

## Disclaimer

- ◆ **The materials of this seminar are intended to provide general information and guidance on the subject concerned. Examples and other materials in this seminar are only for illustrative purposes and should not be relied upon for technical answers. The Hong Kong Institute of Certified Public Accountants (The Institute), the speaker(s) and the firm(s) that the speaker(s) is representing take no responsibility for any errors or omissions in, or for the loss incurred by individuals or companies due to the use of, the materials of this seminar conference.**
- ◆ **No claims, action or legal proceedings in connection with this seminar brought by any individuals or companies having reference to the materials on this seminar will be entertained by the Institute, the speaker(s) and the firm(s) that the speaker(s) is representing.**



# MD Taxation



## Module Preparation Seminar – Agenda

- **Ascertainment of salaries tax liability under separate assessment and joint assessment (Ch 5)**
- **Personal assessment (Ch 7)**
- **AVD, BSD and SSD (Ch 8)**
- **Stamp duty exemptions and reliefs (Ch 8)**
- **Offences and penalties (Ch 2)**



## Ascertainment of salaries tax liability under separate assessment and joint assessment (Ch 5)

# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Salaries tax computation

Salaries tax is computed as the lower of:

- Net assessable income less allowable deductions, charged at the standard rate; or
- Net assessable income less allowable deductions and personal allowances, charged at progressive rates.

| 2017/18 and onwards |       |
|---------------------|-------|
| First \$45,000      | 2.0%  |
| Next \$45,000       | 7.0%  |
| Next \$45,000       | 12.0% |
| Balance             | 17.0% |

Standard Rate = 15%

# Ascertainment of salaries tax liability under separate assessment and joint assessment



A sample salaries tax computation schedule is as follows:

|  |       |
|--|-------|
| <b>Assessable income</b>   | A     |
| Less:  |       |
| Allowable outgoings and expenses [S.12(1)(a)]  | B     |
| Depreciation allowances [S.12(1)(b)]   | C     |
| Losses brought forward [S.12(1)(c)]  | D     |
| Allowable outgoings and expenses/depreciation allowances/losses of a spouse not fully utilised [S.12(1)(d)] (Note 1) | E     |
| Self-education expenses [S.12(1)(e)]   | F     |
|  | <hr/> |
|  | G     |

**General Expenses**

|   |       |
|---|-------|
| <b>Net assessable income</b>                          | H     |
| Less:   |       |
| Concessionary deductions:                             |       |
| Approved charitable donations [S.26C] (Note 2)        | K     |
| Elderly residential care expenses [S.26D] (Note 3)    | L     |
| Home loan interest [S.26E] (Note 4)                   | M     |
| Contribution to recognised retirement schemes [S.26G] | N     |
|   | <hr/> |
|   | P     |
| Personal allowances                                   | R     |
|   | <hr/> |
|   | R     |

**Concessionary Deductions**

**Personal Allowances**

**Net chargeable income**

Tax thereon:  
 Lower of:  
 Standard rate @ [H – P]; and  
 Progressive tax rates @T



# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Notes

1. Under joint assessment
2. Limited to 35% (or 25% for years of assessment 2003/04 to 2007/08; or 10% for years of assessment prior to 2003/04) of [A – B – C]
3. Not to be claimed if Dependent Parent Allowance in respect of the same parent has been granted
4. The deduction period for home loan interest is extended from 15 to 20 years starting from the year of assessment 2017/18.

# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Husband and wife

For husband and wife, unless **a valid election for joint assessment** under s.10(2) is made, salaries tax will be payable on the net chargeable income of each spouse.

## An election under s.10(2) may be made if:

- Either the husband or wife is entitled to concessionary deductions under Part 4A and personal allowances under Part 5 which, in aggregate, are in excess of his or her net assessable income; or
- Lower tax will be payable on their aggregate income under joint assessment.

# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Husband and wife

The election has to be made in a specified form **jointly by the husband and wife.**

When an election under s.10(2) is made, the spouse who would have been chargeable to tax in the **absence of an election** will be liable for salaries tax. In any other case, a spouse nominated by the husband or wife will be liable for salaries tax.

If the husband and wife have withdrawn an election for joint assessment jointly, they may not make an election for the same year of assessment again.



# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Example: Question

Mr. and Mrs. X would like to know whether they should elect for joint assessment for 2016/17.

Their background information for year of assessment 2016/17 is as below:

|              | <b>Assessable<br/>Income</b><br>\$ | <b>Allowable<br/>Outgoings</b><br>\$ | <b>Charitable<br/>Donations</b><br>\$ |
|--------------|------------------------------------|--------------------------------------|---------------------------------------|
| Husband      | 200,000                            | 2,000                                | 20,000                                |
| Wife         | 100,000                            | -                                    | 20,000                                |
| <b>Total</b> | <b>300,000</b>                     | <b>2,000</b>                         | <b>40,000</b>                         |

# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Example: Question (Cont'd)

### Required

- (a) Compute the salaries tax payable by the couple if no election for joint assessment is made for 2016/17. (Ignore contributions to recognised retirement schemes.)
- (b) Compute the salaries tax payable by the couple if an election for joint assessment is made for 2016/17. (Ignore contributions to recognised retirement schemes.)

# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Example : Answer (a)

Year of assessment 2016/17

No election for joint assessment is elected

|                               | Husband   | Wife      |
|-------------------------------|-----------|-----------|
|                               | \$        | \$        |
| Assessable income             | 200,000   | 100,000   |
| Less:                         |           |           |
| Allowance outgoings           | (2,000)   | -         |
| Net assessable income         | 198,000   | 100,000   |
| Less:                         |           |           |
| Approved charitable donations | (20,000)  | (20,000)  |
|                               | 178,000   | 80,000    |
| Less:                         |           |           |
| Basic allowance               | (132,000) | (132,000) |
| Net chargeable income         | 46,000    | Nil       |

# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Example : Answer (a) (Cont'd)

No election for joint assessment is elected

|                             | Husband | Wife  |
|-----------------------------|---------|-------|
|                             | \$      | \$    |
| Tax thereon                 |         |       |
| First \$40,000 @ 2%         | 800     |       |
| Balance \$6,000 @ 7%        | 420     |       |
|                             | <hr/>   | <hr/> |
|                             | 1,220   | Nil   |
| Less: 2016/17 tax reduction | (915)   | -     |
|                             | <hr/>   | <hr/> |
| Total                       | 305     | Nil   |
|                             | <hr/>   | <hr/> |

# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Example : Answer (b)

Year of assessment 2016/17

No election for joint assessment is elected

|                               | Husband | Wife    | Total     |
|-------------------------------|---------|---------|-----------|
|                               | \$      | \$      | \$        |
| Assessable income             | 200,000 | 100,000 | 300,000   |
| Less:                         |         |         |           |
| Allowance outgoings           | (2,000) | -       | (2,000)   |
| Net assessable income         | 198,000 | 100,000 | 298,000   |
| Less:                         |         |         |           |
| Approved charitable donations |         |         | (40,000)  |
|                               |         |         | 258,000   |
| Less:                         |         |         |           |
| Married person's allowance    |         |         | (264,000) |
| Net chargeable income         |         |         | Nil       |
| Tax thereon                   |         |         | Nil       |



# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Lump Sum Payment

**s.11B** provides that the assessable income of a person for a year of assessment shall be the total amount of income accruing to that person from all sources in that year of assessment (**i.e. the accruals basis**).

Pursuant to **s.11D**, income accrues to a person when he becomes entitled to claim payment thereof. However, s.11D(a) also provides that an assessment on income accrued but not received is to be deferred until the income is received.

Income is treated as received when it has been **made available to the taxpayer or has been dealt with according to his/her instructions**.

# Ascertainment of salaries tax liability under separate assessment and joint assessment



## Lump Sum Payment

Pursuant to s.11D(b), payments received after the cessation of an employment are deemed to have accrued on the **last day of that employment**. Noted that s.11D(b) is not applicable to share option gains, which is only a notional gain rather than an actual payment of cash.

S.11D(b)(i) provides that, **within two years** after the end of the year of assessment in which a lump sum payment on **cessation of office/employment, termination of employment contract or deferred pay was received**, application in writing can be made to have that lump sum payment related back for a period of:

- 36 months; or
- Actual period of employment;

whichever is the shorter.



## Personal assessment (Ch 7)

# Personal assessment



**DIPN No. 18 (Revised)** provides guidance on the assessment of individuals under salaries tax and personal assessment.

The **benefits** from electing for personal assessment are likely derived from the following deductions (some of which are available under salaries tax but not profits tax or property tax):

- interest incurred on money borrowed for the purpose of producing rental income (However, the amount of interest deductible should not exceed the net assessable value of each individual property);
- approved charitable donations;
- elderly residential care expenses (from the year of assessment 1998/99 onwards);
- home loan interest (from the year of assessment 1998/99 onwards);
- business losses incurred in the year of assessment;
- losses brought forward from previous years under personal assessment; and personal allowances.



# Personal assessment



## Time limit for election for personal assessment

Elections for personal assessment must be **made in writing** and lodged with the Commissioner within:

- **two years** after the end of the year of assessment in respect of which the election is made; or
- **one 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 under s.70 (i.e. two months after the issue of the assessment), or
- such further period, if any, as the Commissioner may allow as being reasonable in the particular circumstances, whichever is the later.



# Personal assessment

## Example : Question



Husband

|  | \$        |
|--|-----------|
| Net assessable income                                  | 460,000   |
| Charitable donations                                   | (100,000) |
| Allowable losses from Business Y                       | (50,000)  |
| Interest on mortgage loan used to acquire Property B * | (50,000)  |
| Contribution to MPF                                    | (18,000)  |

Wife

|  | \$        |
|--|-----------|
| Net assessable value of Property A                     | 200,000   |
| Interest on mortgage loan used to acquire Property A   | (300,000) |
| Interest on mortgage loan used to acquire Property B * | (50,000)  |
| Assessable profits from Business X                     | 100,000   |
| Contribution to MPF as a self-employed person          | (18,000)  |

\* Jointly owned and occupied by the couple as their matrimonial home

*Required*

Compute the tax payable by the couple for 2016/17 under personal assessment.

# Personal assessment

## Example : Answer



### Personal Assessment Computation – Year of assessment 2016/17

#### Husband and wife

|  | Husband<br>\$  | Wife<br>\$     | Total<br>\$    |
|--|----------------|----------------|----------------|
| Net assessable value of Property A                                   | –              | 200,000        | 200,000        |
| Net assessable income  | 460,000        | –              | 460,000        |
| Assessable profits from Business X                                   | –              | 100,000        | 100,000        |
|  | <u>460,000</u> | <u>300,000</u> | <u>760,000</u> |
| Less: Interest on mortgage loan used<br>to acquire Property A (Note) | –              | (200,000)      | (200,000)      |
|  | <u>460,000</u> | <u>100,000</u> | <u>560,000</u> |
| Less:  |                |                |                |
| Approved charitable donations  | (100,000)      | –              | (100,000)      |
| Home loan interest   | (50,000)       | (50,000)       | (100,000)      |
| Allowable losses from Business Y                                     | (50,000)       | –              | (50,000)       |
| MPF contribution   | (18,000)       | (18,000)       | (36,000)       |
|  | <u>242,000</u> | <u>32,000</u>  | <u>274,000</u> |
| Less: Married allowances   |                |                | (264,000)      |
| Net chargeable income  |                |                | <u>10,000</u>  |
| Tax thereon:   |                |                | Nil            |
| \$10,000 @ 2%  |                |                | 200            |
| Tax liability for 2016/17  |                |                | 200            |
| Less: 2016/17 tax reduction  |                |                | (150)          |
| Tax payable for 2016/17  |                |                | <u>50</u>      |

