
Inland Revenue (Amendment) Bill 2011

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A BILL

To

Amend the Inland Revenue Ordinance to give effect to the proposals in the Budget introduced by the Government for the 2010–2011 financial year concerning tax concessions for qualifying debt instruments; to make further provisions relating to debt instruments; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2011.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 9.

3. Section 14A amended (Qualifying debt instruments)

(1) Section 14A(1)(a)—

Repeal

“; and”

Substitute

“or short term debt instrument; or”.

Clause 3

- (2) Section 14A(1)(b), before the comma—

Add

“or short term debt instrument”.

- (3) After section 14A(1)—

Add

“(1A) In relation to—

(a) a medium term debt instrument issued on or after the date of commencement of the Inland Revenue (Amendment) Ordinance 2011 (of 2011);
or

(b) a short term debt instrument,

subsection (1) does not apply in respect of any sums received by or accrued to a person as referred to in that subsection if, at the time the sums are so received or accrued, the person is an associate of the issuer of the debt instrument.”.

- (4) Section 14A(4), definition of *debt instrument*—

Repeal paragraph (e)

Substitute

“(e) is, at issuance, issued in Hong Kong to—

(i) 10 or more persons; or

(ii) less than 10 persons none of whom is an associate of the issuer of the instrument;”.

- (5) Section 14A(4), definition of *debt instrument*, paragraph (g)—

Repeal

“the commencement of this section”

Substitute

“14 November 2003”.

Clause 3

- (6) Section 14A(4), English text, definition of *medium term debt instrument*, paragraph (b)(iii)—

Repeal the full stop

Substitute a semicolon.

- (7) Section 14A(4)—

Add in alphabetical order

“*associate* (相聯者), in relation to the issuer of a debt instrument, means—

- (a) if the issuer is a natural person—

(i) any relative of the issuer;

(ii) any partner of the issuer;

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

(iv) any partnership of which the issuer is a partner;

- (v) any corporation controlled by—

(A) the issuer;

(B) a partner of the issuer;

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

Clause 3

- (D) a partnership of which the issuer is a partner; or
- (vi) any director or principal officer of a corporation referred to in subparagraph (v);
- (b) if the issuer is a corporation—
 - (i) any associated corporation;
 - (ii) any person who controls the issuer;
 - (iii) any partner of a person who controls the issuer;
 - (iv) if a person who controls the issuer is a natural person, any relative of that person;
 - (v) if a partner referred to in subparagraph (iii) is a natural person, any relative of that partner;
 - (vi) any director or principal officer of the issuer or of any associated corporation;
 - (vii) any relative of a director or principal officer referred to in subparagraph (vi);
 - (viii) any partner of the issuer; or
 - (ix) if a partner of the issuer is a natural person, any relative of that partner; or
- (c) if the issuer is a partnership—
 - (i) any partner of the issuer;
 - (ii) if a partner of the issuer is a partnership, any partner (*Partner A*) of that partnership or any partner (*Partner B*) with that partnership in any other partnership;
 - (iii) if Partner A is a partnership, any partner of Partner A;

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- (iv) if Partner B is a partnership, any partner of Partner B;
- (v) if a partner of, or with, or in any of the partnerships referred to in subparagraph (ii), (iii) or (iv) is a natural person, any relative of that partner;
- (vi) any corporation controlled by—
 - (A) the issuer;
 - (B) a partner of the issuer;
 - (C) if a partner of the issuer is a natural person, any relative of that partner; or
 - (D) a partnership of which the issuer is a partner;
- (vii) any director or principal officer of a corporation referred to in subparagraph (vi); or
- (viii) any corporation of which any partner of the issuer is a director or principal officer;

associated corporation (相聯法團), in relation to the issuer of a debt instrument which is a corporation, means—

- (a) a corporation over which the issuer has control;
- (b) a corporation which has control over the issuer; or
- (c) a corporation which is under the control of the same person as is the issuer;

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

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

Clause 3

- (b) by virtue of any power conferred by the articles of association or other document regulating that or any other corporation,

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

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

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

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

- (a) an adopted child is regarded as a child of both the natural parents and the adopting parents; and
- (b) a step child is regarded as a child of both the natural parents and the step parents;

short term debt instrument (短期債務票據) means a debt instrument that—

- (a) is issued on or after the date of commencement of the Inland Revenue (Amendment) Ordinance 2011 (of 2011);
- (b) has an original maturity of less than 3 years or is undated; and

Clause 3

(c) can be redeemed within 3 years from the date of its issue;

wholly owned subsidiary (全資附屬公司) has the same meaning as it is given for the purposes of section 124 of the Companies Ordinance (Cap. 32) by subsection (4) of that section.”.

