

**Inland Revenue (Amendment) (Tax Concessions for
Carried Interest) Bill 2021**

Contents

| Clause | Page |
|--------|---|
| 1. | Short title C11 |
| 2. | Inland Revenue Ordinance amended C11 |
| 3. | Section 2 amended (interpretation) C13 |
| 4. | Section 4 amended (official secrecy) C13 |
| 5. | Section 19CA (as amended by section 7 of the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Ordinance 2020 (15 of 2020)) amended (treatment of unabsorbed losses under sections 19CAB and 19CAC: interpretation) C13 |
| 6. | Section 20AN amended (certain profits of certain funds exempt from payment of profits tax) C19 |
| 7. | Section 20AO amended (certain profits of special purpose entities exempt from payment of profits tax) C19 |
| 8. | Part 6B added C23 |

Part 6B

Eligible Carried Interest and its Tax Treatment

| | |
|-------|---|
| 40AC. | Schedule 16D: eligible carried interest and its tax treatment C23 |
| 40AD. | Power to amend Schedule 16D C23 |

| Clause | Page |
|--------|---|
| 9. | Section 51C amended (business records to be kept) C23 |
| 10. | Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.) C25 |
| 11. | Schedule 16C amended (classes of assets specified for transactions for purposes of section 20AN) C27 |
| 12. | Schedule 16D added C27 |
| | Schedule 16D Eligible Carried Interest and its Tax Treatment C29 |

A BILL

To

Amend the Inland Revenue Ordinance to give profits tax and salaries tax concessions to qualifying persons and qualifying employees in relation to particular types of carried interest received by, or accrued to, the qualifying persons and the qualifying employees from the provision of investment management services by those persons and employees for certain funds and entities; to expand for the purposes of profits tax exemption the eligible classes of assets that may be held and administered by a special purpose entity on behalf of a fund that owns the entity; and to provide for related and transitional matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Ordinance 2021.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 12.

3. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“***Monetary Authority*** (金融管理專員) means the Monetary Authority appointed under section 5A(1) of the Exchange Fund Ordinance (Cap. 66);”.

4. Section 4 amended (official secrecy)

(1) Section 4(4)(d)—

Repeal

“; or”

Substitute a semicolon.

(2) Section 4(4)(e)—

Repeal the full stop

Substitute

“; or”.

(3) After section 4(4)(e)—

Add

“(f) to the Monetary Authority, or an officer authorized by the Monetary Authority, for the purpose of seeking advice under section 12 of Schedule 16D.”.

5. Section 19CA (as amended by section 7 of the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Ordinance 2020 (15 of 2020)) amended (treatment of unabsorbed losses under sections 19CAB and 19CAC: interpretation)

(1) Section 19CA, definition of *chargeable concessionary trading receipts*, paragraph (a), after “14P(1)”—

Add

“and section 4(1) of Schedule 16D”.

- (2) Section 19CA, definition of *chargeable concessionary trading receipts*, paragraph (b)—

Repeal

“; and”

Substitute a semicolon.

- (3) Section 19CA, definition of *chargeable concessionary trading receipts*, paragraph (c)—

Repeal the semicolon

Substitute

“; and”.

- (4) Section 19CA, definition of *chargeable concessionary trading receipts*, after paragraph (c)—

Add

“(d) if the assessable profits in respect of the concessionary trading receipts fall within the description in section 4(1) of Schedule 16D—the amount of the assessable profits calculated in accordance with section 6 of that Schedule;”.

- (5) Section 19CA, definition of *concession provision*, paragraph (f)—

Repeal

“or”.

- (6) Section 19CA, definition of *concession provision*, paragraph (g)—

Repeal the semicolon

Substitute

“; or”.

- (7) Section 19CA, definition of *concession provision*, after paragraph (g)—

Add

“(h) section 4(1) of Schedule 16D;”.

- (8) Section 19CA, definition of *unabsorbed loss in respect of the concessionary trading receipts*, paragraph (a), after “14P(1)”—

Add

“and section 4(1) of Schedule 16D”.

- (9) Section 19CA, definition of *unabsorbed loss in respect of the concessionary trading receipts*, paragraph (b)—

Repeal

“; and”

Substitute a semicolon.

