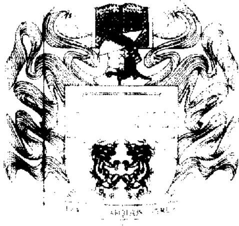

香港稅務學會

**THE TAXATION INSTITUTE OF HONG KONG**

*(Incorporated in Hong Kong as a company limited by guarantee)*

31 December 2005

Ms Connie Szeto
Clerk to Bills Committee
Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005
Legislative Council Building
8 Jackson Road Central
Hong Kong

Dear Ms Szeto,

**Proposed Committee Stage Amendments ("CSAs") to the Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005**

Thank you for your letter dated 6 December 2005 inviting us to comment on the technical aspects of the Administration's proposed CSAs to the Bill.

Firstly, we welcome the Administration's active responses to some of the concerns expressed by various professional bodies and members of the fund industry.

As to the technical aspects of the proposed CSAs, we consider that they, subject to one exception, serve the legislative purposes of exempting non-resident funds from securities transactions normally carried out by them in Hong Kong.

The exception is in respect of the definition of "securities" as excluding "shares or debentures of...a private company within the meaning of section 29 of the Companies Ordinance (Cap 32)".

The rationale for such a definition is, as explained by the Administration, that "the inclusion of such shares or debentures would unintentionally widen the scope of exemption. It is envisaged that a person in effect can trade in any types of assets through transfer of shares in private companies purposely set up for holding such assets" [LC Paper No. CB(1)363/05-06(01)].

We however have reservation on this. Some non-residents are private equity funds, providing start-up capital to certain up-coming and promising business ventures, and subsequently realizing their capital investments when the ventures concerned are mature enough. The business ventures that private equity funds invest in are invariably private companies. We believe that these private equity funds' activities are important to Hong Kong as an international financial centre and, therefore, the scope of the proposed exemption should also cover these activities. As such, we submit that the definition of "securities" in this context should not categorically exclude all shares or debentures of a private company within the meaning of section 29 of the Companies Ordinance.

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Instead, if it is the Administration's concern that shareholdings in certain types of private companies are susceptible to abuse (such as shareholdings in a private property-holding company), then those types of private companies could be specifically carved out and excluded from the definition of "securities".

In any case we also consider that the current definition of "securities" is not an effective means of addressing the Administration's concern that special-purpose private companies could be used by non-resident funds to effectively trade in any types of assets in Hong Kong. This is because under the current definition of "securities", <u>only those shares in private companies that are incorporated in Hong Kong under the Companies Ordinance would be excluded</u>. That means non-resident funds could easily circumvent the proposed legislation by using a special-purpose private company incorporated in a foreign jurisdiction, e.g. a BVI incorporated company to trade in any types of assets in Hong Kong through transfer of shares in such foreign incorporated private company.

In light of the foregoing, we propose that the definition of "securities" should only exclude certain limited types of private companies that are susceptible to abuse (probably only those private companies predominately holding real estate properties in Hong Kong), but regardless of their place of incorporation or establishment.

Yours sincerely,

Patrick Kwong
Vice-Chairman
Taxation Review Committee