

BRIEF FOR THE LEGISLATIVE COUNCIL

Tax Reserve Certificates Ordinance (Cap. 289)

TAX RESERVE CERTIFICATES (AMENDMENT) BILL 1999

INTRODUCTION

Annex

At the meeting of the Executive Council on 4 May 1999, the Council **ADVISED** and the Chief Executive **ORDERED** that the Tax Reserve Certificates (Amendment) Bill 1999 at the Annex should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. Tax reserve certificates (TRCs), which are issued by the Inland Revenue Department, are provided for tax payment purposes. There are two kinds of TRCs, namely *normal TRCs* which are purchased by taxpayers who wish to prepare for tax payment in future, and *conditional TRCs* which the Commissioner of Inland Revenue (the Commissioner) requires taxpayers who have objected to their tax assessments to purchase in order to cover the total amount or part of the tax in dispute. The TRC system is now an integral part of the tax collection system. The purchase of conditional TRCs under tax objection cases helps protect Government revenue and reduce the resources required in the subsequent recovery of taxes. Also, normal TRCs provide an alternative means for taxpayers to save for tax payment.

3. We have recently reviewed the TRC system with a view to making it more attractive to taxpayers as an alternative means to save for tax payment and a more equitable system. The improvement measures identified require amendments to the Tax Reserve Certificates Ordinance (Cap. 289) (the Ordinance) and the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg.) (the Rules).

Proposals

(a) Abolition of paper certificates for normal TRCs

4. Normal TRCs were previously issued only in the form of paper certificates. Purchasers have to buy them in person, by post or through banks and have to present the certificates for redemption. Since December 1995, as an alternative to the issue of paper certificates, we have introduced a scripless scheme for civil servants and subsequently for civil service pensioners. Under the scheme, participants purchase TRCs of fixed value on a monthly basis and no paper certificates are issued to them. Instead, we maintain individual accounts for these participants with the evidence of purchase reflected as entries in the accounts. The system has worked well. Among the 75 900 normal TRCs sold in 1998-99, there

were some 50 700 TRCs (67%) purchased under the scripless scheme. We have been making arrangements to enhance the scripless feature of the TRC system by establishing electronic accounts which can be accessed by banks and the Payment-by-Phone system. This will enable TRC purchases to be made at any time.

5. The issue and redemption of paper TRCs are resource-intensive and not user-friendly. As most of the normal TRCs buyers are regular buyers and with the enhancement of the scripless scheme which will become more flexible, we propose to abolish the issue of paper certificates for normal TRCs and replace it by scripless TRCs. All normal TRC purchasers will be given an account instead of paper certificates for the record of all transactions.

6. Regarding conditional TRCs, as there is no regular pattern of purchase by taxpayers and given the small quantity (about 1 000 were sold in 1998-99), we propose to continue issuing paper certificates for such TRCs.

(b) Payment of TRC interest at moving prescribed rates for conditional TRCs

7. At present, the interest rate applicable at the time when a TRC is purchased will be valid for the entire interest-earning period of the TRC. The fixed-rate mechanism is rather restrictive for taxpayers who are required to buy conditional TRCs as they do not have any flexibility on when they have to make the purchase. Therefore, the interest rate applicable to their TRCs may be either very low or very high subject to the interest rate at the time of purchase. As the holding period of conditional TRCs may vary significantly depending on the time taken to conclude the objection or appeal cases concerned, the applicable interest rate may apply for a long period of time until the cases are concluded, irrespective of the prevailing TRC interest rate. This is unfair to both the Government and the taxpayer. To provide a more equitable system, we propose that the interest on conditional TRCs should be calculated by applying the interest rate in force from time to time for the tenure of the TRCs. This will mean that every time when the TRC interest rate is reviewed and changed, it will apply to all conditional TRCs issued.

8. As for normal TRCs, since their average holding time is about six months and the interest rate for these TRCs is determined based on the average interest rates for six-month fixed deposits offered by banks, the fixed-rate mechanism should not create any unfair situation. We therefore do not consider it necessary to alter the present arrangement in respect of the calculation of interest for normal TRCs.

Implementation of Improvement Measures

9. The proposed improvements will apply to TRCs purchased on or after the commencement of the relevant amendments.

Commissioner to Prescribe Rules

10. Subject to the passage of the proposed amendments by the Legislative Council, the Commissioner would prescribe rules under section 3(1AA) of the Ordinance as conditions for the maintenance of scripless TRC accounts. The major conditions are -

- (a) TRCs in the account will be redeemed on a first-bought-first-redeemed basis;
- (b) any interest accrued to TRCs which is not fully utilised would be reinvested in TRCs under the same account; and
- (c) Any TRCs in an account which are not redeemed would be carried forward in the account.

