

For discussion
on 3 January 2017

Legislative Council Panel on Financial Affairs

**Proposed Creation of two directorate posts in the Financial Services
and the Treasury Bureau and the Inland Revenue Department**

PURPOSE

This paper invites Members to note and support the proposal to create the following two directorate posts –

- (a) one permanent post of Administrative Officer Staff Grade C (“AOSGC”) (D2) in the Treasury Branch (“TsyB”) of the Financial Services and the Treasury Bureau (“FSTB”) with effect from 1 June 2017 to strengthen the support for dealing with policy and legislative matters on various initiatives regarding Hong Kong’s cooperation with the international community on tax matters; and
- (b) one permanent post of Chief Assessor (“CA”) (D1) in the Inland Revenue Department (“IRD”) with effect from 1 June 2017, after the lapse of the three-year supernumerary CA post on 31 March 2017, to cope with the increased workload and support the implementation of various policy initiatives relating to stamp duty.

JUSTIFICATIONS

Proposed Creation of one permanent AOSGC Post in TsyB of FSTB

2. The international landscape on tax co-operation has been evolving very rapidly in recent years. The Organisation for Economic Co-operation and Development (“OECD”) has from time to time put forward new initiatives seeking to enhance tax transparency and combat cross-border tax evasion. These initiatives include the new standard released in July 2014 for automatic exchange of financial account

information in tax matters (“AEOI”), and the package of measures endorsed by the Group of Twenty (“G20”) in November 2015 to tackle base erosion and profits shifting (“BEPS”) of enterprises. As an international financial centre and a responsible member of the international community, Hong Kong has been supportive of these international efforts. The need for Hong Kong to take forward these initiatives and cope with the evolving standards has given rise to a significant and persistent increase in the workload for both FSTB and IRD.

Implementation of AEOI

3. In relation to AEOI, Hong Kong has joined the other 100 jurisdictions for this global initiative. We amended the Inland Revenue Ordinance (Cap. 112) in June 2016 to put in place a legal framework for implementation of AEOI in Hong Kong, and have signed competent authority agreements (“CAAs”) with two jurisdictions (i.e. Japan and UK) for conducting AEOI on a bilateral basis, so that Hong Kong can deliver its commitment to commence the first automatic exchanges in 2018. Our work, however, does not end there.

4. In the light of OECD / European Union (“EU”)’s aspiration to widen the AEOI network, it is crucial for Hong Kong to demonstrate our full commitments by expanding our AEOI network with other tax jurisdictions. We have approached our tax treaty partners which are committed to adopting AEOI for CAA discussions, and will seek to conclude as many CAAs as practicable within 2017. While IRD will provide front-line support in the CAA discussion, FSTB will need to deal with the policy aspects of the drive, take forward the relevant legislative proposals, and keep an overview of the implementation of AEOI in Hong Kong at a strategic level. FSTB will need to work with IRD to prepare for the peer review to be conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes to assess Hong Kong’s compliance with the OECD standard. Moreover, in view of the mounting pressure for jurisdictions to conduct AEOI on a multilateral basis (as against a bilateral approach which Hong Kong has adopted), the Government will need to keep a close watch on the latest developments, and map out our strategy and response accordingly.

Implementation of measures to tackle BEPS

5. BEPS is another international tax cooperation initiative which Hong Kong has to accord high priority to. The package put forward by the OECD in October 2015 covers 15 action plans, which seek to improve the coherence of international tax rules, realign taxation with economic substance and value creation, and promote a transparent tax environment. Hong Kong indicated to OECD in June 2016 its commitment to the BEPS package and its consistent implementation, and is now an Associate in the inclusive framework established by the OECD for implementing the BEPS package. As at 7 December 2016, 91 jurisdictions have joined the inclusive framework as BEPS Associates.

6. To take forward Hong Kong's commitment, FSTB is conducting a consultation exercise to gauge views on implementation of the BEPS package in Hong Kong. We briefed the Panel on 14 December 2016 on the key proposals in the consultation document. FSTB will analyze the views from stakeholders in formulating the way forward and drawing up the relevant legislative proposals. As set out in the consultation paper, Hong Kong will focus on the four minimum standards as well as measures of direct relevance to their implementation. The priority is to put in place the necessary legislative framework for transfer pricing rules which cover the latest guidance from the OECD, spontaneous exchange of information on tax rulings, the country-by-country ("CbC") reporting requirement, the cross-border dispute resolution mechanism and the Multilateral Instrument.

