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contrary is proved, that the form is a form specified by the Board of Inland Revenue under subsection (1). (Added 8 of 1983 s. 20)

**87. General power of Governor in Council to exempt**

The Governor in Council may by order exempt any person, office or institution from payment of the whole or any portion of any tax chargeable under this Ordinance.

**87A. (Repealed 76 of 1993 s. 9)**

**88. Exemption of charitable bodies**

Notwithstanding anything to the contrary in this Ordinance contained there shall be exempt and there shall be deemed always to have been exempt from tax any charitable institution or trust of a public character:

Provided that where a trade or business is carried on by any such institution or trust the profits derived from such trade or business shall be exempt and shall be deemed to have been exempt from tax only if such profits are applied solely for charitable purposes and are not expended substantially outside Hong Kong and either— (Amended 7 of 1986 s. 12)

- (a) the trade or business is exercised in the course of the actual carrying out of the expressed objects of such institution or trust; or
- (b) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution or trust is established.

(Added 3 of 1949 s. 18. Amended 30 of 1950 Schedule; 49 of 1956 s. 66; 26 of 1969 s. 40; 65 of 1970 s. 10)

**89. Transitional provisions**

(1) The transitional provisions of Schedule 5 shall have effect in relation to the amendments made by the Inland Revenue (Amendment) (No. 3) Ordinance 1989 (43 of 1989). (Amended 52 of 1993 s. 11)

(2) In relation to amendments made by the Inland Revenue (Amendment) (No. 2) Ordinance 1993 (52 of 1993)—

- (a) it is declared that the amendments shall be without prejudice to the provisions of Part XIV; and
- (b) the transitional provisions of Schedule 7 shall have effect. (Added 52 of 1993 s. 11)

(3) The transitional provisions of Schedule 9 shall have effect in relation to recognized occupational retirement schemes approved under section 87A

prior to the repeal of that section by the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993). (Added 76 of 1993 s. 10) (Added 43 of 1989 s. 29)

**SCHEDULE 1 [ss. 2 & 5]**

**STANDARD RATE**

For the years of assessment 1947/48 to 1949/50 inclusive	— 10%. (Amended 49 of 1956 s. 67)
For the years of assessment 1950/51 to 1965/66 inclusive	— 12½%. (Amended 15 of 1966 s. 4)
For the years of assessment 1966/67 to 1983/84 inclusive	— 15%. (Added 15 of 1966 s. 4. Amended 36 of 1984 s. 7)
For the years of assessment 1984/85 to 1986/87 inclusive	— 17%. (Added 36 of 1984 s. 7. Amended 28 of 1987 s. 8)
For the year of assessment 1987/88	— 16¾%. (Added 28 of 1987 s. 8. Amended 28 of 1988 s. 7)
For the year of assessment 1988/89	— 15½%. (Added 28 of 1988 s. 7. Amended 17 of 1989 s. 20)
For the year of assessment 1989/90 and until superseded	— 15%. (Added 17 of 1989 s. 20)

**SCHEDULE 2 [ss. 13 & 43(1)]**

**RATES**

For the years of assessment 1947/48 to 1949/50 inclusive (Amended 49 of 1956 s. 68)

SECOND COLUMN	THIRD COLUMN
(a) Upon the first \$5,000	½ standard rate
(b) Upon the next \$5,000	½ " "
(c) —do—	½ " "
(d) —do—	The full standard rate
(e) —do—	½ standard rate
(f) —do—	½ " "
(g) —do—	½ " "
(h) Upon the remainder	Twice the standard rate

Note:—Where a person is liable to the appropriate tax for a part only of any year of assessment the amounts in the second column against items (a) to (g) will be reduced in the proportion which the number of days he is so liable bears to the number of days in that year of assessment.

**12A. Treatment of losses**

(1) Where in any year of assessment the aggregate of the outgoings, expenses and allowances deductible under section 12(1)(a) and (b) from the assessable income of a person exceeds the amount of his assessable income, the amount of the excess shall, subject to subsection (4), be carried forward and set off against his assessable income in subsequent years of assessment.

