

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (AMENDMENT) BILL 2010

INTRODUCTION

A At the meeting of the Executive Council on 20 April 2010, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Amendment) Bill 2010 at Annex A be introduced into the Legislative Council (“LegCo”) to implement the following two concessionary revenue measures proposed in the 2010-11 Budget -

- (a) reduce salaries tax and tax under personal assessment for 2009-10 by 75%, subject to a ceiling of \$6,000 per case; and
- (b) accelerate profits tax deduction for capital expenditure on environment-friendly vehicles.

JUSTIFICATIONS

One-off Tax Reduction for 2009-10

2. To alleviate taxpayers’ financial burden at an early stage of economic recovery, the 2010-11 Budget proposes a one-off reduction of salaries tax and tax under personal assessment by 75% for the year of assessment 2009-10, subject to a ceiling of \$6,000 per case. The reduction will be reflected in the taxpayer’s final tax payable for 2009-10.

Accelerated Profits Tax Deduction for Capital Expenditure on Environment-friendly Vehicles

3. At present, depreciation allowance under profits tax is provided for motor vehicles (including environment-friendly vehicles) like ordinary machinery or plant. In general, businesses claiming depreciation allowance for motor vehicles will be granted an initial allowance at 60% of the purchase cost in the year of purchase and an annual allowance at 30% of the reducing value. Almost 99% of the purchase cost will be deducted in the first 10 years.

4. To encourage the business sector to purchase environment-friendly vehicles, the 2010-11 Budget proposes a 100% profits tax deduction for capital expenditure on environment-friendly vehicles in the year of purchase. We propose that the following three categories of environment-friendly vehicles are to be covered –

- (a) environment-friendly vehicles under the “Tax Incentives Scheme for Environment-friendly Petrol Private Cars” and “Tax Incentives Scheme for Environment-friendly Commercial Vehicles” administered by the Environmental Protection Department (“EPD”);
- (b) hybrid electric vehicles; and
- (c) electric vehicles.

5. For environment-friendly vehicles mentioned at paragraph 4(a), only those models approved by the EPD will be eligible for the proposed tax concession. To ensure that only those models with emission standards well above the statutory limits are eligible for the proposed tax concession, EPD will review from time to time the models approved and remove those that are no longer environment-friendly from the approved list. Regarding electric vehicles and hybrid electric vehicles, there will be no such review mechanism since all these vehicles are environment-friendly. The Environment Bureau and EPD will issue a list of electric vehicles and hybrid electric vehicles currently known to be available in the local market and update the list from time to time for public reference.

6. Apart from businesses which buy brand new environment-friendly vehicles, we propose that the proposed tax

concession should also be applicable to businesses which buy second-hand vehicles as long as the second-hand vehicles are eligible environment-friendly vehicles at the time of purchase. As a transitional arrangement, deductions for the value of eligible environment-friendly vehicles in use would also be available to existing owners of such vehicles to the extent that that value has not been deducted under other provisions of the Inland Revenue Ordinance (Cap. 112) (“IRO”). On subsequent sale of an environment-friendly vehicle, the sale proceeds, restricted to deductions previously allowed to the business, would be brought to tax.

7. To give effect to the above two concessionary revenue measures, we propose to introduce into the LegCo the Inland Revenue (Amendment) Bill 2010.

OTHER OPTIONS

8. We must amend the IRO in order to bring the relevant revenue proposals into effect. There are no other options.

THE BILL

9. The purpose of the Inland Revenue (Amendment) Bill 2010 is to amend the IRO to give effect to the concessionary revenue proposals set out at paragraph 1 above. The major provisions are as follows –

- (a) **Clause 2** amends section 16(2)(e)(i)(D) to allow for deduction from assessable profits the interest payable on capital expenditure on environment-friendly vehicles.
- (b) **Clause 4** amends section 16I to allow for a 100% deduction from assessable profits any capital expenditure incurred on environment-friendly vehicles in the year of purchase.
- (c) **Clause 5** amends section 16J to provide that if any environment-friendly vehicle for which deduction has been allowed under section 16I is sold, destroyed or stolen, the proceeds of the sale or any insurance or compensation monies are

to be treated as trading receipts. It further provides that in case of cessation of business, an environment-friendly vehicle is deemed to have been sold immediately before the cessation. If the vehicle is sold, destroyed or stolen within 12 months of the cessation, the taxpayer may claim an adjustment to the amount of proceeds deemed to have been received from the deemed sale.

- (d) **Clause 6** amends section 16K to allow capital expenditure incurred on environment-friendly vehicles before the commencement date of the Bill to be eligible for deduction from assessable profits.
- (e) **Clauses 7 and 9** add a new section 92 and a new Schedule 20 respectively to reduce the salaries tax and tax under personal assessment payable for the year of assessment 2009-10 by 75%, subject to a ceiling of \$6,000 per case.
- (f) **Clause 8** amends Schedule 17 to specify environment-friendly vehicles.

B An extract of the provisions of the IRO which are being amended is attached at **Annex B**.

LEGISLATIVE TIMETABLE

10. The legislative timetable will be as follows -

| | |
|------------------------------------------------------------------------|----------------|
| Publication in the Gazette | 30 April 2010 |
| First Reading and commencement of Second Reading debate | 12 May 2010 |
| Resumption of Second Reading debate, committee stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSAL

C 11. The proposal has financial, economic, environmental and sustainability implications as set out at **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the IRO and its subsidiary legislation. It has no civil service or productivity implications.

