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Schedule 41 Transitional Provisions for Inland Revenue (Amendment) (No. 3) Ordinance 2017

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Schedule 41  Transitional Provisions for Inland Revenue (Amendment) (No. 3) Ordinance 2017  A777
Inland Revenue (Amendment) (No. 3) Ordinance 2017

An Ordinance to amend the Inland Revenue Ordinance to give profits tax concessions to qualifying aircraft lessors and qualifying aircraft leasing managers; to make provisions for profits tax purposes about businesses in connection with aircraft; and to make consequential and minor textual amendments.

Enacted by the Legislative Council.

[7 July 2017]

1. **Short title**
This Ordinance may be cited as the Inland Revenue (Amendment) (No. 3) Ordinance 2017.

2. **Inland Revenue Ordinance amended**
The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 17.

3. **Section 2 amended (interpretation)**
   (1) Section 2(1), definition of *lease*, before “in relation to any machinery”—
   
   Add
   “except in the aircraft leasing tax concessions provisions and Schedule 17F,”.
(2) Section 2(1)—
Add in alphabetical order
"aircraft leasing tax concessions provisions" (飛機租賃稅務寬減條文) means sections 14G, 14H, 14I, 14J, 14K, 14L, 14M and 14N;”.

4. Sections 14G to 14N added
After section 14F—
Add
“14G. Aircraft leasing tax concessions: interpretation
(1) In the aircraft leasing tax concessions provisions—
actual residual value (實際剩餘價值), in relation to an aircraft, means the actual fair market value of the aircraft at the end of the term of a lease or its useful economic life;
aircraft (飛機)—
(a) includes an aeroplane, airframe, aircraft engine and helicopter; but
(b) does not include an aircraft solely for military use, airship, spacecraft or satellite;
aircraft engine (飛機引擎) means an engine—
(a) that is used or to be used in an aircraft; and
(b) that—
(i) is powered by jet propulsion and has at least 1 750 lb of thrust or its equivalent; or
(ii) is powered by turbine or piston technology and has at least 550 rated take-off shaft horsepower or its equivalent, together with any aircraft engine component;
合資格飛機租賃管理活動 (qualifying aircraft leasing management activity)——參閱第 (7) 款；
合資格飛機租賃管理商 (qualifying aircraft leasing manager)——參閱第 14J(2) 條；
有關連者 (connected person) 就某法團而言，指——
(a) 該法團的相聯法團；
(b) 以下人士 (法團除外)——
   (i) 該法團控制的人；
   (ii) 控制該法團的人；或
   (iii) 控制該法團的同一人所控制的人；或
(c) 由該法團或其相聯者作為合夥人的合夥；
估計剩餘價值 (estimated residual value) 就某飛機而言，
指估計該飛機於租約的租期結束時，或於其經濟效
用期結束時的公平市值；
相聯法團 (associated corporation) 就某法團而言，指——
(a) 該法團控制的另一法團；
(b) 控制該法團的另一法團；或
(c) 控制該法團的同一人所控制的另一法團；
相聯者 (associate) 就某法團而言，指——
(a) 控制該法團的人；

aircraft engine component (飛機引擎組件), in relation to
an engine, means—
(a) a module or other installed, incorporated or
attached accessory, part or equipment of the engine; or
(b) data, manual or record relating to the engine;

aircraft leasing activity (飛機租賃活動)—see section 1(1)
of Schedule 17F;

aircraft leasing management activity (飛機租賃管理活動)—
see section 1(1) of Schedule 17F;

aircraft leasing management asset (飛機租賃管理資產), in
relation to a corporation, means an asset of the corporation used by it to carry out a qualifying
aircraft leasing management activity;

aircraft leasing management profits (飛機租賃管理利潤), in
relation to a corporation, means any profits of the corporation that are derived from a qualifying
aircraft leasing management activity;

aircraft operation business (飛機營運業務)—
(a) means a business of operating aircraft as an
owner or a charterer for providing services for
the carriage by air of passengers, cargo or mail; but
(b) does not include dealing in aircraft or agency
business in connection with air transport;

aircraft operator (飛機營運商) means a person carrying on
an aircraft operation business;

associate (相聯者), in relation to a corporation, means—
(a) a person who has control over the corporation;
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(b) a partner of the person mentioned in paragraph (a);

c) if a person mentioned in paragraph (a) is a natural person, a relative of the person;

d) if a partner mentioned in paragraph (b) is a natural person, a relative of the partner;

e) a director or principal officer of—

(i) the corporation; or

(ii) an associated corporation of the corporation;

(f) a relative of a director (if the director is a natural person) or principal officer mentioned in paragraph (e);

g) a partner of the corporation;

(h) if a partner of the corporation is a natural person, a relative of the partner;

(i) a partnership in which the corporation is a partner; or

(j) an associated corporation of the corporation;

