

**KCRC's views on the
Boundary Facilities Improvement Tax Bill**

The Corporation, having studied in detail the Boundary Facilities Improvement Tax (the Tax) Bill and draft Guidance Notes produced by the Financial Services and the Treasury Bureau (the Bureau), considers it necessary to express its concerns in respect of the implementation of the Bill to the Bills Committee.

2. Before doing so, the Corporation would wish to place on record that it has no fundamental objection to the Tax itself. Indeed, the Corporation has stated to the Bureau that it would be willing to help the Government collect the tax provided that –

- (a) it is fully empowered to do;
- (b) it is fully reimbursed its capital and annually recurrent costs; and
- (c) that such collection responsibilities are consistent with the Corporation's duties and responsibilities under the KCRC Ordinance, particularly those involving the safety and efficiency of its services.

3. Setting aside a number of lesser concerns, the major practical problem which the Corporation faces with the proposed Bill is that of enforcement. The proposed Bill places a responsibility on the Corporation to carry out checks to ensure that the Tax has been paid by those liable for payment, and that exemptions or discounts are only enjoyed by those entitled to such treatment. To make matters worse, the Corporation would be held liable for any shortfall in the assessed amount of tax due.

4. Airports and ferry terminals have points of entry where the tax must have been paid and can be checked before passengers are allowed to enter into the system. In the case of the KCRC, this is possible for intercity services at Hung Hom as the relatively small number of passengers can be checked before they board the train. At Lo Wu the situation is not one of entry to the KCRC system but of exit from it. And of large numbers of passengers which need to be checked. At peak hours, a train arrives every five minutes carrying 3,000 passengers, who must be cleared before the next train arrives. For Octopus cardholders, the Tax would have to be collected in the same fashion as fares, i.e. as passengers exited the gates at Lo Wu. For single ticket holders, the Tax would have to be paid first when they purchased the ticket, with the ticket being swallowed by the exit gate system on exit. About 90% of the cross-boundary

passengers use Octopus cards, and about 10% use single journey tickets. The Corporation's extensive experience of handling fare evasion by Octopus card and single ticket users, indicates that there is a potential for tax evasion using these methods of collection. For obvious reasons, the Corporation feels that it would be undesirable to set out in detail what the loopholes could be. The Government, however, has been advised of the areas of concern.

5. The whole exit system at Lo Wu is automatic and is geared to clearing passengers as quickly and efficiently as possible, so as to avoid congestion and risks to passenger safety. Unlike the 76 Immigration Department exit counters at Lo Wu, the 24 passenger exit gates are not designed to support the checking of all individuals passing through them. If congestion is to be avoided, the Corporation can at best only carry out very limited spot checks. These would have to be based on a light/noise signal from the exit gates that the card or ticket holder had not paid tax. This in itself is difficult for staff to keep track of in a very busy period, and mistakes would inevitably occur, causing embarrassment and possible delays to passengers if they are wrongly stopped and checked. The problems will be compounded by the exemptions and discounts now being proposed under the Bill.

6. An operational manual, taking the form of Guidance Notes, as has been proposed by the Government, may be capable of overcoming some of the Corporation's concerns. Although the Corporation has been consulted on the drafts, the Government would make the final decision on the contents of the Guidance Notes and these would be subject to change at the Government's discretion. The Corporation believes that either the draft Bill should be amended to incorporate sufficient reference to the contents of the Guidance Notes, or the Government should agree to convert the Guidance Notes to a contractual agreement between the Government and the Corporation. In either case, the content of the Guidance Notes should be decided by mutual agreement between the Government and the Corporation, and not unilaterally by the Government.

7. As mentioned earlier, under the KCRC Ordinance, the Corporation must operate the railway efficiently and safely. The Corporation is of the view that, if sensible standards are not prescribed in the legislation or at least in appropriate guidelines, it could find itself or indeed its officers having to breach these provisions in the KCRC Ordinance while enforcing the collection of the Tax at railway stations.

