

立法會
Legislative Council

LC Paper No. CB(1)1087/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/08/2

Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009

Sixth meeting on
Thursday, 26 November 2009, at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon James TO Kun-sun
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Starry LEE Wai-king
Hon CHAN Kin-por, JP
- Members absent** : Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon CHIM Pui-chung
- Public officers** : Ms Julia LEUNG
Attending Under Secretary for
Financial Services and the Treasury
- Mr Clement LEUNG
Deputy Secretary for
Financial Services and the Treasury (Treasury)
- Mr Kenneth CHENG
Principal Assistant Secretary for
Financial Services and the Treasury (Treasury)

Mr CHU Yam-yuen
Deputy Commissioner of Inland Revenue

Mr Michael LAM
Senior Assistant Law Draftsman
Department of Justice

Ms Rayne CHAI
Senior Government Counsel
Department of Justice

Ms Agnes CHEUNG
Senior Government Counsel
Department of Justice

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

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Noel SUNG
Senior Council Secretary (1)4

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)408/09-10 — Minutes of meeting on 27 October 2009

LC Paper No. CB(1)465/09-10 — Minutes of meeting on 5 November 2009)

The minutes of the meetings held on 27 October and 5 November 2009 were confirmed.

II Meeting with the Administration

Follow-up to issues raised at previous meetings

(LC Paper No. CB(1)466/09-10(01) — List of follow-up actions arising from the meeting on 12 November 2009 prepared by the Legislative Council Secretariat

- LC Paper No. CB(1)466/09-10(02) — Administration's response to the issues raised at the meeting on 12 November 2009
- LC Paper No. LS16/09-10 — Paper for the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009 prepared by the Legal Service Division of the Legislative Council Secretariat
- LC Paper No. CB(1)327/09-10(02) — Administration's response to the issues raised at the meeting on 5 November 2009
- LC Paper No. CB(1)260/09-10(02) — Administration's response to the issues raised at the meeting on 27 October 2009
- IN03/09-10 — Information note on Income Tax (Amendment) (Exchange of Information) Bill 2009 of Singapore prepared by the Research and Library Services Division of the Legislative Council Secretariat
- LC Paper No. CB(1)106/09-10(02) — Administration's response to the issues raised at the meeting on 8 October 2009)

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)751/08-09 — The Bill
- FIN CR 12/2041/46 — The Legislative Council Brief issued by the Financial Services and the Treasury Bureau
- LC Paper No. CB(1)2622/08-09(18) — Marked-up copy of the Bill prepared by the Legal Service Division of the Legislative Council Secretariat
- LC Paper No. CB(1)2622/08-09(19) — Letter from Assistant Legal Adviser to the Administration dated 14 August 2009

LC Paper No. CB(1)2682/08-09(08) — Administration's response to the Assistant Legal Adviser's letter)

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

Follow-up actions to be taken by the Administration

3. In connection with the Administration's agreement to add provisions in the proposed Inland Revenue (Disclosure of Information) Rules (the Rules) to address members' concerns about safeguards to protect individual privacy and confidentiality of information in the exchange of information (EoI) under comprehensive avoidance of double taxation agreements (CDTAs) (as set out in Annex C to LC Paper No. CB(1)466/09-10(02)), the Administration was requested to:

- (a) provide the revised draft of the Rules for members' consideration; and
- (b) consider Mr James TO's request of subjecting the Rules to the positive vetting procedure instead of the negative vetting procedure, so that Members' right to object to any future amendments to the Rules would be less restricted.

4. In relation to members' concern about the drafting of the Departmental Interpretation and Practice Notes (DIPN) at Annex B to LC Paper No. CB(1)466/09-10(02), the Administration was requested to consider refining the wordings of the draft in response to the following:

- (a) concern shared by Mr James TO and Mr Alan LEONG about measures to prevent abuse of the EoI arrangement by the requesting party to obtain information not relevant to taxation matters. In this connection, the Administration was requested to consider Mr TO's suggestion of providing examples to illustrate cases of "bona-fide" requests in paragraph 16, as well as examples of cases which fell outside the interpretation of "bona-fide" requests and therefore would not be entertained;
- (b) the Chairman's concern about clarity of the phrase "may not be used" in paragraph 25 and his view of revising this to, say "shall not be used";
- (c) Mr James TO's concern whether "fiscal information" and "non-fiscal crimes" in paragraph 25 meant "tax information" and "non-tax related crimes or offences";
- (d) Mr James TO's concern whether the scope of information exchange under CDTAs would be appropriate if the requesting party should resort to other means (for example, through mutual legal assistance) "if the information appears to be of value to the requesting party for another purpose" in paragraph 25; and

- (e) Mr James TO's concern about the "legitimate reasons from the requesting party" on the basis of which Hong Kong would permit disclosure of information exchanged to oversight authorities in paragraph 29. In this connection, the Administration should consider the Chairman's suggestion of setting out clearly that such disclosure would be in accordance with the provisions in the respective CDTAs only.

5. In relation to Mr James TO's concern, the Administration was requested to illustrate, with example of CDTAs in force or those under negotiation, the impact and benefits of adopting the latest international standard for EoI arrangement for the Hong Kong community and the taxpayers.

(Post-meeting note: The Administration's response to paragraphs 3 to 5 above were circulated to members vide LC Paper Nos. CB(1)494/09-10(02) and CB(1)573/09-10(02) on 30 November and 4 December 2009 respectively.)

III Any other business

Meeting arrangements

6. The Chairman reminded members that the next meeting was scheduled for Tuesday, 1 December 2009 at 10:45 am. At the request of the Administration, members agreed that additional meetings be scheduled before mid-December 2009 to expedite the scrutiny work of the Bills Committee. The Secretariat would work out the schedule of additional meetings in consultation with the Chairman and notify members in due course.

