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The logo for the Association of Chartered Certified Accountants (ACCA), featuring the letters 'ACCA' in a stylized, outlined font.

one hundred

Clerk to Bills Committee  
(Att: Ms. Loretta CHAN)  
Legislative Council Secretariat  
3<sup>rd</sup> Floor Citibank Tower  
3 Gardem Road  
Central, Hong Kong

1 December 2003

Dear Sir,

Inland Revenue (Amendment) Bill 2000

On behalf of ACCA Hong Kong, we would like to make the following submissions in response to the Bill and the draft CSAs.

Section 15(1)(ba) Royalty Income

As noted in the Legco Paper issued on 2 October 2003, the Administration's position towards the proposed amendments to Sec 15(1)(ba) is to essentially: (1) clarify the words "for use or right to use in Hong Kong" to cover "use in the economic sense"; and (2) apply the "deductibility test" to demonstrate a substantial link to economic use in Hong Kong. We do not subscribe to the "economic use" interpretation as, firstly, the Emerson case rejected the interpretation, and, secondly, it does not reconcile with Sec 15(1)(a), where "use" apparently still follows the Emerson decision and is not the subject of the CSA.

ACCA Hong Kong 香港分會

Room 1901 19/F World Wide House 19 Des Voeux Road Central

中環 德輔道 19 號 環球大廈 19 樓 1901 室

tel 電話: +852 2524 4988 fax 傳真: +852 2868 4909 <http://hongkong.accaglobal.com>

The Association of Chartered Certified Accountants 特許公認會計師公會

Given that the actual taxpayers in respect of royalty income under Sec 15 (1)(ba) are the non-resident recipients, we do not subscribe to the application of the “deductibility test” as the test hinges on the economic activities of other parties, instead of the taxpayers themselves or the location of use (in the conventional sense) of the taxpayers’ assets.

We therefore wish to reiterate our concern that the provision of Sec 15(1)(ba) deviates from our fundamental territorial principle of taxation. We are also of the view that Sec 15(1)(ba) is inconsistent with other provisions in this section.

The government has articulated its policy to support creative and high-tech industries. The proposal of increasing the rate of deeming assessable profits for royalties from 10% to 30% has already been a disincentive for creative and high-tech industries. The provision of Sec 15(1)(ba) further harms Hong Kong’s competitiveness especially when our neighbouring countries are granting tax incentives to these industries.

### **Section 16 (2A)(b) Interest Deduction**

We note that Sec 16(2A)(b) provides for interest deduction be calculated on such basis as is most reasonable and appropriate in circumstances of the case. We appreciate that it would be difficult to provide for details of the possible calculation bases in the tax legislation. As tax is a cost of doing business, it will always be useful to know the certainty of one’s tax exposure. We therefore suggest that a departmental guideline and practice note be issued as soon as possible showing examples of calculations, not only for the benefits of the taxpayers but for ensuring a uniform practice is adopted internally within the Inland Revenue Department.

We hope that our concerns will be taken into consideration. Should you have any issues which need clarification, please feel free to contact myself, K.C. Law or Frankie Ho at 2524 4988.



Yours sincerely,

A handwritten signature in black ink, appearing to read 'Leo Lee'.

Leo Lee  
President