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A BILL

To

Amend the Inland Revenue Ordinance—

- (a) to improve the operation of the Board of Review;
- (b) to provide for the deduction allowed for interest expenses incurred in the acquisition of prescribed fixed assets and specified machinery or plant;
- (c) to enable the Commissioner of Inland Revenue (“the Commissioner”) to make a property tax assessment on persons who receive rent on any common parts of any land or building;
- (d) to empower an assessor to make an additional assessment of the tax payable in consequence of a taxpayer’s revocation of a claim for deduction of home loan interest after the statutory period;
- (e) to extend the period within which a prosecution may be instituted for an offence relating to breach of secrecy;
- (f) to enable the Commissioner to refund to a taxpayer the balance remaining in the Tax Reserve Certificates accounts without requiring the taxpayer to return the tax reserve certificate to the Commissioner; and
- (g) to make minor and textual amendments,
and to make consequential amendments.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) (No. 2) Ordinance 2009.

PART 2

AMENDMENTS RELATING TO ADMINISTRATION OF INLAND
REVENUE ORDINANCE**2. Interpretation**

(1) Section 2(1) of the Inland Revenue Ordinance (Cap. 112) is amended by repealing the definition of “owner” and substituting—

““owner” (擁有人), in respect of land or buildings or land and buildings, includes—

- (a) a person holding the land or buildings or land and buildings directly from the Government;
- (b) a beneficial owner;
- (c) a tenant for life;
- (d) a mortgagor;
- (e) a mortgagee in possession;
- (f) a person with adverse title to land receiving rent from buildings or other structures erected on that land;
- (g) a person who is making payments to a co-operative society registered under the Co-operative Societies Ordinance (Cap. 33) for the purpose of the purchase of the land or buildings or land and buildings;
- (h) a person who holds land or buildings or land and buildings subject to a ground rent or other annual charge;
- (i) (in so far as common parts are concerned) a corporation registered under section 8 of the Building Management Ordinance (Cap. 344) or a person who, on the person’s own behalf or on behalf of another person, receives any consideration, in money or money’s worth, in respect of the right of use of any common parts solely or with another; and
- (j) an executor of the estate of an owner;”.

(2) Section 2(1) is amended by adding—

““Board of Review” (稅務上訴委員會) means the Board of Review referred to in section 65;

“common parts” (公用部分), in relation to any land or buildings or land and buildings—

- (a) means the whole of the land or buildings or land and buildings, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and

- (b) includes, unless so specified or designated in the instrument mentioned in paragraph (a), those parts of a building specified in Schedule 1 to the Building Management Ordinance (Cap. 344);”.

**3. Establishment of Board of Inland Revenue.
Power of Chief Executive to appoint a
Commissioner and other officers**

Section 3(1)(c) is amended, in the Chinese text, by repealing “投票所得的多數票” and substituting “過半數票”.

4. Ascertainment of chargeable profits

Section 16(2)(e)(i) is repealed and the following substituted—

- “(i) capital expenditure incurred by the borrower on the provision of—
- (A) any machinery or plant, where the expenditure qualifies for an allowance under Part VI;
 - (B) any machinery or plant for research and development, where the expenditure may be deducted under section 16B;
 - (C) a prescribed fixed asset (as defined in section 16G(6)), where the expenditure may be deducted under section 16G; or
 - (D) any environmental protection machinery (as defined in section 16H(1)), where the expenditure may be deducted under section 16I; or”.

**5. Cessation of source of profits in years of assessment
commencing on 1 April 1975**

Section 18D(2) is amended, in the proviso, by repealing “, subject to subsection (3),”.

6. Approved charitable donations (Part IVA)

Section 26C(1) is amended, in the Chinese text, by repealing “不小於” and substituting “不少於”.

7. Home loan interest

Section 26E is amended by adding—

- “(6A) If a person revokes a claim under subsection (6) after 6 years from the expiration of the year of assessment to which the claim relates, an assessor may, within 2 years after the revocation, make an additional

assessment of the tax payable in consequence of the revocation and for this purpose, section 60(1) applies to the additional assessment as if it were an assessment made under that section.”.

