by section 50A;

*central bank* (中央銀行) has the meaning given by section 50A;

*controlling person* (控權人) has the meaning given by section 50A;

*depository account* (存款帳戶) has the meaning given by section 50A;

*entity* (實體) has the meaning given by section 50A;

*established securities market* (具規模證券市場) has the meaning given by section 50A;

*financial account* (財務帳戶) has the meaning given by section 50A;

*financial asset* (財務資產) has the meaning given by section 50A;

*financial institution* (財務機構) has the meaning given by section 50A;

*governmental entity* (政府實體) has the meaning given by section 50A;

*international organization* (國際組織) has the meaning given by section 50A;

*investment entity* (投資實體) has the meaning given by section 50A;

*non-reporting financial institution* (免申報財務機構) has the meaning given by section 50A;

*passive NFE* (被動非財務實體) has the meaning given by section 50A;

*regularly traded* (經常買賣) has the meaning given by section 50A;

*reportable person* (申報對象) has the meaning given by section 50A.

## Part 2

### Non-reporting Financial Institutions

#### 1. Governmental entity

A governmental entity, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

**2. International organization**

An international organization, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

**3. Central bank**

A central bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

**4. Hong Kong Monetary Authority**

The Hong Kong Monetary Authority, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

**5. Pension fund of governmental entity, international organization, central bank or Hong Kong Monetary Authority**

A fund is a non-reporting financial institution if it is established by a governmental entity, international organization, central bank or the Hong Kong Monetary Authority to provide retirement, disability, or death benefits to beneficiaries or participants who—

- (a) are current or former employees (or persons designated by such employees); or
- (b) are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services rendered for the

governmental entity, international organization, central bank or the Hong Kong Monetary Authority.

## 6. **Broad participation retirement fund**

A fund is a non-reporting financial institution if—

- (a) it is established to provide retirement, disability or death benefits, or any combination of the above, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered; and
- (b) it—
  - (i) does not have a single beneficiary with a right to more than 5% of the fund's assets;
  - (ii) is subject to government regulation and provides information reporting to the tax authorities; and
  - (iii) meets any of the following conditions—
    - (A) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, owing to its status as a retirement or pension plan;
    - (B) the fund receives at least 50% of its total contributions (other than transfers of assets from other funds described in this section or section 5 or 7 of this Part or from a retirement and pension account described in section 1 of Part 3 of this Schedule) from the sponsoring employers;
    - (C) distributions or withdrawals from the fund are allowed only on the occurrence of specified events related to retirement, disability or

death (except rollover distributions to other retirement funds described in this section or section 5 or 7 of this Part or to a retirement and pension account described in section 1 of Part 3 of this Schedule), or penalties apply to distributions or withdrawals made before such specified events;

- (D) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to the earned income of the employee, or may not exceed \$390,000 annually, applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.

## 7. **Narrow participation retirement fund**

A fund is a non-reporting financial institution if—

- (a) it is established to provide retirement, disability or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered; and
- (b) it—
  - (i) has less than 50 participants;
  - (ii) is sponsored by an employer that is not an investment entity or a passive NFE; and
  - (iii) meets all of the following conditions—
    - (A) the employee and employer contributions to the fund (other than transfers of assets from a retirement and pension account described in section 1 of Part 3 of this Schedule) are

limited by reference to the earned income and compensation of the employee;

- (B) the participants who are not residents for tax purposes for the jurisdiction in which the fund is established are not entitled to more than 20% of the fund's assets;
- (C) the fund is subject to government regulation and provides information reporting to the tax authorities.

## 8. Qualified credit card issuer

- (1) An entity is a non-reporting financial institution if—
  - (a) the entity is a financial institution and it is so solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the credit card of the customer and the overpayment is not immediately returned to the customer; and
  - (b) by 1 January 2017, the entity has begun to implement policies and procedures—
    - (i) to prevent a customer from making an overpayment in excess of \$390,000; or
    - (ii) to ensure that any customer overpayment in excess of \$390,000 is refunded to the customer within 60 days,

in each case applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.

- (2) For the purposes of subsection (1)(b), a customer overpayment does not refer to credit balances to the extent of

disputed charges but includes credit balances resulting from merchandise returns. (*Amended 5 of 2018 s. 8*)

**9. Exempt collective investment vehicle**

- (1) An investment entity is a non-reporting financial institution if—
- (a) the investment entity is regulated as a collective investment vehicle; and
  - (b) all of the interests in the investment entity are held by or through any of the following—
    - (i) individuals who are not reportable persons;
    - (ii) entities that are not reportable persons. (*Replaced 5 of 2018 s. 9*)
- (1A) Subsection (1) does not apply to an investment entity if—
- (a) any of the interests in the entity is held by, or through, an entity that is a passive NFE; and
  - (b) any one of the controlling persons of the passive NFE is a reportable person. (*Added 5 of 2018 s. 9*)
- (2) An investment entity that is regulated as a collective investment vehicle does not fail to qualify under subsection (1) as a non-reporting financial institution solely because the investment entity has issued physical shares in bearer form, if—
- (a) the investment entity has not issued, and does not issue, any physical shares in bearer form after 1 January 2017;
  - (b) the investment entity retires all such shares on surrender;
  - (c) the investment entity applies the due diligence requirements in Schedule 17D and reports any information required to be reported with respect to

any such shares when such shares are presented for redemption or other payment; and

- (d) the investment entity has in place policies and procedures to ensure that such shares are redeemed or immobilized as soon as possible, and in any event prior to 1 January 2018.

#### **10. Trustee-documented trust**

A trust is a non-reporting financial institution if it is established to the extent that the trustee of the trust is a reporting financial institution and reports all information required to be reported pursuant to this Ordinance with respect to all reportable accounts of the trust.

#### **11. Grant Schools Provident Fund and Subsidized Schools Provident Fund**

- (1) The Grant Schools Provident Fund maintained for teachers under the Grant Schools Provident Fund Rules (Cap. 279 sub. leg. C) is a non-reporting financial institution.
- (2) The Subsidized Schools Provident Fund maintained for teachers under the Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg. D) is a non-reporting financial institution.

#### **12. Mandatory provident fund schemes and occupational retirement schemes**

- (1) A mandatory provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (*MPF scheme*) is a non-reporting financial institution.
- (2) An occupational retirement scheme registered under the Occupational Retirement Schemes Ordinance (Cap. 426) (*ORSO scheme*) is a non-reporting financial institution.



- (3) A pooling agreement as defined by section 2(4) of the Occupational Retirement Schemes Ordinance (Cap. 426) that only applies to 2 or more participating ORSO schemes is a non-reporting financial institution.
- (4) An approved pooled investment fund as defined by section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A), in which only either or both of the following schemes are invested, is a non-reporting financial institution—
  - (a) MPF schemes;
  - (b) ORSO schemes.

**13. Credit union**

A credit union registered under the Credit Unions Ordinance (Cap. 119) is a non-reporting financial institution.

## Part 3

### Excluded Accounts

#### 1. Retirement and pension account

- (1) A retirement or pension account is an excluded account if all of the following conditions are met—
  - (a) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
  - (b) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder, or are taxed at a reduced rate, or taxation of the investment income from the account is deferred or made at a reduced rate);
  - (c) information reporting to the tax authorities is required in respect of the account;
  - (d) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such events;
  - (e) either—
    - (i) the annual contributions are limited to \$390,000 or less; or
    - (ii) there is a maximum lifetime contribution limit to the account of \$7,800,000 or less,

in each case applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.

- (2) A financial account that does not meet the condition under subsection (1)(e) does not fail to meet the condition solely because the financial account may receive assets or funds transferred from one or more financial accounts as described in this section and section 2 of this Part or from one or more retirement or pension funds as described in sections 5, 6 and 7 of Part 2 of this Schedule.

## **2. Non-retirement tax-favoured accounts**

- (1) An account is an excluded account if all of the following conditions are met—
- (a) the account is, for purposes other than for retirement, subject to regulation as an investment vehicle that is regularly traded on an established securities market, or the account is, for purposes other than for retirement, subject to regulation as a savings vehicle;
  - (b) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder, or are taxed at a reduced rate, or taxation of the investment income from the account is deferred or made at a reduced rate);
  - (c) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (including the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met;
  - (d) the annual contributions are limited to \$390,000 or less, applying the rules of account aggregation and currency

set out in the due diligence requirements in Schedule 17D.

- (2) A financial account that does not meet the condition under subsection (1)(d) does not fail to meet the condition solely because the financial account may receive assets or funds transferred from one or more financial accounts as described in this section and section 1 of this Part or from one or more retirement or pension funds as described in sections 5, 6 and 7 of Part 2 of this Schedule.

### **3. Term life insurance contracts**

A life insurance contract with a coverage period that will end before the insured individual attains age 90 is an excluded account if all of the following conditions are met—

- (a) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
- (b) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
- (c) the amount (other than a death benefit) payable on cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract;
- (d) the contract is not held by a transferee for value.

### **4. Estate account**

An account held solely by an estate is an excluded account if its

documentation includes a copy of the deceased's will or death certificate.

## **5. Escrow account**

An account established in connection with any of the following is an excluded account—

- (a) a court order or judgment;
- (b) a sale, exchange, or lease of real or personal property, provided that the account meets the following conditions—
  - (i) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
  - (ii) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
  - (iii) the assets of the account, including the income earned on the assets, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor or lessee (including satisfying the obligation of the purchaser, seller, lessor or lessee) when the property is sold, exchanged, or surrendered, or the lease terminates;

- (iv) the account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
- (v) the account is not associated with an account described in section 6 of this Part;
- (c) an obligation of a financial institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
- (d) an obligation of a financial institution solely to facilitate the payment of taxes at a later time.

#### **6. Depository account owing to not-returned overpayments**

- (1) A depository account is an excluded account if both of the following conditions are met—
  - (a) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
  - (b) beginning on or before 1 January 2017, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of \$390,000, or to ensure that any customer overpayment in excess of \$390,000 is refunded to the customer within 60 days, in each case applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.
- (2) For the purpose of subsection (1)(b), a customer overpayment does not refer to credit balances to the extent of disputed charges but includes credit balances resulting from merchandise returns.

**7. Dormant account**

- (1) An account (other than an annuity contract) with a balance that does not exceed \$7,800 is an excluded account if—  
*(Amended 5 of 2018 s. 10)*
  - (a) the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with a reporting financial institution in the previous 3 years;
  - (b) the account holder has not communicated with the reporting financial institution regarding the account or any other account held by the account holder with the reporting financial institution in the previous 6 years; and *(Amended 5 of 2018 s. 10)*
  - (c) *(Repealed 5 of 2018 s. 10)*
  - (d) (for the account being a cash value insurance contract) the reporting financial institution has not communicated with the account holder regarding the account or any other account held by the account holder with the reporting financial institution in the previous 6 years.
- (2) An account (other than an annuity contract) with a balance that does not exceed \$7,800 maintained with a reporting financial institution is also an excluded account if—
  - (a) the account is treated as a dormant account—
    - (i) in accordance with the laws or regulations applicable to the institution; or
    - (ii) under the normal operating procedures of the institution that are consistently applied for all accounts maintained with the institution; and
  - (b) the laws, regulations or procedures mentioned in paragraph (a) contain provisions that are substantially

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similar to subsection (1)(a), (b) and (d). (*Added 5 of 2018 s. 10*)

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## Schedule 17D

[ss. 2(1), 50A(1) & (2),  
50B(1), 50J, 80(2E) & 80D(1)  
& Sch. 17C]

### Due Diligence Requirements

*(Schedule 17D added 22 of 2016 s. 11)*

#### Part 1

#### Interpretation

##### 1. Interpretation

In this Schedule—

***account holder*** (帳戶持有人) has the meaning given by section 50A;

***active NFE*** (主動非財務實體) has the meaning given by section 50A;

***AML/KYC procedures*** (打擊洗錢暨認識客戶程序) has the meaning given by section 50A;

***annuity contract*** (年金合約) has the meaning given by section 50A;

***cash value insurance contract*** (現金值保險合約) has the meaning given by section 50A;

***controlling person*** (控權人) has the meaning given by section 50A;

***depository account*** (存款帳戶) has the meaning given by section 50A;

***documentary evidence*** (文件證據) includes—

- (a) a certificate of residence issued by an authorized government body (including a government, a government agency and a municipality) of the jurisdiction of which the payee claims to be a resident for tax purposes;
- (b) for an individual, a valid identification issued by an authorized government body (including a government, a government agency and a municipality) of a jurisdiction that includes the individual's name and is typically used for identification purposes;
- (c) for an entity, an official documentation issued by an authorized government body (including a government, a government agency and a municipality) of a jurisdiction that includes the entity's name and—
  - (i) the address of the entity's principal office in the jurisdiction of which it claims to be a resident for tax purposes; or
  - (ii) the jurisdiction in which the entity was incorporated or organized; and
- (d) an audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report;

**entity** (實體) has the meaning given by section 50A;

**financial account** (財務帳戶) has the meaning given by section 50A;

**financial institution** (財務機構) has the meaning given by section 50A;

**high value account** (高值帳戶) means a pre-existing individual account with an aggregate balance or value that exceeds \$7,800,000 as at 31 December of the second year before the reporting year or 31 December of any subsequent year;

**jurisdiction of residence** (居留司法管轄區) has the meaning given by section 50A;

- low value account** (低值帳戶) means a pre-existing individual account with an aggregate balance or value that does not exceed \$7,800,000 as at 31 December of the second year before the reporting year;
- new account** (新帳戶) means a financial account opened and maintained by a reporting financial institution on or after 1 January 2017;
- new entity account** (新實體帳戶) means a new account held by one or more entities;
- new individual account** (新個人帳戶) means a new account held by one or more individuals;
- participating jurisdiction** (參與稅務管轄區) has the meaning given by section 50A;
- participating jurisdiction financial institution** (參與稅務管轄區財務機構) has the meaning given by section 50A;
- passive NFE** (被動非財務實體) has the meaning given by section 50A;
- pre-existing account** (先前帳戶) has the meaning given by section 50A;
- pre-existing entity account** (先前實體帳戶) means a pre-existing account held by one or more entities;
- pre-existing individual account** (先前個人帳戶) means a pre-existing account held by one or more individuals;
- related entity** (有關連實體)—see section 50A(2);
- reportable person** (申報對象) has the meaning given by section 50A;
- reporting year** (申報年) has the meaning given by section 50A;
- resident for tax purposes** (稅務居民) has the meaning given by section 50A;
- TIN** (稅務編號) has the meaning given by section 50A.

## Part 2

### General Due Diligence Requirements

1. An account is to be treated as a reportable account beginning as at the date it is identified as such pursuant to the due diligence requirements in this Part and Parts 3, 4, 5, 6 and 7 of this Schedule and information in relation to a reportable account must be reported as required under section 50C.
2. The balance or value of an account is to be determined as at the last day of the calendar year or other appropriate reporting period of 12 months.
3. If a balance or value threshold is to be determined as at the last day of a calendar year, the relevant balance or value must be determined as at the last day of the reporting period that ends with or within that calendar year.
4. A reporting financial institution may—
  - (a) apply the due diligence requirements for new accounts to pre-existing accounts (but in such cases the requirements that otherwise apply to pre-existing accounts continue to apply); and
  - (b) apply the due diligence requirements for high value accounts to low value accounts.
5. A financial account held by an individual as a partner of a partnership is to be treated as an entity account and is not to be treated as an individual account.

6. In applying the rules of account aggregation and currency set out in the due diligence requirements in this Schedule, an account balance that has a negative value is to be treated as having a nil value.

## **Part 3**

### **Due Diligence Requirements for Pre-existing Individual Accounts**

#### **1. Application**

This Part specifies the requirements that apply to pre-existing individual accounts in identifying a reportable account.

#### **2. Accounts not required to be reviewed, identified, or reported**

A pre-existing individual account that is a cash value insurance contract or an annuity contract is not required to be reviewed, identified or reported, if the reporting financial institution is effectively prevented by law from selling the contract to residents for tax purposes of a reportable jurisdiction.

#### **3. Low value accounts**

- (1) The requirements in this section apply to low value accounts.
- (2) If a reporting financial institution has in its records a current residence address for the individual account holder based on documentary evidence, the institution may treat the individual account holder as a resident for tax purposes of the jurisdiction in which the address is located for the purpose of determining whether the individual account holder is a reportable person.
- (3) If a reporting financial institution does not rely on the current residence address for the individual account holder based on documentary evidence as mentioned in subsection (2),

the institution must review electronically searchable data maintained by the institution for any of the following indicia and apply the provisions in subsections (4), (5), (6), (7), (8) and (9)—

- (a) identification of the account holder as a resident for tax purposes of a reportable jurisdiction;
  - (b) current mailing or residence address (including a post office box) in a reportable jurisdiction;
  - (c) one or more telephone numbers in a reportable jurisdiction outside Hong Kong with no telephone number in Hong Kong;
  - (d) standing instructions (other than with respect to a depository account) to transfer funds to an account maintained in a reportable jurisdiction;
  - (e) currently effective power of attorney or signatory authority granted to a person with an address in a reportable jurisdiction;
  - (f) a hold mail instruction or in-care-of address in a reportable jurisdiction if the institution does not have any other address on file for the account holder.
- (4) If none of the indicia described in subsection (3) is discovered in the electronic search, then no further action is required until—
- (a) there is a change in circumstances that results in one or more indicia being associated with the account; or
  - (b) the account becomes a high value account.
- (5) If any of the indicia described in subsection (3)(a), (b), (c), (d) and (e) is discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the reporting financial institution must treat the account holder as a resident for tax

purposes of a reportable jurisdiction for which an indicium is identified, unless it elects to apply subsection (8) or (9), or both, and any of the exceptions in subsections (8) and (9) applies to the account.

