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Legislative Council

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Paper for the House Committee Meeting on 15 June 2018

Legal Service Division Report on Inland Revenue (Amendment) (No. 5) Bill 2018

I. SUMMARY

1. **The Bill**

   The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to:
   (a) provide for the option for married persons to elect for personal assessment separately for all years of assessment commencing on or after 1 April 2018;
   (b) accelerate tax deductions for capital expenditure incurred in relation to environmental protection installations;
   (c) provide for tax exemption to cover certain debt instruments issued on or after 1 April 2018; and
   (d) provide for related matters.

2. **Public Consultation**

   According to the Administration, it has discussed the implementation details of providing accelerated deduction for building energy efficiency installations with the relevant stakeholders, and has also consulted the key market players on the tax exemption for the qualifying debt instrument scheme.

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.

4. **Conclusion**

   The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce changes to the existing tax relief regime, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 13 June 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: Tsy B R 183/535-1/6/0 (18-19)(C)) issued by the Financial Services and the Treasury Bureau on 6 June 2018 for further details.

Object of the Bill

2. The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to:

(a) provide for the option for married persons to elect for personal assessment separately for all years of assessment commencing on or after 1 April 2018;

(b) accelerate tax deductions for capital expenditure incurred in relation to environmental protection installations;

(c) provide for tax exemption to cover certain debt instruments issued on or after 1 April 2018; and

(d) provide for related matters.

Background

3. According to the 2018-19 Budget, the Government proposes to implement the following measures starting from the year of assessment 2018/19 to alleviate the tax burden on salary earners and to enhance certain profits tax concessions:

(a) relaxing the requirement on election for personal assessment starting from the year of assessment 2018-19 by allowing a husband and his wife the option to decide whether to elect for personal assessment;[1]

(b) enhancing the tax concessions for capital expenditure incurred by enterprises in procuring eligible energy efficiency building installations and renewable energy devices;[2] and

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[1] See paragraph 186 of the 2018-19 Budget Speech.
[2] See paragraph 168 of the 2018-19 Budget Speech.

(c) increasing the types of debt instruments that would qualify for tax exemption under Cap. 112.[3]

The Bill

4. The Bill seeks to implement the above proposals in the 2018-19 Budget. Key amendments to Cap. 112 introduced by the Bill are set out in the ensuing paragraphs.

Amendments relating to election of personal assessment by married persons

5. At present, under section 41(1) of Cap. 112, an individual who is married may elect for personal assessment on the individual's total income (such as income from property situated in Hong Kong and profits arising in trade in Hong Kong) in accordance with Part 7 of Cap. 112. Section 41(1A) of Cap. 112 provides, among other things, that in case the individual and the individual's spouse have assessable income under Cap. 112 and both are eligible to elect for personal assessment, the individual may not elect for personal assessment unless the individual's spouse also elects to be so assessed.

6. Part 2 of the Bill seeks to, among other things, amend section 41(1) and (1A) of Cap. 112 to allow an individual who has a spouse to elect for personal assessment separately or jointly with the spouse. However, in cases where an individual or the individual's spouse is chargeable to salaries tax and they have elected to be jointly assessed in accordance with section 10(3) of Cap. 112, the individual and the individual's spouse must make an application for personal assessment jointly under the proposed section 41of Cap. 112.

Amendments relating to environmental protection installations ("EPIs")

7. Under section 16I(3) of Cap. 112, any specified capital expenditure incurred in relation to EPI ("EPI expenditure") during the basis period for a year of assessment shall be deducted over 5 succeeding years of assessment[4] so long as the EPI has not been sold at the end of the basis period for the year of assessment concerned. EPI is defined in section 16H(1) of Cap. 112 to mean any installation, or part of any installation, that is specified in Part 2 of Schedule 17 to Cap. 112 and forms a commercial or industrial building or

[3] See paragraph 81 of the 2018-19 Budget Speech.

