

立法會
Legislative Council

LC Paper No. CB(1)1272/17-18
(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 seventh meeting
held on Monday, 14 May 2018, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex

Members present : Hon Kenneth LEUNG (Chairman)
Hon James TO Kun-sun
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 Holden CHOW Ho-ding
Hon CHAN Chun-ying

Members absent : Hon Abraham SHEK Lai-him, GBS, JP
Hon WU Chi-wai, MH
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)899/17-18 — Minutes of the meeting held on
21 March 2018)

The minutes of the meeting held on 21 March 2018 were confirmed.

Action

II. Meeting with the Administration

Clause-by-clause examination of the Bill

(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)941/17-18(01) — Draft amendments proposed by the Administration (Consolidated version))

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)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)

Discussion

2. The Bills Committee deliberated (index of proceedings attached at the **Annex**) and continued clause-by-clause examination of the Bill.

Action

Follow-up actions to be taken by the Administration

- Admin 3. The Administration explained that assessors of the Inland Revenue Department ("IRD") conducted tax assessments/re-assessments based on, among other things, the following principles: (a) the assessments/re-assessments should be objective and grounded on facts, and (b) the motive of the assessments/re-assessments should be legitimate; and that the assessors should explain the basis/assumptions of their assessments/re-assessments to the taxpayers in question. In this connection, the Administration was requested to provide supplementary information, if any, on the above principles, and advise whether IRD had stated those principles in its relevant departmental interpretation and practice notes and/or other internal guidelines for reference by assessors.

(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(1)985/17-18(02) on 18 May 2018.)

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 Wednesday, 23 May 2018, at 8:30 am.
5. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 1
Legislative Council Secretariat
16 July 2018

