



Inland Revenue Department

The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

NO. 14 (REVISED)

PROPERTY TAX

These notes are issued for the information of taxpayers and their tax representatives. They contain the Department's interpretation and practices in relation to the law as it stood at the date of publication. Taxpayers are reminded that their right of objection against the assessment and their right of appeal to the Commissioner, the Board of Review or the Court are not affected by the application of these notes.

These notes replace those issued in February 2005.

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Commissioner of Inland Revenue

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INTRODUCTION

This Practice Notes was first issued in December 1983 and updated in February 2005. It serves to assist property owners in understanding and meeting their tax obligations. The current revision reflects the changes made in February 2010 to the definition of the term “owner” in relation to the common parts of land or/and buildings.

2. Following the enactment of the Inland Revenue (Amendment) (No. 2) Ordinance 2010, the definition of “owner” under section 2 of the Inland Revenue Ordinance (“the Ordinance”) has been clarified to include an owners’ corporation and expanded to cover a person who receives rental income on any common parts of land or/and buildings (e.g. the building management company). A definition of “common parts” is also provided. All along, the Department holds the view that an owners’ corporation is the owner of the common parts of a building and should report and pay property tax on the rental income derived from the common parts of the building. The Amendment Ordinance provides clear legislative backing to our practice. It also imposes tax obligations similar to property owners on the owners’ corporations as well as persons receiving rental in respect of common parts.

CHARGE OF PROPERTY TAX

Meanings of “Owners”

3. Property Tax is imposed under section 5(1) of the Ordinance. It is charged on the owner of any land or/and buildings wherever situated in Hong Kong and shall be computed at the standard rate on the net assessable value of such land or/and buildings for each year.

4. “Owner” in respect of any land or/and buildings is defined in section 2 of the Ordinance as including -

- (a) a person holding the land or buildings or land and buildings directly from the Government. Under normal circumstances, “owner” is primarily taken as the person(s) whose name(s) is registered in the Land Registry;

- (b) a beneficial owner;
- (c) a tenant for life;
- (d) a mortgagor;
- (e) a mortgagee in possession;
- (f) a person with adverse title to land receiving rent from buildings or other structures erected on that land;
- (g) a person who is making payments to a co-operative society registered under the Co-operative Societies Ordinance (Cap. 33) for the purpose of the purchase of the land or buildings or land and buildings;
- (h) a person who holds land or buildings or land and buildings subject to a ground rent or other annual charge;
- (i) (in so far as common parts are concerned) a corporation registered under section 8 of the Building Management Ordinance (Cap. 344) or a person who, on the person's own behalf or on behalf of another person, receives any consideration, in money or money's worth, in respect of the right of use of any common parts solely or with another; and
- (j) an executor of the estate of an owner.

5. The definition of "owner" in this section is an inclusive one and is by no means restrictive on the ordinary meaning of the word.

Meanings of "Land or/and Buildings"

6. "Land or buildings or land and buildings" is normally given its ordinary meaning. Section 7A of the Ordinance extends its meaning to include "piers, wharves and other structures". Some examples of structures are: walls, dams, advertising signs, light box, oil station, etc. They also include the common parts. See paragraph 8 below.

7. Except for the purpose of considering tax exemption under section 5(2) [see paragraph 23], “buildings” should include any part of a building.

Meanings of “common parts”

8. “Common parts”, in relation to any land or buildings or land and buildings, is defined in section 2 of the Ordinance. It -

- (a) means the whole of the land or buildings or land and buildings, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and
- (b) includes, unless so specified or designated in the instrument mentioned in paragraph (a), those parts of a building specified in Schedule 1 to the Building Management Ordinance (Cap. 344).

Change of ownership

9. As Property Tax is charged on the owner of a property, it is pertinent to identify the date of change of ownership in the property so as to ascertain the Property Tax liability of both the old and new owners in the case of a property transfer.

10. Most property transactions start with the entering into an agreement for sale and purchase of property between the vendor and the purchaser. The possession and the title to the property will be transferred to the purchaser at a later date by an assignment or other conveyance instrument upon completion of the sale and purchase. Technically speaking, during the period from the date of executing the agreement for sale and purchase to the completion of the transaction, a duality of ownership exists. Whilst the vendor remains the legal owner of the property, the purchaser, upon entering into the agreement for sale and purchase and on payment of part of the purchase price as a deposit, has become the equitable owner of the property. The date for switching the entitlement of the rental income arising from the property from the vendor to the purchaser would normally be determined in the terms of the agreement for

- (a) rent;
- (b) payments for the right of use of premises under licence;
- (c) lump sum premium;
- (d) service charges, management fee, etc. paid to the owner; and
- (e) owner's expenditure e.g. repairs, borne by the tenant.

