

立法會
Legislative Council

LC Paper No. CB(4)1554/16-17
(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 third meeting
held on Monday, 22 May 2017, at 8:30 am
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon Kenneth LEUNG (Chairman)
Hon James TO Kun-sun
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Charles Peter MOK, JP
Dr Hon KWOK Ka-ki
Hon Jeremy TAM Man-ho
- Members absent** : Hon Paul TSE Wai-chun, JP
Hon Dennis KWOK Wing-hang
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
- Public officers attending** : Agenda item I
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

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I. Meeting with the Administration

Follow-up to issues arising from previous meeting

(LC Paper No. CB(4)940/16-17(01) -- List of follow-up actions arising from the discussion at the meeting on 26 April 2017

LC Paper No. CB(4)894/16-17(01) -- List of follow-up actions arising from the discussion at the meeting on 11 April 2017

LC Paper No. CB(4)1011/16-17(01) -- Administration's responses to the views expressed by deputations in written submissions at the meeting on 26 April 2017

LC Paper No. CB(4)894/16-17(02) -- Administration's response to the list of follow-up actions arising from the discussion at the meeting on 11 April 2017

LC Paper No. CB(4)934/16-17(01) -- Administration's response to Assistant Legal Adviser's letter dated 25 April 2017

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

Committee stage amendments

(LC Paper No. CB(4)1060/16-17(01) -- Draft Committee stage amendments proposed by the Government)

Other relevant papers

(LC Paper No. CB(3)392/16-17 -- The Bill

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- 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)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)
- LC Paper No. CB(4)1075/16-17(01) -- Mark-up copy of the draft Committee stage amendments prepared by the Legal Service Division)

Discussion

The Bills Committee deliberated (Index of proceedings attached at **Annex**). Some of the salient points are summarized in the paragraphs below.

Impact of the Bill

2. Members enquired about public revenue that might be forgone from the proposed tax regime under the Bill. The Administration explained that as there was at present no offshore aircraft leasing business in Hong Kong, the question of revenue forgone as a result of introducing the proposed tax concession would not arise.

Requirement of the Organisation for Economic Co-operation and Development

3. The Administration informed the Bills Committee that the Organisation for Economic Co-operation and Development ("OECD") and

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the Group of Twenty released a package of 15 actions to combat base erosion and profit shifting ("BEPS") in October 2015. Hong Kong indicated to OECD in June 2016 its commitment to implementing the BEPS package. The Forum on Harmful Tax Practice ("FHTP"), a working party under OECD, was responsible for reviewing the preferential tax regimes relating to income from geographically mobile activities (such as financial and other service activities) of all participating jurisdictions. The Bill was gazetted in March 2017 and OECD informed the Administration that it would only assess the proposed aircraft leasing framework until the Bill was enacted as an Ordinance. In determining whether a preferential tax regime was potentially harmful, FHTP would take into account a number of factors, one of which was that "the regime is ring-fenced from the domestic economy".

4. Members were also informed that, in March 2017, the Administration was informed that FHTP would adopt a rigid and narrow interpretation on the "ring-fencing" factor when determining whether a preferential tax regime was potentially harmful. Failure to address OECD's concerns about harmful tax practices will jeopardize Hong Kong's reputation as an international financial centre. The Administration considered it prudent for Hong Kong to revise the proposed aircraft leasing regime so that there would not be a perception issue on ring-fencing as the proposed tax regime would only be made applicable for offshore aircraft leasing activities.

