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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

Inland Revenue (Amendment) Bill 2015

INTRODUCTION

At the meeting of the Executive Council on 17 March 2015, the Council **ADVISED** and the Chief Executive **ORDERED** that the Inland Revenue (Amendment) Bill 2015 ("the Bill"), at **Annex A**, should be introduced into the Legislative Council ("LegCo") to extend the profits tax exemption for offshore funds to private equity funds.

A

JUSTIFICATIONS

Benefits to the Financial Services Industry

2. The asset and wealth management business is a fast-growing area within the financial services industry. At the end of 2013, the combined fund management business in Hong Kong achieved a record high of HK$16,007 billion, representing a year-on-year growth of 27% from 2012[1]. This puts us among the top asset management hubs in Asia. Private equity is an important component of our asset management industry. The total capital under management in private equity funds in Hong Kong reached US$114.6 billion in end 2014, recording a year-on-year increase of 16%[2], accounting for 21% of Asia's total capital under management in private equity.

3. By providing clear tax exemption to transactions conducted by offshore private equity funds in respect of eligible overseas portfolio companies, we hope to attract more private equity fund managers to set up or expand their business in Hong Kong, hire local asset management, investment and advisory services, which will be conducive to the further

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[1] Information from the "Fund Management Activities Survey 2013" published by the Securities and Futures Commission.

[2] Information from an industry journal.

development of our asset management industry. This will in turn drive demand for other relevant professional services, such as business consulting, tax, accounting and legal services.

Current Tax Exemption Applicable to Offshore Funds

4. We amended the Ordinance in 2006 to provide for profits tax exemption to offshore funds as with other major international financial centres. After enactment of the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 (4 of 2006), under the exemption provisions, non-resident entities are exempt from tax for profits derived from "specified transactions" carried out through or arranged by a "specified person" and "transactions incidental to the carrying out of the specified transactions".

5. The scope of "specified transactions" covers those transactions an offshore fund would typically perform in Hong Kong, including transactions in securities, futures contracts, foreign exchange contracts, foreign currencies, exchange-traded commodities and transactions consisting in making deposits otherwise than by way of a money-lending business. As stated in paragraph 4 above, to qualify for tax exemption, the "specified transactions" must be carried out by "specified persons", which include corporations and authorized financial institutions licensed or registered under the Securities and Futures Ordinance ("SFO") (Cap. 571) to carry out such transactions.

6. The current definition of "securities" does not generally include securities of a private company. In other words, offshore private equity funds that make use of the services of "specified persons" to derive profits from transactions in securities of private companies could be subject to Hong Kong profits tax. We also note that private equity funds may not necessarily be managed by corporations licensed by the Securities and Futures Commission ("SFC") under the SFO.

Our Proposal

(a) Extending tax exemption to offshore private equity funds

7. We propose to amend the definition of "securities" such that a transaction in securities in an eligible private company (i.e. portfolio company) will not be excluded from a "specified transaction". To

qualify for tax exemption, a portfolio company should be a private company incorporated outside Hong Kong. This aims to prevent abuse by local companies by simply converting their taxable profits to non-taxable income via an offshore fund structure. It is also required that the portfolio company, at all times within the three years before a transaction in securities in the portfolio company —

(a) did not carry on any business through or from a permanent establishment in Hong Kong;

(b) falls within either of the following descriptions—

(i) it did not hold (whether directly or indirectly) share capital (however described) in one or more private companies carrying on any business through or from a permanent establishment in Hong Kong;

(ii) it held such share capital but the aggregate value of the holding of the capital is equivalent to not more than 10% of the value of its own assets; and

(c) falls within either of the following descriptions—

(i) it neither held immovable property in Hong Kong, nor held (whether directly or indirectly) share capital (however described) in one or more private companies with direct or indirect holding of immovable property in Hong Kong;

(ii) it held such immovable property or share capital (or both), but the aggregate value of the holding of the property and capital is equivalent to not more than 10% of the value of its own assets.

8. We propose to set a clear timeframe that a portfolio company should meet all the conditions (paragraph 7(a)-(c) above) at all times within the three years before a transaction in securities in the portfolio company to qualify for tax exemption. This would provide certainty for private equity funds.

9. Regarding paragraph 7(a), we propose not to allow an offshore portfolio company to carry on business in Hong Kong. However, the offshore portfolio company may have some insignificant business

activities in Hong Kong without giving rise to significant profits tax liability under the provisions of the Ordinance. The Bill therefore allows that if the place of business is for carrying on business activities of a purely preparatory or auxiliary character (meaning the use of facilities solely for storage, display or delivery of goods or merchandise belonging to the company; the maintenance of a stock of goods or merchandise belonging to the company solely for storage, display or delivery, or for processing by another business; and the maintenance of a fixed place of business solely for purchasing goods or merchandise or for collecting information, for the company), such a place will not be considered as a permanent establishment. To prevent abuse of the exemption, subject to a de minimis rule, the portfolio company is not allowed to hold share capital in one or more other private companies carrying on any business through or from a permanent establishment in Hong Kong (paragraph 7(b)). Regarding paragraph 7(c), we propose that, subject to a de minimis requirement, a portfolio company eligible for tax exemption should not hold any immovable property in Hong Kong to prevent local entities converting gains from investments in real estate to non-taxable income via an offshore fund structure.

10. To prevent abuse or round-tripping by onshore private equity funds and other resident entities disguised as offshore funds, the existing deeming provisions will equally apply to offshore private equity funds. That means a resident person (alone or jointly with his associates) holding a beneficial interest of 30% or more in a tax-exempt private equity fund will be deemed to have derived assessable profits in respect of profits earned by the fund from specified transactions and incidental transactions in Hong Kong.

(b) Allowing offshore qualifying private equity funds to enjoy tax exemption

11. To allow offshore private equity funds which are not managed by SFC licensees to also enjoy tax exemption, we propose to amend the existing exemption provisions such that an offshore private equity fund carrying out a "specified transaction" could be eligible for tax exemption in respect of profits from that transaction if either of the following conditions is satisfied –

(a) the specified transaction has been carried out through or arranged by a specified person;

(b) the offshore private equity fund conducting the specified transaction is a "qualifying fund".

12. In order to be a "qualifying fund" and hence be eligible for tax exemption, the following conditions must be met -

(a) at all times after the final closing of sale of interests –

(i) the number of investors exceeds 4; and

(ii) the capital commitments made by investors exceed 90% of the aggregate capital commitments; and

(b) the portion of the net proceeds arising out of the transactions of the fund to be received by the originator and the originator's associates, after deducting the portion attributable to their capital contributions (which is proportionate to that attributable to the investors' capital contributions), is agreed under an agreement governing the operation of the fund to be an amount not exceeding 30% of the net proceeds.

13. The above proposed thresholds reflect the typical characteristics of a private equity fund. For example, a private equity fund is typically a collective investment vehicle (i.e. an investment vehicle with multiple investors) and not simply a vehicle majority-owned by the fund manager with other investors holding only nominal interest. These aim to ensure that only *bona fide* private equity funds will be eligible for tax exemption.

14. Similarly, for a "qualifying fund" to be exempt from tax in respect of profits derived from transactions in securities in its portfolio company, the relevant portfolio company should meet the conditions as set out in paragraph 7 above. The existing deeming provisions as mentioned in paragraph 10 will also apply.

(c) Allowing exemption from the payment of tax for Special Purpose Vehicles ("SPVs")

15. Private equity funds may use multi-level holding structures to accommodate preferences of fund investors. For example, private equity funds generally set up one or multiple-tier SPVs to hold their portfolio companies. We propose to -

(a) amend the definition of "securities" such that a transaction in securities in an SPV will not be excluded from the definition of a "specified transaction", so that offshore private equity fund will be exempt from tax in respect of profits derived from the transaction in the securities in an eligible portfolio company through disposal of securities in an SPV; and

(b) add an express provision to give exemption from the payment of tax to an SPV in respect of profits derived from a transaction in securities in an interposed SPV or an eligible offshore portfolio company.

16. We further propose that the SPV, which is a purpose-built structuring tool of private equity funds, could be a corporation, partnership, trustee of a trust estate or any other entity incorporated, registered or appointed in or outside Hong Kong. It can be wholly or partially owned by a non-resident person and should be established solely for the purpose of holding, directly or indirectly, and administering one or more eligible portfolio companies.

17. A similar deeming provision as in paragraph 10 is proposed, such that when a resident person (alone or jointly with his associates) holds a beneficial interest of 30% or more in a tax-exempt private equity fund, and the fund has a beneficial interest in an SPV that is exempt from the payment of tax in respect of its assessable profits from certain transactions, the resident person will be deemed to have derived assessable profits in respect of profits earned by the SPV.

THE BILL

18. The main provisions of the Bill are as follows -

(a) **Clause 4** amends section 20AC of the Ordinance to -

(i) exempt a non-resident person that is a qualifying fund from profits tax in respect of assessable profits of the person arising from certain transactions;

(ii) provide that section 20AC does not apply to an SPV ; and

(iii) provide for the application of the amended section 20AC.

Please refer to paragraphs 7-10 above under "Extending tax exemption to offshore private equity funds" and paragraphs 11-14 above under "Allowing offshore qualifying private equity funds to enjoy tax exemption".

(b) **Clause 5** adds a new section 20ACA to the Ordinance. The new section exempts an SPV, which may be a resident person or a non-resident person, from the payment of tax in respect of assessable profits arising from certain transactions concerning an interposed SPV, or an excepted private company, as defined by that section (please refer to paragraph 15(b) above under "Allowing exemption from the payment of tax for Special Purpose Vehicles").

(c) **Clause 8** adds a new section 20AF to the Ordinance. The new section provides that in certain circumstances, the assessable profits of an SPV that is held by a non-resident person and exempt from the payment of tax under the new section 20ACA, are to be regarded as the assessable profits of a resident person (please refer to paragraph 17 above under "Allowing exemption from the payment of tax for Special Purpose Vehicles").

(d) **Clause 11** amends Schedule 16 to the Ordinance. The definition of securities in section 1 of Part 2 of that Schedule is amended so that interests such as shares and debentures of, or issued by, SPVs and excepted private companies fall within the definition (please refer to paragraph 7 above under "Extending tax exemption to offshore private equity funds" and paragraph 15(a) under "Allowing exemption from the payment of tax for Special Purpose Vehicles").

B The existing provisions being amended are at **Annex B.**

LEGISLATIVE TIMETABLE

19. The legislative timetable will be as follows –

Publication in the Gazette	20 March 2015
First Reading and commencement of Second Reading debate	25 March 2015
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

COMMENCEMENT

20. The Bill will come into operation on the day on which the enacted Inland Revenue (Amendment) Ordinance 2015 is published in the Gazette.

IMPLICATIONS OF THE PROPOSAL

21. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the existing provisions of the Ordinance. There are no significant sustainability implications, and no productivity, environmental, family or civil service implications.

22. On financial implications, since Hong Kong adopts the territorial basis of taxation whereby only income sourced from Hong Kong is subject to tax, offshore private equity funds' profits derived from operations carried out outside Hong Kong would not be taxed in Hong Kong. Hence, the actual cost to revenue of this proposal should not be significant. On economic implications, the proposal will help attract more offshore private equity fund managers to set up or expand their business in Hong Kong, thereby generating demand for local asset management, investment and advisory services, as well as other relevant professional services. This would help strengthen Hong Kong's position as an international asset management centre and foster the further development of our financial services sector as a whole.

PUBLIC CONSULTATION

23. We have consulted the industry on the legislative proposal to extend profits tax exemption for offshore funds to private equity funds. The industry generally welcomes the proposal and urges for its early implementation. We briefed the LegCo Panel on Financial Affairs on the legislative proposal on 5 January 2015. Members generally supported the introduction of a Bill to implement the proposal.

