

並不屬第 61A 條內條款所列，則本條不適用於根據該宗交易而招致的開支；或如根據在 1990 年 11 月 15 日前作出的某項交易而在 1990 年 11 月 15 日或其後招致任何開支，但並無就該項交易提出上述申請，而局長認為該項交易與他按 1990 年 11 月 14 日的當時情況會表示意見認為並不屬第 61A 條內條款所列的交易屬同一類別的，則本條亦不適用於根據該宗交易而招致的開支。（由 1992 年第 15 號第 4 條增補）

（由 1986 年第 7 號第 7 條增補。編輯修訂——2012 年第 1 號編輯修訂紀錄）

40. 釋義

* (1) 在本部中——

工業建築物或構築物 (industrial building or structure) 指作以下用途的任何建築物或構築物或任何建築物或構築物的部分——

- (a) 供在工場、工廠或其他相類似的處所內經營的某行業使用；或
- (b) 供運輸、隧道、船塢、水務、氣體或電力企業使用，或供公共電話服務或公共電報服務使用；或（由 1969 年第 39 號第 5 條修訂）
- (c) 供包括製造貨品或物料或將貨品或物料加工的行業使用；或

Commissioner before or after that date expressed the opinion that the transaction would not fall within the terms of section 61A or, where no such application was made in respect of a transaction entered into before 15 November 1990 under which expenditure was incurred on or after 15 November 1990, the transaction under which the expenditure was made is, in the Commissioner's opinion, of the same type as any for which, in the circumstances prevailing as at 14 November 1990, he would have expressed the opinion that the transaction would not fall within the terms of section 61A. (*Added 15 of 1992 s. 4*)

(*Added 7 of 1986 s. 7. Amended E.R. 1 of 2012*)

40. Interpretation

* (1) In this Part—

basis period (評稅基期) has the meaning assigned to it by section 2 except that—

- (a) where 2 basis periods overlap the period common to both shall be deemed to fall in the first basis period only; and
- (b) where there is an interval between the end of the basis period for one year of assessment and the beginning of the basis period for the next year of assessment the interval shall be deemed to fall in the second basis period but where, in respect of salaries tax, the interval is the year ending on 31 March 1973, that interval shall not be deemed to fall in the second basis period; (*Replaced 49 of 1956 s. 28. Amended 8 of 1973 s. 8*)

capital expenditure (資本開支)—

- (a) includes interest paid and commitment fees incurred in respect of a loan made for the sole purpose of financing the provision of an industrial building or

* 2004 年第 9 號對第 40(1) 條作出的修訂就自 2004 年 4 月 1 日開始的課稅年度及以後的各課稅年度而適用。（請參閱 2004 年第 9 號第 1(2) 條）

* The amendment made by 9 of 2004 to section 40(1) applies in relation to the year of assessment commencing on 1 April 2004 and to all subsequent years of assessment. (Please see 9 of 2004 s. 1(2))

- (d) 供從事貯存以下貨品或物料的行業使用——
- (i) 用以製造其他貨品或物料的任何貨品或物料；或
 - (ii) 在某行業的經營過程中須予加工的貨品或物料；或
 - (iii) 剛運抵香港的貨品或物料；或（由 1986 年第 7 號第 12 條修訂）
- (e) 供農業業務使用；
- (f) 供與任何行業、專業或業務有關的研究和開發使用，（由 1998 年第 32 號第 25 條修訂；由 2004 年第 9 號第 5 條修訂）

而該詞尤其包括經營本定義 (a) 至 (e) 段所指明行業、企業或業務的任何人所使用的任何建築物或構築物或任何建築物或構築物的部分，而該建築物或構築物或任何建築物或構築物的部分是由該人為其行業、企業或業務的工人的福利而提供，並為該目的而在使用中者：

但——

- (i) 如整座建築物或構築物中部分是工業建築物或構築物，而部分並非工業建築物或構築物，而建造該非工業建築物或構築物部分所招致的資本開支，佔建造整座建築物或構築物所招致的總資本開支不超出十分之一，則該整座建築物或構築物及其每一部分均須被視為是工業建築物或構築物；及

structure or commercial building or structure or machinery or plant; but

- (b) does not include expenditure which is reimbursed by way of or attributable to any grant, subsidy or similar financial assistance and in relation to the person incurring the expenditure does not include any expenditure which is allowed to be deducted in ascertaining for the purpose of Part 4 the profits of a trade, profession or business carried on by that person; (*Replaced 30 of 1981 s. 7. Amended 32 of 1998 s. 25*)

capital expenditure on the provision of machinery or plant (在提供機械或工業裝置方面的資本開支) includes capital expenditure on alterations to an existing building incidental to the installation of that machinery or plant for the purposes of the trade, profession or business;

class of machinery or plant (該類機械或工業裝置、類別的機械或工業裝置) means the items of machinery or plant for which the same rate of depreciation is prescribed by the Board of Inland Revenue; (*Added 63 of 1980 s. 4*)

commercial building or structure (商業建築物或構築物) means any building or structure or part of any building or structure used by the person entitled to the relevant interest for the purposes of his trade, profession or business other than an industrial building or structure; (*Replaced 35 of 1965 s. 22. Amended 26 of 1969 s. 22*)

industrial building or structure (工業建築物或構築物) means any building or structure or part of any building or structure used—

- (a) for the purposes of a trade carried on in a mill, factory or other similar premises; or
- (b) for the purposes of a transport, tunnel, dock, water, gas or electricity undertaking or a public telephonic or public telegraphic service; or (*Amended 39 of 1969 s. 5*)

