

# Inland Revenue (Amendment) (No. 7) Bill 2018

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# A BILL

## To

Amend the Inland Revenue Ordinance to align tax treatment of financial instruments with their accounting treatment in certain circumstances; to provide for deduction of interest expenses payable to overseas export credit agencies; to refine the provisions that implement the arrangement relating to automatic exchange of financial account information in tax matters; to avoid potential double non-taxation of income of visiting teachers and researchers; and to revise the meaning of the sibling relationship.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

##### 1. Short title and commencement

- (1) This Ordinance may be cited as the Inland Revenue (Amendment) (No. 7) Ordinance 2018.

- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Part 4 comes into operation on 1 January 2020.

**2. Inland Revenue Ordinance Amended**

The Inland Revenue Ordinance (Cap. 112) is amended as set out in Parts 2 to 7.

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## Part 2

### Amendments for Aligning Tax Treatment of Financial Instruments with their Accounting Treatment

#### 3. Sections 18G to 18L added

After section 18F—

##### Add

**“Note without legislative effect on sections 18G, 18H, 18I, 18J, 18K and 18L—**

1. The specified financial reporting standards (as defined in section 18G(1)) require enterprises to account for financial instruments on a fair value basis (that is, both realized and unrealized profits of the instruments have to be accounted for in the financial statements) in certain circumstances. Sections 18G, 18H, 18I, 18J, 18K and 18L provide for the alignment of the treatment of financial instruments for profits tax purpose with their accounting treatment.
2. Sections 18I, 18J, 18K and 18L apply to a taxpayer who follows a specified financial reporting standard and elects that those sections apply to the taxpayer (see section 18H).
3. Section 18I explains the effect of sections 18J, 18K and 18L on the other Part 4 provisions in determining whether any profit, gain, loss, income or expense is chargeable to tax or allowable for deduction. (The other Part 4 provisions are provisions of this Part other than sections 18G, 18H, 18I, 18J, 18K and 18L.) In summary—
  - (a) for the purposes of this Part, profits are not limited to realized profits despite the other Part 4 provisions and a change in fair value of a financial instrument is to be brought into account in assessing profits tax in certain circumstances;
  - (b) also, the way in which a profit, gain, loss, income or expense is computed is changed in certain circumstances (for example, interest is computed in some cases at the effective rate instead of the contractual rate); and

- (c) apart from the changes described in paragraphs (a) and (b), sections 18J and 18L apply subject to the other Part 4 provisions.
- 4. Under section 18J, the amount of profit, gain, loss, income or expense computed for a financial instrument for profits tax purpose for a period is the amount of profit, gain, loss, income or expense recognized for the instrument for accounting purpose for the period.
- 5. Sections 18K and 18L provide for special treatment of an impairment loss, an equity instrument or financial liability on revenue account, an embedded derivative, a preference share, a loan made or debt security issued otherwise than on an arm's length basis and a hedging instrument.

**18G. Financial instrument: interpretation of this section and sections 18H, 18I, 18J, 18K and 18L**

- (1) In this section and sections 18H, 18I, 18J, 18K and 18L—

*recognized* (確認)—see subsection (2)(a);

*specified financial reporting standard* (指明財務報告準則)—

- (a) unless paragraph (b) applies, means—
  - (i) the Hong Kong Financial Reporting Standard 9 (Financial Instruments) issued by the Hong Kong Institute of Certified Public Accountants, as in force from time to time; or
  - (ii) the International Financial Reporting Standard 9 (Financial Instruments) issued by the International Accounting Standards Board, as in force from time to time; or
- (b) in relation to a person for a year of assessment for which the person prepares financial statements in accordance with a standard referred to in paragraph (a)(i) or (ii), means that standard.

- (2) If a person prepares financial statements for the basis period for a year of assessment in accordance with a specified financial reporting standard—
  - (a) *recognized* in this section or section 18H, 18I, 18J, 18K or 18L (other than section 18L(6)(c)), in relation to the person and the year, means recognized in accordance with the standard; and
  - (b) an expression used in this section or section 18H, 18I, 18J, 18K or 18L has the same meaning in relation to the person and the year as the expression has in the standard if the expression is—
    - (i) defined in the standard; and
    - (ii) not defined in this section or section 18H, 18I, 18J, 18K or 18L.

**18H. Financial instrument: application of sections 18I, 18J, 18K and 18L**

- (1) Sections 18I, 18J, 18K and 18L apply to a person for a year of assessment only if—
  - (a) the person prepares financial statements for the basis period for the year in accordance with a specified financial reporting standard; and
  - (b) the person has elected in writing that those sections apply to the person (*election*) and the election has effect for the year.
- (2) A person may make an election for a year of assessment (*election year*) and, subject to subsections (4), (5), (6) and (7), the election—
  - (a) is irrevocable; and



