

**Inland Revenue (Amendment)
(Taxation on Foreign-sourced Disposal Gains) Bill 2023**

Draft Committee Stage Amendments Proposed by the Government

Purpose

This paper sets out the proposed Committee Stage Amendments (“CSAs”) to the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Bill 2023 (“the Bill”) to be moved by the Government.

List of Proposed CSAs

2. A list of all proposed CSAs to be moved by the Government is set out at **Annex A**. The CSAs involve drafting amendments only and do not affect the legal effect of the Bill. The CSAs cover –

- (a) drafting improvements to section 15OB(1) of the Bill to reflect in greater clarity when and how the intra-group transfer relief provided for in new section 15OA of the Bill ceases to apply or does not apply; and
- (b) minor textual amendments to clauses 11(16) and 12 of the Bill.

A mark-up version of the extract of the Bill is at **Annex B**.

Advice Sought

3. Subject to Members’ views on the draft CSAs, the Government will move the CSAs upon the resumption of second reading debate of the Bill.

**Financial Services and the Treasury Bureau
Inland Revenue Department
November 2023**

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Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
7*	In the proposed section 15OB(1), by deleting “15OA(3)—” and substituting “15OA(3), any of the following events occurs—”.
7*	In the proposed section 15OB(1)(a), by deleting “Part; or” and substituting “Part;”.
11(16)#	In the proposed section 7(7)(a), in the English text, by deleting “sustained;” and substituting “sustained.”;”.
12#	By adding before subclause (1)— “(1A) Schedule 54— Repeal “[s.” Substitute “[ss. 15OA &”.”.

* Drafting improvements to the Bill

Minor textual amendments to the Bill

(Extract)

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150B. When does section 150A cease to apply etc.

- (1) For the purposes of section 150A(3) and (4), this section applies if, within 2 years after the subject sale in relation to the subject income mentioned in section 150A(3), any of the following events occurs—150A(3)—
 - (a) the selling entity or the acquiring entity ceases to be chargeable to profits tax under this Part; ~~or~~
 - (b) the selling entity and the acquiring entity cease to be associated with each other.
- (2) In relation to the subject income—
 - (a) section 150A(3) is to cease to apply;
 - (b) section 15I(1) is to apply as if the income were received in Hong Kong during the selling entity's basis period of the year of assessment during which the event occurs; and
 - (c) if, as a result of the operation of paragraph (b), profits tax is chargeable in respect of the income because of section 15I(1)—
 - (i) the selling entity is chargeable to the tax in the entity's name or in the name of the acquiring entity; and
 - (ii) the tax is recoverable by all means provided in this Ordinance from the selling entity or acquiring entity.
- (3) If any future income in relation to which section 150A(5) applies has already accrued to, and has already been received in Hong Kong by, the acquiring entity at the time of the event, then in relation to the income—

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- (a) section 15OA(5) and (if applicable) section 15OA(6), (7), (8) and (9) are to cease to apply; and
 - (b) if the income was not chargeable to profits tax because of section 15OA(5), section 15I(1) is to apply as if the income were received in Hong Kong during the acquiring entity's basis period of the year of assessment during which the event occurs.
- (4) In relation to any future income that—
- (a) has not yet accrued to the acquiring entity at the time of the event; or
 - (b) has already accrued to, but has not yet been received in Hong Kong by, the acquiring entity at the time of the event,

section 15OA(5), (6), (7), (8) and (9) does not apply even if such income eventually accrues to, or is received in Hong Kong by, the acquiring entity.

- (5) In this section—

acquiring entity (取得方), in relation to a subject sale, means the entity that acquires the subject property;

associated (相聯)—see section 15OC;

future income (未來收入), in relation to a subject sale, means any specified foreign-sourced income derived subsequent to the sale by the acquiring entity from the subject property or a resale of the property;

selling entity (出售方), in relation to a subject sale, means the entity that sells the subject property;

subject property (標的財產), in relation to a subject sale, means the property to which the sale relates;

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subject sale (標的出售), in relation to any subject income, means the sale from which the income is derived.

11. Schedule 17FC amended (qualifying IP income: nexus requirement for ascertaining excepted portion etc.)

(1) Schedule 17FC—

Repeal

“51C, 80 & 82A & Sch. 55]”

Substitute

“15OA, 15P, 51C, 80 & 82A & Schs. 55 & 56]”.

(2) Schedule 17FC, section 1(2), definition of *qualifying IP income*—

Repeal

everything after “means”

Substitute

“—

(a) any qualifying general IP income; or

(b) any qualifying IP disposal gain;”.

(3) Schedule 17FC, section 1(2), definition of *specified period*—

Repeal paragraphs (a) and (b)

Substitute

“(a) if the income is qualifying general IP income—

(i) beginning on 1 January 2023 or on an earlier date elected by the entity; and

(ii) ending on the last day of the entity’s basis period of the year of assessment during which the income accrues; or

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- (b) if the income is a qualifying IP disposal gain—
- (i) beginning on 1 January 2024 or on an earlier date elected by the entity; and
 - (ii) ending on the last day of the entity’s basis period of the year of assessment during which the income accrues.”.
- (4) Schedule 17FC, section 1(2)—

Add in alphabetical order

“qualifying general IP income (合資格一般知識產權收入)
means any income derived from qualifying intellectual property in respect of—

- (a) the exhibition or use of, or a right to exhibit or use, (whether in or outside Hong Kong) the property; or
- (b) the imparting of, or undertaking to impart, knowledge directly or indirectly connected with the use (whether in or outside Hong Kong) of the property;

qualifying IP disposal gain (合資格知識產權處置收益)
means any gain or profit derived from the sale of qualifying intellectual property;”.

