

For discussion

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

Clause-by-clause Examination

Members are invited to examine the mark-up version of the Bill at **Annex**, with the Administration's proposed Committee Stage Amendments ("CSAs") marked thereto in the light of the Bills Committee's deliberation so far. The reasons for these amendments are set out in the footnotes. Additional CSAs may be possible.

2. The wording of the proposed amendments is subject to any refinement by the Law Draftsman.

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

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[Only provisions relevant to the CSAs are shown]

4. Schedule 17A added

After Schedule 17—

Add

“Schedule 17A [ss. 5B(7),
14A(6), 15(3A),
16(4A),
20AC(7),
26A(4), 40AB,
51C(5), 60(4),
64(11), 79(4),
80(6) & 82A(8)
& Schs. 6, 16 &
27]

**Specified Alternative Bond Scheme and its Tax
Treatment**

1. Interpretation

(2) In this Schedule—

asset (資產) means any property or any class of property;

investment return (投資回報)—

- (a) in relation to an investment arrangement, has the meaning given by section 2 of this Schedule;

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- (b) in relation to any of the following arrangements, means the investment return calculated in accordance with section 10 of this Schedule—
- (i) a lease arrangement;
 - (ii) a profits sharing arrangement;
 - (iii) an agency arrangement; and
- (c) in relation to a purchase and sale arrangement, means the investment return calculated in accordance with section 11 of this Schedule;

special purpose vehicle (), in relation to any scheme or schemes, means a corporation or any other entity that—

- (a) is established solely for the purposes of the scheme or schemes (as the case requires); and
- (b) does not carry on any trade or activities except for the purposes of the scheme or schemes (as the case requires).¹

2. Alternative bond scheme, bond arrangement and investment arrangement

- (1) If a scheme comprises 2 arrangements (*arrangement A* and *arrangement B*), and the scheme and the arrangements meet the description in subsections (2), (3) and (4), then—
- (a) the scheme is an *alternative bond scheme*;

¹ In line with the market practice, we would like to make it clear our intent for the “bond-issuer” in an alternative bond scheme to be a “special purpose vehicle” (see section 2(3)(b) of Schedule 17A).

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- (b) arrangement A is the *bond arrangement* in the scheme; and
 - (c) arrangement B is the *investment arrangement* in the scheme.
- (2) The scheme (and arrangement A and arrangement B in it)—
- (a) commences on the date on which alternative bonds are issued under arrangement A, as referred to in subsection (3)(d); and
 - (b) ends on the date on which the alternative bonds are to be fully redeemed or cancelled under the terms of arrangement A,
- (the period that so commences and ends is referred to as the *specified term*).
- (3) Under arrangement A—
- (a) one or more persons (each is referred to as an *initial bond-holder*) pay a sum of money (*bond proceeds*) to another person (*bond-issuer*);
 - (b) the bond-issuer is ~~incorporated, constituted or acquired solely for the purposes of a special purpose vehicle for~~² the scheme;
 - (c) on behalf of the initial bond-holders, the bond-issuer enters into arrangement B, as referred to in subsection (4);
 - (d) the bond-issuer issues instruments (*alternative bonds*) to the initial bond-holders evidencing their

² See footnote 1 above.

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- rights and interests in or in relation to the specified asset referred to in subsection (4)(a);
- (e) if the alternative bonds are transferable from 1 person to another, transferees of any such alternative bonds become holders of the alternative bonds (*subsequent bond-holders*) because of the transfers (any initial bond-holder or subsequent bond-holder is referred to as a *bond-holder*); and
 - (f) the bond-issuer undertakes—
 - (i) to make a payment (*redemption payment*), whether or not by instalments, to the bond-holders during or at the end of the specified term to redeem the alternative bonds;
 - (ii) to make other payments (*additional payments*) to the bond-holders on one or more occasions during, or at the end of, the specified term; and
 - (iii) to use the investment return and the proceeds of disposal under arrangement B as referred to in subsection (4)(b) and (c), or part of these sums, for payment of the redemption payment and additional payments.
- (4) The bond-issuer enters into arrangement B with another person (*originator*), under which—
- (a) the bond-issuer uses the bond proceeds (*acquisition cost*) to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in section ~~3(2)3(2)(b)~~³, (3)

³ The amendment is to indicate the cross-reference more specifically.

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and (4) of this Schedule, is referred to as the *specified asset*);

- (b) the bond-issuer arranges for the management of the specified asset with a view to generating income or gains during the specified term (the income or gains are referred to as the *investment return*); and
- (c) the bond-issuer is to dispose of the specified asset by the end of the specified term (the consideration received by the bond-issuer for the disposal of the specified asset is referred to as the *proceeds of disposal*).

3. Construction of references in section 2(3)(b) and (4)(b) of this Schedule

- (1) For the purposes of section 2(3)(b) of this Schedule, a ~~person incorporated, constituted or acquired solely for the purposes of special purpose vehicle for 2~~ or more schemes (whether existing or intended to be set up) is regarded as a ~~person incorporated, constituted or acquired solely for the purposes of special purpose vehicle for~~ each of those schemes if—
 - (a) each of the schemes would have been, or when set up would have been, an alternative bond scheme but for that section; and
 - (b) each of the schemes has, or is intended to have, ~~that person that special purpose vehicle~~⁴ as the bond-issuer and the same other person as the originator.

