

立法會
Legislative Council

LC Paper No. CB(1)2336/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/1/00

Bills Committee on Inland Revenue (Amendment) Bill 2000

**Minutes of the tenth meeting
held on Tuesday, 11 May 2004, at 4:30 pm
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

Mr Martin GLASS
Deputy Secretary for
Financial Services and the Treasury (Treasury)

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 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)1753/03-04 (01) - Administration's paper on response to concerns raised at the meeting on 29 April 2004

LC Paper No. CB(1)1733/03-04 (01) - Submission dated 5 May 2004 from the Real Estate Developers Association of Hong Kong

LC Paper No. CB(1)1753/03-04 (02) - Administration's response to submission from the Real Estate Developers Association of Hong Kong

LC Paper No. CB(1)1714/03-04 (01) - The relevant Hansard on the Second Reading of the Inland Revenue (Amendment) Bill 1986

LC Paper No. CB(1)1753/03-04 (03) - List of issues requiring follow-up actions by the Administration (Position as at 10 May 2004)

- LC Paper No. CB(1)1654/03-04 (05) - Summary of views and the Administration's response on the impacts of proposed section 16(2C) and the proposed exemption of "market-makers" under proposed sections 16(2G) and 16(2H) (position as at 26 April 2004)
- LC Paper No. CB(1)1753/03-04 (04) - Revised draft CSAs provided by the Administration on 8 May 2004
- LC Paper No. CB(1)1654/03-04 (03) - Administration's response to comments relating to exemption from 'tax symmetry' rule for internal borrowings by associated corporations

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

- (a) Marked-up copy of revised draft CSAs provided by the Administration on 8 May 2004; and
- (b) Administration's paper on "The Part Relating to Amendments on Debenture Interest Deduction and Proposal from Real Estate Developers Association"

II. Any other business

Dates of next meeting

2. The next meeting of the Bills Committee was scheduled for 17 May 2004 from 2:00 pm to 3:00 pm. The Bills Committee would deliberate the outstanding issues at the next meeting.
3. There being no other business, the meeting ended at 7:30 pm.
4. The index of proceedings of the meeting is at **Appendix**.

Bills Committee on Inland Revenue (Amendment) Bill 2000

**Proceedings of the 10th meeting on Tuesday, 11 May 2004, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000215	Chairman	Welcoming and introductory remarks	
000216 - 000540	Chairman Administration	Briefing by the Administration on the follow-up actions arising from the discussion at the meeting on 29 April 2004 <i>[CB(1)1753/03-04 (01)]</i>	
000541 - 000623	Chairman Administration Mr SIN Chung-kai	<u>Clause 4 - Adjustments to assessable income</u>	
000624 - 002519	Chairman Mr SIN Chung-kai Ms Miriam LAU Administration	<u>Clause 6 - Ascertainment of chargeable profits</u> Briefing by the Administration on its response to submission from the Real Estate Developers Association of Hong Kong (REDA) <i>[CB(1)1733/03-04 (01)]</i> <i>[CB(1)1753/03-04 (02)]</i> Briefing by the Administration on its paper on "The Part Relating to Amendments on Debenture Interest Deduction and Proposal from Real Estate Developers Association" tabled at the meeting	

Time marker	Speaker	Subject(s)	Action required
002520 - 003244	Chairman Administration Ms Miriam LAU Mr SIN Chung-kai	<p>With reference to the relevant Hansard on the Second Reading of the Inland Revenue (Amendment) Bill 1986, members noted that the then Financial Secretary (FS) had confirmed that the policy intent of the amendments in the 1986 Amendment Bill was <i>"to combat tax avoidance and to protect the revenue by enabling him to strike down schemes which clearly appear to have entered into for the sole or dominant purpose of conferring a tax benefits; ..."</i>. [CB(1)1714/03-04 (01)]</p> <p>Referring to the same extracts of Hansard, the Administration pointed out that the then FS had also remarked that <i>"it would be a foolish and irresponsible administration that did not seek to block obvious loopholes in the laws as they appear - and appear they have and always will. From time to time, therefore, it is our job to take steps to protect the revenue..."</i>. The Administration added that the then FS's remarks quoted by some Members concerned the introduction of the general anti-avoidance provisions and were not related to specific anti-avoidance provisions as in the present case.</p>	
003245 - 003252	Mr SIN Chung-kai Chairman	Mr SIN Chung-kai reiterated that the Democratic Party supported the proposed anti-avoidance provisions relating to deduction of interest expenses from chargeable profits proposed by the Administration.	

