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# HIGHLIGHTS OF 2023/24 REVENUE DEVELOPMENTS

## ¶1100 Highlights of 2023/24 Revenue Developments

The following are highlights of the significant tax developments after publication of the 2022/23 edition. The summarised developments include key legislative amendments, important Court decisions and new or revised Departmental Interpretation and Practice Notes. Cross-references to the relevant paragraphs of the Guide are provided.

## ¶1110 The Departmental Information and Technology Plan and the e-Filing Project

With the aims of meeting the need of compliance with the Organisation for Economic Co-operation and Development (“OECD”) and enhancing the efficiency, reliability and accuracy of the collection of accounting and financial data from businesses, thereby bringing about the benefits to taxpayers and tax practitioners such as minimising possible manual errors in tax filing and reducing the turnaround time for signature or authorisation arrangement, the Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021 was gazetted on 11 June 2021 to refine the statutory framework for the furnishing of tax returns, including taking forward the electronic filing (“e-filing”) of Profits Tax returns, by phases:

Phase I - enhance the existing eTax Portal to enable more businesses to voluntarily e-file profits tax returns, including financial statements and tax computations in inline eXtensible Business Reporting Language (“iXBRL”) format in around April 2023.

Phase II - implement mandatory e-filing of profits tax returns through the newly developed Business Tax Portal by multi-national enterprises starting from 2025.

Phase III - full-scale implementation of mandatory e-filing by 2030.

The IRD has released the preliminary edition of the IRD Taxonomy Package to facilitate Hong Kong businesses to tag financial statements and tax computations for generating iXBRL data files in support of voluntary e-filing of profits tax returns.

Starting from 3 April 2023, supporting documents in iXBRL format can be e-filed together with profits tax returns on voluntary basis.

The IRD provides free conversion tools, namely IRD iXBRL Data Preparation Tools, for corporations or businesses to convert their financial statements and tax computations into iXBRL data files.

Starting from the year of assessment 2022/23, all corporations and businesses (including partnerships) can e-file profits tax returns through eTax alongside with the following e-services and e-filing modes:

Filing mode	Profits Tax Return	Required forms	Supporting documents
Paper	Paper	XML	Paper
Electronic	Electronic	XML	iXBRL
Semi-electronic	Paper	XML	iXBRL

All required forms (i.e. supplementary forms and other forms) must be submitted electronically through eTAX irrespective of the filing mode of the profits tax return for any year of assessment from 2018/19 to 2023/24 (both inclusive).

An extra one month extension is granted to taxpayers who elect for electronic or semi-electronic filing (not applicable to M code with current year loss cases).

## ¶120 Profits tax cases

### **KWP Quarry Company Limited v Inland Revenue Board of Review and the Commissioner of Inland Revenue – The Court of Final Appeal**

This was the judicial review application of KWP Quarry Co Ltd (Taxpayer) in respect of the decision of the Inland Revenue Board of Review (Board) dated 8 April 2016 (Decision) made in Case No B/R 10/11 refusing to state a case on a question of law for the opinion of the Court of First Instance upon the Taxpayer's application, which was made pursuant to the then prevailing provisions of s.69 of the Inland Revenue Ordinance, Cap 112 (Ordinance).

In essence, the taxpayer claimed the expenditures of removal the top layer of the quarry for the purpose of excavation of rock were revenue in nature and deductible under profits tax. The Commissioner disagreed and the matter went to the Board. The Board in 2015 dismissed the taxpayer's appeal. The taxpayer filed an application to state the case for the purpose of appeal under the then Section 69. In its judgment on 10 October 2017, the Court of First Instance (CFI) dismissed the application.

The taxpayer filed appeal to the Court of Appeal (CA). On 11 April 2019, CA orally dismissed the Taxpayer's appeal against CFI's dismissal of his application for judicial review of the Board of Review's decision refusing

to state a case on a question of law for the opinion of CFI. The Taxpayer filed a notice of intended application for leave to appeal to Court of Final Appeal (CFA) on 30 April 2019. By a judgment dated 3 November 2021, CA dismissed the taxpayer's appeal. The Board found, as a fact, that the removal of the overburden was in the nature of a "first cut", it being common ground that the expenses of a "first cut" were capital in nature. Having regard to the Board's findings that the overburden did not have to be continuously removed in the process of quarrying, but only had to be removed once at each section of the Quarry, and that such work was part of the infrastructural work necessary to benefit the applicant's operations, it was unarguable that it was reasonable to conclude that the overburden costs were revenue in nature.

