

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1273/17-18  
(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 eighth meeting**  
**held on Wednesday, 23 May 2018, at 8:30 am**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Kenneth LEUNG (Chairman)  
Hon Abraham SHEK Lai-him, GBS, JP  
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 Alvin YEUNG  
Hon Holden CHOW Ho-ding  
Hon CHAN Chun-ying

**Members absent** : Hon James TO Kun-sun  
Hon Dennis KWOK Wing-hang  
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

**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)980/17-18 — Minutes of the meeting held on  
11 April 2018)

The minutes of the meeting held on 11 April 2018 were confirmed.

Action

**II. Meeting with the Administration**

Matters arising from previous meeting

(LC Paper No. CB(1)985/17-18(01) — List of follow-up actions arising from the discussion at meeting on 14 May 2018

LC Paper No. CB(1)985/17-18(02) — Administration's response to the issues raised at the meeting on 14 May 2018)

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

Action

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

Discussion

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

*(Post-meeting note: A submission from some members of the public addressed to the Chairman and subsequently referred to the Bills Committee after the meeting was issued vide LC Paper No. CB(1)1008/17-18(01) on 25 May 2018. The Administration's written response was issued vide LC Paper No. CB(1)1008/17-18(02) on 28 May 2018.)*

**III. Any other business**

Date of next meeting

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Monday, 28 May 2018, at 5:00 pm.

4. There being no other business, the meeting ended at 10:21 am.

Council Business Division 1  
Legislative Council Secretariat  
16 July 2018

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

**Proceedings of the eighth meeting  
on Wednesday, 23 May 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>			
000751 – 000835	Chairman	The minutes of the meeting held on 11 April 2018 (LC Paper No. CB(1)980/17-18) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000837 – 000914	Chairman	Introductory remarks	
000915 – 001100	Chairman Administration	The Administration briefed members on its response to the issues raised at the meeting on 14 May 2018 (LC Paper No. CB(1)985/17-18(02)).	
<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 (consolidated version) (LC Paper No. CB(1)941/17-18(01))]</p>			
001101 – 002129	Chairman Mr CHUNG Kwok-pan Administration	<p><b>Part 2 – Amendments to Inland Revenue Ordinance</b></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><u>Division 4 – Advance Pricing Arrangement</u></p> <p>The Administration's briefing on Division 4 of Clause 9.</p> <p>Mr CHUNG expressed concern that under the proposed section 50AAP(3)(a) of the Inland Revenue Ordinance ("Cap. 112") ("IRO"), the Commissioner of Inland Revenue ("the Commissioner") might refuse to make an advance pricing arrangement ("APA") if the specified person (being one of the persons as between whom a provision to be governed by the APA was made or imposed and a person who had income or loss to be computed for the purpose of Hong Kong tax but was not the person making the application for the APA) failed or refused to join in the APA application.</p>	