[4] Under section 16I(3) of Cap. 112, 20% of EPI expenditure shall be deducted for that year of assessment and the remaining part shall be deducted by four equal amounts one for each of the next succeeding four years of assessment, so long as the EPI has not been sold at the end of the basis period for the year of assessment concerned.

structure as defined in section 40(1) of Cap. 112. These installations include solar water heating installations and energy efficient building installations registered under the Hong Kong Energy Efficiency Registration Scheme for Buildings administered by the Electrical and Mechanical Services Department ("EMSD").

8. Part 3 of the Bill seeks to amend Cap.112 by adding:

(a) a new section 16I(3A) to allow any part of EPI expenditure that remains to be deducted for any year of assessment commencing on or after 1 April 2018 to be deducted in the year of assessment commencing on that date so long as the EPI concerned has not been sold on or before that date; and

(b) a new section 16I(3B) to allow any EPI expenditure incurred in a year of assessment commencing on or after 1 April 2018 to be deducted for the year of assessment in which the expenditure is incurred.

Amendments relating to debt instruments

9. Section 14A(1) of Cap. 112 provides, among other things, for the rate(s) at which profits tax is chargeable in respect of a medium term debt instrument[5] or a short term debt instrument.[6] Section 26A(1) provides for profits tax exemption in respect of a long term debt instrument.[7] A "debt instrument" is defined in section 14A(4) of Cap. 112 to include an instrument specified in Part 1 of Schedule 6 to Cap. 112[8] in respect of a debt issue which

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[5] A "medium term debt instrument" is defined in section 14A(4) to mean a debt instrument that is issued before 5 March 2003, has an original maturity of not less than five years (or is undated) and cannot be redeemed within five years from the date of its issue; or a debt instrument that is issued on or after 5 March 2003, has an original maturity of less than seven years but not less than three years (or is undated) and can be redeemed within seven years from the date of its issue but not within the first three years.

[6] A "short term debt instrument" is defined in section 14A(4) to mean a debt instrument that is issued on or after the date of commencement of the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011), has an original maturity of less than three years (or is undated) and can be redeemed within three years from the date of issue.

[7] A "long term instrument" is defined in section 26A(2) to mean a debt instrument as defined in section 14A(4) of Cap. 112 that is issued on or after 5 March 2003, has an original maturity period of not less than seven years (or is undated) and cannot be redeemed within seven years from the date of its issue.

[8] These instruments include a bill of exchange and a promissory note defined in the Bills of Exchange Ordinance (Cap. 19).

in its entirety has been lodged with and cleared by the Central Moneymarkets Unit operated by the Monetary Authority.

10. The Bill seeks to amend section 14A of Cap. 112 to provide that:

(a) extend the definition of "debt instrument" to cover debt instruments listed on a stock exchange in Hong Kong such that these instruments would also become eligible for tax exemption; and

(b) the scope of tax exemption for debt instruments would be extended to cover debt instruments of any duration issued on or after 1 April 2018.

11. In the light of the proposed new tax exemption for debt instruments, the definition of "long term debt instrument" under section 26A(2) of Cap. 112 is also proposed to be amended.

Other amendments

12. Other provisions of the Bill relate to consequential amendments and transitional arrangements.

Commencement

13. The Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

Public Consultation

14. According to paragraph 12 of the LegCo Brief, the Administration has formulated the proposals after taking into account views received from Members and stakeholders during the 2018-19 Budget consultation process. After the announcement of the 2018-19 Budget, the Environment Bureau and EMSD discussed the implementation details of providing accelerated deduction for building energy efficiency installations with the relevant stakeholders. For the Qualifying Debt Instrument Scheme, key market players were sounded out following the announcement of the 2018-19 Budget.

Consultation with LegCo Panel

15. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on the Bill.

Conclusion

16. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce changes to the existing tax relief regime, Members may wish to form a Bills Committee to study the Bill in detail.

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