PUBLIC CONSULTATION

12. The Financial Secretary has conducted consultations with LegCo Members, various business and professional bodies, as well as the general public during the formulation of the 2010-11 Budget. Their views have been taken into account in formulating these proposals.

PUBLICITY

13. We will issue a press release on 30 April 2010. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

14. In case of enquiries about this Brief, please contact Ms Shirley Kwan, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2370.

Financial Services and the Treasury Bureau
28 April 2010

Inland Revenue Ordinance
(Chapter 112)

Inland Revenue (Amendment) Bill 2010

ANNEXES

- Annex A Inland Revenue (Amendment) Bill 2010
- Annex B Extract of the provisions of the Inland Revenue Ordinance
which are being amended
- Annex C Implications of the Proposal

A BILL

To

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

Enacted by the Legislative Council.

1. Short title

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

2. Ascertainment of chargeable profits

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

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

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

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

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

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

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

(4) Section 16H(1) is amended by adding –

““environment-friendly vehicle” (環保車輛) –

(a) means any vehicle that is specified in Part 3 of Schedule 17; but

(b) does not include any vehicle in which any person holds rights as a lessee under a lease;”.

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

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

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

(1) Section 16J is amended by adding –

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

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

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

“if any environmental protection machinery or environmental protection installation in respect of which a deduction has been

allowed to a person under section 16I in ascertaining the profits from a trade, profession or business is subsequently destroyed –

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

(4) Section 16J is amended by adding –

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

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

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

destroyed or stolen before the cessation of the trade, profession or business –

- (a) the vehicle is deemed to have been sold immediately before the cessation; and
- (b) the person is deemed to have received immediately before the cessation the proceeds of that sale.

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

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

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

6. Environmental protection facilities owned as at commencement date

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

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

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

(4) Section 16K is amended by adding –

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

- (a) in relation to any machinery, plant, building or structure, means 27 June 2008;
- (b) in relation to any vehicle, means the date on which the Inland Revenue (Amendment) Ordinance 2010 (of 2010) came into operation.”.

7. Section 92 added

The following is added –

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

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

8. Environmental protection facilities

Schedule 17 is amended by adding –

“PART 3

ENVIRONMENT-FRIENDLY VEHICLES

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

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

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

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

(a) consumable fuel;

(b) battery, capacitor, flywheel, generator or other electrical energy or power storage device.

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

9. Schedule 20 added

The following is added –

“SCHEDULE 20 [s. 92]

REDUCTION OF TAXES FOR YEAR OF ASSESSMENT 2009/10

1. Salaries tax

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

(a) 75% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or

(b) \$6,000,

whichever is the lesser.

2. Tax under personal assessment

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

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

whichever is the lesser.

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

Explanatory Memorandum

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

- (a) to reduce the amounts of salaries tax and tax under personal assessment payable for the year of assessment 2009/10;
- (b) to accelerate profits tax deduction for capital expenditure incurred on the provision of environment-friendly vehicles.

2. Clause 2 amends section 16(2)(e)(i)(D) of the Ordinance to allow for the deduction from assessable profits interest payable on capital expenditure incurred on the provision of environment-friendly vehicles.

3. Clause 3 amends section 16H(1) of the Ordinance to add a definition of “environment-friendly vehicle”, to amend the definitions of “environmental

protection facility” and “specified capital expenditure”, and to repeal the definition of “commencement date”.

4. Clause 4 amends section 16I of the Ordinance to allow for the deduction from assessable profits the capital expenditure incurred on the provision of environment-friendly vehicles.

5. Clause 5 amends section 16J of the Ordinance to provide that if any environment-friendly vehicle for which deduction has been allowed under section 16I of the Ordinance is sold, the proceeds of the sale are to be treated as trading receipts. New provisions are also added by this clause to provide that if an environment-friendly vehicle for which deduction has been allowed under section 16I of the Ordinance has not been sold, destroyed or stolen before the cessation of the trade, profession or business concerned, that vehicle is deemed to have been sold immediately before the cessation.

6. Clause 6 amends section 16K of the Ordinance to allow capital expenditure incurred on the provision of an environment-friendly vehicle before the commencement date of this Bill (when enacted) to be deducted under section 16I of the Ordinance.

7. Clauses 7 and 9 respectively add section 92 and Schedule 20 to the Ordinance to reduce the salaries tax and tax under personal assessment payable for the year of assessment 2009/10 by 75%, subject to a maximum of \$6,000 in each case.

8. Clause 8 amends Schedule 17 to the Ordinance to specify environment-friendly vehicles.

Annex B

| | | | | | |
|----------|-----|--------|-----------------------------|-----------------|-----------|
| Chapter: | 112 | Title: | INLAND REVENUE ORDINANCE | Gazette Number: | 4 of 2010 |
|----------|-----|--------|-----------------------------|-----------------|-----------|

| | | | | |
|----------|----|-------------------------------------|-----------|------------|
| Section: | 16 | Ascertainment of chargeable profits | 4 of 2010 | 12/02/2010 |
|----------|----|-------------------------------------|-----------|------------|

(1) In ascertaining the profits in respect of which a person is chargeable to tax under this Part for any year of assessment there shall be deducted all outgoings and expenses to the extent to which they are incurred during the basis period for that year of assessment by such person in the production of profits in respect of which he is chargeable to tax under this Part for any period, including-

