

For information

**Bills Committee on
Inland Revenue and Stamp Duty Legislation
(Alternative Bond Schemes) (Amendment) Bill 2012**

**Follow-up Actions arising from
the Meeting on 27 May 2013**

This paper gives information in relation to the Bills Committee's discussions at the meeting on 27 May 2013 on the following issues –

- (a) the operation of clause 6 of the Bill which seeks to rectify an anomaly in the definition of *debt instrument* in section 14A(4) of the Inland Revenue Ordinance (“IRO”); and
- (b) the operation of the stamping arrangements in the case of an instrument which is not duly stamped according to the proposed section 47I of the Stamp Duty Ordinance (“SDO”) and the subsequent adjudication process.

Section 14A(4) of the IRO (Qualifying Debt Instruments)

2. Section 14A of the IRO currently provides for a tax concession at 50% of the prevailing profits tax rate for interest income and trading profits deriving from a qualifying debt instrument. The current definition of *debt instrument* contained in section 14A(4) is set out at Annex A. Under paragraph (g) of the definition, one of the qualifying criteria is that the debt instrument “*is issued on or after 14 November 2003*”.

3. Section 14A of the IRO was added by the Inland Revenue (Amendment) (No. 3) Ordinance 1996, which came into operation on 24 May 1996. Paragraph (g) of the definition of *debt instrument* was then enacted to read “*is issued on or after the commencement of this section*”.

In order to facilitate users of the law, the Inland Revenue (Amendment) Ordinance 2011 sought to replace the phrase “the commencement of this section” with a clear calendar date (which has always been intended to mean “24 May 1996” as the commencement date of the Inland Revenue (Amendment) (No. 3) Ordinance 1996). Unfortunately, the date “14 November 2003”¹ was instead adopted for that definition in the amendment exercise in 2011 by anomaly.

4. The Administration proposes rectifying this anomaly via clause 6 of the Bill by repealing the date “14 November 2003” appearing in paragraph (g) of the definition and substituting “24 May 1996”. It is also our intent to allow the concession for a qualifying instrument issued on or after 24 May 1996 but before 14 November 2003 on the basis that paragraph (g) of the definition of debt instrument, as amended by Clause 6 of the Bill with the correct date inserted, had always been in force.

5. The Inland Revenue Department is not aware of any case in which a claim for the relevant concession was denied solely because of the anomaly since the commencement of the Inland Revenue (Amendment) Ordinance 2011. Having regard to the discussions at the last meeting of the Bills Committee, the Administration intends to propose a Committee Stage Amendment to clause 6 of the Bill (Annex B) to state clearly that –

- (a) a qualifying debt instrument issued on or after 24 May 1996 but before 14 November 2003 may be treated as a *debt instrument* within the meaning of section 14A of the IRO to the extent that it would have been if paragraph (g) of the relevant definition as amended had always been in force; and
- (b) any previous assessment made on the above basis is declared to be valid to the extent that it would have been if paragraph (g) of the relevant definition as amended had always been in force.

¹ “14 November 2003” was the commencement date of the Revenue (No. 3) Ordinance 2003. The amendments in 2003 to section 14A of the IRO did not relate to paragraph (g) of the definition of debt instrument (except for replacing a full stop with a semicolon in the end of the definition).

Stamping Arrangements for Instruments Subject to the Proposed Stamp Duty Relief

6. The proposed sections 47F and 47G of the SDO are intended to provide for stamp duty relief for relevant specified transactions under a qualified investment arrangement in a specified alternative bond scheme. The proposed section 47I provides that an instrument in relation to such transactions is not duly stamped unless –

- (a) it is stamped with the stamp duty with which it would be chargeable but for section 47F or 47G; or
- (b) it has, in accordance with section 13, been stamped with a particular stamp or by way of a stamp certificate, denoting either that it is not chargeable with any stamp duty or that it is duly stamped.

7. If an instrument on a transfer of, for example, Hong Kong immovable property, eligible for the proposed stamp duty relief is not duly stamped in accordance with section 47I, or if a party concerned has failed to apply for the relief in the first place, relevant parties to that or subsequent transfer may apply to the Collector of Stamp Revenue for adjudication of the relevant stamp duty implications under section 13. In addition, the Collector has power under section 49 to cancel a stamp inadvertently used or stamp certificate inadvertently issued and to effect a refund of the excess stamp duty paid, but such an application shall be made within two years after the date of the instrument or within two years after the execution of the instrument if it is not dated.

