

<u>Exam Topics</u>	<u>Key Words</u>	<u>Pg.</u>	<u>LP Ref.</u>
Profits Tax – Mind Map			
Capital gain on disposal	s. 14	9	3.2.1/3.7
CBA	s. 33A	20	3.9.3
Change of accounting date	s. 18E	17	3.11.4
Deductible expenses	s. 16/ s. 17	15/17	3.8
Deemed trading receipts – royalty/ transfer of right	s. 15/ s. 15A	12/13	3.5.1
DIPN 12 – commission expense	DIPN 12	24	3.8
DIPN 43 – offshore fund	DIPN 43	29	3.5.3
Dividend	s. 26(a)	18	3.5.3
Doing business in HK/ DIPN 39	IRR 5	9	3.3
Exchange differences (DIPN 42)	DIPN 42	29	3.8.10
IBA	s. 34	20	3.9.2
Interest expenses/ interest income	s. 16(2)/ s. 15(1)(f)	15/14	3.8.4/3.5.1
Leased assets	s. 2/ s. 39E	8/24	3.4.7
Loss	s. 19C	18	3.13
Manufacturing profit	DIPN 21	25	3.4.3
P & M + Fixed Assets	s. 39B/ DIPN 5 & 49	21/36	3.9.4
Profits tax rate	16.5%	7	-
Service income under Profits Tax (Scope of profits tax charge)	s. 14	8	3.1
Source of profit/ Trading profit	DIPN 21	26/27	3.4.2
Stock valuation on cessation/ DIPN 1	s. 15C	14	3.6
Transportation service/ DIPN 44	DIPN 44	30	3.4.9/12.3
Individual Income Tax – Mind Map			
<40-46>			
Contract for or of services	s. 14 v. s. 8	48	5.2.2
Deductions/ allowances under salaries tax	s. 12(1)	53	5.5/5.6
Deemed employment income (Type I – DIPN 25)/ (Type II – DIPN 24)	s. 9A	51	9.4.5/9.4.6
Donation (DIPN 37)/ Home loan interest (DIPN 35)	s. 26C/ s. 26E	53/54	5.5.6/5.5.8
Lump Sum	s. 11D	52	5.4
Other assessable income	s. 9	51	5.3
Partnership/ Personal Assessment	s. 22/ s. 41	18/55	3.12/7
Property Tax	s. 5	47	6
Salaries Tax Computation & Allowances	s. 13	42	5.7
Service income under Salaries Tax (scope of salaries tax charge)	s. 8	47	5.2
Share Option Gain & Share Award (DIPN 38)	DIPN 38	56	5.3.5
Tax Administration – Mind Map			
<57>			
Administration/ Reporting obligations	s. 51/ s. 52	58	2.2
Advance Ruling System/ Tax System	s. 88A	66/70	2.8/1
Assessment & Provisional Tax	s. 59/ s. 60	61	2.3
Due diligence	DD	68	9.6
General Anti-avoidance/ DIPN No. 15/ Transfer Pricing / DIPN 45/ DIPN 46	s. 61/ s. 61A/ s. 20	66 31/32	9.4.2/9.4.3 12.4
Objection/ Section 70A claim	s. 64/ s. 70A	62/64	2.4/2.6
Penalty/ Tax Investigations (DIPN 11)	ss. 80, 82, 82A	67/60	2.7/10
Tax compliance and Tax advisory/ Ethics	Tax Practice	69	11
Stamp Duty Ordinance			
Stamp Duty	Head 1/ Head 2	72	8.3/8.4
SD Administration/ Exemptions	s. 27(5)/ s. 45	75/74	8.9/8.8
Special Stamp Duty (SSD) & BSD & AVD	SOIPN 5, 7, 8	78 - 84	8.3.3
China Tax - Turnover Tax & Income Tax – See PPT			13

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Examinable contents and Module Study Materials

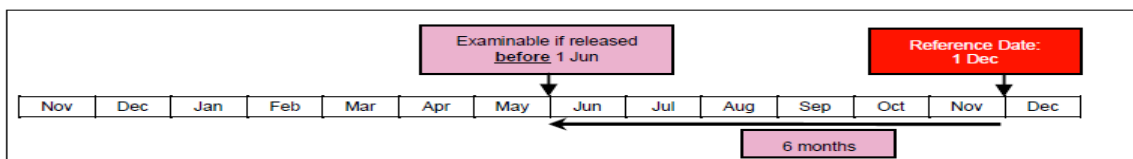
Examinable contents

The examinable contents are determined on 31 May each year (cut-off date) which applies to the December session of the same year and the following June session. Examinable contents are applicable to both module and final examinations.

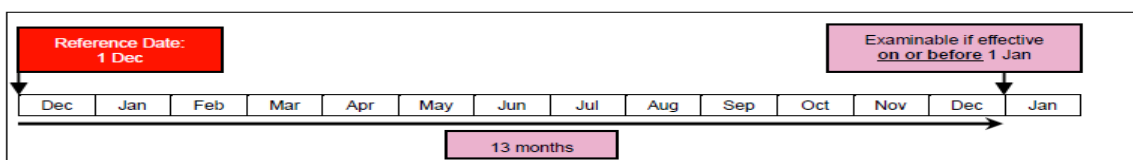
The determination of examinable contents refers to both the release date of the pronouncements (or the enactment date of the legislations) and their corresponding effective date.

Students will be examined on legislations and the Institute's pronouncements that meet the following conditions:

Condition 1: Have been released six months prior to the **reference date** (the reference date is determined as the 1st day of the month the examination takes place); **AND**



Condition 2: Have been effective/ will be effective on or before the 13th month from the **reference date**.



For illustration:

Release date	Effective date	Status under Condition 1	Status under Condition 2
18 May 2013	1 Jan 2015	Proceed to Condition 2	Examinable
18 May 2013	1 Feb 2015	Proceed to Condition 2	Not examinable
25 Jun 2013	1 Jan 2015	Not examinable	Not relevant

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Past Paper Analysis

Section	Marks	Topics	Details
2015 Dec			
See 2015 June post-exam review and have a guess!			
2015 June			
A (50)	7	Administration	Q1 – tax system re cases & DIPNs
Case	3		Q2 – DIPN 47 - EOI
	7	Profits Tax	Q3 – licensing income s. 15
	5		Q4 – overseas performer DIPN 17
	9		Q5 – DTA (DIPN 44 & 45)
	5	China Tax	Q6 – PRC turnover tax
	14	Salaries Tax	Q7a – employment income s.8
			Q7b – 2013/14 salaries tax computation
B (50)	6	Profits Tax	Q8 – badges of trade re gain on disposal
Essay/	14		Q9a&b – property income
Short Q	8	Stamp duty	Q9c&d – stamp duty on licence & late stamping
	12	Salaries Tax	Q10 – deduction of outgoings & expenses
	6	Administration	Q11 – tax payment & recovery
	4	Ethics	Q12a&b – appointment & qualified audit opinion
2014 Dec			
A (50)	6	Profits Tax	Q1a – relevant sum s. 23B
Case	5		Q1b – interest income
	10		Q1c – interest deduction
	2		Q1d – share option deduction
	4		Q1e – assessable profits re ship owner
	8	Stamp Duty	Q2 – sale of shares
	9	Salaries Tax	Q3a – salaries tax charge
	6		Q3b – share option gain
B (50)	8	Administration	Q4a – revised assessments re PYA
Essay/	4		Q4b – penalty
Short Q	5	Salaries Tax	Q5a – type I arrangement
	3	Administration	Q5b – advance ruling
	11	Property Tax	Q6a – property tax computation
	5	China Tax	Q6b – BT & VAT
	11	Salaries Tax	Q7a – deduction and self-education claims
	3	Ethics	Q7b – professional ethics
2014 June			
A (50)	5	Profits Tax	Q1a – interest income
Case	5		Q1b – waiver of loan
	4		Q2 – MPF deduction
	16	Salaries Tax	Q3 – 2012/13 Computation
	5	China Tax	Q4 – Individual Income Tax
	5	Administration	Q5ai – field audit
	5		Q5aai – settlement methods
	5	Ethics	Q5b – offence & ethics
B (50)	3	Profits Tax	Q6a – business in HK
Essay/	3		Q6b – dividend income
Short Q	7		Q6c – info requested by PRC tax authority
	7		Q7a – basis period
	5		Q7b – depreciation allowances
	7	IRO & SDO	Q8a – purchase shop
	11	- property income	Q8b – purchase residential property
	7		Q8c – sell a residential property

Learning Outcomes

Salaries tax on employees and directors (Chapter 5)	Past Paper (marks)
LO2.04 Scope of salaries tax charge (Competency 3)	
2.04.01 Identify the scope of salaries tax	Pilot BSQ2(10); 2000MBSQ3(7); 2003SAQ4(12); 2007FQ2(11); 2014DAQ3(9)
2.04.02 Discuss various exemptions available under salaries tax	2009SBQ7(7); 2011JAQ4(16); 2013JAQ1(12)
2.04.03 Describe the rules governing the source of income from office, employment and pension	
2.04.04 Compute the assessable income from an office, employment and pension	
2.04.05 Explain and apply DIPN 10 (Revised)	2009SAQ2(5); 2010SBQ6(10); 2010DBQ5(3); 2012JAQ5(10)
LO2.05 Expenses and deductions (Competency 3)	Pilot AQ1(6); 2003SBQ2(12); 2010DBQ5(3); 2015JBQ10(12)
2.05.01 Explain the rules governing the deduction of expenses and depreciation allowance allowable under salaries tax	2001MBQ3(8); 2014DBQ7(11)
2.05.02 Explain the rules governing the concessionary deductions including approved charitable donations, elderly residential care expenses, home loan interest and contributions to recognised retirement schemes	2007SBQ6(13); 2012DAQ3(8); 2013JBQ8(3)
2.05.03 Explain and apply DIPN 9, 23, 35, 36 and 37 (Revised)	
LO2.06 Time basis assessment (Competency 3)	
2.06.01 Describe the circumstances under which time apportionment is applicable and compute the assessable income with time basis apportionment	2001SBQ1(20); 2013DAQ5(5)
2.06.02 Explain and apply DIPN 10 (Revised)	
LO2.07 Personal allowances (Competency 2)	
2.07.01 Describe the provisions under the IRO which govern the claims for various personal allowances	2011JAQ8(7); 2012DAQ5(5); 2013JAQ2(3)
2.07.02 Explain and apply DIPN 18 (Revised)	
LO2.08 Benefits in kind, housing benefit, share options (Competency 3)	
2.08.01 Identify & explain the taxation of BIK and housing benefit	2003FBQ3(10); 2007SAQ3(10); 2011JAQ4(16); 2011DAQ4(15); 2012JAQ3(17)
2.08.02 Explain the rules governing the taxation of employee share based benefits	2005FAQ3(6); 2012JAQ5(4); 2014DAQ3(6); 2013DAQ5(6)
2.08.03 Explain the rules governing the taxation of holiday benefits	
2.08.04 Explain & apply DIPN 16 (Revised), 38 (Revised) and 41	2011JAQ7(7)
LO2.09 Treatment of lump sum receipts and losses (Competency 3)	
2.09.01 Explain the taxation of lump sum receipts	2001SBQ1(7); 2008MB4(20); 2009SAQ1(5)
2.09.02 Explain the taxation of retirement scheme benefits	
2.09.03 Explain the treatment of losses	
2.09.04 Explain and apply DIPN 23 (Revised)	
LO2.10 Separate taxation on spouses and joint assessment (Competency 2)	
2.10.01 Identify and explain the issues relating to the joint assessment of husband and wife	2004MBQ5(10)
2.10.02 Explain and apply DIPN 18 (Revised)	
LO2.11 Ascertainment of salaries tax liability (Competency 3)	
2.11.01 Ascertain net assessable income	
2.11.02 Ascertain net chargeable income	
2.11.03 Ascertain allowable outgoings, expenses, deductions and allowances	
2.11.04 Compute salaries tax payable including provisional salaries tax under separate or joint assessment	2000MQ1(6); 2001MAQ3(8); 2005SBQ3(20); 2006MBQ2(20); 2007SAQ4(13); 2009SAQ7(9); 2010SBQ6(10); 2013JBQ8(9); 2014JAQ3(16); 2015JAQ7(14)

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Tax planning	
LO2.41 Anti-avoidance provisions in the Inland Revenue Ordinance (Competency 3)	
2.41.04 Explain deemed employment income under service company 'Type I' arrangement	2002MAQ4(5); 2009FBQ5(15); 2014DBQ5(5)
2.41.05 Explain and apply DIPN 15 (Revised) and 25 (Revised)	
LO2.45 Double taxation relief (Competency 2)	
2.45.01 Explain the general purpose and application of double taxation treaties	
LO2.46 Hong Kong tax planning (Competency 3)	
2.46.02 Recognise tax-efficient ways to structure remuneration packages for employees and employment arrangements	2012DAQ6(6)
2.46.03 Identify tax planning opportunities for individuals under contracts of service or contracts for service	Pilot AQ3(13); 2001 MQ1(5); 2007FBQ6(20); 2012JAQ4(8)
2.46.09 Identify the tax planning opportunities under the Arrangement	
Stamp duty (Chapter 8)	
LO2.31 Scope of charge (Competency 2)	
2.31.01 Identify the relevant heads of stamp duty charge	2001MBQ2(8); 2002MBQ2(9); 2005SAQ2(27); 2011JAQ3(5); 2011DBQ8(17); 2013DAQ2(13)
LO2.32 Conveyance on sale of immovable property (Competency 3)	
2.32.01 Explain the stamping requirements and practices in relation to conveyance on sale of immovable property in Hong Kong and compute the relevant stamp duty payable	2009SAQ4(15); 2011DAQ2(3); 2014JBQ8(7)
LO2.33 Agreement for sale of residential immovable property (Competency 3)	
2.33.01 Explain the stamping requirements and practices in relation to agreement for sale of residential immovable property and compute the relevant stamp duty payable	2014JBQ8(11)
2.33.02 Explain and apply SOIPN 1, 3, 4, 5, 7 and 8	
LO2.34 Lease of immovable property (Competency 3)	
2.34.01 Explain the stamping requirements and practices in immovable property in Hong Kong and compute the relevant stamp duty payable	2003FBQ3(3); 2012DAQ4(6); 2013JBQ7(6); 2015JAQ9(8)
LO2.35 Hong Kong stock (Competency 3)	
2.35.01 Explain the stamping requirements and practices in relation to Hong Kong stock and compute the relevant stamp duty payable	2006MAQ1(5); 2007FBQ7(10); 2012JAQ6(6); 2014DAQ2(8)
LO2.36 Voluntary disposition <i>inter vivos</i> (Competency 3)	
2.36.01 Explain the stamp duty implication for voluntary disposition <i>inter vivos</i>	
LO2.37 Alternative bond schemes (Competency 3)	
2.37.01 Explain the stamp duty relief for alternative bond schemes	
2.37.02 Apply SOIPN 6	
LO2.38 Exemptions and reliefs (Competency 3)	
2.38.01 Explain the exemptions and reliefs available under SDO	2010SAQ2(5)
2.38.02 Outline the <i>Arrowtown</i> case and explain its significance	
LO2.39 Adjudication, assessment and administration (Competency 2)	
2.39.01 Describe administration issues concerning stamp duty	
2.39.02 Explain the adjudication and appeal procedures for stamp duty assessment	
2.39.03 Describe stamp duty offence and the related penalty provisions under the SDO	
LO2.40 Stamp duty planning (Competency 3)	
2.40.01 Identify stamp duty planning opportunities	

Workshop Outline and Learning Methodologies

Session	Methodologies	Chapters covered
Workshop 1		
1. Introduction	<ul style="list-style-type: none"> • Presentation • Group discussion 	
2. Profits tax	<ul style="list-style-type: none"> • Group exercise 	Ch.3 & 11
3. Negotiation	<ul style="list-style-type: none"> • Role play • Group exercise 	
4. Tax for individuals	<ul style="list-style-type: none"> • Case study • Group discussion 	Ch.2, 5 & 11
Workshop 2		
5. Reboot	<ul style="list-style-type: none"> • Presentation • Group discussion 	
6. Tax cases / Anti-avoidance	<ul style="list-style-type: none"> • Group discussion 	Ch.3, 4, 8, 9 & 11
7. Cross border tax issues	<ul style="list-style-type: none"> • Group discussion 	Ch.3, 4, 12 & 13
8. Tax planning	<ul style="list-style-type: none"> • Case study • Group reflection 	Ch.3, 4, 5, 9, 11 & 12
9. Conclusion	<ul style="list-style-type: none"> • Presentation • Group discussion 	

You are expected to have studied the relevant chapters of the Learning Pack thoroughly prior to attending the workshops in order to actively participate in the case studies and group discussions throughout the workshops. The main topics covered in the workshops are listed below.

Workshop 1

- Profits tax computation, addition and disposal of property plant and equipment, depreciation allowance – plant and machinery, commercial building allowance, interest income and expenses, gain from sale of product design and trademark, investment income, share award costs, and other deductible expenses
- Trade versus investment, source of profit/income
- Salaries tax computation, share grants, accommodation, living allowance, home leave, contribution to MPF, charitable donation, personal allowances, individual tax return
- Additional assessment and penal actions, taxability of employment income and director's fee, fringe benefits, termination payments

Workshop 2

- Trademark arrangements, bank loan arrangements, profit allocation within a group
- Chargeability to China business tax, value added tax, consumption tax for tourism business carried out in the Mainland and Hong Kong, concept of mixed sales activities
- Individual tax planning (incl. tax efficient remuneration package), corporate tax planning for clubs and trade associations (incl. tax avoidance), advance rulings

(Different sets of questions will be distributed to different classes. As such, some of the above topics may not be covered during your assigned workshops.)

