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羅兵咸永道

Hon Kenneth Leung
Chairman
Bills Committee on Inland Revenue (Amendment) (No. 6) Bill 2018
Legislative Council Secretariat
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Central
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Sent by email to: bc_01_18@legco.gov.hk

17 December 2018

Submission on the Inland Revenue (Amendment) (No. 6) Bill 2018

Dear Hon Kenneth Leung,

We refer to the Bills Committee's invitation for submission on the Inland Revenue (Amendment) (No. 6) Bill 2018 (the Bill), which seeks to:

1. treat certain loss-absorbing capacity (LAC) debt instruments as debt securities for profits tax purposes;
2. deem certain sums received by or accrued to LAC banking entities in respect of a regulatory capital security (RCS) as taxable trading receipts; and
3. provide for other related matters.

Generally speaking, we welcome the HKSAR Government's proposal of specifying the tax treatments of (1) sums payable in respect of money borrowed by a LAC banking entity by way of issuing a RCS and (2) certain sums accrued to a LAC banking entity in respect of a RCS in the Inland Revenue Ordinance (IRO) as such specification can provide certainty and clarity to taxpayers.

However, we would like to take this opportunity to express our view that while the Bill provides an interest expense deduction for payments made under certain LAC debt instruments that are hybrid instruments (i.e. with both debt and equity features), such as Additional Tier 1 capital instruments, certain LAC debt instruments, in particular Tier 2 capital instruments and non-capital LAC debt instruments, are purely debt securities despite their loss-absorbing capacity. Therefore, we are of the view that for payments made under this kind of LAC debt instruments, the payments should be eligible for an interest expense deduction (provided that the other relevant conditions for interest expense deduction in the IRO are met) **both before and after** the enactment of the Bill. The Bill simply codifies the appropriate tax treatment for such payments in the IRO and one should not take the view that without the Bill, these payments are not eligible for an interest expense deduction.

If you have any questions on our submission, please feel free to contact me (charles.lee@cn.pwc.com) or Rex Ho (rex.ho@hk.pwc.com) or Anita Tsang (anita.wn.tsang@hk.pwc.com).

Yours sincerely,
For and on behalf of PricewaterhouseCoopers Limited

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