

II. REPORT

The date of First Reading of the Bill is 24 June 2015. Members may refer to the LegCo Brief (File Ref.: TsyB R 183/700-6/3/0 (C) issued by the Financial Services and the Treasury Bureau on 10 June 2015 for further details.

Object of the Bill

2. The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to empower the person presiding at the hearing of an appeal before the Board of Review (the Board) to give directions on the provision of documents and information; enable a party aggrieved by the Board's decision to appeal directly to the Court of First Instance (CFI) on a question of law; confer privileges and immunities on members of the Board; and provide for related matters.

Background

3. According to paragraph 2 of the LegCo Brief, the Government has conducted a review on the existing tax appeal mechanism under Cap. 112 and identified four key areas for improvement as follows –

- (a) the statutory requirement for the case stated procedure for dealing with appeals against the decision of the Board on questions of law is time-consuming and costly, and affects the capacity of the Board to hear other appeals (the 1st Area);
- (b) the lack of statutory power for the Board to give pre-hearing directions has led to the deferral or unnecessary lengthening of hearings (the 2nd Area);
- (c) the lack of provision of privileges and immunities, as in the case of other statutory appeal boards, for the Chairman, Deputy Chairmen and members of the Board and parties attending hearings may expose them to unnecessary risks of litigation, which is undesirable to the Board in performing its statutory duty of determining tax appeals without fear or favour (the 3rd Area); and
- (d) the ceiling of costs which the Board may order the appellants to pay has not been adjusted since 1993. This has reduced the deterrent effect against frivolous appeals (the 4th Area).

Provisions of the Bill

The 1st Area

4. Under section 69(1) of Cap. 112, either the taxpayer concerned or the Commissioner of Inland Revenue (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 CFI. This statutory requirement for the case stated procedure for dealing with appeals against the decision of the Board on questions of law is proposed to be abolished. Under the proposed new section 69, a taxpayer or CIR may apply to CFI for leave to appeal against the Board's decision on a question of law. If CFI refuses to grant leave to appeal, the taxpayer concerned or CIR may make a further application to the Court of Appeal (CA) for leave to appeal. After CA has determined the application for leave, no further application may be made to CA for leave to appeal against the Board's decision.

5. Under section 69A, an appeal by way of case stated may be brought to CA direct without a hearing before CFI, provided that CA has granted leave on the application by the taxpayer or CIR. Clause 10 of the Bill amends section 69A so that a person who has been granted leave to appeal to CFI may, with the leave of CA, appeal directly to CA (the leapfrogging). If CFI refuses to grant leave to appeal in the first place but CA subsequently grants leave upon application by the taxpayer or CIR, another leave is still required from CA for leapfrogging. If CA refuses to grant leave for leapfrogging, the appeal will be heard by CFI.

The 2nd Area

6. The proposed new section 68AA provides for the power of the person presiding at the hearing of an appeal before the Board to give directions on the provision of documents and information, and to refuse to admit in evidence any document or information that is not provided in compliance with the directions.

The 3rd Area

7. The proposed new section 68AAB provides that members of the Board including the Chairman and Deputy Chairmen have, in performing their duties under Part 11 (Objections and Appeals) of Cap. 112, the same privileges and immunities as a judge of CFI in civil proceedings in that Court and a party to a hearing, and a witness, counsel, solicitor and person representing a party appearing before the Board have the same privileges and immunities as they would have in civil proceedings in CFI.

The 4th Area

8. Part 1 of Schedule 5 to Cap. 112 is proposed to be amended 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 from \$5,000 to \$25,000.

Transitional arrangements

9. The proposed new section 89(15) and Schedule 35 provide for transitional arrangements relating to appeals against the Board's decisions such that –

- (a) if a person has a right to make an application under section 69 but has not done so before the proposed new section 69 comes into operation (the commencement date), and the time within which such application may be made has not expired on the commencement date, the person may not make the application on or after the commencement date but may appeal to CFI under the proposed new section 69; and
- (b) applications which have been made and delivered to the Board under section 69 before the commencement date will continue to be processed in accordance with the existing arrangement.

Public Consultation

10. According to paragraph 23 of the LegCo Brief, the Joint Liaison Committee on Taxation has no difficulty with the broad directions of the legislative proposals.

Consultation with LegCo Panel

11. The Clerk to the Financial Affairs Panel has advised that on 6 January 2014, the Panel on Financial Affairs was briefed on the legislative proposals to enhance the existing tax appeal mechanism and improve the efficiency and effectiveness of the Board under Cap. 112. Members did not raise objection to the proposals. Members made enquiries about issues including appointment of suitable members to the Board, honorarium for members of the Board, and timeframe for the Board in handling tax appeals.

Conclusion

12. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

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24 June 2015