LC Paper No. CB(1)44/05-06(24)

Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005

Response to issues raised by the LegCo Assistant Legal Adviser in letter dated 27 August 2005

The Administration's responses seriatim to the questions raised by the LegCo Assistant Legal Adviser (ALA) in her letter of 27 August 2005 are set out below.

1. Clause 2 - proposed section 20AB

(a) Under the proposed section 20AB(2)(b) to (d), a corporation, partnership or trustee of a trust estate is a resident person in relation to any year of assessment if the central management and control of the corporation, partnership or the trust estate is exercised in Hong Kong "in that year of assessment". In other words, the question is, within the time frame of the year of assessment concerned, whether the central management and control is on the whole exercised in Hong Kong. There is no requirement that such management and control is to be exercised in Hong Kong continuously throughout the year.

(b) The "central management and control" test is a well-established common law principle adopted in many jurisdictions in determining residence of non-individual entities. Under this principle, a company resides where its real business is carried on, and the real business is carried on where the central management and control actually abides. It refers to the highest level of control of the business of the company. In general, importance is attached to the place where the directors hold board meetings. In many cases, the board meets in the country where the business operations take place, and central management and control is clearly located in that jurisdiction. In other cases, central management and control may be exercised by directors in one jurisdiction though the actual business operations may take place elsewhere. The place of board meetings, however, is not necessarily conclusive. It is significant only in so far as those meetings constitute the medium through which central management and control is exercised. The location where central

management and control is exercised is wholly a question of fact and each case must be decided on its own facts. There is a considerable body of case law on this subject to guide its operation. Hence, it may not be possible or appropriate to set out in the Bill exhaustively the circumstances under which the central management and control of an entity is regarded as being exercised in Hong Kong. Indeed, jurisdictions (such as Australia, the UK and Singapore) that adopt the same concept for determining the residency for tax purposes also do not define the scope of the concept in their statutes. As for trust estates and partnerships, the same test of central management and control as applies to a board of directors of a corporation will apply to the trustee or the partners, as the case may be. The Inland Revenue Department (IRD) will issue a Departmental Interpretation and Practice Note to explain how the provisions of the Bill are to be applied, including the "central management and control" test, with worked examples. An outline of this is given in the supplementary notes at ***Appendix 1***. Paragraphs 5 to 9 and Annex A of the notes set out IRD's views on the application of the central management and control test with some practical examples.

2. Clause 2 – proposed section 20AC

(a) In view of the potential technical difficulties raised in ALA's letter, the Administration is exploring the option of adding provisions to the Bill to the effect that in relation to the qualified transactions carried out before the Securities and Futures Ordinance (SFO) came into operation, "specified person" under section 20AC(2)(b), (3)(b) or (4)(b) should mean a person registered as "investment adviser" or "dealer" under Part VI of the repealed Securities Ordinance (Cap. 333) (SO), or a person who would otherwise be required to be registered, but was exempt from such registration under the SO. The Administration is studying the technical details and will revert to the Bills Committee in due course.

(b) Assessments have only been raised for back years on four "offshore funds" which are all normal trading corporations. No mutual fund corporation or unit trust is involved. As all the assessments concerned were raised on corporations, the mentioned complexities relating to a trustee's legal liabilities to beneficiaries should not arise.

For corporations, they are legal entities separate from their shareholders. Corporations themselves, rather than their shareholders, are chargeable to tax and equally are entitled to any tax refunds. In law, shareholders of a corporation have no legal entitlement to any particular asset including cash (i.e. tax refunds for the present purpose) of a corporation at any time while it is a going concern. Hence, the question of whether to attribute any portion of a tax refund to any particular shareholder does not arise.

(c), (d) and (e) Since Schedule 5 to SFO sets out the regulated activities under the Ordinance, it provides a good basis for defining the types of transactions by the industry that should qualify for the proposed exemption. In addition, in defining the various regulated activities, Schedule 5 sets out the types of persons to which the definition would/would not apply. This provides a useful reference point for setting out the types of persons through which the transactions should be conducted in order to qualify for the proposed exemption. It is for the above reasons that the Administration has chosen to make reference to Schedule 5 to SFO for defining the qualified transactions. In view of ALA's concerns raised, we are considering whether her proposal to make reference to Schedule 1 (instead of Schedule 5) to SFO should be adopted.

