

立法會
Legislative Council

LC Paper No. CB(1)1151/09-10

(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

**Minutes of special meeting
held on Monday, 14 December 2009 at 8:30 am
in the Chamber of the Legislative Council Building**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Vincent FANG kang, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon CHAN Tanya

Members attending: Hon Miriam LAU Kin-ye, GBS, JP
Dr Hon LAM Tai-fai, BBS, JP

Members absent : Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon CHIM Pui-chung
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Public officers
attending**

: Agenda Item I

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)

Ms Mary WONG
Assistant Secretary for Financial Services and the
Treasury (Treasury)

Mr WONG Kuen-fai
Acting Deputy Commissioner of Inland Revenue
(Technical)

Agenda Item II

Mr Patrick HO, JP
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Ms Angelina KWAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Mr Howard LEE
Head (Banking Policy)
Hong Kong Monetary Authority

Ms Annie CHOI, JP
Commissioner of Insurance

Mr CHEUNG Sai-yan
Head of Trade Controls
Customs and Excise Department

**Attendance by
invitation**

: Agenda Item I

Federation of Hong Kong Industries

Mr Cliff SUN
Chairman

Mr Roger TAM
Manager

Deloitte Touche Tohmatsu

Mrs Yvonne LAW
National Chief Knowledge Office and Tax Partner

Mr Davy YUN
Tax Director

The Taxation Institute of Hong Kong

Mr Bernard WU
President

Mr Kenneth LEUNG
Council Member

Ernst & Young Tax Services Limited

Mr Patrick KWONG
Executive Director

Ms Kathy KUN
Manager

Hong Kong General Chamber of Commerce

Ms Agnes CHAN
Chairwoman – Taxation Committee

Hong Kong Watch Manufacturers Association Ltd.

Mr David LAI
Vice President

Hong Kong Auto Parts Industry Association

Dr WONG Chun
President

Hong Kong Electronic Industries Association

Mr Basil WAI
Chief Executive Officer

The Hong Kong Business Committee Joint Conference

Mr Aaron SHUM
Chief Secretary

Agenda Item II

Mrs Yvonne MOK
Director, Intermediaries Supervision
Securities and Futures Commission

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

Staff in attendance : Mr Noel SUNG
Senior Council Secretary (1)4

Mr Simon CHEUNG
Senior Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Depreciation allowances in respect of machinery or plants under "import processing" arrangements

Meeting with deputations

(LC Paper No. CB(1)662/09-10(01) — Submission from Federation of Hong Kong Industries

LC Paper No. CB(1)601/09-10(01) — Submission from Deloitte Touche Tohmatsu

LC Paper No. CB(1)601/09-10(02) — Submission from the Taxation Institute of Hong Kong

LC Paper No. CB(1)601/09-10(03) — Submission from Ernst & Young Tax Services Limited

LC Paper No. CB(1)601/09-10(04) — Submission from Hong Kong General Chamber of Commerce)

Submissions from organizations not attending the meeting

(LC Paper No. CB(1)601/09-10(05) — Submission from the Chinese Manufacturers' Association of Hong Kong

LC Paper No. CB(1)601/09-10(06) — Submission from Association of Chartered Certified Accountants Hong Kong

LC Paper No. CB(1)601/09-10(07) — Submission from CPA Australia Ltd.

LC Paper No. CB(1)601/09-10(08) — Submission from KPMG Tax Limited

LC Paper No. CB(1)601/09-10(09) — Submission from PricewaterhouseCoopers Limited)

LC Paper No. CB(1)645/09-10(01) — Submission from Hong Kong Institute of Certified Public Accountants

LC Paper No. CB(1)662/09-10(02) — Submission from SEB Asia Ltd.

Meeting with the Administration

(LC Paper No. CB(1)601/09-10(10) — Administration's paper on depreciation allowances in respect of machinery or plants under "import processing" arrangements

LC Paper No. CB(1)209/09-10(01) — Hon LAM Tai-fai's letter dated 14 October 2009 on depreciation allowances in respect of machinery or plants under "import processing" arrangements (Chinese version only)

LC Paper No. CB(1)599/09-10 — Background brief on depreciation allowances in respect of machinery or plants under "import processing" arrangements prepared by the Legislative Council Secretariat)

Presentation of views by deputations

At the invitation of the Chairman, representatives of the deputations presented their views on the depreciation allowances in respect of machinery or plants under "import processing" arrangements. Major views highlighted in their presentations were summarized in the following paragraphs.

