

---

# **Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022**

## **Contents**

Section	Page
1.	Short title and commencement ..... A1659
2.	Inland Revenue Ordinance amended ..... A1659
3.	Part 4, Division 3A added ..... A1659
<b>Division 3A—Specified Foreign-sourced Income</b>	
<b>Subdivision 1—Preliminary</b>	
15H.	Interpretation of Division 3A of Part 4 ..... A1661
<b>Subdivision 2—Treatment of Specified Foreign-sourced Income for Charging Profits Tax</b>	
15I.	Specified foreign-sourced income regarded as arising in or derived from Hong Kong ..... A1673
15J.	Notification ..... A1677
<b>Subdivision 3—Exceptions from Section 15I(1)</b>	
15K.	Exception 1: interest, dividend or disposal gain subject to economic substance requirement being met ..... A1677
15L.	Exception 2: excepted portion of qualifying IP income ascertained in accordance with nexus requirement ..... A1681

---

Section	Page
15M.	Exception 3: dividend or disposal gain subject to participation requirement being met ..... A1683
15N.	When does section 15M not apply ..... A1685
15O.	Supplementary provision to section 15N: meaning of <i>direct investee entity</i> and <i>indirect investee entity</i> ..... A1695
<b>Subdivision 4—Supplementary Provisions</b>	
15P.	Setting off loss sustained from sale of equity interests outside Hong Kong ..... A1697
15Q.	Outgoing or expense incurred in production of specified foreign-sourced income may be deducted ..... A1699
15R.	Balancing charge or allowance relating to production of specified foreign-sourced income may be taken into account ..... A1701
15S.	Records to be kept ..... A1703
4.	Section 16 amended (ascertainment of chargeable profits) ..... A1705
5.	Section 50 amended (tax credits) ..... A1705
6.	Sections 50AAA, 50AAAB and 50AAAC added ..... A1707
50AAA.	Unilateral tax credits—no double taxation arrangements or specified DT arrangements made ..... A1707

---

Section	Page
50AAAB. Unilateral tax credits—no relief for underlying profits etc. under specified DT arrangements made .....	A1713
50AAAC. Supplementary provision to section 50AAAB: determining whether interest is adequate .....	A1721
7. Section 51C amended (business records to be kept) .....	A1729
8. Section 63C amended (amount of provisional salaries tax) .....	A1729
9. Section 63H amended (amount of provisional profits tax) .....	A1729
10. Section 63M amended (amount of provisional property tax) .....	A1731
11. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.) .....	A1731
12. Section 82A amended (additional tax in certain cases) .....	A1733
13. Section 89 amended (transitional provisions) .....	A1735
14. Schedule 17FC added .....	A1735
Schedule 17FC Qualifying IP Income: Nexus Requirement for Ascertaining Excepted Portion etc. ....	A1737
15. Schedule 17G amended (meaning of <i>permanent establishment</i> in Hong Kong) .....	A1763
16. Schedule 45 amended (deduction of R&D expenditures) .....	A1763

Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income)  
Ordinance 2022

Ord. No. 17 of 2022  
A1657

---

Section	Page
17. Schedules 54 and 55 added .....	A1765
Schedule 54 Specifications for Section 50AAA in relation to Unilateral Tax Credits .....	A1765
Schedule 55 Transitional Provisions for Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 .....	A1771

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**ORDINANCE NO. 17 OF 2022**



Eric CHAN Kwok-ki  
Acting Chief Executive  
22 December 2022

An Ordinance to amend the Inland Revenue Ordinance to provide that certain foreign-sourced income is to be regarded as arising in or derived from Hong Kong; to provide for relief against double taxation in respect of certain foreign-sourced income; and to provide for related and transitional matters.

[1 January 2023]

Enacted by the Legislative Council.

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022.
- (2) This Ordinance comes into operation on 1 January 2023.

**2. Inland Revenue Ordinance amended**

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 17.

**3. Part 4, Division 3A added**

Part 4, after Division 3—

**Add**

## “Division 3A—Specified Foreign-sourced Income

### Subdivision 1—Preliminary

#### 15H. Interpretation of Division 3A of Part 4

(1) In this Division—

*consolidated financial statements* (綜合財務報表) means—

- (a) subject to paragraphs (b) and (c), the financial statements prepared by an entity under applicable accounting principles, in which the assets, liabilities, income, expenses and cash flows of the entity and the entities in which it has a controlling interest are presented as those of a single economic unit;
- (b) in relation to a stand-alone MNE entity—the financial statements of the entity prepared under applicable accounting principles; or
- (c) in relation to an ultimate parent entity that does not prepare any financial statements described in paragraph (a) or (b)—the financial statements that would have been prepared if the entity had been required to prepare financial statements under applicable accounting principles;

*controlling interest* (控制權益), in relation to an entity, means an equity interest in the entity such that—

- (a) the interest holder is required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis under applicable accounting principles; or

- (b) the interest holder would have been required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis under applicable accounting principles if the interest holder had prepared consolidated financial statements;

***disposal gain*** (處置收益) means any gain or profit derived from the sale of equity interests (other than partnership interests) in an entity;

***entity*** (實體) means—

- (a) a legal person (other than a natural person); or
- (b) an arrangement that prepares separate financial accounts, such as a partnership and a trust;

***equity interest*** (股權權益), in relation to an entity, means an interest that carries rights to the profits, capital or reserves of the entity and is accounted for as equity under applicable accounting principles;

***group*** (集團) means—

- (a) a collection of entities that are related through ownership or control such that the assets, liabilities, income, expenses and cash flows of those entities—
  - (i) are required under applicable accounting principles to be included in the consolidated financial statements of the ultimate parent entity of the collection; or
  - (ii) are excluded from the consolidated financial statements of the ultimate parent entity solely on size or materiality grounds or on the grounds that the entities are held for sale; or

(b) a stand-alone MNE entity;

**Hong Kong resident person** (香港居民人士) has the meaning given by section 50AAC(1);

**intellectual property** (知識產權) includes—

- (a) cinematograph film, film or tape used for radio or television broadcasting, sound recording, and advertising material connected with such film, tape or recording; and
- (b) patent, design, model, plan, trade mark, copyright material, layout-design (topography) of an integrated circuit, performer's right, plant variety right, secret process or formula, know-how, information concerning industrial, commercial or scientific experience, and other property or right of a similar nature;

**IP income** (知識產權收入) means income derived from intellectual property in respect of—

- (a) the exhibition or use of, or a right to exhibit or use, (whether in or outside Hong Kong) the property; or
- (b) the imparting of, or undertaking to impart, knowledge directly or indirectly connected with the use (whether in or outside Hong Kong) of the property;

**MNE entity** (跨國企業實體), subject to subsection (4), means a person that is, or acts for, an MNE group or an entity included in an MNE group;

**MNE group** (跨國企業集團) means a group that includes at least one entity or permanent establishment that is not located or established in the jurisdiction of the ultimate parent entity of the group;



***partnership interest*** (合夥權益) means an equity interest in a partnership that is not a legal person;

***permanent establishment*** (常設機構)—see subsection (3);

***regulated financial entity*** (受規管財務實體) means—

- (a) an insurer (as defined by section 2(1) of the Insurance Ordinance (Cap. 41)) authorized under that Ordinance, Lloyd's or an approved association of underwriters;
- (b) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155); or
- (c) an entity licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by Part 1 of Schedule 5 to that Ordinance;

