JOINT LIAISON COMMITTEE ON TAXATION

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25 May 2011

Mr. Hugo Chiu
Clerk to the Bills Committee
Inland Revenue (Amendment) (No.20 Bill 2011
Legislative Council Building
8 Jackson Road
Central Hong Kong

Dear Mr. Chiu,

Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2011 ("the Bill")

In relation to the set up of the Bills Committee to scrutinize the Bill, the Joint Liaison Committee on Taxation ("the JLCT") would like to make the following comments on the Bill.

During the administration's earlier consultation on the legislative proposal, the JLCT made its submission on 10 December 2010, a copy of which is now enclosed as Annex I to this submission for your easy reference.

As stated by the Financial Secretary in his 2010 budget speech, the purposes of the legislative proposal for granting tax deductions for the acquisition costs of certain specified intellectual property rights ("the relevant IPs") is "[t]o promote the wider application of intellectual property by enterprises and the development of creative industries." Our views on how the purposes of the legislative proposal may be better achieved are reflected in our previous submission now enclosed in Annex I, to which please refer. The administration's response to our previous submission is now also enclosed in Annex II to this submission.

Before we give our specific comments on the Bill, we would like to first reiterate our view made in our previous submission that there should not be a blanket denial of the tax deductions when the relevant IPs are purchased from an associate. While the administration has not taken on board our view on this point in the Bill, we consider that this point may warrant the Bills Committee further consideration.

No blanket tax deductions for purchase of the relevant IPs from an associate, especially under a cost sharing arrangement

Section 16EC(2) of the Bill denies tax deductions for the acquisition costs of the relevant IPs which are purchased from an associate, a term which is widely defined. We consider this is too broad-brush an approach given the fact that the administration has previously indicated that the "purchase from a non associate" requirement is to avoid a sale whereby a loss-making vendor sells the rights to a profit-making associated party. We believe that it would be more

appropriate for this particular abuse to be handled specifically, rather than providing for outright prohibition on deductions for related-party sales. Our reasons for considering why removing the "purchase from a non associate" requirement, especially under a cost sharing arrangement, may better achieve the purposes of the legislative proposal are detailed in Points 14 and 15 of our previous submission now enclosed in Annex I, to which please refer.

Section 16EC (4)(b) of the Bill is inconsistent with the removal of the "use in Hong Kong" requirement

While we welcome the administration taking on board our view made in our previous submission that there is no need to impose the requirement that the relevant IPs have to be used in Hong Kong (so long as the relevant IPs are used in the production of profits chargeable to tax in Hong Kong) for granting the tax deductions, the provision contained in section 16EC (4)(b) of the Bill is however inconsistent with the removal of the "use in Hong Kong" requirement. This point will be further elaborated in our submission below.

"Customer lists" should much more preferably be specifically covered by the Bill

In response to our previous proposal to extend the scope of the tax deductions to cover intangible assets beyond those now specified in the Bill, the administration indicated in its reply to us now enclosed in Annex II to this submission that the scope as specified may in fact be wider than what we thought. In particular, the administration pointed out that "customer lists" may be covered by "copyright".

However, under section 2(1) of the Copyright Ordinance, the definition of which is adopted for the purposes of the Bill, "copyright is a property right which subsists in original literary, dramatic, musical or artistic works; sound recordings, films, broadcast or cable programmes; and the typographical arrangement of published editions." Given this definition, we have reservation as to whether "customer lists" are covered by copyright. If it is the intention of the administration to grant tax deductions for the acquisition costs of "customer lists", we are of the view that it is much more preferable to specifically provide for this in the Bill.

With the above background, we now make our specific comments on the Bill below.

IPs the registration of which is pending or subsequently invalidated

The Bill does not specifically deal with the situation where a trade mark or design is subject to a pending registration when acquired, or where the registration of a trade mark or design is subsequently invalidated. As regards pending registration, please refer to Points 12 and 13 of our previous submission now enclosed in Annex I to this submission.

In this regard, our view is that since the registration requirement is only imposed to screen out unregistered trade marks or designs with no genuine commercial value, specific provisions should therefore be made in the Bill to retrospectively grant the tax deductions once the pending application for registration of a trade mark or design is obtained.

For trade marks or designs the registration of which is subsequently invalidated, we understand it is the legislative intent that any tax deductions previously granted would then be withdrawn. If this is the case, we believe that specific provisions may also need to be added to the Bill to explicitly deal with the situation so as to put the matter beyond doubt.

A partner should not be regarded as being associated with a partnership

Given the fact that, unlike a majority shareholder of a company, the affairs of a partnership are generally run by agreement of all the partners concerned with no one single partner having a controlling say, we therefore consider that a partner should not generally be regarded as being associated with a partnership for the purposes of the Bill.

Section 16EC (1) – denial of tax deductions where a licensee acquires the relevant IPs from an owner before the commencement date of the proposed legislation

It is not readily apparent to us why this particular anti-avoidance provision is needed and what the significance is of a license being early terminated before or after the commencement date of the proposed legislation. This is particularly so given the fact that, regardless of whether a license is early terminated before or after the commencement date, the proposed legislation once enacted shall apply to the year of assessment 2011-12 and thereafter.

Supposedly, early termination of a license for the right to use the relevant IPs after the commencement date of the proposed legislation is not perceived as offensive. If so, it is not readily apparent to us why would the early termination of a license before the commencement date of the proposed legislation then become offensive? This is particularly so given the fact that royalty payments under a license agreement should in most cases be tax deductible (provided that the relevant IPs are used for the purposes of producing profits chargeable to tax in Hong Kong).

Furthermore, given the fact that tax deductions under the proposed legislation would only be granted if the purchase of the relevant IPs is from a non-associate, the purchase consideration to be paid by a licensee to an owner, being not associated with each other, must necessarily reflect the royalties to be paid or have already been paid for the unexpired term of the license. As such, we have difficulty in seeing under what conditions the Commissioner could form "the opinion that, having regard to the early termination of the license, the consideration for the purchase is not reasonable in the circumstances of the case" as required under section 16EC (1)(c) of the Bill.

If it is the reasonableness of the purchase consideration that is at issue, we consider that the remedy is not to deny the tax deductions in full, but the Commissioner invoking the power of determining the true market value of the relevant IPs and substituting the same for the inflated purchase consideration, a power already conferred to him under section 16EA (9) of the Bill.

