

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022

INTRODUCTION

A At the meeting of the Executive Council on 6 December 2022, the Council **ADVISED** and the Chief Executive **ORDERED** that the Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”) to provide tax concession for eligible family-owned investment holding vehicles (“FIHVs”) managed by single family offices (“SFO”) in Hong Kong.

JUSTIFICATIONS

2. Family offices generally refer to entities which assume the day-to-day management and administration of the wealth of ultra-high-net-worth individuals (“UHNWIs”) ¹. Attributing to the substantial growth of UHNWI population in Asia, family office business represents a fast-growing segment in the asset and wealth management industry. According to industry’s estimates², there were over 610 000 UHNWIs globally in 2021, with over 169 000 (27%) UHNWIs in Asia. The industry also estimated that there were over 15 000 UHNWIs in Hong Kong in the 1st half of 2022, the highest amongst global cities³. As far as Hong Kong is concerned, the size of private banking and private wealth management business attributed to family offices and private trusts clients reached HK\$1,784 billion in 2021⁴, suggesting huge business opportunities for the asset and wealth management

¹ UHNWI is usually defined as people with a net worth of at least US\$30 million in investible assets.

² Source: Knight Frank (2022).

³ Source: Wealth-X (2022).

⁴ Source: Securities and Futures Commission (“SFC”) (2022).

industry.

3. The National 14th Five-Year Plan supports Hong Kong to strengthen its position as an international asset management centre. With a comprehensive financial services platform as well as a liquid capital market that is uniquely connected to the Mainland, Hong Kong is the natural choice for UHNWIs to manage their portfolios in the region. The multiplier effect of attracting more family offices to set up and operate in Hong Kong could be tremendous. Not only will it generate increased demand for financial and related professional services hence creating more high-quality employment opportunities, but it will also channel substantial capital to Hong Kong's IPO market, venture capital and private philanthropy, etc. The cumulative financial and economic benefits will bolster the asset and wealth management industry and Hong Kong's progression as a hub.

4. To help the industry seize new business opportunities, the Government has been stepping up efforts to attract family offices to set up and operate in Hong Kong through a multi-pronged approach⁵. When family offices decide where to set up their operations and locate their investments, tax treatment is often a key factor influencing their decisions. Currently, all funds operating in Hong Kong can enjoy profits tax exemption on certain transactions subject to meeting specified conditions under the unified tax exemption regime for funds ("UFR")⁶. However, investment holding vehicles managed by family offices in Hong Kong (namely FIHVs) may not be able to enjoy the UFR tax exemption because –

- (a) not every FIHV can meet the definition of "fund" in section 20AM of the Inland Revenue Ordinance (Cap. 112) ("the Ordinance"); and
- (b) the anti-round tripping provisions in sections 20AX and 20AY of the Ordinance would constrain the extent of a resident person's beneficial interest in a fund⁷.

⁵ The initiatives include (i) creating a facilitating business environment through the concerted efforts of regulators and market players; (ii) providing clarity on the licensing obligations of family offices; and (iii) providing one-stop services for family offices interested in setting up a presence in Hong Kong by establishing a dedicated team under Invest Hong Kong.

⁶ Sections 20AM to 20AY of the Inland Revenue Ordinance (Cap. 112).

⁷ For example, if a resident person who, either alone or jointly with the person's associates, has a beneficial interest of 30% or more in a tax-exempt fund (or any percentage if the fund is the resident person's associate), the assessable profits of the fund that would have been chargeable to tax but for the tax exemption will be deemed to be the assessable profits of the resident person.

5. In order to attract family offices to set up a presence in Hong Kong, and to provide tax certainty to FIHVs owned by UHNWIs given their different nature and ownership structure⁸, the Financial Secretary announced in the 2022-23 Budget Speech that the Government will provide tax concession for eligible FIHVs managed by SFOs. A task force led by the Financial Services and the Treasury Bureau⁹ has examined the tax arrangement applicable to FIHVs and formulated a legislative proposal.

THE PROPOSAL

6. The legislative proposal aims to introduce new and self-contained provisions to the Ordinance to apply similar concessionary tax treatment currently enjoyed by funds to FIHVs, so that the assessable profits of FIHVs arising from qualifying transactions and incidental transactions (described in paragraph 14 below) would be eligible for tax concession. The key parameters of the tax concession regime are summarized in the following paragraphs.

Requirements for FIHV

7. We propose that the following requirements must be met, and the conditions set out in paragraphs 14 to 16 must be satisfied, for an FIHV to enjoy tax concession for qualifying transactions and incidental transactions outlined in paragraph 14 below –

- (a) **structure:** the FIHV must be an entity¹⁰ (established or created in or outside Hong Kong) that is not a business undertaking for general commercial or industrial purposes;
- (b) **ownership:** the FIHV must relate to one or more than one member of a single family (see paragraph 8 below);

⁸ While the structure of family offices may vary, typically, a family would establish an investment holding vehicle (i.e. an FIHV) to hold the assets for the family and a separate entity (i.e. the SFO) to manage the assets held by the investment holding vehicle. Investment gains thus typically arise at the FIHV.

⁹ Comprising members from the Inland Revenue Department (“IRD”), the Hong Kong Monetary Authority and SFC.

¹⁰ Entity means a body of persons (corporate or unincorporate) or a legal arrangement and includes a corporation, partnership and trust (including a discretionary trust).

- (c) **central management and control (“CMC”)**: the FIHV must, at all times during the basis period for the year of assessment, exercise CMC in Hong Kong¹¹;
- (d) **management of FIHV**: the FIHV must be managed by an eligible SFO¹² (see paragraphs 9 and 10 below) and the minimum asset threshold must be fulfilled (see paragraph 12 below); and
- (e) **substantial activities requirement**: the FIHV must carry out its core income generating activities (“CIGAs”) in Hong Kong and fulfill the substantial activities requirement (see paragraph 13 below).

Ownership of FIHV

8. To associate an FIHV with a single family (“relevant family”), we propose that one or more than one member of the relevant family must have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the FIHV at all times during the basis period for the year of assessment. Members of the relevant family include a natural person (Person A) and all of the persons related to Person A (whether alive or deceased) mentioned in paragraphs (a) to (g) below –

- (a) a spouse¹³ of Person A (Person B);

¹¹ CMC is a well-established test in common law jurisdictions for determining the residence of corporations, partnerships and trusts, which is also relevant to the determination of whether FIHVs have economic substance in Hong Kong. Applying the CMC requirement to an FIHV could also prevent the proposed tax regime from being regarded as *de facto* ring fenced (i.e. mainly benefiting non-resident entities in reality). The CMC requirement is consistent with other preferential tax regimes including corporate treasury centres, aircraft leasing and ship leasing.

It should be noted that CMC refers to the highest level of control and direction of the operations of an entity. Location of CMC is wholly a question of fact and each case must be decided on its own facts. In general, if CMC of a company is exercised by the directors in board meetings, the relevant locality is where those meetings are held. However, the place of board meetings may not be conclusive. It is significant only in so far as those meetings constitute the medium through which CMC is exercised. The Commissioner of Inland Revenue (“the Commissioner”) would also consider other factors, including the location where the high-level decisions (that set the FIHV’s investment strategy and determine the direction of its operations and the types of investment) were made and approved, and the location where the day-to-day activities necessary for preparing and making those decisions were undertaken.

¹² The eligible SFO is referred to as an ESF Office in the Bill.

¹³ If a spouse mentioned in paragraphs 8(a) or 8(g) above ceases to be a spouse (i.e. other than being deceased) during a year of assessment that begins on or after 1 April 2022, the spouse and those persons who are connected to the spouse and considered as members of the family before the cessation would still be regarded as members of the relevant family for the subject year of

- (b) a lineal ancestor of Person A (Person C);
- (c) a lineal ancestor of Person B (Person D);
- (d) a lineal descendant¹⁴ of Person A (Person E);
- (e) a sibling of Person A, Person B, Person C or Person D (Person F);
- (f) a lineal descendant of Person F (Person G); and
- (g) a spouse of Person E, Person F and Person G.

B The proposed scope of the relevant family is set out at **Annex B**.

Management of FIHV

9. To attain the policy objective of bringing investment management and related activities to Hong Kong, we propose that the FIHV must be managed¹⁵ in Hong Kong by an eligible SFO of the family to which the FIHV is related. To be an eligible SFO of a family, the SFO –

- (a) must be a private company (incorporated in or outside Hong Kong) exercising CMC in Hong Kong;
- (b) must have at least 95% of its beneficial interest being held (directly and indirectly) by members of the family (see paragraph 8 above)¹⁶; and

assessment and the following year of assessment (i.e. a total of two years). The purpose of setting a two-year transitional period is to allow sufficient time for the FIHV to restructure its ownership.

¹⁴ Including adopted and step children of the person’s spouse (including a deceased spouse) or former spouse.

¹⁵ An FIHV is managed by an eligible SFO of the family to which the FIHV is related if the eligible SFO carries out the investment activities (as defined in section 1(1) of the proposed new Schedule 16E in the Bill) in relation to the FIHV. The activities include (a) conducting research and advising on any potential investments to be made by the FIHV; (b) acquiring, holding, managing or disposing of property for the FIHV; and (c) establishing or administering a family-owned special purpose entity (“FSPE”) for holding and administering one or more underlying investments of the FIHV (see paragraph 15 below).

¹⁶ The beneficial interest of the FIHV and the eligible SFO can be held by different family members within the relevant family.

- (c) must fulfill the conditions specified in subparagraphs (i) and (ii) below –
 - (i) the SFO provides services to specified persons¹⁷ of the family during the basis period for the year of assessment and the fees for the provision of those services are chargeable to tax; and
 - (ii) the SFO fulfills the safe harbour rule whereby at least 75% of the eligible SFO's assessable profits should arise from the services provided to specified persons of the family.

10. To ensure effective ongoing monitoring and enforcement of the proposed tax concession regime, we also propose that not more than 50 FIHVs managed by the same eligible SFO may benefit from the proposed regime. An FIHV can elect for the tax concession through an election mechanism which comprises design features similar to those of existing preferential tax regimes¹⁸.

11. We do not plan to cover FIHVs managed by multi-family offices (“MFOs”) under the current tax proposal. This is because MFOs are generally independent service providers not owned by the relevant family. MFOs may also engage in the provision of investment management services for FIHV(s) owned by different families as well as other investment entities. Given that the proposed tax concession regime allows –

- (a) the combined assessment of the minimum asset threshold by multiple FIHVs managed by the same SFO in Hong Kong (see paragraph 12 below); and
- (b) outsourcing of the FIHV's CIGAs to the SFO (see paragraph 13 below),

the monitoring of the assets under management and FIHV's CIGAs outsourced to MFOs would be difficult. The latter requirement is subject to the scrutiny of the Forum on Harmful Tax Practices of the Organization for Economic Co-operation and Development.

¹⁷ A specified person in relation to a family means: (a) an FIHV that is related to the family; (b) an FSPE in which an FIHV mentioned in (a) has a beneficial interest (whether direct or indirect); (c) an interposed FSPE of an FIHV mentioned in (a); and (d) a member of the family.

¹⁸ The key features of the proposed election mechanism are: (a) a formal election is required; (b) the election made by an FIHV should be irrevocable; and (c) no annual election should be allowed.

Minimum asset threshold

12. To target UHNWIs to set up family offices and FIHVs in Hong Kong, we propose that the aggregate value of assets specified under Schedule 16C to the Ordinance (“specified assets”) managed by the eligible SFO for the FIHV (or multiple FIHVs) of the relevant family must be at least HK\$240 million¹⁹.

Substantial activities requirement

13. In compliance with the latest international tax standards, FIHVs which would benefit from the proposed tax concession regime should have carried out their CIGAs in Hong Kong. We propose that, an FIHV must have an adequate number of qualified full-time employees and incur an adequate amount of operating expenditure for carrying out the CIGAs in Hong Kong to the satisfaction of the Commissioner during the basis period for the year of assessment. At a minimum, an FIHV is required²⁰ to have –

- (a) not less than two full-time employees in Hong Kong who carry out the activities concerned and have the qualifications necessary for doing so; and

¹⁹ We suggest looking into the aggregate of the amount of the net asset value (“NAV”) of the specified assets of each relevant FIHV managed by the eligible SFO (“the Aggregate NAV”) at the end of the FIHV’s basis period for the year of assessment (“subject year”). In case the Aggregate NAV for the subject year falls below \$240 million, we will also consider the Aggregate NAV at the end of the FIHV’s basis period for the year of assessment immediately preceding the subject year (“1st preceding year”), and the Aggregate NAV at the end of the FIHV’s basis period for the year of assessment immediately preceding the 1st preceding year. In calculating the NAV, the assets held by an FSPE of the relevant FIHV will be included.

²⁰ Outsourcing of CIGAs to the eligible SFO is permitted provided that the use of outsourcing is not for circumventing the substantial activities requirement. For the purpose of satisfying the substantial activities requirement under the proposed regime, the number of qualified full-time employees employed and the amount of operating expenditure incurred by the FIHV, or by the eligible SFO on behalf of the FIHV if the CIGAs are outsourced, must be commensurate with the level of the CIGAs carried out in Hong Kong.

