

Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2001

The Administration's Response and Follow-up Actions on Issues Arising from the Discussion at the Meeting on 12 November 2002

Introduction

At the meeting of the Bills Committee held on 12 November 2002, the Administration was requested to :-

- (a) address members' concern about whether there would be safeguards in the computer program to enable taxpayers to rectify any inadvertent mistakes made in the process of filing a tax return ;
- (b) address the concerns raised by the professional bodies about the drafting of certain clauses in the Bill, e.g. the definition of "password" and the reference to "password is to be affixed to a return";
- (c) consider to provide in the Bill or in a code of practice, how "reasonable excuse" may be used as a defence to the filing of an incorrect tax return using a password;
- (d) provide the draft Committee Stage Amendments to the Bill taking into account the views of members and in the submissions ;
- (e) highlight in its publicity programme the difference between using Personal Identification Number (PIN) and digital signature in filing of tax returns and their corresponding security levels; and
- (f) arrange a demonstration on electronic filing of tax return through the Electronic Service Delivery (ESD) Scheme and the Telefiling System with the use of a password.

2. The Administration's response and follow-up actions on the above issues are set out in the following paragraphs.

Safeguard / Correction Functions in the Return Filing Systems

3. The system of filing of a return under the ESD Scheme and the proposed Telefiling System are designed to enable correction of data inputted by the taxpayer in the filing process and to safeguard any inadvertent submission of data. Besides, both systems are capable of performing validation and consistency check on certain essential information which the taxpayer inputted so that the taxpayer will be prompted for rectification in the course of filing.

4. After a filing has been performed, the systems will automatically display (for filings through the ESD Scheme) or repeat verbally (for telefiling cases) the relevant tax return data keyed in by the taxpayer for his confirmation. Taxpayer may then check the accuracy of the inputted data and make changes to the data inputted if necessary. If he confirms the inputted data to be correct, he will be required to sign the tax return by inputting his password and press the “Submit” button or the “Confirmation” key. Note that it is only at this last input screen (or voice flow) that the taxpayer can access the “Submit” button or the “Confirmation” key to submit the return. Hence, any inadvertent submission of data is reduced to a minimum.

5. Upon successful transmission of the return data to IRD, the system will generate a reference number to acknowledge receipt of the return. Once a return has been filed, amendments to the return data submitted can still be made in writing to the IRD, same as for paper returns.

The Drafting Issues

6. We have summarized in **Annex A** the deputations’ concerns relating to the drafting issues of the Bill and the Administration’s response.

Consideration to provide a defence of “Reasonable Excuse” in the Bill or in a Code of practice

7. The sanctions for filing an incorrect tax return are provided in sections 80(2) and 82A of the Inland Revenue Ordinance (“IRO”). A penalty, whether levied by the courts or imposed by the Commissioner of Inland Revenue (“Commissioner”) in the form of additional tax under section 82A, is only applicable if the taxpayer has no “reasonable excuse”. What constitutes reasonable excuse must be a question of fact which depends upon the circumstances of each case. It is therefore not possible, given the great variety of situations and the special circumstances of each case, to state exhaustively in the law or in a code of practice the circumstances that may amount to reasonable excuse in filing an incorrect tax return. Generally speaking, a taxpayer is regarded as having acted with reasonable excuse if he or she acted reasonably and in good faith in doing what he or she did and that a reasonable man would regard this as an excuse consistent with a reasonable standard of conduct.

8. The proposed amendments in the Bill aim at providing in the IRO an alternative means of filing tax returns with the use of password through the ESD Scheme and by telefiling. The Bill does not seek to provide specific sanctions for filing an incorrect return using such means. Instead, as an electronic return so filed is to be accorded the same status as a paper return, the existing provisions in sections 80(2) and 82A would apply.

9. For the same reasons given in para. 7 above, we do not consider it appropriate to provide in the Bill or to set out in a code of practice the exhaustive circumstances of how “reasonable excuse” may be used as a defence for the filing of an incorrect tax return using a password. Nevertheless, for illustration purposes and to ease the concern about the difference in security level between using password and digital signature in filing tax returns, IRD will provide in its homepage some instances which the Commissioner would accept as “reasonable excuse” and hence a defence for filing an incorrect return using a password. We will also highlight that in case of doubt, the benefit of the doubt will be given to the taxpayer.

Draft Committee Stage Amendments

10. The Hong Kong Society of Accountants suggested earlier to remove “any other signing device” from clause 8 of the Amendment Bill. This clause was included to cater for future technological development, such that when there is some signing device other than electronic signature and password, which attains the same level of security, the legislation would not have to be amended. We note the Society’s and Members’ concern about the uncertainty this clause could give rise to. Having reviewed our position, we indicated in January 2002 that we were prepared to move a Committee Stage Amendment to delete this clause.

11. Separately, while we hold the view that the use of the word “affix” in relation to password in the new section 51AA(6)(b) is appropriate, we consider that separating password from digital signature in that context will help to differentiate the two devices in the Amendment Bill. This will also help the public to recognise that the two devices, though both being accepted as signatures, are different.

12. Having considered members’ and deputations’ views and submissions on the drafting issues of the Bill, we have provided at **Annex B** the proposed draft Committee Stage Amendments to the Bill.

Publicity for the Difference in Security Level between PIN and Digital Certificate

13. IRD will draw taxpayers’ attention to the difference in the level of security between using PIN / Password and digital signature for filing tax returns in the relevant publicity leaflets. The publicity leaflets will be sent to all taxpayers along with each Tax Return for Individuals and Property Tax Return.

