

立法會
Legislative Council

LC Paper No. CB(1)844/09-10
(These minutes have been seen by
the Administration)

Ref : CB1/BC/10/08/2

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

**Seventh meeting on
Tuesday, 1 December 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon James TO Kun-sun
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king
Hon CHAN Kin-por, JP

Members absent : Hon CHAN Kam-lam, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP

**Public officers
Attending** : Ms Julia LEUNG
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 Meeting with the Administration

Follow-up to issues raised at previous meetings

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| (LC Paper No. CB(1)494/09-10(01) | —List of follow-up actions arising from the meeting on 26 November 2009 prepared by the Legislative Council Secretariat |
| LC Paper No. CB(1)494/09-10(02) | —Administration's response to the issues raised at the meeting on 26 November 2009 |
| LC Paper No. CB(1)494/09-10(03) | —Summary of further views submitted by various organizations on safeguards to protect individuals' right to privacy and confidentiality of information |

- 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)

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

Follow-up actions to be taken by the Administration

2. The Chairman and Mr James TO were concerned whether the draft provision in paragraph 4A of the proposed Inland Revenue (Disclosure of Information) Rules (the Rules) could clearly set out the policy that the exchange of information (EoI) arrangement under comprehensive avoidance of double taxation agreements (CDTAs) would have no retrospective effect. To address their concern, the Administration was requested to consider revising paragraph 4A along the following line: "The Commissioner **shall not** disclose any information in response to a disclosure request **unless** the Commissioner is satisfied that the information does not relate to any period before the relevant arrangements that are applicable to the request come into operation".

3. Ms Miriam LAU expressed concern about the discretionary power of the Commissioner of Inland Revenue (the Commissioner) to refuse a disclosure request under paragraph 4(ii) of the Rules. In this connection, the Administration was requested to refine the draft by making reference to section 105D(2) of the Income Tax (Amendment) (Exchange of Information) Act of Singapore (the Singapore legislation).

4. Mr James TO expressed concern about the justifications provided by a requesting party to substantiate its request for not giving notification or prior notification of the disclosure request to the taxpayer concerned (paragraphs 7 and 8 of the Rules). In this connection, the Administration was requested to examine whether elaboration could be provided by revising item 10 of the Schedule to the Rules.

5. Mr James TO was concerned that the drafting of the proposed section 49(1A)(a) which stipulated that arrangements specified in CDTAs "shall have effect in relation to tax under this Ordinance despite anything in any enactment" might result in excessive overriding effect on provisions in other ordinances. To address Mr TO's concern, the Administration was requested to examine the propriety of the proposed section 49(1A)(a), taking into consideration the suggestion of the legal adviser to the Bills Committee to revise the proposed subsection by adding, say, "provisions in relation to the collection of tax" after the word "despite".

6. In response to the view expressed by Ms Miriam LAU and Mr Jeffrey LAM about consistency in law drafting, the Administration was requested to consider the merits of amending section 49(1) by replacing the word "notwithstanding" by "despite", to achieve consistency with the drafting of the proposed section 49(1A)(a).

(Post-meeting note: The Administration's response to paragraphs 2 to 6 above was circulated to members vide LC Paper No. CB(1)573/09-10(02) on 4December 2009.)

II Any other business

7. Members agreed that the eighth meeting of the Bills Committee should be held on Monday 7 December 2009 at 4:30 pm.

8. There being no other business, the meeting ended at 12:15 pm.

Council Business Division 1
Legislative Council Secretariat
6 January 2010

**Proceedings of the
Bills Committee on Inland Revenue (Amendment) (No.3) Bill 2009
Seventh meeting on Tuesday, 1 December 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000144 – 000315	Chairman	Introductory remarks	
Follow-up to issues raised at previous meetings			
000316 – 001235	Chairman Administration	Briefing by the Administration on the response to issues raised at the meeting on 26 November 2009 (LC Paper No. CB(1) 494/09-10(02)).	
001236 – 001719	Chairman Ms Miriam LAU Administration	(a) At the advice of the Chairman, the Administration undertook to correct a typo in the English version of item 8 of the Schedule to the Rules (Annex A to LC Paper CB(1)494/09-10(02)). (b) Concern shared by the Chairman and Ms Miriam LAU about clarity of the term "relevant arrangements" used in the Rules (i.e. in paragraph 4A of the Rules and item 7 of the Schedule to the Rules) (c) The Administration's advice that the term "relevant arrangements" used in the Rules referred to the CDTAs under which the EoI request is made.	
001720 – 002035	Ms Miriam LAU Administration	Ms Miriam LAU's reference to the difference in drafting between section 105D(2) of the Singapore legislation and paragraph 4(ii) of the Rules. Her concern that the drafting of paragraph 4(ii) of the Rules might allow the Commissioner too much discretion in acceding to a request which did not contain the particulars set out in the Schedule.	The Administration to take action as required in paragraph 3 of the minutes.
002036 – 002229	Chairman Mr James TO Ms Miriam LAU	Concern shared by the Chairman, Mr James TO and Ms Miriam LAU whether the provision in paragraph 4A of the draft Rules could clearly set out the policy that the EoI arrangement under CDTAs would have no retrospective effect.	The Administration to take action as required in paragraph 2 of the minutes.
002230 – 002820	Mr James TO Ms Miriam LAU Assistant Legal	(a) Mr James TO's concern about the commencement date of the Rules and the procedure for gazettal of the Rules to tie in	

