

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-related Activities) Bill 2022

INTRODUCTION

A At the meeting of the Executive Council on 24 May 2022, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-related Activities) Bill 2022 (“the Bill”), at Annex A, should be introduced into the Legislative Council to amend the Inland Revenue Ordinance (“IRO”) (Cap.112) to give profits tax concessions to certain ship agents, ship managers, and ship brokers (collectively “shipping commercial principals”) and to make related, miscellaneous and technical drafting amendments.

JUSTIFICATIONS

Hong Kong as an international maritime centre

2. Hong Kong is an international maritime centre with over 150 years of maritime history. It enjoys competitive advantage in high value-added maritime services with a strong maritime cluster of nearly 900 shipping-related companies. Among various maritime services, ship agents, ship managers and ship brokers, which take up a significant portion of around 40% of the Hong Kong maritime cluster in terms of number of firms, have yet to enjoy any tax concession under the current shipping tax regimes in Hong Kong. Attracting the business presence of these commercial principals of shipping activities is paramount to enhancing the competitiveness of Hong Kong’s maritime industry.

3. Recognising the competitive landscape for maritime business in the region and subsequent to the Government’s announcement of the tax measures used to foster ship leasing business in Hong Kong in October 2018, the Government announced in October 2019 the initiative of tax concessionary measures to encourage more commercial principals of the

maritime industry (such as ship agents, ship managers and ship brokers) to set up presence in Hong Kong. With reference to the ship leasing tax concessions provisions enacted in June 2020, a Task Force on Commercial Principals, comprising tax, financial, legal and maritime experts as well as representatives from relevant Government bureau/departments, was set up under the Hong Kong Maritime and Port Board (“HKMPB”) in late 2020 to devise the details of the proposed tax concessions for shipping commercial principals.

Seizing further development opportunities

4. With over 80% of global freight volume carried by water today, the demand for water transport will likely continue to spur demand for high-end maritime services. With the shift of the global economic centre of gravity from the West to the East, and with the major contributor to shipowning activities coming from Asia (e.g. more than half of world’s seagoing merchant fleet in terms of number of vessels was owned by Asia, with Mainland China, Japan, Singapore and Hong Kong accounting for 14%, 7%, 5% and 3% respectively in 2021), maritime services are expected to see robust demand from Asia.

5. The “Outline of the 14th Five-Year Plan for National Economic and Social Development of the People’s Republic of China and the Long-Range Objectives Through the Year 2035” as endorsed by the 13th National People’s Congress in March 2021 supports consolidating Hong Kong’s position as an international maritime centre and the development of high value-added maritime services in Hong Kong for better integration into the country’s development course. The “Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area” as promulgated in February 2019 also expresses such support.

6. The “Maritime Leasing Paper” released by the Financial Services Development Council in May 2018 suggested, among other things, that Hong Kong should attract more maritime players¹ such as shipowners, lessors, carriers, investors, operators, and ship management companies to

¹ The Report noted that while Hong Kong is the 4th largest shipping register in terms of total gross tonnage (GT) (which has reached 113.2 million GT in 2017), the percentage of fleet owned by Hong Kong principals is only 24% (i.e. 27.3 million GT). In comparison, Singapore came as the 5th largest shipping register with 85.4 million GT, with 48% of the ships concerned owned by Singapore companies (i.e. with 41.2 million GT) according to Clarksons Research. At the same time, given the shift of the global economic gravity from the West to the East in the past years, and with major contribution to shipowning and ship building activities in Asia over the years, tonnage providers around the globe have been searching for an Asian base of operations. The Report suggested that there shall be room for Hong Kong to grow its own base of shipping principals and attract those shipping players with vessels registered in Hong Kong Shipping Register but without a substantial local presence to base their operation in Hong Kong.

base their operation in Hong Kong, in order to enhance the competitiveness of Hong Kong's maritime industry.

7. Ship agency, ship management and ship broking businesses are important maritime business services supporting international shipping activities. Ship agents refer to parties who represent ship owners, charterers or ship lessors at ports to facilitate efficient port calls of ships². Ship managers provide management services³ for a ship to render it fit and safe for operation and voyage. Ship brokers act on the interests of different ship users including but not limited to ship owners, charterers, ship lessors, prospective ship buyers or lessees to facilitate the conclusion of business deals relating to a ship among different ship users.

8. Having recognised the importance of the presence of a vibrant maritime cluster in enhancing their position as major maritime centres, other international maritime cities⁴ have put forward tax measures and fiscal incentive schemes to proactively attract overseas companies to set up offices there, with a view to forming a strong maritime cluster of shipping groups and maritime services. Provision of tax incentives is a possible means for Hong Kong to stay competitive to effectively attract commercial principals to set up offices here.

9. With the support of suitable policy initiative, Hong Kong would stand to benefit from these growth opportunities. As ship agency, ship management and ship broking businesses serve to facilitate ship ownership and operation, which also generate demand for other maritime business services, fostering the development of shipping commercial principals in Hong Kong is conducive to the growth of our shipping core and maritime cluster.

10. Meanwhile, the Organisation for Economic Co-operation and Development ("OECD")'s action in developing new international taxation rules and principles to deal with tax abuses, notably the anti-base erosion and profit shifting ("BEPS") measures, has driven shipping commercial principals currently based in some low-tax countries to look for opportunities to rebase their operations. This offers an opportunity for Hong Kong to attract companies with genuine business interest to come to operate in Hong Kong.

² Typical ship agency services include handling cargo operation matters with the port, seeking clearance for ships from relevant authorities and provision of port and husbandry services.

³ Such services usually relate to the management of technical, crew and commercial aspects of a vessel, as well as its insurance arrangements.

⁴ Notably, Singapore offers the Maritime Sector Initiative (MSI) Scheme, one of which is the Shipping-related Support Services (SSS) Award. The MSI-SSS Award promotes the growth of shipping service providers in Singapore by providing a concessionary tax rate on incremental income derived from the provision of approved shipping-related support services such as ship agency, ship management and ship broking.

The proposed dedicated tax regime

11. In order to promote the development of shipping commercial principals in Hong Kong and make our tax regime competitive vis-à-vis major competitors in the region, we propose incorporating in the IRO a new dedicated regime under which –

- (a) the profits derived by a qualifying shipping commercial principal (i.e. a qualifying ship agent, qualifying ship manager or qualifying ship broker) from carrying out a qualifying activity (i.e. a qualifying ship agency activity, qualifying ship management activity or qualifying ship broking activity) in Hong Kong will be subject to a profits tax rate at 8.25% (i.e. half of the profits tax rate for corporations at 16.5%); and
- (b) the profits derived by a qualifying shipping commercial principal from carrying out a qualifying activity for an associated shipping enterprise⁵, which is entitled to a concessionary tax rate or income exemption under the IRO, will be subject to the same concessionary tax rate or income exemption as that applicable to the associated shipping enterprise.

12. A qualifying shipping commercial principal should be a standalone corporate entity solely carrying out qualifying activities, or satisfying the safe harbour rule by having profits primarily derived from, and assets primarily used for, the qualifying activities (see paragraph 14(a) below). We also propose empowering the Commissioner of Inland Revenue (“CIR”) to determine that a corporation is a qualifying shipping commercial principal and hence eligible for the tax concession if the CIR is of the opinion that the relevant conditions or safe harbour rule would, in the ordinary course of its business, have been satisfied.

13. A ship agency, ship management or ship broking activity carried out by a qualifying shipping commercial principal is a qualifying activity if the activity is carried out in the ordinary course of the principal’s business carried on in Hong Kong. Profits derived by a qualifying shipping commercial principal from a qualifying activity will qualify for the tax concession only if the principal makes an election in writing that the tax concession applies to it.

⁵ An associated shipping enterprise refers to a person who is a ship lessor, ship leasing manager, ship operator or ship owner entitled to tax concessions or exemption under section 14P(1), 14T(1) or 23B of the IRO and (a) over which the qualifying entity has control, (b) which has control over the qualifying entity, or (c) which is under the control of the same person as the qualifying entity.

Anti-abuse features

14. The dedicated regime will incorporate anti-abuse features so as to safeguard the integrity of the tax system and comply with international tax rules. The features include –

- (a) Entity Based Approach: requiring a qualifying shipping commercial principal to be a standalone corporate entity predominantly engaging in the relevant qualifying activity to prevent loss transfer via partnership and ring fence the tax benefits to the corporate entity. In addition, under the safe harbour rules, the standalone entity may be allowed to engage in other non-qualifying profit generating activities subject to specified limits (i.e. the percentage of profits and assets related to those activities should be not more than 25% of its aggregate profits and assets);
- (b) Central Management and Control (“CMC”) Requirements: requiring a qualifying shipping commercial principal to exercise its CMC (i.e. the highest level of control of its business)⁶ in Hong Kong to ensure that its business operations are domiciled in Hong Kong with substance.
- (c) Substantial Activity Requirements: requiring a qualifying shipping commercial principal to carry out the core income generating activities (“CIGAs”) in Hong Kong by (a) employing an adequate number of full-time qualified employees in Hong Kong and (b) incurring an adequate amount of operating expenditure in Hong Kong, which are not less than the minimum thresholds to be prescribed so as to ensure that its operations are undertaken in Hong Kong with substantial business presence;
- (d) Arm’s Length Principle for Transfer Pricing: ensuring that the profits from a transaction between a qualifying shipping commercial principal and its associated party are determined on an arm’s length basis by reference to the profits that would have accrued if the same transaction had been carried out by independent persons;
- (e) Main Purpose Test: introducing a main purpose test to prevent tax avoidance and treaty shopping, under which profits tax concession

⁶ Generally, the CMC of a qualifying entity is located in Hong Kong if the executive officers and senior management employees of the qualifying entity, when exercising their day-to-day responsibility for strategic, financial and operational policy decision making and conducting the day-to-day activities necessary for preparing and making the aforementioned decisions, conduct such activities more in Hong Kong than in other jurisdictions.

in respect of profits accrued under an arrangement entered into by a qualifying shipping commercial principal would be denied if the main purpose, or one of the main purposes, of the arrangement is to obtain a tax benefit under the IRO or a tax treaty; and

- (f) Anti-tax Arbitrage Rule⁷: reducing the tax deduction for service fee paid by a payer subject to tax at full-rate (e.g. a non-qualifying ship lessor) to its connected qualifying shipping commercial principal subject to tax at half-rate by reference to the amount of tax saving obtained by the qualifying shipping commercial principal, so as to prevent profit shifting from a high-tax regime to a low-tax regime.

