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Report of the Bills Committee on Inland Revenue (Amendment) Bill 2012

Purpose

This paper reports on the deliberations of the Bills Committee on Inland Revenue (Amendment) Bill 2012 ("the Bill").

Background

2. The Bill was gazetted on 27 April 2012 to implement the following tax concessions announced in the 2012-2013 Budget –

- (a) to raise the level of various allowances for salaries tax and tax under personal assessment;
- (b) to raise the deduction ceiling for elderly residential care expenses from \$72,000 to \$76,000;
- (c) to raise the deduction ceiling for mandatory contributions to recognized retirement schemes from \$12,000 to \$15,000;
- (d) to extend the entitlement years for home loan interest ("HLI") deduction from 10 years to 15 years; and
- (e) to reduce the amount of salaries tax, tax under personal assessment and profits tax payable for the year of assessment 2011-2012 by 75% or \$12,000 per case, whichever is lesser.

The Bill

3. To give effect to the above-mentioned tax concessions, the Bill includes the following provisions to amend the Inland Revenue Ordinance (Cap. 112) ("the Ordinance") –

- (a) Schedule 4 to the Ordinance is amended to give effect to the proposal on increasing various kinds of allowances for salaries tax and tax under personal assessment with effect from the year of assessment 2012-2013 (*Clause 9*);
- (b) Schedule 3C to the Ordinance is amended to give effect to the proposal to raise the deduction ceiling for elderly residential care expenses from \$72,000 to \$76,000. The proposed increase will apply in relation to the year of assessment 2012-2013 and subsequent years of assessment (*Clause 8*);
- (c) Schedule 3B to the Ordinance is amended to increase the maximum amount deductible from assessable income for the mandatory contributions paid by any self-employed person under the Mandatory Provident Fund Schemes Ordinance (Cap. 485), and contributions paid by any person to a recognized retirement scheme (including a Mandatory Provident Fund scheme) as an employee. The maximum deductible amount is increased from \$12,000 to \$14,500 for the year of assessment 2012-2013, and to \$15,000 with effect from the year of assessment 2013-2014 (*Clause 7*);
- (d) sections 26E and 26F of the Ordinance are amended to give effect to the proposal on extending the entitlement years for HLI deduction from 10 years to 15 years, while maintaining the current deduction ceiling of \$100,000 per year (*Clauses 3 and 4*);
- (e) a new section 94 (*Clause 6*) and a new Schedule 26 (*Clause 10*) are added to the Ordinance to provide for the reduction of salaries tax, profits tax and tax under personal assessment payable for the year of assessment 2011-2012 by 75%, subject to a maximum of \$12,000 per case; and
- (f) section 89 of the Ordinance is amended to add a new Schedule 25 to the Ordinance to provide for the transitional arrangements relating to the assessment of, and holding over of payment of, provisional salaries tax and provisional profits tax in respect of

the years of assessment 2012-2013 and 2013-2014 (*Clauses 5 and 10*).

4. Upon enactment of the Bill, the provisions relating to the extension of the entitlement period for deduction of HLI will be deemed to have come into operation on 1 April 2012. Other provisions will come into operation on the day on which the enacted Ordinance is published in the Gazette.

The Bills Committee

5. The House Committee agreed at its meeting on 11 May 2012 to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in the **Appendix**. Under the chairmanship of Hon James TO, the Bills Committee has held two meetings to discuss with the Administration.

Deliberations of the Bills Committee

6. The Bills Committee has no objection to the proposed tax concessions. However, members of the Bills Committee have expressed views in respect of the extension of the entitlement years for HLI deduction which are summarized in the ensuing paragraphs.

Entitlement years for HLI deduction

7. The Bills Committee notes that the proposed extension of the entitlement years for HLI deduction only applies to prospective years of assessment, meaning that homeowners who have used up their ten-year entitlement for HLI deduction would not be allowed deduction for previous years of assessment (i.e. years of assessment which are earlier than the year of assessment commencing on 1 April 2012) during which deduction was denied due to exhaustion of the ten-year entitlement. Specifically, since HLI deduction was introduced in the year of assessment 1998-1999, a certain number of homeowners should have used up their ten-year entitlement by the year of assessment 2007-2008 if they have applied for the deduction for ten consecutive years starting from the year of assessment 1998-1999.

8. The Chairman has queried why the proposed extension cannot be given retrospective effect so that these homeowners could apply for HLI deduction retrospectively. He has pointed out that the policy objective of the proposed extension of the entitlement years for HLI deduction is to provide financial relief to taxpayers and that giving retrospective effect to the proposed extended

entitlement years for HLI deduction would genuinely help alleviate the financial burden of the above-mentioned homeowners who could no longer claim HLI deduction between the years of assessment 2008-2009 and 2011-2012. In fact, these taxpayers could benefit more from the proposed extension if the extension was given retrospective effect since they paid a higher HLI in the past few years than they will pay in the future for the same mortgage loan.