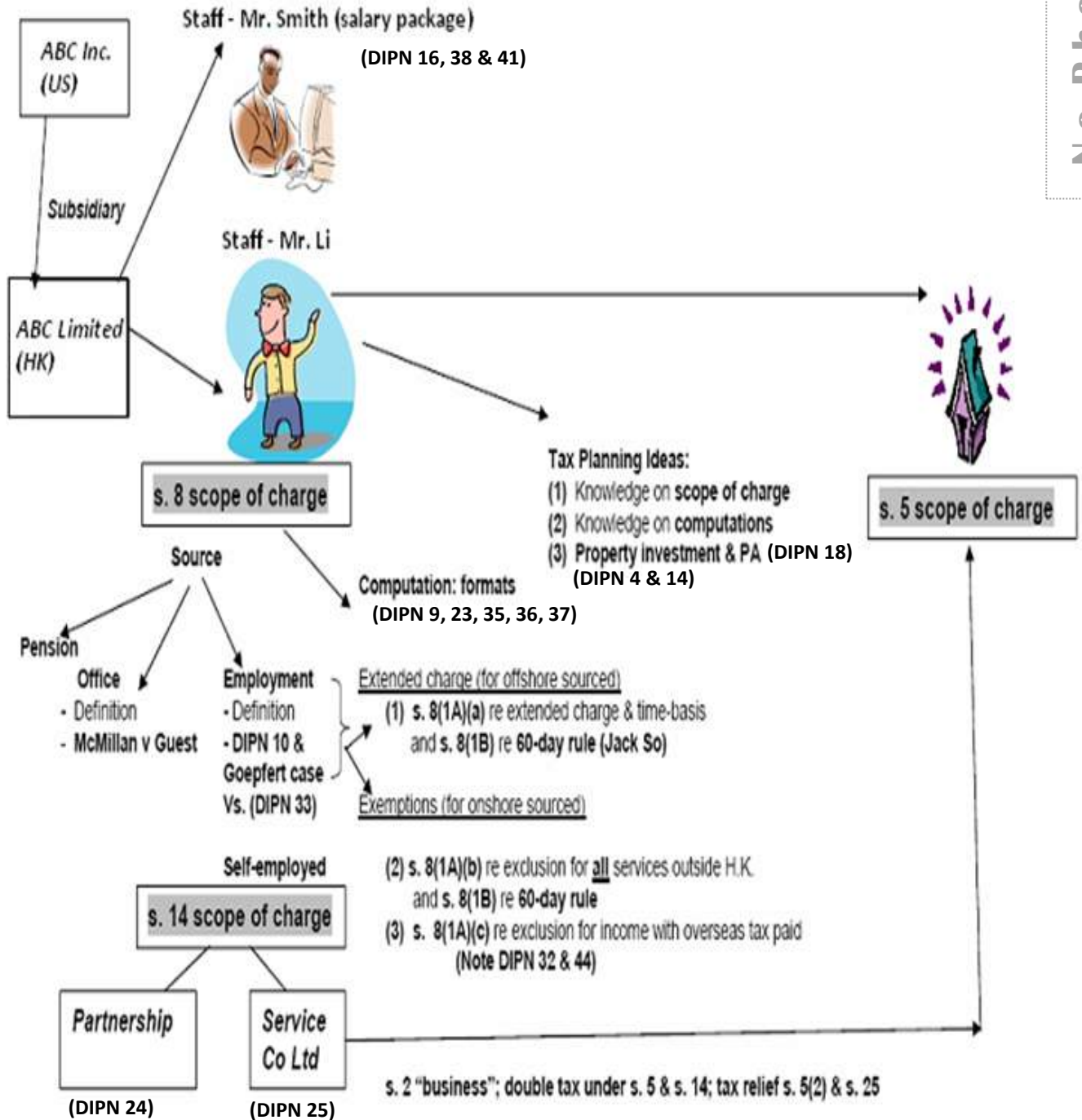
B) Individual Income Tax



Taxation for Individual

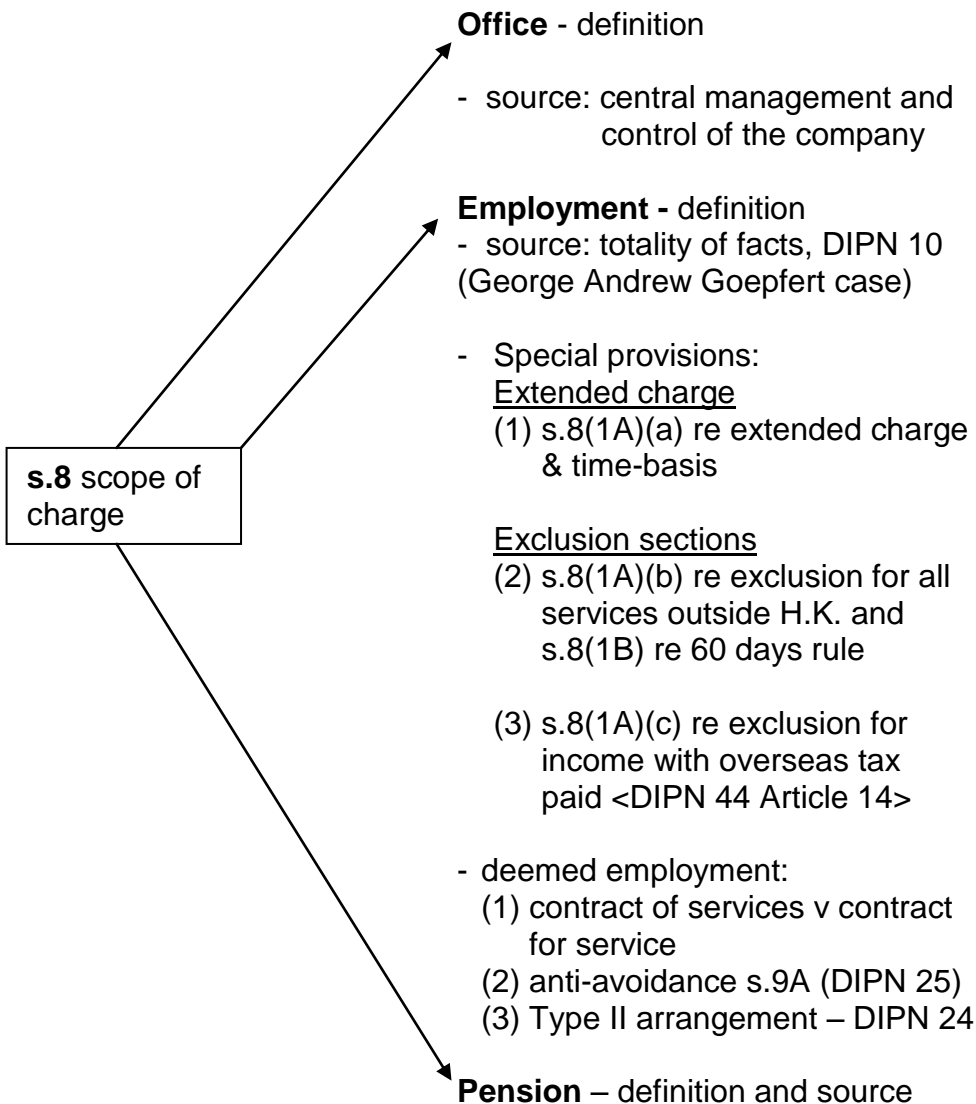
Director – Mr. Garvie

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Scope of Salaries Tax Charge



Note: Section 8(2)(c) - subject to subsection section 8(4) any sum received by way of commutation of pension under recognized occupational retirement scheme upon termination of service, death, incapacity or retirement is exempted.

Standard Tax Computation Formats Re Individual Taxpayer

Name of taxpayer

Salaries tax computation

Year of assessment 2014/2015

Basis period: year ended 31 March 2015

	\$	\$	
Income from principal employment/office		A	s.9(1)(a)
Less: Allowable outgoing and expenses	B		s.12(1)(a)
Depreciation allowances	<u>C</u>	<u>D</u>	s.12(1)(b)
		E	
Add: Rental value	F		s.9(1)(b)
Less: rent suffered	<u>G</u>	<u>H</u>	s.9(1)(c)
		I	
Add: Income from other employment	J		
Qualified lump sum received	K		s.11D(b)
Gain on share option (DIPN 38)	<u>L</u>		s.9(1)(d)
		M	
Less: Self-education expenses		<u>(Q)</u>	s.12(1)(e)
Net assessable income		R	s.12
Less: Concessionary deductions			Part IVA
Approved charitable donations (DIPN 37)	S1		s.26C
Elderly residential care expenses (DIPN 36)	S2		s.26D
Home loan interest (DIPN 35)	S3		s.26E/F
Contributions to MPF (from 2000/2001)	<u>S4</u>	<u>(S)</u>	s.26G
		T	
Less: Personal allowances		<u>(U)</u>	Part V
Net chargeable income		V	
		==	
Tax thereon (lesser of V @ progressive rate or T@15%)		W	s.13
		==	

Note: For 2014/15, 75% of the final tax payable under salaries tax, profits tax and tax under PA would be waived, subject to the maximum of \$20,000 per case.

MPF – MPF per month is HK\$1,250 maximum (\$1,500 from June 2014) (s. 26G(2)(b)).

Section 16AA: A sole proprietor or a partner in a partnership may also claim MPF deduction.

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For Joint Assessment Case

Mr. Li and Mrs. Li
 Salaries tax computation
 Year of assessment 2014/2015
 Basis period: year ended 31 March 2015

	Mr. X	Mrs. X	Joint	
	\$	\$	\$	
Net assessable income (see above)	R1	R2	R	
	==	==		
Less: Concessionary deductions			(S)	Part IVA

			T	
Less: Personal allowances			(U)	Part V

Net chargeable income			V	s.12B(2)
			==	
Tax thereon (lesser of V @progressive rate or T@15%)			W	s.13
			==	

The salaries tax is payable by the spouse who have been chargeable to salaries tax in the absence of the election. In case salaries tax is payable by both spouses in the absence of the election, the salaries tax under joint assessment is payable by the spouse who is nominated by them as the case may be – **s.10(3)**.



Property Tax Computation Format

Taxpayer's name	
Year of assessment 2014/2015	
Basis period: Year ended 31 March 2015	
	\$
Rent	A
Premium	B
Bad debt recovered	C

	D
Less: Bad debts (irrecoverable rent)	(E)

Assessable value	F
Less: Rates (paid by owner)	(G)

	H
Less: Statutory deduction 20% of H	(I)

Net assessable value	J
	====
Property tax thereon @ 15%	K
	====

Notes: F - if negative, relate back – s.7C(3); D, F, H, - if negative, no property tax; I - no other deduction e.g. management fees and repairs (exception re mortgage interest under PA).



Tax Computation Formats under Personal Assessment



For individual case

Taxpayer's name

Year of assessment 2014/2015

Basis period: year ended 31 March 2015

	\$	\$
Net assessable value		A
Net assessable income (i.e. before concessionary deductions)		B
Assessable profits (i.e. after deduction of donations, say Y)		C

		D
Less: Interest expenses (not exceeding A above)		(E)

Total income		F
Less: Charitable donation #	G	
Other concessionary deductions	H	
Business loss ~	I	
	---	(J)

		K
Less: Loss b/f under PA		(L)

Reduced total income		M
Less: Personal allowances		N

Net chargeable income ^		O
		==

Charitable donations (Section 26C(2)) - restricted amount = 35% x (total income before loss F + donations allowed in profits tax if any, say Y, + self education expenses included in B) – Y.

~ Allowable tax loss derived from the taxpayer's trade, profession or business.

^ Section 43 - Limitation test (lesser of standard rate on M and progressive rate on O)

Note: For 2014/15, 75% of the final tax payable under salaries tax, profits tax and tax under PA would be waived, subject to the maximum of \$20,000 per case.

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 **For married case (PA)**

Taxpayers' name

Year of assessment 2014/2015

Basis period: year ended 31 March 2015

	Husband	Wife	Joint
	\$	\$	\$
Net assessable value	A1	A2	
Net assessable income (i.e. before concessionary deductions)	B1	B2	
Assessable profits (i.e. after deduction of donations)	C1	C2	
	----	----	
	D1	D2	
Less: Interest expenses (not exceeding A1, A2 above)	(E1)	(E2)	
	----	----	
Total income	F1	F2	
Less: Charitable donation	(G1)	(G2)	
Other concessionary deductions	(H1)	(H2)	
Business loss	(I1)	(I2)	
	----	----	
	J1	J2	
Less: Loss b/f or loss from other spouse	(L1)	(L2)	
	----	----	
Reduced total income	M1	M2	M
Less: Personal allowances			(N)

Net chargeable income ^			O
			====

^ Apply limitation test (lesser of standard rate on M and progressive rate on O).

The tax payable by Husband and Wife is in the proportion of M1/M and M2/M respectively.

Note: For 2014/15, 75% of the final tax payable under salaries tax, profits tax and tax under PA would be waived, subject to the maximum of \$20,000 per case.

<p>5</p>	<p>– Property tax is charged on the owner for the rental income derived from HK property. Mortgage interests are not deductible in property tax computation. See property tax computation in mind map. The only deduction available to him is restricted to 20% of the assessable value of the property after the deduction of any rates paid by him. There will be no deduction of actual expenses incurred in respect of the property, including the loan interest, service fees paid to his agent and other expenses incurred in connection with refurbishing the property.</p> <p>* Owners have the obligation to notify the change in ownership of the property within one month of the sale of transfer. Furthermore, they are also required to keep sufficient business records, including all rental records, for a period of not less than seven years.</p> <p>* Owner also includes, in so far as common parts are concerned, a corporation registered under section 8 of the Building Management Ordinance or a person who, on the person’s own behalf or on behalf of another person, receives any consideration, in money or money’s worth, in respect of the right of use of any common parts solely or with another; or an executor of the estate of an owner.</p> <p>* Companies owning HK properties and carrying on business in Hong Kong need to apply for exemption from property tax (section 5(2)(a)).</p> <p>* If no application has been made, any property tax paid by the company may be used to offset the company’s profits tax liability under Section 25 of the IRO</p>	<p>The premium should be spread over the period of the tenancy agreement or three years, whichever is the shorter (s. 5B(4)).</p>	<p>IRO Section 5</p>
<p>5B(2)</p>	<p>* The assessable value of a property for each year of assessment shall be the consideration, in money or money’s worth, <u>payable</u> in that year to the owner in respect of the right of use of that property.</p>		<p>IRO Section 5B(2)</p>
<p>8</p>	<p>* If taxpayer’s contract is determined to be an employment contract, his income will be subject to Salaries Tax [section 8(1)(a)]. If his employer is a Hong Kong company and the contract is enforceable in Hong Kong, there is strong indication that employment is a Hong Kong sourced employment contract despite the fact that the contract was negotiated and signed overseas (DIPN 10 – Goepfert case).</p> <p>* The IRD has stated in DIPN No. 10 that the location of employment is generally determined by reference to totality of facts, in particular three factors, i.e. the residence of the employer, the place where the employment contract is negotiated, concluded and enforceable, and the place of payment of the remuneration. The residence of the employer factor is most important.</p>		<p>IRO Section 8</p>

IRO

Section

8

* You will hence be exempt from Salaries Tax if (a) your 'visits' during the year do not exceed 60 days or (b) all your services are rendered offshore [**Section 8(1A)(b)**]. 'Visit' means temporary stay and has to be determined with reference with reason of stay in Hong Kong, work base and family base. It should be noted that in computing the number of days for the purposes of **section 8(1B)**, part of a day has to be counted as one day.

* [**Section 8(1A)(a)**] Although the employment with overseas employer can be regarded as foreign employment, income from such employment is fully taxable if taxpayer performs services in Hong Kong. Then consider s. 8(1B), no services are taken into account if visits are not more than 60 days during the basis period. Otherwise, time basis will be applicable using mid-night rule.

* Pursuant to the Double Tax Arrangement (DTA) between the Mainland and the Hong Kong SAR (see DIPN 44), the relief provided in relation to **Article 14 of the DTA** does not apply to directors' fees.

* Pursuant to **Article 15**, directors' fees and similar payments received by a PRC resident in his or her capacity as a board of director of a company which is a Hong Kong resident may be taxed in Hong Kong.

* Pursuant to **Article 21** of the 2006 Arrangement (similar to Article 4 of the 1998 Arrangement), a Hong Kong resident who has suffered from tax on a source of income both in the Mainland and the SAR, will be allowed to offset the tax paid in the Mainland from his Hong Kong tax payable on the same income. On the other hand, a Mainland resident will be allowed to offset the tax paid in the SAR from the tax payable in the Mainland. The allowable tax credit is to be computed in accordance with Section 50(3) and Section 50(5) of the IRO.

* **Section 8(1A)(c)** is a unilateral double taxation relief, which applies in the situation where part of a Hong Kong employee's income has been subject to and paid tax substantially of same nature similar to salaries tax in another territory.

IRO

Section

8

or

14

* Pursuant to **Article 14** of the Double Tax Arrangement (DTA) between the Mainland and the Hong Kong SAR (see DIPN 44), employment income derived by HK resident is taxable in the HK unless the employment is exercised in the PRC.

* Remuneration derived by HK residents in respect of employment exercised in the PRC will be exempt from PRC individual income tax provided that:

- (i) the taxpayer stays in the PRC for a period(s) not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned;
- (ii) the remuneration is paid by or on behalf of an employer who is not a resident of the PRC; and
- (iii) the remuneration is not borne by a permanent establishment which the employer has in PRC.

* In determining the taxing right (i.e. the 183-day rule) in the Mainland, any day in which a Hong Kong resident is physically present in the Mainland will be included and part of a day is counted as one day ("the N days rule").

* In determining the tax liabilities in the Mainland, normally either the day of arrival or day of departure is counted as one day ("the N-1 day rule").

* **Contract for or of services**

- Whether service income is subject to **Profits Tax** or **Salaries Tax** depends on whether the taxpayer provided the service as an independent contractor (i.e. having a contract for service) or provided the service under an employment contract (i.e. having a contract of service).
- Whether the contract is a contract of service or a contract for service is a **matter of fact**.
- The following tests have been applied in deciding cases:
 1. **Control Test:** whether the service provider has control on how and when to perform taxpayer's services.
 2. **Integration Test:** whether the service provider is part of the company, i.e. whether taxpayer is treated like other employees of the company and whether taxpayer is held out by the company to the public as an officer of the company.

3. **Economic Reality Test:** whether the service provider performs the services on his own account, such as whether he has to provide his own equipment and his own staff, to work in his own business premises, to bear his own business risk and to manage his own business.
4. **Mutual Obligation Test:** whether there has been some form of mutual obligation between the consultant and the paying company. Examples of the information include: Whether the company is obliged to pay a wage or remuneration? Whether the consultant is obliged to provide his/her work? (re Appendix B of **DIPN 25 (November 2011)**)

9A

* **Deemed employment income (Type I – DIPN 25)** is used by the IRD to challenge the use of a service company to disguise an employment relationship. Section 9A is applicable if the fees are paid to a service company for the service provided by an individual who (or his associates) controls the company.

