

**立法會**  
**Legislative Council**

LC Paper No. LS32/19-20

**Legal Service Division Report on  
Inland Revenue (Amendment) (Profits Tax Concessions for  
Insurance-related Businesses) Bill 2019**

**I. SUMMARY**

- 1. The Bill**

The main object of the Bill is to amend the Inland Revenue Ordinance (Cap. 112) to provide for profits tax concessions for:

  - (a) general reinsurance business, and certain types of general insurance business, of direct insurers; and
  - (b) certain types of insurance brokerage business of licensed insurance broker companies.
- 2. Public Consultation**

According to the Administration, the Financial Services and the Treasury Bureau and the Insurance Authority ("IA") have consulted the Industry Advisory Committees of IA and the relevant industry organizations and they generally supported the proposed tax relief.
- 3. Consultation with LegCo Panel**

The Panel on Financial Affairs was consulted on 3 June 2019. Panel members had no objection to the introduction of the Bill into the Legislative Council.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to extend profits tax relief to certain insurance-related businesses, Members may consider setting up a Bills Committee to examine the Bill in detail.

## II. REPORT

The date of First Reading of the Bill is 18 December 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: INS/2/19C) issued by the Financial Services and the Treasury Bureau ("FSTB") on 4 December 2019 for further details.

### Object of the Bill

2. The main object of the Bill is to amend the Inland Revenue Ordinance (Cap. 112) to:
  - (a) provide for profits tax concessions for general reinsurance business and certain types of general insurance business of direct insurers, and certain types of insurance brokerage business of licensed insurance broker companies; and
  - (b) provide for related matters.

### Background

3. Currently, under section 14B(1) of Cap. 112, the assessable profits of a corporation, to the extent that they are derived from (a) the business of reinsurance business as a professional reinsurer;<sup>1</sup> and (b) the business of insurance business as an authorized captive insurer,<sup>2</sup> are chargeable to tax at a concessionary profits tax rate (i.e. 8.25% being one-half of the normal tax rate of 16.5% for corporations for 2008/09 and each subsequent year of assessment as specified in Schedule 8 to Cap. 112).

4. According to paragraphs 3 and 4 of the LegCo Brief, in the light of the tax incentives introduced by other insurance hubs including Singapore, the United Kingdom and Switzerland, it is necessary for Hong Kong to introduce new measures to enhance its competitiveness as one of the major insurance hubs in the world. Also, the Bill is introduced to give effect to the policy initiative announced by the Chief Executive and the Financial Secretary respectively in the 2018 Policy Address (paragraph 118) and the 2019-2020 Budget Speech (paragraph 57) to promote the development of marine insurance and the underwriting of specialty risks (e.g. aviation, agriculture, catastrophe, political risk, war risk and trade credit) in Hong Kong.

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<sup>1</sup> "Professional reinsurer" is defined as a company authorized to carry on reinsurance business only (section 14B(4) of Cap. 112).

<sup>2</sup> "Authorized captive insurer" is a company authorized under the Insurance Ordinance (Cap. 41) to carry on insurance and reinsurance business restricted to risks of the companies within the same grouping of companies to which the first-mentioned company belongs (section 14B(4) of Cap. 112 and section 2(7) of Cap. 41).

## **Provisions of the Bill**

5. The Bill proposes to amend Cap. 112 to extend profits tax concessions (i.e. half of normal profits tax rate for corporations) currently available to the insurance business of authorized captive insurers and reinsurance business of professional reinsurers to (a) general reinsurance business, and certain types of general insurance business, of direct insurers;<sup>3</sup> and (b) certain types of insurance brokerage business of licensed insurance broker companies. Details of the proposed tax concessions are summarized in the ensuing paragraphs.

### Proposed tax concessions for specified insurers (proposed new section 14B(1)(c))

6. The Bill proposes to add a new section 14AB to Cap. 112 to provide for the interpretation of the relevant terms, and to amend section 14B(1) of Cap. 112 to provide profits tax concessions for direct insurers (referred to as "specified insurers" in the Bill) in respect of their general reinsurance business and certain types of general insurance business. "Specified insurer" is defined in the proposed new section 14AB(1) to include the following:

- (a) insurers authorized by the Insurance Authority ("IA") to carry on any class of insurance or reinsurance business except a professional reinsurer and an authorized captive insurer;
- (b) Lloyd's;<sup>4</sup> and
- (c) an association of underwriters approved by IA.

7. The proposed tax concession for specified insurers would cover any general reinsurance business and any general insurance business<sup>5</sup> except those businesses covering the following types of risks and liabilities as specified and described in the proposed new Schedule 49 to Cap. 112:

- (a) health risk;
- (b) mortgage guarantee risk;
- (c) motor vehicle damage risk;

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<sup>3</sup> Upon our enquiry, FSTB has clarified that "direct insurer" is a commonly used term in the insurance trade for an insurer who provides general insurance to the public as opposed to a professional reinsurer who is authorized to carry on reinsurance business only.

