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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (AMENDMENT) (MISCELLANEOUS PROVISIONS) BILL 2021

INTRODUCTION

At the meeting of the Executive Council on 16 March 2021, the Council ADVISED and the Chief Executive ORDERED that, the Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021 ("the Bill"), at **Annex A**, should be introduced into the Legislative Council ("LegCo").

A

JUSTIFICATIONS

2. The Bill amends the Inland Revenue Ordinance (Cap. 112) ("IRO") to address matters relating to —

(a) the tax treatment for amalgamation of companies under the court-free procedures as provided for under the Companies Ordinance (Cap. 622) ("CO");

(b) the tax treatment for transfer or succession of specified assets under certain circumstances;

(c) the furnishing of tax returns; and

(d) the deduction of foreign tax under specified circumstances.

Court-free amalgamation of companies

3. Before the CO came into operation on 3 March 2014, amalgamation of companies[1] could only be effected through the court-sanctioned statutory procedure under the old Companies Ordinance (Cap.

[1] Amalgamation is a legal process by which the undertaking, property and liabilities of two or more companies merge and are brought under one of the original companies or a newly formed company and their shareholders become the shareholders of the new or amalgamated company.

32) or by way of specific private merger ordinances. The former was rare due to the complex procedures involved, high compliance costs and the court's restrictive approach. The latter only applied to the merger of authorised institutions (i.e. banks).

4. Since 3 March 2014, Division 3 of Part 13 of the CO has provided for a court-free amalgamation procedure for wholly-owned intra-group companies incorporated in Hong Kong and limited by shares to amalgamate and continue as one company ("qualifying amalgamation"). It could take the form of a vertical amalgamation between the holding company and one or more of its wholly-owned subsidiaries with the holding company as the amalgamated company, or a horizontal amalgamation between two or more of the wholly-owned subsidiaries of a company with one of them as the amalgamated company[2].

5. At present, the Inland Revenue Department ("IRD") makes assessments on qualifying amalgamation cases in accordance with an assessment practice published on IRD's website. While the interim administrative assessment practice has been implemented smoothly since its publication, it is necessary to introduce legislative amendments to codify the practice into the IRO for clarity and certainty.

6. We propose that the amalgamated company ("amalgamated company") in a qualifying amalgamation must comply with all obligations, meet all liabilities, and be entitled to all rights, powers and privileges of each of the amalgamating companies (each an "amalgamating company") in the qualifying amalgamation under the IRO. For the purposes of the IRO, we propose that the amalgamating company will be treated as having ceased business on the date immediately before the date of amalgamation.

7. We also propose to provide special tax treatment to qualifying amalgamations upon election by taxpayers. An election made is irrevocable. Key features of the special tax treatment for qualifying amalgamations are set out below –

(a) Succession of trading stock: if the amalgamated company in a qualifying amalgamation succeeds to any trading stock of a trade or business carried on by an amalgamating company in the qualifying amalgamation, and the amalgamated company continues to use the trading stock as its trading stock in carrying

[2] The company whose shares are not cancelled upon amalgamation is the amalgamated company whereas the company whose shares are cancelled upon amalgamation is the amalgamating company.

on a trade or business in Hong Kong from the date of amalgamation, the trading stock would be accounted for in the financial account of the amalgamated company at a value equal to the carrying amount of the trading stock of the amalgamating company immediately before the date of amalgamation[3], instead of being valued at the open market price on the date of cessation of the amalgamating company for the purposes of computing its chargeable profits under the existing IRO;

(b) Succession of capital assets: the amalgamated company would be treated as if it were the continuation of and the same person as the amalgamating company and be allowed to claim the balance of deductions and annual allowances in respect of certain assets[4&5]. Such deductions and allowances cannot be claimed by the amalgamated company otherwise under the existing IRO as it has not incurred the capital expenditure on the acquisition of these assets;

(c) Deductions and allowances: in the same vein, deductions or allowances which were granted to not only the amalgamated company after amalgamation, but also the amalgamating company before the amalgamation would be taken into account in determining the amount to be clawed back or allowed upon the subsequent sale or destruction of the relevant capital assets[6]

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[3] Except for circumstances when the acquisition method is applied to require assets acquired to be measured at their fair values at the acquisition date.

[4] The IRO provides for deductions or allowances in respect of certain capital expenditures if such expenditures are incurred in the production of chargeable profits. Specifically, capital expenditures on research and development ("R&D") activities (section 16B), purchase of patent rights, etc. (section 16E), prescribed fixed assets (section 16G) and environmental protection facilities (section 16I) are allowed in the year of assessment ("YA") in which the capital expenditures are incurred. Capital expenditure incurred on purchase of specified intellectual property rights (section 16EA) and on building refurbishment (section 16F) are allowable in 5 years of assessment. For capital expenditure on building and structure and machinery or plant, initial allowance will be made in the YA when the capital expenditures are incurred (sections 34(1), 37(1), 37A(1) and 39(1)); and annual allowance will be made in the years of assessment in which such assets are used in producing chargeable profits (sections 33A, 34(2), 37(2), 37A(2) and 39(2)). Under our proposal, if the capital expenditures and allowances are not fully claimed by the amalgamating company, the balance of deductions or allowances will be allowed to the amalgamated company as if the capital expenditures were incurred by the amalgamated company.

[5] The same principle also applies to the tax treatment of any balance of deduction upon amalgamation in relation to special payment under an approved retirement scheme (section 16A(1)).

[6] Under the IRO, capital expenditures incurred on the provision of certain assets are allowable by way of deductions or allowances. If the asset is subsequently sold or destructed, or if the amalgamated company ceases business, the sale proceeds, insurance moneys or other compensation, subject to certain conditions, will be deemed to be trading receipts to claw back the deductions or allowances previously granted ("claw back provisions"). Such assets

by the amalgamated company or cessation of business of the amalgamated company;

(d) Pre-amalgamation losses of amalgamating company: the set-off of unutilised pre-amalgamation losses of the amalgamating company against the assessable profits of the amalgamated company would be allowed subject to certain restrictions and conditions[7] to ensure that the set-off is not to achieve group loss relief or to reduce assessable profits through acquisition of losses via the purchase of a loss company as an amalgamating company. Under the existing IRO, any unutilised loss of the amalgamating company will lapse upon the amalgamation and cannot be carried forward to the amalgamated company as it is a different person;

(e) Pre-amalgamation losses of amalgamated company: similarly, the set-off of pre-amalgamation losses of the amalgamated company against the assessable profits of the business succeeded from the amalgamating company would be allowed subject to restrictions and conditions[8]; and

(f) Tax treatment of other aspects: the tax treatment of various aspects upon amalgamation such as the reclassification of assets, effect of cancellation of shares of the amalgamating company, post-amalgamation income or expenditure of the amalgamating company, etc. would be provided for.

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include machineries or plants used for or rights generated from R&D activities (section 16B(5)); patent rights or rights to know-how (section 16E(3)); specified intellectual property rights (section 16EB); prescribed fixed assets (section 16G(3)); environmental protection facilities (section 16J); commercial and industrial buildings and structures (section 35); and machineries or plants (sections 38 and 39D).

[7] The restrictions and conditions are notably the post entry condition (only losses incurred after the amalgamating company and the amalgamated company had entered into a qualifying relationship (i.e. both are wholly owned subsidiaries of the same company or one is a wholly owned subsidiary of the other) are qualifying losses), the same trade condition (qualifying losses can only be used to set off against the assessable profits of the amalgamated company derived from the same trade, profession or business it succeeded from the amalgamating company, or to set off against the amalgamated company's share of assessable profits derived from a specified partnership) and anti-avoidance provisions.

[8] The restrictions and conditions are notably the post entry condition, the trade continuation condition (i.e. the amalgamated company/the partnership that the amalgamated company has shared loss has continued to carry on a trade, profession or business since the qualifying loss was incurred up to the date of amalgamation), the financial resources condition (the amalgamated company has adequate financial resources (which resources shall exclude any loan from an associated corporation of the amalgamated company) immediately before the amalgamation to purchase, other than through amalgamation, the trade, profession or business carried on by the amalgamating company immediately before the amalgamation, and the amalgamating company's interest in any partnership immediately before the amalgamation), and anti-avoidance provisions.

Transfer or succession of specified assets without sale

8. Except for limited circumstances[9], there is currently no provision under the IRO to deal with the transfer of assets without sale, such as in the case of a qualifying amalgamation. In the absence of specific provisions, the capital expenditures which have been allowed deductions or allowance cannot be clawed back.

9. We would take the opportunity to amend the IRO to provide for the tax treatment in circumstances when a taxpayer succeeds to specified assets[10] ("specified assets"). Such tax treatment would apply to a qualifying amalgamation whereby the amalgamated company does not elect for the abovementioned special tax treatment, or when specified assets are transferred, other than by way of a qualifying amalgamation or succession on the person's death, to another person without sale. Specifically, we propose to deem the transfer of the specified assets without sale under the circumstances mentioned above as sale. For the purposes of computing the chargeable profits, the transferor will be deemed to have received the proceeds of sale of the specified asset at the lower of the open market value of the asset and the capital expenditure incurred by the person[11] whereas the transferee will be deemed to have incurred expenditure on the purchase of the specified assets in the same amount.

Furnishing of tax returns

10. At present, most profits tax returns are not submitted electronically as the existing information technology infrastructure of IRD cannot support the electronic processing of voluminous accounting and financial data given its very limited data uploading capacity. During the year ended 31 March 2020, only about 2 200 (out of some 438 000) profits tax returns were received through the current eTax Portal.

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[9] There are provisions dealing with cessation of business without sale of environment-friendly vehicle (section 16J(5B)) and machinery or plant (section 38(4) and section 39D(4)) under the IRO. Under these provisions, the Commissioner of Inland Revenue is empowered to use the open market value of the asset as the deemed proceeds of sale.

[10] Specified assets include machinery or plant or rights generated from R&D activities; patent rights or rights to know-how; specified intellectual property rights; prescribed fixed assets; environmental protection facilities; commercial buildings and structures; industrial buildings and structures; and machineries or plants.

[11] For machinery or plant or rights generated from R&D activities, the transferor will be deemed to have received the proceeds of sale of the specified asset at the lower of the open market value of the asset and the total amount of deductions allowed for the expenditure incurred by the person.

11. The LegCo Finance Committee approved on 2 July 2020 a new commitment of about $742 million for the enhancement and relocation of information technology systems and facilities of the IRD for the new Inland Revenue Tower in the Kai Tak Development Area. Among others, a Business Tax Portal will be developed to facilitate electronic submission of tax returns ("e-filing") by businesses including accounting and financial data. The first phase which enhances the existing eTax Portal to enable more businesses to voluntarily e-file profits tax returns including financial statements will be launched in around 2023, whilst the second phase which develops a new Business Tax Portal is expected to be completed by 2025.

