

Chapter:	112	<b>Inland Revenue Ordinance</b>	Gazette Number	Version Date
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		<b>Long title</b>	E.R. 1 of 2012	09/02/2012
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To impose a tax on property, earnings and profits.

(Amended 26 of 1969 s. 2; 17 of 1989 s. 2)

[3 May 1947]

(Originally 20 of 1947 (Cap 112 1950))

(\*Format changes—E.R. 1 of 2012)

**Note:**

**\*The format of the whole Ordinance has been updated to the current legislative styles.**

Part:	1	<b>Introductory</b>	E.R. 1 of 2012	09/02/2012
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Section:	1	<b>Short title</b>	E.R. 1 of 2012	09/02/2012
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This Ordinance may be cited as the Inland Revenue Ordinance.

Section:	2	<b>Interpretation</b>	E.R. 1 of 2012	09/02/2012
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(1) In this Ordinance, unless the context otherwise requires-

**active partner** (積極參與的合夥人), in relation to a partnership, means a partner who takes an active part in the control, management, or conduct of the trade or business of such partnership;

**agent** (代理人), in relation to a non-resident person or to a partnership in which any partner is a non-resident person, includes-

- (a) the agent, attorney, factor, receiver, or manager in Hong Kong of such person or partnership, and
- (b) any person in Hong Kong through whom such person or partnership is in receipt of any profits or income arising in or derived from Hong Kong;

**approved charitable donation** (認可慈善捐款) means a donation of money to any charitable institution or trust of a public character which is exempt from tax under section 88 or to the Government, for charitable purposes; (Replaced 13 of 1971 s. 2. Amended 76 of 1975 s. 2; 74 of 1981 s. 4; 30 of 1990 s. 2; 78 of 1999 s. 7)

**arrangement** (安排) includes-

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action or course of action or course of conduct; (Added 32 of 1998 s. 3)

**assessable income** (應評稅入息) means the assessable income of a person in any year of assessment as ascertained in accordance with sections 11B, 11C and 11D; and "net assessable income" (應評稅入息實額) means assessable income as adjusted in accordance with section 12; (Replaced 71 of 1983 s. 2)

**assessable profits** (應評稅利潤) means the profits in respect of which a person is chargeable to tax for the basis period for any year of assessment, calculated in accordance with the provisions of Part 4; (Replaced 28 of 1964 s. 2)

**assessor** (評稅主任) means an assessor appointed under this Ordinance;

**assistant commissioner** (助理局長) means an assistant commissioner of Inland Revenue appointed under this Ordinance;

**authorized representative** (獲授權代表) means a person authorized in writing by any other person to act on his behalf for the purposes of this Ordinance; (Replaced 7 of 1975 s. 2)

**basis period** (評稅基期) for any year of assessment is the period on the income or the profits of which tax for that year ultimately falls to be computed; (Amended 36 of 1955 s. 3)

**bill of sale** (賣據) means a bill of sale registrable under the Bills of Sale Ordinance (Cap 20);

**Board of Review** (稅務上訴委員會) means the Board of Review referred to in section 65; (Added 4 of 2010 s. 2)

**body of persons** (團體) means any body politic, corporate or collegiate and any company, fraternity, fellowship and society of persons whether corporate or not corporate; (Added 36 of 1955 s. 3)

**business** (業務) includes agricultural undertaking, poultry and pig rearing and the letting or sub-letting by any corporation to any person of any premises or portion thereof, and the sub-letting by any other person of any premises or portion of any premises held by him under a lease or tenancy other than from the Government; (Replaced 35 of 1965 s. 2. Amended 19 of 1996 s. 15)

**certificate of deposit** (存款證) means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable, and, in the case of any such document which is a prescribed instrument by virtue of paragraph (a) of the definition of **prescribed instrument** (訂明的票據) in section 137B of the Banking Ordinance (Cap 155), includes any right or interest referred to in paragraph (b) of that definition in respect of such document; (Added 30 of 1981 s. 2. Amended 94 of 1993 s. 36)

**Commissioner** (局長) means the Commissioner of Inland Revenue appointed under this Ordinance; (Replaced 26 of 1969 s. 3)

**common parts** (公用部分), in relation to any land or buildings or land and buildings-

(a) means the whole of the land or buildings or land and buildings, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and

(b) includes, unless so specified or designated in the instrument mentioned in paragraph (a), those parts of a building specified in Schedule 1 to the Building Management Ordinance (Cap 344); (Added 4 of 2010 s. 2)

**conditional sale agreement** (有條件售賣協議) means an agreement for the sale of goods under which the purchase price or part of the purchase price is payable by instalments, and the property in the goods remains in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled; (Added 32 of 1998 s. 3)

**corporation** (法團) means any company which is either incorporated or registered under any enactment or charter in force in Hong Kong or elsewhere but does not include a co-operative society or a trade union; (Amended 2 of 1971 s. 2)

**debenture** (債權證) means a debenture as defined in section 2(1) of the Companies Ordinance (Cap 32);

**deposit** (存款) means a deposit as defined in section 2(1) of the Banking Ordinance (Cap 155); (Added 29 of 1982 s. 2. Amended 27 of 1986 s. 137)

**deputy commissioner** (副局長) means a deputy commissioner of Inland Revenue appointed under this Ordinance; (Amended 48 of 1995 s. 2)

**digital signature** (數碼簽署) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 5 of 2003 s. 2)

**electronic record** (電子紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 5 of 2003 s. 2)

**executor** (遺囑執行人) means any executor, administrator, or other person administering the estate of a deceased person, and includes a trustee acting under a trust created by the last will of the author of the trust;

**financial institution** (財務機構), means-

(a) an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap 155);

(b) any associated corporation of such an authorized institution which, being exempt by virtue of section 3(2)(a) or (b) or (c) of the Banking Ordinance (Cap 155), would have been liable to be authorized as a deposit-taking company or restricted licence bank under that Ordinance had it not been so exempt; (Replaced 27 of 1986 s. 137. Amended 3 of 1990 s. 55; 49 of 1995 s. 53)

**grandparent or grandparent of his or her spouse** (該人的或其配偶的祖父母或外祖父母), in relation to any person, means-

(a) a natural grandfather or grandmother of the person or his or her spouse;

- (b) an adoptive grandparent of the person or his or her spouse (whether an adoptive parent of a natural parent, adoptive parent or step parent of the person or his or her spouse, or a natural parent of an adoptive parent of the person or his or her spouse);
- (c) a step grandparent of the person or his or her spouse (whether a step parent of a natural parent, adoptive parent or step parent of the person or his or her spouse, or a natural parent of a step parent of the person or his or her spouse); or
- (d) in the case of a deceased spouse, a person who would have been the grandparent of the person's spouse by reason of any of the provisions of paragraphs (a) to (c) if the spouse had not died; (Added 31 of 1998 s. 3)

**hire-purchase agreement** (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee; (Added 32 of 1998 s. 3)

**Hong Kong currency** (港幣) means money which is legal tender in Hong Kong; (Added 29 of 1982 s. 2)

**husband** (丈夫) means a married man whose marriage is a marriage within the meaning of this section; (Added 43 of 1989 s. 2)

**incapacitated person** (無行為能力的人) means any minor, lunatic, idiot, or person of unsound mind;

**inspector** (稅務督察) means an inspector appointed under this Ordinance; (Added 36 of 1955 s. 3)

**lease** (租約), in relation to any machinery or plant, includes-

- (a) any arrangement under which a right to use the machinery or plant is granted by the owner of the machinery or plant to another person; and
- (b) any arrangement under which a right to use the machinery or plant, being a right derived directly or indirectly from a right referred to in paragraph (a), is granted by a person to another person,

but does not include a hire-purchase agreement or a conditional sale agreement unless, in the opinion of the Commissioner, the right under the agreement to purchase or obtain the property in the goods would reasonably be expected not to be exercised; (Added 32 of 1998 s. 3)

**limited partnership** (有限責任合夥) has the same meaning as in section 3 of the Limited Partnerships Ordinance (Cap 37); (Added 47 of 1992 s. 2)

**mandatory contributions** (強制性供款), in relation to a mandatory provident fund scheme, means mandatory contributions paid to the scheme in accordance with the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 6)

**mandatory provident fund scheme** (強制性公積金計劃) means a provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 6)

**marriage** (婚姻) means-

- (a) any marriage recognized by the law of Hong Kong; or
  - (b) any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so,
- but shall not, in the case of a marriage which is both potentially and actually polygamous, include marriage between a man and any wife other than the principal wife, and **married** (結婚) shall be construed accordingly; (Added 43 of 1989 s. 2)

**mortgage** (按揭) means a security by way of mortgage or equitable mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money thereafter to be lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be, and includes-

- (a) conditional surrender by way of mortgage, or further charge, of or affecting any property whatsoever; and
- (b) any conveyance of any property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; and
- (c) any instrument for defeating or making redeemable, or explaining or qualifying any conveyance, transfer or disposition of any property whatsoever, apparently absolute, but intended only as a security; and
- (d) any instrument relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property whatsoever or creating a charge on any property whatsoever; and
- (e) any mortgage by an equitable owner of his equitable rights; and
- (f) any warrant of attorney to enter up judgment; (Replaced 79 of 1979 s. 2) [cf. 1891 c. 39 s. 86 U.K.]

**net chargeable income** (應課稅入息實額) means net chargeable income calculated in accordance with section 12B;

(Added 71 of 1983 s. 2)

**occupational retirement scheme** (職業退休計劃) has the meaning assigned to it by section 2(1) of the Occupational Retirement Schemes Ordinance (Cap 426); (Added 76 of 1993 s. 2)

**owner** (擁有人), in respect of land or buildings or land and buildings, includes-

- (a) a person holding the land or buildings or land and buildings directly from the Government;
- (b) a beneficial owner;
- (c) a tenant for life;
- (d) a mortgagor;
- (e) a mortgagee in possession;
- (f) a person with adverse title to land receiving rent from buildings or other structures erected on that land;
- (g) a person who is making payments to a co-operative society registered under the Co-operative Societies Ordinance (Cap 33) for the purpose of the purchase of the land or buildings or land and buildings;
- (h) a person who holds land or buildings or land and buildings subject to a ground rent or other annual charge;
- (i) (in so far as common parts are concerned) a corporation registered under section 8 of the Building Management Ordinance (Cap 344) or a person who, on the person's own behalf or on behalf of another person, receives any consideration, in money or money's worth, in respect of the right of use of any common parts solely or with another; and
- (j) an executor of the estate of an owner; (Replaced 4 of 2010 s. 2)

**parent or parent of his or her spouse** (該人的或其配偶的父或母), in relation to any person, means-

- (a) a parent of whose marriage the person or his or her spouse is the child;
- (b) the natural father or mother of the person or his or her spouse;
- (c) a parent by whom the person or his or her spouse was adopted;
- (d) a step parent of the person or his or her spouse; or
- (e) in the case of a deceased spouse, a person who would have been the parent of the person's spouse by reason of any of the provisions of paragraphs (a) to (d) if the spouse had not died; (Added 31 of 1998 s. 3)

**password** (通行密碼) means any combination of letters, characters, numbers or other symbols selected by a person and approved by the Commissioner for use in systems designated by the Commissioner for the purpose of authenticating the person's identification in communicating with the Commissioner in relation to a return required to be furnished under this Ordinance; (Added 5 of 2003 s. 2)

**person** (人、人士) includes a corporation, partnership, trustee, whether incorporated or unincorporated, or body of persons; (Amended 2 of 1971 s. 2; 30 of 1981 s. 2)

**precedent partner** (首合夥人) means the partner who, of the active partners resident in Hong Kong-

- (a) is first named in the agreement of partnership; or
- (b) if there is no agreement, is specified by name or initials singly or with precedence to the other partners in the usual name of the partnership; or
- (c) is first named in any statutory statement of the names of the partners;

**profits arising in or derived from Hong Kong** (於香港產生或得自香港的利潤) for the purposes of Part 4 shall, without in any way limiting the meaning of the term, include all profits from business transacted in Hong Kong, whether directly or through an agent;

**receiver** (接管人) includes any receiver or liquidator, and any assignee, trustee, or other person having the possession or control of the property of any person by reason of insolvency or bankruptcy;

**recognized certificate** (認可證書) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 5 of 2003 s. 2)

**recognized occupational retirement scheme** (認可職業退休計劃) means an occupational retirement scheme-

- (a) which, prior to the commencement\* of section 2 of the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993), was a retirement scheme approved by the Commissioner under section 87A where such approval has not subsequently been withdrawn;
- (b) registered for the time being under section 18 of the Occupational Retirement Schemes Ordinance (Cap 426);
- (c) in respect of which an exemption certificate has been issued under section 7(1) of the Occupational Retirement Schemes Ordinance (Cap 426) and has not been withdrawn;
- (d) which is operated by an employer who is-
  - (i) the government of a country or territory outside Hong Kong; or

(ii) any agency or undertaking of or by such a government which is not operated for the purpose of gain; or (Amended 19 of 1996 s. 3)

(e) contained in or otherwise established by an Ordinance other than the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 76 of 1993 s. 2. Amended 4 of 1998 s. 6)

**recognized retirement scheme** (認可退休計劃) means-

- (a) a recognized occupational retirement scheme; or
- (b) a mandatory provident fund scheme; (Added 31 of 1998 s. 3)

**return** (報稅表) includes any return furnished under section 51AA, irrespective of the manner in which that return is furnished; (Added 5 of 2003 s. 2)

**river trade limits** (內河航限) has the same meaning as in the Merchant Shipping Ordinance (Cap 281); (Added 47 of 1992 s. 2)

**specified form** (指明的格式) means a form specified under section 86; (Added 43 of 1989 s. 2. Amended 5 of 2003 s. 2)

**spouse** (配偶) means a husband or wife; (Added 43 of 1989 s. 2)

**standard rate** (標準稅率) means the rate specified in Schedule 1; (Added 30 of 1950 Schedule)

**tax** (稅、稅款、稅項) except for the purposes of Parts 12 and 13, means any tax imposed by this Ordinance (including provisional salaries tax charged under Part 10A, provisional profits tax charged under Part 10B and provisional property tax charged under Part 10C) other than additional tax, but for the purposes of Parts 12 and 13 **tax** (稅、稅款、稅項) includes additional tax; (Replaced 26 of 1969 s. 3. Amended 8 of 1973 s. 2; 7 of 1975 s. 2; 8 of 1983 s. 2)

**teletyping system** (電話報稅系統) means a system that enables a person to furnish to the Commissioner certain returns or information by using a telephone; (Added 5 of 2003 s. 2)

**trade** (行業、生意) includes every trade and manufacture, and every adventure and concern in the nature of trade;

**trustee** (受託人) includes any trustee, guardian, curator, manager, or other person having the direction, control, or management of any property on behalf of any person, but does not include an executor;

**voluntary contributions** (自願性供款), in relation to a mandatory provident fund scheme, means voluntary contributions paid to the scheme in accordance with section 11 of the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 6)

**wife** (妻子) means a married woman whose marriage is a marriage within the meaning of this section; (Replaced 43 of 1989 s. 2)

**year of assessment** (課稅年度) means the period of 12 months commencing on 1 April in any year; (Replaced 30 of 1950 Schedule)

**year preceding a year of assessment** (任何課稅年度的上一年) means the period of 12 months ending on 31 March immediately prior to such year of assessment.

(Amended 36 of 1955 s. 3; 9 of 1958 s. 2; 26 of 1969 s. 3; 7 of 1986 s. 12; 76 of 1993 s. 2; 12 of 1999 s. 3)

(2) For the purposes of the definition of **financial institution** (財務機構) in subsection (1)-

**associated corporation** (相聯法團), in relation to an authorized institution, means-

- (a) a corporation over which the institution has control;
- (b) a corporation which has control over the institution; or
- (c) a corporation which is under the control of the same person as is the institution; (Replaced 49 of 1995 s. 53)

**control** (控制), in relation to a corporation, means the power of a person to secure-

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
  - (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,
- that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

(Added 73 of 1978 s. 2)

(2A) For the purposes of the definition of **recognized occupational retirement scheme** (認可職業退休計劃) in subsection (1)-

- (a) a scheme which is registered for the time being under section 18 of the Occupational Retirement Schemes Ordinance (Cap 426) shall upon registration be regarded as a recognized occupational retirement scheme as from-
  - (i) the date on which the application for such registration was made; or
  - (ii) the date on which the terms of the scheme came into effect, whichever is the earlier; and
- (b) a scheme in respect of which an exemption certificate has been issued under section 7(1) of the Occupational Retirement Schemes Ordinance (Cap 426) and has not been withdrawn shall upon the issue of the certificate be regarded as a recognized occupational retirement scheme as from-
  - (i) the date on which the application for the certificate was made; or
  - (ii) the date on which the terms of the scheme came into effect, whichever is the earlier:

Provided that if such date is earlier than the first commencement date of the Occupational Retirement Schemes Ordinance (Cap 426), the scheme shall be regarded as a recognized occupational retirement scheme as from such commencement date. (Added 76 of 1993 s. 2)

- (3) For the purposes of this Ordinance a husband and wife shall be deemed to be living apart when they are living apart-
  - (a) under a decree or order of a competent court in or outside Hong Kong;
  - (b) under a duly executed deed of separation or any instrument of similar effect; or
  - (c) in such circumstances that the Commissioner is of the opinion the separation is likely to be permanent. (Added 43 of 1989 s. 2)
- (4) Whether or not a person who is or was formerly a member of a mandatory provident fund scheme has permanently departed from Hong Kong is, for the purposes of this Ordinance, to be determined by reference to regulations in force under the Mandatory Provident Fund Schemes Ordinance (Cap 485). (Added 4 of 1998 s. 6)
- (5) In this Ordinance, a reference to the act of signing a return required to be furnished under this Ordinance includes a reference to-
  - (a) the affixing of a digital signature to; or (Amended 14 of 2004 s. 29)
  - (b) the inclusion of a password with, the return for the purpose of authenticating or approving it. (Added 5 of 2003 s. 2)
- (6) For the purposes of subsection (5)(a), a digital signature shall be-
  - (a) supported by a recognized certificate;
  - (b) generated within the validity of that certificate; and
  - (c) used in accordance with the terms of that certificate. (Added 14 of 2004 s. 29)
- (7) For the purposes of subsection (6)(a), a digital signature is taken to be supported by a recognized certificate if it is taken to be supported by that certificate under section 2(2) of the Electronic Transactions Ordinance (Cap 553). (Added 14 of 2004 s. 29)
- (8) In subsection (6)(b), *within the validity of that certificate* (在該證書的有效期內) has the meaning assigned to it by section 6(2) of the Electronic Transactions Ordinance (Cap 553). (Added 14 of 2004 s. 29)  
(Amended E.R. 1 of 2012)

**Note:**

\* **Commencement date: 19 November 1993.**

Section:	3	<b>Establishment of Board of Inland Revenue. Power of Chief Executive to appoint a Commissioner and other officers</b>	E.R. 1 of 2012	09/02/2012
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- (1) (a) There shall be a Board of Inland Revenue composed of the Financial Secretary and 4 other members appointed by the Chief Executive, of whom not more than one shall be an official in the employment of the Government. A member so appointed shall hold office until he shall resign or be removed from office by the Chief Executive. (Amended 12 of 1999 s. 3)
- (aa) The Board of Inland Revenue shall have a secretary who shall be a deputy commissioner. (Added 8 of 1983 s. 3. Amended 48 of 1995 s. 3)
- (b) 3 members of the Board of Inland Revenue shall form a quorum for the transaction of business and when the Financial Secretary is present he shall be the chairman.
- (c) All matters coming before the Board of Inland Revenue shall be decided by a majority of votes, and in the

case of an equality of votes the chairman or presiding member shall have a second or a casting vote.

- (d) The Board of Inland Revenue may transact any of its business by the circulation of papers without meeting; and a resolution signed by a majority of the members shall be as valid and effective as if it had been passed at a meeting by the votes of the members so signing. (Added 8 of 1983 s. 3)
- (2) For the purposes of this Ordinance, the Chief Executive may appoint a Commissioner, deputy commissioners, assistant commissioners, assessors and inspectors. (Amended 36 of 1955 s. 4; 48 of 1995 s. 3; 12 of 1999 s. 3)
- (3) An assistant commissioner exercising or performing any power, duty, or function of the Commissioner under this Ordinance shall be deemed for all purposes to be authorized to exercise or perform the same until the contrary is proved.
- (4) All powers conferred upon an assessor by this Ordinance may be exercised by an assistant commissioner.

Section:	3A	<b>Exercise of powers and duties</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where under this Ordinance any power is conferred or any duty is imposed on the Commissioner and so long as it is not provided that the power or duty shall be exercised or performed by the Commissioner personally, such power may be exercised or such duty may be performed by a deputy commissioner or by an assistant commissioner. (Amended 48 of 1995 s. 4)
- (2) Except where a provision of this Ordinance provides that a power or duty shall be exercised or performed by the Commissioner personally, the Commissioner may, subject to such limitations as he may think fit, authorize in writing any public officer to exercise any power or perform any duty conferred or imposed upon him by this Ordinance.

(Added 26 of 1969 s. 4)

Section:	4	<b>Official secrecy</b>	E.R. 1 of 2012	09/02/2012
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- (1) Except in the performance of his duties under this Ordinance, every person who has been appointed under or who is or has been employed in carrying out or in assisting any persons to carry out the provisions of this Ordinance shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under this Ordinance, and shall not communicate any such matter to any person other than the person to whom such matter relates or his executor or the authorized representative of such person or such executor, nor suffer or permit any person to have access to any records in the possession, custody or control of the Commissioner. (Amended 9 of 1958 s. 3)
- (2) Every person appointed under or employed in carrying out the provisions of this Ordinance, shall before acting under this Ordinance take and subscribe before a commissioner for oaths an oath of secrecy in such form as the Board of Inland Revenue may specify. (Amended 39 of 1969 s. 2; 47 of 1997 s. 10)
- (3) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document, or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Ordinance, except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance.
- (4) Notwithstanding anything contained in this section, the Commissioner or any officer of the Inland Revenue Department authorized by the Commissioner in that behalf may communicate any matter which comes to his knowledge, including a copy of any return, accounts or other document submitted to him in connection with this Ordinance-
  - (a) to the Commissioner of Rating and Valuation, to the Collector of Stamp Revenue, or to the Estate Duty Commissioner, or (Amended 20 of 1948 s. 4)
  - (b) (Repealed 12 of 1999 s. 3)
  - (c) to the Secretary for Justice, or any public officer authorized by him, for the purpose of reporting under section 68(5) an appeal to the Board of Review, or (Added 2 of 1971 s. 3. Amended 79 of 1992 s.10; L.N. 362 of 1997)
  - (d) to any person appointed under or employed in carrying out the provisions of the Business Registration Ordinance (Cap 310), as regards any matter required to be notified to the Commissioner pursuant to section 8 of that Ordinance by the person submitting such return, accounts or other document. (Added 79 of 1992 s. 10. Amended 13 of 2010 s. 26)
- (5) Notwithstanding anything contained in this section, the Commissioner may permit the Director of Audit or any officer of that department duly authorized by the Director of Audit in that behalf to have such access to any

records or documents as may be necessary for the performance of his official duties. The Director of Audit or any officer so authorized shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purpose of subsection (2).

- (6) Notwithstanding anything contained in this section, where the Commissioner is of the opinion that any tax deemed to be in default under the provisions of section 71(1) has for the time being become irrecoverable, he may communicate to the Financial Secretary the names and descriptions of the persons charged with such tax together with particulars of the tax in default. (Added 9 of 1958 s. 3)

(Amended 9 of 1958 s. 3)

Part:	2	<b>Property Tax</b>	E.R. 1 of 2012	09/02/2012
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Section:	5	<b>Charge of property tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Property tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person being the owner of any land or buildings or land and buildings wherever situate in Hong Kong and shall be computed at the standard rate on the net assessable value of such land or buildings or land and buildings for each such year. (Amended 35 of 1965 s. 3; 76 of 1975 s. 3; 8 of 1983 s. 4; 7 of 1986 s. 12)

Provided that-

- (a) (Repealed 76 of 1975 s. 3)
- (b) where the owner of the land is not the owner of the buildings thereon, separate assessments shall be made for the land and for the buildings;
- (c) (Repealed 26 of 1969 s. 5)
- (d) (Repealed 76 of 1975 s. 3)
- (e) (Repealed 56 of 1993 s. 2)

(Replaced 36 of 1955 s. 6)

- (1A) In subsection (1), *net assessable value* (應評稅淨值) means the assessable value of land or buildings or land and buildings, ascertained in accordance with section 5B-

- (a) (Repealed 56 of 1993 s. 2)
- (b) less-
  - (i) where the owner agrees to pay the rates in respect of the land or buildings or land and buildings, those rates paid by him; and
  - (ii) an allowance for repairs and outgoings of 20% of that assessable value after deduction of any rates under subparagraph (i). (Added 76 of 1975 s. 3. Amended 8 of 1983 s. 4; 56 of 1993 s. 2)

- (1B) The percentage allowance specified in subsection (1A) may be amended by resolution of the Legislative Council. (Added 76 of 1975 s. 3)

- (2) (a) Notwithstanding subsection (1), any corporation carrying on a trade, profession or business in Hong Kong shall, on application made in writing to the Commissioner and on proof of the facts to the satisfaction of the Commissioner, be entitled to exemption from the property tax for any year of assessment in respect of any land or buildings of land and buildings owned by the corporation where the corporation would be entitled under section 25 to a set-off of the property tax which, if exemption were not granted under this subsection, would be paid by the corporation; and the property shall be and remain exempted from property tax for each year of assessment in which the circumstances are such as to qualify the property for such exemption for that year. (Amended 7 of 1986 s. 12; 56 of 1993 s. 2)

- (b) (Repealed 56 of 1993 s. 2)
- (c) Every corporation exempted from property tax under this subsection in respect of any land or buildings or land and buildings shall, within 30 days after the event, notify the Commissioner in writing of any change in the ownership or use thereof or in any other circumstances affecting such exemption. (Added 35 of 1965 s. 3)

- (2A)-(5) (Repealed 56 of 1993 s. 2)

Section:	5A	<b>(Repealed 56 of 1993 s. 3)</b>		30/06/1997
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Section:	5B	<b>Ascertainment of assessable value on or after 1 April 1983</b>	E.R. 1 of 2012	09/02/2012
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- (1) This section shall apply to any year of assessment commencing or after 1 April 1983. (Amended 56 of 1993 s. 4)
- (2) The assessable value of land or buildings or land and buildings for each year of assessment shall be the consideration, in money or money's worth, payable in that year to, to the order of, or for the benefit of, the owner in respect of the right of use of that land or buildings or land and buildings.
- (3) Any consideration payable before the year of assessment commencing on 1 April 1983 in respect of a period of the right of use which starts after, or extends beyond, 1 April 1983 shall, for the purposes of this section, be deemed to be payable in equal monthly instalments during the period of the right of use or during a period of 3 years ending on 31 March 1986, whichever is the shorter.
- (4) Any consideration payable in respect of a period of the right of use which is not contained within any one year of assessment shall, for the purposes of this section, be deemed to be payable in equal monthly instalments during the period of the right of use or during a period of 3 years commencing at the start of the period of the right of use to which the consideration relates, whichever is the shorter.
- (5) (Repealed 56 of 1993 s. 4)
- (6) In this section, **consideration** (代價) includes any consideration payable in respect of the provision of any services or benefits connected with or related to the right of use.

(Added 8 of 1983 s. 6)

Section:	6	<b>(Repealed 8 of 1983 s. 7)</b>		30/06/1997
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Section:	7	<b>(Repealed 56 of 1993 s. 5)</b>		30/06/1997
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Section:	7A	<b>Interpretation</b>	E.R. 1 of 2012	09/02/2012
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In this Part-

**buildings** (建築物), except for the purposes of section 5(2), includes any part of a building; (Replaced 35 of 1965 s. 4. Amended 56 of 1993 s. 6)

**land or buildings or land and buildings** (土地或建築物或土地連建築物) includes piers, wharves and other structures;

**occupied** (佔用), in relation to land or buildings or land and buildings, means land or buildings or land and buildings which are being put to beneficial use. (Replaced 76 of 1975 s. 6)

(Added 36 of 1955 s. 9)

Section:	7B	<b>(Repealed 56 of 1993 s. 7)</b>		30/06/1997
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Section:	7C	<b>Bad debts</b>	E.R. 1 of 2012	09/02/2012
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- (1) In ascertaining the assessable value of any land or buildings or land and buildings under this Part for any year of assessment commencing on or after 1 April 1983, there shall be deducted any consideration in money or money's worth, payable or deemed to be payable on or after 1 April 1983 to, to the order of, or for the benefit of, the owner in respect of the right of use of that land or buildings or that land and buildings and proved to the satisfaction of the assessor to have become irrecoverable during that year of assessment.
- (2) Consideration previously deducted as irrecoverable and recovered during any year of assessment shall be treated as consideration mentioned in section 5B(2) payable in that year of assessment in respect of the right of use of the land or buildings or land and buildings in respect of which that consideration was payable.
- (3) Notwithstanding section 70, where a person is entitled to deduct any consideration under subsection (1) but the land or buildings or land and buildings has no or insufficient assessable value from which to deduct that consideration in the year of assessment in which, under that subsection, that consideration is deductible, that

consideration, or that consideration to the extent to which it cannot be deducted in that year, shall be deducted from the assessable value of that land or buildings or that land and buildings in the latest year of assessment in which that assessable value is sufficient.

(Added 8 of 1983 s. 9)

Part:	3	<b>Salaries Tax*</b>	E.R. 1 of 2012	09/02/2012
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**Note:**

**\* (Amended 36 of 1955 s. 10)**

Section:	8	<b>Charge of salaries tax</b>	E.R. 1 of 2012	09/02/2012
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Remarks:

Adaptation amendments retroactively made - see 2 of 2012 s. 3.

- (1) Salaries tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person in respect of his income arising in or derived from Hong Kong from the following sources-
  - (a) any office or employment of profit; and
  - (b) any pension.
- (1A) For the purposes of this Part, income arising in or derived from Hong Kong from any employment-
  - (a) includes, without in any way limiting the meaning of the expression and subject to paragraph (b), all income derived from services rendered in Hong Kong including leave pay attributable to such services; (Amended 69 of 1987 s. 2)
  - (b) excludes income derived from services rendered by a person who-
    - (i) is not employed by the Government or as master or member of the crew of a ship or as commander or member of the crew of an aircraft; and
    - (ii) renders outside Hong Kong all the services in connection with his employment; and (Added 2 of 1971 s. 5. Amended 69 of 1987 s. 2)
  - (c) excludes income derived by a person from services rendered by him in any territory outside Hong Kong where-
    - (i) by the laws of the territory where the services are rendered, the income is chargeable to tax of substantially the same nature as salaries tax under this Ordinance; and
    - (ii) the Commissioner is satisfied that that person has, by deduction or otherwise, paid tax of that nature in that territory in respect of the income. (Added 69 of 1987 s. 2)
- (1B) In determining whether or not all services are rendered outside Hong Kong for the purposes of subsection (1A) no account shall be taken of services rendered in Hong Kong during visits not exceeding a total of 60 days in the basis period for the year of assessment. (Added 2 of 1971 s. 5)
- (2) In computing the income of any person for the purposes of subsection (1) there shall be excluded the following-
  - (a) (Repealed 130 of 1997 s. 2)
  - (b) the official emoluments of consuls, vice-consuls and persons employed on the staff of any consulate, who are subjects or citizens of the state which they represent;
  - (c) subject to subsection (4) any sum received by way of commutation of pension under-
    - (i) a recognized occupational retirement scheme upon termination of service, death, incapacity or retirement;
    - (ii) the Pensions Ordinance (Cap 89);
    - (iii) the Pension Benefits Ordinance (Cap 99); or
    - (iv) the Pension Benefits (Judicial Officers) Ordinance (Cap 401); (Replaced 76 of 1993 s. 3)
  - (ca) in the case of a pension attributable to services rendered in any office or employment, other than employment by the Government, so much of the pension as is not attributable to services rendered in Hong Kong; (Added 2 of 1971 s. 5)
  - (cb) so much of accrued benefits received from the approved trustee of a mandatory provident fund scheme on a person's retirement from employment, death or incapacity or permanent departure from Hong Kong as is attributable to mandatory contributions; (Replaced 4 of 1998 s. 6)
  - (cc) subject to subsections (4) and (5)-

- (i) any sum (not being a pension) withdrawn from a recognized occupational retirement scheme on retirement, death, incapacity or termination of service; and
- (ii) a sum equal to so much of the accrued benefit received from the approved trustee of a mandatory provident fund scheme on retirement, death, incapacity, termination of service, or taken to have been received from the approved trustee of such a scheme as provided by subsection (9), as is attributable to voluntary contributions paid to the scheme by an employer; (Added 4 of 1998 s. 6)
- (d) the emoluments payable by the Central People's Government to members of the Chinese People's Liberation Army, and to persons in the permanent service of that Government in Hong Kong in respect of their offices under that Government; (Replaced 2 of 2012 s. 3)
- (e) wound and disability pensions granted to members of the Chinese People's Liberation Army; (Amended 2 of 2012 s.3)
- (f) gratuities granted to members of the Chinese People's Liberation Army in respect of services rendered during war; (Amended 2 of 2012 s.3)
- (fa) the Hong Kong War Memorial Pensions and additional benefits paid under the Hong Kong War Memorial Pensions Ordinance (Cap 386); (Added 51 of 1991 s. 24)
- (g) any amount arising from a scholarship, exhibition, bursary, or other similar educational endowment held by that person where he is receiving full time instruction at a university, college, school, or other similar educational establishment; (Replaced 26 of 1969 s. 9. Amended 1 of 1991 s. 2)
- (h) the emoluments payable by the Central People's Government to persons in the temporary service of that Government who are in the opinion of the Commissioner serving in Hong Kong on Mainland of China based terms whereby they are normally employed in the Mainland of China but are liable for service elsewhere or are recruited in the Mainland of China specially for service in Hong Kong; (Added 26 of 1969 s. 9. Amended 23 of 1998 s. 2; 12 of 1999 s. 3)
- (i) any amount received by way of periodical payments in the nature of alimony or maintenance by a person from his or her spouse or former spouse; (Added 35 of 1965 s. 5. Amended 2 of 1971 s. 5; 19 of 1991 s. 2)
- (j) income derived from services rendered as master or member of the crew of a ship or as commander or member of the crew of an aircraft by a person who was present in Hong Kong on not more than-
  - (i) a total of 60 days in the basis period for that year of assessment; and
  - (ii) a total of 120 days falling partly within each of the basis periods for 2 consecutive years of assessment, one of which is that year of assessment; (Added 2 of 1971 s. 5. Amended 7 of 1986 s. 3)
- (k) any salary or other remuneration paid by another person who is chargeable to profits tax under Part 4 which, but for section 17(2), would be deductible in computing the profits or losses of such other person for the purposes of that Part. (Added 7 of 1986 s. 3)

(2A) In computing the income of any person for the purposes of subsection (1) there is to be excluded any amount that, had it been payable immediately before the date of commencement\* of section 17 of Schedule 1 to the Adaptation of Laws (Military References) Ordinance 2012 (2 of 2012), would have been excluded under subsection (2)(e) or (f) as in force immediately before that date. (Added 2 of 2012 s. 3)

(3) For the purposes of subsection (2)(c) and (cc)- (Amended 4 of 1998 s. 6)

**retirement** (退休) means-

- (a) a retirement from the service of the employer at some specified age of not less than 45 years; or
- (b) a retirement after some specified period of service with the employer of not less than 10 years; or
- (c) the attainment of the age of 60 years or some specified age of retirement, whichever is the later;

**termination of service** (服務終止) means a termination of employment with the employer other than upon retirement, death or incapacity. (Added 76 of 1993 s. 3)

(4) For the purposes of paragraphs (c) and (cc) of subsection (2), an amount that a person-

- (a) has received from a recognized occupational retirement scheme on the person's termination of service; or
- (b) has received, or is taken to have received, from a mandatory provident fund scheme on termination of service,

may be excluded under those paragraphs to the extent that it is attributable to voluntary contributions made by the person's employer and does not exceed the proportionate benefit calculated in accordance with subsection (5). However, where, in the case of a recognized occupational retirement scheme approved by the Commissioner under section 87A before its repeal by the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993), an amount payable on termination of service in accordance with the rules of the scheme (as approved by the Commissioner before that repeal) exceeds the proportionate benefit so calculated, that amount is to be taken to

be the proportionate benefit. (Replaced 4 of 1998 s. 6)

(5) For the purposes of subsection (4), the formula for calculating the proportionate benefit is-

$$PB = \frac{CMS}{120} \times AB$$

where-

PB is the proportionate benefit to be calculated;

CMS is the number of completed months of service that the person has completed with the employer; and

AB the amount of the person's accrued benefit. (Added 4 of 1998 s. 6)

(6) In subsection (5), **accrued benefit** (累算權益), in relation to a person, means-

(a) if the person is a member of a recognized occupational retirement scheme, the maximum benefit that the person would have been entitled to receive from the scheme for the person's service recognized for the purposes of the scheme if, at the date on which the person's employment was terminated, the person had retired (within the meaning of subsection (3)); and

(b) if the person is a member of a mandatory provident fund scheme, the person's accrued benefits attributable to voluntary contributions paid to the scheme in respect of the person for that service. (Added 4 of 1998 s. 6)

(7) If-

(a) the recognized occupational retirement scheme referred to in subsection (2)(cc)(i) is established by an employer who is not chargeable to tax under Part 4; or

(b) the employer who contributes to the mandatory provident fund scheme referred to in subsection (2)(cc)(ii) is not so chargeable,

the sum excluded by subsection (2)(cc) must not, with respect to the part of the sum that is attributable to the employer's voluntary contributions to the scheme, exceed the amount calculated in accordance with subsection (8). (Added 4 of 1998 s. 6)

(8) For the purposes of subsection (7), the formula is-

$$A = \left[ \frac{(EI \times \frac{15}{100}) \times YCS}{100} \right] - RAB$$

where-

A is the amount to be calculated;

EI is the employee's income from the employee's office or employment for the period of 12 months preceding the date on which the relevant benefit is received or taken to have been received;

YCS is the employee's completed years of service with the employee's employer;

RAB is-

(a) in the case of a recognized occupational retirement scheme, zero; or

(b) in the case of a mandatory provident fund scheme, so much of the relevant accrued benefit that the employee has received from the scheme as is attributable to mandatory contributions paid to the scheme by the person's employer. (Added 4 of 1998 s. 6)

(9) If-

(a) the service of a person in respect of whom an employer has paid voluntary contributions to a mandatory provident fund scheme is terminated; and

(b) the accrued benefit attributable to those contributions is retained within the scheme or is transferred to another mandatory provident fund scheme,

the person is, for the purposes of subsection (2)(cc), taken to have received from the scheme on the date of termination of service such part of the person's accrued benefit as is attributable to those contributions. (Added 4 of 1998 s. 6)

(10) Subsection (4) does not apply to a part of a person's accrued benefit in a mandatory provident fund scheme that has previously been taken to have been paid to the person because of the operation of subsection (9). (Added 4 of 1998 s. 6)

(Replaced 36 of 1955 s. 11. Amended 15 of 1966 s. 2; 7 of 1986 s. 12; E.R. 1 of 2012)

Section:	9	<b>Definition of income from employment</b>	E.R. 1 of 2012	09/02/2012
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(1) Income from any office or employment includes-

- (a) any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite, or allowance, whether derived from the employer or others, except-
  - (i)-(iii) (Repealed 24 of 2003 s. 3)
  - (iv) subject to subsection (2A), any amount paid by the employer to or for the credit of a person other than the employee in discharge of a sole and primary liability of the employer to that other person, not being a liability for which any person was surety; (Added 1 of 1991 s. 3)
- (aa) so much of any amount (other than a pension falling under section 8(1)(b)) received by an employee before or after his employment ceases, whether by way of commutation or otherwise, from a pension or provident fund, scheme or society, other than a recognized occupational retirement scheme or mandatory provident fund scheme, as is attributable to the employer's contributions to that fund, scheme or society; (Added 2 of 1971 s. 6. Amended 76 of 1993 s. 4; 4 of 1998 s. 6)
- (ab) so much of any amount (other than a pension falling under section 8(1)(b)) received by an employee, whether by way of commutation or otherwise, under a recognized occupational retirement scheme-
  - (i) otherwise than because of termination of service, death, incapacity or retirement of the employee as is attributable to the employer's contributions under the scheme in respect of the employee; or
  - (ii) by reason of termination of service as is attributable to such part of the employer's contributions under the scheme in respect of the employee that exceeds the proportionate benefit calculated in accordance with section 8(5); (Added 76 of 1993 s. 4. Amended 4 of 1998 s. 6)
- (ac) any payment received by an employee pursuant to a judgment given under section 57(3)(b) of the Occupational Retirement Schemes Ordinance (Cap 426) that is attributable to his employer's contributions to the occupational retirement scheme in respect of which the judgment was given; (Added 76 of 1993 s. 4)
- (ad) so much of the accrued benefit that an employee has received, or is taken to have received, from a mandatory provident fund scheme (otherwise than on retirement, death, incapacity or termination of service) as is attributable to contributions paid to the scheme by the employee's employer; (Added 4 of 1998 s. 6)
- (ae) so much of the accrued benefit that an employee has received, or is taken to have received, from a mandatory provident fund scheme as is attributable to voluntary contributions paid to the scheme by the employee's employer that exceeds the proportionate benefit calculated in accordance with section 8(5); (Added 4 of 1998 s. 6)
- (b) the rental value of any place of residence provided rent-free by the employer or an associated corporation; (Amended 38 of 1975 s. 2)
- (c) where a place of residence is provided by an employer or an associated corporation at a rent less than the rental value, the excess of the rental value over such rent; (Amended 2 of 1971 s. 6; 38 of 1975 s. 2)
- (d) any gain realized by the exercise of, or by the assignment or release of, a right to acquire shares or stock in a corporation obtained by a person as the holder of an office in or an employee of that or any other corporation. (Added 2 of 1971 s. 6)
- (1A) (a) Notwithstanding subsection (1)(a), where an employer or an associated corporation-
  - (i) pays all or part of the rent payable by the employee; or
  - (ii) refunds all or part of the rent paid by the employee,
 such payment or refund shall be deemed not to be income; (Replaced 1 of 1991 s. 3)
- (b) a place of residence in respect of which an employer or associated corporation has paid or refunded all the rent therefor shall be deemed for the purposes of subsection (1) to be provided rent free by the employer or associated corporation;
- (c) a place of residence in respect of which an employer or associated corporation has paid or refunded part of the rent therefor shall be deemed for the purposes of subsection (1) to be provided by the employer or associated corporation for a rent equal to the difference between the rent payable or paid by the employee and the part thereof paid or refunded by the employer or associated corporation. (Added 36 of 1954 s. 2. Amended 38 of 1975 s. 2; 1 of 1991 s. 3)
- (2) The rental value of any place of residence provided by the employer or an associated corporation shall be deemed to be 10% of the income as described in subsection (1)(a) derived from the employer for the period during which a place of residence is provided after deducting the outgoings, expenses and allowances provided for in section 12(1)(a) and (b) to the extent to which they are incurred during the period for which the place of residence is provided and any lump sum payment or gratuity paid or granted upon the retirement or termination of employment of the employee: (Amended 35 of 1965 s. 6; 26 of 1969 s. 10; 7 of 1975 s. 3; 38 of 1975 s. 2)
 

Provided that-

- (a) if such place of residence be a hotel, hostel or boarding house the rental value shall be deemed to be 8% of the income aforesaid where the accommodation consists of not more than 2 rooms and 4% where the accommodation consists of not more than one room; (Replaced 10 of 1950 s. 3. Amended 38 of 1975 s. 2)
- (b) if such place of residence be other than a hotel, hostel or boarding house any person may elect to have, in respect of the years of assessment commencing on or after 1 April 1983, the rateable value included in the valuation list prepared under section 12 of the Rating Ordinance (Cap 116) or, if the place of residence is not so included, the rateable value ascertained in accordance with Part III of that Ordinance, substituted for rental value at 10% as aforesaid. (Replaced 19 of 1996 s. 4)
- (2A) Subsection (1)(a)(iv) shall not operate to exclude-
- (a) any benefit that is-
- (i) provided by an employer otherwise than in connection with a holiday journey; and
- (ii) capable of being converted into money by the recipient; (Replaced 24 of 2003 s. 3)
- (b) any amount paid by an employer in connection with the education of a child of an employee; or (Amended 24 of 2003 s. 3)
- (c) any amount paid by an employer in connection with a holiday journey, (Added 24 of 2003 s. 3) from income from any office or employment. (Added 1 of 1991 s. 3)
- (3) A pension shall include a pension which is voluntary or is capable of being discontinued. (Replaced 36 of 1955 s. 13)
- (4) For the purposes of subsection (1)-
- (a) the gain realized by the exercise at any time of such a right as is referred to in paragraph (d) of that subsection shall be taken to be the difference between the amount which a person might reasonably expect to obtain from a sale in the open market at that time of the shares or stock acquired and the amount or value of the consideration given whether for them or for the grant of the right or for both; and
- (b) the gain realized by the assignment or release of such a right as is referred to in paragraph (d) of that subsection shall be taken to be the difference between the amount or value of the consideration for the assignment or release and the amount or value of the consideration given for the grant of the right, (a just apportionment being made of any entire consideration given for the grant of the right to acquire the said shares or stock and other shares or stock or otherwise for the grant of the right to acquire those shares or stock and for something beside):
- Provided that neither the consideration given for the grant of the right nor any such entire consideration shall be taken to include the performance of any duties in or in connection with the office or employment by reason of which the right was granted, and no part of the amount or value of the consideration given for the grant shall be deducted more than once under this subsection. (Replaced 2 of 1971 s. 6)
- (5) Where salaries tax may by virtue of subsection (1)(d) become chargeable in respect of any gain which may be realized by the exercise of a right, salaries tax shall not be chargeable under any other provision of this Ordinance in respect of the receipt of the right. (Added 2 of 1971 s. 6. Amended L.N. 65 of 1986)
- (6) For the purposes of this section-
- accrued benefit** (累算權益) has the same meaning as in section 8(6); (Added 4 of 1998 s. 6)
- associated corporation** (相聯法團) means-
- (a) a corporation over which the employer has control;
- (b) if the employer is a corporation-
- (i) a corporation which has control over the employer; or
- (ii) a corporation which is under the control of the same person as is the employer;
- child of an employee** (僱員的子女) means any child of an employee or of his or her spouse or former spouse, whether or not born in wedlock, and includes the adopted or step child of either or both of them; (Added 1 of 1991 s. 3)
- control** (控制), in relation to a corporation, means the power of a person to secure-
- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,
- that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person; (Added 38 of 1975 s. 2)
- employee** (僱員) includes a holder of an office; (Added 1 of 1991 s. 3)

**holiday journey** (度假旅程) means-

- (a) a journey taken for holiday purposes; or
- (b) where a journey is taken for holiday and other purposes, the part of the journey taken for holiday purposes; (Added 24 of 2003 s. 3)

**place of residence** (居住地方) includes a residence provided by an employer or an associated corporation notwithstanding that the employee is required to occupy that place of residence by or under his terms of employment and whether or not by doing so he can better perform his duties; (Added 48 of 1979 s. 2. Amended 76 of 1993 s. 4)

**retirement** (退休) and **termination of service** (服務終止) have the same meaning as in section 8(3). (Added 76 of 1993 s. 4)

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**Note:**

The amendments made by 24 of 2003 to section 9(1)(a)(i) to (iii), (2A)(a) and (c) and (6) apply in relation to the year of assessment commencing on 1 April 2003 and to all subsequent years of assessment. (Please see 24 of 2003 s. 2)

Section:	9A	<b>Remuneration under certain agreements treated as being income derived from an employment of profit</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where a person (**relevant person**) carrying on (or deemed under this Ordinance to be carrying on) a trade, profession or business, or prescribed activity, has entered into an agreement, whether before, on or after the appointed day, under which any remuneration for any services carried out under the agreement on or after that day by an individual (**relevant individual**) for the relevant person or any other person is paid or credited on or after that day to-
- (a) a corporation controlled by-
    - (i) the relevant individual;
    - (ii) an associate or associates of the relevant individual; or
    - (iii) the relevant individual together with an associate or associates of the relevant individual;
  - (b) a trustee of a trust estate under which the relevant individual or an associate or associates of the relevant individual is a beneficiary, or are beneficiaries, as the case may be, under the trust; or
  - (c) a corporation controlled by such a trustee,
- then, subject to subsections (3) and (4), for the purposes of this Ordinance-
- (i) the relevant individual shall be treated as having an employment of profit with the relevant person-
    - (A) commencing on-
      - (I) in the case of the trade, profession or business, the day the relevant individual commenced to carry out any of those services or the appointed day, whichever is the later;
      - (II) in the case of the prescribed activity, the day the notice concerned under subsection (6) commenced or the day the relevant individual commenced to carry out any of those services, whichever is the later;
    - (B) until the agreement terminates without the relevant individual continuing to carry out any of those services as an employee of the relevant person;
      - (i) the relevant individual shall be treated as an employee of the relevant person, and the relevant person shall be treated as the employer of the relevant individual, whilst the relevant individual is treated, under paragraph (i), as having an employment of profit with the relevant person; and
      - (ii) any such remuneration shall be treated as being-
        - (A) income derived by the relevant individual from an employment of profit with the relevant person; and
        - (B) received by and accrued to the relevant individual at the time that it is paid or credited to the corporation or trustee concerned referred to in paragraph (a), (b) or (c),
- and the other provisions of this Ordinance (including section 52) shall be construed accordingly.
- (2) Where an agreement referred to in subsection (1) does not specify or otherwise identify the amount of any remuneration referred to in that subsection which is from time to time to be paid or credited to the corporation or trustee referred to in paragraph (a), (b) or (c) of that subsection, then any sum which under that agreement is paid or credited to that corporation or trustee, as the case may be, shall be deemed to be such remuneration (and the other provisions of this Ordinance, including that subsection, shall apply accordingly) except any such sum or

part thereof in respect of which the relevant individual concerned or the relevant person establishes to the satisfaction of the Commissioner that it was not in substance remuneration for any services carried out under that agreement on or after the appointed day by the relevant individual for the relevant person or any other person.

- (3) Paragraphs (i), (ii) and (iii) of subsection (1) shall not apply where-
- (a) neither the agreement referred to in that subsection nor any related undertaking (and whether or not the agreement refers to that undertaking) provides for any remuneration for any of those services to include or to be the provision of annual leave, passage allowance, sick leave, pension entitlements, medical payments or accommodation, or any similar benefit, or any benefit (including money) in lieu thereof;
  - (b) if the agreement referred to in that subsection or any related undertaking (and whether or not the agreement refers to that undertaking) requires any of the services referred to in that subsection to be carried out personally by the relevant individual, the relevant individual carries out the same or similar services-
    - (i) for persons other than any person for whom those first-mentioned services are carried out under that agreement; and
    - (ii) during the term of that agreement or undertaking, as the case may be;
  - (c) the performance by the relevant individual of any of those services is not subject to any control or supervision-
    - (i) which may be commonly exercised by an employer in relation to the performance of his employee's duties; and
    - (ii) by any person (including the relevant person) other than the corporation or trustee concerned referred to in subsection (1)(a), (b) or (c);
  - (d) the remuneration referred to in that subsection is not paid or credited periodically and calculated on a basis commonly used in relation to the payment or crediting and calculation of remuneration under a contract of employment;
  - (e) the relevant person does not have the right to cause any of those services to cease to be carried out in a manner, or for a reason, commonly provided for in relation to the dismissal of an employee under a contract of employment; and
  - (f) the relevant individual is not held out to the public to be an officer or employee of the relevant person.
- (4) Paragraphs (i), (ii) and (iii) of subsection (1) shall not apply where the relevant individual establishes to the satisfaction of the Commissioner that at all relevant times the carrying out of the services referred to in that subsection was not in substance the holding by him of an office or employment of profit with the relevant person.
- (5) It is hereby declared that where, by virtue of the operation of this section, the relevant individual is chargeable to salaries tax on remuneration referred to in subsection (1), then-
- (a) the corporation or trustee concerned referred to in paragraph (a), (b) or (c) of that subsection to whom that remuneration is paid or credited is not chargeable to tax thereon; and
  - (b) the relevant individual is not chargeable to tax on any remuneration paid or credited to him by that corporation or trustee, as the case may be-
    - (i) in respect of any office or employment of profit he has with that corporation or trustee, as the case may be; and
    - (ii) to the extent that the remuneration referred to in this paragraph is attributable to any of the services referred to in that subsection.
- (6) The Commissioner may, by notice in the Gazette, prescribe an activity for the purposes of this section.
- (7) For the avoidance of doubt, it is hereby declared that-
- (a) where there are 2 or more relevant individuals under an agreement referred to in subsection (1), then that subsection shall apply to them individually and not collectively, and the other provisions of this section (including subsection (2)) shall be construed accordingly;
  - (b) paragraphs (i), (ii) and (iii) of subsection (1) shall not apply where under an agreement referred to in that subsection-
    - (i) the relevant person is also the relevant individual; or
    - (ii) the relevant person is a partnership and the relevant individual is a partner of the partnership.
- (8) In this section-

**appointed day** (指定日期) means the day appointed under section 1(2) of the Inland Revenue (Amendment) (No. 2) Ordinance 1995 (54 of 1995);

**associate** (相聯者), in relation to the relevant individual, means-



- (a) a relative of the relevant individual;
- (b) a partner of the relevant individual and any relative of that partner;
- (c) a partnership in which the relevant individual is a partner;
- (d) any corporation controlled by the relevant individual, by a partner of the relevant individual or by a partnership in which the relevant individual is a partner;
- (e) any director or principal officer of a corporation referred to in paragraph (d);
- (f) another relevant individual who is such an individual under the agreement referred to in subsection (1) under which the first-mentioned relevant individual is also such an individual;

**beneficiary** (受益人), in relation to a trust estate, means any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income;

**control** (控制), in relation to a corporation, means the power of a person to secure-

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

**prescribed activity** (訂明活動) means any activity prescribed in a notice under subsection (6);

**principal officer** (主要職員) means-

- (a) a person employed by a corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

**relative** (親屬) means the spouse, parent, child, brother or sister of the person concerned, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent.

(Added 54 of 1995 s. 2)

Section:	10	<b>Salaries tax on spouses to be paid separately unless they elect to be jointly assessed</b>	E.R. 1 of 2012	09/02/2012
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- (1) In the case of a husband and wife, unless an election is made under subsection (2), salaries tax shall be payable on the net chargeable income of each spouse ascertained under this Part by the spouse to whom the income has accrued.
- (2) Where in any year of assessment a husband and wife, not being a wife living apart from her husband, both have assessable income and-
  - (a) either the husband or wife is entitled to deductions under Part 4A and allowances under Part 5 which, in aggregate, are in excess of his or her net assessable income; or (Amended 31 of 1998 s. 4)
  - (b) both also have a net chargeable income and the aggregate of the salaries tax which would be payable by them if subsection (1) applies exceeds the salaries tax which would be payable if an election is made under this subsection,
 an election may be made by them, subject to section 11, to be assessed to salaries tax in the manner specified in subsection (3).
- (3) Where an election is made by a husband and wife under subsection (2) salaries tax shall be payable on their aggregated net chargeable income as ascertained under section 12B(2) and in the case of an election-
  - (a) under subsection (2)(a), the spouse who would have been chargeable to salaries tax in the absence of such an election;
  - (b) under subsection (2)(b), the spouse who is nominated by them, shall be chargeable to salaries tax in respect of such aggregated net chargeable income.
- (4) Where a husband or wife is deceased an executor shall have the same right to make an election under subsection (2) as the deceased would have had if the deceased had not died.
- (5) For the purposes of subsection (3), where an election is made under subsection (2) by a husband and wife who

married one another in the year of assessment to which the election relates, they shall be deemed, for the purposes of ascertaining their aggregated net chargeable income for that year, to have married at the commencement of that year.

(Replaced 43 of 1989 s. 3. Amended E.R. 1 of 2012)

Section:	11	<b>The time and manner in which an election or the withdrawal of an election for joint assessment is to be made</b>	E.R. 1 of 2012	09/02/2012
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- (1) An election shall be made in the specified form jointly by the husband and wife and, subject to subsection (3), may be withdrawn by them jointly by notice in writing given to the Commissioner.
- (2) An election shall relate to the year of assessment specified in such form and it, and any withdrawal thereof under this section, may be made at any time-
  - (a) within that year of assessment or the following year of assessment; or
  - (b) before the expiration of a period of one month following the time when the assessment for the year of assessment becomes final and conclusive under section 70, whichever is the later, or within such further time, if any, as the Commissioner may allow as being reasonable in the circumstances.
- (3) Where an election is withdrawn under this section it shall, for the purpose of assessing the net chargeable income of the husband and wife, be deemed never to have been made and any assessment made prior to such withdrawal on the basis of the election may be adjusted by the Commissioner to take account of the withdrawal.
- (4) A husband and wife who under this section have withdrawn an election may not again make an election in relation to the year of assessment to which the withdrawn election relates.
- (5) In this section *election*(選擇) means an election made under section 10(2) and, where a nomination under section 10(3)(b) is required, includes such nomination.

(Added 43 of 1989 s. 3)

Section:	11A	<b>(Repealed 71 of 1983 s. 4)</b>		30/06/1997
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Section:	11B	<b>Ascertainment of assessable income</b>	E.R. 1 of 2012	09/02/2012
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The assessable income of a person in any year of assessment shall be the aggregate amount of income accruing to him from all sources in that year of assessment.

(Added 8 of 1973 s. 5. Amended 71 of 1983 s. 5)

Section:	11C	<b>Office or employment of profit</b>	E.R. 1 of 2012	09/02/2012
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For the purpose of section 11B, a person shall be deemed to commence or cease, as the case may be, to derive income from a source whenever and as often as he commences or ceases-

- (a) to hold any office or employment of profit; or
- (b) to become entitled to a pension.

(Replaced 71 of 1983 s. 6)

Section:	11D	<b>Receipt of income</b>	E.R. 1 of 2012	09/02/2012
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For the purpose of section 11B-

- (a) income which has accrued to a person during the basis period for a year of assessment but which has not been received by him in such basis period shall not be included in his assessable income for that year of assessment until such time as he shall have received such income, when notwithstanding anything contained in this Ordinance, an additional assessment shall be raised in respect of such income:

Provided that for the purposes of this paragraph income which has either been made available to the person to whom it has accrued or has been dealt with on his behalf or according to his directions shall be deemed to have been received by such person;

(b) income accrues to a person when he becomes entitled to claim payment thereof:

Provided that-

- (i) any lump sum payment received on or after 1 April 1966, being a lump sum payment or gratuity paid or granted upon the retirement from or termination of any office or employment or any contract of employment of an employee or a lump sum payment of deferred pay or arrears of pay arising from an award of salary or wages, whether such a payment is paid by an employer to a person during employment or after that person has left his employ, shall upon the application in writing of the person entitled to claim payment thereof within 2 years after the end of the year of assessment in which the payment is made be related back and shall then be deemed to be income which has accrued during the periods in which the services or employment, in respect of which the payment was made, were performed or exercised, or, if the relevant periods of service or employment exceed 3 years, the payment shall be deemed to be income accruing at a constant rate over the 3 years ending on the date on which the person became entitled to claim payment thereof or ending on the last day of employment, whichever is the earlier; and, notwithstanding section 70, an application made by any person under this proviso for the adjustment of an assessment shall, to that extent, be regarded as a valid objection to the assessment under section 64; and
- (ii) subject to proviso (i), any payment made by an employer to a person after that person has ceased or been deemed to cease to derive income which, if it had been made on the last day of the period during which he derived income, would have been included in that person's assessable income for the year of assessment in which he ceased or is deemed to cease to derive income from that employment, shall be deemed to have accrued to that person on the last day of that employment.

(Added 8 of 1973 s. 5. Amended 71 of 1983 s. 7)

Section:	12	<b>Adjustments to assessable income</b>	E.R. 1 of 2012	09/02/2012
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- (1) In ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person-
  - (a) all outgoings and expenses, other than expenses of a domestic or private nature and capital expenditure, wholly, exclusively and necessarily incurred in the production of the assessable income;
  - (b) allowances calculated in accordance with Part 6 in respect of capital expenditure on machinery or plant the use of which is essential to the production of the assessable income;
  - (c) the amount of any excess carried forward to that year of assessment in accordance with section 12A(3);
  - (d) the amount of any excess required by subsection (3) to be deducted;
  - (e) the amount of the expenses of self-education paid in the year of assessment not exceeding the amount prescribed in subsection (6). (Added 24 of 1996 s. 3)
- (2) Where any machinery or plant is not used wholly and exclusively in the production of assessable income, the amount of the allowances provided for in subsection (1)(b) shall be reduced in the proportion considered by the assessor to be fair and reasonable.
- (3) If in the case of a husband and wife who have made an election under section 10(2), the aggregate of deductions claimed for any year of assessment by either spouse under subsection (1)(a), (b) and (c) exceeds the assessable income of that spouse in that year, the excess shall be deducted from the assessable income of the other spouse for the purpose of determining the net assessable income of that other spouse in that year. (Amended 43 of 1989 s. 4)
- (4) (Repealed 71 of 1983 s. 8)
- (5) The amount of assessable income for any year of assessment of a person shall, for the purposes of ascertaining his net assessable income, be increased by the amount of any balancing charge directed to be made under Part 6 on that person in respect of the machinery or plant used in the production of the assessable income.
- (6) For the purposes of subsection (1)(e)-
  - (a) the total amount that may be deducted in any year of assessment shall not exceed the amount specified in relation to that year in Schedule 3A; (Amended 42 of 1997 s. 3)
  - \***(b) expenses of self-education** (個人進修開支) means expenses paid by the taxpayer as-
    - (i) fees, including tuition and examination fees, in connection with a prescribed course of education undertaken by the taxpayer; or
    - (ii) fees in respect of an examination set by an education provider or a trade, professional or business association, and undertaken by the taxpayer to gain or maintain qualifications for use in any

employment,  
but does not include-

- (A) expenses for which a deduction is allowable or has been allowed to the taxpayer in any year of assessment under any other provision of this Ordinance; or
- (B) expenses to the extent to which they have been reimbursed or are reimbursable to the taxpayer by his employer or any other person unless the reimbursement has been or will be included in the assessable income of the taxpayer; (Replaced 12 of 2004 s. 4)

\*(c) **prescribed course of education** (訂明教育課程) means a course undertaken to gain or maintain qualifications for use in any employment and being-

- (i) a course of education provided by an education provider;
- (ii) a training or development course provided by a trade, professional or business association; or
- + (iii) a training or development course accredited or recognized by an institution specified in Schedule 13; (Replaced 12 of 2004 s. 4)

\*(d) **education provider** (教育提供者) means-

- (i) a university, university college or technical college;
- (ii) a place of education to which the Education Ordinance (Cap 279) does not apply by virtue of section 2 of that Ordinance;
- (iii) a school registered under section 13(a) of the Education Ordinance (Cap 279);
- (iv) a school exempted from registration under section 9(1) of the Education Ordinance (Cap 279);
- (v) an institution approved by the Commissioner for the purposes of section 16C; or
- (vi) an institution approved by the Commissioner under paragraph (e); (Replaced 12 of 2004 s. 4)

\*(e) the Commissioner may in writing approve an institution as an education provider and the approval may operate from a date, whether before or after the date of approval, specified in the instrument of approval and may be withdrawn at any time; (Added 12 of 2004 s. 4)

+(f) the Secretary for Financial Services and the Treasury may by order amend Schedule 13. (Added 12 of 2004 s. 4)

(Replaced 7 of 1975 s. 4. Amended 71 of 1983 s. 8; E.R. 1 of 2012)

**Notes:**

\* **Section 12(6)(b), (c)(except paragraph (c)(iii)), (d) and (e) applies in relation to the year of assessment 2000/01 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(1))**

+ **Section 12(6)(c)(iii) and (f) applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(4))**

Section:	12A	<b>Treatment of losses</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where in any year of assessment the aggregate of the outgoings, expenses and allowances deductible under section 12(1)(a) and (b) from the assessable income of a person exceeds the amount of his assessable income, the amount of the excess shall, subject to subsection (4), be carried forward and set off against his assessable income in subsequent years of assessment.
- (2) The aggregate amount set off against a person's assessable income in subsequent years of assessment shall not exceed the amount of any excess under subsection (1).
- (3) Subject to subsection (4), a set off by a person under this section shall first be made against his assessable income for the year of assessment next succeeding the year of assessment in respect of which the excess occurred and, so far as it cannot be so made, against his assessable income for the next year of assessment and so on until the excess has been completely set off.
- (4) Where in any year of assessment the net chargeable incomes of the husband and wife are aggregated by reason of an election made under section 10(2), any excess carried forward into that year under this section shall-
  - (a) be set off primarily against the assessable income of the spouse whose deductions resulted in the excess and then, so far as it cannot be so set off, against the assessable income of the other spouse; and
  - (b) then, and so far as it cannot be set off in accordance with paragraph (a)-
    - (i) where no election is made under section 10(2) in respect of the following year of assessment, in accordance with subsection (3); or
    - (ii) where an election is made under section 10(2) in respect of the following year of assessment, in

accordance with paragraph (a),  
and so on from year to year until the excess has been completely set off. (Replaced 43 of 1989 s. 5)  
(Replaced 7 of 1975 s. 4. Amended 71 of 1983 s. 9)

Section:	12B	<b>Ascertainment of net chargeable income</b>	E.R. 1 of 2012	09/02/2012
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- (1) The net chargeable income of a person for any year of assessment shall, subject to subsection (2), be such amount as is arrived at after deducting from his net assessable income-
  - (a) such deductions as are under Part 4A allowable to that person; and (Replaced 31 of 1998 s. 5)
  - (b) such allowances as are under Part 5 permitted for that person. (Amended 43 of 1989 s. 6)
- (2) In the case of a person chargeable to salaries tax under section 10(3), that person and his or her spouse shall have but one net chargeable income, and it shall be the amount arrived at after deducting from the aggregate of their net assessable incomes-
  - (a) such deductions as are under Part 4A allowable to them; and (Replaced 31 of 1998 s. 5)
  - (b) such allowances as are under Part 5 permitted in their case. (Replaced 43 of 1989 s. 6)
- (3) (Repealed 43 of 1989 s. 6)  
(Replaced 71 of 1983 s. 10. Amended E.R. 1 of 2012)

Section:	12BA	<b>(Repealed 31 of 1998 s. 6)</b>	31 of 1998	17/04/1998
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Section:	13	<b>Calculation of salaries tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (2), salaries tax shall be charged at the rates specified in Schedule 2 on the net chargeable income of a person for each year of assessment ascertained in accordance with this Part. (Amended L.N. 350 of 1990)
- (2) The amount of salaries tax so charged shall not exceed the amount which would have been chargeable had the standard rate been charged on the whole of-
  - (a) the net assessable income as reduced by such deductions as are under Part 4A allowable to the person; or
  - (b) in the case of a spouse chargeable to salaries tax under section 10(3), the aggregate amount of his or her net assessable income and that of his or her spouse as reduced by such deductions as are under Part 4A allowable to them. (Amended 31 of 1998 s. 7)
- (3) Notwithstanding subsections (1) and (2), the amount of salaries tax charged under this section for the year of assessment commencing on 1 April 2006 shall be reduced by an amount equivalent to-
  - (a) 50% of the amount of the tax as computed under subsection (1) read together with subsection (2); or
  - (b) \$15000,
whichever is the less. (Added 10 of 2007 s. 3)  
(Replaced 43 of 1989 s. 8. Amended E.R. 1 of 2012)

Part:	4	<b>Profits Tax</b>	E.R. 1 of 2012	09/02/2012
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Section:	14	<b>Charge of profits tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part. (Replaced 2 of 1971 s. 9. Amended 7 of 1986 s. 12; 56 of 1993 s. 8)
- (2) In the case of-
  - (a) a corporation; and
  - (b) a corporation (*relevant corporation*) to which a share of the assessable profits of a partnership is apportioned under section 22A and is charged in the partnership name under section 22,
profits tax shall be charged on the assessable profits of that corporation, or on that share of the assessable profits

of that relevant corporation, as the case may be, at the rate specified in Schedule 8. (Added 56 of 1993 s. 8)

Section:	14A	<b>Qualifying debt instruments</b>	E.R. 1 of 2012	09/02/2012
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- (1) For the purposes of this Part the assessable profits of a person for sums received by or accrued to the person as-
- (a) interest paid or payable on a medium term debt instrument or short term debt instrument; or
  - (b) any gain or profit on the sale or other disposal or on the redemption on maturity or presentment of the medium term debt instrument or short term debt instrument,
- are chargeable to tax under this Part at one-half of the rate specified in Schedule 1 or Schedule 8, as the case may be. (Amended 4 of 2011 s. 3)

(1A) In relation to-

- (a) a medium term debt instrument issued on or after the date of commencement\* of the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011); or
  - (b) a short term debt instrument,
- subsection (1) does not apply in respect of any sums received by or accrued to a person as referred to in that subsection if, at the time the sums are so received or accrued, the person is an associate of the issuer of the debt instrument. (Added 4 of 2011 s. 3)

(2)-(3) (Repealed 32 of 1998 s. 4)

(4) In this section- (Amended 34 of 2003 s. 3)

**associate** (相聯者), in relation to the issuer of a debt instrument, means-

- (a) if the issuer is a natural person-
  - (i) any relative of the issuer;
  - (ii) any partner of the issuer;
  - (iii) if a partner of the issuer is a natural person, any relative of that partner;
  - (iv) any partnership of which the issuer is a partner;
  - (v) any corporation controlled by-
    - (A) the issuer;
    - (B) a partner of the issuer;
    - (C) if a partner of the issuer is a natural person, any relative of that partner; or
    - (D) a partnership of which the issuer is a partner; or
  - (vi) any director or principal officer of a corporation referred to in subparagraph (v);
- (b) if the issuer is a corporation-
  - (i) any associated corporation;
  - (ii) any person who controls the issuer;
  - (iii) any partner of a person who controls the issuer;
  - (iv) if a person who controls the issuer is a natural person, any relative of that person;
  - (v) if a partner referred to in subparagraph (iii) is a natural person, any relative of that partner;
  - (vi) any director or principal officer of the issuer or of any associated corporation;
  - (vii) any relative of a director or principal officer referred to in subparagraph (vi);
  - (viii) any partner of the issuer; or
  - (ix) if a partner of the issuer is a natural person, any relative of that partner; or
- (c) if the issuer is a partnership-
  - (i) any partner of the issuer;
  - (ii) if a partner of the issuer is a partnership, any partner (**Partner A**) of that partnership or any partner (**Partner B**) with that partnership in any other partnership;
  - (iii) if Partner A is a partnership, any partner of Partner A;
  - (iv) if Partner B is a partnership, any partner of Partner B;
  - (v) if a partner of, or with, or in any of the partnerships referred to in subparagraph (ii), (iii) or (iv) is a natural person, any relative of that partner;
  - (vi) any corporation controlled by-
    - (A) the issuer;
    - (B) a partner of the issuer;
    - (C) if a partner of the issuer is a natural person, any relative of that partner; or
    - (D) a partnership of which the issuer is a partner;
  - (vii) any director or principal officer of a corporation referred to in subparagraph (vi); or

(viii) any corporation of which any partner of the issuer is a director or principal officer; (Added 4 of 2011 s. 3)

**associated corporation** (相聯法團), in relation to the issuer of a debt instrument which is a corporation, means-

- (a) a corporation over which the issuer has control;
- (b) a corporation which has control over the issuer; or
- (c) a corporation which is under the control of the same person as is the issuer; (Added 4 of 2011 s. 3)

**control** (控制), in relation to a corporation, means the power of a person to secure-

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any power conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person; (Added 4 of 2011 s. 3)

**debt instrument** (債務票據) means an instrument specified in Part 1 of Schedule 6 that- (Amended 34 of 2003 s. 3)

- (a) is in respect of a debt issue which in its entirety has been lodged with and cleared by the Central Moneymarket Unit operated by the Monetary Authority;
- (b) subject to subsection (5), is issued by a person and has at all relevant times a credit rating acceptable to the Monetary Authority from a credit rating agency recognized by the Monetary Authority;
- (c) (Repealed 34 of 2003 s. 3)
- (d) subject to subsection (5), has-
  - (i) where it is issued before 1 April 1999, a minimum denomination of \$500000 or its equivalent in a foreign currency; or
  - (ii) where it is issued on or after 1 April 1999, a minimum denomination of \$50000 or its equivalent in a foreign currency; (Replaced L.N. 90 of 1999 and 44 of 1999 s. 11)
- (e) is, at issuance, issued in Hong Kong to-
  - (i) 10 or more persons; or
  - (ii) less than 10 persons none of whom is an associate of the issuer of the instrument; (Replaced 4 of 2011 s. 3)
- (f) if it is a scripless instrument, it is one that would qualify in the terms of this definition if it were in a physical form; (Amended 34 of 2003 s. 3)
- (g) is issued on or after 14 November 2003; (Amended 34 of 2003 s. 3; 4 of 2011 s. 3)

**medium term debt instrument** (中期債務票據) means-

- (a) a debt instrument that-
  - (i) is issued before 5 March 2003;
  - (ii) has an original maturity of not less than 5 years or is undated; and
  - (iii) cannot be redeemed within 5 years from the date of its issue; or
- (b) a debt instrument that-
  - (i) is issued on or after 5 March 2003;
  - (ii) has an original maturity of less than 7 years but not less than 3 years or is undated; and
  - (iii) can be redeemed within 7 years from the date of its issue but not within the first 3 years; (Added 34 of 2003 s. 3. Amended 4 of 2011 s. 3)

**principal officer** (主要職員), in relation to a corporation, means-

- (a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person employed by the corporation who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation; (Added 4 of 2011 s. 3)

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

- (a) an adopted child is regarded as a child of both the natural parents and the adopting parents; and
- (b) a step child is regarded as a child of both the natural parents and the step parents; (Added 4 of 2011 s. 3)

**short term debt instrument** (短期債務票據) means a debt instrument that-

- (a) is issued on or after the date of commencement of the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011);
- (b) has an original maturity of less than 3 years or is undated; and
- (c) can be redeemed within 3 years from the date of its issue; (Added 4 of 2011 s. 3)

**wholly owned subsidiary** (全資附屬公司) has the same meaning as it is given for the purposes of section 124 of the Companies Ordinance (Cap 32) by subsection (4) of that section. (Added 4 of 2011 s. 3)

(4A) For the purposes of paragraph (c) of the definition of **associated corporation** in subsection (4), a corporation is not regarded as being under the control of the same person as is the issuer of a debt instrument issued on or after the date of commencement of the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011) by reason only that-

- (a) both the corporation and the issuer are wholly owned by-
  - (i) the Government of Hong Kong; or
  - (ii) the central government of the same country;
- (b) more than 50% of the voting power in the corporation and more than 50% of the voting power in the issuer are held or controlled by-
  - (i) one or more than one corporation which is established and wholly owned by the Government of Hong Kong or the central government of the same country for the purpose of carrying on the business of investment (**government investment vehicle**); or
  - (ii) a wholly owned subsidiary of a government investment vehicle; or
- (c) more than 50% of the voting power in the corporation is held or controlled by a corporation wholly owned by the Government of Hong Kong or the central government of the same country (**government enterprise**) and more than 50% of the voting power in the issuer is held or controlled by another government enterprise. (Added 4 of 2011 s. 3)

(5) For the purposes of the definition of **debt instrument** in subsection (4), the Financial Secretary may by order-

- (a) declare that the provisions relating to a credit rating mentioned in paragraph (b) of that definition do not apply;
- (b) fix an amount of minimum denomination different from the amount mentioned in paragraph (d)(i) or (ii), as the case may be, of that definition, (Amended L.N. 90 of 1999 and 44 of 1999 s. 11)

in respect of a debt instrument issued by such person as may be specified in the order.