PUBLICITY

24. We will issue a press release upon the gazettal of the Bill on 20 March 2015, and arrange a spokesperson to answer media enquiries.

ENQUIRIES

25. Enquiries relating to this brief can be directed to Ms Joyce Ho, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2810 2054.

Financial Services Branch
Financial Services and the Treasury Bureau
18 March 2015

Inland Revenue (Amendment) Bill 2015

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A BILL

To

Amend the Inland Revenue Ordinance to extend the profits tax exemption for non-resident persons to include transactions in securities of, or issued by, certain private companies incorporated outside Hong Kong; to exempt non-resident persons that are qualifying funds from profits tax; to exempt special purpose vehicles from the payment of profits tax; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2015.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 12.

3. Section 20AB amended (interpretation of sections 20AC, 20AD and 20AE and Schedule 15)

(1) Section 20AB, heading—

Repeal

everything after "**20AC,**"

Substitute

"**20ACA, 20AD, 20AE and 20AF and Schedules 15 and 15A**".

(2) Section 20AB(1)—

Repeal

everything after "20AC,"

Substitute

"20ACA, 20AD, 20AE and 20AF and Schedules 15 and 15A.".

(3) Section 20AB(4)(b)—

Repeal

"or".

(4) Section 20AB(4)(c)—

Repeal the full stop

Substitute

"; or".

(5) After section 20AB(4)(c)—

Add

"(d) where the other person is an entity that does not fall within any of paragraphs (a), (b) and (c), the person has any of the ownership interests in the entity.".

(6) Section 20AB(5)(b)—

Repeal

"or".

(7) Section 20AB(5)(c)(ii)—

Repeal

"income,"

Substitute

"income; or".

(8) After section 20AB(5)(c)—

Add

"(d) where the second person is an entity that does not fall within any of paragraphs (a), (b) and (c), the first person has any of the ownership interests in the entity,".

4. Section 20AC amended (certain profits of non-resident persons exempt from tax)

(1) Section 20AC, Chinese text, heading—

Repeal

"豁免繳稅"

Substitute

"獲稅項豁免".

(2) Section 20AC(1)—

Repeal

"(3) and (4)"

Substitute

"(3), (4) and (5A)".

(3) Section 20AC(1), Chinese text—

Repeal

"繳交".

(4) Section 20AC(1), Chinese text—

Repeal

"稅款"

Substitute

"稅項".

(5) Section 20AC(2)—

Repeal

everything after "this subsection"

Substitute

"if—

(a) the transaction is a transaction specified in Part 1 of Schedule 16; and

(b) either of the following conditions is satisfied—

(i) the transaction has been carried out through or arranged by a specified person;

(ii) the non-resident person is a qualifying fund.".

(6) After section 20AC(5)—

Add

"(5A) This section does not apply to a special purpose vehicle as defined by section 20ACA(2) that is a non-resident person.

(5B) To avoid doubt, subsection (2) as in force on the date of commencement of the Inland Revenue (Amendment) Ordinance 2015 (of 2015) applies to transactions carried out within the period from 1 April 2015 to the day before that date of commencement.".

(7) Section 20AC—

Repeal subsection (6)

Substitute

"(6) In this section—

aggregate capital commitment (資本認繳總額), in relation to a fund, means the total of the capital commitments made by the investors, the originator and the originator's associates;

associate (相聯者)—

(a) in relation to a natural person, means—

(i) a relative of the person;

(ii) a partner of the person;

(iii) if a partner of the person is a natural person, a relative of that partner;

(iv) a partnership in which the person is a partner;

(v) a corporation controlled by—

(A) the person;

(B) a relative of the person;

(C) a partner of the person;

(D) if a partner of the person is a natural person, a relative of that partner; or

(E) a partnership in which the person is a partner; or

(vi) a director or principal officer of the corporation mentioned in subparagraph (v);

(b) in relation to a corporation, means—

(i) a person who controls the corporation;

(ii) a partner of the person mentioned in subparagraph (i);

(iii) if the person mentioned in subparagraph (i) is a natural person, a relative of that person;

(iv) if the partner mentioned in subparagraph (ii) is a natural person, a relative of that partner;

(v) a director or principal officer of—

(A) the corporation; or

(B) an associated corporation of the corporation;

(vi) a relative of the director or principal officer mentioned in subparagraph (v);

(vii) a partner of the corporation;

(viii) if a partner of the corporation is a natural person, a relative of that partner;

(ix) a partnership in which the corporation is a partner; or

(x) an associated corporation of the corporation;

(c) in relation to a partnership, means—

(i) a partner in the partnership;

(ii) if a partner in the partnership is a natural person, a relative of that partner;

(iii) if a partner in the partnership is another partnership—

(A) a partner in that other partnership (***Partner A***); or

(B) a partner with that other partnership in any other partnership (***Partner B***);

(iv) if Partner A is a partnership, a partner in Partner A (***Partner C***);

(v) if Partner B is a partnership, a partner in Partner B (***Partner D***);

(vi) if Partner A, Partner B, Partner C or Partner D is a natural person, a relative of that partner;

(vii) a corporation controlled by—

(A) the partnership;

(B) a partner in the partnership;

(C) if a partner in the partnership is a natural person, a relative of that partner; or

(D) a partnership in which the partnership is a partner;

(viii) a director or principal officer of the corporation mentioned in subparagraph (vii);

(ix) a corporation of which a partner in the partnership is a director or principal officer; or

(x) an associated partnership of the partnership;

associated corporation (相聯法團), in relation to a corporation, means—

(a) another corporation over which the corporation has control;

(b) another corporation that has control over the corporation; or

(c) another corporation that is under the control of the same person as is the corporation;

associated partnership (相聯合夥), in relation to a partnership, means—

(a) another partnership over which the partnership has control;

(b) another partnership that has control over the partnership; or

(c) another partnership that is under the control of the same person as is the partnership;

capital commitment (資本認繳), in relation to a fund, means a commitment—

(a) that is in the form of an amount of money payable by an investor, the originator or the originator's associate to the fund under an agreement governing the operation of the fund; and

(b) in respect of which the originator may make capital calls from time to time according to the terms of the agreement;

control (控制)—

(a) in relation to a corporation, means the power of a person to secure—

(i) by means of the holding of shares or the possession of voting power in or in relation to that corporation or any other corporation; or

(ii) by virtue of any powers conferred by the articles of association or other document regulating that corporation or any other corporation,

that the affairs of that corporation are conducted in accordance with the wishes of the person;

(b) in relation to a partnership, means the power of a person to secure—

(i) by means of the holding of interests or the possession of voting power in or in relation to that partnership or any other partnership; or

(ii) by virtue of any powers conferred by the partnership agreement or other document regulating that partnership or any other partnership,

that the affairs of that partnership are conducted in accordance with the wishes of the person;

final closing of sale of interests (權益出售最終截止日), in relation to a fund, means the date on which the originator last accepts subscriptions from investors for making capital commitments;

investor (投資者), in relation to a fund, means a person, other than the originator or the originator's associates, who makes capital commitment to the fund;

net proceeds (淨收益), in relation to a fund at a particular time, means an amount calculated by—

(a) adding together—

(i) the sum of the cumulative distributions received by the investors, the originator and the originator's associates from the fund; and

(ii) the value at that time of all assets, if any, held by the fund; and

(b) subtracting from the sum calculated under paragraph (a) the cumulative capital contributions of the investors, the originator and the originator's associates;

originator (發起人), in relation to a fund, means a person who directly or indirectly—

(a) originates or sponsors the fund; and

(b) has the power to make investment decisions on behalf of the fund;

principal officer (主要職員), in relation to a corporation, means—

(a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or

(b) a person so employed who, under the immediate authority of a director of the corporation or a

person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

qualifying fund (符合資格的基金) means a fund that falls within the following descriptions—

(a) at all times after the final closing of sale of interests—

(i) the number of investors exceeds 4; and

(ii) the capital commitments made by investors exceed 90% of the aggregate capital commitments; and

(b) the portion of the net proceeds arising out of the transactions of the fund to be received by the originator and the originator's associates, after deducting the portion attributable to their capital contributions (which is proportionate to that attributable to the investors' capital contributions), is agreed under an agreement governing the operation of the fund to be an amount not exceeding 30% of the net proceeds;

relative (親屬), in relation to a person, means the spouse, parent, child, brother or sister of the person, and, in deducing such a relationship—

(a) an adopted child is to be regarded as a child of both the natural parents and the adopting parent; and

(b) a step child is to be regarded as a child of both the natural parents and any step parent;

specified person (指明人士)—

(a) in relation to a transaction carried out before 1 April 2003, means—

(i) a bank as defined by 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 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);

(b) in relation to a transaction carried out on or after 1 April 2003, means 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 as defined by Part 1 of Schedule 5 to that Ordinance.".

5. Sections 20ACA and 20ACB added

After section 20AC—

Add

"**20ACA. Certain profits of special purpose vehicles exempt from payment of tax**

(1) A special purpose vehicle is exempt, to an extent corresponding to the percentage of shares or interests that a non-resident person exempted under section 20AC(1) holds in the vehicle, from the payment of tax chargeable under this Part in respect of its assessable profits, if any, for any year of assessment commencing on or after 1 April 2015, from—

(a) transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, an interposed special purpose vehicle or an excepted private company;

(b) transactions in 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; and

(c) transactions in 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.

(2) In this section—

excepted private company (例外私人公司) means a private company incorporated outside Hong Kong that, at all times within the 3 years before a transaction falling within subsection (1)(a), (b) or (c) is carried out—

(a) did not carry on any business through or from a permanent establishment in Hong Kong;

(b) falls within either of the following descriptions—

(i) it did not hold (whether directly or indirectly) share capital (however described) in one or more private companies carrying on any business through or from a permanent establishment in Hong Kong;

(ii) it held such share capital, but the aggregate value of the holding of the capital is equivalent to not more than 10% of the value of its own assets; and

(c) falls within either of the following descriptions—

(i) it neither held immovable property in Hong Kong, nor held (whether directly or indirectly) share capital (however described) in one or more private companies with direct or indirect holding of immovable property in Hong Kong;

(ii) it held such immovable property or share capital (or both), but the aggregate value of the holding of the property and capital is equivalent to not more than 10% of the value of its own assets;

interposed special purpose vehicle (中間特定目的工具)—

(a) in relation to a special purpose vehicle that has an indirect beneficial interest in an excepted private company through an interposed person that is a special purpose vehicle, means the interposed person;

(b) in relation to a special purpose vehicle that has an indirect beneficial interest in an excepted private company through a series of 2 or more interposed persons that are special purpose vehicles, means any of the interposed persons;

permanent establishment (常設機構)—see section 20ACB;

private company (私人公司) means a company incorporated in or outside Hong Kong that is not allowed to issue any invitation to the public to subscribe for any shares or debentures of the company;

special purpose vehicle (特定目的工具) means a corporation, partnership, trustee of a trust estate or any other entity that—

(a) is wholly or partially owned by a non-resident person;

(b) is established solely for the purpose of holding, directly or indirectly, and administering one or more excepted private companies;

(c) is incorporated, registered or appointed in or outside Hong Kong;

(d) does not carry on any trade or activities except for the purpose of holding, directly or indirectly, and administering one or more excepted private companies; and

(e) is not itself an excepted private company.

20ACB. Permanent establishment of private company

(1) For a private company, a permanent establishment is a fixed place of business through which activities of the company are carried on (including a branch and a place of management).

(2) Subject to subsection (3), a private company is regarded as having a permanent establishment in Hong Kong if the company has an agent carrying on activities in Hong Kong who—

(a) has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the company; or

(b) has a stock of merchandise from which the agent regularly fills orders on behalf of the company.

