立法會
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《2017 年稅務(修訂)(第 2 號)條例草案》
委員會報告

目的

本文件旨在匯報《2017 年稅務(修訂)(第 2 號)條例草案》委員會("法案委員會")的商議工作。

背景

2. 亞洲和中國內地的航空業迅速增長，帶動區內市場對飛機租賃服務的長期需求。香港不但是國際金融中心，也是全球重要的航空樞紐，因而在拓展飛機租賃業務方面具有競爭優勢。海外經驗顯示，稅務因素是飛機租賃公司甄選營業地方的重要考慮因素之一。

3. 行政長官已把推動香港飛機租賃業務列為其 2015 年、2016 年及 2017 年《施政報告》中的措施，而財政司司長亦在 2017-2018 年度財政預算案提到，政府計劃於 2017 年向立法會提交修訂《稅務條例》(第 112 章)的條例草案，藉以建立稅務制度，推動香港的離岸飛機租賃業務(即將飛機租賃予非香港飛機營運商)。

條例草案

4. 條例草案旨在修訂香港法例第 112 章，以：

(a) 給予合資格飛機出租商及合資格飛機租賃管理商利得稅寬減；

(b) 在利得稅方面，就與飛機相關的業務，訂定條文；及

(c) 作出相應及輕微文本修訂。

<u>為合資格飛機出租商及合資格飛機租賃管理商提供優惠稅制</u>

5. 條例草案旨在訂定制度，把合資格飛機出租商和合資格飛機租賃管理商分別得自合資格飛機租賃活動及合資格飛機租賃管理活動的合資格利潤稅率，定為香港法例第 112 章附表 8 指明的現行法團利得稅稅率的一半(即 16.5% x 50% 或 8.25%)。

6. 條例草案建議，在計算合資格飛機出租商的應評稅利潤時，合資格飛機出租商得自其合資格飛機租賃活動的淨租約付款，須按照擬議第 14I(2)條所列的公式計算。其效果是，得自合資格飛機租賃活動的租約付款的應課稅款額，等同有關稅基(即租約付款總額扣減支出(不包括折舊免稅額)後的款額)的 20%。

7. 條例草案的要點載於有關法律事務部報告(立法會 LS49/16-17 號文件)第 4 至 9 段。

法案委員會

8. 內務委員會在 2017 年 3 月 24 日舉行的會議上成立法案委員會，研究條例草案。梁繼昌議員獲選為法案委員會主席。法案委員會的委員名單載於**附錄 I**。

9. 法案委員會曾與政府當局舉行 3 次會議，並在其中一次會議上聽取代表團體的意見。法案委員會就條例草案接獲共 11 份意見書。曾向法案委員會提出意見的團體及個別人士名單載於**附錄 II**。應法案委員會的要求，政府當局已就代表團體在意見書中所提的事宜作出書面回應，有關回應載於**附錄 III**（只備英文本）。

條例草案的主要條文

10. 條例草案就合資格飛機出租商和合資格飛機租賃管理商從事與飛機相關的某些業務，可享有的利得稅寬減，訂定條文；在利得稅方面，就該等業務訂定條文；以及就香港法例第 112 章作出相應和輕微文本修訂。條例草案的主要條文如下：

(a) **條例草案第 4 條及第 15 條**在第 112 章中加入新訂第 14G 至 14N 條及新訂附表 17F，以：

(i) 界定何謂擬議稅務寬減措施適用的合資格飛機租賃活動和合資格飛機租賃管理活動(新訂第 14G 條及新訂附表 17F)；

(ii) 就合資格飛機出租商和合資格飛機租賃管理商適用的寬減利得稅措施，訂定條文(新訂第 14H、14I 及 14J 條)；

(iii) 就作為合資格飛機租賃管理商適用的安全港規則，訂定條文(新訂第 14K 條)；

(iv) 就稅務局局長有權決定某法團是合資格飛機租賃管理商，訂定條文(新訂第 14L 條)；及

(v) 訂定防避稅條文(新訂第 14M 條)；

(b) **條例草案第 5 條**修訂第 112 章第 15 條，將透過經營某些與飛機相關的業務而由某法團收取，或累算予某法團的款項，視作源自香港的款項，即使有關飛機是於香港境外使用亦然；

(c) **條例草案第 6 條**對第 112 章第 19CA 條作出相應修訂，就根據新訂第 14H 或 14J 條須以特惠稅率課稅的營業收入而言，訂明關乎用以抵銷該收入的相關虧損的調整，或反之亦然；

(d) **條例草案第 8 至 11 條**分別修訂第 112 章第 37、38、39B 及 39D 條，以處理與符合以下說明的飛機有關的成本及資本開支：某法團曾使用該飛機進行合資格飛機租賃活動，而其後將之用於另一行業、專業或業務；及

(e) **條例草案第 13 及 16 條**分別修訂第 112 章第 89 條及加入新訂附表 41，以處理過渡事宜。

法案委員會的商議工作

11. 委員普遍支持條例草案及其擬達至的目標。法案委員會在商議條例草案的過程中提出的主要事宜及關注綜述於下文各段。

條例草案的影響

12. 委員詢問，在條例草案的擬議稅務制度下，政府可能會少收的收入有多少，以及內地飛機機主會否從中得益最多。部分委員關注到，實施擬議稅務制度的相關環境及空運基建成本，是否可能會超過被吸引來港發展的飛機租賃業務所帶來的經濟效益。

13. 政府當局解釋，由於香港現時並無離岸飛機租賃業務，所以不會出現因推行擬議稅務寬減措施而令政府損失收入的問題。至於哪一方可從此項建議中得益最多，政府當局解釋，關於條例草案實施後將會在香港進行交易的飛機租賃業務中的飛機的擁有權，當局並無這方面的資料。再者，如有飛機停靠香港，有關的飛機營運商須繳付機場費用，此舉有助抵銷機場運作成本。政府當局亦有實施有助減少香港航空交通對環境的影響的措施，特別是沿飛機航道及最接近香港國際機場的地區。

14. 郭家麒議員質疑，為在香港經營離岸飛機租賃業務的合資格飛機出租商及合資格飛機租賃管理商引入稅務制度的做法，會否立下先例，令海上貨運業或藥劑業等其他行業仿效，要求享有同類的稅務待遇。政府當局表示，提供稅務優惠只是創造有利營商環境以支持某行業發展的其中一種方法。政府當局在考慮應否為另一行業設立新稅務優惠制度時，會把有關行業的需要、對政府收入的影響及可為整個社會帶來的裨益等因素納入考慮之列。

擬議稅務制度的適用範圍

15. 委員要求政府當局澄清，擬議稅務制度應否適用於涉及飛機的一部分的飛機租賃業務，例如推進引擎的租賃。部分委員質疑"飛機"的定義是否應包括太空船等其他航行器。政府當局表示，條例草案中的"飛機"的定義依照國際公約及慣例訂定。"飛機"包括飛機引擎及直升機等，但不包括太空船、衞星及飛船。

租約

16. 法案委員會察悉，根據條例草案擬議第 14G(6)(b)及(7)(d)條，出租商必須將飛機租賃予"非香港飛機營運商"，才合資格享有擬議的利得稅寬減。就"租約"的概念而言，法案委員會察悉，根據新訂第 14G(1)條就"租約"所下的定義，已交易的租約必須是淨租機租約而非融購租約(使資產的擁有權在租約的租期結束時不會被轉讓)、租購協議或有條件售賣協議，擬議的稅務制度才適用。

