



Inland Revenue Department
Hong Kong

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

NO. 18 (REVISED)

ASSESSMENT OF INDIVIDUALS

UNDER SALARIES TAX AND PERSONAL ASSESSMENT

These notes are issued for the information and guidance of taxpayers and their authorised representatives. They have no binding force and do not affect a person's right of objection and appeal to the Commissioner, the Board of Review or the Courts.

These notes replace those issued in September 1989.

LAU MAK Yee-ming, Alice
Commissioner of Inland Revenue

January 2005

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PART I – INTRODUCTION

The Inland Revenue (Amendment)(No. 3) Ordinance 1989, which came into effect on 1 April 1990, introduced changes in the basis of assessing Salaries Tax on husbands and wives and the election procedure for Personal Assessment. The previous Salaries Tax regime whereby the incomes of married couples were aggregated was replaced with a new system of separate taxation. For all assessments for the year of assessment 1989/90 and subsequent years of assessment, husbands and wives are treated as separate individuals for tax purposes, unless a joint assessment is elected in the prescribed circumstances. Married women are also entitled to elect Personal Assessment on the same basis as their husbands.

Marriage

2. A definition of “marriage” is in section 2 of Inland Revenue Ordinance (“the Ordinance”) and the validity of a marriage is determined by the law of the place where it was celebrated. Marriages solemnized in Hong Kong are recognized under paragraph (a) of the definition when they have been celebrated in accordance with the Marriage Ordinance. Recognition also extends to customary marriages celebrated in accordance with Chinese law and custom prior to 7 October 1971, which have been declared to be valid by the Marriage Reform Ordinance.

3. There is no legislation in Hong Kong that specifically validates foreign marriages whose validity is governed by private international law. Paragraph (b) of the definition recognizes foreign marriages if they have been contracted in accordance with the law of the place where the marriage took place between persons having the capacity to do so. However, in cases where foreign law permits polygamous marriages, this recognition extends to marriages that are only potentially polygamous because the husband has not married more than one wife. In any circumstance where a marriage is both potentially and actually polygamous through the husband having more than one wife, only the marriage between the husband and the principal wife is recognized – any other forms of marriage existing concurrently are not accepted for the purposes of the Ordinance.

4. In line with the definition of “marriage”, the words “husband” and “wife” are defined respectively as married man and woman whose marriages are valid marriages within the terms of that definition.

Same-Sex Marriages

5. A same-sex marriage is not regarded as a valid marriage for purposes of the Ordinance. Although the definition of “marriage” in section 2(1) does not expressly oust one between persons of the same sex, it does make reference to a marriage between a “man” and any “wife”. Under section 2, “husband” means a married man and “wife” means a married woman. “Spouse” is defined under the same section as a husband or wife. Marriage in the context of the Ordinance is thus intended to refer to a heterosexual marriage between a man and a woman. Parties in a same-sex marriage cannot be “husband/wife” and they would be incapable of having a “spouse”.

Husbands and Wives Living Apart

6. Section 2(3) prescribes the situations in which a husband and wife shall be deemed to be living apart from each other in the following three situations:-

- (a) under a decree or order of a competent court in or outside of Hong Kong;
- (b) under a duly executed deed of separation or any instrument of similar effect; or
- (c) in such circumstances that the Commissioner is of the opinion that the separation is likely to be permanent.

7. Where a husband and wife are living apart from each other pursuant to paragraphs (a) or (b), the production of copies of the legal documentation specified will be sufficient evidence of separation. When formal legal proceedings for separation have not been instituted or are not finalized, the couple will be required to demonstrate that their separation is likely to be permanent. While the circumstances surrounding each situation will vary,

each case will be reviewed on its own merits and evidence of separation proceedings in progress will generally be accepted. In the absence of any form of legal proceedings, a letter from each spouse confirming the date of separation and that it is likely to be permanent will likewise, in general, be acceptable.

PART II – SALARIES TAX

Separate Taxation

8. Under separate taxation, each spouse will be individually responsible for all aspects of his or her personal taxation affairs including lodgment of returns, claiming his or her entitlement to allowances, raising objections to assessments and settlement of the tax payable. Section 10(1) provides that a husband and wife, unless jointly electing to be assessed on their aggregated incomes under section 10(2), will be separately assessed on their respective incomes on the same basis as unmarried taxpayers.