- (b) has effect for the election year and all subsequent years of assessment.
- (3) The amount of any profit, gain, loss, income or expense which would have been brought into account for computing the person's assessable profits for the basis period for any year of assessment preceding the election year, had the assessable profits been computed on the basis set out in sections 18I, 18J, 18K and 18L, must be brought into account for computing the person's assessable profits for the election year.
- (4) Despite subsection (2), an election may be revoked with the Commissioner's approval under subsection (5) and, on the revocation, the election ceases to have effect from the year of assessment specified by the Commissioner.
- (5) The Commissioner may, on a person's application in writing, approve the revocation of the person's election if the person proves to the Commissioner's satisfaction—
  - (a) that there are good commercial reasons for the revocation; and
  - (b) that avoidance of tax is not the main purpose, or one of the main purposes, of the revocation.
- (6) If, after a person has made an election, the person ceases to prepare, in accordance with a specified financial reporting standard, financial statements for the basis period for a year of assessment, the election ceases to have effect from the year.
- (7) If an election ceases to have effect from a year of assessment under subsection (4) or (6) (*cessation year*)—

- (a) sections 18I, 18J, 18K and 18L do not apply to the person for the cessation year and all subsequent years of assessment; and
- (b) every financial instrument held by the person at the end of the basis period for the year of assessment immediately preceding the cessation year is taken to have been disposed of and reacquired, or released and reassumed, at its fair value on the first day of the basis period for the cessation year.

**18I. Financial instrument: effect of sections 18J, 18K and 18L on other Part 4 provisions**

- (1) This section applies in determining whether any profit, gain, loss, income or expense is chargeable to tax or allowable for deduction in relation to a person to whom this section applies under section 18H for a year of assessment.
- (2) Sections 18J, 18K and 18L do not affect the operation of sections 17C and 17D.
- (3) Subject to subsection (2), sections 18J, 18K and 18L apply despite any other Part 4 provisions to the extent that—
  - (a) those other provisions (regardless of how they are expressed) would otherwise limit the profit, gain, loss, income or expense chargeable to tax or allowable for deduction to that which is realized, received, receivable, accrued, paid, payable or incurred; or
  - (b) under those other provisions (regardless of how they are expressed), any profit, gain, loss, income or expense would otherwise be

computed in a way different from that provided for in any of sections 18J, 18K and 18L (whether or not by having the profit, gain, loss, income or expense wholly or partly brought into account for a different year of assessment).

- (4) Except as provided for in subsection (3), sections 18J and 18L apply subject to the other Part 4 provisions.
- (5) In this section—

***other Part 4 provisions*** (第4部其他條文) means provisions of this Part other than sections 18G, 18H, 18I, 18J, 18K and 18L.

**18J. Financial instrument: generally, profits etc. for accounting purpose taken to be profits etc. for taxation purpose**

- (1) In relation to a person to whom this section applies under section 18H for a year of assessment, the tax-relevant amount in respect of a financial instrument is the accounting-relevant amount in respect of the instrument.
- (2) Subsection (1) applies subject to sections 18K and 18L.
- (3) For subsection (1)—
  - (a) the tax-relevant amount in respect of a financial instrument is the amount of profit, gain, loss, income or expense to be brought into account for computing the person's assessable profits in respect of the instrument for the basis period for the year of assessment; and
  - (b) the accounting-relevant amount in respect of a financial instrument is the amount which is recognized in determining any profit, gain, loss, income or expense of the person in respect of

the instrument for the basis period for the year of assessment.

- (4) In applying subsection (1) to a financial instrument that is measured at fair value through profit or loss—
  - (a) if the person derives interest from the instrument—the amount of interest chargeable to tax is the amount recognized in profit or loss;
  - (b) if the person incurs interest on any money borrowed by the person for the purpose of producing the person's assessable profits—the amount of interest allowable as a deduction is the amount recognized in profit or loss;
  - (c) if the instrument is a debt security and the person derives a gain from a discount or premium on the debt security—the amount of gain chargeable to tax is the amount recognized in profit or loss; and
  - (d) if the instrument is a debt security that the person issues at a discount or redeems at a premium, and the proceeds of the issue of the debt security are applied for the purpose of producing the person's assessable profits—the amount of discount or premium allowable as a deduction is the amount recognized in profit or loss.
- (5) In applying subsection (1) to a financial instrument that is measured at amortized cost or fair value through other comprehensive income—
  - (a) if the person derives interest from the instrument—the amount of interest chargeable to tax is the amount recognized in profit or loss at the effective interest rate;

- (b) if the person incurs interest on any money borrowed by the person for the purpose of producing the person's assessable profits—the amount of interest allowable as a deduction is the amount recognized in profit or loss at the effective interest rate;
- (c) if the instrument is a debt security and the person derives a gain from a discount or premium on the debt security—the amount of gain chargeable to tax is the amount recognized in profit or loss at the effective interest rate; and
- (d) if the instrument is a debt security that the person issues at a discount or redeems at a premium, and the proceeds of the issue of the debt security are applied for the purpose of producing the person's assessable profits—the amount of discount or premium allowable as a deduction is the amount recognized in profit or loss at the effective interest rate.

