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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 4 July 2018**

**Amendments to Inland Revenue (Amendment) (No. 6) Bill 2017**

The Second Reading debate on the above Bill will be resumed at the Council meeting of 4 July 2018. Subject to the Bill receiving Second Reading, the President has given permission for the Secretary for Financial Services and the Treasury to move amendments to the Bill.

2. As directed by the President, the amendments are attached for Members' consideration.

(Lilian MOK)  
for Clerk to the Legislative Council

Encl.

**Committee Stage**

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

Clause

Amendment Proposed

3

By deleting the clause and substituting—

**“3. Section 8 amended (charge of salaries tax)**

(1) Section 8(1A)(c), before “excludes”—

**Add**

“subject to subsection (1C) and section 50AA,”.

(2) After section 8(1B)—

**Add**

“(1C) Subsection (1A)(c) does not apply in relation to income derived by a person from services rendered by the person in a territory if—

(a) the territory is a DTA territory (as defined by section 48A); and

(b) under section 50, tax payable in the territory by a Hong Kong resident person in respect of income derived from services rendered by him or her in the territory is to be allowed as a credit against tax payable in Hong Kong by the Hong Kong resident person in respect of that income.”.

4

By deleting the clause and substituting—

**“4. Section 16 amended (ascertainment of chargeable profits)**

(1) Section 16(1)(c), before “tax of”—

**Add**

“subject to subsection (2J) and section 50AA,”.

(2) Section 16(1)(c)—

**Repeal the colon**

**Substitute a semicolon.**

(3) Section 16(1)(c)—

**Repeal the proviso.**

(4) After section 16(2I)—

**Add**

“(2J) Subsection (1)(c) does not apply in relation to any tax paid in a territory by a person in respect of profits referred to in that subsection if—

(a) the territory is a DTA territory (as defined by section 48A); and

(b) under section 50, tax payable in the territory by a Hong Kong resident person in respect of the profits is to be allowed as a credit against tax payable in Hong Kong by the Hong Kong resident person in respect of the profits.”.”.

5 In the proposed section 48A, by deleting the definition of *non-DTA territory*.

6 In the heading, by deleting “**arrangements for relief from double taxation and exchange of information**” and substituting “**arrangements: relief from double taxation, exchange of information and other international tax cooperation**”.

8 By deleting the proposed section 50AA(1)(a) and (b) and substituting—

“(a) relief under section 8(1A)(c) by way of exclusion of any amount of the relevant income;

(b) relief under section 16(1)(c) by way of deduction of any amount of the foreign tax;

(c) relief under section 50 by way of credit and deduction of any amount of the foreign tax.”.

8 By deleting the proposed section 50AA(3)(a)(ii) and substituting—

“(ii) if subsection (1)(c) applies—the double taxation arrangements made with the foreign territory,”.

9 In the proposed Part 8AA, in the Note under the Part heading, by deleting item 2 and substituting—

“2. Division 2 incorporates the international transfer pricing rules and has the following effect—

- (a) in relation to a year of assessment beginning on or after 1 April 2018—
  - (i) a person’s tax liability under this Ordinance is to be determined on the basis that a provision made or imposed between the person and the person’s associated person is made or imposed on an arm’s length basis;
  - (ii) in other words, a person who would have a Hong Kong tax advantage if taxed on the basis of a non-arm’s length provision (*advantaged person*) will have income adjusted upwards or loss adjusted downwards;
- (b) similarly, in relation to a year of assessment beginning on or after 1 April 2019, the income or loss of a non-Hong Kong resident person attributable to the person’s permanent establishment in Hong Kong is to be determined as if the permanent establishment were a distinct and separate enterprise.”.

9 In the proposed Part 8AA, in the Note under the Part heading, by adding—

“2A. The arm’s length provision is to be determined in accordance with the OECD rules (as defined by section 50AAC(1)). It is possible that application of the OECD rules may not produce a single provision (such as an exact figure as the price) but may produce a range of provisions where each provision constitutes an arm’s length provision.”.