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

(a) another corporation over which the corporation has control;

(b) another corporation that has control over the corporation; or

(c) another corporation that is under the control of the same person as is the corporation;

connected person (有關連者), in relation to a corporation, means—
(b) an associated corporation of the corporation;
(b) a person (other than a corporation)—
   (i) over whom the corporation has control;
   (ii) who has control over the corporation; or
   (iii) who is under the control of the same person as is the corporation; or
(c) a partnership in which the corporation or its associate is a partner;

control (控制), in relation to the definitions of associate, associated corporation and connected person—see subsection (2);

dry lease (淨租機租約) means an arrangement under which—
(a) an aircraft is bona fide demised, let or hired out, or a right to use an aircraft is otherwise granted, by a person (lessor) to another person for a term exceeding 1 year;
(b) the lessor is not responsible for ensuring the airworthiness of the aircraft; and
(c) no member of the crew of the aircraft is employed by the lessor;

estimated residual value (估計剩餘價值), in relation to an aircraft, means an estimated fair market value of the aircraft at the end of the term of a lease or its useful economic life;

funding lease (融購租約) means a dry lease of an aircraft—
(a) that satisfies one of the following conditions at its inception—

飛機引擎 (aircraft engine) 指符合以下說明的引擎——
(a) 用於或將用於飛機；及
(b) 是——
   (i) 以噴氣推進驅動，最少具 1750 磅推力或相等推力；或
   (ii) 以渦輪或活塞技術驅動，最少具 550 鎖定起飛軸馬力或相等馬力，

並連同任何飛機引擎組件在內；

飛機引擎組件 (aircraft engine component) 就某引擎而言—
(a) 該引擎的模塊或其他已安裝、納入或附遜的配件、部分或設備；或
(b) 關於該引擎的數據、手冊或紀錄；

飛機租賃活動 (aircraft leasing activity)——參閱附表 17F 第 1(1) 條；

飛機租賃管理利潤 (aircraft leasing management profits) 就某法團而言，指該法團得合資格飛機租賃管理活動的利潤；

飛機租賃管理活動 (aircraft leasing management activity)——參閱附表 17F 第 1(1) 條；
The aircraft leasing management asset (aircraft leasing management asset) is a contract between the lessor and the lessee for the use of an aircraft. The lease agreement includes the lessee's rights and obligations under the terms of the lease, including the property in the aircraft.

(i) the lease agreement is accounted for as a finance lease or loan by the lessor in accordance with—

(A) the Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants, as in force from time to time; or

(B) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force from time to time;

(ii) the present value of the aggregate minimum lease payments (whether or not they are periodic payments and including any sum payable under a residual value guarantee) during the term of the dry lease is equal to or more than 80% of the fair market value of the aircraft;

(iii) the term of the dry lease is equal to or more than 65% of the remaining useful economic life of the aircraft; and

(b) under which the property in the aircraft will or may pass to the lessee at the end of its term, and includes an arrangement or agreement in connection with such a dry lease;

Note—
See also subsections (3) and (4).

lease (租約), when used as a noun—

(a) means a dry lease; but
控制 (control) 就有關連者、相聯法團及相聯者的定義而言——參閱第 (2) 款；

淨租機租約 (dry lease) 指一項安排，而根據該項安排——
(a) 某人 (出租者) 真誠地將某飛機以轉管租約形式或其他方式出租予另一人，或將某飛機的使用權以其他方式批予另一人，為期超過 1 年；
(b) 出租者不負責確保該飛機適航；及
(c) 該飛機的機組成員中無人受僱於出租者；

剩餘價值擔保 (residual value guarantee) 就某飛機而言，指參照以下數額支付項目的財務承擔：該飛機的估計剩餘價值超過該飛機的實際剩餘價值的數額；

實際剩餘價值 (actual residual value) 就某飛機而言，指該飛機於租約的租期結束時，或於其經濟效用期結束時的實際公平市值；

擁有 (own) 包括——
(a) 根據融購租約，以承租人身分持有；
(b) 根據租購協議，以受寄人身分持有；及
(c) 根據有條件售賣協議，以買方身分持有；

附註——
請亦參閱第 (5) 款。

融購租約 (funding lease) 指符合以下說明的飛機淨租機租約——

(b) does not include a dry lease that is a funding lease, hire-purchase agreement or conditional sale agreement, and lease (租賃), when used as a verb, is to be construed accordingly;

Note—
See also subsection (5).

own (擁有) 包括——
(a) to hold as a lessee under a funding lease;
(b) to hold as a bailee under a hire-purchase agreement; and
(c) to hold as a buyer under a conditional sale agreement;

Note—
See also subsection (5).

