

## NOTES AND INSTRUCTIONS – SUPPLEMENTARY FORM (S22)

1. An eligible person (Note 3) is required to complete this supplementary form for submission together with the Profits Tax Return if:
  - (a) the person wishes to make an election (Note 15) for the tax concessions (Note 2) under Schedule 17FD to the Inland Revenue Ordinance (Cap. 112) (“IRO”) in respect of an eligible intellectual property from which the eligible IP income (Note 5) was derived in the basis period;
  - (b) the person has made an election for the tax concessions for eligible IP income under Schedule 17FD in respect of an eligible intellectual property in a preceding year of assessment and eligible IP income was derived from that eligible intellectual property in the basis period; or
  - (c) any of the circumstances referred to in Note 17 occurred in the basis period in respect of the eligible intellectual property concerned.
2. The tax concessions apply to eligible IP income derived from an eligible intellectual property in a year of assessment beginning on or after 1 April 2023. Upon the making of a valid election (Note 15) in respect of an eligible intellectual property (Note 4), the concessionary portion of assessable profits from eligible IP income (Note 23) derived from the eligible intellectual property in a year of assessment would be taxed at the concessionary tax rate of 5%.
3. “Eligible person” means a person who is entitled to derive eligible IP income (Note 5) from an eligible intellectual property (Note 4).
4. “Eligible intellectual property” means any of the following intellectual property that is generated from a research and development (“R&D”) activity (Note 6):
  - (a) an eligible patent (Note 7);
  - (b) an eligible plant variety right (Note 8);
  - (c) a copyright subsisting in software under the Copyright Ordinance (Cap. 528) or under the law of any place outside Hong Kong.
5. “Eligible IP income” means an income of any one or more of the following descriptions:
  - (a) income derived from an eligible intellectual property in respect of (i) the exhibition or use of, or a right to exhibit or use, (whether in or outside Hong Kong) the property; or (ii) the imparting of, or undertaking to impart, knowledge directly or indirectly connected with the use (whether in or outside Hong Kong) of the property;
  - (b) income derived from the sale of an eligible intellectual property;
  - (c) if the price of a sale of a product or service includes an amount that is attributable to an eligible intellectual property – such portion of the income from that sale as, on a just and reasonable basis, is attributable to the value of the property (“embedded IP income”). For the purpose of ascertaining the embedded IP income, the income attributed to the eligible intellectual property is to be calculated in the way that best secures consistency with the requirements and guidance in the “OECD rules” as defined in section 7(3) of Schedule 17FD to the IRO; and
  - (d) amount of insurance, damages or compensation derived in relation to an eligible intellectual property.
6. An R&D activity is –
  - (a) an activity in the fields of natural or applied science to extend knowledge;
  - (b) a systematic, investigative or experimental activity carried on for the purposes of any feasibility study or in relation to any market, business or management research;
  - (c) an original and planned investigation carried on with the prospect of gaining new scientific or technical knowledge and understanding; or
  - (d) the application of research findings or other knowledge to a plan or design for producing or introducing new or substantially improved materials, devices, products, processes, systems or services before they are commercially produced or used.

