

Additional note from the Institute on agenda item A1(f) of the 2016 annual meeting between the Inland Revenue Department and the Hong Kong Institute of CPAs

Members may wish to note that some practitioners and authors of taxation textbooks hold a different view to the Inland Revenue Department on the interpretation of sections 23C and 23D of the Inland Revenue Ordinance (IRO), discussed in agenda item A1(f) of the minutes. Their views are outlined below.

In the scenario outlined by the Institute (i.e., an owner of aircraft leasing them out and not running them) the question of operating aircraft is not relevant. "Chartering" is not defined in the IRO. The natural meaning is a contractual arrangement between an aircraft owner for the letting or hire of the aircraft to the charterer. It does not require that the owner also operates the aircraft, for example in the case of a bareboat or demise charter. Therefore, an owner of an aircraft that simply leases it to an operator (with the operator taking responsibility for the aircraft and its crewing and maintenance) will still be chartering that aircraft. This is supported by the definition of charter hire in s23C(5):

"charter hire (租機費) means any sums earned by or accrued to an owner of an aircraft under a charter-party by demise in respect of the operation of the aircraft, but does not include any sums so earned or accrued where that charter-party does not, or does not purport to, extend to the whole of that aircraft" A charter-party by demise is a deed between an aircraft-owner and the charterer to let or hire the aircraft to the charterer, under which the charterer takes responsibility for the crewing and maintenance of the aircraft during the time of the charter. If the owner must also operate the aircraft to fall within s23C, this definition would not be necessary.

The above commentary would also apply to ships and ship owners under section 23B of the IRO.

Hong Kong Taxation: Law & Practice, 2016-17 edition, supports the above interpretation, i.e., that a pure owner can fall within s23B and s23C, as it states, on page 885, "A shipowner also includes a person who charters a ship from another owner and so both the owner and the charterer may be regarded as carrying on business in Hong Kong under Sec. 23B."

Disclaimer: Please note that the above commentary does not purport to offer a legal interpretation of the law or legal advice and members should seek their own professional advice in specific circumstances. The purpose of the note is just to make clear that the minutes of the annual meeting reflect the Inland Revenue Department's positions on the issues raised, which we believe it is important for members to know. However, tax practitioners may sometimes hold a different view. For some items, this will be clear from the discussion the minutes, but it may not always be so. This particular issue is one of those where there are different views, and members may wish to be aware of this.