



財經事務及庫務局
(庫務科)
香港下亞厘畢道
中區政府合署

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FINANCIAL SERVICES AND THE
TREASURY BUREAU
(The Treasury Branch)
Central Government Offices,
Lower Albert Road,
Hong Kong

傳真號碼 Fax No. : 2530 5921
電話號碼 Tel. No. : 2810 2370
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19 October 2009

Ms Rosalind Ma
Clerk to Bills Committee on
Inland Revenue (Amendment)(No.2) Bill 2009
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong
(By fax: 2121 0420)

Dear Ms Ma,

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

Follow-up to second meeting on 6 October 2009

Thank you for your letter of 7 October 2009. The additional information requested by the Bills Committee is provided in the ensuing paragraphs.

To allow a retired member to handle a case that he has handled before

As stated in paragraph 5 of the Legislative Council Brief, the Administration proposes to empower a retired member of the Board of Review to handle a case he has previously handled in the following circumstances –

- (a) when the court remits a case to the Board for rehearing;
- (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.

We note that the Accreditation of Academic and Vocational Qualification Ordinance (Cap. 592) and the Accreditation of Academic and Vocational Qualifications (Appeal) Rules (Cap. 592A) allow a retired member of the Appeal Board established under the Ordinance to continue to hear an appeal in the circumstance described at (b) above.

Circumstances described at (a) and (c) above arise from the so-called "case stated procedures". Like the Board of Review, four other appeal boards adopt the case stated procedures and allows retired members to continue to hear an on-going appeal. These four appeal boards are the Telecommunications (Competition Provisions) Appeal Board, Municipal Services Appeals Board, Administrative Appeals Board and Unsolicited Electronic Messages (Enforcement Notices) Appeal Board.

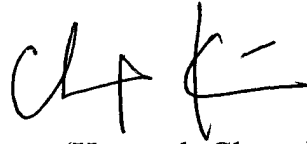
None of the governing legislations of these four appeal boards has explicit provisions to allow a retired member to continue to handle a previous case in circumstances described at (a) and (c) above. However, it should be noted that there were altogether only three applications for these four appeal boards to state a case to the court in the past three years, while the Board of Review received 33 such applications in the same period. Therefore, we consider that there is a practical need for the Board of Review to be granted the proposed flexibility in redeploying retired members.

To extend the prosecution period for breaches of secrecy provisions

We note that there is no time limit for prosecution of breaches of secrecy provisions in a number of ordinances, e.g. the Official Secrets Ordinance (Cap. 521) and Securities and Futures Ordinance (Cap. 571).

The tax legislations of the United Kingdom, Singapore, Australia and New Zealand also impose a legal duty on staff members to preserve the secrecy of tax information. However, there is no prosecution time limit in such legislations for breaches of secrecy provisions in those countries.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'CK', written over a horizontal line.

(Kenneth Cheng)

for Secretary for Financial Services
and the Treasury

c.c. CIR (Attn: Mr K K Chiu)
(Attn: Mr K C Yim)
DoJ (Attn: Ms Angie Li)
BOR (Attn: Mr Simon Yip)

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