

Inland Revenue (Amendment) Bill 2015

Contents

Clause	Page
1. Short title	C703
2. Inland Revenue Ordinance amended	C703
3. Section 20AB amended (interpretation of sections 20AC, 20AD and 20AE and Schedule 15)	C703
4. Section 20AC amended (certain profits of non-resident persons exempt from tax)	C707
5. Sections 20ACA and 20ACB added	C725
20ACA. Certain profits of special purpose vehicles exempt from payment of tax	C725
20ACB. Permanent establishment of private company	C731
6. Section 20AD substituted	C733
20AD. Loss from transactions referred to in sections 20AC(1) and 20ACA(1) not available for set off	C733
7. Section 20AE amended (assessable profits of non- resident persons regarded as assessable profits of resident persons)	C735
8. Section 20AF added	C737

Clause	Page
20AF. Assessable profits of special purpose vehicles held by non-resident persons regarded as assessable profits of resident persons	C737
9. Schedule 15 amended (provisions for ascertaining amount of assessable profits of resident person under section 20AE of this Ordinance)	C743
10. Schedule 15A added	C747
Schedule 15A Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 20AF	C747
11. Schedule 16 amended (specified transactions)	C755
12. Schedule 17A amended (specified alternative bond scheme and its tax treatment)	C759

A BILL

To

Amend the Inland Revenue Ordinance to extend the profits tax exemption for non-resident persons to include transactions in securities of, or issued by, certain private companies incorporated outside Hong Kong; to exempt non-resident persons that are qualifying funds from profits tax; to exempt special purpose vehicles from the payment of profits tax; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2015.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 12.

3. Section 20AB amended (interpretation of sections 20AC, 20AD and 20AE and Schedule 15)

(1) Section 20AB, heading—

Repeal

everything after “20AC,”

Substitute

“20ACA, 20AD, 20AE and 20AF and Schedules 15 and 15A”.

- (2) Section 20AB(1)—

Repeal

everything after “20AC,”

Substitute

“20ACA, 20AD, 20AE and 20AF and Schedules 15 and 15A.”.

- (3) Section 20AB(4)(b)—

Repeal

“or”.

- (4) Section 20AB(4)(c)—

Repeal the full stop

Substitute

“; or”.

- (5) After section 20AB(4)(c)—

Add

“(d) where the other person is an entity that does not fall within any of paragraphs (a), (b) and (c), the person has any of the ownership interests in the entity.”.

- (6) Section 20AB(5)(b)—

Repeal

“or”.

- (7) Section 20AB(5)(c)(ii)—

Repeal

“income,”

Substitute

“income; or”.

- (8) After section 20AB(5)(c)—

Add

“(d) where the second person is an entity that does not fall within any of paragraphs (a), (b) and (c), the first person has any of the ownership interests in the entity,”.

4. Section 20AC amended (certain profits of non-resident persons exempt from tax)

- (1) Section 20AC, Chinese text, heading—

Repeal

“豁免繳稅”

Substitute

“獲稅項豁免”.

- (2) Section 20AC(1)—

Repeal

“(3) and (4)”

Substitute

“(3), (4) and (5A)”.

- (3) Section 20AC(1), Chinese text—

Repeal

“繳交”.

- (4) Section 20AC(1), Chinese text—

Repeal

“稅款”

Substitute

“税項”.

- (5) Section 20AC(2)—

Repeal

everything after “this subsection”

Substitute

“if—

- (a) the transaction is a transaction specified in Part 1 of Schedule 16; and
- (b) either of the following conditions is satisfied—
 - (i) the transaction has been carried out through or arranged by a specified person;
 - (ii) the non-resident person is a qualifying fund.”.

- (6) After section 20AC(5)—

Add

“(5A) This section does not apply to a special purpose vehicle as defined by section 20ACA(2) that is a non-resident person.

- (5B) To avoid doubt, subsection (2) as in force on the date of commencement of the Inland Revenue (Amendment) Ordinance 2015 (of 2015) applies to transactions carried out within the period from 1 April 2015 to the day before that date of commencement.”.

