

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (AMENDMENT) (TAXATION ON FOREIGN-SOURCED DISPOSAL GAINS) BILL 2023

INTRODUCTION

At the meeting of the Executive Council on 10 October 2023, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Bill 2023 (“the Bill”) at **Annex A** should be introduced into the Legislative Council (“LegCo”) to amend the Inland Revenue Ordinance (Cap. 112) (“IRO”).

A

JUSTIFICATIONS

2. To address harmful tax competition, the EU has been requiring its Member States to refrain from introducing any harmful tax measures and to amend any laws or practices that are deemed to be harmful. With regard to non-EU jurisdictions, the EU has been evaluating their tax regimes against international tax standards since December 2017 and put in place a list of non-cooperative jurisdictions for tax purposes (“EU blacklist”) whereas jurisdictions that have committed to implementing reforms are included in a watchlist¹.

3. In response to the inclusion of Hong Kong in the EU watchlist in 2021, the IRO was amended in December 2022 to introduce a new FSIE regime for foreign-sourced dividend, interest, income derived from the use of intellectual properties (“IP income”) and disposal gain in relation to shares or equity interests

¹ The EU blacklist and watchlist are regularly revised by the Economic and Financial Affairs Council of the EU.

“equity interest disposal gain”) received in Hong Kong by multinational enterprise (“MNE”) entities with effect from 1 January 2023. The FSIE regime imposes, among others, economic substance requirement as a prerequisite for exempting the aforementioned foreign-sourced passive income from tax. This seeks to address the concerns of the EU about the risks of MNE entities without adequate economic substance in Hong Kong exploiting Hong Kong’s territorial tax system to achieve “double non-taxation” of such income. In February 2023, the EU confirmed that the regime was fully in compliance with the FSIE Guidance originally promulgated in 2019 with regard to dividend, interest and IP income. As a result of the timely legislative amendments made in end-2022, Hong Kong was not included in the EU blacklist.

4. In December 2022, the EU promulgated an updated FSIE Guidance (“Updated FSIE Guidance”)², which explicitly sets out disposal gains as one of the categories of passive income covered by an FSIE regime. Disposal gains (“capital gains” in the EU’s terminology)³ refer to gains from disposal of assets regardless of whether such gains are revenue or capital in nature as determined by the badges of trade. The Updated FSIE Guidance requires that if a jurisdiction exempts certain passive income (including disposal gains) from tax, the FSIE regime should include the following parameters –

- (a) adequate economic substance requirement should be imposed on taxpayers receiving tax exemptions for all types of passive income concerned;
- (b) robust anti-abuse rules should be put in place to tackle the specific risks of double non-taxation and lack of substantial activities; and
- (c) any administrative discretion in determining the income to be exempt from tax should be removed.

Jurisdictions with ongoing FSIE reforms, including Hong Kong, are requested by the EU to further amend their tax treatments of foreign-sourced disposal gains in compliance with the Updated FSIE Guidance by the end of 2023 for implementation with effect from January 2024 and are, in the interim, kept in the

² See the EU’s Guidance on Foreign Source Income Exemption Regimes at Annex to the report at <https://data.consilium.europa.eu/doc/document/ST-14674-2022-INIT/en/pdf>.

³ To avoid confusion, “disposal gains” is used throughout this paper.

EU watchlist pending completion of the necessary legislative amendments.

5. If Hong Kong does not comply with the Updated FSIE Guidance within the required time frame, the EU will include Hong Kong in the EU blacklist and Hong Kong-based enterprises may be subject to tax-related defensive measures, namely legislative defensive measures (e.g. denial of deduction of costs, higher withholding tax rate) and administrative defensive measures (e.g. reinforced monitoring of certain transactions, higher audit risks for taxpayers) imposed by the EU Member States.

Guiding principles in refining FSIE regime

6. To protect Hong Kong businesses from the potential defensive measures that may arise from the EU's blacklisting, we will refine the FSIE regime to bring it in line with the Updated FSIE Guidance. In formulating the refinements, we will continue to adhere to the key principles of –

- (a) maintaining the territorial source principle of taxation, viz. offshore active income will remain unaffected by the FSIE regime;
- (b) adopting the current practice of determining the source of profits;
- (c) upholding Hong Kong's simple, certain and low-tax regime with due regard to tax competitiveness; and
- (d) minimising the compliance burden of corporates.

Consultation with the EU and stakeholders

7. Since February 2023, the Government has been engaging the EU to discuss the necessary refinements to Hong Kong's FSIE regime in relation to disposal gains. Based on the explanation and clarification provided by the EU, we formulated an initial package of proposed refinements for seeking comments from stakeholders between April and June 2023 through the issuance of a consultation paper in April 2023 and the organisation of various engagement sessions. Upon taking into account the comments by stakeholders, we finalised the legislative proposal for further discussions with the EU between July and September 2023 and updated stakeholders on the negotiation outcome.

Stakeholders appreciated the Government's efforts in negotiating with the EU for the best or more favourable features of the refined FSIE regime, as well as the interactive two-stage approach for consultation under which they were first consulted on Hong Kong's proposals to be negotiated with the EU and then updated on the negotiation outcome.

Proposed design of the refined FSIE regime for disposal gains

8. The proposed refinements to the FSIE regime will focus on expanding the scope of assets in relation to foreign-sourced disposal gains to cover assets other than shares or equity interests, as well as providing for exemption and relief to minimise the compliance burden of affected MNE entities. The existing framework of Hong Kong's FSIE regime, which has come into effect since 1 January 2023 and was confirmed by the EU to have incorporated the required key parameters of FSIE regimes, will remain unchanged to provide the necessary continuity and tax certainty for taxpayers. Details of the proposed design are set out in the ensuing paragraphs.

