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CB(1)2664/08-09(02)

Ms Rosalind Ma
 Clerk to Bills Committee
 Inland Revenue (Amendment) (No. 2) Bill 2009
 Legislative Council Building
 8 Jackson Road
 Central
 Hong Kong

Dear Ms Ma,

Re: Inland Revenue (Amendment) (No. 2) Bill 2009

Thank you for your letter dated 7 September 2009 inviting us to make submission on the captioned Bill. In response, we would like to express our views on Clause 11 of the Bill.

In the Legislative Council Brief (Brief) for the Bill, the Government explains that the Board of Review "currently has no authority to correct mistakes in its written decisions on tax appeals if the correction would prejudice one of the parties, notwithstanding that such mistakes are obvious clerical mistakes." For this reason, the Government proposes to amend the legislation to empower the Board to do so.

However, Clause 11, by adding a new section 68A to the Inland Revenue Ordinance, empowers the Board not only to correct clerical mistakes but also "any error in any decision of the Board arising from any accidental slip or omissions."

It appears to us that, if the proposed section 68A is enacted, such a subsequent correction could result in the tax position of one of the parties in an appeal based on the original decision being prejudiced by the correction. For otherwise there may not be much point to make the correction, or the correction can in any case be done under the current system.

If the above observation is correct, we are of the view that this would add uncertainties to the finality of a decision of the Board. This is because firstly there is no specific limit on the time frame or number of times such a correction under the proposed section 68A can be made.

Furthermore, a party losing a case may be inclined to make further submission after a formal decision has been issued that the decision should be changed on the alleged grounds that the Board has made an accidental slip or omission.



Ms Rosalind Ma
Clerk to Bills Committee

In fact, from the wording of the proposed section 68A, it is not entirely clear that the phrase "accidental slip or omission" refers to that made by the Board or by the parties involved in an appeal. If it is also capable of including the latter, then a decision of the Board may hardly become final and conclusive.

There are also no explicit corresponding provisions governing an appeal against a decision of the Board corrected under the proposed section 68A.

From time to time, a decision of the Board may be viewed as being in error resulting from the Board's accidental slip and omission. Currently, the parties involved in such a decision could seek remedy by appealing against the decision to the courts. In this respect, we have not heard much view from practitioners that the current system is deficient and needs to be changed.

In fact, we have not experienced any significant problem which could be said to have been caused by a clerical mistake or an accidental slip or omission of a decision of the Board.

As such, we consider that, in addition to addressing the points raised above, the Government, if it wants to push through the proposed legislation, may also need to further explain why it thinks the current system is deficient, and how the proposed section 68A is consistent with the means other tribunals and courts seek to correct errors of similar nature.

Should you wish us to clarify any of the above points, please feel free to contact the undersigned at 2846 9921 or Patrick Kwong at 2846 9810.

Yours sincerely,
For and on behalf of
Ernst & Young Tax Services Limited

A handwritten signature in black ink, appearing to be 'Agnes Chan', written over a faint, illegible stamp.

Agnes Chan
Partner