***sale*** (出售), in relation to equity interests, means a transfer of the interests (other than a transfer effected by extinguishing the interests) for valuable consideration;

***specified foreign-sourced income*** (指明外地收入) means any interest, dividend, disposal gain or IP income arising in or derived from a territory outside Hong Kong, but does not include—

- (a) any interest, dividend or disposal gain that—
  - (i) accrues to an entity that is a regulated financial entity; and
  - (ii) is derived from, or is incidental to, the entity's business as a regulated financial entity;

- (b) any interest, dividend or disposal gain that—
  - (i) accrues to an entity the assessable profits of which are chargeable to tax at the rate specified in a concession provision (as defined by section 19CA) other than section 14A(1); and
  - (ii) is derived from, or is incidental to, the activity that produces those assessable profits;
- (c) any interest, dividend or disposal gain that—
  - (i) accrues to an entity that is exempt from tax chargeable in respect of its assessable profits under section 20AC, 20ACA, 20AN or 20AO; and
  - (ii) is derived from, or is incidental to, the activity that produces those assessable profits; or
- (d) any interest, dividend or disposal gain that—
  - (i) accrues to an entity that has any exempt sums (as defined by section 23B(12)) excluded under section 23B(4AA) from the amount of relevant sums (as defined by section 23B(12)) earned by or accrued to the entity; and
  - (ii) is derived from, or is incidental to, the activity that produces those exempt sums;

***stand-alone MNE entity*** (獨立跨國企業實體) means an entity that—

- (a) is located in one jurisdiction and has one or more permanent establishments in other jurisdictions; and

- (b) is not part of a collection of entities described in paragraph (a) of the definition of **group**;

**ultimate parent entity** (最終母實體) means—

- (a) an entity that—
    - (i) owns directly or indirectly a controlling interest in any other entity; and
    - (ii) is not owned, with a controlling interest, directly or indirectly by another entity; or
  - (b) a stand-alone MNE entity.
- (2) For the purposes of this Division—
- (a) if an entity is a tax resident in a jurisdiction based on its place of management, place of creation or similar criteria—the entity is to be regarded as located in that jurisdiction; or
  - (b) in any other case—the entity is to be regarded as located in the jurisdiction in which it was created.
- (3) For the purposes of this Division, an entity has a permanent establishment in a jurisdiction if—
- (a) where the jurisdiction is Hong Kong—the entity has a permanent establishment in Hong Kong under Schedule 17G; or
  - (b) where the jurisdiction is not Hong Kong—the entity is to be regarded as having a permanent establishment in the jurisdiction under the laws of the jurisdiction or under a bilateral or multilateral tax convention to which the jurisdiction is a party,
- and a reference to a permanent establishment in a jurisdiction is to be read accordingly.

- (4) For the purposes of this Division, if an MNE entity is a Hong Kong resident person, any permanent establishment of the entity outside Hong Kong is to be regarded as a separate MNE entity carrying on a trade, profession or business in the territory in which the permanent establishment is established.
- (5) For the purposes of this Division, without limiting the meaning of “received in Hong Kong”, a sum is to be regarded as received in Hong Kong if—
  - (a) the sum is remitted to, or is transmitted or brought into, Hong Kong;
  - (b) the sum is used to satisfy any debt incurred in respect of a trade, profession or business carried on in Hong Kong; or
  - (c) the sum is used to buy movable property, and the property is brought into Hong Kong.
- (6) For the purposes of subsection (5)(c), the sum is to be regarded as being received at the time when the movable property is brought into Hong Kong.
- (7) Subsection (5) applies regardless of whether or not the source from which the sum is derived has ceased.

### **Subdivision 2—Treatment of Specified Foreign-sourced Income for Charging Profits Tax**

- 15I. Specified foreign-sourced income regarded as arising in or derived from Hong Kong**
- (1) For charging profits tax, specified foreign-sourced income to which this subsection applies—

- 
- (a) is to be regarded as a receipt arising in or derived from Hong Kong for the basis period of the year of assessment during which the income is received in Hong Kong; and
    - (b) is to be regarded as not arising from the sale of capital assets even if it so arises.
  - (2) Subsection (1) is subject to Subdivision 3.
  - (3) Subsection (1) applies to specified foreign-sourced income that—
    - (a) is received in Hong Kong by an MNE entity carrying on a trade, profession or business in Hong Kong; and
    - (b) is not otherwise chargeable to profits tax under this Part.
  - (4) Despite subsection (3), if a sum is both—
    - (a) a sum to which section 15 or 15F applies; and
    - (b) but for this subsection, income to which subsection (1) would have applied,subsection (1) does not apply to the sum.
  - (5) To avoid doubt, if—
    - (a) any specified foreign-sourced income is received in Hong Kong by an MNE entity after the entity ceases to carry on a trade, profession or business in Hong Kong; and
    - (b) had the income been received before the cessation, it would have been chargeable to profits tax because of subsection (1),section 15D applies in relation to the income.

## **15J. Notification**

If an MNE entity is chargeable to profits tax in respect of any specified foreign-sourced income under this Part because of section 15I(1), the entity must notify the Commissioner in writing that the entity is so chargeable within 4 months after the end of the basis period of the year of assessment during which the income is received in Hong Kong, unless the entity has already been required to furnish a return under section 51(1).

### **Subdivision 3—Exceptions from Section 15I(1)**

## **15K. Exception 1: interest, dividend or disposal gain subject to economic substance requirement being met**

- (1) Section 15I(1) does not operate in relation to specified foreign-sourced income received in Hong Kong by an MNE entity if—
  - (a) the income is interest, a dividend or a disposal gain; and
  - (b) the economic substance requirement specified in subsection (2) is met.
- (2) The economic substance requirement is that during the basis period of the year of assessment in which the income accrues to the MNE entity—
  - (a) if the entity is a pure equity-holding entity—
    - (i) the entity complies with every applicable registration and filing requirement under the following Ordinances—
      - (A) the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

- (B) the Limited Partnerships Ordinance (Cap. 37);
  - (C) the Business Registration Ordinance (Cap. 310);
  - (D) the Companies Ordinance (Cap. 622);
  - (ii) specified economic activities are—
    - (A) carried out in Hong Kong by the entity; or
    - (B) arranged by the entity to be carried out in Hong Kong; and
  - (iii) in the Commissioner's opinion, the entity has adequate human resources and premises for carrying out the specified economic activities; or
- (b) if the entity is not a pure equity-holding entity—
- (i) specified economic activities are—
    - (A) carried out in Hong Kong by the entity; or
    - (B) arranged by the entity to be carried out in Hong Kong;
  - (ii) the number of employees in Hong Kong who—
    - (A) carry out the specified economic activities; and
    - (B) have the qualifications necessary for doing so,is adequate in the Commissioner's opinion; and

- (iii) the total amount of operating expenditure incurred in Hong Kong for carrying out the specified economic activities is adequate in the Commissioner's opinion.

(3) In this section—

***pure equity-holding entity*** (純股權持有實體) means an entity that—

- (a) only holds equity interests in other entities; and
- (b) only earns—
  - (i) dividends;
  - (ii) disposal gains; and
  - (iii) income incidental to the acquisition, holding or sale of such equity interests;

***specified economic activities*** (指明經濟活動) means—

- (a) in relation to an MNE entity that is a pure equity-holding entity—holding and managing its equity participations in other entities; or
- (b) in relation to an MNE entity that is not a pure equity-holding entity—
  - (i) making necessary strategic decisions in respect of any assets the entity acquires, holds or disposes of; and
  - (ii) managing and bearing principal risks in respect of such assets.

