

# 立法會

## Legislative Council

立法會CB(3) 420/10-11號文件

2011年1月21日內務委員會會議文件

定於2011年1月26日立法會會議上提出的質詢

提問者：

- |      |                     |        |        |
|------|---------------------|--------|--------|
| (1)  | 鄭家富議員               | (口頭答覆) |        |
| (2)  | 湯家驊議員               | (口頭答覆) |        |
| (3)  | 李永達議員               | (口頭答覆) |        |
| (4)  | 李華明議員               | (口頭答覆) | (新的質詢) |
|      | <i>(取代其原先提出的質詢)</i> |        |        |
| (5)  | 方剛議員                | (口頭答覆) | (新的質詢) |
|      | <i>(取代其原先提出的質詢)</i> |        |        |
| (6)  | 黃毓民議員               | (口頭答覆) |        |
| (7)  | 吳靄儀議員               | (書面答覆) |        |
| (8)  | 梁耀忠議員               | (書面答覆) |        |
| (9)  | 黃定光議員               | (書面答覆) |        |
| (10) | 甘乃威議員               | (書面答覆) |        |
| (11) | 謝偉俊議員               | (書面答覆) |        |
| (12) | 石禮謙議員               | (書面答覆) |        |
| (13) | 陳茂波議員               | (書面答覆) |        |
| (14) | 劉健儀議員               | (書面答覆) |        |
| (15) | 李國寶議員               | (書面答覆) |        |
| (16) | 林大輝議員               | (書面答覆) | (新的質詢) |
|      | <i>(取代其原先提出的質詢)</i> |        |        |
| (17) | 劉慧卿議員               | (書面答覆) |        |
| (18) | 陳偉業議員               | (書面答覆) |        |
| (19) | 葉劉淑儀議員              | (書面答覆) |        |
| (20) | 張國柱議員               | (書面答覆) |        |

註 :

NOTE :

# 議員將採用這種語言提出質詢

# Member will ask the question in this language

## 編配公共租住房屋單位

### # (4) 李華明議員 (口頭答覆)

符合資格申請公共租住房屋(下稱“公屋”)並已遞交申請的市民須先獲編配登記號碼，按公屋輪候冊的登記次序等候，若有適合單位便會獲編配公屋單位。現時一般獲編配的面積是平均每人不少於7平方米。就此，政府可否告知本會：

- (一) 為何現時當局一般需要3個月才能為公屋申請人編配登記號碼，可否縮短有關時間；過去3年，在已獲編配公屋單位的一般家庭申請中，由登記日期起計至其接受獲編配單位(即成功上樓)的平均輪候時間是多久、輪候時間中位數為何；有多少申請者分別屬第一次、第二次及第三次獲編配才接受上樓，以及各佔的百分比為何；
- (二) 目前在輪候登記冊上的一般家庭申請中，由登記日期起計至2010年12月底止，平均已等候多久、等候時間中位數為何、分別有多少申請個案已獲一次或兩次的編配機會，以及可否縮短第二次或第三次編配的相隔時間；及
- (三) 過去3年，在獲編配公屋單位的3人、4人及5人家庭申請中，平均每人獲編配的面積分別為何，以及當局會否考慮放寬已訂立多年的平均每人7平方米的編配標準？

## Allocation of public rental housing flats

(4) Hon Fred LI Wah-ming (Oral Reply)

Members of the public who are eligible to apply for public rental housing (“PRH”) and have submitted their applications must first obtain an application number, then wait for allocation of PRH flats according to their order of registration on the PRH Waiting List, and PRH flats will be allocated to them when suitable flats are available. At present, the average space allocated is normally not less than seven square metres per person. In this connection, will the Government inform this Council:

- (a) why at present, the authorities generally need three months to allocate an application number to a PRH applicant and whether that duration can be shortened; among the ordinary family applications which had been allocated PRH flats in the past three years, of the average waiting time from the date of registration to the acceptance of flat offer (i.e. being successfully allocated a flat), the median waiting time, and the respective numbers and percentages of applicants who accepted the flats allocated to them on the first, second and third offers;
- (b) among the ordinary family applications currently on the Waiting List, of the average waiting time from the date of registration till the end of December 2010, the median waiting time, and the respective numbers of applications which have been given flat offers once or twice, and whether the time required for making the second or the third offers can be shortened; and
- (c) among the applications from the three-person, four-person and five-person families which had been allocated PRH flats in the past three years, of the respective average space allocated to each person, and whether the authorities will consider

relaxing the space allocation standard, which had been established many years ago, of an average of seven square metres per person?

