

**立法會**  
**Legislative Council**

LC Paper No. CB(1)899/17-18  
(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 fourth meeting**  
**held on Wednesday, 21 March 2018, at 8:30 am**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Kenneth LEUNG (Chairman)  
Hon James TO Kun-sun  
Hon WONG Ting-kwong, GBS, JP  
Hon WU Chi-wai, MH  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon CHUNG Kwok-pan  
Hon Holden CHOW Ho-ding  
Hon CHAN Chun-ying

**Members absent** : Hon Abraham SHEK Lai-him, GBS, JP  
Hon Dennis KWOK Wing-hang  
Hon Alvin YEUNG  
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** : 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

---

Action

**I. Confirmation of minutes**

(LC Paper No. CB(1)690/17-18 — Minutes of the meeting held on  
13 February 2018)

The minutes of the meeting held on 13 February 2018 were confirmed.

Action

**II. Meeting with the Administration**

Matters arising from previous meeting

(LC Paper No. CB(1)702/17-18(01) — List of follow-up actions arising from the discussion at meeting on 6 March 2018

LC Paper No. CB(1)702/17-18(02) — Administration's response to the issues raised at the meeting on 6 March 2018)

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

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

LC Paper No. CB(1)657/17-18(03) — Administration's reply to Assistant Legal Adviser's letter dated 8 February 2018)

Discussion

2. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Action

Follow-up actions to be taken by the Administration

Admin 3. The Administration was requested to provide a written response on the following:

- (a) whether it would further relax the proposed threshold on total annual revenue from \$300 million to \$500 million for the purpose of exemption from transfer pricing ("TP") documentation (i.e. master file and local file) requirements based on the size of business, while keeping the threshold on total assets and staff size at \$300 million and 100 respectively, and explain its considerations with reference to (i) the number of taxpaying enterprises and their contributions to profits tax in Hong Kong, (ii) the estimated number of enterprises to be relieved from the documentation requirements if the threshold was further relaxed or not, and (iii) the relevant exemption criteria and threshold levels set by other comparable tax jurisdictions (such as Singapore) for TP documentation requirements;
- (b) the justifications, with reference to the relevant parts of the TP guidelines or other document(s) of the Organisation for Economic Co-operation and Development ("OECD"), for introducing the proposed section 15F (sums derived from intellectual property ("IP") by non-Hong Kong resident associates) to the Inland Revenue Ordinance (Cap. 112) ("IRO"); and
- (c) the justifications for introducing the proposed section 15BA (changes in trading stock) to IRO; and the application of section 15BA, including its interaction with (i) relevant case law in Hong Kong relating to the tax timing of trading stock from which profits had not yet been earned or realized and (ii) existing section 15C (valuation of trading stock on cessation of business).

4. The Administration was also requested to provide when appropriate, for the Panel on Financial Affairs' reference/consideration, the draft/updated Departmental Interpretation and Practice Notes to be issued by the Inland Revenue Department on matters relating to the TP regulatory regime.

*(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(1)774/17-18(02) on 9 April 2018.)*

Action

**III. Any other business**

Date of next meeting

5. The Chairman reminded members that the meetings of the Bills Committee in April and May 2018 had been scheduled as follows:

| <u>Date</u>              | <u>Time</u>          |
|--------------------------|----------------------|
| Wednesday, 11 April 2018 | 8:30 am to 10:30 am  |
| Wednesday, 25 April 2018 | 8:30 am to 10:30 am  |
| Monday, 14 May 2018      | 4:30 pm to 6:30 pm   |
| Tuesday, 29 May 2018     | 10:45 am to 12:45 pm |

6. The Chairman said that the above schedule had been issued to members vide LC Paper No. CB(1)693/17-18 on 14 March 2018. The next meeting of the Bills Committee would be held on Wednesday, 11 April 2018, at 8:30 am.

