

財經事務及庫務局
(庫務科)

香港下亞厘畢道
中區政府合署



CB(1)500/03-04 (02)
FINANCIAL SERVICES AND THE
TREASURY BUREAU
(The Treasury Branch)
Central Government Offices,
Lower Albert Road,
Hong Kong

傳真號碼 Fax No. : 2868 5279
電話號碼 Tel. No. : 2810 2229
本函檔號 Our Ref. : FIN CR 1/2306/00
來函檔號 Your Ref. : LS/B/4/00-01

8 December 2003

Ms Bernice WONG
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2877 5029)

Dear Ms Wong,

Inland Revenue (Amendment) Bill 2000

Thank you for your letter of 22 November 2003. The Administration's response is set out in the ensuing paragraphs.

Clause 2 - Application

The Administration agrees with the ALA that providing saving provisions in respect of deduction of home loan interest and deduction of expenses of self-education under Clause 8 and Clause 4 respectively is a feasible option. We are prepared to move a CSA in this respect.

Clause 5 (section 15) - Certain amounts deemed trading receipts

It is not necessary to amend the reference to "Inland Revenue (Amendment) Bill 2000 (of 2000)" in proposed s.15(6) by way of CSAs. As advised by the Law Draftsman, the year "2000" will be changed to the year in which the Bill becomes law when the Ordinance is published in the Gazette.

Clause 6 (section 16) - Ascertainment of chargeable profits

(1) Method for calculating "the most reasonable and appropriate" amount of deduction to be reduced under the proposed section 16(2A)

The proposed approach of determining the amount of deduction to be reduced where section 16(2A) applies follows that used in Rule 2A of the Inland Revenue Rules, which provides for the apportionment of expenses on a basis that is "reasonable and appropriate in the circumstances of the case".

IRD will adopt the general principle that where the loan borrowed is fully secured by a deposit or loan that produces tax-free interest income, the full amount of interest will be disallowed. If composite securities including tax-free deposit or loan are provided, the interest deduction will be reduced by the amount of tax-free interest earned from the deposit or loan used as security for the money borrowed in question.

(2) Control of a person other than a corporation proposed in section 16(3A)(b)

The definitions under section 58B(8) of the Bankruptcy Ordinance (Cap. 6), section 9 of the Insurance Companies Ordinance (Cap. 41), section 2 of the Travel Agents Ordinance (Cap. 218) and section 2 of Banking Ordinance (Cap. 155), to which the Administration has made reference in drafting the proposed definition under section 16(3A)(b), are tests of whether a person has control over a company. In these contexts, a person to whom the directors of a company is accustomed to act in accordance with this person's directions or instructions would be regarded as having control over the directors and hence having control over the company. Therefore, the control relationship in these contexts is one between a person and another person (i.e. the directors), which is similar to the present case.

The policy intent of the proposed test is to cover a person being controlled by those persons who are influenced by another in regard to their investment or business affairs. Those who are influenced by another person only in relation to other affairs, such as private affairs, will not be taken as being controlled by that other person.

(3) Section 16(5A) – grandfathering provision

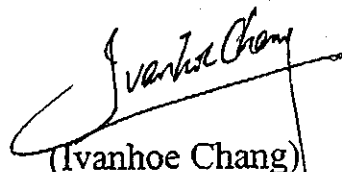
- (a) Only advance clearance applications made before 1 April 1998 would satisfy the grandfathering provision under section 16(5A)(b). This is because following the enactment of the Inland Revenue (Amendment) (No. 2) Ordinance (32 of 1998) which applies to all years of assessments commencing on or after 1 April 1998, all applications for advance clearance have to be made in accordance with section 88A introduced by that Amendment Ordinance in the form of advance rulings. Hence, there is no more advance clearance application received after 1 April 1998.
- (b) There is no application for advance clearance submitted to the Commissioner of Inland Revenue on which the Commissioner has not yet expressed her opinion.

- (c) The receiving and processing of applications for advance ruling is a continuing work and the advance rulings requested may be of different nature, not confined to interest deduction claims. Up to the end of November 2003, there were 20 applications on which the Commissioner has not expressed an opinion. Out of them, only 4 cases involve interest deduction claim and the application of section 61A.

Although section 88A and Schedule 10 of the Inland Revenue Ordinance do not prescribe any limit for the Commissioner to make a ruling, the IRD has pledged in a Departmental Interpretation and Practice Note (paragraph 36 of DIPN No. 31 on Advance Rulings) to make every effort to deal with a request for ruling as expeditiously as possible. It endeavours to respond within six weeks of the date of receipt of a request provided all relevant information has been furnished with the request and further consultation with the applicant is unnecessary.

- (d) In order to satisfy section 16(5A)(b) or (c), the advance clearance or advance ruling has to be given before commencement of the Amendment Ordinance. This is necessary because –
- (i) all advance clearance applications have already been cleared and starting from 1 April 1998, all applications for advance clearance are made in the form of advance rulings; and
 - (ii) after the commencement of the Amendment Ordinance the Commissioner can only give her advance ruling relating to the interest deduction claims in accordance with the new law.

Yours sincerely,



(Ivanhoe Chang)

for Secretary for Financial Services and the Treasury

- cc. Clerk to Bills Committee (Attn.: Mr Matthew LOO) 21210420
Commissioner of Inland Revenue (Attn.: Mr Thomas LI) 28771082
Law Draftsman (Attn.: Mr Michael LAM) 28691302
Law Officer (Civil Law) (Attn.: Mr M Y CHEUNG) 2536 8244