The taxpayer has filed an amended notice of motion to apply leave to appeal to CFA. By a judgment dated 16 February 2022, CA dismissed the Taxpayer's application for leave to appeal as they did not think it appropriate to comment on the merits of the present application and shall simply leave it to the CFA for determination. The Taxpayer has filed to the CFA a notice of intended application for leave to appeal against the CA's judgment. By an order dated 8 September 2022, the CFA dismissed the taxpayer's application for leave to appeal.

For details of this case, please refer to ¶6-3480.

### **China Mobile Hong Kong Company Limited v the Commissioner of Inland Revenue - The Court of First Instance**

The present case concerns whether the upfront lump sum spectrum utilisation fees (Upfront SUFs) paid by the taxpayer to the Telecommunications Authority are capital in nature and non-deductible.

The taxpayer is a mobile telecommunications and related services provider in Hong Kong. Through the auctions held by the Telecommunications Authority, the taxpayer acquired the exclusive right to use certain 4G and 2G frequency bands for a period of 15 and 12 years respectively by paying one-off Upfront SUFs of HK\$494.7 million and HK\$15.12 million respectively. The use of, or the right to use, the 2G frequency bands is also subject to annual payments. The taxpayer sought to deduct the amortisation of the Upfront SUFs in its profits tax computation for the years of assessment 2009/10 to 2011/12. The IRD treated the Upfront SUFs as capital expenditures and disallowed the deduction of the amortisation charges.

The Board handed down its decision on 17 January 2017 and held that the taxpayer's Upfront SUFs were capital in nature and dismissed the taxpayer's appeal. The taxpayer then appealed to the CFI.

In the appeal before the CFI, the taxpayer sought to draw a distinction between (1) a payment for the "right to use" radio spectrum (which

was capital in nature) and (2) a payment for the “use of” such spectrum (which was revenue in nature). Based on the various provisions of the Telecommunications Ordinance, the taxpayer’s key argument was that the Upfront SUFs were paid for the use of, as opposed to the right to use, the 2G and 4G frequency bands and were therefore revenue in nature and deductible.

The CFI handed down its judgment on 28 July 2020. It dismissed the taxpayer’s appeal and upheld the Board’s decision that the Upfront SUFs were capital in nature and non-deductible. In particular, the CFI considered that it was not necessary in every case to draw a distinction between a payment for the “right to use” and a payment for the “use of” an asset for the purpose of determining whether the payment was capital or revenue in nature, and that it was wrong in principle to treat such distinction as being decisive in determining the nature of a payment.

The taxpayer lodged an appeal against the CFI’s decision on 21 September 2020. By a judgment dated 3 November 2022, the CA dismissed the taxpayer’s appeal and upheld the CFI’s decision that the upfront SUFs were capital in nature and not deductible.

For details of this case, please refer to ¶16-3480.

### **Koo Ming Kown and Another v The Commissioner of Inland Revenue - The Court of Final Appeal**

The present case concerns the validity of assessments to additional tax raised by the Commissioner under Section 82A(1)(a) against the appellants who are the directors of a company who signed the profits tax returns for incorrect statements made therein.

The CFI held on 23 November 2018 that where a company had been required by notice issued to it under Section 51(1) to make a return, it was the company, rather than the individual who signed the document, that furnished, or made, the return in compliance with the requirements of the notice. As such, Section 82A(1)(a) did not permit a penalty assessment to be made on the appellants.

The Commissioner’s appeal to COA was granted and was heard on 11 October 2019. The COA dismissed the appeal orally. An application for leave to appeal to the CFA was filed on 8 November 2019. By a judgement dated 20 July 2021, COA dismissed the Commissioner’s appeal. The Commissioner has filed an appeal to CFA. The appeal is scheduled to be heard on 5 July 2022. By a judgement dated 5 August 2022, the Court of Final Appeal dismissed the Commissioner’s appeal.