**Note.** Allowable mortgage loan interest is limited to the net assessable value of Property A.

The total tax payable will be shared by the couple as follows:

|   |           |
|---|-----------|
| Husband's share of the total tax liability: | \$        |
| $\$50 \times 242,000/274,000$               | 44        |
| Wife's share of the total tax liability:    |           |
| $\$50 \times 32,000/274,000$                | 6         |
| Total                                       | <u>50</u> |

# Past Paper Practice – Personal assessment

Jun 2016 Qu9

## Question



Mr Lee is the sole proprietor of a café (“the Café”). He also has two solely owned properties, Property 1 and Property 2, which have been let out since their acquisitions. In financing the purchases of the properties, Mr Lee respectively took out two bank loans, Loan 1 and Loan 2.

Mr Lee and his wife (hereinafter collectively referred to as “the Couple”) reside at Property 3 on a housing estate in Happy Valley. Mrs Lee is the sales manager of a fashion company. Their first child was born on 1 April 2014. To look after the child, Mr Lee’s mother (“the Mother”) has been residing at Property 4 since the birth of the child. Property 3 and Property 4 are situated in the same building though Property 4 is on an upper floor. Prior to that, the Mother resided in the New Territories from where it took her an hour to travel to Property 3. The Couple sent their child to the Mother every morning. After finishing dinner at Property 4 every evening, the Couple picked up their child and returned home.

# Past Paper Practice – Personal assessment

## Jun 2016 Qu9



### Question (Cont'd)

The Mother was at the age of 58 in the year of assessment 2012/13. Mr Lee paid the Mother HK\$60,000 a year to support her living throughout the three years of assessment from 2012/13 to 2014/15. The Mother seldom traveled overseas. Her overseas tour lasted for, at most, ten days in each year of assessment.

The relevant income derived and expenses incurred by the Couple during the three years of assessment are as follows:



# Past Paper Practice – Personal assessment

## Jun 2016 Qu9



### Question (Cont'd)

#### Mr Lee

#### Year of assessment

|   | 2012/13   | 2013/14  | 2014/15 |
|---|-----------|----------|---------|
|   | HK\$      | HK\$     | HK\$    |
| Assessable profits / (allowable loss) of the Café | (150,000) | (50,000) | 250,000 |
| Net assessable value                              |           |          |         |
| Property 1  | 360,000   | 380,000  | 400,000 |
| Property 2  | 240,000   | 240,000  | 280,000 |
| Total   | 600,000   | 620,000  | 680,000 |
| Mortgage interest                                 |           |          |         |
| Loan 1  | 150,000   | 130,000  | 120,000 |
| Loan 2  | 260,000   | 250,000  | 230,000 |
| Total   | 410,000   | 380,000  | 350,000 |



# Past Paper Practice – Personal assessment

## Jun 2016 Qu9

### Question (Cont'd)

#### Mrs Lee



| Year of assessment | 2012/13 | 2013/14 | 2014/15 |
|--------------------|---------|---------|---------|
|                    | HK\$    | HK\$    | HK\$    |
| Assessable income  | 210,000 | 230,000 | 250,000 |

The Couple elected to have their income assessed under personal assessment for the years of assessment 2012/13 and 2014/15. Mr Lee also claimed deduction of dependent parent allowance for the aforesaid two years of assessment and additional dependent parent allowance in respect of the Mother for the year of assessment 2014/15.

As to the year of assessment 2013/14, the Couple forgot to indicate in their Individual Tax returns their intention to have their income to be assessed under personal assessment. On 3 August 2014, the property tax assessment in respect of Property 1 and Property 2 was issued to Mr Lee and the salaries tax assessment was issued to Mrs Lee. They did not object to the assessments raised.

# Past Paper Practice – Personal assessment

## Jun 2016 Qu9



### Question (Cont'd)

#### Required:

- a) Analyse, with reference to the relevant tax principles,
- i) the amount of mortgage interest that is allowable for deduction to Mr Lee for the year of assessment 2012/13;  
Note: Computation is required.  
(3 marks)
  - ii) whether Mr Lee is entitled to the deduction of additional dependent parent allowance in respect of the Mother for the year of assessment 2014/15.  
(2 marks)
- b) Compute the net chargeable income of the Couple under s.42A(1)(b) of the IRO for each of the years of assessment 2012/13 and 2014/15  
(7 marks)

# Past Paper Practice – Personal assessment

## Jun 2016 Qu9



### Question (Cont'd)

#### Required:

c) The Couple now would like to have their income to be assessed under personal assessment for the year of assessment 2013/14. The Commissioner of Inland Revenue does not allow them a further period of time to make the election. Identify, with explanations in support, the last date on which they have to elect to have their income to be assessed under personal assessment.

(3 marks)

# Past Paper Practice – Personal assessment

## Jun 2016 Qu9



### Answer (a)(i)

Proviso to s.42(1) of the IRO provides that there shall be deducted from that part of the total income the amount of interest payable on money borrowed for the purpose of producing that part of the total income where the amount of such interest has not been allowed and deducted under Part 4. In the Board of Review Decision No. D86/99 14 IRBRD 581, the Board held that the proviso does not allow a global deduction for interest payable against total taxable income. It only allows a deduction for interest payable on money borrowed for the purpose of producing that part of the property income which has been included in the computation of total income under s.42(1)(a) of the IRO.



