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Paper for the House Committee meeting on 8 April 2016

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

Purpose

This paper reports on the deliberations of the Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2015 ("the Bills Committee").

Background

Operation of corporate treasury centres

2. The Financial Secretary announced in the 2015-2016 Budget that, to attract multinational and Mainland enterprises to establish corporate treasury centres ("CTCs") in Hong Kong to perform treasury services for their group companies, the Administration proposed to amend the Inland Revenue Ordinance (Cap. 112) to allow, under specified conditions, interest deductions with respect to profits tax for CTCs, and to reduce the profits tax for specified treasury activities by 50%.

3. A CTC is an "in-house bank" within a multinational corporation focusing on the optimal procurement and usage of capital for the operations of the entire group. At present, under section 16 of Cap. 112, if a corporation obtains a loan from a person other than a financial institution[1] ("non-FI") in the ordinary course of its intra-group financing business, the interest expense may be deductible if the corresponding interest income of that non-FI is chargeable to

[1] Under section 2(1) of Cap. 112, "financial institution" means an authorized institution (i.e. a licensed bank, a restricted licensed bank, or a deposit-taking company) within the meaning of section 2 of the Banking Ordinance (Cap. 155) or its relevant associated corporation.

Hong Kong profits tax.

4. From the perspective of CTCs located in Hong Kong engaging in an intra-group financing business, its interest expense payable to associated corporations ("ACs") outside Hong Kong (being non-financial institutions whose profits are not subject to Hong Kong tax) is currently not deductible, whereas the interest income arising from its intra-group financing business is chargeable to profits tax. By enhancing the relevant tax rules on interest incurred in an intra-group financing business of corporations and introducing a concessionary profits tax rate for qualifying CTCs, the Administration expects that the proposals would attract more CTCs to be established in Hong Kong, thereby generating demands for the financial and professional services sectors.

Tax treatment of Regulatory Capital Security

5. The Basel III capital adequacy requirements are minimum standards promulgated by the Basel Committee on Banking Supervision ("BCBS"), under which financial institutions must hold certain amount of regulatory capital expressed as a percentage of their total risk-weighted assets. The Basel III requirements have been gradually implemented in Hong Kong and 27 other member jurisdictions of BCBS since 2013. The Banking Ordinance (Cap. 155) and the Banking (Capital) Rules (Cap. 155 sub. leg. L) are the relevant local legislation. Financial institutions may seek to comply with the Basel III requirements by strengthening their capital base through, among other means, issuing Additional Tier 1 or Tier 2 instruments ("AT1/T2 instruments"), to raise funds. These AT1/T2 instruments possess hybrid features of debt and equity because their terms and conditions provide for their write-down, or conversion into ordinary shares, to absorb losses either in going concern (for AT1 instruments) or at the point of non-viability of the issuer (for both AT1 and T2 instruments). Under Hong Kong's current tax regime, these AT1/T2 instruments are not regarded as debt instruments, and their distributions are not deductible for profits tax purposes.

6. The Administration proposes to amend Cap. 112 by defining "regulatory capital security" ("RCS") to cover an AT1/T2 instrument that is essentially a debt in nature and adding new provisions to treat a RCS as debt security, so that distributions arising from the security (other than the repayment of the paid-up amount) should be treated as interest for both deduction and taxation purposes under Cap. 112. With the amendments, section 16 of Cap. 112 is to apply to RCSs to allow for distributions from these instruments to be treated as interest expenses, so that they are eligible for deduction in ascertaining the assessable profits of the issuers.

7. At the same time, sums received by a person as distributions in respect of a RCS, or profits from the disposal or on the redemption of a RCS, are

deemed to be trading receipts, and are chargeable to profits tax, if the sums are received by:

(a) a financial institution, and arising through or from carrying on of its business in Hong Kong; or

(b) a person or a corporation carrying on a trade, profession or business in Hong Kong, and arising in or derived from Hong Kong.

