

# **立法會**

## ***Legislative Council***

LC Paper No. CB(1)1066/14-15(02)

Ref : CB1/BC/9/14

### **Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2015**

#### **Background brief**

#### **Purpose**

This paper provides background information on the Inland Revenue (Amendment) (No. 3) Bill 2015 ("the Bill") and a summary of the major views and concerns expressed by members of the Panel on Financial Affairs ("FA Panel") on related issues.

#### **Background**

##### The existing tax appeal mechanism under the Board of Review

2. The Board of Review ("BoR") is a statutory body constituted under section 65 of the Inland Revenue Ordinance (Cap. 112) ("IRO") to hear and determine tax appeals. It provides a convenient and less costly channel for taxpayers to lodge tax appeals. Members of BoR are appointed by the Chief Executive, and its statutory membership comprises a chairman, a maximum of 10 deputy chairmen<sup>1</sup>, and not more than 150 other members<sup>2</sup>. A hearing panel is formed for hearing a tax appeal. The panel comprises three or more members (including the chairman or a deputy chairman of BoR as the panel chair) nominated by the chairman of BoR. The existing IRO does not provide privileges and immunities to the chairman, deputy chairman and members of BoR, as well as persons appearing before it.

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<sup>1</sup> The chairman and the deputy chairmen must be persons with legal training and experience.

<sup>2</sup> According to the information set out in website of BoR (<http://www.info.gov.hk/bor/en/introduction.htm>) on 3 July 2015, BoR is composed of one chairman, eight deputy chairmen and 63 members.

### Non-compliance with the Board of Review's pre-hearing directions

3. Currently, BoR has no statutory power to give pre-hearing directions to the taxpayer or Inland Revenue Department ("IRD"), or to sanction their non-compliance. In practice, BoR will give sufficient time for the taxpayers and IRD to submit the documents before a hearing<sup>3</sup>. According to the Administration, late submissions to BoR occur from time to time, and parties sometimes submit additional documents at the last minute, which may lead to deferral or unnecessary lengthening of hearings.

### Appeal against the Board of Review's decisions

4. After hearing an appeal, BoR may confirm, reduce, increase or annul IRD's tax assessment, or remit the case to IRD for re-assessment. BoR is the ultimate authority for fact finding, and its decisions cannot be challenged on the grounds of facts. Under section 69 of IRO, if an appellant or the Commissioner of Inland Revenue would like to appeal against BoR's decisions, the party concerned may make an application to BoR for it to state a case on a question of law arising from its decision for the opinion of the Court of First Instance ("CFI"), i.e. the case stated procedure. The applicant will prepare a draft case on the proposed question(s) of law (known as "case stated") for the other party's comments. The applicant may agree with or make further comments on the other party's comments. BoR will then consider the draft case stated together with comments made by both parties.

5. If BoR is convinced that there exists a proper question of law, it will then state a case on the question of law for the opinion of CFI<sup>4</sup>. The taxpayer/IRD may also take the case stated by BoR to the Court of Appeal ("CA") direct without going through CFI, if CA grants the leave. However, if BoR considers that there is no proper question of law, it will refuse to state a case. The taxpayer/IRD may challenge BoR's refusal to state a case by seeking judicial review.

6. According to the Administration, while the BoR processes an average of around 50 tax appeals per year, the appeal cases have become more and more complex and the average hearing time per case has increased from 1.3 sessions (half-day for each) in 2010-11 to 3 sessions in 2014-15. The case stated procedure has taken up much of the time and resources of BoR at the

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<sup>3</sup> In some complicated cases, BoR will specify administratively what documents to be submitted by which party and by what time before a hearing in consultation with both the taxpayers and IRD.

<sup>4</sup> In stating a case, BoR is not bound by the draft case submitted by the relevant parties.

expense of the efficiency in handling other appeals, particularly those complex ones<sup>5</sup>.