17. 政府當局進一步解釋，就飛機租賃業務而言，出租商可容許承租人使用飛機，而無須承擔確保該飛機適航的責任，亦無須為該飛機提供機組人員。這是條例草案擬議第 14G(1)條所指的"淨租機租約"。條例草案擬議第 14G 條引入"融購租約"的概念，其定義是符合以下其中一項條件的飛機淨租機租約：

(a) 出租者將該淨租機租約作為融資租賃[1]或貸款入帳；

(b) 租約付款總數的現值等同或多於該飛機的公平市值的80%；或

(c) 租期等同或多於該飛機尚餘的經濟效用期的 65%。

根據"融購租約"，有關飛機的產權在其租期結束時將會或可轉移予承租人。就稅務目的而言，根據"融購租約"租賃的飛機將被視為承租人所擁有，而這亦與條例草案擬議第 14G 條中"擁有"的涵意一致。

18. 委員認為，該定義過於局限，會限制飛機租約的商業條款。由於有部分代表團體指出，就飛機租賃業務可獲的稅務寬減而言，其他稅務管轄區例如新加坡，並沒有區分根據營運租約[2]及根據融資租賃而進行的飛機交易，委員質疑是否有需要在條例草案中引入"融購租約"的概念。委員亦察悉，部分代表團體建議政府當局研究擴闊稅務寬減制度的範圍至涵蓋融資租賃安排或租購協議。

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[1] 在某些情況下，出租商購入飛機後按議定的租期將之租予承租人，在議定的租期內承租人實際上擁有該飛機。在整段租期內支付的租金大致足以抵銷飛機的成本。此類協議可理解為"融資租賃"協議。凡會轉移大部分與擁有權有關的風險及回報的租約，均歸類為融資租賃。

[2] 如出租商保留該飛機擁有權的部分風險及回報，而在租期結束時有轉售價值，有關安排一般稱為"營運租約"。凡不會轉移大部分與擁有權有關的風險及回報的租約，均歸類為營運租約。

19. 政府當局解釋，條例草案擬提供稅務寬減予並不屬於飛機營運商(擬議第 14H(2)(a)條)、但應擁有該出租飛機(擬議第14G(6)(b)條)的合資格飛機出租商。就條例草案的目的而言，出租商是否根據融購租約以承租人身分持有飛機(擬議第 14G(1)條)，是判斷擁有權誰屬的方法之一。

20. 政府當局解釋，合資格飛機出租商可透過融購租約、租購協議或有條件售賣協議購買飛機。融購租約類似融資租賃；租購協議涉及委託，而有條件售賣協議則涉及保留所有權。擬議第 14G(1)條把"擁有"一詞界定為包含上述全部 3 個概念，以配合航空融資業常用的不同形式的結構。故此，合資格飛機出租商透過融購租約(以承租人身份)、租購協議(以受託人身份)或有條件售賣協議(以買家身份)持有飛機，將被視為飛機的擁有人。

21. 如合資格飛機出租商以融購租約、租購協議或有條件售賣協議租賃飛機予非香港飛機營運商，則飛機的擁有人不再是該合資格飛機出租商，而是該非香港飛機營運商。有關的租賃交易不屬於擬議第 14G(6)條所界定的合資格飛機租賃活動，該條文訂明有關飛機必須由合資格飛機出租商擁有。

22. 該項關於擁有權的規定是必需的，以確保符合國際上打擊侵蝕稅基及轉移利潤(BEPS)的最新標準。預期合資格飛機出租商會在香港進行大量業務活動，並發揮相關功能、使用相關資產，以及承擔與飛機擁有權有關的風險。政府當局指出，飛機出租商與飛機營運商之間的租賃交易大部分屬於營運租約。

合資格租賃活動

23. 譚文豪議員質疑，當局有何理據將合資格飛機租賃活動只限於把飛機租賃予非香港飛機營運商。政府當局解釋，現時已有為境內飛機租賃活動(即租賃飛機予香港飛機營運商)而設的稅務制度。其後，法案委員會察悉，鑒於經濟發展與合作組織("經合組織")的最新要求及代表團體提出的關注，政府當局將會就條例草案提出修正案，把擬議稅務寬減制度的範圍擴大至涵蓋所有離岸飛機營運商(包括在非締約夥伴司法管轄區內，並有航班飛往香港的離岸飛機營運商)及境內飛機租賃活動(請參閱下文第 50 及 51 段)。

飛機租賃管理活動

24. 委員察悉，代表團體關注到收回飛機、飛機再營銷，以及飛機租賃管理商就出售飛機向飛機出租商提供意見等活動，會否被視為擬議新訂附表 17F 第 1 部第 1 條所指的"飛機租賃管理活動"。政府當局表示，"飛機租賃管理活動"的定義第(m)段訂明，該類活動包括就飛機租賃活動為或向另一合資格飛機出租商提供服務。因此，"飛機租賃管理活動"的定義第(m)段應足以涵蓋該等活動。

25. 委員亦察悉政府當局就"飛機租賃管理活動"的定義第(j)段中出現的"營運租約"一詞所作的澄清。當局解釋，《香港財務匯報準則》第 16 號把"營運租約"界定為不會轉移大部分與其相關資產(此稅制下指飛機)擁有權有關的風險及回報的租約。這詞是執業稅務會計師及飛機出租商常用的商業概念，政府當局認為無需在條例草案中界定"營運租約"。

香港的中央管理及控制

26. 根據條例草案擬議第 14H(4)及 14J(5)條，飛機出租商及飛機租賃管理商如要符合資格在某課稅年度中享有香港的擬議稅務寬減，必須在該課稅年度中在香港進行中央管理及控制，而產生其在該課稅年度的合資格利潤的活動，亦須是由該法團在香港進行的。委員察悉，部分代表團體關注到，中央管理及控制規定並無必要，因為條例草案指明的條件已能滿足實質要求。該等條件訂明，產生合資格利潤的相關活動須在香港進行，而出租商須屬香港的稅務居民的規定，亦令擬議稅務制度在某些情況下更難遵行。

27. 政府當局回應時表示，當局提出條例草案的目的，是吸引飛機出租商來港開業，以期將香港發展成為飛機租賃中心。中央管理及控制規定會確保擬議的稅務寬減只適用於其業務經營是以香港為本藉的公司。此優惠制度須符合實質要求。有關公司不應為達到避稅目的而將利潤轉移至香港。此外，此項中央管理及控制規定使合資格飛機出租商得以利用香港的稅務協定網絡。一般而言，除非香港的飛機出租商必須是在香港進行中央管理及控制(即香港的稅務居民)，否則稅務協定夥伴的稅務當局不會同意把稅收協定優惠給予該飛機出租商。

非香港飛機營運商

28. 委員察悉，部分代表團體指出，條例草案的擬議稅務寬減適用於租賃飛機予非香港飛機營運商的飛機租賃活動及飛機租賃管理活動。根據條例草案擬議第 14G(1)條，"非香港飛機營運商"的定義為無須根據香港法例第 112 章課利得稅的飛機營運商。

