

立法會
Legislative Council

LC Paper No. CB(1)1088/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/08/2

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

Eighth meeting on
Monday, 7 December 2009, at 4:30 pm
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 Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king
- Members absent** : Hon CHAN Kam-lam, SBS, JP
Hon CHAN Kin-por, JP
- 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
Commissioner of Inland Revenue

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting and Administration)
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

(LC Paper No. CB(1)573/09-10(01) —List of follow-up actions arising from the meeting on 1 December 2009 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)573/09-10(02) —Administration's response to the issues raised at the meeting on 1 December 2009

LC Paper No. CB(1)494/09-10(02) —Administration's response to the issues raised at the meeting on 26 November 2009)

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

Committee Stage amendments (CSAs)

2. The Bills Committee noted the CSAs proposed by the Administration to amend section 49 of the Ordinance (clause 3 of the Bill), having regard to members' view of subjecting the proposed Inland Revenue (Disclosure of Information) Rules to

positive vetting, and achieving consistency in drafting of section 49(1) and the proposed section 49(1A). The Bills Committee agreed to the proposed CSAs.

3. Mr James TO expressed concern whether the proposed section 49(1A) which stipulated that arrangement specified in the comprehensive avoidance of double taxation agreements (CDTAs) "shall have effect in relation to tax under this Ordinance despite anything in any enactment" might result in excessive overriding effect on provisions concerning protection of fundamental human rights in other ordinances. The Bills Committee noted that Mr TO might propose CSA to the proposed section 49(1A) in this regard.

Way forward

4. As the Bills Committee had completed scrutiny of the Bill, meetings originally scheduled for 10, 14 and 18 December 2009 would be cancelled. Members noted the following legislative timetable:

Date of reporting to House Committee	Deadline for giving notice of resumption of Second Reading debate	Deadline for giving notice of Committee Stage amendments	Date of resumption of Second Reading debate (Date of Council Meeting)
11 December 2009 (Friday)	18 December 2009 (Friday)	24 December 2009 (Thursday)	6 January 2010 (Wednesday)

5. Members noted that the Chairman of the Bills Committee would make a verbal report to the House Committee on 11 December 2009 and the written report would be issued before the meeting of the House Committee on 18 December 2009.

(Post-meeting note: Members were informed of the cancellation of meetings in December and the legislative timetable vide LC Paper CB(1) No. 608/09-10 issued on 8 December 2009.)

III Any other business

6. There being no other business, the meeting ended at 5:10 pm.

**Proceedings of the
Bills Committee on Inland Revenue (Amendment) (No.3) Bill 2009
Eighth meeting on Monday, 7 December 2009, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000138 – 000228	Chairman	Introductory remarks	
Follow-up to issues raised at previous meetings			
000229 – 000240	Chairman ALA4	In response to the Chairman's enquiry, ALA4's advice that the drafting of the Chinese version of the Bill was in order.	
000241 – 000801	Chairman Administration	Briefing by the Administration on the response to issues raised at the meeting on 1 December 2009 (LC Paper No. CB(1)573/09-10(02)).	
000802 – 002137	Chairman Mr James TO Mr Jeffrey LAM Administration	<p>(a) Mr James TO's concern about the discretionary power of the Commissioner of Inland Revenue (the Commissioner) to approve a disclosure request which did not contain all the particulars set out in the Schedule to the proposed Inland Revenue (Disclosure of Information) Rules (the Rules). Mr TO's proposal to qualify the discretionary power of the Commissioner by refining the drafting of paragraph 4(c) of the Rules to "unless the Commissioner otherwise on reasonable grounds permits, the request contains the particulars set out in the Schedule."</p> <p>(b) View shared by Mr Jeffrey LAM and the Chairman that the current formulation of paragraph 4(c) of the Rules could imply reasonableness in the exercise of discretion by the Commissioner and an explicit description would not be necessary. Mr LAM's concern that explicit provision on the exercise of discretion on "reasonable grounds" might have implication on other legislation.</p> <p>(c) The Administration's explanation on the need for the Commissioner to exercise discretion in examining the information contained in disclosure requests. The Administration's advice that the Commissioner would only approve a disclosure request if he/she was</p>	

Time Marker	Speaker	Subject(s)	Action Required
		satisfied that the request complied with the provisions of the relevant CDTAs and the procedures applicable to the request.	
002138 – 003730	Chairman Mr James TO Administration Department of Justice (DoJ)	<p>(a) Mr James TO's concern that the drafting of the proposed section 49(1A)(a) might result in excessive overriding effect on provisions in other ordinances. Mr TO's view that the formulation of "shall have effect in relation to tax under this Ordinance despite anything in any enactment" might affect fundamental legal protection on, say human rights or procedural fairness. His remark that he would consider proposing a CSA to section 49(1A) to restrict the scope of the overriding effect.</p> <p>(b) The Administration and DoJ's response that the intention of the phrase "despite anything in any enactment" in the proposed 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. 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. Common law jurisdictions such as the United Kingdom, Malaysia and Singapore adopted similar formulation in their relevant legislations.</p>	
003731 – 003822	Chairman Administration	The Bills Committee's agreement with the Administration's proposed CSAs to section 49 (Annex B to LC Paper CB(1)573/09-10(02)).	
003823 – 004010	Chairman Administration	Way forward	