

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 9 August 1978****The Council met at half past two o'clock**

(The Acting Governor has changed the date of the next Legislative Council sitting of 16 August 1978 to 9 August 1978)

PRESENT

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)
SIR DENYS TUDOR EMIL ROBERTS, KBE, QC, JP

THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, CMG, JP

THE HONOURABLE THE ATTORNEY GENERAL
MR JOHN WILLIAM DIXON HOBLEY, CMG, QC, JP

THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR LI FOOK-KOW, CMG, JP

THE HONOURABLE DAVID AKERS-JONES, CMG, JP
SECRETARY FOR THE NEW TERRITORIES

THE HONOURABLE LEWIS MERVYN DAVIES, CMG, OBE, JP
SECRETARY FOR SECURITY

THE HONOURABLE ALAN JAMES SCOTT, JP
SECRETARY FOR HOUSING

THE HONOURABLE GARTH CECIL THORNTON, QC
SOLICITOR GENERAL

THE HONOURABLE DEREK JOHN CLAREMONT JONES, JP
SECRETARY FOR THE ENVIRONMENT

THE HONOURABLE ERIC PETER HO, JP
SECRETARY FOR SOCIAL SERVICES

THE HONOURABLE JOHN CHARLES CREASEY WALDEN, JP
DIRECTOR OF HOME AFFAIRS

THE HONOURABLE JOHN MARTIN ROWLANDS, JP
SECRETARY FOR THE CIVIL SERVICE

THE HONOURABLE JAMES NEIL HENDERSON, JP
COMMISSIONER FOR LABOUR

THE HONOURABLE WILLIAM DORWARD, OBE, JP
DIRECTOR OF TRADE, INDUSTRY AND CUSTOMS (*Acting*)

THE HONOURABLE DAVID TZE-KI WONG, JP
SECRETARY FOR ECONOMIC SERVICES (*Acting*)

THE HONOURABLE WILLIAM COLLINS BELL, OBE, JP
DIRECTOR OF PUBLIC WORKS (*Acting*)

THE HONOURABLE JOHN MORRISON RIDDELL-SWAN, JP
DIRECTOR OF AGRICULTURE AND FISHERIES (*Acting*)

THE HONOURABLE JAMES WINDROW SWEETMAN, JP
DIRECTOR OF SOCIAL WELFARE (*Acting*)

DR THE HONOURABLE LAM SIM-FOOK, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES (*Acting*)

THE HONOURABLE COLVYN HUGH HAYE, JP
DIRECTOR OF EDUCATION (*Acting*)

THE HONOURABLE SIR SZE-YUEN CHUNG, CBE, JP

THE HONOURABLE LEE QUO-WEI, CBE, JP

THE HONOURABLE OSWALD VICTOR CHEUNG, CBE, QC, JP

THE HONOURABLE PETER GORDON WILLIAMS, OBE, JP

THE HONOURABLE JAMES WU MAN-HON, OBE, JP

THE HONOURABLE HILTON CHEONG-LEEN, OBE, JP

THE HONOURABLE JOHN HENRY BREMRIDGE, OBE, JP

DR THE HONOURABLE HARRY FANG SIN-YANG, OBE, JP

THE HONOURABLE MRS KWAN KO SIU-WAH, OBE, JP

THE HONOURABLE LO TAK-SHING, OBE, JP

THE HONOURABLE ALEX WU SHU-CHIH, OBE, JP

THE REV THE HONOURABLE JOYCE MARY BENNETT, JP

THE HONOURABLE LYDIA DUNN, OBE, JP

DR THE HONOURABLE HENRY HU HUNG-LICK, OBE, JP

THE HONOURABLE LEUNG TAT-SHING, JP

THE REV THE HONOURABLE PATRICK TERENCE McGOVERN, SJ, JP

THE HONOURABLE PETER C. WONG, JP

THE HONOURABLE WONG LAM, OBE, JP

THE HONOURABLE CHARLES YEUNG SIU-CHO, JP

ABSENT

THE HONOURABLE ROGERIO HYNDMAN LOBO, CBE, JP

THE HONOURABLE LI FOOK-WO, OBE, JP

THE HONOURABLE FRANCIS YUAN-HAO TIEN, OBE, JP

THE HONOURABLE CHEN SHOU-LUM, JP

DR THE HONOURABLE RAYSON LISUNG HUANG, CBE, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR STEPHEN TAM SHU-PUI

PAPERS

<i>Subject</i>	<i>LN No</i>
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Subsidiary Legislation:

Merchant Shipping Ordinance.	
Merchant Shipping (Lifeboatmen and A.B. Certificates of Competency Examinations) Rules 1978.....	179

Sessional Papers 1977-78:

No 57—Sir David Trench for Recreation Trustee's Report 1977-78 (published on 9.8.78).

