

立法會
Legislative Council

LC Paper No. CB(1)623/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/17/2

Bills Committee on Inland Revenue (Amendment) (No. 6) Bill 2017

Minutes of the first meeting
held on Tuesday, 23 January 2018, from 5:00 pm to 6:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Kenneth LEUNG (Chairman)
Hon James TO Kun-sun
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon Holden CHOW Ho-ding
Hon SHIU Ka-chun
Hon CHAN Chun-ying

Members absent : Hon WU Chi-wai, MH
Hon CHU Hoi-dick

Public Officers attending : **For item II**
Financial Services and the Treasury Bureau

Mr Andrew LAI, JP
Deputy Secretary (Treasury)2

Mr Stephen LO
Principal Assistant Secretary (Treasury)(R2)

Inland Revenue Department

Mr Brian CHIU, JP
Deputy Commissioner (Technical)

Mr Benjamin CHAN
Senior Assessor (Research)3

Ms Vivian NG
Senior Assessor (Tax Treaty)6

Department of Justice

Miss Betty CHEUNG
Senior Assistant Law Draftsman

Miss Bonita WONG
Government Counsel

Clerk in Attendance : Miss Cindy HO
Chief Council Secretary (1)1

Staff in attendance : Miss Rachel DAI
Assistant Legal Adviser 2

Mr Joey LO
Senior Council Secretary (1)8

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Election of Chairman

Election of Chairman

Prof Joseph LEE, the member who had the highest precedence among members of the Bills Committee present at the meeting, presided at the election of Chairman of the Bills Committee.

Action

2. Prof Joseph LEE invited nominations for the chairmanship of the Bills Committee. Mr Alvin YEUNG nominated Mr Kenneth LEUNG, and the nomination was seconded by Mr CHAN Chun-ying. Mr LEUNG accepted the nomination.
3. There being no other nominations, Mr Kenneth LEUNG was declared Chairman of the Bills Committee. Mr LEUNG then took the chair.
4. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

(LC Paper No. CB(3)232/17-18	—	The Bill
File Ref: TsyB R2 00/800/1/0 (C)	—	Legislative Council Brief
LC Paper No. LS19/17-18	—	Legal Service Division Report
LC Paper No. CB(1)506/17-18(01)		Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
LC Paper No. CB(1)509/17-18(01)	—	Background brief prepared by the Legislative Council Secretariat)

Discussion

5. The Bills Committee deliberated (index of proceedings attached at the **Annex**) on the Inland Revenue (Amendment) (No. 6) Bill 2017 ("the Bill").

Invitation for public views

6. Members agreed to invite relevant organizations to attend the next Bills Committee meeting to express their views and/or provide submissions on the Bill, and to post an invitation notice on the website of the Legislative Council ("LegCo").

Action

(Post-meeting note: The notice was posted on the LegCo website on 24 January 2018 and invitation letters were sent to relevant organizations and District Councils on the same day.)

Date of next meeting

7. The Chairman said that the second meeting was scheduled for Tuesday, 13 February 2018 from 2:30 pm to 5:30 pm to meet with deputations and the Administration.

(Post-meeting note: The notice of meeting was issued to members vide LC Paper No. CB(1)518/17-18 on 24 January 2018.)

III. Any other business

8. There being no other business, the meeting ended at 6:21 pm.

Council Business Division 1
Legislative Council Secretariat
26 February 2018

Bills Committee on Inland Revenue (Amendment) (No. 6) Bill 2017

**Proceedings of the first meeting
on Tuesday, 23 January 2018, from 5:00 pm to 6:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Election of Chairman</i>			
001356 - 001528	Prof Joseph LEE Mr Alvin YEUNG Mr Kenneth LEUNG Mr CHAN Chun-ying	Election of Chairman	
<i>Agenda Item II - Meeting with the Administration</i>			
001529 - 001714	Chairman	Opening remarks	
001715 - 003229	Administration	Briefing by the Administration on the Inland Revenue (Amendment) (No. 6) Bill 2017 ("the Bill").	
003230 - 003640	Chairman Mr CHAN Chun-ying Administration	<p>Noting that a two-month public consultation exercise was held from October to December 2016 to gauge views on the Administration's proposals to implement measures promulgated by the Organization for Economic Co-operation and Development ("OECD") to counter base erosion and profit shifting ("BEPS"), Mr CHAN enquired whether all the respondents' concerns had been taken into account in the current legislative proposals and if not, what were the concerns remained to be addressed.</p> <p>The Administration responded that:</p> <p>(a) a total of 26 written submissions from organizations and individuals were received and two engagement sessions with key stakeholders were held during the consultation exercise. There was broad support for the proposal to introduce measures for complying with the anti-BEPS requirements;</p> <p>(b) while OECD had outlined 15 action plans in its final package released in October 2015 ("BEPS package"), the Administration only sought to implement the four minimum standards of the BEPS</p>	