<sup>4</sup> "Lloyd's" is defined to mean the society of underwriters known in the United Kingdom as Lloyd's (section 2(1) of Cap. 41).

<sup>5</sup> Under Part 3 of Schedule 1 to Cap. 41, there are 17 classes of general insurance business including businesses relating to goods in transit, ships, liability for ships, accident and sickness. There is no dedicated class for marine or specialty insurance business.

- (d) employees' compensation liability; and
- (e) owners' corporation third-party liability.

Proposed tax concessions for licensed insurance brokers (proposed new section 14B(1)(d))

8. The Bill proposes to amend section 14B(1) of Cap. 112 to provide profits tax concession for licensed insurance broker companies in respect of their assessable profits derived from the business of negotiating, arranging, inviting or inducing a person to enter into, or advising on:

- (a) reinsurance contracts with professional reinsurers as mentioned in the existing section 14B(1)(a); or
- (b) general reinsurance contracts or certain general insurance contracts with specified insurers as mentioned in the proposed new section 14B(1)(c).

Related matters

9. The Bill also seeks to provide for the related matters summarized below.

*Amendments relating to the administration of proposed tax concessions*

10. Consequential upon the introduction of the proposed profits tax concessions for the specified insurers, the Bill proposes to add to section 14B of Cap. 112 an anti-avoidance provision to the effect that the assessable profits of a specified insurer derived from a transaction or a series of transactions would not enjoy the concessionary rate if the main purpose, or one of the main purposes, of its entering into the transaction(s) is to avoid or postpone, or to reduce the amount of, any liability to pay tax (proposed new section 14B(2A)).

11. The Bill proposes to add new sections 23AB and 23AC to Cap. 112 to provide for the ascertainment of assessable profits from insurance and reinsurance business for which profits tax concessions are proposed to be given to specified insurers under the proposed section 14B(1)(c) (clause 12). Under the proposed new section 23AC, the Commissioner of Inland Revenue would be empowered to (a) exclude certain sums; and (b) apportion certain sums between the business eligible for the proposed tax concession and other business of the specified insurers, in assessing profits chargeable to tax under the proposed section 14B(1)(c).

*Transitional arrangements*

12. The Bill proposes to amend section 89 of, and to add the proposed new Schedule 50 to, Cap. 112 to provide for transitional arrangements such that

in computing the assessable profits of a corporation under the proposed section 14B(1)(c) or (d), sums received by or accrued to the corporation before the commencement date of the Ordinance, if enacted, would not be taken into account (clause 15).

#### *Technical drafting matters*

13. The Bill proposes certain technical drafting amendments including:
- (a) rewriting section 19CA (Treatment of losses: concessionary trading receipts), section 23A (Ascertainment of assessable profits of insurance corporations other than life insurance corporations) and section 23AA (Mutual insurance corporations) of Cap. 112 to make them more readable, in line with current drafting practice (clauses 7, 8, 10 and 11);
  - (b) correcting a cross-reference in section 63H(1D) (election by a corporation relating to amount of provisional profits tax) of Cap. 112 (clause 14); and
  - (c) adding Division and Subdivision headings to Part 4 (Profits Tax) of Cap. 112 (Schedule to the Bill).

14. It is noted that the proposed new section 14AB includes a note to give an example for the definition of "contract of insurance".<sup>6</sup> The proposed section 14AB(5) provides that a note located in the text is provided for information only and has no legislative effect.

#### Commencement

15. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

#### **Public Consultation**

16. According to paragraph 18 of the LegCo Brief, FSTB and IA have consulted the Industry Advisory Committees of IA and the relevant industry organizations (including the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers, the Professional Insurance Brokers Association and the Hong Kong Institute of Certified Public Accountants) in formulating the proposed tax relief measures. Upon our enquiry, FSTB confirms that the bodies consulted generally supported the proposal.

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<sup>6</sup> Notes help the reader to understand the legislation more quickly and get a clearer picture of it (*Drafting Legislation in Hong Kong – A Guide to Styles & Practices* (2012) published by the Department of Justice, para. 9.4.3).

## **Consultation with LegCo Panel**

17. As advised by the Clerk to the Panel on Financial Affairs, on 3 June 2019, the Panel was briefed by the Administration on a number of proposals to strengthen Hong Kong's competitiveness as an insurance hub, including the proposal to provide tax concessions for the insurance sector to promote the development of marine insurance and the underwriting of specialty risks in Hong Kong. Members had no objection to the introduction of the Bill into LegCo but discussed various issues including how the proposal would benefit policy holders and the types of insurance business covered by the proposed profits tax concessions.

## **Conclusion**

18. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to extend profits tax relief to certain insurance-related businesses, Members may consider setting up a Bills Committee to examine the Bill in detail.

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