- (a) where the condition for the application of this paragraph is satisfied under subsection (2), and subject to subsections (2A), (2B) and (2C), sums payable by such person by way of interest on any money borrowed by him for the purpose of producing such profits, and sums payable by such person by way of legal fees, procuration fees, stamp duties and other expenses in connection with such borrowing; (Replaced 2 of 1971 s. 11. Amended 36 of 1984 s. 4, 12 of 2004 s. 6)
- (b) rent paid by any tenant of land or buildings occupied by him for the purpose of producing such profits, but not exceeding, in the case of rent paid to the tenant's spouse, or by a partnership to one or more of the partners thereof or to a spouse of any such partner, an amount equal to the assessable value of the land or buildings; (Amended 76 of 1975 s. 8; 8 of 1983 s. 11; 71 of 1983 s. 14)
- (c) tax of substantially the same nature as tax imposed under this Ordinance, proved to the satisfaction of the Commissioner to have been paid elsewhere, whether by deduction or otherwise, by any corporation or by a person other than a corporation who carries on a trade, profession or business in Hong Kong, during the basis period for the year of assessment in respect of profits chargeable to tax by virtue of section 15(1)(f), (g), (i), (j), (k) or (l); (Amended 7 of 1986 s. 12; 19 of 1986 s. 3; 63 of 1997 s. 2(a))

Provided that no deduction shall be made under this paragraph if the corporation or person concerned is eligible for relief under Part VIII in respect of such profits; (Added 73 of 1978 s. 4. Amended 36 of 1984 s. 4)

- (d) bad debts incurred in any trade, business or profession, proved to the satisfaction of the assessor to have become bad during the basis period for the year of assessment, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the assessor to have become bad during the said basis period notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said basis period:

Provided that-

- (i) deductions under this paragraph shall be limited to debts which were included as a trading receipt in ascertaining the profits, in respect of which the person

claiming the deduction is chargeable to tax under this Part, of the period within which they arose, and debts in respect of money lent, in the ordinary course of the business of the lending of money within Hong Kong, by a person who carries on that business; (Amended 7 of 1986 s. 12)

- (ii) all sums recovered during the said basis period on account of amounts previously allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as part of the profits of the trade, business or profession for that basis period;
- (e) expenditure incurred in the repair of any premises, plant, machinery, implement, utensil or article employed in the production of such profits;
- (f) expenditure incurred in the replacement of any implement, utensil or article employed in the production of such profits:

Provided that no allowances have been or shall be made under the provisions of Part VI in respect of such implement, utensil or article;

- (g) notwithstanding section 17, a sum expended for the registration of a trade mark or design, or the registration or grant of a patent, used in the trade, profession or business which produces such profits; (Replaced 26 of 1969 s. 14. Amended 52 of 1997 s. 160)
- *(ga) the payments and expenditure specified in sections 16AA, 16B, 16C, 16E, 16F and 16G as provided therein; (Added 35 of 1965 s. 9. Amended 56 of 1993 s. 9; 31 of 1998 s. 8; 32 of 1998 s. 6)
- (h) such other deductions as may be prescribed by any rule made under this Ordinance.

(2) The condition for the application of subsection (1)(a) is satisfied if- (Amended 12 of 2004 s. 6)

- (a) the money has been borrowed by a financial institution;
- (b) the money has been borrowed by a public utility company specified in the Schedule 3 at a rate of interest not exceeding the rate specified by the Financial Secretary by notice in the Gazette; (Amended 17 of 1989 s. 5)
- (c) the money has been borrowed from a person other than a financial institution or an overseas financial institution and the sums payable by way of interest are chargeable to tax under this Ordinance;
- (d) the money has been borrowed from a financial institution or an overseas financial institution; (Replaced 12 of 2004 s. 6)
- (e) the money has been borrowed wholly and exclusively to finance-
 - (i) capital expenditure incurred by the borrower on the provision of-
 - (A) any machinery or plant, where the expenditure qualifies for an allowance under Part VI;
 - (B) any machinery or plant for research and development, where the

expenditure may be deducted under section 16B;

(C) a prescribed fixed asset (as defined in section 16G(6)), where the expenditure may be deducted under section 16G; or

(D) any environmental protection machinery (as defined in section 16H(1)), where the expenditure may be deducted under section 16I; or (Replaced 4 of 2010 s. 4)

(ii) the purchase of trading stock by the borrower, where the trading stock purchased is used by the borrower in the production of profits chargeable to tax under this Part,

and-

(iii) the lender is not an associate of the borrower; and

(iv) where the lender is a trustee of a trust estate or a corporation controlled by such a trustee, neither the trustee nor the corporation nor any beneficiary under the trust is the borrower or an associate of the borrower; or (Replaced 12 of 2004 s. 6)

(f) the borrower is a corporation and the deduction claimed is in respect of interest payable by it-

(i) on debentures listed on a stock exchange in Hong Kong or on any other stock exchange recognized by the Commissioner for the purposes of this subparagraph;

(ii) on instruments (other than debentures described in subparagraph (i))-

(A) issued bona fide and in the course of carrying on business and marketed in Hong Kong or in a major financial centre outside Hong Kong recognized by the Commissioner for the purposes of this sub-subparagraph; or

(B) issued pursuant to any agreement or arrangements, where the issue of an advertisement, invitation or document in respect of the agreement or arrangements has been authorized by the Securities and Futures Commission under section 105 of the Securities and Futures Ordinance (Cap 571), and the advertisement, invitation or document has been issued to the public; or