Compliance with international standards

15. In determining whether a preferential tax regime provided by a jurisdiction meets the international standards on countering BEPS, the OECD will take into account whether the regime has incorporated substantial activity requirements to ensure that only those entities which undertake the CIGAs⁸ in the jurisdiction would benefit from the regime. To satisfy the substantial activity requirements, an entity is required to (a) employ an adequate number of full-time qualified employees and (b) incur an adequate amount of operating expenditure for carrying out the CIGAs in the jurisdiction. After industry consultation, the minimum thresholds that a qualifying shipping commercial principal is required to meet for the above two measurements in Hong Kong are proposed as follows –

Number of full-time
qualified employees

1

Annual operating
expenditure

HK\$1 million

⁷ To counteract the practice of obtaining tax benefits by using the differences in tax systems, tax treatments or tax rates in how transactions are treated for tax purposes, e.g. by recognizing income in a low-tax regime while recognizing expenses in a high-tax regime.

⁸ CIGAs can be carried out by a qualifying entity itself or outsourced to a group company. When determining whether the threshold requirements are satisfied by a qualifying entity, the employees employed or operating expenditure incurred by a group company would be taken into account if (a) the CIGAs are carried out by the group company in Hong Kong through outsourcing arrangement; (b) a service fee is charged to the qualifying entity on an arm's length basis; (c) the number of employees and the amount of operating expenditure are commensurate with the level of the CIGAs carried out by the group company; and (d) the qualifying entity has exercised adequate monitoring of the CIGAs outsourced to the group company.

Potential benefits of the proposal

16. According to the analysis conducted by the Task Force on Commercial Principals under HKMPB, with relevant input from experts in the shipping commercial principal industries, if the proposed new tax regime for qualifying ship agents, ship managers and ship brokers is put in place, under normal economic conditions (e.g. barring protracted impediments to global business activities or unexpected economic impacts brought about by COVID-19), it is estimated that the following benefits would be brought about (in 2019 dollars) –

- (a) cumulative incremental ship agency, ship management and ship broking business receipts of about HK\$32.5 billion over 10 years compared to the case if no tax measure is introduced;
- (b) cumulative value added of around HK\$17.7 billion over 10 years (from around HK\$0.2 billion in Year 1 to around HK\$4.2 billion in Year 10), generated from the business receipts in (a);
- (c) direct employment of around 27 600 jobs (in terms of man-years) over 10 years (from around 270 jobs in Year 1 to 6 600 jobs in Year 10); and
- (d) indirect employment of around 50 000 – 55 000 jobs (in terms of man-years) in the economic sectors/activities in support of the shipping principals' activities over 10 years due to the linkage effects.

THE BILL

17. The Bill provides for the profits tax concessions to qualifying ship agents, qualifying ship managers and qualifying ship brokers; and to make related, miscellaneous and technical drafting amendments to the IRO. The main provisions of the Bill are as follows –

- (a) **Clauses 4 and 12** add the new sections 14ZC to 14ZZC of and the new Schedules 17FB to the IRO respectively to –
 - (i) provide for the interpretation of terms, including “qualifying ship agency activity”, “qualifying ship management activity” and “qualifying ship broking activity” (the new sections 14ZC, 14ZL and 14ZU);

- (ii) provide for profits tax concessions to qualifying ship agents, qualifying ship managers and qualifying ship brokers (the new sections 14ZD, 14ZM and 14ZV);
 - (iii) provide for the safe harbour rule for the qualification as a qualifying ship agent, qualifying ship manager or qualifying ship broker (the new sections 14ZE, 14ZN and 14ZW);
 - (iv) provide for CIR's power to determine that a corporation is a qualifying ship agent, qualifying ship manager or qualifying ship broker (the new sections 14ZF, 14ZO and 14ZX);
 - (v) provide for substantial activity threshold requirements, treatment of certain losses, anti-avoidance provisions and CIR's power to amend Parts 2 to 4 of the new Schedule 17FB (the new sections 14ZG to 14ZK, 14ZP to 14ZT and 14ZY to 14ZZC and the new Schedule 17FB);
- (b) **Clauses 8 and 13** amend section 89 of the IRO and add a new Schedule to the IRO respectively to deal with transitional matters; and
- (c) **Clauses 3, 5, 6, 7, 9, 10 and 11** provide for consequential amendments to sections 14, 16, 19CA, 63H and 100 of, and Schedules 8 and 8C to, the IRO respectively.
- (d) the **Schedule** makes technical drafting amendments to sections 2 and 14G to 14ZB of, and Schedules 17F and 17FA to, the IRO.

LEGISLATIVE TIMETABLE

18. The legislative timetable is as follows –

Publication in the Gazette	2 June 2022
First Reading and commencement of Second Reading debate	15 June 2022
Resumption of Second Reading debate, Committee Stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

B 19. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It has no civil service, environmental, family, gender or productivity implications. The amendments proposed in the Bill will not affect the current binding effect of the IRO. The financial, economic and sustainability implications of the proposal are set out at **Annex B**.

PUBLIC CONSULTATION

20. The proposed dedicated tax regime for shipping commercial principals was formulated by the Task Force on Commercial Principals set up under HKMPB, where tax, financial, legal and maritime experts as well as relevant Government bureaux/departments (i.e. Transport and Housing Bureau, Financial Secretary Office's Budget and Tax Policy Unit, and Inland Revenue Department) are represented.

21. The proposal was presented to HKMPB in September 2021. Comprising key industry stakeholder such as the Hong Kong Shipowners Association, Hong Kong Liner Shipping Association and the Hong Kong Sea Transport and Logistics Association, HKMPB supported the proposal and opined that the introduction of tax concession would be conducive to enhancing Hong Kong's attractiveness as a base for high-end maritime services. We consulted the LegCo Economic Development Panel on the proposed tax regime on 25 April 2022. Members showed general support to the proposal and expressed that the proposed tax concessions would help raise Hong Kong's competitiveness as an international maritime hub.

PUBLICITY

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

ENQUIRIES

23. Enquiries may be directed to Miss Heidi Ip, Principal Assistant Secretary for Transport and Housing (Transport), at 3509 8154.

Transport and Housing Bureau
June 2022

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A BILL

To

Amend the Inland Revenue Ordinance to give profits tax concessions to certain ship agents, ship managers and ship brokers; to make technical drafting amendments to Division 2 of Part 4 of the Ordinance; and to make related and miscellaneous amendments.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-related Activities) Ordinance 2022.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 13 and the Schedule.

3. Section 14 amended (charge of profits tax)

Section 14(5)—

Repeal

“or 14T(5)(b)”

Substitute

“, 14T(5)(b), 14ZD(7)(b), 14ZM(7)(b) or 14ZV(7)(b)”.

4. Part 4, Division 2, Subdivisions 6, 7 and 8 added

Part 4, Division 2, after Subdivision 5—

Add

“Subdivision 6—Ship Agency

14ZC. Interpretation of Subdivision 6 of Division 2 of Part 4

(1) In this Subdivision—

qualifying ship agency activity (合資格船舶代理活動)—see subsection (3);

qualifying ship agent (合資格船舶代理商)—see section 14ZD(4);

ship agency activity (船舶代理活動)—see section 2 of Schedule 17FB.

(2) Also, Part 1 of Schedule 17FB contains interpretation provisions that apply to this Subdivision in accordance with their terms.

(3) A ship agency activity carried out by a corporation is a qualifying ship agency activity if the activity is carried out in the ordinary course of the corporation's business carried on in Hong Kong.

(4) A note located in the text of this Subdivision is provided for information only and has no legislative effect.

14ZD. Concession for qualifying ship agent

(1) For the purposes of this Part and subject to subsections (7) and (9), the assessable profits of a corporation that is a qualifying ship agent for a year of assessment are chargeable to tax under this Part at—

(a) to the extent to which those profits are assessable profits derived from its qualifying ship agency activity—

- (i) that is carried out for its associated qualifying ship lessor; or
 - (ii) that is carried out—
 - (A) for its associated qualifying ship leasing manager; and
 - (B) in respect of that manager's qualifying ship leasing management activity carried out for that manager's associated qualifying ship lessor—
 - the rate specified in Schedule 8C; or
 - (b) to the extent to which those profits are assessable profits derived from its qualifying ship agency activity other than one mentioned in paragraph (a)—one-half of the rate specified in Schedule 8.
- (2) In ascertaining the assessable profits of a corporation for the purposes of subsection (1), there are to be excluded, to the extent specified in subsection (3), any profits derived by the corporation from its qualifying ship agency activity that is carried out—
- (a) for its connected person that is a ship operator; and
 - (b) in respect of any activity carried out by the connected person in the operation of a ship.
- (3) The extent specified for subsection (2) is the extent to which the activity mentioned in paragraph (b) of that subsection generates income—
- (a) that is a sum falling within paragraph (a) or (b) of the definition of *exempt sums* in section 23B(12); or
 - (b) that is not—

- (i) a sum falling within paragraph (a) of the definition of *relevant sums* in that section; or
 - (ii) a sum derived from, attributable to, or in respect of, any charter hire as described in paragraph (b) of the definition of *relevant sums* in that section.
- (4) A corporation is a qualifying ship agent for a year of assessment if, for the year of assessment—
- (a) it satisfies the conditions specified in subsection (5);
 - (b) it satisfies the safe harbour rule under section 14ZE; or
 - (c) it has obtained the Commissioner's determination under section 14ZF(1).
- (5) The conditions specified for subsection (4)(a) are—
- (a) that the corporation has carried out in Hong Kong one or more qualifying ship agency activities; and
 - (b) that the corporation has not carried out in Hong Kong any activity other than a qualifying ship agency activity,
- during the basis period for the year of assessment.
- (6) For the purposes of subsection (5)(b), in determining whether a corporation has carried out any activity other than a qualifying ship agency activity, only activities that generate income to the corporation are to be taken into account.
- (7) Subsection (1) applies to a corporation for a year of assessment only if—
- (a) during the basis period for the year of assessment—

- (i) the central management and control of the corporation is exercised in Hong Kong;
 - (ii) the activities that produce its qualifying profits for the year are—
 - (A) carried out in Hong Kong by the corporation; or
 - (B) arranged by the corporation to be carried out in Hong Kong; and
 - (iii) those activities are not carried out by a permanent establishment of the corporation outside Hong Kong; and
- (b) the corporation has elected in writing that subsection (1) applies to it.

Note—

See also section 14ZG.

- (8) An election under subsection (7)(b), once made, is irrevocable.
- (9) If subsection (1) does not apply to a corporation for a year of assessment (*cessation year*) while it did for the previous year of assessment—
 - (a) the election made by the corporation under subsection (7)(b) ceases to be effective; and
 - (b) despite anything in this section, subsection (1) is not to apply to the corporation for the year of assessment that follows the cessation year.
- (10) In this section—

qualifying profits (合資格利潤), in relation to a corporation, means the assessable profits of the corporation that fall within subsection (1) (as read together with subsection (2)).