- However, it is further provided that section 9A will not be applied if all the 6 criteria listed in s. 9A(3) are satisfied. These criteria characterize a contract for service or profession service.
- If section 9A applies, the income that the service company received from the employer will be not assessable under profits tax, but assessable under salaries tax as income of the subject staff. The employer is also required to fulfill the obligations as an employer as if the taxpayer is its employee. Moreover the income that taxpayer derived from the service company will not be taxable.

The **6 criteria** listed in s. 9A(3) are:

- Neither the agreement under which the remuneration is paid, nor any related undertaking, provides for the remuneration to include or provide for annual leave, passage allowances, sick leave, pension entitlement, medical payments or accommodation or similar benefits – **s.9A(3)(a)**.
- The individual personally carries out the same or similar services for persons other than any person for whom services are required to be carried out under the agreement – **s.9A(3)(b)**.
- The performance of services by the individual is not subject to control or supervision, which would commonly be exercised by an employer, by any person other than the corporation or trustee to whom remuneration is paid - **s.9A(3)(c)**.
- The remuneration is not paid or credited periodically or calculated on a basis commonly used under a contract of employment – **s.9A(3)(d)**.

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	<p>- The person paying the remuneration does not have the right to cause the individual to cease performing the service in the way that an employer has the right to dismiss an employee under a contract of employment – s.9A(3)(e).</p> <p>- The relevant person is not held out to the public as an officer or employee of the person paying the remuneration – s.9A(3)(f).</p>	
9(1)(a)	<p>* Section 9(1)(a)(iv) - The benefit e.g. medical insurance policy purchased by employer is a contractual obligation between employer and the service/ insurance company and hence the benefit is not money worth and is not taxable to taxpayer.</p> <p>* The cash allowance received is fully taxable even though part of the allowance is used to cover expenditures for employment purpose (<i>CIR v Humprey (HKTC451)</i>). In general, income for services done is taxable.</p>	<p>IRO Section 9 (1) (a)</p>
9(1)(b)	<p>* Section 9(1)(b) - Rental value of the quarter provided is taxable at 10% of the income from the employment other than gains from share option after allowable deductions under s.12(1)(a) and s.12(1)(b).</p> <p>* To ensure that the relevant sum is accepted as a rent refund, taxpayer should make sure that his employment contract contains a clause providing for the refund of rent. See <i>CIR v. Peter Leslie Page</i>, HCIA Appeal No. 2 of 2002 for the importance of the employment contract. The amount or limit of the refund should be stated in the contract. The clause should also make it clear that the relevant sum would only be paid for reimbursement of rental expenses. There should also be actual control by employer over how he spends the money concerned. In this connection, the employer should examine the tenancy agreement and verify the rental payments made by taxpayer by checking the rental receipts periodically. See, e.g. <i>CIR v. Peter Leslie Page, supra</i>.</p> <p>* Taxpayer should also be able to substantiate that he has actually incurred rental expenses as claimed and that there is a genuine landlord and tenant relationship between his friend and himself with regard to the flat he is going to move into. To do this, he should stamp the tenancy agreement and keep the rental receipts in order. He should also be prepared to demonstrate that the rent paid to his friend is not above the market rent.</p>	<p>IRO Section 9 (1) (b)</p>
9(1)(c)	<p>The excess of the rental value over the rent paid for a place of residence provided by the employer or an associated company at a rent less than the rental value.</p> <p>Alternatively, rateable value if lesser may be elected to be used by taxpayer.</p>	

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9(2A)

- * **Section 9(2A)(a)** – If the benefit is convertible into cash, it is taxpayer’s income.
- * **Section 9(2A)(b)** – benefit for employee’s child education is taxable (David Hardy Glenn case).
- * **Section 9(2A)(c) - Holiday benefit (DIPN 41):** The amount is taxable under s.9(1)(a) is the cost to the employer.

Section 8(4) – 10-year rule re **proportionate benefit** is exempted.

Proportionate benefit is exempted – MPF sums received upon termination of service to the extent attributable to voluntary contributions made by the person’s employer.

Accrued benefit (累算權益), in relation to a person, means - (a) if the person is a member of a recognized occupational retirement scheme, the maximum benefit that the person would have been entitled to receive from the scheme for the person’s service recognized for the purposes of the scheme if, at the date on which the person’s employment was terminated, the person had retired (within the meaning of subsection (3)); and (b) if the person is a member of a mandatory provident fund scheme, the person’s accrued benefits attributable to voluntary contributions paid to the scheme in respect of the person for that service.

Section 8(5):

$$PB = \frac{CMS}{120} \times AB$$
 CMS is the completed no. of months of service, and AB the amount of the person’s **accrued benefit**.

IRO
Section
11D

11D

- * **Lump Sum** Payment is chargeable to Salaries Tax under section 8(1) of the IRO if it is “**income from employment**” as defined under **section 9(1)(a)**, which in turn includes an allowance.
- * Board of Review in a few decisions had held as taxable a lump sum paid at commencement of employment - taxable payments are not restricted to rewards for services rendered or to be rendered. What matters is whether the source of the lump sum payment is the employment and if so, it is taxable.
- * **Gratuity** is a contractual payment and a **reward made for the services** provided by taxpayer for a Hong Kong employment. Hence the gratuity is wholly chargeable to Salaries Tax under section 8 of the IRO.
- * Pursuant to **section 11D(b)**, gratuity will be **accrued** on the date when taxpayer is **entitled to claim the payment**. By directly paying it into taxpayer’s **nominated accounts**, the gratuity is deemed to have been received by taxpayer [section 11D(a)]. **Section 11D** also treats income received after cessation of employment as accrued to taxpayer on the last date of employment.
- * However, proviso (i) to section 11D(b) allows taxpayer to apply to have the gratuity **related back** (max. three years). The application must be lodged in writing within 2 years after the end of year of assessment in which the payment of gratuity was made.

S. 8(2)(cc) - except for proportionate rule, any sum (not being a pension) withdrawn from a recognized ORSO and sum equal to so much of the accrued benefit received from MPF on retirement, death, incapacity or termination of service, as is attributable to voluntary contributions paid by an employer is exempted.

<p>12 & DIPN 9</p>	<p>* Deductions/ allowances under salaries tax</p> <p>* Under s.12(1)(a) and s.12(1)(b), taxpayer can claim deductions of expenses that are wholly, necessarily and exclusively incurred in the production of employment income and depreciation allowances on assets the use of which are essential to producing the employment income. The personal expenses paid with corporate credit card are taxable fringe benefits as employer is discharging taxpayer's personal liabilities (See DIPN 16). Reimbursement of company's business expenses are however not taxable.</p> <p>* Under s.12(1)(e) and s. 12(6), the maximum amount allowable for self-education expenses is \$80,000 for the year of assessment 2014/15 onwards as specified in Schedule 3A of the IRO. The expenses include tuition and examination fees paid and not deducted/ reimbursed to taxpayer, in connection with a prescribed course of education undertaken by the taxpayer; or fees in respect of an examination set by education provider, or by a trade, professional or business association for its members, and undertaken by the taxpayer to gain or maintain qualifications for use in any employment.</p>	
<p>26C</p>	<p>* Donation (DIPN 37)</p> <p>Section 26C of the Ordinance allows a deduction for approved charitable donations made by a person during the year of assessment if</p> <ul style="list-style-type: none"> • the payment is a donation of money for charitable purposes to a charitable institution or trust of a public character which is exempt from tax under section 88 of the Ordinance or the Government; and • the aggregate of the person's donations must not be less than \$100 and cannot exceed 25% (35% for 2009/10) of the person's assessable income as reduced by his or her deductions for losses and outgoings incurred in earning the income (deductions allowable under section 12(1)(a) and depreciation allowances on machinery and plant used in the production of the assessable income (granted under section 12(1)(b)). If a husband and wife have elected under section 10(2) to be jointly assessed, the deduction for charitable donations cannot exceed 25% (or 35% for 2009/10) of their <u>joint assessable incomes</u> as reduced by their respective entitlements to deduction for employment-related expenses and depreciation allowances. A person who is taxable under both profits tax and salaries tax may only claim a deduction for any one donation under either section 16D or 26C. The same approved charitable donation cannot be claimed as a deduction in both assessments. The word "donation" means a gift, i.e. a transfer of property without any valuable consideration. Further, the transferor cannot receive any benefit or advantage of a material character by way of return [<i>Sanford Yung-tao Yung v. C.I.R. 1 HKTC 1081</i>]. 	

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Section

26D

26D * Even if taxpayer's parent was under the age of 60, but if the parent was eligible to claim Government Disability Allowance and was living in a "**residential care home**" as defined under section 26D(5), then the maximum elderly residential care deduction is restricted to \$80,000. Having claimed the deduction under section 26D, taxpayer is not entitled to dependant parent allowance of \$40,000 in respect of his parent. But if taxpayer's parent was eligible to claim Government Disability Allowance, taxpayer is also entitled to disabled dependant allowance in respect of the parent.

IRO

Section

26E

26E * **Home loan interest (DIPN 35)**
Home loan is defined under **Section 26E(9)** as:

- A loan of money which is-
 - (a) applied wholly or partly for the acquisition of a dwelling which-
 - (i) during any period of time in that year of assessment is held by the person as a sole owner, or as a joint tenant or tenant in common; and
 - (ii) during that period of time is used by the person exclusively or partly as his place of residence; and
 - (b) secured during that period of time by a mortgage or charge over that dwelling or any other property in Hong Kong.
- Section 26E provides, among other things, that:
 - Where the property is jointly owned, the interest deduction follows the ownership ratio and not the actual amounts contributed by each of the joint owners. If the property is owned by a person other than as a sole owner, the amount of the home loan interest is deemed to have been paid by each of the joint tenants equally [Section 26E(2)(b)(i)].
 - The maximum home loan interest deduction cannot exceed the amount specified for the year of assessment in Schedule 3D [HK\$100K for any 15 years - Section 26E(2)(a)(ii)]. If the property is owned by a person other than as a sole owner, the relevant amount specified in Schedule D should be apportioned equally between the joint tenants [Section 26E(2)(c)(i)].
 - The interest must be paid to an approved body, viz. the Government, a financial institution, a credit union, a money lender, Hong Kong Housing Society, an employer or other recognised organisation [definition of "home loan interest" as provided under Section 26E(9)]. Taxpayer can nominate spouse to claim his/her share of home loan interest (s. 26F).

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<p>32</p>	<p>* Personal allowances</p> <p>* Taxpayer can claim the married personal allowance and the child allowance in respect of his two children even though they did not live with him in Hong Kong. If taxpayer and his former wife are both eligible to claim child allowance in respect of their son and each of them was solely responsible for the maintenance of their son for six months during the year, both of them are eligible to claim single parent allowance under s. 32. Apportionment of the single parent allowance and the child allowance based on time is likely to be made by the IRD.</p> <p>* For parent allowance, no dependent allowance can be granted in respect if parent is not ordinary resident in Hong Kong during the period. Elderly residential care expenses cannot be claimed e.g. if the nursery home is in Shenzhen and is unlikely an approved nursery home in Hong Kong. A new dependant allowance for dependent parents aged 55 to 59 was introduced for the year of assessment 2005/2006. An additional allowance is also granted if taxpayer's parents resided with taxpayer for the whole year. If taxpayer had the sole or predominant care of his son, he is also entitled to single parent allowance under section 32.</p> <p>Child allowance conditions: (i) maintained by taxpayer; (ii) unmarried and (iii) below 18 or if between 18 to 25 receiving full time education or if over 18 incapacitated for work because of physical or mental disability. New born baby allowance of \$70,000 is also granted. Dependent brother/sister allowance conditions: (i) unmarried; (ii) maintained by taxpayer and (iii) below 18 or if between 18 to 25 receiving full time education or if over 18 incapacitated for work because of physical or mental disability. Disabled dependant allowance - available to individual taxpayer for each dependant who is eligible to claim Government's disabled allowance.</p>	<p>Check Revision Q&A for examples of personal allowances.</p>
<p>41</p>	<p>* Personal Assessment</p> <p>* Taxpayer (18 or above) is entitled to personal assessment under Section 41(4). The taxpayer must be a permanent resident of Hong Kong or a temporarily resident, i.e. spent more than 180 days in Hong Kong for the relevant year of assessment or more than 300 days during two consecutive years. The election shall be made in writing to the CIR not later than 2 years after the assessment year or 1 month after an assessment of income or profits forming part of the individual's total income for such year of assessment becomes final and conclusive (s. 70), whichever is the later.</p> <p>* Benefits for electing for PA are as follows:</p> <ol style="list-style-type: none"> 1) Utilize taxpayer's trading losses 2) Can claim a deduction for interest for rental apartment 3) Utilize the personal allowance for housewife 4) Can maximize the deduction for charitable donations 	
<p>42</p>	<p>* If taxpayer wishes to claim a deduction of loan interest, he would have to elect for Personal Assessment. Note the interest expenses of rental property would be offset against up to the net assessable value of rental property.</p>	

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**DIPN
38**

* **Share Option Gain:** Even if the option (that was granted before working in HK) was exercised when a taxpayer is subject to salaries tax in Hong Kong, the share option was granted in year of assessment when he was **exempted by the virtue of s.8 (1A)(b)**; then the gains from exercising the option are not assessable. The IRD accepts that gains from unconditional stock options granted before providing HK service are not taxable even the options are exercised when rendering services in Hong Kong.

However, the option that was granted when taxpayer is **chargeable under s. 8(1)** will be taxable benefit under **s.9(1)(d)** if the options are **exercised**, assigned or released, and the amount of taxable benefit is determined in accordance to **s.9(4)**. The taxable gain is the notional gains at the time when the option is exercised, i.e. difference between market value of the shares at the time of exercise and the exercise price.

Timing - the gain is taxable at the time of exercise. Subsequent gain on disposal is not taxable. **Section 11D** treating the gains as accrued to taxpayer on the last date of employment is not applicable as the exercise of the option does not involve any payment by the employer.

Chargeability is based on source on grant date while exercising the option affects the timing of assessment.

Section 9(5) provides that where a taxable gain may arise under section 9(1)(d), a person shall not be chargeable to Salaries Tax under any other provision in respect of the receipt of the right. Reporting requirements are to be observed by both employer and employee.

DIPN 38 also mentions taxation treatment for employee departing HK. Compromise on share option gain amount can be done for leaving Hong Kong case.

DIPN 38 (revised in Mar 2008) - includes tax treatments on share award benefits (**Part 2 of the DIPN**) in two categories, i.e. **“upfront”** and **“back end”**. Share awards are taxable as perquisites for employment work done. The crucial issue is on timing of assessment.

Issues	Upfront Approach	Back end Approach
Vesting Period	No	Yes
Time of Assessment	When award is granted	When vesting period is completed
Valuation	Market value at granting date	Market value when conditions are fulfilled
Discount in Valuation	Normally 5% for sale restriction	No
Distribution e.g. dividends/ bonus shares	Not taxable as being investment income only	Normally not taxable unless legal right to distribution is enforceable

Q1.

Derek Chan has been working as the group product director of Joyce Ltd (JL), a company resident in Hong Kong, for over ten years. As a result of a change in product line, Derek has been asked to leave his employment with JL as of 30 June 2015, and to agree not to join any competitor within the next two years.

JL has negotiated and agreed a termination package with Derek, which includes the following amounts:

- (1) his last month's salary of \$70,000;
- (2) accrued vacation pay of \$105,000 (including some leave days brought forward from previous years); and
- (3) a lump sum gratuity of \$840,000.

Derek plans to move to Canada to live with his family on 15 July 2015. Upon agreement, JL will pay the termination payment after his cessation of employment on 30 June 2015 but before he leaves Hong Kong on 15 July 2015. JL will also give Derek a letter stating that, 'A lump sum amount of \$1,015,000 is being paid to you in consideration of your agreeing to release the company from all claims you may have against the company arising from the termination of your employment.' By doing so, Derek has been advised by a friend that he may have a good chance to avoid paying any tax on the payment because it will be treated as a tax-free capital receipt; and/or it is received after cessation of employment.