Time marker	Speaker	Subject(s)	Action required
003253 - 003459	Chairman Ms Miriam LAU	Ms Miriam LAU reiterated her concern about the impact of the proposed anti-avoidance provisions on the development of debt market in Hong Kong.	
003500 - 004209	Ms Miriam LAU Chairman Administration	Members noted REDA's suggestion of adopting the Singaporean model by allowing interest expenses payable on listed debentures and marketable debt instruments held by a controlling shareholder to be deducted from chargeable profits, so long as the holding did not exceed 50% (REDA preferred a 75% threshold but was prepared to accept a lower 50% threshold). A similar suggestion was made by the Hong Kong General Chamber of Commerce (HKGCC).	
004210 - 005359	Ms Miriam LAU Chairman Administration Mr SIN Chung-kai	Administration's response to submissions from HKGCC <i>[CB(1)1438/03-04 (02)]</i> <i>[CB(1)1654/03-04 (05)]</i> Ms Miriam LAU said that in view of HKGCC's concern, she might need to discuss the issue with HKGCC further and hence she could not confirm her position at this stage.	
005400 - 010449	Chairman Administration Ms Miriam LAU	In response to the Chairman's enquiry, the Administration said that concession on Profits Tax deduction was applied to the manufacturing industry but it was not justified to apply the principle of such concession to the deduction of debt security interest expense on debt instruments held by associated corporations or controlling shareholders.	

Time marker	Speaker	Subject(s)	Action required
010450 - 010833	Chairman Mr SIN Chung-kai Ms Miriam LAU Administration	The Chairman considered that there was a need to consult Mr Abraham SHEK who represented the real estate and construction constituency on the proposed arrangement.	
010834 - 011112	Chairman Mr Ambrose LAU Administration	In response to Mr Ambrose LAU's enquiry on whether the Administration could further discuss with REDA on its proposal, the Administration advised that it appeared that there was no room for compromise with REDA on the "tax symmetry" and "non-associate borrowing" principles.	
011113 - 011449	Chairman Mr CHAN Kam-lam Ms SIN Chung-kai Ms Miriam LAU	Noting that consensus might not be reached by the Bills Committee on the proposed anti-avoidance provisions, the Chairman said that separate voting on the proposal might be required at the Second Reading of the Bill. Members agreed to consider the issue further at the next meeting.	
011450 - 011906	Chairman Mr SIN Chung-kai Ms Miriam LAU ALA1	The Bills Committee had scrutinized clauses 1, 3, 5 and 7 at the previous meetings, and agreed to proceed to the clause-by-clause examination of the remaining clauses together with the draft Committee Stage amendments. The Bills Committee went through the English version first.	
011907 - 013312	Chairman Mr SIN Chung-kai Administration Chairman ALA1	<u>Clause 2 - Application</u> ALA1 advised that except otherwise mentioned in clause 2, all provisions would commence operation once the Bill was passed by the Legislative Council and gazetted.	

