

80F. Miscellaneous provisions for certain offences relating to reporting financial institutions, etc.

- (1) Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence under section 80B, 80C, 80D or 80E, other than an indictable offence, may be brought within 6 years after the date on which the offence was committed.
- (2) The Commissioner may compound an offence under section 80B, 80C, 80D or 80E, and may before judgment stay or compound any proceedings instituted for the offence.”.

11. Schedules 17C, 17D and 17E added

Before Schedule 18—

Add

“Schedule 17C

[ss. 2(1), 50A(1)
& 50J]

Non-reporting Financial Institutions and Excluded Accounts

Part 1

Interpretation

1. Interpretation

In this Schedule—

account holder (帳戶持有人) has the meaning given by section 50A;

annuity contract (年金合約) has the meaning given by section 50A;

cash value insurance contract (現金值保險合約) has the meaning given by section 50A;

central bank (中央銀行) has the meaning given by section 50A;

controlling person (控權人) has the meaning given by section 50A;

depository account (存款帳戶) has the meaning given by section 50A;

entity (實體) has the meaning given by section 50A;

established securities market (具規模證券市場) has the meaning given by section 50A;

financial account (財務帳戶) has the meaning given by section 50A;

financial asset (財務資產) has the meaning given by section 50A;

financial institution (財務機構) has the meaning given by section 50A;

governmental entity (政府實體) has the meaning given by section 50A;

international organization (國際組織) has the meaning given by section 50A;

investment entity (投資實體) has the meaning given by section 50A;

non-reporting financial institution (免申報財務機構) has the meaning given by section 50A;

passive NFE (被動非財務實體) has the meaning given by section 50A;

regularly traded (經常買賣) has the meaning given by section 50A;

reportable person (申報對象) has the meaning given by section 50A.

Part 2

Non-reporting Financial Institutions

1. Governmental entity

A governmental entity, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

2. International organization

An international organization, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

3. Central bank

A central bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

4. Hong Kong Monetary Authority

The Hong Kong Monetary Authority, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

5. Pension fund of governmental entity, international organization, central bank or Hong Kong Monetary Authority

A fund is a non-reporting financial institution if it is established by a governmental entity, international organization, central bank or the Hong Kong Monetary Authority to provide retirement, disability, or death benefits to beneficiaries or participants who—

- (a) are current or former employees (or persons designated by such employees); or
- (b) are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services rendered for the governmental entity, international organization, central bank or the Hong Kong Monetary Authority.

6. Broad participation retirement fund

A fund is a non-reporting financial institution if—

- (a) it is established to provide retirement, disability or death benefits, or any combination of the above, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered; and

(b) it—

- (i) does not have a single beneficiary with a right to more than 5% of the fund's assets;
- (ii) is subject to government regulation and provides information reporting to the tax authorities; and
- (iii) meets any of the following conditions—
 - (A) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, owing to its status as a retirement or pension plan;
 - (B) the fund receives at least 50% of its total contributions (other than transfers of assets from other funds described in this section or section 5 or 7 of this Part or from a retirement and pension account described in section 1 of Part 3 of this Schedule) from the sponsoring employers;
 - (C) distributions or withdrawals from the fund are allowed only on the occurrence of specified events related to retirement, disability or death (except rollover distributions to other retirement funds described in this section or section 5 or 7 of this Part or to a retirement and pension account described in section 1 of Part 3 of this Schedule), or penalties apply to distributions or withdrawals made before such specified events;

(D) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to the earned income of the employee, or may not exceed \$390,000 annually, applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.

7. Narrow participation retirement fund

A fund is a non-reporting financial institution if—

- (a) it is established to provide retirement, disability or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered; and
- (b) it—
 - (i) has less than 50 participants;
 - (ii) is sponsored by an employer that is not an investment entity or a passive NFE; and
 - (iii) meets all of the following conditions—
 - (A) the employee and employer contributions to the fund (other than transfers of assets from a retirement and pension account described in section 1 of Part 3 of this Schedule) are limited by reference to the earned income and compensation of the employee;

- (B) the participants who are not residents for tax purposes for the jurisdiction in which the fund is established are not entitled to more than 20% of the fund's assets;
- (C) the fund is subject to government regulation and provides information reporting to the tax authorities.

8. Qualified credit card issuer

- (1) An entity is a non-reporting financial institution if—
 - (a) the entity is a financial institution and it is so solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the credit card of the customer and the overpayment is not immediately returned to the customer; and
 - (b) by 1 January 2017, the entity has begun to implement policies and procedures—
 - (i) to prevent a customer from making an overpayment in excess of \$390,000; or
 - (ii) to ensure that any customer overpayment in excess of \$390,000 is refunded to the customer within 60 days,
- in each case applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.
- (2) For the purposes of subsection (1)(b)(ii), a customer overpayment does not refer to credit balances to the extent of disputed charges but includes credit balances resulting from merchandise returns.

9. Exempt collective investment vehicle

- (1) An investment entity is a non-reporting financial institution if—
 - (a) the investment entity is regulated as a collective investment vehicle; and
 - (b) all of the interests in the investment entity are held by or through any of the following—
 - (i) individuals who are not reportable persons;
 - (ii) entities that—
 - (A) are not reportable persons; and
 - (B) are passive NFEs with controlling persons who are not reportable persons.
- (2) An investment entity that is regulated as a collective investment vehicle does not fail to qualify under subsection (1) as a non-reporting financial institution solely because the investment entity has issued physical shares in bearer form, if—
 - (a) the investment entity has not issued, and does not issue, any physical shares in bearer form after 1 January 2017;
 - (b) the investment entity retires all such shares on surrender;
 - (c) the investment entity applies the due diligence requirements in Schedule 17D and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and

(d) the investment entity has in place policies and procedures to ensure that such shares are redeemed or immobilized as soon as possible, and in any event prior to 1 January 2018.