- (7) Section 20AC—

Repeal subsection (6)

Substitute

“(6) In this section—

aggregate capital commitment (資本認繳總額), in relation to a fund, means the total of the capital commitments made by the investors, the originator and the originator's associates;

associate (相聯者)—

- (a) in relation to a natural person, means—
 - (i) a relative of the person;
 - (ii) a partner of the person;
 - (iii) if a partner of the person is a natural person, a relative of that partner;
 - (iv) a partnership in which the person is a partner;
 - (v) a corporation controlled by—
 - (A) the person;
 - (B) a relative of the person;
 - (C) a partner of the person;
 - (D) if a partner of the person is a natural person, a relative of that partner; or
 - (E) a partnership in which the person is a partner; or
 - (vi) a director or principal officer of the corporation mentioned in subparagraph (v);
- (b) in relation to a corporation, means—
 - (i) a person who controls the corporation;
 - (ii) a partner of the person mentioned in subparagraph (i);

- (iii) if the person mentioned in subparagraph (i) is a natural person, a relative of that person;
 - (iv) if the partner mentioned in subparagraph (ii) is a natural person, a relative of that partner;
 - (v) a director or principal officer of—
 - (A) the corporation; or
 - (B) an associated corporation of the corporation;
 - (vi) a relative of the director or principal officer mentioned in subparagraph (v);
 - (vii) a partner of the corporation;
 - (viii) if a partner of the corporation is a natural person, a relative of that partner;
 - (ix) a partnership in which the corporation is a partner; or
 - (x) an associated corporation of the corporation;
- (c) in relation to a partnership, means—
- (i) a partner in the partnership;
 - (ii) if a partner in the partnership is a natural person, a relative of that partner;
 - (iii) if a partner in the partnership is another partnership—
 - (A) a partner in that other partnership (*Partner A*); or
 - (B) a partner with that other partnership in any other partnership (*Partner B*);

- (iv) if Partner A is a partnership, a partner in Partner A (*Partner C*);
- (v) if Partner B is a partnership, a partner in Partner B (*Partner D*);
- (vi) if Partner A, Partner B, Partner C or Partner D is a natural person, a relative of that partner;
- (vii) a corporation controlled by—
 - (A) the partnership;
 - (B) a partner in the partnership;
 - (C) if a partner in the partnership is a natural person, a relative of that partner; or
 - (D) a partnership in which the partnership is a partner;
- (viii) a director or principal officer of the corporation mentioned in subparagraph (vii);
- (ix) a corporation of which a partner in the partnership is a director or principal officer; or
- (x) an associated partnership of the partnership;

associated corporation (相聯法團), in relation to a corporation, means—

- (a) another corporation over which the corporation has control;
- (b) another corporation that has control over the corporation; or

- (c) another corporation that is under the control of the same person as is the corporation;

associated partnership (相聯合夥), in relation to a partnership, means—

- (a) another partnership over which the partnership has control;
- (b) another partnership that has control over the partnership; or
- (c) another partnership that is under the control of the same person as is the partnership;

capital commitment (資本認繳), in relation to a fund, means a commitment—

- (a) that is in the form of an amount of money payable by an investor, the originator or the originator's associate to the fund under an agreement governing the operation of the fund; and
- (b) in respect of which the originator may make capital calls from time to time according to the terms of the agreement;

control (控制)—

- (a) in relation to a corporation, means the power of a person to secure—
 - (i) by means of the holding of shares or the possession of voting power in or in relation to that corporation or any other corporation; or
 - (ii) by virtue of any powers conferred by the articles of association or other document regulating that corporation or any other corporation,

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

- (b) in relation to a partnership, means the power of a person to secure—
- (i) by means of the holding of interests or the possession of voting power in or in relation to that partnership or any other partnership; or
 - (ii) by virtue of any powers conferred by the partnership agreement or other document regulating that partnership or any other partnership,

that the affairs of that partnership are conducted in accordance with the wishes of the person;

final closing of sale of interests (權益出售最終截止日), in relation to a fund, means the date on which the originator last accepts subscriptions from investors for making capital commitments;

investor (投資者), in relation to a fund, means a person, other than the originator or the originator's associates, who makes capital commitment to the fund;

net proceeds (淨收益), in relation to a fund at a particular time, means an amount calculated by—

- (a) adding together—
- (i) the sum of the cumulative distributions received by the investors, the originator and the originator's associates from the fund; and