- (6) If a hold mail instruction or in-care-of address is discovered in the electronic search and no other address and none of the other indicia described in subsection (3)(a), (b), (c), (d) and (e) is identified for the account holder, the reporting financial institution must—
- (a) in the order most appropriate to the circumstances, perform the paper record search described in section 4(4) of this Part; or
  - (b) seek to obtain from the account holder a self-certification or documentary evidence to establish the jurisdiction of residence for the account holder.
- (7) If—
- (a) the paper record search under subsection (6)(a) fails to establish an indicium; and
  - (b) the attempt to obtain the self-certification or documentary evidence under subsection (6)(b) is not successful,
- the reporting financial institution must report the account as an undocumented account.
- (8) Despite any finding of an indicium described in subsection (3)(b), (c) or (d) for a financial account, a reporting financial institution is not required to treat its account holder as a resident for tax purposes of a reportable jurisdiction if it obtains, or has previously reviewed and maintains a record of, both of the following—



- (a) a self-certification from the account holder showing that his or her jurisdiction of residence does not include that reportable jurisdiction;
  - (b) documentary evidence establishing the jurisdiction of residence for the account holder other than that reportable jurisdiction.
- (9) Despite any finding of an indicium described in subsection (3)(e) for a financial account, a reporting financial institution is not required to treat its account holder as a resident for tax purposes of a reportable jurisdiction if it obtains, or has previously reviewed and maintains a record of, any of the following—
- (a) a self-certification from the account holder showing that his or her jurisdiction of residence does not include that reportable jurisdiction;
  - (b) documentary evidence establishing the jurisdiction of residence for the account holder other than that reportable jurisdiction.

#### **4. Enhanced review procedures for high value accounts**

- (1) This section provides for enhanced review procedures and applies to high value accounts.
- (2) With respect to a high value account, the reporting financial institution must review electronically searchable data maintained by the institution for any of the indicia described in section 3(3) of this Part.
- (3) If the reporting financial institution's electronically searchable databases (*e-databases*) include fields for, and capture all of the information described in, subsection (5), then a further paper record search is not required.
- (4) However, if the e-databases do not capture all of the information described in subsection (5), then with respect



to a high value account, the reporting financial institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the institution within the last 5 years for any of the indicia described in section 3(3) of this Part—

- (a) the most recent documentary evidence collected with respect to the account;
  - (b) the most recent account opening contract or documentation;
  - (c) the most recent documentation collected by the reporting financial institution pursuant to AML/KYC procedures or for other regulatory purposes;
  - (d) any standing instructions (other than with respect to a depository account) to transfer funds currently in effect;
  - (e) any power of attorney or signatory authority currently in effect.
- (5) A reporting financial institution is not required to perform the paper record search described in subsection (4) if its electronically searchable information includes the following information—
- (a) the account holder's residence status;
  - (b) the account holder's mailing and residence address currently on file with the reporting financial institution;
  - (c) the account holder's telephone number currently on file, if any, with the reporting financial institution;
  - (d) for financial accounts other than depository accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the reporting financial institution or another financial institution);

- (e) whether there is a current hold mail instruction or in-care-of address for the account holder;
  - (f) whether there is any power of attorney or signatory authority for the account.
- (6) Apart from conducting the electronic and paper record searches described in subsections (2) and (4), the reporting financial institution must treat as a reportable account any high value account assigned to a relationship manager of the institution (including any financial accounts aggregated with that high value account) if the relationship manager has actual knowledge that the account holder is a reportable person.
- (7) After an enhanced review of a high value account under subsection (2) or (4) is performed—
- (a) if—
    - (i) none of the indicia described in section 3(3) of this Part is discovered; and
    - (ii) the account is not identified as held by a resident for tax purposes of a reportable jurisdiction in subsection (6),
 then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account;
  - (b) if—
    - (i) any of the indicia described in section 3(3)(a), (b), (c), (d) and (e) of this Part is discovered; or
    - (ii) there is a subsequent change in circumstances that results in one or more indicia being associated with the account,
 then the reporting financial institution must treat the account holder as a resident for tax purposes of each reportable jurisdiction for which an indicium is identified

unless it elects to apply subsection (8) or (9), or both, of section 3 of this Part and any of the exceptions in subsections (8) and (9) of that section applies to the account; and

(c) if—

(i) a hold mail instruction or in-care-of address is discovered; and

(ii) no other address and none of the other indicia described in section 3(3)(a), (b), (c), (d) and (e) of this Part is identified for the account holder,

then the reporting financial institution must obtain from the account holder a self-certification or documentary evidence to establish the jurisdiction of residence for the account holder and (if it cannot obtain such self-certification or documentary evidence) must report the account as an undocumented account.

(8) If a pre-existing individual account is not a high value account as at 31 December of the second year before the reporting year, but becomes a high value account as at the last day of a subsequent calendar year—

(a) the reporting financial institution must complete the enhanced review procedures under this section with respect to the account within the calendar year following the year in which the account becomes a high value account; and

(b) (if based on the review under paragraph (a), the account is identified as a reportable account) the reporting financial institution must report the required information about the account with respect to the year in which it is identified as a reportable account and subsequent years on an annual basis, unless the account holder ceases to be a reportable person.

- 
- (9) Once a reporting financial institution applies the enhanced review procedures under this section to a high value account, the reporting financial institution is not required to reapply the procedures, other than the procedure in subsection (6), to the same high value account in any subsequent year unless the account is undocumented where the reporting financial institution must reapply them annually until the account ceases to be undocumented.
- (10) If there is a change of circumstances with respect to a high value account that results in one or more indicia described in subsection (3) of section 3 of this Part being associated with the account, then the reporting financial institution must treat the account as a reportable account with respect to each reportable jurisdiction for which an indicium is identified unless it elects to apply subsection (8) or (9), or both, of section 3 of this Part and any of the exceptions in subsections (8) and (9) of that section applies to the account.
- (11) A reporting financial institution must implement procedures to ensure that a relationship manager of the institution identifies any change in circumstances of an account.
- (12) Without limiting subsection (11), if a relationship manager is notified that the account holder has a new mailing address in a reportable jurisdiction, the reporting financial institution—
- (a) must treat the new address as a change in circumstances; and
  - (b) if the institution elects to apply subsection (8) or (9), or both, of section 3 of this Part, must obtain the appropriate documentation from the account holder.

## **5. Review of pre-existing individual accounts**

- (1) Review of a pre-existing individual account that is a high value account must be completed on or before 31 December

of the year before the reporting year for the account.

- (2) Review of a pre-existing individual account that is a low value account must be completed on or before 31 December of the reporting year for the account.

## **Part 4**

### **Due Diligence Requirements for New Individual Accounts**

#### **1. Application**

This Part specifies the requirements that apply to new individual accounts in identifying a reportable account.

#### **2. Requirements**

- (1) On the opening of a new individual account, a reporting financial institution must—
  - (a) obtain a self-certification, which may be part of the account opening documentation, that allows the institution to determine the jurisdiction of residence for the account holder; and
  - (b) confirm the reasonableness of the self-certification based on the information obtained by the institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures.
- (2) If the self-certification establishes that the account holder is a resident for tax purposes of a reportable jurisdiction—
  - (a) the reporting financial institution must treat the account as a reportable account; and

- (b) the self-certification must also include the account holder's date of birth and (subject to section 50G(1)(b)) the account holder's TIN with respect to the reportable jurisdiction.
- (3) If there is a change of circumstances with respect to a new individual account that causes the reporting financial institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the institution—
  - (a) cannot rely on the original self-certification; and
  - (b) must obtain a valid self-certification that establishes the jurisdiction of residence for the account holder.

## **Part 5**

### **Due Diligence Requirements for Pre-existing Entity Accounts**

#### **Division 1—General**

##### **1. Application**

This Part specifies the requirements that apply to pre-existing entity accounts in identifying a reportable account.

#### **Division 2—Entity Accounts subject to Review**

##### **2. Entity accounts not required to be reviewed, identified or reported**

- (1) A pre-existing entity account with an aggregate account balance or value that does not exceed \$1,950,000 as at 31 December of the second year before the reporting year, is not required to be reviewed, identified, or reported as a reportable

account until the aggregate account balance or value exceeds \$1,950,000 as at the last day of any subsequent calendar year.

- (2) Subsection (1) does not apply if the reporting financial institution elects otherwise, whether with respect to all pre-existing entity accounts or, separately, with respect to any clearly identified group of such accounts.

**3. Entity accounts subject to review**

A pre-existing entity account must be reviewed in accordance with the review procedures under section 4 of this Part if—

- (a) the account has an aggregate account balance or value that exceeds \$1,950,000 as at 31 December of the second year before the reporting year; or
- (b) the account does not exceed \$1,950,000 as at 31 December of the second year before the reporting year but the aggregate account balance or value of the account exceeds \$1,950,000 as at the last day of any subsequent calendar year.

**Division 3—Review Procedures**

**4. Review procedures for identifying entity accounts with respect to which reporting may be required**

For a pre-existing entity account described in section 3 of this Part, a reporting financial institution must apply the review procedures under this Division.

**5. Determining residence of entity that holds pre-existing entity account**

- (1) The reporting financial institution must review information maintained for regulatory or customer relationship purposes (including information collected and maintained pursuant to



AML/KYC procedures) to determine the account holder's residence.

- (2) For the purpose of subsection (1), information indicating the account holder's residence includes a place of incorporation or organization, or an address in a reportable jurisdiction.
- (3) If the information indicates that the account holder is a reportable person, the reporting financial institution must treat the account as a reportable account unless it obtains a self-certification from the account holder, or reasonably determines, based on information in its possession or that is publicly available, that the account holder is not a reportable person.

#### **6. Determining residence of controlling persons of passive NFE**

- (1) With respect to an account holder of a pre-existing entity account (including an entity that is a reportable person), the reporting financial institution must identify whether the account holder is a passive NFE with one or more controlling persons, and determine the residence of the controlling persons.
- (2) If any of the controlling persons of a passive NFE is a reportable person, then the account is to be treated as a reportable account.
- (3) In making the determinations, the reporting financial institution must follow the guidance in sections 7, 8 and 9 of this Part in the order most appropriate under the circumstances.

#### **7. Determining whether account holder is passive NFE**

For the purpose of determining whether the account holder is a passive NFE, the reporting financial institution must obtain and rely on a self-certification from the account holder to establish the



account holder's status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the account holder is—

- (a) an active NFE; or
- (b) a financial institution other than an investment entity within the meaning of paragraph (e) of the definition of *investment entity* in section 50A(1) that is not a participating jurisdiction financial institution.

**8. Determining controlling persons of an account holder**

For the purpose of determining the controlling persons of an account holder, a reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures.

**9. Determining residence of controlling person of passive NFE**

- (1) For the purpose of determining the residence of a controlling person of a passive NFE, a reporting financial institution may rely on—
  - (a) information collected and maintained pursuant to AML/KYC procedures in the case of a pre-existing entity account held by one or more passive NFEs with an aggregate account balance or value that does not exceed \$7,800,000; or
  - (b) a self-certification from the account holder or the controlling person of the jurisdiction for which the controlling person is a resident for tax purposes.
- (2) For the purpose of subsection (1)(b), if a self-certification is not provided, the reporting financial institution must establish the residence by applying the review procedures under section 4 of Part 3 of this Schedule.

**Division 4—Timing of Review, etc.**

**10. Timing of review**

- (1) Review of a pre-existing entity account with an aggregate account balance or value that exceeds \$1,950,000 as at 31 December of the second year before a reporting year must be completed on or before 31 December of the reporting year for the account.
- (2) Review of a pre-existing entity account with an aggregate account balance or value that does not exceed \$1,950,000 as at 31 December of the second year before the reporting year, but exceeds \$1,950,000 as at the last day of a subsequent calendar year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds \$1,950,000.

**11. Additional procedures applicable to pre-existing entity accounts**

If there is a change of circumstances with respect to a pre-existing entity account that causes the reporting financial institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the institution must re-determine the status of the account in accordance with the review procedures under Division 3 of this Part.

**Part 6****Due Diligence Requirements for New Entity Accounts****1. Application**

This Part specifies the requirements that apply to new entity accounts in identifying a reportable account.

**2. Determining residence of entity**

- (1) A reporting financial institution must—
  - (a) obtain a self-certification from an entity that opens an account, which may be part of the account opening documentation, that allows the institution to determine the jurisdiction of residence for the account holder; and
  - (b) confirm the reasonableness of the self-certification based on the information obtained by the institution in connection with the opening of the account, including any documentation collected and maintained pursuant to AML/KYC procedures.
- (2) If the entity certifies that it is not a resident for tax purposes of any jurisdiction, the reporting financial institution may rely on the address of the principal office of the entity to determine the residence of the account holder.
- (3) If the self-certification indicates that the account holder is a resident for tax purposes of a reportable jurisdiction, the reporting financial institution must treat the account as a reportable account unless it reasonably determines, based on information in its possession or that is publicly available, that the account holder is not a reportable person with respect to the reportable jurisdiction.

### **3. Determining residence of controlling persons of passive NFE**

- (1) With respect to an account holder of a new entity account (including an entity that is a reportable person), the reporting financial institution must identify whether the account holder is a passive NFE with one or more controlling persons, and determine the residence of the reportable persons.
- (2) If any of the controlling persons of a passive NFE is a reportable person, then the account is to be treated as a reportable account.

(3) In making the determination, the reporting financial institution must follow the guidance in sections 4, 5 and 6 of this Part in the order most appropriate under the circumstances.

**4. Determining whether account holder is passive NFE**

For the purpose of determining whether the account holder is a passive NFE, the reporting financial institution must obtain and rely on a self-certification from the account holder to establish the account holder's status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the account holder is—

- (a) an active NFE; or
- (b) a financial institution other than an investment entity within the meaning of paragraph (e) of the definition of *investment entity* in section 50A(1) that is not a participating jurisdiction financial institution.

**5. Determining controlling persons of account holder**

For the purpose of determining the controlling persons of an account holder, a reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures.

**6. Determining residence of controlling person of passive NFE**

For the purpose of determining the residence of a controlling person of a passive NFE, a reporting financial institution may rely only on a self-certification from the account holder or the controlling person.

*(Amended 5 of 2018 s. 11)*

## **Part 7**

### **Special Due Diligence Requirements**

**1. Application**

This Part specifies the additional requirements that apply in applying the due diligence requirements in Parts 2, 3, 4, 5 and 6 of this Schedule.

**2. Reliance on self-certifications and documentary evidence**

A reporting financial institution may not rely on self-certification or documentary evidence if it knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

**3. Alternative procedures for financial accounts held by individual beneficiaries of cash value insurance contract or annuity contract**

- (1) A reporting financial institution may presume that an individual beneficiary (other than the owner) of a cash value insurance contract or an annuity contract receiving a death benefit is not a reportable person and may treat the financial account as other than a reportable account unless the institution has actual knowledge, or reason to know, that the beneficiary is a reportable person.
- (2) A reporting financial institution has reason to know that a beneficiary of a cash value insurance contract or an annuity contract is a reportable person if the information collected by the institution and associated with the beneficiary contains indicia of residence in a reportable jurisdiction as described in section 3 of Part 3 of this Schedule.
- (3) If a reporting financial institution has actual knowledge, or reason to know, that the beneficiary is a reportable person, the institution must apply the requirements in section 3 of Part 3 of this Schedule.

**4. Alternative procedures for group cash value insurance contract**

**or group annuity contract**

- (1) A reporting financial institution may treat a financial account that is a member's interest in a group cash value insurance contract or group annuity contract as a financial account that is not a reportable account until the date on which an amount is payable to the employee, certificate holder or beneficiary, if the financial account that is a member's interest in a group cash value insurance contract or group annuity contract meets all of the following conditions—
- (a) the group cash value insurance contract or group annuity contract is issued to the employer and covers 25 or more employees or certificate holders;
  - (b) the employees or certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable on the death of the employee or certificate holder;
  - (c) the aggregate amount payable to any employee or certificate holder or beneficiary does not exceed \$7,800,000.
- (2) In subsection (1)—

**group annuity contract** (團體年金合約) means an annuity contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group;

**group cash value insurance contract** (團體現金值保險合約) means a cash value insurance contract that—

- (a) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and
- (b) charges a premium for each member of the group (or member of a class within the group) that is determined

without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

## **5. Rules of account aggregation and currency**

- (1) For the purpose of determining the aggregate balance or value of financial accounts held by an individual, a reporting financial institution must aggregate all financial accounts maintained by the institution, or by a related entity, but only to the extent that the institution's computerized systems—
  - (a) link the financial accounts by reference to a data element such as client number or TIN; and
  - (b) allow account balances or values to be aggregated.
- (2) Each holder of a jointly held financial account must be attributed the entire balance or value of the jointly held financial account for the purpose of applying the aggregation requirements described in subsection (1).
- (3) For the purpose of determining the aggregate balance or value of financial accounts held by an entity, a reporting financial institution must take into account all financial accounts that are maintained by the institution, or by a related entity, but only to the extent that the institution's computerized systems—
  - (a) link the financial accounts by reference to a data element such as client number or TIN; and
  - (b) allow account balances or values to be aggregated.
- (4) Each holder of a jointly held financial account must be attributed the entire balance or value of the jointly held financial account for the purpose of applying the aggregation requirements described in subsection (3).

