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Inland Revenue (Amendment) Bill 2000

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Amend the Inland Revenue Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2000.

2. Application

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

(2) Section 8 applies in relation to the year of assessment 1998/99 and to all subsequent years of assessment.

(3) Sections 9(b), 10, 11(b)(i) and (iii), 12 and 13 apply in relation to the year of assessment 2001/02 and to all subsequent years of assessment.

3. Interpretation

Section 2(1) of the Inland Revenue Ordinance (Cap. 112) is amended, in the definition of "認可慈善捐款", by repealing "慈善機構或屬公共性質的信託" and substituting "屬公共性質的慈善機構或慈善信託".

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 by a trade, professional or business association for its members, 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 undertaken 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 for its members;

(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);

(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."

5. Certain amounts deemed trading receipts

Section 15 is amended---

(a) in subsection (1)---

(i) by repealing paragraph (b) and substituting---

"(b) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person for the use of or right to use in Hong Kong any patent, design, trademark, copyright material, secret process or formula or other property 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, trademark, copyright material, secret process or formula or other property;"

(ii) by adding---

"(ba) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person for the use of or right to use outside Hong Kong any patent, design, trademark, copyright material, secret process or formula or other property 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, trademark, copyright material, secret process or formula or other property, which are deductible in ascertaining the assessable profits of a person under this Part;"

(b) by adding---

"(6) The amendment made to subsection (1) by section 5(a)(ii) of the Inland Revenue (Amendment) Ordinance 2000 (of 2000) 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."

6. Ascertainment of chargeable profits

Section 16 is amended---

(a) in subsection (2)---

(i) by repealing paragraph (d) and substituting---

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

(i) where a person other than the financial institution or overseas financial institution is entitled to any sum payable by way of interest upon the money borrowed---

(A) the person entitled is not the borrower or an associate of the borrower; and
(B) if the person entitled 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; and

(ii) the repayment of the principal or interest is not secured or guaranteed, whether in whole or in part and whether directly or indirectly, by a deposit or loan made with or to any person where any sum payable by way of interest on the deposit or loan is not chargeable to tax under this Ordinance;"

(ii) in paragraph (e), by repealing subparagraphs (A) and (B) and substituting---

"(A) the lender is not an associate of the borrower;

(B) 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;

(C) where a person other than the lender is entitled to any sum payable by way of interest upon the money borrowed---

(I) the person entitled is not the borrower or an associate of the borrower; and

(II) if the person entitled 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; and

(D) the repayment of the principal or interest is not secured or guaranteed, whether in whole or in part and whether directly or indirectly, by a deposit or loan made with or to any person where any sum payable by way of interest on the deposit or loan is not chargeable to tax under this Ordinance;"

(iii) by repealing paragraph (f) and substituting---

"(f) the person chargeable to tax is a corporation and the deduction claimed is in respect of interest payable by that corporation (in this paragraph referred to as "the relevant corporation")---

(i) on debentures;

(ii) on instruments (other than debentures)---

(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 approved by the Commissioner for the purposes of this subparagraph; or

(B) issued pursuant to any agreement or arrangements, where an advertisement or invitation in respect of the agreement or arrangements, or a document which contains such an advertisement or invitation, has been issued to the public and authorized by the Securities and Futures Commission before issue under section 4(2)(g) of the Protection of Investors Ordinance (Cap. 335); or

(iii) on moneys borrowed from an associated corporation, where the moneys borrowed in the hands of the associated corporation arise entirely from the proceeds of an issue by the associated corporation of debentures or of instruments described in subparagraph (ii), in an amount not exceeding the interest payable by the associated corporation to the holders of its debentures or of such instruments, and---

(A) none of the holders of the debentures or instruments is the relevant corporation or an associate of the relevant corporation;

(B) where any of the debentures or instruments is held by 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 relevant corporation or an associate of the relevant corporation; and

(C) where a person other than the holder of the debenture or instrument concerned is entitled to any sum payable by way of interest upon that debenture or instrument---

(I) the person entitled is not the relevant corporation or an associate of the relevant corporation; and

(II) if the person entitled 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 relevant corporation or an associate of the relevant corporation.";

(b) by adding---

"(7) The amendments made to subsection (2) by section 6(a) of the Inland Revenue (Amendment) Ordinance 2000 (of 2000) do not apply to sums described in subsection (1)(a) which were payable before the commencement of that Ordinance."

7. Sections amended

Sections 20B(1)(a) and 21A(1) are amended by repealing "section 15(1)(a) or (b)" and substituting "section 15(1)(a), (b) or (ba)".

8. Home loan interest

Section 26E(8) is amended by repealing "any car parking space valued together

with the dwelling as a single tenement under section 10 of the Rating Ordinance (Cap. 116), such" and substituting "a car parking space, the".

9. Annual allowances, commercial buildings and structures

Section 33A is amended---

(a) in subsection (1)---

(i) by repealing "equal to" and substituting "of an amount equal to, subject to subsection (2),";

(ii) by adding a comma after "one-twenty-fifth of the expenditure";

(b) in subsection (2)---

(i) by repealing "while the building or structure is a commercial building or structure" and substituting "and where the building or structure has been used at any time before the sale, whether as a commercial building or structure or otherwise";

(ii) by repealing paragraph (a) and substituting---

"(a) begins with the year of assessment in the basis period for which the sale takes place; and".

