

**Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2013**

**List of follow-up actions arising from the discussion  
at the meeting on 28 January 2014**

Proposed profits tax concession for captive insurers

*Proposed concessionary profits tax rate*

1. With regard to the proposed profits tax concession for captive insurers, the Administration is requested to provide information/response to members' views as follows –

- (a) the rationale for setting the proposed profits tax rate at one-half of the normal tax rate for corporations which is currently 16.5%;
- (b) the reasons for only applying the proposed concessionary profits tax rate to captive insurer pertaining to their business of insurance and reinsurance of offshore risks but not onshore risks;
- (c) comparison of the proposed concessionary profits tax rate and other regulatory concessions granted to captive insurers by Hong Kong and other jurisdictions; and explain how Hong Kong would maintain its competitiveness in attracting captive insurers vis-à-vis other jurisdictions;
- (d) whether the proposed tax concession is targeted at attracting captive insurers from particular jurisdictions, such as the Mainland, to establish in Hong Kong; and
- (e) some members' views that the Administration should make reference to other jurisdictions to exempt captive insurers from all profits tax (e.g. Singapore) or exempt them from such tax in the first two years of their operation in Hong Kong.

*Definition of captive insurance business eligible for the proposed tax concessions*

2. According to section 2(7) of the Insurance Companies Ordinance (Cap. 41) ("ICO"), captive insurer is defined as an insurer which carries on general business only and is restricted to underwriting insurance of risks of the companies within the same group to which the captive insurer belongs. The same grouping of companies to which the captive insurer belongs may

cover a company which the captive insurer or any company belonging to the same group holds, or is entitled to control the exercise of; not less than 20% of the voting power at any general meeting. In providing the proposed concessionary profits tax rate for captive insurer, the Administration is requested to –

- (a) explain the appropriateness to adopt the definition of "same grouping of companies" under ICO for the purpose of the proposed tax concessions, having regard to the concern that the percentage of controlling stake (i.e. not less than 20%) in question may be over generous and have implications on tax revenue;
- (b) provide information on the definition of "same grouping of companies" or other relevant definitions adopted by other jurisdictions for the purpose of granting profits tax concessions to captive insurers; and
- (c) consider the need to provide a definition of "offshore risks" in the Bill, with reference to major tax cases in other jurisdictions involving disputes/loopholes over the scope of "offshore risks".

#### Section 39E of the Inland Revenue Ordinance (Cap. 112) ("IRO")

3. In light of the proposed tax concessions for captive insurance business of offshore risks, the Administration is requested to respond to some members' views that similar considerations should be given to relaxing the restrictions under section 39E of IRO for granting depreciation allowances to a Hong Kong enterprise if the machinery or plants owned by the enterprise are used wholly or principally outside Hong Kong by another enterprise under a leasing arrangement.

#### Drafting issue

4. In light of comments of the Legal Adviser to the Bills Committee, the Administration is requested to explain the drafting of sections 2(2), 2(4), 4(2) and 4(4) of the proposed Schedule 30 to IRO with regard to the usage of "the ground is..." (English text) and "有關理由是" (Chinese text), which seems to depart from the drafting of similar provisions in other parts of IRO (e.g. existing section 3(4) of Schedule 25).