

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1064/17-18  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/6/17

**Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2018**

**Minutes of first meeting**  
**on Tuesday, 24 April 2018, at 10:45 am**  
**in Conference Room 2 of the Legislative Council Complex**

**Members present** : Hon Kenneth LEUNG (Chairman)  
Hon WONG Ting-kwong, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon WU Chi-wai, MH  
Hon Charles Peter MOK, JP  
Dr Hon Junius HO Kwan-yiu, JP

**Members absent** : Hon Dennis KWOK Wing-hang  
Hon CHUNG Kwok-pan

**Public officers attending** : Agenda item II

Commerce and Economic Development Bureau

Mr Gary POON  
Deputy Secretary for Commerce and Economic  
Development (Commerce and Industry) 2

Miss Alice CHOI  
Principal Assistant Secretary for Commerce and Economic  
Development (Commerce and Industry) 3

Intellectual Property Department

Ms Michelle CHONG  
Assistant Director of Intellectual Property (Advisory)

Miss Maggie WONG  
Senior Solicitor (Advisory) 2

Inland Revenue Department

Mr KK CHIU, JP  
Deputy Commissioner (Technical)

Ms Fiona WONG  
Senior Assessor (Research) 2

Department of Justice

Mr Alan CHONG  
Senior Government Counsel

**Clerk in attendance:** Mr Desmond LAM  
Chief Council Secretary (1)3

**Staff in attendance:** Ms Vanessa CHENG  
Assistant Legal Adviser 5

Ms Connie HO  
Senior Council Secretary (1)3

Mr Terence LAM  
Council Secretary (1)3

Ms May LEUNG  
Legislative Assistant (1)3

Miss Zoe YIP  
Clerical Assistant (1)3

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**I. Election of Chairman**

Mr WONG Ting-kwong, the member who had the highest precedence among members of the Bills Committee present at the meeting, presided at the election of the chairmanship of the Bills Committee. Mr WONG invited nominations for the chairmanship of the Bills Committee.

2. Mr Kenneth LEUNG was nominated by Mr Charles Peter MOK and the nomination was seconded by Mr WU Chi-wai. Mr LEUNG accepted the nomination.

3. There being no other nomination, Mr Kenneth LEUNG was elected Chairman of the Bills Committee. Mr LEUNG then took the chair.

4. Members agreed that it was not necessary to elect a Deputy Chairman.

**II. Meeting with the Administration**

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| (LC Paper No. CB(3)452/17-18  | -- The Bill   |
| LC Paper No. CB(1)842/17-18(01)   | -- Mark-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)                             |
| File Ref: CITB CR 81/45/2   | -- Legislative Council Brief issued by the Commerce and Economic Development Bureau   |
| LC Paper No. LS49/17-18   | -- Legal Service Division Report  |
| LC Paper No. CB(1)842/17-18(02)   | -- Paper on Inland Revenue (Amendment) (No. 2) Bill 2018 prepared by the Legislative Council Secretariat (background brief) |
| LC Paper No. CB(1)842/17-18(03)   | -- Assistant Legal Adviser's letter dated 18 April 2018 to the Administration   |
| LC Paper No. CB(1)860/17-18(01)<br><i>(tabled at the meeting and subsequently issued on the same day)</i> | -- Administration's reply to Assistant Legal Adviser's letter dated 18 April 2018)  |

Discussion

5. The Bills Committee deliberated (Index of proceedings attached at **Annex**).

**III. Any other business**

Invitation for views

6. Instead of arranging a meeting to receive oral views from deputations on the Bill, members agreed that invitations be issued to relevant organizations and a notice be posted on the Legislative Council ("LegCo") website for written submissions on the Bill.

*(Post-meeting note: On 25 April 2018, invitations were sent to 18 District Councils, relevant professional organizations, chambers of commerce and trade associations, as well as organizations of the performing arts and agricultural sectors (the list of which was agreed by the Bills Committee) for written submissions on the Bill. A notice was also posted on the LegCo website on the same day. A total of 11 written submissions were received by the Bills Committee by the submission deadline on 10 May 2018. The Administration was requested to provide written responses to the submissions received for consideration by the Bills Committee at its second meeting on 25 May 2018.)*

