

立法會
Legislative Council

LC Paper No. LS91/08-09

**Paper for the House Committee Meeting
on 26 June 2009**

**Legal Service Division Report on
Inland Revenue (Amendment) (No. 2) Bill 2009**

I. SUMMARY

- 1. Objects of the Bill** To amend the Inland Revenue Ordinance (Cap. 112) (the Ordinance) to smoothen the operation of the Board of Review (the Board) and to improve the administration of the Ordinance.
- 2. Comments** The Bill seeks to –

 - (a) amend the procedure of the operation of the Board to, among other things, transfer the power of nominating members to hear an appeal to the Board from the Chief Secretary for Administration to the chairman of the Board;
 - (b) improve the administration of the Ordinance in the following aspects –

 - (i) assessment of property tax;
 - (ii) deductible interest expenses in profit tax;
 - (iii) home loan interest deduction in salaries tax and tax under personal assessment;
 - (iv) time limit for the prosecution of staff breaching secrecy provision;
 - (v) tax reserve certificates; and
 - (c) repeal obsolete references and make other minor miscellaneous amendments.
- 3. Public Consultation** There is no public consultation.
- 4. Consultation with LegCo Panel** According to the LegCo Brief, the Panel on Financial Affairs was consulted at its meeting on 6 April 2009. While Members did not disagree with the proposed amendments, some concerns and suggestions were raised. The Administration has responded to some of the views at the meeting.
- 5. Conclusion** No difficulties relating to the legal and drafting aspects have been identified. Subject to Members' views, the Bill is ready for resumption of the Second Reading debate.

II. REPORT

Objects of the Bill

To amend the Inland Revenue Ordinance (Cap. 112) (the Ordinance) to smoothen the operation of the Board of Review (the Board) and to improve the administration of the Ordinance.

LegCo Brief

2. Members may refer to the LegCo Brief issued by the Treasury Branch of the Financial Services and the Treasury Bureau dated 10 June 2009 (File Ref: FIN CR 1/2306/09) for further information.

Date of First Reading

3. 24 June 2009.

Comments

4. The Bill seeks to –

- (a) amend the procedure of the operation of the Board to, among other things, transfer the power of nominating members to hear an appeal to the Board from the Chief Secretary for Administration to the chairman of the Board;
- (b) improve the administration of the Ordinance in the following aspects –
 - (i) assessment of property tax;
 - (ii) deductible interest expenses in profit tax;
 - (iii) home loan interest deduction in salaries tax and tax under personal assessment;
 - (iv) time limit for the prosecution of staff breaching secrecy provision;
 - (v) tax reserve certificates; and
- (c) repeal obsolete references and make other minor miscellaneous amendments.

Board of Review

5. The Board is established under section 65 of the Ordinance, which consists of a chairman, 10 deputy chairmen and not more than 150 members. The main function of the Board is to hear tax appeals. 3 or more members shall be nominated by the Chief Secretary for Administration to attend meetings of the Board at which appeals are to be heard.

6. Clause 9 of the Bill proposes to amend section 65 of the Ordinance. Members hearing an appeal to the Board will be nominated by the chairman, instead of the Chief Secretary for Administration. The presiding member of a meeting of the Board has a casting vote in addition to his or her original vote. Further, if a person ceases to be a member of the Board but that person is or has been involved in the hearing or determination of an appeal by the Board, that person may continue to perform functions as a member of the Board until the appeal is finally disposed of by the Board.

7. Clause 11 of the Bill proposes to add a new section 68A to the Ordinance to enable the Board to correct any clerical mistake, or any error arising from any accidental slip or omission, in relation to any decision of the Board.

Assessment of Property Tax

8. According to the LegCo Brief, common parts of a building are owned jointly by all owners of the building. When rental income is received for the use of common parts (like outer wall), all owners should be chargeable to property tax. However, such assessment on all owners is difficult.

9. Clause 2 of the Bill proposes to amend the definition of "owner" in section 2 of the Ordinance by adding to it the owners' incorporation or the person who receives rental income on common parts of land or buildings or land and buildings. Clause 2 will also add a definition of "common parts", which is similar to that in the Building Management Ordinance (Cap. 344). The effect of the proposed amendments is that property tax on the rental income of common parts will be charged on the owners' incorporation or the person receiving rent.

