

**Information Paper for Bills Committee
on Inland Revenue (Amendment) (No.2) Bill 2001**

Introduction

The Bills Committee met on 22 July 2002 to discuss the Inland Revenue (Amendment) (No. 2) Bill 2001. At the meeting, Members raised concerns about the scope of the new lodgement services; empowering the Commissioner of Inland Revenue (“Commissioner”) to specify requirements for certain cases and the technical or other details concerning an electronic record where the furnishing of return by electronic filing and by the use of the telefiling system would apply; and whether consideration would be given to accepting more service providers, other than the Hongkong Post, to support the use of password in filing tax returns electronically.

2. The Administration’s responses to the above concerns are set out in the following paragraphs.

Scope of the New Lodgement Services

3. Clause 8 of the Bill empowers the Commissioner of Inland Revenue to specify by notice in the Gazette by reference to a class or description of return for cases where the furnishing of a return in the form of an electronic record and the use of the telefiling system are applicable. Members would like to know, at the present stage, the classes of persons or returns to which the electronic and telefiling lodgment scheme would apply.

4. We have provided at Annex A and Annex B the details of the types of returns, the respective eligible criteria and the technical or other details concerning an electronic record for cases where the furnishing of a return by electronic filing and the use of the telefiling system would apply. The Commissioner will stipulate these criteria and requirements by notice in the Gazette after the Bill is enacted.

5. In summary, the specified criteria for furnishing the respective returns are set having regard to the following practical and technical considerations:

- a. The criteria set for Tax Return for Individuals filing through the Electronic Service Delivery (ESD) System have essentially excluded cases that require attachment of supporting documents. This is due to design of the return filing software which at the present stage only caters for electronic filing of returns without supporting documents and attachments. Despite this, we estimate that 94% of the Tax Return for Individuals can be allowed for filing through the ESD System.

- b. The reason for limiting the furnishing of Property Tax return through the ESD System to two-owners cases is to set in the number of screens to be displayed for input of the particulars of each owner. According to statistics, the two-owners property cases account for about 94% of the Property Tax return issued each year.
- c. The telefiling service is designed for individuals with simple salaries tax and property tax cases so that the time taken in furnishing the return via telephone can be kept within a reasonable limit. Apart from this consideration, due to the limitation of a telephone as an input device for letters of the alphabets and characters, criteria for telefiling have to be set to eliminate the returns which involve claims that require input of information in alphabetic or character form (such as claims for dependent parents allowance), or the provision of supporting documents (such as claim for full or partial exemption of income from employment). Despite this restriction, we estimate that some 800,000 taxpayers will meet the criteria for telefiling.

Commissioner's Power in Relation to Specifications

6. The various provisions under Clause 8 of the Bill empower the Commissioner to specify by notice in the Gazette (not subsidiary legislation) certain cases where the furnishing of a return by electronic filing and the use of the telefiling system are applicable, the technical or other details concerning an electronic record or any attachment required to be furnished with an electronic record. Members raised concerns about the Commissioner's power in the Bill.

7. We wish to state that the Commissioner's specification power under Clause 8, such as the eligibility criteria, form and manner of furnishing electronic returns, and technical requirement as to software and communication in electronic record are routine and operation matters, and may have to change with evolution of time and information and technology development and applications. As these matters do not carry any significant policy implications, the Administration proposes the Commissioner to deal with them.

8. In addition, we wish to point out that the Gazette notice made by Secretary for Commerce, Industry and Technology under section 11(2) of the Electronic Transactions Ordinance (ETO) (which concerns the specification of the manner and format in which information in the form of electronic record is to be given, presented and retained etc) is not subsidiary legislation. The types of matters to be specified by the Commissioner under Clause 8 of the Bill are similar to those to be specified under section 11(2) of the ETO, which are technical in nature.

9. Under the Inland Revenue Ordinance, specifications of the form and contents of tax returns have to be subject to a separate body's scrutiny, i.e. the Board of Inland Revenue.

10. In other tax jurisdictions like USA, Singapore, United Kingdom, Australia and Canada, their Commissioners (or equivalents) are also given the power to make regulations or specifications in respect of eligibility criteria, the form and manner and the signature requirements of furnishing an electronic return.

To accept digital certificates other than those issued by the Hongkong Post

11. The ETO provides the legal framework for furnishing of return in the form of an electronic record where a digital certificate is used for authentication and signing the return. At present, the ESD System only accepts electronic filing of tax returns using digital certificates issued by the Hongkong Post Certification Authority which is a recognized certification authority under the ETO.

12. Apart from accepting the digital certificates issued by the Hongkong Post, the Inland Revenue Department will also be accepting digital certificates issued by other recognized certification authority under the ETO for the purpose of filing an electronic return. In this regard, we understand that the digital certificates issued by Digi-Sign Certification Services Limited, another recognised certification authority under the ETO, will be accepted for use in furnishing tax return under the ESD System when the system enhancements to cater for the new certificate are ready for implementation.

13. The Bill also empowers the Commissioner to approve a password for use in designated systems for the purpose of authenticating the person's identification in communication with her. Accepting service providers outside the Government to support the use of password will have to be examined, among other things, whether data security could be ensured.