(Added 25 of 1996 s. 2. Amended 34 of 2003 s. 3; E.R. 1 of 2012)

**Note:**

The amendments made by 34 of 2003 to section 14A(1)(a) and (b), (4) and (5) apply in relation to the year of assessment commencing on 1 April 2003 and to all subsequent years of assessment. (Please see 34 of 2003 s. 2)

\* Commencement date: 25 March 2011

Section:	14B	<b>Qualifying reinsurance business</b>	E.R. 1 of 2012	09/02/2012
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- (1) For the purposes of this Part, the assessable profits of a corporation, to the extent that they are the assessable profits of the corporation derived from the business of reinsurance of offshore risks as a professional reinsurer within the meaning of section 23A(2) are, subject to subsection (2), chargeable to tax under this Part at one-half of the rate specified in Schedule 8.
- (2) (a) Subsection (1) shall only apply to a corporation where the corporation has elected in writing that the subsection shall so apply to it.
- (b) An election under paragraph (a), once made, is irrevocable.

(Added 32 of 1998 s. 5)

Section:	15	<b>Certain amounts deemed trading receipts</b>	E.R. 1 of 2012	09/02/2012
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- (1) For the purposes of this Ordinance, the sums described in the following paragraphs shall be deemed to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong-
  - (a) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person from the exhibition or use in Hong Kong of cinematograph or television film or tape, any sound recording, or any advertising



- material connected with such film, tape or recording;
- (b) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person for the use of or right to use in Hong Kong any patent, design, trade mark, copyright material, secret process or formula or other property of a similar nature, or for imparting or undertaking to impart knowledge directly or indirectly connected with the use in Hong Kong of any such patent, design, trade mark, copyright material, secret process or formula or other property; (Replaced 12 of 2004 s. 5. Amended 21 of 2011 s. 3)
  - (ba) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person for the use of or right to use outside Hong Kong any patent, design, trade mark, copyright material, secret process or formula or other property of a similar nature, or for imparting or undertaking to impart knowledge directly or indirectly connected with the use outside Hong Kong of any such patent, design, trade mark, copyright material, secret process or formula or other property, which are deductible in ascertaining the assessable profits of a person under this Part; (Added 12 of 2004 s. 5. Amended 21 of 2011 s. 3)
  - (c) sums received by or accrued to a person by way of grant, subsidy or similar financial assistance in connection with the carrying on of a trade, profession or business in Hong Kong, other than sums in connection with capital expenditure made or to be made by the person;
  - (d) sums received by or accrued to a person by way of hire, rental or similar charges for the use of movable property in Hong Kong or the right to use movable property in Hong Kong;
  - (e) (Repealed 7 of 1975 s. 7)
  - (f) sums received by or accrued to a corporation carrying on a trade, profession or business in Hong Kong by way of interest derived from Hong Kong; (Replaced 19 of 1986 s. 2)
  - (g) sums received by or accrued to a person, other than a corporation, carrying on a trade, profession or business in Hong Kong by way of interest derived from Hong Kong which interest is in respect of the funds of the trade, profession or business; (Replaced 19 of 1986 s. 2. Amended 17 of 1989 s. 4)
  - (h) sums received by or accrued to a person as a refund to the person of-
    - (i) contributions paid as an employer to a recognized occupational retirement scheme; or
    - (ii) voluntary contributions paid as an employer to a mandatory provident fund scheme, but only to the extent that the sums are allowed as deductions in ascertaining the person's assessable profits under this Part; (Replaced 4 of 1998 s. 6)
  - (i) sums, not otherwise chargeable to tax under this Part, received by or accrued to a financial institution by way of interest which arises through or from the carrying on by the financial institution of its business in Hong Kong, notwithstanding that the moneys in respect of which the interest is received or accrues are made available outside Hong Kong; (Added 73 of 1978 s. 3)
  - (j) sums received by or accrued to a corporation carrying on a trade, profession or business in Hong Kong by way of gains or profits arising in or derived from Hong Kong from the sale or other disposal or on the redemption on maturity or presentment of a certificate of deposit or bill of exchange; (Replaced 19 of 1986 s. 2)
  - (k) sums received by or accrued to a person, other than a corporation, carrying on a trade, profession or business in Hong Kong by way of gains or profits arising in or derived from Hong Kong from the sale or other disposal or on the redemption on maturity or presentment of a certificate of deposit or bill of exchange where such gains or profits are in respect of the funds of the trade, profession or business; (Replaced 19 of 1986 s. 2. Amended 28 of 1987 s. 3; 17 of 1989 s. 4)
  - (l) sums, not otherwise chargeable to tax under this Part, received by or accrued to a financial institution by way of gains or profits arising through or from the carrying on by the financial institution of its business in Hong Kong from the sale or other disposal or on the redemption on maturity or presentment of a certificate of deposit or bill of exchange notwithstanding that-
    - (i) the moneys laid out for the acquisition of the certificate or bill were made available outside Hong Kong; or
    - (ii) the sale, disposal or redemption is effected outside Hong Kong; and (Added 19 of 1986 s. 2. Amended 28 of 1987 s. 3)
  - (m) sums received or receivable by a person as consideration in respect of the transfer of a right to receive income, as provided for in section 15A. (Added 28 of 1987 s. 3)
- (1A) Subsection (1)(j) or (k) shall not apply to gains or profits arising in or derived from Hong Kong, other than gains or profits received by or accrued to a person whose trade, profession or business comprises or includes trading in certificates of deposit or bills of exchange, to the extent to which such gains or profits relate to a period prior to 1 April 1981; and gains or profits received by or accrued to any person from the sale or other disposal or on the

redemption on maturity or presentment, on or after 1 April 1981, of a certificate of deposit or bill of exchange purchased or otherwise acquired by that person before that date, shall be determined by reference to such amount as the Commissioner may consider such certificate of deposit or bill of exchange would have realized if it had been sold in the open market at the close of business on 31 March 1981 and not by reference to the amount, if any, paid by that person in so purchasing or otherwise acquiring such certificate of deposit or bill of exchange. (Added 30 of 1981 s. 3)

(1B) (Repealed 36 of 1984 s. 3)

(2) Where, in ascertaining for the purposes of this Part the profits of a trade, profession or business carried on in Hong Kong, a deduction has been allowed for any debt incurred for the purposes of the trade, profession or business, then, if the whole or any part of that debt is thereafter released, the amount released shall be deemed to be a receipt of the trade, profession or business arising in or derived from Hong Kong at the time when the release was effected.

(3) Where in the basis period for any year of assessment a financial institution was not a financial institution for the whole of that period, in that, if the institution is a bank it was not licensed for the whole of that period or if the institution is a deposit-taking company it was not registered for the whole of that period, then subsection (1)(i) and (l) shall apply only in respect of such part of the basis period during which the bank or deposit-taking company was licensed or registered, as the case may be. (Added 73 of 1978 s. 3. Amended 19 of 1986 s. 2)

(4) The amendments to this section effected by the Inland Revenue (Amendment) Ordinance 1984 (36 of 1984) shall not have the effect of rendering chargeable to tax sums received or accrued to any person prior to 1 April 1984 which were not chargeable to tax immediately prior to the coming into force of that Ordinance. (Added 36 of 1984 s. 3)

(5) The amendments to this section effected by the Inland Revenue (Amendment) (No. 2) Ordinance 1986 (19 of 1986) shall apply to sums received or accrued by way of interest, gains or profits on or after 1 April 1986, and the provisions of this section in force immediately prior to the coming into force of that Ordinance shall continue to apply to such sums received or accrued prior to 1 April 1986 as if such amendments had not been enacted. (Added 19 of 1986 s. 2)

(6) The amendment made to subsection (1) by section 5(a)(ii) of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) does not apply to sums described in subsection (1)(ba) which were received by or which accrued to a person before the commencement\* of that Ordinance. (Added 12 of 2004 s. 5)

(Replaced 2 of 1971 s. 9. Amended 7 of 1986 s. 12)

**Note:**

\* **Commencement date: 25 June 2004.**

Section:	15A	<b>Transfer of right to receive income</b>	E.R. 1 of 2012	09/02/2012
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(1) Subject to subsection (3) where-

(a) a right to receive income from property is transferred by a person to another person; and

(b) consideration has been received or is receivable in respect of the transfer,

the amount of the consideration shall, notwithstanding the exclusion relating to the sale of capital assets contained in section 14, be treated as a trading receipt arising in or derived from Hong Kong by the transferor from a trade, profession or business carried on in Hong Kong.

(2) The reference in subsection (1) to the amount of consideration shall, in the case where consideration is paid or given otherwise than in cash, be construed as a reference to the money value of the consideration.

(3) Subsection (1) shall not apply in relation to a transfer of a right to receive income from property where the right arose from the ownership by the transferor of a legal or equitable estate or interest in the property and, before or at the time of that transfer, the transferor also transferred that estate or interest to the transferee.

(4) In this section-

**income** (入息) means any profits, rent, interest or royalty chargeable to tax under Part 4;

**property** (財產) means any property whatsoever;

**right to receive income from property** (從財產收取入息的權利) means a right to have income that will or may be derived from property paid to, or applied or accumulated for the benefit of, the person owning the right.

(5) This section shall apply to any agreement made for the transfer of a right to receive income from property within the meaning of subsection (4) entered into or effected after 25 February 1987 other than an agreement made in

pursuance of a legally enforceable obligation incurred on or before that date.

(Added 28 of 1987 s. 4. Amended E.R. 1 of 2012)

Section:	15B	<b>(Repealed 71 of 1983 s. 13)</b>		30/06/1997
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Section:	15C	<b>Valuation of trading stock on cessation of business</b>	E.R. 1 of 2012	09/02/2012
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Where a person ceases to carry on a trade or business in Hong Kong the trading stock of the trade or business at the date of cessation shall be valued for the purpose of computing the profits in respect of which that person is chargeable to tax under this Part as follows- (Amended 28 of 1964 s. 6; 26 of 1969 s. 12)

- (a) in the case of any such trading stock-
  - (i) which is sold or transferred for valuable consideration to a person who carries on or intends to carry on a trade or business in Hong Kong; and
  - (ii) the cost whereof may be deducted by the purchaser as an expense in computing the profits from such trade or business in respect of which such purchaser is chargeable to tax under this Part, the value thereof shall be taken to be the amount realized on the sale or the value of the consideration given for the transfer; (Amended 28 of 1964 s. 6)
- (b) in the case of any other such trading stock, the value thereof shall be taken to be the amount which it would have realized if it had been sold in the open market at the date of cessation.

(Added 36 of 1955 s. 22. Amended 7 of 1986 s. 12)

Section:	15D	<b>Post-cessation receipts and payments</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where a person who has ceased to carry on a trade, profession or business in Hong Kong, receives any sum which, if it had been received before such cessation, would have been included in the profits of the trade, profession or business in respect of which the person is chargeable to tax under this Part, then to the extent to which the sum has not already been included in such profits that sum shall be deemed to be profits of the trade, profession or business for the year of assessment in which the cessation occurred.
- (2) Where a person who has ceased to carry on a trade, profession or business in Hong Kong pays any sum which, if it had been paid before such cessation, would have been deductible in computing the profits of the trade, profession or business in respect of which the person is chargeable to tax under this Part, then to the extent to which the sum has not already been deducted in computing such profits, that sum shall be deducted in ascertaining his profits for the year of assessment in which the cessation occurred.

(Added 26 of 1969 s. 13. Amended 7 of 1986 s. 12)

Section:	15E	<b>Stock borrowing and lending</b>	E.R. 1 of 2012	09/02/2012
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- (1) This section applies where-
  - (a) in relation to a stock borrowing under a stock borrowing and lending agreement, the borrower has used the borrowed stock obtained from a lender for one or more than one specified purpose and has effected a stock return;
  - (b) if any distribution is made or a right or option is issued in respect of the borrowed stock during the borrowing period, regardless of whether that event occurs before or after the borrowed stock is disposed of by the borrower to a third party, the lender receives from the borrower the distribution or identical property, the right or option or an identical right or option, or a compensatory payment equal to the value of the distribution or the value of the right or option;
  - (c) the lender does not dispose of, whether by transfer, declaration of trust or otherwise, the right to receive any part of the total consideration payable or to be given by the borrower under the stock borrowing and lending agreement;
  - (d) both the borrower and the lender were dealing with each other at arm's length in relation to the stock borrowing and the stock return; and
  - (e) the lender does not enter into the stock borrowing with the purpose, or main purpose, of avoiding or deferring the inclusion of any amount in profits in respect of which the lender is chargeable to tax under this

Part.

- (2) For the purpose of determining whether an amount, other than any fee payable under a stock borrowing and lending agreement, should be taken into account in ascertaining the profits in respect of which a lender is chargeable to tax under this Part in respect of a stock borrowing or a stock return, the lender is to be treated as if-
- (a) the stock borrowing, to the extent of the quantity and description of the borrowed stock in respect of which the stock return is subsequently made, had not been entered into;
  - (b) the stock return had not been made;
  - (c) the lender had, at all times during the relevant borrowing period, held the borrowed stock in respect of which the stock return is made; and
  - (d) the stock which is the subject of the stock return were the borrowed stock in respect of which the stock return made.
- (3) Where-
- (a) a lender receives from a borrower in relation to the borrowed stock a distribution or identical property or a right or option or identical property; and
  - (b) had the borrowed stock continued to be held by the lender at all times during the borrowing period an amount would have been included or excluded, as the case may be, in ascertaining for a year of assessment the profits in respect of which the lender is chargeable to tax under this Part in respect of the distribution or the right or option,
- then an equal amount shall be likewise treated in ascertaining the chargeable profits of the lender for that year of assessment.
- (4) Where a lender receives from a borrower in relation to the borrowed stock a compensatory payment in respect of a distribution made or right or option issued during the borrowing period, then in determining whether an amount is to be included or excluded, as the case may be, in ascertaining for a year of assessment the profits in respect of which the lender is chargeable to tax under this Part in respect of the compensatory payment, the lender is to be treated as if-
- (a) the distribution had been made, or the right or option had been issued directly to him in respect of the borrowed stock; and
  - (b) he had disposed of the distribution or right or option immediately after its making or issue, as the case may be, for a consideration equal to that compensatory payment.
- (5) In determining the amount, if any, other than a fee payable under a stock borrowing and lending agreement, to be taken into account in ascertaining the profits in respect of which a borrower is chargeable to tax under this Part in respect of a stock borrowing or a stock return, the borrower is to be treated as if the stock borrowing and the stock return respectively had been carried out for a consideration equal to the market value of the borrowed stock at the time of the relevant stock borrowing.
- (6) Where a person has entered into a stock borrowing and lending agreement under which a stock borrowing has been effected, and at the time of making an assessment of profits tax on that person for any year of assessment the assessor is of the opinion that the requirements specified in subsection (1) have been or will be satisfied, the assessor may make the assessment on the basis that this section is applicable.
- (7) Where-
- (a) an assessment has been made on the basis that this section is applicable; and
  - (b) after the making of the assessment, the assessor becomes satisfied that this section is not applicable,
- then the assessor may accordingly adjust the assessment.
- (8) In this section-

**borrower** (借用人), **borrowed stock** (被借用證券), **lender** (借出人), **recognized stock market** (認可證券市場), **specified purpose** (指明用途), **stock borrowing** (證券借用), **stock borrowing and lending agreement** (證券借用及借出協議) and **stock return** (證券交還), subject to subsection (9), have the same meanings as in the Stamp Duty Ordinance (Cap 117); (Amended 56 of 1996 s. 2; 5 of 2002 s. 407)

**borrowing period** (借用期間), in relation to any borrowed stock, means the period commencing when that stock was borrowed under a stock borrowing and ending when a stock return is effected in relation to that stock;

**distribution** (派發) includes-

- (a) an interest payment;
- (b) a dividend;
- (c) a share issued by a company to a shareholder in the company where the share is issued as a bonus share;
- (d) an amount credited by the trustee of a unit trust to a unit holder other than by way of redemption, realization

or liquidation;

(e) a unit issued by the trustee of a unit trust;

**option** (認購權) includes-

(a) in relation to a company, an option to acquire shares in the company;

(b) in relation to a unit trust, an option to acquire units in the unit trust;

**right** (權利) includes-

(a) in relation to a company, a right to acquire shares in the company or to acquire an option;

(b) in relation to a unit trust, a right to acquire units in the unit trust or to acquire an option;

**specified securities** (指明證券) means any of the following, not being Hong Kong stock the sale and purchase of which in Hong Kong are subject to the rules and practices of a recognized stock market- (Amended 5 of 2002 s. 407)

(a) any shares, stocks, debentures, loan stocks, funds, bonds or notes of or issued by any body, whether corporate or unincorporate, or any government or local government authority, or any other similar investment of any description;

(b) any units under a unit trust scheme;

(c) any right, option or interest in or in respect of any security referred to in paragraph (a) or (b),

which the Commissioner may specify in writing, either generally or in any particular case, for the purposes of this section. (Added 56 of 1996 s. 2)

(9) For the purposes of construing a term by reference to the Stamp Duty Ordinance (Cap 117) in subsection (8), a reference in the corresponding term in the Stamp Duty Ordinance (Cap 117) to "Hong Kong stock" or to "Hong Kong stock the sale and purchase of which in Hong Kong are subject to the rules and practices of a recognized stock market", is construed as including a reference to specified securities that the Commissioner has specified under subsection (8). (Added 56 of 1996 s. 2. Amended 5 of 2002 s. 407)

(10) For the purpose of the definition of **specified securities** in subsection (8), the terms **Hong Kong stock, unit and unit trust scheme** have the same meanings as in the Stamp Duty Ordinance (Cap 117). (Added 56 of 1996 s. 2) (Added 71 of 1994 s. 2)

Section:	16	<b>Ascertainment of chargeable profits</b>	E.R. 1 of 2012	09/02/2012
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(1) In ascertaining the profits in respect of which a person is chargeable to tax under this Part for any year of assessment there shall be deducted all outgoings and expenses to the extent to which they are incurred during the basis period for that year of assessment by such person in the production of profits in respect of which he is chargeable to tax under this Part for any period, including-

(a) where the condition for the application of this paragraph is satisfied under subsection (2), and subject to subsections (2A), (2B) and (2C), sums payable by such person by way of interest on any money borrowed by him for the purpose of producing such profits, and sums payable by such person by way of legal fees, procurator fees, stamp duties and other expenses in connection with such borrowing; (Replaced 2 of 1971 s. 11. Amended 36 of 1984 s. 4, 12 of 2004 s. 6)

(b) rent paid by any tenant of land or buildings occupied by him for the purpose of producing such profits, but not exceeding, in the case of rent paid to the tenant's spouse, or by a partnership to one or more of the partners thereof or to a spouse of any such partner, an amount equal to the assessable value of the land or buildings; (Amended 76 of 1975 s. 8; 8 of 1983 s. 11; 71 of 1983 s. 14)

(c) tax of substantially the same nature as tax imposed under this Ordinance, proved to the satisfaction of the Commissioner to have been paid elsewhere, whether by deduction or otherwise, by any corporation or by a person other than a corporation who carries on a trade, profession or business in Hong Kong, during the basis period for the year of assessment in respect of profits chargeable to tax by virtue of section 15(1)(f), (g), (i), (j), (k) or (l): (Amended 7 of 1986 s. 12; 19 of 1986 s. 3; 63 of 1997 s. 2(a))

Provided that no deduction shall be made under this paragraph if the corporation or person concerned is eligible for relief under Part 8 in respect of such profits; (Added 73 of 1978 s. 4. Amended 36 of 1984 s. 4)

(d) bad debts incurred in any trade, business or profession, proved to the satisfaction of the assessor to have become bad during the basis period for the year of assessment, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the assessor to have become bad during the said basis period notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said basis period:

Provided that-

- (i) deductions under this paragraph shall be limited to debts which were included as a trading receipt in ascertaining the profits, in respect of which the person claiming the deduction is chargeable to tax under this Part, of the period within which they arose, and debts in respect of money lent, in the ordinary course of the business of the lending of money within Hong Kong, by a person who carries on that business; (Amended 7 of 1986 s. 12)
- (ii) all sums recovered during the said basis period on account of amounts previously allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as part of the profits of the trade, business or profession for that basis period;
- (e) expenditure incurred in the repair of any premises, plant, machinery, implement, utensil or article employed in the production of such profits;
- (f) expenditure incurred in the replacement of any implement, utensil or article employed in the production of such profits:  
Provided that no allowances have been or shall be made under the provisions of Part 6 in respect of such implement, utensil or article;
- (g) notwithstanding section 17, a sum expended for the registration of a trade mark or design, or the registration or grant of a patent, used in the trade, profession or business which produces such profits; (Replaced 26 of 1969 s. 14. Amended 52 of 1997 s. 160)
- \* (ga) the payments and expenditure specified in sections 16AA, 16B, 16C, 16E, 16EA, 16F, 16G and 16I, as provided in those sections; (Added 35 of 1965 s. 9. Amended 56 of 1993 s. 9; 31 of 1998 s. 8; 32 of 1998 s. 6; 21 of 2011 s. 4)
- (h) such other deductions as may be prescribed by any rule made under this Ordinance.
- (2) The condition for the application of subsection (1)(a) is satisfied if- (Amended 12 of 2004 s. 6)
  - (a) the money has been borrowed by a financial institution;
  - (b) the money has been borrowed by a public utility company specified in the Schedule 3 at a rate of interest not exceeding the rate specified by the Financial Secretary by notice in the Gazette; (Amended 17 of 1989 s. 5)
  - (c) the money has been borrowed from a person other than a financial institution or an overseas financial institution and the sums payable by way of interest are chargeable to tax under this Ordinance;
  - (d) the money has been borrowed from a financial institution or an overseas financial institution; (Replaced 12 of 2004 s. 6)
  - (e) the money has been borrowed wholly and exclusively to finance-
    - (i) capital expenditure incurred by the borrower on the provision of-
      - (A) any machinery or plant, where the expenditure qualifies for an allowance under Part 6;
      - (B) any machinery or plant for research and development, where the expenditure may be deducted under section 16B;
      - (C) a prescribed fixed asset (as defined in section 16G(6)), where the expenditure may be deducted under section 16G; or
      - (D) any environmental protection machinery or environment-friendly vehicle (as defined in section 16H(1)), where the expenditure may be deducted under section 16I; or (Replaced 4 of 2010 s. 4. Amended 10 of 2010 s. 2)
    - (ii) the purchase of trading stock by the borrower, where the trading stock purchased is used by the borrower in the production of profits chargeable to tax under this Part,
- and-
- (iii) the lender is not an associate of the borrower; and
- (iv) where 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; or (Replaced 12 of 2004 s. 6)
- (f) the borrower is a corporation and the deduction claimed is in respect of interest payable by it-
  - (i) on debentures listed on a stock exchange in Hong Kong or on any other stock exchange recognized by the Commissioner for the purposes of this subparagraph;
  - (ii) on instruments (other than debentures described in subparagraph (i))-
    - (A) issued bona fide and in the course of carrying on business and marketed in Hong Kong or in a major financial centre outside Hong Kong recognized by the Commissioner for the purposes of this sub-subparagraph; or

- (B) issued pursuant to any agreement or arrangements, where the issue of an advertisement, invitation or document in respect of the agreement or arrangements has been authorized by the Securities and Futures Commission under section 105 of the Securities and Futures Ordinance (Cap 571), and the advertisement, invitation or document has been issued to the public; or
- (iii) on money borrowed from an associated corporation of the borrower, where the money borrowed in the hands of the associated corporation arises entirely from the proceeds of an issue by the associated corporation of debentures described in subparagraph (i) or of instruments described in subparagraph (ii), in an amount not exceeding the interest payable by the associated corporation to the holders of such debentures or instruments. (Replaced 12 of 2004 s. 6)

(2A) Where-

- (a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(c), (d) or (e);
- (b) at any time during the basis period of the borrower for the year of assessment concerned, the payment of any sum payable by way of principal or interest in respect of the money borrowed is secured or guaranteed, whether wholly or in part and whether directly or indirectly, by a deposit or loan made by the borrower or an associate of the borrower with or to-
  - (i) the lender or an associate of the lender;
  - (ii) a financial institution or an associate of a financial institution; or
  - (iii) an overseas financial institution or an associate of an overseas financial institution; and
- (c) any sum payable by way of interest on the deposit or loan is not chargeable to tax under this Ordinance, the amount of the deduction which, but for this subsection and subsections (2B) and (2C), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of sums payable by the borrower by way of interest on the money borrowed shall be reduced, having regard to the sum payable by way of interest on the deposit or loan, by an amount calculated on such basis as is most reasonable and appropriate in the circumstances of the case. (Added 12 of 2004 s. 6)

(2B) Where-

- (a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(c), (d) or (e); and
- (b) at any time during the basis period of the borrower for the year of assessment concerned, arrangements are in place, whether between the borrower and the lender or otherwise, whereby any sum payable by way of interest on the money borrowed or on any part of the money borrowed is payable, whether directly or through any interposed person, to the borrower or to a person (other than the lender) who is connected with the borrower and in either case the borrower or the person, as the case may be, is not an excepted person as defined in subsection (2E)(c),

the amount of the deduction which, but for this subsection and subsections (2A) and (2C), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of sums payable by the borrower by way of interest on the money borrowed or on the relevant part of the money borrowed, as the case may be, shall be reduced by an amount calculated in accordance with the following formula-

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

- where:
- A means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the money borrowed or in respect of the relevant part of the money borrowed, as the case may be, is outstanding and the arrangements are in place;
  - B means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the money borrowed or in respect of the relevant part of the money borrowed, as the case may be, is outstanding; and
  - C means the total amount of sums payable by the borrower by way of interest on the money borrowed or on the relevant part of the money borrowed, as the case may be, which, but for this subsection and subsections (2A) and (2C), would have been deductible under subsection (1)(a) for the year of assessment concerned. (Added 12 of 2004 s. 6)

(2C) Subject to subsection (2G), where-

- (a) the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f); and
- (b) at any time during the basis period of the borrower for the year of assessment concerned, arrangements are in place, whether between the borrower and the holders of the debentures or instruments concerned or

otherwise, whereby any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned is payable, whether directly or through any interposed person, to the borrower or to a person who is connected with the borrower and in either case the borrower or the person, as the case may be, is not an excepted person as defined in subsection (2F)(c),

the amount of the deduction which, but for this subsection and subsections (2A) and (2B), would have been allowed under subsection (1)(a) for the year of assessment concerned in respect of-

- (c) (where the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f)(i) or (ii)) the sum payable by the borrower by way of interest on the debentures or instruments concerned or on the relevant interest in the debentures or instruments concerned, as the case may be; or
- (d) (where the condition for the application of subsection (1)(a) is satisfied under subsection (2)(f)(iii)) the sum payable by the borrower by way of interest on money borrowed from the associated corporation, being money arising entirely from the proceeds of the issue of the debentures or instruments concerned or of the relevant interest in the debentures or instruments concerned, as the case may be,

shall be reduced by an amount calculated in accordance with the following formula-

$$\frac{X}{Y} \times Z$$

where: X means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the debentures or instruments concerned or in respect of the relevant interest in the debentures or instruments concerned, as the case may be, is outstanding and the arrangements are in place;

Y means the total number of days during the basis period of the borrower for the year of assessment concerned, at the end of each of which the principal in respect of the debentures or instruments concerned or in respect of the relevant interest in the debentures or instruments concerned, as the case may be, is outstanding; and

Z means the total amount of sums referred to in paragraph (c) or (d), as the case may be, which, but for this subsection and subsections (2A) and (2B), would have been deductible under subsection (1)(a) for the year of assessment concerned. (Added 12 of 2004 s. 6)

(2D) For the purposes of subsection (2A), if a deposit or loan is made by a trustee of a trust estate or a corporation controlled by such a trustee, the deposit or loan shall be deemed to have been made by each of the trustee, the corporation and the beneficiary under the trust. (Added 12 of 2004 s. 6)

(2E) For the purposes of subsection (2B)-

(a) any reference in that subsection to any sum payable by way of interest on the money borrowed or on any part of the money borrowed, however described, shall be construed as including a reference to any sum payable by way of principal or interest in respect of any other loan, where the payment of such sum is-

- (i) secured or guaranteed, whether wholly or in part and whether directly or indirectly, by any sum payable by way of principal or interest in respect of the money borrowed or in respect of any part of the money borrowed; or
- (ii) conditional, whether wholly or in part and whether directly or indirectly, on the payment of any sum payable by way of principal or interest in respect of the money borrowed or in respect of any part of the money borrowed;

(b) if any sum payable by way of interest on the money borrowed or on any part of the money borrowed, as construed in accordance with paragraph (a), is payable, whether directly or through any interposed person, to a trustee of a trust estate or a corporation controlled by such a trustee, such sum shall be deemed to be so payable to each of the trustee, the corporation and the beneficiary under the trust; and

(c) **excepted person** (除外人士) means-

(i) a person who is chargeable to tax under this Ordinance in respect of any sum payable by way of interest on the money borrowed or on any part of the money borrowed, as construed in accordance with paragraph (a);

(ii) in the case of a person (other than the lender) who is connected with the borrower-

(A) a person who is entitled to any sum referred to in subparagraph (i) in the capacity of-

(I) a person acting as a trustee of a trust estate or holding property belonging to others pursuant to the terms of a contract, where the person is not beneficially entitled to the sum in question;



- (II) a beneficiary of a unit trust to which section 26A(1A)(a)(i) or (ii) applies, where the sum in question is payable to a trustee of the unit trust in respect of a specified investment scheme referred to in section 26A(1A)(b); or
  - (III) a member of a retirement scheme which is either a recognized retirement scheme or a substantially similar retirement scheme established outside Hong Kong, where the Commissioner is satisfied that the latter scheme complies with the requirements of a supervisory authority within an acceptable regulatory regime;
  - (B) a public body;
  - (C) a body corporate, where the Government owns beneficially more than half in nominal value of the issued share capital of that body corporate for the time being; or
  - (D) a financial institution or an overseas financial institution. (Added 12 of 2004 s. 6)
- (2F) For the purposes of subsection (2C)-
- (a) any reference in that subsection to any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, however described, shall be construed as including a reference to any sum payable by way of principal or interest in respect of any other loan, where the payment of such sum is-
    - (i) secured or guaranteed, whether wholly or in part and whether directly or indirectly, by any sum payable by way of principal or interest in respect of the debentures or instruments concerned or in respect of any interest in the debentures or instruments concerned; or
    - (ii) conditional, whether wholly or in part and whether directly or indirectly, on the payment of any sum payable by way of principal or interest in respect of the debentures or instruments concerned or in respect of any interest in the debentures or instruments concerned;
  - (b) if any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, as construed in accordance with paragraph (a), is payable, whether directly or through any interposed person, to a trustee of a trust estate or a corporation controlled by such a trustee, such sum shall be deemed to be so payable to each of the trustee, the corporation and the beneficiary under the trust; and
  - (c) **excepted person** (除外人士) means-
    - (i) a person who is chargeable to tax under this Ordinance in respect of any sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned, as construed in accordance with paragraph (a);
    - (ii) in the case of a person who is connected with the borrower-
      - (A) a person who is entitled to any sum referred to in subparagraph (i) in the capacity of-
        - (I) a person acting as a trustee of a trust estate or holding property belonging to others pursuant to the terms of a contract, where the person is not beneficially entitled to the sum in question;
        - (II) a beneficiary of a unit trust to which section 26A(1A)(a)(i) or (ii) applies, where the sum in question is payable to a trustee of the unit trust in respect of a specified investment scheme referred to in section 26A(1A)(b); or
        - (III) a member of a retirement scheme which is either a recognized retirement scheme or a substantially similar retirement scheme established outside Hong Kong, where the Commissioner is satisfied that the latter scheme complies with the requirements of a supervisory authority within an acceptable regulatory regime;
      - (B) a public body;
      - (C) a body corporate, where the Government owns beneficially more than half in nominal value of the issued share capital of that body corporate for the time being; or
      - (D) a financial institution or an overseas financial institution. (Added 12 of 2004 s. 6)
- (2G) Subsection (2C) shall not apply where under the relevant arrangements, the relevant sum payable by way of interest on the debentures or instruments concerned or on any interest in the debentures or instruments concerned is payable to a market maker who, in the ordinary course of conduct of his trade, profession or business in respect of market making, holds such debentures or instruments or such interest for the purpose of providing liquidity thereof. (Added 12 of 2004 s. 6)
- (2H) In subsection (2G), **market maker** (市場莊家) means a person who-
- (a) is licensed or registered for dealing in securities under the Securities and Futures Ordinance (Cap 571) or

authorized to do so by a regulatory authority in a major financial centre outside Hong Kong recognized by the Commissioner for the purposes of subsection (2)(f)(ii)(A);

- (b) in the ordinary course of conduct of his trade, profession or business in respect of market making holds himself out as being willing to buy and sell securities for his own account and on a regular basis; and
- (c) is actively involved in market making in securities issued by a wide range of unrelated institutions. (Added 12 of 2004 s. 6)

(3) In this section- (Amended 12 of 2004 s. 6)

**associate** (相聯者), in relation to a person, means-

- (a) where the person is a natural person-
  - (i) a relative of the person;
  - (ii) a partner of the person and any relative of that partner;
  - (iii) a partnership in which the person is a partner;
  - (iv) any corporation controlled by the person, by a partner of the person or by a partnership in which the person is a partner;
  - (v) an director or principal officer of any such corporation as is referred to in subparagraph (iv);
- (b) where the person is a corporation-
  - (i) any associated corporation;
  - (ii) any person who controls the corporation and any partner of such person, and, where either such person is a natural person, any relative of such person;
  - (iii) any director or principal officer of that corporation or of any associated corporation and any relative of any such director or officer;
  - (iv) any partner of the corporation and, where such partner is a natural person, any relative of such partner;
- (c) where the person is a partnership-
  - (i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;
  - (ii) any corporation controlled by the partnership or by any partner thereof or, where such a partner is a natural person, any relative of such partner;
  - (iii) any corporation of which any partner is a director or principal officer;
  - (iv) any director or principal officer of a corporation referred to in subparagraph (ii);

**associated corporation** (相聯法團), in relation to a person, means-

- (a) a corporation over which the person has control;
- (b) if the person is a corporation-
  - (i) a corporation which has control over the person; or
  - (ii) a corporation which is under the control of the same person as is the first-mentioned person;

**beneficiary under the trust** (信託的受益人) means any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under a trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income;

**overseas financial institution** (海外財務機構) means a person carrying on the business of banking or deposit-taking outside Hong Kong other than a person whom the Commissioner has, in accordance with the powers vested in him by subsection (4), determined shall not be recognized for the purposes of this section as an overseas financial institution; (Amended 12 of 2004 s. 6)

**principal officer** (主要職員) means-

- (a) a person employed by a corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

**relative** (親屬) means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent. (Replaced 63 of 1997 s. 2)

- (3A) In this section-
- (a) a corporation shall be regarded as being controlled by a person if the person has the power to secure-
    - (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
    - (ii) by virtue of any power conferred by the articles of association or any other document regulating that or any other corporation,
 that the affairs of the first-mentioned corporation are conducted in accordance with his wishes; and
  - (b) a person (other than a corporation) shall be regarded as being controlled by another person if the first-mentioned person is accustomed or under an obligation, whether express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings, to act, in relation to his investment or business affairs, in accordance with the directions, instructions or wishes of that other person. (Added 12 of 2004 s. 6)
- (3B) In this section, a person shall be regarded as being connected with a borrower if the person is-
- (a) an associated corporation of the borrower;
  - (b) a person (other than a corporation)-
    - (i) who controls the borrower;
    - (ii) who is controlled by the borrower; or
    - (iii) who is under the control of the same person as is the borrower. (Added 12 of 2004 s. 6)
- (4) The Commissioner may for the purposes of this section determine that a person shall not be recognized as an overseas financial institution if he is of the opinion that that person's banking or deposit-taking business is not adequately supervised by a supervisory authority. (Added 36 of 1984 s. 4. Amended 12 of 2004 s. 6)
- (5) The amendments to this section effected by the Inland Revenue (Amendment) Ordinance 1984 (36 of 1984) shall not have the effect of disallowing any deduction under subsection (1)(a) which could lawfully have been made immediately prior to the coming into force of that Ordinance where the deduction is in respect of sums payable prior to 1 April 1984. (Added 36 of 1984 s. 4. Amended 7 of 1986 s. 4)
- (5A) The amendments made to this section by section 6(a), (b), (c), (d), (e) and (f) of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) (*the Amendment Ordinance*) do not apply to sums described in subsection (1)(a) which were incurred-
- (a) before the commencement# of the Amendment Ordinance;
  - (b) under a transaction which was the subject of an application for advance clearance made to the Commissioner before 1 April 1998, and the Commissioner has before the commencement# of the Amendment Ordinance expressed the opinion that the transaction would not fall within the terms of section 61A; or
  - (c) under an arrangement which was the subject of an application made to the Commissioner under section 88A, and the Commissioner has before the commencement# of the Amendment Ordinance made a ruling under that section that the arrangement would not fall within the terms of section 61A. (Added 12 of 2004 s. 6)
- (6) The Chief Executive in Council may, by notice in the Gazette, amend Schedule 3. (Added 17 of 1989 s. 5. Amended 12 of 1999 s. 3)
- (Replaced 28 of 1964 s. 7. Amended 35 of 1965 s. 9; 12 of 2004 s. 6; E.R. 1 of 2012)

**Notes:**

\* **The amendment made by Ord. No. 31 of 1998 to section 16(1)(ga) applies in relation to the year of assessment commencing on 1 April 2000 and to all subsequent years of assessment. (31 of 1998 s. 2(2); L.N. 175 of 2000)**

# **Commencement date: 25 June 2004.**

Section:	16A	<b>Special payment under an approved retirement scheme allowable as a deduction</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to section 17(1)(k), where a person carrying on a trade, profession or business in Hong Kong makes a payment which is either- (Amended 7 of 1986 s. 12)
- (a) a contribution, other than an ordinary annual contribution, to a fund duly established under a recognized occupational retirement scheme; or

- (b) a premium, other than an ordinary annual premium, in respect of a contract of insurance under a recognized occupational retirement scheme; or (Amended 4 of 1998 s. 6)
- (c) a contribution, other than regular contributions, paid to a mandatory provident fund scheme, (Added 4 of 1998 s. 6)

such payment shall, to the extent that it is made in respect of individuals employed by such person for the purposes of producing profits in respect of which he is chargeable to tax under this Part and that it is not excessive in view of all the relevant circumstances, be deemed to be an expense wholly and exclusively incurred in the production of such profits and shall be allowed as a deduction therefrom in accordance with subsection (2). (Amended 76 of 1993 s. 6)

- (2) For the purpose of making the deduction provided for in subsection (1), one fifth part of the payment shall be deemed to have been expended during the basis period in which the payment was actually made and the remaining 4 parts shall be deemed to have been expended at the rate of one part in the basis period for each of the succeeding 4 years of assessment:

Provided that in no case shall the total amount of the deductions exceed the amount of the payment.

- (3) For the purposes of subsection (1)(c), contributions are regular contributions if they are made to the mandatory provident fund scheme at regular intervals and are either of similar or substantially similar amounts or of amounts calculated by reference to a scale or a fixed percentage of a person's salary or other remuneration. (Added 4 of 1998 s. 6)

(Replaced 49 of 1956 s. 12)

Section:	16AA	<b>Mandatory contributions in self-employment cases allowable as a deduction</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (2), where a person carrying on a trade, profession or business in Hong Kong as a sole proprietor or as a partner in a partnership pays any mandatory contributions in the basis period for any year of assessment in respect of any liability of himself to pay such contributions as a self-employed person under the Mandatory Provident Fund Schemes Ordinance (Cap 485), the payment shall be deemed to be an expense wholly and exclusively incurred in the production of the profits of that trade, profession or business chargeable to tax under this Part and shall be allowed as a deduction from such profits for that year of assessment.
- (2) A deduction shall not be allowable to a person under subsection (1) for any year of assessment-
  - (a) in respect of any sum which is allowable as a deduction under any other sections of this Part or section 26G;
  - (b) in excess of the amount specified in Schedule 3B in relation to that year of assessment, as reduced by the amount of any sum which is allowable to that person as a deduction under any other sections of this Part or section 26G.

(Added 31 of 1998 s. 9)

**Note:**

**Section 16AA applies in relation to the year of assessment commencing on 1 April 2000 and to all subsequent years of assessment. (31 of 1998 s. 2(2); L.N. 175 of 2000)**

Section:	16B	<b>Expenditure on research and development</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding anything in section 17, in ascertaining the profits from any trade, profession or business in respect of which a person is chargeable to tax under this Part for any year of assessment there shall, subject to subsection (2), be deducted the following payments made, and expenditure incurred, by such person during the basis period for that year of assessment (other than any amount which is allowable as a deduction apart from this section), namely-
  - (a) payments to-
    - (i) an approved research institute for research and development related to that trade, profession or business; or
    - (ii) an approved research institute, the object of which is the undertaking of research and development related to the class of trade, profession or business to which that trade, profession or business belongs; and
  - (b) expenditure on research and development related to that trade, profession or business, including capital expenditure except to the extent that it is expenditure on land or buildings or on alterations, additions or

extensions to buildings.

- (2) Where any payment or expenditure to which this section refers is made or incurred outside Hong Kong and the trade, profession or business in relation to which it is so made or incurred is carried on partly in and partly out of Hong Kong, the deduction allowable under this section shall be such part of the amount which would otherwise be allowable as is reasonable in the circumstances. (Amended 7 of 1986 s. 12)
- (3) (a) Where any plant or machinery, representing research and development expenditure of a capital nature which pursuant to subsection (1)(b) has been allowed as a deduction in ascertaining the profits from a trade, profession or business, ceases to be used by the person carrying on the trade, profession or business for research and development related to that trade, profession or business and is then or thereafter sold by him, the proceeds of sale shall, to the extent that they are not otherwise chargeable to tax under this Part and do not exceed the amount of the deduction, be treated as a trading receipt arising in or derived from Hong Kong of the trade, profession or business accruing at the time of the sale or, if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, accruing immediately before the discontinuance.
- (b) Where any such plant or machinery is destroyed, it shall for the purposes of paragraph (a) be treated as if it had been sold immediately before the destruction thereof and any insurance moneys or other compensation of any description received by the person carrying on the trade, profession or business in respect of the destruction and any money received by him in respect of the remains of the plant or machinery shall be treated as if they were proceeds of that sale.
- (c) The reference in paragraph (a) to the time of sale shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.
- (d) Where, prior to the commencement\* of section 2 of the Revenue Ordinance 2004 (9 of 2004), expenditure represented by any plant or machinery has been allowed as a deduction in ascertaining the profits from a trade, profession or business pursuant to the provisions of subsection (1)(b) in force immediately before that commencement\*, then, for the purposes of paragraph (a)-
- (i) such plant or machinery shall be treated as plant or machinery representing research and development expenditure of a capital nature which had been allowed as a deduction in ascertaining the profits from the trade, profession or business pursuant to subsection (1)(b); and
- (ii) the reference in that paragraph to the amount of the deduction in respect of expenditure represented by such plant or machinery shall be construed as a reference to the aggregate of-
- (A) the amount of the deduction allowed in respect of expenditure represented by such plant or machinery pursuant to the provisions of subsection (1)(b) in force immediately before that commencement\*; and
- (B) the amount of the deduction allowed in respect of research and development expenditure of a capital nature represented by such plant or machinery pursuant to subsection (1)(b) after that commencement\*. (Added 9 of 2004 s. 2)
- (3A) (a) Notwithstanding the exclusion relating to the sale of capital assets contained in section 14, where any rights in, or arising out of, research and development the expenditure on which has been allowed as a deduction under this section in ascertaining the profits of any person from a trade, profession or business for the year of assessment commencing on 1 April 1998 or any subsequent year of assessment are thereafter sold by him- (Amended 9 of 2004 s. 2)
- (i) subject to subparagraph (ii), the proceeds of sale;
- (ii) if the deduction has been allowed in accordance with subsection (2), such part of the proceeds of sale as is proportionate to the extent to which the expenditure on the research and development to which the rights relate has been allowed as a deduction in accordance with that subsection, shall, to the extent that the proceeds of sale or the part of the proceeds of sale, as the case may be, is not otherwise chargeable to tax under this Part and does not exceed the amount of the deduction, be treated as a trading receipt of the trade, profession or business accruing at the time of the sale or, if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, accruing immediately before the discontinuance.
- (b) For the purposes of this subsection-
- (i) without prejudice to subsection (3), a reference to the proceeds of sale shall be construed as a reference to such part of the proceeds of sale as is not attributable to the sale of plant or machinery;
- (ii) the reference to the time of the sale, in relation to any rights, shall be construed as a reference to the time of completion of the sale of the rights. (Added 32 of 1998 s. 7)

- (c) Where, prior to the commencement\* of section 2 of the Revenue Ordinance 2004 (9 of 2004), expenditure to which any rights relate has been allowed as a deduction in ascertaining the profits from a trade, profession or business under the provisions of this section in force immediately before that commencement\*, then, for the purposes of paragraph (a)-
- (i) such rights shall be treated as rights in, or arising out of, research and development the expenditure on which had been allowed as a deduction in ascertaining the profits from the trade, profession or business under this section; and
  - (ii) the reference in that paragraph to the amount of the deduction in respect of expenditure to which such rights relate shall be construed as a reference to the aggregate of-
    - (A) the amount of the deduction allowed in respect of expenditure to which such rights relate under the provisions of this section in force immediately before that commencement\*; and
    - (B) the amount of the deduction allowed in respect of expenditure on research and development to which such rights relate under this section after that commencement\*. (Added 9 of 2004 s. 2)
- (4) (a) In this section-
- an approved research institute** (認可研究機構) means any university, college, institute, association or organization which is approved in writing for the purposes of this section by the Commissioner as an institute, association or organization for undertaking research and development which is or may prove to be of value to Hong Kong; (Amended 7 of 1986 s. 12; 24 of 1996 s. 5; 9 of 2004 s. 2)
- research and development** (研究和開發) means-
- (a) any activities in the fields of natural or applied science for the extension of knowledge;
  - (b) any systematic, investigative or experimental activities carried on for the purposes of any feasibility study or in relation to any market, business or management research;
  - (c) any original and planned investigations undertaken with the prospect of gaining new scientific or technical knowledge and understanding; or
  - (d) the application of any research findings or other knowledge to a plan or design for the production or introduction of new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of their commercial production or use. (Added 9 of 2004 s. 2)
- (b) An approval for the purposes of paragraph (a) may-
- (i) operate as from a date, whether before or after the date of approval, specified in the instrument of approval; and
  - (ii) be withdrawn at any time.
- (Amended 9 of 2004 s. 2)
- (5) In this section-
- (a) references to expenditure incurred on research and development do not include any expenditure incurred in the acquisition of rights in, or arising out of, research and development, but, save as aforesaid and subject to subsection (1)(b), include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, research and development; and
  - (b) references to research and development related to a trade, profession or business or class of trade, profession or business shall be read as including a reference to- (Amended 9 of 2004 s. 2)
    - (i) any research and development which may lead to or facilitate an extension, or an improvement in the technical efficiency, of that trade, profession or business, or, as the case may be, of trades, professions or businesses of that class; and
    - (ii) any research and development of a medical nature which is of special relation to the welfare of workers employed in that trade, profession or business or, as the case may be, in trades, professions or businesses of that class; and
  - (c) a reference to rights shall be construed as including a reference to a share or interest in such rights. (Added 32 of 1998 s. 7)
- (6) For the purposes of this section-
- (a) expenditure shall not be regarded as incurred by a person in so far as it is, or is to be, met directly or indirectly by the Government of Hong Kong or by any government or public or local authority, whether in Hong Kong or elsewhere, or by any person other than the first-mentioned person; and (Amended 7 of 1986 s. 12; 19 of 1996 s. 5)
  - (b) any expenditure of a capital nature incurred on research and development related to any trade, profession or business by a person about to carry on that trade, profession or business shall be treated as if it had been

incurred by that person on the first day upon which he does carry on that trade, profession or business.

- (7) The same sums paid, or expenditure incurred, shall not be taken into account for any of the purposes of this section in relation to more than one trade, profession or business.

(Added 35 of 1965 s. 10. Amended 32 of 1998 s. 7; 9 of 2004 s. 2)

**Note:**

**The amendments made to this section by 9 of 2004 apply in relation to the year of assessment commencing on 1 April 2004 and to all subsequent years of assessment. (Please see 9 of 2004 s. 1(2))**

\* **Commencement date: 21 May 2004.**

Section:	16C	<b>Payments for technical education</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding anything in section 17, where a person carrying on a trade, profession or business in Hong Kong makes any payment to be used for the purposes of technical education related to that trade, profession or business at any university, university college, technical college or other similar institution which is approved in writing for the purposes of this section by the Commissioner (being an amount which is not otherwise allowable as a deduction under this Ordinance), the payment shall be deducted as an expense in ascertaining the profits from that trade, profession or business for the year of assessment in the basis period of which the payment was made. (Amended 7 of 1986 s. 12; 24 of 1996 s. 6)
- (2) For the purposes of this section, technical education shall be deemed to be related to a trade, profession or business, if, and only if, it is technical education of a kind specially requisite for persons employed in the class of trade, profession or business to which that trade, profession or business belongs.
- (3) An approval for the purposes of subsection (1) may-
- (a) operate as from a date, whether before or after the date of approval, specified in the instrument of approval; and
  - (b) be withdrawn at any time.

(Added 35 of 1965 s. 10. Amended 32 of 1998 s. 8)

Section:	16D	<b>Approved charitable donations (Part 4)*</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (2), a person chargeable to tax under this Part may deduct the aggregate of approved charitable donations made by that person in the basis period for a year of assessment, if such aggregate is not less than \$100, from what would otherwise have been the assessable profits of such person for that year of assessment.
- (2) A person shall not be entitled under subsection (1) to deduct-
- (a) for any year of assessment, any sum which is allowable as a deduction under section 16, 16B, or 16C; (Amended 56 of 1993 s. 11; 31 of 1998 s. 10; 21 of 2008 s. 3)
  - (aa) for any year of assessment, any sum which is allowable as a deduction under Part 4A; (Added 31 of 1998 s. 10. Amended 21 of 2008 s. 3)
  - (b) for any year of assessment up to and including the year of assessment commencing on 1 April 2002, a sum in excess of 10% of the balance of that person's assessable profits after making any adjustment for the allowances and charges provided under Part 6; (Replaced 21 of 2008 s. 3)
  - (c) for the year of assessment commencing on 1 April 2003 or any subsequent year of assessment up to and including the year of assessment commencing on 1 April 2007, a sum in excess of 25% of the balance of that person's assessable profits after making any adjustment for the allowances and charges provided under Part 6; (Added 21 of 2008 s. 3)
  - (d) for any year of assessment commencing on or after 1 April 2008, a sum in excess of 35% of the balance of that person's assessable profits after making any adjustment for the allowances and charges provided under Part 6. (Added 21 of 2008 s. 3)

(Added 7 of 1975 s. 10. Amended E.R. 1 of 2012)

**Note:**

\* **(Amended 21 of 2008 s. 3)**

Section:	16E	<b>Purchase and sale of patent rights, etc.</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding anything in section 17, in ascertaining the profits from any trade, profession or business in respect of which a person is chargeable to tax under this Part for any year of assessment there shall, subject to subsections (2) and (6), be deducted any capital expenditure incurred by such person during the basis period for that year of assessment (other than any amount which is allowable as a deduction apart from this section) on the purchase of patent rights or rights to any know-how, for use in the trade, profession or business in the production of such profits. (Amended 7 of 1986 s. 12; 15 of 1992 s. 2; 21 of 2011 s. 5)
- (1A) A deduction allowable under subsection (1) includes legal expenses and valuation fees incurred in connection with the purchase of any rights of a kind referred to in that subsection. (Added 21 of 2011 s. 5)
- (2) If any rights of a kind referred to in subsection (1) are used partly in the production of profits chargeable to tax under this Part and partly for any other purposes, the deduction allowable under this section is that part of the capital expenditure referred to in subsection (1) that is proportionate to the extent of the use of the rights in the production of the profits chargeable to tax under this Part. (Replaced 21 of 2011 s. 5)
- (2A)-(2B) (Repealed 21 of 2011 s. 5)
- (3) Despite the exclusion relating to the sale of capital assets in section 14, where any rights of a kind referred to in subsection (1) in respect of which a deduction has been allowed to any person under that subsection in ascertaining the profits from a trade, profession or business are subsequently sold by the person, the relevant proceeds of sale are, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, to be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
- at the time of sale; or
  - if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the discontinuance. (Replaced 21 of 2011 s. 5)
- (3A) For the purposes of this section, any capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on the trade, profession or business is to be treated as if it had been incurred by that person on the first day on which the person carries on the trade, profession or business. (Added 21 of 2011 s. 5)
- (4) In this section—
- know-how** (工業知識) means any industrial information or techniques likely to assist in the manufacture or processing of goods or materials;
- patent rights** (專利權) means the right to do or authorize the doing of anything which would, but for that right, be an infringement of a patent;
- relevant proceeds of sale** (有關售賣得益), in relation to any rights of a kind referred to in subsection (1) in respect of which a deduction has been allowed under that subsection, means—
- if subsection (2) does not apply, the proceeds of sale of the rights; or
  - if subsection (2) applies, that part of the proceeds of sale of the rights that is proportionate to the extent to which the deduction has been allowed. (Added 21 of 2011 s. 5)
- (Amended 21 of 2011 s. 5)
- (5) In this section, a reference to the purchase or sale of rights of a kind referred to in subsection (1) includes a reference to the purchase or sale of a share or interest in any such rights. (Added 15 of 1992 s. 2)
- (6) The amendments made to this section by the Inland Revenue (Amendment) Ordinance 1992 (15 of 1992) apply to patent rights or rights to any know-how purchased under contracts entered into on or after 18 April 1991 and the provisions of this section that were in force immediately before the commencement of that Ordinance continue to apply to patent rights or rights to any trade mark or design purchased under contracts entered into before 18 April 1991 and also to proceeds received from the sale of those rights whether before or after 18 April 1991 as if the amendments had not been enacted. (Added 15 of 1992 s. 2)
- (7) If any rights of a kind referred to in subsection (1) are purchased or sold together or with any other assets for one consideration, the Commissioner may, for the purposes of the calculation of the deduction under subsection (1) or the calculation of the trading receipt under subsection (3), and having regard to all the circumstances of the transaction, allocate a consideration for the purchase or sale of each individual asset. (Added 21 of 2011 s. 5)
- (8) For the purposes of this section, if the Commissioner is of the opinion that the consideration for the purchase or sale of any rights of a kind referred to in subsection (1) does not represent the true market value of those rights at the time of that purchase or sale, the Commissioner may determine the true market value, and the amount so



determined is to be treated—

- (a) for the purposes of subsection (1), as the capital expenditure incurred on purchase; and
  - (b) for the purposes of subsection (3), as the proceeds of sale, and a reference to relevant proceeds of sale is to be construed accordingly. (Added 21 of 2011 s. 5)
- (9) To avoid doubt, any expenditure incurred on the acquisition of a licence (as defined by section 16EC(8)) of any rights of a kind referred to in subsection (1) is not deductible under that subsection. (Added 21 of 2011 s. 5)

Section:	16EA	<b>Purchase of specified intellectual property rights</b>	E.R. 1 of 2012	09/02/2012
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- (1) Despite section 17, this section applies in ascertaining the profits from a trade, profession or business in respect of which a person is chargeable to tax under this Part for any year of assessment.
- (2) Any specified capital expenditure incurred by the person during the basis period for a year of assessment is to be deducted if the specified intellectual property right concerned is purchased for use in the trade, profession or business in the production of profits in respect of which the person is chargeable to tax under this Part.
- (3) Unless subsection (4) applies and subject to subsections (5) and (6), a deduction allowable under subsection (2) is to be deducted by 5 equal amounts—
  - (a) one for the year of assessment in the basis period for which the specified capital expenditure is incurred; and
  - (b) one for each of the next succeeding 4 years of assessment.
- (4) If the specified intellectual property right—
  - (a) is a copyright or registered design; and
  - (b) is due to expire at the end of its maximum period of protection, and that expiry is to occur before the expiry of the basis period for the last of the 5 succeeding years of assessment mentioned in subsection (3),subject to subsections (5) and (6), a deduction allowable under subsection (2) is to be deducted by a number of equal amounts—
  - (c) one for the year of assessment in the basis period for which the specified capital expenditure is incurred; and
  - (d) one for each of the next succeeding years a part or the whole of the basis period of each of which years coincides with a part or the whole of the remaining part of the maximum period of protection.
- (5) A deduction mentioned in subsection (3) or (4) is allowable only if, at the end of the basis period for a year of assessment for which an amount is to be deducted, the specified intellectual property right concerned has not been sold by the person who incurred the specified capital expenditure.
- (6) A deduction mentioned in subsection (3) or (4) is allowable only if—
  - (a) the specified intellectual property right concerned has been used in the trade, profession or business in the production of profits in respect of which the person who incurred the specified capital expenditure is chargeable to tax under this Part;
  - (b) (in the case of the specified intellectual property right being a copyright) the copyright subsists;
  - (c) (in the case of the specified intellectual property right being a registered design) the registration of the design is in force; and
  - (d) (in the case of the specified intellectual property right being a registered trade mark) the registration of the trade mark is in force,during a part or the whole of the basis period for a year of assessment for which an amount is deducted.
- (7) If any specified intellectual property right is used partly in the production of profits chargeable to tax under this Part and partly for any other purposes, the deduction allowable under this section is that part of the specified capital expenditure that is proportionate to the extent of the use of the specified intellectual property right in the production of the profits chargeable to tax under this Part.
- (8) If any specified intellectual property rights in respect of which a deduction is allowable under this section are purchased or sold together or with any other assets for one consideration, the Commissioner may, for the purposes of the calculation of the deduction under subsection (2) or the calculation of the trading receipt under section 16EB(2), and having regard to all the circumstances of the transaction, allocate a consideration for the purchase or sale of each individual asset.
- (9) For the purposes of this section and section 16EB, if the Commissioner is of the opinion that the consideration for the purchase or sale of any specified intellectual property right does not represent the true market value of the specified intellectual property right at the time of that purchase or sale, the Commissioner may determine the

true market value, and the amount so determined is to be treated—

- (a) for the purposes of subsection (2), as the specified capital expenditure; and
- (b) for the purposes of section 16EB(2), as the proceeds of sale of the specified intellectual property right, and a reference to relevant proceeds of sale is to be construed accordingly.

(10) For the purposes of this section, any specified capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on the trade, profession or business is to be treated as if it had been incurred by that person on the first day on which the person carries on the trade, profession or business.

(11) In this section and sections 16EB and 16EC—

**copyright** (版權) means—

- (a) a copyright within the meaning of section 2(1) of the Copyright Ordinance (Cap 528), including an unregistered corresponding design as defined by section 87(5)(b) of that Ordinance; or
- (b) any right that—
  - (i) subsists under the law of a place outside Hong Kong in any work in which a copyright referred to in paragraph (a) may subsist; and
  - (ii) corresponds to a copyright referred to in paragraph (a);

**maximum period of protection** (最長保護限期) means—

- (a) in the case of a specified intellectual property right that is a copyright—
  - (i) (if the copyright subsists under the Copyright Ordinance (Cap 528)) the maximum period for which the copyright may subsist under that Ordinance; or
  - (ii) (if the copyright subsists under the law of a place outside Hong Kong) the maximum period for which the copyright may subsist under the law of that place;
- (b) in the case of a specified intellectual property right that is a registered design—
  - (i) (if the design is registered under the Registered Designs Ordinance (Cap 522)) the maximum period for which the design may be registered under that Ordinance; or
  - (ii) (if the design is registered under the law of a place outside Hong Kong) the maximum period for which the design may be registered under the law of that place;

**registered design** (註冊外觀設計) means a design registered under section 25 of the Registered Designs Ordinance (Cap 522) or under the law of any place outside Hong Kong;

**registered trade mark** (註冊商標) means a trade mark registered under section 47 of the Trade Marks Ordinance (Cap 559) or under the law of any place outside Hong Kong;

**specified capital expenditure** (指明資本開支)—

- (a) means any capital expenditure incurred on the purchase of any specified intellectual property right and includes legal expenses and valuation fees incurred in connection with the purchase; but
- (b) does not include any capital expenditure that may be deducted under any other section of this Part;

**specified intellectual property right** (指明知識產權) means copyright, registered design or registered trade mark.

(12) In this section and sections 16EB and 16EC, a reference to the purchase or sale of any specified intellectual property right includes the purchase or sale of a share or interest in the specified intellectual property right.

(13) To avoid doubt, any expenditure incurred on the acquisition of a licence (as defined by section 16EC(8)) of any specified intellectual property right is not deductible under this section.

(14) This section applies only in ascertaining the profits in respect of which a person is chargeable to tax under Part 4 of this Ordinance for the year of assessment beginning on 1 April 2011 and any subsequent year of assessment.

(Added 21 of 2011 s. 6)

Section:	16EB	<b>Proceeds of sale of specified intellectual property rights to be treated as trading receipts</b>	E.R. 1 of 2012	09/02/2012
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- (1) This section applies despite the exclusion relating to the sale of capital assets in section 14.
- (2) Where any specified intellectual property right in respect of which a deduction has been allowed to any person under section 16EA in ascertaining the profits from a trade, profession or business is subsequently sold by the person—
  - (a) if there is an unallowed amount that exceeds the relevant proceeds of sale, the excess is to be deducted for the year of assessment in the basis period for which the sale occurs;
  - (b) if there is an unallowed amount but the relevant proceeds of sale exceed that amount, the excess is, to the

extent that it is not chargeable to tax under any other section of this Part and does not exceed the amount of the deduction, to be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—

- (i) at the time of the sale; or
- (ii) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the discontinuance; or

(c) if there is not an unallowed amount, the relevant proceeds of sale are, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, to be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—

- (i) at the time of the sale; or
- (ii) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the discontinuance.

(3) In this section—

**relevant proceeds of sale** (有關售賣得益), in relation to any specified intellectual property right in respect of which a deduction has been allowed under section 16EA, means—

- (a) if section 16EA(7) does not apply, the proceeds of sale of the specified intellectual property right; or
- (b) if section 16EA(7) applies, that part of the proceeds of sale of the specified intellectual property right that is proportionate to the extent to which the deduction has been allowed;

**unallowed amount** (未獲容許扣除額), in relation to any specified intellectual property right in respect of which a deduction has been allowed under section 16EA and which is subsequently sold, means—

- (a) if section 16EA(7) does not apply, the amount of specified capital expenditure incurred in relation to the specified intellectual property right that is still unallowed as at the time of the sale; or
- (b) if section 16EA(7) applies, that part of the amount referred to in paragraph (a) that is proportionate to the extent to which the deduction has been allowed.

(Added 21 of 2011 s. 6)

Section:	16EC	<b>Deduction under section 16E or 16EA not allowable under certain circumstances</b>	E.R. 1 of 2012	09/02/2012
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- (1) No deduction is allowable under section 16EA in respect of any specified intellectual property right purchased by a person if—
  - (a) at any time before the commencement date, the specified intellectual property right had been used by the person under a licence the expiry date of which fell on or after the commencement date;
  - (b) the licence was terminated before that expiry date; and
  - (c) the Commissioner is of the opinion that, having regard to the early termination of the licence, the consideration for the purchase is not reasonable consideration in the circumstances of the case.
- (2) No deduction is allowable under section 16E or 16EA in respect of any relevant right purchased by a person wholly or partly from an associate.
- (3) For the purposes of subsection (2), any relevant right that is purchased or sold by a trustee of a trust estate or a corporation controlled by the trustee is deemed to have been purchased or sold by each of the trustee, the corporation and the beneficiary under the trust.
- (4) No deduction is allowable under section 16E or 16EA in respect of any relevant right purchased by a person (**taxpayer**) if at a time when the relevant right is owned by the taxpayer, a person holds rights as a licensee under a licence of the relevant right, and—
  - (a) the relevant right was, before it was purchased by the taxpayer, owned and used by that person (whether alone or with others) or any associate of that person (which person or any such associate is referred to in this section as **the end-user**);
  - (b) the relevant right is, while the licence is in force, used wholly or principally outside Hong Kong by a person other than the taxpayer; or
  - (c) the whole or a predominant part of the consideration for the purchase of the relevant right was financed directly or indirectly by a non-recourse debt.
- (5) Subsection (4)(a) does not apply if—

- (a) the relevant right was purchased by the taxpayer from the end-user with a consideration not more than the consideration paid by the end-user to the supplier for purchasing the relevant right from the supplier (not being a supplier who is an end-user);
  - (b) the purchase referred to in paragraph (a) by the end-user from the supplier occurred on or after the commencement date; and
  - (c) no deduction under section 16E or 16EA has been allowed to the end-user in respect of the relevant right at any time before the purchase of the relevant right by the taxpayer.
- (6) For the purposes of subsection (5), a deduction is deemed not to have been made if the end-user, by notice in writing to the Commissioner within a period of 3 months beginning on the day on which the capital expenditure or specified capital expenditure is incurred in relation to the relevant right giving rise to the deduction, or within a further period that the Commissioner may in any particular case permit, disclaims the deduction.
- (7) For the purposes of subsections (4) and (5), if a trustee of a trust estate or a corporation controlled by the trustee —
- (a) owns any relevant right; or
  - (b) holds rights as a licensee under a licence of the relevant right,
- the trustee, the corporation and the beneficiary under the trust are each deemed to be—
- (c) the owner of the relevant right; or
  - (d) the holder of rights as a licensee of the relevant right (as the case may be).
- (8) In this section—

**associate** (相聯者), in relation to a person who purchases a relevant right or holds rights as a licensee under a licence of a relevant right (including a person who is deemed to have purchased a relevant right or deemed to be holding rights as such licensee) (**first-mentioned person**), means—

- (a) if the first-mentioned person is a natural person—
  - (i) any relative of the first-mentioned person;
  - (ii) any partner of the first-mentioned person;
  - (iii) if a partner of the first-mentioned person is a natural person, any relative of that partner;
  - (iv) any partnership of which the first-mentioned person is a partner;
  - (v) any corporation controlled by—
    - (A) the first-mentioned person;
    - (B) a relative of the first-mentioned person;
    - (C) a partner of the first-mentioned person;
    - (D) if a partner of the first-mentioned person is a natural person, any relative of that partner; or
    - (E) a partnership of which the first-mentioned person is a partner; or
  - (vi) any director or principal officer of a corporation referred to in subparagraph (v);
- (b) if the first-mentioned person is a corporation—
  - (i) any associated corporation;
  - (ii) any person who controls the first-mentioned person;
  - (iii) any partner of a person who controls the first-mentioned person;
  - (iv) if a person who controls the first-mentioned person is a natural person, any relative of that person;
  - (v) if a partner referred to in subparagraph (iii) is a natural person, any relative of that partner;
  - (vi) any director or principal officer of the first-mentioned person or of any associated corporation;
  - (vii) any relative of a director or principal officer referred to in subparagraph (vi);
  - (viii) any partner of the first-mentioned person; or
  - (ix) if a partner of the first-mentioned person is a natural person, any relative of that partner; or
- (c) if the first-mentioned person is a partnership—
  - (i) any partner of the first-mentioned person;
  - (ii) if a partner of the first-mentioned person is a partnership, any partner (**Partner A**) of that partnership or any partner (**Partner B**) with that partnership in any other partnership;
  - (iii) if Partner A is a partnership, any partner of Partner A;
  - (iv) if Partner B is a partnership, any partner of Partner B;
  - (v) if a partner of, or with, or in any of the partnerships referred to in subparagraph (ii), (iii) or (iv) is a natural person, any relative of that partner;

- (vi) any corporation controlled by—
  - (A) the first-mentioned person;
  - (B) a partner of the first-mentioned person;
  - (C) if a partner of the first-mentioned person is a natural person, any relative of that partner; or
  - (D) a partnership of which the first-mentioned person is a partner;
- (vii) any director or principal officer of a corporation referred to in subparagraph (vi); or
- (viii) any corporation of which any partner of the first-mentioned person is a director or principal officer;

**associated corporation** (相聯法團), in relation to a person who purchases a relevant right or holds rights as a licensee under a licence of a relevant right (including a person who is deemed to have purchased a relevant right or deemed to be holding rights as such licensee) (**first-mentioned person**), means—

- (a) a corporation over which the first-mentioned person has control;
- (b) a corporation which has control over the first-mentioned person; or
- (c) a corporation which is under the control of the same person as is the first-mentioned person;

**beneficiary under the trust** (信託的受益人) means any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under a trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income;

**commencement date** (生效日期) means the day on which the Inland Revenue (Amendment) (No. 3) Ordinance 2011 (21 of 2011) comes into operation;

**control** (控制), in relation to a corporation (**first-mentioned corporation**), means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to the first-mentioned corporation or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating the first-mentioned corporation or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

**end-user** (最終使用者) means any person (whether alone or with others) holding rights as a licensee under a licence of any relevant right or any associate of the person;

**licence** (特許), in relation to a relevant right—

- (a) means a licence (however described and whether general or limited) authorizing the licensee to use the relevant right in the manner authorized by the licence; but
- (b) does not include an agreement under which the ownership of the relevant right will or may be sold to or pass to the licensee unless, in the opinion of the Commissioner, the right under the agreement to purchase or obtain the ownership of the relevant right would reasonably be expected not to be exercised,

and **licensee** (特許持有人) is to be construed accordingly;

**non-recourse debt** (無追索權債項), in relation to the financing of the whole or a predominant part of the consideration for the purchase of any relevant right, means a debt where the rights of the creditor in the event of default in the repayment of principal or payment of interest—

- (a) are limited wholly or predominantly to any or all of the following—
  - (i) rights (including a right to moneys payable) in relation to the relevant right or the use of the relevant right;
  - (ii) rights (including a right to moneys payable) in relation to goods or services that are produced, supplied or provided using the relevant right;
  - (iii) rights (including a right to moneys payable) in relation to the loss or disposal of the whole or a part of—
    - (A) the relevant right; or
    - (B) the taxpayer's interest in the relevant right;
  - (iv) any conjunction of those rights referred to in subparagraphs (i), (ii) and (iii);
  - (v) rights in respect of a mortgage or other security over the relevant right;
  - (vi) rights arising out of any arrangement relating to the financial obligations of the end-user of the relevant right towards the taxpayer, being financial obligations in relation to the relevant right;
- (b) are in the opinion of the Commissioner capable of being limited as described in paragraph (a), having regard to either or both of the following—

- (i) the assets of the taxpayer;
- (ii) any arrangement to which the taxpayer is a party; or
- (c) if paragraphs (a) and (b) do not apply, are limited by reason that not all of the assets of the taxpayer (not being assets that are security for a debt of the taxpayer other than a debt arising in relation to the financing of the whole or part of the consideration for the purchase of the relevant right) would be available for the purpose of the discharge of the whole of the debt so arising (including the payment of interest) in the event of any action or actions by the creditor or creditors against the taxpayer arising out of the debt;

**principal officer** (主要職員), in relation to a corporation, means—

- (a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person employed by the corporation who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

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

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

**relevant right** (有關權利) means any patent rights (as defined by section 16E(4)), rights to any know-how (as defined by section 16E(4)) or specified intellectual property right.