(2) The aggregate amount set off against a person's assessable income in subsequent years of assessment shall not exceed the amount of any excess under subsection (1).

(3) Subject to subsection (4), a set off by a person under this section shall first be made against his assessable income for the year of assessment next succeeding the year of assessment in respect of which the excess occurred and, so far as it cannot be so made, against his assessable income for the next year of assessment and so on until the excess has been completely set off.

(4) Where in any year of assessment the net chargeable incomes of the husband and wife are aggregated by reason of an election made under section 10(2), any excess carried forward into that year under this section shall—

(a) be set off primarily against the assessable income of the spouse whose deductions resulted in the excess and then, so far as it cannot be so set off, against the assessable income of the other spouse; and

(b) then, and so far as it cannot be set off in accordance with paragraph (a)—

(i) where no election is made under section 10(2) in respect of the following year of assessment, in accordance with subsection (3); or

(ii) where an election is made under section 10(2) in respect of the following year of assessment, in accordance with paragraph (a),

and so on from year to year until the excess has been completely set off. *(Replaced 43 of 1989 s. 5)*

*(Replaced 7 of 1975 s. 4. Amended 71 of 1983 s. 9)*

**12B. Ascertainment of net chargeable income**

(1) The net chargeable income of a person for any year of assessment shall, subject to subsection (2), be such amount as is arrived at after deducting from his net assessable income—

(a) such approved charitable donations as are provided for under section 12BA; and

(b) such allowances as are under Part V permitted for that person. *(Amended 43 of 1989 s. 6)*

(2) In the case of a person chargeable to salaries tax under section 10(3), that person and his or her spouse shall have but one net chargeable income, and it shall be the amount arrived at after deducting from the aggregate of their net assessable incomes—

(a) such approved charitable donations as are provided for under section 12BA; and

(b) such allowances as are under Part V permitted in their case. *(Replaced 43 of 1989 s. 6)*

(3) *(Repealed 43 of 1989 s. 6)*

*(Replaced 71 of 1983 s. 10)*

**12BA. Charitable donation**

(1) Subject to subsections (2) and (3), the amount of charitable donations that, in ascertaining net chargeable income, may be deducted—

(a) in the case of a person whose assessable income is aggregated with that of his or her spouse by reason of an election made under section 10(2), from the aggregate of their net assessable incomes; and

(b) in the case of any other person, from the net assessable income of that person,

shall be the aggregate of approved charitable donations which are made during that year by that person and by his or her spouse, if in any case such aggregate amount is not less than \$100. *(Replaced 43 of 1989 s. 7)*

(2) Every deduction claimed by virtue of subsection (1) shall be claimed on the specified form and the deduction shall be permitted only if the claim contains such particulars and is supported by such proof as the Commissioner may require. *(Amended 43 of 1989 s. 7)*

(3) No deduction shall be permitted under subsection (1) for any year of assessment in respect of—

(a) any sum which is allowable as a deduction under section 16, 16B, 16C or 16D;

(b) a sum in excess of 10% of—

(i) the assessable income as reduced by the deductions provided for under section 12(1)(a) and (b); or

(ii) in the case of a husband and wife who have made an election under section 10(2), the aggregate of the assessable incomes of both spouses as reduced in each case by the deductions provided for under section 12(1)(a) and (b). *(Replaced 43 of 1989 s. 7)*

(4) Notwithstanding anything contained in this section, a charitable donation shall not be taken into account in ascertaining the net chargeable income of more than one person and, where a deduction of the same donation

is claimed or allowed in respect of the net chargeable income of more than one person, section 33(2) to (4) shall apply with the necessary modifications to such a deduction as they do to a dependent parent allowance, a dependent grandparent allowance or a child allowance; and section 33 shall, where this subsection applies, be construed as if a reference to such an allowance included, in the case of a donation so claimed, a reference to an allowance to which section 33(2) applies and, in the case of a donation so allowed, an allowance to which section 33(3) applies. (*Added 43 of 1989 s. 7. Amended 37 of 1994 s. 2*)

(*Added 71 of 1983 s. 11*)

### 13. Calculation of salaries tax

(1) Subject to subsection (2), salaries tax shall be charged at the rates specified in Schedule 2 on the net chargeable income of a person for each year of assessment ascertained in accordance with this Part.

