

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

**Follow up to the meeting held on 11 September 2015**

**Issue**

At the Bills Committee meeting held on 11 September 2015, the Administration was requested to provide a flow chart to illustrate the correlation among the provisions relating to appeals concerning assessment to tax (i.e. the proposed amended sections 68, 69, 69A and the proposed new sections 68AA, 68AAB, 69AA) and their applicability to appeals concerning assessment to additional tax, and to explain why it is not necessary to include "69AA" and "69A" in the proposed amendment to section 82B(3), in order to make the proposed new section 69AA and the proposed amended section 69A applicable to appeals against assessment to additional tax to the Board of Review ("BoR"). This note sets out the Administration's response.

**Response of the Administration**

2. As set out in the Administration's response to the question raised by Assistant Legal Advisor in her letter of 28 August 2015 and reiterated at the Bills Committee meeting on 11 September 2015, the purpose of section 82B(3) is to provide that relevant procedures **relating** to appeals against assessment to additional tax to the **Board of Review** ("BoR") are the same as those for appeals against assessment to tax other than additional tax. The **procedures relating to appeals to BoR** include –

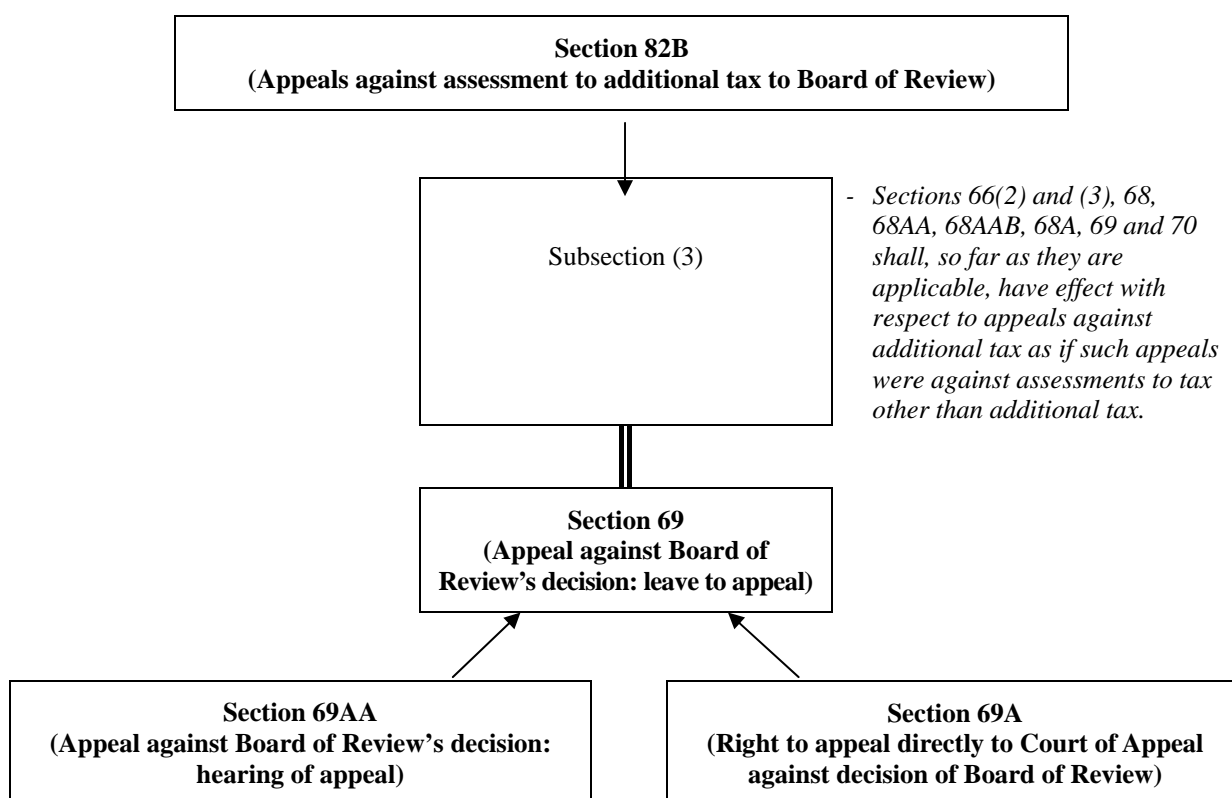
- (a) **Sections 66(2) and (3) (existing)** – giving of notice of appeal to BoR and appealing on the statement of grounds of appeal;
- (b) **Section 68 (existing)** – hearing and disposal of appeals to BoR;
- (c) **Section 68AA (new)** – power of BoR to give directions on provision of documents and information;
- (d) **Section 68AAB (new)** – privileges and immunities of the Chairman, Deputy Chairman and members of BoR at panel hearings;