On the other hand, in view of some deputations' views that the scope of exemption should be expanded, the Administration is examining whether the scope of qualified transactions is wide enough for the purpose of the proposed exemption, and if not, consider to relax the scope of the exemption suitably, to cover the securities-related activities engaged in by the industry. This may affect the references to be made in defining the types of transactions qualified for the proposed exemption. We will revert to the Bills Committee on the issue in due course.

(f) Our view is that the suggested definition is not necessary. Section 20AC(2)(b)(iii) and (3)(b)(iii) reads "a person authorized under section 95(2) of that Ordinance to provide automated trading services". Read in context, "automated trading services" clearly mean those within the meaning of SFO. Again, as explained above, the Administration is examining whether it is necessary to relax the

scope of the exemption suitably, to cover the securities-related activities engaged in by the industry. This may affect the references to be made in defining the types of transactions qualified for the proposed exemption.

3. Clause 3 – proposed section 70AB

The proposed time limit of "12 months or 6 years, whichever is the later" is consistent with the time limit for lodging an application for revision of an assessment in other sections of the Inland Revenue Ordinance (IRO) (e.g. in the mentioned section 70AA, and section 70A (on correction of an error in an assessment)). Such a time limit seeks to strike a balance between finality of an assessment and allowing a taxpayer reasonable time to lodge an application for revision of an assessment.

The "6 years from the relevant year of assessment" time limit would ensure that a reasonable period is allowed to taxpayers who lodge an application in respect of more recent years of assessment (e.g. a time limit of 31 March 2010 in respect of the year of assessment 2003/04). On the other hand, the "12 months" limit would ensure that taxpayers who lodge an application in respect of earlier years (e.g. 1996/97) would have at least 12 months to lodge the application.

4. Drafting matters

(a) The Chinese text correctly reflects the intended result of applying the phrase to both subparagraphs (i) and (ii). An amendment to correct the error will be made to the English text accordingly.

(b) The full stop should be replaced by a comma. An amendment to correct the typographical error will be made to the English text accordingly.

Treasury Branch
Financial Services and the Treasury Bureau
October 2005

Appendix 1

Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005
Supplementary Notes / Responses to Industry's Concerns

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Background

To reinforce the status of Hong Kong as an international financial centre, the Government has proposed to exempt offshore funds from profits tax. The Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 (the Bill) was introduced to the Legislative Council in July 2005 to implement the proposal. A Bills Committee has been set up to study the Bill. These supplementary notes are prepared to address certain issues raised on the Bill.

How to determine residence

2. The Bill proposes to exempt "offshore funds" from profits tax liability where they deal in Hong Kong securities. As a fund is just a sum of money, it is not a taxable entity as such. Only an entity carrying on a securities dealing business in Hong Kong would be chargeable to tax. Hence, the Bill grants profits tax exemption to non-resident entities (including individuals, corporations, partnerships and trustees of trust estate) who derive profits from a securities dealing business in Hong Kong.

3. The Bill provides statutory definition of the terms "resident" and "non-resident" under the Inland Revenue Ordinance (IRO). Basically, an individual is a Hong Kong resident if he or she ordinarily resides in Hong Kong or stays in Hong Kong for more than the specified number of days (i.e. 180 days during the relevant year of assessment or 300 days in two consecutive years, one of which is the relevant year of assessment). A non-individual entity is a Hong Kong resident if its central management and control is exercised in Hong Kong.

4. The same definitions of "resident person" and "non-resident person" would apply for both the Exemption Provisions and the Deeming Provisions. A non-individual entity with its central management and control exercised outside Hong Kong is a non-resident. It would be tax-exempt under the Exemption Provisions. On the other hand, a non-individual entity with its central management and control exercised in Hong Kong is a resident. It would be chargeable to tax under the Deeming Provisions by reference to the beneficial interest it holds in a non-resident entity that is tax-exempt under the Exemption Provisions.

Central management and control

5. Following the well-established common law rule, which has been adopted in many other countries, the Inland Revenue Department (IRD) considers that the central management and control of a company refers to the highest level of control of the business of the company. Control of a company may be exercised without active involvement in the daily operations of the company's business. Moreover, control may be exercised at a place different from that where the company mainly operates its business. In general, if the central management and control of a company is exercised by the directors in board meetings, the relevant locality is where those meetings are held. In cases where central management and control of a company is in fact exercised by an individual (for example, the board chairman or managing director), the relevant locality is the place where the controlling individual exercises his power. As central management and control is a question of fact and reality, when reaching a conclusion in accordance with case law principles, only factors which exist for genuine commercial reasons will be accepted.

