

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

**The Administration's responses to the issues raised at
the meeting held on 7 July 2015**

In the light of the questions on the Inland Revenue (Amendment) (No. 3) Bill 2015 ("Amendment Bill") raised by Members at the meeting held on 7 July 2015, this paper sets out the Administration's responses to the following relevant issues –

- (a) the number of tax appeal cases, including –
 - (i) the success rate of appeal cases, as well as relevant numbers of successful and unsuccessful cases over the past five years; and
 - (ii) which side, taxpayers or the Commissioner of Inland Revenue ("CIR"), had a higher success rate in tax appeal cases over the past two years.
- (b) the considerations and justifications for proposing in the Amendment Bill that the court must not receive any further evidence on hearing an appeal against the decision of the Board of Review (Inland Revenue Ordinance) ("the Board") on a question of law.

The Board's Decisions on Appeal Cases

2. Under the Inland Revenue Ordinance ("IRO"), if relevant parties (i.e. taxpayers) lodge an appeal to the Board, the Board shall form panels to hear individual tax appeals, and may, after hearing an appeal, confirm, reduce, increase or annul the assessment appealed against, or remit the case to CIR with the opinion of the Board, for revising the assessment.

3. The relevant number of decisions made by the Board on appeal cases, as well as requests for stating a case on a question of law arising from the Board's decisions over the past five financial years are set out in the table below –

Financial Year	Decisions made by the Board on appeal cases lodged by taxpayers	
	<u>Confirming</u> the assessment appealed against (as a percentage of total number of decisions)	<u>Revising</u> the assessment appealed against ¹ (as a percentage of total number of decisions)
2010-11	45 (94%)	3 (6%)
2011-12	41 (80%)	10 (20%)
2012-13	45 (88%)	6 (12%)
2013-14	39 (93%)	3 (7%)
2014-15	24 (89%)	3 (11%)

Financial Year	Requests for stating a case on a question of law arising from the Board's decisions	
	Lodged by taxpayers (processed and submitted to the court by the Board)	Lodged by CIR (processed and submitted to the court by the Board)
2010-11	1 (0)	0 (0)
2011-12	8 (2)	0 (0)
2012-13	3 (0)	1 (0)
2013-14	2 (1)	0 (0)
2014-15	3 (0)	1 (1)

The arrangement for lodging direct appeals to the court against the Board's decisions on a question of law

4. The proposed enhanced tax appeal mechanism allows the taxpayers concerned or CIR to lodge direct appeals to the Court of First Instance ("CFI") (or the Court of Appeal ("CA") under the leapfrog arrangement) against the Board's decisions on a question of law, so as to replace the present case stated procedure. The Amendment Bill proposes that in relation to appeals against the Board's decisions on a question of law, CFI or CA, when hearing the appeal, must not receive any further evidence, or reverse or vary any conclusion made by the Board on questions of fact unless the court finds that the conclusion is erroneous in point of law.

5. The Board is an independent statutory body constituted under section 65 of IRO to hear and determine tax appeals lodged by taxpayers. Under the existing section 69(1) of IRO, the taxpayers concerned or CIR

¹ The relevant decisions include reducing, increasing or annulling the assessment appealed against, or remitting the case to the Commissioner with the opinion of the Board thereon.

may appeal against the Board's decisions on a question of law through the case stated procedure. In other words, both parties to the appeal cannot challenge the Board's decision on grounds of fact and the Board is the ultimate authority for fact finding. The Amendment Bill does not seek to change the statutory role of the Board in this aspect.

6. As regards the question of law, according to the existing mechanism, the taxpayer concerned or CIR may make an application within one month of the date of the Board's decision for the Board to state a case on a question of law arising from its decision for the opinion of the CFI (or CA under the leapfrog arrangement). To avoid the time-consuming and costly process for stating a case, the Amendment Bill proposes to abolish the statutory case stated procedure, with a view to allowing taxpayers or CIR to lodge direct appeals to CFI (or CA under the leapfrog arrangement) against the Board's decisions on a question of law. The proposed arrangement will not only preserve the function and role of the Board in receiving and considering evidence, but will also prevent the proceeding of hearings from being affected by the submission of new evidence by either party during court hearings.

7. In drafting the proposal, we have made reference to the existing practice of other statutory appeal boards. It is worth noting that there are similar provisions in the Labour Tribunal Ordinance (Cap. 25), Small Claims Tribunal Ordinance (Cap. 338) and Minor Employment Claims Adjudication Board Ordinance (Cap. 453) which provide that the court, when hearing an appeal, may not receive further evidence, or reverse or vary any determination made by the tribunal/adjudication board on questions of fact.

8. If the court considers it necessary to obtain further evidence or fact during the course of determining the question of law involved in the appeal cases, the Amendment Bill has also provided that CFI or CA may remit the matter back to the Board with any directions (including a direction for a new hearing) that the court thinks fit. We consider that the above arrangement could protect both parties' (i.e. taxpayers and CIR) right to a fair hearing.

9. We have consulted the Judiciary on the above court procedures and incorporated its comments into the relevant provisions of the Amendment Bill.