THE BILL

11. The provisions of the Bill are as follows -

- (a) **Clause 1** provides that the Bill, when enacted, shall come into operation on a date to be appointed by the Secretary for the Treasury.
- (b) **Clauses 2 and 3** amend the provisions relating to the issue of TRCs so that paper certificates will only be issued for conditional TRCs and that purchases of normal TRCs will be reflected as entries in TRC accounts.
- (c) **Clause 4** allows the Commissioner to maintain electronic accounts for all taxpayers and **Clause 9** makes consequential amendments.
- (d) **Clause 5** clarifies that the principal value of paper TRCs and entries of TRC accounts together with the interest accrued shall be accepted for the payment of tax.
- (e) **Clause 6** provides for the calculation of TRC interest for conditional TRCs at moving interest rates fixed under the Rules and that the revised calculation basis only applies to conditional TRCs issued on or after the enactment and commencement of the bill.
- (f) **Clause 7** provides that TRCs issued to cover the balances of old TRCs that have been redeemed for payment of tax should be in the same form as the old TRCs.

- (g) **Clause 8** specifies that upon the redemption of a conditional TRC, the principal sum and the accrued interest should, if the taxpayer so elects, be re-invested in a new TRC but only in the form of an entry in an account.
- (h) **Clause 10** makes consequential amendments to the Inland Revenue Ordinance as a result of the amendments to the Ordinance and the Rules in respect of conditional TRCs.

PUBLIC CONSULTATION

12. We have discussed the proposed changes with the Panel on Financial Affairs of the Legislative Council. The Panel has not raised any adverse comments on the proposals.

HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice advises that the proposed Bill has no human rights implications.

BINDING EFFECT OF THE BILL

14. The amendments in the Bill do not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation.

FINANCIAL AND STAFFING IMPLICATIONS

15. The abolition of the issue of paper certificates for normal TRCs will result in minor staff savings which will be redeployed to improve the quality and efficiency of service. The application of moving interest rates to conditional TRCs may result in either more or less interest expenditure. This variation cannot be estimated at this stage but we expect the variation to balance off in the long run.

LEGISLATIVE TIMETABLE

16. The legislative timetable is -

Publication in the Gazette	7 May 1999
First Reading and commencement of Second Reading debate	19 May 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

17. We will issue a press release on 5 May 1999.

ENQUIRIES

18. In case of enquiries about this Brief, please contact Miss Amy Tse, Principal Assistant Secretary for the Treasury (Revenue), at 2810 2370.

Finance Bureau
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5 May 1999

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A BILL

To

Amend the Tax Reserve Certificates Ordinance and to make other related amendments.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Tax Reserve Certificates (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Treasury by notice in the Gazette.

2. Interpretation

Section 2 of the Tax Reserve Certificates Ordinance (Cap. 289) is amended, in the definition of "account", by repealing everything after "maintained" and substituting "under section 3(1AA);".

3. Power of Commissioner to issue tax reserve certificates and maintain accounts

Section 3 is amended -

(a) by repealing subsection (1A) and substituting -

"(1A) Where a person -

- (a) applies for the purchase of a certificate other than pursuant to the proviso to section 71(2) of the Inland Revenue Ordinance (Cap. 112); or
- (b) requests for an entry to be made in accordance with subparagraph

(c) of the second paragraph of the "REVERSE OF FORM" of Form 2 of Schedule 1 to the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg.) for the sum and interest mentioned therein,

the person shall make an application to the Commissioner for an account to be maintained in his name except where an account is already being maintained in the name of the applicant.

(1AA) The Commissioner may grant an application under subsection (1A) and the Commissioner shall maintain the account in the name of the applicant on such conditions as he may prescribe by rules.

(1AB) Where an account is maintained in the name of an applicant, the Commissioner shall make an entry for -

- (a) each payment received from the applicant for the purchase of a certificate in the circumstances mentioned in subsection (1A) (a); or
- (b) the sum and interest pursuant to the request made by the applicant in the circumstances mentioned in subsection (1A) (b),

into the account instead of issuing a certificate for the payment, or for the sum and interest, as the case may be.

(1AC) Where an applicant applies for the purchase of a certificate pursuant to the proviso to section 71(2) of the Inland Revenue Ordinance (Cap. 112), the Commissioner shall issue a certificate upon payment.";

- (b) in subsection (1B), by repealing everything before ",unless" and substituting "An entry made in an account in accordance with subsection (1AB) is deemed to be a certificate issued under subsection (1) and".