In light of the above, we consider that section 16EC (1) is not necessary. In case the administration insists on including the section in the Bill, we suggest that the Bills Committee ask the administration to provide specific examples to illustrate (i) how the early termination of a license before the commencement date of the proposed legislation would be offensive, whereas that being early terminated after the commencement date would not; (ii) the circumstances under which the purchase consideration would be considered unreasonable and the basis for such a conclusion; (iii) the rationale for denying the deduction rather than substituting a true market value of the relevant IPs for the inflated purchase consideration; and (iv) why the general anti-avoidance provisions contained in section 61A are considered not sufficient to counteract the tax benefit that would otherwise be obtained.

Section 16EC (4)(b)- denial of the tax deductions where the relevant IPs are used wholly or principally outside Hong Kong under the terms of a license by a person other than the taxpayer

Presumably, section 16EC (4)(b) is an anti-avoidance provision, but the administration has so far not explicitly stated what the mischief targeted against by the section is. Nor has the

administration given any examples that the tax deduction provisions for the relevant IPs of the Bill could be exploited by taxpayers in the manner as envisaged in section 16EC(4)(b). Instead, based on the justifications for the section given by the administration in response to the submission made by the Association of Chartered Certified Accountants in Hong Kong ("ACCA – HK") on the same issue, section 16EC(4)(b) is simply there to disallow the tax deductions where the relevant IPs are not used in the production of profits chargeable to tax in Hong Kong. Their relevant views on the issue are now enclosed as Annex III to this submission for your easy reference.

If this is the case and as explained below, we consider that section 16EC(4)(b) is not necessary and would have undesired side effects that would hinder many normal business operations as caused by the section 39E(1)(b)(i) provision of the Inland Revenue Ordinance (on which section 16EC(4)(b) is now modeled). In this regard, the Bills Committee may like to refer to the motion passed at the end of the Special Meeting in respect of the section 39E issue held on 16 December 2009 by the Panel on Financial Affairs of Legco. A copy of the motion passed at the said meeting is now enclosed as Annex IV to this submission.

In fact, as a separate issue, the Secretary for Financial Services and the Treasury also used the same justifications for section 16EC(4)(b) as the reasons for rejecting our previous submission to him to amend 39E so as to remove the undesired side effects of section 39E(1)(b)(i). Therefore, for the reasons stated below, we consider that his reasons for the previous rejection of our proposal to amend section 39E were equally flawed.

Licensing the relevant IPs by a Hong Kong owner to a person for the use of the relevant IPs outside Hong Kong under which royalties are charged

In this situation, it is the administration's view that the relevant royalty income of the Hong Kong owner would generally be offshore and not chargeable to tax in Hong Kong. As such, the administration is therefore of view that the relevant acquisition costs of the IPs should be disallowed by section 16EC (4)(b). We however consider that in this situation, the tax deductions would already be denied by sections 16E(2) and 16EA(7) under the general principle that the relevant costs were not then incurred in the production of profits chargeable to tax in Hong Kong. As such, there would be no need to enact section 16EC (4)(b) to deny the tax deductions in the circumstance.

(i) Use of the relevant IPs outside Hong Kong under a sub-contracting arrangement regardless of whether royalties are charged

- *The administration's questionable "territorial source" and "tax symmetry" arguments*

The administration's view is that where a Hong Kong owner of the relevant IPs allows its sub-contractor (or contract manufacturer) to use the relevant IPs outside Hong Kong for the purposes of the sub-contractor manufacturing goods ordered by the owner, such an arrangement would constitute a license agreement of the relevant IPs between the owner and the sub-contractor. Furthermore, it is the administration's view that under such an arrangement, the Hong Kong owner is not using the IPs for the purposes of producing its own profits. Instead, the administration takes the view that the relevant IPs are only used by the sub-contractor to generate their offshore manufacturing profits. Accordingly, the administration's position is that based on the "territorial source" and "tax symmetry" principles, the owner should be denied the tax deductions by way of section 16EC(4)(b).

In this regard, we presume that the typical situation would be that the Hong Kong owner would buy from its sub-contractor (or contract manufacturer) the finished goods ordered by the owner and that the owner is fully chargeable to tax in Hong Kong in respect of its profits derived from the trading of the goods supplied by the sub-contractor.

In these presumed circumstances, we do not agree with the administration's view that the relevant IPs are used for the purposes of generating the sub-contractor's offshore manufacturing profits outside Hong Kong, rather than the owner using the relevant IPs for the purposes of generating its own trading profits, which are fully chargeable to tax in Hong Kong.

This is the case as the sub-contractor would generally only use the relevant IPs specifically for the manufacturing of goods ordered by the owner, e.g. affixing the owner's brand name tag to the goods ordered in the case of a trade mark, or applying the patent rights of the owner in the process of the sub-contractor manufacturing goods ordered by the owner. In these circumstances, we fail to see how it could be said that the owner is not using the relevant IPs for the purposes of generating its profits from the trading of goods supplied by the sub-contractor.

In fact, in these circumstances, we are of the view that it can hardly be said that the owner has granted a license to use the relevant IPs to the sub-contractor. This is the case given the fact that the use of the relevant IPs by the sub-contractor is specifically and solely for the purposes of the sub-contractor manufacturing the goods for the benefit of the owner, instead of the sub-contractor having a right to freely exploit the relevant IPs for the sub-contractor's own purposes and benefit.

In any case, even if such an administration's "territorial source" and "tax symmetry" arguments stand (which we do not agree), then any tax deductions claimed by the owner for the acquisition costs of the relevant IPs would already be denied by sections 16E(2) and16EA(7) under the general principle as not being expenditure incurred in the production of profits chargeable to tax in Hong Kong. Therefore, similar to scenario (i) above, there is again no need to enact section 16EC(4)(b) to deny the tax deductions in the circumstance.

In the unlikely case that royalties are charged by the owner to its sub-contractor for the use of the relevant IPs outside Hong Kong, the situation is the same as in scenario (i) above – namely the royalty income would generally be offshore and the tax deductions would be denied under the general principle by sections 16E(2) and 16EA(7) as not being expenditure incurred in the production of profits chargeable to tax in Hong Kong. As such, there is again no need to enact section 16EC(4)(b) to deny the tax deductions in the circumstance.

- *The administration's doubtful "arm's length principle" argument in a sub-contracting arrangement*

The administration's "arm's length principle" argument is apparently premised on the notion that as a matter of transfer pricing principle, the Hong Kong owner cannot simply allow its sub-contractor to use the relevant IPs royalty-free, even under a sub-contracting arrangement as described above. Instead, it apparently is the administration's view that the owner should charge the sub-contractor royalties on an arm's length basis.

