
Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Ordinance 2019

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 5 OF 2019



Paul CHAN Mo-po
Acting Chief Executive
28 February 2019

An Ordinance to amend the Inland Revenue Ordinance to allow profits tax exemption for certain funds whether or not the central management and control of the funds is exercised in Hong Kong; and to provide for related matters.

[1 April 2019]

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Ordinance 2019.
- (2) This Ordinance comes into operation on 1 April 2019.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 12.

3. Section 20AB amended (interpretation of sections 20AC, 20ACA, 20AD, 20AE, 20AF, 20AG, 20AH, 20AI, 20AJ, 20AK and 20AL and Schedules 15, 15A, 15B, 16A and 16B)

- (1) Section 20AB, heading—

Repeal

everything after “**20AD**,”

Substitute

“**20AE and 20AF and Schedules 15, 15A and 16**”.

(2) Section 20AB(1)—

Repeal

“20AE, 20AF, 20AG, 20AH, 20AI, 20AJ, 20AK and 20AL and Schedules 15, 15A, 15B, 16A and 16B”

Substitute

“20AE and 20AF and Schedules 15, 15A and 16”.

4. Section 20AC amended (certain profits of non-resident persons exempt from tax)

After section 20AC(1)—

Add

“(1A) On and after 1 April 2019, a reference in this section to a non-resident person does not include a fund within the meaning of section 20AM.

(1B) Subsection (1A) applies only for any year of assessment commencing on or after 1 April 2019.”.

5. Sections 20AG to 20AL repealed

Sections 20AG, 20AH, 20AI, 20AJ, 20AK and 20AL—

Repeal the sections.

6. Sections 20AM to 20AY added

Before section 20B—

Add

“20AM. What *fund* means in sections 20AN, 20AO, 20AP, 20AQ, 20AR, 20AS, 20AT, 20AU, 20AV, 20AW, 20AX and 20AY and Schedules 15C, 15D and 16C

- (1) In sections 20AN, 20AO, 20AP, 20AQ, 20AR, 20AS, 20AT, 20AU, 20AV, 20AW, 20AX and 20AY and Schedules 15C, 15D and 16C, *fund* (基金) has the meaning given to it by this section.
- (2) An arrangement in respect of any property is a *fund* for a year of assessment if at all times during the basis period for the year of assessment—
 - (a) either or both of the following apply—
 - (i) under the arrangement, the property is managed as a whole by, or on behalf of, the person operating the arrangement;
 - (ii) the contributions of the persons participating in the arrangement (*participating persons*), and the profits or income from which payment is made to them, are pooled under the arrangement;
 - (b) under the arrangement, 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 on, or to give directions in respect of, the management); and
 - (c) the purpose or effect (or pretended purpose or effect) of the arrangement 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.
- (3) In subsection (2)—
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 incidental to property mentioned in paragraph (a).
- (4) An arrangement (commonly known as a sovereign wealth fund) that is established and funded by a state or government (or any political subdivision or local authority of a state or government) for the purposes of—
 - (a) carrying out financial activities; and
 - (b) holding and managing a pool of assets, for the benefit of the state or government (or the political subdivision or local authority) is also a *fund*.
- (5) A *fund* does not include an arrangement if—

-
- (a) the arrangement is operated by a person otherwise than by way of business;
 - (b) each of the persons participating in the arrangement (*participating persons*) is a corporation in the same group of companies as the operator of the arrangement;
 - (c) each of the participating persons of the arrangement is—
 - (i) a bona fide employee or former employee of a corporation in the same group of companies as the operator of the arrangement; or
 - (ii) a spouse, widow, widower, minor child (natural or adopted) or minor step-child of such employee or former employee;
 - (d) the arrangement is a franchise arrangement under which the franchisor or franchisee earns profits or income by exploiting a right conferred by the arrangement to use a trade name or design or other intellectual property or goodwill attached to it;
 - (e) money under the arrangement is taken by a solicitor (whether from his or her client or as a stakeholder) acting in his or her professional capacity in the ordinary course of practice;
 - (f) the arrangement is made for the purposes of a fund or scheme maintained by—
 - (i) the Securities and Futures Commission within the meaning of the Securities and Futures Ordinance (Cap. 571); or

- (ii) a recognized exchange company, a recognized clearing house, a recognized exchange controller or a recognized investor compensation company, within the meaning of that Ordinance,
under that Ordinance for providing compensation in the event of default by an exchange participant, or a clearing participant, within the meaning of that Ordinance;
 - (g) the arrangement is made by a credit union registered under the Credit Unions Ordinance (Cap. 119) in accordance with the objects of the credit union;
 - (h) the arrangement is made for the purposes of any chit-fund permitted to operate under the Chit-Fund Businesses (Prohibition) Ordinance (Cap. 262); or
 - (i) the arrangement is a mutual fund, unit trust or similar investment scheme falling within the descriptions in section 26A(1A)(a)(i) and (ii).
- (6) Also, a business undertaking for general commercial or industrial purposes is not a *fund*.
- (7) In subsection (6), the reference to a business undertaking for general commercial or industrial purposes includes a business undertaking that directly engages in any one or more of the following—
- (a) a commercial activity that involves—
 - (i) any purchase, sale or exchange of goods or commodities; or
 - (ii) any supply of services;