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- (5) For the purpose of determining the aggregate balance or value of financial accounts held by a person and whether a financial account is a high value account, if a relationship manager of a reporting financial institution knows, or has reason to know, any financial accounts are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, the institution must aggregate all those accounts.
  - (6) References to a dollar amount in this Schedule are to be read as including an equivalent amount in a foreign currency.
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## Schedule 17E

[ss. 50A(1) & 50J]

### Reportable Jurisdictions and Participating Jurisdictions

*(Schedule 17E added 22 of 2016 s. 11. Amended L.N. 165 of 2016; 4 of 2017 s. 4)*

#### Part 1

#### Reportable Jurisdictions and Reporting Year

Column 1 Reportable jurisdiction	Column 2 Reporting year
Antigua and Barbuda	2018
Argentina, Republic of	2018
Australia, Commonwealth of	2018
Austria, Republic of	2018
Bahamas, Commonwealth of the	2018
Belgium, Kingdom of	2018
Brazil, Federative Republic of	2018
Brunei Darussalam	2018
Bulgaria, Republic of	2018
Canada	2018
Cayman Islands	2018

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Chile, Republic of	2018
China, Mainland of	2018
Colombia, Republic of	2018
Costa Rica, Republic of	2018
Croatia, Republic of	2018
Curacao, Country of	2018
Cyprus, Republic of	2018
Czech Republic	2018
Denmark, Kingdom of	2018
Estonia, Republic of	2018
Faroese	2018
Finland, Republic of	2018
French Republic	2018
Germany, Federal Republic of	2018
Gibraltar	2018
Greenland	2018
Grenada	2018
Guernsey	2018
Hellenic Republic (Greece)	2018
Hungary, Republic of	2018
Iceland, Republic of	2018
India, Republic of	2018

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Indonesia, Republic of	2018
Ireland	2018
Isle of Man	2018
Israel, State of	2018
Italian Republic	2018
Japan	2018
Jersey	2018
Korea, Republic of	2019
Kuwait, State of	2018
Latvia, Republic of	2018
Lebanon, Republic of	2018
Liechtenstein, Principality of	2018
Lithuania, Republic of	2018
Luxembourg, Grand Duchy of	2018
Malaysia	2018
Malta	2018
Mauritius, Republic of	2018
Montserrat	2018
Netherlands, Kingdom of the	2018
New Zealand	2018
Norway, Kingdom of	2018
Poland, Republic of	2018

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Portuguese Republic	2018
Qatar, State of	2018
Romania	2018
Russian Federation	2018
Saint Vincent and the Grenadines	2018
Saudi Arabia, Kingdom of	2018
Seychelles, Republic of	2018
Singapore, Republic of	2018
Slovak Republic	2018
Slovenia, Republic of	2018
South Africa, Republic of	2018
Spain, Kingdom of	2018
Sweden, Kingdom of	2018
Swiss Confederation	2018
Turkey, Republic of	2018
United Arab Emirates	2018
United Kingdom of Great Britain and Northern Ireland	2018
United Mexican States	2018
Uruguay, Oriental Republic of	2018
Vanuatu, Republic of	2018

Note—

The reporting year for a reportable jurisdiction is the year beginning from which a notice may be given under section 50C(2) requiring information on reportable accounts with respect to that jurisdiction.

(This note does not have legislative effect.)

## **Part 2**

### **Participating Jurisdictions**

Albania, Republic of  
Andorra, Principality of  
Anguilla  
Antigua and Barbuda  
Argentina, Republic of  
Aruba  
Australia, Commonwealth of  
Austria, Republic of  
Bahamas, Commonwealth of the  
Bahrain, Kingdom of  
Barbados  
Belgium, Kingdom of  
Belize  
Bermuda  
Brazil, Federative Republic of  
British Virgin Islands  
Brunei Darussalam  
Bulgaria, Republic of  
Canada  
Cayman Islands  
Chile, Republic of  
China, Mainland of  
Colombia, Republic of  
Cook Islands  
Costa Rica, Republic of

Croatia, Republic of  
Curacao, Country of  
Cyprus, Republic of  
Czech Republic  
Denmark, Kingdom of  
Dominica, Commonwealth of  
Estonia, Republic of  
Faroes  
Finland, Republic of  
French Republic  
Germany, Federal Republic of  
Ghana, Republic of  
Gibraltar  
Greenland  
Grenada  
Guernsey  
Hellenic Republic (Greece)  
Hungary, Republic of  
Iceland, Republic of  
India, Republic of  
Indonesia, Republic of  
Ireland  
Isle of Man  
Israel, State of  
Italian Republic  
Japan  
Jersey  
Korea, Republic of  
Kuwait, State of  
Latvia, Republic of  
Lebanon, Republic of  
Liechtenstein, Principality of  
Lithuania, Republic of  
Luxembourg, Grand Duchy of

Macao Special Administrative Region  
Malaysia  
Malta  
Marshall Islands, Republic of the  
Mauritius, Republic of  
Monaco, Principality of  
Montserrat  
Nauru, Republic of  
Netherlands, Kingdom of the  
New Zealand  
Niue  
Norway, Kingdom of  
Panama, Republic of  
Poland, Republic of  
Portuguese Republic  
Qatar, State of  
Romania  
Russian Federation  
Saint Kitts and Nevis, Federation of  
Saint Lucia  
Saint Vincent and the Grenadines  
Samoa, Independent State of  
San Marino, Republic of  
Saudi Arabia, Kingdom of  
Seychelles, Republic of  
Singapore, Republic of  
Sint Maarten  
Slovak Republic  
Slovenia, Republic of  
South Africa, Republic of  
Spain, Kingdom of  
Sweden, Kingdom of  
Swiss Confederation  
Trinidad and Tobago, Republic of

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Turkey, Republic of

Turks and Caicos Islands

United Arab Emirates

United Kingdom of Great Britain and Northern Ireland

United Mexican States

Uruguay, Oriental Republic of

Vanuatu, Republic of

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## Schedule 17F

[ss. 2, 14G, 14I & 14N]

### Aircraft Leasing Tax Concessions

(Schedule 17F added 9 of 2017 s. 16)

#### Part 1

### Aircraft Leasing Activity and Aircraft Leasing Management Activity

1. **Meaning of *aircraft leasing activity* and *aircraft leasing management activity***

(1) In this section and the aircraft leasing tax concessions provisions—

***aircraft leasing activity*** (飛機租賃活動), in relation to a corporation, means leasing an aircraft by the corporation to an aircraft operator;

***aircraft leasing management activity*** (飛機租賃管理活動), in relation to a corporation, means any of the following activities—

- (a) managing another corporation that is a relevant qualifying aircraft lessor;
- (b) establishment or administration of a special purpose entity for the purpose of owning an aircraft by that entity;
- (c) providing finance in obtaining the ownership of an aircraft by a special purpose entity wholly or partly owned by the corporation or its associated corporation;

- (d) providing a guarantee in respect of a financial or performance obligation as regards the aircraft leasing business of a special purpose entity wholly or partly owned by the corporation or its associated corporation, or granting security in respect of that business;
  - (e) managing leases;
  - (f) arranging for the procurement or leasing of aircraft;
  - (g) arranging for the operation, maintenance, repair, insurance, storage, scrapping or modification of aircraft;
  - (h) arranging for the evaluation, appraisal, provision or inspection of aircraft, airline facilities or maintenance facilities for aircraft;
  - (i) arranging for the assessment of the aviation and aircraft market conditions;
  - (j) marketing of leases that are operating leases;
  - (k) providing finance in obtaining the ownership of an aircraft by an airline enterprise from another corporation that is a relevant qualifying aircraft lessor;
  - (l) providing a residual value guarantee or contingent purchase arrangement;
  - (m) providing services in relation to an aircraft leasing activity for or to another corporation that is a relevant qualifying aircraft lessor.
- (2) For the purposes of paragraph (a), (k) or (m) of the definition of *aircraft leasing management activity* in subsection (1), a corporation is a relevant qualifying aircraft lessor if—
- (a) the activity mentioned in that paragraph is carried out in the basis period of the corporation for a year of assessment; and

- (b) the corporation is a qualifying aircraft lessor for that year of assessment.
- (3) In paragraph (1) of the definition of *aircraft leasing management activity* in subsection (1)—
- contingent purchase arrangement* (待確定購買安排) means an arrangement under which a person is required to purchase an aircraft at a pre-determined amount if the actual residual value falls below the estimated residual value.
- (4) The words and expressions used in this section and defined in section 14G for the purposes of the aircraft leasing tax concessions provisions have the same meaning as in those provisions.

## **Part 2**

### **Prescribed Percentage for Calculation of Net Lease Payments**

2. **Prescribed percentage for calculation of net lease payments**  
For the purposes of section 14I, the prescribed percentage is 20%.

## **Part 3**

### **Prescribed Percentages for Safe Harbour Rule**

3. **Prescribed profits percentage**  
For the purposes of section 14K, the prescribed profits percentage is 75%.

**4. Prescribed asset percentage**

For the purposes of section 14K, the prescribed asset percentage is 75%.

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## Schedule 17G

[ss. 50AAC & 58B &  
Sch. 44]

### Meaning of *Permanent Establishment* in Hong Kong

(Schedule 17G added 27 of 2018 s. 10)

#### Part 1

#### Preliminary

##### 1. Interpretation

- (1) An expression used in this Schedule, and defined or otherwise explained in Part 8AA, has the same meaning as in that Part.
- (2) In this Schedule—  
*company* (公司) means any body corporate or any entity that is treated as a body corporate for tax purposes.

##### 2. Interpretation: *closely related, closely related person and closely related enterprise*

- (1) For the purposes of this Schedule, a person (*person A*) is closely related to another person (*person B*) if, based on all the relevant facts and circumstances—
  - (a) person A has control of person B;
  - (b) person B has control of person A; or
  - (c) person A and person B are both under the control of the same other person or enterprise.
- (2) Also, a person (*person A*) is taken to be closely related to another person (*person B*) if—

- (a) person A possesses directly or indirectly more than the specified interest in person B;
  - (b) person B possesses directly or indirectly more than the specified interest in person A; or
  - (c) another person possesses directly or indirectly more than the specified interest in each of person A and person B.
- (3) In subsection (2)—
- specified interest*** (指明權益), in relation to a person, means—
- (a) 50% of the beneficial interest in the person; or
  - (b) if the person is a company, 50% of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company.
- (4) A reference to closely related person or closely related enterprise is to be read accordingly.

## **Part 2**

### **Permanent Establishment of DTA Territory Resident Person**

#### **3. Permanent establishment of DTA territory resident person**

Whether a DTA territory resident person has a permanent establishment in Hong Kong is to be determined in accordance with the relevant provisions under the double taxation arrangements concerned.

## **Part 3**

### **Permanent Establishment of Non-DTA Territory Resident Person**

- 4. Permanent establishment constituted by fixed place of business**
- (1) Subject to sections 5, 6 and 7 of this Schedule, an enterprise that is a non-DTA territory resident person has a permanent establishment in Hong Kong if it has a fixed place of business in Hong Kong through which the business of the enterprise is wholly or partly carried on.
- (2) For the purpose of subsection (1), a fixed place of business includes, but is not limited to—
- (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop; and
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
- (3) For the purpose of subsection (1), a building site or construction or installation project is a permanent establishment of an enterprise (*subject enterprise*) only if—
- (a) the subject enterprise has carried on activities at the site or project for a period of more than 12 months; or
  - (b) all of the following apply—
    - (i) the subject enterprise has carried on activities at the site or project for a period that exceeds, or 2 or more periods that in the aggregate exceed, 30 days;
    - (ii) connected activities have been carried on at the site or project by one or more closely related enterprises of the subject enterprise for one or more different periods that each exceeds 30 days;

- (iii) all the periods referred to in subparagraphs (i) and (ii) in the aggregate exceed 12 months.
- (4) In determining whether different activities are connected for the purposes of subsection (3)(b)(ii), regard is to be had to the facts and circumstances of the case, including in particular—
- (a) whether the contracts covering the different activities were concluded with the same person or closely related persons;
  - (b) whether the conclusion of additional contracts with a person is a logical consequence of a previous contract concluded with the person or closely related persons;
  - (c) whether the activities would have been covered by a single contract absent tax planning considerations;
  - (d) whether the nature of the work involved under the different contracts is the same or similar; and
  - (e) whether the same employees are performing the activities under the different contracts.

**5. Preparatory or auxiliary activities not constitute permanent establishment**

- (1) This section applies subject to section 6 of this Schedule.
- (2) If the 1st or 2nd set of conditions are met in relation to an enterprise, the enterprise is not regarded under section 4(1) of this Schedule as having a permanent establishment in Hong Kong even if it has a fixed place of business in Hong Kong through which the business of the enterprise is carried on.
- (3) The 1st set of conditions are—
  - (a) the activity carried on for the enterprise through the place consists solely of one of the following—



- (i) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandize belonging to the enterprise;
  - (ii) the maintenance of a stock of goods or merchandize belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (iii) the maintenance of a stock of goods or merchandize belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandize, or collecting information, for the enterprise;
  - (v) the maintenance of a fixed place of business solely for the purpose of carrying on any other activity for the enterprise; and
  - (b) in relation to the business of the enterprise as a whole, the activity is of a preparatory or auxiliary character.
- (4) The 2nd set of conditions are—
- (a) the activities carried on for the enterprise through the place consist solely of any combination of the activities mentioned in subsection (3)(a)(i), (ii), (iii), (iv) and (v); and
  - (b) the overall activity of the place resulting from the combination of the activities is of a preparatory or auxiliary character.

**6. Section 5(2) of this Schedule does not apply if certain activities constitute complementary functions**

Section 5(2) of this Schedule does not apply to an enterprise (*subject enterprise*) with a fixed place of business (*place A*) in

Hong Kong if—

- (a) either or both of the following apply—
  - (i) business activities at place A are carried on by a closely related enterprise of the subject enterprise;
  - (ii) business activities are carried on at another place (*place B*) in Hong Kong by the subject enterprise or its closely related enterprise;
- (b) the business activities carried on at place A by the subject enterprise and those referred to in paragraph (a) constitute complementary functions that are part of a cohesive business operation; and
- (c) any one or more of the following apply—
  - (i) place A would have constituted a permanent establishment for the subject enterprise but for section 5(2) of this Schedule;
  - (ii) place A constitutes a permanent establishment for the closely related enterprise;
  - (iii) place B constitutes a permanent establishment for the subject enterprise or the closely related enterprise;
  - (iv) the overall activity resulting from the combination of the following is not of a preparatory or auxiliary character—
    - (A) the business activities carried on at place A by the subject enterprise;
    - (B) business activities referred to in paragraph (a).

**7. Permanent establishment constituted by agent's activities**

- (1) Despite section 4(1) of this Schedule, an enterprise (*the enterprise*) that is a non-DTA territory resident person is

taken to have a permanent establishment in Hong Kong in respect of any activities (*the activities*) that a person (*the person*) undertakes for the enterprise if—

- (a) the person is acting in Hong Kong on behalf of the enterprise and in doing so—
    - (i) habitually concludes contracts; or
    - (ii) habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise; and
  - (b) the contracts are—
    - (i) in the name of the enterprise;
    - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by the enterprise or that the enterprise has the right to use; or
    - (iii) for the provision of services by the enterprise.
- (2) Subsection (1) does not apply if the activities of the person are limited to activities that, if exercised through a fixed place of business, would not make the fixed place of business a permanent establishment under section 4(1) of this Schedule, having regard to sections 5 and 6 of this Schedule.
- (3) Subsection (1) does not apply if the person—
- (a) carries on business in Hong Kong as an independent agent; and
  - (b) acts for the enterprise in the ordinary course of that business.
- (4) A person is not an independent agent for the purposes of subsection (3) if the person acts exclusively, or almost

exclusively, on behalf of one or more enterprises that are closely related to the person.

**8. Company not constituted permanent establishment of another company**

- (1) Even if—
- (a) a company (*company A*) controls or is controlled by another company (*company B*);
  - (b) company A is resident for tax purposes in a non-DTA territory;
  - (c) company B—
    - (i) is resident for tax purposes in Hong Kong; or
    - (ii) carries on business in Hong Kong (whether through a permanent establishment or otherwise),
- these matters do not of themselves constitute either company a permanent establishment of the other.
- (2) This section does not affect the operation of the other provisions of this Schedule.
-

## Schedule 17H

[ss. 50AAP, 50AAV & 80 &  
Sch. 44]

### Advance Pricing Arrangement

*(Schedule 17H added 27 of 2018 s. 10)*

#### 1. Interpretation

- (1) An expression used in this Schedule, and defined or otherwise explained in Part 8AA, has the same meaning as in that Part.
- (2) In this Schedule—
  - (a) **application** (申請) means an application for an advance pricing arrangement made under section 50AAP(1); and
  - (b) **applicant** (申請人) means a person who makes an application.

#### 2. Contents of application

An application must include—

- (a) the details of the applicant and associated persons of the applicant involved in the transactions in respect of which the advance pricing arrangement is applied for;
- (b) the facts and documents relating to the applicant, the associated persons and the transactions;
- (c) the proposed methodology for determining the income or loss of the applicant;
- (d) the evidence showing that the proposed methodology can produce a result that complies with sections 50AAF and 50AAK (as applicable);

- (e) the period in respect of which an advance pricing arrangement is applied for; and
- (f) a draft advance pricing arrangement.

**3. Information to be provided for purposes of application**

The applicant must provide further information in respect of an application if required by the Commissioner by notice.

**4. Commissioner may appoint independent expert**

The Commissioner may appoint an independent expert to inquire into and report on any matters in relation to an application.

