

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance (Chapter 112)

Inland Revenue (Amendment) (Aircraft Leasing Tax Concessions) Bill 2023

INTRODUCTION

A At the meeting of the Executive Council on 7 November 2023, the Council **ADVISED** and the Chief Executive **ORDERED** that the Inland Revenue (Amendment) (Aircraft Leasing Tax Concessions) Bill 2023 (the Bill) at **Annex A** should be introduced into the Legislative Council (LegCo) to amend the Inland Revenue Ordinance (Cap. 112) (IRO) to give effect to relevant enhancements to the aircraft leasing preferential tax regime (Regime), including to provide qualifying aircraft lessors¹ with a new tax deduction of the acquisition cost of aircraft, expand the scope and coverage of leases and aircraft leasing activities allowed under the Regime, allow deduction of interest incurred for acquisition of aircraft and prescribe threshold requirements to comply with the requirements of the Organisation for Economic Co-operation and Development (OECD).

JUSTIFICATIONS

Global trend, international tax reform and market changes

2. Despite the severe impact of the COVID-19 pandemic on the aviation industry, civil aviation remains a long-term growth business, with global and China's passenger traffic expected to grow at about 6.1% per annum and 11.4% per annum respectively and global air cargo at 4.5% per annum over the next 20 years². Boeing estimated that a total of over 42 000 aircraft will be delivered in the next 20 years, around 20% of which will be delivered to China.

3. Specifically for aircraft leasing, the global market has grown exponentially in the past few decades from 1% of the aircraft in use being leased

¹ According to section 14H(2) of the IRO, a corporation is a qualifying aircraft lessor for a year of assessment if, in the basis period for that year of assessment— (a) it is not an aircraft operator; (b) it has carried out in Hong Kong one or more qualifying aircraft leasing activities; and (c) it has not carried out in Hong Kong any activity other than a qualifying aircraft leasing activity.

² Source: Commercial Market Outlook 2023-2042 published by Boeing Capital in June 2023.

in 1970 to 51% in 2021³. Financing this growth presents major business opportunities for the financial and other professional services. There have been, however, noticeable market changes in the global aircraft leasing industry since the introduction of the Regime in 2017, especially during the COVID-19 pandemic. Leasing arrangements have shifted from the traditional dry leases to other arrangements including wet leases⁴. There has also been an increased use of funding lease to acquire aircraft⁵. Term of lease has been shortened from a few years to possibly less than a year. Aircraft lessors now also lease aircraft to other entities including private companies, public organisations or even individuals, rather than only to airlines. Instead of borrowing from financial institutions to raise funds, lessors may seek other means to finance the acquisition of aircraft, such as borrowing from a non-local financier who is not a financial institution and may be an associate of the borrower. Updates to the Regime are required to accommodate the latest market changes to maintain its competitiveness.

4. The international tax reform proposals⁶ drawn up by OECD to address the challenges of base erosion and profit shifting (BEPS) arising from the digitalisation of the economy (commonly known as BEPS 2.0) will also diminish the competitiveness of the Regime. Specifically, the BEPS 2.0 package consists of two pillars. In particular, Pillar Two introduces a global minimum effective tax rate (ETR) set at 15%, which will apply to multinational enterprises with annual revenue equal to or exceeding € 750 million⁷. Top-up tax will be imposed in respect of a jurisdiction if the group's ETR in that jurisdiction is less than 15%.

5. Against the above background and development, there is an imminent need to enhance the Regime to ensure it remains competitive while adhering to OECD's requirements. Most of the enhancement measures would require legislative amendments to the IRO. Other enhancement measures were implemented via administrative means in the first half of 2023 with details at

B

Annex B.

³ Salas, Erick Burgueño. "Global Aviation Leasing Market Evolution 2021." Statista, April 12, 2022. <https://www.statista.com/statistics/1095749/share-leased-aircraft-aviation-industry-worldwide/>.

⁴ A dry lease generally means a lease of aircraft, not including crew, insurance and maintenance, whereas a wet lease is typically a short term lease for seasonal needs including the aircraft, crew, maintenance and insurance during the period of the lease.

⁵ A funding lease is a financing arrangement under which the lessee is transferred the risks and rewards incidental to the ownership of the aircraft and the aircraft lessor is the financier. The lessee is usually provided with an option to purchase the aircraft at the end of the leasing agreement.

⁶ Together with more than 130 jurisdictions across the globe, Hong Kong pledged in 2021 to implement the proposals.

⁷ The ETR is to be computed on the basis of the group's income in Hong Kong computed under the Global Anti-Base Erosion Rules and the covered taxes attributable to such income.

Enhancement measures to be implemented via legislative amendments to the IRO

6. The proposed legislative amendments to the IRO cover the following aspects —

- (a) to provide qualifying aircraft lessors with tax deduction of the acquisition cost of aircraft;
- (b) to expand the scope of the Regime to include wet lease and funding lease and remove the one-year term of lease restriction;
- (c) to provide for a more general meaning of “aircraft leasing activity” so that the Regime will cover leasing activities other than leasing aircraft to aircraft operators;
- (d) to allow deduction of interest payable for acquisition of aircraft to a financier outside Hong Kong who is not a financial institution and may be an associate of the borrower; and
- (e) to prescribe threshold requirements for aircraft lessors and aircraft leasing managers qualifying for the Regime to comply with OECD’s requirements.

C Details of these enhancement measures are at **Annex C**.

7. Upon the passage of the Bill, the legislative amendments will take retrospective effect from the year of assessment beginning on 1 April 2023 to allow the early implementation of the enhancement measures. This will allow the Regime to remain competitive in the global aircraft leasing industry.

Potential benefits of the enhancement measures

8. Aircraft leasing is global and footloose in its operations, and tax incentive is a key, if not the most important, consideration for aircraft lessors to choose where to conduct their businesses. For Hong Kong, it was only after the introduction of profits tax concession under the Regime in 2017 that aircraft leasing activities started to grow. In other words, if the Regime does not keep pace with market changes and international tax reforms, we run a clear risk of losing the existing aircraft leasing businesses and the associated tax revenue and economic benefits, let alone capturing a larger global market share. With the proposed enhancement measures, we strive to capitalise on our strengths in finance and professional services to boost the competitiveness of Hong Kong as

a platform for this highly mobile and globalised industry, thereby diversifying the economic structure of Hong Kong and promoting Hong Kong's soft power as an international aviation and financial hub. It is estimated by the trade that the introduction of the enhancement measures would allow Hong Kong to capture up to around 12.5% of the global aircraft leasing businesses in 20 years' time, which can be translated into a total of around 3 100 aircraft to be leased via the Hong Kong platform in the next 20 years. In 20 years' time, it could bring over 1 000 direct jobs and around 20 000 indirect jobs⁸ due to the linkage and multiplier effects. It could also generate a cumulative Gross Domestic Product value added of over HK\$400 billion over a 20-year period.

THE BILL

9. The main provisions of the Bill are as follows —

- (a) **Clause 3** amends section 14G of the IRO to revise the definitions of “funding lease” and “qualifying aircraft leasing activity”, delete the definition of “dry lease” and add new definitions for “operating lease” and “sublease”;
- (b) **Clause 5** adds new sections 14HA and 14HB to the IRO —
 - (i) new section 14HA clarifies that certain activities are not regarded to be carried out or arranged to be carried out by a qualifying aircraft lessor in Hong Kong;
 - (ii) new section 14HB provides for the calculation of assessable profits of a qualifying aircraft lessor derived from qualifying aircraft leasing activities;
- (c) **Clause 6** amends section 14I of the IRO to the effect that it only applies to old aircraft^{9,10}

⁸ Including jobs in the financial and professional services sectors, such as asset management, legal, tax and accounting services, as well as general support staff, such as clerk.

⁹ An old aircraft is an aircraft that was acquired, by a qualifying aircraft lessor, in a year of assessment preceding the year of assessment beginning on 1 April 2023 (preceding year) and that had been used, by the qualifying aircraft lessor, for carrying out qualifying aircraft leasing activity relating to an operating lease in any preceding year.

¹⁰ See paragraph 4 of Annex C for details of the transitional arrangement.

- (d) **Clause 7** adds new sections 14IA to 14IM to the IRO —
- (i) new section 14IA provides for the circumstances under which the amended section 14I does not apply;
 - (ii) new section 14IB provides for the calculation of the taxable amounts of the net lease payments for the right to use certain aircraft, including new aircraft¹¹ and specified old aircraft¹² under operating leases;
 - (iii) new sections 14IC to 14IF provide for the deduction of capital expenditure on acquisition of aircraft by qualifying aircraft lessors and the circumstances under which such deduction would not be allowed;
 - (iv) new section 14IG provides for the meaning of capital expenditure (aircraft) used in the new sections 14IC, 14ID, 14IE and 14IF;
 - (v) new sections 14IH to 14IK provide for the tax treatment in relation to the consideration for disposal of aircraft and insurance money or other amount of compensation under different scenarios;
 - (vi) new section 14IM provides for the calculation of the assessable profits of a qualifying aircraft lessor in relation to finance charges or interest for the right to use an aircraft under a funding lease;
- (e) **Clause 9** amends section 15 of the IRO to deem finance charges or interest received by or accrued to a corporation in relation to granting the right to use an aircraft under a funding lease as having a Hong Kong source, even if the aircraft is used outside Hong Kong;
- (f) **Clause 10** adds new section 15FA to the IRO to further provide that finance charges or interest received by or accrued to a person for the grant of the right to use an aircraft under a funding lease are to be regarded as sums received by or accrued to the person by way of interest on money lent by that person;

¹¹ A new aircraft is an aircraft acquired, by a qualifying aircraft lessor, in a year of assessment beginning on or after 1 April 2023.

¹² A specified old aircraft includes an aircraft that was acquired, by a qualifying aircraft lessor (lessor), in a year of assessment preceding the year of assessment beginning on 1 April 2023 (previous year) and that had not been used by the lessor in any previous year for carrying out qualifying aircraft leasing activity relating to an operating lease. An old aircraft is also a specified old aircraft if an election mentioned in paragraph 4 of Annex C has been made by the lessor in relation to the aircraft.

- (g) **Clause 11** amends section 16 of the IRO so that the interest payable on money borrowed by a qualifying aircraft lessor wholly or exclusively to finance the acquisition cost of an aircraft may be deducted when ascertaining the profits in respect of which the qualifying aircraft lessor is chargeable to tax under Part 4 of the IRO;
- (h) **Clauses 17 to 20**¹³ –
 - (i) Clause 17 amends section 40AO of the IRO so that the expression “specified asset” used in Part 6D of the IRO covers an aircraft in respect of which a deduction is allowed under new section 14IC to a person;
 - (ii) Clauses 18 to 20 amend sections 40AO, 40AR, 40AS and 40AT of the IRO;
- (i) **Clause 22** amends Schedule 17F to the IRO to update the definitions of “aircraft leasing activity” and “aircraft leasing management activity” and to add new Part 4 to the Schedule to set out the threshold requirements for qualifying aircraft lessors and qualifying aircraft leasing managers;
- (j) **Clause 23** amends Schedule 17J to the IRO, and **Clause 24** adds new Schedule 57 to the IRO, to provide for the tax treatment in respect of an aircraft succeeded by a qualifying aircraft lessor from an amalgamating company in the case of qualifying amalgamations;
- (k) **Clause 24** also adds new Schedule 58 to the IRO and provides that the application of the amendments made to IRO by this Bill is to apply in a year of assessment beginning on or after 1 April 2023; and
- (l) **Clauses 4, 12 to 16 and 21** make consequential or technical amendments to sections 14H, 19CA, 26AB, 37, 37A, 39B and 89 of the IRO.

¹³ The amendments under clauses 17 to 20 of the Bill are made to ensure that the Regime could operate in the case where a specified event set out in section 40AP of the IRO (i.e. transfer of aircraft from one person to another person without sale).

LEGISLATIVE TIMETABLE

10. The legislative timetable will be -

Publication in the Gazette	17 November 2023
First Reading and commencement of Second Reading debate	29 November 2023
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

11. 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 implication. The amendments proposed in the Bill will not affect the current binding effect of the IRO.

Financial implications

12. As aircraft lessors have various business practices and structures that would give rise to very different profits tax liabilities, it would be difficult to predict legitimately the implications of the enhancement measures on tax revenue. If the presence of the industry is strengthened by the enhanced Regime in Hong Kong, there could potentially be additional tax revenue.

Economic implications

13. The enhancement measures would facilitate the development of the Hong Kong's aircraft leasing industry. This would in turn help broaden the depth and breadth of Hong Kong's economy and be conducive to enhancing the status of Hong Kong as an international aviation hub, financial centre and business hub.

Sustainability implications

14. The proposed enhancement measures would help strengthen Hong Kong's competitiveness in attracting more aircraft leasing activities.

PUBLIC CONSULTATION

15. The Transport and Logistics Bureau conducted a four-week trade consultation on the abovementioned enhancement measures between 22 November and 19 December 2022. Overall, the trade welcomed the proposed enhancement measures and considered that the measures would strengthen the Regime's competitiveness in the global aircraft leasing industry.

16. We briefed the Economic Development Panel of the LegCo on the proposed enhancement measures on 10 July 2023. The Panel was overall supportive of this proposal. Members believed that the enhancement measures would help attract more aircraft leasing businesses to Hong Kong.

PUBLICITY

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

BACKGROUND

18. Civil aviation is a long-term growth business. Jurisdictions such as Ireland and Singapore have been developing aircraft leasing since as early as 1990s by providing favourable local tax treatment. During the same period of some 30 years or so, there was not a strong presence of aircraft leasing business in Hong Kong due to the relatively high profits tax rate and denial of depreciation allowance for offshore leasing activities, until the introduction of the Regime in 2017.

19. There are a host of factors contributing to the attractiveness of Hong Kong as an aircraft leasing platform, including our sound legal and banking systems, well-developed and diversified capital markets, excellent aviation infrastructure and talents, and proximity to the Mainland market. While some of these are common features of the major aircraft leasing centres in the globe, primarily Ireland and Singapore, our current 5% withholding tax rate with the Mainland on lease rentals derived from aircraft leasing businesses, which is lower than the 6% withholding tax rate between the Mainland and the said jurisdictions, has provided a favourable foundation for Hong Kong to attract global aircraft lessors. This is particularly important given the fast-growing civil aviation market in the Mainland. Equally if not more importantly, Hong Kong possesses the institutional strengths of "One Country, Two Systems". Being the only common law jurisdiction within China and leveraging on its highly market-

oriented and international business environment as underpinned by the rule of law, Hong Kong is recognised by many global aircraft lessors as the ideal platform to capture the Mainland business. To capitalise on our strengths, the Regime was introduced in 2017 to provide competitive profits tax concessions as a further incentive for aircraft lessors to conduct businesses in Hong Kong.

20. The prevailing Regime consists of the following two key features —

- (a) the tax rate on the qualifying profits of qualifying aircraft lessors and qualifying aircraft leasing managers is 50% of the prevailing profits tax rate for corporations (i.e. $16.5\% \times 50\% = 8.25\%$); and
- (b) as compensation for loss of depreciation allowances, the assessable profits derived from leasing of an aircraft to an aircraft operator by a qualifying aircraft lessor is equal to 20% of the net lease payments, i.e. gross lease payments less deductible expenses (excluding depreciation allowance).

21. Since the introduction of the Regime in 2017, the aircraft leasing business has started to develop in Hong Kong. A number of major industry players from the Mainland and overseas have set up their subsidiaries/operating arms in Hong Kong, including three of the top five global aircraft lessors ranked by number of aircraft. We understand that aircraft lessors based or with subsidiaries set up in Hong Kong have since then conducted leasing deals of around 95 aircraft with aircraft operators in the Mainland and different countries in the world.

22. The Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area advocates leveraging Hong Kong's strengths in financial and logistics services to develop high-value added freight, aircraft leasing and aviation financing services, etc.. The report to the 20th National Congress of the Communist Party of China supports Hong Kong to give full play to our strengths and distinctive features and to consolidate and elevate our international position in finance, trade, shipping, aviation, innovation and technology, culture and tourism, and other fields. We are determined to continue strengthening Hong Kong's competitiveness in the global aircraft leasing industry.

ENQUIRIES

23. Enquiries relating to the brief can be directed to Miss Carol Wong, Assistant Secretary for Transport and Logistics 8A, at 3509 8246.

**Transport and Logistics Bureau
Inland Revenue Department
15 November 2023**

Inland Revenue (Amendment) (Aircraft Leasing Tax Concessions) Bill 2023

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A BILL
To

Amend the Inland Revenue Ordinance to enhance the existing tax concessions regime regarding the leasing of aircraft; and to make related amendments.

Enacted by the Legislative Council.