(i) Covered taxpayers

9. The scope of covered taxpayers will remain unchanged under the refined FSIE regime. The refined regime will continue to only apply to constituent entities of MNE groups⁴. Individuals, stand-alone local companies and purely local groups will continue to fall outside the scope of the regime.

(ii) Covered income

10. The definition of foreign-sourced disposal gains will be expanded to cover disposal gains in relation to all assets, i.e. both movable property and

⁴ An MNE group means a group that includes at least one entity or permanent establishment that is not in the jurisdiction of the ultimate parent entity of the group. The governing principle to determine a group is to follow the accounting consolidation rules. If the applicable accounting principles do not require the financial results of an entity to be consolidated with its parent or associated entities on a line-by-line basis, that entity will not form part of a group.

immovable property⁵. The EU has clearly indicated that a non-exhaustive approach, which has also been consistently adopted in other jurisdictions, has to be adopted in defining the underlying assets for disposal gains. We have explained such approach to stakeholders, who reckon the need to comply with the EU's requirement.

11. Under the refined FSIE regime, disposal gains arise upon transfer of the property for valuable consideration. This is the same treatment adopted in the case of equity interest disposal gains under the existing FSIE regime.

Excluded disposal gains derived by regulated financial entities and taxpayers benefitting from the preferential tax regimes

12. Under the existing FSIE regime, foreign-sourced dividend, interest and equity interest disposal gains which are derived from, or are incidental to, the carrying on of a business as a regulated financial entity or the profit producing activities of a taxpayer benefitting from an existing preferential tax regime fall outside the scope of the FSIE regime. To ease the compliance burden of taxpayers, the same approach will be extended to cover gains derived from the sale of property other than IP ("non-IP disposal gains") under the refined FSIE regime.

Excluded disposal gains derived by traders of non-IP assets

13. Disposal gains form part of the active business income of a trader of assets (e.g. gains from the sale of immovable properties by property developers). Non-IP disposal gains which are derived from, or are incidental to, the carrying on of a business as a trader will fall outside the scope of the FSIE regime. This acknowledges the fact that such non-IP disposal gains are foreign-sourced active income which is not covered by the FSIE regime.

⁵ It is the EU's requirement that gains from disposal of all kinds of assets should be covered by the Updated FSIE Guidance, regardless of the financial (e.g. equity interests covered by the existing FSIE regime) or non-financial nature of such assets. In Hong Kong, section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) provides that "immovable property" means (a) land, whether covered by water or not; (b) any estate, right, interest or easement in or over any land; and (c) things attached to land or permanently fastened to anything attached to land, whilst "movable property" means property of every description except immovable property. In this connection, movable property and immovable property can be interpreted to cover all assets in the laws of Hong Kong so as to meet the requirement of the Updated FSIE Guidance.

(iii) Exemption from taxation of disposal gains

14. Foreign-sourced disposal gains received in Hong Kong by a covered taxpayer will be deemed to be sourced from Hong Kong and chargeable to Hong Kong profits tax unless –

- (a) with regard to non-IP disposal gains, the taxpayer meets the economic substance requirement; or
- (b) with regard to gains derived from the sale of IP (“IP disposal gains”), the nexus approach consistent with Action 5 of the Base Erosion and Profit Shifting (“BEPS”) package promulgated by the Organisation for Economic Co-operation and Development in 2015 is complied with.

The proposed refinement will not affect the existing provisions in the FSIE regime on participation exemption⁶, which applies only to equity interest disposal gains.

Economic substance requirement in relation to non-IP disposal gains

15. Under the refined FSIE regime, foreign-sourced non-IP disposal gains received in Hong Kong by a covered taxpayer will be exempt from profits tax if the taxpayer carries out, or arranges to carry out, substantial economic activities with regard to the relevant income (i.e. specified economic activities) in Hong Kong. There will be no change to the substantial activities test applicable to non-pure equity-holding entities and the reduced substantial activities test for pure equity-holding entities⁷ under the existing FSIE regime, that is to say –

⁶ The participation exemption regime is an alternative to the economic substance requirement to facilitate taxpayers who receive foreign-sourced dividend and equity interest disposal gain to claim tax exemption. The participation exemption applies to a taxpayer which is a Hong Kong resident person (or a non-Hong Kong resident person that has a permanent establishment in Hong Kong) which holds at least 5 per cent of the investee company’s shares or equity interest for at least 12 months immediately prior to the accrual of the relevant dividend or equity interest disposal gain subject to anti-abuse rules.

⁷ A pure equity-holding entity is an entity which only holds equity interests in other entities and only earns dividends, disposal gains in relation to equity interests and income incidental to the acquisition, holding or sale of such equity interests. Given their very nature, disposal gains other than those in relation to shares or equity interests under the refined regime will not apply to a pure equity-holding entity.

- (a) for a taxpayer that is not a pure equity-holding entity, the specified economic activities required to be carried out in Hong Kong will include making necessary strategic decision, and managing and bearing principal risks, in respect of any asset it acquires, holds or disposes of; and
- (b) for a taxpayer that is a pure equity-holding entity, a reduced substantial activities test will be applied such that the taxpayer is required to comply with every applicable registration and filing requirements and has adequate human resources and premises for carrying out specified economic activities in Hong Kong in terms of holding and managing its equity participations.

16. It should also be emphasised that a taxpayer which is able to meet the economic substance requirement under the existing FSIE regime with regard to assets other than shares or equity interests will not be affected by the proposed refinements to the FSIE regime. Provided that the other assets are disclosed in the taxpayer's application for the Commissioner's Opinion or advance ruling on the compliance with the economic substance requirement, the Opinion or ruling previously granted in respect of such application will remain applicable under the proposed refined regime.

