

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

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# A BILL

## To

Amend the Inland Revenue Ordinance to empower the person presiding at the hearing of an appeal before the Board of Review to give directions on the provision of documents and information; to enable a party aggrieved by the Board's decision to appeal directly to the Court of First Instance on a question of law; to confer privileges and immunities on members of the Board; and to provide for related matters.

Enacted by the Legislative Council.

### **1. Short title and commencement**

- (1) This Ordinance may be cited as the Inland Revenue (Amendment) (No. 3) Ordinance 2015.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

### **2. Inland Revenue Ordinance amended**

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 14.

### **3. Section 65 amended (constitution of the Board of Review)**

- (1) Section 65(2)—

**Repeal**

“of Review (hereinafter referred to as the Board)”.

- (2) Section 65(4), Chinese text—

**Repeal**

“某宗”

**Substitute**

“某項”.

- (3) Section 65(7)(b)—

**Repeal**

“68(2C) or 69(1) or (5)”

**Substitute**

“68(2C), 69AA(1)(a)(ii) or 69A(3)(a)(ii)”.

- (4) Section 65(7), Chinese text—

**Repeal**

“某宗”

**Substitute**

“某項”.

- (5) Section 65(7), Chinese text—

**Repeal**

“該宗” (wherever appearing)

**Substitute**

“該項”.

4. **Section 66 amended (right of appeal to the Board of Review)**  
Section 66(1)(b), after “Board”—

**Add**

“of Review”.

**5. Section 67 amended (transfer of appeals under section 66 for hearing and determination by Court of First Instance instead of Board of Review)**

(1) Section 67(1), after “Board”—

**Add**

“of Review”.

(2) Section 67(5)(a)—

**Repeal**

“clear”.

**6. Section 68 amended (hearing and disposal of appeals to the Board of Review)**

(1) Section 68(1)(a), after “Board”—

**Add**

“of Review”.

(2) Section 68(1)—

**Repeal**

“clear”.

(3) Section 68(1), Chinese text, proviso—

**Repeal**

“，不得早於以下時間”。

- (4) Section 68(1), Chinese text, proviso, paragraph (a)—

**Repeal**

everything before “不得”

**Substitute**

“(a) 在上訴各方均無根據第67(1)條就有關上訴發出通知書的情況下，”。

- (5) Section 68(1), Chinese text, proviso—

**Repeal paragraph (b)**

**Substitute**

“(b) 在以下的人根據第67(1)條就有關上訴發出通知書的情況下，不得早於該通知書發出日期後的21天屆滿之時——

(i) 上訴人；或

(ii) 局長，而非上訴人。”。

- (6) Section 68(2), Chinese text—

**Repeal**

“一名”。

- (7) Section 68(3), Chinese text—

**Repeal**

“作出受到反對的評稅的評稅主任”

**Substitute**

“如上訴是針對某項評稅提出的，則作出該項評稅的評稅主任，”。

- (8) After section 68(10)—

**Add**

“(11) Subject to section 69, the Board’s decision on the appeal is final.”。

**7. Sections 68AA and 68AAB added**

After section 68—

**Add****“68AA. Directions on provision of documents and information**

- (1) Without limiting section 68, the person who is to preside, or is presiding, at the hearing of an appeal under section 66 (*presiding person*) may—
  - (a) give directions on the provision of documents and information for the hearing; and
  - (b) refuse to admit in evidence any document or information that is not provided in compliance with directions given under paragraph (a).
- (2) If the presiding person decides to exercise the power under subsection (1)(b) to refuse to admit in evidence any document or information provided by a party (*defaulting party*), the presiding person must, as soon as practicable after making the decision, by notice in writing given to the party—
  - (a) notify the party of the decision; and
  - (b) give reasons for the decision.
- (3) The defaulting party may, within 14 days after the date on which the notice is given to the party or within a longer period that the presiding person allows, apply to the presiding person for relief against the decision.
- (4) The application for relief—
  - (a) does not suspend the decision;
  - (b) must be supported by evidence proving the statements made in the application; and
  - (c) may be determined without a hearing.