Required:

- (a) Advise Derek Chan on the taxability of the termination payment under salaries tax. Where appropriate, suggest any tax planning ideas which may help minimise his salaries tax liability. (14 marks)
 - (b) Advise Joyce Ltd of its compliance obligations under the Inland Revenue Ordinance in respect of the termination of Derek Chan's employment. (3 marks)
 - (c) Explain to Derek Chan the steps the Inland Revenue Department can take without instituting court proceedings, to recover the salaries tax payable by him. (3 marks)
- (Total 20 marks)**

Answers 1: Derek Chan

(a) Taxability of the termination payment (14 marks)

Subject issues	Sample writings / remarks	Marks
S. 8 of IRO	Salaries tax is imposed on HK sourced employment or office income.	0.5
S. 9(1)(a) of IRO	The salary and accrued leave pay are taxable on the basis that they are income from taxpayer's employment by the HK company.	1
	The fact that some leave days are brought forward from the previous year is not relevant since the amount is not received by taxpayer until 2015/16, and thus the payment will be assessed in the year 2015/16.	1
	'Income' is further defined to include gratuities. Applying to the case, as long as the lump sum gratuity is made as a result of his HK employment for his past services rendered in Hong Kong, then the payment will be subject to HK salaries tax.	1
S. 11D	Any payments made to a taxpayer after they have ceased to derive income are deemed to have accrued on the last day of employment. The suggestion that the termination payment is to be made to him after the date of cessation of his employment of 30 June 2015 is hence not relevant for salaries tax purposes. As a result, the payment would have to be included in the final year's tax returns to be reported by the company and the taxpayer, for the year of assessment 2015/16.	0.5
		1
		0.5
Income of capital nature	An issue arises as to whether the payment can be treated as tax-free payment simply by the parties agreeing that the payment is being made as a 'release' of all claims which the employee has against the employer.	1
	The letter to be issued by the company appears to have been designed to suggest that this is a capital payment. However, case-law indicates that the IRD is entitled to look beyond this letter, which appears to be merely window-dressing to disguise the true arrangements which have been agreed. Therefore, the payment would <u>not</u> be non-taxable simply because of the letter.	1.5
Salaries tax planning	Under s.11D(b), you are eligible to elect to relate back the contract gratuity over the contract period or thirty-six months (whichever is shorter) for the purposes of assessing the gratuity. In doing so, your income may be subject to lesser progressive tax rates. The election has to be made within two years after the end of the year of assessment in which the lump sum payment is received.	1.5
	Depending on the related employment law, you may consider choosing to receive severance pay as provided under the Employment Ordinance instead of the contract gratuity. Whilst a contract gratuity is taxable, under the current practice, severance pay calculated in accordance with the Employment Ordinance is not taxable. However, you should be aware that if the IRD has evidence that the severance payment is effectively a gratuity, or in situations where the actual payment is substantially in excess of the statutory amount payable under the Employment Ordinance, the IRD may challenge the true nature of the payment and choose to impose tax on the entire amount, or the excess.	1.5
	The other possible way to minimise salaries tax liability is to explore whether any element of the gratuity payment is, as a matter of fact, attributable to his loss of office and to his agreeing not to join any competitor within two years, or other facts other than having been employed by the company.	1
	In this case, the taxpayer is asked to leave as a result of the change in product line. It is, however, not clear whether the role of the product director is actually being made redundant. If taxpayer has the legal right of being or reasonable expectation in law to be employed beyond 30 June 2015, but this right is now being terminated due to the extinction of the position as a result of the change in product line, there is a strong case to argue that part of the termination payment serves as a compensation for his loss of office.	1
	The compensation is then not a reward for his past services and thus may be excluded from salaries tax.	1
		1

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Q&A

	On the other hand, he has agreed not to join any competitor within two years. Regardless of whether he has been asked to sign any documents or covenant to this effect, he may ask for a consideration in return for his agreement. In this case the consideration would be a payment for deprivation of rights, not a reward for his past services or from his employment, and thus would not be taxable.	1
Anti-avoidance	However, recent cases illustrated that if a compensation type of payment has been made in accordance with the terms of an employment, it is, in reality, deferred remuneration from that employment. Therefore, despite its nature being described as compensation and its actual payment being post-termination, the compensation may be treated as taxable to the extent that it can be proved to have been paid in accordance with the terms of the employment, or for past services. It is advisable to ascertain further details to confirm the tax treatment.	1 (max. 14)

(b) Joyce Ltd's compliance obligations (3 marks)

Subject issues	Sample writings / remarks	Marks
S. 52 of IRO	<p>The HK company employer has the following compliance obligations under the IRO in respect of his termination:</p> <ol style="list-style-type: none"> (1) To notify the IRD of the cessation of staff's employment no later than one month before the date of cessation (i.e. by 31 May 2015) or such shorter period as might be reasonable [s.52(5)]. (2) To notify the IRD of staff's intention to leave HK no later than one month before the date of intended departure (i.e. 15 June 2015) [s.52(6)]. (3) To withhold all payments due to the staff for one month from the date of notification of his intended departure [s.52(7)]. <p>[Tutor note: The purpose of this is to enable the IRD to 'garnish' any payments due, by requiring the employer to make such payment to the IRD in satisfaction of the employee's tax liability. The termination payments should therefore not be released to the staff within the said month unless the company receives notification from the IRD to release such payment before the expiry of the said month. The obligation to withhold expires after the said month].</p>	1 1 1

(c) Actions available to the IRD to recover tax from Derek Chan (3 marks)

Subject issues	Sample writings / remarks	Marks
Tax recovery actions	<p>In the absence of instituting court proceedings, the IRD can recover tax from the individual taxpayer by:</p> <ol style="list-style-type: none"> (1) Giving notice to any person to pay the outstanding tax from any money due by that person to the taxpayer, or money held by that person on or for his/ her account, or money to be paid by that person to him/her, or money to be paid by that person to him/her on behalf of or by authority of some other person [s.76]. This includes giving notices to: <ol style="list-style-type: none"> (i) Taxpayer's employer to pay over the outstanding tax from any money due by it to taxpayer (in this case, the termination payment); and (ii) Any bank in which taxpayer has a bank account to pay over the outstanding tax from the balance of such account. (2) Applying to a district judge for a departure prevention direction which will authorise any immigration or police officer to prevent taxpayer from leaving Hong Kong without paying the tax or furnishing security to the satisfaction of the Commissioner for payment of the tax [s.77]. 	1 0.5 0.5 1

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Q&A

- Q2.** AB Co, a company resident only in Hong Kong, has several subsidiaries operating in Asia. AB Co is developing a new financial reporting system and intends to send its IT manager, Paul, to its Malaysian subsidiary for a period of four months to monitor and oversee the implementation of this new system.

Paul is a resident of Hong Kong holding a HKSAR passport. His remuneration will remain the same during his time in Malaysia and it will continue to be paid into his bank account in Hong Kong. All his travel and hotel accommodation costs in Malaysia will be reimbursed by AB Co. AB Co has also agreed to bear any additional personal income tax arising from the assignment. However, AB Co has not yet decided whether it will recharge Paul's remuneration to the Malaysian subsidiary, though the assignment is initiated by AB Co.

Required:

- (a) Advise AB Co whether it can claim a tax deduction in respect of Paul's remuneration representing the four-month period of service rendered in Malaysia. (6 marks)
- (b) Advise Paul whether his remuneration for the four-month period of service rendered in Malaysia and the travel and hotel accommodation costs reimbursed by AB Co will be chargeable to Hong Kong salaries tax. (7 marks)
- (c) Based on Article 16 of the Double Tax Agreement (DTA) between Hong Kong and Malaysia (as extracted below), explain how the DTA may protect Paul's remuneration from Malaysian personal income tax.

Hong Kong–Malaysia DTA Article 16 Dependent Personal Services, paragraph 2:

“Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:

- (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Party.’

(7 marks)
(20 marks)



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Q&A

Answer 2: AB Co and Paul

(a) Deduction of remuneration by AB Co (6 marks)

Subject issues	Sample writings/ remarks	Marks
S. 16(1) of IRO	The remuneration paid by the company to taxpayer as its employee would be tax deductible against its assessable profits provided that the remuneration is incurred in the production of the company's profits.	0.5
	This refers to the situation where taxpayer's services are rendered for the benefit of the company. Without the assignment, it would be reasonable to assume that his services are all rendered in HK and for the production of the company's profits in HK; however, this will not necessarily be the case during his four-month assignment.	1
IRR 2A	Section 16(1) only allows deductions for expenses 'to the extent' that they are incurred in the production of assessable profits. Where expenses are partly incurred for purposes other than in the production of assessable profits, only that portion of the expenses are allowed (IRR 2A).	1
	Applying to the case, in carrying out the assignment overseas, his services may be regarded as rendered for the benefit of the overseas subsidiary, given that his assignment is to monitor and oversee the implementation of the new financial reporting system in the subsidiary. In these circumstances, it is possible that the IRD would challenge that at least part of his remuneration attributable to his services overseas is not incurred in the production of the company's profits and, thus, not tax deductible.	1
	If this portion of the remuneration is borne by the company, i.e. there is no recharge to the subsidiary, the company may suffer a tax disallowance of the total portion of the related remuneration. If, however, a recharge to the subsidiary is made, then the disallowed portion will be reduced accordingly by the amount recharged or recovered.	0.5 1
	It may be argued with evidence that Paul's services rendered overseas is for the benefit of the HK company, on the basis that the new system is a reporting system which enables the subsidiary to provide a better report of its financials to its HK parent company.	1

(b) Paul's liability to salaries tax (7 marks)

Subject issues	Sample writings/ remarks	Marks
S. 8 of IRO & DIPN 10	Taxpayer's employment with a HK company should be a Hong Kong sourced employment. All of his employment income would be liable to HK salaries tax unless exemption applies.	0.5 0.5
	S. 8(1A)(b) of IRO	Taxpayer cannot claim exemption for all services done overseas as he has worked in HK during the basis period.
S. 8(1B) of IRO	As he is a resident in HK and does not appear to be a visitor. He cannot claim exemption under 60-day rule as the condition "visit not more than 60days" is not satisfied.	0.5 0.5
S. 8(1A)(c) of IRO	A portion of his remuneration would be exempt from HK salaries tax if (i) it was derived by him from services rendered overseas; and (ii) he is chargeable to and paid overseas personal income tax which is substantially of the same nature as salaries tax. It does not matter who (taxpayer or the employer) has paid the overseas tax.	1.5 1
	Applying to the case, the 4-month period's income is exempted.	0.5
S. 9(1)(a) of IRO	If employer makes payment to a third party which discharges the liability of the employee, the payment would normally be taxable income to the employee.	1
	However, there is case law saying that when an employee is on business trips, all reasonable expenses paid by him for the employer's business and then reimbursed by the employer are not assessable income to the employee.	1
	Applying to the case, the business travel and hotel accommodation costs paid by employer would likely not constitute taxable income to taxpayer.	0.5

Q&A

(c) Effect of the double tax agreement (7 marks)

Subject issues	Sample writings/ remarks	Marks
DTA	Pursuant to Article 16 of the Double Tax Agreement (DTA) between Hong Kong and Malaysia, taxpayer's remuneration relating to his services rendered in Malaysia would be exempt from Malaysian personal income tax if all of the three conditions are fulfilled.	1
	Applying to the case, the first condition is that the aggregate number of days that taxpayer stays overseas in a taxable year does not exceed 183 days. It is not clear from the DTA how a day is counted, but in the case of taxpayer where his intention is to stay there for only four months, it is unlikely that this threshold would be exceeded.	1.5
	The second condition is that the payment of his remuneration is made by an employer who is not a resident of the overseas country. As it is intended that his remuneration would continue to be paid by the resident company in HK, this condition is fulfilled.	1.5
	The third condition is that the payment of taxpayer's remuneration is not to be borne by any permanent establishment or fixed base in the overseas country. In the event that the HK company bears the whole of taxpayer's remuneration and does not recharge any of it to the overseas subsidiary, this condition will be fulfilled.	1.5
	However, if there is a recharge, this condition may be subject to challenge as to whether the overseas subsidiary would, for the purpose of applying the DTA, be regarded as a permanent establishment or a fixed base of the HK company. If the answer is yes, the third condition would not be fulfilled and taxpayer's remuneration would not be eligible for the treaty exemption.	1.5

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Q&A

D) Stamp Duty

The following instruments are dutiable.

Head	Instrument	Stamp Duty (see AVD - SOIPN 8 updates)
1 (1)	Conveyance on sale	1.5% - 8.5% on the higher of consideration and market price (Scale 1)
1 (1A)	Agreement for sale of residential property	1.5% - 8.5% on the higher of consideration and market price (Scale 1)
1(2)	Lease of immovable property: With premium only With premium + rent Lease term ≤ one year Lease term not specified Lease term > one year but ≤ three years Lease term > three years	Same as conveyance on sale. (HK\$100 or 0.75 - 4.25% on the higher of consideration and market price). 4.25% on premium + 0.25 % on total rent payable, or 0.25 % on average yearly rent, or 0.5% on average yearly rent, or 1% on average yearly rent.
	A lease executed in pursuance of a duly stamped agreement for lease	HK\$3
2(1)	Contract note, not jobbing business	0.2% (0.1% on bought note, 0.1% on sold note).
2(2)	Contract note, jobbing business	HK\$5
2(3)	Instrument of transfer for voluntary disposition inter vivos	HK\$5 + 0.2% on value of stock.
2(4)	Instrument of transfer for any other kind	HK\$5
3(1)	Hong Kong bearer instrument	3% on market value.
3(2)	Instrument in substitution for duly stamped instrument under Head 3(1)	HK\$5
4	Duplicates and counterparts of chargeable instruments	HK\$5

SDO

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Duty Table - On Sale or Transfer of Immovable Property in Hong Kong

With effect from 23 February 2013, unless specifically exempted or otherwise provided, stamp duty on sale or transfer of immovable property in Hong Kong is chargeable with ad valorem stamp duty (AVD) at higher rates (Scale 1). The rates at Scale 1 are as follows (Where the stamp duty calculated includes a fraction of \$1, round-up the duty to the nearest \$1.):

Amount or value of the consideration		Rate (scale 1)
Exceeds	Does not exceed	
	\$2,000,000	1.5%
\$2,000,000	\$2,176,470	\$30,000 + 20% of excess over \$2,000,000
\$2,176,470	\$3,000,000	3%
\$3,000,000	\$3,290,330	\$90,000 + 20% of excess over \$3,000,000
\$3,290,330	\$4,000,000	4.5%
\$4,000,000	\$4,428,580	\$180,000 + 20% of excess over \$4,000,000
\$4,428,580	\$6,000,000	6%
\$6,000,000	\$6,720,000	\$360,000 + 20% of excess over \$6,000,000
\$6,720,000	\$20,000,000	7.5%
\$20,000,000	\$21,739,130	\$1,500,000 + 20% of excess over \$20,000,000
\$21,739,130		8.5%

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Stamp Duty - On a sale of Transfer of Immovable Property in Hong Kong (see SOIPN 8 updates)

With effect from 1 April 2010, stamp duty on sale of immovable property in Hong Kong is charged at rates which vary with the amount or value of the consideration as follows:

Amount or value of the consideration		Rate (scale 2)
Exceeds	Does not exceed	
	\$2,000,000	\$100
\$2,000,000	\$2,351,760	\$100 + 10% of excess over \$2,000,000
\$2,351,760	\$3,000,000	1.5%
\$3,000,000	\$3,290,320	\$45,000 + 10% of excess over \$3,000,000
\$3,290,320	\$4,000,000	2.25%
\$4,000,000	\$4,428,570	\$90,000 + 10% of excess over \$4,000,000
\$4,428,570	\$6,000,000	3%
\$6,000,000	\$6,720,000	\$180,000 + 10% of excess over \$6,000,000
\$6,720,000	\$20,000,000	3.75%
\$20,000,000	\$21,739,120	\$750,000 + 10% of excess over \$20,000,000
\$21,739,120		4.25%

- Documents are subject to stamp duty if they fall within the **4 charging heads** of the SDO. Stamp duty is levied on instruments of transfers of shares and immovable property.
- The applicable rate on **conveyance** of the property is 4.25%/8.5% (max.) on the consideration of the sales agreement.
- The **lease** agreement for immovable property is dutiable under **Head (1)(2)**. If the term of the lease is over 3 years, the stamp duty payable is 1% of the annual rent. Section 45 exemption is not applicable to lease agreements. The stamp duty payable is 0.5% on the average yearly rent, (Head 1(2)(b)(iii), First Schedule of the SDO. A duty of \$5 is payable on any duplicate or counterpart.
- Stamp duty is levied on the higher of either the consideration paid or the market value of the shares transferred and the rate is 0.2% (HK\$2/ HK\$1,000) per transaction. 0.1% on the bought note and 0.1% on the sold note, HK\$5 on the instrument of transfer. The bought and sold notes are dutiable under **Head 2(1)** and the instrument of transfer is dutiable under **Head 2(4)**.

Valuation

- Gift or inadequate consideration would be regarded as a **voluntary disposition *inter vivos*** for Stamp Duty purposes (**section 27(4)**) and market value is used. Under section 27(1) of that ordinance, Stamp Duty is chargeable on the market value of the property transferred.

- Deemed consideration under s. 24

Pursuant to Section 24(1) of the SDO, in the case of a conveyance on sale or any transaction whereby a beneficial interest in Hong Kong stock passes, where the conveyance or transaction is in consideration, wholly or in part, of any debt due to the transferee or is subject either certainly or contingently to the payment or transfer of any money or stock, whether or not being or constituting a charge or incumbrance upon the property or interest so conveyed or passing, the debt, money or stock is to be deemed the whole or part (as the case may be), of the consideration by reference to which the conveyance or contract note is chargeable with stamp duty.

Pursuant to Section 24(3) of the SDO, when there is a transfer of a beneficial interest in a body corporate and the transferee will incur liability in respect of any indebtedness of the body corporate, the amount of the indebtedness will form part of the consideration of the transfer. Reference may be made to Stamp Office Interpretation and Practice Notes No. 3 for guidance on deemed consideration under Section 24 of the SDO.

Also refer to contingency principle: Duty is assessed on the basis of the circumstances prevailing at the time an instrument is executed. Liability cannot be altered by subsequent events.

Rules on stampable consideration

Contained in document	Basis for stamp duty
Consideration not ascertainable	Nil
Maximum and minimum amount provided	Max
Minimum amount provided	Min

SDO

Section

24

SOIPN Reference:

No.	Stamp Office Interpretation and Practice Notes	Date issued
1.	Stamping of agreements for sale and purchase of residential property	Oct 2014
2.	Relief for stock borrowing and lending transactions	February 2011
3.	Deemed consideration under section 24 of the Stamp Duty Ordinance, Cap.117	September 1998
4.	Deemed sale and purchase under section 19(1E) of the Stamp Duty Ordinance, Cap.117	25 January 2000
5.	Special Stamp Duty	July 2014
6.	Alternative Bond Schemes	Aug 2014
7.	Buyer's Stamp Duty	July 2014
8.	Ad Valorem Stamp Duty	October 2014

Exemptions from stamp duty:

➤ No change of benefit interest

- If transferor would not have any beneficial interest in the property, i.e. no beneficial interest is transferred upon the assignment, hence by virtue of **section 27(5)** of the Stamp Duty Ordinance, section 27(1) would not apply to substitute the market value for the consideration of the conveyance. However, strong evidence has to be submitted to the Collector of Stamp Revenue.