Time Marker	Speaker	Subject(s)	Action Required
	Adviser 4 (ALA4) Administration	with the commencement of the Amendment Ordinance. (b) Advice of ALA4 and the Administration that arrangements would be made for the Rules and the Amendment Ordinance to come into operation on the same day.	
002821 - 003720	Mr James TO The Chairman Administration	(a) Concern of Mr James TO and the Chairman about the justifications provided by a requesting party to substantiate its request for not giving notification or prior notification of the disclosure request to the taxpayer concerned (paragraph 7 and 8 of the Rules). The Chairman's suggestion that elaboration on the details of information to be provided by the requesting party to justify its claim might be provided by revising item 10 of the Schedule to the Rules. (b) The Administration's response that the Commissioner had to examine and decide whether sufficient and sound justifications were given by the requesting party for not giving notification or prior notification in circumstances under paragraph 7(b) and 8. Administrative guidelines on how IRD would consider a requesting party's claim for not giving prior notification to the person concerned were provided in paragraphs 57 and 58 of the draft Departmental Interpretation and Practice Note. (c) Responding to Mr TO's further enquiry, the Administration's advice that under the scenario of "tight time constraint", the person concerned would be notified concurrently when IRD replied to the requesting party. The requesting party would also need to satisfy IRD that there was no deliberate or undue delay in making a request.	The Administration to take action as required in paragraph 4 of the minutes.
003721 - 004654	Chairman Mr James TO Administration	(a) Mr James TO's reference to the interpretation of "ground for believing" in item 5 of the Schedule to the Rules. His concern about abuse by the requesting party to obtain excessive information relating to many persons through a disclosure request. (b) The Administration's response that in line	

Time Marker	Speaker	Subject(s)	Action Required
		with international practice, the requesting party had to justify that the information requested was "foreseeably relevant" to the investigation of a taxation case, and provide the name and address of the person(s) in Hong Kong believed to be in possession of the information requested.	
Clause-by-clause examination of the Bill			
004655 – 005056	Chairman Administration	<u>Clause 1 – Short title</u> <u>Clause 2 – Commencement</u> <u>Clause 4 – Tax credits</u> Members raised no question on clauses 1 to 2 and clause 4.	
005057 – 011300	Chairman Mr James TO Administration ALA4 Ms Miriam LAU Mr Jeffrey LAM	<u>Clause 3 – Double taxation arrangements</u> (a) Mr James TO's concern that the drafting of the proposed section 49(1A)(a) which stipulated that arrangements specified in CDTAs "shall have effect in relation to tax under this Ordinance despite anything in any enactment" might result in excessive overriding effect on provisions in other ordinances. (b) The Administration's advice that the intention of the phrase "despite anything in any enactment" in the proposed section 49(1A) was to ensure that as far as the current law and any subsequent legislation in future might be concerned, they would not inadvertently override a piece of subsidiary legislation that implemented CDTAs "in relation to tax under the Inland Revenue Ordinance (Cap. 112)". The effect of any CDTA and its implementing subsidiary legislation would already be limited to "tax under the Inland Revenue Ordinance (Cap. 112)" and any precedence effect would also be accordingly limited. (c) Ms Miriam LAU's comment that she was contented with the Administration's explanation on the use of the phrase "notwithstanding anything in any enactment". (d) ALA4's suggestion for the Administration to	The

Time Marker	Speaker	Subject(s)	Action Required
		<p>consider revising the proposed subsection to address Mr TO's concern,</p> <p>(e) Ms Miriam LAU and Mr Jeffrey LAM's view that for the sake of consistency with the drafting of the proposed section 49(1A)(a), consideration should be given to amending section 49(1) by replacing the word "notwithstanding" with "despite".</p>	<p>Administration to take action as required in paragraph 5 of the minutes.</p> <p>The Administration to take action as required in paragraph 6 of the minutes.</p>
011301 – 011504	Chairman Mr James TO Administration	<p><u>Clause 5 – Returns and information to be furnished</u></p> <p>In response to Mr James TO's enquiry as to why the term "full information" was used in the proposed section 51(4AA), the Administration's advice that the same term was used in section 51(4) as OECD required that the same standard should be applied for collection of information in relation to domestic taxation purpose and for information exchange under CDTAs.</p>	
011505– 011554	Chairman Administration	<p><u>Clause 6 – Power to issue search warrant</u></p> <p>Members raised no question on clause 6.</p>	
011555 – 012038	Administration Mr James TO Ms Miriam LAU	<p><u>Clause 7 – Penalties for failure to make returns, making incorrect returns, etc.</u></p> <p>Mr James TO's view that the phrase "or the liability of any other person" in the amendment to section 80(2D) should not be put in bracket. Ms Miriam LAU's different view that placing the above-mentioned phrase in bracket in the amended provision would make the provision more comprehensible.</p>	
012039 – 012316	Chairman Administration	<p><u>Clause 8 – Additional tax in certain cases</u></p> <p>Members raised no question on clauses 8 to 9.</p>	
012317 – 012902	Mr James TO ALA4 Chairman	<p>Related Amendment Personal Data (Privacy) Ordinance (Cap. 486)</p> <p><u>Clause 9 – Crime, etc.</u></p> <p>(a) Mr James TO's concern about the scope of exemption from the provisions of data</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>protection principles under the Personal Data (Privacy) Ordinance (PD(P)O) (Cap. 486) for disclosure of information under CDTAs.</p> <p>(b) ALA4's reference to the view of the Office of the Privacy Commissioner for Personal Data that IRD must exercise caution in invoking the exemption for disclosure of personal data under section 58 of PD(P)O. In relation to Mr TO's concern, ALA4's advice that section 58 provided exemption from provisions of data protection principles 3 and 6 only. As such, handling of the personal data set out in section 58(1) and the proposed 58(1A) would be exempted from the two above-mentioned principles only and still needed to comply with other data protection principles.</p>	
012903 – 013255	Chairman Mr James TO Ms Miriam LAU Administration	Date of next meeting	