LS/B/37/04-05
2869 9216
2877 5029

Secretary for Financial Services and the Treasury
(Attention: Mr Ivanhoe CHANG, AS(Tsy)R)
Financial Services and the Treasury Bureau
4/F, Main and East Wings
Central Government Offices
Hong Kong

25 November 2005

BY FAX
Fax No. : 2234 9757
Total no. of page : (2)

Dear Mr Chang,

Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005

I am scrutinising the draft Committee Stage amendments ("CSAs") annexed to LC Paper No. CB(1)363/05-06(01) and should be grateful if you could clarify the following matters:

Proposed section 20AC(8)(b)

(a) In section 20AC(2)(b) as proposed in the Bill, transactions carried out through certain persons will be exempt from profits tax. These persons include a person authorized under section 95(2) of the Securities and Futures Ordinance (Cap. 571) ("SFO") to provide automated trading services and a person falling within the description of paragraph (xiv) of the definition of "dealing in securities" in Part 2 of Schedule 5 to SFO. The reference to "person" in proposed section 20AC(2)(b) in the Bill could be interpreted to cover a natural person as well as a legal person. However, the proposed section 20AC(8)(b) in the CSAs appears to confine specified persons to corporations and authorized financial institutions only. Is there any reason for proposing a different scope of exemption in the CSAs?

(b) Instead of referring to "regulated activity within the meaning of Schedule 5 to that Ordinance", would it be more specific if reference is made to "within the meaning of Part 1 of Schedule 5 to that Ordinance"?

Proposed Schedule 16

(a) It is noted that the nature of money-lending business is described in the definition of "money lender" in the Money Lenders Ordinance (Cap. 163). According to the definition, a money lender means every person whose business (whether or not he carries on any other business) is that of making

loans or who advertises or announces himself or holds himself out in any way as carrying on that business, subject to certain specified exclusions. By referring to "money-lending business" in section 4 of the proposed Schedule 16, does the Administration intend that the nature of such business is similar to that described in the definition of "money lender" in the Money Lenders Ordinance? If so, should "money-lending business" be defined in the Bill in terms similar to that under the Money Lenders Ordinance?

(b) In the proposed definition of "collective investment scheme" in Schedule 16, is there any reason for not adopting the full definition of the same term under section 1 of Part 1 of Schedule 1 to SFO?

(c) It is noted that the proposed definition of "deposit" is similar to the definition of the same term under section 2(1) of the Banking Ordinance. However, under the Banking Ordinance, certain loans of money are excluded from the definition of "deposit", but these exclusions have not been included in the proposed definition of "deposit" in the Bill. What is the reason for not adopting in this Bill the full definition of the term under the Banking Ordinance?

(d) In paragraph (b)(ii) and (iii) of the proposed definition of "futures contract", reference is made to contracts for differences that an authorized institution within the meaning of the Banking Ordinance (Cap. 155) may enter into under that Ordinance and contracts for differences the transaction in respect of which is regulated by or under, or is carried out in compliance with SFO. However, as "contract for differences" is not defined in the Banking Ordinance and SFO, what exactly are the types of transaction that will be covered by paragraph (b)(ii) and (iii) of the proposed definition of "futures contract"?

(e) In the proposed definition of "securities" in Schedule 16, is there any reason for not adopting the full definition of the same term under section 1 of Part 1 of Schedule 1 to SFO?

I would appreciate it if you could let us have the Administration's reply in both languages as soon as possible.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

cc: DoJ (Attention: Ms Monica LAW – SALD(BD)3)
LA