

(FIN 43/5/144)

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Cap.112)

INLAND REVENUE (AMENDMENT) (NO.2) BILL 2001

INTRODUCTION

At the meeting of the Executive Council on 30 October 2001, the Council **ADVISED** and the Chief Executive **ORDERED**, that the Inland Revenue (Amendment) (No.2) Bill 2001 at Annex A, should be introduced into the Legislative Council, to provide a legal basis for the use of passwords and telephones in filing tax returns.

BACKGROUND AND ARGUMENT

General Background

2. Consistent with Government's policy of using information technology to improve Government services to the public, Inland Revenue Department (IRD) introduced electronic filing of Tax Return - Individuals (i.e. a composite tax return on Salaries Tax, Property Tax and Profits tax for individuals) and Property Tax returns under Government's ESD Scheme in January 2001. Under the present mode of operation, taxpayers are required to use their digital certificates for authentication and signing for the purpose of filing tax returns through the ESD system. In a bid to encourage more taxpayers to file tax returns through the internet, IRD proposes to provide alternative means, i.e. the use of passwords, for electronic authentication and fulfillment of the signature requirement for tax return filing under the ESD Scheme.

3. In addition, IRD intends to introduce in April 2002 a system to allow the filing of Tax Return - Individuals and Property Tax returns by telephone,

and the lodgment of Profits Tax returns in Electronic Government Forms (e-Forms). Electronic filing of Tax Return - Individuals and Property Tax returns through the ESD Scheme or telefiling, and electronic filing of Profits Tax returns in e-Forms are all convenient alternatives to the traditional method of physical lodgment.

4. While electronic filing of Tax Return - Individuals and Property Tax returns with the use of digital certificates under the ESD Scheme and the filing of Profits Tax returns in e-Forms have been provided for in the Electronic Transactions Ordinance, the proposed use of a password as an alternative to a digital signature under the ESD Scheme and the telefiling of tax returns lack a legal basis. Therefore, the Inland Revenue Ordinance (the Ordinance) requires amendments to cater for these alternative means of lodging tax returns.

Filing of Tax Returns with the Use of Password under the ESD Scheme

5. At present, taxpayers are able to submit Tax Return - Individuals and Property Tax returns electronically through the Internet via the information system of the ESD Scheme. After inputting the required information into the tax return, taxpayers will be required to affix their digital signature with a digital certificate issued by a recognized certification authority for authentication and non-repudiation purposes. The Electronic Transactions Ordinance provides the legal backing for electronic filing of tax returns through the ESD system by using digital signatures.

6. However, a password approved by the Commissioner of Inland Revenue for the purpose of furnishing returns is not a digital signature. There are no provisions, in either the Electronic Transactions Ordinance or the Ordinance, for the use of a password as an alternative to a digital signature in the ESD System. Specific provision in the Ordinance enabling the use of such password is therefore necessary.

7. The new sub-sections 51AA(2), (5) and (6) (i.e. Clause 8 in the Bill attached at Annex A) would allow the filing of returns in electronic record in cases where the taxpayers or the returns meet certain criteria or technical requirements specified in a notice by the Commissioner of Inland Revenue. A list of these criteria and technical requirements as to software and

communication is at Annex B. By a Government notice in the Gazette, the Commissioner may stipulate these criteria or requirements. This is to facilitate amendments in future for any expansion of the returns lodgment services to other forms of electronic record.

8. After the proposed amendment, a return will be construed as being “signed” by applying either a digital signature or a password. The terms “password” and “digital signature” will be defined in the Ordinance. The act of signing a return for the purposes of the Ordinance will be extended to include the adoption of a digital signature, a password or any other signing device for the purpose of authenticating the return.

9. Under the existing law, an electronic return (filed through the ESD system or in e-Forms) is acceptable by virtue of provisions in the Electronic Transactions Ordinance. In order that the requirement for furnishing of returns may be self-contained in the Ordinance and hence would be more easily comprehensible to the public, opportunity is taken to make specific provisions for an electronic record in the Ordinance in this respect. With the amendments set out in paragraph 7 above, filing of return electronically will no longer have to rely on the provisions of the Electronic Transactions Ordinance. Therefore, the relevant part of the Government Notice made by the Secretary for Information Technology and Broadcasting in respect of an electronic record under section 51(1) of the Ordinance will be repealed after the Bill is enacted.

Telefiling of tax returns

10. The existing Ordinance does not provide for the telefiling of tax returns. Section 51(1) of the Ordinance, which provides for the furnishing of returns, would not cover the furnishing of a return by telefiling as indicated by the following -

(a) a “return” under that provision must be in a form specified by the Board of Inland Revenue and telefiling does not have a visible form. The authentication of such return by the execution of a manuscript signature or a digital signature would not be applicable; and

(b) a telephonic record may not constitute an “electronic record” for the purposes of the Electronic Transactions Ordinance.