➤ Group relief

- Exemptions are available for intra-group transfers of shares or immovable property from one associated body corporate to another under **Section 45** of the Stamp Duty Ordinance ("SDO"). They should obtain adjudication for Section 45 relief. "**ASSOCIATED**" (i.e. when one is the beneficial owner of at least 90% of the issued share capital of the other, or when a third company is the beneficial owner of at least 90% of the issued share capital of each.)
- **Adjudication** (a formal assessment procedure re section 13) is compulsory for application for exemption under Section 45 of the SDO. To qualify for the Section 45 exemption, the transferor and transferee companies have to remain associated for at least two years after the transfer. If they cease to be associated within the two-year period, the stamp duty exemption will be revoked and duty is payable within thirty days of the change.
- Following anti-avoidance provisions prevent the abuse of Section 45 relief.
 - If any part of the **consideration** for the transfer of immovable property or Hong Kong stock between associated companies was provided by an unrelated non-associated person, Section 45 relief is not applicable (Section 45(4)(a)).
 - If there is an arrangement at the time of the transfer of immovable property or Hong Kong stock that the two companies will cease to be associated, even after **two years** of the transfer, Section 45 relief is not applicable (Section 45(4)(c)).
- If money has been obtained from a bank for the purpose of acquiring the property from an associated body corporate, the Collector of Stamp Revenue has issued a ruling stating that as long as he is satisfied that the loan was made by a bank or a deposit-taking company in the ordinary course of business, and that neither the bank and the deposit-taking company had any interest in the property other than as security, the provision of the purchase money by that bank or deposit-taking company would not cause a denial of the Section 45 relief (**Arrowtown case**).

SD administration

Duty liability is jointly and severally liable by parties involved, though in practice buyer will pay the stamp duty for purchase of property. All dutiable instruments must be stamped either before execution or within a certain period of time after execution, as follows:

Instrument	Time Limit for Stamping
Conveyance on sale of immovable property in HK	Thirty days after execution.
Lease of immovable property in HK	Thirty days after execution.
Contract notes (i.e. bought note and sold note) of HK stock	Two days after the sale or purchase if effected in HK; or Thirty days after the sale or purchase if effected outside HK.
Instrument of transfer of HK stock	Before execution; or if executed elsewhere than in HK, thirty days after execution.
HK bearer instrument	Before issue.
Duplicates and counterparts	Seven days after execution or such longer period as the time for stamping the original instrument would allow.

- The **time limit** for stamping conveyance on the sale of immovable property in Hong Kong is thirty days after execution. When an instrument which is chargeable to stamp duty is not stamped within the time specified, it can thereafter be stamped only upon payment of the duty owing and a penalty. For delays not exceeding one month, the penalty is two times the amount of duty payable. For delays of more than one month but not exceeding two months, the penalty is four times the amount of duty payable. For delays over two months, the penalty is ten times the amount of duty payable. The **Collector** has the discretionary power to remit the whole or any part of the **penalty**. **Appeal** against assessment procedures (Pursuant to **Section 14** of the SDO).
- Any dutiable instrument not stamped within the specified time can only be stamped upon payment of the stamp duty and a penalty ranging from twice to ten times the duty, depending on the length of the delay in stamping (**section 9(1)** of the SDO). The Collector of Stamp Revenue may take civil action against any person or persons liable for the payment of duty to recover the unpaid duty and any penalty (section 4(3)).
- Importance of stamping: Any **dutiable instrument** which is not stamped is not admissible as evidence in any proceedings except in (i) criminal proceedings (section 15(1)(a)), (ii) civil proceedings instituted by the Collector of Stamp Revenue for recovery of stamp duty (section 15(1)(b)), and (iii) in civil proceedings, if the Court so orders, upon the personal undertaking of a solicitor to pay the stamp duty and penalty thereon or if the instrument is endorsed by the Collector (section 15(1A)). Furthermore, such instrument cannot be acted upon, filed or registered by any public officer (section 15(2)).

SOIPN 1 (supplement)

The differentiation of premises in terms of "**residential property**" or "non-residential property" is by reference to their permitted use rather than their actual use (**SOIPN 1 (Revised)**). The IRD expresses its views in the **SOIPN 1 (Revised)** that "**agreement for sale**" is widely defined and includes various **instruments** involving rights to **immovable property** which might otherwise be used to circumvent the provisions. However, non-binding agreements which are not intended to create legal relations are not intended to be caught, such as an agreement which is subject to contract. The related conveyance will still be chargeable with a fixed **stamp duty** of \$100 after the agreement has been so stamped. **SOIPN 1 (Revised)** further states that "other consideration" for applying the relevant **stamp duty** rate includes all **consideration** paid to any person in connection with the **agreement for sale**, excluding legal expenses.

A confirmor fee of whatever name called is hence included. While incidental expenses such as agency fees, mortgage fees, and outgoings and expenses etc. could arguably be included in "other consideration", the Collector's practice is however to exclude such payments.

The current practice is to use the exact **consideration** or value to compute the **stamp duty** for property transfers. The rates apply when the **instrument** is certified by a statement to the effect that the transaction effected by the **instrument** does not form part of a larger transaction or series of transactions for which a greater amount of **consideration** is payable (**section 29 of SDO**).

This is so called the **certificate of value**. If no such certified statement is included in the **instrument**, **stamp duty** is payable at the maximum AVD rate. Similarly the requirement for certificate of value under **section 29 of SDO** applies to transfer of **residential property** (**section 29G of SDO**).

In respect of liable persons, all parties to a conveyance and any other persons executing the conveyance are liable for the duty payable. Persons obtaining a vesting order consequential upon an order for sale, partition or foreclosure order are also liable for the duty payable. For timing of stamping, the **conveyance on sale** including deed of gift shall be stamped within 30 days after the date of execution, i.e. the date the document is signed. When an **agreement for sale** is created for an immovable **residential property** and another chargeable agreement (e.g. **sub-sale** agreement) for the same property is made before a **conveyance on sale** of the property, each agreement is chargeable with **stamp duty** with reference to the respective amounts of **consideration** involved (**section 29C(3) of SDO**). Whereas, if a second **agreement for sale** of a property is made within 14 days to supersede the first agreement, between the same parties and on the same terms, no duty will be chargeable on the first agreement provided that the second agreement is duly stamped (**First Schedule, Note 2 to Head 1(1A) of SDO**). Note further that if the two **agreements for sale** are made between the same parties and on the same terms, and one has been duly stamped, the other agreement will only be chargeable with a duty of \$100 (**First Schedule, Note 3 to Head 1(1A) of SDO**).

When two **agreements for sale** are entered into, and in the second agreement an additional purchaser (or purchasers) are named or, only one (or some) of the original purchasers are named, the second agreement is chargeable as if it were a **conveyance of sale** executed in pursuance of the first agreement (**section 29C(5) of SDO**).

Regarding a single **agreement for sale** involving both residential and non-residential properties, the Collector's practice is as follows (**SOIPN 1 (Revised)**):

- the agreement is regarded as an **agreement for sale** of a **residential property** and the whole **consideration** is liable to **stamp duty**; or
- **Stamp duty** may be computed on the **consideration** of the residential units only provided that:
 - the residential and non-residential units are separate and distinct properties; and
 - respective **considerations** for the residential and non-residential units are separately set out in the agreement.

However, the **stamp duty** rate applicable will still be based on the total **consideration** of the whole transaction.

Effective from 1 April 1999, where an agreement is cancelled, annulled, rescinded or otherwise not performed, other than by reason of a resale or disposal of the property by nomination or direction of the purchaser, the agreement will be exempted from **stamp duty** (**section 29C(5A) of the SDO**). In case the **stamp duty** in respect of such agreements has been paid, the duty payers may apply to the Collector for a refund within two years after the cancellation or rescission or, in the case where the agreement is not performed, two years from the agreed date of completion of the transaction (**Section 29C(5B) of the SDO**).

Candidates should note the special case that when the partition of property or exchange of one property for another is agreed under an **agreement for sale**, and the **consideration** is paid or given for the purpose of equality, the agreement is chargeable with **stamp duty** on the equality money only (**section 29C(10) and section 29F of the SDO**).

For the purposes of considering whether 2 or more agreements for sale of residential property are made between the same parties, before the Effective Date on 23 Feb 2013, a person and a parent, spouse or child of that person are treated as the same person.

From the Effective Date onwards, 2 or more persons are treated as the same person if, on the date of agreement made between those persons – (a) they are closely related; (b) each of them is acting on his or her own behalf; and (c) each of them is not a beneficial owner of any other residential property in Hong Kong [Note 5 to head 1(1A) in the First Schedule]. Two persons are closely related if one of them is the parent, spouse, child, brother or sister of the other; and if there are more than two persons, they are closely related if each of them is a parent, spouse, child, brother or sister of each of the others [section 29AD]. The Ordinance does not define “parent”, “spouse”, “child”, “brother” or “sister”. For the purposes of AVD, the Collector will adopt the ordinary meaning and accept persons who are blood-related, half blood-related, and also persons who have spouse relationship, adoption or step relationships as the parents, spouse, children, brothers or sisters of the person concerned.

SOIPN 2

The Stamp Office issued the **SOIPN 2 (Revised)** in February 2011 in respect of the relief for stock borrowing and lending transactions. No **stamp duty** is payable on transfers of **HK stock** (which are not executed by contract note and not operate as **voluntary dispositions *inter vivos***) if they are executed by a recognised clearing house as transferor in accordance with its rules (**Note to First Schedule, Head 2(4) of the SDO**). The stamping requirements for contract notes set out in **section 19(1) of the SDO** have no application in relation to a sale or purchase of **HK stock** effected under a “market contract”, i.e. a transaction between a broker and clearing house (**section 19(1C) and section 19(16) of the SDO**).

There is a **stamp duty** relief for the sale or purchase of any specified derivative which is effected by a broker through the Unified Exchange in the course of his or her business as a broker, whether as a principal or agent (**section 19(1D) and the Fourth Schedule of the SDO**). Finally, stock borrowing and lending transactions are also relieved from **stamp duty** if the following conditions are fulfilled (**section 19(11) of the SDO**):

- the borrowed stock must have been used for one or more specified purposes (generally this means stock borrowing);
- the borrower is required to make a stock return in request of the borrowed stock or part thereof, or of its reasonable equivalent; and
- the borrower must have complied with any demand made by the lender for a stock return to be made in respect of the borrowed stock or part thereof, or of its reasonable equivalent.

Section 47A of the SDO also contains a broad exemption in respect of any instrument of transfer in connection with certain transfers of units in unit trust schemes, where the scheme is a “registered scheme” or an “approved pooled investment fund” as defined in the Mandatory Provident Fund Schemes Ordinance. Repurchase arrangement (“Repo”) is an agreement under which a person who wishes to raise finance sells securities to a purchaser and promises to repurchase the same amount and the same type of securities at a specified price at a future date. A reverse repo is where the transaction is initiated by the purchaser. Repo and reverse repo are exempt from **stamp duty** in a similar way as stock borrowing and lending (see **SOIPN 2 (Revised)**).

Special Stamp Duty (SSD) – SOIPN 5

Scope of SSD

SSD on conveyance on sale (Head 1(1AA)) and agreement for sale (Head 1(1B)): **SSD** is newly imposed on **conveyance on sale** of immovable **residential property** which was acquired by the transferor under the conveyance on or after 20 November 2010 if the property is disposed of within 24 months (note the further enactment by the Legislative Council, the period would be 36 months if the property was acquired on or after 27 October 2012) from the day on which the transferor acquired the property (**Head 1(1A)**). If conveyance is exempt from **stamp duty** under **Head 1(1)**, **SSD** is not chargeable. No **SSD** is payable if the **agreement for sale** is exempt from duty under **Head 1(1A)**. The **SSD** is chargeable in addition to the normal **stamp duty** payable under **Head 1(1)** or **Head 1(1A)**.

SSD rates

The SSD payable will be calculated based on the stated consideration for the transaction or the market value of the property as assessed by the Commissioner of Inland Revenue, whichever is higher, at the following regressive rates for different holding periods by the seller before the transaction-

- (i) 15% if the vendor has held the property for six months or less;
- (ii) 10% if the vendor has held the property for more than six months but for 12 months or less; and
- (iii) 5% if the vendor has held the property for more than 12 months but for 24 months or less.

The SSD is not calculated based on the profits from the property transactions.

Note the further enactment by the Legislative Council that the period for SSD would be 36 months if the property was acquired on or after 27 October 2012 (Head 1(1B)), and the applicable regressive rates are as follows:

- (i) 20% if the property has been held for six months or less;
- (ii) 15% if the property has been held for more than six months but for 12 months or less; or
- (iii) 10% if the property has been held for more than 12 months but for 36 months or less.

The Stamp Duty (Amendment) Ordinance 2014 (“the Amendment Ordinance”) was published in the gazette on 28 February 2014. For **SSD** purposes, the property holding period is calculated based on calendar months, i.e. the period from a certain day in a month to the preceding day in the following calendar month is counted as one month (**SOIPN 5 (Revised)**). The seller and the buyer of the property transaction are jointly and severally liable for paying the **SSD (SOIPN 5 (Revised))**. Timing for stamping is 30 days after execution of the **instrument**.

Persons liable to pay the SSD

The Government proposes that both the seller and the buyer, be it an individual or a company, will be held jointly and severally liable for the payment of the SSD. This is in line with the current law. To protect the interest of the buyer and the seller, the Stamp Office suggests that the following terms be specified in the provisional sale and purchase agreement as well as in the formal sale and purchase agreement:

- (i) which party (the buyer or the seller) shall pay the stamp duty; and
- (ii) whether the stamp duty includes the SSD.

In case the seller has agreed to pay the SSD, remind the buyer that he may need to specify in the agreement for sale (provisional and formal) to withhold part of the sale proceeds to pay for the SSD. To deter non-compliance, the existing statutory sanctions under the Ordinance will be extended to cover the SSD. Any person who fails to pay the SSD by the deadline for payment shall be liable to penalties up to 10 times the amount of the SSD payable. The evasion of SSD by fraudulent practice shall be a criminal offence, as with the evasion of normal stamp duty under the existing Ordinance.

Exemptions

SOIPN 5 (Revised) states that the payment of **SSD** is exempted in the following cases:

- nomination of the spouse, parents, children, brothers or sisters to take up the assignment of the **residential property**, and sale or transfer of the **residential property** to the spouse, parents, children, brothers or sisters.
- addition/deletion of name(s) to/from a chargeable **agreement for sale** or a **conveyance on sale** in respect of the **residential property** if the person(s) is the spouse, parents, children, brothers or sisters of the original purchaser(s).
- sale or transfer of residential properties by a court order or pursuant to a court order.
- sale of the estate of a deceased person, which involves **residential property**, by the executor or personal representative; and sale or transfer of a **residential property** by a person whose property is inherited from a deceased person's estate or passed to that person under the right of survivorship.
- **residential property** sold relates solely to a bankrupt's estate or the property of a company which is being wound up by the court by reason of its inability to pay debts.
- sale of mortgaged residential properties in various forms by a mortgage which is a financial institution within the meaning of **section 2 of the IRO**, or by a receiver appointed by such a mortgagee.
- sale or transfer of residential properties to the Government.
- sale or transfer of residential properties between **associated bodies corporate**.
- gift of residential properties to charitable institutions exempted from tax under s.88 of IRO.

Buyer's stamp duty ("BSD") – SOIPN 7

On 26 October 2012, the Financial Secretary announced that the HKSAR would introduce BSD on residential properties with effect from 27 October 2012. The relevant provisions are set out in the Stamp Duty (Amendment) Bill 2012 which was gazetted on 28 December 2012. Upon enactment of the relevant legislation, any residential property acquired by any person (including an incorporated company) except for a HK permanent resident will be subject to the BSD. BSD is to be charged at a flat rate of 15% on all residential properties, on top of the stamp duty and the special stamp duty, if applicable [IRD's website for further details - <http://www.ird.gov.hk/eng/faq/bsd.htm>]. The Stamp Duty (Amendment) Ordinance 2014 ("the Amendment Ordinance") was published in the gazette on 28 February 2014.

Buyer's stamp duty (Head 1(1AAB) and 1(1C)):

To address the overheated residential property market, BSD is imposed on the acquisition of residential properties by a person (including a company) on or after 27 October 2012. BSD is imposed on top of the existing ad valorem stamp duty and SSD, if applicable, on a chargeable AFS of residential property under s.29CB and Head 1(1C); or a conveyance on sale under s.29DB and Head 1(1AAB). BSD is charged at a flat rate of 15% on the stated consideration or the market value of the property, whichever is higher.

Exemption from BSD is granted when evidence is shown to the satisfaction of the Collector that the person is a Hong Kong permanent resident (HKPR) acting on his/her own behalf in acquiring the residential property (i.e. the person is both the legal and beneficial owner). In order to examine any claim for the BSD exemption, the IRD requires each applicant to declare, by virtue of the Oaths and Declarations Ordinance, that he/she is a HKPR and was 'acting on his/her own behalf' in the acquisition of the residential property.

1. Time for payment of BSD

BSD has to be paid within 30 days after the execution of the chargeable document. For chargeable documents executed between 27 October 2012 and the date on which the Stamp Duty (Amendment) Ordinance 2014 was published in the Gazette (i.e. 28 February 2014), BSD had to be paid on or before 31 March 2014.

2. Persons liable to pay BSD

The buyer or the transferee who is not a HKPR is liable to pay the BSD. A HKPR is defined as a person who:

- (a) Holds a valid permanent identity card (PIC) under the Registration of Persons Ordinance; or
- (b) Is eligible to, but exempted from, applying for the issue of a PIC under regulation 25(e) of the Registration of Persons Regulation (the aged, the blind or the infirm). Although BSD will not apply to HKPRs, it will apply to companies that acquire residential properties, regardless of whether they are controlled by or have any shareholders or directors who are HKPRs. A non-HKPR acquiring a residential property in the capacity of a trustee on behalf of a HKPR is liable to pay BSD, unless the HKPR is a mentally incapacitated person.

3. Exchange of residential properties

If a non-HKPR uses his/her residential property to exchange for another residential property and has to pay a sum of money (i.e. equality money) which represents the difference in value of the two properties, BSD is charged on the instrument with reference to the equality money and the non-HKPR is regarded as the buyer.

If a non-HKPR uses his/her non-residential property to exchange for a residential property, BSD is charged on the instrument with reference to the value of the residential property and the non-HKPR is regarded as the buyer.

4. Refund of BSD

If a chargeable AFS is cancelled (other than for further resale such as confirmor sale or nomination of another buyer), the buyer can apply for refund of the BSD within two years after the AFS is cancelled.