9 In the proposed section 50AAC(1), by deleting the definition of *double taxation arrangements* and substituting—

“*double taxation arrangements* (雙重課稅安排)—

- (a) in relation to the computation of income or loss with respect to a provision made or imposed between 2 persons by means of a transaction or series of transactions—means double taxation arrangements (as defined by section 48A) that incorporate—
  - (i) the associated enterprises article and the mutual agreement procedure article; or
  - (ii) any rules in the same or equivalent terms as those articles;

- (b) in relation to the attribution of a person's income or loss to the person's permanent establishment in Hong Kong— means double taxation arrangements (as defined by section 48A) that incorporate—
  - (i) the business profits article and the mutual agreement procedure article; or
  - (ii) any rules in the same or equivalent terms as those articles; or
- (c) in relation to the determination of the question whether a person has a permanent establishment in Hong Kong— means double taxation arrangements (as defined by section 48A) that incorporate—
  - (i) the permanent establishment article; or
  - (ii) any rules in the same or equivalent terms as the article;”.

9 In the proposed section 50AAC(1), by deleting the definition of *DTA territory* and substituting—

“*DTA territory* (有安排地區) means a territory outside Hong Kong with which double taxation arrangements have been made;”.

9 In the proposed section 50AAC(1), by deleting the definition of *non-DTA territory* and substituting—

“*non-DTA territory* (無安排地區) means a territory outside Hong Kong that is not a DTA territory;”.

9 In the proposed section 50AAC(1), by adding in alphabetical order—

“*associated enterprises article* (相聯企業條文) means the rules contained in Article 9 of the Model Tax Convention;

*business profits article* (營業利潤條文) means the rules contained in Article 7 of the Model Tax Convention;

*mutual agreement procedure article* (相互協商程序條文) means the rules contained in Article 25 of the Model Tax Convention;

*OECD rules* (《經合組織規則》) means—

- (a) the commentary on the associated enterprises article or the business profits article (as the case requires); and
- (b) the Transfer Pricing Guidelines for Multinational

Enterprises and Tax Administrations published by the Organisation for Economic Co-operation and Development on 10 July 2017;

***permanent establishment article*** (常設機構條文) means the rules contained in Article 5 of the Model Tax Convention;”.

9 In the proposed section 50AAC, by adding—

“(1A) For the purposes of the definitions of ***associated enterprises article***, ***business profits article***, ***mutual agreement procedure article***, ***OECD rules*** and ***permanent establishment article*** in subsection (1)—

- (a) a reference to an article of the Model Tax Convention means the article of the Model Tax Convention on Income and on Capital as approved by the Organisation for Economic Co-operation and Development on 21 November 2017; and
- (b) a reference to the commentary on the associated enterprises article or the business profits article means the commentary on the article so approved on that date.”.

9 By deleting the proposed section 50AAC(5) and substituting—

“(5) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend—

- (a) the definitions of the following expressions in subsection (1)—

***associated enterprises article*** (相聯企業條文);

***business profits article*** (營業利潤條文);

***mutual agreement procedure article*** (相互協商程序條文);

***OECD rules*** (《經合組織規則》);

***permanent establishment article*** (常設機構條文);

- (b) subsection (1A); and
- (c) Schedule 17G.”.

9 In the proposed section 50AAE—

- (a) in subsection (1), by deleting “Division” and substituting “Part”;

(b) by deleting subsections (2), (3) and (4).

9 In the proposed section 50AAF(6), by deleting “a more reliable measure” and substituting “an equally reliable measure, or a more reliable measure,”.

9 In the proposed section 50AAF, by adding—

“(7) Subsections (1) to (6) do not apply in relation to a provision made or imposed in relation to any disposal or acquisition of trading stock if section 15BA(4) or (5) applies in relation to the disposal or acquisition.

(8) Subsections (1) to (6) do not apply in relation to a provision made or imposed in relation to any trading stock if section 15C applies in relation to the trading stock.”.

9 In the proposed section 50AAJ—

(a) by renumbering the section as section 50AAJ(1);

(b) by adding—

“(2) Despite subsection (1), an actual provision made or imposed as between 2 persons is not taken to confer a potential advantage in relation to Hong Kong tax on either of the affected persons if—

(a) the domestic nature condition is met as provided for in subsection (3);

(b) either the no actual tax difference condition is met as provided for in subsection (5), or the non-business loan condition is met as provided for in subsection (6); and

(c) the actual provision does not, under subsection (7), have a tax avoidance purpose.