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		<p>package and the measures of direct relevance to their implementation at this stage;</p> <p>(c) jurisdictions failing to implement measures to counter BEPS might be labelled as "non-cooperative tax jurisdictions" by OECD or the European Union, and could be subject to defensive measures in both tax and non-tax areas; and</p> <p>(d) having regard to the comments received during the consultation exercise, the Administration had revised the proposals, in relation to the preparation of master file and local file, so as to (i) relax the exemption thresholds based on the business size of the enterprise in question and (ii) introduce a new exemption based on the amount and nature of related-party transactions undertaken.</p>	
003641 - 004047	Chairman Administration	<p>The Chairman requested the Administration to explain the definitions of "master file" and "local file" in transfer pricing documentation.</p> <p>The Administration advised that:</p> <p>(a) a master file would give a high-level overview of the group of enterprises, including the global business operations and transfer pricing policies. A local file would provide detailed transactional transfer pricing information specific to the enterprise in each jurisdiction, including details of material related party transactions or arrangements undertaken by the enterprise and associated enterprises involved, amount involved in those transactions or arrangements and transfer pricing analysis with respect to those transactions or arrangements. An enterprise would be required to articulate and execute consistent transfer pricing position and provide the tax administration with useful information for assessing transfer pricing risks; and</p> <p>(b) an enterprise engaging in transactions with associated enterprises would not be</p>	

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		<p>required to prepare a master file and a local file for an accounting period if they could meet any two of the following exemption criteria for the period: (i) total amount of revenue not more than \$200 million; (ii) total value of assets not more than \$200 million; and (iii) average number of employees not more than 100. In addition, a new exemption based on the amount and nature of related party transactions was introduced so as to bring it in line with the Mainland's exemption threshold for related party transactions, with a view to facilitating the handling of cross-border transactions.</p>	
004048 - 004427	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN enquired about the estimated number of enterprises which would be exempt from the transfer pricing documentation requirements after relaxing the exemption thresholds of total annual revenue/total assets from \$100 million (as proposed for public consultation) to \$200 million (as proposed in the Bill); and whether the Administration had also assessed the number of enterprises to be exempt from the requirements if the said exemption thresholds were further relaxed to, say, \$300 million.</p> <p>The Administration advised that as no relevant information on assets held by individual enterprises in Hong Kong was available, it would be difficult to assess the number of enterprises to be exempted if the proposed exemption thresholds were further relaxed. Nevertheless, the Administration advised that its proposal to relax the said exemption thresholds was welcomed by the business sector.</p> <p>In response to Mr CHAN's enquiry, the Administration advised that further legislative amendments would be introduced should OECD amend its requirements for the filing of country-by-country ("CbC") reports in future.</p>	

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004428 - 005007	Chairman Mr Holden CHOW Administration	<p>Mr CHOW sought clarification on whether non-compliance with the transfer pricing documentation and CbC reporting requirements would lead to criminal sanctions.</p> <p>The Administration advised that penalty and offence provisions were introduced under the Bill in respect of matters such as failing to file CbC reports or notifications, providing misleading, false or inaccurate information, or omitting information in CbC reports furnished by the reporting entity. Penalty and offence provisions were also prescribed for failing to comply with the requirements in relation to master files and local files. These penalty and offence provisions aimed to facilitate compliance with the relevant requirements for transfer pricing documentation, thereby enabling Hong Kong to implement the BEPS package effectively.</p> <p>Mr CHOW enquired whether the proposed exemption criteria (i.e. \$200 million thresholds) in the Bill were broadly in line with those adopted by other jurisdictions implementing the BEPS package. The Administration advised that:</p> <p>(a) although similar exemption criteria based on the size of business and value of related party transactions might be adopted by other tax jurisdictions, the detailed conditions might not be the same and some might adopt a lower/higher threshold depending on their local economic situations; and</p> <p>(b) the proposed exemption thresholds struck a balance between the cost of compliance by enterprises and the need for Hong Kong to comply with international standards.</p>	
005008 - 010450	Chairman Mr CHUNG Kwok-pan Administration	<p>In the scenario where an enterprise in Hong Kong engaging in foreign transactions with an associated enterprise based in a non-OECD jurisdiction, Mr CHUNG and the Chairman enquired about the obligation for compliance with the documentation and reporting arrangements in the circumstances.</p>	