5. Exemptions from BSD

BSD will be exempted under the following circumstances:

- (i) Acquisition of a residential property by a HKPR jointly with a close relative(s) (i.e. spouse, parents, children, brothers and sisters) who is/are not HKPR and each of the purchasers is acting on his/her own behalf;
- (ii) Transfer of a residential property to a close relative who is not a HKPR, or to a close relative(s) jointly one or more of whom is/are not HKPR and each of the transferees is acting on his/her own behalf;
- (iii) Nomination of a close relative(s) who is/are not HKPR to take up the assignment of a residential property and each of the nominees is acting on his/her own behalf;
- (iv) Addition/deletion of name(s) of a person(s) who is/are not HKPR to/from a chargeable AFS or a conveyance on sale in respect of a residential property if the person(s) is/are a close relative(s) of the original purchaser(s) and each of the persons is acting on his/her own behalf;
- (v) Acquisition or transfer of a residential property by a court order or pursuant to a court order, which includes a foreclosure order obtained by a mortgagee whether or not it falls under the definition of a financial institution within the meaning of s.2 of the IRO;
- (vi) Transfer/vesting of a mortgaged residential property under a conveyance to/in its mortgagee that is a financial institution within the meaning of s.2 of the IRO, or a receiver appointed by the mortgagee;
- (vii) Acquisition or transfer of a residential property by or to a body corporate from an associated body corporate;
- (viii) Acquisition of a residential property by a person acting on his/her own behalf to replace another residential property that was owned by that person and that has been
 - Purchased or acquired pursuant to redevelopment projects pursued by the Urban Renewal Authority; or
 - Resumed under an order made under s.3 of the Lands Resumption Ordinance or purchased under s.4A of that Ordinance; or
 - Sold pursuant to an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance; or
 - Resumed under an order made under s.4(1) of the Mass Transit Railway (Land Resumption and Related provisions) Ordinance; or
 - Resumed under an order made under s.13(1) of the Roads (Works, Use and Compensation) Ordinance; or
 - Resumed under an order made under s.16 or 28(1) of the Railways Ordinance; or
 - Acquired under an acquisition order made under s.3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance; or
 - Resumed under an order made under s.37(2) of the Land Drainage Ordinance.
- (ix) Acquisition or transfer of residential properties by or to the Government; and
- (x) Gift of residential properties to charitable institutions exempted from tax under s.88 of IRO.

If a residential property is jointly acquired by a HKPR and a non-HKPR who is not a close relative of the HKPR, there will not be any exemption from BSD. BSD will be payable on the stated consideration or full value of the property, whichever is the higher, regardless of the share of interest of the non-HKPR in the property.

A residential property which is inherited by a non-HKPR from a deceased person's estate under a will, the law of intestacy or right of survivorship by a beneficiary is exempted from stamp duty, which is defined under the SDO to include ad valorem stamp duty, SSD and BSD.

6. Relief for residential property acquired by a non-HKPR for redevelopment

A non-HKPR acquiring a residential property for redevelopment can apply to the Collector for a refund of the BSD paid after the person, or if the person is a body corporate, jointly with its associated body corporate, has become the owner of the entire lot to be redeveloped and

- (a) Either has obtained consent to commence any foundation works for the lot (whether or not together with any other lot) from the Building Authority under the Buildings Ordinance;
- (b) Or has (i) Demolished or caused to demolish all buildings (if any) existing on the lot, other than a building the demolition of which is prohibited under any Ordinance; and (ii) Obtained approval of plans in respect of building works to be carried out on the lot (whether or not together with any other lot) from the Building Authority under the Buildings Ordinance.

If the residential property is subsequently transferred by a body corporate to an associated body corporate, the latter may also, under the aforesaid conditions, apply for a refund of the BSD paid by the former.

7. Documents required for claiming exemption from BSD

(a) By a HKPR buyer/transferee

For e-stamping cases, the original statutory declaration (IRSD131) of the applicant and a copy of his/her Hong Kong Permanent Identity Card have to be submitted within 30 days after the stamping application is submitted. In respect of paper application, the applicant has to submit the following: (i) A duly completed form IRSD112; (ii) The original statutory declaration (IRSD131); and (iii) A copy of the applicant's Hong Kong Permanent Identity Card.

(b) For the reason of transfer of residential property between close relatives the stamping must be by paper application, the applicant has to submit the following:

- (i) Duly completed form IRSD112 and IRSD118;
- (ii) A certified copy of relevant documentary evidence showing the relationship of the parties; and
- (iii) The original statutory declaration (IRSD131) declaring that the buyer/transferee was acting on his/her own behalf in acquiring the property.

(c) For the reason of acquiring residential property by a HKPR jointly with his/her close relative who is a non-HKPR

The stamping must be by paper application, the applicant has to submit the following:

- (i) Duly completed form IRSD112 and IRSD118;
- (ii) A certified copy of relevant documentary evidence showing the relationship of the parties; and
- (iii) The HKPR's original statutory declaration (IRSD131) declaring that he/she is a HKPR and was acting on his/her own behalf in acquiring the property; and the original statutory declaration (IRSD131) made by the non-HKPR declaring that he/she is acting on his/her own behalf in acquiring the property.

Ad valorem stamp duty (“AVD”) – SOIPN 8

On 22 February 2013, the Financial Secretary announced that the HKSAR would amend the **SDO** to adjust the **AVD** rates and to advance the charging of **AVD** on non-residential property transactions from the **conveyance on sale** to the **agreement for sale**. Any **residential property** (except that acquired by a HK permanent resident who does not own any other **residential property** in HK at the time of acquisition) and non-residential property acquired on or after 23 February 2013, either by an individual or a company, will be subject to the new rates of **AVD** upon the enactment of the relevant legislation. Transactions which took place before 23 February 2013 will be subject to the original **stamp duty** regime [IRD’s website for further details - <http://www.ird.gov.hk/eng/fag/avd.htm>]. **The Stamp Duty (Amendment) (No. 2) Ordinance 2014 has been gazette** - The Amendment Ordinance provides the ad valorem stamp duty (AVD) payable on certain instruments dealing with immovable properties executed on or after 23 February 2013 (“Effective Date”) shall be payable at higher rates (Scale 1); and advances the timing for charging AVD on non-residential property transactions from the conveyance on sale to the agreement for sale executed on or after the Effective Date.

As an anti-avoidance measure, if a duty-payer wishes to enjoy the progressive rates rather than the maximum rate of **8.5%**, he or she must include in the conveyance on sale a s.29 certificate stating that the transaction does not form part of a larger transaction or a series of transactions, in respect of which the aggregate consideration or value exceeds the amount for that progressive rate.

The following instruments are chargeable:

Head	Instrument	Stamp duty
1 (1)	Conveyance on sale (“COS”) chargeable with AVD	1.5% – 8.5% (Scale 1 rates), or \$100 or 1.5% – 4.25% (Scale 2 rates) on the higher of consideration and market value
1 (1AA)	COS chargeable with SSD	5% – 15% or 10% – 20% on the higher of consideration and market value
1 (1AAB)	COS chargeable with BSD	15% on the higher of consideration and market value
1 (1A)	AFS chargeable with AVD	1.5% – 8.5% (Scale 1 rates), or \$100 or 1.5% – 4.25% (Scale 2 rates) on the higher of consideration and market value
1 (1B)	AFS chargeable with SSD	5% – 15% or 10% – 20% on the higher of consideration and market value
1 (1C)	AFS chargeable with BSD	15% on the higher of consideration and market value

If consideration consists of periodic payments, stamp duty is charged under s.23 as follows:

Consideration consisting of periodic payments	Stamp duty
Payable for a definite period not exceeding 20 years	Stamp duty chargeable by reference to the total amount payable
Payable for a definite period exceeding 20 years or in perpetuity or for any indefinite period not terminable with life	Stamp duty chargeable by reference to an amount equal to the total amount which will or may, according to the terms of sale, be payable during the period of 20 years after the date of the conveyance or contract notes
Payable periodically for a life or lives	Stamp duty chargeable by reference to an amount equal to the total amount which will or may, according to the terms of sale, be payable during the period of 12 years after the date of the conveyance or contract notes

'HKPR' means a person who holds a valid Hong Kong permanent identity card ('PIC'), or who is eligible to but exempted from applying for the issue of a PIC (the aged, the blind or the infirm).

A person **'owns'** a RPPT if he is the beneficial owner of such property, or any share or interest thereof.

- (b) **Scale 1 rates** apply with effect from 23 February 2013 to:
- (i) **any RPPT**, except that acquired by a HKPR on his/her own behalf (i.e. the person is both the legal and beneficial owner) and who does not own any other RPPT in Hong Kong at the time of acquisition; and
 - (ii) **all non-RPPT** acquired either by an individual or a company.

Consideration/market value	Stamp duty (Scale 1 rates)
Up to \$2,000,000	1.5%
\$2,000,001 – \$2,176,470	\$30,000 plus 20% of the excess over \$2,000,000
\$2,176,471 – \$3,000,000	3%
\$3,000,001 – \$3,290,330	\$90,000 plus 20% of the excess over \$3,000,000
\$3,290,331 – \$4,000,000	4.5%
\$4,000,001 – \$4,428,580	\$180,000 plus 20% of the excess over \$4,000,000
\$4,428,581 – \$6,000,000	6%
\$6,000,001 – \$6,720,000	\$360,000 plus 20% of the excess over \$6,000,000
\$6,720,001 – \$20,000,000	7.5%
\$20,000,001 – \$21,739,130	\$1,500,000 plus 20% of the excess over \$20,000,000
Over \$21,739,130	8.5%

As an anti-avoidance measure, if a duty-payer wishes to enjoy the progressive rates rather than the maximum rate of 4.25% or 8.5%, he or she must include in the COS a s.29 certificate stating that the transaction does not form part of a larger transaction or a series of transactions, in respect of which the aggregate consideration or value exceeds the amount for that progressive rate.

In addition to the above AVD, the COS of RPPT may be subject to SSD (see section 3.3 on 'SSD') and BSD (see section 3.4 on 'BSD') if no AFS was entered into.

Scale 1 rates will not be applicable under the following circumstances:

(A) When Scale 2 rates are applicable to:

- (a) Acquisition of a RPPT (whether or not together with a car parking space) by a HKPR who is acting on his/her own behalf, and does not own any other RPPT (and car parking space, if applicable) in Hong Kong at the time of acquisition.
- (b) Acquisition of a RPPT (whether or not together with a car parking space) by two or more HKPRs jointly as co-owners or joint owners, and each of the purchasers is acting on his/her own behalf and does not own any other RPPT (and car parking space, if applicable) in Hong Kong at the time of acquisition.
- (c) Acquisition of a RPPT by a HKPR jointly as a co-owner or joint owner with a close relative(s) who is/are not HKPR, and each of the purchasers is acting on his/her own behalf and does not own any other RPPT in Hong Kong at the time of acquisition.

Close relatives include parent (but not parent-in-law), spouse, child, brother or sister who are blood-related, half-blood related, adopted or step-related.

If there are more than two purchasers/ transferees, all of them must be closely related.

- (d) Acquisition or transfer of RPPT between close relatives, irrespective of whether they are HKPRs, and whether they are beneficial owners of any other RPPT in Hong Kong at the time of acquisition or transfer.

If there are more than two purchasers/ transferees, all of them must be closely related.

- (e) Nomination of a close relative(s) (be they HKPRs or not) who is/are owner(s) of other RPPT in Hong Kong at the time of nomination, to take up the assignment of a RPPT, and the nominee is acting on his/her own behalf.

If there is more than one nominee, all the nominees must be close relatives.

If the close relative is not a beneficial owner of any other RPPT in Hong Kong, the nomination is not an AFS and not chargeable with AVD.

- (f) Acquisition or transfer of a property by a court order or pursuant to a court order, which includes a foreclosure order obtained by a mortgagee whether or not it falls under the definition of a FI within the meaning of s.2 of the IRO.
- (g) Transfer/ vesting of a mortgaged property under a conveyance to/in its mortgagee that is a FI within the meaning of s.2 of the IRO, or a receiver appointed by the mortgagee.
- (h) Acquisition of a property by a person acting on his/her own behalf to replace another property which was owned by that person, and that has been
- (i) purchased or acquired pursuant to redevelopment projects pursued by the Urban Renewal Authority; or
 - (ii) resumed under an order made under s.3 or purchased under s.4A of the Lands Resumption Ordinance; or
 - (iii) sold pursuant to an order for sale made by the Lands Tribunal under s.4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance; or
 - (iv) resumed under an order made under s.4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance; or
 - (v) resumed under an order made under s.13(1) of the Roads (Works, Use and Compensation) Ordinance; or
 - (vi) resumed under an order made under s.16 or 28(1) of the Railway Ordinance; or
 - (vii) acquired under an acquisition order made under s.3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance; or
 - (viii) resumed under an order made under s.37(2) of the Land Drainage Ordinance.

(B) When ad valorem duty is exempt for:

- (a) Nomination of a close relative(s) (be they HKPRs or not) who do(es) not own any other RPPT in Hong Kong at the time of nomination.
- (b) Transfer of a property to a beneficiary of the estate of a deceased person in accordance with that provided under a will or the law of intestacy; or acquired the property by the right of survivorship.
- (c) Acquisition or transfer of a property by or to a body corporate from an associated body corporate.
- (d) Acquisition or transfer of properties by or to the Government.
- (e) Gift of properties received by charitable institutions exempted from tax under s.88 of the IRO.

(C) When entitled to a partial refund of ad valorem duty for:

Acquisition of a RPPT or non-RPPT (including bare sites) for the purpose of redevelopment.

* End of this part *

Examples Illustrating the Application and

Computation of Special Stamp Duty

[SOIPN 5]

Residential property acquired before 20 November 2010

Example 1

Mr. Chiu signed a provisional agreement for sale to acquire a residential property on 15 September 2010. Subsequently, he signed a provisional agreement for sale to dispose of the property on 20 December 2010. Any SSD liability when Mr. Chiu disposed of the property?

As Mr. Chiu acquired the subject property before 20 November 2010 (the effective date of SSD), no SSD is payable when he signed the provisional agreement for sale to dispose of the property on 20 December 2010.

Residential property acquired between 20 November 2010 and 26 October 2012

Example 2 (Residential property disposed of / transferred after 24 months from the date of acquisition)

Mr. Chan acquired a residential property on 22 March 2011 and disposed of it on 30 November 2013. Any SSD liability when Mr. Chan disposed of the property?

No SSD is payable because the subject property is disposed of / transferred after 24 months from the date of acquisition.

Example 3 (Property holding period is 6 months or less)

Mr. Ho acquired a residential property on 10 September 2011 and disposed of it for \$6.5M on 9 March 2012. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

For the purposes of SSD, the property holding period is calculated based on the calendar months, i.e. the period from a certain day in a month to the preceding day in the following calendar month is counted as 1 month. In the above example, Mr. Ho has held the property for exactly 6 months. The applicable rate of SSD is therefore 15%. The amount of SSD payable is \$975,000, i.e. 15% of \$6.5M.

Example 4 (Property holding period is more than 6 months but not more than 12 months)

Mr. Ho acquired a residential property on 10 September 2011 and disposed of it for \$6.5M on 10 March 2012. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

Mr. Ho disposed of the subject property on 10 March 2012. He has held the property for more than 6 months but not more than 12 months. The applicable rate of SSD is 10%. The amount of SSD payable is \$650,000, i.e. 10% of \$6.5M.

Example 5 (Property holding period is more than 12 months but not more than 24 months)

Mr. Wong acquired a residential property on 2 February 2011 and disposed of it for \$1.8M on 18 August 2012. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

The subject property was acquired after 19 November 2010 and disposed of for more than 12 months but within 24 months from the date of acquisition. The applicable SSD rate is 5%. The amount of SSD payable is \$90,000, i.e. 5% of \$1.8M.

Example 6 (Property holding period is more than 24 months)

Mr. Wong acquired a residential property on 15 October 2012 and disposed of it for \$4M on 15 December 2014. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

Since the subject property was acquired before 27 October 2012 and disposed of after more than 24 months from the date of acquisition, no SSD is payable.

Residential property was acquired on or after 27 October 2012

Example 7 (Property holding period is 6 months or less)

Mr. Wong acquired a residential property on 1 November 2012 and disposed of it for \$3M on 1 January 2013. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

The subject property was acquired after 26 October 2012 and disposed of within 6 months from the date of acquisition. The applicable SSD rate is 20%. The amount of SSD payable is \$600,000, i.e. 20% of \$3M.

Example 8 (Property holding period is more than 6 months but not more than 12 months)

Mr. Wong acquired a residential property on 1 November 2012 and disposed of it for \$3M on 15 September 2013. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

The subject property was acquired after 26 October 2012 and disposed of after more than 6 months but within 12 months from the date of acquisition. The applicable SSD rate is 15%. The amount of SSD payable is \$450,000, i.e. 15% of \$3M.

Example 9 (Property holding period is more than 24 months but not more than 36 months)

Mr. Wong acquired a residential property on 1 November 2012 and disposed of it for \$4M on 15 December 2014. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

The subject property was acquired after 26 October 2012 and disposed of after more than 12 months but within 36 months from the date of acquisition. The applicable SSD rate is 10%. The amount of SSD payable is \$400,000, i.e. 10% of \$4M.

Examples Illustrating the Application and

Computation of Buyer's Stamp Duty

[SOIPN 7]

Example 1 (A non-HKPR acquires a residential property on or after 27 October 2012)

Mr. Chan, a non-HKPR, signed a provisional agreement for sale and purchase to acquire a residential property on 1 November 2012 at a price of \$3M. The formal agreement for sale was signed on 15 November 2012. Will Mr. Chan be liable to pay BSD?

Since the residential property was acquired by Mr. Chan, a non-HKPR, on or after 27 October 2012, he has to pay BSD for the transaction and the BSD payable is \$450,000 (\$3M x 15%).

Example 2 (A non-HKPR acquires a residential property before 27 October 2012)

Mr. Chan, a non-HKPR, signed a provisional agreement for sale and purchase to acquire a residential property on 15 October 2012 but the formal agreement for sale was signed on 15 November 2012. Will Mr. Chan be liable to pay BSD?

Since the residential property was acquired by Mr. Chan before 27 October 2012, the transaction is not subject to BSD.

Example 3 (A HKPR acquires a residential property jointly with his/her close relative who is a non-HKPR on or after 27 October 2012)

Mr. Lee, a HKPR, and his spouse Ms. Cheung jointly purchased a residential property on 1 November 2012 at a price of \$4M. Ms. Cheung is not a HKPR. Is the transaction chargeable with BSD?