Date of next meeting

7. The Chairman reminded members that the next meeting would be held on Friday, 25 May 2018 at 10:45 am.

8. There being no other business, the meeting ended at 11:59 am.

**Proceedings of the first meeting of  
the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2018  
on Tuesday, 24 April 2018, at 10:45 am  
in Conference Room 2 of the Legislative Council Complex**

| Time marker        | Speaker   | Subject(s)  | Action required |
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| 000000 –<br>000609 | Mr WONG Ting-kwong<br>Mr Kenneth LEUNG<br>Mr Charles MOK<br>Mr WU Chi-wai | <u>Election of Chairman</u><br><br>Mr Kenneth LEUNG was elected Chairman of the Bills Committee.  |                 |
| 000610 –<br>000842 | Chairman  | Opening remarks   |                 |
| 000843 –<br>001204 | Chairman<br>Administration  | Briefing by the Administration on the Inland Revenue (Amendment) (No. 2) Bill 2018 ("the Bill") (LC Paper No. CB(3)452/17-18 and File Ref: CITB CR 81/45/2).  |                 |
| 001205 –<br>001759 | Chairman<br>Mr Charles MOK<br>Administration                              | Mr Charles MOK enquired about –<br><br>(a) the rationale for choosing the three newly proposed types of intellectual property rights ("IPRs") (i.e. the rights in layout-design (topography) of integrated circuits, plant varieties and performances) for inclusion in the scope of profits tax deductions; and<br><br>(b) the estimated amount of tax revenue to be foregone as a result of the proposal.<br><br>The Administration responded that –<br><br>(a) the proposed three types of IPRs were covered by the World Trade Organization Agreement on Trade-Related Aspects of IPRs, and were protected in Hong Kong under respective dedicated intellectual property ("IP") legislations (i.e. the Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445), the Plant Varieties Protection Ordinance (Cap. 490) and the Copyright Ordinance (Cap. 528)). The three were, however, not covered by Hong Kong's current regime of profits tax deductions in respect of capital expenditure incurred for the purchase of IPRs;<br><br>(b) the three proposed additions would render the scope of profits tax deductions in respect of capital expenditure incurred for the |                 |

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|                 |  | <p>purchase of IPRs under the Inland Revenue Ordinance (Cap. 112) more comprehensive. If the legislative proposal was approved, capital expenditure incurred for the purchase and registration (where applicable under the relevant regimes) of various major types of IPRs would be deductible under Cap. 112;</p> <p>(c) the expansion of the scope of tax deduction for the purchase of IPRs was indeed one of the measures recommended by the Working Group on IP Trading in March 2015 for promoting Hong Kong as a regional IP trading hub, and the legislative proposal would bring about positive effect to the development of the IP industry in Hong Kong and also enhance its status as a premier IP trading hub in Asia; and</p> <p>(d) the proposal would involve tax revenue foregone. However, it was not feasible to arrive at a precise estimation as there were limited market information and statistics on the trading volume of the three proposed types of IPRs.</p> <p>In response to the Chairman's enquiry on the commencement of the relevant Ordinances (i.e. Cap. 445, Cap. 490 and Cap. 528) which provided statutory protection for the three types of IPRs concerned, the Administration explained that the three relevant Ordinances had already been in place for quite a period of time (taking Cap. 490 as an example which was enacted in the 1990s). The Administration also remarked that, with the proposed expansion set out in the Bill, the scope of profits tax deductions under Cap. 112 would cover major types of IPRs that were currently protected by dedicated IP legislations in Hong Kong.</p> |                 |
| 001800 – 003643 | Chairman<br>Mr WONG Ting-kwong<br>Administration | <p>The Administration responded to Mr WONG Ting-kwong's enquiry on the definitions of the three proposed types of IPRs, and clarified the application of copyright and performer's economic right in a scenario of street performance suggested by Mr WONG.</p> <p>Mr WONG Ting-kwong further enquired whether the scenario suggested below would be subject to</p>   |                 |

