

**REVENUE (PROFITS TAX EXEMPTION FOR
OFFSHORE FUNDS) ORDINANCE 2006**

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 4 OF 2006



Donald TSANG
Chief Executive
9 March 2006

An Ordinance to amend the Inland Revenue Ordinance to give effect to the proposal to exempt offshore funds from profits tax in the Budget introduced by the Government for the 2003–2004 financial year and to make related amendments.

[10 March 2006]

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006.

Inland Revenue Ordinance

2. Sections added

The Inland Revenue Ordinance (Cap. 112) is amended by adding—

**“20AB. Interpretation of sections 20AC, 20AD
and 20AE and Schedule 15**

(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.

**20AC. Certain profits of non-resident persons
exempt from tax**

(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.

**20AD. Loss from transactions referred to in section
20AC(1) not available for set off**

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.

**20AE. Assessable profits of non-resident persons
regarded as assessable profits of resident
persons**

(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.”.

3. Section added

The following is added—

**“70AB. Revision of assessment due to commencement
of section 2 of Revenue (Profits Tax
Exemption for Offshore Funds)
Ordinance 2006**

(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.”.

4. Schedule 15 added

The following is added—

“SCHEDULE 15

[ss. 20AB & 20AE]

PROVISIONS FOR ASCERTAINING AMOUNT OF ASSESSABLE PROFITS OF
RESIDENT PERSON UNDER SECTION 20AE OF THIS ORDINANCE

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 IV 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.”.

5. Schedule 16 added

The following is added—

“SCHEDULE 16

[s. 20AC]

SPECIFIED TRANSACTIONS

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 securities of a corporation, whether constituting a charge on the assets of the corporation or not;
- “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.”.