



香港稅務學會  
THE TAXATION INSTITUTE OF HONG KONG



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Hon CHAN Kam-lam,  
Chairman  
Committee on Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes)  
(Amendment) Bill 2012  
Legislative Council  
Hong Kong SAR Government

11 March 2013

Dear Hon KL Chan,

**Submission on the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012**

Thank you for your invitation for submission on the on Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012 and set out below are our comments on the Bill for your consideration.

**1. Manpower and resources**

We welcome and support the HKSAR Government's move to propose amendments to the Inland Revenue Ordinance ("IRO") and the Stamp Duty Ordinance ("SDO") to facilitate the development of an Islamic Bond (i.e. Sukuk) market in Hong Kong and strengthen Hong Kong's position as an international financial centre. As indicated in our submission to the FSTB's Consultation Paper issued in March 2012, this proposal came only after nearly 5 years of research and preparation by the FSTB since the then CE, Donald Tsang, first mentioned in his Policy Address for 2007/2008 to promote Islamic financial product in Hong Kong. This time lag not only reflects the complexity of the subject matter, but also perhaps, a lack of resources on the part of the HKSAR Government to give this legislative amendment a priority. Therefore, we consider it necessary for more manpower and resources to be allocated to the Hong Kong Inland Revenue Department ("IRD") to set up special Islamic products team within the Profits Tax unit and the Stamp Office to monitor the implementation of the legislative amendment, to deal with taxpayer's applications under the exemption regime under the IRO and the SDO, and (together with the FSTB) to carry out continuous research and keep the legislation up-to-date with market development.



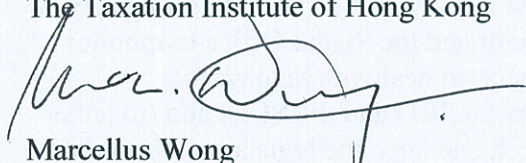
## 2. Reasonable commercial return

We are pleased to see that some of our views expressed in our submission to the FSTB's Consultation Paper have been taken on board and reflected in the Bill. However, we would like to reiterate the following point which, we consider, has not been addressed adequately in the Bill. According to Section 13 of the Proposed Schedule 17A to the IRO, one of the conditions for a bond arrangement to be recognised as a qualified bond arrangement is that *in each period* ending on a scheduled payment date, the maximum total amount of the bond return that may be payable must not exceed an amount that would be a reasonable commercial return on money borrowed of the amount of the bond proceeds. This is an added condition that instead of looking at the reasonableness of the overall return over the whole period of the bond, the bond may not be able to make fluctuating coupon payments over the scheduled payment dates. Therefore, where the profile of the returns under the bond arrangement is such that greater amounts are paid in earlier periods than in later periods, the bond arrangement may fail the "reasonable commercial return" condition, even though the overall return over the whole period of the bond is reasonable. This clearly limits the flexibility with which the pay-out profile of a specified alternative bond scheme ("ABS") may be structured, and in this manner, discriminates it against a conventional bond arrangement.

Furthermore, what is considered to be a "reasonable commercial return" for each payment period is subjective and is likely to cause uncertainty for market participants. We understand the Government will clarify what they view as a "reasonable commercial return" in a practice note to be issued by the IRD. However, we note that clarity in the drafting of the legislation is always preferable to a non-statutory practice note which is neither binding on the IRD nor the taxpayers. We therefore suggest that it would be appropriate to only look at the reasonableness of the overall return over the whole period rather than that for each of the payment periods of a specified ABS. And similar to that applicable to a conventional bond arrangement, where the sole or dominant purpose of a specified ABS paying fluctuating coupon payments is tax motivated, the arrangement would be subject to the IRD's potential application of the general anti-avoidance provision contained in section 61A of the IRO to counteract the tax benefit sought. In this regard, what constitutes a reasonable overall return of a specified ABS should be stipulated in the legislation itself to the extent possible rather than by way of a practice note.

Should you have any questions on the above, please do not hesitate to contact me.

Yours sincerely  
For and on behalf of  
The Taxation Institute of Hong Kong



Marcellus Wong  
Co-Chairman, Taxation Policy Committee