In determining whether the threshold requirements are met, the Commissioner will consider whether the actual number of full-time employees and amount of operating expenditure could adequately and reasonably demonstrate the fulfillment of the substantial activities requirement having regard to the facts and circumstances of individual cases, which is not a mechanical multiplication or division exercise. The Commissioner will consider the totality of facts of each case, including investment strategy of the FIHV, types of assets held by the FIHV, the number of FIHVs that the eligible SFO served, types and levels of investment activities undertaken by the eligible SFO, details of the employees employed in Hong Kong (including their level of experience and qualifications, position held and duties performed), amount and types of the operating expenditure (e.g. fixed or variable cost) incurred in Hong Kong, and amount of assessable profits of the FIHV in respect of which tax concession is claimed.

- (b) not less than HK\$2 million operating expenditure incurred in Hong Kong for carrying out the activities concerned.

Qualifying transactions and incidental transactions of FIHV and FSPE

14. Under the proposed regime, an FIHV may enjoy profits tax concession in respect of the following transactions –

- (a) transactions in specified assets (“qualifying transactions”); and
- (b) transactions incidental to the carrying out of qualifying transactions (“incidental transactions”) subject to a 5% threshold²¹.

The qualifying transactions of an FIHV must be carried out in Hong Kong by or through an eligible SFO of the relevant family, or arranged in Hong Kong by the eligible SFO.

15. It is quite common for an FIHV to establish special purpose entities (i.e. FSPEs) for holding and administering FIHV’s assets. In line with the tax treatment under UFR, tax concession will be provided at both the FIHV level and (if there is an FSPE) the FSPE level to the extent which corresponds to the percentage of beneficial interest of the FIHV in the FSPE.

16. Private companies may hold any type of assets in Hong Kong. To reduce the risk of tax evasion by FIHVs and FSPEs through their investment in private companies, we propose that the immovable property test, holding period test, control test and short-term asset test currently applicable to funds under UFR (at **Annex C**) should apply to an FIHV and FSPE.

C

Loss not available for set off

17. We propose that, if an FIHV or an FSPE is exempted from the payment of profits tax in respect of its assessable profits earned from qualifying transactions and incidental transactions for a year of assessment, any loss sustained by the FIHV, or the FSPE in relation to the FIHV, from any of those transactions is not available for set off against any of the assessable profits of the FIHV or FSPE for the year or any subsequent year of assessment.

²¹ The FIHV’s trading receipts from incidental transactions must not exceed 5% of the total of the FIHV’s trading receipts from qualifying transactions and incidental transactions in the basis period for the year of assessment.

Concessionary tax rate

18. We propose that the concessionary profits tax rate for the qualifying transactions and incidental transactions of an FIHV or FSPE for a year of assessment commencing on or after 1 April 2022 is 0%.

Anti-round tripping provisions

19. The current anti-round tripping provisions under UFR are intended to prevent abuse or round-tripping by resident persons to take advantage of the profits tax exemption via the fund vehicle. Given the diverse holding structures of FIVs, a family may hold FIVs directly or indirectly through resident companies, and such companies are likely to be associated with the FIVs. Therefore, they may be caught under the current anti-round tripping provisions under UFR. To address such special features of family office arrangement whilst ensuring that adequate safeguards are in place, modified anti-round tripping provisions need to be introduced for the proposed tax concession regime for FIVs. Specifically, we suggest specifying that the modified anti-round tripping provisions would not be applicable to (i) resident individuals; and (ii) resident non-individual entities (i.e. an eligible SFO of the relevant family and a specified entity). The specified entity must be subject to the anti-abuse measures below –

- (a) the entity concerned must fulfill the following conditions –
 - (i) at least one member of the family to which the FIV is related must have a direct or indirect beneficial interest in the entity;
 - (ii) the entity is interposed between the family members and the FIV; and
 - (iii) regardless of the extent of the beneficial interest held by the family members in the entity, at least 95% of the beneficial interest in the FIV must be held by family members;
- (b) the entity concerned is a passive investment holding vehicle which does not carry on any trade or business.

Anti-avoidance Provisions

20. To prevent tax abuse, if the Commissioner is satisfied that (i) the main purpose, or one of the main purposes of an FIHV or FSPE in entering into an arrangement, or (ii) the main purpose, or one of the main purposes of a person making a transfer of any asset or business to the FIHV or FSPE is to obtain a tax benefit, whether for the FIHV or the FSPE or another person or entity, the tax concession will not apply to the FIHV or the FSPE concerned. However, for a transfer, the tax concession may still apply if the transfer is carried out on an arm's length basis and the transferor is chargeable to tax in respect of the assessable profits arising from the transfer.

Record-keeping requirements

21. To enhance the ongoing monitoring and enforcement of the proposed family office tax regime, a responsible person for an FIHV and the eligible SFO should keep sufficient records to enable the identity and particulars of the beneficial owner(s) of the FIHV and the eligible SFO to be readily ascertainable. Penalties will be imposed on the FIHV and the eligible SFO if they fail to comply with the record-keeping requirements without reasonable excuse.

OTHER OPTIONS

22. We must amend the Ordinance to provide profits tax concession for an FIHV and FSPE. There is no other option.

THE BILL

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

- (a) Clause 3 amends section 19CA of the Ordinance to provide for the treatment of losses if the concessionary profits tax rate of the regime is not zero;
- (b) Clause 4 adds a new Part 6E to the Ordinance to introduce the proposed tax concession regime and empower the Secretary for Financial Services and the Treasury to amend certain sections of the new Schedule 16E by notice published in the Gazette, having regard to future developments in international tax standards;

- (c) Clause 5 amends section 80 of the Ordinance to apply the relevant penalties in relation to record-keeping requirements;
- (d) Clause 7 introduces the new Schedule 16E to the Ordinance, which contains the following parts –
 - (i) Part 1 (sections 1 to 8) provides for certain key concepts under the new profits tax concession regime. This part also contains definitions or interpretation provisions for certain expressions used in that Schedule;
 - (ii) Parts 2 and 3 (sections 9 to 19) mainly provide for profits tax concession for an entity that is an FIHV or an FSPE, and the circumstances under which losses sustained by an FIHV or an FSPE from certain transactions are not available for setting off against their assessable profits;
 - (iii) Part 4 (sections 20 to 23) mainly provides for the circumstances under which the assessable profits of an FIHV or FSPE are to be regarded as the assessable profits of a resident person (within the meaning of section 20 of that Schedule) that has a beneficial interest in the FIHV or FSPE;
 - (iv) Part 5 (sections 24 and 25) provides for the rate of profits tax for qualifying transactions and incidental transactions of an FIHV or FSPE;
 - (v) Part 6 (sections 26 to 29) provides for miscellaneous matters, including anti-avoidance provisions relating to an arrangement or transfer to obtain tax benefits. That Part also contains provisions providing for the obligations of a responsible person for an FIHV or an eligible SFO to keep or retain information or records regarding the beneficial owners of the FIHV and those of the eligible SFO; and
- (e) Clause 7 also introduces the new Schedules 16F to 16J to the Ordinance, which are supplementary to the new Schedule 16E and contain provisions for ascertaining the extent of beneficial interest that a person or entity has in another person or entity. The new Schedules 16I and 16J also contain provisions for ascertaining the amount of the assessable profits of resident persons under sections 22 and 23 of the new Schedule 16E respectively.

LEGISLATIVE TIMETABLE

24. The legislative timetable is as follows –

Publication in the Gazette	9 December 2022
First Reading and commencement of Second Reading debate	14 December 2022
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

25. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the existing provisions of the Ordinance. There are no productivity, environmental, family, and gender implications. It has no sustainability implications other than those set out under the economic implications. As IRD will absorb the additional workload arising from the proposal with its existing resources, there are no civil service implications for the Government at this stage. Should the proposal result in further workload on IRD which could not be coped with within existing resources in future, IRD will review the need and seek additional resources in accordance with the established mechanism. The financial and economic implications are set out at **Annex D.**

D

PUBLIC CONSULTATION

26. The Government conducted industry consultation on the proposal from March to April 2022. The financial services industry generally welcomed the proposal and suggested relaxation of the parameters. We have taken into account the industry's feedback when preparing the proposal at paragraphs 6 to 21 above. We consulted the LegCo Panel on Financial Affairs and the Financial Leaders Forum on the proposal on 4 April and 7 April 2022 respectively. Members generally supported the proposal.

PUBLICITY

27. We will issue a press release upon gazettal of the Bill, and arrange a spokesperson to answer media enquiries.

ENQUIRIES

28. Enquiries relating to this brief can be directed to Mr Keith Giang, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2054.

Financial Services and the Treasury Bureau
7 December 2022

Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022

Contents

Clause	Page
1. Short title.....	1
2. Inland Revenue Ordinance amended.....	1
3. Section 19CA amended (treatment of unabsorbed losses under sections 19CAB and 19CAC: interpretation).....	1
4. Part 6E added	2
Part 6E	
Tax Treatment of Family-owned Investment Holding Vehicle and Family-owned Special Purpose Entity	
40AV. Schedule 16E: tax treatment of family-owned investment holding vehicle and family-owned special purpose entity.....	2
40AW. Power to amend Schedule 16E.....	3
5. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)	3
6. Schedule 16C amended (classes of assets specified for transactions for purposes of sections 20AN and 20AO)	4
7. Schedules 16E to 16J added.....	5

Clause	Page
Schedule 16E Tax Treatment of Family-owned Investment Holding Vehicle and Family-owned Special Purpose Entity	5
Schedule 16F Provisions for Determining Extent of Beneficial Interest Family Member has in Particular Entity (Section 8 of Schedule 16E).....	66
Schedule 16G Provisions for Determining Extent of Beneficial Interest Entity has in Another Entity (Sections 8 and 20 of Schedule 16E).....	70
Schedule 16H Provisions for Determining Extent of FIHV’s Beneficial Interest in FSPE (Sections 11 and 16 of Schedule 16E).....	74
Schedule 16I Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 22 of Schedule 16E.....	78
Schedule 16J Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 23 of Schedule 16E.....	83

A BILL

To

Amend the Inland Revenue Ordinance to give profits tax concessions to certain family-owned investment holding vehicles and related entities; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Ordinance 2022.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 7.

3. Section 19CA amended (treatment of unabsorbed losses under sections 19CAB and 19CAC: interpretation)

(1) Section 19CA, definition of *concession provision*, paragraph (gc)—

Repeal

“; or”

Substitute a semicolon.

(2) Section 19CA, definition of *concession provision*, paragraph (h)—

Repeal the semicolon

Substitute

“; or”.

(3) Section 19CA, definition of *concession provision*, after paragraph (h)—

Add

“(i) section 9 or 16 of Schedule 16E;”.

4. Part 6E added

After Part 6D—

Add

“Part 6E

Tax Treatment of Family-owned Investment Holding Vehicle and Family-owned Special Purpose Entity

40AV. Schedule 16E: tax treatment of family-owned investment holding vehicle and family-owned special purpose entity

(1) Schedule 16E contains provisions about—

(a) the tax treatment of a family-owned investment holding vehicle within the meaning of that Schedule; and

(b) the tax treatment of a family-owned special purpose entity within the meaning of that Schedule.

(2) Schedules 16F, 16G, 16H, 16I and 16J contain provisions supplementary to Schedule 16E.

- (3) Schedules 16E, 16F, 16G, 16H, 16I and 16J apply in respect of a year of assessment commencing on or after 1 April 2022.

40AW. Power to amend Schedule 16E

- (1) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend—
- (a) the number specified in section 10(1)(b)(ii) of Schedule 16E;
 - (b) the amounts specified in sections 10(1)(c)(ii) and 11(2), (4) and (6) of Schedule 16E; and
 - (c) the rates specified in sections 24(2) and 25(2) of Schedule 16E.
- (2) A notice published under subsection (1) may contain any incidental, supplemental, evidential, consequential, savings and transitional provisions that are necessary and expedient in consequence of the amendments made under that subsection.”.

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

Before section 80(3)—

Add

- “(2Y) A person who, without reasonable excuse, fails to comply with a Schedule 16E provision commits an offence and is liable on conviction to a fine at level 3.
- (2Z) For the purposes of subsection (2Y)—
- Schedule 16E provision** (附表 16E 條文) means any of the following provisions of Schedule 16E—
- (a) section 28(2);

- (b) section 28(3);
- (c) section 28(4);
- (d) section 28(5);
- (e) section 28(6);
- (f) section 29(2);
- (g) section 29(3);
- (h) section 29(4);
- (i) section 29(5);
- (j) section 29(6);
- (k) section 29(7);
- (l) section 29(8);
- (m) section 29(9).

(2ZA) If a person is convicted of an offence under subsection (2Y) for failing to do an act, the court may order the person to do the act within a time specified in the order.

(2ZB) A person who fails to comply with an order of the court under subsection (2ZA) commits an offence and is liable on conviction to a fine at level 4.”.

6. Schedule 16C amended (classes of assets specified for transactions for purposes of sections 20AN and 20AO)

- (1) Schedule 16C, heading, after “20AO”—

Add

“and Schedule 16E”.

- (2) Schedule 16C—

Repeal

“& 17A]”

Substitute

“, 16E & 17A]”.

