



香港證券經紀業協會有限公司

HONG KONG STOCKBROKERS ASSOCIATION LIMITED

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Submission To

LegCo Bills Committee

On

Profits Tax Exemption for Offshore Funds

Hong Kong Stockbrokers Association

October 2005



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Introduction

1. The Hong Kong Stockbrokers Association had submitted responses to the previous 2 consultations on Profits Exemption for Offshore Funds. Our submission today is supplemental to our previous responses and is made from the standpoint of participants in the securities industry.
2. For the avoidance of doubt, we should state at the outset that the HK Stockbrokers Association fully supports the Bill and the underlying concept of providing exemption to profits tax for offshore funds.

HKG's status as a financial centre

3. In order for HKG to maintain our status as the capital raising centre for the PRC, it is necessary to accumulate a body of expertise and experience in financial services including investment banking, stockbroking, fund management, and the ancillary legal and accounting services. IPO's are prepared for listing by investment banks, lawyers and accountant, sold to the public by stockbrokers, and taken up by investors and fund managers.
4. The investment community's reaction to uncertainty is to sit on the sidelines. In the case of uncertainty in tax matters, the natural reaction is to seek out a friendly regime.
5. The objective of the the Bill is to provide certainty over tax treatment of offshore funds. It will enhance our ability to attract and retain offshore funds operations in HKG, bring downstream benefits to the economy, and add to the accumulation of expertise as a financial centre.

Some questions as to the detailed implementation

6. As laymen on tax matters, we have questions as to whether the Bill as drafted will achieve its' stated objectives. Specifically, it would appear that the "exemption" provisions may be too narrow in defining qualified transactions such that over-the-counter transactions and investments in private pre-ipo equity are not exempted.



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7. We also believe that the "deeming" provisions which aim to protect the revenue from "round tripping", may in fact be too broad in definition to provide the level of certainty which is the objective of the Bill. The net result may be that instead of providing certainty, the Bill as it stands, may have an unintended consequence of widening the tax net.

Other considerations

8. In our response to the earlier consultations, we suggested that a case may be made to exempt all investors from profits tax on securities traded on the HKEx on the basis that the present stamp duty on buy and sell transactions is already a tax on the turnover. From that standpoint, it is an efficient tax in that it is collected on behalf of the IRD by stockbrokers, and provides absolute certainty.
9. We also believe that the Bill may discourage the formation of an indigenous fund management industry by tilting the playing field in favour of large international funds, and may cause the exodus of local fund management houses overseas.
10. For example, a local investor putting the same amount of money into an international fund (where he is under the 30% threshold) and a locally managed fund (where he is over the threshold) which traded exactly the same shares and made the same profits, would be faced with very different tax consequences even though the funds may, in fact, be managed by the same local fund manager. This obviously, is not equitable.

Conclusion

11. The Bill, with appropriate amendments, will achieve the objective of giving certainty of tax treatment for offshore funds. However, we would encourage the administration to consider whether it is appropriate to extend the exemption to all funds in order to encourage the development of an indigenous fund management industry, and strengthen our position as a financial centre.