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		<p>The Administration advised that while it was unlikely that the above situation would happen for transactions between associated enterprises, the proposed section 50AAP(3)(a) was meant to provide for the Commissioner's power to refuse to make an APA in case the specified person failed or refused to join in the application.</p> <p>In response to the Chairman's enquiry, the Administration explained the meaning of revocation, cancellation and revision of APA as set out in the proposed section 50AAR(2) to (4).</p> <p>Discussion on the fees payable for an APA application.</p>	
002130 – 002800	Chairman Mr CHUNG Kwok-pan Mr Abraham SHEK Administration	<p><u>Clause 10 – Schedules 17G and 17H added</u></p> <p>The Administration's briefing on Clause 10 and its proposed amendments to the clause.</p> <p>In response to the enquiries of the Chairman and Mr CHUNG, the Administration advised that:</p> <p>(a) the meaning of "permanent establishment in Hong Kong" in relation to DTA territory or non-DTA territory resident person, as given in the proposed Schedule 17G, would apply to new Parts 8AA and 9A of IRO to be added, and Rules 3 and 5 of the Inland Revenue Rules (Cap. 112 sub. Leg. A) to be amended, by the Bill (DTA territory resident person and non-DTA territory resident person being terms defined in the proposed section 50AAC by reference to double taxation arrangements); and</p> <p>(b) the Inland Revenue Department ("IRD") would consult the APA applicant on the appointment of independent expert for inquiring into and reporting on any matters in relation to the APA application. The Commissioner would consider the academic qualifications, related work experience, etc. of the potential candidates for making the appointment.</p> <p>The Chairman advised that he had received a submission via an email on 23 May 2018 from some members of the public. Subject to the senders' consent to disclose the submission, the submission would be dealt with at the next meeting. The submission concerned the Administration's</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		amendments to the proposed section 50AAJ (Interpretation: potential advantage in relation to tax).	
002801 – 002817	Chairman Administration	<p>Division 3 – Amendments Relating to Transfer Pricing: Other Provisions Relating to New Part 8AA</p> <p><u>Clause 11 – Section 7D added</u></p> <p><u>Clause 12 – Section 13A added</u></p> <p>The Administration's briefing on Clauses 11 and 12.</p> <p>Members raised no queries.</p>	
002818 – 003446	Chairman Mr CHUNG Kwok-pan Administration	<p><u>Clause 13 – Section 15BA added</u></p> <p>The Administration's briefing on Clause 13 and its proposed amendments to the clause.</p> <p>Discussion on:</p> <p>(a) the meaning of "a person" in "trading stock of a person's trade" under the proposed section 15BA(2); and</p> <p>(b) determination of the amount that the trading stock would have realized if sold in the open market where the goods/services were traded at a discount.</p> <p>The Administration advised that IRD would give due regard to a number of factors and the circumstances of each case in considering whether a transaction price was at the open market value. Similar to the arm's length amount referred to in section 50AAF as amended by the Administration's proposed amendments, a taxpayer would be accepted as having substantiated his/her reported/claimed amount if such amount was within an acceptable range.</p>	
003447 – 004116	Chairman Mr CHUNG Kwok-pan Administration	<p><u>Clause 14 – Section 15F added</u></p> <p>The Administration's briefing on Clause 14.</p> <p>The Administration indicated that it would propose amendments to amend the definition of "intellectual property" ("IP") under the proposed section 15F(5).</p>	

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		<p>In response to Mr CHUNG's enquiry, the Administration advised that the information contained in the country-by-country ("CbC") reports and transfer pricing ("TP") documentation (i.e. master file and local file) would facilitate IRD and/or foreign tax authorities to identify the legal ownership of IP as well as the value creation contributions in relation to the IP in Hong Kong or other jurisdictions.</p>	
004117 – 004133	Chairman Administration	<p><u>Clause 15 – Section 26AC added</u></p> <p>The Administration's briefing on Clause 15.</p> <p>Members raised no queries.</p>	
004134 – 012134	Chairman Mr CHUNG Kwok-pan Mr WONG Ting-kwong Mr WU Chi-wai Assistant Legal Adviser ("ALA") Administration	<p>Division 4 – Amendments Relating to Transfer Pricing: Addition of New Part 9A and Schedule 17I</p> <p><u>Clause 16 – Part 9A added</u></p> <p><i>Division 1 – Interpretation</i></p> <p><i>Division 2 – Master File and Local File</i></p> <p><i>Division 3 – Country-by-Country Reporting</i></p> <p><i>Division 4 – Provisions Applicable to this Part Generally</i></p> <p>The Administration's briefing on Clause 16 and its proposed amendments to the clause.</p> <p>In response to the enquiries of the Chairman, Mr CHUNG and Mr WONG, the Administration advised that:</p> <p>(a) multinational enterprise groups ("MNE groups") with annual consolidated group revenue not less than EUR750 million (or HK\$6.8 billion) would be required to file CbC reports;</p> <p>(b) "surrogate parent entity" in the proposed section 58B(2) was defined in relation to CbC reporting;</p> <p>(c) CbC report was to be filed annually and electronically as part of the CbC return;</p> <p>(d) as enterprises would need to update their respective master files and local files only when there were changes to the information contained</p>	



