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# Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**ORDINANCE NO. 32 OF 2023**



John KC LEE  
Chief Executive  
7 December 2023

An Ordinance to amend the Inland Revenue Ordinance to provide that certain foreign-sourced gains and profits derived from the sale of movable property and immovable property are to be regarded as arising in or derived from Hong Kong; to provide for an intra-group transfer relief for such gains and profits; and to provide for related and transitional matters.

[1 January 2024]

Enacted by the Legislative Council.

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023.
- (2) This Ordinance comes into operation on 1 January 2024.

**2. Inland Revenue Ordinance amended**

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 14.

**3. Section 15H amended (interpretation of Division 3A of Part 4)**

- (1) Section 15H(1), definition of *disposal gain*—  
**Repeal**

everything after “means”

**Substitute**

“any IP disposal gain or non-IP disposal gain;”.

- (2) Section 15H(1), definition of *sale*—

**Repeal**

everything after “to” and before “for”

**Substitute**

“any property, means a transfer of the property (other than a transfer effected by extinguishing the property)”.

- (3) Section 15H(1), definition of *specified foreign-sourced income*, paragraphs (a), (b) and (c), before “disposal”—

**Add**

“non-IP”.

- (4) Section 15H(1), definition of *specified foreign-sourced income*, paragraph (c)(ii)—

**Repeal**

“profits; or”

**Substitute**

“profits;”.

- (5) Section 15H(1), definition of *specified foreign-sourced income*, paragraph (d), before “disposal”—

**Add**

“non-IP”.

- (6) Section 15H(1), definition of *specified foreign-sourced income*, paragraph (d)(ii), after “sums;”—

**Add**

“or”.

- (7) Section 15H(1), definition of *specified foreign-sourced income*, after paragraph (d)—

**Add**

- “(e) any non-IP disposal gain that—
- (i) accrues to an entity that is a trader; and
  - (ii) is derived from, or is incidental to, the entity’s business as a trader;”.

- (8) Section 15H(1)—

**Add in alphabetical order**

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

*IP disposal gain* (知識產權處置收益) means any gain or profit derived from the sale of intellectual property;

*non-IP disposal gain* (非知識產權處置收益) means any gain or profit derived from the sale of property, but does not include IP disposal gains;

*property* (財產) means any movable property or immovable property;

*trader* (買賣商) means an entity that sells, or offers to sell, property in the entity’s ordinary course of business;”.

**4. Section 15K amended (exception 1: interest, dividend or disposal gain subject to economic substance requirement being met)**

- (1) Section 15K, heading, before “**disposal**”—

**Add**

“**non-IP**”.

- (2) Section 15K(1)(a), before “disposal”—

**Add**

“non-IP”.

- (3) Section 15K(3), definition of *pure equity-holding entity*, paragraph (b)(ii), before “disposal”—

**Add**

“equity interest”.

**5. Section 15M amended (exception 3: dividend or disposal gain subject to participation requirement being met)**

- (1) Section 15M, heading, before “disposal”—

**Add**

“equity interest”.

- (2) Section 15M(1)(b)(i) and (ii), before “disposal”—

**Add**

“equity interest”.

- (3) Section 15M(3), definition of *investee entity*, paragraph (b)—

**Repeal**

“a disposal”

**Substitute**

“an equity interest disposal”.

**6. Section 15N amended (when does section 15M not apply)**

Section 15N(2)(c)—

**Repeal**

“a disposal”

**Substitute**

“an equity interest disposal”.

**7. Sections 150A, 150B and 150C added**

Part 4, Division 3A, Subdivision 3, after section 150—

**Add**

**“150A. Exception 4: intra-group transfer relief for disposal gain**

- (1) This section applies if—
  - (a) any specified foreign-sourced income (*subject income*) received in Hong Kong by an MNE entity (*selling entity*) is a disposal gain;
  - (b) the sale from which the gain is derived (*subject sale*) is an intra-group transfer;
  - (c) the property to which the subject sale relates (*subject property*) is acquired by an entity (*acquiring entity*); and
  - (d) both the selling entity and the acquiring entity are, at the time of the subject sale, chargeable to profits tax under this Part.
- (2) For the purposes of subsection (1)(b), the subject sale is an intra-group transfer if the selling entity and the acquiring entity are, at the time of the sale, associated with each other.
- (3) Subject to section 150B, in applying section 15I(1) to the subject income, the selling entity is to be regarded as having sold the subject property for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the selling entity.
- (4) Subject to section 150B, subsections (5), (6), (7), (8) and (9) apply if, subsequent to the subject sale, the acquiring entity—