(Post-meeting note: At the instruction of the Chairman, an additional meeting was scheduled for 7 December 2009. Members were informed of the meeting arrangement vide LC Paper No. CB(1) 495/09-10 on 2 December 2009.)

7. There being no other business, the meeting ended at 10:40 am.

**Proceedings of the
Bills Committee on Inland Revenue (Amendment) (No.3) Bill 2009
Sixth meeting on Thursday, 26 November 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

| Time Marker | Speaker | Subject(s) | Action Required |
|--|--|---|---|
| 000148 – 000251 | Chairman | (a) Introductory remarks (b) Confirmation of minutes of meetings | |
| Follow-up to issues raised at previous meetings | | | |
| 000252 – 001132 | Chairman Administration | Briefing by the Administration on the response to issues raised at the meeting on 12 November 2009 (LC Paper No. CB(1)466/09-10(02)). | The Administration to take action as required in paragraph 3(a) of the minutes. |
| 001133 – 001355 | ALA4 | Briefing by ALA4 on the paper prepared by the Legal Service Division of the Legislative Council Secretariat (LC Paper No. LS16/09-10). | |
| 001356 – 003410 | Mr James TO Administration ALA4 Ms Starry LEE | (a) Mr James TO's view that the proposed Rules to provide for the domestic safeguards should be subject to the positive vetting procedure, so that Members' right to object to any future amendments to the Rules would be less restricted (as the amendments proposed by the Administration to subsidiary legislation subject to positive vetting would be negated by a simple majority of the Members voting against the amendments). (b) The Administration's advice that under the existing provisions, rules made under section 49(6), as well as other rules made under the Inland Revenue Ordinance (Cap. 112) (IRO), were subsidiary legislation subject to negative vetting. Mr TO's suggestion involved a fundamental issue not only related to this particular set of Rules but also the procedures for making amendments to other subsidiary legislation. The Administration's view that Members would be able to examine the propriety and give views on the subsidiary legislation concerned through the negative vetting procedure. (c) ALA4's explanation on the legislative procedures for subsidiary legislation subject to | The Administration to take action as required in paragraph 3(b) of the minutes. |

| Time Marker | Speaker | Subject(s) | Action Required |
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| | | <p>positive vetting and negative vetting.</p> <p>(d) In response to Ms Starry LEE's enquiry, ALA4's advice that as far as he knew, all the rules made under IRO were subject to negative vetting. There was nevertheless no hard and fast rule for all subsidiary legislations under the same ordinance to be subject to the same legislative procedure.</p> | |
| 003411 – 004925 | Chairman Administration Mr James TO | Comments and enquiries on the sample text of CDTA and the draft DIPN. The Chairman's view that the phrase "may not be used" in paragraph 25 of the DIPN should be revised to say "shall not be used". | The Administration to take action as required in paragraph 4(b) of the minutes. |
| 004926 – 010845 | Mr James TO Administration | <p>(a) Mr James TO's concern about the types of taxes covered, and the impact and benefits of adopting the latest international standard for EoI arrangement for the Hong Kong community and the taxpayers.</p> <p>(b) The Administration's advice that it would seek to confine the scope of information exchange to income taxes only during negotiations with treaty partners. EoI arrangement would be made in accordance with the scope of information exchange stipulated in the relevant CDTAs. The Administration also explained briefly the potential benefits under a CDTA, such as avoidance of double taxation, reduced withholding tax rates for passive incomes.</p> | The Administration to take action as required in paragraph 5 of the minutes. |
| 010846 – 012050 | Mr James TO Administration Ms Starry LEE | <p>(a) Mr James TO's following concerns about the drafting of paragraph 25 of the DIPN:</p> <p>(i) whether "fiscal information" and "non-fiscal crimes" in the paragraph meant "tax information" and "non-tax related crimes or offences"; and</p> <p>(ii) whether the scope of information exchange under CDTAs would be appropriate if the requesting party should resort to other means (for example, through mutual legal assistance) "if the information appears to be of value to the requesting party for another purpose".</p> | The Administration to take action as required in paragraph 4(c) and 4(d) of the minutes. |

| Time Marker | Speaker | Subject(s) | Action Required |
|--------------------|--|--|---|
| | | (b) Responding to Ms Starry LEE's concern about the confidentiality of the information exchanged, the Administration's advice that according to the provisions in CDTA sample text, any information received by a contracting party should be treated as secret and should be disclosed only to persons or authorities concerned with the assessment and administration of taxes. | |
| 012051 – 013030 | Mr James TO Chairman | Mr James TO's concern about the "legitimate reasons from the requesting party" on the basis of which Hong Kong would permit disclosure of information exchanged to oversight authorities in paragraph 29 of the DIPN. | The Administration to take action as required by paragraph 4(e) of the minutes. |
| 013031 – 015822 | Mr Alan LEONG Mr James TO Administration | (a) Mr Alan LEONG's concern about measures to ensure the confidentiality of information exchanged. (b) The Administration's response that in negotiating a CDTA, it would ensure that the domestic laws of the contracting party would provide a comparable protection for the confidentiality of information exchanged as the laws of Hong Kong. Safeguards would be incorporated in the CDTA to protect such confidentiality. Contracting parties had the obligation to ensure compliance with the provisions agreed in CDTAs, failing which the other party might raise objections, refuse further EoI requests or even seek to terminate the relevant CDTA. (c) Concern shared by Mr LEONG and Mr James TO about measures to prevent abuse of the EoI arrangement. | The Administration to take action as required in paragraph 4(a) of the minutes. |
| 015823 – 020518 | Chairman Administration Mr James TO | Way forward and meeting arrangements. | |