

立法會
Legislative Council

LC Paper No. CB(1)1008/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/15/2

Bills Committee on Inland Revenue (Amendment) Bill 2016

Minutes of sixth meeting
held on Tuesday, 17 May 2016, at 11:00 am
in Conference Room 2A 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 NG Leung-sing, SBS, JP
Hon Charles Peter MOK, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP

Members absent : Hon CHAN Hak-kan, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Kenneth LEUNG

Public Officers : **For item I**
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

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. Meeting with the Administration

(LC Paper No. CB(1)904/15-16(01) — Letter from Hon James TO
Kun-sun dated 10 May 2016
(Chinese version only)

LC Paper No. CB(1)914/15-16(01) — Administration's response to
the letter from Hon James TO
Kun-sun dated 10 May 2016

LC Paper No. CB(1)923/15-16(01) — Further submission from Hong
Kong Institute of Certified
Public Accountants (English
version only))

Action

Discussion

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

2. Members noted a further submission from the Hong Kong Institute of Certified Public Accountants. The Administration would provide a written response in due course.

(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(1)950/15-16(01) on 24 May 2016.)

II. Any other business

Legislative timetable and way forward

3. Members noted that Mr James TO would propose Committee Stage amendments ("CSAs") to the proposed offence provision relating to the signing of self-certification that was misleading, false or incorrect under the new section 80(2E) of the Inland Revenue Ordinance (Cap. 112), and forward the draft CSAs to the Secretariat for circulation to members.

(Post-meeting note: The draft CSAs proposed by Mr James TO was issued vide LC Paper No. CB(1)983/15-16(01) on 27 May 2016.)

4. Members further noted that in order to allow time for preparation of the Bills Committee report, the Administration intended to resume the Second Reading debate on the Bill at the Council meeting of 8 June 2016 (instead of 1 June 2016 as proposed at the last meeting). The Chairman would report the deliberations of the Bills Committee to the House Committee on 27 May 2016. The deadline for giving notice to move CSAs to the Bill was 30 May 2016.

5. There being no other business, the meeting ended at 11:47 am.

Bills Committee on Inland Revenue (Amendment) Bill 2016

**Proceedings of the sixth meeting
on Tuesday, 17 May 2016, at 11:00 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000032 – 000058	Chairman	Opening remarks	
Agenda Item I — Meeting with the Administration			
000059 – 004659	Chairman Administration Mr James TO	<p data-bbox="504 674 1235 777">Briefing by the Administration on its response to the the letter from Mr TO dated 10 May 2016 [LC Paper No. CB(1)914/15-16(01)]</p> <p data-bbox="504 819 1235 1032">In relation to the proposed offence under the new section 80(2E) of the Inland Revenue Ordinance (Cap. 112) relating to the signing of self-certification that was misleading, false or incorrect ("the proposed offence"), Mr TO made the following enquiries and suggestions:</p> <p data-bbox="504 1075 1235 1288">(a) the Administration should consider adding a provision in the Bill to explicitly stipulate that the Administration could not rely solely on the self-certification provided by an account holder to establish that the person concerned committed the proposed offence;</p> <p data-bbox="504 1330 1235 1767">(b) although the Inland Revenue Department ("IRD") "did not need" to rely on the statutory powers specified in section 80 when raising questions with an account holder during investigation of suspected offence under the new section 80(2E), whether the Administration could confirm/undertake that IRD "would not" do so, so as to address the concern that the account holder could not exercise his/her right to silence and hence might be self-incriminated if IRD made use of its information gathering powers under section 80 to seek information from the account holder during the investigation;</p> <p data-bbox="504 1809 1235 2125">(c) if the Administration would not consider the suggestion of seeking confirmation by IRD from an account holder on a self-certification made when IRD had reasonable doubt to suspect that the account holder had committed the proposed offence, whether IRD would consider, as an alternative, requiring the reporting financial institution ("FI") concerned to seek a self-certification from the account holder again. Only if</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the account holder provided incorrect information when making the further self-certification, should IRD take enforcement actions;</p> <p>(d) how IRD would prove that an account holder had committed the proposed offence if the person exercised his/her right to silence during investigation; and</p> <p>(e) whether reporting FIs would be required to, for investigation purpose, furnish IRD with a copy of the self-certification signed by account holders.</p> <p>The Administration advised that:</p> <p>(a) when reporting FIs sought self-certification from account holders, they would need to alert them of the purpose of the self-certification for automatic exchange of information in tax matters ("AEOI"), and the possible legal liabilities on the part of the account holders;</p> <p>(b) IRD would require the reporting FI concerned to provide a copy of self-certification made by an account holder for any investigation of whether the account holder concerned had committed the offence under the new section 80(2E);</p> <p>(c) the new section 80(2E) provided for two indispensable elements constituting the proposed offence, namely that an account holder in making a self-certification made a statement that was misleading, false or incorrect in a material particular, and that the account holder knew, or was reckless as to whether, the statement was misleading, false or incorrect in a material particular;</p> <p>(d) as each case should be considered having regard to its actual circumstances, the Administration was not in a position to commit not to make use of section 80 when conducting investigations;</p> <p>(e) it would render the proposed offence futile if the Bill provided that an account holder could confirm with IRD on the self-certification made, or make further self-certification to the reporting FI, after investigation had commenced, and that no offence would be committed so long as the person could provide correct information when making confirmation with IRD or making further self-</p>	