For details of this case, please refer to ¶13-5800.

## **Newfair Holdings Limited v Commissioner of Inland Revenue – The Court of First Instance**

The taxpayer is engaged in the business of trading of merchandise. The goods were purchased from two suppliers which were on-sold to an overseas related party at a mark up. The taxpayer neither maintained any office (other than a registered office maintained by an accounting firm) nor employed any staff in Hong Kong. All office work was performed by related parties outside Hong Kong. The taxpayer appealed to the Board of Review's decision (D14/20) which held that the taxpayer carried on a business in Hong Kong and its profits were sourced in Hong Kong.

The CFI handed down its judgement on 20 April 2022 which allowed the taxpayer's appeal. The CFI's reasons were the operation of bank account in Hong Kong by the taxpayer and the management of shipment by the suppliers in Hong Kong were irrelevant to determine that the taxpayer carries on a business in Hong Kong. The transactions that generated the taxpayer's profits were the purchase and sale of merchandise and all the relevant operations were conducted outside Hong Kong. Hence the taxpayer's profits were sourced outside Hong Kong.

For details of Board and CFI decisions of this case, please refer to ¶16-1650.

## **¶130 Salaries tax cases**

### **Dr. The Honourable Leung Ka-Lau v the Commissioner of Inland Revenue – Court of First Instance**

The taxpayer, a medical practitioner who was awarded a sum ("Sum") as compensation for his loss of rest days and statutory holidays, appealed to the CFI against the Determination by the CIR.

The CIR maintained that the Sum received by the taxpayer was chargeable to salaries tax under section 8 of the Ordinance. The Board of Review agreed with that based on the grounds that the Sum was income from the taxpayer's employment with the Hospital Authority.

The CFI allowed the taxpayer's appeal and considered that not every payment which an employee received from his employer was necessarily income "from his employment". The substance of the Sum, in truth, was to compensate the taxpayer for the loss of rest days and public holidays. Further, the CIR also accepted that the taxpayer had earned his day off entitlement under his contract of employment and had paid tax on it indirectly because he was taxed on his remuneration package. Hence, the Taxpayer would not have to pay tax again (or twice) on the compensation which was the substitution for his rest days.

The CIR had filed an appeal to the CA. By a judgment dated 11 May 2023, the CA granted leave for the Commissioner to appeal to the CFA.

For details of this case, please refer to ¶2-1250.

## **Heath Brian Zarin v the Commissioner of Inland Revenue – Court of Appeal**

The taxpayer was employed by a bank (“Company”). Under the Employment Contract, the taxpayer was provided with participation in a “discretionary bonus scheme”. As part of his discretionary bonus for the performance year 2011, the taxpayer was granted a restricted share award with various vesting dates. Amongst the terms of the share plan were terms that if the participant left the Group before the vesting date(s) as a good leaver, the awards would vest in full on the vesting date(s) subject to approval. Good leaver reasons included, amongst other things, redundancy; and where the rule of good leaver is applied and the participant had entered into a termination agreement in connection with the cessation of employment, the awards would not vest until the participant had complied with, or was released from his obligations under, that termination agreement.

The Company terminated the taxpayer’s employment on the grounds of redundancy in January 2013. The taxpayer, having complied with the terms of the Termination Agreement, received the sums of the award shares but was assessed the payment to salaries tax. The taxpayer appealed to the CFI after the Board of Review dismissed his appeal.

The CFI found in favour of the taxpayer. The Commissioner of Inland Revenue appealed to the CA. The appeals were heard on 25 February 2022 and by a judgement dated 16 March 2022, the CA upheld the CFI’s decisions dismissing the Commissioner’s appeal.

The CA contended that the causes of the payment of all three sums flowed from the new bargain in the Termination Agreement, for which fresh consideration was provided by the taxpayer, and the parties to that agreement had undertaken new obligations.

For details of this case, please refer to ¶12-1250.