- (a) derives specified foreign-sourced income (*future income*) from the subject property or a resale of the property; and
  - (b) receives the future income in Hong Kong.
- (5) In applying this Division and (if applicable) Schedule 17FC to the future income, the acquiring entity is to be regarded as having acquired the property for the consideration mentioned in subsection (3) at the time at which the selling entity acquired, or is to be regarded as having acquired, the property.
- (6) If—
- (a) an outgoing or expense (however called) is incurred by the selling entity in the production of the subject income;
  - (b) but for the operation of subsection (3), that outgoing or expense, or a part of it, would be deductible for a year of assessment in accordance with section 15Q and Division 4; and
  - (c) the future income is a disposal gain, that outgoing or expense, or that part of the outgoing or expense, is, for the purposes of section 15Q and Division 4, to be regarded as having been incurred by the acquiring entity in the production of the future income.
- (7) If—
- (a) any balancing charge is directed to be made on, or any allowance is made to, the selling entity under Part 6;
  - (b) that charge or allowance, or a part of it, relates to the subject income;



- (c) but for the operation of subsection (3), that charge or allowance, or that part of the charge or allowance, would be taken into account under section 18F or 19E (whether or not because of section 15R) when calculating the amount of the selling entity's assessable profits or loss; and
  - (d) the future income is a disposal gain, that charge or allowance, or that part of the charge or allowance, is, for the purposes of sections 15R, 18F and 19E and Part 6, to be regarded as having been directed to be made on, or having been made to, the acquiring entity and as relating to the future income.
- (8) If—
- (a) but for the operation of subsection (3), any tax paid in respect of the subject income by the selling entity in a territory outside Hong Kong (*foreign tax*) would be allowable under section 50 (whether or not because of section 50AAA) as a credit against tax payable in respect of that income by the selling entity in Hong Kong; and
  - (b) the future income is a disposal gain, that foreign tax is, for the purposes of sections 50 and 50AAA and Schedule 54, to be regarded as tax paid in respect of the future income by the acquiring entity in that territory.
- (9) If both the subject income and future income are qualifying IP disposal gains, then in applying Schedule 17FC to the future income—

- (a) all qualifying R&D expenditures incurred by the selling entity in respect of the subject property are to be regarded as qualifying R&D expenditures incurred by the acquiring entity in respect of the subject property; and
- (b) all non-qualifying expenditures incurred by the selling entity in respect of the subject property are to be regarded as non-qualifying expenditures incurred by the acquiring entity in respect of the subject property.

(10) In this section—

*associated* (相聯)—see section 150C;

*non-qualifying expenditure* (不合資格開支)—see section 6 of Schedule 17FC;

*qualifying IP disposal gain* (合資格知識產權處置收益) has the meaning given by section 1(2) of Schedule 17FC;

*qualifying R&D expenditure* (合資格研發開支)—see section 5 of Schedule 17FC.

### **150B. When does section 150A cease to apply etc.**

- (1) For the purposes of section 150A(3) and (4), this section applies if, within 2 years after the subject sale in relation to the subject income mentioned in section 150A(3), any of the following events occurs—
  - (a) the selling entity or the acquiring entity ceases to be chargeable to profits tax under this Part;
  - (b) the selling entity and the acquiring entity cease to be associated with each other.
- (2) In relation to the subject income—
  - (a) section 150A(3) is to cease to apply;

- (b) section 15I(1) is to apply as if the income were received in Hong Kong during the selling entity's basis period of the year of assessment during which the event occurs; and
- (c) if, as a result of the operation of paragraph (b), profits tax is chargeable in respect of the income because of section 15I(1)—
  - (i) the selling entity is chargeable to the tax in the entity's name or in the name of the acquiring entity; and
  - (ii) the tax is recoverable by all means provided in this Ordinance from the selling entity or acquiring entity.
- (3) If any future income in relation to which section 15OA(5) applies has already accrued to, and has already been received in Hong Kong by, the acquiring entity at the time of the event, then in relation to the income—
  - (a) section 15OA(5) and (if applicable) section 15OA(6), (7), (8) and (9) are to cease to apply; and
  - (b) if the income was not chargeable to profits tax because of section 15OA(5), section 15I(1) is to apply as if the income were received in Hong Kong during the acquiring entity's basis period of the year of assessment during which the event occurs.
- (4) In relation to any future income that—
  - (a) has not yet accrued to the acquiring entity at the time of the event; or

(b) has already accrued to, but has not yet been received in Hong Kong by, the acquiring entity at the time of the event,

section 150A(5), (6), (7), (8) and (9) does not apply even if such income eventually accrues to, or is received in Hong Kong by, the acquiring entity.

