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本函檔號 OUR REF.:

來函檔號 YOUR REF.:

23 February 2018

The Honourable Kenneth Leung  
Chairman of the Bills Committee on  
Inland Revenue (Amendment) (No. 4)  
Bill 2017  
Legislative Council  
1 Legislative Council Road  
Central  
Hong Kong

Dear Honourable Leung,

**Government's Proposed Amendments to  
the Inland Revenue (Amendment) (No. 4) Bill 2017**

Taking into account the discussion at the Bills Committee meeting on 13 February 2018 and comments of the Assistant Legal Adviser (including her letter of 23 February 2018), we have made textual revisions to our proposed amendments to the Bill. A bilingual set of the revised amendments is attached at **Annex** for the Bills Committee's information. The substance of the proposed amendments remains unchanged.

We have written to the House Committee Chairman to seek her agreement for the Second Reading Debate on the captioned Bill be resumed on 21 March 2018. Accordingly, we plan to issue a formal Notice of Committee Stage Amendments by 12 March 2018 in accordance with the Rules of Procedure of the Legislative Council.

If you require further information, please let the undersigned or Miss Renita Au, at 2810 3043, know. Thank you for your kind attention.

A handwritten signature in black ink, appearing to read 'Carrie Chang', written in a cursive style.

( Carrie Chang )

for Secretary for Financial Services and the Treasury

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

**Committee Stage**

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

<u>Clause</u>	<u>Amendment Proposed</u>
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 ( <i>company concerned</i> ); 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).”.

《2017 年稅務(修訂)(第 4 號)條例草案》

委員會審議階段

由財經事務及庫務局局長動議的修正案

<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



人 ——

“**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。”。