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The DTC Association
(The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)
存款公司公會（香港有限制牌照銀行及接受存款公司公會）

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Our Ref.: 20/02/10
Your Ref.:

3rd June, 2005 (Fri)

Miss Sharon Tong,
Clerk to *Bills Committee on Revenue(Abolition of Estate Duty) Bill 2005*,
Legislative Council,
Legislative Council Building,
8 Jackson Road, Central, Hong Kong.
(Fax: 2509 0775; pages faxed: 7)

Dear Miss Tong,

Legislative Council (LegCo) Deliberations on the Revenue (Abolition of Estate Duty) Bill 2005

We understand that the LegCo is deliberating on the captioned bill. Advocating the abolition of Estate Duty has been one of the subjects of major concern to our Association. The administration has previously been in need of strong prompting from the private sector before the last budget announcement by the Financial Secretary to abolish Estate Duty. Before that budget announcement, we have long been in support of our Legislative Council Financial Constituency representative Dr the Honourable David Li in his lobbying for abolition. We had indeed, surveyed all our Association members and confirmed that it is the view of our industry to wish for abolition.

In the light of this history, we would like to reiterate for the consideration of LegCo views we have been advocating. We have written[1] to the administration as follows:-

QUOTE

In perhaps over simplistic terms, two-thirds of our members expressing views on this issue believe that estate duty should be scrapped, period. None believes in maintaining the *status quo*. Again, over 80% of those expressing views to us believe that the abolition of estate duty will bring material benefit to Hong Kong's economy including additional deposit and investment business for AI's, leading to increased employment within the industry.

We agree very much with the comments on the consultation document expressed by our *Legislative Council* (LegCo) Financial Constituency representative Dr the Honourable

[1] On 20th October, 2004 (Wed) to Mr M M Glass, Chairman of the *Estate Duty Review Committee* of the Treasury Branch of the Financial Services and Treasury Bureau.

David Li [2]: " ... the document tends to highlight why changes should <u>not</u> made ... yet is misleading on the discriminatory nature of the duty, and silent on the scope of potential new business that could be generated ... " and that " ... only the unprepared pay estate duty, and the rich are much less likely to be unprepared ... "

As to the document's being short on forward looking, our Chairman (Mr Cliff Forster) has written separately[3] to point out that, *inter alia* persisting in charging of estate duty will make Hong Kong ill prepared to capture the business opportunities arising from the implication of the *European Union Savings Directive* ("EUSD") as in contrast to Singapore.

As Dr Li pointed out "... estate duty normally accounts for about 0.7% of Government revenue ... ". Put this in the context of the above two points that it is a tax on the unprepared and on those with potential to be lured to locate their assets in say Singapore, it is not a duty Government can have a rosy prospect on its future collection. Hence, we would urge Government not to cling to this tax as it is a separately identifiable and quantifiable revenue source and be bold to anticipate compensating gain for the economy and thus indirectly also to Government collection even though these gains have not been quantified at the moment.

UNQUOTE

Thank you for your kind attention,

Yours Sincerely

Pui-Chong LUND
Association Secretary

Enclosures-

1. Dr David Li's letter of 9th August, 2004 to the Financial Secretary (2 pages)
2. Mr Cliff Forster's letter of 22nd July, 2004 to the said Dr Li, who in turn has forwarded it the same day to the Financial Secretary (3 pages)

[Total enclosure: 5 pages]

[2] His letter of 9th August, 2004 to the Financial Secretary a copy of which is herewith enclosed for your ready reference.

[3] Letter of 22nd July, 2004 to the said Dr Li, who in turn has forwarded it the same day to the Financial Secretary. A copy is herewith enclosed for your ready reference.

BEA東亞銀行

David K.P. Li 李國寶
Chairman and Chief Executive
主席兼行政總裁

By Hand

9th August, 2004

The Honourable Henry Tang Ying Yen, GBS, JP
Financial Secretary
Financial Secretary's Private Office
12/F, West Wing
Central Government Offices
Hong Kong

My dear Henry,

I thank you for the letter from your administrative assistant dated 28th July, 2004, and for forwarding me a copy of the consultation document on review of Estate Duty. I am very pleased to see that the consultation exercise is now under way, and wish to thank you for taking the matter forward.

I had independently obtained a copy of the consultation document on the day that it was released, and must admit to some disappointment at the tone and lack of thoroughness of the document. The document tends to highlight why changes should not be made (the discussion of "domicile/residency"), yet is misleading on the discriminatory nature of the duty, and silent on the scope of potential new business that could be generated should the duty be abolished.

You will remember that, in my letter of 22nd July, I forwarded the views of Mr. Cliff Forster regarding the implications of the introduction of the European Union Savings Directive. It is surprising to me that the consultation document makes no mention of this policy change.

May I also point out the following:

Paragraph 16 notes that 53% of dutiable cases in 2003/04 involved estates worth less than $10 million, yet still claims that those who were charged estate duty "clearly belong to the better-off segment of our society." In fact, this 53% are very likely middle class taxpayers, who have paid salary tax throughout their lives and now must pay tax again after death. This group is paying a much higher percentage of income in tax than any other group in Hong Kong: the wealthy are more likely to have earned non-taxable capital gains income, while the majority of Hong Kong people escape the tax net entirely.

