

立法會
Legislative Council

LC Paper No. CB(4)1531/16-17
(These minutes have been seen
by the Administration)

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Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2017

Minutes of the first meeting
held on Tuesday, 11 April 2017, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex

Members present : Hon Kenneth LEUNG (Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Charles Peter MOK, JP
Dr Hon KWOK Ka-ki
Hon Holden CHOW Ho-ding
Hon Jeremy TAM Man-ho

Members absent : Hon James TO Kun-sun
Hon Dennis KWOK Wing-hang
Dr Hon Junius HO Kwan-yiu, JP

Public officers attending : Agenda item II

Transport and Housing Bureau

Mr Wallace LAU
Deputy Secretary for Transport and Housing
(Transport)4

Ms Candy NIP
Principal Assistant Secretary for Transport and
Housing (Transport)8

Financial Services and the Treasury Bureau

Mr Paul WONG
Principal Assistant Secretary for Financial Services
and Treasury (Financial Services)6

Inland Revenue Department

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

Ms Michelle CHAN
Senior Assessor (Special Duties)

Department of Justice

Mr Henry CHAN
Senior Government Counsel

Mr Peter SZE
Senior Government Counsel

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

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Mr Ambrose LEUNG
Senior Council Secretary (4)3

Ms Peggy CHUNG
Council Secretary (4)3

Miss Mandy LAM
Legislative Assistant (4)3

Ms Yvonna HO
Clerical Assistant (4)3

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)392/16-17 -- The Bill

File Ref: THB(T)CR 1/44/951/08 -- Legislative Council Brief issued by the Transport and Housing Bureau and the Financial Services and the Treasury Bureau

LC Paper No. LS49/16-17 -- Legal Service Division Report

LC Paper No. CB(4)822/16-17(01) -- Assistant Legal Adviser's letter dated 7 April 2017 to the Administration

LC Paper No. CB(4)809/16-17(01) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)

LC Paper No. CB(4) 809/16-17(02) -- Paper on Inland Revenue (Amendment) (No. 2) Bill 2017 prepared by the Legislative Council Secretariat (Background brief)

Discussion

2. The Bills Committee deliberated (Index of proceedings attached at **Annex**). The key issues discussed are summarized in the ensuing paragraphs.

Restrictions on qualifying aircraft lessors and qualifying aircraft leasing managers

3. Dr KWOK Ka-ki noted from the Administration that, with the implementation of the proposed tax regime, a large share of the global

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aircraft leasing business could be attracted to Hong Kong. He asked whether the majority of these aircraft being leased by qualifying aircraft lessors and qualifying aircraft leasing managers, who would be eligible for the tax concession under the Bill, were owned by Mainland persons or companies. He also asked whether these aircraft were not allowed to land in or depart from Hong Kong. The Administration explained that there were no clear statistics to substantiate the suggestion that the majority of such aircraft were owned by Mainland persons or companies. However, given the anticipated growth of the aviation market, there would be a high demand for new aircraft from the Mainland.

4. The Administration added that the Bill applied to offshore aircraft leasing activities. Such aircraft might not normally fly to Hong Kong although there was no restriction on what routes the aircraft might take; these aircraft might also call on Hong Kong for maintenance and repair purposes subject to prior arrangements having been made with the Civil Aviation Department. In response to a query from the Chairman, the Administration undertook to provide information on the amount of landing fees for private jets landing at the Hong Kong International Airport ("HKIA").

5. In response to Mr Jeremy TAM, the Administration confirmed that qualifying aircraft lessors and qualifying aircraft leasing managers would enjoy the proposed tax concession even if their business involved leasing part of an aircraft, such as the propulsion jet engines.

6. Mr Holden CHOW asked whether qualifying aircraft lessors and qualifying aircraft leasing managers benefiting from the proposed tax concession should be required to conduct aircraft leasing activities in Hong Kong for a certain minimum period of time; and that lessors or leasing managers who failed to meet the condition would have to pay back the Government all the tax benefits that they had received. The Administration explained that Hong Kong's tax regime was simple and transparent, and the Commissioner of Inland Revenue ("CIR") had not been empowered to require repayment of tax concession. The Administration further elaborated that Hong Kong had already possessed many competitive advantages such as sound legal system and well established financial infrastructure to attract leasing companies to Hong Kong. The Administration therefore considered it unnecessary to adopt a claw-back mechanism to penalize the withdrawal of investments.

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Measures against tax evasion

7. Members expressed concerns about companies taking advantage of the proposed tax regime for tax evasion. The Administration responded that anti-tax avoidance mechanism was proposed to guard against abuse. Qualifying aircraft lessors and qualifying aircraft leasing managers must be corporations with central management and control and substantial business presence in Hong Kong (i.e. they should have an office in Hong Kong and employ staff in Hong Kong; they should also use local professional services for carrying out business operations in Hong Kong). In considering whether a corporation carried out substantive business in Hong Kong, the Inland Revenue Department would conduct a comparability analysis to decide whether it had incurred in Hong Kong similar types of expenditures normally incurred by other companies carrying on the same type of business.