⁴ See footnote 1 above.

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- (2) A reference in section 2(4)(b) of this Schedule to the management of the specified asset includes—
 - (a) its disposal; and
 - (b) a change of the specified asset described in subsection (3) with the consequences described in subsection (4).
- (3) A change of the specified asset refers to—
 - (a) the asset that is at any time the specified asset under the scheme (*pre-change asset*) being disposed of, destroyed or lost, in whole or in part (the asset or part disposed of, destroyed or lost is referred to as the *outgoing asset*); and
 - (b) another asset (*incoming asset*) being acquired.
- (4) The consequences of the change of the specified asset are—
 - (a) the outgoing asset ceases to be subject to the scheme; and
 - (b) either—
 - (i) if the outgoing asset constitutes the whole of the pre-change asset, the incoming asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections ~~(2)(2)(b)~~ and (3) and this subsection; or
 - (ii) if the outgoing asset constitutes only part of the pre-change asset, the asset comprising the incoming asset and the remaining part of the pre-change asset is subject to the scheme, until another asset is subject to the scheme in

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the circumstances described in subsections ~~(2)~~(2)(b)⁵ and (3) and this subsection.

6. Lease arrangement

- (1) The investment arrangement in an alternative bond scheme is a *lease arrangement* if, under the investment arrangement—
 - (a) the bond-issuer uses the acquisition cost to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in subsection (2), is referred to as the *specified asset*);
 - (b) subject to paragraph (d), the bond-issuer is to hold the specified asset until the end of the specified term;
 - (c) for the purposes of generating income or gains during the specified term, the bond-issuer leases the specified asset to the originator for a consideration (*specified income*); and
 - (d) the bond-issuer is to dispose of the specified asset to the originator, whether or not in stages, by the end of the specified term in return for the proceeds of disposal.
- (2) For the purposes of subsection (1), an asset that is at any time the specified asset under the scheme (*pre-replacement asset*) may be replaced in whole or in part (the asset or part replaced is referred to as the *replaced*

⁵ Both amendments in this subsection are to indicate the cross-reference more specifically.

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asset, and any remainder is referred to as the *remainder asset*) by another asset (*replacing asset*) if—

- (a) either—
 - (i) the bond-issuer acquires the replacing asset from a person in consideration of the bond-issuer's disposal of the replaced asset to that person; or
 - (ii) the replaced asset is destroyed or lost during the specified term with or without any remains, and the bond-issuer acquires the replacing asset from a person using—
 - (A) the consideration received by the bond-issuer for the disposal to that person of any remains of the replaced asset; and
 - (B) any insurance money ~~and~~⁶ ~~or~~ other compensation of any description arising in respect of the destruction or loss;
- (b) the person referred to in paragraph (a)(i) or (ii) is—
 - (i) the originator, whether or not subparagraph (ii) applies; or
 - (ii) if the asset acquired with the acquisition cost under subsection (1)(a) was acquired from a third party, the third party; and
- (c) on the replacement—
 - (i) the replaced asset ceases to be subject to the scheme; and

⁶ A technical amendment to address a comment suggested by the Law Society of Hong Kong.

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- (ii) either—
- (A) for a replacement in whole, the replacing asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in this subsection; or
 - (B) for a replacement in part, the asset comprising the replacing asset and the remainder asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in this subsection.
- (3) In relation to a lease arrangement, ***specified asset transaction between O and BI*** in section 21(3)(a) of this Schedule means—
- (a) any acquisition of an asset as, or as part of, the specified asset ~~from the originator~~ under subsection (1) or (2) from the originator;
 - (b) any leasing of an asset as, or as part of, the specified asset under subsection (1); or
 - (c) any disposal of an asset as, or as part of, the specified asset ~~to the originator~~ under subsection (1) or (2) to the originator⁷.

7. Profits sharing arrangement

- (1) The investment arrangement in an alternative bond scheme is a ***profits sharing arrangement*** if, under the investment arrangement—

⁷ A drafting refinement made on SALA's suggestion.

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- (a) the bond-issuer and the originator form a business undertaking—
 - (i) by the bond-issuer contributing the acquisition cost to the business undertaking in return for an interest in it; and
 - (ii) by the originator contributing to the business undertaking in either of the following ways in return for an interest in it—
 - (A) contributing a sum of money or in kind or both;
 - (B) contributing expertise and management skills only⁸,

(the interest in the business undertaking acquired by the bond-issuer under subparagraph (i) is referred to as the *specified asset*);
- (b) subject to paragraph (f), the bond-issuer is to hold the specified asset until the end of the specified term;
- (c) for the purposes of generating income or gains during the specified term, the business undertaking carries on business activities in accordance with the terms of the arrangement;
- (d) for any profits generated, and any losses incurred, by the business undertaking—

⁸ This amendment helps make a clearer distinction between the two types of profits sharing arrangements (i.e. “Musharakah” and “Mudarabah”) in accordance with the market practice.