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- (5) The presiding person must, as soon as practicable after determining the application for relief, by notice in writing given to the defaulting party—
- (a) notify the party of the determination; and
  - (b) give reasons for the determination.
- (6) In determining the application for relief, the presiding person must consider all the circumstances, including—
- (a) the interests of the administration of justice;
  - (b) whether the application has been made promptly;
  - (c) whether the failure to comply with the directions given under subsection (1)(a) was intentional;
  - (d) whether there is a good explanation for the failure;
  - (e) the extent to which the defaulting party has complied with other directions of the presiding person;
  - (f) whether the failure was caused by the defaulting party (or the party's authorized representative);
  - (g) where the defaulting party is not legally represented—
    - (i) whether the party was unaware of the directions given under subsection (1)(a); or
    - (ii) if the party was aware of the directions given under subsection (1)(a), whether the party was able to comply with them without legal assistance;
  - (h) whether the hearing date or the likely hearing date can still be met if relief is granted;



- (i) the effect that the failure had on each party;  
and
- (j) the effect that the granting of relief would have on each party.

**68AAB. Privileges and immunities**

- (1) Subsection (2) applies to the chairman, a deputy chairman or any other member of the panel mentioned in section 65(1).
- (2) A person to whom this subsection applies has, in performing the person's duties under this Part, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that Court.
- (3) Subsection (4) applies to—
  - (a) a party to a hearing before the Board of Review; or
  - (b) a witness, counsel, solicitor or person representing a party appearing before the Board.
- (4) A person to whom this subsection applies has the same privileges and immunities as the person would have in civil proceedings in the Court of First Instance.”.

**8. Section 69 substituted**

Section 69—

**Repeal the section**

**Substitute**

**“69. Appeal against Board of Review’s decision: leave to appeal**

- (1) Where the Board of Review has made a decision on an appeal under section 68, the appellant or the Commissioner may appeal to the Court of First Instance against the Board’s decision on a ground involving only a question of law.
- (2) No appeal may be made under subsection (1) unless leave to appeal has been granted, on the application of the appellant or the Commissioner—
  - (a) by the Court of First Instance; or
  - (b) if a further application is made under subsection (4), by the Court of Appeal.
- (3) For the purposes of an application to the Court of First Instance under subsection (2)(a) for leave to appeal—
  - (a) the application—
    - (i) must be lodged with the Registrar of the High Court, and served on the other party, within 1 month after the following date—
      - (A) subject to sub-subparagraph (B), the date on which the Board’s decision is made;
      - (B) if the Board’s decision is notified to the appellant or the Commissioner by notice in writing, the date of the communication by which the decision is notified; and
    - (ii) must be made by a summons supported by a statement setting out—
      - (A) the grounds of the appeal; and

- (B) the reasons why leave should be granted;
- (b) if the other party intends to resist the application, that party must, within 14 days after the date on which the application is served on that party, file in the Court of First Instance and serve on the applicant a statement as to why leave should not be granted;
- (c) the Court of First Instance may—
  - (i) determine the application without a hearing on the basis of written submissions only; or
  - (ii) direct that the application be considered at a hearing,and, in both cases, the Court of First Instance may give any directions it thinks fit in relation to the application;
- (d) if the Court of First Instance directs that the application be considered at a hearing, it must give 14 days' notice to the parties of the date and place fixed for the hearing;
- (e) leave to appeal must not be granted unless the Court of First Instance is satisfied—
  - (i) that a question of law is involved in the proposed appeal; and
  - (ii) that—
    - (A) the proposed appeal has a reasonable prospect of success; or
    - (B) there is some other reason in the interests of justice why the proposed appeal should be heard;