7. We have to work under a very tight timetable to meet OECD's timeline and aim to introduce the relevant amendment bill(s) into the Legislative Council ("LegCo") in the second half of 2017. Given the wide range of measures involved, the challenges of implementing the BEPS package in Hong Kong should not be under-estimated. In developing our implementation strategy, we need to ensure that Hong Kong can meet the international standard without compromising our simple and low tax regime. FSTB will work closely with IRD in taking forward the exercise, and provide the necessary policy steer.

8. While the minimum standards currently set by OECD only cover four items of the BEPS package, we envisage that jurisdictions would be

required to implement the remaining BEPS action plans progressively in the years to come. FSTB's work commitments on this front will continue to grow in size and complexity.

Expansion of Hong Kong's CDTA and TIEA network

9. Apart from the above initiatives, the Government is committed to expanding Hong Kong's network of Comprehensive Avoidance of Double Taxation Agreements ("CDTAs") with our trading partners¹. For jurisdictions with no interest to pursue CDTAs with Hong Kong for the time being, Hong Kong may need to sign Tax Information Exchange Agreements ("TIEAs")² with them instead. So far, Hong Kong has signed 35 CDTAs (including the latest two with Russia and Latvia signed in 2016) and seven TIEAs. Negotiations with some ten jurisdictions are under way. Apart from signing CDTAs / TIEAs with new partners, Hong Kong will also need to upgrade the existing agreements from time to time, so as to catch up with the evolving international standards.

10. While IRD will provide front-line support in the negotiations of individual CDTAs / TIEAs, FSTB will need to deal with policy issues which may come up arising from the evolving international standards and unique circumstances for individual cases. FSTB will also need to take forward the relevant legislative proposals in seeking LegCo's ratification of the agreements signed.

International efforts of monitoring compliance by jurisdictions

11. With the proliferation of new standards and new initiatives, the international community has been placing greater emphasis on the compliance by jurisdictions. Apart from conducting peer reviews for individual initiatives, the OECD and EU have kicked off their respective exercises to draw up lists of "non-cooperative tax jurisdictions". The EU has indicated that common counter-measures will be taken by all its member states against the listed jurisdictions. Hong Kong must monitor

¹ CDTAs are tax agreements which seek to minimize incidence of double taxation between the contracting parties and provide a mechanism for exchange of information between tax authorities. CDTAs are instrumental in fostering the economic, business and investment ties between Hong Kong and the contracting parties concerned.

² TIEAs serve purely as instruments of exchange of information without offering any taxation relief.

these developments closely and make timely responses. We will demonstrate Hong Kong's commitment towards tax transparency so as to avert risks of the unilateral imposition of any counter measures. Otherwise, there will be severe adverse impact on Hong Kong's economy and the business relationship with our partners. It is also important to uphold the reputation of Hong Kong by ensuring our compliance with the relevant standards and defend our position in a robust manner in the international arena as and when necessary. Such work will require coordination within the Government at a strategic level.

Need for strengthened directorate support

12. The Revenue Division of FSTB comprises one Principal Assistant Secretary ("PAS(Tsy)R") (at the rank of AOSGC), two Assistant Secretaries (at the rank of Senior Administrative Officer) and a few supporting staff. As the Revenue Division is responsible for policy and legislative matters relating to taxation and government revenue, the various initiatives on international tax cooperation are handled by the same division within FSTB. Given the rapid evolvement of the international tax landscape over the past few years, IRD has strengthened its manpower to deal with the additional workload at the operational level³. For FSTB, the Revenue Division has been trying hard to absorb the additional workload with existing resources. However, given the growing list of initiatives for international tax cooperation and the increase in workload to deal with the policy and legislative aspects of the relevant matters in an on-going manner, the Revenue Division has been stretched to the very limit. The situation has become untenable. There is an imminent need for FSTB to set up a dedicated team to handle Hong Kong's cooperation with the international community on tax matters on a long-term basis.

13. We propose to create one permanent AOSGC post in FSTB, to be designated as the Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (Revenue) 2 (PAS(Tsy)R2), to ensure dedicated directorate support in FSTB for handling the increasing workload arising from the international tax initiatives. The proposed job description of

³ For IRD, with the approval of the Finance Committee, a permanent post of Chief Assessor has been created with effect from 1 April 2014 to oversee the Tax Treaty Section. At the non-directorate level, seven posts have been created in 2016-17, including five permanent posts and two time-limited posts which will expire by 31 March 2021.