Asset portfolios of offshore funds or entities managed by Hong Kong fund managers

6. There are concerns that the asset portfolios of many overseas funds or entities operating in Hong Kong are in fact managed by fund managers in Hong Kong who have been given full discretion to manage these asset

portfolios. As such, the central management and control of these funds might be regarded as being exercised in Hong Kong. They might therefore be caught as residents and hence not qualify for the tax exemption proposed.

7. The IRD considers that the residency of the person who controls and manages the asset portfolios on behalf of a fund or entity is not a conclusive factor in determining the residency of such fund or entity for the purpose of the proposed exemption. Where the "central management and control" of a fund or a non-individual entity is not exercised in Hong Kong, the fund or entity can qualify for the proposed exemption notwithstanding that its asset portfolios are controlled and managed by a Hong Kong fund manager under his full discretion. However, where an investor company is managed and controlled by fund managers in Hong Kong as directors of the company, the company will be a resident entity as its central management and control is exercised by such directors in Hong Kong. Please see **Annex A** which sets out the Taxable Entity and the Residence in the context of management of investment portfolios for the purpose of the proposed exemption under the Bill in respect of some examples of investments made through various forms of investment vehicles. The IRD will incorporate similar examples to clarify matters in a Departmental Interpretation and Practice Note (the DIPN).

Offshore entities managed by Hong Kong directors cum fund managers

8. It has been put to the Administration that it is a very common practice of setting up an offshore fund to incorporate a company in an offshore jurisdiction, and appoint two Hong Kong fund managers as the company's only directors, and grant the managers full discretion to deal in Hong Kong securities. As the company's central management and control would be exercised in Hong Kong under such a setup, there is a concern that this kind of funds would not be eligible for the proposed exemption.

9. A "Hong Kong based fund" with its directors and principal officers exercising central management and control of the fund in Hong Kong is no different from a normal resident company, which is not the intended beneficiary of the proposed exemption for offshore funds. To widen the scope of exemption may lead to abuse and open up the exemption to all local funds.

Split year residence

10. Funds may change its residence status during a year of assessment, i.e. from non-resident to resident or vice versa. The Administration considers that, whilst cases of this type should not be frequent, the residence status will be determined on a year of assessment basis by reference to the respective periods during which the fund is or is not resident in Hong Kong. For a fund which is newly set up during a year of assessment, its residence status will be based on the period from its set-up date to the end of the year of assessment. This point will be clarified in a DIPN.

Scope of exemption

11. The Bill proposes to grant tax exemption to offshore funds in respect of profits derived from qualified transactions, which are defined as "dealing in securities", "dealing in futures contracts" and "leveraged foreign exchange trading" within the meaning of these terms in the Securities and Futures Ordinance (SFO). Also, "securities" is defined by reference to such term used in the SFO. There are concerns that the prescribed types of activities as well as the definition of "securities" are not wide enough to cover some common types of activities that are carried out by offshore funds, eg, stock borrowing and lending, placing of deposits in Hong Kong or foreign currencies (which are required for hedging purposes), over-the-counter transactions, non-leveraged foreign exchange trading, etc. Besides, "securities" would not cover certificates of deposit, swaps, spot foreign exchange contracts, etc.

12. The Administration agrees to examine whether the scope of qualified transactions is wide enough for the purpose of the proposed exemption, and if not, consider to suitably relax the scope of the exemption to cover the securities-related activities engaged by the industry. If necessary, the Administration is prepared to move a CSA to introduce two new schedules to the IRO, one to expand the scope of qualified transactions and the other to expand the meaning of "securities" in the context of the Bill. In drafting the new schedules, the Administration will work closely with the industry to ensure that the new scheme is practical and workable. Shares in private companies are not included in the proposed exemption. A person may trade in any types of assets [e.g. landed property] through transfer of shares in private companies purposely set up for holding such assets. Inclusion of shares in private companies in effect would grant exemption to all sorts of trading transactions.

