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BILL

To

Amend the Inland Revenue Ordinance to facilitate the use of information technology in furnishing tax returns and to provide for related matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Inland Revenue (Amendment) (No. 2) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Treasury by notice published in the Gazette.

2. Interpretation

Section 2 of the Inland Revenue Ordinance (Cap. 112) is amended---

(a) in subsection (1)---

(i) in the definition of "specified form", by repealing "(指明的表格)" and substituting "(指明的格式)";

(ii) by adding---

" "digital signature" (數碼簽署) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"electronic record" (電子紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"password" (通行密碼) means any combination of letters, characters, numbers or other symbols selected by a person and approved by the Commissioner for use in systems designated by the Commissioner for the purpose of authenticating the person's identification in communicating with the Commissioner;

"recognized certificate" (認可證書) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"return" (報稅表) includes any return furnished under section 51AA, irrespective of the manner in which that return is furnished;

"telefiling system" (電話報稅系統) means a system that enables a person to furnish to the Commissioner certain returns or information by using a telephone;";

(b) by adding---

"(5) In this Ordinance, a reference to the act of signing a return required to be furnished under this Ordinance includes a reference to the adopting of---

(a) a digital signature (supported by a recognized certificate and generated within a period during which the certificate is valid);

(b) a password; or
(c) any other signing device,
for the purpose of authenticating or approving the return."

3. The time and manner in which an election
or the withdrawal of an election for
joint assessment is to be made

Section 11 is amended---

(a) in subsection (1), by repealing "表格" and substituting "格式";
(b) in subsection (2), by repealing "表格" and substituting "格式".

4. Concessionary deductions, general provisions

Section 26B(2) is amended by repealing "表格" and substituting "格式".

5. Allowances, general provisions

Section 27(2) is amended by repealing "表格" and substituting "的格式".

6. Rates of charge

Section 43(3) is amended by repealing "表格" and substituting "格式".

7. Returns and information to be furnished

Section 51 is amended---

(a) in subsection (1), by repealing ", containing such particulars and in such form
as may be specified by the Board of Inland Revenue";

(b) in subsection (2A), by repealing "表格" and substituting "格式".

8. Section added

The following is added immediately after section 51---

"51AA. Form and manner of furnishing
return, etc. under section 51

(1) Except as provided in subsection (2) or (3), a return required to be furnished
under section 51(1)---

(a) shall be furnished in paper form using a printed form specified by the Board
of Inland Revenue and provided by the Commissioner; and

(b) shall contain the particulars specified in the printed form.

(2) A return required to be furnished under section 51(1) may, in a case specified
by the Commissioner, be furnished in the form of an electronic record that---

(a) is sent using a system specified by the Board of Inland Revenue;

(b) uses a template specified by the Board of Inland Revenue and made available by
the Commissioner; or

(c) contains the particulars specified by the Board of Inland Revenue that is
arranged in a form specified by the Board of Inland Revenue.

(3) A return required to be furnished under section 51(1) may, in a case specified
by the Commissioner, be furnished by using a telefiling system which---

(a) provides for the furnishing of such particulars as may be specified by the Board of Inland Revenue; and

(b) is made available by the Commissioner.

(4) A return shall be regarded as furnished under subsection (3) when the particulars and the password are accepted by the telefiling system.

(5) Any case to be specified by the Commissioner for the purposes of subsections (2) and (3)---

(a) shall be specified by notice published in the Gazette; and

(b) may be specified by reference to a class or description of person or return.

(6) The Commissioner may by notice published in the Gazette specify requirements as to---

(a) the manner of generating or sending an electronic record or any attachment required to be furnished with an electronic record;

(b) how a digital signature or password or any other signing device is to be affixed to a return furnished under this section; and

(c) the software and communication in relation to any attachment required to be furnished with an electronic record.

(7) The Commissioner may approve a password and designate any system in respect of any communication with the Commissioner for the purposes of this Ordinance.

(8) A notice under subsection (5) or (6) is not subsidiary legislation."

9. Power to require statement of assets and liabilities, etc.

Section 51A(1) is amended by repealing "不正確" and substituting "申報不確".

10. Power to issue search warrant

Section 51B(1)(a) is amended by repealing "不正確" and substituting "申報不確".

11. Penalties for failure to make returns, making incorrect returns, etc.

Section 80 is amended---

(a) in subsection (2)(a)---

(i) by repealing "填" where it first appears and substituting "申";

(ii) by repealing "在報稅表上填" and substituting "其提交的報稅表申";

(b) in subsection (2), by repealing "的填" and substituting "的申".

12. Penal provisions relating to fraud, etc.

Section 82(1) is amended---

(a) in paragraph (a)---

(i) by repealing "填具" and substituting "提交";

- (ii) by repealing "填報" and substituting "申報";
- (b) in paragraph (b), by repealing "填具" and substituting "提交".

13. Additional tax in certain cases

Section 82A is amended---

- (a) in subsection (1)(a)---
 - (i) by repealing "填" where it first appears and substituting "申";
 - (ii) by repealing "在報稅表上填" and substituting "其提交的報稅表申";
- (b) in subsection (1)(i), by repealing "填" and substituting "申";
- (c) in subsection (4)(a)(i), by repealing "填" and substituting "申".

14. Board of Inland Revenue to specify forms

Section 86 is amended---

- (a) in subsection (1), by adding "or the form of any forms" after "any forms";
- (b) in subsection (2), by adding "或格式" after "表格" wherever it appears.

Explanatory Memorandum

The purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) ("the Ordinance") to provide necessary legal framework for the use of passwords and telephones in furnishing tax returns.

2. Clause 2 amends the interpretation provision to---

- (a) amend the Chinese defined term for "specified form" to widen the scope of meaning beyond a written form;
- (b) bring in certain definitions from the Electronic Transactions Ordinance (Cap. 553);
- (c) add the definition of "return" to cover returns furnished otherwise than in writing; and
- (d) extend the reference to the act of signing a return to that of adopting a digital signature or password or any other signing device in furnishing a return.

3. Clauses 3 to 7, apart from clause 7(a), are consequential amendments made 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.

4. Clause 8 adds a new section 51AA to---

- (a) allow returns to be furnished in paper form, by filing an electronic record or using the telefiling system;
- (b) require that a return furnished in paper form must be made on a printed form provided by the Commissioner of Inland Revenue ("the Commissioner");
- (c) 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;
- (d) specify the time when a return is received in the case of furnishing a return

by using the telefiling system;

(e) 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

(f) empower the Commissioner to approve a password and designate any system for communication purpose.

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

6. 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.