## **¶140 Stamp duty cases**

### **John Wiley & Sons UK2 LLP and Wiley International LLC v The Collector of Stamp Revenue**

John Wiley & Sons UK2 LLP transferred the shares of its wholly-owned Hong Kong subsidiary to its ultimate parent, Wiley International LLC, and claimed group relief under section 45. John Wiley & Sons UK2 LLP is a Limited Liability Partnership which was held by another Limited Liability Partnership (“Intermediary LLP”). The application for relief was rejected by the Collector on the grounds that John Wiley & Sons UK2 LLP and Intermediary LLP did not have issued share capital and therefore could not be associated for the purpose of section 45(2). The District Court took the view that the ordinary and natural meaning of the words “share

capital” was simply “one that is divided into shares of a fixed amount”. Accordingly, it would amount to “share capital” so long as the capital of that body corporate was divided into quantifiable portions and all such shares together make up 100% of the total value of the capital that was legally recognized. Applying the said interpretation, the District Court concluded that the John Wiley & Sons UK2 LLP and Intermediary LLP had issued share capital within the meaning of section 45 and group relief was applicable. The Collector applied for leave to appeal to Court of Appeal on 14 October 2022. The Court of Appeal granted the leave to appeal and the hearing is scheduled on 14 March 2024.

## ¶150 Legislation

### **Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) Notice 2022 and 2023**

The Notice was gazetted on 2 June 2022 and increased the annual interest rate of tax reserve certificates to 0.1333% from the prior rate of 0.0500%. The increased interest rate applies to tax reserve certificates purchased on or after 6 June 2022.

The Notice was gazetted on 30 September 2022 and increased the annual interest rate of tax reserve certificates to 0.1750% from the prior rate of 0.1333%. The increased interest rate applies to tax reserve certificates purchased on or after 3 October 2022.

The Notice was gazetted on 4 November 2022 and increased the annual interest rate of tax reserve certificates to 0.3167% from the prior rate of 0.1750%. The increased interest rate applies to tax reserve certificates purchased on or after 7 November 2022.

The Notice was gazetted on 2 December 2022 and increased the annual interest rate of tax reserve certificates to 0.4000% from the prior rate of 0.3167%. The increased interest rate applies to tax reserve certificates purchased on or after 5 December 2022.

The Notice was gazetted on 30 December 2022 and increased the annual interest rate of tax reserve certificates to 0.5833% from the prior rate of 0.4000%. The increased interest rate applies to tax reserve certificates purchased on or after 3 January 2023.

The Notice was gazetted on 3 March 2023 and increased the annual interest rate of tax reserve certificates to 0.7500% from the prior rate of 0.5833%. The increased interest rate applies to tax reserve certificates purchased on or after 6 March 2023.

### **Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) (No. 2) Notice 2022 and 2023**

The Notice was gazetted on 31 March 2023 and increased the annual interest rate of tax reserve certificates to 0.7667% from the prior rate of 0.7500%. The increased interest rate applies to tax reserve certificates purchased on or after 3 April 2023.

The Notice was gazetted on 2 June 2023 and increased the annual interest rate of tax reserve certificates to 0.8083% from the prior rate of 0.7667%. The increased interest rate applies to tax reserve certificates purchased on or after 5 June 2023.

### **The Revenue (Tax Concessions) Ordinance 2023**

The Ordinance was enacted on 28 April 2023 to give effect to the waiver of 100% of profits tax, salaries tax and tax under personal assessment for the year of assessment 2022/23, subject to a ceiling of HK\$6,000.

### **Stamp Duty (Amendment) Ordinance 2023**

The Ordinance was enacted on 27 January 2023 which gives effect to the exemption of stamp duty payable on transactions relating to dual-counter stock made by the dual counter market maker in the course of performing market making or liquidity providing activities in respect of the stock.

### **Stamp Duty (Amendment) Bill 2023**

The Financial Secretary announced in his 2023/24 Budget the proposed adjustment of the value bands on which the ad valorem stamp duty (“AVD”) at Scale 2 Rates applies with effect from 22 February 2023. The *Stamp Duty (Amendment) Bill 2023* was subsequently passed on 17 May 2023. After the adjustment to the value bands of AVD at Scale 2 rates, the stamp duty applicable to the property transactions with amount or value of consideration between \$2 million and just below \$10,080,000 will be reduced. Please refer to ¶15-3180 for the new rates.