8. Furthermore, the Administration proposes that anti-avoidance provisions should be included to prevent financial institutions from issuing RCSs for tax avoidance purposes. The Inland Revenue (Amendment) (No. 4) Bill 2015 ("the Bill") provides that chargeable profits from a RCS transaction between a financial institution and its associate will be assessed by reference to the amount of profits that would have accrued had the same transaction been carried out, at arm's length terms, between parties who are not associates (i.e. arm's length principle). There are also restrictions and conditions on deduction for sums payable in respect of a RCS issued to or for the benefit of, or held by or for the benefit of, a specified connected person of the issuer. In ascertaining the chargeable profits of the Hong Kong branch of a financial institution (whose head office is outside Hong Kong) with capital raised through the issuance of RCSs, profits will be attributed as if the Hong Kong branch and other parts of the financial institution are separate enterprises (i.e. separate enterprise principle), and the amount of deduction allowable for costs and expenses is not to exceed the amount that would have been incurred by the Hong Kong branch on this basis. Correspondingly, the Stamp Duty Ordinance (Cap. 117) is to be amended so that the transfer of RCSs is, as other transfer transactions relating to debts, given stamp duty relief.

The Bill

9. The Bill seeks to –

(a) amend Cap. 112 to –

(i) give profits tax concession to qualifying CTCs;

(ii) make provisions for profits tax purposes regarding interests on money borrowed from or lent to ACs;

(iii) treat RCSs as debt securities; and

(b) amend Cap. 117 to give stamp duty relief in relation to RCS.

10. The major features of the Bill are highlighted in paragraphs 6 to 10 of the Legal Service Division Report (LC Paper No. LS19/15-16) and recapitulated in paragraphs 13 to 16 below.

The Bills Committee

11. At the House Committee meeting held on 18 December 2015, a Bills Committee was formed to scrutinize the Bill. Hon Kenneth LEUNG was elected Chairman of the Bills Committee. The membership list of the Bills Committee is in **Appendix I.**

12. The Bills Committee has held three meetings with the Administration and received views from deputations at one of the meetings. A total of 12 written submissions on the Bill were received. The names of organizations which have provided oral or written representation to the Bills Committee are in **Appendix II.**

Key provisions of the Bill

Profits tax concession for qualifying CTCs

13. Division 1 of Part 2 (Clauses 3 to 6) of the Bill seeks to amend Cap. 112 to provide for:

(a) a regime in which the tax rate on qualifying profits of a qualifying CTC, i.e. the assessable profits that are derived from its qualifying lending transactions, or from qualifying corporate treasury services or qualifying corporate treasury transactions, is 50% of the prevailing profits tax rate for corporations (i.e. 16.5% x 50% = 8.25%) ("concessionary rate") (new section 14D(1))[2];

(b) the circumstances under which a qualifying CTC is eligible for the proposed profits tax concession (new sections 14D, 14E and 14F); and

(c) adjustments in respect of relevant losses to be set off against the concessionary trading receipts chargeable to tax under the concessionary rate (section 19CA as amended by Clause 4).

[2] The new section 14C(1) defines the terms "qualifying profits", "qualifying corporate treasury centre", "qualifying corporate treasury service", "qualifying corporate treasury transaction" and "qualifying lending transaction".

Interest in respect of borrowing and lending of money with ACs

14. Division 2 of Part 2 of the Bill (Clauses 7 to 10) seeks to amend Cap. 112 to:

(a) provide that the interest income and specified disposal profits earned by a corporation (other than a financial institution) in respect of an intra-group financing business are deemed trading receipts chargeable to profits tax, even though the relevant money is made available, or the transaction is effected, outside Hong Kong (section 15 as amended by Clause 7); and

(b) allow deductions, by a corporate borrower carrying on in Hong Kong an intra-group financing business, of interest payable on money borrowed from a non-Hong Kong AC under specified conditions (section 16 as amended by Clause 8).

Amendments relating to RCS

15. Division 3 of Part 2 (Clauses 11 to 16) of the Bill seeks to amend Cap. 112 to:

(a) define "regulatory capital security" to mean AT1/T2 instruments[3], other than those convertible into equity instruments after a certain period of time and other than those in respect of which distribution or redemption payment depends on the issuer's business results (new section 17A);

(b) treat a RCS as a debt security, and a sum payable in respect of the RCS (other than a repayment of the paid-up amount) as interest payable on the security, for the purposes of profits tax (new section 17B);

(c) provide for the tax treatment of RCS upon issuance by the issuer and when subsequently held by the specified connected person of the issuer (new sections 17C and 17D); and

(d) prevent avoidance of profits tax through issuance of RCSs as mentioned in paragraph 8 above by specifying:

[3] The new section 17A(1) defines the terms "Additional Tier 1 capital instrument" (referring to Schedule 4B to Cap. 155L) and "Tier 2 capital instrument" (referring to Schedule 4C to Cap. 155L).