(2) The amount of salaries tax so charged shall not exceed the amount which would have been chargeable had the standard rate been charged on the whole of—

- (a) the net assessable income as reduced by approved charitable donations provided for under section 12BA; or
- (b) in the case of a spouse chargeable to salaries tax under section 10(3), the aggregate amount of his or her net assessable income and that of his or her spouse as reduced by approved charitable donations provided for under section 12BA.

(*Replaced 43 of 1989 s. 8*)

## PART IV PROFITS TAX

### 14. Charge of profits tax

(1) Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part. (*Replaced 2 of 1971 s. 9. Amended 7 of 1986 s. 12; 56 of 1993 s. 8*)

(2) In the case of—

- (a) a corporation; and
- (b) a corporation ("relevant corporation") to which a share of the assessable profits of a partnership is apportioned under section 22A and is charged in the partnership name under section 22,

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profits tax shall be charged on the assessable profits of that corporation, or on that share of the assessable profits of that relevant corporation, as the case may be, at the rate specified in Schedule 8. (*Added 56 of 1993 s. 8*)

### 15. Certain amounts deemed trading receipts

(1) For the purposes of this Ordinance, the sums described in the following paragraphs shall be deemed to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong—

- (a) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person from the exhibition or use in Hong Kong of cinematograph or television film or tape, any sound recording, or any advertising material connected with such film, tape or recording;
- (b) sums, not otherwise chargeable to tax under this Part, received by or accrued to a person for the use of or right to use in Hong Kong a patent, design, trademark, copyright material or secret process or formula or other property of a similar nature, or for imparting or undertaking to impart knowledge directly or indirectly connected with the use in Hong Kong of any such patent, design, trademark, copyright, secret process or formula or other property;
- (c) sums received by or accrued to a person by way of grant, subsidy or similar financial assistance in connection with the carrying on of a trade, profession or business in Hong Kong, other than sums in connection with capital expenditure made or to be made by the person;
- (d) sums received by or accrued to a person by way of hire, rental or similar charges for the use of movable property in Hong Kong or the right to use movable property in Hong Kong;
- (e) (*Repealed 7 of 1975 s. 7*)
- (f) sums received by or accrued to a corporation carrying on a trade, profession or business in Hong Kong by way of interest derived from Hong Kong; (*Replaced 19 of 1986 s. 2*)
- (g) sums received by or accrued to a person, other than a corporation, carrying on a trade, profession or business in Hong Kong by way of interest derived from Hong Kong which interest is in respect of the funds of the trade, profession or business; (*Replaced 19 of 1986 s. 2. Amended 17 of 1989 s. 4*)
- (h) sums received by or accrued to a person by way of refund to that person of a contribution made by him as employer to a recognized occupational retirement scheme, but to the extent only that such sums were allowed as deductions in ascertaining

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the amount of the consideration shall, notwithstanding the exclusion relating to the sale of capital assets contained in section 14, be treated as a trading receipt arising in or derived from Hong Kong by the transferor from a trade, profession or business carried on in Hong Kong.

(2) The reference in subsection (1) to the amount of consideration shall, in the case where consideration is paid or given otherwise than in cash, be construed as a reference to the money value of the consideration.

(3) Subsection (1) shall not apply in relation to a transfer of a right to receive income from property where the right arose from the ownership by the transferor of a legal or equitable estate or interest in the property and, before or at the time of that transfer, the transferor also transferred that estate or interest to the transferee.

(4) In this section—

“income” means any profits, rent, interest or royalty chargeable to tax under Part IV;

“property” means any property whatsoever;

“right to receive income from property” means a right to have income that will or may be derived from property paid to, or applied or accumulated for the benefit of, the person owning the right.