We however have reservation as to whether this is the way the "arm's length principle" should be applied to the sub-contracting arrangement. As a matter of practice, from their

many years of experience in the taxation field either as taxpayers of multi-national corporate group or international tax practitioners, representatives of our constituent member organizations have not encountered any instances where an overseas tax jurisdiction invokes the said "arm's length principle" to deem such an IP owner to have derived royalty income in their jurisdiction under a sub-contracting arrangement as described above (where no royalties are charged).

We also consider that the administration's following harmful tax competition argument used in its response to the ACCA- HK's submission on the 16EC(4)(b) issue flawed. In this regard, the administration's argument is that "such "no cost" [i.e. "royalty free"] arrangement would render the sub-contractor charge lower price for goods sold to the Hong Kong enterprise, thus rendering the level of chargeable profits in that overseas jurisdiction. We consider that Hong Kong should not act in a way that would undermine the taxing rights of other jurisdictions by recognizing such "no cost" arrangement through the granting of the proposed tax deduction, otherwise Hong Kong may be labeled as a harmful tax competitor internationally."

We however are of the view that generally whether or not royalties are charged by an owner to its sub-contractor for allowing the sub-contractor to use the relevant IPs for the purposes of the sub-contractor manufacturing goods ordered by the owner would not affect the profit level of the sub-contractor. This is the case because any royalties charged by the owner would be reflected in the price of goods sold by the sub-contractor to the owner. The following example illustrates the point.

Assumptions

(i) The royalties for the sub-contractor's use of the relevant IPs are HK$50,000 under the said arm's length principle

(ii) If no royalties are charged by the owner, the price of goods supplied by the sub-contractor to the owner would be HK$1,200,000

(iii) However, if royalties are charged by the owner, the price of goods supplied by the sub-contractor to the owner would then become HK$1,250,000

(iv) The cost of manufacturing of the sub-contractor is HK$1,000,000

Profit level of the sub-contractor

	Royalties are charged	**No Royalties are charged**
Sales of goods	1,250,000	1,200,000
Royalties paid to the owner	(50,000)	---
Net sales income	1,200,000	1,200,000
Less: cost of manufacturing	(1,000,000)	(1,000,000)
Profit level	**200,000**	**200,000**

Furthermore, even in the case Hong Kong tax authorities insist on applying the said doubtful "arm's length principle" to a sub-contracting arrangement where no royalties are charged, we consider that section 16EC(4)(b) is still not necessary. The denial of the tax

deductions would still be achieved by way of sections 16E(2) or section 16EA (7) as not being expenditure incurred in the production of profits chargeable to tax in Hong Kong – as the deemed royalties would then be regarded as offshore income as shown in scenario (i) above.

It however appears to us that in the circumstances described in the immediate preceding paragraph, the Hong Kong tax authorities should upwardly adjust the price of goods paid by the owner to the sub-contractor for Hong Kong tax purposes - by the amount of royalties the owner is deemed to have charged the sub-contractor as illustrated by the example above.

We hope the Bills Committee finds the above comments helpful in enabling it to scrutinize the Bill and we can be contacted at 2846 9810.

Yours faithfully,

Patrick Kwong
Chairman – Sub-committee on the Inland Revenue (Amendment) (No. 2) Bill 2011
For and on behalf of
The Joint Liaison Committee on Taxation

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10 December 2010

Mr John Tsang, GBM, JP
Financial Secretary
Hong Kong Special Administrative Region Government
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Hong Kong

BY HAND

Prof. K.C. Chan, SBS JP
Secretary for Financial Services & The Treasury
Financial Services & The Treasury
8/F West Wing
Central Government Offices
Lower Albert Road
Hong Kong

Dear Mr Tsang and Professor Chan,

Proposal to Introduce Profits Tax Deduction for Capital Expenditure on Registered Trade Marks, Copyrights and Registered Designs

We refer to your briefing paper which was transmitted to us by Ms Shirley Kwan setting out the government's proposal to enact amendments to the Inland Revenue Ordinance ("IRO") in order to give effect to a commitment made by you in your last budget speech as outlined above. We wish to thank you for giving the JLCT an opportunity to comment.

We would offer the following comments.

1. *JLCT's previous submission.* As you know, on 15 April 2009, the JLCT made a submission to you proposing tax amortization of *all* expenditure made by taxpayers on intangibles. (This is in contrast to the current provisions of the IRO which permit tax amortization of capital expenditure in very limited circumstances only.) The driving force behind our recommendation was the concept of fairness, namely, to seek recognition that the amortization of spending on intangibles represents as much a cost of carrying on business as any other expenditure, and therefore should be taken into account in determining the true taxable profits of a taxpayer.

2. We assume that government did not accept our proposal, presumably because of the cost ramifications involved. The proposal before us now is to permit tax amortization of a fairly

limited class of capital expenditure, namely, expenditure on registered trade marks, copyrights and registered designs. We continue to believe that our initial proposal remains the better solution for the development of creative and other industries in Hong Kong. Although we are disappointed that government has not accepted our more wide-ranging recommendations, we nevertheless proceed in this letter on the basis of commenting on the more limited proposal.

3. *The purpose of your new proposal.* Whether the proposal as set out in the briefing paper makes sense depends on what is the policy objective behind it. In your budget speech, you said:

> "To promote the wider application of intellectual property by enterprises and the development of creative industries, I propose to extend the deduction [that currently exists with respect to capital expenditure to purchase patent rights and industrial know-how] to cover registered trade marks, copyrights and registered designs."

Read broadly, this could be interpreted to extend tax amortization for these limited types of expenditures to all taxpayers. However, in the context of the budget speech, we do wonder whether your purpose was to provide this tax concession only for the more limited purpose of stimulating the "development of creative industries".

If indeed the purpose is only to promote the "development of creative industries" in Hong Kong, we would raise the question whether the proposal is in fact too wide in the sense that it extends to the purchase of registered trade marks. Although such purchases may assist the taxpayer in marketing products, in itself it does not encourage the development of "creative industries". That is more likely to be fostered by purchasing copyrights and registered designs, and also by purchasing additional intangibles that are not encompassed within these three categories. We therefore suggest that thought be given as to the appropriate categories of intellectual property rights that should be the subject of this proposal.