7. Schedules 16E to 16J added

After Schedule 16D—

Add

“Schedule 16E

[ss. 19CA, 40AV,
40AW & 80 & Schs. 16C,
16F, 16G, 16H, 16I & 16J]

**Tax Treatment of Family-owned Investment
Holding Vehicle and Family-owned Special
Purpose Entity**

Part 1

Preliminary

1. Interpretation

(1) In this Schedule—

direct beneficial interest (直接實益權益)—see section 7 of this Schedule;

entity (實體) means a body of persons (corporate or unincorporate) or a legal arrangement, and includes—

- (a) a corporation;
- (b) a partnership; and

(c) a trust;

ESF Office (具資格辦公室), in relation to a family—see section 2 of this Schedule;

family (家族)—see section 4 of this Schedule;

family office (家族辦公室) means a family office within the meaning of section 2 of this Schedule;

FIHV (家控工具) means a family-owned investment holding vehicle within the meaning of section 5 of this Schedule;

FSPE (家族特體) means a family-owned special purpose entity within the meaning of section 6 of this Schedule;

IFSPE (中間家族特體) means an interposed family-owned special purpose entity within the meaning of section 6 of this Schedule;

immovable property (不動產)—

(a) means—

- (i) land (whether covered by water or not);
- (ii) any estate, right, interest or easement in or over any land; and
- (iii) things attached to land or permanently fastened to anything attached to land; and

(b) does not include infrastructure;

indirect beneficial interest (間接實益權益)—see section 7 of this Schedule;

infrastructure (基礎設施)—

- (a) means any publicly or privately owned facility providing or distributing services for the benefit of the public; and

(b) includes any water, sewage, energy, fuel, transportation or communication facility;

investee private company (獲投資私人公司)—see subsections (2) and (3);

investment activity (投資活動), in relation to an FIHV, includes—

- (a) conducting research and advising on any potential investments to be made by the FIHV;
- (b) acquiring, holding, managing or disposing of property for the FIHV; and
- (c) establishing or administering an FSPE for holding and administering one or more underlying investments of the FIHV;

member (成員), in relation to a family—see section 4 of this Schedule;

private company (私人公司) means a company (whether incorporated in or outside Hong Kong) that is not allowed to issue any invitations to the public to subscribe for any shares or debentures of the company;

property (財產) includes—

- (a) money, goods, choses in action and land (whether in Hong Kong or elsewhere); and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to property mentioned in paragraph (a);

Schedule 16C asset (附表 16C 資產) means an asset that falls within a class specified in Schedule 16C.

- (2) An investee private company, in relation to an FIHV, is a private company any shares of which is held by an FSPE or IFSPE for the FIHV.
- (3) A reference to an FSPE or IFSPE in subsection (2) includes—
 - (a) if the FSPE or IFSPE is a partnership—a partner in the partnership; and
 - (b) if the FSPE or IFSPE is a trust—a trustee of the trust.
- (4) For the purposes of this Schedule, an FIHV is related to a family if one or more than one member of the family has or (because of section 8 of this Schedule) is taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the FIHV.
- (5) For the purposes of this Schedule, an FIHV is managed by an ESF Office of the family to which the FIHV is related if the ESF Office carries out any investment activities.

2. Meaning of *ESF office of family*

- (1) A private company is a family office if—
 - (a) the central management and control of the company is exercised in Hong Kong; and
 - (b) the company provides services to specified persons of a family.
- (2) A family office is an eligible single family office (**ESF Office**) of a family for a year of assessment if—
 - (a) at all times during the basis period for the year of assessment, one or more than one member of the family has at least 95%, in aggregate, of the

beneficial interest (whether direct or indirect) in the family office;

- (b) the family office satisfies the safe harbour rule in relation to the family for the year of assessment; and
- (c) the following conditions are met in respect of the family office—
 - (i) the family office provides services to specified persons of the family during the basis period for the year of assessment; and
 - (ii) the fees for the provision of those services are chargeable to profits tax under section 14 for that year.

(3) In this section—

safe harbour rule (安全港規則)—see section 3 of this Schedule;

specified person (指明人士), in relation to a family, means—

- (a) an FIHV that is related to the family;
- (b) an FSPE in which an FIHV mentioned in paragraph (a) has a beneficial interest (whether direct or indirect);
- (c) an IFSPE of an FIHV mentioned in paragraph (a); and
- (d) a member of the family.

3. Provision supplementary to section 2 of this Schedule—safe harbour rule

- (1) For the purposes of section 2 of this Schedule, a family office satisfies the safe harbour rule in relation to a family

for a year of assessment (*subject year*) if the family office—

- (a) falls within the 1-year safe harbour under subsection (2) in relation to the family for the subject year; or
 - (b) falls within the multiple-year safe harbour under subsection (3) in relation to the family for the specified years.
- (2) A family office falls within the 1-year safe harbour in relation to a family for a subject year if, for that year, the FOMP percentage of the family office is more than or equal to 75%.
 - (3) A family office falls within the multiple-year safe harbour in relation to a family for the specified years if, for those years, the average FOMP percentage of the family office is more than or equal to 75%.
 - (4) In this section, a reference to the specified years for a family office is—
 - (a) if the family office has provided services in Hong Kong, to any person or entity, for less than 2 consecutive years of assessment immediately before the subject year—a reference to the subject year and the preceding year of assessment (*the 2 years*); and
 - (b) if the family office has provided services in Hong Kong, to any person or entity, for 2 or more consecutive years of assessment immediately before the subject year—a reference to the subject year and the preceding 2 years of assessment (*the 3 years*).
 - (5) The FOMP percentage of a family office for a year of assessment is calculated in accordance with the following formula—

FOMP

P

where: FOMP means the aggregate amount of the management profits of the family office in the basis period for the year of assessment that are derived from services provided to any one or more specified persons of the family;

P means the aggregate amount of profits accruing to the family office from all sources in Hong Kong in the basis period for the year of assessment.

(6) The average FOMP percentage of a family office for the specified years is—

(a) for the specified years within the meaning of subsection (4)(a)—the percentage arrived at by dividing the sum of the FOMP percentage of the family office for the 2 years by 2; and

(b) for the specified years within the meaning of subsection (4)(b)—the percentage arrived at by dividing the sum of the FOMP percentage of the family office for the 3 years by 3.

(7) In this section—

specified person (指明人士) has the meaning given by section 2(3) of this Schedule.

4. Meaning of *family* and *member of family*

(1) For the purposes of this Schedule—

(a) a natural person (whether alive or deceased) (*Person A*) and all of the persons related to Person A together constitute a family; and

(b) each of the persons mentioned in paragraph (a) is a member of the family.

(2) For the purposes of subsection (1)(a)—

(a) a spouse (including a deceased spouse) of Person A (*Person B*) is a person related to Person A;

(b) any other natural person (whether alive or deceased) is a person related to Person A if the other natural person is—

(i) a lineal ancestor of Person A (*Person C*);

(ii) a lineal ancestor of Person B (*Person D*);

(iii) a lineal descendant of Person A (*Person E*);

(iv) a sibling of Person A, Person B, Person C or Person D (*Person F*); or

(v) a lineal descendant of Person F (*Person G*); and

(c) a spouse (including a deceased spouse) of Person E, Person F or Person G is also a person related to Person A.

(3) For the purposes of this section—

(a) a child of a natural person (*Child A*) is a lineal descendant of the natural person;

(b) a child of Child A (*Child B*), a child of Child B, and so on, is also a lineal descendant of the natural person mentioned in paragraph (a);

(c) a parent of a natural person (*Parent A*) is a lineal ancestor of the natural person; and

- (d) a parent of Parent A (**Parent B**), a parent of Parent B, and so on, is also a lineal ancestor of the natural person mentioned in paragraph (c).

(4) In this section—

child (子女), in relation to a natural person—

- (a) means a child of the person, or of a spouse (including a deceased spouse) or former spouse of the person, whether or not the child was born in wedlock; and
- (b) includes an adopted child or step child of either or both of the following—
 - (i) the person;
 - (ii) a spouse (including a deceased spouse) or former spouse of the person;

parent (父母), in relation to a natural person, means—

- (a) a parent of whose marriage the person is a child;
- (b) the natural father or mother of the person;
- (c) a parent by whom the person was adopted; or
- (d) a step parent of the person;

sibling (兄弟姊妹), in relation to Person A, Person B, Person C or Person D (**relevant person**), means—

- (a) a full or half blood sibling of the relevant person;
- (b) an adopted sibling of the relevant person;
- (c) a step sibling of the relevant person; or
- (d) if the relevant person is an adopted person—a natural child of an adoptive parent of the relevant person.

- (5) If a person (other than a deceased spouse of Person A) (**Person H**) ceases to be a spouse of Person A during a year of assessment that begins on or after 1 April 2022 (**subject year**), for the subject year and the year of assessment immediately after the subject year (and not for any subsequent year), Person H is still regarded as a spouse of Person A.
- (6) If subsection (5) applies to Person H, for the subject year and the year of assessment immediately after the subject year (and not for any subsequent year)—
 - (a) a sibling of Person H (**Sibling A**) and a spouse of Sibling A are respectively a sibling and a spouse of a sibling of Person B;
 - (b) a lineal descendant and a spouse of a lineal descendant of Sibling A are respectively a lineal descendant and a spouse of a lineal descendant of a sibling of Person B;
 - (c) a lineal ancestor of Person H (**Ancestor A**) is a lineal ancestor of Person B;
 - (d) a sibling and a spouse of a sibling of Ancestor A are respectively a sibling and a spouse of a sibling of a lineal ancestor of Person B; and
 - (e) a lineal descendant and a spouse of a lineal descendant of a sibling of Ancestor A are respectively a lineal descendant and a spouse of a lineal descendant of a sibling of a lineal ancestor of Person B.
- (7) If a person (other than a deceased spouse of Person E, Person F or Person G) (**Person I**) ceases to be a spouse of Person E, Person F or Person G during a year of assessment that begins on or after 1 April 2022 (**subject**

year), for the subject year and the year of assessment immediately after the subject year (and not for any subsequent year), Person I is still regarded as a spouse of Person E, Person F or Person G (as the case requires).

5. Meaning of family-owned investment holding vehicle (FIHV)

An entity (*Entity A*), whether established or created (however described) in or outside Hong Kong, is a family-owned investment holding vehicle for a year of assessment if—

- (a) at all times during the basis period for that year, one or more than one member of a family has at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in Entity A; and
- (b) Entity A is not a business undertaking for general commercial or industrial purposes mentioned in section 20AM(6).

6. Meaning of family-owned special purpose entity (FSPE) and interposed family-owned special purpose entity (IFSPE)

- (1) An entity (*Entity B*), whether established or created (however described) in or outside Hong Kong, is a family-owned special purpose entity (*FSPE*) if all of the conditions specified in subsection (2) are met in respect of Entity B.
- (2) The conditions are—
 - (a) an FIHV (*relevant FIHV*) has a beneficial interest (whether direct or indirect) in Entity B;
 - (b) Entity B is established or created (however described) solely—

- (i) for holding (whether directly or indirectly) and administering one or more investee private companies;
- (ii) for holding (whether directly or indirectly) and administering any Schedule 16C assets; or
- (iii) for the purposes mentioned in subparagraphs (i) and (ii);

- (c) Entity B does not carry on any trade or activity (including executing a legal document) except for either or both of the purposes mentioned in paragraph (b)(i) and (ii); and
- (d) Entity B is neither an FIHV nor an investee private company.

- (3) If an FSPE has an indirect beneficial interest in an investee private company through an entity (*interposed entity*) that is an FSPE in which the relevant FIHV has an indirect beneficial interest, the interposed entity is an interposed family-owned special purpose entity (*IFSPE*) of the relevant FIHV.
- (4) If an FSPE has an indirect beneficial interest in an investee private company through a series of 2 or more interposed entities each of which is an FSPE in which the relevant FIHV has an indirect beneficial interest, each of the interposed entities is an IFSPE of the relevant FIHV.

7. Meaning of direct beneficial interest and indirect beneficial interest in person or entity

- (1) A person or entity (*the particular person*) has a direct beneficial interest in another person or entity (*the other person*) if—
 - (a) where the other person is a corporation—

- (i) the particular person holds any of the issued share capital (however described) of the corporation; or
- (ii) (if the corporation does not have any issued share capital) the particular person is entitled to exercise or control the exercise of any voting rights in the corporation;
- (b) where the other person is a partnership—
 - (i) the particular person, as a partner in the partnership, is entitled to any of the profits of the partnership; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the particular person, as a partner in the partnership, is entitled to exercise or control the exercise of any voting rights in the partnership;
- (c) where the other person is a trust—
 - (i) the particular person benefits under the trust estate otherwise than through the trustee of the trust; or
 - (ii) the particular person, not being a trustee of the trust or—
 - (A) if the trustee of the trust is a corporation—a director of the corporation;
 - (B) if the trustee of the trust is a partnership—a partner in the partnership; or

- (C) if the trustee of the trust is any other entity—a principal officer of the entity, is able (or might reasonably be expected to be able) to control the activities of the trust estate or the application of its corpus or income, otherwise than through the trustee of the trust; or
- (d) where the other person is a person or entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the particular person is entitled to any capital of the other person;
 - (ii) (if subparagraph (i) is not applicable in relation to the other person) the particular person has any of the ownership interests in the other person;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the other person) the particular person is entitled to any profits of the other person; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the other person) the particular person is entitled to exercise or control the exercise of any voting rights in the other person.
- (2) A person or entity (*the particular person*) has an indirect beneficial interest in another person or entity (*the other person*) if—
 - (a) where the other person is a corporation—

- (i) the particular person is interested in any of the issued share capital (however described) of the corporation; or
- (ii) (if the corporation does not have any issued share capital) the particular person is entitled to exercise or control the exercise of any voting rights in the corporation;
- (b) where the other person is a partnership—
 - (i) the particular person is entitled to any of the profits of the partnership; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the particular person is entitled to exercise or control the exercise of any voting rights in the partnership;
- (c) where the other person is a trust—
 - (i) the particular person benefits under the trust estate; or
 - (ii) the particular person, not being a trustee of the trust or—
 - (A) if the trustee of the trust is a corporation—a director of the corporation;
 - (B) if the trustee of the trust is a partnership—a partner in the partnership; or
 - (C) if the trustee of the trust is any other entity—a principal officer of the entity,