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- (i) if paragraph (a)(ii)(A) applies, the bond-issuer shares with the originator—
 - (A) the profits in accordance with the profits sharing ratios set out in the arrangement; and
 - (B) the losses in proportion to the capital contributions of the bond-issuer and the originator; or
 - (ii) if paragraph (a)(ii)(B) applies, the bond-issuer—
 - (A) shares with the originator the profits in accordance with the profits sharing ratios set out in the arrangement; and
 - (B) bears the losses,
(the profits due to the bond-issuer, less the losses borne by the bond-issuer, are referred to as the *specified return*);
 - (e) the bond-issuer may pay a portion of its share of the profits to the originator as an incentive fee; and
 - (f) the bond-issuer is to dispose of the specified asset to the originator, whether or not in stages, by the end of the specified term in return for the proceeds of disposal.
- (2) Business activities carried on by the business undertaking under subsection (1)(c) may include—
- (a) acquiring an asset;
 - (b) leasing an asset; and
 - (c) disposing of an asset.

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- (3) In relation to a profits sharing arrangement—
- (a) *asset transaction between O and BU* in section 21(4)(b) of this Schedule means an acquisition of an asset by the business undertaking as a contribution in kind by the originator because of subsection (1)(a)(ii)(A), or any acquisition, leasing or disposal of an asset by the business undertaking from or to the originator referred to in subsection (2);
 - (b) *specified asset transaction between O and BI* in section 21(3)(a) of this Schedule means the disposal of the specified asset under subsection (1)(f).

9. Agency arrangement

- (1) The investment arrangement in an alternative bond scheme is an *agency arrangement* if, under the investment arrangement—
- (a) the bond-issuer appoints the originator, and the originator undertakes to act, as the bond-issuer's agent;
 - (b) subject to subsection (2), the originator as the bond-issuer's agent undertakes the matters specified below—
 - (i) using the acquisition cost to acquire an asset (which asset, or an asset that is subject to the scheme in the circumstances described in subsections (4), (5) and (6), is referred to as the *specified asset*);

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- (ii) subject to subparagraphs (iii) and (iv), holding the specified asset until the end of the specified term;
 - (iii) the management of the specified asset for the purposes of generating income or gains; and
 - (iv) disposing of the specified asset, whether or not in stages, by the end of the specified term in return for the proceeds of disposal; and
- (c) the bond-issuer is entitled to the profits from the management of the specified asset (*specified return*), and the originator is entitled to ~~a fixed agency fee or an incentive fee~~ an agency fee or an incentive fee, or both⁹.
- (2) For the purposes of subsection (1), the bond-issuer may act otherwise than through the originator as its agent—
 - (a) partly in the matter specified in subsection (1)(b)(iii); and
 - (b) wholly or partly in the matters specified in subsection (1)(b)(i), (ii) and (iv).
 - (3) For the purposes of this section, the management of the specified asset may include leasing and disposing of an asset as, or as part of, the specified asset.
 - (4) For the purposes of this section, the management of the specified asset may also include a replacement described in subsection (5) with the consequences described in subsection (6).

⁹ The amendment provides flexibility to cater for the market practice in relation to the fees to which the originator is entitled.

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- (5) A replacement refers to—
- (a) the asset that is at any time the specified asset under the scheme (*pre-replacement asset*) being disposed of, destroyed or lost, in whole or in part (the asset or part disposed of, destroyed or lost is referred to as the *replaced asset*, and any remainder is referred to as the *remainder asset*); and
 - (b) another asset (*replacing asset*) being acquired.
- (6) The consequences of a replacement are—
- (a) the replaced asset ceases to be subject to the scheme; and
 - (b) either—
 - (i) if the replaced asset constitutes the whole of the pre-replacement asset, the replacing asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (4) and (5) and this subsection; or
 - (ii) if the replaced asset constitutes only part of the pre-replacement asset, the asset comprising the replacing asset and the remainder asset is subject to the scheme, until another asset is subject to the scheme in the circumstances described in subsections (4) and (5) and this subsection.
- (7) In relation to an agency arrangement, *specified asset transaction between O and BI* in section 21(3)(a) of this Schedule means any acquisition, leasing or disposal of an asset as, or as part of, the specified asset by the bond-issuer (whether or not acting through the originator as its

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agent) from or to the originator under subsection (1)(b) or (2).

10. Lease arrangement, profits sharing arrangement and agency arrangement—investment return

- (1) This section applies to a specified investment arrangement that is—
- (a) a lease arrangement;
 - (b) a profits sharing arrangement; or
 - (c) an agency arrangement.

- (2) The investment return paid or payable under a specified investment arrangement to which this section applies in a period in the specified term is to be calculated in accordance with the following formula—

$$A + B - C + D - E$$

- (3) If the formula is used for calculating the investment return paid under a specified investment arrangement in the period—

A means—

- (a) for a lease arrangement, the total amount of specified income (including any amount regarded as specified income under subsection (7)) paid under the arrangement in the period; or
- (b) for a profits sharing arrangement or an agency arrangement, the total amount of specified return paid under the arrangement in the period;

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- B means the specified proceeds of disposal paid under the arrangement in the period;
- C means the specified acquisition cost paid under the arrangement in the period;
- D means the total amount of any other sums paid by the originator to the bond-issuer under the arrangement in the period;
- E means—
 - (a) for a lease arrangement, nil; or
 - (b) for a profits sharing arrangement or an agency arrangement, the total amount of any incentive fee (referred to in section 7(1)(e) or 9(1)(c) of this Schedule) that is paid by the bond-issuer to the originator under the arrangement in the period.

