

# Inland Revenue (Amendment) (No. 5) Bill 2018

## Contents

Clause	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1.	Short title ..... C1057
2.	Inland Revenue Ordinance amended ..... C1057
<b>Part 2</b>	
<b>Amendments Relating to Personal Assessment</b>	
3.	Application ..... C1059
4.	Section 19C amended (treatment of losses after 1 April 1975) ..... C1059
5.	Section 26C amended (approved charitable donations (Part 4A)) ..... C1061
6.	Section 29 amended (married person's allowance) ..... C1061
7.	Section 31 amended (child allowance) ..... C1063
8.	Section 31A amended (disabled dependant allowance) ..... C1063
9.	Section 41 amended (election for personal assessment) ..... C1065
10.	Section 42 amended (calculation of total income) ..... C1067
11.	Section 51 amended (returns and information to be furnished) ..... C1069
12.	Section 59 amended (assessor to make assessments) ..... C1069

Clause	Page
13.	Schedule 4 amended (allowances) ..... C1075

**Part 3**

**Amendments Relating to Environmental Protection Installations**

14.	Section 16I amended (deductions for specified capital expenditure incurred in relation to environmental protection facilities) ..... C1077
15.	Section 16J amended (proceeds of sale of environmental protection facilities to be treated as trading receipts) ..... C1079
16.	Section 16K amended (environmental protection facilities owned as at commencement date) ..... C1081
17.	Section 16L added ..... C1083
16L.	Environmental protection installations owned before 1 April 2018 ..... C1083

**Part 4**

**Amendments Relating to Qualifying Debt Instruments**

18.	Section 14A amended (qualifying debt instruments) ..... C1087
19.	Section 19CA amended (treatment of losses: concessionary trading receipts) ..... C1091
20.	Section 26A amended (exclusion of certain profits from tax) ..... C1091

# A BILL

## To

Amend the Inland Revenue Ordinance to provide for the option for married persons to elect for personal assessment separately for all years of assessment commencing on or after 1 April 2018; to accelerate tax deductions for capital expenditure incurred in relation to environmental protection installations; to provide for tax exemption to cover certain debt instruments issued on or after 1 April 2018; and to provide for related matters.

Enacted by the Legislative Council.

### **Part 1**

#### **Preliminary**

**1. Short title**

This Ordinance may be cited as the Inland Revenue (Amendment) (No. 5) Ordinance 2018.

**2. Inland Revenue Ordinance amended**

The Inland Revenue Ordinance (Cap. 112) is amended as set out in Parts 2, 3 and 4.

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## Part 2

### Amendments Relating to Personal Assessment

#### 3. Application

The provisions of the Inland Revenue Ordinance (Cap. 112) as amended by this Part apply in relation to all years of assessment commencing on or after 1 April 2018.

#### 4. Section 19C amended (treatment of losses after 1 April 1975)

(1) Section 19C(1)—

##### Repeal paragraph (b)

##### Substitute

“(b) either of the following conditions is met—

- (i) the individual (whether married or not) does not elect for personal assessment under section 41(1) for the year of assessment;
- (ii) the individual and the individual’s spouse do not jointly elect for personal assessment under section 41(1A) for the year of assessment.”.

(2) Section 19C(2)—

##### Repeal paragraph (b)

##### Substitute

“(b) either of the following conditions is met—

- (i) the individual (whether married or not) does not elect for personal assessment under section 41(1) for the year of assessment;
- (ii) the individual and the individual’s spouse do not jointly elect for personal assessment under section 41(1A) for the year of assessment.”.

(3) Section 19C(3)—

**Repeal paragraphs (a) and (b)**

**Substitute**

- “(a) the individual (whether married or not) is personally assessed under Part 7; or
- (b) the individual and the individual’s spouse have jointly elected to be personally assessed under Part 7.”.

**5. Section 26C amended (approved charitable donations (Part 4A))**

Section 26C(2)(b)(ii)—

**Repeal**

“that is required to be aggregated with that of the person under section 42A(1)”

**Substitute**

“under Part 7”.

**6. Section 29 amended (married person’s allowance)**

(1) Section 29—

**Repeal subsection (1)**

**Substitute**

- “(1) An allowance (*married person’s allowance*) is to be granted to a person in any year of assessment if—
- (a) the person is, at any time during the year of assessment, married; and
- (b) either of the following conditions is met—
- (i) the person’s spouse—
- (A) did not have assessable income in the year of assessment; and

(B) has not made an election under section 41(1) for the year of assessment;

(ii) the person and the spouse have made an election under section 10(2) for the year of assessment.”.

