

立法會
Legislative Council

LC Paper No. CB(1)325/09-10
(These minutes have been seen by
the Administration)

Ref : CB1/BC/7/08/2

Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2009

Second meeting on
Tuesday, 6 October 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Paul CHAN Mo-po, MH, JP
- Public officers Attending** : Mr Kenneth CHENG
Principal Assistant Secretary for
Financial Services and the Treasury (Treasury)
- Ms Shirley KWAN
Assistant Secretary for
Financial Services and the Treasury (Treasury)
- Mr Simon YIP
Clerk to Board of Review
(Inland Revenue Ordinance)
- Mr CHIU Kwok-kit
Assistant Commissioner (2)
Inland Revenue Department
- Mr YIM Kwok-cheong
Senior Assessor (Support and Project)
Inland Revenue Department

Ms Angie LI
Government Counsel
Department of Justice

Clerk in attendance : Ms Rosalind MA
Chief Council Secretary (1)5

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Mr Noel SUNG
Senior Council Secretary (1)4

Miss Constance MAN
Senior Council Secretary (1)8

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Confirmation of minutes and matters arising

(LC Paper No. CB(1) 2461/08-09 —Minutes of meeting on 17 July 2009)

The minutes of the meeting held on 17 July 2009 were confirmed.

II Meeting with the Administration

Submissions from organizations not attending the meeting

(LC Paper No. CB(1)2664/08-09(01) —Submission from Hong Kong
Institute of Certified Public
Accountants

LC Paper No. CB(1)2664/08-09(02) —Submission from Ernst & Young Tax
Services Limited

LC Paper No. CB(1)2664/08-09(03) —Submission from
PricewaterhouseCoopers Limited)

Administration's written response to submissions

(LC Paper No. CB(1)2664/08-09(04) —Paper provided by the Administration)

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)691/08-09 —The Bill

FIN CR 1/2306/09 —The Legislative Council Brief issued by the Financial Services and the Treasury Bureau

LC Paper No. LS91/08-09 —The Legal Service Division Report on the Bill

LC Paper No. CB(1)2301/08-09 —Background Brief on the Inland Revenue (Amendment) (No. 2) Bill 2009 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2302/08-09(01) —Marked-up copy of the Bill prepared by the Legal Service Division)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

Clause 9(3) (Part 3 of the Bill)

3. In relation to the Administration's proposal to amend section 65(7) of the Inland Revenue Ordinance (Cap. 112) (IRO) so that a person who ceased to be a member of the Board of Review (such as a retired member) would also be allowed to handle a case that he had handled before in the three circumstances stated in paragraph 5 of the Legislative Council Brief (FIN CR 1/2306/09), Mr James TO was concerned whether the proposed arrangement was unique or in line with those of other review/appeal boards. The Administration was requested to provide examples of the operation of other review/appeal boards to illustrate whether the proposed arrangement was consistent with those of similar boards, and if the arrangement was unique, to provide reasons for that.

Clause 14(3) (Part 4 of the Bill)

4. In response to Mr James TO's concern about the fairness of the Administration's proposal to extend the period within which prosecution of breaches of the secrecy

provisions of IRO by staff members of the Inland Revenue Department (IRD) might be brought from six months to six years, the Administration was requested to provide examples on prosecution periods for breaches of secrecy provisions in legislation other than the Business Registration Ordinance (Cap. 310) (BRO), as well as on overseas practices, for reference purpose.

(Post-meeting note: The supplementary information provided by the Administration in response to the requests in paragraphs 3 and 4 was circulated to members vide LC Paper No. CB(1)72/09-10(02) on 19 October 2009.)

Way forward

5. The Bills Committee completed clause-by-clause examination of the Bill. The Bills Committee agreed that the Chairman would consult members on the need for another meeting taking into consideration the supplementary information provided by the Administration as requested in paragraphs 3 and 4 above. Subject to other views the Bills Committee might have on the Bill, the Administration intended to resume Second Reading debate of the Bill on 11 November 2009. In this connection, the Chairman drew members' attention to the following legislative timetable:

Date of reporting to House Committee	Deadline for giving notice of resumption of Second Reading debate	Deadline for giving notice of Committee Stage amendments	Date of resumption of Second Reading debate
23 October 2009 (Friday)	27 October 2009 (Tuesday)	2 November 2009 (Monday)	11 November 2009 (Wednesday)

(Post-meeting note: As advised by the Administration, it would decide the date for resumption of the Second Reading debate of the Bill having regard to members' views on the supplementary information.)