- (b) an industrial activity that involves any production of goods or construction of immovable property as defined by section 20AP(4);
- (c) property development or property holding;
- (d) finance, including—
 - (i) banking;
 - (ii) providing capital (other than providing capital to a special purpose entity, or an investee private company, as defined by section 20AO(4));
 - (iii) leasing;
 - (iv) factoring;
 - (v) securitization; and
 - (vi) money-lending;
- (e) insurance business;
- (f) construction or direct acquisition of infrastructure as defined by section 20AP(4);
- (g) making direct investments that derive rent, royalties or lease payments.

20AN. Certain profits of certain funds exempt from payment of profits tax

- (1) This section applies subject to section 20AS.
- (2) If, in respect of a fund, a condition specified in subsection (3) is met at all times during the basis period for a year of assessment, the fund is, subject to sections 20AP and 20AQ, exempt from the payment of tax otherwise chargeable under this Part

in respect of its assessable profits for the basis period earned from—

- (a) transactions in assets of a class specified in Schedule 16C (*qualifying transactions*);
 - (b) subject to subsection (4), transactions incidental to the carrying out of qualifying transactions (*incidental transactions*); and
 - (c) if the fund is an open-ended fund company— transactions in assets of a class that is not specified in Schedule 16C.
- (3) The condition is—
- (a) that the qualifying transactions of the fund are—
 - (i) carried out in Hong Kong by or through a specified person; or
 - (ii) arranged in Hong Kong by a specified person; or
 - (b) that the fund is a qualified investment fund.
- (4) The exemption under subsection (2) does not apply to assessable profits earned from incidental transactions if the percentage calculated according to the following formula exceeds 5%—

$$A/B \times 100\%$$

where—

A = the fund's trading receipts from incidental transactions in the basis period;

B = the total of the fund's trading receipts from qualifying transactions and incidental transactions in the basis period.

(5) The Commissioner may by notice published in the Gazette amend Schedule 16C.

(6) In this section—

aggregate capital commitment (資本認繳總額), in relation to a qualified investment fund, means the total of the capital commitments made by the investors, the originator and the originator's associates;

associate (相聯者)—

(a) in relation to a natural person, means—

(i) a relative of the person;

(ii) a partner of the person;

(iii) if a partner of the person is a natural person—a relative of the partner;

(iv) a partnership in which the person is a partner;

(v) a corporation controlled by—

(A) the person;

(B) if the person is a natural person—a relative of the person;

(C) a partner of the person;

(D) if a partner of the person is a natural person—a relative of that partner; or

(E) a partnership in which the person is a partner; or

(vi) a director or principal officer of a corporation mentioned in subparagraph (v);

(b) in relation to a corporation, means—

(i) a person who controls the corporation;

- (ii) a partner of the person mentioned in subparagraph (i);
 - (iii) if the person mentioned in subparagraph (i) is a natural person—a relative of the person;
 - (iv) if the partner mentioned in subparagraph (ii) is a natural person—a relative of the partner;
 - (v) a director or principal officer of—
 - (A) the corporation; or
 - (B) an associated corporation of the corporation;
 - (vi) a relative of the director or principal officer mentioned in subparagraph (v);
 - (vii) a partner of the corporation;
 - (viii) if a partner of the corporation is a natural person—a relative of the partner;
 - (ix) a partnership in which the corporation is a partner; or
 - (x) an associated corporation of the corporation;
- (c) in relation to a partnership, means—
- (i) a partner in the partnership;
 - (ii) if a partner in the partnership is a natural person—a relative of the partner;
 - (iii) if a partner in the partnership is another partnership—
 - (A) a partner in the other partnership (*Partner A*); or

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- (B) a partner with the other partnership in any other partnership (*Partner B*);
 - (iv) if Partner A is a partnership—a partner in Partner A (*Partner C*);
 - (v) if Partner B is a partnership—a partner in Partner B (*Partner D*);
 - (vi) if Partner A, Partner B, Partner C or Partner D is a natural person—a relative of the partner;
 - (vii) a corporation controlled by—
 - (A) the partnership;
 - (B) a partner in the partnership;
 - (C) if a partner in the partnership is a natural person—a relative of the partner; or
 - (D) a partnership in which the partnership is a partner;
 - (viii) a director or principal officer of the corporation mentioned in subparagraph (vii);
 - (ix) a corporation of which a partner in the partnership is a director or principal officer; or
 - (x) an associated partnership of the partnership;
- 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;

associated partnership (相聯合夥), in relation to a partnership, means—

- (a) another partnership over which the partnership has control;
- (b) another partnership that has control over the partnership; or
- (c) another partnership that is under the control of the same person as is the partnership;

capital commitment (資本認繳), in relation to a qualified investment fund, means a commitment—