10. Balancing allowances and charges, commercial buildings and structures

Section 33B is repealed.

11. Initial and annual allowances, industrial buildings and structures

Section 34(2) is amended---

(a) in paragraph (a)---

(i) by adding a comma after "that building or structure" and after "one-twenty-fifth of that expenditure";

(ii) by repealing "equal to" and substituting "of an amount equal to, subject to paragraph (b),";

(b) in paragraph (b)---

(i) by repealing "while the building or structure is an industrial building or structure" and substituting "and where the building or structure has been used at any time before the sale, whether as an industrial building or structure or otherwise,";

(ii) by adding a comma after "that sale";

(iii) by repealing subparagraph (i) and substituting---

"(i) begins with the year of assessment in the basis period for which the sale takes place; and";

(iv) in subparagraph (ii)---

(A) by repealing "the year" after "the 50th year after" and substituting "the year of assessment";

(B) by adding "the commencement of" before "such basis period";

(c) in paragraph (c)---

(i) by adding "amount" after "such";

(ii) by repealing "that" before "expenditure";

(iii) by repealing "his" and substituting "the".

12. Section substituted

Section 35 is repealed and the following substituted---

"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."

13. Interpretation

Section 40(1) is amended, in the definition of "residue of expenditure"---

(a) in paragraph (a)---

(i) by repealing everything after "reduced by---" and before the proviso 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,

and increased by the amount of any balancing charge made under section 35:";

(ii) in the proviso, by repealing "no annual allowance fell to be made under section 33A" and substituting "no allowance fell to be made under section 33A or 34";

(b) in paragraph (b)---

(i) by repealing everything after "reduced by---" and before the proviso 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,

and increased by the amount of any balancing charge made under section 35:";

(ii) in the proviso, by repealing "no initial or annual allowance fell to be made under section 34(1) or (2), as the case may be" and substituting "no allowance fell to be made under section 33A or 34".

14. Hearing and disposal of appeals to

the Board of Review

Section 68 is amended---

(a) in subsection (9), by repealing "\$5,000" and substituting "the amount specified in Part I of Schedule 5";

(b) by adding---

"(9A) The Secretary for the Treasury may by order amend the amount specified in Part I of Schedule 5.".

15. Appeals to the Court of First Instance

Section 69 is amended---

(a) in the proviso to subsection (1), by repealing "\$640" and substituting "the amount specified in Part II of Schedule 5";

(b) by adding---

"(1A) The Secretary for the Treasury may by order amend the amount specified in Part II of Schedule 5.";

(c) by repealing subsection (8).

16. Assessments or amended assessments to be final

Section 70 is amended by repealing "68(2A)" and substituting "68(1A)(a)".

17. Appeals against assessment to additional

tax to Board of Review

Section 82B is amended---

(a) by repealing subsection (1) and substituting---

"(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 may allow under subsection (1A),

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).";

(b) by adding---

"(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 1 April 2001."

18. Exemption of charitable bodies

Section 88 is amended by repealing "慈善機構或屬公共性質的信託" and substituting "屬公共性質的慈善機構或慈善信託".

19. Transitional provisions

Section 89(1) is repealed.

20. Schedule 5 substituted

Schedule 5 is repealed and the following substituted---

"SCHEDULE 5 [ss. 68 & 69]

PART I

Order for Appellant to Pay Costs

1. Maximum amount which the Board of Review may order \$5,000".
the appellant to pay as costs of the Board

PART II

Application Fee for Case Stated

1. Fee payable for application requiring the Board of Review to state a case \$640".

Consequential Amendments

Estate Duty Ordinance

21. What property is deemed to pass on death

Section 6(7) of the Estate Duty Ordinance (Cap. 111) is amended by repealing "慈善機構或公眾性質的信託" and substituting "屬公共性質的慈善機構或慈善信託".

22. Exceptions for transactions for money consideration, property situate outside Hong Kong, shares on local registers and certain land in the New Territories

Section 10(g) is amended by repealing "慈善機構或公眾性質的信託" and substituting "屬公共性質的慈善機構或慈善信託".

Exemption from Profits Tax (Interest Income) Order

23. Exemption from profits tax

Section 2(2) of the Exemption from Profits Tax (Interest Income) Order (Cap. 112 sub. leg.) is amended by repealing "where the condition specified in section 16(2)(d) of the Ordinance is satisfied" and substituting "where the conditions specified in section 16(2)(d) or (e) of the Ordinance, as the case may be, are satisfied".

Stamp Duty Ordinance

24. Interpretation of Part V

Section 38 of the Stamp Duty Ordinance (Cap. 117) is amended, in the definition of "獲豁免機構", by repealing "慈善機構或屬公共性質的信託" and substituting "屬公共性質的慈善機構或慈善信託".

Gambling Ordinance

25. Interpretation

Section 2 of the Gambling Ordinance (Cap. 148) is amended, in the definition of "私有收益", by repealing "慈善機構或屬公共性質的信託" and substituting "屬公共性質的慈善機構或慈善信託".