**15L. Exception 2: excepted portion of qualifying IP income ascertained in accordance with nexus requirement**

- (1) If any specified foreign-sourced income received in Hong Kong by an MNE entity is qualifying IP income, section 15I(1) does not operate in relation to



the excepted portion of the income ascertained under Part 2 of Schedule 17FC.

- (2) Part 3 of Schedule 17FC applies in relation to the qualifying IP income.
- (3) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 17FC.
- (4) In this section—  
*excepted portion* (例外部分)—see section 3 of Schedule 17FC;

*qualifying IP income* (合資格知識產權收入) has the meaning given by section 1(2) of Schedule 17FC.

**15M. Exception 3: dividend or disposal gain subject to participation requirement being met**

- (1) Subject to section 15N, section 15I(1) does not operate in relation to specified foreign-sourced income received in Hong Kong by an MNE entity if—
  - (a) the entity is—
    - (i) a Hong Kong resident person; or
    - (ii) a non-Hong Kong resident person who has a permanent establishment in Hong Kong;
  - (b) the income is—
    - (i) if the entity is a Hong Kong resident person—a dividend or disposal gain; or

- (ii) if the entity is a non-Hong Kong resident person—a dividend or disposal gain attributable to the entity's permanent establishment in Hong Kong under section 50AAK; and
  - (c) the participation requirement specified in subsection (2) is met.
- (2) The participation requirement is that the MNE entity has continuously held not less than 5% of equity interests in the investee entity for a period of not less than 12 months immediately before the specified foreign-sourced income accrues to the MNE entity.
- (3) In this section—
- investee entity* (獲投資實體) means—
- (a) in relation to an MNE entity that receives a dividend—the entity that distributes the dividend; or
  - (b) in relation to an MNE entity that receives a disposal gain—the entity the equity interests in which are sold;

*non-Hong Kong resident person* (非香港居民人士) has the meaning given by section 50AAC(1).

**15N. When does section 15M not apply**

- (1) This section applies to specified foreign-sourced income in relation to which section 15I(1), but for this section, would not have operated because of section 15M.

- 
- (2) Section 15M only applies if the Commissioner is satisfied that—
- (a) where the specified foreign-sourced income is a dividend (whether or not the underlying profits of the income consist of any dividend)—
    - (i) the income is subject to a qualifying similar tax in a territory outside Hong Kong; or
    - (ii) the underlying profits of the income are subject to a qualifying similar tax in a territory outside Hong Kong, and the amount of the profits is equal to or larger than that of the income;
  - (b) where the specified foreign-sourced income (*subject income*) is a dividend, and the underlying profits of the subject income consist wholly or partly of dividends—
    - (i) one or more items of the related downstream income of the profits are subject to a qualifying similar tax in a territory outside Hong Kong; and
    - (ii) the aggregate amount of all such items of income is equal to or larger than the amount of the subject income; or
  - (c) where the specified foreign-sourced income is a disposal gain—the income is subject to a qualifying similar tax in a territory outside Hong Kong.

- (3) Where—
  - (a) the specified foreign-sourced income is a dividend; and
  - (b) tax is charged on the underlying profits of the income in a territory outside Hong Kong,  
section 15M does not apply if, and to the extent that, the income is allowable for deduction when computing the amount of the tax.
- (4) Section 15M also does not apply if—
  - (a) the MNE entity receiving the specified foreign-sourced income entered into an arrangement in respect of the income; and
  - (b) the Commissioner is satisfied that the main purpose, or one of the main purposes, of the entity in entering into the arrangement was to obtain a tax benefit, whether for the entity or another person, under that section for the income.
- (5) To avoid doubt and without limiting sections 50, 50AAA and 50AAAB (*those sections*), if section 15M does not apply because of this section, any similar tax payable in the source territory—
  - (a) in respect of the specified foreign-sourced income; and
  - (b) if the income is a dividend—in respect of the underlying profits and in respect of any related downstream income of the profits,  
may, in accordance with those sections, be allowed as a credit against any tax payable in respect of the specified foreign-sourced income in Hong Kong.

- (6) For the purposes of subsection (2), a sum is subject to a qualifying similar tax in a territory outside Hong Kong if—
- (a) the sum is subject to a similar tax in that territory; and
  - (b) the applicable rate, or (if there is more than one applicable rate) the highest applicable rate, of that tax is equal to or higher than the reference rate.
- (7) For the purposes of subsection (6)(b), the reference rate is 15%.
- (8) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend the reference rate in subsection (7).
- (9) In this section—
- applicable rate*** (適用稅率), in relation to a similar tax to which a sum is subject, means—
- (a) if the tax is chargeable at the time the sum accrues—the rate of the tax applicable to the sum at that time; or
  - (b) if the tax is chargeable for the taxable period during which the sum accrues—the rate of the tax applicable to the sum for that taxable period;
- direct investee entity*** (直接獲投資實體)—see section 150(1);
- indirect investee entity*** (間接獲投資實體)—see section 150(2);
- investee entity*** (獲投資實體), in relation to an entity, means a direct investee entity, or an indirect investee entity, of the entity;

**qualifying similar tax** (合資格類似稅項)—see subsection (6);

**related downstream income** (有關下游收入), in relation to a subject investee entity's underlying profits that consist wholly or partly of dividends (**underlying dividends**), means—

- (a) the underlying dividends;
- (b) if the underlying dividends—
  - (i) are paid out of the profits of a direct investee entity of the subject investee entity; or
  - (ii) are derived from the profits of an indirect investee entity of the subject investee entity through another investee entity of the subject investee entity, those profits (**downstream profits**); or
- (c) if the downstream profits consist wholly or partly of dividends—those dividends;

**similar tax** (類似稅項) has the meaning given by section 16(2I)(b);

**source territory** (來源地區) means—

- (a) in relation to specified foreign-sourced income—the territory in which the income accrues;
- (b) in relation to underlying profits—the territory in which the profits accrue; or
- (c) in relation to related downstream income—the territory in which the income accrues;

**subject investee entity** (標的獲投資實體), in relation to an MNE entity that receives a dividend, means the entity that distributes the dividend;

**tax benefit** (稅務利益) means an avoidance, postponement or reduction of a liability to pay tax;

**underlying profits** (基礎利潤), in relation to a dividend distributed by a subject investee entity, means the profits of the entity out of which the dividend is paid.

**150. Supplementary provision to section 15N: meaning of *direct investee entity* and *indirect investee entity***

- (1) An entity (**entity B**) is a direct investee entity of another entity (**entity A**) if—
  - (a) entity A has any direct beneficial interest in, or in relation to, entity B; or
  - (b) entity A is directly entitled to exercise, or control the exercise of, any voting rights in, or in relation to, entity B.
- (2) An entity (**entity C**) is an indirect investee entity of entity A if—
  - (a) entity A has any indirect beneficial interest in, or in relation to, entity C through another entity or a series of 2 or 3 entities; or
  - (b) entity A is indirectly entitled to exercise, or control the exercise of, any voting rights in, or in relation to, entity C through another entity or a series of 2 or 3 entities.
- (3) To avoid doubt, an entity (**entity D**) is not an indirect investee entity of entity A if none of the conditions in subsection (2) is satisfied in relation to them, even when—

- (a) entity A has any indirect beneficial interest in, or in relation to, entity D through a series of 4 or more entities; or
  - (b) entity A is indirectly entitled to exercise, or control the exercise of, any voting rights in, or in relation to, entity D through a series of 4 or more entities.
- (4) In applying subsection (1)(b), (2)(b) or (3)(b), the voting rights attributed to entity A include all the voting rights of persons other than entity A so far as they are required, or may be required, to be exercised in one or more of the following ways—
- (a) on behalf of entity A;
  - (b) under the direction of entity A;
  - (c) for the benefit of entity A.
- (5) For the purposes of this section, if—
- (a) a reference is made to the exercise of the voting rights in an entity; and
  - (b) the entity is a corporation,
- the reference is to be read as a reference to the exercise of the voting rights at general meetings of the entity.

