



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



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7 April 2017

Ms NIP Kai Yan, Candy
Prin AS for Transp & Housing(Transp)8
Transport and Housing Bureau
21/F, East Wing
Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Ms NIP,

Inland Revenue (Amendment) (No. 2) Bill 2017

We are scrutinizing the legal and drafting aspects of the captioned Bill and should be grateful if you could clarify the following matters:

Clause 4 - new section 14G

- (a) Please clarify the meaning of "useful economic life" in relation to an aircraft in the definitions of ***actual residual value***, ***estimated residual value*** and ***funding lease*** (in paragraph (a)(iii)) under the new section 14G(1) and consider whether the same should be spelt out in the Bill.
- (b) ***Non-Hong Kong aircraft operator*** is defined under the new section 14G(1) to mean an aircraft operator who is not chargeable to profits tax under the Inland Revenue Ordinance (Cap. 112). Under the relevant provisions of an avoidance of double taxation agreement ("DTA") entered into between Hong Kong and a foreign jurisdiction as the contracting parties, income and profits derived from the operation of aircraft in international traffic by an airline of one contracting party which are subject to tax in the area of that contracting party shall be exempt from income tax, profits tax and all other taxes on income and profits imposed in the area of the other

contracting party (see for example the Specification of Arrangements (Government of the State of Kuwait) (Avoidance of Double Taxation on Income from Aircraft Operation) Order (Cap. 112AS) and the Inland Revenue (Double Taxation Relief on Income from Aircraft Operations) (Republic of Finland) Order (Cap. 112BD)). In this regard, please clarify whether a non-Hong Kong aircraft operator would include an aircraft operator resident (which derives aircraft profits and income from Hong Kong) in the foreign jurisdiction with which Hong Kong has entered into such a DTA.

Clause 4 – new sections 14H and 14J

The new sections 14H(1) and 14J(1) respectively provide that the assessable profits of a corporation that is a qualifying aircraft lessor and a qualifying aircraft leasing manager for a year of assessment are, subject to certain conditions, chargeable to tax at one-half of the rate specified in Schedule 8 to the extent to which those profits are assessable profits derived from its qualifying aircraft leasing activity and qualifying aircraft leasing management activity.

One of the conditions that a corporation needs to satisfy for claiming tax concessions in a year of assessment under the new sections 14H(1) and 14J(1) is that the corporation has elected in writing that the new sections 14H(1) and 14J(1) apply to it pursuant to the new sections 14H(4)(b) and 14J(5)(b) respectively. The election under the new section 14H(4)(b) or 14J(5)(b), once made, is irrevocable by virtue of the new sections 14H(5) and 14J(6) respectively. Please explain the rationale for making the election irrevocable under the new sections 14H(5) and 14J(6).

Clause 4 - new section 14J

Under the new section 14J(8), in computing the qualifying profits of a corporation that is a qualifying aircraft leasing manager for the purposes of subsection (1), if a sum payable to the corporation by a person for the qualifying aircraft leasing management activity is deductible under Part 4, the amount of the qualifying profits attributable to that activity is to be deducted by reference to the amount of that sum. The new section 14J(9) provides that subsection (8) does not apply in relation to a sum payable to the corporation for a qualifying aircraft leasing management activity carried out by it.

- (a) Does the new section 14J(9) have the effect that if a sum payable to the corporation which is a qualifying aircraft leasing manager by a person for the qualifying aircraft leasing management activity is

deductible under Part 4 of Cap. 112, such sum would be excluded from the qualifying profits and thus be taxable at the profits tax rate of 16.5%? Please clarify if this is the legislative intent of the new section 14J(9); and

- (b) How the new section 14J(9) is different from the new section 14J(8) in terms of its application since both subsections refer to a sum payable to the corporation for a qualifying aircraft leasing management activity?

Clause 4 – new section 14L

The new section 14L provides for the Commissioner of Inland Revenue's ("Commissioner") power to make a determination that a corporation, which is not otherwise qualified, is a qualifying aircraft leasing manager. Under the new section 14L(3), the Commissioner may make such a determination only if the Commissioner is of the opinion that the conditions specified in the new section 14J(3), or the safe harbour rule under the new section 14K, would, in the ordinary course of business of the corporation, have been satisfied for the year of assessment. Are there any other factors, apart from those set out in the new section 14J(3), that the Commissioner may take into account when making the determination? If so, please consider whether these factors should also be stated in the Bill.

Clause 4 - new section 14M

The new section 14M contains certain provisions for preventing avoidance of profits tax by means of the new profits tax concessions. Under the new section 14M(7), if (a) an aircraft is owned by a corporation that is a qualifying aircraft lessor under an arrangement ("ownership arrangement"); and (b) the corporation enters into an arrangement ("release arrangement") under which (i) it is released from the primary obligation under the ownership arrangement; and (ii) that obligation is assumed by another person, the aircraft leasing tax concessions provisions are to have effect as if the corporation had ceased to own the aircraft during the time when the release arrangement is in force. What are the possible forms of ownership arrangement (under which the aircraft is owned) that would be covered by the new section 14M(7)? What would be the primary obligation under such ownership arrangement?

Clause 15 - new Schedule 17F

Please clarify the meanings of "special purpose entity" (in paragraphs (c) and (d)) and "operating leases" (in paragraph (j)) in the definition of *aircraft*

leasing management activity in section 1(1) of Part 1 of the new Schedule 17F and consider whether the same should be defined in the Bill.

I would be grateful if your reply in both English and Chinese could reach us as soon as practicable.

Yours sincerely,


(Vanessa CHENG)
Assistant Legal Adviser

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