

15. Certain amounts deemed trading receipts

- (1) For the purposes of this Ordinance, the sums described in the following paragraphs shall be deemed to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong.
- (a) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person from the exhibition or use in Hong Kong of cinematograph or television film or tape, any sound recording, or any advertising material connected with such film, tape or recording;
- (b) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person for the use of or right to use in Hong Kong any patent, design, trademark, copyright material, secret process or formula or other property of a similar nature, or for imparting or undertaking to impart knowledge directly or indirectly connected with the use in Hong Kong of any such patent, design, trademark, copyright material, secret process or formula or other property; (*Amended, 12 of 2004, s 5*)
- (ba) sums, not otherwise chargeable to tax under this Part, received or accrued to a person for the use of or right to use outside Hong Kong any patent, design, trademark, copyright material, secret process or formula or other property of a similar nature, or for imparting or undertaking to impart knowledge directly or indirectly connected with the use outside Hong Kong of any such patent, design, trademark, copyright material, secret process or formula or other property, which are deductible in ascertaining the assessable profits of a person under this Part; (*Added, 12 of 2004, s 5*)
- (c) sums received by or accrued to a person by way of grant, subsidy or similar financial assistance in connection with the carrying on of a trade, profession or business in Hong Kong, other than sums in connection with capital expenditure made or to be made by the person;
- (d) sums received by or accrued to a person by way of hire, rental or similar charges for the use of movable property in Hong Kong or the right to use movable property in Hong Kong;
- (e) (*Repealed, 7 of 1975, s 7*)
- (f) sums received by or accrued to a corporation carrying on a trade, profession or business in Hong Kong by the way of interest derived from Hong Kong; (*Replaced, 19 of 1986, s 2*)
- (g) sums received by or accrued to a person, other than a corporation, carrying on a trade, profession or business in Hong Kong by way of interest derived from Hong Kong

which interest is in respect of the funds of the trade, profession or business; (*Replaced, 19 of 1986, s 2; Amended, 17 of 1989, s 4*)

- (h) sums received by or accrued to a person as a refund to the person of –
- (i) contributions paid as an employer to a recognised occupational retirement scheme; or
- (ii) voluntary contributions paid as an employer to a mandatory provident fund scheme,
- but only to the extent that the sums are allowed as deductions in ascertaining the person's assessable profits under this Part; (*Replaced, 4 of 1998, s. 6*)
- (i) sums, not otherwise chargeable to tax under this Part, received by or accrued to a financial institution by way of interest which arises through or from the carrying on by the financial institution of its business in Hong Kong, notwithstanding that the moneys in respect of which the interest is received or accrued are made available outside Hong Kong; (*Added, 73 of 1978, s 3*)
- (j) sums received by or accrued to a corporation carrying on a trade, profession or business in Hong Kong by way of gains or profits arising in or derived from Hong Kong from the sale or other disposal or on the redemption on maturity or presentment of a certificate of deposit or bill of exchange; (*Replaced, 19 of 1986, s 2*)
- (k) sums received by or accrued to a person, other than a corporation, carrying on a trade, profession or business in Hong Kong by way of gains or profits arising in or derived from Hong Kong from the sale or other disposal or on the redemption on maturity or presentment of a certificate of deposit or bill of exchange where such gains or profits are in respect of the funds of the trade, profession or business; (*Replaced, 19 of 1986, s 2; Amended, 28 of 1987, s 3; 17 of 1989, s 4*)
- (l) sums, not otherwise chargeable to tax under this Part, received by or accrued to a financial institution by way of gains or profits arising through or from the carrying on by the financial institution of its business in Hong Kong from the sale or other disposal or on the redemption on maturity or presentment of a certificate of deposit or bill of exchange notwithstanding that –
- (i) the moneys laid out for the acquisition of the certificate or bill were made available outside Hong Kong; or
- (ii) the sale, disposal or redemption is effected outside Hong Kong; and (*Added, 19 of 1986, s 2; Amended, 28 of 1987, s 3*)

