

**立法會**  
**Legislative Council**

LC Paper No. CB(1)112/15-16  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/13/14/1

**Subcommittee on Specification of Arrangements (The Mainland of China)  
(Avoidance of Double Taxation and the Prevention of Fiscal Evasion with  
respect to Taxes on Income) (Fourth Protocol) Order**

**Minutes of first meeting  
held on Tuesday, 20 October 2015, at 9:00 am  
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon James TO Kun-sun  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Kenneth LEUNG  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon SIN Chung-kai, SBS, JP  
Hon CHUNG Kwok-pan
- Public Officers attending** : **For item II**
- Financial Services and the Treasury Bureau
- Mr Gary POON  
Principal Assistant Secretary (Treasury) (Revenue)
- Inland Revenue Department
- Mr CHIU Kwok-kit, JP  
Deputy Commissioner (Technical)

Department of Justice

Mr LUNG Wan-pun  
Senior Government Counsel (Treaties and Law)

Mr Alex LAI  
Government Counsel

**Clerk in Attendance :** Ms Angel SHEK  
Chief Council Secretary (1)1

**Staff in attendance :** Miss Carrie WONG  
Assistant Legal Adviser 4

Miss Sharon LO  
Senior Council Secretary (1)9

Ms Mandy LI  
Council Secretary (1)1

Miss Mandy POON  
Legislative Assistant (1)1

Ms PANG Yin-shan  
Clerical Assistant (1)1

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Action

**I. Election of Chairman**

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr CHAN Kam-lam was nominated by Mr Andrew LEUNG and the nomination was seconded by Mr Jeffrey LAM. Mr CHAN Kam-lam accepted the nomination. There being no other nominations, Mr CHAN Kam-lam was declared Chairman of the Subcommittee.

Action

**II. Meeting with the Administration**

- (L.N. 189 of 2015 — Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fourth Protocol) Order
- File Ref: TsyB R 183/800-1-1/17/0 (C) — Legislative Council Brief
- LC Paper No. LS84/14-15 — Legal Service Division Report
- LC Paper No. CB(1)30/15-16(01) — Background brief prepared by the Legislative Council Secretariat)

Discussion

3. The Subcommittee deliberated (index of proceedings attached at the **Annex**).

Follow-up actions to be taken by the Administration

*Caps on withholding tax imposed by the Mainland in respect of dividends and interest*

4. "The Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" ("the Mainland Arrangement") was signed in 2006. The Fourth Protocol to the Mainland Arrangement sought to, amongst others, reduce the cap on the withholding tax imposed by the Mainland on Hong Kong residents in respect of royalties paid to aircraft and ship leasing business from 7% to 5%. In response to a member's enquiry that the existing caps specified by the Mainland Arrangement on the withholding tax imposed by the Mainland in respect of dividends and interest were higher than the reduced cap for royalties, the Administration was requested to provide supplementary information for members' reference on the caps in respect of dividends and interest under similar agreements signed by the Mainland with other tax jurisdictions for avoidance of double taxation.

Action

*(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(1)67/15-16(02) on 27 October 2015).*

Legislative timetable

5. The Chairman concluded that the Subcommittee had completed the scrutiny of the Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fourth Protocol) Order ("the Order") and would not propose any amendment to the Order.

6. Members noted that the scrutiny period of the Order would expire at the Council meeting of 11 November 2015, and that the deadline for giving notice of motion to amend the Order was 4 November 2015. The Chairman would report the deliberations of the Subcommittee to the House Committee at its meeting on 30 October 2015.

**III. Any other business**

7. There being no other business, the meeting ended at 9:57 am.

Council Business Division 1  
Legislative Council Secretariat  
4 November 2015

**Subcommittee on Specification of Arrangements (The Mainland of China)  
(Avoidance of Double Taxation and the Prevention of Fiscal Evasion with  
respect to Taxes on Income) (Fourth Protocol) Order**