(i) the rules concerning interest deduction if RCS are issued to or for the benefit of, or held by or for the benefit of, a specified connected person (new section 17F); and

(ii) the application of the arm's length and the separate enterprise principles (new sections 17E and 17G).

Transitional provisions, consequential and related amendments

16. Division 4 of Part 2 (Clauses 17 and 18) of the Bill provides for transitional matters in respect of the amendments in Divisions 1, 2 and 3 of Part 2 of the Bill. Division 1 of Part 3 (Clauses 19 to 23) of the Bill makes consequential amendments to the Inland Revenue Rules (Cap. 112, sub. leg. A). Division 2 of Part 3 (Clauses 24 to 27) of the Bill makes related amendments to Cap. 117 to provide for the relief of stamp duty for transactions and transfers relating to RCSs.

Deliberations of the Bills Committee

17. Members generally supported the Bill and the objectives it seeks to achieve. A member asked whether Hong Kong, given the various tax measures from time to time, would gradually deviate from its simple tax regime. The Administration explains that the proposed initiatives are introduced in response to evolving international development such as the Basel III capital adequacy requirements and are in line with international standards against base erosion and profit shifting. The policy objective of maintaining a simple tax regime in Hong Kong has not been changed.

Provisions related to corporate treasury centres

Qualifying corporate treasury centres

18. The proposed section 14D(2) (Clause 3 of the Bill) sets out the alternative criteria according to which a corporation is a qualifying CTC for a year of assessment. One of the criteria is satisfying the conditions specified in the proposed section 14D(3). In particular the proposed section 14D(3)(b) requires that a corporation has not carried out in Hong Kong any activity other than corporate treasury activities. For this requirement, the proposed section 14D(4) specifies that only activities that generate income to the corporation are to be taken into account.

19. Members note that a company which carries on a CTC business as its core activities and conducts non-income generating transactions (such as recruitment of staff) may still be a qualifying CTC under the Bill.

20. Members have queried if an investment holding company would be a qualifying CTC if it carries out corporate treasury activities for other group companies while performing an investment holding role for the group, but does not receive dividends from its group companies. The Administration advises that dividend income is not subject to tax in Hong Kong. If a holding company is also performing some CTC functions, it may benefit from the profits tax concession provided that it satisfies the criteria for being a qualifying CTC. In particular, the proposed safe harbour rule, which allows corporations having 75% or more of their profits derived from, and 75% or more of their assets used to carry out, corporate treasury activities to be subject to the concessionary rate (in respect of the qualifying profits), would help strike a reasonable balance to ensure that companies carrying out predominantly corporate treasury activities would meet the proposed qualifying criteria.

21. If a holding company is also performing some CTC functions, it may benefit from the profits tax concession provided that it satisfies the criteria for being a "qualifying CTC" in the proposed section 14D(2). In particular, under the proposed section 14E and the proposed Schedule 17B (Clause 6), a safe harbour rule is introduced which allows corporations (having 75% or more of their profits derived from, and 75% or more of their assets used to carry out, corporate treasury activities) to be subject to the concessionary tax (in respect of its qualifying profits).

22. The Administration further clarifies that, if a company fails to meet the 75% prescribed profits or asset percentage for the safe harbour rule under the proposed section 14E, it may apply to the Commissioner of Inland Revenue ("the Commissioner") for a determination under the proposed section 14F that it is a qualifying CTC for a year of assessment.

Operation test

23. Section 15(1) of Cap. 112 sets out the various types of income that are deemed to be trading receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong, and hence are chargeable to profits tax. The Bill amends section 15(1) by adding two subsections, namely, subsection (1)(ia) and subsection (1)(la), related to intra-group financing business.

24. The proposed section 15(1)(ia) and (la) makes it clear that the "operation test" applies in the determination of the source of interest income, as well as relevant gains or profits, arising from the carrying on in Hong Kong by a corporation (other than a financial institution) of its intra-group financing business. The principle of the "operation test" is that "one looks to see what the taxpayer has done to earn the profit in question and where he has done it",

and it has already been laid down in the court case, *Commissioner of Inland Revenue v Orion Caribbean Limited* ([1997] 1 HKLRD 924), which is binding in Hong Kong's courts.

