

《2000年稅務(修訂)條例草案》法案委員會

有關保留條文及扣除個人進修開支的
委員會審議階段修正案擬稿

目的

本文件旨在載述政府在考慮法案委員會提出有關個人進修開支(第4條)及第4和第8條適用範圍的要求後，就《2000年稅務(修訂)條例草案》第8及第4條提出的委員會審議階段修正案(“修正案”)建議。

第2條 — 適用範圍

2. 政府在回覆立法會助理法律顧問的來信時(立法會文件CB(1)500/03-04(2)號)，已表示信內提出分別就第8條有關扣除居所貸款利息及第4條有關扣除個人進修開支的規定訂定保留條文的建議是可行的。我們現已就該等保留條文擬備修正案(英文版見**附件A**)。

第4條 — 應評稅入息的調整

3. 我們已告知法案委員會(立法會文件CB(1)1064/03-04(01)號)，為回應議員的要求，即是把可扣除個人進修開支的涵蓋範圍自**源來由專業協會等團體提供的課程**擴闊至包括專業協會所認可的課程，政府現正諮詢各有關決策局及部門的意見，稍後才能評定這項建議的利弊及實施的最佳方法。

4. 正如我們在上述文件中所提出，雖然有22項處理認可專業資格的法例，但這22項法例下的註冊當局，卻不一定是參與為專業資格訂立標準的專業協會，亦可能不是議員所設想的提供／認可有關專業課程的專業團體。例如，香港律師會是提供／認可學員可取得律師資格的專業課程的專業協會，但卻並非負責律師註冊事宜的當局，而且

該會亦不是一個法定機構¹。另一方面，也有負責註冊事宜的當局，例如香港會計師公會等，會提供及認可有關專業課程。

5. 經仔細考慮後，為確保所有參與為專業資格訂立標準，以及可審定／認可專業課程的註冊當局和主要的專業協會均包括在內，我們建議提出一套修正案，使個人進修開支扣除額的涵蓋範圍擴闊至包括以下機構所審定或認可的課程的費用—(a)根據上述 22 項法例，參與註冊及認可專業或職業資格或地位，或簽發專業、行業或職業的執業許可證或牌照的 35 個機構，以及(b)為就任何特定行業或涉及建造業或與其相關的工作，確立須達致的技術水平及頒發技術水平證明書等目的而成立的法定機構，即職業訓練局及建造業訓練局。(a)組的機構可進一步分為以下兩類：

- (i) 根據有關法例而成立的法定機構，該些機構具備法定權力處理註冊及認可專業或職業資格或地位，或簽發許可證或牌照的事宜 [例如香港會計師公會的理事會獲《專業會計師條例》(第 50 章)第 26(1)條賦權，可命令批准或拒絕任何在專業會計師註冊紀錄冊中註冊的申請]；以及
- (ii) 並非根據有關條例成立，但在條例中載列為參與註冊事宜的機構 [例如，就受僱為實習律師、考試合格和完成課程各方面遵從香港律師會理事會所訂明的規定，是獲認許為律師的一項準則(《法律執業者條例》(第 159 章)第 4(1)(a)條)]。

有關機構及相應條例會在新附表中列明(附表 13)²。為方便修訂該一覽表的資料，我們建議財經事務及庫務局局長應獲授權，可以附屬法例形式命令修訂該附表。

¹ 根據香港律師會的網頁，該會在一九零七年以擔保有限公司形式成立為法團。

² 《1998 年法律執業者(修訂)條例》(1998 年第 27 號條例)(修訂條例)附表 13 第 1 項為委任公證人提供法律依據，凡符合各項規定，包括公證人協會理事會所訂明的有關規定的人士，可獲委任為公證人，但該條文尚未生效。因此，我們建議第 1 項由修訂條例開始實施的日期起生效。

6. 修正案擬稿已在條例草案標示，並載於 *附件 B* (英文版)。由於在提出《2000 年稅務(修訂)條例草案》時沒有預計議員會提議擴闊涵蓋範圍，我們建議，倘若有關法例在本年內制定，則新安排應由二零零四／零五課稅年度起生效。

財經事務及庫務局

二零零四年四月

70AA. Revision of assessment due to commencement of section 4 or 8 of Inland Revenue (Amendment) Ordinance 2004 (of 2004)

(1) Notwithstanding any other provisions of this Ordinance, if, upon application made within 12 months after the date of commencement of section 4 or 8 of the Inland Revenue (Amendment) Ordinance 2004 (of 2004), or within 6 years after the end of a year of assessment that expires before that date, whichever is the later, it is established to the satisfaction of an assessor that the tax charged for the year of assessment in relation to which the application is made is excessive solely by reason of the commencement of that section, the assessor shall revise the relative assessment for that 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.

Draft CSA on self-education expenses allowance

2. Application

(1) ~~Subject to subsection (4),~~ Section 4 applies in relation to the year of assessment 2000/01 and to all subsequent years of assessment.

.....

(4) Subject to subsection (5), sections 4 (in respect of section 12(6)(c)(iii) and (f) of the Inland Revenue Ordinance (Cap. 112)) and 20A apply in relation to the year of assessment 2004/05 and to all subsequent years of assessment.

