

## LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance  
(Chapter 112)

### EXEMPTION FROM SALARIES TAX AND PROFITS TAX (ANTI-EPIDEMIC FUND) ORDER

#### INTRODUCTION

A At the meeting of the Executive Council on 26 May 2020, the Council ADVISED and the Chief Executive ORDERED that the Exemption from Salaries Tax and Profits Tax (Anti-epidemic Fund) Order (“the Order”), at **Annex A**, should be made under section 87 of the Inland Revenue Ordinance (Cap. 112) (“IRO”) to exempt a person<sup>1</sup> from payment of salaries tax or profits tax for the year of assessment (“YA”) 2019/20 and subsequent years in respect of certain sums provided under the Anti-epidemic Fund (“AEF”).

#### JUSTIFICATIONS

##### Measures under AEF

B 2. To enhance the capability of the Government and other relevant parties in combating the coronavirus disease 2019 (“COVID-19”) epidemic and to provide financial assistance or relief to enterprises and members of the public hard hit by the COVID-19 epidemic or affected by the anti-epidemic measures, the Government established the AEF by a Declaration of Trust made by The Financial Secretary Incorporated on 21 February 2020 with a commitment of \$30 billion approved by the Legislative Council Finance Committee (“FC”) for rolling out 24 measures at **Annex B**. In view of the severe economic repercussions of the COVID-19 pandemic globally and locally, as well as further hardship and uncertainties caused to businesses and individuals by the public health

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<sup>1</sup> According to section 2 of the IRO, “person” includes “a corporation, partnership, trustee, whether incorporated or unincorporated, or body of persons”.

measures that the Government has put in place to effectively contain the spread of the virus, we obtained the FC's approval to inject a further \$120.5 billion into the AEF on 18 April 2020 for another 33 measures at **Annex C**.

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3. Most of the measures under the AEF involve the provision of financial assistance or relief in the form of subsidies, allowances, grants and reimbursements to businesses and individuals, or payment to a third party for provision of rental/fee/fare/price concessions to businesses/individuals to be aided under an AEF programme. Some measures involve procurement of goods and services.

### **Tax Liability in respect of the Measures under AEF**

4. Under the IRO, incomes generated from employment or business operations in Hong Kong should generally be subject to tax. Amongst the measures announced under the AEF, some have no tax consequences in respect of the sums received under AEF, because (i) they are not in connection with employment or the carrying on of a trade, profession or business, (ii) the recipient of the payment is a tax exempt organisation, and/or (iii) the targeted parties receive rental/fee/fare/price concessions only. Other initiatives will entail tax liabilities pursuant to the relevant provisions under IRO.

5. Specifically, sums received by or accrued to a person by way of grant, subsidy or similar financial assistance in connection with the carrying on of a trade, profession or business in Hong Kong, other than sums in connection with capital expenditure made or to be made by the person, are deemed as trading receipts under section 15(1)(c) of the IRO and are chargeable to profits tax. Accordingly, certain financial assistance or relief provided to relevant business sectors (e.g. travel agents, restaurants, transport operators and retailers) are subject to profits tax.

6. Under section 8(1) of the IRO, incomes including those from "any office or employment of profit" are chargeable to salaries tax. Section 9(1)(a) further defines "income from employment" to include "any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite, or allowance, whether derived from the employer or others". By the same token, certain financial assistance or relief provided to employees of various industries (e.g. cleansing and security staff, construction workers, etc.) under the AEF are subject to salaries tax.

## Considerations

7. COVID-19 pandemic has significantly undermined Hong Kong's economy and various sectors are hard hit. The Government has been committed to taking resolute measures to expeditiously relieve the imminent needs of the businesses and members of the public. In view of the unprecedented challenges arising from COVID-19 and the relieving objectives of the AEF, we consider it justifiable to provide a tax exemption to most of the financial assistance or relief under the AEF that are provided to businesses/individuals so that the recipients will fully benefit from the assistance received.