12. We propose to amend the IRO to enhance the statutory framework for the filing of tax returns electronically. The proposed amendments will provide legislative backing to IRD's plan to enable more businesses to voluntarily e-file profits tax returns including financial statements in 2023, with the ultimate goal of implementing e-filing of profits tax returns through the newly developed Business Tax Portal. The proposed amendments will also empower the Commissioner of Inland Revenue ("the Commissioner") to apply the enhanced filing mechanism to other tax returns in the future.

13. To cater for future technological changes, the proposed amendments include new provisions which empower the Commissioner to specify in a gazette notice the manner in which an e-return or a return to be furnished by a mixed mode of paper and electronic record ("mixed filing") is to be generated, signed and delivered to IRD. IRD's current plan is to allow the furnishing of profits tax returns by mixed filing or e-filing as an alternative to paper filing. If and when IRD decides to make e-filing a mandatory requirement in future, we will consult LegCo again on the implementation plan. A gazette notice will need to be made by the Commissioner on the classes or description of persons who must furnish their tax returns by e-filing, which is subject to negative vetting by LegCo.

14. Irrespective of the way in which a return is furnished (i.e. paper, electronic or mixed), we propose to provide the framework to allow taxpayers to appoint service providers to furnish tax returns for or on their behalf. The service provider must, before furnishing a tax return, obtain a written confirmation from the taxpayer stating that the information contained in the return is correct and complete to the best of the taxpayer's knowledge and belief, and retain the written confirmation for a period of not less than seven years. The engagement of a service provider to furnish a tax return will not relieve the taxpayer from the

obligation of furnishing the tax return. There would also be provisions for penalties against service providers[12] for –

(a) failure to furnish a tax return without reasonable excuse;

(b) failure to obtain or retain, without reasonable excuse, a written confirmation from the taxpayer stating that the information in the return is correct and complete to the best of the taxpayer's knowledge; and

(c) furnishing, not in accordance with the information provided or instructions given by the taxpayer, a return that is incorrect in a material particular without reasonable excuse.

Foreign tax deduction under specified circumstances

15. At present, double taxation relief by way of tax credit is provided to Hong Kong resident persons in respect of foreign tax paid in a territory with a double taxation agreement ("DTA") in force with Hong Kong ("DTA territory"). Given the low tax regime and territorial taxation system of Hong Kong, it has not been the Government's policy to offer across-the-board unilateral tax credit for tax paid by Hong Kong resident persons in non-DTA territories and non-Hong Kong resident persons in either DTA territories or non-DTA territories.

16. Notwithstanding the general policy not to offer unilateral tax credit for foreign tax paid, the IRO provides a limited relief by way of deduction for foreign tax paid to address double taxation arising from bringing certain specified interest, gains and profits into profits tax charge in Hong Kong[13]. Such relief was available to a taxpayer regardless of whether he was a Hong Kong resident person and whether the tax had been paid in a DTA-territory, but has been restricted to foreign tax paid in

[12] The service provider is liable on conviction to a fine at level 3 for the offence set out in (a), (b) or (c). The court may order a service provider who commits an offence for (a) or (b) to do the act that the service provider fails to do, and a service provider who fails to comply with the court order will be liable on conviction to a fine at level 6. The Commissioner may compound an offence under (a), (b) or (c) and stay or compound any proceedings for the offence before judgment.

[13] The limited relief as set out in section 16(1)(c) of the IRO originally covered certain interest income brought into profits tax charge in Hong Kong under the deeming provision of section 15(1)(i), and has expanded over the years to cover interest, gains and profits from the sale, disposal, redemption, maturity or presentment of a certificate of deposit, bill of exchange or regulatory capital security which are deemed to be receipts arising in or derived from Hong Kong and hence brought into profits tax charge under section 15(1) of the IRO.

non-DTA territories only since the enactment of the Inland Revenue (Amendment) (No. 6) Ordinance 2018 ("2018 Amendment Ordinance")[14].

17. Stakeholders have raised concerns about the change as a consequence of the 2018 Amendment Ordinance. They consider that it could negatively affect the Hong Kong branches of foreign corporations (which are regarded as non-Hong Kong resident persons for tax purpose), in particular the over 150 foreign banks operating in Hong Kong through branches, when dealing with DTA territories. Specifically, since no tax relief is available to them in Hong Kong, their income would be subject to tax in both Hong Kong and the DTA territories if relief is also not available to them in their jurisdiction of residence. The industry holds the view that Hong Kong's attractiveness as a banking location might be undermined as a result.

18. Besides, stakeholders have raised concerns that the current scope of deduction for foreign tax paid in respect of specified interest, gains and profits is too narrow, and proposed to expand the scope to cover foreign tax paid in respect of other income such as royalty. This will be conducive to promoting Hong Kong as an R&D hub as the taxpayers concerned could benefit from the tax regime when developing and exploiting the intellectual property ("IP") they create in Hong Kong.

19. Having duly considered stakeholders' views, we propose the following changes to the foreign tax deduction regime under the IRO –

(a) the existing deduction available for foreign tax paid in respect of specified interest, gains and profits by Hong Kong resident persons and non-Hong Kong resident persons in non-DTA territories will be extended to non-Hong Kong resident persons who paid such tax in DTA territories;

(b) a new restriction will be incorporated such that deduction of foreign tax paid by a non-Hong Kong resident person (in either DTA territory or non-DTA territory) will be provided only to the extent of the portion of foreign tax paid for which the

[14] Since a DTA is intended to provide a comprehensive solution to all tax matters which are within its scope, and Hong Kong has adopted the tax credit approach under all DTAs, the 2018 Amendment Ordinance was enacted so that, amongst others, relief by way of deduction is no longer available to Hong Kong resident persons in respect of tax paid in DTA territories with effect from the YA 2018/19. Hong Kong resident persons should only be allowed to claim tax credit in respect of the tax paid in a DTA territory under the DTA concerned. The same treatment (i.e. no relief by way of deduction) was extended to non-Hong Kong resident persons in respect of tax paid in DTA territories for consistency sake. Non-Hong Kong resident persons might resort to (i) any unilateral relief available from their jurisdiction of residence or (ii) bilateral relief under the DTA (if any) between the jurisdiction of residence and the source jurisdiction or Hong Kong.

person would not be entitled to utilise for claiming any relief (whether by deduction or otherwise) in his jurisdiction of residence[15]; and

(c) the existing deduction available for foreign tax paid in respect of specified interest, gains and profits will be extended to cover foreign tax paid in respect of certain income if the tax is charged on gross income (such as withholding tax on royalty), subject to the same set of limitations and restrictions in paragraph 19(a) and (b) above.

OTHER OPTIONS

20. We must amend the IRO to address the matters as elaborated in paragraphs 3 to 19 above relating to qualifying amalgamations, specified assets, furnishing of returns and foreign tax deduction. There is no other option.

THE BILL

21. The main provisions of the Bill are as follows –

Part 2 – Amendments relating to Qualifying Amalgamations

(a) Clause 3 adds a new Part 6C (i.e. new sections 40AE to 40AM) to the IRO to provide for the tax treatment in relation to qualifying amalgamations.

(b) Clause 4 adds a new Schedule 17J to provide for special tax treatment for the amalgamating companies and amalgamated company in a qualifying amalgamation for the purposes of calculating profits tax payable by those companies as a result of the amalgamation, which applies in relation to a qualifying amalgamation for which an election has been made under the new section 40AM(1).

[15] As a matter of principle, non-Hong Kong resident persons should first approach their jurisdictions of residence for double taxation relief, whether the foreign tax is paid in DTA territories or non-DTA territories.

Part 3 – Amendments relating to Specified Assets

(a) Clause 5 adds a new Part 6D (i.e. new sections 40AN to 40AU) to the IRO to set out the tax treatments in relation to the transfer or succession of specified assets.

Part 4 – Amendments relating to Furnishing of Returns

(a) Clauses 6 to 8 contain amendments to sections 2 and 51AA of IRO and add new sections 51AAB, 51AAC and 51AAD to IRO to lay down the legal framework for enhancing the mechanism for furnishing returns, which provides for the alternative way of mixed filing, enables the Commissioner to require any class or description of persons to furnish a return in the form of an electronic record and provides for the engagement of service providers for furnishing returns by the taxpayers.

(b) Clauses 9 to 13 contain amendments to sections 51A, 51B, 80 and 82A of IRO and add new sections 80K to 80N to IRO to set out the legal obligations and liabilities of a taxpayer and a service provider when the latter is engaged in furnishing a return for the taxpayer.

Part 5 – Amendments relating to Deduction of Foreign Tax

(a) Clauses 14 to 15 contain amendments to sections 16 and 50AA of IRO to expand the scope of foreign tax deduction under the IRO.

LEGISLATIVE TIMETABLE

22. The legislative timetable is as follows –

Publication in the Gazette	19 March 2021
First Reading and commencement of Second Reading debate	24 March 2021
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

The Bill commences on the day on which the amendment ordinance is gazetted after it is enacted by LegCo. Amendments in relation to foreign tax deduction will take effect from the YA 2021/22.

IMPLICATIONS OF THE PROPOSALS

23. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the existing provisions of the IRO. There are no productivity, family, civil service and gender implications. The financial, economic, sustainability and environmental implications are set out at **Annex B**.

B

PUBLIC CONSULTATION

24. We consulted relevant industry representatives on the legislative proposals through the Joint Liaison Committee on Taxation ("JLCT"). JLCT members generally welcomed proposals that would provide more legal clarity and certainty with regard to the tax treatment as well as IRD's plan to facilitate better use of electronic means for furnishing of tax returns. JLCT also supported broadening the scope of foreign tax deduction under the IRO. We took into account the industry's feedback when preparing the legislative amendments.

25. We briefed the LegCo Panel on Financial Affairs on the proposals concerning qualifying amalgamations, specified assets and furnishing of returns on 4 January 2021. Panel members expressed general support for the legislative proposals.

PUBLICITY

26. We will issue a press release on 17 March 2021 and arrange a spokesperson to answer media enquiries.

ENQUIRIES

27. 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
March 2021

Annex A

Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021

Contents

A BILL

To

Amend the Inland Revenue Ordinance to provide for tax treatment in relation to the amalgamation of companies under Division 3 of Part 13 of the Companies Ordinance and tax treatment in relation to the transfer or succession of certain capital assets; to enhance the mechanism for furnishing returns required under the Inland Revenue Ordinance; to enhance the current provisions for deduction of foreign tax paid in respect of certain income, profits or gains; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in Parts 2 to 6.