## 廢物循環再造

### # (5) 方剛議員 (口頭答覆)

儘管現時香港整體的廢物回收率已達百分之49，但其中超過九成是出口到其他國家和地區，僅有極少數量在香港進行循環再造。惟環境局官員向本會環境事務委員會表示，部分可供循環再造的廢物“沒有市場出路，此類(廢塑膠)物料須棄置於堆填區”，以及“部分循環再造業務已變得在財政上不可行”。加上部分國家和地區(包括內地)已經逐步禁止廢料進口，有環保人士指出，到底香港回收的廢物最終有多少是成功循環再造令人存疑；而政府的《都市固體廢物管理政策大綱》的建議能否成功將廢物減少和達到“三用原則”的具體目標更令人擔憂。就此，政府可否告知本會：

- (一) 2010年回收的廢物當中，出口和在本地進行循環再造的比例為何；是否知悉過去3年進口地所接受的廢物種類和數量，以及不能循環再造最終需要棄置在堆填區的廢物的數量和比例為何；
- (二) 是否知悉本港從事廢物再造的企業的數目和再造內容及生產能力為何；該等企業目前有否獲得政府或其他團體的支援或資助；政府會否調整現時環保園的經營策略；及
- (三) 鑒於環境局官員表示，部分循環再造業務在財政上不可行，政府會否參考其他國家的做法，直接支援、資助，甚至投資廢物再造產業以解決廢物堆積問題；若否，原因為何，以及有何措施去解決因為經濟效益下降而出現

的廢物無價、無市、無地方進口而要在香港堆積的問題？

## Recycling of wastes

(5) Hon Vincent FANG Kang (Oral Reply)

Although the overall waste recovery rate in Hong Kong at present has reached 49%, over 90% of the recovered waste is exported to other countries and regions, with a very small amount of waste being recycled in Hong Kong. However, officials of the Environment Bureau have indicated to the Panel on Environmental Affairs of this Council that “as there were no outlets for” some recyclable wastes, “these (waste plastics) had to be disposed of at landfills” and “some recycling operations had since become financially non-viable”. In addition, some countries and regions (including the Mainland) have gradually banned the import of waste materials, and some environmentalists have pointed out that it is doubtful how much recovered waste in Hong Kong is eventually recycled successfully; and whether the proposals in the Government’s “Policy Framework for the Management of Municipal Solid Waste” can successfully reduce waste and achieve the specific targets under the “3R principles” is even more worrying. In this connection, will the Government inform this Council:

- (a) among the waste recovered in 2010, of the ratio between the waste which is exported and which is recycled locally, whether it knows the types and amounts of waste received by places of import in the past three years, and the amount and percentage of waste which cannot be recycled and is eventually disposed of at landfills in the past three years;
- (b) whether it knows the number of recycling operators in Hong Kong, the types of waste recycled and their production capabilities; whether these operators are currently receiving support or funding from the Government or other organizations; whether the Government

will adjust the current business strategies of EcoPark; and

- (c) given the remarks of the officials of the Environment Bureau that some recycling operations were financially non-viable, whether the Government will, by making reference to the practices of other countries, provide direct support and funding for or even invest in waste recycling industries in order to resolve the problem of waste accumulation; if not, of the reasons for that; and the measures to resolve the problem of waste accumulation in Hong Kong as waste has become worthless and unmarketable with no importing ends because of declining economic benefits brought by waste recovery?