29. 部分代表團體及法案委員會法律顧問詢問，"非香港飛機營運商"是否包括根據香港與外地稅務管轄區簽訂的雙邊雙重課稅協定獲豁免繳付利得稅的飛機營運商。法案委員會就此請政府當局作出回應。根據避免雙重課稅協定的相關條文，締約一方的航空公司自營運航空器從事國際運輸所得的收入和利潤，如在該締約方的地區內須予徵稅，則獲豁免在另一締約方的地區內徵收的入息稅、利得稅以及對收入和利潤徵收的所有其他稅項。

30. 委員亦察悉，代表團體關注到，根據香港法例第 112 章第 23D 條關於對身為非居住於香港的人士的飛機擁有人(包括飛機租賃合約內所指的飛機承租人)的應評稅利潤的確定的規定，凡飛機營運商的飛機在香港以內任何機坪或飛機場降落，則該飛機營運商須被當作是在香港經營業務，故此該飛機營運商原則上須繳納香港的利得稅。有代表團體指出，如飛機出租商租賃飛機予來自非稅務協定夥伴管轄區並有航班飛往香港的離岸飛機營運商，該飛機出租商便沒有資格享有擬議的利得稅寬減。由於香港現有的稅務協定網絡相對有限，"非香港飛機營運商"的規定會令擬議飛機租賃制度的吸引力下降。委員詢問，政府當局如何回應代表團體提出讓擬議稅務制度可涵蓋所有離岸飛機營運商的訴求。

31. 就代表團體提出的疑問，委員要求政府當局澄清，若出租飛機停靠香港以便運載貨物或乘客，則有關的飛機承租人是否仍被視為"非香港飛機營運商"，並因而享有擬議的稅務寬減。法案委員會察悉，有代表團體指出，雖然境外營運商根據香港雙重課稅協定的條款實際上未必須於香港繳稅，但某人是否須在香港繳稅的問題，首先應取決於本地法例而非避免雙重課稅協定，因為避免雙重課稅協定並無就上述應否課稅的事宜訂定條文，但有劃分稅務管轄區之間的徵稅權。部分代表團體建議在擬議法例中明確指明，若任何可適用的雙重課稅協定其後豁免利得稅，則"無須根據該條例(即香港法例第 112 章)課利得稅"的條件便獲得符合。

32. 政府當局表示，香港與約58個稅務管轄區訂有協定(包括避免雙重課稅協定及民航/航運入息協定)，即使居於該等稅務管轄區的企業的飛機在香港降落，該等企業亦應無須繳納利得稅。雙重課稅協定藉香港法例第112章第49條已於本地法例下具有效力。若境外飛機營運商根據避免雙重課稅協定無須繳納利得稅，則該境外飛機營運商在擬議稅務制度下會被視為"非香港飛機營運商"。居於協定夥伴管轄區的飛機營運商通過出售機票及服務提供是附帶於營運航空器從事國際運輸的情況所得的收益，無須在香港課稅，因為該等收益構成通過營運航空器從事國際運輸所得利潤的一部分。如非本地的航空公司在香港所得收益附帶於營運航空器，則擬議的稅務制度應可涵蓋該等非本地的航空公司。 由於政府當局擬提出委員會階段修正案，將條例草案下為離岸飛機租賃活動而設的擬議飛機租賃稅務制度延伸至境內飛機租賃活動，因此條例草案將不會就"非香港飛機營運商"設定義。

<u>經濟發展與合作組織的要求</u>

33. 法案委員會於2017年4月26日舉行第二次會議後，政府當局於2017年5月18日告知法案委員會，經合組織及二十國集團於2015年10月推出一套涵蓋15個範疇的行動計劃，以打擊BEPS。據政府當局表示，BEPS是指跨國企業利用各地稅務規則的差異及錯配，人為地將利潤轉移至只有很少或沒有經濟活動的低稅或無稅地方的稅務規劃策略。香港於2016年6月向經合組織承諾會落實BEPS方案。

34. 據政府當局表示，打擊損害性的稅務措施是BEPS方案中4個最低標準之一。經合組織轄下的有害稅收實踐論壇負責檢討所有參與稅務管轄區關於收入來自地域流動性高的活動(如財務及其他服務活動)的優惠稅務制度。在確定某優惠稅務制度是否具潛在損害性時，有害稅收實踐論壇會考慮多個因素，其中之一是"有關稅務制度與本地經濟分隔"。

35. 政府當局於2017年3月獲悉，有害稅收實踐論壇在確定優惠稅務制度是否具潛在損害性時，會就"分隔"安排採取非常嚴謹及狹隘的定義。若政府當局未能回應經合組織對損害性稅務措施的關注，將影響香港作為國際金融中心的聲譽。與此同時，歐洲聯盟("歐盟")已開展工作，以期於2017年年底制訂"不合作稅務管轄區"名單。損害性的稅務措施是歐盟的其中一項關注。被列為"不合作"的稅務管轄區或會遭受國際的抵制措施，

影響在當地投資和營商吸引力。因應上述最新發展，政府當局認為審慎的做法是修訂擬議的飛機租賃稅務制度，以免有看法認為有關制度(只開放予離岸飛機租賃活動)會引起"分隔"的關注。

36. 因應經合組織的最新發展及代表團體對"非香港飛機營運商"的定義提出的關注，政府當局建議修正條例草案，將條例草案下為離岸飛機租賃活動而設的擬議飛機租賃稅務制度延伸至境內飛機租賃活動(請參閱第 50 及 51 段)。根據修訂後的稅務制度，從事境內飛機租賃活動的公司會按照香港法例第 112 章規定的原本制度(即就相關飛機可獲折舊扣稅額)評定其應繳稅款。它們亦可選擇按提供予"非香港飛機營運商"的擬議寬減制度評稅，即它們不會獲得折舊扣稅額，但享有 20%稅基以計算租約付款的應課稅款額，以及稅率為現行法團利得稅稅率的 50%。然而，有關選擇一經作出便不得撤回。與此同時，從事離岸飛機租賃活動的公司仍享有 20%稅基以計算租約付款的應課稅款額，以及稅率為現行法團利得稅稅率的 50%，但不享有折舊扣稅額。

37. 法案委員會曾就政府當局的稅務寬減制度的修訂建議，徵詢本地飛機營運商的意見。所有 6 間本地飛機營運商均作出回應，並支持政府當局的建議。

38. 委員察悉，條例草案經納入上述修正案後如獲得通過，將交由有害稅收實踐論壇研究。視乎有害稅收實踐論壇是否提出任何意見，香港法例第 112 章或須作進一步修訂。

<u>安全港規則</u>

39. 擬議第 14K 條列明飛機租賃稅務寬減的安全港規則。擬議第 14K(2)條訂明，就標的年度而言，若法團的飛機租賃管理資產及飛機租賃管理利潤百分率不低於訂明的百分率(根據擬議附表 17F，訂明百分率為 75%)，法團即屬落入 1 年安全港規則的範圍。委員詢問，飛機租賃管理資產及飛機租賃管理利潤是否應一併評稅，以確定為合資格飛機租賃管理商而設的安全港條件是否獲得符合。

40. 政府當局確認，若要符合安全港規則，必須達到條例草案中就飛機租賃管理資產及飛機租賃管理利潤所訂明的門檻百分率。若法團落入 1 年安全港或多年安全港的範圍，則該法團符合某一課稅年度的安全港規則。即使在某一年度，法團的飛