(Added 21 of 2011 s. 6)

Section:	16F	<b>Expenditure on building refurbishment</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding anything in section 17, in the basis period for any year of assessment, a person who incurs capital expenditure on the renovation or refurbishment of a building or structure other than a domestic building or structure may claim the expenditure as an outgoing or expense, to the extent that it is incurred in the production of profits chargeable to tax under this Part, as an expense incurred in the production of profits and a deduction from those profits is allowed in accordance with this section. (Amended 32 of 1998 s. 9)
- (2) For the purposes of subsection (1), a deduction is allowed for one-fifth of the expenditure in the basis period in which the expenditure was actually incurred and the remaining part is to be allowed by 4 equal deductions, one in each of the basis periods for the next succeeding 4 years of assessment.
- (3) The person is not entitled to the allowances under Part 6 for any capital expenditure incurred on the renovation or refurbishment of a building or structure where a deduction for the expenditure is allowed under this section. (Amended 32 of 1998 s. 9)
- (4) This section does not apply to-
  - (a) capital expenditure incurred for a building or structure which is used or intended to be used as a domestic building or structure;
  - (b) capital expenditure incurred by a person to enable a building or structure to be first used substantially by the person for the production of profits in respect of which the person is chargeable to tax under this Part;
  - (c) capital expenditure incurred by a person to enable a building or structure to be used for a purpose different from that for which it was used immediately before the capital expenditure was incurred. (Replaced 32 of 1998 s. 9)
- (5) In this section-

**building or structure** (建築物或構築物) includes part of a building or structure;

**domestic building or structure** (住用建築物或構築物) means any building or structure used for habitation, but does not include any building or structure used as a hotel or guesthouse, or any part of a hotel or guesthouse;

**hotel** and **guesthouse** (旅館) have the same meaning as in the Hotel and Guesthouse Accommodation Ordinance (Cap 349). (Replaced 32 of 1998 s. 9)

(Added 24 of 1996 s. 7. Amended E.R. 1 of 2012)

Section:	16G	<b>Capital expenditure on the provision of a prescribed fixed asset</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding anything in section 17, in ascertaining the profits of a person from any trade, profession or business in respect of which the person is chargeable to tax under this Part for any year of assessment, there shall, subject to subsections (2) and (3), be deducted any specified capital expenditure incurred by the person during the basis period for that year of assessment.
- (2) Where a prescribed fixed asset in respect of which any specified capital expenditure is incurred is used partly in the production of profits chargeable to tax under this Part and partly for any other purposes, the deduction allowable under this section shall be such part of the specified capital expenditure as is proportionate to the extent of the use of the asset in the production of the profits so chargeable to tax under this Part.
- (3) (a) Notwithstanding the exclusion relating to the sale of capital assets contained in section 14, where any prescribed fixed asset in respect of which any specified capital expenditure has been allowed as a deduction to any person under this section in ascertaining the profits from a trade, profession or business is thereafter sold by him-
  - (i) subject to subparagraph (ii), the proceeds of sale;
  - (ii) if the deduction has been allowed in accordance with subsection (2), such part of the proceeds of sale as is proportionate to the extent to which the specified capital expenditure has been allowed as a deduction in respect of that asset in accordance with that subsection,
 shall, to the extent that the proceeds of sale or the part of the proceeds of sale, as the case may be, is not otherwise chargeable to tax under this Part and does not exceed the amount of the deduction, be treated as a trading receipt arising in or derived from Hong Kong of the trade, profession or business accruing at the time of the sale or, if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, accruing immediately before the discontinuance.
  - (b) For the purposes of paragraph (a), where any prescribed fixed asset in respect of which any specified capital expenditure has been allowed as a deduction to any person under this section in ascertaining the profits from a trade, profession or business is thereafter destroyed, the asset shall be treated as if it had been sold immediately before the destruction thereof, and any insurance moneys or other compensation of any description received by the person in respect of the destruction and any moneys received by him in respect of the remains of the asset shall be treated as if they were proceeds of that sale.
  - (c) Where, in relation to the sale of a prescribed fixed asset, which is referred to in paragraph (a)-
    - (i) the buyer is a person over whom the seller has control;
    - (ii) the seller is a person over whom the buyer has control;
    - (iii) both the seller and the buyer are persons over both of whom some other person has control; or
    - (iv) the sale is between a husband and his wife, not being a wife living apart from her husband,
 the Commissioner shall, if he is of the opinion that the sale price of the asset does not represent its true market value at the time of the sale, determine such true market value, and the amount so determined shall, for the purposes of this subsection, be deemed to be the proceeds of sale of the asset.
  - (d) For the purposes of this subsection, the reference to the time of the sale, in relation to a prescribed fixed asset, shall be construed as a reference to the time of completion of the sale of the asset, or the time when possession of the asset is given, whichever is earlier.
- (4) (a) Subject to paragraph (c), where, immediately prior to the commencement of this section, a person owned and had in use any machinery or plant which is a prescribed fixed asset, that person shall, for the purposes of this section, be deemed to have incurred, at the time of the commencement of this section, specified capital expenditure in relation to that machinery or plant.
  - (b) The specified capital expenditure deemed to have been incurred by a person in relation to any machinery or plant under paragraph (a) shall be the capital expenditure incurred on the provision of that machinery or plant, as reduced by the aggregate of-
    - (i) the amount of the initial allowances, if any, under section 37(1), 37A(1) or 39B(1); and
    - (ii) the amount of the annual allowances, if any, under section 37(2), 37A(3) or 39B(2), made to the person in respect of the capital expenditure in all prior years of assessment.
  - (c) (i) Paragraph (a) shall only apply to a person where the person has elected in writing that the paragraph shall so apply to him, at any time before the expiration of one month after the date on which a notice of the assessment made in respect of the person for the year of assessment commencing on 1 April 1998 under section 59 is given under section 62.

- (ii) An election under subparagraph (i), once made, is irrevocable.
- (5) For the purposes of this section, any specified capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on such trade, profession or business shall be treated as if it had been incurred by that person on the first day on which he does carry on such trade, profession or business.

(6) In this section-

**excluded fixed asset** (例外固定資產) means a fixed asset in which any person holds rights as a lessee under a lease;

**prescribed fixed asset** (訂明固定資產) means-

- (a) such of the machinery or plant specified in items 16, 20, 24, 26, 28, 29, 31, 33 and 35 of the First Part of the Table annexed to rule 2 of the Inland Revenue Rules (Cap 112 sub. leg. A) as is used specifically and directly for any manufacturing process;
  - (b) computer hardware, other than that which is an integral part of any machinery or plant;
  - (c) computer software and computer systems,
- but does not include an excluded fixed asset;

**specified capital expenditure** (指明資本開支), in relation to a person, means any capital expenditure incurred by the person on the provision of a prescribed fixed asset, but does not include-

- (a) capital expenditure that may be deducted under any other section in this Part;
- (b) capital expenditure incurred under a hire-purchase agreement.

(Added 32 of 1998 s. 10)

Section:	16H	<b>Definitions and general provisions applicable to this section and sections 16I, 16J and 16K</b>	E.R. 1 of 2012	09/02/2012
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(1) In this section and sections 16I, 16J and 16K—

**building or structure** (建築物或構築物) means—

- (a) any commercial building or structure as defined in section 40(1); or
- (b) any industrial building or structure as defined in section 40(1);

**capital expenditure** (資本開支) has the meaning assigned to it by section 40(1);

**environment-friendly vehicle** (環保車輛)—

- (a) means any vehicle that is specified in Part 3 of Schedule 17; but
- (b) does not include any vehicle in which any person holds rights as a lessee under a lease; (Added 10 of 2010 s. 3)

**environmental protection facility** (環保設施) means—

- (a) any environmental protection machinery;
- (b) any environmental protection installation; or
- (c) any environment-friendly vehicle; (Replaced 10 of 2010 s. 3)

**environmental protection installation** (環保裝置) means any installation, or part of any installation, that is specified in Part 2 of Schedule 17 and forms a building or structure;

**environmental protection machinery** (環保機械)—

- (a) means any machinery or plant that is specified in Part 1 of Schedule 17; but
- (b) does not include any machinery or plant in which any person holds rights as a lessee under a lease;

**relevant interest** (有關權益) has the meaning assigned to it by section 40(1);

**relevant proceeds of sale** (有關售賣得益), in relation to an environmental protection facility in respect of which a deduction has been allowed under section 16I, means—

- (a) if section 16I(4) does not apply, the proceeds of sale of the facility; or
- (b) if section 16I(4) applies, such part of the proceeds of sale of the facility as is proportionate to the extent to which the deduction has been allowed;

**residue of expenditure** (開支剩餘額) has the meaning assigned to it by section 40(1);

**specified capital expenditure** (指明資本開支)—

- (a) means any capital expenditure incurred on—
  - (i) the provision of any environmental protection machinery or environment-friendly vehicle; or (Amended 10 of 2010 s. 3)



- (ii) the construction of any environmental protection installation; but
- (b) does not include—
  - (i) any capital expenditure that may be deducted under any other section of this Part; or
  - (ii) any capital expenditure incurred under a hire-purchase agreement;

**unallowed amount** (未獲容許扣除款額), in relation to an environmental protection installation in respect of which a deduction has been allowed under section 16I and which is subsequently sold, means—

- (a) if section 16I(4) does not apply, the amount of specified capital expenditure incurred in relation to the installation that is still unallowed as at the time of the sale; or
- (b) if section 16I(4) applies, such part of the amount referred to in paragraph (a) as is proportionate to the extent to which the deduction has been allowed.

(Amended 10 of 2010 s. 3)

(2) In this section and section 16K—

- (a) a reference to capital expenditure incurred on the provision of any environmental protection machinery or any machinery or plant includes capital expenditure incurred on alterations to an existing building incidental to the installation of that environmental protection machinery or that machinery or plant, as the case may be; and
- (b) a reference to capital expenditure incurred on the construction of any environmental protection installation or any building or structure does not include any expenditure incurred on the acquisition of, or of rights in or over, any land.

(3) The Secretary for Financial Services and the Treasury may, after consultation with the Director of Environmental Protection, by notice published in the Gazette, amend Schedule 17.

(Added 21 of 2008 s. 4)

Section:	16I	<b>Deductions for specified capital expenditure incurred in relation to environmental protection facilities</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding section 17, this section applies in ascertaining the profits from any trade, profession or business in respect of which a person is chargeable to tax under this Part for any year of assessment (referred to in this section as *that year of assessment*).
- (2) Any specified capital expenditure incurred by the person during the basis period for that year of assessment in relation to any environmental protection machinery or environment-friendly vehicle shall be deducted. (Amended 10 of 2010 s. 4)
- (3) Any specified capital expenditure incurred by the person during the basis period for that year of assessment in relation to any environmental protection installation shall be deducted as follows—
  - (a) 20% shall be deducted for that year of assessment; and
  - (b) the remaining part shall be deducted by 4 equal amounts, one for each of the next succeeding 4 years of assessment, so long as the installation has not been sold at the end of the basis period for the year of assessment concerned.
- (4) If an environmental protection facility is used partly in the production of profits chargeable to tax under this Part and partly for any other purposes, the amount that shall be deducted under subsection (2) or (3) is the amount of specified capital expenditure that is proportionate to the extent of the use of the facility in the production of those profits.
- (5) A person is not entitled to the allowances under Part 6 in respect of any specified capital expenditure if a deduction for any part of the expenditure is allowed under this section.
- (6) For the purposes of this section, any specified capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on the trade, profession or business shall be treated as if it had been incurred by that person on the first day on which he carries on the trade, profession or business.

(Added 21 of 2008 s. 4. Amended E.R. 1 of 2012)

Section:	16J	<b>Proceeds of sale of environmental protection facilities to be treated as trading receipts</b>	E.R. 1 of 2012	09/02/2012
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- (1) This section applies notwithstanding the exclusion relating to the sale of capital assets in section 14.
- (2) If any environmental protection machinery in respect of which a deduction has been allowed under section 16I

in ascertaining the profits from a trade, profession or business is subsequently sold, the relevant proceeds of sale shall, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—

- (a) at the time of the sale; or
  - (b) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the date of discontinuance.
- (2A) If any environment-friendly vehicle in respect of which a deduction has been allowed under section 16I in ascertaining the profits from a trade, profession or business is sold before the cessation of the trade, profession or business, the relevant proceeds of sale, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, are to be treated as trading receipts of the trade, profession or business, arising in or derived from Hong Kong and accruing at the time of the sale. (Added 10 of 2010 s. 5)
- (3) If any environmental protection installation in respect of which a deduction has been allowed under section 16I in ascertaining the profits from a trade, profession or business is subsequently sold—
- (a) if there is an unallowed amount that exceeds the relevant proceeds of sale, the excess shall be deducted for the year of assessment in the basis period for which the sale occurs;
  - (b) if there is an unallowed amount but the relevant proceeds of sale exceed that amount, the excess shall, to the extent that it is not chargeable to tax under any other section of this Part and does not exceed the amount of the deduction, be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
    - (i) at the time of the sale; or
    - (ii) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the date of discontinuance; or
  - (c) if there is not an unallowed amount, the relevant proceeds of sale shall, to the extent that they are not chargeable to tax under any other section of this Part and do not exceed the amount of the deduction, be treated as a trading receipt of the trade, profession or business, arising in or derived from Hong Kong and accruing—
    - (i) at the time of the sale; or
    - (ii) if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, immediately before the date of discontinuance.
- (4) If, in relation to the sale of an environmental protection facility as referred to in subsection (2), (2A) or (3)— (Amended 10 of 2010 s. 5)
- (a) the buyer is a person over whom the seller has control;
  - (b) the seller is a person over whom the buyer has control;
  - (c) both the seller and the buyer are persons over both of whom some other person has control; or
  - (d) the sale is between a husband and his wife, not being a wife living apart from her husband,
- the Commissioner shall, if he is of the opinion that the sale price of the facility does not represent its true market value at the time of the sale, determine such true market value, and the amount so determined shall, for the purposes of subsection (2), (2A) or (3), as the case may be, be treated as the proceeds of that sale. (Amended 10 of 2010 s. 5)
- (5) For the purposes of subsections (2) and (3), if any environmental protection machinery or environmental protection installation in respect of which a deduction has been allowed to a person under section 16I in ascertaining the profits from a trade, profession or business is subsequently destroyed— (Amended 10 of 2010 s. 5)
- (a) the machinery or installation is deemed to have been sold immediately before the destruction; and
  - (b) any insurance money, other compensation of any description and any money derived from the remains of the machinery or installation that are received by the person in respect of the destruction are to be treated as the proceeds of that sale. (Amended 10 of 2010 s. 5)
- (5A) For the purposes of subsection (2A), if an environment-friendly vehicle in respect of which a deduction has been allowed to a person under section 16I in ascertaining the profits from a trade, profession or business is destroyed or stolen before the cessation of the trade, profession or business—
- (a) the vehicle is deemed to have been sold immediately before it was destroyed or stolen; and
  - (b) any insurance money, other compensation of any description and any money derived from the remains of

the vehicle that are received by the person in respect of the destruction or theft are to be treated as the proceeds of that sale. (Added 10 of 2010 s. 5)

- (5B) For the purposes of subsection (2A), if an environment-friendly vehicle in respect of which a deduction has been allowed to a person under section 16I in ascertaining the profits from a trade, profession or business has not been sold, destroyed or stolen before the cessation of the trade, profession or business—
  - (a) the vehicle is deemed to have been sold immediately before the cessation; and
  - (b) the person is deemed to have received immediately before the cessation the proceeds of that sale. (Added 10 of 2010 s. 5)
- (5C) The amount of proceeds of sale deemed to have been received under subsection (5B)(b) is such amount as the Commissioner may consider the vehicle would have realized had it been sold in the open market at the time of cessation. (Added 10 of 2010 s. 5)
- (5D) If the environment-friendly vehicle referred to in subsection (5B) is sold, destroyed or stolen on, or within 12 months after, the cessation of the trade, profession or business, the person may claim an adjustment to the amount deemed to have been received under subsection (5C). (Added 10 of 2010 s. 5)
- (5E) Despite section 70, an assessor may make any necessary correction to any assessment due to an adjustment under subsection (5D). (Added 10 of 2010 s. 5)
- (6) For the purposes of this section, a reference to the time of the sale, in relation to an environmental protection facility, shall be construed as a reference to the time of completion of the sale of the facility, or the time when possession of the facility is given, whichever is the earlier.

(Added 21 of 2008 s. 4)

Section:	16K	<b>Environmental protection facilities owned as at commencement date</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (7), if, immediately before the commencement date, a person owned and had in use any machinery or plant that is environmental protection machinery or any vehicle that is an environment-friendly vehicle, that person is, for the purposes of section 16I, deemed to have incurred, on the commencement date, specified capital expenditure in relation to that machinery, plant or vehicle. (Amended 10 of 2010 s. 6)
- (2) Subject to subsection (7), if, immediately before the commencement date, a person owned and had in use any machinery or plant that would otherwise have qualified as environmental protection machinery but for the fact that that machinery or plant does not comply with the registration or other requirements under Part 1 of Schedule 17, that person shall, for the purposes of section 16I, be deemed to have incurred specified capital expenditure in relation to that machinery or plant on the date on which the registration or other requirements are complied with.
- (3) The specified capital expenditure deemed to have been incurred by a person in relation to any machinery, plant or vehicle under subsection (1) or (2) shall be the capital expenditure incurred on the provision of that machinery, plant or vehicle reduced by the aggregate of— (Amended 10 of 2010 s. 6)
  - (a) the amount of the initial allowances, if any, under section 37(1), 37A(1) or 39B(1); and
  - (b) the amount of the annual allowances, if any, under section 37(2), 37A(2) or 39B(2), (Amended 10 of 2010 s. 6)
 made to the person in respect of the capital expenditure in all prior years of assessment.
- (4) Subject to subsection (7), if—
  - (a) immediately before the commencement date, a person is entitled to an interest in any building or structure that is an environmental protection installation; and
  - (b) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure,
 that person shall, for the purposes of section 16I, be deemed to have incurred, on the commencement date, specified capital expenditure in relation to that building or structure.
- (5) Subject to subsection (7), if—
  - (a) immediately before the commencement date, a person is entitled to an interest in any building or structure that would otherwise have qualified as an environmental protection installation but for the fact that that building or structure does not comply with the registration requirement under Part 2 of Schedule 17; and
  - (b) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure,
 that person shall, for the purposes of section 16I, be deemed to have incurred specified capital expenditure in

relation to that building or structure on the date on which the registration requirement is complied with.

- (6) The specified capital expenditure deemed to have been incurred in relation to any building or structure under subsection (4) or (5) shall be the residue of expenditure in relation to that building or structure immediately before the commencement date, or the residue of expenditure in relation to that building or structure immediately before the date on which the registration requirement under Part 2 of Schedule 17 is complied with, whichever is applicable.
- (7) Where a person is deemed to have incurred specified capital expenditure under any of subsections (1), (2), (4) and (5) (referred to in this subsection as *the relevant provision*) in the basis period for any year of assessment, the relevant provision applies to him only if he, at any time within one month after the date on which a notice of the assessment made in respect of that year of assessment under section 59 is given under section 62, elects in writing that the relevant provision shall so apply to him.
- (8) An election under subsection (7), once made, is irrevocable.
- (9) In this section, *commencement date* (生效日期)—
  - (a) in relation to any machinery, plant, building or structure, means 27 June 2008;
  - (b) in relation to any vehicle, means the date on which the Inland Revenue (Amendment) (No. 3) Ordinance 2010 (10 of 2010) came into operation. (Added 10 of 2010 s. 6)

(Added 21 of 2008 s. 4)

Section:	17	<b>Deductions not allowed</b>	E.R. 1 of 2012	09/02/2012
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- (1) For the purpose of ascertaining profits in respect of which a person is chargeable to tax under this Part no deduction shall be allowed in respect of— (Amended 36 of 1955 s. 25; 49 of 1956 s. 13)
  - (a) domestic or private expenses, including—
    - (i) the cost of travelling between the person's residence and place of business; and
    - \* (ii) subject to section 16AA, contributions made to a mandatory provident fund scheme in the person's capacity as a member of the scheme; (Replaced 4 of 1998 s. 6. Amended 31 of 1998 s. 25)
  - \* (b) subject to section 16AA, any disbursements or expenses not being money expended for the purpose of producing such profits; (Amended 36 of 1955 s. 25; 31 of 1998 s. 11)
  - (c) any expenditure of a capital nature or any loss or withdrawal of capital;
  - (d) the cost of any improvements;
  - (e) any sum recoverable under an insurance or contract of indemnity;
  - (f) rent of, or expenses in connection with, any premises or part of premises not occupied or used for the purpose of producing such profits; (Amended 36 of 1955 s. 25)
  - (g) any tax paid or payable under this Ordinance other than salaries tax paid in respect of employees' remuneration; (Replaced 3 of 1949 s. 7. Amended 35 of 1955 s. 25)
  - (h) any sums that the person has, as an employer, paid in respect of an employee as—
    - (i) an ordinary annual contribution to a fund established under a recognized occupational retirement scheme; or
    - (ii) an ordinary annual premium for a contract of insurance under such a scheme; or
    - (iii) regular contributions paid to a mandatory provident fund scheme, to the extent that the total of the payments exceeds 15 per cent of the total emoluments of the employee for the period to which the payments relate; (Replaced 4 of 1998 s. 6)
  - (i) any provision made for the payment in respect of an employee of any sum referred to in paragraph (h), to the extent that the aggregate of such provision and any such payment as is referred to in that paragraph exceeds 15% of the total emoluments of that employee for the period in respect of which the provision is made; (Added 7 of 1986 s. 5. Amended 76 of 1993 s. 7)
  - (j) any provision made in respect of an occupational retirement scheme other than for the payment of any sum referred to in paragraph (h); (Added 7 of 1986 s. 5. Amended 76 of 1993 s. 7)
  - (k) any sum that the person has, as an employer, paid in respect of an employee as—
    - (i) a contribution to a fund established under a recognized occupational retirement scheme; or
    - (ii) a premium for a contract of insurance under such a scheme; or
    - (iii) a contribution to a mandatory provident fund scheme, where provision for payment of the sum has been made in a prior year of assessment and a deduction has been allowed for the provision in that or another prior year of assessment; or (Replaced 4 of 1998 s. 6)
  - (l) any—

- (i) contribution that the person has, as an employer, made to the funds of; or
  - (ii) payment that that person has made as an employer for the purposes of the operation of, an occupational retirement scheme other than a recognized occupational retirement scheme. (Added 76 of 1993 s. 7. Amended 4 of 1998 s. 6)
- (2) In computing the profits or losses of a person carrying on a trade, profession or business, no deduction is allowable for-
- (a) salaries or other remuneration of the person's spouse; or
  - (b) interest on capital or loans provided by that spouse; or
  - (c) a contribution made to a mandatory provident fund scheme in respect of that spouse; or
  - (d) in the case of a partnership-
    - (i) salaries or other remuneration of a partner or a partner's spouse; or
    - (ii) interest on capital or loans provided by a partner or by a partner's spouse; or
    - \*(iii) subject to section 16AA, a contribution made to a mandatory provident fund scheme in respect of a partner or a partner's spouse. (Replaced 4 of 1998 s. 6. Amended 31 of 1998 s. 25)
- (3) In this section-  
*regular contributions* (固定供款) has the same meaning as in section 16A(3). (Added 4 of 1998 s. 6)

**Note:**

\* The amendments made by Ord. No. 31 of 1998 to section 17(1)(a)(ii) and (b) and (2)(d)(iii) apply in relation to the year of assessment commencing on 1 April 2000 and to all subsequent years of assessment. (31 of 1998 s. 2(2); L.N. 175 of 2000)

Section:	18	<b>Basis for computing profits</b>	E.R. 1 of 2012	09/02/2012
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- (1) Save as provided in this section, the assessable profits for any year of assessment from any trade, profession or business carried on in Hong Kong shall be computed on the full amount of the profits therefrom arising in or derived from Hong Kong during the year preceding the year of assessment.
- (2) Where the Commissioner is satisfied that the accounts of a trade, profession or business carried on in Hong Kong are usually made up to some day other than 31 March, he may direct that the assessable profits from that source be computed on the amount of the profits therefrom arising in or derived from Hong Kong during the year ending on that day in the year preceding the year of assessment. Where, however, the assessable profits from any trade, profession or business have been computed by reference to an account made up to a certain day, and no account is made up to the corresponding day in the year following, the assessable profits from that source both for the year of assessment in which such failure occurs and for the 2 years of assessment following shall be computed on such basis as the Commissioner in his discretion thinks fit.
- (3) Subject to section 18C, where a person commences to carry on a trade, profession or business in Hong Kong on a day within a year of assessment, the assessable profits from that source for such year of assessment shall be computed on the amount of the profits therefrom arising in or derived from Hong Kong during the period beginning on the date of commencement and ending on the last day of that year of assessment. (Amended 7 of 1975 s. 11)
- (4) Where a person has commenced to carry on a trade, profession or business in Hong Kong on a day within the year preceding a year of assessment, the assessable profits from that source for that year of assessment shall be computed on the amount of the profits therefrom arising in or derived from Hong Kong for 1 year from such day:  
Provided that such person may claim, by giving notice in writing to the Commissioner, to have the assessable profits from the source for that year of assessment and for the following year of assessment (but not for one or other of those years) recomputed on the basis of the actual profits therefrom arising in or derived from Hong Kong during each such year respectively, but where the commencement is in the year of assessment commencing on 1 April 1973, such claim for recomputation shall relate only to the year of assessment commencing on 1 April 1974. (Amended 7 of 1975 s. 11)
- (5) Where a person ceases to carry on a trade, profession or business in Hong Kong the assessable profits from that source for the year of assessment in which the cessation occurs shall be computed on the amount of the profits therefrom arising in or derived from Hong Kong during the period beginning on 1 April in that year and ending on the date of cessation:  
Provided that where the profits arising in or derived from Hong Kong from that source during the year of

assessment immediately preceding the year in which the cessation occurs exceed what would otherwise have been the assessable profits from that source for that preceding year such assessable profits shall be recomputed on the basis of the actual profits therefrom arising in or derived from Hong Kong during that preceding year and an additional assessment shall be made accordingly.

- (6) Notwithstanding the provisions of section 70 a claim made for an adjustment of any assessment because of a change in the basis period required or authorized under the provisions of this section shall be entertained if it is made in writing within 2 years after the end of the relevant year of assessment or, where the claim has been made under the proviso to subsection (4), within 2 years after the end of the second of the 2 years of assessment referred to in such proviso. A claim so made shall be regarded as an objection to an assessment under section 64 for the purposes of Part 11. (Amended 35 of 1965 s. 11)
- (7) This section shall apply to the years of assessment up to and including the year of assessment commencing on 1 April 1974. (Replaced 7 of 1975 s. 11)

(Replaced 49 of 1956 s. 14. Amended 7 of 1986 s. 12; E.R. 1 of 2012)

Section:	18A	<b>Assessable profits for the year of assessment 1974/5</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where the assessable profits for the year of assessment commencing on 1 April 1974 from any trade, profession or business fall to be computed under section 18(1) but the actual profits from that source for that year of assessment exceed those assessable profits as so computed, then, notwithstanding section 18, the assessable profits for the year of assessment commencing on 1 April 1974 shall be computed on the basis of those actual profits.
- (2) Where the assessable profits for the year of assessment commencing on 1 April 1974 from any trade, profession or business fall to be computed under section 18(2) on the amount of profits from that source for the year ending on a day other than 31 March in the year preceding that year of assessment but the actual profits from that source-
- (a) for the year ending on the corresponding day in the year of assessment; or
- (b) if the accounts for that trade, profession or business were made up to more than 1 day in the year of assessment, for the year ending on such of those days as the Commissioner may direct, exceed those assessable profits as so computed, then, notwithstanding section 18, the assessable profits for the year of assessment commencing on 1 April 1974 shall be computed on the basis of those actual profits.
- (3) Where the assessable profits for the year of assessment commencing on 1 April 1974 from any trade, profession or business fall to be computed under section 18(4) but the lesser of the actual profits from that source for-
- (a) the year ending on the day in that year of assessment to which the accounts of that trade, profession or business were made up; or
- (b) that year of assessment, exceed those assessable profits as so computed, then notwithstanding section 18, the assessable profits for the year of assessment commencing on 1 April 1974 shall be computed on the basis of those actual profits.
- (4) For the purposes of applying this section there shall be disregarded any loss brought forward to the year of assessment commencing on 1 April 1974 under section 19(2).

(Added 7 of 1975 s. 12)

Section:	18B	<b>Basis for computing assessable profit for years of assessment commencing on 1 April 1975</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (2) and to sections 18C, 18D and 18E, the assessable profits for any year of assessment commencing on or after 1 April 1975 from any trade, profession or business carried on in Hong Kong shall be computed on the full amount of the profits therefrom arising in or derived from Hong Kong during the year of assessment.
- (2) Subject to sections 18C, 18D and 18E, where the Commissioner is satisfied that the accounts of a trade, profession or business carried on in Hong Kong are made up to some day other than 31 March, he may direct that the assessable profits from that source for any year of assessment be computed on the full amount of profits therefrom arising in or derived from Hong Kong during the year ending on that day in the year of assessment.

(Added 7 of 1975 s. 12. Amended 7 of 1986 s. 12)

Section:	18C	<b>Commencement of source of profits in years of assessment commencing on or after 1 April 1974</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (2) where a person commences to carry on a trade, profession or business in Hong Kong within any year of assessment commencing on or after 1 April 1974 and the Commissioner is satisfied that the first accounts of such trade, profession or business after its commencement are made up to some day other than 31 March, the assessable profits from that source for that year of assessment shall-
- if the first accounts are made up to a day within that year of assessment, be computed on the full amount of the profits from that source arising in or derived from Hong Kong during the period beginning on the day of commencement and ending on the day to which the accounts are made up; or
  - if the first accounts are for a period in excess of a year and are made up to a day within a year of assessment following that in which the commencement occurred, be computed on such basis as the Commissioner thinks fit. (Amended 7 of 1986 s. 12)
- (2) Where the first accounts of a trade, profession or business commenced in any year of assessment commencing on or after 1 April 1974 are for a period of 1 year or less and are made up to a day within the year of assessment following that in which the commencement occurred, there shall be deemed to be no assessable profits for the year of assessment in which the commencement occurred.

(Added 7 of 1975 s. 12)

Section:	18D	<b>Cessation of source of profits in years of assessment commencing on 1 April 1975</b>	E.R. 1 of 2012	09/02/2012
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- (1) Save as provided in this section, where, in any year of assessment commencing on or after 1 April 1975, a person ceases to carry on a trade, profession or business in Hong Kong, the assessable profits from that source for the year of assessment in which the cessation occurs shall be computed on the amount of the profits therefrom arising in or derived from Hong Kong during the period beginning on the day following the end of the basis period for the year preceding the year of assessment and ending on the date of cessation.
- (2) Where in any year of assessment commencing on or after 1 April 1975 a person ceases to carry on a trade, profession or business in Hong Kong which was commenced by him in Hong Kong before 1 April 1974, the assessable profits from that source for the year of assessment in which the cessation occurs shall be computed on the amount of the profits therefrom arising in or derived from Hong Kong during the period beginning on 1 April in that year and ending on the date of cessation:
- Provided that where a person ceases to carry on such trade, profession or business in Hong Kong other than by reason of the death of an individual previously carrying on a trade, profession or business as the sole proprietor thereof, and the trade, profession or business, or any part thereof, is transferred to or carried on by any other person as his trade, profession or business, this subsection shall not apply, but the cessation shall be deemed to be a cessation for the purposes of subsection (1). (Amended 71 of 1983 s. 16; 4 of 2010 s. 5)
- (2A) Where a person ceases to carry on a relevant trade, profession or business on or after 1 April 1979, the following amount shall be treated as assessable profits therefrom for the year of assessment in which the cessation occurs and shall be in addition to the assessable profits therefrom which, apart from this subsection, fall to be computed for that year of assessment-
- in the case of an excepted trade, profession or business, the amount, if any, by which the relevant profits therefrom arising in or derived from Hong Kong during the relevant period exceed the transitional amount;
  - in the case of any other relevant trade, profession or business, the full amount of any relevant profits therefrom arising in or derived from Hong Kong during the relevant period,
- and, for the purposes of this subsection, profits are **relevant profits** if, but for subsection (2) and apart from Part 6, the assessable profits for that year of assessment would have included those profits, and-
- excepted trade, profession or business** (特定行業、專業或業務) means a relevant trade, profession or business referred to in the definition in this subsection of "transitional amount";
- relevant period** (有關期間) means the period beginning on the day next following the end of the basis period for the year preceding the year of assessment in which the cessation occurs and ending on 31 March in the year preceding the year of assessment in which the cessation occurs;
- relevant trade, profession or business** (有關行業、專業或業務) means a trade, profession or business to which subsection (2) applies and in the case of which the basis period for the year preceding the year of assessment in

which the cessation occurs ends on a day other than 31 March;

**transitional amount** (過渡期款額) means-

- (a) where the assessable profits from a relevant trade, profession or business for the year of assessment commencing on 1 April 1974 fell to be computed under section 18(2) on the amount of profits therefrom for the year ending on a day other than 31 March in the year preceding that year of assessment, the amount of profits from the relevant trade, profession or business arising in or derived from Hong Kong during the period beginning on the day next following the corresponding day in that year of assessment and ending on 31 March 1975;
  - (b) where the assessable profits from a relevant trade, profession or business for the year of assessment commencing on 1 April 1974 fell to be computed under section 18A(2), the amount of profits from the relevant trade, profession or business arising in or derived from Hong Kong during the period beginning on the day next following the end of the basis period for that year of assessment and ending on 31 March 1975, and where a loss was incurred in the carrying on of a relevant trade, profession or business referred to in paragraph (a) or (b) of this definition during the period therein referred to, **transitional amount**, in relation to that trade, profession or business, shall be construed to mean a nil amount. (Added 34 of 1980 s. 2)
- (3)-(4) (Repealed 56 of 1993 s. 12)
- (5) Where a person who commenced to carry on a trade, profession or business in Hong Kong in a year of assessment commencing on or after 1 April 1975-
- (a) ceases to carry on such trade, profession or business in the year of assessment following that in which such commencement occurred; and
  - (b) by virtue of section 18C(2), there has been deemed to be no assessable profits for the year of assessment in which the commencement occurred,
- the assessable profits for the year of assessment in which the cessation occurs shall be recomputed on the basis of the actual profits arising in or derived from Hong Kong from the date of the commencement to the date of cessation.
- (6)-(7) (Repealed 19 of 1996 s. 6)

(Added 7 of 1975 s. 12. Amended 7 of 1986 s. 12; E.R. 1 of 2012)

Section:	18E	<b>Change of accounting date and apportionments</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where the assessable profits of a person from any trade, profession or business carried on in Hong Kong have been computed by reference to an account made up to a certain day in any year of assessment and either- (Amended 7 of 1986 s. 12)
- (a) that person fails to make up an account to the corresponding day in the following year of assessment; or
  - (b) that person makes up accounts to more than one day in the following year of assessment,
- then-
- (i) the assessable profits from that source for the year of assessment in which the circumstances described in either paragraph (a) or (b) prevail shall be computed on such basis as the Commissioner thinks fit; and
  - (ii) the assessable profits for the year preceding that year of assessment shall be recomputed on such basis as the Commissioner thinks fit.
- (2) For the purposes of subsection (1)-
- (a) where the accounts of any trade, profession or business are made up to the end of the Lunar year, the Commissioner may accept those accounts as being made up to a corresponding day in each year of assessment; and
  - (b) in the case of a trade, profession or business which was commenced on or after 1 April 1974, the Commissioner may, if he considers it necessary, make a computation under subsection (1) in respect of a basis period which exceeds 12 months.
- (3) For the purposes of this Part, where in the case of a trade, profession or business it is necessary in order to arrive at the assessable profits or the losses for any year of assessment to divide or apportion to specific periods the profits and losses for any period for which accounts have been made up, or to aggregate any such profits or losses or any apportioned parts thereof, it shall be lawful to make such division and apportionment or aggregation, and any such apportionment shall be made in proportion to the number of days or months in the respective periods unless the Commissioner, having regard to any special circumstances, otherwise directs.
- (4) For the purposes of section 18D(2A), where in the case of a trade, profession or business it is necessary in order to arrive at the profits or losses for any period to divide or apportion to specific periods the profits and losses for



any period for which accounts have been made up, or to aggregate any such profits or losses or any apportioned parts thereof, the Commissioner may make such division and apportionment or aggregation as he may deem proper in that case. (Added 34 of 1980 s. 3)

(Added 7 of 1975 s. 12)

Section:	18F	<b>Adjustment of assessable profits</b>	E.R. 1 of 2012	09/02/2012
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- (1) The amount of assessable profits for any year of assessment of a person chargeable to tax under this Part shall be increased by the amount of any balancing charge directed to be made on that person under Part 6 and decreased by the allowances made to that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the assessable profits.
- (2) When in any year of assessment the amount of the allowances made under Part 6 to any person chargeable to tax under this Part exceeds the total amount of that person's assessable profits, as increased by any balancing charge, the amount of such excess shall, for the purposes of section 19C, be deemed to be a loss of that person for that year of assessment.
- (3) This section shall apply to the year of assessment commencing on 1 April 1975 and to subsequent years of assessment.

(Added 7 of 1975 s. 12. Amended E.R. 1 of 2012)

Section:	19	<b>Treatment of losses</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where a loss is incurred in any year of assessment up to and including the year of assessment commencing on 1 April 1974 by a person chargeable to tax under this Part the amount of such loss attributable to activities in Hong Kong shall notwithstanding the provisions of section 70 be set off against what would otherwise have been the assessable profits of such person for that year of assessment. (Amended 49 of 1956 s. 15; 7 of 1975 s. 13; 7 of 1986 s. 12; 32 of 1998 s. 11)
- (2) Where the amount of loss which may set off under subsection (1) is such that it cannot be wholly set off against the assessable profits of a person chargeable to tax under this Part for the year of assessment in which the loss occurred, the amount not so set off shall be carried forward and shall be set off against what would otherwise have been assessable profits of that person for the future years of assessment in succession:  
Provided that-
  - (a) the amount of any such loss allowed to be set off in computing the assessable profits for any year of assessment shall not be set off in computing the assessable profits for any other year of assessment; and
  - (b) where a loss is set off under this subsection in respect of the year of assessment commencing on 1 April 1975 or any subsequent year of assessment, that loss shall be set off before the set off of any loss under section 19C. (Replaced 7 of 1975 s. 13)
- (3)-(4) (Repealed 56 of 1993 s. 13)

(Replaced 36 of 1955 s. 28)

Section:	19A	<b>(Repealed 56 of 1993 s. 14)</b>		30/06/1997
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Section:	19B	<b>(Repealed 56 of 1993 s. 15)</b>		30/06/1997
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Section:	19C	<b>Treatment of losses after 1 April 1975</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to section 19CB, where in any year of assessment-
  - (a) an individual sustains a loss in any trade, profession or business carried on by him; and
  - (b) the individual or, in the case of a husband and wife, not being a wife living apart from her husband, the husband or wife does not elect for personal assessment under section 41 for that year of assessment,
 the amount of that loss shall be carried forward and set off against the amount of his assessable profits from that trade, profession or business for subsequent years of assessment. (Amended 71 of 1983 s. 17; 43 of 1989 s. 9)
- (2) Subject to section 19CB, where in any year of assessment-

- (a) an individual incurs a share of a loss of a partnership in any trade, profession or business carried on by that partnership; and
  - (b) the individual or, in the case of a husband and wife, not being a wife living apart from her husband, the husband or wife does not elect for personal assessment under section 41 for that year of assessment, the amount of that share of the loss shall be carried forward and set off against the amount of his share of assessable profits of the partnership from that trade, profession or business for subsequent years of assessment: (Amended 71 of 1983 s. 17; 43 of 1989 s. 9)
- Provided that where at the end of the year of assessment commencing on 1 April 1983 a share of a loss to be carried forward under this subsection is one that was incurred by a husband and wife, not being a wife living apart from her husband, in partnership with each other, whether or not also with other persons-
- (i) the share of the loss shall be deemed to be apportioned between the husband and wife in the proportions in which they were entitled to share profits between themselves as at the last day of the basis period for that year of assessment; and
  - (ii) each such portion of the share of the loss shall be carried forward and set off against the husband's or, as the case may be, the wife's respective share of assessable profits of the partnership from that trade, profession or business for subsequent years of assessment. (Added 71 of 1983 s. 17)
- (3) Subject to subsection (3A), where in any year of assessment an individual has sustained a loss or has incurred a share of a loss of a partnership and-
- (a) is personally assessed under Part 7; or
  - (b) in the case of a husband and wife, not being a wife living apart from her husband, the husband or wife is personally assessed under Part 7, (Replaced 43 of 1989 s. 9)
- the amount of the loss or share of the loss shall be dealt with in accordance with that Part. (Replaced 71 of 1983 s. 17)
- (3A) For the purposes of Part 7, where the loss or the share of the loss referred to in subsection (3) consists solely of the balance of an unabsorbed loss calculated in accordance with section 19CA(2)(b), the amount of the loss or the share of the loss shall be deemed to be the amount arrived at by dividing such balance by the adjustment factor within the meaning of section 19CA. (Added 32 of 1998 s. 12)
- (4) Subject to section 19CB, where in any year of assessment a corporation or a person, who is not an individual, a partnership or a corporation, carrying on a trade, profession or business sustains a loss in that trade, profession or business, the amount of that loss shall be set off against the assessable profits of the corporation or person (including its share of the assessable profits of a partnership in which it is a partner) for that year of assessment and to the extent not so set off, shall be carried forward and set off against the corporation's or the person's assessable profits and its share of assessable profits of such a partnership for subsequent years of assessment.
- (5) Subject to section 19CB, where-
- (a) a trade, profession or business is carried on in Hong Kong by persons in partnership and any one of those persons is a corporation or is a person who is not an individual, a partnership or a corporation; and (Amended 7 of 1986 s. 12)
  - (b) in any year of assessment a loss is incurred in that trade, profession or business, then the corporation's or the person's share of that loss shall be set off against the assessable profits of the corporation or the person for the year of assessment in which the loss was incurred and to the extent not so set off, be carried forward and, for subsequent years of assessment, be set off first against the corporation's or the person's share of the assessable profits of such partnership and, to the extent not so set off, then against the assessable profits of the corporation or the person.
- (6) For the purposes of this section-
- (a) the amount of any loss set off in computing the assessable profits for any year of assessment shall not be set off in computing the assessable profits for any other year of assessment;
  - (b) the amount of any loss carried forward to any year of assessment to be set off against the assessable profits for that year shall not be set off more than once in that year of assessment;
  - (c) the total amount set off against assessable profits shall not exceed the amount of the loss;
  - (d) the amount of any loss to be set off under this section shall be the loss attributable to activities in Hong Kong; (Amended 30 of 1981 s. 4; 7 of 1986 s. 12)
  - (e) the amount of any loss sustained in any trade, profession or business carried on for the benefit of a trust by a person in his capacity as trustee shall not be available for set off except against the assessable profits of that trust from that trade, profession or business for subsequent years of assessment. (Added 30 of 1981 s. 4)
- (7) (Repealed 30 of 2004 s. 3)

- (8) This section shall apply to the year of assessment commencing on 1 April 1975 and to subsequent years of assessment.

(Added 7 of 1975 s. 16. Amended 32 of 1998 s. 12; E.R. 1 of 2012)

Section:	19CA	<b>Treatment of losses: concessionary trading receipts</b>	E.R. 1 of 2012	09/02/2012
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- (1) This section shall apply to any person who derives concessionary trading receipts and normal trading receipts for any year of assessment.
- (2) Where, for any year of assessment, there is an unabsorbed loss in respect of the concessionary trading receipts of a person to whom this section applies, and the person has chargeable normal trading receipts for that year of assessment, the unabsorbed loss shall be treated in accordance with the following provisions-
- (a) where the amount of the unabsorbed loss does not exceed the amount of the chargeable normal trading receipts as multiplied by the adjustment factor, the amount of the chargeable normal trading receipts shall, for the purpose of ascertaining the assessable profits of the person, be deemed to be reduced by an amount arrived at by dividing the amount of the unabsorbed loss by the adjustment factor, and the amount of the unabsorbed loss shall, for any other purposes, be deemed to be nil;
- (b) in any other case, the amount of the unabsorbed loss shall, for the purpose of ascertaining the loss sustained by the person, be deemed to be reduced by an amount arrived at by multiplying the amount of the chargeable normal trading receipts by the adjustment factor, and the balance of the unabsorbed loss so reduced shall be dealt with in accordance with sections 19C and 19CB, and the amount of the chargeable normal trading receipts shall, for any other purposes, be deemed to be nil.
- (3) Where, for any year of assessment, there is an unabsorbed loss in respect of the normal trading receipts of a person to whom this section applies, and the person has chargeable concessionary trading receipts for that year of assessment, the unabsorbed loss shall be treated in accordance with the following provisions-
- (a) where the amount of the unabsorbed loss does not exceed the amount of the chargeable concessionary trading receipts as divided by the adjustment factor, the amount of the chargeable concessionary trading receipts shall, for the purpose of ascertaining the assessable profits of the person, be deemed to be reduced by an amount arrived at by multiplying the amount of the unabsorbed loss by the adjustment factor, and the amount of the unabsorbed loss shall, for any other purposes, be deemed to be nil;
- (b) in any other case, the amount of the unabsorbed loss shall, for the purpose of ascertaining the loss sustained by the person, be deemed to be reduced by an amount arrived at by dividing the amount of the chargeable concessionary trading receipts by the adjustment factor, and the balance of the unabsorbed loss so reduced shall be dealt with in accordance with sections 19C and 19CB, and the amount of the chargeable concessionary trading receipts shall, for any other purposes, be deemed to be nil.
- (4) In this section, **adjustment factor** (調整分數), in relation to any year of assessment, means the factor ascertained in accordance with the following formula:

$$\frac{A}{B}$$

where: A means the rate specified in Schedule 1 or 8, as the case may be, for that year of assessment; and  
 B, in relation to any concessionary trading receipts, means the rate specified in section 14A or 14B, as the case may be, for that year of assessment.

- (5) In this section-
- chargeable concessionary trading receipts** (應課稅的獲特惠的營業收入), in relation to any person for any year of assessment, means-
- (a) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in section 14A, the amount of such concessionary trading receipts as-
- (i) reduced by the aggregate of-
- (A) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the concessionary trading receipts; and
- (B) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the concessionary trading receipts; and
- (ii) increased by the amount of any balancing charge directed to be made on that person under Part 6 for

that year of assessment to the extent to which the relevant assets are used in the production of the concessionary trading receipts;

- (b) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in section 14B, the amount of the assessable profits ascertained in accordance with section 23A(2);

**chargeable normal trading receipts** (應課稅的一般營業收入), in relation to any person for any year of assessment, means the amount of the normal trading receipts as-

- (a) reduced by the aggregate of-
- (i) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the normal trading receipts; and
  - (ii) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the normal trading receipts; and
- (b) increased by the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the normal trading receipts;

**concessionary trading receipts** (獲特惠的營業收入) means the trading receipts and other sums in respect of which assessable profits are chargeable to tax at the rate specified in section 14A or 14B;

**normal trading receipts** (一般營業收入) means the trading receipts and other sums in respect of which assessable profits are chargeable to tax at the rate specified in Schedule 1 or 8;

**unabsorbed loss in respect of the concessionary trading receipts** (關乎獲特惠的營業收入的未吸納虧損), in relation to any person for any year of assessment, means-

- (a) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in section 14A, the loss ascertained by-
- (i) adding to the amount of the concessionary trading receipts the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the concessionary trading receipts; and
  - (ii) reducing from the resulting amount the aggregate of-
- (A) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the concessionary trading receipts; and
  - (B) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the concessionary trading receipts;
- (b) where the concessionary trading receipts are of a kind in respect of which assessable profits are chargeable to tax at the rate specified in section 14B, the loss arrived at in accordance with sections 23A(2) and 19D;

**unabsorbed loss in respect of the normal trading receipts** (關乎一般營業收入的未吸納虧損), in relation to any person for any year of assessment, means the loss ascertained by-

- (a) adding to the amount of the normal trading receipts the amount of any balancing charge directed to be made on that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the normal trading receipts; and
- (b) reducing from the resulting amount the aggregate of-
- (i) the amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for that year of assessment by the person in the production of the normal trading receipts; and
  - (ii) the amount of any allowances made under Part 6 for that year of assessment to the person to the extent to which the relevant assets are used during the basis period for that year of assessment in the production of the normal trading receipts.

(Added 32 of 1998 s. 13. Amended E.R. 1 of 2012)

Section:	19CB	Set off: concessionary trading receipts	E.R. 1 of 2012	09/02/2012
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- (1) Where, in accordance with section 19C(1), (2), (4) or (5), a loss is to be set off against assessable profits for any

year of assessment, this section shall apply for the purpose of ascertaining the amount of the loss set off and the resulting reduction in the assessable profits.

- (2) Where the loss is in respect of concessionary trading receipts and it is to be set off against the assessable profits in respect of normal trading receipts-
  - (a) where the amount of the loss does not exceed the amount of the assessable profits in respect of normal trading receipts as multiplied by the adjustment factor, the amount of the assessable profits in respect of normal trading receipts shall, for the purpose of ascertaining the assessable profits of the person, be deemed to be reduced by the amount arrived at by dividing the amount of the loss by the adjustment factor, and the loss shall, for any other purposes, be deemed to have been fully set off;
  - (b) in any other case, the loss shall, for the purpose of the set off, be deemed to have been set off to the extent of the amount arrived at by multiplying the amount of the assessable profits in respect of normal trading receipts by the adjustment factor, and the amount of the assessable profits in respect of normal trading receipts shall, for any other purposes, be deemed to be nil.
- (3) Where the loss is in respect of normal trading receipts and it is to be set off against the assessable profits in respect of concessionary trading receipts-
  - (a) where the amount of the loss does not exceed the amount of the assessable profits in respect of concessionary trading receipts as divided by the adjustment factor, the amount of the assessable profits in respect of concessionary trading receipts shall, for the purpose of ascertaining the assessable profits of the person, be deemed to be reduced by the amount arrived at by multiplying the amount of the loss by the adjustment factor, and the loss shall, for any other purposes, be deemed to have been fully set off;
  - (b) in any other case, the loss shall, for the purpose of the set off, be deemed to have been set off to the extent of the amount arrived at by dividing the amount of the assessable profits in respect of concessionary trading receipts by the adjustment factor, and the amount of the assessable profits in respect of concessionary trading receipts shall, for any other purposes, be deemed to be nil.

(4) In this section-

**adjustment factor** (調整分數), **concessionary trading receipts** (獲特惠的營業收入) and **normal trading receipts** (一般營業收入) have the meanings respectively assigned to them in section 19CA(4) and (5);

**loss** (虧損) includes part of a loss.

(Added 32 of 1998 s. 13)

Section:	19D	<b>Computation of losses after 1 April 1975</b>	E.R. 1 of 2012	09/02/2012
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- (1) For the purposes of section 19C, the amount of loss incurred by a person chargeable to tax under this Part for any year of assessment shall be computed in like manner and for such basis period as the assessable profits for that year of assessment would have been computed.
- (2) This section shall apply to the year of assessment commencing on 1 April 1975 and to subsequent years of assessment.

(Added 7 of 1975 s. 16)

Section:	19E	<b>Adjustment of losses</b>	E.R. 1 of 2012	09/02/2012
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- (1) For the purposes of section 19D, the amount of loss for any year of assessment of any person chargeable to tax under this Part shall be increased by the allowances made to that person under Part 6 for that year of assessment to the extent to which the relevant assets are used in the production of the losses and decreased by the amount of any balancing charge directed to be made on that person under Part 6.
- (2) Where in any year of assessment the amount of the balancing charge made under Part 6 to a person chargeable to tax under this Part exceeds the total amount of that person's losses, as increased by any allowances, the amount of such excess shall be deemed to be assessable profits of that person for that year of assessment.
- (3) This section shall apply to the year of assessment commencing on 1 April 1975 and to subsequent years of assessment.

(Added 7 of 1975 s. 16. Amended E.R. 1 of 2012)

Section:	20	<b>Liability of certain non-resident persons</b>	E.R. 1 of 2012	09/02/2012
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- (1) For the purposes of this section-
  - (a) a person is closely connected with another person where the Commissioner in his discretion considers that such persons are substantially identical or that the ultimate controlling interest of each is owned or deemed under this section to be owned by the same person or persons;
  - (b) the controlling interest of a company shall be deemed to be owned by the beneficial owners of its shares, whether held directly or through nominees, and shares in one company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company.
- (2) Where a non-resident person carries on business with a resident person with whom he is closely connected and the course of such business is so arranged that it produces to the resident person either no profits which arise in or derive from Hong Kong or less than the ordinary profits which might be expected to arise in or derive from Hong Kong, the business done by the non-resident person in pursuance of his connection with the resident person shall be deemed to be carried on in Hong Kong, and such non-resident person shall be assessable and chargeable with tax in respect of his profits from such business in the name of the resident person as if the resident person were his agent, and all the provisions of this Ordinance shall apply accordingly. (Amended 36 of 1955 s. 29; 7 of 1986 s. 12)

Section:	20A	<b>Persons chargeable on behalf of a non-resident</b>	E.R. 1 of 2012	09/02/2012
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- (1) A non-resident person shall be chargeable to tax either directly or in the name of his agent in respect of all his profits arising in or derived from Hong Kong from any trade, profession or business carried on in Hong Kong whether such agent has the receipt of the profits or not, and the tax so charged whether directly or in the name of the agent shall be recoverable by all means provided in this Ordinance out of the assets of the non-resident person or from the agent. Where there are more agents than one they may be charged to tax jointly or severally in respect of the profits of the non-resident person and shall be jointly and severally liable for the tax thereon. (Amended 7 of 1986 s. 12)
  - (2) Every person chargeable to tax as agent, or from whom tax is recoverable in respect of the profits of another person, shall retain out of any assets coming into his possession or control on behalf of such other person or in his capacity as agent so much thereof as shall be sufficient to produce the amount of such tax, and he shall be and is hereby indemnified against any person whomsoever in respect of his retention of such assets.
  - (3) Notwithstanding anything contained in subsections (1) and (2), any person who sells any goods in Hong Kong on behalf of a non-resident person shall furnish quarterly to the Commissioner a return showing the gross proceeds from such sales and shall at the same time pay to the Commissioner a sum equal to 1% of such proceeds or such lesser sum as may have been agreed with the Commissioner. On receipt of such sum the Commissioner shall issue a certificate in the form specified by the Board of Inland Revenue: (Amended 39 of 1969 s. 3; 7 of 1986 s. 12)
- Provided that the Commissioner may exempt any such person from the provisions of this subsection on such conditions as he may consider fit.

(Added 49 of 1956 s. 17)

Section:	20AA	<b>Persons not treated as agents</b>	E.R. 1 of 2012	09/02/2012
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- (1) For the purposes of section 20A, the following persons are deemed not to be an agent of a non-resident person-
  - (a) where profits are chargeable to tax under this Part by reference to so much of any trade, profession or business as relates to transactions carried out through a broker and falling within subsection (2), the broker;
  - (b) where profits are chargeable to tax under this Part by reference to so much of any trade, profession or business as relates to transactions carried out through an approved investment adviser and falling within subsection (3), the approved investment adviser.
- (2) Where any profits are chargeable to tax under this Part by reference to so much of any trade, profession or business as relates to a transaction carried out through a broker, the transaction is taken, in relation to the profits (the **taxable profits**), to fall within this subsection if-
  - (a) at the time of the transaction, the broker was carrying on the business of a broker;
  - (b) the transaction was carried out by the broker for the non-resident person in the ordinary course of the business;

- (c) the remuneration that the broker received for providing the services of a broker to the non-resident person for the transaction was at a rate not less than the one customary for the class of business;
  - (d) the non-resident person does not fall (apart from this paragraph) to be treated as having the broker as his agent in relation to any other profits not included in the taxable profits under this subsection or subsection (3) but chargeable to tax under this Part for the same year of assessment; and
  - (e) the broker was not an associate of the non-resident person during the year of assessment.
- (3) Where any profits are chargeable to tax under this Part by reference to so much of any trade, profession or business as relates to a transaction carried out through an approved investment adviser, the transaction is taken, in relation to the profits (the *taxable profits*), to have been carried out through the approved investment adviser and to fall within this subsection if-
- (a) (Repealed 32 of 1998 s. 14)
  - (b) at the time of the transaction, the approved investment adviser was carrying on the business of an approved investment adviser;
  - (c) the transaction was carried out by the approved investment adviser for the non-resident person in the ordinary course of the business;
  - (d) the remuneration that the approved investment adviser received for providing the services of an approved investment adviser to the non-resident person for the transaction was at a rate not less than the one customary for the class of business;
  - (e) the non-resident person does not fall (apart from this paragraph) to be treated as having the approved investment adviser as his agent in relation to any other profits not included in the taxable profits under this subsection or subsection (2) but chargeable to tax under this Part for the same year of assessment;
  - (f) the approved investment adviser was not an associate of the non-resident person during the year of assessment; and
  - (g) the approved investment adviser, when he acted for the non-resident person in the transaction, did so in an independent capacity.
- (4) This section applies to a person who acts as a broker or provides services as an approved investment adviser as part only of a business and as if that part is a separate business.
- (5) For the purposes of this section, an approved investment adviser is not regarded as acting in an independent capacity when acting on behalf of the non-resident person unless, having regard to the legal, financial and commercial characteristics of the relationship between them, it is a relationship between persons carrying on independent businesses dealing with each other at arm's length.
- (6) In this section-
- approved investment adviser** (認可投資顧問) means-
- (a) a corporation licensed to carry on a business in advising on securities or asset management under Part V of the Securities and Futures Ordinance (Cap 571); or
  - (b) an authorized financial institution registered for carrying on such a business under that Part, only to the extent that the institution carries on such a business; (Replaced 5 of 2002 s. 407)
- associate** (相聯者), in relation to a non-resident person, means-
- (a) where the person is a natural person-
    - (i) a relative of the person;
    - (ii) a partner of the person and any relative of that partner;
    - (iii) a partnership in which the person is a partner;
    - (iv) any corporation controlled by the person, by a partner of the person or by a partnership in which the person is a partner;
    - (v) any director or principal officer of any such corporation as is referred to in subparagraph (iv);
  - (b) where the person is a corporation-
    - (i) any associated corporation;
    - (ii) any person who controls the corporation and any partner of such person, and, where either such person is a natural person, any relative of such person;
    - (iii) any director or principal officer of that corporation or of any associated corporation and any relative of any such director or officer;
    - (iv) any partner of the corporation and, where such partner is a natural person, any relative of such partner;
  - (c) where the person is a partnership-
    - (i) any partner of the partnership and where such partner is a partnership any partner of that partnership,

any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;

- (ii) any corporation controlled by the partnership or by any partner thereof or, where such a partner is a natural person, any relative of such partner;
- (iii) any corporation of which any partner is a director or principal officer;
- (iv) any director or principal officer of a corporation referred to in subparagraph (ii);

**associated corporation** (相聯法團) in relation to a person means-

- (a) a corporation over which the person has control;
- (b) a corporation which has control over such a person, being a corporation; or
- (c) a corporation which is under the control of the same person, being a corporation;

**broker** (經紀) means-

- (a) a corporation licensed to carry on a business in dealing in securities under Part V of the Securities and Futures Ordinance (Cap 571); or
- (b) an authorized financial institution registered for carrying on such a business under that Part, only to the extent that the institution carries on such a business; (Replaced 5 of 2002 s. 407)

**control** (控制), in relation to a corporation, means the power of a person to secure-

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation, that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

**principal officer** (主要職員) means-

- (a) a person employed by a corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the body corporate or a person to whom paragraph (a) applies, exercises managerial functions in respect of the body corporate;

**relative** (親屬) means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent. (Amended 32 of 1998 s. 14)

(Added 56 of 1996 s. 3)

Section:	20AB	<b>Interpretation of sections 20AC, 20AD and 20AE and Schedule 15</b>	E.R. 1 of 2012	09/02/2012
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- (1) This section applies to the interpretation of sections 20AC, 20AD and 20AE and Schedule 15.
- (2) In relation to any year of assessment, a person is to be regarded as a resident person if—
  - (a) where the person is a natural person who is not a trustee of a trust estate, the person—
    - (i) ordinarily resides in Hong Kong in that year of assessment; or
    - (ii) stays in Hong Kong for a period or a number of periods amounting to more than 180 days during that year of assessment or for a period or a number of periods amounting to more than 300 days in 2 consecutive years of assessment one of which is that year of assessment;
  - (b) where the person is a corporation that is not a trustee of a trust estate, the central management and control of the corporation is exercised in Hong Kong in that year of assessment;
  - (c) where the person is a partnership that is not a trustee of a trust estate, the central management and control of the partnership is exercised in Hong Kong in that year of assessment; or
  - (d) where the person is a trustee of a trust estate, the central management and control of the trust estate is exercised in Hong Kong in that year of assessment.
- (3) In relation to any year of assessment, a person is a non-resident person if he is not a resident person in relation to that year of assessment.
- (4) A person is to be regarded as having a direct beneficial interest in another person if—
  - (a) where the other person is a corporation that is not a trustee of a trust estate, the person holds any of the



- issued share capital (however described) of the corporation;
- (b) where the other person is a partnership that is not a trustee of a trust estate, the person, as a partner in the partnership, is entitled to any of the profits of the partnership; or
  - (c) where the other person is a trustee of a trust estate, the person—
    - (i) benefits under the trust estate; or
    - (ii) not being a trustee of the trust estate or, where the trustee is a corporation, a director of the trustee, is able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income, otherwise than through another person.
- (5) A person (*the first person*) is to be regarded as having an indirect beneficial interest in another person (*the second person*) if—
- (a) where the second person is a corporation that is not a trustee of a trust estate, the first person is interested in any of the issued share capital (however described) of the corporation;
  - (b) where the second person is a partnership that is not a trustee of a trust estate, the first person is entitled to any of the profits of the partnership; or
  - (c) where the second person is a trustee of a trust estate, the first person—
    - (i) benefits under the trust estate; or
    - (ii) not being a trustee of the trust estate or, where the trustee is a corporation, a director of the trustee, is able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income,
 through another person (*interposed person*) or through a series of 2 or more interposed persons who is or are related to the first person and the second person in the manner described in subsections (6) and (7).
- (6) Where there is one interposed person—
- (a) the first person has a direct beneficial interest in the interposed person; and
  - (b) the interposed person has a direct beneficial interest in the second person.
- (7) Where there is a series of 2 or more interposed persons—
- (a) the first person has a direct beneficial interest in the first interposed person in the series;
  - (b) each interposed person (other than the last interposed person) in the series has a direct beneficial interest in the next interposed person in the series; and
  - (c) the last interposed person in the series has a direct beneficial interest in the second person.
- (8) A reference to an entitlement to the profits of a partnership is, in the case where the partners in a partnership are not entitled to its profits but are only entitled to a distribution of its assets upon its dissolution, to be construed as a reference to an entitlement to a distribution of the assets of the partnership upon its dissolution.
- (9) A reference to the issued share capital of a corporation does not include a reference to the shares comprised in the issued share capital that do not entitle their holders to receive dividends, whether in cash or in kind, and a distribution of the corporation's assets upon its dissolution other than a return of capital.

(Added 4 of 2006 s. 2)

Section:	20AC	<b>Certain profits of non-resident persons exempt from tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsections (3) and (4), a non-resident person is exempt from tax chargeable under this Part in respect of his assessable profits, for any year of assessment commencing on or after 1 April 1996, from—
  - (a) transactions falling within subsection (2); and
  - (b) transactions incidental to the carrying out of the transactions referred to in paragraph (a).
- (2) A transaction falls within this subsection if it—
  - (a) is a transaction specified in Schedule 16; and
  - (b) has been carried out through or arranged by a specified person.
- (3) Subsection (1) does not apply to a non-resident person in a year of assessment if, at any time in that year of assessment, the person carries on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in that subsection.
- (4) Subsection (1)(b) does not apply to a non-resident person in a year of assessment if, in that year of assessment, his trading receipts from the incidental transactions referred to in that subsection exceed 5% of the total trading receipts from the transactions referred to in subsection (1)(a) and (b).
- (5) The Commissioner may by notice published in the Gazette amend Schedule 16.

- (6) In subsection (2), a *specified person* (指明人士) means—
- (a) in relation to a transaction carried out before 1 April 2003—
    - (i) a bank within the meaning of section 2(1) of the Banking Ordinance (Cap 155);
    - (ii) a person registered as a dealer or commodity trading adviser under Part IV of the Commodities Trading Ordinance (Cap 250) repealed under section 406 of the Securities and Futures Ordinance (Cap 571);
    - (iii) a person registered as a dealer or an investment adviser under Part VI, or as a securities margin financier under Part XA, of the Securities Ordinance (Cap 333) repealed under section 406 of the Securities and Futures Ordinance (Cap 571); or
    - (iv) a person licensed as a leveraged foreign exchange trader under Part IV of the Leveraged Foreign Exchange Trading Ordinance (Cap 451) repealed under section 406 of the Securities and Futures Ordinance (Cap 571); or
  - (b) in relation to a transaction carried out on or after 1 April 2003, a corporation licensed under Part V of the Securities and Futures Ordinance (Cap 571) to carry on, or an authorized financial institution registered under that Part for carrying on, a business in any regulated activity within the meaning of Part 1 of Schedule 5 to that Ordinance.

(Added 4 of 2006 s. 2)

Section:	20AD	<b>Loss from transactions referred to in section 20AC(1) not available for set off</b>	E.R. 1 of 2012	09/02/2012
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Notwithstanding anything in this Part, any loss sustained by a non-resident person from a transaction referred to in section 20AC(1) in a year of assessment in which he has not at any time carried on any trade, profession or business in Hong Kong involving any transaction other than a transaction referred to in that section is not available for set off against any of his assessable profits for any subsequent year of assessment.

(Added 4 of 2006 s. 2)

Section:	20AE	<b>Assessable profits of non-resident persons regarded as assessable profits of resident persons</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where, in the year of assessment following the year of assessment in which the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 (4 of 2006) commences\* or in any subsequent year of assessment—
  - (a) a resident person has, during any period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person to the extent set out in subsection (2); and
  - (b) the non-resident person is exempt from tax under section 20AC, the assessable profits of the non-resident person for that period of time that would have been chargeable to tax under this Part but for that section are to be regarded as the assessable profits arising in or derived from Hong Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.
- (2) The extent of a resident person's beneficial interest in a non-resident person referred to in subsection (1) is that the resident person, either alone or jointly with any of his associates (whether a resident person or not)—
  - (a) where the non-resident person is a corporation that is not a trustee of a trust estate, holds or is interested in not less than 30% of the issued share capital (however described) of the corporation;
  - (b) where the non-resident person is a partnership that is not a trustee of a trust estate, is entitled to not less than 30% of the profits of the partnership; or
  - (c) where the non-resident person is a trustee of a trust estate, is interested in not less than 30% in value of the trust estate.
- (3) Where, in the year of assessment following the year of assessment in which the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 (4 of 2006) commences or in any subsequent year of assessment—
  - (a) a resident person has, during any period of time, a beneficial interest, whether direct or indirect or both, in a non-resident person who is exempt from tax under section 20AC; and
  - (b) the non-resident person is an associate of the resident person, the assessable profits of the non-resident person for that period of time that would have been chargeable to tax under this Part but for that section are to be regarded as the assessable profits arising in or derived from Hong

Kong of the resident person for that year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.