(3) In relation to the business of the company as a whole, the activities mentioned in subsections (1) and (2) exclude—

(a) the use of facilities solely for storage, display or delivery of goods or merchandise belonging to the company;

(b) the maintenance of a stock of goods or merchandise belonging to the company solely for storage, display or delivery, or for processing by another business; and

(c) the maintenance of a fixed place of business solely for purchasing goods or merchandise or for collecting information, for the company.

(4) In this section—

private company (私人公司) has the meaning given by section 20ACA(2).".

6. Section 20AD substituted

Section 20AD—

Repeal the section

Substitute

"**20AD. Loss from transactions referred to in sections 20AC(1) and 20ACA(1) not available for set off**

Despite anything in this Part—

(a) any loss sustained by a non-resident person from a transaction referred to in section 20AC(1) in a year of assessment in which the non-resident person has not at any time carried on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in that section, is not available for set off against any of the person's assessable profits for any subsequent year of assessment; and

(b) any loss sustained by a special purpose vehicle as defined by section 20ACA(2) from a transaction referred to in section 20ACA(1) in a year of assessment in which the special purpose vehicle has not at any time carried on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in section 20ACA(1), is not available for set off against any of its assessable profits for any subsequent year of assessment.".

7. Section 20AE amended (assessable profits of non-resident persons regarded as assessable profits of resident persons)

(1) Section 20AE(1)(b), Chinese text—

Repeal

"豁免繳稅"

Substitute

"稅項豁免".

(2) Section 20AE(3)(a), Chinese text—

Repeal

"豁免繳稅"

Substitute

"稅項豁免".

(3) Section 20AE—

Repeal subsection (10)

Substitute

"(10) In this section—

associate (相聯者) has the meaning given by section 20AC(6).".

8. Section 20AF added

After section 20AE—

Add

"**20AF. Assessable profits of special purpose vehicles held by non-resident persons regarded as assessable profits of resident persons**

(1) If, in a year of assessment commencing on or after 1 April 2015—

(a) a resident person has, during a period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person to the extent set out in section 20AE(2);

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

(c) the non-resident person has, during that period of time, a beneficial interest, whether direct or indirect or both, in a special purpose vehicle as defined by section 20ACA(2); and

(d) the special purpose vehicle is exempt from the payment of tax under section 20ACA,

the assessable profits of the special purpose vehicle for that period of time that are chargeable to tax under this Part and in respect of which tax would have been payable but for section 20ACA, are to be regarded as 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) If, in a year of assessment commencing on or after 1 April 2015—

(a) a resident person has, during a 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;

(b) the non-resident person is an associate of the resident person;

(c) the non-resident person has, during that period of time, a beneficial interest, whether direct or indirect or both, in a special purpose vehicle as defined by section 20ACA(2); and

(d) the special purpose vehicle is exempt from the payment of tax under section 20ACA,

the assessable profits of the special purpose vehicle for that period of time that are chargeable to tax under this Part and in respect of which tax would have been payable but for section 20ACA, are to be regarded as 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.

(3) Subsections (1) and (2) apply in relation to a resident person irrespective of whether the person has received,

or will receive, directly or indirectly, from the special purpose vehicle concerned any money or other property representing the profits of the special purpose vehicle for the relevant year of assessment.

(4) A resident person who has a direct or indirect beneficial interest in a trustee of a trust estate by reason of the fact that the person 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 is, for the purposes of this section, to be regarded as being interested in 100% in value of the trust estate.

(5) The extent of a non-resident person's beneficial interest in a special purpose vehicle is to be determined in accordance with Part 2 of Schedule 15A.

(6) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (2) is to be ascertained in accordance with Schedule 15A.

(7) Subsections (1) and (2) do not apply in relation to a resident person who has a direct or indirect beneficial interest in a non-resident person if the Commissioner is satisfied that beneficial interests in the non-resident person are bona fide widely held.

(8) If—

(a) a resident person is liable to tax under subsection (1) or (2) in respect of the profits of a special purpose vehicle by reason of the person's having an indirect beneficial interest in the special purpose vehicle through an interposed person or through a series of 2 or more interposed persons (excluding the non-resident person); and

(b) the interposed person or any of the interposed persons is a resident person who is also liable to tax under that subsection in respect of the profits,

the resident person mentioned in paragraph (a) is discharged from the person's liability to tax under that subsection in respect of those profits.

(9) In this section—

associate (相聯者) has the meaning given by section 20AC(6).".

9. Schedule 15 amended (provisions for ascertaining amount of assessable profits of resident person under section 20AE of this Ordinance)

(1) Schedule 15, heading—

Repeal

"**of this Ordinance**".

(2) Schedule 15—

Repeal

"& 20AE]"

Substitute

"& 20AE & Sch. 15A]".

(3) Schedule 15, Part 1, section 1—

Repeal

"of this Ordinance but for section 20AC of this Ordinance"

Substitute

"but for section 20AC".

(4) Schedule 15, Part 1, section 2, after "section 1"—

Add

"of this Part".

(5) Schedule 15, Part 1, section 2, after "Part 2"—

Add

"of this Schedule".

(6) Schedule 15, Part 2, section 3, after "section 2"—

Add

"of this Part".

(7) Schedule 15, Part 2, section 3(a), after "section 1"—

Add

"of this Part".

(8) Schedule 15, Part 2, section 3(b), after "section 1"—

Add

"of this Part".

(9) Schedule 15, Part 2, section 3(c), after "section 1"—

Add

"of this Part".

10. Schedule 15A added

After Schedule 15—

Add

"Schedule 15A

[ss. 20AB & 20AF]

Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 20AF

Part 1

1. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the special purpose vehicle that are chargeable to tax under Part 4 and in respect of which tax would have been payable but for section 20ACA (***exempt profits***) for each day in the period in that year of assessment during which the resident person has an indirect beneficial interest in the special purpose vehicle.

2. For the purposes of section 1 of this Part, the exempt profits of a special purpose vehicle for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B1 \times B2 \times C}{D}$$

where: A means the exempt profits of the special purpose vehicle for a particular day in a year of assessment;

B1 means the extent of the resident person's beneficial interest in the non-resident person on the particular day, expressed as a percentage determined in accordance with Part 2 of Schedule 15;

B2 means the extent of the non-resident person's beneficial interest in the special purpose

vehicle on the particular day, expressed as a percentage determined in accordance with Part 2 of this Schedule;

C means the exempt profits of the special purpose vehicle for the accounting period of the special purpose vehicle in which the particular day falls;

D means the total number of days in the accounting period of the special purpose vehicle in which the particular day falls.

3. In this Part—

special purpose vehicle (特定目的工具) has the meaning given by section 20ACA(2).

Part 2

1. Where a non-resident person has a direct beneficial interest in a special purpose vehicle, the extent of the beneficial interest of the non-resident person in the special purpose vehicle is—

(a) if the special purpose vehicle is a corporation that is not a trustee of a trust estate, the percentage of the issued share capital (however described) of the corporation held by the non-resident person;

(b) if the special purpose vehicle is a partnership that is not a trustee of a trust estate, the percentage of the profits of the partnership to which the non-resident person is entitled;

(c) if the special purpose vehicle is a trustee of a trust estate, the percentage in value of the trust estate in which the non-resident person is interested; or

(d) if the special purpose vehicle is an entity that does not fall within any of paragraphs (a), (b) and (c), the percentage of ownership interests that the non-resident person has in the entity.

2. Where a non-resident person has an indirect beneficial interest in a special purpose vehicle, the extent of the beneficial interest of the non-resident person in the special purpose vehicle is—

(a) if there is one interposed person, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the non-resident person in the interposed person by the percentage representing the extent of the beneficial interest of the interposed person in the special purpose vehicle; or

(b) if there is a series of 2 or more interposed persons, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the non-resident person in the first interposed person in the series by—

(i) the percentage representing the extent of the beneficial interest of each interposed person (other than the last interposed person) in the series in the next interposed person in the series; and

(ii) the percentage representing the extent of the beneficial interest of the last interposed person in the series in the special purpose vehicle.

3. For the purposes of section 2 of this Part—

(a) section 1 of this Part applies in determining the extent of the beneficial interest of a non-resident person in an interposed person as if references to a special purpose vehicle in that section were references to an interposed person;

(b) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person in a special purpose vehicle as if references to a non-resident person in that section were references to an interposed person; and

(c) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person (***Interposed Person A***) in another interposed person (***Interposed Person B***) as if—

(i) references to a non-resident person in that section were references to Interposed Person A; and

(ii) references to a special purpose vehicle in that section were references to Interposed Person B.

4. In this Part—

special purpose vehicle (特定目的工具) has the meaning given by section 20ACA(2).".

11. Schedule 16 amended (specified transactions)

(1) Schedule 16, before item 1—

Add

"**Part 1**".

(2) Schedule 16, Part 1, after item 6—

Add

"**Part 2**".

(3) Schedule 16, Part 2—

Repeal

"In this Schedule"

Substitute

"1. In this Schedule".

(4) Schedule 16, Part 2, section 1, definition of ***securities***, paragraph (a), after "government authority"—

Add

"(excluding shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a private company which is not a special purpose vehicle or an excepted private company)".

(5) Schedule 16, Part 2, section 1, definition of ***securities***, paragraph (e)—

Repeal

"securities,"

Substitute

"securities;".

(6) Schedule 16, Part 2, section 1, definition of ***securities***—

Repeal everything after paragraph (e).

(7) Schedule 16, Part 2, after section 1—

Add

"2. For the purposes of the definition of ***securities*** in section 1 of this Part—

excepted private company (例外私人公司) has the meaning given by section 20ACA(2);

private company (私人公司) has the meaning given by section 20ACA(2);

special purpose vehicle (特定目的工具) has the meaning given by section 20ACA(2).".

12. Schedule 17A amended (specified alternative bond scheme and its tax treatment)

Schedule 17A, section 21(6), after "item 1 of"—

Add

"Part 1 of".

Explanatory Memorandum

The main purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (***Ordinance***) to extend the profits tax exemption for non-resident persons.

2. Clause 1 sets out the short title.

3. Clause 3 amends section 20AB of the Ordinance to extend the scope of that section to apply to the interpretation of the new sections 20ACA and 20AF and Schedule 15A.

4. Clause 4 amends section 20AC of the Ordinance to—

   (a) exempt a non-resident person that is a qualifying fund from profits tax in respect of assessable profits of the person arising from certain transactions;

   (b) provide that section 20AC does not apply to a special purpose vehicle; and

   (c) provide for the application of the amended section 20AC.

5. Clause 5 adds a new section 20ACA to the Ordinance. The new section exempts a special purpose vehicle, which may be a resident person or a non-resident person, from the payment of tax in respect of assessable profits arising from certain transactions concerning an interposed special purpose vehicle, or an excepted private company, as defined by that section.

6. Clause 6 amends section 20AD of the Ordinance to extend the scope of that section to provide that loss from transactions referred to in the new section 20ACA(1) are not available for set off.

7. Clause 8 adds a new section 20AF to the Ordinance. The new section provides that in certain circumstances, the assessable profits of a special purpose vehicle that is held by a non-resident person

and exempt from the payment of tax under the new section 20ACA, are to be regarded as the assessable profits of a resident person.

8. Clause 10 adds a new Schedule 15A to the Ordinance. The new Schedule contains a formula for ascertaining the amount to be regarded as the assessable profits of a resident person under the new section 20AF.

9. Clause 11 amends Schedule 16 to the Ordinance. The definition of ***securities*** in section 1 of Part 2 of that Schedule is amended so that interests such as shares and debentures of, or issued by, special purpose vehicles and excepted private companies fall within the definition.

Annex B

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date

Section:	20AB	Interpretation of sections 20AC, 20AD and 20AE and Schedule 15	E.R. 1 of 2012	09/02/2012

(1) This section applies to the interpretation of sections 20AC, 20AD and 20AE and Schedule 15.

