

**President's ruling on  
Committee Stage Amendments to  
Inland Revenue (Amendment) Bill 2001  
proposed by Hon Albert HO Chun-yan and Dr Hon YEUNG Sum**

Hon Albert HO and Dr Hon YEUNG Sum have respectively given notice of their intention to move amendments to the Inland Revenue (Amendment) Bill 2001 (the Bill), if the Bill gets its Second Reading at the Council meeting to be held on 21 November 2001. Mr HO's amendment seeks to increase the maximum amount of home loan interest deduction from \$150,000, as proposed in the Bill, to \$180,000 for the years of assessment 2001-02 and 2002-03. Dr YEUNG's amendment seeks to increase the maximum amount of home loan interest deduction to \$180,000 for the year of assessment 2002-03 only.

2. The Secretary for the Treasury (S for Tsy) has been invited to offer her comments on the proposed amendments. Mr HO and Dr YEUNG have also been invited to respond. I have also sought the advice of Counsel to the Legislature.

**The Administration's view**

3. S for Tsy considers that the Members' proposed amendments have a charging effect as defined in Rule 57(6) of the Rules of Procedure. If implemented, each proposal would result in a reduction of revenue from a lawfully established source at a future date. In the case of Mr HO's proposal, the further deduction will cost the Government revenue an additional \$210 million per annum, i.e. a total of \$420 million for the two years 2001-02 and 2002-03. In Dr Hon YEUNG's proposed amendment, Government revenue would be reduced by \$210 million.

**Response from Hon Albert HO and Dr Hon YEUNG Sum**

4. Mr HO and Dr YEUNG do not agree with S for Tsy. They consider as not valid the Administration's view that "revenue" has within it a clear meaning of prospective income collectable in future, because the object and the potential effect of their proposals are to alleviate the tax burden of an unknown group of taxpayers, i.e. the reduction of a charge upon the people, whereas Rule 57(6) deals with a charge upon the revenue of the Government.

## **Advice of Counsel to the Legislature**

5. Counsel to the Legislature advises that the issues raised by both the Administration and the Members seem to turn on the interpretation of Rule 57(6), and advises that his previous advice, that "as a matter of general principle, the 'charging effect' restriction provided in Rule 31(1) of the Rules of Procedure applies to revenue which may be collected under statutory authority", also applies to Rule 57(6) because both rules are substantially the same.

6. Counsel to the Legislature agrees with the Administration's assessment that the two sets of proposed amendments have the legal effect of reducing Government revenue from Salaries Tax because they would cause the taxpayers concerned to pay less Salaries Tax. He advises that they would have a charging effect for reason that the clear prospect of reduction of revenue in the form of Salaries Tax which may be collected under the Inland Revenue Ordinance would amount to disposal of revenue in the context of Rule 57(6).

## **My opinion**

7. Rule 57(6) of the Rules of Procedure provides that:

"An amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by -

- (a) the Chief Executive; or
- (b) a designated public officer; or
- (c) a Member, if the Chief Executive consents in writing to the proposal."

8. In the 1998-99 Budget, home loan interest deduction was introduced to assist payers of Salaries Tax who purchased their own homes. Since then, taxpayer may claim the deduction for a maximum of five years of assessment and the maximum yearly deduction has been \$100,000, as specified in Schedule 3D to the Inland Revenue Ordinance, Cap 112.

9. In the 2001 Policy Address, the Chief Executive announced that to ease the burden of home owners, Government would propose to the Legislative Council raising the tax-deduction ceiling to \$150,000 for the two years of assessment 2001-02 and 2002-03. The Bill in front of the Council seeks to amend the Inland Revenue Ordinance to effect Government's proposal.

10. According to the Administration, the proposal in the Bill will result in a reduction of revenue by \$520 million a year. Mr HO's and Dr YEUNG's proposals will entail a further reduction by \$420 million and \$210 million respectively.

11. Neither Mr HO nor Dr YEUNG has disputed S for Tsy's claim about the reduction of revenue due to their proposed amendments. I have previously ruled on similar claims; for instance, in regard to proposals by a Member to amend the Inland Revenue (Amendment) Bill 1998 (which was about the implementation of tax concessions for the contributions made by employees and self-employed persons to Mandatory Provident Fund Schemes or to recognized occupational retirement schemes) to remove the proposed statutory limit of \$12,000 a year for the allowable deduction, I ruled in favour the Government's submission that the proposed amendments would lead to significant revenue foregone, hence they had a charging effect for the purpose of Rule 57(6). I also accept the advice of Counsel to the Legislature that the "charging effect" restriction in Rule 57(6) applies to revenue which may be collected under statutory authority. In this case, the statutory authority for collecting Salaries Tax and making the relevant concessions is already in the Inland Revenue Ordinance.

### **Ruling**

12. Having regard to the views of the S for Tsy, Mr HO and Dr YEUNG, as well as the advice of Counsel to the Legislature, I rule that the proposed amendments have a charging effect for the purpose of Rule 57(6) of the Rules of Procedure, and require the consent of the Chief Executive.

( Mrs Rita FAN )  
President  
Legislative Council

19 November 2001