- (ii) 除本但書第(i)段另有規定外，即使本定義前文另有規定，**工業建築物或構築物** (industrial building or structure) 一詞不得包括用作住宅（供體力勞動者居住的住宅除外）、零售店、陳列室、酒店或辦事處的任何建築物或構築物或任何建築物或構築物的部分；（由 1965 年第 35 號第 22 條代替）

在提供機械或工業裝置方面的資本開支 (capital expenditure on the provision of machinery or plant) 包括為有關行業、專業或業務而安裝機械或工業裝置時附帶引起的對現有建築物進行改裝而招致的資本開支；

有關權益 (relevant interest) 在與因建造任何建築物或構築物而招致的任何開支有關時，指招致該項開支的人在其招致該項開支時有權享有的該建築物或構築物中的權益；（由 1956 年第 49 號第 28 條修訂）

商業建築物或構築物 (commercial building or structure) 指有權享有有關權益的人為其行業、專業或業務而使用的任何建築物或構築物或任何建築物或構築物的部分，但工業建築物或構築物除外；（由 1965 年第 35 號第 22 條代替。由 1969 年第 26 號第 22 條修訂）

評稅基期 (basis period) 具有第 2 條給予該詞的涵義，但以下除外——

- (a) 如有兩個評稅基期重疊，則重疊期間須當作只歸入首個評稅基期內；及

- (c) for the purposes of a trade which consists of the manufacture of goods or materials or the subjection of goods or materials to any process; or
- (d) for the purposes of a trade which consists in the storage—
- (i) of goods or materials which are to be used in the manufacture of other goods or materials; or
- (ii) of goods or materials which are to be subjected in the course of a trade to any process; or
- (iii) of goods or materials on their arrival into Hong Kong; or (*Amended 7 of 1986 s. 12*)
- (e) for the purposes of the business of farming;
- (f) for the purposes of research and development related to any trade, profession or business, (*Amended 32 of 1998 s. 25; 9 of 2004 s. 5*)

and, in particular, the said expression includes any building or structure or part of any building or structure used by a person carrying on a trade, undertaking or business specified in paragraphs (a) to (e) of this definition and provided by him for the welfare of workers employed in his trade, undertaking or business and in use for that purpose:

Provided that—

- (i) where part of the whole of a building or structure is, and part thereof is not, an industrial building or structure, and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-tenth of the total capital expenditure which has been incurred on the construction of the whole building or structure, the whole building or structure and every part thereof shall be treated as an industrial building or structure; and
- (ii) subject to the provisions of paragraph (i) of this proviso but notwithstanding anything else contained in

- (b) 如在一個課稅年度的評稅基期結束時與下一課稅年度的評稅基期開始時之間有一段期間相隔，則該段相隔期間須當作是歸入第二個評稅基期內，但就薪俸稅而言，如該段相隔期間是截至 1973 年 3 月 31 日止的一年，則該段相隔期間不得當作是歸入第二個評稅基期內；（由 1956 年第 49 號第 28 條代替。由 1973 年第 8 號第 8 條修訂）

* **開支剩餘額** (residue of expenditure)——

- (a) 就任何商業建築物或構築物而言——（由 2004 年第 12 號第 13 條修訂）

- (i) 除第 (ii) 節另有規定外，指建造該建築物或構築物而招致的資本開支額，扣減——

- (A) 已根據第 34(1) 條給予的初期免稅額；
(B) 已根據第 33A 或 34(2) 條給予的每年免稅額；
(C) 已根據第 35 條（或在緊接《2004 年稅務（修訂）條例》(2004 年第 12 號) 生效† 前有效的第 33B 或 35 條）給予的結餘免稅額，

再加上已根據第 35 條（或在緊接《2004 年稅務（修訂）條例》(2004 年第 12 號) 生效† 前有效的第 33B 或 35 條）作出的結餘課稅；或

* 2004 年第 12 號對本定義作出的修訂就 2004/05 課稅年度及其後的所有課稅年度而適用。（請參閱 2004 年第 12 號第 2(3) 條）

† 生效日期：2004 年 6 月 25 日。

the foregoing provisions of this definition, the expression **industrial building or structure** (工業建築物或構築物) shall not include any building or structure or part of any building or structure used as a dwelling house (other than as a dwelling house for the housing of manual workers), retail shop, showroom, hotel or office; (*Replaced 35 of 1965 s. 22*)

relevant interest (有關權益) means, in relation to any expenditure incurred on the construction of a building or structure the interest in that building or structure to which the person who incurred the expenditure was entitled when he incurred it; (*Amended 49 of 1956 s. 28*)

* **residue of expenditure** (開支剩餘額)——

- (a) in relation to a commercial building or structure——(*Amended 12 of 2004 s. 13*)

- (i) subject to subparagraph (ii), means the amount of the capital expenditure incurred on the construction of the building or structure reduced by——

- (A) the amount of any initial allowance made under section 34(1);
(B) the amount of any annual allowance made under section 33A or 34(2);
(C) the amount of any balancing allowance made under section 35, or under section 33B or 35 that was in force immediately before the commencement† of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004),

and increased by the amount of any balancing charge made under section 35, or under section

* The amendments made by 12 of 2004 to this definition apply in relation to the year of assessment 2004/05 and to all subsequent years of assessment. (Please see 12 of 2004 s. 2(3))

† Commencement date: 25 June 2004.