7. An eligible patent is –
- (a) a patent granted under the Patents Ordinance (Cap. 514) (“Cap. 514”) or by a patent office (Note 9) of any place outside Hong Kong, and if the date of filing (Note 11) of the application for the patent is on or after the specified date (Note 14), the patent is not a standard patent (R) (Note 10). A reference to a patent granted by a patent office of a place outside Hong Kong includes the registration of a utility model by the patent office, and a utility certificate and an inventor’s certificate issued by the patent office; or
  - (b) a patent application made under Cap. 514 or filed with a patent office (Note 9) of any place outside Hong Kong, and if the date of filing (Note 11) of the patent application is on or after the specified date (Note 14), the application is not a standard patent (R) application (Note 10). If a patent application is an international application, the reference to the patent application filed with a patent office of any place outside Hong Kong is a reference to the patent application having validly entered its national phase in the patent office in which the national phase is entered.
8. An eligible plant variety right is –
- (a) a right granted under the Plant Varieties Protection Ordinance (Cap. 490) (“Cap. 490”) or a corresponding right subsisted under the law of any place outside Hong Kong; or
  - (b) an application as defined by section 2 of Cap. 490 or a corresponding application subsisted under the law of any place outside Hong Kong.
9. “Patent office”, in relation to a place outside Hong Kong, means a competent authority in that place that receives or processes patent applications, or grants patents.
10. (a) Pursuant to section 1(1) of Schedule 17FD to the IRO, “application for a standard patent (R)” and “standard patent (R) application” have the meaning given by section 3 of Cap. 514.
- (b) Pursuant to section 1(2) of Schedule 17FD to the IRO, the following expressions have the meanings given by section 2(1) of Cap. 514:
- (i) application for a short-term patent and short-term patent application;
  - (ii) application for a standard patent (O) and standard patent (O) application;
  - (iii) international application;
  - (iv) Patent Cooperation Treaty;
  - (v) short-term patent;
  - (vi) standard patent (O);
  - (vii) standard patent (R);
  - (viii) substantive examination.
11. For a patent, “date of filing” has its meaning given by section 1(1) of Schedule 17FD to the IRO:
- (a) in relation to a patent application filed with, or a patent granted by, a patent office of any place outside Hong Kong –
    - (i) if the patent application, or the application for the patent, is an international application that has validly entered its national phase in a patent office – the international filing date accorded to the international application for the purposes of Article 11 of the Patent Cooperation Treaty; or
    - (ii) in any other case – the date of filing accorded to the patent application, or the application for the patent, by the patent office with which the application is filed;
  - (b) in relation to a standard patent (R) application or a standard patent (R) (Note 10) –
    - (i) if the corresponding designated patent application within the meaning of section 4(2)(b) of Cap. 514 is an international application that has validly entered its national phase in the corresponding designated patent office – the international filing date accorded to the international application for the purposes of Article 11 of the Patent Cooperation Treaty; or
    - (ii) in any other case – the date of filing of the corresponding designated patent application for a standard patent (R) application; or the deemed date of filing (within the meaning of section 38 of Cap. 514) of the application for a standard patent (R);
  - (c) in relation to a standard patent (O) application or a standard patent (O) (Note 10) – the date of filing accorded under section 37M(2) or 37Z(2) of Cap. 514 to the standard patent (O) application or application for the standard patent (O); or

- (d) in relation to a short-term patent application or a short-term patent (Note 10) –
- (i) for a short-term patent application or an application for a short-term patent based on an international application designating the People’s Republic of China (“PRC”) that has entered its national phase in the PRC – the international filing date referred to in section 125(5) of Cap. 514 that is deemed to be the date of filing of the short-term patent application or application for the short-term patent; or
  - (ii) in any other case – the date of filing accorded under section 114(2) or 116 of Cap. 514 to the short-term patent application or application for the short-term patent.

For a plant variety right, please input the date of filing of the application as defined in section 2 of Cap. 490 or the corresponding application subsisted under the law of any place outside Hong Kong in respect of the right. For a copyright subsisting in software, please input the date on which the work was reduced to a material form (i.e. recorded in writing or in some other way such as on a disk or saved on a computer).

12. For a patent or a plant variety right granted, please input the date of registration or grant of the patent or the right in section 3.2(e). For an application for a patent or a plant variety right, “99/99/9999” will be input automatically. For a copyright subsisting in software, the date stated in section 3.2(d) will be input automatically.
13. For a patent or a plant variety right granted, please input the registration number or grant number of the patent or the right in section 3.2(f). For an application for a patent or a plant variety right, please input the application number in respect of the application filed with the Intellectual Property Department or the Agriculture, Fisheries and Conservation Department in Hong Kong, or any equivalent authority outside Hong Kong. For a copyright subsisting in software, please input “NA”.
14. “Specified date” means the date of expiry of a period of 24 months after the commencement date of the Inland Revenue (Amendment) (Tax Concessions for Intellectual Property Income) Ordinance 2024 (17 of 2024) (i.e. 5 July 2026).
15. To claim tax concessions for the concessionary portion of the assessable profits from an eligible intellectual property (Note 4), an irrevocable election in respect of the eligible intellectual property has to be made in writing. An election in respect of certain types of eligible intellectual properties is subject to the following further specifications and/or requirements:
- (a) for a granted patent and a divisional patent application (Note 16), if an election has been made in respect of an eligible patent that is a patent application (original patent application), the election is to be regarded as having also been made in respect of:
    - (i) the patents granted in pursuance of the original patent application; and
    - (ii) the divisional patent applications of the original patent application and the patents granted in pursuance of such divisional patent applications;
  - (b) for an eligible patent that is not a standard patent (O), a standard patent (O) application, a short-term patent or a short-term patent application (Note 10), and the date of filing of which is on or after the specified date (Note 14), an election is not valid unless there is a corresponding local patent as defined in section 6(3) and (4) of Schedule 17FD to the IRO; or
  - (c) for an eligible plant variety right that is neither a grant nor an application as defined by section 2 of Cap. 490, and the date of filing of which is on or after the specified date (Note 14), an election is not valid unless there is a corresponding local plant variety right as defined in section 6(3) and (5) of Schedule 17FD to the IRO.
16. “Divisional patent application” means –
- (a) in relation to a patent application made under Cap. 514:
    - (i) a request to enter a record of a divisional patent application filed under section 22(1) of Cap. 514 for a standard patent (R) application;
    - (ii) a divisional standard patent (O) application filed under section 37Z of Cap. 514 for a standard patent (O) application; or
    - (iii) a divisional short-term patent application filed under section 116 of Cap. 514 for a short-term patent application; or
  - (b) in relation to a patent application filed with a patent office of any place outside Hong Kong, an application for a divisional patent filed under the law, instruments or rules of the patent office applicable to that application.

