

立法會
Legislative Council

LC Paper No. CB(4)602/15-16
(These minutes have been seen
by the Administration)

Ref : CB4/BC/2/15

Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2015

Minutes of the first meeting
held on Tuesday, 12 January 2016, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex

- Members present** : Hon Kenneth LEUNG (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon NG Leung-sing, SBS, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon IP Kin-yuen
- Public officers attending** : Agenda item II
Financial Services and the Treasury Bureau

Miss Salina YAN, JP
Deputy Secretary (Financial Services)

Mr Jackie LIU
Principal Assistant Secretary (Financial Services)

Ms Jenny LEE
Assistant Secretary (Financial Services)

Inland Revenue Department

Mr CHIU Kwok-kit, JP
Deputy Commissioner (Technical)

Mr Allen NG Ka-wing
Senior Assessor (Research)

Ms CHAN Shun-mei
Senior Assessor (Special Duties)

Hong Kong Monetary Authority

Mr Enoch FUNG
Head (Market Development)

Miss Kyle HUNG
Senior Manager (Market Development)

Miss Theresa KWAN
Senior Manager (Banking Policy)

Department of Justice

Miss Betty CHEUNG
Senior Assistant Law Draftsman

Mr Peter SZE
Senior Government Counsel

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Mr Jason KONG
Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant (1)4

Ms Vivian CHAN
Clerical Assistant (1)4

Action

I. Election of Chairman

Mr Kenneth LEUNG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Paper No. CB(3)206/15-16 -- The Bill

File Ref: B&M/2/1/66C -- Legislative Council Brief

LC Paper No. LS19/15-16 -- Legal Service Division Report

LC Paper No. CB(1)409/15-16(01) -- Background brief on Inland Revenue (Amendment) (No. 4) Bill 2015 prepared by the Legislative Council Secretariat

LC Paper No. CB(4)473/15-16(01) -- Letter from Hon YIP Kin-yuen (tabled at the meeting and subsequently issued to members on 13 January 2016) dated 12 January 2016 on withdrawal of membership (Chinese version only)

LC Paper No. CB(4)474/15-16(01) -- Administration's paper on (tabled at the meeting and subsequently issued via e-mail on 14 January 2016) Inland Revenue (Amendment)(No. 4) Bill 2015 (power-point presentation materials))

Discussion

2. The Bills Committee deliberated (Index of proceedings attached at **Annex**).

3. Members noted that Mr IP Kin-yuen had submitted a letter indicating his intention to withdraw his membership from the Bills Committee.

Action

Follow-up actions to be taken by the Administration

4. The Administration was requested to provide a summary of the views and comments that the Administration has received in connection with the implementation of the Basel III standards.

(Post-meeting note: The Administration's written response was circulated to members vide LC Paper No. CB(4)534/15-16(01) on 25 January 2016.)

Date of next meeting

5. Members agreed that the next meeting should be held on 26 January 2016 to receive views on the Bill from members of the public.

III. Any other business

6. There being no other business, the meeting ended at 6:24 pm.

Council Business Division 4
Legislative Council Secretariat
16 February 2016

**Proceedings of the first meeting of
Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2015
on Tuesday, 12 January 2016, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman			
000000 – 000705	Mr SIN Chung-kai Mr Dennis KWOK Mr Kenneth LEUNG Mr Jeffrey LAM Kin-fung Mr CHAN Kam-lam Mr CHEUNG Wah-fung	Election of Chairman	
000706 – 000822	Chairman	Letter from Mr IP Kin-yuen dated 12 January 2016 on withdrawal of his membership	
Agenda item II – Meeting with the Administration			
000823 – 002900	Chairman Administration	Power-point presentation on the Inland Revenue (Amendment) (No.4) Bill 2015	
002901 – 003945	Chairman Mr Dennis KWOK Administration	Mr Dennis KWOK supported the Bill and asked:- (a) whether the proposed section 17G ("separate enterprise provisions") added by Clause 14 of the Bill might put Hong Kong at an disadvantage compared with other tax regimes such as Singapore; (b) about the application of "arm's length" concept as contained in the proposed section 17G(5) in dealing with transactions concerning regulatory capital securities ("RCSs"), the relationship between a bank's branch office in Hong Kong and its non-resident head office; (c) whether the "source concept" in the Inland Revenue Ordinance, Cap. 112 would be affected; (d) whether specific anti-avoidance provisions were necessary in the light of the general anti-avoidance provisions in the Ordinance; and (e) whether the proposed new section 17H was applicable to all persons and organizations to	

Time marker	Speaker	Subject(s)	Action required
		<p>which the Ordinance applied.</p> <p>The Administration explained that:-</p> <ul style="list-style-type: none"> (a) section 17G was introduced as a safeguard against potential abuse of the proposed tax deduction measures by a non-resident bank transferring an excessive amount of interest expenses in connection with its RCSs to its Hong Kong branch; (b) similar "separate enterprise provisions" were found in the 33 bilateral double taxation agreements signed between Hong Kong and other tax jurisdictions; and (c) the proposed section 17H was added to state, for the avoidance of doubt, that the proposed sections 17E and 17G would not affect the operation of similar principles currently contained in other existing provisions of the Ordinance; the provisions would not create any new taxation principles concerning the "source concept". 	
003946 – 005050	Chairman Mr Jeffrey LAM Kin-fung Administration	<p>Mr Jeffrey LAM welcomed the proposed tax initiatives on corporate treasury centres ("CTC"). He asked whether Hong Kong had a sufficiently liquid offshore RMB pool to attract multinational or Mainland corporations to set up CTCs in Hong Kong. He also asked the Administration to provide information on the views and comments it had received in connection with the proposals.</p> <p>The Administration undertook to provide a summary of views received before the next meeting of the Bills Committee.</p> <p>In response to Mr LAM's questions, the Administration explained Hong Kong's competitive edge in financial services and how the Bill would further attract multinational corporations to set up CTCs in Hong Kong thereby bringing benefits to the Hong Kong economy.</p>	The Administration to follow up as paragraph 4 of the minutes