13. A lump sum premium paid in respect of a lease exceeding one year will be spread, on an equal monthly basis, over the period of the lease or over a 3-year period from the commencing date of the lease, whichever is the shorter.

14. For example -

A premium of \$60,000 was received on 31 March 2006 from a lease of 5 years commencing on 1 June 2006 and ending on 31 May 2011.

The premium is to be spread over the 3-year period from 1 June 2006 to 31 May 2009 and assessed under Property Tax as follows -

Year of Assessment		Assessable Value
2006/07	$\$60,000 \times 10/36 =$	\$16,667
2007/08	$\$60,000 \times 12/36 =$	\$20,000
2008/09	$\$60,000 \times 12/36 =$	\$20,000
2009/10	$\$60,000 \times 2/36 =$	<u>\$ 3,333</u>
		<u>\$60,000</u>

15. Section 5B(6) specifically includes as consideration any sum payable in respect of the provision of any services or benefits connected with or related to the right to use the property. Hence, the management fee paid by a tenant to a landlord who rents out the whole block of building to different tenants and provides management service to all the tenants in the building should be included in ascertaining the assessable value of the respective property.

16. Nevertheless, if it is provided in the tenancy agreement that the tenant is responsible for the payment of the management fee, the fee so paid

should not be included as consideration payable in respect of the right of use of the relevant property even though it is paid through the landlord. In such an event the landlord merely acts as agent for the tenant.

17. Where the tenancy agreement is silent as regards the party who shoulders the responsibility of paying the management fee, but the **established fact** shows that the landlord is accustomed to paying the management fee to the management service provider out of the lump sum he receives monthly from the tenant and that he has no right to claim for a repayment from the tenant, only the net sum received by the landlord (as reduced by the management fee paid by him) would be included as consideration payable in respect of the right of use of the relevant property. In this situation, it is assumed that the contractual obligation of the parties is the same as in paragraph 16 above.

Irrecoverable consideration

18. Section 7C(1) provides that in ascertaining the assessable value, if any consideration payable on or after 1 April 1983 in respect of the property is proved to the satisfaction of the Assessor to be irrecoverable in any year of assessment, the irrecoverable amount shall be allowable as a deduction in that particular year of assessment. If the assessable value for that year is insufficient to cover the irrecoverable amount, the balance shall be deducted, under section 7C(3), in the latest year of assessment in which the assessable value is sufficient for the deduction. Any claims made for the deduction of irrecoverable consideration should be supported by documentary evidence.

Rent recovered

19. Recovery of amounts previously deducted as irrecoverable should be included as assessable value in the year of recovery.

DEDUCTIONS FROM THE ASSESSABLE VALUE

Rates

20. Where the owner agrees to pay the rates in respect of the property, the rates paid by the owner can be deducted from the assessable value [section

5(1A)]. However, the Government rent payable in respect of some properties after 1 July 1997 is not deductible.

Allowance for repairs and outgoings

21. A special allowance for repairs and outgoings can be deducted from the assessable value in ascertaining the net assessable value. The amount of the allowance is 20% of the assessable value of the property,

- (a) including rent recovered, if any, as set out in paragraph 19; and
- (b) after deduction of irrecoverable considerations and rates, if any, as set out in the paragraphs 18 and 20.

22. This allowance is given irrespective of the actual amount of expenditure incurred by the owner. The percentage may be amended by resolution of the Legislative Council [section 5(1B)].

RELIEF AND EXEMPTIONS

Tax set-off under section 25

23. Where the property is owned and used by a person carrying on a trade, profession or business in Hong Kong, the Property Tax payable for any year of assessment can be used to offset against the Profits Tax payable for the same year, provided that -

- (a) the profits derived from the property are part of the profits of the trade, profession or business; or
- (b) the property is occupied or used by the owner for the purposes of producing profits assessable to Profits Tax.

