

INLAND REVENUE (AMENDMENT) (NO. 2) ORDINANCE 2010

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 4 OF 2010

L.S.

Donald TSANG
Chief Executive
11 February 2010

An Ordinance to amend the Inland Revenue Ordinance—

- (a) to improve the operation of the Board of Review;
- (b) to provide for the deduction allowed for interest expenses incurred in the acquisition of prescribed fixed assets and specified machinery or plant;
- (c) to enable the Commissioner of Inland Revenue (“the Commissioner”) to make a property tax assessment on persons who receive rent on any common parts of any land or building;
- (d) to empower an assessor to make an additional assessment of the tax payable in consequence of a taxpayer’s revocation of a claim for deduction of home loan interest after the statutory period;
- (e) to extend the period within which a prosecution may be instituted for an offence relating to breach of secrecy;
- (f) to enable the Commissioner to refund to a taxpayer the balance remaining in the Tax Reserve Certificates accounts without requiring the taxpayer to return the tax reserve certificate to the Commissioner; and
- (g) to make minor and textual amendments,
and to make consequential amendments.

[12 February 2010]

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) (No. 2) Ordinance 2010.

PART 2

AMENDMENTS RELATING TO ADMINISTRATION OF INLAND
REVENUE ORDINANCE

2. Interpretation

(1) Section 2(1) of the Inland Revenue Ordinance (Cap. 112) is amended by repealing the definition of “owner” and substituting—

““owner” (擁有人), in respect of land or buildings or land and buildings, includes—

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

(2) Section 2(1) is amended by adding—

““Board of Review” (稅務上訴委員會) means the Board of Review referred to in section 65;

“common parts” (公用部分), in relation to any land or buildings or land and buildings—

(a) means the whole of the land or buildings or land and buildings, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and

(b) includes, unless so specified or designated in the instrument mentioned in paragraph (a), those parts of a building specified in Schedule 1 to the Building Management Ordinance (Cap. 344);”.

3. Establishment of Board of Inland Revenue.

Power of Chief Executive to appoint a Commissioner and other officers

Section 3(1)(c) is amended, in the Chinese text, by repealing “投票所得的多數票” and substituting “過半數票”.

4. Ascertainment of chargeable profits

Section 16(2)(e)(i) is repealed and the following substituted—

- “(i) capital expenditure incurred by the borrower on the provision of—
- (A) any machinery or plant, where the expenditure qualifies for an allowance under Part VI;
 - (B) any machinery or plant for research and development, where the expenditure may be deducted under section 16B;
 - (C) a prescribed fixed asset (as defined in section 16G(6)), where the expenditure may be deducted under section 16G; or
 - (D) any environmental protection machinery (as defined in section 16H(1)), where the expenditure may be deducted under section 16I; or”.

5. Cessation of source of profits in years of assessment commencing on 1 April 1975

Section 18D(2) is amended, in the proviso, by repealing “, subject to subsection (3),”.

6. Approved charitable donations (Part IVA)

Section 26C(1) is amended, in the Chinese text, by repealing “不小於” and substituting “不少於”.

7. Home loan interest

Section 26E is amended by adding—

“(6A) If a person revokes a claim under subsection (6) after 6 years from the expiration of the year of assessment to which the claim relates, an assessor may, within 2 years after the revocation, make an additional assessment of the tax payable in consequence of the revocation and for this purpose, section 60(1) applies to the additional assessment as if it were an assessment made under that section.”.

8. Power to issue search warrant

Section 51B(4) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 3” and substituting “commits an offence and is liable on conviction to a fine at level 3”.

PART 3

AMENDMENTS RELATING TO BOARD OF REVIEW

9. Constitution of the Board of Review

(1) Section 65(1) of the Inland Revenue Ordinance (Cap. 112) is amended by adding “and determining” after “hearing”.

(2) Section 65(4) is repealed and the following substituted—

“(4) For the purpose of hearing and determining an appeal—

(a) the Board comprises 3 or more members of the panel as follows—

(i) the chairman or a deputy chairman nominated by the chairman; and

(ii) at least 2 more members of the panel nominated by the chairman;

(b) the member mentioned in paragraph (a)(i) is to preside at the hearing;

(c) the clerk must summon the members mentioned in paragraph (a)(i) and (ii) to attend meetings of the Board at which the appeal is to be heard;

- (d) the quorum for a meeting of the Board hearing the appeal is 3 members; and
 - (e) a matter arising at a meeting of the Board is determined by a majority of votes of the members present and voting on the matter and, if there is an equality of votes, the member presiding has a casting vote in addition to his or her original vote.”.
- (3) Section 65(7) is repealed and the following substituted—
- “(7) If a person ceases to be the chairman, a deputy chairman or a member of the panel and, at the time of that event, the person is or has been involved in the hearing or determination of an appeal by the Board, that person may continue to—
- (a) hear and determine the appeal; or
 - (b) perform any other function as a member of the Board in relation to the appeal in accordance with section 68(2C) or 69(1) or (5) until the appeal is finally disposed of by the Board.”.

10. Right of appeal to the Board of Review

Section 66(1A) is amended by repealing “This subsection shall apply to an appeal relating to any assessment in respect of which notice of assessment is given on or after 1 April 1971.”.

