

Inland Revenue (Amendment) Ordinance 2012

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 21 OF 2012

L.S.

C. Y. LEUNG
Chief Executive
19 July 2012

An Ordinance to amend the Inland Revenue Ordinance to give effect to the proposals concerning tax concessions in the Budget introduced by the Government for the 2012–2013 financial year, and to provide for transitional matters.

[1 April 2012]

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2012.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Sections 2, 3 and 4 are deemed to have come into operation on 1 April 2012.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 10.

3. Section 26E amended (home loan interest)

- (1) Section 26E(4)(b)—

Repeal

“(3)(b); or”

Substitute

“(3)(b);”.

- (2) Section 26E(4)(c)—

Repeal

“10 years of assessment (whether continuous or not).”

Substitute

“15 years of assessment (whether continuous or not); or”.

- (3) After section 26E(4)(c)—

Add

“(d) that year of assessment is earlier than the year of assessment commencing on 1 April 2012 and the following occur—

(i) 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); and

(ii) those 10 years of assessment are all earlier than the year of assessment commencing on 1 April 2012.”.

- (4) Section 26E(5), after “(4)(c)”—

Add

“and (d)”.

- (5) Section 26E—

Repeal subsection (10)

Substitute

- “(10) To avoid doubt, if a person—
- (a) has been allowed a deduction under the provisions of this section—
 - (i) in force immediately before 1 April 2003;
 - (ii) in force immediately before 1 April 2005; or
 - (iii) in force immediately before 1 April 2012; or
 - (b) has been regarded as having been allowed such a deduction by virtue of section 26F(2)(b),
for any year of assessment, that year of assessment is regarded as a year of assessment for which a deduction has been allowed for the purposes of subsection (4)(c) and (d).”.

4. Section 26F amended (nomination for purposes of section 26E)

Section 26F(2)(b), after “26E(4)(c)”—

Add

“and (d)”.

5. Section 89 amended (transitional provisions)

At the end of section 89—

Add

- “(9) Schedule 25 has effect in relation to the following persons—
- (a) a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2012 or the year of assessment commencing on 1 April 2013;
 - (b) a person liable to pay provisional profits tax in respect of the year of assessment commencing on 1 April 2012 or the year of assessment commencing on 1 April 2013.”.

6. Section 94 added

After section 93—

Add

“94. Reduction of taxes for year of assessment 2011/12

Schedule 26 contains provisions relating to the reduction of salaries tax, profits tax and tax under personal assessment for the year of assessment commencing on 1 April 2011.”.

7. Schedule 3B amended (deduction for the purposes of section 16AA or 26G)

Schedule 3B—

Repeal item 1

Substitute

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|---|------------|
| “1. For the years of assessment 2000/01 to 2011/12 inclusive | \$12,000 |
| 2. For the year of assessment 2012/13 | \$14,500 |
| 3. For the year of assessment 2013/14 and for each year after that year | \$15,000”. |

8. Schedule 3C amended (elderly residential care expenses deduction)

Schedule 3C—

Repeal item 2

Substitute

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| “2. For the year of assessment 2011/12 | \$72,000 |
| 3. For the year of assessment 2012/13 and for each year after that year | \$76,000”. |

9. Schedule 4 amended (allowances)

(1) Schedule 4, subheading—

Repeal

“For the year of assessment 2011/12 and for each year after that year”

Substitute

“For the year of assessment 2011/12”.

(2) At the end of Schedule 4—

Add

“For the year of assessment 2012/13 and for each year after that year

| | FIRST COLUMN (section) | SECOND COLUMN (the prescribed amount) |
|----|--|--|
| 1. | Section 28 (basic allowance) | \$ 120,000 |
| 2. | Section 29 (married person’s allowance) | \$ 240,000 |
| 3. | Section 30 (dependent parent allowance)— | |
| | (a) subsection (3)(a) | \$ 38,000 |
| | (b) subsection (3)(b) | \$ 38,000 |
| | (c) subsection (3A)(a) | \$ 19,000 |
| | (d) subsection (3A)(b) | \$ 19,000 |
| | (e) subsection (4)(a) | \$ 12,000 |
| 4. | Section 30A (dependent grandparent allowance)— | |
| | (a) subsection (3)(a) | \$ 38,000 |
| | (b) subsection (3)(b) | \$ 38,000 |

| | FIRST COLUMN (section) | SECOND COLUMN (the prescribed amount) |
|----|--|--|
| | (c) subsection (3A)(a) | \$ 19,000 |
| | (d) subsection (3A)(b) | \$ 19,000 |
| | (e) subsection (4)(a) | \$ 12,000 |
| 5. | Section 30B(1) (dependent brother or dependent sister allowance) | \$ 33,000 |
| 6. | Section 31 (child allowance)— | |
| | (a) subsection (1) | \$63,000 for each child |
| | (b) subsection (1A) | \$63,000 for each child |
| | (c) subsection (5) (in relation to subsection (1)) | \$ 567,000 |
| | (d) subsection (5) (in relation to subsection (1A)) | \$ 567,000 |
| 7. | Section 31A(1) (disabled dependant allowance) | \$ 66,000 |
| 8. | Section 32(1) (single parent allowance) | \$ 120,000”. |