- is able (or might reasonably be expected to be able) to control the activities of the trust estate or the application of its corpus or income; or
- (d) where the other person is a person or entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the particular person is entitled to any capital of the other person;
 - (ii) (if subparagraph (i) is not applicable in relation to the other person) the particular person has any of the ownership interests in the other person;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the other person) the particular person is entitled to any profits of the other person; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the other person) the particular person is entitled to exercise or control the exercise of any voting rights in the other person,through a third person that is an entity (*interposed entity*), or a series of 2 or more interposed entities, that is or are related to the particular person and the other person in the way described in subsection (3) or (4).
- (3) If there is only one interposed entity—
 - (a) the particular person has a direct beneficial interest in the interposed entity; and
 - (b) the interposed entity has a direct beneficial interest in the other person.
- (4) If there is a series of 2 or more interposed entities—

- (a) the particular person has a direct beneficial interest in the first interposed entity in the series;
 - (b) each interposed entity (other than the last interposed entity) in the series has a direct beneficial interest in the next interposed entity in the series; and
 - (c) the last interposed entity in the series has a direct beneficial interest in the other person.
- (5) In this section, a reference to the issued share capital of a corporation does not include the shares comprised in the issued share capital that do not entitle their holders to receive dividends (whether in cash or in kind) and a distribution of the assets of the corporation on its dissolution other than a return of capital.
- (6) In this section, a reference to the exercise of any voting rights in the corporation is a reference to the exercise of any voting rights at a general meeting of the corporation.
- (7) For a partnership the partners in which are not entitled to its profits but are entitled to a distribution of the assets of the partnership on its dissolution—a reference in this section to an entitlement to any of the profits of the partnership is taken to be a reference to an entitlement to a distribution of any of the assets of the partnership on its dissolution.
- (8) A reference to the particular person in subsections (1) and (2) (other than the last reference in subsection (2)) includes—
- (a) if the particular person is a partnership—a partner in the partnership; and
 - (b) if the particular person is a trust—a trustee of the trust.

- (9) In this section—
- principal officer* (主要職員), in relation to an entity, means a person who exercises the managerial functions of the entity.
- 8. Determination of extent of family member's beneficial interest in entity for sections 2(2) and 5 of this Schedule etc.**
- (1) Schedule 16F applies, subject to this section, in determining the extent of the beneficial interest that a member of a family has in the entity mentioned in section 2(2) or 5 of this Schedule (*subject entity*).
- (2) For a subject entity that is a specified trust related to a family, if the aggregate percentage in value of the relevant estate of the trust is at least 95%, the members of the family who are qualified beneficiaries of the trust, and those other members of the family who are entitled to benefit from the trust estate, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the trust.
- (3) Subsections (4), (5), (6), (7) and (8) only apply if the subject entity is not a specified trust (*particular entity*).
- (4) If—
- (a) an entity that is a specified trust related to a family (*Interposed Entity A*) has a direct beneficial interest in a particular entity;
 - (b) the extent of the beneficial interest mentioned in paragraph (a) is 100%; and
 - (c) the aggregate percentage in value of the relevant estate of the trust is at least 95%,

the members of the family who are qualified beneficiaries of Interposed Entity A, and those other members of the family who are entitled to benefit from the trust estate of Interposed Entity A, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in Interposed Entity A.

- (5) If, because of subsection (4), any members of a family are taken to have at least 95%, in aggregate, of the beneficial interest in Interposed Entity A, those members are also taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the particular entity.
- (6) If—
- (a) an entity that is a specified trust related to a family (*Interposed Entity B*) has an indirect beneficial interest in a particular entity through one or more other entities each of which is an eligible entity;
 - (b) the extent of the beneficial interest mentioned in paragraph (a) is 100%; and
 - (c) the aggregate percentage in value of the relevant estate of the trust is at least 95%,

the members of the family who are qualified beneficiaries of Interposed Entity B, and those other members of the family who are entitled to benefit from the trust estate of Interposed Entity B, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in Interposed Entity B.

- (7) If, because of subsection (6), any members of a family are taken to have at least 95%, in aggregate, of the beneficial interest in Interposed Entity B, those members are also taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the particular entity.

- (8) Schedule 16G applies in determining the extent of the beneficial interest that Interposed Entity A or Interposed Entity B has in a particular entity.

- (9) In this section—

eligible entity (具資格實體) means an entity that is not a specified trust;

qualified beneficiary (合資格受益人), in relation to a specified trust related to a family, means—

- (a) a member of the family who is a specified beneficiary under the trust;
- (b) a member of the family who has a direct beneficial interest in a specified beneficiary under the trust that is an eligible entity; or
- (c) a member of the family who, through an eligible entity or a series of entities each of which is an eligible entity, has an indirect beneficial interest in a specified beneficiary under the trust that is an eligible entity;

qualified entity (合資格實體)—see subsection (13);

relevant estate (有關產業), in relation to a specified trust related to a family, means the trust estate of the trust, or each part of the trust estate of the trust, from which one or more than one member of the family is entitled to benefit or that is distributable for the benefit of one or more than one specified beneficiary under the trust who is a member of the family or a qualified entity of the family;

specified beneficiary (指明受益人)—see subsection (12);

specified trust (指明信託)—see subsection (10).

- (10) For the purposes of this section, a trust created or established (however described) under a trust instrument is a specified trust if, under the trust—
- (a) there is one or more than one specified beneficiary;
 - (b) there is one or more than one class of persons or entities any of the members of which is a specified beneficiary; or
 - (c) there is a combination of paragraphs (a) and (b).
- (11) For the purposes of this section, a specified trust is related to a family if one or more than one specified beneficiary under the trust is—
- (a) a member of the family; or
 - (b) an entity in which one or more than one member of the family has a beneficial interest (whether direct or indirect).
- (12) For the purposes of this section, a person or entity is a specified beneficiary under a trust if—
- (a) the person or entity would be able to benefit from the trust estate if the trustee of the trust exercises a discretionary power under the trust instrument in the favour of the person or entity; or
 - (b) the person or entity would be able to benefit from the trust estate if the conditions under the trust instrument that are applicable to the person or entity are met.
- (13) For the purposes of this section, an entity is a qualified entity of a family if—
- (a) the entity is an eligible entity; and

- (b) one or more than one member of the family has 100%, in aggregate, of the beneficial interest (whether direct or indirect) in the entity.
- (14) For the purposes of subsection (13)(b), the extent of the beneficial interest that a member of the family has in the eligible entity is to be determined in accordance with Schedule 16F.

Part 2

Tax Concession for Certain Profits of Family-owned Investment Holding Vehicle

9. Profits tax concession for FIHV

- (1) This section applies to an FIHV for the basis period for a year of assessment.
- (2) Profits tax is to be charged, at the rate specified in section 24(2) of this Schedule, on the FIHV's assessable profits for the basis period earned from the transactions specified in subsection (3) if the condition specified in subsection (4) is met at all times during the basis period.
- (3) The transactions are—
 - (a) transactions in Schedule 16C assets (*qualifying transactions*); and
 - (b) subject to subsection (5), transactions incidental to the carrying out of qualifying transactions (*incidental transactions*).
- (4) The condition referred to in subsection (2) is—
 - (a) that the central management and control of the FIHV is exercised in Hong Kong; and

- (b) that the qualifying transactions of the FIHV—
- (i) are carried out in Hong Kong by or through an ESF Office of the family that manages the FIHV; or
 - (ii) are arranged in Hong Kong by such an office.
- (5) Subsection (2) however does not apply to assessable profits earned from incidental transactions if the percentage calculated in accordance with the following formula exceeds 5%—

$$\frac{A}{B} \times 100\%$$

where—

- A = the FIHV's trading receipts from incidental transactions in the basis period;
- B = the total of the FIHV's trading receipts from qualifying transactions and incidental transactions in the basis period.

- (6) This section is subject to sections 10, 12, 13 and 14 of this Schedule.

10. When does section 9 of this Schedule not apply—Exception 1 (FIHV)

- (1) Section 9 of this Schedule does not apply to an FIHV for the basis period for a year of assessment (*subject year*) unless—
- (a) the subject ESF Office complies with the Specified NAV Rule under section 11 of this Schedule;
 - (b) the average number of qualified employees during the basis period—

- (i) is adequate in the opinion of the Commissioner; and
 - (ii) is in any event not less than 2; and
- (c) the total amount of operating expenditure incurred in Hong Kong for carrying out investment activities during the basis period—
- (i) is adequate in the opinion of the Commissioner; and
 - (ii) is in any event not less than \$2,000,000.
- (2) For the purposes of subsection (1)(b), a person is a qualified employee in relation to an FIHV if—
- (a) the person is a full-time employee in Hong Kong; and
 - (b) the person—
 - (i) carries out any investment activities in Hong Kong during the basis period; and
 - (ii) has the qualifications necessary for doing so.
- (3) In this section—
- subject ESF Office* (標的具資格辦公室), in relation to an FIHV for the basis period for the subject year, means a family office—
- (a) that is an ESF Office of the family to which the FIHV is related; and
 - (b) that, on the last day of the basis period, manages the FIHV.

11. Provision supplementary to section 10 of this Schedule—Specified NAV Rule

- (1) For the purposes of section 10(1)(a) of this Schedule, a subject ESF Office complies with the Specified NAV Rule in relation to an FIHV (*subject FIHV*) for the basis period for a year of assessment (*subject year*) if Requirement 1, Requirement 2 or Requirement 3 is met.
- (2) Requirement 1 is that—the aggregate of the amount of the NAV of the Schedule 16C assets of each relevant FIHV managed by the subject ESF Office (*the Office*), as at the end of the basis period of the relevant FIHV for the subject year, is not less than \$240,000,000 (or its equivalent in a foreign currency).
- (3) Requirement 2 applies if—
 - (a) the Office is established in or before the year preceding the subject year (*1st preceding year*); and
 - (b) the Office does not meet Requirement 1.
- (4) Requirement 2 is that—the aggregate of the amount of the NAV of the Schedule 16C assets of each relevant FIHV managed by the Office, as at the end of the basis period of the relevant FIHV for the 1st preceding year, is not less than \$240,000,000 (or its equivalent in a foreign currency).
- (5) Requirement 3 applies if—
 - (a) the Office is established in or before the year preceding the 1st preceding year (*2nd preceding year*); and
 - (b) the Office meets neither Requirement 1 nor Requirement 2.

- (6) Requirement 3 is that—the aggregate of the amount of the NAV of the Schedule 16C assets of each relevant FIHV managed by the Office, as at the end of the basis period of the relevant FIHV for the 2nd preceding year, is not less than \$240,000,000 (or its equivalent in a foreign currency).
- (7) For the purposes of this section, the NAV of any Schedule 16C assets is to be determined in the manner specified by the Commissioner.
- (8) For the purposes of this section, a reference to the NAV of the Schedule 16C assets of an FIHV includes the NAV of the Schedule 16C assets held by each FSPE in which the FIHV has a beneficial interest (whether direct or indirect) to the extent specified in subsection (9).
- (9) The extent mentioned in subsection (8) is the percentage equal to the percentage of the FIHV's beneficial interest (whether direct or indirect) in the FSPE.
- (10) Schedule 16H applies in determining the extent of the beneficial interest mentioned in subsection (9).
- (11) For the purposes of this section—
 - (a) the subject FIHV is a relevant FIHV; and
 - (b) any other FIHV that is related to the relevant family is also a relevant FIHV if an election has been made in relation to that other FIHV under section 14 of this Schedule.
- (12) For the purposes of this section—
 - (a) if an FSPE is a partnership—any Schedule 16C asset held by a partner in the partnership is regarded as held by the FSPE; and

(b) if an FSPE is a trust—any Schedule 16C asset held by a trustee of the trust is regarded as held by the FSPE.

(13) In this section—

NAV means net asset value;

relevant family (有關家族) means the family to which the subject FIHV is related;

relevant FIHV (有關家控工具)—see subsection (11);

subject ESF Office (標的具資格辦公室), in relation to a subject FIHV for the basis period for the subject year, has the meaning given by section 10(3) of this Schedule.

12. When does section 9 of this Schedule not apply—Exception 2 (FIHV)

(1) This section applies if, during the basis period for a year of assessment—

(a) an FIHV carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and

(b) the relevant company holds (whether directly or indirectly)—

(i) immovable property in Hong Kong; or

(ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.

(2) If the aggregate value of the immovable property and share capital held by the relevant company exceeds 10% of the value of the company's assets, section 9 of this

Schedule does not apply to the assessable profits of the FIHV for the basis period earned from the transactions specified in section 9(3) of this Schedule (*section 9(3) transactions*).

(3) If the aggregate value of the immovable property and share capital held by the relevant company does not exceed 10% of the value of the company's assets, section 9 of this Schedule does not apply to the assessable profits of the FIHV for the basis period earned from the section 9(3) transactions unless a condition specified in subsection (4) is met in good faith by the FIHV.

(4) The condition is—

(a) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FIHV has control over the relevant company); or

(b) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—

(i) the FIHV does not have control over the relevant company; or

(ii) if the FIHV has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.

(5) For the purposes of this section, an FIHV has control over a company if the FIHV has power to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
- (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with the wishes of the FIHV.