- (5) Schedule 17FC, section 7(1)(a), before “IP”—

Add

“general”.

- (6) Schedule 17FC, section 7(1)(b), after “loss”—

Add

“(general loss)”.

- (7) Schedule 17FC, after section 7(1)—

Add

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“(1A) This section also applies if—

- (a) an MNE entity sustains a loss (*sale loss*) from a sale in a territory outside Hong Kong of qualifying intellectual property;
- (b) the proceeds of the sale are received in Hong Kong by the MNE entity during the basis period of a year of assessment; and
- (c) had a gain been derived from the sale and received in Hong Kong by the MNE entity, the gain, or part of the gain, would have been chargeable to profits tax because of section 15I(1).”.

(8) Schedule 17FC, section 7(2)—

Repeal

“loss may”

Substitute

“general loss or sale loss may, subject to subsection (3A).”.

(9) Schedule 17FC, section 7(3)—

Repeal

“loss not so set off may”

Substitute

“general loss or sale loss not so set off may, subject to subsection (3A).”.

(10) Schedule 17FC, after section 7(3)—

Add

“(3A) A sale loss may only be set off to the extent that the assessable profits concerned are derived from specified foreign-sourced income that is chargeable to profits tax because of section 15I(1).”.

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(11) Schedule 17FC, section 7(4)—

Repeal

“a loss”

Substitute

“a general loss or sale loss”.

(12) Schedule 17FC, section 7(4)—

Repeal

“the qualifying IP income to which the qualifying intellectual property relates.”

Substitute

“the qualifying intellectual property.”.

(13) Schedule 17FC, section 7(5)—

Repeal

“a loss”

Substitute

“a general loss or sale loss”.

(14) Schedule 17FC, section 7(6)—

Repeal

“a loss”

Substitute

“a general loss or sale loss”.

(15) Schedule 17FC, section 7(6)—

Repeal

“the qualifying IP income to which the qualifying intellectual property relates.”

Substitute

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“the qualifying intellectual property.”.

(16) Schedule 17FC, after section 7(6)—

Add

“(7) For ascertaining the R&D fraction applicable to qualifying intellectual property under subsections (4) and (6), sections 4, 5 and 6 of this Schedule are to apply with the following modifications—

(a) in section 1(2) of this Schedule, the following definition is substituted for the definition of *specified period*—

“*specified period* (指明期間), in relation to an MNE entity that sustains a loss in respect of qualifying intellectual property, means the period—

(a) if the loss is a general loss within the meaning of section 7(1)(b) of this Schedule—

(i) beginning on 1 January 2023 or on an earlier date elected by the entity; and

(ii) ending on the last day of the entity’s basis period of the year of assessment during which the loss is sustained; or

(b) if the loss is a sale loss within the meaning of section 7(1A)(a) of this Schedule—

(i) beginning on 1 January 2024 or on an earlier date elected by the entity; and

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- (ii) ending on the last day of the entity’s basis period of the year of assessment during which the loss is ~~sustained.~~; ~~sustained.~~;
 - (b) in section 4(1) of this Schedule—
 - (i) the words “qualifying intellectual property (*subject intellectual property*) held” are substituted for the words “qualifying IP income received”; and
 - (ii) the words “subject intellectual property” are substituted for the words “qualifying intellectual property to which the qualifying IP income relates (*subject intellectual property*)”;
 - (c) in sections 5(1) and 6(1) of this Schedule, the words “qualifying intellectual property (*subject intellectual property*) held” are substituted for the words “qualifying IP income received”;
 - (d) in sections 5(2) and 6(2) of this Schedule, the words “subject intellectual property” are substituted for the words “qualifying intellectual property to which the qualifying IP income relates (*subject intellectual property*)”.
- (17) Schedule 17FC, section 10(1)(a)—
 - Repeal subparagraphs (i) and (ii)**
 - Substitute**
 - “(i) if the income is qualifying general IP income—
 - (A) beginning on 1 January 2023; and

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- (B) ending on the last day of the entity’s basis period of the year of assessment beginning on 1 April 2024; or
- (ii) if the income is a qualifying IP disposal gain—
 - (A) beginning on 1 January 2024; and
 - (B) ending on the last day of the entity’s basis period of the year of assessment beginning on 1 April 2025; and”.

12. Schedule 54 amended (specifications for section 50AAA in relation to unilateral tax credits)

(1A) Schedule 54—

Repeal

“[s.”

Substitute

“[ss. 150A &”.

- (1) Schedule 54, section 1—

Add in alphabetical order

“*disposal gain* (處置收益) has the meaning given by section 15H(1);

equity interest disposal gain (股權權益處置收益) has the meaning given by section 15H(1);”.

- (2) Schedule 54, section 2(4)—

Repeal

everything after “subsection”

Substitute

“(1)(a)—

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- (a) in relation to any specified foreign-sourced income that is a disposal gain (other than equity interest disposal gain)—section 50AAA applies in relation to profits tax payable for a year of assessment beginning on or after 1 April 2023 in respect of income accrued and received on or after 1 January 2024;
- (b) in relation to other specified foreign-sourced income—section 50AAA applies in relation to profits tax payable for a year of assessment beginning on or after 1 April 2022 in respect of income accrued and received on or after 1 January 2023.”.