

立法會
Legislative Council

LC Paper No. CB(3) 257/10-11

**Paper for the House Committee meeting
on 3 December 2010**

**Questions scheduled for the
Legislative Council meeting on 8 December 2010**

Questions by:

- | | | | |
|------|---|-----------------|----------------|
| (1) | Dr Hon PAN Pey-chyou | (Oral reply) | |
| (2) | Dr Hon Joseph LEE Kok-long | (Oral reply) | |
| (3) | Hon TAM Yiu-chung | (Oral reply) | |
| (4) | Hon Albert HO Chun-yan | (Oral reply) | |
| (5) | Hon Vincent FANG Kang | (Oral reply) | (New question) |
| | <i>(Replacing his previous question)</i> | | |
| (6) | Hon Frederick FUNG Kin-kee | (Oral reply) | |
| (7) | Dr Hon LEUNG Ka-lau | (Written reply) | |
| (8) | Hon CHAN Kin-por | (Written reply) | |
| (9) | Hon WONG Kwok-hing | (Written reply) | |
| (10) | Hon Jeffrey LAM Kin-fung | (Written reply) | |
| (11) | Hon Tanya CHAN | (Written reply) | |
| (12) | Hon LEUNG Kwok-hung | (Written reply) | (New question) |
| | <i>(Hon LEE Wing-tat has given up
the question slot allocated to him)</i> | | |
| (13) | Hon IP Wai-ming | (Written reply) | |
| (14) | Hon Paul CHAN Mo-po | (Written reply) | |
| (15) | Hon Starry LEE Wai-king | (Written reply) | |
| (16) | Dr Hon LAM Tai-fai | (Written reply) | (New question) |
| | <i>(Replacing his previous question)</i> | | |
| (17) | Hon Paul TSE Wai-chun | (Written reply) | |
| (18) | Hon KAM Nai-wai | (Written reply) | |
| (19) | Hon Fred LI Wah-ming | (Written reply) | |
| (20) | Hon Albert CHAN Wai-yip | (Written reply) | |

註 :

NOTE :

議員將採用這種語言提出質詢

Member will ask the question in this language

解決通脹及熱錢流入問題的措施

(5) 方剛議員 (口頭答覆)

美國的量化寬鬆貨幣政策引致大量資金流入香港的投資市場，增加資產泡沫風險，財政司司長因而在2010年11月19日推出進一步遏抑物業炒賣的措施。有評論指出，該等措施主要針對近期價格飆升較為強勁的豪宅市場，對於工商物業，尤其商舖，下藥較輕；對中小型住宅更未有任何應對措施。加上與美元實施聯繫匯率的港元不斷貶值，導致通脹問題日益嚴重，資金亦會轉向尋求其他出路。就此，政府可否告知本會：

- (一) 自本年11月19日推出上述遏抑物業炒賣措施至今，物業市場的表現為何；是否達到政府的預期目標；市場資金有否由豪宅轉向工商物業、商舖和小型住宅的市場；政府將如何應對該等市場出現資產泡沫化的情況；
- (二) 鑒於財政司司長較早前將全年通脹調升僅零點2個百分點至百分之1.7，但亞洲國家(包括受外來物價影響較低的國家)已紛紛將全年通脹調升至百分之4至5的水平，而香港主要的日用品和食品價格月來均以高雙位數上升，有否評估香港有否低估通脹的實際情況和影響；在港元持續疲弱的情況下，政府會否調整現時計算通脹的方法以反映實質情況；及
- (三) 鑒於財政司司長預期熱錢將會持續流入本港市場，美國利率亦會持續低

企，但他亦預期利率終會回升，政府有否預期利率掉頭回升及資金撤離香港時，香港的經濟活動會受到多大影響，以及投資市場(包括銀行業)會出現多大波動和蒙受多大損失？

Measures to tackle problems of inflation and inflow
of hot money

(5) Hon Vincent FANG Kang (Oral Reply)

