

立法會
Legislative Council

LC Paper No. CB(1)3043/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/10/2

Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2011

Sixth meeting on
Thursday, 4 August 2011, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
- Member absent** : Hon CHAN Kam-lam, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Public officers** : Miss Cathy CHU
Attending Deputy Secretary for Financial Services and the
Treasury (Treasury)
- Miss Fiona CHAU
Acting Principal Assistant Secretary for
Financial Services and the Treasury (Treasury)
(Revenue)
- Mr WONG Kuen-fai
Deputy Commissioner of Inland Revenue (Technical)

Ms Judy YIP
Senior Assessor
Inland Revenue Department

Miss Betty CHEUNG
Senior Assistant Law Draftsman
Department of Justice

Mr Manuel NG
Government Counsel
Department of Justice

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

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Mr Hugo CHIU
Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)5

I Confirmation of minutes of meeting

(LC Paper No. CB(1)2719/10-11 — Minutes of meeting on 28 May 2011

LC Paper No. CB(1)2742/10-11 — Minutes of meeting on 2 June 2011)

The minutes of the meetings held on 28 May 2011 and 2 June 2011 were confirmed.

II Meeting with the Administration

Discussion on further submissions received

(LC Paper No. CB(1)2853/10-11(01) — Administration's letter dated 1 August 2011 on matters arising from the meeting on 7 July 2011

and responses to the submissions from the Joint Liaison Committee on Taxation and the Hong Kong Institute of Certified Public Accountants dated 5 July 2011 and 6 July 2011 respectively

LC Paper No. CB(1)2687/10-11 — Submission dated 5 July 2011 from the Joint Liaison Committee on Taxation (English version only)

LC Paper No. CB(1)2688/10-11 — Submission dated 6 July 2011 from the Hong Kong Institute of Certified Public Accountants (English version only)

LC Paper No. CB(1)2368/10-11(01) — Administration's letter dated 1 June 2011 on the first batch of the Administration's response to submissions from deputations (Item No. 3 of Annex is relevant)

LC Paper No. CB(1)2437/10-11(01) — Paper provided by the Administration on the tax treatment for various scenarios cited by members at the meeting on 21 April 2011 (paras. 8 to 14 are relevant)

LC Paper No. CB(1)2447/10-11(01) — Administration's letter dated 10 June 2011 on matters arising from the meetings on 21 April 2011 and 28 May 2011 (Items No. 1 and 6-8 of Annex A are relevant))

Clauses-by-clause examination of the Bill (starting from the proposed section 16EC)

(LC Paper No. CB(3)517/10-11 — The Bill

- LC Paper No. CB(1)2628/10-11(01) — Letter from the Administration dated 29 June 2011 regarding the Administration's proposed Committee Stage amendments
- LC Paper No. CB(1)2686/10-11 — Marked-up copy of the Bill and the Committee Stage amendments proposed by the Administration prepared by the Legal Service Division
- LC Paper No. LS37/10-11 — The Legal Service Division Report on Inland Revenue (Amendment) (No. 2) Bill 2011
- LC Paper No. LS42/10-11 — The Legal Service Division further Report on Inland Revenue (Amendment) (No. 2) Bill 2011)

Discussion

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

(Post-meeting note: The seven diagrams (in Chinese only) tabled by the Administration at the meeting were circulated to members vide LC Paper No. CB(1)2865/10-11 on 9 August 2011.)

Admin

Follow-up actions to be taken by the Administration

3. The Administration was requested to take the following follow-up actions:
- (a) to review its position regarding the proposed section 16EC(4)(b) taking into account members' views, in particular the proviso suggested by Ms Audrey EU, and decide whether it would move an amendment to the provision;
 - (b) to provide its relevant correspondence with the State Administration of Taxation of the Mainland regarding the issue of offsetting transactions arising from cross-border activities;
 - (c) to consider setting out in the Departmental Interpretation and Practice Notes (DIPNs) the factors to be considered by the Commissioner of Inland Revenue (the Commissioner) in making his determination under the proposed section 16EC(1)(c);

(Post-meeting note: The Administration agreed to set out the factors in the DIPNs to be issued by the Inland Revenue Department in due course.)

