《2005年收入(取消遺產稅)條例草案》委員會

我們應委員在上述委員會六月二日會議上的請求,提供以下資料。

分期繳付

2. 雖然未繳稅款的應計利息在死者去世後首六個月按年利率 4%計算,而其後則按年利率 8%計算,但很少個案一次過繳交有關稅款及利息。

取消遺產稅的影響

- 3. 正如在六月二日會議上所提到,根據稅務局所取得有關新西蘭經驗的資料,取消遺產稅的措施令該國在一九九三年(即取消遺產稅當年)的直接外來投資增加 103%;這個增幅在一九九四年收窄至 22%,而一九九五年增幅則維持在一九九四年的水平。新西蘭在一九九三年取消遺產稅,而同年又出現直接投資增加的情況,這當然可能由於多種原因所致,因此難以單獨估計取消遺產稅措施的影響。
- 4. 我們已根據金管局所提供的資料,載述新加坡資產管理業的管理資產總額的變動情況。有關的管理資產額由二零零二年年底的 3,438 億新加坡元,增至二零零三年年底的 4,652 億新加坡元,增幅為 35%。根據證監會所進行的基金管理活動調查,香港資產管理業在二零零二年年底總值 14,910 億元,在二零零三年年底已增至 22,500 億元。不過,須注意的是,證監會公布的二零零三年基金管理活動調查數據,首次包括註冊機構(即認可機構)所提供的數據,因此不應與二零零二年的數字直接比較。

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5. 一如我們屢次強調,管理資產額/直接投資額的變動是由於多種原因所致,我們難以單獨估計取消遺產稅的影響。政府當局也沒有以該等數字去說明取消遺產稅可能產生的影響。

進一步把香港發展爲資產管理中心的其他措施

6. 證監會爲促進資產管理業務而在最近採取的措施,包括目標實施日期,表列於**附錄 I**。至於豁免離岸基金繳交利得稅,我們已完成就有關的詳細立法建議(包括防止避稅條文的建議)廣泛諮詢業界的工作,並計劃在短期內把有關法例提交立法會。

海外的經驗

7. 根據我們手頭上的資料,馬來西亞、澳門及新西蘭都沒有徵收資本 增值稅,但澳洲、加拿大、印度、意大利、瑞典及美國則有徵收這稅項。

取消遺產稅後的遺產管理程序

8. 民政事務局擬備了一份文件,解釋取消遺產稅後申請授予承辦的程序所作的更改。該文件載於**附錄 II**。民政事務局向香港律師會、香港大律師公會及香港銀行公會發出的諮詢信件/文件,載於**附錄 III(只備英文本)**。

財經事務及庫務局 二零零五年六月六日

證監會近期為推動資產管理業務所採取的措施

措施	目的	諮詢期	(目標) 實施日期
檢討《對沖基金指引》	● 在承認基金經理的關鍵人員的經驗方面提供較大彈性,提升透明度及加強保障投資者。	二零零五年 五月二十六 日至六月三 十日	二零零五年第四季
	● 邀請各界人士就應 否降低最低認購金 額水平及放寬對抵 押水平所施加的限 制提供意見。		
房地產投資信 託基金			
1. 有關放寬 宽敞 會認 所資 股份 資 銀 上	撤銷房地產基金的 地域限制,令其可 以投資於全球各地 的房地產;	二零零五年 三月三十日 至四月三十 日	二零零五年六月
外投資的地域限制及相關事宜的建議	● 引入著重房地產基 金經理在投資於海 外投資項目時應履 行的義務的應用指 引;以及		
	● 考慮一系列舉措, 以進一步促進房地 產基金作為投資產 品的發展。		
2. 有關根據 《單位信 託及互惠 基 金 守	建議准許根據《單位信託及互惠基金守則》獲認可的集體投資計劃(統稱為證監會認可計	二零零五年 二月二十五 日至三月二	

措施	目的	諮詢期	(目標) 實施日期
期可投市投基議	劃)投資於上市房地產投資信託基金	十四日	認可的計劃投資於上市房地產投資信託基金。
利便轉寶 寶 寶 寶 寶 寶 寶 寶 沙 (UCITS III) 基 金 的 言	UCITS III 管立例認知 E WE W	公會舉行連	二零零五年三月

措 施	目的	諮詢期	(目標) 實施日期
	● 向中介機構發出概 述各項臨時措施的 通告,並透過互聯 網為投資者推出關 於 UCITS III 的 < 常見問題>	已 五 十 通 告	
		已於二零零五年三月二十二日推出<常見問題>	
	● 證監 WCITS III 的	已 五 聘 律 顧 問	
	● 證監會正研究以較長久的方式處理 UCITS III 基金申請,並會在稍後廣 泛徵詢市場意見。		

