



9 January 2006

By fax (2537 1851) and by post

Our Ref.: C/TXP(50), M38727

Hon. James Tien Pei-chun
Chairman
Bills Committee on Revenue (Profits Tax
Exemption for Offshore Funds) Bill 2005
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr. Tien,

Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005

Thank you for inviting the views of the Hong Kong Institute of Certified Public Accountants (“the Institute”) on the Administration’s proposed Committee Stage Amendments (“CSAs”) to the above Bill. Our comments are set out below.

We note and welcome the additional improvements that have been made to the Bill by the CSAs, including:

- expanding the scope of “specified transactions” to include a number of derivative transactions;
- allowing for further expansion of the list of qualifying transactions by removing the link to the Securities and Futures Ordinance (Cap. 571) (“SFO”), and setting out a list of “specified transactions” as defined in a new Schedule 16 to the Inland Revenue Ordinance (Cap.112);
- broadening the scope of “specified person” to include any licence-holder under the SFO and clarifying that a “specified transaction” qualifies for exemption so long as it is “carried out through or arranged by” a specified person; and
- carving out “non-profit participating shares” from the application of the deeming provisions, under which any resident investor who has a 30% or more interest in an exempt fund would generally be liable to Hong Kong profits tax in respect of Hong Kong-sourced trading income arising from specified transactions.

These proposed changes notwithstanding, we note that not all of the concerns expressed in the Institute’s previous submissions on the Bill have been addressed.



In particular, we also referred to the following matters in our submission dated 24 October 2005:

- the practical problems of applying the residency test of central management and control, which should preferably be clarified by way of legislative provisions;
- the application of the deeming provisions to individuals generally;
- the exclusion of shares in private companies (incorporated in Hong Kong) from the scope of the term “securities” and so from the scope of the exemption;
- the issue of double taxation resulting from the deeming provisions; and
- the inability of a resident investor to claim a “deemed loss” that may be set off against other taxable profits.

More generally, we should have liked to see more support being given to the development of local boutique funds through this legislation.

Nevertheless, on balance, the Institute believes that the draft legislation with the improvements so far introduced will be workable and, on this basis, should be allowed to proceed. We would hope that the Administration remains mindful of the concerns referred to above, and their practical implications, once the legislation is in effect, and that, in due course, consideration will be given to the need for further legislative amendments to address some or all of these points.

We hope that you find our comments above to be constructive. If you have any questions on this submission, please feel free to contact me at peter@hkicpa.org.hk or on 2287 7084.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Tisman', written in a cursive style.

Peter Tisman
Director, Specialist Practices

PMT/JT/ay

c.c. Secretary for Financial Services and the Treasury (Attn: Mr. Ivanhoe Chang)
(Fax no.: 2868 5279)