III Any other business

6. There being no other business, the meeting ended at 3:50 pm.

**Proceedings of the
Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2009
Second meeting on Tuesday, 6 October 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000410 – 000455	Chairman Mr Tommy CHEUNG	Confirmation of minutes of the first meeting held on 17 July 2009 (LC Paper No. CB(1)2461/08-09).	
Administration's response to the submissions			
000456 – 000820	Chairman Administration	Briefing by the Administration on response to the submissions from Hong Kong Institute of Certified Public Accountants, Ernst & Young Tax Services Limited, and PricewaterhouseCoopers Limited (LC Paper No. CB(1)2664/08-09(04)).	
Clause-by-clause examination of the Bill			
000821 – 002252	Chairman Administration Mr James TO	<p>Part 1</p> <p>Preliminary</p> <p><u>Clause 1 – Short title</u></p> <p>Members raised no question on clause 1.</p> <p>Part 2</p> <p>Amendments Relating to Administration of Inland Revenue Ordinance</p> <p><u>Clause 2 – Interpretation</u></p> <p>(a) Mr James TO's concern about the impact of the proposed amendment to the definition of "owner" on property tax assessments and the current practice for IRD to raise property tax assessments on rental income for common parts of a building.</p> <p>(b) The Administration's advice that whilst the Commissioner of Inland Revenue (the Commissioner) could raise tax assessment on Owners' Corporation concerned or on all the owners of a building where there was no Owners' Corporation under the existing practice, the proposed amendment would</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>provide clarity and avoid unnecessary dispute.</p> <p>(c) Mr James TO's further enquiry whether the amended definition of "owner" would be exhaustive, such as covering persons who had no right to the property in question nor authorization from owners to collect rental income on the common parts.</p> <p>(d) The Administration's response that the proposed definition of "owner" was an inclusive definition and was broad enough to cover persons receiving rental income on common parts of a building, including those mentioned by Mr TO above.</p> <p><u>Clause 3 – Establishment of Board of Inland Revenue. Power of Chief Executive to appoint a Commissioner and other officers</u></p> <p>Members raised no question on clause 3.</p>	
002253 – 002751	Chairman Administration Mr James TO	<p><u>Clause 4 – Ascertainment of chargeable profits</u></p> <p>(a) Mr James TO's concern about a clear definition of "environmental protection machinery" in the legislation to prevent abuse. In response, the Administration's advice that environmental protection machinery, as defined in section 16H(1) of IRO, means "any machinery or plant that is specified in Part 1 of Schedule 17" to IRO.</p> <p>(b) Mr James TO's further enquiry on objective assessment of whether a machinery or plant met the criteria for classification as environmental protection machinery.</p> <p>(c) The Administration's explanation that the machinery or plant had to comply with necessary statutory or registration requirements in this regard. For example, Part 1 of Schedule 17 to IRO specified that one of the environmental protection machinery was low noise construction machinery or plant registered under the Quality Powered Mechanical Equipment system administered by the Environmental Protection Department.</p>	

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002752 – 002833	Chairman Administration	<p><u>Clause 5 – Cessation of source of profits in years of assessment commencing on 1 April 1975</u></p> <p><u>Clause 6 – Approved charitable donations (Part IVA)</u></p> <p>Members raised no question on clauses 5 to 6.</p>	
002834 – 003214	Chairman Administration Mr James TO	<p><u>Clause 7 – Home loan interest</u></p> <p>(a) In response to Mr James TO's concern about the purpose of the proposed amendment, the Administration's advice that under the existing provision, in case a taxpayer withheld claiming the home loan interest deduction for a particular year until the sixth year after, and revoked the claim within six months after the deduction was allowed, IRD might be time-barred to raise an additional assessment for that particular year. The proposed amendment to section 26E sought to plug this loophole by empowering an assessor to make an additional assessment, within two years after the revocation of the home loan interest deduction claim, if the revocation was made after the six-year statutory period.</p> <p>(b) As to Mr James TO's further enquiry, the Administration's advice that one of the possible reasons for a taxpayer to revoke the claim was the taxpayer's anticipation of claiming more home loan interest deduction for another property of a higher value.</p>	
003215 – 003222	Chairman Administration	<p><u>Clause 8 – Power to issue search warrant</u></p> <p>Members raised no question on clause 8.</p>	
003223 – 004037	Chairman Administration Mr James TO	<p>Part 3</p> <p>Amendments Relating to Board of Review</p> <p><u>Clause 9 – Constitution of the Board of Review</u></p> <p>(a) Mr James TO's concern about the proposal that a person who ceased to be a member of the Board of Review (such as a retired member) would also be allowed to handle a case that he had handled before in the three circumstances stated in paragraph 5 of the Legislative Council Brief (FIN CR 1/2306/09). Mr TO's question</p>	

