

立法會
Legislative Council

LC Paper No. CB(2)198/18-19
(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/17

Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2018

**Minutes of the first meeting
held on Friday, 15 June 2018, at 8:30 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon Holden CHOW Ho-ding (Deputy Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Dr Hon Helena WONG Pik-wan
Hon CHUNG Kwok-pan
Dr Hon Pierre CHAN

Members absent : Dr Hon KWOK Ka-ki

Public Officers attending : Mr FONG Ngai
Deputy Secretary for Food and Health (Health) 3
Food and Health Bureau

Mr Bill LI Chi-pang
Principal Assistant Secretary for Food and Health
(Health) 4
Food and Health Bureau

Mr Derek LEE Chi-chung
Chief Research Scientist (Research Office) A
Research Office
Food and Health Bureau

Mr CHIU Kwok-kit
Deputy Commissioner (Technical)
Inland Revenue Department

Ms WONG Pui-ki
Senior Assessor (Research) 2
Inland Revenue Department

Mr Salvador TSANG Hoi-fung
Government Counsel
Department of Justice

Clerk in attendance : Ms Maisie LAM
Chief Council Secretary (2) 5

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 4

Miss Kay CHU
Senior Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Action

I. Election of Chairman

Election of Chairman and Deputy Chairman

Mr Kenneth LEUNG and Mr Holden CHOW were elected Chairman and Deputy Chairman of the Bills Committee respectively.

II. Meeting with the Administration

[File Ref: FH CR 1/3822/13, LC Paper Nos. CB(3)608/17-18, LS59/17-18 and CB(2)1602/17-18(02) to (07)]

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

Action

Follow-up actions required of the Administration

Admin

3. The Bills Committee requested the Administration to:
- (a) in respect of its stance that the right to equality was not absolute and might be subject to permissible limitations as set out under item (a) in its reply letter to the letter dated 18 May 2018 from the Legal Adviser to the Bills Committee (LC Paper No. CB(2)1602/17-18(05)), address a member's concern that according to the judgment in *Secretary for Justice v Yau Yuk Lung Zigo and Another* [FACC 12/2006], it was the difference in legal treatment but not an infringement of the right to equality which might be constitutionally justified;
 - (b) explain the reason for imposing the condition under the proposed section 26J(2) of the Inland Revenue Ordinance (Cap. 112) that only those parents or grandparents of a taxpayer or the taxpayer's spouse who were, at any time during the year of assessment, aged 55 or more; or under the age of 55 but eligible to claim an allowance under the Government's Disability Allowance Scheme, would fall within the definition of "specified relative" of the taxpayer; and
 - (c) advise whether and, if so, when it would review the effectiveness of the introduction of a concessionary deduction for premiums paid in respect of individual indemnity hospital insurance policies certified by the Secretary for Food and Health to be in compliance with the Voluntary Health Insurance Scheme ("VHIS") in incentivizing the uptake of VHIS policies, in particular by the higher-risk group.

Admin

4. The Administration was requested to revert to the Panel on Health Services on the outcome of the review, if any, referred to in paragraph 3(c) above as and when appropriate.

Invitation of public views

5. Members agreed to invite written submissions on the Inland Revenue (Amendment) (No. 4) Bill 2018 from the public as well as those organizations which the Administration had consulted on the taking forward of VHIS. For the former, in line with usual practice, a general notice would be posted on the Legislative Council website and invitation letters would be issued to the 18 District Councils for the purpose.

Action

III. Any other business

6. The Chairman said that subject to the availability of members, the next meeting of the Bills Committee would be held on 9 July 2018. Members would be informed of the meeting arrangements in due course.

(Post-meeting note: Having checked members' availability and with the concurrence of the Chairman, the second meeting of the Bills Committee was scheduled for 9 July 2018 at 10:45 am.)

