



By email (bc 06 17@legco.gov.hk) and by hand

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Hon Kenneth Leung
Bills Committee on Inland Revenue (Amendment) (No.2) Bill 2018
Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong

Dear Mr. Leung,

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

The Tax Faculty ("TF") of the Hong Kong Institute of Certified Public Accountants ("Institute") has reviewed the Inland Revenue (Amendment) (No.2) Bill 2018 ("the Bill") and generally welcomes the expansion of the scope of the tax deductions for capital expenditure incurred in the purchase of specified intellectual property rights ("IPRs") under section 16EA of the Inland Revenue Ordinance (Cap. 112) ("IRO") to cover the following:

- protected layout-design (topography) rights in respect of integrated circuits;
- protected plant variety rights; and
- performer's economic rights.

At the same time, we have some doubts over the introduction of a new deeming provision in the Bill, i.e., the proposed section 15(1)(bb) of the IRO. By virtue of this provision, while a performer's economic right is defined as a specified IPR under section 16EA(11) of the IRO and, in order to be eligible for the tax concession, a taxpayer must have obtained a proprietary interest in the relevant IPR (as paragraph 12 of the Legislative Council Brief indicates), nevertheless sums received by or accrued to a performer or an organizer for the assignment of, or an agreement to assign, the relevant IPR, in relation to a performance given in Hong Kong, will be treated as trading receipts for Hong Kong profits tax purposes.

The above provision should be distinguished from the deeming provisions under section 15(1)(b) and (ba), which are extended to the new IPRs and which deem sums, not otherwise chargeable to tax under Part 4 of the IRO, received by or accrued to a person for the use of or right to use in Hong Kong, or outside Hong Kong (where these are deductible in ascertaining the assessable profits of a person under Part 4), to be trading receipts. These provisions relate to situations in which a taxpayer would generally have an interest only as, e.g., a licensee.

Therefore, we suggest that it needs to be clarified why a person who may have fully assigned their proprietary interest in a capital asset, through a one-off transaction, would automatically be deemed to be in receipt of taxable trading income, when the IPR relates to a performer's right in respect of a performance given in Hong Kong. In this connection, we note that while the Legislative Council paper on this subject



presented to the Panel on Commerce and Industry in November 2016 (LC Paper No. CB(1)90/16-17(03)) made reference to need to apply the deeming provisions under section 15(1)(b) and (ba) of the IRO to the new IPRs, it did not indicate the need for any additional deeming provisions of the kind contained in the proposed new section 15(1)(bb).

We hope therefore, that the government will either withdraw the proposed section 15(1)(bb) or at least make it clear in the Bill that, where any sums received for the assignment of, or an agreement to assign, a performer's right are capital in nature, such sums would be excluded from the scope of this deeming provision.

Should you have any questions on this submission, please contact me at 22877084 or peter@hkicpa.org.hk

Yours sincerely,

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PMT/EKC/pk