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

**Proceedings of the seventh meeting
on Monday, 14 May 2018, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Confirmation of minutes</i>			
000309 – 000408	Chairman	The minutes of the meeting held on 21 March 2018 (LC Paper No. CB(1)899/17-18) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000409 – 000724	Chairman Mr CHUNG Kwok-pan	Introductory remarks	
000725 – 001019	Chairman Administration	Briefing on the consolidated version of the draft amendments proposed by the Administration (LC Paper No. CB(1)941/17-18(01)).	
<p>Clause-by-clause examination of the Bill [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 (consolidated version) (LC Paper No. CB(1)941/17-18(01))]</p>			
001020 – 010313	Chairman Mr CHUNG Kwok-pan Administration	<p>Part 2 – Amendments to Inland Revenue Ordinance</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>The Administration's briefing on Divisions 1, 2 and 3 of Clause 9 and its proposed amendments to the Divisions.</p> <p>Discussion on the basis and principles of tax assessments/re-assessments.</p> <p>Mr CHUNG expressed concern that assessors of the Inland Revenue Department ("IRD") might not explain to taxpayers the basis of their assessments/re-assessments (collectively referred to as "tax assessments"), which made it difficult for the latter to ascertain whether the tax assessments were accurate and an objection/appeal against the assessments should be filed in case of disputes.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that:</p> <ul style="list-style-type: none"> (a) tax assessments by IRD were made objectively on the basis of facts, and the motive of the assessments should be legitimate (i.e. for tax purposes and protection of tax revenue). The assessors would normally explain to the taxpayers the facts and circumstances which had been taken into account in arriving at the assessments, provided that such disclosure would not prejudice any audit or investigation work. The taxpayer would also be reminded of his right of objection against the assessment and his right of appeal to the Board of Review or the Court. The Administration undertook to bring up Mr CHUNG's concern at the internal discussions of IRD; (b) the burden of proof would rest with the taxpayer (not the assessor) if the person lodged an objection or appeal against a tax assessment; and (c) IRD would not conduct tax investigations on behalf of overseas tax authorities. <p>In response to the Chairman's enquiry, the Administration advised that the notice given under the proposed section 50AAF(3) sought to require a person to provide information to prove that the amount of the person's income or loss as stated in the person's tax return was the arm's length amount. Generally, the notice would not be given beyond the six-year limitation period.</p> <p>In response to the Chairman's enquiry, the Administration advised that:</p> <ul style="list-style-type: none"> (a) the provisions in the proposed sections 50AAG and 50AAH were relevant to the interpretation of "participation condition" under the proposed section 50AAF(1)(b) and were based on the relevant definitions used by the Organisation for Economic Co-operation and Development; and (b) under the proposed section 50AAH, person A would be regarded as participating in the management, control or capital of person B if person A directly, or indirectly through an interposed person, held a controlling interest in person B. <p>Discussion on the proposed scope of "transaction" under the proposed section 50AAI, which would</p>	<p>Admin (paragraph 3 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>include any operation, scheme, arrangement, understanding and mutual practice.</p> <p>Mr CHUNG enquired on how the arm's length prices could be determined where (a) the goods/services were provided by an enterprise free of charge to both associated enterprises and third party enterprises, or no reference could be made to the transfer price ("TP") of similar transactions in the market; or (b) the TP had been written off as bad debts due to default/waiving of payment.</p> <p>The Administration advised that the proposed scope was meant to cover all relevant transactions between associated enterprises to which the TP rules should be applicable. In actual practice, whether a transaction was carried out at arm's length and whether an adjustment of the advantaged person's income or loss was necessary had to be determined having regard to the circumstances of each case.</p>	
010314 – 011124	Chairman Assistant Legal Adviser ("ALA") Administration	<p><u>Subdivision 2 – Permanent Establishment in Hong Kong</u></p> <p>ALA enquired about the meaning of "distinct and separate enterprise" in the proposed section 50AAK(2) as compared to the definition of "independent enterprise" in the proposed section 50AAC(1).</p> <p>The Administration advised that the phrase "distinct and separate enterprise" was need in the proposed section 50AAK(2) to reflect that permanent establishments of a person/enterprise in different jurisdictions would be treated as distinct and separate enterprise for the purpose of charging profits tax whereas the proposed section 50AAC(2)(b) sought to explain how a person or an enterprise was taken to be independent of another person or enterprise with reference to the "participation condition" under the proposed section 50AAG.</p> <p>In response to the Chairman's enquiry, the Administration advised that the separate enterprises principle for attributing income or loss of a non-Hong Kong resident person under the proposed section 50AAK would not limit or alter the conditions for the charge of profits tax under the Inland Revenue Ordinance (Cap. 122).</p>	

Time marker	Speaker	Subject(s)	Action required
011125 – 014109	Chairman Mr CHUNG Kwok-pan Administration	<p><u>Division 3 – Relief Consequential on Transfer Pricing Adjustment</u></p> <p>In response to the enquiries of Mr CHUNG and the Chairman, the Administration explained the application for and granting of relief consequential on TP adjustment, and advised that –</p> <p>(a) "advantaged person" under the proposed section 50AAM referred to an affected person on whom a potential advantage in relation to Hong Kong tax was conferred by the actual provision prior to TP adjustment;</p> <p>(b) in determining an arm's length amount and whether TP adjustment was necessary, IRD would conduct functional analysis and comparability analysis on the transactions in question;</p> <p>(c) as TP adjustment involved the adjustment of the assessed income or computed loss of both the advantaged person and the disadvantaged person arising from their relevant activities, it was likely that the disadvantaged person would be aware of the adjustment made on the advantaged person and hence the need to make the claim for corresponding adjustment under the proposed section 50AAM(5). In practice, the tax consultant concerned would remind the disadvantaged person to make the claim; and</p> <p>(d) the use of the term "attribution" under the proposed section 50AAO was based on the same terminology used in comprehensive avoidance of double taxation agreements.</p>	
<i>Agenda Item III – Any other business</i>			
014110 – 014837	Chairman Mr WONG Ting- kwong Administration	Date of next meeting and schedule of meetings Legislative timetable	