- 1. Short title**
This Ordinance may be cited as the Inland Revenue (Amendment) (Aircraft Leasing Tax Concessions) Ordinance 2023.
- 2. Inland Revenue Ordinance amended**
The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 24.
- 3. Section 14G amended (interpretation of Subdivision 4 of Division 2 of Part 4)**
 - (1) Section 14G(1)—**

Repeal the definition of *funding lease*

Substitute

“funding lease (融購租約) —

 - (a) means an arrangement—**
 - (i) under which a right to use an aircraft is granted by a person (*lessor*) to another person (*lessee*);**
 - (ii) that satisfies one or more of the following conditions at its inception—**

- (A) the arrangement is accounted for as a finance lease or loan by the lessor in accordance with—
 - (I) the Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants, as in force from time to time; or
 - (II) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force from time to time;
- (B) the present value of the aggregate minimum lease payments (whether or not they are periodic payments and including any sum payable under a residual value guarantee) during the term of the arrangement is equal to or more than 80% of the fair market value of the aircraft;
- (C) the term of the arrangement is equal to or more than 65% of the remaining useful economic life of the aircraft; and
- (iii) under which the property in the aircraft will or may pass to the lessee, or an associate of the lessee, at the end of its term; and
- (b) includes an agreement or any other arrangement in connection with an arrangement that falls within paragraph (a);

Note—

See also subsection (3).”

- (2) Section 14G(1), definition of *lease*, after “noun”—
 - Add**
 - “, means”.
- (3) Section 14G(1), definition of *lease*—
 - Repeal paragraphs (a) and (b)**
 - Substitute**
 - “(a) an operating lease; or
 - (b) a funding lease.”.
- (4) Section 14G(1), definition of *lease*—
 - Repeal the Note.**
- (5) Section 14G(1), English text, definition of *residual value guarantee*—
 - Repeal**
 - “aircraft.”
 - Substitute**
 - “aircraft;”.
- (6) Section 14G(1), Chinese text, definition of 親屬, paragraph (b)—
 - Repeal**
 - “子女。”
 - Substitute**
 - “子女;”.
- (7) Section 14G(1)—
 - Repeal the definition of *dry lease*.**
- (8) Section 14G(1)—
 - Add in alphabetical order**

“operating lease (營運租約)—

(a) means—

(i) an arrangement under which a right to use an aircraft is granted by an owner of the aircraft to another person (*specified head lease*); or

(ii) a sublease of an aircraft; and

(b) does not include a funding lease;

***specified head lease* (指明主租約)** means an arrangement that falls within the description in paragraph (a)(i) of the definition of *operating lease*;

***sublease* (分租租約)**, when used as a noun, means an arrangement that is a sublease of an aircraft under subsection (7A);

***sublease* (分租)**, when used as a verb, is to be construed accordingly.”.

(9) Section 14G—

Repeal subsection (3)

Substitute

“(3) For the purposes of the definition of *funding lease* in subsection (1), an arrangement does not fall within paragraph (a)(iii) of that definition if, in the opinion of the Commissioner, the property in the aircraft concerned would reasonably be expected not to pass to the lessee, or an associate of the lessee, under the arrangement at the end of its term.”.

(10) Section 14G—

Repeal subsection (4).

(11) Section 14G(5)—

Repeal

“definitions of *lease* and”

Substitute

“definition of”.

(12) Section 14G(5)—

Repeal

“funding lease,”.

(13) Section 14G(5)—

Repeal

“lessee,”.

(14) Section 14G(5), Chinese text—

Repeal

“租約或” (wherever appearing).

(15) Section 14G—

Repeal subsection (6)

Substitute

“(6) An aircraft leasing activity carried out by a corporation in respect of an aircraft is a qualifying aircraft leasing activity if the activity is carried out in the ordinary course of the corporation’s business carried on in Hong Kong.”.

(16) Section 14G(7)(b)—

Repeal the semicolon

Substitute

“; and”.

(17) Section 14G(7)(c)—

Repeal

“; and”

Substitute a full stop.

(18) Section 14G(7)—

Repeal paragraph (d).

(19) After section 14G(7)—

Add

“(7A) An arrangement (*specified arrangement*) is a sublease of an aircraft if—

- (a) a right to use the aircraft is granted under the specified arrangement, by a person deriving the right under a specified head lease of the aircraft (*lessee*), to another person; or
- (b) a right to use the aircraft is granted under the specified arrangement, by a person (other than a lessee of a specified head lease of the aircraft) who derives the right from another arrangement, to another person.”.

4. Section 14H amended (concession for qualifying aircraft lessor)

Section 14H(1)—

Repeal

“and section 26AB”.

5. Sections 14HA and 14HB added

After section 14H—

Add**“14HA. Carrying out of activities in Hong Kong—supplementary provisions for section 14H(4)(a)(ii)**

- (1) For the purposes of section 14H(4)(a)(ii), an activity producing the assessable profits of a corporation that fall within section 14H(1) 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 in that year of assessment unless the requirements prescribed in section 5 of Schedule 17F (*prescribed requirements*) are met.

- (2) To avoid doubt, the fact that the prescribed requirements are not met does not imply that the assessable profits mentioned in subsection (1) do not arise in or are not derived from Hong Kong.

14HB. Calculation of assessable profits of corporation derived from qualifying aircraft leasing activity for purposes of section 14H(1)

- (1) This section applies to a corporation for a year of assessment if section 14H(1) applies to the corporation for that year of assessment (*particular year*).
- (2) The assessable profits of the corporation that are chargeable to tax under this Part at the rate specified in section 14H(1) (*qualifying profits*) for the particular year is to be calculated in accordance with the following formula—

$$A = B + C + D + E + F - G$$

where: A means the qualifying profits of the corporation for the particular year;

B means the aggregate amount of the assessable profits of the corporation calculated under section 14I for the particular year;

C means the aggregate amount of the assessable profits of the corporation calculated under section 14IB for the particular year;

D means the aggregate amount of the specified receipts of the corporation for the particular year;

E means the aggregate amount of the assessable profits of the corporation calculated under section 14IL;

F means the aggregate amount of the assessable profits of the corporation calculated under section 14IM for the particular year; and

G means the aggregate amount that is deductible under section 14IC in relation to the corporation for the particular year.

(3) In this section—

specified receipts (指明收入), in relation to a particular year, means—

(a) the aggregate of the amounts—

(i) that are regarded as trading receipts of the corporation concerned under section 14IH for the particular year; and

(ii) that, under section 14IH, are accrued or regarded as being accrued in that year;

(b) the aggregate of the amounts—

(i) that are regarded as trading receipts of the corporation concerned under section 14II for the particular year; and

(ii) that, under section 14II, are accrued or regarded as being accrued in that year; or

(c) the aggregate of the amounts—

(i) that are regarded as trading receipts of the corporation concerned under section 14IJ for the particular year; and

(ii) that, under section 14IJ, are accrued or regarded as being accrued in that year.”

6. Section 14I amended (calculation of net lease payments)

(1) Section 14I, heading—

Repeal

“Calculation of net lease payments”

Substitute

“Calculation of net lease payments for right to use aircraft under operating lease: aircraft acquired in year of assessment preceding year of assessment beginning on 1 April 2023”.

(2) Section 14I—

Repeal subsection (1)

Substitute

“(1) Subject to section 14IA, this section applies to a corporation for a year of assessment (*particular year*) if—

(a) section 14H(1) applies to the corporation for the particular year; and

(b) any qualifying aircraft leasing activity of the corporation for the particular year relates to an operating lease of an aircraft—

(i) that was acquired by the corporation in a year of assessment preceding the year of assessment beginning on 1 April 2023; and

(ii) that has been used by the corporation for carrying out any qualifying aircraft leasing

activity relating to an operating lease in a year of assessment preceding the year of assessment beginning on 1 April 2023.

- (1A) The assessable profits of the corporation derived from the qualifying aircraft leasing activity relating to the operating lease for the particular year are to be the net lease payments for the right to use the aircraft under the operating lease (*NLP*).”.
- (3) Section 14I(2)—
Repeal
 “net lease payments for the right to use an aircraft under the lease are”
Substitute
 “NLP is”.
- (4) Section 14I(2)—
Repeal
 “means the net lease payments”
Substitute
 “means the NLP”.
- (5) Section 14I(2)—
Repeal
 “means the aggregate amount of the gross lease payments (whether or not they are periodic payments and including any sum payable under a residual value guarantee) earned by or accrued to the corporation under the lease during the basis period for the year of assessment;”
Substitute
 “means the aggregate amount of the gross lease payments for the right to use the aircraft under the operating lease (whether

or not they are periodic payments and including any sum payable under a residual value guarantee) (*lease income*) earned by or accrued to the corporation during the basis period for the particular year;”.

- (6) Section 14I(2)—
Repeal
 “for the year of assessment by”
Substitute
 “for the particular year by”.
- (7) Section 14I(2)—
Repeal
 “those gross lease payments”
Substitute
 “the lease income”.
- (8) Section 14I—
Repeal subsection (3).
- (9) Section 14I(4)—
Repeal
 “If an aircraft”
Substitute
 “If the aircraft”.
- (10) Section 14I(4)—
Repeal
 “to an aircraft operator”.
- (11) Section 14I(4)—
Repeal
 “net lease payments under subsection (2)”

Substitute

“NLP”.

(12) Section 14I(5)—

Repeal

“net lease payments”

Substitute

“NLP”.

7. Sections 14IA to 14IM added

After section 14I—

Add**“14IA. Circumstances under which section 14I does not apply**

- (1) Section 14I does not apply to a corporation for a year of assessment in respect of a qualifying aircraft leasing activity carried out by the corporation in relation to an operating lease of an aircraft (*specified aircraft*) if—
 - (a) the corporation has not incurred any capital expenditure on the provision of the specified aircraft;
 - (b) an allowance under Part 6 is or has been granted to a relevant person in respect of any capital expenditure incurred on the provision of the aircraft;
 - (c) capital allowances are granted to a relevant person in a jurisdiction outside Hong Kong (*non-Hong Kong jurisdiction*), for the year of assessment, in respect of any capital expenditure incurred on the provision of the aircraft;
 - (d) subject to subsection (7), the qualifying aircraft leasing activity is carried out by the corporation as

an owner of the aircraft and, before the aircraft is acquired by the corporation—

- (i) the aircraft was owned and used by a lessee of the operating lease to which the qualifying aircraft leasing activity relates (*lessee*), whether alone or with another person; or
- (ii) the aircraft was owned and used by an associate of a lessee mentioned in subparagraph (i), whether alone or with another person; or
- (e) the corporation has elected in writing that section 14IB applies in calculating the assessable profits of the corporation derived from any qualifying aircraft leasing activity carried out by the corporation in relation to any operating lease of the aircraft for the year of assessment and any subsequent year of assessment.
- (2) An election under subsection (1)(e), once made, is irrevocable.
- (3) For the purposes of subsection (1)(b), an allowance under Part 6 is to be regarded as not being or having been granted to a relevant person in respect of any capital expenditure incurred on the provision of the specified aircraft if an amount equal to the allowance has been charged to profits tax as balancing charge made on the relevant person.
- (4) Subsection (1)(c) does not apply to capital allowances granted to a relevant person in a non-Hong Kong jurisdiction (as described in that subsection) if Condition 1 or Condition 2 is satisfied in relation to the year of assessment.
- (5) Condition 1 is that—

- (a) the relevant person is subject to tax in the non-Hong Kong jurisdiction (*non-Hong Kong tax*) in respect of the gross lease payments for the right to use the specified aircraft in relation to the year of assessment (*GLP*);
 - (b) the GLP is chargeable to tax under this Part;
 - (c) the non-Hong Kong tax is a tax of substantially the same nature as tax imposed under this Part; and
 - (d) capital allowances are granted to the relevant person in calculating any chargeable profits derived from the GLP for the purpose of the non-Hong Kong tax.
- (6) Condition 2 is that—
- (a) one or both of the specified events occur in respect of the specified aircraft in the year of assessment;
 - (b) the relevant person is, in respect of the insurance money or other compensation or the consideration for the disposal of the aircraft (as the case requires), subject to a non-Hong Kong tax that is a tax of substantially the same nature as tax imposed under this Part (*specified tax*); and
 - (c) the total amount that the relevant person is subject to the specified tax is not less than the total amount of the capital allowances granted to that person in the non-Hong Kong jurisdiction (as described in subsection (1)(c)).
- (7) Subsection (1)(d) does not apply if—
- (a) the specified aircraft was acquired by the corporation from the lessee or the associate mentioned in that subsection (*end-user*) with a consideration that is not more than the consideration

- paid by the end-user to another person (*supplier*) for acquiring the aircraft from the supplier; and
 - (b) no initial or annual allowance under Part 6 was or has been granted to the end-user in respect of the aircraft before the acquisition of the aircraft by the corporation.
- (8) For the purposes of subsection (7)(b), an allowance is to be regarded as not being or having been granted if the end-user disclaims the allowance by giving the Commissioner a written notice within—
- (a) the period of 3 months beginning on the date on which the capital expenditure giving rise to the allowance is incurred; or
 - (b) any further time that the Commissioner permits in a particular case.
- (9) In this section—
- relevant person* (相關人士) means—
- (a) the corporation concerned; or
 - (b) a connected person of that corporation;
- specified event* (指明事件)—see subsection (10).
- (10) For the purposes of this section, a specified event occurs in respect of an aircraft in a year of assessment if—
- (a) any insurance money or other compensation is accrued in relation to the aircraft in the year of assessment; or
 - (b) the aircraft is disposed of in the year of assessment.

14IB. Calculation of net lease payments for right to use aircraft under operating lease: aircraft acquired in year of assessment beginning on or after 1 April 2023 and certain other aircraft

- (1) This section applies to a corporation for a year of assessment (*particular year*) if—
 - (a) section 14H(1) applies to the corporation for the particular year; and
 - (b) Condition 1, Condition 2 or Condition 3 is satisfied.
- (2) Condition 1 is that—any qualifying aircraft leasing activity carried out by the corporation in the particular year relates to an operating lease of an aircraft acquired by the corporation in a year of assessment beginning on or after 1 April 2023.
- (3) Condition 2 is that—
 - (a) any qualifying aircraft leasing activity carried out by the corporation in the particular year relates to an operating lease of an aircraft that was acquired by the corporation in a year of assessment preceding the year of assessment beginning on 1 April 2023 (*previous year of assessment*); and
 - (b) the aircraft had not been used by the corporation, in any previous year of assessment, for carrying out any qualifying aircraft leasing activity in relation to an operating lease.
- (4) Condition 3 is that—
 - (a) any qualifying aircraft leasing activity carried out by the corporation in the particular year relates to an operating lease of an aircraft that was acquired by the corporation in a previous year of assessment; and
 - (b) either—

- (i) the corporation has elected under section 14IA(1)(e) in relation to an aircraft for the particular year; or
 - (ii) section 14I does not apply in any other case to any operating lease of the aircraft for the particular year.
- (5) The assessable profits derived from the qualifying aircraft leasing activity mentioned in subsection (2), (3)(a) or (4)(a), as the case requires, are to be the net lease payments for the right to use the aircraft under the lease concerned (*NLP*).
- (6) The NLP is to be calculated in accordance with the following formula—

$$A = B - C - D + E + F$$

where: A means the NLP;

- B means the aggregate amount of the gross lease payments for the right to use the aircraft under the operating lease (whether or not they are periodic payments and including any sum payable under a residual value guarantee) (*lease income*) earned by or accrued to the corporation during the basis period for the particular year;
- C means the aggregate amount of any outgoings and expenses deductible under this Part, to the extent to which they are incurred during the basis period for the particular year by the corporation in the production of the lease income (*relevant outgoings and expenses*);

- D means the aggregate amount of the allowances granted under Part 6, to the extent that the relevant assets counted for the allowances are used during the basis period for the particular year by the corporation in the production of the lease income (*relevant allowances*);
- E means the aggregate amount of the other income and trading receipts arising in or derived from Hong Kong that are attributable to the qualifying aircraft leasing activity relating to the operating lease; and
- F means the balancing charge to be made under Part 6 on the corporation, to the extent that the relevant assets counted for the balancing charge are used in the production of specified gross lease income (*relevant charge*).
- (7) If the aircraft is leased together with any other dealings in pursuance of one bargain, then for calculating the NLP, the Commissioner must, having regard to all the circumstances of the bargain, allocate an amount of gross lease payments for the right to use the aircraft under the lease.
- (8) If subsections (5) and (6) apply—
- the relevant outgoings and expenses and the relevant allowances may not be claimed for deduction under this Part otherwise than for calculating the NLP under subsection (6); and
 - the other income and trading receipts and the relevant charge are not taxable under this Part

otherwise than for calculating the NLP under subsection (6).

- (9) In this section—

specified gross lease income (指明總租約收入), in relation to a corporation, means any gross lease payments for the right to use an aircraft of the corporation under an operating lease that are used for calculating the net lease payments for the right to use the aircraft under this section;

trading receipts (營業收入) does not include any amounts that are regarded as trading receipts under section 14IH, 14II or 14IJ.