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|             |         | <p>profits tax deduction in relation to plant variety rights as proposed in the Bill –</p> <ul style="list-style-type: none"> <li>- a new species of papaya tree was bred by hybrid planting of genetic modified papayas. The papaya seedlings so bred were subsequently sold and the profits generated from the relevant transaction comprised two parts: (a) sale of papaya seedlings and (b) transfer of the planting technique of the new species of papaya to the buyer.</li> </ul> <p>The Chairman and Mr WONG Ting-kwong were concerned that there might be a loophole in the proposed profits tax deduction regime where an enterprise could over-claim the amount of capital expenditure incurred for the purchase of IPRs for tax deductions.</p> <p>The Administration advised that –</p> <ul style="list-style-type: none"> <li>(a) plant variety rights were rights granted to plant breeders (or owners of the variety) over cultivated plant varieties they had bred or discovered and developed. The plant breeders or owners of the variety could apply to the Agriculture, Fisheries and Conservation Department for such proprietary rights pursuant to Cap. 490;</li> <li>(b) owners of plant variety rights had exclusive rights to (i) produce reproductive material of the protected variety for the purpose of commercial marketing; (ii) sell or offer for sale reproductive material of the protected variety; (iii) import/export reproductive material of the protected variety; and (iv) licence others to carry out the above activities;</li> <li>(c) IPR was an intangible asset without a physical form. The sale of a registered IPR referred to the transfer of the ownership of and the proprietary rights in relation to the relevant IPR to another party. No royalties or licence fees could be generated from the relevant IPR by the original owner once it was sold to the other party; and</li> </ul> |                 |

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|                    |   | <p>(d) in order to be eligible for registration under the relevant legislation, the plant variety must meet the registration criteria for novelty, distinctness, uniformity and stability. The papaya seedlings as mentioned in the scenario suggested by Mr WONG Ting-kwong was regarded as a kind of commodity from the perspective of taxation and not an IPR.</p> <p>In response to the concerns raised by the Chairman and Mr WONG Ting-kwong, the Administration said that IRD had established mechanism to guard against abuses where the claim for deduction did not represent the true market value of the IPR at the time of purchase or sale.</p> |                 |
| 003644 –<br>004234 | Chairman<br>Mr WU Chi-wai<br>Administration | <p>In response to Mr WU Chi-wai's enquiry, the Administration clarified that –</p> <p>(a) the proposed profits tax deduction targeted at the capital expenditure incurred for the purchase of the ownership of the relevant IPRs and not the permission to use such IPRs; and</p> <p>(b) under the current Hong Kong tax regime, an enterprise's revenue expenditure was generally deductible when computing profits tax. As such, an enterprise's revenue expenditure for the use of IPRs (such as royalties and licence fees) was already deductible for determining its profits tax liability.</p>  |                 |
| 004235 –<br>005005 | Chairman<br>Mr Paul TSE<br>Administration   | <p>Mr Paul TSE referred to paragraphs 3 and 4 of the Legislative Council Brief (CITB CR 81/45/2) ("LegCo Brief") and enquired about the reasons for providing profits tax deductions for capital expenditure incurred for the registration of certain IPRs under Cap. 112 and the Bill, and why such expenditure was not taken as part of the development costs.</p> <p>The Administration advised that –</p> <p>(a) in respect of the existing five specified types of IPRs, some IPRs (i.e. registered designs, patents and trade marks) were required to be</p>   |                 |



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|                    |   | <p>registered under relevant statutory registration regime in order to secure protection under the Ordinances concerned. Profits tax deduction for such registration costs had been provided under Cap. 112; and</p> <p>(b) among the three proposed additions, plant variety right was the only one which was required to be registered likewise in order to secure protection under the Ordinance concerned. Clause 4 of the Bill sought to amend section 16(1)(g) of Cap. 112 to allow profits tax deduction for expenditure for the grant of plant variety rights.</p> <p>Referring to paragraph 14 of the LegCo Brief, Mr Paul TSE enquired whether the capital receipts arising from the sale of an IPR would become taxable pursuant to section 15 of Cap. 112 as amended by Clause 3 of the Bill.</p> <p>The Administration clarified that –</p> <p>(a) capital receipts were not taxable in accordance with the taxation principles of Hong Kong. Except in rare case where the IPR was a trading stock, IPRs were usually capital assets and therefore receipts from the sale of IPRs were not taxable;</p> <p>(b) Clause 3 of the Bill sought to amend section 15 of Cap. 112 which mainly concerned about royalties received for the use of IPRs, not sums received from the sale of IPRs. The amendment sought to clarify that, same with all IPRs, royalties received for the use of the three newly proposed types of IPRs were taxable receipts; and</p> <p>(c) Clause 3 of the Bill covered sums which were revenue in nature and it was not a new taxation requirement.</p> |                 |
| 005006 –<br>010217 | Chairman<br>Dr Junius HO Kwan-yiu<br>Administration | While expressing support for the Bill in principle, Dr Junius HO enquired how to determine whether an alleged purchase cost of an IPR was eligible for deduction under the proposed tax deduction. He used the following scenario as an example to raise his concern that an enterprise might abuse the proposed profits tax deduction by   |                 |