#### **Subdivision 4—Supplementary Provisions**

##### **15P. Setting off loss sustained from sale of equity interests outside Hong Kong**

- (1) This section applies if—



- (a) an MNE entity sustains a loss from a sale in a territory outside Hong Kong of its equity interests (other than partnership interests) in another entity;
  - (b) the proceeds of the sale are received in Hong Kong by the MNE entity during the basis period of a year of assessment; and
  - (c) had a gain been derived from the sale and received in Hong Kong by the MNE entity, the gain would have been chargeable to profits tax because of section 15I(1).
- (2) Subject to subsection (3)—
- (a) the loss may be set off against the MNE entity's assessable profits for that year of assessment; and
  - (b) any amount of the loss not so set off may be carried forward and set off, in accordance with section 19C, against the MNE entity's assessable profits for subsequent years of assessment.
- (3) The loss may only be set off to the extent that the assessable profits concerned are derived from specified foreign-sourced income that is chargeable to profits tax because of section 15I(1).

**15Q. Outgoing or expense incurred in production of specified foreign-sourced income may be deducted**

Without limiting Division 4, if—

- (a) an outgoing or expense (however called) is incurred in the production of specified foreign-sourced income; and

- (b) the income is chargeable to profits tax for a year of assessment (*that year of assessment*) because of section 15I(1),

that outgoing or expense may be deducted in accordance with Division 4, to the extent that it has not been deducted for any year of assessment, for that year of assessment as if it were incurred during the basis period of that year of assessment.

**15R. Balancing charge or allowance relating to production of specified foreign-sourced income may be taken into account**

Without limiting sections 18F and 19E and Part 6, if—

- (a) any balancing charge directed to be made on, or any allowance made to, an MNE entity under Part 6 for a year of assessment (or any part of such a charge or allowance) is not taken into account under section 18F or 19E when calculating the amount of the entity's assessable profits or loss for that year of assessment because—
  - (i) that charge or allowance, or that part of the charge or allowance, relates to the production of specified foreign-sourced income; and
  - (ii) the income—
    - (A) is not received in Hong Kong during the basis period of that year of assessment; and
    - (B) is not chargeable to profits tax for that year of assessment; and

- (b) the income—
  - (i) is received in Hong Kong during the basis period of a subsequent year of assessment; and
  - (ii) is chargeable to profits tax for that subsequent year of assessment because of section 15I(1),

that charge or allowance, or that part of the charge or allowance, is to be taken into account under section 18F or 19E (as the case requires) when calculating the amount of the entity's assessable profits or loss for that subsequent year of assessment as if that charge or allowance, or that part of the charge or allowance, were directed to be made on, or made to, the entity under Part 6 for that subsequent year of assessment.

**15S. Records to be kept**

- (1) Section 51C applies, with the modifications specified in subsection (2), to an MNE entity that receives in Hong Kong specified foreign-sourced income to which section 15I(1) applies.
- (2) The MNE entity must retain records of transactions, acts or operations relating to the specified foreign-sourced income under section 51C at least until the later of the following—
  - (a) the expiry of 7 years after the completion of those transactions, acts or operations; or
  - (b) the expiry of 7 years after the income is received, or to be regarded as received, in Hong Kong.

- (3) Section 80 applies to a failure to comply with section 51C as modified by subsection (2) in the same way section 80 applies to a failure to comply with section 51C.”.

**4. Section 16 amended (ascertainment of chargeable profits)**

Section 16(2J)—

**Repeal**

everything after “in a”

**Substitute**

“territory outside Hong Kong by a person in respect of the profits referred to in that subsection if, under section 50, the tax is to be allowed as a credit against tax payable in Hong Kong by the person in respect of the profits.”.

**5. Section 50 amended (tax credits)**

- (1) Section 50, heading, after “credits”—

**Add**

“under double taxation arrangements”.

- (2) Section 50(7)—

**Repeal**

“Where—”

**Substitute**

“Subject to subsections (7A) and (7B), where—”.

- (3) After section 50(7)—

**Add**

“(7A) Subsection (7B) applies if the arrangements provide that where—

(a) the income concerned is a dividend received by a Hong Kong resident person (*subject person*) from a company that is a DTA territory resident person (*investee company*); and

(b) the dividend is paid out of the investee company's profits,

the tax payable in respect of the profits in the DTA territory concerned (*underlying tax*) is, subject to the satisfaction of any conditions or provisions stated in the arrangements, to be taken into account in determining the amount of credit and (if any) deduction to be allowed to the subject person in respect of the dividend.

(7B) In determining the amount of credit and (if any) deduction to be allowed to the subject person in respect of the dividend, the underlying tax is to be taken into account in accordance with the arrangements.”.

**6. Sections 50AAA, 50AAAB and 50AAAC added**

After section 50—

**Add**

**“50AAA. Unilateral tax credits—no double taxation arrangements or specified DT arrangements made**

(1) This section applies if—

(a) no double taxation arrangements have been made with the government of a territory outside Hong Kong (*subject territory*); or

- 
- (b) double taxation arrangements have been made with the government of the subject territory, but the arrangements do not incorporate any of the following articles and rules—
- (i) the exemption article;
  - (ii) the credit article;
  - (iii) any rules in the same or equivalent terms as those articles.
- (2) Section 50 applies in relation to any similar tax payable in the subject territory in respect of income specified in Part 2 of Schedule 54 (*specified income*) if the condition specified in that Part for the income is satisfied.
- (3) For the purposes of subsection (2), section 50 is to apply, with the modifications specified in Part 2 of Schedule 54 (if any) for applying that section in relation to the similar tax, as if—
- (a) where no double taxation arrangements have been made with the government of the subject territory—
    - (i) double taxation arrangements containing the provisions specified in Part 2 of Schedule 54 for the similar tax (*specified provisions*) were made with the government of the subject territory; and
    - (ii) the subject territory were a DTA territory; and
  - (b) where double taxation arrangements have been made with the government of the subject territory, but the arrangements do not incorporate any of the articles and rules

- mentioned in subsection (1)(b)—further double taxation arrangements containing the specified provisions were made with the government of the subject territory.
- (4) The transitional arrangement specified in Part 2 of Schedule 54 for the specification of the specified income has effect.
- (5) Section 50AAAB applies in relation to any profits tax payable in Hong Kong in respect of any specified income that is a dividend as if—
- (a) specified DT arrangements (as defined by subsection (10) of that section) containing the specified provisions were made with the government of the subject territory; and
  - (b) where the subject territory is not already a DTA territory—the territory were a DTA territory.
- (6) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend—
- (a) the definitions of the following expressions in subsection (7)—
    - (i) *Convention* (《協定》);
    - (ii) *credit article* (抵免條文);
    - (iii) *exemption article* (豁免條文); and
  - (b) Schedule 54.
- (7) In this section—
- Convention* (《協定》) means the Model Tax Convention on Income and on Capital as approved by the Organisation for Economic Co-operation and Development on 21 November 2017;

**credit article** (抵免條文) means the rules contained in Article 23B of the Convention;

**exemption article** (豁免條文) means the rules contained in Article 23A of the Convention;

**similar tax** (類似稅項), in relation to specified income, means a tax that is of substantially the same nature as the tax specified in Part 2 of Schedule 54 for the income.

