

**Bills Committee on
Employees Compensation Assistance (Amendment) Bill 2002**

LC Paper No. CB(2)2054/01-02(01)

**The Administration's Response –
Suggestion of Raising the Level of Surcharge
and Adequacy of the Maximum Penalty Against Uninsured Employers**

Introduction

This paper provides information requested by members of the Bills Committee at the meeting held on 9 May 2002 on the following aspects –

- (a) the views of the Labour Advisory Board (LAB) on raising the proposed level of surcharge to be imposed on uninsured employers; and
- (b) the adequacy of the existing maximum penalty against uninsured employers under the Employees' Compensation Ordinance (ECO).

(A) Level of surcharge

Background

2. At the meeting of the Bills Committee held on 9 May 2002, we have explained the policy intent of imposing a surcharge against those employers who have failed to comply with the compulsory insurance requirement under the ECO. We have also expounded on the principle of setting the level of the surcharge at three times the levy payable to the Board when such offending employers subsequently take out an employees' compensation (EC) insurance. For employers who no longer employ any employee, the surcharge should be a fixed sum of \$5,000. For employers who fail to provide sufficient information within the specified period of time to the Board for determining the amount of surcharge, the surcharge should be \$10,000.

3. At the same meeting, Members asked the Administration to further consider the following suggestions:

- (i) to raise the proposed level of the surcharge;

- (ii) to require those employers who are convicted for a second time for failing to take out an EC insurance policy within a period should be required to pay a surcharge at a higher level when the second offence is detected.

Views of the LAB

4. We have sought the views of the LAB on the suggestions as outlined in paragraph 3 above. The majority view of LAB members was that the proposed level of surcharge at three times the levy payable to the Board was appropriate. Having considered the views of the LAB, we do not propose to raise the level of surcharge.

5. It is noted that the same level of financial charge has been imposed upon those who provide false information in taxation returns. Under section 82A(1) of the Inland Revenue Ordinance (Cap. 112), any person who, without reasonable excuse, makes an incorrect return or statement or gives false information affecting the liability to tax shall be liable to pay an additional tax up to three times the amount of tax which has been undercharged in consequence of such incorrect return, statement or information. Although making an incorrect return or giving false information under the Inland Revenue Ordinance is different from failure to have a valid EC insurance policy, they are roughly analogous since both are attempts to avoid payment of an amount of money which should be payable to the relevant organisation. Provisions of section 82A of the Inland Revenue Ordinance are extracted at the Annex for Members' information.

6. On the suggestion of imposing a higher surcharge against those employers who are convicted for a second time for failing to take out an EC insurance policy within a period, the majority in the LAB supported the proposal. Having taken the views of the LAB, we would propose to require those employers, who are convicted again for failure to comply with the compulsory insurance requirement within two years counting from the date of the last conviction, to pay a surcharge at six times the levy payable to the Board when the second offence is detected.

(B) Maximum penalty against uninsured employers under ECO

7. Under section 40(2) of the ECO, any employer who fails to comply with the compulsory insurance requirement shall, upon summary conviction, be liable to a maximum fine of \$100,000 (i.e. level 6 under the Criminal Procedure Ordinance (Cap. 221)) and to imprisonment for one year (on summary conviction) or two years (on indictment). The present maximum level of fine, which is pitched at the highest level of fine prescribed for offences under the ECO, was introduced in August 2000. Before the amendment, the maximum fine was \$25,000 for summary conviction and \$50,000 for conviction on indictment.

8. In setting the new level of maximum fine in 2000, we had consulted the Department of Justice who advised that the level of penalty was appropriate and commensurate with the seriousness of the offence concerned.

9. We are of the view that, in the context of the ECO, the current maximum penalty for failure to comply with the compulsory insurance requirement is appropriate. Furthermore, the new maximum level has just been running for less than two years. We will monitor the sentences passed down by the Court and review the levels of penalty for different offences under the ECO from time to time.

subsection (1). (Added 43 of 1975 s. 8. Amended 7 of 1986 s. 12; 48 of 1995 s. 12)

(5) Notice of intention to assess additional tax and notice of an assessment to additional tax shall be given in the same manner as is provided in section 58(2) in respect of a notice of assessment under section 62.

(6) Where a person who is liable to be assessed to additional tax has died, an assessment to additional tax may be made on his executor, and the additional tax shall be recovered as a debt due from and payable out of the deceased person's estate.

(7) A person who has been assessed to additional tax under subsection (1) shall not be liable to be charged on the same facts with an offence under section 80(2) or 82(1).

(Added 26 of 1969 s. 38)

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