### **The Inland Revenue (Amendment) (No. 3) Bill 2015**

7. The Bill was published in the Gazette on 12 June 2015 and received its First Reading on 24 June 2015. The Bill seeks to amend IRO to implement improvements for BoR as follows:

- (a) to empower the person presiding at the hearing of an appeal before BoR to give directions on the provision of documents and information;
- (b) to enable a party aggrieved by BoR's decision to appeal directly to CFI on a question of law in place of the existing requirement for BoR to state the case for CFI's opinion;
- (c) to confer privileges and immunities on members of BoR and parties to a hearing or persons appearing before it; and
- (d) to increase the maximum amount which BoR may order an appellant to pay as costs of BoR from \$5,000 to \$25,000.

8. The main provisions of the Bill are explained in paragraph 20 of the Legislative Council ("LegCo") Brief (File Ref: TsyB R 183/700-6/3/0 (C) issued on 11 June 2015), and paragraphs 4 to 9 of the Legal Service Division Report on the Bill (LC Paper No. LS75/14-15).

### **Major views and concerns expressed by Members**

9. On 4 January 2010 and 6 January 2014, the Administration briefed FA Panel on its legislative proposals to enhance the efficiency of the existing tax appeal mechanism. According to the Administration, it has consulted the Joint Liaison Committee on Taxation and the Judiciary on the proposals, and obtained their support for the proposals in principle. Panel members also expressed support for the legislative proposals in principle<sup>6</sup>. The ensuing

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<sup>5</sup> It takes about six months on average for BoR to process the stated cases before they could be heard before the court.

<sup>6</sup> According to the Administration, the legislative proposals presented to FA Panel in January 2014 did not include the proposed increase in the ceiling of costs to be paid by the appellant that might be ordered by BoR (i.e. Clause 13(2) of the Bill). The Administration has explained that the objective of strengthening the deterrent effect against frivolous tax appeals via the proposed increase in the costs ceiling would be consistent with the overall objective of the Bill.

paragraphs summarized the major views and concerns expressed by Panel members.

Empowering the Board of Review to issue directions and to sanction non-compliance

10. Some members questioned the need to empower BoR to give pre-hearing directions and sanction non-compliance given that such matters in most tax appeal cases had been dealt with administratively all along. There was a concern that appellants representing themselves at the tax appeal hearings would be disadvantaged under the revised pre-hearing directions and arrangements of the proposal, particularly those who had no access to legal assistance in preparing appeal documents. As the nature of most tax appeals was simple and straightforward, the Administration was urged to draw up the pre-hearing directions the simplest way possible so as to save the appellants from unnecessary administrative and financial burdens.

11. There was a suggestion from members that the Administration should categorize the repeated deferral cases by analyzing the underlying reasons and consider devising different legal provisions for application to the respective categories of cases. Members opined that the Administration should provide information on the number of hearings of BoR which had been deferred due to late submission of documents and the number of wasted days of BoR resulting from the late submission.

12. Given that BoR was not empowered to authorize litigation cost in the case of non-compliance like court proceedings, members were concerned that if BoR dismissed any document not submitted in compliance with its pre-hearing directions, it might give rise to controversies at the subsequent stage of tax appeal in the event that such documents turned out to be an important piece of evidence in the appeal.

13. The Administration stressed that BoR members rendered assistance to the Board as part of their community service, and the efficiency and effectiveness of BoR's work should be enhanced by providing a proper legal basis for BoR to make pre-hearing directions, in particular having regard to incidents of repeated deferrals of submission of documents by appellants which were represented by legal/professional representatives. The Administration advised that it had taken into account the situation where the appellant opted to lodge an appeal without legal/professional representative in formulating the legislative proposals. The Administration would be mindful to institute flexibility, for example by establishing a mechanism for appellants to apply for extension of the deadline for submission of documents. The

Administration assured members that the rights of the appellants would be safeguarded in the pre-hearing phase of the appeal system.

#### Enhancing the efficiency of the tax appeal mechanism

14. Some members enquired about the estimated improvement in the hearing time with implementation of the legislative proposals, and the possible impact on the number of tax appeal cases lodged by taxpayers as a result of the abolition of the case stated procedure.