4. On the other hand, if we have mistaken your intent, and you do in fact intend to extend this concession to *all* taxpayers in *all* industries, then that is of course government's prerogative. Our only comment is that Hong Kong would benefit by extending tax concessions to a wider range of intangibles spending that these mere three categories. We would point out that the concept of trade marks, copyrights and designs (as well as patents, that tax treatment of which is already provided for in the IRO) do in our view represent an "old world" way of thinking about business. Hong Kong frankly has moved on and, in this day and age, there are far wider ranges of intangible property that are more relevant to businesses in Hong Kong in today's economy. For example, in today's digital age, it would be in Hong Kong's better interests to encourage (by way of example) a broadband company to invest billions of dollars in developing for the benefit of business customers in Hong Kong an internet infrastructure by developing broadband access capabilities, yet such expenditure would be treated as being on capital account without any entitlement to tax amortisation. We do query whether the more limited tax concession that you have proposed will represent anything meaningful to a significant number of taxpayers in Hong Kong.

5. *Observation about the previous position in Hong Kong concerning similar rights.* We would observe that the IRO previously did provide for a deduction for trade marks, copyrights and designs, and permitted an immediate tax write-off for such expenditure. The new proposal, however, provides for amortization only over 5 years. This provision is therefore less generous when compared to what previously existed in Hong Kong prior to its abolition.

6. *Distinction between manufacturing and other rights.* We also note an anomaly in that under existing provisions of the IRO, the purchase price of patent rights and industrial know-how will remain deductible outright, whereas the cost of registered trade marks, copyrights and registered designs will be amortized only over 5 years. This seems to us an unnecessary distinction. We also question whether it fully reflects your stated intention in the budget

speech to "extend the deduction" that currently exists with respect to patents and industrial know-how to these new categories of expenditure, because the new deduction will effectively be staggered over 5 years, compared to what you referred to as your base of comparison.

7. *Is five years the correct period?* We understand that the reason for limiting the proposed tax amortization to a limited class of capital assets is because of the cost implications to government. Although amortization effectively represents only a timing difference from an accounting viewpoint, it does result in an immediate impact on the government's budget. This follows from the fact that government operates its budget on a cash basis, and we understand that you prefer to spread the "hit" to the government's budget over 5 years. Although it would be preferable to permit an outright deduction for such spending in the year of expenditure, we appreciate your concern in this regard. One possibility as an alternative would be to consider extending the range of intangibles to qualify for such amortization, but extend the amortization period to, say, 10 or even 15 years. (The de facto rule in the USA is 15 years, and in Mainland China is 10 years.) This would ensure that any impact on the government's budget in any year is kept within acceptable bounds, but would still encourage investment in a wider range of intangibles (whether restricted to the development of creative industries or more generally to the development of all industries).

8. *The registration requirement.* We note that the proposed amortization will only be made available to *registered* trade marks and designs. The stated reason for this is to help minimize tax avoidance "by screening out trade marks and designs created merely for tax benefit and hence of dubious commercial value". Although we agree that steps should be taken to prevent tax avoidance, we query whether an emphasis on registration is relevant in this regard. It is quite possible to register worthless trade marks and designs. (Conversely, we note that some unregistered trade marks and designs do have significant value, and there are often good commercial reasons for not registering them, for example, because they do not qualify for registration notwithstanding the fact that they have significant value.)

9. *The requirement for the rights to be used in Hong Kong.* We note from para 9 of the briefing paper that tax amortization will be permitted only if relevant rights are "for use in Hong Kong in the production of chargeable profits". With respect, we do not understand the rationale for having a two-prong test (namely, (i) use in Hong Kong, and (ii) in the production of chargeable profits). The normal rule for deductibility and existing categories of permitted amortization of capital expenditure is that the expenditure be incurred simply "in the production of chargeable profits". Whether the rights are used in or outside of Hong Kong should be irrelevant, so long as the taxpayer is chargeable to tax on its profits derived from the use of those rights either inside or outside Hong Kong. (We acknowledge that the "use in Hong Kong" requirement is currently provided for in section 16E with respect to the existing deduction provision for patent rights and industrial know-how, but that makes more sense since the stated purpose of that deduction was to encourage manufacture *in* Hong Kong. Indeed, given that many Hong Kong businesses now engage in manufacturing activities in Mainland China, there would be a good argument to permit a deduction for the cost of acquiring patents and manufacturing know-how to be used outside Hong Kong if this results in the production of taxable income to the taxpayer concerned, but we appreciate that this is a separate issue.)

10. *Use of foreign registered trade marks.* We would also point out that, conceptually, it is impossible to use an overseas registered trade mark or overseas registered design in Hong Kong, because trade marks and designs are territorial in nature. Thus, a Hong Kong trade mark is logically distinct from a (say) US registered trade mark. A taxpayer who wishes to use a trade mark or design in more than one jurisdiction would need to register it separately in both jurisdictions. References therefore to overseas-registered trade marks and designs are conceptually flawed since they would never meet the proposed criterion that the rights must be used in Hong Kong.

11. *The proportionality ownership requirement.* In para 13 of the briefing paper, it is proposed that, if the intellectual property is owned by more than one taxpayer, the tax deduction will be granted for the amount of capital expenditure that is proportional to the taxpayer's share or interest in the IP right. We suggest that this limitation is largely unnecessary, because presumably the taxpayer's proportional interest will be reflected in the amount of expenditure that it actually incurred in the first place. This provision therefore appears superfluous, and does not appear to meet any anti-avoidance concern.

That said, we appreciate that it might be possible in some cases that a taxpayer will incur expenditure that is disproportionate to its percentage interest in the intellectual property concerned, but we suggest this would be an unusual situation . Of course, such disproportionate spending might be commercially explicable if the two parties intend to exploit the intellectual property in different ways, for example, if one were to exploit a trademark by affixing it to manufactured goods and the other were to exploit it by licensing it to third parties. We also suggest that it would in some cases not be possible to calculate the percentage ownership where two parties jointly own an item of intellectual property but have different rights to exploit it, as indicated in the example above. And, of course, a complication that needs to be addressed is the scenario in which two parties have incurred proportionate purchase prices but thereafter bear disproportionate on-going maintenance costs for the intellectual property right concerned owing to the different uses to which they put the right.

Because of these commercial scenarios, we suggest that tax avoidance cases could best be dealt with by application of the general anti-avoidance provisions in section 61A, rather than by a blanket rule which might impinge on genuine commercial transactions.

12. *Delays in registering rights.* Trade marks can take a number of years to be registered, due to the procedures of the Trade Marks Registry and the need to deal with potential oppositions to registration. We therefore query what would happen if a taxpayer were to sell a trade mark which is still pending registration – would the purchaser be entitled to a tax amortization when it is ultimately registered?