14IC. Deduction of certain capital expenditure incurred in relation to aircraft

- (1) Despite section 17, this section applies to a corporation for a year of assessment (*particular year*) if—
- section 14IB applies to the corporation for the particular year in relation to its assessable profits derived from the qualifying aircraft leasing activity relating to an operating lease of an aircraft (*specified aircraft*);
 - the specified aircraft is an aircraft acquired by the corporation; and
 - the corporation uses the aircraft in the particular year for the carrying out of any qualifying aircraft leasing activity by the corporation in relation to an operating lease of the aircraft.
- (2) Subject to section 14IF, the specified capital expenditure incurred in relation to the specified aircraft in the

particular year (*SCE*) is deductible for the corporation for that year.

- (3) If the particular year is the first year of assessment for which section 14IB applies to the specified aircraft, the SCE is to be determined in accordance with the formula in section 14ID(2).
- (4) If the particular year is any other year of assessment for which section 14IB applies to the specified aircraft, the SCE is to be determined in accordance with the formula in section 14IE(2).
- (5) If the SCE has been allowed to be deducted under this section for a corporation, the corporation is not entitled to be granted any allowance under Part 6 in respect of the capital expenditure (aircraft) incurred by the corporation in relation to the aircraft concerned.
- (6) In this section—

capital expenditure (aircraft) (資本開支(飛機))—see section 14IG.

14ID. Supplementary provisions for section 14IC(3)

- (1) This section applies for the purposes of section 14IC(3).
- (2) The formula referred to in section 14IC(3) is—

$$A = B - C - D - E - F$$

where: A means the specified capital expenditure incurred in relation to the aircraft concerned (*specified aircraft*) in the year of assessment concerned (*particular year*);

B means the total amount of capital expenditure (aircraft) incurred in the particular year by the corporation in relation to the specified aircraft;

C means the aggregate amount of the initial allowances granted under sections 37(1), 37A(1) and 39B(1) to the corporation in relation to the specified aircraft;

D means the aggregate amount of the annual allowances granted under sections 37(2), 37A(2) and 39B(2) to the corporation in relation to the specified aircraft;

E means the notional amount of the annual allowances that would have been granted to the corporation in respect of the specified aircraft (*NA*); and

F means the aggregate of the relevant amounts of capital allowances granted to relevant persons in jurisdictions outside Hong Kong.

- (3) For the purposes of subsection (2), the NA is the sum of the total amount determined under paragraph (a) and the total amount determined under paragraph (b)—
 - (a) the total amount of the annual allowances that would have been granted under sections 37(2), 37A(2) and 39B(2) to the corporation in respect of the specified aircraft for a section 14I-related year if the allowances had been available to the corporation for that year;
 - (b) the total amount of the annual allowances that would have been granted under sections 37(2), 37A(2) and 39B(2) to the corporation in respect of the aircraft for a specific year if the allowances had been available to the corporation for that year.
- (4) For the purposes of subsection (2), subject to subsection (6), the relevant amount of capital allowances granted to

a relevant person in a jurisdiction outside Hong Kong (*non-Hong Kong jurisdiction*) is to be determined in accordance with the following formula—

$$G = H - I$$

where: G means the relevant amount of capital allowances granted to the relevant person in the non-Hong Kong jurisdiction;

H means the aggregate of the total amount of capital allowances granted, to the relevant person in the non-Hong Kong jurisdiction, for each relevant year in respect of capital expenditure (aircraft) incurred by the corporation in relation to the specified aircraft; and

I means the aggregate of the total amount of insurance money or other compensation, accrued in each relevant year in relation to the specified aircraft, in respect of which the relevant person is subject to a specific tax in the non-Hong Kong jurisdiction.

- (5) For the purposes of subsection (4), G is taken to be zero if H is equal to or less than I.
- (6) If—
- a relevant person is subject to a specific tax in a non-Hong Kong jurisdiction in respect of any gross lease payments for the right to use the specified aircraft in relation to the particular year (*GLP*);
 - the GLP is chargeable to tax under this Part; and
 - capital allowances are granted to the relevant person in calculating any chargeable profits derived from the GLP for the purpose of the specific tax,

the relevant person is to be regarded as not being granted any relevant amount of capital allowances in the non-Hong Kong jurisdiction.

(7) In this section—

capital expenditure (aircraft) (資本開支(飛機))—see section 14IG;

relevant person (相關人士) means—

- the corporation concerned; or
- a connected person of that corporation;

relevant year (相關年度) means the particular year or any year of assessment preceding the particular year;

section 14I-related year (第 14I 條所涉年度)—see subsection (8);

specific tax (指定稅)—see subsection (9);

specific year (指定年度)—see subsection (10).

- (8) For the purposes of this section, a year of assessment is a section 14I-related year in relation to a corporation to which this section applies if section 14I has applied to the corporation because of the specified aircraft for the year of assessment.
- (9) For the purposes of this section, a tax is a specific tax if it is a tax of substantially the same nature as tax imposed under this Part.
- (10) For the purposes of this section, a year of assessment is a specific year in relation to a corporation to which this section applies if the specified aircraft has not been used at any time during the year of assessment for producing chargeable profits of the corporation.
- (11) For the purposes of this section, in calculating the total amount of capital expenditure (aircraft) incurred in the

particular year by the corporation in relation to the specified aircraft—

- (a) any capital expenditure (aircraft) that is incurred in the particular year by the corporation in relation to the aircraft is to be taken into account unless it is regarded as being incurred or taken to be incurred in another year of assessment in relation to the aircraft under section 14IG;
- (b) any capital expenditure (aircraft) that is regarded as being incurred in the particular year by the corporation in relation to the aircraft is to be taken into account unless it is taken to be incurred in another year of assessment in relation to the aircraft under section 14IG; and
- (c) any capital expenditure (aircraft) that is taken to be incurred in the particular year by the corporation in relation to the aircraft is to be taken into account.

14IE. Supplementary provisions for section 14IC(4)

- (1) This section applies for the purposes of section 14IC(4).
- (2) The formula referred to in section 14IC(4) is—

$$J = K - L$$

where: J means the specified capital expenditure incurred in relation to the aircraft concerned (*specified aircraft*) in the year of assessment concerned (*particular year*);

K means the total amount of capital expenditure (aircraft) incurred in the particular year by the corporation in relation to the specified aircraft; and

L means the aggregate of the relevant amounts of capital allowances granted to relevant persons in jurisdictions outside Hong Kong.

- (3) For the purposes of subsection (2), subject to subsection (5), the relevant amount of capital allowances granted to a relevant person in a jurisdiction outside Hong Kong (*non-Hong Kong jurisdiction*) is to be determined in accordance with the following formula—

$$M = N - P$$

where: M means the relevant amount of capital allowances granted to the relevant person in the non-Hong Kong jurisdiction;

N means the total amount of capital allowances granted, to the relevant person in the non-Hong Kong jurisdiction, for the particular year in respect of capital expenditure (aircraft) incurred by the corporation in relation to the specified aircraft; and

P means the total amount of insurance money or other compensation, accrued in the particular year in relation to the specified aircraft, in respect of which the relevant person is subject to a specific tax in the non-Hong Kong jurisdiction.

- (4) For the purposes of subsection (3), M is taken to be zero if N is equal to or less than P.
- (5) If—
 - (a) a relevant person is subject to a specific tax in a non-Hong Kong jurisdiction in respect of any gross lease

- payments for the right to use the specified aircraft in relation to the particular year (*GLP*);
- (b) the GLP is chargeable to tax under this Part; and
 - (c) capital allowances are granted to the relevant person in calculating any chargeable profits derived from the GLP for the purpose of the specific tax,
- the relevant person is to be regarded as not being granted any relevant amount of capital allowances in the non-Hong Kong jurisdiction.
- (6) In this section—
- capital expenditure (aircraft)** (資本開支(飛機))—see section 14IG;
- relevant person** (相關人士) means—
- (a) the corporation concerned; or
 - (b) a connected person of that corporation;
- specific tax** (指定稅)—see subsection (7).
- (7) For the purposes of this section, a tax is a specific tax if it is a tax of substantially the same nature as tax imposed under this Part.
- (8) For the purposes of this section, in calculating the total amount of capital expenditure (aircraft) incurred in the particular year by the corporation in relation to the specified aircraft—
- (a) any capital expenditure (aircraft) that is incurred in the particular year by the corporation in relation to the aircraft is to be taken into account unless it is regarded as being incurred or taken to be incurred in another year of assessment in relation to the aircraft under section 14IG;

- (b) any capital expenditure (aircraft) that is regarded as being incurred in the particular year by the corporation in relation to the aircraft is to be taken into account unless it is taken to be incurred in another year of assessment in relation to the aircraft under section 14IG; and
- (c) any capital expenditure (aircraft) that is taken to be incurred in the particular year by the corporation in relation to the aircraft is to be taken into account.

14IF. Circumstances under which capital expenditure is not allowed to be deducted under section 14IC

- (1) Section 14IC does not apply to a corporation in relation to an aircraft (*specified aircraft*) for a year of assessment if—
- (a) any allowance has been granted under Part 6 or deduction has been allowed under this Part to the corporation in respect of any capital expenditure (aircraft) in relation to the specified aircraft and the aggregate amount of the allowances and deductions so granted or allowed is equal to the total amount of capital expenditure (aircraft) incurred by the corporation in relation to the aircraft; or
 - (b) subject to subsection (2), the aircraft was, before the acquisition of the aircraft by the corporation—
 - (i) owned and used by a lessee of an operating lease of the aircraft (whether alone or with any other person); or
 - (ii) owned and used by an associate of a lessee of an operating lease of the aircraft (whether alone or with any other person).
- (2) Subsection (1)(b) does not apply if—

- (a) the specified aircraft was acquired by the corporation from the lessee or any associate of the lessee (*end-user*) with a consideration not more than the consideration paid by the end-user to another person (*supplier*) for acquiring the aircraft from the supplier; and
 - (b) no initial or annual allowance under Part 6 was or has been granted to the end-user in respect of the aircraft before the acquisition of the aircraft by the corporation.
- (3) For the purposes of subsection (2)(b), an allowance is to be regarded as not being or having been granted if the end-user disclaims the allowance by giving the Commissioner a written notice within—
- (a) the period of 3 months beginning on the date on which the capital expenditure giving rise to the allowance is incurred; or
 - (b) any further time that the Commissioner permits in a particular case.
- (4) In this section—
capital expenditure (aircraft) (資本開支(飛機))—see section 14IG.

14IG. Meaning of *capital expenditure (aircraft)*—for sections 14IC, 14ID, 14IE and 14IF

- (1) This section applies for the purposes of sections 14IC, 14ID, 14IE and 14IF.
- (2) Any capital expenditure incurred by a corporation in relation to an aircraft is capital expenditure (aircraft) in relation to the aircraft.

- (3) Capital expenditure incurred by a corporation in relation to an aircraft includes—
 - (a) any consideration for the acquisition of the aircraft made by the corporation; and
 - (b) any legal expenses and valuation fees incurred by the corporation in connection with the acquisition.
- (4) However, neither the expenditure mentioned in paragraph (a) nor the expenditure mentioned in paragraph (b) is capital expenditure incurred by a corporation in relation to an aircraft—
 - (a) any expenditure incurred in relation to the aircraft that is reimbursed to the corporation by way of or attributable to a grant, subsidy or similar financial assistance;
 - (b) any capital expenditure incurred by the corporation that has been deducted or may be deducted in relation to the aircraft under any section (other than section 14IC) in this Part.
- (5) If the aircraft is acquired together with any other assets in pursuance of one bargain, then for determining the actual amount of the consideration for the acquisition, the Commissioner must, having regard to all the circumstances of the bargain, allocate an amount of the consideration for the acquisition of the aircraft.
- (6) If the Commissioner is of the opinion that the consideration for the acquisition of the aircraft does not represent the true market value of the aircraft at the time of the acquisition—
 - (a) the Commissioner may determine the true market value of the aircraft; and

- (b) the amount so determined is to be taken to be the consideration for the acquisition.
- (7) If a corporation begins to use an aircraft, for the carrying out of any qualifying aircraft leasing activity, in a particular year of assessment after the year of assessment in which the acquisition takes place, any capital expenditure (aircraft) incurred in relation to the aircraft by the corporation before the particular year of assessment is to be regarded as being incurred by the corporation in the particular year of assessment by the corporation.
- (8) If any capital expenditure (aircraft) in relation to the aircraft (*expenditure*) is incurred or regarded as being incurred in a year of assessment preceding the year of assessment beginning on 1 April 2023, the expenditure is taken to be incurred in the year of assessment beginning on 1 April 2023.

14IH. Consideration for disposal of aircraft etc. to be regarded as trading receipts of corporation—aircraft in respect of which no election has been made under section 14IA(1)(e)

- (1) This section applies to a corporation if—
 - (a) section 14I applies to the corporation in relation to an aircraft (*specified aircraft*) for a year of assessment beginning on or after 1 April 2023;
 - (b) no election has been made under section 14IA(1)(e) in respect of the specified aircraft for any year of assessment; and
 - (c) either or both of the following events occur in a year of assessment beginning on or after 1 April 2023—
 - (i) any insurance money or other compensation is accrued to the corporation in relation to the aircraft;

- (ii) the aircraft is disposed of by the corporation.
- (2) Despite the exclusion relating to the sale of capital assets in section 14, each of the following amounts in relation to the specified aircraft is to be regarded as a trading receipt arising in or derived from Hong Kong in relation to the qualifying aircraft leasing activity of the corporation (*trading receipt*)—
 - (a) the amount of any insurance money or other compensation accrued to the corporation in relation to the aircraft (*IMOC*);
 - (b) the actual amount of the consideration for the disposal of the aircraft determined in accordance with section 14IK.
- (3) However, if, in relation to the specified aircraft, the aggregate of the total amount of the IMOCs and the amount mentioned in subsection (2)(b) accrued or regarded as being accrued in a particular year exceeds the specified amount (*SA*), the excess amount is not regarded as any trading receipt of the corporation under subsection (2) for the particular year.
- (4) The SA—
 - (a) if any insurance money or other compensation—
 - (i) is accrued or regarded as being accrued, in relation to the specified aircraft, in a year of assessment preceding the particular year; and
 - (ii) is chargeable to tax under this Part in relation to the corporation,
 is the amount of the notional amount (*NA*) minus the total amount of all such insurance money or other compensation; and
 - (b) in any other case—is the NA.

- (5) Subject to subsection (6), the NA is to be the amount determined in accordance with the following formula—

$$A = \frac{B}{C} \times (1 - C)$$

where: A means the NA;

B means the aggregate of the total amount of the net lease payments for the right to use the specified aircraft, calculated in accordance with section 14I in relation to the corporation, for each particular year (*aggregate NLP*); and

C means the percentage prescribed in section 2 of Schedule 17F.

- (6) If the aggregate NLP is equal to or less than zero, the NA is taken to be zero.
- (7) For a trading receipt that falls within the description in subsection (2)(a)—
- if the corporation has permanently discontinued its qualifying aircraft leasing activity before the IMOC concerned is accrued—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and
 - in any other case—the trading receipt is accrued in the year of assessment in which the IMOC is accrued.
- (8) For a trading receipt that falls within the description in subsection (2)(b)—
- if the corporation has permanently discontinued its qualifying aircraft leasing activity before the disposal of the specified aircraft takes place—the trading receipt is to be regarded as being accrued in

the year of assessment in which the discontinuance takes place; and

- in any other case—the trading receipt is accrued in the year of assessment in which the aircraft is disposed of.

- (9) In this section—

particular year (特定年度) means a year of assessment beginning on or after 1 April 2023.