(4) In subsection (3)—

specified acquisition cost (指明取得成本), in relation to a specified investment arrangement in a specified alternative bond scheme, means—

- (a) in relation to a period in which the whole of the specified asset under the scheme is disposed of to enable the bond-issuer to fully redeem or cancel the alternative bonds under the bond arrangement in the scheme, the acquisition cost; or
- (b) in relation to any other period—
 - (i) if a part of the specified asset under the scheme is disposed of in the period to enable the bond-issuer to partly redeem or cancel the alternative bonds under the bond arrangement

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in the scheme, the part of the acquisition cost attributable to that part of the specified asset unless subparagraph (ii) applies; or

- (ii) (for a lease arrangement or an agency arrangement in a specified alternative bond scheme) if the alternative bonds under the bond arrangement in the scheme are fully redeemed or cancelled in the period as a result of the destruction or loss of the specified asset under the scheme, the acquisition cost;

specified income (指明入息), in relation to a lease arrangement, has the meaning given by section 6(1)(c) of this Schedule;

specified proceeds of disposal (指明處置所得), in relation to a specified investment arrangement in a specified alternative bond scheme, means—

- (a) in relation to a period in which the whole of the specified asset under the scheme is disposed of to enable the bond-issuer to fully redeem or cancel the alternative bonds under the bond arrangement in the scheme, the consideration received by the bond-issuer for the disposal of the specified asset subject to subsection (5); or
- (b) in relation to any other period, the sum of the following—
 - (i) if a part of the specified asset under the scheme is disposed of in the period to enable the bond-issuer to partly redeem or cancel the alternative bonds under the bond arrangement

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in the scheme, the consideration received by the bond-issuer for the disposal of that part of the specified asset subject to subsection (5);

- (ii) (for a lease arrangement or an agency arrangement in a specified alternative bond scheme) if the alternative bonds under the bond arrangement in the scheme are fully redeemed or cancelled in the period as a result of the destruction or loss of the specified asset under the scheme, the amount regarded as the consideration received by the bond-issuer for the disposal of the specified asset under subsection (8) subject to subsection (5);

specified return (指明回報)—

- (a) in relation to a profits sharing arrangement, has the meaning given by section 7(1)(d) of this Schedule;
 - (b) in relation to an agency arrangement, has the meaning given by section 9(1)(c) of this Schedule.
- (5) A sum that is counted as, or as part of, the specified return paid under an agency arrangement in a period is not to be counted as, or as part of, the specified proceeds of disposal paid under the arrangement in the period.
- (6) If the formula is used for calculating the investment return payable under a specified investment arrangement in the period, A, B, C, D and E have the meaning given by subsections (3) and (4) and subsection (5) applies, except that—
- (a) a reference in subsection (3), (4) or (5) to paid is to be read as payable; and

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- (b) in the definitions of *specified acquisition cost* and *specified proceeds of disposal* in subsection (4)—
 - (i) a reference to is disposed of is to be read as is to be disposed of; and
 - (ii) paragraph (b)(ii) in each definition does not apply.
- (7) Except where subsection (8) applies, the aggregate of any money arising from the destruction or loss of the specified asset paid under a lease arrangement is to be regarded as specified income under the arrangement for the purposes of subsection (3) if the money—
 - (a) is received by the bond-issuer; but
 - (b) is not used for any acquisition of an asset as, or as part of, the specified asset referred to in section 6(2)(a)(ii) of this Schedule.
- (8) The aggregate of any money arising from the destruction or loss of the specified asset paid under a lease arrangement or an agency arrangement in a specified alternative bond scheme is to be regarded as the consideration received by the bond-issuer for the disposal of the specified asset under the arrangement for the purposes of subsection (3) if—
 - (a) alternative bonds under the bond arrangement in the scheme are fully redeemed or cancelled as a result of the destruction or loss; and
 - (b) the money is received by the bond-issuer.
- (9) In this section—
 - (a) *the destruction or loss of the specified asset* (except in paragraph (b)(i)) means the destruction

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or loss, in whole or in part, of an asset that is the specified asset; and

- (b) *money arising from the destruction or loss of the specified asset* means the sum of the following—
- (i) any insurance money or other compensation of any description arising in respect of the destruction or loss, in whole or in part, of an asset that is the specified asset (the asset or part destroyed or lost is referred to as the *previous asset*);
 - (ii) any consideration received for the disposal of any remains left of the previous asset after the destruction or loss.

21. Qualified investment arrangement regarded as debt arrangement

- (1) This Ordinance applies, with the modifications set out in this section, to a qualified investment arrangement in a specified alternative bond scheme.
- (2) For the purposes of this Ordinance, the qualified investment arrangement is to be regarded as a debt arrangement in the following respects—
 - (a) the acquisition cost under the qualified investment arrangement is to be regarded as money borrowed by the originator from the bond-issuer;
 - (b) the investment return payable under the qualified investment arrangement is to be regarded as interest payable on the money borrowed by the originator from the bond-issuer;

