

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1019/17-18  
(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 sixth meeting**  
**held on Wednesday, 25 April 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 Abraham SHEK Lai-him, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon WU Chi-wai, MH  
Hon CHAN Chi-chuen  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Hon Holden CHOW Ho-ding  
Hon CHAN Chun-ying

**Members absent** : Hon Charles Peter MOK, JP  
Hon Dennis KWOK Wing-hang

**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

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Action

**I. Confirmation of minutes**

(LC Paper No. CB(1)793/17-18 — Minutes of the meeting held on  
6 March 2018)

The minutes of the meeting held on 6 March 2018 were confirmed.

Action

**II. Meeting with the Administration**

(LC Paper No. CB(1)847/17-18(01) — Submission from Federation of Hong Kong Industries (English version only))

Clause-by-clause examination of the Bill

(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)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

LC Paper No. CB(1)774/17-18(02) — Administration's response to the issues raised at the meeting on 21 March 2018 and summary of the draft amendments proposed by the Administration)

LC Paper No. CB(1)847/17-18(02) — Draft amendments proposed by the Administration (First batch)

Action

Discussion

2. The Bills Committee deliberated (index of proceedings attached at the **Annex**).
3. The Bills Committee continued clause-by-clause examination of the Bill (including the Administration's proposed amendments to the relevant clauses (LC Paper No. CB(1)847/17-18(02)) and examined up to Division 2 of Part 8AA under Clause 9 of the Bill.

**III. Any other business**

Date of next meeting

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Monday, 14 May 2018, at 4:30 pm.
5. There being no other business, the meeting ended at 10:12 am.

Council Business Division 1  
Legislative Council Secretariat  
11 June 2018

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

**Proceedings of the sixth meeting  
on Wednesday, 25 April 2018, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda Item I – Confirmation of minutes</i>			
000535 – 000699	Chairman	The minutes of the meeting held on 6 March 2018 (LC Paper No. CB(1)793/17-18) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000700 – 000802	Chairman	Introductory remarks	
000803 – 001029	Chairman Administration	<p>Briefing on the first batch of draft amendments proposed by the Administration (LC Paper No. CB(1)847/17-18(02)).</p> <p>As regards the exemption from the preparation of master file and local file, the Administration advised that in response to members' suggestions, it would propose to further relax the exemption thresholds based on size of business by raising the exemption threshold for total amount of revenue from \$300 million to \$400 million, while keeping the thresholds on total value of assets and average number of employees unchanged at \$300 million and 100 respectively. The Administration considered that an appropriate balance had been struck between maintaining the overall effectiveness of the transfer pricing documentation ("TP") requirements and minimizing the compliance burden on the business sector.</p>	
001030 – 001399	Chairman Mr CHUNG Kwok-pan Administration	Discussion on the concerns about the application of TP rules to domestic transactions, and the proposed section 15F (sums derived from intellectual property by non-Hong Kong resident associates) raised in the submission from the Federation of Hong Kong Industries (LC Paper No. CB(1)847/17-18(01)).	
001400 – 001432	Chairman Mr CHUNG Kwok-pan Administration	In response to Mr CHUNG's enquiry, the Administration advised that the proposed threshold of \$400 million on total amount of revenue for the purpose of exemption from TP documentation requirements would be calculated for each accounting year.	