17. Likewise, the refined FSIE regime will not introduce any change to the adequacy test, that is to say –

- (a) a taxpayer that is not a pure equity-holding entity will need to employ an adequate number of qualified employees and incur an adequate amount of operating expenditure for carrying out its specified economic activities in Hong Kong; and
- (b) in the case of the reduced substantial activities test applicable to pure equity-holding entities, the taxpayer concerned will only need to have adequate human resources and premises for carrying out its specified economic activities in Hong Kong.

18. In considering whether a taxpayer has met the adequacy test, the Inland Revenue Department (“IRD”) will consider relevant factors, such as the nature of business, scale of operation, the number of employees and the amount of operating expenditure involved in the specified economic activities, etc.

Nexus approach in relation to IP disposal gains

19. Similar to the existing FSIE regime in respect of IP income, the nexus requirement consistent with BEPS Action 5 will be adopted in determining the extent to which IP disposal gains are to be exempted from tax.

(iv) Relief for intra-group transfer of assets

20. To ease the compliance burden of covered taxpayers, we will introduce an intra-group transfer relief⁸ under which any tax charged on IP disposal gains or non-IP disposal gains is to be deferred if the asset concerned is transferred between associated entities, subject to specific anti-abuse rules. The selling entity will be considered as “associated” with the acquiring entity where –

- (a) one of the entities has at least 75% of direct or indirect beneficial interest, or is directly or indirectly entitled to exercise or control the exercising of at least 75% of the voting rights, in or in relation to the other entity concerned; or
- (b) a third entity has at least 75% of direct or indirect beneficial interest, or is directly or indirectly entitled to exercise or control the exercising of at least 75% of the voting rights, in or in relation to each entity concerned.

21. To safeguard against abuse of the intra-group transfer relief, we will put in place the following specific anti-abuse measures –

- (a) both the selling entity and the acquiring entity are required to be chargeable to profits tax in Hong Kong within two years after the

⁸ The effect of such relief is that the transfer is deemed to take place for a consideration which gives rise to neither a gain nor a loss in the hand of the selling entity, while the acquiring entity is deemed to have acquired the asset at the same cost and on the same date as the selling entity. Hence, the disposal of assets within a group will not trigger any taxable gain or loss, and the economic gain or loss during the period of ownership of an asset by a group will only be considered for tax purposes when the asset leaves the group.

transfer of the asset⁹; and

- (b) both the selling entity and the acquiring entity are required to remain associated within two years after the transfer of the asset¹⁰.

Business facilitation measures and other related features of the refined FSIE regime

22. To provide the necessary continuity and tax certainty for taxpayers, other parts of the existing compliance framework of Hong Kong's FSIE regime will continue to apply to the refined FSIE regime. This covers the availability of double taxation relief and treatment of disposal loss as well as business facilitating measure to reduce compliance burden, enhance tax certainty and ensure tax transparency. In particular, where taxpayers have already obtained a favourable advance ruling or Commissioner's Opinion before, they may fill in a supplementary form to disclose details of the covered assets other than shares or equity interests and the information relating to the compliance of the economic substance requirement with respect to such assets (if applicable), and seek IRD's confirmation that the existing ruling or Opinion applies to the additional assets. Taxpayers are not required to file a new application. Details are set out in

B Annex B.

Tax competitiveness

23. As our guiding principle in refining the FSIE regime, we will strive to maintain the key advantages of our tax regime with a view to reinforcing Hong Kong's tax competitiveness. Hong Kong's refined FSIE regime continues to maintain a competitive edge over comparable regimes in other jurisdictions by covering only four types of foreign-sourced passive income and not affecting foreign-sourced active income, and including a host of business-friendly features such as covering MNE entities only and allowing an additional pathway (i.e. participation exemption) for claiming tax exemption in respect of foreign-sourced dividends and equity interest disposal gains without considering the economic substance requirement. As far as the proposed refinements to the FSIE regime

⁹ This aims to ensure that any subsequent disposal gains in relation to the transferred asset derived by the acquiring entity, if not exempt from tax, can be chargeable to profits tax in Hong Kong.

¹⁰ This aims to prevent any abuse of the relief by any disguised intra-group transfer with an intent to disposing of the asset to a third entity.

are concerned, the intra-group transfer relief mentioned in paragraphs 20 and 21 above is a unique feature provided by Hong Kong and is greatly welcomed by the stakeholders.

OTHER OPTIONS

24. We must amend the IRO in order to give effect to the above proposal. There is no other viable option.

THE BILL

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

- (a) **Clause 3** amends the existing definitions of disposal gain, sale and specified foreign-sourced income, and add new definitions of equity interest disposal gain, IP disposal gain, non-IP disposal gain, property and trader in section 15H(1) of the IRO;
- (b) **Clause 7** adds new sections 15OA, 15OB and 15OC to the IRO as follows:
 - (i) new section 15OA provides that, if a foreign-sourced disposal gain is derived from a sale that is an intra-group transfer, in applying section 15I(1) to the gain, the selling entity is to be regarded as having sold the relevant property for a consideration of such amount as would secure that neither a gain nor loss would accrue to the entity. Also, in applying Division 3A of Part 4 of, and Schedule 17FC to, the IRO to any future specified foreign-sourced income that may be derived from the property, or a resale of the property, and received in Hong Kong by the acquiring entity, the acquiring entity is to be regarded as having acquired the property for the consideration incurred by the selling entity at the time at which the selling entity acquired, or is to be regarded as having acquired, the property;

- (ii) new section 15OB provides that the new section 15OA does not apply, or ceases to apply, in certain circumstances;
 - (iii) new section 15OC explains the meaning of “associated” for the purposes of the new sections 15OA and 15OB;
- (c) **Clause 9** amends section 79 of the IRO to provide for the refund of overpaid tax in the case of an entity being assessed in the name of another entity under the new section 15OB(2)(c);
- (d) **Clauses 10 and 14** respectively amend section 89 of, and add a new **Schedule 56** to, the IRO to provide for transitional arrangements;
- (e) **Clause 11** amends Schedule 17FC to the IRO to deal with IP disposal gains and losses; and
- (f) **Clauses 4, 5, 6, 8, 12 and 13** respectively make related amendments to sections 15K, 15M, 15N and 15P of, and Schedules 54 and 55 to, the IRO.

