

立法會
Legislative Council

LC Paper No. LS20/17-18

**Paper for the House Committee Meeting
on 12 January 2018**

**Legal Service Division Report on
Inland Revenue (Amendment) (No. 7) Bill 2017**

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to introduce a two-tiered profits tax rates regime ("Two-tiered Regime") for the years of assessment commencing on or after 1 April 2018. In general, under the Two-tiered Regime, the profits tax rates for the first HK\$2 million of profits of corporations and unincorporated businesses would be lowered to 8.25% and 7.5% respectively. Profits above that amount would continue to be subject to the existing tax rates of 16.5% and 15% respectively.
- 2. Public consultation**

It is not stated in the Legislative Council Brief that the public has been consulted.
- 3. Consultation with LegCo Panel**

As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on the Bill. During the briefing on the Policy Address at the Panel meeting on 20 October 2017, the Administration mentioned its plan to implement the Two-tiered Regime by introducing legislative amendments to Cap. 112. Members did not raise questions on the initiative at the Panel meeting.
- 4. Conclusion**

Since the Bill seeks to introduce a new Two-tiered Regime, Members may wish to set up a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Inland Revenue (Amendment) (No. 7) Bill 2017 ("Bill") is 10 January 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: TsyB R 00/765-3-2/1/0(C)) issued by the Financial Services and the Treasury Bureau ("FSTB") in December 2017 for further details.

Object of the Bill

2. The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to introduce a two-tiered profits tax rates regime ("Two-tiered Regime") for the years of assessment commencing on or after 1 April 2018. Under the Bill, the profits tax rates for the first HK\$2 million of profits of corporations and unincorporated businesses would be lowered to 8.25% and 7.5% respectively. Profits above that amount would continue to be subject to the existing tax rates of 16.5% and 15% respectively.

Background

3. The current Cap. 112 sets the profits tax rates at 16.5% for corporations (see section 14(2) of and Schedule 8 to Cap. 112) and 15% for unincorporated businesses (see sections 2(1) and 14(1) of and Schedule 1 to Cap. 112). The Chief Executive ("CE")'s 2017 Policy Address published in October 2017 ("Policy Address") stated that FSTB will implement the Two-tiered Regime put forward by CE in her Election Manifesto with a view to enhancing the competitiveness of Hong Kong.¹

Provisions of the Bill

4. The Bill seeks to amend Cap. 112 to implement the Two-tiered Regime. The proposed amendments are summarized in the following paragraphs.

¹ See paragraphs 65 and 66 of the Policy Address. According to paragraph 66, the profits tax rate for the first HK\$2 million of profits of enterprises would be lowered from the current 16.5% to 8.25% instead of 10% as proposed in the Manifesto.

Two-tiered Regime

5. The Bill seeks to amend section 14 of and add the new Schedule 8B to Cap. 112 so that the profits tax rate for the first HK\$2 million of profits of corporations would be lowered from 16.5% (as specified in the existing Schedule 8 to Cap. 112) to 8.25% for any year of assessment commencing on or after 1 April 2018.

6. The Bill also seeks to amend section 14 of and add the new Schedule 8A to Cap. 112 so that the profits tax rate for the first HK\$2 million of profits of unincorporated businesses would be lowered from 15% (as specified in the existing Schedule 1 to Cap. 112) to 7.5% for any year of assessment commencing on or after 1 April 2018.

Application of the new Two-tiered Regime subject to modifications proposed in clause 4

7. Clause 4 of the Bill proposes to add the new sections 14AA, 14AAB and 14AAC to Cap. 112 to define a number of terms (including "entity"² and "connected entities"), and to provide for the application of the Two-tiered Regime in respect of "connected entities". The proposed new section 14AAB(1) reads:

"... an entity is a connected entity of another entity if —

- (a) one of them has control³ over the other;
- (b) both of them are under the control of the same entity; or
- (c) in the case of the first entity being a natural person carrying on a sole proprietorship business — the other entity is the same person carrying on another sole proprietorship business".

8. Under the proposed new section 14AAC, if entity A and entity B are connected entities, only one entity could benefit from the lower profits tax rate among all the connected entities, i.e. if entity A elects in writing for the proposed lower profits tax rate in a particular year of assessment, entity B would not be so entitled in that year of assessment.

² Under the proposed new section 14AA(1), "... entity means — (a) a natural person; (b) a body of persons; or (c) a legal arrangement, including — (i) a corporation; (ii) a partnership; and (iii) a trust".

³ The proposed new section 14AAB(2) and (3) explains what constitutes "control".

Transitional arrangements

9. Clause 12 of the Bill seeks to add the new Schedule 43 to Cap. 112 to provide for the transitional arrangements in relation to the charging of provisional profits tax for the year of assessment commencing on 1 April 2018.

Commencement

10. The Bill contains no commencement provision. By virtue of section 20(2)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill, if passed, would come into operation on the day the enacted ordinance is published in the Gazette.

Public consultation

11. It is not stated in the Legislative Council Brief that the public has been consulted.

Consultation with LegCo Panel

12. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on the Bill. During the briefing on the Policy Address at the Panel meeting on 20 October 2017, the Administration mentioned its plan to implement the Two-tiered Regime by introducing legislative amendments to Cap. 112. Members did not raise questions on the initiative at the Panel meeting.

Conclusion

13. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new Two-tiered Regime, Members may wish to set up a Bills Committee to study the Bill in detail.

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