(2) In relation to any year of assessment, a person is to be regarded as a resident person if—

(a) where the person is a natural person who is not a trustee of a trust estate, the person—

(i) ordinarily resides in Hong Kong in that year of assessment; or

(ii) stays in Hong Kong for a period or a number of periods amounting to more than 180 days during that year of assessment or for a period or a number of periods amounting to more than 300 days in 2 consecutive years of assessment one of which is that year of assessment;

(b) where the person is a corporation that is not a trustee of a trust estate, the central management and control of the corporation is exercised in Hong Kong in that year of assessment;

(c) where the person is a partnership that is not a trustee of a trust estate, the central management and control of the partnership is exercised in Hong Kong in that year of assessment; or

(d) where the person is a trustee of a trust estate, the central management and control of the trust estate is exercised in Hong Kong in that year of assessment.

(3) In relation to any year of assessment, a person is a non-resident person if he is not a resident person in relation to that year of assessment.

(4) A person is to be regarded as having a direct beneficial interest in another person if—

(a) where the other person is a corporation that is not a trustee of a trust estate, the person holds any of the issued share capital (however described) of the corporation;

(b) where the other person is a partnership that is not a trustee of a trust estate, the person, as a partner in the partnership, is entitled to any of the profits of the partnership; or

(c) where the other person is a trustee of a trust estate, the person—

(i) benefits under the trust estate; or

(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.

(5) A person (***the first person***) is to be regarded as having an indirect beneficial interest in another person (***the second person***) if—

(a) where the second person is a corporation that is not a trustee of a trust estate, the first person is interested in any of the issued share capital (however described) of the corporation;

(b) where the second person is a partnership that is not a trustee of a trust estate, the first person is entitled to any of the profits of the partnership; or

(c) where the second person is a trustee of a trust estate, the first person—

(i) benefits under the trust estate; or

(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,

through another person (***interposed person***) or through a series of 2 or more interposed persons who is or are related to the first person and the second person in the manner described in subsections (6) and (7).

(6) Where there is one interposed person—

(a) the first person has a direct beneficial interest in the interposed person; and

(b) the interposed person has a direct beneficial interest in the second person.

(7) Where there is a series of 2 or more interposed persons—

(a) the first person has a direct beneficial interest in the first interposed person in the series;

(b) each interposed person (other than the last interposed person) in the series has a direct beneficial interest in the next interposed person in the series; and

(c) the last interposed person in the series has a direct beneficial interest in the second person.

(8) A reference to an entitlement to the profits of a partnership is, in the case where the partners in a partnership are not entitled to its profits but are only entitled to a distribution of its assets upon its dissolution, to be construed as a reference to an entitlement to a distribution of the assets of the partnership upon its dissolution.

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

(Added 4 of 2006 s. 2)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date

Section:	20AC	Certain profits of non-resident persons exempt from tax	10 of 2013	19/07/2013

(1) Subject to subsections (3) and (4), 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.

(3) Subsection (1) does not apply to a non-resident person in a year of assessment if, at any time in that year of assessment, the person carries on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in that subsection.

(4) Subsection (1)(b) does not apply to a non-resident person in a year of assessment if, in that year of assessment, his trading receipts from the incidental transactions referred to in that subsection exceed 5% of the total trading receipts from the transactions referred to in subsection (1)(a) and (b).

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

(6) 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 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 meaning of Part 1 of Schedule 5 to that Ordinance.

(7) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section. (Added 10 of 2013 s. 9)

(Added 4 of 2006 s. 2)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date

Section:	20AD	Loss from transactions referred to in section 20AC(1) not available for set off	E.R. 1 of 2012	09/02/2012

Notwithstanding anything in this Part, any loss sustained by a non-resident person from a transaction referred to in section 20AC(1) in a year of assessment in which he has not at any time carried on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in that section is not available for set off against any of his assessable profits for any subsequent year of assessment.

(Added 4 of 2006 s. 2)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date

Section:	20AE	Assessable profits of non-resident persons regarded as assessable profits of resident persons	E.R. 1 of 2012	09/02/2012

(1) Where, in the year of assessment following the year of assessment in which the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 (4 of 2006) 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 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) The extent of a resident person's beneficial interest in a non-resident person referred to in subsection (1) is that the resident person, either alone or jointly with any of his associates (whether a resident person or not)—
   (a) where the non-resident person is a corporation that is not a trustee of a trust estate, holds or is interested in not less than 30% of the issued share capital (however described) of the corporation;
   (b) where the non-resident person is a partnership that is not a trustee of a trust estate, is entitled to not less than 30% of the profits of the partnership; or
   (c) where the non-resident person is a trustee of a trust estate, is interested in not less than 30% in value of the trust estate.

(3) Where, in the year of assessment following the year of assessment in which the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 (4 of 2006) 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 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.

(4) Subsections (1) and (3) apply in relation to a resident person irrespective of whether the person has received, or will receive, directly or indirectly, from the non-resident person concerned any money or other property representing the profits of the non-resident person for the relevant year of assessment.

(5) A resident person who has a direct or indirect beneficial interest in a trustee of a trust estate by reason of the fact that he 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 is, for the purposes of this section, to be regarded as being interested in 100% in value of the trust estate.

(6) The extent of a resident person's beneficial interest in a non-resident person is to be determined in accordance with the provisions in Part 2 of Schedule 15.

(7) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (3) is to be ascertained in accordance with the provisions in Schedule 15.

(8) Subsection (1) or (3) does not apply in relation to a resident person who has a direct or indirect beneficial interest in a non-resident person if the Commissioner is satisfied that beneficial interests in the non-resident person are bona fide widely held.

(9) Where a resident person is liable to tax under subsection (1) or (3) in respect of the profits of a non-resident person by reason of his having an indirect beneficial interest in the non-resident person through an interposed person or through a series of 2 or more interposed persons, if the interposed person or any of the interposed persons is a resident person who is also liable to tax under that subsection in respect of the same profits, the first-mentioned resident person is discharged from his liability to tax under that subsection in respect of those profits.

(10) In this section—

associate (**相聯者**), in relation to a person, means—

(a) where the person is a natural person—
  (i) a relative of the person;
  (ii) a partner of the person and any relative of that partner;
  (iii) a partnership in which the person is a partner;
  (iv) any corporation controlled by the person, by a partner of the person or by a partnership in which the person is a partner;
  (v) any director or principal officer of a corporation referred to in subparagraph (iv);
(b) where the person is a corporation—
  (i) any associated corporation;
  (ii) any person who controls the corporation and any partner of such person, and, where either such person is a natural person, any relative of such person;
  (iii) any director or principal officer of the corporation or of any associated corporation and any relative of any such director or officer;
  (iv) any partner of the corporation and, where such partner is a natural person, any relative of such partner;
(c) where the person is a partnership—
  (i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;
  (ii) any corporation controlled by the partnership or by any partner of the partnership or, where such a partner is a natural person, any relative of such partner;
  (iii) any corporation of which any partner of the partnership is a director or principal officer;
  (iv) any director or principal officer of a corporation referred to in subparagraph (ii);

associated corporation (相聯法團), in relation to a person, means—

(a) a corporation over which the person has control;
(b) a corporation which has control over such a person, being a corporation; or
(c) a corporation which is under the control of the same person, being a corporation;

control (控制), in relation to a corporation, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
(b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

principal officer (主要職員), in relation to a corporation, means—

(a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or
(b) a person so employed who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

relative (親屬), in relation to a person, means the spouse, parent, child, brother or sister of the person, and, in deducing such a relationship, an adopted child is to be regarded as a child both of the natural parents and the adopting parent and a step child as the child of both the natural parents and of any step parent.

(Added 4 of 2006 s. 2)

Note:

* **Commencement date: 10 March 2006.**

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date

Schedule:	15	Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 20AE of this Ordinance	E.R. 1 of 2012	09/02/2012

[sections 20AB & 20AE]

Part 1

1. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the non-resident person that would have been chargeable to tax under Part 4 of this Ordinance but for section 20AC of this Ordinance (***exempt profits***) for each day in the period in that year of assessment during which the resident person has a direct or indirect beneficial interest in the non-resident person.

2. For the purposes of section 1, the exempt profits of a non-resident person for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B \times C}{D}$$

where: A means the exempt profits of the non-resident person for a particular day in a year of assessment;
B means the extent of the resident person's beneficial interest in the non-resident person on the particular day, expressed as a percentage determined in accordance with Part 2;
C means the exempt profits of the non-resident person for the accounting period of the non-resident person in which the particular day falls;
D means the total number of days in the accounting period of the non-resident person in which the particular day falls.

Part 2

1. Where a resident person has a direct beneficial interest in a non-resident person, the extent of the beneficial interest of the resident person in the non-resident person is—
   (a) where the non-resident person is a corporation that is not a trustee of a trust estate, the percentage of the issued share capital (however described) of the corporation held by the resident person;
   (b) where the non-resident person is a partnership that is not a trustee of a trust estate, the percentage of the profits of the partnership to which the resident person is entitled; or
   (c) where the non-resident person is a trustee of a trust estate, the percentage in value of the trust estate in which the resident person is interested.

2. Where a resident person has an indirect beneficial interest in a non-resident person, the extent of the beneficial interest of the resident person in the non-resident person is—
   (a) where there is one interposed person, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the interposed person by the percentage representing the extent of the beneficial interest of the interposed person in the non-resident person; or
   (b) where there is a series of 2 or more interposed persons, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the first interposed person in the series by—
      (i) the percentage representing the extent of the beneficial interest of each interposed person (other than the last interposed person) in the series in the next interposed person in the series; and
      (ii) the percentage representing the extent of the beneficial interest of the last interposed person in the series in the non-resident person.

3. For the purposes of section 2—

(a) section 1 applies in determining the extent of the beneficial interest of a resident person in an interposed person as if references to a non-resident person in that section were references to an interposed person;

(b) section 1 applies in determining the extent of the beneficial interest of an interposed person in a non-resident person as if references to a resident person in that section were references to an interposed person;

(c) section 1 applies in determining the extent of the beneficial interest of an interposed person (***first-mentioned interposed person***) in another interposed person (***second-mentioned interposed person***) as if—

(i) references to a resident person in that section were references to the first-mentioned interposed person; and

(ii) references to a non-resident person in that section were references to the second-mentioned interposed person.

(Schedule 15 added 4 of 2006 s. 4. Amended E.R. 1 of 2012)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date

Schedule:	16	Specified Transactions	L.N. 163 of 2013	03/03/2014

[section 20AC & Schedules 17A & 29]
(Amended 10 of 2013 s. 19)

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—

(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 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 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 debt securities of a corporation, whether constituting

a charge on the assets of the corporation or not; (Amended 8 of 2011 s. 27)

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;

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 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, 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) subject to section 21(6) of Schedule 17A (specified alternative bond scheme and its tax treatment), shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority; (Amended 10 of 2013 s. 19)

(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 company within the meaning of section 11 of the Companies Ordinance (Cap 622); (Amended 28 of 2012 ss. 912 & 920)

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.

(Schedule 16 added 4 of 2006 s. 5)

[sections 5B(7), 14A(6), 15(3A), 16(4A), 20AC(7), 26A(2) & (4), 40AB, 51C(5), 60(4), 64(11), 79(4), 80(6) & 82A(8) & Schedules 6, 16 & 29]
(Amended 7 of 2014 s. 9)

Note—

The following is an overview of the content of this Schedule and does not have legislative effect—

(a) This Schedule enables particular arrangements in a specified alternative bond scheme to be regarded as debt arrangements for the purposes of this Ordinance if certain conditions are met.
(b) Sections 2 and 3 provide for the basic structure of an alternative bond scheme, which comprises a bond arrangement and an investment arrangement.
(c) Under section 4, a specified alternative bond scheme is, in broad terms, an alternative bond scheme whose investment arrangement is always the same specified investment arrangement.
(d) Different types of specified investment arrangements are set out in section 5. Sections 6 to 12 provide for the structures of those types of specified investment arrangements and for the calculation of the investment return under them. These provisions may be amended by notice published in the Gazette under section 23.
(e) Sections 13 to 20 provide for the conditions that must be met in order for the bond arrangement, and investment arrangement, in a specified alternative bond scheme to be regarded as debt arrangements for the purposes of this Ordinance. Sections 21 and 22 contain detailed provisions on the tax treatment of the arrangements.
(f) Sections 24 to 29 provide for record-keeping, notifications, assessments and other miscellaneous matters.