13. In similar vein, if a deduction is permitted only after registration if completed, which may occur a number of years after the intellectual property has been acquired, there would need to be an express amendment to the IRO to permit the taxpayer to reopen its prior tax return to claim the deduction in the prior years. We do not believe that this would be permitted under the existing provisions of section 70A, in view of the absence of an error or mistake in the original filing (based on the facts that existed at the time the prior tax return as prepared and filed).

14. *Purchases from related parties.* In para 16 of the briefing paper, it is proposed that no deduction would be allowed for intellectual property that is purchased from an associated party. We note that the stated purpose of this restriction is to avoid a sale whereby a loss-making vendor sells the rights to a profit-making associated party. We believe that it would be more appropriate for this particular abuse to be handled specifically, rather than providing from outright prohibition on deductions for *all* inter-party sales. For example, if the purpose of this proposal is to develop business in Hong Kong (whether in creative industries or more generally), it would be just as much in Hong Kong's interest to encourage multi-national groups to set up a company in Hong Kong to facilitate the movement of the group's existing overseas business to Hong Kong, and this of necessity would entail the group transferring existing intellectual property rights from overseas companies to related Hong Kong companies, so that those rights could thereafter continue to be developed and exploited further in Hong Kong. This seems perfectly consistent with the notion of developing Hong Kong as a business centre. Therefore, in this case, there is just as much justification to permit a deduction as if the parties have been unrelated.

15. *Cost-sharing arrangements.*

Within many multi-national groups, the development of intellectual property rights tends to take place by means of a so-called cost-sharing arrangement ("CSA"). Under a CSA, the development work is conducted by one entity within the group, and the other entities contribute to the costs of this development. The terms of a CSA would typically provide that all in-country rights arising from such development will vest from the outset in the country entity concerned. Because a CSA is typically related to the development of new rights and not to the acquisition of existing rights, your proposals would have no impact on plain vanilla CSA arrangements.

However, typically, there is an initial contribution by one of the entities into the "pool" of assets to "kick-start" the CSA and to enable it to proceed. Such an acquisition is a matter of clear benefit to the CSA participant. Under your proposals, we note that tax amortization would usually be denied to the initial buy-in because in most cases this would constitute the acquisition of intellectual property rights from an associated party. Because of the global significance of CSA arrangements within multi-national groups, we suggest that, if the limitation on acquisitions of intellectual property rights from associates were to remain, an exception should be made in the case of genuine CSA arrangements.

16. *Previous use in Hong Kong.* Likewise, we query whether the proposal to deny amortization for intellectual property that has previously been used in Hong Kong by the taxpayer or its licensees or associates before the commencement of the proposed amendments is too broad. For example, where a Hong Kong licensee decides to acquire the intellectual property from the foreign owner, no deduction would available. With respect, there appears to us little logic to deny amortization in the case of a genuine commercial transaction. Of course, if the transaction were motivated by tax avoidance, the general anti-avoidance provisions in section 61A of the IRO would apply.

17. *IRD's powers to determine the purchase price.* We note that it is proposed that CIR will be empowered to determine the true market price of any sale or purchase transaction for the relevant intellectual property rights. In view of the fact that amortization would only be permitted for unrelated party transactions, we query whether such a power is necessary or appropriate. Although we have commented before that there needs to be a firmer legislative basis for the introduction of a transfer pricing regime in Hong Kong, we would note that transfer pricing principles apply only to related party transactions. It is inconceivable that a purchaser dealing at arm's length with the seller would agree to pay an excessive price.

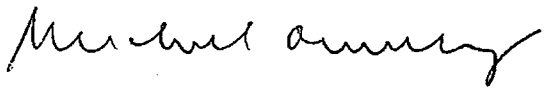
Of course, in the case of a "bundle sale" where a number of assets are sold together and an initial allocation of an aggregate amount must be made between the assets comprised in that bundle, there is potentially opportunity for abuse. In this regard, we note that para 19 of the proposal paper gives CIR power to "unbundle" a sale involving two or more intellectual property rights, but not a sale involving an intellectual property right and other assets. To avoid obvious abuse, we suggest that this provision be widened to cover all bundle sales involving the purchase of intellectual property rights with other assets.

It is worth noting that CIR has existing power under section 38A of the IRO to reallocate a purchase price amongst assets on a bundle sale that includes depreciable assets. Granting the same power on a bundle sale that includes intellectual property rights appears to be both consistent and fair.

18. *Use of a schedule to define the relevant rights.* On a final point, and in line with our earlier submission to permit tax amortization for all spending on intangibles, we suggest there could be added flexibility to include in the proposed legislation the ability to add to the list of eligible capital assets by order of the Financial Secretary, rather than having to seek further legislative amendments on a piecemeal basis going forward.

We hope you find the above comments helpful in enabling you to formulate the proposals more specifically. If you have any questions, please feel free to call me at 2846 1716.

Yours sincerely,



Michael Olesnicky
Chairman
For and on behalf of
The Joint Liaison Committee on Taxation

財經事務及庫務局
（庫務科）
香港下亞厘畢道
中區政府合署

FINANCIAL SERVICES AND THE TREASURY BUREAU
(The Treasury Branch)
Central Government Offices,
Lower Albert Road,
Hong Kong

傳真號碼 Fax No. : (852) 2523 5722
電話號碼 Tel. No. : (852) 2810 2492
本函檔號 Our Ref. : TsyB R 183/535-1/8/0(10-11)(C)
來函檔號 Your Ref. :

23 February 2011

Mr Michael Olesnicky
Chairman
Joint Liaison Committee on Taxation
14/F, Hutchison House
Central
Hong Kong

Dear Chairman,

Proposal to Introduce Profits Tax Deduction for Capital Expenditure Incurred on the Purchase of Copyrights, Registered Designs and Registered Trade Marks

Thank you for your letter dated 10 December 2010 to the Financial Secretary and the Secretary for Financial Services and the Treasury, providing comments of the Joint Liaison Committee on Taxation ("JLCT") regarding the Administration's proposal to introduce profits tax deduction for capital expenditure incurred on the purchase of copyrights, registered designs and registered trade marks ("specified IPRs"). I am authorized to reply on their behalf.

We note that JLCT suggests expanding the scope of tax deduction to cover intangible assets beyond the specified IPRs. However, we consider that the specified IPRs are more commonly used and should be more generally relevant to businesses in different sectors. Indeed, we find that some of the intangible assets proposed by JLCT in its submission of 15 April 2009 could possibly be regarded as relevant to the specified IPRs. For example, "customer lists" may be covered by "copyrights". Regarding the proposed implementation details of the tax deduction, the Administration's responses to JLCT's views are set out in the ensuing paragraphs.

