香港稅務學會

THE TAXATION INSTITUTE OF HONG KONG

(Incorporated in Hong Kong as a company limited by guarantee)

11 January 2006

BY HAND AND BY E-MAIL

The Honourable Mr. Henry Tang
Financial Secretary,
12th Floor, West Wing,
Central Government Offices,
Lower Albert Road,
Central,
Hong Kong.

Dear Mr. Tang,

2006/07 Budget Proposals

It is beyond doubt that Hong Kong's economy has been recovering in 2005 from the Asian financial crisis suffered a few years ago. Under the leadership of our new Chief Executive, Mr. Tsang, it is time for the Government of the Hong Kong SAR (the "Government") to take this opportunity of recovery to maintain the stability and prosperity of Hong Kong for the good of the people of Hong Kong.

Looking forward, we see the future of Hong Kong is promising. In 2008, our capital city Beijing will host the Olympic Games. In 2009, Hong Kong will host the East Asian Games which will attract thousands of tourists for visits and enjoyment.

On the tax administration aspect, our Institute, as in the past, has recommended measures to maintain fairness, certainty, simplicity and transparency of the tax system in Hong Kong.

This year, the proposals of our Institute cover the following areas:

A Broadening tax base

B Our environment

C Fairness, certainty and transparency of tax system

D Incentives to enhance business operating environment

E Tax incentives to individuals

F Tax incentives to corporations and individuals

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A Broadening tax base

We have touched on this topic in the 2004/2005 and 2005/2006 budget proposals. The fact that a broad base tax has become a common feature in our recent budget proposals has demonstrated the importance of this topic. In order to maintain a healthy fiscal system in the long run and to secure a stable source of revenue, the Institute believes that the introduction of a broad base tax is desirable.

The Institute's stand is clear: introduction of such a tax must be for the dominant purpose of widening the tax base in Hong Kong. The Institute does not support the purpose of introducing a broad base tax, such as goods and services tax ("**GST**"), to be solely for raising additional revenue.

Since GST should not be regarded as an instrument to raise additional revenue, the tax burden of the middle class and the lower income group should be reduced once GST is implemented. (We will write again to suggest methods of alleviating the tax burden of the middle class and the lower income group when it is appropriate.)

In terms of the timeframe for the introduction of GST, we do not think it is appropriate for the Government to rush through such a complicated set of legislation. Broadening tax base is a complicated and formidable task. We suggest a "preparation period" of at least one year between the time when the legislation is passed and the time when the legislation is implemented so the public are fully aware of the implications of GST. The business community will be clear as to the consequence and effect of the new tax. We reckon that it will at least take two to three years after the completion of the public consultation for the legislation to be drafted, amended and finalised, and taking into account the "preparation period" suggested, another year for such law to be implemented .

We propose:-

Broadening tax base is for the dominant purpose of stabilization of the tax burden amongst taxpayers and the Government should start consultation soon.

B Our environment

We note that in the last year's budget proposal[1] the Financial Secretary has asked relevant policy bureaux to conduct study on the introduction of a product responsibility scheme for waste tyres and a tax levy on plastic bags. In order to attract a pool of talented workforce to work and stay in Hong Kong (echoing and further developing our theme in the last year's budget submission to invest in human capital), we believe the Government should devise a comprehensive

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1 Paragraphs 74 to 75, the 2005-2006 budgets.

environmental policy - our youngsters, workforce and indeed all our citizens should deserve to live in a better and cleaner environment. We are sure that tax policies do have a role to play in the overall structuring of a comprehensive environmental policy.

In addition to the tax policies, we believe that administrative measures and concessions (otherwise than in form of direct favourable tax treatment) should be devised to encourage the establishment and sustainable operation of industries involved in the recycling of waste products or production of environmentally friendly goods.

We propose:-

The Government to have a tax policy to enhance the environment of our city, including but not limited to, imposing taxes on waste tyres and excessive use of plastic bags.

