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Tel : 3919 3306

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 21 March 2018

Amendments to Inland Revenue (Amendment) (No. 4) Bill 2017

The Second Reading debate on the above Bill will be resumed at the Council meeting of 21 March 2018. Subject to the Bill receiving Second Reading, the President has given permission for the Secretary for Financial Services and the Treasury to move amendments to the Bill.

2. As directed by the President, the amendments are attached for Members' consideration.

(Boris LAM)
for Clerk to the Legislative Council

Encl.

Inland Revenue (Amendment) (No. 4) Bill 2017

Committee Stage

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

<u>Clause</u>	<u>Amendment Proposed</u>
4	In the proposed section 20AG(4), by deleting “from a transaction referred to in section 20AH(1)(a) or (b)”.
4	In the proposed section 20AH(1)— (a) in paragraph (a), by deleting “and”; (b) in paragraph (b), by deleting the full stop and substituting “; and”; (c) by adding— “(c) transactions in assets of a non-Schedule 16A class if the activities that produce assessable profits from the transactions— (i) are carried out in Hong Kong by or through a qualified person; or (ii) are arranged in Hong Kong by a qualified person.”.
4	In the proposed section 20AH(2)— (a) in paragraph (a), by adding “and” after the semicolon; (b) in paragraph (b), by deleting “; and” and substituting a full stop; (c) by deleting paragraph (c).
4	In the proposed section 20AH, by adding— “(4A) Despite subsection (1), if, during the basis period for a year of assessment— (a) an open-ended fund company carries on a trade, profession or business that involves transactions in shares of, or debentures issued by, a private company (<i>company concerned</i>); and (b) the company concerned holds (whether directly or indirectly) immovable property in Hong Kong or share

capital (however described) in one or more private companies with direct or indirect holding of immovable property in Hong Kong, and the aggregate value of the holding of the property (if any) and the share capital (if any) is equivalent to more than 10% of the value of the company concerned's assets,

the open-ended fund company is not exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the period from the transactions.

(4B) Despite subsection (1), if, during the basis period for a year of assessment—

(a) an open-ended fund company carries on a trade, profession or business that involves transactions in shares of, or debentures issued by, a private company (other than a private company with a holding or shareholding referred to in subsection (4A)(b)) and has control over the private company;

(b) the private company holds (whether directly or indirectly) short-term assets;

(c) the aggregate value of the short-term assets is equivalent to more than 50% of the value of the private company's assets; and

(d) the open-ended fund company disposes of the shares or debentures through a transaction or a series of transactions,

the open-ended fund company is not exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the period from the transactions.

(4C) Despite subsection (1), if, during the basis period for a year of assessment, an open-ended fund company—

(a) carries on a direct trading or a direct business undertaking in Hong Kong in assets of a non-Schedule 16A class; or

(b) holds assets of a non-Schedule 16A class and the assets are being utilized with a view to generating income,

the open-ended fund company is not exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the period from the direct trading, direct business undertaking or utilization of assets.”.

4 In the proposed section 20AH(9), in the English text, in the definition of *qualified person*, by deleting the full stop and substituting a semicolon.

4 In the proposed section 20AH(9), in the Chinese text, in the definition of *非附表 16A 類別*, by deleting the full stop and substituting a semicolon.

4 In the proposed section 20AH(9), by adding in alphabetical order to the proposed definitions—

“*control* (控制) has the meaning given by section 20AC;

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

short-term asset (短期資產), in relation to a private company the shares or debentures of which are being disposed of by an open-ended fund company, means an asset—

(a) that is of a non-Schedule 16A class;

(b) that is not immovable property in Hong Kong; and

(c) that has been held by the private company for less than 3 consecutive years before the date of disposal.”.

4 In the proposed section 20AI(6), in the English text, in the definition of *qualified investor*, in paragraph (f), by deleting “Authority.” and substituting “Authority;”.

4 In the proposed section 20AI(6), in the definition of *qualified investor*, by adding—

“(g) an investment arrangement, which is commonly known as a sovereign wealth fund, established and funded by a state or government (or any political subdivision or local authority of a state or government) for the purposes of—

(i) carrying out financial activities; and

(ii) holding and managing a pool of assets,

for the benefit of the state or government (or the political subdivision or local authority).”.

4 By deleting the proposed section 20AJ(2).

4 In the proposed section 20AJ(4), by deleting the definition of *non-Schedule 16A class*.

4 In the proposed section 20AJ(4), in the Chinese text, in the definition of *服務*, in paragraph (d), by deleting the semicolon and substituting a full stop.

4 In the proposed section 20AL, in the heading, by deleting “**Losses from section 20AH(1) transactions and non-Schedule 16A transactions**” and substituting “**Losses sustained by open-ended fund companies**”.

4 In the proposed section 20AL(1), by deleting “(a) or (b)” and substituting “(a), (b) or (c)”.

4 In the proposed section 20AL(2)—

- (a) by deleting “under section 20AH” and substituting “under section 20AH (other than because of subsection (4A), (4B) or (4C) of that section)”;
- (b) by deleting “(a) or (b)” (wherever appearing) and substituting “(a), (b) or (c)”.

4 In the proposed section 20AL(3)—

- (a) by deleting “a non-Schedule 16A transaction” and substituting “a transaction, a direct trading, a direct business undertaking or utilization of assets, in respect of which there is not an exemption from the payment of tax for assessable profits under section 20AH(4A), (4B) or (4C)”;
- (b) by deleting “non-Schedule 16A transactions” and substituting “the transaction, direct trading, direct business undertaking or utilization of assets”.

4 By deleting the proposed section 20AL(4).

6 In the proposed Schedule 16A, by deleting “, 20AH, 20AJ & 20AL]” and substituting “& 20AH]”.

6 In the proposed Schedule 16A, by adding—

- “1A. Shares of, or debentures issued by, a private company within the meaning of section 11 of the Companies Ordinance (Cap. 622).”.