

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1319/17-18  
(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 ninth meeting  
held on Monday, 28 May 2018, at 5:00 pm  
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 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 CHAN Chun-ying

**Members absent** : Hon WU Chi-wai, MH  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Hon Holden CHOW Ho-ding

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

**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. Meeting with the Administration**

(LC Paper No. CB(1)1008/17-18(01) — Submission from some members of the public (English version only)

LC Paper No. CB(1)1008/17-18(02) — Administration's response to the submission from some members of the public)

Action

Clause-by-clause examination of the Bill

- (LC Paper No. CB(1)1008/17-18(03) — Additional draft amendments proposed by the Administration
- 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
- LC Paper No. CB(1)847/17-18(02) — Draft amendments proposed by the Administration (First batch))

Discussion

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

Action

Legislative timetable

2. The Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 4 July 2018. On this basis, the Chairman would report the deliberations of the Bills Committee to the House Committee on 15 June 2018, and the deadline for giving notice of amendments to the Bill would be 23 June 2018.

**II. Any other business**

3. There being no other business, the meeting ended at 6:27 pm.

Council Business Division 1  
Legislative Council Secretariat  
6 August 2018

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

**Proceedings of the ninth meeting  
on Monday, 28 May 2018, at 5:00 pm  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<b>Agenda Item I - Meeting with the Administration</b>			
000332 – 000521	Chairman	Introductory remarks	
000522 – 001026	Chairman Administration	The Administration briefed members on its response to the submission from some members of the public (LC Paper Nos. CB(1)1008/17-18(01) and (02)).	
001027 – 002052	Chairman Mr Abraham SHEK Mr James TO Administration	<p>Mr SHEK indicated that he would consider whether there were any further concerns raised by members of the real estate sector that might require the Administration's response.</p> <p>Mr TO stressed that the Bills Committee should provide sufficient time for the relevant stakeholders to study the Administration's proposed amendments.</p> <p>The Administration advised that in response to the views and concerns raised by deputations/individuals at the meeting in February 2018 and/or in their written submissions, it had submitted a paper in March 2018 setting out the direction that the proposed amendments would take, and the proposed amendments were subsequently provided to the Bills Committee by two batches and published on the website of the Legislative Council ("LegCo"). The Chairman advised that no objection to the proposed amendments had been received from stakeholders so far.</p>	
002053 – 002233	Chairman Administration	<p>The Administration briefed members on the additional amendments proposed by the Administration (LC Paper No. CB(1)1008/17-18(03)).</p> <p>Members raised no queries.</p>	
<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>			
002234 – 002516	Chairman Administration	<p><b>Part 2 – Amendments to Inland Revenue Ordinance</b></p> <p><u>Clause 17 – Schedule 17I added</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Division 5 – Amendments Relating to Transfer Pricing: Other Amendments Relating to New Part 9A</p> <p><u>Clause 18 – Section 2 amended (interpretation)</u></p> <p>The Administration's briefing on Clauses 17 and 18 and its proposed amendments to Clause 17.</p> <p>Members raised no queries.</p>	
002517 – 003735	Chairman Mr CHUNG Kwok-pan Administration	<p>Division 6 – Amendments Relating to Penalties and Offences</p> <p><u>Clause 19 – Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)</u></p> <p>The Administration advised that the penalties prescribed for failure to make returns, making incorrect returns, etc. under the proposed revised section 80 would not change the existing framework of penalties for incorrect returns and relevant matters under the Inland Revenue Ordinance (Cap. 112) ("IRO").</p> <p>In reply to Mr CHUNG, the Administration explained that:</p> <p>(a) "treble the undercharged amount" meant treble amount of the tax undercharged, which was different from a fine at level 3. The amounts corresponding to the levels of fines for offences under the proposed revised section 80 were prescribed by Schedule 8 to the Criminal Procedure Ordinance (Cap. 221). Currently, a fine at level 3 corresponded to \$10,000; and</p> <p>(b) a fine at level 3 and a further fine of the undercharged amount would be imposed on taxpayers who failed to notify the Inland Revenue Department ("IRD") of any adjustment to their tax positions which might result in tax credit granted being excessive (i.e. offences for failure to comply with section 50AAM(11), 50AAN(3) or 50AAO(3)).</p>	
003736 – 010014	Chairman Mr CHUNG Kwok-pan Administration	<p><u>Clause 20 – Sections 80G to 80J added</u></p> <p>In response to Mr CHUNG's enquiry, the Administration advised that:</p> <p>(a) if a reporting entity discovered that the information furnished in its country-by-country ("CbC") report was inaccurate, it must notify IRD as soon as practicable;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) IRD would exchange CbC reports with foreign tax authorities within prescribed time;</p> <p>(c) foreign tax authorities could not interfere with IRD's handling of non-compliances by Hong Kong enterprises with the CbC reporting requirements;</p> <p>(d) IRD would not conduct tax investigations or recover taxes on behalf of foreign tax authorities; and</p> <p>(e) disputes arising from different interpretation of the information (including those related to transfer pricing) exchanged between tax authorities would be dealt with via the mutual agreement procedure or arbitration.</p> <p>In reply to the Chairman and Mr CHUNG, the Administration further advised that:</p> <p>(a) the six-year time limit under the proposed section 80J within which proceedings in respect of an offence under the proposed section 80G, 80H or 80I, other than an indictable offence, might be instituted (after the date on which the offence was committed) applied to the reporting entities, their directors, service providers engaged by the reporting entities to fulfill the CbC reporting requirements, etc.; and</p> <p>(b) if a reporting entity committed an offence relating to CbC reporting under the proposed section 80I, the director(s) of the entity who consented to or connived at the offence would be liable on conviction to the penalty provided for that offence.</p>	
010015 – 010430	Chairman Administration	<p><u>Clause 21 – Section 82 amended (penal provisions relating to fraud, etc.)</u></p> <p>The Administration's briefing on Clause 21.</p> <p>Discussion on the reasons to provide different definitions of "undercharged amount" in the various penal provisions of the Bill.</p>	
010431 – 010804	Chairman Administration	<p><u>Clause 22 – Section 82A amended (additional tax in certain cases)</u></p> <p>The Administration's briefing on Clause 22.</p> <p>Members raised no queries.</p>	