9. As with all other taxpayers, married women known to be in receipt of salary income will be issued with returns and any married woman deriving a chargeable income for any year of assessment must notify the Commissioner of her liability to assessment within the 4-month period immediately following the end of the relevant year of assessment if she has not been issued with a tax return for individuals.

Joint Assessment

10. Under separate taxation it is possible, in certain circumstances, for married couples to pay more tax in total under separate taxation than they would have paid under the former aggregation system. The two situations where this may occur are:-

- (a) one spouse has an entitlement to allowances under Part V that exceeds his or her net assessable income (referred to as an “unabsorbed allowance”) while the other spouse continues to remain chargeable to tax; and

- (b) the levels of income of the spouses, while being chargeable to tax, are such that the total tax payable by them under separate taxation is greater than the tax otherwise payable if their incomes are aggregated (this arises because prior to the year of assessment 1990/91, Married Person's Allowance, which was \$2,000 more than the sum of two Basic Allowances, provided the couple with a greater tax relief than separate taxation).

An example to illustrate the situation in (a) is shown in Appendix A.

11. To provide relief to married couples adversely affected by the above situations, a system of joint assessment is available to permit a husband and wife to jointly elect to have their incomes and allowance entitlements aggregated in any year of assessment. In essence, the procedural aspects of the calculation of their combined net chargeable income when joint assessment is elected mirror the procedures for calculating the aggregated net chargeable income of a husband and wife under the previous aggregation system of taxation.

12. Where joint assessment is elected under section 10(2)(a) because one spouse has unabsorbed allowances, the spouse who was liable to tax prior to the election will continue to be liable to pay the tax charged under joint assessment. In contrast to this, where an election is made under section 10(2)(b) by a husband and wife who are both individually chargeable, they must nominate which of them will become liable for the tax payable on their aggregated net chargeable income. The nomination of the chargeable spouse is an integral part of the election process and any variation in the nomination will constitute a withdrawal of the election.

13. An election for joint assessment must be made by the husband and wife by jointly signing the tax return for individuals or prescribed form which will be issued by this Department once it has been determined that an entitlement to make an election exists. It may be made at any time during the year of assessment concerned or the following year of assessment, or before the expiration of one month after the date on which the assessment becomes final and conclusive, whichever is the later. In addition, the Commissioner

may allow an extension of time to make an election in circumstances as he considers to be reasonable, including, for instance, when either spouse has been absent from Hong Kong for an extended time or a spouse only has an unabsorbed allowance agreed after the expiration of the election period.

14. For joint assessment purposes, marriages which occur during a year of assessment are deemed to have taken place at the commencement of that year. Therefore, the total incomes which accrued to the husband and the wife in the year of marriage (both before and after marriage) will be combined into a single net assessable income (see paragraph 21). In the case of the death of a spouse, an executor has the same rights of election for joint assessment as the deceased would have had.

15. Any withdrawal of an election must be in writing and jointly signed by the husband and wife. The time limits for withdrawing an election are the same as those specified for making an election. If a joint assessment election is withdrawn, the assessment position of each spouse will be restored to a pre-election basis. Once withdrawn, an election cannot be made again for that same year. A withdrawal of an election is only considered to have occurred when a husband and wife give a signed written notification to that effect. Where a husband and wife no longer qualify to elect joint assessment as a result of reassessment, any prior valid election which has not been formally withdrawn will be treated as having lapsed. If, as a consequence of a further assessment, the couple again qualify for joint assessment the lapsed election will be reactivated.

Objections in respect of Joint Assessments

16. The objection provisions of section 64 of the Ordinance remain basically unchanged. However, a right of objection is provided under section 64(9) to a taxpayer with an unabsorbed allowance electing to be jointly assessed with his or her spouse under section 10(3)(a). This right is limited to matters relating to the quantification of the unabsorbed allowance only and cannot serve to reopen the taxable spouse's assessment in connection with issues unrelated to the joint assessment itself.

17. Once an objection has been made against a joint assessment by a spouse with unabsorbed allowances, the procedures provided by section 64(10), which are similar to the established procedures for settlement or determination of ordinary objections, will apply. Where a settlement cannot be agreed, the couple will jointly and severally have the right to appeal to the Board of Review.