25. Members note that the use of the "operation test" in determining the source of interest income of a CTC is different from the treatment of interest income in some circumstances where the "provision of credit test" is used. Regarding the "provision of credit test", the source of interest income is the place where the funds from which the interest income is derived are provided to the borrower. One member queries whether the use of the "operation test" and the deeming of interest income as trading receipt for tax purposes, would defeat the objective of promoting Hong Kong as a place for international corporations to set up CTCs.

26. The Administration explains that when new tax deduction provisions are introduced for interest expenses, it is also necessary to include a symmetric tax treatment for deeming interest income as trading receipts. This would avoid giving the impression that Hong Kong is becoming a tax haven, and forestall aggressive tax avoidance schemes. The application of the "operation test" on interest income and relevant gains or profits arising from an intra-group financing business follows the current practice in the Inland Revenue Department ("IRD"). The proposed provisions of the Bill codify this practice and the legal principle in the *Orion* case in respect of such income arising from intra-group financing business. No new taxation principle is introduced in the Bill and no change is to be made to existing taxation principles by the proposed section 15(1)(ia) and (la). The Administration has undertaken to issue new Departmental Interpretation and Practice Notes ("DIPN") to provide more detailed explanation on the application of "operation test" on the relevant incomes arising from intra-group financing business after the passage of the Bill.

"Subject to tax" requirement

27. The Bill proposes to adjust the interest deduction rules in Cap. 112 to allow a corporate borrower, carrying on in Hong Kong an intra-group financing business, deduction of interest payable on money borrowed from a non-Hong Kong associated corporation under specified conditions (the proposed section 16(2)(g) (Clause 8 of the Bill)). One condition requires, among others, that the interest income received by the non-Hong Kong associated corporation from the same loan transaction, is subject to a similar tax in a territory outside Hong Kong.

28. Some members query whether the requirement under the proposed section 16(2)(g)(ii) for a lender to be subject to a similar tax in a territory outside Hong Kong refers to tax that has been paid or will be paid, and whether interest deduction would be allowed if the lender is in a loss situation. The

Administration explains that the concept of "subject to tax" includes cases where (a) "tax has been paid"; and (b) "tax will be paid". A company which has to pay tax, in respect of an interest, after setting off its loss against the profits will 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 has not paid any tax.

29. The Administration agrees that, after the passage of the Bill, IRD would explain the application of the "subject to tax" condition in the DIPN.

"Main purpose, or one of the main purposes" test

30. The Bill provides for a new section 16(2CC) (Clause 8) which specifies that no deduction is to be allowed in respect of the interest if the Commissioner is satisfied that the main purpose, or one of the main purposes, of the borrowing of the money is to utilize a loss to avoid, postpone or reduce a liability to profits tax. Members note that the "main purpose, or one of the main purposes" test under the proposed section 16(2CC) seems more stringent than the "sole or dominant purpose" test under the existing section 61A of Cap. 112 and they enquire why a more stringent test is proposed.

31. The Administration advises that, in order to align with the latest international practices, the "main purpose test" should be adopted for the proposed section 16(2CC) to prevent tax avoidance schemes shifting losses to Hong Kong, even though the "main purpose test" might be regarded as more stringent (from some taxpayers' perspectives) than the "sole or dominant purpose test" under the existing section 61A of Cap. 112.

Corporate treasury services

32. Section 1(1) in Part 1 of the proposed Schedule 17B (Clause 6) sets out the activities that are corporate treasury services for the purposes of the Bill. A member queries whether the meaning of corporate treasury service reflects the current practice in the sector, and whether the services listed are based on any international standard. The Administration advises that there is no international standard in defining the scope of corporate treasury services. The list of services set out in section 1(1) of the proposed Schedule 17B is formulated in consultation with the industry. The Secretary for Financial Services and the Treasury will be empowered under the Bill to amend Schedule 17B by way of subsidiary legislation in the light of changes in corporate treasury practice in future.

Provisions related to regulatory capital securities

Treatment of income arising from deep discount

33. A member has queried, when a financial institution issues RCSs in deep discount, whether the discount amount would be regarded as interest income and chargeable for tax purposes. The Administration explains that the discount amount would be assessed for tax purpose when RCSs are realized or the value of RCSs is brought into account on fair value basis.