14ZE. Safe harbour rule—qualifying ship agent

- (1) For the purposes of section 14ZD(4)(b), a corporation satisfies the safe harbour rule for a year of assessment (*subject year*) if—
 - (a) the corporation falls within the 1-year safe harbour under subsection (2); or
 - (b) the corporation falls within the multiple-year safe harbour under subsection (3).
- (2) A corporation falls within the 1-year safe harbour if, for the subject year—
 - (a) its SAP percentage is not lower than the profits percentage prescribed in section 3 of Schedule 17FB; and
 - (b) its SAA percentage is not lower than the asset percentage prescribed in section 4 of that Schedule.
- (3) A corporation falls within the multiple-year safe harbour if, for the specified years—
 - (a) its average SAP percentage is not lower than the profits percentage prescribed in section 3 of Schedule 17FB; and
 - (b) its average SAA percentage is not lower than the asset percentage prescribed in section 4 of that Schedule.
- (4) In this section, a reference to the specified years for a corporation is a reference to—
 - (a) if the corporation has carried on a trade, profession or business in Hong Kong for less than 2 consecutive years of assessment immediately before the subject year—the subject year and the preceding year of assessment (*the 2 years*); or

- (b) if the corporation has carried on a trade, profession or business in Hong Kong for 2 or more consecutive years of assessment immediately before the subject year—the subject year and the preceding 2 years of assessment (*the 3 years*).
- (5) The SAP percentage of a corporation for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{SAP}}{\text{P}}$$

where: SAP means the aggregate amount of the ship agency profits of the corporation during the basis period for the year of assessment; and

P means the aggregate amount of profits accruing to the corporation from all sources (whether in Hong Kong or not) during the basis period for the year of assessment.

- (6) The SAA percentage of a corporation for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{SAA}}{\text{A}}$$

where: SAA means the aggregate value of the ship agency assets of the corporation as at the end of the basis period for the year of assessment; and

A means the aggregate value of all assets (whether in Hong Kong or not) of the

corporation as at the end of the basis period for the year of assessment.

- (7) For the purposes of subsection (6), in computing the aggregate value of the ship agency assets of a corporation, if a ship agency asset is used partly to carry out a qualifying ship agency activity and partly for another purpose, only the part of the value of the asset that is proportionate to the extent to which the asset is used to carry out a qualifying ship agency activity is to be taken into account.
- (8) A reference to the average SAP percentage of a corporation for the specified years is a reference to the percentage arrived at by—
- (a) if subsection (4)(a) applies—dividing the sum of the SAP percentages of the corporation for the 2 years by 2; or
- (b) if subsection (4)(b) applies—dividing the sum of the SAP percentages of the corporation for the 3 years by 3.
- (9) A reference to the average SAA percentage of a corporation for the specified years is a reference to the percentage arrived at by—
- (a) if subsection (4)(a) applies—dividing the sum of the SAA percentages of the corporation for the 2 years by 2; or
- (b) if subsection (4)(b) applies—dividing the sum of the SAA percentages of the corporation for the 3 years by 3.
- (10) In this section—

ship agency asset (船舶代理資產), in relation to a corporation, means an asset of the corporation used by it to carry out one or more qualifying ship agency activities;

ship agency profits (船舶代理利潤), in relation to a corporation, means any profits of the corporation that are derived from one or more qualifying ship agency activities.

14ZF. Commissioner's determination—qualifying ship agent

- (1) For the purposes of section 14ZD(4)(c), the Commissioner may, on application by a corporation, determine that the corporation is a qualifying ship agent for a year of assessment.
- (2) A corporation may apply for the Commissioner's determination under subsection (1) only if, for the year of assessment, the corporation satisfies neither of the following—
 - (a) the conditions specified in section 14ZD(5);
 - (b) the safe harbour rule under section 14ZE.
- (3) The Commissioner may make a determination under subsection (1) only if the Commissioner is of the opinion that the corporation would, in its ordinary course of business, have satisfied the conditions specified in section 14ZD(5), or the safe harbour rule under section 14ZE, for the year of assessment.

14ZG. Carrying out of activities in Hong Kong—qualifying ship agent

- (1) For the purposes of section 14ZD(7)(a)(ii), an activity producing the assessable profits of a corporation that fall within section 14ZD(1) (as read together with section

14ZD(2)) for a year of assessment is not considered to be carried out in Hong Kong by the corporation, or arranged by the corporation to be carried out in Hong Kong, during the basis period for the year of assessment unless the prescribed requirements are met.

- (2) To avoid doubt, the fact that the prescribed requirements are not met for the purposes of subsection (1) does not imply that the assessable profits mentioned in that subsection do not arise in, or are not derived from, Hong Kong.
- (3) In this section—
prescribed requirements (訂明要求) means the requirements prescribed in section 5 of Schedule 17FB.

14ZH. Losses sustained by qualifying ship agent

- (1) Any loss sustained by a corporation from a qualifying ship agency activity in a year of assessment is, to the extent specified in subsection (2), not available for set off against any of its assessable profits for the year of assessment or any subsequent year of assessment if the activity is carried out—
 - (a) for its connected person that is a ship operator; and
 - (b) in respect of any activity carried out by the connected person in the operation of a ship.
- (2) The extent specified for subsection (1) is the extent to which the activity mentioned in paragraph (b) of that subsection generates income—
 - (a) that is a sum falling within paragraph (a) or (b) of the definition of *exempt sums* in section 23B(12); or
 - (b) that is not—

- (i) a sum falling within paragraph (a) of the definition of *relevant sums* in that section; or
 - (ii) a sum derived from, attributable to, or in respect of, any charter hire as described in paragraph (b) of the definition of *relevant sums* in that section.
 - (3) If section 14ZD(1)(a) applies to a corporation for a year of assessment for which the rate of profits tax specified in Schedule 8C is 0%, any loss sustained by the corporation from a qualifying ship agency activity—
 - (a) that is carried out for its associated qualifying ship lessor; or
 - (b) that is carried out—
 - (i) for its associated qualifying ship leasing manager; and
 - (ii) in respect of that manager's qualifying ship leasing management activity carried out for that manager's associated qualifying ship lessor,
- in the year of assessment is not available for set off against any of its assessable profits for the year of assessment or any subsequent year of assessment.

14ZL. Anti-avoidance provisions relating to arm's length principle—qualifying ship agent

- (1) Subsection (2) applies if—
 - (a) conditions are made or imposed between a corporation that is a qualifying ship agent and a person who is an associate of the corporation, in

- their commercial or financial relations in connection with a qualifying ship agency activity; and
 - (b) the conditions differ from those that would be made or imposed if the person were not such an associate.
- (2) Any profits that, but for the conditions referred to in subsection (1)(a), would have accrued to the corporation or the person and, by reason of those conditions, have not so accrued, are to be included in the profits of the corporation or the person and taxed in accordance with this Part.

14ZJ. Anti-avoidance provisions relating to arrangement to obtain tax benefit—qualifying ship agent

- (1) If—
 - (a) a corporation that is a qualifying ship agent enters into an arrangement; and
 - (b) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the corporation in entering into the arrangement is—
 - (i) to obtain a tax benefit (whether for the corporation or another person) in relation to a liability to pay profits tax under this Ordinance; or
 - (ii) to obtain a tax benefit (whether for the corporation or another person) under a tax treaty that is contrary to the purpose of the treaty,

section 14ZD(1) does not apply in relation to any assessable profits accrued to the corporation during a basis period relevant to the arrangement.

- (2) For the purposes of this section, the basis period of a year of assessment is relevant to an arrangement if, in the Commissioner's opinion, the arrangement has effect during that basis period.

14ZK. Power to amend Part 2 of Schedule 17FB

The Commissioner may by order published in the Gazette amend Part 2 of Schedule 17FB.

Subdivision 7—Ship Management

14ZL. Interpretation of Subdivision 7 of Division 2 of Part 4

- (1) In this Subdivision—

qualifying ship management activity (合資格船舶管理活動)—see subsection (3);

qualifying ship manager (合資格船舶管理商)—see section 14ZM(4);

ship management activity (船舶管理活動)—see section 6(1) of Schedule 17FB.

- (2) Also, Part 1 of Schedule 17FB contains interpretation provisions that apply to this Subdivision in accordance with their terms.
- (3) A ship management activity carried out by a corporation is a qualifying ship management activity if the activity is carried out in the ordinary course of the corporation's business carried on in Hong Kong.
- (4) A note located in the text of this Subdivision is provided for information only and has no legislative effect.

14ZM. Concession for qualifying ship manager

- (1) For the purposes of this Part and subject to subsections (7) and (9), the assessable profits of a corporation that is a qualifying ship manager for a year of assessment are chargeable to tax under this Part at—
- (a) to the extent to which those profits are assessable profits derived from its qualifying ship management activity—
- (i) that is carried out for its associated qualifying ship lessor; or
- (ii) that is carried out—
- (A) for its associated qualifying ship leasing manager; and
- (B) in respect of that leasing manager's qualifying ship leasing management activity carried out for that leasing manager's associated qualifying ship lessor—
- the rate specified in Schedule 8C; or
- (b) to the extent to which those profits are assessable profits derived from its qualifying ship management activity other than one mentioned in paragraph (a)—one-half of the rate specified in Schedule 8.
- (2) In ascertaining the assessable profits of a corporation for the purposes of subsection (1), there are to be excluded, to the extent specified in subsection (3), any profits derived by the corporation from its qualifying ship management activity that is carried out—
- (a) for its connected person that is a ship operator; and
- (b) in respect of any activity carried out by the connected person in the operation of a ship.

- (3) The extent specified for subsection (2) is the extent to which the activity mentioned in paragraph (b) of that subsection generates income—
- (a) that is a sum falling within paragraph (a) or (b) of the definition of *exempt sums* in section 23B(12); or
 - (b) that is not—
 - (i) a sum falling within paragraph (a) of the definition of *relevant sums* in that section; or
 - (ii) a sum derived from, attributable to, or in respect of, any charter hire as described in paragraph (b) of the definition of *relevant sums* in that section.
- (4) A corporation is a qualifying ship manager for a year of assessment if, for the year of assessment—
- (a) it satisfies the conditions specified in subsection (5);
 - (b) it satisfies the safe harbour rule under section 14ZN; or
 - (c) it has obtained the Commissioner's determination under section 14ZO(1).
- (5) The conditions specified for subsection (4)(a) are—
- (a) that the corporation has carried out in Hong Kong 2 or more qualifying ship management activities; and
 - (b) that the corporation has not carried out in Hong Kong any activity other than a qualifying ship management activity,
- during the basis period for the year of assessment.
- (6) For the purposes of subsection (5)(b), in determining whether a corporation has carried out any activity other than a qualifying ship management activity, only

- activities that generate income to the corporation are to be taken into account.
- (7) Subsection (1) applies to a corporation for a year of assessment only if—
- (a) during the basis period for the year of assessment—
 - (i) the central management and control of the corporation is exercised in Hong Kong;
 - (ii) the activities that produce its qualifying profits for the year are—
 - (A) carried out in Hong Kong by the corporation; or
 - (B) arranged by the corporation to be carried out in Hong Kong; and
 - (iii) those activities are not carried out by a permanent establishment of the corporation outside Hong Kong; and
 - (b) the corporation has elected in writing that subsection (1) applies to it.
- Note—**
See also section 14ZP.
- (8) An election under subsection (7)(b), once made, is irrevocable.
- (9) If subsection (1) does not apply to a corporation for a year of assessment (*cessation year*) while it did for the previous year of assessment—
- (a) the election made by the corporation under subsection (7)(b) ceases to be effective; and

- (b) despite anything in this section, subsection (1) is not to apply to the corporation for the year of assessment that follows the cessation year.
- (10) In this section—
qualifying profits (合資格利潤), in relation to a corporation, means the assessable profits of the corporation that fall within subsection (1) (as read together with subsection (2)).