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		<p>about the consistency of the operation of the Board of Review with that of other review/appeal boards in this regard.</p> <p>(b) The Administration's explanation that the proposed amendment aimed to smooth the operation of the Board of Review and enhance its efficiency. Notwithstanding his appreciation of the Administration's aim to enhance the efficiency of the Board of Review, Mr TO requested the Administration to provide examples of the operation of other review/appeal boards to illustrate whether the proposed arrangement was consistent with those of similar boards, and if the arrangement was unique, to provide reasons for that.</p>	<p>The Administration to take follow-up action as required in paragraph 3 of the minutes.</p>
004038 – 004450	Chairman Administration Mr James TO	<p><u>Clause 10 – Right of appeal to the Board of Review</u></p> <p>(a) Mr James TO's concern about the possible impact of the proposed repealing of the provision that section 66(1A) should apply to an appeal relating to any assessment the notice of which was given on or after 1 April 1971. His view that the provision should preferably be kept unless there was a real need for the repeal.</p> <p>(b) The Administration's advice that as a taxpayer who wished to lodge an appeal should lodge it within one month after the notice of assessment, unless otherwise with strong reasons such as sickness, the proposed deletion, which applied to a notice of assessment given on or after 1 April 1971, would not deprive a taxpayer of the right to appeal. Moreover, given the six-year time limit for raising additional assessment or new assessment, assessment would not be made on cases dated back to 1971.</p>	
004451 – 004829	Chairman Administration Mr James TO	<p><u>Clause 11 – Section added</u></p> <p><i>68A – Power of Board of Review to correct clerical mistakes and other errors</i></p> <p>(a) Mr James TO's concern whether the proposed section 68A(b) which empowered the Board of Review to correct "any error in any decision of the Board arising from any accidental slip or omission" was in line with the practice of similar boards.</p>	

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		<p>(b) The Administration's advice that the proposed section 68A was modeled on Order 20 rule 11 of the Rules of the High Court (Cap. 4A) and Order 20 rule 11 of the Rules of the District Court (Cap. 336H).</p> <p>(c) In response to Mr James TO's further enquiry, the Administration's advice that as shown from previous court rulings, examples of "accidental slip or omission" included error in computation and omission to ask for a certificate for counsel in an application for costs order.</p>	
004830 – 005050	Chairman Administration	<p>Part 4</p> <p>Miscellaneous and Minor Amendments to Inland Revenue Ordinance and its Subsidiary Legislation</p> <p><i>Division 1—Inland Revenue Ordinance</i></p> <p><u>Clause 12 – Provisions regarding payment of tax</u></p> <p>In response to the Chairman's enquiry on the status of the Tax Reserve Certificates (TRCs) after the Commissioner had repaid the remaining balances with interest to relevant taxpayers, the Administration's advice that the proposed amendment aimed to help clear the unclaimed balances more effectively after finalization of objections. While the relevant taxpayers would not be required to surrender their TRCs under the proposed arrangement, the balance of their TRCs would be recorded in the TRC deposit accounts.</p> <p><u>Clause 13 – Penalties for failure to make returns, making incorrect returns, etc.</u></p> <p>Members raised no question on clause 13.</p>	
005051 – 010858	Chairman Administration Mr James TO	<p><u>Clause 14 –Breach of secrecy and other matters to be offences</u></p> <p>(a) Mr James TO's concern about the fairness of the proposal to extend the period within which prosecution of breaches of the secrecy provisions of IRO by staff members of IRD might be brought from six months to six years.</p> <p>(b) The Administration had explained that a time</p>	

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		<p>limit for prosecution was currently not specified in the secrecy provisions of IRO and reference had been drawn to the provision of the Magistrates Ordinance (Cap. 227) on the six-month limit. Given the significance of the secrecy provisions, a six-month prosecution time limit was considered insufficient to enable legal actions against breaches. The Administration had therefore proposed to align the limit with similar provisions under BRO, which were also under the purview of IRD.</p> <p>(c) Mr TO's enquiry on whether IRD had encountered difficulties in instituting prosecutions against staff in breach of the secrecy provisions in the past due to expiry of the six-month period.</p> <p>(d) The Administration's advice that there was only one case where consideration had been given as to whether there was a breach of the secrecy provisions but no legal action had been taken after seeking legal advice.</p> <p>(e) Mr TO's emphasis that in deciding the time limit for instituting prosecution, a correct balance should be struck between enforcing compliance with the secrecy provisions and litigation fairness, making reference to legislation other than BRO and overseas practices.</p>	<p>The Administration to take follow-up action as required in paragraph 4 of the minutes.</p>
010859 – 011243	Chairman Administration	<p><u>Clause 15 – Penal provisions relating to fraud, etc.</u></p> <p><u>Clause 16 – Appeals against assessment to additional tax to Board of Review</u></p> <p><u>Clause 17 – Transitional provisions</u></p> <p><u>Clause 18 – Allowances</u></p> <p><u>Clause 19 – Schedule 6 amended</u></p> <p><u>Clause 20 – Transitional provisions relating to the Inland Revenue (Amendment) (No. 2) Ordinance 1993</u></p> <p><i>Division 2—Specification of Arrangements (Government of the Kingdom of Belgium Concerning Air Services) (Double Taxation) Order</i></p>	

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		<p><u>Clause 21 – Repeal</u></p> <p>Part 5</p> <p>Consequential Amendments to Tax Reserve Certificates Ordinance and its Subsidiary Legislation</p> <p><i>Division 1—Tax Reserve Certificates Ordinance</i></p> <p><u>Clause 22 – Power of Commissioner to issue tax reserve certificates and maintain accounts</u></p> <p><i>Division 2—Tax Reserve Certificates (Fourth Series) Rules</i></p> <p><u>Clause 23 - Schedule 1 amended</u></p> <p>Members raised no question on clauses 15 to 23.</p>	
011244 – 011548	Chairman Administration Mr Tommy CHEUNG	Way forward	