

立法會
Legislative Council

LC Paper No. CB(1)2253/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/BC/14/04

**Bills Committee on
Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005**

**Minutes of the first meeting held on
Friday, 15 July 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TIEN Pei-chun, GBS, JP (Chairman)
Hon Bernard CHAN, JP
Hon SIN Chung-kai, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon TAM Heung-man
- Public officers attending** : Mr Martin GLASS, JP
Deputy Secretary for Financial Services and the Treasury
(Treasury)
- Miss Erica NG
Principal Assistant Secretary for Financial Services
and the Treasury (Treasury)

Mrs LAU MAK Yee-ming, JP
Commissioner of Inland Revenue

Mr TAM Kuen-chong, JP
Deputy Commissioner of Inland Revenue

Mr CHU Yam-yuen, JP
Assistant Commissioner of Inland Revenue

Mr YIM Kwok-cheong
Senior Assessor
Inland Revenue Department

Ms Monica LAW
Senior Assistant Law Draftsman
Department of Justice

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

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

I. Election of Chairman

Mr James TIEN Pei-chun was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Paper No. CB(3)770/04-05

— The Bill

LC Paper No. CB(1)2043/04-05(01)

— Marked-up copy of the Revenue
(Profits Tax Exemption for
Offshore Funds) Bill 2005

Ref: FIN CR3/7/2201/02	— The Legislative Council Brief on “Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005” issued by the Financial Services and the Treasury Bureau
LC Paper No. LS91/04-05	— The Legal Service Division Report
LC Paper No. CB(1)2044/04-05(01)	— Background brief prepared by the Legislative Council Secretariat)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

Exemption provisions

3. Members noted that in order to be eligible for the proposed exemption of profits tax, an offshore fund’s central management and control must not be exercised in Hong Kong. Some members expressed concerns that such a criterion would not facilitate the operation of offshore funds in Hong Kong and might create enforcement difficulties on the part of the Administration. The Administration was requested to provide a paper covering the following aspects:

Admin

- (a) To provide the justifications for imposing the criterion of “central management and control” on offshore funds for the purpose of the Bill and information on ways of enforcing the criterion; and
- (b) To consider and respond to members’ suggestion of relaxing the criterion in order to facilitate the operation of offshore funds in Hong Kong and to provide benefits for the local financial services industry and related sectors.

4. Some members expressed concern about the proposal of applying the proposed exemption provisions with retrospective effect to the year of assessment commencing on 1 April 1996. In this regard, the Administration was requested to take the following actions:

Admin

- (a) To provide information on -
 - (i) The justifications for applying the proposed exemption provisions

with retrospective effect to the year of assessment 1996-97;

- (ii) Profits tax assessments issued and amount of tax collected in respect of offshore funds since the year of assessment 1996-97;
 - (iii) Refunding arrangements for the profits tax collected from offshore funds since 1996-97 if the proposal to apply the proposed exemption provisions with retrospective effect was adopted;
 - (iv) Whether it was feasible to apply the proposed exemption provisions after the enactment of the Bill; and
 - (v) If the proposal to apply the proposed exemption provisions with retrospective effect was not adopted, whether it was feasible not to recover outstanding profits tax from offshore funds.
- (b) In connection with item 4(a)(iii) above, to address members' concern about unfair treatment to investors/beneficial owners of offshore funds if the collected tax was to be refunded to the relevant offshore funds.

Overseas legislation and practices

Admin

5. To facilitate members' understanding of legislation and practices on tax treatment of offshore funds of other jurisdictions, the Administration was requested to provide a paper comparing the proposals in the Bill and the relevant provisions and practices in other jurisdictions, including the United States, the United Kingdom, Singapore, Switzerland, and other jurisdictions which the Administration had made reference to in formulating the proposals in the Bill. The comparison should include but not limited to the following aspects:

- (a) Scope of tax exemption for offshore funds;
- (b) The criteria adopted for determining tax exemption to be provided to offshore funds, including the application of the "central management and control" criterion; and
- (c) Measures adopted to prevent abuse or round-tripping by local funds disguised as offshore funds seeking to take advantage of the exemption.

