

立法會
Legislative Council

LC Paper No. CB(1)2352/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/11

Bills Committee on Inland Revenue (Amendment) Bill 2012

**Minutes of first meeting held on
Monday, 4 June 2012, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon James TO Kun-sun (Chairman)
Hon WONG Sing-chi
Hon Alan LEONG Kah-kit, SC

Public Officers attending : Agenda item II

Miss Cathy CHU
Deputy Secretary for Financial Services and the
Treasury (Treasury)

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

Miss Fiona CHAU
Assistant Secretary for Financial Services and the
Treasury (Treasury) (Revenue)

Mr CHIU Kwok-kit
Deputy Commissioner of Inland Revenue
(Technical)

Mr Tony WONG
Senior Assessor (Research)
Inland Revenue Department

Ms Leonora IP
Senior Assistant Law Draftsman
Department of Justice

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)6

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Mr Ken WOO
Council Secretary (1)6

Action

I Election of Chairman

Mr James TO, the member who had the highest precedence in the Council among all members of the Bills Committee present, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr James TO was nominated by Mr WONG Sing-chi and the nomination was seconded by Mr Alan LEONG. Mr TO accepted the nomination. There being no other nominations, Mr James TO was elected Chairman of the Bills Committee.

II Meeting with the Administration

(LC Paper No CB(3)696/11-12 File Ref: TsyB R 183/535-1/5/0 (12-13) (C)	—The Bill —Legislative Council Brief issued by the Financial Services and the Treasury Bureau
LC Paper No. LS61/11-12	—Legal Service Division Report
LC Paper No. CB(1)1961/11-12(01)	—Marked-up copy of the Bill prepared by the Legal Service Division
LC Paper No. CB(1)1961/11-12(02)	—Paper on Inland Revenue (Amendment) Bill 2012 prepared by the Legislative Council Secretariat (background brief))

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

Follow-up actions required of the Administration

4. The Bills Committee requested the Administration to –
- (a) enhance the clarity of the proposed section 26E(4)(d) of the Inland Revenue Ordinance (Cap. 112), as the current drafting could be misinterpreted by readers who did not know the background or purpose of this provision to the effect that those home owners who had been allowed deduction of home loan interest for ten assessment years (whether continuous or not) prior to the assessment year commencing on 1 April 2012 would not enjoy the additional five years of home loan interest deduction; and
 - (b) provide information on the implications, including the estimated loss in tax revenue, if the proposed extension in the total entitlement years for home loan interest deduction could be given retrospective effect.

Date of next meeting

5. As the Administration indicated that it needed time to prepare for the information requested, the Chairman instructed the Clerk to work out with the Administration the date of next meeting and inform members of the details in due course.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)2092/11-12 on 6 June 2012 that the second meeting of the Bills Committee would be held on 18 June 2012.)