(2) After section 29(1)—

**Add**

“(1A) A married person’s allowance is to be granted to a person and the person’s spouse in any year of assessment if—

(a) their marriage subsists at any time during the year of assessment; and

(b) they have jointly elected to be personally assessed under Part 7.”.

**7. Section 31 amended (child allowance)**

Section 31(3)—

**Repeal**

“salaries tax under Part 3”

**Substitute**

“tax under Part 3 or 7”.

**8. Section 31A amended (disabled dependant allowance)**

Section 31A(3)—

**Repeal**

“salaries tax under Part 3”

**Substitute**

“tax under Part 3 or 7”.

**9. Section 41 amended (election for personal assessment)**

(1) Section 41—

**Repeal subsections (1) and (1A)**

**Substitute**

“(1) An individual—

- (a) who is of or above the age of 18 years or is under that age if both parents are dead; and
- (b) who is either ordinarily resident in Hong Kong or a temporary resident,

may elect for personal assessment on the individual's total income in accordance with this Part.

(1A) If—

- (a) an individual is married and not living apart from the individual's spouse;
- (b) both of them have income assessable under this Ordinance; and
- (c) either one or both of them are eligible to make an election under subsection (1),

they may jointly make an election for personal assessment.

(1B) If an individual or the individual's spouse is chargeable to salaries tax under section 10(3), the individual may not make an election for personal assessment unless the individual and the spouse jointly make an election under subsection (1A).”.

(2) After section 41(3)—

**Add**

- “(3A) An election made by an individual under subsection (1) may be withdrawn by the individual. An election made by an individual and his or her spouse under subsection (1A) may only be withdrawn by them jointly.
- (3B) A withdrawal under subsection (3A) must be effected by giving a notice in writing to the Commissioner—
- (a) within 6 months after the date on which a personal assessment is issued by the Commissioner pursuant to the election; or
  - (b) within another period that the Commissioner considers reasonable in the circumstances.
- (3C) An election withdrawn under subsection (3A) is to be regarded as not having been made.
- (3D) An individual who has (or the individual and his or her spouse who have) withdrawn under subsection (3A) an election made for a year of assessment may not make an election again for that year of assessment, unless the Commissioner considers it appropriate to allow a re-election.”.
- (3) Section 41(4)—

**Repeal the definition of *permanent resident*.**

**10. Section 42 amended (calculation of total income)**

Section 42—

**Repeal subsection (6)**

**Substitute**

- “(6) If—
- (a) an individual has income assessable under this Ordinance for a year of assessment;



- (b) the individual's spouse does not have income assessable under this Ordinance for that year of assessment, but an amount of loss is carried forward from a previous year of assessment under this Part to that year of assessment;
- (c) the individual and the spouse would have been able to jointly make an election for personal assessment under section 41(1A) had the spouse had income assessable under this Ordinance; and
- (d) the individual has elected to be personally assessed under this Part,

subsection (5)(a)(ii) and (b)(ii) applies in relation to the individual and the spouse as if their total income had been required to be aggregated under section 42A(1).”.

**11. Section 51 amended (returns and information to be furnished)**

Section 51—

**Repeal subsections (2A), (2B) and (2C).**

**12. Section 59 amended (assessor to make assessments)**

Section 59—

**Repeal subsections (1B) and (1C)**

**Substitute**

“(1B) Despite subsection (1), if an assessor is satisfied that—

- (a) an individual—
  - (i) carries on (other than jointly with another person) a trade, profession or business in Hong Kong; and

- (ii) is eligible to elect for personal assessment under section 41 on the individual's total income;
  - (b) the assessable profits of the individual in respect of the trade, profession or business for any year of assessment do not exceed the amount specified for the year of assessment in the second column of item 1 of Schedule 4; and
  - (c) the individual has no income, property or profits chargeable to tax under this Ordinance for the year of assessment, other than that in respect of the trade, profession or business,  
the assessor is not obliged to make an assessment of profits tax in respect of the assessable profits.
- (1C) Despite subsection (1), if an assessor is satisfied that—
- (a) an individual—
    - (i) carries on a trade, profession or business in Hong Kong, either solely or jointly with another person; and
    - (ii) is eligible to elect for personal assessment under section 41 on the individual's total income;
  - (b) the individual has no income, property or profits chargeable to tax under this Ordinance for the year of assessment, other than that in respect of the trade, profession or business; and
  - (c) after taking into account the allowances that would have to be deducted under Part 5—

- (i) if the individual carries on the trade, profession or business solely—the assessable profits of the individual in respect of the trade, profession or business for the year of assessment are such that no tax would be charged on the individual had the individual elected for personal assessment under section 41; or
- (ii) if the individual carries on the trade, profession or business jointly with another person—the individual's share of the profits in respect of the trade, profession or business for the year of assessment is such that no tax would be charged on the individual had the individual elected for personal assessment under section 41,

the assessor is not obliged to make an assessment of profits tax in respect of the assessable profits.