8. Dr KWOK Ka-ki asked whether the Administration had a timetable for review of the proposed tax regime. The Administration advised that it would monitor the implementation of the proposed tax regime and would keep in view similar incentive measures introduced by Hong Kong's competitors and change in international taxation standard or practice. The Administration would initiate review as and when necessary.

Impact on Hong Kong International Airport

9. Dr KWOK Ka-ki expressed concerns that the introduction of the proposed tax regime might attract more private aircraft using HKIA, thereby increasing the pressure on the airport's handling capacity. The Administration responded that according to the International Air Transport Association's guidelines, priority would be given to aircraft having landing rights on Hong Kong. Besides, the decision for using HKIA by private aircraft had no relevance to whether these aircraft were leased or not.

Whether similar tax concession would be provided to other sectors

10. Dr KWOK Ka-ki queried whether the introduction of a dedicated tax regime for qualifying aircraft lessors and qualifying aircraft leasing managers carrying on offshore aircraft leasing business in Hong Kong would set a precedent for other sectors, such as the maritime cargo carriage sector or pharmaceutical industry, to request for similar tax treatment. The Administration advised that offering tax concessions was one of the means to create a favourable environment to support the development of a certain sector. The Administration would take into account the needs of the

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sector concerned and the impact on public revenue, among other factors, in considering whether tax concession should be extended to other sectors.

Public revenue implications of the proposed Bill

11. The Administration informed members that, as there was at present no aircraft leasing business in Hong Kong, the question of revenue forgone as a result of introducing the proposed tax concession would not arise.

Clause-by-clause examination of the Bill

12. The Administration went through the Bills clause-by-clause with members. The Administration clarified that the definition of "aircraft" was drafted according to international conventions in which spacecraft, satellites and airships were excluded but helicopters were included. The Administration also explained the need to distinguish between "associate", "associated corporation" and "connected person" to cater for different anti-tax avoidance measures for aircraft lessors or aircraft leasing managers.

13. The Administration also briefed members on the difference between "lease", "funding lease" and "dry lease" in response to the queries from the Chairman.

14. ALA5 sought clarification on the meaning of "useful economic life" in relation to an aircraft which had been referred to in the definitions of "actual residual value", "estimated residual value" and "funding lease". She asked if a proper definition should be provided for "useful economic life". The Administration responded that it was preparing a reply to the questions raised by ALA5 per her letter of 7 April 2017. The Administration explained that "useful economic life" was an ordinary commercial term and such terminology had been commonly adopted in accounting as well.

15. The Chairman asked if both the aircraft leasing management asset and aircraft leasing management profits would be assessed together to determine if the safe harbour rule for a qualifying aircraft leasing manager could be met.

16. The Administration replied that both the prescribed threshold percentages as stipulated in the Bill for the aircraft leasing management asset and the aircraft leasing management profits had to be satisfied. A corporation satisfied the safe harbour rule for a year of assessment if the corporation fell within the 1-year safe harbour rule or the multiple-year safe harbour rule. Even if a company did not satisfy either safe harbour rule for

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a particular year of assessment, a corporation might still be considered as a qualifying aircraft leasing manager and be eligible to claim the proposed tax concession if it had obtained CIR's determination under the new section 14L. The Administration further explained that similar mechanisms of safe harbour rule and CIR's determination had been adopted in the concessionary tax regime for qualifying corporate treasury centres under the Inland Revenue Ordinance, Cap. 112.

17. The Chairman also queried about the difference and relationships between "lease", "dry lease" and "funding lease". The Administration explained that the definition of "dry lease" had been drafted by making reference to the Civil Aviation Ordinance, Cap. 448. Under the proposed concessionary tax regime, tax concessions would be granted to qualifying aircraft lessors and qualifying aircraft leasing managers which could not be an aircraft operator. For satisfying the conditions of qualifying aircraft leasing activities and qualifying aircraft leasing management activities, the aircraft had to be leased to a non-Hong Kong aircraft operator.

18. In the context of leasing aircraft to non-Hong Kong aircraft operators, dry lease had been referred to in the definition of "lease" which was defined to mean a dry lease but did not include a dry lease that was a funding lease, hire-purchase agreement or conditional sale agreement. Under a dry lease, the lessors would not be responsible for ensuring the airworthiness of the aircraft and would not employ any member of the crew of the aircraft. The aircraft should be owned by qualifying aircraft lessors in order to be qualified for the tax concessions. The ownership of an aircraft could be acquired by various means such as holding as a lessee under a funding lease, holding as a bailee under a hire-purchase agreement and holding as a buyer under a conditional sale agreement. Finance lease had been referred to in the definition of "funding lease". In relation to the definition of "non-Hong Kong aircraft operator", the Administration explained that this would include an aircraft operator resident in the foreign jurisdiction with which Hong Kong has entered into a double taxation agreement.