III Any other business

6. There being no other business, the meeting ended at 12:00 noon.

**Proceedings of first meeting of
Bills Committee on Inland Revenue (Amendment) Bill 2012
on Monday, 4 June 2012, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Election of Chairman			
000702 – 000759	Mr James TO Mr WONG Sing-chi Mr Alan LEONG	Election of Chairman	
Agenda Item II – Meeting with the Administration			
000800 – 001059	Chairman Administration	The Administration briefed members on the Inland Revenue (Amendment) Bill 2012 (the Bill) (TsyB R 183/535-1/5/0 (12-13) (C)).	
001100 – 003750	Chairman Administration Assistant Legal Adviser 8 (ALA8)	<p><u>Clause-by-clause examination of the Bill (LC Paper Nos. CB(3)696/11-12 and CB(1)1961/11-12(01))</u></p> <p><u>Clause 1 – Short title and commencement</u></p> <p><u>Clause 2 – Inland Revenue Ordinance amended</u></p> <p><u>Clause 3 – Section 26E amended (home loan interest)</u></p> <p><i>Section 26E(4)(c)</i></p> <p>In response to the Chairman, the Administration advised that the Bill proposed to extend the entitlement years for home loan interest deduction from ten years of assessment to 15 years of assessment. Same as in the past, the years of assessment in which home loan interest deduction were granted needed not be consecutive years. Once a deduction for home loan interest had been allowed, the year of assessment in which the deduction was allowed would be counted as one of the entitlement years. At the request of the Chairman, the Administration undertook to further reinforce the message to taxpayers that home loan interest deduction would be granted for up to 15 years of assessment, no matter whether those assessment years were continuous or not.</p> <p><i>Section 26E(4)(d)</i></p> <p>ALA8 pointed out the need to enhance the clarity of the proposed section 26E(4)(d) of the Inland Revenue Ordinance, as the current drafting could be misinterpreted by readers who did not know the background or purpose of this provision to the effect that those home owners who had been allowed deduction of home loan interest for ten years of assessment (whether continuous or not) prior to the year of assessment commencing on 1 April 2012 would not enjoy the additional five years of home loan interest deduction.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration explained that home loan interest deduction was introduced in the year of assessment 1998-1999. As such, some home owners should have used up their ten-year entitlement by the year of assessment 2007-2008 if they had applied for deduction for ten years consecutively starting from 1998-1999. The policy intent of the proposed extension of the entitlement years of home loan interest deduction was that taxpayers who had used up their ten-year entitlement for home loan interest deduction prior to the year of assessment commencing on 1 April 2012 would be allowed deduction for additional five years of assessment prospectively (whether continuous or not), that was, any five years of assessment commencing on 1 April 2012 or after. In other words, these taxpayers would not be allowed home loan interest deduction with retrospective effect for years of assessment commencing before 1 April 2012 during which deduction was denied due to exhaustion of the ten-year entitlement. The current drafting of section 26E(4)(d) as proposed by the Bill clearly reflected the above policy intent.</p> <p>In response to the Chairman, the Administration advised that taxation measures were generally not given retrospective effect for the avoidance of confusion to the public. Providing the proposed extended entitlement years for home loan interest deduction with retrospective effect might give rise to certain scenarios which might be viewed as unfair to certain home owners, for example, home owners who had sold their properties upon using up their ten-year entitlement.</p> <p>ALA8 expressed concern that the use of "any year" in section 26E(4) might be taken as any year before or after the year of assessment from which the proposed extension of the entitlement years for home loan interest deduction was to take effect.</p> <p>The Administration explained that there should not be a question of ambiguity as the proposed section 26E(4)(d) elaborated "any year" as any year of assessment that was "earlier than the year of assessment commencing on 1 April 2012".</p> <p>The Chairman requested the Administration to consider if there was a need to enhance the clarity of the proposed section 26E(4)(d).</p> <p><i>Section 26E(10)</i></p> <p>In response to the Chairman, the Administration advised that a taxpayer could apply for home loan interest deduction for as far back as the year of assessment which was six years ago and during which he/she incurred home</p>	<p>The Administration to provide information as requested in paragraph 4 (a) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		loan interest but had not applied for the interest deduction, provided that he/she had yet to use up the current ten-year entitlement.	
003751 – 003812	Chairman Administration	<p><u>Clause 4 – Section 26F amended (nomination for purposes of section 26E)</u></p> <p>Members had no comments.</p>	
003813 – 004432	Chairman Administration	<p><u>Clause 5 – Section 89 amended (transitional provisions)</u></p> <p>The Chairman queried why home owners who had yet to use up the ten-year home loan interest deduction entitlement were allowed to apply for deduction for up to past six years of assessment, while those who had used up their ten-year entitlement would not be allowed deduction with retrospective effect for previous years of assessment during which deduction was denied due to exhaustion of the ten-year entitlement. Since home loan interest deduction was introduced in the year of assessment 1998-1999 and a certain number of home owners should have used up their ten-year entitlement by the year of assessment 2007-2008 if they had applied for the deduction for ten consecutive years starting from 1998-1999, giving the proposed extended entitlement years of home loan interest deduction retrospective effect would help alleviate the financial burden of these home owners who could no longer claim home loan interest deduction between the 2008-2009 and 2011-2012 assessment years.</p> <p>The Administration reiterated that giving taxation measures retrospective effect might give rise to confusion to the public and loss in tax revenue.</p> <p>In the light of the Administration's response, the Chairman said that he might propose Committee Stage amendments to the effect of his above suggestion.</p>	
004433 – 004500	Chairman Administration	<p><u>Clause 6 – Section 94 added (Reduction of taxes for year of assessment 2011/12)</u></p> <p>Members had no comments.</p>	
004501 – 004531	Chairman Administration	<p><u>Clause 7 – Schedule 3B amended (deduction for the purposes of section 16AA or 26G)</u></p> <p>Members had no comments.</p>	
004532 – 004556	Chairman Administration	<p><u>Clause 8 – Schedule 3C amended (elderly residential care expenses deduction)</u></p> <p>Members had no comments.</p>	

Time marker	Speaker	Subject(s)	Action required
004557 – 004802	Chairman Administration	<p><u>Clause 9 – Schedule 4 amended (allowances)</u></p> <p>Members had no comments.</p>	
004803 – 010140	Chairman Administration	<p><u>Clause 10 – Schedule 25 (Transitional Provisions Relating to Provisional Salaries Tax and Provisional Profits Tax in respect of Years of Assessment 2012/13 and 2013/14) and Schedule 26 (Reduction of Taxes for Year of Assessment 2011/12) added</u></p> <p>Members had no comments on Schedule 25.</p> <p>In response to the Chairman's enquiries on Schedule 26, the Administration gave the following explanation:</p> <p>(a) the proposed section 2(2) was to provide that the reduction in profits tax applied to the tax chargeable on the whole of the net assessable profits of a partnership, and not individual partners ;</p> <p>(b) the proposed section 3(2) was to provide that in ascertaining the portion of tax under personal assessment to be charged on each spouse in the year of assessment commencing on 1 April 2011, the amount of tax to be apportioned between husband and wife was the amount upon reduction by 75% or \$12,000, whichever was the lesser, as stipulated under the proposed section 3(1); and</p> <p>(c) in circumstances where personal assessment was not advantageous, the Inland Revenue Department (IRD) would issue separate tax assessments to taxpayers and would, by way of an assessor's note in the respective tax demand notes, inform the taxpayer concerned that it was not advantageous to elect personal assessment for the relevant year of assessment.</p>	
010141 – 010751	Chairman Mr Alan LEONG ALA8 Administration	<p>Further discussion on the proposed section 26E(4)(d).</p> <p>The Administration advised that apart from improving the drafting of section 26E(4)(d), the purpose and effect of such provision would be further elaborated upon the resumption of the Second Reading debate on the Bill as well as through the relevant guidelines to be published by IRD.</p>	
010752 – 010919	Chairman Administration	<p>The Chairman requested the Administration to provide supplementary information on the implications, including the estimated loss in tax revenue, if the proposed extension in the total entitlement years for home loan interest deduction could be given retrospective effect.</p>	<p>The Administration to provide information as requested in paragraph 4 (b) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
010920 – 011013	Chairman Administration	Meeting arrangements	
011014 – 011310	Chairman Mr Alan LEONG Administration	Further discussion on the proposed section 26E(4)(d). Mr Alan LEONG opined that the use of "any year" in section 26E(4) would not give rise to ambiguity as it was stipulated in subsection (d) that "any year" referred to any assessment year that was "earlier than the year of assessment commencing on 1 April 2012".	

Council Business Division 1
Legislative Council Secretariat
11 July 2012