14ZN. Safe harbour rule—qualifying ship manager

- (1) For the purposes of section 14ZM(4)(b), a corporation satisfies the safe harbour rule for a year of assessment (*subject year*) if—
- (a) the corporation falls within the 1-year safe harbour under subsection (2); or
- (b) the corporation falls within the multiple-year safe harbour under subsection (3).
- (2) A corporation falls within the 1-year safe harbour if, for the subject year—
- (a) its SMP percentage is not lower than the profits percentage prescribed in section 7 of Schedule 17FB; and
- (b) its SMA percentage is not lower than the asset percentage prescribed in section 8 of that Schedule.
- (3) A corporation falls within the multiple-year safe harbour if, for the specified years—
- (a) its average SMP percentage is not lower than the profits percentage prescribed in section 7 of Schedule 17FB; and

- (b) its average SMA percentage is not lower than the asset percentage prescribed in section 8 of that Schedule.
- (4) In this section, a reference to the specified years for a corporation is a reference to—
- (a) if the corporation has carried on a trade, profession or business in Hong Kong for less than 2 consecutive years of assessment immediately before the subject year—the subject year and the preceding year of assessment (*the 2 years*); or
- (b) if the corporation has carried on a trade, profession or business in Hong Kong for 2 or more consecutive years of assessment immediately before the subject year—the subject year and the preceding 2 years of assessment (*the 3 years*).
- (5) The SMP percentage of a corporation for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{SMP}}{\text{P}}$$

- where: SMP means the aggregate amount of the ship management profits of the corporation during the basis period for the year of assessment; and
- P means the aggregate amount of profits accruing to the corporation from all sources (whether in Hong Kong or not) during the basis period for the year of assessment.

- (6) The SMA percentage of a corporation for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{SMA}}{\text{A}}$$

where: SMA means the aggregate value of the ship management assets of the corporation as at the end of the basis period for the year of assessment; and

A means the aggregate value of all assets (whether in Hong Kong or not) of the corporation as at the end of the basis period for the year of assessment.

- (7) For the purposes of subsection (6), in computing the aggregate value of the ship management assets of a corporation, if a ship management asset is used partly to carry out a qualifying ship management activity and partly for another purpose, only the part of the value of the asset that is proportionate to the extent to which the asset is used to carry out a qualifying ship management activity is to be taken into account.
- (8) A reference to the average SMP percentage of a corporation for the specified years is a reference to the percentage arrived at by—
- (a) if subsection (4)(a) applies—dividing the sum of the SMP percentages of the corporation for the 2 years by 2; or
 - (b) if subsection (4)(b) applies—dividing the sum of the SMP percentages of the corporation for the 3 years by 3.

- (9) A reference to the average SMA percentage of a corporation for the specified years is a reference to the percentage arrived at by—
- (a) if subsection (4)(a) applies—dividing the sum of the SMA percentages of the corporation for the 2 years by 2; or
 - (b) if subsection (4)(b) applies—dividing the sum of the SMA percentages of the corporation for the 3 years by 3.

- (10) In this section—

ship management asset (船舶管理資產), in relation to a corporation, means an asset of the corporation used by it to carry out 2 or more qualifying ship management activities;

ship management profits (船舶管理利潤), in relation to a corporation, means any profits of the corporation that are derived from 2 or more qualifying ship management activities.

14ZO. Commissioner's determination—qualifying ship manager

- (1) For the purposes of section 14ZM(4)(c), the Commissioner may, on application by a corporation, determine that the corporation is a qualifying ship manager for a year of assessment.
- (2) A corporation may apply for the Commissioner's determination under subsection (1) only if, for the year of assessment, the corporation satisfies neither of the following—
- (a) the conditions specified in section 14ZM(5);
 - (b) the safe harbour rule under section 14ZN.

- (3) The Commissioner may make a determination under subsection (1) only if the Commissioner is of the opinion that the corporation would, in its ordinary course of business, have satisfied the conditions specified in section 14ZM(5), or the safe harbour rule under section 14ZN, for the year of assessment.

14ZP. Carrying out of activities in Hong Kong—qualifying ship manager

- (1) For the purposes of section 14ZM(7)(a)(ii), an activity producing the assessable profits of a corporation that fall within section 14ZM(1) (as read together with section 14ZM(2)) for a year of assessment is not considered to be carried out in Hong Kong by the corporation, or arranged by the corporation to be carried out in Hong Kong, during the basis period for the year of assessment unless the prescribed requirements are met.
- (2) To avoid doubt, the fact that the prescribed requirements are not met for the purposes of subsection (1) does not imply that the assessable profits mentioned in that subsection do not arise in, or are not derived from, Hong Kong.
- (3) In this section—
prescribed requirements (訂明要求) means the requirements prescribed in section 9 of Schedule 17FB.

14ZQ. Losses sustained by qualifying ship manager

- (1) Any loss sustained by a corporation from a qualifying ship management activity in a year of assessment is, to the extent specified in subsection (2), not available for set off against any of its assessable profits for the year of assessment or any subsequent year of assessment if the activity is carried out—

- (a) for its connected person that is a ship operator; and
- (b) in respect of any activity carried out by the connected person in the operation of a ship.
- (2) The extent specified for subsection (1) is the extent to which the activity mentioned in paragraph (b) of that subsection generates income—
- (a) that is a sum falling within paragraph (a) or (b) of the definition of *exempt sums* in section 23B(12); or
- (b) that is not—
- (i) a sum falling within paragraph (a) of the definition of *relevant sums* in that section; or
- (ii) a sum derived from, attributable to, or in respect of, any charter hire as described in paragraph (b) of the definition of *relevant sums* in that section.
- (3) If section 14ZM(1)(a) applies to a corporation for a year of assessment for which the rate of profits tax specified in Schedule 8C is 0%, any loss sustained by the corporation from a qualifying ship management activity—
- (a) that is carried out for its associated qualifying ship lessor; or
- (b) that is carried out—
- (i) for its associated qualifying ship leasing manager; and
- (ii) in respect of that manager's qualifying ship leasing management activity carried out for that manager's associated qualifying ship lessor,

in the year of assessment is not available for set off against any of its assessable profits for the year of assessment or any subsequent year of assessment.

14ZR. Anti-avoidance provisions relating to arm's length principle—qualifying ship manager

- (1) Subsection (2) applies if—
 - (a) conditions are made or imposed between a corporation that is a qualifying ship manager and a person who is an associate of the corporation, in their commercial or financial relations in connection with a qualifying ship management activity; and
 - (b) the conditions differ from those that would be made or imposed if the person were not such an associate.
- (2) Any profits that, but for the conditions referred to in subsection (1)(a), would have accrued to the corporation or the person and, by reason of those conditions, have not so accrued, are to be included in the profits of the corporation or the person and taxed in accordance with this Part.

14ZS. Anti-avoidance provisions relating to arrangement to obtain tax benefit—qualifying ship manager

- (1) If—
 - (a) a corporation that is a qualifying ship manager enters into an arrangement; and
 - (b) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the corporation in entering into the arrangement is—
 - (i) to obtain a tax benefit (whether for the corporation or another person) in relation to a

liability to pay profits tax under this Ordinance; or

- (ii) to obtain a tax benefit (whether for the corporation or another person) under a tax treaty that is contrary to the purpose of the treaty,

section 14ZM(1) does not apply in relation to any assessable profits accrued to the corporation during a basis period relevant to the arrangement.

- (2) For the purposes of this section, the basis period of a year of assessment is relevant to an arrangement if, in the Commissioner's opinion, the arrangement has effect during that basis period.

14ZT. Power to amend Part 3 of Schedule 17FB

The Commissioner may by order published in the Gazette amend Part 3 of Schedule 17FB.

Subdivision 8—Ship Broking

14ZU. Interpretation of Subdivision 8 of Division 2 of Part 4

- (1) In this Subdivision—

qualifying ship broker (合資格船舶經紀商)—see section 14ZV(4);

qualifying ship broking activity (合資格船舶經紀活動)—see subsection (3);

ship broking activity (船舶經紀活動)—see section 10(1) of Schedule 17FB.

- (2) Also, Part 1 of Schedule 17FB contains interpretation provisions that apply to this Subdivision in accordance with their terms.
- (3) A ship broking activity carried out by a corporation is a qualifying ship broking activity if the activity is carried out in the ordinary course of the corporation's business carried on in Hong Kong.
- (4) A note located in the text of this Subdivision is provided for information only and has no legislative effect.

14ZV. Concession for qualifying ship broker

- (1) For the purposes of this Part and subject to subsections (7) and (9), the assessable profits of a corporation that is a qualifying ship broker for a year of assessment are chargeable to tax under this Part at—
 - (a) to the extent to which those profits are assessable profits derived from its qualifying ship broking activity—
 - (i) that is carried out for its associated qualifying ship lessor; or
 - (ii) that is carried out—
 - (A) for its associated qualifying ship leasing manager; and
 - (B) in respect of that manager's qualifying ship leasing management activity carried out for that manager's associated qualifying ship lessor—
the rate specified in Schedule 8C; or
 - (b) to the extent to which those profits are assessable profits derived from its qualifying ship broking

- activity other than one mentioned in paragraph (a)—
one-half of the rate specified in Schedule 8.
- (2) In ascertaining the assessable profits of a corporation for the purposes of subsection (1), there are to be excluded, to the extent specified in subsection (3), any profits derived by the corporation from its qualifying ship broking activity that is carried out—
 - (a) for its connected person that is a ship operator; and
 - (b) in respect of any activity carried out by the connected person in the operation of a ship.
- (3) The extent specified for subsection (2) is the extent to which the activity mentioned in paragraph (b) of that subsection generates income—
 - (a) that is a sum falling within paragraph (a) or (b) of the definition of *exempt sums* in section 23B(12); or
 - (b) that is not—
 - (i) a sum falling within paragraph (a) of the definition of *relevant sums* in that section; or
 - (ii) a sum derived from, attributable to, or in respect of, any charter hire as described in paragraph (b) of the definition of *relevant sums* in that section.
- (4) A corporation is a qualifying ship broker for a year of assessment if, for the year of assessment—
 - (a) it satisfies the conditions specified in subsection (5);
 - (b) it satisfies the safe harbour rule under section 14ZW; or
 - (c) it has obtained the Commissioner's determination under section 14ZX(1).

