

香港特別行政區政府
商務及經濟發展局
工商及旅遊科



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23 April 2018

Ms Vanessa CHENG
Assistant Legal Adviser 5
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Dear Ms CHENG,

Inland Revenue (Amendment) (No. 2) Bill 2018

Thank you for your letter dated 18 April 2018. Our responses are set out below.

Clause 3 – section 15 amended (certain amounts deemed trading receipts)

Response to part (a)

2. The term “performer’s right” that appears in clauses 3(1) and 3(2) includes both performer’s “economic” and “non-economic” rights but not the rights of a person having fixation rights. Sections 15(1)(b) and 15(1)(ba) of the Inland Revenue Ordinance (“Cap. 112”) (as amended by clauses 3(1) and 3(2) of the Inland Revenue (Amendment) (No. 2) Bill 2018 (“the Bill”)) deal with sums received by or accrued to a person for the use, or the right to use, of intellectual property rights, including performers’ rights. The intention of the provisions is to cover the rights of performers instead of the rights of persons having fixation rights. In Hong Kong, the rights of a performer are set out in sections 202-207A of the Copyright Ordinance (“Cap. 528”) and they include both “economic rights” (sections 203, 204, 205 and 207A) and “non-

economic rights” (sections 202, 206 and 207). Examples of acts categorized under “non-economic rights” include the making of a fixation of a performance directly from an unfixed performance, the broadcast of a performance live or the inclusion of a performance live in a cable programme service. As for acts categorized under “economic rights”, examples include the copying of a fixation of a performance for commercial use, the issue of copies of a fixation of a performance to the public or the renting of copies of a sound recording to which a performance is fixed.

3. By way of the reference “.....an assignment of, or an agreement to assign, a performer’s right in relation to a performance.....” in clause 3(3), the term “performer’s right” under clause 3(3) would practically only cover performer’s “economic rights”, as “non-economic rights” are not assignable nor transmissible except by testamentary disposition pursuant to section 224 of Cap. 528. The rights of a person having fixation rights are also excluded as such rights are not assignable or transmissible under section 225 of Cap. 528.

Response to parts (b) and (c)

4. As mentioned above, “performer’s right” in clause 3(3) would practically only cover performer’s economic rights. It does not include a performer’s “non-economic rights” nor the rights of a person having fixation rights. Therefore, there is no contradiction between clause 3(3) and sections 224 and 225(1) of Cap. 528. The clause is also consistent with section 16EA of Cap. 112 as amended by clause 5 which allows deduction of capital expenditure incurred on the purchase of performer’s economic right.

Clause 5 – section 16EA amended (purchase of specified intellectual property rights)

Response to part (a)

5. In order to protect their interest in the relevant rights, it is common for taxpayers to submit application to the relevant registration authorities for registering the assignments of the relevant rights. Taxpayers can produce the relevant documentary evidence to the Inland Revenue Department (“IRD”) to support their claims for tax deduction.

Response to part (b)

6. Recognising that the registration process of the relevant rights in some jurisdictions may take some time to complete, IRD will adopt a liberal approach in considering deduction for those relevant rights undergoing registration process. In this regard, a relevant right undergoing the registration process would also be accepted for claiming deduction. Deduction would be allowed for the capital expenditure incurred on the purchase of the relevant rights on the conditions that (i) the relevant rights have already been registered by the previous owners with the relevant authorities and (ii) the taxpayers have already submitted applications for registering the relevant right under their names.

Response to part (c)

7. If the registration of a relevant right is subsequently invalidated, revoked or surrendered, the relevant right concerned will not be eligible for the deduction from the date when the invalidation, revocation or surrender becomes effective. IRD would, in accordance with section 60 of Cap. 112, make additional assessment as appropriate to disallow any deduction previously allowed.

Response to part (d)

8. For the proposed section 16EA(6)(bb) under clause 5(2), “(topography)” is not included in the “the protection of the layout-design” as the preceding phrase “protected layout-design (topography) right” makes it clear in the context that the term “layout-design” must refer to a layout-design (topography). We follow the same logic for section 16EA(11)(ac)(i) under clause 5(5). To align the Chinese and the English texts, we intend to move a CSA to delete “(拓撲圖) 權利” from the expression “有關布圖設計(拓撲圖)權利仍受保護” in the Chinese text of section 16EA(6)(bb).

Yours sincerely,

(Miss Alice CHOI)
for Secretary for Commerce and Economic Development

c.c. Clerk to the Bills Committee

Commissioner of Inland Revenue
(Attn: Mr KK CHIU)

Department of Justice
(Attn: Mr Alan CHONG)

Director of Intellectual Property
(Attn: Ms Michelle CHONG)