

財經事務及庫務局  
(庫務科)  
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2 October 2009

Mr Noel Sung  
Clerk to Bills Committee on  
Inland Revenue (Amendment)(No.2) Bill 2009  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong  
(By fax: 2121 0420)

Dear Mr Sung,

**Bills Committee on Inland Revenue (Amendment)(No.2) Bill 2009**

Thank you for your letters of 4, 14 and 18 September 2009 attaching the submissions from the Hong Kong Institute of Certified Public Accountants (HKICPA), the Ernst & Young Tax Services Limited (Ernst & Young) and the PricewaterhouseCoopers Limited (PwC) in relation to the Inland Revenue (Amendment)(No.2) Bill 2009 (the Bill). The Administration's responses to the submissions are set out in the ensuing paragraphs.

**Submission from HKICPA**

We welcome HKICPA's support for the proposed amendments contained in the Bill.

The Bill aims to introduce some technical amendments to the Inland Revenue Ordinance (IRO) with a view to smoothing the operation of the Board of Review (the Board). The suggestions relating to the composition and case-stated procedure of the Board are policy issues beyond the scope of the Bill. We will consider them separately.

### **Submission from Ernst & Young**

At present, the Board is unable to correct mistakes in its decisions if the correction would prejudice one of the parties even though such mistakes are obvious clerical mistakes or obvious mistakes arisen from accidental slip. The parties will have to seek a formal appeal against the decision for the rectification.

Our policy intention as reflected in clause 11 of the Bill is to empower the Board to correct such obvious mistakes so as to truly reflect the substance of the decision without requiring the parties to make a formal appeal. The purpose of correction of the errors is simply to give effect to the intended decisions of the Board. Therefore, the correction itself would not serve to alter any interest of the parties under the intended decision.

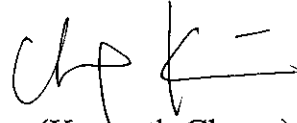
The proposed section 68A is modelled on Order 20 rule 11 of the Rules of the High Court (Cap. 4A), Order 20 rule 11 of the Rules of the District Court (Cap. 336H) and rule 30 of the Lands Tribunal Rules (Cap. 17A). Under those provisions, a correction may be made by the court/tribunal at any time. The purpose of such “slip rule” is akin to rectification, allowing the court/tribunal to amend a formal order/decision which by clerical or accidental error does not reflect the actual order/decision of the court/tribunal. Case law has held that the error or omission must be an error in expressing the manifest intention of the court/tribunal and the rule is not to enable them to have second thoughts.

With the enactment of the proposed section 68A, the Board would be empowered to rectify such errors. Since the correction made under the proposed section 68A would not change the substance of the Board’s decisions, it would not be necessary to provide for an appeal against the correction. In fact, under Caps. 4A, 336H and 17A mentioned above, there is also no provision to provide for an appeal against a correction made under the slip rule. However, an aggrieved party may apply for judicial review against the Board’s correction.

### **Submission from PwC**

We welcome PwC’s support for the proposed technical amendments contained in the Bill, and note their comments on the “longer-term structural change” of the Board, which is a policy issue beyond the scope of the Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Cheng', with a horizontal line extending to the right from the end of the signature.

(Kenneth Cheng)  
for Secretary for Financial Services  
and the Treasury

c.c. CIR (Attn: Mr K K Chiu)  
(Attn: Mr K C Yim)  
DoJ (Attn: Ms Angie Li)  
BOR (Attn: Mr Simon Yip)

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