

立法會
Legislative Council

LC Paper No. CB(1)188/19-20
(These minutes have been seen
by the Administration)

Ref : CB1/SS/20/18

**Subcommittee on Two Orders Made under Section 49(1A) of
The Inland Revenue Ordinance and Gazetted on 4 October 2019**

**Minutes of the first meeting on
Friday, 25 October 2019, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

- Members present** : Hon Kenneth LEUNG (Chairman)
Hon James TO Kun-sun
Hon Charles Peter MOK, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Jeremy TAM Man-ho
- Members absent** : Hon Elizabeth QUAT, BBS, JP
Hon CHU Hoi-dick
- Public officers attending** : Mr Andrew LAI, JP
Deputy Secretary for Financial Services and the Treasury
(Treasury)²
- Mr Stephen LO
Principal Assistant Secretary for Financial Services and
the Treasury (R2)
- Mr Brian CHIU, JP
Deputy Commissioner (Technical)
Inland Revenue Department

Ms Carmen CHU
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Miss Rachel DAI
Assistant Legal Adviser 2

Mr Hugo CHIU
Senior Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant (1)4

Ms Vivian CHAN
Clerical Assistant (1)4

Action

I Election of Chairman

Election of Chairman

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee and invited nominations for the chairmanship of the Subcommittee.

2. Mr Kenneth LEUNG was nominated by Mr Charles Peter MOK and the nomination was seconded by Mr Christopher CHEUNG. Mr Kenneth LEUNG accepted the nomination. There being no other nomination, Mr James TO declared that Mr Kenneth LEUNG was elected the Chairman of the Subcommittee. Mr LEUNG took the chair.

Election of Deputy Chairman

3. Members agreed that there was no need to elect a Deputy Chairman.

Action

II Meeting with the Administration

Relevant papers

- (L.N. 117 of 2019 — Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of Cambodia) Order
- L.N. 118 of 2019 — Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fifth Protocol) Order
- TsyB R2 183/800-1-1/17/0 (C) and TsyB R2 183/800-1-1/65/0 (C) — Legislative Council Brief
- LC Paper No. LS93/18-19 — Legal Service Division Report
- LC Paper No. CB(1)43/19-20(01) — Marked-up copy of the Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fifth Protocol) Order prepared by the Administration (Restricted to members only)
- LC Paper Nos. CB(2)1974/18-19(01) and CB(1)43/19-20(02) — Two submissions dated 11 October 2019 and 12 October 2019 from a member of the public (Restricted to members only) (English version only)
- LC Paper No. CB(1)43/19-20(03) — Administration's response to the two submissions from the member of the public

Action

- LC Paper No. CB(1)43/19-20(04) — Letter dated 22 October 2019 from the Legal Service Division to the Administration
- LC Paper No. CB(1)43/19-20(05) — Administration's response to the letter dated 22 October 2019 from the Legal Service Division
- LC Paper No. CB(1)43/19-20(06) — Background brief prepared by the Legislative Council Secretariat)

Discussion

4. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

5. In respect of the Comprehensive Avoidance of Double Taxation Agreement signed between Hong Kong and Cambodia ("the Cambodia CDTA"), the Administration was requested to:

- (a) consult the Joint Liaison Committee on Taxation and relevant stakeholders, including the American Chamber of Commerce in Hong Kong, on the Cambodia CDTA, in particular whether any provisions in the Cambodia CDTA would contravene the United States' Cambodia Democracy Act of 2019 as raised in the two submissions from a member of the public (i.e. LC Paper Nos. CB(2)1974/18-19(01) and CB(1)43/19-20(02)), and report the views received to the Subcommittee; and
- (b) provide, if any, information or comments of the business and professional sectors, such as the "Big Four" accounting firms, on the Cambodia CDTA.

(Post meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)105/19-20(02) on 1 November 2019.)

III Any other business

Legislative timetable and date of next meeting

6. The Chairman said that he would, subject to members' views on the Administration's written response, decide whether the Subcommittee should hold a second meeting.

(Post-meeting note: As the Secretariat had not received any requests from members for holding a meeting to discuss the Administration's written response, the Chairman instructed that no further meeting of the Subcommittee would be held.)

7. The Subcommittee noted that the two Orders made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and gazetted on 4 October 2019 ("the two Orders") would come into operation on 6 December 2019, and agreed that the Chairman should move a resolution on behalf of the Subcommittee at a Council meeting to extend the scrutiny period of the two Orders to the Council meeting of 4 December 2019.