11. Section added

The following is added—

“68A. Power of Board of Review to correct clerical mistakes and other errors

The Board of Review may correct—

- (a) any clerical mistake in any decision of the Board made in relation to an appeal; or
- (b) any error in any decision of the Board arising from any accidental slip or omission.”.

PART 4

MISCELLANEOUS AND MINOR AMENDMENTS TO INLAND REVENUE
ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Division 1—Inland Revenue Ordinance

12. Provisions regarding payment of tax

(1) Section 71(7)(d) of the Inland Revenue Ordinance (Cap. 112) is amended by repealing everything after “under paragraph (c),” and substituting—

“the Commissioner must repay to the holder of the certificate—

- (i) the principal value represented by the certificate or part of the certificate; and
- (ii) the interest on that value, calculated in accordance with the rules from the date of issue of the certificate to the date of the final determination of the objection or appeal; and”.

(2) Section 71(11) is amended by repealing “the rate fixed by the Chief Justice by notice in the Gazette under section 50” and substituting “the rate determined by the Chief Justice by order under section 50(1)(b)”.

**13. Penalties for failure to make returns,
making incorrect returns, etc.**

(1) Section 80(1) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 3” and substituting “commits an offence and is liable on conviction to a fine at level 3”.

(2) Section 80(1A) is amended by repealing “shall be guilty of any offence: Penalty a fine at level 6” and substituting “commits an offence and is liable on conviction to a fine at level 6”.

(3) Section 80(1AB) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 3” and substituting “commits an offence and is liable on conviction to a fine at level 3”.

(4) Section 80(2) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 3” and substituting “commits an offence and is liable on conviction to a fine at level 3”.

(5) Section 80(2B) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 4” and substituting “commits an offence and is liable on conviction to a fine at level 4”.

(6) Section 80(2C) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 6” and substituting “commits an offence and is liable on conviction to a fine at level 6”.

14. Breach of secrecy and other matters to be offences

(1) Section 81 is amended by renumbering it as section 81(1).

(2) Section 81(1) is amended by repealing “shall be guilty of an offence: Penalty a fine at level 5” and substituting “commits an offence and is liable on conviction to a fine at level 5”.

(3) Section 81 is amended by adding—

“(2) Proceedings in respect of an offence under this section must not be commenced after 2 years from the commission of the offence.

(3) Subsection (2) applies only to an offence committed on or after the commencement of the Inland Revenue (Amendment) (No. 2) Ordinance 2010 (4 of 2010).”.

15. Penal provisions relating to fraud, etc.

(1) Section 82(1) is amended by repealing everything after paragraph (g) and substituting—

“commits an offence.”.

(2) Section 82 is amended by adding—

“(1A) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction to—

(i) a fine at level 3;

(ii) a further fine of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence has not been detected; and

(iii) imprisonment for 6 months; and

(b) on indictment to—

(i) a fine at level 5;

(ii) a further fine of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence has not been detected; and

(iii) imprisonment for 3 years.”.

16. Appeals against assessment to additional tax to Board of Review

Section 82B(3) is amended by adding “68A,” after “68,”.

17. Transitional provisions

(1) Section 89(2)(a) is amended by repealing “; and” and substituting a full stop.

(2) Section 89(2)(b) is repealed.

18. Allowances

Schedule 4 is amended, under the subheading “For the years of assessment 1998/99 to 2002/03 inclusive”, in the second column, by repealing “or percentage”.

19. Schedule 6 amended

Item 9 of Part II of Schedule 6 is repealed and the following substituted—

“9. The Council of Europe Development Bank (formerly known as The Council of Europe Social Development Fund).”.

20. Transitional provisions relating to the Inland Revenue (Amendment) (No. 2) Ordinance 1993

Schedule 7 is repealed.

Division 2—Specification of Arrangements (Government of the Kingdom of Belgium Concerning Air Services) (Double Taxation) Order

21. Repeal

The Specification of Arrangements (Government of the Kingdom of Belgium Concerning Air Services) (Double Taxation) Order (Cap. 112 sub. leg. U) is repealed.

PART 5

CONSEQUENTIAL AMENDMENTS TO TAX RESERVE CERTIFICATES ORDINANCE
AND ITS SUBSIDIARY LEGISLATION

Division 1—Tax Reserve Certificates Ordinance

22. Power of Commissioner to issue tax reserve certificates and maintain accounts

(1) Section 3(1A) of the Tax Reserve Certificates Ordinance (Cap. 289) is repealed and the following substituted—

“(1A) If a person applies for the purchase of a certificate other than pursuant to the proviso to section 71(2) of the Inland Revenue Ordinance (Cap. 112), the person (“applicant”) must make an application to the Commissioner for an account to be maintained in the applicant’s name unless an account is already being maintained in the applicant’s name.”.

(2) Section 3(1AB) is repealed and the following substituted—

“(1AB) If an account is maintained in the name of an applicant, the Commissioner, for each payment received from the applicant for the purchase of a certificate in the circumstances mentioned in subsection (1A), must make an entry in the account instead of issuing a certificate for the payment.”.

Division 2—Tax Reserve Certificates (Fourth Series) Rules

23. Schedule 1 amended

Schedule 1 to the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A) is amended, in Form 2, in the second paragraph of the “*REVERSE OF FORM*”—

- (a) in subparagraph (b), by repealing “; and/or” and substituting a full stop;
- (b) by repealing subparagraph (c).