

立法會
Legislative Council

LC Paper No. CB(1)1296/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/1/00

Bills Committee on Inland Revenue (Amendment) Bill 2000

**Minutes of the eighth meeting
held on Tuesday, 2 March 2004, at 8:30 am
in Conference Room B 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 Ambrose LAU Hon-chuen, GBS, JP
Hon Audrey EU Yuet-mee, SC, 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

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 Meeting with the Administration

LC Paper No. CB(1)1158/03-04 (01) - Administration's paper on "Tax Treatment of Interest Income and Payments: A Comparison with Overseas Jurisdictions"

LC Paper No. CB(1)1158/03-04 (02) - List of issues requiring follow-up actions by the Administration (Position as at 1 March 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

1. The following papers were tabled at the meeting -
 - (a) Chinese version of Administration's paper on "Tax Treatment of Interest Income and Payments: A Comparison with Overseas Jurisdictions"; and
 - (b) Administration's letter dated 1 March 2004 on the draft Committee Stage amendments (CSAs) on exemption of market-making activities from the operation of proposed section 16(2C).

(Post-meeting note: The papers were circulated to members vide LC Paper No. CB(1)1182/03-04 on 3 March 2004.)

2. The Administration was requested to consider and provide information on the following matters raised by the Bills Committee at the meeting -

- (a) To provide an update on the progress of the four outstanding applications for advance ruling by the Commissioner of Inland Revenue which involved interest deduction claims and the application of section 61A (*mentioned in the letter dated 8 December 2003 from the Administration to the Assistant Legal Adviser 1 (LC Paper No. CB(1)500/03-04(02))*). Information including the dates of receiving these applications should be provided.
- (b) To revise the draft CSAs to section 16 (Clause 6 of the Bill) to exempt "market making activities" from the operation of proposed section 16(2C) instead of confining the exemption to "market makers" as defined in proposed section 16(2H) of the draft CSAs.

3. The Bills Committee agreed that the Capital Markets Tax Committee of Asia (Hong Kong Chapter), the Hong Kong General Chamber of Commerce, the Taxation Institute of Hong Kong, the Real Estate Developers Association of Hong Kong, Joint Liaison Committee on Taxation and the Hong Kong Society of Accountants should be invited to give views on exemption of market-making activities from the operation of proposed section 16(2C) and the abovementioned draft CSAs provided by the Administration.

(Post-meeting note: Letters to the six organizations to invite their views were issued on 3 March 2004.)

II Any other business

Dates of next meeting

4. The next three meetings of the Bills Committee were scheduled for 22, 27 and 29 April 2004, all starting at 8:30 am.

(Post-meeting note: Notice of the meetings was issued to members vide LC Paper No. CB(1)1183/03-04 dated 3 March 2004.)

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

6. 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**

**8th meeting on Tuesday, 2 March 2004, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000625	Chairman Mr SIN Chung-kai	Welcoming and introductory remarks	
000626 - 003809	Chairman Administration Mr SIN Chung-kai Ms Miriam LAU	<p>Comparison with overseas jurisdictions on tax treatment of interest income and payments <i>[CB(1)1158/03-04(01)]</i></p> <p>Mr SIN Chung-kai said that at this stage, he was not convinced that the anti-avoidance provisions relating to deduction of interest expenses proposed by the Administration were unacceptable, unless there was evidence showing that the proposed provisions would have serious impact on the development of Hong Kong's debt market.</p> <p>Ms Miriam LAU said that she was not convinced that the proposed anti-avoidance provisions were appropriate. She was particularly concerned that the provisions would stifle the development of Hong Kong's debt market.</p>	

Time marker	Speaker	Subject(s)	Action required
000626 - 003809 (Cont'd)		<p>The Chairman agreed with the Administration that the tax treatment of interest income and payments, with the related tax deductibility rules, adopted in Hong Kong was favourable to taxpayers compared with overseas jurisdictions. He was however concerned that with the implementation of the proposed anti-avoidance provisions and hence the lifting of the tax deductibility treatment for certain transactions, Hong Kong's debt market, which was still at the budding stage of development, would be hard hit.</p> <p>The Chairman pointed out that achieving a critical mass and favourable pricing were the two major factors affecting the development of Hong Kong's debt market. From this perspective, the timing of the operation of the proposed anti-avoidance provisions should also be considered.</p> <p>The Bills Committee agreed to revisit this issue upon receipt of further views from interested organizations.</p>	