(3) The domestic nature condition is met—

(a) if the actual provision is made or imposed in connection with each affected person’s trade, profession or business carried on in Hong Kong; or

(b) if—

(i) the actual provision is made or imposed in connection with either affected person’s trade, profession or business carried on in Hong Kong; and

(ii) the other affected person is resident for tax purposes

in Hong Kong and the provision is not made or imposed in connection with that other person's trade, profession or business.

- (4) For the purposes of subsection (3), a trade, profession or business is not regarded as being carried on in Hong Kong by an affected person only because a sum received or receivable by or accrued to the person is deemed under section 15(1) to be a receipt arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong.
- (5) The no actual tax difference condition is met if—
  - (a) each affected person's income arising from the relevant activities is chargeable to Hong Kong tax or each affected person's loss so arising is allowable for the purposes of Hong Kong tax; and
  - (b) no concession or exemption for Hong Kong tax applies to any affected person's income or loss arising from the relevant activities.
- (6) The non-business loan condition is met if the actual provision relates to lending money otherwise than in the ordinary course of a business of lending money or an intra-group financing business (as defined by section 16(3)).
- (7) For the purposes of this section, an actual provision has a tax avoidance purpose if the Commissioner is satisfied that the main purpose, or one of the main purposes, of the provision is to utilize a loss sustained by an affected person to avoid, postpone or reduce any liability, whether of the other affected person or any other person, to Hong Kong tax.
- (8) In this section—  
***relevant activities*** (有關活動) has the meaning given by section 50AAL.”.

9           In the proposed section 50AAK(10), by deleting “a more reliable measure” and substituting “an equally reliable measure, or a more reliable measure,”.

9           In the proposed section 50AAM(10), by deleting “a more reliable measure” and substituting “an equally reliable measure, or a more reliable measure,”.



- 9 In the proposed section 50AAO(3)(b)(ii), in the Chinese text, by deleting “虧損定” and substituting “虧損”.
- 9 In the proposed section 50AAP(3)(a)(i)(A), in the Chinese text, by deleting “評計算” and substituting “計算”.
- 10 In the proposed Schedule 17G, by deleting “Sch. 42]” and substituting “Sch. 44]”.
- 10 In the proposed Schedule 17H, by deleting “Sch. 42]” and substituting “Sch. 44]”.
- 10 In the proposed Schedule 17H, in section 7(9)(a), by adding “subject to subsection (10),” before “a service”.
- 10 In the proposed Schedule 17H, in section 7, by adding—  
“(10) The service charge payable under subsection (9)(a) in respect of an application must not exceed \$500,000.”.
- 13 In the proposed section 15BA(1), by adding in alphabetical order—  
“*trade* (行業) means a trade or business;”.
- 13 In the proposed section 15BA, by adding—  
“(6) Subsection (4) does not apply in relation to a disposal, and subsection (5) does not apply in relation to an acquisition, of any trading stock if section 15C applies in relation to the trading stock.”.
- 14 In the proposed section 15F(5)—  
(a) in the definition of *intellectual property*, in paragraph (b), by deleting everything after “material,” and substituting “layout-design (topography) of an integrated circuit, performer’s right, plant variety right, secret process or formula, or other property or right of a similar nature;”;  
(b) in the English text, in the definition of *non-Hong Kong resident person*, by deleting the full stop and substituting a semicolon;  
(c) by adding in alphabetical order—  
“*performer* (表演者) has the meaning given by section 200(2) of the Copyright Ordinance (Cap. 528).”.

New

By adding—

**“14A. Section 20 repealed (liability of certain non-resident persons)**

Section 20—

**Repeal the section.”.**

16 In the proposed section 58B(2), in the definition of *CbCR documents*, in paragraph (b), by deleting “2017” and substituting “2018”.

16 In the proposed section 58B(2), by deleting the definition of *filing deadline* and substituting—

“*filing deadline* (提交期限) has the meaning given by subsections (2A) and (2B);”.

16 In the proposed section 58B(2), in the Chinese text, in the definition of *國別標準文件*, in paragraphs (a), (b) and (c)—

(a) by deleting “( 《” and substituting “(“ 《”;

(b) by deleting “》 是” and substituting “》 ”是”.

16 In the proposed section 58B, by adding—

“(2A) In this Part—

*filing deadline* (提交期限), in relation to a country-by-country return for an accounting period, means, subject to subsection (2B), the earlier of the following dates—

(a) the date on which a period of 12 months after the end of the accounting period expires;

(b) the date specified in a notice given under section 58G.

