

# Chapter

# 6

## *Property Tax*

### *Key Points*

These are:

- scope of charge
- assessable value
- net assessable value
- calculation of property tax
- provisional property tax

### *Objectives*

After studying this chapter, you should be able to:

- identify the persons chargeable to property tax
- identify the properties chargeable to property tax
- explain the scope of charge of property tax
- explain the assessable value
- explain the net assessable value
- compute the property tax liability
- explain the relief available to an owner of property whose rental income is chargeable to both property tax and profits tax
- explain the statutory requirements for keeping rent records
- explain how the provisional property tax is ascertained
- explain the procedures to claim holding-over of payment of provisional property tax

## *Scope of Charge*

1. Property tax is charged for each year of assessment on every person being the owner (擁有人) of any land and/or buildings situated in Hong Kong. The amount of property tax is computed at the standard rate on the net assessable value (應評稅淨值) of the chargeable property (s 5(1)).

## *Chargeable Property*

2. All land (土地) and buildings (建築物) situated in Hong Kong, including the New Territories, are chargeable to property tax.
3. Land and buildings include piers, wharves and other structures. Buildings include any part of a building (s 7A). Thus, letting of part of a flat (e.g., a room) will create a property tax liability. Structures include walls, dams, car parks, bridges, roads, ponds, sewers, etc.

## *Owners of Land and/or Buildings*

4. Owners of land and/or buildings include (s 2(1)):
  - a person holding land and/or buildings directly from the HKSAR Government;
  - a person who acquires ownership of the land and/or building from the person mentioned above by an assignment or conveyance;
  - a beneficial owner;
  - a mortgagor;
  - a mortgagee in possession;
  - a person with adverse title to land who is receiving rent from buildings or other structures erected on the land;
  - a person who is making payments to a co-operative society registered under the *Co-operative Societies Ordinance* for the purpose of the purchase thereof;
  - a person who holds land and/or buildings subject to a ground rent or other annual charge;
  - (in so far as common parts (公用部分) are concerned) –
    - a corporation registered under s 8 of the Building Management Ordinance (Cap 344) or
    - a person who,
      - (i) on the person's own behalf, or
      - (ii) 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

- an executor of the estate of an owner.

### ➤➤ Example 1

Mr Chan rents a piece of land from the HKSAR Government and uses the land as a car park for rental income. He is an owner for property tax purposes because he is a lessee of the HKSAR Government. The rental income which he derives from the letting of the land is subjected to property tax.

### ➤➤ Example 2

Mr A Wong sets up a trust whereby he appoints Mr Luk as a trustee to hold his flat at South Horizons for the benefit of his son, Mr B Wong, for Mr B Wong's life. Though Mr Luk's name appears in the Land Office as the registered owner of the flat at South Horizons, the declaration of trust executed by Mr Luk will show that he is only holding the property for the benefit of the life tenant, Mr B Wong. Mr B Wong, the person holding the equitable interest in the flat, will be regarded as the owner for property tax purposes.

### ➤➤ Example 3

By his last will made in 2008, Mr S Cheung appointed Mr Ho to be the executor of his estate and gifted all his properties, including a flat in Kowloon, to his son Mr T Cheung. The flat has been let for rental income since 1 April 2006. Mr S Cheung died on 15 February 2009. The flat was distributed by Mr Ho to Mr T Cheung on 1 May 2011.

Mr S Cheung was an owner for property tax purposes in respect of the rental income for the period from 1 April 2007 to 15 February 2009 (the date of death). Mr Ho, as the executor of the deceased's estate, was chargeable to property tax in respect of the rental income for the period from 16 February 2009 to 30 April 2011. Mr T Cheung has been the beneficial owner of the flat since 16 February 2009. As the flat was distributed to Mr T Cheung on 1 May 2011, Mr T Cheung is liable to property tax in respect of rental income derived from 1 May 2011.

5. In *D 27/98*, the incorporated owners of a building objected to a property tax assessment relating to rental income or licence fee derived from car parking spaces, which formed part of the common areas to which all owners of the building had the right to use. The income was deposited into the management fund of the building. The BoR held that the incorporated owners were liable to property tax because:

- the definition of 'owner' for the purpose of property tax should include an incorporated owner; and

- the incorporated owners should be considered the owners because they have the right to let out commonly-owned car parks.

### OWNERS EXEMPT FROM PROPERTY TAX

6. The following owners of land and/or buildings are exempt from property tax:
- the Hong Kong SAR Government;
  - consular — for property used for consular purposes or residence of consular employees; and
  - approved charitable institutions or trusts of a public character (s 88).

### *Computation of Property Tax*

7. Property tax is computed at the standard rate on the net assessable value of land and/or buildings for the year of assessment concerned (s 5(1)).  
The property tax on a property is computed as follows:

Assessable value (s 5B and s 7C(2))	\$ A
Less: Irrecoverable consideration (bad debt) (s 7C)	<u>B</u>
Assessable value after deduction of bad debt	C
Less: Rates paid by owner (s 5(1A)(b)(i)) where the owner agreed to pay the rates	<u>D</u>
Assessable value after deduction of rates	E
Less: Statutory deduction at 20% (s 5(1A)(b)(ii))	<u>F</u>
Net assessable value (s 5(1A))	<u>G</u>
Property tax thereon at the standard rate (s 5(1))	<u>H</u>

### *Assessable Value*

8. The assessable value of a property for a year of assessment is the consideration (代價), in money or money's worth, payable in that year to, to the order of or for the benefit of, the owner in respect of the right of use of that land or buildings or land and buildings (s 5B(2)).

In *D 55/01*, T, an owner of a property allowed his mother to let the property out and keep the rent received for her maintenance. The Board held that T, as owner, was chargeable to property tax.

9. Consideration in money's worth is subject to property tax. The assessable amount of a non-monetary consideration is its convertible value or open market value.
10. Consideration includes any consideration payable in respect of the provision of any services or benefits connected with, or related to, the right of use of the land and/or buildings. For example, if the landlord provides management services such as a watchman, cleaning, etc., and charges the tenant a management fee, this fee is subject to property tax.
11. The assessable value therefore includes the following:
  - rent;
  - payments for the right of use of premises under licence (e.g., car park fee, advertisements on the wall or roof of a building);
  - payment for the right of use of furniture in the premises;
  - service charges, management fee, etc., paid to the owner; and
  - lump sum premium (*DIPN 14* (Revised), para 9).
12. Premiums on leases are frequently referred to as non-returnable deposits, key or tea money, construction fees, tenancy rights or other terms (*DIPN 4* (Revised), para 1). In a property-letting or dealing business, a lease premium is part of a payment for the use of the property and therefore is an income of a revenue nature (*DIPN 4* (Revised), para 4) and so chargeable to profits tax also (see Chapter 11).
13. If the management fee is the liability of the tenant, the fee will not be included in the assessable value. However, if the management fee is the liability of the landlord and the tenant pays the fee to the landlord, the fee will form part of the assessable value. The landlord will only be entitled to the statutory deduction of 20% and cannot receive deductions for actual expenses incurred by him for management, repairs and maintenance.
14. In *D 48/07*, licence fees for allowing telecom companies to install equipment and antennae at the common areas of the residential blocks of a building were held to be within the definition of assessable values.

### SPREADING OVER OF LUMP SUM PREMIUMS

15. Any consideration payable for a period of more than one year of assessment is deemed to be payable in equal monthly instalments during the period for which it is paid up to a maximum of three years (s 5B).