(1D) Subsection (1E) applies if—

- (a) an assessor has made an assessment of profits tax in respect of the assessable profits of an individual for a year of assessment; and
- (b) in relation to the individual, the assessor becomes satisfied of the matters specified in subsection (1C)(a), (b) and (c) for the year of assessment.

(1E) The assessor may, despite section 70—

- (a) annul the assessment; or
- (b) in case of an assessment of a partnership—reduce the assessment in so far as it relates to the share of profits of the individual.”.

**13. Schedule 4 amended (allowances)**

Schedule 4—

**Repeal**

“[s. 27(3)]”

**Substitute**

“[ss. 27 & 59]”.

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## Part 3

### Amendments Relating to Environmental Protection Installations

**14. Section 16I amended (deductions for specified capital expenditure incurred in relation to environmental protection facilities)**

(1) Section 16I(3)—

**Repeal**

“Any”

**Substitute**

“If that year of assessment commences on or before 1 April 2017, any”.

(2) After section 16I(3)—

**Add**

“(3A) Despite subsection (3)(b), any part of a specified capital expenditure that remains to be deducted for any year of assessment commencing on or after 1 April 2018 may be deducted in the year of assessment commencing on that date so long as the installation has not been sold on or before that date.

(3B) If that year of assessment commences on or after 1 April 2018, any specified capital expenditure incurred by the person during the basis period for that year of assessment in relation to any environmental protection installation is to be deducted.”.

(3) Section 16I(4)—

**Repeal**

“(2) or (3)”

**Substitute**

“(2), (3), (3A) or (3B)”.

**15. Section 16J amended (proceeds of sale of environmental protection facilities to be treated as trading receipts)**

(1) Section 16J(3)—

**Repeal**

“16I”

**Substitute**

“16I(3), (3A) or (4)”.

(2) After section 16J(3)—

**Add**

“(3A) If an environmental protection installation for which a deduction has been allowed under section 16I(3B) or (4) is subsequently sold, the relevant proceeds of sale are, if the conditions specified in subsection (3B) are met, to be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—

(a) if the trade, profession or business is permanently discontinued and the sale occurs on or after the date of discontinuance—immediately before the date of discontinuance; or

(b) otherwise—at the time of the sale.

(3B) The conditions are—

(a) that the proceeds of sale are not chargeable to tax under any other provision of this Part; and

(b) that the proceeds of sale do not exceed the amount of the deduction under section 16I(3B) or (4).”.

(3) Section 16J(4)—

**Repeal**

“(2A) or (3)” (wherever appearing)

**Substitute**

“(2A), (3) or (3A)”.

(4) Section 16J(5)—

**Repeal**

“(2) and (3)”

**Substitute**

“(2), (3) and (3A)”.

**16. Section 16K amended (environmental protection facilities owned as at commencement date)**

(1) Section 16K, heading—

**Repeal**

“commencement”

**Substitute**

“certain”.

(2) Section 16K(4)—

**Repeal**

“16I”

**Substitute**

“16I(3) or (4)”.

(3) Section 16K(5)—

**Repeal**

“16I”

**Substitute**

“16I(3) or (4)”.

**17. Section 16L added**

After section 16K—

**Add**

**“16L. Environmental protection installations owned before 1 April 2018**

(1) If—

- (a) a person has incurred capital expenditure (or is otherwise entitled to the relevant interest in relation to the capital expenditure incurred) on the construction of a building or structure before 1 April 2018;
- (b) the building or structure is an environmental protection installation; and
- (c) no deduction has previously been allowed under this Part for the expenditure,

the person is, for the purposes of section 16I(3B), taken to have incurred specified capital expenditure in relation to the building or structure on 1 April 2018.

- (2) The specified capital expenditure is to be the residue of expenditure incurred in relation to the building or structure immediately before 1 April 2018.
- (3) The person may elect in writing for this section to apply if the person wishes to claim a deduction



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under section 16I(3B) in relation to the specified capital expenditure for the year of assessment commencing on 1 April 2018.