The quantitative easing monetary policy of the United States (“US”) has led to a massive inflow of capital into Hong Kong’s investment markets and intensifies the risk of an asset bubble, the Financial Secretary therefore introduced further measures to curb property speculation on 19 November 2010. There have been comments that these measures mainly target at the luxury property market, in which prices have recently surged more sharply. As for commercial and industrial properties, particularly shops, the measures are less severe and there is no corresponding measure for medium and small-sized residential flats at all. In addition, the continuous depreciation of the Hong Kong dollar under the linked exchange rate with the US dollar has resulted in an aggravating inflation trend, and capital will also shift to seek other avenues. In this connection, will the Government inform this Council:

- (a) of the performance of the property market since the introduction of the aforesaid measures to curb property speculation on 19 November this year; whether the Government’s expected targets have been met; whether capital in the market has shifted from the luxury property market to the markets of commercial and industrial properties, shops and small-sized residential flats; how the Government is going to cope with the formation of asset bubbles in these markets;
- (b) given that the Financial Secretary has earlier adjusted upwards the annual inflation rate by only 0.2 percentage point to 1.7% while Asian

countries (including those which are less vulnerable to the impact of prices in other countries) have all adjusted upwards their annual inflation rates to 4% or 5%, and the prices of major daily necessities and food in Hong Kong have experienced high double-digit increases in recent months, whether it has assessed if Hong Kong has underestimated the actual inflation and its impact; in view of the continuous weakening of the Hong Kong dollar, whether the current method of calculating inflation will be modified to reflect the actual situation; and

- (c) given that the Financial Secretary has expected that hot money will continue to flow into the Hong Kong market and that the interest rates in the US will remain low, but he also anticipates an eventual bounce-back of interest rates, whether the Government has made any projections as to how Hong Kong's economic activities will be affected, how volatile the investment markets (including the banking sector) will become and how much loss these markets will incur when the interest rates go up and capital is withdrawn from Hong Kong?

規管信貸資料服務機構

(12) 梁國雄議員 (書面答覆)

有市民向本人投訴，指一間專門為銀行及財務機構提供個人信貸資料的個人信貸資料服務公司曾將有關他的錯誤個人資料向銀行提供，導致他向銀行申請貸款時被拒絕。同時，更有市民向本人投訴，該公司保留及／或向銀行及財務機構提供一些市民超過7年的信貸紀錄，因而違反了《個人信貸資料實務守則》(《守則》)的規定。就此，政府可否告知本會：

- (一) 除了個人資料私隱專員(“私隱專員”)發布《守則》規管個人信貸資料外，現時政府有否對個人信貸資料服務機構(“服務機構”)作出規管；若有，如何規管及其範圍為何；若否，原因為何；
- (二) 現時香港金融管理局(“金管局”)有否規管銀行及財務機構如何接納、依賴及使用服務機構所提供的個人信貸資料；若有，如何規管及其範圍為何；若否，原因為何；及
- (三) 是否知悉，過去3年，私隱專員或金管局有否定期調查服務機構有否保留或發放市民超過7年的任何信貸或其他紀錄；若有定期調查，每隔多久進行定期調查一次；若沒有定期調查，原因為何？

Regulation of credit reference agencies

(12) Hon LEUNG Kwok-hung (Written Reply)

A member of the public has complained to me that a credit reference company which specializes in providing banks and financial institutions with consumer credit data had given incorrect personal data about him to a bank, resulting in the rejection of his bank loan application. Meanwhile, some members of the public have also complained to me that the company has retained the credit records of some members of the public for more than seven years and/or provided banks and financial institutions with such records, thereby violating the requirements of the Code of Practice on Consumer Credit Data (“the Code”). In this connection, will the Government inform this Council:

- (a) apart from the Code promulgated by the Privacy Commissioner for Personal Data (“Privacy Commissioner”) to regulate consumer credit data, whether the Government has imposed regulation on credit reference agencies (“CRAs”) at present; if so, how they are regulated and of the scope of regulation; if not, the reasons for that;
- (b) whether at present the Hong Kong Monetary Authority (“HKMA”) has imposed regulation on how banks and financial institutions accept, rely on and use the consumer credit data provided by CRAs; if so, how they are regulated and of the scope of regulation; if not, the reasons for that; and
- (c) whether it knows if the Privacy Commissioner or HKMA had in the past three years regularly investigated whether CRAs had retained any credit or other records of members of the public

for more than seven years or released such records; if regular investigation had been conducted, how often such investigations had been conducted; if regular investigation had not been conducted, of the reasons for that?

檢討《稅務條例》第39E條的實施情況

(16) 林大輝議員 (書面答覆)

關於財經事務及庫務局局長(“局長”)於本年11月24日就本人的口頭質詢所作出的答覆，政府可否告知本會：

- (一) 會否全面公開稅務聯合聯絡小組(“小組”)就檢討《稅務條例》(第112章)第39E條(“第39E條”)的實施情況而提交的報告，以及當局與小組之間的相關來往信件和文件；如會，何時公布；如否，原因為何；
- (二) 鑒於局長表示，“據我們理解，不少香港企業在內地加工貿易升級轉型時，已選擇以注資方式把機械及工業裝置的擁有權轉至新成立的內地企業”，政府有否數據顯示上述“不少香港企業”的數目；如有，詳情為何；如否，局長根據甚麼客觀事實得出有關理解；
- (三) 鑒於局長表示，“部分香港企業以租賃形式向內地新成立的企業提供機械及工業裝置，有關租金收入屬內地的應課稅利潤，須繳交內地的營業稅和所得稅”，但香港企業向加工企業提供機械及工業裝置生產自行出售的貨物，並沒有存在收取租金的情況，為何當局可將此理解為“租賃”；
- (四) 鑒於局長表示“在‘進料加工’下免費租用予內地企業的機械及工業裝置，我們擔憂若果按照部分企業的要求，為該等機械及工業裝置在香港提供折舊

免稅額，可能被視為鼓勵轉讓定價”，但經濟合作與發展組織和香港稅務局對於轉讓定價的問題均有特定指引處理，局長基於甚麼理據支持上述擔憂；

- (五) 鑒於根據稅務上訴委員會個案D37/01及D60/06，該委員會裁定納稅人的稅務責任應按本地法例決定，而不應考慮外地稅務機關是否有稅收流失，為何局長提出其他稅收管轄區(包括內地)的徵稅權利的問題；
- (六) 鑒於根據《稅務條例》第16條，為產生應課稅利潤而招致的一切支出及開支，均須予扣除，有否評估用於產生應課稅利潤的機器設備，只因為是在境外使用而不能享有折舊免稅額，是否違反“稅務對稱”及《稅務條例》第16條規定開支扣除的基本原則；如否，原因為何；
- (七) 有否評估，當局拒絕改善第39E條對工商業、社會就業和經濟發展帶來甚麼影響，以及本港企業因減少投資機械及工業裝置而引致生產力和競爭力下降，繼而導致盈利減少，對政府帶來的稅收損失是否比局長指“放寬第39E條”帶來的稅收減少為大；如有評估，詳情為何；如沒有評估，原因為何；
- (八) 鑒於業內人士要求當局恢復遵循第39E條的立法原意，只針對打擊售後租回和槓桿租賃的避稅安排，為何當局將此理解為“放寬”第39E條；
- (九) 當局會否就在本年11月24日答覆質詢的內容再諮詢工商業界、會計界及稅

務專家等界別的意見；如會，詳情為何；如否，原因為何；及

- (十) 會否考慮召開業界聯席會議，邀請本港四大商會、中小型企業商會、會計及核數師行和稅務專家等代表共同商議處理執行第39E條的方法；如會，詳情為何；如否，原因為何？

