

Contents

Acknowledgement	xvii
Preface to 2016–17 Edition	xviii
Abbreviations	xxii
Latin Words and Phrases	xxiv
Table of Cases	xxv
Board of Review Decisions	xxxiv
IRO, IRR and SDO	xxxix
Chapter 1 General Scheme of Taxation in Hong Kong	1
1.1 Law, Interpretation and Policy	2
1.2 The Taxes in General	10
1.3 Estate Duty (EDO)	13
1.4 Stamp Duty (SDO)	14
1.5 Income Taxes	17
1.5.1 Year of assessment (Sec. 2)	17
1.5.2 Property Tax (Part II)	17
1.5.3 Salaries Tax (Part III)	18
1.5.4 Profits Tax (Part IV)	19
1.5.5 Depreciation allowances (Part VI)	21
1.5.6 Rates of Tax (Sch. 2)	22
1.5.7 Personal allowances (Sch. 4)	23
1.5.8 Personal Assessment (Part VII)	23
1.5.9 Returns and information (Part IX)	25
1.5.10 Assessments and payment of Tax (Parts X, XA, XB, XC, and XII)	26
1.5.11 Objections and appeals (Part XI)	27
1.5.12 Board of Inland Revenue (Sec. 3)	28
1.6 Inland Revenue Department	29
1.7 Taxation System from 1 July 1997	31
1.7.1 The Basic Law	31
1.7.2 The Hong Kong Reunification Ordinance	32

Chapter 2 Property Tax	35
2.1 Legislation	36
2.2 Scope of the Tax	36
2.3 The Charge	37
2.3.1 Net assessable value	37
2.3.2 Assessable value	38
2.4 Ownership	41
2.5 Exemptions and Reliefs	44
2.5.1 Governments	44
2.5.2 Corporations and other persons carrying on business	44
2.5.3 Clubs and trade associations	47
2.5.4 Alternative bond schemes	48
2.6 Assessment and Payment of Property Tax	50
2.7 Time Limits and Objections	53
Chapter 3 Salaries Tax	55
3.1 Legislation	57
3.2 Scope of the Tax	57
3.3 Source of the Income	59
3.3.1 General	59
3.3.2 Employment income	59
3.3.2.1 Non-Hong Kong employment	67
3.3.2.2 Hong Kong employment	72
3.3.3 Holder of an office	77
3.3.4 Pensions	81
3.3.5 Seafarers and aircrew	81
3.4 Determination of Assessable Income	84
3.4.1 Inclusions in assessable income	84
3.4.2 Case law discussion	89
3.4.2.1 Is the income from employment?	89
3.4.2.2 Is the income for services rendered?	91
3.4.2.3 Payments on termination of employment	92
3.4.2.4 Payments on change of terms of employment	103
3.4.2.5 Payments on commencement of employment	104
3.4.2.6 Payments other than from the recipient's employer	105
3.4.2.7 Perquisites	105
3.4.2.8 Other issues	106

3.4.3	Housing accommodation benefit	108
3.4.4	Share option benefit	117
3.4.5	Other perquisites	128
3.4.6	Exclusions from assessable income	129
3.5	Deductions from Assessable Income	139
3.5.1	Expenses	140
3.5.2	Depreciation allowances	146
3.5.3	Self-education expenses	147
3.5.4	Charitable contributions	149
3.5.5	Home loan interest	151
3.5.6	Elderly residential care expenses	159
3.5.7	Retirement scheme contributions	161
3.5.8	Losses	162
3.6	Basis of Assessment	164
3.6.1	Basis period and income falling therein	165
3.6.2	Calculation of tax	171
3.6.3	Break-even point	172
3.7	Assessment and Payment of Tax	173
3.7.1	Filing requirements	173
3.7.2	Objections and appeals	174
3.7.3	Provisional Salaries Tax	174
3.8	Other Issues	178
3.8.1	Treatment of payments to service companies and trusts	178
3.8.2	Tax on tax	186
3.8.3	Taxation of married couples	189
3.8.3.1	The election	192
3.8.3.2	Provisional Salaries Tax	193
3.8.3.3	Definitions	194
3.8.4	Double Taxation Agreements	195
Chapter 4	Profits Tax	199
4.1	Legislation	202
4.2	Scope of the Tax	202
4.3	Liability to Profits Tax	204
4.3.1	Persons chargeable	205
4.3.2	Carrying on a trade, profession or business	208
4.3.3	What constitutes trading	213
4.3.4	Meaning of business	222
4.3.5	Commencement of business	225
4.3.6	Cessation of business	226

