

## **Inland Revenue (Amendment) (No. 6) Bill 2017**

### **Draft Committee Stage Amendments Proposed by the Government (First Batch)**

#### **Purpose**

Having regard to comments and suggestions from Members and Assistant Legal Adviser of the Bills Committee and various deputations, as well as the initial comments from the Organisation for Economic Co-operation and Development, the Government proposes to move Committee Stage Amendments (“CSAs”) to the Inland Revenue (Amendment) (No. 6) Bill 2017. This paper sets out the **first batch of the proposed CSAs** (total: 45) to be moved by the Government.

#### **Proposed CSAs**

2. The proposed CSAs and their underlying objectives are set out at **Annex A**. To facilitate Members’ consideration, we have prepared a marked-up version at **Annex B**. The proposed CSAs may be subject to further refinement.

3. The Government will provide the second batch of the proposed CSAs (mainly about the exemption for certain domestic transactions from the transfer pricing rules and from the requirement relating to master file and local file) to the Bills Committee shortly.

#### **Advice Sought**

4. Members are invited to examine the draft CSAs set out in this paper.

**Financial Services and the Treasury Bureau  
Inland Revenue Department  
April 2018**

Inland Revenue (Amendment) (No. 6) Bill 2017

**Committee Stage**

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

Clause

Amendment Proposed

3<sup>1</sup>

By deleting the clause and substituting—

**“3. Section 8 amended (charge of salaries tax)**

(1) Section 8(1A)(c), before “excludes”—

**Add**

“subject to subsection (1C) and section 50AA,”.

(2) After section 8(1B)—

**Add**

“(1C) Subsection (1A)(c) does not apply in relation to income derived by a person from services rendered by the person in a territory if—

(a) the territory is a DTA territory (as defined by section 48A); and

(b) under section 50, tax payable in the territory by a Hong Kong resident person in respect of income derived from services rendered by him or her in the territory is to be allowed as a credit against tax payable in Hong Kong by the Hong Kong resident person in respect of that income.”.”.

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<sup>1</sup> This seeks to clarify that unilateral double taxation relief (i.e. exclusion of income taxed in foreign territory under section 8(1A)(c) and deduction of tax paid in foreign territory under section 16(1)(c)) is not applicable where the income is derived from services rendered, or the foreign tax is paid, in a DTA territory with which Hong Kong has entered into Double Taxation Agreements (“DTAs”) that provide for relief by way of tax credit.

By deleting the clause and substituting—

**“4. Section 16 amended (ascertainment of chargeable profits)**

- (1) Section 16(1)(c), before “tax of”—

**Add**

“subject to subsection (2J) and section 50AA,”.

- (2) Section 16(1)(c)—

**Repeal the colon**

**Substitute a semicolon.**

- (3) Section 16(1)(c)—

**Repeal the proviso.**

- (4) After section 16(2I)—

**Add**

“(2J) Subsection (1)(c) does not apply in relation to any tax paid in a territory by a person in respect of profits referred to in that subsection if—

- (a) the territory is a DTA territory (as defined by section 48A); and
- (b) under section 50, the tax payable in the territory by a Hong Kong resident person in respect of the profits is to be allowed as a credit against tax payable in Hong Kong by the Hong Kong resident person in respect of the profits.”.

In the proposed section 48A, by deleting the definition of ***non-DTA territory***.

In the heading, by deleting “**arrangements for relief from double taxation and exchange of information**” and substituting “**arrangements: relief from double taxation, exchange of information and other international tax cooperation**”.

<sup>2</sup> Same as footnote 1.

<sup>3</sup> The term ***non-DTA territory*** will no longer be used in sections 8, 16 and 50AA. The definition of the term will be relocated from section 48A to section 50AAC(1) (see footnote 11).

<sup>4</sup> This seeks to reflect the heading of section 49 of the Inland Revenue Ordinance (Cap. 112) (“IRO”) as amended by the Inland Revenue (Amendment) Ordinance 2018, which came into operation on 2 February 2018.

8<sup>5</sup> In the proposed section 50AA(1), by deleting paragraphs (a) and (b) and substituting—

- “(a) relief under section 8(1A)(c) by way of exclusion of any amount of the relevant income;
- (b) relief under section 16(1)(c) by way of deduction of any amount of the foreign tax;
- (c) relief under section 50 by way of credit and deduction of any amount of the foreign tax.”.

8<sup>6</sup> In the proposed section 50AA(3)(a), by deleting subparagraph (ii) and substituting—

- “(ii) if subsection (1)(c) applies—the double taxation arrangements made with the foreign territory,”.

9<sup>7</sup> In the proposed Part 8AA, in the Note under the Part heading, by deleting paragraph 2 and substituting—

“2. Division 2 incorporates the international transfer pricing rules and has the following effect—

- (a) in relation to a year of assessment beginning on or after 1 April 2018—
  - (i) a person’s tax liability under this Ordinance is to be determined on the basis that a provision made or imposed between the person and the person’s associated person is made or imposed on an arm’s length basis;
  - (ii) in other words, a person who would have a Hong Kong tax advantage if taxed on the basis of a non-arm’s length provision (*advantaged person*) will have income adjusted upwards or loss adjusted downwards;
- (b) similarly, in relation to a year of assessment beginning on or after 1 April 2019, the income or loss of a non-Hong Kong resident person attributable to the person’s permanent establishment in Hong Kong are to be determined as if the permanent establishment were a distinct and separate enterprise.”.

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<sup>5</sup> Consequential amendment because of the amendments to sections 8(1A)(c) and 16(1)(c).

<sup>6</sup> Consequential amendment because of the amendments to sections 8(1A)(c) and 16(1)(c).

<sup>7</sup> The revised note seeks to clarify that the rules relating to the computation of income or loss for provision between associated persons will apply in relation to a year of assessment beginning on or after 1 April 2018, while the rules relating to the attribution of income or loss to permanent establishments of non-Hong Kong resident persons will apply in relation to a year of assessment beginning on or after 1 April 2019.

9<sup>8</sup>

In the proposed Part 8AA, in the Note under the Part heading, by adding—

“2A. The arm’s length provision is to be determined in accordance with the OECD rules (as defined by section 50AAC(1)). It is possible that application of the OECD rules may not produce a single provision (such as an exact figure as the price) but may produce a range of provisions where each provision constitutes an arm’s length provision.”.

