



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2294 0460)

10 April 2015

Ms Joyce HO
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)1
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Ms HO,

Inland Revenue (Amendment) Bill 2015

We are scrutinizing the legal and drafting aspects of the captioned Bill and should be grateful if you could clarify the following matters:

Clause 4

- (a) Please consider whether "capital calls" in paragraph (b) of the definition of *capital commitment* in the proposed section 20AC(6) should be defined.
- (b) Please clarify whether "認繳" should be added after "形式的" in the Chinese text of paragraph (a) of the definition of *資本認繳* (capital commitment) in the proposed section 20AC(6).

Clause 5

- (a) *[E]xcepted private company* is defined under the new section 20ACA(2) to mean a private company incorporated outside Hong Kong that, at all times within the 3 years before a transaction is carried out, did not carry on any business through or from a permanent establishment in Hong Kong and did not hold share capital in one or more private companies carrying on any business through or from a permanent establishment in Hong Kong etc.

It is noted that "business" has been used in the above definition. Is it your policy intent to allow the private company to carry on any "trade" in Hong Kong since "trade" and "business" bear different meanings under the interpretation as provided in section 2(1) of the Inland Revenue Ordinance (Cap. 112)? If not, would you consider adding "or trade" after "business"?

- (b) *[P]rivate company* is defined under the new section 20ACA(2) to mean a company incorporated in or outside Hong Kong that is not allowed to issue any invitation to the public to subscribe for any shares or debentures of the company. Is it necessary to provide that the prohibition is imposed by and contained in the articles of association of the company or otherwise (in line with section 11(1) of the Companies Ordinance (Cap. 622))?
- (c) Under the new section 20ACA(2), a *special purpose vehicle* (SPV) means a corporation, partnership, trustee of a trust estate or any other entity that, among other things, does not carry on any trade or activities except for the purpose of holding, directly or indirectly, and administering one or more excepted private companies (paragraph (d) under the definition of SPV).

It is noted that the phrase "trade or activities" is used in paragraph (d) of the above definition whereas "business" is not included. Similar to the issue raised in (a) above, would you consider adding ", business" after "trade"?

- (d) Under the new section 20ACB(1), for a private company, a permanent establishment is a fixed place of business through which activities of the company are carried on (including a branch and a place of management). "Activities" has also been referred to in subsection (2).

- (i) Does the term "activities" include trade or business of the company? Would you consider adding "trade, business or" before "activities" for clarity sake?
 - (ii) Does the term "activities" include activities of the company that are partly carried on? If so, please consider whether it is necessary to provide that the activities of the company are wholly or partly carried on.
 - (iii) Does a "place of management" include an office, factory or workshop?
- (e) Under the new section 20ACB(2)(a), "habitually" is rendered as "慣常" in the Chinese text. Would you consider amending it to "習慣上" so as to be consistent with the Chinese rendition adopted in rule 5(1) of the Inland Revenue Rules (Cap. 112A) and sections 23A(3) and 23C(5) of Cap. 112?

Clauses 7 and 8

It is proposed that the definition of *associate* in section 20AE(10) be repealed and substituted with the one to be added under the proposed section 20AC(6). The proposed definition of *associate* would also be adopted in the new section 20AF(9). When compared with the existing definition of *associate* under section 20AE(10), it is noted from the proposed definition of *associate* under the proposed section 20AC(6) that the class of associates under each category of natural person, corporation and partnership has been expanded (see items (a)(v)(B), (a)(v)(D), (b)(ix), (c)(vii)(D) and (c)(x) under the definition of *associate* in the proposed section 20AC(6)).

- (a) Please let us know the rationale for adopting the proposed definition of *associate* (arising from the originator's associate in the context of qualifying fund as defined in the proposed section 20AC(6)) in section 20AE and the new section 20AF.
- (b) By expanding the scope of *associate*, it appears that more resident persons would be caught by the anti-avoidance provisions under section 20AE and the new section 20AF if they hold the beneficial interest of a non-resident person who is an associate of the resident person. Does this reflect your policy intent?

Clause 8


It is noted that the phrase "beneficial interests in the non-resident person are bona fide widely held" is rendered as "某非居港者的實益權益被真正地分散持有" in the Chinese text of the new section 20AF(7) whereas the same is rendered as "某非居港者的實益權益的持有情況屬真正的財產權分散" in the existing section 20AE(8) of Cap. 112. Also the phrase "bona fide widely held" is rendered as "真正的財產權分散" in the existing section 26A(1A)(a)(ii) of Cap. 112. Please explain the discrepancy.

Clause 10

Please explain why "Interposed Person A" and "Interposed Person B" are rendered in Chinese as "前者" and "後者" rather than "甲中間人" and "乙中間人" in section 3(c) of Part 2 of the new Schedule 15A.

I should appreciate your reply in both English and Chinese as soon as possible, preferably before the first meeting of the Bills Committee.

Yours sincerely,


(Vanessa CHENG)
Assistant Legal Adviser

c.c. DoJ (Attn: Ms Mandy NG, SGC (By Fax: 2536 8201))
Clerk to the Bills Committee