機租賃管理利潤低於有關門檻，但若稅務局局長確定，該法團本會在其通常業務過程中，就有關課稅年度而符合擬議第 14J(3)條指明的條件，或擬議第 14K 條下的安全港規則，則該法團仍可被視作合資格飛機租賃管理商，並有資格獲得擬議的稅務寬減。香港法例第 112 章為合資格企業財資中心而設的稅務寬減制度，已採用類似安全港規則及由稅務局局長作決定的機制。

稅務局局長的酌情權

41. 委員察悉，條例草案擬議第 14L 條賦予稅務局局長酌情權，以決定飛機租賃管理商是否仍屬合資格飛機租賃管理商，並可享有條例草案下的稅務寬減，即使有關飛機租賃管理商基於某些理據充分及不可預見的情況，而未能符合某個課稅年度對合資格飛機租賃管理商的要求。

42. 委員關注到，有關條文賦予稅務局局長的權力或過於廣泛，他們質疑是否有客觀的準則，讓稅務局局長可據此作出決定，以及應否在條例草案中列明該等準則。政府當局表示，新訂第 14L 條讓稅務局局長可如上文第 40 段所述行使酌情權。在根據擬議第 14L 條作出決定時，局長可考慮有關法團曾進行的活動(例如法團的營運往績、資產及負債、所承擔的職能及風險，以及身份、角色及責任等)及所有其他相關資料。

43. 政府當局預期稅務局局長的決定或涉及評估個別個案的實際情況，故認為條例草案不宜就有關情況訂立明確條文。此外，政府當局告知法案委員會，香港法例第 112 章下為合資格企業財資中心而設的稅務寬減制度已訂明類似的酌情權，但稅務局局長迄今不曾行使此項酌情權。

<u>防避稅及濫用的措施</u>

退扣機制

44. 周浩鼎議員詢問，受惠於擬議稅務制度的飛機出租商及飛機租賃管理商，是否需要在香港經營飛機租賃業務最少一段時間；不符合此條件的出租商或租賃管理商是否須向政府償還其獲得的所有稅務優惠。政府當局認為沒有必要採取退扣機制，針對撤回投資而作出懲罰。

45. 政府當局解釋，香港的稅制簡單透明，稅務局局長只擁有有限的酌處權。此外，香港已具備很多競爭優勢，例如完善

的法律和稅務制度，以及穩健的金融基礎設施，以吸引海外租賃公司在香港設立業務。

利用海外公司逃稅

46. 委員關注到，有公司或會利用擬議的稅務制度逃稅。舉例而言，一間本地法團可能在海外設立公司進行飛機租賃業務，使該公司在香港進行的交易可享有稅務寬減。

47. 政府當局回應時表示，條例草案提出制訂防避稅機制，防止制度被濫用。舉例而言，合資格飛機出租商及合資格飛機租賃管理商必須是具有中央管理和控制的法團，並在香港有實質的業務存在。一間法團是否在香港進行實質業務是關乎事實的問題。稅務局會進行可比性分析，以決定該法團在香港的開支類型，與其他進行同類業務的公司的通常開支是否類似。

相聯者、相聯法團及有關連者

48. 法案委員會察悉，為釋除對避稅問題的關注，條例草案引入"相聯者"、"相聯法團"及"有關連者"等詞語。部分委員認為，這些詞語的含義相似而且重疊；有些亦已出現於香港法例第 112 章的其他部分，當中的定義略有不同，而章節內容亦有分別。他們質疑，這些詞語在條例草案中是否有必要。

49. 政府當局解釋，部分防避稅措施的應用範圍可能較廣泛，但另外一些則較多限制。"相聯者"、"相聯法團"及"有關連者"等詞語的使用，將取決於防避稅條文擬涵蓋的範圍是寬闊或狹窄。在條例草案的範圍內，由於飛機租賃和飛機租賃管理活動是由飛機出租商或飛機租賃管理商進行，因此，關乎這類實體的"相聯者"、"相聯法團"及"有關連者"的定義，有必要制訂，因該實體可能具備不同形式或結構的擁用權。

全體委員會審議階段修正案

50. 政府當局擬提出全體委員會審議階段修正案("修正案")，把條例草案下就離岸飛機租賃活動實施的擬議稅務制度擴大至適用於境內飛機租賃活動，有關原因載於上文第 28 至第 38 段。法案委員會支持政府當局的修訂建議。

51. 政府當局的擬議修正案載於**附錄 IV**。

恢復二讀辯論

52. 法案委員會支持條例草案將於2017年6月21日的立法會會議上恢復二讀辯論。

徵詢內務委員會的意見

53. 法案委員會已於2017年6月9日向內務委員會匯報其商議工作。

立法會秘書處
議會事務部4
2017年6月15日

附錄 I

《2017 年稅務(修訂)(第 2 號)條例草案》委員會

委員名單

主席	梁繼昌議員
委員	涂謹申議員 林健鋒議員, GBS, JP 謝偉俊議員, JP 莫乃光議員, JP 郭家麒議員 郭榮鏗議員 何君堯議員, JP 周浩鼎議員 譚文豪議員 (總數：10 名委員)
秘書	冼柏榮先生
法律顧問	鄭喬丰女士

附錄II

《2017年稅務(修訂)(第2號)條例草案》委員會

已向法案委員會提供口頭陳述或意見書的團體名單

^ 1. 博聞律師事務所
* 2. 國泰航空有限公司
^ 3. 德勤諮詢(香港)有限公司
^ 4. 香港飛機租賃及航空融資協會
* 5. 香港航空有限公司
* 6. 港龍航空有限公司
* 7. 香港交易及結算所有限公司
* 8. 香港快運航空有限公司
^ 9. 香港會計師公會
\# 10. 貝克•麥堅時
^ 11. 羅兵咸永道有限公司
\# 12. 特許公認會計師公會
^ 13. 香港稅務學會
\# 14. 英國安理國際律師事務所

\# 只提供口頭陳述
* 只提交意見書
^ 提供口頭陳述及意見書

The Administration's responses to the views of deputations

Organisation	The Deputations' Views	The Administration's Responses
General comments		
Cathay Pacific Airways Limited, Hong Kong Dragon Airlines Limited and Allen & Overy LLP	The proposed tax regime appears to be well focused with the objective of attracting the aircraft leasing sector. Adoption of the Bill would be a positive development for Hong Kong.	The support is welcomed.
Hong Kong Aircraft Leasing and Aviation Finance Association and PricewaterhouseCoopers Limited ("PwC")	The new tax regime will make it possible for aircraft leasing companies to incorporate and set up their operation base in Hong Kong. It is a key step in the right direction for the development of an aircraft leasing industry in Hong Kong. It is however important for the Hong Kong Government to continue to give its support to the aircraft leasing industry in the future, and in particular, expand Hong Kong's tax treaty network with other countries around the world. The Hong Kong Government should ensure that any withholding tax imposed by the tax treaty partners on lease rentals for equipment is reduced to "nil" or "the lowest rate possible" in order to further develop asset finance and leasing business in Hong Kong.	The support is welcomed. The Administration will continue its efforts in expanding Hong Kong's tax treaty network and take into account the needs of the aircraft leasing sector when negotiating the terms of tax treaties.