9<sup>9</sup>

In the proposed section 50AAC(1), by deleting the definition of *double taxation arrangements* and substituting—

“*double taxation arrangements* (雙重課稅安排)—

- (a) in relation to the computation of income or loss with respect to a provision made or imposed between 2 persons by means of a transaction or series of transactions—means double taxation arrangements (as defined by section 48A) that incorporate—
  - (i) the associated enterprises article and the mutual agreement procedure article; or
  - (ii) any rules in the same or equivalent terms as those articles;
- (b) in relation to the attribution of a person’s income or loss to its permanent establishment in Hong Kong—means double taxation arrangements (as defined by section 48A) that incorporate—
  - (i) the business profits article and the mutual agreement procedure article; or
  - (ii) any rules in the same or equivalent terms as those articles;
- (c) in relation to the determination of the question whether a person has a permanent establishment in Hong Kong—means double taxation arrangements (as defined by section 48A) that incorporate—
  - (i) the permanent establishment article; or
  - (ii) any rules in the same or equivalent terms as the

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<sup>8</sup> This seeks to insert a note (with no legislative effect) to address the deputations’ concerns about the determination of the arm’s length provision.

<sup>9</sup> This seeks to clarify that for the purposes of the proposed Part 8AA, the term *DTA territory* should only cover the territories with which Hong Kong has entered into DTAs that contain the business profits article, associated enterprises article, mutual agreement procedure article and permanent establishment article.

article;”.

9<sup>10</sup> In the proposed section 50AAC(1), by deleting the definition of *DTA territory* and substituting—

“*DTA territory* (有安排地區) means a territory outside Hong Kong with which double taxation arrangements have been made;”.

9<sup>11</sup> In the proposed section 50AAC(1), by deleting the definition of *non-DTA territory* and substituting—

“*non-DTA territory* (無安排地區) means a territory outside Hong Kong that is not a DTA territory;”.

9<sup>12</sup> In the proposed section 50AAC(1), by adding in alphabetical order—

“*associated enterprises article* (相聯企業條文) means the rules contained in Article 9 of the Model Tax Convention;

*business profits article* (營業利潤條文) means the rules contained in Article 7 of the Model Tax Convention;

*mutual agreement procedure article* (相互協商程序條文) means the rules contained in Article 25 of the Model Tax Convention;

*OECD rules* (《經合組織規則》) means—

- (a) the commentary on the associated enterprises article or the business profits article (as the case requires); and
- (b) the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the Organisation for Economic Co-operation and Development on 10 July 2017;

*permanent establishment article* (常設機構條文) means the rules contained in Article 5 of the Model Tax Convention;”.

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<sup>10</sup> Consequential amendment because of the amendment to the definition of *double taxation arrangements* in section 50AAC(1).

<sup>11</sup> The definition of *non-DTA territory* is relocated from section 48A to section 50AAC(1).

<sup>12</sup> Given the proposed CSA to the definition of *double taxation arrangements* under section 50AAC(1) (see footnote 9), the definitions of certain relevant expressions are relocated from section 50AAE to section 50AAC(1) for the sake of clarity. A new definition of *permanent establishment article* is also added under section 50AAC(1).

9<sup>13</sup>

In the proposed section 50AAC, by adding—

“(1A) For the purposes of the definitions of *associated enterprises article*, *business profits article*, *mutual agreement procedure article*, *OECD rules* and *permanent establishment article* in subsection (1)—

- (a) a reference to an article of the Model Tax Convention means the article in the Model Tax Convention on Income and on Capital as approved by the Organisation for Economic Co-operation and Development on 21 November 2017; and
- (b) a reference to the commentary on the associated enterprises article or the business profits article means the commentary on the article so approved on that date.”.

9<sup>14</sup>

By deleting the proposed section 50AAC(5) and substituting—

“(5) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend—

- (a) the definitions of the following expressions in subsection (1)—

*associated enterprises article* (相聯企業條文);

*business profits article* (營業利潤條文);

*mutual agreement procedure article* (相互協商程序條文);

*OECD rules* (《經合組織規則》);

*permanent establishment article* (常設機構條文);

- (b) subsection (1A); and
- (c) Schedule 17G.”.

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<sup>13</sup> Consequential amendment because of the relocation of the relevant definitions to section 50AAC(1). This also updates the date reference of the Model Tax Convention promulgated by the Organisation for Economic Co-operation and Development (“OECD”).

<sup>14</sup> Consequential amendment because of the relocation of relevant definitions to section 50AAC(1) and the addition of section 50AAC(1A).

- 9<sup>15</sup> (a) In the proposed section 50AAE(1), by deleting “Division” and substituting “Part”.
- (b) By deleting the proposed section 50AAE(2), (3) and (4).
- 9<sup>16</sup> In the proposed section 50AAF(6), by deleting “a more reliable measure” and substituting “an equally reliable measure, or a more reliable measure,”.
- 9<sup>17</sup> In the proposed section 50AAF, by adding—
- “(7) Subsections (1) to (6) do not apply in relation to a provision made or imposed in relation to any disposal or acquisition of trading stock if section 15BA(4) or (5) applies in relation to the disposal or acquisition.
- (8) Subsections (1) to (6) do not apply in relation to a provision made or imposed in relation to any trading stock if section 15C applies in relation to the trading stock.”.
- 9<sup>18</sup> In the proposed section 50AAK(10), by deleting “a more reliable measure” and substituting “an equally reliable measure, or a more reliable measure,”.
- 9<sup>19</sup> In the proposed section 50AAM(10), by deleting “a more reliable measure” and substituting “an equally reliable measure, or a more reliable measure,”.
- 9<sup>20</sup> In the proposed section 50AAO(3)(b)(ii), in the Chinese text, by deleting “虧損定” and substituting “虧損”.
- 9<sup>21</sup> In the proposed section 50AAP(3)(a)(i)(A), in the Chinese text, by deleting “評計算” and substituting “計算”

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<sup>15</sup> This seeks to reflect that the whole Part 8AA (not just Division 2 thereof) should be read in a way that best secures its consistency with the rules promulgated by the OECD. Furthermore, as the relevant provisions will be relocated to section 50AAC(1) (see footnotes 12, 13 and 14), section 50AAE(2), (3) and (4) needs to be deleted correspondingly.

