香港特別行政區政府
財經事務及庫務局
財經事務科
香港添馬添美道二號
政府總部二十四樓

FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND
THE TREASURY BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
24TH FLOOR
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE
TAMAR
HONG KONG

電　話 TEL.: (852) 2810 2054
圖文傳真 FAX.: (852) 2294 0460
本函檔號 OUR REF.:
來函檔號 YOUR REF.:

香港中區
立法會道 1 號
立法會綜合大樓
《2017 年稅務(修訂)(第 4 號)
條例草案》委員會主席
梁繼昌議員

梁議員：

政府對《2017 年稅務(修訂)(第 4 號)條例草案》的擬議修正

因應二零一八年二月十三日法案委員會的討論以及助理法律顧問的意見（包括其於二零一八年二月二十三日的來函），我們將就對《條例草案》的建議修訂作一些字眼上的修改。現夾付經修改的建議修訂的中英文版本（見附件），以供法案委員會參閱。修訂建議的內容維持不變。

我們已去信內務委員會主席建議在二零一八年三月二十一日恢復《條例草案》的二讀辯論。有見及此，我們計劃根據立法會《議事規則》在二零一八年三月十二日或以前發出全體委員會審議階段修正案通知。

如需要進一步資料，請與本信代行人或區家飴女士（電話：2810 3043）聯絡。謝謝。

財經事務及庫務局局長

(鄭嘉慧 鄭嘉慧 代行)

二零一八年二月二十三日

Annex / 附件

Inland Revenue (Amendment) (No. 4) Bill 2017

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

Clause	Amendment Proposed
4	In the proposed section 20AG(4), by deleting "from a transaction referred to in section 20AH(1)(a) or (b)".
4	In the proposed section 20AH(1)— (a) in paragraph (a), by deleting "and"; (b) in paragraph (b), by deleting the full stop and substituting "; and"; (c) by adding— "(c) transactions in assets of a non-Schedule 16A class if the activities that produce assessable profits from the transactions— (i) are carried out in Hong Kong by or through a qualified person; or (ii) are arranged in Hong Kong by a qualified person.".
4	In the proposed section 20AH(2)— (a) in paragraph (a), by adding "and" after the semicolon; (b) in paragraph (b), by deleting "; and" and substituting a full stop; (c) by deleting paragraph (c).
4	In the proposed section 20AH, by adding— "(4A) Despite subsection (1), if, during the basis period for a year of assessment— (a) an open-ended fund company carries on a trade, profession or business that involves transactions in shares of, or debentures issued by, a private company (***company concerned***); and (b) the company concerned holds (whether directly or indirectly) immovable property in Hong Kong or share

capital (however described) in one or more private companies with direct or indirect holding of immovable property in Hong Kong, and the aggregate value of the holding of the property (if any) and the share capital (if any) is equivalent to more than 10% of the value of the company concerned's assets,

the open-ended fund company is not exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the period from the transactions.

(4B) Despite subsection (1), if, during the basis period for a year of assessment—

(a) an open-ended fund company carries on a trade, profession or business that involves transactions in shares of, or debentures issued by, a private company (other than a private company with a holding or shareholding referred to in subsection (4A)(b)) and has control over the private company;

(b) the private company holds (whether directly or indirectly) short-term assets;

(c) the aggregate value of the short-term assets is equivalent to more than 50% of the value of the private company's assets; and

(d) the open-ended fund company disposes of the shares or debentures through a transaction or a series of transactions,

the open-ended fund company is not exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the period from the transactions.

(4C) Despite subsection (1), if, during the basis period for a year of assessment, an open-ended fund company—

(a) carries on direct trading or a direct business undertaking in Hong Kong in assets of a non-Schedule 16A class; or

(b) holds assets of a non-Schedule 16A class and the assets are being utilized with a view to generating income,

the open-ended fund company is not exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the period from the direct trading, direct business undertaking or utilization of assets.".

4 In the proposed section 20AH(9), in the English text, in the definition of ***qualified person***, by deleting the full stop and substituting a semicolon.

4 In the proposed section 20AH(9), in the Chinese text, in the definition of ***非附表 16A 類別***, by deleting the full stop and substituting a semicolon.