No 58—Supplementary Provisions approved by the Urban Council during the first quarter for the fiscal year 1978-79 (published on 9.8.78).

Beggars at Star Ferry Pier Subway

1 MR PETER C. WONG asked:—*Sir,*

- (a) *is Government aware that the pedestrian subway leading to the Star Ferry Pier on Hong Kong Island has become a favourite haunt for beggars?*
- (b) *if so, what action will Government take?*

SECRETARY FOR SECURITY:—*Sir,*

- (a) this pedestrian subway is used by a few persons who are disabled persons and sit in the subway and ostensibly offer chewing gum or musical entertainment in return for alms.
- (b) Police officers will respond to a complaint and those on beat duty will act against persons found openly begging and making a nuisance of themselves in a public place. But as long as such persons do not cause any obstruction their presence has been tolerated by the Police.

MR PETER C. WONG:—*Sir, could not the Social Welfare Department do something for these people?*

SECRETARY FOR SECURITY:—Sir, we have—the Social Welfare Department and the Police—have undertaken an enquiry into the circumstances of the two most prominent persons in the subway. One of them is an elderly gentleman of 65, who maintains vociferously that he enjoys the type of living which he earns and doesn't require assistance. The other person has been, on several occasions, counselled and been to centres for assistance but on each occasion he has reverted to his present stand.

Checks on pre-war buildings

2 MISS DUNN asked:—*In the light of the collapse of several old buildings during tropical storm Agnes, will Government institute regular checks on old and especially pre-war buildings to minimize the danger to residents?*

DIRECTOR OF PUBLIC WORKS:—Sir, the Dangerous Buildings Division of the Buildings Ordinance Office has since its inception 15 years ago carried out planned surveys in the older built-up areas to identify dangerous and potentially dangerous buildings, in addition to responding to individual complaints.

Buildings so identified are dealt with either by an application being made to the Courts for a Closure Order, the tenants being evacuated in the interest of public safety, or by the issue of an Order requiring that repairs be carried out. In addition, buildings which may require further action to be taken in the future are kept under periodic supervision.

There were in fact two major building collapses during the passage of tropical storm Agnes. Both involved old pre-war buildings in the urban area of Hong Kong Island. One of these had already been closed by order of the Court 18 days prior to the storm, and in the other case the collapse occurred during an inspection by a Building Surveyor of the Buildings Ordinance Office who had been called to the scene. The residents had already evacuated the building and the only casualties were the Building Surveyor, a Police Inspector, a Police Constable, and a resident who accompanied the inspecting party. Fortunately injuries received were of a minor nature.

MISS DUNN:—*Sir, how frequently are these planned surveys carried out and in the light of experience in recent years is the Government satisfied that the frequency is adequate?*

DIRECTOR OF PUBLIC WORKS:—Sir, the frequency of site inspections obviously depends upon the state of the building. There is a BU system, a bring-up system, operating in the Buildings Ordinance Office. It may be anything from 3 months to 12 months depending, as I have said, on the state of the building. I am sorry, the second part of the question was?

MISS DUNN:—*Is the Government satisfied that the frequency is adequate?*

DIRECTOR OF PUBLIC WORKS:—Sir, I think we are satisfied that the frequency is adequate. I think it should be borne in mind that extreme weather conditions can affect buildings unexpectedly and radically very quickly, and I do not think it is possible to anticipate what might happen in every case. Nonetheless, the staff of the Buildings Ordinance Office will continue, as far as is possible, to ensure that buildings are safe.

MISS DUNN:—*Sir, are special checks made in addition to routine checks after heavy rainstorms or if there are building or demolition work within the vicinity?*

DIRECTOR OF PUBLIC WORKS:—Sir, the simple answer to that question, in both cases, is there *are* special checks made. The point is when an assessment is made of a dangerous building, and one of those which collapsed has in fact been under observation since 1969, when an inspection is made it is usual to assess when the next inspection will become due, and as I have said, the frequency of these inspections will vary according to the state of the building. But we are satisfied with the present procedures. In fact, Miss DUNN might like to know that since 1963 over 2,310 buildings have been closed and demolished and a further 6,621 Repair Orders have been issued.

