

Inland Revenue (Amendment) Ordinance 2018

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 5 OF 2018



Matthew CHEUNG Kin-chung
Acting Chief Executive
1 February 2018

An Ordinance to amend the Inland Revenue Ordinance to empower the Chief Executive in Council to give effect to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, and other tax agreements that apply to Hong Kong; and to amend the Ordinance to align the relevant provisions with the international standard for the automatic exchange of financial account information in tax matters.

[2 February 2018]

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2018.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Sections 5, 6, 7, 8, 9, 10 and 11 come into operation on 1 January 2019.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 11.

3. Part 8 heading amended (double taxation relief and exchange of information)

Part 8, heading—

Repeal

“and Exchange of Information”

Substitute

“, Exchange of Information and Other International Tax Cooperation”.

4. Section 49 amended (arrangements for relief from double taxation and exchange of information)

(1) Section 49, heading—

Repeal

“Arrangements for relief from double taxation and exchange of information”

Substitute

“Arrangements: relief from double taxation, exchange of information and other international tax cooperation”.

(2) After section 49(1A)—

Add

“(1AB) Arrangements that may be specified in an order under subsection (1A) include—

(a) arrangements that are made with more than one government; and

(b) arrangements that are made by the Central People's Government and applied to Hong Kong.”.

(3) Section 49(1B)—

Repeal

“either or both”

Substitute

“one or more”.

(4) Section 49(1B)(b)—

Repeal

“the territory concerned.”

Substitute

“any territory concerned;”.

(5) After section 49(1B)(b)—

Add

“(c) implementing an initiative of international tax cooperation.”.

5. Section 50A amended (interpretation)

(1) Section 50A(1)—

Repeal the definition of *annuity contract*

Substitute

“*annuity contract* (年金合約)—

(a) means a contract under which its issuer agrees to make payments for a period of time determined, in whole or in part, by reference to the life expectancy of one or more individuals; and

- (b) includes a contract—
- (i) that is considered to be an annuity contract in accordance with the law, regulation or practice of the jurisdiction in which the contract was issued; and
 - (ii) under which its issuer agrees to make payments for a term of years;”.
- (2) Section 50A(1), definition of *cash value*, paragraph (a)(ii), after “under”—

Add

“, or with regard to,”.

- (3) Section 50A(1), definition of *depository account*—

Repeal

“financial institution in the ordinary course of a banking business or similar business”

Substitute

“depository institution”.

- (4) Section 50A(1), definition of *financial account*, paragraph (d)—

Repeal

“not an investment entity”

Substitute

“a custodial institution, depository institution or specified insurance company, or an advising manager within the meaning of subsection (12)”.

- (5) Section 50A(1), definition of *pre-existing account*, paragraph (b)(ii)(A), after “the institution”—

Add

“, or its related entity within Hong Kong”.

- (6) Section 50A(1), definition of *specified insurance company*—

Repeal

everything after “annuity contract”

Substitute a semicolon.

- (7) Section 50A(1)—

Add in alphabetical order

“*insurance company* (保險公司) means any of the following—

- (a) an insurer authorized under the Insurance Ordinance (Cap. 41);
 - (b) an entity the gross income of which arising from insurance, reinsurance and annuity contracts exceeds 50% of the entity’s total gross income for the calendar year immediately preceding the calendar year in which the determination as to whether the entity is an insurance company is made;
 - (c) an entity the aggregate value of the assets of which associated with insurance, reinsurance and annuity contracts exceeds 50% of the entity’s total assets at any time during the calendar year immediately preceding the calendar year in which the determination as to whether the entity is an insurance company is made;”.
- (8) Section 50A(6)(a)(i)(A) and (B)—

Repeal

“not less than”

Substitute

“more than”.

- (9) Section 50A(6)(a)(i)(B) and (b)(i)(B)—

Repeal

“; or”

Substitute a semicolon.

- (10) Section 50A(6)(b)(i)(A) and (B)—

Repeal

“not less than”

Substitute

“more than”.

- (11) After section 50A(6)(a)(i)(C)—

Add

“(D) (if no individual falls within sub-subparagraph (A), (B) or (C)) holds the position of senior managing official of the entity; or”.

- (12) After section 50A(6)(b)(i)(C)—

Add

“(D) (if no individual falls within sub-subparagraph (A), (B) or (C)) holds the position of senior managing official of the entity; or”.

- (13) Section 50A(6)(c)(i)—

Repeal

“not less than”

Substitute

“more than”.

- (14) Section 50A(6)(c)(iii), after “protector”—

Add

“or enforcer”.

(15) Section 50A(6)(c)—

Repeal subparagraph (iv)

Substitute

“(iv) has ultimate control over the entity; or”.

(16) Section 50A(12)—

Repeal

“paragraph (c)”

Substitute

“paragraphs (c) and (d) (in relation to an advising manager)”.

6. Section 50B amended (due diligence obligations on reporting financial institutions)

(1) Section 50B(1)(a)(iii)—

Repeal

“or a record”

Substitute

“and any record”.

(2) Section 50B(1)(a)(iii), English text—

Repeal

“is kept”

Substitute

“are kept”.

7. Section 50C amended (obligations of reporting financial institutions to furnish returns)

After section 50C(2)—

Add

“(2A) However, the specified information period for a reportable jurisdiction may not cover any period that is earlier than the date on which the jurisdiction becomes a reportable jurisdiction.”.

8. Schedule 17C, Part 2, section 8 amended (qualified credit card issuer)

Schedule 17C, Part 2, section 8(2)—

Repeal

“(ii)”.

9. Schedule 17C, Part 2, section 9 amended (exempt collective investment vehicle)

(1) Schedule 17C, Chinese text, Part 2, section 9(1)(b)(i)—

Repeal the semicolon

Substitute

“ ; 或”.

(2) Schedule 17C, Part 2, section 9(1)(b)—

Repeal subparagraph (ii)

Substitute

“(ii) entities that are not reportable persons.”.

(3) Schedule 17C, Part 2, after section 9(1)—

Add

“(1A) Subsection (1) does not apply to an investment entity if—

- (a) any of the interests in the entity is held by, or through, an entity that is a passive NFE; and

(b) any one of the controlling persons of the passive NFE is a reportable person.”.

10. Schedule 17C, Part 3, section 7 amended (dormant account)

(1) Schedule 17C, Part 3—

Renumber section 7 as section 7(1).

(2) Schedule 17C, Part 3, section 7(1)(b)—

Repeal

“years;”

Substitute

“years; and”.

(3) Schedule 17C, Part 3, section 7(1)—

Repeal paragraph (c).

(4) Schedule 17C, Part 3, after section 7(1)—

Add

“(2) An account (other than an annuity contract) with a balance that does not exceed \$7,800 maintained with a reporting financial institution is also an excluded account if—

(a) the account is treated as a dormant account—

(i) in accordance with the laws or regulations applicable to the institution; or

(ii) under the normal operating procedures of the institution that are consistently applied for all accounts maintained with the institution; and

- (b) the laws, regulations or procedures mentioned in paragraph (a) contain provisions that are substantially similar to subsection (1)(a), (b) and (d).”.

11. Schedule 17D, Part 6, section 6 amended (determining residence of controlling person of passive NFE)

Schedule 17D, Part 6, section 6, after “rely”—

Add

“only”.