

財經事務及庫務局
(庫務科)



FINANCIAL SERVICES AND
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(The Treasury Branch)

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本函檔號 Our Ref. :

來函檔號 Your Ref. :

22 November 2011

Ms Anita SIT
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong
(Fax: 3529 2837)

Dear Ms SIT,

Inland Revenue (Amendment) (No. 2) Bill 2011 (“the Bill”)

Further to the discussions at the meeting of the Bills Committee held on 10 November 2011, the Administration is pleased to provide at Appendix of this letter examples to illustrate the application of section 16EC(4)(b) of the Bill for Members’ reference.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Fiona Chau', written over a circular stamp.

(Miss Fiona Chau)

for Secretary for Financial Services and the Treasury

Encl.

c.c. Commissioner of Inland Revenue (Attn: Mr Wong Kuen-fai)
Department of Justice (Attn: Miss Betty Cheung)

**Examples to illustrate the application of section 16EC(4)(b)
of the Inland Revenue (Amendment) (No. 2) Bill 2011 (“the Bill”)**

Example (1)

Company HK, carrying on a trading business in Hong Kong, has during the year of assessment 2011/12 purchased a trade mark registered in Hong Kong at a cost of \$1,000,000. The trade mark has not been registered in places other than Hong Kong. Company HK contracted Company M, a manufacturer located in the Mainland to produce goods bearing the Hong Kong registered trade mark. The finished goods were sold by Company HK to customers in Hong Kong and the profits derived are chargeable to tax in Hong Kong.

Company HK has only purchased the Hong Kong registered trade mark and has not acquired any right to use the trade mark in places other than Hong Kong. The trade mark used by Company M when manufacturing the goods in the Mainland is an unregistered trade mark in the Mainland, not the trade mark registered in Hong Kong. In the circumstances, section 16EC(4)(b) of the Bill is not applicable. Since the profits derived by Company HK from selling the finished goods are chargeable to tax in Hong Kong and in accordance with section 16EA(3) of the Bill, it is entitled to deduct one-fifth of the purchase cost of the Hong Kong registered trade mark for the year of assessment 2011/12 in the amount of \$200,000 (i.e. \$1,000,000 ÷ 5).

Example (2)

Company HK, carrying on a trading business in Hong Kong, has during the year of assessment 2011/12 purchased a trade mark registered in Hong Kong at a cost of \$2,000,000. The trade mark has not been registered in places other than Hong Kong. Company HK subsequently registered the trade mark in the Mainland and contracted a Mainland manufacturer, Company M, to produce in the Mainland goods bearing the Mainland registered trade mark. The goods produced by Company

M were sold in Hong Kong by Company HK and the profits derived are chargeable to tax in Hong Kong.

Company HK has only purchased the Hong Kong registered trade mark but not the Mainland registered trade mark. It becomes the registered owner of the Mainland registered trade mark because it has subsequently registered the trade mark in the Mainland. The trade mark used by Company M in the production of goods in the Mainland is the one registered in the Mainland by the Company HK and not the Hong Kong registered trade mark purchased by Company HK in the first place. As such, section 16EC(4)(b) of the Bill is not applicable. Since the profits derived by Company HK from selling the finished goods are chargeable to tax in Hong Kong and in accordance with section 16EA(3) of the Bill, it is entitled to deduct one-fifth of the purchase cost of Hong Kong registered trade mark for the year of assessment 2011/12 in the amount of \$400,000 (i.e. \$2,000,000 ÷ 5).

Example (3)

Company HK, carrying on a trading business in Hong Kong, has during the year of assessment 2011/12 purchased a trade mark registered both in Hong Kong and the Mainland at a total cost of \$3,000,000. The Hong Kong registered trade mark and the Mainland registered trade mark are each valued at \$1,500,000. Company HK contracted Company M, a contract manufacturer located in the Mainland, to produce goods bearing the trade mark.