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

prescribed asset percentage (訂明資產百分率)——see section 4 of Schedule 17F;

prescribed profits percentage (訂明利潤百分率)——see section 3 of Schedule 17F;

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;

qualifying aircraft leasing activity (合資飛機租賃活動)—see subsection (6);

qualifying aircraft leasing management activity (合資飛機租賃管理活動)—see subsection (7);

qualifying aircraft leasing manager (合資飛機租賃管理人)—see section 14J(2);

qualifying aircraft lessor (合資飛機出租商)—see section 14H(2);

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—

(a) an adopted child is to be regarded as a child of both the natural parents and any adopting parent; and

(b) a step child is to be regarded as a child of both the natural parents and any step parent;

residual value guarantee (剩餘價值擔保), in relation to an aircraft, means a financial commitment to pay a sum by reference to the amount by which the estimated
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(2) For the purposes of the definitions of *associate*, *associated corporation* and *connected person* in subsection (1)—

(a) a person has control over a corporation 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 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; and

(b) a person (*first-mentioned person*) has control over another person (other than a corporation) (*second-mentioned person*) if the second-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 the investment or business affairs of the second-mentioned person, in accordance with the directions, instructions or wishes of the first-mentioned person.

(3) For the purposes of the definition of *funding lease* in subsection (1), subsection (4) applies if, under 2 or more dry leases, an aircraft is demised, let or hired out, or a right to use an aircraft is otherwise granted—

residual value of the aircraft exceeds the actual residual value of the aircraft.
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(a) to a corporation; or
(b) to a corporation and to its associate or associates,
unless, in the opinion of the Commissioner, the dry leases do not form part of a single arrangement.

(4) Regardless of whether the term of one of the dry leases mentioned in subsection (3) is immediately followed by that of another, the dry leases are to be treated as one single dry lease—

(a) for computing the present value of the aggregate minimum lease payments under paragraph (a)(ii) of that definition; and
(b) for computing the term of the dry lease under paragraph (a)(iii) of that definition.

(5) In the definitions of lease and own in subsection (1), a reference to a funding lease, hire-purchase agreement or conditional sale agreement does not include one under which, in the opinion of the Commissioner, the property in the aircraft concerned would reasonably be expected not to pass to the lessee, bailee or buyer (as the case may be).

(6) An aircraft leasing activity carried out by a corporation in respect of an aircraft is a qualifying aircraft leasing activity if—

(a) the activity is carried out in the ordinary course of the corporation's business carried on in Hong Kong; and
(b) the aircraft is owned by the corporation when the activity is carried out.

(a) 任何法團；或
(b) 任何法團及其相聯者。

(4) 不論第 (3) 款所述的淨租機租約的租期是否互相緊接，以下目的而言，該等租約須視為單一的淨租機租約——

(a) 計算該定義的 (a)(ii) 段所指的最低租約付款總數現值；及
(b) 計算該定義的 (a)(iii) 段所指的淨租機租約租期。

(5) 在第 (1) 款中租約及擁有定義中，提及融資租約、租購協議或有條件售賣協議，不包括局長認為符合以下說明的該等租約或協議：按合理預期，有關飛機的產權，不會根據該等租約或協議，轉移至有關承租人、受寄人或買方 (視屬何情況而定)。

(6) 如某法團就某飛機進行飛機租賃活動，而以下情況適用，則該活動即屬合資格飛機租賃活動——

(a) 該活動是在該法團於香港經營的業務的通常運作過程中進行；及
(b) 在該活動進行時，該飛機是由該法團擁有。
Inland Revenue (Amendment) (No. 3) Ordinance 2017

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7) An aircraft leasing management activity carried out by a corporation in respect of an aircraft is a qualifying aircraft leasing management activity if—
   (a) the activity is carried out in the ordinary course of the corporation’s business carried on in Hong Kong;
   (b) the activity is carried out for another corporation in the basis period of the other corporation for a year of assessment;
   (c) the other corporation is a qualifying aircraft lessor for that year of assessment; and
   (d) the aircraft is owned by the other corporation, and is leased to an aircraft operator, when the activity is carried out.

8) A note located in the text of this section is provided for information only and has no legislative effect.

14H. Aircraft leasing tax concessions: concession for qualifying aircraft lessor

1) For the purposes of this Part and subject to subsections (4) and (6), the assessable profits of a corporation that is a qualifying aircraft lessor for a year of assessment are chargeable to tax under this Part at one-half of the rate specified in Schedule 8 to the extent to which those profits are assessable profits derived from its qualifying aircraft leasing activity.

2) A corporation is a qualifying aircraft lessor for a year of assessment if, in the basis period for that year of assessment—
   (a) it is not an aircraft operator;
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(b) it has carried out in Hong Kong one or more qualifying aircraft leasing activities; and

(c) it has not carried out in Hong Kong any activity other than a qualifying aircraft leasing activity.

