[Gazettal of Inland Revenue (Amendment) (Disposal Gain by Holder of Qualifying Equity Interests) Bill 2023]

The Inland Revenue (Amendment) (Disposal Gain by Holder of Qualifying Equity Interests) Bill 2023 will be gazetted on October 20 and introduced into the Legislative Council on November 1. The Bill seeks to introduce a tax certainty enhancement scheme to provide greater certainty of non-taxation of onshore gains on disposal of equity interests (the gains) that are of capital nature.

The scheme will help enhance the attractiveness of Hong Kong as a premier international investment and business hub, in particular with regard to facilitating business expansion and restructuring as acquisition and disposal of equity interests are common in this process.

To determine the nature of the gains, the Inland Revenue Department (IRD) presently adopts a "badges of trade" approach where considerations are given to the relevant facts and circumstances of the case. The scheme will provide upfront certainty on the non-taxation of the gains which meet certain specified criteria. Specifically, the gains will be treated as capital in nature and not chargeable to profits tax if the investor entity concerned has held certain equity interests in the investee entity throughout the continuous period of 24 months immediately before the date of disposal and those equity interests having been held amount to at least 15 per cent of the total equity interests in the investee entity.

To strike a balance between facilitating businesses and upholding the integrity of the tax system, the scheme excludes certain gains which are not normally considered as capital in nature and those arising in circumstances where the risk of abuse is relatively high.

Where the gains are not eligible for the scheme or taxpayers do not make an election for the scheme, the IRD will continue to use the "badges of trade" approach as it does at present to consider the tax treatment of the gains.

A Government spokesman said, "Hong Kong is renowned for its simple and competitive tax system which does not tax gains on disposal of equity interests of capital nature. The scheme will further increase the competitiveness of our tax regime through greater upfront tax certainty of non-taxation of the gains based on simple and clear rules, faster tax determination and lower compliance cost of businesses."

Going further, as compared to similar schemes in other tax jurisdictions, the scheme will be more competitive in that it has a wider coverage of businesses and equity interests, as well as lower equity holding threshold. It also provides more flexible arrangements such as allowing the minimum equity holding percentage of 15 per cent to be met on a corporate group basis, and covering disposal of equity interests in tranches subject to certain restrictions. The scheme also does not specify an expiry date.

The scheme will be applicable to the gains where the disposal occurs on or after January 1, 2024, and the gains accrued in the basis period for a year of assessment beginning on or after April 1, 2023.

The full text of the Bill will be available from the Government Gazette website on Friday (October 20).