

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

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

INTRODUCTION

A At the meeting of the Executive Council on 17 December 2013, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Amendment) (No. 3) Bill 2013 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”) to –

- (a) give captive insurers a concessionary profits tax rate (i.e. one-half of the normal tax rate for corporations which is currently at 16.5%) for their business of insurance of offshore risks with effect from 1 April 2013; and
- (b) raise the deduction ceiling for contributions¹ made by employees or self-employed persons (“SEPs”) to recognized retirement schemes subsequent to the increase of the maximum relevant income level (“Max RI”) under the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) (Chapter 485) from \$25,000 per month to \$30,000 per month with effect from 1 June 2014.

¹ Contributions include:

- (a) mandatory contributions by a self-employed person (“SEP”) under the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) (Chapter 485);
- (b) the lesser of the amount of the contributions paid by a person as an employee to a recognized occupational retirement scheme or the amount he would have been required to pay if at all times whilst an employee during the relevant year of assessment he had contributed as a participant in a mandatory provident fund scheme; and
- (c) mandatory contributions by an employee to a mandatory provident fund scheme under the MPFSO.

JUSTIFICATIONS

Proposed Tax Concession for Captive Insurers

2. Captive insurance is a form of self-insurance by companies. In Hong Kong, a captive insurer is legally defined under the Insurance Companies Ordinance (Chapter 41) as an insurer which carries on general business only and is restricted to underwriting insurance of risks of the companies within the same group to which the captive insurer belongs. A company may wish to set up a captive insurer to provide coverage of specific risks that is not readily available in the market. As a captive insurer can operate with a lower overhead (e.g. no marketing expenses and commission to insurance intermediaries) and profit margin, it may charge a lower premium and the parent company can also share the underwriting profits of the captive insurer.

3. While captive insurance has been widely used as a risk management tool in advanced economies, its utilization in Asia remains low. Attracting companies to set up captive insurers in Hong Kong to form a cluster will help the development of other related businesses, including reinsurance, legal and actuarial services, making Hong Kong's risk management services more diversified. This will in turn reinforce Hong Kong's status as a regional insurance hub. With a sound regulatory regime and availability of a wide range of professionals, Hong Kong is well positioned to establish herself as a domicile for captive insurers.

4. This potential is strengthened by the policy of the Central People's Government to encourage Mainland enterprises to form captive insurers in Hong Kong to enhance their risk management. The policy was promulgated by the State Council in June 2012 as one of the measures to foster co-operation between the Mainland and Hong Kong.

5. Against this background, the Financial Secretary proposed in the 2013-14 Budget to reduce the profits tax of captive insurers for their business of insurance of offshore risks such that they will enjoy the same tax concessions under the Inland Revenue Ordinance ("IRO") (Chapter 112) as those currently applicable to reinsurers (i.e. at one-half of the normal corporation tax rate of 16.5% on the taxable profits derived from the business of reinsurance of offshore risks). With the proposed tax concession and in support of the State Council's policy, we shall step up our promotion

of the tax concession to target large Mainland enterprises, starting with their headquarters in Beijing.

Raise the Deduction Ceiling for Contributions to Recognized Retirement Schemes

6. The IRO provides for the deduction of contributions to recognized retirement schemes by employees and SEPs in the assessment of salaries tax, tax under personal assessment and profits tax. On commencement of the MPFSO (Amendment of Schedule 3) Notice 2013 on 1 June 2014, the Max RI will be increased from \$25,000 to \$30,000 per month. Following this, we propose to raise the deduction ceiling for contributions to recognized retirement schemes from \$15,000 to \$17,500 (i.e. $\$25,000 \times 5\% \times 2$ months + $\$30,000 \times 5\% \times 10$ months) for the 2014/15 year of assessment, and \$18,000 (i.e. $\$30,000 \times 5\% \times 12$ months) from the 2015/16 year of assessment onwards.

