

~~Hong Kong will be affected by the risk assessment, we cannot assess at this stage the extent of impact the pre-screening measure may have on Hong Kong's logistics industry.~~

~~PRESIDENT (in Cantonese): Last question seeking an oral reply.~~

Granting Tax Relief for Divorced Persons Paying Maintenance to Ex-spouses

6. **MISS MARGARET NG** (in Cantonese): *Madam President, in May 2002, the Court of Appeal of the High Court ruled that although an appellant was paying monthly maintenance to his ex-wife under a court order, he was nonetheless not entitled to the Married Person's Allowance (MPA) because "ex-wife" does not fall within the definition of a "spouse" in the Inland Revenue Ordinance. However, in giving the ruling, the Court commented that "the position under the legislation as it stands seems unfair and inequitable". In this connection, will the Government inform this Council whether, in the light of the Court's comment, it will consider amending the Ordinance to permit a divorced taxpayer paying his or her ex-spouse maintenance pursuant to a court order to claim the MPA or to provide other tax relief, such as the introduction of a tax allowance for maintenance payments; if it will not, why not?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, first of all, I wish to thank the Member for her question, as it gives the Government the opportunity to explain its policy on tax relief for maintenance payments.

- (a) It has been our taxation policy to provide tax relief for taxpayers on payments made contributing to the maintenance or support of a relative. "Relative" means a person who has a relationship with the taxpayer established either by blood or by law. Examples include spouse, child, parent, grandparent, brother and sister, and so on.

"Spouse" is defined as a husband or wife. Where the husband and wife are living apart and the divorce has not yet become absolute, a

taxpayer may still claim the MPA for contributions to the maintenance or support of his or her estranged spouse.

Although a taxpayer may not claim the MPA when a divorce has become absolute, the alimony payments received by a former spouse are exempt from tax. Also, the taxpayer may continue to claim the Child Allowance for payments made contributing to the maintenance or support of his or her children after divorce.

- (b) Referring to the United Kingdom's tax legislation, the Court of Appeal in its judgement on a recent case pointed out that some overseas tax jurisdictions do provide tax relief on maintenance payments and remarked that it seemed to be unfair and inequitable not to allow divorcees in Hong Kong to claim tax allowance for maintenance payments made to former spouses. However, I wish to point out that in April 2000, the Government of the United Kingdom has changed this system of providing tax relief on maintenance payments. It abolished the tax relief for divorcees, except for a small number of old-aged taxpayers, while retaining the tax exemption for maintenance payments received by former spouses. This is exactly the system being practised in Hong Kong and indeed in other overseas jurisdictions such as Australia and New Zealand.
- (c) I understand that there are cases in which the divorcees have not made maintenance payments in accordance with court order or have delayed making such payments. But I wish to point out that a tax allowance is unlikely to be an effective solution to such problems. Divorcees may fail to make maintenance payments as required by court order for various reasons, such as financial problem, being out of employment, or a bitter relationship with their former spouse. We think that introducing a tax allowance will hardly help in such situations.

Those who are not required by the Court to make maintenance payments would probably still not pay even if there is a tax allowance for these, as the benefits from a tax allowance are certainly less than the payment itself. Also, people who pay no tax

and taxpayers who are already paying at the standard tax rate will derive no benefit from such a tax allowance.

- (d) Also, such a tax allowance would involve many operational problems. It is administratively cumbersome to prevent double benefits due to tax exemption for maintenance payments received by the former spouse and to verify that a person has actually made alimony payments to his or her former spouse. This would be difficult to implement effectively and prone to abuse.
- (e) As a responsible Government, we encourage people to fulfil their obligations to their ex-spouses. However, we do not consider it appropriate or the most effective means to achieve this goal through tax incentives.

MISS MARGARET NG (in Cantonese): *Madam President, I think the Secretary's reply is totally irrelevant. My question actually asked whether this is unfair, and why this is unfair. In part (a) of the main reply, the Secretary only stated the existing definition in law. A married person can claim an allowance for his spouse; and although he is divorced, we must bear in mind that he is required by a court order to pay his ex-wife alimony. Can the Secretary explain to us why he cannot claim an allowance for such payments? Is this coincidental, or does the Secretary consider this inequitable? If the Secretary does not see any inequity in it, can he give us an explanation? If there is inequity, will the Secretary look into whether such stipulations in the existing law are wrong?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): *Madam President, I thank the Member for her question. In part (a) of the main reply, I already mentioned that under the definition in law, taxpayers may be given tax relief for payments made in contribution to the maintenance or support of a relative. But after a person is divorced, he will no longer enjoy this tax relief. Yet, I wish to reiterate that even if a taxpayer is divorced, he can still claim an allowance for payments made in contribution to the maintenance or support of his children, and the alimony payments received by his former spouse is also exempt from tax. If tax reduction is allowed for one party on such*

payments or income, and the other party is also exempted from tax, is it not tantamount to double benefits?