Demonstration on ESD Filing and Telefiling with the Use of Password

14. We are pleased to arrange the demonstration on electronic filing of tax returns through the ESD Scheme and the Telefiling System during the next meeting on 13 December 2002.

Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2001
Administration's Response to
Summary of Concerns Addressed to the Bills Committee
Relating to Specific Drafting Issues

Item	Clause	Raised by	Concerns	Administration's Response
1.	Clause 2(a)	Hong Kong Society of Accountants [LC Paper No. CB(2) 4/02 – 03(06)]	<p>– <u>Considers</u> the references in the Bill to the CIR “approving” a password inappropriate.</p> <p><u>Suggests</u> to replace “approved by” with “conforming to the requirement prescribed by” in the definition of password.</p>	<p>– The expression that the Commissioner may “approve” a password relies on the Carltona principle or the alter ego principle. The rationale behind this is that the Commissioner should be and remain responsible to the legislature for the exercise of a power but may exercise the power through an authorized agent except where the provision expressly or by implication requires him or her to act personally. This approach provides practical flexibility while the responsibility stays where it belongs.</p> <p>– The approval processes in setting up a password involve the selection of numbers by the taxpayer that conform to requirements prescribed by the Commissioner as well as the successful transmission, verification, validation and recording of the selected numbers in IRD's computer system. The Bill has collectively embodied all such processes as “approved by the Commissioner”. We consider these wordings adequate and appropriate.</p>

Item	Clause	Raised by	Concerns	Administration's Response
2.	Clause 2(a)	Information Systems Audit and Control Association (Hong Kong Chapter) [LC Paper No. CB(2) 4/02-03 (07)]	<u>Suggests</u> to replace "approved" with "conform to policies and standard" in the definition of "password".	– Same as in item 1 above.
3.	Clause 8(6)	Information Security and Forensics Society [LC Paper No. CB(2) 4/02 – 03(04)]	– Suggests defining clearly in the Bill the process of furnishing tax return with the use of digital certificates, password or any other signing device.	– Specifications of technical details in furnishing electronic records for tax return filing purpose have been catered for in the Bill. Clause 8 of the Bill empowers the Commissioner to specify by notice in Gazette the technical details for the form and manner of furnishing an electronic record for tax filing purpose and how the signature is to be affixed to the return. The Commissioner will set out these details by notice in Gazette after the Bill is enacted. (Please refer to the draft details in Annexes A & B to the Information Paper for Bills Committee) [LC Paper No. CB(2) 4/02-03(01)]

Item	Clause	Raised by	Concerns	Administration's Response
4.	Clause 8(6)	Information Systems Audit and Control Association (Hong Kong Chapter) [LC Paper No. CB(2) 4/02-03 (07)]	<u>Suggests</u> to replace “signing device” and “affixed” by “means of authentication” and “used to authenticate” respectively in the proposed S.51AA(6)(b).	<ul style="list-style-type: none"> <li data-bbox="1323 233 2051 502">– We understand that the concern on the proposed terminology of “affixed” is to restrict the use of password for authentication purpose only. However, the Administration’s policy intention of this amendment Bill is to accept passwords as a form of signature for return filing purposes. <li data-bbox="1323 502 2051 1125">– A tax return, which is specified by the Board of Inland Revenue, invariably requires the taxpayer’s signature. In such circumstances, we need to make sure that the signature (in the form of a password) is added to the return and furnished together with the tax return. In this regard, section 51(5) of the IRO provides, among others, that any person signing any return shall be deemed to be cognizant of all matters therein. Therefore, the signing of a return is the very basis for our enforcement action. Mere authentication is not sufficient for the purpose. To achieve the Administration’s policy intention and fulfill the functions mentioned above, we consider it appropriate to retain the word “affix”, in so far as a digital signature is concerned. <li data-bbox="1323 1125 2051 1311">– In addition, the Administration will move a CSA to amend section 51AA(6)(b) to differentiate the case of a digital signature from that of a password.

Item	Clause	Raised by	Concerns	Administration's Response
5.	Clause 8(7)	Hong Kong Society of Accountants [LC Paper No. CB(2) 4/02 – 03(06)]	<u>Suggests</u> to substitute “approve a password” with “prescribe the requirements to which a password should conform” in the proposed S.51AA(7).	– See remarks in item 1 above.
6.	Clause 8(7)	Information Systems Audit and Control Association (Hong Kong Chapter) [LC Paper No. CB(2) 4/02-03 (07)]	<u>Suggests</u> to replace “approve a password” with “prescribe the password policies and standards in the proposed S.51AA(7).	– Same as item 5 above.
7.	-	Information Systems Audit and Control Association (Hong Kong Chapter) [LC Paper No. CB(2) 4/02-03 (07)]	<u>Suggests</u> to state clearly in the Bill the presumption that, in the absence of evidence to the contrary, the receiving party has the right to accept the message as proof of the other party's authorization, i.e. along the line of the provisions in Schedule 1 to the Import and Export Ordinance (Cap 60)	<p>– The stated presumption is clear. The proposed s.2(5) would extend a reference to the act of signing a return to that of adopting a password in connection with a return. Thus, the person signing a return electronically by means of his password shall be deemed to be cognizant of the contents thereof, i.e. he shall be taken as having authorized the submission of the return, unless the contrary is proved.</p> <p>– Schedule 1 to the Import and Export Ordinance (Cap 60) prescribes articles for which an order for their forfeiture is mandatory and is in no way connected with the stated presumption.</p>