

立法會
Legislative Council

LC Paper No. CB(1)818/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/15/2

Bills Committee on Inland Revenue (Amendment) Bill 2016

Minutes of the third meeting
held on Tuesday, 22 March 2016, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon CHAN Hak-kan, JP
Hon NG Leung-sing, SBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP

Members absent : Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Charles Peter MOK, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP

Public Officers : **For item III**
attending

Financial Services and the Treasury Bureau

Ms Mable CHAN, JP
Deputy Secretary (Treasury)²

Mr Gary POON
Principal Assistant Secretary (Treasury)(Revenue)

Miss Crystal YIP
Assistant Secretary (Treasury)(Revenue)1

Inland Revenue Department

Mr Brian CHIU, JP
Deputy Commissioner (Technical)

Ms Peggy LEUNG
Senior Assessor (Tax Treaty)2

Department of Justice

Mr Alan CHONG
Senior Government Counsel

Ms Phyllis POON
Senior Government Counsel

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

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Mandy LI
Council Secretary (1)1

Action

I. Application for late membership

(LC Paper No. CB(1)638/15-16(01) — Letter dated 2 March 2016
from Hon Mrs Regina IP LAU
Suk-yee (English version
only))

The Chairman informed members of the application from Mrs Regina IP LAU Suk-yee for late membership of the Bills Committee. Members agreed to accept Mrs IP as a member of the Bills Committee pursuant to Rule 23(c) of the House Rules.

Action

II. Confirmation of minutes

(LC Paper No. CB(1)639/15-16 — Minutes of the meeting held on 2 February 2016)

2. The minutes of the meeting held on 2 February 2016 were confirmed.

III. Meeting with the Administration

Matters arising from previous meetings

(LC Paper No. CB(1)697/15-16(01) — List of follow-up actions arising from the meeting on 1 March 2016

LC Paper No. CB(1)697/15-16(02) — Administration's response to the views provided by organizations at the meeting held on 1 March 2016 or in their submissions

LC Paper No. CB(1)611/15-16(01) — List of follow-up actions arising from the meeting on 2 February 2016

LC Paper No. CB(1)611/15-16(02) — Administration's response to the issues raised at the meeting on 2 February 2016

LC Paper No. CB(1)518/15-16(02) — Assistant Legal Adviser's letter dated 26 January 2016 to the Administration

LC Paper No. CB(1)528/15-16(01) — Administration's reply to Assistant Legal Adviser's letter dated 26 January 2016)

Relevant papers

(LC Paper No. CB(3)290/15-16 — The Bill

File Ref: TsyB R 183/700-6/7/0 (C) — Legislative Council Brief

Action

- LC Paper No. LS28/15-16 — Legal Service Division Report
- LC Paper No. CB(1)518/15-16(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- LC Paper No. CB(1)518/15-16(03) — Background brief prepared by the Legislative Council Secretariat)

Discussion

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

Admin Follow-up actions to be taken by the Administration

Offence relating to the signing of self-certification that was misleading, false or incorrect

4. Regarding a member's suggestion that the Inland Revenue Department ("IRD") should seek confirmation from the account holder concerned before establishing an offence relating to the signing of self-certification that was misleading, false or incorrect and taking enforcement actions, the Administration was requested to clarify whether the suggestion was feasible or not, taking into account the Common Reporting Standard promulgated by the Organisation for Economic Co-operation and Development, the practices of other tax jurisdictions and other factors (e.g. operational difficulties).

Issue of search warrant

5. The proposed amended section 51B of the Inland Revenue Ordinance (Cap. 112) provided for a search warrant to be issued against a reporting financial institution ("FI") or its service provider under specified conditions (i.e. clause 6 of the Bill). The Administration was requested to elaborate on the steps envisaged to be taken by IRD with the FI or the service provider concerned before proceeding to obtain a search warrant from a magistrate for IRD to exercise the powers under the said section.