Time marker	Speaker	Subject(s)	Action required
<p><b>Clause-by-clause examination of the Bill</b>                      [The Bill (LC Paper No. CB(3)232/17-18)]                      [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)506/17-18(01))]                      [Draft amendments proposed by the Administration (First batch) (LC Paper No. CB(1)847/17-18(02))]</p>			
001433 – 002058	Chairman Administration	<p><b>Part 2 – Amendments to Inland Revenue Ordinance</b></p> <p>Division 1 – Amendments Relating to Double Taxation</p> <p><u>Clause 3 – Section 8 amended (charge of salaries tax)</u></p> <p><u>Clause 4 – Section 16 amended (ascertainment of chargeable profits)</u></p> <p>The Administration's briefing on Clauses 3 and 4 and its proposed amendments to the clauses.</p> <p>Members raised no query.</p>	
002059 – 004327	Chairman Mr CHUNG Kwok-pan Mr WU Chi-wai Administration	<p><u>Clause 5 – Section 48A added</u></p> <p>The Administration's briefing on Clause 5 and its proposed amendments to the clause.</p> <p>In response to the Chairman's enquiry, the Administration advised that the proposed amendments for deleting the definition of "non-DTA territory" from section 48A was a technical amendment because the relevant term would be relocated to the proposed section 50AAC(1).</p> <p><u>Clause 6 – Section 49 amended (arrangements for relief from double taxation and exchange of information)</u></p> <p>The Administration's briefing on Clause 6 and its proposed amendments to the clause.</p> <p>Discussion on the conditions for relief by way of tax credit for any tax that would have been payable under the laws of a DTA territory.</p> <p>Discussion on whether the enhanced tax deduction for research and development ("R&amp;D") expenditure to be introduced by the Inland Revenue (Amendment) (No. 3) Bill 2018 ("No. 3 Bill") would be perceived by other tax authorities of DTA territories as unfair taxation or violating the relevant terms of Comprehensive Avoidance of Double Taxation Agreements ("CDTAs").</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration pointed out that CDTAs dealt with the tax liabilities of taxpayers in respect of their incomes taxable in Hong Kong and a CDTA partner, and provided double taxation relief by way of tax credit. The CDTAs were not concerned with the expenditures (including R&amp;D expenditures) of the taxpayers in question. To prevent abuse of the enhanced tax deduction for R&amp;D expenditure, anti-avoidance provisions would be incorporated in the Inland Revenue Ordinance (Cap. 112) ("IRO") by way of the No. 3 Bill.</p> <p>On the definition of "relative" ("親屬") in the proposed section 49(1C), the Administration advised that the definition was derived from the existing ones under IRO.</p> <p><u>Clause 7 – Section 50 amended (tax credits)</u></p> <p>The Administration's briefing on Clause 7 and its proposed amendments to the clause.</p> <p>Discussion on the definition of "Hong Kong resident person".</p> <p>In response to Mr CHUNG's enquiry, the Administration advised that the relaxation of the time limit for making a claim for double taxation relief by way of tax credit from two years to six years was proposed in response to industries' call and was meant to tally with the limitation period under the laws of Hong Kong.</p>	
004328 – 011499	<p>Chairman Mr WONG Ting-kwong Mr CHUNG Kwok-pan Mr WU Chi-wai Assistant Legal Adviser ("ALA") Administration</p>	<p><u>Clause 8 – Section 50AA and 50AAB added</u></p> <p>The Administration's briefing on Clause 8 and its proposed amendments to the clause.</p> <p>In response to the Chairman's enquiry, the Administration advised that the time limit of two years for making an assessment, additional assessment or claim as a result of the adjustment to the amount of the foreign tax or tax payable in Hong Kong was an existing arrangement under IRO.</p> <p>Discussion on the mutual agreement procedure and arbitration provided under CDTAs as well as their interaction with the objection and appeal mechanism under IRO.</p> <p>In response to the enquiries by ALA, Mr CHUNG and Chairman, the Administration advised that if a</p>	

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		<p>taxpayer had lodged an objection or appeal against an assessment in respect of which a case had also been presented for the mutual agreement procedure, or an issue had also been referred for arbitration under a CDTA, the taxpayer might apply for holding over of the tax in dispute under IRO. In respect of controversial foreign tax assessment, it would be dealt with by the competent authority of the foreign jurisdiction concerned in accordance with the tax legislation of that jurisdiction.</p>	
<p>011500 – 014447</p>	<p>Chairman Mr CHUNG Kwok-pan Mr Holden CHOW ALA Administration</p>	<p>Division 2 – Amendments Relating to Transfer Pricing: Addition of New Part 8AA and Schedules 17G and 17H</p> <p><u>Clause 9 – Part 8AA added</u></p> <p><i><u>Division 1 – Preliminary</u></i></p> <p>The Administration's briefing on Clause 9 for the Note and Division 1 of Part 8AA and its proposed CSAs to the Division.</p> <p>In response to members' enquiries, the Administration advised that the definition of "recognized pension fund" under the proposed section 50AAC(1) was based on that adopted in the latest version of the Model Tax Convention on Income and on Capital promulgated by the Organisation for Economic Co-operation and Development. It would cover mandatory provident fund schemes and occupational retirement schemes in Hong Kong. The Administration also advised that an enterprise and its recognized pension fund would not be regarded as associated persons.</p> <p>Discussion on the definition of "resident for tax purposes".</p> <p>In response to Mr CHUNG's enquiry, ALA and the Administration advised that any further amendments to the schedules in the Bill (e.g. Schedule 17G) necessitated by relevant changes made to OECD rules, etc. would be made by way of subsidiary legislation published in the Gazette, which would be subject to the negative vetting procedure of the Legislative Council.</p>	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda Item III – Any other business</i>			
014448 – 014635	Chairman Administration	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
11 June 2018