

立法會
Legislative Council

LC Paper No. CB(1)1073/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/1/00

Bills Committee on Inland Revenue (Amendment) Bill 2000

Minutes of the sixth meeting
held on Thursday, 5 February 2004, at 10:45 am
in Conference Room B of the Legislative Council Building

Members present : Dr Hon Eric LI Ka-cheung, GBS, JP (Chairman)
Hon SIN Chung-kai
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon CHAN Kam-lam, JP

Public officers attending : Financial Services and the Treasury Bureau
Miss Erica NG
Principal Assistant Secretary for
Financial Services and the Treasury (Treasury)

Inland Revenue Department

Mr TAM Kuen-chong
Deputy Commissioner of Inland Revenue

Mr SO Chau-chuen
Assistant Commissioner of Inland Revenue

Mrs Jennifer CHAN
Assistant Commissioner of Inland Revenue

Mr LI Yiu-kuen, Thomas
Senior Assessor

Department of Justice

Mr LAM Siu-chung, Michael
Senior Government Counsel

Mr Allen LAI
Senior Government Counsel

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)6

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Matthew LOO
Senior Council Secretary (1)3

I Confirmation of minutes of meeting

LC Paper No. CB(1)686/03-04 - Minutes of meeting on 9 December 2003

1. The minutes of the meeting held on 9 December 2003 were confirmed.

II Meeting with the Administration

LC Paper No. CB(1)921/03-04 (01) - Administration's paper on response to concerns raised at the meeting on 9 December 2003

LC Paper No. CB(1)921/03-04 (02) - List of issues requiring follow-up actions by the Administration (position as at 3 February 2004)

LC Paper No. CB(1)500/03-04 (03) - Submission dated 1 December 2003 from Capital Markets Tax Committee of Asia (Hong Kong Chapter)

- LC Paper No. CB(1)531/03-04 (01) - Submission dated 8 December 2003 from Hong Kong Society of Accountants
- LC Paper No. CB(1)500/03-04 (04) - Submission dated 1 December 2003 from Joint Liaison Committee on Taxation
- LC Paper No. CB(1)500/03-04 (05) - Submission dated 1 December 2003 from the Association of Chartered Certified Accountants Hong Kong
- LC Paper No. CB(1)500/03-04 (06) - Submission dated 5 December 2003 from the Chinese General Chamber of Commerce
- LC Paper No. CB(1)500/03-04 (07) - Submission dated 29 November 2003 from the Hong Kong Association of Banks
- LC Paper No. CB(1)500/03-04 (08) - Submission dated 1 December 2003 from the Real Estate Developers Association of Hong Kong
- LC Paper No. CB(1)921/03-04 (03) - Submission dated 23 December 2003 from the Real Estate Developers Association of Hong Kong
- LC Paper No. CB(1)500/03-04 (09) - Submission dated 1 December 2003 from the Taxation Institute of Hong Kong
- LC Paper No. CB(1)921/03-04 (04) - Submission dated 20 December 2003 from the Taxation Institute of Hong Kong
- LC Paper No. CB(1)921/03-04 (05) - Submission dated 20 December 2003 from Hong Kong Bar Association
- LC Paper No. CB(1)921/03-04 (06) - Summary of views submitted to the Bills Committee and the Administration's response upon re-activation of the Bill (position as at 3 February 2004)

- LC Paper No. CB(1)500/03-04 (01) - Letter dated 13 November 2003 from Assistant Legal Adviser 1 to the Administration on the technical aspects of the proposed Committee Stage amendments
- LC Paper No. CB(1)500/03-04 (02) - Administration's response dated 8 December 2003
- LC Paper No. CB(1)303/03-04 (01) - Revised proposed Committee Stage amendments provided by the Administration on 7 November 2003
- LC Paper CB(1)303/03-04 (02) - Marked-up copy of revised proposed Committee Stage amendments provided by the Administration on 7 November 2003
- LC Paper No. CB(1)7/03-04 (01) - Paper provided by the Administration on "Results of the Consultations and Effects of the Proposed Committee Stage Amendments"

2. Members noted that the following papers were tabled at the meeting -

- (a) written submission dated 4 February 2004 from Hong Kong Society of Accountants;
- (b) extracts from legislation or tax guides of Singapore, Malaysia, Australia, New Zealand and the United Kingdom relevant to proposed section 15(1)(ba) (Clause 5 of the Bill) and referred to in the footnotes of the Administration's paper (LC Paper No. CB(1)921/03-04 (01)); and
- (c) the case of *Commissioner of Inland Revenue and Emerson Radio Corp* (1999)2 Hong Kong Court of Final Appeal Report relating to royalty income (Clause 5 of the Bill) and referred to in the Legislative Council Brief on the Bill.

