

立法會
Legislative Council

LC Paper No. CB(1)705/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/17/2

Bills Committee on Inland Revenue (Amendment) (No. 7) Bill 2017

Minutes of the second meeting
held on Tuesday, 6 February 2018, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Holden CHOW Ho-ding (Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon CHAN Chi-chuen
Hon Kenneth LEUNG
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Alvin YEUNG
Hon Jimmy NG Wing-ka, JP
Hon CHAN Chun-ying

Members absent : Hon Paul TSE Wai-chun, JP
Hon CHUNG Kwok-pan

Public Officers attending : **For item I**
Financial Services and the Treasury Bureau

Mr Andrew LAI, JP
Deputy Secretary (Treasury)2

Inland Revenue Department

Mr CHIU Kwok-kit, JP
Deputy Commissioner (Technical)

Ms CHAN Shun-mei
Senior Assessor (SD)

Department of Justice

Mr Manuel NG
Senior Government Counsel

Clerk in attendance : Miss Cindy HO
Chief Council Secretary (1)6

Staff in attendance : Mr Cliff IP
Assistant Legal Adviser 8

Mr Jason KONG
Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Meeting with the Administration

Follow-up to issues arising from previous meeting

(LC Paper No. CB(1)562/17-18(01) — Assistant Legal Adviser's letter dated 2 February 2018 to the Administration

LC Paper No. CB(1)570/17-18(01) — Administration's reply to Assistant Legal Adviser's letter dated 2 February 2018

LC Paper No. CB(1)549/17-18(01) — List of follow-up actions arising from the discussion at meeting on 24 January 2018

Action

- LC Paper No. CB(1)513/17-18(01) — Assistant Legal Adviser's letter dated 23 January 2018 to the Administration
- LC Paper No. CB(1)549/17-18(02) — Administration's response to the issues raised at the meeting on 24 January 2018)

Written submissions received and the Administration's response

- (LC Paper No. CB(1)556/17-18(01) — Submission from The Chinese Manufacturers' Association of Hong Kong (Chinese version only)
- LC Paper No. CB(1)556/17-18(02) — Submission from Hong Kong Small and Medium Enterprises Association (Chinese version only) (Restricted to Members)
- LC Paper No. CB(1)556/17-18(03) — Submission from The Society of Chinese Accountants & Auditors (English version only)
- LC Paper No. CB(1)556/17-18(04) — Submission from Liberal Party (Chinese version only)
- LC Paper No. CB(1)564/17-18(01) — Administration's response to the written submissions on the Bill
- LC Paper No. CB(1)575/17-18(01) — Submission from Hong Kong Institute of Certified Public Accountants (English version only))

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)233/17-18 — The Bill
- LC Paper No. CB(1)507/17-18(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)

Action

File Ref: TsyB R 00/765-3-2/1/0(C) — Legislative Council Brief

LC Paper No. LS20/17-18 — Legal Service Division Report)

Amendments to the Bill proposed by the Administration

(LC Paper No. CB(1)570/17-18(02) Draft amendments to the Bill proposed by the Administration)

Declaration of interest

Mr Jimmy NG declared that his company might benefit from the proposed two-tiered profits tax rates regime.

Discussion

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

3. The Bills Committee completed clause-by-clause examination of the Bill, and examined and supported the draft amendments to the Bill proposed by the Administration. The Bills Committee would not move any amendments to the Bill.

(Post-meeting note: As the Administration expects that the Bill will be enacted before the Inland Revenue (Amendment) (No. 6) Bill 2017, the Administration has subsequently advised that it will move amendments to renumber the proposed new section 89(21) and the proposed new Schedule 43 to IRO. Members were informed on 1 March 2018 vide LC Paper No. CB(1)616/17-18(01) on the updated amendments to the Bill provided by the Administration.)

