

Letterhead of Legislative Council Secretariat Legal Service Division

Annex

By Fax No. 28685279

18 May 1999

Your Ref: FIN CR3/2306/54
Our Ref: LS/B/82/98-99
Tel: 2869 9209
Fax: 2877 5029

Miss Vivian Sum
Assistant Secretary
Finance Bureau
4/F Main and East Wings
Central Government Offices
Hong Kong

Dear Miss Sum,

Tax Reserve Certificates (Amendment) Bill 1999

I am scrutinizing the legal and drafting aspects of the above Bill with a view to advising Members. I would be grateful if you could clarify the following:

Clause 3

- (a) In new section 3(1A)(a), it states that "Where a person applies for the purchase of a certificate other than pursuant to the proviso to section 71(2) of the Inland Revenue Ordinance (Cap. 112);". In this proviso, there are paragraphs (a) and (b). Paragraph (a) states that the taxpayer may purchase a certificate under the Tax Reserve Certificates Ordinance but paragraph (b) refers to a banker's undertaking. Should the reference in this new section be restricted to section 71(2)(a) instead of just section 71(2)? Please also refer to subsection (7) of that section where it specifically mentions that "where a person is required to purchase a certificate under paragraph (a) of that proviso ...".
- (b) In new section (1AA), it states that "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". In new subsection (1B), it states that "An entry made in an account in accordance with subsection (1AB) is deemed to be a certificate issued under subsection (1)".

/P.2...

In original subsection (2), it states that "the certificates shall, subject to such conditions as the Secretary for the Treasury may prescribe by rules, be accepted by the Commissioner ...". Who should prescribe rules for the certificates (which also means an entry in an account as proposed), the Secretary for the Treasury or the Commissioner? Furthermore, it is noted that subsection (1) has already empowered the Chief Executive to prescribe rules on the tax reserve certificates.

I shall be grateful if you can let me have a reply in both English and Chinese as soon as possible so that I can report to the Members.

Yours sincerely,

(Anita Ho)
Assistant Legal Adviser

c.c. Dept. of Justice (Attn: Miss Carmen Chu, SGC)
LA

Letterhead of FINANCE BUREAU

Fax No.: 2530 5921
Tel. No.: 2810 2370
Our Ref.: FIN CR 3/2306/54
Your Ref.: LS/B/82/98-99

19 May 1999

Ms Anita Ho
Assistant Legal Adviser
Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Ms Ho,

Tax Reserve Certificates (Amendment) Bill 1999

Thank you for your letter of 18 May raising two issues relating to clause 3 of the Tax Reserve Certificates (Amendment) Bill 1999. Our response to the points raised is set out in the Annex.

Yours sincerely,

(Miss Amy Tse)
for Secretary for the Treasury

Encl.

c.c. CIR (Attn: Mr Y Y Chu)
D of J (Attn: Ms Carmen Chu, Mr M Y Cheung)

Tax Reserve Certificates (Amendment) Bill 1999

Response to Points raised by the Assistant Legal Adviser to the Legislative Council in the Letter of 18 May 1999

- (a) There are three references to "the proviso to section 71(2) of the Inland Revenue Ordinance (Cap. 112)" in the Amendment Bill, i.e. in the new section 3(1A)(a) and (1AC) in clause 3, and in the new Rule 7(1A) in clause 6. In all these provisions, there are express references to "certificates". Therefore, when reading the reference "the proviso to section 71(2)" in the context of the provisions concerned, it should be sufficiently clear that only the proviso in section 71(2) concerning tax reserve certificates (TRCs) is of relevance. We therefore do not consider that it is necessary to amend the reference to "section 71(2)" in the Amendment Bill to read "section 71(2)(a)". As regards the specific reference to paragraph (a) in section 71(7) of the Inland Revenue Ordinance, it is worth noting that the section specifies the requirements which have to be followed in respect of tax hold-over cases where TRCs have to be purchased. The requirements relating to bank guarantee are separately set out in section 71(9). Given the need to apply different requirements in the context of section 71 of the Inland Revenue Ordinance, it is hence necessary to make specific reference to paragraphs (a) and (b) in that section.
- (b) Our intention is that the Commissioner of Inland Revenue (the Commissioner) would prescribe rules relating to the conditions of maintenance of electronic accounts. However, in view of the Assistant Legal Adviser's observation in respect of the effect of the deeming provision relating to an entry of an account on the interpretation of the Commissioner's power, we, on further reflection, consider that it would be a tidier arrangement if the power to make rules relating to the maintenance of electronic TRC accounts is also vested in the Secretary for the Treasury. A draft Committee Stage Amendment which replaces the reference to "he [i.e. the Commissioner]" in the new section 3(1AA) in clause 3 of the Amendment Bill by "the Secretary for the Treasury" is at the Appendix. As regards the rule-making power of the Chief Executive under section 3(1) of the Tax Reserve Certificates Ordinance, it is not our intention to transfer such power in the current amendment exercise.

Finance Bureau
FIN CR 3/2306/54
May 1999

TAX RESERVE CERTIFICATES (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Treasury

Clause

Amendment Proposed

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|---|--------------------------------------------------------------------------------------------|
| 3 | In new section 3(1AA), by deleting "he" and substituting "the Secretary for the Treasury". |
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