(Post-meeting note: The papers were circulated to members vide LC Paper No. CB(1)947/03-04 on 9 February 2004.)

3. The Administration was requested to consider the following matters raised by the Bills Committee at the meeting -

Clause 4 - Adjustments to assessable income

- (a) To review the scope of education courses eligible for salary tax deduction under section 12(6) and the arrangements under section 12(6) and/or the relevant Departmental Interpretation & Practice Note for approval of education courses for the purposes of salary tax deduction having regard to the following concerns and suggestions of members -
- (i) The scope of education courses eligible for salary tax deduction as defined by "courses.....provided by" education providers and trade, professional and business associations might be too narrow and fall short of recognizing some education courses which were subject to strict quality control and were recognized or accredited by trade, professional and business associations;
 - (ii) The Vocational Training Council (VTC) had established a scheme for accreditation of education/training courses provided by various organizations. Since the courses accredited under the scheme were already subject to strict quality control, the course fees of these courses should be eligible for salary tax deduction. The Administration should liaise with VTC to see whether VTC might apply on behalf of the institutions offering the courses accredited under its scheme for approval by the Commissioner of Inland Revenue (the Commissioner);
 - (iii) While proposed sections 12(6)(d)(vi) and 12(6)(e) provided a mechanism for the Commissioner to approve an institution as an education provider, this mechanism might not be an efficient arrangement and might not be flexible enough to cover some bona fide employment-related self-education courses, such as courses provided by companies; and
 - (iv) As a first step, the Administration might consider including all the courses "recognized" by statutory professional bodies under their respective continuous professional development programmes for salary tax deduction purpose. Alternatively, the Administration should consider including all the courses recognized by professional bodies.

Clause 5 - Certain amounts deemed trading receipts

- (b) To assess the possible impact of the new arrangement on the investment in Hong Kong and to compare the tax rate of royalty income in Hong Kong under the proposed new arrangement with those in other jurisdictions;

- (c) To provide examples to illustrate that the royalty income was not chargeable to Profit Tax under existing section 15(1)(b) but would be chargeable under proposed section 15(1)(ba);
- (d) To explain/confirm the legal and policy implications of the commencement of operation of the Trade Marks Ordinance (Cap. 559) on 4 April 2003 on the proposed amendments relating to royalty income; and
- (e) To list out all provisions in the existing Inland Revenue Ordinance (Cap. 112) which involved departure from the territorial source principle and to explain whether these provisions were based on the "symmetry" principle.

III Any other business

Dates of next meeting

4. The next two meetings of the Bills Committee were scheduled for 24 February and 2 March 2004 at 8:30 am respectively.

(Post-meeting note: Notice of the meetings was issued to members vide LC Paper No. CB(1)948/03-04 dated 6 February 2004.)

- 5. There being no other business, the meeting ended at 12:35 pm.
- 6. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
23 February 2004

**Proceedings of the meeting of the
Bills Committee on Inland Revenue (Amendment) Bill 2000**

**6th meeting on Tuesday, 5 February 2004, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000320	Chairman	Welcoming and introductory remarks Confirmation of minutes of meeting on 9 December 2003	
000321 - 000826	Chairman Administration	Briefing by the Administration on its response to members' concerns raised at the last meeting on issues relating to self-education expenses <i>[CB(1)921/03-04 (01)]</i>	
000827 - 001019	Administration Chairman	Administration's response on the definition of trade, professional or business association for the purpose of section 12(6)	

Time marker	Speaker	Subject(s)	Action required
001020 - 002650	Administration Chairman Ms Miriam LAU	<p>Administration's response on whether courses accredited or recognized but not provided by a trade, professional or business association would be covered under the proposed section 12(6)(c)(ii)</p> <p>Administration pointed out that the proposed amendments were only technical amendments to clarify the policy intent with regard to an examination fee that was not connected with a prescribed course of education. Members' suggestion to allow deductions for accredited or recognized courses would involve a change in policy.</p> <p>Ms Miriam LAU considered that the scope of education courses eligible for salary tax deduction under proposed section 12(6) might be too narrow. She quoted the Vocational Training Council (VTC) as an example and pointed out that VTC had established a scheme for accreditation of education and/or training courses provided by various organizations which were subject to strict quality control. She suggested the Administration consider offering an "umbrella coverage" for the accredited courses under the scheme.</p>	Administration to take follow-up action set out in paragraph 3(a)(i) and (ii) of the minutes

