

INLAND REVENUE (AMENDMENT) ORDINANCE 2004

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HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE NO. 12 OF 2004**L.S.

TUNG Chee-hwa
Chief Executive
24 June 2004

An Ordinance to amend the Inland Revenue Ordinance.

[25 June 2004]

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2004.

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.

(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 2004/05 and to all subsequent years of assessment.

(4) Section 4 (in so far as it relates to section 12(6)(c)(iii) and (f) of the Inland Revenue Ordinance (Cap. 112)) applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment.

(5) Section 22—

(a) subject to paragraph (b), applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment;

(b) in so far as it relates to item 17 of 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 1998 (27 of 1998) comes into operation 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 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 undertaken to gain or maintain qualifications for use in any employment and being—
- (i) a course of education provided by an education provider;
 - (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” (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;
- (f) the Secretary for Financial Services and the Treasury may by order amend Schedule 13.”.

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 2004 (12 of 2004) 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 (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 “conditions referred to in subsection (1)(a) are that—” and substituting “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, is 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, is 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) Subject to subsection (2G), 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, is 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, is 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, in the ordinary course of conduct of his trade, profession or business in respect of market making, holds such debentures or instruments or such interest for the purpose of providing liquidity thereof.

(2H) In subsection (2G), “market maker” (市場莊家) means a person who—

- (a) is licensed or registered for dealing in securities under the Securities and Futures 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);
 - (b) in the ordinary course of conduct of his trade, profession or business in respect of market making holds himself out as being willing to buy and sell securities for his own account and on a regular basis; and
 - (c) is actively involved in market making in securities issued by a wide range of unrelated institutions.”;
- (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 2004 (12 of 2004) (“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.”.

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”;
 - (iii) in paragraph (b)(i), by repealing “in which this section commences” and substituting “commencing on 1 April 1998”;
- (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)”.

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 “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 2004 (12 of 2004), 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 2004 (12 of 2004); 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 2004 (12 of 2004), 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 2004 (12 of 2004), in

- respect of any year of assessment commencing on or after 1 April 1998.”;
- (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, or under section 33B or 35 that was in force immediately before the commencement of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004), 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 2004 (12 of 2004).”;
 - (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 Financial Services and 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 Financial Services and 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. Section added

The following is added—

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

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

18. 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 the commencement of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004).”.

19. 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”.

20. Transitional provisions

Section 89(1) is repealed.

21. 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 the appellant to pay as costs of the Board | \$5,000 |
|----|-----------------------------------------------------------------------------------------------|---------|

PART II

APPLICATION FEE FOR CASE STATED

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

22. Schedule 13 added

The following is added—

“SCHEDULE 13 [s. 12]

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

Item	Institution
1.	The Architects Registration Board established by section 4 of the Architects Registration Ordinance (Cap. 408)
2.	The Chinese Medicine Council of Hong Kong established by section 3 of the Chinese Medicine Ordinance (Cap. 549)
3.	The Chiropractors Council established by section 3 of the Chiropractors Registration Ordinance (Cap. 428)
4.	The Construction Industry Training Authority established by section 4 of the Industrial Training (Construction Industry) Ordinance (Cap. 317)
5.	The Dental Council of Hong Kong established by section 4 of the Dentists Registration Ordinance (Cap. 156)
6.	The Engineers Registration Board established by section 3 of the Engineers Registration Ordinance (Cap. 409)
7.	The Estate Agents Authority established by section 4 of the Estate Agents Ordinance (Cap. 511)
8.	The Hong Kong Academy of Medicine established by section 3 of the Hong Kong Academy of Medicine Ordinance (Cap. 419)
9.	The Hong Kong Bar Association referred to in section 2(1) of the Legal Practitioners Ordinance (Cap. 159)
10.	The Hong Kong Institute of Architects incorporated by section 3 of The Hong Kong Institute of Architects Incorporation Ordinance (Cap. 1147)
11.	The Hong Kong Institution of Engineers incorporated by section 3 of The Hong Kong Institution of Engineers Ordinance (Cap. 1105)

Item	Institution
12.	The Hong Kong Institute of Housing incorporated by section 3 of The Hong Kong Institute of Housing Ordinance (Cap. 507)
13.	The Hong Kong Institute of Landscape Architects incorporated by section 3 of The Hong Kong Institute of Landscape Architects Incorporation Ordinance (Cap. 1162)
14.	The Hong Kong Institute of Planners incorporated by section 3 of The Hong Kong Institute of Planners Incorporation Ordinance (Cap. 1153)
15.	The Hong Kong Institute of Surveyors incorporated by section 3 of The Hong Kong Institute of Surveyors Ordinance (Cap. 1148)
16.	The Hong Kong Society of Accountants incorporated by section 3 of the Professional Accountants Ordinance (Cap. 50)
17.	The Hong Kong Society of Notaries referred to in section 2(1) of the Legal Practitioners Ordinance (Cap. 159) as amended by section 5(1)(e) of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998)
18.	The Housing Managers Registration Board established by section 3 of the Housing Managers Registration Ordinance (Cap. 550)
19.	The Land Surveyors Registration Committee appointed under section 6 of the Land Survey Ordinance (Cap. 473)
20.	The Landscape Architects Registration Board established by 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 by section 3 of the Medical Registration Ordinance (Cap. 161)
23.	The Medical Laboratory Technologists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
24.	The Midwives Council of Hong Kong established by section 3 of the Midwives Registration Ordinance (Cap. 162)
25.	The Nursing Council of Hong Kong established by section 3 of the Nurses Registration Ordinance (Cap. 164)
26.	The Occupational Therapists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
27.	The Optometrists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
28.	The Pharmacy and Poisons Board established by section 3 of the Pharmacy and Poisons Ordinance (Cap. 138)
29.	The Physiotherapists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
30.	The Planners Registration Board established by section 3 of the Planners Registration Ordinance (Cap. 418)
31.	The Radiographers Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap. 359)
32.	The Security and Guarding Services Industry Authority established by section 4 of the Security and Guarding Services Ordinance (Cap. 460)
33.	The Social Workers Registration Board established by section 4 of the Social Workers Registration Ordinance (Cap. 505)
34.	The Surveyors Registration Board established by 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 by section 3 of the Veterinary Surgeons Registration Ordinance (Cap. 529)

Item	Institution
37.	The Vocational Training Council established by section 4 of the Vocational Training Council Ordinance (Cap. 1130)".

Consequential Amendments

Estate Duty Ordinance

23. 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”.

24. 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

25. 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 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”.

Stamp Duty Ordinance

26. 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

27. 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

28. 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

29. 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”.