8. Given the varying design and nature of individual AEF programmes, some of the programmes may involve normal business activities (e.g. procurement of masks), which are not the target of this tax exemption. It is important to make clear that no special treatment is to be accorded to general business activities and sums received under the AEF that form part of normal trading or businesses should continue to be subject to tax.

9. In general, we propose that a recipient of sums paid under an AEF programme should be exempt from the payment of profits tax and salaries tax in respect of such sums, **unless** the sums are trading receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong. From the first two rounds of relief measures under the AEF, we note that such trading receipts include –

- (a) proceeds of sale of goods: examples include the sales proceeds received by businesses out of AEF from the sales of masks, provision of technology applications such as reusable masks, or provision of price discounts for liquefied petroleum gas sold to taxis and public light buses, etc.;
- (b) consideration for services (including administrative fees for implementing the AEF programmes): examples include the income received by businesses out of AEF for the provision of online dispute resolution services, and the administrative fees received by service contractors of Government and the Housing Authority, oil companies, MPF trustees and national sports associations, etc. for implementing the relevant AEF programmes, etc.; and

- (c) rental incomes: examples include the reimbursement received by the Hong Kong Cyberport for offering rental waivers to tenants and reimbursements received by landlords or operators of arts spaces for offering rental waivers to their tenants.

10. However, if the sums are paid under an AEF programme to recipients on a matching arrangement to fulfill the purpose of the programme, we propose that the sums will also be exempted from tax even if they are trading receipts so as to keep the value of the Government's contribution intact and to give due recognition to the contributions from our counterparts in providing assistance or relief to members of the public. Examples include the training funds received by statutory bodies or industry associations on a matching arrangement for organising training for skills upgrading and financial assistance received by the MTR Corporation Limited on a 50:50 matching arrangement for providing a 20% fare concession to passengers.

11. The proposed tax exemption will be applicable to persons identified under the AEF programme to receive the sums, and will not extend to other persons that may indirectly benefit from such payment. For instance, subsidies to employers to cover their operating expenses e.g. wages, may indirectly benefit employees in the form of wage incomes. However, the sums received by employees are, as usual, normal incomes from employment and hence are chargeable to salaries tax.

12. Applying the principles set out in paragraphs 8 to 11 above, a summary of the proposed tax treatment for the two rounds of measures announced under the AEF is set out at **Annex D**. This list is illustrative and is by no means exhaustive. We propose that the same principles be adopted to provide tax exemption as and when further relief measures are rolled out under the AEF.

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## **THE ORDER**

13. The provisions of the Order are as follows –
- (a) **Section 1** provides that the Order applies to salaries tax and profits tax chargeable for the YA 2019/20 and for all subsequent years of assessment;
  - (b) **Sections 2 and 3** provide for the meaning of fund programme and fund purpose by drawing reference to the

Declaration of Trust in respect of AEF, an extract of the relevant provisions of the Declaration of Trust will be set out in the **Schedule**;

- (c) **Section 4** provides for the exemption from salaries tax and profits tax to persons who receive sums as a benefitted party identified under the fund programme; and
- (d) **Section 5** provides that sums received by the person as receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong, save for those on a matching arrangement, should be excluded from the exemption.

## **LEGISLATIVE TIMETABLE**

14. The legislative timetable is as follows –

Publication in the Gazette and Commencement Date of the Order	29 May 2020
Tabling at the Legislative Council for negative vetting	3 June 2020

15. The Order shall take effect upon gazettal to provide clarity and certainty of the tax treatment. The early commencement date will facilitate employers to amend their returns for YA 2019/20 accordingly to exclude those exempted incomes of their employees while employees could complete their individual tax returns to be issued in June 2020.

## **IMPLICATIONS OF THE PROPOSAL**

### **Financial Implications**

16. The financial implications of the proposed tax exemption cannot be sized up because the circumstances of businesses and individuals vary and so do their tax liabilities. The overall impact should not be significant, especially when the hard-hit enterprises and individuals may not have tax liabilities.

