



**The British
Chamber of Commerce
in Hong Kong**

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(English version only)

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21st December 2005

Ms Connie Szeto
Clerk to the Bills Committee
Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Ms Szeto,

Bills Committee on Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005

Thank you for your detailed letter of 6 December 2005 inviting the Chamber to comment on the Administration's proposed Committee Stage Amendments ("CSAs") to the above Bill made in response to the deputations made to the Bills Committee meeting of 25 October 2005.

The Chamber, would like to express its thanks to the Bills Committee for providing us with the opportunity to discuss the original Bill with our members. We would also like to thank the Administration for all their considerable efforts in making time to meet with us.

We believe that the Administration has addressed the principal concerns in relation to the extension of the scope of the exemption, and in general we recommend the Bill, as amended by the Administration's proposed CSAs, to our members; but subject to two concerns which we detail below.

We note that the proposed retrospective application of the exemption provisions; and have some concerns about this aspect of the Bill. Whilst we understand that the Hong Kong Investment Funds Association ("HKIFA") and the larger Funds in Hong Kong are pushing for the retrospective application of the exemption legislation, we are still uncertain whether Legco have the authority to pass such legislation, even though it is meant to be a relief or exemption, as it would have effect from a time prior to the Handover.

Whilst we believe the larger Funds will be eligible for the proposed exemptions under the Bill, we are still particularly concerned that the Inland Revenue Department ("IRD") may issue back Profits Tax Assessments on the boutique funds and hedge funds which did not comply with the new laws, and where the IRD may have detailed information on hand about those funds. If the IRD raise substantial numbers of such back Profits Tax assessments on such Funds, damage will still be done to the perception of the tax system here being fair and certain; especially in the eyes of offshore investors. Especially as these funds, have probably not accrued for such Profits Tax charges in their accounts, over the years, and could not have known that the laws would be drafted and implemented this way nearly ten years later on. So, we think if there is action to raise assessments based on this new legislation, the IRD should proceed with discretion. The IRD had shown such discretion so far in not assessing the larger Funds since 1996.

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We are also concerned that the deeming provisions, for the taxation of deemed income remain in the Bill, in terms of requiring Hong Kong based investors to in effect self assess themselves regarding investments in such Funds. We, along with the Hong Kong General Chamber of Commerce, would still prefer to see the Bill enacted without any such deeming provisions. They add new complexity to the tax system in Hong Kong and will probably not give rise to much tax revenue as such Hong Kong investors will be discouraged from making such investments by their new tax position. We understand that this is a “policy” decision that Hong Kong investors should pay and the situation is unlikely to change; but we cannot really understand why the Administration is so adamant about this.

Finally I would like to wish you and all your team a merry Christmas and a happy New Year

Yours sincerely

Brigadier Christopher Hammerbeck CB
Executive Director

Cc: Christopher Page – Chairman
Deborah Annells – Chair Financial Services Interest Group

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