**18K. Financial instrument: special treatment of impairment loss**

- (1) This section applies in relation to a person to whom this section applies under section 18H for a year of assessment.
- (2) Any impairment loss recognized by the person in respect of a financial instrument that is not credit-impaired is not deductible and any subsequent reversal of any amount of the impairment loss is not chargeable to tax.
- (3) If an impairment loss is recognized by the person in respect of a financial instrument that is credit-impaired—

- (a) if the instrument represents a debt that was included as a trading receipt in ascertaining the person's assessable profits for the basis period in which the debt arose—the impairment loss is allowable as a deduction up to the amount of the debt so included;
  - (b) if the instrument represents a debt in respect of money lent, in the ordinary course of the business of lending money in Hong Kong, by the person who carries on that business—the impairment loss is allowable as a deduction up to the amount of the debt; and
  - (c) in any other case—the impairment loss is not deductible.
- (4) If—
  - (a) a deduction of an amount was previously allowed to the person for a year of assessment—
    - (i) under section 16(1)(d) in respect of a bad debt or doubtful debt in respect of a financial instrument; or
    - (ii) under subsection (3) in respect of an impairment loss in respect of a financial instrument; and
  - (b) recovery or reversal of an amount of the bad debt, doubtful debt or impairment loss is recognized by the person for a subsequent year of assessment,  
the amount recovered or reversed is chargeable to tax for the subsequent year of assessment.
- (5) If—

- (a) a financial instrument purchased or originated by the person is credit-impaired on initial recognition; and
  - (b) the instrument is on revenue account, any impairment gain recognized by the person in respect of the instrument for a year of assessment is treated as the person's trading receipt for the year.
- (6) Subsection (7) or (8) applies if—
  - (a) the person (*transferor*), being a financial institution, transfers to another person (*transferee*)—
    - (i) a credit-impaired loan; with
    - (ii) a loss allowance, for an expected credit loss arising from that loan, that is made in accordance with the specified financial reporting standard;
  - (b) the transfer is not by way of a sale in the ordinary course of the transferor's business; and
  - (c) in respect of the loss allowance made, a deduction of an amount was previously allowed to the transferor under section 16(1)(d) in respect of a bad debt or doubtful debt or under subsection (3) in respect of an impairment loss.
- (7) If, on the date of the transfer referred to in subsection (6), both the transferor and the transferee are in the business of lending money in Hong Kong, the deduction referred to in subsection (6)(c) is treated as having been allowed to the transferee, despite any provision of this Part.
- (8) If, on the date of the transfer referred to in subsection (6), the transferor or the transferee is, or

both are, not in the business of lending money in Hong Kong, the amount of deduction referred to in subsection (6)(c) is treated as the transferor's trading receipt arising in or derived from Hong Kong from a trade, profession or business carried on by the transferor in Hong Kong and accruing on the date of the transfer.

**18L. Financial instrument: special treatment of equity instrument, financial liability, embedded derivative, preference share, non-arm's length loan, etc.**

- (1) This section applies in relation to a person to whom this section applies under section 18H for a year of assessment.
- (2) If an equity instrument on revenue account of the person that is measured at fair value through other comprehensive income is disposed of during the basis period for a year of assessment (*year of disposal*)—
  - (a) a gain to the person that is derived from the disposal, including any cumulative gain recognized in other comprehensive income, is chargeable to tax for the year of disposal; and
  - (b) a loss to the person that is derived from the disposal, including any cumulative loss recognized in other comprehensive income, is allowable as a deduction for the year of disposal.
- (3) Subsections (4) and (5) apply if a financial instrument—
  - (a) is on revenue account of the person and is a financial liability measured at fair value through profit or loss; and



- (b) matures or is sold, bought back or redeemed (each an *event*) during the basis period for a year of assessment (*event year*).
- (4) A gain to the person that is derived from the event, including any cumulative gain recognized in other comprehensive income, is chargeable to tax for the event year.
- (5) A loss to the person that is derived from the event, including any cumulative loss recognized in other comprehensive income, is allowable as a deduction for the event year.
- (6) If—
  - (a) the person issues a debt security;
  - (b) the debt security is issued with an embedded derivative to acquire shares or units in the person; and
  - (c) the embedded derivative is recognized as an equity component in accordance with—
    - (i) the Hong Kong Accounting Standard 32 (Financial Instruments: Presentation) issued by the Hong Kong Institute of Certified Public Accountants, as in force from time to time; or
    - (ii) the International Accounting Standard 32 (Financial Instruments: Presentation) issued by the International Accounting Standards Board, as in force from time to time,

the part of the interest, discount, premium or expense recognized by the person in respect of the debt security that is attributable to the embedded derivative is not deductible.

- (7) Any interest, discount, premium or expense recognized by the person in respect of a preference share issued by the person is not deductible.
- (8) Subsection (9) has effect without affecting the operation of sections 50AAF and 50AAK.
- (9) If—
  - (a) the person is the lender or borrower of a loan or is the issuer or holder of a debt security; and
  - (b) the loan is made, or the debt security is issued, otherwise than at arm's length to or by another person,

the amount of profit, gain, loss, income or expense in respect of the loan or debt security that is chargeable to tax, or allowable as a deduction, is the amount computed in accordance with the contractual terms of the loan or debt security.

- (10) An amount of profit, gain, loss, income or expense recognized by the person in respect of a hedging instrument must be disregarded if—
    - (a) the hedging instrument is designated, under a hedging arrangement made in good faith, for the purpose of hedging against any risk associated with a hedged item; and
    - (b) the hedged item is on capital account.”.
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## Part 3

### Amendments Relating to Interest Expense Payable to Overseas Export Credit Agency

#### 4. Section 16 amended (ascertainment of chargeable profits)

##### (1) Section 16(3)—

**Repeal the definition of *overseas financial institution***

**Substitute**

**“*overseas financial institution* (海外財務機構)—**

(a) means—

(i) a person carrying on the business of banking or deposit-taking outside Hong Kong; or

(ii) an overseas export credit agency; but

(b) excludes a person or organization that the Commissioner has, under subsection (4), determined is not recognized as an overseas financial institution;”.