9. However, the Administration disagrees with giving retrospective effect to the proposal of extending the entitlement years for HLI deduction. It has advised that according to the estimation of Inland Revenue Department ("IRD"), some 91 100 salaries taxpayers have used up their ten-year entitlement for HLI deduction between the years of assessment 2007-2008 and 2010-2011. If retrospective effect were to be given to the proposed five-year extension for HLI deduction, the 91 100 salaries taxpayers would be allowed to claim HLI deduction for previous years (starting from the year of assessment 2008-2009 the earliest, depending on circumstances) during which the relevant deduction was denied due to exhaustion of the ten-year entitlement. Assuming that all these taxpayers would claim HLI deduction for all the previous years in one go, this would lead to reduction of government revenue in 2012-2013 by about \$980 million.

10. According to the Administration, apart from causing reduction in government revenue, the proposal of giving retrospective effect will also carry significant implications on manpower, resources and implementation time. IRD estimates that some 250 000 tax assessment cases would have to be revised under the proposal. This would entail additional operating expenditure of some \$40 million. Moreover, IRD foresees that taxpayers would submit reassessment claims in the latter half of this year, which coincides with the peak season of IRD's assessing work in processing some 2.9 million tax returns for the year of assessment 2011-2012 filed by salaries taxpayers. As such, this would impose considerable pressure on IRD's resources.

11. The Administration has stressed that as a principle in implementing tax measures, it has been the established practice of the Administration to adjust allowances and deductions for salaries tax on past occasions by specifying that the relevant adjustments would only be applicable to prospective years of assessment. Giving retrospective effect to individual deductible items selectively would inevitably arouse controversy. Some taxpayers would also question as to why no retrospective effect is given likewise to other tax measures from which they could benefit.

12. The Administration has advised that it has clearly indicated on the IRD's website since 1 February 2012, the same day when the Financial Secretary

announced the above proposed extension in the 2012-2013 Budget, its policy intent of the proposed extension of entitlement years for HLI deduction that the extended period is applicable only to prospective years of assessment. Moreover, from the legal perspective, tax legislation should be clear, fair and certain such that taxpayers are able to ascertain their tax liabilities reasonably and clearly when making economic or investment decisions.

13. Notwithstanding the above explanation given by the Administration, the Chairman has indicated that he will consider moving Committee Stage amendments ("CSAs") in his personal capacity to the Bill to give retrospective effect to the proposed additional entitlement years for HLI deduction.

Drafting of the proposed section 26E(4)(d)

14. Section 26E(4)(d) which is proposed to be added to the Ordinance states the conditions under which homeowners would not be allowed deduction of HLI paid during a year of assessment which is prior to the year of assessment commencing on 1 April 2012.

15. Some members of the Bills Committee opine that the current drafting of the proposed section 26E(4)(d) could be misinterpreted by readers who do not know the background or purpose of this provision to the effect that those homeowners who have been allowed HLI deduction 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 HLI deduction. The Bills Committee has requested the Administration to consider enhancing the clarity of the proposed section 26E(4)(d).

16. The Administration holds the view that the current drafting of the new section 26E(4)(d) has clearly reflected the policy intent of the Administration without any ambiguity. The wording "that year of assessment" in the new section 26E(4)(d) proposed by the Bill clearly refers to a year of assessment which is earlier than the year of assessment commencing on 1 April 2012. Hence, the conditions proposed in the new section 26E(4)(d) will not affect the relevant taxpayer's entitlement to HLI deduction for the five additional years proposed by the Bill prospectively.

17. However, to further explain the Administration's policy intent of this provision in order to avoid any misinterpretation by taxpayers, the Administration has undertaken that the purpose and effect of this provision would be mentioned in the speech of the public officer in charge during the resumption of the Second Reading debate on the Bill. Moreover, after the Bill

has been passed by the Legislative Council ("LegCo"), IRD would issue guidelines to explain the relevant requirements.

Committee Stage amendments

18. The Administration has not proposed any CSAs to the Bill. The Chairman has indicated that he will consider moving CSAs as stated in paragraph 13 above.

Resumption of Second Reading debate on the Bill

19. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting on 11 July 2012.

Follow-up actions by the Administration

20. The Administration has undertaken –

- (a) to set out the purpose and effect of the proposed section 26E(4)(d) in the speech of the public officer in charge during the resumption of the Second Reading debate on the Bill; and
- (b) to explain the relevant requirements in the guidelines issued by IRD after the Bill has been passed by LegCo (paragraph 17 above).

Consultation with the House Committee

21. The Bills Committee reported its deliberations to the House Committee on 22 June 2012.

Council Business Division 1
Legislative Council Secretariat
5 July 2012

Appendix

Bills Committee on Inland Revenue (Amendment) Bill 2012

Membership List

Chairman Hon James TO Kun-sun

Members Hon WONG Sing-chi

Hon Alan LEONG Kah-kit, SC

(Total : 3 members)

Clerk Mr Derek LO

Legal Adviser Mr YICK Wing-kin