Deductions from Assessable Income

18. Deductions of expenses, including expenses of self-education, and depreciation allowances remain personal to the individual who incurred them. In any year of assessment in which allowable deductions exceed the individual's assessable income, the loss will be carried forward in his or her name. However, where a husband and a wife elect to be jointly assessed, their net assessable incomes will in the first instance be computed individually but prior to either of them becoming entitled to carry forward their loss to the subsequent year of assessment, any excess of expenses and depreciation allowances must be set off as far as is possible against the net assessable income of his or her spouse.

Losses

19. Losses will be carried forward in the name of the individual who incurred them and set off against his or her future net assessable income. However, in any year of assessment in which joint assessment is elected the loss will firstly be set off against the individual's assessable income and then that of his or her spouse before the residue of the loss not set off is carried forward to the subsequent year of assessment. In the subsequent year of assessment, if joint assessment is again elected, inter-spouse set off of losses will take place for that year.

Calculation of Net Chargeable Income

20. A person's net chargeable income is computed by deducting from his or her net assessable income the appropriate concessionary deductions and allowances to which the person is entitled as specified under Part IVA and Part V of the Ordinance respectively. The concessionary deductions under Part IVA include:-

- (a) Approved charitable donations,
- (b) Elderly residential care expenses (from year of assessment 1996/97 onwards),
- (c) Home loan interest (from year of assessment 1998/99 onwards),
- (d) Mandatory contributions to Mandatory Provident Fund Scheme or Recognized Occupational Retirement Scheme (from year of assessment 2000/01 onwards).

21. When joint assessment has been elected the net assessable incomes of the husband and wife are aggregated into a single sum from which are deducted those concessionary deductions and permitted allowances to arrive at an aggregated net chargeable income.

Charitable Donations

22. Married couples, irrespective of whether they are single income or two income family, are permitted to deduct approved charitable donations made by their spouses. While the aggregate of the donations must not be less than \$100 and neither spouse can deduct donations that exceed 25% (10% for years prior to year of assessment 2003/04) of his or her assessable income as reduced by expenses and depreciation allowance, no restriction is imposed on the transfer of unutilized donations between spouse provided that there is no duplication of claims. In the case of joint assessment, the maximum deduction that may be allowed for charitable donations cannot exceed 25% (10% for years prior to year of assessment 2003/04) of the aggregate of their assessable incomes as reduced by expenses and depreciation allowance.

23. Where a deduction for the same charitable donations is claimed by, or has been allowed to, more than one person then the parties must agree amongst themselves which of them will be entitled to claim the deduction. The necessary reassessments will be made once the parties have reached an agreement. If the claimants are unable to agree amongst themselves as to which of them will claim the donation, the Commissioner is authorized to

allow the deduction on such basis as appears to be just in the circumstances, having regard to the information in his possession at that time.

Calculation of Salaries Tax

24. Salaries Tax is charged at rates specified in the Second Schedule on the net chargeable income (see paragraph 20) and is not to exceed the tax payable at the standard rate specified in the First Schedule on the taxpayer's net assessable income (see paragraph 18) as reduced by such concessionary deductions under Part IVA (see paragraph 20) allowable to the person. When joint assessment is elected, the tax charged is not to exceed the tax payable at the standard rate on the aggregate of the net assessable incomes of the husband and wife as reduced by such concessionary deductions allowable to them.

Provisional Salaries Tax

25. Any taxpayer chargeable to Salaries Tax in respect of any year of assessment is liable to pay Provisional Salaries Tax for that year. Under separate taxation, unless joint assessment is elected, each spouse will be individually charged provisional tax in respect of his or her own income. When joint assessment is elected, the following year's provisional tax will be charged on a joint assessment basis in the name of the spouse chargeable under section 10(3).

PART III – ALLOWANCES

26. The allowance provisions contained in Part V of the Ordinance are as follows:-

- Section 28 - Basic Allowance
- Section 29 - Married Person's Allowance
- Section 30 - Dependent Parent Allowance
- Section 30A - Dependent Grandparent Allowance
(with effect from 1994/95)
- Section 30B - Dependent Brother or Dependent Sister
Allowance (with effect from 1996/97)
- Section 31 - Child Allowance

- Section 31A - Disabled Dependant Allowance
(with effect from 1995/96)
Section 32 - Single Parent Allowance

The rates at which allowances are granted and maximum entitlement to Child Allowance are specified in the Fourth Schedule of the Ordinance.