7. There being no other business, the meeting ended at 10:31 am.

Council Business Division 2
Legislative Council Secretariat
6 November 2018

**Proceedings of the first meeting of
the Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2018
held on Friday, 15 June 2018, at 8:30 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Election of Chairman</i>			
000427 - 001221	Mr WONG Ting-kwong Ms Starry LEE Mr KWOK Wai-keung Mr Holden CHOW Mr Charles MOK Mr CHAN Chi-chuen Mr Kenneth LEUNG	Election of Chairman	
001222 - 001301	Chairman Ms Starry LEE Mr Charles MOK Mr Holden CHOW	Election of Deputy Chairman	
<i>Agenda item II: Meeting with the Administration</i>			
001302 - 001421	Chairman	Opening remarks	
001422 - 001943	Chairman Admin	Briefing by the Administration on the Inland Revenue (Amendment) (No. 4) Bill 2018 ("the Bill")	
001944 - 002551	Chairman Ms Alice MAK Admin	<p>Ms Alice MAK's concerns about whether, in the absence of a high risk pool ("HRP") which, in her view, was a key element for the successful implementation of the Voluntary Health Insurance Scheme ("VHIS"), the legislative proposal to provide concessionary deduction under salaries tax and personal assessment for relevant premiums paid by taxpayers or their spouses (not being a spouse living apart from the taxpayer) for an insurance policy that is in whole or in part issued under an individual indemnity hospital insurance plan certified by the Secretary for Food and Health to be in compliance with VHIS ("VHIS policy") could provide adequate incentive to encourage people to take up VHIS and use private healthcare services so as to relieve the pressure on the public healthcare system; and the Administration's timetable to re-examine the HRP proposal.</p> <p>The Administration's advice that:</p> <p>(a) given the divergent views received over the HRP proposal in the relevant public consultation exercise, it was considered more prudent to adopt a phased approach by first launching VHIS with those proposed requirements which received broad support. The HRP proposal would be re-examined at a later stage, taking into account, among others, the experience of actual implementation of VHIS;</p> <p>(b) the maximum deduction allowable to a taxpayer in respect of qualifying premiums paid during a year of assessment for each insured person who was either the taxpayer or a specified relative (as defined in the Bill) of the taxpayer in</p>	

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		<p>the year of assessment would be \$8,000. The Bill did not provide a cap on the number of specified relatives in respect of whom a taxpayer might claim tax deductions; and</p> <p>(c) there were currently over two million people covered by individual indemnity hospital insurance. It was estimated that the uptake of VHIS policies would be up to one million, 1.5 million and 2.5 million in the second, third and tenth years of implementation of VHIS respectively.</p>	
002552 - 002909	Chairman Mr WONG Ting-kwong Admin	<p>Mr WONG Ting-kwong's enquiries and the Administration's elaboration about the meanings of "specified relative" of a person in a year of assessment; qualifying premiums paid during a year of assessment for an insured person under a VHIS policy; and the maximum deduction for qualifying premiums paid during a year of assessment for each insured person as provided for under the proposed sections 26J and 26K of and the proposed Schedule 3E to the Inland Revenue Ordinance (Cap. 112) ("the Ordinance").</p> <p>In response to Mr WONG Ting-kwong's enquiry, the Administration advised that Elderly Health Care Vouchers could only be used for paying the expenses arising from the use of primary care services provided by the private sector but not for purchasing a VHIS policy or paying the premiums thereof.</p>	
002910 - 003423	Chairman Mr Holden CHOW Admin	<p>In response to Mr Holden CHOW's suggestion of increasing the maximum deduction claimable for those insured persons who were of an older age and needed to pay a higher premium due to their higher health risks so as to encourage the uptake of VHIS policies, the Administration advised that it was envisaged that about 90% of the policy holders of Standard Plans (i.e. plans which meet the minimum compliant product requirements of VHIS in respect of its terms and conditions and the benefit schedule) could have their qualifying premiums fully deductible under the legislative proposal.</p>	
003424 - 003931	Chairman Mr CHUNG Kwok-pan Admin	<p>Mr CHUNG Kwok-pan's concern about whether the legislative proposal could provide adequate incentive to encourage policy holders who had signed up for individual indemnity hospital insurance products before the implementation of VHIS to switch to a VHIS-complaint product; and the effectiveness of VHIS in enhancing the long-term sustainability of the public healthcare system.</p> <p>The Chairman's view that the Administration should review the effectiveness of VHIS in alleviating the pressure on public healthcare system one or two years after the implementation of VHIS and revert with the review outcome to the Panel on Health Services.</p> <p>The Administration's advice that the various features of VHIS policies would enhance the protection of individual indemnity hospital insurance products and hence, encourage more people to purchase such products so that they could make use of private healthcare services when needed. This could in turn help alleviate pressure on the public healthcare system in the long run.</p>	