14II. Consideration for disposal of aircraft etc. to be regarded as trading receipts of corporation—aircraft in respect of which section 14I has not applied for year of assessment beginning on or after 1 April 2023

- (1) This section applies to a corporation if—
- section 14IB applies to the corporation for a year of assessment in relation to an aircraft;
 - the application of that section to the aircraft is not because of an election made under section 14IA(1)(e); and
 - either or both of the following events occur in a year of assessment beginning on or after 1 April 2023—
 - any insurance money or other compensation is accrued to the corporation in relation to the aircraft;
 - the aircraft is disposed of by the corporation.
- (2) This section also applies to a corporation if—
- section 14IB applies to the corporation for a year of assessment in relation to an aircraft because of an election made under section 14IA(1)(e);

- (b) section 14I has not applied to the corporation in relation to the aircraft for any year of assessment beginning on or after 1 April 2023; and
- (c) either or both of the following events occur in a year of assessment beginning on or after 1 April 2023—
 - (i) any insurance money or other compensation is accrued to the corporation in relation to the aircraft;
 - (ii) the aircraft is disposed of by the corporation.
- (3) Despite the exclusion relating to the sale of capital assets in section 14, each of the following amounts in relation to an aircraft to which this section applies (*specified aircraft*) is to be regarded as a trading receipt arising in or derived from Hong Kong in relation to the qualifying aircraft leasing activity of the corporation (*trading receipt*)—
 - (a) the amount of any insurance money or other compensation accrued to the corporation in relation to the specified aircraft (*IMOC*);
 - (b) the actual amount of the consideration for the disposal of the aircraft determined in accordance with section 14IK.
- (4) However, if, in relation to the specified aircraft, the aggregate of the total amount of the IMOCs and the amount mentioned in subsection (3)(b) accrued or regarded as being accrued in a particular year exceeds the specified amount (*SA*), the excess amount is not regarded as any trading receipt of the corporation under subsection (3) for the particular year.
- (5) The SA—
 - (a) if any insurance money or other compensation—

- (i) is accrued or regarded as being accrued, in relation to the specified aircraft, in a year of assessment preceding the particular year; and
 - (ii) is chargeable to tax under this Part in relation to the corporation,
- is the amount of the D&A minus the total amount of all such insurance money or other compensation; and
- (b) in any other case—is the D&A.
- (6) For a trading receipt that falls within the description in subsection (3)(a)—
 - (a) if the corporation has permanently discontinued its qualifying aircraft leasing activity before the IMOC concerned is accrued—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and
 - (b) in any other case—the trading receipt is accrued in the year of assessment in which the IMOC is accrued.
- (7) For a trading receipt that falls within the description in subsection (3)(b)—
 - (a) if the corporation has permanently discontinued its qualifying aircraft leasing activity before the disposal of the specified aircraft takes place—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and
 - (b) in any other case—the trading receipt is accrued in the year of assessment in which the aircraft is disposed of.
- (8) In this section—

D&A (扣免總額), in relation to a specified aircraft, means the aggregate of the following—

- (a) the total amount of the deductions allowed to the corporation under section 14IC in respect of the specified aircraft;
- (b) the total amount of the allowances granted to the corporation under Part 6 in respect of the aircraft;

particular year (特定年度) means a year of assessment beginning on or after 1 April 2023.

14IJ. Consideration for disposal of aircraft etc. to be regarded as trading receipts of corporation—aircraft in respect of which section 14I has applied for year of assessment beginning on or after 1 April 2023

- (1) This section applies to a corporation if—
 - (a) section 14IB applies to the corporation for a year of assessment in relation to an aircraft (*specified aircraft*) because of an election made under section 14IA(1)(e);
 - (b) section 14I has applied to the corporation in relation to the specified aircraft for a year of assessment beginning on or after 1 April 2023; and
 - (c) either or both of the following events occur in a year of assessment beginning on or after 1 April 2023—
 - (i) any insurance money or other compensation is accrued to the corporation in relation to the aircraft;
 - (ii) the aircraft is disposed of by the corporation.
- (2) Despite the exclusion relating to the sale of capital assets in section 14, each of the following amounts in relation to the specified aircraft is to be regarded as a trading receipt

arising in or derived from Hong Kong in relation to the qualifying aircraft leasing activity of the corporation (*trading receipt*)—

- (a) the amount of any insurance money or other compensation accrued to the corporation in relation to the aircraft (*IMOC*);
- (b) the actual amount of the consideration for the disposal of the aircraft determined in accordance with section 14IK.

- (3) However, if, in relation to the specified aircraft, the aggregate of the total amount of the IMOCs and the amount mentioned in subsection (2)(b) accrued or regarded as being accrued in a particular year exceeds the specified amount (*SA*), the excess amount is not regarded as any trading receipt of the corporation under subsection (2) for the particular year.

- (4) The SA—

- (a) if any insurance money or other compensation—
 - (i) is accrued or regarded as being accrued, in relation to the specified aircraft, in a year of assessment preceding the particular year; and
 - (ii) is chargeable to tax under this Part in relation to the corporation,

is the amount of the D&A minus the total amount of all such insurance money or other compensation; and

- (b) in any other case—is the D&A.

- (5) For a trading receipt that falls within the description in subsection (2)(a)—

- (a) if the corporation has permanently discontinued its qualifying aircraft leasing activity before the IMOC concerned is accrued—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and
 - (b) in any other case—the trading receipt is accrued in the year of assessment in which the IMOC is accrued.
- (6) For a trading receipt that falls within the description in subsection (2)(b)—
- (a) if the corporation has permanently discontinued its qualifying aircraft leasing activity before the disposal of the specified aircraft takes place—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and
 - (b) in any other case—the trading receipt is accrued in the year of assessment in which the aircraft is disposed of.
- (7) In this section—
- D&A** (扣免總額), in relation to a specified aircraft, means the aggregate of the following—
- (a) the total amount of the deductions allowed to the corporation under section 141C in respect of the specified aircraft;
 - (b) the notional amount (*NA*) determined under subsection (8) or (9) (as the case requires);
- particular year** (特定年度) means a year of assessment beginning on or after 1 April 2023.

- (8) Subject to subsection (9), the *NA* in relation to a specified aircraft is to be determined in accordance with the following formula—

$$A = \frac{B}{C} \times (1 - C)$$

- where:
- A** means the *NA*;
 - B** means the aggregate of the total amount of the net lease payments for the right to use the specified aircraft, calculated in accordance with section 141, for each year of assessment beginning on or after 1 April 2023 up to the year of assessment preceding the one in which section 141B begins to apply in relation to the aircraft (*aggregate NLP*); and
 - C** means the percentage prescribed in section 2 of Schedule 17F.
- (9) If the aggregate *NLP* is equal to or less than zero, the *NA* is taken to be zero.

14IK. Determination of actual amount of consideration for disposal of aircraft—supplementary provisions for sections 14IH, 14II and 14IJ

- (1) This section applies for the purposes of sections 14IH, 14II and 14IJ.
- (2) For the purposes of section 14IH, subject to subsections (5) and (6), the actual amount of the consideration for a disposal of an aircraft by a corporation is to be determined in accordance with the following formula—

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

where: A means the actual amount of the consideration for the disposal;

B means the consideration for the sale or other disposal of the aircraft;

C means the total number of completed months in the specified period; and

D means the total number of section 14I-related months.

- (3) For the purposes of section 14II, subject to subsections (5) and (6), the actual amount of the consideration for a disposal of an aircraft by a corporation is—

- (a) if section 14I has applied to the aircraft for any year of assessment preceding the year of assessment beginning on 1 April 2023, an amount determined in accordance with the following formula—

$$E = F \times \frac{G}{H}$$

where: E means the actual amount of the consideration for the disposal;

F means the consideration for the sale or other disposal of the aircraft;

G means the total number of completed months in the specified period; and

H means the aggregate of the total number of section 14I-related months and the total number of section 14IB-related months; and

- (b) in any other case—the sale proceeds of the aircraft.

- (4) For the purposes of section 14IJ, subject to subsections (5) and (6), the actual amount of the consideration for a

disposal of an aircraft by a corporation is to be determined in accordance with the following formula—

$$I = J \times \frac{K}{L}$$

where: I means the actual amount of the consideration for the disposal;

J means the consideration for the sale or other disposal of the aircraft;

K means the total number of completed months in the specified period; and

L means the aggregate of the total number of section 14I-related months and the total number of section 14IB-related months.

- (5) If the aircraft is disposed of together with other assets in pursuance of one bargain, the Commissioner must, having regard to all the circumstances of the bargain, allocate an amount to be the actual amount of the consideration for the disposal.

- (6) If the Commissioner is of the opinion that the consideration for the disposal of the aircraft does not represent the true market value of the aircraft at the time of the disposal—

(a) the Commissioner may determine the true market value of the aircraft; and

(b) the amount so determined is to be taken as the actual amount of the consideration for the disposal.

- (7) In this section—

completed month (完整月份) means a full calendar month;

section 14I-related month (第 14I 條所涉月份)—see subsection (8);

section 14IB-related month (第 14IB 條所涉月份)—see subsection (9);

specified period (指明期間)—

- (a) for the purposes of subsections (2) and (4)—
 - (i) if the corporation has permanently discontinued its qualifying aircraft leasing activity in relation to the aircraft before the disposal takes place—means the period beginning on the 1st day of the basis period of the corporation for the year of assessment (2023/2024) and ending on the date of the discontinuance; and
 - (ii) in any other case—means the period beginning on the 1st day of the basis period of the corporation for the year of assessment (2023/2024) and ending on the date of the disposal of the aircraft; and
- (b) for the purposes of subsection (3)—
 - (i) if the corporation has permanently discontinued its qualifying aircraft leasing activity in relation to the aircraft before the disposal takes place—means the period beginning on the date on which section 14IB begins to apply to the corporation in relation to the aircraft concerned and ending on the date of the discontinuance; and
 - (ii) in any other case—means the period beginning on the date on which section 14IB begins to apply to the corporation in relation to the aircraft concerned and ending on the date of the disposal of the aircraft;

year of assessment (2023/2024) (課稅年度 (2023/2024)) means the year of assessment beginning on 1 April 2023.

- (8) For an aircraft of a corporation to which subsection (2), (3) or (4) applies, each completed month in respect of which section 14I applies to the corporation in relation to the aircraft is a section 14I-related month.
- (9) For an aircraft of a corporation to which subsection (3) or (4) applies, each completed month in respect of which section 14IB applies to the corporation in relation to the aircraft is a section 14IB-related month.
- (10) For the purposes of this section, the consideration for the sale or other disposal of an aircraft—
 - (a) if the disposal is a sale of the aircraft—is the proceeds of sale of the aircraft; and
 - (b) in any other case—is the value of the consideration for the disposal of the aircraft.

14IL. Calculation of net lease payments for right to use aircraft under operating lease: subleasing of aircraft

- (1) This section applies to a corporation for a year of assessment (**particular year**) if—
 - (a) section 14H(1) applies to the corporation for the particular year;
 - (b) a right to use an aircraft is granted to the corporation by—
 - (i) an owner of the aircraft under an arrangement in relation to the aircraft that falls within the description in paragraph (a) of the definition of **operating lease** in section 14G(1); or
 - (ii) a person deriving the right to use the aircraft under a sublease of the aircraft;

- (c) a right to use the aircraft is subsequently granted by the corporation to another person under a sublease of the aircraft; and
 - (d) any qualifying aircraft leasing activity carried out by the corporation in the particular year relates to the sublease.
- (2) The assessable profits derived from the qualifying aircraft leasing activity mentioned in subsection (1)(a) are to be the net lease payments for the right to use the aircraft under the sublease (*NLP*).
- (3) The NLP is to be calculated in accordance with the following formula—

$$A = B - C - D + E + F$$

- where:
- A means the NLP;
 - B means the aggregate amount of the gross lease payments for the right to use the aircraft under the sublease (whether or not they are periodic payments and including any sum payable under a residual value guarantee) (*lease income*) earned by or accrued to the corporation during the basis period for the particular year;
 - C means the aggregate amount of any outgoings and expenses deductible under this Part, to the extent to which they are incurred during the basis period for the particular year by the corporation in the production of the lease income (*relevant outgoings and expenses*);
 - D means the aggregate amount of the allowances granted under Part 6, to the

- extent that the relevant assets counted for the allowances are used during the basis period for the particular year by the corporation in the production of the lease income (*relevant allowances*);
- E means the aggregate amount of the other income and trading receipts arising in or derived from Hong Kong that are attributable to the qualifying aircraft leasing activity relating to the sublease; and
 - F means the balancing charge to be made under Part 6 on the corporation, to the extent that the relevant assets counted for the balancing charge are used in the production of specified gross lease income (*relevant charge*).
- (4) If the aircraft is subleased together with any other dealings in pursuance of one bargain, then for calculating the NLP, the Commissioner must, having regard to all the circumstances of the bargain, allocate an amount of gross lease payments for the right to use the aircraft under the sublease.
- (5) If subsections (2) and (3) apply—
- (a) the relevant outgoings and expenses and the relevant allowances may not be claimed for deduction under this Part otherwise than for calculating the NLP under subsection (3); and
 - (b) the other income and trading receipts and the relevant charge are not taxable under this Part otherwise than for calculating the NLP under subsection (3).
- (6) In this section—

specified gross lease income (指明總租約收入), in relation to a corporation, means any gross lease payments for the right to use an aircraft under a sublease of the aircraft that are used for calculating the net lease payments for the right to use the aircraft under this section.

14IM. Calculation of net payments of finance charges or interest for funding leases

- (1) This section applies to a corporation for a year of assessment if section 14H(1) applies to the corporation, for that year of assessment, in relation to its assessable profits that are derived from the qualifying aircraft leasing activity relating to a funding lease of an aircraft.
- (2) The assessable profits of the corporation that are derived from the qualifying aircraft leasing activity carried out in relation to a funding lease of an aircraft for a year of assessment (**particular year**) are to be the net payments of finance charges or interest in relation to the right to use the aircraft under the lease (**NP**).
- (3) The NP is to be calculated in accordance with the following formula—

$$A = B - C - D - E + F$$

where: A means the NP;

B means the aggregate amount of the gross payments of finance charges or interest (whether or not they are periodic payments) (**lease income**) earned by or accrued to the corporation under the funding lease during the basis period for the particular year;

C means the aggregate amount of any outgoings and expenses deductible under this Part, to the extent to which they are

incurred during the basis period for the particular year by the corporation in the production of the lease income (**relevant outgoings and expenses**);

D means the aggregate amount of the allowances granted under Part 6, to the extent that the relevant assets counted for the allowances are used during the basis period for the particular year by the corporation in the production of the lease income (**relevant allowances**);

E means the aggregate amount of the other income and trading receipts arising in or derived from Hong Kong that are attributable to the lease income; and

F means the balancing charge to be made under Part 6 on the corporation, to the extent that the relevant assets counted for the balancing charge are used in the production of specified gross lease income (**relevant charge**).

- (4) If an aircraft is leased together with any other dealings in pursuance of one bargain, the Commissioner must, having regard to all the circumstances of the bargain, allocate an amount of the lease income.
- (5) If subsections (2) and (3) apply—
 - (a) the relevant outgoings and expenses and the relevant allowances may not be claimed for deduction under this Part otherwise than for calculating the NP under subsection (3); and

- (b) the other income and trading receipts and the relevant charge are not taxable under this Part otherwise than for calculating the NP under subsection (3).

(6) In this section—

specified gross lease income (指明總租約收入), in relation to a corporation, means any gross payments of finance charges or interest in relation to the right to use an aircraft under a funding lease that are used for calculating the net payments of finance charges or interest in relation to the right to use the aircraft under this section.”

8. Section 14LA added

After section 14L—

Add

“14LA. Carrying out of activities in Hong Kong—supplementary provisions for section 14J(5)(a)(ii)

- (1) For the purposes of section 14J(5)(a)(ii), an activity producing the assessable profits of a corporation that fall within section 14J(1) 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 in that year of assessment unless the requirements prescribed in section 6 of Schedule 17F (***prescribed requirements***) are met.
- (2) To avoid doubt, the fact that the prescribed requirements are not met does not imply that the assessable profits do not arise in or are not derived from Hong Kong.”

9. Section 15 amended (certain amounts deemed trading receipts)

After section 15(1D)—

Add

“(1DA) For the purposes of subsection (1)(n)(i), if the aircraft business is a business of granting a right to use an aircraft under a funding lease as defined by section 14G(1), the finance charges or interest received by or accrued to the corporation for the grant of the right to use the aircraft are to be regarded as sums received by or accrued to the corporation by way of gains or profits.”

10. Section 15FA added

After section 15F—

Add

“15FA. Sums derived from funding leases of aircraft

For the purposes of this Part, if a person is engaged in a business of granting a right to use an aircraft under a funding lease as defined by section 14G(1), the finance charges or interest received by or accrued to the person for the grant of the right to use the aircraft are to be regarded as sums received by or accrued to the person by way of interest on money lent by the person.”