- (4) Subsections (1) and (3) apply in relation to a resident person irrespective of whether the person has received, or will receive, directly or indirectly, from the non-resident person concerned any money or other property representing the profits of the non-resident person for the relevant year of assessment.
- (5) A resident person who has a direct or indirect beneficial interest in a trustee of a trust estate by reason of the fact that he is able or might reasonably be expected to be able to control the activities of the trust estate or the application of its corpus or income is, for the purposes of this section, to be regarded as being interested in 100% in value of the trust estate.
- (6) The extent of a resident person's beneficial interest in a non-resident person is to be determined in accordance with the provisions in Part 2 of Schedule 15.
- (7) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (3) is to be ascertained in accordance with the provisions in Schedule 15.
- (8) Subsection (1) or (3) does not apply in relation to a resident person who has a direct or indirect beneficial interest in a non-resident person if the Commissioner is satisfied that beneficial interests in the non-resident person are bona fide widely held.
- (9) Where a resident person is liable to tax under subsection (1) or (3) in respect of the profits of a non-resident person by reason of his having an indirect beneficial interest in the non-resident person through an interposed person or through a series of 2 or more interposed persons, if the interposed person or any of the interposed persons is a resident person who is also liable to tax under that subsection in respect of the same profits, the first-mentioned resident person is discharged from his liability to tax under that subsection in respect of those profits.
- (10) In this section—

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

- (a) where the person is a natural person—
  - (i) a relative of the person;
  - (ii) a partner of the person and any relative of that partner;
  - (iii) a partnership in which the person is a partner;
  - (iv) any corporation controlled by the person, by a partner of the person or by a partnership in which the person is a partner;
  - (v) any director or principal officer of a corporation referred to in subparagraph (iv);
- (b) where the person is a corporation—
  - (i) any associated corporation;
  - (ii) any person who controls the corporation and any partner of such person, and, where either such person is a natural person, any relative of such person;
  - (iii) any director or principal officer of the corporation or of any associated corporation and any relative of any such director or officer;
  - (iv) any partner of the corporation and, where such partner is a natural person, any relative of such partner;
- (c) where the person is a partnership—
  - (i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;
  - (ii) any corporation controlled by the partnership or by any partner of the partnership or, where such a partner is a natural person, any relative of such partner;
  - (iii) any corporation of which any partner of the partnership is a director or principal officer;
  - (iv) any director or principal officer of a corporation referred to in subparagraph (ii);

**associated corporation** (相聯法團), in relation to a person, means—

- (a) a corporation over which the person has control;
- (b) a corporation which has control over such a person, being a corporation; or
- (c) a corporation which is under the control of the same person, being a corporation;

**control** (控制), in relation to a corporation, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or

(b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

**principal officer** (主要職員), in relation to a corporation, means—

(a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or

(b) a person so employed who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

**relative** (親屬), in relation to a person, means the spouse, parent, child, brother or sister of the person, and, in deducing such a relationship, an adopted child is to be regarded as a child both of the natural parents and the adopting parent and a step child as the child of both the natural parents and of any step parent.

(Added 4 of 2006 s. 2)

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**Note:**

\* **Commencement date: 10 March 2006.**

Section:	20B	<b>Persons chargeable in respect of certain profits of a non-resident</b>	E.R. 1 of 2012	09/02/2012
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(1) Without prejudice to section 20A, this section applies in respect of a non-resident person who is chargeable to tax in respect of—

(a) sums deemed by virtue of section 15(1)(a), (b) or (ba) to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong; or (Amended 12 of 2004 s. 7)

(b) sums received in respect of, or which in any way derive directly or indirectly from, the performance in Hong Kong by a non-resident entertainer or sportsman (whether or not he is the non-resident person who is so chargeable) of an activity in his character as entertainer or sportsman on or in connection with a commercial occasion or event, including—

(i) any appearance of the entertainer or sportsman by way of or in connection with the promotion of any such occasion or event; and

(ii) any participation by the entertainer or sportsman in or for sound recording, films, videos, radio, television or other similar transmissions (whether live or recorded).

(2) Where this section applies, the non-resident person is chargeable to tax in respect of the sums described in subsection (1) in the name of any person in Hong Kong who paid or credited those sums to that or any other non-resident person, and the tax so charged shall be recoverable by all means provided in this Ordinance from that person in Hong Kong.

(3) Where a person in Hong Kong from whom tax is recoverable by virtue of this section pays or credits to a non-resident person (whether or not he is the non-resident person who is chargeable to tax) sums described in subsection (1) he shall, at the time he makes the payment or credit, deduct from those sums so much thereof as is sufficient to produce the amount of such tax, and he is hereby indemnified against any person in respect of his deduction of such sum.

(4) In this section—

**commercial occasion or event** (商業場合或事項) includes any description of occasion or event—

(a) for which an entertainer or sportsman (or other person) might, by virtue of his performance of the activity, receive or become entitled to receive anything by way of cash or any other form of property; or

(b) which is designed to promote commercial sales or activity by advertising, the endorsement of goods or services, sponsorship, or other promotional means of any kind;

**entertainer or sportsman** (演藝人員或運動員) means a person, other than a corporation, who gives performances (whether alone or with others) in his character as entertainer or sportsman in any kind of entertainment or sport, including any activity of a physical kind which (whether in a live or recorded form) the public or any section of the public is or may be permitted (whether for payment or not) to see or hear.

(Added 4 of 1989 s. 2)

Section:	21	<b>Assessable profits of certain businesses to be computed on a percentage of the turnover</b>	E.R. 1 of 2012	09/02/2012
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Where the true amount of the assessable profits arising in or derived from Hong Kong of a non-resident person in respect of a trade, profession or business carried on in Hong Kong cannot be readily ascertained, such assessable profits may be computed on a fair percentage of the turnover of that trade or business in Hong Kong.

(Amended 36 of 1955 s. 30; 7 of 1975 s. 17; 7 of 1986 s. 12)

Section:	21A	<b>Computation of assessable profits from cinematograph films, patents, trade marks, etc.*</b>	E.R. 1 of 2012	09/02/2012
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(1) The assessable profits of a person arising in or derived from Hong Kong in respect of a sum deemed by section 15(1)(a), (b) or (ba) to be a receipt arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong shall, for the purposes of this Ordinance and notwithstanding any other provisions of this Part, be taken to be- (Amended 12 of 2004 s. 7)

(a) 100% of the sum in the case of a sum derived from an associate:

Provided that this paragraph shall not apply in the case where the Commissioner is satisfied that no person carrying on a trade, profession or business in Hong Kong has at any time wholly or partly owned the property in respect of which the sum is paid; or

(b) the following percentages of the sum in any other case, including any case of the description mentioned in the proviso to paragraph (a)-

(i) for any sum received by or accrued to the person before 1 April 2003, 10%;

(ii) for any sum received by or accrued to the person on or after 1 April 2003, 30%. (Replaced 24 of 2003 s. 5)

(2) For the purpose of ascertaining whether a sum was derived from an associate in the application of subsection (1), where the sum was derived from or by a trustee of a trust estate or a corporation controlled by such a trustee, that sum shall be deemed to have been derived from or by, as the case may be, each of the trustee, the corporation and the beneficiary under the trust.

(3) In this section-

**associate** (相聯者), in relation to a person, means-

(a) where the person is a natural person-

(i) a relative of the person;

(ii) a partner of the person and any relative of that partner;

(iii) a partnership in which the person is a partner;

(iv) any corporation controlled by the person, by a partner of the person or by a partnership in which the person is a partner;

(v) any director or principal officer of any such corporation as is referred to in subparagraph (iv);

(b) where the person is a corporation-

(i) any associated corporation;

(ii) any person who controls the corporation and any partner of such person, and, where either such person is a natural person, any relative of such person;

(iii) any director or principal officer of that corporation or of any associated corporation and any relative of any such director or officer;

(iv) any partner of the corporation and, where such partner is a natural person, any relative of such partner;

(c) where the person is a partnership-

(i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;

(ii) any corporation controlled by the partnership or by any partner thereof or, where such partner is a natural person, any relative of such partner;

(iii) any corporation of which any partner is a director or principal officer;

(iv) any director or principal officer of a corporation referred to in subparagraph (ii);

**associated corporation** (相聯法團), in relation to a person, means-

- (a) a corporation over which the person has control;
- (b) if the person is a corporation-
  - (i) a corporation which has control over the person; or
  - (ii) a corporation which is under the control of the same person as is the first-mentioned person;

**beneficiary under the trust** (信託的受益人) means any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under a trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income;

**control** (控制), in relation to a corporation, means the power of a person to secure-

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

**principal officer** (主要職員) means-

- (a) a person employed by a corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

**relative** (親屬) means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent.

(Replaced 65 of 1993 s. 3)

**Note:**

\* (Amended 21 of 2011 s. 7)

Section:	21B	<b>Transitional</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (2), the amendments to section 21A effected by the Inland Revenue (Amendment) (No. 4) Ordinance 1993 (65 of 1993) shall apply to any sum received by or accrued to any person on or after 4 March 1993.
- (2) The provisions of section 21A in force immediately prior to the coming into operation of the Inland Revenue (Amendment) (No. 4) Ordinance 1993 (65 of 1993) shall continue to apply to any sum received by or accrued to any person prior to 4 March 1993 as if that Ordinance had not been enacted.

(Added 65 of 1993 s. 3)

Section:	22	<b>Assessment of partnerships</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where a trade, profession or business is carried on by 2 or more persons jointly the assessable profits therefrom shall be computed in one sum and the tax in respect thereof shall be charged in the partnership name. (Replaced 36 of 1955 s. 31)
- (2) The precedent partner shall make and deliver a statement of the profits or losses of such trade, profession or business, on behalf of the partnership, ascertained in accordance with the provisions of this Part relating to the ascertainment of profits. Where no active partner is resident in Hong Kong the return shall be furnished by the manager or agent of the partnership in Hong Kong. (Amended 7 of 1986 s. 12)
- (3) If a change occurs in a partnership of persons carrying on any trade, profession or business, by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or business continue to be engaged therein, or if a person previously engaged in any trade, profession or business on his own account continues to be engaged in it, but as a partner in a partnership, the tax payable by the person or persons who carry on the trade, profession or business after that time shall, notwithstanding the change be computed on what would otherwise have been the assessable profits of such

person or persons or the aggregation of such assessable profits as if no such change had occurred. (Amended 30 of 1950 Schedule; 36 of 1955 s. 31; 49 of 1956 s. 18; 7 of 1975 s. 19; 56 of 1993 s. 16)

- (4) Tax upon the partnership shall be recoverable by all means provided in this Ordinance out of the assets of the partnership, or from any partner. (Amended 36 of 1955 s. 31)
- (5) Tax may be assessed on the profits of a partnership notwithstanding the cessation or dissolution of such partnership and shall be recoverable from the former partners and from the assets of the partnership at the time of its cessation.

Section:	22A	<b>Ascertainment of share of partnership profits or losses</b>	E.R. 1 of 2012	09/02/2012
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- (1) In order to ascertain the share of a partner of the assessable profits or losses of a partnership, such assessable profits or losses for the relevant year of assessment shall be apportioned amongst the persons who were partners during the basis period in the ratio in which the profits or losses of the basis period for that year of assessment were divided; and the profits or losses as so apportioned shall constitute the shares of the assessable profits and losses of the individual partners for that year of assessment.
- (2) For the purposes of subsection (1), there shall be excluded from the assessable profits of a partnership any loss brought forward under section 19C.
- (3) (Repealed 30 of 2004 s. 3)

(Added 7 of 1975 s. 20)

Section:	22B	<b>Limited partner loss relief</b>	E.R. 1 of 2012	09/02/2012
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- (1) In this section-

**limited partner** (有限責任合夥人) means a person who is a partner in a partnership which is carrying on a trade, profession or business and that person is-

- (a) a limited partner in a limited partnership registered under the Limited Partnerships Ordinance (Cap 37);
- (b) a general partner in a partnership in which he is not entitled to or does not take part in the management of the partnership but is entitled to have his liabilities, or his liabilities beyond a certain limit, for debts or obligations incurred by the partnership for the purposes of the trade, profession or business discharged or reimbursed by some other person; or
- (c) under the law of any place outside Hong Kong, not entitled to or does not take part in the management of the partnership and is not liable beyond a certain limit for debts or obligations incurred by the partnership for the purposes of the trade, profession or business;

**relevant sum** (有關款項) means the amount of the person's contribution to the partnership as at the end of the relevant year of assessment in which the loss is sustained, except that where the person ceased to be a partner in the partnership during that year of assessment it is the time when he so ceased.

- (2) For the purposes of this section, a person's contribution to the partnership at any time is the aggregate of-
  - (a) the amount which he has contributed to it as capital less the sum of-
    - (i) the amounts of capital that he has directly or indirectly drawn out or received back; and
    - (ii) anything that he is or may be entitled at any time while the partnership carries on the trade, profession or business to draw out, receive back or be reimbursed from another person, whether or not the entitlement is enforceable or is pursuant to an unenforceable undertaking or practice; and
  - (b) the amount of any profits or gains of the partnership to which he is entitled but which he has not received in money or money's worth.
- (3) Notwithstanding section 19C, where in any year of assessment a person who is a limited partner in a partnership has incurred a share of a loss of that partnership the amount of the loss which may be set off against the assessable profits of the person is limited to the lesser of-
  - (a) the amount of the loss; or
  - (b) the relevant sum.
- (4) This section applies to years of assessment that commence on or after 1 April 1991 and to that part of any basis period for a year of assessment that occurs on or after 15 November 1990 but before 1 April 1991 but does not apply in respect of a share of a loss incurred under a transaction which was the subject of an application for advance clearance made to the Commissioner before 15 November 1990 and the Commissioner before or after that date expressed the opinion that the transaction would not fall within the terms of section 61A or, where no

such application was made in respect of a loss incurred under a transaction entered into before that date, the transaction is, in the Commissioner's opinion, of the same type as any for which, in the circumstances prevailing as at 14 November 1990, he would have expressed the opinion that the transaction would not fall within the terms of section 61A.

(Added 15 of 1992 s. 3)

Section:	22C	<b>Transitional: partnerships consisting of more than 20 members</b>	E.R. 1 of 2012	09/02/2012
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Where a partnership, which immediately before the commencement\* of sections 6, 7, 8 and 9 of Part 2 of Schedule 4 to the Companies (Amendment) Ordinance 2004 (30 of 2004), was a person, but was not an individual, a corporation or a partnership as defined in sections 19C(7) and 22A(3) that were in force immediately before that commencement, has any losses brought forward under section 19C(4), then, notwithstanding section 22A(2)—

- (a) any such losses shall be used to set off against the assessable profits of that partnership in the subsequent years of assessment the basis periods of which are ended after that commencement until those losses are fully utilized; and
- (b) the assessable profits of that partnership for a year of assessment the basis period of which is ended after that commencement shall be reduced by the amount of loss set off mentioned in paragraph (a) before they are apportioned amongst the partners of that partnership in accordance with section 22A(1).

(Added 30 of 2004 s. 3)

**Note:**

\* **Commencement date: 14 December 2007.**

Section:	23	<b>Ascertainment of assessable profits of life insurance corporations</b>	E.R. 1 of 2012	09/02/2012
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- (1) The assessable profits for any year of assessment of a corporation, whether mutual or proprietary, from the business of life insurance, shall-
  - (a) be deemed to be 5% of the premiums from life insurance business in Hong Kong of the corporation during the basis period for that year; or (Amended 7 of 1986 s. 12)
  - (b) should the corporation so elect, be that part of the adjusted surplus ascertained in accordance with the provisions of subsections (2) to (7) deemed to arise in the basis period for that year less any dividend received which is required to be excluded by virtue of section 26(a): (Amended 49 of 1956 s. 19)
 

Provided that-

    - (i) any such election once made shall be irrevocable and in addition shall be deemed to apply to all future years of assessment; and (Added 49 of 1956 s. 19)
    - (ii) until such part of the adjusted surplus is ascertained, the assessable profits shall be calculated provisionally in accordance with paragraph (a) of this subsection, and tax charged and collected as if no such election had been made. (Amended 49 of 1956 s. 19)
- (2) A corporation which elects to be assessed in the manner provided in subsection (1)(b) shall submit to the Commissioner a certified true copy of the latest abstract of the report of the actuary submitted to the Insurance Authority under section 18 of the Insurance Companies Ordinance (Cap 41) or, in the case of a corporation to which section 52(3) of that Ordinance applies, a copy of the latest such abstract submitted under that section. (Replaced 11 of 1985 s. 2)
- (3) An election under subsection (1)(b) shall be effective only if the actuarial report is submitted not later than 2 years after the end of the period in respect of which it is made. Where an effective election has been made it shall be lawful to give effect to such election notwithstanding the provisions of section 70. (Amended 49 of 1956 s. 19)
- (4)
  - (a) The surplus shall be the amount by which the life insurance fund exceeds the estimated liability of the corporation on the life insurance fund at the end of the period in respect of which any actuarial report is made.
  - (b) The adjusted surplus shall be ascertained by adding to the surplus-
    - (i) any deficit in respect of a period prior to the period in respect of which the relevant actuarial report is made where such deficit is included in such report;



- (ii) any outgoing or expense charged against the life insurance fund in the relevant actuarial report which is not such that it would be allowed as a deduction in ascertaining assessable profits under the provisions of section 16;
  - (iii) any expense disbursement or loss charged against the life insurance fund in the relevant actuarial report which is such that it would not be allowed as a deduction in ascertaining assessable profits by reason of the provisions of section 17;
  - (iv) any income or profits of the corporation arising in the period in respect of which the relevant actuarial report is made, not being profits from the business of insurance other than life insurance, and not credited to the life insurance fund in such report;
  - (v) any appropriations of profits or transfers to reserve charged against the fund during the period in respect of which the relevant actuarial report is made, other than appropriations or transfers to policy holders in their capacity as such;
  - (va) the amount of a balancing charge directed to be made under Part 6; (Added 7 of 1975 s. 21) and by deducting therefrom-
  - (vi) any surplus disclosed by a previous actuarial report which has been retained in the life insurance fund in the relevant actuarial report;
  - (vii) any transfer or appropriation to policy holders in their capacity as such, effected during the period in respect of which the relevant actuarial report is made where such transfer or appropriation has not been charged against the life insurance fund in such report;
  - (viii) any outgoing or expenses not charged against the life insurance fund during the period in respect of which the relevant actuarial report is made which is such that it would be deducted in ascertaining assessable profits under the provisions of section 16;
  - (ix) any receipt of a capital nature, or transfer from reserve, credited to the life insurance fund during the period in respect of which the relevant actuarial report is made; (Amended 7 of 1975 s. 21)
  - (x) the allowances provided by Part 6 to the extent to which the relevant assets are used in the production of the adjusted surplus. (Added 7 of 1975 s. 21)
- (5) Notwithstanding anything contained in subsection (4) the adjusted surplus of a corporation which transacts life insurance business both within Hong Kong and elsewhere shall be the adjusted surplus ascertained in accordance with the provisions of the said subsection (4) less that portion of such adjusted surplus as is not deemed under the provisions of subsection (6) to be profits arising in or derived from Hong Kong. (Amended 7 of 1986 s. 12)
- (6) Where a corporation transacts life insurance business both within Hong Kong and elsewhere, the portion of the adjusted surplus ascertained in accordance with the provisions of subsection (4) which shall be deemed to be profits arising in or derived from Hong Kong is the amount which bears the same proportion to the adjusted surplus so ascertained as the aggregate of the premiums from life insurance business in Hong Kong for the period of the relevant actuarial report bears to the aggregate of the premiums from the whole of the corporation's life insurance business for that period. (Amended 7 of 1986 s. 12)
- (7) Any adjusted surplus ascertained in accordance with the foregoing provisions shall be deemed to arise during the years or other periods which make up the period in respect of which the relevant actuarial report is made in the proportion which the aggregate of the premiums from life insurance business in Hong Kong in each such period bears to the aggregate of such premiums for the total period in respect of which the relevant actuarial report is made. (Amended 49 of 1956 s. 19; 7 of 1986 s. 12)
- (8) (a) Where the making of the adjustments required by subsection (4) results in a deficit, such deficit shall be deemed to be the loss sustained by the corporation during the period in respect of which the relevant actuarial report is made.
- (b) In ascertaining for the purposes of sections 19 and 19C what part of such loss so calculated is attributable to activities in Hong Kong the provisions of subsections (5) and (6) shall apply mutatis mutandis. (Amended 11 of 1985 s. 2)
- (c) Any such loss attributable to activities in Hong Kong shall be deemed to have been sustained during the years which make up the period in respect of which the relevant actuarial report is made in the proportion which the aggregate of the premiums from life insurance business in Hong Kong in each such year bears to the aggregate of such premiums for the total period in respect of which the relevant actuarial report is made. (Amended 49 of 1956 s. 19; 7 of 1986 s. 12)
- (9) In this section-
- actuarial report** (精算師報告) means any abstract referred to in subsection (2); (Added 11 of 1985 s. 2)

**life insurance business** (人壽保險業務) means business of the following classes as specified in Part 2 of Schedule 1 to the Insurance Companies Ordinance (Cap 41)-

- A Life and annuity;
- B Marriage and birth;
- C Linked long term;
- E Tontines,

and references to a "life insurance fund" (人壽保險基金) shall be construed accordingly; (Replaced 11 of 1985 s. 2)

**premiums from life insurance business in Hong Kong** (從在香港經營人壽保險業務所得的保費) includes-

- (a) all premiums received or receivable in Hong Kong from both residents and non-residents; and
- (b) all premiums receivable outside Hong Kong from residents of Hong Kong where such premiums are in respect of policies the proposals for which were received by the corporation in Hong Kong;

Provided that any such premiums returned to the insured and any corresponding premiums paid on reinsurance shall be deducted from the premiums so receivable. (Amended 7 of 1986 s. 12)

(Replaced 36 of 1955 s. 32. Amended E.R. 1 of 2012)

Section:	23A	<b>Ascertainment of assessable profits of insurance corporations other than life insurance corporations</b>	E.R. 1 of 2012	09/02/2012
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- (1) The assessable profits of a corporation, whether mutual or proprietary, from the business of insurance other than life insurance, shall be ascertained by taking the gross premiums from such insurance business in Hong Kong less any such premiums returned to the insured and any premiums paid on corresponding reinsurance and adding thereto any interest or other income arising in or derived from Hong Kong and the amount of any balancing charge directed to be made under Part 6, and deducting therefrom a reserve for unexpired risks at the percentage adopted by that corporation in relation to its operations as a whole for such risks at the end of the period for which such profits are ascertained, and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of such period, and from the amount so arrived at deducting the actual losses less the amount recoverable in respect thereof under reinsurance, the agency expenses in Hong Kong and the allowances provided under Part 6 to the extent to which the relevant assets are used in the production of such profits, and a fair proportion of the expenses of the head office of the corporation: (Amended 49 of 1956 s. 20; 7 of 1975 s. 22)

Provided that where the Commissioner is satisfied that, by reason of the limited extent of such business transacted in Hong Kong by a non-resident insurance corporation it would be unreasonable to require such corporation to furnish the particulars necessary for the application of this section, he may permit the assessable profits of the corporation to be ascertained by reference to the proportion of the total profits and income of the corporation corresponding to the proportion which its premiums from insurance business in Hong Kong bear to its total premiums or on any other basis which appears to him to be equitable.

- (2) Where a corporation to which subsection (1) applies carries on the business of reinsurance of offshore risks as a professional reinsurer, the assessable profits of the corporation derived from the business of reinsurance of offshore risks as a professional reinsurer for a year of assessment shall be ascertained in accordance with the following formula:

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

- where:
- A means such assessable profits;
  - B means the assessable profits of that corporation during the basis period for that year of assessment as calculated in accordance with subsection (1);
  - C means the aggregate of the total income earned by or accrued to that corporation during that basis period for that year of assessment; and
  - D means the aggregate of offshore reinsurance income earned by or accrued to that corporation during that basis period for that year of assessment. (Replaced 32 of 1998 s. 15)

- (3) For the purposes of this section-

**additional amount for unexpired risks** (未過期風險的額外款額), **claims outstanding** (未決申索), **fund** (基金) and **unearned premiums** (未滿期保費) have the meanings respectively assigned to them in paragraph 1(1) of

Part 1 of the Third Schedule to the Insurance Companies Ordinance (Cap 41);

**gains or profits from offshore reinsurance investments** (得自離岸再保險投資的收益或利潤) means any sums derived from, attributable to, or in respect of gains or profits arising from the sale or other disposal of, or on the redemption on maturity or presentment of, and any interest received on-

- (a) investments made with premiums from reinsurance of offshore risks;
- (b) investments representing the whole or any part of the technical reserves of a professional reinsurer referable to premiums from reinsurance of offshore risks;

**offshore reinsurance income** (離岸再保險入息) means any sums derived from, attributable to, or in respect of-

- (a) premiums from reinsurance of offshore risks;
- (b) gains or profits from offshore reinsurance investments;

**permanent establishment** (永久機構) means a branch, management or other place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of his principal;

**premiums from insurance business in Hong Kong** (得自香港保險業務的保費) includes-

- (a) all premiums in respect of contracts of insurance, other than life insurance, made in Hong Kong; and
- (b) all premiums on contracts of insurance, other than life insurance, the proposals for which were made to a corporation in Hong Kong;

**premiums from reinsurance of offshore risks** (得自離岸風險的再保險的保費) means premiums received by a professional reinsurer in respect of the reinsurance of any risk outside Hong Kong or in transit in Hong Kong, and-

- (a) in relation to facultative general reinsurance, the reinsured is not a person resident in Hong Kong or a permanent establishment maintained in Hong Kong;
- (b) in relation to treaty general reinsurance, not less than 75% of the total risk in terms of gross premiums is outside Hong Kong or is in transit in Hong Kong;

**professional reinsurer** (專業再保險人) means a company authorized to carry on in or from Hong Kong reinsurance business only, under section 8 of the Insurance Companies Ordinance (Cap 41);

**technical reserves** (技術性儲備)-

- (a) subject to paragraph (b), means reserves for-
  - (i) additional amounts for unexpired risks;
  - (ii) claims outstanding; and
  - (iii) unearned premiums;
- (b) in relation to a class of general business which is accounted for on a fund accounting basis, means the fund. (Added 32 of 1998 s. 15)

(Added 36 of 1955 s. 33. Amended 7 of 1986 s. 12; E.R. 1 of 2012)

Section:	23AA	<b>Mutual insurance corporations</b>	E.R. 1 of 2012	09/02/2012
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For the purposes of this Part, a mutual insurance corporation shall be deemed to carry on an insurance business the surplus from which shall be ascertained in the manner provided in sections 23 and 23A for ascertaining assessable profits and shall be deemed to be assessable profits chargeable to tax under section 14.

(Added 26 of 1969 s. 15)

Section:	23B	<b>Ascertainment of the assessable profits of a ship-owner carrying on business in Hong Kong</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where a person carries on a business as an owner of ships and-
  - (a) the business is normally controlled or managed in Hong Kong; or
  - (b) the person is a company incorporated in Hong Kong,
 that person shall be deemed to be carrying on that business in Hong Kong.
- (2) Subject to subsection (6), where a person to whom subsection (1) does not apply carries on a business as an owner of ships, and any ship owned by that person calls at any location within the waters of Hong Kong, that person shall be deemed to be carrying on that business in Hong Kong.
- (3) Subject to subsections (4) and (5), where a person is deemed to be carrying on a business as an owner of ships in

Hong Kong under subsection (1) or (2), as the case may be, the assessable profits of that person from that business for a year of assessment shall be the sum bearing the same ratio to the aggregate of the relevant sums earned by or accrued to that person during the basis period for that year of assessment as that person's total shipping profits for the basis period bear to the aggregate of the total shipping income earned by or accrued to that person during that basis period for that year of assessment.

- (4) Subject to subsection (5), where in the opinion of the assessor the provisions in subsection (3) for computing assessable profits cannot for any reason be satisfactorily applied in the case of a person to whom subsection (2) applies, the assessable profits of that person for any year of assessment may instead be computed on a fair percentage of the aggregate of the relevant sums earned by or accrued to that person during the basis period for that year of assessment.
- (4A) For the purposes of this section, where a person who is deemed to be carrying on a business as an owner of ships in Hong Kong under subsection (2) is resident in any territory outside Hong Kong, he shall be regarded as having a reciprocity status, if the Commissioner is satisfied that any profits earned by or accrued to a person to whom subsection (1) applies from a business carried on in the territory as an owner of ships are, under the laws of that territory, exempt from a tax which is of substantially the same nature as the tax chargeable under this Part. (Added 32 of 1998 s. 16)
- (5) Notwithstanding section 70, where the assessable profits of any person have been computed for any year of assessment in accordance with subsection (4), the person shall, upon the submission to the assessor of accounts computed in accordance with the provisions of this Part relating to the ascertainment of assessable profits, be entitled to elect at any time within 2 years from the end of the year of assessment that his assessable profits for that year be re-computed in accordance with subsection (3).
- (6) Where the Commissioner is satisfied that the call at any location within the waters of Hong Kong of any ship owned by a person to whom subsection (2) applies is of a casual nature, and that further calls at any location within those waters by that or any other ship in the same ownership are improbable, he may in his discretion direct that that person shall be deemed not to be carrying on a business as an owner of ships in Hong Kong under subsection (2) by reason of the casual call of that ship and accordingly, in the event of his making such a direction, that person shall be so deemed not to be carrying on that business.
- (7) For the purposes of this section, it is declared that where a ship is operated during the basis period for a year of assessment by a person deemed to be carrying on a business as an owner of ships in Hong Kong under subsection (1) or (2), as the case may be-
- (a) if the ship is a registered ship (in respect of which paragraph (a) of the definition of *exempt sums* (豁免款項) applies) at any time during that basis period, only losses incurred by that person in respect of the operation of that ship while it is not such a registered ship shall be set off against the assessable profits of that person in accordance with section 19C; (Amended 32 of 1998 s. 16)
- (b) sections 18F and 19E shall apply in respect of the operation of the ship (treated as machinery or plant for the purposes of Part 6) by that person, and-
- (i) subject to subsections (8) or (9), in the case of any initial allowance or annual allowance, as the case may be, that may be made to that person under Part 6, that allowance shall only be made in respect of that portion of the basis period during which the ship is not a registered ship (in respect of which paragraph (a) of the definition of *exempt sums* (豁免款項) applies) to the extent that that ship is operated in that portion of that basis period for that year of assessment for the purpose of producing assessable profits; (Amended 32 of 1998 s. 16)
- (ii) in the case of any balancing allowance or balancing charge, as the case may be, that may be made to that person under Part 6, that allowance or charge shall be limited to a sum which is in the same proportion as the aggregate of the initial and annual allowances made to that person in computing his assessable profits since the acquisition of the ship bears to the aggregate of the initial and annual allowances that would have been made had the ship been operated by that person at all times since its acquisition for the purpose of producing assessable profits.
- (8) Where in the basis period for any year of assessment a registered ship (in respect of which paragraph (a) of the definition of *exempt sums* (豁免款項) applies) ceases to be a registered ship, any allowances that may be made under Part 6 in respect of the operation of that ship (treated as machinery or plant for the purposes of that Part) for that year of assessment and subsequent years, shall be computed on the reducing value of the ship after taking into account the amounts of-
- (a) any initial allowance made under section 37(1), 37A(1) or 39B(1); and

- (b) subject to subsection (9), any annual allowance that would have been made under section 37(2), 37A(2) or 39B(2) had the ship, since its acquisition by a person deemed to be carrying on a business as an owner of ships in Hong Kong under subsection (1) or (2), as the case may be, been operated for the purpose of producing assessable profits.
- (9) For the purposes of subsections (7)(b)(i) and (8)(b)-
- (a) in the case of subsection (7)(b)(i), the reference to Part 6 (which Part contains sections 37(2) and 37A(2) amongst others); and
- (b) in the case of subsection (8)(b), the reference to sections 37(2) and 37A(2), shall, in both cases, be construed as if the words "at the end of the basis period" (在評稅基期結束時) (in the first place where they appear in section 37(2), and where they appear in section 37A(2)) read "during the basis period" (在該評稅基期內).
- (10) For the purposes of this section, any sums earned by or accrued to the owner of a ship under a charter-party that does not, or does not purport to, extend to the whole of that ship shall, to the extent that those sums are derived from, attributable to, or in respect of, any voyage or voyages of that ship commencing from any location within the waters of Hong Kong, be deemed to be derived from, attributable to, or in respect of, any relevant carriage shipped in Hong Kong.
- (11) A copy of, or extract from, the register of ships in legible form issued and certified under the Merchant Shipping (Registration) Ordinance (Cap 415) shall-
- (a) in relation to any year of assessment, be proof that a ship was a registered ship or was not a registered ship, or be proof that a ship had commenced to be a registered ship or had ceased to be a registered ship, as the case may be; and
- (b) in relation to the date of the provisional registration of that ship under that Ordinance, be proof that that registered ship was so registered from that date of provisional registration.
- (12) In this section-
- bill of lading** (提單) has the same meaning as in the Import and Export Ordinance (Cap 60), but does not include a bill of lading which describes any port or other location within the waters of Hong Kong as the port of origin or the port of destination;
- business as an owner of ships** (以船舶擁有人身分經營業務) means a business of chartering or operating ships, but does not include dealing in ships or agency business in connection with shipping;
- charter hire** (租船費) means any sums earned by or accrued to an owner of a ship under a charter-party in respect of the operation of the ship, but does not include any sums so earned or accrued where that charter-party does not, or does not purport to, extend to the whole of that ship;
- exempt sums** (豁免款項)-
- (a) means any sums derived from, attributable to, or in respect of-
- (i) any relevant carriage shipped aboard a registered ship at any location within the waters of Hong Kong and proceeding to sea from that location or any other location within those waters; or
- (ii) any towage operation undertaken by a registered ship proceeding to sea from any location within the waters of Hong Kong;
- (b) in relation to a person who has a reciprocity status, means any sums derived from, attributable to, or in respect of-
- (i) any relevant carriage shipped aboard a ship at any location within the waters of Hong Kong and proceeding to sea from that location or any other location within those waters; or
- (ii) any towage operation undertaken by a ship proceeding to sea from any location within the waters of Hong Kong; (Replaced 32 of 1998 s. 16)
- goods** (貨品) includes livestock and mails;
- goods in transit** (過境貨品), in relation to the shipment of goods aboard a ship, means goods-
- (a) specified in a bill of lading;
- (b) brought to Hong Kong by sea solely for the purpose of the onward carriage of those goods; and
- (c) in respect of which any freight charges for that onward carriage are not paid or payable in Hong Kong;
- operation** (營運), in relation to a ship, includes the use or possession of the ship, and **operated** (運作) shall be construed accordingly;
- owner** (擁有人), in relation to a ship, includes a charterer of the ship under a charter-party;

**passengers** (乘客) does not include re-embarking passengers;

**re-embarking passengers** (重新登船的乘客), in relation to a voyage of a ship, means passengers whose passenger tickets in respect of the voyage do not specify Hong Kong as the place of departure or as the place of destination;

**registered ship** (註冊船舶) means a ship registered under the Merchant Shipping (Registration) Ordinance (Cap 415);

**relevant carriage** (有關運載), in relation to a ship, means the carriage by sea of passengers or goods, or both passengers and goods, as the case may be, but does not include the carriage of goods in transit;

**relevant limited partnership** (有關的有限責任合夥) means a limited partnership-

- (a) registered in accordance with the provisions of the Limited Partnerships Ordinance (Cap 37) on or before 2 December 1990 and continuing to be so registered after that date; and
- (b) whose principal assets include any ship, or any interest therein, acquired by or on behalf of that partnership on or before that date;

**relevant sums** (有關款項) means-

- (a) any sums derived from, attributable to, or in respect of-
  - (i) any relevant carriage shipped in Hong Kong;
  - (ii) any towage operation undertaken by a ship within the waters of Hong Kong, or any towage operation undertaken by that ship commencing from any location within those waters, as the case may be;
  - (iii) any dredging operation undertaken by a ship within the waters of Hong Kong;
  - (iv) any charter hire in respect of-
    - (A) the operation of a ship navigating solely or mainly within the waters of Hong Kong; or
    - (B) a charter-party where one of the parties thereto is a relevant limited partnership;
- (b) one half of any sums derived from, attributable to, or in respect of, any charter hire in respect of the operation of a ship navigating between any location within the waters of Hong Kong and any location within river trade waters, but does not include exempt sums;

**river trade waters** (內河貿易水域) means the waters contained within river trade limits other than the waters of Hong Kong contained within those limits;

**sea** (海), except in relation to relevant carriage, means the waters of the sea other than those contained within river trade limits;

**ship** (船舶) includes any dynamically supported craft within the meaning of the Shipping and Port Control Ordinance (Cap 313);

**shipped** (裝運), in the case of passengers, means embarked;

**shipped in Hong Kong** (在香港裝運的), in relation to the shipment of relevant carriage, means shipped aboard a ship at any location within the waters of Hong Kong;

**total shipping income** (總航運入息), in relation to any basis period, means the worldwide income of a person from the person's business as an owner of ships, and indicated as such by that person's accounts for that period;

**total shipping profits** (總航運利潤), in relation to any basis period, means the worldwide profits of a person from the person's business as an owner of ships, and indicated as such by that person's accounts for that period.

(Replaced 47 of 1992 s. 3. Amended E.R. 1 of 2012)

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**Note:**

**As to the operation of this section, see 47 of 1992 s. 1(3).**

Section:	23C	<b>Ascertainment of the assessable profits of a resident aircraft-owner</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where a person carries on a business as an owner of aircraft and-
  - (a) the business is normally controlled or managed in Hong Kong; or
  - (b) the person is a company incorporated in Hong Kong, that person shall be deemed to be carrying on that business in Hong Kong.
- (2) Where a person is deemed to be carrying on a business as an owner of aircraft in Hong Kong under this section

the assessable profits from that business for any year of assessment shall be the sum bearing the same ratio to the aggregate of the relevant sums earned by or accrued to that person during the basis period for that year of assessment as that person's total aircraft profits for the basis period bear to the aggregate of the total aircraft income earned by or accrued to that person during that the basis period for that year of assessment.

- (2A) For the purposes of subsection (2) and the expression "relevant sums" in that subsection and in subsection (5), where any arrangement for relief from double taxation has effect by virtue of section 49 in respect of any person of the description mentioned in subsection (1), the relevant sums earned by or accrued to that person shall include any sums derived from, attributable to, or in respect of any relevant carriage shipped in an arrangement territory, any relevant charter hire attributable to an arrangement territory and charter hire in respect of the operation of an aircraft flying between aerodromes or airports within an arrangement territory. (Added 19 of 1996 s. 7)
- (2B) Where any arrangement for relief from double taxation has effect in the circumstances mentioned in subsection (2A), then in determining the relevant sums earned by or accrued to a person for the purposes of that subsection-
- (a) subsections (3) and (4), the definitions *air waybill*, *goods in transit*, *passengers in transit*, *post office delivery bill*, and paragraph (a) of the definition *relevant charter hire* in subsection (5) shall apply as though in those subsections and definitions and in that paragraph, the words "an arrangement territory" were substituted for the expression "Hong Kong"; and
- (b) the remainder of the definition *relevant charter hire* in subsection (5) shall apply as though in that definition the words "outside an arrangement territory" were substituted for the words "outside Hong Kong". (Added 19 of 1996 s. 7)
- (2C) The provisions relating to paragraph (a) of the definition *relevant charter hire* in subsection (2B) shall not be construed so as to exclude from the definition *relevant sums* in subsection (5), any sum derived from, or attributable to, or in respect of any charter hire in respect of the operation of an aircraft flying between aerodromes or airports within Hong Kong. (Added 19 of 1996 s. 7)
- (2D) Subsection (2A) shall not apply to any sums derived from, attributable to, or in respect of any relevant carriage shipped in an arrangement territory and any relevant charter hire attributable to an arrangement territory where such sums are chargeable to tax in an arrangement territory. (Added 19 of 1996 s. 7)
- (3) For the purposes of this section, any sums earned by or accrued to the owner of an aircraft under a charter-party (whether by demise or not) that does not, or does not purport to, extent to the whole of that aircraft shall, to the extent that those sums are derived from, attributable to, or in respect of, any outward flight or flights of that aircraft commencing from any aerodrome or airport within Hong Kong, be deemed to be derived from, attributable to, or in respect of, any relevant carriage shipped in Hong Kong.
- (4) For the purposes of this section, the following sums earned by or accrued to an owner of aircraft under a charter-party otherwise than by demise shall be deemed to be derived from, attributable to, or in respect of, any relevant carriage shipped in Hong Kong-
- (a) in the case of a charter-party which is a flight charter, any sums earned by or accrued to that owner under that charter-party and derived from, attributable to, or in respect of, any outward flight or flights of that aircraft commencing from any aerodrome or airport within Hong Kong;
- (b) in the case of a charter-party which is a time charter, the sum bearing the same ratio to the aggregate of the sums earned by or accrued to that owner under that charter-party as the total number of flying hours of that aircraft flown in respect of all outward flights of that aircraft commencing from any aerodrome or airport within Hong Kong to the final destinations of those flights bear to the aggregate of the total number of flying hours of that aircraft flown in respect of all flights of that aircraft under that charter-party.

(5) In this section-

*aerodrome or airport* (機坪或飛機場) includes any helipad;

*air waybill* (空運路單) has the same meaning as in the Import and Export Ordinance (Cap 60), but does not include an air waybill which describes any aerodrome or airport in Hong Kong as the aerodrome or airport of departure or the aerodrome or airport of destination;

*aircraft* (飛機) includes a helicopter;

\**arrangement territory* (安排地區), in relation to an arrangement for the relief of double taxation, means any territory outside Hong Kong where an arrangement for the relief of double taxation has effect by virtue of section 49 in respect of any person of the description mentioned in subsection (1), deemed to be carrying on a business as an owner of aircraft in Hong Kong; (Added 19 of 1996 s. 7)

*business as an owner of aircraft* (以飛機擁有人身分經營業務) means a business of chartering or operating

aircraft, but does not include dealing in aircraft or agency business in connection with air transport;

**charter hire** (租機費) means any sums earned by or accrued to an owner of an aircraft under a charter-party by demise in respect of the operation of the aircraft, but does not include any sums so earned or accrued where that charter-party does not, or does not purport to, extend to the whole of that aircraft;

**goods** (貨品) includes livestock and mails;

**goods in transit** (過境貨品), in relation to the shipment of goods aboard an aircraft, means goods-

- (a) specified in an air waybill (issued by or on behalf of an owner of aircraft) or a post office delivery bill;
- (b) brought to Hong Kong by air solely for the purpose of the onward carriage of those goods; and
- (c) in respect of which any freight charges for that onward carriage are not paid or payable in Hong Kong;

**operation** (營運), in relation to an aircraft, includes the use or possession of the aircraft;

**owner** (擁有人), in relation to an aircraft, includes a charterer of the aircraft under a charter-party;

**passengers** (乘客) does not include passengers in transit;

**passengers in transit** (過境乘客), in relation to a flight of an aircraft, means passengers-

- (a) whose passenger tickets in respect of the flight do not specify Hong Kong as the place of departure or as the place of destination; or
- (b) who-
  - (i) travel to Hong Kong in any aircraft owned by an owner of aircraft and leave Hong Kong in that or any other aircraft in the same ownership; and
  - (ii) not more than 24 hours after travelling to an arriving at Hong Kong, leave Hong Kong for a destination other than the one from which they had travelled;

**permanent establishment** (永久機構) means a branch, management or other place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of his principal;

**post office delivery bill** (郵政局交接清單), in relation to the carriage of mails, means any document (whether referred to as an "AV7 bill" or otherwise) which does not describe Hong Kong, or the General Post Office of Hong Kong, as the office of origin or the office of destination in respect of those mails;

**relevant carriage** (有關運載), in relation to an aircraft, means the carriage by air of passengers or goods, or both passengers and goods, as the case may be, but does not include the carriage of goods in transit;

**relevant charter hire** (有關的租機費) means charter hire other than charter hire attributable to a permanent establishment maintained outside Hong Kong by a person deemed to be carrying on a business as an owner of aircraft in Hong Kong under this section, but does not include-

- (a) charter hire in respect of the operation of an aircraft flying between aerodromes or airports within Hong Kong; or
- (b) charter hire in respect of the operation of an aircraft flying between any aerodrome or airport within Hong Kong and any aerodrome or airport within Macau;

**relevant sums** (有關款項) means-

- (a) any sums derived from, attributable to, or in respect of-
  - (i) any relevant carriage shipped in Hong Kong;
  - (ii) any relevant charter hire;
  - (iii) any charter hire in respect of the operation of an aircraft flying between aerodromes or airports within Hong Kong;
- (b) one half of any sums derived from, attributable to, or in respect of, any charter hire in respect of the operation of an aircraft flying between any aerodrome or airport within Hong Kong and any aerodrome or airport within Macau;

**shipped** (裝運), in the case of passengers, means embarked;

**shipped in an arrangement territory** (在安排地區裝運的), in relation to the shipment of relevant carriage, means shipped aboard an aircraft at any aerodrome or airport within an arrangement territory; (Added 19 of 1996 s. 7)

**shipped in Hong Kong** (在香港裝運的), in relation to the shipment of relevant carriage, means shipped aboard an aircraft at any aerodrome or airport within Hong Kong;

**total aircraft income** (總空運入息), in relation to any basis period, means the worldwide income of a person from the person's business as an owner of aircraft, and indicated as such by that person's accounts for that period.



**total aircraft profits** (總空運利潤), in relation to any basis period, means the worldwide profits of a person from the person's business as an owner of aircraft, and indicated as such by that person's accounts for that period.

(Replaced 47 of 1992 s. 3)

**Note:**

\* For application of s. 23C(2A), (2B), (2C) and (2D) in respect of any arrangement with an arrangement territory, please note s. 2 of 19 of 1996, the text of which is reproduced below-

**"2. Application of amendments affected by section 7**

**Notwithstanding section 1(2), the amendments to section 23C of the principal Ordinance effected by section 7 of this Ordinance shall, in respect of any arrangement with an arrangement territory as defined in section 23C of the principal Ordinance following its amendment by this Ordinance, be deemed to apply and to have always applied in accordance with the terms specified in that arrangement."**

Section:	23D	<b>Ascertainment of the assessable profits of a non-resident aircraft-owner</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (5), where a person to whom section 23C does not apply carries on a business as an owner of aircraft, and any aircraft owned by that person lands at any aerodrome or airport within Hong Kong, that person shall be deemed to be carrying on that business in Hong Kong.
- (2) Subject to subsections (3) and (4), where a person is deemed to be carrying on a business as an owner of aircraft under this section the assessable profits of that person from that business for any year of assessment shall be the sum bearing the same ratio to the aggregate of the relevant sums earned by or accrued to that person during the basis period for that year of assessment as that person's total aircraft profits for the basis period bear to the aggregate of the total aircraft income earned by or accrued to that person during that basis period for that year of assessment.
- (3) Subject to subsection (4), where in the opinion of the assessor the provisions in subsection (2) for computing assessable profits cannot for any reason be satisfactorily applied in the case of a person to whom this section applies, the assessable profits of that person for any year of assessment may instead be computed on a fair percentage of the aggregate of the relevant sums earned by or accrued to that person during the basis period for that year of assessment.
- (4) Notwithstanding section 70, where the assessable profits of any person have been computed for any year of assessment in accordance with subsection (3), the person shall, upon the submission to the assessor of accounts computed in accordance with the provisions of this Part relating to the ascertainment of assessable profits, be entitled to elect at any time within 2 years from the end of the year of assessment that his assessable profits for that year be re-computed in accordance with subsection (2).
- (5) Where the Commissioner is satisfied that the landing at any aerodrome or airport within Hong Kong of any aircraft owned by a person to whom this section applies is of a casual nature, and that further landings at any aerodrome or airport within Hong Kong by that or any other aircraft in the same ownership are improbable, he may in his discretion direct that that person shall be deemed not to be carrying on a business as an owner of aircraft in Hong Kong under this section by reason of the casual landing of that aircraft and accordingly, in the event of his making such a direction, that person shall be so deemed not to be carrying on that business.
- (6) For the purposes of this section, any sums earned by or accrued to the owner of an aircraft under a charter-party (whether by demise or not) that does not, or does not purport to, extend to the whole of that aircraft shall, to the extent that those sums are derived from, attributable to, or in respect of, any outward flight or flights of that aircraft commencing from any aerodrome or airport within Hong Kong, be deemed to be derived from, attributable to, or in respect of, any relevant carriage shipped in Hong Kong.
- (7) For the purposes of this section, the following sums earned by or accrued to an owner of an aircraft under a charter-party otherwise than by demise shall be deemed to be derived from, attributable to, or in respect of, any relevant carriage shipped in Hong Kong-
  - (a) in the case of a charter-party which is a flight charter, any sums earned by or accrued to that owner under that charter-party and derived from, attributable to, or in respect of, any outward flight or flights of that aircraft commencing from any aerodrome or airport within Hong Kong;
  - (b) in the case of a charter-party which is a time charter, the sum bearing the same ratio to the aggregate of the sums earned by or accrued to that owner under that charter-party as the total number of flying hours of that

aircraft flown in respect of all outward flights of that aircraft commencing from any aerodrome or airport within Hong Kong to the final destinations of those flights bear to the aggregate of the total number of flying hours of that aircraft flown in respect of all flights of that aircraft under that charter-party.

(8) In this section-

**aerodrome or airport** (機坪或飛機場) includes any helipad;

**air waybill** (空運路單) has the same meaning as in the Import and Export Ordinance (Cap 60), but does not include an air waybill which describes any aerodrome or airport in Hong Kong as the aerodrome or airport of departure or the aerodrome or airport of destination;

**aircraft** (飛機) includes a helicopter;

**business as an owner of aircraft** (以飛機擁有人身分經營業務) means a business of chartering or operating aircraft, but does not include dealing in aircraft or agency business in connection with air transport;

**charter hire** (租機費) means any sums earned by or accrued to an owner of an aircraft under a charter-party by demise in respect of the operation of the aircraft, but does not include any sums so earned or accrued where that charter-party does not, or does not purport to, extend to the whole of that aircraft;

**goods** (貨品) includes livestock and mails;

**goods in transit** (過境貨品), in relation to the shipment of goods aboard an aircraft, means goods-

- (a) specified in an air waybill (issued by or on behalf of an owner or aircraft) or a post office delivery bill;
- (b) brought to Hong Kong by air solely for the purpose of the onward carriage of those goods; and
- (c) in respect of which any freight charges for that onward carriage are not paid or payable in Hong Kong;

**operation** (營運), in relation to an aircraft, includes the use or possession of the aircraft;

**owner** (擁有人), in relation to an aircraft, includes a charterer of the aircraft under a charter-party;

**passengers** (乘客) does not include passengers in transit;

**passengers in transit** (過境乘客), in relation to a flight of an aircraft, means passengers-

- (a) whose passenger tickets in respect of the flight do not specify Hong Kong as the place of departure or as the place of destination; or
- (b) who-
  - (i) travel to Hong Kong in any aircraft owned by an owner of aircraft and leave Hong Kong in that or any other aircraft in the same ownership; and
  - (ii) not more than 24 hours after travelling to and arriving at Hong Kong, leave Hong Kong for a destination other than the one from which they had travelled;

**permanent establishment** (永久機構) means a branch, management or other place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of his principal;

**post office delivery bill** (郵政局交接清單), in relation to the carriage of mails means any document (whether referred to as an "AV7 bill" or otherwise) which does not describe Hong Kong, or the General Post Office of Hong Kong, as the office of origin or the office of destination in respect of those mails;

**relevant carriage** (有關運載), in relation to an aircraft, means the carriage by air of passengers or goods, or both passengers and goods, as the case may be, but does not include the carriage of goods in transit;

**relevant charter hire** (有關的租機費) means charter hire attributable to a permanent establishment maintained in Hong Kong by a person deemed to be carrying on a business as an owner of aircraft in Hong Kong under this section, but does not include-

- (a) charter hire in respect of the operation of an aircraft flying between aerodromes or airports within Hong Kong; or
- (b) charter hire in respect of the operation of an aircraft flying between any aerodrome or airport within Hong Kong and any aerodrome or airport within Macau;

**relevant sums** (有關款項) means-

- (a) any sums derived from, attributable to, or in respect of-
  - (i) any relevant carriage shipped in Hong Kong;
  - (ii) any relevant charter hire;
  - (iii) any charter hire in respect of the operation of an aircraft flying between aerodromes or airports within Hong Kong;

- (b) one half of any sums derived from, attributable to, or in respect of, any charter hire in respect of the operation of an aircraft flying between any aerodrome or airport within Hong Kong and any aerodrome or airport within Macau;

**shipped** (裝運), in the case of passengers, means embarked;

**shipped in Hong Kong** (在香港裝運的), in relation to the shipment of relevant carriage, means shipped aboard an aircraft at any aerodrome or airport within Hong Kong;

**total aircraft income** (總空運入息), in relation to any basis period, means the worldwide income of a person from the person's business as an owner of aircraft, and indicated as such by that person's accounts for that period;

**total aircraft profits** (總空運利潤), in relation to any basis period, means the worldwide profits of a person from the person's business as an owner of aircraft, and indicated as such by that person's accounts for that period.

(Added 47 of 1992 s. 3)

Section:	23E	<b>Alternative computation of "total shipping profits" and "total aircraft profits"</b>	E.R. 1 of 2012	09/02/2012
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Where total shipping profits within the meaning of section 23B(12) or total aircraft profits within meaning of section 23C(5) or 23D(8), as the case may be, have been computed on a basis which differs materially from that provided for in this Part for the ascertainment of assessable profits in respect of which a person is chargeable to tax, those profits may be adjusted so as to correspond as nearly as may be to the sum that would have been arrived at had they been computed in accordance with the provisions of this Part relating to the ascertainment of assessable profits in respect of which a person is chargeable to tax.

(Added 47 of 1992 s. 3)

Section:	24	<b>Clubs, trade associations, etc.</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where a person carries on a club or similar institution which receives from its members not less than half of its gross receipts on revenue account (including entrance fees and subscriptions), such person shall be deemed not to carry on a business; but where less than half of its gross receipts are received from members, the whole of the income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and such person shall be chargeable in respect of the profits therefrom. (Amended 36 of 1955 s. 23; 49 of 1956 s. 22)
- (2) Where a person carries on a trade, professional or business association in such circumstances that more than half its receipts by way of subscriptions are from persons who claim or would be entitled to claim that such sums were allowable deductions for the purposes of section 16, such person shall be deemed to carry on a business, and the whole of the income of such association from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from business, and such person shall be chargeable in respect of the profits therefrom. (Amended 36 of 1955 s. 34; 2 of 1971 s. 17; 40 of 1972 s. 3)
- (3) In this section, **members** (會員) means those persons entitled to vote at a general meeting of the club, or similar institution, or trade, professional or business association. (Replaced 36 of 1955 s. 34. Amended 40 of 1972 s. 3)

Section:	25	<b>Deduction of property tax from profits tax</b>	E.R. 1 of 2012	09/02/2012
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Where property tax is payable for any year of assessment under Part 2 in respect of any land or buildings owned by a person carrying on a trade, profession or business, any profits tax payable by such person in respect of that year of assessment shall be reduced by a sum not exceeding the amount of such property tax paid by him:

Provided that-

- (a) no reduction shall be allowed unless either the profits derived from such property are part of the profits of the trade, profession or business carried on by such person or the property is occupied or used by him for the purposes of producing profits in respect of which he is chargeable to tax under this Part; (Replaced 11 of 1961 s. 5. Amended 35 of 1965 s. 14)
- (b) if the amount of property tax paid for a year of assessment exceeds the profits tax payable, the amount so paid in excess shall be refunded in accordance with the provisions of section 79; (Replaced 11 of 1961 s. 5)
- (c) (Repealed 19 of 1996 s. 8)

(Replaced 3 of 1949 s. 9. Amended E.R. 1 of 2012)

Section:	26	<b>Exclusion of certain dividends and profits from the assessable profits of other persons</b>	E.R. 1 of 2012	09/02/2012
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For the purposes of this Part-

- (a) a dividend from a corporation which is chargeable to tax under this Part shall not be included in the profits in respect of which any other person is chargeable to tax under this Part; and
- (b) save as otherwise provided no part of the profits or losses of a trade, profession or business carried on by a person who is chargeable to tax under this Part shall be included in ascertaining the profits in respect of which any other person is chargeable to tax under this Part. (Added 2 of 1971 s. 18)  
(Replaced 16 of 1951 s. 5. Amended 28 of 1964 s. 10; 2 of 1971 s. 18; 7 of 1975 s. 25; 62 of 1975 s. 2)

Section:	26A	<b>Exclusion of certain profits from tax</b>	E.R. 1 of 2012	09/02/2012
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(1) For the purposes of this Part-

- (a) interest paid or payable on a Tax Reserve Certificate issued by the Commissioner;
- (b) interest paid or payable on a bond issued under the Loans Ordinance (Cap 61) or the Loans (Government Bonds) Ordinance (Cap 64); (Amended 48 of 1991 s. 2)
- (c) any profit on the sale or other disposal or on the redemption on maturity or presentment of such a bond; (Amended 48 of 1991 s. 2)
- (d) interest paid or payable on an Exchange Fund debt instrument; (Added 9 of 1990 s. 2. Amended 17 of 1992 s. 2)
- (e) any profit on the sale or other disposal or on the redemption on maturity or presentment of such an Exchange Fund debt instrument; (Added 9 of 1990 s. 2)
- (f) interest paid or payable on a Hong Kong dollar denominated multilateral agency debt instrument; (Added 17 of 1992 s. 2. Amended 34 of 2003 s. 4)
- (g) any profit on the sale or other disposal or on the redemption or maturity or presentment of such a Hong Kong dollar denominated multilateral agency debt instrument; (Added 17 of 1992 s. 2. Amended 34 of 2003 s. 4)
- (h) interest paid or payable on a long term debt instrument; and (Added 34 of 2003 s. 4)
- (i) any gain or profit on the sale or other disposal or on the redemption on maturity or presentment of a long term debt instrument, (Added 34 of 2003 s. 4)

shall not be included in the profits of any corporation or other person chargeable to tax under this Part. (Amended 9 of 1990 s. 2)

- (1A) (a) For the purposes of this Part, there shall not be included in the profits to which a person is chargeable to tax under this Part any sums received or accrued in respect of a specified investment scheme by or to the person as-
- (i) a person chargeable to tax under this Part in respect of a mutual fund, unit trust or similar investment scheme that is authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (Cap 571); or (Replaced 5 of 2002 s. 407)
  - (ii) a person chargeable to tax under this Part in respect of a mutual fund, unit trust or similar investment scheme where the Commissioner is satisfied that the mutual fund, unit trust or investment scheme is a bona fide widely held investment scheme which complies with the requirements of a supervisory authority within an acceptable regulatory regime. (Replaced 5 of 2002 s. 407)
  - (iii)-(v) (Repealed 5 of 2002 s. 407)
- (b) For the purposes of paragraph (a), a specified investment scheme is an investment scheme carried on-
- (i) for the purposes for which the investment scheme was stated to be carried on in the constitutive documents approved in respect of the investment scheme by-
    - (A) in the case of paragraph (a)(i), the Commission;
    - (B) in the case of paragraph (a)(ii), the supervisory authority within the acceptable regulatory regime;and
  - (ii) in accordance with-
    - (A) in the case of paragraph (a)(i), the requirements of the Commission;
    - (B) in the case of paragraph (a)(ii), the requirements of the supervisory authority within the

acceptable regulatory regime. (Replaced 32 of 1998 s. 17. Amended 5 of 2002 s. 407)

(1B) In relation to a long term debt instrument issued on or after the date of commencement\* of the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011), subsection (1) does not apply in respect of-

(a) any interest referred to in paragraph (h) of that subsection; or

(b) any gain or profit referred to in paragraph (i) of that subsection,

if, at the time the interest or gain or profit is received by or accrued to any corporation or other person, that corporation or person is an associate (as defined in section 14A(4)) of the issuer of the debt instrument. (Added 4 of 2011 s. 4)

(2) In this section-

**Commission** (證監會) means the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap 571); (Added 32 of 1998 s. 17. Amended 5 of 2002 s. 407)

**computer** (電腦) means any device for storing, processing or retrieving information;

**Exchange Fund** (外匯基金) means the fund of that name established under section 3(1) of the Exchange Fund Ordinance (Cap 66);

**Exchange Fund debt instrument** (外匯基金債務票據) means any instrument (whether described as an "Exchange Fund Bill" or otherwise) issued under the Exchange Fund Ordinance (Cap 66) evidencing the deposit of a sum of money in Hong Kong currency with the Monetary Authority for the account of the Exchange Fund, being an instrument which recognizes an obligation to pay a stated amount, with or without interest, and which is transferable in a manner specified by that Authority; (Amended 82 of 1992 s. 9)

**instrument** (票據) includes-

(a) every written document;

(b) any information recorded in the form of an entry in a book of account; and

(c) any information which is recorded (whether by means of a computer or otherwise) in a non-legible form but is capable of being reproduced in a legible form;

**long term debt instrument** (長期債務票據) means a debt instrument as defined in section 14A that-

(a) is issued on or after 5 March 2003;

(b) has an original maturity of not less than 7 years or is undated; and

(c) cannot be redeemed within 7 years from the date of its issue; (Added 34 of 2003 s. 4)

**multilateral agency debt instrument** (多邊代理機構債務票據) means an instrument specified in Part 1 of Schedule 6 issued by a body specified in Part 2 of that Schedule; (Added 17 of 1992 s. 2)

**mutual fund** (互惠基金) means any arrangement made for the purpose, or having the effect, of providing facilities for investment in shares in a corporation which is or hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities and which is offering for sale or has outstanding any redeemable shares of which it is the issuer; (Added 5 of 2002 s. 407)

**unit trust** (單位信託) means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever. (Replaced 5 of 2002 s. 407)

(3) The Legislative Council may by resolution amend Schedule 6. (Added 17 of 1992 s. 2)

(Replaced 62 of 1975 s. 3. Amended 32 of 1998 s. 17; 5 of 2002 s. 407; E.R. 1 of 2012)

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**Note:**

The amendments made by 34 of 2003 to section 26A(1) and (2) apply in relation to the year of assessment commencing on 1 April 2003 and to all subsequent years of assessment. (Please see 34 of 2003 s. 2)

\* Commencement date: 25 March 2011

Part:	4A	Concessionary Deductions	E.R. 1 of 2012	09/02/2012
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(Part 4A added 31 of 1998 s. 12)

Section:	26B	<b>Concessionary deductions, general provisions</b>	E.R. 1 of 2012	09/02/2012
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- (1) This Part prescribes the deductions which shall be allowable to persons chargeable to tax under Part 3 or 7 and the circumstances in which such deductions shall be so allowable.
- (2) Every person who claims a deduction under this Part shall make his claim in the specified form and the person shall be allowed a deduction only if the claim contains such particulars and is supported by such proof as the Commissioner may require.
- (3) In this Part-  
**deduction** (扣除) means a deduction allowable under this Part;  
**person** (人) means a person chargeable to tax under Part 3 or 7, as the case may be.

(Amended E.R. 1 of 2012)

Section:	26C	<b>Approved charitable donations (Part 4A)*</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to the other provisions of this section, where a person or his or her spouse, not being a spouse living apart from the person, makes any approved charitable donations during any year of assessment, a deduction in respect of the aggregate amount of the approved charitable donations shall be allowable to the person for that year of assessment, if in any case such aggregate amount is not less than \$100.
- (2) (a) Subject to paragraph (b), where a person is chargeable to tax under Part 3, no deduction shall be allowable to the person under subsection (1) for any year of assessment in respect of-
  - (i) any sum which is allowable as a deduction under Part 4;
  - (ii) any sum by which the aggregate amount of the approved charitable donations within the meaning of subsection (1) is in excess of the percentage specified in subsection (2A) of- (Amended 24 of 2003 s. 6)
    - (A) subject to sub-subparagraph (B), the assessable income of the person for that year of assessment as reduced by the deductions provided for under section 12(1)(a) and (b) for that year of assessment; or
    - (B) where the person and his or her spouse have made an election under section 10(2) for that year of assessment, the aggregate of their assessable incomes for that year of assessment as reduced in each case by the deductions provided for under section 12(1)(a) and (b) for that year of assessment.
- (b) Where a person has made an election under section 41 in respect of any year of assessment, no deduction shall be allowable to the person under subsection (1) for that year of assessment in respect of-
  - (i) any sum which is allowable as a deduction under Part 4;
  - (ii) any sum which has been allowed as a deduction to his or her spouse against the total income of that spouse that is required to be aggregated with that of the person under section 42A(1);
  - (iii) any sum by which the aggregate amount of the approved charitable donations within the meaning of subsection (1) is, when aggregated with any sum that is allowable as a deduction under section 16D for that year of assessment, in excess of the percentage specified in subsection (2A) of the total amount of- (Amended 24 of 2003 s. 6)
    - (A) the total income of the person for that year of assessment;
    - (B) any sum which is allowable as a deduction under section 16D for that year of assessment; and
    - (C) any sum which is allowable as a deduction under section 12(1)(e) for that year of assessment.
- (2A) The percentages specified for the purposes of subsection (2)(a)(ii) and (b)(iii) shall be-
  - (a) for any year of assessment up to and including the year of assessment commencing on 1 April 2002, 10%;
  - (b) for the year of assessment commencing on 1 April 2003 or any subsequent year of assessment up to and including the year of assessment commencing on 1 April 2007, 25%; (Replaced 21 of 2008 s. 5)
  - (c) for any year of assessment commencing on or after 1 April 2008, 35%. (Added 21 of 2008 s. 5)

(Added 24 of 2003 s. 6)
- (3) (a) Subject to paragraph (b), the same approved charitable donation shall not be allowable as a deduction under this section in ascertaining the net chargeable income or the total income of more than one person.
- (b) Where a deduction of the same approved charitable donation is claimed or allowed in ascertaining the net chargeable income or the total income of more than one person, section 33(2) to (4) shall apply with the necessary modifications to such a deduction as it does to a dependent parent allowance, a dependent

grandparent allowance, a dependent brother or dependent sister allowance, a child allowance or a disabled dependant allowance; and section 33 shall, where this paragraph applies, be construed as if a reference therein to such an allowance included, in the case of an approved charitable donation so claimed, a reference to an allowance to which section 33(2) applies and, in the case of an approved charitable donation so allowed, a reference to an allowance to which section 33(3) applies.

(Amended E.R. 1 of 2012)


**Note:**

\* (Amended 21 of 2008 s. 5)

Section:	26D	<b>Elderly residential care expenses</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to the other provisions of this section, where a person or his or her spouse, not being a spouse living apart from the person, pays during any year of assessment any residential care expenses in respect of a parent or grandparent of the person who at any time in that year of assessment is aged 60 or more or, being under the age of 60, is eligible to claim an allowance under the Government's Disability Allowance Scheme, a deduction in respect of the residential care expenses shall be allowable to that person for that year of assessment.
- (2) A deduction under subsection (1) is allowable to a person in respect of each parent or grandparent of the person, in so far as any residential care expenses described in that subsection have been paid by the person or his or her spouse in respect of that parent or grandparent.
- (3) A deduction allowable to a person under subsection (1) in respect of each parent or grandparent of the person for any year of assessment shall not exceed the amount specified in Schedule 3C in relation to that year of assessment.
- (4)
  - (a) Subject to paragraph (b), a deduction in respect of any residential care expenses shall not be allowable under this section to more than one person for any year of assessment in respect of the same parent or grandparent.
  - (b) Where a deduction in respect of any residential care expenses is claimed by or allowed to more than one person for any year of assessment in respect of the same parent or grandparent, section 33(2) to (4) shall apply with the necessary modifications to such a deduction as it does to a dependent parent allowance, a dependent grandparent allowance, a dependent brother or dependent sister allowance, a child allowance or a disabled dependant allowance; and section 33 shall, where this paragraph applies, be construed as if a reference therein to such an allowance included, in the case of any residential care expenses so claimed, a reference to an allowance to which section 33(2) applies and, in the case of any residential care expenses so allowed, a reference to an allowance to which section 33(3) applies.
- (5) In this section-
  - parent or grandparent** (父母或祖父母), in relation to any person, means-
    - (a) a parent or parent of his or her spouse; or
    - (b) a grandparent or grandparent of his or her spouse;
  - residential care expenses** (住宿照顧開支) means any expenses payable in respect of the residential care received at a residential care home and paid to that residential care home or any other person acting on its behalf;
  - residential care home** (院舍) means any premises- (Amended 12 of 2011 s. 26)
    - (a) in respect of which a licence issued or renewed under the Residential Care Homes (Elderly Persons) Ordinance (Cap 459) is for the time being in force;
    - (b) in respect of which a certificate of exemption issued or renewed under the Residential Care Homes (Elderly Persons) Ordinance (Cap 459) is for the time being in force; (Amended 12 of 2011 s. 26)
    - (c) to which the Residential Care Homes (Elderly Persons) Ordinance (Cap 459) does not apply by virtue of section 3 of that Ordinance; (Replaced 12 of 2011 s. 26)
    - (d) which is a nursing home in respect of which any person has been registered under section 3 of the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap 165); (Amended 12 of 2011 s. 26)
    - (e) in respect of which a licence issued or renewed under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap 613) is for the time being in force; or (Added 12 of 2011 s. 26)
    - (f) in respect of which a certificate of exemption issued or renewed under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap 613) is for the time being in force. (Added 12 of 2011 s. 26)

Section:	26E	<b>Home loan interest</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to the other provisions of this section and to section 26F, where a person pays during any year of assessment any home loan interest for the purposes of a home loan obtained in respect of a dwelling which is used at any time in that year of assessment by the person exclusively or partly as his place of residence, a deduction in respect of the home loan interest shall be allowable to that person for that year of assessment.
  - (2) (a) Subject to paragraphs (b) and (c) and subsection (3), a deduction allowable to a person under subsection (1) in respect of any home loan interest paid by the person during any year of assessment shall be-
    - (i) (A) where the dwelling is used by the person exclusively as his place of residence during the whole of that year of assessment, the amount of the home loan interest paid; or
    - (B) in any other case, such amount (whether representing the full amount of the home loan interest paid or any part thereof) as is reasonable in the circumstances of the case; or
    - (ii) the amount specified in Schedule 3D in relation to that year of assessment, whichever is of the lesser amount.
  - (b) For the purposes of this section, where a dwelling is held by a person otherwise than as a sole owner, the amount of the home loan interest paid referred to in paragraph (a)(i) shall be regarded as having been paid-
    - (i) where the dwelling is held by the person as a joint tenant, by the joint tenants each in proportion to the number of the joint tenants; or
    - (ii) where the dwelling is held by the person as a tenant in common, by the tenants in common each in proportion to his or her share in the ownership in the dwelling.
  - (c) For the purposes of paragraph (a), where a dwelling is held by a person otherwise than as a sole owner, the relevant amount specified in Schedule 3D referred to in paragraph (a)(ii) shall be regarded as having been reduced-
    - (i) where the dwelling is held by the person as a joint tenant, in proportion to the number of the joint tenants; or
    - (ii) where the dwelling is held by the person as a tenant in common, between the tenants in common each in proportion to his or her share in the ownership in the dwelling.
  - (3) (a) Where any home loan interest is paid by a person during any year of assessment for the purposes of a home loan obtained in respect of a dwelling which is used at any time in that year of assessment by that person exclusively or partly as his place of residence, but the loan was not applied wholly for the acquisition of the dwelling, the deduction allowable to the person under subsection (1) for that year of assessment in respect of the home loan interest paid shall be such part of the amount of the home loan interest paid as is reasonable in the circumstances of the case.
  - (b) Where any home loan interest is paid by a person during any year of assessment for the purposes of a home loan obtained in respect of a dwelling which is used at any time in that year of assessment by that person exclusively or partly as his place of residence, but the person has paid during that year of assessment any other home loan interest for the purposes of a home loan obtained in respect of any other dwelling which is also used at any time in that year of assessment by that person exclusively or partly as his place of residence, a deduction shall, subject to subsection (4), be allowable to the person under subsection (1) for that year of assessment in respect of both the first-mentioned home loan interest and the second-mentioned home loan interest, and the deduction so allowable shall be such amount (whether representing the full amount of the aggregate of the respective amounts of the first-mentioned home loan interest and the second-mentioned home loan interest or any part thereof) as is reasonable in the circumstances of the case.
  - (4) A deduction shall not be allowable under this section to a person in respect of any home loan interest paid during any year of assessment for the purposes of a home loan obtained in respect of a dwelling where-
    - (a) the sum representing the home loan interest is allowable as a deduction under any other section of this Ordinance;
    - (b) any other home loan interest paid in respect of any other dwelling has been allowed to the person as a deduction for that year of assessment under this section other than by virtue of subsection (3)(b); or
    - (c) a deduction has been allowed to the person under this section, whether in respect of the same dwelling or in respect of any other dwelling, for 10 years of assessment (whether continuous or not). (Amended 9 of 2004 s. 3; 13 of 2006 s. 2)
  - (5) For the purposes of subsection (4)(c), where a deduction allowable to a person under this section has been taken into account in any year of assessment in ascertaining-




- (a) subject to paragraphs (b) and (c), the net chargeable income of the person;
  - (b) where the person and his or her spouse have made an election under section 10(2), the aggregated net chargeable income of the person and his or her spouse; or
  - (c) where the person or the person and his or her spouse have made an election under section 41, the amount of the assessment made under section 42A(1) in respect of the person or the person and his or her spouse, the person shall be deemed to have been allowed the deduction under this section for that year of assessment.
- (6) (a) A claim by a person to a deduction allowable to him under this section may only be revoked by the person by notice in writing to the Commissioner within 6 months after the date on which the deduction is allowed to him under this section.
- (b) Where a claim is revoked under paragraph (a), the claim shall be deemed not to have been made.
- (6A) If a person revokes a claim under subsection (6) after 6 years from the expiration of the year of assessment to which the claim relates, an assessor may, within 2 years after the revocation, make an additional assessment of the tax payable in consequence of the revocation and for this purpose, section 60(1) applies to the additional assessment as if it were an assessment made under that section. (Added 4 of 2010 s. 7)
- (7) The Commissioner may, for the purposes of this section, approve in writing any organization or association as a recognized organization or association.
- \* (8) For the purposes of this section, where a person pays any home loan interest for the purposes of a home loan obtained in respect of a dwelling which is used by that person exclusively or partly as his place of residence in the circumstances described in subsection (1), and the home loan was applied also for the acquisition of a car parking space, the car parking space shall be deemed-
- (a) to be part and parcel of the dwelling; and
  - (b) to be used by that person in the same manner and to the same extent as the dwelling is used as his place of residence.
- (9) In this section-
- dwelling** (住宅) means any building or any part of a building-
- (a) which is designed and constructed for use exclusively or partly for residential purposes; and
  - (b) the rateable value of which is separately estimated under section 10 of the Rating Ordinance (Cap 116);
- home loan** (居所貸款), in relation to a person claiming a deduction under this section for any year of assessment, means a loan of money which is-
- (a) applied wholly or partly for the acquisition of a dwelling which-
    - (i) during any period of time in that year of assessment is held by the person as a sole owner, or as a joint tenant or tenant in common; and
    - (ii) during that period of time is used by the person exclusively or partly as his place of residence; and
  - (b) secured during that period of time by a mortgage or charge over that dwelling or any other property in Hong Kong;
- home loan interest** (居所貸款利息), in relation to a person claiming a deduction in respect of a dwelling under this section, means interest paid by the person as a sole owner, or as a joint tenant or tenant in common of the dwelling for the purposes of a home loan to-
- (a) the Government;
  - (b) a financial institution;
  - (c) a credit union registered under the Credit Unions Ordinance (Cap 119);
  - (d) a money lender licensed under the Money Lenders Ordinance (Cap 163);
  - (e) the Hong Kong Housing Society;
  - (f) an employer of the person; or
  - (g) any recognized organization or association;
- place of residence** (居住地方), in relation to a person who has more than one place of residence, means his principal place of residence;
- recognized organization or association** (認可組織或協會) means any organization or association approved as such by the Commissioner under subsection (7).
- (10) For the avoidance of doubt, where any person has been allowed a deduction under the provisions of this section in force immediately before 1 April 2003 or in force immediately before 1 April 2005, or has been regarded as having been allowed such deduction by virtue of section 26F(2)(b), for any year of assessment, that year of assessment shall be regarded as a year of assessment for which a deduction has been allowed for the purposes of subsection (4)(c). (Added 9 of 2004 s. 3. Amended 13 of 2006 s. 2)

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**Notes:**

\* **The amendment made by 12 of 2004 to this subsection applies in relation to the year of assessment 1998/99 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(2))**

Section:	26F	<b>Nomination for purposes of section 26E</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where-
    - (a) a deduction is allowable to a person under section 26E for any year of assessment; and
    - (b) the person has no income, property or profits chargeable to tax under this Ordinance for that year of assessment,  
the person may nominate his or her spouse, being a spouse not living apart from the person, to claim the deduction for that year of assessment.
  - (2) Where a person has in accordance with subsection (1) made a nomination in respect of a deduction allowable to him under section 26E for any year of assessment-
    - (a) (i) the deduction shall cease to be allowable to that person; and  
(ii) the deduction shall be allowable to the spouse of that person; and
    - (b) subject to subsection (4)(b), the person but not that spouse shall, for the purposes of section 26E(4)(c), be regarded as having been allowed the deduction under section 26E for that year of assessment.
  - (3) Where a person has in accordance with subsection (1) made a nomination in respect of a deduction allowable to the person under section 26E for any year of assessment, and the deduction has been allowed to his or her spouse for that year of assessment, the Commissioner shall give written notification thereof to the person making the nomination.
  - (4) (a) A nomination made by a person under subsection (1) in respect of a deduction allowable to him under section 26E may only be revoked by the person by notice in writing to the Commissioner within 6 months after the date on which the Commissioner has given notification to the person in respect of the deduction in accordance with subsection (3).  
(b) Where a nomination is revoked under paragraph (a), the nomination shall be deemed not to have been made.