Elections (Corrupt and Illegal Conduct) Ordinance

26. How candidate must dispose of certain election donations

Section 19 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) is amended---

(a) in subsections (2)(b), (3) and (4), by repealing "慈善機構或屬公共性質的信託" and substituting "屬公共性質的慈善機構或慈善信託";

(b) in subsection (6), by repealing "(慈善機構或屬公共性質的信託)" and substituting "(屬公共性質的慈善機構或慈善信託)".

Brewin Trust Fund Ordinance

27. Interpretation

Section 2 of the Brewin Trust Fund Ordinance (Cap. 1077) is amended, in the definition of "慈善機構", by repealing "慈善機構或屬公共性質的信託" and substituting "屬公共性質的慈善機構或慈善信託".

Explanatory Memorandum

The purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) ("the Ordinance").

2. The Bill---

(a) revises the definition of "expenses of self-education" in section 12(6)(c) of the Ordinance to include fees paid by the taxpayer in respect of certain specified examinations (clause 4);

(b) amends section 15(1) of the Ordinance to ensure that all sums payable for the use of intellectual property (whether in or outside Hong Kong) by a person carrying on a trade, profession or business in Hong Kong and deductible in ascertaining the assessable profits of that person are deemed to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong (clauses 5 and 7);

(c) amends certain of the conditions set out in section 16(2) of the Ordinance which must be satisfied in order for a person to be allowed a deduction in respect of interest payable by the person upon money borrowed by him for the purpose of producing assessable profits (clause 6);

(d) amends section 26E(8) of the Ordinance to remove the requirement that, where a person applies a portion of a home loan for the acquisition of a car parking space, the car parking space must be valued together with the dwelling concerned as a single

tenement under section 10 of the Rating Ordinance (Cap. 116) in order for the person to be allowed a deduction in respect of the interest paid on that portion of the loan (clause 8);

(e) amends subsection (2) of section 33A of the Ordinance so that the method of computation of annual allowances in respect of commercial buildings and structures set out in that subsection applies to a buyer of a building or structure which has been used at any time before the sale, regardless of whether the building or structure is a commercial building or structure at the time of the sale (clause 9);

(f) amends paragraph (b) of section 34(2) of the Ordinance so that the method of computation of annual allowances in respect of industrial buildings and structures set out in that paragraph applies to a buyer of a building or structure which has been used at any time before the sale, regardless of whether the building or structure is an industrial building or structure at the time of the sale (clause 11);

(g) consolidates sections 33B and 35 of the Ordinance, which provide for the determination of balancing allowances and charges in respect of commercial and industrial buildings and structures, with the following amendments---

(i) a balancing charge may be made where a building or structure is not a commercial or an industrial building or structure at the time when the relevant event occurs but has been used as such at any time before the occurrence of that event; and

(ii) all initial and annual allowances granted in respect of any prior usage of a building or structure are to be taken into account when determining the maximum amount on which a balancing charge may be made,

(clauses 10 and 12);

(h) revises the definition of "residue of expenditure" in section 40(1) of the Ordinance to take into account all initial, annual and balancing allowances granted, and all balancing charges made, in respect of any prior usage of a building or structure (clause 13);

(i) provides for the maximum amount of costs which may be imposed by the Board of Review under section 68(9) of the Ordinance to be specified in the new Schedule 5 of the Ordinance and empowers the Secretary for the Treasury to vary the amount by an order (clauses 14 and 20);

(j) provides for the amount of the fee payable for an application to state a case under section 69(1) of the Ordinance to be specified in the new Schedule 5 of the Ordinance and empowers the Secretary for the Treasury to vary the amount by an order (clauses 15 and 20);

(k) empowers the Board of Review to extend the time for lodging notice of appeal under section 82B(1) of the Ordinance (clause 17);

(l) rectifies minor irregularities (clauses 3, 16 and 18) and repeals spent provisions in the Ordinance (clauses 19 and 20); and
(m) makes consequential amendments to other Ordinances and to subsidiary legislation under the Ordinance (clauses 21 to 27).

3. The amendments made to section 12(6) of the Ordinance by clause 4 apply in relation to the year of assessment 2000/01 and to all subsequent years of assessment.

4. The amendment made to section 15(1) of the Ordinance by clause 5(a)(ii) does not apply to sums described in the new section 15(1)(ba) of the Ordinance which were received by or which accrued to a person before the commencement of the Bill as enacted.

5. The amendments made to section 16(2) of the Ordinance by clause 6(a) do not apply to sums described in section 16(1)(a) of the Ordinance which were payable before the commencement of the Bill as enacted.

6. The amendment made to section 26E(8) of the Ordinance by clause 8 applies in relation to the year of assessment 1998/99 and to all subsequent years of assessment.

7. The amendments made to sections 33A(2), 33B, 34(2)(b), 35 and 40(1) of the Ordinance by clauses 9(b), 10, 11(b)(i) and (iii), 12 and 13 apply in relation to the year of assessment 2001/02 and to all subsequent years of assessment.