11. Section 16 amended (ascertainment of chargeable profits)

(1) After section 16(2)(e)—

Add

- “(ea) the money has been borrowed wholly or exclusively to finance capital expenditure incurred by the borrower, who is a qualifying aircraft lessor, on the provision of an aircraft and—
- (i) the lender is not an associate of the borrower;

- (ii) the capital expenditure qualifies for a deduction under section 14IC for the aircraft; and
 - (iii) if the lender is a trustee of a trust estate or a corporation controlled by such a trustee, neither the trustee nor the corporation nor any beneficiary under the trust is the borrower or an associate of the borrower;
- (eb) the money has been borrowed wholly or exclusively to finance capital expenditure incurred by the borrower, who is a qualifying aircraft lessor, on the provision of an aircraft and—
- (i) the deduction claimed is in respect of interest payable by the borrower on money borrowed from its associate for carrying on a qualifying aircraft leasing activity;
 - (ii) the associate is, in respect of the interest, subject to a similar tax in a territory outside Hong Kong at a rate that is not lower than the reference rate;
 - (iii) the associate's right to use and enjoy that interest is not constrained by a contractual or legal obligation to pass that interest to any other person, unless the obligation arises as a result of a transaction between the associate and a person other than the borrower dealing with each other at arm's length; and
 - (iv) the capital expenditure qualifies for a deduction under section 14IC;”
- (2) Section 16(2I)—
- Repeal**
- “(2)(g)”
- Substitute**

- “(2)(eb) and (g)”.
- (3) Section 16(2I)(a)(i)—
- Repeal**
- “(2)(g)(ii)”
- Substitute**
- “(2)(eb)(ii) and (g)(ii)”.
- (4) Section 16(2I)(c)(ii), after “14D(1)”—
- Add**
- “or 14H(1)”.
- (5) After section 16(3C)—
- Add**
- “(3CA) To avoid doubt, if a person is, in the production of profits, granted a right to use an aircraft under a funding lease as defined by section 14G(1)—
- (a) for the purposes of subsection (1)(a), the payments of finance charges or interest by the person for the right to use the aircraft are to be regarded as sums payable by the person by way of interest on money borrowed by the person (*specified sums*) for the purpose of producing the profits; and
 - (b) for the purposes of subsection (2)(e)(i)(A), the specified sums are to be regarded as money borrowed wholly and exclusively to finance capital expenditure incurred by the person on the provision of the aircraft.”.
- 12. Section 19CA amended (treatment of unabsorbed losses under sections 19CAB and 19CAC: interpretation)**
- (1) Section 19CA, definition of *chargeable concessionary trading receipts*, paragraph (a), after “(c)”—

Add

“, 14H(1)”.

- (2) Section 19CA, definition of *chargeable concessionary trading receipts*, after paragraph (b)—

Add

“(ba) if the assessable profits in respect of the concessionary trading receipts fall within the description in section 14H(1)—the amount of the assessable profits calculated in accordance with section 14HB;”.

- (3) Section 19CA, definition of *unabsorbed loss in respect of the concessionary trading receipts*, paragraph (a), after “(c)”—

Add

“, 14H(1)”.

- (4) Section 19CA, definition of *unabsorbed loss in respect of the concessionary trading receipts*, after paragraph (b)—

Add

“(ba) if the assessable profits in respect of the concessionary trading receipts fall within the description in section 14H(1)—any loss ascertained in accordance with section 14HB (because of section 19D);”.

13. Section 26AB amended (threshold requirements relating to concession condition provisions)

- (1) Section 26AB(1)(a)—

Repeal

“, 14D(1)(a), (b) or (c), 14H(1) or 14J(1)”

Substitute

“or 14D(1)(a), (b) or (c)”.

- (2) Section 26AB(4), definition of *concession condition provision*—

Repeal

“, 14H(4)(a)(ii), 14J(5)(a)(ii)” (wherever appearing).

- (3) Section 26AB(4), definition of *concession condition provision*, Note—

Repeal

“, 14H(1), 14J(1)”.

14. Section 37 amended (initial and annual allowances, machinery or plant)

Section 37(3), after “section”—

Add

“14IC.”.

15. Section 37A amended (initial and annual allowances in respect of machinery and plant acquired under hire purchase agreement)

Section 37A(1), after “Schedule 45”—

Add

“or section 14IC”.

16. Section 39B amended (initial and annual allowances on machinery or plant under the pooling system)

- (1) Section 39B(1), after “or section”—

Add

“14IC or”.

- (2) Section 39B(10), after “section”—

Add

“14IC,”.

17. Section 40AO amended (meaning of *specified asset*)

(1) Before section 40AO(1)(a)—

Add

“(aa) any aircraft for which a deduction has been allowed to the person under section 14IC;”.

(2) Section 40AO(2)—

Repeal

“(1)(a)” (wherever appearing)

Substitute

“(1)(aa), (a)”.

18. Section 40AR amended (non-application of certain provisions because of application of Part 6D)

Section 40AR, before “16J(5B)” —

Add

“14IK(6),”.

19. Section 40AS amended (deemed selling price of specified asset)

Section 40AS(1)(b)(ii)—

Repeal

“40AO(1)(c)”

Substitute

“40AO(1)(aa), (c)”.

20. Section 40AT amended (deemed proceeds of sale)

Section 40AT, before “16B(5)” —

Add

“14IK,”.

21. Section 89 amended (transitional provisions)

(1) Section 89, heading, after “provisions”—

Add

“or other provisions having effect for purposes of amendments to this Ordinance”.

(2) Section 89—

Add

“(31) Schedule 58 sets out the provisions that have effect for the purposes of the amendments to this Ordinance made by the Inland Revenue (Amendment) (Aircraft Leasing Tax Concessions) Ordinance 2023 (of 2023).”.

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

(1) Schedule 17F—

Repeal

“14I & 14N]”

Substitute

“14HA, 14I, 14IH, 14IJ, 14LA & 14N & Schs. 57 & 58]”.

(2) Schedule 17F, section 1(1)—

Repeal

“section and Subdivision”

Substitute

“Schedule and Subdivision”.

(3) Schedule 17F, section 1(1)—

Repeal the definition of *aircraft leasing activity*

Substitute

- “aircraft leasing activity** (飛機租賃活動), in relation to a corporation, means an activity comprising—
- (a) the leasing of an aircraft by the corporation to any other person; and
 - (b) any of the following activities carried out by the corporation—
 - (i) agreeing funding terms in relation to the lease concerned;
 - (ii) identify or acquiring the aircraft to be so leased;
 - (iii) setting the terms and duration of the lease;
 - (iv) monitoring or revising any funding or other agreements in relation to the lease;
 - (v) managing any risks associated with the lease or with an activity mentioned in subparagraph (i), (ii), (iii) or (iv);”.
- (4) Schedule 17F, section 1(1), definition of **aircraft leasing management activity**, paragraph (c), after “providing”—
- Add**
- “, or arranging for the provision of,”.
- (5) Schedule 17F, section 1(1), definition of **aircraft leasing management activity**, paragraph (d), after “providing”—
- Add**
- “, or arranging for the provision of,”.
- (6) Schedule 17F, section 1(1), definition of **aircraft leasing management activity**, paragraph (g), after “operation,”—
- Add**
- “crewing,”.

- (7) Schedule 17F, section 1(1), definition of **aircraft leasing management activity**, paragraph (j)—
- Repeal**
- “that are operating leases”.
- (8) Schedule 17F, section 1(1), definition of **aircraft leasing management activity**, paragraph (k), after “providing”—
- Add**
- “, or arranging for the provision of,”.
- (9) Schedule 17F, after Part 3—
- Add**

“Part 4

Prescribed Requirements for Sections 14HA and 14LA

5. Prescribed requirements for section 14HA

- (1) The requirements prescribed for the purposes of section 14HA are—
- (a) that the average number of qualified employees during the basis period for the year of assessment concerned—
 - (i) is adequate in the Commissioner’s opinion; and
 - (ii) is in any event not less than 1; and
 - (b) that the total amount of operating expenditure incurred in Hong Kong for the activity during that period—

- (i) is adequate in the Commissioner's opinion; and
 - (ii) is in any event not less than \$2,000,000.
- (2) For the purposes of subsection (1)(a), a person is a qualified employee if—
 - (a) the person is a full-time employee in Hong Kong; and
 - (b) the person—
 - (i) carries out the activity during the basis period; and
 - (ii) has the qualifications necessary to do so.

6. Prescribed requirements for section 14LA

- (1) The requirements prescribed for the purposes of section 14LA are—
 - (a) that the average number of qualified employees during the basis period for the year of assessment concerned—
 - (i) is adequate in the Commissioner's opinion; and
 - (ii) is in any event not less than 2; and
 - (b) that the total amount of operating expenditure incurred in Hong Kong for the activity during that period—
 - (i) is adequate in the Commissioner's opinion; and
 - (ii) is in any event not less than \$1,000,000.
- (2) For the purposes of subsection (1)(a), a person is a qualified employee if—

- (a) the person is a full-time employee in Hong Kong; and
- (b) the person—
 - (i) carries out the activity during the basis period; and
 - (ii) has the qualifications necessary to do so.”.

23. Schedule 17J amended (qualifying amalgamations—special tax treatment)

- (1) Schedule 17J—

Repeal

“40AMJ”

Substitute

“40AM & Schs. 57 & 58J”.

- (2) Schedule 17J, after section 9—

Add

“9A. Succession of aircraft

- (1) This section applies to—
 - (a) a company that is an amalgamated company in a qualifying amalgamation (*Company A*); and
 - (b) a company that is an amalgamating company in the qualifying amalgamation (*Company B*).
- (2) Sections 14I, 14IA, 14IB, 14IC, 14ID, 14IE, 14IF, 14IG, 14IH, 14II, 14IJ and 14IK do not apply to Company B in relation to any aircraft succeeded by Company A in the qualifying amalgamation (*specified aircraft*).
- (3) Sections 14I, 14IA, 14IB, 14IC, 14ID, 14IE, 14IF, 14IG, 14IH, 14II, 14IJ and 14IK with the modifications set out

in Part 2 of Schedule 57, have effect in relation to Company A and a specified aircraft.

(4) In this section—

aircraft (飛機) has the meaning given by section 14G.”.

24. Schedules 57 and 58 added

The Ordinance—

Add

“Schedule 57

[Schs. 17J & 58]

**Modifications to be Made to Certain Provisions
Because of Succession of Aircraft**

Part 1

Preliminary

1. Interpretation

(1) In the modified sections 14I, 14IA, 14IB, 14IC, 14ID, 14IE, 14IF, 14IG, 14IH, 14II, 14IJ and 14IK (*modified provisions*)—

Company A (甲公司)—see section 9A(1) of Schedule 17J;

Company B (乙公司)—see section 9A(1) of Schedule 17J;

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

specified aircraft (指明飛機), in relation to Company A, means an aircraft of Company B to which Company A has succeeded in the qualifying amalgamation.

(2) The words and expressions used in modified provisions and defined in section 14G for the purposes of Subdivision 4 of Division 2 of Part 4 have the same meaning as in that Subdivision.

Part 2

**Modifications to Sections 14I, 14IA, 14IB, 14IC,
14ID, 14IE, 14IF, 14IG, 14IH, 14II, 14IJ and
14IK**

2. Sections 14I, 14IA, 14IB, 14IC, 14ID, 14IE, 14IF, 14IG, 14IH, 14II, 14IJ and 14IK modified

Sections 14I, 14IA, 14IB, 14IC, 14ID, 14IE, 14IF, 14IG, 14IH, 14II, 14IJ and 14IK are modified to read as follows—

“14I. Calculation of net lease payments for right to use specified aircraft under operating lease: aircraft acquired in year of assessment preceding year of assessment beginning on 1 April 2023

(1) Subject to section 14IA, this section applies to Company A for a year of assessment (*particular year*) if—

(a) section 14H(1) applies to Company A for the particular year; and

(b) any qualifying aircraft leasing activity of Company A for the particular year relates to an operating lease of a specified aircraft—

- (i) that was acquired by Company B in a year of assessment preceding the year of assessment beginning on 1 April 2023; and
 - (ii) that has been used by Company B or Company A for carrying out any qualifying aircraft leasing activity relating to an operating lease in a year of assessment preceding the year of assessment beginning on 1 April 2023.
- (2) The assessable profits of Company A derived from the qualifying aircraft leasing activity relating to the operating lease for the particular year are to be the net lease payments for the right to use the specified aircraft under the operating lease (*NLP*).
- (3) The NLP is to be calculated in accordance with the following formula—

$$A = (B - C) \times D$$

where: A means the NLP;

B means the aggregate amount of the gross lease payments for the right to use the specified aircraft under the operating lease (whether or not they are periodic payments and including any sum payable under a residual value guarantee) (*lease income*) earned by or accrued to Company A during the basis period for the particular year;

C means the aggregate amount of any outgoings and expenses deductible

under this Part to the extent to which they are incurred during the basis period for the particular year by Company A in the production of the lease income (*relevant outgoings and expenses*); and

D means the percentage prescribed in section 2 of Schedule 17F.

- (4) If the specified aircraft is leased together with other dealings in pursuance of one bargain, then for calculating the NLP, the Commissioner must, having regard to all the circumstances of the bargain, allocate an amount of gross lease payments for the right to use the aircraft under the lease.
- (5) If subsection (3) applies, the relevant outgoings and expenses may not be claimed for deduction under this Part otherwise than for calculating the NLP under that subsection.

14IA. Circumstances under which section 14I does not apply

- (1) Section 14I does not apply to Company A for a year of assessment in respect of a qualifying aircraft leasing activity carried out by Company A in relation to an operating lease of a specified aircraft if—
- (a) neither Company B nor Company A has incurred any capital expenditure on the provision of the specified aircraft;
 - (b) an allowance under Part 6 is or has been granted to a relevant person in respect of any capital expenditure incurred on the provision of the aircraft;

- (c) capital allowances are granted to a relevant person in a jurisdiction outside Hong Kong (*non-Hong Kong jurisdiction*), for the year of assessment, in respect of any capital expenditure incurred on the provision of the aircraft;
 - (d) subject to subsection (7), the qualifying aircraft leasing activity is carried out by Company A as an owner of the aircraft and, before the aircraft is acquired by Company B—
 - (i) the aircraft was owned and used by a lessee of the operating lease to which the qualifying aircraft leasing activity relates (*lessee*), whether alone or with another person; or
 - (ii) the aircraft was owned and used by an associate of a lessee mentioned in subparagraph (i), whether alone or with another person; or
 - (e) Company B or Company A has elected in writing that section 14IB applies in calculating its assessable profits derived from any qualifying aircraft leasing activity carried out by it in relation to any operating lease of the aircraft for the year of assessment and any subsequent year of assessment.
- (2) An election under subsection (1)(e), once made, is irrevocable.
- (3) For the purposes of subsection (1)(b), an allowance under Part 6 is to be regarded as not being or having been granted to a relevant person in respect of any

- capital expenditure incurred on the provision of the specified aircraft if an amount equal to the allowance has been charged to profits tax as balancing charge made on the relevant person.
- (4) Subsection (1)(c) does not apply to capital allowances granted to a relevant person in a non-Hong Kong jurisdiction (as described in that subsection) if Condition 1 or Condition 2 is satisfied in relation to the year of assessment.
- (5) Condition 1 is that—
- (a) the relevant person is subject to tax in the non-Hong Kong jurisdiction (*non-Hong Kong tax*) in respect of the gross lease payments for the right to use the specified aircraft in relation to the year of assessment (*GLP*);
 - (b) the GLP is chargeable to tax under this Part;
 - (c) the non-Hong Kong tax is a tax of substantially the same nature as tax imposed under this Part; and
 - (d) capital allowances are granted to the relevant person in calculating any chargeable profits derived from the GLP for the purpose of the non-Hong Kong tax.
- (6) Condition 2 is that—
- (a) one or both of the specified events occur in respect of the specified aircraft in the year of assessment;
 - (b) the relevant person is, in respect of the insurance money or other compensation or the consideration for the disposal of the aircraft (as the case requires), subject to a non-Hong Kong

- tax that is a tax of substantially the same nature as tax imposed under this Part (*specified tax*); and
- (c) the total amount that the relevant person is subject to the specified tax is not less than the total amount of the capital allowances granted to that person in the non-Hong Kong jurisdiction (as described in subsection (1)(c)).
- (7) Subsection (1)(d) does not apply if—
- (a) the specified aircraft was acquired by Company B from the lessee or the associate mentioned in that subsection (*end-user*) with a consideration that is not more than the consideration paid by the end-user to another person (*supplier*) for acquiring the aircraft from the supplier; and
- (b) no initial or annual allowance under Part 6 was or has been granted to the end-user in respect of the aircraft before the acquisition of the aircraft by Company B.
- (8) For the purposes of subsection (7)(b), an allowance is to be regarded as not being or having been granted if the end-user disclaims the allowance by giving the Commissioner a written notice within—
- (a) the period of 3 months beginning on the date on which the capital expenditure giving rise to the allowance is incurred; or
- (b) any further time that the Commissioner permits in a particular case.
- (9) In this section—
relevant person (相關人士) means—

- (a) Company A; or
- (b) a connected person of Company A;
- specified event* (指明事件)—see subsection (10).
- (10) For the purposes of this section, a specified event occurs in respect of an aircraft in a year of assessment if—
- (a) any insurance money or other compensation is accrued in relation to the aircraft in the year of assessment; or
- (b) the aircraft is disposed of in the year of assessment.
- 14IB. Calculation of net lease payments for right to use specified aircraft under operating lease: aircraft acquired in year of assessment beginning on or after 1 April 2023 and certain other aircraft**
- (1) This section applies to Company A for a year of assessment (*particular year*) if—
- (a) section 14H(1) applies to Company A for the particular year; and
- (b) Condition 1, Condition 2 or Condition 3 is satisfied in relation to a specified aircraft.
- (2) Condition 1 is that—
- (a) the specified aircraft was acquired by Company B in a year of assessment beginning on or after 1 April 2023; and
- (b) any qualifying aircraft leasing activity carried out by Company A in the particular year relates to an operating lease of the aircraft.
- (3) Condition 2 is that—

- (a) the specified aircraft was acquired by Company B in a year of assessment preceding the year of assessment beginning on 1 April 2023 (*previous year of assessment*) and had not been used by Company B, nor by Company A, in any previous year of assessment for carrying out any qualifying aircraft leasing activity in relation to an operating lease; and
 - (b) any qualifying aircraft leasing activity carried out by Company A in the particular year relates to an operating lease of the aircraft.
- (4) Condition 3 is that—
- (a) any qualifying aircraft leasing activity carried out by Company A in the particular year relates to an operating lease of the specified aircraft; and
 - (b) either—
 - (i) Company B or Company A has elected under section 14IA(1)(e) in relation to the specified aircraft for the particular year; or
 - (ii) section 14I does not apply in any other case to any operating lease of the aircraft for the particular year.
- (5) The assessable profits derived from the qualifying aircraft leasing activity mentioned in subsection (2)(b), (3)(b) or (4)(a), as the case requires, are to be the net lease payments for the right to use the specified aircraft under the lease concerned (*NLP*).
- (6) The NLP is to be calculated in accordance with the following formula—

$$A = B - C - D + E + F$$

- where:
- A means the NLP;
 - B means the aggregate amount of the gross lease payments for the right to use the specified aircraft under the operating lease (whether or not they are periodic payments and including any sum payable under a residual value guarantee) (*lease income*) earned by or accrued to Company A during the basis period for the particular year;
 - C means the aggregate amount of any outgoings and expenses deductible under this Part, to the extent to which they are incurred during the basis period for the particular year by Company A in the production of the lease income (*relevant outgoings and expenses*);
 - D means the aggregate amount of the allowances granted under Part 6, to the extent that the relevant assets counted for the allowances are used during the basis period for the particular year by Company A in the production of the lease income (*relevant allowances*);
 - E means the aggregate amount of the other income and trading receipts arising in or derived from Hong Kong that are attributable to the qualifying

aircraft leasing activity relating to the operating lease; and

F means the balancing charge to be made under Part 6 on Company A, to the extent that the relevant assets counted for the balancing charge are used in the production of specified gross lease income (*relevant charge*).

