LC Paper No. CB(1)411/05-06(01)

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本函檔號 Our Ref. : FIN CR3/7/2201/02
來函檔號 Your Ref. : LS/B/3704-05

By Fax [Fax No.: 2877 5029]

28 November 2005

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Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005

Your letter dated 25 November 2005 refers please. The Administration's responses are set out below -

Proposed section 20AC(8)(b)

(a) There is no change in the scope of "specified persons" proposed in the draft Committee Stage Amendments ("CSAs"). A person falling within paragraph (xiv) of the definition of "dealing in securities" in Part 2 of Schedule 5 to the Securities and Futures Ordinance ("SFO") is a person who is licensed or registered for Type 9 regulated activity [i.e. asset management]. According to our understanding, under the SFO, only a licensed corporation or a registered financial institution is permitted to carry on any of the regulated activities [including Type 7 (providing automated trading services) and Type 9 (asset management) regulated activities]. The persons referred to in section 20AC(2)(b) in the Bill all along means a licensed corporation or a registered financial institution.

(b) We have no objection to your proposal to add "Part 1" to the description of regulated activity in the proposed section 20AC(8)(b).

Proposed Schedule 16

(a) Similar wording exists in section 16(1)(d) of the Inland Revenue Ordinance ("IRO"), viz. "in the ordinary course of the business of the lending of money". The wording is not defined in the IRO. The administration of the relevant provisions in the IRO relies on the ordinary meaning of the wording rather than the Money Lenders Ordinance. *Shun Lee Investment Co. Ltd. v. CIR* 1 HKTC 322 and Board of Review Case No. D38/89 4 Vol. 433 are two relevant cases in which it was stated that whether there is a money lender licence is not conclusive in the context of the IRO and it is a question of fact whether a money lending business is carried on.

(b), (c) and (e)

Though reference has been made to the definitions of the same terms in the SFO and the Banking Ordinance ("BO") in drafting the definitions for "collective investment scheme", "deposit" and "securities" in the CSAs, the definitions are in fact meant to be separate and independent from those in the SFO and the BO. The definitions of these terms in the SFO and the BO have their own regulatory functions to play, which are considered not necessarily appropriate for administering the offshore funds exemption under the IRO. Therefore, the aforesaid definitions are modified so as not to distort the legislative intent of providing tax exemption to offshore funds dealing in those instruments.

(d) "Contract for differences" is a contract which rides on the differences in the value of the underlying property/index. It covers a wide range of contracts, including certain types of financial derivatives traded by offshore funds. Although the BO and SFO do not have a definition for "contract for differences", the scope of tax exemption under "futures contract" has to be limited to transactions falling within the meaning of "contract for differences" that may be entered into by an authorized institution under the BO or are

regulated by or under, or are carried out in compliance with the SFO.

I hope the above information is of assistance to you.

Yours sincerely,

(Ivanhoe Chang)
for Secretary for Financial Services and the Treasury

c.c.
Clerk to Bills Committee (Attn.: Ms Debbie Yau)