Section:	26G	<b>Contributions to recognized retirement schemes</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to the other provisions of this section, where a person pays any contributions to a recognized retirement scheme during any year of assessment, a deduction in respect of the contributions shall be allowable to that person for that year of assessment.
- (2) A deduction shall not be allowable to a person under subsection (1) for any year of assessment-
  - (a) in respect of any sum which is allowable as a deduction under Part 4;
  - (b) in excess of the amount specified in Schedule 3B in relation to that year of assessment.
- (3) Subject to subsection (2), the amount of the deduction allowable under this section in respect of any contributions to a recognized retirement scheme, in relation to a person, shall be-
  - (a) in the case of a recognized occupational retirement scheme-
    - (i) the amount of the contributions paid by the person as an employee to the scheme; or
    - (ii) the amount of the mandatory contributions that the person would have been required to pay as an employee if at all times whilst an employee during the year of assessment in question he had contributed as a participant in a mandatory provident fund scheme.  
whichever is of the lesser amount;
  - (b) in the case of a mandatory provident fund scheme, the amount of the mandatory contributions paid by the person as an employee.

(Amended E.R. 1 of 2012)

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**Note:**

**Section 26G applies in relation to the year of assessment commencing on 1 April 2000 and to all subsequent years of assessment. (31 of 1998 s. 2(2); L.N. 175 of 2000)**

Part:	5	<b>Allowances</b>	E.R. 1 of 2012	09/02/2012
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(Part 5 added 43 of 1989 s. 10)

Section:	27	<b>Allowances, general provisions</b>	E.R. 1 of 2012	09/02/2012
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- (1) This Part prescribes the allowances which shall be granted to persons chargeable to tax under Parts 3 and 7 and the circumstances in which such allowances are grantable.
- (2) Every person who claims an allowance under this Part shall make his claim in the specified form and an allowance shall be granted only if the claim contains such particulars and is supported by such proof as the Commissioner may require.

(3) In this Part-

**adopted** (領養) means adopted in any manner recognized by the laws of Hong Kong;

**allowance** (免稅額) means an allowance granted under this Part;

**child** (子女) means any child of a person chargeable to tax or of his or her spouse or former spouse whether or not born in wedlock and includes the adopted or step child of either or both of them;

**person** (人) means a person chargeable to tax under Part 3 or, as the case may be, Part 7;

**prescribed amount** (訂明款額) and **prescribed percentage** (訂明百分率) mean the amount and percentage specified in the second column of Schedule 4 in relation to the provisions of this Part specified in the first column of that Schedule. (Amended 48 of 1995 s. 6)

(Amended E.R. 1 of 2012)

Section:	28	<b>Basic allowance</b>	E.R. 1 of 2012	09/02/2012
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- (1) The following allowance (**basic allowance**) shall be granted in any year of assessment-
  - (a) an allowance of the prescribed amount;
  - (b) (Repealed 31 of 1998 s. 13)
- (2) No person may be granted-
  - (a) both a basic allowance and a married person's allowance; or
  - (b) a basic allowance where his or her spouse has claimed a married person's allowance.

Section:	29	<b>Married person's allowance</b>	E.R. 1 of 2012	09/02/2012
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- (1) An allowance (**married person's allowance**) shall be granted under this section in any year of assessment if a person is, at any time during that year, married and-
  - (a) the spouse of that person did not have assessable income in the year of assessment; or
  - (b) that person and his or her spouse have made, in relation to the year of assessment, an election under section 10(2); or
  - (c) that person has elected to be assessed under Part 7.
- (2) Where an election has been made under section 10(2) a married person's allowance shall be granted to the person chargeable to salaries tax under section 10(3).
- (3) A married person's allowance grantable under this section is-
  - (a) an allowance of the prescribed amount;
  - (b) (Repealed 31 of 1998 s. 14)
- (4) Where husband and wife are living apart a married person's allowance shall only be granted where the spouse claiming the allowance is maintaining or supporting the other.
- (5) Where a married person's allowance is granted in respect of a husband and wife living apart, the husband and wife shall be treated as not living apart for the purposes of Part 7.
- (6) Any claim to an allowance to which subsection (4) applies may be revoked by the claimant within the year of assessment in respect of which it was made or within 6 years after the expiration of that year.

(Amended E.R. 1 of 2012)

Section:	30	<b>Dependent parent allowance</b>	E.R. 1 of 2012	09/02/2012
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(1AA) In this section, *dependent parent allowance* means an allowance granted under subsection (1) or (1A). (Added 8 of 2005 s. 3)

- (1) An allowance shall be granted in any year of assessment to a person—
- (a) if—
    - (i) the person; or
    - (ii) his or her spouse who is not living apart from that person, maintains a parent or a parent of his or her spouse in that year; and
  - (b) if that parent—
    - (i) was ordinarily resident in Hong Kong; and
    - (ii) was—
      - (A) aged 60 or more; or
      - (B) under the age of 60 and was eligible to claim an allowance under the Government's Disability Allowance Scheme,
 at any time in that year. (Replaced 8 of 2005 s. 3)
- (1A) An allowance shall be granted in any year of assessment to a person—
- (a) if—
    - (i) the person; or
    - (ii) his or her spouse who is not living apart from that person, maintains a parent or a parent of his or her spouse in that year; and
  - (b) if that parent—
    - (i) at any time in that year was ordinarily resident in Hong Kong;
    - (ii) at any time in that year was aged 55 or more but was under the age of 60;
    - (iii) did not attain the age of 60 in that year; and
    - (iv) was, throughout that year, not eligible to claim an allowance under the Government's Disability Allowance Scheme. (Added 8 of 2005 s. 3)
- (2) A dependent parent allowance may be granted in respect of each such parent who is so maintained.
- (3) A dependent parent allowance grantable in respect of a parent under subsection (1) is— (Amended 8 of 2005 s. 3)
- (a) an allowance of the prescribed amount;
  - (b) an additional allowance of the prescribed amount if that parent resided, otherwise than for full valuable consideration, with the person who is eligible to claim the allowance under paragraph (a) for a year of assessment continuously throughout that year. (Amended 8 of 2005 s. 3)
- (3A) A dependent parent allowance grantable in respect of a parent under subsection (1A) is—
- (a) an allowance of the prescribed amount;
  - (b) an additional allowance of the prescribed amount if that parent resided, otherwise than for full valuable consideration, with the person who is eligible to claim the allowance under paragraph (a) for a year of assessment continuously throughout that year. (Added 8 of 2005 s. 3)
- (4) For the purposes of this section—
- (a) a parent shall only be treated as being maintained by a person or his or her spouse if—
    - (i) the parent resides, otherwise than for full valuable consideration, with that person and his or her spouse for a continuous period of not less than 6 months in the year of assessment; or
    - (ii) the person or his or her spouse contributes not less than the prescribed amount in money towards the maintenance of that parent in the year of assessment;
  - (b) (Repealed 31 of 1998 s. 15)
- (5) Where a deduction has been allowed to a person under section 26D for any year of assessment in respect of a parent or parent of his or her spouse, no person shall be granted a dependent parent allowance under this section for that year of assessment in respect of the same parent. (Added 31 of 1998 s. 15)

(Added 43 of 1989 s. 10)

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**Note:**

**The amendments made by s. 3 of 8 of 2005 to this section apply in relation to the year of assessment**

commencing on 1 April 2005 and to all subsequent years of assessment. (Please see 8 of 2005 s. 2)

Section:	30A	Dependent grandparent allowance	E.R. 1 of 2012	09/02/2012
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(1AA) In this section, *dependent grandparent allowance* means an allowance granted under subsection (1) or (1A).  
(Added 8 of 2005 s. 4)

- (1) An allowance shall be granted in any year of assessment to a person—
- (a) if—
    - (i) the person; or
    - (ii) his or her spouse who is not living apart from that person, maintains a grandparent or a grandparent of his or her spouse in that year; and
  - (b) if that grandparent—
    - (i) was ordinarily resident in Hong Kong; and
    - (ii) was—
      - (A) aged 60 or more; or
      - (B) under the age of 60 and was eligible to claim an allowance under the Government's Disability Allowance Scheme,
- at any time in that year. (Replaced 8 of 2005 s. 4)
- (1A) An allowance shall be granted in any year of assessment to a person—
- (a) if—
    - (i) the person; or
    - (ii) his or her spouse who is not living apart from that person, maintains a grandparent or a grandparent of his or her spouse in that year; and
  - (b) if that grandparent—
    - (i) at any time in that year was ordinarily resident in Hong Kong;
    - (ii) at any time in that year was aged 55 or more but was under the age of 60;
    - (iii) did not attain the age of 60 in that year; and
    - (iv) was, throughout that year, not eligible to claim an allowance under the Government's Disability Allowance Scheme. (Added 8 of 2005 s. 4)
- (2) A dependent grandparent allowance may be granted in respect of each such grandparent who is so maintained.
- (3) A dependent grandparent allowance grantable in respect of a grandparent under subsection (1) is— (Amended 8 of 2005 s. 4)
- (a) an allowance of the prescribed amount;
  - (b) an additional allowance of the prescribed amount if that grandparent resided, otherwise than for full valuable consideration, with the person who is eligible to claim the allowance under paragraph (a) for a year of assessment continuously throughout that year. (Amended 8 of 2005 s. 4)
- (3A) A dependent grandparent allowance grantable in respect of a grandparent under subsection (1A) is—
- (a) an allowance of the prescribed amount;
  - (b) an additional allowance of the prescribed amount if that grandparent resided, otherwise than for full valuable consideration, with the person who is eligible to claim the allowance under paragraph (a) for a year of assessment continuously throughout that year. (Added 8 of 2005 s. 4)
- (4) For the purposes of this section—
- (a) a grandparent shall only be treated as being maintained by a person or his or her spouse if—
    - (i) the grandparent resides, otherwise than for full valuable consideration, with that person and his or her spouse for a continuous period of not less than 6 months in the year of assessment; or
    - (ii) the person or his or her spouse contributes not less than the prescribed amount in money towards the maintenance of that grandparent in the year of assessment;
  - (b) (Repealed 31 of 1998 s. 16)
- (5) Where a deduction has been allowed to a person under section 26D for any year of assessment in respect of a grandparent or grandparent of his or her spouse, no person shall be granted a dependent grandparent allowance under this section for that year of assessment in respect of the same grandparent. (Added 31 of 1998 s. 16)  
(Added 37 of 1994 s. 4)

**Note:**

The amendments made by s. 4 of 8 of 2005 to this section apply in relation to the year of assessment commencing on 1 April 2005 and to all subsequent years of assessment. (Please see 8 of 2005 s. 2)

Section:	30B	<b>Dependent brother or dependent sister allowance</b>	E.R. 1 of 2012	09/02/2012
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- (1) An allowance (*dependent brother or dependent sister allowance*) shall be granted under this section in the prescribed amount in any year of assessment if a person or the spouse of the person, not being a spouse living apart from the person, maintains an unmarried brother or unmarried sister, or an unmarried brother or unmarried sister of the spouse of the person, in the year of assessment and the person so maintained at any time in the year of assessment was-
  - (a) under the age of 18 years;
  - (b) of or over the age of 18 years but under the age of 25 years and was receiving full time education at a university, college, school or other similar educational establishment; or
  - (c) of or over the age of 18 years and was, by reason of physical or mental disability, incapacitated for work.
- (2) A dependent brother or dependent sister allowance may be granted for each brother or sister or brother or sister of the spouse maintained.
- (3) For the purposes of this section-
  - (a) a brother or sister of the person or a brother or sister of the spouse of the person is only treated as maintained by the person or by the spouse of the person if, at any time during the year, the person or the spouse had sole or predominant care of the brother or sister or of the brother or sister of the spouse;
  - (b) *brother or sister or brother or sister of the spouse* (兄弟姊妹或配偶的兄弟姊妹) means, in relation to many person-
    - (i) a natural brother or natural sister of the person or the spouse;
    - (ii) an adopted brother or adopted sister of the person or the spouse;
    - (iii) a step brother or step sister of the person or the spouse;
    - (iv) in the case of a deceased spouse, a person who would have been the brother or sister of the spouse under subparagraph (i), (ii) or (iii) if the spouse had not died.

(Added 24 of 1996 s. 8)

Section:	31	<b>Child allowance</b>	E.R. 1 of 2012	09/02/2012
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- (1) An allowance (*child allowance*) shall be granted under this section in the prescribed amount in any year of assessment if the person had living and was maintaining at any time during the year of assessment an unmarried child who was-
  - (a) under the age of 18;
  - (b) of or over the age of 18 years but under the age of 25 years and was receiving full time education at a university, college, school or other similar educational establishment; or
  - (c) of or over the age of 18 years and was, by reason of physical or mental disability, incapacitated for work.
- (1A) A child allowance granted in respect of a child under subsection (1) shall be increased in the year of assessment in which the child is born by the prescribed amount. (Added 10 of 2007 s. 4)
- (2) Subject to subsection (3), where more than one person is entitled to claim a child allowance under this section in respect of the same child for the same year of assessment, the allowance due shall be apportioned on such basis as the Commissioner may decide having regard to the contributions made by each individual to the maintenance and education of the child during the year of assessment.
- (3) In the case of a husband and wife, not being a husband and wife living apart, chargeable to salaries tax under Part 3-
  - (a) all child allowances grantable under this section shall be claimed by one spouse; and
  - (b) the claim shall be made by such spouse as the spouses may nominate.
- (4) A nomination under subsection (3)(b) made in relation to any year of assessment shall not be revoked save with the consent of the Commissioner whose decision in the matter shall be final and not subject to objection or appeal.
- (5) The total of the child allowances granted to a person in respect of his or her children shall not exceed the prescribed amount.

(Amended E.R. 1 of 2012)

Section:	31A	<b>Disabled dependant allowance</b>	E.R. 1 of 2012	09/02/2012
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- (1) An allowance (*disabled dependant allowance*) of the prescribed amount shall be granted in any year of assessment to a person in respect of every dependant of his or hers who is eligible to claim an allowance under the Government's Disability Allowance Scheme.
- (2) Where a child allowance in respect of a child who is eligible to claim an allowance under the Government's Disability Allowance Scheme is apportioned under section 31(2) and granted to more than one person, the disabled dependant allowance in respect of the child grantable under this section shall be apportioned between the persons on the same basis of apportionment as that used under section 31(2) in relation to the child allowance.
- (3) In the case of a husband and wife, not being a husband and wife living apart, chargeable to salaries tax under Part 3, all disabled dependant allowances grantable under this section in respect of their children shall be claimed by the spouse nominated under section 31(3).
- (4) For the purposes of this section, *dependant* (受養人), in relation to a person, means-
  - (a) a spouse in respect of whom the person is entitled to be granted an allowance under section 29 for the year of assessment;
  - (b) a parent or a parent of his or her spouse in respect of whom the person is entitled to be granted a deduction under section 26D or an allowance under section 30 for the year of assessment; (Amended 31 of 1998 s. 17)
  - (c) a grandparent or a grandparent of his or her spouse in respect of whom the person is entitled to be granted a deduction under section 26D or an allowance under section 30A for the year of assessment; (Amended 24 of 1996 s. 9; 31 of 1998 s. 17)
  - (d) a child in respect of whom the person is entitled to be granted an allowance under section 31 for the year of assessment; or (Amended 24 of 1996 s. 9)
  - (e) a brother or sister, or a brother or sister of the person's spouse, for whom the person is entitled to be granted an allowance under section 30B for the year of assessment. (Added 24 of 1996 s. 9)  
(Added 48 of 1995 s. 7. Amended E.R. 1 of 2012)

Section:	32	<b>Single parent allowance</b>	E.R. 1 of 2012	09/02/2012
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- (1) An allowance (*single parent allowance*) of the prescribed amount shall be granted if at any time during the year of assessment the person had the sole or predominant care of a child in respect of whom the person was entitled during the year of assessment to be granted a child allowance.
- (2) A person shall not be entitled to claim single parent allowance-
  - (a) if at any time during the year of assessment the person was married and not living apart from his or her spouse;
  - (b) by reason only that the person made contributions to the maintenance and education of the child during the year of assessment; or
  - (c) in respect of any 2nd or subsequent child.
- (3) Where 2 or more persons are entitled to claim single parent allowance in respect of the same child for the same year of assessment, the allowance due shall be apportioned on such basis as the Commissioner may decide-
  - (a) having regard to the respective periods for which each person had the sole or predominant care of the child during the year of assessment; or
  - (b) if, in the opinion of the Commissioner, those periods are uncertain, on such basis as the Commissioner may decide as being just.

Section:	33	<b>Provisions supplementary to sections 30, 30A, 30B, 31 and 31A</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to sections 31(2) and 31A(2), a dependent parent allowance, a dependent grandparent allowance, a dependent brother or dependent sister allowance, a child allowance or a disabled dependant allowance shall not be given to more than one person in any year of assessment in respect of the same parent, grandparent, brother, sister or child. (Amended 48 of 1995 s. 8)

- (1A) In any year of assessment-
- (a) a dependent parent allowance and a dependent grandparent allowance; or
  - (b) a dependent brother or dependent sister allowance and a child allowance,
- shall not both be given for the same dependent person. (Replaced 24 of 1996 s. 10)
- (2) Subject to sections 31(2) and (3) and 31A(2) and (3), where the Commissioner has reason to believe that 2 or more persons are eligible to claim such an allowance in respect of the same parent, grandparent, brother, sister or child for the same year of assessment, the Commissioner shall not consider any claim until he is satisfied that the claimants have agreed which of them shall be entitled to claim in that year. (Amended 48 of 1995 s. 8)
- (3) Where a dependent parent allowance, a dependent grandparent allowance, a dependent brother or dependent sister allowance, a child allowance or a disabled dependant allowance has been granted- (Amended 48 of 1995 s. 8)
- (a) otherwise than under section 31(2) or 31A(2) to 2 or more persons in respect of the same parent, grandparent, brother, sister or child; or (Amended 48 of 1995 s. 8)
  - (b) to both a husband and wife, contrary to section 31(3) or 31A(3); or (Amended 48 of 1995 s. 8)
  - (c) to a person and, within 6 months of such allowance being granted, another person appears to the Commissioner to be eligible to be granted that allowance in respect of the same parent, grandparent, brother, sister or child for the same year of assessment,
- the Commissioner shall invite the persons to whom the allowance has been granted and any other individual who appears to the Commissioner to be eligible to be granted the allowance to agree which of them is to have the allowance (being an agreement consistent with the provisions of this Part) and the Commissioner may in consequence of such agreement, or if the individuals do not so agree within a reasonable time, within the period specified in section 60, raise additional assessments under that section.
- (3A) Where the Commissioner has reason to believe that there are persons eligible to claim, respectively-
- (a) a dependent parent allowance and a dependent grandparent allowance; or
  - (b) a dependent brother or dependent sister allowance and a child allowance,
- in respect of the same dependent person for the same year of assessment, the Commissioner shall not consider any claim until he is satisfied that the claimants have agreed which of the allowances shall be claimed in that year. (Added 37 of 1994 s. 5)
- (3B) Where-
- (a) a dependent parent allowance and a dependent grandparent allowance; or
  - (b) a dependent brother or dependent sister allowance and a child allowance,
- have both been granted in respect of the same dependent person contrary to subsection (1A), the Commissioner shall invite the persons to whom the allowances have been granted to agree which of the allowances is to be given (being an agreement consistent with the provisions of this Part) and the Commissioner may in consequence of such agreement, or if the individuals do not so agree within a reasonable time, within the period specified in section 60, raise additional assessments under that section. (Added 37 of 1994 s. 5)
- (3C) Where-
- (a) a dependent parent allowance or a dependent grandparent allowance has been granted for a dependent person; or
  - (b) a dependent brother or dependent sister allowance or a child allowance has been granted for a dependent person,
- and, within 6 months of the allowance being granted, another person appears to the Commissioner to be eligible to be granted the other allowance for the same dependent person for the same year of assessment, the Commissioner is to invite the person to whom the allowance has been granted and any other person who appears to the Commissioner to be eligible to be granted the other allowance for the same dependent person to agree which of the allowances is to be granted (being an agreement consistent with this Part). (Replaced 24 of 1996 s. 10)
- (3D) The Commissioner may, in consequence of an agreement under subsection (3C), or, if the persons do not agree under that subsection within a reasonable time, within the time specified in section 60, raise additional assessments under section 60. (Added 24 of 1996 s. 10)
- (4) The Commissioner shall exercise his powers under this section in such manner as may appear to him to be just having regard to such information only as may be in his possession at the time when he exercises those powers. (Amended 37 of 1994 s. 5; 24 of 1996 s. 10)



Part:	6	<b>Depreciation, etc.</b>	E.R. 1 of 2012	09/02/2012
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Section:	33A	<b>Annual allowances, commercial buildings and structures</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where any person is, at the end of the basis period for any year of assessment, entitled to an interest in a building or structure which is a commercial building or structure and where that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure, an allowance for depreciation by wear and tear of that building or structure, to be known as an "annual allowance", of an amount equal to, subject to subsection (2), one-twenty-fifth of the expenditure, shall be made to the person for that year of assessment. (Amended 12 of 2004 s. 9)
- \* (2) Where the interest in a building or structure, which is the relevant interest in relation to any expenditure, is sold and where the building or structure has been used at any time before the sale, whether as a commercial building or structure or otherwise, the annual allowance, in the years of assessment the basis periods for which end after the time of the sale, shall be computed by reference to the residue of expenditure immediately after the sale and shall be the fraction of that residue of expenditure the numerator of which is 1 and the denominator of which is the number of years of assessment comprised in the period which-
- (a) begins with the year of assessment in the basis period for which the sale takes place; and (Replaced 12 of 2004 s. 9)
- (b) ends with the year of assessment which is-
- (i) in the case of a building or structure to which subsection (4) applies, the 25th year after the year of assessment commencing on 1 April 1998; (Amended 12 of 2004 s. 9)
- (ii) in any other case, the 25th year after the year of assessment in which the building or structure was first used,
- and so on for any subsequent sales.
- (3) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount of an annual allowance for any year of assessment in respect of any expenditure exceed such amount as, apart from the writing off falling to be made by reason of the making of that allowance, would be the residue of expenditure at the end of the basis period for that year of assessment.
- (4) For the purposes of this section, where immediately prior to the commencement# of the Inland Revenue (Amendment) (No. 2) Ordinance 1998 (32 of 1998), a person was entitled to an interest in a building or structure which is a commercial building or structure and where that interest is the relevant interest in relation to the capital expenditure incurred on the construction of the building or structure-
- (a) the capital expenditure incurred on the construction of the building or structure shall be deemed to have been reduced by the aggregate of the amount of the rebuilding allowances that would have been made to the person under section 36 in respect of that building or structure in all prior years of assessment if at all times during the period of the person's entitlement to the relevant interest it had been used for the purposes of producing profits chargeable to tax under Part 4; and
- (b) the year of assessment commencing on 1 April 1998 shall be deemed to be the year of assessment in which the building or structure was first used.

(Added 32 of 1998 s. 18. Amended E.R. 1 of 2012)

**Notes:**

\* **The amendments made by 12 of 2004 to this subsection apply in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))**

# **Commencement date: 17 April 1998.**

Section:	33B	<b>(Repealed 12 of 2004 s. 10)</b>	12 of 2004	25/06/2004
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**Note:**

**This section was repealed by 12 of 2004. The repeal applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))**

Section:	34	<b>Initial and annual allowances, industrial buildings and structures</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where a person incurs capital expenditure on the construction of a building or structure which is to be an industrial building or structure occupied for the purposes of a trade there shall be made to the person who incurred the expenditure for the year of assessment in the basis period for which the expenditure was incurred an allowance to be known as an "initial allowance" equal to one-fifth thereof: (Amended 30 of 1950 Schedule; 35 of 1965 s. 17)  
 Provided that-
- (a) no initial allowance shall be made for the 8 successive years of assessment commencing on 1 April in each of the years 1957 to 1964;
  - (b) where any initial allowance has been made in relation to capital expenditure on a building or structure under this subsection before such building or structure comes to be used and when it first comes to be used it is not an industrial building or structure, such allowance shall be disallowed and such additional assessments as may be necessary consequent thereon shall be made. (Replaced 35 of 1965 s. 17)
- (2) (a) Where any person is, at the end of the basis period for any year of assessment, entitled to an interest in a building or structure which is an industrial building or structure and where that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure, an allowance for depreciation by wear and tear, to be known as an "annual allowance", of an amount equal to, subject to paragraph (b), one-twenty-fifth of that expenditure, shall be made to him for that year of assessment. (Amended 36 of 1955 s. 41; 35 of 1965 s. 17)
- \*(b) Where the interest in a building or structure, which is the relevant interest in relation to any expenditure, is sold and where the building or structure has been used at any time before the sale, whether as an industrial building or structure or otherwise, the annual allowance, in the years of assessment the basis periods for which end after the time of that sale, shall be computed by reference to the residue of expenditure immediately after the sale and shall be the fraction of the said residue the numerator of which is 2, where the building or structure was first used before the commencement of the basis period for the year of assessment commencing on 1 April 1965, and one, where the building or structure was first used on or after the commencement of such basis period, and the denominator of which is the number of years of assessment comprised in the period which-
- #(i) begins with the year of assessment in the basis period for which the sale takes place; and (Replaced 12 of 2004 s. 11)
  - (ii) ends with the year of assessment which, where the building or structure was first used before the commencement of the basis period for the year of assessment commencing on 1 April 1965, is the 50th year after the year of assessment in which the building or structure was first used, and where the building or structure was first used on or after the commencement of such basis period, is the 25th year after the year of assessment in which the building or structure was first used, and so on for any subsequent sales. (Replaced 35 of 1965 s. 17)
- (c) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount of an annual allowance for any year of assessment in respect of any expenditure exceed such amount as, apart from the writing off falling to be made by reason of the making of that allowance, would be the residue of expenditure at the end of the basis period for that year of assessment. (Amended 12 of 2004 s. 11)

**Notes:**

\* **The amendment made by 12 of 2004 to this paragraph applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))**

# **Section 34(2)(b)(i) applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))**

Section:	35	<b>Balancing allowances and charges, buildings and structures</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where—

- (a) any of the following events occurs in relation to a building or structure—
    - (i) the relevant interest in the building or structure is sold;
    - (ii) the relevant interest in the building or structure, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon; or
    - (iii) the building or structure is demolished or destroyed or, without being demolished or destroyed, ceases altogether to be used; and
  - (b) the building or structure has been a commercial building or structure or an industrial building or structure at any time before the occurrence of such event,
- an allowance, to be known as a “balancing allowance” , or a charge, to be known as a “balancing charge” , shall, in the circumstances mentioned in this section, be made to or, as the case may be, on the person entitled to the relevant interest in the building or structure immediately before the occurrence of such event for the year of assessment in the basis period for which such event occurs.
- (2) (a) Where—
    - (i) there are no sale, insurance, salvage or compensation moneys arising in respect of the occurrence of an event referred to in subsection (1)(a); or
    - (ii) the residue of expenditure immediately before the occurrence of such event exceeds those moneys, a balancing allowance shall be made and the amount thereof shall be the amount of—
      - (A) in the case of subparagraph (i), the residue of expenditure; or
      - (B) in the case of subparagraph (ii), the excess of the residue of expenditure over those moneys.
  - (b) Notwithstanding anything in this section, a balancing allowance shall not be made to a person where—
    - (i) an event referred to in subsection (1)(a) occurs in relation to a building or structure and the building or structure was not a commercial building or structure or an industrial building or structure immediately before the occurrence of such event; or
    - (ii) a commercial building or structure or an industrial building or structure is demolished for purposes unconnected with, or not in the ordinary course of conduct of, the trade, profession or business for the purposes of which the building or structure was used before the demolition in circumstances qualifying for annual allowances under section 33A or 34(2), as the case may be.
- (3) (a) Where the sale, insurance, salvage or compensation moneys arising in respect of the occurrence of an event referred to in subsection (1)(a) exceed the residue of expenditure immediately before the occurrence of such event, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the excess of those moneys over the residue of expenditure.
  - (b) Notwithstanding anything in paragraph (a), in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the allowances, if any, made to him under sections 33A and 34 in respect of the expenditure in question.

(Replaced 12 of 2004 s. 12)

**Note:**

**Section 35 applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))**

Section:	35A	<b>Special provisions on termination of leasehold interest</b>	E.R. 1 of 2012	09/02/2012
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Where, on the termination of a leasehold interest-

- (a) a lessee of any building or structure remains in possession thereof with the consent of the lessor without a new lease being granted to him, the leasehold interest shall be deemed for the purposes of this Part to continue so long as he so remains in possession;
- (b) a new lease is granted to the lessee either by way of regrant or in pursuance of an option available to him under the terms of the first lease, this Part shall have effect as if the second lease were a continuation of the first lease.

(Added 2 of 1971 s. 27)

Section:	35B	<b>Buildings and structures bought unused</b>	E.R. 1 of 2012	09/02/2012
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Where capital expenditure is incurred on the construction of a building or structure and, before that building or

structure is used, the relevant interest therein is sold-

- (a) the expenditure actually incurred on the construction thereof shall be left out of account for the purposes of this Part and any initial allowance made under section 34 shall be disallowed and such additional assessments as may be necessary consequent thereon shall be made; but
- (b) (i) in a case where the person who sells that interest incurred that expenditure and made that sale in the course of a trade which consists, in whole or part, in the construction or development of buildings or structures for the purpose of sale, the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, capital expenditure on the construction thereof equal to the net price paid by him for that interest; and
- (ii) in any other case, the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, capital expenditure on the construction thereof equal to the expenditure actually incurred on the construction of the building or structure or to the net price paid by him for that interest, whichever is the less: (Replaced 29 of 1982 s. 7)

Provided that-

- (a) where in a case to which paragraph (b)(i) applies the relevant interest in the building or structure is sold more than once before the building or structure is used, only the person who buys that interest on the occasion of the last of those sales shall be deemed to have incurred capital expenditure on the construction of the building or structure and that capital expenditure shall be equal to the net price paid on the first sale or the net price paid by him, whichever is the less;
- (b) where in a case to which paragraph (b)(ii) applies the relevant interest in the building or structure is sold more than once before the building or structure is used, that paragraph shall have effect only in relation to the last of those sales. (Replaced 29 of 1982 s. 7)

(Added 2 of 1971 s. 27)

Section:	36	<b>Rebuilding allowance for a commercial building or structure up to and including the year of assessment commencing on 1 April 1997</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (2), where at the end of the basis period for any year of assessment a person is entitled to an interest in a commercial building or structure and where that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure, an allowance to be known as a "rebuilding allowance" equal to 2% of the capital expenditure incurred on the construction of such building or structure shall be made to him for that year of assessment.
  - (2) No allowance shall be made to any person under subsection (1) for a year of assessment if the basis period for that year of assessment is subsequent to the basis period for the year of assessment commencing on 1 April 1997. (Added 32 of 1998 s. 20)
- (Replaced 36 of 1955 s. 42. Amended 26 of 1969 s. 18; 30 of 1990 s. 3; 32 of 1998 s. 20)

Section:	36A	<b>Application of provisions to machinery or plant</b>	E.R. 1 of 2012	09/02/2012
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- (1) Except where otherwise provided, in relation to the initial and annual allowances on machinery or plant-
  - (a) sections 37, 37A, 38 and 39 shall apply to the years of assessment up to and including the year of assessment commencing on 1 April 1979; and
  - (b) sections 39B, 39C and 39D shall apply to the year of assessment commencing on 1 April 1980 and to subsequent years of assessment.
- (2) Where in relation to any machinery or plant the Commissioner is satisfied that in respect of any year of assessment commencing on or after 1 April 1980 the application of any of the provisions of the sections referred to in subsection (1)(b) is impracticable or inequitable, he may direct that the provisions of the sections referred to in subsection (1)(a) shall apply to the extent and for the duration specified in the direction.
- (3) Where under subsection (2) the Commissioner directs that the provisions of section 37 shall apply to any machinery or plant in respect of-
  - (a) the year of assessment commencing on 1 April 1980, the initial allowance shall be equal to 35% of the expenditure referred to in subsection (1) of that section;
  - (b) any year of assessment commencing on or after 1 April 1981, the initial allowance shall be equal to 55% of the expenditure referred to in subsection (1) of that section. (Replaced 29 of 1982 s. 8)

(c) any year of assessment commencing on or after 1 April 1989, the initial allowance shall be equal to 60% of the expenditure referred to in subsection (1) of that section. (Added 56 of 1993 s. 17)

(Added 63 of 1980 s. 2)

Section:	37	<b>Initial and annual allowances, machinery or plant</b>	E.R. 1 of 2012	09/02/2012
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(1) Where a person carrying on a trade, profession or business incurs capital expenditure on the provision of machinery or plant for the purposes of producing profits chargeable to tax under Part 4 then, except where such expenditure is expenditure of a kind described in section 16B(1)(b) or 16G, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred, an allowance, to be known as an "initial allowance". (Amended 30 of 1950 Schedule; 35 of 1965 s. 19; 26 of 1969 s. 19; 23 of 1974 s. 2; 32 of 1998 s. 21)

(1A) For the purposes of subsection (1), the initial allowance shall be-

- (a) in respect of a year of assessment up to and including the year of assessment commencing on 1 April 1973, equal to one-fifth of the expenditure referred to in subsection (1); and
- (b) in respect of the year of assessment commencing on 1 April 1974 and all subsequent years of assessment up to and including the year of assessment commencing on 1 April 1979, equal to one-quarter of such expenditure. (Added 23 of 1974 s. 2. Amended 32 of 1981 s. 4)

(2) Where at the end of the basis period for any year of assessment a person owns and has in use machinery or plant for the purposes of producing profits chargeable to tax under Part 4 there shall be made to him in respect of that year of assessment an allowance to be known "annual allowance" for depreciation by wear and tear of those assets. The allowance shall be calculated at the rates prescribed by the Board of Inland Revenue and shall be computed on the reducing value of the asset, which shall be the cost of the asset reduced by-

- (a) any initial allowance computed in accordance with the provisions of this section; and
- (b) the annual allowances computed under the provisions of this section: (Amended 56 of 1993 s. 18)

Provided that-

- (a) (Repealed 32 of 1998 s. 21)
- (b) the Commissioner may in his discretion allow a higher rate than that prescribed by the Board of Inland Revenue. (Amended 16 of 1951 s. 7; 35 of 1965 s. 19; 26 of 1969 s. 19)

(2A) For the purposes of subsection (2), in any case where machinery or plant is owned and used by a person for any period immediately before he uses it for the purposes of producing profits chargeable to tax under Part 4, **cost of the asset** (資產成本) means the sum computed by deducting from the actual cost the notional amount of the annual allowances which would have been made under subsection (2) to the owner if since acquiring the asset he had used it for the purpose of producing profits chargeable to tax under Part 4. (Added 26 of 1969 s. 19)

(3) Nothing in subsection (2) shall apply in respect of any machinery or plant owned and used by a person for the purposes of his trade, profession or business where such machinery or plant represents expenditure of a capital nature which pursuant to section 16B(1)(b) or 16G has been allowed as a deduction in ascertaining the profits from such trade, profession or business in respect of which such person is chargeable to tax under Part 3 for any year of assessment. (Added 35 of 1965 s. 19. Amended 32 of 1998 s. 21)

(4) If a person succeeds to any trade, profession or business which immediately before the succession-

- (a) was carried on by another person; and
- (b) made use of machinery or plant for the purpose of producing profits chargeable to tax under Part 4, and, immediately after the succession, such machinery or plant, without being sold to the successor, is in use in that trade, profession or business for the same purpose, the reduced value of such machinery or plant shall, for the purpose of computing annual allowances under subsection (2), be taken to be the reduced value thereof still unallowed to that other person as at the time of the succession. (Added 2 of 1971 s. 28)

(5) Notwithstanding subsection (4), no initial allowance shall be made under this Part by virtue of subsection (4). (Added 2 of 1971 s. 28)

(Amended E.R. 1 of 2012)

Section:	37A	<b>Initial and annual allowances in respect of machinery and plant acquired under hire purchase agreement</b>	E.R. 1 of 2012	09/02/2012
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(1) Where a person carrying on a trade, profession or business incurs capital expenditure under a hire purchase

agreement on the provision of machinery or plant for the purposes of producing profits chargeable to tax under Part 4 then, except where such expenditure is expenditure of a kind described in section 16B(1)(b), there shall be made to him for each year of assessment in the basis period for which he has made an instalment payment under such agreement, an initial allowance. (Amended 35 of 1965 s. 20; 26 of 1969 s. 20; 23 of 1974 s. 3)

- (1A) For the purposes of subsection (1), the initial allowance shall be-
- (a) in respect of a year of assessment up to and including the year of assessment commencing on 1 April 1973, equal to one-fifth of the capital portion only of the instalment payment referred to in subsection (1);
  - (b) in respect of the year of assessment commencing on 1 April 1974 and all subsequent years of assessment up to and including the year of assessment commencing on 1 April 1979, equal to one-quarter of the capital portion only of such payment;
  - (c) in respect of the year of assessment commencing on 1 April 1980 equal to 35% of the capital portion only of such payment; and (Replaced 29 of 1982 s. 9)
  - (d) in respect of the year of assessment commencing on 1 April 1981 and all subsequent years of assessment up to and including the year of assessment commencing on 1 April 1988, equal to 55% of the capital portion only of such payment. (Added 29 of 1982 s. 9. Amended 17 of 1989 s. 8)
  - (e) in respect of any year of assessment commencing on or after 1 April 1989, equal to 60% of the capital portion only of such payment. (Added 17 of 1989 s. 8)
- (2) Where at the end of the basis period for any year of assessment a person has in use for the purposes of producing profits chargeable to tax under Part 4, machinery or plant acquired by him under a hire purchase agreement there shall be made to him in respect of that year of assessment an annual allowance for depreciation by wear and tear on such machinery or plant. (Amended 26 of 1969 s. 20)
- (3) An annual allowance under this section shall be calculated at rates prescribed by the Board of Inland Revenue and shall be computed on the reducing value of such machinery or plant which shall be the full cost thereof, excluding any interest which may be included in such cost under the terms of the agreement and reduced by any initial or previous annual allowances computed under this section: (Amended 35 of 1965 s. 20)  
 Provided that the Commissioner may in his discretion allow a higher rate than that prescribed by the Board of Inland Revenue.
- \*(4) Nothing in subsection (2) shall apply in respect of any machinery or plant used by a person for the purposes of his trade, profession or business where such machinery or plant represents research and development expenditure of a capital nature which pursuant to section 16B(1)(b) has been allowed as a deduction in ascertaining the profits from such trade, profession or business in respect of which such person is chargeable to tax under Part 4 for any year of assessment. (Added 35 of 1965 s. 20. Amended 32 of 1998 s. 22; 9 of 2004 s. 4)  
 (Added 36 of 1955 s. 43. Amended E.R. 1 of 2012)

**Note:**

\* **The amendment made to this section 37A(4) by 9 of 2004 applies in relation to the year of assessment commencing on 1 April 2004 and to all subsequent years of assessment. (Please see 9 of 2004 s. 1(2))**

Section:	38	<b>Balancing allowances and charges, machinery or plant</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or an annual allowance has been made for any year of assessment to a person carrying on a trade, profession or business, that is to say, either- (Amended 30 of 1950 Schedule)
- (a) the machinery or plant is sold, whether while still in use or not; or
  - (b) the machinery or plant is destroyed; or
  - (c) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required,
- and the event in question occurs either whilst the person is carrying on his trade, profession or business or at the time when he ceases so to do, an allowance or charge, to be known as a "balancing allowance" or a "balancing charge", shall in the circumstances mentioned in this section, be made to or, as the case may be, on that person for the year of assessment in his basis period for which that event occurs. (Amended 36 of 1955 s. 44)
- (2) Where there are no sale, insurance, salvage or compensation moneys or where the amount of the capital expenditure of the person in question on the provision of the plant or machinery still unallowed as at the time of the event exceeds those moneys, a balancing allowance shall be made, and the amount thereof shall be the amount of the expenditure still unallowed as aforesaid or, as the case may be, the excess thereof over the said

moneys; but in a case where an annual allowance has been computed on the cost of the asset as determined in accordance with section 37(2A), the cost of the asset as computed in accordance with that subsection shall be deemed to be the capital expenditure for the purposes of this subsection and in a case where an annual allowance has been computed in accordance with section 37(4), the reduced value used for the purpose of that subsection shall be deemed to be the capital expenditure for the purposes of this subsection. (Amended 26 of 1969 s. 21; 2 of 1971 s. 29)

- (3) If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said moneys.
- (4) Where by reason of a person ceasing to carry on his trade, profession or business, machinery or plant in respect of which an initial or an annual allowance has been made is put out of use, such person shall be deemed to have received immediately prior to such cessation, sale moneys for such machinery or plant of such an amount as the Commissioner may consider it would have realized had it been sold in the open market at the time of cessation: Provided that if such person sells such machinery or plant within 12 months of the date of cessation he may claim the adjustment of any balancing allowance or charge which may have been made to or on him as if such sale had taken place immediately prior to the date of cessation and notwithstanding the provisions of section 70 an assessor shall make any necessary correction to any assessment. (Added 36 of 1955 s. 44. Amended 35 of 1965 s. 21)
- (5) Notwithstanding anything contained in this section, in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the following amounts, that is to say- (Amended 36 of 1955 s. 44)
  - (a) the amount of the initial allowance, if any, made to him in respect of the expenditure in question;
  - (b) the amount of the annual allowances, if any, made to him in respect of the expenditure in question, including any allowance computed under proviso (b) to section 37(2) at a rate higher than that prescribed by the Board of Inland Revenue. (Amended 3 of 1949 s. 13)

Section:	38A	<b>Determination of cost of individual assets sold together for one price</b>	E.R. 1 of 2012	09/02/2012
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Where assets which qualify for initial or annual allowances under this Part are sold together or with other assets in pursuance of one bargain the Commissioner shall for the purposes of the calculation of the allowances and charges provided for in this Part, and having regard to all the circumstances of the transaction allocate a purchase price to each individual asset.

(Added 36 of 1955 s. 45)

Section:	38B	<b>Commissioner's power to determine the true value of an asset on sale</b>	E.R. 1 of 2012	09/02/2012
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Where an asset which qualifies for initial or annual allowances is sold, and-

- (a) the buyer is a person over whom the seller has control; or
- (b) the seller is a person over whom the buyer has control; or
- (c) both the seller and the buyer are persons over both of whom some other person has control; or (Amended 71 of 1983 s. 18)
- (d) the sale is between a husband and wife, not being a wife living apart from her husband, (Added 71 of 1983 s. 18)

the Commissioner shall, if he is of the opinion that the sale price of such asset does not represent its true market value at the time of such sale, determine such true market value and the amount so determined shall be deemed to be the sale price of such asset for the purpose of calculating the allowances and charges provided for in this Part.

(Added 36 of 1955 s. 45)

Section:	38C	<b>(Repealed 19 of 1996 s. 9)</b>		30/06/1997
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Section:	39	<b>Replacement of machinery or plant</b>	E.R. 1 of 2012	09/02/2012
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Where machinery or plant in the case of which any of the events mentioned in section 38(1) has occurred is replaced by the owner thereof and a balancing charge falls to be made on him by reason of that event or, but for the provisions of this section, would have fallen to be made on him by reason thereof, then, if by notice in writing to the Commissioner he so elects, the following provisions shall have effect, that is to say- (Amended 30 of 1950 Schedule)

- (a) if the amount on which the charge would have been made is greater than the capital expenditure on providing the new machinery or plant-
  - (i) the charge shall be made only on an amount equal to the difference; and
  - (ii) no initial allowance, no balancing allowance and no annual allowance shall be made or allowed in respect of the new machinery or plant or the expenditure on the provision thereof; and
  - (iii) in considering whether any, and, if so, what balancing charge falls to be made in respect of the expenditure on the new machinery or plant, there shall be deemed to have been made in respect of that expenditure an initial allowance equal to the full amount of that expenditure;
- (b) if the capital expenditure on providing the new machinery or plant is equal to or greater than the amount on which the charge would have been made-
  - (i) the charge shall not be made; and
  - (ii) the amount of any initial allowance in respect of the said expenditure shall be calculated as if the expenditure had been reduced by the amount on which the charge would have been made; and
  - (iii) in considering what annual allowance is to be made in respect of the new machinery or plant, there shall be left out of account a proportion of the machinery or plant equal to the proportion which the amount on which the charge would have been made bears to the amount of the said expenditure; and
  - (iv) in considering whether any and, if so, what balancing allowance or balancing charge falls to be made in respect of the new machinery or plant, the initial allowance in respect thereof shall be deemed to have been increased by an amount equal to the amount on which the charge would have been made.

Section:	39A	<b>Reduction of allowances not to affect calculation of subsequent allowances</b>	E.R. 1 of 2012	09/02/2012
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Where, by virtue of section 12(2), section 18F(1) or section 19E(1), the amount of any allowance provided for under this Part is reduced, such reduction shall not affect the calculation of subsequent allowances which shall be computed in the first place as if the full amount of the allowance had been granted and shall then where appropriate be apportioned in relation to the extent to which the relevant assets are or have been used in the production of assessable income or assessable profits.

(Added 7 of 1975 s. 27)

Section:	39B	<b>Initial and annual allowances on machinery or plant under the pooling system</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where a person carrying on a trade, profession or business incurs capital expenditure on the provision of machinery or plant for the purposes of producing profits chargeable to tax under Part 4 then, except where such expenditure is expenditure of a kind described in section 16B(1)(b) or 16G, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred, an allowance, to be known as an "initial allowance". (Amended 32 of 1981 s. 6; 32 of 1998 s. 23)
- (1A) For the purposes of subsection (1), the initial allowance shall be equal to the following percentages of the expenditure referred to in that subsection-
  - (a) for the year of assessment commencing on 1 April 1980, 35%;
  - (b) for the year of assessment commencing on 1 April 1981 and all subsequent years of assessment up to and including the year of assessment commencing on 1 April 1988, 55%; (Amended 17 of 1989 s. 9)
  - (c) for any year of assessment commencing on or after 1 April 1989, 60%. (Added 17 of 1989 s. 9)

(Replaced 29 of 1982 s. 10)
- (2) Where during the basis period for any year of assessment or during the basis period for any earlier year of assessment a person owns or has owned and has in use or has had in use any machinery or plant for the purposes of producing profits chargeable to tax under Part 4, there shall be made to him in respect of each class of machinery or plant for that year of assessment an allowance, to be known as an "annual allowance", for



- depreciation by wear and tear of such machinery or plant. (Amended L.N. 262 of 1985)
- (3) The annual allowance shall be calculated at the rates of depreciation prescribed by the Board of Inland Revenue and shall be computed on the reducing value of each class of machinery or plant.
  - (4) Subject to subsections (5), (6) and (7), the reducing value of a class of machinery or plant shall be the aggregate capital expenditure incurred on the provision of the machinery or plant belonging to that class reduced by-
    - (a) the aggregate of any initial allowances computed in accordance with section 37 in respect of any machinery or plant belonging to that class;
    - (b) the aggregate of any annual allowances computed in accordance with section 37 in respect of any machinery or plant belonging to that class;
    - (c) the aggregate of any initial allowances computed in accordance with this section in respect of any machinery or plant belonging to that class;
    - (d) any annual allowance computed in accordance with this section;
    - (e) any sale, insurance, salvage or compensation moneys received in respect of any machinery or plant belonging to that class; and
    - (f) any reducing value of machinery or plant excluded from the total reducing value of a class of machinery or plant under section 39C(3).
  - (5) Where, prior to the commencement of the Inland Revenue (Amendment)(No. 4) Ordinance 1980 (63 of 1980), any machinery or plant has been the subject of a balancing allowance or balancing charge computed in accordance with section 38, such machinery or plant shall, for the purposes of subsection (4), be excluded from the class of machinery or plant.
  - (6) Where any machinery or plant is owned and used by a person for any period immediately before he uses it for the purposes of producing profits chargeable to tax under Part 4, the capital expenditure incurred on the provision of the machinery or plant for the purposes of subsection (4) shall be computed by deducting from the actual cost the notional amount of the annual allowances which would have been made under section 37 to the owner if since acquiring the machinery or plant he had used it for the purpose of producing profits chargeable to tax under Part 4.
  - (7) If a person succeeds to any trade, profession or business which immediately before the succession-
    - (a) was carried on by another person; and
    - (b) the machinery or plant that was used at any time by that other person for the purpose of producing profits chargeable to tax under Part 4 is not sold to the successor,
 the reducing value of such machinery or plant shall, for the purpose of computing annual allowances under subsection (3) be taken to be the reducing value thereof still unallowed to that other person as at the time of succession.
  - (8) Notwithstanding subsection (7), no initial allowance shall be made under this Part by virtue of subsection (7).
  - (9) No annual allowance shall be made where the reductions made under subsection (4) exceed the aggregate capital expenditure incurred on the provision of the class of machinery or plant.
  - (10) Nothing in subsection (2) shall apply in respect of any machinery or plant owned and used by a person for the purposes of his trade, profession or business where such machinery or plant represents expenditure of a capital nature which pursuant to section 16B(1)(b) or 16G has been allowed as a deduction in ascertaining the profits from such trade, profession or business in respect of which such person is chargeable to tax under Part 4 for any year of assessment. (Amended 32 of 1998 s. 23)
  - (11) The Commissioner may in his discretion allow a higher rate of depreciation in respect of any class of machinery or plant than that prescribed by the Board of Inland Revenue.

(Added 63 of 1980 s. 3. Amended E.R. 1 of 2012)

Section:	39C	<b>Pooling system when not to apply</b>	E.R. 1 of 2012	09/02/2012
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- (1) The provisions of this Part which applied immediately prior to the commencement of the Inland Revenue (Amendment) (No. 4) Ordinance 1980 (63 of 1980) shall continue to apply-
  - (a) subject to subsection (2), in respect of machinery or plant to which section 37A applies;
  - (b) in respect of machinery or plant to which section 39A applies.
- (2) Where, pursuant to the terms and conditions of a hire purchase agreement, machinery or plant to which section 37A applies passes into the ownership of the person carrying on a trade, profession or business who incurred the capital expenditure under the hire purchase agreement, the reducing value of such machinery or plant computed in accordance with that section shall be included in the class of machinery or plant for the purposes of section

39B for the years of assessment following the year of assessment during the basis period for which the machinery or plant passed into the ownership of that person.

- (3) Where any machinery or plant which is included in a class of machinery or plant for the purposes of section 39B and which was used wholly and exclusively in the production of profits chargeable to tax under Part 4 is subsequently not so used wholly and exclusively in the production of such profits, the provisions of this Part which applied immediately prior to the commencement of the Inland Revenue (Amendment) (No. 4) Ordinance 1980 (63 of 1980) shall apply to such machinery or plant in respect of the year of assessment during the basis period for which the machinery or plant is subsequently not used wholly and exclusively in the production of profits chargeable to tax under Part 4, and the reducing value of such machinery or plant shall be deemed to be such an amount as the Commissioner may consider it would have realized had it been sold in the open market at the time it ceased to be used wholly and exclusively in the production of such profits, and such reducing value shall be excluded from the total reducing value of that class of machinery or plant.
- (4) For the purposes of subsection (2), in the application of section 37A, subsection (2) of that section shall be read as if "during the basis period" was substituted for "at the end of the basis period".

(Added 63 of 1980 s. 3. Amended E.R. 1 of 2012)

Section:	39D	<b>Balancing allowances and charges under the pooling system</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where at the end of a basis period for a year of assessment the aggregate reductions made under section 39B(4) in respect of a class of machinery or plant exceed the aggregate capital expenditure incurred by a person on the provision of machinery or plant belonging to that class-
  - (a) a charge, to be known as a "balancing charge", shall be made on him, and the amount on which it is made shall be an amount equal to the excess; and
  - (b) the reducing value at the end of the basis period for that year of assessment shall be nil.
- (2) Subject to subsection (3) and except where subsection (4) applies, where a person ceases to carry on his trade, profession or business in a year of assessment, the aggregate of the sale, insurance, salvage or compensation moneys, if any, of the machinery or plant in respect of which an initial allowance or annual allowance has been made shall be compared with the amount of the reducing value of the class of machinery or plant at the end of the basis period for that year of assessment and-
  - (a) where there are no sale, insurance, salvage or compensation moneys, or where the amount of the reducing value exceeds the aggregate of such moneys, an allowance, to be known as a "balancing allowance", shall be made to him, and the amount thereof shall be the amount of the reducing value or, as the case may be, the excess thereof over the aggregate of the said moneys; or
  - (b) where there are sale, insurance, salvage or compensation moneys, and the aggregate of such moneys exceeds the amount, if any, of the reducing value, a charge, to be known as a "balancing charge", shall be made on him, and the amount on which it is made shall be an amount equal to the excess or, where the reducing value is nil, to the aggregate of the said moneys.
- (3) Subsection (2) shall not apply on the occasion on which any machinery or plant, to which section 39B(7) applies, passes by way of succession.
- (4) Where by reason of a person ceasing to carry on his trade, profession or business machinery or plant in respect of which an initial allowance or annual allowance has been made is put out of use and there are no sale, insurance, salvage or compensation moneys, such person shall, subject to subsection (5), be deemed to have received immediately prior to such cessation, sale moneys for such machinery or plant of such an amount as the Commissioner may consider it would have realized had it been sold in the open market at the time of cessation.
- (5) If a person sells any machinery or plant referred to in subsection (4) within 12 months of the date of cessation he may claim the adjustment of any balancing allowance or balancing charge which may have been made to or on him as if such sale had taken place immediately prior to the date of cessation and notwithstanding section 70 an assessor shall make any necessary correction to any assessment.
- (6) Notwithstanding anything contained in this section, where the aggregate of any sale, insurance, salvage or compensation moneys in respect of any machinery or plant exceeds the capital expenditure incurred on the provision of that machinery or plant, the aggregate of such moneys shall-
  - (a) for the purposes of calculating a balancing charge under subsection (2)(b); and
  - (b) in calculating the reducing value of the class of machinery or plant under section 39B(4), not exceed the capital expenditure incurred on the provision of that machinery or plant.

- (7) For the purposes of subsection (6), the capital expenditure incurred on the provision of the machinery or plant shall be taken as- (Amended 7 of 1986 s. 6)
- (a) in a case where section 37(2A) applies, the "cost of the asset" computed in accordance with that section;
  - (b) in a case where section 39B(6) applies, the capital expenditure computed in accordance with that section; or
  - (c) in any other case, the aggregate capital expenditure incurred by the person in question on the provision of the machinery or plant for the purposes of producing profits chargeable to tax under Part 4.

(Added 63 of 1980 s. 3. Amended E.R. 1 of 2012)

Section:	39E	<b>Allowances under this Part in respect of capital expenditure on leased machinery and plant</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding anything to the contrary in this Part, a person (in this section referred to as *the taxpayer*) who incurs capital expenditure on the provision of machinery or plant, being machinery or plant acquired by the taxpayer under a contract entered into after the commencement of the Inland Revenue (Amendment) Ordinance 1986 (7 of 1986), for the purpose of producing profits chargeable to tax under Part 4 shall not have made to him the initial or annual allowances prescribed in section 37, 37A or 39B if, at a time when the machinery or plant is owned by the taxpayer, a person holds rights as lessee under a lease of the machinery or plant, and-
- (a) the machinery or plant was, prior to its acquisition by the taxpayer, owned and used by that person (whether alone or with others), or any associate of that person (which person or any such associate is hereinafter referred to as *the end-user*); or
  - (b) the machinery or plant, not being a ship or aircraft or any part thereof, is while the lease is in force-
    - (i) used wholly or principally outside Hong Kong by a person other than the taxpayer; or (Amended 15 of 1992 s. 4)
    - (ii) the whole or a predominant part of the cost of the acquisition or construction of the machinery or plant was financed directly or indirectly by a non-recourse debt; or
  - (c) the machinery or plant is a ship or aircraft or any part thereof and-
    - (i) the person holding rights as lessee is not an operator of a Hong Kong ship or aircraft; or
    - (ii) the whole or a predominant part of the cost of acquisition or construction of the ship or aircraft or the part thereof was financed directly or indirectly by a non-recourse debt. (Replaced 15 of 1992 s. 4)
- (2) Subsection (1)(a) shall not apply where-
- (a) the machinery or plant was acquired by the taxpayer on payment from the end-user at not more than the price which the end-user paid to the supplier (not being a supplier who is himself an end-user); and
  - (b) no initial or annual allowances have at any time prior to the acquisition of the machinery or plant by the taxpayer been made under section 37, 37A or 39B to the end-user in respect of such machinery or plant.
- (3) For the purposes of subsection (2) an allowance shall be deemed not to have been made if the end-user, by notice in writing to the Commissioner within 3 months of the date on which the capital expenditure on the provision of machinery or plant giving rise to the allowance is incurred, or within such further time as the Commissioner may, in any particular case, permit, disclaims such allowance.
- (4) For the purposes of this section, where a trustee of a trust estate or a corporation controlled by such a trustee owns machinery or plant or holds rights as a lessee under a lease of machinery or plant, the trustee, the corporation and the beneficiary under the trust shall each be deemed to be the owner or holder, as the case may be, of rights as a lessee of the machinery or plant. (Replaced 15 of 1992 s. 4)
- (5) In this section-
- acquisition** (取得) means acquisition by a person as owner and includes holding or hiring under a hire-purchase agreement or, if the hire-purchase agreement is a conditional sale agreement, holding as purchaser;
- associate** (相聯者), in relation to a person holding rights as lessee under any lease of machinery or plant (including a person who is deemed to be holding such rights), means- (Amended 15 of 1992 s. 4)
- (a) where the person holding such rights is a natural person-
    - (i) a relative of the person holding such rights;
    - (ii) a partner of the person holding such rights and any relative of that partner;
    - (iii) a partnership in which the person holding such rights is a partner;
    - (iv) any corporation controlled by the person holding such rights, by a partner of the person holding such rights or by a partnership in which the person holding such rights is a partner;
    - (v) any director or principal officer of any such corporation as is referred to in subparagraph (iv);

- (b) where the person holding such rights is a corporation-
  - (i) any associated corporation;
  - (ii) any person who controls the corporation and any partner of such person, and, where either such person is a natural person, any relative of such person;
  - (iii) any director or principal officer of that corporation or of any associated corporation and any relative of any such director or officer;
  - (iv) any partner of the corporation and, where such partner is a natural person, any relative of such partner;
- (c) where the person holding such rights is a partnership-
  - (i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner; (Replaced 65 of 1993 s. 4)
  - (ii) (Repealed 65 of 1993 s. 4)
  - (iii) any corporation controlled by the partnership or by any partner thereof or, where such a partner is a natural person, any relative of such partner;
  - (iv) any corporation of which any partner is a director or principal officer;
  - (v) any director or principal officer of a corporation referred to in subparagraph (iii);

**associated corporation** (相聯法團) means-

- (a) a corporation over which the person holding rights under any lease of machinery or plant (including a person who is deemed to be holding such rights) has control; (Amended 15 of 1992 s. 4)
- (b) a corporation which has control over such person holding rights, being a corporation;
- (c) a corporation which is under the control of the same person as such person holding rights, being a corporation;

**beneficiary under the trust** (信託的受益人) means any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under a trust estate, either directly or through any interposed person, or who is able or might reasonably be expected to be able, whether directly or indirectly, to control the activities of the trust estate or the application of its corpus or income; (Replaced 15 of 1992 s. 4)

**control** (控制), in relation to a corporation, means the power of a person to secure-

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person;

**end-user** (最終使用者) means any person (whether alone or with others) holding rights as lessee under a lease of machinery or plant or any associate of such person;

**held for use** (持有以供使用) includes installed ready for use and held in reserve;

**non-recourse debt** (無追索權債項), in relation to the financing of the whole or a predominant part of the cost of the acquisition or construction of any machinery or plant, means a debt where the rights of the creditor in the event of default in the repayment of principal or payment of interest-

- (a) are limited wholly or predominantly to any or all of the following-
  - (i) rights (including a right to moneys payable) in relation to the machinery or plant or the use of the machinery or plant;
  - (ii) rights (including rights to moneys payable) in relation to goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the machinery or plant;
  - (iii) rights (including a right to moneys payable) in relation to the loss or disposal of the whole or a part of the machinery or plant or of the taxpayer's interest in the machinery or plant;
  - (iv) any conjunction of such rights as are referred to in subparagraphs (i), (ii) and (iii);
  - (v) rights in respect of a mortgage or other security over the machinery or plant; or
  - (vi) rights arising out of any arrangement relating to the financial obligations of the end-user of the machinery or plant towards the taxpayer, being financial obligations in relation to the machinery or plant;
- (b) are in the opinion of the Commissioner capable of being limited as described in paragraph (a), having regard to either or both of the following-

- (i) the assets of the taxpayer;
- (ii) any arrangement to which the taxpayer is a party; or
- (c) where paragraphs (a) and (b) do not apply, are limited by reason that not all of the assets of the taxpayer (not being assets that are security for a debt of the taxpayer other than a debt arising in relation to the financing of the whole or part of the cost of the acquisition of the machinery or plant) would be available for the purpose of the discharge of the whole of the debt so arising (including the payment of interest) in the event of any action or actions by the creditor or creditors against the taxpayer arising out of the debt;

**operator of a Hong Kong aircraft** (香港飛機的經營者) means a person who-

- (a) holds an air operators' certificate issued under the Air Navigation (Hong Kong) Order 1995 (Cap 448 sub. leg. C); and (Amended 12 of 1999 s. 3)
- (b) carries on business as an operator of aircraft and the business is controlled and managed in Hong Kong; (Amended 15 of 1992 s. 4)

**operator of a Hong Kong ship** (香港船舶的經營者) means a person who-

- (a) is responsible for defraying all or a substantial portion of the expenses of operating the ship and the ship operates mainly in the waters of Hong Kong or between the waters of Hong Kong and waters within the river trade limits; and
- (b) carries on business as an operator of ships and the business is controlled and managed in Hong Kong; (Added 15 of 1992 s. 4)

**principal officer** (主要職員) means-

- (a) a person employed by a corporation who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the body corporate or a person to whom paragraph (a) applies, exercises managerial functions in respect of the body corporate;

**relative** (親屬) means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be the child of both the natural parents and of any step parent;

**used** (使用) includes held for use. (Amended 32 of 1998 s. 24)

- (6) The amendments made to this section by section 4(b) and (d)(iv) of the Inland Revenue (Amendment) Ordinance 1992 (15 of 1992) apply to capital expenditure on the provision of machinery or plant under a transaction entered into on or after 15 November 1990 except expenditure under a transaction which was the subject of an application for advance clearance made to the Commissioner before 15 November 1990 and the Commissioner before or after that date expressed the opinion that the transaction would not fall within the terms of section 61A or, where no such application was made in respect of a transaction entered into before 15 November 1990 under which expenditure was incurred on or after 15 November 1990, the transaction under which the expenditure was made is, in the Commissioner's opinion, of the same type as any for which, in the circumstances prevailing as at 14 November 1990, he would have expressed the opinion that the transaction would not fall within the terms of section 61A. (Added 15 of 1992 s. 4)

(Added 7 of 1986 s. 7. Amended E.R. 1 of 2012)

Section:	40	<b>Interpretation</b>	E.R. 1 of 2012	09/02/2012
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\*(1) In this Part-

**basis period** (評稅基期) has the meaning assigned to it by section 2 except that-

- (a) where 2 basis periods overlap the period common to both shall be deemed to fall in the first basis period only, and
- (b) where there is an interval between the end of the basis period for one year of assessment and the beginning of the basis period for the next year of assessment the interval shall be deemed to fall in the second basis period but where, in respect of salaries tax, the interval is the year ending on 31 March 1973, that interval shall not be deemed to fall in the second basis period; (Replaced 49 of 1956 s. 28. Amended 8 of 1973 s. 8)

**capital expenditure** (資本開支)-

- (a) includes interest paid and commitment fees incurred in respect of a loan made for the sole purpose of financing the provision of an industrial building or structure or commercial building or structure or

machinery or plant; but

- (b) does not include expenditure which is reimbursed by way of or attributable to any grant, subsidy or similar financial assistance and in relation to the person incurring the expenditure does not include any expenditure which is allowed to be deducted in ascertaining for the purpose of Part 4 the profits of a trade, profession or business carried on by that person; (Replaced 30 of 1981 s. 7. Amended 32 of 1998 s. 25)

**capital expenditure on the provision of machinery or plant** (在提供機械或工業裝置方面的資本開支) includes capital expenditure on alterations to an existing building incidental to the installation of that machinery or plant for the purposes of the trade, profession or business;

**class of machinery or plant** (該類機械或工業裝置、類別的機械或工業裝置) means the items of machinery or plant for which the same rate of depreciation is prescribed by the Board of Inland Revenue; (Added 63 of 1980 s. 4)

**commercial building or structure** (商業建築物或構築物) means any building or structure or part of any building or structure used by the person entitled to the relevant interest for the purposes of his trade, profession or business other than an industrial building or structure; (Replaced 35 of 1965 s. 22. Amended 26 of 1969 s. 22)

**industrial building or structure** (工業建築物或構築物) means any building or structure or part of any building or structure used-

- (a) for the purposes of a trade carried on in a mill, factory or other similar premises; or  
(b) for the purposes of a transport, tunnel, dock, water, gas or electricity undertaking or a public telephonic or public telegraphic service; or (Amended 39 of 1969 s. 5)  
(c) for the purposes of a trade which consists of the manufacture of goods or materials or the subjecting of goods or materials to any process; or  
(d) for the purposes of a trade which consists in the storage-  
(i) of goods or materials which are to be used in the manufacture of other goods or materials; or  
(ii) of goods or materials which are to be subjected in the course of a trade to any process; or  
(iii) of goods or materials on their arrival into Hong Kong; or (Amended 7 of 1986 s. 12)  
(e) for the purposes of the business of farming;  
(f) for the purposes of research and development related to any trade, profession or business, (Amended 32 of 1998 s. 25; 9 of 2004 s. 5)

and, in particular, the said expression includes any building or structure or part of any building or structure used by a person carrying on a trade, undertaking or business specified in paragraphs (a) to (e) of this definition and provided by him for the welfare of workers employed in his trade, undertaking or business and in use for that purpose:

Provided that-

- (i) where part of the whole of a building or structure is, and part thereof is not, an industrial building or structure, and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-tenth of the total capital expenditure which has been incurred on the construction of the whole building or structure, the whole building or structure and every part thereof shall be treated as an industrial building or structure; and  
(ii) subject to the provisions of paragraph (i) of this proviso but notwithstanding anything else contained in the foregoing provisions of this definition, the expression **industrial building or structure** (工業建築物或構築物) shall not include any building or structure or part of any building or structure used as a dwelling house (other than as a dwelling house for the housing of manual workers), retail shop, showroom, hotel or office; (Replaced 35 of 1965 s. 22)

**relevant interest** (有關權益) means, in relation to any expenditure incurred on the construction of a building or structure the interest in that building or structure to which the person who incurred the expenditure was entitled when he incurred it; (Amended 49 of 1956 s. 28)

**+residue of expenditure** (開支剩餘額)-

- (a) in relation to a commercial building or structure- (Amended 12 of 2004 s. 13)  
(i) subject to subparagraph (ii), means the amount of the capital expenditure incurred on the construction of the building or structure reduced by-  
(A) the amount of any initial allowance made under section 34(1);  
(B) the amount of any annual allowance made under section 33A or 34(2);  
(C) the amount of any balancing allowance made under section 35, or under section 33B or 35 that

was in force immediately before the commencement# of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004),

and increased by the amount of any balancing charge made under section 35, or under section 33B or 35 that was in force immediately before the commencement# of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004); or

- (ii) where the building or structure is a building or structure to which section 33A(4) applies, means the amount of the capital expenditure incurred on the construction of the building or structure as determined under section 33A(4)(a) reduced by-
- (A) the amount of any initial allowance made under section 34(1) in respect of any year of assessment commencing on or after 1 April 1998;
  - (B) the amount of any annual allowance made under section 33A or 34(2) in respect of any year of assessment commencing on or after 1 April 1998;
  - (C) the amount of any balancing allowance made under section 35, or under section 33B or 35 that was in force immediately before the commencement# of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004), in respect of any year of assessment commencing on or after 1 April 1998,

and increased by the amount of any balancing charge made under section 35, or under section 33B or 35 that was in force immediately before the commencement# of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004), in respect of any year of assessment commencing on or after 1 April 1998:

Provided that in computing the residue of expenditure there shall be written off, in respect of any year in which no allowance fell to be made under section 33A or 34, an amount of one-twenty-fifth of the capital expenditure, and for the purposes of this proviso *year* (年) means the period which would have comprised a year of assessment commencing on 1 April 1998 or any subsequent year of assessment in respect of which an annual allowance would have fallen to be made under section 33A if the building or structure had been in use as a commercial building or structure; (Added 32 of 1998 s. 25)

- (b) in relation to an industrial building or structure, means the amount of the capital expenditure incurred on the construction of the building or structure reduced by-
- (i) the amount of any initial allowance made under section 34(1);
  - (ii) the amount of any annual allowance made under section 33A or 34(2);
  - (iii) the amount of any balancing allowance made under section 35, or under section 33B or 35 that was in force immediately before the commencement# of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004),

and increased by the amount of any balancing charge made under section 35, or under section 33B or 35 that was in force immediately before the commencement# of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004):

Provided that in computing the residue of expenditure there shall be written off, in respect of any year in which no allowance fell to be made under section 33A or 34, an amount of one-fiftieth of the capital expenditure in the case of a year prior to the year of assessment commencing on 1 April 1965, and one-twenty-fifth of the capital expenditure in the case of such or any subsequent year of assessment, and for the purposes of this proviso *year* (年) means the period which would have comprised a year of assessment in respect of which an initial or annual allowance would have fallen to be made under section 34(1) or (2), as the case may be, if the building or structure had then been in use as an industrial building or structure and the provisions of section 34 had then been in force. (Replaced 35 of 1965 s. 22. Amended 32 of 1998 s. 25; 12 of 2004 s. 13)

- (2) For the purposes of this Part, any capital expenditure incurred for the purposes of a trade, profession or business by a person about to carry on such trade, profession or business shall be treated as if it had been incurred by that person on the first day upon which he does carry on such trade, profession or business. (Added 35 of 1965 s. 22)
- (3) References in this Part to capital expenditure incurred on the construction of a building or structure do not include any expenditure incurred on the acquisition of, or of rights in or over, any land. (Added 29 of 1982 s. 11)

(Replaced 36 of 1955 s. 46. Amended E.R. 1 of 2012)

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**Notes:**

- \* The amendment made by 9 of 2004 to section 40(1) applies in relation to the year of assessment

commencing on 1 April 2004 and to all subsequent years of assessment. (Please see 9 of 2004 s. 1(2))

+ The amendments made by 12 of 2004 to this definition apply in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))

# Commencement date: 25 June 2004.

Section:	40A	(Repealed 56 of 1993 s. 19)		30/06/1997
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Part:	7	Personal Assessment	E.R. 1 of 2012	09/02/2012
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Section:	40B	Interpretation	E.R. 1 of 2012	09/02/2012
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In this Part, unless the context otherwise requires-

*adjustment factor* (調整分數) has the same meaning as in section 19CA; (Added 32 of 1998 s. 26)

*concessionary trading receipts* (獲特惠的營業收入) has the same meaning as in section 19CA; (Added 32 of 1998 s. 26)

*income* (入息), in relation to any person, means income derived beneficially by that person;

*individual* (個人) means a person electing or who has elected to be chargeable to tax under this Part;

*joint total income* (共同入息總額) means joint total income calculated in accordance with section 42A;

*loss* and *losses* (虧損) do not include a loss sustained by a person acting in his capacity as trustee of a trust.  
(Replaced 43 of 1989 s. 11)

Section:	41	Election for personal assessment	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (1A), an individual-
  - (a) of or above the age of 18 years, or under that age if both his or her parents are dead; and
  - (b) who is or, if he or she is married, whose spouse is either a permanent or temporary resident, may elect for personal assessment on his or her total income in accordance with this Part. (Replaced 43 of 1989 s. 12)
- (1A) Where-
  - (a) an individual is married and not living apart from his or her spouse; and
  - (b) both that individual and his or her spouse-
    - (i) have income assessable under this Ordinance; and
    - (ii) are eligible to make an election under subsection (1),then that individual may not make such an election unless his or her spouse does so too. (Added 43 of 1989 s. 12)
- (2) Where an individual is deceased an executor shall have the same right to elect for personal assessment on the total income of the deceased as the deceased would have if he were alive. (Replaced 35 of 1965 s. 23. Amended 71 of 1983 s. 20; 43 of 1989 s. 12)
- (2A) Where-
  - (a) a deceased individual, or his executor on his behalf, elected to be personally assessed for the year of assessment in which the deceased died; and
  - (b) that individual was a partner in a partnership; and
  - (c) that individual had a share of the partnership assessable profits or losses in the year of assessment following that in which he died,then his executor may claim to have that share of such assessable profits or losses computed in accordance with Part 4 included in the deceased's total income for the year of assessment in which he died. (Added 7 of 1975 s. 29)
- (3) Any election under this section shall be made in writing and lodged with the Commissioner not later than 2 years after the end of the year of assessment in respect of which the election is made or 1 month after an assessment of income or profits forming part of the individual's total income for such year of assessment becomes final and



conclusive under section 70 or within such further period, if any, as the Commissioner may allow as being reasonable in the particular circumstances, whichever is the later. (Amended 2 of 1971 s. 31)

(4) In this section-

**permanent resident** (永久性居民) means an individual who ordinarily resides in Hong Kong; (Amended 7 of 1986 s. 12)

**temporary resident** (臨時居民) means an individual who stays in Hong Kong for a period or a number of periods amounting to more than 180 days during the year of assessment in respect of which the election is made or for a period or periods amounting to more than 300 days in 2 consecutive years of assessment one of which is the year of assessment in respect of which the election is made.