LEGISLATIVE TIMETABLE

26. The legislative timetable is as follows –

Publication in the Gazette	13 October 2023
First Reading and commencement of Second Reading debate	18 October 2023
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

27. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the IRO and its subsidiary legislation. It has

no environmental, gender, family or productivity implications, and no sustainability implications other than those set out in the economic implications paragraphs in **Annex C**. The economic, financial and civil service implications of the proposal are set out in **Annex C**.

PUBLIC CONSULTATION

28. We conducted a stakeholder consultation exercise from 6 April to 6 June 2023, through the issuance of a consultation paper and the organisation of several engagement sessions. More than 70 organisations, including tax professionals, local and foreign chambers of commerce, trade and professional bodies and representatives of the financial services sector, were engaged. A total of 20 written submissions were received. Stakeholders agreed with the need to refine the FSIE regime to bring it in line with the Updated FSIE Guidance, and supported the Government's work in providing business-friendly facilitating measures to ease compliance burden. Stakeholders' comments have been largely taken on board as appropriate when finalising the legislative proposal.

29. We briefed the LegCo Panel on Financial Affairs on the legislative proposal on 8 May 2023. Panel members raised no objection to our proposal.

PUBLICITY

30. We will issue a press release on 11 October 2023. A spokesperson will be available to answer media and public enquiries.

BACKGROUND

31. Under our territorial source principle of taxation, foreign-sourced passive income is not chargeable to tax in Hong Kong. In October 2021, the EU placed Hong Kong in the watchlist in view of possible risks of double non-taxation arising from the non-taxation of foreign-sourced passive income in the absence of any requirement for recipient companies to have a substantial economic presence in Hong Kong. The EU was mainly concerned about possible exploitation of the tax arrangement by shell companies for obtaining tax benefits. In response to the inclusion of Hong Kong in the EU watchlist in 2021, Hong Kong has since 1 January 2023 put in place a new FSIE regime for foreign-

sourced dividend, interest, IP income and equity interest disposal gain to address the EU's concerns.

ENQUIRIES

32. In case of enquiries about this Brief, please contact Mr Stephen Lo, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2317.

**Financial Services and the Treasury Bureau
October 2023**

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2023

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A BILL To

Amend the Inland Revenue Ordinance to provide that certain foreign-sourced gains and profits derived from the sale of movable property and immovable property are to be regarded as arising in or derived from Hong Kong; to provide for an intra-group transfer relief for such gains and profits; and to provide for related and transitional matters.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023.
- (2) This Ordinance comes into operation on 1 January 2024.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 14.

3. Section 15H amended (interpretation of Division 3A of Part 4)

- (1) Section 15H(1), definition of *disposal gain*—
Repeal
everything after “means”
Substitute
“any IP disposal gain or non-IP disposal gain;”.

- (2) Section 15H(1), definition of *sale*—
Repeal
everything after “to” and before “for”
Substitute
“any property, means a transfer of the property (other than a transfer effected by extinguishing the property)”.
- (3) Section 15H(1), definition of *specified foreign-sourced income*, paragraphs (a), (b) and (c), before “disposal”—
Add
“non-IP”.
- (4) Section 15H(1), definition of *specified foreign-sourced income*, paragraph (c)(ii)—
Repeal
“profits; or”
Substitute
“profits;”.
- (5) Section 15H(1), definition of *specified foreign-sourced income*, paragraph (d), before “disposal”—
Add
“non-IP”.
- (6) Section 15H(1), definition of *specified foreign-sourced income*, paragraph (d)(ii), after “sums;”—
Add
“or”.
- (7) Section 15H(1), definition of *specified foreign-sourced income*, after paragraph (d)—
Add

- “(e) any non-IP disposal gain that—
- (i) accrues to an entity that is a trader; and
 - (ii) is derived from, or is incidental to, the entity’s business as a trader;”.

(8) Section 15H(1)—

Add in alphabetical order

“equity interest disposal gain (股權權益處置收益) means any gain or profit derived from the sale of equity interests (other than partnership interests) in an entity;

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

non-IP disposal gain (非知識產權處置收益) means any gain or profit derived from the sale of property, but does not include IP disposal gains;

property (財產) means any movable property or immovable property;

trader (買賣商) means an entity that sells, or offers to sell, property in the entity’s ordinary course of business;”.

4. **Section 15K amended (exception 1: interest, dividend or disposal gain subject to economic substance requirement being met)**

- (1) Section 15K, heading, before “disposal”—

Add

“non-IP”.

- (2) Section 15K(1)(a), before “disposal”—

Add

“non-IP”.

- (3) Section 15K(3), definition of *pure equity-holding entity*, paragraph (b)(ii), before “disposal”—

Add

“equity interest”.

5. **Section 15M amended (exception 3: dividend or disposal gain subject to participation requirement being met)**

- (1) Section 15M, heading, before “disposal”—

Add

“equity interest”.

- (2) Section 15M(1)(b)(i) and (ii), before “disposal”—

Add

“equity interest”.

- (3) Section 15M(3), definition of *investee entity*, paragraph (b)—

Repeal

“a disposal”

Substitute

“an equity interest disposal”.

6. **Section 15N amended (when does section 15M not apply)**

Section 15N(2)(c)—

Repeal

“a disposal”

Substitute

“an equity interest disposal”.