Drafting issues

6. The Administration was requested to review whether "commodity" ("商品") in the proposed definition of "financial asset" under clause 4 of the Bill

Action

should be amended to "commodity futures" ("商品期貨"), with a view to reflecting the intended scope of "commodity" more precisely and aligning with the drafting in the other parts of the Bill (e.g. in the definition of "investment entity" where "commodity futures" ("商品期貨") was used).

(Post-meeting note: The Administration's response was issued vide LC Paper No. CB(1)772/15-16(02) on 8 April 2016.)

IV. Any other business

Date of next meeting

7. The Chairman reminded members that the next meeting of the Bills Committee was scheduled for Monday, 11 April 2016, at 4:30 pm.
8. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 1
Legislative Council Secretariat
19 April 2016

Bills Committee on Inland Revenue (Amendment) Bill 2016

**Proceedings of the third meeting
on Tuesday, 22 March 2016, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I — Application for late membership			
000030 – 000050	Chairman	Members accepted Mrs Regina IP LAU Suk-yee's application for late membership of the Bills Committee. [LC Paper No. CB(1)638/15-16(01)]	
Agenda Item II — Confirmation of minutes			
000051 – 000109	Chairman	The minutes of the meeting held on 2 February 2016 were confirmed. [LC Paper No. CB(1)639/15-16]	
Agenda Item III — Meeting with the Administration			
000110 – 000130	Chairman	Opening remarks	
000131 – 001903	Chairman Administration Assistant Legal Adviser 9 ("ALA9")	Briefing by the Administration on: (a) its response to the issues raised at the meeting on 2 February 2016 [LC Paper No. CB(1)611/15-16(02)]; and (b) its reply to ALA's letter dated 26 January 2016 [LC Paper No. CB(1)528/15-16(01)]. In response to ALA's enquiry, the Administration explained the safeguard measures for automatic exchange of financial account information in tax matters ("AEOI") at the treaty level, the system level and the financial institution ("FI") level. The Administration pointed out that the Inland Revenue Department ("IRD") would not further process the reportable information collected from FIs before exchanging the information with the tax authorities of the AEOI partner jurisdictions concerned.	
001904 – 003229	Chairman Administration Mr James TO	Briefing by the Administration on its response to the views and concerns expressed by the deputations at the meeting on 1 March 2016 or in their written submissions [LC Paper No. CB(1)697/15-16(02)]	

Time marker	Speaker	Subject(s)	Action required
		<p>Referring to a deputation's views that the thresholds for exempting different types of accounts from due diligence should be aligned, Mr TO sought elaboration on the Administration's response.</p> <p>The Administration explained the thresholds for dormant account and pre-existing individual low-value account respectively, and pointed out that the thresholds were set in accordance with the Common Reporting Standard ("CRS") promulgated by the Organisation for Economic Co-operation and Development ("OECD") and would be respectively set out in the new Schedules 17C and 17D proposed to be added to the Inland Revenue Ordinance (Cap. 112) ("IRO") under the Bill.</p>	
003230 – 003800	Chairman Mr NG Leung-sing Administration	<p>Mr NG considered that the Administration should:</p> <ul style="list-style-type: none"> (a) take proper actions to protect the interests of taxpayers if Hong Kong's AEOI partner jurisdictions breached the safeguard provisions in the relevant agreements for conducting AEOI; (b) urge OECD to make public a list of tax jurisdictions with non-compliance record in AEOI; and (c) devise concrete plans and deploy sufficient resources to take forward AEOI publicity in joint efforts with FIs. <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) as early as the stage of identifying potential AEOI candidates, the Government would follow the guiding principles that the candidates should have the capacity in meeting the OECD standard and relevant safeguards in their domestic law for protecting data privacy and confidentiality of information exchanged, so as to ensure proper use of the data exchanged. Reference would also be made to the outcome of the assessments arising from review being conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes regarding the confidentiality and data safeguards of the jurisdictions committed to implementing AEOI; (b) in case an AEOI partner of Hong Kong could not meet the safeguards to ensure protection of privacy of taxpayers and the confidentiality of 	

