

Government welcomes passage of Inland Revenue (Amendment) (Disposal Gain by Holder of Qualifying Equity Interests) Bill 2023

The Government welcomes the passage of the Inland Revenue (Amendment) (Disposal Gain by Holder of Qualifying Equity Interests) Bill 2023 by the Legislative Council today (December 6). The Bill gives effect to the Tax Certainty Enhancement Scheme proposed in the 2023-24 Budget Speech to provide greater certainty of non-taxation of onshore gains on disposal of equity interests (the gains) that are of capital nature.

The Secretary for Financial Services and the Treasury, Mr Christopher Hui, said, "Hong Kong is committed to improving the business environment so as to attract more enterprises to Hong Kong and drive economic growth. The Tax Certainty Enhancement Scheme provides businesses with upfront certainty of the non-taxation of onshore gains on disposal of equity interests that are of capital nature through the application of simple and clear rules. This will also expedite tax determination and reduce the compliance cost. All these serve to facilitate business expansion and restructuring as well as the development of Hong Kong as a premier platform for international investment and business activities."

Currently, the Inland Revenue Department (IRD) adopts a "badges of trade" approach, where considerations are given to the relevant facts and circumstances of the case, to determine the nature of the gains and whether the gains are subject to tax. Under the Tax Certainty Enhancement Scheme, the gains made by an investor entity will be treated as capital in nature and not chargeable to tax if the investor entity 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, subject to certain conditions imposed to uphold the integrity of Hong Kong's tax system. This obviates the need for assessing the taxability of such gains based on the "badges of trade" approach.

The Tax Certainty Enhancement Scheme introduced by Hong Kong stands out from similar schemes in other tax jurisdictions in terms of tax competitiveness by offering broader coverage for businesses and equity interests, along with a lower equity holding threshold. It also provides greater flexibility by allowing the minimum equity holding percentage of 15 per cent to be met by aggregating the equity interests held by the investor entity and its closely related entity/entities, and permitting the disposal of equity interests in tranches, subject to certain restrictions. There is no specified expiry date for the Tax Certainty Enhancement Scheme.

The Bill as passed will be gazetted on December 15, 2023. 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.

For more details, please visit the webpage of the IRD on the Tax Certainty Enhancement Scheme (www.ird.gov.hk/eng/tax/bus_taxcertainty.htm).