- (5) The conditions specified for subsection (4)(a) are—
- (a) that the corporation has carried out in Hong Kong one or more qualifying ship broking activities; and
 - (b) that the corporation has not carried out in Hong Kong any activity other than a qualifying ship broking activity,
- during the basis period for the year of assessment.
- (6) For the purposes of subsection (5)(b), in determining whether a corporation has carried out any activity other than a qualifying ship broking activity, only activities that generate income to the corporation are to be taken into account.
- (7) Subsection (1) applies to a corporation for a year of assessment only if—
- (a) during the basis period for the year of assessment—
 - (i) the central management and control of the corporation is exercised in Hong Kong;
 - (ii) the activities that produce its qualifying profits for the year are—
 - (A) carried out in Hong Kong by the corporation; or
 - (B) arranged by the corporation to be carried out in Hong Kong; and
 - (iii) those activities are not carried out by a permanent establishment of the corporation outside Hong Kong; and
 - (b) the corporation has elected in writing that subsection (1) applies to it.

Note—

See also section 14ZY.

- (8) An election under subsection (7)(b), once made, is irrevocable.
- (9) If subsection (1) does not apply to a corporation for a year of assessment (*cessation year*) while it did for the previous year of assessment—
 - (a) the election made by the corporation under subsection (7)(b) ceases to be effective; and
 - (b) despite anything in this section, subsection (1) is not to apply to the corporation for the year of assessment that follows the cessation year.
- (10) In this section—
qualifying profits (合資格利潤), in relation to a corporation, means the assessable profits of the corporation that fall within subsection (1) (as read together with subsection (2)).

14ZW. Safe harbour rule—qualifying ship broker

- (1) For the purposes of section 14ZV(4)(b), a corporation satisfies the safe harbour rule for a year of assessment (*subject year*) if—
 - (a) the corporation falls within the 1-year safe harbour under subsection (2); or
 - (b) the corporation falls within the multiple-year safe harbour under subsection (3).
- (2) A corporation falls within the 1-year safe harbour if, for the subject year—

- (a) its SBP percentage is not lower than the profits percentage prescribed in section 11 of Schedule 17FB; and
- (b) its SBA percentage is not lower than the asset percentage prescribed in section 12 of that Schedule.
- (3) A corporation falls within the multiple-year safe harbour if, for the specified years—
 - (a) its average SBP percentage is not lower than the profits percentage prescribed in section 11 of Schedule 17FB; and
 - (b) its average SBA percentage is not lower than the asset percentage prescribed in section 12 of that Schedule.
- (4) In this section, a reference to the specified years for a corporation is a reference to—
 - (a) if the corporation has carried on a trade, profession or business in Hong Kong for less than 2 consecutive years of assessment immediately before the subject year—the subject year and the preceding year of assessment (*the 2 years*); or
 - (b) if the corporation has carried on a trade, profession or business in Hong Kong for 2 or more consecutive years of assessment immediately before the subject year—the subject year and the preceding 2 years of assessment (*the 3 years*).
- (5) The SBP percentage of a corporation for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{SBP}}{\text{P}}$$

where: SBP means the aggregate amount of the ship broking profits of the corporation during the basis period for the year of assessment; and

P means the aggregate amount of profits accruing to the corporation from all sources (whether in Hong Kong or not) during the basis period for the year of assessment.

- (6) The SBA percentage of a corporation for a year of assessment is calculated in accordance with the following formula—

$$\frac{\text{SBA}}{\text{A}}$$

where: SBA means the aggregate value of the ship broking assets of the corporation as at the end of the basis period for the year of assessment; and

A means the aggregate value of all assets (whether in Hong Kong or not) of the corporation as at the end of the basis period for the year of assessment.

- (7) For the purposes of subsection (6), in computing the aggregate value of the ship broking assets of a corporation, if a ship broking asset is used partly to carry out a qualifying ship broking activity and partly for another purpose, only the part of the value of the asset that is proportionate to the extent to which the asset is used to carry out a qualifying ship broking activity is to be taken into account.

- (8) A reference to the average SBP percentage of a corporation for the specified years is a reference to the percentage arrived at by—
- (a) if subsection (4)(a) applies—dividing the sum of the SBP percentages of the corporation for the 2 years by 2; or
 - (b) if subsection (4)(b) applies—dividing the sum of the SBP percentages of the corporation for the 3 years by 3.
- (9) A reference to the average SBA percentage of a corporation for the specified years is a reference to the percentage arrived at by—
- (a) if subsection (4)(a) applies—dividing the sum of the SBA percentages of the corporation for the 2 years by 2; or
 - (b) if subsection (4)(b) applies—dividing the sum of the SBA percentages of the corporation for the 3 years by 3.
- (10) In this section—
- ship broking asset* (船舶經紀資產), in relation to a corporation, means an asset of the corporation used by it to carry out one or more qualifying ship broking activities;
- ship broking profits* (船舶經紀利潤), in relation to a corporation, means any profits of the corporation that are derived from one or more qualifying ship broking activities.

14ZX. Commissioner's determination—qualifying ship broker

- (1) For the purposes of section 14ZV(4)(c), the Commissioner may, on application by a corporation,

- determine that the corporation is a qualifying ship broker for a year of assessment.
- (2) A corporation may apply for the Commissioner's determination under subsection (1) only if, for the year of assessment, the corporation satisfies neither of the following—
- (a) the conditions specified in section 14ZV(5);
 - (b) the safe harbour rule under section 14ZW.
- (3) The Commissioner may make a determination under subsection (1) only if the Commissioner is of the opinion that the corporation would, in its ordinary course of business, have satisfied the conditions specified in section 14ZV(5), or the safe harbour rule under section 14ZW, for the year of assessment.

14ZY. Carrying out of activities in Hong Kong—qualifying ship broker

- (1) For the purposes of section 14ZV(7)(a)(ii), an activity producing the assessable profits of a corporation that fall within section 14ZV(1) (as read together with section 14ZV(2)) for a year of assessment is not considered to be carried out in Hong Kong by the corporation, or arranged by the corporation to be carried out in Hong Kong, during the basis period for the year of assessment unless the prescribed requirements are met.
- (2) To avoid doubt, the fact that the prescribed requirements are not met for the purposes of subsection (1) does not imply that the assessable profits mentioned in that subsection do not arise in, or are not derived from, Hong Kong.
- (3) In this section—

prescribed requirements (訂明要求) means the requirements prescribed in section 13 of Schedule 17FB.

14ZZ. Losses sustained by qualifying ship broker

- (1) Any loss sustained by a corporation from a qualifying ship broking activity in a year of assessment is, to the extent specified in subsection (2), not available for set off against any of its assessable profits for the year of assessment or any subsequent year of assessment if the activity is carried out—
 - (a) for its connected person that is a ship operator; and
 - (b) in respect of any activity carried out by the connected person in the operation of a ship.
- (2) The extent specified for subsection (1) is the extent to which the activity mentioned in paragraph (b) of that subsection generates income—
 - (a) that is a sum falling within paragraph (a) or (b) of the definition of *exempt sums* in section 23B(12); or
 - (b) that is not—
 - (i) a sum falling within paragraph (a) of the definition of *relevant sums* in that section; or
 - (ii) a sum derived from, attributable to, or in respect of, any charter hire as described in paragraph (b) of the definition of *relevant sums* in that section.
- (3) If section 14ZV(1)(a) applies to a corporation for a year of assessment for which the rate of profits tax specified in Schedule 8C is 0%, any loss sustained by the corporation from a qualifying ship broking activity—

- (a) that is carried out for its associated qualifying ship lessor; or
- (b) that is carried out—
 - (i) for its associated qualifying ship leasing manager; and
 - (ii) in respect of that manager's qualifying ship leasing management activity carried out for that manager's associated qualifying ship lessor,

in the year of assessment is not available for set off against any of its assessable profits for the year of assessment or any subsequent year of assessment.

14ZZA. Anti-avoidance provisions relating to arm's length principle—qualifying ship broker

- (1) Subsection (2) applies if—
 - (a) conditions are made or imposed between a corporation that is a qualifying ship broker and a person who is an associate of the corporation, in their commercial or financial relations in connection with a qualifying ship broking activity; and
 - (b) the conditions differ from those that would be made or imposed if the person were not such an associate.
- (2) Any profits that, but for the conditions referred to in subsection (1)(a), would have accrued to the corporation or the person and, by reason of those conditions, have not so accrued, are to be included in the profits of the corporation or the person and taxed in accordance with this Part.

14ZZB. Anti-avoidance provisions relating to arrangement to obtain tax benefit—qualifying ship broker

(1) If—

- (a) a corporation that is a qualifying ship broker enters into an arrangement; and
- (b) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the corporation in entering into the arrangement is—
 - (i) to obtain a tax benefit (whether for the corporation or another person) in relation to a liability to pay profits tax under this Ordinance; or
 - (ii) to obtain a tax benefit (whether for the corporation or another person) under a tax treaty that is contrary to the purpose of the treaty,

section 14ZV(1) does not apply in relation to any assessable profits accrued to the corporation during a basis period relevant to the arrangement.

- (2) For the purposes of this section, the basis period of a year of assessment is relevant to an arrangement if, in the Commissioner's opinion, the arrangement has effect during that basis period.

14ZZC. Power to amend Part 4 of Schedule 17FB

The Commissioner may by order published in the Gazette amend Part 4 of Schedule 17FB.”.

5. Section 16 amended (ascertainment of chargeable profits)

- (1) Section 16(1A)(c) and (1B)—

Repeal

“or 14T(1)”

Substitute

“, 14T(1), 14ZD(1), 14ZM(1) or 14ZV(1)”.

- (2) Section 16(1D)—

Repeal

“or 14T(1)”

Substitute

“, 14T(1), 14ZD(1), 14ZM(1) or 14ZV(1)”.

- (3) Section 16(1D), after “section 14G(1)”—

Add

“or 14O(1) or section 1(1) of Schedule 17FB (whichever is applicable)”.

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

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

Repeal

“or”.

- (2) Section 19CA, definition of *concession provision*, after paragraph (g)—

Add

“(ga) section 14ZD(1);

(gb) section 14ZM(1);

(gc) section 14ZV(1); or”.

