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By Email (holdenchow@hotmail.com.hk)

3 May 2021

Hon Holden CHOW
Chairman, Bills Committee on
Inland Revenue (Amendment)
(Miscellaneous Provisions) Bill 2021
Room 610, Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Hon CHOW,

**Follow-up on Issues Discussed at the Bills Committee on
Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021**

The Administration's clarifications on the enquiries made in your letter dated 22 April 2021 regarding the Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021 are set out at **Annex**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Helen Chung'.

(Miss Helen CHUNG)
for Secretary for Financial Services
and the Treasury

c.c.

Bills Committee on Inland Revenue (Amendment)
(Miscellaneous Provisions) Bill 2021

(Attn: Mr Derek LO)

Commissioner of Inland Revenue

(Attn: Mr LEUNG Kin-wa)

Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021

Factors in determining whether there are “good commercial reasons” for amalgamation

The proposed sections 24(5) and 26(3) of Schedule 17J to the Inland Revenue Ordinance (“IRO”) provide that unless the Commissioner of Inland Revenue (“Commissioner”) is satisfied that there are “good commercial reasons” for carrying out the qualifying amalgamation, and avoidance of tax is not the main purpose or one of the main purposes of carrying out the qualifying amalgamation, the set-off of pre-amalgamation losses under specified circumstances will be disallowed.

2. When determining whether the relevant companies have “good commercial reasons” for a qualifying amalgamation, the Commissioner will consider all relevant facts and circumstances, such as the reasons and circumstances for the amalgamation, what result the amalgamation is intended to achieve or has achieved, the non-tax purpose of the amalgamation, whether there are alternative ways to achieve the non-tax purpose, etc. As the facts of each case are different, when determining whether there are “good commercial reasons”, all relevant facts and circumstances specific to a case have to be considered by the Commissioner.

3. If tax benefit is only an incidental consequence of the qualifying amalgamation, the obtaining of tax benefit will not be considered a main purpose. The pre-amalgamation loss would be allowed for set-off subject to the satisfaction of other conditions. On the other hand, if the tax benefit is achieved through deliberate arrangement, the pre-amalgamation loss would not be allowed for set-off.

Mandatory e-filing of returns: applicable businesses

4. When setting the timetable for implementing mandatory e-filing, the Administration will consider the actual situation and feasibility, including whether taxpayers and tax practitioners have sufficient time to get familiar with the new e-filing mechanism. The preliminary thinking is, at appropriate time, to require large businesses (e.g. with turnover above a certain threshold) or businesses in certain sectors (e.g. financial institutions) to make their filings electronically first. It may be extended gradually to cover other classes of businesses or entities at a later stage. The Administration may also consider allowing micro enterprises (e.g. with turnover below a certain threshold) to continue filing profits tax returns in paper form.

5. The proposed section 51AAB under the IRO allows the Commissioner

to, through subsidiary legislation, specify the classes or descriptions of taxpayers who must furnish their tax returns by e-filing in a gazette notice. Before the implementation of mandatory e-filing, the Inland Revenue Department will duly gauge views from stakeholders in preparation for the subsidiary legislation, which is subject to negative vetting by the Legislative Council.