(5) This section shall apply to any agreement made for the transfer of a right to receive income from property within the meaning of subsection (4) entered into or effected after 25 February 1987 other than an agreement made in pursuance of a legally enforceable obligation incurred on or before that date.

*(Added 28 of 1987 s. 4)*

#### 15B. *(Repealed 71 of 1983 s. 13)*

#### 15C. Valuation of trading stock on cessation of business

Where a person ceases to carry on a trade or business in Hong Kong the trading stock of the trade or business at the date of cessation shall be valued for the purpose of computing the profits in respect of which that person is chargeable to tax under this Part as follows— *(Amended 28 of 1964 s. 6; 26 of 1969 s. 12)*

(a) in the case of any such trading stock—

(i) which is sold or transferred for valuable consideration to a person who carries on or intends to carry on a trade or business in Hong Kong; and

(ii) the cost whereof may be deducted by the purchaser as an expense in computing the profits from such trade or business in respect of which such purchaser is chargeable to tax under this Part,

the value thereof shall be taken to be the amount realized on the sale or the value of the consideration given for the transfer; *(Amended 28 of 1964 s. 6)*

(b) in the case of any other such trading stock, the value thereof shall be taken to be the amount which it would have realized if it had been sold in the open market at the date of cessation.

*(Added 36 of 1955 s. 22. Amended 7 of 1986 s. 12)*

#### 15D. Post-cessation receipts and payments

(1) Where a person who has ceased to carry on a trade, profession or business in Hong Kong, receives any sum which, if it had been received before such cessation, would have been included in the profits of the trade, profession or business in respect of which the person is chargeable to tax under this Part, then to the extent to which the sum has not already been included in such profits that sum shall be deemed to be profits of the trade, profession or business for the year of assessment in which the cessation occurred.

(2) Where a person who has ceased to carry on a trade, profession or business in Hong Kong pays any sum which, if it had been paid before such cessation, would have been deductible in computing the profits of the trade, profession or business in respect of which the person is chargeable to tax under this Part, then to the extent to which the sum has not already been deducted in computing such profits, that sum shall be deducted in ascertaining his profits for the year of assessment in which the cessation occurred.

*(Added 26 of 1969 s. 13. Amended 7 of 1986 s. 12)*

#### 16. Ascertainment of chargeable profits

(1) In ascertaining the profits in respect of which a person is chargeable to tax under this Part for any year of assessment there shall be deducted all outgoings and expenses to the extent to which they are incurred during the basis period for that year of assessment by such person in the production of profits in respect of which he is chargeable to tax under this Part for any period, including—

(a) where the conditions set out in subsection (2) are satisfied, sums payable by such person by way of interest upon any money borrowed by him for the purpose of producing such profits, and sums payable by such person by way of legal fees, procurator fees, stamp duties and other expenses in connection with such borrowing; *(Replaced 2 of 1971 s. 11. Amended 36 of 1984 s. 4)*

- (b) rent paid by any tenant of land or buildings occupied by him for the purpose of producing such profits, but not exceeding, in the case of rent paid to the tenant's spouse, or by a partnership to one or more of the partners thereof or to a spouse of any such partner, an amount equal to the assessable value of the land or buildings; (*Amended 76 of 1975 s. 8; 8 of 1983 s. 11; 71 of 1983 s. 14*)
- (c) tax of substantially the same nature as tax imposed under this Ordinance, proved to the satisfaction of the Commissioner to have been paid elsewhere, whether by deduction or otherwise, by any corporation which is managed and controlled in Hong Kong or by a person other than a corporation who carries on a trade, profession or business in Hong Kong, during the basis period for the year of assessment in respect of profits chargeable to tax by virtue of section 15(1)(f), (g), (i), (j), (k) or (l): (*Amended 7 of 1986 s. 12; 19 of 1986 s. 3*)