A reference to a divisional patent application includes all subsequent divisional patent applications in respect of that application.

17. Upon occurrence of any of the following circumstances in relation to an eligible intellectual property in the year of assessment (“relevant year”), all concessionary portions of the assessable profits from the eligible IP income subject to the concessionary tax rate for the preceding years of assessment are to be regarded as trading receipts for the relevant year:
- (a) The eligible patent that is a patent is unconditionally revoked;
  - (b) The eligible patent that is a patent application is abandoned, refused or withdrawn;
  - (c) The eligible plant variety right that is a right mentioned in Note 8(a) above is cancelled or no longer subsists;
  - (d) The eligible plant variety right that is an application mentioned in Note 8(b) above lapses, is declined or withdrawn, or no longer subsists; and
  - (e) In relation to an eligible patent or an eligible plant variety right of which the date of filing (Note 11) is on or after the specified date (Note 14), the conditions specified in section 19 of Schedule 17FD to the IRO have not been met.

If any of the above circumstances occurred in the relevant year, Table A should be completed to provide details of the eligible intellectual property concerned. Details of up to 25 eligible intellectual properties can be provided in Table A. In case there are more than 25 eligible intellectual properties, please provide details of the remaining eligible intellectual properties in the same format on a separate sheet. In the separate sheet, please add your file number, year of assessment concerned and a remark “Additional” and sign at the bottom of the sheet.

18. The basis period must be the same as that stated in the relevant Profits Tax Return.
19. An adjusted loss from an eligible intellectual property should not be set off against the assessable profits derived from another eligible intellectual property. The aggregate assessable profits from eligible IP income in respect of all eligible intellectual properties with assessable profits computed in accordance with the formula mentioned in Note 22 for the year of assessment should be input in section 2.3(a). Similarly, the aggregate adjusted losses from eligible IP income in respect of all eligible intellectual properties with adjusted losses should be input in section 2.3(b).
20. The aggregate concessionary portions of assessable profits (or adjusted losses, as the case may be) from eligible IP income in respect of all eligible intellectual properties computed in accordance with the formula mentioned in Note 23.
21. The definition of “eligible intellectual property” is provided in Note 4. The number of eligible intellectual properties can be counted in terms of the number of groups or collections of eligible intellectual properties covering the same invention or similar technical content. The Taxpayer is required to provide details in section 3.2 in respect of each eligible intellectual property covered in section 3.1. Details of up to 25 eligible intellectual properties can be provided in this form. In case there are more than 25 eligible intellectual properties, please provide details of the remaining eligible intellectual properties in the same format on a separate sheet. In the separate sheet, please add your file number, year of assessment concerned and a remark “Additional” and sign at the bottom of the sheet.
22. The assessable profits from eligible IP income are computed in accordance with the following formula:

$$I = A - B - C + D$$

Where: I means the assessable profits from the eligible IP income;

A means the eligible IP income;

B means the outgoings and expenses to the extent that they are incurred during the basis period for the year of assessment (“relevant basis period”) to produce A;

C means the allowances allowed under Part 6 of the IRO (depreciation, etc.), to the extent that the relevant assets counted for the allowances are used during the relevant basis period to produce A; and

D means the balancing charge to be made under Part 6 of the IRO, to the extent that the relevant assets counted for the balancing charge are used during the relevant basis period to produce A.

If the result of the above computation is a positive value (i.e. assessable profits), input the amount in section 3.2(j)(i) and “0” in section 3.2(j)(ii). If the result is a negative value (i.e. adjusted loss), input “0” in section 3.2(j)(i) and the amount in section 3.2(j)(ii).

23. The concessionary portion of assessable profits from eligible IP income is chargeable at the concessionary tax rate (i.e. 5% as specified under section 3(3) of Schedule 17FD to the IRO) and is computed in accordance with the following formula:

$$P = I \times F$$

Where: P means the concessionary portion;

I means the assessable profits from the eligible IP income; and

F means the R&D fraction applicable to those assessable profits.

The concessionary portion of an adjusted loss is computed on the same basis.