(5) In this section—

**acquiring entity** (取得方), in relation to a subject sale, means the entity that acquires the subject property;

**associated** (相聯)—see section 150C;

**future income** (未來收入), in relation to a subject sale, means any specified foreign-sourced income derived subsequent to the sale by the acquiring entity from the subject property or a resale of the property;

**selling entity** (出售方), in relation to a subject sale, means the entity that sells the subject property;

**subject property** (標的財產), in relation to a subject sale, means the property to which the sale relates;

**subject sale** (標的出售), in relation to any subject income, means the sale from which the income is derived.

**150C. Supplementary provision to sections 150A and 150B: meaning of *associated***

(1) For the purposes of sections 150A and 150B, 2 entities are associated with each other if—

- (a) one of them has an associating interest in the other; or
- (b) a third entity has an associating interest in both of them.

- (2) For the purposes of subsection (1), an entity (*entity A*) has an associating interest in another entity (*entity B*) if—
  - (a) entity A has at least 75% of direct or indirect beneficial interest in, or in relation to, entity B;  
or
  - (b) entity A is, directly or indirectly, entitled to exercise, or control the exercise of, at least 75% of the voting rights in, or in relation to, entity B.
- (3) In applying subsection (2), if entity A has a direct beneficial interest in entity B, the extent of the beneficial interest of entity A in entity B is—
  - (a) if entity 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 entity A;
  - (b) if entity B is a partnership that is not a trustee of a trust estate—the percentage of the income of the partnership to which entity A is entitled;
  - (c) if entity B is a trustee of a trust estate—the percentage in value of the trust estate in which entity A is interested; or
  - (d) if entity B is an entity that does not fall within any of paragraphs (a), (b) and (c)—the percentage of entity A's ownership interest in the entity.
- (4) In applying subsection (2), if entity A has an indirect beneficial interest in, or is indirectly entitled to exercise or control the exercise of voting rights in, entity B through another entity (*interposed entity*), the extent of the beneficial interest or voting rights of entity A in entity B is—

- 
- (a) if there is only one interposed entity—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest or voting rights of entity A in the interposed entity by the percentage representing the extent of the beneficial interest or voting rights of the interposed entity in entity B; or
  - (b) if there is a series of 2 or more interposed entities—the percentage arrived at by multiplying the percentage representing the extent of the beneficial interest or voting rights of entity A in the first interposed entity in the series by—
    - (i) the percentage representing the extent of the beneficial interest or voting rights of each interposed entity (other than the last interposed entity) in the series in the next interposed entity in the series; and
    - (ii) the percentage representing the extent of the beneficial interest or voting rights of the last interposed entity in the series in entity B.
- (5) For the purposes of subsection (4)—
- (a) subsection (3) applies in determining the extent of the beneficial interest of entity A in an interposed entity as if the references to entity B in subsection (3) were references to an interposed entity;

- (b) subsection (3) applies in determining the extent of the beneficial interest of an interposed entity in entity B as if the references to entity A in subsection (3) were references to an interposed entity; and
- (c) subsection (3) applies in determining the extent of the beneficial interest of an interposed entity (*interposed entity X*) in another interposed entity (*interposed entity Y*) as if—
  - (i) the references to entity A in subsection (3) were references to interposed entity X; and
  - (ii) the references to entity B in subsection (3) were references to interposed entity Y.
- (6) In applying subsection (2)(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.
- (7) 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.”.

**8. Section 15P amended (setting off loss sustained from sale of equity interests outside Hong Kong)**

(1) Section 15P, heading—

**Repeal**

“equity interests”

**Substitute**

“certain property”.

(2) Section 15P(1)(a)—

**Repeal**

everything after “of”

**Substitute**

“any property (other than qualifying intellectual property as defined by section 1(2) of Schedule 17FC);”.