- (a) in the form of an amount of money payable by an investor, the originator or the originator's associate to the fund under an agreement governing the operation of the fund; and
- (b) in respect of which the originator may make capital calls from time to time according to the terms of the agreement;

control (控制)—

- (a) in relation to a corporation, means the power of a person to secure—
 - (i) by means of the holding of shares or the possession of voting power in or in relation to the corporation or any other corporation; or
 - (ii) by virtue of any powers conferred by the articles of association or other document

regulating the corporation or any other corporation,

that the affairs of the corporation are conducted in accordance with the wishes of the person;

(b) in relation to a partnership, means the power of a person to secure—

(i) by means of the holding of interests or the possession of voting power in or in relation to the partnership or any other partnership; or

(ii) by virtue of any powers conferred by the partnership agreement or other document regulating the partnership or any other partnership,

that the affairs of the partnership are conducted in accordance with the wishes of the person;

final closing of sale of interests (權益出售最終截止日), in relation to a qualified investment fund, means the date on which the originator last accepts subscriptions from investors for making capital commitments;

investor (投資者), in relation to a qualified investment fund, means a person, other than the originator or the originator's associates, who makes capital commitment to the fund;

net proceeds (淨收益), in relation to a qualified investment fund at a particular time, means an amount calculated by—

(a) adding together—

(i) the sum of the cumulative distributions received by the investors, the originator

and the originator's associates from the fund by the particular time; and

(ii) the value at the particular time of all assets, if any, held by the fund; and

(b) subtracting the cumulative capital contributions of the investors, the originator and the originator's associates by the particular time;

originator (發起人), in relation to a qualified investment fund, means a person who directly or indirectly—

(a) originates or sponsors the fund; and

(b) has the power to make investment decisions on behalf of the fund;

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 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;

qualified investment fund (合資格投資基金) means a fund in relation to which—

(a) at all times after the final closing of sale of interests—

(i) the number of investors exceeds 4; and

- (ii) the capital commitments made by investors exceed 90% of the aggregate capital commitments; and
- (b) an agreement governing the operation of the fund provides that not more than 30% of the net proceeds arising out of the transactions of the fund are to be received by the originator and the originator's associates, after deducting the portion attributable to their capital contributions (which is proportionate to that attributable to the investors' capital contributions);

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

specified person (指明人士) means 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 as defined by Part 1 of Schedule 5 to that Ordinance.

- (7) Section 21 of Schedule 17A (specified alternative bond scheme and its tax treatment) provides for modifications to this section.

20AO. Certain profits of special purpose entities exempt from payment of profits tax

- (1) This section applies to a special purpose entity owned by a fund that is exempt from the payment of tax under section 20AN in respect of its assessable profits for a year of assessment.
- (2) The special purpose entity is, subject to sections 20AP and 20AQ, exempt to the extent provided by subsection (3) from the payment of tax chargeable under this Part in respect of its assessable profits for the year of assessment earned from—
 - (a) transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, an investee private company or an interposed special purpose entity;
 - (b) transactions in rights, options or interests (whether described as units or otherwise) in, or in respect of, the specified securities; and
 - (c) transactions in certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, the specified securities.
- (3) The extent of exemption under subsection (2) is the percentage equal to the percentage of the fund's ownership of the special purpose entity in the year of assessment.
- (4) In this section—

interposed special purpose entity (中間特定目的實體) means—

- (a) in relation to a special purpose entity that has an indirect beneficial interest in an investee private company through an interposed person that is a special purpose entity—the interposed person;
- (b) in relation to a special purpose entity that has an indirect beneficial interest in an investee private company through a series of 2 or more interposed persons each of which is a special purpose entity—any of the interposed persons;

investee private company (獲投資私人公司), in relation to a fund, means a private company held by a special purpose entity or an interposed special purpose entity as a shareholder on behalf of the fund;

private company (私人公司) means a company (whether incorporated in or outside Hong Kong) that is not allowed to issue any invitations to the public to subscribe for any shares or debentures of the company;

special purpose entity (特定目的實體) means a corporation, partnership, trustee of a trust estate or any other entity that—

- (a) is wholly or partially owned by a fund;
- (b) is established solely for the purpose of holding (whether directly or indirectly) and administering one or more investee private companies;
- (c) is incorporated, registered or appointed in or outside Hong Kong;

- (d) does not carry on any trade or activities except for the purpose of holding (whether directly or indirectly) and administering one or more investee private companies; and
- (e) is not itself a fund or an investee private company.