PAS(Tsy)R2 is at **Annex A**. The current PAS(Tsy)R post will be re-designated as PAS(Tsy)R1.

14. PAS(Tsy)R2 will be underpinned by a team comprising one Administrative Officer, one Executive Officer I, one Personal Secretary I and one Assistant Clerical Officer. These permanent non-directorate posts will be created with effect from 1 June 2017 under delegated authority along with the creation of the PAS(Tsy)R2 post. The proposed organisation chart of FSTB (TsyB) is at **Annex B**.

Proposed Creation of one permanent CA Post in IRD

15. With the imminent lapse of the three-year supernumerary CA post in Unit 3 of IRD in March 2017, we propose to create one permanent CA post in the same Unit, to be designated as Chief Assessor (Stamp Office) (CA(SO)), to render dedicated directorate support on stamp duty related responsibilities.

Need to strengthen leadership in Unit 3 of IRD

16. IRD comprises six units and a departmental administration division. Among them, Unit 3, which is headed by an Assistant Commissioner, is responsible for assessment and collection of stamp duty for transactions of Hong Kong stocks and immovable properties, administration of the Business Registration Ordinance (Cap. 310), matters relating to betting duty in respect of horse races, football matches and lotteries, tax collection and recovery actions in respect of all assessments and levies made under various ordinances⁴ administered by IRD, as well as handling of estate duty cases, etc.

17. While the other five units in IRD are each underpinned by two to four CAs, there used to be only one CA in Unit 3 (i.e. CA3). Apart from overseeing the day-to-day operation of Unit 3, CA3 also needed to take on several additional assignments, including the implementation of system infrastructure enhancement project in Unit 3 and the launch of a new electronic service for business registration targeting small and medium

⁴ Including the Inland Revenue Ordinance (Cap. 112), Business Registration Ordinance (Cap. 310), Stamp Duty Ordinance (Cap. 117), Betting Duty Ordinance (Cap. 108) and Estate Duty Ordinance (Cap. 111).

enterprises To cope with the situation, with approval from the Finance Committee of the LegCo, we created a supernumerary CA post to strengthen the support required for matters relating to stamp duties on 1 April 2014. The supernumerary post will expire on 31 March 2017. IRD has critically reviewed the manpower situation of Unit 3, and finds it not feasible for CA3 alone to cope with the ever-increasing workload relating to stamp duty on top of his daily tasks and new responsibilities upon the expiry of the supernumerary CA post. There is a genuine need to strengthen directorate leadership in Unit 3 by creating the proposed permanent CA post, following the lapse of the supernumerary CA post.

18. The proposed permanent CA post will head the Stamp Office (“SO”) within Unit 3. The SO oversees, among others, the collection of stamp duty and betting duty, which are amongst the major sources of government revenue. For 2015-16, the stamp duty and betting duty receipts were \$63 billion and \$20 billion respectively, altogether accounting for 28% of the total revenue collected by IRD in the year. Given SO’s important role in collecting stamp duty and betting duty, it would be important to assign a dedicated directorate officer to head the SO and oversee its daily operation.

Increasing workload arising from property transactions

19. In recent years, the SO in Unit 3 has been under mounting pressure to cope with the increasing workload arising from property transactions. The number of stamp duty cases on property transactions has maintained at a consistently high level (i.e. about 98 000 cases in 2014 and 89 000 cases in 2015).

20. In addition, the SO has to deal with an escalating number of appeal cases. The number of appeal cases received per annum has surged from six cases in 2010-11 to 57 cases in 2015-16, and to 84 cases in the first seven months of 2016-17 (as at end-Oct 2016). As the head of the SO, CA(SO) is responsible for handling these appeal cases, making the submissions to courts, and preparing for the appeal hearings in consultation with the Department of Justice.

21. Volume aside, the stamp duty cases dealt with by the SO have

become increasingly complicated. In some complex cases, the stamp duty payers and the SO may hold different views on the interpretation of provisions under the Stamp Duty Ordinance (Cap. 117) (“SDO”). A directorate officer is essential to help scrutinise these complex cases with his professional knowledge and judgment. It is also incumbent upon the proposed CA(SO) post to ensure that the stamp duty provisions under the SDO are properly administered across different stamp duty cases.