(iii) on money borrowed from an associated corporation of the borrower, where the money borrowed in the hands of the associated corporation arises entirely from the proceeds of an issue by the associated corporation of debentures described in subparagraph (i) or of instruments described in subparagraph (ii), in an amount not exceeding the interest payable by the associated corporation to the holders of such debentures or instruments. (Replaced 12 of 2004 s. 6)

(2A) Where-

(a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(c), (d) or (e);

- (b) at any time during the basis period of the borrower for the year of assessment concerned, the payment of any sum payable by way of principal or interest in respect of the money borrowed is secured or guaranteed, whether wholly or in part and whether directly or indirectly, by a deposit or loan made by the borrower or an associate of the borrower with or to-
 - (i) the lender or an associate of the lender;
 - (ii) a financial institution or an associate of a financial institution; or
 - (iii) an overseas financial institution or an associate of an overseas financial institution; and
- (c) any sum payable by way of interest on the deposit or loan is not chargeable to tax under this Ordinance,

the amount of the deduction which, but for this subsection and subsections (2B) and (2C), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of sums payable by the borrower by way of interest on the money borrowed shall be reduced, having regard to the sum payable by way of interest on the deposit or loan, by an amount calculated on such basis as is most reasonable and appropriate in the circumstances of the case. (Added 12 of 2004 s. 6)

(2B) Where-

- (a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(c), (d) or (e); and
- (b) at any time during the basis period of the borrower for the year of assessment concerned, arrangements are in place, whether between the borrower and the lender or otherwise, whereby any sum payable by way of interest on the money borrowed or on any part of the money borrowed is payable, whether directly or through any interposed person, to the borrower or to a person (other than the lender) who is connected with the borrower and in either case the borrower or the person, as the case may be, is not an excepted person as defined in subsection (2E)(c),

the amount of the deduction which, but for this subsection and subsections (2A) and (2C), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of sums payable by the borrower by way of interest on the money borrowed or on the relevant part of the money borrowed, as the case may be, shall be reduced by an amount calculated in accordance with the following formula-

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

where: A means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the money borrowed or in respect of the relevant part of the money borrowed, as the case may be, is

outstanding and the arrangements are in place;

B means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the money borrowed or in respect of the relevant part of the money borrowed, as the case may be, is outstanding; and

C means the total amount of sums payable by the borrower by way of interest on the money borrowed or on the relevant part of the money borrowed, as the case may be, which, but for this subsection and subsections (2A) and (2C), would have been deductible under subsection (1)(a) for the year of assessment concerned. (Added 12 of 2004 s. 6)

(2C) Subject to subsection (2G), where-

- (a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f); and
- (b) at any time during the basis period of the borrower for the year of assessment concerned, arrangements are in place, whether between the borrower and the holders of the debentures or instruments concerned or otherwise, whereby any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned is payable, whether directly or through any interposed person, to the borrower or to a person who is connected with the borrower and in either case the borrower or the person, as the case may be, is not an excepted person as defined in subsection (2F)(c),

the amount of the deduction which, but for this subsection and subsections (2A) and (2B), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of-

- (c) (where the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f)(i) or (ii)) the sum payable by the borrower by way of interest on the debentures or instruments concerned or on the relevant interest in the debentures or instruments concerned, as the case may be; or
- (d) (where the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f)(iii)) the sum payable by the borrower by way of interest on money borrowed from the associated corporation, being money arising entirely from the proceeds of the issue of the debentures or instruments concerned or of the relevant interest in the debentures or instruments concerned, as the case may be,

shall be reduced by an amount calculated in accordance with the following formula-

$$\frac{X}{Y} \times Z$$

where: X means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the

debentures or instruments concerned or in respect of the relevant interest in the debentures or instruments concerned, as the case may be, is outstanding and the arrangements are in place;

Y means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the debentures or instruments concerned or in respect of the relevant interest in the debentures or instruments concerned, as the case may be, is outstanding; and

Z means the total amount of sums referred to in paragraph (c) or (d), as the case may be, which, but for this subsection and subsections (2A) and (2B), would have been deductible under subsection (1)(a) for the year of assessment concerned. (Added 12 of 2004 s. 6)

(2D) For the purposes of subsection (2A), if a deposit or loan is made by a trustee of a trust estate or a corporation controlled by such a trustee, the deposit or loan shall be deemed to have been made by each of the trustee, the corporation and the beneficiary under the trust. (Added 12 of 2004 s. 6)

(2E) For the purposes of subsection (2B)-

- (a) any reference in that subsection to any sum payable by way of interest on the money borrowed or on any part of the money borrowed, however described, shall be construed as including a reference to any sum payable by way of principal or interest in respect of any other loan, where the payment of such sum is-
 - (i) secured or guaranteed, whether wholly or in part and whether directly or indirectly, by any sum payable by way of principal or interest in respect of the money borrowed or in respect of any part of the money borrowed; or
 - (ii) conditional, whether wholly or in part and whether directly or indirectly, on the payment of any sum payable by way of principal or interest in respect of the money borrowed or in respect of any part of the money borrowed;
- (b) if any sum payable by way of interest on the money borrowed or on any part of the money borrowed, as construed in accordance with paragraph (a), is payable, whether directly or through any interposed person, to a trustee of a trust estate or a corporation controlled by such a trustee, such sum shall be deemed to be so payable to each of the trustee, the corporation and the beneficiary under the trust; and
- (c) "excepted person" (除外人士) means-
 - (i) a person who is chargeable to tax under this Ordinance in respect of any sum payable by way of interest on the money borrowed or on any part of the money borrowed, as construed in accordance with paragraph (a);
 - (ii) in the case of a person (other than the lender) who is connected with the borrower-
 - (A) a person who is entitled to any sum referred to in subparagraph (i) in the capacity of-