Basic Allowance

27. All taxpayers chargeable to tax under Salaries Tax or Personal Assessment (Part III or Part VII of the Ordinance) are entitled to Basic Allowance unless he/she is:-

- (a) assessable at the standard rate according to the provisions in section 13 or 43 as the case may be; or
- (b) married and his/her spouse did not have any income chargeable to Salaries Tax.
- (c) married and has elected Personal Assessment with his/her spouse who is not living apart from him/her.

When a taxpayer is married and his/her spouse did not derive any income assessable to Salaries Tax under Part III of the Ordinance, the taxpayer is to be granted Married Person's Allowance instead of Basic Allowance. section 28(2) precludes a taxpayer to be granted both the Basic Allowance and the Married Person's Allowance in the same year of assessment.

Married Person's Allowance

28. Married Person's Allowance will be granted to a taxpayer who was married at any time during the year of assessment and:-

- (a) his or her spouse did not have any income chargeable to Salaries Tax;
- (b) the taxpayer and his or her spouse have elected to be jointly assessed; or

- (c) the taxpayer has elected to be personally assessed under Part VII with his/her spouse who is not living apart from him/her.

29. The full amount of the Married Person's Allowance may be granted in any year of marriage, separation, divorce or death, irrespective of the actual date in the year on which the event occurred.

30. Where a husband and wife are living apart from each other, a Married Person's Allowance can only be granted if the claimant is maintaining or supporting the other spouse. When an allowance is granted in these circumstances then, for the purposes of Personal Assessment, the husband and wife shall not be treated as living apart from each other and they are required to jointly elect to be personally assessed. A claim for maintaining and supporting a spouse may, however, be revoked at any time during the year of assessment to which it applies or within the next six years.

31. In the case of *Sit Kwok Keung v. CIR*, 5 HKTC 647, the Court of Appeal ruled that the taxpayer was not entitled to Married Person's Allowance in respect of payments made towards the support of a former spouse in years subsequent to the year of assessment in which the divorce became absolute. When a marriage is dissolved, the relationship of husband and wife no longer exists from the date on which a divorce order becomes absolute.

Dependent Parent Allowance

32. Dependent Parent Allowance may be granted where a parent of a taxpayer or his or her spouse, being a spouse not living apart, at any time during that year of assessment, was:-

- (a) ordinarily resident in Hong Kong; and
- (b) aged 60 or more or, if aged under 60, was eligible to claim an allowance under the Government's Disability Allowance Scheme; and
- (c) maintained by the taxpayer or the spouse by either residing with the taxpayer and/or his/her spouse,

otherwise than for full valuable consideration, for a continuous period of not less than 6 months, or the taxpayer and/or his/her spouse has contributed not less than \$12,000 in the year of assessment (\$1,200 for years before 1998/99) in money towards the parent's maintenance.

33. The term "parent" includes a natural, adoptive and step father or mother of the taxpayer or his/her living or deceased spouse.

34. To qualify as a dependent parent, the parent must be ordinarily resident in Hong Kong. In substance, the term "ordinarily resident in Hong Kong" means that the parent must have his or her normal and usual place of residence in Hong Kong. A taxpayer cannot be granted an allowance in respect of a dependent parent who is ordinarily resident outside of Hong Kong solely by virtue of that parent holding a Hong Kong Permanent Identity Card. For the purpose of the Dependent Parent Allowance, it is not relevant that the dependent parent also received income during the year of assessment in respect of which the claim was made.

35. The amount of the allowance is set out at Item 3 of the Fourth Schedule. The allowance has two components – the standard allowance and the additional allowance. While the standard allowance will be granted for each qualifying dependent parent, an additional allowance will be granted when the parent resided, otherwise than for the full valuable consideration, with the taxpayer and his or her spouse continuously throughout the year of assessment. Dependent Parent Allowance shall not be granted (either claimed by the same taxpayer or by any other person) if the elderly residential care expenses deduction is granted in respect of the same dependent parent.

Dependent Grandparent Allowance

36. From year of assessment 1994/95 onwards, Dependent Grandparent Allowance may be granted, in accordance with Item 4 of the Fourth Schedule, to a taxpayer who, during the year of assessment, maintained his/her grandparents or that of the spouse, being a spouse not living apart. The conditions to be fulfilled as well as the allowance granted are the same as that relating to Dependent Parent Allowance set out in paragraphs 32 to 35 above.