The Administration's responses to the views of deputations

Hong Kong Airlines Limited	The Government's initiative to promote aircraft leasing business in Hong Kong is supported. A prosperous aircraft leasing industry in Hong Kong will draw aviation talents to the city from around the globe, further consolidating Hong Kong as one of the largest international aviation hubs in the region.	The support is welcomed.
Hong Kong Exchanges and Clearing Limited ("HKEX")	HKEX supports the aircraft leasing tax amendments as an initiative to build Hong Kong as a global aircraft leasing centre.	The support is welcomed.
PwC	As special purpose vehicles ("SPVs") are normally being used for aircraft leasing, confirmation from the Inland Revenue Department ("IRD") that it will adopt a wider approach in practice to determine whether the SPVs are considered to be "centrally managed and controlled" and performing "profits generating activities" in Hong Kong is needed. We believe that the aircraft leasing industry would welcome some practical guidance from the IRD on this aspect.	The IRD would adopt a realistic approach in determining whether an aircraft lessor has satisfied the "central management and control" ("CMC") and "substantial activity" requirements after having had regard to the facts of the case. For example, the IRD would take into account, inter alia, whether the SPVs have substantial connections with a qualifying aircraft leasing manager in Hong Kong. That is, the SPVs are actually managed and controlled in Hong Kong. The IRD would provide guidance on this topic in a new Departmental Interpretation and Practice Notes ("DIPN").

PwC	The requirement of a certificate of resident ("COR") of a lessor is normally a condition precedent under a leasing transaction. The aircraft leasing industry would welcome some practical guidance from the IRD to apply for a COR and to allow an aircraft lessor to obtain a COR in a timely and efficient manner.	The IRD would provide guidance on the issue of COR in the DIPN and review its procedures to ensure that COR would be issued in a timely manner.
Section 14G		
Deloitte Advisory (Hong Kong) Limited ("Deloitte"), Hong Kong Institute of Certified Public Accountants ("HKICPA"), The Taxation Institute of Hong Kong ("TIHK"), PwC, Baker & McKenzie ("Baker") and The Association of Chartered Certified Accountants ("ACCA")	The Bill has defined a non-Hong Kong aircraft operator as one "who is not chargeable to profits tax under the Inland Revenue Ordinance". This would mean that any aircraft operator whose aircraft lands in Hong Kong would likely not be considered a non-Hong Kong aircraft operator. It would seem to be contrary to the intention of the Bill. While under the terms of Hong Kong's double taxation agreements ("DTAs"), in practice, non-resident operators may not be taxable in Hong Kong, the question of whether a person is chargeable to tax in Hong Kong should look first to the domestic legislation rather than to DTAs, which do not provide for chargeability as such, but instead allocate taxing rights between jurisdictions. In any event, it is possible that such airlines may have other activities in	Hong Kong has arrangements (including DTAs and Air Services/Shipping Income Agreements) with around 58 jurisdictions under which enterprises resident in these jurisdictions would not be charged to profits tax even if their aircraft land in Hong Kong. The DTAs have been given effect under our domestic legislation by virtue of section 49 of the IRO. If a non-resident aircraft operator is not charged to profits tax under a DTA, it would be regarded as a "non-Hong Kong aircraft operator" under the proposed tax regime. The Administration would continue to expand the tax treaty network so as to cover more non-resident aircraft operators in the future. Income derived by aircraft operators resident in a treaty partner's jurisdiction from the sale of tickets and the provision of services incidental to the operation of

	Hong Kong, such as ground handling or ticketing, for which they earn fee income that would not qualify for exemption under a DTA. A better approach may be to clarify through the definition that a non-Hong Kong aircraft operator is an aircraft operator which is not actually subject to profits tax on relevant carriage shipped in Hong Kong. It would be preferable to explicitly specify in the proposed legislation that the condition of "not chargeable to profits tax under the Ordinance" would be satisfied where profits tax are subsequently exempted under any applicable DTAs. It would be useful for the IRD to provide practical guidance on the interaction of section 23D(1) of the Inland Revenue Ordinance ("IRO") and the DTAs concluded by Hong Kong.	aircraft in international traffic would not be charged to profits tax in Hong Kong since such income forms part of the profits from the operation of aircraft in international traffic. The proposed tax regime should be able to cover those non-local airlines with income derived in Hong Kong which is incidental to the operation of their aircraft. The IRD would elaborate the interaction between section 23D(1) of the IRO and DTAs in the DIPN.
Deloitte, HKICPA, TIHK and Baker	The definition of "lease" in section 14G(1) excludes finance leases (referred to by the Bill as "funding leases"). It would constrain the commercial terms on which aircraft leases may be entered into. If a finance lease contains an option to buy the aircraft, the application of the provisions of the Bill would be	A qualifying aircraft lessor may acquire an aircraft via a funding lease, a hire-purchase agreement or a conditional sale agreement. In short, a funding lease is similar to a finance lease, a hire-purchase agreement involves a bailment and a conditional sale agreement involves a retention of title. In order to accommodate

	subject to the discretion of the IRD, which creates subjectivity and uncertainty and ultimately may require an advance ruling to be obtained. A funding lease is defined to include leases that have the features of a finance lease and under which ownership will or may pass at the end of the lease. Given that the existing definition of a hire-purchase agreement already covers leases under which ownership will or may pass, and such agreements are already excluded from the definition of a lease in the proposed section 14G, the stipulation that a dry lease does not include a funding lease seems to impose an unnecessary further restriction. As finance lease arrangements or hire-purchase agreements are not uncommon in the aircraft leasing and financing industry, TIHK would like to urge the government to consider expanding the scope of the concessionary tax regime to cover finance lease arrangements or hire-purchase agreements as both the tax regimes in Ireland and Singapore do not differentiate between operating leases and finance leases.	different forms of structure commonly used in the aviation finance industry, the word "own" is defined in the new section 14G(1) as including all these three concepts. Therefore, a qualifying aircraft lessor holding an aircraft as a lessee under a funding lease, as a bailee under a hire-purchase agreement or as a buyer under a conditional sale agreement will be regarded as the owner of the aircraft. Under the definition, if a qualifying aircraft lessor leases an aircraft to a non-Hong Kong aircraft operator under a funding lease, a hire-purchase agreement or conditional sale agreement, the qualifying aircraft lessor should no longer be regarded as the owner of the aircraft. Instead, the non-Hong Kong aircraft operator becomes the owner. The lease transaction is not a qualifying aircraft leasing activity as defined under the new section 14G(6) which stipulates that the aircraft must be owned by the qualifying aircraft lessor. The ownership requirement is necessary so as to ensure the compliance with the latest international standards to combat base erosion and profit shifting ("BEPS"). The qualifying aircraft lessor is expected to have substantial activities in Hong Kong, performing the relevant functions, using the relevant assets and assuming the relevant risks associated with the

		ownership of the aircraft. In fact, most of the aircraft lessors' leasing transactions with aircraft operators are operating leases. The Bill should be able to achieve the policy objective of fostering the aircraft leasing sector in Hong Kong.
HKICPA	The requirement that, in many cases, the lease, or any arrangement or agreement in connection with it, cannot provide that the ownership of the aircraft will or may pass to the lessee at the end of the lease seems unduly restrictive. While it would seem to be possible to request a ruling from the Commissioner of Inland Revenue ("the Commissioner") that this will not apply in a particular case, pursuant to the proposed new section 14G(5), on the basis that the Commissioner considers it unlikely that ownership will pass to the lessee, this creates an additional administrative burden on the taxpayer and uncertainty in the application of the provisions.	Under a funding lease, the legal title of the aircraft would normally pass to the lessee at the end of the lease term. Thus, a funding lease with a passage of the title would not be eligible for the proposed tax concessions. The new section 14G(5) provides that funding leases, hire-purchase agreements or conditional sale agreements would qualify as leases if, in the opinion of the Commissioner, the property in the aircraft concerned would reasonably be expected not to pass to the lessee, bailee or buyer (as the case may be). This should provide a certain degree of flexibility for the aircraft leasing industry.
TIHK	A qualifying aircraft lessor may enter into an operating lease of an aircraft with a non-Hong Kong aircraft operator for part of a year. However, as a means of	As explained above, a qualifying aircraft lessor who has disposed of an aircraft by means of a funding lease or a hire-purchase agreement would not be regarded as