C Fairness, certainty and transparency of tax system

C1 Publication of Assessor's Manual by the Inland Revenue Department

It is understood that the Government adopts a policy of fairness, certainty and transparency in its administration in Hong Kong. We believe that in order to foster a favourable investment environment, tax law should be consistently interpreted and applied by the Inland Revenue Department (the "IRD"). The issue of Departmental and Interpretation & Practice Notes ("DIPN") alone may not be adequate in this aspect as those notes in general do not deal with procedural matters or specific situations. The application of these guidelines and rules affects the day-to-day tax administration. In line with the practice of other tax authorities (including the United Kingdom), the IRD should publish the Assessor's Manual in order to increase its transparency and taxpayers' trust and confidence in their dealings with the IRD.

We propose:-

The IRD to publish the Assessor's Manual to the public.

C2 Consistency of source rules in tax administration

We found from our members' feedback that there are various practices and policies in our administration system which lack consistency and certainty. We believe that such a situation will damage Hong Kong as a preferred place of investment; and thus undermine significantly Hong Kong's simple and effective tax system. Examples of the uncertainty in the tax administration include adopting the totality of facts principle in assessing offshore profits (in particular

trading profits), re-opening of 50:50 exemption cases premised on an unclear "apportionment of profit" policy.

C2.1 Avoid changes in certain long established administrative practices and assessment policy

In recent years, we found that the IRD has become much aggressive in their assessing and auditing initiatives. Without any warning or informing public a change of administrative policies, some of the long established administrative practices and assessing policies are ignored and new practices and polices implemented without any prior consultation of the tax and accounting professions. For example, our members have noted a number of cases re-opened on 100% and 50% offshore profit exemption cases as well as time-apportionment exemption cases in salaries tax sections, both by the Field Audit and Assessing Units of the IRD. These exemption cases were previously agreed or allowed by the IRD. The 50:50 offshore profit exemptions have been given to those concerns which have their manufacturing bases in the Mainland of China. What remains in Hong Kong are only the management offices to provide supportive services to the manufacturing operations in the Mainland of China, such as the purchase of raw materials, receipt of sale proceeds, opening of letters of credit and keeping of books of accounts. As the manufacturing operations are carried out in the Mainland of China, the portion of profits attributable to manufacturing activities is outside Hong Kong. It has been a practice by the IRD to grant 50% exemption on those profits deemed to arise outside of Hong Kong. It is much to our surprise that cases which have been settled for a few years have been re-opened by the IRD. Such new assessing policy to re-open settled cases goes back to six years and sometimes with heavy penalties. Such retroactive change of administrative practice and assessing policy has created much discomfort and discontent amongst the taxpayers.

We do not categorically object the tax administration to change their practice and policies from time to time, which may be required according to the change of circumstances. We would expect that the changes be done in a controlled and informed manner with fairness to the taxpayers. We also suggest the Government to consider allowing some kind of grand-fathering measures if there are any changes in the administrative practices and assessing polices.

We propose:-

The IRD to have consultation with the tax and accounting professions prior to any significant change of administrative practices and assessing policies and to consider allowing some kind of grand-fathering measures prior to any changes in the administrative practices and assessing polices.

C2.2 Set up a task force to review the source rules to be used in Hong Kong with a view of restoring and enhancing the attractiveness of the territorial tax regime of Hong Kong

It has been claimed that one of the tax incentive of Hong Kong is its territorial source based tax regime. Under this regime, companies carrying on business in Hong Kong are not subject to taxation in Hong Kong so long as the profits earned are not sourced in Hong Kong.

In the past, many international corporations were able to set up re-invoicing and logistics centres in Hong Kong and book some of the trading profits here without exposing the same to taxation in Hong Kong. This was done on the basis that the contracts of purchase and sale of these trading activities were essentially concluded outside Hong Kong by other overseas associates and Hong Kong was no more than the booking centre of those profits.

It has, however, been felt that the IRD is increasingly seeking to tax the profits which were merely booked in Hong Kong. This is even so in many cases it could be said that the economic activities in Hong Kong (that is, booking, re-invoicing and logistics etc.) are grossly incommensurate with the large amount of profits booked in Hong Kong and that the activities in Hong Kong could hardly be said to generate the profits assessed. One indication of the latter situation may be reflected in the case shown in the CIR's Advanced Ruling case No. 11.

