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工商及旅遊科

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21 May 2018

Ms Vanessa CHENG
Assistant Legal Adviser 5
Legal Service Division
Legislative Council Secretariat

Dear Ms CHENG,

Inland Revenue (Amendment) (No. 2) Bill 2018
Response to ALA's letter of 11 May 2018

We refer to your letter of 11 May and would like to set out our response below.

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

2. As you have rightly recapped, the term "performer's right" includes both economic rights (assignable) and non-economic rights (not assignable). For "performer's right", it is necessary for Clauses 3(1) and 3(2) to cover both types of rights, so as to clarify what sums received by or accrued to a person for the use of "performer's right" should be deemed as trading receipts arising in or derived from Hong Kong. In this regard, trading receipts can arise from the use of economic rights, and similarly, from the use of non-economic rights¹.

¹ For example, a performer may receive a sum for the use of his/her non-economic right of making a fixation of his/her performance directly from the unfixed performance. Such sum should be deemed as trading receipts if they meet the other conditions under section 15(1)(b) and (ba).

3. Clause 3(3) however, seeks to deal with sums received arising from the assignment (rather than mere use) of performer's rights. Since only economic rights are assignable, Clause 3(3) would practically cover economic rights only, as explained in our previous letter of 23 April 2018. Taking the words in context, the reference to "performer's right" in the provision (i.e. "... *an assignment of, or an agreement to assign, a performer's right in relation to a performance ...*" (*emphasis added*)) is clear enough, and should not give rise to any misconception that it covers also non-economic rights.

4. By using the same term of "performer's right" in both Clause 3(1) / 3(2) and Clause 3(3), we consider that it can help highlight the different focuses and natures of the sums involved (i.e. sums arising from use vis-a-vis those arising from assignment) between these sets of provisions in respect of performer's rights, rather than the difference between economic or non-economic rights.

5. In our view, the present formulation of Clause 3(3) can duly reflect the policy intent, and we do not find it necessary to make any amendments.

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)