20AP. When does exemption under section 20AN or 20AO not apply to specified body holding immovable property through another company

- (1) Subject to section 20AR, this section applies if, during the basis period for a year of assessment—
 - (a) a specified body carries out transactions in shares, stocks, debentures, loan stocks, funds, bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
 - (b) the relevant company holds (whether directly or indirectly)—
 - (i) immovable property in Hong Kong; or
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
- (2) If the aggregate value of the immovable property and share capital held by the relevant company—
 - (a) exceeds 10% of the value of its assets—the specified body is not exempt from the payment of tax under this Part in respect of its assessable profits for the period earned from the transactions; or

- (b) does not exceed 10% of the value of its assets— the specified body is not, unless a condition specified in subsection (3) is met in good faith by the specified body, exempt from the payment of tax under this Part in respect of its assessable profits for the period earned from the transactions.
- (3) The condition is—
 - (a) that the specified body disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the specified body has control over the relevant company); or
 - (b) that the specified body disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
 - (i) the specified body does not have control over the relevant company; or
 - (ii) if the specified body has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which does not exceed 50% of the value of the relevant company's assets.

- (4) In this section—

control (控制) has the meaning given by section 20AN(6);

immovable property (不動產) means—

- (a) land (whether covered by water or not);
- (b) any estate, right, interest or easement in or over any land; and

- (c) things attached to land or permanently fastened to anything attached to land,

but does not include infrastructure;

infrastructure (基礎設施) means any publicly or privately owned facility providing or distributing services for the benefit of the public, and includes any water, sewage, energy, fuel, transportation or communication facility;

private company (私人公司) has the meaning given by section 20AO(4);

short-term asset (短期資產), in relation to a private company the shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, which are being disposed of by a fund, means an asset—

- (a) that is of a class not specified in Schedule 16C;
- (b) that is not immovable property in Hong Kong; and
- (c) that has been held by the company for less than 3 consecutive years before the date of disposal;

special purpose entity (特定目的實體) has the meaning given by section 20AO(4);

specified body (指明團體) means a fund or a special purpose entity.

20AQ. When does exemption under section 20AN or 20AO not apply to specified body not holding immovable property through another company

- (1) Subject to section 20AR, this section applies if, during the basis period for a year of assessment—
- (a) a specified body carries out transactions in shares, stocks, debentures, loan stocks, funds,

- bonds or notes (*specified securities*) of, or issued by, a private company (*relevant company*); and
- (b) the relevant company does not hold (whether directly or indirectly)—
 - (i) immovable property in Hong Kong; or
 - (ii) share capital (however described) in another private company that holds (whether directly or indirectly) immovable property in Hong Kong.
 - (2) The specified body is not, unless a condition specified in subsection (3) is met in good faith by the specified body, exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the period earned from the transactions.
 - (3) The condition is—
 - (a) that the specified body disposes of, through a transaction or a series of transactions, the specified securities not less than 2 years after they are acquired (whether or not the specified body has control over the relevant company); or
 - (b) that the specified body disposes of, through a transaction or a series of transactions, the specified securities less than 2 years after they are acquired and—
 - (i) the specified body does not have control over the relevant company; or
 - (ii) if the specified body has control over the relevant company—the relevant company holds (whether directly or indirectly) short-term assets the aggregate value of which

does not exceed 50% of the value of the relevant company's assets.

(4) In this section—

control (控制) has the meaning given by section 20AN(6);

immovable property (不動產) has the meaning given by section 20AP(4);

private company (私人公司) has the meaning given by section 20AO(4);

short-term asset (短期資產) has the meaning given by section 20AP(4);

special purpose entity (特定目的實體) has the meaning given by section 20AO(4);

specified body (指明團體) has the meaning given by section 20AP(4).

20AR. Supplementary provision to sections 20AP and 20AQ

(1) Sections 20AP and 20AQ do not apply to a partner fund carrying on a trade, profession or business that involves transactions in shares of an investee company during the basis period for a year of assessment.

(2) In this section—

investee company (獲投資公司) means—

(a) a corporation that has ITVFC and a partner fund as shareholders under the ITVF Scheme; or

(b) a corporation that—

(i) had, at any time, ITVFC and a partner fund (*Fund A*) as shareholders under the ITVF Scheme; and

- (ii) has, since that time, continued to have a partner fund (whether Fund A or another partner fund) as a shareholder;

ITVF Scheme (創基計劃) means the Innovation and Technology Venture Fund Scheme established by the Innovation and Technology Commission;

ITVFC (創基公司) means The Innovation and Technology Venture Fund Corporation incorporated under the Companies Ordinance (Cap. 622);

partner fund (夥伴基金) means a fund that is a party (whether or not through an agent) to an agreement—

- (a) to which ITVFC is also a party;
- (b) that stipulates the overall rights and obligations of ITVFC and the fund in respect of their participation in the ITVF Scheme; and
- (c) that is valid and in force.