Specifically the IRD has argued in a High Court case that the profits in question were Hong Kong sourced simply because it was a place where the transaction was booked and certain background functions were performed.

In response to such assessing practice, it has been known that some investors are comparing setting up companies in Hong Kong vis-à-vis in Macau under the offshore tax regime there.

We believe that these booking profits are conducive to the economic well being of Hong Kong. If the IRD continues to pursue the aggressive assessing policies in the way it has changed to adopt, Hong Kong takes the risk of losing the competitiveness to other trading partner, like Macau.

We propose:-

A task force to be formed with a brief of reviewing the source rules in Hong Kong in general and those relating to booked profits in particular with a view of devising ways of restoring and enhancing the attractiveness of the territorial tax regime of Hong Kong. The review will make use of the tax policy to serve the needs of Hong Kong.

C2.3 Legislation for exclusion of activities which are accepted by CIR for not carrying on of business in Hong Kong

Hong Kong adopts a territorial concept of taxation. Only profits arising in or derived from a source in Hong Kong from a business, profession or trade carried on in Hong Kong is assessable to Hong Kong profits tax. The CIR has issued a DIPN No. 21 which specifies, amongst other things, that the following activities performed in Hong Kong will not, of themselves, constitute the carrying on of business in Hong Kong, namely:

- issuing or accepting invoices (not order) to or from customer or supplier outside Hong Kong (whether related or not) on the basis of contracts of sale or purchase already effected by an associated company situated outside Hong Kong;
- arranging letters of credit;
- operating bank accounts and receiving payments; and
- maintaining accounting records.

We propose:-

To provide confidence to the taxpayers in our tax system for certainty and consistency, the exemption status of the above activities should be enacted by law in the Inland Revenue Ordinance ("IRO"). The legislation of exemption for these exempted activities in the statute law is necessary because the Board of Review does not recognise the binding effect of DIPN imposed upon it in hearing tax appeals from taxpayers' objection against the CIR's determination.

D Incentives to enhance business operating environment

D1 Investment in human resources by allowing 150% deductions on training costs

With the policy of the Government in securing and maintaining a talented population and promoting Hong Kong as an International Financial and Services Centre in the 21st Century, we need a pool of educated, talented and motivated workforce to sustain the success of Hong Kong. This pool of talented people would be replenished from time to time. For tax purposes, the Government should allow certain incentives to the employers to invest in human resources.

We propose:-

To allow 150% deduction on training cost to employers for profits tax purpose so as to encourage human investment in our workforce for the good of Hong Kong in the future.

D2 Tax incentives to companies setting up headquarters in Hong Kong

Hong Kong, in these recent years, is losing its status as a location for headquarters in the Asian region. Some companies have been moving their headquarters to other Asian countries.

On the one hand, with the signing of the Closer Economic Partnership Arrangement (CEPA) between the Mainland of China and Hong Kong and the integration of the Pan-Pearl River Delta Economic Zone, more multi-national companies are attracted to set up headquarters in Hong Kong. On the other hand, we do not have any tax incentive to attract companies to set up headquarters in Hong Kong. Against the rising costs of maintaining headquarters in Hong Kong, we may grant tax concessions to these companies in the form of tax reduction, say, reduction of tax rate to 10% from the present profits tax rate for corporations.

Certain criteria should of course be met for the companies to qualify for the tax concession by reference to the amount of investment in Hong Kong, the number of highly qualified persons to be brought to Hong Kong and the number of local people that the company will employ in Hong Kong.

We propose:-

To allow tax concessions to qualified corporations which maintain headquarters in Hong Kong.

D3 Group loss relief

The IRO which we are now working with was first enacted in 1947 when group companies were very few. More than half a century has passed. The way the businessmen conduct their business has changed. Group companies are very common now in Hong Kong. Some companies within a group may earn a profit while the other companies may suffer losses. With the present IRO, these companies are not allowed any loss set-off within the group. The absence of group loss set-off is questioned by many international investors because their home legislature does provide such a group loss set-off. Hong Kong as one of the advanced international cities should allow the set-off of losses amongst group companies.