Scenario 1

All of the finished goods were sold by Company HK to customers in Hong Kong and the profits derived are chargeable to tax in Hong Kong.

Insofar as the trade mark registered in Hong Kong is concerned, it was used by the Company HK itself for selling the finished goods to produce profits chargeable to tax in Hong Kong. Section 16EC(4)(b) of the Bill is therefore not applicable. In the year of assessment 2011/12, Company HK is entitled to deduct one-fifth of the purchase cost of the Hong Kong registered trade mark pursuant to section 16EA(3) of the Bill for the year

of assessment 2011/12 in the amount of \$300,000 (i.e. \$1,500,000 ÷ 5).

As for the Mainland registered trade mark, it was used by Company M for production of goods in the Mainland. As such, section 16EC(4)(b) of the Bill is applicable and the purchase price of \$1,500,000 for the Mainland registered trade mark is not deductible.

Scenario 2

The finished goods were sold by Company HK to customers in Hong Kong and the United States. The profits so derived are chargeable to tax in Hong Kong.

Insofar as the trade mark registered in Hong Kong is concerned, it was used by Company HK itself for selling of the finished goods to produce profits chargeable to tax in Hong Kong. In addition, Company HK when selling the goods in the US market is not using the trade mark registered in Hong Kong. As such, section 16EC(4)(b) of the Bill is not applicable. In the year of assessment 2011/12, Company HK is entitled to deduct one-fifth of the purchase cost of the Hong Kong registered trade mark pursuant to section 16EA(3) of the Bill for the year of assessment 2011/12 in the amount of \$300,000 (i.e. \$1,500,000 ÷ 5).

As for the Mainland registered trade mark, it was used by Company M for production of goods in the Mainland. As such, section 16EC(4)(b) of the Bill is applicable and the purchase price of \$1,500,000 for the Mainland registered trade mark is not deductible.

Scenario 3

Company M manufactured 1,000,000 pieces of goods during the year of assessment 2011/12 and they were sold by Company HK to customers in Hong Kong, the United States and the Mainland in the respective quantities of 200,000, 200,000 and 600,000. The profits so derived are all chargeable to tax in Hong Kong.

Insofar as the trade mark registered in Hong Kong is concerned, it was used by Company HK itself for selling of finished goods to produce profits chargeable to tax in Hong Kong. In addition, Company HK when selling the goods in the US market is not using the trade mark

registered in Hong Kong. As such, section 16EC(4)(b) of the Bill is not applicable. In the year of assessment 2011/12, Company HK is entitled to deduct one-fifth of the purchase cost of the Hong Kong registered trade mark pursuant to section 16EA(3) of the Bill in the amount of \$300,000 (i.e. \$1,500,000 ÷ 5).

As for the Mainland registered trade mark, it was partly used by Company M for production of goods in the Mainland and partly used by Company HK for selling some of the finished goods in the Mainland. In the circumstances, section 16EC(4)(b) of the Bill is applicable to the part of the Mainland registered trade mark that was used by Company M in the Mainland manufacturing activities. Nevertheless, Company HK is still entitled to deduct part of purchase price of the Mainland registered trade mark which was used by itself to sell the finished goods in the Mainland and has produced profits chargeable to tax in Hong Kong. The amount of deduction for the Mainland registered trade mark is calculated as follows:

$$\begin{array}{rcl}
 \text{Purchase price of the} & & \text{No. of units sold in the Mainland} \\
 \text{Mainland registered} & \times & \frac{\hspace{10em}}{\hspace{10em}} & \div & 5 \\
 \text{trade mark} & & \text{No. of units manufactured and sold} \\
 & & \text{in the Mainland} \\
 \\
 = & \$1,500,000 & \times & \frac{600,000}{1,600,000} & \div & 5 \\
 \\
 = & \underline{\underline{\$112,500}} & & & &
 \end{array}$$

The allowable deduction in respect of the purchase price of the Mainland registered trade mark for the year of assessment 2011/12 is \$112,500.