# Past Paper Practice – Personal assessment

## Jun 2016 Qu9



### Answer (a)(i) (Cont'd)

On the authority of the Board of Review Decision No. D86/99, the amount of mortgage interest that is allowable for deduction is as follows:

### **Mortgage interest allowable for deduction capped at net assessable value of the respective property**

|            | HK\$           |
|------------|----------------|
| Property 1 | 150,000        |
| Property 2 | <u>240,000</u> |
| Total      | <u>390,000</u> |



# Past Paper Practice – Personal assessment

## Jun 2016 Qu9



### Answer (a)(ii)

S.30(3)(b) of the IRO provides that an additional allowance is to be granted if the parent resided, otherwise than full valuable consideration, with the person who is eligible to claim the dependent parent allowance under s.30(1) of the IRO. In the present case, although Mr Lee is entitled to the deduction of the dependent parent allowance in respect of the Mother (s.30(1) of the IRO), no deduction of additional dependent parent allowance is to be allowed. It is because the Mother did not reside with Mr Lee continuously throughout the year of assessment 2014/15. She resided at Property 4 whereas Mr Lee resided at Property 3.

# Past Paper Practice – Personal assessment

## Jun 2016 Qu9



### Answer (b)

|                                       | 2012/13        | 2014/15          |
|---------------------------------------|----------------|------------------|
|                                       | HK\$           | HK\$             |
| <b>Mr Lee</b>                         |                |                  |
| Assessable profits 1                  | -              | 200,000          |
| Net assessable value                  | 600,000        | 680,000          |
| <b>Mrs Lee</b>                        |                |                  |
| Assessable income                     | 210,000        | 250,000          |
| <b>Total income</b>                   | <b>810,000</b> | <b>1,130,000</b> |
| <b>Less:</b>                          |                |                  |
| Interest payable on Loan 1 and Loan 2 | (390,000)      | (350,000)        |
|                                       | <b>420,000</b> | <b>780,000</b>   |
| <b>Less:</b>                          |                |                  |
| Loss for the year                     | (150,000)      | -                |
| <b>Net total income</b>               | <b>270,000</b> | <b>780,000</b>   |

# Past Paper Practice – Personal assessment

## Jun 2016 Qu9



### Answer (b) (Cont'd)

|   | 2012/13       | 2014/15        |
|---|---------------|----------------|
|   | HK\$          | HK\$           |
| <b>Less:</b>  |               |                |
| Married person's allowance                                | (240,000)     | (240,000)      |
| Child allowance   | -             | (140,000)      |
| Dependent parent allowance in respect of the Mother       | (19,000)      | (40,000)       |
| <b>Net chargeable income under s.42A(1)(b) of the IRO</b> | <b>11,000</b> | <b>360,000</b> |

Note 1: Year of assessment 2014/15: HK\$250,000 (being assessable profits for the year of assessment 2014/15) – HK\$50,000 (being loss brought forward from the year of assessment 2013/14) (s.19C(1) and s.42(1)(c) of the IRO)

# Past Paper Practice – Personal assessment

## Jun 2016 Qu9



### Answer (c)

The property tax assessment and the salaries tax assessment were issued to the Couple on 3 August 2014. They did not object to those assessments. On 4 September 2014, the assessments became final and conclusive in terms of s.70 of the IRO. If the Couple would like to have their income assessed under personal assessment for the year of assessment 2013/14, they have to write to the Commissioner of Inland Revenue not later than (a) one month after the assessments concerned become final and conclusive i.e., 4 October 2014; or (b) two years after the end of the year of assessment in respect of which the election is made, i.e., by 31 March 2016 (s.41(3) of the IRO). Hence, they have to make their application on 31 March 2016, at the latest.



## AVD, BSD and SSD (Ch 8)



# AVD, BSD and SSD



- Head 1**      Immovable property in Hong Kong
- Head 2**      Hong Kong stock
- Head 3**      Hong Kong bearer instrument
- Head 4**      Duplicates and counterparts of chargeable instruments under Heads 1, 2 and 3

**Theoretically, stamp duty is levied on instruments or documents, not on transactions**

# AVD, BSD and SSD



To deter speculations in the residential property market, **the government has launched a series of tax measures including the following:**

- The **maximum rate of ad valorem duty ('AVD')** for property transactions valued more than \$20 million was increased to 4.25%, effective from 1 April 2010.
- A **special stamp duty ('SSD')** was enacted on 30 June 2011 on 'Special stamp duty'. Two further measures, comprising a measure to enhance the SSD rates and the introduction of a 15% **buyer's stamp duty ('BSD')**, were enacted on 22 February 2014
- To discourage speculations in the property market (both residential and non-residential), the maximum AVD rate was further increased from 4.25% to 8.5%, effective from 23 February 2013.
- On 4 November 2016, the Government announced that the SDO would be amended to increase the AVD rates for residential property market transactions to a flat rate of 15%

# AVD, BSD and SSD



| Head | Instrument   | Stamp duty  |
|------|--|---|
| 1(1) | Conveyance on sale ('COS') chargeable with AVD   | 1.5% – 8.5% (Scale 1 rates);<br>or \$100 or 1.5% – 4.25% (Scale 2 rates);<br>or 15% on the higher of the consideration and market value |
| 1(2) | Lease of immovable property: <ul style="list-style-type: none"><li>• With premium only</li></ul> | Same as COS<br>(\$100 or 1.5% – 4.25% on the higher of the consideration and market value)  |
|      | <ul style="list-style-type: none"><li>• With premium and/or rent</li></ul>                       | 4.25% on premium; and/or  |

# AVD, BSD and SSD



| Head | Instrument   | Stamp duty                                     |
|------|--|--|
| 1(2) | Lease term not specified   | 0.25% on the yearly or average yearly rent; or |
|      | Lease term $\leq$ 1 year   | 0.25% on total rent payable; or                |
|      | Lease term $>$ 1 year but $\leq$ 3 years                           | 0.5% on the yearly or average yearly rent; or  |
|      | Lease term $>$ 3 years   | 1% on the yearly or average yearly rent        |
|      | An agreement for lease executed in pursuance of a duly stamped AFS | \$3  |
| 2(1) | Contract note, not jobbing business                                | 0.2% (0.1% on bought note, 0.1% on sold note)  |