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- (c) the bond-issuer is to be regarded as not having any legal or beneficial interest in the specified asset under the specified alternative bond scheme.
- (3) For the purposes of this Ordinance, whether or not subsection (4) applies—
- (a) any specified asset transaction between O and BI under the qualified investment arrangement is to be disregarded;
 - (b) if an asset is acquired as, or as part of, the specified asset under the qualified investment arrangement by the bond-issuer from a third party, the asset is to be regarded as acquired by the originator directly from the third party;
 - (c) if an asset is disposed of as, or as part of, the specified asset under the qualified investment arrangement by the bond-issuer to a third party, the asset is to be regarded as disposed of by the originator directly to the third party; and
 - (d) any income, expenditure, profits, gains or losses arising from or attributable to any asset as, or as part of, the specified asset under the qualified investment arrangement are to be regarded as income, expenditure, profits, gains or losses (as the case requires) of the originator.
- (4) If the qualified investment arrangement in the specified alternative bond scheme involves the bond-issuer holding, as the specified asset under the scheme, an interest in a business undertaking that is formed by the originator and the bond-issuer, then for the purposes of this Ordinance—

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- (a) without ~~affecting section 7(3)(b) of this Schedule~~ limiting subsection (3)(a)¹⁰, the business undertaking, the acquisition of the interest in the business undertaking as the specified asset by the bond-issuer and the disposal of that interest in favour of the originator, are to be disregarded;
 - (b) any asset transaction between O and BU under the qualified investment arrangement is to be disregarded;
 - (c) if an asset is acquired by the business undertaking from a third party, the asset is to be regarded as acquired by the originator directly from the third party;
 - (d) if an asset is disposed of by the business undertaking to a third party, the asset is to be regarded as disposed of by the originator directly to the third party;
 - (e) any other business activities carried on by the business undertaking during the specified term are to be regarded as business activities carried on by the originator directly; and
 - (f) any income, expenditure, profits, gains or losses arising from or attributable to—
 - (i) an asset held by the business undertaking during the specified term; or
 - (ii) other business activities carried on by the business undertaking during that specified term,

¹⁰ This amendment aligns with the drafting of subsection (5) of this section.

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are to be regarded as income, expenditure, profits, gains or losses (as the case requires) of the originator.

- (5) Without limiting subsection (2)(b), (3)(a) or (b) or (4)(b) or (c), the investment return, or any part of it, under the qualified investment arrangement that, but for this section, would have constituted consideration payable in respect of the right of use of land or buildings, or both, for the purposes of section 5B of this Ordinance is to be regarded as not being such consideration.
- (6) In relation to a qualified investment arrangement, *specified asset transaction between O and BI* in subsection (3)(a) or *asset transaction between O and BU* in subsection (4)(b) (as the case requires) has the meaning given by the provisions in Division 2 of this Part in which the relevant specified investment arrangement is described.
- (7) Section 16(2)(f)(iii) of this Ordinance is to apply—
 - (a) as if the alternative bonds issued under the qualified bond arrangement in the specified alternative bond scheme were debentures or instruments; and
 - (b) for the bond-issuer who is not an associated corporation of the originator, as if the bond-issuer were an associated corporation of the originator.
- (8) Subsection (7)(b) does not apply to a qualified investment arrangement in a specified alternative bond scheme to which section 3(1) of this Schedule applies if—

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- (a) any of the other schemes referred to in that section is not, or is not intended to be, a specified alternative bond scheme; or
- (b) although each of those other schemes is, or is intended to be, a specified alternative bond scheme, any of those other schemes does not comply, or is not intended to comply with—
 - (i) the reasonable commercial return condition; or
 - (ii) the bond-issuer as conduit condition.

23. Interpretation (Part 3 of this Schedule)

- (1) ~~This section applies~~ Subsections (2), (3) and (4) apply¹¹ for the purposes of this Part.
- (2) In relation to an arrangement in a scheme and for a year of assessment—
 - (a) a person makes a BA claim if, for the purposes of ascertaining the tax chargeable on the person for the year of assessment, the person claims—
 - (i) that the arrangement is a qualified bond arrangement in a specified alternative bond scheme; and
 - (ii) that the person is the bond-issuer under the alleged specified alternative bond scheme; and

¹¹ A drafting refinement made to avoid overlap between section 23(1) and section 23(5).

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- (b) a person makes an IA claim if, for the purposes of ascertaining the tax chargeable on the person for the year of assessment, the person claims—
 - (i) that the arrangement is a qualified investment arrangement in a specified alternative bond scheme; and
 - (ii) that the person is the originator or bond-issuer under the alleged specified alternative bond scheme.
- (3) A BA claim or IA claim by a person in relation to an arrangement in a scheme for a year of assessment is accepted if the matters specified in subsection (2)(a) or (b) (as the case requires) are accepted for the purposes specified in that subsection.
- (4) A reference to the disqualification of an arrangement is a reference to—
 - (a) if the arrangement is one for which a BA claim by a person for a year of assessment has been accepted, the fact that the arrangement is under section 12(3) of this Schedule regarded as never having been a qualified bond arrangement in a specified alternative bond scheme; or
 - (b) if the arrangement is one for which an IA claim by a person for a year of assessment has been accepted, the fact that the arrangement is under section 12(4) of this Schedule regarded as never having been a qualified investment arrangement in a specified alternative bond scheme.
- (5) In this Part—

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specified assessment (指明評稅) has the meaning given by section 26(7)(c) of this Schedule;

specified event (指明事件) means—

- (a) (for a person who has made a BA claim, or whose BA claim has been accepted, in relation to an arrangement in a scheme) a BA disqualifying event; or
- (b) (for a person who has made an IA claim, or whose IA claim has been accepted, in relation to an arrangement in a scheme) an IA disqualifying event.