Time marker	Speaker	Subject(s)	Action required
		<p>information to be exchanged, IRD might suspend exchange of information with that jurisdiction or even terminate the AEOI agreement by giving written notice to the AEOI partner;</p> <p>(c) the Administration would liaise with FIs and deploy adequate resources to take forward publicity to tie in with the AEOI implementation; and</p> <p>(d) it would convey to OECD the suggestion of publishing a list of tax jurisdictions with non-compliance record in AEOI.</p>	
003801 – 004118	Chairman Mr WONG Ting- kwong Administration	<p>Noting that an entity account with an aggregate account balance or value not exceeding HK\$1.95 million would not be required to be reviewed, identified, or reported as a reportable account, Mr WONG enquired about:</p> <p>(a) the rationale for setting the threshold at \$1.95 million;</p> <p>(b) the estimated number/percentage of entity accounts that would be subject to review or not with the said threshold; and</p> <p>(c) assessment of related workload on reporting FIs.</p> <p>The Administration advised that:</p> <p>(a) the threshold in question was set in accordance with CRS. At present, the Administration did not have information about the number of entity accounts with an aggregate account balance or value exceeding/less than \$1.95 million. The Administration would consider liaising with the FIs in this regard, if necessary, after the implementation of AEOI; and</p> <p>(b) as AEOI in Hong Kong would be implemented in an orderly and progressive manner (with only one or a few AEOI partner jurisdictions at the initial stage), and leveraging on the experience gained from implementation of the Foreign Account Tax Compliance Act ("FATCA")(i.e. an Act passed by the United States ("US") Congress in 2010 requiring foreign FIs including those in Hong Kong to report financial information in respect of their US clients), it was envisaged that AEOI would not give rise to undue compliance burden on FIs.</p>	

Time marker	Speaker	Subject(s)	Action required
004119 – 010429	Chairman Mr James TO Administration	<p>Mr TO enquired about how a trustee should identify reportable accounts held by the relevant beneficiaries (who might be infants or minors) of a trust.</p> <p>The Administration advised that:</p> <ul style="list-style-type: none"> (a) a custodial institution holding, as a substantial portion of its business, the financial assets for the accounts of another individual or entity would be a reporting FI in relation to AEOI under the Bill. While FIs would conduct due diligence procedures to identify reportable accounts and request account holders (including beneficiaries of a trust) to submit self-certifications, it was the responsibility of individual account holders to ascertain their own tax residence; and (b) the trustee had to provide information of the controlling person (including the beneficiary) in the self-certification to the FI. The FI was required under CRS to report discretionary beneficiaries in the year they received distributions from the trust. Prior to distribution, the FI must have appropriate procedures in place to identify the beneficiaries and determine their jurisdictions of residence, including infants or minors. <p>Discussion on Mr TO's suggestion that IRD should seek confirmation from the account holder concerned before establishing an offence relating to the signing of self-certification that was misleading, false or incorrect and taking enforcement actions</p> <p>The Administration pointed out that CRS did not impose any requirements on tax authorities to put in place such arrangement, nor was there such a requirement in similar provisions in other local legislation. The suggestion would likely create additional compliance burden on FIs to furnish information to IRD for verification purposes.</p> <p>Mr TO considered that his suggestion would enhance protection of account holders from being caught by the offence inadvertently due to errors or omissions in making self-certification. Mr TO indicated that he might propose Committee Stage amendments to the Bill if the Administration would not take heed of his suggestion.</p>	