**5. Withdrawal of application**

An applicant may withdraw an application by written notice to the Commissioner.

**6. Reasons to be given for refusal**

If the Commissioner refuses to make an advance pricing arrangement, the Commissioner must give the applicant a written notice stating the decision and the reasons for the refusal.

**7. Fees**

- (1) The fees specified in subsection (9) and incurred in respect of an application are payable by the applicant.
- (2) The Commissioner may require that an applicant must pay a deposit of an amount determined by the Commissioner before the application is entertained.
- (3) When the application is determined, the Commissioner, on ascertaining the total amount of the fees payable, must apply the deposit already paid to settle the fees and—
  - (a) if the amount of the deposit is less than the amount of the fees payable—the applicant must pay the balance; or

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- (b) if the amount of the deposit exceeds the amount of the fees payable—the Commissioner must refund the surplus to the applicant.
- (4) Subject to subsections (5), (6) and (8), subsection (1) applies even if the application is refused or withdrawn.
- (5) If an application is withdrawn, the applicant is liable to pay all the fees specified in subsection (9) and incurred in respect of the application before the Commissioner receives notice of withdrawal given under section 5 of this Schedule.
- (6) In exceptional circumstances, the Commissioner may, at the Commissioner's discretion, waive all or part of any fees payable in respect of an application.
- (7) Any fees due and payable in respect of an application are recoverable as a civil debt due to the Government.
- (8) In exceptional circumstances, the Commissioner may, at the Commissioner's discretion, direct that all or part of any fees paid in respect of an application be refunded to the applicant if the Commissioner does not make an advance pricing arrangement.
- (9) The fees payable in respect of an application are—
- (a) subject to subsection (10), a service charge calculated on the basis of each hour (or any part of an hour) spent by—
- |   |         |
|---|---------|
| (i) a Deputy Commissioner                                 | \$2,650 |
| (ii) an Assistant Commissioner                            | \$2,240 |
| (iii) a Chief Assessor                                    | \$1,960 |
| (iv) any other person appointed under this Ordinance; and | \$1,730 |
- (b) payment or reimbursement of—

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- (i) any fees paid by the Commissioner to any independent expert appointed under section 4 of this Schedule; and
    - (ii) any costs and reasonable expenses incurred by the Commissioner in relation to the application.
  - (10) The service charge payable under subsection (9)(a) in respect of an application must not exceed \$500,000.
-



## Schedule 17I

[s. 58C & Sch. 44]

### Master File and Local File: Thresholds and Prescribed Information

(Schedule 17I added 27 of 2018 s. 18)

#### Part 1

#### Interpretation

1. Except for *accounting period* and *permanent establishment*, an expression used in this Schedule, and defined or otherwise explained in Part 8AA or 9A, has the same meaning as in that Part.
2. In this Schedule—  
*accounting period* (會計期)—
  - (a) in relation to a Hong Kong entity that is an enterprise—means the period with respect to which the enterprise's financial statements are prepared; and
  - (b) in relation to a Hong Kong entity that is a permanent establishment—means the period with respect to which the permanent establishment's financial statements are prepared;*advance pricing agreements and arrangements* (預先定價協議及安排) means—
  - (a) any advance pricing arrangements made under section 50AAP; and

- (b) any agreements, and any arrangements, that determine, in advance of controlled transactions, an appropriate set of criteria, such as method, comparables and appropriate adjustments thereto, critical assumptions as to future events, for the determination of the transfer pricing for those transactions over a fixed period of time;

**associated entity** (有聯繫實體), in relation to an entity (**subject entity**) of a group in the extended sense, means—

- (a) if the subject entity is an enterprise—
  - (i) another constituent entity of the group;
  - (ii) an associated person of the subject entity; or
  - (iii) a permanent establishment of an associated enterprise of the subject entity; or
- (b) if the subject entity forms part of an enterprise (**subject enterprise**)—
  - (i) another constituent entity of the group;
  - (ii) an associated person of the subject enterprise; or
  - (iii) a permanent establishment of an associated enterprise of the subject enterprise;

**controlled transaction** (受管交易), in relation to a Hong Kong entity of a group in the extended sense, means a transaction between the entity and its associated entity;

**corresponding accounting period** (相應會計期), in relation to an accounting period of a Hong Kong entity of a group in the extended sense, means a period that meets the following 2 conditions—

- (a) either—
  - (i) if the group is also a group in the usual sense—the period is one in respect of which the consolidated financial statements of the group are prepared; or

(ii) if the group falls within paragraph (b) of the definition of *group in the extended sense* in section 58B(2)—the period is one in respect of which the financial statements of the single enterprise referred to in that paragraph are prepared;

(b) either—

(i) the period coincides with the accounting period of the entity; or

(ii) the period ends within the accounting period of the entity;

*financial asset* (財務資產) has the meaning given by section 50A(1);

*intangible* (無形物) means something—

(a) that is not a physical asset or a financial asset;

(b) that is capable of being owned or controlled for use in commercial activities; and

(c) whose use or transfer would have been compensated had it occurred in a transaction between independent persons in comparable circumstances;

*permanent establishment* (常設機構) has the meaning given by section 58B(5);

*specified domestic transaction* (指明本地交易) means a controlled transaction between a Hong Kong entity of a group in the extended sense and an associated entity of that Hong Kong entity if, in relation to the transaction—

(a) subject to section 3 of this Schedule, either of the following conditions is met—

(i) the transaction is undertaken in connection with each entity's trade, profession or business carried on in Hong Kong; or

- 
- (ii) both—
    - (A) the transaction is undertaken in connection with either entity's trade, profession or business carried on in Hong Kong; and
    - (B) the other entity is resident for tax purposes in Hong Kong and the transaction is not undertaken in connection with that other entity's trade, profession or business; and
  - (b) either of the following conditions is also met—
    - (i) each entity's income arising from the transaction is chargeable to Hong Kong tax or each entity's loss so arising is allowable for the purposes of Hong Kong tax; or
    - (ii) the transaction relates to lending money otherwise than in the ordinary course of a business of lending money or an intra-group financing business (as defined by section 16(3));

***uncontrolled transaction*** (非受管交易), in relation to a Hong Kong entity of a group in the extended sense, means a transaction that is not a controlled transaction.

3. For the purposes of paragraph (a) of the definition of ***specified domestic transaction*** in section 2 of this Schedule, a trade, profession or business is not regarded as being carried on in Hong Kong by an entity only because a sum received or receivable by or accrued to the entity is deemed under section 15(1) to be a receipt arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong.

## Part 2

### Thresholds for Purposes of Section 58C

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4. The thresholds specified for the purposes of section 58C(1) are—
- |     |                             |               |
|-----|-----------------------------|---------------|
| (a) | total amount of revenue     | \$400 million |
| (b) | total value of assets       | \$300 million |
| (c) | average number of employees | 100           |
5. The amounts of controlled transactions specified for the purposes of section 58C(4) are—
- |     |   |               |
|-----|---|---------------|
| (a) | transfers of properties (whether movable or immovable but excluding financial assets and intangibles) | \$220 million |
| (b) | transactions in respect of financial assets   | \$110 million |
| (c) | transfers of intangibles  | \$110 million |
| (d) | other transactions  | \$44 million  |

### Part 3

### Prescribed Information

#### Division 1—Local File

6. A local file prepared and retained by a Hong Kong entity (*subject entity*) of a group in the extended sense in respect of an accounting period of the subject entity (*subject accounting period*) must include the following information—
- |     |  |
|-----|--|
| (a) | in relation to the subject entity—   |
| (i) | a description of the management structure of the subject entity, an organization chart of the subject entity, and a description of the individuals to whom the subject entity's management reports and |

- the territory or territories in which the individuals maintain their principal offices;
- (ii) a detailed description of the business and business strategy pursued by the subject entity including an indication whether the subject entity has been involved in or affected by business restructurings or intangibles transfers in the subject accounting period of the subject entity or the subject entity's accounting period immediately before it and an explanation of those aspects of such transactions affecting the subject entity; and
  - (iii) a list of key competitors;
- (b) in relation to controlled transactions, the following information for each material category of controlled transactions—
- (i) a description of the material controlled transactions and the context in which the transactions took place;
  - (ii) the amount of payments and receipts among the subject entity and its associated entities for each category of controlled transactions broken down by tax jurisdictions of the payers or recipients;
  - (iii) an identification of the subject entity's associated entities involved in each category of controlled transactions, and the relationship among them;
  - (iv) copies of all material agreements concluded by the subject entity with any of its associated entities;
  - (v) a detailed comparability and functional analysis of the subject entity and the relevant associated entities with respect to each documented category of controlled transactions, including any changes

- compared to the accounting periods before the subject accounting period;
- (vi) an indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method;
  - (vii) an indication of which associated entity is selected as the tested party, if applicable, and an explanation of the reasons for this selection;
  - (viii) a summary of the important assumptions made in applying the transfer pricing methodology;
  - (ix) if applicable, an explanation of the reasons for performing a multi-year analysis;
  - (x) a list and description of the selected comparable uncontrolled transactions (internal or external), if any, and information on the financial indicators that are relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information;
  - (xi) a description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both;
  - (xii) a description of the reasons for concluding that the controlled transactions were priced on an arm's length basis based on the application of the selected transfer pricing method;
  - (xiii) a summary of financial information used in applying the transfer pricing methodology; and

- (xiv) a copy of existing unilateral, bilateral and multilateral advance pricing agreements and arrangements and other tax rulings that are related to the controlled transactions;
- (c) in relation to financial information—
  - (i) the subject entity's audited financial statements for the subject accounting period or, if no audited financial statements exist, the subject entity's existing unaudited statements for the subject accounting period;
  - (ii) information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the financial statements; and
  - (iii) summary schedules of the financial data relating to the comparables used in the analysis and the sources from which that data was obtained.

## **Division 2—Master File**

7. A master file to be prepared and retained, by a Hong Kong entity (*subject entity*) of a group in the extended sense (together with a local file in respect of an accounting period of the subject entity) must include the following information—
- (a) in relation to organizational structure—a chart illustrating—
    - (i) the group's legal and ownership structure; and
    - (ii) (if the group is a multinational enterprise group) geographical location of constituent entities of the group;



- 
- (b) in relation to description of group's business—a general written description of the group's business including—
- (i) important drivers of business profits;
  - (ii) a description of the supply chain for the group's 5 largest products or service offerings by turnover and for any other products or services amounting to more than 5% of group turnover;
  - (iii) a list and brief description of important service arrangements (other than those relating to research and development services) between constituent entities of the group, including a description of the capabilities of the principal locations providing the services and transfer pricing policies for allocating services costs and determining prices to be paid for the services;
  - (iv) a description of the main geographic markets for the group's products and services that are referred to in subparagraph (ii);
  - (v) a brief written functional analysis describing the principal contributions to value creation (including key functions performed, important risks assumed, and important assets used) by individual constituent entities within the group; and
  - (vi) a description of important business restructuring transactions, acquisitions and divestitures occurring during the corresponding accounting period of the group;
- (c) in relation to the group's intangibles—
- (i) a general description of the group's overall strategy for the development, ownership and exploitation of intangibles, including location of principal research

- and development facilities and location of research and development management;
- (ii) a list of intangibles or categories of intangibles of the group that are important for transfer pricing purposes, identifying which constituent entities of the group legally own or effectively control the intangibles;
  - (iii) a list of important agreements among the group's constituent entities related to intangibles, including cost contribution arrangements, principal research service agreements and licence agreements;
  - (iv) a general description of the group's transfer pricing policies related to research and development and intangibles; and
  - (v) a general description of any important transfers of interests in or control of intangibles among the group's constituent entities during the group's corresponding accounting period, including the constituent entities, territories, and compensation involved;
- (d) in relation to the financial activities between constituent entities of the group—
- (i) a general description of how the group is financed, including important financing arrangements with unrelated lenders;
  - (ii) the identification of any constituent entity (***financing entity***) of the group that provides a central financing function for the group, including the territory under whose laws the financing entity is organized and the place of effective management of the financing entity; and

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- (iii) a general description of the group's general transfer pricing policies related to financing arrangements among the group's constituent entities; and
  - (e) in relation to the group's financial and tax positions—
    - (i) the group's consolidated financial statements for the corresponding accounting period ; and
    - (ii) a list and brief description of the group's existing unilateral advance pricing agreements and arrangements and other tax rulings relating to the allocation of income among territories.
-

## Schedule 18

[s. 90]

### Reduction of Taxes for Year of Assessment 2007/08

*(Schedule 18 added 21 of 2008 s. 11. Amended E.R. 1 of 2012)*

#### 1. Property tax

- (1) The amount of property tax charged under Part 2 of this Ordinance for the year of assessment commencing on 1 April 2007 shall be reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 5(1) of this Ordinance; or
  - (b) \$25,000,whichever is the less.
- (2) Where a person is the sole owner of 2 or more properties, the reduction under subsection (1) applies separately to each of those properties.
- (3) Where 2 or more persons are joint owners or owners in common of 2 or more properties, the reduction under subsection (1) applies separately to each of those properties.
- (4) Where 2 or more persons are joint owners or owners in common of a property, and any of them has elected to be assessed in accordance with Part 7 of this Ordinance for the year of assessment commencing on 1 April 2007, the reduction under subsection (1) applies to the tax chargeable on the whole of the net assessable value of the property, and not the tax charged on the net assessable value of the property shared by those persons who have not made that election.

(5) In this section—

*property* (物業) means any land or buildings or land and buildings as defined in section 7A of this Ordinance—

- (a) that is a separate tenement for which a rateable value is estimated in accordance with section 10 of the Rating Ordinance (Cap. 116) for the financial year commencing on 1 April 2007;
- (b) if paragraph (a) does not apply, that is the subject tenement of any agreement, whether in writing or not, providing for the right of use of the land or buildings or land and buildings; or
- (c) if paragraphs (a) and (b) do not apply, that is considered as a separate tenement by the Commissioner having regard to the circumstances of the case.

## 2. Salaries tax

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1 April 2007 shall be reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
- (b) \$25,000,

whichever is the less.

## 3. Profits tax

- (1) The amount of profits tax charged under Part 4 of this Ordinance for the year of assessment commencing on 1 April 2007 shall be reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 14 of this Ordinance read together with sections 14A and 14B of this Ordinance; or
  - (b) \$25,000,
 whichever is the less.
- (2) Where a trade, profession or business is carried on by a partnership, and any of the partners has elected to be assessed in accordance with Part 7 of this Ordinance for the year of assessment commencing on 1 April 2007, the reduction under subsection (1) applies to the tax chargeable on the whole of the net assessable profits of the trade, profession or business, and not the tax charged on the net assessable profits of the trade, profession or business shared by those partners who have not made that election.

#### **4. Tax under personal assessment**

- (1) The amount of tax charged under Part 7 of this Ordinance for the year of assessment commencing on 1 April 2007 shall be reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
  - (b) \$25,000,
 whichever is the less.
- (2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on each spouse

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in the year of assessment commencing on 1 April 2007, the amount of tax to be apportioned between the husband and wife shall be the amount as reduced under subsection (1).

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## Schedule 19

[s. 91]

### Reduction of Taxes for Year of Assessment 2008/09

*(Schedule 19 added 8 of 2009 s. 3. Amended E.R. 1 of 2012)*

#### 1. Salaries tax

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1 April 2008 is reduced by an amount equivalent to—

- (a) 100% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
- (b) \$8,000,

whichever is the lesser.

#### 2. Tax under personal assessment

(1) The amount of tax charged under Part 7 of this Ordinance for the year of assessment commencing on 1 April 2008 is reduced by an amount equivalent to—

- (a) 100% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
- (b) \$8,000,

whichever is the lesser.



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- (2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2008, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).
-

## **Schedule 20**

[s. 92]

### **Reduction of Taxes for Year of Assessment 2009/10**

*(Schedule 20 added 10 of 2010 s. 9. Amended E.R. 1 of 2012)*

#### **1. Salaries tax**

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1 April 2009 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
- (b) \$6,000,

whichever is the lesser.

#### **2. Tax under personal assessment**

(1) The amount of tax charged under Part 7 of this Ordinance for the year of assessment commencing on 1 April 2009 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
- (b) \$6,000,

whichever is the lesser.

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- (2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2009, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).
-

## Schedule 21

[s. 89(6)]

### Transitional Provisions Relating to Inland Revenue (Amendment) Ordinance 2011

*(Schedule 21 added 4 of 2011 s. 9)*

1. In this Schedule—  
***amending Ordinance*** (《修訂條例》) means the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011).
2. Paragraph (e) of the definition of ***debt instrument*** in section 14A(4) of this Ordinance that was in force immediately before the date of commencement\* of the amending Ordinance continues to have effect in relation to an instrument issued before that date as if the amending Ordinance had not been enacted.

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Editorial Note:

\* Commencement date: 25 March 2011

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## Schedule 22

[s. 89(7)]

### **Transitional Provisions Relating to Provisional Salaries Tax in respect of Year of Assessment 2011/12**

*(Schedule 22 added 9 of 2011 s. 7. Amended E.R. 1 of 2012)*

#### **1. Interpretation**

In this Schedule—

*current year of assessment* (本課稅年度) means the year of assessment commencing on 1 April 2011;

*preceding year of assessment* (上一課稅年度) means the year of assessment commencing on 1 April 2010.