Exemption for corporations under section 5(2)(a)

24. Section 5(2)(a) provides for exemption from Property Tax in respect of any property owned by a corporation provided that the corporation would be entitled under section 25 to a set-off of the Property Tax which, if exemption were not granted under section 5(2)(a), would be paid by the corporation.

Exemption under sections 87 and 88

25. By virtue of section 87 of the Ordinance, the Chief Executive in Council may exempt any person, office or institution from payment of the whole or a portion of the Property Tax that is chargeable. The approved charitable institutions or trusts of a public character are exempt from Property Tax under section 88.

PROPERTY LETTING AMOUNTING TO A BUSINESS

26. By definition, letting and sub-letting by a corporation and sub-letting by any person other than a corporation amount to a business [section 2]. As such, the rental income so arising is chargeable to Profits Tax.

27. For other cases, whether the property letting amounts to a business is to be considered within the ordinary meaning and concept of the term “business”. While it is a question of fact to be determined in each case, it is the view of the Department that there is strong indication of business in the following circumstances -

- (a) the number of properties let is substantial and the owner has engaged some staff to handle tenancies and to deal with the tenants;
- (b) the properties are of a special class such as ballrooms, cinemas or restaurants, and that additional services are provided by the landlord such as the landlord being the licensee of the ballroom, cinema or restaurant (see *Louis Kwan-nang KWONG & Carlos Kwok-nang KWONG v. CIR*, 2 HKTC 541);

- (c) letting by a property dealer: the rents are regarded as income of the property dealing business; or
- (d) the letting is incidental to and is therefore part of the trade or business as would be the situation of a trader who owns a property which he uses partly for his trade and lets out that part which is surplus to his immediate requirements.

PROVISIONAL PROPERTY TAX

28. Provisional Property Tax is payable by every person who is chargeable to Property Tax, i.e. the owner of any land and/or buildings. The provisional tax for any year of assessment is payable at the standard rate on the net assessable value of the preceding year and will be applied against the final Property Tax for that year when ascertained. Any excess is then applied against the provisional tax liability for the succeeding year and the amount not so applied will be refunded to the taxpayer.

29. Subsections (2) and (3) of section 63M allow for estimated Provisional Property Tax charges to be raised where the assessable value of the preceding year was calculated in respect of a period of less than 1 year, or for the year in which a person first becomes chargeable to Property Tax and for the succeeding year thereof.

30. The demand for provisional tax may be issued separately to the person liable or included in a notice of assessment to Property Tax with such specified due date for payment as may be fixed by the Commissioner.

31. A claim may be made in writing for holding over the whole or part of the provisional tax payable on any of the grounds listed in paragraph 32 below. The claim must be received by the Commissioner not later than the later of -

- (a) 28 days before the due date of payment of the provisional tax; or
- (b) 14 days after the date of the notice for payment of provisional tax.

32. The grounds for holding over include -
- (a) the assessable value for that year of assessment is, or is likely to be, less than 90% of the assessable value for the year preceding the year of assessment or of the estimated assessable value in respect of which the provisional property tax assessment was made;
 - (b) the person assessed to provisional property tax has ceased, or will before the end of the year of assessment cease, to be an owner of land and/or buildings and that the assessable value for the year of assessment is, or is likely to be, less than the sum in respect of which the provisional property assessment was made;
 - (c) the person assessed to property tax has elected personal assessment for that year of assessment and such personal assessment is likely to reduce his liability to tax; or
 - (d) a valid objection has been lodged against the assessment to Property Tax for the year preceding the year of assessment.

PROPERTY TAX RETURNS AND ASSESSMENTS

33. The Inland Revenue Department adopts a composite tax return system for individual taxpayers. Property income, depending on the types of property ownership, are to be declared as follows:

- (a) Properties **solely** owned by an individual -
 - (i) Details of all such properties should be declared in the Tax Return – Individuals (BIR60) issued to the sole owner under the personal tax file of the individual owner.

- (ii) One consolidated Property Tax assessment would be raised on the individual owner in respect of all his solely owned properties.
- (b) Properties **not solely** owned by an individual -
 - (i) Details of each property should be declared on the respective Property Tax Return (BIR57 or BIR58) issued to the owners under the corresponding Property Tax file for that property.
 - (ii) Separate Property Tax assessments would be raised on the owner or co-owners [the joint owners and owners in common] in respect of each property.