- (ii) the value at that time of all assets, if any, held by the fund; and
- (b) subtracting from the sum calculated under paragraph (a) the cumulative capital contributions of the investors, the originator and the originator's associates;

originator (發起人), in relation to a fund, means a person who directly or indirectly—

- (a) originates or sponsors the fund; and
- (b) has the power to make investment decisions on behalf of the fund;

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

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

qualifying fund (符合資格的基金) means a fund that falls within the following descriptions—

- (a) at all times after the final closing of sale of interests—
 - (i) the number of investors exceeds 4; and

- (ii) the capital commitments made by investors exceed 90% of the aggregate capital commitments; and
- (b) the portion of the net proceeds arising out of the transactions of the fund to be received by the originator and the originator's associates, after deducting the portion attributable to their capital contributions (which is proportionate to that attributable to the investors' capital contributions), is agreed under an agreement governing the operation of the fund to be an amount not exceeding 30% of the net proceeds;

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

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

specified person (指明人士)—

- (a) in relation to a transaction carried out before 1 April 2003, means—
 - (i) a bank as defined by section 2(1) of the Banking Ordinance (Cap. 155);
 - (ii) a person registered as a dealer or commodity trading adviser under Part IV of the Commodities Trading Ordinance (Cap. 250) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571);

- (iii) a person registered as a dealer or an investment adviser under Part VI, or as a securities margin financier under Part XA, of the Securities Ordinance (Cap. 333) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571); or
 - (iv) a person licensed as a leveraged foreign exchange trader under Part IV of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) repealed under section 406 of the Securities and Futures Ordinance (Cap. 571);
- (b) in relation to a transaction carried out on or after 1 April 2003, means a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on, or an authorized financial institution registered under that Part for carrying on, a business in any regulated activity as defined by Part 1 of Schedule 5 to that Ordinance.”.

5. Sections 20ACA and 20ACB added

After section 20AC—

Add

“20ACA. Certain profits of special purpose vehicles exempt from payment of tax

- (1) A special purpose vehicle is exempt, to an extent corresponding to the percentage of shares or interests that a non-resident person exempted under section 20AC(1) holds in the vehicle, from the payment of tax chargeable under this Part in respect of its

assessable profits, if any, for any year of assessment commencing on or after 1 April 2015, from—

- (a) transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, an interposed special purpose vehicle or an excepted private company;
- (b) transactions in rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes; and
- (c) transactions in certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes.

(2) In this section—

excepted private company (例外私人公司) means a private company incorporated outside Hong Kong that, at all times within the 3 years before a transaction falling within subsection (1)(a), (b) or (c) is carried out—

- (a) did not carry on any business through or from a permanent establishment in Hong Kong;
- (b) falls within either of the following descriptions—
 - (i) it did not hold (whether directly or indirectly) share capital (however described) in one or more private companies carrying on any business through or from a permanent establishment in Hong Kong;

- (ii) it held such share capital, but the aggregate value of the holding of the capital is equivalent to not more than 10% of the value of its own assets; and
- (c) falls within either of the following descriptions—
 - (i) it neither held immovable property in Hong Kong, nor held (whether directly or indirectly) share capital (however described) in one or more private companies with direct or indirect holding of immovable property in Hong Kong;
 - (ii) it held such immovable property or share capital (or both), but the aggregate value of the holding of the property and capital is equivalent to not more than 10% of the value of its own assets;

interposed special purpose vehicle (中間特定目的工具)—

- (a) in relation to a special purpose vehicle that has an indirect beneficial interest in an excepted private company through an interposed person that is a special purpose vehicle, means the interposed person;
- (b) in relation to a special purpose vehicle that has an indirect beneficial interest in an excepted private company through a series of 2 or more interposed persons that are special purpose vehicles, means any of the interposed persons;

permanent establishment (常設機構)—see section 20ACB;

private company (私人公司) means a company incorporated in or outside Hong Kong that is not allowed to issue any invitation to the public to subscribe for any shares or debentures of the company;

special purpose vehicle (特定目的工具) means a corporation, partnership, trustee of a trust estate or any other entity that—

- (a) is wholly or partially owned by a non-resident person;
- (b) is established solely for the purpose of holding, directly or indirectly, and administering one or more excepted private companies;
- (c) is incorporated, registered or appointed in or outside Hong Kong;
- (d) does not carry on any trade or activities except for the purpose of holding, directly or indirectly, and administering one or more excepted private companies; and
- (e) is not itself an excepted private company.

