Revenue (Abolition of Estate Duty) Bill 2005

Proposal on Effective Dates

As requested by the Bills Committee at the meeting of 6 July 2005, this paper elaborates the rationale for the Administration's proposals regarding the effective dates.

2. It is the Administration's intention that upon commencement of the ordinance, estate duty should be abolished with effect from 15 July 2005. (The charging of a nominal duty of $100 in respect of cases of death occurring on or after 15 July 2005 but before the commencement date is a technical arrangement to ensure that all existing legislative provisions and legal documents making reference to actual charging or payment of estate duty would not be put into doubt for such cases. We do not suggest applying the new procedures retrospectively to these cases because the estate duty assessment and probate and administration procedures might have started before the commencement date, and retrospective application of the new procedures might lead to uncertainty and confusion and would be inappropriate from the legal policy perspective.)

3. The purpose of abolishing estate duty is to make Hong Kong an attractive place in which to invest and manage investments, thus promoting the development of the asset management business and contributing to the further growth of Hong Kong as an international financial centre. Our proposal to apply the abolition of estate duty with retrospective effect would help send a clear signal to the international investment community, encouraging both local and foreign investors to make early preparation for the channeling of funds to Hong Kong, thus facilitating the achievement of our objective to promote investment. Besides, the proposed retrospective effect would also enable more people to benefit from the initiative to abolish estate duty.

4. While it is a general legal principle not to enact legislation with retrospective effect, the legal policy is that, for tax concessionary measures which will confer benefits, not a burden, on the affected class of

persons, retrospective provisions should be acceptable.

5. As a matter of fact, all profits tax and salaries tax concessions enacted in the past five years (including those enacted pursuant to the 2005-06 Budget) were applied with some retrospective effect (e.g. legislation enacted in June/July was applied retrospectively from the beginning of that year of assessment). While arguably the retrospectivity has operational justification in these cases, there are other notable examples whereby tax concessions were applied on a retrospective basis backdating not only to the commencement of the concerned assessment year but to some point in time before. These include:

(i) exemption of the owners of Hong Kong registered ships from profits tax on income derived from the international operations of those vessels implemented by the Inland Revenue (Amendment) (No.4) Ordinance 1992 enacted on 4 June 1992 with effect from 3 December 1990;

(ii) reduction of the eligible maturity period for the 50% profits tax concession on trading profits and interest income derived from Qualifying Debt Instruments (QDIs) from five years to three years, and grant of a 100% concession on trading profits and interest income from QDIs with a maturity period of seven years or more by the Revenue (No.3) Ordinance 2003 enacted on 14 November 2003 for QDIs issued on or after 3 March 2003 (the Budget day);

(iii) extension of the entitlement for home loan interest deduction under salaries tax and personal assessment from five to seven years of assessment implemented by the Revenue Ordinance 2004 enacted on 20 May 2004 with effect from the year of assessment 2003/04;

(iv) removal of the requirement that, where a person applies a portion of a home loan for the acquisition of a car parking space, the car parking space must be valued together with the dwelling concerned as a single tenement under the Rating Ordinance implemented by the Inland Revenue (Amendment) Ordinance

2004 enacted on 25 June 2004 with effect from 1998/99 year of assessment; and

(v) extension of the scope of salaries tax deduction for self-education expenses to include fees paid in respect of certain specified examinations implemented by the Inland Revenue (Amendment) Ordinance 2004 enacted on 25 June 2004 with effect from 2000/01 year of assessment.

6. Moreover, in the estate duty context, all the adjustments to the exemption threshold, duty bands and rates effected in the past ten years were applied with retrospective effect, dating the amendments to the beginning of the respective financial years.

Financial Services and the Treasury Bureau
The Treasury Branch
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