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- (f) if the Court of First Instance grants leave to appeal—
    - (i) it must give 14 days' notice to the parties of the date and place fixed for the hearing of the appeal; and
    - (ii) it may impose any terms it thinks fit;
  - (g) if the application is determined by the Court of First Instance on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after the date on which the party is notified of the determination, request the Court of First Instance to reconsider the determination at a hearing *inter partes*; and
  - (h) a hearing held in response to a request under paragraph (g) may be before the judge who has determined the application on the basis of written submissions only.
- (4) If the Court of First Instance refuses to grant leave to appeal, the applicant may make a further application to the Court of Appeal for leave to appeal against the Board's decision.
- (5) For the purposes of an application to the Court of Appeal under subsection (4) for leave to appeal—
- (a) the application—
    - (i) must be lodged with the Registrar of the High Court, and served on the other party, within 14 days after the date on which the Court of First Instance refuses to grant leave; and

- (ii) must be made by a summons supported by a statement setting out—
  - (A) the grounds of the appeal; and
  - (B) the reasons why leave should be granted;
- (b) if the other party intends to resist the application, that party must, within 14 days after the date on which the application is served on that party, file in the Court of Appeal and serve on the applicant a statement as to why leave should not be granted;
- (c) the Court of Appeal consisting of one or more Justices of Appeal may—
  - (i) determine the application without a hearing on the basis of written submissions only; or
  - (ii) direct that the application be considered at a hearing,and, in both cases, the Court of Appeal may give any directions it thinks fit in relation to the application;
- (d) paragraphs (d), (e) and (f) of subsection (3) apply to the application as if references in those paragraphs to the Court of First Instance were references to the Court of Appeal;
- (e) subject to paragraph (f), if the application is determined by the Court of Appeal on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after the date on which the party is notified of the determination, request the Court of Appeal to reconsider the determination at a hearing *inter partes*;

- (f) if—
  - (i) the application is determined by the Court of Appeal consisting of more than one Justice of Appeal on the basis of written submissions only; and
  - (ii) the Court of Appeal considers that the application is totally without merit, the Court of Appeal may make an order that no party may make a request under paragraph (e);
- (g) a hearing held in response to a request under paragraph (e) may be before the Court of Appeal consisting of—
  - (i) (if the application was determined by a single Justice of Appeal on the basis of written submissions only) that Justice of Appeal; or
  - (ii) (if the application was determined by more than one Justice of Appeal on the basis of written submissions only) one or more of those Justices of Appeal; and
- (h) subject to paragraph (e), after the Court of Appeal (whether or not consisting of a single Justice of Appeal only) has determined the application (whether or not on the basis of written submissions only), no further application may be made to the Court of Appeal for leave to appeal against the Board's decision.”

**9. Section 69AA added**

After section 69—

**Add****“69AA. Appeal against Board of Review’s decision: hearing of appeal**

- (1) 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.
- (2) Where—
  - (a) the Court of First Instance has made a determination on an appeal for which leave has been granted under section 69; and
  - (b) there is an appeal to the Court of Appeal against the Court of First Instance’s determination,

paragraphs (a) and (b) of subsection (1) apply to the Court of Appeal on hearing the appeal as if references in those paragraphs to the Court of First Instance were references to the Court of Appeal.

- (3) Subject to subsection (2), the High Court Ordinance (Cap. 4) applies to proceedings before the Court of Appeal under this section.”.

**10. Section 69A amended (right to appeal directly to Court of Appeal against decision of Board of Review)**

- (1) Section 69A—

**Repeal subsection (1)**

**Substitute**

“(1) 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.

- (1A) 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.”.

- (2) Section 69A(2)—

**Repeal**

“under this section may be granted”

**Substitute**

“may be granted under subsection (1A)”.

- (3) Section 69A—

**Repeal subsection (3)**

**Substitute**



- “(3) On hearing an appeal for which leave has been granted under subsection (1A), 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.
- (4) Subject to subsection (3), the High Court Ordinance (Cap. 4) applies to proceedings before the Court of Appeal under this section.”.

**11. Section 82B amended (appeals against assessment to additional tax to Board of Review)**

- (1) Section 82B(1)(b), after “Board”—

**Add**

“of Review”.

- (2) Section 82B(1), Chinese text—

**Repeal**

“該委員會的書記”

**Substitute**

“委員會書記”.

- (3) Section 82B(3), after “68,”—

**Add**

“68AA, 68AAB.”.