- (10) Section 19CA, definition of *unabsorbed loss in respect of the concessionary trading receipts*, paragraph (c)—

Repeal the semicolon

Substitute

“; and”.

- (11) Section 19CA, definition of *unabsorbed loss in respect of the concessionary trading receipts*, after paragraph (c)—

Add

“(d) if the assessable profits in respect of the concessionary trading receipts fall within the description in section 4(1) of Schedule 16D—any loss ascertained in accordance with section 19D and section 6 of that Schedule;”.

6. Section 20AN amended (certain profits of certain funds exempt from payment of profits tax)

(1) After section 20AN(2)—

Add

“(2A) For the purposes of subsection (2)(a), assets of a class specified in Schedule 16C may be held by a special purpose entity on behalf of a fund that owns the entity and transactions in such assets may be carried out by the entity on behalf of the fund.”.

(2) Section 20AN(6)—

Add in alphabetical order

“*special purpose entity* (特定目的實體) has the meaning given by section 20AO(4);”.

7. Section 20AO amended (certain profits of special purpose entities exempt from payment of profits tax)

(1) Section 20AO(2)(b)—

Repeal

“and”.

(2) Section 20AO(2)(c)—

Repeal the full stop

Substitute a semicolon.

(3) After section 20AO(2)(c)—

Add

“(d) transactions in assets of a class specified in Schedule 16C; and

- (e) transactions incidental (*incidental transactions*) to the carrying out of transactions mentioned in paragraph (a), (b), (c) or (d) if, in the basis period for the year of assessment, the entity's trading receipts from the incidental transactions do not exceed 5% of the total trading receipts from—
 - (i) the transactions mentioned in those paragraphs; and
 - (ii) the incidental transactions.”.
- (4) Section 20AO(4), definition of *special purpose entity*—

Repeal paragraph (b)

Substitute

- “(b) is established solely for the purpose of holding (whether directly or indirectly) and administering only one or both of the following—
 - (i) one or more investee private companies;
 - (ii) assets of a class specified in Schedule 16C;”.
- (5) Section 20AO(4), definition of *special purpose entity*—

Repeal paragraph (d)

Substitute

- “(d) does not carry on any trade or activities except for the purpose of—
 - (i) holding (whether directly or indirectly) and administering one or more investee private companies;
 - (ii) holding (whether directly or indirectly) and administering assets of a class specified in Schedule 16C; or

- (iii) executing a legal document relating to an activity mentioned in subparagraph (i) or (ii) on behalf of the fund mentioned in paragraph (a); and”.

8. Part 6B added

After Part 6A—

Add

“Part 6B

Eligible Carried Interest and its Tax Treatment

40AC. Schedule 16D: eligible carried interest and its tax treatment

Schedule 16D contains provisions about the tax treatment of eligible carried interest within the meaning of that Schedule.

40AD. Power to amend Schedule 16D

- (1) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend sections 2, 5(3), 7 and 9 of Schedule 16D.
- (2) A notice published under subsection (1) may contain any incidental, supplemental, evidential, consequential, savings and transitional provisions that are necessary and expedient in consequence of the amendments made under that subsection.”.

9. Section 51C amended (business records to be kept)

Section 51C—

Repeal subsection (5)

Substitute

- “(5) The following provisions provide for modifications to this section—
- (a) section 10 of Schedule 16D (eligible carried interest and its tax treatment);
 - (b) section 25 of Schedule 17A (specified alternative bond scheme and its tax treatment).”.

10. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)

- (1) After section 80(2S)—

Add

- “(2T) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement under section 10(2) of Schedule 16D.
- (2U) A person who commits an offence under subsection (2T) is liable on conviction to a fine at level 3, and the court may order the person to do, within a time specified in the order, the act that the person has failed to do.
- (2V) If a person fails to comply with an order of the court under subsection (2U), the person commits an offence and is liable on conviction to a fine at level 4.”.
- (2) Section 80—

Repeal subsection (6)

Substitute

“(6) The following provisions provide for modifications to this section—

- (a) section 10 of Schedule 16D (eligible carried interest and its tax treatment);
- (b) sections 25 and 26 of Schedule 17A (specified alternative bond scheme and its tax treatment).”.