II. Any other business

Legislative timetable

4. The Chairman concluded that the Bills Committee had completed the scrutiny of the Bill. The Bills Committee noted the Administration's intention to resume the Second Reading debate on the Bill at the Council meeting of 21 March 2018. The Chairman said that the Bills Committee would report its deliberations to the House Committee on 23 February 2018, and the deadline for giving notice of amendments to the Bill would be 12 March 2018.

Action

5. There being no other business, the meeting ended at 6:09 pm.

Council Business Division 1
Legislative Council Secretariat
16 March 2018

Bills Committee on Inland Revenue (Amendment) (No. 7) Bill 2017

**Proceedings of the second meeting
on Tuesday, 6 February 2018, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000531 – 001914	Chairman Administration	<p>The Chairman's opening remarks and the Administration's briefing on its written responses to (a) issues arising from the meeting on 24 January 2018 (LC Paper No. CB(1)549/17-18(02)), (b) four written submissions received by the Bills Committee (LC Paper No. CB(1)564/17-18(01)), and (c) Assistant Legal Adviser ("ALA")'s letter dated 2 February 2018 to the Administration (LC Paper No. CB(1)570/17-18(01)).</p> <p>The Administration advised that, to better reflect the policy intent of the proposed two-tiered profits tax rates regime ("two-tiered regime") that profits relating to qualifying debt instruments ("QDIs") would not be counted towards the "cap" of HK\$2 million of assessable profits for the proposed lower tax rates of the relevant enterprises, it had proposed amendments to the Inland Revenue (Amendment) (No. 7) Bill 2017 ("the Bill") for the Bills Committee's consideration (LC Paper No. CB(1)570/17-18(02)).</p>	
001915 – 002338	Chairman Mr Kenneth LEUNG Administration	<p>Mr LEUNG enquired in the scenario where a corporation chose to benefit from the existing preferential half-rate tax regimes, be it an aircraft leasing company or a corporate treasury centre, how its assessable profits derived from other sources would be taxed.</p> <p>The Administration's explanation as follows:</p> <p>(a) the proposed new section 14(5) to be added to the Inland Revenue Ordinance (Cap. 112) ("IRO") provided that if a corporation had made an election for the preferential half-rate tax regimes (relating to professional reinsurance companies, captive insurance companies, corporate treasury centres and aircraft leasing companies) in respect of a portion of its assessable profits, then, in relation to the rest of its assessable profits, the tax was to be charged at the rate specified in Schedule 8 (the rate of profits tax in respect of a corporation as currently specified in Schedule 8 being 16.5%); and</p> <p>(b) a company electing for the preferential regime should be a standalone corporate entity engaging predominantly in relevant activities (e.g. aircraft leasing activities, corporate treasury activities, etc.). Under the safe harbour rules for</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>those preferential regimes, the standalone entity might be allowed to engage in other profit-generating activities subject to specified limits (e.g. the percentage of profits from those activities should not be more than 25%).</p>	
002339 – 002803	Chairman Mr Jimmy NG Administration	<p>Declaration of interest (paragraph 1 of the minutes refers).</p> <p>Mr NG said that he and the association to which he was affiliated supported the implementation of the proposed two-tiered regime. In respect of the definition and application of "connected entity", he enquired whether a group of companies might benefit from the proposed lower profits tax rate through segregation(s) of business(es), transfer of shares or re-distribution of profits to alter the control, or conceal the genuine control, of an entity in a group such that the entity would no longer be considered as "connected" for the purpose of the said regime.</p> <p>The Administration advised with the following example: in the scenario where a natural person held 60% of Company A's shares and 70% of Company B's shares, then Companies A and B would be regarded as connected entities as both of them were under the control of the same entity.</p> <p>Mr NG sought clarification that if a person, via his shareholding in a British Virgin Islands company, was the ultimate owner of a group of companies, whether the companies in question would each benefit from the proposed lower profits tax rate. The Administration confirmed that the Inland Revenue Department ("IRD") would trace the ultimate owner through successive layers of companies in a chain of ownership and there were specific provisions in the Bill (i.e. the proposed new section 14AAB(4)) to address this point.</p> <p>Mr NG further enquired whether a group of companies jointly owned by family members, such as spouse and children, would be regarded as "connected entities" if each person owned or controlled no more than 50% of the interest or profits in each of the companies in question. The Administration responded that the companies operated by the family members in the aforementioned scenario would not be regarded as connected entities because none of the family members would be deemed to have control over any company for the purpose of the proposed two-tiered regime. The Administration also advised that the concept of "relative" was not adopted in the definition of "connected entity".</p>	