4 In the proposed section 20AH(9), by adding in alphabetical order to the proposed definitions—

"***control*** (控制) has the meaning given by section 20AC;

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

short-term asset (短期資產), in relation to a private company the shares or debentures of which are being disposed of by an open-ended fund company, means an asset—

(a) that is of a non-Schedule 16A class;

(b) that is not immovable property in Hong Kong; and

(c) that has been held by the private company for less than 3 consecutive years before the date of disposal.".

4 In the proposed section 20AI(6), in the English text, in the definition of ***qualified investor***, in paragraph (f), by deleting "Authority." and substituting "Authority;".

4 In the proposed section 20AI(6), in the definition of ***qualified investor***, by adding—

"(g) an investment arrangement, which is commonly known as a sovereign wealth fund, established and funded by a state or government (or any political subdivision or local authority of a state or government) for the purposes of—

(i) carrying out financial activities; and

(ii) holding and managing a pool of assets,

for the benefit of the state or government (or the political subdivision or local authority).".

4 By deleting the proposed section 20AJ(2).

4 In the proposed section 20AJ(4), by deleting the definition of ***non-Schedule 16A class***.

4	In the proposed section 20AJ(4), in the Chinese text, in the definition of *服務*, in paragraph (d), by deleting the semicolon and substituting a full stop.
4	In the proposed section 20AL, by deleting the heading and substituting— "**20AL. Losses sustained by open-ended fund companies**".
4	In the proposed section 20AL(1), by deleting "(a) or (b)" and substituting "(a), (b) or (c)".
4	In the proposed section 20AL(2)— (a) by deleting "under section 20AH" and substituting "under section 20AH (other than because of subsection (4A), (4B) or (4C) of that section)"; (b) by deleting "(a) or (b)" (wherever appearing) and substituting "(a), (b) or (c)".
4	In the proposed section 20AL(3)— (a) by deleting "a non-Schedule 16A transaction" and substituting "a transaction, a direct trading, a direct business undertaking or utilization of assets, in respect of which there is not an exemption from the payment of tax for assessable profits under section 20AH(4A), (4B) or (4C)"; (b) by deleting "non-Schedule 16A transactions" and substituting "the transaction, direct trading, direct business undertaking or utilization of assets".
4	By deleting the proposed section 20AL(4).
6	In the proposed Schedule 16A, by deleting ", 20AH, 20AJ & 20AL]" and substituting "& 20AH]".
6	In the proposed Schedule 16A, by adding— "1A. Shares of, or debentures issued by, a private company within the meaning of section 11 of the Companies Ordinance (Cap. 622).".

委員會審議階段

<u>由財經事務及庫務局局長動議的修正案</u>

<u>條次</u>	<u>建議修正案</u>
4	在建議的第 20AG(4)條中，刪去“因第 20AH(1)(a)或(b)條提述的交易而”。
4	在建議的第 20AH(1)條中 —— (a) 在(a)段中，刪去“及”； (b) 在(b)段中，刪去句號而代以“；及”； (c) 加入 —— “(c) 非附表 16A 類別資產的交易，前提是在該等交易中，產生應評稅利潤的活動 —— (i) 是由合資格人士，或透過合資格人士，在香港進行；或 (ii) 是由合資格人士在香港安排進行。”。
4	在建議的第 20AH(2)條中 —— (a) 在(a)段中，在分號之後加入“及”； (b) 在(b)段中，刪去“；及”而代以句號； (c) 刪去(c)段。
4	在建議的第 20AH 條中，加入 —— “(4A) 儘管有第(1)款的規定，如在某課稅年度的評稅基期內 — (a) 某開放式基金型公司經營的行業、專業或業務，涉及某私人公司(***有關公司***)的股份或由有關公司發行的債權證的交易；及 (b) 有關公司(不論直接或間接)持有在香港的不動產，或持有一間或多於一間私人公司的股本(不論如何描

述)，而該等私人公司直接或間接持有在香港的不動產；此外，上述持有的不動產(如有)及股本(如有)的總價值，相等於有關公司的資產價值的 10%以上，

則該開放式基金型公司不獲豁免繳付根據本部規定、須就其在該段期間內來自上述交易的應評稅利潤而徵收的稅款。

(4B) 儘管有第(1)款的規定，如在某課稅年度的評稅基期內 —

(a) 某開放式基金型公司經營的行業、專業或業務，涉及某私人公司(持有第(4A)(b)款提述的不動產或股本的私人公司除外)(***標的公司***)的股份或由標的公司發行的債權證的交易，並控制標的公司；