11. Schedule 16C amended (classes of assets specified for transactions for purposes of section 20AN)

(1) Schedule 16C, heading—

Repeal

“Section 20AN”

Substitute

“Sections 20AN and 20AO”.

(2) Schedule 16C—

Repeal

“20AP & 20AS & Sch. 17A]”

Substitute

“20AO, 20AP & 20AS & Schs. 16D & 17A]”.

12. Schedule 16D added

After Schedule 16C—

Add

“Schedule 16D

[ss. 4, 19CA, 40AC,
40AD, 51C & 80]

Eligible Carried Interest and its Tax Treatment

Part 1

Preliminary

1. Interpretation

In this Schedule—

associated corporation (相聯法團), in relation to a corporation, means—

- (a) another corporation over which the corporation has control;
- (b) another corporation that has control over the corporation; or
- (c) another corporation that is under the control of the same person as is the corporation;

associated partnership (相聯合夥), in relation to a partnership, means—

- (a) another partnership over which the partnership has control;
- (b) another partnership that has control over the partnership; or

- (c) another partnership that is under the control of the same person as is the partnership;

certified investment fund (經核證投資基金)—see section 2 of this Schedule;

control (控制)—

- (a) in relation to a corporation, means the power of a person to secure—
 - (i) by means of the holding of shares or the possession of voting power in or in relation to that corporation or any other corporation; or
 - (ii) by virtue of any powers conferred by the articles of association or other document regulating that corporation or any other corporation,

that the affairs of that corporation are conducted in accordance with the wishes of the person;

- (b) in relation to a partnership, means the power of a person to secure—
 - (i) by means of the holding of interests or the possession of voting power in or in relation to that partnership or any other partnership; or
 - (ii) by virtue of any powers conferred by the partnership agreement or other document regulating that partnership or any other partnership,

that the affairs of that partnership are conducted in accordance with the wishes of the person;

disposal of investment (投資處置) includes part disposal of an investment and the disposal of particular investments;

eligible carried interest (具資格附帶權益)—see section 3 of this Schedule;

entity (實體) means a body of persons (corporate or unincorporate) or a legal arrangement, and includes—

- (a) a corporation;
- (b) a partnership; and
- (c) a trust;

external investor (外部投資者) means a person who participates in a certified investment fund or a specified entity as an investor without day-to-day control over the fund or entity;

investment management services (投資管理服務), in relation to a certified investment fund or a specified entity, include—

- (a) seeking funds for the fund or entity from external investors or potential external investors;
- (b) researching and advising on potential investments to be made for the fund or entity;
- (c) acquiring, managing or disposing of property or investments for the fund or entity; and
- (d) acting for the fund or entity with a view to assisting an entity in which the fund or entity has made an investment to raise funds;

profit-related return (利潤關聯回報)—see section 3 of this Schedule;

qualifying employee (合資格僱員)—see section 8(4) of this Schedule;

qualifying payer (合資格支付人)—see section 2 of this Schedule;

qualifying person (合資格人士)—see section 4(3) of this Schedule;

specified entity (指明實體)—see section 2 of this Schedule;

sum (款項) includes any money or money's worth.

2. **Meaning of *certified investment fund*, *qualifying payer* and *specified entity***

In this Schedule—

certified investment fund (經核證投資基金) means a fund within the meaning of section 20AM that is certified by the Monetary Authority to be in compliance with the criteria for certification published by the Monetary Authority;

qualifying payer (合資格支付人) means—

- (a) a certified investment fund;
- (b) an associated corporation, or an associated partnership, of a certified investment fund that is a corporation or a partnership; or
- (c) a specified entity;

specified entity (指明實體) means The Innovation and Technology Venture Fund Corporation incorporated under the Companies Ordinance (Cap. 622).