OTHER OPTIONS

7. We need to amend the IRO to bring the two proposals into effect. This cannot be achieved by any alternative option.

THE BILL

8. The main provisions of the Amendment Bill are set out as follows –

- (a) **Clause 3** provides that the profits tax concession applies to the year of assessment commencing on 1 April 2013 and to all subsequent years of assessment;
- (b) **Clause 4** amends section 14B of the IRO. This is to allow a corporation's assessable profits that are derived from the business of insurance of offshore risks as a captive insurer to be chargeable to profits tax at one-half of the normal rate;
- (c) **Clause 6** amends section 23A of the IRO. This is to provide for the formula for ascertaining a captive insurer's assessable profits that are derived from the business of insurance of offshore risks;

- (d) **Clause 7** amends Schedule 3B to the IRO to raise the maximum amount deductible from assessment income for the following contributions –
- (i) mandatory contributions paid by any SEP under MPFSO; and
 - (ii) certain contributions paid by any person to a recognized retirement scheme as an employee; and
- (e) **Clauses 8 and 9** add a new Schedule 30 to the IRO. The Schedule provides for the transitional arrangements relating to the holding over payment of provisional salaries tax and provisional profits tax, on the ground of the taxpayer's entitlement to the rise in deduction ceiling for contributions to recognized retirement schemes, for the years of assessment 2014/15 and 2015/16.

B The existing provisions to be amended are at **Annex B**.

LEGISLATIVE TIMETABLE

9. The legislative timetable is as follows -

Publication in the Gazette	27 December 2013
First Reading and commencement of Second Reading debate	8 January 2014
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

10. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has economic and financial implications as set out in **Annex C**. It has no civil service, productivity, environmental, sustainability or family implications. The amendments proposed in the Bill will not affect the current binding effect of the IRO.

PUBLIC CONSULTATION

11. The Insurance Advisory Committee was consulted on the tax concession proposal on 16 August 2013 and supported the initiative. The LegCo Panel on Financial Affairs was consulted on 4 November 2013. Members supported both proposed legislative amendments.

PUBLICITY

12. We will issue a press release on 27 December 2013. A spokesperson will be available to answer media and public enquiries.

BACKGROUND

Captive Insurers

13. We have offered various regulatory concessions to captive insurers, e.g. lower capital, solvency margin requirements and fees, since 1997. There are currently two captive insurers in Hong Kong – CNOOC Insurance Limited (authorized on 5 December 2000) and Sinopec Insurance Limited (authorized on 31 October 2013).

Deduction Ceiling for Contributions to Recognized Retirement Schemes

14. Section 16AA of the IRO provides for the deduction of mandatory contribution by SEPs for the purpose of calculating their tax payable under Profits Tax. Section 26G of the IRO provides for the deduction of contribution to recognized occupational retirement schemes and mandatory contribution to the Mandatory Provident Fund (“MPF”) Schemes by employees for the purposes of calculating tax payable under Salaries Tax or Tax under Personal Assessment. The maximum amount of allowable deduction under section 16AA or 26G of the IRO for each year of assessment is prescribed in Schedule 3B to the IRO. It is currently set at \$15,000 (i.e. \$25,000 x 5% x 12 months).

ENQUIRIES

15. Enquiries relating to this brief on the proposed tax concession for captive insurers can be directed to Mr Paul Wong, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) Special Duties, at 2810 2201. Enquiries relating to the rise of the deduction ceiling for contributions to recognized retirement schemes can be directed to Miss Emmy Wong, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) 3, at 2810 2061.

Financial Services and the Treasury Bureau
24 December 2013

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

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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.

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;”.

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
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.
- (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.”.

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.
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.

Annex B

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	14B	Qualifying reinsurance business	E.R. 1 of 2012	09/02/2012
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- (1) For the purposes of this Part, the assessable profits of a corporation, to the extent that they are 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) are, subject to subsection (2), chargeable to tax under this Part at one-half of the rate specified in Schedule 8.
- (2) (a) Subsection (1) shall only apply to a corporation where the corporation has elected in writing that the subsection shall so apply to it.
 (b) An election under paragraph (a), once made, is irrevocable.