- (7) If the specified aircraft is leased together with any other dealings in pursuance of one bargain, then for calculating the NLP, the Commissioner must, having regard to all the circumstances of the bargain, allocate an amount of gross lease payments for the right to use the aircraft under the lease.
- (8) If subsections (5) and (6) apply—
 - (a) the relevant outgoings and expenses and the relevant allowances may not be claimed for deduction under this Part otherwise than for calculating the NLP under subsection (6); and
 - (b) the other income and trading receipts and the relevant charge are not taxable under this Part otherwise than for calculating the NLP under subsection (6).
- (9) In this section—
specified gross lease income (指明總租約收入), in relation to Company A, means any gross lease payments for the right to use an aircraft of Company A under an operating lease that are used for calculating the net lease payments for the right to use the aircraft under this section;

trading receipts (營業收入) does not include any amounts that are regarded as trading receipts under section 14IH, 14II or 14IJ.

14IC. Deduction of certain capital expenditure incurred in relation to specified aircraft

- (1) Despite section 17, this section applies to Company A for a year of assessment (*particular year*) if—
 - (a) section 14IB applies to Company A for the particular year in relation to its assessable profits derived from the qualifying aircraft leasing activity relating to an operating lease of a specified aircraft;
 - (b) the specified aircraft was an aircraft acquired by Company B; and
 - (c) Company A uses the aircraft in the particular year for the carrying out of any qualifying aircraft leasing activity by Company A in relation to an operating lease of the aircraft.
- (2) Subject to section 14IF, the specified capital expenditure incurred in relation to the specified aircraft in the particular year (*SCE*) is deductible for Company A for that year.
- (3) If the particular year is the first year of assessment for which section 14IB applies to the specified aircraft, the SCE is to be determined in accordance with the formula in section 14ID(2).
- (4) If the particular year is any other year of assessment for which section 14IB applies to the specified aircraft, the SCE is to be determined in accordance with the formula in section 14IE(2).

- (5) If the SCE has been allowed to be deducted under this section for Company A, Company A is not entitled to be granted any allowance under Part 6 in respect of the capital expenditure (aircraft) incurred by it in relation to the aircraft concerned.

- (6) In this section—

capital expenditure (aircraft) (資本開支(飛機))—see section 141G.

14ID. Supplementary provisions for section 141C(3)

- (1) This section applies for the purposes of section 141C(3).

- (2) The formula referred to in section 141C(3) is—

$$A = B - C - D - E - F$$

where: A means the specified capital expenditure incurred in relation to the specified aircraft in the year of assessment concerned (*particular year*);

B means the total amount of capital expenditure (aircraft) incurred in the particular year in relation to the specified aircraft;

C means the aggregate amount of the initial allowances granted under sections 37(1), 37A(1) and 39B(1) to Company A in relation to the specified aircraft;

D means the aggregate amount of the annual allowances granted under sections 37(2), 37A(2) and 39B(2) to

Company A in relation to the specified aircraft;

E means the notional amount of the annual allowances that would have been granted to Company A in respect of the specified aircraft (*NA*); and

F means the aggregate of the relevant amounts of capital allowances granted to relevant persons in jurisdictions outside Hong Kong.

- (3) For the purposes of subsection (2), the NA is the sum of the total amount determined under paragraph (a) and the total amount determined under paragraph (b)—

(a) the total amount of the annual allowances that would have been granted under sections 37(2), 37A(2) and 39B(2) to Company A in respect of the specified aircraft for a section 141I-related year if the allowances had been available to Company A for that year;

(b) the total amount of the annual allowances that would have been granted under sections 37(2), 37A(2) and 39B(2) to Company A in respect of the aircraft for a specific year if the allowances had been available to Company A for that year.

- (4) For the purposes of subsection (2), subject to subsection (6), the relevant amount of capital allowances granted to a relevant person in a jurisdiction outside Hong Kong (*non-Hong Kong jurisdiction*) is to be determined in accordance with the following formula—

$$G = H - I$$

where: G means the relevant amount of capital allowances granted to the relevant person in the non-Hong Kong jurisdiction;

H means the aggregate of the total amount of capital allowances granted, to the relevant person in the non-Hong Kong jurisdiction, for each relevant year in respect of capital expenditure (aircraft) incurred in relation to the specified aircraft; and

I means the aggregate of the total amount of insurance money or other compensation, accrued in each relevant year in relation to the specified aircraft, in respect of which the relevant person is subject to a specific tax in the non-Hong Kong jurisdiction.

(5) For the purposes of subsection (4), G is taken to be zero if H is equal to or less than I.

(6) If—

(a) a relevant person is subject to a specific tax in a non-Hong Kong jurisdiction in respect of any gross lease payments for the right to use the specified aircraft in relation to the particular year (*GLP*);

(b) the GLP is chargeable to tax under this Part; and

(c) capital allowances are granted to the relevant person in calculating any chargeable profits derived from the GLP for the purpose of the specific tax,

the relevant person is to be regarded as not being granted any relevant amount of capital allowances in the non-Hong Kong jurisdiction.

(7) In this section—

capital expenditure (aircraft) (資本開支(飛機))—see section 14IG;

relevant person (相關人士) means—

(a) Company A; or

(b) a connected person of Company A;

relevant year (相關年度) means the particular year or any year of assessment preceding the particular year;

section 14I-related year (第 14I 條所涉年度)—see subsection (8);

specific tax (指定稅)—see subsection (9);

specific year (指定年度)—see subsection (10).

(8) For the purposes of this section, a year of assessment is a section 14I-related year in relation to Company A if section 14I has applied to Company B or Company A because of the specified aircraft for the year of assessment.

(9) For the purposes of this section, a tax is a specific tax if it is a tax of substantially the same nature as tax imposed under this Part.

(10) For the purposes of this section, a year of assessment is a specific year in relation to Company A if the specified aircraft has not been used at any time

during the year of assessment for producing chargeable profits of Company B or Company A.

- (11) For the purposes of this section, in calculating the total amount of capital expenditure (aircraft) incurred in the particular year in relation to the specified aircraft—

- (a) any capital expenditure (aircraft) that is incurred in the particular year in relation to the aircraft is to be taken into account unless it is regarded as being incurred or taken to be incurred in another year of assessment in relation to the aircraft under section 14IG;
- (b) any capital expenditure (aircraft) that is regarded as being incurred in the particular year in relation to the aircraft is to be taken into account unless it is taken to be incurred in another year of assessment in relation to the aircraft under section 14IG; and
- (c) any capital expenditure (aircraft) that is taken to be incurred in the particular year in relation to the aircraft is to be taken into account.

14IE. Supplementary provisions for section 14IC(4)

- (1) This section applies for the purposes of section 14IC(4).
- (2) The formula referred to in section 14IC(4) is—

$$J = K - L$$

where: J means the specified capital expenditure incurred in relation to the specified aircraft in the year of assessment concerned (*particular year*);

K means the total amount of capital expenditure (aircraft) incurred in the particular year in relation to the specified aircraft; and

L means the aggregate of the relevant amounts of capital allowances granted to relevant persons in jurisdictions outside Hong Kong.

- (3) For the purposes of subsection (2), subject to subsection (5), the relevant amount of capital allowances granted to a relevant person in a jurisdiction outside Hong Kong (*non-Hong Kong jurisdiction*) is to be determined in accordance with the following formula—

$$M = N - P$$

where: M means the relevant amount of capital allowances granted to the relevant person in the non-Hong Kong jurisdiction;

N means the total amount of capital allowances granted, to the relevant person in the non-Hong Kong jurisdiction, for the particular year in respect of capital expenditure (aircraft) incurred in relation to the specified aircraft; and

P means the total amount of insurance money or other compensation, accrued in the particular year in relation to the specified aircraft, in respect of which the relevant person is subject to a

specific tax in the non-Hong Kong jurisdiction.

- (4) For the purposes of subsection (3), M is taken to be zero if N is equal to or less than P.
- (5) If—
- (a) a relevant person is subject to a specific tax in a non-Hong Kong jurisdiction in respect of any gross lease payments for the right to use the specified aircraft in relation to the particular year (*GLP*);
 - (b) the GLP is chargeable to tax under this Part; and
 - (c) capital allowances are granted to the relevant person in calculating any chargeable profits derived from the GLP for the purpose of the specific tax,
- the relevant person is to be regarded as not being granted any relevant amount of capital allowances in the non-Hong Kong jurisdiction.
- (6) In this section—
- capital expenditure (aircraft)** (資本開支(飛機))—see section 14IG;
- relevant person** (相關人士) means—
- (a) Company A; or
 - (b) a connected person of Company A;
- specific tax** (指定稅)—see subsection (7).
- (7) For the purposes of this section, a tax is a specific tax if it is a tax of substantially the same nature as tax imposed under this Part.

- (8) For the purposes of this section, in calculating the total amount of capital expenditure (aircraft) incurred in the particular year in relation to the specified aircraft—
- (a) any capital expenditure (aircraft) that is incurred in the particular year in relation to the aircraft is to be taken into account unless it is regarded as being incurred or taken to be incurred in another year of assessment in relation to the aircraft under section 14IG;
 - (b) any capital expenditure (aircraft) that is regarded as being incurred in the particular year in relation to the aircraft is to be taken into account unless it is taken to be incurred in another year of assessment in relation to the aircraft under section 14IG; and
 - (c) any capital expenditure (aircraft) that is taken to be incurred in the particular year in relation to the aircraft is to be taken into account.

14IF. Circumstances under which capital expenditure is not allowed to be deducted under section 14IC

- (1) Section 14IC does not apply to Company A in relation to a specified aircraft for a year of assessment if—
- (a) any allowance has been granted under Part 6 or deduction has been allowed under this Part to Company A in respect of any capital expenditure (aircraft) in relation to the specified aircraft and the aggregate amount of the allowances and deductions so granted or allowed is equal to the total amount of capital

- expenditure (aircraft) in relation to the aircraft;
or
- (b) subject to subsection (2), the aircraft was, before the acquisition of the aircraft by Company B—
 - (i) owned and used by a lessee of an operating lease of the aircraft (whether alone or with any other person); or
 - (ii) owned and used by an associate of a lessee of an operating lease of the aircraft (whether alone or with any other person).
 - (2) Subsection (1)(b) does not apply if—
 - (a) the specified aircraft was acquired by Company B from the lessee or any associate of the lessee (*end-user*) with a consideration not more than the consideration paid by the end-user to another person (*supplier*) for acquiring the aircraft from the supplier; and
 - (b) no initial or annual allowance under Part 6 was or has been granted to the end-user in respect of the aircraft before the acquisition of the aircraft by Company B.
 - (3) For the purposes of subsection (2)(b), an allowance is to be regarded as not being or having been granted if the end-user disclaims the allowance by giving the Commissioner a written notice within—
 - (a) the period of 3 months beginning on the date on which the capital expenditure giving rise to the allowance is incurred; or
 - (b) any further time that the Commissioner permits in a particular case.

- (4) In this section—

capital expenditure (aircraft) (資本開支(飛機))—see section 14IG.

14IG. Meaning of *capital expenditure (aircraft)*—for sections 14IC, 14ID, 14IE and 14IF

- (1) This section applies for the purposes of sections 14IC, 14ID, 14IE and 14IF.
- (2) Any capital expenditure incurred by Company A in relation to a specified aircraft is capital expenditure (aircraft) in relation to the specified aircraft.
- (3) Capital expenditure incurred by Company A in relation to a specified aircraft includes—
 - (a) any capital expenditure incurred by Company B on the provision of the specified aircraft;
 - (b) any consideration for the acquisition of the aircraft made by Company B; and
 - (c) any legal expenses and valuation fees incurred by Company B in connection with the acquisition.
- (4) However, neither the expenditure mentioned in paragraph (a) nor the expenditure mentioned in paragraph (b) is capital expenditure incurred by Company A in relation to a specified aircraft—
 - (a) any expenditure incurred by Company B or Company A in relation to the specified aircraft that is reimbursed to Company B or Company A by way of or attributable to a grant, subsidy or similar financial assistance;
 - (b) any capital expenditure incurred by Company B or Company A that has been deducted or

may be deducted in relation to the aircraft under any section (other than section 14IC) in this Part.

- (5) If the specified aircraft was acquired by Company B together with any other assets in pursuance of one bargain, then for determining the actual amount of the consideration for the acquisition, the Commissioner must, having regard to all the circumstances of the bargain, allocate an amount of the consideration for the acquisition of the aircraft.
- (6) If the Commissioner is of the opinion that the consideration for the acquisition of the specified aircraft by Company B does not represent the true market value of the aircraft at the time of the acquisition—
 - (a) the Commissioner may determine the true market value of the aircraft; and
 - (b) the amount so determined is to be taken to be the consideration for the acquisition.
- (7) If—
 - (a) after the qualifying amalgamation, Company A begins to use the specified aircraft in a year of assessment (*particular year*) for the carrying out of any qualifying aircraft leasing activity in relation to an operating lease of the aircraft but the particular year is not the year of assessment in which the acquisition takes place; and
 - (b) Company B had not used the aircraft for the carrying out of such activity before the qualifying amalgamation,

any capital expenditure (aircraft) in relation to the aircraft that was incurred before the particular year is to be regarded as being incurred in the particular year.

- (8) If any capital expenditure (aircraft) in relation to a specified aircraft (*expenditure*) is incurred or regarded as being incurred in a year of assessment preceding the year of assessment beginning on 1 April 2023, the expenditure is taken to be incurred in the year of assessment beginning on 1 April 2023.