**50AAAB. Unilateral tax credits—no relief for underlying profits etc. under specified DT arrangements made**

- (1) This section applies if—
  - (a) a Hong Kong resident person (**subject person**) receives a dividend (**subject dividend**) from a company that is a DTA territory resident person (**subject company**);
  - (b) the subject dividend is paid out of the subject company's profits (**underlying profits**);
  - (c) when the subject dividend is distributed, the subject person has an adequate interest in the subject company; and
  - (d) specified DT arrangements are made with the government of the DTA territory concerned.
- (2) Subsection (3) applies if, under the specified DT arrangements, no provision is made for a similar tax payable in the DTA territory in respect of the underlying profits (**first-tier UP tax**) to be allowed as a credit against profits tax payable in Hong Kong.
- (3) Subject to subsection (9), the first-tier UP tax is to be allowed under section 50(7B) as a credit against profits tax payable in Hong Kong by the subject person in respect of the subject dividend as if—



- 
- (a) the specified DT arrangements contained a provision to that effect; and
  - (b) in section 50(7B)—
    - (i) the reference to “dividend” were a reference to the subject dividend;
    - (ii) the reference to “underlying tax” were a reference to the first-tier UP tax; and
    - (iii) the reference to “arrangements” were a reference to the specified DT arrangements.
  - (4) Subsection (5) applies if—
    - (a) the underlying profits consist wholly or partly of dividends (*underlying dividends*);
    - (b) a similar tax (*first-tier D tax*) is payable in a territory outside Hong Kong in respect of the underlying dividends;
    - (c) when the underlying dividends are distributed, the subject person has an adequate interest in the subject company; and
    - (d) under the specified DT arrangements, no provision is made for the first-tier D tax to be allowed as a credit against profits tax payable in Hong Kong.
  - (5) Subject to subsection (9), the first-tier D tax is to be allowed under section 50(7B) as a credit against profits tax payable in Hong Kong by the subject person in respect of the subject dividend as if—
    - (a) the specified DT arrangements contained a provision to that effect; and
    - (b) in section 50(7B)—

- (i) the reference to “dividend” were a reference to the subject dividend;
  - (ii) the reference to “underlying tax” were a reference to the first-tier D tax; and
  - (iii) the reference to “arrangements” were a reference to the specified DT arrangements.
- (6) Subsections (7) and (8) apply if—
  - (a) the underlying dividends—
    - (i) are paid out of the profits of a direct investee entity of the subject company; or
    - (ii) are derived from the profits of an indirect investee entity of the subject company through another investee entity of the subject company; and
  - (b) the subject person has an adequate interest in—
    - (i) in the case of paragraph (a)(i)—that direct investee entity; or
    - (ii) in the case of paragraph (a)(ii)—that indirect investee entity.
- (7) If—
  - (a) a similar tax (*downstream UP tax*) is payable in a territory outside Hong Kong in respect of the profits mentioned in subsection (6)(a)(i) or (ii) (as the case requires); and
  - (b) under the specified DT arrangements, no provision is made for the downstream UP tax to be allowed as a credit against profits tax payable in Hong Kong,

subsection (3) applies to the downstream UP tax as if the references to the first-tier UP tax in subsection (3) were references to the downstream UP tax.

- (8) If—
- (a) the profits mentioned in subsection (6)(a)(i) or (ii) (as the case requires) consist wholly or partly of dividends (*downstream dividends*);
  - (b) a similar tax (*downstream D tax*) is payable in a territory outside Hong Kong in respect of the downstream dividends; and
  - (c) under the specified DT arrangements, no provision is made for the downstream D tax to be allowed as a credit against profits tax payable in Hong Kong,

subsection (5) applies to the downstream D tax as if the references to the first-tier D tax in subsection (5) were references to the downstream D tax.

- (9) Any credit allowed under section 50 because of subsection (3) or (5) must represent the extent of—
- (a) the direct or indirect beneficial interest the subject person has in, or in relation to, the subject company or investee entity concerned (as the case requires); or
  - (b) the voting rights the subject person is (whether directly or indirectly) entitled to exercise, or control the exercise of, in or in relation to the subject company or investee entity concerned (as the case requires),

as ascertained when determining whether the subject person has an adequate interest in that company or investee entity.

(10) In this section—

*adequate interest* (足夠權益)—see section 50AAAC;

*direct investee entity* (直接獲投資實體)—see section 15O(1);

*entity* (實體) has the meaning given by section 15H(1);

*indirect investee entity* (間接獲投資實體)—see section 15O(2);

*investee entity* (獲投資實體), in relation to an entity, means a direct investee entity, or an indirect investee entity, of the entity;

*similar tax* (類似稅項) has the meaning given by section 16(2I)(b);

*specified DT arrangements* (指明雙重課稅安排) means double taxation arrangements that incorporate—

- (a) the credit article or exemption article as defined by section 50AAA(7); or
- (b) any rules in the same or equivalent terms as those articles.

**50AAAC. Supplementary provision to section 50AAAB: determining whether interest is adequate**

(1) A person (*person A*) has an adequate interest in another person (*person B*) if—

- (a) person A has at least 10% of direct or indirect beneficial interest in, or in relation to, person B; or
- (b) person A is, directly or indirectly, entitled to exercise, or control the exercise of, at least 10% of the voting rights in, or in relation to, person B.

- 
- (2) In applying subsection (1), if person A has a direct beneficial interest in person B, the extent of the beneficial interest of person A in person B is—
- (a) if person B 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 person A;
  - (b) if person B is a partnership that is not a trustee of a trust estate—the percentage of the income of the partnership to which person A is entitled;
  - (c) if person B is a trustee of a trust estate—the percentage in value of the trust estate in which person A is interested; or
  - (d) if person B is an entity that does not fall within any of paragraphs (a), (b) and (c)—the percentage of person A's ownership interest in the entity.
- (3) In applying subsection (1), if person A has an indirect beneficial interest in, or is indirectly entitled to exercise or control the exercise of voting rights in, person B through another person (*interposed person*), the extent of the beneficial interest or voting rights of person A in person B is—
- (a) if there is only one interposed person—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest or voting rights of person A in the interposed person by the percentage representing the extent of the beneficial interest or voting rights of the interposed person in person B; or

- 
- (b) if there is a series of 2, 3 or 4 interposed persons—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest or voting rights of person A in the first interposed person in the series by—
    - (i) the percentage representing the extent of the beneficial interest or voting rights 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 or voting rights of the last interposed person in the series in person B.
  - (4) In applying subsection (1)—
    - (a) any indirect beneficial interest person A has in, or in relation to, person B through a series of 5 or more persons; and
    - (b) any voting rights person A is indirectly entitled to exercise, or control the exercise of, in or in relation to person B through a series of 5 or more persons,are not to be taken into account.
  - (5) For the purposes of subsection (3)—
    - (a) subsection (2) applies in determining the extent of the beneficial interest of person A in an interposed person as if the references to person B in subsection (2) were references to an interposed person;

- 
- (b) subsection (2) applies in determining the extent of the beneficial interest of an interposed person in person B as if the references to person A in subsection (2) were references to an interposed person; and
- (c) subsection (2) applies in determining the extent of the beneficial interest of an interposed person (*interposed person X*) in another interposed person (*interposed person Y*) as if—
- (i) the references to person A in subsection (2) were references to interposed person X; and
  - (ii) the references to person B in subsection (2) were references to interposed person Y.
- (6) In applying subsection (1)(b), the voting rights attributed to person A include all the voting rights of persons other than person A so far as they are required, or may be required, to be exercised in one or more of the following ways—
- (a) on behalf of person A;
  - (b) under the direction of person A;
  - (c) for the benefit of person A.
- (7) For the purposes of this section, if—
- (a) a reference is made to the exercise of the voting rights in a person; and
  - (b) the person is a corporation,
- the reference is to be read as a reference to the exercise of the voting rights at general meetings of the person.”.