- (4) An election may only be made within 1 month after a notice of assessment for the year of assessment is given to the person under section 62.
  - (5) An election is irrevocable.”.
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## Part 4

### Amendments Relating to Qualifying Debt Instruments

#### 18. Section 14A amended (qualifying debt instruments)

(1) Section 14A(1A)(a)—

**Repeal**

“the date of commencement of the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011)”

**Substitute**

“25 March 2011”.

(2) After section 14A(1A)—

**Add**

“(1B) For the purposes of this Part—

(a) interest paid or payable on a debt instrument issued on or after 1 April 2018; and

(b) any gain or profit on the sale or other disposal, or on the redemption on maturity or presentment, of the debt instrument,

received by or accrued to a person are not chargeable to tax under this Part.

(1C) Subsection (1B) does not apply in relation to a debt instrument if, at the time the interest or gain or profit relating to the debt instrument is received by or accrued to a person, the person is an associate of the issuer of the debt instrument.”.

(3) Section 14A(4), definition of *debt instrument*—

**Repeal paragraph (a)**

**Substitute**

“(a) is—

(i) in respect of a debt issue which in its entirety has been lodged with and cleared by the Central Moneymarkets Unit operated by the Monetary Authority; or

(ii) listed on a stock exchange in Hong Kong;”.

- (4) Section 14A(4), definition of *medium term debt instrument*, paragraph (b)(i), after “2003”—

**Add**

“but before 1 April 2018”.

- (5) Section 14A(4), definition of *short term debt instrument*, paragraph (a)—

**Repeal**

everything after “or after”

**Substitute**

“25 March 2011 but before 1 April 2018;”.

- (6) Section 14A(4A)—

**Repeal**

“the date of commencement of the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011)”

**Substitute**

“25 March 2011”.

- (7) After section 14A(6)—

**Add**

“(7) An amount of loss incurred or sustained by a person from a transaction in or related to a debt instrument issued on or after 1 April 2018 in a year of assessment cannot be set off against the person’s

assessable profits for the year of assessment or any subsequent year of assessment.

- (8) To avoid doubt, paragraph (a) of the definition of *debt instrument* in subsection (4) as in force on the commencement date of the Inland Revenue (Amendment) (No. 5) Ordinance 2018 ( of 2018) applies to an instrument issued within the period from 1 April 2018 to the day before that commencement date.”.

**19. Section 19CA amended (treatment of losses: concessionary trading receipts)**

Section 19CA(5), definition of *concession provision*, paragraph (a)—

**Repeal**

“14A”

**Substitute**

“14A(1)”.

**20. Section 26A amended (exclusion of certain profits from tax)**

(1) Section 26A(1B)—

**Repeal**

“the date of commencement of the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011)”

**Substitute**

“25 March 2011”.

(2) Section 26A(2), definition of *long term debt instrument*, paragraph (a), after “2003”—

**Add**

“but before 1 April 2018”.

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## **Explanatory Memorandum**

The objects of this Bill are to amend the Inland Revenue Ordinance (Cap. 112) (*Ordinance*) to provide for the option for married persons to elect for personal assessment separately for all years of assessment commencing on or after 1 April 2018, to accelerate tax deductions for capital expenditure incurred in relation to environmental protection installations, to provide for tax exemption to cover certain debt instruments issued on or after 1 April 2018, and to provide for related matters.

2. The Bill is divided into 4 Parts.

### **Part 1—Preliminary**

3. Clause 1 sets out the short title.

### **Part 2—Amendments Relating to Personal Assessment**

4. Clause 3 provides that the provisions of the Ordinance as amended by Part 2 apply in relation to all years of assessment commencing on or after 1 April 2018.
5. Clause 4 amends section 19C of the Ordinance to—
  - (a) allow a loss incurred by an individual in a year of assessment in any trade, profession or business carried on by the individual to be carried forward and set off against the amount of the individual's assessable profits from the trade, profession or business for subsequent years of assessment if—
    - (i) the individual (whether married or not) does not elect for personal assessment for the year of assessment; or