##### (2) Section 16(3)—

**Add in alphabetical order**

**“*controlled entity* (受控制實體) has the meaning given by section 50A;**

***export credit business* (出口信貸業務), in relation to a jurisdiction, means the business of supporting and developing international trade by providing financing support to exporters or investors of that jurisdiction for export or investment activities outside that jurisdiction;**

***governmental entity*** (政府實體), in relation to a jurisdiction, means—

- (a) the government of the jurisdiction;
- (b) the political subdivision of the jurisdiction, including a state, a province, a county and a municipality of the jurisdiction;
- (c) a wholly owned agency or instrumentality of the jurisdiction, or of any entity mentioned in paragraph (a) or (b); or
- (d) an integral part, controlled entity or political subdivision of the jurisdiction;

***integral part*** (組成部分) has the meaning given by section 50A;

***overseas export credit agency*** (海外出口信貸機構) means an organization that is owned by, or was established and is operated by, a governmental entity of a jurisdiction outside Hong Kong for the purposes of carrying on export credit business;”.

(3) Section 16—

#### **Repeal subsection (4)**

#### **Substitute**

“(4) The Commissioner may, for the purposes of this section, determine that any person or organization is not recognized as an overseas financial institution if the Commissioner is of the opinion that—

- (a) in the case of a person carrying on the business of banking or deposit-taking outside Hong Kong—the business is not adequately supervised by a supervisory authority; or

- (b) in the case of an organization that is an overseas export credit agency—the organization’s export credit business is not adequately monitored or regulated by the governmental entity by which the organization—
    - (i) is owned; or
    - (ii) was established and is operated.”.
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## Part 4

### Amendments Relating to Automatic Exchange of Financial Account Information in Tax Matters

#### 5. Section 50A amended (interpretation)

(1) Section 50A(1)—

**Repeal the definition of *controlling person***

**Substitute**

**“*controlling person* (控權人), in relation to an entity—**

- (a) subject to paragraphs (b) and (c), means an individual who exercises control over the entity;
- (b) if the entity is a trust—
  - (i) means an individual who is the settlor, trustee, protector (if any), enforcer (if any), or a beneficiary or a member of a class of beneficiaries, of the trust; or
  - (ii) if the settlor, trustee, protector, enforcer, or the beneficiary or the member of the class of beneficiaries, of the trust is another entity, means an individual who exercises control over that other entity; or
- (c) if the entity is equivalent or similar to a trust (regardless of how the entity is described)—
  - (i) means an individual who, in relation to the entity, is in a position similar to the settlor, trustee, protector (if any), enforcer (if any), or a beneficiary or a member of a class of beneficiaries, of a trust; or

- (ii) if, in relation to the entity, another entity is in a position similar to the settlor, trustee, protector (if any), enforcer (if any), or a beneficiary or a member of a class of beneficiaries, of a trust—means an individual who exercises control over that other entity;”.

(2) Section 50A(1)—

**Repeal the definition of *entity***

**Substitute**

“*entity* (實體)—

(a) means—

- (i) an entity, other than a natural person, that can establish a permanent customer relationship with a financial institution or otherwise own property; or

(ii) a legal arrangement; and

- (b) includes a corporation, partnership and any other body of persons (incorporated or unincorporated) and a trust;

**Note without legislative effect—**

The definition of *entity* reflects the following—

- (a) under the Common Reporting Standard and the CRS publications (both expressions are defined in section 50L(4)), *entity* covers a legal person and a legal arrangement; and
- (b) under the FATF Recommendations (as defined in this section), *legal person* means an entity other than a natural person that can establish a permanent customer relationship with a financial institution or otherwise own property.”.

(3) Section 50A(1)—

**Repeal the definition of *pre-existing account*****Substitute**

**“*pre-existing account* (先前帳戶) means—**

- (a) a financial account of an account holder maintained by a reporting financial institution as at the following applicable date (***old account***)—
  - (i) if the institution is not a 2020-covered institution—31 December 2016;
  - (ii) if the institution is a 2020-covered institution—31 December 2019; or
- (b) a financial account—
  - (i) that is a financial account of an account holder opened and maintained by a reporting financial institution on or after the following applicable date (***subsequent account***)—
    - (A) if the institution is not a 2020-covered institution—1 January 2017;
    - (B) if the institution is a 2020-covered institution—1 January 2020; and
  - (ii) in respect of which all of the following conditions are met—
    - (A) the account holder holds with the institution, or its related entity within Hong Kong, any old account;
    - (B) on the opening of the subsequent account, the institution (and, as applicable, its related entity within Hong Kong) treats the subsequent



account and the following financial accounts as a single financial account—

- (I) one or more old accounts of the account holder maintained by the institution or its related entity within Hong Kong; and
  - (II) if there exist one or more subsequent accounts that are treated as pre-existing accounts because all of the conditions in this sub-subparagraph and sub-subparagraphs (C), (D) and (E) are met—all of the subsequent accounts that are so treated;
- (C) the institution (and, as applicable, its related entity within Hong Kong) acts in the way described in sub-subparagraph (B) for the purposes of—
- (I) satisfying the requirement set out in section 2 of Part 7 of Schedule 17D; and
  - (II) calculating the balance or value of any of the accounts mentioned in that sub-subparagraph to determine any of the account thresholds;
- (D) the subsequent account is subject to AML/KYC procedures and the institution is permitted to carry out such AML/KYC procedures for the

subsequent account by relying on the AML/KYC procedures carried out for the old account mentioned in subparagraph (B)(I);

- (E) on the opening of the subsequent account, no new, additional or amended customer information is required to be provided by the account holder other than for the purpose of complying with sections 50B, 50C, 50F and 50G;”.

