

Bills Committee on Inland Revenue (Amendment) Bill 2000

List of issues requiring follow-up actions by the Administration
(position as at 10 May 2004)

Clauses 2, 4 and 8

Date of meeting	Issue	Outcome
13 November 2003	The arrangement prescribed in clause 2 for the retrospective application of the proposed amendments to section 12(6) on self-education expenses and section 26E(8) on home loan interest needs to be reviewed, and that the public should be well-informed of the arrangement.	LC Paper No. CB(1)531/03-04 (02) (<i>English version issued on 5 December 2003, Chinese version issued on 3 February 2004</i>)

Clause 4 - Adjustments to assessable income

Date of meeting	Issue	Outcome
9 December 2003	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 have 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) is 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;	LC Paper No. CB(1)921/03-04 (01) (<i>issued on 3 February 2004</i>)

Clause 4 - Adjustments to assessable income (Cont'd)

Date of meeting	Issue	Outcome
<p>9 December 2003 (Cont'd)</p>	<p>(iii) whether the Administration would consider revising section 12(6) to cover the above courses;</p> <p>(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 is required to prove that the course in question relates to his current employment or an employment which the taxpayer is likely to take up in future; and</p> <p>(v) whether there is 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".</p>	<p>LC Paper No. CB(1)921/03-04 (01) (issued on 3 February 2004)</p>
<p>5 February 2004</p>	<p>To review the scope of education courses eligible for salary tax deduction under section 12(6) and the arrangements under section 12(6) and/or the relevant Departmental Interpretation & Practice Note for approval of education courses for the purposes of salary tax deduction having regard to the following concerns and suggestions of members -</p> <p>(i) The scope of education courses eligible for salary tax deduction as defined by "courses...provided by" education providers and trade, professional and business associations may be too narrow and fall short of recognizing some education courses which are subject to strict quality control and are recognized or accredited by trade, professional and business associations;</p>	<p>LC Paper No. CB(1)1064/03-04 (01) (English version issued on 20 February 2004, Chinese version issued on 23 February 2004)</p>

Clause 4 - Adjustments to assessable income (*Cont'd*)

Date of meeting	Issue	Outcome
<p>5 February 2004 (<i>Cont'd</i>)</p>	<p>(ii) The Vocational Training Council (VTC) has established a scheme for accreditation of education/training courses provided by various organizations. Since the courses accredited under the scheme are already subject to strict quality control, the course fees of these courses should be eligible for salary tax deduction. The Administration should liaise with VTC to see whether VTC may apply on behalf of the institutions offering the courses accredited under its scheme for approval by the Commissioner;</p> <p>(iii) While proposed sections 12(6)(d)(vi) and 12(6)(e) provide a mechanism for the Commissioner to approve an institution as an education provider, this mechanism may not be an efficient arrangement and may not be flexible enough to cover some bona fide employment-related self-education courses, such as courses provided by companies; and</p> <p>(iv) As a first step, the Administration may consider including all the courses "recognized" by statutory professional bodies under their respective continuous professional development (CPD) programmes for salary tax deduction purpose. Alternatively, the Administration should consider including all the courses recognized by professional bodies.</p>	<p>LC Paper No. CB(1)1064/03-04 (01) (<i>English version issued on 20 February 2004, Chinese version issued on 23 February 2004</i>)</p>
<p>29 April 2004</p>	<p>To provide a list of the institutions approved under the existing section 12(6)(d)(i)(F), and if available, information on the criteria being used and the future guideline for the purpose of proposed section 12(6)(e).</p>	<p>LC Paper No. CB(1)1753/03-04 (01) (<i>English version issued on 10 May 2004, Chinese version to follow</i>)</p>

Clause 5 - Certain amounts deemed trading receipts

Date of meeting	Issue	Outcome
9 December 2003	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.	LC Paper No. CB(1)921/03-04 (01) <i>(issued on 3 February 2004)</i>
5 February 2004	<p>(i) To assess the possible impact of the new arrangement on the investment in Hong Kong and to compare the tax rate of royalty income in Hong Kong under the proposed new arrangement with those in other jurisdictions;</p> <p>(ii) To provide examples which illustrate that the royalty income is not chargeable to Profit Tax under the existing section 15(1)(b) but would be chargeable under proposed section 15(1)(ba);</p> <p>(iii) To explain/confirm the legal and policy implications of the commencement of the new Trade Marks Ordinance (Cap. 559) in April 2003 on the proposed amendments relating to royalty income; and</p> <p>(iv) To list out all provisions in the existing Inland Revenue Ordinance (Cap. 112) which involve departure from the territorial source principle and to explain whether these provisions are based on the "symmetry" principle.</p>	LC Paper No. CB(1)1064/03-04 (01) <i>(English version issued on 20 February 2004, Chinese version issued on 23 February 2004)</i>

Clause 6 - Ascertainment of chargeable profits

Date of meeting	Issue	Outcome
9 December 2003	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).	LC Paper No. CB(1)921/03-04 (01) <i>(issued on 3 February 2004)</i>
24 February 2004	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.	LC Paper No. CB(1)1158/03-04(01) <i>(English version issued on 1 March 2004, Chinese version issued on 3 March 2004)</i>
2 March 2004	To provide an update on the progress of the four outstanding applications for advance ruling by the Commissioner which involved interest deduction claims and the application of section 61A <i>(mentioned in the letter dated 8 December 2003 from the Administration to the Assistant Legal Adviser 1 [CB(1)500/03-04(02)]</i> . Information including the dates of receiving these applications should be provided	LC Paper No. CB(1)1654/03-04(02) <i>(English version issued on 28 April 2004, Chinese version issued on 10 May 2004)</i>
2 March 2004	To consider revising the draft CSAs to section 16 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.	LC Paper No. CB(1)1654/03-04(03) <i>(English version issued on 28 April 2004, Chinese version issued on 10 May 2004)</i>

Clause 6 - Ascertainment of chargeable profits (Cont'd)

29 April 2004	Regarding Inland Revenue Department's investigations on interest deduction claims under section 61A, to provide further details including the amount of tax that has been assessed to which no notice of objection or appeal has been received, with a breakdown showing the amount attributable to schemes involving debenture interest.	LC Paper No. CB(1)1753/03-04 (01) <i>(English version issued on 10 May 2004, Chinese version to follow)</i>
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Clauses 9 to 13

Date of meeting	Issue	Outcome
13 November 2003	To provide the Bills Committee with a paper on the reasons and effects of clauses 9 to 13 of the Bill together with the relevant proposed Committee Stage amendments in respect of initial and annual allowances for commercial and industrial buildings and structures . The paper should also address the concern that the definitions of "commercial" and "industrial" buildings and structures under the Inland Revenue Ordinance (Cap. 112) were not consistent with those adopted in other legislation.	LC Paper No. CB(1)531/03-04 (02) <i>(English version issued on 5 December 2003, Chinese version issued on 3 February 2004)</i>

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