

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

Government's response to the follow-up issues raised at the Bills Committee meeting on 15 June 2018

Purpose

This paper sets out the Government's response to the follow-up issues raised at the meeting of the Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2018 (the Bill) held on 15 June 2018.

Right to Equality

2. At the Bills Committee meeting on 15 June 2018, a member referred to the first sentence of the sixth paragraph of the Government's written reply dated 13 June 2018 (the written reply) which stated that “[t]he right to equality is not absolute and may be subject to permissible limitations”, and expressed the view that the abovementioned statement was inconsistent with paragraph 22 of the Court of Final Appeal's judgment in *Secretary for Justice v Yau Yuk Lung Zigo* (FACC 12/2006), where Chief Justice Li held as follows:

“In requiring differential treatment to be justified, the view has been expressed that the difference in treatment in question is an infringement of the constitutional right to equality but that the infringement may be constitutionally justified. See the Court of Appeal's judgment in the present case at 208B-C (Ma CJHC) and in *Leung v Secretary for Justice* [2006] HKCA 360; [2006] 4 HKLRD 211 at 234G-H. This approach is not appropriate. Where the difference in treatment satisfies the justification test, the correct approach is to regard the difference in treatment as not constituting discrimination and not infringing the constitutional right to equality. Unlike some other constitutional rights, such as the right of peaceful assembly, it is not a question of infringement of the right which may be constitutionally justified.”

3. The Government maintains the view that the right to equality is not absolute in the sense that it does not require that all persons should invariably be treated alike. This is consistent with:

- (i) paragraphs 8 and 13 of the United Nations Human Rights Committee’s General Comment No. 18 on non-discrimination¹; and
- (ii) paragraph 20 of the Court of Final Appeal’s judgment in *Yau Yuk Lung*²,

which state that the right to equality does not require identical treatment in every instance, and that differences in treatment may be justified for good reason.

4. The concerned member pointed out that, in light of Chief Justice Li’s judgment in *Yau Yuk Lung*, where the difference in treatment could be justified, it does not constitute discrimination and does not infringe the right to equality. Hence, it was not correct to state that an act of discrimination which infringes the right to equality could be justified. However, the Government’s written reply does not state that there is an “infringement” of the right to equality which is justifiable.

5. The sixth paragraph of the written reply already explains that a “difference in treatment” would not constitute unlawful discrimination if it can be justified in accordance with the four-step test. The seventh to tenth paragraphs of the reply further explain why the difference in treatment under the Bill is justifiable, and concludes that “there is no contravention of Article

¹ It is stated in paragraph 8 of the United Nations Human Rights Committee’s General Comment No. 18 that “*The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance*”, and in paragraph 13, the Committee observes that “*not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the [International Covenant on Civil and Political Rights]*”.

² An extract of paragraph 20 of the Court of Final Appeal’s judgment in *Yau Yuk Lung* is set out below - “*However, the guarantee of equality before the law does not invariably require exact equality. Differences in legal treatment may be justified for good reason. In order for differential treatment to be justified, it must be shown that:*

- (1) *The difference in treatment must pursue a legitimate aim. For any aim to be legitimate, a genuine need for such difference must be established.*
- (2) *The difference in treatment must be rationally connected to the legitimate aim.*
- (3) *The difference in treatment must be no more than is necessary to accomplish the legitimate aim.”*

25 of the Basic Law and Article 22 of the [Hong Kong Bill of Rights]”. Hence, the written reply is consistent with the concerned member’s observations.

Condition of Parents and Grandparents as “Specified Relative”

6. A member enquired on the condition under the proposed section 26J(2) of the Inland Revenue Ordinance (Cap. 112) (IRO) that the parent or grandparent 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. The abovementioned condition concerning the parent or grandparent is the same as the one in the existing dependent parent allowance³ (供養父母免稅額) and dependent grandparent allowance⁴ (供養祖父母或外祖父母免稅額). As set out in the Legislative Council Brief (File Ref: FH CR 1/3822/13), it is the policy intent that the types of familial relationships covered by the Bill should be the same as the relationships covered by the existing dependant allowances in the IRO.

Review of the Effectiveness of the Concessionary Deduction

7. Regarding the enquiry on whether and, if so, when the Government would review the effectiveness of the concerned concessionary deduction, we wish to stress that the tax deduction is **not** meant to be the key or sole incentive for the public to purchase Certified Plans under the Voluntary Health Insurance Scheme (VHIS). VHIS seeks to improve the quality of individual indemnity hospital insurance products (IHIPs) and offers consumers a more comprehensive quality choice of IHIPs. Compared with many existing IHIPs, Certified Plans under VHIS are more attractive in a number of ways, e.g. guaranteed renewal until 100 years old of the insured, premium adjustment not to be based on changes in the health condition of that individual insured; no “lifetime benefit limit”; and coverage extended to include unknown pre-existing conditions and ambulatory procedures including endoscopy. The effectiveness of the VHIS will be reviewed from time to time after its implementation.

Food and Health Bureau
3 July 2018

³ Section 30 of IRO

⁴ Section 30A of IRO