7. **Section 63H amended (amount of provisional profits tax)**
Section 63H(1D)—
Repeal
“or 14T(5)(b)”
Substitute
“, 14T(5)(b), 14ZD(7)(b), 14ZM(7)(b) or 14ZV(7)(b)”.
8. **Section 89 amended (transitional provisions)**
(1) Section 89, Chinese text, heading—
Repeal
“性”.
(2) Section 89—
Add
“(27) Schedule 52 sets out a transitional provision that has effect for the purposes of amendments to this Ordinance made by the Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-related Activities) Ordinance 2022 (of 2022).”.
9. **Section 100 amended (reduction of taxes)**
Section 100(2)(a)—
Repeal
“and 14T”
Substitute
“, 14T, 14ZD, 14ZM and 14ZV”.

10. **Schedule 8 amended (rate of profits tax in respect of a corporation)**
Schedule 8, after “14T,”—
Add
“14ZD, 14ZM, 14ZV,”.
11. **Schedule 8C amended (rate of profits tax for qualifying ship lessor or qualifying ship leasing manager)**
(1) Schedule 8C, heading—
Repeal
“or Qualifying Ship Leasing Manager”
Substitute
“, Qualifying Ship Leasing Manager, etc.”.
(2) Schedule 8C—
Repeal
“& 14X]”
Substitute
“, 14X, 14ZD, 14ZH, 14ZM, 14ZQ, 14ZV & 14ZZ]”.
12. **Schedule 17FB added**
After Schedule 17FA—
Add

“Schedule 17FB

[ss. 14ZC, 14ZE, 14ZG,
14ZK, 14ZL, 14ZN,
14ZP, 14ZT, 14ZU,
14ZW, 14ZY, 14ZZC &
16]

**Tax Concessions for Ship Agency Activities, Ship
Management Activities and Ship Broking
Activities**

Part 1

General Interpretation Provisions

**1. Interpretation of Schedule 17FB and Subdivisions 6, 7 and
8 of Division 2 of Part 4**

- (1) In this Schedule and Subdivisions 6, 7 and 8 of Division 2 of Part 4—

associate (相聯者), in relation to a corporation, means—

- (a) a person who has control over the corporation;
- (b) a partner of a person mentioned in paragraph (a);
- (c) if a person mentioned in paragraph (a) is a natural person—a relative of the person;
- (d) if a partner mentioned in paragraph (b) is a natural person—a relative of the partner;
- (e) a director or principal officer of—

- (i) the corporation; or
- (ii) an associated corporation of the corporation;
- (f) a relative of a director (if the director is a natural person) or principal officer mentioned in paragraph (e);
- (g) a partner of the corporation;
- (h) if a partner of the corporation is a natural person—a relative of the partner;
- (i) a partnership in which the corporation is a partner; or
- (j) an associated corporation of the corporation;

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 qualifying ship leasing manager (相聯合資格船舶租賃管理商) means an associated corporation that is a qualifying ship leasing manager;

associated qualifying ship lessor (相聯合資格船舶出租商) means an associated corporation that is a qualifying ship lessor;

connected person (有關連者), in relation to a corporation, means—

- (a) an associated corporation of the corporation;

- (b) a person (other than a corporation)—
 - (i) over whom the corporation has control;
 - (ii) who has control over the corporation; or
 - (iii) who is under the control of the same person as is the corporation; or
- (c) a partnership in which the corporation or its associate is a partner;

control (控制), in relation to the definitions of *associate*, *associated corporation* and *connected person*—see subsection (2);

operation (營運), in relation to a ship, includes the use or possession of the ship;

permanent establishment (常設機構)—

- (a) means a branch, management or other place of business; but
- (b) does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of a principal;

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;

qualifying ship leasing management activity (合資格船舶租賃管理活動) means a qualifying ship leasing management activity within the meaning of section 14O(7);

qualifying ship leasing manager (合資格船舶租賃管理商) means a qualifying ship leasing manager within the meaning of section 14T(2);

qualifying ship lessor (合資格船舶出租商) means a qualifying ship lessor within the meaning of section 14P(2);

relative (親屬), in relation to a person, means the spouse, parent, child, brother or sister of the person, and, in deducing such a relationship—

- (a) an adopted child is to be regarded as a child of both the natural parents and any adopting parent; and
- (b) a step child is to be regarded as a child of both the natural parents and any step parent;

ship (船舶) means a vessel of any description capable of navigating in water and—

- (a) includes—
 - (i) a barge or lighter;
 - (ii) an air-cushion vehicle; and
 - (iii) a dynamically supported craft as defined by section 2 of the Shipping and Port Control Ordinance (Cap. 313); and
- (b) does not include—

- (i) a junk as defined by section 2 of the Merchant Shipping Ordinance (Cap. 281);
 - (ii) a vessel propelled by oars; or
 - (iii) a vessel solely for military use;
- ship leasing manager** (船舶租賃管理商) has the meaning given by section 14O(1);
- ship lessor** (船舶出租商) has the meaning given by section 14O(1);
- ship operation business** (船舶營運業務)—
- (a) means a business of operating ships as an owner or a charterer for providing services for the carriage by ships of passengers, cargo or mail; but
 - (b) does not include dealing in ships or agency business in connection with sea transport;
- ship operator** (船舶營運商) means a person carrying on a ship operation business;
- ship owner** (船舶擁有人) means the following person who is not a ship operator or ship lessor—
- (a) a person registered as the owner of a ship, or in the absence of registration, a person owning a ship; or
 - (b) a demise charterer of a ship;
- tax benefit** (稅務利益) means an avoidance, postponement or reduction of a liability to pay tax;
- tax treaty** (稅收協定) means an arrangement made between 2 or more jurisdictions (whether including Hong Kong or otherwise) with a view to affording relief from double taxation.

- (2) For the purposes of the definitions of *associate*, *associated corporation* and *connected person* in subsection (1)—
 - (a) a person has control over a corporation if the person has the power to secure—
 - (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
 - (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation, that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person; and
 - (b) a person (*first person*) has control over another person (other than a corporation) (*second person*) if the second person is accustomed or under an obligation (whether express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings) to act, in relation to the investment or business affairs of the second person, in accordance with the directions, instructions or wishes of the first person.

Part 2

Ship Agency Activity

2. Meaning of *ship agency activity*

In Subdivision 6 of Division 2 of Part 4—

ship agency activity (船舶代理活動), in relation to a person, means an activity carried out by the person on behalf of a ship lessor, ship leasing manager, ship operator or ship owner (collectively *principal*) in respect of the principal's ships, masters and crews, cargoes or customers.

3. Prescribed profits percentage for section 14ZE

The profits percentage prescribed for the purposes of section 14ZE is 75%.

4. Prescribed asset percentage for section 14ZE

The asset percentage prescribed for the purposes of section 14ZE is 75%.

5. Prescribed requirements for qualifying ship agency activity

The requirements prescribed for the purposes of the definition of *prescribed requirements* in section 14ZG(3) are—

- (a) that during the basis period for the year of assessment concerned, the average number of full-time employees in Hong Kong who carry out the activity concerned and have the qualifications necessary for doing so is—
 - (i) adequate in the Commissioner's opinion; and
 - (ii) in any event not less than one; and
- (b) that the total amount of operating expenditure incurred in Hong Kong for the activity during the basis period for that year of assessment is—
 - (i) adequate in the Commissioner's opinion; and
 - (ii) in any event not less than \$1,000,000.

Part 3

Ship Management Activity

6. Meaning of *ship management activity*

(1) In this section and Subdivision 7 of Division 2 of Part 4—

ship management activity (船舶管理活動), in relation to a person, means any of the following activities carried out by the person for a ship lessor, ship leasing manager, ship operator or ship owner—

- (a) arranging for or supervising the dry-docking, repair, overhaul, alteration, upkeep, maintenance or lay-up of a ship;
- (b) arranging for the operation, crewing, voyage monitoring, certification, storage or scrapping of a ship;
- (c) ensuring through procurement contracts the adequacy of supplies, provisions, spares, stores and lubricating oil for a ship;
- (d) liaising with relevant authorities or other bodies on safety or manning requirements, or other similar requirements, for a ship;
- (e) appointing a surveyor or any other technical consultant for a ship;
- (f) appointing another person as a ship manager or ship agent, or engaging a stevedore, for a ship;
- (g) supervising the sale (including the physical delivery on sale) of a ship;
- (h) arranging for the provision of bunkers for a ship;

- (i) arranging for the sampling and testing of bunkers for a ship;
- (j) ensuring that organizational, flag state, local port state and international requirements applicable to a ship are complied with (including auditing such requirements);
- (k) supervising the general efficiency of a ship;
- (l) handling crew-related matters such as the provision of a qualified crew, the appointment of a crew manager, the provision of crew training, or the arrangement of crew insurance or payroll, for a ship;
- (m) arranging for the transportation of the crew of a ship (including such transportation for their repatriation) or related logistics;
- (n) supervising crew efficiency for a ship;
- (o) ensuring that requirements concerning medical examinations and the possession of medical certificates applicable to the crew of a ship are complied with;
- (p) awarding contracts, entering into alliances, or deciding on pooling, in respect of a ship;
- (q) securing the engagement of a ship by a ship operator for the carriage of cargoes;
- (r) planning a ship's route and freight tonnage, including the issuance of voyage instructions;
- (s) collecting or arranging for the collection of—
 - (i) the freight of a ship; or
 - (ii) the charter hire for a ship, or any other payment in exchange for a ship's use;

- (t) arranging for or providing post-fixture services for a ship, including—
 - (i) voyage estimating; and
 - (ii) accounting in respect of, or calculating—
 - (A) hire;
 - (B) freight;
 - (C) demurrage; or
 - (D) dispatch moneys, due from or to charterers;
- (u) arranging for surveys of a ship;
- (v) making a purchase or sale of a ship, or a decision regarding its ownership;
- (w) deciding on a ship's flag and registry;
- (x) sourcing for or deciding on financing for the acquisition of a ship;
- (y) arranging for the insurance for a ship or handling relevant insurance claims;
- (z) advising on or supervising the construction, conversion or registration of a ship, including the approval of plans for a ship, based on a ship owner's requirements;
- (za) arranging for, advising on or undertaking any work requiring technical expertise (including basic design and front end engineering work) for a ship;
- (zb) arranging for or providing marine-related consultancy or technology services for a ship (including ones concerning the environmental, technological and vessel performance aspects);

- (zc) arranging for port agency services or security services for a ship;
- (zd) managing any risks ancillary or incidental to any activity mentioned in any other paragraph of this definition.
- (2) In paragraph (f) of the definition of *ship management activity* in subsection (1)—
 - ship agent* (船舶代理商) means a person carrying on a business of carrying out ship agency activities as defined by section 2 of this Schedule;
 - ship manager* (船舶管理商) means a person carrying on a business of carrying out ship management activities.
- 7. **Prescribed profits percentage for section 14ZN**

The profits percentage prescribed for the purposes of section 14ZN is 75%.
- 8. **Prescribed asset percentage for section 14ZN**

The asset percentage prescribed for the purposes of section 14ZN is 75%.
- 9. **Prescribed requirements for qualifying ship management activity**

The requirements prescribed for the purposes of the definition of *prescribed requirements* in section 14ZP(3) are—

 - (a) that during the basis period for the year of assessment concerned, the average number of full-time employees in Hong Kong who carry out the activity concerned and have the qualifications necessary for doing so is—

- (i) adequate in the Commissioner's opinion; and
- (ii) in any event not less than one; and
- (b) that the total amount of operating expenditure incurred in Hong Kong for the activity during the basis period for that year of assessment is—
 - (i) adequate in the Commissioner's opinion; and
 - (ii) in any event not less than \$1,000,000.