- (m) sums received or receivable by a person as consideration in respect of the transfer of a right to receive income, as provided for in section 15A. (*Added, 28 of 1987, s 3*)
- (1A) Subsection (1)(j) or (k) shall not apply to gains or profits arising in or derived from Hong Kong, other than gains or profits received by or accrued to a person whose trade, profession or business comprises or includes trading in certificates of deposit or bills of exchange, to the extent to which such gains or profits relate to a period prior to 1 April 1981; and gains or profits received by or accrued to any person from the sale or other disposal or on the redemption on maturity or presentment, on or after 1 April 1981, of a certificate of deposit or bill of exchange purchased or otherwise acquired by that person before that date, shall be determined by reference to such amount as the Commissioner may consider such certificate or deposit or bill of exchange would have realized if it had been sold in the open market at the close of business on 31 March 1981 and not by reference to the amount, if any, paid by that person in so purchasing or otherwise acquiring such certificate of deposit or bill of exchange. (*Added, 30 of 1981, s 3*)
- (1B) (*Repealed, 36 of 1984, s 3*)
- (2) Where, in ascertaining for the purposes of this Part the profits of a trade, profession or business carried on in Hong Kong, a deduction has been allowed for any debt incurred for the purposes of the trade, profession or business, then, if the whole or any part of that debt is thereafter released, the amount released shall be deemed to be a receipt of the trade, profession or business arising in or derived from Hong Kong at the time when the release was effected.
- (3) Where in the basis period for any year of assessment a financial institution was not a financial institution for the whole of that period, in that, if the institution is a bank it was not licensed for the whole of that period or if the institution is a deposit-taking company it was not registered for the whole of that period, then subsection (1)(j) and (l) shall apply only in respect of such part of the basis period during which the bank or deposit-taking company was licensed or registered, as the case may be. (*Added, 73 of 1978, s 3; Amended, 19 of 1986, s 2*)
- (4) The amendments to this section effected by the Inland Revenue (Amendment) Ordinance 1984 (36 of 1984) shall not have the effect of rendering chargeable to tax sums received or accrued to any person prior to 1 April 1984 which were not chargeable to tax immediately prior to the coming into force of that Ordinance. (*Added, 36 of 1984, s 3*)
- (5) The amendments to this section effected by the Inland Revenue (Amendment) (No 2) Ordinance 1986 (19 of 1986) shall apply to sums received or accrued by way of interest, gains or profits on

- or after 1 April 1986, and the provisions of this section in force immediately prior to the coming into force of that Ordinance shall continue to apply to such sums received or accrued prior to 1 April 1986 as if such amendments had not been enacted. (*Added, 19 of 1986, s 2*)
- (6) The amendment made to subsection (1) by section 5(a)(ii) of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) does not apply to sums described in subsection (1)(ba) which were received by or which accrued to a person before the commencement* of that Ordinance. (*Added, 12 of 2004, s 5*)
- (*Replaced, 2 of 1971, s 9; Amended, 7 of 1986, s 12*)

Note:

Commencement date: 25 June 2004.

[15.01] General Note

This section widens the scope of section 14 by deeming a number of unrelated receipts to arise in or be derived from Hong Kong from a trade, profession or business carried on in Hong Kong. Therefore it is 'Subject to the provisions of this Ordinance' and is overridden by sections 23 and 23A, sections 23B-23E and section 24(1) and (2). The deeming provision is of necessity relevant only where section 14 does not apply: see *D, 7/84 2 IRBRD 58*. Section 15(2) provides for the situation where a deduction has been allowed for a debt which is subsequently released. Sections 16B(3)-(3A), 16E(3) and 16G(3) also provide for a deemed receipt upon the sale of certain types of assets, the acquisition cost of which qualifies as an allowable deduction.