	disposing the aircraft, such qualifying aircraft lessor may then within the same year enter into a finance lease or hire-purchase agreement in respect of the same aircraft with a third party. TIHK considers that there should be provisions in the proposed legislation to cater for such situation so that the qualifying aircraft lessor would continue to enjoy the proposed tax concessions for the first part of the year during which the operating lease is in force. For the avoidance of doubt, the definition of "qualifying aircraft leasing activity" may also explicitly include the disposal of an aircraft by way of outright sale or entering into a finance lease or hire-purchase agreement.	the owner of the aircraft. The lessor should not be entitled to the proposed tax concessions in respect of such activities. The Bill was designed to provide tax concessions for aircraft lessors rather than aircraft dealers. In their normal course of business, aircraft lessors would enter into operating leases for a fixed term of around 5 years in respect of their aircraft. The scenario mentioned by TIHK should be rare.
Berwin Leighton Paisner ("BLP"), PwC and ACCA	Pursuant to section 14G(6)(b), an aircraft leasing activity carried out by a corporation in respect of an aircraft will be regarded as a qualifying aircraft leasing activity if, inter alia, the aircraft is owned by the corporation, and is leased to a non-Hong Kong aircraft operator, when the activity is carried out. Intermediate lessors, who may not be aircraft operators, may be interposed between the corporation and the non-Hong Kong aircraft operator for various reasons. So long as the ultimate operator of the aircraft is a non-Hong Kong aircraft operator, the	IRD would carefully examine the facts of each case so as to ascertain if the lease transaction involved is the one intended to be eligible for the proposed tax concessions. In the absence of any tax avoidance arrangement, IRD may consider allowing a qualifying aircraft lessor to enjoy the proposed tax concessions if, for example, it leases an aircraft to a non-Hong Kong aircraft operator indirectly via a wholly owned SPV within the same group to which the non-Hong Kong aircraft operator belongs. IRD would provide guidance in the DIPN.

	condition set out in section 14G(6)(b) shall be deemed to be satisfied.	
Sections 14H and 14J		
PwC	There may be other "income" or "expenses" generated in an aircraft leasing and aircraft leasing management businesses including interest income, gains and losses arising from interest rate and foreign exchange swaps, termination payments, commissions, etc. PwC would like the IRD to clarify such incidental income or expenses arising from activities other than leasing should also fall under the proposed tax regime provided that they are part and parcel of the qualifying activities carried out by the aircraft lessors or aircraft leasing managers.	If such incidental income or expenses are generated from activities that are part and parcel of the qualifying activities carried out by qualifying aircraft lessors or qualifying aircraft leasing managers, the IRD would allow such income to be included in the qualifying profits eligible for the half rate concession under the proposed tax regime. The IRD would provide more guidance in the DIPN.
Deloitte, TIHK and Baker	Not all aircraft leasing vehicles are SPVs holding single aircraft; aircraft lessors that do not require bank financing may be set up with multiple aircraft in a large company. In these cases, requiring the lessor to be tax resident in Hong Kong means that a lessor with substantial substance in Hong Kong, but perhaps with greater substance and tax residency elsewhere, would not be able to benefit from the provisions of the Bill without creating a new Hong Kong tax resident entity	The Bill was introduced with the intention of attracting lessors to set up their business in Hong Kong and developing Hong Kong into an aircraft leasing hub. This CMC requirement makes sure that the proposed tax concessions only apply to companies with operations domiciled in Hong Kong. Such a preferential regime should comply with the substance requirement. Profits would not be shifted to Hong Kong for tax avoidance purposes.

	and transferring planes to that entity. It also likely is unnecessary, given that the operational activity pertaining to leasing the aircraft must be undertaken from Hong Kong. As an alternative, this requirement could be replaced or supplemented with a minimum Hong Kong spending requirement, or a substance requirement. The proposed legislation may need to explicitly allow for taxpayers to qualify for the concessionary tax regime for part of the year if the taxpayers' CMC is exercised in Hong Kong during part of the year. It is proposed to have a grace period for aircraft leasing platforms newly set up in Hong Kong which may not have central management and control in Hong Kong during the early years.	In addition, this CMC requirement will enable a qualifying aircraft lessor to make use of Hong Kong's tax treaty network. Generally, the tax authority of a tax treaty partner would only agree to grant treaty benefits to an aircraft lessor in Hong Kong if the lessor is centrally managed and controlled in Hong Kong (i.e. a tax resident in Hong Kong). Taking note that different companies may have different business models, the IRD will consider all the relevant facts and circumstances, including whether there is a concrete plan to set up a genuine aircraft leasing business in Hong Kong when determining whether the CMC requirement is satisfied, especially in the early years of operation.
HKICPA	The anti-avoidance provision requiring the aircraft leasing manager to be centrally managed and controlled in Hong Kong to qualify for the tax concession would appear to discriminate against non-resident companies operating in Hong Kong. Therefore, it may be inconsistent with the non-discrimination articles in Hong Kong's	The non-discrimination article under Hong Kong's DTAs prohibits discrimination based on nationality and requires that all other relevant factors, including the residence of the entity, be the same. Irrespective of the place of incorporation, qualifying aircraft lessors and qualifying aircraft leasing managers whose CMC is located in Hong Kong and thus are tax residents in

	comprehensive DTAs with other jurisdictions.	Hong Kong are eligible for the proposed tax concessions. There is no discrimination against overseas incorporated lessors and managers. The CMC requirement does not breach the non-discrimination article as non-resident lessors and managers are not in the same circumstances.
Deloitte	The Bill provides that if an aircraft is continuously leased for a period of three years, it will be considered a capital asset, such that any gain or loss on the sale would not be taxable or deductible. However, the nature of aircraft is that they are assets that generally will lose value over time. Accordingly, it is far more likely that any disposal after a three-year period would lead to a loss, which would be non-deductible under the Bill, as a result of being capital in nature. If the aircraft is sold for a profit within the first three years of ownership, the lessor would still be required to undertake a capital/revenue analysis to determine whether the gain is taxable, leading to uncertainty. The Bill would provide more certainly if the aircraft were treated as capital assets throughout the entire period of ownership, such that lessors could freely sell aircraft without any concern of triggering a significant tax charge.	The new section 14H(8) provides certainty to qualifying aircraft lessors on the tax treatment of gains or losses upon disposal of aircraft. The three-year period is relatively short in the aircraft leasing industry since most of the aircraft are leased for a term of at least 5 years. The aircraft lessors should find it easy to satisfy this criterion. If a qualifying aircraft lessor sells an aircraft within the first three years of ownership, it can still argue that the aircraft is a capital asset. The Commissioner would consider all the facts and circumstances and apply common law principles in making decisions.