**9. Section 79 amended (tax paid in excess to be refunded)**

(1) Section 79(3), Chinese text—

**Repeal**

“的收據”

**Substitute**

“收取該項退款，”。

(2) After section 79(3)—

**Add**

“(3A) If an entity (*entity A*) has been assessed in the name of another entity (*entity B*) under section 15OB(2)(c) and the tax so assessed has been paid by entity B—

(a) entity A or entity B, but not both, may make a claim under subsection (1) for a refund of the tax overpaid; and



(b) if a refund is made to entity B, the entity's receipt is a valid discharge in respect of the amount of the refund.”.

(3) After section 79(4)—

**Add**

“(5) In this section—

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

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

After section 89(29)—

**Add**

“(30) Schedule 56 sets out transitional provisions that have effect for the purposes of the amendments to this Ordinance made by the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 (32 of 2023).”.

**11. Schedule 17FC amended (qualifying IP income: nexus requirement for ascertaining excepted portion etc.)**

(1) Schedule 17FC—

**Repeal**

“51C, 80 & 82A & Sch. 55]”

**Substitute**

“150A, 15P, 51C, 80 & 82A & Schs. 55 & 56]”.

(2) Schedule 17FC, section 1(2), definition of *qualifying IP income*—

**Repeal**

everything after “means”

**Substitute**

“—

- (a) any qualifying general IP income; or
  - (b) any qualifying IP disposal gain;”.
- (3) Schedule 17FC, section 1(2), definition of *specified period*—

**Repeal paragraphs (a) and (b)**

**Substitute**

- “(a) if the income is qualifying general IP income—
- (i) beginning on 1 January 2023 or on an earlier date elected by the entity; and
  - (ii) ending on the last day of the entity’s basis period of the year of assessment during which the income accrues; or
- (b) if the income is a qualifying IP disposal gain—
- (i) beginning on 1 January 2024 or on an earlier date elected by the entity; and
  - (ii) ending on the last day of the entity’s basis period of the year of assessment during which the income accrues.”.

(4) Schedule 17FC, section 1(2)—

**Add in alphabetical order**

“*qualifying general IP income* (合資格一般知識產權收入) means any 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 IP disposal gain*** (合資格知識產權處置收益) means any gain or profit derived from the sale of qualifying intellectual property;”.

- (5) Schedule 17FC, section 7(1)(a), before “IP”—

**Add**

“general”.

- (6) Schedule 17FC, section 7(1)(b), after “loss”—

**Add**

“(general loss)”.

- (7) Schedule 17FC, after section 7(1)—

**Add**

“(1A) This section also applies if—

- (a) an MNE entity sustains a loss (***sale loss***) from a sale in a territory outside Hong Kong of qualifying intellectual property;
- (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, or part of the gain, would have been chargeable to profits tax because of section 15I(1).”.

- (8) Schedule 17FC, section 7(2)—

**Repeal**

“loss may”

**Substitute**

“general loss or sale loss may, subject to subsection (3A),”.

- (9) Schedule 17FC, section 7(3)—

**Repeal**

“loss not so set off may”

**Substitute**

“general loss or sale loss not so set off may, subject to subsection (3A),”.

- (10) Schedule 17FC, after section 7(3)—

**Add**

“(3A) A sale 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).”.

- (11) Schedule 17FC, section 7(4)—

**Repeal**

“a loss”

**Substitute**

“a general loss or sale loss”.

- (12) Schedule 17FC, section 7(4)—

**Repeal**

“the qualifying IP income to which the qualifying intellectual property relates.”

**Substitute**

“the qualifying intellectual property.”.

- (13) Schedule 17FC, section 7(5)—

**Repeal**

“a loss”

**Substitute**

“a general loss or sale loss”.

- (14) Schedule 17FC, section 7(6)—

**Repeal**

“a loss”

**Substitute**

“a general loss or sale loss”.

- (15) Schedule 17FC, section 7(6)—

**Repeal**

“the qualifying IP income to which the qualifying intellectual property relates.”

**Substitute**

“the qualifying intellectual property.”.