20ACB. Permanent establishment of private company

- (1) For a private company, a permanent establishment is a fixed place of business through which activities of the company are carried on (including a branch and a place of management).
- (2) Subject to subsection (3), a private company is regarded as having a permanent establishment in Hong Kong if the company has an agent carrying on activities in Hong Kong who—

- (a) has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the company; or
 - (b) has a stock of merchandise from which the agent regularly fills orders on behalf of the company.
- (3) In relation to the business of the company as a whole, the activities mentioned in subsections (1) and (2) exclude—
- (a) the use of facilities solely for storage, display or delivery of goods or merchandise belonging to the company;
 - (b) the maintenance of a stock of goods or merchandise belonging to the company solely for storage, display or delivery, or for processing by another business; and
 - (c) the maintenance of a fixed place of business solely for purchasing goods or merchandise or for collecting information, for the company.
- (4) In this section—
- private company* (私人公司) has the meaning given by section 20ACA(2).”.

6. Section 20AD substituted

Section 20AD—

Repeal the section

Substitute

“20AD. Loss from transactions referred to in sections 20AC(1) and 20ACA(1) not available for set off

Despite anything in this Part—

- (a) any loss sustained by a non-resident person from a transaction referred to in section 20AC(1) in a year of assessment in which the non-resident person has not at any time carried on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in that section, is not available for set off against any of the person's assessable profits for any subsequent year of assessment; and
- (b) any loss sustained by a special purpose vehicle as defined by section 20ACA(2) from a transaction referred to in section 20ACA(1) in a year of assessment in which the special purpose vehicle has not at any time carried on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in section 20ACA(1), is not available for set off against any of its assessable profits for any subsequent year of assessment.”.

7. Section 20AE amended (assessable profits of non-resident persons regarded as assessable profits of resident persons)

- (1) Section 20AE(1)(b), Chinese text—

Repeal

“豁免繳稅”

Substitute

“稅項豁免”.

- (2) Section 20AE(3)(a), Chinese text—

Repeal

“豁免繳稅”

Substitute

“稅項豁免”.

- (3) Section 20AE—

Repeal subsection (10)

Substitute

“(10) In this section—

associate (相聯者) has the meaning given by section 20AC(6).”.

8. Section 20AF added

After section 20AE—

Add

“20AF. Assessable profits of special purpose vehicles held by non-resident persons regarded as assessable profits of resident persons

- (1) If, in a year of assessment commencing on or after 1 April 2015—
- (a) a resident person has, during a period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person to the extent set out in section 20AE(2);
 - (b) the non-resident person is exempt from tax under section 20AC;

- (c) the non-resident person has, during that period of time, a beneficial interest, whether direct or indirect or both, in a special purpose vehicle as defined by section 20ACA(2); and
- (d) the special purpose vehicle is exempt from the payment of tax under section 20ACA,

the assessable profits of the special purpose vehicle for that period of time that are chargeable to tax under this Part and in respect of which tax would have been payable but for section 20ACA, are to be regarded as the assessable profits arising in or derived from Hong Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.

- (2) If, in a year of assessment commencing on or after 1 April 2015—

- (a) a resident person has, during a period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person who is exempt from tax under section 20AC;
- (b) the non-resident person is an associate of the resident person;
- (c) the non-resident person has, during that period of time, a beneficial interest, whether direct or indirect or both, in a special purpose vehicle as defined by section 20ACA(2); and
- (d) the special purpose vehicle is exempt from the payment of tax under section 20ACA,

the assessable profits of the special purpose vehicle for that period of time that are chargeable to tax under this Part and in respect of which tax would have been payable but for section 20ACA, are to be

regarded as the assessable profits arising in or derived from Hong Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.

- (3) Subsections (1) and (2) apply in relation to a resident person irrespective of whether the person has received, or will receive, directly or indirectly, from the special purpose vehicle concerned any money or other property representing the profits of the special purpose vehicle for the relevant year of assessment.
- (4) A resident person who has a direct or indirect beneficial interest in a trustee of a trust estate by reason of the fact that the person is able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income is, for the purposes of this section, to be regarded as being interested in 100% in value of the trust estate.
- (5) The extent of a non-resident person's beneficial interest in a special purpose vehicle is to be determined in accordance with Part 2 of Schedule 15A.
- (6) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (2) is to be ascertained in accordance with Schedule 15A.
- (7) Subsections (1) and (2) do not apply in relation to a resident person who has a direct or indirect beneficial interest in a non-resident person if the Commissioner is satisfied that beneficial interests in the non-resident person are bona fide widely held.

