

REVENUE (PROFITS TAX EXEMPTION FOR OFFSHORE
FUNDS) BILL 2005

COMMITTEE STAGE

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

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>In the proposed section 20AB(4)(c), by deleting subparagraph (ii) and substituting –</p> <p>“(ii) not being a trustee of the trust estate or, where the trustee is a corporation, a director of the trustee, is able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income, otherwise than through another person.”.</p>
2	<p>In the proposed section 20AB, by adding –</p> <p>“(9) A reference to the issued share capital of a corporation does not include a reference to the shares comprised in the issued share capital that do not entitle their holders to receive dividends, whether in cash or in</p>

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kind, and a distribution of the corporation's assets upon its dissolution other than a return of capital.”.

2

In the proposed section 20AC, by deleting subsections (1), (2), (3) and (4) and substituting –

“(1) Subject to subsections (5) and (6), a non-resident person is exempt from tax chargeable under this Part in respect of his assessable profits, for any year of assessment commencing on or after 1 April 1996, from –

- (a) transactions falling within subsection (2); and
- (b) transactions incidental to the carrying out of the transactions referred to in paragraph (a).

(2) A transaction falls within this subsection if it –

- (a) is a transaction specified in Schedule 16; and
- (b) has been carried out through or arranged by a specified person.”.

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In the proposed section 20AC, by adding –

“(7) The Commissioner may by notice published in the Gazette amend Schedule 16.

(8) In subsection (2), a “specified person” (指明人士) means –

(a) in relation to a transaction carried out before 1 April 2003 –

(i) a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);

(ii) a person registered as a dealer or commodity trading adviser under Part IV of the Commodities Trading Ordinance (Cap. 250) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571);

(iii) a person registered as a dealer or an investment adviser under Part VI, or as a securities margin financier under Part XA, of the

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Securities Ordinance (Cap. 333) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571); or

(iv) a person licensed as a leveraged foreign exchange trader under Part IV of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571); or

(b) in relation to a transaction carried out on or after 1 April 2003, a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on, or an authorized financial institution registered under that Part for carrying on, a business in any regulated activity within the

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meaning of Part 1 of Schedule 5 to that Ordinance.”.

2 In the proposed section 20AD, by adding “for any subsequent year of assessment” before the full stop.

2 In the proposed section 20AE, by deleting subsection (1) and substituting –

“(1) Where, in the year of assessment following the year of assessment in which the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2005 (of 2005) commences or in any subsequent year of assessment –

(a) a resident person has, during any period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person to the extent set out in subsection (2); and

(b) the non-resident person is exempt from tax under section 20AC,

the assessable profits of the non-resident person for that period of time that would have been chargeable to tax under this Part but for that section are to be regarded as

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the assessable profits arising in or derived from Hong Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.”.

2

In the proposed section 20AE, by deleting subsection (3) and substituting –

“(3) Where, in the year of assessment following the year of assessment in which the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2005 (of 2005) commences or in any subsequent year of assessment –

(a) a resident person has, during any period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person who is exempt from tax under section 20AC; and

(b) the non-resident person is an associate of the resident person, the assessable profits of the non-resident person for that period of time that would have been chargeable to tax under this Part but for that section are to be regarded as

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the assessable profits arising in or derived from Hong Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.”.

2 In the proposed section 20AE, by deleting subsection (11).

New By adding –

“5. Schedule 16 added

The following is added –

“SCHEDULE 16 [s. 20AC]

SPECIFIED TRANSACTIONS

1. a transaction in securities.
2. a transaction in futures contracts.
3. a transaction in foreign exchange contracts.
4. a transaction consisting in the making of a deposit other than by way of a money-lending business.
5. a transaction in foreign currencies.
6. a transaction in exchange-traded commodities.

In this Schedule –

“collective investment scheme” (集體投資計劃) means

arrangements in respect of any property –

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(a) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of the management;

(b) under which –

(i) the property is managed as a whole by or on behalf of the person operating the arrangements;

(ii) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or

(iii) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the

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profits or income from which
payments are made to them
are pooled; and

(c) the purpose or effect, or pretended
purpose or effect, of which is to
enable the participating persons,
whether by acquiring any right,
interest, title or benefit in the
property or any part of the property
or otherwise, to participate in or
receive –

(i) profits, income or other
returns represented to arise or
to be likely to arise from the
acquisition, holding,
management or disposal of
the property or any part of
the property, or sums
represented to be paid or to
be likely to be paid out of
any such profits, income or
other returns; or

(ii) a payment or other returns

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arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property;

“contract for differences” (差價合約) means an

agreement the purpose or effect of which is to obtain a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the agreement;

“debenture” (債權證) includes debenture stocks, bonds,

and other securities of a corporation, whether constituting a charge on the assets of the corporation or not;

“deposit” (存款) means a loan of money –

- (a) at interest; or
- (b) repayable at a premium or repayable with any consideration in money or money’s worth;

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“exchange-traded commodity” (在交易所買賣的商品)

means gold or silver traded on a commodity exchange in Hong Kong to which the Commodity Exchanges (Prohibition) Ordinance (Cap. 82) does not apply by virtue of section 3(d) of that Ordinance;

“foreign exchange contract” (外匯交易合約) means a

contract other than a futures contract and an options contract, whereby the parties to the contract agree to exchange different currencies at a future time;

“futures contract” (期貨合約) means –

- (a) a contract or an option on a contract that is listed or traded on the Hong Kong Futures Exchange Limited; or
- (b) any other contract for differences –
 - (i) that is listed on a specified stock exchange, or traded on a specified futures exchange, within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures

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- Ordinance (Cap. 571);
- (ii) that an authorized institution within the meaning of the Banking Ordinance (Cap. 155) may enter into under that Ordinance; or
 - (iii) the transaction in respect of which is regulated by or under, or is carried out in compliance with, the Securities and Futures Ordinance (Cap. 571);

“options contract” (期權合約) means a contract that

gives the holder of the contract the option or right, exercisable at or before a time specified in the contract to –

- (a) buy or sell –
 - (i) at an agreed consideration an agreed quantity of a specified futures contract, share or other property; or
 - (ii) an agreed value of a specified futures contract,

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share or other property; or

- (b) be paid an amount of money calculated by reference to the value of such futures contract, share or other property or by reference to the level of an index, as may be specified in the contract;

“property” (財產) includes –

- (a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

“securities” (證券) means –

- (a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal

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- government authority;
- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
 - (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
 - (d) interests in any collective investment scheme;
 - (e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities,

but does not include shares or debentures of, or rights, options or interests (whether described as units or otherwise) in, or in respect of, shares or debentures of, a company that is a private

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company within the meaning of section 29 of the
Companies Ordinance (Cap. 32);

“share” (股份) means any share in the share capital of a
corporation, and, except where a distinction
between stock and shares is express or implied,
includes stock.”.”

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