7. Sections 150A, 150B and 150C added

Part 4, Division 3A, Subdivision 3, after section 150—

Add

“150A. Exception 4: intra-group transfer relief for disposal gain

- (1) This section applies if—
- (a) any specified foreign-sourced income (*subject income*) received in Hong Kong by an MNE entity (*selling entity*) is a disposal gain;
 - (b) the sale from which the gain is derived (*subject sale*) is an intra-group transfer;
 - (c) the property to which the subject sale relates (*subject property*) is acquired by an entity (*acquiring entity*); and
 - (d) both the selling entity and the acquiring entity are, at the time of the subject sale, chargeable to profits tax under this Part.
- (2) For the purposes of subsection (1)(b), the subject sale is an intra-group transfer if the selling entity and the acquiring entity are, at the time of the sale, associated with each other.
- (3) Subject to section 150B, in applying section 151(1) to the subject income, the selling entity is to be regarded as having sold the subject property for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the selling entity.
- (4) Subject to section 150B, subsections (5), (6), (7), (8) and (9) apply if, subsequent to the subject sale, the acquiring entity—

- (a) derives specified foreign-sourced income (*future income*) from the subject property or a resale of the property; and
 - (b) receives the future income in Hong Kong.
- (5) In applying this Division and (if applicable) Schedule 17FC to the future income, the acquiring entity is to be regarded as having acquired the property for the consideration mentioned in subsection (3) at the time at which the selling entity acquired, or is to be regarded as having acquired, the property.
- (6) If—
- (a) an outgoing or expense (however called) is incurred by the selling entity in the production of the subject income;
 - (b) but for the operation of subsection (3), that outgoing or expense, or a part of it, would be deductible for a year of assessment in accordance with section 15Q and Division 4; and
 - (c) the future income is a disposal gain, that outgoing or expense, or that part of the outgoing or expense, is, for the purposes of section 15Q and Division 4, to be regarded as having been incurred by the acquiring entity in the production of the future income.
- (7) If—
- (a) any balancing charge is directed to be made on, or any allowance is made to, the selling entity under Part 6;
 - (b) that charge or allowance, or a part of it, relates to the subject income;

- (c) but for the operation of subsection (3), that charge or allowance, or that part of the charge or allowance, would be taken into account under section 18F or 19E (whether or not because of section 15R) when calculating the amount of the selling entity's assessable profits or loss; and
 - (d) the future income is a disposal gain, that charge or allowance, or that part of the charge or allowance, is, for the purposes of sections 15R, 18F and 19E and Part 6, to be regarded as having been directed to be made on, or having been made to, the acquiring entity and as relating to the future income.
- (8) If—
- (a) but for the operation of subsection (3), any tax paid in respect of the subject income by the selling entity in a territory outside Hong Kong (*foreign tax*) would be allowable under section 50 (whether or not because of section 50AAA) as a credit against tax payable in respect of that income by the selling entity in Hong Kong; and
 - (b) the future income is a disposal gain, that foreign tax is, for the purposes of sections 50 and 50AAA and Schedule 54, to be regarded as tax paid in respect of the future income by the acquiring entity in that territory.
- (9) If both the subject income and future income are qualifying IP disposal gains, then in applying Schedule 17FC to the future income—
- (a) all qualifying R&D expenditures incurred by the selling entity in respect of the subject property are to

be regarded as qualifying R&D expenditures incurred by the acquiring entity in respect of the subject property; and

- (b) all non-qualifying expenditures incurred by the selling entity in respect of the subject property are to be regarded as non-qualifying expenditures incurred by the acquiring entity in respect of the subject property.

(10) In this section—

associated (相聯)—see section 150C;

non-qualifying expenditure (不合資格開支)—see section 6 of Schedule 17FC;

qualifying IP disposal gain (合資格知識產權處置收益) has the meaning given by section 1(2) of Schedule 17FC;

qualifying R&D expenditure (合資格研發開支)—see section 5 of Schedule 17FC.

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

- (1) For the purposes of section 150A(3) and (4), this section applies if, within 2 years after the subject sale in relation to the subject income mentioned in section 150A(3)—
 - (a) the selling entity or the acquiring entity ceases to be chargeable to profits tax under this Part; or
 - (b) the selling entity and the acquiring entity cease to be associated with each other.
- (2) In relation to the subject income—
 - (a) section 150A(3) is to cease to apply;
 - (b) section 151(1) is to apply as if the income were received in Hong Kong during the selling entity's

- basis period of the year of assessment during which the event occurs; and
- (c) if, as a result of the operation of paragraph (b), profits tax is chargeable in respect of the income because of section 15I(1)—
- (i) the selling entity is chargeable to the tax in the entity's name or in the name of the acquiring entity; and
- (ii) the tax is recoverable by all means provided in this Ordinance from the selling entity or acquiring entity.
- (3) If any future income in relation to which section 15OA(5) applies has already accrued to, and has already been received in Hong Kong by, the acquiring entity at the time of the event, then in relation to the income—
- (a) section 15OA(5) and (if applicable) section 15OA(6), (7), (8) and (9) are to cease to apply; and
- (b) if the income was not chargeable to profits tax because of section 15OA(5), section 15I(1) is to apply as if the income were received in Hong Kong during the acquiring entity's basis period of the year of assessment during which the event occurs.
- (4) In relation to any future income that—
- (a) has not yet accrued to the acquiring entity at the time of the event; or
- (b) has already accrued to, but has not yet been received in Hong Kong by, the acquiring entity at the time of the event,

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

(5) In this section—

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

associated (相聯)—see section 15OC;

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

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

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

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

15OC. Supplementary provision to sections 15OA and 15OB: meaning of *associated*

- (1) For the purposes of sections 15OA and 15OB, 2 entities are associated with each other if—
- (a) one of them has an associating interest in the other; or
- (b) a third entity has an associating interest in both of them.
- (2) For the purposes of subsection (1), an entity (*entity A*) has an associating interest in another entity (*entity B*) if—