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		<p>certification to the reporting FI; and</p> <p>(f) if an account holder exercised his/her right to keep silence during investigation, IRD would make use of all available evidence, including circumstantial evidence (e.g. whether the account holder had been convicted of tax evasion in a reportable jurisdiction), to prove whether the account holder had committed the proposed offence.</p> <p>Mr TO considered it:</p> <p>(a) difficult to ascertain whether certain information was "misleading" in relation to the proposed offence; and</p> <p>(b) unfair to impose sanctions on account holders given that they might not be familiar with the concept of "jurisdiction(s) of residence" ("居留司法管轄區").</p> <p>The Administration explained that:</p> <p>(a) the wording of "misleading", "false" and "incorrect" adopted in the new section 80(2E) generally followed the existing section 80. Other overseas jurisdictions (such as Singapore) also adopted similar wording in their offence provisions regarding self-certification provided by account holders under the AEOI arrangement;</p> <p>(b) whether certain information was misleading, false or incorrect was to be determined on the basis of the actual circumstances of each case. If certain important information in a material particular was missing in a statement (e.g. omission of indication by the account holder that he/she was the tax resident of a certain reportable jurisdiction), and such omission made others wrongly believe that what was provided in the statement was the whole truth about the fact, this might constitute a misleading statement;</p> <p>(c) generally speaking, whether an individual was a tax resident of a jurisdiction was determined having regard to the person's physical presence or stay in a place (say, whether over 183 days within a tax year). In the case of a company, the test was the place of incorporation or where the central management and control of the entity laid. An account holder should be able to ascertain their own tax residence; and</p>	

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		<p>(d) the Organisation for Economic Co-operation and Development had established a portal providing information regarding tax residency rules application in jurisdictions that were committed to implementing AEOI. The Administration would advise the public and reporting FIs to refer to the tax residency rules of respective jurisdiction on the website.</p> <p>The Administration indicated that it had provided the explanations in the light of Mr TO's concerns and suggestions made at the meeting, and confirmed that it would not amend the proposed offence provision or introduce additional provisions to the Bill as he requested.</p> <p>Mr TO indicated his intention to move Committee Stage amendments ("CSAs") in relation to the proposed offence and to provide the draft CSAs for circulation to members.</p>	
Agenda Item II — Any other business			
004700 – 004908	Chairman Administration	Legislative timetable	