Common equity Tier 1 capital instrument

34. Members seek clarification on whether common equity tier 1 ("CET1") capital instrument is regarded as RCS. The Administration advises that, unlike Additional Tier 1 or Tier 2 capital instruments, CET1 capital instruments are equity rather than debt in nature and do not fall within the meaning of RCS. Under the proposed section 17A(2)(b), the definition of RCS does not include an instrument which provides for an issuer converting, or having an option to convert, the instrument into a CET1 capital instrument after a certain period of time.

Proposed sections 17C and 17D: General provisions on profits chargeable to tax in respect of a regulatory capital security

35. Under the proposed section 17C, profits of the issuer of RCSs are to be determined as if fair value accounting are not generally accepted accounting practice in relation to the security, or part of the security. This applies in ascertaining profits in respect of which the issuer of a RCS is chargeable to tax for a year of assessment. Members have queried the reason for adding such provision in the Bill. The Administration explains that the purpose of the provision is to disregard the fluctuation in value of the security. Proposed section 17C also states that a sum representing the paid-up amount of security being written down as required by contractual terms or statute on the occurrence of certain trigger events is not to be treated as a receipt arising in or derived from Hong Kong by the issuer from a trade, profession or business carried on in Hong Kong, and that no deduction is to be allowed to the issuer for any sum representing the paid-up amount of the security being written up, after a temporary write-down as mentioned above.

36. To ensure symmetry of treatment between the issuer and its specified connected holders, similar to the proposed section 17C, the proposed section 17D provides for ascertaining profits in respect of which a specified connected person of the issuer of a RCS is chargeable to tax for a year of assessment, and that the security is held by, or for the benefit of, the specified connected person. Members noted that the proposed section 17D has excluded persons who hold

RCS as a trustee or who is a market-maker from the definition of "specified connected person".

Proposed section 17E: Profits adjusted if associates deal not at arm's length in connection with RCSs

37. Under the proposed section 17E, the chargeable profits from a RCS transaction between a financial institution and its associate will be assessed by reference to the amount of profits that would have accrued had the same transaction been carried out at arm's length terms between parties who are not associates (i.e. arm's length principle). The proposed section 17F sets out how deduction may be allowed for issuer of RCSs if the security is issued to, held by, or issued or held for the benefit of a specified connected person of the issuer. Members note that deduction would be allowed if RCSs are issued to a specified connected person and the payment is financed from unconnected sources. If the acquisition of the RCSs by the specified connected person is financed out of its own reserve, no deduction would be allowed. In practice, IRD will examine how the payment for the RCS is financed, and the relevant documents supporting the sources of funds raised for the acquisition of RCSs.

Proposed section 17G: Separate enterprise principle

38. The proposed section 17G provides that, in ascertaining the chargeable profits of the Hong Kong branch of a financial institution (whose head office is outside Hong Kong) with capital raised through the issuance of RCSs, profits will be attributed as if the Hong Kong branch and other parts of the financial institution are separate enterprises (i.e. separate enterprise principle), and the amount of deduction allowable for costs and expenses is not to exceed the amount that would have been incurred by the Hong Kong branch on this basis. The proposed section 17G(2) provides that profits of the Hong Kong branch are those that it would have made if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealt wholly independently of the non-resident financial institution.

39. Some members have expressed concern whether the inclusion of the "separate enterprise" provision might put Hong Kong at an disadvantage as similar restrictions are absent in the tax regime of other markets. The proposed section 17G in handling transactions of RCSs between a bank's branch office in Hong Kong and the non-resident head office might affect the level playing field among Hong Kong branches of non-resident banks which have issued RCSs and those which have not.

40. The Administration advises that the proposed section 17G is introduced as a safeguard against potential abuse by non-resident financial institutions of the tax deduction provisions of the Bill by allocating a large proportion of their

RCSs to its branch office in Hong Kong. The "separate enterprise" principle is already being applied in ascertaining profits for tax purposes as such provisions have been provided for in the 33 bilateral double taxation agreements signed between Hong Kong and other tax jurisdictions.

