

**立法會**  
**Legislative Council**

LC Paper No. CB(1)690/17-18  
(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 second meeting**  
**held on Tuesday, 13 February 2018, at 2:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon Kenneth LEUNG (Chairman)  
Hon James TO Kun-sun  
Hon WU Chi-wai, MH  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Hon Holden CHOW Ho-ding  
Hon CHAN Chun-ying

**Members absent** : Hon WONG Ting-kwong, GBS, JP  
Hon Dennis KWOK Wing-hang  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon CHUNG Kwok-pan

**Public Officers** : **For item I**  
**attending**

Financial Services and the Treasury Bureau

Mr Andrew LAI, JP  
Deputy Secretary (Treasury)<sup>2</sup>

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

**Attendance by  
invitation** : **For item I**

Individual

Mr LEUNG Kwok-hung

The American Chamber of Commerce in Hong Kong

Mr Peter CHEN  
Vice Chairman, Taxation Committee;  
Partner, Zhong Lun Law Firm

Certified Practising Accountants Australia Limited

Mr Paul HO  
Divisional President 2018, CPA Australia in Greater China

Hong Kong Institute of Certified Public Accountants

Mr SO Kwok-kay  
Chairman of Taxation Faculty Executive Committee

The British Chamber of Commerce in Hong Kong

Mr James BADENACH

Association of Chartered Certified Accountants Hong Kong

Mr Fergus WONG  
Member, Tax Sub-committee

Ernst & Young Tax Services Limited

Mr Martin RICHTER  
Partner, International tax and transfer pricing

The Taxation Institute of Hong Kong

Mr WONG Marcellus  
Chairman of Advisory Board, Past President (1996-1999)

KPMG Tax Limited

Mr Curtis NG  
Head of Tax, Hong Kong

Liberal Party

Mr TSE Kiu-cheung  
Member

PricewaterhouseCoopers Limited

Ms Cecilia LEE  
Partner, Tax Services - Transfer Pricing

Deloitte

Miss Petrina CHANG  
Director, Transfer Pricing Tax

**Clerk in attendance :** Ms Angel SHEK  
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. Meeting with deputations and the Administration**

(LC Paper No. CB(1)584/17-18(01) — Assistant Legal Adviser's letter dated 8 February 2018 to the Administration)

Meeting with deputations/individuals and the Administration

*Submissions from deputations/individuals not attending the meeting*

(LC Paper No. CB(1)588/17-18(01) — Submission from Hong Kong Investment Funds Association (English version only)

LC Paper No. CB(1)593/17-18(02) — The Hong Kong Association of Banks (English version only)

*(Post-meeting note: seven submissions from deputations on the subject received after the meeting (LC Paper Nos. CB(1)601/17-18(03), CB(1)614/17-18(02) to (05) and CB(1)614/17-18(07) to (08) were circulated to members via emails on 14 and 27 February 2018 respectively.)*

The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations that their written submissions provided to the Bills Committee and views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

Action

Presentation of views by deputations/individuals

2. At the invitation of the Chairman, a total of 12 deputations/individuals presented their views at the meeting. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Meeting with the Administration

*Relevant papers*

(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)

Follow-up actions to be taken by the Administration

- Admin 3. The Administration was requested to:
- (a) clarify the interaction between the proposed transfer pricing rules under the Bill and the existing rules for determining the source of income or profit under the territorial-based tax regime of Hong Kong, including which set of rules would prevail in case of conflict; and
  - (b) provide written response to the views and concerns raised by deputations/individuals at the meeting and/or in their written submissions.

*(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(1)657/17-18(02) on 5 March 2018.)*

Action

**II. Any other business**

Date of next meeting

4. The Chairman informed members that the next meeting of the Bills Committee was scheduled for Tuesday, 6 March 2018, at 4:30 pm.

*(Post-meeting note: The notice of meeting was issued to members vide LC Paper No. CB(1)600/17-18 on 14 February 2018.)*