取消遺產稅後 申請遺產承辦書的新程序

取消遺產稅後,申請遺產承辦書的程序會大為簡化。下文各段說明申請程序有哪些改變,並會就有關承辦遺產的申請人須向法院提交財產清單的規定,闡述當局的立場。

現行的申請程序

- 2. 現時申請遺產承辦書的程序攝載於**附件 A** 流程圖 I。
- 3. 目前,當一個人去世後,其遺產代理人(遺囑指明的執行人或預期的遺產管理人)便須向稅務局遺產稅署提交一份遺產稅報表, 詳列死者的全部資產與負債。下表載有申請遺產稅清妥證明書所須提 交的文件,以及稅務局完成評估和收妥應繳遺產稅後所發出的文件。

遺產總值	須提交的文件	稅務局發出	在二零零三
		的文件	/零四年度
			的個案數目
不超過 40 萬	遺產簡易呈報表	• 豁免證明書	7 546
元,以及不包括		• 遺產簡易呈報	
物業、生意及非		表的認證副本	
上市股票			
超過 40 萬元但	遺產申報誓章	• 豁免證明書	7 816
不超過 750 萬		• 財產清單	
元,或不超過40			
萬元,並包括物			
業、生意或非上			

市股票		
超過 750 萬元	遺產申報誓章	• 收取遺產稅證 258
		明書
		• 財產清單

- 4. 遺產代理人須在遺產簡易呈報表或遺產申報誓章上,清楚列明死者的資產和債務,以及估計的價值。稅務局收到呈報表/誓章後,便會進行有關的工作,包括在必要時與第三者核實有關的資產和債務;評估有關的業務利益(獨資或合夥經營者)和股票(上市及非上市)的價值;把死者以私人名義持有的物業,以及以公司名義持有的物業(如有關的股份是按資產估計價值的)等資料,轉交差餉物業估價署進行估值;向銀行查詢以確定有否漏報饋贈和資產。假如資產的估值結果高於其原先的申報價值,當局會通知遺囑執行人或預期的遺產管理人以取得其同意。假如稅務局發現漏報任何饋贈或資產,會要求負責人提交修正遺產申報誓章/遺產呈報表。
- 5. 稅務局完成評估後,會視乎個案的遺產總值,向有關人士收取遺產稅,並會接著發出豁免證明書或收取遺產稅證明書,及財產清單或遺產簡易呈報表。
- 6. 遺產代理人申請遺產承辦書時,通常須向遺產承辦處提交下列文件:
 - (i) 死者的死亡證明書;
 - (ii) 死者的遺囑(如有的話)及其副本一份;

- (iii) 確定死者與遺產代理人關係的證明書或誓章;
- (iv) 稅務局發出的收取遺產稅證明書連同財產清單(一式兩份) 或豁免證明書(一式兩份)連同遺產簡易呈報表的認證副本。

遺產稅取消後的申請程序

- 8. 根據我們的建議,稅務局不會就任何於《收入(取消遺產稅) 條例》生效日期當日或之後去世的人士,發出任何證明書、遺產簡易 呈報表或財產清單。有關的遺產代理人可直接向遺產承辦處提交上文 第 6(i)至(iii)段的文件,以申請遺產承辦書,而無須向法院提交稅務 局所發出的豁免證明書或收取遺產稅證明書。

財產清單

- 9. 財產清單臚列死者去世時轉移的所有在香港的資產和債務。根據《遺產稅條例》(第 111 章)第 23 條的規定,財產清單須附於遺產承辦書內。受益人及有利益關係的第三方可參考清單,藉以確定死者的資產及負債。銀行或債務人可參考清單,以便向遺產代理人發放款項。此外,土地註冊處及證券登記公司也可參考清單,以分別處理地產和股份轉讓。任何人如無合法權限或合理辯解而處理並未列於該清單內的任何資產,可被處以該條文規定的懲罰。政府實行這些措施,是為了方便收取遺產稅,並確保可收到有關稅款。
- 10. 遺產稅取消後,便無須基於保障稅收的理由而保留現行規

定,即把財產清單附於遺產承辦書內。當局並不建議強制規定有關人士在申請遺產承辦書時,向法院提交財產清單或載列死者所有資產及負債的類似文件,理由如下:

- (i) 大部分個案中的遺產代理人屬死者生前信任的人或近親。遺產管理失當的情況不會常見;
- (ii) 鑑於遺產管理失當的情況並不常見,為維持審查清單內容的 工作而引致的成本和其帶來的好處並不相稱;
- (iii) 財產清單只提供了較便利的途徑去了解有關資料。即使沒有 這張清單,遺產受益人仍可循其他途徑得到這些資料,例如 查閱土地及公司註冊資料等。遺產代理人往往會向受益人查 詢,以編製這些資料的列表;
- (iv) 擬備財產清單或類似的文件需時,假如無須進行這項工作, 我們預期遺產代理人可於更短時間內取得遺產承辦書,而死 者的資產便可提早解凍。此舉有助減輕中小企業因資產被凍 結而面對的困難;及
- (v) 根據遺囑認證及遺產管理條例(第 10 章)第 56 條,如有需要,法院可要求遺產代理人提交一份真確及完整財產清單及帳目。
- 11. 目前,稅務局在評估遺產須否課稅時,其中一項工作是審查 財產清單的內容。在取消遺產稅後,稅務局便無須繼續審查清單或類

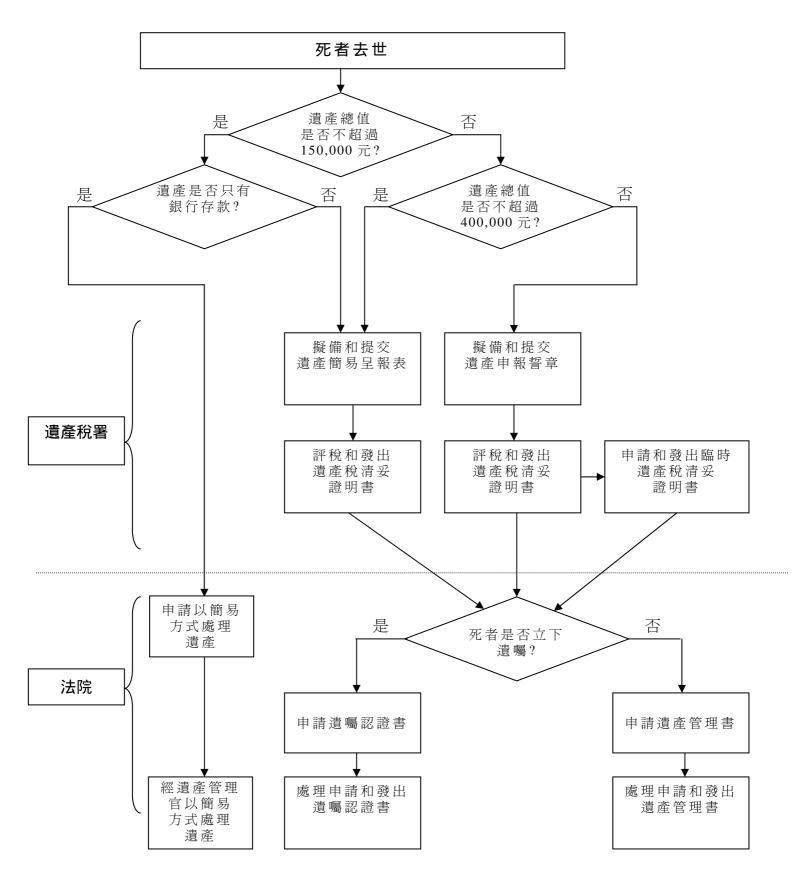
似文件以保障稅收;加上現時遺產稅署的營運開支是由徵收所得的遺產稅支付的,如政府仍繼續執行上述審查工作,我們便可能須向遺產代理人徵收手續費,以收回成本。此外,由於核實遺產價值的工作需時,遺產承繼人便需要更長的時間才能取得遺產承辦書,此舉可能會為部分家庭和中小企業造成額外和不必要的困難。

- 12. 雖然我們不會再強制規定遺產代理人在申請遺產承辦書時 須提交財產清單,但受益人仍可要求遺產代理人擬備死者的資產與負 債清單。
- 13. 如有需要,受益人可通過提出起訴,要求遺產代理人作出交代。此外,如遺產代理人在沒有通知受益人的情況下收取和處置了遺產,受益人有權行使法律權利向遺產代理人追索,並要求對方作出賠償。
- 14. 總括而言,當局認為再無需要規定在申請遺產承辦書時提交 財產清單或類似的文件。我們在此重申,遺產代理人處理死者遺產的 權力,是來自遺產承辦書的。

