

立法會
Legislative Council

LC Paper No. CB(4)709/15-16
(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 second meeting
held on Tuesday, 26 January 2016, at 4:30 pm
in Conference Room 1 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 Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon NG Leung-sing, SBS, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP

Member absent : Hon Alan LEONG Kah-kit, SC

Public officers attending : Agenda item I

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)

Miss Tanna CHONG
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 Theresa KWAN
Senior Manager (Banking Policy)

Department of Justice

Miss Betty CHEUNG
Senior Assistant Law Draftsman

Mr Peter SZE
Senior Government Counsel

Attendance by invitation : Agenda Item I

Treasury Markets Association

Mr Jack CHEUNG
Chief Executive Officer

The International Association of CFOs and
Corporate Treasurers (China) Limited

Mr Peter WONG Wai-man
Founding Chairman

Deloitte Touche Tohmatsu

Mr Davy YUN
Partner

The Hong Kong Association of Banks

Mr Dale MILLAR
Chairman of the Taxation Committee of the Hong
Kong Association of Banks

The Association of Chartered Certified
Accountants Hong Kong

Mr Kenneth WONG
Tax Sub-committee Chairman

Capital Markets Tax Committee of Asia

Mr Howard CHANG Shan-hau
Member

The Hong Kong Association of Corporate
Treasurers

Mr Francis HO
Convenor

Ernst & Young Tax Services Limited

Mr Patrick KWONG
Executive Director

Clerk in attendance : Mr Daniel SIN
Chief Council Secretary (4)3

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Mr Ambrose LEUNG
Senior Council Secretary (4)3

Miss Mandy LAM
Legislative Assistant (4)3

Ms Yvonna HO
Clerical Assistant (4)2

Action

I. Meeting with Deputations and the Administration

Submissions from deputations attending the meeting

- (LC Paper No. CB(4)516/15-16(01) -- Submission from the Hong Kong Association of Corporate Treasurers dated 19 January 2016
(English version only)
- LC Paper No. CB(4)516/15-16(02) -- Submission from Deloitte Touche Tohmatsu dated 18 January 2016
- LC Paper No. CB(4)516/15-16(03) -- Submission from the International Association of CFOs and Corporate Treasurers (China) Limited dated 19 January 2016
(English version only)
- LC Paper No. CB(4)516/15-16(04) -- Submission from Capital Markets Tax Committee of Asia dated 20 January 2016
(English version only)
- LC Paper No. CB(4)516/15-16(09) -- Submission from the Hong Kong Association of Banks dated 22 January 2016
(English version only)
- LC Paper No. CB(4)516/15-16(10) -- Submission from Ernst & Young Tax Services Limited dated 22 January 2016
(English version only)

Action

Submissions from deputations not attending the meeting

- (LC Paper No. CB(4)516/15-16(05) -- Submission from Asia
(English version only) Securities Industry & Financial
Markets Association dated
21 January 2016
- LC Paper No. CB(4)516/15-16(06) -- Submission from the Taxation
(English version only) Institute of Hong Kong dated
20 January 2016
- LC Paper No. CB(4)516/15-16(07) -- Submission from Hong Kong
(English version only) Institute of Certified Public
Accountants dated 21 January
2016
- LC Paper No. CB(4)516/15-16(08) -- Submission from
(English version only) PricewaterhouseCoopers
Limited dated 21 January 2016
- LC Paper No. CB(4)539/15-16(01) -- Submission from the Hong
(English version only) Kong Institute of Directors
(tabled at the meeting and dated 25 January 2016)
subsequently issued to members on
27 January 2016)

Meeting with the Administration

- (LC Paper No. CB(4)534/15-16(01) -- Summary of major views
received during the drafting
stage of the Bill and the
government's responses
- LC Paper No. CB(4)534/15-16(02) -- Assistant Legal Adviser's letter
dated 25 January 2016 to the
Administration
- LC Paper No. CB(4)510/15-16(01) -- List of follow-up actions arising
from the discussion at the
meeting on 12 January 2016)

Action

Other relevant papers

- (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(4)491/15-16(01) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)
- 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)

Discussion

The Bills Committee received views from eight deputations attending the meeting, and noted written submissions from another five organizations which did not attend the meeting (Index of proceedings is attached at **Annex**).

Follow-up actions to be taken by the Administration

2. The Administration was requested to provide a written response to the views expressed by deputations at the meeting and in the written submissions.

(Post meeting-note: The Administration's written response was circulated to members vide LC Paper No. CB(4)647/15-16(01) on 26 February 2016.)

Date of next meeting

3. The Chairman reminded members that the third meeting would be held on 29 February 2016 at 4:30 pm to follow up issues arising from previous meetings and to conduct clause-by-clause examination of the Bill.