3. Meaning of *eligible carried interest* and *profit-related return*

- (1) Eligible carried interest is a sum received by, or accrued to, a person by way of profit-related return from the provision of investment management services by the person for a certified investment fund or a specified entity.
- (2) A sum received by, or accrued to, a person is so received or accrued by way of profit-related return if, under the agreement governing the operation of the certified investment fund or the specified entity, all of the following conditions are satisfied—
 - (a) the sum is received or accrued after the payment of a return on investments in the fund or entity subject to the fulfilment of the hurdle rate in the fund or entity;
 - (b) the sum is to be, or may be, received or accrued only if—
 - (i) there are profits for a period on the investments, or on particular investments, made for the fund or entity; or
 - (ii) there are profits arising from a disposal of investment made for the fund or entity;
 - (c) the sum that is to be, or may be, received or accrued is variable by reference to those profits;
 - (d) the returns to external investors of the fund or entity are also determined by reference to those profits.
- (3) If a part of the sum does not satisfy any one of the conditions in subsection (2), that part is not to be regarded as received by, or accrued to, a person by way of profit-related return.

- (4) If—
- (a) one or more sums are received by, or accrued to, a person from a certified investment fund or a specified entity by way of profit-related return in a year of assessment (*actual sums*); and
 - (b) there was no significant risk that at least a certain amount of the actual sum (*minimum amount*) would not be received by, or accrued to, the person,
- then the amount of the actual sum, or of the aggregate of the actual sums, that is equal to the minimum amount is not to be regarded as eligible carried interest.
- (5) For the purposes of subsection (4)(b), the risk is to be assessed—
- (a) in relation to each actual sum (and the investments to which it relates) individually—by taking into account any other sums that might have been received by, or accrued to, the person from the certified investment fund or the specified entity instead of that actual sum; and
 - (b) in relation to the actual sum or sums, and any other sums that might have been received by, or accrued to, the person from the fund or entity by way of profit-related return in the year of assessment (and the investments to which all those sums relate)—by taking into account all those sums as a whole.
- (6) For the purposes of subsection (4)(b), the risk is also to be assessed as at the latest of—

- (a) the time when the person enters into an agreement for the provision of investment management services for the certified investment fund or the specified entity;
 - (b) the time when the person begins to carry out investment management services directly or indirectly for the fund or entity; and
 - (c) the time when a change is made to the agreement referred to in paragraph (a) so far as relating to the amount of the sums that are to be, or may be, received by or accrued to the person.
- (7) For the purposes of subsection (4)(b), any risk that a sum is prevented from being received by, or accrued to, a person (by reason of insolvency or otherwise) is to be ignored.
- (8) If more than one actual sum is received by, or accrued to, a person in a year of assessment, the minimum amount is to be apportioned between the actual sums so that, for the purposes of subsection (4)—
 - (a) the part of the minimum amount that is attributable to a particular actual sum is to be apportioned to that actual sum; and
 - (b) the part of the minimum amount that is not attributable to any particular actual sum is to be apportioned between the actual sums on a just and reasonable basis.
- (9) For the purposes of subsection (8), any part of the minimum amount is attributable to a particular actual sum (so that the risk under subsection (4)(b) for that part is to be assessed in accordance with

subsection (5)(a)) to the extent that there was no significant risk that that part would not be received by, or accrued to, the person in relation to that actual sum.

- (10) Despite subsections (2), (3), (4), (5), (6), (7), (8) and (9), any sum received by, or accrued to, a person in respect of investment management services, that—

- (a) is distributed by a specified entity; and
- (b) arises from profits derived from a disposal of shares of an investee company (as defined by section 20AR(2)),

is to be regarded as received or accrued by way of profit-related return.

- (11) In this section—

hurdle rate (門檻回報率) means a preferred rate of return on investments in a certified investment fund or a specified entity, that is stipulated in the agreement governing the operation of the fund or entity.

Part 2

Profits Tax Treatment of Eligible Carried Interest

4. Profits tax concessions for qualifying person

- (1) Where a person is chargeable to profits tax in respect of eligible carried interest for a year of assessment and all of the conditions in subsection (2) are satisfied in relation to the eligible carried interest, then—