14IH. Consideration for disposal of specified aircraft etc. to be regarded as trading receipts of Company A—aircraft in respect of which no election has been made under section 14IA(1)(e)

- (1) This section applies to Company A if—
 - (a) section 14I applies or has applied to Company A or Company B in relation to a specified aircraft for a year of assessment beginning on or after 1 April 2023;
 - (b) no election has been made under section 14IA(1)(e) in respect of the specified aircraft for any year of assessment; and
 - (c) either or both of the following events occur on or after the qualifying amalgamation—
 - (i) any insurance money or other compensation is accrued to Company A in relation to the aircraft;
 - (ii) the aircraft is disposed of by Company A.
- (2) Despite the exclusion relating to the sale of capital assets in section 14, each of the following amounts

- in relation to the specified aircraft is to be regarded as a trading receipt arising in or derived from Hong Kong in relation to the qualifying aircraft leasing activity of Company A (*trading receipt*)—
- (a) the amount of any insurance money or other compensation accrued to Company A in relation to the aircraft (*IMOC*);
 - (b) the actual amount of the consideration for the disposal of the aircraft determined in accordance with section 14IK.
- (3) However, if, in relation to the specified aircraft, the aggregate of the total amount of the IMOCs and the amount mentioned in subsection (2)(b) accrued or regarded as being accrued in a particular year exceeds the specified amount (*SA*), the excess amount is not regarded as any trading receipt of Company A under subsection (2) for the particular year.
- (4) The SA—
- (a) if—
 - (i) any insurance money or other compensation—
 - (A) is accrued or regarded as being accrued to Company B, in relation to the specified aircraft, in the particular year or a year of assessment preceding the particular year (*preceding year*); or
 - (B) is accrued or regarded as being accrued to Company A, in relation

- to the aircraft, in a preceding year; and
- (ii) the insurance money or other compensation is chargeable to tax under this Part in relation to Company B or Company A,
- is the amount of the notional amount (*NA*) minus the total amount of all such insurance money or other compensation; and
- (b) in any other case—is the NA.
- (5) Subject to subsection (6), the NA is to be the amount determined in accordance with the following formula—

$$A = \frac{B1 + B2}{C} \times (1 - C)$$

where: A means the NA;

- B1 means the aggregate of the total amount of the net lease payments for the right to use the specified aircraft, calculated in accordance with section 14I in relation to Company B, for each particular year (*aggregate NLP1*);
- B2 means the aggregate of the total amount of the net lease payments for the right to use the specified aircraft, calculated in accordance with section 14I in relation to Company A, for each particular year (*aggregate NLP2*); and
- C means the percentage prescribed in section 2 of Schedule 17F.

- (6) If the sum of the aggregate NLP1 and the aggregate NLP2 is equal to or less than zero, the NA is taken to be zero.
- (7) For a trading receipt that falls within the description in subsection (2)(a)—
 - (a) if Company A has permanently discontinued its qualifying aircraft leasing activity before the IMOC concerned is accrued—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and
 - (b) in any other case—the trading receipt is accrued in the year of assessment in which the IMOC is accrued.
- (8) For a trading receipt that falls within the description in subsection (2)(b)—
 - (a) if Company A has permanently discontinued its qualifying aircraft leasing activity before the disposal of the specified aircraft takes place—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and
 - (b) in any other case—the trading receipt is accrued in the year of assessment in which the aircraft is disposed of.
- (9) In this section—

particular year (特定年度) means a year of assessment beginning on or after 1 April 2023.

14II. Consideration for disposal of specified aircraft etc. to be regarded as trading receipts of Company A—aircraft

in respect of which section 14I has not applied for year of assessment beginning on or after 1 April 2023

- (1) This section applies to Company A if—
 - (a) section 14IB applies to Company A for a year of assessment in relation to a specified aircraft;
 - (b) the application of that section to the specified aircraft is not because of an election made under section 14IA(1)(e); and
 - (c) either or both of the following events occur on or after the qualifying amalgamation—
 - (i) any insurance money or other compensation is accrued to Company A in relation to the aircraft;
 - (ii) the aircraft is disposed of by Company A.
- (2) This section also applies to Company A if—
 - (a) section 14IB applies to Company A for a year of assessment in relation to a specified aircraft because of an election made under section 14IA(1)(e);
 - (b) section 14I has not applied to Company B, nor to Company A, in relation to the specified aircraft for any year of assessment beginning on or after 1 April 2023; and
 - (c) either or both of the following events occur on or after the qualifying amalgamation—
 - (i) any insurance money or other compensation is accrued to Company A in relation to the aircraft;
 - (ii) the aircraft is disposed of by Company A.

- (3) Despite the exclusion relating to the sale of capital assets in section 14, each of the following amounts in relation to a specified aircraft to which this section applies is to be regarded as a trading receipt arising in or derived from Hong Kong in relation to the qualifying aircraft leasing activity of Company A (*trading receipt*)—
- (a) the amount of any insurance money or other compensation accrued to Company A in relation to the specified aircraft (*IMOC*);
 - (b) the actual amount of the consideration for the disposal of the aircraft determined in accordance with section 14IK.
- (4) However, if, in relation to the specified aircraft, the aggregate of the total amount of the IMOCs and the amount mentioned in subsection (3)(b) accrued or regarded as being accrued in a particular year exceeds the specified amount (*SA*), the excess amount is not regarded as any trading receipt of Company A under subsection (3) for the particular year.
- (5) The SA—
- (a) if—
 - (i) any insurance money or other compensation—
 - (A) is accrued or regarded as being accrued to Company B, in relation to the specified aircraft, in the particular year or a year of assessment preceding the particular year (*preceding year*); or

- (B) is accrued or regarded as being accrued to Company A, in relation to the aircraft, in a preceding year; and
 - (ii) the insurance money or other compensation is chargeable to tax under this Part in relation to Company B or Company A,
- is the amount of the D&A minus the total amount of all such insurance money or other compensation; and
- (b) in any other case—is the D&A.
- (6) For a trading receipt that falls within the description in subsection (3)(a)—
- (a) if Company A has permanently discontinued its qualifying aircraft leasing activity before the IMOC concerned is accrued—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and
 - (b) in any other case—the trading receipt is accrued in the year of assessment in which the IMOC is accrued.
- (7) For a trading receipt that falls within the description in subsection (3)(b)—
- (a) if Company A has permanently discontinued its qualifying aircraft leasing activity before the disposal of the specified aircraft takes place—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and

- (b) in any other case—the trading receipt is accrued in the year of assessment in which the aircraft is disposed of.

(8) In this section—

D&A (扣免總額), in relation to a specified aircraft, means the aggregate of the following—

- (a) the total amount of the deductions allowed to Company A under section 14IC in respect of the specified aircraft;
- (b) the total amount of the allowances that have been granted to Company A under Part 6 in respect of the aircraft;

particular year (特定年度) means a year of assessment beginning on or after 1 April 2023.

14IJ. Consideration for disposal of specified aircraft etc. to be regarded as trading receipts of Company A—aircraft in respect of which section 14I has applied for year of assessment beginning on or after 1 April 2023

(1) This section applies to Company A if—

- (a) section 14IB applies to Company A for a year of assessment in relation to a specified aircraft because of an election made under section 14IA(1)(e);
- (b) section 14I has applied to Company B or Company A in relation to the specified aircraft for a year of assessment beginning on or after 1 April 2023; and
- (c) either or both of the following events occur on or after the qualifying amalgamation—

- (i) any insurance money or other compensation is accrued to Company A in relation to the aircraft;
 - (ii) the aircraft is disposed of by Company A.
- (2) Despite the exclusion relating to the sale of capital assets in section 14, each of the following amounts in relation to the specified aircraft is to be regarded as a trading receipt arising in or derived from Hong Kong in relation to the qualifying aircraft leasing activity of Company A (**trading receipt**)—
 - (a) the amount of any insurance money or other compensation accrued to Company A in relation to the aircraft (**IMOC**);
 - (b) the actual amount of the consideration for the disposal of the aircraft determined in accordance with section 14IK.
- (3) However, if, in relation to the specified aircraft, the aggregate of the total amount of the IMOCs and the amount mentioned in subsection (2)(b) accrued or regarded as being accrued in a particular year exceeds the specified amount (**SA**), the excess amount is not regarded as any trading receipt of Company A under subsection (2) for the particular year.
- (4) The SA—
 - (a) if—
 - (i) any insurance money or other compensation—
 - (A) is accrued or regarded as being accrued to Company B, in relation to the specified aircraft, in the

particular year or a year of assessment preceding the particular year (*preceding year*); or

(B) is accrued or regarded as being accrued to Company A, in relation to the aircraft, in a preceding year; and

(ii) the insurance money or other compensation is chargeable to tax under this Part in relation to Company B or Company A,

is the amount of the D&A minus the total amount of all such insurance money or other compensation; and

(b) in any other case—is the D&A.

(5) For a trading receipt that falls within the description in subsection (2)(a)—

(a) if Company A has permanently discontinued its qualifying aircraft leasing activity before the IMOC concerned is accrued—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and

(b) in any other case—the trading receipt is accrued in the year of assessment in which the IMOC is accrued.

(6) For a trading receipt that falls within the description in subsection (2)(b)—

(a) if Company A has permanently discontinued its qualifying aircraft leasing activity before the disposal of the specified aircraft takes

place—the trading receipt is to be regarded as being accrued in the year of assessment in which the discontinuance takes place; and

(b) in any other case—the trading receipt is accrued in the year of assessment in which the aircraft is disposed of.

(7) In subsections (3) and (4)—

D&A (扣免總額), in relation to a specified aircraft, means the aggregate of the following—

(a) the total amount of the deductions allowed to Company A under section 14IC in respect of the specified aircraft;

(b) the notional amount (*NA*) determined under subsection (8) or (9) (as the case requires);

particular year (特定年度) means a year of assessment beginning on or after 1 April 2023.

(8) Subject to subsection (9), the *NA* in relation to a specified aircraft is to be determined in accordance with the following formula—

$$A = \frac{B}{C} \times (1 - C)$$

where: *A* means the *NA*;

B means the aggregate *NLP*; and

C means the percentage prescribed in section 2 of Schedule 17F.

(9) If the aggregate *NLP* is equal to or less than zero, the *NA* is taken to be zero.

(10) In subsections (8) and (9)—

aggregate *NLP* (淨租款總和)—

- (a) if section 14I has applied to Company B in relation to the specified aircraft for a year of assessment beginning on or after 1 April 2023—means the aggregate of the total amount of the net lease payments calculated in accordance with section 14I in relation to the aircraft for each year of assessment beginning on or after 1 April 2023 up to the year of assessment preceding the one in which section 14IB begins to apply in relation to the aircraft; and
- (b) in any other case—means the aggregate of the total amount of the net lease payments calculated in accordance with section 14I in relation to Company A for each year of assessment beginning on or after 1 April 2023 up to the year of assessment preceding the one in which section 14IB begins to apply in relation to the aircraft.

14IK. Determination of actual amount of consideration for disposal of specified aircraft—supplementary provisions for sections 14IH, 14II and 14IJ

- (1) This section applies for the purposes of sections 14IH, 14II and 14IJ.
- (2) For the purposes of section 14IH, subject to subsections (5) and (6), the actual amount of the consideration for a disposal of a specified aircraft by Company A is to be determined in accordance with the following formula—

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

- where: A means the actual amount of the consideration for the disposal;
- B means the consideration for the sale or other disposal of the aircraft;
- C means the total number of completed months in the specified period; and
- D means the total number of section 14I-related months.

- (3) For the purposes of section 14II, subject to subsections (5) and (6), the actual amount of the consideration for a disposal of a specified aircraft by Company A is—
 - (a) if section 14I has applied to the specified aircraft concerned for any year of assessment preceding the year of assessment beginning on 1 April 2023, an amount determined in accordance with the following formula—

$$E = F \times \frac{G}{H}$$

- where: E means the actual amount of the consideration for the disposal;
- F means the consideration for the sale or other disposal of the specified aircraft;
- G means the total number of completed months in the specified period; and
- H means the aggregate of the total number of section 14I-related

months and the total number of section 14IB-related months; and

- (b) in any other case—the sale proceeds of the aircraft.
- (4) For the purposes of section 14IJ, subject to subsections (5) and (6), the actual amount of the consideration for a disposal of a specified aircraft by Company A is to be determined in accordance with the following formula—

$$I = J \times \frac{K}{L}$$

- where: I means the actual amount of the consideration for the disposal;
- J means the consideration for the sale or other disposal of the specified aircraft;
- K means the total number of completed months in the specified period; and
- L means the aggregate of the total number of section 14I-related months and the total number of section 14IB-related months.
- (5) If the specified aircraft is disposed of together with other assets in pursuance of one bargain, the Commissioner must, having regard to all the circumstances of the bargain, allocate an amount to be the actual amount of the consideration for the disposal.
- (6) If the Commissioner is of the opinion that the consideration for the disposal of the specified aircraft does not represent the true market value of the aircraft at the time of the disposal—

- (a) the Commissioner may determine the true market value of the aircraft; and
- (b) the amount so determined is to be taken as the actual amount of the consideration for the disposal.

(7) In this section—

completed month (完整月份) means a full calendar month;

section 14I-related month (第 14I 條所涉月份)—see subsections (8) and (9);

section 14IB-related month (第 14IB 條所涉月份)—see subsections (10) and (11);

specified day (指明日)—

- (a) if section 14IB has applied to Company B—means the day on which that section begins to apply to Company B; and
- (b) in any other case—means the day on which section 14IB begins to apply to Company A;

specified period (指明期間)—

- (a) for the purposes of subsections (2) and (4)—
- (i) if Company A has permanently discontinued its qualifying aircraft leasing activity in relation to the specified aircraft before the disposal—means the period beginning on the 1st day of the basis period of Company A for the year of assessment (2023/2024) and ending on the date of the discontinuance; and
- (ii) in any other case—means the period beginning on the 1st day of the basis

period of Company A for the year of assessment (2023/2024) and ending on the date of the disposal of the aircraft; and

(b) for the purposes of subsection (3)—

- (i) if Company A has permanently discontinued its qualifying aircraft leasing activity in relation to the aircraft before the disposal takes place—means the period beginning on the specified day and ending on the date of the discontinuance; and
- (ii) in any other case—means the period beginning on the specified day and ending on the date of the disposal of the aircraft;

year of assessment (2023/2024) (課税年度(2023/2024)) means the year of assessment beginning on 1 April 2023.

- (8) For a specified aircraft of Company A to which subsection (2), (3) or (4) applies, each completed month in respect of which section 14I applies to Company B or Company A in relation to the specified aircraft is a section 14I-related month.
- (9) If, in relation to the specified aircraft, section 14I applies to Company B in respect of a part of a month and applies to Company A in respect of the other part of the month, that month is also a section 14I-related month.
- (10) For a specified aircraft of Company A to which subsection (3) or (4) applies, each completed month in respect of which section 14IB applies to Company

B or Company A in relation to the specified aircraft is a section 14IB-related month.

- (11) If, in relation to the specified aircraft, section 14IB applies to Company B in respect of a part of a month and applies to Company A in respect of the other part of the month, that month is also a section 14IB-related month.
- (12) For the purposes of this section, the consideration for the sale or other disposal of a specified aircraft—
 - (a) if the disposal concerned is a sale of the specified aircraft—is the proceeds of sale of the aircraft; and
 - (b) in any other case—is the value of the consideration for the disposal of the aircraft.”.

Schedule 58

[s. 89(31)]

Provisions for Inland Revenue (Amendment) (Aircraft Leasing Tax Concessions) Ordinance 2023

1. The amendments made to the existing provisions of this Ordinance by the Inland Revenue (Amendment) (Aircraft Leasing Tax Concessions) Ordinance 2023 (of 2023) (*Amendment Ordinance*) and the new provisions added to this

Ordinance by the Amendment Ordinance apply to a corporation for a year of assessment beginning on or after 1 April 2023.

2. In this Schedule—

existing provisions (現有條文) means sections 14G, 14I, 15, 16, 19CA, 26AB, 37, 37A, 39B, 40AO, 40AR, 40AS and 40AT and Schedules 17F and 17J;

new provisions (新訂條文) means sections 14HA, 14HB, 14IA, 14IB, 14IC, 14ID, 14IE, 14IF, 14IG, 14IH, 14II, 14IJ, 14IK, 14IL, 14IM, 14LA and 15FA and this Schedule and Schedule 57.”.

Explanatory Memorandum

The main purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (**Cap. 112**) to enhance the existing profits tax concessions regime available for corporations carrying on certain business in connection with aircraft.

2. Clause 3 amends section 14G of Cap. 112 and revises the definitions of **funding lease**, **lease** and **qualifying aircraft leasing activity** used in Subdivision 4 of Division 2 of Part 4 (Aircraft Leasing) of Cap. 112. Clause 3 also deletes the existing definition of **dry lease** and adds definitions of **operating lease** and **sublease** to that section.
3. Section 14H of Cap. 112 provides for concession for a corporation that is a qualifying aircraft lessor (as defined by section 14G) (**qualifying aircraft lessor**) for a year of assessment. Clause 5 adds a provision (new section 14HA) to supplement the provision in section 14H(4)(a)(ii) of Cap. 112 and clarifies that certain activities are not considered to be carried out in Hong Kong by the qualifying aircraft lessor or arranged by the lessor to be carried out in Hong Kong.
4. Clause 5 also adds another provision (new section 14HB) to Cap. 112. New section 14HB provides for the calculation of the assessable profits of a qualifying aircraft lessor derived from qualifying aircraft leasing activity (as defined by section 14G) relating to an operating lease (**QALA**) or a funding lease for a year of assessment.
5. Section 14I of Cap. 112 provides for the calculation of the taxable amount of the net lease payments for the right to use an aircraft (**NLP**) under an operating lease of a corporation to which section 14H of Cap. 112 applies (**section 14H corporation**). Under section 14I, the taxable amount is to be equal to 20% of the tax base.