(3) For the purposes of subsection (2)(c), in determining whether a corporation has carried out any activity other than a qualifying aircraft leasing activity, only activities that generate income to the corporation are to be taken into account.

(4) Subsection (1) applies to a corporation for a year of assessment only if—

(a) in that year of assessment—

(i) the central management and control of the corporation is exercised in Hong Kong;

(ii) the activities that produce its qualifying profits in that year are—

(A) carried out in Hong Kong by the corporation; or

(B) arranged by the corporation to be carried out in Hong Kong; and

(iii) those activities are not carried out by a permanent establishment outside Hong Kong; and

(b) the corporation has elected in writing that subsection (1) applies to it.

(5) An election under subsection (4)(b), once made, is irrevocable.

(6) If subsection (1) does not apply to a corporation for a year of assessment (cessation year) while it did for the previous year of assessment—
(a) the election made by the corporation under subsection (4)(b) ceases to be effective; and
(b) despite anything in this section, subsection (1) is not to apply to the corporation for the year of assessment that follows the cessation year.

(7) If subsection (1) applies to a corporation for a year of assessment, the corporation is not entitled to be granted any allowance under Part 6 for that year of assessment in respect of the capital expenditure incurred on the provision of the aircraft concerned.

(8) An aircraft owned by a corporation is to be treated as a capital asset of the corporation for the purposes of this Part if—
(a) the corporation uses the aircraft for carrying out a qualifying aircraft leasing activity for a continuous period of not less than 3 years immediately before it disposes of the aircraft; and
(b) subsection (1) applies in relation to that activity for any year of assessment.

(9) In this section—

*qualifying profits* (合資格利潤), in relation to a corporation, means the assessable profits of the corporation that fall within subsection (1).

**14I. Aircraft leasing tax concessions: calculation of net lease payments**

(1) If section 14H(1) applies to a corporation that is a qualifying aircraft lessor for a year of assessment, then subsection (2) applies for computing the assessable profits of the corporation derived from its
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The net lease payments for the right to use an aircraft under the lease are to be calculated in accordance with the following formula—

\[ A = (B - C) \times D \]

where:
- \( A \) means the net lease payments;
- \( B \) means the aggregate amount of the gross lease payments (whether or not they are periodic payments and including any sum payable under a residual value guarantee) earned by or accrued to the corporation under the lease during the basis period for the year of assessment;
- \( C \) means the aggregate amount of any outgoings and expenses deductible under this Part to the extent to which they are incurred during the basis period for the year of assessment by the corporation in the production of those gross lease payments (relevant outgoings and expenses); and
- \( D \) means the percentage prescribed in section 2 of Schedule 17F.

Despite subsection (1), subsection (2) does not apply to a corporation for a year of assessment if—

(a) the corporation has not incurred capital expenditure on the provision of the aircraft concerned;
14J. Aircraft leasing tax concessions: concession for qualifying aircraft leasing manager

(1) For the purposes of this Part and subject to subsections (5) and (7), the assessable profits of a corporation that is a qualifying aircraft leasing manager for a year of assessment are chargeable to tax under this Part at one-half of the rate specified in Schedule 8 to the extent to which those profits are assessable profits derived from its qualifying aircraft leasing management activity.
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A corporation is a qualifying aircraft leasing manager for a year of assessment if—

(a) in the basis period for that year of assessment, it is not an aircraft operator; and

(b) for that year of assessment—

(i) it satisfies the conditions specified in subsection (3);

(ii) it satisfies the safe harbour rule under section 14K; or

(iii) it has obtained the Commissioner’s determination under section 14L(1).

(3) For the purposes of subsection (2)(b)(i), the conditions are that, in the basis period for the year of assessment, the corporation—

(a) has carried out in Hong Kong one or more qualifying aircraft leasing management activities; and

(b) has not carried out in Hong Kong any activity other than a qualifying aircraft leasing management activity.

(4) For the purposes of subsection (3)(b), in determining whether a corporation has carried out any activity other than a qualifying aircraft leasing management activity, only activities that generate income to the corporation are to be taken into account.

(5) Subsection (1) applies to a corporation for a year of assessment only if—

(a) in that year of assessment—

(i) the central management and control of the corporation is exercised in Hong Kong;
(ii) the activities that produce its qualifying profits in that year are—
(A) carried out in Hong Kong by the corporation; or
(B) arranged by the corporation to be carried out in Hong Kong; and
(iii) those activities are not carried out by a permanent establishment outside Hong Kong; and
(b) the corporation has elected in writing that subsection (1) applies to it.

(6) An election under subsection (5)(b), once made, is irrevocable.

(7) If subsection (1) does not apply to a corporation for a year of assessment (cessation year) while it did for the previous year of assessment—
(a) the election made by the corporation under subsection (5)(b) ceases to be effective; and
(b) despite anything in this section, subsection (1) is not to apply to the corporation for the year of assessment that follows the cessation year.

