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Preface to the First Edition

The purpose of this book is to provide materials for students to prepare for Paper 11(H) of Tax Planning (Module E of Professional Stage) of the HKSA/ACCA Joint Scheme Examination (now Paper P6 (HKG) Advanced Taxation (Hong Kong) of the ACCA Examination). This book covers in full Paper 11(H) (now Paper P6 (HKG) Advanced Taxation (Hong Kong)) and Paper 7(H) of Tax Framework (now Paper F6 (HKG) Taxation (Hong Kong)).

At the end of each chapter, there are past ACCA/HKSA examination questions with suggested answers. In addition, there are a number of discussion questions; answers are not provided for these questions. The purpose of these questions is to enable course tutors to use them as exercises or for class discussion.

The materials in this book are based on those prepared for revision courses for Paper 11(H) (now Paper P6 (HKG) Advanced Taxation (Hong Kong)) which have been taught by the authors for a number of years. The authors are grateful to the students of these courses for their helpful suggestions and support.

This book includes relevant legislation and cases up to 1 May 1994.

Acknowledgements are due to the Hong Kong Society of Accountants for permission to reproduce the examination questions from their past papers. The answers to some of these questions are reproduced from the answers published by the Society. Finally, the families of the authors are acknowledged for their moral support and forbearance.

Dora Lee
C M Ho

Hong Kong
 August 1994

Preface to the Seventeenth Edition

Since the publication of the 16th edition, there have been some changes in tax law and practice. Some of the significant developments are summarised below for ease of reference:

Court Cases

The Court of Final Appeal (CFA) has decided the following cases:

- *CIR v Nice Cheer Investment Ltd* (2013) FACV 23/2012 – dismissed the CIR's appeal and held that unrealized gain in respect of shares held for trading were not taxable;
- *Moulin Global Eyecare Trading Limited (In Liquidation) (formerly known as Moulin Optical Manufactory Limited v CIR* (2014) FACV 5/2013 – dismissed the liquidators' application for judicial review of the CIR's refusal to accept late objection under s.64 of the Inland Revenue Ordinance and refusal to accept s.70A claim.

The Appeal Committee of the CFA in *Braitrim (Far East) Limited v CIR* (2013) FAMV 18/2013 refused to grant the taxpayer's leave to appeal to the CFA.

The Court of Appeal has reserved judgment for the following cases:

- *Church Body of the Hong Kong Sheng Kung Hui v CIR* (CACV 41/2010);
- *Hong Kong Sheng Kung Hui Foundation v CIR* (CACV 41/2010); and
- *Turner Entertainment Networks Asia, Inc. for Muse Communication Co., Ltd v CIR* (HCIA 4/2010).

The Court of First Instance in *Good Mark Industrial Ltd v CIR* (2014) HCAL 88/2012 refused the taxpayer's application for judicial review of the CIR's refusal to correct assessments under section 70A of the IRO.

Departmental Interpretation and Practice Notes (DIPN)

In January 2014, the Inland Revenue Department (IRD) updated *DIPN 47* Exchange of Information under comprehensive double taxation agreements to set out the current practice on exchange of information upon requests received from treaty partners.

Legislative Changes

2013/14 Budget Proposals Enacted into Law

Affecting assessments for 2012/13 only

75% of the final tax payable in respect of salaries tax, profits tax and tax payable under personal assessment would be waived, subject to a ceiling of \$10,000 per case.

Affecting assessments for 2013/14 and thereafter

The changes to personal allowances and concessionary deductions have been incorporated in the table "Summary of Deductions, Tax Rates and Personal Allowances" on page xvi.

Inland Revenue (Amendment) (No. 2) Ordinance 2013

The amendment ordinance was enacted on 19 July 2013 to:

- provide a legal framework for standalone tax information exchange agreements (TIEAs), and
- enhance the existing exchange of information (EoI) arrangement.

On 25 March 2014, Hong Kong signed the "Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United States of America for the exchange of information relating to taxes". On 25 April 2014, the *Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order 2014* was gazetted. The Order will operate as from 20 June 2014.

Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013

The ordinance was enacted on 19 July 2013 to:

- amend the *Inland Revenue Ordinance* to bring particular types of arrangements that are economically equivalent to debt instruments under tax rules comparable to those applying to debt arrangements; and
- amend the *Stamp Duty Ordinance* to give stamp duty relief in relation to those types of arrangements.

Stamp Duty Amendment Ordinance 2014

The ordinance was enacted on 28 February 2014 to impose:

- a higher rate of special stamp duty (SSD) on certain agreements for sale and conveyances on sale of residential properties that are:
 - acquired on/after 27 October 2012 and
 - disposed of within 36 months of acquisition; and
- a new duty, known as the buyer's stamp duty (BSD), on certain agreements for sale and conveyances on sale of residential properties executed on/after 27 October 2012.

Inland Revenue (Amendment) Ordinance 2014

The ordinance was enacted on 28 March 2014 to:

- provide a tax concession for captive insurers to enjoy a 50% reduction in the profits tax on their insurance business of offshore risks as from the year of assessment 2013/14; and
- raise the deduction ceiling for contributions made by employees or self-employed persons to recognised retirement schemes, including the Mandatory Provident Fund Schemes, from the current level of \$15,000:
 - to \$17,500 for the year of assessment 2014/15 and
 - to \$18,000 for the year of assessment 2015/16 and onwards,
 subsequent to the increase of the maximum relevant income level under the *Mandatory Provident Fund Schemes Ordinance* (Chapter 485) from \$25,000 per month to \$30,000 per month with effect from 1 June 2014.