<sup>16</sup> This seeks to clarify that a taxpayer would be accepted as having substantiated his reported/claimed amount if such amount is within the arm’s length range.

<sup>17</sup> This seeks to clarify the application of the proposed sections 15BA and 50AAF and the existing section 15C under the IRO as far as acquisition or disposal of trading stock otherwise than in the course of trade and valuation of trading stock on cessation of business are concerned.

<sup>18</sup> Same as footnote 16.

<sup>19</sup> Same as footnote 16.

<sup>20</sup> This seeks to amend a typo in the Chinese text.

<sup>21</sup> This seeks to amend a typo in the Chinese text.



- 10<sup>22</sup> In the proposed Schedule 17G, by deleting “Sch. 42]” and substituting “Sch. 44]”.
- 10<sup>23</sup> In the proposed Schedule 17H, by deleting “Sch. 42]” and substituting “Sch. 44]”.
- 10<sup>24</sup> In the proposed Schedule 17H, in section 7(9)(a), by adding “subject to subsection (10),” before “a service”.
- 10<sup>25</sup> In the proposed Schedule 17H, in section 7, by adding—  
“(10) The service charge payable under subsection (9)(a) in respect of an application must not exceed \$500,000.”.
- 13<sup>26</sup> In the proposed section 15BA(1), by adding—  
“*trade* (行業) means trade or business;”
- 13<sup>27</sup> In the proposed section 15BA, by adding—  
“(6) Subsection (4) does not apply in relation to a disposal, and subsection (5) does not apply in relation to an acquisition, of any trading stock if section 15C applies in relation to the trading stock.”.
- new<sup>28</sup> By adding—  

**“14A. Section 20 repealed (liability of certain non-resident persons)**  
Section 20—  
**Repeal the section.”.**

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<sup>22</sup> This seeks to re-number Schedule 42 to Schedule 44 as the Inland Revenue (Amendment) (No. 7) Bill 2017 and Inland Revenue (Amendment) Bill 2018 (each of which contains a Schedule) has been or will be enacted before the present Bill.

<sup>23</sup> Same as footnote 22.

<sup>24</sup> Consequential amendment because of the addition of section 7(10) to Schedule 17H (see footnote 25).

<sup>25</sup> This seeks to impose a cap on the amount of fees to be charged by the Inland Revenue Department in respect of advance pricing arrangement (“APA”) applications, excluding the direct costs of engaging external advisors and travelling costs which will be fully reimbursed by APA applicants.

<sup>26</sup> This seeks to define “trade” to include business so as to ensure consistency with the existing section 15C of the IRO.

<sup>27</sup> This seeks to clarify the application of the proposed section 15BA and the existing section 15C under the IRO as far as valuation of trading stock on cessation of business is concerned.

<sup>28</sup> Section 20 of the IRO is no longer necessary following the introduction of the proposed section 50AAF.

16<sup>29</sup>

In the proposed section 58B(2), in the definition of *CbCR documents*, in paragraph (b), by deleting “2017” and substituting “2018”.

16<sup>30</sup>

(a) In the proposed section 58B(2), by deleting the definition of *filing deadline* and substituting—

“*filing deadline* (提交期限) has the meaning given by subsections (2A) and (2B);”.

(b) In the proposed section 58B, by adding—

“(2A) In this Part—

“*filing deadline* (提交期限), in relation to a country-by-country return for an accounting period, means, subject to subsection (2B), the earlier of the following dates—

- (a) the date on which a period of 12 months after the end of the accounting period expires;
- (b) the date specified in a notice given under section 58G.

(2B) If—

- (a) a Hong Kong entity (not being a HK ultimate parent entity) required under section 58F to file a country-by-country return for an accounting period notifies the Commissioner in accordance with section 58H that the SPE-filing-elsewhere exception is to apply within the meaning of section 58I(2)(a); and
- (b) the date by which a country-by-country report for the accounting period is required to be filed by the laws or regulations of the jurisdiction of tax residence of the surrogate parent entity concerned (*foreign filing date*) is later than the filing deadline under subsection (2A),

the *filing deadline* in relation to the country-by-country return for the accounting period is the foreign filing date.”.

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<sup>29</sup> This updates the date reference of the guidance on country-by-country (“CbC”) reporting promulgated by the OECD.

<sup>30</sup> This is a technical CSA in response to the OECD’s suggestion for better alignment with the requirements of the CbC reporting regime. The purpose is to clarify that where the SPE-filing-elsewhere-exception applies and a later deadline for filing CbC reports is prescribed in the laws or regulations of the jurisdiction of tax residence of the surrogate parent entity, that later deadline will be taken as the filing deadline in relation to the CbC return concerned.

16<sup>31</sup>

In the proposed section 58B(3)—

- (a) in paragraph (a)(ii), by deleting “; and” and substituting a semicolon;
  - (b) in paragraph (b), by deleting the full stop and substituting “; and”;
  - (c) by adding—
    - “(c) for the purposes of applying Schedule 17G to determine whether a business unit of a multinational enterprise group has a permanent establishment in Hong Kong, a reference to a person or to an enterprise—
      - (i) in paragraph (c) of the definition of *double taxation arrangements* in section 50AAC(1); or
      - (ii) in Schedule 17G,
- is to be construed as including such a business unit.”.

16<sup>32</sup>

In the proposed section 58C(2)(a), by deleting “6” and substituting “9”.

16<sup>33</sup>

In the proposed section 58D(4)—

- (a) in paragraph (a), by adding “and” after the semicolon;
- (b) in paragraph (b), by deleting “; and” and substituting a comma;
- (c) by deleting paragraph (c).

16<sup>34</sup>

In the proposed section 58D(5), by deleting the definition of *jurisdiction U's threshold amount* and substituting—

**“jurisdiction U's threshold amount** (終區門檻款額) means—

- (a) if jurisdiction U requires the filing of a country-by-country report in respect of period P by a multinational enterprise group that has a total consolidated group revenue for period P-1 of at least a threshold amount and that amount is specified under the laws or regulations of jurisdiction U—the threshold amount specified; or
- (b) in any other case—an amount, in currency U, that is

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<sup>31</sup> This amendment seeks to clarify that Schedule 17G has the effect of determining whether a business unit of a multinational enterprise group has a permanent establishment in Hong Kong for the purposes of CbC reporting.