20AS. When does exemption under section 20AN not apply to open-ended fund companies

Despite section 20AN, if, during the basis period for a year of assessment, an open-ended fund company—

- (a) carries on a direct trading or direct business undertaking in Hong Kong in assets of a class that is not specified in Schedule 16C (***non-Schedule 16C class***); or
- (b) holds assets of a non-Schedule 16C class that are utilized to generate income,

the company is not exempt from the payment of tax chargeable under this Part in respect of its assessable profits for the basis period earned from the trading, business undertaking or utilization.

20AT. Sub-funds of open-ended fund companies

- (1) This section applies in relation to an open-ended fund company.
- (2) If the instrument of incorporation of the company (*main company*) provides for the division of its scheme property into separate parts (each of which is a *sub-fund*), then, when applying section 14 to the main company—
 - (a) a reference to assessable profits in that section is a reference to the total of the assessable profits of all of its sub-funds; and
 - (b) for computing the assessable profits of the sub-funds—
 - (i) each sub-fund is to be regarded as an open-ended fund company;
 - (ii) the main company is to be regarded as not being an open-ended fund company; and
 - (iii) the provisions of this Part apply to a sub-fund as if it were an open-ended fund company.
- (3) The part of the profits tax chargeable on the main company that is attributable to the assessable profits of one of the sub-funds may only be paid out of the assets of the sub-fund.
- (4) If the condition for exemption from payment of tax under section 20AN is met in respect of a sub-fund, the sub-fund is exempt under that section even if the condition is not met in respect of another sub-fund of the main company.

- (5) Any loss sustained by a sub-fund is not available for set off against any assessable profits of another sub-fund of the main company.
- (6) In this section—
scheme property (計劃財產) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571).

20AU. Losses sustained by funds (other than open-ended fund companies) and special purpose entities

- (1) This section applies in relation to a fund (other than an open-ended fund company) and a special purpose entity.
- (2) If a fund is exempt from the payment of tax under section 20AN in respect of its assessable profits for a year of assessment, any loss sustained by the fund from a transaction referred to in section 20AN(2)(a) or (b) in the year of assessment is not available for set off against any of its assessable profits for the year of assessment or any subsequent year of assessment.
- (3) If a special purpose entity is exempt from the payment of tax under section 20AO in respect of its assessable profits for a year of assessment, any loss sustained by the entity from a transaction referred to in section 20AO(2) in the year of assessment is not available for set off against any of its assessable profits for the year of assessment or any subsequent year of assessment.
- (4) In this section—
special purpose entity (特定目的實體) has the meaning given by section 20AO(4).

20AV. Losses sustained by open-ended fund companies

- (1) This section applies in relation to an open-ended fund company.
- (2) If the company is exempt from the payment of tax under section 20AN in respect of its assessable profits for a year of assessment, any loss sustained by the company from a transaction referred to in section 20AN(2)(a), (b) or (c) in the year of assessment is not available for set off against any of its assessable profits for the year of assessment or any subsequent year of assessment.
- (3) Any loss sustained by the company from a specified activity in respect of which there is not an exemption from the payment of tax for assessable profits under section 20AN or 20AS for a year of assessment is only available for set off against any assessable profits of the company earned from the specified activity for the year of assessment or any subsequent year of assessment.
- (4) In this section—

specified activity (指明活動) means a transaction, a direct trading, a direct business undertaking or utilization of assets.

20AW. Interpretation of sections 20AX and 20AY and Schedules 15C and 15D

- (1) This section applies to the interpretation of sections 20AX and 20AY and Schedules 15C and 15D.
- (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—

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- (i) ordinarily resides in Hong Kong in the year of assessment; or
 - (ii) stays in Hong Kong for a period or a number of periods amounting to—
 - (A) more than 180 days during the year of assessment; or
 - (B) more than 300 days in 2 consecutive years of assessment one of which is the 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 the 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 the 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 the year of assessment.
- (3) In relation to any year of assessment, a person is a non-resident person if the person is not a resident person in relation to the year of assessment.
- (4) A person (*the person*) is to be regarded as having a direct beneficial interest in another person (*the other person*) if—

