

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

Committee Stage

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

<u>Clause</u>	<u>Amendment Proposed</u>
4	In the proposed section 40AV(2) and (3), by adding “16FA,” after “16F,”.
6(2)	In the English text, by deleting “16E & 17A” and substituting “16E & 17A”.
7	In the proposed Schedule 16E, by adding “16FA,” before “16G, 16H, 16I & 16J”.
7	In the proposed Schedule 16E, in section 1(4), by deleting “(because of section 8 of this Schedule)”.
7	In the proposed Schedule 16E, in section 2(1)(a), by deleting “the central management and control of the company is exercised” and substituting “the company is normally managed or controlled”.
7	In the proposed Schedule 16E, in section 2(2), by adding “(<i>particular family</i>)” after “a family”.
7	In the proposed Schedule 16E, in section 2, by adding— <div style="margin-left: 40px;"> <p>“(2A) Without limiting subsection (2)(a), if both Condition 1 and Condition 2 are met with respect to the family office, the members of the particular family are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the family office.</p> <p>(2B) Condition 1 is that one or more than one member of the particular family has at least 75%, but less than 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the family office.</p> </div>

(2C) Condition 2 is—

- (a) that one or more than one charitable entity has a beneficial interest (whether direct or indirect) in the family office; and
- (b) that—
 - (i) no unrelated person has a beneficial interest (whether direct or indirect) in the family office; or
 - (ii) the total percentage of the beneficial interest (whether direct or indirect) that an unrelated person has in the family office or, if there is more than one unrelated person, the total percentage of the beneficial interest (whether direct or indirect) that those unrelated persons have in that office does not exceed 5%.

(2D) For the purposes of subsection (2C)(b)(i), an unrelated person is not regarded as having a beneficial interest in the family office if the unrelated person has the beneficial interest only because a charitable entity has a beneficial interest (whether direct or indirect) in the office.

(2E) For the purposes of subsection (2C)(b)(ii), in determining the extent of the beneficial interest (whether direct or indirect) that an unrelated person has in the family office, any beneficial interest (whether direct or indirect) that the unrelated person has—

- (a) in a charitable entity that has a beneficial interest (whether direct or indirect) in the family office; or
- (b) in any other unrelated person that is an entity and that has a beneficial interest (whether direct or indirect) in the office,

is not to be taken into account.”.

7 In the proposed Schedule 16E, in section 2(3), in the definition of *specified person*, in paragraph (d), by deleting the full stop and substituting a semicolon.

7 In the proposed Schedule 16E, in section 2(3), by adding in alphabetical order—

“*charitable entity* (慈善實體) means a charitable institution or trust of a public character that is exempt from tax under section 88;

unrelated person (無關連人士), in relation to a particular family—

(a) means—

(i) an entity in which no member of the particular family has a beneficial interest (whether direct or indirect);
or

(ii) a natural person who is not a member of the family;
and

(b) does not include a charitable entity.”.

7 In the proposed Schedule 16E, by renumbering section 5 as section 5(1).

7 In the proposed Schedule 16E, in section 5(1)(a), by adding “(***particular family***)” after “a family”.

7 In the proposed Schedule 16E, in section 5, by adding—

“(2) Without limiting subsection (1)(a), if both Condition 1 and Condition 2 are met with respect to Entity A, the members of the particular family are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in Entity A.

(3) Condition 1 is that one or more than one member of the particular family has at least 75%, but less than 95%, in aggregate, of the beneficial interest (whether direct or indirect) in Entity A.

(4) Condition 2 is—

(a) that one or more than one charitable entity has a beneficial interest (whether direct or indirect) in Entity A; and

(b) that—

(i) no unrelated person has a beneficial interest (whether direct or indirect) in Entity A; or

(ii) the total percentage of the beneficial interest (whether direct or indirect) that an unrelated person has in Entity A or, if there is more than one unrelated person, the total percentage of the beneficial interest (whether direct or indirect) that those unrelated persons have in Entity A does not exceed 5%.

(5) For the purposes of subsection (4)(b)(i), an unrelated person is not regarded as having a beneficial interest in Entity A if the

unrelated person has the beneficial interest only because a charitable entity has a beneficial interest (whether direct or indirect) in Entity A.

- (6) For the purposes of subsection (4)(b)(ii), in determining the extent of the beneficial interest (whether direct or indirect) that an unrelated person has in Entity A, any beneficial interest (whether direct or indirect) that the unrelated person has—
- (a) in a charitable entity that has a beneficial interest (whether direct or indirect) in Entity A; or
 - (b) in any other unrelated person that is an entity and that has a beneficial interest (whether direct or indirect) in Entity A,

is not to be taken into account.

