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The Hon Mandy TAM Heung-man
Room 425, West Wing
Central Government Offices
11 Ice House Street
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Hong Kong

17 March 2005

Dear *Mandy*,

Views on the Inland Revenue Ordinance (Cap. 112)

I understand that you have sent a letter on 3 March 2005 to the Secretary for Financial Services and the Treasury (SFST), and an open letter to the accountancy constituency dated 9 March 2005 on the above subject. While the Secretary will give you a reply to your letter to him, I wish take this opportunity to clarify some issues contained in your open letter to your constituency.

In response to your earlier letter to the constituency dated 8 February 2005, I have given you a reply on 2 March 2005, copy attached. However your letter of 9 March 2005 has made no reference to my reply of 2 March, which I am afraid, would present a less than full picture of the developments of this issue. As the partial presentation may create, perhaps unintentionally, possible misconceptions on the work of the Department, I feel obliged to write to you and copy the letter to the tax practitioners and others who are on the subscription list of our Departmental Interpretation and Practice Notes to clarify the position.

You mentioned in the third paragraph of your letter of 9 March 2005 that I have not responded to the issues raised by you on 28 October 2004 after our meeting on 12 November 2004. In this regard, I must say that I have made it clear in my letter of 2 March 2005 that since there were diverse views on the operation of the existing tax legislation expressed in our meeting on 12 November 2004, you had indicated in the meeting that you and your advisors would deliberate the matter further and make a further submission. We are still waiting for that submission.

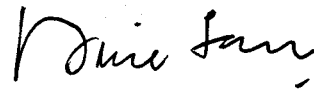
As I mentioned in that letter, many of your proposals had in fact been raised by taxation institutions/professionals before and had been carefully deliberated by the Administration. Your concern about the Commissioner's discretion in raising assessment of penalty tax under section 82A, for example, was brought up by the Hong Kong Institution of Certified Public Accountants (HKICPA) as early as 2000 in the annual meeting between the Institution and the Inland Revenue Department. To relieve the concern of the practitioners and for the sake of transparency, we had published details of the elements for consideration in raising assessments under section 82A on our web site in 2001 and the practice was welcomed by the practitioners. Some technical problems, like those relating to the source of profits and the taxation on financial instruments, are being studied by the Joint Liaison Committee on Taxation (JLCT) and its sub-committees as part of its regular exercise to suggest refinements to the Departmental Interpretation and Practice Notes. Some of the issues you raised were indeed thoroughly debated in the Legislature. For example, views similar to yours against the enactment of general anti-avoidance provisions were deeply debated both within and outside the Legislative Council in 1986 when section 61A was enacted. The law was finally passed by the Legislature, which endorsed the need for the enactment, with amendments reflecting the concerns of the community. Some of your proposals also have significant impacts on tax revenue collection and on the fiscal reserve. These issues have to be deliberated by the Financial Secretary in a macro-perspective.

As I advised you in my previous letter we have reported to the LegCo Panel on Financial Affairs that the taxation issues raised by you would be fully discussed in the JLCT. We shall report again to the Panel when appropriate. The JLCT in the last meeting confirmed that it would discuss the relevant issues in the forthcoming meetings. To allow the JLCT to conduct impartial and thorough deliberations on the issues you raised and to make an objective assessment, it is obviously improper for us to make comments now on the issues concerned without first benefiting from the JLCT's views. In this connection, I wish to point out that the JLCT plays a very similar advisory role to that of the previous Inland Revenue Ordinance (IRO) Review Committees, except that it is permanent in nature and more widely represented. Its membership includes representatives from various chambers of commerce, the Law Society of Hong Kong, HKICPA and Hong Kong Institute of Taxation etc.

As you are well aware, in the last meeting of the JLCT some professionals had also expressed concerns about an overall review of the IRO. Worry was expressed that such a review might tend to disrupt the progress of the present work dealing with the contentious tax issues and problems. It was also pointed out that the review might have an impact on the progress on the Hong Kong's Comprehensive Double Taxation Agreement programme, as the treaty partners and potential treaty partners were already well aware of Hong Kong's current simple tax system. Some opined that an overall review without a policy decision on whether Goods and Services Tax should be introduced would be premature.

In his reply to your oral question, the SFST indicated that he considered that the present approaches, namely keeping various tax items under constant review in annual budget exercises, carrying out other policy review exercises, and reviewing various provisions of the Inland Revenue Ordinance regularly with inputs from the industry, the profession and the business community through the various consultative channels including the JLCT were rewarding, effective and efficient. At present, we do not see any genuine need for conducting an overall review of the Inland Revenue Ordinance.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Alice Lau".

(Mrs LAU MAK Yee-ming, Alice)
Commissioner of Inland Revenue

c.c. FSTB
HKICPA
Tax Practitioners [Circulation list of DIPNs]