- (6) For the purposes of this section, a reference to an FIHV (*reference*) in subsection (1), the second reference in subsection (3), the first reference in subsection (4)(a) and (b), and the second and last references in subsection (5) include—

- (a) if the FIHV is a partnership—a partner in the partnership; and
- (b) if the FIHV is a trust—a trustee of the trust.

- (7) In this section—

short-term asset (短期資產), in relation to a private company, the shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, which are being disposed of by or for an FIHV, means an asset—

- (a) that is not a Schedule 16C asset;
- (b) that is not immovable property in Hong Kong; and
- (c) that has been held by the company for less than 3 consecutive years before the date of disposal.

13. When does section 9 of this Schedule not apply—Exception 3 (FIHV)

- (1) This section applies if, during the basis period for a year of assessment—

- (a) an FIHV carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
- (b) the relevant company holds (whether directly or indirectly) neither of the following—
 - (i) immovable property in Hong Kong;
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.

- (2) Unless a condition specified in subsection (3) is met in good faith by the FIHV, section 9 of this Schedule does not apply to the assessable profits of the FIHV for the basis period earned from the transactions specified in section 9(3) of this Schedule.

- (3) The condition is—

- (a) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FIHV has control over the relevant company); or
- (b) that the FIHV disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
 - (i) the FIHV does not have control over the relevant company; or
 - (ii) if the FIHV has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term

assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.

- (4) For the purposes of this section, an FIHV has control over a company if the FIHV has power to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
(b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with the wishes of the FIHV.

- (5) For the purposes of this section, a reference to an FIHV (*reference*) in subsection (1), the first reference in subsections (2) and (3)(a) and (b), and the second and last references in subsection (4) include—

- (a) if the FIHV is a partnership—a partner in the partnership; and
(b) if the FIHV is a trust—a trustee of the trust.

- (6) In this section—

short-term asset (短期資產) has the meaning given by section 12(7) of this Schedule.

14. When does section 9 of this Schedule not apply—Exception 4 (FIHV)

- (1) Section 9 of this Schedule does not apply to an FIHV unless—
(a) an election is made in relation to the FIHV under this section; and

- (b) the FIHV is managed by only one ESF Office of the family to which the FIHV is related.

- (2) Subject to subsection (3), an FIHV that is managed by an ESF Office of the family to which the FIHV is related (*eligible FIHV*) may in writing elect that section 9 of this Schedule applies to it.

- (3) For each ESF Office of the family, not more than 50 eligible FIHVs that are managed by the ESF Office may make an election under this section.

- (4) An election under this section, once made, is not revocable by the FIHV concerned.

15. Losses sustained by FIHV—where rate specified in section 24(2) of this Schedule is 0%

If, because of sections 9 and 24 of this Schedule, an FIHV is exempt from the payment of profits tax in respect of its assessable profits earned from the transactions specified in section 9(3) of this Schedule for the basis period for a year of assessment, any loss sustained by the FIHV from any of those transactions is not available for set off against any of its assessable profits for that basis period or the basis period for any subsequent year of assessment.

Part 3

Tax Concession for Certain Profits of Family-owned Special Purpose Entity

16. Profits tax concession for FSPE

- (1) This section applies to an FSPE for the basis period for a year of assessment if section 9 of this Schedule applies,

- for that year, to an FIHV that has a beneficial interest (whether direct or indirect) in the FSPE.
- (2) Profits tax is to be charged, at the rate specified in section 25(2) of this Schedule, on the FSPE's assessable profits for the basis period earned from the transactions specified in subsection (3).
 - (3) The transactions are—
 - (a) transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, an investee private company or an IFSPE;
 - (b) transactions in rights, options or interests (whether described in units or otherwise) in, or in respect of, the specified securities mentioned in paragraph (a);
 - (c) transactions in certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, the specified securities mentioned in paragraph (a);
 - (d) transactions in Schedule 16C assets; and
 - (e) qualified incidental transactions.
 - (4) For the purposes of subsection (3)(e), the transactions that are incidental to the carrying out of the transactions mentioned in subsection (3)(a), (b), (c) or (d) (*incidental transactions*) are qualified incidental transactions if, in the basis period for the year of assessment, the FSPE's trading receipts from the incidental transactions do not exceed 5% of the total trading receipts from—
 - (a) the transactions mentioned in subsection (3)(a), (b), (c) and (d); and

- (b) the incidental transactions.
- (5) The extent of assessable profits to be charged under subsection (2) is the percentage equal to the percentage of the FIHV's beneficial interest (whether direct or indirect) in the FSPE in the year of assessment.
- (6) Schedule 16H applies in determining the extent of the beneficial interest of the FIHV in the FSPE.
- (7) This section is subject to sections 17 and 18 of this Schedule.

17. When does section 16 of this Schedule not apply—Exception 1 (FSPE)

- (1) This section applies if, during the basis period for a year of assessment—
 - (a) an FSPE carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
 - (b) the relevant company holds (whether directly or indirectly)—
 - (i) immovable property in Hong Kong; or
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
- (2) If the aggregate value of the immovable property and share capital held by the relevant company exceeds 10% of the value of the company's assets, section 16 of this Schedule does not apply to the assessable profits of the FSPE for the basis period earned from the transactions

- specified in section 16(3) of this Schedule (*section 16(3) transactions*).
- (3) If the aggregate value of the immovable property and share capital held by the relevant company does not exceed 10% of the value of the company's assets, section 16 of this Schedule does not apply to the assessable profits of the FSPE for the basis period earned from the section 16(3) transactions unless a condition specified in subsection (4) is met in good faith by the FSPE.
- (4) The condition is—
- (a) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FSPE has control over the relevant company); or
- (b) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
- (i) the FSPE does not have control over the relevant company; or
- (ii) if the FSPE has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.
- (5) For the purposes of this section, an FSPE has control over a company if the FSPE has power to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
- (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,
- that the affairs of the company are conducted in accordance with the wishes of the FSPE.
- (6) For the purposes of this section, a reference to an FSPE (*reference*) in subsection (1), the second reference in subsection (3), the first reference in subsection (4)(a) and (b), and the second and last references in subsection (5) include—
- (a) if the FSPE is a partnership—a partner in the partnership; and
- (b) if the FSPE is a trust—a trustee of the trust.
- (7) In this section—
- short-term asset* (短期資產), in relation to a private company, the shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, which are being disposed of by or for an FSPE, means an asset—
- (a) that is not a Schedule 16C asset;
- (b) that is not immovable property in Hong Kong; and
- (c) that has been held by the company for less than 3 consecutive years before the date of disposal.
- 18. When does section 16 of this Schedule not apply—Exception 2 (FSPE)**
- (1) This section applies if, during the basis period for a year of assessment—

- (a) an FSPE carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
 - (b) the relevant company holds (whether directly or indirectly) neither of the following—
 - (i) immovable property in Hong Kong;
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
- (2) Unless a condition specified in subsection (3) is met in good faith by the FSPE, section 16 of this Schedule does not apply to the assessable profits of the FSPE for the basis period earned from the transactions specified in section 16(3) of this Schedule.
- (3) The condition is—
- (a) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the FSPE has control over the relevant company); or
 - (b) that the FSPE disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
 - (i) the FSPE does not have control over the relevant company; or
 - (ii) if the FSPE has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term

- assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.
- (4) For the purposes of this section, an FSPE has control over a company if the FSPE has power to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company; or
 - (b) by virtue of any powers conferred by the articles of association or any other document regulating the company or any other company,
- that the affairs of the company are conducted in accordance with the wishes of the FSPE.
- (5) For the purposes of this section, a reference to an FSPE (*reference*) in subsection (1), the first reference in subsections (2) and (3)(a) and (b), and the second and last references in subsection (4) include—
- (a) if the FSPE is a partnership—a partner in the partnership; and
 - (b) if the FSPE is a trust—a trustee of the trust.
- (6) In this section—
- short-term asset* (短期資產) has the meaning given by section 17(7) of this Schedule.

19. Losses sustained by FSPE—where rate specified in section 25(2) of this Schedule is 0%

If, because of sections 16 and 25 of this Schedule, an FSPE is exempt from the payment of profits tax in respect of its assessable profits earned from the transactions specified in section 16(3) of this Schedule for the basis period for a year of

assessment, any loss sustained by the FSPE from any of those transactions is not available for set off against any of its assessable profits for that basis period or the basis period for any subsequent year of assessment.

Part 4

Assessable Profits of Resident Persons

20. Meaning of *resident person*, *specified entity*, etc. in this Part

(1) In this Part—

resident person (居港者)—see subsection (2);

specified entity (指明實體)—see subsections (3), (4), (5), (6) and (7);

specified members (指明成員), in relation to an entity, means members of a family who, because of section 8 of this Schedule, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the entity.

(2) In relation to a year of assessment—

(a) a corporation that is not a trustee of a trust is a resident person if the central management and control of the corporation is exercised in Hong Kong in the year of assessment;

(b) a partnership that is not a trustee of a trust is a resident person if the central management and control of the partnership is exercised in Hong Kong in the year of assessment; and

(c) a trustee of a trust is a resident person if the central management and control of the trust is exercised in Hong Kong in the year of assessment.

(3) An entity (*Entity C*) is a specified entity in relation to the family to which an FIHV is related if Condition 1 or Condition 2 is met.

(4) Condition 1 is—

(a) that Entity C—

(i) is not a business undertaking for general commercial or industrial purpose; and

(ii) does not carry on any trade or business;

(b) that at least one member of the family to which the FIHV is related has a direct or indirect beneficial interest in the entity (*relevant family member*); and

(c) that Entity C is the entity, or one of the entities in a series of 2 or more entities, through which any one or more than one relevant family member has an indirect beneficial interest in the FIHV.

(5) Condition 2 is—

(a) that Entity C—

(i) is not a business undertaking for general commercial or industrial purpose; and

(ii) does not carry on any trade or business; and

(b) that Entity C is a qualified entity.

(6) For the purposes of subsection (5), Entity C is a qualified entity if—

(a) Entity C has either—

- (i) 100% direct beneficial interest in the FIHV mentioned in subsection (3); or
 - (ii) 100% indirect beneficial interest in that FIHV; and
 - (b) there are any specified members in relation to Entity C.
- (7) For the purposes of subsection (5), an entity is also a qualified entity if it is an entity, or one of the entities in a series of 2 or more entities, through which an entity falling within the description in subsection (6) has the beneficial interest mentioned in subsection (6)(a)(ii).
- (8) Schedule 16G applies in determining the extent of the beneficial interest of Entity C in the FIHV.

21. Meaning of *associate* in sections 22 and 23 of this Schedule

- (1) In sections 22(2) and (4) and 23(2) of this Schedule—
associate (相聯者)—
- (a) in relation to a resident person that is a corporation but is not a trustee of a trust, means—
 - (i) a person or entity who has control over the corporation;
 - (ii) if a person mentioned in subparagraph (i) is a partner in a partnership—another partner in the partnership;
 - (iii) if a person mentioned in subparagraph (i) is a natural person—a relative of the person;
 - (iv) if another partner mentioned in subparagraph (ii) is a natural person—a relative of that other partner;

- (v) a director or principal officer of—
 - (A) the corporation; or
 - (B) an associated corporation of the corporation;
 - (vi) if a director mentioned in subparagraph (v) is a natural person—a relative of the director;
 - (vii) a relative of a principal officer mentioned in subparagraph (v);
 - (viii) if the corporation is a partner in a partnership—another partner in the partnership;
 - (ix) if another partner mentioned in subparagraph (viii) is a natural person—a relative of that other partner;
 - (x) a partnership in which the corporation is a partner; or
 - (xi) an associated corporation of the corporation;
- (b) in relation to a resident person that is a partnership but is not a trustee of a trust, means—
- (i) a partner in the partnership;
 - (ii) if a partner in the partnership is a natural person—a relative of the partner;
 - (iii) if a partner in the partnership is another partnership—
 - (A) a partner in the other partnership (*Partner A*); or
 - (B) a partner with the other partnership in any other partnership (*Partner B*);

- (iv) if Partner A is a partnership—a partner in Partner A (*Partner C*);
 - (v) if Partner B is a partnership—a partner in Partner B (*Partner D*);
 - (vi) if Partner A, Partner B, Partner C or Partner D is a natural person—a relative of the partner;
 - (vii) a corporation over which any of the following persons has control—
 - (A) the partnership;
 - (B) a partner in the partnership;
 - (C) if a partner in the partnership is a natural person—a relative of the partner;
 - (D) a partnership in which the partnership is a partner;
 - (viii) a director or principal officer of the corporation mentioned in subparagraph (vii);
 - (ix) if a director mentioned in subparagraph (viii) is a natural person—a relative of the director;
 - (x) a relative of a principal officer mentioned in subparagraph (viii);
 - (xi) a corporation of which a partner in the partnership is a director or principal officer; or
 - (xii) an associated partnership of the partnership; and
- (c) in relation to a resident person that is a trustee of a trust, means—
- (i) a settlor, a protector, an enforcer or a beneficiary of the trust; or