Provided that no deduction shall be made under this paragraph if the corporation or person concerned is eligible for relief under Part VIII in respect of such profits; (*Added 73 of 1978 s. 4. Amended 36 of 1984 s. 4*)

- (d) bad debts incurred in any trade, business or profession, proved to the satisfaction of the assessor to have become bad during the basis period for the year of assessment, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the assessor to have become bad during the said basis period notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said basis period:

Provided that—

- (i) deductions under this paragraph shall be limited to debts which were included as a trading receipt in ascertaining the profits, in respect of which the person claiming the deduction

is chargeable to tax under this Part, of the period within which they arose, and debts in respect of money lent, in the ordinary course of the business of the lending of money within Hong Kong, by a person who carries on that business; (*Amended 7 of 1986 s. 12*)

- (ii) all sums recovered during the said basis period on account of amounts previously allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as part of the profits of the trade, business or profession for that basis period;
  - (e) expenditure incurred in the repair of any premises, plant, machinery, implement, utensil or article employed in the production of such profits;
  - (f) expenditure incurred in the replacement of any implement, utensil or article employed in the production of such profits;  
 Provided that no allowances have been or shall be made under the provisions of Part VI in respect of such implement, utensil or article;
  - (g) notwithstanding section 17, a sum expended for the registration of a trade mark, design or patent used in the trade, profession or business which produces such profits; (*Replaced 26 of 1969 s. 14*)
  - (ga) the payments and expenditure specified in sections 16B, 16C and 16E, as provided therein; (*Amended 56 of 1993 s. 9*)
  - (h) such other deductions as may be prescribed by any rule made under this Ordinance.
- (2) The conditions referred to in subsection (1)(a) are that—
- (a) the money has been borrowed by a financial institution;
  - (b) the money has been borrowed by a public utility company specified in Schedule 3 at a rate of interest not exceeding the rate specified by the Financial Secretary by notice in the Gazette; (*Amended 17 of 1989 s. 5*)
  - (c) the money has been borrowed from a person other than a financial institution or an overseas financial institution and the sums payable by way of interest are chargeable to tax under this Ordinance;
  - (d) the money has been borrowed from a financial institution or an overseas financial institution and the repayment of the principal or interest is not secured or guaranteed either in whole or in part, and whether directly or indirectly, by any instrument executed or any undertaking given—
    - (i) by or on behalf of the borrower or any partner of the borrower;

- (ii) where the borrower is a body of persons, whether corporate or unincorporate, by or on behalf of any shareholders, member, director or member of the board of management of the borrower; or
  - (iii) where the borrower is a corporation, by or on behalf of any associated corporation,  
 against a deposit made with that or any other financial institution or overseas financial institution where any sums payable by way of interest on the deposit are not chargeable to tax under this Ordinance; (*Amended 7 of 1986 s. 4*)
- (e) the money has been borrowed wholly and exclusively to finance—
- (i) capital expenditure incurred on the provision of machinery or plant which qualifies for an allowance under Part VI; or
  - (ii) the purchase of trading stock, and such stock is used by the borrower in the production of profits chargeable to tax under this Part,  
 and the lender is not—
    - (A) any partner of the borrower; or
    - (B) where the borrower is a body of persons, whether corporate or unincorporate, any shareholder, member, director or member of the board of management of the borrower; or
    - (C) where the borrower is a corporation, any associated corporation; (*Replaced 36 of 1984 s. 4. Amended 7 of 1986 s. 4*)
- (f) the person chargeable to tax is a corporation and the deduction is in respect of interest payable by that corporation—
- (i) on debentures;
  - (ii) to the holder of any instrument issued—
    - (A) bona fide and in the course of carrying on business and which is marketable in Hong Kong or in a major financial centre outside Hong Kong approved by the Commissioner for the purposes of this subparagraph; or
    - (B) in pursuance of any agreement or arrangements, where the issue of an advertisement or invitation to the public in respect of such agreement or arrangements, or any document which contains such an advertisement or invitation, has been authorized by the Securities and Futures Commission under section 4(2)(g) of the Protection of Investors Ordinance (Cap. 335); or (*Amended 10 of 1989 s. 65*)
  - (iii) on moneys borrowed from an associated corporation, where the moneys borrowed in the hands of the associated

corporation arise entirely from the proceeds of an issue by the associated corporation of debentures or of any such instrument as is described in subparagraph (ii), in an amount not exceeding the interest payable by the associated corporation to the holders of its debentures or of such instruments. (*Added 7 of 1986 s. 4*)