The Administration's responses to the views of deputations

Section 14I		
TIHK	To compensate for the loss of depreciation allowances (because of the current prohibition under section 39E of the IRO), the proposed legislation has adopted a deemed 80% deduction rule. An alternative and better legislative approach would be to amend section 39E such that depreciation allowances are granted to a qualifying aircraft lessor in respect of an aircraft leased to a non-Hong Kong aircraft operator because: - Aircraft lessors in Hong Kong would likely need to pay a modest amount of taxes under the proposed tax regime whereas aircraft lessors operating in Ireland and Singapore would not normally need to pay taxes in their initial years of operation; - The deemed 80% deduction could be perceived as an artificial definition of the tax base; and Granting depreciation allowances will make the tax treatment for onshore and offshore aircraft leasing activities consistent.	Section 39E of the IRO was introduced as a measure to stop the abusive use of tax leverage leases of machinery or plant, including aircraft, which caused substantial tax losses with no compensatory macroeconomic benefits to Hong Kong. To amend section 39E will compromise the integrity of this anti-abuse provision. Therefore, a dedicated tax regime is proposed in the Bill for the offshore aircraft leasing industry, which is comparable to the existing regime for onshore aircraft leasing activities where lessors are entitled to depreciation allowances. The 20% tax base is not arbitrarily decided, but represents the average profit margin of aircraft leasing business after consulting the aviation industry stakeholders.
BLP and Baker	If the corporation is a lessee under a funding lease, a bailee under a hire-purchase agreement or a buyer under a conditional sale agreement, it shall be deemed to have incurred capital expenditure on the provision of the aircraft concerned by virtue of its entry into the	BLP's understanding is correct.

	funding lease, the hire-purchase or conditional sale agreement.	
Baker	Under the new section 14I(3)(b), no 20% tax base concession would be granted to a qualifying aircraft lessor if capital allowances have been previously claimed by a connected person in respect of the aircraft concerned. This condition should be removed if the aircraft was transferred by the connected person at an arm's length price.	The 20% tax base concession is to compensate for the loss of depreciation allowances. The new section 14I(3)(b) is an anti-abuse provision which prevents an aircraft leasing group from having depreciation allowances and the 20% tax base concession at the same time. That is, a connected person has obtained generous depreciation allowances (equivalent to 72% of the aircraft cost in the first year of ownership and 8.4% of the aircraft cost in the second year of ownership) before the disposal of the aircraft to the lessor who would enjoy the 20% tax base concession. Removing the condition in section 14I(3)(b) would easily result in tax abuses.
Section 14N		
TIHK	In order to avoid any perceived possible conflict of interest, it appears that the Commissioner, being a tax administrator and collector, should preferably not be directly empowered to change Schedule 17F on his own.	The Commissioner has been empowered to amend similar schedules to the IRO, e.g. section 20AC(5). Moreover, any amendment order is subject to negative vetting by the Legislative Council.

The Administration's responses to the views of deputations

Schedule 17F		
BLP	The definition of "aircraft leasing management activity" should also include the following: - repossession of aircraft; and - remarketing of aircraft.	Paragraph (m) of the definition of "aircraft leasing management activity" stipulates such activity includes the provision of services in relation to an aircraft leasing activity for or to a qualifying aircraft lessor. This paragraph should be wide enough to cover provision of services to qualifying aircraft lessors in connection with repossession of aircraft and remarketing of aircraft. The IRD would elaborate the application of paragraph (m) in the DIPN.
PwC	Another activity which may be carried out by an aircraft leasing manager may be providing advice to aircraft lessors in relation to disposals of aircraft. PwC would like the IRD to clarify that this activity or any related activities will be treated as qualifying leasing management activities for the purpose of the tax regime.	Paragraph (m) of the definition of "aircraft leasing management activity" should be wide enough to cover provision of advice to qualifying aircraft lessors in connection with disposals of aircraft. The IRD would elaborate the application of paragraph (m) in the DIPN.
Deloitte	Paragraph (j) of the definition of "aircraft leasing management activity" provides that the marketing of operating leases would be considered an aircraft leasing management activity. While, as a commercial reality, many aircraft leases are considered operating leases by market participants, a significant portion are	The list of aircraft leasing management activities is modelled on a similar aircraft leasing regime in Singapore. As the definition of "lease" under the new section 14G(1) has excluded finance leases, a qualifying aircraft lessor can only carry on an operating lease business. Therefore, a qualifying

	finance leases, and these should not be excluded. Moreover, the term "operating lease" is not defined in the Bill. It would be helpful if the Bill included a definition to provide certainty.	aircraft leasing manager is expected to market operating leases for a qualifying aircraft lessor. "Operating lease" is defined in Hong Kong Financial Reporting Standard 16 as a lease that does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset (i.e. an aircraft under a lease in this proposed tax regime). This term is a commonly used commercial concept well known by the tax practitioners and aircraft lessors. The Administration considers it unnecessary to define this well-known accounting and commercial concept in the Bill.
Deloitte and HKICPA	Paragraph (k) of the definition of "aircraft leasing management activity" would allow financing to be provided to an airline enterprise for the purchase of an aircraft. However, the new section 14G(7) provides that an aircraft leasing management activity will be a qualifying activity only if it meets a number of criteria, including that the qualifying aircraft leasing manager must perform the activity for a qualifying aircraft lessor. A corporation can be a qualifying aircraft lessor only if it is not an aircraft operator. This means that paragraph (k) can apply only where a	Paragraph (k) would apply when a qualifying aircraft leasing manager provides, at the request of a qualifying aircraft lessor, finance to an airline enterprise for acquiring an aircraft from that lessor. By providing finance to the airline enterprise, the qualifying aircraft leasing manager is assisting the qualifying aircraft lessor to dispose of its aircraft. Hence, such activity is carried out for that lessor and would be qualified for the proposed tax concessions.

	corporation provides financing to an airline enterprise, and that airline enterprise is not an aircraft operator. It seems highly unlikely that a company that is an airline enterprise and requires financing to purchase an aircraft would not also be an aircraft operator. The current drafting of the Bill would make it difficult to achieve its intended objectives.	

《2017 年稅務(修訂)(第 2 號)條例草案》法案委員會

政府擬議的全體委員會審議階段修正案

目的

政府建議對《2017 年稅務(修訂)(第 2 號)條例草案》(條例草案)提出全體委員會階段修正案(修正案)，以回應－

(a) 經濟發展與合作組織(經合組織)對損害性的稅務措施的最新規定；以及

(b) 團體代表的意見書。

本文件邀請委員考慮擬議的修正案。

經合組織的最新發展

2. 經合組織及二十國集團於 2015 年 10 月推出一套涵蓋 15 個範疇的行動計劃，以打擊侵蝕稅基及轉移利潤(BEPS)。BEPS 是指跨國企業利用各地稅務規則的差異及錯配，人為地將利潤轉移至只有很少或沒有經濟活動的低稅或無稅地方的稅務規劃策略。香港於 2016 年 6 月向經合組織承諾會落實 BEPS 方案。

3. 打擊損害性的稅務措施是 BEPS 方案中四個最低標準之一[1]。經合組織轄下的有害稅收實踐論壇負責檢討所有參與稅務管轄區關於收入來自地域流動性高的活動(如財務及其他服務活動)的優惠稅務制度。在確定某優惠稅務制度是否具潛在損害性時，有害稅收實踐論壇會考慮多個因素，其中之一是「有關稅務制度與本地經濟分隔」。