4.4	Source of Profits	227
4.4.1	Statutory provisions	228
4.4.2	Case law — general principles	229
4.4.3	Case law — other issues	263
4.4.4	Source of interest income	269
4.4.5	IRD's practice	276
4.5	Ascertainment of Assessable Profits	285
4.5.1	When income and profit arises	290
4.5.2	Treatment of capital profits	300
4.5.3	Other excluded profits	310
4.5.4	Amounts deemed taxable	327
4.5.5	Expenditure — general deductibility rules	348
4.5.6	When expenditure is incurred	357
4.5.7	Expenditure — capital v revenue	361
4.5.8	Expenditure deemed deductible	370
4.5.9	Deductibility of interest and related expenses	403
4.5.9.1	Interpretation of Sec. 16(1)(a)	404
4.5.9.2	Provisions of Sec. 16(2) — Prior to 25 June 2004	409
4.5.9.3	Provisions of Sec. 16(2) — From 25 June 2004	414
4.5.10	Expenditure deemed non-deductible	421
4.5.11	Payments to “service companies”	426
4.5.12	Trading stock and work-in-progress	432
4.5.13	Pre-commencement expenditure	438
4.5.14	Post-cessation receipts and payments	438
4.5.15	Apportionment of expenses	439
4.5.16	Losses	444
4.5.16.1	Losses involving taxpayers deriving concessionary trading receipts	445
4.5.16.2	Individuals	448
4.5.16.3	Corporations and other persons	450
4.5.16.4	Partnerships — general	450
4.5.16.5	Limited Partnerships — loss limitation	451
4.5.16.6	Trustees	453
4.6	Basis of Assessment	455
4.6.1	Normal basis	456
4.6.2	Commencement	456
4.6.3	Cessation	458
4.6.4	Change of accounting date	462

4.6.5	Apportionment	467	
4.7	Non-residents		468
4.7.1	Non-residents carrying on business in Hong Kong	469	
4.7.2	Goods on consignment	472	
4.7.3	Hong Kong agents	474	
4.7.4	Payers other than agents	478	
4.7.5	Arm's length pricing	482	
4.8	Assessment and Payment of Tax		483
Chapter 5	Depreciation Allowances		489
5.1	Legislation		491
5.2	Scope of the Reliefs		491
5.3	Industrial Buildings		492
5.3.1	Qualifying expenditure	492	
5.3.2	Initial allowance	499	
5.3.3	Annual allowance	499	
5.3.4	Balancing allowances and charges	502	
5.4	Commercial Buildings (For years of assessment prior to 1998/99)		505
5.4.1	Qualifying expenditure	505	
5.4.2	Allowances	506	
5.5	Commercial Buildings (For 1998/99 and subsequent years of assessment)		506
5.5.1	Annual allowances	507	
5.5.2	Balancing allowances and charges	509	
5.6	Expenditure Qualifying as Plant and Machinery		510
5.7	Plant and Machinery Allowances (General)		515
5.8	Plant and Machinery Allowances (Pooling System)		517
5.8.1	Initial allowance	517	
5.8.2	Annual allowance	517	
5.8.3	Balancing allowance/charge	521	
5.9	Plant and Machinery Allowances (Non-Pooling System)		524
5.9.1	Initial allowance	524	
5.9.2	Annual allowance	525	
5.9.3	Balancing allowance/charge	529	
5.10	Leasing		532
5.10.1	When is a lease not a lease?	533	
5.10.2	Sale and leaseback	536	
5.10.3	Leveraged leases — general	540	

5.10.4	Non-recourse debt	540
5.10.5	Leveraged leases — ships or aircraft	541
5.10.6	Leveraged leases — machinery or plant other than ships or aircraft	544
5.11	Miscellaneous Points Relating to Depreciation Allowances	546
5.11.1	Basis periods	546
5.11.2	Apportionment	547
5.11.3	Commissioner's powers to determine cost or value of asset	547
Chapter 6	Personal Assessment	549
6.1	Legislation	550
6.2	The Purpose of Personal Assessment	550
6.3	Persons Who Qualify	551
6.4	The Election	555
6.5	Computation of Total Income	556
6.6	Personal Allowances	560
6.6.1	Basic allowance (Sec. 28)	561
6.6.2	Married person's allowance (Sec. 29)	561
6.6.3	Child allowance (Sec. 31)	562
6.6.4	Dependent parent allowance (Sec. 30)	563
6.6.5	Dependent grandparent allowance (Sec. 30A)	566
6.6.6	Disabled dependent allowance (Sec. 31A)	569
6.6.7	Dependent brother or dependent sister allowance (Sec. 30B)	572
6.6.8	Single parent allowance (Sec. 32)	573
6.7	The Charge to Tax	574
Chapter 7	Returns and Information to Be Supplied, Penalties	579
7.1	Legislation	580
7.2	Returns and Information	580
7.2.1	Returns — general	580
7.2.2	Persons responsible	583
7.2.3	Returns by employers	584
7.2.4	Information	585
7.2.5	Statement of assets and liabilities	587
7.2.6	Search warrants	589
7.2.7	Business records	591