(3) For the purposes of subsection (2)—

(a) any reference in paragraph (d)(i) or (ii) or paragraph (e)(A) or (B) to—

- (i) a borrower or partner of a borrower; or
- (ii) a shareholder, member, director or member of the board of management,

who is a natural person, shall be deemed to extend to that person's parents, spouse, child, brother or sister (whether of the whole or half blood) and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and of the adopting parent and a step child to be the child both of the natural parents and of any step parent;

(b) an "associated corporation" means—

- (i) a corporation over which the borrower has control;
- (ii) a corporation which has control over the borrower; or
- (iii) a corporation which is under the control of the same person as the borrower,

and, for the purposes of this definition, control shall have the same meaning as it has in section 2(2);

(ba) "debentures" means debentures listed on a stock exchange in Hong Kong or any other stock exchange recognized for the purposes of this paragraph by the Commissioner; (*Added 7 of 1986 s. 4*)

(c) an "overseas financial institution" means a person carrying on the business of banking or deposit-taking outside Hong Kong other than a person whom the Commissioner has, in accordance with the powers vested in him by subsection (4), determined shall not be recognized for the purposes of subsection (2) as an overseas financial institution. (*Added 36 of 1984 s. 4. Amended 7 of 1986 s. 12*)

(4) The Commissioner may for the purposes of subsection (2) determine that a person shall not be recognized as an overseas financial institution if he is of the opinion that that person's banking or deposit-taking business is not adequately supervised by a supervisory authority. (*Added 36 of 1984 s. 4*)

(5) The amendments to this section effected by the Inland Revenue (Amendment) Ordinance 1984 (36 of 1984) shall not have the effect of disallowing any deduction under subsection (1)(a) which could lawfully have

been made immediately prior to the coming into force of that Ordinance where the deduction is in respect of sums payable prior to 1 April 1984. (*Added 36 of 1984 s. 4. Amended 7 of 1986 s. 4*)

(6) The Governor in Council may, by notice in the Gazette, amend Schedule 3. (*Added 17 of 1989 s. 5*)

(*Replaced 28 of 1964 s. 7. Amended 35 of 1965 s. 9*)

**16A. Special payment under an approved retirement scheme allowable as a deduction**

(1) Subject to section 17(1)(k), where a person carrying on a trade, profession or business in Hong Kong makes a payment which is either— (*Amended 7 of 1986 s. 12*)

- (a) a contribution, other than an ordinary annual contribution, to a fund duly established under a recognized occupational retirement scheme; or
- (b) a premium, other than an ordinary annual premium, in respect of a contract of insurance under a recognized occupational retirement scheme,

such payment shall, to the extent that it is made in respect of individuals employed by such person for the purposes of producing profits in respect of which he is chargeable to tax under this Part and that it is not excessive in view of all the relevant circumstances, be deemed to be an expense wholly and exclusively incurred in the production of such profits and shall be allowed as a deduction therefrom in accordance with subsection (2). (*Amended 76 of 1993 s. 6*)

(2) For the purpose of making the deduction provided for in subsection (1), one fifth part of the payment shall be deemed to have been expended during the basis period in which the payment was actually made and the remaining 4 parts shall be deemed to have been expended at the rate of one part in the basis period for each of the succeeding 4 years of assessment:

Provided that in no case shall the total amount of the deductions exceed the amount of the payment.