41. The Administration further advises that the proposals in the Bill are aimed at benefiting both non-resident and local financial institutions. In determining the amount of profits attributable to the Hong Kong branch of a non-resident financial institution, consideration would be given to the functions performed, assets used and risks assumed by the non-resident financial institution through the Hong Kong branch and other parts of the financial institution. The extent to which profits of the Hong Kong branch are chargeable to Hong Kong tax would then be determined by the application of the territorial source principle.

Proposed section 17G: Arm's length principle

42. In respect of a transaction, "arm's length" refers to a condition where parties to the transaction have no relationship with one another. The proposed section 17G(5) provides that, in ascertaining profits, for tax purposes, of a Hong Kong branch, transactions in connection with RCSs between the Hong Kong branch and any other part of the non-resident financial institution are treated as taking place on such terms and conditions as would have been agreed between parties dealing at arm's length.

43. Some members query whether it is appropriate to apply arm's length principle to handle the relationship between a non-resident financial institution and its local branch office in Hong Kong. The Administration explains that the arm's length principle enables IRD to determine, accurately and objectively, the profit that a branch office of a non-resident financial institution generates in Hong Kong from the transactions in RCSs. The Administration advises that the proposed section 17G is necessary because RCSs are high interest hybrid instrument with both the features of debt and equity. It would not be beneficial to Hong Kong if a non-resident financial institution could enjoy huge tax deduction by allocating excessive RCSs to its local Hong Kong branch office.

Proposed section 17G: Relationship with the Source concept

44. Members have queried whether the proposed section 17G would change the long-standing territorial source principle in the Hong Kong's taxation system. The Administration explains that, under section 14 of Cap. 112, profits tax shall be charged in respect of the assessable profits arising in or derived from Hong Kong as ascertained in accordance with Part 4 of Cap. 112. IRD determines profits chargeable to Hong Kong tax based on the source concept.

45. The proposed section 17G would not change the source concept in the existing section 14 of Cap. 112.

Proposed section 17H: Application of arm's length and separate enterprise principles

46. The Administration has proposed to include in the Bill a provision (proposed section 17H) to specify that the proposed section 17E and the proposed section 17G will not affect the operation of other provisions under Cap. 112 that apply the arm's length and separate enterprise principles.

47. Members seek clarification whether the proposed section 17H would apply throughout Cap. 112. Some members have reflected the sector's concern that this section may affect the operation of non-banking corporations. The Administration advises that the proposed section states, for the avoidance of doubt, that the proposed section 17E and 17G will not affect the operation of other provisions under Cap. 112 and the Administration stresses that proposed section 17H will not create a new principle of taxation.

48. Members have considered the sector's concern on the need for the proposed section 17H and suggest that the Administration reconsider whether the provision is necessary. The Administration advises that taking into account the concerns expressed by deputations at the meeting held on 26 January 2016 over the interpretation of the proposed section 17H, the Administration would propose Committee Stage amendments to remove the proposed section 17H and all references to the section from the Bill.

49. Members note that IRD will issue DIPNs to explain that sections 17E and 17G are additional to and do not derogate from any other laws on the arm's length and separate enterprise principles after the passage of the Bill. The Administration has agreed to forward the DIPNs to the Joint Liaison Committee on Taxation prior to its issue.

Commencement

50. The Bills Committee notes that the Bill, if passed, will come into operation on the day on which the enacted Ordinance is published in the Gazette.

51. The Administration advises that, for the purposes of the proposed sections 14D(1) and 14E(5), in computing the qualifying profits and corporate treasury profits of a corporation, sums received by or accrued to the corporation before 1 April 2016 are not to be taken into account. Proposed section 15(1)(ia) and proposed section 15(1)(la) would not apply to sums received or accrued before the commencement date of the Bill.

Committee Stage amendments

52. As mentioned in paragraphs 46 to 48, the Administration will propose Committee Stage amendments ("CSAs") to remove the proposed section 17H and all references to the section from the Bill.

53. The Administration will also move CSAs to –

(a) amend the Chinese version of the proposed sections 14C(1) and 16(3) to reflect that "intra-group financing business", in relation to a corporation, means the business of the borrowing of money from and lending of money to its associated corporations;

(b) reorganize the structure of the proposed section 14D(6) and (7), so that the two consequences of a corporation ceasing to be subject to the concessionary rate under the proposed section 14D(1) are grouped together under the proposed section 14D(7), i.e. (a) invalidation of the election; and (b) disqualification from the concessionary rate for the subsequent year of assessment (disqualified year); and

(c) refine the drafting of the relevant provisions.

