

# Inland Revenue (Amendment) (No. 3) Bill 2013

## Contents

Clause	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1. Short title .....	C1877
2. Inland Revenue Ordinance amended .....	C1877
<b>Part 2</b>	
<b>Amendments regarding Profits Tax Concession for Qualifying Captive Insurance Business</b>	
3. Application .....	C1879
4. Section 14B amended (qualifying reinsurance business) .....	C1879
5. Section 19CA amended (treatment of losses: concessionary trading receipts) .....	C1881
6. Section 23A amended (ascertainment of assessable profits of insurance corporations other than life insurance corporations)....	C1881
<b>Part 3</b>	
<b>Amendments regarding Maximum Amount Deductible from Assessable Profits or Income for Certain Contributions</b>	
<b>Division 1—Increase of Maximum Deductible Amount</b>	
7. Schedule 3B amended (deduction for the purposes of section 16AA or 26G) .....	C1889

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Clause

Page

**Division 2—Transitional Provisions**

8.	Section 89 amended (transitional provisions) .....	C1889
9.	Schedule 30 added.....	C1891
	Schedule 30 Transitional Provisions Relating to Provisional Salaries Tax and Provisional Profits Tax in respect of Years of Assessment 2014/15 and 2015/16 .....	C1891

# A BILL

## To

Amend the Inland Revenue Ordinance to give captive insurance companies, for their offshore risks insurance business, a profits tax concession equivalent to that given to reinsurance companies; to increase the maximum amount deductible under sections 16AA and 26G of that Ordinance; to provide for transitional arrangements for that increase; and to make minor amendments.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

**1. Short title**

This Ordinance may be cited as the Inland Revenue (Amendment) (No. 3) Ordinance 2013.

**2. Inland Revenue Ordinance amended**

The Inland Revenue Ordinance (Cap. 112) is amended as set out in Parts 2 and 3.

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## Part 2

### Amendments regarding Profits Tax Concession for Qualifying Captive Insurance Business

#### 3. Application

This Part applies in relation to the year of assessment commencing on 1 April 2013 and to all subsequent years of assessment.

#### 4. Section 14B amended (qualifying reinsurance business)

(1) Section 14B, heading, after “**business**”—

**Add**

“**and captive insurance business**”.

(2) Section 14B(1)—

**Repeal**

everything after “a corporation”

**Substitute**

“are, subject to subsection (2), chargeable to tax under this Part at one-half of the rate specified in Schedule 8 to the extent to which those profits are—

- (a) the assessable profits of the corporation derived from the business of reinsurance of offshore risks as a professional reinsurer within the meaning of section 23A(2); or
- (b) the assessable profits of the corporation derived from the business of insurance of offshore risks as an authorized captive insurer within the meaning of section 23A(2A).”.

(3) Section 14B(2)—

**Repeal paragraph (a)**

**Substitute**

“(a) Subsection (1)(a) or (b) only applies to a corporation if the corporation has elected in writing that the subsection so applies to it.”.

**5. Section 19CA amended (treatment of losses: concessionary trading receipts)**

(1) Section 19CA(5), definition of *chargeable concessionary trading receipts*, paragraph (b)—

**Repeal**

“section 23A(2)”

**Substitute**

“section 23A(2) or (2A)”.

(2) Section 19CA(5), definition of *unabsorbed loss in respect of the concessionary trading receipts*, paragraph (b)—

**Repeal**

“sections 23A(2) and 19D”

**Substitute**

“sections 19D and 23A(2) or (2A)”.

**6. Section 23A amended (ascertainment of assessable profits of insurance corporations other than life insurance corporations)**

(1) After section 23A(2)—

**Add**

“(2A) If a corporation to which subsection (1) applies carries on the business of insurance of offshore risks as an authorized captive insurer, the assessable profits of the corporation derived from the business as an authorized

captive insurer for a year of assessment are to be ascertained in accordance with the following formula—

$$E = \frac{F}{G} \times H$$

where—

E means such assessable profits;

F means the assessable profits of that corporation during the basis period for that year of assessment as calculated in accordance with subsection (1);

G means the aggregate of the total income earned by or accrued to that corporation during that basis period for that year of assessment; and

H means the aggregate of offshore insurance income earned by or accrued to that corporation during that basis period for that year of assessment.”.

- (2) Section 23A(3), definition of *gains or profits from offshore reinsurance investments*, paragraph (a)—

**Repeal**

“risks;”

**Substitute**

“risks; or”.

- (3) Section 23A(3), definition of *offshore reinsurance income*, paragraph (a)—

**Repeal**

“risks;”

**Substitute**

“risks; or”.