- (I) a person acting as a trustee of a trust estate or holding property belonging to others pursuant to the terms of a contract, where the person is not beneficially entitled to the sum in question;
- (II) a beneficiary of a unit trust to which section 26A(1A)(a)(i) or (ii) applies, where the sum in question is payable to a trustee of the unit trust in respect of a specified investment scheme referred to in section 26A(1A)(b); or
- (III) a member of a retirement scheme which is either a recognized retirement scheme or a substantially similar retirement scheme established outside Hong Kong, where the Commissioner is satisfied that the latter scheme complies with the requirements of a supervisory authority within an acceptable regulatory regime;
- (B) a public body;
- (C) a body corporate, where the Government owns beneficially more than half in nominal value of the issued share capital of that body corporate for the time being; or
- (D) a financial institution or an overseas financial institution. (Added 12 of 2004 s. 6)

(2F) For the purposes of subsection (2C)-

- (a) any reference in that subsection to any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, however described, shall be construed as including a reference to any sum payable by way of principal or interest in respect of any other loan, where the payment of such sum is-
 - (i) secured or guaranteed, whether wholly or in part and whether directly or indirectly, by any sum payable by way of principal or interest in respect of the debentures or instruments concerned or in respect of any interest in the debentures or instruments concerned; or
 - (ii) conditional, whether wholly or in part and whether directly or indirectly, on the payment of any sum payable by way of principal or interest in respect of the debentures or instruments concerned or in respect of any interest in the debentures or instruments concerned;
- (b) if any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, as construed in accordance with paragraph (a), is payable, whether directly or through any interposed person, to a trustee of a trust estate or a corporation controlled by such a trustee, such sum shall be deemed to be so payable to each of the trustee, the corporation and the beneficiary under the trust; and

- (c) "excepted person" (除外人士) means-
- (i) a person who is chargeable to tax under this Ordinance in respect of any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, as construed in accordance with paragraph (a);
 - (ii) in the case of a person who is connected with the borrower-
 - (A) a person who is entitled to any sum referred to in subparagraph (i) in the capacity of-
 - (I) a person acting as a trustee of a trust estate or holding property belonging to others pursuant to the terms of a contract, where the person is not beneficially entitled to the sum in question;
 - (II) a beneficiary of a unit trust to which section 26A(1A)(a)(i) or (ii) applies, where the sum in question is payable to a trustee of the unit trust in respect of a specified investment scheme referred to in section 26A(1A)(b); or
 - (III) a member of a retirement scheme which is either a recognized retirement scheme or a substantially similar retirement scheme established outside Hong Kong, where the Commissioner is satisfied that the latter scheme complies with the requirements of a supervisory authority within an acceptable regulatory regime;
 - (B) a public body;
 - (C) a body corporate, where the Government owns beneficially more than half in nominal value of the issued share capital of that body corporate for the time being; or
 - (D) a financial institution or an overseas financial institution. (Added 12 of 2004 s. 6)

(2G) Subsection (2C) shall not apply where under the relevant arrangements, the relevant sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned is payable to a market maker who, in the ordinary course of conduct of his trade, profession or business in respect of market making, holds such debentures or instruments or such interest for the purpose of providing liquidity thereof. (Added 12 of 2004 s. 6)

(2H) In subsection (2G), "market maker" (市場莊家) means a person who-

- (a) is licensed or registered for dealing in securities under the Securities and Futures Ordinance (Cap 571) or authorized to do so by a regulatory authority in a major financial centre outside Hong Kong recognized by the Commissioner for the purposes of subsection (2)(f)(ii)(A);
- (b) in the ordinary course of conduct of his trade, profession or business in respect of market making holds himself out as being willing to buy and sell securities for his own

account and on a regular basis; and

- (c) is actively involved in market making in securities issued by a wide range of unrelated institutions. (Added 12 of 2004 s. 6)

(3) In this section- (Amended 12 of 2004 s. 6)

"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) an director or principal officer of any such corporation as is 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 that 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 thereof or, where such a partner is a natural person, any relative of such partner;
 - (iii) any corporation of which any partner 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) if the person is a corporation-
 - (i) a corporation which has control over the person; or
 - (ii) a corporation which is under the control of the same person as is the first-mentioned person;

"beneficiary under the trust" (信託的受益人) means any person who benefits or is capable (whether

by the exercise of a power of appointment or otherwise) of benefiting under a trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income;

"overseas financial institution" (海外財務機構) means a person carrying on the business of banking or deposit-taking outside Hong Kong other than a person whom the Commissioner has, in accordance with the powers vested in him by subsection (4), determined shall not be recognized for the purposes of this section as an overseas financial institution; (Amended 12 of 2004 s. 6)

"principal officer" (主要職員) means-

- (a) a person employed by a 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) means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent. (Replaced 63 of 1997 s. 2)

