

財經事務及庫務局  
(庫務科)

香港下亞厘畢道  
中區政府合署

CB(1)1182/03-04 (01)  
**FINANCIAL SERVICES AND THE  
TREASURY BUREAU  
(The Treasury Branch)**  
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香港中區皇后大道中八號立法會大樓  
立法會法案委員會秘書  
薛鳳鳴女士  
(傳真: 2121 0420)

薛女士：

《2000年稅務(修訂)條例草案》  
法案委員會

豁免規限市場莊家活動

在立法會第CB(1)921/03-04(01)號文件中，政府表示正就豁免市場莊家活動，使其不受擬議第16(2C)條訂明的利息扣減限制，擬備委員會審議階段修訂案。

我們已按照香港亞洲資本市場稅務委員會在其2004年1月16日的信中（載於立法會第CB(1)921/03-04(01)號文件的附件）建議的方向，修訂了委員會審議階段修訂案的草稿（英文版）（見附件）。有關修訂載於附件的第10及第23至25頁並已加上記號以方便議員參閱。

如香港亞洲資本市場稅務委員會在其信中建議，稅務局局長將在執行指引中列明長時間（超過三個月）或大量（超過發行量的5%）庫存有關債權證或票據，除非有可使稅務局長接納的解釋，否則將不被視為與市場莊家活動相符，以防止濫用。

財經事務及庫務局局長  
( 蔣志豪 代行 )

二零零四年三月一日

副本抄送：

立法會秘書處法律事務部（經辦人：黃思敏女士）（傳真：2877 5029）

律政司法律草擬科（經辦人：勵啓鵬先生）

稅務局（經辦人：李耀權先生）

**Proposed CSA on exemption from the proposed new section 16(2C) in  
relation to market-makers**

**"6. Ascertainment of chargeable profits**

Section 16 is amended -

(a) in subsection (1)(a) -

(i) by repealing "the conditions set out in subsection (2) are satisfied" and substituting "the condition for the application of this paragraph is satisfied under subsection (2), and subject to subsections (2A), (2B) and (2C)";

(ii) by repealing "upon" and substituting "on";

(b) in subsection (2) -

(i) by repealing "The conditions referred to in subsection (1)(a) are that -" and substituting "The condition for the application of subsection (1)(a) is satisfied if -";

(ii) by repealing paragraphs (d), (e) and (f) and substituting -

"(d) the money has been borrowed from  
a financial institution or an

overseas financial institution;

(e) the money has been borrowed wholly and exclusively to finance -

(i) capital expenditure on the provision of machinery or plant incurred by the borrower, where such expenditure qualifies for an allowance under Part VI; or

(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,

(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; or

(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.";

(c) by adding -

"(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) and (2C), 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.

(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) and (2C), 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 -

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

- 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, remains 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, remains 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) and (2C), would have been deductible under subsection (1)(a) for the year of assessment concerned.

(2C) Where subject to subsection (2G)-

- (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) and (2B), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of -

(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, remains 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, remains 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) and (2B), would have been deductible under subsection (1)(a) for the year of assessment concerned.

(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.

(2E) For the purposes of subsection (2B) -

(a) any reference in that subsection 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 -

(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 in nominal value of the issued share capital of that body corporate for the time being; or

(D) a financial institution or an overseas financial institution.

(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 in nominal  
value of the issued



share capital of that  
body corporate for the  
time being; or

(D) a financial institution  
or an overseas  
financial institution;

(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 holds such debentures or  
instruments or such interest in debentures  
or instruments in the ordinary course of  
his trade, profession or business in  
respect of market making.

(2H) For the purposes of subsection (2G),  
"market maker" ( ) means a person  
who -

- (i) is licensed or registered for dealing in securities under the Securities and Future 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);
- (ii) in the ordinary course of a trade, profession or business holds himself out as being willing to buy and sell securities on his own account and on a regular basis;
- (iii) actively makes a market in securities issued by a wide range of unrelated institutions; and
- (iv) buys and sells the debentures or instruments

described in subsection (2)(f)(i) or (ii) in the ordinary course of his trade, profession or business for the purpose of providing liquidity in respect of such debentures or instruments.-";

(d) in subsection (3) -

- (i) by repealing "subsection (2) and this subsection" and substituting "this section";
- (ii) by repealing the definitions of "control" and "debentures";
- (iii) in the definition of "overseas financial institution", by repealing "subsection (2)" and substituting "this section";

(e) by adding -

"(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.

(3B) In this section, a person shall be  
regarded as being connected with a  
borrower if the person is -

(a) an associated corporation of the  
borrower;

(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.";

(f) in subsection (4), by repealing "subsection  
(2)" and substituting "this section";

(g) by adding -

"(5A) The amendments made to this  
section by section 6(a), (b), (c), (d), (e)

and (f) of the Inland Revenue (Amendment) Ordinance 2003 ( of 2003) ("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."."