Part 1

Preliminary

1. Interpretation

(1) In this Schedule, an expression specified in column 1 of the Table below is to be construed in accordance with the section of this Schedule specified opposite to it in column 2 of the Table—

Table

Column 1 Expression	Column 2 Section
acquisition cost (取得成本)	2
additional payments (額外付款)	2
agency arrangement (代理安排)	9
alternative bond (另類債券)	2
alternative bond scheme (另類債券計劃)	2
arrangements performed according to terms condition (按條款履行安排條件)	18
asset transaction between O and BU (發起人—業務實體資產交易) (in relation to a profits sharing arrangement)	7(3)
BA disqualifying event (喪失債券安排資格事件)	13(5)

bond arrangement (債券安排)	2
bond arrangement as financial liability condition (債券安排作金融負債條件)	15
bond-holder (持債人)	2
bond-issuer (發債人)	2
bond-issuer as conduit condition (發債人作轉付者條件)	19
bond proceeds (發債所得)	2
Hong Kong connection condition (與香港關連條件)	16
IA disqualifying event (喪失投資安排資格事件)	13(5)
investment arrangement (投資安排)	2
investment arrangement as financial liability condition (投資安排作金融負債條件)	20
lease arrangement (租賃安排)	6
maximum term length condition (最長年期條件)	17
originator (發起人)	2
proceeds of disposal (處置所得)	2
profits sharing arrangement (分利安排)	7
purchase and sale arrangement (買賣安排)	8
qualified bond arrangement (合資格債券安排)	13(1)
qualified investment arrangement (合資格投資安排)	13(2)
reasonable commercial return condition (合理商業回報條件)	14
redemption payment (贖債付款)	2
specified alternative bond scheme (指明另類債券計劃)	4
specified asset (指明資產)—	
(a) in relation to an alternative bond scheme;	2
(b) in relation to a lease arrangement;	6
(c) in relation to a profits sharing arrangement;	7
(d) in relation to a purchase and sale arrangement;	8
(e) in relation to an agency arrangement	9
specified asset transaction between O and BI (發起人—發債人指明資產交易)—	
(a) in relation to a lease arrangement;	6(3)
(b) in relation to a profits sharing arrangement;	7(3)
(c) in relation to a purchase and sale arrangement;	8(6)

(d) in relation to an agency arrangement 9(7)

specified investment arrangement (指明投資安排) 5

specified term (指明年期) 2

(2) In this Schedule—

asset (資產) means any property or any class of property;

investment return (投資回報)—

(a) in relation to an investment arrangement, has the meaning given by section 2 of this Schedule;
(b) in relation to a lease arrangement or a profits sharing arrangement, means the investment return calculated in accordance with section 10 of this Schedule;
(c) in relation to a purchase and sale arrangement, means the investment return calculated in accordance with section 11 of this Schedule; and
(d) in relation to an agency arrangement, means the investment return calculated in accordance with section 12 of this Schedule;

special purpose vehicle (特定目的工具), in relation to any scheme or schemes, means a corporation, partnership or any other entity that—

(a) is established solely for the purposes of the scheme or schemes (as the case requires); and
(b) does not carry on any trade or activities except for the purposes of the scheme or schemes (as the case requires)

Part 2

Specified Alternative Bond Scheme and its Tax Treatment

Division 1—Alternative Bond Scheme, Bond Arrangement and Investment Arrangement

2. Alternative bond scheme, bond arrangement and investment arrangement

(1) If a scheme comprises 2 arrangements (***arrangement A*** and ***arrangement B***), and the scheme and the arrangements meet the description in subsections (2), (3) and (4), then—
(a) the scheme is an ***alternative bond scheme***;
(b) arrangement A is the ***bond arrangement*** in the scheme; and
(c) arrangement B is the ***investment arrangement*** in the scheme.

(2) The scheme (and arrangement A and arrangement B in it)—
(a) commences on the date on which alternative bonds are issued under arrangement A, as referred to in subsection (3)(d); and
(b) ends on the date on which the alternative bonds are to be fully redeemed or cancelled under the terms of arrangement A,

(the period that so commences and ends is referred to as the ***specified term***).

(3) Under arrangement A—
(a) one or more persons (each is referred to as an ***initial bond-holder***) pay a sum of money (***bond proceeds***) to another person (***bond-issuer***);
(b) the bond-issuer is a special purpose vehicle for the scheme;
(c) on behalf of the initial bond-holders, the bond-issuer enters into arrangement B, as referred to in subsection (4);
(d) the bond-issuer issues instruments (***alternative bonds***) to the initial bond-holders evidencing their rights and interests in or in relation to the specified asset referred to in subsection (4)(a);
(e) if the alternative bonds are transferable from 1 person to another, transferees of any such alternative bonds become holders of the alternative bonds (***subsequent bond-holders***) because of the transfers (any initial bond-holder or subsequent bond-holder is referred to as a ***bond-holder***); and
(f) the bond-issuer undertakes—
(i) to make a payment (***redemption payment***), whether or not by instalments, to the bond-holders during or at the end of the specified term to redeem the alternative bonds;

(ii) to make other payments (***additional payments***) to the bond-holders on one or more occasions during, or at the end of, the specified term; and

(iii) to use the investment return and the proceeds of disposal under arrangement B as referred to in subsection (4)(b) and (c), or part of these sums, for payment of the redemption payment and additional payments.

(4) The bond-issuer enters into arrangement B with another person (***originator***), under which—

(a) the bond-issuer uses the bond proceeds (***acquisition cost***) to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in section 3(2)(b), (3) and (4) of this Schedule, is referred to as the ***specified asset***);

(b) the bond-issuer arranges for the management of the specified asset with a view to generating income or gains during the specified term (the income or gains are referred to as the ***investment return***); and

(c) the bond-issuer is to dispose of the specified asset by the end of the specified term (the consideration received by the bond-issuer for the disposal of the specified asset is referred to as the ***proceeds of disposal***).

3. Construction of references in section 2(3)(b) and (4)(b) of this Schedule

(1) For the purposes of section 2(3)(b) of this Schedule, a special purpose vehicle for 2 or more schemes (whether existing or intended to be set up) is regarded as a special purpose vehicle for each of those schemes if—

(a) each of the schemes would have been, or when set up would have been, an alternative bond scheme but for that section; and

(b) each of the schemes has, or is intended to have, that special purpose vehicle as the bond-issuer and the same other person as the originator.

(2) A reference in section 2(4)(b) of this Schedule to the management of the specified asset includes—

(a) its disposal; and

(b) a change of the specified asset described in subsection (3) with the consequences described in subsection (4).

(3) A change of the specified asset refers to—

(a) the asset that is at any time the specified asset under the scheme (***pre-change asset***) being disposed of, destroyed or lost, in whole or in part (the asset or part disposed of, destroyed or lost is referred to as the ***outgoing asset***); and

(b) another asset (***incoming asset***) being acquired.

(4) The consequences of the change of the specified asset are—

(a) the outgoing asset ceases to be subject to the scheme; and

(b) either—

(i) if the outgoing asset constitutes the whole of the pre-change asset, the incoming asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (2)(b) and (3) and this subsection; or

(ii) if the outgoing asset constitutes only part of the pre-change asset, the asset comprising the incoming asset and the remaining part of the pre-change asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (2)(b) and (3) and this subsection.

4. Specified alternative bond scheme

A scheme is a ***specified alternative bond scheme*** at any time (***material time***) if at the material time, and from the commencement of the specified term of the scheme up to the material time—

(a) the terms of the scheme are, and have always been, those as described of an alternative bond scheme in section 2 of this Schedule; and

(b) the terms of the investment arrangement in the scheme are those as described of a specified investment arrangement in Division 2 of this Part, and have always been those as so described of the same specified investment arrangement.

Division 2—Specified Investment Arrangements: Description and Calculation of Investment Return

5. Specified investment arrangement

The investment arrangement in an alternative bond scheme is a ***specified investment arrangement*** if it is—

(a) a lease arrangement;
(b) a profits sharing arrangement;
(c) a purchase and sale arrangement; or
(d) an agency arrangement.

6. Lease arrangement

(1) The investment arrangement in an alternative bond scheme is a ***lease arrangement*** if, under the investment arrangement—
  (a) the bond-issuer uses the acquisition cost to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in subsection (2), is referred to as the ***specified asset***);
  (b) subject to paragraph (d), the bond-issuer is to hold the specified asset until the end of the specified term;
  (c) for the purposes of generating income or gains during the specified term, the bond-issuer leases the specified asset to the originator for a consideration (***specified income***); and
  (d) the bond-issuer is to dispose of the specified asset to the originator, whether or not in stages, by the end of the specified term in return for the proceeds of disposal.

(2) For the purposes of subsection (1), an asset that is at any time the specified asset under the scheme (***pre-replacement asset***) may be replaced in whole or in part (the asset or part replaced is referred to as the ***replaced asset***, and any remainder is referred to as the ***remainder asset***) by another asset (***replacing asset***) if—
  (a) either—
    (i) the bond-issuer acquires the replacing asset from a person in consideration of the bond-issuer's disposal of the replaced asset to that person; or
    (ii) the replaced asset is destroyed or lost during the specified term with or without any remains, and the bond-issuer acquires the replacing asset from a person using—
      (A) the consideration received by the bond-issuer for the disposal to that person of any remains of the replaced asset; and
      (B) any insurance money or other compensation of any description arising in respect of the destruction or loss;
  (b) the person referred to in paragraph (a)(i) or (ii) is—
    (i) the originator, whether or not subparagraph (ii) applies; or
    (ii) if the asset acquired with the acquisition cost under subsection (1)(a) was acquired from a third party, the third party; and
  (c) on the replacement—
    (i) the replaced asset ceases to be subject to the scheme; and
    (ii) either—
      (A) for a replacement in whole, the replacing asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in this subsection; or
      (B) for a replacement in part, the asset comprising the replacing asset and the remainder asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in this subsection.

(3) In relation to a lease arrangement, ***specified asset transaction between O and BI*** in section 22(3)(a) of this Schedule means—
  (a) any acquisition of an asset as, or as part of, the specified asset under subsection (1) or (2) from the originator;
  (b) any leasing of an asset as, or as part of, the specified asset under subsection (1); or
  (c) any disposal of an asset as, or as part of, the specified asset under subsection (1) or (2) to the originator.