- (7) In this section—

charitable entity (慈善實體) means a charitable institution or trust of a public character that is exempt from tax under section 88;

unrelated person (無關連人士), in relation to a particular family—

- (a) means—
 - (i) an entity in which no member of the particular family has a beneficial interest (whether direct or indirect); or
 - (ii) a natural person who is not a member of the family; and
- (b) does not include a charitable entity.”.

7 In the proposed Schedule 16E, in section 8, in the heading, by deleting “for sections 2(2) and 5 of this Schedule”.

7 In the proposed Schedule 16E, in section 8(1), by deleting “, subject to this section,”.

7 In the proposed Schedule 16E, in section 8(1), by deleting “5 of this Schedule (***subject entity***)” and substituting “5(1) of this Schedule”.

7 In the proposed Schedule 16E, in section 8, by adding—

“(1A) Schedule 16FA applies, for the purposes of sections 2(2C)(b)(ii) and 5(4)(b)(ii) of this Schedule, in determining the

extent of the beneficial interest that an unrelated natural person has in a subject entity.

- (1B) Schedule 16G applies, for the purposes of sections 2(2C)(b)(ii) and 5(4)(b)(ii) of this Schedule, in determining the extent of the beneficial interest that an unrelated entity has in a subject entity.
- (1C) If it is not practicable to determine the extent, in aggregate, of the beneficial interest that one or more than one member of a family has in a subject entity, subsection (2) or (3) (as the case requires) applies.”.

7 In the proposed Schedule 16E, in section 8(3), by deleting “only”.

7 In the proposed Schedule 16E, in section 8, by adding—

- “(8A) Subsection (8H) applies in relation to a subject entity and a family if—
 - (a) Condition 1 or Condition 2 is met;
 - (b) it is not practicable to apply Schedule 16F or 16G, or both; and
 - (c) none of the deeming provisions can be relied on.
- (8B) Condition 1 is that the subject entity is a specified trust (*Trust A*) and one or more than one member of a family—
 - (a) is a specified beneficiary under Trust A; or
 - (b) has a connection with the subject entity through—
 - (i) another specified trust; or
 - (ii) a series of 2 or more entities in which there is one or more than one specified trust.
- (8C) Condition 2 is that the subject entity is not a specified trust but one or more than one member of a family has a connection with the subject entity through—
 - (a) a specified trust (*Trust B*); or
 - (b) a series of 2 or more entities in which there is one or more than one specified trust.
- (8D) For the purposes of subsection (8B)(b)(i), a member of a family has a connection with Trust A through a specified trust if—
 - (a) the specified trust is related to the family; and
 - (b) the specified trust—

- (i) is a specified beneficiary under Trust A; or
 - (ii) has a beneficial interest (whether direct or indirect) in Trust A.
- (8E) For the purposes of subsection (8B)(b)(ii), a member of a family has a connection with Trust A through a series of 2 or more entities—
 - (a) if—
 - (i) the member of the family has a beneficial interest (whether direct or indirect) in the first entity in the series;
 - (ii) each entity in the series—
 - (A) has a beneficial interest (whether direct or indirect) in the next following entity in the series (*next following interposed entity*); or
 - (B) if the next following interposed entity is a specified trust—is a specified beneficiary under the trust; and
 - (iii) the last entity in the series—
 - (A) has a beneficial interest (whether direct or indirect) in Trust A; or
 - (B) is a specified beneficiary under Trust A; or
 - (b) if—
 - (i) the first entity in the series is a specified trust related to the family;
 - (ii) each entity in the series—
 - (A) has a beneficial interest (whether direct or indirect) in the next following interposed entity; or
 - (B) if the next following interposed entity is a specified trust—is a specified beneficiary under the trust; and
 - (iii) the last entity in the series—
 - (A) has a beneficial interest (whether direct or indirect) in Trust A; or
 - (B) is a specified beneficiary under Trust A.