- (16) Schedule 17FC, after section 7(6)—

**Add**

“(7) For ascertaining the R&D fraction applicable to qualifying intellectual property under subsections (4) and (6), sections 4, 5 and 6 of this Schedule are to apply with the following modifications—

- (a) in section 1(2) of this Schedule, the following definition is substituted for the definition of *specified period*—

“*specified period* (指明期間), in relation to an MNE entity that sustains a loss in respect of qualifying intellectual property, means the period—

- (a) if the loss is a general loss within the meaning of section 7(1)(b) of this Schedule—
  - (i) beginning on 1 January 2023 or on an earlier date elected by the entity; and
  - (ii) ending on the last day of the entity’s basis period of the year of assessment during which the loss is sustained; or
- (b) if the loss is a sale loss within the meaning of section 7(1A)(a) of this Schedule—
  - (i) beginning on 1 January 2024 or on an earlier date elected by the entity; and
  - (ii) ending on the last day of the entity’s basis period of the year of assessment during which the loss is sustained.”;
- (b) in section 4(1) of this Schedule—
  - (i) the words “qualifying intellectual property (*subject intellectual property*) held” are substituted for the words “qualifying IP income received”; and

- (ii) the words “subject intellectual property” are substituted for the words “qualifying intellectual property to which the qualifying IP income relates (*subject intellectual property*)”;
  - (c) in sections 5(1) and 6(1) of this Schedule, the words “qualifying intellectual property (*subject intellectual property*) held” are substituted for the words “qualifying IP income received”;
  - (d) in sections 5(2) and 6(2) of this Schedule, the words “subject intellectual property” are substituted for the words “qualifying intellectual property to which the qualifying IP income relates (*subject intellectual property*)”.
- (17) Schedule 17FC, section 10(1)(a)—

**Repeal subparagraphs (i) and (ii)**

**Substitute**

- “(i) if the income is qualifying general IP income—
- (A) beginning on 1 January 2023; and
  - (B) ending on the last day of the entity’s basis period of the year of assessment beginning on 1 April 2024; or
- (ii) if the income is a qualifying IP disposal gain—
- (A) beginning on 1 January 2024; and
  - (B) ending on the last day of the entity’s basis period of the year of assessment beginning on 1 April 2025; and”.

**12. Schedule 54 amended (specifications for section 50AAA in relation to unilateral tax credits)**

(1) Schedule 54—

**Repeal**

“[s.”

**Substitute**

“[ss. 15OA &”.

(2) Schedule 54, section 1—

**Add in alphabetical order**

“*disposal gain* (處置收益) has the meaning given by section 15H(1);

*equity interest disposal gain* (股權權益處置收益) has the meaning given by section 15H(1);”.

(3) Schedule 54, section 2(4)—

**Repeal**

everything after “subsection”

**Substitute**

“(1)(a)—

(a) in relation to any specified foreign-sourced income that is a disposal gain (other than equity interest disposal gain)—section 50AAA applies in relation to profits tax payable for a year of assessment beginning on or after 1 April 2023 in respect of income accrued and received on or after 1 January 2024;

(b) in relation to other specified foreign-sourced income—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.”.

**13. Schedule 55 amended (transitional provisions for Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022)**

- (1) Schedule 55, section 1, definition of *specified foreign-sourced income*—

**Repeal**

“15H(1).”

**Substitute**

“15H(1) as in force immediately before 1 January 2024.”.

- (2) Schedule 55, section 2(1)—

**Repeal**

“and Schedule 17FC”

**Substitute**

“as in force immediately before 1 January 2024 and Schedule 17FC as in force immediately before 1 January 2024”.

- (3) Schedule 55, section 2(2)—

**Repeal**

“and section 15P”

**Substitute**

“as in force immediately before 1 January 2024 and section 15P as in force immediately before 1 January 2024”.

**14. Schedule 56 added**

After Schedule 55—

**Add**

## “Schedule 56

[s. 89(30)]

### **Transitional Provisions for Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023**

#### **1. Interpretation of Schedule 56**

In this Schedule—

**2023 Amendment Ordinance** (《2023年修訂條例》) means the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 (32 of 2023);

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

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

- (1) The amendments made to Division 3A of Part 4 and Schedule 17FC by the 2023 Amendment Ordinance apply in relation to specified foreign-sourced income accrued and received on or after 1 January 2024.
- (2) Without limiting subsection (1), the amendments made to section 7 of Schedule 17FC and section 15P by the 2023 Amendment Ordinance apply in relation to losses sustained on or after 1 January 2024.”.