Loan (Amendment) Ordinance 2014

The ordinance was enacted on 4 April 2014 to amend:

- the *Loan Ordinance* (Cap 61) so that money raised by the Government by alternative bonds issued under a specified alternative bond scheme set up the Government is treated as money borrowed by the Government and may be credited into the Bond Fund; and
- s 26A and Schedule 17A of the *Inland Revenue Ordinance* (Cap. 112) to exempt from profits tax certain amounts derived from those bonds.

Proposed Legislative Changes

2014/15 Budget

Inland Revenue (Amendment) Bill 2014

The bill was gazetted on 25 April 2014 in response to some of the Financial Secretary's proposals in the budget speech for 2014/15. The proposed changes to the dependent parent/grandparent allowance, additional dependent parent/grandparent allowance, residential care expenses and the one-off reduction of the final tax payable under profits tax, salaries tax and tax under personal assessment for the year of assessment 2013/14 have been incorporated in the table "Summary of Deductions, Tax Rates and Personal Allowances" on pages xvi.

Stamp Duty (Amendment) Bill 2013 (gazetted on 5 April 2013)

The object of the Bill is:

- to adjust the *ad valorem* stamp duty (AVD) rates and
- advance the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement for sale.

Comprehensive Double Taxation Agreements (CDTAs)

The CDTAs with Mexico, Canada, Guernsey and Qatar are effective in Hong Kong from the year of assessment 2014/15.

Some readers and friends have been very helpful and provided feedback on errors or omissions in the past editions. I am grateful to them. Last but not least, I would also like to express my thanks to Mr HO Chi Ming and Mr Alvin Chan for giving valuable advice on the contents of this book.

Dora Lee
31 May 2014

T	the taxpayer
TB	Tax Bulletin issued by the HKICPA recording the minutes of annual meeting between the CIR and the HKICPA
TC	British Tax Cases
TIEA	tax information exchange agreement
TNMN	transactional net margin method (for transfer pricing)
TrP	transfer pricing
USIRS	Internal Revenue Service of the USA
VDIV	voluntary disposition <i>inter vivos</i> (ie between living persons)
viz	namely
WDV	written down value
WHT	withholding tax
YA	year of assessment

Hong Kong Board of Review cases are referred to as *BR* (for older cases) and *D*, e.g. *D 68/93*.

Chapter

1

Introduction to the Hong Kong Taxation System

Key Points

These are:

- the types of tax
- characteristics of the Hong Kong tax system
- basic terms used in income tax
- administration of income tax
- sources of tax law
- interpretation of tax law
- exemption of certain organisations from income tax

Objectives

After studying this chapter, you should be able to:

- describe the characteristics of the Hong Kong tax system
- explain some basic terms used in income tax
- describe the compositions and functions of the following administrative bodies
 - the Inland Revenue Department
 - the Board of Inland Revenue
 - the Board of Review
- describe the sources of tax law
- describe how the tax statutes are interpreted
- explain the circumstances under which an organisation can obtain exemption from income tax

Types of Tax

- This book deals with:
 - tax on earnings and income: profits tax, salaries tax and property tax imposed under the *Inland Revenue Ordinance* (IRO);
 - stamp duty, which is a tax on documents imposed under the *Stamp Duty Ordinance* (SDO).

There used to be interest tax and estate duty. Interest tax was abolished with effect from 1 April 1989, while estate duty was abolished in respect of deaths occurring after 11 February 2006.

Fiscal Policy of Hong Kong

- The Basic Law of the HKSAR states clearly the fiscal policy of Hong Kong under the principle of 'one country, two systems':

'The Hong Kong Special Administrative Region (the HKSAR) shall have independent finances.

The Central People's Government shall not levy taxes in the HKSAR' (Article 106).

'The HKSAR shall practise an independent taxation system.

The HKSAR shall, taking the low tax policy previously pursued in Hong Kong as a reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation' (Article 108).

'The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (3) To approve taxation ...' (Article 73).

After unification, tax laws and regulations made in the Mainland of China will not apply to Hong Kong. See also *DIPN 29*.

Features of Hong Kong Taxation

TERRITORIAL SOURCE CONCEPT

- Income taxes (i.e., salaries tax, profits tax and property tax) are charged on income which has a Hong Kong source. Stamp duty is charged on instruments which relate to Hong Kong assets.

The residence status of a taxpayer does not normally affect his tax liability except in special cases (e.g., ship or aircraft owners and election for personal assessment).

SCHEDULAR SYSTEM

- Income tax is levied under separate headings: profits tax, salaries tax and property tax.

A taxpayer who is an individual, if eligible, can elect, under personal assessment, to have all his assessable income from all sources aggregated together. Tax shall then be assessed on the aggregate income/profits.

DIRECT ASSESSMENT

- All the income taxes charged under the *Inland Revenue Ordinance* (IRO) are directly assessed and demanded from the taxpayer concerned, except for profits tax on certain income of non-residents, such as royalties (s 15(1)(b) and s 15(1)(ba)) and income received by an agent (代理人) (s 20A) where the tax is collected from the payer or agent.

LIMITATION TO THE STANDARD RATE

- For profits tax and property tax, the tax is levied at a fixed standard rate (標準稅率). It is only in cases of salaries tax and personal assessment that tax is calculated on a progressive basis, but the overall tax cannot exceed the standard rate on the net assessable income before deduction of personal allowances.

LOW TAX RATES

- The standard rate of 15% (for the year of assessment or YA 2013/14) and corporation profits tax rate of 16.5% (for the YA 2013/14) are relatively low, compared with other developed countries.

NO CAPITAL GAINS TAX

- Capital gains tax is a tax imposed on the gain on sale or disposal of a capital asset. Unlike most other countries (e.g., Australia, Canada and UK), Hong Kong does not impose a capital gains tax.