- (d) to consider setting out in DIPNs the tax deduction arrangements in respect of an IPR registered in more than one jurisdiction but the use of the IPR in the jurisdictions concerned for generation of profits chargeable to tax in Hong Kong commenced at different times; and

(Post-meeting note: The Administration agreed to set out the arrangements in the DIPNs to be issued by the Inland Revenue Department in due course.)

- (e) to provide the names of the research institutes approved by the Commissioner for the purposes of section 16B of the Inland Revenue Ordinance (Cap. 112).

II Any other business

Date of next meeting

- 4. The Chairman remarked that the holding of another meeting before the end of August 2011 would be decided upon the receipt and consideration of the written reply from the Administration.
- 5. There being no other business, the meeting ended at 5:58 pm.

Council Business Division 1
Legislative Council Secretariat
23 September 2011

**Proceedings of the
Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2011
Sixth meeting on Thursday, 4 August 2011, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000840 – 000932	Chairman	Confirmation of minutes of meetings on 28 May 2011 and 2 June 2011	
000933 – 002927	Chairman Administration	<p>The Chairman remarked that the concerns raised in the further submissions by the Joint Liaison Committee on Taxation (JLCT) and the Hong Kong Institute of Certified Public Accountants (HKICPA) regarding the anti-avoidance provisions, in particular the proposed section 16EC(4)(b), of the Bill should be discussed first.</p> <p>The Administration briefed members on items 1 to 3 of Annex A of LC Paper No. CB(1)2853/10-11(01), and stressed that the proposed section 16EC(4)(b) was necessary because the Administration had to observe the "territorial source" principle and the "tax symmetry" principle and to guard against revenue loss due to tax avoidance. To demonstrate the rationale and effect of section 16EC(4)(b), the Administration tabled a diagram (in Chinese only) entitled "Under a licensing arrangement, the intellectual property rights (IPRs) concerned are used wholly or principally outside Hong Kong" (Diagram 1) to elaborate in detail how an offsetting transaction would lead to loss in tax revenue and how to restore the offsetting transaction in order to protect tax revenue.</p>	
002928 – 004014	Chairman	<p>The Chairman made the following comments:</p> <p>(a) The situation surrounding the proposed section 16EC(4)(b) was different from that of section 39E of the Inland Revenue Ordinance (Cap. 112) (IRO) (under which a taxpayer providing machinery to a Mainland entity free of charge under the import processing arrangement was not eligible to claim depreciation allowance for tax assessment in Hong Kong). It was because machinery for production indeed constituted part of the production cost but the use of an IPR in the manufacturing</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>process would not have significant effect on the production cost. It was in the trading activities rather than the manufacturing processes that an IPR (e.g. a trade mark and a registered design) would bear significance. As such, the Administration should differentiate the "use" of an IPR in manufacturing activities and in trading activities.</p> <p>(b) If the "offsetting transaction" was restored, the Hong Kong enterprise would not enjoy any tax deduction for the purchase cost of the IPR (i.e. \$200M).</p> <p>(c) If the Mainland entity was not a separate company but a branch office of the Hong Kong enterprise in the Mainland, the Hong Kong enterprise would be able to enjoy the proposed tax deduction because the Hong Kong enterprise itself used the IPR. Such tax deduction arrangement was unfair to those Hong Kong enterprises which outsourced their manufacturing activities to separate Mainland entities. It was common for Hong Kong enterprises to concentrate on product development and marketing activities and outsource the manufacturing activities to entities in the Mainland.</p> <p>(d) JLCT had grounds for its persistent objection to the proposed section 16EC(4)(b).</p>	
004015 – 004503	Ms Miriam LAU Chairman Administration	<p>Ms LAU remarked that currently many Hong Kong enterprises would outsource the manufacturing activities to entities in the Mainland, and very often, many such Mainland entities were in fact owned by the Hong Kong enterprises concerned. Pointing out that such outsourcing arrangement did not aim at avoiding tax, Ms LAU considered that Hong Kong's tax regime should cater for the present-day operation mode of local businesses.</p> <p>Ms LAU noted that JLCT and HKICPA were persistent about their views on the proposed section 16EC(4)(b). In view of their representativeness, Ms LAU remarked that it</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>would be undesirable if the Administration did not consider their views carefully.</p> <p>Ms LAU also commented that the licence fee of \$10M in the "offsetting transaction restored", i.e. situation II in Diagram 1 was artificial. Ms LAU quoted the following example: a Hong Kong company, X, owned the IPR of the LegCo logo and outsourced the production of cups with the LegCo logo to an entity in the Mainland, Y. Although Y was allowed to use the LegCo logo in producing the cups, Y would sell the manufactured products (i.e. cups bearing the LegCo logo) to X only. Ms LAU remarked that it was unreasonable to artificially ascribe a licence fee to the transaction, because Y would not sell the manufactured products to a third party for profits.</p> <p>The Chairman said that even if a Hong Kong company engaged in an offsetting transaction, it was for the Hong Kong company to bear the risks of having its tax liabilities adjusted by the tax authorities subsequently to restore the offsetting transaction.</p>	
004504 – 004950	Chairman Administration	<p>The Administration made the following responses:</p> <p>(a) the proposed measures in the Bill were more favorable to taxpayers than the arrangements under the existing legislation as the Bill proposed to remove the "use in Hong Kong" condition and tax deduction would be granted for the relevant IPRs irrespective of whether they were used in Hong Kong so long as they were used by the taxpayers themselves for production of chargeable profits.</p> <p>(b) when the Hong Kong company, which has purchased the IPR of the LegCo logo, sold the cups bearing the LegCo logo and earned profits chargeable to tax in Hong Kong, it could enjoy the proposed tax deduction for part of the capital expenditure incurred on the purchase of the IPR of the LegCo logo used in the company's trading activities; and</p>	