## **Other Implications**

17. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the IRO and its subsidiary legislation. The economic, sustainability and family implications of the proposal are at **Annex E**. There are no civil service, productivity, environmental or gender implications.

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## **PUBLIC CONSULTATION**

18. No public consultation on the proposal is considered necessary.

## **PUBLICITY**

19. We will issue a press release and social media posts to disseminate this good news to the wider public. A spokesperson from the Financial Services and the Treasury Bureau will deal with press enquiries on the exemption granted.

## **ENQUIRIES**

20. Enquiries on this Brief can be directed to Miss Helen CHUNG, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2370.

**Financial Services and the Treasury Bureau**  
**May 2020**

## Exemption from Salaries Tax and Profits Tax (Anti-epidemic Fund) Order

Section 1

1

**Exemption from Salaries Tax and Profits Tax (Anti-epidemic Fund) Order**

(Made by the Chief Executive in Council under section 87 of the Inland Revenue Ordinance (Cap. 112))

**1. Application**

This Order applies in relation to salaries tax and profits tax chargeable for the year of assessment commencing on 1 April 2019 and for all subsequent years of assessment.

**2. Interpretation**

In this Order—

*Anti-epidemic Fund* (防疫抗疫基金) means the fund established by the Declaration of Trust;

*benefitted party* (受惠方), in relation to a fund programme, means a person, or a class of persons, identified under the fund programme as the person, or the class of persons, to whom payments under the fund programme are to be made so that—

- (a) the person, or the class of persons, is provided with financial assistance or relief by way of the payments; or
- (b) because of the payments, the person, or the class of persons, is to provide assistance or relief to another person;

*Declaration of Trust* (《信託聲明書》) means the Declaration of Charitable Trust in respect of Anti-epidemic Fund made by The Financial Secretary Incorporated as the Trustee on 21 February 2020;

*fund programme* (基金項目)—see section 3(1);

*fund purpose* (基金目的)—see section 3(2);

## Exemption from Salaries Tax and Profits Tax (Anti-epidemic Fund) Order

Section 3

2

*profits tax* (利得稅) means the profits tax chargeable under Part 4 of the Ordinance;

*salaries tax* (薪俸稅) means the salaries tax chargeable under Part 3 of the Ordinance.

**3. Meaning of fund programme and fund purpose**

- (1) A fund programme is a programme set up for a fund purpose under the Anti-epidemic Fund that falls within the meaning of the definition of “Programmes” in Clause 2 of the Declaration of Trust.
- (2) A fund purpose is one of the purposes within the meaning of Clause 4 of the Declaration of Trust.
- (3) The English text of the relevant provisions of Clause 2 and the provisions of Clause 4 of the Declaration of Trust is reproduced in the English text of the Schedule. A Chinese translation of those provisions is set out in the Chinese text of the Schedule.

**4. Exemption**

Subject to section 5, if a person is, or belongs to, a benefitted party of a fund programme, the person is exempt from the payment of salaries tax and profits tax in respect of sums received by, or accrued to, the person under the fund programme.

**5. Sums not exempted under section 4**

- (1) The exemption given to a person under section 4 does not apply to sums that are received by, or accrued to, the person as receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong.
- (2) The receipts mentioned in subsection (1)—
  - (a) include—
    - (i) proceeds of sale of goods;

- (ii) consideration for provision of services; and
  - (iii) monies received from the letting, sub-letting or licensing of any premises or portion of any premises; but
- (b) do not include sums deemed to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong only because they fall within the description of section 15(1)(c) of the Ordinance.
- (3) The sums mentioned in subsection (1) do not include any sums received by, or accrued to, a person under a matching arrangement of a fund programme.
- (4) In subsection (3)—
- matching arrangement** (配對安排) means matching a financial commitment made by a person under a fund programme (excluding any financial commitment that is to be fully reimbursed under the fund programme), with reference to—
- (a) a percentage of; or
  - (b) a ratio of,
- the financial commitment.
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## Schedule

[s. 3]

### Provisions of Declaration of Trust referred to in this Order

#### 2. INTERPRETATION

...