MR PETER C. WONG:—*What is the number of staff in the Dangerous Buildings Division of the Buildings Ordinance Office?*

DIRECTOR OF PUBLIC WORKS:—I am sorry, Sir, I do not have the answer to hand. I know these are the usual complaints about general shortage of staff but I do not know the actual numbers involved. I will let my honourable Friend know the figure.

(THE FOLLOWING INFORMATION WAS PROVIDED SUBSEQUENTLY)

There are 11 professional officers in post out of an establishment of 15.

Hung Hom Multi-storey car park

3 MR WONG LAM asked in Cantonese dialect:—

閣下，政府可否說明：

- (甲) 因何封閉紅磡多層停車場；
- (乙) 有何計劃善用該停車場？

(The following is the interpretation of what Mr WONG Lam asked)

Will Government State:

- (a) *the reasons for closing the Hung Hom Multi-storey car-park; and*
- (b) *whether there are any plans to put it to good use?*

SECRETARY FOR THE ENVIRONMENT:—Sir, the answer to the first part of the question is that there has been a temporary shortage of staff to man car parks. Some of the staff seconded to the Transport Department from the Urban Services Department, when the management of car parks was transferred, have returned to the USD and the Transport Department has had some difficulty in recruiting new staff to replace them. It was therefore decided to temporarily close the least patronized car park, Hung Hom, but it is hoped to re-open it again in October of this year.

As regards the second part of the question, it is not expected that this car park will be fully utilized, except perhaps on special occasions such as Sha Tin race days, until the nearby indoor stadium is opened in 1981. Three floors of the car park have therefore recently been allocated on a temporary basis to the Council for Recreation and Sport for indoor sporting and recreational activities.

Mr WONG LAM asked in Cantonese dialect:—

閣下，除了這三層交給康樂體育事務組用之外，其餘的會不會租給私人團體來作為展覽場所之用？

(The following is the interpretation of what Mr WONG Lam asked)

Sir, besides the 3 storeys allocated to the Council for Recreation and Sport would other storeys be used by private organizations for exhibition?

SECRETARY FOR THE ENVIRONMENT:—Sir, I think it is felt that the 3 storeys are enough at the present time in view of the expected utilization of the car park, especially as I said with the opening in October of the Sha Tin Race Course. I think there are a total of something like just over 1,000, 1,041, parking spaces and by taking away 3 floors that reduces it by over 300 and the further spaces, we feel, will be needed as the demand for car parking builds up.

REV. JOYCE M. BENNETT:—*Sir, what qualifications are required for these posts of which there is a shortage?*

SECRETARY FOR THE ENVIRONMENT:—Sir, I would say the major qualification is to be able to read and write, and write down figures and to take money.

REV. JOYCE M. BENNETT:—*Sir, has the Government considered employing handicapped people?*

SECRETARY FOR THE ENVIRONMENT:—Yes, Sir, in circumstances where handicapped people can operate. I mean, the people who actually collect the tickets have to be able to move around and to move inside the car parks. So, this would not be suitable for handicapped people but the taking of money, yes, quite possible.

REV. JOYCE M. BENNETT:—*Sir, I think, is it possible for people with one arm to do this work?*

SECRETARY FOR THE ENVIRONMENT:—Sir, I am not sure. I would have to take advice on that but I would say it would be difficult. It would be difficult to collect money with one arm because he has to issue the ticket as well.

REV. JOYCE M. BENNETT:—*Sir, is the Honourable Member aware that other car parks use men with one arm?*

SECRETARY FOR THE ENVIRONMENT:—In other countries, Sir?

REV. JOYCE M. BENNETT:—*In Hong Kong, Sir.*

SECRETARY FOR THE ENVIRONMENT:—In Hong Kong? You mean the private car parks? No, Sir, I am not aware but I will look into the possibility. I will look into what the Transport Department actually does in this regard and I will write to Miss BENNETT.

(THE FOLLOWING WRITTEN REPLY WAS PROVIDED SUBSEQUENTLY)

I now understand from the Commissioner of Transport that he is prepared to recruit about 20 disabled people to answer telephone complaints at Transport Department's Headquarters and act as shroffs in car parks subject to the nature and degree of their disability. However, the employment of disabled people in car parks is conditional on the installation of semiautomatic barrier equipment which has been deferred pending a policy decision on the construction of additional Government multi-storey car parks. This should be made early next year.