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		<p>The Administration responded that:</p> <ul style="list-style-type: none">(a) enterprises in Hong Kong would be obliged to prepare the master file and local file unless the exemption conditions were met; and(b) transactions between a Hong Kong enterprise and its overseas associated enterprises would be taxed on the basis that they were effected at arm's length. <p>Mr CHUNG and the Chairman sought clarification on the meaning of transactions between associated enterprises which should be effected at arm's length. The Administration explained that the proposed fundamental transfer pricing rule required an adjustment of the profits or losses of an enterprise where an actual provision made or imposed between two associated persons departed from the provision which would have been made between independent persons and the actual provision created a potential tax advantage.</p> <p>The Administration further advised that:</p> <ul style="list-style-type: none">(a) the transfer pricing rules and the arm's length principle were provided for under the 38 comprehensive avoidance of double taxation agreements signed between Hong Kong and its trading partners; and(b) the Inland Revenue Department ("IRD") currently dealt with transfer pricing issues based on the general provisions in the Inland Revenue Ordinance ("IRO") (Cap. 112) and its Departmental Interpretation and Practice Notes ("DIPNs"). The Bill sought to codify the OECD's transfer pricing rules into the IRO. <p>Mr CHUNG considered that the Administration should explain the transfer pricing rules clearly to the relevant sectors.</p> <p>The Administration agreed that it would strengthen publicity of the transfer pricing regulatory regime and transfer pricing rules after the passage of the Bill.</p>	

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010451 - 010735	Chairman Mr Christopher CHEUNG Administration	<p>Mr CHEUNG asked whether it would require IRD's verification to confirm that an enterprise satisfied the conditions for exemption from transfer pricing documentation.</p> <p>The Administration advised that an honour system would be implemented in that if an enterprise could meet the exemption criteria based on the size of business or the value and nature of related party transactions, it would not be required to prepare a master file and a local file.</p>	
010736 - 011700	Chairman Mr CHUNG Kwok-pan Administration	<p>Mr CHUNG sought explanation of the advance pricing arrangement ("APA") regime. The Administration advised that:</p> <p>(a) the statutory APA regime sought to provide Hong Kong enterprises with an opportunity to reach prior agreement with IRD on the application of the arm's length principle; and</p> <p>(b) the statutory APA regime was a voluntary arrangement to facilitate enterprises in their business planning, and provide greater certainty to enterprises on their tax liabilities.</p>	
011701 - 012054	Chairman Mr Holden CHOW Administration	<p>Mr CHOW asked how arm's length pricing could be set on an objective basis as exceptionally high transaction prices might be offered by independent third parties in the market.</p> <p>The Administration advised that comparable uncontrolled price method was not the only method to determine an arm's length price. Moreover, IRD would look at a series of intragroup transactions rather than one single transaction to determine whether the outcomes of such transactions were reasonable and in line with the arm's length principle.</p>	
012055 - 012339	Chairman Administration	<p>The Chairman sought clarification on:</p> <p>(a) the application of transfer pricing rules on a group of associated enterprises in Hong Kong which did not have transactions with overseas enterprises; and</p>	

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		<p>(b) whether any new penalty would be introduced in connection with the implementation of the BEPS package.</p> <p>The Administration explained that:</p> <p>(a) transfer pricing rules were currently applicable to cases where the transactions were made between the associated enterprises; and</p> <p>(b) codification of the OECD's transfer pricing rules into IRO would not change the prevailing penalties provided for under the IRO in relation to other non-compliances. The Administration proposed to introduce an administrative penalty to ensure compliance with the transfer pricing rule. As transfer pricing was not an exact science and having regard to international practices, the administrative penalty was proposed to be set at a level lower than the existing one for other non-compliances under section 82A of IRO. Specifically, the taxpayer whose tax return did not accord with the arm's length principle would be liable to an administrative penalty by way of additional tax not exceeding the amount of tax undercharged (vis-à-vis an amount trebling the tax undercharged, as currently imposed for incorrect return and other non-compliances under section 82A of the IRO).</p>	
012340 - 013445	Chairman Mr CHUNG Kwok-pan Administration	<p>In response to Mr CHUNG's enquiry, the Administration advised that:</p> <p>(a) IRD would liaise with the tax authorities of overseas tax jurisdictions upon presentation of cases by Hong Kong enterprises for mutual agreement procedure to resolve their tax disputes with the relevant jurisdictions; and</p> <p>(b) an enterprise would not be regarded as having failed to meet the requirements of transfer pricing documentation (including CbC reports) if the failure had resulted from the occurrence of an extraordinary event beyond the control of the enterprise such as fire or flood.</p>	

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item III — Any other business</i>			
013446 - 013458	Chairman	Members agreed to invite the public, including relevant professional organizations, to give views on the Bill. Date of next meeting	

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