

立法會
Legislative Council

LC Paper No. CB(1)468/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/17/2

Bills Committee on Inland Revenue (Amendment) (No. 5) Bill 2017

**Minutes of the second meeting on
Wednesday, 20 December 2017, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, GBS, JP (Chairman)
Hon James TO Kun-sun
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon Charles Peter MOK, JP
Hon KWOK Wai-keung, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon Holden CHOW Ho-ding
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon CHEUNG Kwok-kwan, JP

Members absent : Hon WU Chi-wai, MH
Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai
Hon YUNG Hoi-yan

Public officers attending : Mr Andrew LAI, JP
Deputy Secretary for Financial Services and the
Treasury (Treasury)2

Ms Pecvin YONG
Principal Assistant Secretary for Financial Services and
the Treasury (Treasury) (Revenue 1)

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

Mr CHAN Sze-wai
Senior Assessor (Research)³
Inland Revenue Department

Ms Phyllis POON
Senior Government Counsel
Department of Justice

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

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Miss Sharon LO
Senior Council Secretary (1)⁹

Ms Sharon CHAN
Legislative Assistant (1)⁴

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I Meeting with the Administration

Matters arising from previous meeting

(LC Paper No. CB(1)369/17-18(01) — Letter dated 22 November
2017 from the Legal Service
Division to the Administration

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- LC Paper No. CB(1)369/17-18(02) — Administration's response to the Legal Service Division's letter dated 22 November 2017
- LC Paper No. CB(1)301/17-18(01) — Submission from The Hong Kong Association of Banks (English version only)
- LC Paper No. CB(1)369/17-18(03) — Administration's response to the submission from The Hong Kong Association of Banks
- LC Paper No. CB(1)257/17-18(01) — List of follow-up actions arising from the discussion at the meeting on 14 November 2017
- LC Paper No. CB(1)257/17-18(02) — Administration's response to the list of follow-up actions arising from the discussion at the meeting on 14 November 2017)

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)10/17-18) — The Bill
- File Ref: TsyB R 00/800-2/20/0(C) — Legislative Council Brief
- LC Paper No. LS5/17-18 — Legal Service Division Report
- LC Paper No. CB(1)206/17-18(01) — Marked-up copy of the Inland Revenue (Amendment) (No. 5) Bill 2017 prepared by the Legal Service Division (Restricted to members only)
- LC Paper No. CB(1)206/17-18(02) — Letter dated 1 November 2017 from the Legal Service Division to the Administration

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LC Paper No. CB(1)206/17-18(03) — Administration's response to the Legal Service Division's letter dated 1 November 2017

LC Paper No. CB(1)206/17-18(04) — Background brief prepared by the Legislative Council Secretariat)

Consideration of Committee Stage amendments proposed by the Administration

(LC Paper No. CB(1)369/17-18(04) — Draft Committee Stage amendments proposed by the Administration)

Discussion

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

Invitation of views

2. Members considered it not necessary for the Bills Committee to meet with deputations to receive views on the Inland Revenue (Amendment) (No. 5) Bill 2017 ("the Bill").

Clause-by-clause examination and consideration of Committee Stage amendments proposed by the Administration

3. The Bills Committee completed clause-by-clause examination of the Bill and the Committee Stage amendments ("CSAs") proposed by the Administration.

II Any other business

Legislative timetable

4. The Bills Committee completed the scrutiny of the Bill, and noted the Administration's intention to resume the Second Reading debate on the Bill at the Council meeting of 24 January 2018. The Bills Committee would report

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its deliberations to the House Committee on 12 January 2018. The deadline for giving notice of CSAs to the Bill would be 15 January 2018.