#### **2. Allowances granted for current year of assessment**

(1) For the purposes of section 63C(1) of this Ordinance, in calculating the net chargeable income of a person for the preceding year of assessment to ascertain the provisional salaries tax in respect of the current year of assessment—

(a) the reference to “such allowances as are under Part 5 permitted for that person” in section 12B(1)(b) of this Ordinance; and

(b) the reference to “such allowances as are under Part 5 permitted in their case” in section 12B(2)(b) of this Ordinance,

are to be construed as allowances that may be granted to that person, or that person and his or her spouse, whichever is applicable, for the current year of assessment under Part

5 of this Ordinance as amended by the Inland Revenue (Amendment) (No. 2) Ordinance 2011 (9 of 2011).

- (2) For the purposes of an application under section 63E(1) of this Ordinance to hold over the payment of provisional salaries tax in respect of the current year of assessment, the reference to “net chargeable income for the year preceding the year of assessment” in section 63E(2)(a) and (b) of this Ordinance is to be construed as the net chargeable income for the preceding year of assessment as calculated in accordance with subsection (1).

**3. Applications for holding over of payment of provisional salaries tax on additional ground**

- (1) Without affecting section 63E of this Ordinance, if in relation to the current year of assessment a person is liable to pay provisional salaries tax, that person may, by notice in writing lodged with the Commissioner, apply to the Commissioner on the ground specified in subsection (3) to have the payment of the whole or part of the tax held over until that person is required to pay salaries tax for the current year of assessment.
- (2) An application under subsection (1) must be made not later than—
- (a) 28 days before the day by which the provisional salaries tax is to be paid; or
- (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6) of this Ordinance,

whichever is the later.

- (3) The ground specified for the purposes of subsection (1) is that the aggregate amount of the residential care expenses paid or to be paid by the person or his or her spouse, not being a

spouse living apart from the person, during the current year of assessment exceeds, or is likely to exceed \$60,000 in respect of a parent or grandparent of the person.

- (4) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which an application may be made under subsection (1).
- (5) On receipt of an application made under subsection (1), the Commissioner must consider the application and may hold over the payment of the whole or part of the provisional salaries tax.
- (6) The Commissioner must, by notice in writing, inform the person applying under subsection (1) of the Commissioner's decision.
- (7) In this section—

*parent or grandparent* (父母或祖父母) and *residential care expenses* (住宿照顧開支) have the meanings given to them by section 26D(5) of this Ordinance.

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## Schedule 23

[s. 93]

### Reduction of Taxes for Year of Assessment 2010/11

*(Schedule 23 added 9 of 2011 s. 7. Amended E.R. 1 of 2012)*

#### 1. Salaries tax

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1 April 2010 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
- (b) \$6,000,

whichever is the lesser.

#### 2. Tax under personal assessment

(1) The amount of tax charged under Part 7 of this Ordinance for the year of assessment commencing on 1 April 2010 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
- (b) \$6,000,

whichever is the lesser.



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- (2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2010, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).
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## Schedule 24

[s. 89(8)]

### **Transitional Provisions for Inland Revenue (Amendment) (No. 3) Ordinance 2011**

*(Schedule 24 added. 21 of 2011 s. 9. Amended E.R. 1 of 2012)*

1. The amendments made to section 16E(1), (2), (2A), (2B), (4) and (5) of this Ordinance by section 5(1), (2), (4), (5), (8), (9) and (11) of the Inland Revenue (Amendment) (No. 3) Ordinance 2011 (21 of 2011) (**2011 Ordinance**) do not apply in ascertaining the profits in respect of which a person is chargeable to tax under Part 4 of this Ordinance for any year of assessment preceding the year of assessment beginning on 1 April 2011.
2. Section 16E(1A), (3A) and (9) of this Ordinance applies only in ascertaining the profits in respect of which a person is chargeable to tax under Part 4 of this Ordinance for the year of assessment beginning on 1 April 2011 and any subsequent year of assessment.
3. The amendments made to section 16E(3) and (4) of this Ordinance by section 5(6) and (10) of the 2011 Ordinance do not apply in respect of any rights of a kind referred to in section 16E(1) of this Ordinance—
  - (a) in respect of which a deduction has been allowed under section 16E(1) of this Ordinance to any person; and
  - (b) that are sold by the person during the basis period for any year of assessment preceding the year of assessment

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beginning on 1 April 2011 or are sold by the person under a contract entered into during such a basis period.

4. Section 16E(7) and (8) of this Ordinance does not apply in respect of any rights of a kind referred to in section 16E(1) of this Ordinance that are purchased or sold during the basis period for any year of assessment preceding the year of assessment beginning on 1 April 2011 or are purchased or sold under a contract entered into during such a basis period.
-

## Schedule 25

[s. 89(9)]

### **Transitional Provisions Relating to Provisional Salaries Tax and Provisional Profits Tax in respect of Years of Assessment 2012/13 and 2013/14**

*(Schedule 25 added 21 of 2012 s. 10)*

#### **1. Interpretation**

In this Schedule—

*current year of assessment* (本課稅年度) means the year of assessment commencing on 1 April 2012;

*following year of assessment* (下一課稅年度) means the year of assessment commencing on 1 April 2013;

*preceding year of assessment* (上一課稅年度) means the year of assessment commencing on 1 April 2011.

#### **2. Allowances granted for current year of assessment**

(1) For the purposes of section 63C(1) of this Ordinance, in calculating the net chargeable income of a person for the preceding year of assessment to ascertain the provisional salaries tax in respect of the current year of assessment—

- (a) the reference to “such allowances as are under Part 5 permitted for that person” in section 12B(1)(b) of this Ordinance; and

- (b) the reference to “such allowances as are under Part 5 permitted in their case” in section 12B(2)(b) of this Ordinance,

are to be construed as allowances that may be granted to that person, or that person and his or her spouse, whichever is applicable, for the current year of assessment under Part 5 of this Ordinance as amended by the Inland Revenue (Amendment) Ordinance 2012 (21 of 2012).

- (2) For the purposes of an application under section 63E(1) of this Ordinance to hold over the payment of provisional salaries tax in respect of the current year of assessment, the reference to “net chargeable income for the year preceding the year of assessment” in section 63E(2)(a) and (b) of this Ordinance is to be construed as the net chargeable income for the preceding year of assessment as calculated in accordance with subsection (1).

### **3. Applications for holding over of payment of provisional salaries tax on additional grounds**

- (1) Without affecting section 63E of this Ordinance—
- (a) if in relation to the current year of assessment a person is liable to pay provisional salaries tax, that person may, by notice in writing lodged with the Commissioner, apply to the Commissioner on any ground specified in subsection (3) to have the payment of the whole or part of the tax held over until that person is required to pay salaries tax for the current year of assessment; and
- (b) if in relation to the following year of assessment a person is liable to pay provisional salaries tax, that person may, by notice in writing lodged with the Commissioner, apply to the Commissioner on the

ground specified in subsection (4) to have the payment of the whole or part of the tax held over until that person is required to pay salaries tax for the following year of assessment.

- (2) An application under subsection (1) must be made not later than—
- (a) 28 days before the day by which the provisional salaries tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6) of this Ordinance,

whichever is the later.

- (3) The following grounds are specified for the purposes of subsection (1)(a)—
- (a) the aggregate amount of the residential care expenses paid or to be paid by the person or his or her spouse, not being a spouse living apart from the person, during the current year of assessment, to the extent to which a deduction in respect of those expenses is allowable under section 26D of this Ordinance for that year, exceeds or is likely to exceed \$72,000 in respect of a parent or grandparent of the person;
  - (b) the amount of contributions to a recognized retirement scheme paid or to be paid by the person during the current year of assessment, to the extent to which a deduction in respect of those contributions is allowable under section 26G of this Ordinance for that year, exceeds or is likely to exceed \$12,000.
- (4) The ground specified for the purposes of subsection (1)(b) is that the amount of contributions to a recognized retirement scheme paid or to be paid by the person during the following year of assessment, to the extent to which a deduction in

respect of those contributions is allowable under section 26G of this Ordinance for that year, exceeds or is likely to exceed \$14,500.

- (5) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which an application may be made under subsection (1).
- (6) On receipt of an application made under subsection (1), the Commissioner must consider the application and may hold over the payment of the whole or part of the provisional salaries tax.
- (7) The Commissioner must, by notice in writing, inform the person applying under subsection (1) of the Commissioner's decision.
- (8) In this section—

*parent or grandparent* (父母或祖父母) has the meaning given to it by section 26D(5) of this Ordinance;

*residential care expenses* (住宿照顧開支) has the meaning given to it by section 26D(5) of this Ordinance.

#### 4. **Applications for holding over of payment of provisional profits tax on additional ground**

- (1) Without affecting section 63J of this Ordinance—
  - (a) if in relation to the current year of assessment a person is liable to pay provisional profits tax, that person may, by notice in writing lodged with the Commissioner, apply to the Commissioner on the ground specified in subsection (3) to have the payment of the whole or part of the tax held over until that person is required to pay profits tax for the current year of assessment; and

- (b) if in relation to the following year of assessment a person is liable to pay provisional profits tax, that person may, by notice in writing lodged with the Commissioner, apply to the Commissioner on the ground specified in subsection (4) to have the payment of the whole or part of the tax held over until that person is required to pay profits tax for the following year of assessment.
- (2) An application under subsection (1) must be made not later than—
  - (a) 28 days before the day by which the provisional profits tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional profits tax under section 63H(7) of this Ordinance,whichever is the later.
- (3) The ground specified for the purposes of subsection (1)(a) is that the amount of mandatory contributions paid or to be paid by the person in the basis period for the current year of assessment in respect of any liability of the person to pay the contributions as a self-employed person under the Mandatory Provident Fund Schemes Ordinance (Cap. 485), to the extent to which a deduction in respect of those contributions is allowable under section 16AA of this Ordinance for that year, exceeds or is likely to exceed \$12,000.
- (4) The ground specified for the purposes of subsection (1)(b) is that the amount of mandatory contributions paid or to be paid by the person in the basis period for the following year of assessment in respect of any liability of the person to pay the contributions as a self-employed person under the Mandatory Provident Fund Schemes Ordinance (Cap. 485), to the extent to which a deduction in respect of those contributions is



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allowable under section 16AA of this Ordinance for that year, exceeds or is likely to exceed \$14,500.

- (5) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which an application may be made under subsection (1).
  - (6) On receipt of an application made under subsection (1), the Commissioner must consider the application and may hold over the payment of the whole or part of the provisional profits tax.
  - (7) The Commissioner must, by notice in writing, inform the person applying under subsection (1) of the Commissioner's decision.
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## Schedule 26

[s. 94]

### Reduction of Taxes for Year of Assessment 2011/12

*(Schedule 26 added 21 of 2012 s. 10)*

#### 1. Salaries tax

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1 April 2011 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
- (b) \$12,000,

whichever is the lesser.

#### 2. Profits tax

(1) The amount of profits tax charged under Part 4 of this Ordinance for the year of assessment commencing on 1 April 2011 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 14 of this Ordinance read together with sections 14A and 14B of this Ordinance; or
- (b) \$12,000,

whichever is the lesser.

(2) If a trade, profession or business is carried on by a partnership, and any of the partners has elected to be assessed in accordance with Part 7 of this Ordinance for the year of

assessment commencing on 1 April 2011, the reduction under subsection (1) applies to the tax chargeable on the whole of the net assessable profits of the trade, profession or business, and not the tax charged on the net assessable profits of the trade, profession or business shared by those partners who have not made that election.

**3. Tax under personal assessment**

- (1) The amount of tax charged under Part 7 of this Ordinance for the year of assessment commencing on 1 April 2011 is reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
  - (b) \$12,000,whichever is the lesser.
- (2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2011, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).

## Schedule 27

[s. 89(10)]

### **Transitional Provisions Relating to Provisional Salaries Tax in respect of Year of Assessment 2013/14**

*(Schedule 27 added 5 of 2013 s. 7)*

#### **1. Interpretation**

In this Schedule—

***current year*** (本年度) means the year of assessment commencing on 1 April 2013;

***preceding year*** (上一年度) means the year of assessment commencing on 1 April 2012.

#### **2. Allowances granted for current year**

(1) For the purposes of section 63C(1) of this Ordinance, in calculating the net chargeable income of a person for the preceding year to ascertain the provisional salaries tax in respect of the current year—

(a) the reference to “such allowances as are under Part 5 permitted for that person” in section 12B(1)(b) of this Ordinance; and

(b) the reference to “such allowances as are under Part 5 permitted in their case” in section 12B(2)(b) of this Ordinance,

are to be construed as allowances that may be granted to that person, or that person and his or her spouse, whichever is applicable, for the current year under Part 5 of this Ordinance

as amended by the Inland Revenue (Amendment) Ordinance 2013 (5 of 2013).

- (2) For the purposes of an application under section 63E(1) of this Ordinance to hold over the payment of provisional salaries tax in respect of the current year, the reference to “net chargeable income for the year preceding the year of assessment” in section 63E(2)(a) and (b) of this Ordinance is to be construed as the net chargeable income for the preceding year as calculated in accordance with subsection (1).

**3. Applications for holding over of payment of provisional salaries tax on additional ground**

- (1) Without affecting section 63E of this Ordinance, if in relation to the current year a person is liable to pay provisional salaries tax, that person may, by notice in writing lodged with the Commissioner, apply to the Commissioner on the ground specified in subsection (3) to have the payment of the whole or part of the tax held over until that person is required to pay salaries tax for the current year.
- (2) An application under subsection (1) must be made not later than—
  - (a) 28 days before the day by which the provisional salaries tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6) of this Ordinance,
 whichever is the later.
- (3) The ground specified for the purposes of subsection (1) is that the amount of the expenses of self-education paid or to be paid by the person during the current year, to the extent to which a deduction in respect of those expenses is allowable

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under section 12 of this Ordinance for that year, exceeds or is likely to exceed \$60,000.

- (4) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which an application may be made under subsection (1).
- (5) On receipt of an application made under subsection (1), the Commissioner must consider the application and may hold over the payment of the whole or part of the provisional salaries tax.
- (6) The Commissioner must, by notice in writing, inform the person applying under subsection (1) of the Commissioner's decision.
- (7) In this section—  
***expenses of self-education*** (個人進修開支) has the meaning given to it by section 12(6)(b) of this Ordinance.

**Schedule 28**

[s. 95]

**Reduction of Taxes for Year of Assessment 2012/13***(Schedule 28 added 5 of 2013 s. 7)***1. Salaries tax**

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1 April 2012 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
- (b) \$10,000,

whichever is the lesser.

**2. Profits tax**

(1) The amount of profits tax charged under Part 4 of this Ordinance for the year of assessment commencing on 1 April 2012 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 14 of this Ordinance read together with sections 14A and 14B of this Ordinance; or
- (b) \$10,000,

whichever is the lesser.

(2) If a trade, profession or business is carried on by a partnership, and any of the partners has elected to be assessed in accordance with Part 7 of this Ordinance for the year of

assessment commencing on 1 April 2012, the reduction under subsection (1) applies to the tax chargeable on the whole of the net assessable profits of the trade, profession or business, and not the tax charged on the net assessable profits of the trade, profession or business shared by those partners who have not made that election.

**3. Tax under personal assessment**

- (1) The amount of tax charged under Part 7 of this Ordinance for the year of assessment commencing on 1 April 2012 is reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
  - (b) \$10,000,whichever is the lesser.
- (2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2012, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).



## Schedule 29

[s. 89(11)]

### **Transitional Provisions for Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013**

*(Schedule 29 added 10 of 2013 s. 20)*

1. The amendments made to sections 5B, 14A, 15, 16, 20AC, 26A, 51C, 60, 64, 79, 80 and 82A of, and Schedules 6 and 16 to, this Ordinance by sections 5, 6(5), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18 and 19 of the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 (10 of 2013) (**2013 Amendment Ordinance**), do not apply to an alternative bond scheme, or the bond arrangement or investment arrangement in it, if alternative bonds are issued under the bond arrangement in the scheme before the date of commencement of section 3 of the 2013 Amendment Ordinance.
2. Section 40AB of, and Schedule 17A to, this Ordinance do not apply to an alternative bond scheme, or the bond arrangement or investment arrangement in it, if alternative bonds are issued under the bond arrangement in the scheme before the date of commencement\* of section 3 of the 2013 Amendment Ordinance.

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Editorial Note:

\* Commencement date: 19 July 2013.

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## Schedule 30

[s. 89(12)]

### **Transitional Provisions Relating to Provisional Salaries Tax and Provisional Profits Tax in respect of Years of Assessment 2014/15 and 2015/16**

*(Schedule 30 added 3 of 2014 s. 9)*

#### **1. Interpretation**

In this Schedule—

***MPFSO*** (《強積金條例》) means the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

***year of assessment 2014/15*** (2014/15 課稅年度) means the year of assessment commencing on 1 April 2014;

***year of assessment 2015/16*** (2015/16 課稅年度) means the year of assessment commencing on 1 April 2015.

#### **2. Application for holding over payment of provisional salaries tax on additional grounds**

(1) If a person is liable to pay provisional salaries tax for the year of assessment 2014/15, that person may apply to the Commissioner on the ground specified in subsection (2) to have the payment of the whole or part of that tax held over until that person is required to pay salaries tax for that year.

(2) The ground is that the amount of contributions to a recognized retirement scheme paid or to be paid by the person during the year of assessment 2014/15, to the extent to which a deduction in respect of those contributions is allowable

under section 26G for that year, exceeds or is likely to exceed \$15,000.

- (3) If a person is liable to pay provisional salaries tax for the year of assessment 2015/16, that person may apply to the Commissioner on the ground specified in subsection (4) to have the payment of the whole or part of that tax held over until that person is required to pay salaries tax for that year.
- (4) The ground is that the amount of contributions to a recognized retirement scheme paid or to be paid by the person during the year of assessment 2015/16, to the extent to which a deduction in respect of those contributions is allowable under section 26G for that year, exceeds or is likely to exceed \$17,500.
- (5) This section does not affect the operation of section 63E.