4. 今年 3 月，我們得悉有害稅收實踐論壇在確定優惠稅務制度是否具潛在損害性時，會就「分隔」安排採取非常嚴

[1] 四個最低標準包括打擊損害性的稅務措施(第5項行動計劃)、防止濫用稅收協定的情況(第6項行動計劃)、訂立國別報告的規定(第13項行動計劃)，以及引入爭議解決機制(第14項行動計劃)。

謹及狹隘的定義。若我們未能回應經合組織對損害性稅務措施的關注，將影響香港作為國際金融中心的聲譽。與此同時，歐洲聯盟(歐盟)已開展工作，以期於 2017 年年底制訂「不合作稅務管轄區」名單。損害性的稅務措施是歐盟的其中一項關注[2]。被列為「不合作」的稅務管轄區或會遭受國際的抵制措施，影響在當地投資和營商吸引力。

5. 因應上述最新發展，我們認為審慎的做法是修訂擬議的飛機租賃稅務制度，以免有看法認為有關制度(只開放予離岸飛機租賃活動)會引起「分隔」的關注。

團體代表的意見書

6. 現時，將飛機租予香港飛機營運商的公司(即境內飛機租賃活動)，可按《稅務條例》(第 112 章) (下稱《稅務條例》)獲得扣減該飛機的折舊免稅額(下稱**評稅方式 A**)。

7. 另一方面，條例草案中建議的飛機租賃稅務制度(下稱**評稅方式 B**)旨在向離岸飛機租賃活動提供利得稅寬減。換言之，符合擬議利得稅寬減的條件是有關飛機出租商必須將飛機租予「非香港飛機營運商」，當中並不包括本地飛機營運商及經營香港航線的離岸飛機營運商。

8. 然而，業界相關持分者曾就上述「非香港飛機營運商」的規定表示關注。它們認為擬議的飛機租賃稅務制度只適用於在香港以外經營業務的非香港飛機營運商，以及受香港全面性避免雙重課稅協定和空運／航運的避免雙重徵稅協定涵蓋的非香港飛機營運商。將飛機租予經營香港航線並位於非香港締約夥伴稅務管轄區的離岸飛機營運商的租賃活動，將不可受惠於擬議的利得稅寬減。由於香港現時的稅務協定網絡相對有限，這項規定會減低擬議飛機租賃稅務制度的吸引力。因此，業界相關持分者希望擬議的稅務制度可延伸至所有離岸飛機營運商。

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[2] 在篩選過程中，歐盟會採納三個標準，包括(a)稅務透明度；(b)公平課稅；以及(c)落實打擊BEPS措施。就公平課稅而言，有關的稅務管轄區不應有任何被有害稅收實踐論壇評定為損害性的優惠稅務措施。

全體委員會階段修正案

9. 因應經合組織的最新發展及團體代表的意見書，我們建議提出載於**附件 A**的草擬修正案，將條例草案下為離岸飛機租賃活動而設的擬議飛機租賃稅務制度延伸至境內飛機租賃活動。根據經修正的稅務制度，從事境內飛機租賃活動的公司會按評稅方式 A 計算其應繳稅款，它們亦可選擇按評稅方式 B 評稅。然而，有關選擇一經作出便不得撤回。從事離岸飛機租賃活動的公司則仍只可選擇評稅方式 B。擬議修正案下各評稅方案的概要載於**附件 B**。

持分者反應的評估

10. 正如我們就條例草案提交的立法會參考資料摘要(檔號編號：THB(T)CR 1/44/951/08)中所述，政府已諮詢本地航空公司對原本專門稅務制度(即只針對離岸飛機租賃活動)的意見，它們均支持有關建議。擬議的修正案會為所有本地航空公司提供多一個評稅方式，它們可按各自的商業考慮和策略比較評稅方式 A 及評稅方式 B 的利弊，然後自行決定是否選擇新稅務制度下的評稅方式，或繼續按現有的評稅方式評稅。因此，我們認為相關持分者不會作出反對。

徵詢意見

11. 現邀請委員備悉擬議的修正案並提出意見。

2017 年 5 月

附件 **A**

《2017 年稅務(修訂)(第 2 號)條例草案》

委員會審議階段

由運輸及房屋局局長動議的修正案

條次	建議修正案
4	在建議的第 14G(1)條中，刪去***非香港飛機營運商***的定義。
4	在建議的第 14G(6)(b)條中，刪去“，並正租賃予非香港飛機營運商”。
4	在建議的第 14G(7)(d)條中，刪去“非香港”而代以“某”。
4	在建議的第 14H(1)條中，刪去“(4)、(6)及(7)”而代以“(4)及(6)”。
4	刪去建議的第 14H(7)條而代以 —— “(7) 如第(1)款就某課稅年度而言，適用於某法團，則就該課稅年度而言，該法團無權就為提供有關飛機而招致的資本開支，獲給予第 6 部所訂的免稅額。”。
4	刪去建議的第 14I(3)(b)條而代以 —— “(b) 如某法團或其有關連者，已就為提供有關飛機而招致的資本開支，獲給予第 6 部所訂的免稅額，則就任何課稅年度而言，第(2)款均不適用於該法團；或”。

4 在建議的第 14I(4)條中，刪去“非香港”。

4 在建議的第 14J(1)條中，刪去“(5)、(7)及(8)”而代以“(5)及(7)”。

4 刪去建議的第 14J(8)及(9)條。

4 刪去建議的第 14M(5)、(6)及(8)條。

新條文 加入 ——

“**5A. 修訂第 16 條(應課稅利潤的確定)**

在第 16(1)條之後 ——

加入

“(1A) 凡為施行第(1)款而計算某人的支出及開支的扣除款額，如 ——

(a) 該人是某法團的有關連者(第 14G(1)條所界定者)；

(b) 該人須直接或透過任何中間人，支付某款項予該法團；及

(c) 該法團在某課稅年度中的應評稅利潤當中，包括該款項，而該利潤是根據第 14H(1)或 14J(1)條，以經扣減稅率課稅的，

則關於該款項的扣除款額，須作扣減，以使該人須支付的利得稅參照以下款額而增加：該法團在該課稅年度或隨後任何課稅年度中，就該款項而須支付的利得稅所獲扣減的款額。”。”。

8	在建議的第 37(2B)條中，在“活動”之後加入“(第14H(1)條就該活動適用者)”。
10(2)	在建議的第 39B(6A)條中，在“活動”之後加入“(第14H(1)條就該活動適用者)”。

附件 **B**

擬議修正案下各評稅方式的概要

	租予香港飛機營運商	租予非香港飛機營運商
現時條例草案下的評稅方式	**評稅方式 A** *(即《稅務條例》現行的評稅方式)* ✓ 折舊扣稅額 × 20%稅基 × 半額稅率	**評稅方式 B** *(即條例草案擬議的稅務制度)* × 折舊扣稅額 ✓ 20%稅基 ✓ 半額稅率
擬議修正案下各評稅方式	飛機出租商會按評稅方式 A 評稅— **評稅方式 A：** ✓ 折舊扣稅額 × 20%稅基 × 半額稅率 飛機出租商亦可選擇以評稅方式 B 評稅— **評稅方式 B：** × 折舊扣稅額 ✓ 20%稅基 ✓ 半額稅率	同上 (只可選擇評稅方式 B)