

A BILL

To

Amend the Inland Revenue Ordinance to give effect to 2 proposals concerning tax concessions in the Budget introduced by the Government for the 2010–2011 financial year.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2010.

2. Ascertainment of chargeable profits

Section 16(2)(e)(i)(D) of the Inland Revenue Ordinance (Cap. 112) is amended by adding “or environment-friendly vehicle” after “machinery”.

3. Definitions and general provisions applicable to this section and sections 16I, 16J and 16K

(1) Section 16H(1) is amended by repealing the definition of “commencement date”.

(2) Section 16H(1) is amended by repealing the definition of “environmental protection facility” and substituting—

““environmental protection facility” (環保設施) means—

- (a) any environmental protection machinery;
- (b) any environmental protection installation; or
- (c) any environment-friendly vehicle;”.

(3) Section 16H(1) is amended, in the definition of “specified capital expenditure”, in paragraph (a)(i), by adding “or environment-friendly vehicle” after “machinery”.

- (4) Section 16H(1) is amended by adding—
““environment-friendly vehicle” (環保車輛)—
(a) means any vehicle that is specified in Part 3 of Schedule 17; but
(b) does not include any vehicle in which any person holds rights as a lessee under a lease;”.

4. Deductions for specified capital expenditure incurred in relation to environmental protection facilities

Section 16I(2) is amended by adding “or environment-friendly vehicle” after “machinery”.

5. Proceeds of sale of environmental protection facilities to be treated as trading receipts

- (1) Section 16J is amended by adding—

“(2A) If any environment-friendly vehicle in respect of which a deduction has been allowed under section 16I in ascertaining the profits from a trade, profession or business is sold before the cessation of the trade, profession or business, the relevant proceeds of sale, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, are to be treated as trading receipts of the trade, profession or business, arising in or derived from Hong Kong and accruing at the time of the sale.”.

(2) Section 16J(4) is amended by adding “, (2A)” after “subsection (2)” where it twice appears.

(3) Section 16J(5) is amended by repealing everything after “and (3),” and substituting—

“if any environmental protection machinery or environmental protection installation in respect of which a deduction has been allowed to a person under section 16I in ascertaining the profits from a trade, profession or business is subsequently destroyed—

- (a) the machinery or installation is deemed to have been sold immediately before the destruction; and
(b) any insurance money, other compensation of any description and any money derived from the remains of the machinery or installation that are received by the person in respect of the destruction are to be treated as the proceeds of that sale.”.

(4) Section 16J is amended by adding—

“(5A) For the purposes of subsection (2A), if an environment-friendly vehicle in respect of which a deduction has been allowed to a person under section 16I in ascertaining the profits from a trade, profession or business is destroyed or stolen before the cessation of the trade, profession or business—

(a) the vehicle is deemed to have been sold immediately before it was destroyed or stolen; and

(b) any insurance money, other compensation of any description and any money derived from the remains of the vehicle that are received by the person in respect of the destruction or theft are to be treated as the proceeds of that sale.

(5B) For the purposes of subsection (2A), if an environment-friendly vehicle in respect of which a deduction has been allowed to a person under section 16I in ascertaining the profits from a trade, profession or business has not been sold, destroyed or stolen before the cessation of the trade, profession or business—

(a) the vehicle is deemed to have been sold immediately before the cessation; and

(b) the person is deemed to have received immediately before the cessation the proceeds of that sale.

(5C) The amount of proceeds of sale deemed to have been received under subsection (5B)(b) is such amount as the Commissioner may consider the vehicle would have realized had it been sold in the open market at the time of cessation.

(5D) If the environment-friendly vehicle referred to in subsection (5B) is sold, destroyed or stolen on, or within 12 months after, the cessation of the trade, profession or business, the person may claim an adjustment to the amount deemed to have been received under subsection (5C).

(5E) Despite section 70, an assessor may make any necessary correction to any assessment due to an adjustment under subsection (5D).”.

6. Environmental protection facilities owned as at commencement date

(1) Section 16K(1) is amended by repealing everything after “environmental protection machinery” and substituting “or any vehicle that is an environment-friendly vehicle, that person is, for the purposes of section 16I, deemed to have incurred, on the commencement date, specified capital expenditure in relation to that machinery, plant or vehicle.”.