Federation of Hong Kong Industries (FHKI)

2. Mr Cliff SUN, Chairman of FHKI opined that the denial of depreciation allowances under section 39E of the Inland Revenue Ordinance (Cap. 112) (IRO) in respect of machinery or plants used by Hong Kong manufacturers outside Hong Kong was not fully in accord with the basic tax principle of allowing taxpayers to get relief for costs incurred in generating the taxable revenue. Pointing out that the moduli of contract processing and import processing arrangements were essentially the same, Mr SUN considered it unreasonable that Hong Kong enterprises could claim 50:50 apportionment under the former arrangement but were denied any depreciation allowances under the latter. FHKI strongly urged the Government to address the concerns of Hong Kong manufacturers about the application of section 39E to denial of depreciation allowances under import processing arrangement, as the provision was intended as a safeguard against tax avoidance and the arrangement was not related to tax avoidance in any way.

Deloitte Touche Tohmatsu (DTT)

3. Mrs Yvonne LAW, Partner of DTT expressed concern that denial of depreciation allowances for machinery or plants used outside Hong Kong under section 39E was unfair to genuine businesses and in contradiction to the principle of providing tax relief for costs incurred in generating taxable revenue. DTT suggested amendments be made to IRO with retrospective application from the year of assessment of 2003-2004 so as to address the concern of Hong Kong enterprises about the denial of depreciations allowances under section 39E.

The Taxation Institute of Hong Kong (TIHK)

4. Mr Bernard WU, President of TIHK, pointed out that as section 39E was enacted as a specific anti-tax avoidance provision, the application of the provision to deny depreciation allowances for machinery or plants used outside Hong Kong under import processing arrangement was an after-thought. TIHK was of the view that the Administration should consider either granting the extra-statutory concessionary treatment applicable to contract processing arrangements to import processing arrangements, or amending section 39E such that enterprises would not be denied depreciation allowances for machinery or plants under the latter arrangements.

Ernst & Young Tax Services Limited (E&Y)

5. Ms Kathy KUN, Manager of E&Y opined that the use of machinery or plants under import processing arrangement would bring economic benefits for Hong Kong given that the sale of goods by the Hong Kong enterprises would create employment in Hong Kong and any profits so generated were wholly chargeable to tax in Hong Kong. On the basis of the above, E&Y considered that there was a strong case to either grant an extra-statutory tax concessionary to the use of machinery or plants under import processing arrangement, or amend section 39E so that enterprise might claim depreciation allowances under such arrangement with retrospective effect from 2003-2004.

Hong Kong General Chamber of Commerce (HKGCC)

6. Ms Agnes CHAN, Chairwoman of HKGCC Taxation Committee, opined that denial of depreciation allowance for the use of machinery or plants outside Hong Kong under section 39E was in violation of the basic principle of allowing taxpayers to deduct the costs incurred in the generation of taxable income. HKGCC requested that the Inland Revenue Department (IRD) extended the concession currently granted to the contract processing arrangement to import processing arrangement, and considered granting 100% of the depreciation allowances for the use of machinery or plants under import processing arrangement if the income generated was 100% taxable. Alternatively, IRO might be amended so that manufacturers would not be denied depreciation allowances for the use of machinery or plants outside Hong Kong. HKGCC strongly urged that the granting of tax concessions and legislative amendments should take retrospective effect from the year of assessment of 2003-2004.

Hong Kong Watch Manufacturers Association Limited (HKWMA)

7. Mr David LAI, Vice President of HKWMA, explained that the mode of operation for Hong Kong manufacturers engaged in contract processing and import processing were broadly the same and they were gravely concerned about the different treatment in the granting of depreciation allowances under the two aforesaid processing arrangements. Mr LAI called on the Government to provide clear guidelines on the granting of depreciation allowances and give due consideration to the difficulties of small and medium-sized enterprises engaging in import processing arrangements.

