

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)

#### 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;

(2) 凡評稅主任覺得退還給任何人的全部或部分稅款(非因反對或上訴而釐定的評稅所致者)是由於事實上或法律上的錯誤而退還的,則評稅主任可在該項退稅所關乎的課稅年度內,或在該課稅年度屆滿後6年內,就錯誤退還給該人的稅款額而對該人作出評稅,而本條例中關於評稅通知書、反對、上訴及其他法律程序的條文,適用於該項評稅及根據該項評稅而徵收的稅項。(由1971年第2號第39條增補)

(3) 如任何退稅事實上是根據或按照退稅時通行的慣例而作出,則不得根據第(2)款作出評稅。(由1971年第2號第39條增補)

#### 61. 某些交易及產權處置須不予理會

凡評稅主任認為,導致或會導致任何人的應繳稅款減少的任何交易是虛假或虛構的,或認為任何產權處置事實上並無實行,則評稅主任可不理會該項交易或產權處置,而該名有關的人須據此而被評稅。

#### 61A. 旨在規避繳稅法律責任的交易

(1) 任何交易如是在(1986年稅務(修訂)條例)(Inland Revenue (Amendment) Ordinance 1986) (1986年第7號)生效後訂立或達成(依據在該項生效前所招致的在法律上可予強制執行的義務而作出的交易除外),而該項交易會將稅項利益授予某人(在本條中稱為"該有關人士"),或者非因本條規定則會將稅項利益授予某人,而在考慮以下各項後——

- (a) 訂立或實行該項交易的方式;
- (b) 該項交易的形式及實質;
- (c) 若非因本條規定則該項交易原可達成的與本條例的實施有關的結果;
- (d) 該有關人士因該項交易而在財政狀況上已發生、將發生或可合理預期會發生的改變;
- (e) 與該有關人士有任何聯繫或曾有任何聯繫的任何人士(不論是業務上、家庭上或其他性質的聯繫)因該項交易而在財政狀況上已發生或可合理預期會發生的改變;

(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 X 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)

#### 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,

(f) 該項交易是否已產生任何權利或義務，而該項權利或義務通常不會在基於各自獨立利益而作出該類交易的人之間產生的；及

(g) 在香港以外地方營業或寓居的任何法團參與該項交易的情形。會得出結論，認為訂立或實行該項交易的人或該等人士之一訂立或實行該項交易的唯一或主要目的，是使該有關人士單獨或連同其他人能夠獲得稅項利益，則本條適用於該項交易。

(2) 在第(1)款適用的情況下，根據第X部授予評稅主任的權力，須由助理局長行使，而在以助理局長根據該部可行使的權力不受減損為原則下，該助理局長須評定該有關人士的繳稅法律責任——

(a) 猶如該項交易或其任何部分不曾訂立或實行一樣；或

(b) 以助理局長認為適合的其他方式評定，用以消弭從該項交易中原本可獲得的稅項利益。

(3) 在本條中——

"交易" (transaction) 包括任何交易、行動或計劃，而不論該項交易、行動或計劃是否藉法律程序或意圖藉法律程序可予以強制執行者；

"稅項利益" (tax benefit) 指對繳稅法律責任的規避或延期，或稅額的減少。

(由1986年第7號第10條增補)

#### 61B. 利用虧損而避稅

凡局長信納——

(a) 任何法團因股份的持有方面有變動而直接或間接使該法團在任何課稅年度收取或應算任何利潤，而該項變動是由任何人在《1986年稅務(修訂)條例》(Inland Revenue (Amendment) Ordinance 1986) (1986年第7號)生效後作出的；及

(b) 上述變動的唯一或主要目的是利用該法團在經營某行業、專業或業務時所蒙受的任何虧損或虧損餘額，以規避該法團或任何其他人士的繳稅法律責任或使稅額減少，