

Ref: HQ309/405/22C

Mr Daniel Lai, JP  
President  
Hong Kong Computer Society  
Room 1915, 19/F China Merchants Tower  
Shun Tak Centre, 168 Connaught Rd  
Central  
Hong Kong

14 February 2003

Dear Mr Lai,

### **Inland Revenue (Amendment) (No. 2) Bill 2001**

I refer to your letter of 10 Feb 2003 to the Chairman of the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2001 (the Bill), setting out your Society's concerns on the Bill. I am pleased to provide below our response to the various issues raised.

#### **Whether digital signature is the only "preferred approach" in the ETO**

We consider that the Electronic Transactions Ordinance (ETO) should not be interpreted as giving an exclusive legal recognition to digital signature. It has in fact followed a "Technology Neutral" approach and provided legal recognition for digital signature and other forms of electronic signature [see section 14 of ETO]. Furthermore, the Review of the ETO in 2002 has not precluded the acceptance of personal identification number (PIN) / password. Though the Review would not propose to make a general amendment to the ETO on the use of PIN or password for satisfying a signature requirement under law, the Administration clearly expressed that it remains of the view that PIN or password should be introduced for services where the level of security offered by it is commensurate with the risk of the services involved. Where the use of PIN or password is appropriate, the Administration will deal with it by specific legislation and will also address the security concerns so that the implications of the legislative amendment can be fully examined by the Legislative Council and the community. We consider tax return filing to be one of the specific cases where password can be accepted as sufficiently secure for the purpose.

#### **Electronic submission of tax returns**

Comments noted. I could not agree with you more that there is no such thing as a perfect system or of a system with perfect security. Our proposed system does provide the minimum security required while balancing the convenience to the taxpayers.

### **Greater IRD Accessibility**

In proposing to adopt a 6-digit password, we have made reference to the prevailing practice in the commercial sector, and has also taken into consideration the desirability of enabling taxpayers to use the same password for both the telefiling system and the TeleTax service, a system under which a taxpayer can access by telephone some of his personal tax information, such as whether the tax return has been filed, whether a tax assessment has been issued, and tax reserve certificates account balance. A common password will save taxpayers from registering separately for different kinds of services and memorizing different passwords. Furthermore, we believe that the convenience of providing a common password for accessing both the telefiling and ESD tax return filing services would be an incentive to attract taxpayers to use these services and hence conducive to the promotion of e-Government.

On the security side, we consider that a 6-digit numeric password would provide sufficient security protection against unauthorized access because a security feature will be built into the proposed system such that if the correct password is not entered within five attempts for any particular taxpayer, the password will be revoked by the system and the taxpayer will have to register for the service again whereupon his identity will be re-verified. After all, the Taxpayer Identification Number (or TIN) (which is a unique 9 or 10-digit numeric number) coupled with the password (6 digits as presently proposed) would provide a 15 or 16-digit key that should be sufficiently secure for return filing purposes.

In any case, we will review, after implementation of the proposed systems, whether the length of the password should be increased and whether the same password should be used for other taxation services on the ESD platform or through the telephone. Where any change is proposed to the system, it will be carefully planned and migration issues will be critically studied so as to minimize any inconvenience to existing users.

### **E-Commerce law**

We do not agree that the proposed system meets none of the requirements in Article 6 of the UNCITRAL Model Law on Electronic Signatures (2001). The technical reliability of a certain application should depend on the overall design of the system. We consider that, with tight technical and administrative measures put in place, the proposed system should provide the required technical reliability on the use of password for electronic filing of tax returns.

As regards the admissibility of password in legal proceeding, we wish to state that the IRD will not use the password alone to establish non-repudiation of the tax return data. Besides proving that tight system and administrative control measures are in force to protect electronic records from unauthorized access, we will address the non-repudiation issue in the following manner -

- A person joining the IRD's electronic filing services shall keep his password confidential. This is an express condition under the "Terms and Conditions for use of password" to which the user must agree before he is allowed to use the services.

- By virtue of the proposed section 2(5) and existing section 51(5) of the Inland Revenue Ordinance, a person signing a return with his password electronically shall be deemed to be cognizant of the contents thereof unless the contrary is proved.
- In lawsuits, IRD will seek to establish to the Court that the taxpayer has used his password to furnish an electronic return and that these details have not been tampered with according to its internal control and administrative measures. The Court will then decide whether or not it accepts that the non-repudiation averred should be accepted or rejected.
- IRD acknowledges that the burden of proof is always on the prosecution.

**Promotion of e-Government, IT usage and improving the competitiveness of Hong Kong**

We certainly agree that efforts to promote IT must be rightly directed. We consider that the proposed system of electronic filing is consistent with this goal. We must stress again that the proposed amendment merely allows the use of password as **an alternative means** of authentication and to satisfy the signature requirement for return filing purpose. Taxpayers can determine themselves whether the password option should be used, or whether the digital signature or physical option should be adopted. In formulating the proposal, IRD has paid due regard to the successful experience in a number of tax jurisdictions where password is widely accepted for filing of tax returns. We believe that the provision of more convenient means and options is an incentive to attract taxpayers to use the electronic filing service and helps promote e-Government.

I hope that I have addressed in the preceding paragraphs the issues raised in your letter. Once again, I wish to thank you for your valuable comments and look forward to your continued support in this matter.

Yours sincerely,

(Mrs LAU MAK Yee-ming, Alice)  
Commissioner of Inland Revenue

cc The Hon Eric LI Ka-cheung, JP, Chairman, Bills Committee  
The Hon. SIN Chung-kai  
Secretary for Financial Services and the Treasury (Attn: Mr Ivanhoe Chang)  
Clerk to Bills Committee