We propose:-

To set up a task force to consider details of allowing loss set-off among group companies so as to harmonise our tax law with the advanced nations of the world and maintain Hong Kong as a city for international investment.

D4 Carrying back of tax losses

This proposal arises from the Court of Final Appeal decision in ***Secan*** and other cases in the United Kingdom. The CIR is prone to assess the taxpayers based on the audited profit and loss accounts, which is a deviation from its practice prior to ***Secan***. The change of practice ignores the fact that apart from the IRD, there are other users of the audited accounts. Indeed, audited accounts are not prepared primarily for tax purpose.

Given that the audited accounts of a company are prepared for the different needs of users, it has been recognised, though not recognised by the CIR after ***Secan***, that some accounting profits should not be taken into account for tax purpose, for example, unrealized gains on the translation of foreign exchange differences and revaluation gains of premises and assets.
Further, in response to the adoption of Hong Kong Accounting Standard HKAS 39 with effect from 1st January 2005, the IRD has, against the views of many taxpayers and practitioners, indicated that all revaluation gains of financial instruments held on trading account have to be marked to market value at the year end under HKAS 39 would be taxed, even though the instruments have not been sold, no receipt has been received and no real profits have been made.

In simple words, the CIR is going to collect tax on profits which the taxpayer has not and may not be able to realise under any contractual right and yet the CIR is of the view that it is lawful to collect in accordance with ***Secan.***

In addition, the CIR has further indicated that the established practice of allowing the taxpayers the option to be taxed on foreign exchange difference on realization basis (instead of on accounting basis) would be withdrawn.

In justifying the CIR's practice of taxing all unrealized revaluation and translation gains as reflected in the accounts (before transactions of instruments are settled or realised), it is understood that the CIR is making reference to the UK Inland Revenue which is adopting the same practice. It is regrettable that the CIR of Hong Kong ignores the provisions of the UK tax law for allowing the carrying back of tax losses.

It may turn out that the financial instruments or foreign exchange transactions suffer losses on settlement (although book profits may have been booked in the past) and then at the time when there are no other taxable profits in the year of settlement to set off the losses; and the losses cannot be carried back, under the present IRO, to set off the taxable profits of a taxpayer of the earlier years.

To rectify the unfair position , the IRO should be amended to allow carrying back of losses for, say, three years.

We propose:-

To amend the IRO to allow losses to be carried back for three years of assessment.

D5 Deduction for initial purchase costs incurred on implements, utensils and articles

Inland Revenue Rules allows certain cost of purchase to be allowable on replacement basis and the items concerned for deduction include implements, utensils and articles. Under the rule, the initial purchase cost is not, and will never be, allowable and only the replacement cost is allowable. The common businesses affected by the rules are restaurants and hotels which incur a lot of expenditure on these items. This line of businesses has contributed a lot to the economy in Hong Kong. In particular, they employ many workers in Hong Kong. The tax law should be amended to allow the initial purchase cost of those items to reflect the concern of the Government towards these businesses and indirectly, the employment of workers by these businesses.

We propose:-

To allow deduction of the full purchase cost of implements, utensils and articles because these are the genuine business expenses of restaurants and hotels which contribute much to the prosperity of Hong Kong by employing many workers in Hong Kong.

D6 Amortisation of capital expenditure on franchise, concessionaire or licence etc. in service industries

Certain capital expenditure for service industries is as important as plant and machinery for manufacturing industries.

Such capital expenditure includes, for example, acquisition costs of franchise, concessionaire or licence. We do not see the rationale of merely granting depreciation allowances to plant and machinery but ignoring the capital expenditure involving franchise, concessionaire or licence to which we believe an amortisation allowance should be given.

We propose:-

To allow amortisation of capital expenditure on franchise, concessionaire or licence in service industries.

D7 Full deduction for business equipment

From 1 April 1998 onwards, expenditure incurred for the purchase of computer equipment and manufacturing plant and machinery are fully allowable under section 16G of the IRO in the year of purchase. To encourage service industries to upgrade their operating apparatus, cost of business equipment such as fax machines, copiers and telephone systems etc. should also be fully allowable.