7. Profits sharing arrangement

(1) The investment arrangement in an alternative bond scheme is a ***profits sharing arrangement*** if, under the investment arrangement—

(a) the bond-issuer and the originator form a business undertaking—

(i) by the bond-issuer contributing the acquisition cost to the business undertaking in return for an interest in it; and

(ii) by the originator contributing to the business undertaking in either of the following ways in return for an interest in it—

(A) contributing a sum of money or in kind or both;

(B) contributing expertise and management skills only,

(the interest in the business undertaking acquired by the bond-issuer under subparagraph (i) is referred to as the ***specified asset***);

(b) subject to paragraph (f), the bond-issuer is to hold the specified asset until the end of the specified term;

(c) for the purposes of generating income or gains during the specified term, the business undertaking carries on business activities in accordance with the terms of the arrangement;

(d) for any profits generated, and any losses incurred, by the business undertaking—

(i) if paragraph (a)(ii)(A) applies, the bond-issuer shares with the originator—

(A) the profits in accordance with the profits sharing ratios set out in the arrangement; and

(B) the losses in proportion to the capital contributions of the bond-issuer and the originator; or

(ii) if paragraph (a)(ii)(B) applies, the bond-issuer—

(A) shares with the originator the profits in accordance with the profits sharing ratios set out in the arrangement; and

(B) bears the losses,

(the profits due to the bond-issuer, less the losses borne by the bond-issuer, are referred to as the ***specified return***);

(e) the bond-issuer may pay a portion of its share of the profits to the originator as an incentive fee; and

(f) the bond-issuer is to dispose of the specified asset to the originator, whether or not in stages, by the end of the specified term in return for the proceeds of disposal.

(2) Business activities carried on by the business undertaking under subsection (1)(c) may include—

(a) acquiring an asset;

(b) leasing an asset; and

(c) disposing of an asset.

(3) In relation to a profits sharing arrangement—

(a) ***asset transaction between O and BU*** in section 22(4)(b) of this Schedule means an acquisition of an asset by the business undertaking as a contribution in kind by the originator because of subsection (1)(a)(ii)(A), or any acquisition, leasing or disposal of an asset by the business undertaking from or to the originator referred to in subsection (2);

(b) ***specified asset transaction between O and BI*** in section 22(3)(a) of this Schedule means the disposal of the specified asset under subsection (1)(f).

8. Purchase and sale arrangement

(1) The investment arrangement in an alternative bond scheme is a ***purchase and sale arrangement*** if it is an investment arrangement described in subsection (2) or (3).

(2) An investment arrangement described in this subsection is one under which—

(a) at the commencement of the specified term, the bond-issuer acquires an asset from a third party on immediate payment of the acquisition cost to that third party;

(b) for the purposes of generating income or gains, the bond-issuer, on acquiring the asset, immediately disposes of it onward to the originator in return for the proceeds of disposal, which—

(i) are of an amount equal to the acquisition cost plus a markup (***markup***); and

(ii) are payable on deferred payment terms, in a lump sum or by instalments, by the end of the specified term; and

(c) on the acquisition of the asset from the bond-issuer, the originator either—

(i) immediately disposes of the asset onward to another third party against immediate payment of a

price equal to the acquisition cost; or

(ii) retains the asset for the originator's own use.

(3) An investment arrangement described in this subsection is one under which—

(a) an acquisition and disposal of an asset by the bond-issuer and an onward disposal of it by the originator occur—

(i) at the commencement of the specified term; and

(ii) on each date (except the last one) on which an additional payment is payable under the bond arrangement in the scheme,

(a date on which transactions referred to in this paragraph occur is referred to as a ***transaction date***); and

(b) the acquisitions, disposals and onward disposals of assets on the transaction dates meet the description in subsection (4).

(4) Under an investment arrangement described in subsection (3)—

(a) on each transaction date (***material transaction date***), the bond-issuer acquires an asset (***asset of the material transaction date***) from a third party on immediate payment to that third party of—

(i) if the material transaction date is the 1st transaction date, the acquisition cost;

(ii) in any other case, an amount equal to the acquisition cost that is paid out of the proceeds of the bond-issuer's disposal of the asset of the preceding transaction date;

(b) for the purposes of generating income or gains, the bond-issuer, on acquiring the asset of the material transaction date, immediately disposes of it onward to the originator in return for an amount that—

(i) is equal to the acquisition cost plus a markup (***markup***); and

(ii) is payable in a lump sum—

(A) except if sub-subparagraph (B) applies, on the next transaction date; or

(B) if the material transaction date is the last transaction date, at the end of the specified term; and

(c) on the acquisition of the asset of the material transaction date from the bond-issuer, the originator immediately disposes of it onward to another third party against immediate payment of a price equal to the acquisition cost.

(5) In relation to a purchase and sale arrangement described in subsection (2) or (3), each asset acquired and disposed of by the bond-issuer in accordance with subsection (2) or (4) (as the case requires) is, from the acquisition until the disposal, referred to as the ***specified asset***.

(6) In section 22(3)(a) of this Schedule, ***specified asset transaction between O and BI*** means—

(a) in relation to a purchase and sale arrangement described in subsection (2), the disposal of the specified asset under subsection (2)(b); or

(b) in relation to a purchase and sale arrangement described in subsection (3), the disposal of a specified asset under subsection (4)(b) on a transaction date.

9. Agency arrangement

(1) The investment arrangement in an alternative bond scheme is an ***agency arrangement*** if, under the investment arrangement—

(a) the bond-issuer appoints the originator, and the originator undertakes to act, as the bond-issuer's agent;

(b) subject to subsection (2), the originator as the bond-issuer's agent undertakes the matters specified below—

(i) using the acquisition cost to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in subsections (4), (5) and (6), is referred to as the ***specified asset***);

(ii) subject to subparagraphs (iii) and (iv), holding the specified asset until the end of the specified term;

(iii) the management of the specified asset for the purposes of generating income or gains; and

(iv) disposing of the specified asset, whether or not in stages, by the end of the specified term in return for the proceeds of disposal; and

(c) the bond-issuer is entitled to the profits from the management of the specified asset (***specified return***), and the originator is entitled to an agency fee or an incentive fee, or both.

(2) For the purposes of subsection (1), the bond-issuer may act otherwise than through the originator as its

agent—

(a) partly in the matter specified in subsection (1)(b)(iii); and

(b) wholly or partly in the matters specified in subsection (1)(b)(i), (ii) and (iv).

(3) For the purposes of this section, the management of the specified asset may include leasing and disposing of an asset as, or as part of, the specified asset.

(4) For the purposes of this section, the management of the specified asset may also include a replacement described in subsection (5) with the consequences described in subsection (6).

(5) A replacement refers to—

(a) the asset that is at any time the specified asset under the scheme (***pre-replacement asset***) being disposed of, destroyed or lost, in whole or in part (the asset or part disposed of, destroyed or lost is referred to as the ***replaced asset***, and any remainder is referred to as the ***remainder asset***); and

(b) another asset (***replacing asset***) being acquired.

(6) The consequences of a replacement are—

(a) the replaced asset ceases to be subject to the scheme; and

(b) either—

(i) if the replaced asset constitutes the whole of the pre-replacement asset, the replacing asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (4) and (5) and this subsection; or

(ii) if the replaced asset constitutes only part of the pre-replacement asset, the asset comprising the replacing asset and the remainder asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (4) and (5) and this subsection.

(7) In relation to an agency arrangement, ***specified asset transaction between O and BI*** in section 22(3)(a) of this Schedule means any acquisition, leasing or disposal of an asset as, or as part of, the specified asset by the bond-issuer (whether or not acting through the originator as its agent) from or to the originator under subsection (1)(b) or (2).

10. Lease arrangement and profits sharing arrangement—investment return

(1) This section applies to a specified investment arrangement that is—

(a) a lease arrangement; or

(b) a profits sharing arrangement.

(2) The investment return paid or payable under a specified investment arrangement to which this section applies in a period in the specified term is to be calculated in accordance with the following formula—

$$A + B – C + D – E$$

(3) If the formula is used for calculating the investment return paid under a specified investment arrangement in the period—

A means—

(a) for a lease arrangement, the total amount of specified income (referred to in section 6(1)(c) of this Schedule) paid under the arrangement in the period, plus any amount regarded under subsection (5)(b) as specified income paid under the arrangement in the period; or

(b) for a profits sharing arrangement, the total amount of specified return (referred to in section 7(1)(d) of this Schedule) paid under the arrangement in the period;

B means the specified proceeds of disposal paid under the arrangement in the period;

C means the specified acquisition cost paid under the arrangement in the period;

D means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period;

E means—

(a) for a lease arrangement, nil; or

(b) for a profits sharing arrangement, the total amount of any incentive fee (referred to in section 7(1)(e) of this Schedule) that is paid by the bond-issuer to the originator under the arrangement in the period.

(4) In this section, in relation to a specified investment arrangement in a specified alternative bond scheme—

full redemption of bonds (全額贖回債券) means full redemption or cancellation of the alternative bonds under the bond arrangement in the scheme;

partial redemption of bonds (局部贖回債券) means partial redemption or cancellation of the alternative bonds under the bond arrangement in the scheme;

specified acquisition cost (指明取得成本), in relation to a period in the specified term, means the sum specified in paragraph (a) or (b) or the total amount of the sums specified in paragraphs (a) and (b) (as the case requires)—

(a) if the specified proceeds of disposal is wholly or partly attributable to the consideration for the disposal of an asset as, or as part of, the specified asset—the acquisition cost or the part of the acquisition cost attributable to the asset disposed of (as the case requires);

(b) if the specified proceeds of disposal is wholly or partly attributable to the money deemed under subsection (5)(c)(ii) to be the consideration for the deemed disposal of an asset as, or as part of, the specified asset—the acquisition cost or the part of the acquisition cost attributable to the asset deemed to be disposed of (as the case requires);

specified proceeds of disposal (指明處置所得), in relation to a period in the specified term, means the sum specified in paragraph (a) or (b) or the total amount of the sums specified in paragraphs (a) and (b) (as the case requires)—

(a) the consideration for the disposal of an asset as, or as part of, the specified asset if the consideration is used for full or partial redemption of bonds in the period;

(b) the money deemed under subsection (5)(c)(ii) to be the consideration for the deemed disposal of an asset as, or as part of, the specified asset.

(5) If an asset (***asset A***) that is or forms part of the specified asset under a lease arrangement is destroyed or lost—

(a) the money arising from the destruction or loss is the total amount of the following—

(i) any insurance money or other compensation of any description arising in respect of the destruction or loss;

(ii) any consideration received for the disposal of any remains left of asset A after the destruction or loss;

(b) if in a period—

(i) the money arising from the destruction or loss is received by the bond-issuer but is not used for full or partial redemption of bonds; and

(ii) the money or part of it is not used for any acquisition of an asset as, or as part of, the specified asset referred to in section 6(2)(a)(ii) of this Schedule,

then the unused money or part is to be regarded as specified income paid under the arrangement in the period for the purposes of subsection (3); and

(c) if the money arising from the destruction or loss is received by the bond-issuer who uses the money for full or partial redemption of bonds in a period, then—

(i) asset A is deemed to be disposed of in the period; and

(ii) the money arising from the destruction or loss is deemed to be consideration for the deemed disposal of asset A in the period.

(6) If the formula is used for calculating the investment return payable under a specified investment arrangement in the period, then subsections (3), (4) and (5) apply with necessary modifications including—

(a) paid is to be read as payable;

(b) disposed of is to be read as to be disposed of;

(c) received is to be read as receivable; and

(d) used is to be read as to be used.

11. Purchase and sale arrangement—investment return

(1) The investment return paid or payable under a purchase and sale arrangement in a period in the specified term is to be calculated in accordance with the following formula—

A + B

(2) If the formula is used for calculating the investment return paid under a purchase and sale arrangement in the period—

A means—

(a) for a purchase and sale arrangement described in section 8(2) of this Schedule, the markup referred to in that section, or part of it, that is paid under the arrangement in the period; or

(b) for a purchase and sale arrangement described in section 8(3) of this Schedule, the total amount of the markups referred to in section 8(4)(b) of this Schedule paid under the arrangement in the period;

B means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period.

(3) If the formula is used for calculating the investment return payable under a purchase and sale arrangement in the period, A and B have the meaning given by subsection (2), except that a reference in that subsection to paid is to be read as payable.