Part 2

Amendments relating to Qualifying Amalgamations

3. Part 6C added

The Ordinance—

Add

"Part 6C

Qualifying Amalgamations

40AE. Interpretation

In this Part—

amalgamated company (合併後公司) means—

(a) a company—

(i) that amalgamates with one or more of its wholly owned subsidiaries under section 680 of the Companies Ordinance; and

(ii) the shares of which are not cancelled on the amalgamation; or

(b) a wholly owned subsidiary of a body corporate—

(i) that amalgamates with one or more of the other wholly owned subsidiaries of the body corporate under section 681 of the Companies Ordinance; and

(ii) the shares of which are not cancelled on the amalgamation;

amalgamating company (參與合併公司) means a company—

(a) that is amalgamated in a qualifying amalgamation; and

(b) the shares of which are cancelled on the amalgamation;

body corporate (法人團體) has the meaning given by section 2(1) of the Companies Ordinance;

Companies Ordinance (《公司條例》) means the Companies Ordinance (Cap. 622);

company (公司) has the meaning given by section 2(1) of the Companies Ordinance;

date of amalgamation (合併日期), in relation to a qualifying amalgamation, means the effective date of the amalgamation specified in the certificate of amalgamation for the qualifying amalgamation under section 685(1) of the Companies Ordinance;

qualifying amalgamation (合資格合併) means an amalgamation of companies—

(a) under section 680 or 681 of the Companies Ordinance; and

(b) for which a certificate of amalgamation has been issued by the Registrar of Companies under section 684(3) of the Companies Ordinance;

year of cessation (停業年度), in relation to an amalgamating company in a qualifying amalgamation, means the year of assessment in which the amalgamating company is treated as having ceased to carry on its trade, profession or business under section 40AG.

40AF. Application of Part 6C

This Part applies in relation to a qualifying amalgamation that takes effect on or after the date of commencement of the Inland

Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021 (of 2021).

40AG. Amalgamating company treated as having ceased to carry on trade, profession or business

For the purposes of this Ordinance, an amalgamating company in a qualifying amalgamation is treated as having ceased to carry on its trade, profession or business on the day immediately before the date of amalgamation.

40AH. Provisional profits tax for amalgamating company

Despite section 63H(1), an assessor may, having taken section 40AG into account, estimate the amount of provisional profits tax payable by an amalgamating company in a qualifying amalgamation for its year of cessation.

40AI. Provisional profits tax for amalgamated company

Despite section 63H(1), an assessor may estimate the amount of provisional profits tax payable by the amalgamated company in a qualifying amalgamation—

(a) for the year of assessment the basis period for which the date of amalgamation falls in; and

(b) for the succeeding year of assessment,

taking into account the succession of any trade, profession or business from any amalgamating company in the qualifying amalgamation.

40AJ. Obligations and liabilities of amalgamating companies

The amalgamated company in a qualifying amalgamation must comply with all obligations, and meet all liabilities, of each of the amalgamating companies under this Ordinance, for the year

of cessation of the amalgamating companies and all preceding years of assessment.

40AK. Rights, powers and privileges of amalgamating companies

The amalgamated company in a qualifying amalgamation is entitled to all rights, powers and privileges of each of the amalgamating companies under this Ordinance, for the year of cessation of the amalgamating companies and all preceding years of assessment.

40AL. Returns for profits tax for amalgamating companies

Without limiting sections 40AJ and 40AK, the amalgamated company in a qualifying amalgamation must furnish a return for profits tax for each of the amalgamating companies for its year of cessation.

40AM. Election for Schedule 17J

(1) The amalgamated company in a qualifying amalgamation may, within 1 month after the date of amalgamation (or any further period that the Commissioner may allow), elect for Schedule 17J to apply to the amalgamated company and each amalgamating company in the qualifying amalgamation.

(2) If an election under subsection (1) is made, it must be made by the amalgamated company by notice in writing to the Commissioner.

(3) An election made under subsection (1) is irrevocable.

(4) If the condition specified in subsection (5) is met, the requirement under section 51(6) is regarded as having been complied with in respect of each amalgamating company in the qualifying amalgamation.

(5) The condition is that the amalgamated company has given the notice under subsection (2) within 1 month after the date of amalgamation.".

4. Schedule 17J added

After Schedule 17I—

Add

"Schedule 17J

[s. 40AM]

Qualifying Amalgamations—Special Tax Treatment

1. Interpretation

(1) In this Schedule—

commercial building or structure (商業建築物或構築物) has the meaning given by section 40(1);

industrial building or structure (工業建築物或構築物) has the meaning given by section 40(1);

R&D activity (研發活動)—see section 2 of Schedule 45;

R&D expenditure (研發開支)—see section 6 of Schedule 45;

specified event (指明事件)—see section 40AP;

trading stock (營業存貨), in relation to a trade or business, means anything that is—

(a) held for sale in the ordinary course of the trade or business;

(b) in the production process for the sale; or

(c) in the form of materials or supplies to be consumed in the production process or rendering of services.

(2) The following expressions have the same meaning in this Schedule as in section 40AE—

(a) amalgamated company;

(b) amalgamating company;

(c) body corporate;

(d) company;

(e) date of amalgamation;

(f) qualifying amalgamation;

(g) year of cessation.

2. Application of Schedule 17J

This Schedule applies in relation to a qualifying amalgamation—

(a) that takes effect on or after the date of commencement of the Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021 (of 2021); and

(b) for which an election has been made under section 40AM(1).

3. Succession of business and asset etc.

(1) Despite section 40AG, the trade, profession or business carried on by each amalgamating company in a qualifying amalgamation in Hong Kong immediately before the date of amalgamation is, unless the Commissioner is notified otherwise, treated as being carried on by the amalgamated company in Hong Kong beginning on the date of amalgamation.

(2) If the amalgamated company succeeds to any asset (excluding any trading stock) of an amalgamating company on the amalgamation—

(a) subject to section 4 of this Schedule, any asset on revenue account of the amalgamating company is treated as an asset on revenue account of the amalgamated company; and

(b) subject to section 5 of this Schedule, any asset on capital account of the amalgamating company is treated as an asset on capital account of the amalgamated company.

(3) In relation to each asset referred to in subsection (2), the amalgamated company is treated as—

(a) having acquired the asset—

(i) on the date on which the amalgamating company acquired the asset; and

(ii) for an amount that was incurred by the amalgamating company for acquiring the asset; and

(b) having been charged to tax on all such profits, or allowed all such deductions, in connection with the asset, as charged on, or allowed to, the amalgamating company.

4. Reclassification of asset from revenue account to capital account on amalgamation

(1) This section applies if any asset on revenue account of an amalgamating company in a qualifying amalgamation becomes an asset on capital account of the amalgamated company on the amalgamation.

(2) The amalgamating company is deemed to have sold the asset to the amalgamated company immediately before the date of amalgamation for a consideration equal to the amount that the asset would have been realized had it been sold in the open market on the date of amalgamation.

(3) The amalgamated company is deemed to have purchased the asset from the amalgamating company immediately before the date of amalgamation for a consideration equal to the amount referred to in subsection (2).

(4) Any profit arising from the deemed sale under subsection (2) is to be brought into account for the purpose of computing the chargeable profits of the amalgamating company for its year of cessation.

5. Reclassification of asset from capital account to revenue account on amalgamation

(1) This section applies if any asset on capital account of an amalgamating company in a qualifying amalgamation becomes an asset on revenue account of the amalgamated company on the amalgamation.

(2) The amount that the amalgamated company would have incurred, had the asset been purchased in the open market on the date of amalgamation, is taken as the cost of the asset to the amalgamated company for the purpose of computing the profits of the amalgamated company chargeable to tax under Part 4.

(3) The amalgamating company is deemed to have sold the asset to the amalgamated company immediately before the date of amalgamation for a consideration equal to the amount referred to in subsection (2).

6. Succession of trading stock

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to any trading stock of a trade or business carried on by an amalgamating company in Hong Kong on the amalgamation; and

(b) the amalgamated company uses the trading stock as its trading stock for carrying on a trade or business in Hong Kong.

(2) Section 15C does not apply to the amalgamating company.

(3) Subject to section 7 of this Schedule, if the trading stock is accounted for in the financial account of the amalgamated company at a value equal to the carrying amount of the trading stock of the amalgamating company immediately before the date of amalgamation, the amalgamated company is deemed to have purchased the trading stock on the amalgamation for a consideration equal to that value.

(4) Also, subject to section 7 of this Schedule, any unrealized gain or loss in respect of the trading stock that has not been brought into account in ascertaining the chargeable profits of the amalgamating company—

(a) is treated as an unrealized gain or loss of the amalgamated company in respect of the trading stock; and

(b) is to be brought into account in ascertaining the chargeable profits of the amalgamated company—

(i) when it is realized; or

(ii) in accordance with the tax treatment applicable to the amalgamated company.

7. Trading stock accounted for in financial account of amalgamated company at different value

(1) This section applies if the trading stock mentioned in section 6 of this Schedule is accounted for in the financial account of the amalgamated company at a value other than the carrying amount of the trading stock of the amalgamating company immediately before the date of amalgamation.

(2) The amalgamating company is deemed to have sold the trading stock to the amalgamated company immediately before the date of amalgamation for a consideration equal to the value as reflected in the financial account of the amalgamated company on the date of amalgamation.

(3) The amalgamated company is deemed to have purchased the trading stock from the amalgamating company immediately before the date of amalgamation for a consideration equal to the value as reflected in the financial account of the amalgamated company on the date of amalgamation.

(4) Any profit arising from the deemed sale under subsection (2) is to be brought into account for the purpose of computing the chargeable profits of the amalgamating company for its year of cessation.

8. Amalgamating company's trading stock not used by amalgamated company as trading stock

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to any trading stock of a trade or business carried on by an amalgamating company in Hong Kong (***relevant stock***) on the amalgamation; and

(b) the amalgamated company does not use the relevant stock as its trading stock for carrying on a trade or business in Hong Kong.

(2) Section 15C applies to the amalgamating company.

(3) The relevant stock is to be valued in accordance with section 15C(b) for the purpose of computing the profits of the amalgamating company chargeable to tax under Part 4 for its year of cessation.

(4) The amalgamated company is deemed to have purchased the relevant stock for a consideration equal to the value referred to in subsection (3).

9. Effect of cancellation of shares of amalgamating company

(1) This section applies if in a qualifying amalgamation, an amalgamating company (***first company***) holds shares of another amalgamating company (***second company***).

(2) The first company is deemed to have sold the shares of the second company immediately before the date of amalgamation for an amount equal to the cost incurred by the first company for acquiring the shares.

(3) If—

(a) the first company has borrowed money to acquire shares of the second company; and

(b) the liability arising from the money borrowed is transferred to, and becomes the liability of, the amalgamated company,

subject to subsection (4), no deduction is to be allowed for any interest or other borrowing costs incurred by the amalgamated company on or after the date of amalgamation on the liability (***incurred costs***).

(4) The incurred costs are allowable for deduction—

(a) if the shares of the second company are held by the first company on revenue account; and

(b) to the extent that they are incurred in the production of profits for which the amalgamated company is chargeable to tax under Part 4.

10. Succession of machinery or plant, or rights or entitlement to rights, related to R&D activities

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to—

(i) any machinery or plant used for; or

(ii) any rights or entitlement to any rights generated from,

R&D activities of an amalgamating company on the amalgamation; and

(b) a deduction for the related R&D expenditure has been allowed to the amalgamating company under section 16B(2).

(2) Section 16B(5) does not apply to the amalgamating company because of the succession.