Hong Kong Auto Parts Industry Association (HKAPIA) and Hong Kong Electronic Industries Association (HKEIA)

8. Dr WONG Chun, President of HKAPIA, presented the views of his association and HKEIA. These associations shared the view that same tax concessions should be granted to the use of machinery or plants under both contract processing and import processing arrangements. The denial of depreciation allowances for the latter arrangement was not conducive to the transformation of Hong Kong enterprises to cope with policy changes of Mainland authorities. Dr

WONG opined that the Government should review section 39E and make necessary amendments to ensure that the aforesaid processing arrangements could enjoy the same tax concessions.

The Hong Kong Business Committee Joint Conference (HKBJC)

9. Mr Aaron SHUM, Chief Secretary of HKBJC, advised that members of HKBJC had meetings on the subject and submitted their views in writing to IRD. Mr SHUM pointed out that the operations of manufacturers under the contract processing arrangement and import processing arrangement were the same in substance and the change was merely made in response to policy requirements of the Mainland authorities. Mr SHUM called on the Government to facilitate the development of Hong Kong industries and give due consideration to granting depreciation allowances for machinery or plants under the import processing arrangement as well.

Response of the Administration

10. Deputy Secretary for Financial Services and the Treasury (Treasury) (DS(Tsy)) said that the Government noted the views and concerns of the professional and business organizations about the application of section 39E of IRO. He nevertheless pointed out that in examining the propriety of any revision of the provision, the Government had to take into account the interpretation of tax laws and implication on Hong Kong's taxation system, as well as the possible risks of tax avoidance acts. DS(Tsy) highlighted the following points in his response to the deputations:

- (a) Section 39E was enacted in 1986 aiming to limit claims for depreciation allowance in respect of machinery or plants through "sale and leaseback" and "leverage leasing" arrangements only. To plug the loophole of the then provision whereby companies might technically circumvent the definition of "leverage leasing", the Government amended section 39E in 1992. After the amendment, so long as the machinery or plants under a leasing arrangement were used wholly or principally outside Hong Kong by another person, section 39E would apply and the relevant depreciation allowances would be denied, even if the arrangement was not a "leverage leasing" arrangement. There had been detailed discussion on the types of arrangements subject to the restriction under the amended section 39E back in 1992.
- (b) The Government appreciated that the industry would like to enjoy the deduction of depreciation allowances in Hong Kong for the use of machinery or plants under the "import processing" arrangement. However, because the machinery or plants were used by another person outside Hong Kong, it was a rather complicated matter involving various issues, including whether the machinery or plants were producing profits chargeable to tax in Hong Kong; whether they

were used for the manufacturing of goods sold solely to the Hong Kong enterprises, etc.

- (c) Despite views of the depositions on the similarity of the mode of operation of import processing and contract processing arrangements, the Government considered these two arrangements distinctly and fundamentally different from the legal point of view. As IRD did not have the statutory power to request an overseas entity who was not a Hong Kong taxpayer to provide supporting documents, or to carry out field checks for enforcing the relevant provision under IRO, it would be difficult for IRD to regulate the claims for depreciation allowances in respect of machinery or plants under the import processing arrangement. IRD had explained to the professional and business organizations the differences in interpretation and application of section 39E for claims of depreciation allowances under the contract processing and import processing arrangements.

Discussion

11. Dr LAM Tai-fai expressed great disappointment that the Secretary for Financial Services and the Treasury (SFST) or his Under Secretary did not attend the meeting to discuss such an important issue with Members and the depositions. Dr LAM recapped that when he expressed concern about the application of section 39E with the Chief Executive (CE) earlier this year, CE had assured him that the Government would enhance communication with the business and professional organizations with a view to sorting out the relevant issues. However, despite his repeated questions raised at meetings of the Legislative Council (LegCo) in the past two months and his written request to the Financial Secretary and SFST for a meeting to discuss the concerns about denial of depreciation allowances under section 39E, Dr LAM was dissatisfied that the Administration had not addressed his concerns and SFST had not responded to his request for a meeting. Dr LAM opined that the application of section 39E to deny claims for depreciation allowances under import processing arrangement was contrary to the legislative intent of the provision, which aimed to safeguard against tax avoidance. Pointing out that many Hong Kong manufacturers with business operation on the Mainland were worried about the possible tax burden on the profits made under the import processing arrangement, Dr LAM criticized the Administration of its delaying tactics and called for immediate dialogue with the business organizations to work out a solution.