- (4) Section 23A(3), Chinese text, definition of 離岸再保險入息, paragraph (b)—

**Repeal**

“潤。”

**Substitute**

“潤；”。

- (5) Section 23A(3)—

**Add in alphabetical order**

“*authorized captive insurer* (獲授權專屬自保保險人) means a company that—

- (a) is a captive insurer as defined by section 2(7)(a) of the Insurance Companies Ordinance (Cap. 41); and
- (b) is authorized to carry on in or from Hong Kong insurance business as such a captive insurer under section 8 of that Ordinance;

*gains or profits from offshore insurance investments* (得自離岸保險投資的收益或利潤) means any sums derived from, attributable to, or in respect of gains or profits arising from the sale or other disposal of, or on the redemption on maturity or presentment of, and any interest received on—

- (a) investments made with premiums from insurance of offshore risks; or
- (b) investments representing the whole or any part of the technical reserves of an authorized captive insurer referable to premiums from insurance of offshore risks;

*offshore insurance income* (離岸保險入息) means any sums derived from, attributable to, or in respect of—

- (a) premiums from insurance of offshore risks; or

- (b) gains or profits from offshore insurance investments;

*premiums from insurance of offshore risks* (得自離岸風險的保險的保費) means premiums received by an authorized captive insurer in respect of the insurance of any risk outside Hong Kong or in transit in Hong Kong, and—

- (a) in relation to facultative general reinsurance, the reinsured is not a person resident in Hong Kong or a permanent establishment maintained in Hong Kong;
- (b) in relation to treaty general reinsurance, not less than 75% of the total risk in terms of gross premiums is outside Hong Kong or is in transit in Hong Kong;”.
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## Part 3

### Amendments regarding Maximum Amount Deductible from Assessable Profits or Income for Certain Contributions

#### Division 1—Increase of Maximum Deductible Amount

7. **Schedule 3B amended (deduction for the purposes of section 16AA or 26G)**
- (1) Schedule 3B, item 3—  
**Repeal**  
 “and for each year after that year”.
- (2) Schedule 3B, after item 3—  
**Add**
- |     |   |            |
|-----|---|------------|
| “4. | For the year of assessment 2014/15                                      | \$17,500   |
| 5.  | For the year of assessment 2015/16 and<br>for each year after that year | \$18,000”. |

#### Division 2—Transitional Provisions

8. **Section 89 amended (transitional provisions)**
- After section 89(11)—  
**Add**
- “(12) Schedule 30 has effect in relation to the following persons—
- (a) a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2014 or the year of assessment commencing on 1 April 2015;

- (b) a person liable to pay provisional profits tax in respect of the year of assessment commencing on 1 April 2014 or the year of assessment commencing on 1 April 2015.”.

**9. Schedule 30 added**

After Schedule 29—

**Add**

**“Schedule 30**

[s. 89(12)]

**Transitional Provisions Relating to Provisional Salaries Tax and Provisional Profits Tax in respect of Years of Assessment 2014/15 and 2015/16**

**1. Interpretation**

In this Schedule—

*MPFSO* (《強積金條例》) means the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

*year of assessment 2014/15* (2014/15 課稅年度) means the year of assessment commencing on 1 April 2014;

*year of assessment 2015/16* (2015/16 課稅年度) means the year of assessment commencing on 1 April 2015.

**2. Application for holding over payment of provisional salaries tax on additional grounds**

- (1) If a person is liable to pay provisional salaries tax for the year of assessment 2014/15, that person may apply to the Commissioner on the ground specified in subsection (2) to have the payment of the whole or

- part of that tax held over until that person is required to pay salaries tax for that year.
- (2) The ground is that the amount of contributions to a recognized retirement scheme paid or to be paid by the person during the year of assessment 2014/15, to the extent to which a deduction in respect of those contributions is allowable under section 26G for that year, exceeds or is likely to exceed \$15,000.
  - (3) If a person is liable to pay provisional salaries tax for the year of assessment 2015/16, that person may apply to the Commissioner on the ground specified in subsection (4) to have the payment of the whole or part of that tax held over until that person is required to pay salaries tax for that year.
  - (4) The ground is that the amount of contributions to a recognized retirement scheme paid or to be paid by the person during the year of assessment 2015/16, to the extent to which a deduction in respect of those contributions is allowable under section 26G for that year, exceeds or is likely to exceed \$17,500.
  - (5) This section does not affect the operation of section 63E.

