

**Legislative Council**

**Bills Committee on Revenue (Abolition of Estate Duty) Bill 2005**

**Summary of views expressed/suggestions made by organisations/individuals on  
the Bill prepared by the Legislative Council Secretariat**

**13 June 2005**

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<b>Submission No. of Written submission</b>	<b>Organisation/ Individual</b>	<b>Views/suggestions</b>
<b>General comments</b>		
1	Mr Daniel R BRADSHAW LC Paper No. CB(2)1682/04-05(01) LC Paper No. CB(2)1814/04-05(01)	(a) Support the abolition of estate duty;  (b) Estate duty cannot fulfill its objectives to levy heavy tax on the very rich and provide a substantial revenue to the Government;  (c) The argument that estate duty provides a convenient check on income tax payable is not sustainable;  (d) Abolishing estate duty is one of the important measures to develop Hong Kong into an asset management centre and international financial centre; and  (e) Shipowners have been advised to move their ships out of Hong Kong Registry because of risk of estate duty, they will benefit if estate duty is abolished.

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2	The Society of Trust and Estate Practitioners (Hong Kong) Limited LC Paper No. CB(2)1752/04-05(01)	(a) Oppose the abolition of estate duty;  (b) There is no evidence to support the claim that the abolition of estate duty will advance Hong Kong's position as a regional financial centre;  (c) Propose to introduce changes to estate duty with a view to helping asset management industry in Hong Kong, streamlining probate procedures and enhancing enforcement measures to ensure estate duty is imposed on those most able to pay;  (d) Propose to introduce profit tax reform with respect to the taxation of offshore fund managers and to amend the Trustee Ordinance and the Companies Ordinance;  (e) Estate duty is an effective tax to collect, its abolition may mean that it would need to be replaced by increases in other taxes;

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		(f) Estate duty provides an incentive for the wealthy to donate and will benefit the charitable organisations;  (g) Estate duty returns provide an excellent source of information to uncover tax evasion cases; and  (h) Abolition of estate duty will adversely affect the trustee services industry, the legal and accounting profession.

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3	Article written by Professor Andrew HALKYARD and Mr Wilson CHOW LC Paper No. CB(2)1752/04-05(02)	(a) Estate duty should have a future in Hong Kong and the case for its abolition has not been adequately established;  (b) Estate duty is not a particularly burdensome form of taxation nor does it seem to have inhibited Hong Kong's development as an international financial and service centre;  (c) There is a need to review the Estate Duty Ordinance, to simplify the estate duty regime, streamline procedures for obtaining grants of probate or letters of administration, and remove the inequities and complexities in levying estate duty;  (d) Estate duty is revenue productive, its abolition may mean that it would need to be replaced by increases in other taxes; and  (e) Estate duty helps to uncover cases of tax evasion.
4	The Law Society of Hong Kong LC Paper No. CB(2)1752/04-05(03)	(a) Neutral as to the abolition of estate duty.

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5 – 8	The Chinese Manufacturers' Association of Hong Kong Hong Kong General Chamber of Commerce The Chinese General Chamber of Commerce Federation of Hong Kong Industries  LC Paper No. CB(2)1789/04-05(01) LC Paper No. CB(2)1789/04-05(02) LC Paper No. CB(2)1789/04-05(03) LC Paper No. CB(2)1809/04-05(02) LC Paper No. CB(2)1843/04-05(02)	(a) Strongly support the abolition of estate duty;  (b) Estate duty cannot fulfill its objectives to levy heavy tax on the very rich and provide a substantial revenue to the Government;  (c) Loopholes in collection of a tax should be plugged by tightening the rules rather than using estate duty as a tool to uncover tax evasion cases;  (d) Estate duty is unethical as it burdens beneficiaries with taxes after the loss of a family member;  (e) Abolishing estate duty will give Hong Kong an important extra advantage as the region's asset management centre, attract new investment and further promote Hong Kong's status as an international financial hub;  (f) Abolishing estate duty will create more business and employment opportunities;

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		<p>(g) The increase in economic activities will generate revenue to the Treasury;</p> <p>(h) Estate duty is unfair as it imposes “double taxation” on a person (in particular the middle class) before and after his death; and</p> <p>(i) Small and medium enterprises suffer from the retention of estate duty as their assets may be frozen during the assessment period and causing cash flow problems.</p>
9	Hong Kong Small and Medium Enterprises Association LC Paper No. CB(2)1789/04-05(04)	<p>(a) Support the abolition of estate duty;</p> <p>(b) Estate duty is unfair to small and medium enterprises as their assets may be frozen during the assessment period and causing cash flow problems;</p> <p>(c) Abolishing estate duty will attract new investment and further promote Hong Kong’s status as an international financial centre; and</p> <p>(d) The increase in economic activities will generate revenue to the Treasury.</p>



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10	The Hong Kong Shipowners Association Ltd. LC Paper No. CB(2)1789/04-05(05)	(a) Support the abolition of estate duty;  (b) The argument that estate duty provides a convenient check on income tax payable is not sustainable;  (c) Shipowners have been advised to move their ships out of Hong Kong Registry because of risk of estate duty, they will benefit if estate duty is abolished.
11	The Hong Kong Exporters' Association LC Paper No. CB(2)1789/04-05(06)	(a) Support the abolition of estate duty;  (b) Abolishing estate duty will give Hong Kong an important extra advantage as the region's asset management centre, attract new investment and further promote Hong Kong's status as an international financial hub;  (c) Abolishing estate duty will create more business and employment opportunities;  (d) The increase in economic activities will generate revenue to the Treasury; and  (e) An active financial market will also benefit exporters.