(3A) In this section-

- (a) a corporation shall be regarded as being controlled by a person if the person has the power to secure-
 - (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
 - (ii) by virtue of any power conferred by the articles of association or any other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with his wishes; and
- (b) a person (other than a corporation) shall be regarded as being controlled by another person if the first-mentioned person is accustomed or under an obligation, whether express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings, to act, in relation to his investment or business affairs, in accordance with the directions, instructions or wishes of that other person. (Added 12 of 2004 s. 6)

(3B) In this section, a person shall be regarded as being connected with a borrower if the person

is-

- (a) an associated corporation of the borrower;
- (b) a person (other than a corporation)-

- (i) who controls the borrower;
- (ii) who is controlled by the borrower; or
- (iii) who is under the control of the same person as is the borrower. (Added 12 of 2004 s. 6)

(4) The Commissioner may for the purposes of this section determine that a person shall not be recognized as an overseas financial institution if he is of the opinion that that person's banking or deposit-taking business is not adequately supervised by a supervisory authority. (Added 36 of 1984 s. 4. Amended 12 of 2004 s. 6)

(5) The amendments to this section effected by the Inland Revenue (Amendment) Ordinance 1984 (36 of 1984) shall not have the effect of disallowing any deduction under subsection (1)(a) which could lawfully have been made immediately prior to the coming into force of that Ordinance where the deduction is in respect of sums payable prior to 1 April 1984. (Added 36 of 1984 s. 4. Amended 7 of 1986 s. 4)

(5A) The amendments made to this section by section 6(a), (b), (c), (d), (e) and (f) of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) ("the Amendment Ordinance") do not apply to sums described in subsection (1)(a) which were incurred-

- (a) before the commencement# of the Amendment Ordinance;
- (b) under a transaction which was the subject of an application for advance clearance made to the Commissioner before 1 April 1998, and the Commissioner has before the commencement# of the Amendment Ordinance expressed the opinion that the transaction would not fall within the terms of section 61A; or
- (c) under an arrangement which was the subject of an application made to the Commissioner under section 88A, and the Commissioner has before the commencement# of the Amendment Ordinance made a ruling under that section that the arrangement would not fall within the terms of section 61A. (Added 12 of 2004 s. 6)

(6) The Chief Executive in Council may, by notice in the Gazette, amend Schedule 3. (Added 17 of 1989 s. 5. Amended 12 of 1999 s. 3)

(Replaced 28 of 1964 s. 7. Amended 35 of 1965 s. 9; 12 of 2004 s. 6)

Notes:

- * **The amendment made by Ord. No. 31 of 1998 to section 16(1)(ga) applies in relation to the year of assessment commencing on 1 April 2000 and to all subsequent years of assessment. (31 of 1998 s. 2(2); L.N. 175 of 2000)**

Commencement date: 25 June 2004.

| | | | | |
|----------|-----|--------------------------|----------------|--------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
|----------|-----|--------------------------|----------------|--------------|

| | | | | |
|----------|-----|---------------------------------------------------------------------------------------------|------------|------------|
| Section: | 16H | Definitions and general provisions applicable to this section and sections 16I, 16J and 16K | 21 of 2008 | 27/06/2008 |
|----------|-----|---------------------------------------------------------------------------------------------|------------|------------|

- (1) In this section and sections 16I, 16J and 16K—
- “building or structure” (建築物或構築物) means—
- (a) any commercial building or structure as defined in section 40(1); or
 - (b) any industrial building or structure as defined in section 40(1);
- “capital expenditure” (資本開支) has the meaning assigned to it by section 40(1);
- * “commencement date” (生效日期) means the date on which section 16I comes into operation;
- “environmental protection facility” (環保設施) means—
- (a) any environmental protection machinery; or
 - (b) any environmental protection installation;
- “environmental protection installation” (環保裝置) means any installation, or part of any installation, that is specified in Part 2 of Schedule 17 and forms a building or structure;
- “environmental protection machinery” (環保機械)—
- (a) means any machinery or plant that is specified in Part 1 of Schedule 17; but
 - (b) does not include any machinery or plant in which any person holds rights as a lessee under a lease;
- “relevant interest” (有關權益) has the meaning assigned to it by section 40(1);
- “relevant proceeds of sale” (有關售賣得益), in relation to an environmental protection facility in respect of which a deduction has been allowed under section 16I, means—
- (a) if section 16I(4) does not apply, the proceeds of sale of the facility; or
 - (b) if section 16I(4) applies, such part of the proceeds of sale of the facility as is proportionate to the extent to which the deduction has been allowed;
- “residue of expenditure” (開支剩餘額) has the meaning assigned to it by section 40(1);
- “specified capital expenditure” (指明資本開支)—
- (a) means any capital expenditure incurred on—
 - (i) the provision of any environmental protection machinery; or
 - (ii) the construction of any environmental protection installation; but
 - (b) does not include—
 - (i) any capital expenditure that may be deducted under any other section of this Part; or
 - (ii) any capital expenditure incurred under a hire-purchase agreement;
- “unallowed amount” (未獲容許扣除款額), in relation to an environmental protection installation in respect of which a deduction has been allowed under section 16I and which is subsequently sold, means—
- (a) if section 16I(4) does not apply, the amount of specified capital expenditure incurred in relation to the installation that is still unallowed as at the time of the sale; or
 - (b) if section 16I(4) applies, such part of the amount referred to in paragraph (a) as is proportionate to the extent to which the deduction has been allowed.
- (2) In this section and section 16K—
- (a) a reference to capital expenditure incurred on the provision of any environmental protection machinery or any machinery or plant includes capital expenditure incurred on alterations to an existing building incidental to the installation of that environmental protection machinery or that machinery or plant, as the case may be; and

(b) a reference to capital expenditure incurred on the construction of any environmental protection installation or any building or structure does not include any expenditure incurred on the acquisition of, or of rights in or over, any land.