- (a) the person's assessable profits in respect of the eligible carried interest are to be calculated in accordance with section 6 of this Schedule; and
 - (b) profits tax is to be charged on those assessable profits of the person at the rate specified in section 7 of this Schedule.
- (2) The conditions are that—
 - (a) for the year of assessment, the person by whom the eligible carried interest is received, or to whom the eligible carried interest is accrued, is a qualifying person;
 - (b) the eligible carried interest is received by, or accrued to, the person from one, or more than one, qualifying payer;
 - (c) the eligible carried interest arises from profits on investments, profits on particular investments, or profits on a disposal of investment, that are earned from a transaction—
 - (i) in shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a private company (as specified in Schedule 16C);
 - (ii) in shares of, or comparable interests in, a special purpose entity or an interposed special purpose entity (as defined by section 20AO(4)) that holds (whether directly or indirectly) and administers—
 - (A) one or more investee private companies (as defined by section 20AO(4)); and

- (B) no other assets of a class specified in Schedule 16C;
 - (iii) in shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, an investee private company (as defined by section 20AO(4)); or
 - (iv) incidental to the carrying out of a transaction mentioned in subparagraph (i), (ii) or (iii);
 - (d) if the profits that are earned from a transaction mentioned in paragraph (c) are from a transaction by a certified investment fund or a special purpose entity—those profits are exempt from profits tax in accordance with section 20AN or 20AO.
 - (3) A person is a qualifying person for a year of assessment if, during the basis period for the year of assessment, the person—
 - (a) is a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on, or an authorized financial institution registered under that Part for carrying on, a business in any regulated activity as defined by Part 1 of Schedule 5 to that Ordinance;
 - (b) carries out investment management services in Hong Kong, or arranges such services to be carried out in Hong Kong, for a certified investment fund that is a qualified investment fund as defined by section 20AN(6); or
 - (c) carries out investment management services in Hong Kong, or arranges such services to be carried out in Hong Kong, for a specified entity.

5. Investment management services carried out in Hong Kong

- (1) Section 4(1) of this Schedule does not apply to a person in relation to eligible carried interest received by, or accrued to, the person from the provision of investment management services by the person for a certified investment fund or a specified entity for a year of assessment unless the person satisfies the conditions in both subsections (2) and (3).
- (2) The condition in this subsection is satisfied if, during the whole of the applicable period, the investment management services concerned are—
 - (a) either—
 - (i) carried out in Hong Kong by the person; or
 - (ii) arranged by the person to be carried out in Hong Kong; and
 - (b) not carried out outside Hong Kong by a permanent establishment (that is, a branch, management or other place of business, but not including an agency, unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of a principal).
- (3) The condition in this subsection is satisfied if, during the whole of the applicable period—
 - (a) the average number of full-time employees in Hong Kong who carry out the investment management services concerned and have the qualifications necessary for doing so during the basis period for each year of assessment falling within the applicable period is—

- (i) adequate in the opinion of the Commissioner; and
 - (ii) in any event, 2 or more; and
- (b) the total amount of operating expenditure incurred in Hong Kong for the provision of the investment management services concerned during the basis period for each year of assessment falling within the applicable period is—
 - (i) adequate in the opinion of the Commissioner; and
 - (ii) in any event, \$2,000,000 or more.
- (4) In this section—

applicable period (適用期間) means the period beginning on the day on which a person begins to carry out investment management services directly or indirectly for a certified investment fund or a specified entity and ending on the day on which eligible carried interest is received by, or accrued to, the person.

6. Profits tax calculation for qualifying person

- (1) If section 4(1) of this Schedule applies to a qualifying person in relation to eligible carried interest—
 - (a) the person is chargeable to profits tax for the basis period for a year of assessment on the net eligible carried interest calculated in accordance with subsection (2); and
 - (b) the person's assessable profits in respect of the eligible carried interest are to be calculated on the basis of the net eligible carried interest calculated in accordance with subsection (2).

- (2) The calculation of net eligible carried interest is in accordance with the following formula—

$$A = B - C - D + E$$

- where:
- A means the net eligible carried interest;
 - B means the eligible carried interest received by, or accrued to, the qualifying person from one, or more than one, qualifying payer during the basis period for the year of assessment;
 - C means the outgoings and expenses to the extent that they are incurred during the basis period for the year of assessment to produce B;
 - D means the allowances allowed under Part 6, to the extent that the relevant assets counted for the allowances are used during the basis period for the year of assessment to produce B;
 - E means the balancing charge to be made under Part 6, to the extent that the relevant assets counted for the balancing charge are used during the basis period for the year of assessment to produce B.

