

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

The Administration's response to the submission of the Joint Liaison Committee on Taxation ("JLCT") dated 17 September 2015

Purpose

JLCT has, at the request of the Bills Committee Chairman, provided via its letter dated 17 September 2015, findings regarding whether any leave is required in the UK and Australia for appeals against decisions of their respective tax review authorities; and if required, whether any threshold has been spelt out. This note sets out the Administration's response.

Response from the Administration

Arrangements in the UK and Australia

2. The arrangement for appeals against decisions of the respective tax review authorities varies amongst jurisdictions. In respect of the arrangements in the UK and Australia, our observations are -

(a) England and Wales

Tax appeals are heard in the Tax Chamber of the First-tier Tribunal. Any appeal against its decision on a question of law shall lie to the Tax and Chancery Chamber of the Upper Tribunal. An appeal to the Upper Tribunal may proceed only with "permission" which may be given by the First-tier Tribunal or the Upper Tribunal, on application by a party to the case. The law has not set out a leave threshold. But as pointed out in JLCT's submission, in *Invicta Foods Ltd v HMRC [2014] UKFTT 456 (TC)*, the First-tier Tribunal looked to Rule 52.3(6) of the Civil Procedure Rules for guidance, which provides that permission to appeal "may be given only where (a) the court considers that the appeal would have a **real prospect of success**; or (b) there is some other compelling reason why the appeal should be heard".

Any appeal against the Upper Tribunal's decision on a question of law shall lie to the Court of Appeal in England and Wales. An appeal to the Court of Appeal may proceed only with "permission" which may be given by the Upper Tribunal or the Court of Appeal, on application

by a party to the case. It has been expressly provided that such permission shall not be granted unless the Upper Tribunal or the Court of Appeal considers that (a) the proposed appeal would raise **some important point of principle or practice**; or (b) there is some other compelling reason for the Court of Appeal to hear the appeal.

(b) Australia

At the federal level, tax appeals are heard at the Administrative Appeals Tribunal. Any appeal against its decision on a question of law shall lie to the Federal Court of Australia. As pointed out in JLCT's submission, the law has not provided for any leave requirement.

That said, the arrangement at the state level may be different. In the State of Victoria, for example, appeal cases regarding state-level taxes are heard in the Victorian Civil and Administrative Tribunal ("VCAT"). Leave would be required for making appeals to the Court of Appeal or the Trial Division of the Supreme Court of Victoria against VCAT's decisions on a question of law.

Leave requirement and threshold under the Bill

3. We have included in the Bill the leave requirement and leave threshold¹ as **proposed** by the Judiciary. The proposed leave requirement provides for the issue of whether an appeal involves a question of law to be first dealt with by the Court of First Instance. In Hong Kong, similar leave requirement applies in the case of appeals against the decision of the Labour Tribunal, Small Claims Tribunal, and Minor Employment Claims Adjudication Board.

4. In formulating the proposed leave threshold under the Bill, we have made reference to similar threshold in the local context of –

- (a) interlocutory appeal under section 14AA of the High Court Ordinance (Cap.4);
- (b) appeal to the Court of Appeal (CA) against a judgment, order or decision of the Lands Tribunal on the ground that such judgment, order or decision is erroneous in point of law; and

¹ The proposed threshold set out under the proposed section 69(3)(e)(ii) for application for leave to appeal is reproduced below :

(A) *the proposed appeal has a reasonable prospect of success; or*

(B) *there is some other reason in the interest of justice why the proposed appeal should be heard*

- (c) appeal to the CA from any judgment, order or decision of a District Judge in any civil cause or matter.

5. We consider that the above proposals are reasonable and appropriate to enhance the tax appeal system in Hong Kong, striking a balance between the appellants' right to appeal and the Judiciary's prerogative in allowing leave to appeal.

Financial Services and the Treasury Bureau
September 2015