10. Trustee-documented trust

A trust is a non-reporting financial institution if it is established to the extent that the trustee of the trust is a reporting financial institution and reports all information required to be reported pursuant to this Ordinance with respect to all reportable accounts of the trust.

11. Grant Schools Provident Fund and Subsidized Schools Provident Fund

- (1) The Grant Schools Provident Fund maintained for teachers under the Grant Schools Provident Fund Rules (Cap. 279 sub. leg. C) is a non-reporting financial institution.
- (2) The Subsidized Schools Provident Fund maintained for teachers under the Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg. D) is a non-reporting financial institution.

12. Mandatory provident fund schemes and occupational retirement schemes

- (1) A mandatory provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (*MPF scheme*) is a non-reporting financial institution.
- (2) An occupational retirement scheme registered under the Occupational Retirement Schemes Ordinance (Cap. 426) (*ORSO scheme*) is a non-reporting financial institution.

- (3) A pooling agreement as defined by section 2(4) of the Occupational Retirement Schemes Ordinance (Cap. 426) that only applies to 2 or more participating ORSO schemes is a non-reporting financial institution.
- (4) An approved pooled investment fund as defined by section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A), in which only either or both of the following schemes are invested, is a non-reporting financial institution—
 - (a) MPF schemes;
 - (b) ORSO schemes.

13. Credit union

A credit union registered under the Credit Unions Ordinance (Cap. 119) is a non-reporting financial institution.

Part 3

Excluded Accounts

1. Retirement and pension account

- (1) A retirement or pension account is an excluded account if all of the following conditions are met—
 - (a) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

- (b) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder, or are taxed at a reduced rate, or taxation of the investment income from the account is deferred or made at a reduced rate);
- (c) information reporting to the tax authorities is required in respect of the account;
- (d) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such events;
- (e) either—
 - (i) the annual contributions are limited to \$390,000 or less; or
 - (ii) there is a maximum lifetime contribution limit to the account of \$7,800,000 or less, in each case applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.

(2) A financial account that does not meet the condition under subsection (1)(e) does not fail to meet the condition solely because the financial account may receive assets or funds transferred from one or more financial accounts as described in this section and section 2 of this Part or from one or more retirement or pension funds as described in sections 5, 6 and 7 of Part 2 of this Schedule.

2. Non-retirement tax-favoured accounts

- (1) An account is an excluded account if all of the following conditions are met—
 - (a) the account is, for purposes other than for retirement, subject to regulation as an investment vehicle that is regularly traded on an established securities market, or the account is, for purposes other than for retirement, subject to regulation as a savings vehicle;
 - (b) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder, or are taxed at a reduced rate, or taxation of the investment income from the account is deferred or made at a reduced rate);
 - (c) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (including the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met;
 - (d) the annual contributions are limited to \$390,000 or less, applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.
- (2) A financial account that does not meet the condition under subsection (1)(d) does not fail to meet the condition solely because the financial account may receive assets or funds transferred from one or more financial accounts as described in this section and section 1 of this Part or from one or more retirement

or pension funds as described in sections 5, 6 and 7 of Part 2 of this Schedule.

3. Term life insurance contracts

A life insurance contract with a coverage period that will end before the insured individual attains age 90 is an excluded account if all of the following conditions are met—

- (a) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
- (b) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
- (c) the amount (other than a death benefit) payable on cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract;
- (d) the contract is not held by a transferee for value.

4. Estate account

An account held solely by an estate is an excluded account if its documentation includes a copy of the deceased's will or death certificate.

5. Escrow account

An account established in connection with any of the following is an excluded account—

- (a) a court order or judgment;
- (b) a sale, exchange, or lease of real or personal property, provided that the account meets the following conditions—
 - (i) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
 - (ii) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
 - (iii) the assets of the account, including the income earned on the assets, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor or lessee (including satisfying the obligation of the purchaser, seller, lessor or lessee) when the property is sold, exchanged, or surrendered, or the lease terminates;

- (iv) the account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
- (v) the account is not associated with an account described in section 6 of this Part;
- (c) an obligation of a financial institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
- (d) an obligation of a financial institution solely to facilitate the payment of taxes at a later time.

6. Depository account owing to not-returned overpayments

- (1) A depository account is an excluded account if both of the following conditions are met—
 - (a) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
 - (b) beginning on or before 1 January 2017, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of \$390,000, or to ensure that any customer overpayment in excess of \$390,000 is refunded to the customer within 60 days, in each case applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.

(2) For the purpose of subsection (1)(b), a customer overpayment does not refer to credit balances to the extent of disputed charges but includes credit balances resulting from merchandise returns.

7. **Dormant account**

An account (other than an annuity contract) with a balance that does not exceed \$7,800 is an excluded account if—

- (a) the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with a reporting financial institution in the previous 3 years;
- (b) the account holder has not communicated with the reporting financial institution regarding the account or any other account held by the account holder with the reporting financial institution in the previous 6 years;
- (c) the account is treated as a dormant account in accordance with the reporting financial institution's normal operating procedures; or
- (d) (for the account being a cash value insurance contract) the reporting financial institution has not communicated with the account holder regarding the account or any other account held by the account holder with the reporting financial institution in the previous 6 years.