34. For some properties jointly owned or co-owned by individuals, a simple Advice Letter instead of a Property Tax Return may be issued to the owners to review their tax liability and to remind them of the obligation to notify chargeability [see paragraph 36]. No reply to the Letter is required if the property is not let. If the property has been let out, the owners are only required to state the commencement date of the lease at the lower portion (“Letting Notification”) of the Letter and return it to the Department. The Department will then issue Property Tax returns for the relevant years to the owners for completion.

OBLIGATIONS OF PROPERTY OWNERS

Filing of returns – section 51(1)

35. Property owners are obliged to complete the tax returns issued to them under section 51(1) and return them to the Inland Revenue Department within the time limit stipulated in the tax returns (which is normally one month from the date of issuing the return). To comply with the requirements of section 51(1), the owner should complete and submit the return notwithstanding that the relevant property is occupied by him or any other person without consideration.

Notification of chargeability to tax – section 51(2)

36. Every person who is chargeable to Property Tax for any year of assessment but has not received a return form is required to notify the Commissioner of Inland Revenue in writing that he is so chargeable within four months after the end of that year of assessment (e.g. on or before 31 July 2010 for the year of assessment 2009/10).

Notification of cessation of ownership – section 51(6)

37. Where the ownership of a property has changed as a result of a sale or transfer, the vendor or the transferor must notify the Department of the change in writing within one month after the sale or transfer is effected.

Notification of change of address – section 51(8)

38. Where a person chargeable to Property Tax changes address, he should, within one month, inform the Commissioner of Inland Revenue in writing of the particulars of the change.

Keeping of sufficient rental records – section 51D

39. Owners of properties must keep sufficient records of rent received, such as lease agreements and duplicates of rent receipts, to enable their tax liability to be readily ascertained. Such records should be retained for a period of not less than 7 years.

Notification of change in exemption status – section 5(2)(c)

40. Where the owner is a corporation exempted from Property Tax under section 5(2)(a), the owner should notify the Commissioner in writing within 30 days of any change in the ownership or use of the property or any other circumstances affecting the exemption previously granted.

Responsibility of joint owners or co-owners – section 56A

41. Where two or more persons are joint owners or owners in common of any property, each and every owner will have full responsibility for doing all

such acts required to be done under the Ordinance as if he is the sole owner, including the filing of tax returns and paying the tax [section 56A(1)]. Furthermore, this section does not relieve any person of any obligation under the Ordinance or affect any right or obligation of the joint owners or owners in common as between themselves [section 56A(2)].

42. If any person has paid Property Tax for which he would not have been liable except for the provisions of section 56A(1), he may recover such tax from the person who is liable to pay it [section 56A(3)].

Letting of common parts of a building

43. Normally, the common parts of a building such as side shop, car park, external wall, roof top, etc. are collectively owned by the individual owners of the building. If any part of the common parts is let out, the rental income derived is chargeable to Property Tax. The owners are responsible for reporting the rental income and paying the tax. If the owners have not received the Property Tax return relating to the common parts let, they are required to notify the Commissioner in writing.

44. In *Board of Review Case No. D80/02*, it was held that an individual owner of a residential unit in a building complex was a co-owner of the car-parking spaces in the building and therefore section 56A would be applicable to him. The Board did not accept the contention that for section 56A to apply, there must be an instrument naming all persons who are or were co-owners of the car-parking spaces in question. Furthermore, the Board considered that the purported hardship of the captioned ruling on the individual owner concerned would not have any relevance to and could not affect the construction of section 56A.

45. A corporation formed by the owners of a building under the Building Management Ordinance (Cap. 344) has been ruled to be the owner of the common parts of the building and is chargeable to Property Tax where the rights, powers, privileges and duties of the owners in relation to the common parts of the building would be exercised and performed by, and the liabilities of the owners in relation to the common parts of the building would be enforceable against the Incorporated Owners to the exclusion of the owners. See *Board of Review Case No. D27/98*.

46. In so far as common parts are concerned, owners' corporations and persons who receive income in respect of the right of use of any common parts are now specifically included in the definition of "owner" under section 2 of the Ordinance. They have to fulfil all the tax obligations of a property owner as set out in the preceding paragraphs.

47. The department will normally issue tax returns and property tax demand notes to the owners' corporations in respect of the common parts. Where the building management company of the building is responsible for collecting the income in respect of the common parts, tax will be assessed on or recovered from the management company. Where appropriate, the department may also raise assessments on the individual owners.