

Clerk to Bills Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

For the attention of Ms Connie Szeto

30 December 2005

Dear Madam

**Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005 ("the Bill")**

We refer to your letter dated 6 December 2005 inviting us for comments on the Administration's proposed Committee Stage Amendments (CSAs) to the above Bill. On behalf of ACCA (Association of Chartered Certified Accountants) Hong Kong, we are writing to submit our comments as below.

We are pleased to note that a Departmental Interpretation and Practice Note will be issued by the Inland Revenue Department ("IRD") to clarify concerns regarding the concept of "central management and control". We also find that the Table on Scope of Exemption released by the IRD in connection with the CSAs helps address the major concerns regarding the scope of exemption.

However, we would like to highlight that the principal objective of the proposed new legislation is to exempt offshore funds from Hong Kong Profits Tax in order to reinforce the status of Hong Kong as an international financial centre. In addition, when striking a balance between revenue protection and the practicality of complying with any reporting requirements under the proposed legislation, more emphasis should be given to the latter. Where the law cannot provide taxpayers with certainty and is difficult to comply with, business will be driven away which in turn will negatively affect revenue.

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As such, we still consider that some flexibility should be allowed for a resident to escape from the deeming provision if the resident can justify that no round-tripping is involved, say through the advance ruling mechanism.

This is particularly important, especially when there is an increasing trend of foreign investments into PRC enterprises and these enterprises are expected to be allowed to invest in the global securities market, including Hong Kong, through Qualified Domestic Institutional Investors (QDII) in the near future. A situation may occur that several of the foreign investors, who are associated and in aggregate hold over 30% interest in such a PRC enterprise, will find themselves caught by the deeming provision notwithstanding that they have no round-tripping intention. As a further example, if a PRC enterprise is put under a listing vehicle for Hong Kong IPO purpose, the listing vehicle will potentially be caught by the deeming provision. If there is no "escape" provision on the deeming provision, the deemed tax can only be avoided by locating the management and control of the listing vehicle outside Hong Kong which may or may not be practically feasible. This would, in any event, run counter to the objective of the proposed legislation to reinforce Hong Kong as a user-friendly financial centre in the world.

Should you like to clarify any of our above comments, please do not hesitate to contact Ms Sonia Khao, Head of Technical Services (Hong Kong) or myself at 2524 4988.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jimmy Chung', written in a cursive style.

Jimmy Chung  
President