Specified persons

13. The Bill proposes that only qualified transactions which are carried out through a specified person can qualify for tax exemption. A "specified person" is a person who holds a Type 1 [dealing in securities], Type 2 [dealing in futures contracts] or Type 3 [leveraged foreign exchange trading] licence (and to a certain extent, a Type 9 [asset management] licence) under the SFO. There are requests to relax the requirement of "specified persons" to cover holders of other types of licences specified and regulated under the SFO. In this regard, the Administration is prepared to move a CSA to expand the scope of specified persons such that a qualified transaction carried out through any licensed corporation or registered financial institution under the SFO will qualify for tax exemption.

Incidental transactions and 5% de minimis rule

14. Some deputations consider that the meaning of "trading receipts" is not clear as to whether or not non-taxable income/receipts should be included. There are also views that the 5% threshold for incidental

transactions is too low and that the actual operation of funds likely will give rise to a higher percentage of incidental income.

15. The IRD will clarify in the DIPN that "trading receipts" mean gross receipts that should have been chargeable to tax but for the exemption. Non-taxable income/receipts would fall outside of the formula altogether. Hence, tax-exempt dividends and interest income will not be included in applying the 5% threshold. The Administration considers that the proposed threshold at 5% should be sufficient after taking into account that the scope of qualified transactions is to be expanded (see paragraph 11 above).

16. Some deputations are concerned that transactions which would otherwise qualify for exemption would lose the exemption status if the 5% threshold is exceeded. The Administration would like to clarify that the Bill as presently drafted should not have such effect. If the 5% threshold is exceeded, only the exemption in respect of the incidental transactions will be disallowed. Moreover, the incidental transactions will not be regarded as "any other business" carried on in Hong Kong for the purposes of the exemption. Hence, the exemption in respect of the qualified transactions will not be affected. We intend to clarify these points in the DIPN.

17. Some deputations suggested that "incidental transaction" should be defined. The Administration does not agree to this. Offshore funds can have vastly different modes of operation. It would be difficult to arrive at a definition that can cover all possible situations. "Incidental" would be accorded its common meaning, which should provide the desired flexibility to different offshore funds.

Blanket exemption for back years

18. To provide certainty, some deputations suggest that offshore funds that satisfy the conditions for exemption when the Bill is enacted shall be tax exempt with retrospective effect from 1 April 1996, notwithstanding

that they might not have met the conditions for exemption during the interim years (ie, from 1 April 1996 up to the enactment of the Bill).

19. The tax exemption is allowed to an offshore fund which satisfies the qualifying conditions in a particular year of assessment. The Administration considers that there is little justification for allowing exemption to an offshore fund for any particular year during which the exemption conditions are not satisfied.

Loss from exempt transactions not available for set off

20. Proposed section 20AD prohibits the set off of a loss incurred by a qualifying offshore fund against "any of his assessable profits". Since such a fund should not be carrying on any other business in Hong Kong (or else the exemption provisions would not apply), some deputations consider that the wording in the proposed section is unclear.

21. The IRD will explain in the DIPN that section 20AD is designed to prohibit the set off of a loss sustained by a qualifying offshore fund against its taxable profit in any *subsequent* years.

Beneficial interest : Non-participating management shares

22. Some deputations point out that an investment manager of an offshore fund may hold "non-participating management shares" for the purpose of managing the fund. They consider that the Deeming Provisions should not be applied to the management shares since the investment manager does not have any genuine beneficial interest in the fund.

23. The Administration agrees that there is a genuine need for an investment manager to hold the management shares. We are prepared to move a CSA to carve out management shares from the application of the Deeming Provisions where the holder of such shares is not entitled to participate in the fund's profits nor in any distribution of the fund's assets

upon dissolution, except a return of capital.

Double taxation resulting from the Deeming Provisions

24. If certain conditions are satisfied, a resident investor of a tax-exempt offshore fund will be deemed to derive taxable profits in proportion to his beneficial interest in the fund. There are suggestions that when the resident investor subsequently disposes of his units in the offshore fund and realises a gain on the disposal, he may suffer double taxation if the gain on the disposal of the units in the offshore fund is regarded as Hong Kong sourced revenue profit.

25. The Administration does not consider that there is double taxation in the application of the deeming provisions. Where a resident person invests in shares in, say, a listed company in Hong Kong and makes a gain on disposal of the shares, he pays tax on the gain only if the transaction has been conducted in such circumstances that the gain is regarded as of revenue in nature. The listed company also pays tax on its profits earned. There is no double taxation because the two entities are different.