(Replaced 36 of 1955 s. 47. Amended 71 of 1983 s. 20; 7 of 1986 s. 12; 56 of 1993 s. 20; E.R. 1 of 2012)

Section:	42	<b>Calculation of total income</b>	E.R. 1 of 2012	09/02/2012
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(1) For the purposes of this Part the total income of an individual for any year of assessment shall be the aggregate of the following amounts- (Amended 30 of 2004 s. 3)

(a) (i) (Repealed 56 of 1993 s. 21)

(ii) in respect of the years of assessment commencing on or after 1 April 1983, the sum equivalent to the net assessable value as ascertained in accordance with sections 5(1A) and 5B; (Added 8 of 1983 s. 12)

Provided that where an individual is a joint owner or co-owner of property, that individual's share of the net assessable value shall be computed by apportioning the value ascertained in accordance with section 5(1A) or 5B-

(a) in the case of joint ownership, between the joint owners equally; and

(b) in the case of ownership in common, between the owners in common each in proportion to his share in such ownership; (Added 52 of 1993 s. 3)

(b) the net assessable income of the individual for that year of assessment; and (Replaced 71 of 1983 s. 21)

(c) subject to subsection (1A), the assessable profits of the individual for that year of assessment computed in accordance with Part 4: (Amended 32 of 1998 s. 27)

(d) (Repealed 17 of 1989 s. 10)

Provided that there shall be deducted from that part of the total income arising from paragraph (a) the amount of any interest payable on any money borrowed for the purpose of producing that part of the total income where the amount of such interest has not been allowed and deducted under Part 4. (Amended 17 of 1989 s. 10)

(1A) For the purposes of subsection (1)(c), any assessable profits in respect of concessionary trading receipts shall be deemed to be the amount arrived at by dividing such assessable profits by the adjustment factor. (Added 32 of 1998 s. 27)

(2) There shall be deducted from the total income of an individual for any year of assessment-

(a) such deductions as are under Part 4A allowable to the individual; and (Replaced 31 of 1998 s. 18)

(b) the amount of the individual's loss or share of loss for that year of assessment computed in accordance with Part 4.

(3)-(4) (Repealed 31 of 1998 s. 18)

(5) (a) Where in any year of assessment the aggregate amount of the deductions under subsection (2)(a) and the loss under subsection (2)(b) for an individual exceeds the total income of the individual-

(i) subject to subparagraph (ii), that part of the amount of such excess not exceeding the amount of the loss under subsection (2)(b) for the individual for that year of assessment shall be carried forward to be set off against the total income of the individual for future years of assessment;

(ii) where the total incomes of the individual and his or her spouse are required to be aggregated under section 42A(1), the amount of such excess shall be reduced as far as can be done by being set off against the total income of his or her spouse for that year of assessment as reduced under subsection (2), and that part of the amount of such excess not exceeding the amount of the loss under subsection (2)(b) for the individual for that year of assessment which is not so reduced shall be carried forward to be set off against the total income of the individual for future years of assessment.

(b) Where paragraph (a) does not apply and in any year of assessment the amount of the loss under subsection (2)(b) for an individual exceeds the total income of the individual-

(i) subject to subparagraph (ii), the amount of such excess shall be carried forward to be set off against the total income of the individual for future years of assessment;

- (ii) where the total incomes of the individual and his or her spouse are required to be aggregated under section 42A(1), the amount of such excess shall be reduced as far as can be done by being set off against the total income of his or her spouse for that year of assessment as reduced under subsection (2), and that part of the amount of such excess which is not so reduced shall be carried forward to be set off against the total income of the individual for future years of assessment.
- (c) Where paragraphs (a) and (b) do not apply and in any year of assessment the amount of the deductions under subsection (2)(a) for an individual exceeds the total income of the individual-
  - (i) subject to subparagraph (ii), the amount of such excess shall not be carried forward to be set off against the total income of the individual for future years of assessment;
  - (ii) where the total incomes of the individual and his or her spouse are required to be aggregated under section 42A(1), the amount of such excess shall be reduced as far as can be done by being set off against the total income of his or her spouse for that year of assessment as reduced under subsection (2), and that part of the amount of such excess which is not so reduced shall not be carried forward to be set off against the total income of the individual for future years of assessment. (Replaced 31 of 1998 s. 18)
- (6) Subsection (5)(a)(ii) and (b)(ii) shall apply, with any necessary modifications, in relation to an individual who has elected to be personally assessed under this Part and to his or her spouse where- (Amended 31 of 1998 s. 18)
  - (a) by reason of the application of section 41(1A), that individual could not have so elected unless his or her spouse did so too, had his or her spouse had income assessable under this Ordinance; and
  - (b) for this reason only he or she was able so to elect, as if the total income of both spouses had been required to be aggregated under section 42A(1). (Replaced 43 of 1989 s. 13)
- (7) The amount of any excess set off under subsection (5) against an individual's total income or that of the individual's spouse for any year of assessment shall not be set off for any other year of assessment.
- (8)-(9) (Repealed 30 of 2004 s. 3)
- (10) Where an election is made by a husband and wife under section 41(1A) the total income (as reduced under subsections (2) and (5)) of each of them shall be separately calculated under this section before both incomes are aggregated under section 42A. (Replaced 43 of 1989 s. 13)  
(Replaced 7 of 1975 s. 30. Amended 71 of 1983 s. 21; 43 of 1989 s. 13; E.R. 1 of 2012)

Section:	42A	<b>Assessment to tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) In giving effect to an election under section 41 the assessor shall make a single assessment-
  - (a) in the sum of the total income, as reduced under section 42(2) and (5), of the individual making the election; or
  - (b) in the case of an election under section 41(1A), in the sum of the joint total income resulting from the aggregation of the total income of the one spouse, as so reduced, with that of the other, as also so reduced, as reduced in each case by such of the allowances prescribed in Part 5 as may be appropriate.
- (2) In the case of an election under section 41(1A) by a husband and wife who married one another in the year of assessment to which the election relates, they shall be deemed for the purpose of ascertaining their joint total income under subsection (1)(b) to have married at the commencement of that year.  
(Replaced 43 of 1989 s. 14. Amended E.R. 1 of 2012)

Section:	42B	<b>(Repealed 43 of 1989 s. 14)</b>		30/06/1997
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Section:	43	<b>Rates of charge</b>	E.R. 1 of 2012	09/02/2012
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- (1) Tax shall be charged on the amount of the assessment referred to in section 42A(1) and at the rates specified in Schedule 2- (Amended L.N. 350 of 1990)
  - (a) on the individual; or
  - (b) in the case of a husband and wife making an election under section 41(1A) on both of them subject to apportionment in the manner prescribed by subsection (2B). (Replaced 43 of 1989 s. 15)
- (1A) Notwithstanding subsection (1), the amount of tax charged under that subsection shall not in any case exceed the

amount which would have been chargeable had the standard rate been charged on the total income (as reduced under section 42(2) and (5)) or, as the case may be, the joint total income. (Added 65 of 1970 s. 8. Amended 7 of 1975 s. 32; 71 of 1983 s. 24)

(1B) Notwithstanding subsections (1) and (1A), for the year of assessment commencing on 1 April 2006, the amount of tax charged under subsection (1) read together with subsection (1A) shall be reduced by an amount equivalent to-

- (a) 50% of the amount of the tax as computed under subsection (1) read together with subsection (1A); or
- (b) \$15000,

whichever is the less. (Added 10 of 2007 s. 5)

(2) Any property tax, any salaries tax and any profits tax paid under the provisions of Parts 2, 3 and 4 respectively shall, where the relevant amounts on which such taxes were calculated are included in the total income of the person who paid the tax, be set off for the purposes of collection against the tax charged under this Part on that person. (Replaced 26 of 1969 s. 26. Amended 8 of 1973 s. 11; 8 of 1983 s. 13; 71 of 1983 s. 24; 17 of 1989 s. 12; 43 of 1989 s. 15)

(2A) (Repealed 17 of 1989 s. 12)

(2B) Any tax chargeable on a husband and wife under subsection (1)(b) in any year of assessment (as reduced, for the year of assessment commencing on 1 April 2006, under subsection (1B)) shall be apportioned between them so that each spouse shall, in respect of that year, be charged such proportion of the tax as the total income of that spouse (as reduced under section 42(2) and (5)) bears to joint total income of the husband and wife. (Replaced 43 of 1989 s. 15. Amended 10 of 2007 s. 5)

Provided that where an additional assessment is issued under section 60, the whole of the tax payable shall be charged on the individual assessed in respect of that income under Part 2, 3 or 4. (Added 52 of 1993 s. 4)

(2C) (Repealed 43 of 1989 s. 15)

(3) Where the aggregate of the taxes which may be set off under subsection (2) exceeds the amount of tax charged under this Part, the Commissioner shall, on receipt of a claim from the person charged in the specified form and on being satisfied that the claim is in order, refund such excess to that person. (Added 36 of 1955 s. 50. Amended 26 of 1969 s. 26; 39 of 1969 s. 8; 30 of 1981 s. 8; 71 of 1983 s. 24; 17 of 1989 s. 12; 43 of 1989 s. 15)

(Amended E.R.1 of 2012)

Section:	43A	<b>(Repealed 19 of 1991 s. 4)</b>		30/06/1997
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Part:	8	<b>Double Taxation Relief*</b>	E.R. 1 of 2012	09/02/2012
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**Note:**

\* (Amended 49 of 1956 s. 32)

Section:	44	<b>(Repealed 49 of 1956 s. 33)</b>		30/06/1997
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Section:	45	<b>(Repealed 32 of 1998 s. 28)</b>	32 of 1998 s. 28	17/04/1998
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Section:	46	<b>(Repealed 12 of 1999 s. 3)</b>	12 of 1999	01/07/1997
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Section:	47	<b>(Repealed 49 of 1956 s. 35)</b>		30/06/1997
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Section:	48	<b>(Repealed 49 of 1956 s. 35)</b>		30/06/1997
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Section:	49	<b>Double taxation arrangements</b>	E.R. 1 of 2012	09/02/2012
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- (1) If the Chief Executive in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax under this Ordinance despite anything in any enactment. (Amended 7 of 1986 s. 12; 12 of 1999 s. 3; 1 of 2010 s. 3)
- (1A) If the Chief Executive in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, those arrangements shall have effect and, in particular—
  - (a) shall have effect in relation to tax under this Ordinance despite anything in any enactment; and
  - (b) for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of that territory, shall have effect in relation to any tax of that territory that is the subject of that provision. (Added 1 of 2010 s. 3)
- (2) (Repealed 49 of 1956 s. 36)
- (3) (Repealed 32 of 1998 s. 29)
- (4) Any order made under this section may be revoked by a subsequent order.
- (5) Where any arrangements have effect by virtue of this section, the obligation as to secrecy imposed by section 4 shall not prevent the disclosure to any authorized officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.
- (6) The Chief Executive in Council may make rules for carrying out the provisions of any arrangements having effect under this section. (Amended 12 of 1999 s. 3)
- (7) Rules made under subsection (6) are subject to the approval of the Legislative Council. (Added 1 of 2010 s. 3)  
(Amended 49 of 1956 s. 36)

Section:	50	<b>Tax credits</b>	E.R. 1 of 2012	09/02/2012
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- (1) The provisions of this section shall have effect where, under arrangements having effect under section 49, tax payable in respect of any income in the territory with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Hong Kong; and in this section the expression *foreign tax* (外地稅款) means any tax payable in that territory which under the arrangements is to be so allowed and the expression *tax* (稅款) means tax chargeable under this Ordinance. (Amended 7 of 1986 s. 12; 1 of 2010 s. 4)
- (2) The amount of the tax chargeable in respect of the income shall be reduced by the amount of the credit: Provided that credit shall not be allowed against tax for any year of assessment unless the person entitled to the income is resident in Hong Kong for that year. (Amended 7 of 1986 s. 12)
- (3) The credit shall not exceed the amount which would be produced by computing the amount of the income in accordance with the provisions of this Ordinance and then charging it to tax at a rate ascertained by dividing the tax chargeable (before allowance of credit under any arrangements having effect under section 49) on the total income of the person entitled to the income by the amount of his total income.
- (4) Without prejudice to the provisions of subsection (3), the total credit to be allowed to a person for any year of assessment for foreign tax under all arrangements having effect under section 49 shall not exceed the total tax payable by him for that year of assessment. (Amended 17 of 1989 s. 13)
- (5) In computing the amount of the income-
  - (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);
  - (b) where the tax chargeable depends on the amount received in Hong Kong, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the income; (Amended 7 of 1986 s. 12)
  - (c) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit,

but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

- (6) Subsection (5)(a) and (b) (but not the remainder thereof) shall apply to the computation of total income for the purposes of determining the rate mentioned in subsection (3), and shall apply thereto in relation to all income in the case of which credit falls to be given for foreign tax under arrangements for the time being in force under section 49.
- (7) Where-
- (a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and
  - (b) a dividend is paid which is not of a class in relation to which the arrangements so provide, then, if the dividend is paid to a company which controls, directly or indirectly not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.
- (8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the income of any person for any year of assessment if he elects that credits shall not be allowed in the case of his income for that year.
- (9) Any claim for an allowance by way of credit shall be made not later than 2 years after the end of the year of assessment, and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.
- (10) Where the amount of a credit given under the arrangement is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Hong Kong or elsewhere, nothing in this Ordinance limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than 2 years from the time when all such assessments, adjustments and other determinations have been made, whether in Hong Kong or elsewhere, as are material in determining whether any and if so what credit falls to be given. (Amended 7 of 1986 s. 12)

Part:	9	<b>Returns, etc.</b>	E.R. 1 of 2012	09/02/2012
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Section:	51	<b>Returns and information to be furnished</b>	E.R. 1 of 2012	09/02/2012
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- (1) An assessor may give notice in writing to any person requiring him within a reasonable time stated in such notice to furnish any return which may be specified by the Board of Inland Revenue for-
- (a) property tax, salaries tax or profits tax; or
  - (b) property tax, salaries tax and profits tax,
- under Parts 2, 3, 4, 10A, 10B, and 10C. (Replaced 52 of 1993 s. 5. Amended 5 of 2003 s. 7)
- (2) Every person chargeable to tax for any year of assessment shall inform the Commissioner in writing that he is so chargeable not later than 4 months after the end of the basis period for that year of assessment unless he has already been required to furnish a return under the provisions of subsection (1). (Replaced 49 of 1956 s. 37)
- (2A) An assessor shall give notice to any individual who has elected to be personally assessed under Part 7 requiring that individual within a reasonable time stated in the notice to furnish a return in the specified form of his total income assessable under this Ordinance. (Added 43 of 1989 s. 16)
- (2B) Where a notice is required to be given under subsection (2A) to an individual who is married and not living apart from his or her spouse-
- (a) such notice shall be given to both that individual and his or her spouse; and
  - (b) they shall be required to furnish a return of their joint total income assessable under this Ordinance. (Added 43 of 1989 s. 16)
- (2C) For the purposes of this section, compliance by a person, and his or her spouse when they have jointly elected to be personally assessed, with the requirements of a notice issued under subsection (1) shall be deemed to be compliance with the requirements of a notice issued under subsection (2A) or (2B). (Added 52 of 1993 s. 5)
- (3) An assessor may give notice in writing to any person when and as often as he thinks necessary requiring him within a reasonable time stated in such notice to furnish fuller or further returns respecting any matter of which a return is required or prescribed by this Ordinance.
- (4) For the purposes of obtaining full information in regard to any matter which may affect any liability,

responsibility or obligation of any person under this Ordinance-

(a) an assessor or an inspector may give notice in writing to such person, or to any other person whom he considers may be in possession of information or documents in regard to any such matter as aforesaid, requiring him within such reasonable time as is stated in the notice to furnish all information in his possession respecting any such matter, and to produce for examination any deeds, plans, instruments, books, accounts, trade lists, stock lists, vouchers, bank statements or other documents which the assessor or inspector giving the notice considers are or may be relevant for the purpose aforesaid:

Provided that in the case of a notice under this paragraph requiring the production of any account kept by a solicitor and relating to the affairs of any client or clients of his, production of a copy of all relevant entries therein respecting any matter upon which information is sought shall be a sufficient compliance with the aforesaid requirement of the notice if the copy is certified by the solicitor as being a correct copy of all relevant entries in such account respecting the matter aforesaid;

(b) an assistant commissioner may give notice in writing to such person, or to such other person, requiring him, at a time and place to be named by the assistant commissioner, to attend and be examined, and upon such examination to answer truthfully all questions put to him, respecting any such matter as aforesaid. (Replaced 35 of 1965 s. 26. Amended 40 of 1972 s. 4)

(4AA) Subsection (4) also applies for the purposes of obtaining full information in regard to any matter (referred to in this subsection as “the matter concerned” ) that may affect any liability, responsibility or obligation of any person (referred to in this subsection as “the person concerned” ) under the laws of a territory outside Hong Kong concerning any tax of that territory if-

(a) arrangements having effect under section 49(1A) are made with the government of that territory; and

(b) that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,

and, for the purposes of the application of subsection (4) under this subsection, references to “any such matter” and “any such matter as aforesaid” in subsection (4)(a) and (b) are to be construed as references to the matter concerned, and references to “such person” in subsection (4)(a) and (b) are to be construed as references to the person concerned. (Added 1 of 2010 s. 5)

(4A) For the avoidance of doubt it is hereby declared that the powers conferred by subsection (4) include the power to require information from, and to require the attendance for the purpose of being examined of,-

(a) any person, or any employee of any person, who was a party to any particular land or property transaction;

(b) any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction;

(c) any person who either paid or received, directly or indirectly, any consideration, brokerage, commission or fee in respect of or in connection with any particular land or property transaction; and

(d) any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, respecting any particular land or property transaction,

as to any of the following matters, that is to say-

(i) the full names (including aliases) and addresses of any of the persons referred to in paragraphs (a) to (d) and any other information in his possession which may be helpful in identifying or locating any such persons;

(ii) any consideration, brokerage, commission or fee paid or received in respect of or in connection with any such land or property transaction; and

(iii) the terms and conditions of any such land or property transaction;

and the existence in respect of any communication, whether oral or written, of privilege from disclosure shall not constitute any excuse for the non-disclosure of information as to any of the matters specified in paragraphs (i) to (iii) where disclosure thereof is required from any of the persons referred to in paragraphs (a) to (d), but except as aforesaid nothing in subsection (4) shall require disclosure by counsel or solicitor of any privileged information or communication given or made to him in that capacity. (Added 35 of 1965 s. 26)

(4B) (a) Any person who without reasonable excuse, the burden of proof whereof shall lie upon him, fails to comply with the requirements of a notice given to him under subsection (4)(a) or fails to attend in answer to a notice issued under subsection (4)(b) or having attended fails to answer any questions put to him, being questions which under that paragraph may be put to him, shall be liable to a penalty at level 3 recoverable under section 75 as a civil debt due to the Government: (Amended 11 of 1985 s. 3; L.N 338 of 1995; 19 of 1996 s. 15)

Provided that-

- (i) the Commissioner may compound any such penalty and may before judgment in proceedings therefor stay or compound such proceedings, or may refuse to accept payment of such penalty or any part thereof except under a judgment of the court in proceedings for the recovery thereof;
  - (ii) the court before which any proceedings for such penalty are brought may, if it thinks fit, give judgment for a less amount.
- (b) In addition to giving judgment for the penalty or any less amount as aforesaid, the court may order the person against whom the proceedings were brought to do, within a time specified in the order, the act which he has failed to do. (Added 35 of 1965 s. 26)
- (5) A return, statement, or form purporting to be furnished under this Ordinance by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement, or form shall be deemed to be cognizant of all matters therein.
- (6) Any person who ceases to carry on any trade, profession or business or who ceases to own any source of income or to be the owner of any land or buildings or land and buildings in respect of which tax is chargeable under the provisions of Part 2, 3, 4 or 7 shall so inform the Commissioner in writing within 1 month of such cessation. (Replaced 49 of 1956 s. 37. Amended 8 of 1983 s. 14)
- (7) Any person chargeable to tax under Part 3, 4 or 7 who is about to leave Hong Kong for any period exceeding 1 month shall give notice in writing to the Commissioner of his expected date of departure, and if he intends to return to Hong Kong the approximate date of his return. Such notice shall be given not later than 1 month before the expected date of departure:

Provided that-

- (a) the Commissioner may accept such shorter notice as he may deem reasonable; and
  - (b) this subsection shall not apply in the case of an individual who is required in the course of his employment, business or profession to leave Hong Kong at frequent intervals. (Added 49 of 1956 s. 37. Amended 7 of 1986 s. 12)
- (8) Any person chargeable to tax under Part 2, 3, 4 or 7 who changes his address shall within 1 month inform the Commissioner in writing of the particulars of the change. (Added 2 of 1971 s. 33. Amended 8 of 1983 s. 14)
- (9) (Repealed 43 of 1975 s. 2)

(Amended E.R. 1 of 2012)

Section:	51AA	<b>Form and manner of furnishing return, etc. under section 51</b>	E.R. 1 of 2012	09/02/2012
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- (1) Except as provided in subsection (2) or (3), a return required to be furnished under section 51(1)-
  - (a) shall be furnished in paper form using a printed form specified by the Board of Inland Revenue and provided by the Commissioner; and
  - (b) shall contain the particulars specified in the printed form.
- (2) A return required to be furnished under section 51(1) may, in a case specified by the Commissioner, be furnished in the form of an electronic record that-
  - (a) is sent using a system specified by the Board of Inland Revenue;
  - (b) uses a template specified by the Board of Inland Revenue and made available by the Commissioner; or
  - (c) contains the particulars specified by the Board of Inland Revenue that are arranged in a form specified by the Board of Inland Revenue.
- (3) A return required to be furnished under section 51(1) may, in a case specified by the Commissioner, be furnished by using a telefiling system which-
  - (a) provides for the furnishing of such particulars as may be specified by the Board of Inland Revenue; and
  - (b) is made available by the Commissioner.
- (4) A return shall be regarded as furnished under subsection (3) when the particulars and the password are accepted by the telefiling system.
- (5) Any case to be specified by the Commissioner for the purposes of subsections (2) and (3)-
  - (a) shall be specified by notice published in the Gazette; and
  - (b) may be specified by reference to a class or description of persons or returns.
- (6) The Commissioner may by notice published in the Gazette specify requirements as to-
  - (a) the manner of generating or sending an electronic record or any attachment required to be furnished with an

- electronic record;
  - (b) how a digital signature is to be affixed to, or a password is to be included with, a return furnished under this section; and
  - (c) the software and communication in relation to any attachment required to be furnished with an electronic record.
- (7) The Commissioner may approve a password and designate any system in respect of any communication with the Commissioner for the purposes of this section.
- (8) A notice under subsection (5) or (6) is not subsidiary legislation.

(Added 5 of 2003 s. 8)

Section:	51A	<b>Power to require statement of assets and liabilities, etc.</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where the Commissioner or a deputy commissioner is personally of the opinion that a person has made an incorrect return or supplied false information having the effect of understating his income or profits chargeable to tax and has done so without reasonable excuse and not through an innocent oversight or omission, the Commissioner may, with the consent of the Board of Review, give notice in writing to such person requiring him to furnish within the time limited by such notice, not being less than 30 days from the date of service of the notice, a statement containing particulars of-
- (a) all assets which the person or his spouse possessed in Hong Kong, including any possessed jointly or severally with any other person, at such times as may be specified in the notice; and
  - (b) all liabilities to which the person or his spouse was subject in Hong Kong, including any to which he was subject jointly or severally with any other person, at such times as may be specified in the notice; and
  - (c) all expenditure or disbursements from funds in Hong Kong, including remittances to places outside Hong Kong and gifts, incurred or made by the person or his spouse during such periods as may be specified in the notice; and (Amended 23 of 1998 s. 2)
  - (d) all sums, including remittances, gifts and legacies received in Hong Kong by the person or his spouse during such periods as may be specified in the notice. (Amended 71 of 1983 s. 26; 7 of 1986 s. 12)
- (2) A notice given under subsection (1) shall not specify any time or period earlier than 7 years before the commencement of the year of assessment in which it is given.
- (3) An application for the consent of the Board of Review shall be made in writing by the Commissioner to the clerk of the Board and shall be accompanied by a statement of the material on the basis of which it is proposed to exercise the powers of the Commissioner or deputy commissioner under subsection (1).
- (4) Upon receipt of an application under subsection (3), the Chairman of the Board of Review shall appoint 3 members from the panel of the Board of Review, one of whom shall be the Chairman or a deputy chairman, to consider the application.
- (5) When the Board is considering an application, the Commissioner or his authorized representative may attend, but the person in respect of whom the application is made may not attend.
- (6) Subject to subsection (7), neither in the application nor on the consideration thereof shall the identity of the person in respect of whom the application is made be revealed to the Board of Review.
- (7) If the person on whom a notice under subsection (1) has been given so requests, the Commissioner shall furnish him with a certificate from the Chairman or deputy chairman of the Board of Review certifying that the Board's consent to the issue of the notice was given, and for the purpose of obtaining such a certificate the Commissioner shall reveal to the Chairman or deputy chairman the identity of that person.
- (8) The decision of the Board of Review to grant or refuse consent shall be final.

(Added 26 of 1969 s. 28. Amended 40 of 1972 s. 5; 43 of 1975 s. 3)

Section:	51B	<b>Power to issue search warrant</b>	E.R. 1 of 2012	09/02/2012
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- (1) If the Commissioner, or an officer of the Inland Revenue Department not below the rank of chief assessor authorized in writing by the Commissioner for the purpose (in this section referred to as the authorized officer), satisfies a magistrate, by statement made on oath,-
- (a) that there are reasonable grounds for suspecting that a person has made an incorrect return or supplied false information having the effect of understating his income or profits chargeable to tax and has done so without reasonable excuse and not through an innocent oversight or omission; or
  - (b) that a person has failed to comply with an order of a court made under section 80(1) or (2A) directing him



to comply with the requirements of a notice given to him under section 51(1) or (3), (Amended 56 of 1993 s. 22)

the magistrate may by warrant authorize the Commissioner or authorized officer to exercise the following powers-

- (i) without previous notice at any reasonable time during the day, to enter and have free access to any land, buildings, or place where he suspects there to be any books, records, accounts or documents of that person, or of any other person, which may afford evidence material in assessing the liability of the first-mentioned person for tax, and there to search for and examine any books, records, accounts or documents; (Amended 43 of 1975 s. 4)
- (ii) in carrying out any such search, to open or cause to be removed and opened, any article in which he suspects any books, records, accounts or documents to be contained;
- (iii) to take possession of any books, records, accounts or documents of that person or that person's spouse, and to make copies of such parts of any books, records, accounts or documents of any other person, as may afford evidence material in assessing the liability of the first-mentioned person for tax; (Replaced 43 of 1975 s. 4. Amended 71 of 1983 s. 27)
- (iv) to retain any such books, records, accounts or documents for as long as they may be reasonably required for any assessment to be made or for any proceedings under this Ordinance to be completed:

Provided that if the Commissioner or authorized officer shall retain any book, record, account or document for a period of more than 14 days, the person aggrieved may apply in writing to the Board of Review for an order directing the return thereof and the Board of Review, after hearing the applicant or his authorized representative and the Commissioner or his representative, may so order, either unconditionally or subject to any condition which the Board may consider it proper to impose. (Amended 7 of 1975 s. 34)

(1AA) Subsection (1) also applies to any tax (referred to in this subsection as *the tax concerned*) of a territory outside Hong Kong if-

- (a) arrangements having effect under section 49(1A) are made with the government of that territory; and
- (b) the tax concerned is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,

and, for the purposes of the application of subsection (1) under this subsection, a reference to a person's income or profits chargeable to tax in subsection (1)(a) is to be construed as a reference to a person's income or profits chargeable to the tax concerned, and a reference to a person's liability for tax in subsection (1)(i) and (iii) is to be construed as a reference to a person's liability for the tax concerned. (Added 1 of 2010 s. 6)

- (1A) Any officer of the Inland Revenue Department under the direction of the Commissioner or an authorized officer may assist the Commissioner or an authorized officer in the execution of a warrant issued under subsection (1) and may exercise any of the powers referred to in subsection (1)(i), (ii) and (iii). (Added 40 of 1972 s. 6)
- (2) When exercising any power under subsection (1), the Commissioner or authorized officer shall produce on demand the warrant issued to him under that subsection.
- (3) The person to whose affairs any books, records, accounts or documents taken possession of under subsection (1) relate shall be entitled to examine and make extracts from them at such times and under such conditions as the Commissioner may determine.
- (4) Any person who obstructs or hinders the Commissioner or an authorized officer acting in the discharge of his duty under subsection (1) or an officer assisting him under subsection (1A) commits an offence and is liable on conviction to a fine at level 3 and imprisonment for 6 months. (Amended 56 of 1993 s. 22; L.N. 338 of 1995; 4 of 2010 s. 8)

(Added 26 of 1969 s. 28. Amended 40 of 1972 s. 6)

Section:	51C	<b>Business records to be kept</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (2), every person carrying on a trade, profession or business in Hong Kong shall keep sufficient records in the English or Chinese language of his income and expenditure to enable the assessable profits of such trade, profession or business to be readily ascertained and shall retain such records for a period of not less than 7 years after the completion of the transactions, acts or operations to which they relate. (Amended 7 of 1986 s. 12)
- (2) Subsection (1) shall not require the preservation of any records-
  - (a) which the Commissioner has specified need not be preserved; or
  - (b) of a corporation which has been dissolved.

- (3) For the purposes of this section, *records* (紀錄) includes-
- (a) books of account (whether kept in a legible form, or in a non-legible form by means of a computer or otherwise) recording receipts and payments, or income and expenditure; and
  - (b) vouchers, bank statements, invoices, receipts, and such other documents as are necessary to verify the entries in the books of account referred to in paragraph (a). (Added 48 of 1995 s. 10)
- (4) Without limiting the generality of subsection (3), the records required to be kept and retained pursuant to subsection (1) in respect of any trade, profession or business carried on during any year of assessment by any person, include-
- (a) a record of the assets and liabilities of the person in relation to that trade, profession or business;
  - (b) a record of all entries from day to day of all sums of money received and expended by the person in relation to that trade, profession or business and the matters in respect of which the receipt and expenditure take place;
  - (c) where that trade, profession or business involves dealing in goods-
    - (i) a record of all goods purchased, and of all goods sold in the carrying on of that trade, profession or business (except those sold in the course of cash retail trading customarily conducted in a trade, profession or business of the kind of which that trade, profession or business is one) showing the goods, and the sellers and buyers in sufficient detail to enable the Commissioner to readily verify the quantities and values of the goods and the identities of the sellers and buyers; and all invoices relating thereto; and
    - (ii) statements (including quantities and values) of trading stock held by the person-
      - (A) at the end of each year of assessment; or
      - (B) where the Commissioner is satisfied that the accounts of such trade, profession or business are made up to a day other than 31 March, on that day in the year of assessment,
 and all records of stocktakings from which any such statement of trading stock has been prepared; and
  - (d) where that trade, profession or business involves the provision of services, records of the services provided in sufficient detail to enable the Commissioner to readily verify the entries referred to in paragraph (b). (Added 48 of 1995 s. 10)

(Added 26 of 1969 s. 28)

Section:	51D	<b>Rent records to be kept</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsection (2), every person who is the owner of land or buildings or land and buildings situated in Hong Kong shall keep sufficient records in the English or Chinese languages of the consideration, in money or money's worth, payable or deemed to be payable to him, to his order or for his benefit on or after 1 April 1983 in respect of the right of use of that land or buildings or land and buildings to enable the assessable value of that land or buildings or land and buildings to be readily ascertained and shall retain such records for a period of not less than 7 years after the completion of the transactions, acts or operations to which they relate.
- (2) Subsection (1) shall not require the preservation of any records-
- (a) which the Commissioner has specified need not be preserved; or
  - (b) of a corporation which has been dissolved.

(Added 8 of 1983 s. 15)

Section:	52	<b>Information to be furnished by officials and employers</b>	E.R. 1 of 2012	09/02/2012
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- (1) The Commissioner may give notice in writing to any officer in the employment of the Government or of any public body requiring him within a reasonable time stated in such notice to furnish any particulars which he may require for the purposes of this Ordinance which may be in the possession of such officer:  
Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he is under any express statutory obligation to observe secrecy.
- (2) Every person who is an employer shall, when required to do so by notice in writing given by an assessor, furnish within a reasonable time stated in such notice a return containing the names and places of residence and the full amount of the remuneration, whether in cash or otherwise, for the period specified in the notice, of-
- (a) all persons employed by him in receipt of remuneration in excess of a minimum figure to be fixed by the assessor; and

- (b) any other person employed by him named by the assessor.
- (3) For the purposes of this section, any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed by the company. (Amended 7 of 1986 s. 9)
- (4) Where any person who is an employer commences to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part 3, or any married person, he shall give notice thereof in writing to the Commissioner not later than 3 months after the date of commencement of such employment, stating the full name and address of the individual, the date of commencement and the terms of employment. (Added 49 of 1956 s. 38. Amended 7 of 1986 s. 9; 43 of 1989 s. 17)
- (5) Where any person who is an employer ceases or is about to cease to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part 3, or any married person, he shall give notice thereof in writing to the Commissioner not later than 1 month before such individual ceases to be employed in Hong Kong, stating the name and address of the individual and the expected date of cessation: (Amended 7 of 1986 s. 9; 43 of 1989 s. 17)
- Provided that the Commissioner may accept such shorter notice as he may deem reasonable. (Added 49 of 1956 s. 38)
- (6) The employer of any individual who is chargeable to tax under Part 3 and is about to leave Hong Kong for any period exceeding 1 month shall give notice in writing to the Commissioner of the expected date of departure of such individual. Such notice shall be given not later than 1 month before the expected date of departure:  
Provided that-
- (a) the Commissioner may accept such shorter notice as he may deem reasonable; and
- (b) this subsection shall not apply in the case of an individual who is required in the course of his employment to leave Hong Kong at frequent intervals. (Added 49 of 1956 s. 38)
- (7) An employer who is required by subsection (6) to give notice to the Commissioner of the expected departure of an individual shall not, in the case of an individual whom he has ceased, or is about to cease, to employ in Hong Kong, except with the consent in writing of the Commissioner or in the case of money paid to the Commissioner on the direction of the individual, make any payment of money or money's worth to or for the benefit of the individual for a period of 1 month from the date on which he gave the notice; and compliance with this subsection shall constitute a defence in any proceedings against an employer in respect of his failure to make any payment to or for the benefit of the individual during the said period. (Added 26 of 1969 s. 29. Amended 2 of 1971 s. 34)
- (8) Notwithstanding anything to the contrary in subsections (4) and (5) an employer shall not be required to give notice under those subsections in respect of a married person if he has reasonable grounds for believing that neither that person nor his or her spouse are, or are likely to be, chargeable to tax under Part 3. (Added 7 of 1986 s. 9. Amended 43 of 1989 s. 17)

(Amended 7 of 1986 s. 12; E.R. 1 of 2012)

Section:	53	<b>Who may act for incapacitated or non-resident persons</b>	E.R. 1 of 2012	09/02/2012
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An act or thing required by or under this Ordinance to be done by any person shall, if such person is an incapacitated or non-resident person, be deemed to be required to be done by the trustee of such incapacitated person or by the agent of such non-resident person, as the case may be.

Section:	54	<b>Liability of executor of deceased taxpayer</b>	E.R. 1 of 2012	09/02/2012
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The executor of a deceased person shall be chargeable with the tax for all periods prior to the date of such person's death with which the said person would be chargeable if he were alive, and shall be liable to do all such acts, matters or things as the deceased person if he were alive would be liable to do under this Ordinance:

Provided that-

- (a) no proceedings, other than an assessment to additional tax under section 82A, shall be instituted against the executor under the provisions of Part 14 in respect of any act or default of the deceased person; (Amended 43 of 1975 s. 5)
- (b) where the person dies before 11 February 2006, no assessment or additional assessment, other than an assessment to additional tax under section 82A, in respect of a period prior to the date of the person's death shall be made after-
- (i) the expiry of 1 year from such date of death; or

- (ii) the expiry of 1 year from the date of filing any affidavit required under the Estate Duty Ordinance (Cap 111),  
whichever is the later; and (Amended 26 of 1969 s. 30; 56 of 1993 s. 23; 21 of 2005 s. 19)
- (c) where the person dies at any time on or after 11 February 2006 in any year of assessment, no assessment or additional assessment (other than an assessment to additional tax under section 82A) in respect of a period prior to his death shall be made after the expiry of 3 years immediately after that year of assessment. (Added 21 of 2005 s. 19. Amended L.N. 210 of 2005)

(Amended E.R. 1 of 2012)

Section:	55	<b>(Repealed 49 of 1956 s. 39)</b>		30/06/1997
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Section:	56	<b>Precedent partner to act on behalf of partnership</b>	E.R. 1 of 2012	09/02/2012
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- (1) Wherever 2 or more persons in partnership act as agents, or are employers, or are persons in receipt of profits or act in any other capacity whatever, either on behalf of themselves or of any other person, the precedent partner of such partnership shall be answerable for doing all such acts, matters and things as would be required to be done under the provisions of this Ordinance by an individual acting in such capacity: (Amended 49 of 1956 s. 40)
- Provided that any person to whom a notice has been given under the provisions of this Ordinance as precedent partner of a partnership shall be deemed to be the precedent partner thereof unless he proves that he is not a partner in such partnership, or that some other person resident in Hong Kong is the precedent partner thereof. (Amended 7 of 1986 s. 12)
- (2) Where 2 or more persons who are not in partnership act jointly in any capacity mentioned in subsection (1), they shall be jointly and severally answerable for doing all such acts, matters, and things as would be required to be done under the provisions of this Ordinance by an individual acting in such capacity.

Section:	56A	<b>Joint owners and co-owners</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where 2 or more persons are joint owners or owners in common of any land or buildings or land and buildings, any of those persons appearing from any deed, conveyance, judgment or other instrument in writing registered in the Land Registry under the Land Registration Ordinance (Cap 128) to be such an owner shall be answerable for doing all such acts, matters and things as would be required to be done under the provisions of this Ordinance by a sole owner. (Amended 56 of 1992 s. 20; 8 of 1993 s. 2)
- (2) Nothing in subsection (1) shall relieve any person of any obligation under this Ordinance or affect any right and obligation of joint owners or owners in common as between themselves.
- (3) Where any person pays property tax under subsection (1) and that person is not, apart from that subsection, liable to that tax or part of it, that person may recover from any other person that tax or part of it to which that other person, apart from that subsection, is liable under this Ordinance.

(Added 8 of 1983 s. 16)

Section:	57	<b>Principal officer to act on behalf of a corporation or body of persons</b>	E.R. 1 of 2012	09/02/2012
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- (1) The secretary, manager, any director or the liquidator of a corporation and the principal officer of a body of persons shall be answerable for doing all such acts, matters, or things as are required to be done under the provisions of this Ordinance by such corporation or body of persons.
- (2) If no secretary, manager, director or liquidator of a corporation or no principal officer of a body of persons is ordinarily resident in Hong Kong, the corporation or body of persons, as the case may be, shall inform the Commissioner, and keep him so informed at all times, of the name and address of an individual ordinarily resident in Hong Kong who shall be answerable for doing all such acts, matters, or things as are required to be done under the provisions of this Ordinance by such corporation or body of persons. (Amended 7 of 1986 s. 12)
- (Replaced 2 of 1971 s. 35)

Section:	58	<b>Signature and service of notices</b>	E.R. 1 of 2012	09/02/2012
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- (1) Every notice to be given by the Commissioner, a deputy commissioner, an assistant commissioner, an assessor or an inspector under this Ordinance shall bear the name of the Commissioner, deputy commissioner, assistant commissioner, assessor or inspector, as the case may be, and every such notice shall be valid if the name of the Commissioner, deputy commissioner, assistant commissioner, assessor or inspector is duly printed or signed thereon. (Replaced 19 of 1996 s. 10)
- (2) Every notice given by virtue of this Ordinance may be served on a person either personally or by being delivered at, or sent by post to, his last known postal address, place of abode, business or employment or any place at which he is, or was during the year to which the notice relates, employed or carrying on business or the land or buildings or land and buildings in respect of which he is chargeable to tax under Part 2. (Amended 49 of 1956 s. 42; 26 of 1969 s. 31; 8 of 1983 s. 17; 76 of 1993 s. 8)
- (3) Any notice sent by post shall be deemed, unless the contrary is shown, to have been served on the day succeeding the day on which it would have been received in the ordinary course by post. (Amended 76 of 1993 s. 8)
- (4) In proving service by post it shall be sufficient to prove that the letter containing the notice was duly addressed and posted.
- (5) Every name printed or signed on any notice or signed on any certificate given or issued for the purposes of this Ordinance which purports to be the name of the person authorized to give or issue the same shall be judicially noticed.
- (6) If a notice given under this Part requires something to be done within a time stated in the notice, the Commissioner or, in the case of a notice given by an assessor, an assessor may by notice in writing extend the time for complying with the notice. (Added 2 of 1971 s. 36)

(Amended E.R. 1 of 2012)

Section:	58A	<b>(Repealed 43 of 1989 s. 18)</b>		30/06/1997
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Part:	10	<b>Assessments</b>	E.R. 1 of 2012	09/02/2012
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Section:	59	<b>Assessor to make assessments</b>	E.R. 1 of 2012	09/02/2012
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- (1) Every person who is in the opinion of an assessor chargeable with tax under this Ordinance shall be assessed by him as soon as may be after the expiration of the time limited by the notice requiring him to furnish a return under section 51(1):  
Provided that the assessor may assess any person at any time if he is of opinion that such person is about to leave Hong Kong, or that for any other reason it is expedient to do so. (Amended 7 of 1986 s. 12)
- (1A) Notwithstanding subsection (1), where an assessor is of the opinion that an election by an individual under section 41 for personal assessment on his total income would result in a refund becoming due of the whole of the amount which he might lawfully be assessed for property tax if such amount were paid, the assessor shall not be obliged to proceed to make an assessment in respect of that tax. (Added 26 of 1969 s. 32)
- (1B) Notwithstanding subsection (1), where an assessor is satisfied that-
  - (a) an individual or his or her spouse, not being a spouse living apart from that individual, carries on (not jointly with another person) a trade, profession or business in Hong Kong and the individual is eligible to elect under section 41 for personal assessment on his total income; and
  - (b) the assessable profits of that individual in respect of his trade, profession or business in Hong Kong for any year of assessment do not exceed the amount specified in the second column of item 1(c) of the Schedule 4; and (Amended 32 of 1981 s. 8; 29 of 1982 s. 13; 28 of 1987 s. 6; 28 of 1988 s. 5; 17 of 1989 s. 15; 30 of 1990 s.4)
  - (c) the individual, and his or her spouse, not being a spouse living apart from that individual, has no income, property, or profits chargeable to tax under this Ordinance for that year of assessment, other than in respect of such trade, profession or business,

the assessor shall not be obliged to proceed to make an assessment of profits tax in respect of such assessable

profits. (Added 2 of 1971 s. 37. Amended 7 of 1975 s. 35; 7 of 1986 s. 12; 43 of 1989 s. 19)

- (1C) Notwithstanding subsection (1), where an assessor is satisfied that-
- (a) an individual or his or her spouse, not being a spouse living apart from that individual, carries on a trade, profession or business in Hong Kong, either solely or jointly with another person, and the individual is eligible to elect under section 41 for personal assessment on his total income; and (Amended 7 of 1986 s. 12)
  - (b) the individual, and his or her spouse, not being a spouse living apart from that individual, has no income, property or profits chargeable to tax under this Ordinance for any year of assessment, other than in respect of such trade, profession or business; and
  - (c) the assessable profits of the individual or his or her spouse, not being a spouse living apart from that individual, in respect of such trade, profession or business for such year of assessment, or his or her share of those profits if he or she is a partner in the trade, profession or business, are such that if there were an election for personal assessment under section 41 and after taking into account the allowances that would have to be deducted under Part 5, no tax would be charged on either of them, (Replaced 71 of 1983 s. 29)
- the assessor shall not be obliged to proceed to make an assessment of profits tax in respect of such assessable profits and, if he has made such an assessment, he may notwithstanding section 70, annul the assessment or in case of assessment of a partnership may reduce it insofar as it relates to the share of profits of such individual or his or her spouse. (Added 2 of 1971 s. 37. Amended 71 of 1983 s. 29; 43 of 1989 s. 19; 19 of 1991 s. 5)
- (2) Where a person has furnished a return in accordance with the provisions of section 51 the assessor may either- (Amended 49 of 1956 s. 43)
- (a) accept the return and make an assessment accordingly; or
  - (b) if he does not accept the return, estimate the sum in respect of which such person is chargeable to tax and make an assessment accordingly. (Amended 49 of 1956 s. 43; 19 of 1996 s. 11)
  - (c) (Repealed 56 of 1993 s. 24)
- (3) Where a person has not furnished a return and the assessor is of the opinion that such person is chargeable with tax, he may estimate the sum in respect of which such person is chargeable to tax and make an assessment accordingly, but such assessment shall not affect the liability of such person to a penalty by reason of his failure or neglect to deliver a return. (Amended 49 of 1956 s. 43)
- (4) In the case of profits from a trade or business, if accounts of such trade or business have not been kept in a satisfactory form, the assessor may assess the profits or income of such trade or business on the basis of the usual rate of net profit on the turnover of such trade or business, and the Board of Inland Revenue may prescribe the amounts of such usual rates of profits in particular classes of trade or business.

(Amended E.R. 1 of 2012)

Section:	59A	<b>(Repealed 52 of 1993 s. 6)</b>		30/06/1997
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Section:	60	<b>Additional assessments</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where it appears to an assessor that for any year of assessment any person chargeable with tax has not been assessed or has been assessed at less than the proper amount, the assessor may, within the year of assessment or within 6 years after the expiration thereof, assess such person at the amount or additional amount at which according to his judgment such person ought to have been assessed, and the provisions of this Ordinance as to notice of assessment, appeal and other proceedings shall apply to such assessment or additional assessment and to the tax charged thereunder: (Amended 16 of 1951 s. 10; 49 of 1956 s. 44)
- Provided that-
- (a) (Repealed 2 of 1971 s. 39)
  - (b) where the non-assessment or under-assessment of any person for any year of assessment is due to fraud or wilful evasion, such assessment or additional assessment may be made at any time within 10 years after the expiration of that year of assessment. (Amended 49 of 1956 s. 44)
- (2) Where it appears to an assessor that the whole or part of any tax repaid to a person (otherwise than in consequence of an assessment having been determined on objection or appeal) has been repaid by mistake, whether of fact or law, the assessor may, within the year of assessment to which the repayment relates or within 6 years after the expiration thereof, assess such person in the amount of tax so repaid by mistake, and the provisions of this Ordinance as to notice of assessment, objection, appeal and other proceedings shall apply to

such assessment and to the tax charged thereunder. (Added 2 of 1971 s. 39)

- (3) No assessment shall be made under subsection (2) if the repayment was in fact made on the basis of, or in accordance with, the practice generally prevailing at the time when the repayment was made. (Added 2 of 1971 s. 39)

Section:	61	<b>Certain transactions and dispositions to be disregarded</b>	E.R. 1 of 2012	09/02/2012
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Where an assessor is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the person concerned shall be assessable accordingly.

Section:	61A	<b>Transactions designed to avoid liability for tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) This section shall apply where any transaction has been entered into or effected after the commencement\* of the Inland Revenue (Amendment) Ordinance 1986 (7 of 1986) (other than a transaction in pursuance of a legally enforceable obligation incurred prior to such commencement) and that transaction has, or would have had but for this section, the effect of conferring a tax benefit on a person (in this section referred to as **the relevant person**), and, having regard to- (\*Commencement date-14 March 1986)
- (a) the manner in which the transaction was entered into or carried out;
  - (b) the form and substance of the transaction;
  - (c) the result in relation to the operation of this Ordinance that, but for this section, would have been achieved by the transaction;
  - (d) any change in the financial position of the relevant person that has resulted, will result, or may reasonably be expected to result, from the transaction;
  - (e) any change in the financial position of any person who has, or has had, any connection (whether of a business, family or other nature) with the relevant person, being a change that has resulted or may reasonably be expected to result from the transaction;
  - (f) whether the transaction has created rights or obligations which would not normally be created between persons dealing with each other at arm's length under a transaction of the kind in question; and
  - (g) the participation in the transaction of a corporation resident or carrying on business outside Hong Kong, it would be concluded that the person, or one of the persons, who entered into or carried out the transaction, did so for the sole or dominant purpose of enabling the relevant person, either alone or in conjunction with other persons, to obtain a tax benefit.
- (2) Where subsection (1) applies, the powers conferred upon an assessor under Part 10 shall be exercised by an assistant commissioner, and such assistant commissioner shall, without derogation from the powers which he may exercise under that Part, assess the liability to tax of the relevant person-
- (a) as if the transaction or any part thereof had not been entered into or carried out; or
  - (b) in such other manner as the assistant commissioner considers appropriate to counteract the tax benefit which would otherwise be obtained.

- (3) In this section-

**tax benefit** (稅項利益) means the avoidance or postponement of the liability to pay tax or the reduction in the amount thereof;

**transaction** (交易) includes a transaction, operation or scheme whether or not such transaction, operation or scheme is enforceable, or intended to be enforceable, by legal proceedings.

(Added 7 of 1986 s. 10. Amended E.R. 1 of 2012)

Section:	61B	<b>Utilization of losses to avoid tax</b>	E.R. 1 of 2012	09/02/2012
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Where the Commissioner is satisfied that-

- (a) any change in the shareholding in any corporation, as a direct or indirect result of which profits have been received by or accrued to that corporation during any year of assessment, has been effected by any person after the commencement\* of the Inland Revenue (Amendment) Ordinance 1986 (7 of 1986); and (\*Commencement date - 14 March 1986)
- (b) the sole or dominant purpose of the change was for the purpose of utilizing any loss or any balance of any

loss sustained in a trade, profession or business carried on by the corporation, in order to avoid liability on the part of that corporation or any other person for the payment of any tax or to reduce the amount thereof, the set off of any such loss or balance of loss against any such profits shall be disallowed.

(Added 7 of 1986 s. 10)

Section:	62	<b>Notice to be issued by Commissioner</b>	E.R. 1 of 2012	09/02/2012
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- (1) The Commissioner shall give a notice of assessment to each person who has been assessed stating the amount assessed, the amount of tax charged, and such due date for payment thereof as may be fixed by the Commissioner. (Amended 2 of 1971 s. 40)
- (2) (Repealed 52 of 1993 s. 6)
- (3) Where by reason of an amendment of the law it is necessary to vary the amount of tax charged in any notice of assessment the Commissioner may give such notification as may be necessary to the person assessed in that notice of assessment, and any notification so given shall, as regards any particulars of the assessment contained in the notification which have not been included in the notice of assessment, have effect as if the notification were a notice of assessment.

(Amended 35 of 1965 s. 27)

Section:	63	<b>Validity of assessments, etc.</b>	E.R. 1 of 2012	09/02/2012
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No notice, assessment, certificate, or other proceeding purporting to be in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

Section:	63A	<b>(Repealed 12 of 1999 s. 3)</b>	12 of 1999	01/07/1997
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Part:	10A	<b>Provisional Salaries Tax</b>	E.R. 1 of 2012	09/02/2012
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Section:	63B	<b>Liability for provisional salaries tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Every person who is chargeable to salaries tax under Part 3 in respect of any year of assessment shall be liable to pay provisional salaries tax in respect of that year of assessment in accordance with this Part.
- (2) In the case of a husband and wife, where either the husband or wife is assessed to salaries tax under section 10(3) on the aggregate of their net chargeable incomes in respect of the year of assessment preceding that in respect of which provisional salaries tax is payable-
  - (a) such provisional salaries tax shall be payable on the net chargeable income adjusted as necessary under section 63C(1); and
  - (b) the person who is assessed to salaries tax in respect of that preceding year of assessment shall be solely liable to pay that provisional salaries tax. (Replaced 43 of 1989 s. 20)

(Replaced 71 of 1983 s. 30. Amended E.R. 1 of 2012)

Section:	63C	<b>Amount of provisional salaries tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Subject to subsections (2) and (3), provisional salaries tax in respect of any year of assessment shall be payable at the rates specified in Schedule 2 for that year of assessment by reference to the amount of the net chargeable income for the preceding year of assessment adjusted, for the purposes of this section, as follows-
  - (a) any loss set off under section 12A in calculating the net assessable income, or net assessable incomes, on which that net chargeable income is based, shall be added; (Amended 71 of 1983 s. 31(a)(i))
  - (b) any loss which may be set off under section 12A in the year of assessment shall be set off against that amount:



Provided that-

- (i) in respect of the year of assessment up to and including the year of assessment commencing on 1 April 1984, in no case shall the amount of provisional salaries tax charged on any person under this subsection exceed the amount which would have been chargeable on him had the standard rate for the year of assessment been charged on the whole of his assessable income for the preceding year of assessment as reduced by the outgoings, expenses and allowances provided for in section 12(1) and any excess set off under section 12A; and
  - (ii) in respect of the year of assessment commencing on 1 April 1985 and subsequent years of assessment, in no case shall the amount of provisional salaries tax charged under this subsection exceed the amount which would have been chargeable had the standard rate been charged on the whole of-
    - (A) the net assessable income for the preceding year of assessment as reduced by such deductions as are under Part 4A allowable to that person; or
    - (B) in the case of a husband and wife to whom section 63B(2) applies, the aggregate of their net assessable incomes for the preceding year of assessment as reduced by such deductions as are under Part 4A allowable to them. (Replaced 43 of 1989 s. 21. Amended 31 of 1998 s. 19)
- (1A) (Repealed 43 of 1989 s. 21)
- (2) If a person commences to derive income from a source on a day within any year of assessment, an assessor may estimate the sum in respect of which provisional salaries tax is payable in that year and the succeeding year of assessment. (Amended 71 of 1983 s. 31)
  - (3) If a person ceases to derive income from a source within any year of assessment an assessor may estimate the sum in respect of which provisional salaries tax is payable for that year of assessment and for the year preceding that year of assessment. (Amended 71 of 1983 s. 31)
  - (4) If a person is liable to pay provisional salaries tax, an assessor shall, as soon as may be after the expiration of the time limited by the notice requiring that person to furnish a return under section 51(1), assess or estimate the amount of the provisional salaries tax which he is liable to pay.
  - (5) Notwithstanding subsection (4), an assessor may assess or estimate the amount of provisional salaries tax which any person is liable to pay if he is of the opinion that the person is about to leave Hong Kong or that for any other reason it is expedient to do so. (Amended 7 of 1986 s. 12)
  - (6) When an assessor has assessed or estimated the amount of provisional salaries tax which a person is liable to pay, the Commissioner shall give a notice to that person stating the amount of provisional salaries tax to be paid, and such due date for payment thereof as may be fixed by the Commissioner.
  - (6A) Where in any year of assessment a notice for payment of provisional salaries tax has been given under subsection (6) and thereafter any rate specified in Schedule 2, or any allowance provided for in Part 5, for that year of assessment is amended, the amount of provisional salaries tax stated in the notice shall nevertheless be payable. (Added 32 of 1981 s. 9. Amended 43 of 1989 s. 21)
  - (7) For the purposes of Part 12, provisional salaries tax shall be deemed to be a tax charged under the provisions of this Ordinance and a notice under subsection (6) shall be deemed to be a notice of assessment.  
(Added 8 of 1973 s. 13. Amended 7 of 1975 s. 36; E.R. 1 of 2012)

**Note:**

**For the calculation of net chargeable income under this section in order to ascertain provisional salaries tax in respect of the year of assessment commencing from 1 April 1990, 1 April 1991, 1 April 1992, 1 April 1993, 1 April 1994, 1 April 1995, 1 April 1996, 1 April 1997, 1 April 1998, 1 April 2003, 1 April 2004, 1 April 2007 or 1 April 2008, please also see the transitional provisions contained in 30 of 1990, 42 of 1991, 34 of 1992, 28 of 1993, 37 of 1994, 48 of 1995, 24 of 1996, 42 of 1997, 31 of 1998, 24 of 2003, 10 of 2007 or 21 of 2008 respectively.**

Section:	63D	<b>Demands for provisional salaries tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) In any year of assessment, a notice for payment of provisional salaries tax may be-
  - (a) given separately to any person liable to pay provisional salaries tax; or
  - (b) included in a notice of assessment to salaries tax. (Amended 7 of 1975 s. 37)
- (2) (Repealed 7 of 1975 s. 37)

(Added 8 of 1973 s. 13)

Section:	63E	<b>Holding over of payment of provisional salaries tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where in relation to any year of assessment a person is liable to pay provisional salaries tax, he may, by notice in writing lodged with the Commissioner not later than-
- (a) 28 days before the day by which the provisional salaries tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6), whichever is the later, apply to the Commissioner on any of the grounds specified in subsection (2) to have the payment of the whole or part of such tax held over until he is required to pay salaries tax for that year of assessment or, in the case of an application on the ground set out in subsection (2)(d), until-
    - (i) the determination of the objection or settlement thereof under section 64(3); or
    - (ii) he is required to pay salaries tax for that year of assessment, whichever is the sooner. (Replaced 52 of 1993 s. 7)
- #(2) The grounds referred to in subsection (1) are-
- \*(a) that the person assessed to provisional salaries tax has become entitled during the year of assessment to an allowance under Part 5, which allowance was not taken into account in the ascertainment of his net chargeable income for the year preceding the year of assessment or in estimating the sum in respect of which such person is liable to pay provisional salaries tax; (Amended 33 of 1973 s. 4; 79 of 1978 s. 3; 43 of 1989 s. 22)
  - \*(b) that the net chargeable income during the year of assessment of the person assessed to provisional salaries tax is, or is likely to be, less than 90% of the net chargeable income for the year preceding the year of assessment or of the estimated sum in respect of which such person is liable to pay provisional salaries tax; (Amended 7 of 1975 s. 38)
  - (c) that the person assessed to provisional salaries tax has ceased, or will before the end of the year of assessment cease, to derive income chargeable to salaries tax; or (Amended 7 of 1975 s. 38)
  - (d) that the person assessed to provisional salaries tax has objected under section 64 to his assessment to salaries tax for the year preceding the year of assessment. (Added 7 of 1975 s. 38)
- (3) On receipt of an application under subsection (1), the Commissioner shall consider the same and may hold over the payment of the whole or part of the provisional salaries tax.
- (4) The Commissioner shall, by notice in writing, inform the person applying under subsection (1) of his decision.
- (5) (Repealed 43 of 1989 s. 22)

(Added 8 of 1973 s. 13. Amended E.R. 1 of 2012)

**Note:**

# On additional grounds for making a hold over application in respect of the year of assessment commencing on 1 April 2003 or 1 April 2008, please see the transitional provisions in section 15(1), (2) and (5) to (7) of 24 of 2003 or section 17 of 21 of 2008 respectively.

\* For the calculation of the "net chargeable income for the year preceding the year of assessment" commencing on 1 April 2003 or 1 April 2004, 1 April 2007 or 1 April 2008, please see the transitional provisions in section 14 of 24 of 2003, section 9 of 10 of 2007 or section 16 of 21 of 2008 respectively.

Section:	63F	<b>Provisional salaries tax to be applied against salaries tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) When any person had paid provisional salaries tax in respect of any year of assessment, the Commissioner shall, not later than when he gives notice of assessment of salaries tax, apply the amount of provisional salaries tax so paid in payment first of-
- (a) the salaries tax payable by that person for that year of assessment; then
  - (b) the provisional salaries tax payable in respect of the year of assessment succeeding that year of assessment, and shall refund to the person paying the provisional salaries tax the amount of the provisional salaries tax not so applied. (Replaced 7 of 1975 s. 39)
- (2) (Repealed 43 of 1989 s. 23)

(Added 8 of 1973 s. 13)

Part:	10B	<b>Provisional Profits Tax</b>	E.R. 1 of 2012	09/02/2012
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Section:	63G	<b>Liability for provisional profits tax</b>	E.R. 1 of 2012	09/02/2012
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Every person who is chargeable to profits tax under Part 4 in respect of the year of assessment commencing on 1 April 1975 or any succeeding year of assessment shall be liable to pay provisional profits tax in respect of that year of assessment in accordance with this Part.

(Added 7 of 1975 s. 40. Amended E.R. 1 of 2012)

Section:	63H	<b>Amount of provisional profits tax</b>	E.R. 1 of 2012	09/02/2012
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(1) Subject to subsections (1A), (2), (3) and (4), provisional profits tax in respect of any year of assessment shall be payable at the standard rate by reference to the amount of assessable profits for the year preceding the year of assessment, but after the set off of any loss available for set off in the year of assessment under section 19 or 19C. (Amended 56 of 1993 s. 25)

(1A) In the case of-

(a) a corporation; and

(b) a corporation (*relevant corporation*) to which a share of the assessable profits of a partnership is apportioned under section 22A and is charged in the partnership name under section 22, provisional profits tax shall be charged on the assessable profits of that corporation, or on that share of the assessable profits of that relevant corporation, as the case may be, at the rate specified in Schedule 8. (Added 56 of 1993 s. 25)

(2) In calculating any assessable profits for a year preceding a year of assessment for the purposes of computing provisional profits tax under subsection (1), there shall be disregarded any loss available for set off in that year.

(3) Where the amount of assessable profits of a person for the year preceding the year of assessment was calculated on a basis period of more or less than 1 year, an assessor may estimate the sum in respect of which such person is liable to pay provisional profits tax in that year of assessment.

(4) If a person commences to carry on a trade, profession or business in Hong Kong on a day within a year of assessment commencing on or after 1 April 1974, an assessor may estimate the sum in respect of which such person is liable to pay provisional profits tax in that year and the succeeding year of assessment. (Amended 7 of 1986 s. 12)

(5) If a person is liable to pay provisional profits tax, an assessor shall, as soon as may be after the expiration of the time limited by the notice requiring that person to furnish a return under section 51(1), assess or estimate the amount of provisional profits tax which he is liable to pay.

(6) Notwithstanding subsection (5), an assessor may assess or estimate the amount of provisional profits tax which any person is liable to pay if he is of the opinion that the person is about to leave Hong Kong or that for any other reason it is expedient to do so. (Amended 7 of 1986 s. 12)

(7) When an assessor has assessed or estimated the amount of provisional profits tax which a person is liable to pay, the Commissioner shall give a notice to that person stating the amount of provisional profits tax to be paid, and such due date for payment thereof as may be fixed by the Commissioner.

(7A) Where in any year of assessment a notice for payment of provisional profits tax has been given under subsection (7) and thereafter the rate of provisional tax for that year of assessment is amended, the amount of provisional profits tax stated in the notice shall nevertheless be payable. (Added 32 of 1981 s. 10)

(8) For the purposes of Part 12, provisional profits tax shall be deemed to be a tax charged under this Ordinance and a notice under subsection (7) shall be deemed to be a notice of assessment.

(Added 7 of 1975 s. 40. Amended E.R. 1 of 2012)

Section:	63I	<b>Demands for provisional profits tax</b>	E.R. 1 of 2012	09/02/2012
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In any year of assessment, a notice for payment of provisional profits tax may be-

(a) given separately to the person liable to pay that provisional profits tax; or

(b) included in a notice of assessment to profits tax.

(Added 7 of 1975 s. 40)

Section:	63J	<b>Holding over of payment of provisional profits tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where in relation to any year of assessment a person is liable to pay provisional profits tax, he may, by notice in writing lodged with the Commissioner not later than-
- (a) 28 days before the day by which the provisional profits tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional profits tax under section 63H(7), whichever is the later, apply to the Commissioner on any of the grounds specified in subsection (2) to have the payment of the whole or part of such tax held over until he is required to pay profits tax for that year of assessment or, in the case of an application on the ground set out in subsection (2)(e), until-
    - (i) the determination of the objection or settlement thereof under section 64(3); or
    - (ii) he is required to pay profits tax for that year of assessment, whichever is the sooner. (Replaced 52 of 1993 s. 8)
- \* (2) The grounds referred to in subsection (1) are-
- (a) that the assessable profits for the year of assessment of the person assessed to provisional profits tax are, or are likely to be, less than 90 per cent of the assessable profits for the year preceding the year of assessment or of the estimated sum in respect of which the person is liable to pay provisional profits tax;
  - (b) that the amount of any loss brought forward for set off to that year of assessment under section 19 or 19C has been omitted or is incorrect;
  - (c) that the person assessed to provisional profits tax has ceased, or will before the end of the year of assessment cease, to carry on his trade, profession or business and that the assessable profits to be assessed under section 18D for that year of assessment are, or are likely to be, less than the assessable profits for the year preceding the year of assessment or of the estimated sum in respect of which the person is liable to pay provisional profits tax;
  - (d) that the person assessed to provisional profits tax has elected to be personally assessed under Part 7 for that year of assessment and that such personal assessment is likely to reduce his liability to tax; or (Amended 19 of 1996 s. 12)
  - (e) that the person assessed to provisional profits tax has objected under section 64 to his assessment to profits tax for the year preceding the year of assessment.
- (3) On receipt of an application under subsection (1), the Commissioner shall consider the same and may hold over the payment of the whole or part of the provisional profits tax.
- (4) The Commissioner shall, by notice in writing, inform the person applying under subsection (1) of his decision.  
(Added 7 of 1975 s. 40. Amended E.R. 1 of 2012)

**Note:**

\* **On the additional ground for making a hold over application in respect of the year of assessment commencing on 1 April 2003, please see the transitional provision in section 15(3) to (7) of 24 of 2003 or section 18 of 21 of 2008 respectively.**

Section:	63K	<b>Provisional profits tax to be applied against profits tax</b>	E.R. 1 of 2012	09/02/2012
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When any person has paid provisional profits tax in respect of any year of assessment, the Commissioner shall, not later than when he gives notice of assessment of profits tax, apply the amount of provisional profits tax so paid in payment first of-

- (a) the profits tax payable by that person for that year of assessment; then
- (b) the provisional profits tax payable in respect of the year of assessment succeeding that year of assessment, and shall refund to the person paying the provisional profits tax the amount thereof not so applied.  
(Added 7 of 1975 s. 40)

Part:	10C	<b>Provisional Property Tax</b>	E.R. 1 of 2012	09/02/2012
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Section:	63L	<b>Liability for provisional property tax</b>	E.R. 1 of 2012	09/02/2012
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Every person who is chargeable to property tax under Part 2 in respect of any year of assessment commencing on or

after 1 April 1983 shall be liable to pay provisional property tax in respect of that year of assessment in accordance with this Part.