《稅務條例》第39E條

# (16) 林大輝議員 (書面答覆)

關於《稅務條例》(第112章)第39E條(“第39E條”)的問題，政府可否告知本會：

- (一) 財經事務及庫務局局長(“局長”)於2011年1月12日回覆本人的質詢時，未有正面回答其在2010年11月24日及12月8日回覆質詢時所提及的有關“廣東省有關當局”的問題，局長現可否正面回答“廣東省有關當局”實際指哪些內地部門、何時曾向它們查詢(並提供相關的來往書信和資料文件的副本)，以及有否評估“廣東省有關當局”的說法是否正確；
- (二) 鑒於局長於2010年11月24日答覆本會議員的補充質詢時表示，他本人透過不同的機會與業界進行很多很詳細的溝通，並與業界面對面溝通很多次，局長於過去3年就第39E條的問題會見過的業界團體或個人的名稱和會面的日期及地點(以表列出)；如不能提供該等資料，原因為何；
- (三) 局長於2010年11月24日致函稅務聯合聯絡小組(“小組”)表達不接納其意見後，小組有否作出回應；如有，可否提供相關的文件和書信；以及當局有否再與小組進行溝通和接觸；如有，詳情為何；如否，原因為何；
- (四) 鑒於局長於2010年11月24日回覆本人的質詢時表示，小組沒有提出有效措施以堵塞可能出現的避稅漏洞，當局

在邀請小組就第39E條的問題進行研究時，有否清楚要求小組一併研究如何有效堵塞可能出現的避稅漏洞；如有，詳情為何，以及小組有否清楚表示知道政府有這個要求；如否，原因為何；

- (五) 政府會否再要求小組或其他專家研究如何有效堵塞政府聲稱可能出現的避稅漏洞；如會，詳情為何；如否，原因為何；
- (六) 鑒於局長於2010年10月20日回覆本人的質詢時表示，若在過程中有需要諮詢其他政府部門(包括律政司和商務及經濟發展局等)，當局會邀請它們參與檢討工作，當局有否就第39E條的問題諮詢律政司和商務及經濟發展局等其他政府部門；如有，詳情為何；如否，原因為何；
- (七) 商務及經濟發展局如何評估第39E條的問題，對企業投資機器設備以提升生產力和競爭力的影響；
- (八) 過去10年，每年分別有多少港資企業申報由從事“來料加工”業務升級轉型至從事“進料加工”業務，以及有多少從事後者業務的企業結業；
- (九) 行政長官於2010年7月13日本會的答問會上表示，希望本人跟局長商量第39E條問題的跟進工作，如果仍然有問題，還有財政司司長可以處理，然後才由他處理，局長有否就此向行政長官匯報並諮詢其意見；如有，詳情為何；如否，原因為何；

- (十) 局長於2011年1月12日回覆本人的質詢時，未有回答為何不接納小組在其檢討報告中提出修改《稅務條例》第2條有關“租約”定義的建議，以及有關稅務局指該定義涵蓋香港企業在“進料加工”下將其機器及工業裝置給予內地企業免費使用的情況是否屬於過寬詮釋的問題，局長現可否正面回答這些問題；如否，原因為何；
- (十一) 局長於2011年1月12日回覆本人的質詢時，未有回答小組在檢討報告中所提出，第39E條在1992年被修訂時香港企業在“進料加工”下將其機器及工業裝置給予內地企業免費使用的情況並未普遍，當時第39E條的修訂原意並非要處理此情況的說法，局長現可否正面回答究竟有否評估上述說法是否屬實；如再次不作正面回答，原因為何；及
- (十二) 鑒於局長於2011年1月12日回覆本人的質詢時，未有回答稅務上訴委員會在個案編號D61/08的判詞中指出第39E條的條文本身無規定須具有“避稅目的”才能引用，是否與《釋義及通則條例》(第1章)第19條及法庭解釋法例的原則不一致的問題，原因為何；局長可否諮詢律政司後，將律政司的法律意見提交本會；如否，原因為何？

Section 39E of the Inland Revenue Ordinance

(16) Dr Hon LAM Tai-fai (Written Reply)

Regarding section 39E of the Inland Revenue Ordinance (“IRO”) (Cap. 112), will the Government inform this Council:

- (a) given that in reply to my question on 12 January 2011, the Secretary for Financial Services and the Treasury (“SFST”) has not provided a direct response to the issue relating to the “relevant authorities of the Guangdong Province” which was mentioned in his reply to the questions raised on 24 November and 8 December 2010, whether SFST can now provide a direct response to which mainland authorities are actually referred to as “relevant authorities of the Guangdong Province”, when SFST asked them for information (together with copies of the relevant correspondences and information papers), and whether SFST has assessed if the views of the “relevant authorities of the Guangdong Province” are correct;
- (b) given that SFST indicated in his reply to a Legislative Council Member’s supplementary question on 24 November 2010 that he had conducted a lot of communication in great detail with the sectors through different opportunities, and he had conducted face-to-face communication with the sectors numerous times, of the names of the associations and individuals from the industry whom SFST had met with in the past three years regarding the issue of section 39E, as well as the dates and venues of the relevant meetings (list in table form); if such information cannot be provided, of the reasons for that;
- (c) whether the Joint Liaison Committee on Taxation (“JLCT”) has responded to the letter

dated 24 November 2010 from SFST, indicating his refusal to accept JLCT's recommendation; if it has, whether SFST can provide the relevant papers and correspondences; and whether the authorities have any further communication and contact with JLCT thereafter; if they have, of the details; if not, the reasons for that;

- (d) given that SFST indicated in his reply to my question on 24 November 2010 that JLCT has not proposed effective measures to plug possible tax avoidance loopholes, whether the authorities, in inviting JLCT to look into the issue of section 39E, have also clearly requested JLCT to explore effective measures to plug possible tax avoidance loopholes; if they have, of the details and whether JLCT has clearly acknowledged the Government's request; if not, the reasons for that;
- (e) whether the Government will again request JLCT or other experts to explore effective measures to plug the tax avoidance loopholes which may exist as claimed by the Government; if it will, of the details; if not, the reasons for that;
- (f) given that SFST indicated in his reply to my question on 20 October 2010 that if there is a need to consult other government departments in the course of review, including the Department of Justice ("DoJ") and the Commerce and Economic Development Bureau ("CEDB"), the authorities will invite their participation, whether the authorities have consulted other government departments, such as DoJ and CEDB on the issue of section 39E; if they have, of the details; if not, the reasons for that;
- (g) how CEDB assesses the impact of the problem of section 39E on enterprises' investment on

machinery and plant to enhance their productivity and competitiveness;

- (h) in each of the past 10 years, of the respective numbers of Hong Kong enterprises that had declared to have upgraded and restructured from originally engaging in “contract processing” to engaging in “import processing”, and the number of enterprises engaging in “import processing” that had wound up their businesses;
- (i) given that the Chief Executive indicated at the Question and Answer Session of this Council on 13 July 2010 that he expected me to follow up the issue of section 39E with SFST, and if there were still problems, they could be handled by the Financial Secretary, and then by him, whether SFST has reported to the Chief Executive on the issue and sought his advice; if he has, of the details; if not, the reasons for that;
- (j) given that in reply to my question on 12 January 2011, SFST has not explained why he refused to accept the recommendation made by JLCT in its review report to amend the definition related to “lease” in section 2 of IRO, and whether it is too loose an interpretation for the Inland Revenue Department to indicate that the definition covers the situation of Hong Kong enterprises making available their machinery and plant for use by mainland enterprises free of charge under “import processing”, whether SFST can now provide a direct response to these questions; if not, of the reasons for that;
- (k) given that in reply to my question on 12 January 2011, SFST has not responded to the claim that when section 39E was amended in 1992, the situation in which Hong Kong enterprises made available their machinery and plant for use by mainland enterprises free of charge under “import processing” was not prevalent, and

therefore the amendments to section 39E at that time were not aimed at handling this situation, whether SFST can now respond directly if this claim is true; if he again refuses to respond directly, of the reasons for that; and

- (1) given that in reply to my question on 12 January 2011, SFST has not replied to my question as to whether the comments made by the Board of Review in its written decision on the case with reference no. D61/08, that section 39E had not stipulated that there should be “an intention to avoid tax” for the application of the provision, is inconsistent with section 19 of the Interpretation and General Clauses Ordinance (Cap. 1) and the principle adopted by the court in the construction of legislation, of the reasons for that; whether SFST will, after consulting DoJ, submit DoJ’s legal advice to this Council; if he will not, of the reasons for that?