We propose:-

To allow full deduction of the purchase cost of business equipment, irrespective of the nature of business.

D8 Review of depreciation allowances for cross-border leasing/manufacturing activities

The amendment of section 39E(1)(b) of the IRO in March 1992 was intended to stop the use of leveraged leasing structure of assets principally used outside Hong Kong to obtain tax benefits by way of depreciation allowance. The amendment has the effect of deterring genuine international investors from setting up companies in Hong Kong to lease machinery and equipment to users in other territories.

The provision would also appear to apply to a Hong Kong taxpayer's plant and machinery used by its wholly-owned subsidiary company in the Mainland of China under an "import processing" arrangement. In such a case, no depreciation allowances might be given on the ground that the plant and machinery are used by the entity outside of Hong Kong.

The amendment has the unintended effect of destroying the intention of some genuine cross-border leasing or manufacturing businesses set up in Hong Kong and the Mainland of China. The law should be amended to make room for the granting of depreciation allowances to genuine cross-border leasing or manufacturing businesses when their profits are assessable to Hong Kong tax. This would make Hong Kong a more attractive place for setting up cross-border leasing or manufacturing businesses.

We propose:-

To amend section 39E of the IRO so as to allow room for genuine cross-border leasing and manufacturing businesses to claim depreciation allowances for use outside of Hong Kong when their profits are assessable to Hong Kong tax.

D9 Unilateral tax credits grantable for overseas withholding tax on royalties and interest income

Hong Kong taxpayers who grant the use or the right to use of their intellectual properties to persons outside Hong Kong would normally suffer overseas withholding tax in respect of the royalties income, as the royalty income would likely to be regarded as being sourced in the overseas countries.

However, following the source rule for royalties adopted in Hong Kong after the *TVBI* case, the royalty income of the Hong Kong taxpayers would probably also be liable to tax in Hong Kong under section 14 as the income is derived from their business carried on in Hong Kong. This has the effect of the royalty

income earned by the Hong Kong taxpayers being doubly taxed.

Similarly, the interest income of Hong Kong taxpayers, in particular, financial institutions, may also be subject to overseas withholding tax as well as profits tax in Hong Kong in respect of their loans granted to persons outside Hong Kong.

At present, Hong Kong taxpayers would probably obtain a tax deduction in Hong Kong in respect of their overseas withholding tax paid on royalties and interest, under either section 16(1) or section 16(1)(c) of the IRO. That means there is no full tax credit of the overseas tax paid against the Hong Kong profits tax payable on the same income since Hong Kong has not entered into any comprehensive tax treaty arrangement with any other countries (except Belgium and Thailand) which may grant full tax credit on overseas tax suffered to avoid double taxation.

Unlike full tax credit deduction, the tax deduction for overseas tax paid is only a partial tax relief and does not fully eliminate double taxation. As such, in the absence of any comprehensive tax treaty arrangement, unilateral tax credit should be allowed to taxpayers under the IRO in respect of their overseas withholding tax suffered on royalties and interest. This deduction will give full tax incentives for Hong Kong businesses to exploit fully the overseas markets and for the international companies investing in Hong Kong.

We propose:-

Unilateral tax credit should be allowed to taxpayers under the IRO in respect of their overseas withholding tax suffered on royalties and interest. This deduction will give full tax incentives for Hong Kong businesses to exploit fully the overseas markets and for international companies investing in Hong Kong.

D10 Double Taxation Agreements (DTAs) For Hong Kong

Multinational corporations ("MNC") headquartered in Hong Kong face a competitive disadvantage in terms of tax when doing business in many foreign territories. This is the result of a lack of sufficient DTAs entered into by the Government, compared with many other territories. (Currently, Hong Kong has only two comprehensive DTAs signed with Belgium and Thailand.) Not only MNCs but also many local companies in Hong Kong that are engaging in cross-border business are facing the same problem. The resulting adverse tax impacts are many, including the full payment of withholding tax on dividend, interest or royalty paid to Hong Kong companies.