<sup>32</sup> This seeks to extend the preparation period of master file and local file from 6 months to 9 months after the end of each accounting period of the entity concerned so as to tally with the deadline of filing tax returns.

<sup>33</sup> This is a technical CSA in response to the OECD's suggestion for better alignment with the requirements of the CbC reporting regime. The purpose is to cater for a multinational enterprise group whose ultimate parent entity's jurisdiction does not implement the CbC reporting regime.

<sup>34</sup> Same as footnote 33.

equivalent to EUR 750 million as at January 2015;”.

- 16<sup>35</sup> In the proposed section 58H(1)(b)(iv) and (c)(iii), by deleting “the date on which” and substituting “whether”.
- 16<sup>36</sup> In the proposed section 58I(3)(b), by deleting everything after “on behalf of the group” and substituting a full stop.
- 17<sup>37</sup> In the proposed Schedule 17I, by deleting “Sch. 42]” and substituting “Sch. 44]”.
- 33<sup>38</sup> By renumbering the proposed subsection (20) as subsection (21).
- 33<sup>39</sup> In the proposed subsection (21), by deleting “42” and substituting “44”.
- 34<sup>40</sup> By deleting “**Schedule 42**” (wherever appearing) and substituting “**Schedule 44**”.
- 34<sup>41</sup> In the proposed Schedule 44, by deleting “89(20)]” and substituting “89(21)]”.
- 34<sup>42</sup> In the proposed Schedule 44, by deleting section 4(1) and substituting—
- “(1) Subject to subsections (2), (3) and (4), the following provisions apply in relation to a year of assessment beginning on or after 1 April 2018—
  - (a) Divisions 2 and 3 of Part 8AA (except section 50AAK) and Schedule 17G;
  - (b) Division 4 of Part 8AA and Schedule 17H;

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<sup>35</sup> This is a technical CSA in response to the OECD’s suggestion for better alignment with the requirements of the CbC reporting regime. A notification will need to state only whether a CbC report is filed in the ultimate parent entity’s jurisdiction or the surrogate parent entity’s jurisdiction, but not the date of filing.

<sup>36</sup> This is a technical CSA in response to the OECD’s suggestion for better alignment with the requirements of the CbC reporting regime. A prerequisite for appointing surrogate parent entity in a jurisdiction will be removed.

<sup>37</sup> Same as footnote 22.

<sup>38</sup> The Inland Revenue (Amendment) (No. 7) Bill 2018, which contains a transitional provision under section 89(20) of the IRO, has been enacted before the present Bill.

<sup>39</sup> Same as footnote 22.

<sup>40</sup> Same as footnote 22.

<sup>41</sup> Same as footnote 38.

<sup>42</sup> This seeks to list out the provisions which apply in relation to a year of assessment beginning on or after (a) 1 April 2018 or (b) 1 April 2019. Sections 15F (taxation of intellectual property income) and 50AAK (attribution of income or loss to permanent establishments of non-Hong Kong resident persons) as well as some amendments related to these two sections will apply in relation to a year of assessment beginning on or after 1 April 2019 so as to give taxpayers a longer lead time to make the necessary preparation.

- (c) section 15BA;
  - (d) the amendments made to sections 80, 82 and 82A by the Amendment Ordinance (except to the extent that the amendments relate to section 50AAK).
- (1A) Subject to subsections (2A), (5) and (6), the following provisions apply in relation to a year of assessment beginning on or after 1 April 2019—
- (a) section 50AAK;
  - (b) section 15F;
  - (c) the amendments made to sections 80, 82 and 82A by the Amendment Ordinance (to the extent that the amendments relate to section 50AAK);
  - (d) the amendments made to rules 3(1A) and 5(1) of the Inland Revenue Rules (Cap. 112 sub. leg. A) by the Amendment Ordinance;
  - (e) rule 5(1A) of those Rules.”.

34<sup>43</sup> In the proposed Schedule 44, in section 4(2), by deleting “(1)(a), (d) and (e)” and substituting “(1)(a) and (d)”.

34<sup>44</sup> In the proposed Schedule 44, in section 4, by adding—

“(2A) The provisions referred to in subsection (1A)(a), (c), (d) and (e) do not apply in relation to a transaction entered into or effected before 1 April 2019.”.

34<sup>45</sup> In the proposed Schedule 44, in section 4(5) and (6), by deleting “the commencement date” (wherever appearing) and substituting “1 April 2019”.

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<sup>43</sup> Same as footnote 42.

<sup>44</sup> Same as footnote 42.

<sup>45</sup> Same as footnote 42.

Inland Revenue (Amendment) (No. 6) Bill 2017

**Committee Stage**

**Amendments to be moved by the Secretary for Financial Services and the Treasury**  
**(Marked-up Version)**

[**Note:** This marked-up version is for reference only. In case of discrepancy, the detailed CSAs at Annex A shall prevail.]

~~3. Section 8 amended (charge of salaries tax)~~

~~(1) Section 8(1A)(c)—~~

~~Repeal~~

~~“territory outside Hong Kong”~~

~~Substitute~~

~~“non DTA territory (as defined by section 48A)”.~~

~~(2) After section 8(1B)—~~

~~Add~~

~~“(1C) Subsection (1A)(c) has effect subject to section 50AA.”.~~

**3. Section 8 amended (charge of salaries tax)**

**(1) Section 8(1A)(c), before “excludes”—**

**Add**

**“subject to subsection (1C) and section 50AA,”**

**(2) After section 8(1B)—**

**Add**

**“(1C) Subsection (1A)(c) does not apply in relation to income derived by a person from services rendered by the person in a territory if—**

**(a) the territory is a DTA territory (as defined by section 48A); and**

**(b) under section 50, tax payable in the territory by a Hong Kong resident person in respect of income derived from services rendered by him or her in the territory is to be allowed as a credit against tax payable in Hong Kong by the Hong Kong resident person in respect of that income.”.**

~~4. Section 16 amended (ascertainment of chargeable profits)~~

~~(1) Section 16(1)(c), before “tax of”—~~

~~Add~~

~~“subject to subsection (2J),”.~~

~~(2) Section 16(1)(c)—~~

~~Repeal~~

~~“elsewhere”~~

~~Substitute~~

~~“in a non DTA territory (as defined by section 48A)”.~~

~~(3) Section 16(1)(c)—~~

~~Repeal the colon~~

~~Substitute a semicolon.~~

~~(4) Section 16(1)(c)—~~

~~Repeal the proviso.~~

~~(5) After section 16(2I)—~~

~~Add~~

~~“(2J) Subsection (1)(c) has effect subject to section 50AA.”.~~

**4. Section 16 amended (ascertainment of chargeable profits)**

(1) Section 16(1)(c), before “tax of”—

**Add**

“subject to subsection (2J) and section 50AA,”.