54. A set of proposed CSAs, is in **Appendix III**.

Resumption of the Second Reading debate

55. The Bills Committee notes the resumption of the Second Reading debate on the Bill at the Council meeting of 20 April 2016.

Advice sought

56. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 4
Legislative Council Secretariat
5 April 2016

Appendix I

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

Membership List

Chairman	Hon Kenneth LEUNG
Members	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 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
	Hon IP Kin-yuen (up to 12 January 2016)
	(Total：10 members)
Clerk	Mr Daniel SIN
Legal Adviser	Miss Carrie WONG

Appendix II

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

List of organizations which have provided oral or written representation to the Bills Committee

1. Capital Markets Tax Committee of Asia
2. Deloitte Touche Tohmatsu
3. Ernst & Young Tax Services Limited
4. The Hong Kong Association of Banks
5. The Hong Kong Association of Corporate Treasurers
6. The International Association of CFOs and Corporate Treasurers (China) Limited

\# 7. The Association of Chartered Certified Accountants Hong Kong

\# 8. Treasury Markets Association

* 9. Asia Securities Industry & Financial Markets Association

* 10. Hong Kong Bar Association

* 11. Hong Kong Institute of Certified Public Accountants

* 12. PricewaterhouseCoopers Limited

* 13. The Hong Kong Institute of Directors

* 14. The Taxation Institute of Hong Kong

\# Oral representation only
* Submitted written views only

Inland Revenue (Amendment) (No. 4) Bill 2015

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

Clause	Amendment Proposed
3	In the proposed section 14C(1), in the Chinese text, in the definition of ***集團內部融資業務***, by deleting "的業務，或" and substituting "及".
3	By deleting the proposed section 14D(6) and (7) and substituting— "(6) An election under subsection (5)(b), once made, is irrevocable. (7) If subsection (1) does not apply to a corporation for a year of assessment (***cessation year***) while it did for the previous year of assessment— (a) the election made by the corporation under subsection (5)(b) ceases to be effective; and (b) despite anything in this section, subsection (1) is not to apply to the corporation for the year of assessment that follows the cessation year.".
3	In the proposed section 14E(5), in the Chinese text, by deleting "就某法團而言的某課稅年度" and substituting "就某課稅年度而言，某法團".
3	In the proposed section 14E(6), in the Chinese text, by deleting "就某法團而言的某課稅年度" and substituting "就某課稅年

度而言，某法團".

3 In the proposed section 14E(7), in the Chinese text, by deleting "而言的" and substituting "而言，".

3 In the proposed section 14E(8), in the Chinese text, by deleting "而言的" and substituting "而言，".

Part 2 In Division 2, in the Chinese text, in the heading, by deleting "或" and substituting "及".

8(13) In the Chinese text, in the proposed definition of ***集團內部融資業務***, by deleting "的業務，或" and substituting "及".

12(3) In the proposed section 15(1C), by deleting "17F, 17G and 17H" and substituting "17F and 17G".

13 In the proposed section 16(2AA), by deleting "17F, 17G and 17H" and substituting "17F and 17G".

14 In the heading, by deleting "**17H**" and substituting "**17G**".

14 In the proposed section 17A(1), by deleting "17F, 17G and 17H" and substituting "17F and 17G".

14 In the proposed section 17B(2), by deleting "17F, 17G and 17H" and substituting "17F and 17G".

14 In the proposed section 17C(3)(a), in the Chinese text, by deleting

"遭永久" and substituting "被永久".

14 In the proposed section 17C(4), in the Chinese text, by deleting "暫時遭" and substituting "被暫時".

14 In the proposed section 17D(3)(a), in the Chinese text, by deleting "遭永久" and substituting "被永久".

14 In the proposed section 17D(4), in the Chinese text, by deleting "遭暫時" and substituting "被暫時".

14 By deleting the proposed section 17H.

18 In the proposed Schedule 36, in section 6(b), by deleting "and section 17H (in so far as it relates to section 17E)".

18 In the proposed Schedule 36, in section 8, by deleting "and section 17H (in so far as it relates to section 17G) apply" and substituting "applies".

20(2) In the proposed rule 3(1A), by deleting "17F, 17G and 17H" and substituting "17F and 17G".