NO TAX ON DIVIDEND INCOME

9. Dividend income is exempt from profits tax.

Basic Terms in the IRO

10. There are some basic terms which are used in the IRO. They are explained below.

YEAR OF ASSESSMENT

11. The year of assessment (課稅年度) commences on 1 April of each year and ends on 31 March of the following year (s 2(1)).

➤➤ Example 1

The year of assessment 2013/14 commenced on 1 April 2013 and ended on 31 March 2014.

BASIS PERIOD

12. The basis period (評稅基期) for any year of assessment (YA) is the period on the income or the profits of which for that year ultimately falls to be computed (s 2(1)).

Except for profits tax, the basis period is the same as the YA. For the basis period of profits tax, see Chapter 14.

CHARGEABLE PERSONS

13. Chargeable persons are persons who are liable to pay tax.

The chargeable persons for the three types of income tax are:

Tax	Chargeable Person
Property tax	Owner (擁有人) of land or buildings in Hong Kong
Salaries tax	Person who has income from employment, office or pension deriving from Hong Kong
Profits tax	Person who carries on a trade (行業, 生意), profession or business (業務) in Hong Kong

PERSON

14. The word 'person' (人, 人士) includes a corporation (法團), partnership, trustee (受托人) or a body of persons (團體) (s 2(1)).

A trustee may be a corporation or an unincorporated person.

A body of persons is defined in s 2(1) as including any company, fraternity, fellowship or society of people whether corporate or not corporate. If a body of persons is a club or association, the profits tax charge is governed by s 24 (see Chapter 17).

PERSONAL ALLOWANCES

15. Personal allowances are amounts prescribed by the IRO which are specifically allowed to be deducted from the assessable income of an individual or a married couple under salaries tax and personal assessment for the purpose of tax computation.

See page xvi of this book for the amounts of personal allowances.

DEDUCTIONS

16. See Salaries Tax, Chapter 4 and also page xvi for the amount of deduction.

TAX

17. The word 'tax' (稅, 稅款, 稅項) means any tax imposed by the IRO other than s 82A additional tax. However, for the purposes of payment, recovery and repayment of tax, 'tax' includes s 82A additional tax (s 2(2)). Section 82A additional tax is a penalty for tax evasion (see Chapter 21).

Tax Rates

18. There are three types of tax rate:

- standard rate;
- corporation profits tax rate; and
- progressive tax rates.

STANDARD RATE

19. The standard tax rate is applied to:

- the net assessable income (應評稅入息實額), after deduction of concessionary deductions, for calculating salaries tax;

- the net assessable value of property for calculating property tax; and
- the net assessable profits of an unincorporated business for calculating profits tax.

The standard rates for the YAs 1997/98 to 2013/14 are:

Year of Assessment

1997/98 to 2002/03	2003/04	2004/05 to 2007/08	2008/09 to 2013/14
15%	15.5%	16%	15%

CORPORATION PROFITS TAX RATE

20. The corporation profits tax rate is applied to the net assessable profits of a corporation for calculating profits tax.

The rates for the YAs 1997/98 to 2013/14 are:

Year of Assessment

1997/98	1998/99 to 2002/03	2003/04 to 2007/08	2008/09 to 2013/14
16.5%	16%	17.5%	16.5%

PROGRESSIVE TAX RATES

21. See page xvi of this book for the progressive tax rates. The progressive tax rates apply to salaries tax and personal assessment.

The maximum amount of salaries tax or tax under personal assessment that can be levied is the standard rate on the net assessable income or total income as reduced by concessionary deductions (s 13(2)(b)).

There were reductions to the final tax payable for some YAs (see table below):

Year of Assessment	Percentage of reduction	Final tax involved	Maximum deduction
2006/07	50%	Salaries tax and personal assessment	\$15,000 per case
2007/08	75%	Salaries tax, property tax, profits tax and personal assessment	\$25,000 per case
2008/09	100%	Salaries tax and personal assessment	\$8,000 per case

2009/10	75%	Salaries tax and personal assessment	\$6,000 per case
2010/11	75%	Salaries tax and personal assessment	\$6,000 per case
2011/12	75%	Salaries tax, profits tax and personal assessment	\$12,000 per case
2012/13 & 2013/14	75%	Salaries tax, profits tax and personal assessment	\$10,000 per case

Administrative and Judicial Organisations

22. The following bodies are involved in the administration of income taxes in Hong Kong:

- Inland Revenue Department (IRD);
- Board of Inland Revenue (BIR); and
- Board of Review (BoR).

INLAND REVENUE DEPARTMENT (IRD)

Functions

23. The IRD collects the following taxes and fees

- salaries tax;
- property tax,
- profits tax;
- stamp duty;
- hotel accommodation tax (waived as from 1 July 2008);
- business registration fee; and
- betting duty.

Officers

24. The IRD is headed by the Commissioner (局長) of Inland Revenue (CIR), who is assisted by deputy commissioners (副局長) of Inland Revenue (dCIR), assistant commissioners (助理局長), chief assessors, senior assessors and assessors (評稅主任), all of whom are appointed by the Chief Executive (s 3(3)). In addition, there are technical officers called inspectors and taxation officers.

monthly salary of \$40,000. In addition, he was entitled to quarters and moved to a flat owned by his employer at Cloud View Road. Mr Yu had to pay a monthly rent of \$1,000 to his employer.

In October 2012, Mr Yu was given an option to purchase shares in Universal Electronic Incorporation, which is an American company. This option was granted by Citipacific Ltd. without consideration. Under the option, he was allowed to purchase 2,000 shares in Universal Electronic Incorporation at the price of US\$4 each. He exercised the option on 15 October 2012. The price quoted on the New York Stock Exchange for Universal Electronic Incorporation at that date was US\$7.50. The exchange rate on 15 October 2012 was US\$1 = HK\$7.80.