(8) If—

- (a) a resident person is liable to tax under subsection (1) or (2) in respect of the profits of a special purpose vehicle by reason of the person's having an indirect beneficial interest in the special purpose vehicle through an interposed person or through a series of 2 or more interposed persons (excluding the non-resident person); and
- (b) the interposed person or any of the interposed persons is a resident person who is also liable to tax under that subsection in respect of the profits,

the resident person mentioned in paragraph (a) is discharged from the person's liability to tax under that subsection in respect of those profits.

(9) In this section—

associate (相聯者) has the meaning given by section 20AC(6).”.

9. Schedule 15 amended (provisions for ascertaining amount of assessable profits of resident person under section 20AE of this Ordinance)

(1) Schedule 15, heading—

Repeal

“of this Ordinance”.

(2) Schedule 15—

Repeal

“& 20AE]”

Substitute

“& 20AE & Sch. 15A]”.

- (3) Schedule 15, Part 1, section 1—

Repeal

“of this Ordinance but for section 20AC of this Ordinance”

Substitute

“but for section 20AC”.

- (4) Schedule 15, Part 1, section 2, after “section 1”—

Add

“of this Part”.

- (5) Schedule 15, Part 1, section 2, after “Part 2”—

Add

“of this Schedule”.

- (6) Schedule 15, Part 2, section 3, after “section 2”—

Add

“of this Part”.

- (7) Schedule 15, Part 2, section 3(a), after “section 1”—

Add

“of this Part”.

- (8) Schedule 15, Part 2, section 3(b), after “section 1”—

Add

“of this Part”.

- (9) Schedule 15, Part 2, section 3(c), after “section 1”—

Add

“of this Part”.

10. Schedule 15A added

After Schedule 15—

Add**“Schedule 15A**[ss. 20AB &
20AF]**Provisions for Ascertaining Amount of Assessable
Profits of Resident Person under Section 20AF****Part 1**

1. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the special purpose vehicle that are chargeable to tax under Part 4 and in respect of which tax would have been payable but for section 20ACA (*exempt profits*) for each day in the period in that year of assessment during which the resident person has an indirect beneficial interest in the special purpose vehicle.
2. For the purposes of section 1 of this Part, the exempt profits of a special purpose vehicle for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B1 \times B2 \times C}{D}$$

- where:
- A means the exempt profits of the special purpose vehicle for a particular day in a year of assessment;
 - B1 means the extent of the resident person's beneficial interest in the non-resident person on the particular day, expressed as a percentage determined in accordance with Part 2 of Schedule 15;
 - B2 means the extent of the non-resident person's beneficial interest in the special purpose vehicle on the particular day, expressed as a percentage determined in accordance with Part 2 of this Schedule;
 - C means the exempt profits of the special purpose vehicle for the accounting period of the special purpose vehicle in which the particular day falls;
 - D means the total number of days in the accounting period of the special purpose vehicle in which the particular day falls.

3. In this Part—

special purpose vehicle (特定目的工具) has the meaning given by section 20ACA(2).

Part 2

1. Where a non-resident person has a direct beneficial interest in a special purpose vehicle, the extent of the beneficial interest of the non-resident person in the special purpose vehicle is—

-
- (a) if the special purpose vehicle is a corporation that is not a trustee of a trust estate, the percentage of the issued share capital (however described) of the corporation held by the non-resident person;
 - (b) if the special purpose vehicle is a partnership that is not a trustee of a trust estate, the percentage of the profits of the partnership to which the non-resident person is entitled;
 - (c) if the special purpose vehicle is a trustee of a trust estate, the percentage in value of the trust estate in which the non-resident person is interested; or
 - (d) if the special purpose vehicle is an entity that does not fall within any of paragraphs (a), (b) and (c), the percentage of ownership interests that the non-resident person has in the entity.
2. Where a non-resident person has an indirect beneficial interest in a special purpose vehicle, the extent of the beneficial interest of the non-resident person in the special purpose vehicle is—
- (a) if there is one interposed person, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the non-resident person in the interposed person by the percentage representing the extent of the beneficial interest of the interposed person in the special purpose vehicle; or