Time marker	Speaker	Subject(s)	Action required
003810 - 005638	Chairman Administration Mr SIN Chung-kai	<p><u>Written submissions and the Administration's response</u> [CB(1)1074/03-04(02)]</p> <p>Administration's response to the suggestion of the Hong Kong Society of Accountants (HKSA) of extending the "grandfathering" provisions in proposed section 16(5A) to genuine financial transactions that were in place before the operation of the anti-avoidance provisions but had not been the subject of an advance ruling application.</p> <p>Mr SIN Chung-kai supported the arrangement proposed by the Administration.</p> <p>The Chairman said that there were good reasons underlying HKSA's suggestion but he was also aware of the practical difficulties that would be encountered by the Inland Revenue Department if the suggestion of HKSA was heeded. He said that he would follow-up this issue with HKSA.</p>	

Time marker	Speaker	Subject(s)	Action required
005639 - 010109	Chairman ALA1 Administration	<p>Progress of outstanding applications for advance ruling by the Commissioner of Inland Revenue which involved interest deduction claims and the application of section 61A</p> <p>The Administration pointed out that the receiving and processing of applications for advance ruling was a continuing work, and thus there might be further applications for advance ruling.</p>	Administration to take follow-up action set out in paragraph 2(a) of the minutes
010110 - 013943	Chairman Administration Mr SIN Chung-kai Ms Miriam LAU	<p><u>Draft Committee Stage amendments (CSAs) relating to market-making activities</u></p> <p>The Chairman noted that the draft CSAs only sought to exempt "market makers" rather than "market-making activities" from the application of proposed section 16(2C). Under the proposed arrangement, controlling shareholders and/or directors of a company who for various commercial reasons had to undertake some market-making activities in respect of the debt securities issued by the company would not be regarded as "market-makers". He considered that the proposed arrangement failed to take account of the compliance burden on corporations the major shareholders or the directors of which had to undertake market-making activities for the debt securities issued by the corporations.</p>	Administration to take follow-up action set out in paragraph 2(b) of the minutes

Time marker	Speaker	Subject(s)	Action required
013944 - 014201	Chairman Administration	The Bills Committee proceeded to clause-by-clause examination of the Bill	
014202 - 014436	Chairman Administration ALA1	Clause 1 - <i>Short Title</i> Clause 2 - <i>Application</i> to be examined together with the relevant CSAs Clause 3 - <i>Interpretation</i>	In relation to clause 2, the Administration would provide saving provisions regarding the application of clause 8 (deduction of home loan interest) and clause 4 (deduction of self education expenses)
014437 - 014446	Chairman Administration	The Bills Committee would examine clause 4 - <i>Adjustments to assessable income</i> together with CSAs to be provided by the Administration	Administration to provide CSAs to expand the scope of courses for salaries tax deduction.
014447 - 014917	Chairman Administration ALA1	Clause 5 - <i>Certain amounts deemed trading receipts</i> The Chairman said that he did not support the proposed section 15(ba) which involved departure from the territorial source principle	
014918 - 014946	Chairman	The Bills Committee would examine clause 6 - <i>Ascertainment of chargeable profits</i> together with revised draft CSAs to be provided by the Administration and further submissions from organizations	Administration to revise the draft CSAs to exempt "market making activities" instead of "market makers" from the operation of proposed section 16(2C)
014947 - 015046	Chairman Administration ALA1	Clause 7 - <i>Sections amended</i>	

Time marker	Speaker	Subject(s)	Action required
015047 - 015154	Chairman ALA1 Administration	The Bills Committee would examine clause 8 - <i>Home loan interest</i> together with revised draft CSAs to be provided by the Administration	Administration to provide CSAs to add a saving provision for clause 8
015155 - 015802	Chairman Administration	Dates of next three meetings Invitation of submissions from organizations	Clerk to invite relevant organizations to give views on the draft CSAs to section 16 relating to "market-making activities"

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