# AVD, BSD and SSD

## Immovable property in Hong Kong (Head 1)

### Conveyance on sale (Head 1(1))

- Instruments are chargeable under Head 1(1):
- **Deed of assignment** for the sale and purchase of an immovable property.
- **Deed of gift** of an immovable property or conveyance operating as a voluntary disposition *inter vivos*.
- **Foreclosure order** relating to an immovable property
- **Deed of exchange** for the exchange of an immovable property.
- **Deed of partition** in relation to an immovable property.
- **Deed of family arrangement** whereby a beneficiary takes an immovable property in satisfaction of his pecuniary legacy





# AVD, BSD and SSD

## Immovable property in Hong Kong (Head 1) Rates of AVD



Before 4 November 2016, there are two scales of *Ad Valorem* Duty (AVD) rates for COS of immovable property as follows:

**(a) Scale 2 rates** apply to:

- (i) properties acquired during 1 April 2010 to 22 February 2013; or
- (ii) RPPTs acquired on or after 23 February 2013, where the purchaser/transferee is a Hong Kong permanent resident ('HKPR') who acquires the RPPT on his/her own behalf (i.e. the person is both the legal and beneficial owner) and owns no other RPPT in Hong Kong at the time of acquisition.



# AVD, BSD and SSD

## Immovable property in Hong Kong (Head 1) Rates of AVD



| Consideration/market value  | Stamp duty (Scale 2 rates)                         |
|-----------------------------|--|
| Up to \$2,000,000           | \$100  |
| \$2,000,001 – \$2,351,760   | \$100 plus 10% of the excess over \$2,000,000      |
| \$2,351,761 – \$3,000,000   | 1.5%   |
| \$3,000,001 – \$3,290,320   | \$45,000 plus 10% of the excess over \$3,000,000   |
| \$3,290,321 – \$4,000,000   | 2.25%  |
| \$4,000,001 – \$4,428,570   | \$90,000 plus 10% of the excess over \$4,000,000   |
| \$4,428,571 – \$6,000,000   | 3%   |
| \$6,000,001 – \$6,720,000   | \$180,000 plus 10% of the excess over \$6,000,000  |
| \$6,720,001 – \$20,000,000  | 3.75%  |
| \$20,000,001 – \$21,739,120 | \$750,000 plus 10% of the excess over \$20,000,000 |
| Over \$21,739,120           | 4.25%  |

# AVD, BSD and SSD

## Immovable property in Hong Kong (Head 1) Rates of AVD



The rates of AVD for an AFS under Head 1(1A) is the same as that for a COS under Head 1(1)

### (b) Scale 1 rates apply to:

- (i) any **RPPTs** acquired during the period from 23 February 2013 to 4 November 2016, 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-**RPPTs** acquired by either an individual or a company on or after 23 February 2013.

# AVD, BSD and SSD

## Immovable property in Hong Kong (Head 1) Rates of AVD



| 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%   |

# AVD, BSD and SSD



**Examples when Scale 1 rates will not be applicable under the following circumstances: When Scale 2 rates are applicable to:**

Acquisition of a RPPT (whether or not together with a car parking space) by a **HKPR (or by two or more HKPRs jointly as co-owners or joint owners)** 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.

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.



# AVD, BSD and SSD



**Examples when Scale 1 rates will not be applicable under the following circumstances: When Scale 2 rates are applicable to:**

- Acquisition or transfer of a property by a court order
- Transfer/vesting of a mortgaged property under a conveyance to/in its mortgagee
- Acquisition of a property by a person acting on his/her own behalf to replace another property

# AVD, BSD and SSD



## When AVD is exempt for:

1. 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.
2. 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.
3. Acquisition or transfer of a property by or to a body corporate from an associated body corporate.
4. Acquisition or transfer of properties by or to the Government.
5. Gift of properties received by charitable institutions exempted from tax under s.88 of the IRO.

# AVD, BSD and SSD



On 4 November 2016, the Government announced that the SDO would be amended to **increase the AVD rates for RPPT transactions to a flat rate of 15%.**

Subject to enactment of the relevant legislation, unless specifically exempted or provided otherwise, any instrument **executed on or after 5 November 2016** for the sale and purchase or transfer of RPPT will be subject to the proposed new AVD rate. However, the proposed new AVD rate does not apply to an AFS/conveyance for a RPPT where the purchaser/transferee is a **HKPR acting on his/her own behalf** and does not own any other RPPT in Hong Kong at the time of acquisition of the subject property. Scale 2 rates will apply to such agreement/conveyance and other acquisitions as specified in section (A) of this section.

# AVD, BSD and SSD



A HKPR, who is acquiring another RPPT (property B) to replace his only RPPT (property A), can apply for partial refund of the AVD.

## Example

On 1 March 2016, a HKPR purchased a RPPT jointly with his spouse for \$10 million. At the time of acquisition, the HKPR did not own any other RPPT in Hong Kong but his spouse already owned a RPPT in Hong Kong. As the spouse already owned a RPPT in Hong Kong, AVD at Scale 1 rates is payable on the entire stated consideration or market value of the property, whichever is the higher, regardless of the respective share of interest of the purchasers in the property acquired. The fact that the joint owner is a close relative does not make any difference. Therefore, AVD payable is \$750,000 (\$10m X 7.5%).



# AVD, BSD and SSD

## Special stamp duty (Heads 1(1AA) and 1(1B))



SSD will be imposed on the **disposal of a RPPT** (including land) which was acquired by an individual or a company (regardless of where it is incorporated) on or **after 20 November 2010** and resold within **24 months** from the date of acquisition. It is imposed on top of the AVD on a chargeable AFS of RPPTs under s.29CA and Head 1(1B); or a COS under s.29DA and Head 1(1AA).

