

**The Administration's responses to
Legal Service Division's Comments ("LSD's Comments")
on the Revenue Bill 2008**

Clauses 3 and 5

[Paragraphs 1 and 2 of LSD's Comments]

The use of "或之前任何課稅年度" in the Chinese text of the proposed section 16D(2)(b) of the Inland Revenue Ordinance (Cap. 112) ("IRO") and the use of "或該兩個課稅年度之間的任何課稅年度" in the new section 16D(2)(c) are appropriate in emphasizing that a deduction under section 16D may be made in respect of one year of assessment. Similarly, the use of "或該兩個課稅年度之間的任何課稅年度" in the proposed section 26C(2A)(b) is appropriate in emphasizing that a deduction under s.26C may be made in respect of one year of assessment.

2. We note that the expressions "及之前各課稅年度" and "及此兩個課稅年度之間各課稅年度" have been used in the Chinese text of the existing section 37A(1A)(a) and section 39B(1A)(b) in different contexts. We do not consider that the Chinese text and the English text of the proposed section 16D(2)(b) and (c) and section 26C(2A)(b) will give rise to different interpretation.

Clause 4 – proposed section 16H(1)

[Paragraph 3 of LSD's Comments]

3. Section 85 of the IRO empowers the Board of Inland Revenue to make rules to prescribe what is or is deemed to be included in, or excluded from, the expression "machinery or plant". The relevant rule is Rule 2 of the Inland Revenue Rules (Cap. 112 sub. leg. A) ("IRR 2"), which lists out prescribed items of "machinery or plant" with corresponding rates of depreciation for depreciation allowance purposes, and items of asset deemed to be excluded from "machinery or plant".

4. As the purpose of Part 1 of the proposed Schedule 17 is to set out the types of machinery or plant that are to be regarded as environmental protection facilities, and not to set out what is or is deemed to be included in, or excluded from, the expression "machinery or plant", we consider that the approach adopted in Part 1 of the proposed Schedule 17 and in para. (a) of the definition of "environmental protection machinery" in the proposed s.16H(1) is more appropriate.

[Paragraph 4 of LSD's Comments]

5. Proposed section 16I of IRO deals with the situation where a person carrying on a trade, profession or business (a taxpayer) incurs "capital expenditure" on the provision of environmental protection facilities in the production of profits from such trade, etc. In the absence of specific provisions, such expenditure is non-deductible for profits tax purposes (see section 17(1)(c) of the IRO). Where a taxpayer is a trader or manufacturer of environmental protection facilities, the costs incurred by him in purchasing or producing the facilities are his costs of goods sold (i.e. revenue expenditure) and are deductible under the general deduction provisions of section 16 of the IRO.

6. It is considered that the reference to "providing" in the definition of "specified capital expenditure" should be retained so as to maintain consistency with section 16G ("Capital expenditure on the provision of a prescribed fixed asset") and the necessary linkage with the definition of "capital expenditure on the provision of machinery or plant" in section 40. It should be noted that the "transitional provisions" under the proposed section 16K have to make reference to the provisions in Part VI of the IRO ("Depreciation Allowance") in ascertaining the "specified capital expenditure" deemed to be incurred on the "commencement date" in appropriate cases.

Clause 4 – proposed section 16I and Schedule 17

[Paragraph 5 of LSD's Comments]

7. For assessing a Construction Noise Permit ("CNP") application, the Noise Control Authority is guided by the Technical Memorandum on

Noise from Construction Work other than Percussive Piling (TM) which is issued under section 9 of the Noise Control Ordinance (Cap. 400) ("NCO"). Under section 3.1 of the TM, a CNP applicant can propose quiet working method or particularly quiet items of Powered Mechanical Equipment ("PME") for the Authority to consider. To be consistent and helpful to the trade, a Quality Powered Mechanical Equipment ("QPME") system was set up by the Environmental Protection Department ("EPD") which provides an option for the trade to work in an environmentally friendly fashion.