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		<p>(c) Regarding the issue of offsetting transactions arising from cross-border activities, the Administration had consulted the State Administration of Taxation (SAT) which had confirmed that the royalty-free IPR licensing arrangement involved in the Mainland sub-contracting arrangement as cited by JLCT would be regarded as an offsetting transaction because the IPR concerned was used in the Mainland manufacturing process and the taxing rights of the Mainland were adversely affected.</p>	
004951 – 005730	Ms Miriam LAU Administration Chairman	<p>Ms LAU enquired about the role of JLCT and how far the Administration would take into account its views in formulating taxation measures.</p> <p>The Administration replied that JLCT was an independent organization but not a statutory advisory body. The Administration would take heed of its views as appropriate. The Administration had carefully considered JLCT's views and had adopted some of its proposals in preparing the Bill.</p> <p>The Administration stressed that it had to maintain a tax neutral position and strike a balance among the interests of various stakeholders. The Administration added that apart from SAT, the international community also considered the activity set out in Diagram 1 to be an offsetting transaction violating the "arm's length" principle.</p> <p>The Chairman remarked that the proposals in the Bill should be viewed as measures to rectify the existing unreasonable taxation arrangements rather than concessionary measures. There was a need to improve the local tax regime to suit the new business environment of Hong Kong; Hong Kong's economy had restructured and the use of intangible assets such as IPRs was increasingly important for local business activities.</p> <p>The Chairman did not consider that the "royalty-free" IPR licensing arrangement involved in the Mainland sub-contracting arrangement constituted an offsetting transaction, and requested the Administration to</p>	The Administration to take action as per paragraph 3(b) of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>provide its relevant correspondence with SAT to facilitate members' further consideration of the issue. He remarked that under the "royalty-free" IPR licensing arrangement, the Mainland entity was not granted an "open-end" licence to use the IPR and the manufactured products would only be sold to the Hong Kong company concerned. The Chairman also referred to Ms LAU's example and remarked that the Mainland entity was not "using" the LegCo logo to generate profits; the Mainland entity was only adding the LegCo logo to the products during the manufacturing process according to the order of the LegCo logo owner.</p> <p>In response to Ms LAU's query on whether the example under discussion was considered an offsetting transaction by the international community, the Administration mentioned a relevant example (the use of royalties to set-off against sales receipts) as set out in the section "intentional set-offs" of the Organization for Economic Co-operation and Development (OECD)'s latest version (2010 July) of the Transfer Pricing Guidelines.</p>	
005731 – 010653	Ms Miriam LAU Administration Chairman	<p>The Chairman and Ms Miriam LAU pointed out that in many instances, the contract manufacturer in the Mainland of a Hong Kong company was in fact owned by the Hong Kong company, though the Mainland manufacturer was set up as a separate legal entity. The Administration should take into account this peculiar mode of operation of Hong Kong enterprises.</p> <p>The Administration responded that while it fully understood the mode of operation of relevant Hong Kong enterprises, it had to strike a balance among the interests of various stakeholders. The Administration added that in the example set out in Diagram 1, even if D(M) was a wholly-owned subsidiary of D(H), D(M) was a separate and independent legal entity in the Mainland which was subject to Mainland taxes. In this regard, Hong Kong could not charge profits tax on D(M). If the proposed tax deduction was provided to D(H) for the IPR used by D(M), Hong Kong would suffer from substantial tax loss and the "tax symmetry" principle would be violated.</p>	