I should, however, like to emphasise that, even assuming a favourable decision, the number of handicapped people who could be employed would be small and not all disabilities could be accepted, e.g. the blind, deaf and those without the use of both legs could not perform basic duties.

Recreational activities

4 MR WONG LAM asked in Cantonese dialect:—

閣下，政府認為目前各社區中心所舉辦的各項活動除適應青少年外，能否同時兼顧年歲較大的人士？

(The following is the interpretation of what Mr WONG Lam asked)

Apart from providing for young people, does Government consider that the activities organized by various community centres also meet the needs of the older age groups?

SECRETARY FOR HOME AFFAIRS:—Sir, all activities and programmes in community centres are intended to cater for persons of all ages. Statistics kept by the Social Welfare Department indicate that adult membership (that is, members of 21 years of age and over) of these centres is about 31%.

Activities and programmes which attract adult participation include cooking and dress-making classes, visits and outings, variety shows and drama. In addition, there are special club groups for persons of 55 and over, which organize their own social events in community centres.

MR WONG LAM asked in Cantonese dialect:—

閣下，政府會不會在公共屋邨設立佈告板，以便張貼各項活動的佈告？

(The following is the interpretation of what Mr WONG Lam asked)

Sir, will Government provide notice boards in public housing estates giving details of these activities?

SECRETARY FOR HOME AFFAIRS:—Sir, as far as I am aware, this is already being done.

Industrial noise

5 DR HU asked:—*Will Government consider strengthening its control over industrial noise?*

COMMISSIONER FOR LABOUR:—Sir, with regard to noise and its general environmental effect Government is considering a draft Noise Abatement Bill which will *inter alia* cover industrial noise. It is hoped, I understand, to begin consultations on this in the autumn with the aim of bringing a Bill to this Council next year.

With regard to the problem of industrial noise as it may affect the hearing of workers, this is a complex matter and I have for some time been considering the possible need for regulations to protecting the hearing of workers but have concluded that other steps are necessary first.

Most important particularly since this is an 'invisible hazard' it is necessary to persuade workers that noise is indeed a danger to hearing, and that wearing protective devices may be helpful. Accordingly a campaign of advice and education will start later in the year. The Factory Inspectorate will also discuss and advise during factory visits, and will collect information on the levels of noise produced by different processes and industries over the next twelve months. This initial policy has the support of the Labour Advisory Board.

A further step is that I hope to have the services of an ILO noise consultant for three months early next year to assist us in developing our policies in this field.

DR HU:—*Sir, is the Government aware that deafness is invisible, therefore, more attention should be paid to this kind of handicap?*

COMMISSIONER FOR LABOUR:—As I have said it is an 'invisible hazard'. Government is aware that it is a hazard, but I think in cases of this kind where people are required or may well be required to wear things for their own protection, it is necessary to start with an educational and information programme.

Government Business

Second reading of bills

INLAND REVENUE (AMENDMENT) BILL 1978

Resumption of debate on second reading (12 April 1978)

Question proposed.

MR Q. W. LEE:—Your Excellency, in accordance with Standing Order No 65(1), I declare that I have an interest in the Bill before Council. The nature of my interest is that of an executive officer of the Hang Seng Bank. I would also mention my membership of the Third Inland Revenue Ordinance Review Committee because the object of the Bill is to implement one of the recommendations of that Committee. Whatever these conflicting interests are, I am speaking today as a Member of this Council and in particular as the Convener of the Ad Hoc Group for this important Bill.

When the Bill was published, the UMELCO Secretariat received a number of representations against both the principle of the Bill and its detailed provisions. These will be dealt with more fully by Honourable T. S. LO who will speak after me. As the Convener of the Ad Hoc Group, I wish to assure our correspondents that their views, together with those expressed in the press, have received the most careful consideration both of the Ad Hoc Group and of the full body of Unofficial Members. The task confronting us was not a simple one: it was required to examine the principle behind the Bill and its provisions which are equally important.

As regards the principle, we have come to the conclusion that, subject to certain amendments to be made to the Bill, the recommendation of the Review Committee should be supported as not breaching the territorial source concept which we are aware is of vital importance to our economic development.