7.3	Service of Notices	592
7.4	Penalties	593
7.4.1	Omissions, failure to make returns, etc.	595
7.4.2	Penalty assessments (additional tax)	599
7.4.3	Fraud and wilful evasion	606
7.4.4	Miscellaneous	608
Chapter 8	Assessments and Payment of Tax	611
8.1	Legislation	612
8.2	The Power to Assess	612
8.2.1	General	612
8.2.2	Estimated assessments	614
8.2.3	Personal assessment	615
8.2.4	Additional assessments	616
8.3	Notices of Assessment	618
8.4	Payment of Tax	619
8.5	Recovery of Tax	623
8.5.1	District Court procedure	623
8.5.2	Collection from debtor of taxpayer	624
8.5.3	Detention of defaulters leaving Hong Kong	625
8.5.4	Impounding ships or aircraft	626
8.6	Repayment of Tax	626
8.7	Assessments Final and Conclusive	627
8.7.1	Error or omission claim (Sec. 70A)	628
Chapter 9	Objections and Appeals	635
9.1	Legislation	636
9.2	Objections	636
9.2.1	The form of an objection	636
9.2.2	Negotiation of objection	643
9.2.3	Commissioner's determination	645
9.3	Appeals	646
9.3.1	Board of Review	646
9.3.2	Appeal against decision of Board of Review	655
9.3.3	Direct appeal to Court of Appeal	659
9.3.4	Direct appeal to Court of First Instance	660
9.3.5	Judicial Review	662
9.4	Provisions regarding Married Couples	669

Chapter 10 Miscellaneous Matters	671
10.1 Double Taxation Relief	672
10.2 Exemptions	673
10.3 Retirement Schemes	675
10.3.1 Taxation consequences of retirement schemes	676
10.4 Anti-avoidance Legislation	681
10.4.1 Specific anti-avoidance	682
10.4.2 Sale of loss companies	682
10.4.3 General anti-avoidance provisions	684
10.4.4 Sec. 61	691
10.4.5 Sec. 61A	693
10.4.5.1 Meaning of transaction	693
10.4.5.2 Tax benefit	699
10.4.5.3 Sole or dominant purpose	703
10.4.5.4 Countering the tax benefit	718
10.4.5.5 Case law discussion	720
10.5 Advance Rulings	724
10.5.1 Sch. 10, Part I	725
10.5.2 Sch. 10, Part II	729
10.6 Other Miscellaneous Matters	730
10.6.1 Board of Inland Revenue	730
10.6.2 Tax Reserve Certificates	731
10.6.3 Trusts, trustees and deceased estates	732
10.6.4 Notice of no objection to deregister a private company	733
Chapter 11 International Aspects of Hong Kong Taxation	735
11.1 Introduction	738
11.2 General Principles of International Taxation	739
11.2.1 Residence and source as a basis for taxation	739
11.2.2 Double taxation	740
11.2.3 Relief from double taxation	741
11.2.4 Double taxation agreements — general	743
11.2.5 Structure of double taxation agreements	745
11.2.6 Overview of key provisions of double taxation agreements	746
11.2.6.1 Resolving residence-residence conflicts	747

11.2.6.2	Resolving source-source conflicts	748
11.2.6.3	Permanent establishments	749
11.2.6.4	Dividends	751
11.2.6.5	Interest	751
11.2.6.6	Royalties	752
11.2.6.7	Employment income	752
11.2.6.8	Associated enterprises	753
11.2.6.9	Double tax relief	754
11.2.6.10	Non-discrimination	755
11.2.6.11	Mutual agreement procedure	755
11.2.6.12	Exchange of information	756
11.2.6.13	Mutual assistance in collection of taxes	756
11.2.6.14	Other articles	757
11.2.7	Anti-avoidance in an international context	757
11.2.7.1	Transfer pricing	757
11.2.7.2	Controlled Foreign Corporation (CFC) rules	763
11.2.7.3	Thin capitalisation rules	766
11.2.7.4	Treaty shopping	768
11.3	Exchange of Information	769
11.3.1	Exchange of Information Article (OECD MTC)	769
11.3.2	Tax Information Exchange Agreements	775
11.3.3	Foreign Account Tax Compliance Act (FATCA)	778
11.3.4	Automatic Exchange of Information	779
11.4	International Tax Aspects of Inbound Investment	780
11.4.1	Carrying on business and permanent establishments	781
11.4.2	Determination of assessable profits	782
11.4.3	Double tax relief	783
11.4.4	Financing an investment in Hong Kong	783
11.4.5	Branch vs subsidiary	785
11.4.6	Transfer pricing	786
11.5	International Tax Aspects of Outbound Investment	788
11.5.1	Assessability of foreign profits	789
11.5.2	Unilateral double tax relief	790
11.5.3	Bilateral double tax relief	792