(2B) If—

(a) a Hong Kong entity (not being a HK ultimate parent entity) required under section 58F to file a country-by-country return for an accounting period notifies the Commissioner in accordance with section 58H that the SPE-filing-elsewhere exception is to apply within the meaning of section 58I(2)(a); and

(b) the date by which a country-by-country report for the accounting period is required to be filed by the laws or regulations of the jurisdiction of tax residence of the

surrogate parent entity concerned (*foreign filing date*) is later than the filing deadline under subsection (2A), the filing deadline, in relation to the country-by-country return for the accounting period, is the foreign filing date.”.

16 In the proposed section 58B(3)—

(a) in paragraph (a)(ii), by deleting “; and” and substituting a semicolon;

(b) in paragraph (b), by deleting the full stop and substituting “; and”;

(c) by adding—

“(c) for the purposes of applying Schedule 17G to determine whether a business unit of a multinational enterprise group has a permanent establishment in Hong Kong, a reference to a person or to an enterprise—

(i) in paragraph (c) of the definition of *double taxation arrangements* in section 50AAC(1); or

(ii) in Schedule 17G,

is to be construed as including such a business unit.”.

16 In the proposed section 58C(2)(a), by deleting “6” and substituting “9”.

16 By adding before the proposed section 58C(4)(a)—

“(aa) a local file of the Hong Kong entity in respect of an accounting period of the entity is not required to cover specified domestic transactions;”.

16 In the proposed section 58C, by adding—

“(4A) Specified domestic transactions are to be disregarded in computing, for the purposes of subsection (4)(a) or (b), the total amount of a type of controlled transaction specified in section 4 of Schedule 17I.”.

16 In the proposed section 58C(5)—

(a) in the English text, by deleting the full stop and substituting a semicolon;

(b) by adding in alphabetical order—

“*specified domestic transaction* (指明本地交易).”.

- 16 In the proposed section 58D(4)—
- (a) in paragraph (a), by adding “and” after the semicolon;
  - (b) in paragraph (b), by deleting “; and” and substituting a comma;
  - (c) by deleting paragraph (c).
- 16 In the proposed section 58D(5), by deleting the definition of *jurisdiction U’s threshold amount* and substituting—
- “jurisdiction U’s threshold amount** (終區門檻款額) means—
- (a) if jurisdiction U requires the filing of a country-by-country report in respect of period P by a multinational enterprise group that has a total consolidated group revenue for period P-1 of at least a threshold amount and that amount is specified under the laws or regulations of jurisdiction U—the threshold amount specified; or
  - (b) in any other case—an amount, in currency U, that is equivalent to EUR 750 million as at January 2015;”.
- 16 In the proposed section 58H(1)(b)(iv) and (c)(iii), by deleting “the date on which” and substituting “whether”.
- 16 In the proposed section 58I(3)(b), by deleting everything after “in jurisdiction S” and substituting “on behalf of the group.”.
- 17 In the proposed Schedule 17I, by deleting “Sch. 42]” and substituting “Sch. 44]”.
- 17 In the proposed Schedule 17I, in the Chinese text, in section 1, by deleting “本部” and substituting “本附表”.
- 17 In the proposed Schedule 17I, in section 2, by adding in alphabetical order—
- “specified domestic transaction** (指明本地交易) means a controlled transaction between a Hong Kong entity of a group in the extended sense and an associated entity of that Hong Kong entity if, in relation to the transaction—
- (a) subject to section 2A of this Schedule, either of the following conditions is met—
    - (i) the transaction is undertaken in connection with each entity’s trade, profession or business carried on

in Hong Kong; or

(ii) both—

(A) the transaction is undertaken in connection with either entity's trade, profession or business carried on in Hong Kong; and

(B) the other entity is resident for tax purposes in Hong Kong and the transaction is not undertaken in connection with that other entity's trade, profession or business; and

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

(i) each entity's income arising from the transaction is chargeable to Hong Kong tax or each entity's loss so arising is allowable for the purposes of Hong Kong tax; or

(ii) the transaction relates to lending money otherwise than in the ordinary course of a business of lending money or an intra-group financing business (as defined by section 16(3));”.