Deductible Interest Expenses

10. At present, interest payment on money borrowed to purchase machinery or plant is deductible from chargeable profits if it is qualified for depreciation allowance. However, such deduction is not available in respect of machinery or plant for research and development, fixed assets prescribed under section 16G of the Ordinance or environmental protection machinery. To remove the disparity, clause 4

of the Bill proposes to allow interest payment for the abovementioned machinery or plant to be deducted from chargeable profits.

Home Loan Interest

11. According to the LegCo Brief, a taxpayer may claim home loan interest deduction for a particular year within six years after that particular year. If the deduction is allowed, a taxpayer may revoke that claim within 6 months of the date on which the deduction is allowed. Under section 60 of the Ordinance, an additional assessment on the revoked claim may be made within 6 years from that particular year.

12. The Administration observes that if a taxpayer withholds claiming the home loan interest deduction for a particular year until the sixth year and the taxpayer revokes the claim after it is allowed, the making of an additional assessment under section 60 of the Ordinance may be time-barred.

13. To plug the loophole, clause 7 of the Bill proposes to amend section 26E of the Ordinance by adding a new subsection 6A, which empowers an assessor to make an additional assessment within 2 years of the revocation if the revocation is made after 6 years from the expiration of the year of assessment to which the claim relates.

Time Limit for Prosecuting Staff Breaching Secrecy Provisions

14. At present, a staff of the Inland Revenue Department is under a duty of secrecy under section 4 of the Ordinance. Breaching the duty of secrecy is an offence under section 81 of the Ordinance with a maximum sentence of a fine at \$50,000. Prosecution of the offence is subject to a limitation period of 6 months. Clause 14 of the Bill proposes to extend the limitation period to six years. This limitation is only applicable to an offence committed on or after the commencement of the Bill.

Tax Reserve Certificate

15. A taxpayer who has lodged objection to tax assessment may be required to purchase a Tax Reserve Certificate as a security for the holdover of the tax in dispute. After the objection is finalized, the taxpayer may request the Commissioner to return to him/her any remaining balance of the Tax Reserve Certificate with interest. According to the LegCo brief, there has been an accumulation of unclaimed balances long after the finalization of objections. Clause 12 of the Bill proposes to amend section 71(7)(d) of the Ordinance to require the Commissioner to repay to the holder

of the principal of the Tax Reserve Certificate or part of it and interest upon the final determination of the objection.

Other Miscellaneous Amendments

16. Clauses 8, 13 to 15 propose to amend the offence provisions of the Ordinance to align their drafting with the current drafting style.

17. Other amendments are proposed to remove obsolete references and to amend the Chinese text.

Commencement

18. There is no commencement provision in the Bill. The Bill will therefore come into operation on the day of gazettal after enactment.

Public Consultation

19. There is no public consultation.

Consultation with LegCo Panel

20. The Administration briefed the Panel on Financial Affairs on the proposed legislative amendments under the Bill at the meeting on 6 April 2009. Generally, no member expressed disagreement with the proposed amendments. However, Members gave the following views –

- (a) in relation to the operation of the Board, there were concerns about the computation of remuneration for members of the Board, and whether a proper nomination mechanism would be put in place to ensure the fairness and objectivity of the nominations;
- (b) noting that issues requiring amendments to improve the administration of the Ordinance were initially handled through administrative measures, some Members were concerned whether such an arrangement had in the past resulted in loss of tax revenue;
- (c) in relation to the proposed amendment to the definition of "owner", a Member expressed concern that the Commissioner might collect more property tax on owners' incorporation after the enactment of the Bill; and

- (d) in relation to the problems of the Tax Reserve Certificates, a Member suggested to the Administration to consider returning the remaining balance without any interest or to impose a financial penalty on failure to claim the remaining balance upon expiry of a specified period.

21. The Administration has responded to some of the views at the meeting. Members may refer to the minutes of the meeting (LC Paper No. CB(1)1410/08-09) for further information.

Conclusion

22. No difficulties relating to the legal and drafting aspects have been identified. Subject to Members' views, the Bill is ready for resumption of the Second Reading debate.

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