Tax Reserve Certificates (Fourth Series) Rules

4. Maintaining of accounts

Rule 2B of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg.) is amended by repealing everything after "section" and substituting "3 (1AA) of the Ordinance for any person who has or is likely to have any kinds of income or profits chargeable to tax under the Inland Revenue Ordinance (Cap. 112).".

5. Duty of Commissioner to accept certificates in payment of specified tax

Rule 6 is amended by repealing "face" and substituting "principal".

6. Payment of interest and method of calculation

Rule 7 is amended -

- (a) in paragraph (1), by repealing "Simple" and substituting "Subject to paragraph (1A), simple";
- (b) by adding -

"(1A) Where -

- (a) a certificate is issued on or after the commencement of the Tax Reserve Certificates (Amendment) Ordinance 1999 (of 1999) pursuant to the proviso to section 71(2) of the Inland Revenue Ordinance (Cap. 112); and
- (b) during the period commencing on the date of issue of the certificate and ending on the date of the final determination of the objection or appeal against the assessment issued by the Commissioner to which the certificate relates ("the holding period"), two or more rates of interest have been fixed by virtue of paragraph (2) (h),

then the interest on the certificate for the holding period shall be paid and calculated at such rates for the respective periods during which such rates are in force from time to time during the holding period."

7. Duty to refund balance after payment of tax

Rule 8(3) (a) is amended by adding "be in the same form and" before "bear".

8. Schedule 1 amended

Schedule 1 is amended, in Form 2, in the second paragraph of the "*REVERSE OF FORM*" -

(a) by repealing subparagraph (c) and substituting -

"(c) make an entry in an account maintained in the name of the holder named in this Certificate, for the principal sum of \$..... together with any interest payable from the date of issue of this Certificate to the date of the final determination of the objection/ appeal.";

(b) by repealing "單" after "評稅" where it twice appears.

9. Classes of persons for whom the Commissioner may maintain tax reserve certificate accounts

Schedule 2 is repealed.

**Consequential Amendments
Inland Revenue Ordinance**

10. Provisions regarding payment of tax

Section 71(7) (d) of the Inland Revenue Ordinance (Cap. 112) is amended -

(a) by repealing subparagraph (i) (A) and substituting -

- "(A) make an entry in an account in the name of the holder maintained under the Tax Reserve Certificates Ordinance (Cap. 289) for the principal value represented by the certificate or part together with the interest thereon calculated in accordance with the rules from the date of issue of the certificate to the date of the final determination of the objection or appeal; or";
- (b) in subparagraph (i) (B), by repealing "at the rate prescribed by" and substituting "calculated in accordance with";
- (c) in subparagraph (ii), by repealing "at the rate prescribed by" and substituting "calculated in accordance with".

Explanatory Memorandum

The main purposes of this Bill are -

- (a) to amend section 3 of the Tax Reserve Certificates Ordinance (Cap. 289) by repealing subsection (1A) and substituting new subsections which provide that -
 - (i) a tax reserve certificate will be issued in paper form only to a person who applies for the purchase of a certificate pursuant to the proviso to section 71(2) of the Inland Revenue Ordinance (Cap. 112) (new subsection (1AC));

- (ii) in other cases, only an entry will be made in the account maintained under the name of the applicant for payment received for the purchase of a tax reserve certificate instead of issuing a certificate (new subsections (1A) and (1AB));
 - (iii) the Commissioner of Inland Revenue may maintain accounts upon application and make entries therein (new subsections (1AA) and (1AB));
- (b) to amend sections 2 (definition of "account") and 3(1B) consequentially (clauses 2 and 3(b));
- (c) to amend the following provisions of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg.) -
 - (i) the amendments to rule 2B extend its application to any person who has or is likely to have any chargeable income or profits (clause 4);
 - (ii) the newly added rule 7(1A) provides that the interest on certificates issued pursuant to the proviso to section 71(2) of the Inland Revenue Ordinance (Cap. 112) shall be calculated at moving rates as may be fixed by the Financial Secretary from time to time (clause 6);
 - (iii) the amendments to Form 2 of Schedule 1 provide that the holder of the Certificate may request the Commissioner of Inland

- Revenue to make an entry in the account maintained in his name for any outstanding principal value of the Certificate together with interest (clause 8);
- (iv) rules 6 and 8(3) (a) are amended consequentially (clauses 5 and 7);
 - (v) Schedule 2 is repealed consequent upon the amendments to rule 2B (clause 9);
- (d) to amend section 71(7) (d) (i) and (ii) of the Inland Revenue Ordinance (Cap. 112) consequentially (clause 10).