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- (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;
 - (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, if 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 the other person; or
 - (d) where the other person is an entity that does not fall within any of paragraphs (a), (b) and (c)—the person has any of the ownership interests in the entity.
- (5) A person (*the person*) is to be regarded as having an indirect beneficial interest in another person (*the other person*) if—
- (a) where the other person is a corporation that is not a trustee of a trust estate—the person is interested in 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 is entitled to any of the profits of the partnership;
 - (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, if 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; or
 - (d) where the other person is an entity that does not fall within any of paragraphs (a), (b) and (c)—the person has any of the ownership interests in the entity, through a third person (*interposed person*), or through a series of 2 or more interposed persons, who is or are related to the person and the other person in the way described in subsections (6) and (7).
- (6) If there is one interposed person—
 - (a) the person has a direct beneficial interest in the interposed person; and
 - (b) the interposed person has a direct beneficial interest in the other person.
 - (7) If there is a series of 2 or more interposed persons—
 - (a) the 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 other person.
- (8) If the partners in a partnership are not entitled to its profits but are only entitled to a distribution of its assets on its dissolution—a reference to an entitlement to the profits of a partnership is taken to be a reference to an entitlement to a distribution of the assets of the partnership on its dissolution.
- (9) A reference to the issued share capital of a corporation does not include 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 on its dissolution other than a return of capital.

20AX. Assessable profits of funds regarded as assessable profits of resident persons

- (1) If, in a year of assessment commencing on or after 1 April 2019—
- (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect or both) in a fund to the extent set out in subsection (2); and
 - (b) the fund is exempt from the payment of tax under section 20AN,

the assessable profits of the fund for the 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 the 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 fund referred to in subsection (1) is that the person, either alone or jointly with any of the person's associates (whether a resident person or not)—
 - (a) if the fund 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) if the fund 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;
 - (c) if the fund is a trustee of a trust estate—is interested in not less than 30% in value of the trust estate; or
 - (d) if the fund is an entity that does not fall within any of paragraphs (a), (b) and (c)—has not less than 30% of the ownership interests in the fund.
- (3) If, in a year of assessment commencing on or after 1 April 2019—
 - (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect or both) in a fund;
 - (b) the fund is exempt from the payment of tax under section 20AN; and
 - (c) the fund is an associate of the resident person,

the assessable profits of the fund for the 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 the 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 (whether directly or indirectly) from the fund concerned any money or other property representing the profits of the fund 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 because of the fact that the resident person 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% of the value of the trust estate.
- (6) The extent of a resident person's beneficial interest in a fund is to be determined in accordance with Part 2 of Schedule 15C.
- (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 Schedule 15C.
- (8) Subsections (1) and (3) do not apply in relation to a resident person who has a direct or indirect beneficial interest in a fund if the Commissioner is satisfied that the beneficial interests in the fund are bona fide widely held.

(9) If—

- (a) a resident person is liable to tax in respect of the profits of a fund by the operation of subsection (1) or (3) because the person has an indirect beneficial interest in the fund through an interposed person (or through a series of 2 or more interposed persons); and
- (b) the interposed person (or any of the interposed persons) is a resident person who is also liable to tax in respect of the profits by the operation of subsection (1) or (3),

the resident person mentioned in paragraph (a) is discharged from the person's liability to tax in respect of the profits.

(10) In this section—

associate (相聯者) has the meaning given by section 20AN(6).

20AY. Assessable profits of special purpose entities held by funds regarded as assessable profits of resident persons

- (1) If, in a year of assessment commencing on or after 1 April 2019—
 - (a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect or both) in a fund to the extent set out in section 20AX(2);
 - (b) the fund is exempt from the payment of tax under section 20AN;
 - (c) the fund has, during the period of time, a beneficial interest (whether direct or indirect or both) in a special purpose entity; and

(d) the special purpose entity is exempt from the payment of tax under section 20AO,

the assessable profits of the special purpose entity for the period of time that are chargeable to tax under this Part and in respect of which tax would have been payable but for section 20AO are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.

(2) If, in a year of assessment commencing on or after 1 April 2019—

(a) a resident person has, during any period of time, a beneficial interest (whether direct or indirect or both) in a fund;

(b) the fund is exempt from the payment of tax under section 20AN;

(c) the fund is an associate of the resident person;

(d) the fund has, during the period of time, a beneficial interest (whether direct or indirect or both) in a special purpose entity; and

(e) the special purpose entity is exempt from the payment of tax under section 20AO,

the assessable profits of the special purpose entity for the period of time that are chargeable to tax under this Part and in respect of which tax would have been payable but for section 20AO are to be regarded as the assessable profits arising in, or derived from, Hong Kong of the resident person for the year of assessment from a trade, profession or business carried on by the resident person in Hong Kong.