[Notice under Sections 51AA(5) and (6) of the IRO]

Specifications by the Commissioner for tax returns that may be furnished in the form of an electronic record

Definition

- (1) The following words or terms used in this Notice shall have the meanings as stipulated below:

Electronic Government Forms	Government forms, in the form of a software, provided by Government to generate electronic records in a pre-defined format for members of the public to fill in electronically and submit to Government through electronic means.
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Electronic Service Delivery (ESD) System	The information system designated and used by Government for providing specified public services online to, and receive electronic information from, members of the community through the Internet and other electronic means.
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Types of return that can be furnished in the form of an electronic record

- (2) Return set out in First Column furnished in electronic record shall be furnished in the manner correspondingly set out in Second Column.

FIRST COLUMN (type of return)	SECOND COLUMN (manner)
a. Profits Tax Return - Corporations	Electronic Government Forms
b. Profits Tax Return - Persons other than Corporations	Electronic Government Forms
c. Property Tax Return - Property jointly owned or co-owned by Individuals	Electronic Service Delivery (ESD) System
d. Tax Return – Individuals	Electronic Service Delivery (ESD) System

Criteria for furnishing of return in the form of an electronic record

- (3) Where a person meets the criteria specified in this paragraph, the person may furnish the return in the form of an electronic record.

Criteria for furnishing Tax Return – Individuals through the Electronic Service Delivery (ESD) System

- a. The return is for the year of assessment 2001/02 [to be updated to current year annually].
- b. The taxpayer does not have any sole proprietorship business with gross annual income of more than \$500,000.
- c. The taxpayer does not claim full or partial exemption of income from employments.

Criteria for furnishing Property Tax Return – Property jointly owned or co-owned by individuals through the Electronic Service Delivery (ESD) System

- a. The return is for the year of assessment 2001/02 [to be updated to current year annually].
- b. The property is jointly owned or co-owned by 2 persons only.

Criteria for furnishing Profits Tax Return – Corporations in Electronic Government Forms

The return is for the year of assessment 2001/02 [to be updated to current year annually].

Criteria for furnishing Profits Tax Return – Persons other than Corporations in Electronic Government Forms

The return is for the year of assessment 2001/02 [to be updated to current year annually].

Manner of affixing signature to return furnished in the form of an electronic record

- (4) Where a return is furnished in the form of an electronic record through the Electronic Service Delivery (ESD) System or in Electronic Government Forms, the digital signature or password shall be affixed to the return in the manner as specified in the system or the software.

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Requirements for attachment to be submitted with a return furnished in the form of an electronic record

- (5) Where a return is furnished in the form of an electronic record in Electronic Government Forms and if supporting document is required to be submitted with the return, the format of individual supporting document attached in an electronic record, should comply with all the relevant requirements specified in the Government Notice made by the Secretary for Commerce, Industry and Technology under Section 11(2) of the Electronic Transactions Ordinance (Cap 553).

[Notice under Sections 51AA(5) and (6) of the IRO]

Specifications by the Commissioner for tax returns that may be furnished by using a telefiling system

Type of return that can be furnished by using a telefiling system

- (1) The following types of return may be furnished by using a telefiling system
 - (a) Tax Return - Individuals
 - (b) Property Tax Return – Property jointly owned or co-owned by Individuals.

Criteria for furnishing of return by using a telefiling system

- (2) Where a person meets the criteria specified in this paragraph, the person may furnish the relevant return by using a telefiling system.

Criteria for furnishing Tax Return – Individuals

1. The return is for the year of assessment 2001/02 [to be updated to current year annually].
2. The Taxpayer has duly filed his return for the preceding year of assessment.

Property Tax

3. There was no disposal of any sole-owned property during the year of assessment.
4. There is no claim for deduction of any irrecoverable rental income.

Salaries Tax

5. In respect of employment income,
 - (a) there is no non-cash fringe benefit, such as provision of quarters, share options, etc; and
 - (b) there is no claim of non-taxable item, such as compensation payment and/or full or partial exemption relief in respect of income derived outside Hong Kong.

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6. There is no claim for outgoings and expenses, or concessionary deductions except contributions to recognized retirement schemes and approved charitable donations.

Profits Tax

7. The Taxpayer does not have any sole-proprietorship business during the year of assessment.

Allowances

8. There is no claim for dependent parent allowance, dependent brother and sister allowance and disabled dependant allowance.
9. In respect of child allowance, the claim should be in respect of the same children as last year. There should not be any new claims, such as newborn child, in the year.
10. There is no claim for married person's allowance for separated or divorced taxpayers under salaries tax or personal assessment.

Personal Assessment

11. For married taxpayers, there is no election for personal assessment.
12. In respect of non-married taxpayer who elects for personal assessment,
 - (a) he/she does not have any co-owned or jointly owned property that was let during the year of assessment;
 - (b) he/she does not have any interest in any partnership business;
 - (c) he/she does not claim any deduction of interest payment for his sole-owned property that was let during the year of assessment; and
 - (d) there is no claim for concessionary deductions except approved charitable donations.

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Criteria for furnishing Property Tax Return – Property jointly owned or co-owned by Individuals

1. The return is for the year of assessment 2001/02 [to be updated to current year annually].
2. The property is jointly owned or co-owned by 2 persons only.
3. The property was not disposed of by any of the owners during the year of assessment.
4. There is no claim for deduction of any irrecoverable rental income.

Manner of affixing password to return furnished by using a telefiling system

- (3) Where a return is furnished by using a telefiling system, the password shall be adopted in the manner as specified in the telefiling system.