37. The term “grandparent” includes a natural, adoptive and step grandfather or grandmother of the taxpayer or his/her living or deceased spouse. In respect of the same dependent grandparent, only one individual will be granted an allowance for tax purposes. The allowance is mutually exclusive with Dependent Parent Allowance in respect of the same dependant who may be in a dual capacity. Similar to Dependent Parent Allowance, no Dependent Grandparent Allowance is granted if the elderly residential care expenses deduction is granted in respect of the same dependant.

Dependent Brother or Dependent Sister Allowance

38. From year of assessment 1996/97 onwards, a taxpayer may be granted Dependent Brother or Dependent Sister Allowance if a taxpayer or the spouse, being a spouse not living apart, has maintained in the year of assessment an unmarried brother or sister of whom the taxpayer or the spouse has the sole or predominant care. The term “brother or sister” means a natural, adoptive and step brother or sister of the taxpayer or his/her living or deceased spouse.

39. Age restrictions, similar to those on Child Allowance, are imposed on the dependants. At any time in the year of assessment the dependent person maintained by the taxpayer must fulfill one of the following three conditions:-

- (a) under the age of 18;
- (b) of or over the age of 18 but under the age of 25 and was receiving full time education at a university, college, school or other similar educational establishment; or
- (c) of or over the age of 18 and was, by reason of physical or mental disability, incapacitated for work.

40. The allowance, at the rate set out at Item 5 of the Fourth Schedule, is mutually exclusive with Child Allowance in respect of the same dependant who may be in a dual capacity.

Child Allowance

41. Taxpayers are entitled to claim Child Allowance in respect of any unmarried child that the taxpayer was maintaining at any time during the year of assessment. The term “child” is defined in section 27 to include any child of a person or his or her spouse or former spouse, whether or not born in wedlock, and to include the adopted or step child of either or both of them. The intention of the legislation is that any taxpayer providing care and support to a child to whom he has lawful custody should be entitled to an allowance, subject to apportionment where there is more than one person claiming the allowance.

42. The term “adopted” applies with equal validity to a child for the purposes of Child Allowance and Single Parent Allowance as it does to the parent-child relationship specified for Dependent Parent Allowance. With effect from 1 January 1973, i.e. the implementation date of the Adoption Ordinance (Cap. 290), an adoption order validating the adoption must be made under that ordinance while adoptions made under Chinese law and custom prior to the implementation date of the ordinance are also recognized. For an overseas adoption, it is recognized in Hong Kong if it is legally valid according to the law of the place where it took place and the adoptive parents have a superior right in respect of the custody of the child to that of the natural parents.

43. For the purposes of Child Allowance, the child must be:-

- (a) under the age of 18;
- (b) of or over 18 but under 25 and was receiving full-time education at a school, college, university or other similar educational institution, or
- (c) of or over 18 and was by reason of physical or mental disability, incapacitated for work.

44. Apart from a husband and wife not living apart from each other, where more than one person is entitled to claim an allowance in respect of the same child for the same year of assessment the allowance is to be apportioned

by the Commissioner having regard to the contributions made by each individual to the maintenance and education of the child during that year. In the case of a husband and wife not living apart from each other, their **total** entitlement to Child Allowance may only be claimed en bloc by the spouse as the couple may nominate. The nomination of the spouse to claim the Child Allowance may not be revoked without the consent of the Commissioner whose decision on the matter is final and not subject to objection or appeal. In general, consent to vary a nomination will not be unreasonably withheld where a change of nomination will result in a reduction in the overall tax liability of the husband and wife.

Disabled Dependant Allowance

45. From year of assessment 1995/96 onwards, Disabled Dependant Allowance may be granted in respect of a disabled family member of whom a taxpayer is entitled to claim Married Person's Allowance, Child Allowance, Dependent Brother or Sister Allowance, Dependent Parent Allowance, Dependent Grandparent Allowance or to an expense deduction of elderly residential care expenses. The disabled dependant must be eligible to claim an allowance under the Government's Disability Allowance Scheme.

46. The amount of allowance is prescribed in Item 7 of the Fourth Schedule. If Disabled Dependant Allowance is granted in respect of a disabled dependent child of whom the respective Child Allowance was apportionable for a year of assessment, the Disabled Dependant Allowance for that year of assessment should be also apportioned on the same basis.