Support services for implementation of various policy initiatives

22. In addition to the over-stretching of staff resources to deal with property transactions, the SO has been heavily engaged in providing technical support to the relevant policy bureaux in implementing new policy initiatives over the past few years. These initiatives include –

- (a) implementation of various demand-side management measures to address the overheated property market;
- (b) stamp duty exemption for transfer of shares or units of exchange traded funds and transactions of regulatory capital securities under Basel III;
- (c) stamp duty arrangement for the new open-ended fund company structure, resolution regime for financial institutions and the uncertificated securities market regime;
- (d) levy collection on behalf of the Property Management Services Authority; and
- (e) implementation of the Shanghai-Hong Kong Stock Connect, Shenzhen-Hong Kong Stock Connect and mutual recognition of funds between the Mainland and Hong Kong.

23. The above initiatives pertaining to the SO are highly specialised and time-critical. Most of them involve legislative amendments to the SDO. Given the continuous expansion of SO’s work in terms of scope, volume and complexity to cater for the implementation of these policy initiatives and any further initiatives in future, there is a strong need for

creating the CA(SO) post in the SO in Unit 3 on a permanent basis, with a view to facilitating policy deliberations, legislative exercises and delivery of various initiatives relating to stamp duty in an efficient and effective manner.

24. In view of the above justifications, there is a genuine operational need to create the permanent CA(SO) post with effect from 1 June 2017⁵. The proposed job description is at **Annex C**. The proposed permanent CA(SO) post will continue to be supported by a team of 24 non-directorate professional posts, namely two Senior Assessors, five Assessors and 17 Assistant Assessors. The proposed organisation chart of the SO is at **Annex D**.

ALTERNATIVES CONSIDERED

25. We have critically examined the option for FSTB and IRD to redeploy internal resources to take up the expanding responsibilities. However, all existing Principal Assistant Secretaries in FSTB and CAs in IRD are already fully engaged in their existing schedules with distinctively different duties. We have come to the conclusion that redeployment is neither practicable nor desirable as a long term solution. We have also examined but do not consider it appropriate to create a supernumerary PAS(Tsy)R2 post or extend the current supernumerary CA post for another three years having regard to the on-going nature of the additional duties involved.

FINANCIAL IMPLICATIONS

26. The proposed creation of one permanent AOSGC post in FSTB and one permanent CA post in IRD will bring about an additional notional annual salary cost at mid-point of \$3,789,000. The full annual average staff cost, including salaries and staff on-cost is \$5,300,556.

27. For the four non-directorate permanent posts in FSTB as set out in

⁵ IRD will arrange short-term re-deployment to provide necessary relief for the interim period between 1 April and 31 May 2017 (i.e. the period after the supernumerary post has expired but before the proposed permanent post is created).

paragraph 14 above, the notional annual salary cost at mid-point is \$2,418,300 and the full annual average staff cost, including salaries and staff on-cost, is \$2,696,148.

28. We will include sufficient provision in the draft Estimates for 2017-18 and subsequent years to meet the cost of the proposal.

ADVICE SOUGHT

29. Members are invited to support the proposal. Subject to Members' views, we will submit the proposal to the Establishment Sub-Committee for endorsement on 8 February 2017 and Finance Committee for approval on 5 May 2017.

Financial Services and the Treasury Bureau (Treasury Branch)
Inland Revenue Department
December 2016

**Proposed Job Description –
Principal Assistant Secretary for Financial Services and the Treasury
(Treasury) (Revenue) 2**