8. Power to issue search warrant

Section 51B(4) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 3” and substituting “commits an offence and is liable on conviction to a fine at level 3”.

PART 3

AMENDMENTS RELATING TO BOARD OF REVIEW

9. Constitution of the Board of Review

(1) Section 65(1) of the Inland Revenue Ordinance (Cap. 112) is amended by adding “and determining” after “hearing”.

(2) Section 65(4) is repealed and the following substituted—

“(4) For the purpose of hearing and determining an appeal—

(a) the Board comprises 3 or more members of the panel as follows—

(i) the chairman or a deputy chairman nominated by the chairman; and

(ii) at least 2 more members of the panel nominated by the chairman;

(b) the member mentioned in paragraph (a)(i) is to preside at the hearing;

(c) the clerk must summon the members mentioned in paragraph (a)(i) and (ii) to attend meetings of the Board at which the appeal is to be heard;

(d) the quorum for a meeting of the Board hearing the appeal is 3 members; and

(e) a matter arising at a meeting of the Board is determined by a majority of votes of the members present and voting on the matter and, if there is an equality of votes, the member presiding has a casting vote in addition to his or her original vote.”.

(3) Section 65(7) is repealed and the following substituted—

“(7) If a person ceases to be the chairman, a deputy chairman or a member of the panel and, at the time of that event, the person is or has been involved in the hearing or determination of an appeal by the Board, that person may continue to—

- (a) hear and determine the appeal; or
- (b) perform any other function as a member of the Board in relation to the appeal in accordance with section 68(2C) or 69(1) or (5) until the appeal is finally disposed of by the Board.”.

10. Right of appeal to the Board of Review

Section 66(1A) is amended by repealing “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 1971.”.

11. Section added

The following is added—

“68A. Power of Board of Review to correct clerical mistakes and other errors

The Board of Review may correct—

- (a) any clerical mistake in any decision of the Board made in relation to an appeal; or
- (b) any error in any decision of the Board arising from any accidental slip or omission.”.

PART 4

MISCELLANEOUS AND MINOR AMENDMENTS TO INLAND REVENUE ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Division 1—Inland Revenue Ordinance

12. Provisions regarding payment of tax

(1) Section 71(7)(d) of the Inland Revenue Ordinance (Cap. 112) is amended by repealing everything after “under paragraph (c),” and substituting—

“the Commissioner must repay to the holder of the certificate—

- (i) the principal value represented by the certificate or part of the certificate; and
- (ii) the interest on that value, calculated in accordance with the rules from the date of issue of the certificate to the date of the final determination of the objection or appeal; and”.

(2) Section 71(11) is amended by repealing “the rate fixed by the Chief Justice by notice in the Gazette under section 50” and substituting “the rate determined by the Chief Justice by order under section 50(1)(b)”.

13. Penalties for failure to make returns, making incorrect returns, etc.

(1) Section 80(1) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 3” and substituting “commits an offence and is liable on conviction to a fine at level 3”.

(2) Section 80(1A) is amended by repealing “shall be guilty of any offence: Penalty a fine at level 6” and substituting “commits an offence and is liable on conviction to a fine at level 6”.

(3) Section 80(1AB) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 3” and substituting “commits an offence and is liable on conviction to a fine at level 3”.

(4) Section 80(2) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 3” and substituting “commits an offence and is liable on conviction to a fine at level 3”.

(5) Section 80(2B) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 4” and substituting “commits an offence and is liable on conviction to a fine at level 4”.

(6) Section 80(2C) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 6” and substituting “commits an offence and is liable on conviction to a fine at level 6”.

14. Breach of secrecy and other matters to be offences

(1) Section 81 is amended by renumbering it as section 81(1).

(2) Section 81(1) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 5” and substituting “commits an offence and is liable on conviction to a fine at level 5”.

(3) Section 81 is amended by adding—

“(2) Proceedings in respect of an offence under this section must not be commenced after 6 years from the commission of the offence.