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		<p>The Chairman remarked that if D(M) was replaced by D(H) and based on the "territorial source" principle, the profits from the manufacturing activities conducted by D(H) in the Mainland would not be subject to tax in Hong Kong. Nevertheless, D(H) could still enjoy the proposed tax deduction for the purchase costs of the IPR. On the other hand, if D(M) was not replaced by D(H), the purchase costs of the IPR would not be eligible for the proposed tax deduction. However, it was very common for Hong Kong companies to set up wholly owned enterprises in the Mainland.</p> <p>In reply, the Administration remarked that one of the cases just quoted by the Chairman, that is, if D(M) was replaced by D(H), would probably be referred to as a "contract processing" arrangement under which the manufacturing plant in the Mainland would be considered as operated by D(H) due to its substantial involvement in the Mainland manufacturing activities. For this case, D(H) would be considered under the Mainland tax law as having a permanent establishment in the Mainland. In assessing the chargeable profits of D(H), IRD would apportion D(H)'s profits, according to the "territorial source principle", on a 50:50 basis when the activities of D(H) fully met the mode of operation of "contract processing". And according to the "tax symmetry" principle, IRD would allow D(H) to have 50% tax deduction for the purchase costs of the IPR used in the Mainland manufacturing activities. On the other hand, if D(M) was not a manufacturing plant operated by D(H) under "contract processing" but was a separate legal entity in the Mainland, it would be subject to different tax regulations and arrangements.</p> <p>The Administration also pointed out that in the situation where the offsetting transaction was restored in Diagram 1, the expenditure on purchasing the finished products incurred by D(H) covered the cost for using the IPR by D(M) as the licence fee for using the IPR was fully reflected in the price of the finished products sold by D(M) to D(H). Since the expenditure on purchasing the finished products, being trading expenditure, was tax deductible, it</p>	

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		<p>could be said that the cost of using the IPR as reflected in such expenditure could enjoy tax deduction. The Chairman remarked that the licence fee deemed to have been charged by D(H) on D(M) was subject to the withholding tax of the Mainland.</p>	
010654 – 010849	Chairman Ms Miriam LAU	<p>The Chairman considered that the issue at stake was that the Administration did not take into account the real life business operation of Hong Kong enterprises, which mainly focused on brand-building and marketing activities and usually outsourced the manufacturing activities to entities in the Mainland. The Chairman considered that it would be unfair to such enterprises if they could not enjoy the proposed tax deduction for the capital expenditure on the IPRs used wholly or principally by a Mainland entity in manufacturing goods for them.</p> <p>Ms LAU remarked that the restriction under the proposed section 16EC(4)(b) would discourage the purchase of IPRs by Hong Kong enterprises.</p>	
010850 – 011201	Ir Dr Raymond HO Administration	<p>Ir Dr HO remarked that Hong Kong's taxation system should facilitate Hong Kong's economic development. He believed that the views of JLCT, which was comprised of professionals in the taxation field, were put forth on consideration of Hong Kong's overall interests rather than the interests of certain trades only. The Administration should adopt an open mind in considering JLCT's views. He shared the views of the Chairman and Ms Miriam LAU.</p> <p>The Administration remarked that it had to consider the issue from a holistic perspective rather than from the angle of enterprises only. The Administration had considered the issue very carefully and concluded that it was necessary to retain the proposed section 16EC(4)(b) to safeguard against revenue loss and protect Hong Kong's overall interest.</p> <p>In view of the deadlock between members and the Administration over the issue, Ir Dr HO suggested conducting a public consultation on the issue.</p>	