12. The Deputy Chairman sought the views of the depositions as to whether taxpayers might, through a different form of arrangement for purchasing and leasing of machinery or plants for use outside Hong Kong, be able to claim depreciation allowances for profits generated from such machinery or plants.

13. Dr WONG Chun of HKAIPA said that the denial of depreciation allowances in respect of machinery or plants used outside Hong Kong under the import processing arrangement would have adverse impact on the competitiveness of Hong

Kong manufacturers, given the fact that the majority of their production lines had been moved to the Mainland. Dr WONG opined that irrespective of the background for amendment of section 39E in 1992, there was an imminent need for reviewing the interpretation and application of the section.

14. Mr David LAI of HKWMA said that many Hong Kong manufacturers were unaware of the Administration's undertaking during the amendment of section 39E in 1992 that rental incomes from the supply of machinery or plants could be used for tax deductions. Mr LAI said that the Commissioner of Inland Revenue should exercise discretionary power in the interpretation of section 39E to grant tax allowances to taxpayers.

15. Mr Patrick KWONG of E&Y recalled that as the Administration had advised that the 1992 amendment of section 39E was a technical amendment to prevent circumvention of the definition of "leverage leasing", stakeholders had not been aware at that time that the provision of machinery or plants by a Hong Kong enterprise to a Mainland enterprise free of charge was a leasing arrangement and was covered under the amended section 39E. Mr KWONG opined that the legislative intent for amending section 39E was not to cover the aforesaid situation, and the "leasing arrangement" argument did not emerge until 2000. Mr KWONG pointed out that under the import processing arrangement, a Hong Kong manufacturer had to provide the moulds to the Mainland enterprise concerned, which did not form part of the capital injection, and hence the moulds were not owned by a separate Mainland legal entity.

16. Mr Andrew LEUNG opined that the enactment of the anti-tax avoidance provision in section 39E in 1986 and the subsequent amendment in 1992 did not intend to cover "import processing" and "contract processing" arrangements. Pointing out that IRD had only started to enforce the amended section 39E for tax assessment in relation to "import processing" arrangement after 2000, i.e. years after the amendment in 1992, Mr LEUNG questioned whether the denial of depreciation allowances in respect of machinery or plants under such an arrangement was in accord with the legislative intent. He shared the view of deputations that the mode of operation of "import processing" and "contract processing" arrangements were the same for the Hong Kong enterprises in terms of the use of machinery or plants by the Mainland factories, and IRD should not have differential treatment in granting depreciation allowances for these arrangements. Mr LEUNG remarked that if IRD insisted on its interpretation and application of section 39E in the strict sense, Hong Kong manufacturers would be forced to set up business entities in the Mainland, and the profits made would no longer be taxable income under Hong Kong tax laws. Mr LEUNG invited the deputations to give views on actions to be taken by the Government to resolve the issue relating to the application section 39E.

17. Mr Patrick KWONG of E&Y was of the view that the 50% tax concession granted to machinery or plants in "contract processing" arrangement should be extended to "import processing" arrangement. As regards the IRD's claim about enforcement difficulties as legal entities outside Hong Kong were involved in the

"import processing" arrangement, Mr KWONG opined that IRD was empowered to request taxpayers to provide evidence on the use of the machinery or plants for production of their goods, and it could also impose fines and/or sanctions on taxpayers for tax avoidance acts.

18. Ms Miriam LAU referred to the unanimous view of attending depositions that the denial of depreciation allowances for machinery or plants used under the "import processing" arrangement was unfair to the Hong Kong enterprises and the Government's interpretation of section 39E had deviated from the legislative intent of this anti-tax avoidance provision. Noting the strong views of the depositions about the similarities of the "import processing" and "contract processing" arrangements and the hardship caused by IRD's retrospective tax assessments in accordance with section 39E, Ms LAU opined that IRD should suspend actions on such tax assessments and conduct a review of the interpretation and application of the provision. Where necessary, amendments should be made to the provision to address the grave concerns of the professional and business organizations. Ms LAU opined that apart from the Financial Services and the Treasury Bureau and IRD, the Commerce and Economic Development Bureau should also participate in the discussion of the subject to work out a solution which could address the concerns of the industry and facilitate the long-term development of the industrial sector.