**Proceedings of the first meeting  
on Tuesday, 20 October 2015, at 9:00 am  
in Conference Room 2B of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda Item I - Election of Chairman</i>			
000106 - 000209	Mr James TO Mr CHAN Kam-lam Mr Jeffrey LAM Mr Andrew LEUNG	Election of Chairman	
<i>Agenda Item II - Meeting with the Administration</i>			
000210 - 000318	Chairman	Opening remarks	
000319 - 000659	Administration	Briefing by the Administration on the Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fourth Protocol) Order  [Legislative Council Brief (File Ref: TsyB R 183/800-1-1/17/0(C))]	
000700 - 001123	Chairman Mr James TO Administration	Discussion on –  (a) the tax liabilities in respect of gains derived from the purchase and sale of shares in Mainland listed companies on the same stock exchange under the new provision introduced by the Fourth Protocol to replace the existing paragraph 6 of Article 13 of the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("the Mainland Arrangement");  (b) how the purchase and sale of shares would be regarded as being conducted on the same stock exchange, and  (c) tax treatment in relation to dividends paid by a Mainland listed company to a Hong Kong resident	

Time marker	Speaker	Subject(s)	Action required
		<p>As capital gains tax was currently payable in the Mainland but not Hong Kong, Mr James TO expressed concern on whether this might have put Hong Kong in an inequitable and unfavourable position when negotiating with the Mainland on the tax liability arrangement in question.</p> <p>The Administration pointed out that currently, both the Mainland and Hong Kong did not levy any tax in relation to the gains derived from the purchase and sale of shares in listed companies on the other side, and the new provision in Article 13 of the Mainland Arrangement was meant to clearly set out the tax liabilities if such gains were taxable by either side in future.</p>	
001124 - 001436	Chairman Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM emphasized that the Administration should clearly inform the public of the details of implementing the tax liability arrangement under the new provision in Article 13 of the Mainland Arrangement, including the relevant statutory or administrative procedures, if any, for determination and declaration of Hong Kong resident status, and the related obligations on investors as well as brokers/securities firms engaged by the investors to conduct stock trading.</p> <p>The Administration advised that the Inland Revenue Department ("IRD") would publish on its website information relating to the implementation of the arrangements under the Fourth Protocol for the public's reference.</p>	
001437 - 001621	Chairman Mr Christopher CHEUNG Mr James TO Administration	Discussion on the tax liabilities in respect of gains if the shares of a Mainland listed company were purchased before the company was listed and were sold after listing	
001622 - 003404	Chairman Mr James TO Administration	<p>Discussion on –</p> <p>(a) the mechanism for determination of resident status (i.e. Mainland or Hong Kong resident) in Article 4 of the Mainland Arrangement; and</p>	

Time marker	Speaker	Subject(s)	Action required
		(b) the mutual agreement procedure provided for in Article 23 of the Mainland Arrangement	
003405 - 004500	Chairman Mr Kenneth LEUNG Administration	<p>Discussion on –</p> <p>(a) the existing caps on the withholding tax imposed by the Mainland in respect of dividends and interest;</p> <p>(b) the conditions under which an investment fund would be regarded in the Mainland as having a Hong Kong tax resident status; and</p> <p>(c) the resident status of the Hong Kong branches of Mainland incorporated companies such as banks</p> <p>At the request of Mr Kenneth LEUNG, the Administration agreed to –</p> <p>(a) provide supplementary information for members' reference of the caps in respect of dividends and interest under the agreements signed by the Mainland with other tax jurisdictions for avoidance of double taxation; and</p> <p>(b) consider issuing tax resident certificates for investment funds qualified in the Mainland for Hong Kong resident status where necessary.</p>	Admin (paragraph 4 of the minutes refers)
004501 - 005430	Chairman Mr James TO Mr Christopher CHEUNG Mr Andrew LEUNG Administration	Discussion on the tax liabilities in relation to the gains derived from the purchase and sale of shares in a Mainland listed company if the shares were purchased before the company was de-listed (or before suspension of trading of its shares), and were subsequently sold on the same stock exchange after the company was re-listed (or after trading of such shares had been resumed)	
005431 - 005540	Chairman Mr Kenneth LEUNG Administration	Mr Kenneth LEUNG requested the Administration to update IRD's Departmental Interpretation and Practice Notes ("DIPNs") timely for taxpayers' reference of the changes to be brought about by the implementation of the Fourth Protocol. The Administration agreed to update the DIPNs where appropriate.	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
005540 - 005710	Chairman	Legislative timetable	

Council Business Division 1  
Legislative Council Secretariat  
4 November 2015