MR MARTIN LEE (in Cantonese): *Madam President, does the Secretary mean that the Government actually discourages divorces and therefore adopts this measure? (Laughter)*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank the Member for his question. Being the Government, we certainly hope that the community fares well and that each and every citizen has a happy family. However, I do not think that the Inland Revenue Ordinance was enacted for this purpose. If it is because of this tax rule that people do not divorce, I think the Hong Kong Government will be very happy.

MR ALBERT CHAN (in Cantonese): *Madam President, first of all, I thank the Secretary and the other two Secretaries for treating Members to cakes and coconut tarts today. Having said that, Madam President, my supplementary question will still be a sharp one.*

Madam President, in part (c) of the main reply, the Secretary mentioned that those people who are not required by the Court to make maintenance payments would probably still not pay even if there is a tax allowance for such payments. I believe people who are well-versed in and knowledgeable about this issue are aware of this point, and will not be convinced that the provision of this tax allowance would encourage divorcees to pay alimony. The Secretary, in giving such a reply, is virtually giving no reply at all. Earlier on, the Honourable Margaret NG also mentioned in her supplementary question that the thrust of the question is the existence of inequity. In some cases, even though the Court has ruled that one party must pay alimony, the amount of maintenance payments may not necessarily be enough to cover all the living expenses of the children and therefore, the tax allowance pertaining to the children may not be claimed by the party paying the alimony and so, the payer cannot benefit from the Child Allowance. In that case, while he is made to pay alimony, he cannot enjoy the Child Allowance, and this is unfair to the maintenance payer and may give rise to many disputes. In view of such inequity, will the Government

consider reviewing the taxation arrangements, in order to do justice to the maintenance payers?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank the Member for his question. First of all, if the maintenance payments are ordered by the Court, I believe the Judge should have given consideration to various aspects, and he should be aware of the situation before making a decision. So, I think we must respect the decision of the Court. However, it is certainly most desirable that people do not divorce, as suggested by Mr LEE earlier on.

MR ALBERT CHAN (in Cantonese): *Madam President, the Secretary has not answered my supplementary question at all. I brought to his attention the problem in reality. If the Secretary does not understand it, he can go back to further look into it. Indeed, an unfair scenario has now arisen. Madam President, please allow me to further explain it to the Secretary. The Secretary may not have frequently come across problems relating to divorce.*

The situation is very simple. Some people are required to pay alimony pursuant to a court order, but they cannot benefit from any tax allowance. They have to shoulder the responsibility but very often, they cannot even claim the Child Allowance. They have, to a certain extent, taken the responsibility and made the payments, but are given utterly unfair treatment in, among other things, taxation. Will the Secretary consider this problem, review whether this arrangement has created gross inequity, and make reasonable taxation arrangements to rectify this inequitable situation?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank the Member for his question. My view is that if the Government really allows divorcees to enjoy all tax allowances, then it would be unfair to those who are married with a happy family from another point of view.

MR ALBERT HO (in Cantonese): *Madam President, I have read carefully the main question and the main reply, and listened to the supplementary question*

asked by Miss Margaret NG and the Secretary's reply to it earlier. I cannot see why the Government would think that maintenance payers should not be entitled to a tax allowance. Earlier on, the Secretary seemed to be suggesting that this would contravene the existing law and so it would be unfair and would constitute double benefits. If it is all because of possible violation of the law that such situation is resulted, then making amendments to the law may rationalize the situation. Madam President, the Secretary mentioned in part (d) of the main reply cumbersome administrative procedures. But how would this be more cumbersome than dealing with expenses related to the computation of profits tax?

PRESIDENT (in Cantonese): Mr HO, I know that you have very strong feelings about this. But please state your supplementary question directly. *(Laughter)*

MR ALBERT HO (in Cantonese): *Yes, Madam President. (Laughter) I do not have particularly strong feelings about this, but I know that some people do have very strong feelings about this.*

Can the Secretary further explain why it is inappropriate and why it is administratively impossible to do so? Indeed, profits tax is very complicated; and since we can still make it despite the many deductions involved and the many expenses involved, why can we not make it for maintenance payments? Why can we not make amendments to the law?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank the Member for his question. I am sorry that I lack experience in this regard.