"Use in Hong Kong" requirement

We share JLCT's view that it is not necessary to impose the "use in Hong Kong" condition for the proposed tax deduction. In other words, the proposed tax deduction would be granted for capital expenditure incurred on the purchase of the specified IPRs irrespective of whether they are used in Hong Kong as long as they are used by the taxpayers themselves for production of chargeable profits. We would also take the opportunity to propose legislative amendments to remove the "use in Hong Kong" requirement currently applicable to the tax deduction for patent rights and rights to any know-how.

Registration requirement

We maintain that, for the purpose of granting the proposed tax deduction, it is necessary to impose registration requirement on the specified IPRs for which registration systems are available, namely designs and trade marks but not copyrights, as the registration regimes provide an effective means to ascertain the identity of the registered owners of IPRs. As we mentioned in our earlier note to JLCT, registration in either Hong Kong or overseas would be recognised. As a related matter, we wish to point out that overseas registered designs and trade marks could be used in Hong Kong despite the existing territorial nature of the registration systems, but such designs and trade marks do not enjoy legal protection if they are not registered in Hong Kong.

Tax deduction period

Taking into account the protection life of the specified IPRs, we consider that spreading the proposed tax deduction over five succeeding years on a straight-line basis starting from the year of purchase is appropriate. The proposed tax deduction period is on par with or more generous than similar tax concessions in other tax jurisdictions. In specific circumstances where a specified IPR reaches the end of its maximum protection life within the five-year deduction period, the proposed tax deduction would be spread in equal amounts over the number of years during which the protection of the specified IPR subsists.

Anti-avoidance measures

As JLCT will appreciate, tax deduction for capital expenditure on the specified IPRs, similar to other tax deductible items, is prone to abuse. As

indicated above, we would propose legislative amendments such that patent rights, rights to any know-how and the specified IPRs used outside Hong Kong would be eligible for tax deduction provided that they are used by the taxpayers for production of chargeable profits. Besides, the sales proceeds for the specified IPRs, patent rights and rights to any know-how to be brought to tax would be capped at deductions previously allowed (legislative amendments would be proposed to relax the recapture rule currently applicable to patent rights and rights to any know-how). With such relaxations, it is necessary for the Administration to put in place measures, in addition to those mentioned in our earlier note to JLCT, to guard against possible tax avoidance. The proposed anti-avoidance measures such as "associate" provision, "sale and license back" provision, "leveraged licensing" provision and the "true market price" provision are also used in other existing tax deduction provisions in the Inland Revenue Ordinance.

After considering JLCT's views, we have made the following refinements to the proposed anti-avoidance measures –

(a) *Specified IPRs already used in Hong Kong*

As a transitional arrangement to deter taxpayers from purchasing the specified IPRs that have already been used by them under a licence before the proposed tax deduction becomes effective purely for tax benefits, we propose that a deduction will not be allowed where the taxpayer cancels the licence before its expiry and purchases the specified IPR at unreasonable consideration. This will supersede the "exclusion" provision set out in our earlier note to JLCT (paragraph 15).

(b) *Determination of cost of individual IPRs sold/purchased together for a single price*

We propose that the Commissioner of Inland Revenue will be empowered to allocate the purchase or selling price for individual specified IPRs having regard to all the circumstances of the transaction where the specified IPRs are purchased or sold together or with other asset(s) for a single price. We also propose applying the same arrangement to tax deduction for patent rights and rights to any know-how.

The Amendment Bill effecting the proposed tax deduction for the specified IPRs and the proposed enhancement measures for patent rights and rights to any know-how will be gazetted on 25 February 2011 (this Friday) for introduction into the Legislative Council on 9 March 2011. Thank you very much for JLCT's advice on this matter.

Yours sincerely,

(Miss Cathy Chu)
for Secretary for Financial Services and the Treasury

c.c. Administrative Assistant to Financial Secretary
Administrative Assistant to Secretary for Financial Services and the Treasury

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

LEGISLATIVE COUNCILLOR (ACCOUNTANCY) Paul Chan Mo Po FCPA, MH, JP
立法會議員 (會計界) 陳茂波 資深會計師

29 Mar 2011

The Hon Miriam Lau,
Chairlady
House Committee
Legislative Council
HKSAR

Dear Miriam,

Re: Inland Revenue (Amendment)(No 2) Bill 2011

I refer to the captioned bill which was recently considered by the House Committee. I am sorry that I was away from Hong Kong in London attending a seminar on Parlimentary Practice & Procedures organised by the Commonwealth Parlamentary Association when the Bill was first considered by the House Committee on 11 March.

I subsequently learnt that the accounting profession had some concerns on the bill at its present form. In this respect, I attach a letter from The Association of Chartered Certified Accountants in Hong Kong ('ACCA - HK') which is self-explanatory. I should be very grateful if you could kindly help address these concerns.

Thank you very much for your kind attention.

Yours sincerely,

Paul Chan

Room 410, West Wing, Central Government Offices, 11 Ice House Street, Central, Hong Kong
香港中環雪廠街 11 號中區政府合署西座 410 室
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只備英文本
English version only

Hon Paul CHAN Mo-po, MH, JP
Legislative Councillor (Accountancy)
Room 410 West Wing
Central Government Offices
Hong Kong

29 March 2011

Dear Sir

Inland Revenue (Amendment) (No.2) Bill 2011 (The Bill)

The Bill was gazetted on 25 February 2011. The initiative was proposed by the Financial Secretary in his 2010 Budget Speech and its purpose is "to promote the wider application of intellectual property by enterprises and the development of creative industries". As it is currently drafted, the Bill will not be able to serve such purpose and will cause concern that is similar to the current problem caused by section 39E of the Inland Revenue Ordinance. On behalf of ACCA (Association of Chartered Certified Accountants) Hong Kong, we would like to raise our concerns as follows and suggest that the Bill should be further examined by a Bills Committee before it is enacted.

Licensing specified Intellectual Property use outside Hong Kong

While section 16EA provides deduction of capital expenditure on specified intellectual properties (that are copyright, registered design and registered trade mark), section 16EC, as an anti-avoidance measure imposes restrictions on the deduction similar to existing section 39E on leased plant and machinery.