6. Clause 6 amends section 14I of Cap. 112 so that it only applies to a section 14H corporation in respect of any QALA in relation to an operating lease of an aircraft—
 - (a) that is acquired by the corporation in a year of assessment preceding the year of assessment beginning on 1 April 2023; and
 - (b) that has been used by the corporation for carrying out any QALA in a year of assessment preceding the year of assessment beginning on 1 April 2023.
7. However, the amended section 14I does not apply in relation to any operating lease of such an aircraft if the section 14H corporation has elected that the new section 14IB should apply to any operating lease of the aircraft (see new section 14IA(1)(e)).
8. Clause 7 adds 13 new provisions to Cap. 112.
9. New section 14IA provides for the circumstances under which the amended section 14I does not apply.
10. New section 14IB provides for the calculation of the taxable amount of NLP of a section 14H corporation in respect of the QALA in relation to—
 - (a) an operating lease of an aircraft acquired by the corporation in a year of assessment beginning on or after 1 April 2023; or
 - (b) an operating lease of an aircraft that was acquired by the corporation in a year of assessment preceding the year of assessment beginning on 1 April 2023 (*previous year of assessment*) and that had not been used by the corporation in relation to any QALA in any previous year of assessment.
11. New section 14IB also applies in relation to an operating lease of an aircraft acquired, in a previous year of assessment, by a section 14H

- corporation if section 14I does not apply in any other case to the operating lease.
12. New sections 14IC, 14ID and 14IE provide for the deduction of capital expenditure incurred on the acquisition of an aircraft by a section 14H corporation and new section 14IF specifies the circumstances under which such expenditure is not allowed to be deducted under new section 14IC. New section 14IG provides for the meaning of *capital expenditure (aircraft)* used in new sections 14IC, 14ID, 14IE and 14IF.
13. New sections 14IH, 14II and 14IJ deal with cases where an aircraft of a section 14H corporation is disposed of or any insurance money or other amount of compensation is accrued to the corporation in relation to the aircraft. Under those sections, the consideration, insurance money and amount of compensation are regarded as trading receipts of the corporation.
14. New section 14IK is a supplementary provision to sections 14IH, 14II and 14IJ. It seeks to determine the actual amount of consideration for a disposal of an aircraft by a section 14H corporation.
15. New section 14IL provides for the calculation of assessable profits of a section 14H corporation in relation to a sublease of an aircraft.
16. New section 14IM provides for the calculation of assessable profits of a section 14H corporation in relation to finance charges or interest for the right to use an aircraft under a funding lease.
17. Clause 8 adds new section 14LA to Cap. 112. New section 14LA is a supplementary provision to section 14J(5)(a)(ii) of Cap. 112.
18. Clause 9 amends section 15 of Cap. 112 by adding new subsection (1DA) to that section. The amendment clarifies the scope of application of section 15(1)(n) and provides that the finance charges or interest received by or accrued to a corporation for the grant of the right to use an aircraft under a funding lease are to be regarded as

sums received by or accrued to the corporation by way of gains or profits.

19. Clause 10 adds a provision (new section 15FA) to provide for the sums derived from funding leases of aircraft.
20. Clause 11 amends section 16 of Cap. 112 so that interest payable on money borrowed by a qualifying aircraft lessor (*borrower*) wholly or exclusively to finance capital expenditure incurred by the borrower on the provision of an aircraft may be deducted when ascertaining the profits in respect of which the borrower is chargeable to tax under Part 4 of Cap. 112.
21. Clause 12 amends the definitions of *chargeable concessionary trading receipts* and *unabsorbed loss in respect of the concessionary trading receipts* in section 19CA of Cap. 112.
22. Clauses 13, 14, 15 and 16 provide for consequential amendments to sections 26AB, 37, 37A and 39B of Cap. 112.
23. Clause 17 amends section 40AO of Cap. 112 and modifies the meaning of *specified asset* in that section. After the amendment to section 40AO comes into operation, an aircraft for which a deduction has been allowed under new section 14IC to a person is a specified asset in relation to that person for the purposes of Part 6D of Cap. 112. Sections 40AR, 40AS and 40AT of Cap. 112 are also amended by the Bill (clauses 18, 19 and 20). The amendments are made to ensure that the enhanced regime under Cap. 112 could operate in the case where a specified event (within the meaning of section 40AP of Cap. 112) occurs in relation to the aircraft.
24. The definition of *aircraft leasing activity* in Schedule 17F to Cap. 112 is amended by clause 22. Clause 22 also amends that Schedule to prescribe certain requirements for new sections 14HA and 14LA.
25. Clause 23 amends Schedule 17J to Cap. 112 so that succession of an aircraft because of a qualifying amalgamation (as defined by section 40AE of Cap. 112) is also covered by that Schedule.

26. The amendments made to Cap. 112 by the Bill apply to a corporation for a year of assessment beginning on or after 1 April 2023 (see new Schedule 58 in clause 24).

Enhancement measures that have been implemented via administrative means

Apart from the legislative proposals included in the main paper, the following two enhancement measures were implemented via administrative means in the first half of 2023.

Recognition of the Irish Stock Exchange

2. Under section 16(2)(f)(i) of the Inland Revenue Ordinance (Cap. 112) (IRO), interest can be allowed for deduction if it is payable on debentures listed on a stock exchange in Hong Kong or on any other stock exchange recognised by the Commissioner of Inland Revenue. Before 1 April 2023, the Irish Stock Exchange was not a stock exchange recognised by the Commissioner. Accordingly, the interest payable on the notes listed on the Irish Stock Exchange was not allowed for deduction. We understand that many aircraft leasing groups raise bond financing or have notes in asset backed securitisation structures which are listed in Ireland. To facilitate the financing of aircraft lessors, starting from 1 April 2023, the Irish Stock Exchange (trading as Euronext Dublin) has been recognised by the Commissioner.

Specification of leasing model involving bare trust

3. We understand that there has been an increase in the use of bare trustee which holds the legal ownership of an aircraft while the lessor acts as the beneficial owner of the aircraft. This leasing model is becoming increasingly popular as it facilitates the trade of the leased aircraft by transfer of beneficial ownership¹, without the necessity to novate the underlying lease. As aircraft lessors that lease aircraft via a bare trust are already eligible for tax concession under the prevailing Regime, amendments to the IRO would not be necessary. The Inland Revenue Department updated the Departmental Interpretation and Practice Notes No. 54 in June 2023 to clarify such eligibility and provide further guidance to the trade.

¹ For the purposes of the aircraft leasing preferential tax regime (Regime), the word “own” covers not only legal ownership, but also economic/beneficial ownership.

Enhancement measures to be implemented via legislative amendments

Details of the enhancement measures to be implemented via legislative amendments to the Inland Revenue Ordinance (Cap. 112) (IRO) are set out in the ensuing paragraphs.

A. To provide qualifying aircraft lessors with tax deduction of the acquisition cost of aircraft

2. As aircraft leasing involves huge outlays in aircraft acquisition, tax treatment for acquisition cost of aircraft is important when an aircraft leasing company selects where to conduct its business. According to the prevailing tax rules of Hong Kong¹, depreciation allowances are denied for offshore leasing activities i.e. leasing of an aircraft to a non-Hong Kong aircraft operator.

3. To compensate for the lack of depreciation allowance, a 20% tax base concession was incorporated in the prevailing aircraft leasing preferential tax regime (Regime) (see paragraph 20 of the main paper). Unlike depreciation allowance, the 20% tax base concession, however, does not provide lessors with the benefit of tax deferral². Owing to the computation of effective tax rate (ETR) under BEPS 2.0³, Hong Kong aircraft lessors enjoying the 20% tax base concession would be liable to a greater amount of top-up tax when compared with aircraft lessors conducting business in other jurisdictions where capital allowance

¹ See section 39E of the IRO which aims at combating certain forms of leasing arrangements for abusing depreciation allowance in respect of machinery or plant (including aircraft).

² Depreciation allowance would be granted if an aircraft lessor leases aircraft to a Hong Kong aircraft operator. Since an aircraft is a costly asset, granting depreciation allowance would lead to a significant amount of tax loss that can be offset against taxable profit. Such loss will be carried forward to set off the assessable profits of the lessor for the subsequent years of assessment and in turn defer cash payment of tax for the aircraft lessor for a considerable period.

³ International tax reform proposals drawn up by the Organisation for Economic Co-operation and Development (OECD) to address the challenges of base erosion and profit shifting arising from the digitalisation of the economy.

(including depreciation allowance) for acquisition of aircraft is generally allowable⁴.

4. To maintain the competitiveness of the Regime, we will amend the IRO to replace the 20% tax base concession with a new tax deduction. Aircraft lessors would be allowed to deduct the full cost of an aircraft acquired in a year of assessment beginning on or after 1 April 2023. As a transitional arrangement, for aircraft acquired in a year of assessment preceding the year of assessment beginning on 1 April 2023, aircraft lessors may opt to continue enjoying the prevailing 20% tax base concession or switch to the new tax deduction⁵. Such election, once made, is irrevocable. Upon the disposal of aircraft, the concession (as provided under the 20% tax base concession) or deduction (as provided under the new tax deduction) allowed for the year of assessment beginning on or after 1 April 2023 and subsequent years would be clawed back and the sale proceeds, not exceeding the amount of concession or deduction allowed, would be deemed as trading receipts chargeable to profits tax.

5. Anti-avoidance provisions similar to the prevailing section 14I(3) of the IRO⁶ would be applicable in determining aircraft lessors' eligibility in claiming the new tax deduction. To address concerns from the trade, we will carve out certain scenarios from the anti-avoidance provisions where no tax avoidance is involved, e.g. where the lessor or its connected person is subject to extra-territorial taxation in another jurisdiction and where the capital allowances on an aircraft granted to the lessor's connected person in a jurisdiction outside Hong Kong have been fully clawed back in that jurisdiction through a mechanism similar to balancing charge under the IRO when the aircraft concerned is transferred to the lessor.

⁴ Under BEPS 2.0, top-up tax will be imposed in respect of its low-taxed profits if the group's ETR in Hong Kong is less than 15%. The ETR is to be computed on the basis of the group's income in Hong Kong and the covered taxes attributable to such income. In determining the amount of covered taxes, deferred tax adjustments will be taken into account so as to address the temporary difference in the recognition of income and expense for accounting and tax purposes (e.g. difference between accounting depreciation and tax depreciation/deduction). Conversely, no adjustment on either the group's income or covered taxes will be made to address most permanent differences in the accounting profits and tax base (e.g. exempted income or reduced tax base). It follows that a qualifying aircraft lessor in Hong Kong, which is a multinational enterprise group with annual revenue equal to or exceeding € 750 million, though being able to benefit from the 20% tax base, would be subject to a greater amount of top-up tax under BEPS 2.0 when compared with aircraft lessors in other jurisdictions which grant capital allowance for acquisition of aircraft regardless of whether the aircraft is used for onshore or offshore leasing.

⁵ The 20% reduced tax base could be considered as arbitrary since it does not reflect the lessor's actual profit or loss position having taken into account the acquisition cost of its aircraft. Artificial tax base is a factor that the Forum on Harmful Tax Practices of the OECD will consider in determining whether a preferential tax regime is potentially harmful. Failure to comply with OECD's requirements will jeopardize Hong Kong's reputation as an international financial centre. Hence the 20% tax base concession will only be kept as a transitional arrangement.

⁶ The prevailing section 14I(3) of the IRO provides that the 20% tax base concession does not apply to a qualifying aircraft lessor for a year of assessment if, among others, capital allowance has been granted to a qualifying aircraft lessor or its connected person in respect of the aircraft concerned for the year of assessment.

B. To expand the scope of the Regime to include wet lease and funding lease and remove the one-year term of lease restriction

6. Under the prevailing Regime, only the leasing of an aircraft under a dry lease that is an operating lease for a term exceeding one year is allowed. In reality, aircraft lessors may lease an aircraft via an operating lease (including dry lease or wet lease). Aircraft lessors may also enter into a finance lease (also known as funding lease) arrangement. Latest market information shows that leasing of aircraft via wet lease and funding lease arrangements are becoming more prevalent in recent years. It is also observed that the lease term could be less than one year, especially under the volatile market situation during the COVID-19 pandemic.

7. To cater for the latest development of the aircraft leasing industry, we will amend the IRO to include both operating leases⁷ (dry and wet leases) and funding leases in the Regime. We will also remove the restriction on the term of lease.

C. To provide for a more general meaning of “aircraft leasing activity” so that the Regime will cover leasing activities other than leasing aircraft to aircraft operators

8. Currently, the scope of “aircraft leasing activity” under the Regime is confined to leasing of an aircraft to an aircraft operator⁸. While leasing of an aircraft to an aircraft operator remains the major business of aircraft lessors, other types of aircraft leasing activities have been developed especially during the COVID-19 pandemic when the demand for air travel was low. We understand that aircraft lessors now also lease aircraft to other entities including private companies, public organisations or even individuals. To allow flexibility for different types of leasing activities in the future, we will amend the IRO to provide for a more general meaning of “aircraft leasing activity”, i.e. leasing an aircraft by an aircraft lessor to any other person.

⁷ An operating lease covers both a head lease (i.e. an arrangement under which a right to use an aircraft is granted by an owner of the aircraft to another person) and a sub-lease.

⁸ Under section 14G(1) of the IRO, an aircraft operator is defined as a person carrying on an aircraft operation business, which is a business of operating aircraft as an owner or a charterer for providing services for the carriage by air of passengers, cargo or mail, but does not include dealing in aircraft or agency business in connection with air transport.

D. To allow deduction of interest payable for acquisition of aircraft to a financier outside Hong Kong who is not a financial institution and may be an associate of the borrower

9. Interest expenses incurred in the production of chargeable profits are allowed for deduction under section 16(1)(a) of the IRO subject to, among others, the satisfaction of any condition stipulated in sections 16(2)(a) to (g) of the IRO. Insofar as it is relevant, interest incurred by an aircraft lessor is allowable for deduction under section 16 of the IRO if —

- (a) the money is borrowed from a lender whose interest income is chargeable to profits tax under the IRO or a financial institution; or
- (b) the money borrowed is wholly or exclusively used for financing the acquisition of machinery and plant which qualifies for depreciation allowance and the lender is not an associate of the borrower.

10. To accommodate the different financing means for the acquisition of aircraft, we will amend the condition for interest deduction under the IRO so that interest payable on money borrowed from a non-associated financier outside Hong Kong (whether or not it is a financial institution) that is wholly and exclusively to finance the acquisition of an aircraft used by a qualifying aircraft lessor for producing its qualifying profits is deductible. If the financier outside Hong Kong is an associate of the borrower, the interest deduction will be subject to certain anti-abuse provisions so as to forestall aggressive tax avoidance schemes creating interest expenses to reduce assessable profits in Hong Kong.

E. To prescribe threshold requirements for aircraft lessors and aircraft leasing managers qualifying for the Regime to comply with OECD's requirements

11. In determining whether a preferential tax regime meets the international standards against harmful tax practices, OECD will take into account whether the regime has incorporated a substantial activity requirement to ensure that only those entities which undertake their core income generating activities⁹ (CIGAs)

⁹ CIGAs can be carried out by a qualifying entity itself or outsourced to another entity (including a group company). When determining whether the threshold requirements are satisfied under an outsourcing arrangement, the employees employed or operating expenditure incurred by the outsourced entity would be taken into account if (a) the CIGAs are carried out by the outsourced entity 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 outsourced entity; and (d) the qualifying entity has exercised adequate monitoring of the outsourced CIGAs.

in the jurisdiction providing the regime would benefit from the regime. Specifically, OECD expects that a qualifying taxpayer should, in the jurisdiction providing the regime —

- (a) employ an adequate number of full-time qualified employees; and
- (b) incur an adequate amount of operating expenditure.

12. To meet the requirements of OECD, we will amend the IRO to prescribe the following threshold requirements for aircraft lessors and aircraft leasing managers —

	Full-time qualified employees¹⁰	Annual operating expenditure
Aircraft lessors	1	HK\$ 2 million
Aircraft leasing managers	2	HK\$ 1 million

13. In determining whether the threshold requirements are met, the Commissioner of Inland Revenue will consider whether the actual number of full-time employees and amount of operating expenditure could adequately and reasonably demonstrate the fulfilment of the substantial activities requirement having regard to the facts and circumstances of individual cases.

¹⁰ A person is a qualified employee if —

- (a) the person is a full-time employee in Hong Kong; and
- (b) the person —
 - (i) carries out the CIGAs in Hong Kong during the basis period; and
 - (ii) has the qualifications necessary to do so.