5. There being no other business, the meeting ended at 5:00 pm.

Council Business Division 1  
Legislative Council Secretariat  
14 March 2018

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

**Proceedings of the second meeting  
on Tuesday, 13 February 2018, at 2:30 pm  
in Conference Room 1 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda Item I — Meeting with deputations and the Administration</i>			
000425 – 000801	Chairman	Introductory remarks	
000802 – 001310	Mr LEUNG Kwok-hung	Presentation of views	
001311 – 001407	The American Chamber of Commerce in Hong Kong	Presentation of views	
001408 – 001706	Certified Practising Accountants Australia Limited	Presentation of views	
001707 – 002204	Hong Kong Institute of Certified Public Accountants	Presentation of views [LC Paper No. CB(1)601/17-18(01)]	
002205 – 002619	The British Chamber of Commerce in Hong Kong	Presentation of views	
002620 – 003130	Association of Chartered Certified Accountants Hong Kong	Presentation of views [LC Paper No. CB(1)614/17-18(01)]	
003131 – 003644	Ernst & Young Tax Services Limited	Presentation of views [LC Paper No. CB(1)584/17-18(02)]	
003645 – 004201	The Taxation Institute of Hong Kong	Presentation of views [LC Paper No. CB(1)601/17-18(02)]	
004202 – 004704	KPMG Tax Limited	Presentation of views [LC Paper No. CB(1)614/17-18(06)]	
004705 – 005101	Liberal Party	Presentation of views	
005102 – 005600	PricewaterhouseCoopers Limited	Presentation of views [LC Paper No. CB(1)595/17-18(01)]	

Time marker	Speaker	Subject(s)	Action required
005601 – 010144	Deloitte	Presentation of views [LC Paper No. CB(1)593/17-18(01)]	
010145 – 012424	Chairman Administration	<p>The Administration thanked the deputations for their support in principle for the Government's proposal to introduce measures to counter base erosion and profit shifting ("BEPS"). The Administration also understood the deputations' concerns on certain issues and their wish to seek clarification of certain provisions in the Bill. The Administration then gave an overall response to the views raised by the deputations at the meeting:</p> <p>(a) it was necessary for Hong Kong to follow the international requirements in enhancing tax transparency and combating cross-border tax evasion, including implementation of the package of action plans released by the Organization for Economic Co-operation and Development ("OECD") to counter BEPS. Otherwise, Hong Kong would risk being labelled as non-cooperative by OECD and/or the European Union ("EU") and subject to defensive measures in both tax and/or non-tax areas;</p> <p>(b) the Administration had adopted a pragmatic approach by focusing on the codification of the transfer pricing rules into the Inland Revenue Ordinance (Cap. 112) ("IRO") and implementation of the four minimum standards of the BEPS package. This sought to meet the international tax standards, whilst minimizing the compliance burden on the business sector;</p> <p>(c) regarding some deputations' call for exempting domestic transactions conducted between two Hong Kong associated persons who were subject to the same effective tax rate (i.e. tax neutral domestic transactions which would not give rise to any tax revenue loss) from the fundamental transfer pricing rule and related documentation requirements, the Administration responded that the OECD's transfer pricing rules had all along been implemented by the Inland Revenue Department ("IRD") through the application of the arm's length principle to transactions between associated enterprises, covering both cross-border and domestic transactions. At present, IRD dealt with transfer pricing issues based on the general provisions in IRO and its Departmental Interpretation and Practice Notes ("DIPNs"). The OECD's transfer pricing rules would be codified through the Bill to</p>	