Action

II. Any other business

4. There being no other business, the meeting ended at 5:54 pm.

Council Business Division 4
Legislative Council Secretariat
11 March 2016

**Proceedings of the second meeting of
Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2015
on Tuesday, 26 January 2016, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Meeting with Deputations and the Administration			
000000 – 000402	Chairman Administration	Opening remarks Introductory remarks by the Administration [LC Paper No. CB(4)534/15-16(01)]	
000403 – 000548	Chairman	The Chairman welcomed the deputations and reminded them that their written submissions and views presented at the meeting were not covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap.382).	
000549 – 000918	Treasury Markets Association	Presentation of views as highlighted below – (a) the Treasury Markets Association supported the Administration's proposals on the grounds that enhancing Hong Kong's competitiveness for corporate treasury centre ("CTC") operations would strengthen Hong Kong's status as an international financial centre; and (b) facilitating the operation of CTCs in Hong Kong would attract more multinational corporations to establish headquarters in Hong Kong, and would also create jobs for the young people.	
000919 – 001211	The International Association of CFOs and Corporate Treasurers (China) Limited	Presentation of views [LC Paper No. CB(4)516/15-16(03)]	
001212 – 001632	Deloitte Touche Tohmatsu	Presentation of views [LC Paper No. CB(4)516/15-16(02)]	
001633 – 002132	The Hong Kong Association of Banks	Presentation of views [LC Paper No. CB(4)516/15-16(09)]	
002133 – 002609	The Association of Chartered Certified Accountants Hong Kong	Presentation of views as highlighted below – (a) ACCA in general supported and welcomed the proposed CTC regime;	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the requirement for a group company to establish a standalone corporation in order to enjoy the concessionary tax rate should be relaxed or removed, so as to attract more multinational corporations to set up CTCs in Hong Kong;</p> <p>(c) the "deeming provisions" under the proposed section 15(1)(ia) and (la) were not necessary, because they would result in uncertainties for intra-group borrowing and lending; and</p> <p>(d) the "subject to tax" requirement under the proposed section 16(2)(g) should be removed because it was not practical.</p>	
002610 – 003049	Capital Markets Tax Committee of Asia	Presentation of views [LC Paper No. CB(4)516/15-16(04)]	
003050 – 003519	The Hong Kong Association of Corporate Treasurers	Presentation of views [LC Paper No. CB(4)516/15-16(01)]	
003520 – 004055	Ernst & Young Tax Services Limited	Presentation of views [LC Paper No. CB(4)516/15-16(10)]	
004056 – 004628	Chairman Administration	<p>The Administration's responses to deputations' views –</p> <p>(a) the Administration welcomed the general support expressed by deputations towards the proposals set out in the Inland Revenue (Amendment) (No. 4) Bill ("the Bill") which sought to enhance interest deduction rules for the intra-group financing business of corporations; introduce a concessionary profits tax rate for qualifying CTCs; and clarify the profits tax and stamp duty treatments in respect of regulatory capital securities ("RCSs") issued by banks in compliance with Basel III capital adequacy requirements;</p> <p>(b) the views of the relevant sectors expressed during consultations held earlier had been taken into account during the drafting of the Bill. The Administration would further consider views expressed by deputations;</p> <p>(c) it was necessary to balance the need to facilitate market development and prevent possible abuse</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>of the tax regime. The proposals required specific anti-avoidance measures in order to meet international standards to combat base erosion and profit shifting; and</p> <p>(d) the proposals would not have adverse effects on the operation of the Inland Revenue Ordinance (Cap. 112).</p>	
004629 – 010700	Chairman Administration	<p>Presentation by the Administration on its paper [LC Paper No. CB(4)534/15-16(01)]</p> <p>The Chairman asked for clarification on whether the requirements under the proposed section 16(2)(g)(ii) for a lender to be subject to a similar tax in a territory outside Hong Kong ("similar tax" is defined under the proposed section 16(2I)(b)) referred to tax that had been paid or would be paid. In particular, he enquired whether interest deduction would be allowed if the lender was in a loss situation.</p> <p>The Administration responded that the concept of "subject to tax" under the proposed section 16(2)(g)(ii) included cases where (a) "tax has been paid"; and (b) "tax will be paid". The Administration further explained that a company which had to pay tax, in respect of an interest, after setting off its loss against the profits would be considered as having been subject to tax, in respect of that interest. The "subject to tax" condition would not be regarded as having been satisfied if, for example, the company incurred a substantial loss for a long period and it did not pay any tax.</p> <p>The Chairman said that the wording of the proposed section 17H might give an impression that the section would import the arm's length and separate enterprise principles to other persons in certain circumstances. He invited the Administration to consider redrafting the section to improve clarity.</p> <p>The Administration was requested to provide a written response to the views expressed by deputations at the meeting and in the written submissions.</p>	The Administration to follow up as paragraph 2 of the minutes

Time marker	Speaker	Subject(s)	Action required
010701 – 011232	Chairman Mr Christopher CHEUNG Wah-fung Administration	<p>Mr Christopher CHEUNG said that the proposals set out in the Bill should bring concrete benefits to the financial sector. However, relevant sectors had queried whether certain parts of the Bill (e.g. the proposed section 17G) might result in inequalities between non-residents and local banks. Mr CHEUNG asked whether the Bill would change the long-standing territorial source principle in the Hong Kong taxation system, and thus potentially undermining incentives of foreign investors to invest in Hong Kong.</p> <p>The Administration replied that the proposals in the Bill were aimed to benefit both non-residents and local corporations. Regarding the proposed section 17G, the Administration said that the application of the separate enterprise principle which was already enshrined in current avoidance of double taxation agreements between Hong Kong and other tax jurisdictions would not bring any change to the territorial basis of taxation. In determining the amount of profits attributable to the Hong Kong branch of a non-resident bank, considerations would be given to the functions performed, assets used and risks assumed by the non-resident bank through the Hong Kong branch and other parts of the bank. Whether tax was payable would then be determined by the application of the territorial source principle.</p>	
011233 – 011638	Chairman Mr Christopher CHEUNG Administration	<p>The Chairman said that in order to address concerns raised by members and deputations, the Administration should provide further elaboration on the relevant sections such as section 17H through departmental interpretation and practice notes.</p> <p>The Administration agreed to consider the views expressed by members and the deputations in the meeting.</p> <p>Date of next meeting.</p>	