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		<p>therein, the documentation requirements would not impose undue compliance burden on the business sector;</p> <p>(e) if the amount of a category of related party transactions for the relevant accounting period was below the prescribed threshold in section 4 of the proposed Schedule 17I, an enterprise would not be required to prepare a local file for that particular category of transactions;</p> <p>(f) as regards exemption based on size of business, enterprises would not be required to prepare master file and local file if they could meet any two of the three conditions in the proposed section 58C(1) (read with section 3 of the proposed Schedule 17I);</p> <p>(g) the "Note" under Division 3 was intended to give an overview of the Division to facilitate readers' understanding of the provisions therein, and did not have any legislative effect;</p> <p>(h) the "specified threshold amount" of \$6.8 billion under the proposed section 58D(5) referred to the consolidated group revenue turnover of an MNE group in the context of CbC reporting;</p> <p>(i) the amendments to the proposed section 58H were technical amendments in response to the suggestions made by the Organisation for Economic Co-operation and Development ("OECD") for better alignment with the requirements of the CbC reporting regime;</p> <p>(j) it was roughly estimated that some 100 MNE groups whose ultimate parent entities were based in Hong Kong would be required to file CbC reports to IRD; and</p> <p>(k) while a reporting entity might engage a service provider to comply with the CbC reporting requirements and the proposed section 80H prescribed the offences of service provider in relation to CbC reporting, the reporting entity would not be relieved from its reporting obligations under the provisions referred to in the proposed section 58M(1).</p> <p>Discussion on the obligations of Hong Kong after joining the inclusive framework for implementing</p>	

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		<p>the package of actions to counter Base Erosion and Profit Shifting ("BEPS") and the potential benefits brought about by this initiative.</p> <p>In reply to ALA's enquiry, the Administration confirmed that "specified domestic transactions" in the proposed section 58C referred to the specified domestic transactions defined in section 2 of the proposed Schedule 17I.</p>	
012135 – 014515	<p>Chairman Mr WU Chi-wai Mr CHUNG Kwok-pan Administration</p>	<p><u>Clause 17 – Schedule 17I added</u></p> <p>The Administration's briefing on Clause 17 and its proposed amendments to the clause.</p> <p>In reply to the enquiries of the Chairman, Mr CHUNG and Mr WU, the Administration advised that:</p> <ul style="list-style-type: none"> <li>(a) the three-tiered standardized approach of TP documentation (i.e. master file, local file and CbC report) was meant to require an enterprise to articulate a consistent TP policy and provide tax administration with useful information for assessment of tax risks;</li> <li>(b) IRD would conduct desk audits and risk-based thematic reviews to ensure tax compliance in general, including compliance with TP rules and documentation requirements;</li> <li>(c) while filing of CbC reports was required for exchange with other jurisdictions, master files and local files would be kept by the respective enterprises for IRD's inspection when necessary;</li> <li>(d) OECD's Handbook on Effective Tax Risk Assessment provided guidance on the use of the information contained in CbC reports for the purpose of tax risk assessment;</li> <li>(e) a tax authority could use the information in CbC reports to assess the tax risk and other BEPS-related risks, and the information could serve as a basis for further enquiries in relation to the enterprises concerned if necessary; and</li> <li>(f) IRD might request an enterprise in Hong Kong to provide information from its master file and local file to follow up areas with high tax risks identified, or in response to requests for</li> </ul>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		exchange of information made by foreign tax authorities.	
<i>Agenda Item III – Any other business</i>			
014516 – 014706	Chairman Administration	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
16 July 2018