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003932 - 004854	Chairman Mr CHAN Chi-chuen Admin ALA4	<p>Mr CHAN Chi-chuen's remark that according to the judgment in <i>Secretary for Justice v Yau yuk Lung Zigo and Another</i> [FACC 12/2006], it was the difference in legal treatment but not an infringement of the right to equality which might be constitutionally justified; and his request for the Administration to elaborate on its stance that the right to equality was not absolute and might be subject to permissible limitation as set out under item (a) in its reply letter to the letter dated 18 May 2018 from the Legal Adviser to the Bills Committee (LC Paper No. CB(2)1602/17-18(05)).</p> <p>The Legal Adviser to the Bills Committee's elaboration on the taxation issue in dispute in <i>Leung Chun Kwong v Secretary for the Civil Service</i> [CACV 126/2017]; and the potentially differential treatment arising from the definition of "sibling" under the Bill against taxpayers (or their spouses) who were adopted children as set out in his letter dated 13 June 2018 to the Administration (LC Paper No. CB(2)1602/17-18(06)).</p>	Admin
004855 - 005458	Chairman Dr Helena WONG Admin	<p>In response to Dr Helena WONG's enquiries as to whether premiums paid by employers on the employees' behalf for group health insurance products were deductible under the profits tax assessment; and whether premiums paid by employees for a VHIS-compliant supplement on top of their group cover would fall within the meaning of "qualifying premiums" under the Bill, the Administration replied in the positive to both questions.</p>	
005459 - 010047	Chairman Mr Holden CHOW Admin	<p>Mr Holden CHOW's views that the existing heterosexual nature of marriage in Hong Kong should be upheld; and a person (regardless of gender) who had a cohabitation relationship with the taxpayer during the year of assessment should be covered under the definition of "specified relative".</p> <p>The Administration's advice that its policy intent was that the types of familial relationships covered by the Bill should be the same as the relationships covered by the existing dependent allowances in the Ordinance. Unmarried cohabitation relationship was not covered by the existing dependent allowances in the Ordinance.</p>	
010048 - 011303	Chairman Mr CHUNG Kwok-pan Admin Dr Helena WONG	<p>Mr CHUNG Kwok-pan and Dr Helena WONG's enquires about the exercising of the power by the Commissioner of Inland Revenue ("the Commissioner") under the proposed section 26K(4) of the Ordinance to determine the amount of qualifying premiums that was, in the Commissioner's opinion, commensurate with the risk profile of an insured person.</p> <p>Dr Helena WONG's concern about how an assessment over the level of premium loading, which was correlated to the additional risk assessed for individual insured person, such as reported health conditions, could be made by the Commissioner.</p> <p>The Administration's response that:</p> <p>(a) the proposed section 26K(4) was an anti-avoidance provision aimed at guarding against any possible abuse of tax deduction by claiming unreasonably high premium for a VHIS policy;</p>	

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		<p>(b) the VHIS Office of the Food and Health Bureau would make public information on all individual indemnity hospital insurance plans certified by the Secretary for Food and Health to be in compliance with VHIS ("Certified Plans"), which covered, among others, the certification number and the age-banded premium schedule. The VHIS Office would provide advice to the Inland Revenue Department ("IRD") in considering the possible abuse cases; and</p> <p>(c) the taxpayers' right of objection against the assessment and their right of appeal to the Commissioner, the Board of Review (Inland Revenue Ordinance) or the court as provided for under the Ordinance was applicable to the proposed concessionary deduction in respect of qualifying premiums.</p> <p>In response to Mr CHUNG Kwok-pan's enquiry, the Administration advised that IRD would flexibly deploy its existing financial and manpower resources to cope with the implementation work arising from the various legislative proposals to amend the Ordinance.</p>	
011304 - 011810	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen's view that premiums paid by a taxpayer during a year of assessment for an insured person, regardless of the relationship of that person with the taxpayer, under a VHIS policy should be deductible so as to encourage the uptake of VHIS policies; and his enquiry about how the meaning of "spouse" would be construed if a taxpayer had more than one wife under the law of other places which permits polygamous marriages.</p> <p>The Administration's advice that:</p> <p>(a) unlike the allowable deduction of outgoings and expenses wholly, exclusively and necessarily incurred in the production of a taxpayer's assessable income, the proposed allowable deduction in respect of qualifying premiums paid during a year of assessment for an insured person under a VHIS policy was concessionary in nature as an added incentive for members of the public to purchase VHIS policies. The policy intent of the Administration was that the types of familial relationships covered by the Bill should be the same as the relationships covered by the existing dependent allowances in the Ordinance; and</p> <p>(b) under the existing section 2(1) of the Ordinance, "marriage" shall not, in the case of a marriage which is both potentially and actually polygamous, include marriage between a man and any wife other than the principal wife, and married (結婚) shall be construed accordingly.</p>	
011811 - 012337	Chairman Admin Mr CHUNG Kwok-pan	Members agreed that the Bills Committee would invite written views from the related organizations and the public on the Bill.	