(b) 標的公司(不論直接或間接)持有短期資產；

(c) 該等短期資產的總價值，相等於標的公司的資產價值的 50%以上；及

(d) 該開放式基金型公司透過某項交易或一系列交易，處置上述股份或債權證，

則該開放式基金型公司不獲豁免繳付根據本部規定、須就其在該段期間內來自上述交易的應評稅利潤而徵收的稅款。

(4C) 儘管有第(1)款的規定，如在某課稅年度的評稅基期內，某開放式基金型公司 ——

(a) 在香港經營非附表 16A 類別資產的直接貿易，或在香港就該等資產經營直接業務實體；或

(b) 持有非附表 16A 類別資產，而該等資產正被運用，以期產生入息，

則該開放式基金型公司不獲豁免繳付根據本部規定、須就其在該段期間內來自上述直接貿易、直接業務實體或資產運用的應評稅利潤而徵收的稅款。”。

4 在建議的第 20AH(9)條中，在英文文本中，在 ***qualified person*** 的定義中，刪去句點而代以分號。

4 在建議的第 20AH(9)條中，在中文文本中，在***非附表 16A 類別***的定義中，刪去句號而代以分號。

4 在建議的第 20AH(9)條中，在建議的定義中，按筆劃數目順序加

入 ——

"*私人公司* (private company)具有第 20ACA 條所給予的涵義；

控制 (control)具有第 20AC 條所給予的涵義；

短期資產 (short-term asset)的涵義如下：凡某私人公司的股份或債權證，正被某開放式基金型公司處置，則就該私人公司而言，***短期資產***指符合以下說明的資產 ——

(a) 屬非附表 16A 類別；

(b) 不是在香港的不動產；及

(c) 在處置當日之前，由該私人公司持有不足連續 3 年。"。

4 在建議的第 20AI(6)條中，在英文文本中，在 ***qualified investor*** 的定義中，在(f)段中，刪去"Authority."而代以"Authority;"。

4 在建議的第 20AI(6)條中，在***合資格投資者***的定義中，加入 ——

"(g) 通常稱為主權財富基金的投資安排，該投資安排由某國家或政府(或國家或政府的任何政治分部或地方當局)設立和提供資金，為該國家或政府(或該政治分部或地方當局)的利益 ——

(i) 進行金融活動；及

(ii) 持有和管理資產組合；"。

4 刪去建議的第 20AJ(2)條。

4 在建議的第 20AJ(4)條中，刪去***非附表 16A 類別***的定義。

4 在建議的第 20AJ(4)條中，在中文文本中，在***服務***的定義中，在(d)段中，刪去分號而代以句號。

4 在建議的第 20AL 條中，刪去標題而代以 ——

"**20AL. 開放式基金型公司蒙受的虧損**"。

4 在建議的第 20AL(1)條中，刪去"(a)或(b)"而代以"(a)、(b)或(c)"。

4 在建議的第 20AL(2)條中 ——

(a) 在“獲豁免”之前加入“(因該條第(4A)、(4B)或(4C)款則除外)”；

(b) 刪去所有“(a)或(b)”而代以“(a)、(b)或(c)”。

4 在建議的第 20AL(3)條中 ——

(a) 刪去“因非附表 16A 交易”而代以“因任何交易、直接貿易、直接業務實體或資產運用(而就上述各項而言，根據第 20AH(4A)、(4B)或(4C)條，不獲豁免就應評稅利潤繳付稅款)”；

(b) 刪去“非附表 16A 交易的”而代以“該交易、直接貿易、直接業務實體或資產運用的”。

4 刪去建議的第 20AL(4)條。

6 在建議的附表 16A 中，刪去“、20AH、20AJ 及 20AL 條]”而代以“及 20AH 條]”。

6 在建議的附表 16A 中，加入 ——

“1A. 《公司條例》(第 622 章)第 11 條所指的私人公司的股份，或由其發行的債權證。”。