- (3) Subsections (1) and (2) apply in relation to a resident person irrespective of whether the person has received or will receive (whether directly or indirectly) from the special purpose entity concerned any money or other property representing the profits of the special purpose entity for the relevant year of assessment.
- (4) A resident person who has a direct or indirect beneficial interest in a trustee of a trust estate because of the fact that the resident person 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% of the value of the trust estate.
- (5) The extent of a fund's beneficial interest in a special purpose entity is to be determined in accordance with Part 2 of Schedule 15D.
- (6) The amount regarded as the assessable profits of a resident person for a year of assessment under subsection (1) or (2) is to be ascertained in accordance with Schedule 15D.
- (7) Subsections (1) and (2) do not apply in relation to a resident person who has a direct or indirect beneficial interest in a fund if the Commissioner is satisfied that the beneficial interests in the fund are bona fide widely held.

(8) If—

- (a) a resident person is liable to tax in respect of the profits of a special purpose entity by the operation of subsection (1) or (2) because the person has an indirect beneficial interest in the special purpose entity through an interposed person (or through a series of 2 or more interposed persons); and
- (b) the interposed person (or any of the interposed persons) is a resident person who is also liable to tax in respect of the profits by the operation of subsection (1) or (2),

the resident person mentioned in paragraph (a) is discharged from the person's liability to tax in respect of the profits.

(9) In this section—

associate (相聯者) has the meaning given by section 20AN(6);

special purpose entity (特定目的實體) has the meaning given by section 20AO(4).”.

7. Schedule 15B repealed (provisions for ascertaining amount of assessable profits of resident person under section 20AK)

Schedule 15B—

Repeal the Schedule.

8. Schedules 15C and 15D added

Before Schedule 16—

Add

“Schedule 15C

[ss. 20AM, 20AW &
20AX & Sch. 15D]

Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 20AX

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 fund that are chargeable to tax under Part 4 and in respect of which tax would have been payable but for section 20AN (*exempt profits*) for each day in the period in the year of assessment during which the resident person has a direct or indirect beneficial interest in the fund.
2. For the purposes of section 1 of this Part, the exempt profits of a fund 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 fund for a particular day in a year of assessment;

- B means the extent of the resident person's beneficial interest in the fund on the particular day, expressed as a percentage determined in accordance with Part 2 of this Schedule;
- C means the exempt profits of the fund for the accounting period of the fund in which the particular day falls;
- D means the total number of days in the accounting period of the fund in which the particular day falls.

Part 2

1. For a resident person having a direct beneficial interest in a fund, the extent of the beneficial interest of the resident person in the fund is—
 - (a) if the fund 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) if the fund 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;
 - (c) if the fund is a trustee of a trust estate—the percentage in value of the trust estate in which the resident person is interested; or

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- (d) if the fund is an entity that does not fall within any of paragraphs (a), (b) and (c)—the percentage of ownership interests that the resident person has in the entity.
2. For a resident person having an indirect beneficial interest in a fund, the extent of the beneficial interest of the resident person in the fund is—
- (a) if there is only 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 fund; or
- (b) if 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 fund.

3. For the purposes of section 2 of this Part—
- (a) section 1 of this Part applies in determining the extent of the beneficial interest of a resident person in an interposed person as if the references to a fund in that section were references to an interposed person;
 - (b) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person in a fund as if the references to a resident person in that section were references to an interposed person; and
 - (c) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person (*Interposed Person A*) in another interposed person (*Interposed Person B*) as if—
 - (i) the references to a resident person in that section were references to Interposed Person A; and
 - (ii) the references to a fund in that section were references to Interposed Person B.
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Schedule 15D

[ss. 20AM, 20AW &
20AY]

Provisions for Ascertaining Amount of Assessable Profits of Resident Person under Section 20AY

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 special purpose entity that are chargeable to tax under Part 4 and in respect of which tax would have been payable but for section 20AO (*exempt profits*) for each day in the period in the year of assessment during which the resident person has an indirect beneficial interest in the special purpose entity.
2. For the purposes of section 1 of this Part, the exempt profits of a special purpose entity for a particular day in a year of assessment are to be ascertained in accordance with the following formula—

$$A = \frac{B1 \times B2 \times C}{D}$$

where: A means the exempt profits of the special purpose entity for a particular day in a year of assessment;

- B1 means the extent of the resident person's beneficial interest in the fund on the particular day, expressed as a percentage determined in accordance with Part 2 of Schedule 15C;
 - B2 means the extent of the fund's beneficial interest in the special purpose entity on the particular day, expressed as a percentage determined in accordance with Part 2 of this Schedule;
 - C means the exempt profits of the special purpose entity for the accounting period of the special purpose entity in which the particular day falls;
 - D means the total number of days in the accounting period of the special purpose entity in which the particular day falls.
3. In this Part—
- special purpose entity* (特定目的實體) has the meaning given by section 20AO(4).