- 
- (ii) the individual and the individual's spouse do not jointly elect for personal assessment for the year of assessment;
    - (b) allow a share of a loss of a partnership incurred by an individual in a year of assessment in any trade, profession or business carried on by the partnership to be carried forward and set off against the amount of the individual's share of assessable profits of the partnership from the trade, profession or business for subsequent years of assessment if—
      - (i) the individual (whether married or not) does not elect for personal assessment for the year of assessment; or
      - (ii) the individual and the individual's spouse do not jointly elect for personal assessment for the year of assessment;
    - (c) provide for the amount of loss or share of loss in a partnership incurred by an individual to be dealt with in accordance with Part 7 (personal assessment) of the Ordinance if—
      - (i) the individual (whether married or not) is personally assessed under that Part; or
      - (ii) the individual and the individual's spouse have jointly elected to be personally assessed under that Part.
6. Clause 5 amends section 26C of the Ordinance to provide that a sum of approved charitable donations that has been allowed as a deduction to the spouse of a person against the spouse's total income under Part 7 of the Ordinance may not be allowed as a deduction to the person.

7. Clause 6 amends section 29 of the Ordinance to allow an allowance (*married person's allowance*) to be granted to a person in a year of assessment if the person's spouse did not have assessable income in the year of assessment and had not made an election under section 41(1) of the Ordinance for the year of assessment. A married person's allowance is to be granted to the person and the spouse if they have jointly elected to be personally assessed under Part 7 of the Ordinance.
8. Clauses 7 and 8 amend sections 31 and 31A of the Ordinance respectively to allow all the child allowances and disabled dependant allowances grantable under those sections in respect of the children of a married couple to be claimed by one spouse if both spouses are chargeable to tax under Part 7 of the Ordinance.
9. Clause 9 amends section 41 of the Ordinance to allow an individual (who has a spouse) to elect for personal assessment separately or jointly with the spouse. However, if the individual or the spouse is chargeable to salaries tax in respect of their aggregated net chargeable income under section 10(3) of the Ordinance, they should jointly make an election for personal assessment. The clause also requires a written notice of withdrawal of election for personal assessment by an individual (and the spouse, if applicable) within a certain period of time and provides for the effect and consequence of the withdrawal.
10. Clause 10 amends section 42 of the Ordinance to provide that if the spouse of an individual (who has income chargeable to tax for a year of assessment) has a loss carried forward under Part 7 of the Ordinance to the year of assessment in which the spouse has no income chargeable to tax, the amount of loss may be set off against the income of the individual under that Part for the year of assessment as if the individual and the



spouse had jointly made an election for personal assessment for that year.

11. Clause 11 repeals obsolete provisions in section 51 of the Ordinance.
12. Clause 12 is a consequential amendment to give effect to separate election for personal assessment by an individual. It amends section 59 of the Ordinance to enable an assessor not to make an assessment of profits tax in respect of the assessable profits of an individual who carries on a trade, profession or business in Hong Kong (whether solely or jointly with another person) under certain circumstances.
13. Clause 13 updates a reference in Schedule 4 to the Ordinance.

### **Part 3—Amendments Relating to Environmental Protection Installations**

14. Clause 14 amends section 16I of the Ordinance to add—
  - (a) a new section 16I(3A) to allow any part of a specified capital expenditure incurred in relation to an environmental protection installation that remains to be deducted for any year of assessment commencing on or after 1 April 2018 under section 16I(3)(b) to be deducted in the year of assessment commencing on 1 April 2018; and
  - (b) a new section 16I(3B) to allow any specified capital expenditure incurred in any year of assessment commencing on or after 1 April 2018 in relation to an environmental protection installation to be deducted for the year of assessment in which the expenditure is incurred.

15. Clause 15 amends section 16J of the Ordinance to add a new section 16J(3A) to treat the sale proceeds of any environmental protection installation for which a deduction has been allowed under the new section 16I(3B) as trading receipts chargeable to profits tax in Hong Kong.
16. Clause 16 amends section 16K of the Ordinance to include certain consequential amendments, and clause 17 adds a new section 16L to the Ordinance to provide for the transitional arrangements for the deduction in relation to certain environmental protection installations under the new section 16I(3B).

#### **Part 4—Amendments Relating to Qualifying Debt Instruments**

17. Clause 18 amends section 14A of the Ordinance to—
  - (a) provide for the profits tax exemption to cover debt instruments issued on or after 1 April 2018; and
  - (b) extend the definition of *debt instrument* in section 14A(4) of the Ordinance to cover a debt instrument that is listed on a stock exchange in Hong Kong.
18. Clause 19 makes a consequential amendment to section 19CA of the Ordinance.
19. Clause 20 amends section 26A of the Ordinance to modify the definition of *long term debt instrument* in view of the new tax exemption measure relating to qualifying debt instruments under Part 4 of the Ordinance.