



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
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8 May 2018

Mr WONG Wang-wah
Assistant Commissioner for Innovation and Technology
(Infrastructure and Quality Services)
Infrastructure Division
Innovation and Technology Commission
Innovation and Technology Bureau
21/F, West Wing
Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Mr WONG,

Inland Revenue (Amendment) (No. 3) Bill 2018

I am scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, I should be grateful if you could clarify the following matters.

Clause 13 – sections 12 and 13 of the new Schedule 45 to Cap. 112

In ascertaining the qualifying expenditure in relation to an employee who is only partly engaged directly and actively in a qualifying research and development ("R&D") activity related to a trade, profession or business or on a consumable item that is only partly used directly in a qualifying R&D activity related to the trade, profession or business, it is proposed in section 12(2) and (3) of the new Schedule 45 to the Inland Revenue Ordinance (Cap. 112) that "the appropriate proportion of the expenditure is to be taken into account".

However, it is noted that a different approach is used in ascertaining the amount allowed to be deducted for a Type A expenditure that is incurred for an R&D activity carried on outside Hong Kong in relation to a

trade, profession or business and the trade, profession or business is carried on partly in, and partly out of, Hong Kong under section 13(3) of the new Schedule 45 to Cap. 112. The wording "the appropriate proportion of the expenditure that the Commissioner considers is reasonable in the circumstances" is used in section 13(3). Please clarify the legislative intent of and the justification for adopting different approaches in sections 12 and 13 of the new Schedule 45 to Cap. 112. Please also clarify how the "appropriate proportion of the expenditure" as stated in section 12(2) and (3) of the new Schedule 45 would be calculated.

Clause 13 - section 14(a) of the new Schedule 45 to Cap. 112

Under section 14(a) of the new Schedule 45 to Cap. 112, an R&D expenditure incurred by a person that falls within the description in section 6(1)(a) or (c) of the new Schedule 45 is not deductible under the new section 16B of Cap. 112 if the rights generated from the relevant R&D activity are not, or will not be, fully vested in the person claiming for a deduction.

The legal effect of section 14(a) of the new Schedule 45 seems to be that even though the rights generated from the relevant R&D activity are, or will be, partly vested in the person claiming for a deduction, expenditures on the relevant R&D activity would be treated as non-deductible under the new section 16B. Please clarify the justification for not allowing such expenditures to be deducted under the new section 16B of Cap. 112.

I look forward to receiving your reply in both English and Chinese as soon as possible, preferably by **16 May 2018**.

Yours sincerely,



(CHUI Ho-yin, Alvin)
Assistant Legal Adviser

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