26. Where a resident person invests in shares in an offshore fund (which deals in Hong Kong securities but is exempt under the proposed exemption) and makes a gain on disposal of the shares, similarly he pays tax on the gain only if the transaction has been conducted in such circumstances that the gain is regarded as of revenue in nature. Now if the deeming provisions apply, the resident person has to pay tax in place of the offshore fund on a portion of the dealing profits earned by the offshore fund. This is the tax that should have been paid by the offshore fund in the first place if not for the exemption. There is also no double taxation here.

27. Hong Kong does not tax dividend and capital gains. Any dividend/distribution received by a resident from an exempted offshore fund and any gain (if established to be of capital nature) derived from the

disposal of interests in such a tax-exempt offshore fund are non-taxable.

No deemed loss for resident investor

28. Some deputations raise the point that if an offshore fund makes a loss over the year, whether a resident investor (holding 30% or more interest) would be entitled to a proportionate deemed loss to set off against his other taxable profits.

29. The resident investor would not be entitled to a proportionate deemed loss. The policy objective of the proposed exemption is to attract foreign capital to invest in the local market. The Deeming Provisions, together with disallowing deemed losses, are intended disincentives to residents for taking benefit from the proposed exemption by round-tripping.

Deeming Provisions invoked on a resident holding company

30. Some deputations also raise the point that a resident holding company may have a non-resident subsidiary conducting a business overseas independently. The non-resident subsidiary may use the surplus funds derived from its business to deal in Hong Kong securities. It would be difficult for the resident holding company to confirm how the non-resident subsidiary invests its surplus funds and where the relevant profits are sourced. In the circumstances, some deputations consider that the Deeming Provisions should not be invoked on the resident holding company.

31. It seems that the deputations are suggesting that the Deeming Provisions should only be invoked where the “funds” (i.e. moneys) used in dealing in Hong Kong securities are sourced from Hong Kong. Administering the Deeming Provisions by reference to the source of funds is impractical and open to abuse. “Funds” sourced from Hong Kong can easily be converted into offshore “funds” by simple arrangements. In real life situations, business “funds” are commonly pooled and become mixed

before actual application. Earmarking the source of "funds" is an artificial and elusive process and subject to manipulation. Further, similar exemptions by other jurisdictions are by reference to non-residency of entities rather than the elusive source of "funds" (i.e. moneys).

32. The Administration does not find tenable the claim that a resident holding company should have difficulty in obtaining information on the business operation of its non-resident subsidiary. The holding company for legal, accounting or other commercial reasons should always possess sufficient business information on its subsidiary for meeting the reporting requirements under the Deeming Provisions.

33. How the Deeming Provisions apply to a resident investor with beneficial interest in an exempt non-resident entity is illustrated at **Annex B**.

Resident investor's liability to penalty for relying on incorrect information provided by offshore fund

34. There are concerns that a resident investor may be liable to a penalty if he, relying on information provided by an offshore fund, reports an incorrect amount of deemed profits to the IRD.

35. Under the IRO, a taxpayer would only be imposed a penalty if he fails to perform the legal obligations "without reasonable excuse". The IRD, before imposing a penalty, would consider the whole facts and circumstances in deciding whether the resident's reliance on incorrect information provided by the offshore fund constitutes a reasonable excuse. Further, the resident always has the right to appeal against the IRD's decision if he does not agree with it.

Deeming provisions invoked on individuals

36. There are views that, as in most cases an individual would be presumed not to carry on a share dealing business, the Deeming Provisions

should not apply to individuals.

37. The Administration considers that there is little justification for giving the preferential tax treatment to individuals. The presumption that an individual is unlikely to carry on a share dealing business is not law but rebuttable facts. Further, the proposal would create avoidance opportunity.

38. Insofar as a resident individual who carries out share transactions in Hong Kong in his own name is concerned, there is no difference in the tax position before and after enactment of the Bill.

Deduction of expenses incurred in generating deemed profits

39. Some deputations requested for clarification of whether expenses incurred by a resident investor in generating the deemed profits can be deducted in computing the profits chargeable on the resident investor.

40. The Administration considers that no such deduction should be allowed. The expenses incurred by the offshore fund in earning the securities trading profits derived from Hong Kong would have been deducted in ascertaining the deemed profits to be imposed on the resident investor.