(Added 32 of 1998 s. 5)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	19CA	Treatment of losses: concessionary trading receipts	E.R. 1 of 2012	09/02/2012
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- (1) This section shall apply to any person who derives concessionary trading receipts and normal trading receipts for any year of assessment.
- (2) Where, for any year of assessment, there is an unabsorbed loss in respect of the concessionary trading receipts of a person to whom this section applies, and the person has chargeable normal trading receipts for that year of assessment, the unabsorbed loss shall be treated in accordance with the following provisions-
 - (a) where the amount of the unabsorbed loss does not exceed the amount of the chargeable normal trading receipts as multiplied by the adjustment factor, the amount of the chargeable normal trading receipts shall, for the purpose of ascertaining the assessable profits of the person, be deemed to be reduced by an amount arrived at by dividing the amount of the unabsorbed loss by the adjustment factor, and the amount of the unabsorbed loss shall, for any other purposes, be deemed to be nil;
 - (b) in any other case, the amount of the unabsorbed loss shall, for the purpose of ascertaining the loss sustained by the person, be deemed to be reduced by an amount arrived at by multiplying the amount of the chargeable normal trading receipts by the adjustment factor, and the balance of the unabsorbed loss so reduced shall be dealt with in accordance with sections 19C and 19CB, and the amount of the chargeable normal trading receipts shall, for any other purposes, be deemed to be nil.
- (3) Where, for any year of assessment, there is an unabsorbed loss in respect of the normal trading receipts of a person to whom this section applies, and the person has chargeable concessionary trading receipts for that year of assessment, the unabsorbed loss shall be treated in accordance with the following provisions-
 - (a) where the amount of the unabsorbed loss does not exceed the amount of the chargeable concessionary trading receipts as divided by the adjustment factor, the amount of the chargeable concessionary trading receipts shall, for the purpose of ascertaining the assessable profits of the person, be deemed to be reduced by an amount arrived at by multiplying the amount of the unabsorbed loss by the adjustment factor, and the amount of the unabsorbed loss shall, for any other purposes, be deemed to be nil;
 - (b) in any other case, the amount of the unabsorbed loss shall, for the purpose of ascertaining the loss sustained by the person, be deemed to be reduced by an amount arrived at by dividing the amount of the chargeable concessionary trading receipts by the adjustment factor, and the balance of the unabsorbed loss so reduced shall be dealt with in accordance with sections 19C and 19CB, and the amount of the chargeable concessionary trading receipts shall, for any other purposes, be deemed to be nil.
- (4) In this section, *adjustment factor* (調整分數), in relation to any year of assessment, means the factor ascertained in accordance with the following formula:

$$\frac{A}{B}$$

where: A means the rate specified in Schedule 1 or 8, as the case may be, for that year of assessment; and
 B, in relation to any concessionary trading receipts, means the rate specified in section 14A or 14B, as the case may be, for that year of assessment.

- (5) In this section-
chargeable concessionary trading receipts (應課稅的獲特惠的營業收入), in relation to any person for any year

of assessment, means-

- (a) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in section 14A, the amount of such concessionary trading receipts as-
 - (i) reduced by the aggregate of-
 - (A) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the concessionary trading receipts; and
 - (B) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the concessionary trading receipts; and
 - (ii) increased by the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the concessionary trading receipts;
- (b) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in section 14B, the amount of the assessable profits ascertained in accordance with section 23A(2);

chargeable normal trading receipts (應課稅的一般營業收入), in relation to any person for any year of assessment, means the amount of the normal trading receipts as-

- (a) reduced by the aggregate of-
 - (i) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the normal trading receipts; and
 - (ii) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the normal trading receipts; and
- (b) increased by the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the normal trading receipts;

concessionary trading receipts (獲特惠的營業收入) means the trading receipts and other sums in respect of which assessable profits are chargeable to tax at the rate specified in section 14A or 14B;

normal trading receipts (一般營業收入) means the trading receipts and other sums in respect of which assessable profits are chargeable to tax at the rate specified in Schedule 1 or 8;

unabsorbed loss in respect of the concessionary trading receipts (關乎獲特惠的營業收入的未吸納虧損), in relation to any person for any year of assessment, means-

- (a) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in section 14A, the loss ascertained by-
 - (i) adding to the amount of the concessionary trading receipts the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the concessionary trading receipts; and
 - (ii) reducing from the resulting amount the aggregate of-
 - (A) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the concessionary trading receipts; and
 - (B) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the concessionary trading receipts;
- (b) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in section 14B, the loss arrived at in accordance with sections 23A(2) and 19D;

unabsorbed loss in respect of the normal trading receipts (關乎一般營業收入的未吸納虧損), in relation to any person for any year of assessment, means the loss ascertained by-

- (a) adding to the amount of the normal trading receipts the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the normal trading receipts; and
- (b) reducing from the resulting amount the aggregate of-

- (i) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the normal trading receipts; and
- (ii) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the normal trading receipts.