### **3. Supplementary provisions for application under section 2**

- (1) This section applies to an application under section 2(1) or (3) of this Schedule.
- (2) The application must be made by notice in writing lodged with the Commissioner.
- (3) The application must be made not later than—
  - (a) 28 days before the day by which the provisional salaries tax is to be paid; or

- (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6), whichever is the later.
- (4) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which the application may be made.
- (5) On receipt of the application, the Commissioner—
- (a) must consider the application; and
  - (b) may hold over the payment of the whole or part of the provisional salaries tax.
- (6) The Commissioner must, by notice in writing, inform the applicant of the Commissioner's decision.

**4. Application for holding over payment of provisional profits tax on additional grounds**

- (1) If a person is liable to pay provisional profits tax for the year of assessment 2014/15, that person may apply to the Commissioner on the ground specified in subsection (2) to have the payment of the whole or part of that tax held over until that person is required to pay profits tax for that year.
- (2) The ground is that the amount of mandatory contributions paid or to be paid by the person in the basis period for the year of assessment 2014/15 in respect of any liability of the person to pay the contributions as a self-employed person under MPFSO, to the extent to which a deduction in respect of those contributions is allowable under section 16AA for that year, exceeds or is likely to exceed \$15,000.

- (3) If a person is liable to pay provisional profits tax for the year of assessment 2015/16, that person may apply to the Commissioner on the ground specified in subsection (4) to have the payment of the whole or part of that tax held over until that person is required to pay profits tax for that year.
- (4) The ground is that the amount of mandatory contributions paid or to be paid by the person in the basis period for the year of assessment 2015/16 in respect of any liability of the person to pay the contributions as a self-employed person under MPFSO, to the extent to which a deduction in respect of those contributions is allowable under section 16AA for that year, exceeds or is likely to exceed \$17,500.
- (5) This section does not affect the operation of section 63J.

#### **5. Supplementary provisions for application under section 4**

- (1) This section applies to an application under section 4(1) or (3) of this Schedule.
- (2) The application must be made by notice in writing lodged with the Commissioner.
- (3) The application must be made not later than—
  - (a) 28 days before the day by which the provisional profits tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional profits tax under section 63H(7),  
whichever is the later.
- (4) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which the application may be made.

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- (5) On receipt of the application, the Commissioner—
- (a) must consider the application; and
  - (b) may hold over the payment of the whole or part of the provisional profits tax.
- (6) The Commissioner must, by notice in writing, inform the applicant of the Commissioner’s decision.”.
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## Explanatory Memorandum

This Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to achieve 2 purposes. The respective amendments are contained in Parts 2 and 3. This Bill also seeks to make minor amendments to that Ordinance.

2. The purpose of the amendments in Part 2 is to give captive insurance companies, for their business of insurance of offshore risks, the same profits tax concession as that given to reinsurance companies for the latter's business of reinsurance of offshore risks.
3. Clause 3 provides that the profits tax concession applies in relation to the year of assessment commencing on 1 April 2013 and to all subsequent years of assessment.
4. Clause 4 amends section 14B of the Ordinance. This is to allow a corporation's assessable profits that are derived from the business of insurance of offshore risks as an authorized captive insurer to be chargeable to profits tax at one-half of the normal rate, same as a professional reinsurer's assessable profits that are derived from the business of reinsurance of offshore risks.
5. Clause 5 amends section 19CA of the Ordinance. This is to make consequential amendments to that section.
6. Clause 6 amends section 23A of the Ordinance. This is to provide for the formula for ascertaining an authorized captive insurer's assessable profits that are derived from the business of insurance of offshore risks. The formula is basically the same as that applicable for ascertaining a professional reinsurer's assessable profits that are derived from the business of reinsurance of offshore risks. Clause 6 also makes minor amendments to that section.

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7. The purpose of the amendments in Part 3 is to increase the maximum amount deductible—
    - (a) from assessable profits for the mandatory contributions paid by a self-employed person under the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and
    - (b) from assessable income for certain contributions paid by a person to a recognized retirement scheme as an employee.
  8. Clause 7 amends Schedule 3B to the Ordinance to increase the maximum deductible amount from \$15,000 to \$17,500 for the year of assessment 2014/15, and to \$18,000 with effect from the year of assessment 2015/16.
  9. Clause 8 amends section 89 of the Ordinance to provide that the transitional provisions set out in the new Schedule 30 to the Ordinance (added by clause 9) have effect in relation to a person liable to pay provisional salaries tax or provisional profits tax in respect of the year of assessment 2014/15 or 2015/16.
  10. Clause 9 adds a new Schedule 30 to the Ordinance. That Schedule provides for the transitional arrangements relating to the holding over of payment of provisional salaries tax and provisional profits tax on specified additional grounds for the years of assessment 2014/15 and 2015/16.