(3) (*Repealed 56 of 1993 s. 10*)

(*Replaced 49 of 1956 s. 12*)

**16B. Expenditure on scientific research**

(1) Notwithstanding anything in section 17, in ascertaining the profits from any trade or business in respect of which a person is chargeable to tax under this Part for any year of assessment there shall, subject to subsection (2), be deducted the following payments made, and expenditure incurred, by such person during the basis period for that year of assessment (other than any amount which is allowable as a deduction apart from this section), namely—

- (a) payments to—



- (i) an approved research institute for scientific research related to that trade or business; or
  - (ii) an approved research institute, the object of which is the undertaking of scientific research related to the class of trade or business to which that trade or business belongs; and
- (b) expenditure on scientific research related to that trade or business, including capital expenditure except to the extent that it is expenditure on land or buildings or on alterations, additions or extensions to buildings.

(2) Where any payment or expenditure to which this section refers is made or incurred outside Hong Kong and the trade or business in relation to which it is so made or incurred is carried on partly in and partly out of Hong Kong, the deduction allowable under this section shall be such part of the amount which would otherwise be allowable as is reasonable in the circumstances. (*Amended 7 of 1986 s. 12*)

(3) (a) Where any plant or machinery, representing scientific research expenditure of a capital nature which pursuant to subsection (1)(b) has been allowed as a deduction in ascertaining the profits from a trade or business, ceases to be used by the person carrying on the trade or business for scientific research related to that trade or business and is then or thereafter sold by him, the proceeds of sale shall be treated as a trading receipt of the trade or business accruing at the time of the sale or, if the sale occurs on or after the date on which the trade or business is permanently discontinued, accruing immediately before the discontinuance.

(b) Where any such plant or machinery is destroyed, it shall for the purposes of paragraph (a) be treated as if it had been sold immediately before the destruction thereof and any insurance moneys or other compensation of any description received by the person carrying on the trade or business in respect of the destruction and any money received by him in respect of the remains of the plant or machinery shall be treated as if they were proceeds of that sale.

(c) The reference in paragraph (a) to the time of sale shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

(4) (a) In this section—

“an approved research institute” means any university, college, institute, association or organization which is approved in writing for the purposes of this section by the Director of Education as an institute, association or organization for undertaking scientific research which is or may prove to be of value to Hong Kong; (*Amended 7 of 1986 s. 12*)

“scientific research” means any activities in the fields of natural or applied science for the extension of knowledge.

- (b) An approval for the purposes of paragraph (a) may—
- (i) operate as from a date, whether before or after the date of approval, specified in the instrument of approval; and
  - (ii) be withdrawn at any time.

(5) In this section—

(a) references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research, but, save as aforesaid and subject to subsection (1)(b), include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research; and

(b) references to scientific research related to a trade or business or class of trade or business shall be read as including a reference to—

- (i) any scientific research which may lead to or facilitate an extension, or an improvement in the technical efficiency, of that trade or business, or, as the case may be, of trades or businesses of that class; and

- (ii) any scientific research of a medical nature which is of special relation to the welfare of workers employed in that trade or business or, as the case may be, in trades or businesses of that class.

(6) For the purposes of this section—

(a) expenditure shall not be regarded as incurred by a person in so far as it is, or is to be, met directly or indirectly by the Crown or by any government or public or local authority, whether in Hong Kong or elsewhere, or by any person other than the first-mentioned person; and (*Amended 7 of 1986 s. 12*)

(b) any expenditure of a capital nature incurred on scientific research related to any trade or business by a person about to carry on that trade or business shall be treated as if it had been incurred by that person on the first day upon which he does carry on that trade or business.

(7) The same sums paid, or expenditure incurred, shall not be taken into account for any of the purposes of this section in relation to more than one trade or business.

(*Added 35 of 1965 s. 10*)

#### 16C. Payments for technical education

(1) Notwithstanding anything in section 17, where a person carrying on a trade or business in Hong Kong makes any payment to be used for the

purposes of technical education related to that trade or business at any university, university college, technical college or other similar institution which is approved in writing for the purposes of this section by the Director of Education (being an amount which is not otherwise allowable as a deduction under this Ordinance), the payment shall be deducted as an expense in ascertaining the profits from that trade or business for the year of assessment in the basis period of which the payment was made. (*Amended 7 of 1986 s. 12*)

(2) For the purposes of this section, technical education shall be deemed to be related to a trade or business, if, and only if, it is technical education of a kind specially requisite for persons employed in the class of trade or business to which that trade or business belongs.