**7. Section 51C amended (business records to be kept)**

(1) Before section 51C(5)(a)—

**Add**

“(aa) section 15S (records to be kept);”.

(2) Section 51C(5)(b)—

**Repeal the full stop**

**Substitute a semicolon.**

(3) After section 51C(5)(b)—

**Add**

“(c) section 9 of Schedule 17FC (qualifying IP income: nexus requirement for ascertaining excepted portion etc.).”.

**8. Section 63C amended (amount of provisional salaries tax)**

(1) Section 63C(1), after “subsections”—

**Add**

“(1B),”.

(2) Before section 63C(2)—

**Add**

“(1B) In computing the amount of provisional salaries tax for a year of assessment, any credit or deduction allowed under section 50 for the preceding year of assessment is to be taken into account.”.

**9. Section 63H amended (amount of provisional profits tax)**

(1) Section 63H(1), after “subsections”—

**Add**

“(1E),”.



- (2) After section 63H(1D)—

**Add**

“(1E) In computing the amount of provisional profits tax for a year of assessment, any credit or deduction allowed under section 50 for the preceding year of assessment is to be taken into account.”.

**10. Section 63M amended (amount of provisional property tax)**

- (1) Section 63M(1)—

**Repeal**

“Provisional”

**Substitute**

“Subject to subsection (1A), provisional”.

- (2) After section 63M(1)—

**Add**

“(1A) In computing the amount of provisional property tax for a year of assessment, any credit or deduction allowed under section 50 for the preceding year of assessment is to be taken into account.”.

**11. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)**

- (1) After section 80(2V)—

**Add**

“(2W) A person who, without reasonable excuse, fails to comply with section 15J commits an offence and is liable on conviction to—

- (a) a fine at level 3; and
- (b) a further fine of treble the undercharged amount.

(2X) A person who, without reasonable excuse, fails to comply with section 8(2) of Schedule 17FC commits an offence and is liable on conviction to—

(a) a fine at level 3; and

(b) a further fine of treble the undercharged amount.”.

(2) Before section 80(6)(a)—

**Add**

“(aa) section 15S (records to be kept);”.

(3) Section 80(6)(b)—

**Repeal the full stop**

**Substitute a semicolon.**

(4) After section 80(6)(b)—

**Add**

“(c) section 9 of Schedule 17FC (qualifying IP income: nexus requirement for ascertaining excepted portion etc.).”.

## 12. Section 82A amended (additional tax in certain cases)

(1) After section 82A(1H)—

**Add**

“(1I) If—

(a) a person, without reasonable excuse, fails to comply with section 15J; and

(b) no prosecution for an offence under section 80 has been instituted in respect of the same facts, the person is liable to be assessed under this section to additional tax of an amount not exceeding treble the undercharged amount.

(1J) If—

- (a) a person, without reasonable excuse, fails to comply with section 8(2) of Schedule 17FC; and
- (b) no prosecution for an offence under section 80 has been instituted in respect of the same facts, the person is liable to be assessed under this section to additional tax of an amount not exceeding treble the undercharged amount.”.

(2) After section 82A(4)(a)(i)(E)—

**Add**

- “(F) for additional tax to be assessed under subsection (1I)—the alleged failure to comply with section 15J;
- (G) for additional tax to be assessed under subsection (1J)—the alleged failure to comply with section 8(2) of Schedule 17FC;”.

**13. Section 89 amended (transitional provisions)**

After section 89(28)—

**Add**

- “(29) Schedule 55 sets out transitional provisions that have effect for the purposes of the amendments to this Ordinance made by the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 (17 of 2022).”.

**14. Schedule 17FC added**

After Schedule 17FB—

**Add**

## “Schedule 17FC

[ss. 15L, 51C, 80 &  
82A & Sch. 55]

### Qualifying IP Income: Nexus Requirement for Ascertaining Excepted Portion etc.

#### Part 1

#### Preliminary

##### 1. Interpretation of Schedule 17FC

(1) An expression used in this Schedule, and defined or otherwise explained in Division 3A of Part 4, has the same meaning as in that Division.

(2) In this Schedule—

*excepted portion* (例外部分)—see section 3 of this Schedule;

*non-Hong Kong resident person* (非香港居民人士) has the meaning given by section 50AAC(1);

*non-qualifying expenditure* (不合資格開支)—see section 6 of this Schedule;

*qualifying intellectual property* (合資格知識產權) means—

(a) a patent granted under the Patents Ordinance (Cap. 514) (*Cap. 514*) or under the law of any place outside Hong Kong;

(b) a patent application made under Cap. 514 or under the law of any place outside Hong Kong;  
or

- (c) a copyright subsisting in software under the Copyright Ordinance (Cap. 528) or under the law of any place outside Hong Kong;

**qualifying IP income** (合資格知識產權收入) means income derived from qualifying intellectual property in respect of—

- (a) the exhibition or use of, or a right to exhibit or use, (whether in or outside Hong Kong) the property; or
- (b) the imparting of, or undertaking to impart, knowledge directly or indirectly connected with the use (whether in or outside Hong Kong) of the property;

**qualifying R&D expenditure** (合資格研發開支)—see section 5 of this Schedule;

**R&D activity** (研發活動) has the meaning given by section 2 of Schedule 45;

**R&D fraction** (研發分數)—see section 4 of this Schedule;

**specified period** (指明期間), in relation to an MNE entity to which any qualifying IP income accrues, means the period—

- (a) beginning on 1 January 2023 or on an earlier date elected by the entity; and
  - (b) ending on the last day of the entity's basis period of the year of assessment during which the income accrues.
- (3) For the purposes of this Schedule—
- (a) a person is to be regarded as associated with another person if, as between them, the participation condition is met under section 50AAG; and

(b) a reference to associated person is to be read accordingly.

## 2. Consistency with OECD 2015 Report

(1) This Schedule is to be read in the way that best secures consistency with the requirements and guidance in Chapter 4 of the OECD 2015 Report.

(2) In this section—

**OECD 2015 Report** (《經合組織 2015 年報告》) means the Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report published by the Organisation for Economic Co-operation and Development in 2015.

## Part 2

### Excepted Portion of Qualifying IP Income

#### 3. Ascertaining excepted portion

The excepted portion of qualifying IP income received by an MNE entity is to be ascertained in accordance with the following formula—

$$P = I \times F$$

where: P means the excepted portion;

I means the qualifying IP income; and

F means the R&D fraction applicable to the qualifying IP income.