7. Rate of profits tax for qualifying person

For a year of assessment commencing on or after 1 April 2020, the rate of profits tax in respect of the net eligible carried interest mentioned in section 6 of this Schedule is 0%.

Part 3

Salaries Tax Treatment of Eligible Carried Interest

8. Salaries tax concessions for qualifying employee

- (1) This section applies to an individual who, for a year of assessment, is a qualifying employee.
- (2) If assessable income is accrued to a qualifying employee from an employment under which investment management services are provided by the employee for, or on behalf of, a qualifying person for a certified investment fund or a specified entity, the employee's assessable income from the employment for the year of assessment is to be calculated in accordance with subsection (3).
- (3) The calculation is in accordance with the following formula—

$$A = B - (C \times D)$$

- where:
- A means the assessable income accrued from the employment for the year of assessment;
 - B means the income accrued from the employment for the year of assessment;
 - C means that part of B paid out of the eligible carried interest received by, or accrued to, a qualifying person and to which section 4(1) of this Schedule applies for the assessment of that eligible carried interest for profits tax;
 - D means the percentage specified in section 9 of this Schedule.

(4) In this section—

qualifying employee (合資格僱員) means an individual who satisfies both of the following conditions—

(a) the individual is employed by—

(i) a qualifying person; or

(ii) the associated corporation, or the associated partnership, of a qualifying person who is a corporation or a partnership, if the associated corporation or the associated partnership carries on a business in Hong Kong;

(b) the individual is carrying out the duties of the employment by providing investment management services in Hong Kong for, or on behalf of, the qualifying person.

9. Percentage of eligible carried interest to be excluded for salaries tax calculation

For a year of assessment commencing on or after 1 April 2020, the percentage mentioned in section 8(3) of this Schedule is 100%.

Part 4

Provision of Information and Retention of Records

10. Obligations of qualifying person: information and records

(1) Part 9 and section 80 apply, with the modifications specified in this section, to a person who makes a claim to the Commissioner that—

- (a) the person is a qualifying person; and
 - (b) eligible carried interest received by, or accrued to, the person is to be assessed for profits tax in accordance with section 4(1) of this Schedule for a year of assessment.
 - (2) The person must provide to the Commissioner in the person's return or in other manner or form that may be required by the Commissioner—
 - (a) the information in relation to the eligible carried interest; and
 - (b) the additional information in relation to an employee of the person, if—
 - (i) the person makes a payment or an accrual of eligible carried interest to the employee; and
 - (ii) the employee makes a claim to the Commissioner that—
 - (A) the employee is a qualifying employee; and
 - (B) eligible carried interest received by, or accrued to, the employee is to be assessed for salaries tax in accordance with section 8 of this Schedule for a year of assessment.
 - (3) The additional information in relation to an employee includes—
 - (a) the employee's name;
 - (b) the employee's address;

- (c) the employee's Hong Kong Identity Card number (or the number and issuing country of the employee's passport);
 - (d) the amount of eligible carried interest received by, or accrued to, the employee for the year of assessment; and
 - (e) details of the qualifying payer from which the eligible carried interest was received by, or accrued to, the employee for the year of assessment.
- (4) For the purposes of section 51C, a person mentioned in subsection (1) must—
 - (a) keep sufficient records to enable the accuracy and completeness of a payment or an accrual of eligible carried interest made by the person to be readily ascertained; and
 - (b) retain the records for a period of not less than 7 years beginning on the date of the payment or the accrual of eligible carried interest, whichever is the later.
- (5) Section 80 applies to a failure to comply with section 51C, as modified by subsection (4), in the same way that section 80 applies to a failure to comply with that section 51C.