(Post-meeting note: The Chairman had given notice on behalf of the Subcommittee to move a resolution at a Council meeting to extend the scrutiny period of the two Orders to the Council meeting of 4 December 2019. The resolution could not be dealt with by the time the Council meeting of 13 November 2019 was adjourned. The scrutiny period for the two Orders therefore expired at the Council meeting of 13 November 2019.)

8. There being no other business, the meeting ended at 11:35 am.

**Proceedings of the first meeting of
the Subcommittee on Two Orders Made under Section 49(1A) of
the Inland Revenue Ordinance and Gazetted on 4 October 2019
on Friday, 25 October 2019, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

| Time Marker | Speaker | Subject(s) | Action Required |
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| Agenda item I — Election of Chairman | | | |
| 000352 – 000756 | Mr James TO Mr Charles Peter MOK Mr Christopher CHEUNG Mr Kenneth LEUNG | Election of Chairman | |
| Agenda item II — Meeting with the Administration | | | |
| Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of Cambodia) Order (L.N. 117 of 2019) ("the Cambodia Order") | | | |
| 000757 – 001231 | Chairman Administration | Briefing by the Administration on the Cambodia Order, which sought to implement the Comprehensive Avoidance of Double Taxation Agreement signed between Hong Kong and Cambodia ("Cambodia CDTA"). | |
| 001232 – 002740 | Chairman Mr James TO Administration | Mr TO referred to the Administration's response to two submissions from a member of the public (i.e. LC Paper Nos. CB(2)1974/18-19(01) and CB(1)43/19-20(02)) ("the submissions"), and enquired about: (a) the reasons for the Administration's views that the tax sparing provision set out in paragraph 3 of Article 23 of the Cambodia CDTA had no connection with the Cambodia Democracy Act of 2019 of the United States ("the US") ("the Cambodia Democracy Act"); (b) whether paragraph 3 of Article 23 of the Cambodia CDTA, which contained a sunset clause limiting the application of the tax sparing provision to 10 years, was similar to the sunset clauses for tax | |

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| | | <p>sparing provisions in CDTAs that Hong Kong had signed with other jurisdictions; and</p> <p>(c) whether the Administration had examined if the Cambodia CDTA might contravene any agreements signed between the US and Cambodia and/or the US legislation relating to Cambodia.</p> <p>The Administration responded that:</p> <p>(a) contrary to the view stated in the submissions that the 10 year economic development project as referred to in paragraph 3 of Article 23 of the Cambodia CDTA might cover projects contravening the Cambodia Democracy Act, the said paragraph contained a tax sparing provision, which was only a general provision and did not refer to any particular economic development project;</p> <p>(b) it was not unusual to include a tax sparing provision in a CDTA between a developed economy and a developing economy where the latter might grant tax incentives to attract foreign investment. Paragraph 3 of Article 23 was included in the Cambodia CDTA at the request of Cambodia. Cambodia's CDTAs with certain other jurisdictions contained a similar tax sparing provision. Similar tax sparing provisions also existed in Hong Kong's CDTAs with Brunei, Malaysia, Thailand and Vietnam;</p> <p>(c) in general, a tax sparing provision included in a CDTA signed by Hong Kong was paired with a 10-year sunset clause to provide a time limit on the application of the provision;</p> <p>(d) given that Hong Kong adopted the territorial basis of taxation, income derived by a Hong Kong resident from its economic activities carried out in Cambodia was in general not taxable in Hong Kong. Therefore, the tax sparing</p> | |

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| | | <p>provision would rarely have practical application in Hong Kong and the impact of such provision on Hong Kong would be minimal; and</p> <p>(e) the Cambodia CDTA only applied to persons who were residents of Hong Kong or Cambodia. It did not apply to US tax residents, nor cover territories under US jurisdiction. It was not envisaged that the Cambodia CDTA would contravene the Cambodia Democracy Act.</p> | |
| 002741 – 004333 | Chairman Mr Jeremy TAM Administration | <p>Regarding the concern on possible conflicts between the Cambodia CDTA and the Cambodia Democracy Act, Mr TAM enquired about:</p> <p>(a) whether the Administration had conducted consultation with relevant stakeholders on the Cambodia CDTA including the Taxation Institute of Hong Kong ("TIHK") and Hong Kong branch of any US taxation bodies;</p> <p>(b) whether the Subcommittee should consider inviting public views on the Cambodia CDTA if the Administration had not conducted consultation with relevant stakeholders on the CDTA; and</p> <p>(c) whether the Administration could confirm that the Cambodia CDTA would not contravene the Cambodia Democracy Act.</p> <p>The Administration responded that:</p> <p>(a) while there had been no public consultation on the Cambodia CDTA, the business and professional sectors including TIHK had all along supported the Government's policy to conclude more CDTAs with Hong Kong's trading and investment partners. The expansion of Hong Kong's CDTA network had facilitated business between Hong Kong and other jurisdictions and enhanced tax certainty for businessmen and investors;</p> | |