- (e) **Section 68A (existing)** – power of BoR to correct clerical mistakes and other errors;
- (f) **Section 69 (existing and as substituted)** – right to appeals to the Court of First Instance; and
- (g) **Section 70 (existing)** – tax assessments or amended assessments to be final.

3. It is not necessary to cover the proposed new section 69AA and the proposed amended section 69A under section 82B(3). The former concerns the hearing of appeals against BoR's decisions by the Court of First Instance and the latter concerns the revised leapfrog procedures of the Court where leave to appeal has been granted in respect of a decision of BoR. Same as the existing section 69A (right to appeal directly to the Court of Appeal against decisions of BoR) which is **not** covered under section 82B(3), these two sections are **not** part of the procedures relating to appeals to BoR, but concern procedures of the Court in dealing with an **appeal against a decision which has been made by BoR and where leave to appeal has been granted** (by the Court) in respect of a decision of BoR.

4. Notwithstanding the above, by virtue of section 69 as currently included in section 82B(3) and given the reference to section 69 in both of the proposed new section 69AA and the proposed amended section 69A, the relevant procedures of the Court of First Instance in hearing of the appeal (section 69AA) and the right to appeal directly to the Court of Appeal with the relevant procedures of the latter in hearing of the appeal (section 69A) will be applicable to an appeal against a decision of BoR (which may be one in relation to an appeal against assessment to additional tax or that in relation to tax other than additional tax). For Members' easy reference, a flow chart illustrating the above is shown in the **Annex**.

**Flow Chart**



- Sections 66(2) and (3), 68, 68AA, 68AAB, 68A, 69 and 70 shall, so far as they are applicable, have effect with respect to appeals against additional tax as if such appeals were against assessments to tax other than additional tax.

Subsection (1) provides that

*“Where leave to appeal has been granted under section 69 in respect of a decision of the Board of Review, the Court of First Instance, on hearing the appeal—*

- (a) may—*
  - (i) draw any inference of fact;*
  - (ii) confirm, reduce, increase or annul the assessment determined by the Board, or remit the matter back to the Board with any directions (including a direction for a new hearing) that the Court of First Instance thinks fit; and*
  - (iii) make any order as to costs that the Court of First Instance thinks fit; and*
- (b) must not—*
  - (i) receive any further evidence; or*
  - (ii) reverse or vary any conclusion made by the Board on questions of fact unless the Court of First Instance finds that the conclusion is erroneous in point of law.”*

Subsection (1) provides that -

*“Where leave to appeal has been granted under section 69 in respect of a decision of the Board of Review, the appellant or the Commissioner may appeal directly to the Court of Appeal against the Board’s decision.”*

Subsection (1A) also provides that-

*“No appeal may be made under subsection (1) unless leave to appeal directly to the Court of Appeal has been granted, on the application of the appellant or the Commissioner, by the Court of Appeal.”*

Subsection (3) provides that the Court of Appeal—

- “(a) may—*
  - (i) draw any inference of fact;*
  - (ii) confirm, reduce, increase or annul the assessment determined by the Board, or remit the matter back to the Board with any directions (including a direction for a new hearing) that the Court of Appeal thinks fit; and*
  - (iii) make any order as to costs that the Court of Appeal thinks fit; and*
- (b) must not—*
  - (i) receive any further evidence; or*
  - (ii) reverse or vary any conclusion made by the Board on questions of fact unless the Court of Appeal finds that the conclusion is erroneous in point of law.”*