24. Where an eligible IP income accrues to an eligible person during the period from the first day of the eligible person's basis period for the year of assessment 2023/24 to the last day of the eligible person's basis period for the year of assessment 2025/26 and that eligible person has insufficient records to track and trace the R&D expenditure in respect of the eligible intellectual property involved, the transitional arrangement provided in section 23 of Schedule 17FD to the IRO may be adopted for ascertaining the R&D fraction (Note 30). That is, the amounts of eligible R&D expenditure (Note 25) and non-eligible expenditure (Note 29) in the formula for calculating the R&D fraction would be the respective amounts for any intellectual property of the eligible person during a period of 3 years ending on the last day of its basis period for the year of assessment during which the eligible IP income accrues.

25. "Eligible R&D expenditure" ("EE") means any expenditure (including capital expenditure) incurred by an eligible person during the specified period (Note 26) for an R&D activity that is connected to the eligible intellectual property to which the eligible IP income relates ("subject intellectual property") and is carried out:

(a) by the eligible person;

(b) on behalf of the eligible person by a non-associated person (Note 27); or

(c) in Hong Kong on behalf of the eligible person by its associated person who is a Hong Kong resident person (Note 28).

EE does not include interest payments, payments for any land or building, or for any alteration, addition or extension to any building; and any expenditure for obtaining the subject intellectual property or any right in respect of the property from another person. For details, please refer to section 13 of Schedule 17FD to the IRO.

26. "Specified period", in relation to an eligible person to whom any eligible IP income accrues, means the period beginning on 1 April 2023 or on an earlier date elected by the eligible person; and ending on the last day of the eligible person's basis period for the year of assessment during which the income accrues.

27. For the purposes of Schedule 17FD to the IRO, a person is to be regarded as associated with another person if, as between them, the participation condition is met under section 50AAG of the IRO; and a reference to an associated person is to be read accordingly.

28. Hong Kong resident person means a person who is resident for tax purposes in Hong Kong within the meaning of section 50AAC(1) of the IRO.

29. Non-eligible expenditure ("NE") includes the following expenditures (including capital expenditure) incurred by the eligible person during the specified period (Note 26) in respect of the subject intellectual property:

(a) any expenditure for obtaining the subject intellectual property or any right in respect of the property from another person;

(b) any expenditure for an R&D activity that is connected to the subject intellectual property and is carried out:

(i) on behalf of the eligible person by its associated person (Note 27) who is a non-Hong Kong resident person; or

(ii) outside Hong Kong on behalf of the eligible person by its associated person who is a Hong Kong resident person (Note 28).

NE does not include interest payments and payments for any land or building, or for any alteration, addition or extension to any building. For details, please refer to section 14 of Schedule 17FD to the IRO.

30. The R&D fraction applicable to assessable profits from an eligible IP income is computed in accordance with the following formula and capped at 100%:

$$\frac{EE \times 130\%}{EE + NE}$$

31. For columns (A) to (C), the name, nature and reference number of the eligible intellectual property stated therein must be the same as those reported in IR1482 and/or Supplementary Form S22 for the year(s) of assessment in which the concessionary portions of the assessable profits and/or adjusted losses from the eligible intellectual property concerned were derived.

32. For column (E), the year of assessment stated therein should be the one in respect of which an election for the tax concessions for eligible IP income in respect of the eligible intellectual property concerned was made under section 4 of Schedule 17FD to the IRO and the tax concessions were so granted. As the election, once made, is irrevocable, the Taxpayer is not required to elect for the tax concessions in respect of the eligible intellectual property concerned in any subsequent years. The year of assessment stated in this column should not be earlier than the year of assessment 2023/24.
33. For column (F), the year of assessment stated therein should be the last year of assessment for which the tax concessions for eligible IP income in respect of the eligible intellectual property concerned were granted to the Taxpayer.
34. For column (G), the total number of years of assessment for which the tax concessions for eligible IP income in respect of the eligible intellectual property concerned were granted to the Taxpayer should be stated therein.
35. For column (H), the total amount of concessionary portions of assessable profits from the eligible intellectual property for all years of assessment covered in column (G) should be entered. For column (I), the total amount of concessionary portions of adjusted losses from the eligible intellectual property for all years of assessment covered in column (G) should be entered. In completing columns (H) and (I), any concessionary portion of adjusted loss for a year of assessment should not be set off against the concessionary portion of assessable profits for another year of assessment.
36. The amounts stated in section 4.2(a) and section 4.2(b) should be the same as the total amounts of column (H) (i.e. total concessionary portions of assessable profits) and column (I) (i.e. total concessionary portions of adjusted losses), respectively, in Table A.
37. You must export the filled form to XML file and upload the XML file via the eTAX services under GovHK for submission. If you do not choose to submit Profits Tax Return through electronic filing or semi-electronic filing, you have to print and sign a paper Control List (containing details of the XML file uploaded and QR code) generated by the eTAX services for submission together with the Profits Tax Return in order to complete the submission process. The Control List of this supplementary form must be signed by the same person signing the tax return.