In the absence of sufficient DTAs entered into by the Hong Kong SAR Government, Hong Kong shipping companies, for example, suffer the most. Many territories impose a flat tax on freight income received by foreign shipping companies on a deemed income basis irrespective of the actual profit and loss positions of the shipping companies. These territories include

Australia, Bangladesh, India, Pakistan, the Philippines, Taiwan, Vietnam, Russia and Poland. In some territories, the profit margins deemed by the foreign governments could be very high. This directly increases the costs of the Hong Kong companies doing business in these territories. Since shipping companies from territories having a large network of DTAs may be fully or partially exempted from these freight taxes, Hong Kong shipping companies are therefore not competing on a level playing field with these overseas shipping companies. Moreover, the lack of a broad DTA network in Hong Kong will be an impediment to economic and trading activities between Hong Kong and the corresponding foreign territories.

In addition, we suggest that the PRC Central Government and the Hong Kong SAR Government consider amending the Arrangement between the Mainland of China and Hong Kong SAR for the Avoidance of Double Taxation on Income to simplify the administration of the dependent services article in order to do away with the cumbersome requirement of counting the days spent in each jurisdiction to determine the taxability of such income. Details of our suggestions were contained in our letter to the State Administration of Taxation and Hong Kong Inland Revenue Department in September 2005. Indeed we would generally welcome any initiative by the governments to expand the scope of the avoidance of double tax arrangements to cover other types of income including dividends, interests and royalties, etc.

We propose:-

The Government to expedite the DTA negotiations with foreign governments, probably with a limited scope of reciprocal exemption at the beginning via the DTAs. The speeding up of reaching DTAs with our trading partners is necessary for the expansion of overseas markets by the local businesses. We also propose making technical revisions to some provisions in the Arrangement between the Mainland of China and Hong Kong SAR for the Avoidance of Double Taxation on Income to facilitate compliance.

E Tax incentives to individuals

E1 Increase of child allowance

Hong Kong is still facing the problem of low fertility rate which is probably attributable to long working hours and uncertain job prospects - phenonmena of economic restructuring which poses immense hardship to Hong Kong people, particularly the middle class. Without sufficient young and talented people, Hong Kong will not be able to maintain its strength as an International Financial and Services Centre.

We propose: -

To increase the child allowance from the current amount of HK$40,000 to HK$60,000 for each eligible child up to the 9th one so as to allow deduction for the cost of living and education of those middle class taxpayers having one or more children and to boost the birth rate in Hong Kong.

E2 More generous deductions for membership subscription fees paid to professional bodies under salaries tax regime

Under the present salaries tax regimes, membership subscription fee of only one professional body is allowable. With the change of education environment and the policy of encouraging the workforce to equip oneself with more skills for the future, the present deduction limit of one professional body is outdated and should be amended.

We propose:-

To allow deduction of paid membership subscription fees for professional bodies without limit of the number of the professional bodies in salaries tax regime.

E3 Extend the scope of courses qualifying for self-education expense deduction

It has been the government policy to encourage the people of Hong Kong to carrying on life-long learning so as to maintain the quality of workforce in Hong Kong. The relevant part of the IRO should provide corresponding incentives to the taxpayers who have been struggling with their own budget for enhancement of their employment skills. However, the present tax incentive for deduction of self-education expenses is limited to those courses which maintain a qualification for use in any employment. The relevant part of the IRO should be amended to extend the scope of courses that could be qualified for deduction for self-education expenses.

We propose:-

To extend the scope of courses qualifying for deduction of self-education expenses without limit so long as the expense is actually spent by the taxpayer.

E4 Deduction of insurance premium

The cost of provision of medical services to the public will be increased years after years with the increase of the aging population in Hong Kong. Rather than leaving the Government alone to shoulder the cost of the medical services, we suggest that the public be encouraged to take out medical insurance and that the insurance premium so paid will qualify for deduction, subject to a maximum

of $30,000 a year. The allowance of the deduction of the medical insurance premium will not cause a significant loss in revenue to the Government because the premium so received by the insurance companies will be assessed to Profits Tax. If compensations are received by the insured (that is, the taxpayers), the sums will set-off the cost of the medical services which will otherwise be borne by the Government. Further, provision of this kind of deduction will enhance the business environment of the financial services industry in Hong Kong.