Acquisition of residential properties by a HKPR jointly with his or her close relatives (that is, spouse, parents, children, brothers and sisters) is not chargeable with BSD. Mr. Lee and Ms. Cheung are not required to pay BSD for the transaction.

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Example 4 (A HKPR acquires a residential property on or after 27 October 2012 jointly with a non-HKPR who is not a close relative of the HKPR)

Mr. Wong and Mr. Ho jointly purchased a residential property on 1 November 2012 at a price of \$4M. Mr. Wong is a HKPR whereas Mr. Ho is not. They are not close relatives (that is, spouse, parents, children, brothers and sisters). What is the amount of BSD payable?

If a residential property is acquired by a HKPR and a non-HKPR jointly as joint tenants or tenants-in-common and they are not close relatives, the BSD rate will apply on the stated consideration or full value of the property, whichever is the higher, regardless of the non-HKPR's share in the property. In the present case, the amount of BSD payable is \$600,000 (that is, \$4M x 15%).

Example 5 (Addition of a non-HKPR in the agreement for sale and purchase)

Mr. Lee who is a HKPR entered into a provisional agreement for sale and purchase on 1 November 2012 to acquire a residential property at a price of \$5M. On 30 November 2012, Ms. Cheung was added in the formal agreement for sale and purchase as one of the joint tenants. Ms. Cheung is neither a HKPR nor a close relative of Mr. Lee. Will Mr. Lee and Ms. Cheung be liable to pay BSD? What is the amount of BSD payable?

In the above situation, Ms Cheung has acquired part of the property from Mr. Lee. As Ms. Cheung is not a close relative of Mr. Lee, there will be no exemption of BSD. They are liable to pay BSD on the full amount of the consideration or the value of the property, whichever is the higher. The amount of BSD payable is \$750,000 (that is, \$5M x 15%).

Example 6 (Addition of a non-HKPR in the assignment)

Mr. Lee who is a HKPR entered into an agreement for sale and purchase on 1 November 2012 to acquire a residential property at a price of \$5M. On 30 November 2012, Ms. Cheung was added in the assignment as one of the joint tenants. Ms. Cheung is neither a HKPR nor a close relative of Mr. Lee. Will Mr. Lee and Ms. Cheung be liable to pay BSD? What is the amount of BSD payable?

In the above situation, Ms Cheung has acquired part of the property from Mr. Lee. As Ms. Cheung is not a close relative of Mr. Lee, there will be no exemption of BSD. They are liable to pay BSD on the full amount of the consideration or the value of the property, whichever is the higher. The amount of BSD payable is \$750,000 (that is, \$5M x 15%)

Scenario 1

On 1 January 2014, Mr A and Ms B signed a provisional agreement for sale and purchase (“PASP”) to acquire a property jointly. Before the completion of the transaction, Ms B withdrew from the transaction and in the formal agreement for sale and purchase (“ASP”) dated 15 January 2014, only Mr A was named as the purchaser.

In the above scenario, the date of acquisition of the property by Ms B is the date of the PASP (i.e. 1 January 2014) and the date of disposal of the property by Ms B is the date of the ASP (i.e. 15 January 2014).

Scenario 2

If after a purchaser (“the original purchaser”) enters into an agreement for sale of an immovable property, another purchaser (“the additional purchaser”) joins in as one of the purchasers when the conveyance on sale in pursuance of the agreement for sale is executed, the original purchaser is regarded as having acquired the property on the date of the agreement for sale and disposed of part of the property on the date of the conveyance on sale [section 29AF(2) and (3)]. The date of acquisition of part of the property by the additional purchaser is the date of the conveyance on sale [section 29AF(4)].

Similarly, if before the conveyance on sale, another agreement for sale is made in respect of the property and the original purchaser and the additional purchaser are the purchasers under the second agreement for sale, the original purchaser is regarded as having acquired the property on the date of the first agreement for sale and disposed of part of the property on the date of the second agreement for sale [section 29AG(2) and (3)]. The date of acquisition of part of the property by the additional purchaser is the date of the second agreement for sale [section 29AG(4)].

Example: By a PASP dated 1 January 2014, Mr A acquired a residential property. Before the completion of the transaction, Ms B joined in the transaction and in the ASP dated 15 January 2014, Ms B was named as one of the purchasers. In this scenario, the date of acquisition of the property by Mr A is the date of the PASP (i.e. 1 January 2014) and the date of disposal of part of the property by Mr A is the date of the ASP (i.e. 15 January 2014). Besides, the date of the ASP is also the date of acquisition of part of the property by Ms B.

Scenario 3

Mr A entered into a PASP on 17 February 2013 to acquire a non-residential property at a price of \$10,000,000. The ASP and the assignment were signed on 28 February 2013 and 28 March 2013 respectively. What is the amount of AVD payable?

AVD payable

Since the PASP was executed before the Effective Date (i.e. 23 Feb 2013), both the PASP and ASP are not chargeable with AVD and Scale 1 rates do not apply to this case. The assignment is chargeable with AVD at Scale 2 rates. The AVD payable is \$375,000 (\$10,000,000 x 3.75%).

Scenario 4

Mr A entered into a PASP on 17 February 2014 to acquire a non-residential property at a price of \$10,000,000. The ASP and the assignment were signed on 28 March 2014 and 28 October 2014 respectively. What is the amount of AVD payable?

AVD payable

Since the PASP was executed on or after the Effective Date and the ASP was executed after 14 days from the date of the PASP, the PASP is chargeable with AVD at Scale 1 rates. The AVD payable is \$750,000 (\$10,000,000 x 7.5%). Provided that the PASP is duly stamped, the ASP and the assignment will each be chargeable with fixed duty of \$100.

Scenario 5

Mr A entered into an ASP on 1 January 2014 to acquire a residential property and a car parking space at a price of \$15,000,000. The residential property and car parking space are inseparable for sale and purchase. Mr A was a HKPR acting on his own behalf in acquiring the properties. He owned two other car parking spaces but no residential property in Hong Kong on the date of acquisition. What is the amount of AVD payable?

AVD payable

The properties concerned will be regarded as a residential property. Mr A's ownership of two other car parking spaces does not affect the amount of AVD payable. The applicable duty rates are determined by reference to the total consideration of \$15,000,000. The ASP is chargeable with AVD at Scale 2 rates. The amount of AVD payable is \$562,500 (\$15,000,000 x 3.75%).

Scenario 6

Mr A entered into an ASP on 1 January 2014 to acquire a residential property and 2 car parking spaces at a price of \$15,000,000. The respective values of the residential property and the 2 car parking spaces are \$13,000,000 and \$2,000,000. The residential property and the 2 car parking spaces can be sold separately. Mr A was a HKPR acting on his own behalf in acquiring the properties and did not own any other residential property in Hong Kong on the date of acquisition. What is the amount of AVD payable?

AVD payable

The residential property and the 2 car parking spaces will be regarded as separate and distinct matters. Scale 2 rates will apply to the acquisition of the residential property whereas Scale 1 rates will apply to the acquisition of the 2 car parking spaces. The applicable duty rates are determined by reference to the total consideration of \$15,000,000. The total amount of stamp duty payable on the chargeable agreement for sale is \$637,500 which is computed as follows:

- (a) AVD payable on the residential unit: \$13,000,000 x 3.75% = \$487,500
- (b) AVD payable on the car parking spaces: \$2,000,000 x 7.5% = \$150,000

For an instrument which is chargeable with AVD partly at Scale 1 rates and partly at Scale 2 rates, the stamping of it must be made by way of adjudication through conventional stamping. The duty payer is advised to state the respective amounts of consideration of the residential property and the non-residential property in the chargeable instrument and/or the stamping application.

Scenario 7

Mr X owned a residential property A and Mr Y owned a residential property B. On 30 September 2013, they executed an agreement for exchange whereby property A was exchanged for property B and Mr X paid an "equality money" of \$1M to Mr Y. On the date of the agreement, Mr X did not own any other residential property in Hong Kong other than property A and Mr Y did not own any other residential property in Hong Kong other than property B. Mr X and Mr Y are HKPRs but are not close relatives. Both of them were acting on their own behalf in the exchange transaction.

Amount of AVD payable

Scale 2 rates will apply. The AVD will be calculated by reference to the "equality money" paid for the exchange. As the "equality money" does not exceed \$2 million, the AVD payable is \$100.

Scenario 8

Mr X, owned a residential property A and Mr Y owned a residential property B. On 30 September 2013, they executed an agreement for exchange whereby property A was exchanged for property B and Mr X paid an “equality money” of \$1M to Mr Y. Other than property A, Mr X also owned another residential property in Hong Kong on the date of exchange. Mr X and Mr Y are HKPRs but are not close relatives. Both of them were acting on their own behalf in the exchange transaction.

Amount of AVD payable

Since Mr X owned other residential property in Hong Kong on the date of exchange, Scale 1 rates will apply. The AVD will be calculated by reference to the “equality money” paid for the exchange. The AVD payable is \$15,000 ($\$1M \times 1.5\%$).

Scenario 9

Mr X, a non-HKPR, owned a residential property A and Mr Y, a HKPR, owned a residential property B. On 30 September 2013, they executed an agreement for exchange whereby property A was exchanged for property B and Mr X paid an “equality money” of \$1M to Mr Y. On the date of the agreement, Mr X did not own any other residential property in Hong Kong other than property A and Mr Y did not own any other residential property in Hong Kong other than property B. Mr X and Mr Y are not close relatives.

Amount of AVD payable

Since Mr X is a non-HKPR, Scale 1 rates will apply. AVD will be calculated by reference to the “equality money” paid for the exchange. The AVD payable is \$15,000 ($\$1M \times 1.5\%$). For the purposes of BSD, Mr X will be regarded as the purchaser under the agreement for exchange as he paid the “equality money”. BSD of \$150,000 ($\$1M \times 15\%$) will be payable on the agreement for exchange.

Scenario 10

Mr X, a HKPR, owned a non-residential property A and Mr Y, a HKPR, owned a residential property B. On 30 September 2013, they executed an agreement for exchange whereby property A was exchanged for property B and Mr X paid an “equality money” of \$1M to Mr Y. On the date of the agreement, Mr X did not own any other residential property in Hong Kong and he was acting on his own behalf in the exchange transaction.

Amount of AVD payable

Mr X will be treated as the purchaser since the residential property B was transferred to him. Since Mr X paid the “equality money” and he was a HKPR acting on his own behalf and was not a beneficial owner of any other residential property in Hong Kong on the date of exchange, the AVD payable will be computed at Scale 2 rates. As the “equality money” does not exceed \$2 million, the amount of AVD payable is \$100.

Scenario 11

Same as Scenario 10 above, but the equality money of \$1M was paid by Mr Y.

Amount of AVD payable

Since the equality money was not paid by the purchaser of a residential property, the AVD will be computed at Scale 1 rates. The AVD payable is \$15,000 ($\$1M \times 1.5\%$).

Scenario 12

Mr A entered into an ASP on 1 January 2014 to acquire a residential property and a car parking space at the respective prices of \$5,000,000 and \$1,000,000. Mr A was a HKPR acting on his own behalf in acquiring the properties and did not own any other residential property or car parking space in Hong Kong on the date of acquisition. What is the amount of AVD payable?

AVD payable

The ASP will be chargeable with AVD at Scale 2 rates. The applicable duty rates are determined by reference to the total consideration of \$6,000,000. The total amount of AVD payable is \$180,000 ($\$6,000,000 \times 3\%$).

Scenario 13

Mr A entered into an ASP on 1 January 2014 to acquire a residential property and a car parking space, both of which are separable from each other, at the respective prices of \$5,000,000 and \$1,000,000. Mr A was a HKPR acting on his own behalf in acquiring the properties and did not own any other residential property but owned another car parking space in Hong Kong on the date of acquisition. What is the amount of AVD payable?

AVD payable

The acquisition of the residential property and the car parking space will be regarded as separate and distinct matters. Scale 2 rates will apply to the acquisition of the residential property whereas Scale 1 rates will apply to the acquisition of the car parking space. The applicable duty rates are determined by reference to the total consideration of \$6,000,000. The total amount of AVD payable on the chargeable agreement for sale is \$210,000 which is computed as follows:

- (a) AVD payable on the residential property: $\$5,000,000 \times 3\% = \$150,000$
- (b) AVD payable on the car parking space: $\$1,000,000 \times 6\% = \$60,000$.

Scenario 14

Mr A (a HKPR) and his wife, Ms B (a non-HKPR), entered into an ASP to acquire a residential property on 1 January 2014. Each of them was acting on his or her own behalf in acquiring the residential property and was not a beneficial owner of any other residential property in Hong Kong on the date of acquisition.

The ASP is chargeable with AVD at Scale 2 rates.

Scenario 15

Mr A (a HKPR), his wife, Ms B (a non-HKPR), and his mother, Ms C (a HKPR), entered into an ASP to acquire a residential property on 1 January 2014. Each of them was acting on his or her own behalf in acquiring the residential property and was not a beneficial owner of any other residential property in Hong Kong on the date of acquisition.

As Ms B and Ms C are not close relatives, the ASP is chargeable with AVD at Scale 1 rates. Since Ms B is a non-HKPR, the ASP is also chargeable with BSD.

Scenario 16

Mr A transfers his residential property to his wife, Ms B. Ms B is a non-HKPR acting on her own behalf and owns another residential property in Hong Kong on the date of transfer.

The instrument effecting the transfer of the residential property is chargeable with AVD at Scale 2 rates.

Scenario 17

Same as Scenario 16, but Mr A transfers the property to Ms B and his mother, Ms C.

As Ms B and Ms C are not close relatives, the instrument effecting the transfer of the residential property is chargeable with AVD at Scale 1 rates. Since Ms B is a non-HKPR, the instrument is also chargeable with BSD.

Scenario 18

Same as Scenario 16, but the property being transferred is a non-residential property: The instrument effecting the transfer of the non-residential property is chargeable with AVD at Scale 1 rates. The Scale 2 rates are not applicable to the transfer of non-residential property even if the transfer is between close relatives.

Scenario 19

Mr A entered into a PASP to acquire a residential property on 1 January 2014. On 10 January 2014, he made a nomination to nominate his wife, Ms B, to take up the assignment of the property.

Ms B was acting on her own behalf in the nomination and she owned a residential property in Hong Kong on the date of nomination.

The nomination is chargeable with AVD at Scale 2 rates.

Scenario 20

Same as Scenario 19, but Ms B is not a close relative of Mr A.

The nomination is chargeable with AVD at Scale 1 rates as Ms B owned other residential property in Hong Kong on the date of nomination.

Scenario 21

If the close relative is not a beneficial owner of any other residential property in Hong Kong, the nomination is not an “agreement for sale”.

Same as Scenario 19, but Ms B did not own any other residential property in Hong Kong on the date of nomination.

The nomination is not an agreement for sale and thus is not chargeable with any AVD.

Scenario 22

By a PASP dated 1 January 2014, Mr A acquired a residential property. Before the completion of the transaction, his wife, Ms B, was added as one of the transferees in the conveyance on sale. Ms B owned another residential property in Hong Kong on the date of conveyance. The conveyance on sale is chargeable with AVD at Scale 2 rates based on the total consideration or value of the property, whichever is the higher, less 1/2 of the AVD representing the property interest Mr A acquired under the PASP.

Scenario 23

Same as Scenario 22 but both Mr A and Ms B did not own any other residential property in Hong Kong on the date of conveyance.

Provided that the agreement for sale has been duly stamped, the conveyance on sale is not chargeable with AVD but only a fixed duty of \$100.

Scenario 24

By a PASP dated 1 January 2014, Mr A acquired a residential property. Before the completion of the transaction, his wife, Ms B, and his mother, Ms C, were added as transferees in the conveyance on sale. Ms B and Ms C did not own any residential property in Hong Kong on the date of conveyance.

Although Mr A and Ms B, and Mr A and Ms C are close relatives, Ms B and Ms C are not close relatives. The conveyance on sale will be chargeable with AVD at Scale 2 rates based on the total consideration or value of the property, whichever is the higher, less 1/3 of the AVD representing the property interest Mr A acquired under the PASP.

Scenario 25

By a PASP dated 1 January 2014, Mr A, Ms B (Mr A's wife) and Ms C (Mr A's mother) acquired a residential property. They did not own any other residential property in Hong Kong on the date of acquisition of the residential property. In the conveyance on sale, Mr A was named as the sole transferee.

Although Mr A and Ms B, and Mr A and Ms C are close relatives, Ms B and Ms C are not close relatives. The conveyance on sale will be chargeable with AVD at Scale 2 rates based on the total consideration or value of the property, whichever is the higher, less 1/3 of the AVD representing the property interest Mr A acquired under the PASP.

Scenario 26

By a PASP dated 1 January 2014, Mr A, Ms B (Mr A's wife) and Ms C (Mr A's mother) acquired a residential property. Mr A owned another residential property in Hong Kong on the date of acquisition of the property. In the conveyance on sale, only Mr A and Ms B were named as the transferees.

Since Ms B and Ms C are not close relatives and Mr A owned another residential property in Hong Kong on the date of acquisition, AVD on the conveyance on sale will be computed at Scale 1 rates based on the total consideration or value of the property, whichever is the higher, less 2/3 of the AVD representing the property interest Mr A and Ms B acquired under the PASP.

Scenario 27

Mr A is a HKPR. He owned a residential property X, being his only residential property in Hong Kong. On 1 July 2014, he entered into a PASP to acquire a residential property Y. On 2 September 2014, he entered into another PASP to dispose of property X. Property Y was assigned to Mr A on 5 September 2014. AVD at Scale 1 rates has been paid for acquisition of property Y. Is Mr A entitled to a partial refund?

The specified period begins on 1 July 2014 and ends on 5 March 2015 (6 months after property Y was assigned to him). Since property X was disposed of within the specified period, Mr A is entitled to claim a partial refund.

Scenario 28

Mr A and Ms B are both HKPRs. They jointly owned a residential property X, being their only residential property in Hong Kong. On 1 July 2014, Mr A entered into a PASP to acquire a residential property Y. On 2 August 2014, Ms B entered into a PASP to acquire a residential property Z. On 2 September 2014, Mr A and Ms B entered into a PASP to dispose of property X. AVD at Scale 1 rates has been paid for acquisition of property Y and property Z. Are Mr A and Ms B entitled to a partial refund?