19. DS(Tsy) advised that it was the statutory responsibility of IRD to enforce the tax laws, but it had never intended to cause hardship to the manufacturing sector in its enforcement work. DS(Tsy) pointed out that IRD was not empowered to exercise flexibility in the interpretation of section 39E to grant tax concessions. In view of the Hong Kong manufacturers' operations in the Mainland under the "contract processing" arrangement, 50% of their profits were taxed in Hong Kong with a 50% depreciation allowances granted in respect of machinery or plants because of the source principle. These Hong Kong manufacturers might be required to pay tax to the Mainland authority for the permanent establishment in the Mainland.. Taxpayers who were aggrieved by IRD's decisions might appeal to the Board of Review.

20. Mr Jeffrey LAM recalled that he had raised similar concern on the application of section 39E jointly with HKGCC, to different Financial Secretaries in the past years, yet IRD had all along maintained its stance. Mr LAM was of the view that the Government should respond to the concerns of the business and professional sectors, and adjust the application of tax laws in accordance with changes in the business environment. In line with measures and efforts of the Hong Kong and Mainland authorities in enhancing economic cooperation and supporting businesses amid the global financial crisis, Mr LAM opined that the Government should take appropriate actions to amend the relevant tax law so as to facilitate the business operation of Hong Kong manufacturers on the Mainland. Mr LAM pointed out that there were many litigation cases relating to section 39E, some of which involved large amount of money. Mr LAM suggested that a subcommittee be formed under the Panel on Financial Affairs (FA Panel) to further deliberate the complicated issue relating to the interpretation and application of section 39E.

21. DS(Tsy) responded that detailed and careful consideration had to be given to amendment of IRO, as Hong Kong had a very narrow tax base and profits tax was one of the major sources of government revenue. While the Government had noted the views and concerns of the business and professional organizations regarding section 39E, it had to take into account the impact of any amendment to the legislation on revenue and the risk of tax avoidance. According to the Government's assessment, relaxing the anti-tax avoidance provision under section 39E might create a loophole in the tax law whereby taxpayers might circumvent the restrictions under the provision through making different processing arrangements, thus having an adverse impact on government revenue. There was no plan to review or amend section 39E at the present stage.

22. Mr Vincent FANG declared interest as one of the manufacturers affected by section 39E. Mr FANG said that based on SFST's replies to Dr LAM Tai-fai's questions at LegCo meetings, Government officials lacked understanding of the actual operations of the manufacturers, and was bureaucratic in dealing with concerns of the business sector on section 39E. Mr FANG referred to the unanimous view of deputations about the similarity of the "contract processing" arrangement and "import processing" arrangement and therefore the same tax concession should be granted for both arrangements. Mr FANG called on the Government to amend the IRO to cater for the changing business operation of Hong Kong manufacturers who had to meet the new policy requirements of the Mainland authorities. Mr FANG enquired about the number of tax assessment cases IRD had in hand in relation to the application of section 39E.

23. In response, Acting Deputy Commissioner (Technical), Inland Revenue Department said that IRD did not maintain statistics purely related to enforcement of section 39E. DS(Tsy) said that many tax assessment cases involved the application of various provisions under IRO, and therefore the number of cases relating purely to section 39E was small. Most cases related to Hong Kong manufacturers providing machinery or plants to the Mainland enterprises as capital injection into these enterprises.

24. Mr Paul CHAN said that he had highlighted the problems of section 39E during the motion debate on enhancement of Hong Kong's taxation system and competitiveness at the LegCo meeting on 13 May 2009. He was disappointed with the bureaucratic attitude of the Government in refusing to take forward the views and requests of the business and professional organizations. Pointing out that the application of section 39E was not related to the issue of a narrow tax base in Hong Kong, Mr CHAN criticized the Government of using this as an excuse to turn down requests of the business and professional sectors for a review and amendment of section 39E. Mr CHAN pointed out that in real life business operation, Hong Kong manufacturers had provided moulds to Mainland enterprises free of charge on consideration of intellectual property protection, and he considered it justified for the manufacturers to claim depreciation allowances in respect of the moulds used outside Hong Kong. Mr CHAN pointed out that taxpayers were liable to penalties/sanctions if they made false declarations in their tax returns. IRD could

also require the manufacturers to provide documentary proof to substantiate their claims for depreciation allowances, and conduct documentary and/or site inspections to verify the claims.