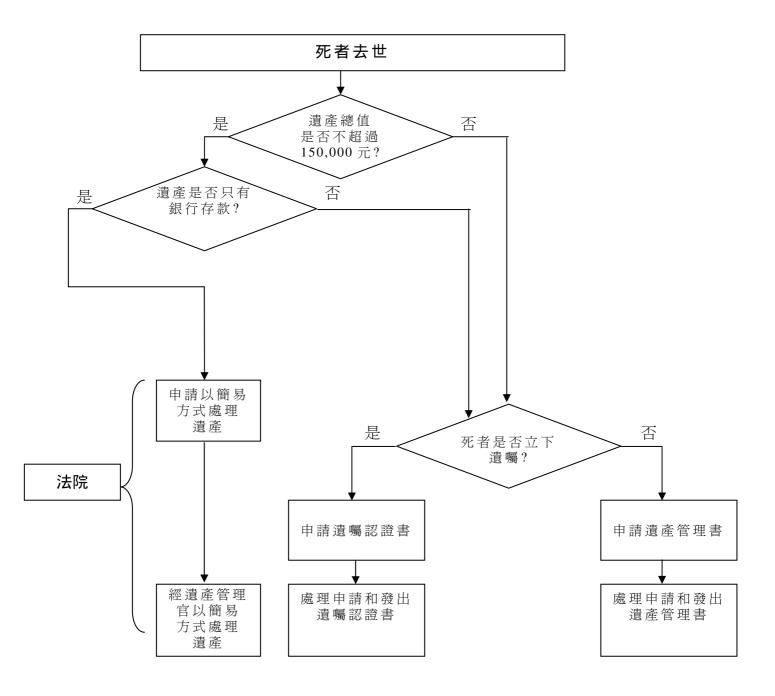
民政事務局

二零零五年六月六日

流程圖 I 申請遺產承辦書的程序 (遺產稅適用時)



流程圖 II 申請遺產承辦書的程序 (遺產稅不適用時)



政府總部 民政事務局

香港灣仔 軒尼詩道一百三十號 修頓中心三十一樓



GOVERNMENT SECRETARIAT HOME AFFAIRS BUREAU

31ST FLOOR, SOUTHORN CENTRE, 130 HENNESSY ROAD, WAN CHAI, HONG KONG.

本局檔號 OUR REF. : HAB/CR/1/19/107 Pt. 2

來函檔號 YOUR REF:

電 話 TEL NO. : 2835 1383

圖文傳真 FAXLINE : 2573 8461

10 May 2005

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The Law Society of Hong Kong (Attn: Ms Joyce Wong Director of Practitioners Affairs) 3/F Wing On Centre 71 Des Voeux Road Central Hong Kong

Dear Me Wong.

Revenue (Abolition of Estate Duty) Bill 2005

I write to seek your comments on the Revenue (Abolition of Estate Duty) Bill 2005 (the Bill). The Bill is to implement the Financial Secretary's proposal in the 2005-06 Budget to abolish estate duty and will be introduced into the Legislative Council on 11 May. A copy of the Bill is enclosed at Annex A for reference.

The Administration proposes to amend the Estate Duty Ordinance (Cap. 111) (EDO) to the effect that estates of persons who passed away on or after the enactment date of the Bill will not be subject to estate duty. The EDO will be retained to deal with cases where the deceased pass away before the enactment date.

Proposed Changes After Enactment of the Bill

A number of powers/requirements currently in the EDO would either be transferred or cease with the abolition of estate duty. The following paragraphs outline the proposed changes as set out in the Bill.

(a) Preparation of schedule of property

Currently, the Commissioner of Inland Revenue (CIR), through her Estate Duty Office, issues a certificate certifying payment of estate duty or exemption together with a schedule of property or a Statement in lieu of Affidavit (SILA) showing all assets and liabilities of the deceased, after assessment and payment of estate duty, if any. Under section 23 of the EDO (copy at Annex B), the schedule of property should be attached to applications to the court for grant of representation. The same section provides that any person who deals with any asset not listed in the schedule of property will be subject to penalty.

The Bill no longer requires a schedule of property to be filed with an application for a grant. Neither CIR nor other government authorities would issue the schedule of property, SILA or any similar documents. The time taken to obtain a grant in respect of a deceased person's estate would also be considerably shortened.