(8) In this section—

qualifying profits (合資格利潤), in relation to a corporation, means the assessable profits of the corporation that fall within subsection (1).

14K. Aircraft leasing tax concessions: safe harbour rule

(1) For the purposes of section 14J(2)(b)(ii), a corporation satisfies the safe harbour rule for a year of assessment (subject year) if the corporation falls within—
Inland Revenue (Amendment) (No. 3) Ordinance 2017

Section 4

(a) the 1-year safe harbour under subsection (2); or
(b) the multiple-year safe harbour under subsection (3).

(2) A corporation falls within the 1-year safe harbour if, for the subject year—
(a) its ALMP percentage is not lower than the prescribed profits percentage; and
(b) its ALMA percentage is not lower than the prescribed asset percentage.

(3) A corporation falls within the multiple-year safe harbour if, for the specified years—
(a) its average ALMP percentage is not lower than the prescribed profits percentage; and
(b) its average ALMA percentage is not lower than the prescribed asset percentage.

(4) In this section, a reference to the specified years for a corporation is a reference to—
(a) if the corporation has carried on a trade, profession or business in Hong Kong for less than 2 consecutive years of assessment immediately before the subject year—the subject year and the preceding year of assessment (the 2 years); or
(b) if the corporation has carried on a trade, profession or business in Hong Kong for 2 or more consecutive years of assessment immediately before the subject year—the subject year and the preceding 2 years of assessment (the 3 years).
(5) The ALMP percentage of a corporation for a year of assessment is calculated in accordance with the following formula—

\[
\frac{\text{ALMP}}{\text{P}}
\]

where: ALMP means the aggregate amount of the aircraft leasing management profits of the corporation in the basis period for the year of assessment; and

\[
\text{P}
\]

means the aggregate amount of profits accruing to the corporation from all sources, whether in Hong Kong or not, in the basis period for the year of assessment.

(6) The ALMA percentage of a corporation for a year of assessment is calculated in accordance with the following formula—

\[
\frac{\text{ALMA}}{\text{A}}
\]

where: ALMA means the aggregate value of the aircraft leasing management assets of the corporation as at the end of the basis period for the year of assessment; and

\[
\text{A}
\]

means the aggregate value of all assets, whether in Hong Kong or not, of the corporation as at the end of the basis period for the year of assessment.
For the purposes of subsection (6), in computing the aggregate value of the aircraft leasing management assets of a corporation, if an aircraft leasing management asset is used partly to carry out a qualifying aircraft leasing management activity and partly for another purpose, only the part of the value of the asset that is proportionate to the extent to which the asset is used to carry out a qualifying aircraft leasing management activity is to be taken into account.

(8) A reference to the average ALMP percentage of a corporation for the specified years is a reference to the percentage arrived at by—

(a) if subsection (4)(a) applies—dividing the sum of the ALMP percentages of the corporation for the 2 years by 2; or

(b) if subsection (4)(b) applies—dividing the sum of the ALMP percentages of the corporation for the 3 years by 3.

(9) A reference to the average ALMA percentage of a corporation for the specified years is a reference to the percentage arrived at by—

(a) if subsection (4)(a) applies—dividing the sum of the ALMA percentages of the corporation for the 2 years by 2; or

(b) if subsection (4)(b) applies—dividing the sum of the ALMA percentages of the corporation for the 3 years by 3.
Section 4

14L. Aircraft leasing tax concessions: Commissioner’s determination

(1) For the purposes of section 14J(2)(b)(iii), the Commissioner may, on application by a corporation, determine that the corporation is a qualifying aircraft leasing manager for a year of assessment.

(2) A corporation may apply for the Commissioner’s determination under subsection (1) only if—

(a) it is not an aircraft operator; and

(b) for the year of assessment, it satisfies neither of the following—

(i) the conditions specified in section 14J(3); and

(ii) the safe harbour rule under section 14K.

(3) The Commissioner may make a determination under subsection (1) only if the Commissioner is of the opinion that the conditions specified in section 14J(3), or the safe harbour rule under section 14K, would, in the ordinary course of business of the corporation, have been satisfied for the year of assessment.

14M. Aircraft leasing tax concessions: anti-avoidance provisions

(1) Subsection (2) applies if—

(a) conditions are made or imposed between a corporation that is a qualifying aircraft lessor and a person who is an associate of that corporation, in their commercial or financial relations in connection with a qualifying aircraft leasing activity; and

(b) the conditions differ from those that would be made if the person were not such an associate.
(2) Any profits that, but for the conditions referred to in subsection (1)(a), would have accrued to the corporation or the person and, by reason of those conditions, have not so accrued, are to be included in the profits of the corporation or the person and taxed in accordance with this Part.