12. Agency arrangement—investment return

(1) The investment return paid or payable under an agency arrangement in a period in the specified term is to be calculated in accordance with the following formula—

A + B – C

(2) If the formula is used for calculating the investment return paid under an agency arrangement in the period—

A means the total amount of specified return (referred to in section 9(1)(c) of this Schedule) paid under the arrangement in the period;

B means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period;

C means the total amount of any agency fee and incentive fee (referred to in section 9(1)(c) of this Schedule) that is paid by the bond-issuer to the originator under the arrangement in the period.

(3) If the formula is used for calculating the investment return payable under an agency arrangement in the period, A, B and C have the meaning given by subsection (2), except that a reference in that subsection to paid is to be read as payable.

Division 3—Qualified Bond Arrangement, and Qualified Investment Arrangement, in Specified Alternative Bond Scheme Regarded as Debt Arrangements

13. Qualified bond arrangement, and qualified investment arrangement, in specified alternative bond scheme

(1) Subject to subsection (3), the bond arrangement in a specified alternative bond scheme is a ***qualified bond arrangement*** at any time (***material time***) if the scheme at the material time complies with, and from the commencement of the specified term of the scheme up to the material time has always complied with—

(a) the reasonable commercial return condition;

(b) the bond arrangement as financial liability condition;

(c) the Hong Kong connection condition;

(d) the maximum term length condition; and

(e) the arrangements performed according to terms condition.

(2) Subject to subsection (4), the specified investment arrangement in a specified alternative bond scheme is a ***qualified investment arrangement*** at any time (***material time***) if—

(a) the bond arrangement in the scheme at the material time is, and from the commencement of the specified term of the scheme up to the material time has always been, a qualified bond arrangement; and

(b) the scheme at the material time complies with, and from the commencement of the specified term up to the material time has always complied with—

(i) the bond-issuer as conduit condition; and
(ii) the investment arrangement as financial liability condition.

(3) Despite subsection (1) but subject to section 28 of this Schedule, an arrangement in a scheme is to be regarded as never having been a qualified bond arrangement in a specified alternative bond scheme if a BA disqualifying event occurs in relation to the arrangement at any time during the specified term.

(4) Despite subsection (2) but subject to section 28 of this Schedule, an arrangement in a scheme is to be regarded as never having been a qualified investment arrangement in a specified alternative bond scheme if an IA disqualifying event occurs in relation to the arrangement at any time during the specified term.

(5) In this section—

BA disqualifying event (喪失債券安排資格事件), in relation to an arrangement in a scheme that has been claimed or accepted to be a qualified bond arrangement in a specified alternative bond scheme for the purposes of ascertaining the tax chargeable on a person, means—

(a) the scheme is not a specified alternative bond scheme at any time during the specified term of the scheme; or

(b) although the scheme is a specified alternative bond scheme at all times during the specified term of the scheme, the scheme fails to comply with any of the conditions specified in subsection (1) at any time during the specified term;

IA disqualifying event (喪失投資安排資格事件), in relation to an arrangement in a scheme that has been claimed or accepted to be a qualified investment arrangement in a specified alternative bond scheme for the purposes of ascertaining the tax chargeable on a person, means—

(a) the scheme is not a specified alternative bond scheme at any time during the specified term of the scheme; or

(b) although the scheme is a specified alternative bond scheme at all times during the specified term of the scheme, the scheme fails to comply with any of the conditions specified in subsection (1) or (2)(b) at any time during the specified term.

14. Reasonable commercial return condition

(1) A specified alternative bond scheme complies with the reasonable commercial return condition if the requirements in subsections (2) and (3) are met.

(2) The Commissioner is satisfied that, in each period ending on a scheduled payment date, the maximum total amount of the bond return that may be payable under the terms of the bond arrangement in the scheme will not exceed an amount that would be a reasonable commercial return on money borrowed of an amount equal to the bond proceeds.

(3) In each period ending on an actual payment date, the total amount of the bond return actually paid under the bond arrangement in the scheme does not exceed an amount that would be a reasonable commercial return on money borrowed of an amount equal to the bond proceeds.

(4) In this section—

period ending on a scheduled payment date (於預定付款日期告終的期間), in relation to a specified alternative bond scheme, means a period—

(a) beginning on the commencement of the specified term of the scheme; and

(b) ending on a date on which an additional payment, or the redemption payment or part of it, may be payable under the terms of the bond arrangement in the scheme;

period ending on an actual payment date (於實際付款日期告終的期間), in relation to a specified alternative bond scheme, means a period—

(a) beginning on the commencement of the specified term of the scheme; and

(b) ending on a date on which an additional payment, or the redemption payment or part of it, is actually paid under the bond arrangement in the scheme.

(5) For the purposes of this section, the bond return paid or payable under a bond arrangement in a period in the specified term is to be calculated in accordance with the following formula—

$$(A – (B \times A / C)) + D$$

(6) If the formula is used for calculating the bond return paid under a bond arrangement in the period—
A is the amount of the redemption payment or part of it that is paid under the arrangement in the period;
B is the whole amount of the bond proceeds under the arrangement;
C is the whole amount of the redemption payment under the arrangement;
D is the total amount of additional payments paid under the arrangement in the period.

(7) If the formula is used for calculating the bond return payable under a bond arrangement in the period, A, B, C and D have the meaning given by subsection (6), except that a reference in that subsection to paid is to be read as payable.

15. Bond arrangement as financial liability condition

A specified alternative bond scheme complies with the bond arrangement as financial liability condition if the bond arrangement in the scheme—

(a) is treated as a financial liability of the bond-issuer, in accordance with—
(i) the Hong Kong Financial Reporting Standards (issued by the Hong Kong Institute of Certified Public Accountants); or
(ii) the International Financial Reporting Standards (issued by the International Accounting Standards Board); or

(b) would be treated as a financial liability of the bond-issuer if the bond-issuer applied those standards.

16. Hong Kong connection condition

A specified alternative bond scheme complies with the Hong Kong connection condition if alternative bonds issued under the bond arrangement in the scheme—

(a) are listed on a stock exchange in Hong Kong;
(b) are issued in good faith and in the course of carrying on business in Hong Kong;
(c) are marketed in Hong Kong; or
(d) are lodged with and cleared by the Central Moneymarkets Unit operated by the Monetary Authority.

17. Maximum term length condition

(1) A specified alternative bond scheme complies with the maximum term length condition if its specified term is not longer than 15 years.

(2) The Financial Secretary may, by notice published in the Gazette, amend the period specified in subsection (1).

18. Arrangements performed according to terms condition

(1) A specified alternative bond scheme complies with the arrangements performed according to terms condition if the bond arrangement and specified investment arrangement in the scheme are performed according to the terms of the arrangements as described—
(a) in section 2 of this Schedule; and
(b) in the provisions in Division 2 of this Part that describe the specified investment arrangement.

(2) Despite subsection (1), a specified alternative bond scheme does not cease to comply with the arrangements performed according to terms condition solely because of a delay, of not more than 30 days, in disposing of the specified asset.

19. Bond-issuer as conduit condition

(1) A specified alternative bond scheme complies with the bond-issuer as conduit condition if the requirements in subsections (2) and (3) are met.

(2) The Commissioner is satisfied that, in each period ending on a scheduled payment date, the maximum total amount of the investment return that may be payable under the terms of the specified investment arrangement in the scheme will not exceed the maximum total amount of the bond return that may be

payable under the terms of the bond arrangement in the scheme.

(3) In each period ending on an actual payment date, the total amount of the investment return actually paid under the specified investment arrangement in the scheme does not exceed the total amount of the bond return actually paid under the bond arrangement in the scheme.

(4) Section 14(4), (5), (6) and (7) of this Schedule applies for the purposes of this section in the same way it applies for the purposes of section 14 of this Schedule.

20. Investment arrangement as financial liability condition

A specified alternative bond scheme complies with the investment arrangement as financial liability condition if the specified investment arrangement in the scheme—

(a) is treated as a financial liability of the originator, in accordance with—

(i) the Hong Kong Financial Reporting Standards (issued by the Hong Kong Institute of Certified Public Accountants); or

(ii) the International Financial Reporting Standards (issued by the International Accounting Standards Board); or

(b) would be treated as a financial liability of the originator if the originator applied those standards.

21. Qualified bond arrangement regarded as debt arrangement

(1) This Ordinance applies, with the modifications set out in this section, to a qualified bond arrangement in a specified alternative bond scheme.

(2) For the purposes of this Ordinance, the qualified bond arrangement is to be regarded as a debt arrangement and—

(a) the bond proceeds paid by the bond-holders to the bond-issuer under the qualified bond arrangement are to be regarded as money borrowed by the bond-issuer from the bond-holders;

(b) the additional payments payable by the bond-issuer to the bond-holders under the qualified bond arrangement are to be regarded as interest payable on the money borrowed by the bond-issuer from the bond-holders;

(c) the bond-issuer is to be regarded as not being a trustee in respect of the specified asset under the specified alternative bond scheme; and

(d) the bond-holders are to be regarded as not having any legal or beneficial interest in the specified asset under the specified alternative bond scheme.

(3) For the purposes of sections 14A and 26A of this Ordinance—

(a) if the rights in an alternative bond under the qualified bond arrangement are transferable by delivery of the alternative bond, with or without endorsement, the alternative bond is to be regarded as an instrument specified in item 3 of Part 1 of Schedule 6;

(b) the issue of alternative bonds under the qualified bond arrangement is to be regarded as a debt issue for the purpose of paragraph (a) of the definition of ***debt instrument*** in section 14A(4) of this Ordinance; and

(c) if an alternative bond is for the purposes of section 14A of this Ordinance regarded as a debt instrument because of paragraphs (a) and (b), the making of the redemption payment for the alternative bond is to be regarded as the redemption on maturity or presentment of a debt instrument.

(4) For the purposes of section 15(1)(j), (k) and (l) of this Ordinance—

(a) if the rights in an alternative bond under the qualified bond arrangement are transferable by delivery of the alternative bond, with or without endorsement, the alternative bond is to be regarded as a certificate of deposit; and

(b) the making of the redemption payment for the alternative bond is to be regarded as the redemption on maturity or presentment of a certificate of deposit.

(5) Section 16(2)(f) of this Ordinance is to apply to additional payments payable on alternative bonds under the qualified bond arrangement by the bond-issuer as if they were interest payable on debentures or instruments by the bond-issuer.

(6) Section 20AC of this Ordinance and item 1 of Schedule 16 are to apply as if alternative bonds issued under the qualified bond arrangement were bonds for the purposes of paragraph (a) of the definition of ***securities*** in that Schedule.

(7) For the purposes of section 26A of this Ordinance, the qualified bond arrangement is to be regarded as not being a mutual fund, unit trust or similar investment scheme described in subsection (1A)(a) of that section.

22. Qualified investment arrangement regarded as debt arrangement

(1) This Ordinance applies, with the modifications set out in this section, to a qualified investment arrangement in a specified alternative bond scheme.

(2) For the purposes of this Ordinance, the qualified investment arrangement is to be regarded as a debt arrangement in the following respects—

(a) the acquisition cost under the qualified investment arrangement is to be regarded as money borrowed by the originator from the bond-issuer;

(b) the investment return payable under the qualified investment arrangement is to be regarded as interest payable on the money borrowed by the originator from the bond-issuer;

(c) the bond-issuer is to be regarded as not having any legal or beneficial interest in the specified asset under the specified alternative bond scheme.

(3) For the purposes of this Ordinance, whether or not subsection (4) applies—

(a) any specified asset transaction between O and BI under the qualified investment arrangement is to be disregarded;

(b) if an asset is acquired as, or as part of, the specified asset under the qualified investment arrangement by the bond-issuer from a third party, the asset is to be regarded as acquired by the originator directly from the third party;

(c) if an asset is disposed of as, or as part of, the specified asset under the qualified investment arrangement by the bond-issuer to a third party, the asset is to be regarded as disposed of by the originator directly to the third party; and

(d) any income, expenditure, profits, gains or losses arising from or attributable to any asset as, or as part of, the specified asset under the qualified investment arrangement are to be regarded as income, expenditure, profits, gains or losses (as the case requires) of the originator.

