

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Financial Services and the Treasury

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|--|---|
| 2(3) | By deleting "2001/02" and substituting "2004/05". |
| 4 | (a) By deleting the proposed section 12(6)(b)(ii) and substituting -

"(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,". |
| | (b) In the proposed section 12(6)(c)(ii), by deleting "for its members". |
| 6 | By deleting the clause and substituting - |
| "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,

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; 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 -

- (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.";

(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."."

9

(a) In paragraph (b) -

- (i) in subparagraph (ii), by deleting the full stop at the end and substituting a semicolon;

- (ii) by adding -

- "(iii) in paragraph (b)(i), by repealing "in which this section commences" and substituting "commencing on 1

April 1998";".

(b) By adding -

"(c) in subsection (4), by repealing
"commencement of this section" and
substituting "commencement of the Inland
Revenue (Amendment)(No. 2) Ordinance 1998
(32 of 1998)".".

13

(a) By deleting paragraph (a)(i) and substituting -

"(i) by repealing everything after "in
relation to" and before the proviso and
substituting -

"a commercial building or structure -

(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 of the Inland Revenue (Amendment) Ordinance 2003 (of 2003),

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 of the Inland Revenue (Amendment) Ordinance 2003 (of 2003); 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 of the Inland Revenue

(Amendment) Ordinance
2003 (of 2003),
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 of the Inland
Revenue (Amendment)
Ordinance 2003 (of
2003), in respect of any
year of assessment
commencing on or after 1
April 1998:";".

(b) In paragraph (b)(i), by deleting everything after
"substituting -" and substituting -

"(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 of the Inland Revenue
(Amendment) Ordinance 2003 (of
2003),

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 of the Inland Revenue
(Amendment) Ordinance 2003 (of 2003):";".

14(b) In the proposed section 68(9A), by deleting "The
Secretary for the Treasury" and substituting "The
Secretary for Financial Services and the Treasury".

15(b) In the proposed section 69(1A), by deleting "The
Secretary for the Treasury" and substituting "The
Secretary for Financial Services and the Treasury".

17(b) In the proposed section 82B(1A), by deleting "1 April
2001" and substituting "the commencement of the Inland
Revenue (Amendment) Ordinance 2003 (of 2003)".

23 By deleting everything after "substituting" and
substituting "'where the condition for the application
of section 16(1)(a) of the Ordinance is satisfied under
section 16(2)(c), (d) or (e) of the Ordinance and
section 16(2A) of the Ordinance does not apply".