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

Background Brief

Purpose

This paper sets out the background of the Inland Revenue (Amendment) (No. 2) Bill 2009 (the Bill) and summarizes the views and concerns of members of the Panel on Financial Affairs (FA Panel) on the proposed legislative amendments.

Proposed legislative amendments

2. The Board of Review (the Board) is a statutory body constituted under the Inland Revenue Ordinance (Cap. 112) (IRO) to hear tax appeals. To smooth the operation of the Board, the Government proposes to introduce the following legislative amendments: -

- (a) to empower the Board to correct clerical mistakes in its written decisions on tax appeals;
- (b) to stipulate that members of the Board are to be nominated by the chairman, rather than the Chief Secretary for Administration, to hear appeals;
- (c) to allow a retired member to handle a case that he has handled previously, under certain circumstances¹, and be remunerated for performing such functions; and
- (d) to make it clear that either the chairman or the deputy chairman will be the presiding officer to the hearing and only the presiding officer

¹ The circumstances specified in the Legislative Council Brief are: (a) when the court remits a case to the Board for re-hearing; (b) when the Board has dismissed a case, but later on accepts the appellant's application for re-hearing; and (c) when the appellant or the Inland Revenue Department dissatisfied with the Board's decision, requests the Board to state a case on a question of law for the opinion of the Court of First Instance.

has the casting vote.

3. The Government also proposes the following technical amendments to improve the administration of IRO:

- (a) to allow interest payment on capital expenditure incurred in purchasing machinery and plant for research and development, prescribed fixed assets or environmental protection machinery² to be explicitly deductible from profits tax;
- (b) to empower the assessors to make additional assessments, within two years after the revocation of the claim for home loan interest deduction, of such claim if the revocation is made after the six-year statutory period. This seeks to plug the loophole where IRO stipulates that an additional assessment can only be raised within six years after the relevant year but a taxpayer can withhold claiming the home loan interest deduction for a particular year until the sixth year after, and revoke the claim within six months after the deduction is allowed;
- (c) to amend the definition of "owner" in IRO so that a property tax assessment can be raised on the Owners' Corporation registered under the Building Management Ordinance (Cap. 344) or the person who receives rental income on common parts of a building (e.g. the building management company);
- (d) to extend the period within which prosecution of breaches of secrecy provision of IRO by IRD staff members may be brought from six months to six years to align with similar provisions under the Business Registration Ordinance (Cap. 310);
- (e) to empower the Commissioner of Inland Revenue to repay the remaining balances of Tax Reserve Certificates (TRCs) with interest to relevant taxpayers unilaterally without asking the taxpayers to surrender their TRCs. Consequential amendments to the Tax Reserve Certificates Ordinance (Cap. 289) and its subsidiary legislation will also be made to reflect the proposal; and
- (f) minor textual amendments to IRO for achieving consistency and removing spent provisions.

² Under the existing provisions, interest payment on capital expenditure incurred in purchasing machinery and plant is explicitly deductible from profits tax if the expenditure qualifies for depreciation allowance. As these machinery and plant and assets mentioned in paragraph 3(a) have been allowed a 100% upfront deduction in the year of purchase and no longer qualify for depreciation allowance, any interest payment on capital expenditure incurred in their purchase is currently not explicitly deductible from profits tax.

Major views and concerns expressed by the Panel on Financial Affairs

4. The Administration briefed FA Panel on the proposed legislative amendments at the meeting on 6 April 2009. Panel members expressed the following views and concerns —

- (a) In relation to the operation of the Board, there were concerns about the computation of remuneration for members of the Board serving in the hearing panel, and whether a proper nomination mechanism would be put in place to ensure the fairness and objectivity of the nominations.
- (b) Since the issues covered by the proposed amendments to improve the administration of IRO had been handled through administrative measures, some members were concerned whether such an arrangement had in the past resulted in loss of tax revenue.
- (c) In relation to the proposed amendment to the definition of "owner", a member expressed concern that IRD might conduct more property tax assessments on Owners' Corporations after enactment of the Bill.
- (d) Considering that taxpayers might not have the incentive to surrender their TRCs which might provide higher interest returns, a member suggested the Administration consider returning the remaining balance of the TRCs without any interest, or imposing a financial penalty if the remaining balance was not claimed before a specified period. This could reduce the difficulty and resources required in handling the unclaimed money in the TRC deposit account.

Relevant papers

5. Relevant papers are available at the following links:

The Administration's paper for the FA Panel meeting on 6 April 2009

<http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa0406cb1-1177-3-e.pdf>

Minutes of FA Panel meeting on 6 April 2009 (paragraphs 10 to 20)

<http://www.legco.gov.hk/yr08-09/english/panels/fa/minutes/fa20090406.pdf>