Time Marker	Speaker	Subject(s)	Action Required
011202 – 011404	Chairman Administration	<p>On whether the "royalty-free" IPR licensing arrangement in the Mainland sub-contracting arrangement constituted an offsetting transaction, the Chairman referred to the sentence "Our view in this regard appears to be borne out by the fact that from their many years of experience either as taxpayers of multi-national corporate groups or practitioners of international taxation, representatives of our constituent member organizations have not encountered any instances of overseas tax jurisdictions taking such a stance." in JLCT's submission dated 5 July 2011 and sought the Administration's response on it.</p> <p>The Administration responded that according to the OECD's relevant documents on transfer pricing, the offset of trading revenue by IPR licence fee was regarded as a kind of offsetting transaction. The Chairman expressed doubt on the direct applicability of the description to the "royalty-free" IPR licencing arrangement under discussion.</p>	
011405 – 011855	Chairman Ms Audrey EU Ir Dr Raymond HO Ms Miriam LAU ALA6 Administration	<p>The Chairman sought members' views on whether a Committee Stage amendment (CSA) to delete the proposed section 16EC(4)(b) should be moved by the Bills Committee.</p> <p>Noting that such a CSA might affect Government revenue, Ms EU sought ALA6's views on whether it was procedurally in order for the Bills Committee to move such a CSA.</p> <p>ALA6 referred to Rule 57(6) of the Rules of Procedure and mentioned that if the object or effect of the CSA might be to dispose of or charge any party the revenue or other public moneys of Hong Kong, the CSA had to be proposed by the Chief Executive, a designated public officer or a Member, if the Chief Executive consented in writing to the proposal. According to a previous ruling of the President of the Legislative Council, a proposed CSA affecting Government revenue might be considered as having an effect of disposing of or charging part of the revenue. In making the ruling, the President would take into account the view of the Administration.</p>	

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		<p>Ir Dr HO remarked that if the Bills Committee was not able to move such a CSA, the alternative was for Members to vote against the Bill.</p> <p>Ms LAU urged the Administration to reconsider its position on the proposed section 16EC(4)(b), on the premise that Government policies should aim at facilitating the trades.</p> <p>The Administration reiterated that the tax deduction proposals in the Bill represented an improvement in the existing taxation regime for the trades. The Administration appreciated and respected the views of JLCT, but on account of the need to protect Hong Kong's overall interest and uphold Hong Kong's fundamental tax principles, it was necessary to retain the proposed section 16EC(4)(b).</p>	
<p>011856 – 012943</p>	<p>Ms Audrey EU Administration Ms Miriam LAU Chairman Mr WONG Ting-kwong</p>	<p>Ms EU asked whether there was a material difference between the following two scenarios: (a) a contract manufacturer in the Mainland was granted a general right to freely exploit the relevant IPR for its own benefit; and (b) the contract manufacturer was granted the IPR only for the production of goods ordered by the owner of the IPR. If the Administration considered that there was a material difference between the two scenarios, whether it would accept adding a proviso to the proposed section 16EC(4)(b) with the wording like "unless the products produced are sold exclusively to the owner of the IPR concerned".</p> <p>The Administration replied that while the two transactions appeared to be different, the difference was not significant from the angle of taxation; the crucial factor was whether there was in fact a consideration for the grant of the IPR, but the consideration was hidden in the price of the finished products.</p> <p>Upon seeking the comments of members present, the Chairman remarked that the Bills Committee did not agree with the Administration's position regarding the proposed section 16EC(4)(b) and requested the Administration to consider amending it.</p>	<p>The Administration to take action as per paragraph 3(a) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Ms LAU pointed out that if the proposed section 16EC(4)(b) remained unchanged, only companies conducting the manufacturing process in Hong Kong could enjoy the proposed tax deduction and the number of such companies was small. Mr WONG also expressed dissatisfaction with the Administration's position.</p> <p>The Administration clarified that, although in the cross-border activities tax deduction was not allowed for capital expenditure incurred on the purchase of a Mainland IPR which was licensed to, whether at cost or at no cost, and used by a sub-contractor in the Mainland, if the taxpayer used the Mainland IPR in his/her subsequent trading activities in the production of chargeable profits to tax in Hong Kong, the capital expenditure incurred on the purchase of the Mainland IPR would be apportioned and that part used in the trading activities was still eligible for the proposed tax deduction provided that all the deduction criteria were fulfilled.</p>	
012944 – 013206	Administration	The Administration briefed members on item 8 of Annex A to CB(1)2853/10-11(01).	
013207 – 013714	Administration Chairman	<p>The Administration briefed members on items 9 and 10 of Annex A to CB(1)2853/10-11(01).</p> <p>Referring to item 10, the Chairman enquired about the tax deduction arrangement if the taxpayer used the registered trade mark in the remaining four jurisdictions for the production of profits chargeable to tax in Hong Kong some time (say one year) after the purchase of the trade mark. The Administration responded that since the tax deduction would spread over five succeeding years on a straight-line basis starting from the year of purchase of the trade mark, if the trade mark was used in the remaining four jurisdictions to produce profits chargeable to tax in Hong Kong at a certain time, say, in year 4 after the year of purchase, the company could not claim tax deduction before year 4 for the portion of the capital expenditure on the IPR in respect of the four jurisdictions concerned. Only the portion of capital expenditure spread over in year 4 and year 5 would be allowable provided that all the deduction criteria were</p>	