Single Parent Allowance

47. Single Parent Allowance may be claimed if, any time during the year of assessment, a taxpayer had the sole or predominant care of a dependent child in respect of whom he or she was entitled to claim a Child Allowance. The allowance is of a single amount and does not increase with the number of children concerned. The term "sole or predominant care" relates to custodial responsibility for the child i.e. the actual day-to-day care, supervision, well-being and control of the child and the onus of proof vested upon the taxpayer making the claim (see *Sit Kwok Keung v. CIR*, 5 HKTC 647).

48. The allowance cannot be granted, however, if the person, at any time during that year of assessment, was married and not living apart from his or her spouse or has only made contributions to the maintenance and education of the child during the year of assessment. Where custody of a child changes at some point during the year the allowance will normally be apportioned on a time basis.

Claims by More Than One Person

49. Except when a Child Allowance and the corresponding Disabled Dependant Allowance are apportioned respectively under section 31(2) and section 31A(2), allowances for any individual dependent parent, grandparent, brother, sister, child or disabled dependant will not be given in respect of the same dependent person to more than one person in the same year of assessment.

50. When it is detected that, save as permitted by sections 31(2) and 31A(2), two or more persons are eligible and have claimed an allowance in respect of the same parent, grandparent, brother, sister, child or disabled dependant for the same year of assessment, the claimants will be required to agree amongst themselves who will claim the allowance. As a practical measure, the Department will accept a written withdrawal of the claim from one of the claimants in favour of the other as sufficient evidence that the parties have reached agreement.

51. Except as permitted by sections 31(2) and 31A(2), where allowance in respect of the dependent person has been granted:-

- (a) to two or more persons; or
- (b) to a husband and wife not living apart from each other; or
- (c) to a taxpayer and, within 6 months of its being granted, another person appears to be entitled to the allowance,

the claimants will then be invited to agree which of them will have the allowance. When the claimants are unable to reach agreement within a reasonable time, additional assessments will be raised under section 60 in a manner which, on the basis of the information available at the time when they are raised, appears to be just.

PART IV – PERSONAL ASSESSMENT

Election for Personal Assessment

52. Any individual who is 18 years of age or over may elect to be personally assessed if he or she is a permanent or temporary resident of Hong Kong. A “permanent resident” is an individual who ordinarily resides in Hong Kong, and a “temporary resident” is an individual who stays in Hong Kong, whether continuously or otherwise, for more than 180 days in the year of assessment to which the election relates or 300 days in two consecutive years of assessment, one of which must be the year to which the election relates.

53. When the individual is married and not living apart from his or her spouse and if that spouse also has income assessable under the Ordinance, then the individual cannot elect to be personally assessed unless the spouse also does so. A married person who does not satisfy the residential conditions may make an election if his or her spouse falls within those requirements. An individual whose spouse is not entitled to elect Personal Assessment may however do so in respect of his or her own income. Where Married Person’s Allowance is granted in respect of a husband and wife living apart, they are to be treated as not living apart from each other for the purpose of Personal Assessment and joint election is required.

54. Election for Personal Assessment must be made within two years after the end of the year of assessment in respect of which the election is made or within two months after the issue of a notice of assessment or a notice of additional assessment in respect of which the election is made, whichever is the later.

Calculation of Total Income

55. Under Personal Assessment, income chargeable to Salaries Tax, Profits Tax and Property Tax of an individual taxpayer are aggregated before interest payable on money borrowed for the acquisition of property let is deducted to arrive at the total income. The total income may further be reduced by:-

- (a) Such deductions as allowable to the individual under Part IVA (see paragraph 20),
- (b) Business losses incurred in the year of assessment.

56. For a husband and wife who have elected to be personally assessed, their reduced total incomes are in the first instance computed individually before being aggregated. For the purposes of computing the couple's joint income, a husband and wife who marry during the year of assessment are **deemed** to have married each other at the commencement of that year of assessment.

Losses

57. Where the aggregate amount of the concessionary deductions under Part IVA of the Ordinance and the business loss of a taxpayer under Part IV exceeds his or her total income, only that part of the excess representing business loss under Part IV will be carried forward to set off the total income of the taxpayer for future years of assessment. In general, prior years' losses brought forward under Personal Assessment will only be set off against the total income of the taxpayer when Personal Assessment is elected. Where Personal Assessment is not elected, incomes of the taxpayer will be assessed under the respective primary charge and the loss will be carried forward for set off in the next year when an election is made.