25. DS(Tsy) advised that where both Hong Kong and Mainland/overseas business entities were involved, IRD's enforcement experience had revealed difficulties in ensuring the accuracy and authenticity of the information in the tax returns, even in cases where such returns included audited statements and financial reports. IRD also had difficulties in checking the claims for depreciation allowances as IRD did not have the statutory power to request a Mainland entity who was not a Hong Kong taxpayer to provide supporting documents, or to carry out a field audit on the operations of a Mainland entity. Exchange of information on tax matters could only be carried out on specific cases but not as a routine practice, for the purpose of avoidance of "fishing expeditions".

26. Ms Starry LEE expressed dissatisfaction that the Government had not conducted detailed assessment of the situation before turning down the request of business and professional organizations for granting depreciation allowances in respect of machinery or plants under the "import processing" arrangement. Ms LEE requested that to facilitate the Panel's understanding of the impact of the application of section 39E on Hong Kong enterprises providing machinery or plants for use by Mainland enterprises under the "import processing" arrangement, the Administration should provide information on the number of tax assessment cases in the past few years where Hong Kong enterprises had been denied depreciation allowances pursuant to section 39E (including but not limited to the number of cases where the enterprises concerned had raised objections to the assessments). Ms LEE also requested that the Administration should provide more detailed information regarding the discrepancies found by IRD in the audited reports of local and international enterprises operating on the Mainland.

27. Miss Tanya CHAN expressed concern that the Government had turned down the request of allowing 50% of depreciation allowances on machinery or plants under the "import processing" arrangement, on grounds of enforcement difficulties, rather than on the taxation principles. Miss CHAN doubted whether the enforcement difficulties were insurmountable. Miss CHAN opined that with determination, the Government should be able to work out an interpretation and application of section 39E which could address the concerns of the business and professional organizations.

28. DS(Tsy) clarified that cases handled by IRD showed that some audited reports of Hong Kong enterprises had not reflected that the ownership of the machinery or plants had been transferred from the Hong Kong enterprise to a separate Mainland legal entity. In response to Ms Starry LEE's request, DS(Tsy) agreed to check whether there was information on the number of tax assessment cases where Hong Kong enterprises had been denied depreciation allowances pursuant to section 39E.

29. To follow up Members' request for further discussion of the issues relating to the interpretation and application of section 39E, the Chairman suggested and members agreed that arrangements should be made for interested Members to meet with SFST (and possibly inviting also the Secretary for Commerce and Economic Development to participate) for the purpose after this meeting. Members and the professional and business organizations were welcomed to provide cases or further information to facilitate the discussion with the Government. As to the earlier suggestion of Mr Jeffrey LAM for formation of a dedicated subcommittee under the FA Panel to take forward the subject, the Chairman advised that this could be considered further having regard to the discussions with SFST.

Motion moved by Mr Paul CHAN

30. Mr Paul CHAN proposed the following motion which was seconded by Mr Vincent FANG:

"本委員會促請政府：

- (1) 改變以一刀切的方式處理本港各企業在內地使用的機械或工業裝置(包括模具)所應享有的折舊免稅額，以致一些沒有避稅意圖或行為的本港企業未能取得該免稅額而致多付稅款；
- (2) 停止錯誤引用《稅務條例》第39E條向沒有避稅意圖或行為的本港企業追討有關稅款，以及，
- (3) 立即啟動有關的法例檢討機制，按實際情況檢討及修改第39E條，使條文與時並進，避免打擊無辜企業，妨礙他們的升級轉型，影響到本港經濟發展和就業機會。"

(Translation)

"That this Panel urges the Government to:

- (1) change the broad-brush approach adopted for granting depreciation allowances to Hong Kong enterprises in respect of their machinery or plants (including moulds) used in the Mainland, as such approach renders some local enterprises with no tax avoidance intention or acts unable to claim such allowances, and hence paying more taxes;
- (2) cease invoking section 39E of the Inland Revenue Ordinance incorrectly for recovery of taxes from Hong Kong enterprises with no tax avoidance intention or acts; and

- (3) activate immediately the relevant mechanism for legislative revision to review and amend section 39E according to actual circumstances, in order to modernize the provision and avoid impacting on the blameless enterprises and hindering their upgrading and restructuring processes, which will in turn affect the economic development and employment opportunities in Hong Kong."