Time Marker	Speaker	Subject(s)	Action Required
		fulfilled. The Chairman remarked that the tax deduction arrangement in the aforesaid scenario should be specified in the Departmental Interpretation and Practice Notes (DIPNs).	The Administration to take action as per paragraph 3(d) of the minutes.
013715 – 014125	Administration Chairman	<p>The Administration briefed members on items 11 and 12 of Annex A to CB(1)2853/10-11(01).</p> <p>Noting that the existing section 16B of IRO provided tax deduction to taxpayers for expenditure incurred on research and development the payments of which were made to approved research institutes, the Chairman enquired whether such approved research institutes had to be non-profit making in nature. The Administration replied in the negative. The Chairman asked for the number and names of the approved research institutes. The Administration advised that there were four such institutes and undertook to provide a list of the institutes after the meeting.</p>	The Administration to take action as per paragraph 3(e) of the minutes.
014126 – 014516	Chairman Administration	The Chairman ordered to take a break of 15 minutes. The Administration tabled the other diagrams (in Chinese only) for explaining the proposed section 16EC.	
014517 – 020505	Break		
020506 – 021209	Administration Chairman	<p>Clause-by-clause examination of the Bill</p> <p><u>Clause 6 – Sections 16EA, 16EB and 16EC added</u></p> <p><i>16EC. Deduction under section 16E or 16EA not allowable under certain circumstances</i></p> <p>The Administration briefed members on the proposed section 16EC(1) with the help of the diagram (in Chinese only) entitled "Change from licensing to purchase" (Diagram 2) tabled at the meeting.</p> <p>In reply to the Chairman's enquiry, the Administration confirmed that the application of the proposed section 16EC(1) was subject to the satisfaction of all the three conditions specified therein.</p>	

