

**Bills Committee on
Inland Revenue (Amendment) (No. 4) Bill 2015**

**Clause-by-clause Examination
Draft Committee Stage Amendments**

Members are invited to examine the Government's proposed draft Committee Stage Amendments ("CSAs") marked in the relevant parts of the Inland Revenue (Amendment) (No. 4) Bill 2015 (**Annex**). The reasons for proposing these amendments are set out in the footnotes. The proposed CSAs may be subject to revision.

**Financial Services and the Treasury Bureau
Inland Revenue Department
Hong Kong Monetary Authority
March 2016**

Inland Revenue (Amendment) (No. 4) Bill 2015

Clause 3

In the proposed section 14C(1), in the Chinese text¹:

“**集團內部融資業務** (intra-group financing business)就某法團而言，指向該法團的相聯法團借款的業務，或及貸款予該法團的相聯法團的業務。”

In the proposed section 14D(6) and (7)²:

“14D. Qualifying corporate treasury centre: profits tax concession

- (1) For the purposes of this Part, the assessable profits of a corporation that is a qualifying corporate treasury centre for a year of assessment are, subject to subsections (5) and (8), 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) assessable profits derived from its qualifying lending transaction;
 - (b) assessable profits derived from its qualifying corporate treasury service; or
 - (c) assessable profits derived from its qualifying corporate treasury transaction.
- .
. .
.
- (5) Subsection (1) applies to a corporation for a year of assessment only if—
- (a) in that year of assessment—

¹ This amendment is proposed to reflect that “intra-group financing business”, in relation to a corporation, means the business of the borrowing of money from and lending of money to its associated corporations.

² This amendment is proposed to reorganise the structure of the proposed section 14D(6) and (7), so that the two consequences of a corporation ceasing to be subject to the concessionary rate under the proposed section 14D(1), i.e. (i) invalidation of the election; and (ii) disqualification from the concessionary rate for the subsequent year of assessment (*disqualified year*), are grouped together under the proposed section 14D(7). In case the corporation is eligible for the concessionary rate again after the disqualified year, the corporation is required to make a fresh election.

- (i) the central management and control of the corporation is exercised in Hong Kong; and
- (ii) the activities that produce its qualifying profits in that year are—
 - (A) carried out in Hong Kong by the corporation; or
 - (B) arranged by the corporation to be carried out in Hong Kong; and
- (b) the corporation has elected in writing that subsection (1) applies to it.

~~(6) An election under subsection (5)(b), once made, is irrevocable for so long as the corporation remains as a qualifying corporate treasury centre.~~

~~(7) If subsection (1) does not apply to a corporation for a year of assessment because the corporation is no longer a qualifying corporate treasury centre for that year of assessment, then, despite anything in this section, subsection (1) is not to apply to the corporation for the subsequent year of assessment.~~

~~(6) An election under subsection (5)(b), once made, is irrevocable.~~

~~(7) If subsection (1) does not apply to a corporation for a year of assessment (*cessation year*) while it did for the previous year of assessment—~~

~~(a) the election made by the corporation under subsection (5)(b) ceases to be effective; and~~

~~(b) despite anything in this section, subsection (1) is not to apply to the corporation for the year of assessment that follows the cessation year.”~~

In the proposed section 14E, in the Chinese text³:

“14E. 合資格企業財資中心：安全港規則

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(5) 就某法團而言的某課稅年度就某課稅年度而言，某法團的**企業財資利潤總額百分率** (CTP percentage)，須按照以下公式計算 —

$$\frac{\text{CTP}}{\text{P}}$$

公式中：CTP 指在該課稅年度的評稅基期中，該法團的企業財資利潤的總額；及

P 指在該課稅年度的評稅基期中，從所有來源累算歸予該法團的利潤的總額，不論該等利潤是否源自香港。

- (6) 就某法團而言的某課稅年度就某課稅年度而言，某法團的**企業財資資產總值百分率** (CTA percentage)，須按照以下公式計算 —

$$\frac{\text{CTA}}{\text{A}}$$

公式中：CTA 指在該課稅年度的評稅基期完結時，該法團的企業財資資產的總值；及

A 指在該課稅年度的評稅基期完結時，該法團的所有資產的總值，不論該等資產是否在香港。

- (7) 就指明年度而言的而言，某法團的**企業財資利潤總額平均百分率** (average CTP percentage)，指按以下方法計算得出的百分率 —

- (a) 如第(4)(a)款適用 — 將該法團於兩個有關年度的企業財資利潤總額百分率的總和，除以 2；或
(b) 如第(4)(b)款適用 — 將該法團於三個有關年度的企業財資利潤總額百分率的總和，除以 3。

- (8) 就指明年度而言的而言，某法團的**企業財資資產總值平均百分率** (average CTA percentage)，指按以下方法計算得出的百分率 —

- (a) 如第(4)(a)款適用 — 將該法團於兩個有關年度的企業財資資產總值百分率的總和，除以 2；或
(b) 如第(4)(b)款適用 — 將該法團於三個有關年度的企業財資資產總值百分率的總和，除以 3。”

³ These technical amendments are proposed to refine the drafting of the relevant provisions.

Part 2

In Division 2, in the Chinese text, in the heading⁴:

“第 2 分部 — 向相聯法團借款或及貸款予相聯法團的利息”

Clause 8(13)

In the proposed section 16(3), in the Chinese text⁵:

“(13) 第 16(3)條 —
按筆劃數目順序加入
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·
集團內部融資業務 (intra-group financing business)就某法團而言，指
向該法團的相聯法團借款的業務·或及貸款予該法團的相聯法團
的業務；”。

⁴ See footnote 1.