Mr Yu has a widowed mother, aged 55, who was claiming disability allowance from the Social Welfare Department and who lived with him from the time Mr Yu returned from Canada. Mr Yu left his mother when he moved into the quarters, and he has contributed \$3,000 per month to her since then. During the YA 2012/13, he donated \$5,000 to the Hong Kong Community Chest and contributed \$14,500 to a mandatory provident fund scheme.

Mr Yu's wife, Mrs Yu, made the following approved charitable donations in cash:

5 March 2012	\$6,000
1 June 2012	\$4,000
1 October 2012	\$1,000
2 January 2013	\$1,000

Mrs Yu contributed \$5,400 to a mandatory provident fund scheme during the year ended 31 March 2013.

Required:

Compute the salaries tax liabilities of Mr and Mrs Yu for the YA 2012/13 to their best advantage. Advise if it is advantageous for them to elect for joint assessment.

Further Reading

- *Departmental Interpretation and Practice Notes*, No. 18, January 2005

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 YA 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 2011, 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 2008. Mr S Cheung died on 15 February 2012. The flat was distributed by Mr Ho to Mr T Cheung on 1 May 2014.

Mr S Cheung was an owner for property tax purposes in respect of the rental income for the period from 1 April 2010 to 15 February 2012 (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 2012 to 30 April 2014. Mr T Cheung has been the beneficial owner of the flat since 16 February 2011. As the flat was distributed to Mr T Cheung on 1 May 2014, Mr T Cheung is liable to property tax in respect of rental income derived from 1 May 2014.

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 YA concerned (s 5(1)).

The property tax on a property is computed as follows:

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

Note: There are reductions to the rates for some quarters as follows:

Year	Quarter ended 30 June	Quarter ended 30 September	Quarter ended 31 December	Quarter ended 3 March	Maximum amount of rates waived per quarter
2009/10	√	√	N/A	N/A	\$1,500
2010/11	√	√	√	√	\$1,500
2011/12	√	√	√	√	\$1,500
2012/13	√	√	√	√	\$2,500
2013/14	√	√	√	√	\$1,500
2014/15	√	√	N/A	N/A	\$1,500

Assessable Value (應評稅值)

8. The assessable value (AV) of a property for a YA 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 AV 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 AV. 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 AV. 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 AVs.

Certain investment returns from alternative bond schemes not to be treated as consideration

15. On 19 July 2013, the *Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013* was enacted to:

- amend the IRO to bring particular types of arrangements (some common types of Islamic financial arrangements) that are economically equivalent to debt instruments, for profits tax and property tax purposes, comparable to those applying to debt arrangements; and
- amend the *Stamp Duty Ordinance* to give stamp duty relief in relation to those types of arrangements.

The legislation adopts a religion-neutral approach and uses the term “alternative bond scheme (另類債券計劃)” (AIBS) instead of “sukuk” to denote the arrangements concerned. The details of specified AIBS (指明另類債券計劃) and its tax treatment are set out in Schedule 17A of the IRO (s 40AB).

16. An AIBS consists of:

- a bond arrangement (債券安排) between a bond-issuer (發債人) (BI) and the bond-holders (持債人) (BHs) whereby the BI issues alternative bonds (AIBs) to the BHs in return for bond proceeds (發債所得); and
- an investment arrangement (投資安排) entered by the BI with the originator (發起人) whereby the BI undertakes:
 - to make a payment (the redemption payment (贖債付款)) for redeeming the AIBs, and
 - to make other repayments (coupon or additional payments (額外付款)) to the BHs (s 2 of Schedule 17A)

17. Under a specified AIBS, —

- assets are acquired, held and disposed by the BI; or
- if the specified assets consist of an interest in a business undertaking (BU) formed by the BI and the originator, by the BU;
- the BI usually declares a trust over the assets under the scheme in favour of the BHs; and
- the assets may be transferred between:
 - the originator and the BI or
 - the originator and the BU.

18. For tax purposes, —

- the bond proceeds paid by the BHs to the BI are regarded as money borrowed by the BI from the BHs; and

- the additional payments payable by the BI to the BHs are regarded as interest payable on the money borrowed.

19. Investment arrangements may take the following forms:

- lease arrangement – where a BI enters into a lease in respect of an acquired asset with an originator to generate an investment returns;
- profits sharing arrangement – where a BI enters into a BIU with an originator to carry on business activities to generate an investment return;
- purchase and sale arrangement – where a BI sells an acquired asset to an originator with a mark up to generate an investment return; and
- agency agreement – where a BI appoints an originator as its agent to manage an acquired asset to generate an investment return.

In respect of a qualified investment arrangement (合資格投資安排) (QIA) (as defined in s 13 of Schedule 17A) between an originator and a BI in relation to the underlying assets of a specified AIBS,

- the acquisition cost (取得成本) of the assets is regarded as the money borrowed by the originator from the BI; and
- the investment return (投資回報) is regarded as interest payable on the money borrowed by the originator from the BI.

In line with the above, it is provided that certain asset transactions, i.e., acquisition, leasing and disposal:

- between the originator and the BI, or
- between the originator and the BU (entered into between the originator and the BI)

are disregarded for the purposes of profits tax (see Chapters 11 and 12). In these cases, the originator is regarded as the owner of any asset acquired, and any income, expenditure (including depreciation allowances (see Chapters 17 and 18), profits, gains or losses arising from or attributable to the asset belong to the originator for tax purposes.