15. The Administration advised that in the period from 2009 to 2013, BoR received an annual average of 85 cases and was able to process about 50 cases per year. In general, it would take about one to two months and three to four months after filing of a tax appeal to issue the notice of hearing for a simple case and a complex case respectively. Depending on the complexity of the case, it would take some weeks to several months for the hearing panel chair to provide written decision on a tax appeal. It was envisaged that the efficiency in processing an appeal case could be enhanced after the abolition of the case stated procedure, and no major change in the number of appeal cases lodged to BoR was expected.

#### Appointment of and honorarium for members of the Board of Review

16. Panel members noted that due to the substantial workload of BoR and heavy demand of time and efforts from BoR members in hearing tax appeals, the Administration had encountered difficulty in appointing BoR members. Some Panel members suggested that the Administration should explore the feasibility to appoint BoR members, especially the chairman and deputy chairmen, on a full-time basis which could enhance the consistency of BoR's decisions and efficiency in handling tax appeal. There was also a suggestion for the Administration to increase the honorarium of BoR members.

17. The Administration advised that each hearing panel of BoR comprised three or more members, including the chairman or a deputy chairman of BoR serving as the panel chair. Currently, the chairman and deputy chairmen of BoR took up the hearing panel chair on a roster basis to share out the caseload. In view of the reduced number of appeal cases in recent years (i.e. about 50 cases in 2012-2013 compared to some 100 cases in 2008-2009), the caseload should be manageable within the existing manpower resources without undermining efficiency in hearing tax appeals. The Administration added that in considering the operation of BoR, it had to take into account the independence of BoR, a diversified background of BoR members to tackle different types of tax appeals, and potential difficulty to appoint BoR members on a full-time basis. As observed, the incumbent

chairman and deputy chairmen of BoR had served in their positions for a number of years and were experienced in presiding the hearing panel. The Administration advised that it would endeavour to recruit more members to BoR as necessary. The proposal to provide BoR members with the same privileges and immunities as a judge of CFI would help enhance their protection. As regards the suggestion of increasing the honorarium for BoR members, the Administration pointed out that the level of honorarium was adjusted with reference to factors including the Composite Consumer Price Index. The adjustment mechanism was in line with that adopted by other boards and committees with comparable functions and workload.

### **Latest development**

18. At the House Committee meeting on 26 June 2015, Members agreed to form a Bills Committee to study the Bill.

### **Relevant papers**

19. A list of relevant papers is in the **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
6 July 2015

## Inland Revenue (Amendment) (No. 3) Bill 2015

## List of relevant papers

Date	Event	Paper/Minutes of meeting
4 January 2010	The Panel on Financial Affairs ("FA Panel") was briefed by the Administration on its legislative proposals to enhance the efficiency of the existing tax appeal mechanism.	<a href="#">Administration's paper</a> (LC Paper No. CB(1)765/09-10(04))  <a href="#">Background brief</a> (LC Paper No. CB(1)763/09-10)  <a href="#">Minutes</a> (LC Paper No. CB(1)1152/09-10)
December 2010	The Administration informed FA Panel of its decision to put on hold the introduction of the legislative proposals to enhance the efficiency of the existing tax appeal mechanism.	<a href="#">Information paper on "Legislative Proposals to Enhance the Efficiency of the Existing Tax Appeal Mechanism"</a> (LC Paper No. CB(1)963/10-11(01))
14 January 2014	FA Panel was further briefed by the Administration on its legislative proposals to enhance the efficiency of the existing tax appeal mechanism.	<a href="#">Administration's paper</a> (LC Paper No. CB(1)625/13-14(12))  <a href="#">Background brief</a> (LC Paper No. CB(1)625/13-14(13))  <a href="#">Minutes</a> (LC Paper No. CB(1)1310/13-14)
12 June 2015	Introduction of the Inland Revenue (Amendment) (No. 3) Bill 2015 into the Legislative Council	<a href="#">The Bill</a>  <a href="#">Legislative Council Brief</a> (File Ref: TsyB R 183/700-6/3/0(C))  <a href="#">Legal Service Division report</a> (LC Paper No. LS75/14-15)