Threshold for invoking the Deeming Provisions

41. Some deputations suggested that the threshold for invoking the Deeming Provisions at 30% is too low and should be increased to 50%.

42. In principle, a resident investor should be chargeable to tax in respect of any securities trading profits derived from Hong Kong through holding any percentage of beneficial interest in a tax-exempt non-resident entity. However, the Administration must strike a balance between revenue protection and the ease with which taxpayers can comply with the reporting requirements. If the threshold is too low, a resident investor

holding a small interest in an offshore fund may have difficulty in obtaining information for reporting deemed profits to the IRD. On the other hand, if the threshold is too high, a resident can easily abuse the exemption, which may lead to tax leakage. The 30% threshold is considered just and reasonable in the circumstances.

Financial Services and the Treasury Bureau
October 2005

Annex A

Taxable entity and residence under the Offshore Funds Exemption Bill

e.g.	Investor	Investment Vehicle	Management of Investment Vehicle (Note [1])	Fund Management	Taxable Entity	Residence of Taxable Entity
1.	Individual A not ordinarily or temporarily resides in Hong Kong	Funds remitted directly to HK Fund Manager	N.A.	Licensed Hong Kong Fund Manager with full discretion	Individual A (**Note** [2])	**Non-resident**
2.		Trust set up in Cayman Islands	Trustee B resides in Cayman Islands		Trustee B	
3.		Mutual fund corporation C set up in Cayman Islands	Board of directors in Cayman Islands		Mutual Fund Corporation C	
4.	Company D carrying on other business in London; managed by a board of directors there	Funds remitted directly to HK Fund Manager	N.A.	Licensed Hong Kong Fund Manager with full discretion	Company D	**Non-resident**
5.		Trust set up in Cayman Islands	Trustee E resides in Cayman Islands		Trustee E	
6.		Mutual fund corporation F set up in Cayman Islands	Board of directors in Cayman Islands		Mutual Fund Corporation F	
7.	Offshore investors	Private Company G incorporated in BVI	Board of directors comprising only 2 HK fund managers in HK	2 licensed Hong Kong Fund Mangers (the directors) with	Company G	**Resident** (centrally managed and controlled in

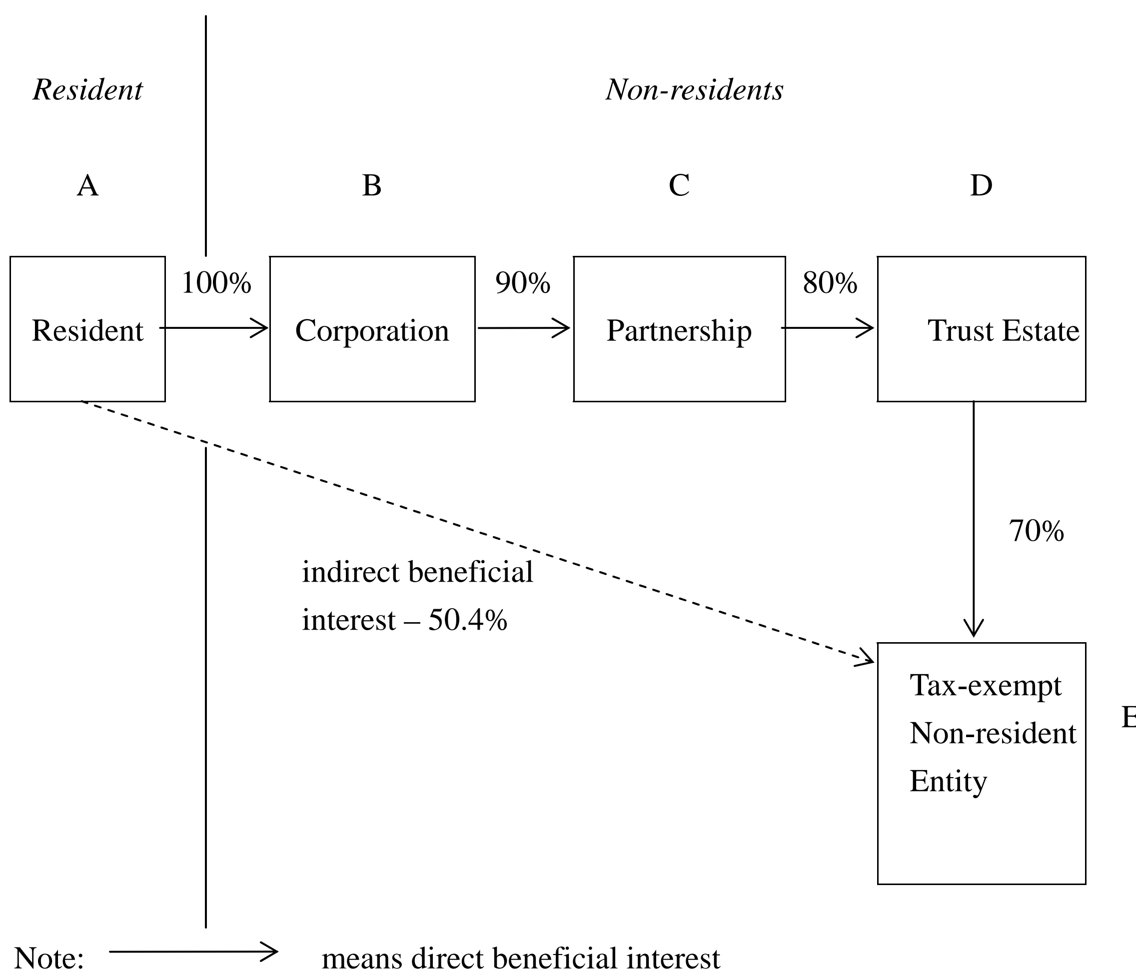
[1] The relevant board of directors can remove the fund manager, monitors and evaluates the fund manager's performance, and may direct the funds to be invested in other countries. In the case of a trust, the relevant trustee is legally in charge of the trust estate and ultimately responsible to the beneficiaries (i.e. unit holders). He supervises the operation of the trust to ensure compliance with the trust's constitutive documents, ensures that the fund manager complies with the investment strategy, reviews the fund manager's performance and has the power to remove the fund manager in accordance with the relevant provisions in the trust deed. The mere outsourcing of back office administrative work by the trustee to a service provider in Hong Kong will not affect its residence.