Part 4

Ship Broking Activity

10. Meaning of *ship broking activity*

- (1) In Subdivision 8 of Division 2 of Part 4—

ship broking activity (船舶經紀活動), in relation to a corporation, means any of the following activities carried out by the corporation for a ship lessor, ship leasing manager, ship operator or ship owner—

 - (a) the broking of sale and purchase of ships;
 - (b) the matching of ship owners (who intend to build new ships) to shipyards based on the ship owners' requirements;
 - (c) the matching of ships to—
 - (i) cargoes; or
 - (ii) ship owners or ship charterers;
 - (d) the valuation of ships;
 - (e) providing any research, consultancy or advisory service for, or in connection with, an activity

mentioned in paragraph (a), (b), (c) or (d) (*specified activity*) that is carried out by the corporation.

- (2) For the purposes of paragraph (e) of the definition of *ship broking activity* in subsection (1), any research, consultancy or advisory service provided by a corporation for, or in connection with, a specified activity that is carried out by the corporation during the basis period for the year of assessment concerned is taken to be not so provided if the condition specified in subsection (3) is met.
- (3) The condition specified for subsection (2) is that the total fees and commissions derived by the corporation from the provision of the service exceed 20% of the aggregate fees and commissions derived by the corporation from the carrying out of all specified activities that are carried out during that basis period.

11. Prescribed profits percentage for section 14ZW

The profits percentage prescribed for the purposes of section 14ZW is 75%.

12. Prescribed asset percentage for section 14ZW

The asset percentage prescribed for the purposes of section 14ZW is 75%.

13. Prescribed requirements for qualifying ship broking activity

The requirements prescribed for the purposes of the definition of *prescribed requirements* in section 14ZY(3) are—

- (a) that during the basis period for the year of assessment concerned, the average number of full-

time employees in Hong Kong who carry out the activity concerned and have the qualifications necessary for doing so is—

- (i) adequate in the Commissioner's opinion; and
 - (ii) in any event not less than one; and
- (b) that the total amount of operating expenditure incurred in Hong Kong for the activity during the basis period for that year of assessment is—
- (i) adequate in the Commissioner's opinion; and
 - (ii) in any event not less than \$1,000,000.”.

13. Schedule 52 added

The Ordinance—

Add

“Schedule 52

[s. 89(27)]

**Transitional Provision for Inland Revenue
(Amendment) (Tax Concessions for Certain
Shipping-related Activities) Ordinance 2022
(of 2022)**

1. In calculating the qualifying profits in relation to a corporation for the purposes of section 14ZD(1), 14ZM(1) or 14ZV(1), sums received by or accrued to the corporation before 1 April 2022 are not to be taken into account.”.

Schedule

[s. 2]

Technical Drafting Amendments to Division 2 of Part 4 of Inland Revenue Ordinance and Related Amendments

1. Section 2 amended (interpretation)
 - (1) Section 2(1), definition of *lease*—
Repeal
“the aircraft leasing tax concessions provisions, the ship leasing tax concessions provisions”
Substitute
“Subdivisions 4 and 5 of Division 2 of Part 4”.
 - (2) Section 2(1)—
 - (a) definition of *aircraft leasing tax concessions provisions*;
 - (b) definition of *ship leasing tax concessions provisions*—
Repeal the definitions.
2. Section 14G amended (aircraft leasing tax concessions: interpretation)
 - (1) Section 14G, heading—
Repeal
“Aircraft leasing tax concessions: interpretation”
Substitute
“Interpretation of Subdivision 4 of Division 2 of Part 4”.

- (2) Section 14G(1)—
Repeal
“the aircraft leasing tax concessions provisions”
Substitute
“this Subdivision”.
3. Section 14H heading amended (aircraft leasing tax concessions: concession for qualifying aircraft lessor)
Section 14H, heading—
Repeal
“Aircraft leasing tax concessions: concession”
Substitute
“Concession”.
4. Section 14I heading amended (aircraft leasing tax concessions: calculation of net lease payments)
Section 14I, heading—
Repeal
“Aircraft leasing tax concessions: calculation”
Substitute
“Calculation”.
5. Section 14J heading amended (aircraft leasing tax concessions: concession for qualifying aircraft leasing manager)
Section 14J, heading—
Repeal
“Aircraft leasing tax concessions: concession”
Substitute

“Concession”.

6. Section 14K heading amended (aircraft leasing tax concessions: safe harbour rule)

Section 14K, heading—

Repeal

“Aircraft leasing tax concessions: safe harbour rule”.

Substitute

“Safe harbour rule—aircraft leasing”.

7. Section 14L heading amended (aircraft leasing tax concessions: Commissioner’s determination)

Section 14L, heading—

Repeal

“Aircraft leasing tax concessions: Commissioner’s determination”

Substitute

“Commissioner’s determination—aircraft leasing”.

8. Section 14M amended (aircraft leasing tax concessions: anti-avoidance provisions)

(1) Section 14M, heading—

Repeal

“Aircraft leasing tax concessions: anti-avoidance provisions”

Substitute

“Anti-avoidance provisions—aircraft leasing”.

(2) Section 14M(5)—

Repeal

“the aircraft leasing tax concessions provisions are”

Substitute

“this Subdivision is”.

9. Section 14N heading amended (aircraft leasing tax concessions: power to amend Schedule 17F)

Section 14N, heading—

Repeal

“Aircraft leasing tax concessions: power”

Substitute

“Power”.

10. Section 14O amended (ship leasing tax concessions: interpretation)

(1) Section 14O, heading—

Repeal

“Ship leasing tax concessions: interpretation”

Substitute

“Interpretation of Subdivision 5 of Division 2 of Part 4”.

(2) Section 14O(1) and (8)—

Repeal

“the ship leasing tax concessions provisions”

Substitute

“this Subdivision”.

11. **Section 14P heading amended (ship leasing tax concessions: concession for qualifying ship lessor)**
Section 14P, heading—
 Repeal
 “Ship leasing tax concessions: concession”
 Substitute
 “Concession”.
12. **Section 14Q heading amended (ship leasing tax concessions: allowance for capital expenditure on ship)**
Section 14Q, heading—
 Repeal
 “Ship leasing tax concessions: allowance”
 Substitute
 “Allowance”.
13. **Section 14R heading amended (ship leasing tax concessions: calculation of net lease payments for operating leases)**
Section 14R, heading—
 Repeal
 “Ship leasing tax concessions: calculation”
 Substitute
 “Calculation”.
14. **Section 14S heading amended (ship leasing tax concessions: calculation of net payments of finance charges or interest for funding leases)**
Section 14S, heading—

- Repeal**
 “Ship leasing tax concessions: calculation”
 Substitute
 “Calculation”.
15. **Section 14T heading amended (ship leasing tax concessions: concession for qualifying ship leasing manager)**
Section 14T, heading—
 Repeal
 “Ship leasing tax concessions: concession”
 Substitute
 “Concession”.
16. **Section 14U heading amended (ship leasing tax concessions: safe harbour rule)**
Section 14U, heading—
 Repeal
 “Ship leasing tax concessions: safe harbour rule”
 Substitute
 “Safe harbour rule—ship leasing”.
17. **Section 14V heading amended (ship leasing tax concessions: Commissioner’s determination)**
Section 14V, heading—
 Repeal
 “Ship leasing tax concessions: Commissioner’s determination”
 Substitute

“Commissioner’s determination—ship leasing”.

18. **Section 14W heading amended (ship leasing tax concessions: carrying out of activities in Hong Kong)**

Section 14W, heading—

Repeal

“Ship leasing tax concessions: carrying out of activities in Hong Kong”

Substitute

“Carrying out of activities in Hong Kong—ship leasing”.

19. **Section 14X heading amended (ship leasing tax concessions: losses sustained by qualifying ship lessor or qualifying ship leasing manager)**

Section 14X, heading—

Repeal

“Ship leasing tax concessions: losses”

Substitute

“Losses”.

20. **Section 14Y heading amended (ship leasing tax concessions: anti-avoidance provisions relating to arm’s length principle)**

Section 14Y, heading—

Repeal

“Ship leasing tax concessions: anti-avoidance provisions relating to arm’s length principle”

Substitute

“Anti-avoidance provisions relating to arm’s length principle—ship leasing”.

21. **Section 14Z amended (ship leasing tax concessions: anti-avoidance provisions relating to release of ownership obligation)**

- (1) **Section 14Z, heading—**

Repeal

“Ship leasing tax concessions: anti-avoidance provisions relating to release of ownership obligation”

Substitute

“Anti-avoidance provisions relating to release of ownership obligation—ship leasing”.

- (2) **Section 14Z—**

Repeal

“the ship leasing tax concessions provisions are”

Substitute

“this Subdivision is”.

22. **Section 14ZA heading amended (ship leasing tax concessions: anti-avoidance provisions relating to arrangement to obtain tax benefit)**

Section 14ZA, heading—

Repeal

“Ship leasing tax concessions: anti-avoidance provisions relating to arrangement to obtain tax benefit”

Substitute

“Anti-avoidance provisions relating to arrangement to obtain tax benefit—ship leasing”.

23. Section 14ZB heading amended (ship leasing tax concessions: power to amend Schedule 17FA)

Section 14ZB, heading—

Repeal

“Ship leasing tax concessions: power”

Substitute

“Power”.

24. Schedule 17F amended (aircraft leasing tax concessions)

(1) Schedule 17F, section 1(1)—

Repeal

“the aircraft leasing tax concessions provisions”

Substitute

“Subdivision 4 of Division 2 of Part 4”.

(2) Schedule 17F, section 1(4)—

Repeal

“the aircraft leasing tax concessions provisions have the same meaning as in those provisions”

Substitute

“Subdivision 4 of Division 2 of Part 4 have the same meaning as in that Subdivision”.

25. Schedule 17FA amended (ship leasing tax concessions)

(1) Schedule 17FA, section 1(1)—

Repeal

“the ship leasing tax concessions provisions”

Substitute

“Subdivision 5 of Division 2 of Part 4”.