(4) Section 50A(1)—

**Repeal the definition of *reporting year***

**Substitute**

“***reporting year*** (申報年), in relation to a reportable jurisdiction—

- (a) in relation to a reporting financial institution that is not a 2020-covered institution—means the year specified in column 2 of Part 1 of Schedule 17E opposite that jurisdiction; or
- (b) in relation to a reporting financial institution that is a 2020-covered institution—means the later of the following—
  - (i) the year specified in column 2 of Part 1 of Schedule 17E opposite that jurisdiction;
  - (ii) 2021;”.

(5) Section 50A(1), before the definition of ***account holder***—

**Add**

“***2020-covered institution*** (2020年涵蓋機構) means a reporting financial institution that is—

- (a) a mandatory provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (***MPF scheme***);
  - (b) an occupational retirement scheme registered under the Occupational Retirement Schemes Ordinance (Cap. 426) (***ORSO scheme***);
  - (c) a pooling agreement as defined by section 2(4) of the Occupational Retirement Schemes Ordinance (Cap. 426) that only applies to 2 or more participating ORSO schemes;
  - (d) an approved pooled investment fund as defined by section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A), in which only either or both of the following schemes are invested—
    - (i) MPF schemes;
    - (ii) ORSO schemes; or
  - (e) a credit union registered under the Credit Unions Ordinance (Cap. 119);”.
- (6) Section 50A(1)—

**Add in alphabetical order**

“***FATF Recommendations*** (《財務行動特別組織的建議》) means the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation—the FATF Recommendations, as adopted by the Financial Action Task Force Plenary in February 2012 incorporating updates made up to February 2018;”.

- (7) Section 50A(6)(c)(iii)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (8) Section 50A(6)(c)—

**Repeal subparagraph (iv)**

**Substitute**

- “(iv) is the trustee of the entity;  
(v) is a beneficiary or a member of a class of beneficiaries of the entity; or  
(vi) has ultimate control over the entity; or”.

- (9) Section 50A—

**Repeal subsection (8).**

- (10) Before section 50A(13)(a)—

**Add**

- “(aa) subject to paragraphs (a) and (b), paragraphs (d) and (e) of the definition must be interpreted in a way consistent with the way in which similar provisions in the definition of *financial institution* in the FATF Recommendations are interpreted;”.

- (11) Section 50A(15)(a), before “where”—

**Add**

“subject to paragraph (d) and”.

- (12) Section 50A(15)(b)(iii)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (13) Section 50A(15)(c), before “where”—

**Add**

“subject to paragraph (d) and”.

(14) Section 50A(15)(c)—

**Repeal the full stop**

**Substitute**

“; or”.

(15) After section 50A(15)(c)—

**Add**

“(d) where the financial institution (other than a trust) is not subject to taxation as a resident in any territory—

- (i) it is incorporated in Hong Kong or constituted under the laws of Hong Kong;
- (ii) it has its place of management (including effective management) in Hong Kong; or
- (iii) it is subject to financial supervision in Hong Kong.”.

(16) After section 50A(16)—

**Add**

“(16A) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend any of the following—

- (a) the definition of *FATF Recommendations* in subsection (1);
- (b) the percentage in subsection (7).”.

## **6. Section 50L added**

Part 8A, after section 50K—

**Add**

**“50L. Guidelines published by Commissioner**

- (1) The Commissioner may publish, in the Gazette or in any way the Commissioner considers appropriate, guidelines that the Commissioner considers necessary for providing guidance on the interpretation of the Part 8A-related provisions to best secure consistency between—
  - (a) the effect given to the Part 8A-related provisions; and
  - (b) the effect that, in accordance with the CRS publications, is to be given to the Common Reporting Standard.
- (2) A failure on the part of a person to comply with the provisions of any guideline published under this section does not by itself render the person liable to any proceedings, whether before a court or otherwise, but in any proceedings under this Ordinance before a court—
  - (a) the guideline is admissible in evidence; and
  - (b) if any provision of the guideline appears to the court to be relevant to the interpretation of any Part 8A-related provisions or relevant to any question arising in the proceedings, the provision of the guideline must be taken into account in interpreting the Part 8A-related provisions or in determining that question.
- (3) A guideline published under this section is not subsidiary legislation.
- (4) In this section—

***Common Reporting Standard*** (共同匯報標準) means the Common Reporting Standard contained in the

Standard for Automatic Exchange of Financial Account Information in Tax Matters (Second Edition), published by the Organisation for Economic Co-operation and Development on 27 March 2017;

***CRS publications*** (共同匯報標準刊物) means—

- (a) the Commentaries on the Common Reporting Standard contained in the Standard for Automatic Exchange of Financial Account Information in Tax Matters (Second Edition), published by the Organisation for Economic Co-operation and Development on 27 March 2017; and
- (b) the Standard for Automatic Exchange of Financial Information in Tax Matters—Implementation Handbook (Second Edition), published by the Organisation for Economic Co-operation and Development in April 2018;

***Part 8A-related provisions*** (第8A部相關條文) means any provisions of Part 8A and Schedules 17C, 17D and 17E.

- (5) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend the definitions of ***Common Reporting Standard*** and ***CRS publications*** in subsection (4).”.

