



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

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URGENT

By Fax (2179 5848)

2 February 2018

Ms Pecvin YONG
Principal Assistant Secretary for Financial
Services & the Treasury (Treasury)(R1)
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Ms YONG,

Inland Revenue (Amendment) (No. 7) Bill 2017

I refer to your response to my letter dated 23 January 2018 as set out in paragraph 6 of a document entitled "Inland Revenue (Amendment) (No. 7) Bill 2017 – Government's response to members' enquiries at the meeting on 24 January 2018" enclosed to your letter dated 31 January 2018 (LC Paper No. CB(1)549/17-18).

We note the policy intent as stated in pages 2 to 3 of your response in respect of a corporation having assessable profits both from qualifying debt instruments ("QDI") and from non-QDI businesses. In particular, we note your view that the existing section 14A of the Inland Revenue Ordinance (Cap. 112) would continue to apply to assessable profits derived from QDI, whereas the remaining assessable profits from operating a business (as cited in the example in question (1)(b) of my previous letter) would be subject to the

proposed two-tiered profits tax rates regime. We should be grateful if you could clarify how the Bill, as drafted, could reflect the above policy intent.

In particular, from the legal and drafting points of view, please clarify the following matters:

- (1) Under the existing section 2(1) of Cap. 112, "... assessable profits means the profits in respect of which a person is chargeable to tax for the basis period for any year of assessment, calculated in accordance with the provisions of Part 4 [i.e. "Profits Tax"]". Please clarify whether profits arising from QDI fall within the definition of "assessable profits" under section 2(1) of Cap. 112 and under the proposed Schedule 8A and Schedule 8B to Cap. 112.
- (2) Please clarify how the proposed section 14 of Cap. 112 (as amended by the Bill) and the proposed Schedule 8A and Schedule 8B to Cap. 112, as presently drafted, could sufficiently reflect your policy intent that QDI-related profits would not be counted towards the "cap" of \$2,000,000 of assessable profits under the two proposed Schedules.
- (3) It is noted that the proposed section 14(5) of Cap. 112 makes express reference to the existing sections 14B(2)(a), 14D(5)(b), 14H(4)(b) and 14J(5)(b) of Cap. 112 in respect of certain existing preferential half-rate tax regimes (relating to qualifying reinsurance business/captive insurance business and qualifying corporate treasury centre etc.). For a corporation which chooses to benefit from those existing preferential half-rate tax regimes, the proposed section 14(5) seeks to provide how "the rest of its assessable profits" would be taxed. In light of the above, please consider whether a provision similar to the proposed section 14(5) would be necessary in respect of QDI in order to clarify beyond doubt the relationship between the existing section 14A, the proposed section 14 of Cap. 112, and the proposed Schedule 8A and Schedule 8B in respect of assessable profits arising from QDI and the rest of the assessable profits.

I should appreciate your reply in both English and Chinese as soon as practicable.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized, flowing line that starts with a small loop and ends with a horizontal stroke.

(Cliff IP)
Assistant Legal Adviser

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