(4) If the qualified investment arrangement in the specified alternative bond scheme involves the bond-issuer holding, as the specified asset under the scheme, an interest in a business undertaking that is formed by the originator and the bond-issuer, then for the purposes of this Ordinance—

(a) without limiting subsection (3)(a), the business undertaking, the acquisition of the interest in the business undertaking as the specified asset by the bond-issuer and the disposal of that interest in favour of the originator, are to be disregarded;

(b) any asset transaction between O and BU under the qualified investment arrangement is to be disregarded;

(c) if an asset is acquired by the business undertaking from a third party, the asset is to be regarded as acquired by the originator directly from the third party;

(d) if an asset is disposed of by the business undertaking to a third party, the asset is to be regarded as disposed of by the originator directly to the third party;

(e) any other business activities carried on by the business undertaking during the specified term are to be regarded as business activities carried on by the originator directly; and

(f) any income, expenditure, profits, gains or losses arising from or attributable to—

(i) an asset held by the business undertaking during the specified term; or

(ii) other business activities carried on by the business undertaking during that specified term,

are to be regarded as income, expenditure, profits, gains or losses (as the case requires) of the originator.

(5) Without limiting subsection (2)(b), (3)(a) or (b) or (4)(b) or (c), the investment return, or any part of it, under the qualified investment arrangement that, but for this section, would have constituted consideration payable in respect of the right of use of land or buildings, or both, for the purposes of section 5B of this Ordinance is to be regarded as not being such consideration.

(6) In relation to a qualified investment arrangement, ***specified asset transaction between O and BI*** in subsection (3)(a) or ***asset transaction between O and BU*** in subsection (4)(b) (as the case requires) has the meaning given by the provisions in Division 2 of this Part in which the relevant specified investment arrangement is described.

(7) Section 16(2)(f)(iii) of this Ordinance is to apply—

(a) as if the alternative bonds issued under the qualified bond arrangement in the specified alternative bond scheme were debentures or instruments; and
(b) for the bond-issuer who is not an associated corporation of the originator, as if the bond-issuer were an associated corporation of the originator.

(8) Subsection (7)(b) does not apply to a qualified investment arrangement in a specified alternative bond scheme to which section 3(1) of this Schedule applies if—
(a) any of the other schemes referred to in that section is not, or is not intended to be, a specified alternative bond scheme; or
(b) although each of those other schemes is, or is intended to be, a specified alternative bond scheme, any of those other schemes does not comply, or is not intended to comply with—
(i) the reasonable commercial return condition; or
(ii) the bond-issuer as conduit condition.

Division 4—Miscellaneous

23. Power to amend Division 2 of this Part, etc.

The Financial Secretary may, by notice published in the Gazette—
(a) amend Division 2 of this Part, including—
(i) adding any investment arrangement into that Division as a specified investment arrangement, and providing for calculation of its investment return; and
(ii) specifying any transaction as a specified asset transaction between O and BI or an asset transaction between O and BU; and
(b) make amendments to section 1 of this Schedule if the amendments are consequential on or necessary as a result of any amendments made under paragraph (a).

Part 3

Record-keeping, Notifications, Assessments and Other Miscellaneous Matters

24. Interpretation (Part 3 of this Schedule)

(1) Subsections (2), (3) and (4) apply for the purposes of this Part.
(2) In relation to an arrangement in a scheme and for a year of assessment—
(a) a person makes a BA claim if, for the purposes of ascertaining the tax chargeable on the person for the year of assessment, the person claims—
(i) that the arrangement is a qualified bond arrangement in a specified alternative bond scheme; and
(ii) that the person is the bond-issuer under the alleged specified alternative bond scheme; and
(b) a person makes an IA claim if, for the purposes of ascertaining the tax chargeable on the person for the year of assessment, the person claims—
(i) that the arrangement is a qualified investment arrangement in a specified alternative bond scheme; and
(ii) that the person is the originator or bond-issuer under the alleged specified alternative bond scheme.

(3) A BA claim or IA claim by a person in relation to an arrangement in a scheme for a year of assessment is accepted if the matters specified in subsection (2)(a) or (b) (as the case requires) are accepted for the purposes specified in that subsection.
(4) A reference to the disqualification of an arrangement is a reference to—
(a) if the arrangement is one for which a BA claim by a person for a year of assessment has been accepted, the fact that the arrangement is under section 13(3) of this Schedule regarded as never having been a qualified bond arrangement in a specified alternative bond scheme; or
(b) if the arrangement is one for which an IA claim by a person for a year of assessment has been accepted, the fact that the arrangement is under section 13(4) of this Schedule regarded as never having been a qualified investment arrangement in a specified alternative bond scheme.

(5) In this Part—

specified assessment (指明評稅) has the meaning given by section 27(7)(c) of this Schedule;

specified event (指明事件) means—

(a) (for a person who has made a BA claim, or whose BA claim has been accepted, in relation to an arrangement in a scheme) a BA disqualifying event; or

(b) (for a person who has made an IA claim, or whose IA claim has been accepted, in relation to an arrangement in a scheme) an IA disqualifying event.

25. Records to be kept

(1) Section 51C of this Ordinance applies, with the modifications specified in subsection (2), to a person who makes a BA claim or IA claim in relation to an arrangement in a scheme (***alleged specified alternative bond scheme***) for the purposes of ascertaining the assessable profits of the trade, profession or business for any year of assessment.

(2) The person must retain records relating to transactions, acts or operations relating to the alleged specified alternative bond scheme under section 51C(1) of this Ordinance at least until the later of the following—

(a) the expiry of 7 years after the completion of the transactions, acts or operations to which they relate; or

(b) the expiry of 3 years after the end of the specified term of the scheme.

(3) Section 80 of this Ordinance applies to a failure to comply with section 51C of this Ordinance, as modified by subsection (2) in the same way that section 80 applies to a failure to comply with that section 51C.

(4) Subsection (1) ceases to apply to the retention, by a person who makes a BA claim or IA claim in relation to an arrangement in an alleged specified alternative bond scheme, of records relating to transactions, acts or operations relating to the scheme if—

(a) one or more assessments have been made on the person on the basis that the claim is not accepted for any years of assessment, and the assessments have all become final and conclusive under section 70 of this Ordinance; or

(b) after the claim has been accepted for any years of assessment, one or more specified assessments have been made on the person because of the disqualification of the arrangement, and the specified assessments have all become final and conclusive under section 70 of this Ordinance.

26. Obligation to inform Commissioner of disqualifying event

(1) A person who has made a BA claim or IA claim in relation to an arrangement in a scheme must inform the Commissioner, in writing, of any specified event that occurs in relation to the arrangement within 30 days after the occurrence.

(2) The following provisions apply as if references in those provisions to a failure to comply with section 51(2) of this Ordinance included a failure to comply with subsection (1)—

(a) section 80 of this Ordinance;

(b) section 82A of this Ordinance.

(3) A person who has made a BA claim or IA claim in relation to an arrangement in a scheme is not required to inform the Commissioner of a specified event in relation to the arrangement under subsection (1) if—

(a) one or more assessments have been made on the person on the basis that the claim is not accepted for any years of assessment, and the assessments have all become final and conclusive under section 70 of this Ordinance; or

(b) after the claim has been accepted for any years of assessment, one or more specified assessments have been made on the person on the basis that the arrangement is disqualified because of an earlier specified event, and the specified assessments have all become final and conclusive under section 70 of this Ordinance.

27. Additional assessments; tax paid in excess to be refunded

(1) In this section, an arrangement in a scheme is an ***accepted arrangement*** in relation to a person and a year of assessment if the person's BA claim or IA claim in relation to the arrangement has been accepted for the purposes of ascertaining the tax chargeable on the person for the year of assessment.

(2) Section 60 of this Ordinance applies, with modifications specified in subsection (3), to the making of an

assessment or additional assessment on a person for a year of assessment because of the disqualification of an accepted arrangement.

(3) For the purposes of subsection (2), each of the following periods begins to run after the expiry of the year of disqualification if that year falls after the year of assessment—
  (a) 6 years referred to in section 60(1) of this Ordinance;
  (b) 10 years referred to in paragraph (b) of the proviso to section 60(1) of this Ordinance; and
  (c) 6 years referred to in section 60(2) of this Ordinance.

(4) Section 79 of this Ordinance applies, with modifications specified in subsections (5) and (6), to an amount of tax that is, because of the disqualification of an accepted arrangement, found to be paid in excess by a person for a year of assessment.

(5) For the purposes of subsection (4), the period of 6 years referred to in section 79(1) of this Ordinance begins to run after the end of the year of disqualification if that year falls after the year of assessment.

(6) If—
  (a) because of the disqualification of an accepted arrangement, an assessor makes an assessment or additional assessment under section 60 of this Ordinance on the person for a year of assessment; and
  (b) it appears to the assessor that, because of the same disqualification, an amount of tax has been paid in excess by the person for another year of assessment,

  then, even in the absence of a claim in writing being made under section 79 of this Ordinance for the refund—
  (c) a refund of that amount of tax paid in excess may be made under section 79 of this Ordinance; or
  (d) the refundable amount may be set off against any amount payable under the assessment or additional assessment referred to in paragraph (a).

(7) The provisions of this Ordinance relating to a notice of assessment, appeal and other proceedings that apply—
  (a) to an assessment, additional assessment or reassessment made under section 60 or 79 (as the case requires) of this Ordinance; and
  (b) to any tax charged under it,

  are to apply—
  (c) to an assessment, additional assessment or reassessment (***specified assessment***) made under section 60 or 79 (as the case requires) of this Ordinance as modified by this section; and
  (d) to any tax charged accordingly.

(8) Despite subsection (7), if—
  (a) a specified assessment is made for a year of assessment because of the disqualification of an accepted arrangement; and
  (b) a person makes an objection under section 64 of this Ordinance against the specified assessment, disputing the disqualification,

  the objection is to be regarded as objections so made by the person against all specified assessments made for all years of assessment because of that disqualification.

(9) In this section—

year of disqualification (喪失資格年度), in relation to a person whose BA claim or IA claim in relation to an arrangement in a scheme has been accepted, means the year of assessment in which—
  (a) a specified event occurs in relation to the arrangement; or
  (b) if there are 2 or more specified events, the earliest specified event occurs in relation to the arrangement.

28. Delay in disposing of specified asset may be disregarded in certain circumstances

(1) Section 13(3) and (4) of this Schedule does not apply in relation to an arrangement in a scheme, despite the fact that a BA disqualifying event or IA disqualifying event occurs in relation to the arrangement, if—
  (a) the scheme is at the time of the occurrence, and from the commencement of the specified term of the scheme up to that time has always been, a specified alternative bond scheme;
  (b) among the conditions specified in section 13(1) and (2)(b) of this Schedule, the scheme only fails to comply with the arrangements performed according to terms condition; and
  (c) the Commissioner disregards the non-compliance under subsection (2).

(2) The Commissioner may disregard a non-compliance with the arrangements performed according to terms condition by a specified alternative bond scheme if—

(a) the non-compliance was solely constituted by a delay, of more than 30 days, in disposing of the specified asset; and

(b) it is proved to the satisfaction of the Commissioner that there was a reasonable excuse for the delay.

29. Commissioner may apportion acquisition cost

For the purposes of calculating, under Division 2 of Part 2 of this Schedule, the investment return under a specified investment arrangement in a specified alternative bond scheme under which the specified asset is or is to be disposed of in parts, the Commissioner may allocate a part of the acquisition cost as attributable to each part of the specified asset having regard to all the circumstances of the scheme.

(Schedule 17A added 10 of 2013 s. 4)