We propose:-

To amend the IRO to allow deduction of, say, $30,000 per year for insurance premium paid for medical insurance so as to assist the middle class taxpayers, relieve the Government of part of the burden in the provision of medical services to the pubic and enhance the business environment of the financial services industry in Hong Kong.

E5 Salaries tax relief

Although our economy recovers gradually in 2005, it is still faced with many challenges such as fluctuation of oil prices, US dollars exchange and interest rates coupled with the possible outbreak of the Avian Flu. For the benefit of the taxpayers at large, we suggest that the Government should implement some salaries tax relief for the taxpayers by widening each tax band from the current level of HK$30,000 to HK$35,000. We anticipate such tax concession would not cause much loss in tax revenue nor would it narrow the existing tax base but can have the favorable effect to the taxpayers upon the economy's recovery since 2004.

We propose:-

To widen the tax band to $35,000 from $30,000 so as to allow some relief of the tax burden of the middle class taxpayers to enjoy the benefit of economic recovery.

E6 Extend the personal assessment right to one spouse

With the present personal assessment regime, in the case of married couples, the 2 spouses should be joined together to have personal assessment election. They do not have their own right to make the election. This election right to personal assessment is obviously outdated. Nowadays, men and women are of equal status. Each spouse should be allowed personal assessment and he or she need not get the agreement of the other party to have personal assessment.

We propose:-

Personal assessment election right should be allowed to each spouse and he or she need not obtain the agreement of the other party to the marriage for personal assessment of his or her income.

F Tax incentives to corporations and individuals

F1 Charitable donation limit

In order to achieve a quality level of education or other social services, a substantial amount of funding or subsidies has to be contributed from the Government or some charitable institutions, say the Hong Kong Jockey Club. Nowadays, Government exercises tightened control on public expenditure spending by curtailing subsidy on some quasi-government bodies, universities or other charitable institutions. Theses institutions are trying their best endeavors to raise funding from sources other than the Government. It is a right approach to be cost conscious. However, making donations to approved charitable institutions should be encouraged so as to maintain the scope, level and quality of such services on the one hand and release the Government's financial burden on the other hand. In some developed countries, donations to the charitable institutions can attract deductions of more than 25% of the assessable income. Therefore we suggest increasing the limit of allowable donations, as tax deduction, made to approved charitable institutions or trusts of a public character or to the Government for charitable purposes up to 50% (25% for year of assessment 2004/05) of the assessable income or assessable profits or total income for Personal Assessment. We believe more donations can be generated by increasing such limit not only for the tax benefits obtained by the donors but also the recognition and appreciation of their social responsibilities by the society.

We propose:-

To increase the charitable donation limit to 50% of a taxpayer's assessable income or profit from 25% thereof.

F2 Extend the meaning of charity by statute to include advancement of sports

For many years, the advancement of sports has been excluded as a charitable activity under the common law. This exclusion is outdated in terms of the social norm nowadays and must be rectified by legislation. The inclusion of advancement of sports as charity is in line with the policy of the Government to encourage people of Hong Kong to have and maintain a healthy body. The policy is essential to a society which is going to have an aging population.

The effect of the proposal will allow organisations involved in the promotion of sports to be recognized as charitable bodies which then will have an easier task to raise funds for their professional activities. It also arouses the interest of the people of Hong Kong of the fact that Beijing will host the Olympic Games in 2008 and Hong Kong will host the East Asian Games in 2009.

We propose:-

To extend the meaning of charity to include advancement of sports to make the sports bodies easier to raise funds for their professional activities and to make the people of Hong Kong aware of the importance of a healthy body.

We trust the above is of assistance to you in formulating the budget for the forthcoming financial years.

Yours faithfully,
For and on behalf of
The Taxation Institute of Hong Kong

Richard Chow
President