**“Programmes”**

includes grant of financial assistance, provision of relief, goods or services, works and projects (or a combination of any of them) and any other forms as approved by the Steering Committee;

...

#### 4. PURPOSES

The Trustee shall hold the Trust Fund upon trust to apply the same at such times, in such manner, to such extent and subject to such conditions as the Trustee may determine in support of Programmes:

- (a) to enhance the capability of the Government as well as other relevant parties in combating the COVID-19 epidemic; and
- (b) to provide assistance or relief to enterprises and members of the public hard hit by the COVID-19 epidemic or are affected by the anti-epidemic measures.



Exemption from Salaries Tax and Profits Tax (Anti-epidemic Fund) Order

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Exemption from Salaries Tax and Profits Tax (Anti-epidemic Fund) Order  
Explanatory Note  
Paragraph 1

6

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**Explanatory Note**

This Order exempts, subject to certain conditions, a person from the payment of salaries tax and profits tax chargeable under Parts 3 and 4 of the Inland Revenue Ordinance (Cap. 112) in respect of sums received by, or accrued to, the person under a fund programme of the Anti-epidemic Fund.

Clerk to the Executive Council

COUNCIL CHAMBER

2020

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**A List of 24 measures  
under the first round of Anti-epidemic Fund**

1. Enhance the support to the Hospital Authority in combating the epidemic
2. Support local mask production
3. Global procurement of personal protective equipment
4. Support property management sector in anti-epidemic efforts
5. Technology applications to enable reusability of masks
6. Support construction sector in anti-epidemic efforts
7. Support cleansing and security staff engaged by Government and Hong Kong Housing Authority service contractors in anti-epidemic efforts
8. Installation of emergency alert system
9. Home quarantine support
10. Ex-gratia payment to prospective households of the two public housing estates designated as quarantine centres
11. Retail Sector Subsidy Scheme
12. Food Licence Holders Subsidy Scheme
13. Subsidy for the transport sector
14. Convention and Exhibition Industry Subsidy Scheme
15. Special allowance for eligible Working Family Allowance and Student Financial Assistance households
16. Additional student study grant for 2019/20 school year
17. Rental waivers for tenants at the Science Park, industrial estates and Cyberport
18. Subsidies for live marine fish wholesale traders and fishing vessels with Mainland deckhands
19. Support to child care centres
20. Arts and Culture Sector Subsidy Scheme
21. Licensed Guesthouses Subsidy Scheme
22. Travel Agents Subsidy Scheme
23. Support to specified training bodies
24. Licensed Hawkers Subsidy Scheme

Reference:

<https://www.info.gov.hk/gia/general/202002/26/P2020022600679.htm?fontSize=1>

**A List of 33 measures  
under the second round of Anti-epidemic Fund**

**(i) Job retention, job creation, job advancement**

1. Employment Support Scheme
2. Job creation
3. LAWTECH Fund
4. COVID-19 Online Dispute Resolution Scheme
5. Subsidy for encouraging early deployment of 5G
6. Distance Business Programme
7. Training subsidies for consultants in the construction sector
8. Matching Grant Scheme for Skills Upgrading

**(ii) Provision of one-off relief for specific sectors**

9. Relief grant for tutorial schools
10. Relief grants for providers of catering services for schools and post-secondary education institutions and providers of interest group and school bus services
11. One-off grant to registered sports coaches
12. Relief grants for freelance workers hired by subvented non-governmental welfare organisations to provide training and coaching for service users
13. Subsidy for the refuse transfer station account holders for transporting municipal solid waste
14. Subsidies for local primary producers
15. Special subsidy to Hong Kong exchange participants and Securities and Futures Commission's licensees
16. Cash subsidy for individual licensees in the estate agency sector
17. Subsidy for the passenger transport sector
18. Providing relief to creative industries
19. Tourism Industry Support Schemes
20. Relief measures for construction sector
21. Subsidy to operators of Revitalising Historic Buildings Through Partnership Scheme, PMQ and Fly the Flyover Operation
22. Subsidy for the aviation sector
23. Catering Business (Social Distancing) Subsidy Scheme