5. In view of the latest development in OECD and the concerns from the deputations on the definition of "non-Hong Kong aircraft operator", the Administration proposed to revise the Bill so as to extend the proposed tax regime for offshore aircraft leasing activities under the Bill to onshore aircraft leasing activities as well. The Administration informed the Bills Committee that under the revised tax regime, companies engaging in onshore aircraft leasing activities would be assessed under the original regime as provided for in the Inland Revenue Ordinance, Cap. 112, i.e. they were entitled to obtain depreciation allowance in respect of the subject aircraft by default. Alternatively, they might elect for assessment under the proposed concessionary regime for offshore aircraft leasing activities (i.e. they were not entitled to obtain depreciation allowance but could enjoy the 20% tax base concession for the computation of the taxable amount of net lease payments and 50% reduction in the prevailing profits tax rate for corporations). The election, once made, was irrevocable. Meanwhile, companies engaging in offshore aircraft leasing activities would remain entitled to the 20% tax base concession for the computation of the taxable amount of net lease payments and 50% reduction in the prevailing profits tax rate for corporations but they were not entitled to obtain depreciation allowance.

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6. In response to the enquiry from Mr Jeremy TAM, the Administration advised that the Bill, having incorporated the above additional amendments, if passed, might be examined by FHTP. For scrutiny of the revised tax regime by FHTP after the Bill was passed, the Administration was required to submit a questionnaire explaining the meaning of every provision in the Bill and to attend an open forum in which the Administration would have to provide a written response to all questions raised or make oral reply. Subject to any comments from FHTP, further amendments to Cap. 112 might be necessary.

7. The Chairman directed the Secretariat to seek the views of local aircraft operators on the Administration's proposed revision to the tax concessionary regime.

(Post-meeting note: All six local aircraft operators have responded and supported the Administration's proposal.)

Safe harbour rule

8. Members noted that even if a corporation's aircraft leasing management profits were below the threshold to qualify for the safe harbour rule in a particular year, it might still be considered as a qualifying aircraft leasing manager and be eligible for the proposed tax concession if the Commissioner of Inland Revenue ("CIR") had determined that the conditions specified in the proposed section 14J(3) or the safe harbour rule under the proposed section 14K would in the ordinary course of business of the corporation have been satisfied for the year of assessment. Similar mechanisms of safe harbour rule and CIR's determination had been adopted in the tax concessionary regime for qualifying corporate treasury centres under Cap. 112.

Commissioner of Inland Revenue's discretionary power

9. Members noted that the proposed section 14L of the Bill conferred on CIR a discretionary power to determine whether an aircraft leasing manager might remain a qualifying aircraft leasing manager and enjoy the tax concession under the Bill even though the aircraft leasing manager did not, due to certain justified and unforeseen circumstances, meet the requirement to be a qualifying aircraft leasing manager for a year of assessment.

10. Members expressed concern that the provision might give CIR too wide a power and they queried whether there were objective criteria under which CIR might make the determination and whether the criteria should be stated in the Bill. The Administration advised that the new section 14L

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would enable CIR to exercise the discretionary power. In making the determination under the proposed section 14L, CIR might take into account the activities carried out by the corporation (such as its operational history, assets and liabilities, functions and risks undertaken, and the capacity, role and responsibility of the corporation, etc.) and all other relevant information.

11. The Administration envisaged that CIR's determination might involve an assessment of the factual circumstances of a particular case and did not consider it appropriate to make express provisions on such circumstances in the Bill. The Administration also informed the Bills Committee that similar discretionary power was provided under the tax concessionary regime for qualifying corporate treasury centres under Cap. 112, although CIR had, so far, not even once exercised this discretionary power.

Legislative timetable

12. The Bills Committee completed scrutiny of the Bill. Members noted that a written report was targeted to be submitted to the House Committee on 9 June 2017, so that Second Reading debate on the Bill might resume on 21 June 2017. The Chairman reminded members that the deadline for serving notice of moving Committee Stage amendments to the Bill was 12 June 2017.

(Post-meeting note: The Chairman reported the deliberations of the Bills Committee to the House Committee on 9 June 2017. The Administration had indicated that it would resume the Second Reading debate on the Bill at the Council meeting of 21 June 2017.)