SSD is calculated based on the stated consideration or the market value, whichever is the higher, of the resold RPPT at regressive rates, with higher rates for shorter holding periods. Effective from 27 October 2012, the SSD rates were adjusted upwards and the holding period extended to 36 months as follows:

| Holding period              | SSD rates for RPPT acquired between 20 October 2010 and 26 October 2012 | SSD rates for RPPT acquired on or after 27 October 2012 |
|-----------------------------|---|---|
| ≤ 6 months                  | 15%   | 20%   |
| > 6 months but ≤ 12 months  | 10%   | 15%   |
| > 12 months but ≤ 24 months | 5%  | 10%   |
| > 24 months but ≤ 36 months | 0%  | 10%   |



# AVD, BSD and SSD



## Counting of the holding period

For SSD purposes, the counting of the holding period of a RPPT is based on calendar months. The period from a certain day in a month to the preceding day in the following calendar month is counted as one month.

## Time for payment of special stamp duty

Heads 1(1AA) and (1B) stipulate that a chargeable instrument is to be stamped with SSD at the same time as that for the AVD, i.e. within 30 days after the date of signing the chargeable AFS, or the date of the conveyance if there is no chargeable AFS.

The buyer and the seller to a RPPT transaction are jointly and severally liable for paying the SSD.

# AVD, BSD and SSD



## Examples of exemptions from special stamp duty

- Nomination of a close relative of the original purchaser to take up an assignment of a RPPT under an AFS
- Sale or transfer of a RPPT to a close relative;
- Addition/ deletion of a name to/from a chargeable AFS or COS of a RPPT if the person is a close relative of the original purchaser;
- Sale, transfer or vesting of a RPPT made by a court or pursuant to a court order
- Sale or transfer of a RPPT that relates to the estate of a deceased person, and sale or transfer of a RPPT by a person whose property is inherited from a deceased person's estate
- The RPPT sold relates solely to a bankrupt's estate
- Sale of a mortgaged RPPT by a mortgagee which is a FI
- Sale or transfer of a RPPT to the Government; and
- Gift of a RPPT to a charitable institution

**SSD does not apply to the sale of first-hand RPPT. Exemption from SSD may also be applicable under s.45 to transfers between associated bodies.**

# AVD, BSD and SSD



## Example:

Mr. X acquired RPPT A on 2 January 2017. Mr. Y acquired RPPT B on 2 July 2017. On 30 September 2017, they executed an agreement for exchange with equality money being \$1 million.

For the purpose of counting the holding period, the date of acquisition of RPPT A (2 January 2017) which is earlier is taken. The holding period (from 2 January 2017 to 30 September 2017) is therefore more than six months but less than 12 months. The applicable SSD rate is 15%, and thus the amount of SSD payable is \$150,000 (\$1 million X 15%).

# AVD, BSD and SSD



## **Buyer's stamp duty (Heads 1(1AAB) and 1(1C))**

BSD is imposed on the acquisition of RPPTs by a person (including a company) on or after 27 October 2012. BSD is imposed on top of the existing AVD and SSD, if applicable, on a chargeable AFS of RPPT under s.29CB and Head 1(1C), or a COS 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 RPPT, whichever is the higher.

## **Time for payment of buyer's stamp duty**

BSD has to be paid within 30 days after the execution of the chargeable document.

## **Persons liable to pay buyer's stamp duty**

The buyer or the transferee who is not a HKPR is liable to pay the BSD.

Although BSD will not apply to HKPRs, it will apply to companies that acquire RPPTs, regardless of whether they are controlled by or have any shareholders or directors who are HKPRs.



# AVD, BSD and SSD



## Exemptions from buyer's stamp duty

Examples of BSD will be exempted under the following circumstances (ss.29CB and 29DB):

- Acquisition of a RPPT by a HKPR jointly with a close relative(s) who is/are not HKPR, and each of the purchasers is acting on his/her own behalf;
- Transfer of a RPPT to a close relative(s) who is/are not HKPR, or to a close relative(s) jointly one or more of whom is/are not HKPR
- Addition/deletion of a close relative(s) who is/are not HKPR to/from a chargeable AFS or COS of a RPPT
- Acquisition or transfer of a RPPT by a court order
- Transfer/vesting of a mortgaged RPPT under a conveyance to/in its mortgagee which is a FI
- Acquisition or transfer of a RPPT by or to the Government; and
- Gift of a RPPT to charitable institutions



# AVD, BSD and SSD



**Exemption from BSD** may also be applicable under s.45 to transfers between associated bodies corporate.

If a RPPT 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 **non-HKPR acquiring a RPPT for redevelopment** can apply to the Collector for a refund of the BSD paid after the person.



## Stamp duty exemptions and reliefs (Ch 8)

# Stamp duty exemptions and reliefs



## Section

## Exemptions/Relief

- 39 Instruments generally exempted
- 40 Instruments specially exempted
- 41 Exemption for Government or public officer
- 42 Relief for leases between Government/public officer and another person
- 43 Relief for leases of consular premises
- 44 Relief for gifts to exempted institutions
- 45 Relief for conveyance or transfer between associated bodies corporate
- 46 Exemption for instruments affecting immovable property made for new Government lease or exchange
- 47A Exemption for transfer of units of constituent funds under MPF Schemes
- 47B Exemption for instruments of transfer relating to indirect allotment or redemption of units under unit trust schemes

# Relief under s.45



Relief under s.45 for conveyance of **immovable property** (Head 1(1) for AVD), 1(1AA) for SSD and Head 1(1AAB) for BSD), or transfer of **Hong Kong stock** (Head 2(1) and 2(3)) between associated bodies corporate only applies when:

- a) one of the bodies corporate is the beneficial owner of not less than **90%** of the issued share capital of the other; or
- b) a third body corporate is the beneficial owner of not less than 90% of the issued share capital of each of the bodies corporate.

The location where the transferor, transferee or the holding company is incorporated is **not relevant** to claiming the s.45 relief.