002804 – 003306	Chairman Mr CHAN Chi-chuen Administration	<p>Mr CHAN considered that enterprises with assessable profits in the range of HK\$2 million to HK\$5 million should be eligible for less tax reduction and those with assessable profits above HK\$5 million should not be eligible for the proposed two-tiered</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>regime. The Administration responded that the proposed two-tiered regime was designed to benefit all eligible enterprises with assessable profits irrespective of their sizes.</p>	
003307 – 004123	Chairman Administration ALA	<p>Discussion on avoidance of double benefits in relation to enterprises electing for preferential regimes and those deriving profits from QDIs.</p> <p>The Administration clarified that while an enterprise electing for the preferential regime must be a standalone corporate entity engaging predominantly in relevant activities, QDIs referred to a specific kind of transactions and companies with profits from QDIs normally had profits derived from other sources.</p> <p>In response to ALA's enquiry, the Administration affirmed that the assessable profits derived from QDIs would be chargeable to profits tax at one-half of the rate specified in Schedule 1 or Schedule 8 to IRO, while the assessable profits from non-QDI businesses (if any) of the same entity would be taxed under the proposed two-tiered regime separately.</p> <p>ALA asked whether the Administration would consider including a provision in the Bill similar to the proposed new section 14(5) of IRO to clarify beyond doubt how the assessable profits derived from QDIs and the rest of the assessable profits of an entity would be taxed respectively.</p> <p>The Administration advised that the proposed approach of tax treatment under the Bill and the proposed amendments would serve the best interests of taxpayers. It was therefore envisaged that the proposed approach would not lead to disputes from relevant taxpayers.</p>	
<p><u>Clause-by-clause examination of the Bill</u> <i>[The Bill (LC Paper No. CB(3)233/17-18)]</i> <i>[Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)507/17-18(01))]</i></p>			
004124 – 010247	Chairman Administration ALA	<p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Inland Revenue Ordinance amended</u></p> <p><u>Clause 3 – Section 14 amended (charge of profits tax)</u></p> <p><u>Clause 9 – Schedule 1 amended (standard rate)</u></p> <p><u>Clause 10 – Schedule 8 amended (rate of profits tax in respect of a corporation)</u></p> <p><u>Clause 11 – Schedules 8A and 8B added</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p data-bbox="491 235 1331 600">Noting that the proposed new section 14(5) made express reference to sections 14B(2)(a), 14D(5)(b), 14H(4)(b) and 14J(5)(b) of IRO which were related to preferential regimes, the Chairman and ALA enquired whether the Administration would consider including a similar provision in the Bill to expressly provide that even if an entity had assessable profits derived from QDIs taxed at one-half of the rate specified in Schedule 1 or Schedule 8 in accordance with section 14A of IRO, its assessable profits derived from other sources would still be eligible for the proposed two-tiered profits tax rates.</p> <p data-bbox="491 633 1035 669">The Administration's response as follows:</p> <ul data-bbox="491 703 1331 2112" style="list-style-type: none"><li data-bbox="491 703 1331 1032">(a) the proposed new section 14(5) provided that, if an entity had elected for a preferential regime in respect of a portion of its assessable profits, then the rest of its assessable profits would be excluded from the proposed two-tiered regime. In respect of QDIs, however, the policy intent was that the assessable profits of an entity deriving from other sources would still be eligible for the proposed two-tiered regime. Therefore, the drafting approach of section 14(5) was inapplicable to QDIs;<li data-bbox="491 1066 1331 1323">(b) section 14 of IRO contained general provisions providing for how profits tax should be charged. Section 14A of IRO contained special provisions applicable only to assessable profits derived from QDIs. It would be beyond doubt that in respect of the assessable profits unrelated to QDIs defined in section 14A, tax should be charged with reference to the general provisions in section 14;<li data-bbox="491 1357 1331 1794">(c) however, the Administration agreed with ALA that the clarity of the Bill might be enhanced as to whether, in the case of section 14A being applicable to an entity, the threshold of HK\$2 million would apply to all the assessable profits of the entity or only the non-QDI assessable profits of the entity. In this regard, the Administration would propose amendments to the Bill to change the references to "assessable profits" in the proposed new Schedules 8A and 8B to "assessable profits to which section 14 [of IRO] applies" in order to make it clearer that the threshold of HK\$2 million would apply to the non-QDI assessable profits only;<li data-bbox="491 1827 1331 1939">(d) the Administration considered that the provisions of the Bill and the proposed amendments above could reflect the above policy intent while maintaining conciseness; and<li data-bbox="491 1973 1331 2112">(e) in administering the proposed two-tiered regime, IRD had undertaken to provide relevant guidance through its webpage and explanatory guidelines to facilitate taxpayers in completing their tax returns.	