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|                    |  | <p>exaggerating the purchase costs of plant variety rights in research and development ("R&amp;D") projects –</p> <ul style="list-style-type: none"> <li>- an enterprise bred a new variety of soya bean by way of genetic modifications of several existing species of soya beans, and applied for profits tax deduction in respect of the purchase costs of those original soya beans varieties based on which the new one was developed and the related R&amp;D expenditure.</li> </ul> <p>The Administration advised that –</p> <ul style="list-style-type: none"> <li>(a) the scope of the proposed tax deduction was confined to plant variety rights which had been duly registered under Cap. 490 in Hong Kong or relevant legislations in other jurisdictions;</li> <li>(b) in determining the true value of the acquisition costs of the relevant IPRs, the IRD would make reference to the "arm's length" principle. For transactions involving related parties, the IRD would take into account relevant transfer pricing provisions, and consider whether the anti-avoidance provisions of Cap. 112 would be applicable should the relevant cases demonstrate an intent of tax avoidance or tax evasion; and</li> <li>(c) tax deduction in respect of R&amp;D expenditures was outside the scope of the Bill. The relevant issue would be dealt with under the context of the Inland Revenue (Amendment) (No. 3) Bill 2018 ("the No. 3 Bill").</li> </ul> |                 |
| 010218 –<br>010744 | Chairman<br>Mr Charles MOK<br>Administration | <p>The Administration responded to Mr Charles MOK's enquiry on the statutory registration regime applicable to plant varieties and clarified that rights in layout-design (topography) of integrated circuits subsisted immediately when it was created and hence registration was not required.</p> <p>In respect of Mr Charles MOK's enquiry on the estimated amount of tax revenue to be forgone pursuant to the proposed tax deduction, the</p>  |                 |

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|                    |   | <p>Administration advised that –</p> <p>(a) it was not feasible to arrive at a precise estimation as there were limited market information and statistics on the trading volume of the three types of IPRs concerned;</p> <p>(b) the IRD did not have relevant data for estimation since capital expenditure (including the acquisition costs of IPRs) was not tax deductible at present and therefore no claim had been recorded; and</p> <p>(c) the total amount of deduction claimed in respect of capital expenditure on the purchase of the existing five types of tax deductible IPRs for the year of assessment 2015/16 (i.e. before the proposed expansion in the current exercise) was HK\$846 million.</p> |                 |
| 010745 –<br>011029 | Chairman<br>Mr WU Chi-wai<br>Administration | <p>In response to Mr WU Chi-wai's enquiry on whether the No. 3 Bill would provide for tax deduction for registration costs of IPRs generated from R&amp;D projects, the Administration advised that section 16(1)(g) of Cap. 112 had already provided for the relevant tax deduction. As such, there was no need for the No. 3 Bill to provide for tax deduction again in respect of registration costs of IPRs generated from R&amp;D projects.</p>   |                 |
| 011030 –<br>011051 | Chairman<br>Administration                  | <p>To facilitate members' understanding on the tax deductions provided under Hong Kong's profits tax regime, the Chairman cited the following hypothetical case and requested the Administration to brief members on the applicable tax deductions :</p> <ul style="list-style-type: none"> <li>- a Hong Kong company had spent HK\$1 million on an R&amp;D project in the past five years. An IPR (e.g. patent) was generated from the project and the relevant registration cost was HK\$200,000. The said IPR was held by the company concerned for product manufacturing purpose.</li> </ul> <p>The Administration advised that in the above case –</p>  |                 |

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|                    |                            | <p>(a) the HK\$1 million R&amp;D expenditure incurred by the company concerned would be tax deductible pursuant to the enhanced tax deduction provided under the No. 3 Bill in respect of qualifying R&amp;D activities;</p> <p>(b) the registration cost of the IPR in the amount of HK\$200,000 was tax deductible pursuant to section 16(1)(g) of Cap. 112;</p> <p>(c) the production costs of the products manufactured by the company (i.e. stocks) was also tax deductible, while the receipts generated from sale of products was taxable; and</p> <p>(d) as there involved no sale and purchase of IPR in the above case, the proposed profits tax deductions for the purchase of IPR provided under the Bill was not applicable.</p> |                 |
| 011052 –<br>011522 | Chairman<br>Administration | The Administration's reply to the Chairman's enquiry on the details of consultation conducted by the Administration on the Bill.  |                 |
| 011523 –<br>011803 | Chairman<br>Administration | <p>Invitation of written submissions on the Bill.</p> <p>Meeting arrangement</p>  |                 |