20. The effect is that any income, expenditure, profits, gains or losses arising from or attributable to the assets held by:

- the BI, or
- BU

belong to the originator for tax purposes.

Accordingly, any such investment return (e.g., rental paid by the originator to the BI) is not regarded as consideration payable in respect of the right of use of land and/or building for property tax purposes under s 5B (s 5B(7)).

Chapter

15

*Profits Tax: Partnership***Key Points**

These are:

- existence of partnership
- allocation of profit/loss
- tax liability
- change in partnership
- partnership loss

Objectives

After studying this chapter, you should be able to:

- explain the meaning of partnership
- compute the share of profit/loss of each partner
- explain who is liable to pay tax
- explain the treatment of sharing profit/loss when there is a change in partnership
- explain the treatment of partnership losses

Existence of Partnership

1. Partnership is defined as 'the relation which exists between persons carrying on a business in common with a view of profit' (s 3(1) *Partnership Ordinance*).
2. Whether a partnership exists is a question of fact. The relevant factors include:
 - sharing of profit or loss;
 - contribution to capital;
 - existence of partnership agreements; and
 - representation to outsiders, such as names appearing in correspondence, letterhead, opening of bank accounts, and representations to creditors and debtors.

In *D 68/03*, a salaried partner of a solicitor's firm was held not a partner but a mere employee. The taxpayer did not share profit or loss nor did he contribute towards the firm's capital.

Computation of Partnership Profits/Losses

3. The same rules of computation of assessable profits apply to sole proprietor businesses, partnerships and corporations, except:
 - deduction of rent paid by a partnership to a partner or his/her spouse is restricted to the assessable value of the relevant property (s 16(1)(b));
 - there is no deduction for salaries, or remuneration, interest on capital or loans paid to a partner or his/her spouse (s 17(2));
 - loss of a partner brought forward can only be used to set-off against his subsequent share of profit (s 19C(2)), and
 - the ability of a limited partner to use his share of loss to set-off his other income is restricted (s 22B) (see Chapter 22, Anti-Tax Avoidance).

➤➤ *Example 1*

- (a) Mr Au, Mr Bau and Mr Chan have been in partnership for many years. They share profits/losses equally. The profit and loss account for the year ended 31 December 2013 contains the following information:

	\$	\$
Gross profit		350,000
Less: Partners' salaries		
— Mr Au	50,000	
— Mr Bau	40,000	
— Mr Chan	60,000	
Salary to Mrs Au	50,000	
Interest on capital		
— Mr Au	11,000	
— Mr Bau	12,000	
— Mr Chan	14,000	
		(237,000)
Other expenses (all allowable)		(50,000)
Net profit		<u>63,000</u>

- (b) Same information as in (a) except that the trading result is a net loss of \$27,000 and the gross profit is \$260,000.

Solution:

(a)

Au, Bau and Chan		
Year of assessment 2013/14		
Basis period: year ended 31 December 2013		
	\$	\$
Profit per account		63,000
Add: Partners' salaries	150,000	
Salary to partner's spouse	50,000	
Interest on capital	37,000	
		<u>237,000</u>
Assessable profits		<u>300,000</u>

(b)

Year of assessment 2013/14		
Basis period: year ended 31 December 2013		
	\$	\$
Loss per account		(27,000)
Add: Partners' salaries	150,000	
Salary to partner's spouse	50,000	
Interest on capital	37,000	
		<u>237,000</u>
Assessable profits		<u>210,000</u>

Allocation of Partnership Profits/Losses

4. The share of profits/losses of each individual partner is ascertained in accordance with the profits/losses-sharing arrangement during the *basis period* for the YA concerned (s 22A(1)).

►► Example 2

Mr B and Mr C are the partners of B, C and Co. which closes its accounts up to 31 December each year. They share profits and losses equally. The agreed loss of the partnership for the year ended 31 December 2013 is \$300,000. Mr B and Mr C drew salaries of \$120,000 and \$160,000 respectively during the calendar year 2013. Both Mr B and Mr C have not elected for personal assessment.

The loss computation and shares of loss for the YA 2013/14 are shown below:

B, C and Co. Year of assessment 2013/14 Basis period: 1 January 2013 to 31 December 2013

	\$
Loss for this year c/f	<u>(300,000)</u>
Assessable profit	<u>Nil</u>

Allocation of loss

	Salary \$	Ratio	Residue \$	Total \$
Mr B	120,000	1/2	(290,000)	(170,000)
Mr C	160,000	1/2	(290,000)	(130,000)
	<u>280,000</u>		<u>* (580,000)</u>	<u>(300,000)</u>

* Loss (\$300,000) – salary \$280,000 = (\$580,000)

5. Allocation of profit/loss is necessary in the following situations:

- where there is an overall loss in the partnership;
- where a partner has a share of loss brought forward;
- where a partner has elected personal assessment; and/or

where one of the partners is a corporation.

Note: The corporation's share of profit in partnership is taxed at corporate rate (see Example 4).

Partnership consisting of more than 20 partners

- Before 14 December 2007, no allocation of profit/loss would be made for a partnership consisting of more than 20 persons (previously also known as an illegal partnership), unless it is a partnership of professional solicitors, accountants or stockbrokers (s 22A IRO). The assessable profits of illegal partnerships were taxed at the standard rate.
- The concept of illegal partnerships was abolished as from 14 December 2007. As a transitional arrangement, where a person, immediately before 14 December 2007, was part of an illegal partnership, has any losses brought forward under s 19C(4), then the assessable profits of that partnership for a YA, the basis period of which is ended after 14 December 2007, shall be reduced by such losses before they are apportioned amongst the partners of that partnership in accordance with s 22A(1) until such losses have been fully utilised (s 22C).