Time marker	Speaker	Subject(s)	Action required
005051 – 005557	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai queried whether Hong Kong, given the various tax measures from time to time, would gradually deviate from its simple tax regime.</p> <p>The Administration explained that the proposed initiatives were introduced in response to evolving international development such as the Basel III capital adequacy requirements and were in line with international standards against base erosion and profit shifting. The policy objective of maintaining a simple tax regime in Hong Kong had not been changed.</p>	
005558 – 010405	Chairman Mr Christopher CHEUNG Wah-fung Administration	<p>Mr Christopher CHEUNG asked if the Administration had approached and encouraged non-Hong Kong companies to set up CTCs in Hong Kong. He also asked, among those interested companies, whether the majority were Mainland companies.</p> <p>The Administration explained that active promotion activities (including those by the Hong Kong Monetary Authority) had been carried out to encourage Mainland companies as well as other Asian and multinational corporations to set up CTCs in Hong Kong.</p>	
010406 – 011856	Chairman Mr Alan LEONG Kah-kit Administration	<p>Mr Alan LEONG sought clarification on the nature and operations of CTCs, and asked if the Administration had assessed the revenue forgone as a result of the proposed tax measures.</p> <p>The Administration explained that CTC was an "in-house bank" within a multinational corporation focusing on the optimal procurement and usage of capital for the operations of the entire group. The actual cost to revenue arising from the proposals should not be significant, as currently multinational corporations tended not to arrange their relevant intra-group borrowing transactions in Hong Kong without the interest deduction. The Administration hoped that the proposals might attract more treasury operations to Hong Kong, thereby potentially bringing in additional direct and indirect tax revenue.</p>	

Time marker	Speaker	Subject(s)	Action required
011857 – 013117	Chairman Mr Dennis KWOK Administration	<p>Mr Dennis KWOK noted the Administration's comments that the proposed section 17G sought to prevent tax evasion. He suggested that a public hearing session be conducted for the Bills Committee to listen to the views of the deputations.</p> <p>The Chairman said that a public hearing session was scheduled for 4:30 pm on 26 January 2016.</p> <p>Mr KWOK asked whether it was appropriate to adopt the "operation test" instead of the "provision of credit test" in determining whether an interest income through or from the carrying on in Hong Kong by a corporation of its intra-group financing business should be taxable in Hong Kong. He noted that the Bill reflected the principle established in the court case of CIR v. Orion Caribbean Limited [1997] HKLRD 924 ("Orion Caribbean case"). He queried whether the specific circumstances relevant to the case were applicable to CTC operations.</p> <p>The Administration explained that the ruling of the Orion Caribbean case, which established the principle for determination of whether certain interest income was taxable, was applicable in Hong Kong. The amendment to section 15(1) of Cap. 112 (clause 7 of the Bill), which added paragraphs (ia) and (la), served to reflect the principle.</p> <p>The Chairman asked whether the proposed section 15(1)(ia) and (la), which codified the "operation test", would not be wider than the principles enshrined in the Orion Caribbean case.</p> <p>The Administration confirmed that the proposed new section 15(1)(ia) and (la) would not introduce any new taxation principle nor would it amend the existing taxation principles.</p> <p>The Administration confirmed that interest income arising from an intra-group financing business would be assessed using the "operation test", whereas "provision of credit test" might be used in respect of a one-off loan transaction.</p> <p>The Administration agreed to provide explanation in the Departmental Interpretation and Practice Notes ("DIPN").</p>	

Time marker	Speaker	Subject(s)	Action required
013118 – 014847	Chairman Mr NG Leung-sing Administration	<p>Mr NG Leung-sing noted that the banking industry welcomed the Bill and asked how the Administration would facilitate training and development of talent to meet the manpower needs arising from the implementation of the Bill.</p> <p>The Administration said that it recognised the importance of talent training and had proposed to launch a pilot training programme for the asset and wealth management sector.</p> <p>Mr NG asked whether the Bill could prevent any abuse by treasury professionals of creating financial transactions artificially and laundering money.</p> <p>The Administration explained that the anti-avoidance provisions in the Bill were necessary to guard against abuses. Moreover, Hong Kong had a robust anti-money laundering regime in place for financial institutions to detect and report suspicious transactions.</p>	
014848 – 015347	Chairman Administration	<p>The Chairman commented that, instead of adding section 17H to state for the avoidance of doubt that sections 17E and 17G would not prevent the two principles of "arm's length" and "separate enterprise" from applying to persons or circumstances other than those set out in sections 17E and 17G, such intention should be clarified in DIPN.</p> <p>The Administration reaffirmed that the purpose of section 17H was to clarify that the application of the "arm's length" and "separate enterprise" principles under the Ordinance would not be affected by the enactment of sections 17E and 17G. Section 17H did not add any new taxation principles in a context outside RCS. The Administration undertook to consider the Chairman's suggestions.</p>	
Agenda item III – Any other business			
015348 – 015455	Chairman Administration	Date of next meeting	