- (ii) (if the resident person does not act in the capacity of a trustee in the course of a business or profession) a related person of the trustee.
- (2) In paragraph (c)(ii) of the definition of *associate* in subsection (1)—
- related person* (有關連人士), in relation to a trustee of a trust—
- (a) if the trustee is a corporation, means—
 - (i) a person or entity who has control over the corporation;
 - (ii) if a person mentioned in subparagraph (i) is a partner in a partnership—another partner in the partnership;
 - (iii) if a person mentioned in subparagraph (i) is a natural person—a relative of the person;
 - (iv) if another partner mentioned in subparagraph (ii) is a natural person—a relative of that other partner;
 - (v) a director or principal officer of—
 - (A) the corporation; or
 - (B) an associated corporation of the corporation;
 - (vi) if a director mentioned in subparagraph (v) is a natural person—a relative of the director;
 - (vii) a relative of a principal officer mentioned in subparagraph (v);
 - (viii) if the corporation is a partner in a partnership—another partner in the partnership;

- (ix) if another partner mentioned in subparagraph (viii) is a natural person—a relative of that other partner;
- (x) a partnership in which the corporation is a partner; or
- (xi) an associated corporation of the corporation;
- (b) if the trustee is a partnership, means—
 - (i) a partner in the partnership;
 - (ii) if a partner in the partnership is a natural person—a relative of the partner;
 - (iii) if a partner in the partnership is another partnership—
 - (A) a partner in the other partnership (*Partner E*); or
 - (B) a partner with the other partnership in any other partnership (*Partner F*);
 - (iv) if Partner E is a partnership—a partner in Partner E (*Partner G*);
 - (v) if Partner F is a partnership—a partner in Partner F (*Partner H*);
 - (vi) if Partner E, Partner F, Partner G or Partner H is a natural person—a relative of the partner;
 - (vii) a corporation over which any of the following persons has control—
 - (A) the partnership;
 - (B) a partner in the partnership;
 - (C) if a partner in the partnership is a natural person—a relative of the partner;

- (D) a partnership in which the partnership is a partner;
- (viii) a director or principal officer of the corporation mentioned in subparagraph (vii);
- (ix) if a director mentioned in subparagraph (viii) is a natural person—a relative of the director;
- (x) a relative of a principal officer mentioned in subparagraph (viii);
- (xi) a corporation of which a partner in the partnership is a director or principal officer; or
- (xii) an associated partnership of the partnership; and
- (c) if the trustee is a natural person, means—
 - (i) a relative of the person;
 - (ii) if the person is a partner in a partnership—another partner in the partnership;
 - (iii) if another partner mentioned in subparagraph (ii) is a natural person—a relative of that other partner;
 - (iv) a partnership in which the person is a partner;
 - (v) a corporation over which any of the following persons has control—
 - (A) the person;
 - (B) a relative of the person;
 - (C) if the person is a partner in a partnership—another partner in the partnership;

- (D) if the person is a partner in a partnership and another partner in the partnership is a natural person—a relative of that other partner;
 - (E) a partnership in which the person is a partner; or
 - (vi) a director or principal officer of the corporation mentioned in subparagraph (v).
- (3) In the definitions of *associate* in subsection (1) and *related person* in subsection (2)—
- associated corporation* (相聯法團), in relation to a corporation, means—
- (a) another corporation over which the corporation has control;
 - (b) another corporation that has control over the corporation; or
 - (c) another corporation that is under the control of the same person as is the corporation;
- associated partnership* (相聯合夥), in relation to a partnership, means—
- (a) another partnership over which the partnership has control;
 - (b) another partnership that has control over the partnership; or
 - (c) another partnership that is under the control of the same person as is the partnership;
- principal officer* (主要職員), in relation to a corporation, means—

- (a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person employed by the corporation who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

relative (親屬) has the meaning given by section 20AN(6).

- (4) For the purposes of the definitions of *associate*, *associated corporation* and *associated partnership* in this section—
- (a) a person or entity (*particular person*) has control over a corporation if the particular person has power to secure—
 - (i) by means of the holding of shares or the possession of voting power in or in relation to the corporation or any other corporation; or
 - (ii) by virtue of any powers conferred by the articles of association or any other document regulating the corporation or any other corporation,that the affairs of the corporation are conducted in accordance with the wishes of the particular person; and
 - (b) a particular person has control over a partnership if the particular person has power to secure—

- (i) by means of the holding of interests or the possession of voting power in or in relation to the partnership or any other partnership; or
- (ii) by virtue of any powers conferred by the partnership agreement or any other document regulating the partnership or any other partnership,

that the affairs of the partnership are conducted in accordance with the wishes of the particular person.

22. Assessable profits of FIHVs to be regarded as assessable profits of resident persons

- (1) If, in respect of a year of assessment—
 - (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV to the extent prescribed in subsection (2); and
 - (b) section 9 of this Schedule applies to the FIHV, the assessable profits of the FIHV for the period of time (*subsection (1) period*) that would have been chargeable to tax under Part 4 of this Ordinance but for section 9 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (2) The extent of a resident person's beneficial interest in an FIHV referred to in subsection (1) is that the person, either alone or jointly with any of the person's associate (whether a resident person or not)—
 - (a) if the FIHV is a corporation—has not less than 30% of the beneficial interest in the corporation;

- (b) if the FIHV is a partnership—has not less than 30% of the beneficial interest in the partnership;
 - (c) if the FIHV is a trust—has not less than 30% of the beneficial interest in the trust; and
 - (d) if the FIHV is an entity that does not fall within any of paragraphs (a), (b) and (c)—has not less than 30% of the beneficial interest in the entity.
- (3) For the purposes of subsection (2), the extent of a resident person's beneficial interest in an FIHV is to be determined in accordance with Part 3 of Schedule 16I.
 - (4) If, in respect of a year of assessment—
 - (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV;
 - (b) section 9 of this Schedule applies to the FIHV; and
 - (c) the FIHV is an associate of the resident person, the assessable profits of the FIHV for the period of time (*subsection (4) period*) that would have been chargeable to tax under Part 4 of this Ordinance but for section 9 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
 - (5) Subsections (1) and (4) apply in relation to a resident person irrespective of whether the person has received or will receive (whether directly or indirectly) from the FIHV any money or other property representing the profits of the FIHV for the relevant year of assessment.

- (6) A resident person who has a direct or indirect beneficial interest in a trust because of the fact that the resident person is able (or might reasonably be expected to be able) to control the activities of the trust estate or the application of its corpus or income is, for the purposes of this section, to be regarded as being interested in 100% of the value of the trust estate.
- (7) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (4) is to be ascertained in accordance with Schedule 16I.
- (8) However, subsections (1) and (4) do not apply to a resident person in relation to a subsection (1) period or subsection (4) period if, at all times during the subsection (1) period or subsection (4) period, the person is—
 - (a) a specified entity in relation to the family to which the FIHV is related;
 - (b) a trustee of a trust that is a specified entity mentioned in paragraph (a); or
 - (c) an ESF Office of the family that manages the FIHV.
- (9) If—
 - (a) a resident person is liable to tax in respect of the profits of an FIHV by the operation of subsection (1) or (4) because the person has an indirect beneficial interest in the FIHV through a third person that is an entity (*interposed entity*) or through a series of 2 or more interposed entities; and
 - (b) the interposed entity or any of the interposed entities is a resident person who is also liable to tax in

respect of the profits by the operation of subsection (1) or (4),

the resident person mentioned in paragraph (a) is discharged from the person's liability to tax in respect of the profits.

23. Assessable profits of FSPEs to be regarded as assessable profits of resident persons

- (1) If, in respect of a year of assessment—
 - (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV to the extent prescribed in section 22(2) of this Schedule;
 - (b) section 9 of this Schedule applies to the FIHV;
 - (c) the FIHV has, during the period of time (*subsection (1) period*), a beneficial interest (whether direct or indirect) in an FSPE; and
 - (d) section 16 of this Schedule applies to the FSPE, the assessable profits of the FSPE for the subsection (1) period that would have been chargeable to tax under Part 4 of this Ordinance but for section 16 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (2) If, in respect of a year of assessment—
 - (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect) in an FIHV;
 - (b) section 9 of this Schedule applies to the FIHV;

- (c) the FIHV is an associate of the resident person;
 - (d) the FIHV has, during the period of time (*subsection (2) period*), a beneficial interest (whether direct or indirect) in an FSPE; and
 - (e) section 16 of this Schedule applies to the FSPE, the assessable profits of the FSPE for the subsection (2) period that would have been chargeable to tax under Part 4 of this Ordinance but for section 16 of this Schedule are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (3) Subsections (1) and (2) apply in relation to a resident person irrespective of whether the person has received or will receive (whether directly or indirectly) from the FSPE any money or other property representing the profits of the FSPE for the relevant year of assessment.
 - (4) A resident person who has a direct or indirect beneficial interest in a trust because of the fact that the resident person is able (or might reasonably be expected to be able) to control the activities of the trust estate or the application of its corpus or income is, for the purposes of this section, to be regarded as being interested in 100% of the value of the trust estate.
 - (5) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (2) is to be ascertained in accordance with Schedule 16J.
 - (6) However, subsections (1) and (2) do not apply to a resident person in relation to a subsection (1) period or

- subsection (2) period if, at all times during the subsection (1) period or subsection (2) period, the person is—
- (a) a specified entity in relation to the family to which the FIHV is related;
 - (b) a trustee of a trust that is a specified entity mentioned in paragraph (a); or
 - (c) an ESF Office of the family that manages the FIHV.
- (7) If—
- (a) a resident person is liable to tax in respect of the profits of an FSPE by the operation of subsection (1) or (2) because the person has an indirect beneficial interest in the FSPE through a third person that is an entity (*interposed entity*) or through a series of 2 or more interposed entities; and
 - (b) the interposed entity or any of the interposed entities is a resident person who is also liable to tax in respect of the profits by the operation of subsection (1) or (2),
- the resident person mentioned in paragraph (a) is discharged from the person's liability to tax in respect of the profits.

Part 5

Rate of Profits Tax for FIHV and FSPE

24. Rate of profits tax for FIHV

- (1) This section applies for the purposes of section 9(2) of this Schedule.

- (2) The rate specified for the basis period for a year of assessment commencing on or after 1 April 2022 is 0%.

25. Rate of profits tax for FSPE

- (1) This section applies for the purposes of section 16(2) of this Schedule.
- (2) The rate specified for the basis period for a year of assessment commencing on or after 1 April 2022 is 0%.

Part 6

Miscellaneous Matters

Division 1—Anti-avoidance Provisions

26. Anti-avoidance provisions relating to arrangement to obtain tax benefits—FIHV

- (1) Subsection (2) applies to an FIHV if—
- (a) the FIHV enters into an arrangement; and
 - (b) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FIHV in entering into the arrangement is to obtain a tax benefit, whether for the FIHV or another person or entity, in relation to a liability to pay profits tax under this Ordinance.
- (2) Section 9 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FIHV during a relevant basis period.
- (3) Subsection (4) applies to an FIHV if—

- (a) any assets or businesses are transferred directly or indirectly from a person (*transferor*) carrying on a business in Hong Kong to the FIHV;
 - (b) the income of the transferor in relation to the transferred assets or businesses (as the case requires) would have been subject to tax under Part 4 of this Ordinance but for the transfer; and
 - (c) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FIHV in making the transfer is to obtain a tax benefit, whether for the FIHV or another person or entity, in relation to a liability to pay profits tax under this Ordinance.
- (4) Section 9 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FIHV during a relevant basis period unless the transfer—
- (a) is carried out on an arm's length basis; and
 - (b) is chargeable to tax under Part 4 of this Ordinance in respect of the assessable profits arising from the transfer.
- (5) For the purposes of this section, a reference to an FIHV (*reference*) in subsection (1)(a), the first reference in subsection (1)(b), the reference in subsection (3)(a), and the first reference in subsection (3)(c) include—
- (a) if the FIHV is a partnership—a partner in the partnership; and
 - (b) if the FIHV is a trust—a trustee of the trust.
- (6) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to an arrangement if, in the opinion of the Commissioner, the arrangement has effect during the basis period.

(7) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to a transfer if, in the opinion of the Commissioner, the transfer has effect during the basis period.

(8) In this section—

relevant assessable profits (有關應評稅利潤)—

- (a) in relation to an arrangement, means the assessable profits arising from the arrangement; and
- (b) in relation to a transfer, means the assessable profits arising from the transfer;

tax benefit (稅務利益) means an avoidance, postponement or reduction of a liability to pay tax.

27. Anti-avoidance provisions relating to arrangement to obtain tax benefits—FSPE

(1) Subsection (2) applies to an FSPE if—

- (a) the FSPE enters into an arrangement; and
- (b) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FSPE in entering into the arrangement is to obtain a tax benefit, whether for the FSPE or another person or entity, in relation to a liability to pay profits tax under this Ordinance.

(2) Section 16 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FSPE during a relevant basis period.

(3) Subsection (4) applies to an FSPE if—

- (a) any assets or businesses are transferred directly or indirectly from a person (*transferor*) carrying on a business in Hong Kong to the FSPE;

(b) the income of the transferor in relation to the transferred assets or businesses (as the case requires) would have been subject to tax under Part 4 of this Ordinance but for the transfer; and

(c) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the FSPE in making the transfer is to obtain a tax benefit, whether for the FSPE or another person or entity, in relation to a liability to pay profits tax under this Ordinance.

(4) Section 16 of this Schedule does not apply in relation to any relevant assessable profits accrued to the FSPE during a relevant basis period unless the transfer—

- (a) is carried out on an arm's length basis; and
- (b) is chargeable to tax under Part 4 of this Ordinance in respect of the assessable profits arising from the transfer.

