

立法會
Legislative Council

LC Paper No. LS 8/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 20 October 2000**

**Legal Service Division Report on
Inland Revenue (Amendment) Bill 2000**

Objects of the Bill

To amend the Inland Revenue Ordinance (Cap. 112) ("the Ordinance")
to -

- (a) provide that all sums payable for the use of intellectual property (whether in or outside Hong Kong) by a person carrying on a trade, profession or business in Hong Kong and deductible in ascertaining the assessable profits of that person are deemed to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong;
- (b) amend the conditions which must be satisfied for deduction of interest payable by a person upon money borrowed by him for the purpose of producing assessable profits;
- (c) revise the method of computation of annual allowances and the determination of balancing allowances and charges in respect of commercial and industrial buildings and structures;
- (d) amend the definition of "expenses of self-education" to include fees paid in respect of certain specified examinations;
- (e) allow deduction of interest paid on the portion of a home loan in respect of a car parking space if such loan has been applied for the acquisition of the car parking space;
- (f) empower the Board of Review to extend the time for lodging notice of appeal against the assessment to additional tax;

- (g) provide for certain costs and fees to be specified in a Schedule to the Ordinance and empower the Secretary for the Treasury to vary the amounts by order;
- (h) make technical amendments.

LegCo Brief Reference

- 2. FIN CR 1/2306/00 issued by the Finance Bureau on 29 September 2000.

Date of First Reading

- 3. 18 October 2000.

Comments

Royalty income

4. Clause 5 of the Bill proposes to amend section 15(1)(b) of the Ordinance which deems certain sums for the use of intellectual property to be trading receipts. According to the Administration, the amendment is made for revenue protection purpose in the light of a Court of Final Appeal decision in 1999. Members may refer to paragraphs 4 to 6 of the LegCo Brief for a summary of that case.

5. In that decision, the Court of Final Appeal finds that if the goods were manufactured in Hong Kong, the mark would be applied to the goods in Hong Kong. That finding is based on section 39 of the Trade Marks Ordinance (Cap. 43), which provides that the application of a trademark to goods to be exported from Hong Kong is deemed to constitute use of that mark. There is no deeming provision similar to the said section 39 in the new Trade Marks Ordinance(35 of 2000). When the new Trade Marks Ordinance comes into operation, the existing Trade Marks Ordinance will be repealed. We have asked the Administration to explain the legal implications of the new Trade Marks Ordinance on the proposed amendment to the Ordinance.

Deduction of interest expenses

6. Clause 6 of the Bill proposes to amend the conditions set out in section 16(2) of the Ordinance for deduction of interest payable by a person upon money borrowed by him for the purpose of producing assessable profits. The amendments seek to combat tax avoidance schemes that cannot be caught by the existing provisions. Members may refer to paragraphs 10 to 18 of the LegCo Brief for a detailed explanation of the proposed amendments.

Annual allowances, commercial and industrial buildings and structures

7. Clauses 9 and 11 of the Bill propose to amend sections 33A and 34(2)(b) of the Ordinance respectively such that the computation of annual allowance in respect of a commercial or industrial building or structure applies to a buyer regardless of whether that building or structure is a commercial or industrial building or structure at the time of the sale. It is not clear whether the building or structure must be used as a commercial or industrial building or structure at any time before the sale. The Administration has been asked to clarify its policy intent, since a similar condition is proposed in the new section 35(1)(b) in relation to balancing allowances and charges. The amendments would apply in relation to the year of assessment 2001/02 and to all subsequent years of assessment.

Home loan interest

8. Under clause 2(2) of the Bill, the amendment proposed in clause 8 relating to home loan interest applies in relation to the year of assessment 1998/99 and to all subsequent years of assessment. It is proposed that section 26E of the Ordinance be amended to remove the requirement that, where a person applies a portion of a home loan for the acquisition of a car parking space, that car parking space must be valued together with the dwelling concerned as a single tenement under the Rating Ordinance (Cap.116) in order for the person to be allowed a deduction of the interest paid on that portion of the loan.

9. We have asked the Administration to clarify whether any unfairness would result from the retrospective effect of the amendment, i.e. where certain taxpayers did not apply for a deduction of home loan interest in the past by reason that the car parking space has not been valued together with the dwelling as a single tenement under section 10 of the Rating Ordinance (Cap. 116).

Costs and fees

10. Clauses 14 and 15 of the Bill respectively amend sections 68 and 69 of the Ordinance to provide for the maximum amount of costs which may be imposed by the Board of Review and the amount of the fee payable for an application to state a case to be specified in a new Schedule 5. The Secretary for the Treasury is empowered to vary these amounts by order, which will be subsidiary legislation subject to the scrutiny of the Legislative Council. Under the existing section 69(8), the Financial Secretary may by notice in the Gazette amend the amount of application fee.

Public Consultation

11. No public consultation has been carried out.

Consultation with the LegCo Panel

12. No consultation has been carried out.

Conclusion

13. The Legal Service Division is seeking clarification from the Administration on the legal points mentioned in paragraphs 5, 7 and 9 above and certain drafting points. A further report will be issued when we receive a reply from the Administration.

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