As regards its provisions, we are concerned with the seemingly uncertain definition both of 'financial institution' and of the interest intended to be brought into the tax charge. Accordingly we advised Government of our views and made a number of recommendations to amend the detailed provisions. Our correspondents should be relieved to know that the Government has agreed to make the necessary amendments to define financial institutions to mean only banks licensed under the Banking Ordinance and registered deposit-taking companies registered under the Deposit-taking Companies Ordinance as well as associated corporations of such banks and deposit-taking companies. As to the interest to be brought into charge, the Government has also agreed to delete the words 'directly or indirectly' in clause 3 of the Bill. We are satisfied that these amendments will go a long way to avoid uncertainty. However, as clearly stated in the Explanatory Memorandum, the intention of the Bill is to extend the charge to profits tax on banks and other financial institutions to include interest which a banking business actively carried on in Hong Kong obtains without the substantial intervention of any branch elsewhere. As a member of the Review Committee, I must therefore express regret that the Government has not seen fit to agree to reflect the intention of the Review Committee more clearly in statutory form, but rather to leave the question to the usual channels of objection and appeal where an institution considers that the Commissioner of Inland Revenue has misinterpreted the law as the Financial Secretary mentioned in his introductory speech on the Bill on the 12 April of 1978.

As to the exclusion from the tax charge of interest earned by the employment overseas of net shareholders funds, it is also regretted that the Government has not seen fit to agree to provide for this exemption. Here, I must make it clear that the amount involved is insignificant both to the Revenue and to the taxpayer. But the fear is expressed that the failure to provide for this exemption would create a precedent for the imposition of a similar tax on other businesses in the future. Furthermore, it may tend to suggest that

we are drifting over to a residence concept. I understand the Financial Secretary is a strong defender of the territorial source concept. I hope he will make it emphatically clear that this is not the intention.

One final point I wish to make is with regard to the contention that this legislation will result in some business moving away from Hong Kong. This is not unexpected. As the learned Lord Upjohn said, 'No commercial man in his senses is going to carry out transactions except on the footing of paying the smallest amount of tax involved'. These commercial men will have to decide for themselves whether Hong Kong has more to offer than other financial centres and, if so, whether the proposed tax charge is but a fair price to pay for the use of the Hong Kong infrastructure and I must point out its many unique benefits.

Subject to these remarks, Sir, I support the motion.

MR LO:—Sir, technically, I have an interest to declare as a director of the Wing On Bank. However, when dealing with Council's business I do not find it in the least difficult to consider only the community interest involved and I have been asked by my Colleagues to describe the role played by them in regard to this Bill.

This Bill was gazetted on the 3 March 1978, and straight away the UMELCO Secretariat began to receive representations on its provisions from local business organizations and associations. They included the Hong Kong General Chamber of Commerce, the American General Chamber of Commerce, the Exchange Banks' Association, the Hongkong and Shanghai Banking Corporation, the Hongkong Society of Accountants, the First National Bank of Chicago, as well as the Canadian Business Association of Hong Kong.

The criticisms of the Bill may be listed as follows:—

Firstly, that it actually imposed a new tax liability on all financial institutions apart from banks and deposit-taking companies.

Secondly, that it was discriminatory against banks and financial institutions in that no other category of business in Hong Kong would be required to pay profits tax on interest earned outside Hong Kong.

Thirdly, that it imposed a tax even where all the activities generating the profits giving rise to the tax are carried on outside of Hong Kong, that is to say in the words of the 3rd Inland Revenue Review Committee, even where 'there has been substantial intervention by an offshore branch'.

Fourthly, that it breached the basic principle of Hong Kong taxation, of only taxing profits derived from business activities carried on in Hong Kong.

Fifthly, that the Bill was retroactive.

Sixthly, that it would give rise to double taxation whenever a foreign country charges an interest withholding tax in one form or another.

Seventhly, that it would damage irreparably Hong Kong's position as a budding financial centre, and

Finally, that it created uncertainty and encouraged tax avoidance countermeasures amongst those who could, because of the size of their operations, afford to build up formidable machinery to do this.

Unofficial Members of Council took the view that the fact that Hong Kong is a major international financial centre is of vital importance to the community as a whole and accordingly it was clearly important to get the Bill right, not because of the powerful and vocal sectional interests which were involved but because of the effect that it could have on the whole community.

An ad hoc group was duly formed with the Honourable Q. W. LEE as Convener. The group with fluctuating membership held 10 meetings including 2 with the Hong Kong General Chamber of Commerce, one with the Commissioner of Inland Revenue, one with Mr K. A. MILLER, a former member of the 3rd Inland Revenue Review Committee, and three with the Financial Secretary.