III. Any other business

13. There being no other business, the meeting ended at 10:33 am.

Council Business Division 4
Legislative Council Secretariat
1 September 2017

**Proceedings of the third meeting of
Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2017
on Monday, 22 May 2017, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Meeting with the Administration			
000000 – 001513	Chairman Administration	Briefing by the Administration	
001514 – 002219	Chairman Dr KWOK Ka-ki Administration	Dr KWOK Ka-ki expressed concern about possible abuse of the proposed tax concession for tax evasion by local aircraft operators.	
002220 – 003444	Chairman Administration	The Administration responded to the views expressed by deputations vide LC Paper No. CB(4)1011/16-17(01).	
003445 – 005359	Chairman Mr James TO Kun-sun Administration	<p>Mr James TO asked which part of the Administration's proposed Committee Stage amendments ("CSAs") was introduced to meet the requirements of the Organisation for Economic Co-operation and Development ("OECD") on base erosion and profit shifting ("BEPS").</p> <p>Mr James TO also queried whether the tax concession should also apply to leasing of aircraft to aircraft operators from countries which have no double taxation agreement with Hong Kong.</p>	
005400 – 010325	Chairman Mr Jeremy TAM Administration	<p>Mr Jeremy TAM queried whether the Administration should have consulted the views of OECD on the proposed tax regime rather than having to introduce CSAs to the Bill at a late stage of the legislative process.</p> <p>He also asked if the Bill could still be put into effect if OECD considered that certain provisions in the Bill were not consistent with the BEPS requirements and practices.</p>	
010326 – 010550	Chairman Administration	The Chairman directed that local aircraft operators should be consulted on the proposed CSAs.	The Secretariat to follow up as per paragraph 7 of the minutes

Time marker	Speaker	Subject(s)	Action required
010551 – 011923	Chairman Administration	<p><u>Clause-by-clause</u></p> <p><u>Clause 4</u></p> <p>The Chairman queried the reason that the formula for net lease payments for the right to use an aircraft under the proposed section 14I(2) did not apply to a corporation for a year of assessment if capital allowances were granted to a connected person in Hong Kong as prescribed under the proposed section 14I(3)</p>	
011924 – 012833	Chairman Mr Jeremy TAM Administration	<p>The Chairman and Mr Jeremy TAM asked if there were objective criteria for the Commissioner of Inland Revenue ("CIR") to determine whether a corporation was a qualifying aircraft leasing manager for a year of assessment under the proposed section 14L if it did not satisfy the safe harbour rule under the proposed section 14K.</p>	
012834 – 014218	Chairman Mr Jeremy TAM Administration	<p>The Chairman asked if CIR's power in making such determination under section 14L was too wide and whether there were similar provisions in the Inland Revenue Ordinance, Cap 112.</p> <p>Mr Jeremy TAM asked if the Administration would keep a record of determination made by CIR on whether a corporate was qualified for tax concession for any year of assessment.</p>	
014219 – 015000	Chairman Mr Jeremy TAM Administration	<p>Mr Jeremy TAM asked if a stakeholder of an aircraft operator could circumvent the anti-avoidance provision under the proposed section 14M by setting up a separate aircraft leasing company for leasing an aircraft to the concerned aircraft operator.</p>	
015001 – 015205	Chairman Administration	<p><u>Clauses 5 to 6</u></p> <p>The Chairman queried whether the Administration intended to introduce general provisions of transfer pricing into Cap. 112 and under such circumstance, further amendments to the parts of legislation related to aircraft leasing and aircraft leasing management activities.</p>	

Time marker	Speaker	Subject(s)	Action required
015206 – 020034	Chairman Administration	<u>Clauses 7 to 15</u> The Chairman asked when the Departmental Interpretation and Practice Notes relating to aircraft leasing and aircraft leasing management activities would be available. Completion of clause-by-clause examination	
Agenda item II – Any other business			
020035 – 020421	Chairman Administration	Legislative timetable	

Council Business Division 4
Legislative Council Secretariat
1 September 2017