11.5.4	Withholding taxes	795
11.5.5	Financing a foreign investment	795
11.5.6	Hong Kong expenses relating to foreign investment	796
11.5.7	Transfer pricing	796
11.6	Hong Kong Taxation Issues for Mainland Investors into Hong Kong	797
11.6.1	Choice of investment vehicle	797
11.6.2	Comprehensive double taxation agreements	798
11.6.3	Residence	799
11.6.4	Carrying on a business and the existence of a permanent establishment	800
11.6.5	Determination of assessable profits	801
11.6.6	Other methods of computing profits	803
11.6.7	Personal Taxation	803
11.6.8	Certificates of Residence	806
11.7	Base Erosion and Profit Shifting (BEPS)	809
11.7.1	Causes of BEPS	810
11.7.2	Effects of BEPS	811
11.7.3	The BEPS action plan	812
11.7.4	The 2015 BEPS action plan	814
11.7.5	Other initiatives	820
Chapter 12	Stamp Duty	823
12.1	Legislation	825
12.2	Scope of the Charge	825
12.2.1	The four Heads of Charge	826
12.2.2	Territorial nature of charge	826
12.3	Immovable Property in Hong Kong	826
12.3.1	Conveyance on sale	827
12.3.2	Gifts and transfers at less than full value	831
12.3.3	Agreements for the sale of property	832
12.3.4	Special Stamp Duty	835
12.3.5	Buyer's Stamp Duty	837
12.3.6	Leases	838
12.4	Hong Kong Stock	839
12.4.1	Sale and purchase	840
12.4.2	Exemptions	841
12.4.3	Gifts and transfers at less than full value	843

12.4.4	Transfers of beneficial interest other than by way of sale	843
12.4.5	Stock borrowing and lending	844
12.4.6	Unit trusts	846
12.4.7	Alternative bond schemes	848
12.5	Bearer Instruments	853
12.6	Duplicates and Counterparts	853
12.7	Determination of Stamping Value	853
12.8	What Constitutes Consideration	854
12.8.1	Debts waived and assigned	854
12.8.2	Methods of calculation of monetary consideration	855
12.8.3	Consideration less than market value	855
12.8.4	Exchange and partition of property	856
12.8.5	Contingency principle	856
12.9	Adjudication	857
12.9.1	Voluntary disposition inter vivos	858
12.9.2	The importance of adjudication	858
12.9.3	Fee for adjudication	859
12.10	Exemptions and Reliefs	859
12.10.1	Transactions with the Government, leases of consular premises, etc.	859
12.10.2	Gifts in consideration of marriage	860
12.10.3	Gifts to charitable institutions	860
12.10.4	Transfers within a corporate group	860
12.10.5	No change of beneficial interest	864
12.11	Assessment and Payment of Stamp Duty	865
12.12	Recovery of Stamp Duty	866
12.13	Late Stamping	866
12.14	Appeals	867
12.15	Other Issues	868
12.15.1	Substance over form	868
12.15.2	Non-admissibility of unstamped instruments	868
12.15.3	Remission of Stamp Duty by the Chief Executive	869
12.15.4	Failure to disclose facts and circumstances affecting Stamp Duty	869
12.15.5	Copies of instruments	870
12.15.6	Electronic stamping	870

Chapter 13 Special Provisions	873
13.1 General	874
13.2 Life Insurance Corporations	874
13.3 Non-Life Insurance Corporations	880
13.4 Shipping and Aircraft Business — General	884
13.5 Shipowning Businesses	884
13.6 Resident Aircraft-Owning Business	892
13.7 Non-Resident Aircraft-Owning Businesses	900
13.8 Financial Institutions	901
13.9 Clubs and Trade Associations	908
13.10 Partnerships	910
13.11 Alternative Bond Schemes	915
13.12 Corporate Treasury Centres	930
13.12.1 Introduction	930
13.12.2 Concessionary profits tax rate for qualifying Corporate Treasury Centres	931
13.12.3 Interest in respect of an intra-group financing business	935
Index	941