Time Marker	Speaker	Subject(s)	Action Required
021210 – 021823	Administration Chairman Mr Abraham SHEK	<p>Mr SHEK referred to the proposed section 16EC(1)(c) and asked whether there were any objective criteria for the determination of a reasonable consideration. The Administration replied that the Commissioner of Inland Revenue (the Commissioner) would determine whether the transaction price was a reasonable price on a case-by-case basis having regard to relevant circumstances such as the terms and conditions of the transaction and the documents provided by the taxpayers.</p> <p>In response to Mr SHEK's suggestion that the Administration should set out the determination criteria, the Administration pointed out that taxpayers would be required to provide valuation reports if necessary and the Administration had undertaken in the last meeting to set out relevant information and procedures in the DIPNs.</p> <p>The Chairman suggested that the Administration should specify in the DIPNs the factors that might be considered by the Commissioner in making his determination under proposed section 16EC(1)(c). The Administration agreed to consider the suggestion.</p>	The Administration to take action as per paragraph 3(c) of the minutes.
021824 – 021932	ALA6 Administration Chairman	<p>ALA6 recapped Ms Miriam LAU's question raised at the last meeting on whether the drafting of proposed section 16EC(1)(b) should be refined to reflect the policy intent.</p> <p>The Administration referred members to its reply set out in paragraph 4 of CB(1)2853/10-11(01).</p>	
021933 – 030333	Administration Chairman	The Administration briefed members on proposed sections 16EC(2), 16EC(3), 16EC(4)(a), 16EC(4)(c), 16EC(5), 16EC(6) and 16EC(7) with the help of relevant diagrams (in Chinese only) tabled at the meeting. Members raised no questions.	
030334 – 031905	Administration ALA6 Chairman Mr Abraham SHEK	The Administration briefed members on proposed section 16EC(8) and remarked that reference had been made to section 16E of IRO in drafting the definitions of the following terms under the proposed section 16EC(8): "associate", "associated corporation", "beneficiary under the trust", "control", "principal officer" and	

Time Marker	Speaker	Subject(s)	Action Required
		<p>"relative". For the terms "associate" and "principal officer", reference had also been made to their definitions in the Inland Revenue (Amendment) Ordinance 2011.</p> <p>Regarding the definition of "associate", ALA6 enquired whether the items in the proposed sections 16EC(8)(a)(v)(C) and 16EC(8)(c)(vi)(D) of the definition of "associate" were newly added in the Bill as compared with section 16E of IRO. The Administration clarified that such items were added to align the term's definition in the Bill with that in the Inland Revenue (Amendment) Ordinance 2011.</p> <p>Mr SHEK queried why the scope of the term "associate" varied under different pieces of legislation. The Administration replied that the scope of the term "associate" varied in different pieces of legislation because the definition of the term needed to be formulated to suit the respective policy objectives of the different pieces of legislation. The Chairman added that in the Bills Committee on Companies Bill, members accepted that the scope of the term "associate" could be different in different contexts.</p>	
031906 – 032256		<p><u>Clause 7 – Section 21A heading amended</u></p> <p><u>Clause 8 – Section 89 amended (Transitional provisions)</u></p> <p><u>Clause 9 – Schedule 22 added</u></p> <p>Members raised no questions.</p>	
032257 – 032540	Chairman ALA6 Administration	<p>The Chairman remarked that the clause-by-clause examination of the English version of the Bill was completed, and suggested that the Chinese version of the Bill should be vetted by ALA6. ALA6 remarked that she had forwarded her enquiries on the Chinese version of the Bill to the Administration.</p> <p>The Administration advised that it had proposed certain CSAs having regard to ALA6's enquiries. Those proposed CSAs were set out together with</p>	

Time Marker	Speaker	Subject(s)	Action Required
		other CSAs proposed by the Administration in the Administration's letter dated 29 June 2011 to the Bills Committee.	
032541 – 032636	Chairman Administration	<p>The Chairman remarked that the Bills Committee had completed the clause-by-clause examination of the Bill and recapped that the Administration had been requested to take the following actions:</p> <p>(a) to review its position regarding the proposed section 16EC(4)(b) taking into account members' views, in particular the proviso suggested by Ms EU, and decide whether it would move an amendment to the provision; and</p> <p>(b) to provide its correspondence with SAT regarding the issue of offsetting transactions arising from cross-border activities.</p> <p>The Administration undertook to provide a written reply on the above issues to the Bills Committee.</p>	
032637 – 032800	Chairman Administration	<p>The Chairman remarked that the holding of another meeting would be decided upon the receipt and consideration of the written reply from the Administration. Such meeting would be held before the end of August 2011.</p> <p>The Chairman thanked the Administration for preparing the detailed diagrams, which had helped members to understand the proposed section 16EC of the Bill.</p>	