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010248 – 011334	Chairman Administration	<p><u>Clause 4 – Sections 14AA, 14AAB and 14AAC added</u></p> <p>In response to the Chairman's enquiry regarding the definition of "connected entity" and "specified interest" under the proposed new section 14AAB, the Administration explained that if entity A did not own/control more than 50% in aggregate of the issued share capital or voting rights in entity B, or was not entitled to more than 50% in aggregate of the capital or profits of the latter, then entity A would not be deemed to have a specified interest in (i.e. have control over) entity B and the two entities were not "connected" by virtue of section 14AAB, even if entity A was a majority shareholder of and could exercise considerable control over entity B.</p>	
<i>Suspension of meeting 011335 – 012528</i>			
012529 – 013257	Chairman Administration	<p>Regarding the Bills Committee's concern about assessable profits of an entity deriving from QDIs and other sources, the Chairman requested that the aforementioned policy intent and considerations be reflected in the speech of the Administration at the resumption of the Second Reading debate on the Bill. The Administration agreed.</p> <p><u>Clause 5 – Section 19CA amended (treatment of losses: concessionary trading receipts)</u></p> <p><u>Clause 6 – Section 63H amended (amount of provisional profits tax)</u></p> <p><u>Clause 7 – Section 63HA added</u></p> <p><u>Clause 8 – Section 89 amended (transitional provisions)</u></p> <p><u>Clause 12 – Schedule 43 added</u></p> <p>Members did not raise any question on the clauses above.</p>	
013258 – 014043	Chairman Mr WU Chi-wai Administration	<p>Mr WU and the Chairman expressed concern that the application of the "connected entity" concept could not preclude the possibility of abuse of the proposed two-tiered regime through corporate restructuring. They called on the Administration to keep the situation under review to ensure compliance with the requirements of the Bill, consider legislative amendments to combat abusive practices where necessary and give relevant data to the Legislative Council after the Ordinance was enacted.</p> <p>The Administration assured members that it would monitor the effectiveness of the proposed two-tiered regime in achieving the policy objectives. It supplemented that if the restriction in respect of "connected entity" was overly stringent, entities that made bona fide investments into multiple corporations might be unintentionally excluded from the proposed two-tiered regime.</p>	

Time marker	Speaker	Subject(s)	Action required
014044 – 014149	Chairman ALA	The Chairman concluded that the Bills Committee supported the draft amendments to the Bill proposed by the Administration. The Bills Committee would not move any amendments to the Bill.	
<i>Agenda Item II — Any other business</i>			
014150 – 014358	Chairman Administration	The Chairman concluded that the Bills Committee had completed scrutiny of the Bill. Legislative timetable	

Council Business Division 1
Legislative Council Secretariat
16 March 2018