Application should be supported by a **statutory declaration**

# Relief under s.45



It should be noted that the s.45 relief is **not available** for leases of immovable property between associated bodies corporate which are chargeable under Head 1(2).

## 2 years period

After the conveyance or transfer between associated bodies corporate, the transferor and transferee have to remain associated for **at least two years**. If they cease to be associated within the two-year period, the stamp duty exemption is revoked and duty is payable within **thirty days** of the change (s.45(4)(c) and (5A)).

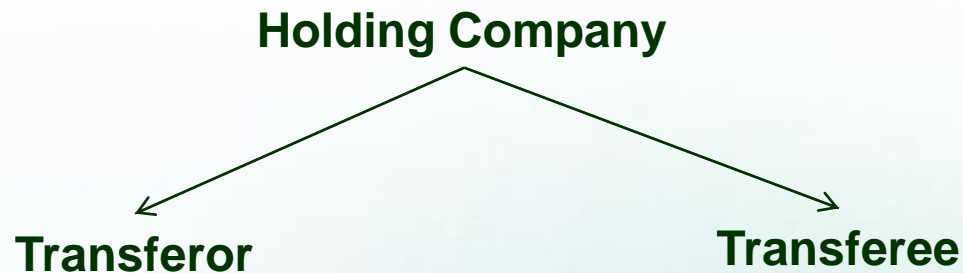


# Relief under s.45



If the **transferor is liquidated within two years**, s.45 relief may not be revoked in the following situations:

- a) The transferor is the holding company of the transferee and there is another holding company of the transferor which continues in existence during the two-year period; or
- b) The transferor and the transferee are under the common control of a holding company and that holding company retains not less than 90% of the shareholdings in the transferee during the two-year period.



# Relief under s.45



## Anti-avoidance provisions prevent the abuse of s.45 relief

- a) any part of the **consideration** for the transfer of immovable property or Hong Kong stock was provided or received, directly or indirectly, by a person other than an associated body corporate of the transferor or transferee (s.45(4)(a))
- b) beneficial interest in the immovable property or Hong Kong stock was previously conveyed, transferred, sold or purchased, directly or indirectly, by a **third person** (s.45(4)(b)).
- c) the transferor and transferee were to **cease to be associated** due to a change in shareholding in the transferee within two years of the transfer (s.45(4)(c)).

If money has been obtained from a **bank** for the purpose of acquiring the property from an associated body corporate, **s.45 relief** might be denied pursuant to s.45(4)(a) as the bank is an unrelated non-associated person

# Other exemptions



## Under ss.47A and 47B

With effect from 1 December 2000, **four specific types** of unit transfers under MPF schemes are exempt from the requirements to pay the fixed stamp duty of \$5 per instrument of transfer: Such as :

- a) indirect allotment of units by Constituent Funds under MPF schemes to scheme members through the fund managers;
- b) redemption of units in Constituent Funds by MPF scheme members;
- c) indirect allotment of units by Approved Pooled Investment Funds to Constituent Funds under MPF schemes through the fund managers; and Taxation
- d) redemption of units in Approved Pooled Investment Funds by Constituent Funds under MPF schemes.

# Relief for alternative bond schemes under ss.47E, 47F and 47G



The Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 was enacted on 19 July 2013 to provide relief for some common types of Islamic bonds (i.e. sukuk) that are economically equivalent to conventional bonds in order to allow comparable tax treatment under the IRO and SDO.

Relief for qualified bond arrangement under s.47E

Relief for qualified investment arrangement under s.47F

Relief for special stamp duty under s.47G



# Past Paper Practice – Stamp Duty Exemption



## Question

XYZ is a company incorporated in Country A. It does not carry on business in Hong Kong, nor have any business presence in Hong Kong. It has a 90% owned subsidiary, HKCO in Hong Kong.

HKCO carries on a manufacturing business in Hong Kong. It has a 100% owned subsidiary, DGCO in Dongguan, mainland China. DGCO was set up in 1996 to carry out part of the manufacturing process for HKCO in the Mainland.

In 2017, XYZ plans to transfer the shares in HKCO to its wholly owned subsidiary, OSCO, a company incorporated in Country B under a group restructuring exercise.



# Past Paper Practice – Stamp Duty Exemption



## Question (Cont'd)

### Required

- a) Advise XYZ on the Hong Kong tax implications of the proposed transfer of the shares in HKCO to OSCO.
  
- b) If the shares in DGCO were transferred to OSCO (instead of the shares in HKCO), what would be the Hong Kong tax implications?

# Past Paper Practice – Stamp Duty Exemption



## Answer (a)

### *Profits tax*

As XYZ does not carry on any business in Hong Kong, any profit on disposal of the shares in HKCO falls outside the scope of s.14.

### *Stamp duty*

Stamp duty is chargeable on the contract notes effecting the transfer of shares in HKCO to OSCO under Head 2(1). The rate is 0.2% on the amount of the consideration or the value of the stock being transferred, whichever is the higher. This is payable half by XYZ and half by OSCO on the contract notes effected.

The stamp duty for the instrument of transfer is \$5.

# Past Paper Practice – Stamp Duty Exemption



## Answer (a) (Cont'd)

However, exemption from stamp duty is available for intragroup transfer of shares under s.45.

XYZ and OSCO are associated for the purpose of s.45, as XYZ is the beneficial owner of 100% of the issued share capital of OSCO. As such, they should be entitled to the exemption; and they should obtain adjudication for the s.45 relief.

To qualify for the exemption, XYZ and OSCO 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 30 days of the change.

# Past Paper Practice – Stamp Duty Exemption



## Answer (b)

### *Profits tax*

On the facts available, it is likely that the shares in DGCO were held by HKCO for long-term investment:

- (i) DGCO was the manufacturing arm of HKCO in the Mainland; and
- (ii) The shares in DGCO were held by HKCO for more than 20 years.

