

**Bills Committee on
Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005
First meeting on 15 July 2005**

List of follow-up actions to be taken by the Administration

Exemption provisions

1. Members note that in order to be eligible for the proposed exemption of profits tax, an offshore fund's central management and control must not be exercised in Hong Kong. There are concerns that such a criterion will not facilitate the operation of offshore funds in Hong Kong and may create enforcement difficulties on the part of the Administration. The Administration is requested to provide a paper covering the following aspects:
 - (a) To provide the justifications for imposing the criterion of "central management and control" on offshore funds for the purpose of the Bill and information on ways of enforcing the criterion; and
 - (b) To consider and respond to members' suggestion of relaxing the criterion in order to facilitate the operation of offshore funds in Hong Kong and to provide benefits for the local financial services industry and related sectors.

2. In order to address members' concern about the proposal of applying the proposed exemption provisions with retrospective effect to the year of assessment commencing on 1 April 1996, the Administration is requested to take the following actions:
 - (a) To provide information on -
 - (i) The justifications for applying the proposed exemption provisions with retrospective effect to the year of assessment 1996-97;
 - (ii) Profits tax assessments issued and amount of tax collected in respect of offshore funds since the year of assessment 1996-97;
 - (iii) Refunding arrangements for the profits tax collected from offshore funds since 1996-97 if the proposal to apply the proposed exemption provisions with retrospective effect is adopted;
 - (iv) Whether it is feasible to apply the proposed exemption provisions after the enactment of the Bill; and

- (v) If the proposal to apply the proposed exemption provisions with retrospective effect is not adopted, whether it is feasible not to recover outstanding profits tax from offshore funds.
- (b) In connection with item 2(a)(iii) above, to address members' concern about unfair treatment to investors/beneficial owners of offshore funds if the collected tax is to be refunded to the relevant offshore funds.

Overseas legislation and practices

3. To facilitate members' understanding of legislation and practices on tax treatment of offshore funds of other jurisdictions, the Administration is requested to provide a paper, comparing the proposals in the Bill and the relevant provisions and practices in other jurisdictions, including the United States, the United Kingdom, Singapore, Switzerland, and other jurisdictions which the Administration has made reference to in formulating the proposals in the Bill. The comparison should include but not limited to the following aspects -
- (a) Scope of tax exemption for offshore funds;
 - (b) The criteria adopted for determining tax exemption to be provided to offshore funds, including the application of the "central management and control" criterion; and
 - (c) Measures adopted to prevent abuse or round-tripping by local funds disguised as offshore funds seeking to take advantage of the exemption.