(3) If a situation mentioned in section 16(1) or 17(1) of Schedule 45 arises, or a specified event occurs, in respect of the machinery or plant, or the rights or entitlement to the rights, on or after the date of amalgamation, section 16B(5) applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (4) occurred.

(4) The circumstances are—

(a) that the amalgamating company had continued to own the machinery or plant, or the rights or entitlement to the rights; and

(b) that the amalgamating company had done all such things in connection with owning the machinery or plant, or the rights or entitlement to the rights, as were done by the amalgamated company.

11. Succession of patent rights etc.

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to any patent rights (as defined by section 16E(4)), or rights to any know-how (as defined by that section), of an amalgamating company on the amalgamation; and

(b) a deduction for the capital expenditure incurred on the purchase of the rights has been allowed to the amalgamating company under section 16E(1).

(2) Section 16E(3) does not apply to the amalgamating company because of the succession.

(3) If a situation mentioned in section 16E(3) arises, or a specified event occurs, in respect of the rights on or after the date of amalgamation, that section applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (4) occurred.

(4) The circumstances are—

(a) that the amalgamating company had continued to own the rights; and

(b) that the amalgamating company had done all such things in connection with owning the rights as were done by the amalgamated company.

12. Succession of specified intellectual property rights

(1) This section applies if the amalgamated company in a qualifying amalgamation succeeds to any specified intellectual property rights (as defined by section 16EA(11)) of an amalgamating company on the amalgamation.

(2) Subject to subsection (4), any balance of deduction allowable under section 16EA(2) in respect of the rights is to be allowed to the amalgamated company for a year of assessment as it would have been allowed to the amalgamating company for that year of assessment had the circumstances specified in subsection (3) occurred.

(3) The circumstances specified for the purposes of subsection (2) are—

(a) that the amalgamating company had continued to own the rights; and

(b) that the amalgamating company had done all such things in connection with owning the rights as were done by the amalgamated company.

(4) If the amalgamating company is eligible to claim a deduction under section 16EA(2) for its year of cessation, no deduction under that section is to be allowed to the amalgamated company for the same year of assessment.

(5) Section 16EB(2) does not apply to the amalgamating company because of the succession.

(6) If a situation mentioned in section 16EB(2) arises, or a specified event occurs, in respect of the rights on or after

the date of amalgamation, that section applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (7) occurred.

(7) The circumstances specified for the purposes of subsection (6) are—

(a) that the amalgamating company had continued to own the rights; and

(b) that the amalgamating company had done all such things in connection with owning the rights as were done by the amalgamated company.

(8) However, if any deduction under subsection (2) has been allowed to the amalgamated company, the circumstances specified in subsection (7) for the purposes of subsection (6) would then be—

(a) that the amalgamating company had continued to own the rights;

(b) that the amalgamating company had done all such things in connection with owning the rights as were done by the amalgamated company; and

(c) that the amalgamating company had continued to be allowed all such deductions in connection with owning the rights as were allowed to the amalgamated company.

13. Succession of refurbished buildings or structures

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to an amalgamating company's interest in any renovation or

refurbishment of a building or structure (as defined by section 16F(5)) on the amalgamation; and

(b) a deduction for the capital expenditure incurred on the renovation or refurbishment has been allowed to the amalgamating company under section 16F(1).

(2) Subject to subsection (4), any balance of deduction allowable under section 16F(1) in respect of the expenditure is to be allowed to the amalgamated company.

(3) However, no deduction is to be allowed to the amalgamated company for a year of assessment unless the deduction would have been allowed to the amalgamating company for that year of assessment but for the amalgamation.

(4) If the amalgamating company is eligible to claim a deduction under section 16F(1) for its year of cessation, no deduction under that section is to be allowed to the amalgamated company for the same year of assessment.

14. Succession of prescribed fixed assets

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to any prescribed fixed assets (as defined by section 16G(6)) of an amalgamating company on the amalgamation; and

(b) a deduction for the specified capital expenditure (as defined by section 16G(6)) incurred on the provision of the assets has been allowed to the amalgamating company under section 16G(1).

(2) Section 16G(3) does not apply to the amalgamating company because of the succession.

(3) If a situation mentioned in section 16G(3) arises, or a specified event occurs, in respect of the assets on or after the date of amalgamation, that section applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (4) occurred.

(4) The circumstances are—

(a) that the amalgamating company had continued to own the assets; and

(b) that the amalgamating company had done all such things in connection with owning the assets as were done by the amalgamated company.

15. Succession of environmental protection facilities

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to any environmental protection facilities (as defined by section 16H(1)) of an amalgamating company on the amalgamation; and

(b) a deduction for the specified capital expenditure (as defined by section 16H(1)) in relation to the facilities has been allowed to the amalgamating company under section 16I(2), (3), (3A), (3B) or (4).

(2) Section 16J(2), (2A), (3), (3A), (5), (5A) and (5B) does not apply to the amalgamating company because of the succession.

(3) If a situation mentioned in section 16J(2), (2A), (3), (3A), (5), (5A) or (5B) arises, or a specified event occurs, in respect of the facilities on or after the date of amalgamation, section 16J applies to the amalgamated

company as it would have applied to the amalgamating company had the circumstances specified in subsection (4) occurred.

(4) The circumstances are—

(a) that the amalgamating company had continued to own the facilities; and

(b) that the amalgamating company had done all such things in connection with owning the facilities as were done by the amalgamated company.

16. Succession of commercial or industrial buildings or structures—initial and annual allowances

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to an amalgamating company's interest in any commercial building or structure, or in any industrial building or structure, on the amalgamation; and

(b) the interest is the relevant interest (as defined by section 40(1)) in relation to the capital expenditure (as defined by that section) incurred on the construction of the building or structure.

(2) If—

(a) an initial allowance has been made to the amalgamating company in relation to the capital expenditure incurred on the construction of the building or structure under section 34(1); and

(b) the building or structure has not been used before the date of amalgamation,

paragraph (b) of the proviso to section 34(1) does not apply to the amalgamating company because of the succession.

(3) If the building or structure has not been used before the date of amalgamation, and when it first comes to be used, it is not an industrial building or structure—

(a) paragraph (b) of the proviso to section 34(1) does not apply in relation to the initial allowance made to the amalgamating company; and

(b) a sum equal to the amount of the initial allowance made to the amalgamating company is deemed to be a trading receipt—

(i) arising in, or derived from, Hong Kong of a trade, profession or business carried on by the amalgamated company in Hong Kong; and

(ii) accruing on the date of amalgamation.

(4) Despite section 34(1), no initial allowance is to be made to the amalgamated company because of the succession.

(5) The annual allowances under section 33A or 34(2) are, subject to subsection (7), to be made to the amalgamated company for a year of assessment as they would have been made to the amalgamating company for that year of assessment had the circumstances specified in subsection (6) occurred.

(6) The circumstances are—

(a) that the amalgamating company had continued to be entitled to the relevant interest in relation to the capital expenditure incurred on the construction of the building or structure; and

(b) that the amalgamating company had done all such things in connection with the entitlement to the

relevant interest as were done by the amalgamated company.

(7) If the amalgamating company is eligible to claim an annual allowance under section 33A or 34(2) for its year of cessation, no annual allowance under that section is to be made to the amalgamated company for the same year of assessment.

17. Succession of commercial or industrial buildings or structures—balancing allowances and charges

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to an amalgamating company's interest in any commercial building or structure, or in any industrial building or structure, on the amalgamation; and

(b) the interest is the relevant interest (as defined by section 40(1)) in relation to the capital expenditure (as defined by that section) incurred on the construction of the building or structure.

(2) Section 35 does not apply to the amalgamating company because of the succession.

(3) If an event mentioned in section 35(1)(a) or a specified event occurs in respect of the relevant interest on or after the date of amalgamation, any balancing allowance or balancing charge under section 35 in respect of the relevant interest is to be made to the amalgamated company as it would have been made to the amalgamating company had the circumstances specified in subsection (4) occurred.

(4) The circumstances specified for the purposes of subsection (3) are—

(a) that the amalgamating company had continued to be entitled to the relevant interest in relation to the capital expenditure incurred on the construction of the building or structure; and

(b) that the amalgamating company had done all such things in connection with the entitlement to the relevant interest as were done by the amalgamated company.

(5) However, if any allowance under section 16(5) of this Schedule has been made to the amalgamated company, the circumstances specified in subsection (4) for the purposes of subsection (3) would then be—

(a) that the amalgamating company had continued to be entitled to the relevant interest in relation to the capital expenditure incurred on the construction of the building or structure;

(b) that the amalgamating company had done all such things in connection with the entitlement to the relevant interest as were done by the amalgamated company; and

(c) that the amalgamating company had continued to be made all such allowances in connection with the entitlement of the relevant interest as were made to the amalgamated company.

18. Succession of machinery or plant not related to R&D activities—annual allowances

(1) This section applies if the amalgamated company in a qualifying amalgamation succeeds to any machinery or plant not related to R&D activities of an amalgamating company on the amalgamation.

(2) Despite sections 37(1), 37A(1) and 39B(1), no initial allowance is to be made to the amalgamated company because of the succession.

(3) Despite sections 37(4) and 39B(7), the annual allowances under section 37(2), 37A(2) or 39B(2) are, subject to subsection (6), to be made to the amalgamated company for a year of assessment as they would have been made to the amalgamating company for that year of assessment had the circumstances specified in subsection (4) occurred.

(4) The circumstances specified for the purposes of subsection (3) are—

(a) that the amalgamating company had continued to own the machinery or plant; and

(b) that the amalgamating company had done all such things in connection with owning the machinery or plant as were done by the amalgamated company.

(5) However, if any annual allowance in respect of the machinery or plant has been made to the amalgamated company for the previous years of assessment, the circumstances specified in subsection (4) for the purposes of subsection (3) would then be—

(a) that the amalgamating company had continued to own the machinery or plant;

(b) that the amalgamating company had done all such things in connection with owning the machinery or plant as were done by the amalgamated company; and

(c) that the amalgamating company had been made all such allowances in connection with owning the machinery or plant as were made to the

amalgamated company for the previous years of assessment.

(6) If the amalgamating company is eligible to claim an annual allowance under section 37(2), 37A(2) or 39B(2) for its year of cessation, no annual allowance under that section is to be made to the amalgamated company for the same year of assessment.

19. Succession of machinery or plant not related to R&D activities—balancing allowances and charges

(1) This section applies if the amalgamated company in a qualifying amalgamation succeeds to any machinery or plant not related to R&D activities of an amalgamating company on the amalgamation.

(2) Sections 38 and 39D do not apply to the amalgamating company because of the succession.

(3) If an event mentioned in section 38(1) or a specified event occurs in respect of the machinery or plant on or after the date of amalgamation, section 38 applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (5) occurred.

(4) If a situation mentioned in section 39D arises, or a specified event occurs, in respect of the machinery or plant on or after the date of amalgamation, that section applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (5) occurred.

(5) The circumstances specified for the purposes of subsections (3) and (4) are—

(a) that the amalgamating company had continued to own the machinery or plant; and

(b) that the amalgamating company had done all such things in connection with owning the machinery or plant as were done by the amalgamated company.

