

(Extract)

LC Paper No. CB(1)559/11-12(01)

立法會

Legislative Council

Ref: CB1/BC/4/10

Paper for the House Committee meeting on 25 November 2011

**Report of the
Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2011**

Purpose

This paper reports on the deliberations of the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2011 ("the Bill").

Background

2. At present, under section 16(1)(g) of the Inland Revenue Ordinance (Cap. 112) ("IRO"), enterprises may claim tax deduction on expenditure related to the registration of trade marks, designs or patents that are used for producing taxable profits. Besides, section 16E¹ provides that capital expenditure on the purchase of patent rights or rights to any know-how is tax deductible. To promote wider application of intellectual property rights ("IPRs") by enterprises and the development of creative industries, the Financial Secretary proposed in the 2010–2011 Budget that the profits tax deduction be extended to cover capital expenditure for purchase of three types of IPRs, namely, registered trade marks, copyrights and registered designs.

The Bill

3. The Bill was gazetted on 25 February 2011 and introduced into the Legislative Council on 9 March 2011. The objects of the Bill are as follows -

¹ To avoid repetition, unless otherwise specified, all the legislative provisions referred to in this report are provisions in IRO.

- (a) to amend IRO to provide for the deduction, in ascertaining profits chargeable to tax under IRO, of capital expenditure incurred on the purchase of a copyright, registered design or registered trade mark;
- (b) to modify the provisions of IRO governing deduction, in ascertaining profits chargeable to tax under the Ordinance, of capital expenditure incurred on the purchase of patent rights and rights to any know-how; and
- (c) to provide for incidental matters.

* * * * *

Scope of specified IPRs covered by the proposed tax deduction

9. Hon Mrs Regina IP has opined that to facilitate the development of a knowledge-based economy in Hong Kong, the proposed tax deduction should apply to more types of IPRs. In this regard, she has suggested that reference be made to the scope of IPRs covered by the Convention Establishing the World Intellectual Property Organization.² The Bills Committee notes that some deputations³ have also expressed the view that the proposed scope of tax deduction is not wide enough.

10. The Administration has responded that the three specified IPRs were chosen because they are commonly used in various industries and are conducive to innovation and upgrading of enterprises in different sectors. This is in line with the "tax neutrality" principle adopted in Hong Kong. However, if in future the extension of the tax deduction to other types of IPRs could be justified on policy grounds, the Administration would be prepared to consider the merits of the case.

11. According to the information provided by the Administration, tax deduction is provided with respect to capital expenditure incurred on the five IPRs of patents, know-how, copyright, registered designs and registered trade marks in Canada, Singapore and the United Kingdom ("the UK"). In Australia,

² The Convention Establishing the World Intellectual Property Organization is the constituent instrument of the World Intellectual Property Organization ("WIPO"), and was signed at Stockholm on July 14, 1967, entered into force in 1970 and amended in 1979. WIPO is an intergovernmental organization that became in 1974 one of the specialized agencies of the United Nations system of organizations.

³ Hong Kong Institute of Certified Public Accountants ("HKICPA") and the Joint Liaison Committee on Taxation ("JLCT").

capital allowance deduction is provided for patents, copyright and registered designs, but not trade marks.

12. Taking into consideration that the objective of the proposed tax deduction is to promote the wider application of IPRs, the Bills Committee has requested the Administration to relay to the Financial Secretary for future consideration outside the context of the Bill the suggestion of extending the proposed tax deduction scheme to more types of IPRs. The Bills Committee has also agreed to refer the issue to the Panel on Commerce and Industry for follow-up as appropriate.

*

*

*

*

*

Council Business Division 1
Legislative Council Secretariat
29 November 2011