



THE ASSOCIATION OF
**HONG KONG
ACCOUNTANTS**

(incorporated in Hong Kong as a company limited by guarantee)

Tel : (852) 3520 2546

Fax : (852) 3547 8088

Email: ahka@ahka.hk

Website: www.ahka.hk

8 May 2018

Hon Kenneth Leung

Chairman,

Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2018

Secretariat, Legislative Council

Hong Kong SAR Government

1 Legislative Council Road

Central, Hong Kong

立法會 CB(1)970/17-18(06)號文件

(只備英文本)

LC Paper No. CB(1)970/17-18(06)

(English version only)

Dear Hon. Kenneth Leung,

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

We refer to your invitation dated 25 April 2018 to the Association of Hong Kong Accountants ("AHKA") for a written submission on Inland Revenue (Amendment) (No.2) Bill 2018 ("the Bill"). The AHKA is delighted to enclose our written submission in Annex A.

We thank you for your invitation and support the proposed amendments in the Bill. The AHKA is devoted to contributing to the wellbeing of our accounting profession and Hong Kong community.

Yours sincerely,

Jack Chow

President, AHKA



THE ASSOCIATION OF
**HONG KONG
ACCOUNTANTS**

(Incorporated in Hong Kong as a company limited by guarantee)

Tel : (852) 3520 2546

Fax : (852) 3547 8088

Email: ahka@ahka.hk

Website: www.ahka.hk

Annex A

Submission on Inland Revenue (Amendment) (No. 2) Bill 2018 ("Bill")

The AHKA supports the Bill to expand the scope of profits tax deductions for capital expenditure incurred for the purchase of intellectual property rights ("IPRs") from the existing five types to eight. The additional three IPRs are as follows:

- i) Layout-design (topography) of integrated circuits,
- ii) Plant varieties and
- iii) Performances.ⁱ

We consider the Bill would further facilitate Hong Kong to become a regional IPR hub. Nonetheless, the proposed additional three IPRs seem not to be sufficient. Regarding the scope of expansion, we have the following comments or recommendations:

- i) In addition to once-off purchase costs for IPR on designs or patents, we suggest the Hong Kong SAR government considers whether a lump sum payment for a license for a limited period, instead of a lump sum payment for an assignment, could also be qualified for tax deductions;
- ii) Tax deductions cover both the registration expenditure and purchase costs of the additional three IPRs. However, the Bill does not extend the deductibility to the registration expenditure on copyright and rights to know-how. The Bill restricts deductions to registration expenditure on designs, patents and trade-marks (section 16(1)(g));
- iii) The anti-avoidance provision under section 16EC(4)(b) of the Inland Revenue Ordinance (IRO) should be further reviewed with a view to reaching a balance between promoting Hong Kong as an IPR hub and anti-avoidance objectives.



The recent enquiry by a Legislative Council Member on this issue and the reply by the Secretary for Financial Services and the Treasury, Mr. James Lau, during the Legislative Council on 21 March 2018ⁱⁱ were reflective of different views held by the industrial sector and the government.

Section 16EC(4)(b) does not allow tax deductions in respect of intellectual property rights used in production processes located outside Hong Kong as it might encourage manufacturers' transferring company profits out from Hong Kong via transfer pricing arrangements.

- iv) Sums received from the sale or assignment of a performer's right will be deemed under the new provision Section 15(1) (bb) to be subject to profits tax, no matter whether it might be capital in nature.

We request that the government re-considers should a consistent treatment be applicable to other IPRs.

In conclusion, we support the government to encourage the use of IPRs in or through companies in Hong Kong. This will undoubtedly enhance Hong Kong as an IPR hub. The government should however address the limitations and areas for improvement listed above.

The Association of Hong Kong Accountants

8 May 2018

ⁱ Legislative Council Brief, Inland Revenue (Amendment) (No.2) Bill 2018

ⁱⁱ LCQ6: Reviewing sections 39E and 16EC of the Inland Revenue Ordinance, Legislative Council