8. In respect of enforcement, the Government will need to clearly stipulate the manner by which ticket inspection is to be carried out and at the very least agree with the Corporation the minimum levels of performance or

standards which are to be achieved. The Corporation will have to rely on existing staff at Hung Hom to undertake checking of through train passengers. While at Lo Wu, with the large volume of passengers passing through Lo Wu Station every day, it would be difficult to intercept passengers for ticket inspection at the gates. Even so, due to space constraints, the Corporation believes only a small number of staff could be provided at any one time to deal with checking of cross-boundary passengers. They could at best only carry out random checks. The Corporation thus queries the practicality of specifying an inspection rate to be adhered to by such staff.

9. Moreover, checks for payment of the tax would have to be dropped at certain times. In emergency situations, for example, the passenger exit gates have to be opened to clear passengers quickly without checking their tickets or Octopus cards. Under such circumstances, the Tax could also not be collected.

10. If these fundamental issues cannot be resolved, the Corporation would urge the Government to take up the role of enforcement by itself or its agents. The Corporation would be willing to provide necessary assistance at railway stations based on mutually agreed arrangements.

11. A practical issue which the Corporation would wish to bring to the attention of the Bills Committee concerns the date of implementation of the proposed legislation. In order to collect the Tax, the Corporation needs to carry out modification of the hardware and software of its automatic revenue collection and ticketing system. This requires an order to be placed with the supplier of this equipment. The Corporation could only begin collection of the Tax some 12 months after the Government agrees on the modifications necessary to permit collection of the Tax. These modifications are dependent on the final scope of the proposed legislation.

12. The Corporation's more specific comments on the Bill are given in the Attachment. Comments on the "Guidance Notes for KCRC for collection of tax from through train passengers departing at Hung Hom Railway Station" and the "Guidance Notes for KCRC for collection of tax from passengers departing from Lo Wu" have been submitted by the Corporation to the Bureau separately.

Kowloon-Canton Railway Corporation

15 September 2003

KCRC's Specific Comments on BFIT Bill

Item	Section in BFIT Bill	Comments
1	S4(5)	<p>KCRC does not have the power to collect taxes or act as Government's agent in this regard. Government must empower KCRC properly by either gazetting a Permitted Activities Order under S4(1)(e) of the KCRC Ordinance (KCRCO) or advising the Chief Executive in Council to give a direction under S6 of KCRCO.</p>
2	S5(1) and S6(2)	<p>KCRC is not able to obtain, and hence maintain records of, details of persons carried on trains as required by S5(1)(a) and S6(2)(b) of the BFIT Bill. KCRC is a mass transit carrier and do not keep record of details of passengers travelling on the trains apart from passenger figures and revenue.</p>
3	S7(1)(b), S7(2), and S7(4)	<p>The Commissioner's assessment of the amount of tax due by the operator should not be final. KCRC would be willing to assist in any investigation on any "material discrepancies" found between its returns and information obtained by the Commissioner through other sources. However, unless KCRC accepts responsibility for the shortfall, KCRC should not be required to pay to the Government the amount of the tax falling short of the Commissioner's assessment.</p> <p>In case of emergencies or major service disruptions, passengers may need to be evacuated from the stations. It will be impossible and even undesirable to require passengers to process their Octopus cards or hand over the single ride tickets to station staff before leaving the paid area of the stations. Under such circumstances, the Corporation cannot guarantee that all passengers would have paid the BFIT and that the Corporation's patronage records are without errors.</p>

4	S26(2)	KCRC should not be required to seek prior approval from the Commissioner for appointment of an agent who maintains records pursuant to S5(1) but does not deal with the Government direct. The Corporation currently appoints agents to sell through train tickets but these agents should have no direct dealing with Government in respect of submission of reports and return of BFIT collected. Such activities will be carried out by the Corporation.
5	S27	The Government should reimburse KCRC all capital and recurrent costs incurred to facilitate the collection of BFIT on behalf of Government.