(3) An approval for the purposes of subsection (1) may—

- (a) operate as from a date, whether before or after the date of approval, specified in the instrument of approval; and
- (b) be withdrawn at any time.

(*Added 35 of 1965 s. 10*)

#### 16D. Approved charitable donations

(1) Subject to subsection (2), a person chargeable to tax under this Part may deduct the aggregate of approved charitable donations made by that person in the basis period for a year of assessment, if such aggregate is not less than \$100, from what would otherwise have been the assessable profits of such person for that year of assessment.

(2) A person shall not be entitled under subsection (1) to deduct for any year of assessment—

- (a) any sum which is allowable as a deduction under section 12BA, 16, 16B or 16C; (*Amended 56 of 1993 s. 11*)
- (b) a sum in excess of 10% of such balance of that person's assessable profits after making any adjustment for the allowances and charges provided under Part VI.

(*Added 7 of 1975 s. 10*)

#### 16E. Purchase and sale of patent rights, etc.

(1) Notwithstanding anything in section 17, in ascertaining the profits from any trade, profession or business in respect of which a person is chargeable to tax under this Part for any year of assessment there shall, subject to subsections (2) and (6), be deducted any expenditure incurred by such person during the basis period for that year of assessment (other than any amount which is allowable as a deduction apart from this section) on the purchase of patent rights or rights to any know-how, for use in Hong Kong in the trade, profession or business in the production of such profits. (*Amended 7 of 1986 s. 12; 15 of 1992 s. 2*)

(2) Where any rights of a kind referred to in subsection (1) are purchased partly for use in Hong Kong and partly for use outside Hong Kong the deduction allowable under this section shall be such part of the expenditure referred to in subsection (1) as is, having regard to the extent of the use in Hong Kong, reasonable and appropriate in the circumstances of the case. (*Amended 7 of 1986 s. 12*)

(2A) No deduction is allowable under subsection (1) in respect of patent rights or rights to any know-how purchased by a person wholly or partly from an associate. (*Added 15 of 1992 s. 2*)

(2B) For the purposes of subsection (2A), rights of a kind referred to in subsection (1) that are purchased or sold by a trustee of a trust estate or a corporation controlled by such a trustee shall be deemed to have been purchased or sold, as the case may be, by each of the trustee, the corporation and the beneficiary under the trust. (*Added 15 of 1992 s. 2*)

(3) Where any rights of a kind referred to in subsection (1) in respect of which a deduction has been allowed to any person under this section in ascertaining the profits from a trade, profession or business are thereafter sold by him—

- (a) the proceeds of sale; or
- (b) if the deduction was one to which subsection (2) applied, such part of the proceeds of sale as relates to the rights in respect of which a deduction was allowed under that subsection,

not being an amount otherwise chargeable to tax under this Part, shall, notwithstanding the exclusion relating to the sale of capital assets contained in section 14, be treated as a trading receipt of the trade, profession or business accruing at the time of sale, or if the sale occurs on or after the date on which the trade, profession or business is permanently discontinued, accruing immediately before the discontinuance.

(4) In this section—

“associate”, in relation to a person who purchases (including a person who is deemed to have purchased) rights of a kind referred to in subsection (1), means—

- (a) where the purchaser is a natural person—
  - (i) a relative of the purchaser;
  - (ii) a partner of the purchaser and any relative of that partner;
  - (iii) a partnership in which the purchaser is a partner;
  - (iv) any corporation controlled by the purchaser, by a partner of the purchaser or by a partnership in which the purchaser is a partner;
  - (v) any director or principal officer of any such corporation as is referred to in subparagraph (iv);
- (b) where the purchaser is a corporation—
  - (i) any associated corporation;