(3) The Secretary for Financial Services and the Treasury may, after consultation with the Director of Environmental Protection, by notice published in the Gazette, amend Schedule 17.

(Added 21 of 2008 s. 4)

Note:

* **Commencement date: 27 June 2008.**

| | | | | |
|----------|-----|--------------------------|----------------|--------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
|----------|-----|--------------------------|----------------|--------------|

| | | | | |
|----------|-----|----------------------------------------------------------------------------------------------------------|------------|------------|
| Section: | 16I | Deductions for specified capital expenditure incurred in relation to environmental protection facilities | 21 of 2008 | 27/06/2008 |
|----------|-----|----------------------------------------------------------------------------------------------------------|------------|------------|

(1) Notwithstanding section 17, this section applies in ascertaining the profits from any trade, profession or business in respect of which a person is chargeable to tax under this Part for any year of assessment (referred to in this section as “that year of assessment”).

(2) Any specified capital expenditure incurred by the person during the basis period for that year of assessment in relation to any environmental protection machinery shall be deducted.

(3) Any specified capital expenditure incurred by the person during the basis period for that year of assessment in relation to any environmental protection installation shall be deducted as follows—

(a) 20% shall be deducted for that year of assessment; and

(b) the remaining part shall be deducted by 4 equal amounts, one for each of the next succeeding 4 years of assessment, so long as the installation has not been sold at the end of the basis period for the year of assessment concerned.

(4) If an environmental protection facility is used partly in the production of profits chargeable to tax under this Part and partly for any other purposes, the amount that shall be deducted under subsection (2) or (3) is the amount of specified capital expenditure that is proportionate to the extent of the use of the facility in the production of those profits.

(5) A person is not entitled to the allowances under Part VI in respect of any specified capital expenditure if a deduction for any part of the expenditure is allowed under this section.

(6) For the purposes of this section, any specified capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on the trade, profession or business shall be treated as if it had been incurred by that person on the first day on which he carries on the trade, profession or business.

(Added 21 of 2008 s. 4)

| | | | | |
|----------|-----|--------------------------|----------------|--------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
|----------|-----|--------------------------|----------------|--------------|

| | | | | |
|----------|-----|-------------------------------------------------------------------------------------------|------------|------------|
| Section: | 16J | Proceeds of sale of environmental protection facilities to be treated as trading receipts | 21 of 2008 | 27/06/2008 |
|----------|-----|-------------------------------------------------------------------------------------------|------------|------------|

(1) This section applies notwithstanding the exclusion relating to the sale of capital assets in section 14.

(2) If any environmental protection machinery in respect of which a deduction has been allowed under section 16I in ascertaining the profits from a trade, profession or business is

subsequently sold, the relevant proceeds of sale shall, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—

- (a) at the time of the sale; or
- (b) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the date of discontinuance.

(3) If any environmental protection installation in respect of which a deduction has been allowed under section 16I in ascertaining the profits from a trade, profession or business is subsequently sold—

- (a) if there is an unallowed amount that exceeds the relevant proceeds of sale, the excess shall be deducted for the year of assessment in the basis period for which the sale occurs;
- (b) if there is an unallowed amount but the relevant proceeds of sale exceed that amount, the excess shall, to the extent that it is not chargeable to tax under any other section of this Part and does not exceed the amount of the deduction, be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
 - (i) at the time of the sale; or
 - (ii) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the date of discontinuance; or
- (c) if there is not an unallowed amount, the relevant proceeds of sale shall, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
 - (i) at the time of the sale; or
 - (ii) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the date of discontinuance.

(4) If, in relation to the sale of an environmental protection facility as referred to in subsection (2) or (3)—

- (a) the buyer is a person over whom the seller has control;
- (b) the seller is a person over whom the buyer has control;
- (c) both the seller and the buyer are persons over both of whom some other person has control; or
- (d) the sale is between a husband and his wife, not being a wife living apart from her husband,

the Commissioner shall, if he is of the opinion that the sale price of the facility does not represent its true market value at the time of the sale, determine such true market value, and the amount so determined shall, for the purposes of subsection (2) or (3), as the case may be, be treated as the proceeds of that sale.

(5) For the purposes of subsections (2) and (3), if an environmental protection facility in respect of which a deduction has been allowed to a person under section 16I is subsequently destroyed—

- (a) the facility shall be treated as if it had been sold immediately before the destruction; and
- (b) any insurance money or other compensation of any description received by the person in respect of the destruction and any money received by him in respect of the remains of the facility shall be treated as the proceeds of that sale.

(6) For the purposes of this section, a reference to the time of the sale, in relation to an environmental protection facility, shall be construed as a reference to the time of completion of the sale of the facility, or the time when possession of the facility is given, whichever is the earlier.