Any profit/loss arising from the disposal of the shares would be of a capital nature and not taxable/deductible under profits tax.

### *Stamp duty*

The shares in DGCO are not Hong Kong stock for the purposes of the SDO. In this regard, no stamp duty is payable in Hong Kong on the documents effecting the transfer and application from exemption from stamp duty is not required.



## Offences and penalties (Ch 2)





# Offences and penalties



An offence may be committed either by non-compliance without a reasonable excuse or by wilful wrongdoing. Penal actions may be imposed by the IRD for offence committed by taxpayers.

For non-compliance offences not affecting the amount of tax charged, the Court may grant an order to instruct the defaulter to comply within a specified time together with a fine.

For offences affecting the amount of tax charged, the penalty may consist of a fine and/or up to 300% of the tax undercharged or the tax that would have been undercharged.

| Level | Fine<br>\$ |
|-------|------------|
| 1     | 2,000      |
| 2     | 5,000      |
| 3     | 10,000     |
| 4     | 25,000     |
| 5     | 50,000     |
| 6     | 100,000    |

# Offences and penalties



## Taxpayer's Obligations under the IRO

| Section | Obligation  | Penalty that may be imposed by courts for non-compliance  |
|---------|---|---|
| 51(1)   | To complete returns within the time limit as requested in the notice from an assessor in writing. | <p>A fine at level 3 and a further fine not exceeding 300% of tax undercharged or would have been undercharged.</p> <p>(If there is no prosecution, the Commissioner, or a Deputy Commissioner, may raise an additional tax assessment (not exceeding 300% of tax undercharged or would have been undercharged) under s.82A. Alternatively, the Commissioner may compound the offence.)</p> |



# Offences and penalties



## Taxpayer's Obligations under the IRO

| Section | Obligation  | Penalty that may be imposed by courts for non-compliance  |
|---------|---|---|
| 51(2)   | To notify the Commissioner in writing, of his chargeability to tax, not later than four months after the end of the basis period in which the income was derived. | <p>A fine at level 3 and a further fine not exceeding 300% of tax undercharged or would have been undercharged.</p> <p>(If there is no prosecution, the Commissioner, or a Deputy Commissioner, may raise an additional tax assessment (not exceeding 300% of tax undercharged or would have been undercharged) under s.82A. Alternatively, the Commissioner may compound the offence.)</p> |
| 51(6)   | To notify the Commissioner in writing, of his cessation of income, within one month of such cessation.  | <p>A fine at level 3 and Court order for compliance within the time specified in the order.</p> <p>(Alternatively, the Commissioner may compound the offence.)</p>  |

# Offences and penalties

## Penalties provisions under the IRO



| S.80(1)   | S.80(2)   | S.82(1)  | S.82A   |
|---|---|--|---|
| For offences without a reasonable excuse.                           | For offences without a reasonable excuse.   | For wilful evasion cases.  | For offences without a reasonable excuse.   |
| Covers most non-compliance offences not involving tax undercharged. | Covers non-compliance offences (no return/late return/incorrect return/failure to inform chargeability for tax) involving tax undercharged. | Covers incorrect return involving tax undercharged.  | Covers non-compliance offences (no return/late return/incorrect return/failure to inform chargeability for tax) involving tax undercharged. |
| Civil proceeding.   | Civil proceeding.   | Criminal proceeding.   | Administrative penalty. No legal proceeding either before or after the additional tax.  |
| Taxpayer to prove, on balance of probability.                       | Taxpayer to prove, on balance of probability.   | Prosecutor to prove, beyond reasonable doubt.  | Taxpayer to prove, on balance of probability.   |
| Penalty assessed by Court.  | Penalty assessed by Court.  | Penalty assessed by Court.   | Additional tax raised by the Commissioner or a Deputy Commissioner personally.  |
| Penalty: a fine at level 3.   | Penalty: a fine at level 3 and $\leq$ 300% of tax undercharged or would have been undercharged.   | Penalty: on summary conviction: a fine at level 3 and $\leq$ 300% of tax undercharged or would have been undercharged and six months' imprisonment.<br>On indictment: a fine at level 5 and $\leq$ 300% of tax undercharged or would have been undercharged and three years' imprisonment. | Penalty: additional tax not exceeding 300% of tax undercharged or would have been undercharged.   |

# Passing MD – Basic Techniques



## Expectations from Students:

- Quote correctly sections (sub-sections), DIPN and cases
- Correct application of the tax rules; do not just copy
- Reasonable conclusion given – answer the question
- Count marks for each question ie 5 marks question – at least 7 minor points
- Present your answer in a logical manner
- Use assumptions
- Give tax evidence



# Answer Plan for each question



- Step 1 –** Which kind of tax?  
Profits Tax, Salaries Tax and Property Tax?  
Involve Stamp Duty?
- Step 2 –** Is the question related to income or expense?
- Step 3 –** Consider the charging section or the general rule first? Then consider any DIPN & cases in support.
- Step 4 –** Apply to the question's facts
- Step 5 –** Discuss different applications under different assumptions
- Step 6 –** Suggest further evidence and give a reasonable conclusion

# MD Preparation



**Only got 2 and ½ months left – What shall you do?**

- **Do past papers with updated answers**
- **Practice writing out**
- **Write as many questions out as possible**
- **Practice using your critical file**
- **Time yourself**

# Final Advice



- **The time to look-up the textbook is limited during an open-book exam**
- **Students should:**
  - ❑ have a good understanding of the topics before going into the exam
  - ❑ read the case and questions carefully
  - ❑ answer what is being asked, not what they wanted to be asked
  - ❑ identify the core issues of the question and allocate their time accordingly
  - ❑ analyse the facts of the case and apply the tax rules or principles to arrive at the conclusion
  - ❑ not copy large passages from the textbook
  - ❑ use logical thinking to understand and respond to the questions