(2) Section 16(1)(c)—

**Repeal the colon**

**Substitute a semicolon.**

(3) Section 16(1)(c)—

**Repeal the proviso.**

(4) After section 16(2I)—

**Add**

“(2J) Subsection (1)(c) does not apply in relation to any tax paid in a territory by a person in respect of profits referred to in that subsection if—

(a) the territory is a DTA territory (as defined by section 48A); and

(b) under section 50, the tax payable in the territory by a Hong Kong resident person in respect of the profits is to be allowed as a credit against tax payable in Hong Kong by the Hong Kong resident person in respect of the profits.”.

...

**5. Section 48A added**

Before section 49—

**Add**

**“48A. Interpretation of Part 8**

In this Part—

...

~~**non-DTA territory** (無安排地區) means a territory outside Hong Kong that is not a DTA territory;~~

...

**6. Section 49 amended (~~arrangements for relief from double taxation and exchange of information~~ **arrangements: relief from double taxation, exchange of information and other international tax cooperation**)**

...

**8. Sections 50AA and 50AAB added**

Part 8, after section 50—

**Add**

**“50AA. General provisions on relief from double taxation**

(1) This section applies if, in respect of tax (*foreign tax*) payable in a territory outside Hong Kong (*foreign territory*) on any income, profits or gains (*relevant income*), a person is entitled to any of the following relief (each of which is referred to in this section as *relief from double taxation*)—

~~(a) if the foreign territory is a non-DTA territory—~~

~~(i) relief under section 8(1A)(c) by way of exclusion of any amount of the relevant income; or~~

~~(ii) relief under section 16(1)(c) by way of deduction of any amount of the foreign tax;~~

~~(b) if the foreign territory is a DTA territory—relief under section 50 by way of credit and deduction of any amount of the foreign tax.~~

- (a) relief under section 8(1A)(c) by way of exclusion of any amount of the relevant income;
  - (b) relief under section 16(1)(c) by way of deduction of any amount of the foreign tax;
  - (c) relief under section 50 by way of credit and deduction of any amount of the foreign tax.
- (2) The amount of any relief from double taxation granted must not exceed the amount of the relief that would be granted had all foreign tax minimization steps been taken.
- (3) For the purposes of subsection (2)—
- (a) all foreign tax minimization steps are taken only if all reasonable steps are taken under—
    - (i) the laws of the foreign territory; and
    - ~~(ii) if the foreign territory is a DTA territory the double taxation arrangements concerned,~~
    - (ii) if subsection (1)(c) applies—the double taxation arrangements made with the foreign territory,
 to minimize the amount of foreign tax payable in the foreign territory in respect of the relevant income; and
  - (b) the reasonable steps mentioned in paragraph (a) include—
    - (i) claiming, or otherwise securing the benefit of, relief, deductions, reductions or allowances; and
    - (ii) making elections for tax purposes.

...

**9. Part 8AA added**  
 After Part 8—  
**Add**

**“Part 8AA**  
**Transfer Pricing Rules, Relief and Advance Pricing Arrangement**

**Note (with no legislative effect) providing an overview of Part 8AA—**

1. Apart from defining relevant terms, Division 1 applies Part 8AA to determining property tax, salaries tax and profits tax and requires the Part to be read in a way that best secures consistency between its effect and the effect given to Articles 7 and 9 of the Model Tax Convention on Income and on Capital approved by the Organisation for Economic Co-operation and Development. The expression *provision* is broadly equivalent to the expression *condition made or imposed* in Article 9.
- ~~2. Division 2 incorporates the international transfer pricing rules and has the following effect—~~
  - ~~(a) a person’s tax liability under this Ordinance is to be determined on the basis that a provision made or imposed between the person and the person’s associated person is made or imposed on an arm’s length basis;~~
  - ~~(b) in other words, a person who would have a Hong Kong tax advantage if taxed on the basis of a non-arm’s length provision (*advantaged person*) will have income adjusted upwards or loss adjusted downwards;~~
  - ~~(c) similarly, the income or loss of a non-Hong Kong resident person attributable to the person’s permanent establishment in Hong Kong are to be determined as if the permanent establishment were a distinct and separate enterprise.~~
2. Division 2 incorporates the international transfer pricing rules and has the following effect—
  - (a) in relation to a year of assessment beginning on or after 1 April 2018—
    - (i) a person’s tax liability under this Ordinance is to be determined on the basis that a provision made or imposed between the person and the person’s associated person is made or imposed on an arm’s length basis;
    - (ii) in other words, a person who would have a Hong Kong tax advantage if taxed on the basis of a non-arm’s length provision (*advantaged person*) will have income adjusted upwards or loss adjusted downwards;
  - (b) similarly, in relation to a year of assessment beginning on or after 1 April 2019, the income or loss of a non-Hong Kong resident person attributable to the person’s



permanent establishment in Hong Kong are to be determined as if the permanent establishment were a distinct and separate enterprise.

- 2A. The arm's length provision is to be determined in accordance with the OECD rules (as defined by section 50AAC(1)). It is possible that application of the OECD rules may not produce a single provision (such as an exact figure as the price) but may produce a range of provisions where each provision constitutes an arm's length provision.

...

## Division 1—Preliminary

### 50AAC. Interpretation of Part 8AA

- (1) In this Part—

...

*associated enterprises article* (相聯企業條文) means the rules contained in Article 9 of the Model Tax Convention;

...

*business profits article* (營業利潤條文) means the rules contained in Article 7 of the Model Tax Convention;

...