Time marker	Speaker	Subject(s)	Action required
010805 – 011514	Chairman Mr CHUNG Kwok-pan Administration	<p>Division 7 – Amendments Relating to Advance Rulings</p> <p><u>Clause 23 – Schedule 10 amended</u> The Administration advised that:</p> <p>(a) the relevant Departmental Interpretation and Practice Notes of IRD would be updated to reflect the amendments relating to advance rulings; and</p> <p>(b) the proposed increase in the fees relating to advance rulings was meant to achieve full cost recovery, having regard to factors such as the salary increase of IRD officers over the past some 20 years since the previous fee revision exercise, and that the proposed increase had been reviewed by the Treasury Branch of the Financial Services and the Treasury Bureau.</p>	
011515 – 012547	Chairman Mr CHUNG Kwok-pan Administration	<p>Division 8 – Amendments Relating to Profits Tax Concessions for Particular Classes of Person</p> <p>The Administration's briefing on Clauses 24 to 32 and its proposed amendments to the proposed section 26AB.</p> <p>In response to the enquiries of the Chairman and Mr CHUNG, the Administration advised that Division 8 in Part 2 of the Bill concerned amendments to preferential tax regimes in Hong Kong so as to meet the international requirements to counter base erosion and profit shifting. In gist, Clauses 24 to 26 and 29 to 30 sought to extend the profits tax concessions to authorized captive insurers, professional reinsurers and corporate treasury centres in respect of their domestic profits.</p> <p><u>Clause 24 – Section 14B amended (qualifying reinsurance business and captive insurance business)</u></p> <p><u>Clause 25 – Section 14C amended (qualifying corporate treasury centre: interpretation)</u></p> <p><u>Clause 26 – Section 14D amended (qualifying corporate treasury centre: profits tax concession)</u></p> <p><u>Clause 27 – Section 14H amended (aircraft leasing tax concessions: concession for qualifying aircraft lessor)</u></p> <p><u>Clause 28 – Section 14J amended (aircraft leasing tax concessions: concession for qualifying aircraft leasing manager)</u></p>	



Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 29 – Section 16 amended (ascertainment of chargeable profits)</u></p> <p><u>Clause 30 – Section 23A amended (ascertainment of assessable profits of insurance corporations other than life insurance corporations)</u></p> <p><u>Clause 31 – Section 23B amended (ascertainment of the assessable profits of a ship-owner carrying on business in Hong Kong)</u></p> <p><u>Clause 32 – Section 26AB added</u></p> <p>In reply to the Chairman and Mr CHUNG, the Administration advised that the threshold requirement of substantial activities under the proposed section 26AB was applicable to the profits tax concessions under sections 14B, 14D, 14H, 14J and 23B. The detailed thresholds would be specified by the Commissioner of Inland Revenue in a notice to be published in the Gazette after consultation with the relevant stakeholders. Such notice was a piece of subsidiary legislation which would be subject to negative vetting by LegCo.</p>	
012548 – 012719	Chairman Administration	<p>Division 9 – Amendments Relating to Transitional Provisions</p> <p><u>Clause 33 – Section 89 amended (transitional provisions)</u></p> <p><u>Clause 34 – Schedule 42 added (re-numbered as Schedule 44 under the proposed amendments)</u></p> <p><b>Part 3 – Amendments to Inland Revenue Rules</b></p> <p><u>Clause 35 – Rule 3 amended (financial institution: profits of Hong Kong branch offices)</u></p> <p><u>Clause 36 – Rule 5 amended (profits of Hong Kong branch offices of person other than financial institution)</u></p> <p>The Administration's briefing on Clauses 33 to 36 and its proposed amendments to Clauses 33 and 34.</p> <p>Members raised no query.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda Item II – Any other business</i>			
012720 – 013019	Chairman Administration	The Bills Committee completed scrutiny of the Bill.  Legislative timetable	

Council Business Division 1  
Legislative Council Secretariat  
6 August 2018