[2] The residence of an individual is based on the "ordinary or temporary residence" test and not the "central management and control" test. This example is added for the sake of completeness.

e.g.	Investor	Investment Vehicle	Management of Investment Vehicle (Note [1])	Fund Management	Taxable Entity	Residence of Taxable Entity
				full discretion		HK)
8.	Offshore investors	Private Company H incorporated in BVI	Board of directors comprising HK fund managers and other non-resident persons, holding majority of board meetings (through which central management and control is exercised –footnote 1) outside HK	Licensed Hong Kong Fund Mangers (the directors) with full discretion	Company H	**Non-resident**
9.	Offshore investors	Limited partnership J set up in BVI	Non-resident general partners only; limited partners [may include resident persons] have no management rights	Licensed Hong Kong Fund Mangers with full discretion	Limited partnership J	**Non-Resident** (centrally managed and controlled outside HK)
10.	Company K incorporated in Japan and managed by a board of directors there; deals in home appliances	Branch set up in Hong Kong – sells home appliances and deals in HK securities	Company K itself in Japan	Licensed Hong Kong Fund Manager with full discretion	Company K	**Non-resident**, but **no exemption** since selling of home appliances is a separate business
11.	Global fund Institution L incorporated and managed by a board of directors outside HK; invests in the global securities markets	A portion of the global funds remitted directly to HK Fund Manager; no investment vehicle is set up	N.A.	Licensed Hong Kong Fund Manager with full discretion	Institution L	**Non-resident**

Annex B

Offshore Funds Exemption – Deeming Provisions
Resident holding indirect beneficial interest
in a tax-exempt non-resident through interposed persons



Note: ⟶ means direct beneficial interest

E is a non-resident entity. During the accounting year ended 31 March 2006, E makes profits of $36.5 million from securities trading transactions in Hong Kong, which would have been chargeable to profits tax but for the exemption provisions. A resident person, A, holds beneficial interest in E through certain non-resident persons from 1 to 31 March 2006. The amount of A's deemed assessable profits under Schedule 15 is-

$$\frac{\$36.5M \times (100\% \times 90\% \times 80\% \times 70\%)}{365 \text{ days}} \times 31 \text{ days} = \underline{\underline{\$1.5624M}}$$