58. Losses incurred by married taxpayers will be computed individually. However, in any year of assessment where Personal Assessment is elected, the loss will be set off against the total income of both the individual to whom the loss belongs and his or her spouse before any unused residue can be carried forward. In any year of assessment in which a spouse with a loss brought

forward does not elect to be personally assessed because he or she has no income, and his or her spouse does so individually, the loss will still be set off against the chargeable income of the electing spouse for that year of assessment, and only the balance of the loss will be carried forward to the subsequent year of assessment in the name of the spouse who incurred it. An example illustrating the operation of section 42(6) is at Appendix B.

Lodgment of Returns and Assessment to Tax

59. Taxpayers electing Personal Assessment are only required to complete the relevant parts of the tax returns issued for individuals and have the returns jointly signed by the taxpayers and their spouses in the event the couple elect Personal Assessment.

60. The reduced total income of the taxpayer after deduction of allowances under Part V of the Ordinance is charged at rates specified in the Second Schedule and is not to exceed the tax payable at the standard rate specified in the First Schedule on the taxpayer's total income or the joint income of the couple after being reduced by any allowable concessionary deductions under Part IVA and business losses but before the deduction of the allowances under Part V.

61. Married couples electing to be personally assessed will receive separate notices of assessment for the apportioned tax attributable to their respective incomes, computed by reference to the ratio that their respective reduced total income bears to their reduced joint total income.

Appendix A

EXAMPLE OF WHERE JOINT ASSESSMENT MAY BE ELECTED

Unabsorbed allowance situation (Year of Assessment 2003/04)

	<u>Mr. A</u>	<u>Mrs. A</u>
	\$	\$
Income from employment	200,000	70,000
<u>Less</u> : employment related expenses	<u>(1,000)</u>	<u>-</u>
Net Assessable Income	199,000	70,000
<u>Less</u> : Charitable donations	(500)	-
Basic Allowance	(104,000)	(104,000)
Dependent Parent Allowance	(30,000)	
Child Allowance (1 child)	<u>(30,000)</u>	<u>-</u>
Net Chargeable Income	<u>34,500</u>	<u>NIL</u>
Unabsorbed allowance	<u>NIL</u>	<u>(34,000)</u>
Tax Payable	<u>850</u>	<u>NIL</u>

Joint assessment reducing overall taxation liability

	<u>Joint assessment</u>
	<u>Mr. & Mrs. A</u>
	\$
Net Assessable Income	269,000
<u>Less</u> : Deductions and Allowance	<u>(268,500)</u>
Net Chargeable Income	<u>500</u>
Tax Payable	<u>10</u>

Appendix B

ILLUSTRATION OF THE APPLICATION OF SECTION 42(6) TO THE TRANSFER OF LOSSES BETWEEN SPOUSES IN PERSONAL ASSESSMENT

Year 1 (Husband and wife jointly elect personal assessment)

	<u>Mr. A</u>	<u>Mrs. A</u>
	\$	\$
Salary income	230,000	
Property income	50,000	
Business loss	<u> </u>	(40,000)
	280,000	(40,000)
Inter-spouse loss set off (section 42(5))	<u>(40,000)</u>	<u>(40,000)</u>
Total income after loss set-off	<u>240,000</u>	<u>NIL</u>
Net Assessable Income	240,000	
Less : Married Person's Allowance (Year 2003/04)	<u>208,000</u>	
Net Chargeable Income	<u>32,000</u>	

Year 2 (Husband and wife jointly elect personal assessment)

	<u>Mr. A</u>	<u>Mrs. A</u>
	\$	\$
Salary income	100,000	
Property income	50,000	
Business loss (business ceased on 31 March)	<u> </u>	(350,000)
	150,000	(350,000)
Inter-spouse loss set off (section 42(5))	<u>(150,000)</u>	<u>(150,000)</u>
Total income after loss set-off	<u>NIL</u>	<u>(200,000)</u>
Loss carried forward		<u>(200,000)</u>

Year 3 (Only husband elects personal assessment – wife has no income)

	<u>Mr A</u>	<u>Mrs A</u>
	\$	\$
Salary income	100,000	
Property income	<u>50,000</u>	<u> </u>
	150,000	0
Inter-spouse loss set off [section 42(6)]	<u>(150,000)</u>	<u> </u>
Total income after loss set-off	<u>NIL</u>	<u>NIL</u>

Statement of loss

Loss brought forward		(200,000)
Loss set off under section 42(6)		<u>150,000</u>
Loss carried forward		<u>(50,000)</u>