

NOTES AND INSTRUCTIONS — FORM BIR58

The following notes give information and guidance on how to complete the tax return. If further information is required, you may visit the Department's web site at www.ird.gov.hk, telephone 187 8055, write (GPO Box 132, Hong Kong) or fax (2519 6896) to the Assessor, quoting your file number and day-time contact telephone number.

Note 1 OWNER

- (a) "Owner" in respect of land or buildings or land and buildings in Hong Kong is defined in section 2 of the Inland Revenue Ordinance (Cap. 112) as including:-
- 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 whose name is registered in the Land Registry);
 - a beneficial owner;
 - a tenant for life;
 - a mortgagor;
 - a mortgagee in possession;
 - a person with adverse title to land receiving rent from buildings or other structures erected on that land;
 - 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;
 - a person who holds land or buildings or land and buildings subject to a ground rent or other annual charge;
 - (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
 - an executor of the estate of the deceased owner ("executor" means any executor, administrator, or other person administering the estate of a deceased person, and includes a trustee acting under a trust created by the last will of the grantor / settlor of the trust).
- (b) Where two or more persons are joint owners or owners in common of any land or buildings or land and buildings, any of those persons appearing from any deed, conveyance, will, judgment or other instrument in writing registered in the Land Registry under the Land Registration Ordinance (Cap. 128) to be such an owner shall be answerable for doing all such acts, matters and things as would be required to be done under the provisions of the Inland Revenue Ordinance by a sole owner.

Note 2 The term "year" refers to the year of assessment printed on the front page of the return. A year of assessment runs from 1 April to 31 March of the following year. The income to be declared in the return is your income from the property for the full year, e.g. if the year of assessment 2020/21 is printed on the front page, you should declare the total income for the period from 1.4.2020 to 31.3.2021. In commencement cases, the income derived from the date of commencement to 31 March and in cessation cases, the income from 1 April to the date of cessation should be declared.

Note 3 NET ASSESSABLE VALUE AND PROPERTY TAX COMPUTATION

Property Tax is charged on owners of properties situated in Hong Kong in respect of income derived from the properties.

(a) "Rental Income" includes:-

- gross rent received or receivable;
- payment for the right of use of premises under licence;
- service charges or management fees paid to the owner [If it is provided in the tenancy agreement that the tenant is responsible for the payment of the management fee, the fee so paid through the landlord would not be included as rental income];
- owner's expenditure borne by the tenant, e.g. repairs and Property Tax paid by the tenant;
- sums previously deducted as irrecoverable rent and now recovered; and
- lump sum premium (A lump sum premium received or receivable in respect of a lease exceeding 1 year is to be spread on an equal monthly instalment basis over the period of the lease, or over a period of 3 years, whichever is the shorter. In this case, you should include in the return the monthly instalments related to the year).

(b) Deductions:-

- (i) Only rates agreed to be paid and paid by the owner and irrecoverable rent can be claimed for deduction. Irrecoverable rent means any consideration reported in this return or previously reported which has become irrecoverable during the year. Please note that the portion of rent in arrears offset by rental deposit cannot be regarded as irrecoverable.
- (ii) A 20% statutory allowance for repairs and outgoings will be automatically granted in the assessment. Actual expenses like Government rent, management fees, renovation or refurbishment expenses are all non-deductible. For certain properties in Hong Kong, Government rent is payable quarterly from the date of extension of lease or 1.7.1997, as appropriate, and charged together with rates. Please make sure **NOT** to include the amount of Government rent in the claim for deduction of rates so as to avoid an incorrect claim.
- (c) The amount of Property Tax for the year (e.g. 2020/21) and the amount of Provisional Tax for the next year (e.g. 2021/22) is computed at the standard rate (15% for the year 2015/16 onwards until superseded) on the Net Assessable Value of the property. Any Provisional Tax previously charged for the year (e.g. 2020/21) will be set-off against your Final Tax liability for the year (e.g. 2020/21) and the Provisional Tax for the next year (e.g. 2021/22).
- (d) "Net Assessable Value" is the rental income after deducting irrecoverable rent, and less rates paid by owner and a statutory allowance for repairs and outgoings of 20% of the aforesaid remaining amount.

Note 4 If the property is not let out for consideration, a return may not be issued annually in subsequent years. In case a return is not received but any part of your property is let out, you **MUST** notify this Department in writing within 4 months after the end of the basis period for the year of assessment (e.g. on or before 31 July 2021 for the year of assessment 2020/21). Details of the lease together with the file reference number of the property should be supplied. **Failure to comply with the requirement is an offence for which you may be prosecuted and fined.**

Note 5 OFFENCES AND PENALTIES

The Inland Revenue Ordinance provides heavy penalties for any person who:-

- (a) fails to comply with the requirements of a notice to make a return without reasonable excuse;
- (b) makes an incorrect return without reasonable excuse;
- (c) makes a false return with a fraudulent intent to evade tax;
- (d) fails to give notice of cessation of ownership of a property without reasonable excuse;
- (e) fails to keep sufficient records of rental income of his / her property without reasonable excuse; or
- (f) fails to notify a change of address without reasonable excuse.

EVASION OF TAX IS A CRIMINAL OFFENCE. MAXIMUM PENALTY is a fine of \$50,000 PLUS a further fine of 3 times the undercharged amount and imprisonment for 3 years.

Personal Information Collection Statement

It is obligatory for you to supply the personal data as required by the return. Breach of the statutory requirement may render you liable to penalty or other actions as provided under the Ordinances administered by the Department. Moreover, if you fail to supply the required information, your application/request/notification will not be accepted for processing. The Department will use the information provided by you for the purposes of the Ordinances administered by it and may disclose/transfer any or all of such information to any other parties provided that the disclosure/transfer is authorized or permitted by law. Except where there is an exemption provided under the Personal Data (Privacy) Ordinance, you have the right to request access to and correction of your personal data. You should send such request in writing to the Assessor at GPO Box 132, Hong Kong and quote your file number in this Department.