- (a) entity A has at least 75% of direct or indirect beneficial interest in, or in relation to, entity B; or
 - (b) entity A is, directly or indirectly, entitled to exercise, or control the exercise of, at least 75% of the voting rights in, or in relation to, entity B.
- (3) In applying subsection (2), if entity A has a direct beneficial interest in entity B, the extent of the beneficial interest of entity A in entity B is—
- (a) if entity B is a corporation that is not a trustee of a trust estate—the percentage of the issued share capital (however described) of the corporation held by entity A;
 - (b) if entity B is a partnership that is not a trustee of a trust estate—the percentage of the income of the partnership to which entity A is entitled;
 - (c) if entity B is a trustee of a trust estate—the percentage in value of the trust estate in which entity A is interested; or
 - (d) if entity B is an entity that does not fall within any of paragraphs (a), (b) and (c)—the percentage of entity A's ownership interest in the entity.
- (4) In applying subsection (2), if entity A has an indirect beneficial interest in, or is indirectly entitled to exercise or control the exercise of voting rights in, entity B through another entity (*interposed entity*), the extent of the beneficial interest or voting rights of entity A in entity B is—
- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest or

- voting rights of entity A in the interposed entity by the percentage representing the extent of the beneficial interest or voting rights of the interposed entity in entity B; or
- (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest or voting rights of entity A in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest or voting rights of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest or voting rights of the last interposed entity in the series in entity B.
- (5) For the purposes of subsection (4)—
- (a) subsection (3) applies in determining the extent of the beneficial interest of entity A in an interposed entity as if the references to entity B in subsection (3) were references to an interposed entity;
 - (b) subsection (3) applies in determining the extent of the beneficial interest of an interposed entity in entity B as if the references to entity A in subsection (3) were references to an interposed entity; and
 - (c) subsection (3) applies in determining the extent of the beneficial interest of an interposed entity (*interposed entity X*) in another interposed entity (*interposed entity Y*) as if—

- (i) the references to entity A in subsection (3) were references to interposed entity X; and
 - (ii) the references to entity B in subsection (3) were references to interposed entity Y.
 - (6) In applying subsection (2)(b), the voting rights attributed to entity A include all the voting rights of persons other than entity A so far as they are required, or may be required, to be exercised in one or more of the following ways—
 - (a) on behalf of entity A;
 - (b) under the direction of entity A;
 - (c) for the benefit of entity A.
 - (7) For the purposes of this section, if—
 - (a) a reference is made to the exercise of the voting rights in an entity; and
 - (b) the entity is a corporation,the reference is to be read as a reference to the exercise of the voting rights at general meetings of the entity.”
8. **Section 15P amended (setting off loss sustained from sale of equity interests outside Hong Kong)**
- (1) Section 15P, heading—

Repeal

“equity interests”

Substitute

“certain property”.
 - (2) Section 15P(1)(a)—

Repeal

- everything after “of”
- Substitute**
- “any property (other than qualifying intellectual property as defined by section 1(2) of Schedule 17FC);”.
9. **Section 79 amended (tax paid in excess to be refunded)**
- (1) Section 79(3), Chinese text—

Repeal

“的收據”

Substitute

“收取該項退款”.
 - (2) After section 79(3)—

Add

“(3A) If an entity (*entity A*) has been assessed in the name of another entity (*entity B*) under section 15OB(2)(c) and the tax so assessed has been paid by entity B—

 - (a) entity A or entity B, but not both, may make a claim under subsection (1) for a refund of the tax overpaid; and
 - (b) if a refund is made to entity B, the entity’s receipt is a valid discharge in respect of the amount of the refund.”.
 - (3) After section 79(4)—

Add

“(5) In this section—

entity (實體) has the meaning given by section 15H(1).”.

10. **Section 89 amended (transitional provisions)**

After section 89(29)—

Add

“(30) Schedule 56 sets out transitional provisions that have effect for the purposes of the amendments to this Ordinance made by the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 (of 2023).”.

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

(1) Schedule 17FC—

Repeal

“51C, 80 & 82A & Sch. 55]”

Substitute

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

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

Repeal

everything after “means”

Substitute

“—

(a) any qualifying general IP income; or

(b) any qualifying IP disposal gain;”.

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

Repeal paragraphs (a) and (b)

Substitute

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

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

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

(b) if the income is a qualifying IP disposal gain—

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

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

(4) Schedule 17FC, section 1(2)—

Add in alphabetical order

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

(a) the exhibition or use of, or a right to exhibit or use, (whether in or outside Hong Kong) the property; or

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

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

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

Add

“general”.

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

Add

“(general loss)”.

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

Add

“(1A) This section also applies if—

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

- (8) Schedule 17FC, section 7(2)—

Repeal

“loss may”

Substitute

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

- (9) Schedule 17FC, section 7(3)—

Repeal

“loss not so set off may”

Substitute

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

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

Add

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

- (11) Schedule 17FC, section 7(4)—

Repeal

“a loss”

Substitute

“a general loss or sale loss”.

- (12) Schedule 17FC, section 7(4)—

Repeal

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

Substitute

“the qualifying intellectual property.”.

- (13) Schedule 17FC, section 7(5)—

Repeal

“a loss”

Substitute

“a general loss or sale loss”.

- (14) Schedule 17FC, section 7(6)—

Repeal

“a loss”

Substitute

“a general loss or sale loss”.

(15) Schedule 17FC, section 7(6)—

Repeal

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

Substitute

“the qualifying intellectual property.”

