

立法會
Legislative Council

LC Paper No. CB(1)686/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/1/00

Bills Committee on Inland Revenue (Amendment) Bill 2000

Minutes of the fifth meeting
held on Tuesday, 9 December 2003, 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 Miriam LAU Kin-ye, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
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)
- 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 LAM Siu-chung, Michael
Senior Government Counsel

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

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Matthew LOO
Senior Assistant Secretary (1)3

I Confirmation of minutes of meeting

LC Paper No. CB(1)484/03-04 - Minutes of meeting on 13 November 2003

1. The minutes of the meeting held on 13 November 2003 were confirmed.

II Meeting with the Administration

LC Paper No. CB(1)500/03-04 (01) - Letter dated 13 November 2003 from Assistant Legal Adviser 1 (ALA1) 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)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)500/03-04 (09) - Submission dated 1 December 2003 from the Taxation Institute of Hong Kong
- LC Paper No. CB(1)531/03-04 (02) - Administration's paper on response to concerns raised at the meeting on 13 November 2003
- LC Paper No. CB(1)500/03-04 (10) - Summary of deputations' views submitted to the Bills Committee and the Administration's response upon re-activation of the Bill
- 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"
- 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 CB(1)531/03-04 (03) - List of issues requiring follow-up actions by the Administration (Position as at 8 December 2003)

2. The Bills Committee noted that eight organizations had provided written submissions on the Bill and the draft Committee Stage amendments (CSAs). Two of these organizations advised that they had no further comments on the Bill and the draft CSAs. The Hong Kong Bar Association indicated that it might provide a submission later. No organizations had indicated interest in attending the meeting to present their views.

3. The Bills Committee agreed that the Administration's response to submissions on the Bill should be forwarded to the respective organizations to see if the organizations had further comments having regard to the Administration's response. The organizations would also be invited to attend the next meeting of the Bills Committee to present their views at the meeting.

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

Clause 4 - Adjustments to accessible income

- (a) To clarify the intended scope of self-education expenses eligible for deduction from the assessable income of a person, having regard to the promulgated policy of encouraging life-long learning and the varied modes of provision/operation of education courses nowadays. Specifically, members had raised the following concerns -
- (i) the scope of "trade, professional or business associations" under proposed section 12(6)(b)(ii) and 12(6)(c)(ii) was not clear;
 - (ii) whether the following courses would be covered under proposed section 12(6)(c)(ii) -
 - courses jointly provided by a trade, professional or business association or education provider with other organizations;
 - courses accredited or recognized but not "provided" by a trade, professional or business association;
 - (iii) whether the Administration would consider revising section 12(6) to cover the above courses;
 - (iv) whether the wordings "to gain or maintain qualifications for use in any employment" used in proposed section 12(6)(b)(ii) and 12(6)(c) imply that in claiming self-education expenses deduction, a taxpayer was required to prove that the course in question relates to his current employment or an employment which the taxpayer was likely to take up in future;

- (v) whether there was discrepancy between the Chinese and the English versions of proposed section 12(6)(b)(ii) and 12(6)(c), in particular the wordings "in any employment".

Clause 5 - Certain amounts deemed trading receipts

- (b) To reconsider the concerns raised by the Association of Chartered Certified Accountants Hong Kong and the Hong Kong Society of Accountants that the proposed section 15(1)(ba) deviated from the fundamental territorial principle ("source principle") of taxation; and

Clause 6 - Ascertainment of chargeable profits

- (c) To reconsider the exemption options ("safe harbour" or "de minimis" exemption) proposed by the Capital Markets Tax Committee of Asia (Hong Kong Chapter) and the Joint Liaison Committee on Taxation to alleviate the compliance burden, having regard to the actual operation of the market-making activities on debentures and other instruments and hence the compliance burden imposed on financial institutions under proposed section 16(2C) and 16(2F).

III Any other business

Dates of next meeting

- 5. The next meeting was tentatively scheduled for 14 January 2004 at 10:45 am.

(Post-meeting note: The Chairman subsequently advised that, as a fall-back arrangement, an alternative time slot for the next meeting is 15 January 2004 at 10:45 am. Members were invited via LC Paper No. CB(1) 554/03-04 of 10 December 2003 to indicate whether they would be available for the time slots. As both time slots clashed with the Policy Briefings for Panels, the next meeting was finally scheduled for 5 February 2004 at 10:45 am)
- 6. There being no other business, the meeting ended at 10:35 am.
- 7. The index of proceedings of the meeting is at **Appendix**.