Re-allocation of profit/loss

- If after allocation, one/more partner(s) has/have losses, while one/more other partner(s) has/have profits, re-allocation has to be made. No loss can be allocated to any individual partner if there is an overall assessable profit. In the case where loss has been allocated to a partner and the partnership's overall result is an assessable profit, the notional 'loss' of that partner will be re-allocated to other partners who have profits according to the ratio of the profits allocated.

➤➤ Example 3

Mr Lam, Mr Mok and Mr Ng have been in partnership for many years. They share profits/losses equally. The profit and loss account for the year ended 31 March 2014 contains the following information:

	\$	\$
Gross profit		280,000
Less: Partners' salaries		
— Mr Lam	150,000	
— Mr Mok	180,000	
Interest on capital		
— Mr Lam	40,000	
— Mr Mok	40,000	
— Mr Ng	40,000	
		(450,000)
Other expenses (all allowable)		(100,000)
Loss for the year		<u>(270,000)</u>

All partners have elected for personal assessment.

Lam, Mok and Ng Year of assessment 2013/14 Basis period: year ended 31 March 2014

	\$	\$
Loss per account		(270,000)
Add: Partners' salaries	330,000	
Interest on capital	120,000	
		450,000
Assessable profits		<u>180,000</u>

Allocation of profit

	Mr Lam \$	Mr Mok \$	Mr Ng \$	Total \$
Salary	150,000	180,000	—	330,000
Interest	<u>40,000</u>	<u>40,000</u>	40,000	120,000
Residue (1:1:1)	190,000 <u>(90,000)</u>	220,000 <u>(90,000)</u>	40,000 <u>(90,000)</u>	450,000 <u>(270,000)</u>
Re-allocation (100:130)	100,000 <u>(21,739)</u>	130,000 <u>(28,261)</u>	* (50,000) <u>50,000</u>	180,000 <u>—</u>
Profits to be transferred to personal assessment	<u>78,261</u>	<u>101,739</u>	<u>—</u>	<u>180,000</u>

Notes:

- It is not possible for a partner to have a share of a loss from a partnership which earned a profit for the YA. Re-allocation is necessary.
- Re-allocation is made in accordance with the ratio of the profits allocated (i.e., 100:130), not the usual profit-sharing ratio (1:1).

➤➤ Example 4

Bubble Co. Ltd., Mr Chow and Mr Dao are in partnership. They share profits/losses in the ratio of 8:1:1 after charging salaries to Mr Chow and Mr Dao. The assessable profit for the YA 2013/14 is \$800,000 after adding back salaries of \$100,000 to Mr Chow and \$120,000 to Mr Dao. No loss has been brought forward from previous years, and no partner has elected for PA.

Year of assessment 2013/14

Assessable profits	\$800,000
Profits tax payable	\$126,960

Allocation of profit

	Bubble Co. Ltd. \$	Mr Chow \$	Mr Dao \$	Total \$
Salary	—	100,000	120,000	220,000
Residue (8:1:1)	464,000	58,000	58,000	580,000
	<u>464,000</u>	<u>158,000</u>	<u>178,000</u>	<u>800,000</u>

Profits tax payable:	\$
\$464,000 at 16.5%	76,560
\$336,000 at 15%	50,400
Total	126,960
Less: Tax reduced by 75%, limited to	(10,000)
	<u>116,960</u>

Tax Liability

- A 'person' is defined to include a partnership (s 2(1)). A single assessment will be raised in the partnership name (s 22(1)).
- The precedent partner has to make and deliver the tax return (together with the profit and loss account and balance sheet) on behalf of the partnership. If there is no resident active partner in Hong Kong, the return has to be filed by the manager/agent of the partnership in Hong Kong (s 22(2)).
- The profits tax charged can be transferred for credit against the individual partner's tax liability under personal assessment (PA) if election for PA has been made.
- In practice, tax may only be charged on the share of the partnership profits of those partners who have not elected for PA, and tax is not charged on the share of assessable profits of the PA electors who are likely to reduce their tax liability under PA.

➤➤ Example 5

- Mr Pang, Mr So and Mr Tso have been in partnership for many years. They share the profit/loss in the ratio of 2:2:1 after charging salaries paid to Mr Pang and Mr So. Their accounts end on 30 September each year.

The adjusted profit/loss for YAs 2012/13 and 2013/14 are as follows after adding back salaries to partners:

Year of assessment	2012/13	Loss \$300,000
Year of assessment	2013/14	Profit \$400,000

The salaries paid to Mr Pang and Mr So are as follows:

		Mr Pang \$	Mr So \$
Year of assessment	2012/13	100,000	80,000
Year of assessment	2013/14	100,000	80,000

No loss was incurred before 2012/13 and no partner has elected for PA.

- Same information as in (a) except the adjusted profit for the YA 2013/14 is \$200,000.

Chapter

24

*Tax Planning and Management***Key Points**

These are:

- meaning of tax planning
- advantages of Hong Kong for tax planning
- salaries tax planning
- profits tax planning
- international tax planning
- base erosion and profit shifting

Objectives

After studying this chapter, you should be able to explain:

- the meaning of tax planning
- the advantages of Hong Kong for tax planning
- how salaries tax planning can be made
- how profits tax planning can be made
- the elements for international tax planning

Tax Planning

1. Tax law and practices must be learnt thoroughly for the purpose of making tax plans. For example, if you know what expenses are allowable and what are not, you can advise a taxpayer to choose allowable expenses instead of non-allowable expenses.

NON-TAX CONSIDERATIONS

2. While tax planning is to minimise tax payable within the legal framework, non-tax considerations are also important (often more important than tax considerations). They are explained below.