⁵ See footnote 1.

Clause 12(3)

In the proposed section 15(1C)⁶:

- “(1C) Subsection (1)(f), (g), (i), (ia), (j), (k), (l) and (la) applies, subject to sections 17B, 17C, 17D, 17E, ~~17F, 17G and 17H~~[17F and 17G](#), in relation to a regulatory capital security.”

Clause 13

In the proposed section 16(2AA)⁷:

- “(2AA) Subsections (1)(a) and (2)(a) apply, subject to sections 17B, 17C, 17D, 17E, ~~17F, 17G and 17H~~[17F and 17G](#), in relation to a sum payable by a financial institution in respect of a regulatory capital security issued by the financial institution.”.

⁶ Having regard to the views of the Bills Committee and some respondents on the proposed section 17H, an amendment is made to remove the proposed section 17H from the Bill (see footnote 15). This is a consequential amendment to remove the reference to section 17H in this provision.

⁷ See footnote 6.

Clause 14

In the heading⁸:

“Sections 17A to ~~17H~~17G added”

In the proposed section 17A(1)⁹:

“(1) In this section and sections 17B, 17C, 17D, 17E, ~~17F, 17G and 17H~~17F and 17G—”

In the proposed section 17B(2)¹⁰:

“(2) Subsection (1) has effect subject to sections 17C, 17D, 17E, ~~17F, 17G and 17H~~17F and 17G.”

In the proposed section 17C(3), in the Chinese text¹¹:

“(3) 凡 —
(a) 有有關證券按照任何法律或監管規定，或該證券的條款及條件，~~遭永久被永久~~或暫時降值；或
(b) 有有關證券按照任何法律或監管規定，或該證券的條款及條件，被轉換為普通股權一級資本票據，
則相當於該證券的已付數額的被降值或被轉換的部分的款項，不得視為有關發行人從在香港經營的某行業、專業或業務所得的、於香港產生或得自香港的收入。”

In the proposed section 17C(4), in the Chinese text¹²:

“(4) 凡有關證券的已付數額按照任何法律或監管規定，或該證券的條款及條件，在該已付數額按照該等法律或規定，或條款及條件~~暫時遭被暫時~~降值後，獲得提值，則不得根據第 16(1)條，就相當於該已付數額的被提值的部分的款項，容許有關發行人作扣除。”

⁸ See footnote 6.

⁹ See footnote 6.

¹⁰ See footnote 6.

¹¹ See footnote 3.

¹² See footnote 3.

In the proposed section 17D(3), in the Chinese text¹³:

- “(3) 指明有關連者不得根據第 16(1)條，獲扣除任何相當於符合以下說明的上述證券的已付數額的被降或被轉換的部分的款項 —
- (a) 按照任何法律或監管規定，或該證券的條款及條件，遭永久被永久或暫時降值的該證券；或
 - (b) 按照任何法律或監管規定，或該證券的條款及條件，被轉換為普通股權一級資本票據的該證券。”

In the proposed section 17D(4), in the Chinese text¹⁴:

- “(4) 凡有關證券的已付數額按照任何法律或監管規定，或該證券的條款及條件，在該已付數額按照該等法律或規定，或條款及條件遭暫時被暫時降後，獲得提值，則相當於該已付數額的被提值的部分的款項，不得視為指明有關連者從在香港經營的某行業、專業或業務所得的、於香港產生或得自香港的收入。”

In the proposed section 17H¹⁵:

~~“17H. — Arm’s length and separate enterprise principles not prevented from application in other circumstances
Sections 17E and 17G do not prevent principles similar to those provided for in those sections from applying to a person, or in circumstances, other than the persons or circumstances mentioned in those sections.”~~

¹³ See footnote 3.

¹⁴ See footnote 3.

¹⁵ Having regard to the views of the Bills Committee and some respondents on the proposed section 17H, this amendment is made to remove section 17H from the Bill. After the passage of the Bill, the Inland Revenue Department will issue Departmental Interpretation and Practice Notes to explain that sections 17E and 17G are additional to and do not derogate from any other laws on the arm’s length and separate enterprise principles.

Clause 18

In the proposed Schedule 36, in section 6(b)¹⁶:

“(b) sections 15(1C), 16(2AA), 17A, 17B, 17C, 17D, 17E and 17F ~~and section 17H (in so far as it relates to section 17E).~~”

In the proposed Schedule 36, in section 8¹⁷:

“8. Section 17G ~~and section 17H (in so far as it relates to section 17G) apply-applies~~ only in ascertaining the profits in respect of which a non-resident financial institution with capital raised through the issue of a regulatory capital security (whether before, on or after the commencement date) is chargeable to tax under Part 4—
(a) for the year of assessment beginning on the first day of April in the calendar year next following the commencement date; or
(b) for any subsequent year of assessment.”

Clause 20(2)

In the proposed rule 3(1A)¹⁸:

“(1A) This rule has effect to the extent to which it is not inconsistent with sections 17B, 17C, 17D, 17E, ~~17F, 17G and 17H~~ 17F and 17G of the Ordinance.”

¹⁶ See footnote 6.

¹⁷ See footnote 6.

¹⁸ See footnote 6.