17 In the proposed Schedule 17I, in Part 1, by adding—

“2A. For the purposes of paragraph (a) of the definition of *specified domestic transaction* in section 2 of this Schedule, a trade, profession or business is not regarded as being carried on in Hong Kong by an entity only because a sum received or receivable by or accrued to the entity is deemed under section 15(1) to be a receipt arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong.”.

17 In the proposed Schedule 17I, in section 3(a), by deleting “\$200” and substituting “\$400”.

17 In the proposed Schedule 17I, in section 3(b), by deleting “\$200” and substituting “\$300”.

32 In the proposed section 26AB—

(a) in the heading, by deleting “**for determining whether profits producing activities are carried out in Hong Kong etc.**” and substituting “**relating to concession condition provisions**”;

- (b) in subsection (1), by adding “, for the purposes of a concession condition provision,” after “whether”;
- (c) by deleting the Note after subsection (1);
- (d) in subsection (2), by adding “, for the purposes of a concession condition provision,” after “not”;
- (e) by adding—
  - “(2A) To avoid doubt, the fact that the threshold requirement is not met for the purposes of subsection (2) does not imply that the assessable profits or the exempt sums under subsection (1)(a) or (b) do not arise in or are not derived from Hong Kong.”;
- (f) in subsection (3), in the definition of *threshold requirement*, in paragraph (a), by deleting “engaged in the activity” and substituting “who carry out the activity and have the qualifications necessary for doing so”;
- (g) in subsection (3), in the definition of *threshold requirement*, in paragraph (b), by adding “operating” before “expenditure”;
- (h) in subsection (3), by adding in alphabetical order—

“**concession condition provision** (寬減條件條文) means section 14B(2)(a), 14D(5)(a)(ii), 14H(4)(a)(ii), 14J(5)(a)(ii) or 23B(4AA);

**Note (with no legislative effect)—**

Section 14B(2)(a), 14D(5)(a)(ii), 14H(4)(a)(ii), 14J(5)(a)(ii) or 23B(4AA) imposes a condition for activities producing the assessable profits or the exempt sums concerned to be carried out in Hong Kong or arranged to be carried out in Hong Kong. The condition must be met in order for the tax concession under section 14B(1), 14D(1), 14H(1), 14J(1) or 23B(4AA) to apply.”.

- 33 By renumbering the proposed subsection (20) as subsection (21).
- 33 In the proposed subsection (21), by deleting “42” and substituting “44”.
- 34 By deleting “**Schedule 42**” (wherever appearing) and substituting “**Schedule 44**”.
- 34 In the proposed Schedule 44, by deleting “89(20)]” and substituting “89(21)]”.
- 34 In the proposed Schedule 44, by deleting section 4(1) and substituting—

- “(1) Subject to subsections (2), (3) and (4), the following provisions apply in relation to a year of assessment beginning on or after 1 April 2018—
- (a) Divisions 2 and 3 of Part 8AA (except section 50AAK) and Schedule 17G;
  - (b) Division 4 of Part 8AA and Schedule 17H;
  - (c) section 15BA;
  - (d) the amendments made to sections 80, 82 and 82A by the Amendment Ordinance (except to the extent that the amendments relate to section 50AAK).
- (1A) Subject to subsections (2A), (5) and (6), the following provisions apply in relation to a year of assessment beginning on or after 1 April 2019—
- (a) section 50AAK;
  - (b) section 15F;
  - (c) the amendments made to sections 80, 82 and 82A by the Amendment Ordinance (to the extent that the amendments relate to section 50AAK);
  - (d) the amendments made to rules 3(1A) and 5(1) of the Inland Revenue Rules (Cap. 112 sub. leg. A) by the Amendment Ordinance;
  - (e) rule 5(1A) of those Rules.”.

- 34 In the proposed Schedule 44, in section 4(2), by deleting “(1)(a), (d) and (e)” and substituting “(1)(a) and (d)”.
- 34 In the proposed Schedule 44, in section 4, by adding—
- “(2A) The provisions referred to in subsection (1A)(a), (c), (d) and (e) do not apply in relation to a transaction entered into or effected before 1 April 2019.”.
- 34 In the proposed Schedule 44, in section 4(5) and (6), by deleting “the commencement date” (wherever appearing) and substituting “1 April 2019”.