11. Obligations of qualifying payer: information and records

- (1) This section applies to a qualifying payer if—
 - (a) a person makes a claim to the Commissioner that—
 - (i) the person is a qualifying person; and

- (ii) eligible carried interest received by, or accrued to, the person is to be assessed for profits tax in accordance with section 4(1) of this Schedule for a year of assessment; and
 - (b) the eligible carried interest was paid or accrued to the person by the qualifying payer for the year of assessment.
- (2) The qualifying payer must provide to the Commissioner the information that may be required by the Commissioner in relation to the payments or the accruals of eligible carried interest made to the person mentioned in subsection (1).
- (3) For the purposes of providing information to the Commissioner, the qualifying payer must—
- (a) keep sufficient records to enable the accuracy and completeness of a payment or an accrual of eligible carried interest made by the qualifying payer to be readily ascertained; and
 - (b) retain the records for a period of not less than 7 years beginning on the date of the payment or the accrual of eligible carried interest, whichever is the later.
- (4) If a qualifying payer fails to comply with the requirements in subsection (2) or (3), the Commissioner may determine that—
- (a) the person making the claim is not a person by whom the eligible carried interest is received, or to whom the eligible carried interest is accrued; and

- (b) the eligible carried interest is not to be assessed for profits tax in accordance with section 4(1) of this Schedule.

Part 5

Miscellaneous Matters

12. Commissioner may seek advice from Monetary Authority on certain matters

- (1) This section applies if a claim is made by a person to the Commissioner in relation to—
 - (a) profits tax treatment of eligible carried interest under section 4 of this Schedule; or
 - (b) salaries tax treatment of eligible carried interest under section 8 of this Schedule.
- (2) After receiving the claim, the Commissioner may seek advice from the Monetary Authority, or an officer authorized by the Monetary Authority, in order to ascertain—
 - (a) whether a service constitutes an investment management service;
 - (b) whether a sum has been received by, or accrued to, a person by way of profit-related return so that it may be eligible carried interest;
 - (c) whether an entity is, and has remained, a certified investment fund; and
 - (d) any other matter that the Commissioner considers appropriate in relation to the claim.

13. Anti-avoidance provisions relating to arrangement to obtain tax benefit**(1) If—**

- (a)** a person enters into an arrangement; and
- (b)** the Commissioner is satisfied that the main purpose, or one of the main purposes, of the person entering into the arrangement is to obtain a tax benefit, whether for the person or any other person, in relation to a liability to pay profits tax or salaries tax in respect of eligible carried interest under this Schedule,

this Schedule does not apply in relation to any sums received by, or accrued to, the person or any other person during a basis period for a year of assessment relevant to the arrangement.

- (2)** For the purposes of subsection (1), a basis period for a year of assessment is relevant to an arrangement if, in the opinion of the Commissioner, the arrangement has effect during the basis period.
- (3)** Without limiting subsection (1), an arrangement to disguise as eligible carried interest a management fee that a person receives, or that accrues, from a qualifying payer is an arrangement to obtain a tax benefit.

(4) In this section—

management fee (管理費用), in relation to a certified investment fund or a specified entity, means a sum received by, or accrued to, a person from the provision of investment management services by the person for the fund or entity, except in so far as the sum constitutes eligible carried interest;

tax benefit (稅務利益) means an avoidance, postponement or reduction of a liability to pay tax.

14. Loss sustained by qualifying person

- (1) This section applies to a qualifying person if, because of sections 4, 6 and 7 of this Schedule, the person does not need to pay any profits tax in respect of eligible carried interest for a year of assessment.
- (2) Any associated loss is not available for set off against any of the assessable profits of the person for the year of assessment or any subsequent year of assessment.
- (3) In this section—

associated loss (相聯虧損) means any loss sustained by a qualifying person in a year of assessment in respect of eligible carried interest received by, or accrued to, the person arising from a transaction mentioned in section 4(2)(c) of this Schedule.

Part 6

Application

15. Application of this Schedule

- (1) The tax treatment of eligible carried interest under this Schedule applies in relation to eligible carried interest received by, or accrued to, a qualifying person or a qualifying employee on or after 1 April 2020, for any year of assessment commencing on or after that date.

- (2) To avoid doubt, this Schedule does not apply in relation to eligible carried interest received by, or accrued to, a qualifying person before 1 April 2020 but falling within the basis period for a year of assessment commencing on or after 1 April 2020.
 - (3) For any year of assessment mentioned in subsection (1), this Schedule applies in relation to eligible carried interest received by, or accrued to, a qualifying person or a qualifying employee in the period beginning on 1 April 2020 and ending on the day immediately before the date of commencement of the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Ordinance 2021 (of 2021) as it applies in relation to eligible carried interest received or accrued after that period.”.
-

Explanatory Memorandum

The main object of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (***Ordinance***) to give profits tax and salaries tax concessions to qualifying persons and qualifying employees in relation to carried interest received by, or accrued to, the qualifying persons and the qualifying employees from the provision of investment management services by those persons and employees for certain funds and entities, commonly known as private equity funds.

