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2 May 2008

Mr Kenneth CHENG, PAS(Tsy)R2  
Financial Services and the Treasury Bureau  
The Treasury Branch  
4/F East Wings  
Central Government Offices  
Hong Kong

**BY FAX**

Fax No. : 2234 9757

Dear Mr CHENG,

**Revenue Bill 2008**

I am scrutinising the above Bill with a view to advising Members and should be grateful if you would clarify the matters set out in the Annex.

As the above Bill will be considered by the House Committee at its meeting to be held on 9 May 2008, I would appreciate it if you could let me have the Administration's reply in both languages on or before that date.

Yours sincerely,

(Connie FUNG)  
Assistant Legal Adviser

Encl.

cc: DoJ (Attn: Mr Michael LAM, SALD) Fax No. 2536 8124  
LA  
SALA1

**Legal Service Division's Comments on the  
Revenue Bill 2008**

Clauses 3 and 5

In the English text of the proposed section 16D(2)(b), it seems that the reference to “for any year of assessment up to and including the year of assessment commencing on ...” should carry a plural meaning. If this is the case, please reflect the plural meaning in the Chinese text of the proposed section. Please refer to section 37A(1A)(a) of the Inland Revenue Ordinance (Cap. 112) (IRO) where a similar reference is used.

2. In the English text of the proposed sections 16D(2)(c) and 26C(2A)(b), should “or any subsequent year of assessment” be replaced by “and all subsequent years of assessment” to achieve consistency with sections 37A(1A)(b) and 39B(1A)(b) of IRO. Please also consider amending the Chinese text of the proposed sections with reference to sections 37A(1A)(b) and 39B(1A)(b).

Clause 4 – proposed section 16H(1)

3. It is noted that in the proposed definition of “environmental protection machinery”, reference is made to “machinery or plant”. In the light of section 85(2)(c) of IRO, would it be more appropriate to prescribe what is to be included in the relevant machinery or plant in the rules to be made by the Board of Inland Revenue under section 85 of IRO instead of specifying it in Part 1 of Schedule 17 as proposed in the Bill?

4. Paragraph (a)(i) of the proposed definition of “specified capital expenditure”, when read together with the proposed section 16I, would suggest that any capital expenditure incurred on the provision of any environmental protection machinery in the production of the profits from any trade, profession or business may be deducted. If a person is providing such machinery in the course of his trade or business and if profits are derived from such trade or business, why should he be entitled to claim a deduction under the proposed section 16I? Instead of referring to “provision” of any environmental protection machinery in the proposed definition of “specified capital expenditure”, would it be more appropriate to use “acquisition” of the said machinery or other words of similar effect?

Clause 4 – proposed section 16I and Schedule 17

5. In item 1 of Part 1 of the proposed Schedule 17, please clarify whether the Environmental Protection Department is empowered under any existing

legislation such as the Noise Control Ordinance (Cap. 400) to administer the Quality Powered Mechanical Equipment (QPME) system and to register low noise construction machinery or plant under the system. Should the legal authority for administering the system and registering such machinery or plant be stipulated in Schedule 17?

6. According to information on the QPME system available on the website of the Environmental Protection Department, it seems that there is no need for the low noise construction equipment to be “registered” under the system. Instead, reference is made to items of equipment that are “approved” under the QPME system. Accordingly, should “registered” in item 1 of Part 1 of the proposed Schedule 17 be replaced by “approved”? Further, as reference is made to “equipment” instead of “machinery or plant” in the above information on the QPME system, should “equipment” be used in the said item of the proposed Schedule under the Bill?

7. In items 2 to items 4 of Part 1 of the proposed Schedule 17 where references are made to “air pollution control machinery or plant”, “waste treatment machinery or plant” and “wastewater treatment machinery or plant”, as these terms are not defined in the Air Pollution Control Ordinance (Cap. 311), Waste Disposal Ordinance (Cap. 352) and Water Pollution Control Ordinance (Cap. 358), please clarify what type of machinery or plant is to be included in each of the above categories of machinery or plant. Further, what exactly are the requirements under the relevant Ordinances that the above machinery or plant is required to comply with in order to qualify as environmental protection machinery for the purposes of the Bill. For example, is a “vapour recovery system” under the Air Pollution Control (Petrol Filling Stations) (Vapour Recovery) Regulation (Cap. 311 sub. leg. S) regarded as “air pollution control machinery or plant”? Please consider whether it is necessary to specify the relevant machinery or plant in the Bill in a more specific manner for the sake of clarity.

8. How will a person who wishes to claim a deduction under the proposed section 16I be able to know that the machinery or plant concerned has been approved/registered under the QPME system referred to in item 1 of Part 1 of Schedule 17 or has complied with the relevant statutory requirements referred to in items 2 to 4 of that Part? What evidence does he need to provide to the Inland Revenue Department in order to support his claim?

9. In section 1 of Part 2 of the proposed Schedule 17, please clarify whether the installations concerned are required to be certified by any authority as being installations falling within the types of installations set out in the said section. If so, should this requirement be provided in the Schedule?

10. In section 2 of Part 2 of the proposed Schedule 17, please clarify the legal basis on which the Electrical and Mechanical Services Department is empowered to administer the Hong Kong Energy Efficiency Registration Scheme for Buildings (the Scheme) and to register energy efficient building installations under the Scheme. Further, please clarify how a person who wishes to claim a

deduction under the proposed section 16I will be able to know that the relevant installations have been so registered, and what evidence he is required to provide in order to support his claim.

11. According to information on the Scheme available on the website of the Electrical and Mechanical Services Department, it appears that it is the buildings, not the installations, that are registered under the Scheme. Moreover, there is no reference to the term “energy efficient building installations” in the above information. Please therefore consider whether it is necessary to revise section 2 of Part 2 of the proposed Schedule 17 to reflect how the Scheme works more clearly.