(2) Section 16K(3) is amended by repealing “or plant” where it twice appears and substituting “, plant or vehicle”.

(3) Section 16K(3)(b) is amended by repealing “37A(3)” and substituting “37A(2)”.

(4) Section 16K is amended by adding—

“(9) In this section, “commencement date” (生效日期)—

(a) in relation to any machinery, plant, building or structure, means 27 June 2008;

(b) in relation to any vehicle, means the date on which the Inland Revenue (Amendment) Ordinance 2010 (of 2010) came into operation.”.

7. Section 92 added

The following is added—

“92. Reduction of taxes for year of assessment 2009/10

Schedule 20 contains provisions relating to the reduction of salaries tax and tax under personal assessment for the year of assessment commencing on 1 April 2009.”.

8. Environmental protection facilities

Schedule 17 is amended by adding—

“PART 3

ENVIRONMENT-FRIENDLY VEHICLES

1. Any vehicle qualified for remission of first registration tax (as defined by section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)) under the following schemes administered by the Environmental Protection Department—

(a) the Tax Incentives Scheme for Environment-friendly Commercial Vehicles;

(b) the Tax Incentives Scheme for Environment-friendly Petrol Private Cars.

2. Any motor vehicle (as defined by section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)) that is capable of drawing energy from both of the following on-vehicle sources of stored energy or power for mechanical propulsion—

- (a) consumable fuel;
- (b) battery, capacitor, flywheel, generator or other electrical energy or power storage device.

3. Any motor vehicle (as defined by section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)) that is solely propelled by electric power and does not emit any exhaust gas.”.

9. Schedule 20 added

The following is added—

“SCHEDULE 20

[s. 92]

REDUCTION OF TAXES FOR YEAR OF ASSESSMENT 2009/10

1. Salaries tax

The amount of salaries tax charged under Part III of this Ordinance for the year of assessment commencing on 1 April 2009 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
- (b) \$6,000,

whichever is the lesser.

2. Tax under personal assessment

(1) The amount of tax charged under Part VII of this Ordinance for the year of assessment commencing on 1 April 2009 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
- (b) \$6,000,

whichever is the lesser.

(2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2009, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).”.

Explanatory Memorandum

The purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (“the Ordinance”) to give effect to the following proposals in the Budget introduced by the Government for the 2010–2011 financial year—

- (a) to reduce the amounts of salaries tax and tax under personal assessment payable for the year of assessment 2009/10;
 - (b) to accelerate profits tax deduction for capital expenditure incurred on the provision of environment-friendly vehicles.
2. Clause 2 amends section 16(2)(e)(i)(D) of the Ordinance to allow for the deduction from assessable profits interest payable on capital expenditure incurred on the provision of environment-friendly vehicles.
3. Clause 3 amends section 16H(1) of the Ordinance to add a definition of “environment-friendly vehicle”, to amend the definitions of “environmental protection facility” and “specified capital expenditure”, and to repeal the definition of “commencement date”.
4. Clause 4 amends section 16I of the Ordinance to allow for the deduction from assessable profits the capital expenditure incurred on the provision of environment-friendly vehicles.
5. Clause 5 amends section 16J of the Ordinance to provide that if any environment-friendly vehicle for which deduction has been allowed under section 16I of the Ordinance is sold, the proceeds of the sale are to be treated as trading receipts. New provisions are also added by this clause to provide that if an environment-friendly vehicle for which deduction has been allowed under section 16I of the Ordinance has not been sold, destroyed or stolen before the cessation of the trade, profession or business concerned, that vehicle is deemed to have been sold immediately before the cessation.
6. Clause 6 amends section 16K of the Ordinance to allow capital expenditure incurred on the provision of an environment-friendly vehicle before the commencement date of this Bill (when enacted) to be deducted under section 16I of the Ordinance.
7. Clauses 7 and 9 respectively add section 92 and Schedule 20 to the Ordinance to reduce the salaries tax and tax under personal assessment payable for the year of assessment 2009/10 by 75%, subject to a maximum of \$6,000 in each case.
8. Clause 8 amends Schedule 17 to the Ordinance to specify environment-friendly vehicles.