**3. Supplementary provisions for application under section 2**

- (1) This section applies to an application under section 2(1) or (3) of this Schedule.
- (2) The application must be made by notice in writing lodged with the Commissioner.
- (3) The application must be made not later than—
  - (a) 28 days before the day by which the provisional salaries tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6),
 whichever is the later.
- (4) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which the application may be made.

- (5) On receipt of the application, the Commissioner—
  - (a) must consider the application; and
  - (b) may hold over the payment of the whole or part of the provisional salaries tax.
- (6) The Commissioner must, by notice in writing, inform the applicant of the Commissioner's decision.

**4. Application for holding over payment of provisional profits tax on additional grounds**

- (1) If a person is liable to pay provisional profits tax for the year of assessment 2014/15, that person may apply to the Commissioner on the ground specified in subsection (2) to have the payment of the whole or part of that tax held over until that person is required to pay profits tax for that year.
- (2) The ground is that the amount of mandatory contributions paid or to be paid by the person in the basis period for the year of assessment 2014/15 in respect of any liability of the person to pay the contributions as a self-employed person under MPFSO, to the extent to which a deduction in respect of those contributions is allowable under section 16AA for that year, exceeds or is likely to exceed \$15,000.
- (3) If a person is liable to pay provisional profits tax for the year of assessment 2015/16, that person may apply to the Commissioner on the ground specified in subsection (4) to have the payment of the whole or part of that tax held over until that person is required to pay profits tax for that year.
- (4) The ground is that the amount of mandatory contributions paid or to be paid by the person in the basis period for the year of assessment 2015/16 in respect of any liability of the person to pay the contributions as a self-employed person under MPFSO, to the extent to which a deduction in respect

of those contributions is allowable under section 16AA for that year, exceeds or is likely to exceed \$17,500.

- (5) This section does not affect the operation of section 63J.

**5. Supplementary provisions for application under section 4**

- (1) This section applies to an application under section 4(1) or (3) of this Schedule.
- (2) The application must be made by notice in writing lodged with the Commissioner.
- (3) The application must be made not later than—
- (a) 28 days before the day by which the provisional profits tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional profits tax under section 63H(7),  
whichever is the later.
- (4) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which the application may be made.
- (5) On receipt of the application, the Commissioner—
- (a) must consider the application; and
  - (b) may hold over the payment of the whole or part of the provisional profits tax.
- (6) The Commissioner must, by notice in writing, inform the applicant of the Commissioner's decision.

**Schedule 31**

[s. 89(13)]

**Transitional Provisions Relating to Provisional Salaries  
Tax in respect of Year of Assessment 2014/15***(Schedule 31 added 10 of 2014 s. 7)***1. Interpretation**

In this Schedule—

*parent or grandparent* (父母或祖父母) has the meaning given by section 26D(5);

*residential care expenses* (住宿照顧開支) has the meaning given by section 26D(5);

*year of assessment 2013/14* (2013/14課稅年度) means the year of assessment commencing on 1 April 2013;

*year of assessment 2014/15* (2014/15課稅年度) means the year of assessment commencing on 1 April 2014.

**2. Allowances granted for year of assessment 2014/15**

(1) For the purposes of section 63C(1), in calculating the net chargeable income of a person for the year of assessment 2013/14 to ascertain the provisional salaries tax in respect of the year of assessment 2014/15—

(a) the reference to “such allowances as are under Part 5 permitted for that person” in section 12B(1)(b); and

(b) the reference to “such allowances as are under Part 5 permitted in their case” in section 12B(2)(b),

are to be construed as allowances that may be granted to that person, or that person and his or her spouse, whichever is applicable, for the year of assessment 2014/15 under Part 5 as amended by the Inland Revenue (Amendment) (No. 2) Ordinance 2014 (10 of 2014).

- (2) For the purposes of an application under section 63E(1) to hold over the payment of provisional salaries tax in respect of the year of assessment 2014/15, the reference to “net chargeable income for the year preceding the year of assessment” in section 63E(2)(a) and (b) is to be construed as the net chargeable income for the year of assessment 2013/14 as calculated in accordance with subsection (1).

**3. Application for holding over payment of provisional salaries tax on additional ground**

- (1) A person who is liable to pay provisional salaries tax in respect of the year of assessment 2014/15 may apply to the Commissioner on the ground specified in subsection (2) to have the payment of the whole or part of the tax held over until that person is required to pay salaries tax for that year.
- (2) The ground is that the aggregate amount of the residential care expenses paid or to be paid by the person or his or her spouse, not being a spouse living apart from the person, during the year of assessment 2014/15, to the extent to which a deduction in respect of those expenses is allowable under section 26D for that year, exceeds or is likely to exceed \$76,000 in respect of a parent or grandparent of the person.
- (3) This section does not affect the operation of section 63E.

**4. Provisions supplementary to section 3 of this Schedule**

- (1) This section applies to an application under section 3(1) of this Schedule.
- (2) The application must be made by notice in writing lodged with the Commissioner.
- (3) The application must be made not later than—
  - (a) 28 days before the day by which the provisional salaries tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6),whichever is the later.
- (4) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which the application may be made.
- (5) On receipt of the application, the Commissioner—
  - (a) must consider the application; and
  - (b) may hold over the payment of the whole or part of the provisional salaries tax.
- (6) The Commissioner must, by notice in writing, inform the applicant of the Commissioner's decision.



**Schedule 32**

[s. 96]

**Reduction of Taxes for Year of Assessment 2013/14***(Schedule 32 added 10 of 2014 s. 7)***1. Salaries tax**

The amount of salaries tax charged under Part 3 for the year of assessment commencing on 1 April 2013 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) read together with section 13(2); or
- (b) \$10,000,

whichever is the lesser.

**2. Profits tax**

(1) The amount of profits tax charged under Part 4 for the year of assessment commencing on 1 April 2013 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 14 read together with sections 14A and 14B; or
- (b) \$10,000,

whichever is the lesser.

(2) If a trade, profession or business is carried on by a partnership, and any of the partners has elected to be assessed in accordance with Part 7 for the year of assessment commencing on 1 April 2013, the reduction under subsection (1) applies to the tax chargeable on the whole of the net

assessable profits of the trade, profession or business, and not the tax charged on the net assessable profits of the trade, profession or business shared by those partners who have not made that election.

**3. Tax under personal assessment**

- (1) The amount of tax charged under Part 7 for the year of assessment commencing on 1 April 2013 is reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 43(1) read together with section 43(1A); or
  - (b) \$10,000,whichever is the lesser.
- (2) For the purposes of section 43(2B), in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2013, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).

**Schedule 33**

[s. 89(14)]

**Transitional Provisions Relating to Provisional Salaries  
Tax in respect of Year of Assessment 2015/16***(Schedule 33 added 10 of 2015 s. 6)***1. Interpretation**

In this Schedule—

*year of assessment 2014/15* (2014/15課稅年度) means the year of assessment commencing on 1 April 2014;

*year of assessment 2015/16* (2015/16課稅年度) means the year of assessment commencing on 1 April 2015.

**2. Allowances granted for year of assessment 2015/16**

(1) For the purposes of section 63C(1), in calculating the net chargeable income of a person for the year of assessment 2014/15 to ascertain the provisional salaries tax in respect of the year of assessment 2015/16—

(a) the reference to “such allowances as are under Part 5 permitted for that person” in section 12B(1)(b); and

(b) the reference to “such allowances as are under Part 5 permitted in their case” in section 12B(2)(b),

are to be construed as allowances that may be granted to that person, or that person and his or her spouse, whichever is applicable, for the year of assessment 2015/16 under Part 5 as amended by the Inland Revenue (Amendment) Ordinance 2015 (10 of 2015).

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- (2) For the purposes of an application under section 63E(1) to hold over the payment of provisional salaries tax in respect of the year of assessment 2015/16, the reference to “net chargeable income for the year preceding the year of assessment” in section 63E(2)(a) and (b) is to be construed as the net chargeable income for the year of assessment 2014/15 as calculated in accordance with subsection (1).
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**Schedule 34**

[s. 97]

**Reduction of Taxes for Year of Assessment 2014/15***(Schedule 34 added 10 of 2015 s. 6)***1. Salaries tax**

The amount of salaries tax charged under Part 3 for the year of assessment commencing on 1 April 2014 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) read together with section 13(2); or
- (b) \$20,000,

whichever is the lesser.

**2. Profits tax**

(1) The amount of profits tax charged under Part 4 for the year of assessment commencing on 1 April 2014 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 14 read together with sections 14A and 14B; or
- (b) \$20,000,

whichever is the lesser.

(2) If a trade, profession or business is carried on by a partnership, and any of the partners has elected to be assessed in accordance with Part 7 for the year of assessment commencing on 1 April 2014, the reduction under subsection (1) applies to the tax chargeable on the whole of the net

assessable profits of the trade, profession or business, and not the tax charged on the net assessable profits of the trade, profession or business shared by those partners who have not made that election.

**3. Tax under personal assessment**

- (1) The amount of tax charged under Part 7 for the year of assessment commencing on 1 April 2014 is reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 43(1) read together with section 43(1A); or
  - (b) \$20,000,whichever is the lesser.
- (2) For the purposes of section 43(2B), in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2014, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).

**Schedule 35**

[s. 89(15)]

**Transitional Provisions: Appeals against Decisions of Board of Review Made before Commencement Date of Inland Revenue (Amendment) (No. 3) Ordinance 2015***(Schedule 35 added 17 of 2015 s. 14)***1. Interpretation**

In this Schedule—

***amending Ordinance*** (《修訂條例》) means the Inland Revenue (Amendment) (No. 3) Ordinance 2015 (17 of 2015);

***commencement date*** (生效日期) means the date on which section 8 of the amending Ordinance comes into operation;

***former section 69*** (原有的第69條) means section 69 as in force immediately before the commencement date.

**2. Applications not made before commencement date**

Despite section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), if—

- (a) but for the enactment of the amending Ordinance, a person has a right to make an application under the former section 69 in respect of a decision of the Board of Review made under section 68;
- (b) the person has not made the application before the commencement date; and
- (c) the time within which the person may make the application has not expired on the commencement date,

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on or after the commencement date, the person may not make the application, but may appeal to the Court of First Instance against the Board's decision under section 69.

### **3. Applications made before commencement date**

An application that has been made and delivered under the former section 69 before the commencement date is to be continued on and after the commencement date as if the amending Ordinance had not been enacted.

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## Schedule 36

[s. 89(16)]

### Transitional Provisions for Inland Revenue (Amendment) (No. 2) Ordinance 2016

*(Schedule 36 added 12 of 2016 s. 18)*

1. In this Schedule—
  - (a) **2016 Amendment Ordinance** (《2016年修訂條例》) means the Inland Revenue (Amendment) (No. 2) Ordinance 2016 (12 of 2016);
  - (b) **commencement date** (生效日期) means the day on which the 2016 Amendment Ordinance comes into operation;
  - (c) **qualifying profits** (合資格利潤) has the meaning given by section 14C(1); and
  - (d) in relation to a person, a year of assessment is the **transitional year of assessment** (過渡課稅年度) if the commencement date falls within the basis period of the person for the year of assessment.
2. For the purposes of section 14D(1), in computing the qualifying profits of a corporation, sums received by or accrued to the corporation before 1 April 2016 are not to be taken into account.
3. For the purposes of section 14E(5), in computing the corporate treasury profits of a corporation, sums received by or accrued to the corporation before 1 April 2016 are not to be taken into account.

4. Section 15(1)(ia) and (la) does not apply to sums received or accrued before the commencement date.
5. The following provisions apply only to sums payable on or after 1 April 2016—
  - (a) the amendments made to section 16(1), (2), (2A), (2B), (2C), (2E), (3) and (3B) by section 8 of the 2016 Amendment Ordinance;
  - (b) section 16(2)(g), (2CA), (2CB), (2CC), (2CD), (2I) and (3C).
6. Subject to section 7 of this Schedule, the following provisions apply only in ascertaining the profits in respect of which a person is chargeable to tax under Part 4 for the transitional year of assessment or any subsequent year of assessment—
  - (a) the amendments made to sections 2, 15 and 16 and Schedules 6 and 16 by Division 3 of Part 2 of the 2016 Amendment Ordinance;
  - (b) sections 15(1C), 16(2AA), 17A, 17B, 17C, 17D, 17E and 17F.
7. For a regulatory capital security issued before the commencement date—
  - (a) the following provisions apply only to sums received or accrued, in respect of the security, on or after the commencement date—
    - (i) the amendments made to section 15 and Schedule 6 by Division 3 of Part 2 of the 2016 Amendment Ordinance;

- (ii) section 17B (in so far as it relates to a person to whom or for whose benefit a sum is payable in respect of the security);
  - (iii) section 17D(1);
- (b) the following provisions apply only to sums payable, in respect of the security, on or after the commencement date—
  - (i) section 16(2AA);
  - (ii) section 17B (in so far as it relates to the issuer of the security);
  - (iii) sections 17C(1) and 17F;
- (c) in applying section 17C(2) to the issuer of the security who has included any sums as assessable profits or losses when bringing the security into account at a fair value—
  - (i) the liability under the security is taken to have been released and re-assumed at its fair value on the commencement date; and
  - (ii) any change in value between that date and the end of the basis period is to be brought into account for computing the assessable profits for the transitional year of assessment;
- (d) in applying section 17D(2) to a specified connected person of the issuer of the security if the specified connected person has included any sums as assessable profits or losses when bringing the security into account at a fair value—
  - (i) the security is taken to have been disposed of and re-acquired at its fair value on the commencement date; and

- (ii) any change in value between that date and the end of the basis period is to be brought into account for computing the assessable profits for the transitional year of assessment;
  - (e) sections 17C(3) and 17D(3) apply only to a write-down or conversion effected on or after the commencement date;
  - (f) sections 17C(4) and 17D(4) apply only to a write-up effected on or after the commencement date; and
  - (g) the amendment made to Schedule 16 by section 16 of the 2016 Amendment Ordinance applies only to a transaction carried out on or after the commencement date.
  
- 8. Section 17G applies only in ascertaining the profits in respect of which a non-resident financial institution with capital raised through the issue of a regulatory capital security (whether before, on or after the commencement date) is chargeable to tax under Part 4—
  - (a) for the year of assessment beginning on the first day of April in the calendar year next following the commencement date; or
  - (b) for any subsequent year of assessment.

**Schedule 37**

[s. 89(17)]

**Transitional Provisions Relating to Provisional Salaries  
Tax in respect of Year of Assessment 2016/17***(Schedule 37 added 8 of 2016 s. 7)***1. Interpretation**

In this Schedule—

*parent or grandparent* (父母或祖父母) has the meaning given by section 26D(5);

*residential care expenses* (住宿照顧開支) has the meaning given by section 26D(5);

*year of assessment 2015/16* (2015/16課稅年度) means the year of assessment commencing on 1 April 2015;

*year of assessment 2016/17* (2016/17課稅年度) means the year of assessment commencing on 1 April 2016.

**2. Allowances granted for year of assessment 2016/17**

(1) For the purposes of section 63C(1), in calculating the net chargeable income of a person for the year of assessment 2015/16 to ascertain the provisional salaries tax in respect of the year of assessment 2016/17—

(a) the reference to “such allowances as are under Part 5 permitted for that person” in section 12B(1)(b); and

(b) the reference to “such allowances as are under Part 5 permitted in their case” in section 12B(2)(b),

are to be construed as allowances that may be granted to that person, or that person and his or her spouse, whichever is

applicable, for the year of assessment 2016/17 under Part 5 as amended by the Inland Revenue (Amendment) Ordinance 2016 (8 of 2016).

- (2) For the purposes of an application under section 63E(1) to hold over the payment of provisional salaries tax in respect of the year of assessment 2016/17, the reference to “net chargeable income for the year preceding the year of assessment” in section 63E(2)(a) and (b) is to be construed as the net chargeable income for the year of assessment 2015/16 as calculated in accordance with subsection (1).

**3. Application for holding over payment of provisional salaries tax on additional ground**

- (1) A person who is liable to pay provisional salaries tax in respect of the year of assessment 2016/17 may apply to the Commissioner on the ground specified in subsection (2) to have the payment of the whole or part of the tax held over until that person is required to pay salaries tax for that year.
- (2) The ground is that the aggregate amount of the residential care expenses paid or to be paid by the person or his or her spouse, not being a spouse living apart from the person, during the year of assessment 2016/17, to the extent to which a deduction in respect of those expenses is allowable under section 26D for that year, exceeds or is likely to exceed \$80,000 in respect of a parent or grandparent of the person.
- (3) This section does not affect the operation of section 63E.

**4. Provisions supplementary to section 3 of this Schedule**

- (1) This section applies to an application under section 3(1) of this Schedule.
- (2) The application must be made by notice in writing lodged with the Commissioner.

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- (3) The application must be made not later than—
  - (a) 28 days before the day by which the provisional salaries tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6),  
whichever is the later.
- (4) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which the application may be made.
- (5) On receipt of the application, the Commissioner—
  - (a) must consider the application; and
  - (b) may hold over the payment of the whole or part of the provisional salaries tax.
- (6) The Commissioner must, by notice in writing, inform the applicant of the Commissioner's decision.

**Schedule 38**

[s. 98]

**Reduction of Taxes for Year of Assessment 2015/16***(Schedule 38 added 8 of 2016 s. 7)***1. Salaries tax**

The amount of salaries tax charged under Part 3 for the year of assessment commencing on 1 April 2015 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) read together with section 13(2); or
- (b) \$20,000,

whichever is the lesser.