(6) However, if any annual allowance in respect of the machinery or plant has been made to the amalgamated company, the circumstances specified in subsection (5) for the purposes of subsections (3) and (4) would then be—

(a) that the amalgamating company had continued to own the machinery or plant;

(b) that the amalgamating company had done all such things in connection with owning the machinery or plant as were done by the amalgamated company; and

(c) that the amalgamating company had continued to be made all such allowances in connection with owning the machinery or plant as were made to the amalgamated company.

20. Deduction of special payment under recognized retirement scheme

(1) This section applies if—

(a) an amalgamating company in a qualifying amalgamation has made a payment to a recognized retirement scheme; and

(b) a deduction in respect of the payment has been allowed to the amalgamating company under section 16A.

(2) Subject to subsection (4), any balance of deduction allowable under section 16A(1) in respect of the payment is to be allowed to the amalgamated company.

(3) However, no deduction is to be allowed to the amalgamated company for a year of assessment unless the deduction would have been allowed to the amalgamating company for that year of assessment but for the amalgamation.

(4) If the amalgamating company is eligible to claim a deduction under section 16A(1) for its year of cessation, no deduction under that section is to be allowed to the amalgamated company for the same year of assessment.

21. Deduction for bad debts, impairment losses, expenditure or losses

(1) This section applies if at any time after a qualifying amalgamation, the amalgamated company—

(a) writes off as bad or doubtful the amount of a debt, or recognizes an impairment loss in respect of a credit-impaired debt, to which the amalgamated company succeeds from an amalgamating company on the amalgamation; or

(b) incurs an amount of expenditure or loss as a result of an act, or a failure to act, of an amalgamating company on the amalgamation.

(2) A deduction is to be allowed to the amalgamated company for the amount of the debt, impairment loss, expenditure or loss (whichever is applicable) if—

(a) the amalgamating company would have been allowed the deduction but for the amalgamation; and

(b) the amalgamated company is not otherwise allowed the deduction.

22. Amount of debt recovered or impairment loss reversed treated as trading receipt

(1) This section applies if at any time after a qualifying amalgamation, the amalgamated company—

(a) recovers any amount of a debt; or

(b) reverses any amount of impairment loss of a debt,

that has been deducted under section 16(1)(d) or 18K(3) in ascertaining the profits of an amalgamating company in the amalgamation chargeable to tax under Part 4.

(2) The amount of a debt recovered, or the amount of impairment loss reversed, is, if the condition specified in subsection (3) is met, treated as a trading receipt—

(a) arising in, or derived from, Hong Kong of a trade, profession or business carried on by the amalgamated company in Hong Kong; and

(b) accruing on the date of recovery or reversal.

(3) The condition is that the amount would have been treated as the amalgamating company's trading receipt chargeable to tax under Part 4 but for the amalgamation.

23. Release of debt

(1) This section applies if any amount of a debt owed by an amalgamating company in a qualifying amalgamation in the course of carrying on a trade, profession or business in Hong Kong before the date of amalgamation is released at any time on or after that date.

(2) The amount released is, if the condition specified in subsection (3) is met, deemed to be a trading receipt—

(a) arising in, or derived from, Hong Kong of a trade, profession or business carried on by the amalgamated company in Hong Kong; and

(b) accruing at the time when the release was effected.

(3) The condition is that the amount would have been deemed to be the amalgamating company's trading receipt chargeable to tax under Part 4 but for the amalgamation.

24. Treatment of pre-amalgamation losses of amalgamating companies

(1) This section applies if an amalgamating company in a qualifying amalgamation has any pre-amalgamation loss.

(2) Except as provided for in subsection (3), a pre-amalgamation loss of the amalgamating company cannot be—

(a) carried forward to the amalgamated company; or

(b) set off against the assessable profits of the amalgamated company.

(3) Subject to subsections (4) and (5), sections 19C, 19CAB, 19CAC and 19CB apply in relation to any qualifying loss of the amalgamating company as if the amalgamated company were the amalgamating company for the purposes of—

(a) carrying forward the qualifying loss; and

(b) setting off against the assessable profits of the amalgamated company.

(4) Any set off mentioned in subsection (3)(b) can only be made against—

(a) the assessable profits of the amalgamated company derived from the same trade, profession or business—

(i) that was carried on by the amalgamating company immediately before the date of amalgamation; and

(ii) that is succeeded by the amalgamated company; or

(b) the amalgamated company's share of assessable profits of a partnership through succession to the amalgamating company's interest in the partnership.

(5) However, no set off mentioned in subsection (3)(b) can be made unless the amalgamated company proves to the satisfaction of the Commissioner—

(a) that there are good commercial reasons for carrying out the qualifying amalgamation; and

(b) that avoidance of tax is not the main purpose, or one of the main purposes, of carrying out the qualifying amalgamation.

(6) In this section—

pre-amalgamation loss (合併前虧損), in relation to an amalgamating company in a qualifying amalgamation, means—

(a) any loss—

(i) that is sustained in a trade, profession or business carried on by the amalgamating company before the date of amalgamation; and

(ii) that is not set off under section 19C, 19CAB, 19CAC or 19CB; or

(b) the amalgamating company's share of loss—

(i) that is incurred in a trade, profession or business carried on by the amalgamating company in a partnership with another person before the date of amalgamation; and

(ii) that is not set off under section 19C, 19CAB, 19CAC or 19CB;

qualifying loss (合資格虧損), in relation to an amalgamating company and the amalgamated company in a qualifying amalgamation, means such part of a pre-amalgamation loss of the amalgamating company that was incurred at any time after the amalgamating company and the amalgamated company entered into a qualifying relationship.

(7) For the purposes of the definition of ***qualifying loss*** in subsection (6), 2 companies have a qualifying relationship if—

(a) one of the companies is a wholly owned subsidiary of the other company; or

(b) both companies are wholly owned subsidiaries of a body corporate.

25. Treatment of pre-amalgamation losses of amalgamated companies

(1) This section applies if the amalgamated company in a qualifying amalgamation has any pre-amalgamation loss.

(2) Subject to subsections (3) and (4), sections 19C, 19CAB, 19CAC and 19CB apply in relation to a pre-amalgamation loss of the amalgamated company.

(3) In relation to an amalgamating company in the qualifying amalgamation, except as provided for in subsection (4), a pre-amalgamation loss of the amalgamated company cannot be used to set off against—

(a) the assessable profits of the amalgamated company derived from the same trade, profession or business—

(i) that was carried on by the amalgamating company immediately before the date of amalgamation; and

(ii) that is succeeded by the amalgamated company; or

(b) the amalgamated company's share of assessable profits of a partnership through succession to the amalgamating company's interest in the partnership.

(4) Subsection (3) does not apply to the qualifying loss of the amalgamated company if all of the following conditions are met—

(a) the trade continuation condition specified in section 26(1) of this Schedule;

(b) the financial resources condition specified in section 26(2) of this Schedule;

(c) the Commissioner's satisfaction condition specified in section 26(3) of this Schedule.

(5) In this section—

pre-amalgamation loss (合併前虧損), in relation to an amalgamated company in a qualifying amalgamation, means—

(a) any loss—

(i) that is sustained in a trade, profession or business carried on by the amalgamated company before the date of amalgamation; and

(ii) that is not set off under section 19C, 19CAB, 19CAC or 19CB; or

(b) the amalgamated company's share of loss—

(i) that is incurred in a trade, profession or business carried on by the amalgamated

company in partnership with another person before the date of amalgamation; and

(ii) that is not set off under section 19C, 19CAB, 19CAC or 19CB;

qualifying loss (合資格虧損), in relation to the amalgamated company and an amalgamating company in a qualifying amalgamation, means such part of a pre-amalgamation loss of the amalgamated company that was incurred at any time after the amalgamated company and the amalgamating company entered into a qualifying relationship.

(6) For the purposes of the definition of ***qualifying loss*** in subsection (5), 2 companies have a qualifying relationship if—

(a) one of the companies is a wholly owned subsidiary of the other company; or

(b) both companies are wholly owned subsidiaries of a body corporate.

26. Conditions for purposes of section 25(4) of this Schedule

(1) For the purposes of section 25(4)(a) of this Schedule, the trade continuation condition is—

(a) that the amalgamated company has continued to carry on a trade, profession or business since the qualifying loss was incurred up to the date of amalgamation; and

(b) if the qualifying loss was a share of loss incurred in a trade, profession or business carried on by the amalgamated company in partnership with another person—that the partnership has continued to carry on a trade, profession or business since the

qualifying loss was incurred up to the date of amalgamation.

(2) For the purposes of section 25(4)(b) of this Schedule, the financial resources condition is that the amalgamated company has adequate financial resources (excluding any loan from an associated corporation of the amalgamated company) immediately before the date of amalgamation to purchase, other than through amalgamation—

(a) the trade, profession or business carried on by the amalgamating company immediately before the date of amalgamation; and

(b) the amalgamating company's interest in any partnership in which the amalgamating company was a partner immediately before the date of amalgamation.

(3) For the purposes of section 25(4)(c) of this Schedule, the Commissioner's satisfaction condition is that the amalgamated company proves to the satisfaction of the Commissioner—

(a) that there are good commercial reasons for carrying out the qualifying amalgamation; and

(b) that avoidance of tax is not the main purpose, or one of the main purposes, of carrying out the qualifying amalgamation.

(4) In this section—

associated corporation (相聯法團), in relation to an amalgamated company in a qualifying amalgamation, has the meaning in relation to a corporation given by section 14C(1);

qualifying loss (合資格虧損) has the meaning given by section 25(5) of this Schedule.

27. Election for basis for ascertainment of profits and concessionary tax rate treatment etc.

(1) This section applies if—

(a) an amalgamating company in a qualifying amalgamation has, in carrying on a trade, profession or business in Hong Kong before the date of amalgamation, made an irrevocable election under a provision of this Ordinance for the purpose of—

(i) ascertaining the profits derived from the trade, profession or business in respect of which the amalgamating company is chargeable to tax under Part 4;

(ii) applying the rate specified in one of the concession provisions (as defined by section 19CA) to the assessable profits (or part of the assessable profits) of the amalgamating company derived from the trade, profession or business; or

(iii) furnishing a return under section 50C as a reporting financial institution (as defined by section 50A(1)); and

(b) the amalgamated company continues to carry on the trade, profession or business of the amalgamating company on or after the date of amalgamation.

(2) The amalgamated company is treated as if it had made the same irrevocable election for the purpose of—

(a) ascertaining the profits derived from the trade, profession or business mentioned in subsection (1)(a)(i) in respect of which the amalgamated company is chargeable to tax under Part 4;

(b) applying the rate specified in one of the concession provisions (as defined by section 19CA) to the assessable profits (or part of the assessable profits) of the amalgamated company derived from the trade, profession or business mentioned in subsection (1)(a)(ii); or

(c) furnishing a return under section 50C as a reporting financial institution (as defined by section 50A(1)).