(Added 8 of 1983 s. 18. Amended E.R. 1 of 2012)

Section:	63M	<b>Amount of provisional property tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Provisional property tax in respect of any year of assessment shall be payable at the standard rate on the net assessable value of land or buildings or land and buildings for the year preceding the year of assessment.
- (2) Where the amount of assessable value of land or buildings or land and buildings for the year preceding the year of assessment was calculated in respect of a period of less than one year, an assessor may estimate the assessable value in respect of which provisional property tax is payable.
- (3) Where a person becomes chargeable to property tax during a year of assessment, an assessor may estimate the assessable value in respect of which provisional property tax is payable in that year and the succeeding year of assessment.
- (4) Where a person is liable to pay provisional property tax, an assessor shall, as soon as may be after expiration of the time limited by the notice requiring that person to furnish a return under section 51(1), assess or estimate the amount of provisional property tax which he is liable to pay.
- (5) Notwithstanding subsection (4), an assessor may assess or estimate the amount of provisional property tax which any person is liable to pay if he is of the opinion that the person is about to leave Hong Kong or that for any other reason it is expedient to do so.
- (6) When an assessor has assessed or estimated the amount of provisional property tax which a person is liable to pay, the Commissioner shall give a notice to that person stating the amount of provisional property tax to be paid, and such due date for payment thereof as may be fixed by the Commissioner.
- (7) Where in any year of assessment a notice for payment of provisional property tax has been given under subsection (6) and thereafter the allowance mentioned in section 5(1A) or the rate of provisional property tax for that year of assessment is amended, the amount of provisional property tax stated in the notice shall nevertheless be payable.
- (8) For the purposes of Part 12, provisional property tax shall be deemed to be a tax charged under this Ordinance and a notice under subsection (6) shall be deemed to be a notice of assessment. (Amended 24 of 2003 s. 7)

(Added 8 of 1983 s. 18. Amended E.R. 1 of 2012)

Section:	63N	<b>Demands for provisional property tax</b>	E.R. 1 of 2012	09/02/2012
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In any year of assessment, a notice for payment of provisional property tax may be-

- (a) given separately to the person liable to pay that provisional property tax; or
- (b) included in a notice of assessment to property tax.

(Added 8 of 1983 s. 18)

Section:	63O	<b>Holding over of payment of provisional property tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where in relation to any year of assessment a person is liable to pay provisional property tax, he may, by notice in writing lodged with the Commissioner not later than-
  - (a) 28 days before the day by which the provisional property tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional property tax under section 63M(6), whichever is the later, apply to the Commissioner on any of the grounds specified in subsection (2) to have the payment of the whole or part of such tax held over until he is required to pay property tax for that year of assessment or, in the case of an application on the ground set out in subsection (2)(d), until-
    - (i) the determination of the objection or settlement thereof under section 64(3); or
    - (ii) he is required to pay property tax for that year of assessment, whichever is the sooner. (Replaced 52 of 1993 s. 9)
- (2) The grounds referred to in subsection (1) are-
  - (a) that the assessable value for the year of assessment is, or is likely to be, less than 90% of the assessable value for the year preceding the year of assessment or of the estimated assessable value in respect of which the person is liable to pay provisional property tax;
  - (b) that the person assessed to provisional property tax has ceased, or will before the end of the year of

assessment cease, to be an owner of land or buildings or land and buildings and that the assessable value for the year of assessment is, or is likely to be, less than the assessable value for the year preceding the year of assessment or the estimated sum in respect of which the person is liable to pay provisional property tax;

- (c) that the person assessed to provisional property tax has elected to be personally assessed under Part 7 for that year of assessment and that such personal assessment is likely to reduce his liability to tax; or (Amended 19 of 1996 s. 13)
  - (d) that the person assessed to provisional property tax has objected under section 64 to his assessment to property tax for the year preceding the year of assessment.
- (3) On receipt of an application under subsection (1), the Commissioner shall consider the same and may hold over the payment of the whole or part of the provisional property tax.
- (4) The Commissioner shall, by notice in writing, inform the person applying under subsection (1) of his decision.  
(Added 8 of 1983 s. 18. Amended E.R. 1 of 2012)

Section:	63P	<b>Provisional property tax to be applied against property tax</b>	E.R. 1 of 2012	09/02/2012
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When any person has paid provisional property tax in respect of any year of assessment, the Commissioner shall, not later than when he gives notice of assessment of property tax, apply the amount of provisional property tax so paid in payment first of-

- (a) the property tax payable by that person for that year of assessment; then
- (b) the provisional property tax payable in respect of the year of assessment succeeding that year of assessment, and shall refund to the person paying the provisional property tax the amount thereof not so applied.  
(Added 8 of 1983 s. 18)

Part:	11	<b>Objections and Appeals*</b>	E.R. 1 of 2012	09/02/2012
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**Note:**

\* (Amended 26 of 1969 s. 33)

Section:	64	<b>Objections</b>	E.R. 1 of 2012	09/02/2012
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- (1) Any person aggrieved by an assessment made under this Ordinance may, by notice in writing to the Commissioner, object to the assessment; but no such notice shall be valid unless it states precisely the grounds of objection to the assessment and is received by the Commissioner within 1 month after the date of the notice of assessment: (Amended 2 of 1971 s. 41; 52 of 1993 s. 10; 24 of 2003 s. 8)

Provided that-

- (a) if the Commissioner is satisfied that owing to absence from Hong Kong, sickness or other reasonable cause, the person objecting to the assessment was prevented from giving such notice within such period, the Commissioner shall extend the period as may be reasonable in the circumstances; (Amended 7 of 1986 s. 12)
  - (b) where any assessment objected to has been made under section 59(3) in the absence of any return required under section 51, no notice of objection against such assessment shall be valid unless, in addition to such notice being valid in accordance with the foregoing provisions of this subsection, the return required as aforesaid has been made within the period provided by this subsection for objecting to the assessment or within such further period as the Commissioner may approve for the making of such return;
  - (c) where the assessment is a reassessment of the tax due from a person having the effect of either increasing or reducing that person's liability to tax, the person so reassessed shall have no further right of objection than he would have had if the reassessment had not been made except to the extent to which, by reason of the reassessment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased or reduced. (Replaced 2 of 1971 s. 41)
- (1A) For the purposes of subsection (1), where a person chargeable to tax is assessed under section 59(2)(b) or 60(1) in circumstances that, if the person had no other income, property or profits chargeable to tax under this Ordinance, the assessment would have been made under section 59(3)-
- (a) the provisions of proviso (b) to subsection (1) shall apply to any objection made against that assessment to the extent to which that person has failed to comply with section 51; and

- (b) no notice of objection against such assessment shall be valid unless and until that person has complied with section 51. (Added 52 of 1993 s. 10)
- (2) On receipt of a valid notice of objection under subsection (1) the Commissioner shall consider the same and within a reasonable time may confirm, reduce, increase or annul the assessment objected to, and for the purpose of discharging his functions under this subsection may, by notice in writing, require the person giving the notice of objection to furnish such particulars as the Commissioner may deem necessary with respect to the matters which are the subject of the assessment and to produce all books or other documents in his custody or under his control relating to such matters, and may summon any person who in his opinion is able to give evidence respecting the assessment to attend before him and may examine such person on oath or otherwise. Where the Commissioner proposes to examine any person on oath under this subsection, he shall, by prior notice in writing, afford a reasonable opportunity to the person giving the notice of objection or his authorized representative to be present at such examination.
- (3) In the event of the Commissioner agreeing with any person assessed, who has validly objected to an assessment made upon him, as to the amount at which such person is liable to be assessed, any necessary adjustment of the assessment shall be made.
- (4) In the event of the Commissioner failing to agree with any person assessed, who has validly objected to an assessment made upon him, as to the amount at which such person is liable to be assessed, the Commissioner shall, within 1 month after his determination of the objection, transmit in writing to the person objecting to the assessment his determination together with the reasons therefor and a statement of the facts upon which the determination was arrived at, and such person may appeal therefrom to the Board of Review as provided in section 66.
- (5) The Commissioner shall for the purpose of this section have the powers granted under section 4(1)(d), (e), (f) and (g) of the Commissions of Inquiry Ordinance (Cap 86), subject to the provisions of section 80 of this Ordinance. (Amended 26 of 1969 s. 34)
- (6) Any person, other than the person giving the notice of objection or his authorized representative, may be allowed by the Commissioner any reasonable expenses necessarily incurred by him in attending before the Commissioner under subsection (2).
- (7) No objection by a person to a personal assessment on his total income under Part 7 shall-
- (a) extend the time for making any objection under any other provision of this Ordinance;
  - (b) make valid any objection which is otherwise invalid; or
  - (c) authorize the revision of any amount which has been included in the total income of an individual pursuant to the provisions of section 42(1), where such amount has been the subject of, or formed a part of, any assessment made under Part 2, 3 or 4 which has become final and conclusive under section 70: (Amended 17 of 1989 s. 17)
- Provided that nothing in this paragraph shall operate to prevent an objection by an individual on the grounds that an amount included in the calculation under section 42 of his total income as a share of the assessable profits or losses of a partnership has not been ascertained in accordance with section 22A. (Replaced 7 of 1975 s. 41)
- (Added 40 of 1972 s. 7)
- (8) Where an individual makes an objection in the circumstances described in the proviso to subsection (7)(c), such objection shall be deemed to be an objection by all the partners as to the share of assessable profits or losses ascertained under section 22A and any determination or agreement made under this section as to such ascertainment shall be binding on all the partners. (Added 7 of 1975 s. 41)
- (9) For the purposes of subsection (1) where a person is chargeable to salaries tax under section 10(3)(a), the spouse of that person, shall have, subject to this subsection, the same right to object as has the person assessed, but any such objection shall be limited to the manner in which the assessable income or net assessable income of such spouse is to be determined, the entitlement of such spouse to any allowance under Part 5 or other matters to which that spouse could have objected had that spouse been the person so chargeable. (Added 43 of 1989 s. 24)
- (10) Where an objection to which subsection (9) applies is made-
- (a) the powers of the Commissioner under subsection (2) shall include the power to annul such assessment and make an assessment against the person objecting;
  - (b) subsection (3) shall not apply but-
    - (i) where the Commissioner agrees with both the spouse who has objected and his or her spouse as to the amount at which either of them is liable to be assessed, any necessary adjustment of the assessment shall be made; and

- (ii) where the Commissioner fails to come to any such agreement as is referred to in subparagraph (i), such agreement shall be deemed to be a failure to agree for the purposes of subsection (4), and the reference in that subsection to the person objecting shall be construed as a reference to the person objecting under paragraph (a) and his or her spouse, with the consequence that either or both of them may appeal to the Board of Review. (Added 43 of 1989 s. 24)

(Replaced 35 of 1965 s. 29. Amended E.R. 1 of 2012)

Section:	65	<b>Constitution of the Board of Review</b>	E.R. 1 of 2012	09/02/2012
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- (1) For the purpose of hearing and determining appeals in the manner hereinafter provided, there shall be a panel for a Board of Review consisting of a chairman and 10 deputy chairmen, who shall be persons with legal training and experience, and not more than 150 other members, all of whom shall be appointed from time to time by the Chief Executive. The members of the panel shall hold office for a term of 3 years but shall be eligible for reappointment. (Amended 49 of 1956 s. 48; 35 of 1965 s. 31; 51 of 1969 s. 2; 65 of 1970 s. 9; 32 of 1977 s. 3; 11 of 1985 s. 4; 4 of 1989 s. 3; 12 of 1999 s. 3; 4 of 2010 s. 9)
- (2) There shall be a clerk to the Board of Review (hereinafter referred to as the Board) who shall be appointed by the Chief Executive. (Amended 12 of 1999 s. 3)
- (3) (Repealed 49 of 1956 s. 48)
- (4) For the purpose of hearing and determining an appeal-
- (a) the Board comprises 3 or more members of the panel as follows-
    - (i) the chairman or a deputy chairman nominated by the chairman; and
    - (ii) at least 2 more members of the panel nominated by the chairman;
  - (b) the member mentioned in paragraph (a)(i) is to preside at the hearing;
  - (c) the clerk must summon the members mentioned in paragraph (a)(i) and (ii) to attend meetings of the Board at which the appeal is to be heard;
  - (d) the quorum for a meeting of the Board hearing the appeal is 3 members; and
  - (e) a matter arising at a meeting of the Board is determined by a majority of votes of the members present and voting on the matter and, if there is an equality of votes, the member presiding has a casting vote in addition to his or her original vote. (Replaced 4 of 2010 s. 9)
- (5) At the request of the Chief Secretary for Administration, the clerk to the Board shall summon a meeting of the Board consisting of all the members of the panel available in Hong Kong. At such a meeting a quorum shall consist of 5 members. (Amended 7 of 1986 s. 12; L.N. 362 of 1997)
- (6) The remuneration, if any, of the chairman, deputy chairmen and other members of the Board and the clerk to the Board shall be determined by the Chief Executive. (Replaced 49 of 1956 s. 48. Amended 65 of 1970 s. 9; 12 of 1999 s. 3)
- (7) If a person ceases to be the chairman, a deputy chairman or a member of the panel and, at the time of that event, the person is or has been involved in the hearing or determination of an appeal by the Board, that person may continue to-
- (a) hear and determine the appeal; or
  - (b) perform any other function as a member of the Board in relation to the appeal in accordance with section 68(2C) or 69(1) or (5) until the appeal is finally disposed of by the Board. (Replaced 4 of 2010 s. 9)

Section:	66	<b>Right of appeal to the Board of Review</b>	E.R. 1 of 2012	09/02/2012
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- (1) Any person (hereinafter referred to as the appellant) who has validly objected to an assessment but with whom the Commissioner in considering the objection has failed to agree may within-
- (a) 1 month after the transmission to him under section 64(4) of the Commissioner's written determination together with the reasons therefor and the statement of facts; or
  - (b) such further period as the Board may allow under subsection (1A), either himself or by his authorized representative give notice of appeal to the Board; but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by a copy of the Commissioner's written determination together with a copy of the reasons therefor and of the statement of facts and a statement of the grounds of appeal. (Replaced 2 of 1971 s. 42)
- (1A) If the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for



such period as it thinks fit the time within which notice of appeal may be given under subsection (1). (Added 2 of 1971 s. 42. Amended 7 of 1986 s. 12; 4 of 2010 s. 10)

- (2) The appellant shall at the same time as he gives notice of appeal to the Board serve on the Commissioner a copy of such notice and of the statement of the grounds of appeal.
- (3) Save with the consent of the Board and on such terms as the Board may determine, an appellant may not at the hearing of his appeal rely on any grounds of appeal other than the grounds contained in his statement of grounds of appeal given in accordance with subsection (1).

(Replaced 35 of 1965 s. 32)

Section:	67	<b>Transfer of appeals under section 66 for hearing and determination by Court of First Instance instead of Board of Review</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where notice of appeal is given to the Board under section 66, the appellant or the Commissioner may give notice in writing in accordance with this section that he desires the appeal to be transferred to the Court of First Instance:  
 Provided that if both the appellant and the Commissioner give such notice, the notice given by the Commissioner shall have no effect and shall be deemed not to have been given.
- (2) A notice under subsection (1) shall, if given by the appellant, be given to the Commissioner, or, if given by the Commissioner, be given to the appellant within-
  - (a) 21 days after the date on which the notice of appeal is received by the clerk to the Board; or
  - (b) such further time as the Board may in any particular case permit upon application in writing by the appellant or the Commissioner,
 and the person giving such notice shall at the same time send a copy thereof to the Board. (Amended 63 of 1997 s. 5)
- (3) If the person to whom notice is given under subsection (1) consents thereto, he shall, within-
  - (a) 21 days after the date on which the notice is given; or
  - (b) such further time as the Board may in any particular case permit upon application in writing by the person, notify his consent in writing to the Board and serve a copy of such notification on the person giving the notice, and on receipt of such notification by the Board the clerk to the Board shall transmit the notice of appeal to the Court of First Instance together with the documents delivered to the Board under this section and section 66(1) in connection with the appeal. (Amended L.N. 262 of 1985; 63 of 1997 s. 5)
- (4) An appeal in respect of which notice of appeal is transmitted to the Court of First Instance under subsection (3) shall be heard and determined by the Court of First Instance as in all respects an appeal to the Court of First Instance against the determination to which the notice of appeal relates.
- (5) The following provisions shall apply in relation to the hearing of an appeal under this section-
  - (a) the Court of First Instance shall give 14 clear days' notice to the appellant and the Commissioner of the date fixed for the hearing of the appeal, and may adjourn the hearing to any other date as the Court of First Instance may deem fit;
  - (b) the Commissioner shall be entitled to appear and be heard at the hearing of the appeal;
  - (c) save with the leave of the Court of First Instance and on such terms as to costs or otherwise as the Court of First Instance may order, the appellant shall not at the hearing of the appeal rely on any grounds of appeal other than the grounds contained in his statement of grounds of appeal given with the notice of appeal under section 66(1);
  - (d) the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant;
  - (e) the Court of First Instance may summon any person appearing to the Court of First Instance to be able to give evidence respecting the appeal to attend at the hearing of the appeal and may examine any such person as a witness on oath or otherwise.
- (6) An appeal in respect of which notice of appeal is transmitted to the Court of First Instance under subsection (3) shall not be withdrawn without the leave of the Court of First Instance and except on such terms as to costs or otherwise as the Court of First Instance may order.
- (7) In determining an appeal under this section, the Court of First Instance may-
  - (a) confirm, reduce, increase or annul the assessment determined by the Commissioner;
  - (b) make any assessment which the Commissioner was empowered to make at the time he determined the assessment, or direct the Commissioner to make such an assessment, in which case an assessment shall be

made by the Commissioner so as to conform to that direction;

- (c) make such order as to costs as the Court of First Instance may deem fit.

(Added 12 of 1979 s. 3. Amended 25 of 1998 s. 2)

Section:	68	<b>Hearing and disposal of appeals to the Board of Review</b>	E.R. 1 of 2012	09/02/2012
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(1) Except where-

- (a) a notification of consent in respect of the transfer of any appeal under section 67 is received by the Board within the time allowed in that behalf by that section; or
- (b) the Board endorses under subsection (1B)(b) a settlement reached in respect of the relevant appeal, every appeal under section 66 shall be heard by the Board in accordance with this section and the clerk to the Board shall, as soon as may be after the receipt of the notice of appeal, fix a time and place for the hearing of the appeal, and shall give 14 clear days' notice thereof to the appellant and the Commissioner: (Amended 63 of 1997 s. 6)

Provided that the time so fixed for the hearing of the appeal shall not be earlier than-

- (a) in the case of an appeal in respect of which neither party to the appeal gives notice under section 67(1), the expiration of the time allowed by that section for giving such notice; or

- (b) in the case of an appeal in respect of which notice under section 67(1) is given-

- (i) by the appellant; or
- (ii) by the Commissioner but not by the appellant,

the expiration of a period of 21 days after the date on which such notice is given. (Replaced 12 of 1979 s. 4)

(1A) At any time before the hearing of an appeal-

- (a) the appellant may withdraw the appeal by notice in writing addressed to the clerk to the Board;
- (b) the appellant and the Commissioner may reach a settlement on the amount at which the appellant is liable to be assessed. (Added 63 of 1997 s. 6)

(1B) Where a settlement of an appeal is reached under subsection (1A)(b)-

- (a) the terms of the settlement shall be reduced to writing in a form specified by the Board and signed by the appellant and the Commissioner; and
- (b) the settlement shall be submitted to the Board for endorsement by it. (Added 63 of 1997 s. 6)

(1C) Subject to subsection (1D), where a settlement is submitted to and endorsed by the Board, any necessary adjustment of the assessment shall be made and such assessment shall be final and conclusive for all purposes of this Ordinance as regards the amount of relevant assessable income or profits or net assessable value. (Added 63 of 1997 s. 6)

(1D) Nothing in subsection (1A), (1B) or (1C) shall prevent an assessor from making an assessment or additional assessment for any year of assessment which does not involve re-opening any matter which has been endorsed by the Board under subsection (1B)(b) for the year. (Added 63 of 1997 s. 6)

(1E) In the event that a settlement reached under subsection (1A)(b) is not endorsed by the Board, the relevant appeal shall be heard by it. (Added 63 of 1997 s. 6)

(2) Subject to subsection (2B), an appellant shall attend at the meeting of the Board at which the appeal is heard in person or by an authorized representative. (Amended 40 of 1972 s. 8)

(2A) (Repealed 63 of 1997 s. 6)

(2B) If, on the date fixed for the hearing of an appeal, the appellant fails to attend at the meeting of the Board either in person or by his authorized representative the Board may-

- (a) if satisfied that the appellant's failure to attend was due to sickness or other reasonable cause, postpone or adjourn the hearing for such period as it thinks fit;
- (b) proceed to hear the appeal under subsection (2D); or
- (c) dismiss the appeal. (Added 40 of 1972 s. 8)

(2C) If an appeal has been dismissed by the Board under subsection (2B)(c) the appellant may, within 30 days after the making of the order for dismissal by notice in writing addressed to the clerk to the Board, apply to the Board to review its order and the Board may, if satisfied that the appellant's failure to attend at the meeting of the Board for the hearing of the appeal was due to sickness or any other reasonable cause, set aside the order for dismissal and proceed to hear the appeal. (Added 40 of 1972 s. 8)

(2D) The Board may, if satisfied that an appellant will be or is outside Hong Kong on the date fixed for the hearing of the appeal and is unlikely to be in Hong Kong within such period thereafter as the Board considers reasonable on the application of the appellant made by notice in writing addressed to the clerk to the Board and received by

him at least 7 days prior to the date fixed for the hearing of the appeal, proceed to hear the appeal in the absence of the appellant or his authorized representative. (Added 40 of 1972 s. 8. Amended 7 of 1986 s. 12)

- (2E) The Board may, if it hears an appeal in the absence of an appellant or his authorized representative under subsection (2D), consider such written submissions as the appellant may submit to the Board. (Added 40 of 1972 s. 8. Amended 7 of 1975 s. 42)
- (3) The assessor who made the assessment appealed against or some other person authorized by the Commissioner shall attend such meeting of the Board in support of the assessment.
- (4) The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant. (Replaced 35 of 1965 s. 34)
- (5) All appeals shall be heard in camera, but any appeal may be reported in such publications as may be approved by the Secretary for Justice in such a manner that the identity of the appellant is not disclosed. (Replaced 2 of 1971 s. 43. Amended L.N. 362 of 1997)
- (6) The Board shall have power to summon to attend at the hearing any person whom it may consider able to give evidence respecting the appeal and may examine him as a witness either on oath or otherwise. Any person so attending may be allowed by the Board any reasonable expenses necessarily incurred by him in so attending.
- (7) At the hearing of the appeal the Board may, subject to the provisions of section 66(3), admit or reject any evidence adduced, whether oral or documentary, and the provisions of the Evidence Ordinance (Cap 8), relating to the admissibility of evidence shall not apply.
- (8) (a) After hearing the appeal, the Board shall confirm, reduce, increase or annul the assessment appealed against or may remit the case to the Commissioner with the opinion of the Board thereon.  
 (b) Where a case is so remitted by the Board, the Commissioner shall revise the assessment as the opinion of the Board may require and in accordance with such directions (if any) as the Board, at the request at any time of the Commissioner, may give concerning the revision required in order to give effect to such opinion. (Replaced 35 of 1965 s. 34)
- (9) Where under subsection (8), the Board does not reduce or annul such assessment, the Board may order the appellant to pay as costs of the Board a sum not exceeding the amount specified in Part 1 of Schedule 5, which shall be added to the tax charged and recovered therewith. (Amended 11 of 1985 s. 5; 56 of 1993 s. 27; 12 of 2004 s. 14)
- (9A) The Secretary for Financial Services and the Treasury may by order amend the amount specified in Part 1 of Schedule 5. (Added 12 of 2004 s. 14)
- (10) The Board shall for the purpose of this section have the powers granted under section 4(1)(d), (e), (f) and (g) of the Commissions of Inquiry Ordinance (Cap 86), subject to the provisions of section 80 of this Ordinance. (Added 35 of 1965 s. 34. Amended 26 of 1969 s. 35)

(Amended E.R. 1 of 2012)

Section:	68A	<b>Power of Board of Review to correct clerical mistakes and other errors</b>	E.R. 1 of 2012	09/02/2012
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The Board of Review may correct-

- (a) any clerical mistake in any decision of the Board made in relation to an appeal; or
- (b) any error in any decision of the Board arising from any accidental slip or omission.

(Added 4 of 2010 s. 11)

Section:	69	<b>Appeals to the Court of First Instance</b>	E.R. 1 of 2012	09/02/2012
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- (1) The decision of the Board shall be final:  
 Provided that either the appellant or the Commissioner may make an application requiring the Board to state a case on a question of law for the opinion of the Court of First Instance. Such application shall not be entertained unless it is made in writing and delivered to the clerk to the Board, together with a fee of the amount specified in Part 2 of Schedule 5, within 1 month of the date of the Board's decision. If the decision of the Board shall be notified to the Commissioner or to the appellant in writing, the date of the decision, for the purposes of determining the period within which either of such persons may require a case to be stated, shall be the date of the communication by which the decision is notified to him. (Amended 49 of 1956 s. 50; 11 of 1985 s. 6; 4 of 1989 s. 4; 56 of 1993 s. 28; 12 of 2004 s. 15)
- (1A) The Secretary for Financial Services and the Treasury may by order amend the amount specified in Part 2 of

Schedule 5. (Added 12 of 2004 s. 15)

- (2) The stated case shall set forth the facts and the decision of the Board, and the party requiring it shall transmit the case, when stated and signed, to the Court of First Instance within 14 days after receiving the same.
- (3) At or before the time when he transmits the stated case to the Court of First Instance, the party requiring it shall send to the other party notice in writing of the fact that the case has been stated on his application and shall supply him with a copy of the stated case.
- (4) Any judge of the Court of First Instance may cause a stated case to be sent back for amendment and thereupon the case shall be amended accordingly.
- (5) Any judge of the Court of First Instance shall hear and determine any question of law arising on the stated case and may in accordance with the decision of the court upon such question confirm, reduce, increase or annul the assessment determined by the Board, or may remit the case to the Board with the opinion of the court thereon. Where a case is so remitted by the court, the Board shall revise the assessment as the opinion of the court may require.
- (6) In any proceedings before the Court of First Instance under this section, the court may make such order in regard to costs in the Court of First Instance and in regard to the sum paid under subsection (1) as to the court may seem fit.
- (7) Appeals from decisions of the Court of First Instance under this section shall be governed by the provisions of the High Court Ordinance (Cap 4), the Rules of the High Court (Cap 4 sub. leg. A), and the Orders and Rules governing appeals to the Court of Final Appeal. (Amended 92 of 1975 s. 58; 79 of 1995 s. 50)
- (8) (Repealed 12 of 2004 s. 15)

(Amended 92 of 1975 s. 59; 25 of 1998 s. 2; E.R. 1 of 2012)

Section:	69A	<b>Right to appeal directly to Court of Appeal against decision of Board of Review</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding section 69, the appellant or the Commissioner may, with the leave of the Court of Appeal granted on the application of the appellant or the Commissioner, as the case may be, appeal directly to the Court of Appeal against the decision of the Board.
- (2) Leave to appeal under this section may be granted on the ground that in the opinion of the Court of Appeal it is desirable that, by reason of the amount of tax in dispute or of the general or public importance of the matter or its extraordinary difficulty or for any other reason, the appeal be heard and determined by the Court of Appeal instead of the Court of First Instance.
- (3) Section 69 shall apply in relation to appeals under this section as it applies in relation to appeals under that section except that for references in that section to the Court of First Instance or a judge of the Court of First Instance there shall be substituted references to the Court of Appeal.

(Added 12 of 1979 s. 5. Amended 25 of 1998 s. 2)

Section:	70	<b>Assessments or amended assessments to be final</b>	E.R. 1 of 2012	09/02/2012
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Where no valid objection or appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the assessable income or profits or net assessable value assessed thereby, or where an appeal against an assessment has been withdrawn under section 68(1A)(a) or dismissed under subsection (2B) of that section, or where the amount of the assessable income or profits or net assessable value has been agreed to under section 64(3), or where the amount of such assessable income or profits or net assessable value has been determined on objection or appeal, the assessment as made or agreed to or determined on objection or appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income or profits or net assessable value: (Amended 49 of 1956 s. 51; 35 of 1965 s. 35; 40 of 1972 s. 9; 7 of 1979 s. 4; 12 of 2004 s. 16)

Provided that nothing in this Part shall prevent an assessor from making an assessment or additional assessment for any year of assessment which does not involve re-opening any matter which has been determined on objection or appeal for the year. (Amended 35 of 1965 s. 35)

Section:	70A	<b>Powers of assessor to correct errors</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding the provisions of section 70, if, upon application made within 6 years after the end of a year of assessment or within 6 months after the date on which the relative notice of assessment was served, whichever is

the later, it is established to the satisfaction of an assessor that the tax charged for that year of assessment is excessive by reason of an error or omission in any return or statement submitted in respect thereof, or by reason of any arithmetical error or omission in the calculation of the amount of the net assessable value (within the meaning of section 5(1A)), assessable income or profits assessed or in the amount of the tax charged, the assessor shall correct such assessment: (Amended 56 of 1993 s. 29)

Provided that under this section no correction shall be made to any assessment in respect of an error or omission in any return or statement submitted in respect thereof as to the basis on which the liability to tax ought to have been computed where the return or statement was in fact made on the basis of or in accordance with the practice generally prevailing at the time when the return or statement was made.

- (2) Where an assessor refuses to correct an assessment in accordance with an application under this section he shall give notice thereof in writing to the person who made such application and such person shall thereupon have the same rights of objection and appeal under this Part as if such notice of refusal were a notice of assessment. (Added 35 of 1965 s. 36)

(Replaced 28 of 1964 s. 11)

Section:	70AA	<b>Revision of assessment due to commencement of section 4 or 8 of Inland Revenue (Amendment) Ordinance 2004</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding any other provisions of this Ordinance, if, upon application in respect of a year of assessment (*the relevant year*) that expires before the date of commencement\* of section 4 or 8 of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) made within 12 months after that date, or within 6 years after the end of the relevant year, whichever is the later, it is established to the satisfaction of an assessor that the tax charged for the relevant year is excessive solely by reason of the commencement of that section, the assessor shall revise the assessment for the relevant year.

- (2) Where an assessor refuses to revise an assessment in accordance with an application under this section, he shall give notice thereof in writing to the person who made such application and such person shall thereupon have the same rights of objection and appeal under this Part as if such notice of refusal were a notice of assessment.

(Added 12 of 2004 s. 17)

**Note:**

\* Commencement date: 25 June 2004.

Section:	70AB	<b>Revision of assessment due to commencement of section 2 of Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006</b>	E.R. 1 of 2012	09/02/2012
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- (1) Notwithstanding any other provisions of this Ordinance, if, upon application by a person in respect of a year of assessment (*the relevant year*) that expires before the date of commencement\* of section 2 of the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 (4 of 2006) made within 12 months after that date, or within 6 years after the end of the relevant year, whichever is the later, it is established to the satisfaction of an assessor that the tax charged for the relevant year exceeds the amount that the person would have had to pay had that section been in force, the assessor shall revise the assessment for the relevant year.

- (2) Where an assessor refuses to revise an assessment in accordance with an application made under this section, he shall give notice of the refusal in writing to the person who made the application and the person thereupon has the same rights of objection and appeal under this Part as if the notice of refusal were a notice of assessment.

(Added 4 of 2006 s. 3)

**Note:**

\* Commencement date: 10 March 2006.

Section:	70B	<b>Husband and wife</b>	E.R. 1 of 2012	09/02/2012
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Where, following an election under section 41(1A) for personal assessment by a husband and wife, either spouse makes an objection, appeal or application under this Part in respect of any assessment made in consequence of the election-

- (a) the other spouse shall be deemed to be joined in the objection, appeal or application;
- (b) nothing in section 70 shall prevent a re-assessment being made in respect of either spouse; and
- (c) amended assessments may be issued to both spouses.

(Added 71 of 1983 s. 34. Amended 43 of 1989 s. 25)

Part:	12	<b>Payment and Recovery of Tax</b>	E.R. 1 of 2012	09/02/2012
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Section:	71	<b>Provisions regarding payment of tax</b>	E.R. 1 of 2012	09/02/2012
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- (1) Tax charged under the provisions of this Ordinance shall be paid in the manner directed in the notice of assessment on or before a date specified in such notice. Any tax not so paid shall be deemed to be in default, and the person by whom such tax is payable, or where any tax is payable by more than one person or by a partnership then each of such persons or each partner in the partnership, shall be deemed to be a defaulter for the purposes of this Ordinance. (Replaced 49 of 1956 s. 53)
- (2) Tax shall be paid notwithstanding any notice of objection or appeal, unless the Commissioner orders that payment of tax or any part thereof be held over pending the result of such objection or appeal: (Amended 7 of 1985 s. 2)  
 Provided that where the Commissioner so orders he may do so conditionally upon the person who or on whose behalf the objection or appeal is made providing security for the payment of the amount of tax or any part thereof the payment of which is held over either-
  - (a) by purchasing a certificate issued under the Tax Reserve Certificates Ordinance (Cap 289); or
  - (b) by furnishing a banker's undertaking,
 as the Commissioner may require. (Added 7 of 1985 s. 2)
- (3) Where the Commissioner is of opinion either that the tax or any part thereof held over under subsection (2) is likely to become irrecoverable, or that the person objecting or appealing is unreasonably delaying the prosecution of his objection or appeal, he may cancel any order made under that subsection and make such fresh order as the case may appear to him to require. (Amended 49 of 1956 s. 53; 35 of 1965 s. 37)
- (4) Where, upon the final determination of an objection or appeal under Part 11, or upon any order made by the Commissioner, any tax which has been held over under subsection (2) becomes payable or the tax charged is increased, the Commissioner shall give to the person objecting or appealing a notice in writing fixing a date on or before which any tax or balance of tax shall be paid. Any tax not so paid shall be deemed to be in default. (Amended 30 of 1950 Schedule; 49 of 1956 s. 53; 35 of 1965 s. 37)
- (5) Where any tax is in default, the Commissioner may in his discretion order that a sum or sums not exceeding 5% in all of the amount in default shall be added to the tax and recovered therewith.
- (5A) Where on the expiry of a period of 6 months from the date when any tax is deemed to be in default, whether such date was before or after 1 August 1984, there remains unpaid any amount of the aggregate of-
  - (a) the tax deemed to be in default; and
  - (b) any sum added thereto under subsection (5),
 the Commissioner may order that a sum or sums not exceeding 10% in all of the unpaid amount shall be added to the unpaid amount and recovered therewith. (Replaced 52 of 1984 s. 2)
- (5B) (Repealed 19 of 1996 s. 14)
- (6) Notwithstanding anything contained in the previous subsections of this section the Commissioner may agree to accept payment of tax by instalments. (Amended 49 of 1956 s. 53)
- (7) Where the Commissioner exercises his powers under the proviso to subsection (2) and a person is required to purchase a certificate under paragraph (a) of that proviso-
  - (a) a certificate in an amount equal to the tax or any part thereof the payment of which is held over shall be purchased within a period of 14 days from the date of the order of the Commissioner, or on or before the date for the payment of tax specified in the notice of the assessment, whichever is the later, failing which the provisions of subsection (2) shall apply as they would if there had been no order;
  - (b) the Commissioner shall, when he issues a certificate so purchased, note on it particulars sufficient to identify the objection or appeal to which it relates;
  - (c) upon the withdrawal or final determination of the objection or appeal a certificate or part of a certificate so purchased shall be accepted by the Commissioner in payment of so much of the tax held over as becomes or is found to become payable, and no interest shall be payable upon any certificate or part of a certificate so

- accepted;
- (d) where, upon the final determination of the objection or appeal, and after all tax held over which becomes, or is found to be, payable has been paid in the manner specified in paragraph (c), any certificate or part of a certificate so purchased has not been accepted as payment by the Commissioner under paragraph (c), the Commissioner must repay to the holder of the certificate- (Amended 4 of 2010 s. 12)
- (i) the principal value represented by the certificate or part of the certificate; and
- (ii) the interest on that value, calculated in accordance with the rules from the date of issue of the certificate to the date of the final determination of the objection or appeal; and (Amended 4 of 2010 s. 12)
- (e) no certificate so purchased shall be valid for any purpose except as specified in the preceding paragraphs. (Added 7 of 1985 s. 2)
- (8) The provisions of subsection (7) shall apply notwithstanding anything to the contrary in the rules relating to such certificates made under the Tax Reserve Certificates Ordinance (Cap 289) and any reference to the rules relating to such certificates in that subsection shall refer to the rules so made. (Added 7 of 1985 s. 2)
- (9) Where the Commissioner exercises his powers under the proviso to subsection (2) and a person is required to furnish a banker's undertaking under paragraph (b) of that proviso, the undertaking shall-
- (a) be in a form acceptable to the Commissioner;
- (b) be furnished to the Commissioner within a period of 14 days from the date of the order of the Commissioner, or on or before the date for the payment of the tax specified in the notice of assessment, whichever is the later;
- (c) be given by a bank (as defined in the Banking Ordinance (Cap 155));
- (d) not be revocable without the consent of the Commissioner;
- (e) be expressed to be an undertaking to pay-
- (i) an amount equal to the tax or any part thereof the payment of which is held over; and
- (ii) interest on that amount, from the date for the payment of the tax specified in the notice of assessment to the date of withdrawal or final determination of the objection or appeal, at the rate specified in subsection (11); and
- (f) provide for payment to the Commissioner upon written notification to the bank by the Commissioner that the objection or appeal has been withdrawn or finally determined and that the amount, and interest, stated by him is now due,
- and if such person fails to supply such an undertaking in such manner the provisions of subsection (2) shall apply as they would if there had been no order. (Added 7 of 1985 s. 2)
- (10) Where the Commissioner makes an order under subsection (2) but does not exercise his powers under the proviso thereto, interest shall be payable on so much of the amount of the tax or any part thereof the payment of which is held over as becomes payable or is found to become payable upon the withdrawal or final determination of the objection or appeal, from the date for the payment of the tax specified in the notice of assessment or the date of the order, whichever is the later, to the date of withdrawal or final determination of the objection or appeal, at the rate specified in subsection (11). (Added 7 of 1985 s. 2)
- (11) The rate of interest specified for the purposes of subsections (9)(e)(ii) and (10) shall be the rate determined by the Chief Justice by order under section 50(1)(b) of the District Court Ordinance (Cap 336). (Added 7 of 1985 s. 2. Amended 4 of 2010 s. 12)

(Amended E.R. 1 of 2012)

Section:	72	<b>Tax to include fines, etc.</b>	E.R. 1 of 2012	09/02/2012
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In the succeeding sections of this Part, *tax* (稅款) includes any sum or sums added under section 71 (5) or (5A) by reason of default, together with any fines, penalties, fees, or costs incurred, and any interest payable under section 71 (9)(e)(ii) or (10).

(Amended 23 of 1974 s. 5; 7 of 1985 s. 3)

Section:	73	<b>(Repealed 49 of 1956 s. 54)</b>		30/06/1997
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Section:	74	<b>(Repealed 49 of 1956 s. 54)</b>		30/06/1997
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Section:	75	<b>Tax recoverable as a civil debt through the District Court</b>	E.R. 1 of 2012	09/02/2012
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- (1) Tax due and payable under this Ordinance shall be recoverable as a civil debt due to the Government. (Amended 19 of 1996 s. 15)
- (2) Whenever any person makes default in payment of tax the Commissioner may recover the same by action in the District Court notwithstanding that the amount is in excess of the sum mentioned in section 33 of the District Court Ordinance (Cap 336). (Amended 35 of 1966 Schedule; 68 of 1973 s. 5; 79 of 1981 s. 3)
- (3) In proceedings under this section for the recovery of tax the production of a certificate signed by the Commissioner stating the name and last known postal address of the defaulter and particulars of the tax due by him shall be sufficient evidence of the amount so due and sufficient authority for a District Court to give judgment for the said amount.
- (4) In proceedings under this section for the recovery of tax the court shall not entertain any plea that the tax is excessive, incorrect, subject to objection or under appeal, but nothing in this subsection shall be construed so as to derogate from the powers conferred by the proviso to section 51 (4B)(a) to give judgment for a less sum in the case of proceedings for the penalty specified therein. (Amended 35 of 1965 s. 38)
- (5) In any proceedings in the District Court under this section, the Commissioner may appear in person or may be represented either by a legal officer within the meaning of the Legal Officers Ordinance (Cap 87) or by any other person authorized by him in writing.

(Replaced 49 of 1956 s. 55)

Section:	75A	<b>(Repealed 43 of 1989 s. 26)</b>		30/06/1997
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Section:	76	<b>Recovery of tax from a debtor of the taxpayer</b>	E.R. 1 of 2012	09/02/2012
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- (1) Where tax payable by a person is in default, or a person charged to tax has quitted Hong Kong or in the opinion of the Commissioner is likely to quit Hong Kong without paying all the tax charged to him, and it appears to the Commissioner to be probable that any other person (hereinafter in this subsection referred to as *the third party*)- (Amended 7 of 1986 s. 12)
  - (a) owes or is about to pay money to such person (hereinafter in this subsection referred to as *the taxpayer*); or
  - (b) holds money for or on account of the taxpayer; or
  - (c) holds money on account of some other person for payment to the taxpayer; or
  - (d) has authority from some other person to pay money to the taxpayer,
 the Commissioner may give the third party notice in writing (a copy of which shall be sent by post to the taxpayer) requiring him to pay such moneys not exceeding the amount of tax in default or charged, as the case may be, to the officer named in the notice. The notice shall apply to all such moneys which are in the third party's hands or due from him or about to be paid by him at the date of receipt of such notice or which come into his hands or become due from him or about to be paid by him at any time within a period of 30 days thereafter. (Replaced 26 of 1969 s. 36)
- (2) Any person who has made any payment in pursuance of this section shall be deemed to have acted under the authority of the person by whom the tax was payable or on whom it was charged and of all other persons concerned, and is hereby indemnified in respect of such payment against all proceedings civil or criminal notwithstanding the provisions of any written law, contract or agreement.
- (3) Any person to whom notice has been given under subsection (1) who is unable to comply therewith shall within 14 days of the expiration of the period of 30 days from the date of receipt of such notice give notice in writing to the Commissioner acquainting him with the facts.
- (4) Any person to whom a notice has been given under subsection (1) who could have complied therewith but failed to do so within 14 days after the expiration of the period referred to in subsection (1), shall be personally liable for the whole of the tax which he was required to pay, and such tax may be recovered from him by all means provided in this Ordinance for the recovery of tax from a person who has made default in payment.

(Replaced 49 of 1956 s. 56)



- (1) If the Commissioner, or an officer of the Inland Revenue Department not below the rank of chief assessor authorized in writing by the Commissioner for the purposes (*authorized officer*), satisfies a District Judge, by statement made on oath-
- (a) that a person has not paid all tax assessed upon him; and
  - (b) that there are reasonable grounds for believing that the person intends to depart, or has departed, from Hong Kong to reside elsewhere,
- and if the District Judge is satisfied that it is in the public interest to ensure that the person does not depart from Hong Kong or, if he returns, does not depart again, without first paying the tax or furnishing security to the satisfaction of the Commissioner for payment of that tax, he shall issue a direction (*departure prevention direction*) to the Director of Immigration and the Commissioner of Police directing them to prevent the person from departing from Hong Kong without paying such tax or furnishing such security.
- (2) The District Judge shall, as soon as practicable after he makes a departure prevention direction under subsection (1), cause a copy of it to be served upon the person who is the subject of the direction, if he can be found, but, whether or not a copy is so served, the direction comes into force immediately upon being issued and continues in force until-
- (a) the tax is paid;
  - (b) security is furnished to the satisfaction of the Commissioner for payment of the tax; or
  - (c) the departure prevention direction is set aside by the Court of First Instance under subsection (9).
- (3) Where-
- (a) an immigration officer or immigration assistant (within the meaning of section 2(1) of the Immigration Ordinance (Cap 115)); or
  - (b) a police officer,
- believes on reasonable grounds that-
- (i) a person the subject of a departure prevention direction made under subsection (1) is about to depart from Hong Kong; and
  - (ii) the Commissioner has not authorized the person to depart from Hong Kong nor has the Court of First Instance suspended or otherwise varied the departure prevention direction so as to permit the person to depart from Hong Kong,
- he may take such measures including the use of such force as may be necessary to prevent the departure of that person from Hong Kong.
- (4) Where-
- (a) a copy of a departure prevention direction has been served on the person the subject of it or the person has been verbally advised of its existence by a person referred to in subsection (3)(a) or (b); and
  - (b) the Commissioner has not authorized the person to depart from Hong Kong nor has the Court of First Instance suspended or otherwise varied the departure prevention direction so as to permit the person to depart from Hong Kong,
- the person commits an offence if he departs or attempts to depart from Hong Kong, and an immigration officer, immigration assistant or police officer may arrest him without a warrant.
- (5) Any person who commits an offence under subsection (4) is liable to a fine at level 4 and to imprisonment for 6 months. (Amended L.N. 338 of 1995)
- (6) Where a departure prevention direction made under this section is in force, the Commissioner may, if he thinks fit, on the written application of the person the subject of the direction or, in the absence of any such application, of his own initiative, authorize, in writing, the person to depart from Hong Kong on one or more occasions as specified in the authorization.
- (7) Where-
- (a) the tax owing has been paid or security has been furnished to the satisfaction of the Commissioner for payment thereof;
  - (b) a departure prevention direction is set aside or temporarily suspended under this section; or
  - (c) the Commissioner authorizes a person to depart from Hong Kong on one or more occasions,
- the Commissioner shall, as soon as practicable, notify-
- (i) the Director of Immigration; and
  - (ii) the Commissioner of Police,

that the person is permitted to depart from Hong Kong.

- (8) Where a person the subject of a departure prevention direction applies under subsection (6) and the Commissioner does not see fit to authorize his departure, the commissioner shall, as soon as practicable, serve a notice (*notice of decision*) upon the person.
- (9) A person aggrieved by a departure prevention direction under subsection (1) or a notice of decision under subsection (8), as the case may be, may appeal to the Court of First Instance which may-
- (a) make an order setting aside the departure prevention direction subject to such conditions as the Court may consider necessary, including the supplying of security to the Commissioner as specified by the Court;
  - (b) make an order temporarily suspending or otherwise varying the departure prevention direction, and the Court may attach such conditions to the suspension or variation as it considers necessary; or
  - (c) dismiss the appeal.
- (10) Service of-
- (a) a copy of a departure prevention direction under subsection (2) shall be effected personally on the person who is the subject of it;
  - (b) a notice of decision under subsection (8) may be effected personally on the person who is the subject of it or by post addressed to that person at his last known place of abode, business or employment.
- (11) Where a direction was issued by a District Judge under section 77 as repealed by the Inland Revenue (Amendment) (No. 3) Ordinance 1993 (56 of 1993), that direction shall be deemed to be a departure prevention direction issued under this section and the provisions of this section shall apply to it accordingly.
- (12) In this section, ***Court of First Instance*** (原訟法庭) has the same meaning as in section 2 of the High Court Ordinance (Cap 4) and includes the Registrar and a Master as defined in that Ordinance.
- (13) In proceedings under this section, the production of a certificate signed by the Commissioner or an authorized officer stating the name and last known postal address of the person referred to in subsection (1) and particulars of the unpaid tax assessed upon him shall be sufficient evidence of the amount and a court shall not entertain any plea that the tax is excessive, incorrect, subject to objection or under appeal.
- (14) The Commissioner or an authorized officer may apply ex parte to the District Court for a departure prevention direction.
- (15) In any proceedings in the District Court under this section, the Commissioner or an authorized officer, as the case may be, may appear in person or may be represented either by a legal officer within the meaning of the Legal Officers Ordinance (Cap 87) or by any other person authorized in writing by the Commissioner.
- (Replaced 56 of 1993 s. 30. Amended 25 of 1998 s. 2)

Section:	77A	<b>Refusal of clearance to ships and aircraft where tax is in default</b>	E.R. 1 of 2012	09/02/2012
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- (1) In addition to any other powers of collection and recovery provided by this Ordinance, where a person has been charged to tax in respect of his profits from the business of shipowner or charterer or aircraft owner or charterer and such tax is in default and whether such person has been assessed directly or in the name of some other person, the Commissioner, with the prior approval of the Chief Secretary for Administration, may issue to the Director of Marine, the Director-General of Civil Aviation or other authority by whom clearance may be granted, a certificate containing the name or names of the said person and the particulars of the tax in default.
- (2) On receipt of such certificate the Director of Marine, the Director-General of Civil Aviation, or other authority, shall be empowered and is hereby required to refuse clearance from any port, aerodrome or airport or place within Hong Kong to any ship or aircraft owned wholly or partly or chartered by such person until the said tax has been paid or until security for payment has been given to the satisfaction of the Commissioner. (Amended 7 of 1986 s. 12)
- (3) No civil or criminal proceedings shall be instituted or maintained against the Government, the Chief Secretary for Administration, the Commissioner, the Director of Marine, the Director-General of Civil Aviation or other authority, in respect of a refusal of clearance under this section, nor shall the fact that a ship or aircraft is detained under this section affect the liability of the owner, charterer or agent to harbour, airport or other dues and charges for the period of detention. (Amended 19 of 1996 s. 15)
- (Added 49 of 1956 s. 58. Amended L.N. 362 of 1997; L.N. 326 of 2000)

Section:	78	<b>(Repealed 49 of 1956 s. 59)</b>		30/06/1997
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Part:	13	<b>Repayment</b>	E.R. 1 of 2012	09/02/2012
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Section:	79	<b>Tax paid in excess to be refunded</b>	E.R. 1 of 2012	09/02/2012
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- (1) If it is proved to the satisfaction of the Commissioner by claim duly made in writing within 6 years of the end of a year of assessment or within 6 months after the date on which the relevant notice of assessment was served, whichever is the later, that any person has paid tax in excess of the amount with which he was properly chargeable for the year, such person shall be entitled to have refunded the amount so paid in excess: (Amended 49 of 1956 s. 60)

Provided that nothing in this section shall operate to extend or reduce any time limit for objection, appeal or repayment specified in any other section or to validate any objection or appeal which is otherwise invalid, or to authorize the revision of any assessment or other matter which has become final and conclusive. (Amended 35 of 1965 s. 39)

- (2) An executor, trustee or receiver shall have the same right to make a claim under the provisions of subsection (1) as the person whom he represents would have had if such person had not been prevented from making such claim by his death, incapacity, bankruptcy or liquidation and shall be entitled to have refunded to him for the benefit of such person or such person's estate any tax paid in excess within the meaning of subsection (1). (Replaced 49 of 1956 s. 60)
- (3) Where a non-resident person has been assessed in the name of another person under section 20A or 20B and the tax so assessed has been paid by the other person, the other person or the non-resident person, but not both, may make a claim under subsection (1) for a refund of tax overpaid. In the event of a refund being made to the other person his receipt shall be a valid discharge in respect of the amount of overpaid tax so refunded. (Replaced 4 of 1989 s. 5)

Part:	14	<b>Penalties and Offences</b>	E.R. 1 of 2012	09/02/2012
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Section:	80	<b>Penalties for failure to make returns, making incorrect returns, etc.</b>	E.R. 1 of 2012	09/02/2012
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- (1) Any person who without reasonable excuse-
- fails to comply with the requirements of a notice given to him under section 51(3), 51A(1), 52(1) or (2), or 64(2); or
  - fails to attend in answer to a summons issued under section 64(2) or 68(6), or having attended fails to answer any questions put to him, being questions which, under section 64(2) or 68(6), as the case may be, may be put to him; or
  - fails to comply with the requirements of section 5(2)(c), 51(6), (7) or (8), 51D(1), 52(4), (5), (6) or (7), or 76(3), (Amended 48 of 1995 s. 11)
- commits an offence and is liable on conviction to a fine at level 3, and the court may order the person convicted within a time specified in the order to do the act which he has failed to do. (Replaced 35 of 1965 s. 40. Amended 26 of 1969 s. 37; 2 of 1971 s. 46; 43 of 1975 s. 6; 8 of 1983 s. 19; L.N. 411 of 1984; 17 of 1989 s. 18; 56 of 1993 s. 31; L.N. 338 of 1995; 4 of 2010 s. 13)
- (1A) Any person who without reasonable excuse fails to comply with the requirements of section 51C commits an offence and is liable on conviction to a fine at level 6 and the court may order the person convicted within a time specified in the order to do the act which he has failed to do. (Added 48 of 1995 s. 11. Amended 4 of 2010 s. 13)
- (1AA) Without prejudice to the generality of the term "reasonable excuse" as it is used in subsection (1) in relation to section 52(4), (5), (6) or (7), where a person has failed to comply with the requirements of that section in the case of an individual in respect of whom that person is treated as the employer by virtue of the operation of section 9A, then it shall constitute a defence in any proceedings under this section against that person in

respect of such failure if he shows that-

- (a) he did not comply with those requirements because he relied upon a statement in writing-
  - (i) by that individual; and
  - (ii) in the form specified under subsection (1AC); and
- (b) it was reasonable for him to rely upon that statement. (Added 54 of 1995 s. 3)
- (1AB) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (1AA)(a) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 3. (Added 54 of 1995 s. 3. Amended 4 of 2010 s. 13)
- (1AC) The Commissioner may, by notice in the Gazette, specify a form for the purposes of subsection (1AA)(a). (Added 54 of 1995 s. 3)
- (1AD) For the avoidance of doubt, it is hereby declared that a form specified under subsection (1AC) is not subsidiary legislation. (Added 54 of 1995 s. 3)
- (2) Any person who without reasonable excuse-
  - (a) makes an incorrect return by omitting or understating anything in respect of which he is required by this Ordinance to make a return, either on his behalf or on behalf of another person; (Amended 1 of 2010 s. 7)
  - (b) makes an incorrect statement in connection with a claim for any deduction or allowance under this Ordinance;
  - (c) gives any incorrect information in relation to any matter or thing affecting his own liability (or the liability of any other person) to tax; (Amended 1 of 2010 s. 7)
  - (d) fails to comply with the requirements of a notice given to him under section 51(1) or (2A); or
  - (e) fails to comply with section 51(2),commits an offence and is liable on conviction to a fine at level 3 and a further fine of treble the amount of tax which has been undercharged in consequence of such incorrect return, statement or information, or would have been so undercharged if the return, statement or information had been accepted as correct, or which has been undercharged in consequence of the failure to comply with a notice under section 51(1) or (2A) or a failure to comply with section 51(2), or which would have been undercharged if such failure had not been detected. (Replaced 43 of 1975 s. 6. Amended L.N. 411 of 1984; 43 of 1989 s. 27; L.N. 338 of 1995; 4 of 2010 s. 13)
- (2A) In the case of an offence under subsection (2)(d), the court may order the person convicted to comply with the requirements of the notice given to him under section 51(1) or (2A) within such time as may be specified in the order. (Added 43 of 1975 s. 6. Amended 43 of 1989 s. 27)
- (2B) Any person who does not comply with an order of the court under subsection (1) or (2A) or under section 51(4B)(b) commits an offence and is liable on conviction to a fine at level 4. (Added 43 of 1975 s. 6. Amended L.N. 338 of 1995; 4 of 2010 s. 13)
- (2C) Any person who does not comply with an order of the court under subsection (1A) commits an offence and is liable on conviction to a fine at level 6. (Added 48 of 1995 s. 11. Amended 4 of 2010 s. 13)
- (2D) Any person who without reasonable excuse gives any incorrect information in relation to any matter or thing affecting the person's own liability (or the liability of any other person) to any tax of a territory outside Hong Kong commits an offence if-
  - (a) arrangements having effect under section 49(1A) are made with the government of that territory; and
  - (b) that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,and is liable to a fine at level 3. (Added 1 of 2010 s. 7)
- (3) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made in the year of assessment in respect of or during which the offence was committed or within 6 years after the expiration thereof. (Amended 49 of 1956 s. 61)
- (4) Any person who aids, abets or incites another person to commit an offence under this section shall be deemed to have committed the same offence and to be liable to the same penalty. (Added 49 of 1956 s. 61)
- (5) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder. (Amended 49 of 1956 s. 61)

Section:	80A	<b>(Repealed 17 of 1989 s. 19)</b>	30/06/1997
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Section:	81	<b>Breach of secrecy and other matters to be offences</b>	E.R. 1 of 2012	09/02/2012
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- (1) Any person who- (Amended 4 of 2010 s. 14)
- (a) acts under this Ordinance without taking an oath of secrecy as required by section 4(2); or
  - (b) acts contrary to the provisions of section 4(1) or to an oath taken under section 4(2); or
  - (c) aids, abets, or incites any other person to act contrary to the provisions of section 4, (Amended 49 of 1956 s. 62)
- commits an offence and is liable on conviction to a fine at level 5. (Amended 43 of 1975 s. 7; L.N. 338 of 1995; 4 of 2010 s. 14)
- (2) Proceedings in respect of an offence under this section must not be commenced after 2 years from the commission of the offence. (Added 4 of 2010 s. 14)
- (3) Subsection (2) applies only to an offence committed on or after the commencement\* of the Inland Revenue (Amendment) (No. 2) Ordinance 2010 (4 of 2010). (Added 4 of 2010 s. 14)

**Note:**

\* **Commencement date: 12 February 2010.**

Section:	82	<b>Penal provisions relating to fraud, etc.</b>	E.R. 1 of 2012	09/02/2012
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- (1) Any person who wilfully with intent to evade or to assist any other person to evade tax-
- (a) omits from a return made under this Ordinance any sum which should be included; or (Amended 30 of 1950 Schedule)
  - (b) makes any false statement or entry in any return made under this Ordinance; or
  - (c) makes any false statement in connection with a claim for any deduction or allowance under this Ordinance; or
  - (d) signs any statement or return furnished under this Ordinance without reasonable grounds for believing the same to be true; or
  - (e) gives any false answer whether verbally or in writing to any question or request for information asked or made in accordance with the provisions of this Ordinance; or
  - (f) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or records; or
  - (g) makes use of any fraud, art, or contrivance, whatsoever or authorizes the use of any such fraud, art, or contrivance,
- commits an offence. (Amended 49 of 1956 s. 63; 40 of 1972 s. 12; L.N. 411 of 1984; 50 of 1991 s. 4; L.N. 338 of 1995; 4 of 2010 s. 15)
- (1A) A person who commits an offence under subsection (1) is liable-
- (a) on summary conviction to-
    - (i) a fine at level 3;
    - (ii) a further fine of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence has not been detected; and
    - (iii) imprisonment for 6 months; and
  - (b) on indictment to-
    - (i) a fine at level 5;
    - (ii) a further fine of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence has not been detected; and
    - (iii) imprisonment for 3 years. (Added 4 of 2010 s. 15)
- (2) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder.

Section:	82A	<b>Additional tax in certain cases</b>	E.R. 1 of 2012	09/02/2012
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- (1) Any person who without reasonable excuse-
- (a) makes an incorrect return by omitting or understating anything in respect of which he is required by this Ordinance to make a return, either on his behalf or on behalf of another person; or (Amended 1 of 2010 s. 8)

- (b) makes an incorrect statement in connection with a claim for any deduction or allowance under this Ordinance; or
  - (c) gives any incorrect information in relation to any matter or thing affecting his own liability (or the liability of any other person) to tax; or (Amended 1 of 2010 s. 8)
  - (d) fails to comply with the requirements of a notice given to him under section 51(1) or (2A); or
  - (e) fails to comply with section 51(2),
- shall, if no prosecution under section 80(2) or 82(1) has been instituted in respect of the same facts, be liable to be assessed under this section to additional tax of an amount not exceeding treble the amount of tax which-
- (i) has been undercharged in consequence of such incorrect return, statement or information, or would have been so undercharged if the return, statement or information had been accepted as correct; or
  - (ii) has been undercharged in consequence of the failure to comply with a notice under section 51(1) or (2A) or a failure to comply with section 51(2), or which would have been undercharged if such failure had not been detected. (Amended 43 of 1975 s. 8; 43 of 1989 s. 28)
- (2) Additional tax shall be payable in addition to any amount of tax payable under an assessment, or an additional assessment under section 60.
  - (3) An assessment of additional tax may be made only by the Commissioner personally or a deputy commissioner personally. (Amended 48 of 1995 s. 12)
  - (4) Before making an assessment of additional tax the Commissioner or a deputy commissioner, as the case may be, shall- (Amended 48 of 1995 s. 12)
    - (a) cause notice to be given to the person he proposes so to assess which shall-
      - (i) inform such person of the alleged incorrect return, incorrect statement or incorrect information or alleged failure to comply with the requirements of the notice given to him under section 51(1) or (2A) or the alleged failure to comply with section 51(2) in respect of which the Commissioner or a deputy commissioner intends to assess additional tax under subsection (1); (Replaced 43 of 1975 s. 8. Amended 43 of 1989 s. 28; 48 of 1995 s. 12)
      - (ii) include a statement that such person has the right to submit written representations to him with regard to the proposed assessment on him of additional tax;
      - (iii) specify the date, which shall not be earlier than 21 days from the date of service of the notice, by which representations which such person may wish to make under subparagraph (ii) must be received;
    - (b) consider and take into account any representations which he may receive under paragraph (a) from or on behalf of a person proposed to be assessed for additional tax.
  - (4A) Notwithstanding subsection (4), if the Commissioner or a deputy commissioner is of the opinion that the person he proposes to assess to additional tax under subsection (1) is about to leave Hong Kong, he need not serve a notice under subsection (4)(a), but may assess that person to additional tax under subsection (1). (Added 43 of 1975 s. 8. Amended 7 of 1986 s. 12; 48 of 1995 s. 12)
  - (5) Notice of intention to assess additional tax and notice of an assessment to additional tax shall be given in the same manner as is provided in section 58(2) in respect of a notice of assessment under section 62.
  - (6) Where a person who is liable to be assessed to additional tax has died, an assessment to additional tax may be made on his executor, and the additional tax shall be recovered as a debt due from and payable out of the deceased person's estate.
  - (7) A person who has been assessed to additional tax under subsection (1) shall not be liable to be charged on the same facts with an offence under section 80(2) or 82(1).

(Added 26 of 1969 s. 38)

Section:	82B	<b>Appeals against assessment to additional tax to Board of Review</b>	E.R. 1 of 2012	09/02/2012
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- (1) Any person who has been assessed to additional tax under section 82A may within-
  - (a) 1 month after the notice of assessment is given to him; or
  - (b) such further period as the Board may allow under subsection (1A),
 either himself or by his authorized representative give notice of appeal to the Board; but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by—
  - (i) a copy of the notice of assessment;
  - (ii) a statement of the grounds of appeal from the assessment;
  - (iii) a copy of the notice of intention to assess additional tax given under section 82A(4), if any such notice was

given; and

- (iv) a copy of any written representations made under section 82A(4). (Replaced 12 of 2004 s. 18)
- (1A) If the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1). This subsection shall apply to an appeal relating to any assessment in respect of which notice of assessment is given on or after the commencement\* of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004). (Added 12 of 2004 s. 18)
- (2) On an appeal against assessment to additional tax, it shall be open to the appellant to argue that-
- (a) he is not liable to additional tax;
  - (b) the amount of additional tax assessed on him exceeds the amount for which he is liable under section 82A;
  - (c) the amount of additional tax, although not in excess of that for which he is liable under section 82A, is excessive having regard to the circumstances.
- (3) Sections 66(2) and (3), 68, 68A, 69 and 70 shall, so far as they are applicable, have effect with respect to appeals against additional tax as if such appeals were against assessments to tax other than additional tax. (Amended 4 of 2010 s. 16)

(Added 26 of 1969 s. 38)

**Note:**

\* **Commencement date: 25 June 2004.**

Section:	83	<b>Tax payable notwithstanding proceedings</b>	E.R. 1 of 2012	09/02/2012
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The institution of proceedings for, or the imposition of, a penalty, fine, or term of imprisonment under this Part shall not relieve any person from liability to assessment or payment of any tax for which he is or may be liable.

(Amended 49 of 1956 s. 64)

Section:	84	<b>Prosecutions, sanction of Commissioner</b>	E.R. 1 of 2012	09/02/2012
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- (1) No prosecution in respect of an offence under section 80 or 82 may be commenced except at the instance of or with the sanction of the Commissioner. (Amended 26 of 1969 s. 39)
- (2) Nothing in this section shall derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences. (Added 26 of 1969 s. 39. Amended L.N. 362 of 1997)

Part:	15	<b>General</b>	E.R. 1 of 2012	09/02/2012
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Section:	85	<b>Power to make rules</b>	E.R. 1 of 2012	09/02/2012
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- (1) The Board of Inland Revenue may from time to time make rules generally for carrying out the provisions of this Ordinance and for the ascertainment and determination of any class of income or profits. (Amended 30 of 1950 Schedule)
- (2) Without prejudice to the generality of the foregoing power such rules may-
- (a) prescribe the procedure to be followed on application for refunds and relief;
  - (b) provide for any matter which by this Ordinance is to be or may be prescribed; (Amended 35 of 1965 s. 41)
  - (c) for the purpose of any of the provisions of this Ordinance, prescribe what is or is deemed to be included in, or excluded from, the expression *machinery or plant* (機械或工業裝置) and the expression *implement, utensil or article* (工具、器具或物品); (Added 35 of 1965 s. 41. Amended 63 of 1997 s. 8)
  - (d) prescribe any procedure to be followed in relation to an appeal to the Board of Review. (Added 63 of 1997 s. 8)
- (3) Such rules may prescribe fines recoverable on summary conviction for any contravention thereof or failure to comply therewith not exceeding in each case a fine at level 1. (Amended L.N. 338 of 1995)
- (4) All such rules made by the Board of Inland Revenue shall be submitted to the Chief Executive, and shall be subject to the approval of the Legislative Council. (Amended 12 of 1999 s. 3)

Section:	86	<b>Board of Inland Revenue to specify forms</b>	E.R. 1 of 2012	09/02/2012
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- (1) The Board of Inland Revenue may specify any forms or the form of any forms which may be necessary for carrying this Ordinance into effect. (Amended 39 of 1969 s. 10; 8 of 1983 s. 20; 5 of 2003 s. 14)
- (2) Where a specimen of any form bears an endorsement, purporting to be signed by the secretary to the Board of Inland Revenue, to the effect that the form is specified by the Board of Inland Revenue, it shall be presumed, until the contrary is proved, that the form is a form specified by the Board of Inland Revenue under subsection (1). (Added 8 of 1983 s. 20)

Section:	87	<b>General power of Chief Executive in Council to exempt</b>	E.R. 1 of 2012	09/02/2012
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The Chief Executive in Council may by order exempt any person, office or institution from payment of the whole or any portion of any tax chargeable under this Ordinance.

(Amended 12 of 1999 s. 3)

Section:	87A	<b>(Repealed 76 of 1993 s. 9)</b>		30/06/1997
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Section:	88	<b>Exemption of charitable bodies</b>	E.R. 1 of 2012	09/02/2012
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Notwithstanding anything to the contrary in this Ordinance contained there shall be exempt and there shall be deemed always to have been exempt from tax any charitable institution or trust of a public character:

Provided that where a trade or business is carried on by any such institution or trust the profits derived from such trade or business shall be exempt and shall be deemed to have been exempt from tax only if such profits are applied solely for charitable purposes and are not expended substantially outside Hong Kong and either- (Amended 7 of 1986 s. 12)

- (a) the trade or business is exercised in the course of the actual carrying out of the expressed objects of such institution or trust; or
- (b) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution or trust is established.

(Added 3 of 1949 s. 18. Amended 30 of 1950 Schedule; 49 of 1956 s. 66; 26 of 1969 s. 40; 65 of 1970 s. 10)

Section:	88A	<b>Advance rulings</b>	E.R. 1 of 2012	09/02/2012
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- (1) The Commissioner may, on an application made by a person in accordance with Part 1 of Schedule 10, make a ruling on any of the matters specified in that Part in accordance with that Part.
- (2) Part 1 of Schedule 10 shall apply to and in connection with an application under subsection (1) and any ruling made by the Commissioner under that subsection.
- (3) The fees specified in Part 2 of Schedule 10 shall be payable in respect of any application under subsection (1).
- (4) If by reason of section 2 or 3 of Part 1 of Schedule 10, the Commissioner does not make a ruling under subsection (1), any fees paid under subsection (3) shall be refunded to the applicant.
- (5) The Commissioner may in exceptional circumstances at his discretion waive in whole or in part any fees payable by an applicant under subsection (3).
- (6) Any fees due and payable under subsection (3) shall be recoverable as a civil debt due to the Government.
- (7) The Secretary for Financial Services and the Treasury may by order amend Schedule 10. (Amended L.N. 106 of 2002)
- (8) No liability shall rest upon the Government, the Commissioner or any other public officer in respect of the bona fide exercise of any power or performance of any duty under and in accordance with Schedule 10.
- (9) In this section and in Schedule 10, **applicant** (申請人) means the person making an application under subsection (1).

(Added 32 of 1998 s. 30. Amended E.R. 1 of 2012)



Section:	88B	<b>Notice of no objection in respect of an application to deregister a private company under section 291AA of Companies Ordinance</b>	E.R. 1 of 2012	09/02/2012
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- (1) On a request made by a person who is entitled to apply for the deregistration of a private company under section 291AA of the Companies Ordinance (Cap 32), the Commissioner may issue a written notice stating that he has no objection to the company being deregistered.
- (2) The fee specified in Schedule 11 shall be payable in respect of a request under subsection (1).
- (3) The Secretary for Financial Services and the Treasury may by order amend Schedule 11. (Amended L.N. 106 of 2002)

(Added 30 of 1999 s. 44)

Section:	89	<b>Transitional provisions</b>	E.R. 1 of 2012	09/02/2012
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- (1) (Repealed 12 of 2004 s. 20)
- (2) In relation to amendments made by the Inland Revenue (Amendment) (No. 2) Ordinance 1993 (52 of 1993)-
  - (a) it is declared that the amendments shall be without prejudice to the provisions of Part 14. (Amended 4 of 2010 s. 17)
  - (b) (Repealed 4 of 2010 s. 17)
- (3) The transitional provisions of Schedule 9 shall have effect in relation to recognized occupational retirement schemes approved under section 87A prior to the repeal of that section by the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993). (Added 76 of 1993 s. 10)
- (4) The transitional provisions of Schedule 12 shall have effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment 2001/02. (Added 29 of 2001 s. 2)
- (5) Schedule 14 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment 2005/06. (Added 8 of 2005 s. 6)
- (6) Schedule 21 has effect in relation to the amendments made by the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011). (Added 4 of 2011 s. 5)
- (7) Schedule 22 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2011. (Added 9 of 2011 s. 3)
- (8) Schedule 24 sets out transitional provisions that have effect for the purposes of the Inland Revenue (Amendment) (No. 3) Ordinance 2011 (21 of 2011). (Added 21 of 2011 s. 8)

Section:	90	<b>Reduction of taxes for year of assessment 2007/08</b>	E.R. 1 of 2012	09/02/2012
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Schedule 18 contains provisions relating to the reduction of property tax, salaries tax, profits tax and tax under personal assessment for the year of assessment commencing on 1 April 2007.