**2. Profits tax**

(1) The amount of profits tax charged under Part 4 for the year of assessment commencing on 1 April 2015 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 14 read together with sections 14A, 14B and 14D; or
- (b) \$20,000,

whichever is the lesser.

(2) If a trade, profession or business is carried on by a partnership, and any of the partners has elected to be assessed in accordance with Part 7 for the year of assessment commencing on 1 April 2015, the reduction under subsection (1) applies to the tax chargeable on the whole of the net assessable profits of the trade, profession or business, and



not the tax charged on the net assessable profits of the trade, profession or business shared by those partners who have not made that election.

**3. Tax under personal assessment**

- (1) The amount of tax charged under Part 7 for the year of assessment commencing on 1 April 2015 is reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 43(1) read together with section 43(1A); or
  - (b) \$20,000,whichever is the lesser.
- (2) For the purposes of section 43(2B), in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2015, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).

**Schedule 39**

[s. 89(18)]

**Transitional Provisions Relating to Provisional Salaries  
Tax in respect of Year of Assessment 2017/18***(Schedule 39 added 3 of 2017 s. 9)***1. Interpretation**

In this Schedule—

***expenses of self-education*** (個人進修開支) has the meaning given by section 12(6)(b);

***year of assessment 2016/17*** (2016/17課稅年度) means the year of assessment commencing on 1 April 2016;

***year of assessment 2017/18*** (2017/18課稅年度) means the year of assessment commencing on 1 April 2017.

**2. Allowances granted for year of assessment 2017/18**

(1) For the purposes of section 63C(1), in calculating the net chargeable income of a person for the year of assessment 2016/17 to ascertain the provisional salaries tax in respect of the year of assessment 2017/18—

(a) the reference to “such allowances as are under Part 5 permitted for that person” in section 12B(1)(b); and

(b) the reference to “such allowances as are under Part 5 permitted in their case” in section 12B(2)(b),

are to be construed as allowances that may be granted to that person, or that person and his or her spouse, whichever is applicable, for the year of assessment 2017/18 under Part 5

as amended by the Inland Revenue (Amendment) Ordinance 2017 (3 of 2017).

- (2) For the purposes of an application under section 63E(1) to hold over the payment of provisional salaries tax in respect of the year of assessment 2017/18, the reference to “net chargeable income for the year preceding the year of assessment” in section 63E(2)(a) and (b) is to be construed as the net chargeable income for the year of assessment 2016/17 as calculated in accordance with subsection (1).

**3. Application for holding over of payment of provisional salaries tax on additional ground**

- (1) A person who is liable to pay provisional salaries tax in respect of the year of assessment 2017/18 may apply to the Commissioner on the ground specified in subsection (2) to have the payment of the whole or part of the tax held over until the person is required to pay salaries tax for the year.
- (2) The ground is that the total amount of the expenses of self-education paid or to be paid by the person during the year of assessment 2017/18, to the extent to which a deduction in respect of the expenses is allowable under section 12 for the year, exceeds or is likely to exceed \$80,000.
- (3) This section does not affect the operation of section 63E.

**4. Provisions supplementary to section 3 of this Schedule**

- (1) This section applies to an application under section 3 of this Schedule.
- (2) The application must be made in writing.
- (3) The application must be made not later than—
  - (a) the 28th day before the day by which the provisional salaries tax is to be paid; or

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- (b) the 14th day after the date of the notice for payment of provisional salaries tax under section 63C(6), whichever is the later.
- (4) If the Commissioner is satisfied that it is appropriate, the Commissioner may, either generally or in a particular case, extend the time within which an application may be made.
- (5) On receipt of the application, the Commissioner—
- (a) must consider the application; and
  - (b) may hold over the payment of the whole or part of the provisional salaries tax.
- (6) The Commissioner must, by notice in writing, inform the applicant of the Commissioner's decision.
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**Schedule 40**

[s. 99]

**Reduction of Taxes for Year of Assessment 2016/17***(Schedule 40 added 3 of 2017 s. 9)***1. Salaries tax**

The amount of salaries tax charged under Part 3 for the year of assessment commencing on 1 April 2016 is reduced by an amount equal to the lesser of the following amounts—

- (a) 75% of the amount of the tax as computed under section 13(1) read together with section 13(2);
- (b) \$20,000.

**2. Profits tax**

(1) The amount of profits tax charged under Part 4 for the year of assessment commencing on 1 April 2016 is reduced by an amount equal to the lesser of the following amounts—

- (a) 75% of the amount of the tax as computed under section 14 read together with sections 14A, 14B and 14D;
- (b) \$20,000.

(2) If a trade, profession or business is carried on by a partnership, and any of the partners has elected to be assessed in accordance with Part 7 for the year of assessment commencing on 1 April 2016, the reduction under subsection (1) applies to the tax chargeable on the whole of the net assessable profits of the trade, profession or business, and not the tax charged on the net assessable profits of the trade, profession or business shared by those partners who have not made that election.

**3. Tax under personal assessment**

- (1) The amount of tax charged under Part 7 for the year of assessment commencing on 1 April 2016 is reduced by an amount equal to the lesser of the following amounts—
  - (a) 75% of the amount of the tax as computed under section 43(1) read together with section 43(1A);
  - (b) \$20,000.
- (2) For the purposes of section 43(2B), in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2016, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).

## **Schedule 41**

[s. 89(19)]

### **Transitional Provisions for Inland Revenue (Amendment) (No. 3) Ordinance 2017**

*(Schedule 41 added 9 of 2017 s. 17)*

1. In computing the qualifying profits in relation to a corporation for the purposes of section 14H(1), sums received by or accrued to the corporation before 1 April 2017 are not to be taken into account.
2. In computing the qualifying profits in relation to a corporation for the purposes of section 14J(1), sums received by or accrued to the corporation before 1 April 2017 are not to be taken into account.
3. Section 15(1)(n) does not apply to sums received or accrued before the Inland Revenue (Amendment) (No. 3) Ordinance 2017 (9 of 2017) comes into operation.

## Schedule 42

[s. 89(20)]

### **Transitional Provisions Relating to Provisional Profits Tax in respect of Year of Assessment 2018/19**

#### **1. Interpretation**

In this Schedule—

*year of assessment 2018/19* (2018/19課稅年度) means the year of assessment commencing on 1 April 2018.

#### **2. Application for holding over payment of provisional profits tax on additional ground**

- (1) A person who is liable to pay provisional profits tax in respect of the year of assessment 2018/19 may apply to the Commissioner to have the payment of the whole or part of the tax held over until the person is required to pay profits tax for the year.
- (2) An application may be made under subsection (1) if, for the year of assessment 2018/19, the person is, or is likely to be, chargeable to profits tax in accordance with section 2 of Schedule 8A, or section 2 of Schedule 8B, under section 14.
- (3) This section does not affect the operation of section 63J.

#### **3. Provisions supplementary to section 2 of this Schedule**

- (1) This section applies to an application under section 2 of this Schedule.
- (2) The application must be made in writing.
- (3) The application must be made not later than—



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- (a) the 28th day before the day by which the provisional profits tax is to be paid; or
  - (b) the 14th day after the date of the notice for payment of provisional profits tax under section 63H(7),whichever is the later.
- (4) However, the Commissioner may, if satisfied that it is appropriate, either generally or in a particular case, postpone the deadline.
- (5) On receipt of the application, the Commissioner—
  - (a) must consider the application; and
  - (b) may hold over the payment of the whole or part of the provisional profits tax.
- (6) The Commissioner must, by notice in writing, inform the applicant of the Commissioner's decision.

*(Schedule 42 added 13 of 2018 s. 12)*

## Schedule 43

[s. 100]

### Reduction of Taxes

*(Schedule 43 added 20 of 2018 s. 16)*

For the year of assessment 2017/18

	Column 1 (section)	Column 2 (prescribed percentage or prescribed amount)
1.	Salaries tax	
	(a) section 100(1)(a)	75%
	(b) section 100(1)(b)	\$30,000
2.	Profits tax	
	(a) section 100(2)(a)	75%
	(b) section 100(2)(b)	\$30,000
3.	Tax under personal assessment	
	(a) section 100(4)(a)	75%
	(b) section 100(4)(b)	\$30,000

## Schedule 44

[s. 89(21)]

### Transitional Provisions for Inland Revenue (Amendment) (No. 6) Ordinance 2018

*(Schedule 44 added 27 of 2018 s. 35)*

#### 1. Interpretation

In this Schedule—

*Amendment Ordinance* (《修訂條例》) means the Inland Revenue (Amendment) (No. 6) Ordinance 2018 (27 of 2018);

\**commencement date* (生效日期) means the day on which the Amendment Ordinance comes into operation.

#### 2. Provisions relating to tax credit

The amendments made to sections 8, 16 and 50 by the Amendment Ordinance, and section 50AA, apply in relation to tax payable for a year of assessment beginning on or after 1 April 2018.

#### 3. Provisions relating to mutual agreement procedure and arbitration

Section 50AAB applies in relation to—

- (a) any case presented for mutual agreement procedure on or after the commencement date, regardless of whether the case relates to a year of assessment that began before the date; and
- (b) any issue if the request for referring the issue for arbitration is made on or after the commencement date, regardless of whether the issue relates to a year of assessment that began before the date.

**4. Provisions relating to transfer pricing rules, relief and advance pricing arrangement**

- (1) Subject to subsections (3), (5) and (6), the following provisions apply in relation to a year of assessment beginning on or after 1 April 2018—
  - (a) Divisions 2 and 3 of Part 8AA (except section 50AAK) and Schedule 17G;
  - (b) Division 4 of Part 8AA and Schedule 17H;
  - (c) section 15BA;
  - (d) the amendments made to sections 80, 82 and 82A by the Amendment Ordinance (except to the extent that the amendments relate to section 50AAK).
- (2) Subject to subsections (4), (7) and (8), the following provisions apply in relation to a year of assessment beginning on or after 1 April 2019—
  - (a) section 50AAK;
  - (b) section 15F;
  - (c) the amendments made to sections 80, 82 and 82A by the Amendment Ordinance (to the extent that the amendments relate to section 50AAK);
  - (d) the amendments made to rules 3(1A) and 5(1) of the Inland Revenue Rules (Cap. 112 sub. leg. A) by the Amendment Ordinance;
  - (e) rule 5(1A) of those Rules.
- (3) The provisions referred to in subsection (1)(a) and (d) do not apply in relation to a transaction entered into or effected before the commencement date.

- (4) The provisions referred to in subsection (2)(a), (c), (d) and (e) do not apply in relation to a transaction entered into or effected before 1 April 2019.
- (5) Subsection (1)(b) does not prevent principles developed in an advance pricing arrangement from being applied, under section 50AAQ(4), in relation to a period which wholly or partly falls before 1 April 2018 if the application for the arrangement is made on or after the commencement date.
- (6) Section 15BA does not apply in relation to a change in trading stock effected before the commencement date.
- (7) A person is not chargeable under section 15F to profits tax in respect of a sum (or any part of it) if the sum accrued to or was received by or for the benefit of an associate of the person before 1 April 2019.
- (8) A person is chargeable under section 15F to profits tax in respect of a sum (or any part of it) if the sum accrues to or is received by or for the benefit of an associate of the person on or after 1 April 2019, regardless of whether the sum arises from a transaction entered into or effected before 1 April 2019.

**5. Provisions relating to master file and local file**

Division 2 of Part 9A and Schedule 17I apply in relation to an accounting period of a constituent entity of a group in the extended sense beginning on or after 1 April 2018.

**6. Provisions relating to country-by-country reporting**

Sections 58F, 58G and 58H apply in relation to an accounting period beginning on or after 1 January 2018.

**7. Provisions relating to fees for application for advance ruling**

The amendments made to Part 2 of Schedule 10 by the Amendment

Ordinance apply in relation to an application for a ruling under section 88A received on or after the commencement date.

**8. Provisions relating to profits tax concessions**

The amendments made to sections 14B, 14C, 14D, 14H, 14J, 16, 23A and 23B by the Amendment Ordinance, and section 26AB, apply in relation to tax payable for a year of assessment beginning on or after 1 April 2018.

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**Editorial Note:**

\* Commencement date: 13 July 2018.

## Schedule 45

[ss. 4, 15, 16, 16B, 37, 37A,  
39B & 40]

### Deduction of R&D Expenditures

(Schedule 45 added 29 of 2018 s. 13)

#### Part 1

#### Preliminary

##### 1. Interpretation

(1) In this Schedule—

**2018 Amendment Ordinance** (《2018年修訂條例》) means the Inland Revenue (Amendment) (No. 7) Ordinance 2018 (29 of 2018);

**amended Ordinance** (《經修訂條例》) means this Ordinance as amended by the 2018 Amendment Ordinance;

**\*commencement date** (生效日期) means the day on which the 2018 Amendment Ordinance comes into operation;

**designated local research institution** (指定本地研究機構) means a designated local research institution designated under section 19 of this Schedule;

**interim Type A expenditure** (中期甲類開支)—see section 9 of this Schedule;

**interim Type B expenditure** (中期乙類開支)—see section 11 of this Schedule;

**pre-amended Ordinance** (《原有條例》) means this Ordinance as in force immediately before the commencement date;

***qualifying expenditure related to trade, profession or business*** (關乎行業、專業或業務的合資格開支)—see section 12 of this Schedule;

***qualifying R&D activity*** (合資格研發活動)—see section 4 of this Schedule;

***qualifying R&D activity related to trade, profession or business*** (關乎行業、專業或業務的合資格研發活動)—see section 5 of this Schedule;

***R&D activity*** (研發活動)—see section 2 of this Schedule;

***R&D activity related to trade, profession or business*** (關乎行業、專業或業務的研發活動)—see section 3 of this Schedule;

***R&D expenditure*** (研發開支)—see section 6 of this Schedule;

***specified period*** (指明期間) means the period beginning on 1 April 2018 and ending immediately before the commencement date;

***Type A expenditure*** (甲類開支)—see section 8 of this Schedule;

***Type B expenditure*** (乙類開支)—see section 10 of this Schedule.

(2) For the purposes of this Schedule, a reference to rights includes a share or interest in rights.

## 2. Meaning of *R&D activity*

An R&D activity is—

- (a) an activity in the fields of natural or applied science to extend knowledge;
- (b) a systematic, investigative or experimental activity carried on for the purposes of any feasibility study or in relation to any market, business or management research;
- (c) an original and planned investigation carried on with the prospect of gaining new scientific or technical knowledge and understanding; or



- (d) the application of research findings or other knowledge to a plan or design for producing or introducing new or substantially improved materials, devices, products, processes, systems or services before they are commercially produced or used.

**3. Meaning of *R&D activity related to trade, profession or business***

- (1) An R&D activity related to a trade, profession or business includes—
  - (a) an R&D activity that may lead to or facilitate an extension, or an improvement in the technical efficiency, of the trade, profession or business; and
  - (b) an R&D activity of a medical nature that is of particular relevance to the welfare of employees employed in the trade, profession or business.
- (2) An R&D activity related to a class of trade, profession or business includes—
  - (a) an R&D activity that may lead to or facilitate an extension, or an improvement in the technical efficiency, of the class of trade, profession or business; and
  - (b) an R&D activity of a medical nature that is of particular relevance to the welfare of employees employed in the class of trade, profession or business.

**4. Meaning of *qualifying R&D activity***

- (1) A qualifying R&D activity is an R&D activity that—
  - (a) falls within the description in section 2(a), (c) or (d) of this Schedule; and
  - (b) is wholly undertaken and carried on in Hong Kong.
- (2) A qualifying R&D activity does not include—

- (a) any efficiency survey, feasibility study, management study, market research or sales promotion;
- (b) the application of any publicly available research findings or other knowledge to a plan or design, with an anticipated outcome and without any scientific or technological uncertainty;
- (c) an activity that does not seek to directly contribute to achieving an advance in science or technology by resolving scientific or technological uncertainty; or
- (d) any work to develop the non-scientific or non-technological aspect of a new or substantially improved material, device, product, process, system or service.

**5. Meaning of *qualifying R&D activity related to trade, profession or business***

- (1) A qualifying R&D activity related to a trade, profession or business includes—
  - (a) a qualifying R&D activity that may lead to or facilitate an extension, or an improvement in the technical efficiency, of the trade, profession or business; and
  - (b) a qualifying R&D activity of a medical nature that is of particular relevance to the welfare of employees employed in the trade, profession or business.
- (2) A qualifying R&D activity related to a class of trade, profession or business includes—
  - (a) a qualifying R&D activity that may lead to or facilitate an extension, or an improvement in the technical efficiency, of the class of trade, profession or business; and

- (b) a qualifying R&D activity of a medical nature that is of particular relevance to the welfare of employees employed in the class of trade, profession or business.

## 6. Meaning of *R&D expenditure*

- (1) An R&D expenditure, in relation to a trade, profession or business in respect of which a person is chargeable to tax under Part 4, is—
  - (a) a payment to an R&D institution for an R&D activity related to the trade, profession or business;
  - (b) a payment to an R&D institution which has, as an object, the undertaking of an R&D activity related to the class of trade, profession or business to which the trade, profession or business belongs, where the payment is used for pursuing that object; or
  - (c) any other expenditure on an R&D activity related to the trade, profession or business, including capital expenditure except to the extent that it is expenditure on land or buildings or on alterations, additions or extensions to buildings.
- (2) A payment referred to in subsection (1)(a) or (b) does not include a payment to the R&D institution for acquiring rights generated from an R&D activity.
- (3) For the purposes of subsection (1)(a) and (b), a payment to a local institution—
  - (a) that is not a university or college; and
  - (b) that is not, and never has been, a designated local research institution,is a payment to an R&D institution if the local institution is designated as a designated local research institution within 6 months after the date of payment.

