President's ruling on
Committee Stage Amendments to
Revenue (No. 2) Bill 2003
proposed by Hon SIN Chung-kai

Hon SIN Chung-kai has given notice to move amendments to the Revenue (No. 2) Bill 2003 (the Bill) at the Committee Stage, if the Bill gets its Second Reading at the Council meeting to be held on 25 June 2003. Before ruling on the admissibility of these amendments, I have invited the Secretary for Financial Services and the Treasury (SFST) to offer his comments and Mr SIN to offer his response. I have also sought the advice of Counsel to the Legislature.

2. The main purpose of the Bill is to amend the Inland Revenue Ordinance (Cap 112) to give effect to some of the proposals in the Budget introduced by the Government for the 2003/04 financial year. In respect of the Salaries Tax, clause 10 of the Bill seeks to amend Schedule 2 to increase the marginal tax rates to 2%, 7.5%, 13% and 18.5% for the year of assessment 2003/04, and to 2%, 8%, 14% and 20% for the years of assessment commencing in 2004/05, and clause 11 seeks to amend Schedule 4 to, inter alia, lower the basic allowance, married person's allowance and single parent allowance to $100,000, $200,000 and $100,000 respectively over a period of two years commencing in 2003/04.

3. Mr SIN's amendments seeks to delete clause 10 so that the existing rates in Schedule 2 of Inland Revenue Ordinance remain the same and to amend clause 11 to maintain the basic allowance, married person's allowance and single parent allowance currently stipulated in Schedule 4 of the Ordinance, i.e. $108,000, $216,000 and $108,000 respectively.

The Administration's View

4. Referring to Rule 57(6) of the Council's Rules of Procedure, SFST states that Mr SIN's proposed amendments have the effect of disposing of the additional salaries tax the Government anticipates that it will collect through the Bill. The proposals in the Bill are expected to bring in additional revenue of $10.37 billion in a full year. If Mr SIN's CSAs were adopted, the additional revenue would drop sharply to $3.89 billion, representing a 62% reduction. The rationale for SFST's position seems to be that, to quote the Secretary's submission:

"…the concept of 'revenue' has within it a clear meaning of prospective income rather than what has been received or accrued in the past. So, the increased revenue anticipated to be collected from the general public may properly be regarded as 'revenue of Hong Kong' even though it may not as yet have accrued due. If the intention (of Rule 57(6)) had been to limit the powers of Members of the Legislative Council only in relation to revenue already collected, the phrase would have been 'revenue collected' or 'revenue received or accrued' and not 'revenue of'."

5. SFST also makes the following statement in his submission:

"Furthermore, the Member's CSA to Clause 11 which will result, besides the removal of proposed decrease in basic allowance, married person's allowance and single parent allowance, in retention of the proposed increase in the allowance for the third to ninth child under salaries tax and will lead to reduction in the Government's revenue by $40 million in a full year. The CSA in question will therefore lead to reduction in salaries tax revenue compared with the pre-Budget position."

Response from the Member

6. In his response, Mr SIN essentially states that his amendments merely seek to bring the proposed marginal tax rate structure and some of the specified allowances contained in the Bill back to their present position. There is no question of his amendments' disposing of the Government's revenue collectible under existing statutory authority.

Advice of Counsel to the Legislature

7. Counsel to the Legislature advises that the proposals in the Bill are to implement the revenue proposals related to salaries tax, profits tax and property tax announced in the 2003-04 Budget. These proposals will only have the force of law after the passage of the Bill with or without amendments.

8. In principle, proposed CSAs to revenue-raising measures being proposed in a bill would have charging effect if revenue to be collected under the proposed CSAs would be less than what is being collected under existing law which would be affected by the CSAs.

My opinion

9. Article 73(3) of the Basic Law stipulates that the Legislative Council shall exercise the power and function of approving taxation. Such power and function is exercised, in the context of the annual Budget introduced by the Government, by the passage of the Appropriation Bill, any revenue bill that the Administration introduces in the Council, and other relevant instruments such as resolutions proposed to the Council. In my previous rulings relating to taxation proposals (for example, my ruling dated 27 March 2001 on Hon LAU Chin-shek's proposed resolution to amend the Public Revenue Protection (Revenue) Order 2001), I stated the principle that we should recognize the fact that until the approval by the Council has been secured, any proposal that seeks to vary the amount of taxation that may be collected are but proposals only. The Government's proposals in the Bill to amend Schedules 2 and 4 to increase the income from the Salaries Tax cannot, as of now, authorize it to collect the tax as proposed to be increased. Until the proposals have been approved by the Council, the Government can only collect the tax at the rates authorized by the existing provisions in the law. I cannot accept SFST's claim that the increased money anticipated to be collected may be regarded as "the revenue of Hong Kong".

10. With regard to the statement made by SFST, which I have quoted in paragraph 5, I have difficulty in understanding the logic of that statement. The concession proposed in the Bill in respect of child allowance, which the Government says will lead to its foregoing $40 million a year, is proposed by the Government, not by Members. I cannot honestly agree that Mr SIN's amendments, which relate to marginal tax rates and allowances that have nothing to do with the child allowance, "will lead to reduction in the Government's revenue by $40 million in a full year".

11. In respect of the amendments proposed by Members to any bill, as President my duty under Rule 57(6) of the Rules of Procedure is to form an opinion on whether or not the object or effect of the amendments may be to dispose of or charge any part of the revenue or other public moneys of Hong Kong. To discharge this duty, I have to weigh the proposals against what may be collected under existing statutory authority. As the object and effect of Mr SIN's proposed amendments are to bring the marginal tax rate structure and the specified allowances back to the position authorized by existing law, I am of the opinion that they do not have a "charging effect" for the purpose of Rule 57(6).

Ruling

12. For the reason stated above, I rule that Mr SIN's proposed amendments are in order, and may be moved at the Bill's Committee Stage.

(Mrs Rita FAN)
President
Legislative Council

23 June 2003