However, problems do arise due to the deeming provisions: see per Megarry J in *Murphy v Ingram* [1973] 2 WLR 983 at 993. Therefore section 15(1) should be construed as deeming the sums listed to have a Hong Kong source and to be Hong Kong business receipts where under normal principles a business can properly be said to be carried on in Hong Kong. For the support in this proposition see: paragraphs (f), (g), (i), (j), (k) and (l).

[15.02] Hong Kong

As to meaning, see [5.15] above.

[15.03] Trade

As to meaning, see [2.72] above.

[15.04] Business

As to meaning, see [2.15] above.

[15.05] Person

As to meaning, see [4.02] above.

[15.06] Property

As to meaning, see [5.18] above.

[15.07] Movable property

As to meaning, see s 3 Cap 1 above.

[15.08] Corporation

As to meaning, see [2.23] above.

[15.09] Recognized occupational retirement

As to meaning, see [2.59] above.

[15.10] Assessable profits

As to meaning, see [2.08] above.

[15.11] Financial institution

As to meaning, see [2.30] above.

[15.12] Occupational retirement scheme

As to meaning, see [2.44] above.

[15.13] Certificate of deposit

As to meaning, see [2.17] above.

[15.14] Bill of exchange

'A bill of exchange' is defined in s 3(1) of the Bills of Exchange Ordinance (Cap 19) as an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person or to bearer.

[15.15] Profits arising in or derived from Hong Kong

As to meaning, see [2.54] above.

[15.16] Commissioner

As to meaning, see [2.21] and s 3A.

[15.17] Deposit

As to meaning, see [2.25] above.

[15.18] Hong Kong currency

As to meaning, see s 2(1).

[15.19] Basis period

As to meaning, see [2.12] above.

[15.20] Subsection (1)(a)

Taxable profits from the items listed in this paragraph are deemed to be 30% (increased from 10% with effect from 1 April 2003) of the total sum received or accrued except where certain anti-avoidance provisions apply, in which case the taxable profits are deemed to be 100% of the total sum received (section 21A). Tax is collected under section 20B. The normal (ie 30%) beneficial method of ascertaining the taxable profits does not apply where the sum in question is 'otherwise chargeable' under section 14.

[15.21] Subsection (1)(b)

Taxable profits can be deemed to be 100% of the total sum received where anti-avoidance provisions apply: see section 21A. It is thought that the words 'use of or right to use in Hong Kong' and 'directly or indirectly connected with the use in Hong Kong' apply only to the actual use of intellectual property rights in Hong Kong. Therefore, a patent is used in Hong Kong if the relevant goods are manufactured in Hong Kong (even though sold overseas); and a copyright is used where the manuscript is published.

It should be noted that the following analysis and commentary on the *Emerson* case, although still valid for the purposes of section 15(1)(b), should now be read subject to the provisions of section 15(1)(ba) which was enacted to overturn the effect of this decision.

For a discussion on section 15(1)(b), one can look at the decision in *Emerson Radio Corp v CIR* [2000] 1 HKC 155, [2000] 1 HKLRD 238. However, it must be noted that it has to be looked together with section 15(1)(ba) which was enacted to overturn the effect of the decision. In *Emerson* manufacturing activity took place both in and outside Hong Kong. The manufacturers physically applied the 'Emerson' trade mark to the goods and sales were made solely to customers outside Hong Kong. It was held that, as a matter of construction, the express terms of the agreement dealt only with the US registered trade mark. However, on the basis of a concession made by Emerson that the royalty was received for the use of the Hong Kong mark in Hong Kong as well as the US mark in the US, part of the royalty fell to be taxed under section 15(1)(b). In the absence of some form of apportionment, it was concluded that that section 15(1)(b) applied to that part of the royalty referable to goods manufactured in Hong Kong but not to goods manufactured outside Hong Kong. Disregarding the concession referred to above, Lord Hoffmann thus concluded that the royalties were paid for the use of the US mark for export sales to US customers and not for affixing that mark in those countries where the goods were manufactured.