### **Stamp Duty (Amendment) (No. 2) Bill 2023**

The Stamp Duty (Amendment) (No. 2) Bill 2023 was gazetted on 6 April 2023 which aims to introduce a refund mechanism under the Buyer’s Stamp Duty (BSD) and New Residential Stamp Duty (NRSD) regimes for non-Hong Kong permanent residents who have entered Hong Kong under designated talent admission schemes, purchased a residential property in Hong Kong on or after October 19, 2022, and subsequently become Hong Kong permanent residents. The bill was passed on 21 June 2023 and published in the gazette on 30 June 2023.

### **The Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022**

The Ordinance came into effect on 1 January 2023 and introduces a refined foreign-sourced income exemption (FSIE) regime for passive income in Hong Kong. Under the refined FSIE regime, foreign-sourced dividends, interest, royalties and gains on the disposal of shares that is received in Hong Kong by multinational group companies carrying on business in Hong Kong which could not meet the economic substance requirement, nexus requirement or participation requirement as where appropriate will be deemed taxable. Please refer to ¶6-2210 for details.

### **Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Ordinance 2023**

The Ordinance was enacted on 19 May 2023 to give profits tax concessions to (i) eligible Family-owned Investment Holding Vehicles managed by eligible Single Family Offices in Hong Kong; and (ii) Family-owned Special Purpose Entities. The tax concession shall take retrospective effect from the year of assessment commencing on 1 April 2022. Please refer to ¶6-9140 for details of the conditions for exemption.

### **The Inland Revenue (Amendment) (Tax Deductions for Domestic Rents) Ordinance 2022**

The Ordinance was enacted on 30 June 2022 to implement the tax deduction for domestic rent proposed in the 2022/23 Budget. The legislation is applicable to the year of assessment commencing on 1 April 2022 and to all subsequent years of assessment. A taxpayer liable to salaries tax or tax under personal assessment may claim deduction for the rent paid by him/her or his/her spouse (who is not living apart from him/her) as tenant (or by both of them as co-tenants) in relation to a relevant year of assessment for renting eligible domestic premises. The maximum amount of allowable deduction is \$100,000 for each year of assessment. To meet the eligibility, the relevant premises must be the taxpayer's principal place of residence, and the relevant tenancy must be stamped.

## **TAX RATES AND PERSONAL ALLOWANCES AT A GLANCE**

### **¶300 Tax Rates and Personal Allowances at a Glance**

Apart from the increase in child allowance, the 2023/24 Budget announced no changes to the tax rates and allowances in the table below. The *Revenue (Tax Concessions) Ordinance 2023* was enacted on 28 April 2023 to provide a

100% waiver of salaries tax, profits tax and tax under personal assessment for the year of assessment 2022/23, subject to a ceiling of HK\$6,000.

### ¶310 Standard tax rate

Property tax and provisional property tax are charged at the standard rate set out in the First Schedule of the IRO (see ¶5-8500 and ¶10-8400). Individuals and unincorporated businesses are also charged to profits tax and provisional profits tax at the standard tax rate (see ¶6-9100 and ¶10-8400).

<i>Year of assessment</i>	<i>Standard tax rate</i>
2008/09 to 2023/24 (Note)	15%
2004/05 to 2007/08	16%
2003/04	15.5%
1989/90 to 2002/03	15%
1988/89	15.5%
1987/88	16.5%
1984/85 to 1986/87	17%
1966/67 to 1983/84	15%

Note:

Further to the gazette of *Inland Revenue (Amendment) (No. 3) Ordinance 2018*, unincorporated businesses are charged to profits tax and provisional profits tax at the rates set down in *Sch 8A* beginning from the year of assessment 2018/19, where the first HK\$2 million of assessable profits of corporations will be taxed at a reduced tax rate of 7.5% and the remainder will be taxed at 15%. A group of connected entities (as defined) can only nominate one entity within the group to enjoy the reduced tax rate for a given year of assessment. An “entity” in this context is also defined to include a natural person.

### ¶320 Progressive salaries tax rates

Salaries tax and provisional salaries tax are charged at the progressive rates specified in the Second Schedule of the IRO as set out below (see ¶2-7700 and ¶10-8400). The tax charged must not exceed the amount that would be charged if the standard tax rate (above) was applied to the taxpayer’s total income less concessionary deductions: see further ¶2-7700.