(8) After section 14A(4)—

Add

“(4A) For the purposes of paragraph (c) of the definition of *associated corporation* in subsection (4), a corporation is not regarded as being under the control of the same person as is the issuer of a debt instrument issued on or after the date of commencement of the Inland Revenue (Amendment) Ordinance 2011 (of 2011) by reason only that—

(a) both the corporation and the issuer are wholly owned by—

(i) the Government of Hong Kong; or

(ii) the central government of the same country;

(b) more than 50% of the voting power in the corporation and more than 50% of the voting power in the issuer are held or controlled by—

(i) one or more than one corporation which is established and wholly owned by the Government of Hong Kong or the central government of the same country for the purpose of carrying on the business of investment (*government investment vehicle*); or

(ii) a wholly owned subsidiary of a government investment vehicle; or

Clause 4

- (c) more than 50% of the voting power in the corporation is held or controlled by a corporation wholly owned by the Government of Hong Kong or the central government of the same country (*government enterprise*) and more than 50% of the voting power in the issuer is held or controlled by another government enterprise.”.

4. Section 26A amended (Exclusion of certain profits from tax)

After section 26A(1A)—

Add

“(1B) In relation to a long term debt instrument issued on or after the date of commencement of the Inland Revenue (Amendment) Ordinance 2011 (of 2011), subsection (1) does not apply in respect of—

- (a) any interest referred to in paragraph (h) of that subsection; or
- (b) any gain or profit referred to in paragraph (i) of that subsection,

if, at the time the interest or gain or profit is received by or accrued to any corporation or other person, that corporation or person is an associate (as defined in section 14A(4)) of the issuer of the debt instrument.”.

5. Section 89 amended (Transitional provisions)

After section 89(5)—

Add

“(6) Schedule 21 has effect in relation to the amendments made by the Inland Revenue (Amendment) Ordinance 2011 (of 2011).”.

Clause 6

6. Schedule 1 amended (Standard rate)

Schedule 1—

Repeal

“[ss. 2 & 5]”

Substitute

“[ss. 2(1), 14A(1) & 19CA(4) & (5)]”.

7. Schedule 6 amended

Schedule 6—

Repeal

“[s. 26A(2) & (3)]”

Substitute

“[ss. 14A(4) & 26A(2) & (3)]”.

8. Schedule 8 amended (Rate of profits tax in respect of a corporation)

Schedule 8—

Repeal

“[ss. 14(2) & 63H(1A)]”

Substitute

“[ss. 14(2), 14A(1), 14B(1), 19CA(4) & (5) & 63H(1A)]”.

9. Schedule 21 added

After Schedule 20—

Add

“Schedule 21

[s. 89(6)]

**Transitional Provisions Relating to Inland Revenue
(Amendment) Ordinance 2011**

1. In this Schedule—

amending Ordinance (《修訂條例》) means the Inland Revenue (Amendment) Ordinance 2011 (of 2011).

2. Paragraph (e) of the definition of *debt instrument* in section 14A(4) of this Ordinance that was in force immediately before the date of commencement of the amending Ordinance continues to have effect in relation to an instrument issued before that date as if the amending Ordinance had not been enacted.”.
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Explanatory Memorandum

The main object 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 extend the tax concession for qualifying debt instruments (which is available under section 14A of the Ordinance) to those debt instruments with an original maturity of less than 3 years; and
 - (b) to amend the provision under the Ordinance which provides that debt instruments issued to the public in Hong Kong may be qualified for the tax concession.
2. Clause 1 provides for the short title of the Bill.
3. Clause 3 amends section 14A of the Ordinance—
- (a) by adding a new definition of *short term debt instrument* so that any interest or gain or profit derived from a debt instrument with an original maturity of less than 3 years is subject to a concessionary profits tax rate at one-half of the normal rate specified in the Ordinance;
 - (b) to specify that a debt instrument has to be issued in Hong Kong, at issuance, to—
 - (i) 10 or more persons; or
 - (ii) less than 10 persons none of whom is an associate of the issuer of the debt instrument,so that it may be qualified for the tax concession under section 14A or 26A of the Ordinance; and
 - (c) to stipulate that the tax concession available under section 14A of the Ordinance does not apply if the person who obtains the interest or gain or profit in

Explanatory Memorandum

Paragraph 4

respect of a medium term debt instrument issued on or after the commencement date of this Bill if enacted (*the commencement date*) or a short term debt instrument so issued is an associate of the issuer of the debt instrument.

4. Clause 4 amends section 26A of the Ordinance to stipulate that the tax concession available under that section does not apply if the corporation or person who obtains the interest or gain or profit in respect of a long term debt instrument issued on or after the commencement date is an associate of the issuer of the debt instrument.
5. Clauses 5 and 9 provide for transitional arrangements.
6. Clauses 6, 7 and 8 deal with minor technical amendments.