- (8F) For the purposes of subsection (8C)(a), a member of a family has a connection with the subject entity through Trust B if—
- (a) Trust B is related to the family; and
 - (b) Trust B has a beneficial interest (whether direct or indirect) in the subject entity.
- (8G) For the purposes of subsection (8C)(b), a member of a family has a connection with the subject entity through a series of 2 or more entities—
- (a) if—
 - (i) the member of the family has a beneficial interest (whether direct or indirect) in the first entity in the series;
 - (ii) each entity in the series—
 - (A) has a beneficial interest (whether direct or indirect) in the next following entity in the series (*next following entity*); or
 - (B) if the next following entity is a specified trust—is a specified beneficiary under the trust; and
 - (iii) the last entity in the series has a beneficial interest (whether direct or indirect) in the subject entity; or
 - (b) if—
 - (i) the first entity in the series is a specified trust related to the family;
 - (ii) each entity in the series—
 - (A) has a beneficial interest (whether direct or indirect) in the next following entity; or
 - (B) if the next following entity is a specified trust—is a specified beneficiary under the trust; and
 - (iii) the last entity in the series has a beneficial interest (whether direct or indirect) in the subject entity.
- (8H) If the Commissioner is satisfied that it is highly probable that one or more than one member of the family will have at least 95%, in aggregate, of the beneficial interest in the subject entity—

- (a) the Commissioner may regard the extent requirement as having been complied with in relation to the family and the subject entity; and
 - (b) one or more than one member of the family is taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the subject entity.
- (8I) In considering whether it is highly probable that one or more than one member of a family would have at least 95%, in aggregate, of the beneficial interest in a subject entity, regard is to be had to all the circumstances of the case, including the following—
- (a) the extent of the beneficial interest (whether direct or indirect) that a member of the family has in one or more than one entity;
 - (b) the extent of the beneficial interest (whether direct or indirect) that an entity has in one or more than one other entity;
 - (c) the value, in aggregate, of the trust estate, or each part of the trust estate, of one or more than one specified trust related to the family that a member of the family would be able to benefit if—
 - (i) the trustee of the trust exercises a discretionary power under the trust instrument in favour of the member or a specified beneficiary under the trust; or
 - (ii) the conditions under the trust instrument that are applicable to the member or a specified beneficiary under the trust are met;
 - (d) the value, in aggregate, of the trust estate, or each part of the trust estate, of one or more than one specified trust that an entity would be able to benefit if—
 - (i) the trustee of the trust exercises a discretionary power under the trust instrument in favour of the entity or a specified beneficiary under the trust; or
 - (ii) the conditions under the trust instrument that are applicable to the entity or a specified beneficiary under the trust are met.”.

- 7 In the proposed Schedule 16E, in section 8(9), by adding in alphabetical order—
- “**deeming provisions** (推定條文) means sections 2(2A), 5(2) and 8(2), (4), (5), (6) and (7) of this Schedule;
- extent requirement** (程度規定), in relation to a subject entity and a family, means the requirement that one or more than one member of the family has at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the entity;
- subject entity** (標的實體) means an entity mentioned in subsection (1);
- unrelated entity** (無關連實體) means an entity that is an unrelated person under section 2 or 5 of this Schedule;
- unrelated natural person** (無關連自然人) means a natural person who is an unrelated person under section 2 or 5 of this Schedule.”.
- 7 In the proposed Schedule 16E, in the Chinese text, in section 8(12)(a), by adding “的” after “該信託”.
- 7 In the proposed Schedule 16E, in section 9(2), by deleting “at all times during the basis period”.
- 7 In the proposed Schedule 16E, in section 9(4), by deleting paragraph (a) and substituting—
- “(a) that the FIHV is normally managed or controlled in Hong Kong during the basis period; and”.
- 7 In the proposed Schedule 16E, in section 9(4)(b), by adding “, at all times during the basis period,” after “that”.
- 7 In the proposed Schedule 16E, in section 12(2), by deleting “specified in section 9(3) of this Schedule (**section 9(3) transactions**)”.
- 7 In the proposed Schedule 16E, in section 12(3), by deleting “section 9(3)”.
- 7 In the proposed Schedule 16E, in section 12(4)(a) and (b), by deleting “specified securities” and substituting “subject securities”.