Time marker	Speaker	Subject(s)	Action required
013313 - 013818	Chairman Administration Mr SIN Chung-kai	<u>Clause 4 - Adjustments to assessable income</u>	
013819 - 021022	Chairman Administration Mr SIN Chung-kai ALA1 Mr Ambrose LAU	<u>Clause 6 - Ascertainment of chargeable profits</u> In response to Mr SIN Chung-kai, the Administration advised that a person might seek advance ruling from the Commissioner for Inland Revenue to clarify the status of "market maker" defined in proposed section 16(2H). ALA1 advised that there was provision similar to the proposed section 16(3A) in the Securities and Futures Ordinance (SFO). The drafting of proposed section was more comprehensive but would have the same effect as the corresponding provision in SFO.	
021023 - 021155	Chairman Administration	<u>Clause 8 - Home loan interest</u>	
021156 - 021802	Administration Chairman Mr SIN Chung-kai	<u>Clause 9 - Annual allowances, commercial buildings and structures</u>	
021803 - 022002	Administration Chairman Mr SIN Chung-kai	<u>Clause 10 - Balancing allowances and charges, commercial buildings and structures</u>	
022003 - 022134	Mr SIN Chung-kai Administration	<u>Clause 11 - Initial and annual allowances, industrial buildings and structures</u>	
022135 - 022414	Administration Chairman	<u>Clause 12 - Section substituted: 35. Balancing allowances and charges, buildings and structures</u>	
022415 - 022940	Administration Chairman	<u>Clause 13 - Interpretation</u>	
022941 - 023139	Chairman Administration Mr SIN Chung-kai	<u>Clause 14 - Hearing and disposal of appeals to the Board of Review</u>	

Time marker	Speaker	Subject(s)	Action required
023140 - 023230	Chairman Administration	<u>Clause 15 - Appeals to the Court of First Instance</u>	
023231 - 023818	Chairman Administration ALA1 Mr SIN Chung-kai	<u>Clause 16 - Assessments or amended assessments to be final</u> <u>Clause 16A - Section added</u> ALA1 undertook to clarify with the Administration on the drafting aspects of proposed new section 70AA under clause 16A and to report to the Bills Committee at the next meeting.	
023819 - 024000	Chairman Administration Mr SIN Chung-kai	<u>Clause 17 - Appeals against assessment to additional tax to Board of Review</u>	
024001 - 024026	Administration Chairman	<u>Clause 18 - Exemption of charitable bodies</u>	
024027 - 024044	Administration Chairman	<u>Clause 19 - Transitional provisions</u>	
024045 - 024057	Mr SIN Chung-kai Administration Chairman	<u>Clause 20 - Schedule 5 substituted</u>	
024058 - 024113	Chairman Administration	<u>Clause 20A - Schedule 13 added</u>	
024114 - 024123	Chairman Administration ALA1	The Bills Committee proceeded to the clause-by-clause examination of the consequential amendments arising from the Bill <u>Estate Duty Ordinance</u> <u>Clauses 21 - What property is deemed to pass on death</u> <u>Clause 22 - Exceptions for transactions for money consideration. property situate outside Hong Kong, shares on local registers and certain land in the New Territories</u>	
024124 - 024135	Chairman Administration	<u>Exemption from Profits Tax (Interest Income) Order</u> <u>Clause 23 - Exemption from profits tax</u>	

Time marker	Speaker	Subject(s)	Action required
024136 - 024146	Chairman Administration	<p><u>Stamp Duty Ordinance</u> <u>Clause 24 - Interpretation of Part V</u></p> <p><u>Gambling Ordinance</u> <u>Clause 25 - Interpretation</u></p> <p><u>Elections (Corrupt and Illegal Conduct) Ordinance</u> <u>Clause 26 - How candidate must dispose of certain election donations</u></p> <p><u>Brewin Trust Fund Ordinance</u> <u>Clause 27 - Interpretation</u></p>	
024147 - 024642	Chairman Mr SIN Chung-kai Mr Ambrose LAU	<p>The Bills Committee completed the clause-by-clause examination of the English version of the Bill and draft CSAs. The Chairman requested ALA1 to check the Chinese version of the Bill and draft CSAs, and to report to the Bills Committee at the next meeting.</p> <p>Date of next meeting</p>	