

BY FAX AND BY POST
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Our Ref.: C/TXM, M25393

4 February 2004

Dr. Hon Eric Li Ka-cheung,
Chairman of the Bills Committee,
Inland Revenue (Amendment) Bill 2000,
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong.

Dear Dr. Li,

Inland Revenue (Amendment) Bill 2000

With reference to the letter of 30 December 2003 from the Clerk to the Bills Committee, attaching the summary of views submitted to the Bills Committee and the Administration's response, the Society's comments on the Administration's response are as set out below.

(i) *Clause 5 of the Bill (section 15, IRO)*

We continue to have concerns in relation to clause 5 of the Bill, as explained in our letter of 8 December 2003 to the Bills Committee, and other previous submissions, and we do not consider that these to have been resolved by the Administration's response.

(ii) *Clause 6 of the Bill (section 16, IRO)*

(a) New section 16(5A) (grandfathering provisions)

In our submission, we suggested that the "grandfathering" provisions in the proposed section 16(5A) be extended in a conceptually similar way to section 22B(4) of the Inland Revenue Ordinance (IRO). In response, the Administration has indicated that the proposed grandfathering provisions are targeted at leasing and asset-financing transactions that have been completed, are not abusive, and have received advanced clearance or advanced rulings from the Commissioner of Inland Revenue ("CIR").

Notwithstanding the Administration's explanation of the difference in underlying objectives between clause 6 of the Bill and the provisions of section 22B of the IRO, the Society believes that the grandfathering provisions should be extended to any genuine financing transactions that have not been the subject of an advanced ruling application, if the CIR is of the opinion that the transaction would not have been regarded as falling within the terms of section 61A if an advanced ruling or clearance had been sought. The discretion is considered necessary to enable the CIR to allow for "grandfathering" at the request of taxpayers on a case-by-case basis. Otherwise, taxpayers who, prior to the passage of the legislation, have in place genuine financing arrangements that were subsequently affected by the new legislation (even though these may be similar in nature to arrangements where a positive ruling or clearance has been given) but who had not sought an advanced ruling or clearance at the time of raising the funding, would be unfairly prejudiced.

Furthermore, in cases where taxpayers choose to pay off or restructure the loan, the costs involved could be significant.

(b) New section 16(2)(f)

The Society notes that a list of stock exchanges recognised by the CIR in relation to “debentures”, as defined under section 16(3) of the IRO, has been published on the IRD website. Nevertheless, the proposed new section 16(2)(f) added by the Bill refers only to “any other stock exchange recognised by the Commissioner for the purpose of this subparagraph”, and, therefore, we would suggest that the opportunity be taken to provide greater certainty by making specific reference to the location where a list will be published (e.g. on the IRD website).

Yours sincerely,

PETER TISMAN
TECHNICAL DIRECTOR
(BUSINESS MEMBERS & SPECIALIST PRACTICES)

PMT/JT/ay