5. There being no other business, the meeting ended at 5:06 pm.

Council Business Division 1
Legislative Council Secretariat
12 January 2018

**Proceedings of the second meeting of the Bills Committee on
Inland Revenue (Amendment) (No. 5) Bill 2017
Wednesday, 20 December 2017, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Meeting with the Administration			
000733 – 001659	Chairman Administration	Briefing by the Administration on its responses to (a) the questions raised by Assistant Legal Adviser 10 ("ALA10") in her letter dated 22 November 2017 and (b) the views and issues raised by The Hong Kong Association of Banks ("HKAB") in its submission dated 29 November 2017 [LC Paper No. CB(1)369/17-18(02)] [LC Paper No. CB(1)369/17-18(03)]	
001700 – 001738	Chairman Mr CHAN Chun-ying	Mr CHAN expressed appreciation on the Government's prompt follow-up actions to address the views and concerns of HKAB including proposing Committee Stage amendments ("CSAs") to specify 1 January 2019 as the commencement date for clauses 5 to 11 of the Inland Revenue (Amendment) (No. 5) Bill 2017 ("the Bill") and updating the guidelines of the Inland Revenue Department ("IRD") upon the passage of the Bill to provide further guidance to reporting financial institutions ("FIs") on the implementation of automatic exchange of financial account information in tax matters ("AEOI") arising from the technical changes brought by the Bill.	
001739 – 002124	Chairman Mr James TO Administration	In response to Mr TO's enquiry regarding the offences relating to AEOI in the Inland Revenue Ordinance (Cap. 112) ("IRO"), the Government advised that the Bill did not introduce new offence provisions or amend the existing offence provisions in IRO. The offence provisions on the implementation of AEOI had been introduced through the Inland Revenue (Amendment) (No. 3) Ordinance 2016, which included the following –	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(a) offence relating to the non-compliance by a reporting FI to furnish the required information to IRD within the prescribed timeframe;</p> <p>(b) offence relating to the provision of information that was misleading, false or inaccurate in a material particular by a reporting FI in its return submitted to IRD; and</p> <p>(c) offence against any person in relation to the making of a self-certification that was misleading, false or incorrect in a material particular.</p> <p>Mr TO enquired about the reason for adding the word "only" after "rely" in section 6 of Schedule 17D to IRO (i.e. clause 11 of the Bill). The Government said that the Organisation for Economic Co-operation and Development ("OECD") had recently identified some inconsistencies between the relevant provisions in IRO for the implementation of AEOI and the Common Reporting Standard ("CRS"). According to the CRS requirement, a reporting FI should only rely on a self-certification (with no other reliance) for the purpose of determining the residence of a controlling person of a passive NFE (NFE referred to an entity that was not an FI). The amendment was to better reflect the CRS requirement and to address the concern of OECD.</p>	
002125 – 002450	Chairman ALA10 Administration	<p>ALA10 sought clarification on the scope of information to be exchanged under Article 5 (i.e. exchange of information ("EOI") on request), Article 6 (i.e. automatic EOI) and Article 7 (i.e. spontaneous EOI) of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("Multilateral Convention").</p> <p>The Government explained that –</p> <p>(a) EOI on request referred to a situation in which a party sought particular tax</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>information from another party related to a particular case. Hong Kong was currently conducting EOI on request with other jurisdictions;</p> <p>(b) as regards automatic EOI, Hong Kong would commence the first exchanges by 2018 and the information would be exchanged in accordance with the AEOI legislative framework;</p> <p>(c) Hong Kong was prepared to ride on the Multilateral Convention to undertake spontaneous EOI on six specific types of tax rulings as required by Action 5 of the base erosion and profit shifting ("BEPS") package; and</p> <p>(d) the types of information exchange under Articles 5 to 7 of the Multilateral Convention might not be the same; and</p> <p>(e) the Government would introduce a bill to amend IRO for the implementation of the minimum standards under the BEPS package.</p>	
Clause-by-clause examination of the Inland Revenue (Amendment) (No. 5) Bill 2017			
002451 – 003248	Chairman Administration	<p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Inland Revenue Ordinance amended</u></p> <p><u>Clause 3 – Part 8 heading amended (double taxation relief and exchange of information)</u></p> <p><u>Clause 4 – Section 49 amended (arrangements for relief from double taxation and exchange of information)</u></p> <p><u>Clause 5 – Section 50A amended (interpretation)</u></p> <p><u>Clause 6 – Section 50B amended (due diligence obligations on reporting financial institutions)</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 7 – Section 50C amended (obligations of reporting financial institutions to furnish returns)</u></p> <p><u>Clause 8 – Schedule 17C, Part 2, section 8 amended (qualified credit card issuer)</u></p> <p><u>Clause 9 – Schedule 17C, Part 2, section 9 amended (exempt collective investment vehicle)</u></p> <p><u>Clause 10 – Schedule 17C, Part 3, section 7 amended (dormant account)</u></p> <p><u>Clause 11 – Schedule 17D, Part 6, section 6 amended (determining residence of controlling person of passive NFE)</u></p> <p>Members did not raise any questions on the provisions of the Bill.</p>	
003249 – 003550	Chairman ALA10 Administration	<p>In response to ALA10's enquiry regarding the term "enforcer of the trust" (i.e. clause 5(14) of the Bill), the Government advised that –</p> <p>(a) the term "enforcer of the trust" was not defined in CRS or IRO;</p> <p>(b) the term appeared in the definition of "beneficial owner" in relation to a trust under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO"); and</p> <p>(c) clause 5(14) of the Bill sought to tally the provision in IRO with the corresponding provision in AMLO to ensure the consistency of required procedures applied by reporting FIs in both regimes and to reduce the compliance burden of FIs in carrying out the due diligence procedures for AEOI as FIs might resort to information collected under AMLO in performing the relevant due diligence requirements under the AEOI regime.</p>	

Time Marker	Speaker	Subject(s)	Action Required
Consideration of Committee Stage amendments proposed by the Administration			
003551 – 003821	Chairman Administration	Briefing by the Administration on its proposed CSAs [LC Paper No. CB(1)369/17-18(04)] Members raised no question on the CSAs proposed by the Administration.	
Agenda item II — Any other business			
003822 – 004024	Chairman Administration	Legislative timetable and concluding remarks	

Council Business Division 1
Legislative Council Secretariat
12 January 2018