(3) Subsection (4) applies if—

(a) conditions are made or imposed between a corporation that is a qualifying aircraft leasing manager and a person who is an associate of that corporation, in their commercial or financial relations in connection with a qualifying aircraft leasing management activity; and

(b) the conditions differ from those that would be made if the person were not such an associate.

(4) Any profits that, but for the conditions referred to in subsection (3)(a), would have accrued to the corporation or the person and, by reason of those conditions, have not so accrued, are to be included in the profits of the corporation or the person and taxed in accordance with this Part.

(5) If—

(a) an aircraft is owned by a corporation that is a qualifying aircraft lessor under an arrangement (ownership arrangement); and

(b) the corporation enters into an arrangement (release arrangement) under which—

(i) it is released from the primary obligation under the ownership arrangement; and
5. Section 15 amended (certain amounts deemed trading receipts)

(1) Section 15(1)(la)(ii)—
Repeal
“及”。

(2) Section 15(1)(m)—
Repeal
“15A.”
Substitute
“15A; and”.

(3) After section 15(1)(m)—
Add
“(n) sums, not otherwise chargeable to tax under this Part, received by or accrued to a corporation by way of gains or profits (other than those arising from the sale of capital assets) arising through or from the carrying on in Hong Kong by the corporation of—

(ii) that obligation is assumed by another person, the aircraft leasing tax concessions provisions are to have effect as if the corporation had ceased to own the aircraft during the time when the release arrangement is in force.

14N. Aircraft leasing tax concessions: power to amend Schedule 17F
The Commissioner may by order published in the Gazette amend Schedule 17F.”.

(ii) 該義務由另一人承擔，則飛機租賃稅務寬減條文所具效力，須猶如該法團於解除義務安排有效期間，不再擁有該飛機一樣。
6. 修訂第 16 條 ( 應課稅利潤的確定 )
在第 16(1) 條之後——
加入
“(1A) 凡為施行第 (1) 款而計算某人的支出及開支的扣除款額，如——
(a) 該人是某法團的有關連者 ( 第 14G(1) 條所界定者 )；
(b) 該人須直接或透過任何中間人，支付某款項予
該法團；及
(c) 該法團在某課稅年度中的應課稅利潤當中，包
括該款項，而該利潤是根據第 14H(1) 或 14J(1)
條，以經扣減稅率課稅的，
則關於該款項的扣除款額，須作扣減，以使該人須
支付的利得稅参照以下款額而增加：該法團在該課
稅年度或隨後任何課稅年度中，就該款項而須支付
的利得稅所獲扣減的款額。”。

6. Section 16 amended (ascertainment of chargeable profits)
After section 16(1)—
Add
“(1A) In computing the amount of deduction of a person's
outgoings and expenses for the purposes of
subsection (1), if—
(a) the person is a connected person (as defined by
section 14G(1)) of a corporation;
(b) a sum is payable by the person to the
corporation, whether directly or through an
interposed person; and
(c) the sum is included in the assessable profits of
the corporation chargeable at a reduced tax rate
under section 14H(1) or 14J(1) for a year of
assessment,
the amount of deduction in respect of the sum is to
be reduced such that the profits tax payable by the
person is increased by reference to the amount of the
reduction in the profits tax payable by the
corporation in respect of the sum for the year of
assessment or any subsequent year of assessment.”.
7. Section 19CA amended (treatment of losses: concessionary trading receipts)

(1) Section 19CA(4)—

Repeal

“section 14A, 14B or 14D, as the case may be,”

Substitute

“the relevant concession provision”.

(2) Section 19CA(5), definition of chargeable concessionary trading receipts, paragraph (a)—

Repeal

“section 14A”

Substitute

“a concession provision (other than section 14B)”.

(3) Section 19CA(5), definition of chargeable concessionary trading receipts—

Repeal paragraph (c).

(4) Section 19CA(5), definition of concessionary trading receipts—

Repeal

“section 14A, 14B or 14D”
(5) 第 19CA(5) 條，關於獲特惠的營業收入的未吸納虧損的定義——
廢除 (a) 段
代以
“(a) 凡有關的獲特惠的營業收入，屬應課稅利潤按某寬減條文（第 14B 條除外）指明的稅率課稅所關乎的一類獲特惠的營業收入——指按以下方式確定的虧損——

(i) 在該營業收入的款額之上，加上根據第 6 部指示，須就該課稅年度，而對該人徵收的結餘課稅額（以有關的資產用於產生該營業收入的程度為限）；及

(ii) 從所得款額，減去以下項目的總和——

(A) 根據本部，可扣除的支出及開支出的款額
(以該人在該課稅年度的評稅基期內，為產生該營業收入而招致者為限）；及

(B) 該人就該課稅年度，根據第 6 部獲給予的免稅額（以有關的資產在該課稅年度的評稅基期內，用於產生該營業收入的程度為限）；”。

(6) 第 19CA(5) 條，中文文本，關於獲特惠的營業收入的未吸納虧損的定義，(b) 段——
廢除分號
代以句號。

(7) 第 19CA(5) 條，關於獲特惠的營業收入的未吸納虧損的定義——
廢除 (c) 段。

Substitute
“a concession provision”.