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

Add

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

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

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

- (a) if the loss is a general loss within the meaning of section 7(1)(b) of this Schedule—
- (i) beginning on 1 January 2023 or on an earlier date elected by the entity; and
- (ii) ending on the last day of the entity’s basis period of the year of assessment during which the loss is sustained; or

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

- (i) beginning on 1 January 2024 or on an earlier date elected by the entity; and
- (ii) ending on the last day of the entity’s basis period of the year of assessment during which the loss is sustained;”;

- (b) in section 4(1) of this Schedule—

- (i) the words “qualifying intellectual property (*subject intellectual property*) held” are substituted for the words “qualifying IP income received”; and
- (ii) the words “subject intellectual property” are substituted for the words “qualifying intellectual property to which the qualifying IP income relates (*subject intellectual property*)”;

- (c) in sections 5(1) and 6(1) of this Schedule, the words “qualifying intellectual property (*subject intellectual property*) held” are substituted for the words “qualifying IP income received”;

- (d) in sections 5(2) and 6(2) of this Schedule, the words “subject intellectual property” are substituted for the words “qualifying intellectual property to which the qualifying IP income relates (*subject intellectual property*)”.

(17) Schedule 17FC, section 10(1)(a)—

Repeal subparagraphs (i) and (ii)

Substitute

- “(i) if the income is qualifying general IP income—
- (A) beginning on 1 January 2023; and
 - (B) ending on the last day of the entity’s basis period of the year of assessment beginning on 1 April 2024;
- or
- (ii) if the income is a qualifying IP disposal gain—
- (A) beginning on 1 January 2024; and
 - (B) ending on the last day of the entity’s basis period of the year of assessment beginning on 1 April 2025; and”.

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

- (1) Schedule 54, section 1—

Add in alphabetical order

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

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

- (2) Schedule 54, section 2(4)—

Repeal

everything after “subsection”

Substitute

“(1)(a)—

- (a) in relation to any specified foreign-sourced income that is a disposal gain (other than equity interest

disposal gain)—section 50AAA applies in relation to profits tax payable for a year of assessment beginning on or after 1 April 2023 in respect of income accrued and received on or after 1 January 2024;

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

13. Schedule 55 amended (transitional provisions for Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022)

- (1) Schedule 55, section 1, definition of *specified foreign-sourced income*—

Repeal

“15H(1).”

Substitute

“15H(1) as in force immediately before 1 January 2024.”.

- (2) Schedule 55, section 2(1)—

Repeal

“and Schedule 17FC”

Substitute

“as in force immediately before 1 January 2024 and Schedule 17FC as in force immediately before 1 January 2024”.

- (3) Schedule 55, section 2(2)—

Repeal

“and section 15P”

Substitute

“as in force immediately before 1 January 2024 and section 15P as in force immediately before 1 January 2024”.

14. Schedule 56 added

After Schedule 55—

Add

“Schedule 56

[s. 89(30)]

**Transitional Provisions for Inland Revenue
(Amendment) (Taxation on Foreign-sourced
Disposal Gains) Ordinance 2023**

1. Interpretation of Schedule 56

In this Schedule—

2023 Amendment Ordinance (《2023 年修訂條例》) means the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 (of 2023);

specified foreign-sourced income (指明外地收入) has the meaning given by section 15H(1).

2. Transitional arrangements

(1) The amendments made to Division 3A of Part 4 and Schedule 17FC by the 2023 Amendment Ordinance apply

in relation to specified foreign-sourced income accrued and received on or after 1 January 2024.

- (2) Without limiting subsection (1), the amendments made to section 7 of Schedule 17FC and section 15P by the 2023 Amendment Ordinance apply in relation to losses sustained on or after 1 January 2024.”.

Explanatory Memorandum

The objects of this Bill are—

- (a) to amend the Inland Revenue Ordinance (Cap. 112) (*principal Ordinance*)—
 - (i) to provide that certain foreign-sourced gains and profits derived from the sale of movable property and immovable property are to be regarded as arising in or derived from Hong Kong; and
 - (ii) to provide for an intra-group transfer relief for such gains and profits; and
 - (b) to provide for related and transitional matters.
2. The Bill contains 14 clauses.
 3. Clause 1 sets out the short title and provides for commencement.
 4. Clause 2 is the standard enactments amended clause included in amending legislation.
 5. Clause 3 amends the existing definitions of *disposal gain*, *sale* and *specified foreign-sourced income* in section 15H(1) of the principal Ordinance. The clause also adds new definitions to the section, namely *equity interest disposal gain*, *IP disposal gain*, *non-IP disposal gain*, *property* and *trader*.
 6. Clause 7 adds new sections 15OA, 15OB and 15OC to the principal Ordinance. The new section 15OA provides, among other things, that, if a foreign-sourced disposal gain is derived from a sale that is an intra-group transfer—
 - (a) in applying section 15I(1) of the principal Ordinance to the gain, the selling entity is to be regarded as having sold the relevant property for a consideration of such amount

- as would secure that neither a gain nor loss would accrue to the selling entity; and
 - (b) in applying Division 3A of Part 4 of, and (if applicable) Schedule 17FC to, the principal Ordinance to any future specified foreign-sourced income that may be derived from the property, or a resale of the property, and received in Hong Kong by the acquiring entity, the acquiring entity is to be regarded as having acquired the property for the consideration mentioned in subparagraph (a) at the time at which the selling entity acquired, or is to be regarded as having acquired, the property.
7. The new section 15OB provides that the new section 15OA does not apply, or ceases to apply, in certain circumstances.
 8. The new section 15OC explains the meaning of *associated* for the purposes of the new sections 15OA and 15OB.
 9. Clause 9 amends section 79 of the principal Ordinance to provide for the refund of overpaid tax in the case of an entity being assessed in the name of another entity under the new section 15OB(2)(c).
 10. Clauses 10 and 14 respectively add a new section 89(30) and a new Schedule 56 to the principal Ordinance to provide for transitional arrangements.
 11. Clause 11 amends Schedule 17FC to the principal Ordinance to deal with IP disposal gains and losses.
 12. Clauses 4, 5, 6, 8, 12 and 13 respectively make related amendments to sections 15K, 15M, 15N and 15P of, and Schedules 54 and 55 to, the principal Ordinance.