As I have just said, we must define in law the person being referred to as spouse. It is provided in law that spouse means the person with whom a person is married; and when a divorce has become absolute, a spousal relationship will no longer exist. Although the spousal relationship no longer exists after divorce, the divorcees are required to take care of their children and so, the divorcees can enjoy a tax allowance if they have children. We also have to take care of the divorced spouses. For instance, if the man has to pay his ex-wife alimony, then

the alimony received by the woman will be exempt from tax. From the angle of taxation, this is a fair arrangement which involves no question of double benefits. Administratively speaking, if, for instance, a divorced taxpayer who has not paid any alimony to his divorced spouse colluded with his former spouse, because they have a good relationship, and filled in the tax return that he had paid maintenance in a bid to claim an allowance by deception, it would be impossible for the Government to verify the case and the Government would eventually suffer loss in tax revenue. Therefore, many problems would be involved administratively, and it also involves the definition in law. As I have said earlier, many other jurisdictions elsewhere in the world adopt the same system as ours in Hong Kong. Hong Kong has not departed from the relevant legislation in the United Kingdom, Australia and New Zealand. In this connection, our statutes are similar to theirs.

MS AUDREY EU (in Cantonese): *Madam President, I wish to ask the Secretary a question on double benefits, the problem mentioned by the Secretary in part (d) of his main reply. Indeed, if, in a marriage, only the husband has worked, the husband will enjoy a tax allowance and the wife obviously cannot consider the money given to her by her husband as an income and so, there is naturally no tax deduction for that. This is an obvious fact. If the couple divorced, the husband would be required to pay his wife alimony pursuant to a court order. The wife would not be given tax deductions for the alimony received, just as the case when she was married. But since the husband has to pay alimony to his ex-wife after divorce, why can he not enjoy a tax allowance for such payments? Why did the Secretary say in his explanation that it will constitute double benefits if the maintenance payer is given a tax allowance? If we compare this with the situation when the marriage was still effective, since the wife did not have to pay tax for the money she received from her husband, then why would it constitute double benefits?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank the Member for her question. This is because the taxpayer concerned is no longer a married person; but insofar as taxation is concerned, the alimony from her ex-spouse is considered an income. Yet, we have not imposed any tax on this income, for the receiver is provided

with tax relief for such income. But if we further exempt the other party from tax on such payments, then the situation would be that this amount of income will be totally untaxed.

PRESIDENT (in Cantonese): Secretary, have you finished answering the question? *(Laughter)*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Thank you, Madam President.

PRESIDENT (in Cantonese): We have spent over 17 minutes on this question. But since there are still many Members waiting to ask their questions, I will allow one last supplementary question from Members.

Miss Margaret NG, if I do not let you ask your question, I believe you will feel very uncomfortable tonight. *(Laughter)* Miss NG, you may ask your question now.

MISS MARGARET NG (in Cantonese): *Madam President, maybe I shall follow up this issue in the Panel in future. However, since the Secretary had stressed the need to respect the judgement of the Court, may I ask whether the Secretary has made reference to the judgement of the Court of Appeal? The Court of Appeal stated that there was inequity in the existing law. The Secretary needs not tell us time and again the relevant legislation, because the Court has already examined the relevant legislation. Under the existing legislation, it is impossible for the Court not to make this judgement, but the Court also considered the situation unfair. Does the Secretary think that the Court is sensible or otherwise? If the Secretary thinks otherwise, can he explain why he would think so?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I thank Miss NG for her question. First of all, I

must say that I definitely do not have the nerve to say that the Court is senseless, because the Court works independently. I must also admit that I do not have the time to read the relevant case. But if I have not interpreted it wrongly, the Court had said that there might be inequity and pointed out that there is such legislation in other jurisdictions overseas. As I have explained earlier on, in April 2000, the United Kingdom already amended this legislation. I dare not comment on whether the Court was fair, because the Court is the Court. On the question of whether this is fair, I think we must look at it from many angles. For instance, whether a glass of water is considered half full or half empty depends on the perspective. So, in this regard, all I can say is that from the taxation point of view, I think the existing system in Hong Kong is entirely fair and reasonable.

PRESIDENT (in Cantonese): Question time ends here.

~~WRITTEN ANSWERS TO QUESTIONS~~

Statistics Concerning Certificate of Absence of Marriage Record

7. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, regarding the Certificate of Absence of Marriage Record issued by the Immigration Department, will the Government inform this Council:*

- (a) *of the number of applications for the Certificate received and the number of Certificates issued in each of the past three years;*
- (b) *whether it has compiled statistics on the sex and age distribution of the applicants in the past three years; if it has, of the details; if not, the reasons for that; and*
- (c) *whether it has analysed the trends in the number of applications for the Certificate and in the demographic characteristics of the applicants over the years; if it has, of the outcome, and whether it has, in formulating various social policies, made reference to the*