(Added 32 of 1998 s. 13. Amended E.R. 1 of 2012)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
Section:	23A	Ascertainment of assessable profits of insurance corporations other than life insurance corporations	E.R. 1 of 2012	09/02/2012

- (1) The assessable profits of a corporation, whether mutual or proprietary, from the business of insurance other than life insurance, shall be ascertained by taking the gross premiums from such insurance business in Hong Kong less any such premiums returned to the insured and any premiums paid on corresponding reinsurance and adding thereto any interest or other income arising in or derived from Hong Kong and the amount of any balancing charge directed to be made under Part 6, and deducting therefrom a reserve for unexpired risks at the percentage adopted by that corporation in relation to its operations as a whole for such risks at the end of the period for which such profits are ascertained, and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of such period, and from the amount so arrived at deducting the actual losses less the amount recoverable in respect thereof under reinsurance, the agency expenses in Hong Kong and the allowances provided under Part 6 to the extent to which the relevant assets are used in the production of such profits, and a fair proportion of the expenses of the head office of the corporation: (Amended 49 of 1956 s. 20; 7 of 1975 s. 22)

Provided that where the Commissioner is satisfied that, by reason of the limited extent of such business transacted in Hong Kong by a non-resident insurance corporation it would be unreasonable to require such corporation to furnish the particulars necessary for the application of this section, he may permit the assessable profits of the corporation to be ascertained by reference to the proportion of the total profits and income of the corporation corresponding to the proportion which its premiums from insurance business in Hong Kong bear to its total premiums or on any other basis which appears to him to be equitable.

- (2) Where a corporation to which subsection (1) applies carries on the business of reinsurance of offshore risks as a professional reinsurer, the assessable profits of the corporation derived from the business of reinsurance of offshore risks as a professional reinsurer for a year of assessment shall be ascertained in accordance with the following formula:

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

- where:
- A means such assessable profits;
 - B means the assessable profits of that corporation during the basis period for that year of assessment as calculated in accordance with subsection (1);
 - C means the aggregate of the total income earned by or accrued to that corporation during that basis period for that year of assessment; and
 - D means the aggregate of offshore reinsurance income earned by or accrued to that corporation during that basis period for that year of assessment. (Replaced 32 of 1998 s. 15)

- (3) For the purposes of this section-

additional amount for unexpired risks (未過期風險的額外款額), *claims outstanding* (未決申索), *fund* (基金) and *unearned premiums* (未滿期保費) have the meanings respectively assigned to them in paragraph 1(1) of Part 1 of the Third Schedule to the Insurance Companies Ordinance (Cap 41);

gains or profits from offshore reinsurance investments (得自離岸再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 reinsurance of offshore risks;
- (b) investments representing the whole or any part of the technical reserves of a professional reinsurer referable to premiums from reinsurance of offshore risks;

offshore reinsurance income (離岸再保險入息) means any sums derived from, attributable to, or in respect of-

- (a) premiums from reinsurance of offshore risks;
- (b) gains or profits from offshore reinsurance investments;

permanent establishment (永久機構) means a branch, management or other place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of his principal;

premiums from insurance business in Hong Kong (得自香港保險業務的保費) includes-

- (a) all premiums in respect of contracts of insurance, other than life insurance, made in Hong Kong; and
- (b) all premiums on contracts of insurance, other than life insurance, the proposals for which were made to a corporation in Hong Kong;

premiums from reinsurance of offshore risks (得自離岸風險的再保險的保費) means premiums received by a professional reinsurer in respect of the reinsurance 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;

professional reinsurer (專業再保險人) means a company authorized to carry on in or from Hong Kong reinsurance business only, under section 8 of the Insurance Companies Ordinance (Cap 41);

technical reserves (技術性儲備)-

- (a) subject to paragraph (b), means reserves for-
 - (i) additional amounts for unexpired risks;
 - (ii) claims outstanding; and
 - (iii) unearned premiums;
- (b) in relation to a class of general business which is accounted for on a fund accounting basis, means the fund. (Added 32 of 1998 s. 15)