(3) Despite subsection (2), the election ceases to have effect if the conditions for the election in the relevant provisions are not met by the amalgamated company at any time after the amalgamation.

28. Income accrued or derived after date of amalgamation

(1) This section applies if—

(a) a sum is accrued to, or derived by, the amalgamated company in a qualifying amalgamation; or

(b) a sum (that would have been deemed to be an income of an amalgamating company in the amalgamation chargeable to tax under Part 4 but for the amalgamation) is accrued to, or derived by, a person,

as a result of a certain thing that the amalgamating company did, or did not do, before the date of amalgamation.

(2) If the condition specified in subsection (3) is met, the sum is deemed to be a trading receipt arising in, or derived from, Hong Kong of a trade, profession or business carried on by the amalgamated company in Hong Kong.

(3) The condition is that the sum would have been a trading receipt (or would have been deemed to be a trading

receipt) of the amalgamating company chargeable to tax under Part 4 but for the amalgamation.

29. Refund from approved retirement scheme after date of amalgamation

(1) This section applies if, in ascertaining the assessable profits of an amalgamating company in a qualifying amalgamation, deductions have been allowed for—

(a) contributions paid as an employer to a recognized occupational retirement scheme; or

(b) voluntary contributions paid as an employer to a mandatory provident fund scheme.

(2) If the condition specified in subsection (3) is met, any refund of the contributions or voluntary contributions (whichever is applicable) received by, or accrued to, the amalgamated company on or after the date of amalgamation is deemed to be a trading receipt arising in, or derived from, Hong Kong of a trade, profession or business carried on by the amalgamated company in Hong Kong.

(3) The condition is that the refund would have been deemed to be the amalgamating company's trading receipt chargeable to tax under Part 4 but for the amalgamation.".

Part 3

Amendments relating to Specified Assets

5. Part 6D added

The Ordinance—

Add

"**Part 6D**

Specified Assets

40AN. Interpretation

In this Part—

amalgamating company (參與合併公司) has the meaning given by section 40AE;

qualifying amalgamation (合資格合併) has the meaning given by section 40AE;

specified asset (指明資產)—see section 40AO;

specified event (指明事件)—see section 40AP.

40AO. Meaning of *specified asset*

(1) A specified asset is, in relation to a person—

(a) any machinery or plant for R&D activities the capital expenditure (as defined by section 40(1)) incurred in the provision of which has been allowed for deduction to the person as R&D expenditure under section 16B;

(b) any rights or entitlement to any rights, that were, or would be, generated from one or more R&D

activities for which the relevant R&D expenditure has been allowed to the person as a deduction under section 16B;

(c) any patent rights (as defined by section 16E(4)), or rights to any know-how (as defined by that section), for which a deduction for the relevant capital expenditure has been allowed to the person under section 16E;

(d) any specified intellectual property rights (as defined by section 16EA(11)) for which a deduction for the relevant specified capital expenditure (as defined by that section) has been allowed to the person under section 16EA;

(e) any prescribed fixed asset (as defined by section 16G(6)) for which a deduction for the relevant specified capital expenditure (as defined by that section) has been allowed to the person under section 16G;

(f) any environmental protection facilities (as defined by section 16H(1)) for which a deduction for the relevant specified capital expenditure (as defined by that section) has been allowed to the person under section 16I;

(g) any commercial building or structure (as defined by section 40(1)) for which an annual allowance has been made to the person under section 33A;

(h) any industrial building or structure (as defined by section 40(1)) for which an initial allowance or annual allowance has been made to the person under section 34; or

(i) any machinery or plant for which an initial allowance or annual allowance has been made to the person under section 37, 37A or 39B.

(2) For the purposes of subsection (1), if the asset referred to in subsection (1)(a), (b), (c), (d), (e), (f), (g), (h) or (i) is an asset succeeded by the person from an amalgamating company in a qualifying amalgamation, and an election has been made by the person under section 40AM(1)—

(a) the reference to a deduction allowed to the person under subsection (1)(a), (b), (c), (d), (e) or (f) includes a deduction allowed to the amalgamating company; and

(b) the reference to an initial allowance or annual allowance made to the person under subsection (1)(g), (h) or (i) includes an initial allowance or annual allowance made to the amalgamating company.

(3) In this section—

R&D activity (研發活動)—see section 2 of Schedule 45;

R&D expenditure (研發開支)—see section 6 of Schedule 45.

40AP. Meaning of *specified event*

A specified event is, in relation to any specified asset of a person (***relevant person***)—

(a) the transfer of the specified asset to another person without sale, other than by way of—

(i) succession on the relevant person's death; or

(ii) a qualifying amalgamation; or

(b) the succession to the specified asset by another person through a qualifying amalgamation in

relation to which no election has been made under section 40AM(1).

40AQ. Application of Part 6D

This Part applies in relation to a specified event that occurs on or after the date of commencement of the Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021 (of 2021).

40AR. Non-application of certain provisions because of application of Part 6D

If this Part applies in relation to a person's specified asset, sections 16J(5B), 37(4), 38(4), 39B(7) and 39D(3) and (4) do not apply to the relevant person, or the other person, referred to in section 40AP in relation to the specified asset.

40AS. Deemed selling price of specified asset

(1) If a specified event occurs in relation to a person, the person's specified asset is deemed to have been sold for a sum that is the lower of—

(a) a price that the Commissioner considers the specified asset would have been realized had it been sold in the open market at the time of the specified event; and

(b) if the specified asset is—

(i) an asset referred to in section 40AO(1)(a) or (b)—the total amount of deductions allowed to the person under section 16B for the expenditures incurred by the person; or

(ii) an asset referred to in section 40AO(1)(c), (d), (e), (f), (g), (h) or (i)—the capital expenditure incurred by the person.

(2) For the purposes of subsection (1), if the asset mentioned in subsection (1)(b)(i) or (ii) is an asset succeeded by the person from an amalgamating company in a qualifying amalgamation, and an election has been made by the person under section 40AM(1)—

(a) the total amount of deductions allowed to the person mentioned in subsection (1)(b)(i) must also include the deductions allowed to the amalgamating company under section 16B; and

(b) the capital expenditure incurred by the person mentioned in subsection (1)(b)(ii) must also include the capital expenditure incurred by the amalgamating company.

40AT. Deemed proceeds of sale

For the purposes of section 16B(5), 16E(3), 16EB(2), 16G(3), 16J, 35, 38 or 39D, or section 16 or 17 of Schedule 45, if a person's specified asset is deemed to have been sold under section 40AS(1), the person is deemed to have received proceeds of sale of the specified asset of an amount equal to the sum ascertained under section 40AS(1).

40AU. Deemed expenditure

For the purpose of computing the chargeable profits, under Part 4, of a person—

(a) to whom a specified asset is transferred in a way referred to in section 40AP(a); or

(b) who succeeds to a specified asset in the way referred to in section 40AP(b),

the person is deemed to have incurred expenditure on the purchase of the specified asset of an amount equal to the sum ascertained under section 40AS(1).".

Part 4

Amendments relating to Furnishing of Returns

6. Section 2 amended (interpretation)

Section 2(1)—

Repeal the definition of *service provider*

Substitute

"***service provider*** (服務提供者)—

(a) except in relation to a provision of Part 9 or 9A—has the meaning given by section 50A(1);

(b) in relation to a provision of Part 9—has the meaning given by section 51AAD(8); or

(c) in relation to a provision of Part 9A—has the meaning given by section 58B(2);".

7. Section 51AA amended (form and manner of furnishing return, etc. under section 51)

(1) Section 51AA—

Repeal subsection (1)

Substitute

"(1) Without limiting section 51AAB and except as provided in subsection (2) or (3), a return required to be furnished under section 51(1)—

(a) must be furnished in paper form—

(i) using a printed form specified by the Board of Inland Revenue and provided by the Commissioner; or

(ii) using a template (if available)—

(A) specified by the Board of Inland Revenue and made available by the Commissioner; and

(B) downloaded from a system specified by the Board of Inland Revenue; and

(b) must contain the particulars specified in the printed form or template.

(1A) Despite subsection (1)(a), the particulars referred to in subsection (1)(b) may (where appropriate) be furnished in a form other than paper form, as specified by the Board of Inland Revenue.".

(2) Before section 51AA(6)(a)—

Add

"(aa) for the purposes of subsection (1)(b)—the manner of generating or sending the particulars;".

(3) Section 51AA(6)(a)—

Repeal

"the manner"

Substitute

"for the purposes of subsection (2)—the manner".

(4) Section 51AA(6)(b)—

Repeal

"and".

(5) Section 51AA(6)(c)—

Repeal

"record."

Substitute

"record; and".

(6) After section 51AA(6)(c)—

Add

"(d) any other matter relating to furnishing a return under this section.".

8. Sections 51AAB, 51AAC and 51AAD added

After section 51AA—

Add

"51AAB. Commissioner may require certain returns to be furnished in form of electronic record

(1) The Commissioner may, by notice published in the Gazette, require any class or description of persons to furnish a return required to be furnished under section 51(1) in the form of an electronic record.

(2) The requirement relating to a return furnished in the form of an electronic record under section 51AA(2) also applies to a return furnished in the form of an electronic record under subsection (1).

51AAC. Return disregarded if requirement not complied with

(1) If an applicable requirement under section 51AA or 51AAB is not complied with in respect of a return, the Commissioner may disregard the return and treat it as not having been furnished for the purposes of section 51(1).

(2) Despite subsection (1), the Commissioner may, either generally or in a particular case, accept a return furnished for the purposes of section 51(1).

(3) The Commissioner may, by a means that the Commissioner considers appropriate, specify the

circumstances or conditions under which a return is to be accepted under subsection (2).

51AAD. Service provider to be engaged to furnish return

(1) A taxpayer may, in a case specified by the Commissioner, engage a service provider to furnish a return under section 51(1) for or on behalf of the taxpayer.

(2) In furnishing the return, the service provider must comply with all the applicable requirements under sections 51AA and 51AAB.

(3) Before the return is furnished to the Commissioner, the service provider must obtain a confirmation (in a form specified by the Commissioner) from the taxpayer stating that the information contained in the return is correct and complete to the best of the taxpayer's knowledge and belief.

(4) The service provider must retain the confirmation for a period of not less than 7 years beginning on the date on which the return is furnished to the Commissioner.

(5) To avoid doubt, despite the engagement of a service provider under subsection (1), the taxpayer is not relieved from the taxpayer's obligation under section 51(1).

(6) For the purposes of subsection (1), a case to be specified by the Commissioner—

(a) must be specified by notice published in the Gazette; and

(b) may be specified by reference to a class or description of persons or returns.

(7) A notice under subsection (6) is not subsidiary legislation.

(8) In this section—

service provider (服務提供者) means a person engaged to carry out a taxpayer's obligation under section 51(1);

taxpayer (納稅人) means a person who is under the obligation to furnish a return under section 51(1).".

9. Section 51A amended (power to require statement of assets and liabilities, etc.)

After section 51A(1)—

Add

"(1A) For the purposes of subsection (1), engaging a service provider under section 51AAD(1) does not in itself constitute a reasonable excuse.".