- (4) An expenditure referred to in subsection (1)(c)—
- (a) includes an expenditure for carrying out, and providing facilities for carrying out, an R&D activity; and
  - (b) does not include an expenditure for acquiring rights generated from an R&D activity.

- (5) In this section—

***R&D institution*** (研發機構) means—

- (a) a designated local research institution; or
- (b) a university or college that is not a designated local research institution.

## 7. When R&D expenditure is incurred

- (1) An R&D expenditure is incurred by a person—
- (a) for a payment referred to in section 6(1)(a) or (b) of this Schedule—at the time the payment is made by the person; or
  - (b) for an expenditure referred to in section 6(1)(c) of this Schedule—at the time the expenditure is incurred by the person.
- (2) However, for a person who is about to carry on a trade, profession or business, the following R&D expenditures are treated as if they had been incurred on the first day on which the person carries on the trade, profession or business—
- (a) a payment referred to in section 6(1)(a) or (b) of this Schedule made by the person;
  - (b) an expenditure referred to in section 6(1)(c) of this Schedule incurred by the person.

## 8. Meaning of *Type A expenditure*

A Type A expenditure, in relation to a trade, profession or business

in respect of which a person is chargeable to tax under Part 4, is—

- (a) for a payment made, or other expenditure incurred, on or after the commencement date—an R&D expenditure other than a Type B expenditure within the meaning of section 10(1)(a) of this Schedule; or
- (b) for a payment made, or other expenditure incurred, during the specified period—an interim Type A expenditure.

**9. Meaning of *interim Type A expenditure***

- (1) An interim Type A expenditure is a payment made during the specified period that—
  - (a) would have been deductible under section 16B(1)(a) of the pre-amended Ordinance; and
  - (b) would not be a Type B expenditure within the meaning of section 10(1)(a) of this Schedule deductible under section 16B of the amended Ordinance if, on the date of payment, that Ordinance were in force.
- (2) Also, an interim Type A expenditure is a payment that—
  - (a) is made during the specified period to a university, college, institute, association, organization or corporation (*entity*) that is, on the commencement date, a designated local research institution;
  - (b) would not have been deductible under section 16B(1)(a) of the pre-amended Ordinance; and
  - (c) would be a Type A expenditure within the meaning of section 8(a) of this Schedule deductible under section 16B of the amended Ordinance if, on the date of payment, that Ordinance were in force and the entity were a designated local research institution.

- (3) Also, an interim Type A expenditure is any other expenditure (*specified expenditure*) incurred during the specified period that—
- (a) would have been deductible under section 16B(1)(b) of the pre-amended Ordinance; and
  - (b) would not be a Type B expenditure within the meaning of section 10(1)(a) of this Schedule deductible under section 16B of the amended Ordinance if, on the date on which the specified expenditure is incurred, that Ordinance were in force.

**10. Meaning of *Type B expenditure***

- (1) A Type B expenditure, in relation to a trade, profession or business in respect of which a person is chargeable to tax under Part 4, is—
- (a) for a payment made, or other expenditure incurred, on or after the commencement date—an R&D expenditure falling within any of the following descriptions—
    - (i) a payment to a designated local research institution for a qualifying R&D activity related to the trade, profession or business;
    - (ii) a payment to a designated local research institution which has, as an object, the undertaking of a qualifying R&D activity related to the class of trade, profession or business to which the trade, profession or business belongs, where the payment is used for pursuing that object;
    - (iii) a qualifying expenditure related to the trade, profession or business; or
  - (b) for a payment made, or other expenditure incurred, during the specified period—an interim Type B expenditure.

- (2) For the purposes of subsection (1)(a)(i) and (ii), a payment to a local institution—
- (a) that is not a university or college; and
  - (b) that is not, and never has been, a designated local research institution,
- is a payment to a designated local research institution if the local institution is designated as a designated local research institution within 6 months after the date of payment.

#### 11. Meaning of *interim Type B expenditure*

- (1) An interim Type B expenditure is a payment that—
- (a) is made during the specified period to a university, college, institute, association, organization or corporation (*entity*) that is, on the commencement date, a designated local research institution; and
  - (b) would be a Type B expenditure within the meaning of section 10(1)(a) of this Schedule deductible under section 16B of the amended Ordinance if, on the date of payment, that Ordinance were in force and the entity were a designated local research institution.
- (2) Also, an interim Type B expenditure is any other expenditure (*specified expenditure*) incurred during the specified period that—
- (a) would have been deductible under section 16B(1)(b) of the pre-amended Ordinance; and
  - (b) would be a Type B expenditure within the meaning of section 10(1)(a) of this Schedule deductible under section 16B of the amended Ordinance if, on the date on which the specified expenditure is incurred, that Ordinance were in force.



**12. Meaning of *qualifying expenditure related to trade, profession or business***

- (1) A qualifying expenditure related to a trade, profession or business is—
  - (a) an expenditure in relation to an employee who is engaged directly and actively in a qualifying R&D activity related to the trade, profession or business; or
  - (b) an expenditure on a consumable item that is used directly in a qualifying R&D activity related to the trade, profession or business.
- (2) In ascertaining the expenditure in relation to an employee who is only partly engaged directly and actively in a qualifying R&D activity related to the trade, profession or business, the appropriate proportion of the expenditure is to be taken into account.
- (3) In ascertaining the expenditure on a consumable item that is only partly used directly in a qualifying R&D activity related to the trade, profession or business, the appropriate proportion of the expenditure is to be taken into account.
- (4) For the purposes of this section—
  - (a) a person is not engaged directly and actively in a qualifying R&D activity related to a trade, profession or business only because the person provides, in support of the activity, services such as—
    - (i) any accounting service;
    - (ii) any administrative service; or
    - (iii) any secretarial service; and
  - (b) a consumable item is not used directly in a qualifying R&D activity related to a trade, profession or business



only because the item is used in providing, in support of the activity, services such as—

- (i) any accounting service;
- (ii) any administrative service; or
- (iii) any secretarial service.

(5) In this section—

**consumable item** (消耗品) means any material or item, including any fuel, power and water that, when used, is consumed or transformed in such a way that it is no longer usable in its original form;

**director** (董事) means a person who is—

- (a) a director as defined by section 2(1) of the Companies Ordinance (Cap. 622) (**Cap. 622 director**);
- (b) a shadow director as defined by section 2(1) of the Companies Ordinance (Cap. 622) (**shadow director**); or
- (c) a person who has similar functions, powers and duties to a Cap. 622 director or a shadow director under the law of a place outside Hong Kong that is similar to the Companies Ordinance (Cap. 622);

**expenditure in relation to an employee** (關於僱員的開支)—

- (a) means any salary, wages or any of the following items, paid or granted (whether in cash or any other form), to or in respect of an employee in relation to the employment—
  - (i) an ordinary annual contribution to a fund duly established under a recognized occupational retirement scheme;
  - (ii) an ordinary annual premium in respect of a contract of insurance under a recognized occupational retirement scheme;

- (iii) any contributions made to a mandatory provident fund scheme at regular intervals that are either of similar or substantially similar amounts or of amounts calculated by reference to a scale or a fixed percentage of the employee's salary or other remuneration;
  - (iv) any other benefit that constitutes a cash outlay paid by the employer; and
- (b) does not include any remuneration of a director, or any item that falls within the description in paragraph (a)(i), (ii), (iii) or (iv) paid or granted (whether in cash or any other form) to or in respect of a director.

## Part 2

### Deduction for R&D Expenditures

#### 13. Total amount of deduction under section 16B

- (1) This section applies subject to sections 14 and 15 of this Schedule.
- (2) In ascertaining the profits from a trade, profession or business in respect of which a person is chargeable to tax under Part 4 for a year of assessment, the amount allowed to be deducted under section 16B for R&D expenditures incurred by the person during the basis period for the year of assessment is the sum of—
  - (a) for Type A expenditures—subject to subsection (3), 100% of the expenditures; and
  - (b) for Type B expenditures—
    - (i) if the total amount of the expenditures exceeds \$2,000,000—\$6,000,000 plus 200% of the part of the expenditures that exceeds \$2,000,000; or

- (ii) if the total amount of the expenditures does not exceed \$2,000,000—300% of the expenditures.

(3) If—

- (a) a Type A expenditure is incurred for an R&D activity carried on outside Hong Kong in relation to a trade, profession or business; and
- (b) the trade, profession or business is carried on partly in, and partly out of, Hong Kong,

the amount allowed to be deducted for the expenditure is the appropriate proportion of the expenditure that the Commissioner considers is reasonable in the circumstances.

#### 14. Expenditures that may not be deducted

No deduction is to be allowed under section 16B for an R&D expenditure incurred on or after the commencement date by a person if—

- (a) for an R&D expenditure incurred by the person that falls within the description in section 6(1)(a) or (c) of this Schedule—
  - (i) any rights generated from the activity are not, or will not be, fully vested in the person; or
  - (ii) the activity is undertaken for another person;
- (b) the expenditure is, or is to be, met directly or indirectly by—
  - (i) the Government;
  - (ii) the government of any place outside Hong Kong;
  - (iii) any public or local authority in Hong Kong or elsewhere; or
  - (iv) another person; or

- (c) the expenditure is incurred under an arrangement the main purpose, or one of the main purposes, of which is to enable the person to obtain—
  - (i) a deduction to which the person would not otherwise be entitled under section 16B; or
  - (ii) a deduction of a greater amount than the amount to which the person would otherwise be entitled under section 16B.

**15. No multiple deduction**

An R&D expenditure may only be deducted for one trade, profession or business.

**Part 3**

**Proceeds of Sale**

**16. Proceeds of sale of certain plant or machinery treated as trading receipts**

- (1) This section applies in relation to plant or machinery representing expenditure or expenditures of a capital nature allowed under section 16B as a deduction or deductions in ascertaining the profits from a trade, profession or business in respect of which a person is chargeable to tax under Part 4 if—
  - (a) the plant or machinery ceases to be used by the person for any R&D activity related to the trade, profession or business; and
  - (b) the plant or machinery is subsequently sold by the person, or destroyed, on or after 1 April 2018.

- (2) The proceeds of sale of the plant or machinery must be treated as a trading receipt arising in or derived from Hong Kong of the trade, profession or business accruing—
  - (a) at the time of the sale; or
  - (b) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued—immediately before the discontinuance.
- (3) However, subsection (2) applies to the proceeds of sale of the plant or machinery only to the extent that the proceeds—
  - (a) are not chargeable to tax under any other provision of Part 4; and
  - (b) do not exceed the total amount of deductions allowed under section 16B for expenditure or expenditures of a capital nature represented by the plant or machinery.
- (4) If the plant or machinery is destroyed—
  - (a) the plant or machinery is, for the purposes of subsection (2), to be treated as if it had been sold immediately before its destruction; and
  - (b) any insurance moneys or other compensation of any description received by the person carrying on the trade, profession or business in respect of the destruction, and any money received by the person in respect of the remains of the plant or machinery, are to be treated as if they were the proceeds of that sale.
- (5) For the purposes of this section, a sale occurs at the time of its completion or the time when possession of the plant or machinery is given, whichever happens earlier.

**17. Proceeds of sale of rights treated as trading receipts**

- (1) This section applies in relation to rights sold on or after 1 April 2018 where the rights were generated from one or more

- R&D activities for which expenditure or expenditures have been allowed under section 16B as a deduction or deductions in ascertaining the profits from a trade, profession or business in respect of which a person is chargeable to tax under Part 4.
- (2) This section applies despite the exclusion relating to the sale of capital assets in section 14.
  - (3) The proceeds of sale of the rights must, to the extent that the proceeds are not chargeable to tax under any other provision of Part 4, be treated as a trading receipt arising in or derived from Hong Kong of the trade, profession or business of a specified amount accruing—
    - (a) unless paragraph (b) applies—at the time of completion of the sale; or
    - (b) if the sale is completed on or after the date on which the trade, profession or business is permanently discontinued—immediately before the discontinuance.
  - (4) For the purposes of subsection (3), the specified amount is—
    - (a) if the expenditures deducted for the R&D activity or activities that generated the rights (*underlying activities*) consist of both Type A expenditure and Type B expenditure—the specified amount calculated under subsection (7);
    - (b) otherwise—the lesser of—
      - (i) the total amount of deductions allowed under section 16B for the expenditures; and
      - (ii) subject to subsection (5), the proceeds of sale.
  - (5) If any relevant Type A expenditure for the underlying activities was not allowed to be deducted in full because of the operation of section 13(3) of this Schedule or section 16B(2) (as in force before the commencement date), the

proceeds of sale referred to in subsection (4)(b)(ii) are to be adjusted downward.

- (6) The adjusted proceeds of sale are to bear the same ratio to the actual proceeds of sale as the ratio that the total amount of deduction or deductions allowed for all Type A expenditures for the underlying activities bears to those Type A expenditures.
- (7) The specified amount referred to in subsection (4)(a) is to be calculated in accordance with the following steps—

**Step 1**

Divide the proceeds of sale into **sale proceeds A** and **sale proceeds B** according to the ratio between—

- (a) Type A expenditures that were incurred on the underlying activities; and
- (b) Type B expenditures that were incurred on the underlying activities.

**Step 2**

Calculate an **amount A** which equals the lesser of—

- (a) the total amount of deductions for Type A expenditures; and
- (b) sale proceeds A.

For the purpose of calculating **amount A**, sale proceeds A are to be adjusted downward if any relevant Type A expenditure for the underlying activities was not allowed to be deducted in full because of the operation of section 13(3) of this Schedule or section 16B(2) (as in force before the commencement date).

The adjusted amount is to bear the same ratio to sale proceeds A as the ratio that the total amount of deduction or deductions allowed for all Type A expenditures for the underlying activities bears to those Type A expenditures.

### Step 3

Calculate an **amount B** which equals the lesser of—

- (a) the total amount of deductions for Type B expenditures; and
- (b) sale proceeds B.

### Step 4

Add amount A and amount B together to get the **specified amount**.

(8) To avoid doubt and without limiting the meaning of expenditure in this Schedule, for the purposes of subsections (1) and (4), an expenditure includes a payment.

(9) In this section—

*proceeds of sale* (售賣得益) means the proceeds of sale that are not attributable to the sale of plant or machinery;

*Type A expenditure* (甲類開支) includes—

- (a) any payment described in section 16B(1)(a) (as in force before the commencement date) that is made before 1 April 2018; and
- (b) any expenditure described in section 16B(1)(b) (as in force before the commencement date) that is incurred before 1 April 2018.

## Part 4

### Miscellaneous Matters



**18. Commissioner may seek advice from Commissioner for I&T on certain matters**

- (1) This section applies if a claim, or an application under section 88A(1), is made by a person to the Commissioner in relation to a deduction under section 16B.
- (2) On receiving the claim or application, the Commissioner may seek advice from the Commissioner for I&T, or a public officer authorized by the Commissioner for I&T, in order to ascertain—
  - (a) for a claim made in relation to a deduction under section 16B—
    - (i) whether an activity constitutes an R&D activity or a qualifying R&D activity; and
    - (ii) whether an R&D expenditure was incurred by the claimant in relation to an R&D activity or a qualifying R&D activity; and
  - (b) for an application made in relation to a deduction under section 16B—
    - (i) whether an activity constitutes an R&D activity or a qualifying R&D activity;
    - (ii) whether an R&D expenditure that was incurred by the applicant was incurred in relation to an R&D activity or a qualifying R&D activity; and
    - (iii) whether an R&D expenditure to be incurred by the applicant is, if incurred, an R&D expenditure incurred in relation to an R&D activity or a qualifying R&D activity.

**19. Designation of local institutions as designated local research institution**

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- (1) The Commissioner for I&T may designate any of the following institutions as a designated local research institution—
    - (a) any university or college located in Hong Kong;
    - (b) any other local institution that undertakes qualifying R&D activities in Hong Kong.
  - (2) If the Commissioner for I&T decides to designate a university, college or local institution under subsection (1), the Commissioner for I&T must, as soon as reasonably practicable, give a copy of the instrument of designation to the university, college or institution.
  - (3) A designation made under subsection (1)—
    - (a) takes effect on the date specified in the instrument of designation; and
    - (b) may be revoked by the Commissioner for I&T at any time.
  - (4) If the designation of a university, college or local institution is revoked under subsection (3)(b), the Commissioner for I&T must, as soon as reasonably practicable, give a copy of the instrument of revocation to the university, college or institution.
  - (5) The revocation takes effect on the date specified in the instrument of revocation.
  - (6) In this section—

*local institution* (本地機構) means an institute, association, organization or corporation that is located in Hong Kong.

## Part 5

### Transitional Provision for Inland Revenue

## **(Amendment) (No. 7) Ordinance 2018**

### **20. Transitional provision relating to section 16B**

- (1) This section applies for the purposes of ascertaining the profits from a trade, profession or business in respect of which a person is chargeable to tax under Part 4 for a year of assessment if the basis period of the person for that year of assessment includes all or any of the specified period.
- (2) Section 16B (other than section 16B(3) and (3A)), as in force before the commencement date, continues to apply in relation to—
  - (a) a payment made before 1 April 2018; and
  - (b) an expenditure incurred before 1 April 2018.
- (3) Section 16B, as in force before the commencement date, continues to apply in relation to a sale of plant or machinery, and to a sale of rights generated from one or more R&D activities, that occurred before 1 April 2018.

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Editorial Note:

\* Commencement date: 2 November 2018.