7. There being no other business, the meeting ended at 10:00 am.

Council Business Division 1  
Legislative Council Secretariat  
2 May 2018

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

**Proceedings of the fourth meeting  
on Wednesday, 21 March 2018, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

| Time marker   | Speaker  | Subject(s)   | Action required                                 |
|---|--|--|---|
| <i>Agenda Item I – Confirmation of minutes</i>          |  |  |   |
| 000505 –<br>000740                                      | Chairman<br>Mr CHUNG Kwok-pan  | <p>The minutes of the meeting held on 13 February 2018 (LC Paper No. CB(1)690/17-18) were confirmed.</p> <p>Corrigendum to amend the translation of "\$200 million" from "200 萬元" to "2 億元" in paragraph (b) of the Chinese version of LC Paper No. CB(1)702/17-18(01).</p>  |   |
| <i>Agenda Item II - Meeting with the Administration</i> |  |  |   |
| 000741 –<br>001814                                      | Chairman<br>Administration   | The Administration briefed members on its response to the issues raised at the meeting of the Bills Committee held on 6 March 2018 (LC Paper No. CB(1)702/17-18(02)).  |   |
| 001815 –<br>003623                                      | Chairman<br>Mr CHUNG Kwok-pan<br>Mr CHAN Chun-ying<br>Administration | <p>Discussion on Mr CHUNG's proposal for further relaxing the proposed threshold on total annual revenue from \$300 million to \$500 million for the purpose of exemption from transfer pricing ("TP") documentation (i.e. master file and local file) requirements based on the size of business, while keeping the threshold on total assets and staff size at \$300 million and 100 respectively.</p> <p>The Administration stressed that in considering whether the threshold levels should be further relaxed, it had to give due regard to a number of factors including the reasonableness of the threshold levels, the estimated number of enterprises subject to such requirements and OECD's views on the robustness of the TP documentation regime. Since it was expected that only some 2 000 enterprises would need to prepare master and local files, most of the small and medium enterprises would be exempt from TP documentation requirements.</p> <p>At the request of the Bills Committee, the Administration would provide a written response on Mr CHUNG's proposal, with reference to the number of taxpaying enterprises and their contributions to profits tax in Hong Kong; the estimated number of enterprises to be relieved from the TP documentation requirements if the threshold was further relaxed or not; and the relevant exemption criteria and threshold</p> | Admin<br>(paragraph 3(a) of the minutes refers) |

| Time marker     | Speaker  | Subject(s)  | Action required                           |
|-----------------|--|---|---|
|                 |  | <p>levels set by other comparable tax jurisdictions (such as Singapore) for TP documentation requirements.</p> <p>In reply to Mr CHAN, the Administration explained its proposal to impose a cap on the amount of fees to be charged by the Inland Revenue Department ("IRD") in respect of applications for advance pricing arrangements, excluding direct costs such as the costs of engaging external advisors and travelling expenses, as set out in paragraph 19 of LC Paper No. CB(1)657/17-18(03).</p>   |   |
| 003624 – 004302 | <p>Chairman<br/>Mr CHUNG Kwok-pan<br/>Mr WONG Ting-<br/>kwong<br/>Administration</p> | <p>Discussion on the consultation mechanism for IRD's Departmental Interpretation and Practice Notes ("DIPNs") relating to the TP regulatory regime.</p> <p>The Administration advised that it would follow OECD's guidelines and relevant international tax practices when drafting/updating the DIPNs, and seek the views of the Joint Liaison Committee on Taxation ("JLCT") (which comprised members from various chambers of commerce, legal/taxation/accounting professionals and academics) where appropriate.</p> <p>The Chairman declared that he was a JLCT member.</p> <p>The Administration advised that it would provide the draft/updated DIPNs relating to the TP regulatory regime for the Panel on Financial Affairs' reference in due course.</p> | Admin (paragraph 4 of the minutes refers) |
| 004303 – 004644 | <p>Chairman<br/>Mr CHUNG Kwok-pan<br/>Administration</p>                             | <p>Mr CHUNG expressed concern about possible compliance difficulty given rise by any major difference between the long existing concept of TP under section 20 (liability of certain non-resident persons) of the Inland Revenue Ordinance (Cap. 112) ("IRO") and the latest OECD's TP rules to be codified into IRO by the Bill.</p> <p>The Administration advised that IRO would be amended to reflect the latest TP requirements promulgated by OECD. Among other amendments, section 20 would be repealed. As multinational enterprises had already been following the latest international requirements related to TP in practice, the impact on them arising from codification of OECD's TP rules into IRO should be minimal.</p>                             |   |