**Related Features of the Existing FSIE Regime
to be Maintained in the Refined Regime**

The following features of the compliance framework of the existing FSIE regime will continue to be adopted to ensure continuity under the refined regime.

(i) Double taxation relief

2. With reference to the mechanism under the existing FSIE regime, double taxation relief will be provided to Hong Kong resident persons under the refined regime by way of bilateral tax credit for taxes paid on any foreign-sourced disposal gains (whether IP disposal gains or non-IP disposal gains) in the jurisdictions which have entered into comprehensive avoidance of double taxation agreements (“CDTAs”) with Hong Kong (“CDTA jurisdictions”), or unilateral tax credit for such taxes paid in non-CDTA jurisdictions.

3. Regarding non-Hong Kong resident persons, the current treatment for the foreign tax paid by them on the foreign-sourced dividend, interest, IP income and equity interest disposal gain in CDTA jurisdictions or non-CDTA jurisdictions to be deductible as an expense in accordance with the existing provisions of the IRO will apply to the foreign tax paid on any foreign-sourced disposal gains.

(ii) Treatment for disposal loss

4. Following the approach adopted under the existing FSIE regime, all foreign-sourced disposal loss can only be used to set off against specified foreign-sourced income accrued in the same year and subsequent years.

(iii) Business facilitating measures

5. Under the existing FSIE regime, we have adopted a four-pronged approach to provide ease of compliance for taxpayers. The business-friendly facilitating measures are welcomed by the trade as being conducive to reducing compliance burden, enhancing tax certainty and ensuring tax transparency. Such

measures will continue to be adopted under the refined regime. Details are set out as follows -

(a) Simplified reporting procedures

To **minimise the compliance burden** for taxpayers, a covered taxpayer will only be required to submit essential, high-level information and declarations in the tax return to demonstrate compliance with the economic substance requirement for the year of accrual of the relevant income. The taxpayer will only be required to report receipt of foreign-sourced disposal gains in Hong Kong to which no exemption is applicable in the year of accrual of the same income.

(b) Advance rulings and Commissioner's Opinion

To **enhance tax certainty**, advance rulings or Commissioner's Opinion¹ on compliance with the economic substance requirement which are valid up to five years will continue to be provided. Taxpayers may apply to the IRD for an advance ruling, or a Commissioner's Opinion in the interim, on whether the economic substance requirement in respect of foreign-sourced disposal gains is satisfied, and avail themselves of the streamlined reporting requirements. Where an advance ruling or a Commissioner's Opinion has been obtained, the taxpayer will be subject to streamlined reporting requirements by only disclosing the existence of the ruling or Opinion and confirming its compliance with the conditions specified in the ruling or Opinion (e.g. the range of profits accrued).

Where taxpayers have already obtained a favourable advance ruling or Commissioner's Opinion before, they may fill in a supplementary form to disclose details of the covered assets other

¹ With reference to the practice adopted before the implementation of the FSIE regime in January 2023, taxpayers who wish to seek opinion in respect of their compliance with the economic substance requirement for the foreign-sourced disposal gains before the enactment of the refinements may apply for a "Commissioner's Opinion" as a transitional measure.

than shares or equity interests and information relating to the compliance of the economic substance requirement with respect to such assets (if applicable), and seek IRD's confirmation that the existing ruling or Opinion applies to the additional assets. Taxpayers are not required to file a new application.

(c) Administrative guidance

With reference to past experience, in order to **provide better tax transparency**, the IRD will publish administrative guidance with illustrative examples as well as frequently asked questions on its website to help taxpayers ascertain their tax liabilities.

(d) Dedicated assistance

To **facilitate compliance by covered taxpayers**, a dedicated team within the IRD will provide technical support to taxpayers and answer enquires with regard to the refined FSIE regime.

Economic, Financial and Civil Service Implications of the Proposal

Economic Implications

The proposal will demonstrate Hong Kong's continued support for international efforts in combating cross-border tax evasion and preventing double non-taxation. This is particularly crucial for Hong Kong to preserve its competitiveness and reputation as an international financial and business centre, and to avoid being listed as a "non-cooperative" tax jurisdiction by the EU.

2. Given that the proposal will mainly affect companies set up by MNE groups in Hong Kong that do not meet the economic substance requirement, the economic impact is not expected to be significant, as these companies by definition do not bring significant economic contributions or many job opportunities to Hong Kong. On the contrary, the proposal may encourage in-scope MNE entities which have a limited economic presence in Hong Kong to take certain steps to comply with the economic substance requirement (such as by employing more qualified employees and incurring more operating expenditures in Hong Kong) in order to enjoy tax exemption, or the MNE entities may be prompted to bring transactions in respect of disposal of assets onshore.

Financial and Civil Service Implications

3. Additional resources have been provided to the Inland Revenue Department since 1 April 2022 and beyond to cope with the work arising from reinforced international tax co-operation and tax matters of large MNE groups in Hong Kong.

4. The legislative proposal, which seeks to expand the scope of the FSIE regime to cover disposal gains in relation to all assets, will not have significant implication on tax revenue. Based on experience, in-scope MNE groups operating in Hong Kong should have no major difficulty in meeting the economic substance requirement to enjoy tax exemption for foreign-sourced non-IP disposal gains. Even if the taxpayers fail to meet the economic substance requirement for foreign-sourced non-IP disposal gains or the nexus requirement for foreign-sourced IP disposal gains, since the gains are normally subject to tax in the foreign source jurisdictions, the resulting increase in tax revenue is not expected to be significant given the availability of double taxation relief.