24. Records to be kept

(1) Section 51C of this Ordinance applies, with the modifications specified in subsection (2), to a person who—

~~(a) carries on a trade, profession or business in Hong Kong; and¹²~~

~~(b) makes a BA claim or IA claim in relation to an arrangement in a scheme (*alleged specified alternative bond scheme*) for the purposes of ascertaining the assessable profits of the trade, profession or business for any year of assessment.~~

(2) The person must retain records relating to transactions, acts or operations relating to the alleged specified

¹² Section 51C of the Ordinance applies to every person carrying on a trade, profession or business in Hong Kong. Therefore, subsection (1)(a) can be removed without affecting the meaning and operation of this section.

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alternative bond scheme under section 51C(1) of this Ordinance at least until the later of the following—

- (a) the expiry of 7 years after the completion of the transactions, acts or operations to which they relate; or
 - (b) the expiry of 3 years after the end of the specified term of the scheme.
- (3) Section 80 of this Ordinance applies to a failure to comply with section 51C of this Ordinance, as modified by subsection (2) in the same way that section 80 applies to a failure to comply with that section 51C.
- (4) Subsection (1) ceases to apply to the retention, by a person who makes a BA claim or IA claim in relation to an arrangement in an alleged specified alternative bond scheme, of records relating to transactions, acts or operations relating to the scheme if—
- (a) one or more assessments have been made on the person on the basis that the claim is not accepted for any years of assessment, and the assessments have all become final and conclusive under section 70 of this Ordinance; or
 - (b) after the claim has been accepted for any years of assessment, one or more specified assessments have been made on the person because of the disqualification of the arrangement, and the specified assessments have all become final and conclusive under section 70 of this Ordinance.

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26. Additional assessments; tax paid in excess to be refunded

- (1) In this section, an arrangement in a scheme is an *accepted arrangement* in relation to a person and a year of assessment if the person's BA claim or IA claim in relation to the arrangement has been accepted for the purposes of ascertaining the tax chargeable on the person for the year of assessment.
- (2) Section 60 of this Ordinance applies, with modifications specified in subsection (3), to the making of an assessment or additional assessment on a person for a year of assessment because of the disqualification of an accepted arrangement.
- (3) For the purposes of subsection (2), each of the following periods begins to run after the expiry of the year of disqualification if that year falls after the year of assessment—
 - (a) 6 years referred to in section 60(1) of this Ordinance;
 - (b) 10 years referred to in paragraph (b) of the proviso to section 60(1) of this Ordinance; and
 - (c) 6 years referred to in section 60(2) of this Ordinance.
- (4) Section 79 of this Ordinance applies, with modifications specified in subsections (5) and (6), to an amount of tax that is, because of the disqualification of an accepted arrangement, found to be paid in excess by a person for a year of assessment.
- (5) For the purposes of subsection (4), the period of 6 years referred to in section 79(1) of this Ordinance begins to

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run after the end of the year of disqualification if that year falls after the year of assessment.

- (6) If—
- (a) because of the disqualification of an accepted arrangement, an assessor makes an assessment or additional assessment under section 60 of this Ordinance on the person for a year of assessment; and
 - (b) it appears to the assessor that, because of the same disqualification, an amount of tax has been paid in excess by the person for another year of assessment,
- then, even in the absence of a claim in writing being made under section 79 of this Ordinance for the refund—
- (c) a refund of that amount of tax paid in excess may be made under section 79 of this Ordinance; or
 - (d) the refundable amount may be set off against any amount payable under the assessment or additional assessment referred to in paragraph (a).
- (7) The provisions of this Ordinance relating to a notice of assessment, appeal and other proceedings that apply—
- (a) to an assessment, additional assessment or reassessment made under section 60 or 79 (as the case requires) of this Ordinance; and
 - (b) to any tax charged under it,
- are to apply—
- (c) to an assessment, additional assessment or reassessment (*specified assessment*) made under

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section 60 or 79 (as the case requires) of this Ordinance as modified by this section; and

(d) to any tax charged accordingly.

_____(8) Despite subsection (7), ~~if—~~

(a) a specified assessment is made for a year of assessment because of the disqualification of an accepted arrangement; and

(b) a person makes an objection made by a person under section 64 of this Ordinance against ~~the~~ specified assessment, ~~disputing the disqualification, made for a year of assessment because of the disqualification of an accepted arrangement~~

~~the objection~~¹³ is to be regarded as objections so made by the person against all specified assessments made for all years of assessment because of that disqualification.

(9) In this section—

year of disqualification (喪失資格年度), in relation to a person whose BA claim or IA claim in relation to an arrangement in a scheme has been accepted, means the year of assessment in which—

(a) a specified event occurs in relation to the arrangement; or

¹³ The amendment indicates more clearly our intent that, where a taxpayer disputes the disqualification and objects to a specified assessment, the objection is to be regarded as objections so made against all specified assessments made for all years of assessment because of that disqualification.

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- (b) if there are 2 or more specified events, the earliest specified event occurs in relation to the arrangement.

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)—

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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.~~¹⁴

(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.”.