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

**5th meeting on Tuesday, 9 December 2003, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000825	Chairman	<p>Welcoming and introductory remarks</p> <p>Confirmation of minutes of meeting on 13 November 2003</p>	
000826 - 003418	<p>Chairman</p> <p>Administration</p> <p>Ms Audrey EU</p> <p>Ms Miriam LAU</p> <p>ALA1</p>	<p>Briefing by the Administration on its response to members' concerns about initial and annual allowances for commercial and industrial buildings and structures [CB(1)531/03-04 (02)]</p> <p>The Administration pointed out that under the Inland Revenue Ordinance (Cap. 112) (the Ordinance), the type of a building or structure was determined by the nature of the trade or business carried on by the person who used the building or structure.</p> <p>ALA1 pointed out that the definition of "industrial building or structure" (section 40 - Interpretation) set out seven purposes for which an industrial building or structure was used. It was not clear whether actual use was relevant or not.</p>	

Time marker	Speaker	Subject(s)	Action required
000826 - 003418 (<i>Cont'd</i>)	Chairman Administration Ms Audrey EU Ms Miriam LAU ALA1 (<i>Cont'd</i>)	<p>The Administration further explained that the definitions of "commercial" and "industrial" buildings and structures in the Ordinance were for tax purposes only and therefore the permitted use of the building or structure as provided for under the government lease and other covenants on the land or building, as well as other legislation were not relevant.</p> <p>Ms Miriam LAU was not entirely satisfied that the definition should be read in isolation from other legislation and from government lease and other covenants, but she accepted the proposed amendments in the Bill and draft Committee Stage amendments (CSAs) on consideration of the actual effects of the proposed amendments, i.e. to rectify the computation method of annual allowances in respect of commercial and industrial buildings or structures and to clarify the reference timing in certain provisions of section 33A.</p>	

Time marker	Speaker	Subject(s)	Action required
003419 - 003623	Chairman Administration	Briefing by the Administration on its response to members' concerns about the retrospective application arrangement for the proposed amendments in clauses 4 and 8 of the Bill <i>[CB(1)531/03-04 (02)]</i>	The Administration would propose CSAs to make specific saving provisions for application of deduction of home loan interest under clause 8 in relation to the year of assessment 1998/99 and subsequent years, and of deduction of self education expenses under clause 4 in relation to the year of assessment 2000/01 and subsequent years.
003624 - 003719	Chairman	Briefing by the Administration on its response to deputations' views <i>[CB(1)500/03-04 (10)]</i>	
003720 - 004517	Chairman Administration	Deputation's general comments on the Bill	
004518 - 011528	Chairman Administration Ms Audrey EU Ms Miriam LAU	<u>Expenses of self-education</u> Views of the Taxation Institute of Hong Kong's views on section 12(6)(b)(ii) and 12(6)(b)(iii) (<i>clause 4 of the Bill</i>) about expenses of self-education and the Administration's response Concerns raised by Ms Audrey EU and Ms Miriam LAU about the intended scope of self-expenses eligible for deductions	Administration to take the follow-up action set out in paragraph 4(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
011529 - 012540	Chairman Administration Ms Miriam LAU	<u>Royalty income</u> Views of the Association of Chartered Certified Accountants Hong Kong and Hong Kong Society of Accountants that proposed section 15(1)(ba) (<i>clause 5 of the Bill</i>) changed the ambit of law and deviated from the fundamental territorial principle of taxation ("source principle") and the Administration's response	Administration to take the follow-up action set out in paragraph 4(b) of the minutes.
012541 - 013246	Chairman Administration	The Administration pointed out that the Joint Liaison Committee on Taxation (JLCT) had accepted the Administration's positions on proposed section 15(1)(ba) after much deliberations. The Chairman's clarification that JLCT was mainly a co-ordinating body and the views of JLCT did not necessarily represent the views of its constituent associations.	
013247 - 015035	Chairman Administration Ms Miriam LAU	<u>Exemptions from interest disallowance provisions for genuine market-making activities</u> Proposals of the Capital Markets Tax Committee of Asia (Hong Kong Chapter) and JLCT on exemptions from interest disallowance provisions for genuine market-making activities under section 16(2C) and 16(2F) (<i>clause 6 of the Bill</i>) and the Administration's response	Administration to take the follow-up action set out in paragraph 4(c) of the minutes.

Time marker	Speaker	Subject(s)	Action required
015036 - 015547	Chairman Administration Ms Miriam LAU Ms Audrey EU	Date of next meeting Invitation for comments from the organizations on the Administration's responses	Clerk to take the follow-up action set out in paragraph 3 of the minutes

Council Business Division 1
Legislative Council Secretariat
31 December 2003