

**For discussion on
6 April 2009**

**Legislative Council
Panel on Financial Affairs**

The Inland Revenue (Amendment) (No. 2) Bill 2009

PURPOSE

This paper briefs Members on the Inland Revenue (Amendment) (No. 2) Bill 2009.

BACKGROUND

2. To smoothen the operation of the Board of Review (Inland Revenue Ordinance), a statutory body constituted under the Inland Revenue Ordinance (“IRO”) to hear tax appeals, and to improve the administration of the IRO, the Government proposes to introduce some technical amendments to the IRO vide the Inland Revenue (Amendment) (No. 2) Bill 2009. The proposed amendments are summarised in the ensuing paragraphs.

Amendments Relating to the Operation of the Board of Review (Inland Revenue Ordinance)

3. The Board currently has no authority to correct clerical mistakes in its written decisions on tax appeals. We propose to empower the Board to do so.

4. Under the existing provisions, members of the Board are nominated by the Chief Secretary for Administration to hear appeals. To reflect the independence of the Board, we propose to amend the IRO so that members are to be nominated by the chairman of the Board, rather than a government official, to hear appeals.

5. Currently, if a member of the Board has retired, he does not have the power to act on a case he handled previously. Therefore, if, for example, the

Court of First Instance remits a case to the Board for rehearing and the members of the original hearing panel have retired, the Board would have to form a new hearing panel to handle the case. The new panel members may need to spend tremendous effort to acquaint themselves with the case. To smoothen the Board's operation, we propose that under certain circumstances a retired member be allowed to act on a case he handled previously and be remunerated for performing such duties.

6. Currently, three or more members of the Board may form a hearing panel for a case, and one of them must be the chairman or a deputy chairman of the Board, who will have the casting vote on the case. In case every member of a hearing panel is either the chairman or a deputy chairman, we propose to make it clear in the law that only the presiding member can have the casting vote. This is to reflect the existing practice.

Other Technical Amendments to Improve the Administration of IRO

Profits tax

7. Interest expenses incurred in purchasing depreciable plant and machinery are deductible under profits tax. However, as plant and machinery for research and development or environment-friendly plant and machinery enjoy a 100% upfront deduction in the year of purchase and hence are not depreciable, interest expenses incurred in purchasing them are not deductible under profits tax. To correct this disparity, we propose to allow interest expenses incurred in purchasing such plant and machinery to be deductible under profits tax.

Salaries tax and tax under personal assessment

8. A taxpayer may claim home loan interest deduction for a particular year within six years after that year. A taxpayer having been allowed home loan interest deduction may also revoke the claim within six months after the deduction is allowed. In case such a claim is revoked, the IRD is supposed to raise additional assessment for the relevant year accordingly. However, the IRO stipulates that an additional assessment can only be raised within six years after the relevant year.

9. Therefore, technically, a taxpayer can withhold claiming the home loan interest deduction for a particular year until the sixth year after, and revoke the claim within six months after the deduction is allowed. In such a case, the IRD may not legally have enough time to raise additional assessment for that particular year. To plug this loophole, we propose to empower IRD to raise additional assessments beyond the six-year statutory period in cases of revocation of home loan interest deduction claims.

Property tax

10. Common areas of a building are co-owned by all owners of the individual flats of the building. Where rental income is received for the use of common areas (e.g. the outer wall), all owners of a building should be chargeable to property tax. However, in reality, it may be difficult to raise a property tax assessment on each and every owner of a building in respect of the rental income received for the use of common areas. We therefore propose to amend the definition of “owner” in the IRO so that a property tax assessment can be raised on the Owners’ Corporation or the person who receives rental income on common areas of a building (e.g. the building management company).

IRD staff breaching secrecy provisions

11. If an IRD staff member breaches the secrecy provisions of the IRO, the IRD currently can only take legal action against that staff member within six months from the date when the offence is committed. We propose to extend the actionable period for such offences to six years to align with similar provisions under the Business Registration Ordinance.

Tax Reserve Certificates (TRCs)

12. Taxpayers who lodge objections to their tax assessments may be asked to purchase TRCs as security for the holdover of the tax in dispute. Taxpayers may claim back any remaining balance of their TRCs with interest after the objections are finalised. However, there has been an accumulation of unclaimed money in the TRC deposit account long after the finalisation of objections, and the Director of Audit considers this situation unsatisfactory. To help clear the unclaimed money more effectively after finalisation of

objections, we propose to empower the Commissioner of Inland Revenue to repay the remaining balance of TRCs with interest to relevant taxpayers unilaterally without the need to have the taxpayers surrender their TRCs.

Miscellaneous

13. We will propose a number of minor textual amendments to the IRO for the sake of consistency.

WAY FORWARD

14. We are finalising the drafting of the Inland Revenue (Amendment) (No. 2) Bill to incorporate all the proposed amendments above. We plan to introduce the Bill in the second half of 2009.

**Financial Services and the Treasury Bureau
March 2009**