The result of these meetings is that the administration has agreed with the ad hoc group to amend the Bill, so that:—

Firstly, the tax will only be imposed on a bank licensed under the Banking Ordinance and a deposit-taking company registered under the Deposit-Taking Companies Ordinance, together with any company controlled by them. This, I believe, takes care of the first objection.

Secondly, the words 'directly or indirectly' will be deleted from the Bill. This, I believe, substantially though unfortunately not completely, deals with the third, fourth and seventh objections. I will expand on this later.

Thirdly, account will be taken of those cases where a financial institution was not a financial institution for the whole of a basis period for any year of assessment.

Fourthly, the tax will be charged on the net interest after deducting therefrom any foreign withholding tax. This will substantially deal with the sixth objection.

The actual wording of the amendments that I have described will be published shortly but although it is obviously difficult to do so, I shall try to analyse the Bill as it will be amended in the light of some of the criticisms of the original version.

I should say straightaway that the Bill, as it will be amended will in a sense continue to be discriminatory against banks and financial institutions.

This is inevitable because it is designed to plug a loophole through which these institutions have been for years escaping tax for some of its profits derived from business activities within Hong Kong. The concept is simply this: The business of a bank or deposit-taking company is to collect deposits. What then is the philosophical justification for them to pay no Hong Kong profits tax on the profits that they have earned abroad by way of interest on the money which, as a business activity, they have collected here? No other institution collects deposits as a business in Hong Kong, and hence the new tax should obviously not be imposed on any other institution or business. The point simply would not arise.

As amended, the Bill will not exempt from tax on the ground of any substantial intervention by a branch outside Hong Kong. Again, the reason is simple. If the funds generating the profits were originally collected within Hong Kong it seems difficult to argue that none of these profits derive from business activities in Hong Kong by reason only of the fact that the loan was arranged outside Hong Kong. Of course, I can see a good case for apportioning the profits under the Bill, so that a part of them will be taken as having been derived from Hong Kong and a part of them will be taken as having been derived from business activities outside Hong Kong.

What then if the funds generating the profits are not those collected as a business in Hong Kong but belong to the shareholders?

As amended, the Bill will not exempt from tax any profits earned outside Hong Kong from shareholders' funds. These funds are those which have not been collected by the Banks as a business in Hong Kong. They are merely funds such as the Banks' original capital, retained earnings and reserves, (on which profits tax has already been paid). They are of themselves theoretically no different from the funds of any manufacturer or business. To tax the interest earned abroad on these funds, even where there has been substantial intervention by a foreign branch, merely because they belong to the shareholders of a Bank whose head office happens to be in Hong Kong would certainly appear to suggest that we, in taxation matters, are drifting to a residence concept. As a point of principle, therefore, the Unofficials have asked the Financial Secretary to agree to an amendment which would exempt specifically net shareholders' funds. They have produced a formula that the Convener has devised for distinguishing interest earned abroad on shareholders' funds and interest earned abroad on collected deposits, and have shown that on the basis of the Financial Secretary's forecast of tax to be gathered, that tax will be reduced by no more than about 4 to 5 million dollars per annum if net shareholders' funds are excluded. I am sure that Honourable Members will agree that to deprive the revenue of 4 to 5 million dollars a year is not an excessive sum to pay for the preservation of a principle. However, not uncharacteristically, the Financial Secretary, with his usual quotient of flexibility, disagreed. The Unofficials do not consider that this should be a sticking point and there the matter rests. (*laughter*)

To conclude our analysis of the Bill as amended, I think it is fair to say that it is right to plug the loophole that has existed, but it is somewhat a pity that it had been done in a manner that paves the way for innumerable arguments on the facts of each case, thus breaching our hallowed tradition of certainty in taxation. Moreover, to tax interest earned abroad on net shareholders' funds can never be justified even on the Financial Secretary's special brand of logic.

Finally, a word on the date of commencement. No Unofficial has been overexcited with whether the Bill should commence in April 1978 or 1979. The principle against retroactive legislation should not blind us to the fact that the Review Committee's Report came out a long time ago and the Bill itself was published in the Gazette on the 3 March 1978. Moreover, in so far as the Bill will have an effect on banks' activities which took place prior to the Bill becoming law, this is frequently inevitable on revenue bills. Hence I feel one should look to the consequences of so-called retroactive legislation. The consequences here are merely to plug a loophole never intentionally created by the legislature. My own sentiments are that the sooner it is done, the better.