[Cap. 112, s. 14A(4), definition of debt instrument is reproduced for reference -

(4) In this section- (Amended 34 of 2003 s. 3)

¹⁴ Please see the Administration’s paper submitted for discussion at the meeting on 4 June 2013.

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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)]*

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21. Part VA added

47F. Relief on transactions under qualified investment arrangement

- (1) Subject to sections 47H, 47I and 47L, an instrument is not chargeable with stamp duty under head 1(1), 1(1AA), 1(1A), 1(1B), 1(2), 2(1), 2(3) or 2(4) in the First Schedule or under section 29D(2)(a) if the requirements under subsections (2) and (3) are complied with in relation to the instrument.
- (2) It must be shown to the satisfaction of the Collector that—
 - (a) the instrument is executed under a qualified investment arrangement in a specified alternative bond scheme either—
 - (i) to effect a transaction that is a specified asset transaction between O and BI or an asset transaction between O and BU under that qualified investment arrangement (***IA transaction***); or
 - (ii) as an agreement for an IA transaction; or
 - (b) the instrument is required by this Ordinance to be made and executed for effecting an IA transaction.
- (3) Security must be given to the satisfaction of the Collector for the payment of—
 - (a) the stamp duty that, ~~apart from~~ but for this section, would have been chargeable on the instrument; and

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- (b) other amounts that, ~~apart from but for~~¹⁵ this section, would have been payable under this Ordinance.

47G. Relief resulting from modification of Sections 29CA and 29DA modified in relation to property held, or formerly held, under qualified investment arrangement

- (1) Sections 29CA and 29DA apply, with the modifications specified in Schedule 6, to an agreement for sale or a conveyance on sale if it is shown to the satisfaction of the Collector that—

(a) the agreement or conveyance falls within specified in section 1 of that Schedule; and

(b) the requirements under subsection (1A) or (1B) are complied with.

(1A) If the operation of subsection (1) will result in the agreement or conveyance not being chargeable with special stamp duty under head 1(1B) or 1(1AA) in the First Schedule, security must be given to the satisfaction of the Collector for the payment of—

(a) the special stamp duty that, but for subsection (1), would have been chargeable on the agreement or conveyance; and

(b) other amounts that, but for subsection (1), would have been payable under this Ordinance.

(1B) If the operation of subsection (1) will result in the agreement or conveyance being chargeable with special

¹⁵ Both amendments in this subsection are to align with the drafting of section 47G.

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stamp duty under head 1(1B) or 1(1AA) in the First Schedule of an amount that is less than the amount that would have been chargeable but for subsection (1), security must be given to the satisfaction of the Collector for the payment of—

- (a) the amount by which the special stamp duty chargeable will be reduced by the operation of subsection (1); and
- (b) the excess of the amounts (other than the special stamp duty) that, but for subsection (1), would have been payable under this Ordinance over the amounts (other than the special stamp duty) that will be payable with the operation of subsection (1).¹⁶

- (2) In this Ordinance, a reference to relief granted under this section for an agreement for sale or a conveyance on sale is a reference to the fact that the agreement or conveyance is stamped on the basis—
 - (a) that the agreement or conveyance is not chargeable with special stamp duty under head 1(1B) or 1(1AA) in the First Schedule because of ~~this~~ subsection (1); or
 - (b) that the agreement or conveyance is chargeable with special stamp duty under head 1(1B) or 1(1AA) in the First Schedule of an amount that is

¹⁶ The heading and section 47G(1) are amended to make “relief” explicit and to align with the drafting of section 47F(2). We also propose adding an amendment to provide for the same security arrangement, as in the proposed section 47F(3) of the Stamp Duty Ordinance, for relief of special stamp duty.

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less than the amount that would have been chargeable, but for ~~this~~ subsection (1).

47H. Relief granted under section 47F or 47G deemed withdrawn

- (1) This section applies if—
- (a) a claim for relief from stamp duty has been made under section 47F or 47G for any instrument, alleging that—
 - (i) an arrangement (*alleged qualified investment arrangement*) in a scheme (*alleged specified ABS*) is a qualified investment arrangement in a specified alternative bond scheme; and
 - (ii) particular persons are respectively the originator and bond-issuer under the alleged specified ABS (*alleged originator* and *alleged bond-issuer*); and
 - (b) an IA disqualifying event occurs in relation to the alleged qualified investment arrangement.
- (2) If this section applies—
- (a) the alleged originator and alleged bond-issuer under the alleged specified ABS must inform the Collector, in writing, of the IA disqualifying event within 30 days after the event occurs;
 - (b) if any relief from stamp duty has been granted by the Collector under section 47F or 47G for the instrument, then subject to section 13(6)—
 - (i) the relief is deemed to be withdrawn;

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- (ii) for a relief granted under section 47F, the parties to the instrument are liable or jointly and severally liable (as the case requires) to pay ~~an amount to the Collector, by way of stamp duty; to the Collector, by way of stamp duty, an amount equal to the stamp duty that would have been chargeable on the instrument had the relief not been granted;~~
 - (iii) for a relief granted under section 47G for an instrument that is an agreement for sale or a conveyance on sale, the vendor under the agreement or the transferor under the conveyance (as the case requires) is liable to pay ~~an amount to the Collector, by way of stamp duty; an amount equal to—~~
 - ~~(A) for an agreement or a conveyance that is not chargeable with special stamp duty because of the relief — the special stamp duty that would have been chargeable on the agreement or conveyance had the relief not been granted; or~~
 - ~~(B) for an agreement or a conveyance that, because of the relief, is chargeable with special stamp duty of an amount that is less than the amount that would have been chargeable but for the relief — the amount by which the special stamp duty chargeable is reduced because of the relief; and~~
 - ~~(iv) the stamp duty referred to in subparagraph (ii) or (iii) is of an amount equal to the stamp~~

