

財經事務及庫務局

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FINANCIAL SERVICES AND
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23 November 2022

Miss Sharon LO
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss Lo,

**Inland Revenue (Amendment)
(Taxation on Specified Foreign-sourced Income) Bill 2022 (“the Bill”)**

As foreshadowed in items 18 and 20 of Annex to our letter dated 21 November 2022 regarding our responses to the comments and suggestions raised in the written submissions, the Government has been in discussion with the European Union (“EU”) on the possibility of applying the headline rate of the foreign jurisdictions as the applicable rate under section 15O(9) of the Bill, subject to certain conditions (“the headline rate” approach), for the benefit of taxpayers under Hong Kong’s foreign-sourced income exemption (“FSIE”) regime. The Government is writing to provide a further update on this for Bills Committee’s information.

After vigorous exchange of views with Hong Kong and having regard to the precedents of other jurisdictions, the EU eventually agrees on the proposed “headline rate” approach to be adopted in our new FSIE regime. Following this approach, the applicable rate for the purpose of the “subject to tax” condition for invoking participation exemption generally refers to the headline rate (i.e. the highest corporate tax rate) of the jurisdiction in which the specified

foreign-sourced income, underlying profits or related downstream income is taxed. This headline rate needs not be the actual tax rate imposed on the income or profits concerned. Such an approach achieved would represent a less stringent interpretation of the applicable rate provision and is aligned with the relevant suggestions made in the written submissions.

However, if the income is taxable under the special tax legislation at a lower rate than in the main legislation, and the lower rate is not a tax incentive for carrying out substantive activities, the headline tax rate should be the highest stipulated tax rate in the special legislation.

The Inland Revenue Department will update its guidance to reflect the above interpretation of the applicable rate in due course.

Yours sincerely,



(Stephen Y. K. LO)
for Secretary for Financial Services
and the Treasury

c.c.

Inland Revenue Department (Attn: Mr Benjamin CHAN)
Department of Justice (Attn: Mr Gary LI)