(5) For the purposes of this section, a reference to an FSPE (*reference*) in subsection (1)(a), the first reference in subsection (1)(b), the reference in subsection (3)(a), and the first reference in subsection (3)(c) include—

- (a) if the FSPE is a partnership—a partner in the partnership; and
- (b) if the FSPE is a trust—a trustee of the trust.

(6) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to an arrangement if, in the opinion of the Commissioner, the arrangement has effect during the basis period.

(7) For the purposes of this section, a basis period for a year of assessment is a relevant basis period in relation to a

transfer if, in the opinion of the Commissioner, the transfer has effect during the basis period.

(8) In this section—

relevant assessable profits (有關應評稅利潤) has the meaning given by section 26(8) of this Schedule;

tax benefit (稅務利益) has the meaning given by section 26(8) of this Schedule.

Division 2—Records of FIHV and ESF Office

28. Obligations of responsible persons to keep records relating to beneficial owners

- (1) This section applies, for the purposes of this Schedule, to and in relation to an FIHV.
- (2) A responsible person for an entity that is an FIHV must keep sufficient records to enable the identity and particulars of each beneficial owner of the FIHV to be readily ascertained.
- (3) Any record that is required under subsection (2) to be kept by a responsible person for an entity, in relation to a person or entity (*particular person*) that is a beneficial owner of the FIHV, must be kept by the responsible person throughout the period within which the particular person is such an owner.
- (4) If a particular person ceases to be a beneficial owner of an FIHV, the responsible person for the entity must retain, for at least 7 years after the date of cessation, the records required under subsections (2) and (3) to be kept in relation to the particular person.

(5) If an entity ceases to be an FIHV but continues to exist, a responsible person for the entity must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3) or (4) to be kept or retained.

(6) If the entity ceases to exist, a person who immediately before the cessation was a responsible person for the entity must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3), (4) or (5) to be kept or retained.

(7) In this section—

beneficial owner (實益擁有人), in relation to an entity—

- (a) means a particular person who has a direct or indirect beneficial interest in the entity; and
- (b) includes any specified members;

responsible person (負責人)—

- (a) in relation to an entity that is a corporation, means the corporation; and
- (b) in relation to any other entity, means a person who is responsible for the management of the entity;

specified members (指明成員) has the meaning given by section 20(1) of this Schedule.

29. Obligations of ESF Office to keep records relating to beneficial owners

- (1) This section applies, for the purposes of this Schedule, to and in relation to an ESF Office of a family (*relevant family office*).

- (2) A relevant family office must keep sufficient records, for each FIHV managed by the family office, to enable the identity and particulars of each beneficial owner of the FIHV to be readily ascertained.
- (3) Any record that is required under subsection (2) to be kept by a relevant family office, in relation to a person or entity (*particular person*) that is a beneficial owner of the FIHV, must be kept by the family office throughout the period within which the particular person is such an owner.
- (4) In addition, a relevant family office must keep sufficient records to enable the identity and particulars of each beneficial owner of the family office to be readily ascertained.
- (5) Any record that is required under subsection (4) to be kept by a relevant family office, in relation to a person or entity (*specified person*) that is a beneficial owner of the family office, must be kept by the family office throughout the period within which the specified person is such an owner.
- (6) If a particular person ceases to be a beneficial owner of an FIHV managed by a relevant family office, the family office must retain, for at least 7 years after the date of cessation, the records required under subsections (2) and (3) to be kept in relation to the particular person.
- (7) If a specified person ceases to be a beneficial owner of a relevant family office, the family office must retain, for at least 7 years after the date of cessation, the records required under subsections (4) and (5) to be kept in relation to the specified person.

- (8) If an entity managed by a relevant family office ceases to be an FIHV (whether or not the entity continues to exist), or ceases to be managed by a relevant family office, the family office must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3) or (6) to be kept or retained.
- (9) If a relevant family office ceases to exist, a person who immediately before the cessation was a director of the family office must retain, for at least 7 years after the date of cessation, the records that, but for the cessation, would have been required under subsection (2), (3), (4), (5), (6), (7) or (8) to be kept or retained.
- (10) In this section—
beneficial owner (實益擁有人) has the meaning given by section 28(7) of this Schedule.

Schedule 16F

[s. 40AV & Sch. 16E]

Provisions for Determining Extent of Beneficial Interest Family Member has in Particular Entity (Section 8 of Schedule 16E)

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

family (家族) has the meaning given by section 4 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E;

member (成員), in relation to a family, has the meaning given by section 4 of Schedule 16E.

Part 2

2. For a member of a family having a direct beneficial interest in an entity (*Entity A*), the extent of the beneficial interest of the member in Entity A is—

- (a) if Entity A is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the member; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the member is entitled to exercise or the exercise of which the member is entitled to control;
- (b) if Entity A is a partnership—
 - (i) the percentage of the profits of the partnership to which the member is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor

entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the member is entitled to exercise or the exercise of which the member is entitled to control;

- (c) if Entity A is a trust—the percentage in value of the trust estate in which the member is interested; and
- (d) if Entity A is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which the member is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the member has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the member is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the member is entitled to exercise or the exercise of which the member is entitled to control.

3. Section 7(5), (6) and (7) of Schedule 16E applies for the purposes of section 2 of this Schedule.

4. For a member of a family having an indirect beneficial interest in an entity (*Entity B*), the extent of the beneficial interest of the member in Entity B is—

- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the member in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in Entity B; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the member in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in Entity B.
5. For the purposes of section 4 of this Schedule—
- (a) section 2 of this Schedule applies in determining the extent of the beneficial interest of a member of a family in an interposed entity as if the references to Entity A in that section were references to an interposed entity;
 - (b) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in Entity B as if—

- (i) the references to a member of a family in that section were references to an interposed entity; and
 - (ii) the references to Entity A in that section were references to Entity B; and
- (c) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
- (i) the references to a member of a family in that section were references to Interposed Entity A; and
 - (ii) the references to Entity A in that section were references to Interposed Entity B.

Schedule 16G

[s. 40AV & Sch. 16E]

Provisions for Determining Extent of Beneficial Interest Entity has in Another Entity (Sections 8 and 20 of Schedule 16E)

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E.

Part 2

2. For an entity (*Entity A*) having a direct beneficial interest in another entity (*Entity B*), the extent of the beneficial interest of Entity A in Entity B is—
 - (a) if Entity B is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by Entity A; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that Entity A is entitled to exercise or the exercise of which Entity A is entitled to control;
 - (b) if Entity B is a partnership—
 - (i) the percentage of the profits of the partnership to which Entity A is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that

Entity A is entitled to exercise or the exercise of which Entity A is entitled to control;

- (c) if Entity B is a trust—the percentage in value of the trust estate in which Entity A is interested; and
- (d) if Entity B is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which Entity A is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that Entity A has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which Entity A is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that Entity A is entitled to exercise or the exercise of which Entity A is entitled to control.

3. For the purposes of section 2 of this Schedule—

- (a) section 7(5), (6) and (7) of Schedule 16E applies; and
- (b) a reference to Entity A in section 2(a), (b), (c) and (d) of this Schedule includes—
 - (i) if Entity A is a partnership—a partner in the partnership; and
 - (ii) if Entity A is a trust—a trustee of the trust.

4. For an entity (*Entity C*) having an indirect beneficial interest in another entity (*Entity D*), the extent of the beneficial interest of Entity C in Entity D is—
- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of Entity C in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in Entity D; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of Entity C in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in Entity D.
5. For the purposes of section 4 of this Schedule—
- (a) section 2 of this Schedule applies in determining the extent of the beneficial interest of Entity C in an interposed entity as if—
 - (i) the references to Entity A in that section were references to Entity C; and
 - (ii) the references to Entity B in that section were references to an interposed entity;

- (b) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in Entity D as if—
 - (i) the references to Entity A in that section were references to an interposed entity; and
 - (ii) the references to Entity B in that section were references to Entity D; and
- (c) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
 - (i) the references to Entity A in that section were references to Interposed Entity A; and
 - (ii) the references to Entity B in that section were references to Interposed Entity B.

Schedule 16H

[s. 40AV & Sch. 16E]

Provisions for Determining Extent of FIHV's Beneficial Interest in FSPE (Sections 11 and 16 of Schedule 16E)

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

FIHV (家控工具) has the meaning given by section 5 of Schedule 16E;

FSPE (家族特體) has the meaning given by section 6 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E.

Part 2

2. For an FIHV having a direct beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—
 - (a) if the FSPE is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the FIHV; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;
 - (b) if the FSPE is a partnership—
 - (i) the percentage of the profits of the partnership to which the FIHV is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the

partnership on its dissolution) the percentage of the voting rights in the partnership that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;

- (c) if the FSPE is a trust—the percentage in value of the trust estate in which the FIHV is interested; and
- (d) if the FSPE is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which the FIHV is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the FIHV has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the FIHV is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control.

3. For the purposes of section 2 of this Schedule—

- (a) section 7(5), (6) and (7) of Schedule 16E applies; and
- (b) a reference in section 2(a), (b), (c) and (d) of this Schedule to the FIHV includes—
 - (i) if the FIHV is a partnership—a partner in the partnership; and

- (ii) if the FIHV is a trust—a trustee of the trust.
4. For an FIHV having an indirect beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—
- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in the FSPE; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in the FSPE.
5. For the purposes of section 4 of this Schedule—
- (a) section 2 of this Schedule applies in determining the extent of the beneficial interest of an FIHV in an interposed entity as if the references to an FSPE in that section were references to an interposed entity;

- (b) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in an FSPE as if the references to an FIHV in that section were references to an interposed entity; and
- (c) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
 - (i) the references to an FIHV in that section were references to Interposed Entity A; and
 - (ii) the references to an FSPE in that section were references to Interposed Entity B.

Schedule 16I

[s. 40AV &
Schs. 16E & 16J]

Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 22 of Schedule 16E

Part 1

1. In this Schedule—

direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

entity (實體) has the meaning given by section 1(1) of Schedule 16E;

FIHV (家控工具) has the meaning given by section 5 of Schedule 16E;

indirect beneficial interest (間接實益權益) has the meaning given by section 7 of Schedule 16E;

resident person (居港者) has the meaning given by section 20(2) of Schedule 16E.

Part 2

2. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the FIHV that are chargeable to tax under Part 4 of this Ordinance and in respect of which tax would have been payable but for section 9 of Schedule 16E (*concessionary profits*) for each day in the period in the year of assessment during which the resident person has a direct or indirect beneficial interest in the FIHV.
3. For the purposes of section 2 of this Schedule, the concessionary profits of an FIHV for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B \times C}{D}$$

where: A means the concessionary profits of the FIHV for a particular day in a year of assessment;

B means the extent of the resident person's beneficial interest in the FIHV on the particular day, expressed as a percentage determined in accordance with Part 3 of this Schedule;

C means the concessionary profits of the FIHV for the accounting period of the FIHV in which the particular day falls;

D means the total number of days in the accounting period of the FIHV in which the particular day falls.

Part 3

4. For a resident person having a direct beneficial interest in an FIHV, the extent of the beneficial interest of the resident person in the FIHV is—
 - (a) if the FIHV is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the resident person; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the resident person is entitled to exercise or the exercise of which the resident person is entitled to control;
 - (b) if the FIHV is a partnership—
 - (i) the percentage of the profits of the partnership to which the resident person is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor

- entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the resident person is entitled to exercise or the exercise of which the resident person is entitled to control;
- (c) if the FIHV is a trust—the percentage in value of the trust estate in which the resident person is interested; and
 - (d) if the FIHV is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which the resident person is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the resident person has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the resident person is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the resident person is entitled to exercise or the exercise of which the resident person is entitled to control.
5. Section 7(5), (6) and (7) of Schedule 16E applies for the purposes of section 4 of this Schedule.

6. For a resident person having an indirect beneficial interest in an FIHV, the extent of the beneficial interest of the resident person in the FIHV is—
- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in the FIHV; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in the FIHV.
7. For the purposes of section 6 of this Schedule—
- (a) section 4 of this Schedule applies in determining the extent of the beneficial interest of a resident person in an interposed entity as if the references to an FIHV in that section were references to an interposed entity;
 - (b) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed

- entity in an FIHV as if the references to a resident person in that section were references to an interposed entity; and
- (c) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
- (i) the references to a resident person in that section were references to Interposed Entity A; and
 - (ii) the references to an FIHV in that section were references to Interposed Entity B.

Schedule 16J

[s. 40AV & Sch. 16E]

Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 23 of Schedule 16E

Part 1

1. In this Schedule—
direct beneficial interest (直接實益權益) has the meaning given by section 7 of Schedule 16E;

- entity* (實體) has the meaning given by section 1(1) of Schedule 16E;
- FIHV* (家控工具) has the meaning given by section 5 of Schedule 16E;
- FSPE* (家族特體) has the meaning given by section 6 of Schedule 16E;
- indirect beneficial interest* (間接實益權益) has the meaning given by section 7 of Schedule 16E;
- resident person* (居港者) has the meaning given by section 20(2) of Schedule 16E.

Part 2

2. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the FSPE that are chargeable to tax under Part 4 of this Ordinance and in respect of which tax would have been payable but for section 16 of Schedule 16E (*concessionary profits*) for each day in the period in the year of assessment during which the resident person has an indirect beneficial interest in the FSPE.
3. For the purposes of section 2 of this Schedule, the concessionary profits of an FSPE for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B1 \times B2 \times C}{D}$$

- where:
- A means the concessionary profits of the FSPE for a particular day in a year of assessment;
 - B1 means the extent of the resident person's beneficial interest in the FIHV on the particular day, expressed as a percentage determined in accordance with Part 3 of Schedule 16I;
 - B2 means the extent of the FIHV's beneficial interest in the FSPE on the particular day, expressed as a percentage determined in accordance with Part 3 of this Schedule;
 - C means the concessionary profits of the FSPE for the accounting period of the FSPE in which the particular day falls;
 - D means the total number of days in the accounting period of the FSPE in which the particular day falls.