Consultation with the public and relevant organizations

6. The Bills Committee agreed to invite the public to give views on the Bill by issuing a press release, announcing an invitation for views on the LegCo website, and writing to the 18 District Councils. The Bills Committee also agreed to invite submissions from the organizations/companies which had been consulted by the Administration or had submitted views to the Administration on the relevant proposals.

The deadline for submissions would be 3 September 2005.

(Post-meeting note: The Bills Committee has posted a notice on the LegCo website on July 2005 and written to the 18 District Councils and organizations/companies to invite submissions by 3 September 2005. Members have been informed of the arrangements and invited to propose other invitees, if any, vide LC Paper No. CB(1)2098/04-05 issued on 19 July 2005.)

Meeting with deputations and the Administration

7. The Bills Committee further agreed to meet with deputations and the Administration on Thursday, 29 September 2005, from 9:00 am to 12:45 pm.

8. The Administration undertook to revise the power-point presentation material tabled at the meeting. The Chairman directed that the revised version of the presentation material be circulated to members for information and consideration if an additional meeting should be scheduled to meet with the Administration before 29 September 2005.

(Post-meeting note: Revised version of the power-point presentation material was circulated to members vide LC Paper No. CB(1)2078/04-05(01) on 26 July 2005.)

III. Any other business

9. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
7 September 2005

**Proceedings of the first meeting of the
Bills Committee on Revenue (Profits Tax Exemption for Offshore Funds) Bill 2005
on Friday, 15 July 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000206	Mr James TIEN Mr CHIM Pui-chung Mr WONG Ting-kwong Mr Jeffrey LAM	Election of Chairman	
000207-000952	Chairman Mr SIN Chung-kai Mr Ronny TONG Clerk Mr Jeffrey LAM	Members' agreement to invite public views on the Bill and meet with deputations on Thursday, 29 September 2005 from 9:00 am to 12:45 pm	
000953-003302	Chairman Administration	Administration's briefing on the proposals in the Bill with the aid of a power-point presentation (FIN CR3/7/2201/02 and LC Paper No. CB(1)2078/04-05(01))	
003303-003723	Chairman Administration	(a) Whether the local funds industry had been consulted on the Bill (b) The impacts of the Bill on Hong Kong investors, local funds and financial services industry (c) The Administration's advice that - (i) all offshore funds, including unsupervised	