10. Section 51B amended (power to issue search warrant)

After section 51B(1)—

Add

"(1AAAA) For the purposes of subsection (1)(a), engaging a service provider under section 51AAD(1) does not in itself constitute a reasonable excuse.".

11. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)

(1) Section 80(2)(a)—

Repeal

"makes an"

Substitute

"makes, or causes or allows to be made on the person's behalf, an".

(2) After section 80(2)—

Add

"(2AA) For the purposes of subsection (2)(a), (b), (c) and (d), engaging a service provider (as defined by section 51AAD(8)) under section 51AAD(1) does not in itself constitute a reasonable excuse.".

12. Sections 80K to 80N added

After section 80J—

Add

"**80K. Offences of service provider in relation to furnishing of returns under section 51(1)**

(1) This section applies if a service provider is engaged by a taxpayer under section 51AAD(1) to furnish for or on behalf of the taxpayer a return required to be furnished under section 51(1).

(2) The service provider commits an offence if the service provider, without reasonable excuse, fails to furnish the return for or on behalf of the taxpayer.

(3) The service provider commits an offence if the service provider, without reasonable excuse, fails to comply with a requirement under section 51AAD(3) or (4).

(4) The service provider commits an offence if, without reasonable excuse—

(a) the service provider furnishes the return for or on behalf of the taxpayer but not in accordance with the information provided, or instructions given, by the taxpayer to the service provider; and

(b) the return so furnished is incorrect in a material particular (whether or not because any information is omitted from the return).

(5) A service provider who commits an offence under subsection (2), (3) or (4) is liable on conviction to a fine at level 3.

(6) In this section—

service provider (服務提供者) has the meaning given by section 51AAD(8);

taxpayer (納稅人) has the meaning given by section 51AAD(8).

80L. Court may order service providers to do certain acts

(1) The court may order a service provider (as defined by section 51AAD(8)) who commits an offence under section 80K(2) or (3) to do, within the time specified in the order, the act that the service provider has failed to do.

(2) A service provider who fails to comply with an order of the court under subsection (1) commits an offence and is liable on conviction to a fine at level 6.

80M. Proceedings for offences relating to service providers

Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings for an offence under section 80K(2), (3) or (4) may be brought within 6 years after the expiry of the year of assessment during which the offence was committed.

80N. Commissioner may compound offences

The Commissioner may—

(a) compound an offence under section 80K(2), (3) or (4); and

(b) before judgment, stay or compound any proceedings for the offence.".

13. Section 82A amended (additional tax in certain cases)

(1) Section 82A(1)(a)—

Repeal

"makes an"

Substitute

"makes, or causes or allows to be made on the person's behalf, an".

(2) After section 82A(1)—

Add

"(1AA) For the purposes of subsection (1)(a), (b), (c) and (d), engaging a service provider (as defined by section 51AAD(8)) under section 51AAD(1) does not in itself constitute a reasonable excuse.".

Part 5

Amendments relating to Deduction of Foreign Tax

14. Section 16 amended (ascertainment of chargeable profits)

(1) Section 16(1)(c)—

Repeal

"elsewhere, whether by deduction or otherwise,"

Substitute

"in a territory outside Hong Kong (whether by deduction or otherwise)".

(2) Section 16(1)(c)—

Repeal

"(j), (k), (l) or (la)"

Substitute

"(ib), (j), (k), (l), (la) or (lb)".

(3) After section 16(1)(c)—

Add

"(ca) subject to subsection (2J) and section 50AA, specified tax that is proved to the satisfaction of the Commissioner to have been paid in a territory outside Hong Kong (whether by deduction or otherwise) by any person who carries on a trade, profession or business in Hong Kong during the basis period for the year of assessment in respect of profits chargeable to tax under this Part;".

(4) Section 16—

Repeal subsection (2J)

Substitute

"(2J) Subsection (1)(c) and (ca) does not apply in relation to any tax paid in a DTA territory (as defined by section 48A) by a Hong Kong resident person (as defined by that section) in respect of the profits referred to in that subsection.".

(5) Section 16(3), English text, definition of ***relative***—

Repeal the full stop

Substitute a semicolon.

(6) Section 16(3)—

Add in alphabetical order

"***specified tax*** (指明稅項) means tax imposed by a territory outside Hong Kong on a person that is—

(a) of substantially the same nature as tax imposed on the person under this Part;

(b) charged on a certain percentage of income received or receivable by the person from that territory without deduction for the outgoings and expenses (whether or not they were incurred in the production of the relevant income) when computing the amount of tax charged to the person in that territory; and

(c) not in respect of profits of the person chargeable to tax because of section 15(1)(f), (g), (i), (ia), (ib), (j), (k), (l), (la) or (lb).".

(7) After section 16(5B)—

Add

"(5C) The amendments made to this section by the Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021 (of 2021) apply only in relation to a year of assessment beginning on or after 1 April 2021.".

15. Section 50AA amended (general provisions on relief from double taxation)

(1) Section 50AA(1)—

Repeal

everything before "is entitled"

Substitute

"(1) This section applies if, in respect of tax (***foreign tax***) on any income, profits or gains (***relevant income***) payable in a territory from where the relevant income was received or receivable by a person (***source jurisdiction***), the person".

(2) Section 50AA(1)(b)—

Repeal

"16(1)(c)"

Substitute

"16(1)(c) or (ca)".

(3) Section 50AA(2)—

Repeal

"The amount"

Substitute

"Subject to subsection (2A), the amount".

(4) After section 50AA(2)—

Add

"(2A) In relation to relief under section 16(1)(c) and (ca), if the foreign tax is paid by a person who is not a Hong Kong resident person, the amount of any relief from double taxation granted must not exceed the difference between the following amounts—

(a) the amount of tax paid in the source jurisdiction had all foreign tax minimization steps been taken in the source jurisdiction;

(b) the amount of foreign tax paid for which the person is entitled to utilize for claiming relief (whether by deduction or otherwise) in the territory of which the person is a resident person (***jurisdiction of residence***) had all foreign tax minimization steps been taken in the jurisdiction of residence.".

(5) Section 50AA(3)—

Repeal

"subsection (2)"

Substitute

"subsections (2) and (2A)(a)".

(6) Section 50AA(3)(a)—

Repeal

"foreign territory" (wherever appearing)

Substitute

"source jurisdiction".

(7) After section 50AA(3)—

Add

"(3A) For the purposes of subsection (2A)(b)—

(a) all foreign tax minimization steps are taken only if all reasonable steps are taken under—

(i) the laws of the jurisdiction of residence;

(ii) the arrangements made between the jurisdiction of residence and the source jurisdiction with a view to affording relief from double taxation (if any); and

(iii) the double taxation arrangements made with the jurisdiction of residence (if any),

to minimize the amount of tax payable in the jurisdiction of residence; and

(b) the reasonable steps mentioned in paragraph (a) include—

(i) claiming, or otherwise securing the benefit of, relief, deductions, reductions or allowances; and

(ii) making elections for tax purposes.".

(8) Section 50AA(4)—

Repeal

"(2) and (3)"

Substitute

"(2), (2A), (3) and (3A)".

(9) Section 50AA(5)(b)—

Repeal

"foreign territory"

Substitute

"source jurisdiction".

(10) Section 50AA(6)(a)—

Repeal

"foreign territory"

Substitute

"source jurisdiction".

(11) After section 50AA(6)—

Add

"(7) The amendments made to this section by the Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021 (of 2021) apply only in relation to a year of assessment beginning on or after 1 April 2021.".

Part 6

Related Amendments

16. Section 38 amended (balancing allowances and charges, machinery or plant)

Section 38(5)—

Repeal paragraphs (a) and (b)

Substitute

"(a) the amount of any initial allowance made to—

(i) the person; or

(ii) if the person is the successor under section 37(4)—the person and that other person referred to in that section,

in respect of the expenditure in question;

(b) the amount of any annual allowance made to—

(i) the person; or

(ii) if the person is the successor under section 37(4)—the person and that other person referred to in that section,

in respect of the expenditure in question, including any allowance computed under paragraph (b) of the proviso to section 37(2) at a rate higher than that prescribed by the Board of Inland Revenue.".

17. Section 39D amended (balancing allowances and charges under the pooling system)

(1) Section 39D(7)(b)—

Repeal

"; or"

Substitute a semicolon.

(2) After section 39D(7)(b)—

Add

"(ba) in a case where section 39B(7) applies, the aggregate capital expenditure incurred by that other person referred to in that section on the provision of the machinery or plant for the purposes of producing profits chargeable to tax under Part 4; or".

18. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)

(1) Section 80(2)(d)—

Repeal

"or (2A)".

(2) Section 80(2A)—

Repeal

"or (2A)".

19. Section 82A amended (additional tax in certain cases)

(1) Section 82A(1)(d)—

Repeal

"or (2A)".

(2) Section 82A(4)(a)(i)(A)—

Repeal

"or (2A)".

20. Schedule 45 amended (deduction of R&D expenditures)

Schedule 45—

Repeal

"& 40]"

Substitute

", 40, 40AO & 40AT & Sch. 17J]".

Explanatory Memorandum

The objects of this Bill are to amend the Inland Revenue Ordinance (Cap. 112) (***Ordinance***) to provide for tax treatment in relation to the amalgamation of companies under Division 3 of Part 13 of the Companies Ordinance (Cap. 622) (***qualifying amalgamation***) and tax treatment in relation to the transfer or succession of certain capital assets (***specified assets***), to enhance the mechanism for furnishing returns required under the Ordinance, to enhance the current provisions for deduction of foreign tax paid in respect of certain income, profits or gains, and to provide for related matters.

2. The Bill is divided into 6 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title.

Part 2—Amendments relating to Qualifying Amalgamations

4. Clause 3 adds a new Part 6C (that is, new sections 40AE to 40AM) to the Ordinance. That Part provides for tax treatment in relation to qualifying amalgamations.

5. The new section 40AE contains definitions that are necessary for the interpretation of the new Part 6C, including ***amalgamated company***, ***amalgamating company***, ***date of amalgamation***, ***qualifying amalgamation*** and ***year of cessation***.

6. The new section 40AF provides for the application of the new Part 6C. That Part applies in relation to a qualifying amalgamation that takes effect on or after the date of commencement of the Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021 (***Amendment Ordinance***).

7. The new section 40AG sets out when an amalgamating company (the shares of which are cancelled on the amalgamation) (***amalgamating***

company) in a qualifying amalgamation is to be treated as having ceased to carry on its trade, profession or business.

8. The new sections 40AH and 40AI enable an assessor to estimate the amount of provisional profits tax payable by an amalgamating company, or the amalgamated company (the shares of which are not cancelled on the amalgamation) (***amalgamated company***), in a qualifying amalgamation for certain years of assessment.

9. The new section 40AJ requires the amalgamated company in a qualifying amalgamation to comply with all obligations, and meet all liabilities, of each of the amalgamating companies under the Ordinance.