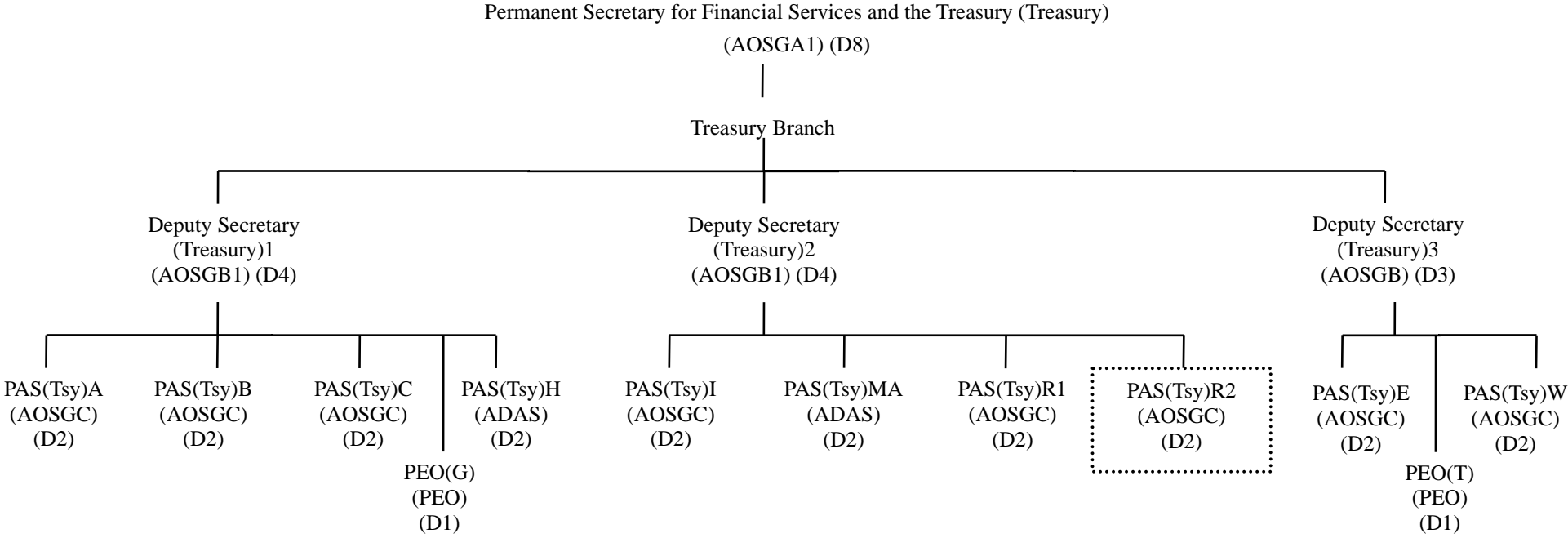
Rank : Administrative Officer Staff Grade C (D2)

Responsible to : Deputy Secretary for Financial Services and the
Treasury (Treasury) 2 (D4)

Main Duties and Responsibilities –

- (1) Policy and legislative matters for tax treaties between Hong Kong and other jurisdictions, including CDTAs and TIEAs
- (2) Policy and legislative matters for exchange of information for tax purposes, including the implementation of AEOI in Hong Kong
- (3) Policy and legislative matters for implementation of OECD's package to tackle BEPS in Hong Kong
- (4) Policy matters concerning Hong Kong's participation in international organizations and conferences relating to tax cooperation, and peer reviews on Hong Kong's compliance with the relevant international standards
- (5) Monitoring other on-going and new developments on the international tax landscape and working on the corresponding enhancements for Hong Kong's tax regime
- (6) Policy and legislative matters relating to the Inland Revenue Ordinance

Proposed Organisation Chart of the Financial Services and the Treasury Bureau (Treasury Branch)



- Legend:**
- Permanent directorate post to be created
 - AOSGA1 Administrative Officer Staff Grade A1
 - AOSGB1 Administrative Officer Staff Grade B1
 - AOSGB Administrative Officer Staff Grade B
 - AOSGC Administrative Officer Staff Grade C
 - ADAS Assistant Director of the Accounting Services
 - PAS(Tsy) Principal Assistant Secretary for Financial Services and the Treasury (Treasury)
 - PEO Principal Executive Officer