19. Mr Holden CHOW queried the rationale for restricting a qualifying aircraft leasing activity to an aircraft being leased to a non-Hong Kong aircraft operator. The Administration responded that there was already a tax regime to cater for onshore aircraft leasing activities and the internal rates of return under this proposed tax regime and the existing tax regime for onshore aircraft leasing activities are comparable.

Action

Follow-up actions to be taken by the Administration

20. The Administration was requested to provide information on the amounts of landing fees for private jets landing at HKIA.

(Post-meeting note: The English version and the Chinese version of Administration's written response was circulated to member vide LC Paper No. CB(4)894/16-17(02) on 24 April 2017 and 14 August 2017 respectively.)

Date of next meeting

21. Members agreed that the next meeting should be held on 26 April 2017 to receive views on the Bill from members of the public.

III. Any other business

22. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 4
Legislative Council Secretariat
24 August 2017

**Proceedings of the first meeting of
Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2017
on Tuesday, 11 April 2017, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman			
000000 – 000250	Mr Jeffrey LAM Kin-fung Mr Holden CHOW Ho-ding Mr Jeremy TAM Man-ho	Election of Chairman Mr Kenneth LEUNG was elected Chairman of the Bills Committee.	
Agenda item II – Meeting with the Administration			
000251 – 002510	Chairman Administration	Briefing by the Administration	
002511 – 004056	Dr KWOK Ka-ki Chairman Administration	Dr KWOK Ka-ki queried the ownership and operating routes of aircraft being leased by qualifying aircraft lessors and the possibility of tax evasion.	
004057 – 004120	Chairman Administration	The Chairman requested the Administration to provide information on the amounts of landing fees for private jets landing at the Hong Kong International Airport.	The Administration to follow up as per paragraph 20 of the minutes.
004121 – 005252	Mr Jeremy TAM Man-ho Chairman Administration	Mr Jeremy TAM sought clarification on the eligibility for the proposed tax concession and how the proposed anti-tax avoidance mechanism operated in practice.	
005253 – 010446	Dr KWOK Ka-ki Chairman Administration	Dr KWOK Ka-ki asked whether similar tax concession would be offered to other sectors, the implications of the Bill on public revenue, as well as the timetable for review of the proposed tax regime.	
010447 – 011044	Mr Holden CHOW Ho-ding Chairman Administration	Mr Holden CHOW asked whether further conditions should be imposed on qualifying aircraft lessors and qualifying aircraft leasing managers for enjoying the tax concession.	

Time marker	Speaker	Subject(s)	Action required
011045 – 011110	Chairman Administration	The Chairman made comments on the Administration's measures to attract overseas companies to set up business operations in Hong Kong.	
011111 – 011202	Mr Jeremy TAM Man-ho Chairman Administration	Mr Jeremy TAM asked if the proposed tax concession would cover leasing of helicopters.	
011203 – 011312	Chairman Administration	The Chairman sought clarification on the scope of "aircraft" in the Bill.	
011313 – 011450	Chairman Mr Holden CHOW Ho-ding	The Chairman suggested that a public hearing should be conducted at 9:00 am on Wednesday, 26 April 2017 and invited members to inform the Clerk if they had any suggestions on the organizations that should be invited to give their views.	
011451 – 012319	Chairman Administration Assistant Legal Adviser 5 (ALA5)	<u>Clause-by-clause</u> <u>Clause 1- 3</u> <u>Clause 4</u> ALA5 sought clarification on the meaning of "useful economic life" in relation to an aircraft which had been referred to in the definitions of "actual residual value", "estimated residual value" and "funding lease" and asked if a proper definition should be provided for "useful economic life".	
012320 – 012659	Chairman Mr Holden CHOW Ho-ding Administration	Mr Holden CHOW asked if airship, spacecraft and satellite were also excluded from the definition of "aircraft" under similar concessionary tax regimes in other jurisdictions.	
012700 – 015551	Chairman Administration	The Chairman sought clarification on how the safe harbour rule could be met. The Chairman also queried about the definitions of "associate", "associated corporation" and "connected person"; and the difference between "lease", "dry lease" and "funding lease".	
015552 – 020035	Chairman Mr Holden CHOW Ho-ding Administration	Mr Holden CHOW queried the rationale for restricting a qualifying aircraft leasing activity to an aircraft being leased to a non-Hong Kong aircraft operator under the proposed section 14G(6).	

Time marker	Speaker	Subject(s)	Action required
Agenda item III – Any other business			
020036 – 020111	Chairman Administration	Date of next meeting The next meeting was scheduled to be held at 9:00 am on 26 April 2017.	

Council Business Division 4
Legislative Council Secretariat
24 August 2017