#### 4. Ascertaining R&D fraction

- (1) The R&D fraction applicable to qualifying IP income received by an MNE entity is to be ascertained in accordance with the following formula—

$$F = \frac{QE \times 130\%}{QE + NE}$$

where: F means the R&D fraction;

QE means the qualifying R&D expenditure incurred in respect of the qualifying intellectual property to which the qualifying IP income relates (*subject intellectual property*); and

NE means the non-qualifying expenditure incurred in respect of the subject intellectual property.

- (2) However, an R&D fraction is to be regarded as 100% if the percentage ascertained in accordance with subsection (1) is more than 100%.

#### 5. Meaning of QE: qualifying R&D expenditure

- (1) This section explains the meaning of *qualifying R&D expenditure* in relation to qualifying IP income received by an MNE entity.
- (2) Any expenditure (including capital expenditure) incurred by the MNE entity during the specified period for an R&D activity that—
- (a) is connected to the qualifying intellectual property to which the qualifying IP income relates (*subject intellectual property*); and

- (b) is carried out—
  - (i) by the MNE entity;
  - (ii) on behalf of the MNE entity by a person that is not associated with the MNE entity; or
  - (iii) in Hong Kong on behalf of the MNE entity by an associated person of the MNE entity that is a Hong Kong resident person,is, subject to subsections (3), (4), (5) and (6), a qualifying R&D expenditure incurred in respect of the subject intellectual property.
- (3) The following expenditures are not to be regarded as qualifying R&D expenditures—
  - (a) interest payments;
  - (b) payments for any land or building, or for any alteration, addition or extension to any building;
  - (c) any expenditure (including capital expenditure) incurred by the MNE entity for obtaining from another person (whether by acquisition, licensing, amalgamating with another company or otherwise) the subject intellectual property.
- (4) Subsection (5) applies if—
  - (a) the subject intellectual property is or was owned by another company that is a Hong Kong resident person (*original owner*);
  - (b) the MNE entity—
    - (i) obtained the property by amalgamating with the original owner; or



- (ii) acquired all equity interests in the original owner and subsequently acquired, or obtained a licence for, the property from the original owner; and
  - (c) the original owner has sufficient records of the expenditures it incurred in respect of the property, so that the MNE entity would still be able to comply with section 51C (as modified by section 9(2) and (3) of this Schedule) in respect of the expenditures even if—
    - (i) the references to the MNE entity in subsections (2) and (3)(c) were regarded as including the original owner; and
    - (ii) as a result, the expenditures became qualifying R&D expenditures.
- (5) Subsections (2) and (3)(c) apply as if the references to the MNE entity in those subsections included the original owner.
- (6) If, in addition to the subject intellectual property, a qualifying R&D expenditure is also connected to other items of intellectual property (including other qualifying intellectual property), the expenditure is to be apportioned between the subject intellectual property and those other items on a just and reasonable basis.
- (7) For the purposes of subsection (6), an expenditure is apportioned between the subject intellectual property and other items on a just and reasonable basis if the amount apportioned to the subject intellectual property represents the extent to which the expenditure was incurred in respect of the property.

**6. Meaning of NE: non-qualifying expenditure**

- (1) This section explains the meaning of *non-qualifying expenditure* in relation to qualifying IP income received by an MNE entity.
- (2) Each of the following expenditures is, subject to subsections (3), (4), (5), (6) and (7), a non-qualifying expenditure incurred in respect of the qualifying intellectual property to which the qualifying IP income relates (*subject intellectual property*)—
  - (a) any expenditure (including capital expenditure) incurred by the MNE entity during the specified period for obtaining from another person (whether by acquisition, licensing, amalgamating with another company or otherwise) the subject intellectual property;
  - (b) any expenditure (including capital expenditure) incurred by the MNE entity during the specified period for an R&D activity that—
    - (i) is connected to the subject intellectual property; and
    - (ii) is carried out—
      - (A) on behalf of the MNE entity by an associated person of the MNE entity that is a non-Hong Kong resident person; or
      - (B) outside Hong Kong on behalf of the MNE entity by an associated person of the MNE entity that is a Hong Kong resident person.
- (3) The following expenditures are not to be regarded as non-qualifying expenditures—

- (a) interest payments;
  - (b) payments for any land or building, or for any alteration, addition or extension to any building.
- (4) Subsections (5) and (6) apply if—
- (a) the subject intellectual property is or was owned by another company that is a Hong Kong resident person (*original owner*);
  - (b) the MNE entity—
    - (i) obtained the property by amalgamating with the original owner; or
    - (ii) acquired all equity interests in the original owner and subsequently acquired, or obtained a licence for, the property from the original owner; and
  - (c) the original owner has sufficient records of the expenditures it incurred in respect of the property, so that the MNE entity would still be able to comply with section 51C (as modified by section 9(2) and (3) of this Schedule) in respect of the expenditures even if—
    - (i) the references to the MNE entity in subsection (2) were regarded as including the original owner; and
    - (ii) as a result, the expenditures became non-qualifying expenditures.
- (5) Subsection (2) applies as if the references to the MNE entity in that subsection included the original owner.

- (6) In calculating the total amount of non-qualifying expenditures, the expenditure incurred by the MNE entity during the specified period for obtaining the subject intellectual property from the original owner is to be deducted.
- (7) If, in addition to the subject intellectual property, a non-qualifying expenditure is also connected to other items of intellectual property (including other qualifying intellectual property), the expenditure is to be apportioned between the subject intellectual property and those other items on a just and reasonable basis.
- (8) For the purposes of subsection (7), an expenditure is apportioned between the subject intellectual property and other items on a just and reasonable basis if the amount apportioned to the subject intellectual property represents the extent to which the expenditure was incurred in respect of the property.

### **Part 3**

## **Supplementary Provisions for Qualifying IP Income**

- 7. Setting off loss sustained in respect of qualifying intellectual property**
  - (1) This section applies if—
    - (a) any qualifying IP income received by an MNE entity is chargeable to profits tax for a year of assessment because of section 15I(1); and

- (b) during the basis period of that year of assessment, a loss is sustained in respect of the qualifying intellectual property to which the income relates.
- (2) The qualifying portion of the loss may be set off against the MNE entity's assessable profits for that year of assessment.
- (3) Any amount of the qualifying portion of the loss not so set off may be carried forward and set off, in accordance with section 19C, against the MNE entity's assessable profits for subsequent years of assessment.
- (4) The qualifying portion of a loss sustained in respect of qualifying intellectual property is to be ascertained in accordance with the following formula—

$$QP = L \times (1 - F)$$

- where: QP means the qualifying portion;  
L means the loss; and  
F means the R&D fraction applicable to the qualifying IP income to which the qualifying intellectual property relates.

- (5) To avoid doubt, the non-qualifying portion of a loss sustained in respect of qualifying intellectual property must not be set off against any assessable profits of the MNE entity.
- (6) The non-qualifying portion of a loss sustained in respect of qualifying intellectual property is to be ascertained in accordance with the following formula—

$$NP = L \times F$$

where: NP means the non-qualifying portion;  
L means the loss; and  
F means the R&D fraction applicable to the qualifying IP income to which the qualifying intellectual property relates.