(Added 21 of 2008 s. 6)

Section:	91	<b>Reduction of taxes for year of assessment 2008/09</b>	E.R. 1 of 2012	09/02/2012
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Schedule 19 contains provisions relating to the reduction of salaries tax and tax under personal assessment for the year of assessment commencing on 1 April 2008.

(Added 8 of 2009 s. 2)

Section:	92	<b>Reduction of taxes for year of assessment 2009/10</b>	E.R. 1 of 2012	09/02/2012
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Schedule 20 contains provisions relating to the reduction of salaries tax and tax under personal assessment for the year of assessment commencing on 1 April 2009.

(Added 10 of 2010 s. 7)

Section:	93	<b>Reduction of taxes for year of assessment 2010/11</b>	E.R. 1 of 2012	09/02/2012
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Schedule 23 contains provisions relating to the reduction of salaries tax and tax under personal assessment for the year

of assessment commencing on 1 April 2010.

(Added 9 of 2011 s. 4)

Section:	94	<b>Reduction of taxes for year of assessment 2011/12</b>	21 of 2012	20/07/2012
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Remarks:  
 This section was added by [21 of 2012](#). Its contents will be incorporated in BLIS system as soon as possible.

Schedule:	1	<b>Standard Rate</b>	E.R. 1 of 2012	09/02/2012
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[sections 2(1), 14A(1)  
 & 19CA(4) & (5)]  
 (Amended 4 of 2011 s. 6)

For the years of assessment 1947/48 to 1949/50 inclusive	—	10%.	(Amended 49 of 1956 s. 67)
For the years of assessment 1950/51 to 1965/66 inclusive	—	12 1/2%.	(Amended 15 of 1966 s. 4)
For the years of assessment 1966/67 to 1983/84 inclusive	—	15%.	(Added 15 of 1966 s. 4. Amended 36 of 1984 s. 7)
For the years of assessment 1984/85 to 1986/87 inclusive	—	17%.	(Added 36 of 1984 s. 7. Amended 28 of 1987 s. 8)
For the year of assessment 1987/88	—	16 1/2%.	(Added 28 of 1987 s. 8. Amended 28 of 1988 s. 7)
For the year of assessment 1988/89	—	15 1/2%.	(Added 28 of 1988 s. 7. Amended 17 of 1989 s. 20)
For the years of assessment 1989/90 to 2002/03 inclusive	—	15%.	(Added 17 of 1989 s. 20. Amended 24 of 2003 s. 9)
For the year of assessment 2003/04	—	15 1/2%.	(Added 24 of 2003 s. 9)
For the years of assessment 2004/05 to 2007/08 inclusive	—	16%.	(Added 24 of 2003 s. 9. Amended 21 of 2008 s. 7)
For the year of assessment 2008/09 and for each year after that year	—	15%.	(Added 21 of 2008 s. 7)

Schedule:	2	<b>Rates</b>	E.R. 1 of 2012	09/02/2012
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[sections 13 & 43(1)]

For the years of assessment 1947/48 to 1949/50 inclusive  
 (Amended 49 of 1956 s. 68)

Second Column

Third Column

(a) Upon the first \$5000

1/4 standard rate

(b)	Upon the next \$5000	1/4	"	"
(c)	-do-	3/4	"	"
(d)	-do-	The full standard rate		
(e)	-do-	1 1/4 standard rate		
(f)	-do-	1 1/2	"	"
(g)	-do-	1 3/4	"	"
(h)	Upon the remainder	Twice the standard rate		

Note:- Where a person is liable to the appropriate tax for a part only of any year of assessment the amounts in the Second Column against items (a) to (g) will be reduced in the proportion which the number of days he is so liable bears to the number of days in that year of assessment.

For the years of assessment 1950/51 to 1965/66 inclusive

	Second Column		Third Column	
(a)	Upon the first \$5000	1/5	standard rate	
(b)	Upon the next \$5000	2/5	"	"
(c)	-do-	3/5	"	"
(d)	-do-	4/5	"	"
(e)	-do-	The full standard rate		
(f)	-do-	1 1/5 standard rate		
(g)	-do-	1 2/5	"	"
(h)	-do-	1 3/5	"	"
(i)	-do-	1 4/5	"	"
(j)	Upon the remainder	Twice the standard rate		

(Added 30 of 1950 Schedule. Amended 37 of 1950 Schedule; 15 of 1966 s. 5)

For the years of assessment 1966/67 to 1971/72 inclusive

	Second Column		Third Column	
(a)	Upon the first \$5000	2 3/4%		
(b)	Upon the next \$5000	5 1/2%		
(c)	-do-	8 1/4%		
(d)	-do-	11%		
(e)	-do-	14%		
(f)	-do-	17%		
(g)	-do-	20%		
(h)	-do-	23%		
(i)	-do-	26%		
(j)	Upon the remainder	30%		

(Added 15 of 1966 s. 5. Amended 40 of 1972 s. 2)

For the years of assessment 1972/73

	Second Column		Third Column	
(a)	Upon the first \$5000	2 1/2%		
(b)	Upon the next \$5000	5%		
(c)	-do-	7 1/2%		
(d)	-do-	10%		
(e)	-do-	12 1/2%		
(f)	-do-	15%		
(g)	-do-	17 1/2%		
(h)	-do-	20%		

(i)	-do-	22 1/2%
(j)	-do-	25%
(k)	-do-	27 1/2%
(l)	Upon the remainder	30%

(Added 26 of 1972 s. 2. Amended 33 of 1973 s. 5)

For the years of assessment 1973/74 to 1977/78 inclusive

	Second Column	Third Column
(a)	Upon the first \$10000	5%
(b)	Upon the next \$10000	10%
(c)	-do-	15%
(d)	-do-	20%
(e)	-do-	25%
(f)	Upon the remainder	30%

(Added 33 of 1973 s. 5. Amended 29 of 1979 s. 3; L.N. 137 of 1981)

For the years of assessment 1978/79 to 1984/85 inclusive

	Second Column	Third Column
(a)	Upon the first \$10000	5%
(b)	Upon the next \$10000	10%
(c)	-do-	15%
(d)	-do-	20%
(e)	Upon the remainder	25%

(Added 29 of 1979 s. 3. Amended 21 of 1985 s. 3)

For the years of assessment 1985/86 to 1986/87 inclusive

	Second Column	Third Column
(a)	Upon the first \$10000	5%
(b)	Upon the next \$10000	10%
(c)	-do-	15%
(d)	Upon the next \$20000	20%
(e)	Upon the remainder	25%

(Added 21 of 1985 s. 3. Amended 28 of 1987 s. 9)

For the year of assessment 1987/88

	Second Column	Third Column
(a)	Upon the first \$10000	5%
(b)	Upon the next \$10000	10%
(c)	Upon the next \$20000	15%
(d)	Upon the next \$20000	20%
(e)	Upon the remainder	25%

(Added 28 of 1987 s. 9. Amended 28 of 1988 s. 8)

For the years of assessment 1988/89 and 1989/90

	Second Column	Third Column
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(a)	Upon the first \$10000	3%
(b)	Upon the next \$10000	6%
(c)	-do-	9%
(d)	-do-	12%
(e)	-do-	15%
(f)	-do-	18%
(g)	-do-	21%
(h)	Upon the remainder	25%

(Added 28 of 1988 s. 8. Amended 30 of 1990 s. 5)

For the year of assessment 1990/91

	Second Column	Third Column
(a)	Upon the first \$10000	2 per cent
(b)	Upon the next \$10000	4 per cent
(c)	-do-	9 per cent
(d)	-do-	12 per cent
(e)	-do-	15 per cent
(f)	-do-	18 per cent
(g)	-do-	21 per cent
(h)	Upon the remainder	25 per cent

(Added 30 of 1990 s. 5. Amended 42 of 1991 s. 2)

For the years of assessment 1991/92 and 1992/93

	Second Column	Third Column
(a)	Upon the first \$20000	2%
(b)	Upon the next \$20000	9%
(c)	Upon the next \$20000	17%
(d)	Upon the remainder	25%

(Added 42 of 1991 s. 2. Amended 28 of 1993 s. 2)

For the year of assessment 1993/94

	Second Column	Third Column
(a)	Upon the first \$20000	2%
(b)	Upon the next \$30000	9%
(c)	Upon the next \$30000	17%
(d)	Upon the remainder	25%

(Added 28 of 1993 s. 2. Amended 37 of 1994 s. 6)

For the years of assessment 1994/95 to 1996/97 inclusive

	Second Column	Third Column
(a)	Upon the first \$20000	2%
(b)	Upon the next \$30000	9%
(c)	Upon the next \$30000	17%
(d)	Upon the remainder	20%

(Added 37 of 1994 s. 6. Amended 42 of 1997 s. 4)

For the year of assessment 1997/98

Second Column

Third Column

- (a) Upon the first \$30000 2%
- (b) Upon the next \$30000 8%
- (c) Upon the next \$30000 14%
- (d) Upon the remainder 20%

(Added 42 of 1997 s. 4. Amended 31 of 1998 s. 20)

For the years of assessment 1998/99 to 2002/03 inclusive

Second Column

Third Column

- (a) Upon the first \$35000 2%
- (b) Upon the next \$35000 7%
- (c) Upon the next \$35000 12%
- (d) Upon the remainder 17%

(Added 31 of 1998 s. 20. Amended 24 of 2003 s. 10)

For the year of assessment 2003/04

Second Column

Third Column

- (a) Upon the first \$32500 2%
- (b) Upon the next \$32500 7 1/2%
- (c) Upon the next \$32500 13 %
- (d) Upon the remainder 18 1/2%

(Added 24 of 2003 s. 10)

For the years of assessment of 2004/05 and 2005/06

Second Column

Third Column

- (a) Upon the first \$30000 2%
- (b) Upon the next \$30000 8%
- (c) Upon the next \$30000 14%
- (d) Upon the remainder 20%

(Added 24 of 2003 s. 10. Amended 13 of 2006 s. 3)

For the year of assessment 2006/07

Second Column

Third Column

- (a) Upon the first \$30000 2%
- (b) Upon the next \$30000 7%
- (c) Upon the next \$30000 13%
- (d) Upon the remainder 19%

(Added 13 of 2006 s. 3. Amended 10 of 2007 s. 6)

For the year of assessment 2007/08

Second Column

Third Column

- (a) Upon the first \$35000 2%

- (b) Upon the next \$35000 7%  
(c) Upon the next \$35000 12%  
(d) Upon the remainder 17%

(Added 10 of 2007 s. 6. Amended 21 of 2008 s. 8)

For the year of assessment 2008/09  
and for each year after that year

Second Column	Third Column
(a) Upon the first \$40000	2%
(b) Upon the next \$40000	7%
(c) Upon the next \$40000	12%
(d) Upon the remainder	17%

(Added 21 of 2008 s. 8)

Schedule:	3	<b>Public Utility Companies</b>	E.R. 1 of 2012	09/02/2012
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[section 16(2)(b) & (6)]

The Hong Kong Electric Company, Limited.  
China Light and Power Company, Limited.  
The Hong Kong and China Gas Company, Limited.

(Added 2 of 1971 s. 48. Amended 17 of 1989 s. 21)

Schedule:	3A	<b>Deduction for Expenses of Self-Education</b>	E.R. 1 of 2012	09/02/2012
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[section 12(6)(a)]

Item	Year of assessment	Amount
1.	For the year of assessment 1996/97	\$12000
2.	For the year of assessment 1997/98 (Amended 31 of 1998 s. 21)	\$20000
3.	For the years of assessment 1998/99 to 2000/01 inclusive (Replaced 15 of 2001 s. 2)	\$30000
4.	For the years of assessment 2001/02 to 2006/07 inclusive (Replaced 10 of 2007 s. 7)	\$40000
5.	For the year of assessment 2007/08 and for each year after that year (Added 10 of 2007 s. 7)	\$60000

(Added 42 of 1997 s. 5)

Schedule:	3B	<b>Deduction for the Purposes of Section 16AA or 26G</b>	E.R. 1 of 2012	09/02/2012
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[sections 16AA & 26G]

1. For the year of assessment to be appointed under section 2(2) of the Inland Revenue (Amendment) Ordinance 1998 (31 of 1998) and for each year after that year
- \$12000  
(Added 31 of 1998 s. 22)

**Note:**

**Schedule 3B applies in relation to the year of assessment commencing on 1 April 2000 and to all subsequent years of assessment. (31 of 1998 s. 2(2); L.N. 175 of 2000)**

Schedule:	3C	<b>Elderly Residential Care Expenses Deduction</b>	E.R. 1 of 2012	09/02/2012
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[section 26D]

1. For the years of assessment 1998/99 to 2010/11 inclusive (Replaced 9 of 2011 s. 5) \$60000
2. For the year of assessment 2011/12 and for each year after that year (Added 9 of 2011 s. 5) \$72000  
(Added 31 of 1998 s. 22)

Schedule:	3D	<b>Home Loan Interest Deduction</b>	E.R. 1 of 2012	09/02/2012
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[section 26E]

1. For the years of assessment 1998/99 to 2000/01 inclusive (Replaced 29 of 2001 s. 3) \$100000
2. For the years of assessment 2001/02 and 2002/03 (Added 29 of 2001 s. 3) \$150000
3. For the year of assessment 2003/04 and for each year after that year (Added 29 of 2001 s. 3) \$100000  
(Added 31 of 1998 s. 22)

Schedule:	4	<b>Allowances</b>	E.R. 1 of 2012	09/02/2012
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[section 27(3)]  
(Amended 48 of 1995 s. 13)

For the year of assessment 1989/90

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)-	
(a) subsection (1)(a)	\$32000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$39000
(d) subsection (1)(b), being the prescribed percentage	10%
2. Section 29 (married person's allowance)-	
(a) subsection (3)(a)	\$66000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$14000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$80000
(d) subsection (3)(b), being the prescribed percentage	10%
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$11000
(b) subsection (3)(b)	\$ 3000
(c) subsection (4)(a)	\$ 1200
4. Section 31 (child allowance)-	
(a) subsection (1)	(i) \$13000 for the first child (ii) \$9000 for the second child



- (iii) \$3000 for the third child
- (iv) \$2000 each for the fourth, fifth and sixth child
- (v) \$1000 for each subsequent child

(b) subsection (5)	\$34000
5. Section 32(1) (single parent allowance)	\$20000
(Replaced 43 of 1989 s. 30. Amended 30 of 1990 s. 6)	

For the year of assessment 1990/91

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)-	
(a) subsection (1)(a)	\$32000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$39000
(d) subsection (1)(b), being the prescribed percentage	0%
2. Section 29 (married person's allowance)-	
(a) subsection (3)(a)	\$66000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$14000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$80000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$12000
(b) subsection (3)(b)	\$ 3000
(c) subsection (4)(a)	\$ 1200
4. Section 31 (child allowance)-	
(a) subsection (1)	(i) \$14000 for the first child
	(ii) \$10000 for the second child
	(iii) \$3000 for the third child
	(iv) \$2000 each for the fourth, fifth and sixth child
	(v) \$1000 for each subsequent child
(b) subsection (5)	\$36000
5. Section 32(1) (single parent allowance)	\$20000
(Added 30 of 1990 s. 6. Amended 42 of 1991 s. 3)	

For the year of assessment 1991/92

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)-	
(a) subsection (1)(a)	\$34000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$41000
(d) subsection (1)(b), being the prescribed percentage	0%
2. Section 29 (married person's allowance)-	

(a)	subsection (3)(a)	\$68000
(b)	subsection(3)(b), being the first reference to the prescribed amount	\$14000
(c)	subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$82000
(d)	subsection (3)(b), being the prescribed percentage	0%
3.	Section 30 (dependant parent allowance)-	
(a)	subsection (3)(a)	\$12000
(b)	subsection (3)(b)	\$ 3000
(c)	subsection (4)(a)	\$ 1200
4.	Section 31 (child allowance)-	
(a)	subsection (1)	(i) \$14000 for the first child (ii) \$10000 for the second child (iii) \$3000 for the third child (iv) \$2000 for the four, fifth and sixth child (v) \$1000 for each subsequent child
(b)	subsection (5)	\$36000
5.	Section 32(1) (single parent allowance)	\$20000

(Added 42 of 1991 s. 3. Amended 34 of 1992 s. 4)

For the year of assessment 1992/93

	First Column (section)	Second Column (the prescribed amount or percentage)
1.	Section 28 (basic allowance)-	
(a)	subsection (1)(a)	\$39000
(b)	subsection (1)(b), being the first reference to the prescribed amount	\$ 7000
(c)	subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$46000
(d)	subsection (1)(b), being the prescribed percentage	0%
2.	Section 29 (married person's allowance)-	
(a)	subsection (3)(a)	\$78000
(b)	subsection (3)(b), being the first reference to the prescribed amount	\$14000
(c)	subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$92000
(d)	subsection (3)(b), being the prescribed percentage	0%
3.	Section 30 (dependent parent allowance)-	
(a)	subsection (3)(a)	\$13500
(b)	subsection (3)(b)	\$ 3000
(c)	subsection (4)(a)	\$ 1200
4.	Section 31 (child allowance)-	
(a)	subsection (1)	(i) \$15500 for the first child (ii) \$11500 for the second child (iii) \$3000 for the third child (iv) \$2000 each for the fourth, fifth and sixth child (v) \$1000 for each subsequent child
(b)	subsection (5)	\$39000
5.	Section 32(1) (single parent allowance)	\$23000

(Added 34 of 1992 s. 4. Amended 28 of 1993 s. 3)

For the year of assessment 1993/94

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)-	
(a) subsection (1)(a)	\$ 49000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 56000
(d) subsection (1)(b), being the prescribed percentage	0%
2. Section 29 (married person's allowance)-	
(a) subsection (3)(a)	\$ 98000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$112000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)-	\$ 17000
(a) subsection (3)(a)	\$ 3000
(b) subsection (3)(b)	\$ 1200
(c) subsection (4)(a)	
4. Section 31 (child allowance)-	
(a) subsection (1)	(i) \$17000 for the first child (ii) \$17000 for the second child (iii) \$3000 for the third child (iv) \$2000 each for the fourth, fifth and sixth child (v) \$1000 for each subsequent child
(b) subsection (5)	\$ 46000
5. Section 32(1) (single parent allowance)	\$ 27000

(Added 28 of 1993 s. 3. Amended 37 of 1994 s. 7)

For the year of assessment 1994/95

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)-	
(a) subsection (1)(a)	\$ 65000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 72000
(d) subsection (1)(b), being the prescribed percentage	0%
2. Section 29 (married person's allowance)-	
(a) subsection (3)(a)	\$ 130000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$144000
(d) subsection (3)(b), being the prescribed percentage	0%

3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 20000
(b) subsection (3)(b)	\$ 3000
(c) subsection (4)(a)	\$ 1200
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 20000
(b) subsection (3)(b)	\$ 3000
(c) subsection (4)(a)	\$ 1200
5. Section 31 (child allowance)-	
(a) subsection (1)	(i) \$20000 for the first child (ii) \$20000 for the second child (iii) \$3000 for the third child (iv) \$2000 each for the fourth, fifth and sixth child (v) \$1000 for each subsequent child
(b) subsection (5)	\$ 52000
6. Section 32(1) (single parent allowance)	\$ 32000

(Added 37 of 1994 s. 7. Amended 48 of 1995 s. 13)

For the year of assessment 1995/96

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)-	
(a) subsection (1)(a)	\$ 72000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 79000
(d) subsection (1)(b), being the prescribed percentage	0%
2. Section 29 (married person's allowance)-	
(a) subsection (3)(a)	\$144000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$158000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 22000
(b) subsection (3)(b)	\$ 6000
(c) subsection (4)(a)	\$ 1200
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 22000
(b) subsection (3)(b)	\$ 6000
(c) subsection (4)(a)	\$ 1200
5. Section 31 (child allowance)-	
(a) subsection (1)	(i) \$22000 for each of the first and the second child (ii) \$11000 for each subsequent child
(b) subsection (5)	\$121000
6. Section 31A(1) (disabled dependent allowance)	\$ 11000
7. Section 32(1) (single parent allowance)	\$ 40000

(Added 48 of 1995 s. 13; Amended 24 of 1996 s. 11)

For the year of assessment 1996/97

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)-	
(a) subsection (1)(a)	\$ 83000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 7000
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$ 90000
(d) subsection (1)(b), being the prescribed percentage	0%
2. Section 29 (married person's allowance)-	
(a) subsection (3)(a)	\$166000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 14000
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$180000
(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 24500
(b) subsection (3)(b)	\$ 7000
(c) subsection (4)(a)	\$ 1200
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 24500
(b) subsection (3)(b)	\$ 7000
(c) subsection (4)(a)	\$ 1200
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 4500
6. Section 31 (child allowance)-	
(a) subsection (1)	(i) \$24500 for the first and second child (ii) \$12500 for each subsequent child
(b) subsection (5)	\$136500
7. Section 31A(1) (disabled dependent allowance)	\$ 15000
8. Section 32(1) (single parent allowance)	\$ 45000

(Added 24 of 1996 s. 11. Amended 42 of 1997 s. 6)

For the year of assessment 1997/98

First Column (section)	Second Column (the prescribed amount or percentage)
1. Section 28 (basic allowance)-	
(a) subsection (1)(a)	\$100000
(b) subsection (1)(b), being the first reference to the prescribed amount	\$ 0
(c) subsection (1)(b), being the references to the prescribed amount in subparagraphs (i) and (ii)	\$100000
(d) subsection (1)(b), being the prescribed percentage	0%
2. Section 29 (married person's allowance)-	
(a) subsection (3)(a)	\$200000
(b) subsection (3)(b), being the first reference to the prescribed amount	\$ 0
(c) subsection (3)(b), being the references to the prescribed amount in subparagraphs (i), (ii) and (iii)	\$200000

(d) subsection (3)(b), being the prescribed percentage	0%
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 27000
(b) subsection (3)(b)	\$ 8000
(c) subsection (4)(a)	\$ 1200
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 27000
(b) subsection (3)(b)	\$ 8000
(c) subsection (4)(a)	\$ 1200
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 27000
6. Section 31 (child allowance)-	
(a) subsection (1)	(i) \$27000 for the first and second child (ii) \$14000 for each subsequent child
(b) subsection (5)	\$152000
7. Section 31A(1) (disabled dependant allowance)	\$ 25000
8. Section 32(1) (single parent allowance)	\$ 75000

(Added 42 of 1997 s. 6. Amended 31 of 1998 s. 23)

For the years of assessment 1998/99 to 2002/03 inclusive

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$108000
2. Section 29 (married person's allowance)	\$216000
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000
(c) subsection (4)(a)	\$ 12000
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000
(c) subsection (4)(a)	\$ 12000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30000
6. Section 31 (child allowance)-	
(a) subsection (1)	(i) \$30000 for each of the first and second children (ii) \$15000 for each subsequent child
(b) subsection (5)	\$165000
7. Section 31A(1) (disabled dependant allowance)	\$ 60000
8. Section 32(1) (single parent allowance)	\$108000

(Added 31 of 1998 s. 23. Amended 24 of 2003 s. 11; 4 of 2010 s. 18)

For the year of assessment 2003/04

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$104000
2. Section 29 (married person's allowance)	\$208000
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000

(c) subsection (4)(a)	\$ 12000
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000
(c) subsection (4)(a)	\$ 12000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30000
6. Section 31 (child allowance)-	
(a) subsection (1)	\$30000 each for the first to the ninth child
(b) subsection (5)	\$270000
7. Section 31A(1) (disabled dependant allowance)	\$ 60000
8. Section 32(1) (single parent allowance)	\$104000

(Added 24 of 2003 s. 11)

For the year of assessment 2004/05

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$100000
2. Section 29 (married person's allowance)	\$200000
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000
(c) subsection (4)(a)	\$ 12000
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000
(c) subsection (4)(a)	\$ 12000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30000
6. Section 31 (child allowance)-	
(a) subsection (1)	\$30000 each for the first to the ninth child
(b) subsection (5)	\$270000
7. Section 31A(1) (disabled dependant allowance)	\$ 60000
8. Section 32(1) (single parent allowance)	\$100000

(Added 24 of 2003 s. 11. Amended 8 of 2005 s. 5)

For the years of assessment 2005/06 and 2006/07

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$100000
2. Section 29 (married person's allowance)	\$200000
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000
(c) subsection (3A)(a)	\$ 15000
(d) subsection (3A)(b)	\$ 15000
(e) subsection (4)(a)	\$ 12000
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000

(c) subsection (3A)(a)	\$ 15000
(d) subsection (3A)(b)	\$ 15000
(e) subsection (4)(a)	\$ 12000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30000
6. Section 31 (child allowance)-	
(a) subsection (1)	\$40000 each for the first to the ninth child
(b) subsection (5)	\$360000
7. Section 31A(1) (disabled dependant allowance)	\$ 60000
8. Section 32(1) (single parent allowance)	\$100000

(Added 8 of 2005 s. 5. Amended 10 of 2007 s. 8)

For the year of assessment 2007/08

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$100000
2. Section 29 (married person's allowance)	\$200000
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000
(c) subsection (3A)(a)	\$ 15000
(d) subsection (3A)(b)	\$ 15000
(e) subsection (4)(a)	\$ 12000
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000
(c) subsection (3A)(a)	\$ 15000
(d) subsection (3A)(b)	\$ 15000
(e) subsection (4)(a)	\$ 12000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30000
6. Section 31 (child allowance)-	
(a) subsection (1)	\$50000 for each child
(b) subsection (1A)	\$50000 for each child
(c) subsection (5) (in relation to subsection (1))	\$450000
(d) subsection (5) (in relation to subsection (1A))	\$450000
7. Section 31A(1) (disabled dependant allowance)	\$ 60000
8. Section 32(1) (single parent allowance)	\$100000

(Added 10 of 2007 s. 8. Amended 21 of 2008 s. 9)

For the years of assessment 2008/09  
to 2010/11 inclusive

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$108000
2. Section 29 (married person's allowance)	\$216000
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000



(c) subsection (3A)(a)	\$ 15000
(d) subsection (3A)(b)	\$ 15000
(e) subsection (4)(a)	\$ 12000
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 30000
(b) subsection (3)(b)	\$ 30000
(c) subsection (3A)(a)	\$ 15000
(d) subsection (3A)(b)	\$ 15000
(e) subsection (4)(a)	\$ 12000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30000
6. Section 31 (child allowance)-	
(a) subsection (1)	\$50000 for each child
(b) subsection (1A)	\$50000 for each child
(c) subsection (5) (in relation to subsection (1))	\$450000
(d) subsection (5) (in relation to subsection (1A))	\$450000
7. Section 31A(1) (disabled dependant allowance)	\$ 60000
8. Section 32(1) (single parent allowance)	\$108000

(Added 21 of 2008 s. 9. Amended 9 of 2011 s. 6)

For the year of assessment 2011/12 and  
for each year after that year

First Column (section)	Second Column (the prescribed amount)
1. Section 28 (basic allowance)	\$108000
2. Section 29 (married person's allowance)	\$216000
3. Section 30 (dependent parent allowance)-	
(a) subsection (3)(a)	\$ 36000
(b) subsection (3)(b)	\$ 36000
(c) subsection (3A)(a)	\$ 18000
(d) subsection (3A)(b)	\$ 18000
(e) subsection (4)(a)	\$ 12000
4. Section 30A (dependent grandparent allowance)-	
(a) subsection (3)(a)	\$ 36000
(b) subsection (3)(b)	\$ 36000
(c) subsection (3A)(a)	\$ 18000
(d) subsection (3A)(b)	\$ 18000
(e) subsection (4)(a)	\$ 12000
5. Section 30B(1) (dependent brother or dependent sister allowance)	\$ 30000
6. Section 31 (child allowance)-	
(a) subsection (1)	\$60000 for each child
(b) subsection (1A)	\$60000 for each child
(c) subsection (5) (in relation to subsection (1))	\$540000
(d) subsection (5) (in relation to subsection (1A))	\$540000
7. Section 31A(1) (disabled dependant allowance)	\$ 60000
8. Section 32(1) (single parent allowance)	\$108000

(Added 9 of 2011 s. 6)

Schedule:	5		E.R. 1 of 2012	09/02/2012
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[sections 68 & 69]

**Part 1**

**Order for Appellant to Pay Costs**

- 1. Maximum amount which the Board of Review may order the appellant to pay as costs of the Board \$5000

**Part 2**

**Application Fee for Case Stated**

- 1. Fee payable for application requiring the Board of Review to state a case ( Amended L.N. 3 of 2006) \$770  
(Schedule 5 replaced 12 of 2004 s. 21)

Schedule:	6		E.R. 1 of 2012	09/02/2012
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[sections 14A(4) &  
26A(2) & (3)]  
(Amended 4 of 2011 s. 7)

**Part 1**

**Instruments**

- 1. A bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap 19).
- 2. A promissory note within the meaning of section 89 of the Bills of Exchange Ordinance (Cap 19).
- 3. Any other instrument which evidences an obligation to pay a stated or determinable amount to bearer or to order, on or before a fixed time, with or without interest, being an instrument by the delivery of which, with or without endorsement, the right to receive that stated or determinable amount, with or without interest, is transferable.

**Part 2**

**Bodies**

- 1. The Asian Development Bank.
- 2. The International Bank for Reconstruction and Development.
- 3. The International Finance Corporation.
- 4. The European Investment Bank.
- 5. The European Bank for Reconstruction and Development. (Added L.N. 478 of 1993)
- 6. The Inter-American Development Bank. (Added L.N. 478 of 1993)
- 7. The Nordic Investment Bank. (Added L.N. 478 of 1993)
- 8. The European Company for the Financing of Railroad Rolling Stock. (Added L.N. 654 of 1994)
- 9. The Council of Europe Development Bank (formerly known as The Council of Europe Social Development Fund). (Replaced 4 of 2010 s. 19)
- 10. The African Development Bank. (Added L.N. 309 of 1997)  
(Added 17 of 1992 s. 3)

Schedule:	7	<b>(Repealed 4 of 2010 s. 20)</b>	4 of 2010	12/02/2010
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Schedule:	8	<b>Rate of Profies Tax in respect of a Corporation</b>	E.R. 1 of 2012	09/02/2012
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[sections 14(2), 14A(1), 14B(1),

19CA(4) & (5) & 63H(1A)]  
(Amended 4 of 2011 s. 8)

For the years of assessment 1992/93 and 1993/94	17 1/2% (Amended 37 of 1994 s. 8)
For the years of assessment 1994/95 to 1997/98 inclusive	16 1/2% (Added 37 of 1994 s. 8. Amended 32 of 1998 s. 31)
For the years of assessment 1998/99 to 2002/03 inclusive	16% (Added 32 of 1998 s. 31. Amended 24 of 2003 s. 12)
For the years of assessment 2003/04 to 2007/08 inclusive	17 1/2% (Added 24 of 2003 s. 12. Amended 21 of 2008 s. 10)
For the year of assessment 2008/09 and for each year after that year	16 1/2% (Added 21 of 2008 s. 10) (Added 56 of 1993 s. 32)

Schedule:	9	<b>Transitional Provisions Relating to the Inland Revenue (Amendment) (no. 5) Ordinance 1993</b>	E.R. 1 of 2012	09/02/2012
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[section 89]

- In this Schedule-  
**amending Ordinance** (修訂條例) means the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993);  
**retirement scheme** (退休計劃) means a retirement scheme as defined in section 2(1) prior to the commencement of section 2 of the amending Ordinance.
- Notwithstanding the repeal of section 87A by the amending Ordinance, where an application for approval of a retirement scheme under that section was received by the Commissioner before such repeal, the Commissioner may approve the scheme as if that section has not been repealed, and where such approval has been given the scheme shall be deemed to have been approved by the Commissioner under that section immediately prior to its repeal by the amending Ordinance.
- The approval given by the Commissioner to any retirement scheme under section 87A prior to its repeal by the amending Ordinance shall-
  - continue to be effective unless and until it is-
    - deemed to have been withdrawn under subparagraph (b); or
    - withdrawn under paragraph 4;
  - be deemed to have been withdrawn-
    - upon the scheme becoming a recognized occupational retirement scheme other than by virtue of paragraph (a) of the definition of **recognized occupational retirement scheme** (認可職業退休計劃) in section 2(1);
    - where an application is made under section 7 or 15 of the Occupational Retirement Schemes Ordinance (Cap 426) in respect of the scheme before the commencement of section 3 of that Ordinance but the application has not been disposed of prior to the commencement of that section, on the date on which the application is finally disposed of;
    - where an application made under section 7 or 15 of the Occupational Retirement Schemes Ordinance (Cap 426) in respect of the scheme is rejected and an appeal (if any) against such rejection is dismissed before the commencement of section 3 of that Ordinance, on that date of commencement; or
    - where no application for registration or exemption under the Occupational Retirement Schemes Ordinance (Cap 426) has been made prior to the date of commencement of section 3 of that Ordinance, on that date of commencement.
- The Commissioner may withdraw the approval given to any retirement scheme under section 87A prior to its repeal by the amending Ordinance if any term or condition of the scheme is altered unless-
  - the alteration is made solely to secure the issue of an exemption certificate in respect of the scheme or registration of the scheme under section 7 or 18 of the Occupational Retirement Schemes Ordinance

(Cap 426); or

- (b) in the case of any other alteration, the Commissioner is notified in writing of such alteration within 1 month after it is made and the scheme, as altered, complies substantially with the requirements set out in paragraph 7.
5. Where an application is made under section 7(1) or 15 of the Occupational Retirement Schemes Ordinance (Cap 426) in respect of a retirement scheme which was approved for the time being by the Commissioner under section 87A before its repeal by the amending Ordinance, the employer who operates the scheme shall as soon as reasonably practicable after the determination of the application or appeal (if any) give a notice in writing to the Commissioner of the result of the application and, where an appeal has been made against the refusal of such application under section 19 of the Occupational Retirement Schemes Ordinance (Cap 426), the result of such appeal.
6. Section 17(1)(j) applies to a retirement scheme as defined in section 2(1) prior to the commencement of section 2 of the amending Ordinance.
7. The requirements referred to in paragraph 4(b) are-
- (a) the retirement scheme shall be exclusively for the benefit of the employee or employees and of the spouse, children, surviving dependants, or legal personal representatives of an employee;
  - (b) each employee concerned shall be entitled to defined benefits and the terms and conditions of the retirement scheme shall have been made known to all the employees concerned;
  - (c) the benefits afforded by the retirement scheme shall accrue only-
    - (i) on retirement from the service of the employer at some specified age of not less than 45 years; or
    - (ii) on retirement after some specified period of service with the employer of not less than 10 years; or
    - (iii) on attaining the age of 60 years or some specified age for retirement whichever is the later; or
    - (iv) on earlier incapacity or death:Provided where, however, the retirement scheme provides for proportionate or reduced benefits in the event of an employee leaving the employer's service prior to attaining the specified age or completing the specified period of service, the provision for such benefits shall not in itself disqualify the scheme from retaining the approved status;
  - (d) the nature of the benefits afforded by the retirement scheme shall be the same in relation to all the persons to whom the scheme relates but a scheme relating to more than one class of employee may be regarded as so many separate schemes for this purposes;
  - (e) where the retirement scheme is conducted by a third party to whom the employer makes periodical contributions, the diversion of such contributions to any purposes (other than those of the scheme) and the refund of such contributions to the employer shall, except with the consent of the Commissioner and subject to subparagraph (f), be prohibited;
  - (f) the employer shall have no lien on any sum or other benefit to which the employee would be entitled under the retirement scheme except-
    - (i) to the extent that the employer has suffered a loss due to a dishonest act committed by the employee; or
    - (ii) to the extent of a debt acknowledged in writing by the employee as owing to the employer.

(Added 76 of 1993 s. 11)

Schedule:	10		E.R. 1 of 2012	09/02/2012
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[section 88A]

### Part 1

#### Advance Rulings

1. On an application made by a person in accordance with this Part, the Commissioner may make a ruling on how any provision of this Ordinance, other than that relating to the imposition or remission of a penalty, the correctness of a return or other information supplied by any person, the prosecution of any person or the recovery of any debt owing by any person, applies to the applicant or to the arrangement described in the application, whether or not reference is made to that provision in the application.

2. The Commissioner may decline to make a ruling if-
  - (a) the application seeking the ruling would require the Commissioner to determine or establish any question of fact;
  - (b) the Commissioner considers that the correctness of the ruling would depend on the making of assumptions, whether in respect of a future event or any other matter;
  - (c) the matter on which the ruling is sought is subject to an objection or appeal, whether in relation to the applicant or any other person; or
  - (d) the matter on which the ruling is sought is the subject of a return which has been or is due to be lodged under this Ordinance.
3. The Commissioner shall not make a ruling if-
  - (a) the Commissioner considers that the arrangement in relation to which the ruling is sought is not seriously contemplated by the applicant;
  - (b) the application is frivolous or vexatious;
  - (c) the Commissioner is undertaking an audit on how any provision of this Ordinance applies to the applicant, or to an arrangement similar to the arrangement which is the subject of the application, during any period for which the proposed ruling would apply were the ruling to be made;
  - (d) the Commissioner considers that the applicant has not provided sufficient information in relation to the application; or
  - (e) the Commissioner considers that it would be unreasonable to make a ruling in view of the resources available to the Commissioner.
4. The Commissioner shall, where he has declined to make a ruling under section 2 or has not made a ruling by virtue of section 3, notify the applicant in writing of his decision and the reasons therefor.
5. Where the Commissioner has made a ruling to a person on the application of any provision of this Ordinance in relation to an arrangement, and-
  - (a) the ruling applies in relation to the arrangement during the whole or any part of the period specified in the ruling; and
  - (b) the person has under section 15 disclosed in the return provided under this Ordinance that he has relied on the ruling in preparing and providing the return,
 the Commissioner shall apply the provision in relation to the person and the arrangement in respect of the whole of the period or the part of the period, as the case may be, in accordance with the ruling.
6. A ruling shall apply in relation to an arrangement as a ruling on a provision of this Ordinance only if the provision is expressly referred to in the ruling and only for the period specified in the ruling.
7. A ruling shall not apply in relation to an arrangement if-
  - (a) the arrangement is materially different from the arrangement identified in the ruling;
  - (b) there was a material omission or misrepresentation in, or in connection with, the application seeking the ruling; or
  - (c) any assumption of the Commissioner in respect of a future event or any other matter that is stated in the ruling is incorrect.
8. An application for a ruling must-
  - (a) identify the applicant;
  - (b) disclose all relevant facts and documents relating to the arrangement in respect of which the ruling is sought;
  - (c) state the provision of this Ordinance in respect of which the ruling is sought;
  - (d) state the proposition of law (if any) which is relevant to the issues raised in the application;
  - (e) provide such other information as the Commissioner may specify in writing from time to time for the purposes of this section; and
  - (f) be accompanied by a draft ruling.
9. The Commissioner may at any time request further relevant information in respect of an application for a ruling.
10. Without prejudice to section 2, if the Commissioner considers that the correctness of a ruling would depend on the making of assumptions, whether in respect of a future event or any other matter, the Commissioner may, subject to section 11, make any assumption which he considers to be the most appropriate.
11. The Commissioner may not make any assumption in respect of information which the applicant can provide.
12. A ruling made by the Commissioner must state-
  - (a) the name of the person, the provision of this Ordinance, and the arrangement to which the ruling applies;

- (b) the period for which the ruling applies; and
  - (c) any material assumptions in respect of a future event or any other matter made by the Commissioner.
13. The Commissioner may at any time withdraw a ruling by notifying the person to whom the ruling applies in writing of the withdrawal and the reasons therefor.
14. If the Commissioner withdraws a ruling made in respect of an arrangement-
- (a) the ruling shall cease to apply in relation to the arrangement if the arrangement is entered into or effected after the date of the withdrawal;
  - (b) if the arrangement has been entered into or effected on or before the date of the withdrawal-
    - (i) where the person to whom the ruling applies has under section 15 disclosed in the return provided under this Ordinance that he has relied on the ruling in preparing and providing the return, the ruling shall after the date of the withdrawal continue to apply in relation to the arrangement for the remainder of the period specified in the ruling;
    - (ii) in any other case, the ruling shall cease to apply in relation to the arrangement.
15. Where-
- (a) a person has obtained a ruling;
  - (b) the person is required to provide a return under this Ordinance; and
  - (c) in preparing the return the person is required to take into account the way in which a provision of this Ordinance applies to the arrangement identified in the ruling,
- the person must disclose in the return-
- (i) the existence of the ruling;
  - (ii) whether or not the person has relied on the ruling in preparing and providing the return; and
  - (iii) any material changes to the arrangement identified in the ruling.
16. (a) If any provision of this Ordinance that is the subject of or affects a ruling is repealed, the ruling shall cease to apply to the extent of, and from the effective date of, that repeal.
- (b) If any provision of this Ordinance that is the subject of a ruling is amended, or repealed in part only, so that the way in which the provision applies is altered, the ruling shall cease to apply to the extent of, and from the effective date of, the amendment or partial repeal.

## Part 2

### Fees

1. The fees specified in respect of an application for a ruling made in accordance with Part 1 are as follows-
- (a) application fee-
    - (i) for a ruling on whether profits are to be treated as chargeable to profits tax under section 14 of this Ordinance as arising in or derived from Hong Kong \$30000
    - (ii) for a ruling on whether remuneration is to be treated as chargeable to salaries tax by virtue of section 9A of this Ordinance \$10000
    - (iii) for any other ruling \$10000
      - (b) where the time spent in consideration of the application, including any time spent in consulting with the applicant, exceeds the time specified in section 3 for the type of rulings to which the ruling belongs, an additional fee calculated on the basis of each hour or any part thereof spent by-
        - (i) a Deputy Commissioner \$1330
        - (ii) an Assistant Commissioner \$1260
        - (iii) any other person appointed under this Ordinance \$1000
2. (a) In an application for a ruling made in accordance with Part 1, reimbursement shall be made in respect of-
- (i) any fees paid by the Commissioner to any person, as a result of the Commissioner requiring any external advice in relation to the ruling; and
  - (ii) any costs and reasonable disbursements incurred by the Commissioner in relation to the ruling.
- (b) For the purposes of this Ordinance, the reimbursement required to be made under paragraph (a) shall, in addition to the fees specified in section 1, be regarded as the fees specified in respect of an application for a ruling made in accordance with Part 1.
3. The time specified for the purposes of section 1(b) is as follows-
- (a) for a ruling on whether profits are to be treated as chargeable to profits tax under section 23 hours

- 14 of this Ordinance as arising in or derived from Hong Kong
- (b) for a ruling on whether remuneration is to be treated as chargeable to salaries tax by virtue of section 9A of this Ordinance 11 hours
- (c) for any other ruling 7 hours
4. Where an application for a ruling is withdrawn, the applicant is still liable to pay all the fees specified in this Part and incurred in respect of the application before the Commissioner receives notice of the withdrawal.  
(Added 32 of 1998 s. 32. Amended E.R. 1 of 2012)

Schedule:	11	<b>Fee Payable on Request for Notice under Section 88B</b>	E.R. 1 of 2012	09/02/2012
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[section 88B]

The fee payable in respect of a request under section 88B is \$270.

(Added 30 of 1999 s. 44. Amended L.N. 3 of 2006)

Schedule:	12	<b>Transitional Provisions Relating to Provisional Salaries Tax in respect of the Year of Assessment 2001/02</b>	E.R. 1 of 2012	09/02/2012
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[section 89]

1. In this Schedule-

*dwelling* (住宅), *place of residence* (居住地方) and *recognized organization or association* (認可組織或協會) have the respective meanings assigned to them in section 26E(9);

*home loan* (居所貸款), in relation to a person applying under paragraph 2, means a loan of money which is-

- (a) applied wholly or partly for the acquisition of a dwelling which-
  - (i) during any period of time in the year of assessment 2001/02 is held by the person as a sole owner, or as a joint tenant or tenant in common; and
  - (ii) during that period of time is used by the person exclusively or partly as his place of residence; and
- (b) secured during that period of time by a mortgage or charge over that dwelling or any other property in Hong Kong;

*home loan interest* (居所貸款利息), in relation to a person applying under paragraph 2, means interest on a home loan which is payable by the person as a sole owner or as a joint tenant or tenant in common of the dwelling to which the home loan relates, to-

- (a) the Government;
- (b) a financial institution;
- (c) a credit union registered under the Credit Unions Ordinance (Cap 119);
- (d) a money lender licensed under the Money Lenders Ordinance (Cap 163);
- (e) the Hong Kong Housing Society;
- (f) an employer of the person; or
- (g) any recognized organization or association.

2. Without prejudice to section 63E, where in relation to the year of assessment 2001/02 a person is liable to pay provisional salaries tax, that person may, by notice in writing lodged with the Commissioner not later than-

- (a) 28 days before the day by which the provisional salaries tax is to be paid; or
- (b) 14 days after the date of the notice for payment of the provisional salaries tax given under section 63C(6),

whichever is the later, apply to have the payment of the whole or part of such tax held over until he is required to pay salaries tax for that year of assessment, on the ground that he has paid or is likely to pay during that year of assessment home loan interest of an amount which exceeds-

- (i) in a case where the dwelling to which the home loan interest relates is held by the person as a sole owner, \$100000; or
- (ii) in a case where the dwelling to which the home loan interest relates is held by the person otherwise than as a sole owner, the amount calculated in accordance with paragraph 3.

3. The amount referred to in paragraph 2(ii) shall be-
  - (a) in a case where the dwelling is held by the person as a joint tenant, \$100000 as divided by the number of joint tenants; or
  - (b) in a case where the dwelling is held by the person as a tenant in common, \$100000 as multiplied by his share in the ownership in the dwelling.
4. Where the Commissioner is satisfied that it is appropriate to do so, he may, either generally or in a particular case, extend the time within which a person may apply under paragraph 2.
5. On receipt of an application under paragraph 2, the Commissioner shall consider the application and may hold over the payment of the whole or part of the provisional salaries tax.
6. The Commissioner shall, by notice in writing, inform the person applying under paragraph 2 of his decision.
 

(Schedule 12 added 29 of 2001 s. 4)

Schedule:	13	<b>Institutions that may Accredite or Recognize Training or Development Courses for the Purpose of Section 12(6)(c)(iii)</b>	E.R. 1 of 2012	09/02/2012
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[section 12]

Item	Institution
1.	The Architects Registration Board established by section 4 of the Architects Registration Ordinance (Cap 408)
2.	The Chinese Medicine Council of Hong Kong established by section 3 of the Chinese Medicine Ordinance (Cap 549)
3.	The Chiropractors Council established by section 3 of the Chiropractors Registration Ordinance (Cap 428)
**3A	The Construction Industry Council established by section 4 of the Construction Industry Council Ordinance (Cap 587) (Added 12 of 2006 s. 84)
.	
4.	The Construction Industry Training Authority established by section 4 of the Industrial Training (Construction Industry) Ordinance (Cap 317) and in existence before the commencement# of section 71 of the Construction Industry Council Ordinance (Cap 587) (Amended 12 of 2006 s. 84)
5.	The Dental Council of Hong Kong established by section 4 of the Dentists Registration Ordinance (Cap 156)
6.	The Engineers Registration Board established by section 3 of the Engineers Registration Ordinance (Cap 409)
7.	The Estate Agents Authority established by section 4 of the Estate Agents Ordinance (Cap 511)
8.	The Hong Kong Academy of Medicine established by section 3 of the Hong Kong Academy of Medicine Ordinance (Cap 419)
9.	The Hong Kong Bar Association referred to in section 2(1) of the Legal Practitioners Ordinance (Cap 159)
10.	The Hong Kong Institute of Architects incorporated by section 3 of The Hong Kong Institute of Architects Incorporation Ordinance (Cap 1147)
11.	The Hong Kong Institution of Engineers incorporated by section 3 of The Hong Kong Institution of Engineers Ordinance (Cap 1105)
12.	The Hong Kong Institute of Housing incorporated by section 3 of The Hong Kong Institute of Housing Ordinance (Cap 507)
13.	The Hong Kong Institute of Landscape Architects incorporated by section 3 of The Hong Kong Institute of Landscape Architects Incorporation Ordinance (Cap 1162)
14.	The Hong Kong Institute of Planners incorporated by section 3 of The Hong Kong Institute of Planners Incorporation Ordinance (Cap 1153)
15.	The Hong Kong Institute of Surveyors incorporated by section 3 of The Hong Kong Institute of Surveyors Ordinance (Cap 1148)
16.	The Hong Kong Institute of Certified Public Accountants incorporated by section 3 of the Professional Accountants Ordinance (Cap 50) (Amended 23 of 2004 s. 56)
*17.	The Hong Kong Society of Notaries referred to in section 2(1) of the Legal Practitioners Ordinance (Cap 159) as amended by section 5(1)(e) of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998)



18. The Housing Managers Registration Board established by section 3 of the Housing Managers Registration Ordinance (Cap 550)
19. The Land Surveyors Registration Committee appointed under section 6 of the Land Survey Ordinance (Cap 473)
20. The Landscape Architects Registration Board established by section 3 of the Landscape Architects Registration Ordinance (Cap 516)
21. The Law Society of Hong Kong referred to in section 2(1) of the Legal Practitioners Ordinance (Cap 159)
22. The Medical Council of Hong Kong established by section 3 of the Medical Registration Ordinance (Cap 161)
23. The Medical Laboratory Technologists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap 359)
24. The Midwives Council of Hong Kong established by section 3 of the Midwives Registration Ordinance (Cap 162)
25. The Nursing Council of Hong Kong established by section 3 of the Nurses Registration Ordinance (Cap 164)
26. The Occupational Therapists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap 359)
27. The Optometrists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap 359)
28. The Pharmacy and Poisons Board established by section 3 of the Pharmacy and Poisons Ordinance (Cap 138)
29. The Physiotherapists Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap 359)
30. The Planners Registration Board established by section 3 of the Planners Registration Ordinance (Cap 418)
31. The Radiographers Board established by section 5 of the Supplementary Medical Professions Ordinance (Cap 359)
32. The Security and Guarding Services Industry Authority established by section 4 of the Security and Guarding Services Ordinance (Cap 460)
33. The Social Workers Registration Board established by section 4 of the Social Workers Registration Ordinance (Cap 505)
34. The Surveyors Registration Board established by section 3 of the Surveyors Registration Ordinance (Cap 417)
35. The Travel Industry Council of Hong Kong referred to in section 32A(1) of the Travel Agents Ordinance (Cap 218)
36. The Veterinary Surgeons Board established by section 3 of the Veterinary Surgeons Registration Ordinance (Cap 529)
37. The Vocational Training Council established by section 4 of the Vocational Training Council Ordinance (Cap 1130)
38. The Hong Kong Council for Accreditation of Academic and Vocational Qualifications established by section 3(1) of the Hong Kong Council for Accreditation of Academic and Vocational Qualifications Ordinance (Cap 1150) (Added 6 of 2007 s. 49)

(Schedule 13 added 12 of 2004 s. 22)

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**Notes:**

**Schedule 13 (except items 3A and 17) applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(5)(a) and 12 of 2006 s. 84)**

**\*\* Item 3A applies in relation to the year of assessment in which section 3 of Schedule 6 to the Construction Industry Council Ordinance (Cap. 587) comes into operation# and to all subsequent years of assessment. (Please see 12 of 2006 s. 84)**

**# Commencement date : 1 January 2008.**

**\* Item 17 applies in relation to the year of assessment in which section 5(1)(e) of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998) comes into operation+ and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(5)(b))**

**+ Commencement date: 30 June 2005.**

Schedule:	14	<b>Transitional Provisions Relating to Provisional Salaries Tax in respect of the Year of Assessment 2005/06</b>	E.R. 1 of 2012	09/02/2012
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[section 89(5)]

1. For the purposes of section 63C(1) of the Ordinance, in calculating the net chargeable income of a person for the preceding year of assessment to ascertain the provisional salaries tax in respect of the year of assessment 2005/06—
  - (a) the reference to “such allowances as are under Part 5 permitted for that person” in section 12B(1)(b) of the Ordinance; and
  - (b) the reference to “such allowances as are under Part 5 permitted in their case” in section 12B(2)(b) of the Ordinance,
 shall be construed to mean such allowances that may be granted to that person for the year of assessment 2005/06 under Part 5 of the Ordinance as amended by the Revenue (Allowances for Tax) Ordinance 2005 (8 of 2005).
  
2. For the purposes of an application under section 63E(1) of the Ordinance to hold over the payment of provisional salaries tax in respect of the year of assessment 2005/06, the reference to “net chargeable income for the year preceding the year of assessment” in section 63E(2)(a) or (b) of the Ordinance shall be construed to mean the net chargeable income for the preceding year of assessment as calculated in accordance with paragraph 1.

(Schedule 14 added 8 of 2005 s. 7. Amended E.R. 1 of 2012)

Schedule:	15	<b>Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 20AE of this Ordinance</b>	E.R. 1 of 2012	09/02/2012
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[sections 20AB & 20AE]

Part 1

1. The amount regarded as the assessable profits of a resident person for a year of assessment is the total sum arrived at by adding up the assessable profits of the non-resident person that would have been chargeable to tax under Part 4 of this Ordinance but for section 20AC of this Ordinance (*exempt profits*) for each day in the period in that year of assessment during which the resident person has a direct or indirect beneficial interest in the non-resident person.
  
2. For the purposes of section 1, the exempt profits of a non-resident person for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

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

- where:
- A means the exempt profits of the non-resident person for a particular day in a year of assessment;
  - B means the extent of the resident person’s beneficial interest in the non-resident person on the particular day, expressed as a percentage determined in accordance with Part 2;
  - C means the exempt profits of the non-resident person for the accounting period of the non-resident person in which the particular day falls;
  - D means the total number of days in the accounting period of the non-resident person in which the particular day falls.

Part 2

1. Where a resident person has a direct beneficial interest in a non-resident person, the extent of the beneficial interest of the resident person in the non-resident person is—
  - (a) where the non-resident person 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 the resident person;
  - (b) where the non-resident person is a partnership that is not a trustee of a trust estate, the percentage of the profits of the partnership to which the resident person is entitled; or
  - (c) where the non-resident person is a trustee of a trust estate, the percentage in value of the trust estate in which the resident person is interested.
  
2. Where a resident person has an indirect beneficial interest in a non-resident person, the extent of the beneficial interest of the resident person in the non-resident person is—
  - (a) where there is one interposed person, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the interposed person by the percentage representing the extent of the beneficial interest of the interposed person in the non-resident person; or
  - (b) where there is a series of 2 or more interposed persons, the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the resident person in the first interposed person in the series by—
    - (i) the percentage representing the extent of the beneficial interest of each interposed person (other than the last interposed person) in the series in the next interposed person in the series; and
    - (ii) the percentage representing the extent of the beneficial interest of the last interposed person in the series in the non-resident person.
  
3. For the purposes of section 2—
  - (a) section 1 applies in determining the extent of the beneficial interest of a resident person in an interposed person as if references to a non-resident person in that section were references to an interposed person;
  - (b) section 1 applies in determining the extent of the beneficial interest of an interposed person in a non-resident person as if references to a resident person in that section were references to an interposed person;
  - (c) section 1 applies in determining the extent of the beneficial interest of an interposed person (*first-mentioned interposed person*) in another interposed person (*second-mentioned interposed person*) as if—
    - (i) references to a resident person in that section were references to the first-mentioned interposed person; and
    - (ii) references to a non-resident person in that section were references to the second-mentioned interposed person.

(Schedule 15 added 4 of 2006 s. 4. Amended E.R. 1 of 2012)

Schedule:	16	<b>Specified Transactions</b>	E.R. 1 of 2012	09/02/2012
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[section 20AC]

1. a transaction in securities.
2. a transaction in futures contracts.
3. a transaction in foreign exchange contracts.
4. a transaction consisting in the making of a deposit other than by way of a money-lending business.
5. a transaction in foreign currencies.
6. a transaction in exchange-traded commodities.

In this Schedule—

**collective investment scheme** (集體投資計劃) means arrangements in respect of any property—

- (a) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of the management;
- (b) under which—

- (i) the property is managed as a whole by or on behalf of the person operating the arrangements;
  - (ii) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or
  - (iii) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and
- (c) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive—
- (i) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or
  - (ii) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property;

**contract for differences** (差價合約) means an agreement the purpose or effect of which is to obtain a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the agreement;

**debenture** (債權證) includes debenture stocks, bonds, and other debt securities of a corporation, whether constituting a charge on the assets of the corporation or not; (Amended 8 of 2011 s. 27)

**deposit** (存款) means a loan of money—

- (a) at interest; or
- (b) repayable at a premium or repayable with any consideration in money or money's worth;

**exchange-traded commodity** (在交易所買賣的商品) means gold or silver traded on a commodity exchange in Hong Kong to which the Commodity Exchanges (Prohibition) Ordinance (Cap 82) does not apply by virtue of section 3(d) of that Ordinance;

**foreign exchange contract** (外匯交易合約) means a contract other than a futures contract and an options contract, whereby the parties to the contract agree to exchange different currencies at a future time;

**futures contract** (期貨合約) means—

- (a) a contract or an option on a contract that is listed or traded on the Hong Kong Futures Exchange Limited; or
- (b) any other contract for differences—
  - (i) that is listed on a specified stock exchange, or traded on a specified futures exchange, within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571);
  - (ii) that an authorized institution within the meaning of the Banking Ordinance (Cap 155) may enter into under that Ordinance; or
  - (iii) the transaction in respect of which is regulated by or under, or is carried out in compliance with, the Securities and Futures Ordinance (Cap 571);

**options contract** (期權合約) means a contract that gives the holder of the contract the option or right, exercisable at or before a time specified in the contract to—

- (a) buy or sell—
  - (i) at an agreed consideration an agreed quantity of a specified futures contract, share or other property; or
  - (ii) an agreed value of a specified futures contract, share or other property; or
- (b) be paid an amount of money calculated by reference to the value of such futures contract, share or other property or by reference to the level of an index, as may be specified in the contract;

**property** (財產) includes—

- (a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

**securities** (證券) means—

- (a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;
- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks,

- debentures, loan stocks, funds, bonds or notes;
- (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
  - (d) interests in any collective investment scheme;
  - (e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities,

but does not include shares or debentures of, or rights, options or interests (whether described as units or otherwise) in, or in respect of, shares or debentures of, a company that is a private company within the meaning of section 29 of the Companies Ordinance (Cap 32);

**share** (股份) means any share in the share capital of a corporation, and, except where a distinction between stock and shares is express or implied, includes stock.

(Schedule 16 added 4 of 2006 s. 5)

Schedule:	17	<b>Environmental Protection Facilities</b>	E.R. 1 of 2012	09/02/2012
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[sections 16H & 16K]

### Part 1

#### Machinery or Plant

1. Low noise construction machinery or plant registered under the Quality Powered Mechanical Equipment system administered by the Environmental Protection Department.
2. Air pollution control machinery or plant in compliance with the requirements under the Air Pollution Control Ordinance (Cap 311).
3. Waste treatment machinery or plant in compliance with the requirements under the Waste Disposal Ordinance (Cap 354).
4. Wastewater treatment machinery or plant in compliance with the requirements under the Water Pollution Control Ordinance (Cap 358).

### Part 2

#### Installations

1. Any of the following installations—
  - (a) solar water heating installations;
  - (b) solar photovoltaic installations;
  - (c) wind turbine installations;
  - (d) offshore wind farm installations;
  - (e) landfill gas installations;
  - (f) anaerobic digestion installations;
  - (g) thermal waste treatment installations;
  - (h) wave power installations;
  - (i) hydroelectric installations;
  - (j) bio-fuel installations;
  - (k) biomass combined-heat-and-power installations;
  - (l) geothermal installations.
2. Energy efficient building installations registered under the Hong Kong Energy Efficiency Registration Scheme for Buildings administered by the Electrical and Mechanical Services Department.

### Part 3

#### Environment-friendly Vehicles

1. Any vehicle qualified for remission of first registration tax (as defined by section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap 330)) under the following schemes administered by the Environmental Protection Department—
  - (a) the Tax Incentives Scheme for Environment-friendly Commercial Vehicles;
  - (b) the Tax Incentives Scheme for Environment-friendly Petrol Private Cars.
2. Any motor vehicle (as defined by section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap 330)) that is capable of drawing energy from both of the following on-vehicle sources of stored energy or power for mechanical propulsion—
  - (a) consumable fuel;
  - (b) battery, capacitor, flywheel, generator or other electrical energy or power storage device.
3. Any motor vehicle (as defined by section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap 330)) that is solely propelled by electric power and does not emit any exhaust gas.

(Part 3 added 10 of 2010 s. 8)  
(Schedule 17 added 21 of 2008 s. 11)

Schedule:	18	Reduction of Taxes for Year of Assessment 2007/08	E.R. 1 of 2012	09/02/2012
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[section 90]

#### 1. Property tax

- (1) The amount of property tax charged under Part 2 of this Ordinance for the year of assessment commencing on 1 April 2007 shall be reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 5(1) of this Ordinance; or
  - (b) \$25000,whichever is the less.
- (2) Where a person is the sole owner of 2 or more properties, the reduction under subsection (1) applies separately to each of those properties.
- (3) Where 2 or more persons are joint owners or owners in common of 2 or more properties, the reduction under subsection (1) applies separately to each of those properties.
- (4) Where 2 or more persons are joint owners or owners in common of a property, and any of them has elected to be assessed in accordance with Part 7 of this Ordinance for the year of assessment commencing on 1 April 2007, the reduction under subsection (1) applies to the tax chargeable on the whole of the net assessable value of the property, and not the tax charged on the net assessable value of the property shared by those persons who have not made that election.
- (5) In this section—

**property** (物業) means any land or buildings or land and buildings as defined in section 7A of this Ordinance—

- (a) that is a separate tenement for which a rateable value is estimated in accordance with section 10 of the Rating Ordinance (Cap 116) for the financial year commencing on 1 April 2007;
- (b) if paragraph (a) does not apply, that is the subject tenement of any agreement, whether in writing or not, providing for the right of use of the land or buildings or land and buildings; or
- (c) if paragraphs (a) and (b) do not apply, that is considered as a separate tenement by the Commissioner having regard to the circumstances of the case.

#### 2. Salaries tax

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1 April 2007 shall be reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
  - (b) \$25000,
- whichever is the less.

**3. Profits tax**

- (1) The amount of profits tax charged under Part 4 of this Ordinance for the year of assessment commencing on 1 April 2007 shall be reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 14 of this Ordinance read together with sections 14A and 14B of this Ordinance; or
  - (b) \$25000,
 whichever is the less.
- (2) Where a trade, profession or business is carried on by a partnership, and any of the partners has elected to be assessed in accordance with Part 7 of this Ordinance for the year of assessment commencing on 1 April 2007, the reduction under subsection (1) applies to the tax chargeable on the whole of the net assessable profits of the trade, profession or business, and not the tax charged on the net assessable profits of the trade, profession or business shared by those partners who have not made that election.

**4. Tax under personal assessment**

- (1) The amount of tax charged under Part 7 of this Ordinance for the year of assessment commencing on 1 April 2007 shall be reduced by an amount equivalent to—
  - (a) 75% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
  - (b) \$25000,
 whichever is the less.
- (2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2007, the amount of tax to be apportioned between the husband and wife shall be the amount as reduced under subsection (1).

(Schedule 18 added 21 of 2008 s. 11. Amended E.R. 1 of 2012)

Schedule:	19	<b>Reduction of Taxes for Year of Assessment 2008/09</b>	E.R. 1 of 2012	09/02/2012
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[section 91]

**1. Salaries tax**

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1 April 2008 is reduced by an amount equivalent to—

- (a) 100% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
  - (b) \$8000,
- whichever is the lesser.

**2. Tax under personal assessment**

- (1) The amount of tax charged under Part 7 of this Ordinance for the year of assessment commencing on 1 April 2008 is reduced by an amount equivalent to—
  - (a) 100% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
  - (b) \$8000,
 whichever is the lesser.
- (2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on

each spouse in the year of assessment commencing on 1 April 2008, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).

(Schedule 19 added 8 of 2009 s. 3. Amended E.R. 1 of 2012)

Schedule:	20	<b>Reduction of Taxes for Year of Assessment 2009/10</b>	E.R. 1 of 2012	09/02/2012
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[section 92]

## 1. Salaries tax

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1 April 2009 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
- (b) \$6000,

whichever is the lesser.

## 2. Tax under personal assessment

(1) The amount of tax charged under Part 7 of this Ordinance for the year of assessment commencing on 1 April 2009 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
  - (b) \$6000,
- whichever is the lesser.

(2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2009, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).

(Schedule 20 added 10 of 2010 s. 9. Amended E.R. 1 of 2012)

Schedule:	21	<b>Transitional Provisions Relating to Inland Revenue (Amendment) Ordinance 2011</b>	E.R. 1 of 2012	09/02/2012
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[section 89(6)]

1. In this Schedule-

**amending Ordinance** (《修訂條例》) means the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011).

2. Paragraph (e) of the definition of **debt instrument** in section 14A(4) of this Ordinance that was in force immediately before the date of commencement\* of the amending Ordinance continues to have effect in relation to an instrument issued before that date as if the amending Ordinance had not been enacted.

(Schedule 21 added 4 of 2011 s. 9)

### Note:

\* **Commencement date: 25 March 2011**

Schedule:	22	<b>Transitional Provisions Relating to Provisional Salaries Tax in respect of Year of Assessment 2011/12</b>	E.R. 1 of 2012	09/02/2012
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[section 89(7)]

## 1. Interpretation

In this Schedule—



*current year of assessment* (本課稅年度) means the year of assessment commencing on 1 April 2011;  
*preceding year of assessment* (上一課稅年度) means the year of assessment commencing on 1 April 2010.

## 2. Allowances granted for current year of assessment

- (1) For the purposes of section 63C(1) of this Ordinance, in calculating the net chargeable income of a person for the preceding year of assessment to ascertain the provisional salaries tax in respect of the current year of assessment—
  - (a) the reference to “such allowances as are under Part 5 permitted for that person” in section 12B(1)(b) of this Ordinance; and
  - (b) the reference to “such allowances as are under Part 5 permitted in their case” in section 12B(2)(b) of this Ordinance,
 are to be construed as allowances that may be granted to that person, or that person and his or her spouse, whichever is applicable, for the current year of assessment under Part 5 of this Ordinance as amended by the Inland Revenue (Amendment) (No. 2) Ordinance 2011 (9 of 2011).
- (2) For the purposes of an application under section 63E(1) of this Ordinance to hold over the payment of provisional salaries tax in respect of the current year of assessment, the reference to “net chargeable income for the year preceding the year of assessment” in section 63E(2)(a) and (b) of this Ordinance is to be construed as the net chargeable income for the preceding year of assessment as calculated in accordance with subsection (1).

## 3. Applications for holding over of payment of provisional salaries tax on additional ground

- (1) Without affecting section 63E of this Ordinance, if in relation to the current year of assessment a person is liable to pay provisional salaries tax, that person may, by notice in writing lodged with the Commissioner, apply to the Commissioner on the ground specified in subsection (3) to have the payment of the whole or part of the tax held over until that person is required to pay salaries tax for the current year of assessment.
- (2) An application under subsection (1) must be made not later than—
  - (a) 28 days before the day by which the provisional salaries tax is to be paid; or
  - (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6) of this Ordinance,
 whichever is the later.
- (3) The ground specified for the purposes of subsection (1) is that the aggregate amount of the residential care expenses paid or to be paid by the person or his or her spouse, not being a spouse living apart from the person, during the current year of assessment exceeds, or is likely to exceed \$60000 in respect of a parent or grandparent of the person.
- (4) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may, either generally or in a particular case, extend the time within which an application may be made under subsection (1).
- (5) On receipt of an application made under subsection (1), the Commissioner must consider the application and may hold over the payment of the whole or part of the provisional salaries tax.
- (6) The Commissioner must, by notice in writing, inform the person applying under subsection (1) of the Commissioner’s decision.
- (7) In this section—

*parent or grandparent* (父母或祖父母) and *residential care expenses* (住宿照顧開支) have the meanings given to them by section 26D(5) of this Ordinance.

(Schedule 22 added 9 of 2011 s. 7. Amended E.R. 1 of 2012)

Schedule:	23	Reduction of Taxes for Year of Assessment 2010/11	E.R. 1 of 2012	09/02/2012
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[section 93]

## 1. Salaries tax

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1

April 2010 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 13(1) of this Ordinance read together with section 13(2) of this Ordinance; or
- (b) \$6000,

whichever is the lesser.

## 2. Tax under personal assessment

(1) The amount of tax charged under Part 7 of this Ordinance for the year of assessment commencing on 1 April 2010 is reduced by an amount equivalent to—

- (a) 75% of the amount of the tax as computed under section 43(1) of this Ordinance read together with section 43(1A) of this Ordinance; or
  - (b) \$6000,
- whichever is the lesser.

(2) For the purposes of section 43(2B) of this Ordinance, in ascertaining the portion of tax to be charged on each spouse in the year of assessment commencing on 1 April 2010, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).

(Schedule 23 added 9 of 2011 s. 7. Amended E.R. 1 of 2012)

Schedule:	24	<b>Transitional Provisions for Inland Revenue (Amendment) (No. 3) Ordinance 2011</b>	E.R. 1 of 2012	09/02/2012
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[section 89(8)]

1. The amendments made to section 16E(1), (2), (2A), (2B), (4) and (5) of this Ordinance by section 5(1), (2), (4), (5), (8), (9) and (11) of the Inland Revenue (Amendment) (No. 3) Ordinance 2011 (21 of 2011) (**2011 Ordinance**) do not apply in ascertaining the profits in respect of which a person is chargeable to tax under Part 4 of this Ordinance for any year of assessment preceding the year of assessment beginning on 1 April 2011.
2. Section 16E(1A), (3A) and (9) of this Ordinance applies only in ascertaining the profits in respect of which a person is chargeable to tax under Part 4 of this Ordinance for the year of assessment beginning on 1 April 2011 and any subsequent year of assessment.
3. The amendments made to section 16E(3) and (4) of this Ordinance by section 5(6) and (10) of the 2011 Ordinance do not apply in respect of any rights of a kind referred to in section 16E(1) of this Ordinance—
  - (a) in respect of which a deduction has been allowed under section 16E(1) of this Ordinance to any person; and
  - (b) that are sold by the person during the basis period for any year of assessment preceding the year of assessment beginning on 1 April 2011 or are sold by the person under a contract entered into during such a basis period.
4. Section 16E(7) and (8) of this Ordinance does not apply in respect of any rights of a kind referred to in section 16E(1) of this Ordinance that are purchased or sold during the basis period for any year of assessment preceding the year of assessment beginning on 1 April 2011 or are purchased or sold under a contract entered into during such a basis period.


(Schedule 24 added. 21 of 2011 s. 9. Amended E.R. 1 of 2012)

Schedule:	25	<b>Transitional Provisions Relating to Provisional Salaries Tax and Provisional Profits Tax in respect of Years of Assessment 2012/13 and 2013/14</b>	21 of 2012	20/07/2012
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### Remarks:

This schedule was added by [21 of 2012](#). Its contents will be incorporated in BLIS system as soon as possible.

Schedule:	26	<b>Reduction of Taxes for Year of Assessment</b>	21 of 2012	20/07/2012
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 Remarks:  
This schedule was added by [21 of 2012](#). Its contents will be incorporated in BLIS system as soon as possible.