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12	Citigroup Private Bank LC Paper No. CB(2)1789/04-05(07)	(a) Support gradual abolition of estate duty in Hong Kong.
13	Morgan Stanley LC Paper No. CB(2)1789/04-05(08)	(a) Support the abolition of estate duty;  (b) The rich can easily avoid paying estate duty through certain corporate and/or trust structures;  (c) Estate duty is currently paid by those who do not have sufficient asset or sophistication to plan around the tax; and  (d) The economic inefficiency created by estate duty is not appropriate in Hong Kong, where tax simplicity is an important hallmark of our society.

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14	The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies LC Paper No. CB(2)1809/04-05(01)	(a) Support the abolition of estate duty;  (b) The abolition of estate duty will bring material benefit to Hong Kong's economy including additional deposit and investment business, leading to increased employment within the industry;  (c) Retaining estate duty will make Hong Kong ill prepared to capture the business opportunities arising from the implication of the European Union Savings Directive as in contrast to Singapore; and  (d) Estate duty will not generate substantial revenue to the Government in future.

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15	UBS LC Paper No. CB(2)1886/04-05(01)	(a) Support the abolition of estate duty;  (b) Abolition of estate duty will strengthen Hong Kong's status as a wealth management hub and financial centre of Asia;  (c) Removal of estate duty will increase the attractiveness of Hong Kong stocks and properties to global investors, and also promote the use of Hong Kong companies as investment vehicles in the region and Hong Kong bank accounts as repositories for financial assets; and  (d) The increase in commercial activities would lead to greater demand for professional and support services.

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<b>Probate application procedures</b>		
4	The Law Society of Hong Kong LC Paper No. CB(2)1752/04-05(03)	<p>(a) A prudent approach should be adopted in the legislative process to ensure the interests of beneficiaries will continue to be safeguarded. The obligation of the personal representative (PR) and other accountable persons to prepare a full inventory and account of properties comprised in a deceased's estate should be made mandatory to avoid intermeddling of estate. Furthermore, there should be clear provisions that assets not disclosed in the inventory list cannot be dealt with by the PR to avoid misappropriation of assets, to ensure proper administration of the estate, and to avoid unnecessary family disputes on the administration and distribution of the estate; and</p> <p>(b) As the above proposals which aim to safeguard the interests of the parties concerned may lead to an increased role and workload of the Probate Registry, the Court fees should be commensurate with the work ultimately required of the Probate Registry.</p>

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<b>Access to the deceased's safe deposit box</b>		
4	The Law Society of Hong Kong LC Paper No. CB(2)1752/04-05(03)	<p>(a) It is unclear under what circumstances the Secretary for Home Affairs will issue a Certificate for Necessity of Inspection of Bank Deposit Box to permit the holder of the certificate to inspect all items contained in the box to ascertain whether there is any will or similar instrument of the deceased person in the safe deposit box and whether there is any document or article other than the will; and</p> <p>(b) Under the new section 60C of the Probate and Administration Ordinance (Clause 9 of the Bill), there is no requirement to prepare an inventory list of the contents of a safe deposit box when it is opened for inspection. There is a real risk of a will being released or tampered with or mislaid before legal advice can be obtained. There is also a danger that articles may be removed and not reported and accounted for and documents removed and destroyed.</p>

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<b>Release of funds for burial expenses and maintenance</b>		
4	The Law Society of Hong Kong LC Paper No. CB(2)1752/04-05(03)	(a) There is a need to define clearly in the legislation the types of person that the Secretary for Home Affairs could consider to be ‘fit and proper’ to apply for a Certificate for Necessity of Release of Money and to be “former dependents” under new section 60B of the Probate and Administration Ordinance (Clause 9 of the Bill);  (b) The Secretary for Home Affairs should only be empowered to authorise the release of a “fair amount” for funeral expenses of the deceased and maintenance of former dependants of the deceased; and  (c) The legislation should specify clearly the liabilities in cases where there should be wrongful release of documents or assets from the estate under the proposed section 60B and 60C of the Probate and Administration Ordinance (Clause 9 of the Bill)

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<b>Proposed amendments to the Bill</b>		
1	Mr Daniel R BRADSHAW LC Paper No. CB(2)1682/04-05(01) LC Paper No. CB(2)1814/04-05(01)	(a) Propose to amend the Bill to provide for the abolition of estate duty to take effect from the date of the budget announcement so that the Administration could take time to address the concerns raised by the Law Society of Hong Kong.
4	The Law Society of Hong Kong LC Paper No. CB(2)1752/04-05(03)	(a) The practical effect of the bill is not to abolish estate duty but to suspend it. There is a possibility that estate duty could be easily re-introduced. In order to achieve certainty, it is proposed to amend the Bill to state that –  (i) estate duty is abolished with effect from 16 March 2005; and  (ii) for transitional purposes the Estate Duty Ordinance will continue to apply to the estates of those persons who die before the date of abolition.