(3) Subsection (2) applies only to an offence committed on or after the commencement of the Inland Revenue (Amendment) (No. 2) Ordinance 2009 (of 2009).”.

15. Penal provisions relating to fraud, etc.

(1) Section 82(1) is amended by repealing everything after paragraph (g) and substituting—

“commits an offence.”.

(2) Section 82 is amended by adding—

“(1A) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction to—

(i) a fine at level 3;

(ii) a further fine of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence has not been detected; and

(iii) imprisonment for 6 months; and

(b) on indictment to—

(i) a fine at level 5;

(ii) a further fine of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence has not been detected; and

(iii) imprisonment for 3 years.”.

16. Appeals against assessment to additional tax to Board of Review

Section 82B(3) is amended by adding “68A,” after “68,”.

17. Transitional provisions

(1) Section 89(2)(a) is amended by repealing “; and” and substituting a full stop.

(2) Section 89(2)(b) is repealed.

18. Allowances

Schedule 4 is amended, under the subheading “For the years of assessment 1998/99 to 2002/03 inclusive”, in the second column, by repealing “or percentage”.

19. Schedule 6 amended

Item 9 of Part II of Schedule 6 is repealed and the following substituted—

“9. The Council of Europe Development Bank (formerly known as The Council of Europe Social Development Fund).”.

**20. Transitional provisions relating to the
Inland Revenue (Amendment)
(No. 2) Ordinance 1993**

Schedule 7 is repealed.

**Division 2—Specification of Arrangements (Government of
the Kingdom of Belgium Concerning Air
Services) (Double Taxation) Order****21. Repeal**

The Specification of Arrangements (Government of the Kingdom of Belgium Concerning Air Services) (Double Taxation) Order (Cap. 112 sub. leg. U) is repealed.

PART 5**CONSEQUENTIAL AMENDMENTS TO TAX RESERVE CERTIFICATES ORDINANCE
AND ITS SUBSIDIARY LEGISLATION****Division 1—Tax Reserve Certificates Ordinance****22. Power of Commissioner to issue tax reserve
certificates and maintain accounts**

(1) Section 3(1A) of the Tax Reserve Certificates Ordinance (Cap. 289) is repealed and the following substituted—

“(1A) If a person applies for the purchase of a certificate other than pursuant to the proviso to section 71(2) of the Inland Revenue Ordinance (Cap. 112), the person (“applicant”) must make an application to the Commissioner for an account to be maintained in the applicant’s name unless an account is already being maintained in the applicant’s name.”.

(2) Section 3(1AB) is repealed and the following substituted—

“(1AB) If an account is maintained in the name of an applicant, the Commissioner, for each payment received from the applicant for the purchase of a certificate in the circumstances mentioned in subsection (1A), must make an entry in the account instead of issuing a certificate for the payment.”.

Division 2—Tax Reserve Certificates (Fourth Series) Rules

23. Schedule 1 amended

Schedule 1 to the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A) is amended, in Form 2, in the second paragraph of the “*REVERSE OF FORM*”—

- (a) in subparagraph (b), by repealing “; and/or” and substituting a full stop;
- (b) by repealing subparagraph (c).

Explanatory Memorandum

The object of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (“the Ordinance”) to improve the operation of the Board of Review and the administration of the Ordinance. The Bill contains 5 parts.

2. Part 1 provides for the short title of the Bill (when enacted).

3. The Bill contains no commencement clause. The Bill (when enacted) will come into operation on the day on which it is published in the Gazette.

4. Part 2 contains amendments relating to the administration of the Ordinance—

- (a) Clause 2 adds the definitions of “Board of Review” and “common parts” to section 2(1) of the Ordinance. The clause also amends the definition of “owner”.
- (b) Clause 3 amends the Chinese text of section 3(1)(c) of the Ordinance to improve the Chinese rendition of “a majority of votes”.
- (c) Clause 4 amends section 16(2)(e) of the Ordinance to allow for the deduction from assessable profits interest payable on capital expenditure incurred on the provision of machinery or plant for research and development, prescribed fixed assets and environmental protection machinery.