Time marker	Speaker	Subject(s)	Action required
		<p>bring greater clarity to taxpayers and to meet the OECD's requirements;</p> <p>(d) it was an international norm that transfer pricing rules should be applicable to both cross-border and domestic transactions. Although the chance for multinational enterprises to use BEPS tactics was higher than domestic enterprises and cross-border transactions might pose greater BEPS risks, domestic transactions could also be manipulated to shift profits and enable the taxpayers to gain tax advantages under certain circumstances. It was therefore not justifiable to adopt different treatments for cross-border and domestic transactions but IRD would take into account the overall Hong Kong tax position of domestic transactions in tax audits;</p> <p>(e) on the fees payable in respect of application for advance pricing arrangement ("APA"), the proposed service charge was calculated on the basis of each hour (or any part of an hour) spent by the IRD officers and relevant expenses. This was in line with the "user pay" and "cost-recovery" principles;</p> <p>(f) as regards the treatment for transfer pricing related to intellectual property ("IP"), the Administration's proposal was that where a person had made value creation contributions in relation to an IP in Hong Kong, e.g. by performing any development, enhancement, maintenance, protection or exploitation ("DEMPE") functions, and a sum was derived by an associate (which was a non-Hong Kong resident) of the person for the use of or right to use the IP, the part of the sum that was attributable to his value creation contributions in Hong Kong would be regarded as a Hong Kong sourced trading receipt. The rationale was that a person who performed any part of DEMPE functions in Hong Kong in relation to an IP could be regarded as the economic owner (in part or in whole) of the IP so created, rather than purely looking at the matter from the legal ownership perspective. Therefore, the Administration proposed to introduce specific provisions in IRO to deem part or all of the income derived from the subsequent exploitation of the IP as profits of the person chargeable to tax in Hong Kong. This was in line with the spirit of the anti-BEPS requirements that profits should be taxed where economic</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>activities generating the profits were performed and where value was created;</p> <p>(g) the Administration would consider how to further alleviate the compliance burden arising from transfer pricing documentation on enterprises; and</p> <p>(h) the Administration would continue its efforts in concluding more Comprehensive Double Taxation Agreements ("CDTAs") with other tax jurisdictions.</p> <p>The Administration would provide a written response to the views and concerns raised by deputations/individuals at the meeting and/or in their written submissions.</p>	<p>Admin (paragraph 3 (b) of the minutes refers)</p>
<p>012425 – 013401</p>	<p>Chairman Mr CHAN Chun-ying PricewaterhouseCoopers Limited Ernst &amp; Young Tax Services Limited Administration</p>	<p>The Chairman requested the Administration to provide a written response to clarify the interaction between the proposed transfer pricing rules under the Bill and the existing rules for determining the source of income or profit under the territorial-based tax regime of Hong Kong, including which set of rules would prevail in case of conflict. The Chairman also expressed concern about whether IRD had sufficient resources to implement the proposals introduced by the Bill.</p> <p>Discussion on the proposed time limit for preparation of master file and local file.</p> <p>The Administration agreed to review the proposed time limit to allow sufficient time for enterprises to prepare the said files.</p>	<p>Admin (paragraph 3 (a) of the minutes refers)</p>
<p>013402 – 014530</p>	<p>Chairman Mr Holden CHOW PricewaterhouseCoopers Limited Administration</p>	<p>Further discussion on the proposed time limit for preparation of master file and local file.</p> <p>Discussion on the roll-forward approach to prepare the master file and local file if there were no material changes to the files during an accounting period.</p> <p>Mr CHOW stressed that Hong Kong should not go beyond the minimum international standards for implementing the BEPS package, otherwise it would create undue compliance burden on enterprises and bring adverse impact on the local business environment.</p>	

Time marker	Speaker	Subject(s)	Action required
014531 – 015152	Chairman Certified Practising Accountants Australia Limited Ernst & Young Tax Services Limited Administration	Discussion on the fee mechanism for APA.  The Administration advised that while IRD currently did not charge any fee on enterprises for APA, it was considered timely and appropriate to review this arrangement together with the existing fee mechanism for advance tax ruling under IRO, having regard to the established "user pay" and "cost-recovery" principles.	
015153 – 015901	Chairman Mr CHAN Chun-ying Association of Chartered Certified Accountants Hong Kong Administration	Discussion on the impact of the proposed enhancement to the tax credit system under the Bill on salaries tax payers working in more than one tax jurisdictions.  The Administration stressed that the enhanced tax credit system was meant to, among other things, state clearly in IRO that CDTAs should prevail in case of any conflict between the provisions in IRO and those in CDTA so as to prevent any overriding of relief and treatment agreed under the CDTA, and ensure that unilateral relief would not be granted in respect of a foreign tax payment if tax credit was allowable.	
015902 – 022400	Chairman Mr Holden CHOW The Taxation Institute of Hong Kong PricewaterhouseCoopers Limited Ernst & Young Tax Services Limited Administration	Further discussion on the application of transfer pricing rules and related documentation requirements to tax-neutral domestic transactions.  The Administration remarked that:  (a) incorporation of OECD's transfer pricing rules into IRO, instead of maintaining the rules in DIPNs, would help demonstrate Hong Kong's commitment to the BEPS package;  (b) revenue loss might arise if a domestic transaction was taxed not on the basis that it was effected at arm's length. This was because sometimes one party to a domestic transaction might be covered by a specific tax concession regime provided under IRO while the other party might not be covered. To meet the international standards on countering harmful tax practices, it was necessary to ensure that domestic transactions, not just cross-border transactions, also adhered to the international transfer pricing principles; and  (c) as usual, IRD would give due regard to a number of factors in considering whether transfer pricing adjustment was necessary for a transaction (or a series of transactions) between associated enterprises.	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
022401 – 022739	Chairman Mr Holden CHOW Administration	The Chairman and Mr CHOW suggested the Administration consider exempting domestic transactions from transfer pricing documentation while IRD could still seek related information from the enterprises concerned on a need basis.	
<b><i>Agenda Item II – Any other business</i></b>			
022740 – 023107	Chairman Mr Holden CHOW Administration	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
14 March 2018