(b) Residual powers under the Estate Duty Ordinance

The following powers are currently exercised by CIR or her officers under the EDO to facilitate duty collection or revenue protection –

- (i) the power to inspect any document or article (section 14(8)). In practice, this translates in many cases into the authorization of representatives to inspect the contents of a deceased person's safe deposit box in the bank; and
- (ii) the power to authorize the release of funds from an estate for burial of the deceased or maintenance of the former dependants of the deceased (section 24(4)).

With the abolition of estate duty, there will no longer be any revenue protection reason to retain such powers.

Nonetheless, the Administration considers that the deceased persons' families or dependants should not be adversely affected because of

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the change. The Administration proposes to empower the Secretary for Home Affairs to discharge specific functions and administratively delegate these to CIR for a period, tentatively the first year following the enactment of the Bill. This will ensure that the facility afforded to the public remains essentially unchanged for a period of time upon the abolition of estate duty. Details of the Administration's specific proposals are set out at **Annex C**.

We would very much appreciate it if the Law Society could benefit us with its views and comments on the proposals regarding the residual powers in the EDO as set out in the Bill by 31 May 2005. We would also welcome discussions with representatives of your Society. Please give us a call for follow up arrangements.

The Administration would, in the meanwhile, also explore the possibility of having some of the above-mentioned residual functions performed by the private sector. We would write to seek your comments where necessary in due course.

Thank you.

Yours sincerely,

(Mrs Nancy Hui)

for Secretary for Home Affairs

c.c. Secretary for Financial Services and the Treasury (Attn: Ms Erica Ng)
Judiciary Administrator (Attn: Mr Augustine Cheng)
Commissioner of Inland Revenue (Attn: Mrs Teresa Chu)

Encls.

Revenue (Abolition of Estate Duty) Bill 2005

Transfer of Residual Powers in Estate Duty Ordinance (Cap. 111) to the Secretary for Home Affairs

The Revenue (Abolition of Estate Duty) Bill 2005 (the Bill) gazetted on 6 May 2005 is to implement the Financial Secretary's proposal to abolish the estate duty. For revenue protection purposes, the Estate Duty Ordinance (Cap. 111) (EDO) vests certain powers in the Commissioner of Inland Revenue (CIR). Some of these powers also afford a facility to the deceased person's family or dependants prior to the grant of representation.

Access to the deceased's safe deposit box

At present, the personal representative of the estate would apply to the Estate Duty Office for an appointment to take an inventory of the contents of the deceased's safe deposit box in the bank, if there is one. By virtue of section 14(8) of the EDO, CIR is empowered to require the bank to facilitate inspection of the contents of the safe deposit box. In the presence of a representative from the bank and the personal representative of the deceased, two tax inspectors from the Estate Duty Office would take inventory of the safe deposit box.

It is not uncommon for a person to keep his/her will, if there is one, in the safe deposit box. The new section 60C in Clause 9 of the Bill proposes to empower the Secretary for Home Affairs (SHA) to authorize personal representatives to inspect the contents of the deceased's safe deposit box in the bank. The main purpose is to avoid unnecessary complication in the applications for grant of representation.

If a person presents a Certificate for Necessity of Inspection of Bank Deposit Box issued by SHA, and produces sufficient proof of his identity to the bank concerned, the latter shall allow the holder of the certificate to inspect all items contained in the box for ascertaining whether there is any will or similar instrument of the deceased person in the safe deposit box, and whether any document or article specified in the certificate is contained therein. The bank shall also allow the holder to remove any items specified in the Certificate if they are found in the safe deposit box. In the event that the item removed is a will, the bank shall take copy of it.

Release of funds for burial expenses and maintenance

The estate of a deceased is frozen upon his death until after clearance of the estate duty liability, if any, and the grant of probate or letter of administration thereafter. For revenue protection purpose, section 24 of the EDO provides for penalties in case of intermeddling. Currently, section 24(4) of the EDO provides an exception. Under the said section, CIR is empowered to authorize the use of a specified part of an estate for burial expenses and maintenance of former dependants of the deceased. The provision provides in some cases temporary relief for the deceased's family or dependants prior to the grant of representation by the court, which may take 1-12 months.

In order to maintain such a facility, section 60B in Clause 9 of the Bill seeks to empower SHA to authorize the release of money in the bank account of a deceased person for burial expenses and maintenance for former dependants of the deceased by issuing a Certificate for Necessity of Release of Money. Presentation of the Certificate and provision of sufficient proof of identity to the bank concerned shall be regarded as a request for withdrawal of the amount of money specified in the Certificate from the account duly made by the deceased person as if he were alive, and the bank shall make payment accordingly.