- (d) Clause 5 removes certain obsolete wording from section 18D(2) of the Ordinance.
 - (e) Clause 6 rectifies a minor error in the Chinese text of section 26C(1) of the Ordinance.
 - (f) Clause 7 amends section 26E of the Ordinance to empower an assessor to make an additional assessment of the tax payable in consequence of a taxpayer's revocation of a claim for deduction of home loan interest after the statutory period of 6 years provided under section 60(1) of the Ordinance. The power may be exercised within 2 years of the revocation of the claim.
 - (g) Clause 8 amends section 51B of the Ordinance to align the drafting style with the current drafting style of offence provisions.
5. Part 3 contains amendments relating to the Board of Review—
- (a) Clause 9 amends section 65(4) of the Ordinance to empower the chairman of the Board of Review (instead of the Chief Secretary for Administration) to nominate members to attend meetings of the Board at which appeals are to be heard. That clause also amends section 65(7) of the Ordinance to empower a person who ceases to be the chairman, a deputy chairman or a member of the panel to continue to perform certain functions relating to an appeal that the person was involved before, that is—
 - (i) to review and set aside an order for dismissal of an appeal and proceed to hear the appeal under section 68(2C) of the Ordinance;
 - (ii) to consider an application by an appellant or the Commissioner of Inland Revenue (“the Commissioner”) requiring the Board to state a case on a question of law for the opinion of the Court of First Instance under the proviso to section 69(1) of the Ordinance; and
 - (iii) if the Court of First Instance remits the stated case to the Board under section 69(5) of the Ordinance, to revise the assessment as the opinion of the court may require.
 - (b) Clause 10 repeals an obsolete provision in section 66(1A) of the Ordinance.
 - (c) Clause 11 adds a new section 68A to the Ordinance. New section 68A empowers the Board of Review to correct clerical mistakes or other errors (arising from any accidental slip or omission) in the decisions of the Board.

6. Part 4 contains miscellaneous and minor amendments to the Ordinance and its subsidiary legislation—

- (a) Clause 12 amends section 71(7)(d) of the Ordinance to empower the Commissioner to refund to holders of tax reserve certificates the principal value of the certificate together with interest without requiring the holders to return the certificate to the Commissioner where the certificate has not been accepted as tax payment. The clause also amends section 71(11) of the Ordinance to clarify that the rate of interest is the rate determined by the Chief Justice by order under section 50(1)(b) of the District Court Ordinance (Cap. 336).
- (b) Clauses 13, 14 and 15 respectively amend sections 80, 81 and 82 of the Ordinance to align the drafting style with the current drafting style of offence provisions. Under the current section 81 of the Ordinance, the period within which prosecution of an offence in respect of breach of secrecy may be brought is 6 months by virtue of section 26 of the Magistrates Ordinance (Cap. 227). That section 81 is amended to extend that period from 6 months to 6 years and the amendment applies only to offences committed on or after the commencement of the Bill (when enacted).
- (c) Clause 16 amends section 82B(3) of the Ordinance so that the new section 68A (relating to the Board's power to correct clerical mistakes and other errors) has effect with respect to appeals against additional tax under section 82B.
- (d) Clause 17 repeals section 89(2)(b) of the Ordinance which is obsolete.
- (e) Clause 18 repeals the unnecessary reference of "or percentage" in Schedule 4 to the Ordinance.
- (f) Clause 19 updates the name of "The Council of Europe Social Development Fund" as specified in Schedule 6 to the Ordinance to "The Council of Europe Development Bank".
- (g) Clause 20 repeals Schedule 7 to the Ordinance which is no longer necessary.
- (h) Clause 21 repeals the Specification of Arrangements (Government of the Kingdom of Belgium Concerning Air Services) (Double Taxation) Order (Cap. 112 sub. leg. U) which has ceased to have effect.

7. Part 5 contains consequential amendments to the Tax Reserve Certificates Ordinance (Cap. 289) and its subsidiary legislation to introduce changes in line with the amendment made to section 71(7)(d) of the Inland Revenue Ordinance (see clause 12).