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Paragraph 16 also highlights two $1 billion plus estates in 2002/03. It is very unlikely that such windfall will be repeated, given the fact that:

1) Banks are now very aggressively selling their wealth management services;
2) Macau has abolished estate duty, and provides a very convenient offshore home for any cash a wealthy person may have.

Despite this, no effort is made in the consultation document to estimate how much estate duty revenue is currently lost to legal tax avoidance arrangements, nor is any effort made to estimate likely future trends. Government wants to leave the impression that it is the rich that pay estate duty. But that is not the case: only the unprepared pay estate duty, and the rich are much less likely to be unprepared.

The review of other jurisdictions lacks concrete examples that would allow relevant comparisons to be made.

No effort is made to review whether other jurisdictions are adjusting their approach to estate duty, and if so, why.

Paragraph 5 refers only to Government capital revenue, and misleads the reader into thinking that estate duty forms a significant 4% share of Government income. For the share of total income, one must refer to the table, and find that estate duty normally accounts for about 0.7% of Government revenue, a significantly lesser amount.

I trust the foregoing is sufficient to register my disappointment regarding the consultation document.

With warmest personal regards,

Yours ever,

David

c.c. Secretary for Financial Services and the Treasury
Secretary for Economic Development and Labour

b.c.c. The Secretary, HKAB
The Association Secretary, DTC Association
The Manager, The Chinese Banks' Association

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22 July 2004 (3 pages)

CONFIDENTIAL
BY FAX (2868 3238)

Dr. David Li
Chairman & Chief Executive
The Bank of East Asia, Limited
10 Des Voeux Road Central
HONG KONG

Dear David,

European Union Savings Directive ("EUSD")

Thank you for your letter of 21 July.

I will give you a summary of my understanding of the key elements of the EUSD:-

1.1 It will apply to all European Union member states and their dependent territories as well as certain other countries including Switzerland and the U.S. ("Participating States").

1.2 It is scheduled to come into effect on 1 July 2005 (postponed from the originally planned date of 1 January 2005).

1.3 It will mainly apply to savings interest income paid to natural persons who are residents of Participating States. Savings interest income includes that paid on deposit and savings accounts and on various other instruments / accounts. These include interest earned by collective investment funds which primarily invest in interest earning assets and even interest which may be tax-free in some Participating Countries.

1.4 Persons affected by the EUSD (e.g. deposit account holders) may elect to take one of the following options:

(a) they may opt to have withholding tax deducted at source by the payer at a rate of 15% for the first three years, 20% for the following three years and 35% thereafter; or

(b) that the payer reports the interest payments to its own tax authority which will then pass on the information to the tax authority in the jurisdiction in which the recipient is resident.

Some of the affects of the EUSD will be:-

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2.1 Persons who are residents of and hold bank and other accounts with institutions' offices/branches in Participating States, will prefer to hold their affected assets with financial institutions located in other jurisdictions. They will be motivated by confidentiality concerns (e.g. there may be disclosure not only to their own tax authority but also to that of the payer of interest); they may be liable for a lower or nil rate of taxation than that which will be withheld; they may prefer to pay their tax when due and not have it withheld when the interest is paid; and some, it must be cautioned, will simply wish to indulge in tax evasion.

2.2 It is also probable that people who are residents of countries outside the Participating States will decide to move their money to other jurisdictions. They will fear that the EUSD is the thin end of the wedge and that confidentiality of their financial affairs may come under threat in time.

2.3 Many high net worth people have very complex finances including liability to taxation in several jurisdictions and they will wish to avoid any further complications brought about by the EUSD. These people will also be looking to move money outside the Participating States.

The beneficiaries of account transfers from Participating States are likely to be financial institutions which are based in jurisdictions which:

(a) are politically and economically stable;

(b) have no exchange control restrictions;

(c) are leading financial centres;

(d) have well established and reliable legal systems;

(e) have a high quality banking system;

(f) have high standards of regulatory supervision;

(g) offer a wide range of competitive financial products and services;

(h) have low rates of local taxation on interest income;

(i) have no or very low rates of estate duty.

Singapore meets all the above criteria as does Hong Kong except for the last one. This, I think, is why many international banks are increasingly concentrating the expansion of their regional wealth management/private banking activities in Singapore rather than in Hong Kong.

Hong Kong should be competing for EUSD transfer business while being careful not to facilitate or be seen to encourage tax evasion (*see 2.1 above*). The estate duty regime in Hong Kong does, of course, place us at a severe competitive disadvantage.

The above is not an exhaustive analysis of the EUSD and its implications for Hong Kong but I believe it to be a reasonably accurate summary.

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I am happy for you to share the contents of this letter with members of the Government but otherwise it should be treated as confidential.

I hope that you find this helpful.

Kind regards.

Yours sincerely,

Cliff

CLIFF FORSTER
Regional Director

CRF/zt

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