## 7. Schedule 17C amended (non-reporting financial institutions and excluded accounts)

- (1) Schedule 17C—

**Repeal**

“& 50J]”

**Substitute**

“, 50J & 50L(4)”.  
“, 50J & 50L(4)”.

- (2) Schedule 17C, Part 2—

**Repeal sections 12 and 13.**

**8. Schedule 17D amended (due diligence requirements)**

- (1) Schedule 17D—

**Repeal**

“[ss. 2(1), 50A(1) & (2), 50B(1), 50J”

**Substitute**

“[ss. 2(1), 50A(1) & (2), 50B(1), 50J, 50L(4)”.  
“[ss. 2(1), 50A(1) & (2), 50B(1), 50J, 50L(4)”.

- (2) Schedule 17D, Part 1, section 1—

**Repeal the definition of *new account***

**Substitute**

“***new account*** (新帳戶) means a financial account opened and maintained by a reporting financial institution on or after—

(a) if the institution is not a 2020-covered institution—1 January 2017; or

(b) if the institution is a 2020-covered institution—1 January 2020;”.

- (3) Schedule 17D, Part 1, section 1, before the definition of ***account holder***—

**Add**

“***2020-covered institution*** (2020年涵蓋機構) has the meaning given by section 50A;”.

**9. Schedule 17E amended (reportable jurisdictions and participating jurisdictions)**

- (1) Schedule 17E—



**Repeal**

“[ss. 50A(1) & 50J”

**Substitute**

“[ss. 50A(1), 50J & 50L(4)].

(2) Schedule 17E, Part 1—

**Repeal everything after the heading and before the Note**

**Substitute**

“Column 1	Column 2
Reportable jurisdiction	Reporting year
Albania, Republic of	2021
Andorra, Principality of	2021
Anguilla	2021
Antigua and Barbuda	2018
Argentina, Republic of	2018
Armenia, Republic of	2021
Aruba	2021
Australia, Commonwealth of	2018
Austria, Republic of	2018
Azerbaijan, Republic of	2021
Bahamas, Commonwealth of the	2018
Bahrain, Kingdom of	2021
Barbados	2021
Belgium, Kingdom of	2018
Belize	2021
Bermuda	2021

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Column 1	Column 2
Reportable jurisdiction	Reporting year
Brazil, Federative Republic of	2018
British Virgin Islands	2021
Brunei Darussalam	2018
Bulgaria, Republic of	2018
Burkina Faso	2021
Cameroon, Republic of	2021
Canada	2018
Cayman Islands	2018
Chile, Republic of	2018
China, Mainland of	2018
Colombia, Republic of	2018
Cook Islands	2021
Costa Rica, Republic of	2018
Croatia, Republic of	2018
Curacao, Country of	2018
Cyprus, Republic of	2018
Czech Republic	2018
Denmark, Kingdom of	2018
Dominica, Commonwealth of	2021
Dominican Republic	2021
El Salvador, Republic of	2021
Estonia, Republic of	2018
Faroese	2018

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Column 1	Column 2
Reportable jurisdiction	Reporting year
Finland, Republic of	2018
French Republic	2018
Gabonese Republic	2021
Georgia	2021
Germany, Federal Republic of	2018
Ghana, Republic of	2021
Gibraltar	2018
Greenland	2018
Grenada	2018
Guatemala, Republic of	2021
Guernsey	2018
Hellenic Republic (Greece)	2018
Hungary, Republic of	2018
Iceland, Republic of	2018
India, Republic of	2018
Indonesia, Republic of	2018
Ireland	2018
Isle of Man	2018
Israel, State of	2018
Italian Republic	2018
Jamaica	2021
Japan	2018
Jersey	2018

Column 1	Column 2
Reportable jurisdiction	Reporting year
Kazakhstan, Republic of	2021
Kenya, Republic of	2021
Korea, Republic of	2019
Kuwait, State of	2018
Latvia, Republic of	2018
Lebanon, Republic of	2018
Liberia, Republic of	2021
Liechtenstein, Principality of	2018
Lithuania, Republic of	2018
Luxembourg, Grand Duchy of	2018
Macao Special Administrative Region	2021
Macedonia, Republic of	2021
Malaysia	2018
Maldives, Republic of	2021
Malta	2018
Marshall Islands, Republic of the	2021
Mauritius, Republic of	2018
Moldova, Republic of	2021
Monaco, Principality of	2021
Montserrat	2018
Morocco, Kingdom of	2021
Nauru, Republic of	2021
Netherlands, Kingdom of the	2018