Time marker	Speaker	Subject(s)	Action required
002651 - 003254	Chairman Administration Ms Miriam LAU	<p>Administration's response on whether a taxpayer was required to prove that the course in question related to his current employment or to an employment which the taxpayer was likely to take up in future, and whether there was any discrepancy between the Chinese and the English versions of proposed sections 12(6)(b)(ii) and 12(6)(c)</p> <p>The Administration pointed out that the Administration had all along interpreted the term "employment" as covering both current and future employment. This had been widely known to taxpayers and hence there had been no dispute over this term. Nevertheless, the Administration would clearly set out the details of the arrangement in the Interpretation & Practice Note of the Inland Revenue Department (IRD).</p>	

Time marker	Speaker	Subject(s)	Action required
003255 - 005009	<p>Chairman Ms Miriam LAU Administration Ms Audrey EU Mr SIN Chung-kai ALA1</p>	<p>Ms Audrey EU and Ms Miriam LAU pointed out that professional bodies (e.g. Law Society) seldom provide education courses on their own. They suggested that the Administration considered extending the scope of proposed section 12(6) to cover certain, if not all, courses accredited or recognized by professional bodies.</p> <p>Mr SIN Chung-kai suggested that the Administration might consider including all the courses recognized by statutory professional bodies under their respective continuous professional development programmes (CDPs) under proposed section 12(6) as a first step, and then extend the exemption to courses recognized by other professional bodies at a later stage. Members supported Mr SIN's suggestion.</p> <p>The Administration pointed out that courses currently recognized by statutory professional bodies might already be eligible for salary tax deduction as the education providers concerned had already been approved by the Commissioner for the purpose of section 12(6). The Chairman said that the current arrangement for approval of education providers might not be an efficient one under present-day circumstances.</p>	<p>Administration to take follow-up action set out in paragraph 3(a)(iii) and (iv) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
003255 - 005009 (Cont'd)		ALA1 advised that it might not be outside the scope of the Bill to change or expand the scope of education courses eligible for salary tax deduction.	
005010 - 010029	Chairman Administration Ms Miriam LAU ALA1	Administration's response on issues about royalty income under proposed section 15(1)(ba) The Chairman said that professional bodies including HKSA and the Association of Chartered Certified Accountants Hong Kong Branch did not support the proposed amendments as they considered the changes deviated from the fundamental territorial source principle of taxation. The new arrangement would also have negative impact on the "simple tax system" in Hong Kong. The Chairman also pointed out that the affected trades had raised similar concern.	

Time marker	Speaker	Subject(s)	Action required
005010 - 010029 (Cont'd)		<p>The Administration explained its position as elaborated in its paper and advised that the estimated revenue loss was around \$200 million per annum if no change was made to the section 15(1).</p> <p>The Administration also said that even after increasing the charging rate on royalty income to 30% on 1 April 2003, the effective tax rate on royalty income, at the current corporation rate of 17.5%, was only 5.25%, which was much lower than the rate charged in other jurisdictions.</p>	
010030 - 011440	Chairman Administration Ms Miriam LAU ALA1 Mr Ambrose LAU	Briefing by the Administration on the case of <i>Commissioner of Inland Revenue and Emerson Radio Corp</i> (1999) 2 Hong Kong Court of Final Appeal Reports, which was the background to the proposed amendments in relation to royalty income	
011441 - 011805	Chairman Mr Ambrose LAU Administration	Concern about the possible impact of the new arrangement on the investment in Hong Kong.	Administration to take follow-up action set out in paragraphs 3(b) and 3(c) of the minutes
011806 - 012358	Chairman ALA1 Ms Miriam LAU	Legal and policy implications of commencement of operation of the Trade Marks Ordinance (Cap. 559) on 4 April 2003	Administration to take follow-up action set out in paragraph 3(d) of the minutes
012359 - 012738	Chairman Mr Ambrose LAU Administration	Provisions in the existing Inland Revenue Ordinance (Cap. 112) which involved departure from the territorial source principle	Administration to take follow-up action set out in paragraph 3(e) of the minutes

Time marker	Speaker	Subject(s)	Action required
012739 - 015437	Chairman Administration Mr SIN Chung-kai Mr Ambrose LAU	Administration's response on the proposal to provide exemptions to market making activities The Chairman said that under the proposed section 16(2C) , it was difficult in practice for multinational giant securities-dealing and investment groups to keep track of the dealings in securities. The Administration confirmed that it would introduce CSAs to exempt market-making activities from the operation of the restriction on interest deduction as provided in the proposed section 16(2C)	Administration would propose Committee Stage amendments to the Bill
015438 - 015635	Chairman	Dates of next meetings	