10. The new section 40AK entitles the amalgamated company in a qualifying amalgamation to all rights, powers and privileges of each of the amalgamating companies under the Ordinance.

11. The new section 40AL requires the amalgamated company in a qualifying amalgamation to furnish a return for profits tax for each of the amalgamating companies.

12. The new section 40AM enables the amalgamated company in a qualifying amalgamation to elect for a new Schedule 17J (***Schedule***) to the Ordinance to apply to the amalgamated company and each amalgamating company in the qualifying amalgamation.

13. Clause 4 adds the Schedule to provide for special tax treatments for the amalgamating companies and amalgamated company in a qualifying amalgamation for the purpose of calculating profits tax payable by those companies as a result of the qualifying amalgamation. The Schedule applies in relation to a qualifying amalgamation that takes effect on or after the date of commencement of the Amendment Ordinance and for which an election has been made under the new section 40AM(1).

14. The special tax treatments mainly concern the following—

(a) succession of the amalgamated company to the following things, rights or interests of an amalgamating company on the amalgamation—

(i) any trade, profession or business, or any trading stock of a trade or business, carried on by the amalgamating company in Hong Kong;

(ii) any machinery or plant used for, or any rights or entitlement to any rights generated from, R&D activities (see section 2 of Schedule 45 to the Ordinance);

(iii) any patent rights or rights to any know-how (as defined by section 16E(4) of the Ordinance);

(iv) any specified intellectual property rights (as defined by section 16EA(11) of the Ordinance);

(v) interest in any renovation or refurbishment of a building or structure (as defined by section 16F(5) of the Ordinance);

(vi) any prescribed fixed assets (as defined by section 16G(6) of the Ordinance);

(vii) any environmental protection facilities (as defined by section 16H(1) of the Ordinance);

(viii) interest in any commercial or industrial building or structure (as defined by section 40(1) of the Ordinance);

(ix) any machinery or plant not related to R&D activities;

(b) reclassification of assets in the accounts (that is, from revenue account to capital account, or the other way round) of the amalgamated company and an amalgamating company on the amalgamation;

(c) the deduction (or balance of deduction) for the following to be allowed to the amalgamated company—

(i) any payment to a recognized retirement scheme made by an amalgamating company before the amalgamation;

(ii) any amount of bad debt, impairment loss, expenditure or loss of an amalgamating company succeeded by the amalgamated company on the amalgamation;

(d) the treatment of pre-amalgamation losses of an amalgamating company or the amalgamated company;

(e) an irrevocable election made by an amalgamating company under certain provisions of the Ordinance for the purpose of ascertaining the profits chargeable to tax under Part 4 of the Ordinance;

(f) the income accrued to, or derived by, the amalgamated company as a result of a certain thing that an amalgamating company did, or did not do, before the amalgamation;

(g) the refund of any contribution or voluntary contribution to an approved retirement scheme made by an amalgamating company that is received by the amalgamated company on or after the amalgamation.

Part 3—Amendments relating to Specified Assets

15. Clause 5 adds a new Part 6D (that is, new sections 40AN to 40AU) to the Ordinance. That Part sets out the tax treatments in relation to the transfer or succession of specified assets.

16. The new section 40AN contains definitions that are necessary for the interpretation of the new Part 6D, including ***specified asset*** and ***specified event***.

17. The new section 40AO sets out the meaning of ***specified asset***. In gist, a specified asset is a certain thing or rights for which a deduction for the capital expenditure (as defined by section 40(1) of the Ordinance) has been allowed to the person who incurred the capital expenditure.

18. The new section 40AP sets out the meaning of ***specified event***. A specified event is the transfer of a person's specified asset to another person without sale (other than by way of succession on the person's death or a qualifying amalgamation) or succession to a person's specified asset through a qualifying amalgamation without making an election under the new section 40AM(1).

19. The new section 40AQ provides for the application of the new Part 6D. That Part applies in relation to a specified event that occurs on or after the date of commencement of the Amendment Ordinance.

20. The new section 40AR provides for the non-application of certain provisions of the Ordinance if the new Part 6D applies in relation to a person's specified asset.

21. The new section 40AS deems a person's specified asset to have been sold for a certain sum if a specified event occurs in relation to the person.

22. The new section 40AT deems, for the purposes of certain provisions of the Ordinance, a person to have received proceeds of sale of the person's specified asset if the asset is deemed to have been sold under the new section 40AS(1).

23. The new section 40AU deems, for a certain purpose, a person (to whom certain specified asset is transferred, or who succeeds to certain specified asset, in a certain way) to have incurred expenditure on the purchase of the specified asset of an amount ascertained under the new section 40AS(1).

Part 4—Amendments relating to Furnishing of Returns

24. Clause 6 amends the definition of ***service provider*** in section 2(1) of the Ordinance to include a meaning of the expression given by a new section 51AAD(8).

25. Clause 7 amends section 51AA of the Ordinance to mainly include an alternative way of using a template to furnish in paper form a return required to be furnished under section 51(1) of the Ordinance (***return***). Certain consequential changes are also made to that section.

26. Clause 8 adds new sections 51AAB, 51AAC and 51AAD to the Ordinance.

27. The new section 51AAB enables the Commissioner of Inland Revenue (***Commissioner***) to require any class or description of persons to furnish a return in the form of an electronic record.

28. The new section 51AAC empowers the Commissioner to disregard a return that is not in compliance with an applicable requirement under section 51AA, or the new section 51AAB, of the Ordinance.

29. The new section 51AAD provides that a person who is under the obligation to furnish a return may, in a case specified by the Commissioner, engage a service provider (***service provider***) to furnish the return.

30. Clause 9 amends section 51A of the Ordinance to provide that a person engaging a service provider under the new section 51AAD(1) does not in itself constitute, for the purposes of section 51A(1), a reasonable excuse for the person's making an incorrect return or supplying false information that has the effect of understating the person's income or profits chargeable to tax.

31. Clause 10 amends section 51B of the Ordinance to provide that a person engaging a service provider under the new section 51AAD(1) does not in itself constitute, for the purposes of section 51B(1)(a), a reasonable excuse for the person's making an incorrect return or

supplying false information that has the effect of understating the person's income or profits chargeable to tax.

32. Clause 11 amends section 80 of the Ordinance to—

(a) extend the offence of a person's making an incorrect return to a person's causing or allowing an incorrect return to be made so that a taxpayer is liable for an incorrect return made by a service provider engaged by the taxpayer; and

(b) provide that a person engaging a service provider under the new section 51AAD(1) does not in itself constitute, for the purposes of paragraphs (a), (b), (c) and (d) of section 80(2) of the Ordinance, a reasonable excuse for the person's failure in doing certain things or complying with certain requirements mentioned in those paragraphs.

33. Clause 12 adds new sections 80K to 80N to the Ordinance. The following new offences are created in relation to service providers under the new section 80K—

(a) the new section 80K(2)—offence of a service provider failing to furnish a return;

(b) the new section 80K(3)—offence of a service provider failing to comply with a requirement under the new section 51AAD(3) or (4);

(c) the new section 80K(4)—offence of a service provider, not in accordance with the information provided or instructions given by the taxpayer, furnishing a return that is incorrect in a material particular.

34. The new section 80L enables the court to order a service provider who commits an offence under the new section 80K(2) or (3) to do the act that the service provider has failed to do.

35. The new section 80M modifies the limitation period under section 26 of the Magistrates Ordinance (Cap. 227) for proceedings for an offence under the new section 80K(2), (3) or (4).

36. The new section 80N enables the Commissioner to stay or compound any proceedings for certain new offences.

37. Clause 13 amends section 82A of the Ordinance to—

(a) extend the offence of a person's making an incorrect return to a person's causing or allowing an incorrect return to be made so that a taxpayer is liable for an incorrect return made by a service provider engaged by the taxpayer; and

(b) provide that a person engaging a service provider under the new section 51AAD(1) does not in itself constitute, for the purposes of paragraphs (a), (b), (c) and (d) of section 82A(1) of the Ordinance, a reasonable excuse for the person's failure in doing certain things or complying with certain requirements mentioned in those paragraphs.

Part 5—Amendments relating to Deduction of Foreign Tax

38. Clause 14 amends section 16 of the Ordinance to allow deduction of certain tax imposed on a person by a territory outside Hong Kong in respect of profits chargeable to tax under Part 4 of the Ordinance. The amendments made to that section by the Amendment Ordinance apply only in relation to a year of assessment beginning on or after 1 April 2021.

39. Clause 15 amends section 50AA of the Ordinance to provide for the extent of foreign tax deduction allowable to a person who is not a Hong Kong resident person (as defined by section 48A of the Ordinance). The amendments made to that section 50AA by the Amendment Ordinance apply only in relation to a year of assessment beginning on or after 1 April 2021.

Part 6—Related Amendments

40. Clauses 16 and 17 amend sections 38 and 39D of the Ordinance respectively to take into account the initial allowance or annual allowance made to a person and another person when computing the balancing allowance or balancing charge under certain circumstances.

41. Clauses 18 and 19 amend sections 80 and 82A of the Ordinance respectively to remove the references to a repealed subsection.

42. Clause 20 makes a consequential amendment to Schedule 45 to the Ordinance.

Annex B

FINANCIAL, ECONOMIC, SUSTAINABILITY AND ENVIRONMENTAL IMPLICATIONS OF THE PROPOSALS

Financial Implications

Qualifying amalgamations

The proposal serves to codify an interim administrative assessment practice of the Inland Revenue Department ("IRD") based on which court-free amalgamation cases are assessed. There is no impact on government revenue.

Transfer or succession of specified assets without sale

2. The proposal is intended for anti-abuse purposes and will help protect revenue.

Furnishing of tax returns

3. Depending on the adoption rate of electronic filing, the implementation of the Business Tax Portal could largely reduce the demand for manpower resources to process the profits tax returns manually, bringing about savings in manpower and operational costs which could be redeployed for processing of the increasing volume of profits tax returns.

Foreign tax deduction

4. Since information on the foreign tax paid by taxpayers is not readily available in the tax returns, it is not possible to estimate the resulting revenue forgone. However, the proposal is expected to be conducive to maintaining Hong Kong's attractiveness as a banking location and promoting research and development and intellectual property-related activities in Hong Kong which will in turn translate into profits tax receivable in Hong Kong.

Economic Implications

5. The proposal to expand the scope of foreign tax deduction will reduce the tax liability of the Hong Kong branches of foreign corporations, in particular foreign banks and holders of intellectual property. It would help foster a more favorable business environment, particularly reinforcing Hong Kong's attractiveness as a banking location and promote Hong Kong as a research and development hub.

Sustainability and Environmental Implications

6. The proposal to enhance the mechanism for electronic filing ("e-filing") of tax return will facilitate taxpayers or their service providers to submit information to the IRD electronically, thereby reducing the use of paper. The volume of paper to be consumed would be reduced gradually with the rise of adoption rate of e-filing of tax returns. Regarding the proposal to expand the scope of foreign tax deduction, there are no sustainability implications other than those mentioned in the economic implications.