| Time marker     | Speaker   | Subject(s)  | Action required |
|-----------------|---|---|-----------------|
| 004645 – 011009 | Chairman<br>Mr CHUNG Kwok-pan<br>Administration | <p>Discussion on the mechanism for exchange of TP-related information with other tax jurisdictions.</p> <p>The Administration explained the existing mechanism for exchange of tax information ("EoI") under the comprehensive avoidance of double taxation agreements or tax information exchange agreements, and for notifying subject persons of the EoI requests ("notification mechanism"), pointing out that:</p> <ul style="list-style-type: none"> <li>(a) IRD would only exchange tax information foreseeably relevant to the EoI requests and would not entertain requests which were "fishing expeditions";</li> <li>(b) under the notification mechanism, the subject person would be notified of the information that IRD was prepared to disclose to the tax authority in question. The subject person could ask IRD to amend any part of the information on the grounds that the information or any part of the information concerned was factually incorrect or was not related to the person. If the subject person was not satisfied with the decision of the Commissioner of Inland Revenue, the person might refer the case to the Financial Secretary for directions in accordance with the relevant statutory provisions;</li> <li>(c) while foreign tax jurisdictions could not impose penalties on enterprises in Hong Kong if the latter failed to meet the TP documentation requirements proposed in the Bill, IRD would consider, having regard to the facts of each case, whether to impose penalties for non-compliances. IRD would exercise flexibility in handling inadvertent non-compliances;</li> <li>(d) compliance with TP documentation requirements was essential for effective implementation of EoI and fulfillment of Hong Kong's treaty obligations by facilitating IRD's collection of information readily available from the TP documentation and response to the EoI requests for TP-related information within the specified time (i.e. 90 days);</li> <li>(e) a statutory dispute resolution mechanism (i.e. via mutual agreement procedure or arbitration) would be put in place by the Bill for resolving treaty-related disputes on matters including the application of TP; and</li> </ul> |                 |



| Time marker  | Speaker   | Subject(s)   | Action required   |
|--|---|--|---|
|  |   | (f) there were existing databases on royalty rates for different types of intellectual properties ("IPs"), which IRD could make reference to when dealing with disputes related to revenue from IPs and valuation of IPs.  |   |
| 011010 –<br>012909                                 | Chairman<br>Administration                      | <p>At the request of the Chairman, the Administration agreed to provide the following information:</p> <p>(a) the justifications, with reference to the relevant parts of the TP guidelines or other document(s) of OECD, for introducing the proposed section 15F (sums derived from IP by non-Hong Kong resident associates) to IRO; and</p> <p>(b) the justifications for introducing the proposed section 15BA (changes in trading stock) to IRO; and the application of section 15BA, including its interaction with (i) relevant case law in Hong Kong relating to the tax timing of trading stock from which profits had not yet been earned or realized and (ii) the existing section 15C (valuation of trading stock on cessation of business).</p> | <p>Admin (paragraph 3(b) of the minutes refers)</p> <p>Admin (paragraph 3(c) of the minutes refers)</p> |
| <b><i>Agenda Item III – Any other business</i></b> |   |  |   |
| 012910 –<br>013515                                 | Chairman<br>Mr CHUNG Kwok-pan<br>Administration | <p>Meeting schedule and date of next meeting</p> <p>The Chairman indicated his intention to commence clause-by-clause examination of the Bill at the next meeting.</p> <p>The Administration agreed to provide its draft amendments to the Bill in batches to facilitate clause-by-clause examination.</p>   |   |