

立法會
Legislative Council

LC Paper No. CB(1)2337/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/1/00

Bills Committee on Inland Revenue (Amendment) Bill 2000

**Minutes of the eleventh meeting
held on Monday, 17 May 2004, at 2:00 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

Non-Bills Committee Member

Hon Abraham SHEK Lai-him, 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

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 Confirmation of minutes of meetings

LC Paper No. CB(1)1824/03-04 - Minutes of meeting on 29 April 2004

The minutes of the meeting held on 29 April 2004 were confirmed.

II. Meeting with the Administration

LC Paper No. CB(3)29/00-01 - Bill gazetted on 5 October 2000

LC Paper No. CB(1)1753/03-04 (04) - Revised draft Committee Stage amendments (CSAs) provided by the Administration on 8 May 2004

LC Paper No. CB(1)1792/03-04 (01) - Marked-up copy of revised CSAs proposed on 8 May 2004

LC Paper No. CB(1)1825/03-04 (01) - Submission dated 14 May 2004 from the Real Estate Developers Association of Hong Kong (REDA)

LC Paper No. CB(1)1753/03-04 (02) - Administration's response to submission of 5 May 2004 from REDA

LC Paper No. CB(1)1733/03-04 (01) - Submission dated 5 May 2004 from REDA

- 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)1654/03-04 (03) - Administration's response to comments relating to exemption from 'tax symmetry' rule for internal borrowings by associated corporations
- 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)1825/03-04 (02) - Administration's paper on "The Part Relating to Amendments on Debenture Interest Deduction and Proposal from Real Estate Developers Association"

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

- (a) Letter dated 17 May 2004 from the Administration on the revised version of the proposed section 70AA under clause 16A; and
- (b) Administration's response to REDA's submission of 14 May 2004.

(Post-meeting note: The papers were circulated to members vide LC Paper No. CB(1)1855/03-04 on 18 May 2004.)

3. The Bills Committee completed the scrutiny of the Bill and agreed to report to the House Committee on 28 May 2004.

III. Any other business

- 4. There being no other business, the meeting ended at 3:45 pm.
- 5. The index of proceedings of the meeting is at **Appendix**.

Bills Committee on Inland Revenue (Amendment) Bill 2000

**Proceedings of the 11th meeting on Monday, 17 May 2004, at 2:00 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000451	Chairman	Welcoming and introductory remarks Confirmation of minutes of meetings on 29 April 2004	
000452 - 000718	Chairman ALA1 Administration Mr SIN Chung-kai	Briefing by the Administration on its response to members' concerns raised at the meeting held on 29 April 2004. <i>[CB(1)1753/03-04 (01)]</i> ALA1 advised that the Chinese version of the Bill and related Committee Stage amendments (CSAs) were in order subject to the agreement of the Administration to make technical drafting amendments as tabled.	
000719 - 004044	Chairman Administration Mr Abraham SHEK Ms Miriam LAU Ms Audrey EU Mr Ambrose LAU	Briefing by the Administration on its response to the submission dated 14 May 2004 from the Real Estate Developers Association of Hong Kong (REDA). <i>[CB(1)1825/03-04 (01)]</i> <i>[CB(1)1855/03-04 (02)]</i> Mr Abraham SHEK considered that the Administration should further discuss with REDA on its proposal in respect of interest deduction for debentures held by controlling shareholders.	

Time marker	Speaker	Subject(s)	Action required
000719 - 004044 (Cont'd)		<p>Ms Miriam LAU reiterated her concern that the development of the local bond market would be adversely affected by the proposed anti-avoidance provisions. She was also concerned that the Administration's approach of merely imposing the "tax symmetry" rule but giving no regard to genuine commercial activities might be abrasive.</p> <p>The Administration said that the policy intent of the proposed anti-avoidance provisions was to reinstate the "symmetry" principle and "non-associate/external borrowing" rule enshrined in section 16(2)(c), (d) and (e). The proposed arrangement was more equitable as interest on internal borrowings in the form of a loan by a controlling shareholder of all types of business undertaking was not allowed for profits tax deduction unless the tax symmetry condition was complied with.</p> <p>The Chairman referred to the Hansard on the Second Reading of the Inland Revenue (Amendment) Bill 1986 [CB(1)1714/03-04(01)] and pointed out that there was no clear indication of the purported policy intent of imposing the "tax symmetry" rule in section 16(2)(f). On the other hand, it was clear from the then FS's remark that the general anti-avoidance provisions under section 61A should not cause unnecessary inhibitions on genuine commercial transactions.</p>	

Time marker	Speaker	Subject(s)	Action required
000719 - 004044 (Cont'd)		<p>The Administration pointed out that the amendments made in 1986 to the Inland Revenue Ordinance were only refinements to the Ordinance. The "tax symmetry" rule was enshrined in section 16(2)(c) to (e) when the section was introduced in 1983 and hence it should be consistently applied to section 16(2)(f).</p> <p>In response to Mr Ambrose LAU, the Administration advised that no legal advice had been sought on whether "tax symmetry" rule should be imposed in section 16(2)(f).</p> <p>In response to Mr Abraham SHEK's concern that the proposed arrangement was discriminatory against controlling shareholders, the Administration pointed out that it was because of the identification problem that the "tax symmetry" would not be applied to debentures held by minority shareholders.</p>	
004045 - 012501	Chairman Administration Ms Miriam LAU Mr Abraham SHEK Mr SIN Chung-kai Mr CHAN Kam-lam Mr Ambrose LAU	Mr SIN Chung-kai indicated the support of Members of the Democratic Party for the Administration's present proposals.	

Time marker	Speaker	Subject(s)	Action required
004045 - 012501 <i>(Cont'd)</i>		<p>In view of the concerns of REDA and Hong Kong General Chamber of Commerce (HKGCC), Ms Miriam LAU, Mr Abraham SHEK, Mr CHAN Kam-lam and Mr Ambrose LAU said that they needed more time to examine the possible implications of the Administration's proposal and they were not yet convinced that the Administration's proposal should be supported. Some members also urged the Administration to discuss with REDA and HKGCC further on the proposed arrangement.</p> <p>Ms Miriam LAU and Mr CHAN Kam-lam also expressed concern that the proposed arrangement might cause significant disincentives to local corporations in raising funds through public issue of debt instruments.</p> <p>In response to the Chairman, the Administration confirmed that they would not pursue the proposal of REDA or any modified version of the proposal such as a lower threshold for the debenture holding by controlling shareholders because all such proposals were not consistent with existing tax principles and would enlarge existing loopholes.</p>	

Time marker	Speaker	Subject(s)	Action required
012502 - 013508	Chairman Ms Miriam LAU Mr CHAN Kam-lam Mr SIN Chung-kai ALA1 Administration	<p>The Chairman concluded that the Bills Committee could not reach a consensus view on the proposed amendments under clause 6 of the Bill and the relevant CSAs. A majority of the Bills Committee members considered it advisable for the Administration to further discuss the amendments with relevant parties, in particular REDA and HKGCC.</p> <p>The Chairman also reiterated that he did not support the proposed amendments in clause 5 of the Bill relating to royalty income.</p> <p>The Chairman would report to the House Committee on 28 May 2004, and suggested separate voting on clauses 5 and 6 and their consequential amendments during the Committee Stage.</p>	
013509 - 013614	Chairman ALA1	Voting arrangement	
013615 - 013947	Chairman Administration Mr SIN Chung-kai ALA1 Mr Ambrose LAU	The Administration's query as to the possibility of taking out section 16(2)(f) and related provisions for separate voting.	