SIR S. Y. CHUNG:—Your Excellency, in rising to speak on this motion I would like first of all to declare my personal interest as a non-executive director of Grindlays Dao Heng Bank.

Like my Colleague, Mr LO, I also believe that there is a loop-hole in our existing corporation profits tax legislation as can be seen from the following two examples.

There is one enterprise in Hong Kong engaged in manufacturing. It imports all its raw material, employs local labour to convert the material into finished products and finally ships out all its products from Hong Kong to other countries. All the sales transactions, including negotiations, signing of contracts, delivery of the products and income from their sale, are made outside Hong Kong. In this case, all income from sales of this manufacturing enterprise is subject to corporation profits tax in Hong Kong.

There is another enterprise in Hong Kong which deals in money. It accepts deposits through the use of its organization here, transfers the money away from Hong Kong and lends it to people in other countries. All the transactions connected with the lending of this money, including negotiations, signing of contracts, the physical handing over of the loan to borrowers and the income from the money loaned, are also made outside Hong Kong. In this case, however, because the income from the money loaned is known as 'interest', such income is NOT subject to corporation profits tax in Hong Kong.

It is therefore obvious that if the first example is correct, the second must be wrong or vice versa. Although these two examples may be somewhat over simplified, I consider that they show very clearly that there is a defect in our existing legislation on corporation profits tax. While the main object of the

Bill now before this Council is to plug this loop-hole, I agree with my Honourable Colleagues, Mr Q. W. LI and Mr T. S. LO, that a number of amendments are necessary to make it more definite and precise. Nonetheless, I fully support the principle of the Bill which is not only designed to correct a defect in our existing tax law but also to ensure that the different sectors of our business community contribute towards the public purse on a more equitable manner and basis.

With these words, Sir, I support the motion before Council.

MR BREMRIDGE:—Sir, I have an interest to declare as an outside Director of the Hongkong & Shanghai Bank and the Mercantile Bank. It is a common criticism of the way in which Hong Kong conducts its affairs that so called vested interests rule the roost to the damage of the community in general, and of the poor in particular. There may in the distant past have been some grounds for such criticism. I can only say that confronted with the draft of this present contentious Bill, which has presented me personally with many difficult problems, I have been moved only by what I (rightly or wrongly) believe to be the best interests of Hong Kong as a whole. Indeed this has always been my only criterion in my advices to this Council, and I do not find it difficult to distinguish this approach from supporting my other interests. This is also true for my Colleagues, whatever their background.

The growth of the banking industry and the transformation of Hong Kong into a major international financial centre have been widely noted. I believe that we are only just at the beginning of the true financial era of Hong Kong. How it will come into full flower is a fascinating postulation.

None of this would have been possible without the long-term, steady, and wise fiscal policies of the Hong Kong Government as so well expounded by my Friend, the Honourable Financial Secretary—who is nothing if not resolute in his ways. This indeed is a considerable understatement (*laughter*). It cannot really be supposed by intelligent men that these policies have suddenly radically changed—indeed would have been allowed to change.

Why then the fuss? Why the rancour? Why the significance attached to a minor though very complicated measure? This Bill only purports to turn into law some of the recommendations of the last Inland Revenue Review Committee. These recommendations have long been before the public, and it is well-known that the members of the Committee were experienced and wise—and certainly included prominent bankers.

Of course this Council must ensure that the drafting of the Bill is sound, and that the power of the Inland Revenue Department is properly constrained. Nothing is worse in such affairs than badly drafted law, for certainly we can never take on trust the discretion in years ahead of those who must interpret the law as it stands. It must therefore be clear and precise, which has presented major drafting problems to us all in this issue. Nor can we allow the territorial

source criterion to be endangered, because it has clearly served Hong Kong well. These factors have presented formidable challenges to the *ad hoc* committee of Unofficials who have been dealing with this Bill for the past 5 months; and indeed to all Unofficial Members. You will hear more of this later from some more qualified than I. Of course they were not wholly satisfied. Nor am I. But who ever is in such matters? Compromise is inevitable.