In the situation where the owner (licensor) of the specified intellectual property (IP) licenses the IP to companies (associated or non-associated) for them to use outside Hong Kong, under the current practice of the Inland Revenue Department (IRD) as explained in paragraph 45 of the Departmental Interpretation and Practice Note 21 (DIPN21), the source of the royalties received by the licensor will be in Hong Kong and subject to profits tax if the place of acquisition and granting of the licence is Hong Kong. However the cost of the IP will not be deductible under the proposed section 16EC(4)(b) of the Bill.

The asymmetry in treatments of the royalties derived from the IP and the deduction of the cost of IP may not serve the original intention of the Bill.

Use of the IP outside Hong Kong under sub-contracting

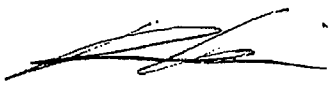
The proposed section 16EC(4)(b) may also cause problem to owner of the IP to produce goods using the IP through sub-contractors outside Hong Kong. Section 16EA allows deduction of the cost of IP irrespective whether the IP is *used* in Hong Kong or outside Hong Kong. "Use" means use by the owner in its own production. If the production is carried out by a sub-contractor outside Hong Kong, strictly speaking, the IRD may disallow the deduction of the cost of the IP on the ground it is not used by the owner but by someone else (sub-contractor) under license outside Hong Kong. As such, deduction on the cost of the IP will be denied under section 16EC(4)(b). The situation will be similar to the denial of depreciation allowances on plant and machinery under the existing section 39E.

Use of the IP by another person other than the taxpayer who incurs the expenditure

S16EA(2) allows the deduction if "Any specified capital expenditure *incurred by the person*.....if the specified intellectual property right concerned is purchased *for use in the trade, profession or business* in the production of profits in respect of which the person is chargeable to tax". In the case where the IP is licensed to another person for use in HK, clarification is required whether deduction will be denied by the IRD on the ground that the IP is not for use in the business of the taxpayer but by someone else (the licensee). This will be a very narrow interpretation and is completely contrary to the intention of the Bill.

The above situations warrant further examination before the Bill is enacted. We suggest a Bills Committee be formed and comments from the business and profession be invited. Should you wish to discuss the above suggestions in more detail, kindly please feel free to contact us at 2524 4988.

Yours faithfully



Rosanna Choi
Chairman

財經事務及庫務局

香港雪廠街
中區政府合署

FINANCIAL SERVICES AND THE TREASURY BUREAU
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本函檔號 Our Ref. :
來函檔號 Your Ref. : CB1/B/FST/2/10

6 April 2011

Miss Odelia LEUNG
Clerk to House Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2509 0775)

Dear Miss LEUNG,

Inland Revenue (Amendment) (No. 2) Bill 2011

I refer to your letter dated 1 April 2011 seeking the Administration's responses to a number of issues in relation to the Inland Revenue (Amendment) (No. 2) Bill 2011 ("the Bill") raised by the Association of Chartered Certified Accountants in Hong Kong (ACCA-HK) as relayed by Hon Paul Chan.

Background

2. The Administration introduced the Bill into the Legislative Council on 9 March 2011 with a view to giving effect to the proposal announced in the 2010-11 Budget to provide tax deduction for capital expenditure incurred on the purchase of copyrights, registered designs and registered trade marks ("specified IPRs"). The objectives are to promote the wider application of intellectual property rights ("IPRs") by enterprises, to encourage innovation and upgrading and to facilitate development of creative industries in Hong Kong.

3. In order to be eligible for the proposed tax deduction, taxpayers must have acquired the "proprietary interest" of the specified IPRs and have to fulfil the registration requirement for those IPRs for which registration systems are available. Moreover, the specified IPRs have to be in use for the production of chargeable profits.

4. At present, tax deduction has already been provided for capital expenditure incurred on the purchase of patent rights and rights to any know-how on the condition that these rights are used in Hong Kong in the production of chargeable profits. Acknowledging that business activities of local enterprises are no longer confined to Hong Kong with the globalisation of the world economy, the Administration therefore proposes in the Bill to remove the "use in Hong Kong" condition currently applicable to the tax deduction for patent rights and rights to any know-how. In other words, tax deduction would be granted for capital expenditure on the purchase of patent rights and rights to any know-how irrespective of whether they are used in Hong Kong as long as they are used by the taxpayers themselves for production of chargeable profits. The same "relaxed" arrangement has been adopted for the proposed tax deduction for the specified IPRs.

5. Apart from the relaxation in the "use in Hong Kong" requirement, we have also proposed in the Bill to relax the "deduction claw-back rule" for patent rights and rights to any know-how by reducing the amount of sales proceeds brought to tax from full sales proceeds to not more than the deductions previously allowed. This is in line with our policy of not taxing capital gains. The above enhanced "deduction claw-back rule" has also been adopted for the proposed tax deduction for the specified IPRs.

6. As the proposed relaxations mentioned in paragraphs 4 and 5 above may be exploited to avoid profits tax, we have proposed in section 16EC of the Bill to impose some commonly-used anti-avoidance measures to prevent potential abuses.

The Administration's Response to ACCA-HK's Concerns

(a) Licensing specified IPRs for use outside Hong Kong

7. Whether royalties derived from licensing arrangements are chargeable to tax in Hong Kong depends on the facts of each case. If a Hong Kong enterprise which has purchased a relevant IPR[1] licenses that relevant IPR to another enterprise for use outside Hong Kong, its royalties (i.e. licensing fees) so derived will generally be regarded as non-Hong Kong sourced income and hence will not be subject to Hong Kong tax while no deduction will be allowed

[1] Relevant IPR means patent right, right to any know-how and specified IPR.

for its capital expenditure incurred on the purchase of the relevant IPR. Paragraph 45(g) of the Departmental Interpretation and Practice Note (DIPN) No. 21 as quoted in ACCA-HK's letter is not applicable to licensing of IPRs by taxpayers who have **purchased** the IPRs (i.e. taxpayers with proprietary interest of the IPRs).

(b) Use of IPRs outside Hong Kong under sub-contracting

8. As indicated above, section 16EC is an anti-avoidance provision to prevent possible abuse of the proposed deduction which is otherwise not available. In the case where a Hong Kong enterprise allows its overseas sub-contractor to use outside Hong Kong an IPR owned by the Hong Kong enterprise at cost, the tax treatment as described in paragraph 7 above would apply and the capital expenditure incurred on the purchase of that IPR is not deductible under section 16EC(4)(b) [2].