(Added 21 of 2008 s. 4)

| | | | | |
|----------|-----|--------------------------|----------------|--------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
|----------|-----|--------------------------|----------------|--------------|

| | | | | |
|----------|-----|-------------------------------------------------------------------|------------|------------|
| Section: | 16K | Environmental protection facilities owned as at commencement date | 21 of 2008 | 27/06/2008 |
|----------|-----|-------------------------------------------------------------------|------------|------------|

(1) Subject to subsection (7), if, immediately before the commencement date, a person owned and had in use any machinery or plant that is environmental protection machinery, that person shall, for the purposes of section 16I, be deemed to have incurred, on the commencement date, specified capital expenditure in relation to that machinery or plant.

(2) Subject to subsection (7), if, immediately before the commencement date, a person owned and had in use any machinery or plant that would otherwise have qualified as environmental protection machinery but for the fact that that machinery or plant does not comply with the registration or other requirements under Part 1 of Schedule 17, that person shall, for the purposes of section 16I, be deemed to have incurred specified capital expenditure in relation to that machinery or plant on the date on which the registration or other requirements are complied with.

(3) The specified capital expenditure deemed to have been incurred by a person in relation to any machinery or plant under subsection (1) or (2) shall be the capital expenditure incurred on the provision of that machinery or plant reduced by the aggregate of—

(a) the amount of the initial allowances, if any, under section 37(1), 37A(1) or 39B(1); and

(b) the amount of the annual allowances, if any, under section 37(2), 37A(3) or 39B(2), made to the person in respect of the capital expenditure in all prior years of assessment.

(4) Subject to subsection (7), if—

(a) immediately before the commencement date, a person is entitled to an interest in any building or structure that is an environmental protection installation; and

(b) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure,

that person shall, for the purposes of section 16I, be deemed to have incurred, on the commencement date, specified capital expenditure in relation to that building or structure.

(5) Subject to subsection (7), if—

(a) immediately before the commencement date, a person is entitled to an interest in any building or structure that would otherwise have qualified as an environmental protection installation but for the fact that that building or structure does not comply with the registration requirement under Part 2 of Schedule 17; and

(b) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure,

that person shall, for the purposes of section 16I, be deemed to have incurred specified capital expenditure in relation to that building or structure on the date on which the registration requirement is complied with.

(6) The specified capital expenditure deemed to have been incurred in relation to any building or structure under subsection (4) or (5) shall be the residue of expenditure in relation to that building or structure immediately before the commencement date, or the residue of expenditure in relation to that building or structure immediately before the date on which the registration requirement under Part 2 of Schedule 17 is complied with, whichever is applicable.

(7) Where a person is deemed to have incurred specified capital expenditure under any of subsections (1), (2), (4) and (5) (referred to in this subsection as “the relevant provision”) in the basis period for any year of assessment, the relevant provision applies to him only if he, at any time within one month after the date on which a notice of the assessment made in respect of that year of assessment under section 59 is given under section 62, elects in writing that the relevant provision shall so apply to him.

(8) An election under subsection (7), once made, is irrevocable.

(Added 21 of 2008 s. 4)

| | | | | |
|-----------|-----|-------------------------------------|----------------|--------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
| Schedule: | 17 | ENVIRONMENTAL PROTECTION FACILITIES | 21 of 2008 | 27/06/2008 |

[sections 16H & 16K]

PART 1

MACHINERY OR PLANT

1. Low noise construction machinery or plant registered under the Quality Powered Mechanical Equipment system administered by the Environmental Protection Department.
2. Air pollution control machinery or plant in compliance with the requirements under the Air Pollution Control Ordinance (Cap 311).
3. Waste treatment machinery or plant in compliance with the requirements under the Waste Disposal Ordinance (Cap 354).
4. Wastewater treatment machinery or plant in compliance with the requirements under the Water Pollution Control Ordinance (Cap 358).

PART 2

INSTALLATIONS

1. Any of the following installations—
 - (a) solar water heating installations;
 - (b) solar photovoltaic installations;
 - (c) wind turbine installations;
 - (d) offshore wind farm installations;
 - (e) landfill gas installations;
 - (f) anaerobic digestion installations;
 - (g) thermal waste treatment installations;
 - (h) wave power installations;
 - (i) hydroelectric installations;
 - (j) bio-fuel installations;
 - (k) biomass combined-heat-and-power installations;
 - (l) geothermal installations.
2. Energy efficient building installations registered under the Hong Kong Energy Efficiency Registration Scheme for Buildings administered by the Electrical and Mechanical Services Department.

(Schedule 17 added 21 of 2008 s. 11)

Financial Implications

The proposed one-off reduction of salaries tax and tax under personal assessment for 2009-10 by 75%, subject to a ceiling of \$6,000 per case, will cost the Government about \$4,510 million in 2010-11. The revenue implication of the proposal relating to environment-friendly vehicles is not expected to be significant as the proposal merely accelerates the tax deduction without offering additional tax reduction.

Economic Implications

The proposed concessionary tax measures will help relieve the financial burden of taxpayers and promote environmental protection. It is expected that the savings from the proposed one-off reduction of salaries tax and tax under personal assessment for 2009-10 can provide some mild stimulus to consumer spending.

Environmental Implications

The proposed upfront 100% profits tax deduction for capital expenditure on environment-friendly vehicles will provide an incentive for the business sector to bring in more environment-friendly vehicles, thereby improving roadside air quality.

Sustainability Implications

As far as sustainability implications are concerned, the proposed one-off tax reduction is expected to generate positive economic benefits through stimulation in local consumption. The proposal relating to environment-friendly vehicles is conducive to the sustainability principle of enhancing environmental quality.