(5) Section 20A (in respect of item 1 in Schedule 13 to the Inland Revenue Ordinance (Cap. 112)) applies in relation to the year of assessment in which section 5(1)(e) of the Legal Practitioners (Amendment) Ordinance (27 of 1998) comes into operation and to all subsequent years of assessment.

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4. Adjustments to assessable income

Section 12(6) is amended by repealing paragraphs (b), (c) and (d) and substituting –

“(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;

(c) “prescribed course of education” (訂明教育課程) means a course under taken to gain or maintain qualifications for use in any employment and being –

- (i) a course of education provided by an education provider; ~~or;~~
- (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;

(d) “education provider” () 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);
- (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;
- (f) the Secretary for Financial Services and the Treasury may by order amend Schedule 13.

“20A. Schedule added

The following is added –

“Schedule 13

[s. 12(6)(c)(iii) & (f)]

INSTITUTIONS THAT MAY ACCREDIT OR RECOGNIZE TRAINING OR DEVELOPMENT COURSES FOR THE PURPOSE OF SECTION 12(6)(c)(iii)

<u>Item</u>	<u>Institution</u>
<u>1.</u>	<u>Hong Kong Society of Notaries referred to in section 5(1)(e) of the Legal Practitioners (Amendment) Ordinance (27 of 1998)</u>
<u>2.</u>	<u>The Architects Registration Board established under section 4 of the Architects Registration Ordinance (Cap. 408)</u>
<u>3.</u>	<u>The Chinese Medicine Council of Hong Kong established under section 3 of the Chinese Medicine Ordinance (Cap. 549)</u>
<u>4.</u>	<u>The Chiropractors Council established under section 3 of the Chiropractors Registration Ordinance (Cap. 428)</u>
<u>5.</u>	<u>The Construction Industry Training Authority established under section 4 of the Industry Training (Construction Industry) Ordinance (Cap. 317)</u>
<u>6.</u>	<u>The Dental Council of Hong Kong established under section 4 of the Dentists Registration Ordinance (Cap. 156)</u>
<u>7.</u>	<u>The Engineers Registration Board established under section 3 of the Engineers Registration Ordinance (Cap. 409)</u>

8. [The Estate Agents Authority established under section 4 of the Estate Agents Ordinance \(Cap. 511\)](#)
9. [The Hong Kong Academy of Medicine established under section 3 of the Hong Kong Academy of Medicine Ordinance \(Cap. 419\)](#)
10. [The Hong Kong Bar Association referred to in section 2\(1\) of the Legal Practitioners Ordinance \(Cap. 159\)](#)
11. [The Hong Kong Institute of Architects established under section 3 of the Hong Kong Institute of Architects Incorporation Ordinance \(Cap. 1147\)](#)
12. [The Hong Kong Institution of Engineers established under section 3 of the Hong Kong Institution of Engineers Ordinance \(Cap. 1105\)](#)
13. [The Hong Kong Institute of Housing established under section 3 of the Hong Kong Institute of Housing Ordinance \(Cap. 507\)](#)
14. [The Hong Kong Institute of Landscape Architects established under section 3 of the Hong Kong Institute of Landscape Architects Incorporation Ordinance \(Cap. 1162\)](#)
15. [The Hong Kong Institute of Planners established under section 3 of the Hong Kong Institute of Planners Incorporation Ordinance \(Cap. 1153\)](#)
16. [The Hong Kong Institute of Surveyors established under section 3 of the Hong Kong Institute of Surveyors Ordinance \(Cap. 1148\)](#)
17. [The Hong Kong Society of Accountants established under section 3 of the Professional Accountants Ordinance \(Cap. 50\)](#)
18. [The Housing Managers Registration Board established under section 3 of the Housing Managers Registration Ordinance \(Cap. 550\)](#)
19. [The Land Surveyors Registration Committee established under section 6 of the Land Survey Ordinance \(Cap. 473\)](#)
20. [The Landscape Architects Registration Board established under 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 under section 3 of the Medical Registration Ordinance \(Cap. 161\)](#)
23. [The Medical Laboratory Technologist Board established under section 5 of the](#)

Supplementary Medical Professions Ordinance (Cap. 359)

24. The Midwives Council of Hong Kong established under section 3 of the Midwives Registration Ordinance (Cap. 162)
25. The Nursing Council of Hong Kong established under section 3 of the Nurses Registration Ordinance (Cap. 164)
26. The Occupational Therapist Board established under section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
27. The Optometrist Board established under section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
28. The Pharmacy and Poisons Board established under section 3 of the Pharmacy and Poisons Ordinance (Cap. 138)
29. The Physiotherapist Board established under section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
30. The Planners Registration Board established under section 3 of the Planners Registration Ordinance (Cap. 418)
31. The Radiographer Board established under section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
32. The Security and Guarding Services Industry Authority established under section 4 of the Security and Guarding Services Ordinance (Cap. 460)
33. The Social Workers Registration Board established under section 4 of the Social Workers Registration Ordinance (Cap. 505)
34. The Surveyors Registration Board established under 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 under section 3 of the Veterinary Surgeons Registration Ordinance (Cap. 529)
37. The Vocational Training Council established under section 4 of the Vocational Training Council Ordinance (Cap. 1130)