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Secretary for Financial Services and the Treasury
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BY FAX

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Dear Erica,

Revenue (Abolition of Estate Duty) Bill 2005

We are scrutinizing the legal and drafting aspects of the above Bill for and on behalf of members and would be grateful if you could clarify the following:

General Observations

1. Estate duty has an important role to play in providing effective checks against tax evasion. Disclosure in an estate duty affidavit of substantial assets inconsistent with tax returns during life frequently results in an investigation into possible liability to taxes under the **Inland Revenue Ordinance (IRO)**. With the introduction of the Bill, does the Administration have other policies in place to assist the Inland Revenue Department in uncovering cases of evading tax?

2. **Section 24 of the Estate Duty Ordinance (EDO)** provides for penalties for intermeddling. Please clarify whether there are any offences (and penalties) for intermeddling the estate of persons who die on or after the commencement of the Bill, if enacted. If there is no longer any estate duty revenue to protect nor any offence of intermeddling, what is the legal basis for transferring the powers of the Commissioner of Inland Revenue to the Secretary for Home Affairs?

Clause 2 Application

3. **Section 2 of EDO** is amended such that it applies to persons who die on or after 1 January 1916 and before the commencement of the Bill if enacted. The

legal effect is that estate duty is not chargeable if a person dies on or after the commencement. According to paragraph 2 of the Explanatory Memorandum and paragraph 15(a) of the LegCo Brief, the intention is that the estate of a person who dies after 00:00 hours, Hong Kong time, on the date on which the Bill is published in the Gazette as an ordinance would not be chargeable to estate duty. Please clarify whether estate duty is payable if a person dies at exactly 00:00 hours, Hong Kong time, that day.

Clause 6 Liability of executor of deceased taxpayer

4. In the **new section 54(c) of the IRO**, it is proposed that no assessment or additional assessment (other than an assessment to additional tax under section 82A) in respect of a period prior to the death of a person who dies on or after the commencement would be made after the expiry of 3 years immediately after the year of assessment in which his death occurs. Please explain the justifications for imposing the 3 years' period and how it is calculated. It appears that a fixed period is substituted for an expiry date. Under the existing legislation, the expiry date is calculated on the basis of the date of death or the date of filing an affidavit under EDO, whichever is the later. Since there is no time limit imposed for making an application for grant of probate or letters of administration, kindly clarify what would happen if an application for grant is not made within the said 3-year period.

Clauses 7 and 8 Related amendments to Probate and Administration Ordinance

5. What information is it intended for the Registrar to provide to the Commissioner of Inland Revenue under the proposed **sections 24A and 49AA of the Probate and Administration Ordinance (PAO)**?

Clause 9 Part VA added

6. In the **new section 60B(1)(b) of PAO**, why is the release of money for meeting the funeral expenses or maintenance of dependents restricted to a bank account maintained in the sole name of the deceased person? Is it necessary to ascertain whether it is a trust account? Is this requirement consistent with the exercise of existing power of the Commissioner of Inland Revenue under section 24(4) of EDO?

7. What are the criteria that the Secretary would consider when specifying the amount of money in the certificate under the **new section 60B(3)**? Would he take into account section 13 of EDO which makes an allowance for reasonable funeral expenses incurred in Hong Kong not exceeding \$50,000 in the case of persons dying on or after the commencement of the Estate Duty (Amendment) Ordinance 1994?

8. In the **new section 60C(3)(b)**, what is the purpose of ascertaining whether any document or article specified in the certificate for inspection is contained

in the safe deposit box? Under section 13(8) of EDO, the Commissioner may authorize any person to inspect any property and to report to him the value thereof for the purpose of that Ordinance.

9. Is it the current practice for a bank to take a copy of the will or instrument before allowing a person to take possession of it as proposed in the **new section 60C(4)**?

10. Under the **new sections 60B(1)(a) and 60C(1)(a)**, the application to the Secretary has to be made in a manner specified by him. Under the **new section 60D**, the certificate for release of money or the certificate for inspection shall be in a form specified by the Secretary. How would the Secretary specify the manner of application and the form of certificate?

11. What kind of conditions would be attached to the certificate under the **new section 60E(1)**?

12. The **new section 60G** provides that Part VA shall cease to have effect on a date appointed by the Secretary by notice published in the Gazette. How long is the intended validity period and is the notice subsidiary legislation?

Clause 11 Probate Jurisdiction

13. What are the justifications for repealing the fees for grants of probate or letters of administration or resealing of the same? Why is the repeal a consequential amendment?

Yours sincerely,

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