Time marker	Speaker	Subject(s)	Action required
		At the request of Mr TO, the Administration undertook to clarify whether his suggestion was feasible or not, taking into account the relevant CRS provisions, the practices of other tax jurisdictions and other factors (e.g. operational difficulties).	The Administration to take action as paragraph 4 of the minutes
<p>Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)290/15-16)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)518/15-16(01))]</p>			
010430 – 010534	Chairman Administration	<p><u>Clause 1 — Short title</u></p> <p><u>Clause 2 — Inland Revenue Ordinance amended</u></p> <p><u>Clause 3 — Section 2 amended (interpretation)</u></p> <p>Members raised no queries.</p>	
010535 – 013124	Chairman Administration Mr NG Leung-sing ALA9	<p><u>Clause 4 — Part 8A added</u></p> <p>Part 8A Returns by Reporting Financial Institutions</p> <p><i>50A. Interpretation</i></p> <p>In reply to the Chairman, the Administration advised that the proposed definition of "international organization" ("國際組織") was provided under clause 4 of the Bill.</p> <p>In reply to ALA about the scope of "similar requirements" referred to in the definition of "AML/KYC procedures", the Administration explained that CRS provided that FIs might make use of the information collected under the anti-money laundering or know-your-customer procedures for identifying or ascertaining the tax residence of an account holder. Such customer due diligence requirements were already provided under the existing Anti-Money Laundering and Counter-Terrorist Financial (Financial Institutions) Ordinance (Cap. 615), or included in the customer due diligence procedures put in place by individual FIs for FATCA or other purposes.</p> <p>At the request of Mr NG, the Administration agreed to review the reference "commodity" ("商品") in the proposed definition of "financial asset" under clause 4 of the Bill.</p>	The Administration to take action as paragraph 6 of the minutes

Time marker	Speaker	Subject(s)	Action required
013125 – 013555	Chairman Administration	<p><i>50B. Due diligence obligations on reporting financial institutions</i></p> <p><i>50C. Obligations of reporting financial institutions to furnish returns</i></p> <p><i>50D. Further obligations of reporting financial institutions relating to returns</i></p> <p><i>50E. Application of due diligence and other obligations to non-corporate reporting financial institutions</i></p> <p>Members raised no queries.</p>	
013556 – 013855	Chairman Administration Mr NG Leung-sing	<p><i>50F. Required information under section 50C(3)</i></p> <p>In reply to Mr NG, the Administration explained that "jurisdiction of residence" was defined in the Bill as a territory of which an individual or entity was a resident for tax purposes. The jurisdiction of residence of an account holder might not be his/her place of birth.</p>	
013856 – 014114	Chairman Administration Mr NG Leung-sing	<p><i>50G. Modifications of required information</i></p> <p>In reply to Mr NG, the Administration clarified that "calendar year" referred to a one-year period that started from 1 January and ended on 31 December.</p>	
014115 – 014529	Chairman Administration ALA9	<p><i>50H. Engagement of service provider</i></p> <p><i>50I. Commissioner may designate system or specify requirements for electronic record, etc.</i></p> <p>In reply to ALA, the Administration explained that "attachment" in the new section 50I(2)(a) of IRO referred to the electronic file containing the information to be furnished by FIs to IRD in respect of reportable accounts.</p> <p><i>50J. Power to amend Schedules 17C, 17D and 17E</i></p> <p><i>50K. Use of information provided by reporting financial institutions</i></p> <p>Members raised no queries.</p>	

Time marker	Speaker	Subject(s)	Action required
014530 – 015545	Chairman Administration	<p><u>Clause 5 — Section 51 amended (returns and information to be furnished)</u></p> <p><u>Clause 6 — Section 51B amended (power to issue search warrant)</u></p> <p><u>Clause 7 — Section 51BA added</u></p> <p><i>51BA. Assessor's power to enter business premises of reporting financial institutions and service providers and inspect</i></p> <p>The Chairman expressed concern that the issue of search warrant by magistrate for IRD to access the premises of an FI in case of the FI's non-compliance with the due diligence and reporting obligations for AEOI purposes appeared to be disproportionate to the relatively light nature of the non-compliance compared to tax evasion.</p> <p>As requested by the Chairman, the Administration would provide supplementary information on the steps envisaged to be taken by IRD with an FI or its service provider concerned before proceeding to obtain a search warrant for IRD to exercise the powers under the proposed amended section 51B.</p>	The Administration to take action as paragraph 5 of the minutes
Agenda Item IV — Any other business			
015546 – 015621	Chairman Administration	Date of next meeting	