8. The EPD is empowered under the NCO to administer the QPME system and to provide a list of particularly quiet PME that meet the approved standards for use of the trade. The system is administrative in nature as it is an option for further improving the environment.

[Paragraph 6 of LSD's Comments]

9. For a CNP applicant (or equipment supplier in facilitating CNP applicants) to introduce a quiet PME into Hong Kong, he needs to have the PME approved by the EPD by showing that the PME has met specified standards. Upon approval, the PME will be registered in the EPD's database. Such registered PMEs will qualify as "environmental protection machinery" under the Bill.

10. The expression "machinery or plant" is used throughout the IRO. It is preferable to retain the term in Schedule 17. The expression "equipment" would fall within the meaning of "machinery or plant" for the purposes of the IRO. See, for example, item 23 ("electronic data processing equipment") in the First Part of the Table annexed to IRR 2.

[Paragraph 7 of LSD's Comments]

11. Examples of (i) "air pollution control machinery or plant" are electrostatic precipitators, flue gas desulphurization plant, gas scrubbers, car wheel washing facilities at construction sites, grease trap filters, hydrovents and vapour recovery system; (ii) "waste treatment machinery or plant" are pH control plant, heavy metal removal plant, cyanide removal plant, oil separation plant, bioreactor and organic solvent recovery plant; (iii) "wastewater treatment machinery or plant"

are domestic wastewater treatment plant and industrial wastewater treatment plant. In general, the use of all such machinery or plant, if required under the respective pollution control Ordinances, as part and parcel of the licence/approval application, would mostly be covered in the terms and conditions of the licence/authorization issued under the Ordinances or specified in the legislation (e.g. vapour recovery system in petrol filling stations). It is not possible to produce an exhaustive list given the variety of machinery and plant and the continuous advance in technology with new equipment types emerging in the market.

[Paragraph 8 of LSD's Comments]

12. For QPME, an approved QPME database containing information matching make, type and model of the PME of the person will make the person eligible for a claim. Other PME meeting the specified standards, but not found in EPD's QPME database, will nevertheless have to be submitted for approval of EPD and, if approved, will become a new comer in the QPME database prior to making a claim. For items 2 to 4 in Part 1 of the proposed Schedule 17, a person would have access to information relating to the qualified machinery and plant when applying for a licence/authorization under the pollution control legislation, or from the legislation specifying the particular machinery or plant.

13. A taxpayer is not required to provide evidence when he claims the deduction in his tax return. The assessor may subsequently request the taxpayer to provide supporting information when examining or reviewing the taxpayer's tax return and accounts. The taxpayer may provide EPD's licence/authorization or other information to show that the relevant asset is qualifying machinery or plant.

[Paragraph 9 of LSD's Comments]

14. The names of the concerned installations are easy-to-understand and commonly used by the trade. Certification of the installations is not required.

[Paragraph 10 of LSD's Comments]

15. The Hong Kong Energy Efficiency Registration Scheme for

Buildings ("HKEERSB") is currently operated on a voluntary basis. The Electrical and Mechanical Services Department ("EMSD") has issued a set of codes of practices for energy efficiency of lighting, electrical, air-conditioning, lift and escalator installations in buildings and a Performance-based Building Energy Code. Under the HKEERSB, the EMSD will issue a Certificate of Registration to an applicant if an installation is in compliance with the respective code of practice. The Certificate of Registration will also set out the type of installation that is being registered.

16. The EMSD maintains a register of building venues that have been registered under the HKEERSB. The register also contains the type of installation which is in compliance with the respective code of practice issued by the EMSD.

17. In order to support his claim under the proposed section 16I, a person can submit a copy of the Certificate of Registration that covers those installations for which specified capital expenditure is incurred.

[Paragraph 11 of LSD's Comments]

18. As mentioned in our response to Paragraph 10 of LSD's Comments, for installations that comply with the Building Energy Codes promulgated by EMSD, they will be covered by Certificates of Registration issued by EMSD under the HKEERSB.

**The Financial Services and the Treasury Bureau
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