

# A BILL

## To

Amend the Inland Revenue Ordinance to expand the scope of profits tax deduction for capital expenditure incurred for the purchase of intellectual property rights to cover performer's economic rights, protected layout-design (topography) rights and protected plant variety rights; to allow deduction of expenses for the grant of plant variety rights; to deem certain sums to be trading receipts chargeable to tax; and to provide for related matters.

Enacted by the Legislative Council.

**1. Short title**

This Ordinance may be cited as the Inland Revenue (Amendment) (No. 2) Ordinance 2018.

**2. Inland Revenue Ordinance amended**

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 7.

**3. Section 15 amended (certain amounts deemed trading receipts)**

(1) Section 15(1)(b)—

**Repeal**

everything after “a person for”

**Substitute**

“the use, or the right to the use, in Hong Kong of any patent, design, trade mark, copyright material, layout-design (topography) of an integrated circuit, performer’s right, plant variety right, secret process or formula, or other property or right 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, layout-design (topography) of an integrated circuit, performer’s right, plant variety right, secret process or formula, or other property or right;”.

- (2) Section 15(1)(ba)—

**Repeal**

everything after “a person for” and before “which are deductible”

**Substitute**

“the use, or the right to the use, outside Hong Kong of any patent, design, trade mark, copyright material, layout-design (topography) of an integrated circuit, performer’s right, plant variety right, secret process or formula, or other property or right 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, layout-design (topography) of an integrated circuit, performer’s right, plant variety right, secret process or formula, or other property or right;”.

- (3) After section 15(1)(ba)—

**Add**

“(bb) sums, not otherwise chargeable to tax under this Part, received by or accrued to a performer or an organizer for an assignment of, or an agreement to assign, a performer’s right in relation to a performance given by the performer in Hong Kong on or after the day on which the Inland Revenue (Amendment) (No. 2) Ordinance 2018 (      of 2018) comes into operation;”.

- (4) After section 15(6)—

**Add**

“(7) The amendments made to this section by the Inland Revenue (Amendment) (No. 2) Ordinance 2018 (      of 2018) do not have the effect of rendering chargeable to tax sums received by or accrued to a person before the day on which that Ordinance comes into operation which were not otherwise chargeable to tax.

- (8) In this section—

**organizer** (籌辦人) means a person who obtains a performer’s right in a performance in Hong Kong through arranging the participation of the performer in the performance or managing the performance;

**performance** (表演) has the meaning given by section 200(2) of the Copyright Ordinance (Cap. 528);

**performer** (表演者) has the meaning given by section 200(2) of the Copyright Ordinance (Cap. 528).”.

**4. Section 16 amended (ascertainment of chargeable profits)**

(1) Section 16(1)(g)—

**Repeal**

“patent,”

**Substitute**

“patent or plant variety right.”

(2) After section 16(5A)—

**Add**

“(5B) The amendment made to subsection (1)(g) by the Inland Revenue (Amendment) (No. 2) Ordinance 2018 ( of 2018) applies only in relation to a year of assessment beginning on or after 1 April 2018.”

**5. Section 16EA amended (purchase of specified intellectual property rights)**

(1) Section 16EA(4)—

**Repeal paragraph (a)****Substitute**

“(a) is a copyright, performer’s economic right, protected layout-design (topography) right, protected plant variety right or registered design; and”.

(2) After section 16EA(6)(b)—

**Add**

“(ba) (in the case of the specified intellectual property right being a performer’s economic right) the performer’s economic right has not expired;

(bb) (in the case of the specified intellectual property right being a protected layout-design (topography) right) the protection of the layout-design has not ceased;

- (bc) (in the case of the specified intellectual property right being a protected plant variety right) the grant of the protected plant variety right is in force;”.
- (3) Section 16EA(11), Chinese text, definition of **最長保護限期**—
- Repeal**  
“(maximum period of protection) 在”
- Substitute**  
“(maximum period of protection)”.
- (4) Section 16EA(11), Chinese text, definition of **最長保護限期**, paragraph (a)—
- Repeal**  
“有關指明知識產權是”
- Substitute**  
“在有關指明知識產權是”.
- (5) Section 16EA(11), definition of ***maximum period of protection***, after paragraph (a)—
- Add**
- “(ab) in the case of a specified intellectual property right that is a performer’s economic right—
- (i) (if the right is conferred by Part III of the Copyright Ordinance (Cap. 528)) the maximum period for which the right may be conferred under that Ordinance; or
- (ii) (if the right subsists under the law of a place outside Hong Kong) the maximum period for which the right may subsist under the law of that place;

- (ac) in the case of a specified intellectual property right that is a protected layout-design (topography) right—
- (i) (if the right is in a layout-design (topography) that is protected under section 3 of the Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445)) the maximum period for which the layout-design may be protected under that Ordinance; or
  - (ii) (if the right subsists under the law of a place outside Hong Kong) the maximum period for which the right may subsist under the law of that place;
- (ad) in the case of a specified intellectual property right that is a protected plant variety right—
- (i) (if the right is granted under Part III of the Plant Varieties Protection Ordinance (Cap. 490)) the maximum period for which the grant of the right may be in force under that Ordinance; or
  - (ii) (if the right subsists under the law of a place outside Hong Kong) the maximum period for which the right may subsist under the law of that place;”.
- (6) Section 16EA(11), Chinese text, definition of **最長保護限期**, paragraph (b)—

**Repeal**

“有關指明知識產權是”

**Substitute**

“在有關指明知識產權是”.