In broad terms it is the intention of Government that the money industry in Hong Kong should pay the same low level of tax as is imposed on all other industries. Why indeed should there be any special tax treatment for any industry? Hong Kong is mercifully free from preferential fiscal distortions. Who can proclaim with the general Hong Kong background before him that one industry is more valuable to the community than another? It is not unreasonable having through the accidents of history enjoyed specially favourable taxation treatment for years that the banks should protest at having to pay more. Most of us would do exactly the same in their position. It is a perfectly fair reaction. But I submit in fact that they are being put only on the same level as everyone else. Thus I regard the threats of some banks of relative insignificance to Hong Kong to leave this territory and move elsewhere as so much hot air—especially when taken against the background of 16 new major international banks having just successfully obtained licences to operate here; and with more to come.

In my view this Bill reaffirms the acceptance earlier by the Review Committee of the territorial source principle under which only income arising in and derived from Hong Kong is chargeable to tax. It does also tighten up enforcement so that interest earnings made abroad by a bank substantially through its business here in Hong Kong should also be taxed. It is of extreme importance that this latter point be explicitly recognized, and that the drafting is clear. It is not acceptable that the position should be uncertain until a test case has been fought through the courts. Uncertain law is usually worse than bad law.

I am disappointed that the Financial Secretary onrushing like the waves before Canute has refused to accept an excellent case for providing in the Bill a clause to exempt banks' profit from interest derived from the employment overseas of shareholders' funds. Not much revenue is involved, a formula to achieve this outcome is available, and I believe that in this regard the Bill might in some circumstances unfairly discriminate against banks. But unhappy as I am I have concluded after considerable heart searching that the issue is one of accepting as a whole the compromise offered by the Financial Secretary, warts and all. I speak metaphorically of course. (*laughter*)

Sir, as a citizen I am proud of the banking industry and particularly the local banking industry in Hong Kong; I think that it has great management; I believe that it has a wonderful future; and I am sure that it can pay the same level of tax as all the other great Hong Kong industries (*laughter*).

Therefore I support the motion, but with some words of caution, particularly and specifically aimed at the dangers of uncertain legislation.

REV. MCGOVERN:—Sir, everything that can usefully be said on the technical points in this Bill has already been said by those competent to understand them. In supporting the Bill I wish to make two brief remarks as a Member of the *ad hoc* group which considered this Bill.

To me, as an amateur who never had enough personal capital to earn interest, much less declare an interest (*laughter*), I would like to put on record how impressed I was by the integrity of the professional Members of the *ad hoc* group, especially the Convenor. Their professional expertise was put fully at our disposal and all our questions on the intricacies of the financial world were fully and clearly answered, all without any attempt to persuade us in any way to grind any professional axes they may have had.

Secondly, for the sake of the public who may sometimes think of the work of this Council as a succession of weary ‘ayes’ (*laughter*), I would like to mention that, apart from three discussions held with the Financial Secretary by the Convenor and several Members of the *ad hoc* group, of whom I was not one possibly because the discussions may have become too heated for clerical ears (*laughter*), the group, as has been said, held seven special meetings and interviews to discuss this Bill and to read and discuss the lengthy and complex papers presented to us by various professional bodies—if it were a Bill on some social subject I suppose they would be called pressure groups (*laughter*). Further time was spent in reporting to full meetings of the Unofficials at eight regular sessions. Still further, and I’m sure I hear an echoing sigh, many of us would prefer to be elsewhere today and next Wednesday rather than here giving time to two extra meetings of the Council, chiefly caused by this Bill. In a word, no one can say that those opposed to this Bill have not had a full and impartial hearing or that any amendments proposed have not been laboriously worked out.

As an indication of my belief that more than enough time has been spent on this Bill I will say no more about it other than to move that the debate on this Bill be further adjourned. (*laughter*)

(At this point, Mr Q. W. LEE declared an interest and would therefore abstain from voting on this Bill).

Motion made. That the debate on the second reading of the Bill be further adjourned—REV P. T. MCGOVERN.

Question put and agreed to.

PROBATE AND ADMINISTRATION (AMENDMENT) BILL 1978**Resumption of debate on the second reading (2 August 1978)**

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

Committee Stage of bill

Council went into Committee.

PROBATE AND ADMINISTRATION (AMENDMENT) BILL 1978

Clauses 1 to 3 were agreed to.

Council then resumed.

Third Reading of bill

The Attorney General reported that the

PROBATE AND ADMINISTRATION (AMENDMENT) BILL

had passed through Committee without amendment and moved the third reading of the Bill.

Question put on the Bill and agreed to.

Bill read the third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Orders I adjourn the Council until 2.30pm on Wednesday the 16 August.

Adjourned accordingly at seventeen minutes past three o'clock.