Column 1	Column 2
Reportable jurisdiction	Reporting year
New Zealand	2018
Nigeria, Federal Republic of	2021
Niue	2021
Norway, Kingdom of	2018
Pakistan, Islamic Republic of	2021
Panama, Republic of	2021
Paraguay, Republic of	2021
Peru, Republic of	2021
Philippines, Republic of the	2021
Poland, Republic of	2018
Portuguese Republic	2018
Qatar, State of	2018
Romania	2018
Russian Federation	2018
Saint Kitts and Nevis, Federation of	2021
Saint Lucia	2021
Saint Vincent and the Grenadines	2018
Samoa, Independent State of	2021
San Marino, Republic of	2021
Saudi Arabia, Kingdom of	2018
Senegal, Republic of	2021
Seychelles, Republic of	2018
Singapore, Republic of	2018

Column 1	Column 2
Reportable jurisdiction	Reporting year
Sint Maarten	2021
Slovak Republic	2018
Slovenia, Republic of	2018
South Africa, Republic of	2018
Spain, Kingdom of	2018
Sweden, Kingdom of	2018
Swiss Confederation	2018
Trinidad and Tobago, Republic of	2021
Tunisia, Republic of	2021
Turkey, Republic of	2018
Turks and Caicos Islands	2021
Uganda, Republic of	2021
Ukraine	2021
United Arab Emirates	2018
United Kingdom of Great Britain and Northern Ireland	2018
United Mexican States	2018
Uruguay, Oriental Republic of	2018
Vanuatu, Republic of	2018”.

## Part 5

### Amendments Relating to Income of Visiting Teacher or Researcher

#### 10. Section 8 amended (charge of salaries tax)

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

**Add**

“subject to subsection (1AB),”.

- (2) After section 8(1A)—

**Add**

“(1AB) If—

- (a) a person’s income is derived from services rendered by the person as a visiting teacher or researcher in a territory outside Hong Kong (*territory*);
- (b) the double taxation arrangements made with that territory provide for exemption from tax in that territory on income derived from services rendered as a visiting teacher or researcher in that territory (the provision is referred to as *exemption provision*); and
- (c) the person is or, immediately before visiting that territory as a visiting teacher or researcher, was a Hong Kong resident person,

subsection (1A)(b) applies to the income referred to in paragraph (a) only if the person proves to the Commissioner’s satisfaction that, despite the exemption provision, tax is paid or payable in that territory in respect of the income.”.

(3) After section 8(1C)—

**Add**

“(1D) In subsections (1AB) and (1C)—

*double taxation arrangements* (雙重課稅安排) has the meaning given by section 48A;

*Hong Kong resident person* (香港居民人士) has the meaning given by section 48A;

*visiting teacher or researcher* (外訪教師或研究人員), in relation to a territory outside Hong Kong, means a person who visits that territory and is present in that territory for the sole or primary purpose of teaching or conducting research at an educational institution or scientific research institution (including a university, college or school) in that territory.”.

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## Part 6

### Amendment Relating to Sibling Relationship

#### 11. Section 30B amended (dependent brother or dependent sister allowance)

Section 30B(3)—

##### **Repeal paragraph (b)**

##### **Substitute**

- “(b) *brother or sister* or *brother or sister of the spouse* (兄弟姊妹或配偶的兄弟姊妹), in relation to a person, means—
- (i) a brother of full or half blood or sister of full or half blood of the person or the spouse of the person;
  - (ii) an adopted brother or adopted sister of the person or the spouse;
  - (iii) a step brother or step sister of the person or the spouse;
  - (iv) if the person or the spouse is adopted—a natural child of an adoptive parent of the person or the spouse; or
  - (v) if the spouse is deceased—a person who would have been the brother or sister of the spouse under subparagraph (i), (ii), (iii) or (iv) if the spouse had not died.”.
-

## Part 7

### Transitional Provisions

#### 12. Section 89 amended (transitional provisions)

Section 89—

##### Add

“(24) Schedule 48 sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue (Amendment) (No. 7) Ordinance 2018 ( of 2018).”.

#### 13. Schedule 48 added

The Ordinance—

##### Add

### “Schedule 48

[s. 89(24)]

### Transitional Provisions for Inland Revenue (Amendment) (No. 7) Ordinance 2018

#### 1. Interpretation

In this Schedule—

*Amendment Ordinance* (《修訂條例》) means the Inland Revenue (Amendment) (No. 7) Ordinance 2018 ( of 2018);

***commencement date*** (生效日期) means the day on which the Amendment Ordinance is published in the Gazette.

**2. Tax treatment of financial instruments**

Sections 18G, 18H, 18I, 18J, 18K and 18L apply in relation to a year of assessment for which the basis period begins on or after 1 January 2018.

**3. Interest expense payable to overseas export credit agency**

The amendments made to section 16 by the Amendment Ordinance apply to interest accruing on or after the commencement date.

**4. Income of visiting teacher or researcher**

The amendments made to section 8 by the Amendment Ordinance apply in relation to a year of assessment beginning on or after 1 April 2019.

**5. Sibling relationship**

The amendment made to section 30B by the Amendment Ordinance applies in relation to a year of assessment beginning on or after 1 April 2019.”.

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## **Explanatory Memorandum**

The object of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (***Ordinance***)—

- (a) to align tax treatment of financial instruments with their accounting treatment in certain circumstances;
- (b) to provide for deduction of interest expenses payable to overseas export credit agencies;
- (c) to refine the provisions that implement the arrangement relating to automatic exchange of financial account information in tax matters (***AEOI arrangement***);
- (d) to avoid potential double non-taxation of income of visiting teachers and researchers; and
- (e) to revise the meaning of the sibling relationship.

