

立法會
Legislative Council

LC Paper No. CB(1)1295/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/1/00

Bills Committee on Inland Revenue (Amendment) Bill 2000

Minutes of the seventh meeting
held on Tuesday, 24 February 2004, at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Dr Hon Eric LI Ka-cheung, GBS, JP (Chairman)
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Hon Miriam LAU Kin-yee, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Ambrose LAU Hon-chuen, GBS, JP
- Public officers attending** : Financial Services and the Treasury Bureau
Miss Erica NG
Principal Assistant Secretary for
Financial Services and the Treasury (Treasury)
Mr Ivanhoe CHANG
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

Attendance by invitation : The Real Estate Developers Association of Hong Kong

Mr Louis LOONG
Secretary General

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)1073/03-04 - Minutes of meeting on 5 February 2004

1. The minutes of the meeting held on 5 February 2004 were confirmed.

II Meeting with deputation and the Administration

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)1064/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 5 February 2004
- LC Paper No. CB(1)1074/03-04 (01) - List of issues requiring follow-up actions by the Administration (Position as at 23 February 2004)
- LC Paper No. CB(1)1074/03-04 (02) - Summary of views submitted to the Bills Committee and the Administration's response upon re-activation of the Bill (position as at 23 February 2004)
- 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

2. Mr Louis LOONG, Secretary General of the Real Estate Developers Association of Hong Kong (REDA), presented the Association's views at the meeting.

3. At the request of members, REDA agreed to provide, if possible, further information to illustrate the extent of the impacts of the proposed anti-avoidance provisions on the development of the debt market in Hong Kong and the cost of financing through the issue of debt instruments by companies carrying on business in Hong Kong. The Bills Committee agreed that the Hong Kong General Chamber of Commerce and the Capital Markets Tax Committee of Asia (Hong Kong Chapter) would also be invited to give views on this issue.

(Post-meeting note: Letters to invite views from the three organizations were issued on 26 February 2004.)

4. Members noted that the "List of statutory bodies established by legislation to register and recognise professional qualifications and status or grant permits or licences for practicing in a profession, trade or occupation" provided by the Administration was tabled at the meeting.

(Post-meeting note: The paper was circulated to members vide LC Paper No. CB(1)1104/03-04 on 24 February 2004.)

5. The Administration was requested to provide a comparison of the anti-avoidance provisions currently proposed in respect of deduction of interest expenses with the relevant taxation laws in the United Kingdom, Singapore, Japan and Australia.

III Any other business

Dates of next meeting

6. Members noted that the next meeting would be held on Tuesday, 2 March 2004 at 8:30 am.

7. There being no other business, the meeting ended at 10:35 am.

8. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
16 March 2004

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

**7th meeting on Tuesday, 24 February 2004, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000339	Chairman	Welcoming and introductory remarks Confirmation of minutes of meeting on 5 February 2004	
000340 - 001422	Chairman The Real Estate Developers Association of Hong Kong (REDA)	Presentation of views by REDA. REDA was mainly concerned about impacts of the proposed anti-avoidance provisions on the development of the debt market in Hong Kong and the cost of financing through the issue of debt instruments by companies carrying on business in Hong Kong. REDA highlighted that the Administration had acknowledged in its response that the proposed provisions did not give consideration to whether any commercial element existed in the transaction.	

Time marker	Speaker	Subject(s)	Action required
001423 - 002232	Chairman Ms Audrey EU Administration	<p>Policy intent of the proposed anti-avoidance provisions under clause 6 of the Bill (section 16)</p> <p>The Administration said that the aim of adding the proposed anti-avoidance provisions was to disallow the setting up of schemes by using existing section 16(2)(f) to bypass the operation of section 16(2)(c) the main purpose of which was to seek a symmetry in the taxing and allowing deduction of interest payment.</p>	
002233 - 002902	Chairman SIN Chung-kai Administration REDA	<p>REDA pointed out the anti-avoidance provisions were unnecessary as the existing section 61A was already an effective tool in handling tax avoidance cases. Section 61A also allowed flexibility to examine the commercial reasons for the arrangement concerned.</p> <p>The Administration advised that the application of section 61A created uncertainty and could not effectively counteract all the abuses. The proposed amendments provided clearer and more explicit rules for the taxpayers to follow.</p>	

Time marker	Speaker	Subject(s)	Action required
002903 - 004347	Chairman Ms Audrey EU Administration	<p>Members sought clarifications on whether the policy intent was to disallow abuses of existing section 16(2)(f) or to disallow deduction of interest in all cases of borrowings from any connected person or associated corporation through the issue of debt instruments irrespective of whether there was a genuine commercial element in the borrowing.</p> <p>The Administration said that the policy intent of the proposed anti-avoidance provisions under clause 6 of the Bill (section 16) was to reinstate the "symmetry" principle explicitly set out in section 16(2)(c) and 16(2)(e). The Administration took the view that loans that were internal to the group should be governed by the tax symmetry test.</p>	
004348 - 010556	Chairman Ms Audrey EU REDA Mr CHAN Kam-lam Administration Ms Miriam LAU	<p>Impact of the proposed anti-avoidance provisions on the development of the debt market in Hong Kong and the cost of financing through the issue of debt instruments by companies carrying on business in Hong Kong</p> <p>REDA reiterated that existing section 61A was already an effective tool in handling anti-avoidance cases.</p>	
010557 - 010847	Chairman Mr CHAN Kam-lam	Taxation laws in respect of deduction of interest expenses in other jurisdictions	Administration to take follow-up action set out in paragraph (5) of the minutes

Time marker	Speaker	Subject(s)	Action required
010848 - 011404	Chairman REDA Mr CHAN Kam-lam	Impact of the proposed anti-avoidance provisions on the development of the debt market in Hong Kong	REDA to consult its members with a view to providing further information to illustrate the extent of the impacts Clerk to invite the Capital Markets Tax Committee of Asia (Hong Kong Chapter) (CMTC) and the Hong Kong General Chamber of Commerce to give views on this issue
011405 - 012313	Chairman Administration Ms Miriam LAU Mr SIN Chung-kai	<u>Administration's response to members' concerns raised at the last meeting held on 5 February 2004</u> <i>[CB(1)1064/03-04(01)]</i> Proposed amendments in clause 4 of the Bill relating to adjustments to assessable income	Administration to consider Committee Stage amendments (CSAs) to expand the scope of courses for salaries tax deduction.
012314 - 012559	Chairman Administration	Proposed amendments in clause 5 of the Bill relating to certain amounts deemed trading receipts	
012600 - 012824	Administration	Examples of royalty income chargeable under section 15(1)(ba)	
012825 - 013244	Administration	Implication of the enactment of the new Trade Marks Ordinance (Cap. 559)	
013245 - 014111	Administration Chairman	Provisions involving "departure" from the territorial source principle	

Time marker	Speaker	Subject(s)	Action required
014112 - 015835	Chairman Mr SIN Chung-kai Administration	<u>Briefing by the Administration on its updated response to submissions</u> [CB(1)1074/03-04(02)] 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 to provide CSAs together with the amendments proposed by CMTC
015836 - 015937	Chairman Mr CHAN Kam-lam	The Bills Committee would discuss the views of the Hong Kong Society of Accountants relating to the introduction of "grandfathering" provisions in proposed section 16(5A) at the next meeting	