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012338 - 012926	Chairman Dr Pierre CHAN Admin	<p>Dr Pierre CHAN's view that the legislative proposal could not incentivize young people to purchase VHIS policies as the average monthly income of a fresh local university graduate only stood at about \$15,000; and that a mechanism should be put in place to regularly review the maximum deduction allowable to a taxpayer in this regard.</p> <p>The Administration's advice that it was estimated that the annual premium of a Standard Plan policy for insured person aged between 20 and 24 would only be \$2,400. In addition, the feature of guaranteed renewal without re-underwriting until the insured person turned 100 could attract young people to purchase VHIS policies. The Administration would step up promotion in this regard upon the implementation of VHIS.</p>	
012927 - 013514	Chairman Mr CHUNG Kwok-pan Admin	<p>Mr CHUNG Kwok-pan's view that the possibility of abuse of tax deduction under the legislative proposal would not be high as the maximum amount of net saving in tax per insured person would only be \$1,360 at a marginal tax rate of 17%.</p> <p>The Administration affirmed, in response to Mr CHUNG Kwok-pan's enquiry, that the stepmother of the spouse of the taxpayer, who had registered a marriage with the taxpayer's father-in-law and was, at any time during the year of assessment, aged 55 or more, would satisfy the definition of "parent" under the Bill which included a step parent.</p>	
013515 - 014146	Chairman Mr Holden CHOW Admin	<p>On Mr Holden CHOW's concern that large insurance companies might charge similarly high levels of premium for the Certified Plans, which would in turn discourage the uptake of VHIS policies, the Administration advised that the standard terms and benefits of Standard Plan as well as the publication of the age-banded premiums of the Certified Plans would foster market competition and help keep premium levels under better check. It should be noted that any anti-competitive practices, including price-fixing, might be prohibited under the Competition Ordinance (Cap. 619).</p>	
014147 - 015448	Chairman Dr Helena WONG Admin	<p>In response to Dr Helena WONG's enquiry, the Administration advised that it was proposed that the insured person, who had to be the taxpayer or a specified relative of the taxpayer, had to be a holder of Hong Kong identity card ("HKID card holder"). If the insured person was under the age of 11 and not an HKID card holder, a natural parent (or an adoptive parent) of the insured person had to be an HKID card holder at the time of birth (or adoption) of the insured person.</p> <p>Dr Helena WONG's enquiry on the rationale for imposing the condition that only those parents or grandparents of a taxpayer or the taxpayer's spouse who were, at any time during the year of assessment, aged 55 or more; or under the age of 55 but eligible to claim an allowance under the Government's Disability Allowance Scheme would be regarded as "specified relatives" of the taxpayers.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>The Administration explained that the above condition concerning the parent or grandparent was the same as the one in the existing dependent parent allowance and dependent grandparent allowance as set out in the existing sections 30(1) and (1A), and 30A(1) and (1A) of the Ordinance respectively. The rationale for the granting of the dependent parent allowance and dependent grandparent allowance was that the younger generation would inevitably have to undertake a heavier responsibility in caring for their parents or grandparents aged 55 or above, who had less chance of finding a full-time or part-time job.</p> <p>Dr Helena WONG's view that all parents and grandparents (regardless of age) of the taxpayers or of the spouse of the taxpayers who were not in the workforce should be regarded as "specified relatives". She asked the Administration to reconsider whether the age condition could be removed.</p> <p>Mr CHAN Chi-chuen suggested that the scope of "specified relatives" should be expanded in order to encourage the uptake of VHIS policies.</p>	
015449 - 015910	Chairman Mr Holden CHOW Admin	Mr Holden CHOW's suggestion for the Administration to review, say, two years after the implementation of VHIS, the effectiveness of the introduction of a concessionary deduction for premiums paid in respect of VHIS policies in incentivizing the uptake of such policies, in particular by the higher-risk group.	Admin
015911 - 020245	Chairman Mr CHUNG Kwok-pan Admin	<p>The Chairman's decision to extend the meeting for not more than 15 minutes beyond its appointed time to allow more time for discussion.</p> <p>Mr CHUNG Kwok-pan's concern that people might prefer to purchase or migrate to Standard Plan policies rather than Flexi Plan policies as the premiums for the latter would be higher. If this would be the case, the implementation of VHIS would bring about a negative impact on innovation and variety of individual hospital indemnity insurance products.</p> <p>The Administration's response that VHIS would enhance the accessibility, continuity, quality and transparency of individual hospital indemnity insurance products for better consumer protection. That said, insurance companies were free to register as a VHIS provider to offer Standard Plans and/or Flexi Plans (with the number of Flexi Plans on offer not restricted), or continue to offer non-VHIS-compliant products, or both.</p>	
020246 - 020411	Chairman Admin	In response to the Chairman's enquiry about the migration arrangements for policy holders who had taken out individual hospital indemnity insurance plans before the implementation of VHIS ("existing policy holders"), the Administration's advice that insurance companies which had registered with FHB as a VHIS provider that offered Certified Plan(s) had to provide their existing policy holders an one-off migration facilitation.	

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item III: Any other business</i>			
020412 - 020636	Chairman Mr CHUNG Kwok-pan	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
6 November 2018