- (7) Section 16EA(11), at the end of the definition of *specified capital expenditure*—

**Add**

“**Note—**

Please also see subsection (14).”.

- (8) Section 16EA(11)—

**Repeal the definition of *specified intellectual property right***

**Substitute**

“*specified intellectual property right* (指明知識產權) means a copyright, performer’s economic right, protected layout-design (topography) right, protected plant variety right, registered design or registered trade mark.”.

- (9) Section 16EA(11)—

**Add in alphabetical order**

“*performer* (表演者) has the meaning given by section 200(2) of the Copyright Ordinance (Cap. 528);

*performer’s economic right* (表演者的經濟權利) means—

- (a) a right mentioned in section 215(1)(a), (b), (c) or (d) of the Copyright Ordinance (Cap. 528) and conferred by Part III of that Ordinance on a performer; or
- (b) a right that corresponds to the right mentioned in paragraph (a) and subsists under the law of a place outside Hong Kong;

*protected layout-design (topography) right* (受保護的布圖設計(拓樸圖)權利) means—

- (a) a right in a layout-design (topography) that is protected under section 3 of the Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445); or
- (b) a right that corresponds to the right mentioned in paragraph (a) and subsists under the law of a place outside Hong Kong;

*protected plant variety right* (受保護植物品種權利) means—

- (a) a right granted under Part III of the Plant Varieties Protection Ordinance (Cap. 490); or
- (b) a right that corresponds to the right mentioned in paragraph (a) and subsists under the law of a place outside Hong Kong;”.

(10) Section 16EA—

**Repeal subsection (14)**

**Substitute**

- “(14) In this section, a reference to specified capital expenditure is—
- (a) if specified capital expenditure is incurred in relation to a copyright, registered design or registered trade mark—a reference to specified capital expenditure incurred during a year of assessment beginning on or after 1 April 2011; or
  - (b) if specified capital expenditure is incurred in relation to a performer’s economic right, protected layout-design (topography) right or protected plant variety right—a reference to specified capital expenditure incurred during a



year of assessment beginning on or after 1 April 2018.”.

**6. Section 16EC amended (deduction under section 16E or 16EA not allowable under certain circumstances)**

Section 16EC(8)—

**Repeal the definition of *commencement date***

**Substitute**

“*commencement date* (生效日期) means—

- (a) in relation to a specified intellectual property right that is a copyright, registered design or registered trade mark—16 December 2011;
- (b) in relation to a specified intellectual property right that is a performer’s economic right, protected layout-design (topography) right or protected plant variety right—the day on which the Inland Revenue (Amendment) (No. 2) Ordinance 2018 ( of 2018) comes into operation;”.

**7. Section 20B amended (persons chargeable in respect of certain profits of a non-resident)**

Section 20B(1)(a)—

**Repeal**

“(b) or (ba)”

**Substitute**

“(b), (ba) or (bb)”.

### **Explanatory Memorandum**

This Bill amends the Inland Revenue Ordinance (Cap. 112) (*Ordinance*) mainly to—

- (a) allow profits tax deductions for capital expenditure incurred for the purchase of 3 additional intellectual property rights, that is to say, performer's economic rights, protected layout-design (topography) rights and protected plant variety rights; and
  - (b) provide that certain sums received by or accrued to a person are deemed trading receipts chargeable to tax.
2. Clause 3 amends section 15 of the Ordinance to provide that the following sums are deemed trading receipts chargeable to tax—
  - (a) sums received by or accrued to a person in relation to layout-designs (topography) of integrated circuits, performer's rights or plant variety rights;
  - (b) sums received by or accrued to a performer or an organizer for an assignment of, or an agreement to assign, a performer's right in relation to a performance given by the performer in Hong Kong.
3. Clause 4 amends section 16(1)(g) of the Ordinance to provide that sums expended for the grant of plant variety rights are deductible on ascertainment of chargeable profits.

4. Clause 5 amends section 16EA of the Ordinance—
  - (a) to allow tax deduction for capital expenditure incurred for the purchase of intellectual property rights to cover performer's economic rights, protected layout-design (topography) rights and protected plant variety rights;
  - (b) to make technical amendments to some of the existing definitions under section 16EA(11); and
  - (c) to add the new definitions of *performer*, *performer's economic right*, *protected layout-design (topography) right* and *protected plant variety right*.
5. Clause 6 amends section 16EC of the Ordinance to provide that the tax deduction mentioned in paragraph 4(a) is not allowable under certain circumstances.
6. Clause 7 amends section 20B of the Ordinance to provide that tax is recoverable from a person in Hong Kong who paid or credited to a non-resident person the sums deemed under a new section 15(1)(bb) of the Ordinance as trading receipts.