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| | | <p>(b) there had been specific calls from the Hong Kong business sector for the Administration to conclude a CDTA with Cambodia as more and more local companies were establishing factories and conducting business in Cambodia. It was also noted that Cambodia had already concluded CDTAs with some economies in the region including Singapore;</p> <p>(c) some of the "Big Four" accounting firms had issued tax updates on the signing of the Cambodia CDTA;</p> <p>(d) like other CDTAs signed by Hong Kong, the Cambodia CDTA was modelled on the Model Tax Convention on Income and on Capital promulgated by the Organisation for Economic Co-operation and Development and hence in line with the international standard; and</p> <p>(e) it was not envisaged that the Cambodia CDTA would contravene the Cambodia Democracy Act.</p> <p>The Chairman's enquiries about:</p> <p>(a) the number of CDTAs concluded by Cambodia with other jurisdictions; and</p> <p>(b) the caps on withholding tax rates set in the Cambodia CDTA (i.e. 10%) as compared to those in the CDTAs concluded by Cambodia with other jurisdictions.</p> <p>The Administration advised that:</p> <p>(a) Cambodia had concluded six CDTAs with other jurisdictions including Singapore;</p> <p>(b) the benefits of the Cambodia CDTA for Hong Kong residents were similar to those for Singapore residents under the CDTA between Cambodia and Singapore; and</p> <p>(c) Cambodia was taking steps to comply with the prevailing international tax standards (including those relating to</p> | |

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| | | <p>automatic exchange of financial account information in tax matters and Country-by-Country reporting).</p> <p>At the request of the Chairman and Mr TAM, the Administration was required to:</p> <p>(a) consult the Joint Liaison Committee on Taxation and relevant stakeholders, including the American Chamber of Commerce in Hong Kong, on the Cambodia CDTA, in particular whether any provisions in the CDTA would contravene the Cambodia Democracy Act as raised in the submissions, and report the views received to the Subcommittee; and</p> <p>(b) provide, if any, information or comments of the business and professional sectors, such as the "Big Four" accounting firms, on the Cambodia CDTA.</p> | <p>The Administration to take action as per paragraph 5 of the minutes</p> |
| 004334 – 004420 | Chairman Assistant Legal Adviser 2 ("ALA2") Administration | The Subcommittee noted ALA2's letter dated 22 October 2019 to the Administration, and the latter's responses (LC Paper Nos. CB(1)43/19-20(03) and (04)). | |
| Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fifth Protocol) Order (L.N. 118 of 2019) ("the Mainland Order") | | | |
| 004421 – 005040 | Chairman Administration | <p>Briefing by the Administration on the Mainland Order, which sought to implement the Fifth Protocol to the Comprehensive Avoidance of Double Taxation Arrangement signed between Hong Kong and the Mainland in July 2019 ("the Mainland Fifth Protocol").</p> <p>The Chairman enquired about the implementation of the new Teachers and Researchers Article ("the Teachers Article") to be added by the Mainland Fifth Protocol.</p> <p>The Administration responded that:</p> <p>(a) the taxation arrangements that would apply to eligible Hong Kong teachers and researchers visiting the Mainland under the Teachers Article would reciprocally</p> | |

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| | | <p>apply to eligible Mainland teachers and researchers visiting Hong Kong; and</p> <p>(b) for Mainland teachers and researchers visiting Hong Kong, the Teachers Article would, among other stipulated conditions, apply to those engaged in teaching or research at recognized educational or scientific research institutions of Hong Kong. Broadly speaking, research institutes in Hong Kong supported by the Innovation and Technology Fund, such as local universities, the Hong Kong Applied Science and Technology Research Institute, and the Hong Kong Productivity Council, would be considered as recognized scientific research institutions within the scope of the Teachers Article.</p> | |
| Agenda item III — Any other business | | | |
| 005041 – 005358 | Chairman Mr Jeremy TAM | Legislative timetable and date of next meeting | |