9. In the case where a Hong Kong enterprise allows its overseas sub-contractor to use outside Hong Kong an IPR owned by the Hong Kong enterprise at no cost, since the overseas production activities by the sub-contractor are generally not attributed to the Hong Kong enterprise, according to the "territorial source" principle, the Inland Revenue Department of Hong Kong would not charge profits tax on the sub-contractor or the Hong Kong enterprise for the overseas production activities. Accordingly, based on the "tax symmetry" principle, the Hong Kong enterprises would not be granted tax deduction for IPRs solely used in overseas production activities not carried out by the Hong Kong enterprises. This treatment is in line with our established taxation principles and our policy intent of promoting wider application of IPRs in Hong Kong. If we recognise such "no cost" arrangement for the use of IPR outside Hong Kong by granting the proposed tax deduction, overseas jurisdictions may doubt whether Hong Kong is acting in compliance with the "arm's length principle" advocated by the Organisation for Economic Cooperation and Development, thus affecting the taxing rights of the overseas jurisdictions. This is because such "no cost" arrangement would render overseas tax authorities unable to tax on the Hong Kong enterprise's royalties income. Also, such "no cost" arrangement would render the sub-contractor charge lower price for goods sold to the Hong Kong enterprise, thus reducing the level of chargeable profits in that overseas jurisdiction. We consider that Hong Kong should not act in a way that would undermine the taxing rights of other jurisdictions by recognizing such "no cost" arrangement through the granting of the proposed tax deduction, otherwise Hong Kong may be labeled as a harmful tax competitor internationally.

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[2] The proposed new section 16EC(4)(b) would deny the proposed tax deduction of capital expenditure incurred on the purchase of patent rights, rights to any know-how and specified IPRs if the afore-mentioned IPRs are used wholly or principally outside Hong Kong by a person other than the taxpayer.

(c) Use of IPRs by another person other than the taxpayer who incurs the expenditure

10. The word "use" should be accorded its ordinary meaning. Based on the example given in ACCA-HK's letter, if a taxpayer grants a licence to another person (the licensee) to use in Hong Kong the relevant IPR purchased by the taxpayer, such relevant IPR would be considered as being "used" by the taxpayer in Hong Kong. Provided that the relevant IPR is used for the production of the taxpayer's chargeable profits under the Inland Revenue Ordinance and that the capital expenditure to acquire the relevant IPR is not prohibited for deduction under the proposed new section 16EC, the taxpayer is eligible to claim tax deduction under the existing section 16E or the proposed new section 16EA for the capital expenditure incurred on the purchase of the relevant IPR.

Yours sincerely,

(Miss Fiona CHAU)
for Secretary for Financial Services and the Treasury

c.c. CIR (Attn: Ms Judy YIP, SA)
DoJ (Attn: Miss Betty CHEUNG, SALD)
DoJ (Attn: Mr MY CHEUNG, ALO)

立法會
Legislative Council

立法會CB(1)677/09-10號文件

檔　號：CB1/PL/FA
電　話：2869 9577
日　期：2009年12月16日
發文者：事務委員會秘書
受文者：陳鑑林議員, SBS, JP (主席)
湯家驊議員, SC (副主席)
何俊仁議員
何鍾泰議員, SBS, S.B.St.J., JP
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陳茂波議員, MH, JP
陳健波議員, JP
陳淑莊議員
葉劉淑儀議員, GBS, JP

財經事務委員會

在2009年12月14日特別會議上通過的議案

謹請委員注意，事務委員會在上述會議的議程項目I(即進料加工安排下機械或工業裝置的折舊免稅額)下通過一項議案。該議案的措辭載於附件。

事務委員會秘書

馬海櫻

(馬海櫻女士)

連附件

副本致：張宇人議員, SBS, JP (非委員的議員)
劉健儀議員, GBS, JP (非委員的議員)
林大輝議員, BBS, JP (非委員的議員)
立法會所有其他議員
助理法律顧問6

立法會
Legislative Council

LC Paper No. CB(1)677/09-10

Ref : CB1/PL/FA
Tel : 2869 9577
Date : 16 December 2009
From : Clerk to Panel
To : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG kang, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon Tanya CHAN
Hon Mrs Regina IP LAU Suk-yee, GBS, JP

Panel on Financial Affairs

Motion passed at the special meeting on 14 December 2009

Members are invited to note that a motion was passed under agenda item I " Depreciation allowances in respect of machinery or plants under import processing arrangements" at the captioned meeting. The terms of the motion are at the Annex.

Rosalind Ma

(Ms Rosalind MA)
Clerk to Panel

Encl.

c.c. Hon Tommy CHEUNG Yu-yan, SBS, JP (Non-Panel Member)
Hon Miriam LAU Kin-yee, GBS, JP (Non-Panel Member)
Dr Hon LAM Tai-fai, BBS, JP (Non-Panel Member)
All other Hon Members of Legislative Council
ALA6

附件
Annex

財經事務委員會
在2009年12月14日特別會議上通過的
有關"進料加工安排下機械或工業裝置的折舊免稅額"的議案

本委員會促請政府：

(1) 改變以一刀切的方式處理本港各企業在內地使用的機械或工業裝置（包括模具）所應享有的折舊免稅額，以致一些沒有避稅意圖或行爲的本港企業未能取得該免稅額而致多付稅款；

(2) 停止錯誤引用《稅務條例》第39E條向沒有避稅意圖或行爲的本港企業追討有關稅款，以及，

(3) 立即啓動有關的法例檢討機制，按實際情況檢討及修改第39E條，使條文與時並進，避免打擊無辜企業，妨礙他們的升級轉型，影響到本港經濟發展和就業機會。

動議人 ： 陳茂波議員, MH, JP

和議人 ： 方剛議員, SBS, JP

(Translation)

Motion on "Depreciation allowances in respect of machinery or plants under import processing arrangements" passed by the Panel on Financial Affairs at its special meeting held on 14 December 2009

That this Panel urges the Government to:

1. change the broad-brush approach adopted for granting depreciation allowances to Hong Kong enterprises in respect of their machinery or plants (including moulds) used in the Mainland, as such approach renders some local enterprises with no tax avoidance intention or acts unable to claim such allowances, and hence paying more taxes;

2. cease invoking section 39E of the Inland Revenue Ordinance incorrectly for recovery of taxes from Hong Kong enterprises with no tax avoidance intention or acts; and

3. activate immediately the relevant mechanism for legislative revision to review and amend section 39E according to actual circumstances, in order to modernize the provision and avoid impacting on the blameless enterprises and hindering their upgrading and restructuring processes, which will in turn affect the economic development and employment opportunities in Hong Kong.

Moved by: Hon Paul CHAN, MH, JP

Seconded by: Hon Vincent FANG, SBS, JP