For Mr A, the specified period begins on 1 July 2014 and ends on six months from the date property Y was assigned to him. For Mr B, the specified period begins on 2 August 2014 and ends on six months from the date property Z was assigned to him. Since property X is disposed of within the specified periods, Mr A and Ms B are entitled to claim a partial refund in respect of the respective residential properties acquired by them.

Scenario 29

Mr A and Ms B are both HKPRs. On 1 July 2014, they entered into a PASP to acquire a residential property X jointly. On the date of acquisition of property X, Mr A already owned a residential property Y and Ms B already owned another residential property Z. On 2 August 2014, Mr A entered into a PASP to dispose of property Y and on 30 September 2014, Ms B entered into a PASP to dispose of property Z. AVD at Scale 1 rates has been paid for acquisition of property X. Are Mr A and Ms B entitled to a partial refund?

Since Mr A and Ms B owned more than 1 residential property in Hong Kong on the date of acquisition of property X, they are not entitled to claim a partial refund in respect of property X.

Circumstances under which a HKPR who changes his or her only residential property can apply for partial refund of AVD paid

	Scenario	Original Property	New Property	Whether refund is available
1.	To acquire residential property by a single Instrument	(a) One residential property	One residential property	Refund is available (for the newly-acquired residential property)
		(b) One residential property together with one car parking space	One residential property	Refund is available (for the newly-acquired residential property)
2.	To acquire residential property together with car parking space by a single instrument	(a) One residential property	One residential property together with one car parking space	Refund is available (for the newly-acquired residential property together with one car parking space)
		(b) One residential property	One residential property together with two car parking spaces	Refund is available (for the newly-acquired residential property) Refund is not available for the two car parking spaces
		(c) One residential property together with one car parking space	One residential property together with one car parking space	Refund is available (for the newly-acquired residential property together with one car parking space) [Remarks: The original residential property and car parking space must be disposed of by a single instrument]
		(d) One residential property together with one car parking space	One residential property together with two car parking spaces	Refund is available (for the newly-acquired residential property) Refund is not available for the two car parking spaces
		(e) One residential property together with two car parking spaces	One residential property together with one car parking space	Refund is available (for the newly-acquired residential property) Refund is not available for the car parking space

Answer 3: Joyce Ltd
(a) Profits tax and stamp duty implications of the lease
(9 marks)

(i) The definition of ‘business’ (s.2) includes letting by a corporation, therefore, Joyce Ltd will be subject to profits tax because it is deemed to be carrying on a business. Thus, it will not be entitled to the statutory allowance of 20% of its rental income, as this is available only under property tax. It can however deduct its actual expenses paid (which might or might not exceed 20%), as well as depreciation allowances with respect to the building.

A person subject to profits tax is taxable on its ‘profits’. For this purpose, profits are calculated according to generally accepted accounting principles (GAAP), unless specifically governed by the IRO. Provided that apportioning the upfront payment over three years is permitted under GAAP in Hong Kong and this appears to be the case (see DIPN 4 and HKAS 17), Joyce Ltd is entitled to bring only \$800,000 into account, and to be taxed on that amount only. A further \$800,000 will be taxable in each of the following two years.

Even if GAAP would also permit Joyce Ltd to account for the whole of the \$2.4 million in the year of assessment 2014/15, it nevertheless is entitled to choose between accepted accounting principles when a choice applies. The IRD is not entitled to insist that Joyce Ltd adopts the accounting principle which is more favourable to the IRD.

Stamp duty on a three-year lease is calculated at the rate of 0.5% of the average yearly rent. The market rent is \$200,000 per month, but the actual rent payable is \$100,000 plus an unascertainable amount attributable to the future turnover of the business conducted in the shop. It is axiomatic that stamp duty can only be charged upon amounts which are ascertainable at the time the lease is entered into. At the beginning of the lease, the amount of future turnover is speculative, and it therefore follows that no stamp duty can be levied in respect of the rental payment attributable to the turnover. Therefore, stamp duty will only be assessed on the monthly rental of \$100,000; and so the stamp duty payable is \$6,000 ($\$100,000 \times 12 \times 0.5\%$). Moreover, where the consideration includes an upfront payment in addition to the rent, this is also deemed to be stampable at the rate of 4.25%. The duty payable on the upfront payment of \$2.4 million is therefore \$102,000.

(ii) Where a lease stipulates a certain figure (as a minimum or maximum amount) on account of an unascertainable amount, that figure can be taken into account in ascertaining the stamp duty. Thus, the average yearly rent, to which the 0.5% rate would be applied, will be \$2.4 million ($\$200,000 \times 12$) and the stamp duty payable is therefore \$12,000.

(2 marks)
(b) Advantages of an appeal being heard before the Board of Review
(4 marks)

The major advantages of having an appeal heard before the Board of Review, rather than the Court of First Instance are:

- (1) The hearings are held in private and published reports do not identify the taxpayer.
- (2) The taxpayer can appoint any person who is not necessarily a barrister as their representative, and thus, whose fee is likely to be lower than that to be charged by a barrister who will be required in a court hearing.
- (3) The hearing is more informal.
- (4) Unlike the case in a court where the loser generally pays the legal costs of the successful party, each party before the Board of Review bears its own costs regardless of the outcome (subject to a potential costs order of a maximum of \$5,000 if the Board feels that the appeal was vexatious).

(c) Tax treatment of the licence
(5 marks)

By having effectively given up its rights to its premises for ten years, Joyce Ltd has effectively disposed of an important asset for a significant term, in a manner which affects the fundamental structure of its business. It therefore seems strongly arguable that the lump sum of \$20 million should be treated as a capital gain from the disposal of a capital right which it owned, and is therefore tax free. Indeed, this is consistent with the accounting for the sum received, which Joyce Ltd has recorded as a ‘disposal of a fixed asset’ in its statement of profit or loss. Joyce Ltd could therefore be advised to take the position that the \$20 million is not subject to profits tax.

Even though the amount has not been charged to profits tax, it will nevertheless be chargeable to property tax and there will be no profits tax for it to be set off against. Effectively, such a payment represents consideration payable to the owner of the premises in respect of the right to use the land and buildings concerned (s.5B(2)). There is no exemption from property tax for payments merely because they are on capital account (see *Harley Development Ltd v CIR*). However, because the payment received extends beyond the year of payment, it can be apportioned and spread over a maximum period of three years for property tax purposes (s.5B(4)).

Q4. You should assume that today's date is 1 December 2015.

Mr Lee is a Hong Kong permanent resident earning salary income under a Hong Kong employment. In planning for his marriage in March 2016, Mr Lee is in the course of negotiating with a potential seller in respect of a property which he intends to acquire as the home for himself and his wife.

The property will be the first property Mr Lee has acquired in Hong Kong. The offered price is \$21 million including a car parking space which is worth around \$1.5 million. The seller is a company incorporated in Hong Kong which wholly owns the property (including the car parking space), and Mr Lee is only interested in acquiring the property and the car parking space, not the company. It has been proposed to Mr Lee that he could enter into two separate conveyances, one for the property and the other one for the car parking space, as this would minimise his total stamp duty costs.

In order to finance the acquisition, Mr Lee is considering the following proposals:

- (1) Obtaining a mortgage loan from a local bank of up to 50% of the property value. The approximate annual interest cost of this loan is \$400,000. Mr Lee has not yet determined whether the property and the bank loan would be held solely in his name or jointly with his wife.
- (2) Selling shares in Mr Lee's employer company. Mr Lee currently holds 100,000 shares in his employer company and an option to acquire another 200,000 shares. The 100,000 shares were awarded to him directly by his employer in 2010/11 as part of his performance bonus. These shares were registered in the name of Mr Lee at the time when the shares were awarded to him. The option for 200,000 shares was granted to him in 2012/13. By exercising the option, Mr Lee will have a total of 300,000 shares on hand. By selling them all on the market, he will be able to realise an amount which can finance up to 30% of the property value.
- (3) Borrowing from his parents up to 40% of the property value. This loan represents the idle funds which his parents have placed on bank deposit to earn interest income. To compensate for their loss of interest income, Mr Lee would promise to give his parents \$10,000 per month. Currently, Mr Lee lives with his parents but they receive no regular contribution from him. After Mr Lee gets married and moves out, his parents will continue living in their own, existing property.
- (4) Borrowing from his employer up to 40% of the property value under the employees' low-interest loan scheme. The preferential loan interest rate is much lower than that offered by the bank. The approximate annual interest cost will be \$150,000, payable by monthly instalments by way of deduction from Mr Lee's monthly gross salary. Mr Lee estimates that his monthly salary will be reduced to \$52,000. The estimated benefit from the saving in interest cost is around \$80,000 per annum.

Required:

- (a) In respect of the proposed acquisition of property, set out all of the potential Hong Kong stamp duty implications for Mr Lee, including the proposal to minimise the duty payable by splitting the conveyances. If the information provided is not sufficient, state what other information relevant to Mr Lee is required. (12 marks)
 - (b) With reference to proposal (1), advise on all the possible Hong Kong tax implications for Mr Lee in respect of the bank mortgage loan interest payment. (4 marks)
 - (c) With reference to proposal (2), advise on all the possible Hong Kong tax implications for Mr Lee arising from the proposed exercise of the share option, and the sale of all 300,000 shares. Where applicable, you should also discuss in which year(s) of assessment any benefit would be assessed. (4 marks)
 - (d) With reference to proposal (3), advise on all the possible Hong Kong tax implications for Mr Lee arising from the proposed course of action, including the monthly payment of \$10,000 to his parents and his eligibility for dependent parent allowance both before and after his marriage. (3 marks)
 - (e) With reference to proposal (4), advise on all the possible Hong Kong tax implications for Mr Lee arising from the proposed course of action, including the loan interest payable to his employer, the reduced monthly salary income and the estimated saving in interest cost. (2 marks)
- (25 marks)**

Answer 4: Mr Lee
(a) Stamp duty on conveyance(s) of the property and car parking space (12 marks)

Subject issues	Sample writings/ remarks	Marks
Head 1(1A) of SDO	Transfer of HK property is subject to stamp duty. The chargeable document is the agreement for sale for residential property. The duty is charged at <i>ad valorem</i> rates ranging from 1.5% to maximum 8.5% of market value of the property. The law stipulates that both parties to the transaction are jointly and severally liable to pay the stamp duty, but in market practice, the purchaser is normally the person to pay. DSD is still not yet applicable and BSD is not applicable here.	0.5 0.5 0.5 0.5 0.5 0.5 bonus
Head 1(1) of SDO	Where the sale and purchase agreement is stamped, the subsequent formal assignment or conveyance executed in conformity with the stamped agreement will be liable to a fixed duty of \$100.	0.5 0.5
S. 27(1) of SDO	The dutiable value is based on the transaction price or the property market value, whichever is higher. Applying to the case, the larger transaction represents the property itself, valued at \$19.5 million, which is subject to stamp duty at 3.75% (scale 2). The smaller transaction represents the car parking space valued at \$1.5 million, which is subject to stamp duty at 1.5% (scale 1). Therefore, the total stamp duty cost for both transactions would be \$753,750. However, if only one single transaction is effected at a value of \$21 million, the higher rate would apply, and the duty would amount to \$850,000. There is stamp duty saving from the separate transactions.	0.5 1.5 1
S. 29 of SDO	Duty payers are required to submit a certificate of value declaring that the smaller transaction does not form part of a larger transaction or series of transactions. In the absence of such a certificate, stamping would be based on the aggregated value as if there was a single transaction.	0.5 0.5
Anti-avoidance	Stamp Office may also check the transaction to justify that the car parking space is eligible to be legally saleable separately from the property and factually sold separately and distinctly from the property.	0.5
SSD (SOIPN 5)	Special stamp duty is payable in addition to the <i>ad valorem</i> stamp duty if the residential property was acquired by the seller on or after 27 October 2012 and resold within 36 months. The applicable rates depend on the holding period, from 20% to 10 % on the disposal value. SSD is jointly and severally payable by both the purchaser and the seller, and is applicable even if the seller is an incorporated company. Applying to the case, it is unclear when the property was acquired by the seller company. It is therefore advisable to obtain more information from the seller to ascertain the SSD position, and if necessary, to negotiate and agree in the agreement who will pay and bear the duty.	3 1

(b) Bank mortgage loan interest (4 marks)

Subject issues	Sample writings/ remarks	Marks
S. 26E of IRO & DIPN 35	Provided that the property is occupied by owner(s) exclusively as their principal place of residence, and the bank loan is charged over any property in HK, the interest is eligible for a deduction as home loan interest against the taxpayer's assessable income in HK.	0.5 0.5 0.5
	The maximum deduction is however capped at \$100,000 for each year, with a maximum of 15 years' claim (but not necessarily need to be consecutive).	1
	Applying to the case, assuming the taxpayer is the sole owner of the property, he will be eligible to claim the home loan interest based on the total interest paid on the home loan, subject to the \$100,000 maximum.	0.5 bonus 0.5
	However, if the property is jointly owned by the couple, the maximum entitlement of each will be proportionately reduced to \$50,000. If both spouses have assessable income, a home loan interest deduction may be claimed separately by each spouse. However, if only one spouse has assessable income, the couple will need to elect for personal assessment so that the total home loan interest deduction of \$100,000 can be set off against their aggregated assessable income in one single assessment. Alternatively, the spouse without any income may nominate the other income-earning spouse to claim the home loan interest deduction.	0.5 0.5
		0.5 bonus

(c) Exercise of share option and sale of shares (4 marks)

Subject issues	Sample writings/ remarks	Marks
S. 9(1)(a) & s. 9(2A)(a) of IRO	Income from employment subject to HK salaries tax includes perquisites and benefits which are convertible into cash by the employee.	0.5
	Applying to the case, the shares were awarded to taxpayer as part of a performance bonus, and the shares are cash-convertible, the shares constitute perquisites and are assessable.	0.5
DIPN 38 S. 11D of IRO	The timing of the assessment will depend on when the benefits have been 'accrued' to taxpayer. Based on s.11D, an income accrues to a person when he becomes entitled to claim payment thereof. In the case of a share award, the IRD clarified in DIPN 38 that this refers to the time when the person is entitled to ownership of the shares.	0.5
	Applying to the case, since the shares were registered in taxpayer's name when they were awarded to him, the ownership of the shares is considered to have already passed to him in 2010/11 (the so-called 'upfront' approach). In this scenario, the value of the shares would be deemed to have accrued to taxpayer at the time of grant, and therefore would be assessable to tax in the year of assessment 2010/11. As taxpayer will already have been assessed to tax on this award in an earlier year of assessment, the subsequent actual sale of the shares in the current year would not be taxed again.	1
S. 9(1)(d) & DIPN 38	Any gain realised upon the exercise, release or assignment of a share option granted to an employee due to an employment is assessable. The granting of the option would not have triggered any tax liability.	0.5
	Applying to the case, taxpayer exercises the option in the current year 2015/16, the deemed gain will hence be assessed in the year of assessment 2015/16 based on the difference between the market value of the shares on the date of exercise and any related costs including the cost of the option and the cost of exercising the option. The date and actual value at which the shares are subsequently sold are irrelevant for salaries tax assessment purposes. Any gain arising from the sale of the shares will normally not be chargeable to salaries tax.	0.5
		0.5 bonus 0.5

(d) Borrowing funds from his parents (3 marks)

<u>Subject issues</u>	<u>Sample writings/ remarks</u>	<u>Marks</u>
S. 26E of IRO & DIPN 35	If the payment is intended to be interest for the use of the idle funds, taxpayer will not be able to claim a home loan interest deduction as the interest is not paid to a qualifying lender (government, financial institution, credit union, licensed money lender, Hong Kong Housing Society, or employer), and the loan is not subject to a mortgage or charge over a Hong Kong property.	0.5 0.5
	<p>However, if taxpayer can prove that the monthly payment is a contribution for maintaining his parents, this would enable him to continue to claim the dependent parent allowance even after he ceases to reside with them after his marriage.</p> <p>Dependent parent allowance is granted to a taxpayer who maintains a parent. A parent is 'maintained' if he/she resides with the taxpayer (or his/her spouse) for at least a continuous period of six months in the year of assessment without full consideration, or if he/she receives a contribution of at least \$12,000 in money from the taxpayer (or his/her spouse) towards his/her maintenance in the year of assessment.</p> <p>Applying to the case, taxpayer is currently living with his parents. Assuming the conditions are satisfied, he is entitled to claim a dependent parent allowance for both parents of \$80,000 (\$40,000 x 2). If he has lived with his parents continuously throughout the whole year, an additional allowance of another \$40,000 each will be granted, resulting in a total allowance of \$160,000 (\$80,000 x 2). However, if he moves out before the six-month period in the current year, and does not contribute towards his parents' maintenance at all, he will not be granted any dependent parent allowance for the year of assessment 2015/16 or in any future year.</p>	0.5 1 bonus 1.5

(e) Low-interest loan from his employer (2 marks)

<u>Subject issues</u>	<u>Sample writings/ remarks</u>	<u>Marks</u>
S. 26E of IRO & DIPN 35	In respect of the loan interest payment, taxpayer may be able to claim a home loan interest deduction provided that the arrangement involves the loan being secured by a mortgage or charge over a property in HK, and that the loan money is fully applied to finance the acquisition of the property used by taxpayer as his primary place of residence. If not all of these conditions are fulfilled, no deduction will be allowed for the interest payment.	0.5 0.5
	S. 9(1)(a) of IRO	In respect of the monthly salary income, the fact that the take-home amount is reduced by the monthly interest payment will not affect taxpayer's tax position. Gross salary represents his income from employment and thus will need to be reported and assessed. This remains true regardless of whether the interest payment is eligible for a deduction or not.
S. 9(1)(a)(iv), s. 9(2A)(a) & DIPN 16	As regards the benefit of the interest saving, representing the interest differential between the market rate and the rate charged by the employer, the IRD clarified in DIPN 16 that the benefits would not be assessable if it is the sole liability of the employer and is not of itself convertible into money. Therefore, it would be advisable that the employer finance the loan without any guarantee provided by taxpayer, and restrict taxpayer from extending the loan money to others in return for higher interest income.	0.5 0.5 Bonus

End & Good Luck!