31. The Chairman considered that the proposed motion was directly related to the agenda item under discussion and members agreed that the motion should be dealt with at the meeting. The Chairman put the motion to vote. Of the members present, seven voted for and no member voted against the motion. The Chairman declared the motion passed.

(Post-meeting note: The motion was passed to the Administration for written response on 14 December 2009 and circulated to members vide LC Paper No. CB(1)677/09-10 on 16 December 2009.)

II Proposed new anti-money laundering legislation for financial institutions – detailed legislative proposals

(LC Paper No. CB(1)601/09-10(11) — Administration's paper on proposed new anti-money laundering legislation for financial institutions — detailed legislative proposals

LC Paper No. CB(1)587/09-10(01) — Administration's consultation document on proposed new legislation on the customer due diligence and record-keeping requirements for financial institutions and the regulation of remittance agents and money changers — detailed proposals

LC Paper No. CB(1)600/09-10 — Background brief on proposed new anti-money laundering legislation for financial institutions prepared by the Legislative Council Secretariat)

32. The Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS(FS)) briefed members that further to the consultation on the conceptual framework of the legislative proposal to enhance the anti-money laundering (AML) regulatory regime for the financial sectors ended in October 2009,

the Administration had drawn up a set of detailed legislative proposals for the second round public consultation. The objective of the legislative proposals was to codify in statute the international AML standards in respect of customer due diligence (CDD) and record-keeping, and to introduce a licensing system for remittance agents and money changers (RAMCs). DS(FS) highlighted that among the key elements of the legislative proposals, certain proposals, such as revising the threshold that triggered CDD requirements for money changing transactions from \$8,000 at present to \$120,000 whilst maintaining the existing threshold of \$8,000 for remittance transactions, would help facilitate business of RAMCs taking into account the money laundering risks involved in these types of transactions.. During the three-month consultation period ending on 6 February 2010, the Administration would, in conjunction with the relevant regulators, arrange consultation sessions for members of the concerned financial sectors. The Administration would prepare the draft legislation taking into account the views of Members and comments received from the consultation, with a view to introducing the relevant bill into the Legislative Council in the second quarter of 2010.

Discussion

33. Mr WONG Ting-kwong supported the legislative proposals, in particular, the proposed introduction of a licensing system to regulate RAMCs. Referring to the operational difficulties faced by small scale RAMCs under the current regime where a number of banks had refused to provide account services to RAMCs, Mr WONG hoped that the licensing system could alleviate the concerns of the banking sector about possible money-laundering activities involved in remittance and money changing business and hence improve the operational environment of RAMCs.

34. Mr Jeffrey LAM also supported the legislative proposals, as an effective AML regulatory regime in line with the international standard would be conducive to maintaining Hong Kong's status as an international financial centre. He commended the Administration for taking on board the views of the financial sectors on the need to minimize compliance burden under the AML regulatory regime, notably the regulation of RAMCs with relatively small scale operation. For example, he welcomed proposals of raising the threshold for CDD requirements for money changing transactions from \$8,000 to \$120,000 and introducing a single category of personal criminal liability with a clearly-defined mental threshold, such that only those who contravene the statutory obligations with knowledge or intent to defraud commit an offence. Mr LAM called on the financial sectors to give views on the legislative proposals during the public consultation and the Administration to give due consideration to the views received, in order to facilitate the smooth implementation of the enhanced AML regulatory regime.

35. The Chairman concluded that the Panel supported the legislative proposals in principle and the Administration's plan to introduce the relevant bill into the LegCo in the second quarter of 2010, and urged the Administration to actively engage the stakeholders in the consultation exercise underway.

III Any other business

36. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
26 February 2010