### **Aligning tax treatment of financial instruments with their accounting treatment**

2. Hong Kong and international financial reporting standards require enterprises to account for financial instruments on a fair value basis (that is, both realized and unrealized profits of the instruments have to be accounted for in the financial statements) in certain circumstances. Clause 3 adds new sections 18G to 18L to the Ordinance to provide for the alignment of the treatment of financial instruments for profits tax purpose with their accounting treatment.
3. The new sections 18I to 18L apply to a taxpayer who follows a specified financial reporting standard and elects that those new sections apply to the taxpayer (see the new section 18H).

4. The new section 18I explains the effect of the new sections 18J, 18K and 18L on the other Part 4 provisions in determining whether any profit, gain, loss, income or expense is chargeable to tax or allowable for deduction. (The other Part 4 provisions are provisions of Part 4 of the Ordinance other than the new sections 18G to 18L.) In summary—
  - (a) for the purposes of Part 4 of the Ordinance, profits are not limited to realized profits despite the other Part 4 provisions and a change in fair value of a financial instrument is to be brought into account in assessing profits tax in certain circumstances;
  - (b) also, the way in which a profit, gain, loss, income or expense is computed is changed in certain circumstances (for example, interest is computed in some cases at the effective rate instead of the contractual rate); and
  - (c) apart from the changes described in paragraphs (a) and (b), sections 18J and 18L apply subject to the other Part 4 provisions.
5. Under the new section 18J, the amount of profit, gain, loss, income or expense computed for a financial instrument for profits tax purpose for a period is the amount of profit, gain, loss, income or expense recognized for the instrument for accounting purpose for the period.
6. The new sections 18K and 18L provide for special treatment of an impairment loss, an equity instrument or financial liability on revenue account, an embedded derivative, a preference share, a loan made or debt security issued otherwise than on an arm's length basis and a hedging instrument.

## Interest expenses payable to overseas export credit agencies

7. Clause 4 amends section 16 of the Ordinance so that, unless the Commissioner of Inland Revenue (*Commissioner*) determines otherwise, an overseas export credit agency falls within the definition of *overseas financial institution* and interest expenses payable to the agency is deductible under section 16(1)(a) of the Ordinance. A definition of *overseas export credit agency* is added to section 16(3) of the Ordinance.

## AEOI arrangement

8. Clauses 5 to 9 refine the provisions of the Ordinance that implement the AEOI arrangement.
9. Clauses 5, 7 and 8 amend section 50A of, and Schedules 17C and 17D to, the Ordinance. Clause 6 adds a new section 50L to the Ordinance. With these amendments—
  - (a) the terms *Common Reporting Standard*, *CRS publications* and *FATF Recommendations* are defined to represent the key documents relating to the AEOI arrangement;
  - (b) the concept of *controlling person*, in relation to a trust, covers (among others) trustees and beneficiaries of the trust;
  - (c) controlling persons will be identified, in relation to any legal person which is functionally equivalent or similar to a trust, in a way similar to the way in which controlling persons are identified in relation to a trust (The concept of *legal person* is used in the Common Reporting Standard and is defined in the FATF Recommendations to mean “an entity other than a natural person that can establish a permanent

customer relationship with a financial institution or otherwise own property”. The Bill incorporates the contents of that definition into the definition of *entity*. The Bill also defines *controlling person*, in relation to an entity which is functionally equivalent or similar to a trust, in a way similar to the way in which the concept is defined in relation to a trust.);

- (d) the term *investment entity* is to be interpreted in a way consistent with the FATF Recommendations;
- (e) residency rules are incorporated in relation to financial institutions (other than trusts) that do not have a residence for tax purposes;
- (f) certain schemes, pooling agreements and approved pooled investment funds under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) or the Occupational Retirement Schemes Ordinance (Cap. 426) and credit unions registered under the Credit Unions Ordinance (Cap. 119) cease to be non-reporting financial institutions, and consequential changes are made to the definitions of *pre-existing account*, *reporting year* and *new account*; and
- (g) provisions are made for the Commissioner to publish guidelines for ensuring that provisions of the Ordinance implementing the AEOI arrangement are construed in a way consistent with the effect given to the Common Reporting Standard, in accordance with the CRS publications, and for clarifying the status of the guidelines.

10. Clause 9 amends Schedule 17E to the Ordinance to substitute an updated list of reportable jurisdictions.

### **Income of visiting teachers and researchers**

11. Clause 10 amends section 8 of the Ordinance to avoid double non-taxation. If the double taxation arrangement with a territory outside Hong Kong provides for exemption from tax in that territory on income of a visiting teacher or researcher in that territory, a Hong Kong resident person's income derived as a visiting teacher or researcher, even though derived from services wholly rendered in that territory, is no longer exempted from salaries tax in Hong Kong unless tax is paid or payable in respect of the income in that territory.

### **Sibling relationship**

12. Clause 11 revises the meaning of *brother or sister* in section 30B of the Ordinance (so as to align with the meaning of *sibling* in the new section 26J proposed to be added to the Ordinance by the Inland Revenue (Amendment) (No. 4) Bill 2018).