Review of the implementation of section 39E of the Inland
Revenue Ordinance

(16) Dr Hon LAM Tai-fai (Written Reply)

Regarding the reply given by the Secretary for Financial Services and the Treasury (“SFST”) to my oral question on 24 November this year, will the Government inform this Council:

- (a) whether it will fully publicize the report submitted by the Joint Liaison Committee on Taxation (“JLCT”) on the review of the implementation of section 39E of the Inland Revenue Ordinance (Cap. 112) (“section 39E”), as well as the relevant correspondences and documents exchanged between the authorities and JLCT; if it will, when they will be published; if not, of the reasons for that;
- (b) given that SFST stated that “according to our understanding, in the course of upgrading and restructuring the processing trade in the Mainland, considerable Hong Kong enterprises have opted to transfer the title of their machinery and plant to the newly established Mainland enterprises as capital injection”, whether the Government has data showing the number of the aforesaid “considerable Hong Kong enterprises”; if so, of the details; if not, on what objective facts SFST has based in arriving at such understanding;
- (c) given that SFST stated that “for some Hong Kong enterprises which have provided machinery and plant to the newly established Mainland enterprises at a rent, they have to pay business tax and income tax in the Mainland as their rental income is taxable profits in the Mainland”, yet there is in fact no question of

the Hong Kong enterprises receiving rent when they provide machinery and plant to processing enterprises to produce goods to be sold by themselves, why the authorities could interpret that such machinery and plant are provided “at a rent”;

- (d) given that SFST stated that “for machinery and plant provided for use by the Mainland enterprises rent-free [under ‘import processing’], we are worried that if we accede to the request of some enterprises and provide depreciation allowances in Hong Kong for such machinery and plant, we may be perceived as encouraging transfer pricing”, yet the Organization for Economic Co-operation and Development and the Inland Revenue Department in Hong Kong have both issued specific guidelines on the handling of the issue of transfer pricing, of SFST’s justifications for the aforesaid worry;
- (e) given that according to the Inland Revenue Board of Review Case Nos. D37/01 and D60/06, the Board has ruled that the tax liability of a taxpayer should be determined by local legislation, and no consideration should be given to whether the foreign tax authorities have suffered tax loss, why SFST raised the issue of taxing rights of other tax jurisdictions (including the Mainland);
- (f) given that according to section 16 of the Inland Revenue Ordinance, all outgoings and expenses shall be deducted to the extent to which they are incurred in the production of chargeable profits, whether it has assessed if it is a violation of the basic principles of “tax symmetry” and deduction of expenses under section 16 of the Inland Revenue Ordinance when depreciation allowances for machinery

and plant used in the production of chargeable profits may not be granted merely because such machinery and plant are used outside Hong Kong; if not, of the reasons for that;

- (g) whether it has assessed the impact of the authorities' refusal to improve section 39E on the commerce and industry sector, employment in our society and economic development; and whether it has assessed if the loss in tax revenue suffered by the Government as a result of reduced profits consequent upon decreased productivity and competitiveness in the wake of Hong Kong enterprises reducing their investment in machinery and plant will outweigh the reduction in tax revenue brought about by "relaxing section 39E" as referred by SFST; if it has, of the details; if not, the reasons for that;
- (h) given that members of the trade have requested the authorities to resume compliance with the legislative intent of section 39E, which is only intended to strike down the acts of tax avoidance through sale and leaseback and leveraged leasing arrangements, why the authorities have interpreted such a request as "relaxing" section 39E;
- (i) whether the authorities will further consult the commerce and industry sector, accountancy sector and tax experts, etc. on the contents of the reply to the question on 24 November this year; if they will, of the details; if not, the reasons for that; and
- (j) whether it will consider convening a joint conference of sectors and inviting representatives from the four major chambers of commerce of Hong Kong, the chambers of commerce of small and medium enterprises, accounting and audit firms as well as tax

experts, etc. to discuss the ways in handling the enforcement of section 39E; if it will, of the details; if not, the reasons for that?