

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance (Chapter 112)

INLAND REVENUE (AMENDMENT) (PROFITS TAX CONCESSIONS FOR INSURANCE-RELATED BUSINESSES) ORDINANCE 2020 (COMMENCEMENT) NOTICE

INLAND REVENUE (PROFITS TAX CONCESSIONS FOR INSURANCE-RELATED BUSINESSES) (THRESHOLD REQUIREMENTS) NOTICE

INTRODUCTION

This paper briefs Members on the following two pieces of subsidiary legislation that are related to the commencement of new profits tax concessions for insurance-related businesses on 19 March 2021 –

- (a) the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Ordinance 2020 (Commencement) Notice (“the Commencement Notice”) made by the Secretary for Financial Services and the Treasury on 11 January 2021 (at **Annex A**) pursuant to section 1(2) of the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Ordinance 2020 (“the Amendment Ordinance”); and
- (b) the Inland Revenue (Profits Tax Concessions for Insurance-related Businesses) (Threshold Requirements) Notice (“the Threshold Notice”) made by the Commissioner of Inland Revenue (“the Commissioner”) on 11 January 2021 (at **Annex B**) pursuant to section 26AB of the Inland Revenue Ordinance (Cap. 112) (“IRO”) (as amended by the Amendment Ordinance).

JUSTIFICATIONS

2. At present, there are tax incentives at 50% of the profits tax rate for authorized captive insurers and professional reinsurers in Hong Kong. In order to keep our business environment conducive to insurance business and help the insurance industry seize new opportunities, including those arising from the Belt and Road Initiative, the Government introduced the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Bill 2019 (“the Amendment Bill”) into the Legislative Council (“LegCo”) in December 2019 to provide new profits tax concessions for direct insurers and insurance brokers. The Amendment Bill was passed by LegCo in July 2020 and became the Amendment Ordinance.

3. Under the Amendment Ordinance, the profits tax rate charged on assessable profits derived from the following insurance-related businesses will be reduced by 50% (i.e. 8.25%) (“the reduced tax rate”) when the Amendment Ordinance comes into operation –

- (a) all general reinsurance business of a direct insurer (hereafter called “specified insurer”¹ in line with the term used in the Amendment Ordinance);
- (b) selected general insurance business of a specified insurer²; and

¹ According to the new section 14AB(1) of the IRO (as added by the Amendment Ordinance), a specified insurer means any of the following persons carrying on in or from Hong Kong a class of insurance business specified in Schedule 1 to the Insurance Ordinance (Cap. 41) (“IO”) –

- (a) a company authorized by the Insurance Authority under section 8 of the IO to carry on the business, except a professional reinsurer and an authorized captive insurer;
- (b) Lloyd’s; and
- (c) an approved association of underwriters.

² Specifically, the reduced tax rate will apply to the assessable profits of specified insurers in respect of their general insurance business, except business covering any of the following five types of risk or liability –

- (a) health risk;
- (b) mortgage guarantee risk;
- (c) motor vehicle damage risk;
- (d) employees’ compensation liability; and
- (e) owners’ corporation third party liability.

- (c) selected insurance brokerage business of a licensed insurance broker company³.

4. Having regard to the progress of preparatory work, the Government has decided to implement the new profits tax concessions for specified insurers and licensed insurance broker companies on 19 March 2021. It is necessary to make two pieces of subsidiary legislation to implement the new profits tax concessions on the same day.

PROPOSALS

5. The proposals contained in the two pieces of subsidiary legislation are set out in the ensuing paragraphs.

(A) Commencement Notice

6. In accordance with section 1(2) of the Amendment Ordinance, we propose to appoint 19 March 2021 as the date on which the Amendment Ordinance will come into operation. Accordingly, the reduced tax rate will apply to assessable profits derived from the insurance-related businesses as set out in paragraph 3 above starting from that date.

(B) Threshold Notice

7. In determining whether a preferential tax regime meets the international standards on anti-base erosion and profit shifting, the Organisation for Economic Co-operation and Development (“OECD”) will take into account whether the regime can meet the substantial activities requirements. Specifically, the OECD expects that qualifying taxpayer should, in the jurisdiction that offers the tax concessions, (a) employ an adequate number of full-time qualified employees and (b) incur an adequate amount of operating expenditure.