DISTURBANCE TO NORMAL ACTIVITIES

3. Ideally, tax minimisation should be achieved with as little change to the taxpayer's normal activities as possible, in particular profit-making. However, very often this is not possible. Then the taxpayer has to weigh the disturbance to his life against the potential tax benefit.

BEWARE OF §§ 61 AND 61A

4. Highly artificial arrangements run the risk of being attacked by ss 61 and 61A (Chapter 23). Ideal tax planning is to arrange the transactions in such a way that they can be justified commercially and are also tax-efficient.

LEGAL

5. Tax advisers should not advise taxpayers to break the law. Full disclosure should be made to the IRD. Advance clearance should be obtained if in doubt. See Chapter 21 on what amounts to tax evasion instead of tax avoidance and Chapter 22.

BEWARE OF FOREIGN TAX

6. When planning international operations, the implications of foreign tax should be considered, as more likely than not, this will be higher than the Hong Kong tax.

Tax Havens

7. There are tax advantages in establishing an institution in a tax haven. A tax haven levies no tax or very low tax. In addition, the statutory requirements for disclosure may be less stringent (e.g., many tax havens do not require audited accounts).
8. The OECD developed an internationally-agreed tax standard (IATS) in co-operation with some non-OECD countries. The IATS:
 - requires exchange of information on request to all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes; and
 - provides for extensive safeguards to protect the confidentiality of the information exchanged.
9. On 2 April 2009, the OECD published a report — 'A Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in implementing the Internationally Agreed Tax Standard' ('Progress Report'). The Progress Report listed the following:
 - Jurisdictions that have substantially implemented the IATS;
 - Jurisdictions that have committed to the IATS, but have not yet substantially implemented it:
 - Tax havens, or
 - Other financial centres; and
 - Jurisdictions that have not committed to the IATS.
10. According to the Progress Report made by the OECD as at 18 May 2012, Nauru and Niue were in the list of tax havens, while Guatemala was in the list of other financial centres.

Using Hong Kong for Tax Planning

11. The advantages of Hong Kong for international tax planning are of two types: non-tax and tax advantages.

NON-TAX ADVANTAGES OF HONG KONG

12. These are:
 - commercial advantages: nearly all tax havens are tiny countries with very little business activity. Hong Kong is almost the only low tax city which is also a major commercial centre;

- good communications facilities;
- banks and professional services: Hong Kong has a full range of banking, accounting, legal and other professional services;
- no exchange controls;
- government policy: free trade policy.

TAX ADVANTAGES OF HONG KONG

13. These are:
 - simple tax system;
 - schedular system of taxes;
 - no total income tax unless personal assessment is elected;
 - territorial scope of taxation;
 - low tax rates;
 - exemption of dividends income (s 26(a));
 - no tax on capital gains (s 14(1)); and
 - On 22 November 2013, the OECD published the Report 'Peer Review of Hong Kong, Phase 2- Implementation of Standard in Practice' on:
 - the legal and regulatory framework for transparency and exchange of information in Hong Kong, and
 - the practical implementation of that framework.

The Phase 2 review has recognized Hong Kong's commitment to meeting the international standards on tax transparency and the overall rating for Hong Kong is 'largely compliant'. Hong Kong has signed 29 CDTAs as at 31 May 2014 (see para 21 in Chapter 23).

Salaries Tax Planning

14. Common areas of salaries tax planning are territorial source, using statutory exemptions, and fringe benefits.

TERRITORIAL SOURCE — EMPLOYMENT

15. The IRD accepts, in the greater majority of the cases, that employment is located outside Hong Kong where the following three factors are present:
 - the contract of employment was negotiated and entered into, and is enforceable outside Hong Kong;

- the employer is resident outside Hong Kong; and
- the employee's remuneration is paid to him outside Hong Kong (*DIPN 10*).

Cases where the IRD will look beyond these factors include cases where a person changes his employment from a Hong Kong resident employer to a non-resident with little apparent changes in the nature of duties performed or where locally-engaged employees enter into offshore contracts of employment.

ENSURE FOREIGN EMPLOYMENT

16. If an employment is foreign, the assessable income is computed on the basis of the number of days spent in Hong Kong in the basis period (s 8(1A)(a)). Therefore, if an employee of a multinational corporation is to be assigned to Hong Kong with duties in and outside Hong Kong, the employee should be employed by a group company resident outside Hong Kong, the contract should be entered into outside Hong Kong and the remuneration paid outside Hong Kong. Note the rule for determining the residence of a company is the place where it carries on business, which may be the place of its management and control.

SIXTY-DAY RULE

17. Income from employment is exempt from salaries tax if all the services of that employment are performed outside Hong Kong (s 8(1A)(b)(ii)). Section 8(1B) excludes the income where services are performed in Hong Kong during visits not exceeding 60 days. If possible, the taxpayer should not visit Hong Kong for more than 60 days in the YA. The work base and the home base of the taxpayer should not be in Hong Kong, otherwise the presence may not be considered to be 'visits'.
18. Note that the exemption only applies to visits and that the 60 days refer to days in Hong Kong, not working days (*Jack So* case).

DUAL EMPLOYMENT

19. Where a taxpayer performs duties in and out of Hong Kong, it may be advisable for him to have two employment contracts: one covering Hong Kong duties and the other covering overseas services. Ensure that the employment under the foreign services contract amounts to foreign employment by following the three rules set out in *DIPN 10*.