(Added 36 of 1955 s. 33. Amended 7 of 1986 s. 12; E.R. 1 of 2012)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	89	Transitional provisions	10 of 2013	19/07/2013
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- (1) (Repealed 12 of 2004 s. 20)
- (2) In relation to amendments made by the Inland Revenue (Amendment) (No. 2) Ordinance 1993 (52 of 1993)-
 - (a) it is declared that the amendments shall be without prejudice to the provisions of Part 14. (Amended 4 of 2010 s. 17)
 - (b) (Repealed 4 of 2010 s. 17)
- (3) The transitional provisions of Schedule 9 shall have effect in relation to recognized occupational retirement schemes approved under section 87A prior to the repeal of that section by the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993). (Added 76 of 1993 s. 10)
- (4) The transitional provisions of Schedule 12 shall have effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment 2001/02. (Added 29 of 2001 s. 2)
- (5) Schedule 14 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment 2005/06. (Added 8 of 2005 s. 6)
- (6) Schedule 21 has effect in relation to the amendments made by the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011). (Added 4 of 2011 s. 5)
- (7) Schedule 22 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2011. (Added 9 of 2011 s. 3)
- (8) Schedule 24 sets out transitional provisions that have effect for the purposes of the Inland Revenue (Amendment) (No. 3) Ordinance 2011 (21 of 2011). (Added 21 of 2011 s. 8)
- (9) Schedule 25 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 2012 or the year of assessment commencing on 1 April 2013;

- (b) a person liable to pay provisional profits tax in respect of the year of assessment commencing on 1 April 2012 or the year of assessment commencing on 1 April 2013. (Added 21 of 2012 s. 5)
- (10) Schedule 27 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2013. (Added 5 of 2013 s. 3)
- (11) Schedule 29 sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 (10 of 2013). (Added 10 of 2013 s. 17)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Schedule:	3B	Deduction for the Purposes of Section 16AA or 26G	21 of 2012	20/07/2012
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[sections 16AA & 26G]

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|----|--|-------------------------------------|
| 1. | For the years of assessment 2000/01 to 2011/12 inclusive (Replaced 21 of 2012 s. 7) | \$12000 |
| 2. | For the year of assessment 2012/13 (Added 21 of 2012 s. 7) | \$14500 |
| 3. | For the year of assessment 2013/14 and for each year after that year (Added 21 of 2012 s. 7) | \$15000
(Added 31 of 1998 s. 22) |

IMPLICATIONS OF THE PROPOSAL

Economic Implications

The reduction in profits tax rate for captive insurers may attract more companies to set up captive insurers in Hong Kong, thereby promoting the development of reinsurance business and making Hong Kong's risk management services more diversified. It is possible that reinsurers based in Hong Kong would benefit from the increase in demand for reinsurance from captive insurers. In addition, the clustering of captive insurers may be conducive to the development of other related professional services including accounting, actuarial and legal services, etc. This will enhance our competitiveness and Hong Kong's status as an international financial centre. On the other hand, with more enterprises setting up captive insurers for placing their own and group companies' insurance risks, it appears that the business opportunities for direct insurers may be affected. However, the impact on direct insurers should be insignificant as captive insurers are mostly established by multinational enterprises whose risks are normally special risks (e.g. oil field risks) which are not the targeted business of the Hong Kong insurance market. Such risks are normally placed with international insurers writing special lines of business. Therefore, the promotion of captive insurance may in fact bring an overall increase in insurance premiums.

2. The other proposal of raising the deduction ceiling for contributions to recognised retirement schemes has no significant economic implications.

Financial Implications

3. In addition to creating job opportunities and attracting overseas professionals to work in Hong Kong, the development of captive insurance will enhance our competitiveness and Hong Kong's status as an international financial centre, bringing about economic benefits.

4. We do not have any estimation of actual tax revenue brought by captive insurers in Hong Kong. The incentive intends to attract business which otherwise would not be domiciled in Hong Kong.

5. As regards the proposal to raise the tax deduction ceiling for contributions to recognized retirement schemes, the Inland Revenue Department's ballpark estimate is that the total amount of tax forgone under Salaries Tax, Profits Tax and Personal Assessment due to the adjustment in 2014/15 and 2015/16 would be \$270 million and \$330 million respectively.