(5) Section 19CA(5), definition of unabsorbed loss in respect of the concessionary trading receipts, paragraph (a)—
Repeal
“section 14A”
Substitute
“a concession provision (other than section 14B)”.

(6) Section 19CA(5), Chinese text, definition of 關於獲特惠的營業收入的未吸納虧損, paragraph (b)—
Repeal the semicolon
Substitute a full stop.

(7) Section 19CA(5), definition of unabsorbed loss in respect of the concessionary trading receipts—
Repeal paragraph (c).
Section 8

Add in alphabetical order

“concession provision (寬減條文) means one of the following provisions—

(a) section 14A;
(b) section 14B;
(c) section 14D;
(d) section 14H;
(e) section 14J;”.

8. Section 20AA amended (persons not treated as agents)

Repeal paragraph (b)

Substitute

“(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;”.

9. Section 37 amended (initial and annual allowances, machinery or plant)

After section 37(2A)—

Add

“(2B) Subsection (2C) applies if an aircraft was owned and used by a corporation for carrying out a qualifying aircraft leasing activity in respect of which section 14H(1) applies before the corporation uses it in
國在另一行業、專業或業務使用該飛機以產生根據第4部應課稅的利潤，則第(2C)款適用。

(2C) 為施行第(2)款，就有關飛機而言，資產成本是從實際成本中，扣除假定每年免稅額後所得之數。上述假定每年免稅額，是指倘若有關法團自取得該飛機後，便一直根據第(2)款可享有每年免稅額，則該法團便會根據該款獲給予的該等每年免稅額。

(2D) 在第(2B)及(2C)款中——
合資格飛機租賃活動 (qualifying aircraft leasing activity) 具有第14G(6)條所給予的涵義；飛機 (aircraft) 具有第14G(1)條所給予的涵義。”。

10. 修訂第38條 (機械或工業裝置的結餘免稅額及結餘課稅)
(1) 第38(2)條，在“第37(2A)”之後——
加入
“或 (2C)”。
(2) 第38(2)條——
廢除
所有“該款”
代以
“該條”。

11. 修訂第39B條 (聚合制下的機械或工業裝置的初期免稅額及每年免稅額)
(1) 第39B(4)條，在“(6)”之後——
加入
“、(6B)”。

10. Section 38 amended (balancing allowances and charges, machinery or plant)
(1) Section 38(2), after “section 37(2A)”—
Add
“or (2C)”.
(2) Section 38(2)—
Repeal
“that subsection” (wherever appearing)
Substitute
“that section”.

11. Section 39B amended (initial and annual allowances on machinery or plant under the pooling system)
(1) Section 39B(4), after “(6)”—
Add
“(6B)”.

another trade, profession or business to produce profits chargeable to tax under Part 4.
(2C) For the purposes of subsection (2), the cost of the asset, in relation to the aircraft, is the sum computed by deducting from the actual cost the notional amount of annual allowances that would have been made under that subsection to the corporation if such annual allowances had been available to the corporation since it acquired the aircraft.

(2D) In subsections (2B) and (2C)—
aircraft (飛機) has the meaning given by section 14G(1);
qualifying aircraft leasing activity (合資格飛機租賃活動) has the meaning given by section 14G(6).”.
12. 修訂第 39D 條 (聚合制下的結餘免稅額及結餘課税)
(1) 第 39D(7)(a) 條，在“第 37(2A)”之後——
加入
“或 (2C)”。
(2) 第 39D(7)(b) 條，在“第 39B(6)”之後——
加入
“或 (6B)”。

12. Section 39D amended (balancing allowances and charges under the pooling system)
(1) Section 39D(7)(a), after “section 37(2A)” —
Add
“or (2C)”.
(2) Section 39D(7)(b), after “section 39B(6)” —
Add
“or (6B)”.