➤➤ Example 1

Mad Computer (US) Inc. wants to appoint Edward as the manager in charge of the operations of its Hong Kong branch at an annual income of \$800,000. In addition to duties in Hong Kong, he is required to carry out duties outside Hong Kong in connection with activities of the group's subsidiaries in other Asian countries. He estimates that in a year,

he will render services outside Hong Kong for 100 days. As his employment with the Hong Kong branch is likely to be Hong Kong employment, all his income is chargeable. He can enter into a foreign employment with a group company in another country which will cover his offshore duties. The income under the foreign contract may be allotted as follows:

$$\$800,000 \times \frac{100 \text{ days}}{365 \text{ days}} = \$219,178$$

As he will spend more than 60 days in Hong Kong in one year, the 60-day exemption is not available. However, if no services are rendered in Hong Kong under the foreign contract, the \$219,178 is exempt.

20. In *D 35/99*, the taxpayer was employed by a Hong Kong company as from 1984. In 1988, he was appointed to work for the parent company, an offshore company. On 11 May 1989, he entered into two employment contracts which took effect from 1 December 1988 — one contract with the parent company for offshore services and one contract with the Hong Kong company as its director for Hong Kong services. The BoR held that there was only one employment — the one with the Hong Kong company. The taxpayer's income was fully assessable.

NO SERVICES IN HONG KONG UNDER THE FOREIGN CONTRACT

21. Note that if a taxpayer spends more than 60 days in a YA in Hong Kong and renders some services in Hong Kong, the income under the foreign contract is not exempt. For example, a taxpayer entered into dual contracts: one covering Hong Kong services and one covering services in China. She claimed exemption in respect of the income under the China contract. This exemption is not available if she did render services under the China contract in Hong Kong (e.g., reporting her activities in China, preparing training manuals).

TERRITORIAL SOURCE — OFFICE

22. It is not advisable for a Hong Kong resident company to pay a director's fee to a non-resident. The whole sum is taxable (s 8(1)(a)).

DUAL CAPACITY AS A DIRECTOR AND AN EMPLOYEE

23. For such a taxpayer, in addition to an office of directorship, he should be given employment. The director's fee is wholly taxable (*McMillan v Guest*) if the location of the office is in Hong Kong, but the employment income can be exempt if he renders no services in Hong Kong or visits Hong Kong for no more than 60 days in the basis period. Of course, the director's fee should be kept to an amount that advantage can be taken of personal allowances and/or progressive tax rates. (See Chapter 2 on source of income from an office.)

➤➤ Example 2

Tony Jones is appointed director of Marks (HK) Ltd., a subsidiary of Marks (UK) Plc., a British retailing group. He is responsible for the marketing strategy of products of the Hong Kong subsidiary. He is resident in Britain. He comes to Hong Kong once a year, staying for about a week. The company plans to pay him a director's fee of \$300,000. A better plan is to appoint him as marketing manager, in addition to his position as director. The \$300,000 can be apportioned having regard to his respective duties as a director and marketing manager. For example, he can be paid a fee for attending each board meeting. Suppose his director's fee is \$40,000 and the pay as a marketing manager is \$260,000 per year. The whole sum of \$300,000 can be exempt, assuming that he derives no other income from Hong Kong. The director's fee is exempt as being below his personal allowance. The marketing manager's salary is exempt as he visits Hong Kong for not more than 60 days in a year.

BENEFITS-IN-KIND OR FRINGE BENEFITS

24. The rules for taxation of fringe benefits are explained in Chapter 3.

DAVID GLYNN CASE

25. According to the Privy Council, a benefit provided to a specific employee pursuant to the employment contract and which involves expenditure by the employer, is taxable.
26. The following benefits are therefore not taxable:
- the benefit does not involve expenditure by the employer;
 - the expenditure cannot be attributed to a particular employee; or
 - the benefit is not contractual and lacks an element of expectation and continuity.

STATUTORY PROVISIONS

27. The IRO limits the scope of the *David Glynn* case by exempting the following fringe benefit: discharge of employer's own liability, apart from liabilities guaranteed by any other person (s 9(1)(a)(iv)).
28. However, the IRO provides that the exemption cannot extend to benefits which are:
- convertible into cash (s 9(2A)(a)),
 - payment by an employer in connection with the education of the employee's children (s 9(2A)(b)); or

- payment by an employer in connection with a holiday journey (up to 2003/04 only) (s 9(2A)(c)).

TAX PLANNING IN RESPECT OF FRINGE BENEFITS

29. It is tax-efficient to provide the following fringe benefits:

- discharge of employer's liability which is not guaranteed by any other person (not employee's personal liability);
- benefits which are not convertible into cash; or
- benefits which are not attributable to a particular employee.

NOT CONVERTIBLE INTO CASH

30. The employer should not give an asset to an employee free or at a price below market value because the benefit is convertible into cash. Assets should be lent to the employee for use, without transfer of ownership, e.g., a motor car can be made available for use by an employee. No salaries tax arises because the benefit cannot be converted into cash. Note that the employer is able to claim depreciation allowance and running expenses of the asset (if incurred by it) in computing its profits tax (*D 3/72*). For credit cards provided by employers to employees, the IRD considers that the benefit obtained is chargeable to salaries tax if such a card is used for private purposes by an employee (*DIPN 16*).

PLANNING FOR SPECIFIC BENEFITS

31. Planning for specific benefits is given below. Reference should be made to *DIPN 16* which lists the IRD's treatment of specific benefits.

UTILITIES OF EMPLOYEE'S HOME

32. The contract should be entered into between the employer and the utilities suppliers (i.e., the electricity company, the gas company, the water authority) for the supply of facilities to the employee's home.

DOMESTIC SERVANT/DRIVER

33. The servant/driver should be employed by the employer to serve the employee.

LOW-INTEREST LOAN/INTEREST-FREE LOAN

34. Such a loan provided by the employer is not taxable provided that no other person provides surety to the loan. The benefit must not be convertible into cash by the employee.