8. According to section 26AB(1) of the IRO (as amended by the Amendment Ordinance), the Commissioner may, by notice published in the

³ Specifically, the reduced tax rate will apply to the assessable profits of a licensed insurance broker company derived from the business of placing –

- (a) all general and long term reinsurance contracts with professional reinsurers;
- (b) all general reinsurance contracts with specified insurers; and
- (c) selected general insurance contracts with specified insurers, i.e. excluding contracts involving the five types of excluded risk or liability.

Gazette, prescribe a threshold requirement for determining whether an activity producing the assessable profits of a specified insurer or a licensed insurance broker company derived from any of the insurance-related businesses as set out in paragraph 3 above, which are charged at the reduced tax rate (“qualifying activity”), is, or is arranged to be, carried out by the insurer or the company in Hong Kong. Pursuant to section 26AB(4) of the IRO, a threshold requirement, in relation to an activity, means the level of the activity in Hong Kong as measured by various indicators, such as the number of full time employees in Hong Kong who carry out the activity and have the qualifications necessary for doing so, and the amount of operating expenditure incurred in Hong Kong for the activity.

9. To tie-in with the implementation of the new preferential tax regimes for specified insurers and licensed insurance broker companies, it is proposed to prescribe threshold requirements which are adequate in the opinion of the Commissioner, and in any event not less than the following threshold requirements in relation to these regimes –

Qualifying activity of –	Number of full-time qualified employees in Hong Kong during the basis period for the year of assessment concerned	Operating expenditure incurred in Hong Kong during the basis period for the year of assessment concerned
(i) a specified insurer which is a mutual insurance corporation	4	HK\$2,000,000
(ii) a specified insurer which is not a mutual insurance corporation	7	HK\$4,000,000
(iii) a licensed insurance broker company	3	HK\$1,000,000

10. The proposed threshold requirements have been formulated having regard to the actual operating statistics of specified insurers and licensed insurance broker companies and after consulting the insurance industry. For specified insurers, different threshold levels for mutual insurance corporations and non-mutual insurance corporations are proposed having regard to their

different ownership and operation model⁴. As regards licensed insurance broker companies, they are intermediaries representing policyholders in negotiating or arranging insurance contracts and usually have a smaller number of staff for management and operation as compared to that of the specified insurers.

LEGISLATIVE TIMETABLE

11. The legislative timetable for the two pieces of subsidiary legislation is as follows –

Publication in the Gazette	15 January 2021
Tabling at LegCo for negative vetting	20 January 2021
Commencement	19 March 2021

IMPLICATIONS OF THE PROPOSAL

12. The two pieces of subsidiary legislation are in conformity with the Basic Law, including the provisions concerning human rights. They do not affect the binding effect of the existing provisions of the IRO, and have no civil service, productivity, environmental, gender or family implications.

13. The financial, economic and sustainability implications of providing profits tax concessions for specified insurers and licensed insurance broker companies have been set out in the LegCo Brief for the Amendment Bill. The two pieces of subsidiary legislation do not have additional financial, economic and sustainability implications.

⁴ For a mutual insurance corporation, the policyholders are also shareholders of the corporation, i.e. the policyholders own the corporation and are insured against each other. A mutual insurance corporation tends to specialise in certain lines of business, e.g. marine insurance, and require a smaller team for management and operation.

For a non-mutual insurance corporation, the policyholders are not necessarily the shareholders of the corporation. A non-mutual corporation usually underwrites a greater variety of lines of businesses and requires a larger team for management and operation.

PUBLIC CONSULTATION

14. The IA has consulted insurance industry stakeholders⁵ on the proposed threshold requirements in paragraph 9 above and the stakeholders are generally supportive.

PUBLICITY

15. We will issue a press release upon the gazettal of the two pieces of subsidiary legislation, and arrange a spokesperson to answer media enquiries.