Part 2

1. For a fund having a direct beneficial interest in a special purpose entity, the extent of the beneficial interest of the fund in the special purpose entity is—
 - (a) if the special purpose entity 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 fund;

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- (b) if the special purpose entity is a partnership that is not a trustee of a trust estate—the percentage of the profits of the partnership to which the fund is entitled;
 - (c) if the special purpose entity is a trustee of a trust estate—the percentage in value of the trust estate in which the fund is interested; or
 - (d) if the special purpose entity is an entity that does not fall within any of paragraphs (a), (b) and (c)—the percentage of ownership interests that the fund has in the entity.
 - 2. For a fund having an indirect beneficial interest in a special purpose entity, the extent of the beneficial interest of the fund in the special purpose entity is—
 - (a) if there is only one interposed person—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest of the fund in the interposed person by the percentage representing the extent of the beneficial interest of the interposed person in the special purpose entity; or
 - (b) if 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 fund 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 special purpose entity.

3. For the purposes of section 2 of this Part—

- (a) section 1 of this Part applies in determining the extent of the beneficial interest of a fund in an interposed person as if the references to a special purpose entity in that section were references to an interposed person;
- (b) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person in a special purpose entity as if the references to a fund in that section were references to an interposed person; and
- (c) section 1 of this Part applies in determining the extent of the beneficial interest of an interposed person (*Interposed Person A*) in another interposed person (*Interposed Person B*) as if—
 - (i) the references to a fund in that section were references to Interposed Person A; and
 - (ii) the references to a special purpose entity in that section were references to Interposed Person B.

4. In this Part—

special purpose entity (特定目的實體) has the meaning given by section 20AO(4).”.

9. **Schedule 16 amended (specified transactions)**

Schedule 16—

Repeal

“[s. 20AC”

Substitute

“[ss. 20AB & 20AC”.

10. Schedules 16A and 16B repealed

Schedules 16A and 16B—

Repeal the Schedules.

11. Schedule 16C added

Before Schedule 17—

Add

“Schedule 16C

[ss. 20AM, 20AN, 20AP
& 20AS & Sch. 17A]

**Classes of Assets Specified for Transactions for
Purposes of Section 20AN**

Part 1

1. Securities
2. Shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a private company
3. Futures contracts

4. Foreign exchange contracts under which the parties to the contracts agree to exchange different currencies on a particular date
5. Deposits other than those made by way of a money-lending business
6. Deposits (as defined by section 2(1) of the Banking Ordinance (Cap. 155)) made with a bank (as defined by Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571))
7. Certificates of deposit (as defined by Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571))
8. Exchange-traded commodities
9. Foreign currencies
10. OTC derivative products (as defined by Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571))
11. An investee company's shares co-invested by a partner fund and ITVFC under the ITVF Scheme

Part 2

1. In this Schedule—
collective investment scheme (集體投資計劃) means an arrangement in respect of any property—
 - (a) under which either or both of the following apply—

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- (i) the property is managed as a whole by, or on behalf of, the person operating the arrangement;
 - (ii) the contributions of the persons participating in the arrangement (*participating persons*) and the profits or income from which payments are made to them are pooled;
- (b) 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 on, or to give directions in respect of, the management); 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 debt 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 (交易所買賣商品) 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;

futures contract (期貨合約) means—

- (a) a contract or an option on a contract made under the rules or convention of a futures market; 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);

futures market (期貨市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

investee company (獲投資公司) has the meaning given by section 20AR(2);

ITVF Scheme (創基計劃) has the meaning given by section 20AR(2);

ITVFC (創基公司) has the meaning given by section 20AR(2);

partner fund (夥伴基金) has the meaning given by section 20AR(2);

private company (私人公司) has the meaning given by section 20AO(4);

property (財產) has the meaning given by section 20AM(3);

securities (證券) means—

- (a) subject to section 21(6) of Schedule 17A (specified alternative bond scheme and its tax treatment), shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body (including a special purpose entity), 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; or
- (f) a structured product in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of the Securities and Futures Ordinance (Cap. 571) is authorized, or required to be authorized, under section 105(1) of that Ordinance;

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;

special purpose entity (特定目的實體) has the meaning given by section 20AO(4).”.

12. Schedule 17A amended (specified alternative bond scheme and its tax treatment)

- (1) Schedule 17A—

Repeal

“26A(2) & (4), 40AB, 51C(5), 60(4), 64(11), 79(4), 80(6) & 82A(8) & Schs. 6, 16”

Substitute

“20AN(7), 26A(2) & (4), 40AB, 51C(5), 60(4), 64(11), 79(4), 80(6) & 82A(8) & Schs. 6, 16, 16C”.

- (2) Schedule 17A, section 21(6)—

Repeal

“Section 20AC”

Substitute

“Sections 20AC and 20AN”.

- (3) Schedule 17A, section 21(6)—

Repeal

“Schedule 16”

Substitute

“Schedules 16 and 16C”.

- (4) Schedule 17A, section 21(6)—

Repeal

“that Schedule”

Substitute

“those Schedules”.