**(iii) Subsidy schemes for premises affected by COVID-19**

24. Amusement Game Centres Subsidy Scheme
25. Commercial Bathhouses Subsidy Scheme
26. Fitness Centre Subsidy Scheme
27. Support places of amusement in anti-epidemic efforts
28. Place of Public Entertainment Licence Holder Subsidy Scheme
29. Mahjong/Tin Kau Licence Holder Subsidy Scheme
30. Subsidy Scheme for Beauty Parlours, Massage Establishments and Party Rooms
31. Club-house Subsidy Scheme
32. Sports and Recreational Sites Subsidy Scheme

**(iv) Easing the burden of businesses and individuals**

33. 20 per cent fare concession of MTR and temporary relaxation of the monthly threshold of the Public Transport Fare Subsidy Scheme

Reference:

<https://www.info.gov.hk/gia/general/202004/20/P2020042000745.htm?fontSize=1>

**Summary of Tax Treatment  
for Two Rounds of Measures under the Anti-epidemic Fund**

**(A) Measures that have tax consequences and will be covered by tax exemption**

1. Subsidy for factories to set up production lines of surgical masks under the Local Mask Production Subsidy Scheme
2. Anti-epidemic Support Scheme for Property Management Sector
3. Subsidies for construction industry stakeholders
4. Financial support to frontline workers engaged by Government and Hong Kong Housing Authority service contractors
5. Retail Sector Subsidy Scheme
6. Food Licence Holders Subsidy Scheme
7. Reimbursements of the actual fuel or electricity cost and/or subsidies to specified means of transport
8. Convention and Exhibition Industry Subsidy Scheme for organisers of exhibitions and international conventions/ conferences
9. Subsidies for live marine fish wholesale traders, specified fresh food wholesalers and fishing vessels with Mainland deckhands
10. Special grant for child care centres
11. Arts and Culture Sector Subsidy Scheme
12. Licensed Guesthouses Subsidy Scheme
13. Travel Agents Subsidy Scheme
14. Special grant to specified training bodies
15. Licensed Hawkers Subsidy Scheme
16. Subsidy to employers and self-employed persons under the Employment Support Scheme
17. Funding to non-government public bodies and private corporations for creating time-limited jobs
18. LAWTECH Fund to SME law firms/barristers' chambers and related persons
19. Subsidy for early deployment of 5G in public and private sectors
20. Funding to private enterprises under the Distance Business Programme
21. Training subsidies for consultants in the construction sector
22. Training funds to bodies/ associations under the Matching Grant Scheme for Skills Upgrading (on matching arrangement)
23. Relief grant for tutorial schools

24. Relief grants for providers of catering services for schools and post-secondary education institutions and providers of interest group and school bus services
25. One-off grant to registered sports coaches
26. Relief grants for freelance workers hired by subvented non-governmental welfare organisations to provide training and coaching for service users
27. Subsidy for the refuse transfer station account holders for transporting municipal solid waste
28. Subsidies for local primary producers
29. Special subsidy to Hong Kong Exchange's participants and Securities and Futures Commission's licensees
30. Cash subsidy for individual licensees in the estate agency sector
31. Reimbursement of the actual regular repair and maintenance costs and insurance premium to operators of specified means of transport, subsidy to eligible registered owners and passenger service licence holders of specified means of transport, eligible taxi and red minibus drivers, and employers of eligible green minibus and local ferry employees
32. Cinemas Subsidy Scheme & Printing and Publishing Sector Subsidy Scheme
33. Subsidies/Refund under Tourism Industry Support Schemes
34. Subsidies to the construction sector
35. Subsidy to operators of Revitalizing Historic Buildings Through Partnership Scheme and Fly the Flyover Operation
36. Subsidy for the aviation sector
37. Subsidy to employers in catering sector and catering businesses under the Catering Business (Social Distancing) Subsidy Scheme
38. Amusement Game Centres Subsidy Scheme
39. Commercial Bathhouses Subsidy Scheme
40. Fitness Centre Subsidy Scheme
41. Subsidy to licensed Places of Amusement for anti-epidemic efforts
42. Place of Public Entertainment Licence Holder Subsidy Scheme
43. Mahjong/Tin Kau Licence Holder Subsidy Scheme
44. Subsidy Scheme for Beauty Parlours, Massage Establishments and Party Rooms
45. Club-house Subsidy Scheme
46. Sports and Recreational Sites Subsidy Scheme
47. Financial assistance to MTR Corporation Limited in providing fare concession (on 50:50 matching arrangement)