ENQUIRIES

16. Enquiries may be directed to Ms Noel Tsang, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2201.

**Financial Services and the Treasury Bureau
Inland Revenue Department**

13 January 2021

⁵ The stakeholders consulted include the Hong Kong Federation of Insurers, relevant insurers carrying on general business, the Professional Insurance Brokers Association and the Hong Kong Confederation of Insurance Brokers.

Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related
Businesses) Ordinance 2020 (Commencement) Notice

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**Inland Revenue (Amendment) (Profits Tax Concessions
for Insurance-related Businesses) Ordinance 2020
(Commencement) Notice**

Under section 1(2) of the Inland Revenue (Amendment) (Profits Tax
Concessions for Insurance-related Businesses) Ordinance 2020 (15 of 2020),
I appoint 19 March 2021 as the day on which the Ordinance comes into
operation.

Secretary for Financial Services and
the Treasury

2021

Inland Revenue (Profits Tax Concessions for Insurance-related Businesses) (Threshold Requirements) Notice

(Made by the Commissioner of Inland Revenue under section 26AB of the Inland Revenue Ordinance (Cap. 112))

1. Commencement

This Notice comes into operation on 19 March 2021.

2. Threshold requirements for activities producing assessable profits falling within section 14B(1)(c) of Ordinance

- (1) The threshold requirements for determining whether, for the purposes of section 14B(2)(a) of the Ordinance, an activity producing the assessable profits of a corporation that fall within section 14B(1)(c) of the Ordinance is carried out in Hong Kong by the corporation or is arranged by the corporation to be carried out in Hong Kong for a year of assessment are specified in subsections (2) and (3).
- (2) During the basis period for the year of assessment concerned, the average number of full time employees in Hong Kong who carry out the activity and have the qualifications necessary for doing so must be—
 - (a) in the opinion of the Commissioner, adequate for the corporation for that year of assessment; and
 - (b) in any event not less than—
 - (i) if the corporation is a mutual insurance corporation—4; or
 - (ii) if the corporation is not a mutual insurance corporation—7.

- (3) During the basis period for the year of assessment concerned, the amount of operating expenditure incurred by the corporation in Hong Kong for the activity must be—
 - (a) in the opinion of the Commissioner, adequate for the corporation for that year of assessment; and
 - (b) in any event not less than—
 - (i) if the corporation is a mutual insurance corporation—\$2,000,000; or
 - (ii) if the corporation is not a mutual insurance corporation—\$4,000,000.

3. Threshold requirements for activities producing assessable profits falling within section 14B(1)(d) of Ordinance

- (1) The threshold requirements for determining whether, for the purposes of section 14B(2)(a) of the Ordinance, an activity producing the assessable profits of a corporation that fall within section 14B(1)(d) of the Ordinance is carried out in Hong Kong by the corporation or is arranged by the corporation to be carried out in Hong Kong for a year of assessment are specified in subsections (2) and (3).
- (2) During the basis period for the year of assessment concerned, the average number of full time employees in Hong Kong who carry out the activity and have the qualifications necessary for doing so must be—
 - (a) in the opinion of the Commissioner, adequate for the corporation for that year of assessment; and
 - (b) in any event not less than 3.
- (3) During the basis period for the year of assessment concerned, the amount of operating expenditure incurred by the corporation in Hong Kong for the activity must be—

Inland Revenue (Profits Tax Concessions for Insurance-related Businesses)
(Threshold Requirements) Notice

Section 3

3

- (a) in the opinion of the Commissioner, adequate for the corporation for that year of assessment; and
- (b) in any event not less than \$1,000,000.

Commissioner of Inland Revenue

2021

Inland Revenue (Profits Tax Concessions for Insurance-related Businesses)
(Threshold Requirements) Notice

Explanatory Note
Paragraph 1

4

Explanatory Note

This Notice prescribes the threshold requirements under section 26AB(1) of the Inland Revenue Ordinance (Cap. 112) (*Ordinance*) for determining whether, for the purposes of section 14B(2)(a) of the Ordinance, certain activities producing the assessable profits of a corporation that fall within section 14B(1)(c) or (d) of the Ordinance are carried out in Hong Kong by the corporation or are arranged by the corporation to be carried out in Hong Kong for a year of assessment.