~~*double taxation arrangements* (雙重課稅安排) has the meaning given by section 48A;~~  
*double taxation arrangements* (雙重課稅安排)—

- (a) in relation to the computation of income or loss with respect to a provision made or imposed between 2 persons by means of a transaction or series of transactions—means double taxation arrangements (as defined by section 48A) that incorporate—
  - (i) the associated enterprises article and the mutual agreement procedure article; or
  - (ii) any rules in the same or equivalent terms as those articles;
- (b) in relation to the attribution of a person's income or loss to its permanent establishment in Hong Kong—means double taxation arrangements (as defined by section 48A) that incorporate—
  - (i) the business profits article and the mutual agreement procedure article; or
  - (ii) any rules in the same or equivalent terms as those articles;
- (c) in relation to the determination of the question whether a person has a permanent establishment in Hong Kong—means double taxation arrangements (as defined by section 48A) that incorporate—
  - (i) the permanent establishment article; or
  - (ii) any rules in the same or equivalent terms as the article;

~~*DTA territory* (有安排地區) has the meaning given by section 48A;~~

*“DTA territory* (有安排地區) means a territory outside Hong Kong with which double taxation arrangements have been made;

...

*mutual agreement procedure article* (相互協商程序條文) means the rules contained in Article 25 of the Model Tax Convention;

...

~~*non-DTA territory* (無安排地區) has the meaning given by section 48A;~~

*non-DTA territory* (無安排地區) means a territory outside Hong Kong that is not a DTA territory;

...

*OECD rules* (《經合組織規則》) means—

- (a) the commentary on the associated enterprises article or the business profits article (as the case requires);
- (b) the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the Organisation for Economic Co-operation and Development on 10 July 2017;

...

*permanent establishment article* (常設機構條文) means the rules contained in Article 5 of the Model Tax Convention;

...

(1A) For the purposes of the definitions of *associated enterprises article*, *business profits article*, *mutual agreement procedure article*, *OECD rules* and *permanent establishment article* in subsection (1)—

- (a) a reference to an article of the Model Tax Convention means the article in the Model Tax Convention on Income and on Capital as approved by the Organisation for Economic Co-operation and Development on 21 November 2017; and
- (b) a reference to the commentary on the associated enterprises article or the business profits article means the commentary on the article so approved on that date.

...

~~(5) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 17G.~~

(5) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend—

- (a) the definitions of the following expressions in subsection (1)—  
*associated enterprises article* (相聯企業條文);  
*business profits article* (營業利潤條文);  
*mutual agreement procedure article* (相互協商程序條文);  
*OECD rules* (《經合組織規則》);  
*permanent establishment article* (常設機構條文);
- (b) subsection (1A); and
- (c) Schedule 17G.

...

#### 50AAE. Consistency with OECD rules

(1) This ~~Division~~ Part is to be read in the way that best secures—

- (a) consistency between—
  - (i) the effect given to sections 50AAF, 50AAG, 50AAM and 50AAN; and
  - (ii) the effect that, in accordance with the OECD rules, is to be given to double taxation arrangements that incorporate the associated enterprises article or any rules in the same or equivalent terms as that article; and
- (b) consistency between—
  - (i) the effect given to sections 50AAK and 50AAO; and
  - (ii) the effect that, in accordance with the OECD rules, is to be given to double taxation arrangements that incorporate the business profits article or any rules in the same or equivalent terms as that article.

~~(2) In this section—~~

~~*associated enterprises article* (相聯企業條文) means the rules contained in Article 9 of the Model Tax Convention;~~

~~*business profits article* (營業利潤條文) means the rules contained in Article 7 of the Model Tax Convention;~~

~~*OECD rules* (《經合組織規則》) means —~~

- ~~(a) the commentary on the associated enterprises article or the business profits article (as the case requires); and~~
- ~~(b) the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the Organisation for Economic Co-operation and Development on 10 July 2017.~~
- ~~(3) For the purposes of subsection (2), a reference to an article of the Model Tax Convention and to the commentary on the article means the article in the Model Tax Convention on Income and on Capital as approved by the Organisation for Economic Co-operation and Development on 15 July 2014 and to the commentary on the article approved on the same date.~~
- ~~(4) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend the definitions in subsections (2) and (3).~~

...

**50AAF. Rule 1: Arm's length principle for provision between associated persons**

...

- (6) For all purposes of this Ordinance, the estimated amount under subsection (5) is taken to be the arm's length amount unless the advantaged person proves that another amount is ~~a more reliable measure~~ an equally reliable measure, or a more reliable measure, of the arm's length amount.
- (7) Subsections (1) to (6) do not apply in relation to a provision made or imposed in relation to any disposal or acquisition of trading stock if section 15BA(4) or (5) applies in relation to the disposal or acquisition.
- (8) Subsections (1) to (6) do not apply in relation to a provision made or imposed in relation to any trading stock if section 15C applies in relation to the trading stock.

...

**50AAK. Rule 2: Separate enterprises principle for attributing income or loss of non-Hong Kong resident person**

...

- (10) For all purposes of this Ordinance, the estimated amount under subsection (9) is taken to be the arm's length amount unless the person proves that another amount is ~~more reliable measure~~ an equally reliable measure, or a more reliable measure, of the arm's length amount.

...

**50AAM. Corresponding relief not involving foreign tax**

...

- (10) For all purposes of this Ordinance, the estimated amount under subsection (8) is taken to be the arm's length amount unless the disadvantaged person proves that another amount is ~~more reliable measure~~ an equally reliable measure, or a more reliable measure, of the arm's length amount.

...

**50AAO. 涉及外地稅項的相應寬免：非香港居民人士的常設機構**

...

- (3) 如某非香港居民人士的收入或虧損，已根據第(2)款評定或計算，則該人士須 ——

...

- (b) 在以下情況出現時，於該外地稅項調整作出後的 3 個月內，就該項調整向局長發出書面通知 ——
- (i) 該項調整關乎可歸因於該人士設於香港的常設機構的該人士的收入或虧損的數額(~~新斷定歸屬額~~)的斷定；及
  - (ii) 按新斷定歸屬額(而非解決方案歸屬額)的基礎，就香港稅項而計算該人士的收入或~~虧損定~~虧損，會導致以下結果 ——
    - (A) 一個較大款額的該人士的收入，被歸因於該人士設於香港的常設機構；或
    - (B) 一個較小款額的該人士的虧損，被歸因於該人士設於香港的常設機構。

...