Part 3

4. For an FIHV having a direct beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—
- (a) if the FSPE is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the FIHV; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the FIHV is

- entitled to exercise or the exercise of which the FIHV is entitled to control;
- (b) if the FSPE is a partnership—
 - (i) the percentage of the profits of the partnership to which the FIHV is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control;
- (c) if the FSPE is a trust—the percentage in value of the trust estate in which the FIHV is interested; and
- (d) if the FSPE is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which the FIHV is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the FIHV has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the FIHV is entitled; or
 - (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the FIHV is entitled to exercise or the exercise of which the FIHV is entitled to control.

5. For the purposes of section 4 of this Schedule—
 - (a) section 7(5), (6) and (7) of Schedule 16E applies; and
 - (b) a reference in section 4(a), (b), (c) and (d) of this Schedule to the FIHV includes—
 - (i) if the FIHV is a partnership—a partner in the partnership; and
 - (ii) if the FIHV is a trust—a trustee of the trust.
6. For an FIHV having an indirect beneficial interest in an FSPE, the extent of the beneficial interest of the FIHV in the FSPE is—
 - (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in the FSPE; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the FIHV in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in the FSPE.

7. For the purposes of section 6 of this Schedule—
 - (a) section 4 of this Schedule applies in determining the extent of the beneficial interest of an FIHV in an interposed entity as if the references to an FSPE in that section were references to an interposed entity;
 - (b) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in an FSPE as if the references to an FIHV in that section were references to an interposed entity; and
 - (c) section 4 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity (*Interposed Entity A*) in another interposed entity (*Interposed Entity B*) as if—
 - (i) the references to an FIHV in that section were references to Interposed Entity A; and
 - (ii) the references to an FSPE in that section were references to Interposed Entity B.”.

Explanatory Memorandum

The main purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (*Cap. 112*) to give profits tax concessions to certain entities to facilitate the development of family office business in Hong Kong. These entities are known as family-owned investment holding vehicles and family-owned special purpose entities in the Bill.

2. The tax concessions provided for under the new Schedule 16E to be added to Cap. 112 apply for a year of assessment commencing on or after 1 April 2022.
3. Clause 1 sets out the short title.
4. Clause 4 adds a new Part 6E to Cap. 112 to introduce a tax concession regime for certain investment vehicles managed by a family office of a particular family and certain entities that are wholly or partially owned by such vehicles.
5. The new Part 6E also empowers the Secretary for Financial Services and the Treasury to amend, by notice published in the Gazette, the number specified in section 10(1)(b)(ii), the amounts specified in sections 10(1)(c)(ii) and 11(2), (4) and (6), and the rates specified in sections 24(2) and 25(2), of the new Schedule 16E (to be added to Cap. 112 by clause 7) and make incidental, supplemental, evidential, consequential, savings and transitional provisions that are necessary and expedient in consequence of the amendments. In addition, the new Part 6E introduces 5 other Schedules (Schedules 16F to 16J) which are to be added to Cap. 112 by that clause. New Schedules 16F to 16J contain provisions supplementary to the new Schedule 16E.

New Schedule 16E

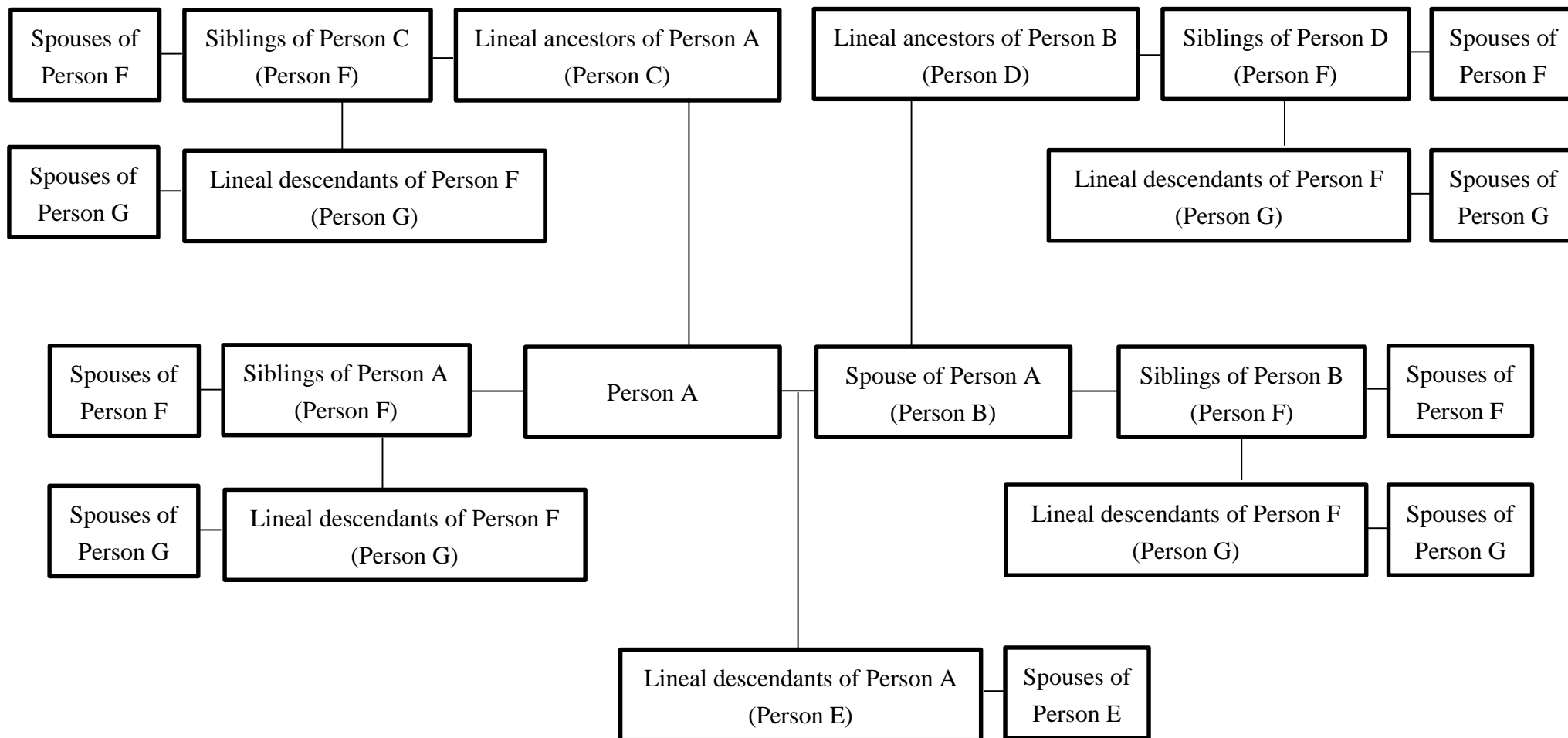
6. The new Schedule 16E contains 6 Parts.
7. Part 1 (sections 1 to 8) of the new Schedule 16E provides for certain key concepts under the new profits tax concession regime. For example, section 7 of that Schedule seeks to explain how to determine whether a person or entity has a direct or indirect beneficial interest in another person or entity. Part 1 of the new Schedule 16E also contains definitions or interpretation provisions for certain expressions used in that Schedule. These expressions include *entity*, eligible single family office (*ESF Office*), *family*, family-owned investment holding vehicle (*FIHV*), family-owned special purpose entity (*FSPE*) and interposed family-owned special purpose entity (*IFSPE*).
8. Parts 2 and 3 (sections 9 to 19) of the new Schedule 16E mainly provide profits tax concessions for an entity that is an FIHV and an entity that is an FSPE. The concessionary rate for an FIHV and that for an FSPE for the basis period for a year of assessment are specified in sections 24(2) and 25(2) of the new Schedule 16E.
9. Parts 2 and 3 of the new Schedule 16E also provide for the circumstances under which losses sustained by an FIHV or FSPE from certain transactions are not available for set off against their assessable profits.
10. Part 4 (sections 20 to 23) of the new Schedule 16E mainly provides for the circumstances under which the assessable profits of an FIHV or FSPE are to be regarded as the assessable profits of a resident person (within the meaning of section 20(2) of that Schedule) that has a beneficial interest in the FIHV or FSPE. The new Schedules 16I and 16J, which are supplementary to the new Schedule 16E, seek to ascertain the amounts of assessable profits of such resident persons and determine the extent of beneficial interest that a person or entity has in another person or entity.

11. Part 6 (sections 26 to 29) of the new Schedule 16E provides for miscellaneous matters. That Part contains anti-avoidance provisions relating to arrangement to obtain tax benefits. That Part also contains provisions providing for the obligations of a responsible person for an FIHV or ESF Office to keep or retain records regarding the beneficial owners of the FIHV and those of the ESF Office.

New Schedules 16F to 16J

12. The new Schedule 16F contains provisions for determining the extent of beneficial interest that members of a family have in a particular entity.
13. The new Schedule 16G contains provisions for determining the extent of beneficial interest that an entity has in another entity.
14. The new Schedules 16F and 16G are added for the purposes of sections 8 and 20 of the new Schedule 16E.
15. The new Schedule 16H is for sections 11 and 16 of the new Schedule 16E. The new Schedule 16H contains provisions for determining the extent of the beneficial interest that an FIHV has in an FSPE.
16. The new Schedule 16I contains provisions for ascertaining the amount of the assessable profits of a resident person under section 22 of the new Schedule 16E. The new Schedule 16I also provides for the determination of the extent of the beneficial interest that a resident person has in an FIHV.
17. The new Schedule 16J contains provisions for ascertaining the amount of the assessable profits of a resident person under section 23 of the new Schedule 16E and provides for the determination of the extent of the beneficial interest that an FIHV has in an FSPE for the purposes of that section.

Members of the relevant family



Tests on tax concession eligibility for profits generated from investment in private companies by FIHVs and FSPEs

(a) Immovable property test: if a family-owned investment holding vehicle (“FIHV”) or a family-owned special purpose entity (“FSPE”) invests in a private company (“relevant company”) and the relevant company holds (whether directly or indirectly) —

- (i) immovable property in Hong Kong; or
- (ii) share capital in another private company that holds (whether directly or indirectly) immovable property in Hong Kong;

provided that the aggregate value of the immovable property and share capital held by the relevant company is more than 10% of the value of the company’s assets, the FIHV or FSPE would not be able to enjoy the tax concession for the profits earned from the transaction in the relevant company (“the transaction”).

(b) Holding period test: if the relevant company —

- (i) does not hold (whether directly or indirectly) immovable property in Hong Kong, or share capital in another private company which holds (whether directly or indirectly) immovable property in Hong Kong; or
- (ii) holds (whether directly or indirectly) immovable property in Hong Kong, or share capital in another private company which holds (whether directly or indirectly) immovable property in Hong Kong, but the aggregate value of the immovable property and share capital so held is not more than 10% of the value of the company’s assets;

the FIHV or FSPE may be able to enjoy tax concession for the profits earned from the transaction if the FIHV or FSPE disposes of the relevant company not less than two years after it is acquired.

(c) Control test and short-term assets test: if the FIHV or FSPE disposes of the relevant company less than two years after it is

acquired, the FIHV or FSPE may be able to enjoy tax concession for profits earned from the transaction only if –

- (i) the FIHV or FSPE does not have control over the relevant company; or
- (ii) the FIHV or FSPE has control over the relevant company, but the aggregate value of the short-term assets ⁽¹⁾ held by the relevant company does not exceed 50% of the value of the company's assets.

¹ Short-term assets are assets (other than immovable property in Hong Kong and assets specified in Schedule 16C to the Inland Revenue Ordinance) that are held by the relevant company for less than three consecutive years before the date of disposal.

Financial and economic implications of the proposal

Financial implications

The proposed tax concession regime for family-owned investment holding vehicles (“FIHVs”) seeks to attract more family offices to set up and operate in Hong Kong. It would be difficult to estimate the revenue forgone arising from the tax concession proposal as the proposal intends to attract family offices which otherwise would not be set up in Hong Kong, since FIHVs are often set up and operated offshore. It is possible that the tax revenue forgone for granting tax concession to FIHVs may be offset partly by the revenue generated from an increase in business activities through the setting up of family offices in Hong Kong.

2. FIHVs which would benefit from the proposed tax regime shall exercise central management and control and carry out their core income generating activities (“CIGAs”) in Hong Kong, including having an adequate number of full-time qualified employees and incurring an adequate amount of operating expenditure for carrying out the CIGAs in Hong Kong during the basis period for the year of assessment concerned. Moreover, we will also require FIHVs to meet a minimum threshold on their assets under management. After the implementation of the tax concession proposal, we will collect relevant statistics on FIHVs’ operation in Hong Kong in order to assess its effectiveness.

Economic implications

3. The proposal would attract more family offices to set up and operate in Hong Kong. This in turn would create new business opportunities for the asset and wealth management sector and generate demand for other related professional services, including legal and accounting services. This would be conducive to fostering Hong Kong’s position as Asia’s premier family office hub, consolidating Hong Kong’s role as an international asset and wealth management centre and enhancing our status as an international financial centre.