8. Members are invited to note the content of this paper.

**Financial Services and the Treasury Bureau
June 2013**

Section:	14A	Qualifying debt instruments	E.R. 1 of 2012	09/02/2012
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- (1) For the purposes of this Part the assessable profits of a person for sums received by or accrued to the person as-
- (a) interest paid or payable on a medium term debt instrument or short term debt instrument; or
 - (b) any gain or profit on the sale or other disposal or on the redemption on maturity or presentment of the medium term debt instrument or short term debt instrument,
- are chargeable to tax under this Part at one-half of the rate specified in Schedule 1 or Schedule 8, as the case may be. (Amended 4 of 2011 s. 3)
- (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 (4 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. (Added 4 of 2011 s. 3)
- (2)-(3) (Repealed 32 of 1998 s. 4)
- (4) In this section- (Amended 34 of 2003 s. 3)
- 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
 - (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;
 - (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; (Added 4 of 2011 s. 3)

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; (Added 4 of 2011 s. 3)

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

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any 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; (Added 4 of 2011 s. 3)

debt instrument (債務票據) means an instrument specified in Part 1 of Schedule 6 that- (Amended 34 of 2003 s. 3)

- (a) is in respect of a debt issue which in its entirety has been lodged with and cleared by the Central Money Market Unit operated by the Monetary Authority;
- (b) subject to subsection (5), is issued by a person and has at all relevant times a credit rating acceptable to the Monetary Authority from a credit rating agency recognized by the Monetary Authority;
- (c) (Repealed 34 of 2003 s. 3)
- (d) subject to subsection (5), has-
 - (i) where it is issued before 1 April 1999, a minimum denomination of \$500000 or its equivalent in a foreign currency; or
 - (ii) where it is issued on or after 1 April 1999, a minimum denomination of \$50000 or its equivalent in a foreign currency; (Replaced L.N. 90 of 1999 and 44 of 1999 s. 11)
- (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; (Replaced 4 of 2011 s. 3)
- (f) if it is a scripless instrument, it is one that would qualify in the terms of this definition if it were in a physical form; (Amended 34 of 2003 s. 3)
- (g) is issued on or after 14 November 2003; (Amended 34 of 2003 s. 3; 4 of 2011 s. 3)

medium term debt instrument (中期債務票據) means-

- (a) a debt instrument that-
 - (i) is issued before 5 March 2003;
 - (ii) has an original maturity of not less than 5 years or is undated; and
 - (iii) cannot be redeemed within 5 years from the date of its issue; or
- (b) a debt instrument that-
 - (i) is issued on or after 5 March 2003;
 - (ii) has an original maturity of less than 7 years but not less than 3 years or is undated; and
 - (iii) can be redeemed within 7 years from the date of its issue but not within the first 3 years; (Added 34 of 2003 s. 3. Amended 4 of 2011 s. 3)

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; (Added 4 of 2011 s. 3)

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; (Added 4 of 2011 s. 3)

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 (4 of 2011);
- (b) has an original maturity of less than 3 years or is undated; and
- (c) can be redeemed within 3 years from the date of its issue; (Added 4 of 2011 s. 3)

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. (Added 4 of 2011 s. 3)

(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 (4 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
- (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. (Added 4 of 2011 s. 3)

(5) For the purposes of the definition of **debt instrument** in subsection (4), the Financial Secretary may by order-

- (a) declare that the provisions relating to a credit rating mentioned in paragraph (b) of that definition do not apply;
- (b) fix an amount of minimum denomination different from the amount mentioned in paragraph (d)(i) or (ii), as the case may be, of that definition, (Amended L.N. 90 of 1999 and 44 of 1999 s. 11)

in respect of a debt instrument issued by such person as may be specified in the order.
(Added 25 of 1996 s. 2. Amended 34 of 2003 s. 3; E.R. 1 of 2012)

Note:

The amendments made by 34 of 2003 to section 14A(1)(a) and (b), (4) and (5) apply in relation to the year of assessment commencing on 1 April 2003 and to all subsequent years of assessment. (Please see 34 of 2003 s. 2)

* Commencement date: 25 March 2011

Committee Stage Amendment
(Subject to refinements by Law Draftsman)

6. Section 14A amended (qualifying debt instruments)

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

Repeal

“14 November 2003”

Substitute

“24 May 1996”.

(2) An instrument issued in the interim period is to be regarded as a debt instrument within the meaning of section 14A of the IRO in relation to a year of assessment to the extent to which it would have been such a debt instrument if paragraph (g) of the definition of *debt instrument* in subsection (4) of that section, as amended by subsection (1) of this section, had always been in force.

(2A) If, for the purposes of an assessment made before the date of commencement of subsection (1), an instrument issued in the interim period was regarded as a debt instrument within the meaning of section 14A of the IRO, the assessment is to be regarded as valid to the extent to which it would have been valid if paragraph (g) of the definition of *debt instrument* in subsection (4) of that section, as amended by subsection (1) of this section, had always been in force.

(2B) For the purposes of subsections (2) and (2A)—

instrument issued in the interim period means an instrument issued on or after 24 May 1996 but before 14 November 2003; and

IRO means the Inland Revenue Ordinance (Cap. 112).

~~(2) If—~~

~~(a) an instrument is issued on or after 24 May 1996 but before 14 November 2003; and~~

~~(b) the instrument is not a debt instrument in section 14A of the Inland Revenue Ordinance (Cap. 112) in relation to a year of assessment solely because of the amendment by the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011) to paragraph (g) of the definition of *debt instrument* in subsection (4) of that section;~~

~~that instrument may be regarded as a debt instrument in that section in relation to that year of assessment as if paragraph (g) of that definition, as amended by subsection (1), had always been in force.~~

(3) After section 14A(5)—

Add

“(6) Section 20 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.”.