(2) Schedule 17FA, section 1(4)—

Repeal

“the ship leasing tax concessions provisions have the same meaning as in those provisions”

Substitute

“Subdivision 5 of Division 2 of Part 4 have the same meaning as in that Subdivision”.

Explanatory Memorandum

The main object of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (*principal Ordinance*) to—

- (a) give profits tax concessions to corporations carrying on certain ship agency, ship management or ship broking activities; and
 - (b) make provisions for profits tax purposes about such activities.
2. Clause 1 sets out the short title.
 3. Clause 4 adds new Subdivisions 6, 7 and 8 to Division 2 of Part 4 of the principal Ordinance.

New Subdivision 6—Ship Agency

4. The new Subdivision 6 contains the tax concessions provisions in relation to ship agency (new sections 14ZC to 14ZK).
5. The new section 14ZC provides for the interpretation of terms used in the Subdivision, including the definitions of *qualifying ship agency activity* and *qualifying ship agent*.
6. The new section 14ZD provides that a corporation that is a qualifying ship agent for a year of assessment is entitled to have its profits derived from its qualifying ship agency activity for the year of assessment charged at a concessionary rate (new section 14ZD(1)). The concessionary rate is either one-half of the profits tax rate specified in Schedule 8 to the principal Ordinance, or the profits tax rate specified in Schedule 8C to the principal Ordinance, depending on whether a certain condition is met in relation to the activity. The new section 14ZD(2) provides for the profits to be excluded in ascertaining the assessable profits of a corporation for the purposes

of the new section 14ZD(1). The new section 14ZD(4) provides for how a corporation may be a qualifying ship agent, namely—

- (a) by satisfying the conditions specified in the new section 14ZD(5);
- (b) by satisfying the safe harbour rule under the new section 14ZE; or
- (c) by obtaining the determination of the Commissioner of Inland Revenue (*Commissioner*) under the new section 14ZF.

The new section 14ZD(7) provides for certain conditions for the entitlement to the concessionary rate.

7. The new section 14ZE provides for how a corporation may satisfy the safe harbour rule. There are 2 alternative safe harbours as follows—
 - (a) the “1-year safe harbour” that requires the corporation to satisfy certain conditions regarding its ship agency profits and ship agency assets for the year of assessment concerned (new section 14ZE(2));
 - (b) the “multiple-year safe harbour” that requires the corporation to satisfy similar conditions for the year of assessment concerned and the preceding 1 or 2 years of assessment (new section 14ZE(3)).
8. The new section 14ZF provides for the Commissioner’s discretion to make a determination that a corporation, which is not otherwise qualified, is a qualifying ship agent.
9. The new section 14ZG provides that, for the purposes of the new section 14ZD(7), certain prescribed requirements under the new Schedule 17FB to the principal Ordinance (added by clause 12) must be met in order for a ship agency activity to be considered to be carried out, or arranged to be carried out, in Hong Kong.

10. The new section 14ZH sets out the circumstances under which the losses sustained by a corporation from carrying out a qualifying ship agency activity are not available for set off against its assessable profits.
11. The new sections 14ZI and 14ZJ contain certain provisions for preventing avoidance of profits tax by means of the new tax concessions in relation to ship agency.
12. The new section 14ZK empowers the Commissioner to amend, by order published in the Gazette, Part 2 of the new Schedule 17FB which—
 - (a) contains the definition of *ship agency activity*;
 - (b) specifies the prescribed profits and asset percentages relating to the safe harbour rule; and
 - (c) prescribes the requirements for the purposes of the new section 14ZG.

New Subdivision 7—Ship Management

13. The new Subdivision 7 contains the tax concessions provisions in relation to ship management (new sections 14ZL to 14ZT).
14. The new section 14ZL provides for the interpretation of terms used in the Subdivision, including the definitions of *qualifying ship management activity* and *qualifying ship manager*.
15. The new section 14ZM provides that a corporation that is a qualifying ship manager for a year of assessment is entitled to have its profits derived from its qualifying ship management activity for the year of assessment charged at a concessionary rate (new section 14ZM(1)). The concessionary rate is either one-half of the profits tax rate specified in Schedule 8 to the principal Ordinance, or the profits tax rate specified in Schedule 8C to the principal Ordinance, depending on whether a certain condition is met in relation to the

activity. The new section 14ZM(2) provides for the profits to be excluded in ascertaining the assessable profits of a corporation for the purposes of the new section 14ZM(1). The new section 14ZM(4) provides for how a corporation may be a qualifying ship manager, namely—

- (a) by satisfying the conditions specified in the new section 14ZM(5);
- (b) by satisfying the safe harbour rule under the new section 14ZN; or
- (c) by obtaining the determination of the Commissioner under the new section 14ZO.

The new section 14ZM(7) provides for certain conditions for the entitlement to the concessionary rate.

16. The new section 14ZN provides for how a corporation may satisfy the safe harbour rule. There are 2 alternative safe harbours as follows—
 - (a) the “1-year safe harbour” that requires the corporation to satisfy certain conditions regarding its ship management profits and ship management assets for the year of assessment concerned (new section 14ZN(2));
 - (b) the “multiple-year safe harbour” that requires the corporation to satisfy similar conditions for the year of assessment concerned and the preceding 1 or 2 years of assessment (new section 14ZN(3)).
17. The new section 14ZO provides for the Commissioner’s discretion to make a determination that a corporation, which is not otherwise qualified, is a qualifying ship manager.
18. The new section 14ZP provides that, for the purposes of the new section 14ZM(7), certain prescribed requirements under the new Schedule 17FB must be met in order for a ship management activity

- to be considered to be carried out, or arranged to be carried out, in Hong Kong.
19. The new section 14ZQ sets out the circumstances under which the losses sustained by a corporation from carrying out a qualifying ship management activity are not available for set off against its assessable profits.
20. The new sections 14ZR and 14ZS contain certain provisions for preventing avoidance of profits tax by means of the new tax concessions in relation to ship management.
21. The new section 14ZT empowers the Commissioner to amend, by order published in the Gazette, Part 3 of the new Schedule 17FB which—
- (a) contains the definition of *ship management activity*;
 - (b) specifies the prescribed profits and asset percentages relating to the safe harbour rule; and
 - (c) prescribes the requirements for the purposes of the new section 14ZP.

New Subdivision 8—Ship Broking

22. The new Subdivision 8 contains the tax concessions provisions in relation to ship broking (new sections 14ZU to 14ZZC).
23. The new section 14ZU provides for the interpretation of terms used in the Subdivision, including the definitions of *qualifying ship broker* and *qualifying ship broking activity*.
24. The new section 14ZV provides that a corporation that is a qualifying ship broker for a year of assessment is entitled to have its profits derived from its qualifying ship broking activity for the year of assessment charged at a concessionary rate (new section 14ZV(1)). The concessionary rate is either one-half of the profits tax rate

specified in Schedule 8 to the principal Ordinance, or the profits tax rate specified in Schedule 8C to the principal Ordinance, depending on whether a certain condition is met in relation to the activity. The new section 14ZV(2) provides for the profits to be excluded in ascertaining the assessable profits of a corporation for the purposes of the new section 14ZV(1). The new section 14ZV(4) provides for how a corporation may be a qualifying ship broker, namely—

- (a) by satisfying the conditions specified in the new section 14ZV(5);
- (b) by satisfying the safe harbour rule under the new section 14ZW; or
- (c) by obtaining the determination of the Commissioner under the new section 14ZX.

The new section 14ZV(7) provides for certain conditions for the entitlement to the concessionary rate.

25. The new section 14ZW provides for how a corporation may satisfy the safe harbour rule. There are 2 alternative safe harbours as follows—
- (a) the “1-year safe harbour” that requires the corporation to satisfy certain conditions regarding its ship broking profits and ship broking assets for the year of assessment concerned (new section 14ZW(2));
 - (b) the “multiple-year safe harbour” that requires the corporation to satisfy similar conditions for the year of assessment concerned and the preceding 1 or 2 years of assessment (new section 14ZW(3)).
26. The new section 14ZX provides for the Commissioner’s discretion to make a determination that a corporation, which is not otherwise qualified, is a qualifying ship broker.

27. The new section 14ZY provides that, for the purposes of the new section 14ZV(7), certain prescribed requirements under the new Schedule 17FB must be met in order for a ship broking activity to be considered to be carried out, or arranged to be carried out, in Hong Kong.
28. The new section 14ZZ sets out the circumstances under which the losses sustained by a corporation from carrying out a qualifying ship broking activity are not available for set off against its assessable profits.
29. The new sections 14ZZA and 14ZZB contain certain provisions for preventing avoidance of profits tax by means of the new tax concessions in relation to ship broking.
30. The new section 14ZZC empowers the Commissioner to amend, by order published in the Gazette, Part 4 of the new Schedule 17FB which—
 - (a) contains the definition of *ship broking activity*;
 - (b) specifies the prescribed profits and asset percentages relating to the safe harbour rule; and
 - (c) prescribes the requirements for the purposes of the new section 14ZY.

Other Amendments

31. Clauses 3, 5, 6, 7, 9, 10 and 11 consequentially amend the following provisions of the principal Ordinance respectively—
 - (a) section 14;
 - (b) section 16;
 - (c) section 19CA;
 - (d) section 63H;
 - (e) section 100;

- (f) Schedule 8; and
 - (g) Schedule 8C.
32. Clause 8 amends section 89 of the principal Ordinance, and clause 13 adds a new Schedule 52 to the principal Ordinance, to deal with transitional matters.
33. The Schedule makes technical drafting amendments to sections 2 and 14G to 14ZB of, and Schedules 17F and 17FA to, the principal Ordinance.

Financial, Economic, and Sustainability Implications

Financial implications

According to the Inland Revenue Department, tax revenue generated from ship agency, ship management and ship broking activities was about HK\$140 million for the year of assessment 2020/21, equivalent to 0.1% of total profits tax revenue or 0.02% of total government revenue for the year. With the introduction of half-rate tax concessions for these businesses, the tax revenue foregone should constitute only an insignificant portion of the total profits tax revenue of the Government. On the other hand, the tax measure will help attract new ship agency, ship management and ship broking companies to establish and operate in Hong Kong, and hence in turn generate additional tax revenue and bring positive economic impetus to Hong Kong.

Economic implications

2. The proposed tax concessions for commercial principal activities would help attract the set-up of related business establishments in Hong Kong, thereby generating further demand for maritime professional services, including maritime business services, financial, legal and accounting services. This would be conducive to enhancing the status of Hong Kong as an international maritime centre as well as business hub.

Sustainability implications

3. The proposed profits tax concessions would strengthen our competitiveness in attracting ship agents, ship managers and ship brokers to Hong Kong, which is conducive to the development of the shipping commercial principals and related professions.