-
- (b) if there is a series of 2 or more interposed persons, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the non-resident person in the first interposed person in the series by—
- (i) the percentage representing the extent of the beneficial interest of each interposed person (other than the last interposed person) in the series in the next interposed person in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed person in the series in the special purpose vehicle.
3. For the purposes of section 2 of this Part—
- (a) section 1 of this Part applies in determining the extent of the beneficial interest of a non-resident person in an interposed person as if references to a special purpose vehicle in that section were references to an interposed person;
 - (b) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person in a special purpose vehicle as if references to a non-resident person in that section were references to an interposed person; and
 - (c) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person (*Interposed Person A*) in another interposed person (*Interposed Person B*) as if—

- (i) references to a non-resident person in that section were references to Interposed Person A; and
- (ii) references to a special purpose vehicle in that section were references to Interposed Person B.

4. In this Part—

special purpose vehicle (特定目的工具) has the meaning given by section 20ACA(2).”.

11. Schedule 16 amended (specified transactions)

(1) Schedule 16, before item 1—

Add

“Part 1”.

(2) Schedule 16, Part 1, after item 6—

Add

“Part 2”.

(3) Schedule 16, Part 2—

Repeal

“In this Schedule”

Substitute

“1. In this Schedule”.

(4) Schedule 16, Part 2, section 1, definition of *securities*, paragraph (a), after “government authority”—

Add

“(excluding shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a private company which is not a special purpose vehicle or an excepted private company)”.

- (5) Schedule 16, Part 2, section 1, definition of *securities*, paragraph (e)—

Repeal

“securities,”

Substitute

“securities;”.

- (6) Schedule 16, Part 2, section 1, definition of *securities*—

Repeal everything after paragraph (e).

- (7) Schedule 16, Part 2, after section 1—

Add

- “2. For the purposes of the definition of *securities* in section 1 of this Part—

excepted private company (例外私人公司) has the meaning given by section 20ACA(2);

private company (私人公司) has the meaning given by section 20ACA(2);

special purpose vehicle (特定目的工具) has the meaning given by section 20ACA(2).”.

12. Schedule 17A amended (specified alternative bond scheme and its tax treatment)

Schedule 17A, section 21(6), after “item 1 of”—

Add

“Part 1 of”.

Explanatory Memorandum

The main purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (*Ordinance*) to extend the profits tax exemption for non-resident persons.

2. Clause 1 sets out the short title.
3. Clause 3 amends section 20AB of the Ordinance to extend the scope of that section to apply to the interpretation of the new sections 20ACA and 20AF and Schedule 15A.
4. Clause 4 amends section 20AC of the Ordinance to—
 - (a) exempt a non-resident person that is a qualifying fund from profits tax in respect of assessable profits of the person arising from certain transactions;
 - (b) provide that section 20AC does not apply to a special purpose vehicle; and
 - (c) provide for the application of the amended section 20AC.
5. Clause 5 adds a new section 20ACA to the Ordinance. The new section exempts a special purpose vehicle, which may be a resident person or a non-resident person, from the payment of tax in respect of assessable profits arising from certain transactions concerning an interposed special purpose vehicle, or an excepted private company, as defined by that section.
6. Clause 6 amends section 20AD of the Ordinance to extend the scope of that section to provide that loss from transactions referred to in the new section 20ACA(1) are not available for set off.

7. Clause 8 adds a new section 20AF to the Ordinance. The new section provides that in certain circumstances, the assessable profits of a special purpose vehicle that is held by a non-resident person and exempt from the payment of tax under the new section 20ACA, are to be regarded as the assessable profits of a resident person.
8. Clause 10 adds a new Schedule 15A to the Ordinance. The new Schedule contains a formula for ascertaining the amount to be regarded as the assessable profits of a resident person under the new section 20AF.
9. Clause 11 amends Schedule 16 to the Ordinance. The definition of *securities* in section 1 of Part 2 of that Schedule is amended so that interests such as shares and debentures of, or issued by, special purpose vehicles and excepted private companies fall within the definition.