

Submission from The Hong Kong Shipowners Association Ltd.

## **Memorandum regarding Estate Duty**

According to the Consultation Document of July 2004 ("Consultation Document"), estate duty was introduced in 1915 for the purpose of enabling the "*whole community to benefit upon the death of persons who had grown very rich in Hong Kong.....*". It is apparent from the figures provided by the Treasury Branch in the Consultation Document that estate duty does not fulfill that objective today. Estate duty is not only borne by the very rich. In fact most of the very rich successfully and easily use international lawyers and accountants to avoid the burden of estate duty.

Over the period 1999 to 2004, the average amount of estate duty collected was HK\$1,512 million, comprising 3.9% of Government capital revenue and 0.7% of total revenue.

In the year 2003-04, the Inland Revenue Department ("IRD") assessed 258 estates for duty. According to the Consultation Paper, 53% of those estates (i.e. about 136 estates) were below HK\$10 million, but only 8% or 21 estates were over HK\$50 million. It appears that in the two year period from 2002 to 2004, only 2 dutiable estates were over HK\$1 billion. Although the accounts collected from the largest estates may be significant, it is clear that the burden of estate duty largely falls on the middle classes, with over half being estates below HK\$10,000,000 and over 90% of dutiable estates being below HK\$50 million. Incidentally, it appears that about 36,600 people died in Hong Kong in 2004 and CapGemini estimated that there were 45,000 United States Dollar millionaires in Hong Kong in 2004.

In the 3rd Edition (1999) of Professor Peter Willoughby's "Guide to HK Estate Duty", he says that about 8% of the Inland Revenue Department worked on estate duty.

It has been suggested by Willoughby, among others, that estate duty provides a convenient method for the IRD to check whether a person's assets are commensurate with his income, and thus ascertain if that individual has cheated on his salaries tax or profits tax returns. Hong Kong does not tax foreign source income or dividends. So an individual's assets will not necessarily be consistent with his income. The argument therefore that estate duty provides a convenient check on income tax payable is not sustainable. It can only work in a jurisdiction which taxes all forms of income, on a world wide basis. Moreover while an estate may properly be liable for income tax not paid in the past, given the number of dutiable estates, this check must be almost ineffective as an anti-tax-avoidance measure.

There are a number of reasons regarding asset management and accumulation of assets within Hong Kong which also justify abolition of estate duty, but this paper will deal with only one aspect of the burden of estate duty, which is however important for Hong Kong as an international centre.

Hong Kong is an international maritime centre. The encouragement and maintenance of that position is an objective, the Government has pursued since 1990 when the Hong Kong autonomous Register of Ship was formed.

Hong Kong's shipowners control a very large number of ships of all kinds, with the container ships most often seen in Hong Kong, being a small fraction of the ships which are owned or controlled out of Hong Kong. Oil tankers and bulk carriers of all descriptions, trading with every part of the world are included in our fleet. By and large, we have a quality fleet, with well managed and maintained ships.

The Hong Kong Register of Ships has grown, particularly since the handover in 1997, to become the 5th or 6th largest shipping register in the world. A significant number of ships

registered in Hong Kong are owned by Hong Kong shipowners. These ships are therefore Hong Kong assets for the purposes of estate duty. The ships are usually owned by Hong Kong companies. Regardless of whether the shareholding in such companies is held, directly or not, by an individual shareholder, shipowners have been advised to move their ships out of the Hong Kong Register because of the risk of estate duty. Singapore has moved to exempt from its estate duty those persons who are not domiciled in Singapore owning movable assets in Singapore. So, I understand, many shipowners are contemplating moving their ships to Singapore.

Many countries worldwide have abolished estate duty, recognising that the burden of the tax often falls on the dependents of those who have not taken advice to prepare for their demise. Those in the industry of avoiding estate duty may be opponents of its abolition, but it is not reasonable to maintain a tax on a small number of people to support an industry that is able to avoid that tax.

Shipowners, and hence Hong Kong generally, will benefit if estate duty is abolished. Estate duty no longer appears to transfer benefit from *"the very rich to the poor"*. Estate duty falls most heavily on widows and other dependents of those in the middle class who did not anticipate the burden that would fall on their estate upon their death.

In summary, the financial benefits to the community of estate duty are small; the damage to the Hong Kong Register, and hence indirectly to the community, and to the dependants of those who have failed, as they can, to organize their affairs to mitigate estate duty, are disproportionate. Hong Kong should, therefore, abolish estate duty.