(2) 在第 39B(6) 條之後——
加入
“(6A) 如某法團曾擁有及使用某飛機進行合資格飛機租賃活動(第 14H(1)條就該活動適用者)，而其後該法團在另一行業、專業或業務使用該飛機以產生根據第4部應課税的利潤，則第(6B)款適用。

(6B) 就第(4)款而言，在提供有關飛機方面招致的資本開支，須是從實際成本中，扣除假定每年免稅額後所得之數。上述假定每年免稅額，是指假若有關法團自取得該飛機後，便一直根據第37(2)條可享有每年免稅額，則該法團便會根據該條獲給予的該等每年免稅額。

(6C) 在第(6A)及(6B)款中——
合資格飛機租賃活動(qualifying aircraft leasing activity)具有第14G(6)條所給予的涵義；
飛機(aircraft)具有第14G(1)條所給予的涵義。”。

(2) After section 39B(6)—
Add
“(6A) Subsection (6B) applies if an aircraft was owned and used by a corporation for carrying out a qualifying aircraft leasing activity in respect of which section 14H(1) applies before the corporation uses it in another trade, profession or business to produce profits chargeable to tax under Part 4.

(6B) For the purposes of subsection (4), the capital expenditure incurred on the provision of the aircraft is to be computed by deducting from the actual cost the notional amount of annual allowances that would have been made under section 37(2) to the corporation if such annual allowances had been available to the corporation since it acquired the aircraft.

(6C) In subsections (6A) and (6B)—
aircraft (飛機) has the meaning given by section 14G(1);
qualifying aircraft leasing activity (合資格飛機租賃活動) has the meaning given by section 14G(6).”.
Section 13
Section 80D amended (offences of service provider)
Section 80D(4)(a), Chinese text—
Repeal
“而在報表中提供”
Substitute
“而在報表中提供”.

Section 89 amended (transitional provisions)
Section 89—
Add
“(19) Schedule 41 sets out transitional provisions that have effect for the purposes of amendments to this Ordinance made by the Inland Revenue (Amendment) (No. 3) Ordinance 2017 (9 of 2017).”.

Schedule 8 amended (rate of profits tax in respect of a corporation)
Schedule 8, after “14D(1),”—
Add
“14H(1), 14J(1),”.

Schedule 17F added
After Schedule 17E—
Add
Aircraft Leasing Tax Concessions

Part 1

Aircraft Leasing Activity and Aircraft Leasing Management Activity

1. Meaning of *aircraft leasing activity* and *aircraft leasing management activity*

(1) In this section and the aircraft leasing tax concessions provisions—

*aircraft leasing activity* (飛機租賃活動), in relation to a corporation, means leasing an aircraft by the corporation to an aircraft operator;

*aircraft leasing management activity* (飛機租賃管理活動), in relation to a corporation, means any of the following activities—

(a) managing another corporation that is a relevant qualifying aircraft lessor;

(b) establishment or administration of a special purpose entity for the purpose of owning an aircraft by that entity;

(c) providing finance in obtaining the ownership of an aircraft by a special purpose entity wholly or partly owned by the corporation or its associated corporation;
(d) providing a guarantee in respect of a financial or performance obligation as regards the aircraft leasing business of a special purpose entity wholly or partly owned by the corporation or its associated corporation, or granting security in respect of that business;

(e) managing leases;

(f) arranging for the procurement or leasing of aircraft;

(g) arranging for the operation, maintenance, repair, insurance, storage, scrapping or modification of aircraft;

(h) arranging for the evaluation, appraisal, provision or inspection of aircraft, airline facilities or maintenance facilities for aircraft;

(i) arranging for the assessment of the aviation and aircraft market conditions;

(j) marketing of leases that are operating leases;

(k) providing finance in obtaining the ownership of an aircraft by an airline enterprise from another corporation that is a relevant qualifying aircraft lessor;

(l) providing a residual value guarantee or contingent purchase arrangement;

(m) providing services in relation to an aircraft leasing activity for or to another corporation that is a relevant qualifying aircraft lessor.

(2) For the purposes of paragraph (a), (k) or (m) of the definition of aircraft leasing management activity in subsection (1), a corporation is a relevant qualifying aircraft lessor if—
2. Prescribed percentage for calculation of net lease payments

For the purposes of section 14I, the prescribed percentage is 20%.
Part 3

Prescribed Percentages for Safe Harbour Rule

3. Prescribed profits percentage
   For the purposes of section 14K, the prescribed profits percentage is 75%.

4. Prescribed asset percentage
   For the purposes of section 14K, the prescribed asset percentage is 75%.

17. Schedule 41 added
   The Ordinance—
   Add

“Schedule 41

[ s. 89(19) ]

Transitional Provisions for Inland Revenue (Amendment) (No. 3) Ordinance 2017

1. In computing the qualifying profits in relation to a corporation for the purposes of section 14H(1), sums received by or accrued to the corporation before 1 April 2017 are not to be taken into account.

2. In computing the qualifying profits in relation to a corporation for the purposes of section 14J(1), sums received by or accrued to the corporation before 1 April 2017 are not to be taken into account.
3. Section 15(1)(n) does not apply to sums received or accrued before the Inland Revenue (Amendment) (No. 3) Ordinance 2017 (9 of 2017) comes into operation.”.