Time marker	Speaker	Subject(s)	Action Required
		<p>funds and non-Securities and Futures Commission authorized funds would be exempted from profits tax under the Bill; and</p> <p>(ii) the deeming provisions were to prevent round-tripping by local funds disguised as offshore funds seeking to take advantage of the exemption</p>	
003724-004751	Chairman Mr Ronny TONG Administration	<p>(a) Concern about -</p> <p>(i) applying the proposed exemption provisions with retrospective effect to the year of assessment 1996-97; and</p> <p>(ii) the disposal of the refunded tax by offshore funds if the proposed retrospective provision was adopted</p> <p>(b) The Administration's explanation that -</p> <p>(i) the proposal for the exemption provisions to take retrospective effect to the year of assessment commencing on 1 April 1996 was to provide legal certainty over the tax liability of offshore funds in respect of past years; and</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(ii) if the proposed retrospective provision was not adopted, the Commissioner of Inland Revenue would be statutorily required to collect profits tax from offshore funds</p> <p>(c) Request for the Administration to provide information and to address members' concern about applying the proposed exemption provisions with retrospective effect</p>	<p>The Administration to take action as per paragraph 4 of the minutes</p>
004752-010142	<p>Chairman Administration Mr Ronny TONG</p>	<p>(a) Concern about imposing the criterion of "central management and control" on offshore funds to the effect that an offshore fund would not be eligible for profits tax exemption if its central management and control was exercised in Hong Kong</p> <p>(b) Suggestion to relax the criterion in (a) above to facilitate the operation of offshore funds in Hong Kong and to provide more business opportunities to the local financial services industry and related sectors</p> <p>(c) Concern about difficulties in enforcing the criterion in (a) above on overseas companies</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(d) The Administration's clarification that offshore funds which had set up overseas companies with central management and control in Hong Kong had effectively become local companies having regard to the principle of territorial source basis of taxation, and hence the proposed profits tax exemption would not be applicable</p> <p>(e) Request for the Administration to provide information and consider members' suggestion to address concern about the "central management and control" criterion</p>	<p>The Administration to take action as per paragraph 3 of the minutes</p>
010143-010553	<p>Chairman Mr Bernard CHAN Administration</p>	<p>(a) Purpose of the deeming provisions</p> <p>(b) The Administration's advice that the proposed deeming provisions could prevent abuse of the proposed exemption by Hong Kong residents holding substantial interests in the offshore funds</p>	
010554-011157	<p>Chairman Mr Jeffrey LAM Administration</p>	<p>(a) Concern about imposing the criterion of "central management and control" on offshore funds</p> <p>(b) Request for the Administration to provide information on legislation and practices of Switzerland on tax treatment</p>	<p>The Administration to take action as per paragraphs 3 and 5 of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>of offshore funds</p> <p>(c) The scope of “qualified transactions”</p> <p>(d) Request for the Administration to provide information on refunding arrangements for the profits tax collected from offshore funds since 1996-97 if the proposal to apply the proposed exemption provisions with retrospective effect was adopted</p>	<p>The Administration to provide information as per paragraph 4 of the minutes</p>
011158-011646	<p>Chairman Mr WONG Ting-kwong Administration</p>	<p>(a) Request for the Administration to consider members’ suggestion to relax the criterion of “central management and control” on offshore funds</p> <p>(b) The Administration’s advice that -</p> <p>(i) the funds industry expressed reservation on the proposed model in 2004 under which a minimum of 80% foreign investment requirement was imposed on offshore funds in order to be qualified for profits tax exemption;</p> <p>(ii) the proposed “central management and control” criterion would impose less compliance burden on the industry; and</p>	<p>The Administration to take action as per paragraph 3 of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(iii) it was not advisable to dispense with both tests mentioned in (b)(i) and (b)(ii) above</p>	
011647- 012817	<p>Chairman Mr Ronny TONG Administration</p>	<p>(a) Whether there was a definition on “offshore funds” for the purpose of the Bill</p> <p>(b) The Administration’s advice that -</p> <p>(i) the Bill defined the respective meanings of resident person (i.e. the proposed section 20AB(2)(a) to (d)) and non-resident person (i.e. the proposed section 20AB(3))</p> <p>(ii) there was no definition on “offshore funds” per se and the proposed section 20AC provided profits tax exemption for certain activities carried out by non-resident persons</p> <p>(c) Concern about whether the Administration’s proposed approach in (b) above for providing profits tax exemption to offshore funds was the correct approach</p>	

Time marker	Speaker	Subject(s)	Action Required
012818-014128	Chairman Mr Ronny TONG Administration	<p>(a) Concern about imposing the criterion of “central management and control” on offshore funds and difficulties in enforcing the criterion</p> <p>(b) The Administration’s explanation of the application of the proposed exemption provisions and deeming provisions on offshore funds entities</p> <p>(c) The Administration’s advice that in considering whether a company complied with the criterion of “central management and control”, it was necessary to examine the relevant facts of individual case</p>	
014129-014304	Chairman Mr WONG Ting-kwong Administration	Request for the Administration to provide information on legislation and practices of other jurisdictions on tax treatment of offshore funds, including the United Kingdom, the United States and Singapore	The Administration to provide information as per paragraph 5 of the minutes
014305-014504	Chairman Mr Ronny TONG	Need for a meeting with the Administration before 29 September 2005	