**(B) Measures that have tax consequences and will be subject to tax**

1. Payment from orders from the Government and/or non-Government parties under Local Mask Production Subsidy Scheme
2. Payment to businesses for providing technology applications such as reusable masks
3. Administrative fees paid to service contractors of the Government and the Hong Kong Housing Authority for disbursing allowances
4. Reimbursements and administrative fees paid to oil companies for providing price discounts on liquefied petroleum gas to taxis and public light buses
5. Reimbursements to the Hong Kong Cyberport Management Company Limited for providing rental waivers
6. Reimbursements to landlords or operators of arts spaces for providing rental waivers
7. Administrative fees paid to MPF trustees for implementing the Employment Support Scheme
8. Funding to eBRAM Centre for initial set-up cost as well as fees for mediators and arbitrators
9. Administrative fees paid to National Sports Associations and sports organisations for implementing AEF programme
10. Administrative fees paid to service providers for implementing the Subsidy Scheme for Beauty Parlours, Massage Establishments and Party Rooms

**(C) Measures that have no tax consequence**

1. Additional funding to the Hospital Authority for combating the epidemic
2. Grant to the Hong Kong Productivity Council under the Local Mask Production Subsidy Scheme
3. Funding to Government for global procurement of personal protective equipment
4. Funding to Government for installation of emergency alert system
5. Funding to Government for making available monitoring devices for home quarantine
6. Ex-gratia payment to prospective households of the two public housing estates designated as quarantine centres
7. Reimbursement to the Trade Development Council for providing fee reduction and implementing the Retail Sector Subsidy Scheme

8. Special allowance for eligible Working Family Allowance and Student Financial Assistance households
9. Additional student study grant for 2019/20 school year
10. Reimbursement to the Hong Kong Science and Technology Parks Corporation for providing rental waivers
11. Funding to Government departments and tax-exempt non-government public bodies for creating time-limited jobs
12. Reimbursement to the operator of Police Married Quarters (PMQ) for providing rental waivers and subsidies to PMQ
13. Waiver of monthly fixed rent and management fees of the Kai Tak Cruise Terminal
14. Funding to Government for engaging accounting firm(s) for conducting compliance checks and providing related services under Catering Business (Social Distancing) Subsidy Scheme
15. Temporary relaxation of the monthly threshold of the Public Transport Fare Subsidy Scheme

Note: The above list is a summary of the tax treatment for the two rounds of AEF measures announced. The tax treatment for new AEF measures will continue to be handled along the same principle.



## **Economic, Sustainability and Family Implications of the Proposal**

### **Economic Implications**

The proposed tax exemption will help reduce the tax burden of the relevant taxpayers and enable them to fully benefit from the financial assistance provided under the Anti-epidemic Fund.

### **Sustainability Implications**

2. The proposed tax exemption is expected to generate economic benefits to businesses and individuals through increasing their disposable incomes and to promote social harmony through alleviating relevant taxpayers' burden as well as cost of business operations, thereby reducing the risk of massive staff layoffs.

### **Family Implications**

3. The proposed exemption from profits tax will help reduce the operating cost of businesses and preserve jobs, thereby maintaining the financial stability of families at this critical juncture.