10. Schedules 25 and 26 added

At the end of the Ordinance—

Add

“Schedule 25

[s. 89(9)]

Transitional Provisions Relating to Provisional Salaries Tax and Provisional Profits Tax in respect of Years of Assessment 2012/13 and 2013/14

1. Interpretation

In this Schedule—

current year of assessment (本課稅年度) means the year of assessment commencing on 1 April 2012;

following year of assessment (下一課稅年度) means the year of assessment commencing on 1 April 2013;

preceding year of assessment (上一課稅年度) means the year of assessment commencing on 1 April 2011.

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) Ordinance 2012 (21 of 2012).

- (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 grounds

- (1) Without affecting section 63E of this Ordinance—
 - (a) 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 any 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; and
 - (b) if in relation to the following 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 (4) 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 following 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 following grounds are specified for the purposes of subsection (1)(a)—
- (a) 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, to the extent to which a deduction in respect of those expenses is allowable under section 26D of this Ordinance for that year, exceeds or is likely to exceed \$72,000 in respect of a parent or grandparent of the person;
- (b) the amount of contributions to a recognized retirement scheme paid or to be paid by the person during the current year of assessment, to the extent to which a deduction in respect of those contributions is allowable under section 26G of this Ordinance for that year, exceeds or is likely to exceed \$12,000.
- (4) The ground specified for the purposes of subsection (1)(b) is that the amount of contributions to a recognized retirement scheme paid or to be paid by the person during the following year of assessment, to the extent to which a deduction in respect of those contributions is allowable under section 26G of this Ordinance for that year, exceeds or is likely to exceed \$14,500.
- (5) 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).

- (6) 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.
- (7) The Commissioner must, by notice in writing, inform the person applying under subsection (1) of the Commissioner's decision.
- (8) In this section—

parent or grandparent (父母或祖父母) has the meaning given to it by section 26D(5) of this Ordinance;

residential care expenses (住宿照顧開支) has the meaning given to it by section 26D(5) of this Ordinance.

4. Applications for holding over of payment of provisional profits tax on additional ground

- (1) Without affecting section 63J of this Ordinance—
 - (a) if in relation to the current year of assessment a person is liable to pay provisional profits 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 profits tax for the current year of assessment; and
 - (b) if in relation to the following year of assessment a person is liable to pay provisional profits tax, that person may, by notice in writing lodged with the Commissioner, apply to the Commissioner on the ground specified in subsection (4) to have the payment of the whole or part of the tax held over until that person is required to pay profits tax for the following year of assessment.
- (2) An application under subsection (1) must be made not later than—

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- (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) of this Ordinance,
- whichever is the later.
- (3) The ground specified for the purposes of subsection (1)(a) is that the amount of mandatory contributions paid or to be paid by the person in the basis period for the current year of assessment in respect of any liability of the person to pay the contributions as a self-employed person under the Mandatory Provident Fund Schemes Ordinance (Cap. 485), to the extent to which a deduction in respect of those contributions is allowable under section 16AA of this Ordinance for that year, exceeds or is likely to exceed \$12,000.
 - (4) The ground specified for the purposes of subsection (1)(b) is that the amount of mandatory contributions paid or to be paid by the person in the basis period for the following year of assessment in respect of any liability of the person to pay the contributions as a self-employed person under the Mandatory Provident Fund Schemes Ordinance (Cap. 485), to the extent to which a deduction in respect of those contributions is allowable under section 16AA of this Ordinance for that year, exceeds or is likely to exceed \$14,500.
 - (5) 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).
 - (6) 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 profits tax.

- (7) The Commissioner must, by notice in writing, inform the person applying under subsection (1) of the Commissioner's decision.

Schedule 26

[s. 94]

Reduction of Taxes for Year of Assessment 2011/12

1. Salaries tax

The amount of salaries tax charged under Part 3 of this Ordinance for the year of assessment commencing on 1 April 2011 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) \$12,000,

whichever is the lesser.

2. Profits tax

(1) The amount of profits tax charged under Part 4 of this Ordinance for the year of assessment commencing on 1 April 2011 is 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) \$12,000,

whichever is the lesser.

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- (2) If 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 2011, 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.

3. 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 2011 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) \$12,000,
- 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 2011, the amount of tax to be apportioned between the husband and wife is the amount as reduced under subsection (1).”.