- 7 In the proposed Schedule 16E, in section 12(7), in the definition of ***short-term asset***, in paragraph (c), by deleting the full stop and substituting a semicolon.
- 7 In the proposed Schedule 16E, in section 12(7), by adding in alphabetical order—
“***subject securities*** (標的證券), in relation to a relevant company, means the specified securities of, or issued by, the company.”.
- 7 In the proposed Schedule 16E, in section 13(2), by deleting “specified in section 9(3) of this Schedule”.
- 7 In the proposed Schedule 16E, in section 13(3)(a) and (b), by deleting “specified securities” and substituting “subject securities”.
- 7 In the proposed Schedule 16E, in section 13(6), in the definition of ***short-term asset***, by deleting the full stop and substituting a semicolon.
- 7 In the proposed Schedule 16E, in section 13(6), by adding in alphabetical order—
“***subject securities*** (標的證券), in relation to a relevant company, means the specified securities of, or issued by, the company.”.
- 7 In the proposed Schedule 16E, in section 17(2), by deleting “specified in section 16(3) of this Schedule (***section 16(3) transactions***)”.
- 7 In the proposed Schedule 16E, in section 17(3), by deleting “section 16(3)”.
- 7 In the proposed Schedule 16E, in section 17(4)(a) and (b), by deleting “specified securities” and substituting “subject securities”.
- 7 In the proposed Schedule 16E, in section 17(7), in the definition of ***short-term asset***, in paragraph (c), by deleting the full stop and substituting a semicolon.
- 7 In the proposed Schedule 16E, in section 17(7), by adding in alphabetical order—
“***subject securities*** (標的證券), in relation to a relevant company, means the specified securities of, or issued by, the company.”.

- 7 In the proposed Schedule 16E, in section 18(2), by deleting “specified in section 16(3) of this Schedule”.
- 7 In the proposed Schedule 16E, in section 18(3)(a) and (b), by deleting “specified securities” and substituting “subject securities”.
- 7 In the proposed Schedule 16E, in section 18(6), in the definition of *short-term asset*, by deleting the full stop and substituting a semicolon.
- 7 In the proposed Schedule 16E, in section 18(6), by adding in alphabetical order—
“*subject securities* (標的證券), in relation to a relevant company, means the specified securities of, or issued by, the company.”.
- 7 By adding—

“Schedule 16FA

[s. 40AV & Sch. 16E]

Provisions for Determining Extent of Beneficial Interest Unrelated Natural Person has in Particular Entity (Section 8 of Schedule 16E)

Part 1

1. In this Schedule—

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

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

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

unrelated natural person (無關連自然人) has the meaning given by section 8(9) of Schedule 16E.

Part 2

2. For an unrelated natural person having a direct beneficial interest in an entity (*Entity A*), the extent of the beneficial interest of the person in Entity A is—
 - (a) if Entity A is a corporation—
 - (i) the percentage of the issued share capital (however described) of the corporation held by the person; or
 - (ii) (if the corporation does not have any issued share capital) the percentage of the voting rights in the corporation that the person is entitled to exercise or the exercise of which the person is entitled to control;
 - (b) if Entity A is a partnership—
 - (i) the percentage of the profits of the partnership to which the person is entitled; or
 - (ii) (if the partners in the partnership are neither entitled to the profits of the partnership nor entitled to a distribution of the assets of the partnership on its dissolution) the percentage of the voting rights in the partnership that the person is entitled to exercise or the exercise of which the person is entitled to control;
 - (c) if Entity A is a trust—the percentage in value of the trust estate in which the person is interested; and
 - (d) if Entity A is an entity that does not fall within any of paragraphs (a), (b) and (c)—
 - (i) the percentage of the capital of the entity to which the person is entitled;
 - (ii) (if subparagraph (i) is not applicable in relation to the entity) the percentage of the ownership interests that the person has in the entity;
 - (iii) (if neither subparagraph (i) nor (ii) is applicable in relation to the entity) the percentage of the profits of the entity to which the person is entitled; or

- (iv) (if none of subparagraphs (i), (ii) and (iii) is applicable in relation to the entity) the percentage of the voting rights in the entity that the person is entitled to exercise or the exercise of which the person is entitled to control.
- 3. Section 7(5), (6) and (7) of Schedule 16E applies for the purposes of section 2 of this Schedule.
- 4. For an unrelated natural person having an indirect beneficial interest in an entity (**Entity B**), the extent of the beneficial interest of the person in Entity B is—
 - (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the person in the interposed entity by the percentage representing the extent of the beneficial interest of the interposed entity in Entity B; or
 - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the person in the first interposed entity in the series by—
 - (i) the percentage representing the extent of the beneficial interest of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
 - (ii) the percentage representing the extent of the beneficial interest of the last interposed entity in the series in Entity B.
- 5. For the purposes of section 4 of this Schedule—
 - (a) section 2 of this Schedule applies in determining the extent of the beneficial interest of an unrelated natural person in an interposed entity as if the references to Entity A in that section were references to an interposed entity;
 - (b) section 2 of this Schedule applies in determining the extent of the beneficial interest of an interposed entity in Entity B as if—

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