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~~duty that would have been chargeable on the instrument as if no relief from stamp duty had been granted by the Collector under section 47F or 47G; and¹⁷~~

- (v) ~~the amount payable under stamp duty referred to in~~ subparagraph (ii) or (iii) ~~must be paid payable—~~
- (A) within 30 days after the IA disqualifying event occurs; or
- (B) if there are 2 or more IA disqualifying events, within 30 days after the earliest IA disqualifying event occurs.
- (3) If the ~~amount referred to in subsection (2)(b)(iv) amount payable under subsection (2)(b)(ii) or (iii)~~ is not paid within the 30 days referred to in subsection (2)(b)(v)—
- (a) for a relief granted under section 47F, the parties to the instrument are liable or jointly and severally liable (as the case requires) to a penalty;
- (b) for a relief granted under section 47G for an instrument that is an agreement for sale or a conveyance on sale, the vendor under the agreement or the transferor under the conveyance (as the case requires) is liable to a penalty; and
- (c) the amount of the penalty payable under paragraph (a) or (b) after a lapse of a period of time after the 30 days referred to in subsection (2)(b)(v) is the

¹⁷ The amendment reflects more clearly the intent that a relief under the proposed section 47G may take the form of (i) a full relief, or (ii) a reduction of duty payable. Consequential amendments are also proposed in subsection (3).

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same as that calculated under section 9 for an instrument chargeable with stamp duty of an amount equal to the amount referred to in subsection — payable under subsection (2)(b)(iv)(2)(b)(ii) or (iii)—that—

- (i) is not stamped before or within the time for stamping it; and
 - (ii) is stamped after the lapse of the same period of time after the time for stamping it.
- (4) An IA disqualifying event in relation to the alleged qualified investment arrangement is not required to be notified under subsection (2)(a) if—
- (a) either—
 - (i) relief from stamp duty under section 47F or 47G is denied; or
 - (ii) because of an earlier IA disqualifying event in relation to the alleged qualified investment arrangement, relief granted under section 47F or 47G for an instrument on the basis referred to in subsection (1)(a) is deemed to be withdrawn;
 - (b) an assessment of the stamp duty payable for the instrument has been made under section 13 or 47L; and
 - (c) either—
 - (i) the assessment has become final and conclusive under section 13(8) or 47L(3); or
 - (ii) the denial or deemed withdrawal of the relief has been confirmed by the court on appeal.

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- (5) A person who fails to comply with subsection (2)(a) incurs a penalty at level 2 which is recoverable by the Collector as a civil debt due to the Government.
- (6) Subsections (2)(b) and (3) and section 47D(3) do not apply, despite the occurrence of an IA disqualifying event in relation to an alleged qualified investment arrangement, if—
 - (a) the alleged specified ABS at the time the event occurs is, and from the commencement of the specified term of the scheme up to the time the event occurs has always been, a specified alternative bond scheme;
 - (b) among the conditions specified in section 47D(1) and (2)(b), the alleged specified ABS only fails to comply with the arrangements performed according to terms condition; and
 - (c) the Collector disregards the non-compliance under subsection (7).
- (7) For the purposes of subsection (6), the Collector may disregard a non-compliance with the arrangements performed according to terms condition by a specified alternative bond scheme if—
 - (a) the non-compliance was solely constituted by a delay, of more than 30 days, in disposing of the specified asset; and
 - (b) it is proved to the satisfaction of the Collector that there was a reasonable excuse for the delay.
- (8) The Collector may remit the whole or any part of any penalty payable under subsection (3).

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30. Section 45 amended (relief in case of conveyance from one associated body corporate to another)

~~— (3) Section 45(5A)(e) —~~

Repeal

~~“section; and”~~

Substitute

~~“section;” (3) Section 45(5A)(c) —~~

Repeal

~~everything after “instrument,”~~

Substitute

~~“had relief not been granted under this section;”.~~

[Cap. 117, s. 45(5A)(c) is reproduced for reference -

(5A) *Where a transferor and transferee, as described in subsection (4), cease to be associated as described in subsection (4)(c) within 2 years after the date of execution of the instrument or, in the case of contract note, within 2 years after the date on which the note was required to have been made and executed under section 19, and relief from stamp duty has been claimed under this section-*

(c) *if any relief from stamp duty has been granted by the Collector under this section, the transferor and transferee are liable or jointly and severally liable, as the case may be, to pay to the Collector, within 30 days after the date of the cessation, by way of stamp duty an amount equal to the stamp duty which would have been chargeable on the instrument ~~as if no relief from stamp duty had been granted by the Collector under this~~*

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Clause 4

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~~section; and had relief not been granted under this~~
section:¹⁸

¹⁸ To align with the Committee Stage Amendment to the proposed section 47H(2)(b)(ii). See footnote 17 above.