2. Clause 1 sets out the short title.
3. Clause 8 adds a new Part 6B to the Ordinance to introduce the tax concession regime for eligible carried interest, which is set out in a new Schedule 16D added to the Ordinance by clause 12. The new Part 6B also empowers the Secretary for Financial Services and the Treasury to, by notice published in the Gazette, amend sections 2, 5(3), 7 and 9 of the new Schedule 16D and make incidental, supplemental, evidential, consequential, savings and transitional changes that are necessary and expedient in consequence of the amendments.
4. The new Schedule 16D contains 6 Parts.
5. Part 1 of the new Schedule 16D provides for the definitions of *associated corporation*, *associated partnership*, *certified investment fund*, *control*, *disposal of investment*, *eligible carried interest*, *entity*, *external investor*, *investment management services*, *profit-related return*, *qualifying employee*, *qualifying payer*, *qualifying person*, *specified entity* and *sum*.

6. Part 2 of the new Schedule 16D contains provisions on profits tax treatment of eligible carried interest for a qualifying person (within the meaning of section 4(3) of that Schedule), including provisions setting out the conditions to be satisfied, the transactions that give rise to eligible carried interest and the calculation and the rate of profits tax in respect of eligible carried interest. In that Part, the rate of profits tax is set at 0%.
7. Part 3 of the new Schedule 16D contains provisions on salaries tax treatment of eligible carried interest for a qualifying employee (as defined by section 8(4) of that Schedule), including provisions setting out the conditions to be satisfied by the employee, the calculation of the employee's salaries tax assessable income and the percentage of eligible carried interest to be excluded for the calculation. In that Part, the percentage is set at 100%.
8. Part 4 of the new Schedule 16D contains provisions on the obligations of a qualifying person (section 10 of that Schedule) and qualifying payer (section 11 of that Schedule) in relation to provision of information and retention of records.
9. Part 5 of the new Schedule 16D contains provisions to enable the Commissioner of Inland Revenue to seek advice from the Monetary Authority on certain matters in the event of a claim, provisions to prevent tax avoidance relating to arrangement to obtain tax benefit, and provisions to prevent set off of certain losses sustained by qualifying persons against their assessable profits.

10. Part 6 of the new Schedule 16D provides that the tax treatment of eligible carried interest under that Schedule applies in relation to eligible carried interest received by, or accrued to, a qualifying person or a qualifying employee on or after 1 April 2020, for any year of assessment commencing on or after that date.
11. The Bill also contains the following related amendments—
 - (a) clause 3 adds the definition of ***Monetary Authority*** to section 2(1) of the Ordinance and clause 4 amends section 4 of the Ordinance to include references to the Monetary Authority, so as to facilitate the seeking of advice from the Monetary Authority provided under section 12 of the new Schedule 16D;
 - (b) clause 5 amends section 19CA of the Ordinance (as amended by section 7 of the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Ordinance 2020 (15 of 2020)) to amend the definitions of ***chargeable concessionary trading receipts***, ***concession provision*** and ***unabsorbed loss in respect of the concessionary trading receipts***, so that those definitions may apply in relation to the new Schedule 16D;
 - (c) clauses 9 and 10 amend sections 51C and 80 of the Ordinance respectively to apply the record-keeping and provision of information requirements and the penalties under those sections to a qualifying person set out in section 10 of the new Schedule 16D.

12. Clauses 6 and 7 amend sections 20AN and 20AO of the Ordinance respectively to expand for the purposes of profits tax exemption the eligible classes of assets that may be held and administered by a special purpose entity on behalf of a fund that owns the entity. In particular, clause 7 amends the definition of *special purpose entity* in section 20AO(4) of the Ordinance to make it clear that the entity can hold and administer assets of a class specified in Schedule 16C to the Ordinance. Clause 11 consequentially amends Schedule 16C to the Ordinance to include references to section 20AO of the Ordinance and the new Schedule 16D.