Accordingly, information required to be furnished in a return under section 51(1) of the Ordinance will not be extended to that furnished in a “telephonic record” by virtue of section 5 of the Electronic Transactions Ordinance.

11. To cater for telefiling of tax returns, we **propose** that additional provisions be made to the Ordinance. In short, these additional provisions would -

(a) provide legal backing for telefiling by -

(i) extending the meaning of “return” to cover particulars furnished by telefiling; and

(ii) enabling telefiling in cases where the taxpayers or the returns meet the eligible criteria;

(b) provide that the adoption of a password will be recognised as signing a return; and

(c) empower the Commissioner of Inland Revenue to specify eligible criteria for cases where returns may be furnished by telefiling.

12. Telefiling is designed for individuals with simple returns 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 alphabet and characters, a set of criteria will need to be prescribed by the Commissioner to eliminate from telefiling the returns which involve claims that require input of information in alphabetic or character form or the provision of supporting documents. Despite these restrictions, IRD estimates that some 800 000 taxpayers will meet the criteria for telefiling.

13. The new sub-sections 51AA(3) and (5) (i.e. clause 8 in the Bill attached at Annex A) would permit the lodgment of returns, by taxpayers meeting certain criteria, by means of telefiling. The criteria, types of return allowed and signature requirement etc will be determined by the Commissioner as appropriate. The criteria will be published by a Government notice in the

Gazette. This is to facilitate amendments in future for any relaxation in the criteria or requirements for return telefiling services. The initial set of criteria for telefiling which will be gazetted after the Bill is enacted is set out in Annex C.

14. Practically, to ensure data confidentiality and proper authentication of the return filers, taxpayers intending to furnish returns by the telefiling system have to register with IRD in advance to obtain a Taxpayer Identification Number (TIN) and an Access Code which will be given to them in separate notices. To complete the registration process, a taxpayer has to log in to the telefiling system by using both the TIN and the Access Code and then to register in the system a password of his own choice. The taxpayer's password information will be stored in IRD's database in encrypted format. There will be tight administrative and system control in IRD to ensure the integrity of the data within the telefiling system.

THE BILL

15. **Clause 1** provides that the Bill shall come into operation on a day to be appointed by the Secretary for the Treasury by notice published in the Gazette.

16. **Clause 2** amends the interpretation provision to bring in certain definitions from the Electronic Transactions Ordinance; and to extend a reference to the act of signing a return in the Ordinance to that of adopting a digital signature or password or any other signing device in furnishing a return.

17. **Clauses 3 to 7**, apart from clause 7(a), are consequential amendments to the Chinese text as a result of amending the Chinese defined term for "specified form". **Clause 7(a)** is a consequential amendment in view of the power of the Board of Inland Revenue under the new section 51AA.

18. **Clause 8** adds a new section to allow returns to be furnished in paper form, by filing an electronic record, or using the telefiling system; require that a return furnished in paper form must be made on a printed form provided by the Commissioner of Inland Revenue; empower the Commissioner to specify certain cases where the furnishing of a return by electronic filing and the use of

the telefiling system are applicable; specify the time when a return is received in the case of furnishing a return by using the telefiling system; empower the Commissioner to specify technical or other details concerning an electronic record or any attachment required to be furnished with an electronic record; and empower the Commissioner to approve a password and designate any system for communication purpose.

19. **Clauses 9 to 13** amends the Chinese text in relation to the references of failing to make a return and making an incorrect return.

20. **Clause 14** amends section 86 of the Ordinance to empower the Board of Inland Revenue to specify, apart from forms, the form of any forms.

BASIC LAW IMPLICATIONS

21. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

22. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

23. The Bill will not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation.

FINANCIAL AND STAFFING IMPLICATIONS

24. The proposed lodgment of tax returns through telefiling and the use of passwords under the ESD system will enhance tax return lodgment services by offering new means of lodgment to the public, and, at the same time, improve IRD's operational efficiency by saving the time required for transcribing and

inputting the information on a physical tax return into the department's databases. They should have no financial or staffing implications.

LEGISLATIVE TIMETABLE

25. The legislative timetable will be -

Publication in the Gazette	9 November 2001
First Reading and commencement of Second Reading debate	21 November 2001

PUBLICITY

26. We will issue a press release on 7 November 2001.

ENQUIRIES

27. In case of enquiries about this Brief, please contact Miss Erica Ng, Principal Assistant Secretary for the Treasury (Revenue), at 2810 2370.

Finance Bureau