**Proposed Job Description –
Chief Assessor (Stamp Office)**

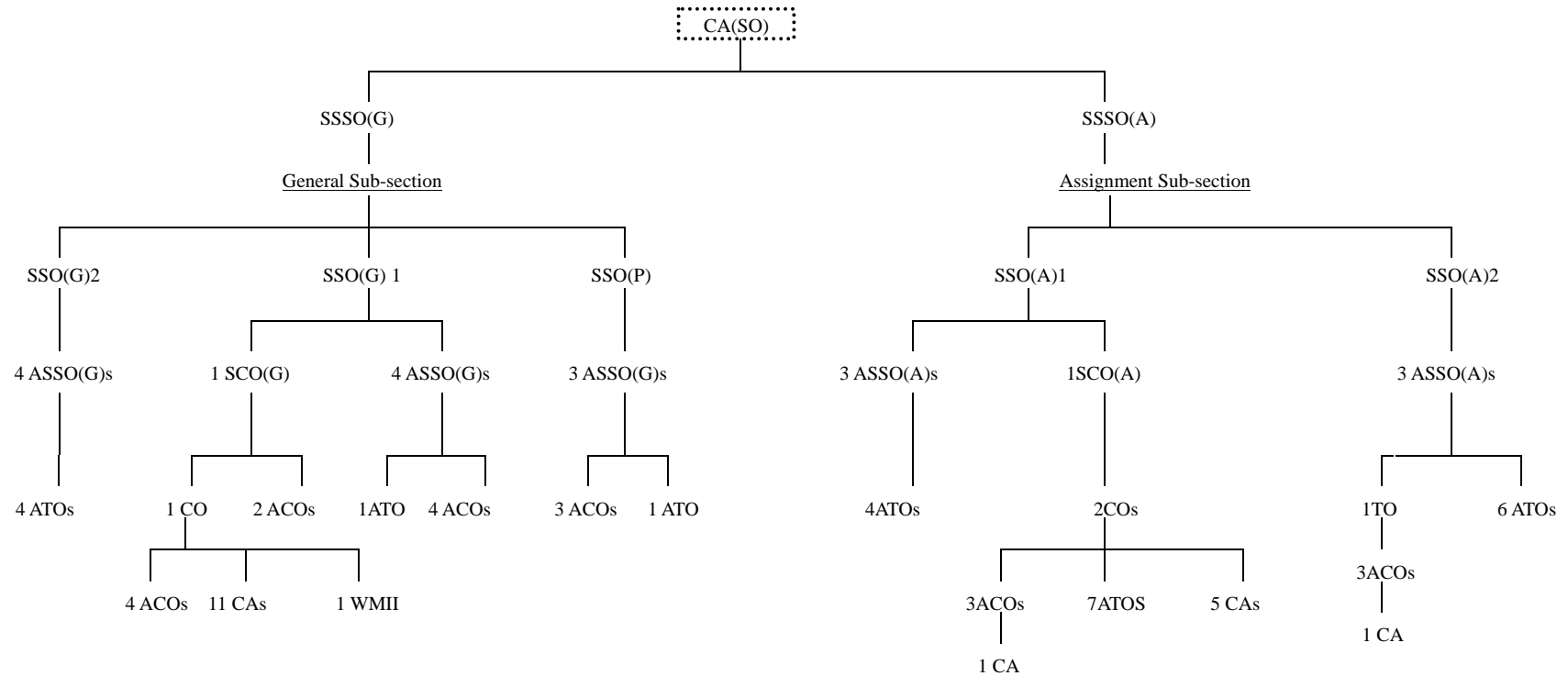
Rank : Chief Assessor (D1)

Responsible to : Assistant Commissioner of Inland Revenue 3 (D2)

Main Duties and Responsibilities –

- (1) To supervise and plan for the administration of the Stamp Office of Unit 3 to ensure that all work programmes of the Stamp Office are carried out efficiently to achieve the overall objectives
- (2) To administer and exercise specific duties under the Stamp Duty Ordinance (Cap. 117), including remission or refund of stamp duty, remission of late stamping penalty or additional stamp duty, conduct of operational reviews on intra-group exemption cases, approving settlement of informer cases and review of adjudication cases
- (3) To provide guidance and give instructions to Senior Superintendent of Stamp Office (Assignment) and Senior Superintendent of Stamp Office (General), on management and technical matters, including the handling of computer projects, system infrastructure enhancement, complaint cases, audit queries, informer cases, drafting staff handbook, stamp circulars and Stamp Office Interpretation and Practice Notes
- (4) To make and comment on submissions on procedural and technical matters in relation to the Stamp Office, including rendering advice to the senior management on policies and practices, and on formulation of Budgets, betting duty reform, law amendments and procedural changes relating to the Stamp Duty Ordinance (Cap. 117) and Betting Duty Ordinance (Cap. 108)
- (5) To liaise with other Units of the Department and to represent the Department in liaising with other Government departments and outside bodies on matters relating to stamp duty and betting duty
- (6) To take up committee work and other duties as assigned by the management

Proposed Organisation Chart of the Inland Revenue Department (Stamp Office)



Legend:

- CA(SO) Chief Assessor (Stamp Office) (permanent post proposed for creation with effect from 1 June 2017)
- SSSO Senior Superintendent of Stamp Office [at the rank of Senior Assessor]
- SSO Superintendent of Stamp Office [at the rank of Assessor]
- ASSO Assistant Superintendent of Stamp Office [at the rank of Assistant Assessor]
- SCO Senior Clerical Officer
- CO Clerical Officer
- TO Taxation Officer
- ACO Assistant Clerical Officer
- ATO Assistant Taxation Officer
- CA Clerical Assistant