**12. Section 89 amended (transitional provisions)**

At the end of section 89—

**Add**

- “(15) Schedule 35 sets out transitional provisions relating to appeals against decisions of the Board of Review made before the commencement date of the Inland Revenue (Amendment) (No. 3) Ordinance 2015 ( of 2015).”.

**13. Schedule 5 amended**

- (1) Schedule 5—

**Repeal**

“[ss. 68 & 69]”

**Substitute**

“[s. 68]”.

- (2) Schedule 5, Part 1, item 1—

**Repeal**

“\$5,000”

**Substitute**

“\$25,000”.

(3) Schedule 5—

**Repeal Part 2.**

**14. Schedule 35 added**

At the end of the Ordinance—

**Add**

**“Schedule 35**

[s. 89(15)]

**Transitional Provisions: Appeals against Decisions  
of Board of Review Made before Commencement  
Date of Inland Revenue (Amendment) (No. 3)  
Ordinance 2015**

**1. Interpretation**

In this Schedule—

*amending Ordinance* (《修訂條例》) means the Inland Revenue (Amendment) (No. 3) Ordinance 2015 ( of 2015);

*commencement date* (生效日期) means the date on which section 8 of the amending Ordinance comes into operation;

*former section 69* (原有的第69條) means section 69 as in force immediately before the commencement date.

**2. Applications not made before commencement date**

Despite section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), if—

- (a) but for the enactment of the amending Ordinance, a person has a right to make an application under the former section 69 in respect of a decision of the Board of Review made under section 68;
- (b) the person has not made the application before the commencement date; and
- (c) the time within which the person may make the application has not expired on the commencement date,

on or after the commencement date, the person may not make the application, but may appeal to the Court of First Instance against the Board's decision under section 69.

**3. Applications made before commencement date**

An application that has been made and delivered under the former section 69 before the commencement date is to be continued on and after the commencement date as if the amending Ordinance had not been enacted.”

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## Explanatory Memorandum

Under the Inland Revenue Ordinance (Cap. 112) (*Ordinance*), a person (*appellant*) may appeal to the Board of Review established by the Ordinance (*Board*) against an assessment of the Commissioner of Inland Revenue (*Commissioner*) in specified circumstances, and the appellant or the Commissioner may make an application in respect of the Board's decision on the appeal, requiring the Board to state a case on a question of law for the opinion of the Court of First Instance (*Court*). The main object of this Bill is to amend the Ordinance—

- (a) to empower the person who is to preside, or is presiding, at the hearing of the appeal before the Board (*presiding person*) to give directions on the provision of documents and information;
  - (b) to abolish the requirement to state a case for the opinion of the Court, and enable the appellant and the Commissioner to appeal directly to the Court (or, if applicable, the Court of Appeal) against the Board's decision on a question of law; and
  - (c) to confer privileges and immunities on members of the Board.
2. Clause 1 sets out the short title and provides for commencement.
  3. Clause 7—
    - (a) adds a new section 68AA to the Ordinance to provide for the power of the presiding person to give directions on the provision of documents and information; and

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- (b) adds a new section 68AAB to the Ordinance to provide for the privileges and immunities of—
- (i) the members of the Board; and
  - (ii) the parties to the hearing, and other persons appearing, before the Board.
4. Clause 8 substitutes section 69 of the Ordinance, and clause 9 adds a new section 69AA to the Ordinance, to provide for the right to appeal directly to the Court against the Board's decision on a question of law.
5. Clause 10 amends section 69A of the Ordinance to make further provisions for the right to appeal directly to the Court of Appeal.
6. Clause 12 adds a new section 89(15), and clause 14 adds a new Schedule 35, to the Ordinance to provide for transitional arrangements relating to appeals against the Board's decisions that have been made before the Bill comes into operation.
7. Clause 13(2) amends item 1 of Part 1 of Schedule 5 to the Ordinance to increase the maximum amount that the Board may, after hearing an appeal, order the appellant to pay as costs of the Board if the Board does not reduce or annul the assessment appealed against.
8. Clauses 3, 4, 5, 6, 11 and 13(1) and (3) contain textual and consequential amendments to the Ordinance.