#### 50AAP. 可作出預先定價安排

...

- (3) 在以下情況下，局長可拒絕作出預先定價安排 ——
- (a) 如 ——
    - (i) 該安排適用於在多於一人之間訂定或施加的條款，而在該等人士之中，某人(~~指明人士~~) ——
      - (A) 有就香港稅項而~~評計算~~計算收入或虧損；但

...

#### 10. Schedules 17G and 17H added

After Schedule 17F—

Add

##### “Schedule 17G

[ss. 50AAC & 58B &  
~~Sch. 42~~ Sch. 44]

...

##### Schedule 17H

[ss. 50AAP, 50AAV & 80 &  
~~Sch. 42~~ Sch. 44]

...

#### 7. Fees

...

- (9) The fees payable in respect of an application are—
- (a) ~~subject to subsection (10)~~, a service charge calculated on the basis of each hour (or any part of an hour) spent by—
    - (i) a Deputy Commissioner \$2,650
    - (ii) an Assistant Commissioner \$2,240
    - (iii) a Chief Assessor \$1,960
    - (iv) any other person appointed under this Ordinance; and \$1,730

...

~~(10) The service charge payable under subsection (9)(a) in respect of an application must not exceed \$500,000.~~

...

#### 13. Section 15BA added

Before section 15C—

Add

**“15BA. Changes in trading stock**

(1) In this section—

*trade* (行業) means trade or business;

...

(6) Subsection (4) does not apply in relation to a disposal, and subsection (5) does not apply in relation to an acquisition, of any trading stock if section 15C applies in relation to the trading stock.

...

**14A. Section 20 repealed (liability of certain non-resident persons)**

Section 20—

**Repeal the section.**

...

**58B. Interpretation of Part 9A**

...

(2) In this Part—

...

*CbCR documents* (國別標準文件) means the following documents published by the Organisation for Economic Co-operation and Development—

- (a) the consolidated report, entitled Transfer Pricing Documentation and Country-by-Country Reporting, on Action 13 of the OECD/ G20 Action Plan on Base Erosion and Profit Shifting published in 2015;
- (b) the document entitled Guidance on the Implementation of Country-by-Country Reporting – BEPS Action 13 published in ~~2017~~ 2018; and
- (c) the document entitled Country-by-Country Reporting: Handbook on Effective Implementation published in 2017;

...

~~*filing deadline* (提交期限), in relation to a country-by-country return, means the earlier of the following times—~~

- ~~(a) the expiry of 12 months after the end of the accounting period to which the return relates;~~
- ~~(b) the date specified in a notice given under section 58G;~~

*filing deadline* (提交期限) has the meaning given by subsections (2A) and (2B);

...

(2A) In this Part—

*filing deadline* (提交期限), in relation to a country-by-country return for an accounting period, means, subject to subsection (2B), the earlier of the following dates—

- (a) the date on which a period of 12 months after the end of the accounting period expires;
- (b) the date specified in a notice given under section 58G.

(2B) If—

- (a) a Hong Kong entity (not being a HK ultimate parent entity) required under section 58F to file a country-by-country return for an accounting period notifies the Commissioner in accordance with section 58H that the SPE-filing-elsewhere exception is to apply within the meaning of section 58I(2)(a); and

(b) the date by which a country-by-country report for the accounting period is required to be filed by the laws or regulations of the jurisdiction of tax residence of the surrogate parent entity concerned (*foreign filing date*) is later than the filing deadline under subsection (2A),  
the *filing deadline* in relation to the country-by-country return for the accounting period is the foreign filing date.

(3) For the purposes of this Part—

(a) a business unit of a multinational enterprise group, or an enterprise, has a permanent establishment in a jurisdiction if—

(i) in the case where the jurisdiction is Hong Kong—the business unit or enterprise has a permanent establishment in Hong Kong under Schedule 17G; or

(ii) in the case where the jurisdiction is not Hong Kong—the business unit or enterprise is regarded as having a permanent establishment in the jurisdiction under the laws of the jurisdiction or under a bilateral or multilateral tax convention to which the jurisdiction is a party; ~~and;~~

(b) a reference to a permanent establishment in a jurisdiction, in relation to a business unit of a multinational enterprise group or to an enterprise, is to be read accordingly; ~~and~~

(c) for the purposes of applying Schedule 17G to determine whether a business unit of a multinational enterprises group has a permanent establishment in Hong Kong, a reference to a person or to an enterprise –

(i) in paragraph (c) of the definition of *double taxation arrangements* in section 50AAC(1); or

(ii) in Schedule 17G,  
is to be construed as including such a business unit.

...

#### 58C. Master file and local file to be retained

...

(2) The Hong Kong entity must—

(a) prepare, within ~~6-9~~ months after the end of each accounting period of the entity, a file in respect of the accounting period (*local file*) and a file in respect of the corresponding accounting period of the group (*master file*); and

...

#### 58D. Consistency with CbCR documents and application to reportable group

...

(4) However, if—

(a) a multinational enterprise group's ultimate parent entity is resident for tax purposes in a jurisdiction other than Hong Kong (*jurisdiction U*); ~~and~~

(b) the group draws up its consolidated financial statements in respect of period P-1 in a currency of jurisdiction U (*currency U*) or would have drawn them up in currency U if the group had been required to produce them; ~~and,~~

~~(c) jurisdiction U requires the filing of a country-by-country report in respect of period P by a multinational enterprise group that has a total consolidated group revenue for period P-1 of at least jurisdiction U's threshold amount,~~

the reference to specified threshold amount in subsection (3) has effect as if it were jurisdiction U's threshold amount.

(5) In this section—

~~*jurisdiction U's threshold amount* (終區門檻款額) means an amount, in currency U, that is equivalent to EUR 750 million as at January 2015;~~

*jurisdiction U's threshold amount* (終區門檻款額) means—

- (a) if jurisdiction U requires the filing of a country-by-country report in respect of period P by a multinational enterprise group that has a total consolidated group revenue for period P-1 of at least a threshold amount and that amount is specified under the laws or regulations of jurisdiction U—the threshold amount specified; or
- (b) in any other case—an amount, in currency U, that is equivalent to EUR 750 million as at January 2015;

...