**8. Effect of withdrawal, abandonment and refusal of patent application**

- (1) This section applies if—
  - (a) because of section 15L, section 15I(1) does not operate in relation to the excepted portion of qualifying IP income received by an MNE entity in a year of assessment;
  - (b) the income is derived from a patent application made under the Patents Ordinance (Cap. 514) or under the law of any place outside Hong Kong; and
  - (c) the application is withdrawn, abandoned or refused in a subsequent year of assessment.
- (2) The MNE entity must notify the Commissioner in writing of the withdrawal, abandonment or refusal within 4 months after the end of the basis period of that subsequent year of assessment, unless the entity has already been required to furnish a return under section 51(1).
- (3) Section 15I(1) applies to the excepted portion of the qualifying IP income as if it were specified foreign-sourced income received in Hong Kong during the basis period of that subsequent year of assessment.

## 9. Records to be kept

- (1) Without limiting section 15S, section 51C applies, with the modifications specified in subsections (2) and (3), to an MNE entity that relies on section 15L to claim that section 15I(1) does not operate in relation to the excepted portion of qualifying IP income it receives.
- (2) The MNE entity must retain records of transactions, acts or operations relating to the qualifying IP income under section 51C at least until the later of the following—
  - (a) the expiry of 7 years after the completion of those transactions, acts or operations; or
  - (b) the expiry of 7 years after making the claim mentioned in subsection (1).
- (3) The MNE entity must keep records of the following, in addition to records within the meaning of section 51C(3) and (4)—
  - (a) information sufficient to establish that the income concerned is qualifying IP income;
  - (b) details of all corresponding expenditures incurred;
  - (c) details of the qualifying intellectual property to which the income relates;
  - (d) if an apportionment is made under section 5(6) or 6(7) of this Schedule—information sufficient to establish that the apportionment is made on a just and reasonable basis;
  - (e) if a loss is set off under section 7 of this Schedule—details of the loss.

- (4) To avoid doubt, the records mentioned in subsection (3) are records of transactions, acts or operations relating to the qualifying IP income.
- (5) Section 80 applies to a failure to comply with section 51C as modified by subsections (2) and (3) in the same way section 80 applies to a failure to comply with section 51C.
- (6) In this section—  
*corresponding expenditures* (相應開支), in relation to qualifying IP income, means all of the following expenditures—
  - (a) qualifying R&D expenditures incurred in respect of the qualifying intellectual property to which the income relates;
  - (b) non-qualifying expenditures incurred in respect of the qualifying intellectual property to which the income relates;
  - (c) any other expenditures incurred in producing the income.

**10. Transitional arrangement for MNE entity with insufficient records**

- (1) This section applies if—
  - (a) qualifying IP income accrues to an MNE entity during the period—
    - (i) beginning on 1 January 2023; and
    - (ii) ending on the last day of the entity's basis period of the year of assessment beginning on 1 April 2024; and



- (b) the entity is unable to ascertain the R&D fraction applicable to the income under Part 2 of this Schedule because there are insufficient records.
- (2) For ascertaining the R&D fraction and keeping records, the MNE entity may elect that sections 5, 6 and 9 of this Schedule apply on the following basis—
  - (a) the references to “specified period” in sections 5(2) and 6(2)(a) and (b) of this Schedule are to be regarded as references to the period of 3 years ending on the last day of the entity’s basis period of the year of assessment during which the qualifying IP income accrues;
  - (b) the references to “the subject intellectual property” in sections 5(3)(c) and 6(2)(a) of this Schedule are to be regarded as references to any intellectual property;
  - (c) the following provisions of this Schedule are to be omitted—
    - (i) section 5(2)(a), (4), (5), (6) and (7);
    - (ii) section 6(2)(b)(i), (4), (5), (6), (7) and (8);
    - (iii) section 9(3)(d).”.

**15. Schedule 17G amended (meaning of *permanent establishment* in Hong Kong)**

Schedule 17G, after “[ss.]—

**Add**

“15H.”.

**16. Schedule 45 amended (deduction of R&D expenditures)**

Schedule 45—

**Repeal**

“Sch.”

**Substitute**

“Schs. 17FC &”.

**17. Schedules 54 and 55 added**

After Schedule 53—

**Add**

**“Schedule 54**

[s. 50AAA]

**Specifications for Section 50AAA in relation to  
Unilateral Tax Credits**

**Part 1**

**Preliminary**

**1. Interpretation of Schedule 54**

In this Schedule—

*adequate interest* (足夠權益)—see section 50AAAC;

*Hong Kong resident person* (香港居民人士) has the meaning given by section 50AAC(1);

*resident for tax purposes* (稅務居民) has the meaning given by section 50AAC(1);

*similar tax* (類似稅項) has the meaning given by section 50AAA(7);

*specified foreign-sourced income* (指明外地收入) has the meaning given by section 15H(1).

## Part 2

### Specifications for Section 50AAA

#### 2. Specified foreign-sourced income

- (1) For the purposes of section 50AAA(2)—
  - (a) the following income is specified: specified foreign-sourced income; and
  - (b) the following condition is specified for the income: the income is chargeable to profits tax because of section 15I(1).
- (2) For the purposes of section 50AAA(3), the following modification is specified for applying section 50 in relation to the similar tax payable in respect of specified foreign-sourced income: section 50(1A)(a)(ii) and (1B) is to be omitted.
- (3) For the purposes of section 50AAA(3)(a)(i), the following provisions are specified for the similar tax payable in respect of specified foreign-sourced income—
  - (a) the similar tax is to be allowed as a credit (*tax credit*) against the profits tax payable in respect of the income in Hong Kong;

- (b) if—
- (i) the income is a dividend received by a Hong Kong resident person (*subject person*) from a company that is resident for tax purposes in the territory concerned (*investee company*);
  - (ii) the dividend is paid out of the investee company's profits; and
  - (iii) at the time the dividend accrues, the subject person has an adequate interest in the investee company,  
the tax credit allowed to the subject person is, subject to paragraph (c), to include any similar tax payable in respect of the profits in the territory;
- (c) only the portion of the similar tax that represents the extent of—
- (i) the direct or indirect beneficial interest the subject person has in, or in relation to, the investee company; or
  - (ii) the voting rights the subject person is (whether directly or indirectly) entitled to exercise, or control the exercise of, in or in relation to the investee company,  
as ascertained when determining whether the subject person has an adequate interest in the investee company, is to be included in the tax credit.

- (4) For the purposes of section 50AAA(4), the following transitional arrangement is specified for the specification of specified foreign-sourced income under subsection (1)(a): section 50AAA applies in relation to profits tax payable for a year of assessment beginning on or after 1 April 2022 in respect of income accrued and received on or after 1 January 2023.
- (5) For the purposes of the definition of *similar tax* in section 50AAA(7), the following tax is specified: profits tax.

---

## Schedule 55

[s. 89(29)]

### **Transitional Provisions for Inland Revenue (Amendment) (Taxation on Specified Foreign- sourced Income) Ordinance 2022**

#### **1. Interpretation of Schedule 55**

In this Schedule—

*specified foreign-sourced income* (指明外地收入) has the meaning given by section 15H(1).

#### **2. Transitional arrangements**

- (1) Division 3A of Part 4 and Schedule 17FC apply in relation to specified foreign-sourced income accrued and received on or after 1 January 2023.

- (2) Without limiting subsection (1), section 7 of Schedule 17FC and section 15P apply in relation to losses sustained on or after 1 January 2023.
- (3) Sections 50(7A) and (7B) and 50AAAB apply in relation to tax payable for a year of assessment beginning on or after 1 April 2022 in respect of income accrued and received on or after 1 January 2023.
- (4) The amendments made to sections 63C, 63H and 63M by the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 (17 of 2022) apply in relation to provisional tax payable for a year of assessment beginning on or after 1 April 2023.”.