#### 58H. Notice by Hong Kong entities

- (1) Subject to subsection (3), each Hong Kong entity of a reportable group must file a written notice with the Commissioner, informing the Commissioner of the following in respect of period P—
  - (a) the name, address and business registration number of each of the group's Hong Kong entities, identifying among them (as applicable)—
    - (i) the HK ultimate parent entity;
    - (ii) the surrogate parent entity that is resident for tax purposes in Hong Kong; or
    - (iii) a Hong Kong entity (not falling within subparagraph (i) or (ii)) that is to file a country-by-country return in accordance with section 58F;
  - (b) if the group's ultimate parent entity is resident for tax purposes in a jurisdiction other than Hong Kong—
    - (i) the jurisdiction of tax residence of the ultimate parent entity (*jurisdiction U*);
    - (ii) the name, address and business registration number (or equivalent particulars) of the ultimate parent entity;
    - (iii) whether, in relation to the group, a condition precedent for Hong Kong to require a Hong Kong entity of the group that is not the ultimate parent entity to file a country-by-country report is met within the meaning of section 58I(1); and
    - (iv) ~~the date on which~~ whether the ultimate parent entity has notified the tax authority of jurisdiction U in accordance with the laws or regulations of jurisdiction U that it is the ultimate parent entity (if the laws or regulations of jurisdiction U require the notification);
  - (c) if the SPE-filing-elsewhere exception is to apply within the meaning of section 58I(2)(a)—
    - (i) the jurisdiction of tax residence of the surrogate parent entity (*jurisdiction S*);
    - (ii) the name, address and business registration number (or equivalent particulars) of the surrogate parent entity; and
    - (iii) ~~the date on which~~ whether the surrogate parent entity has notified the tax authority of jurisdiction S in accordance with the laws or regulations of jurisdiction S that it is the surrogate parent entity (if the laws or regulations of jurisdiction S require the notification); and

...

**58I. Condition precedent for requiring local filing; SPE-filing exceptions**

...

- (3) A constituent entity is appointed as the surrogate parent entity of the group concerned if—
- (a) it is resident for tax purposes in a jurisdiction other than Hong Kong (*jurisdiction S*); and
  - (b) it is appointed by the group as the sole substitute for the ultimate parent entity to file the country-by-country report in respect of period P in jurisdiction S, on behalf of the group, ~~when a condition precedent for jurisdiction S to require a jurisdiction S entity of a reportable group that is not the ultimate parent entity to file a country-by-country report is met within the meaning of subsection (1).~~

...

**17. Schedule 17I added**  
Before Schedule 18—  
**Add**

**“Schedule 17I**

[s. 58C & ~~Sch. 42~~ Sch. 44]

**Master File and Local File: Thresholds and Prescribed Information**

...

**Division 9—Amendments Relating to Transitional Provisions**

**33. Section 89 amended (transitional provisions)**  
Section 89—  
**Add**

- “(20-21) Schedule ~~42-44~~ sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue (Amendment) (No. 6) Ordinance 2017 ( of 2017).”.

...

**34. ~~Schedule 42~~ Schedule 44 added**  
The Ordinance—  
**Add**

**“~~Schedule 42~~ Schedule 44**

[s. ~~89(20)~~ 89(21)]

**Transitional Provisions for Inland Revenue (Amendment) (No. 6)  
Ordinance 2017**

...

- 4. Provisions relating to transfer pricing rules, relief and advance pricing arrangement**
- ~~(1) Subject to this section, the following provisions apply in relation to a year of assessment beginning on or after 1 April 2018—~~
- ~~(a) Divisions 2 and 3 of Part 8AA and Schedule 17G;~~
  - ~~(b) Division 4 of Part 8AA and Schedule 17H;~~



~~(c) sections 15BA and 15F;~~  
~~(d) the amendments made to rules 3(1A) and 5(1) of the Inland Revenue Rules (Cap. 112 sub. leg. A) by the Amendment Ordinance; and~~  
~~(e) rule 5(1A) of those Rules.~~

- (1) Subject to subsections (2), (3) and (4), the following provisions apply in relation to a year of assessment beginning on or after 1 April 2018—
  - (a) Divisions 2 and 3 of Part 8AA (except section 50AAK) and Schedule 17G;
  - (b) Division 4 of Part 8AA and Schedule 17H;
  - (c) section 15BA;
  - (d) the amendments made to sections 80, 82 and 82A by the Amendment Ordinance (except to the extent that the amendments relate to section 50AAK).
- (1A) Subject to subsections (2A), (5) and (6), the following provisions apply in relation to a year of assessment beginning on or after 1 April 2019—
  - (a) section 50AAK;
  - (b) section 15F;
  - (c) the amendments made to sections 80, 82 and 82A by the Amendment Ordinance (to the extent that the amendments relate to section 50AAK);
  - (d) the amendments made to rules 3(1A) and 5(1) of the Inland Revenue Rules (Cap. 112 sub. leg. A) by the Amendment Ordinance;
  - (e) rule 5(1A) of those Rules.
- (2) The provisions referred to in subsection ~~(1)(a), (d) and (e)~~ (1)(a) and (d) do not apply in relation to a transaction entered into or effected before the commencement date.
- (2A) The provisions referred to in subsection (1A)(a), (c), (d) and (e) do not apply in relation to a transaction entered into or effected before 1 April 2019.
- (3) Subsection (1)(b) does not prevent principles developed in an advance pricing arrangement from being applied, under section 50AAQ(4), in relation to a period which wholly or partly falls before 1 April 2018 if the application for the arrangement is made on or after the commencement date.
- (4) Section 15BA does not apply in relation to a change in trading stock effected before the commencement date.
- (5) A person is not chargeable under section 15F to profits tax in respect of a sum (or any part of it) if the sum accrued to or was received by or for the benefit of an associate of the person before ~~the commencement date~~ 1 April 2019.
- (6) A person is chargeable under section 15F to profits tax in respect of a sum (or any part of it) if the sum accrues to or is received by or for the benefit of an associate of the person on or after ~~the commencement date~~ 1 April 2019, regardless of whether the sum arises from a transaction entered into or effected before ~~the commencement date~~ 1 April 2019.