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Paper for the House Committee meeting on 5 October 2018

**Report of the Bills Committee on
Inland Revenue (Amendment) (No. 3) Bill 2018**

Purpose

This paper reports on the deliberations of the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2018 ("the Bills Committee").

Background

2. At present, section 16B of the Inland Revenue Ordinance (Cap. 112) ("IRO") allows 100% deduction of expenditure incurred by a person carrying on a trade, profession or business on research and development ("R&D") related to that trade, profession or business, including capital expenditure incurred on the purchase of plant and machinery used for R&D in the year of assessment during which it was incurred.

3. According to paragraph 5 of the Legislative Council ("LegCo") Brief (File Ref.: ITC CR 5/1/2168/18), in her first Policy Address of October 2017, the Chief Executive has set a goal to double the Gross Expenditure on R&D as a percentage of the Gross Domestic Product to 1.5%, equivalent to about \$45 billion, by 2022. The Government also aims to gradually reverse the ratio of public sector expenditure versus private sector expenditure on R&D from government-led to private-led, which is more sustainable.

4. According to paragraphs 3, 4 and 6 of the LegCo Brief, the Administration has studied the relevant tax practices in major jurisdictions,¹ and noted that their R&D tax incentives mainly target at activities that seek to achieve scientific or technological advancement and involve the resolution of some scientific or technological uncertainties. In alignment with this common model, the Administration proposes to implement an enhanced tax deduction regime for qualifying R&D activities by introducing the Inland Revenue (Amendment) (No. 3) Bill 2018 ("the Bill").

Inland Revenue (Amendment) (No. 3) Bill 2018

5. The Bill seeks to amend IRO to –

- (a) provide for enhanced tax deductions for certain expenditures incurred in relation to qualifying R&D activities;
- (b) introduce further safeguards to prevent the abuse of tax deductions in respect of R&D activities;
- (c) deem certain sums to be trading receipts chargeable to tax; and
- (d) provide for related matters and minor textual amendments.

6. The Administration proposes to replace the existing section 16B of IRO by a new section 16B which provides for the deduction of expenditures on R&D activities and the treatment of the proceeds of sale of plant or machinery for, and rights generated from, R&D activities as trading receipts. Under section 4 of the new Schedule 45 to IRO, a "qualifying R&D activity" is defined as an activity wholly undertaken and carried on in Hong Kong including one in the fields of natural or applied science to extend knowledge and the carrying on of an original and planned investigation with the prospect of gaining new scientific or technical knowledge and understanding. Under section 5 of the new Schedule 45, a "qualifying R&D activity related to a trade, profession or business" includes a qualifying R&D activity that may lead to or facilitate an extension, or an improvement in the technical efficiency, of the trade, profession or business; and a qualifying R&D activity of a medical nature that is of particular relevance to the welfare of employees employed in the trade, profession or business.

¹ Including Australia, Canada, France, Ireland, Mainland China, Singapore, the United Kingdom and the United States.

7. Section 13 of the new Schedule 45 provides for the calculation of the total amount allowed to be deducted under the new section 16B for R&D expenditures during the basis period for a year of assessment. In gist, Type A expenditures (i.e. expenditures on R&D activities related to a trade, profession or business including a payment to an R&D institution² and expenditures other than Type B expenditures) would qualify for 100% deduction. As for Type B expenditures (i.e. expenditures on qualifying R&D activities related to a trade, profession or business including a payment to a designated local research institution³ ("DLRI") and a qualifying expenditure related to the trade, profession or business⁴), it is proposed that they would qualify for the enhanced tax deduction, i.e. 300% for the first \$2 million of the total amount of expenditures and 200% for the remaining amount.

8. Other provisions of the Bill include the following –

- (a) sections 14 and 15 of the new Schedule 45 seek to provide for safeguards to prevent the abuse of tax deductions under the new section 16B of IRO;
- (b) section 18 of the new Schedule 45 seeks to empower the Commissioner of Inland Revenue ("CIR") to seek advice from the Commissioner for Innovation and Technology ("CIT") on matters related to claims and applications made by a person in relation to a deduction under the new section 16B of IRO;
- (c) amendment to section 15(1) of IRO regarding royalties from licensing intellectual property or know-how generated from R&D activity (including qualifying R&D activity); and

² Under section 6(4) of the new Schedule 45, "R&D institution" means (a) a designated local research institution; or (b) a university or college that is not a designated local research institution.

³ Section 19 of the new Schedule 45 seeks to empower the Commissioner for Innovation and Technology to designate any university or college located in Hong Kong or any other local institution that undertakes qualifying R&D activities in Hong Kong as a designated local research institution.

⁴ Under section 12 of the new Schedule 45, a "qualifying expenditure related to a trade, profession or business" includes an expenditure in relation to an employee who is engaged directly and actively in, or an expenditure on a consumable item that is used directly in, a qualifying R&D activity related to the trade, profession or business.

- (d) other amendments including transitional, consequential and textual amendments.

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

The Bills Committee

10. The House Committee agreed at its meeting on 4 May 2018 to form a Bills Committee to study the Bill. Hon Kenneth LEUNG was elected as Chairman of the Bills Committee. The membership list of the Bills Committee is in **Appendix I**. The Bills Committee has held three meetings to meet with the Administration and receive views from deputations. A list of the organizations which have submitted views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

11. Members of the Bills Committee generally support the Bill. The Bills Committee's deliberations are set out in ensuing paragraphs.

Qualifying R&D activity

12. Citing examples of R&D projects concerning various areas including applications of big data, computer network security, blockchain technology, distributed ledger technology, artificial intelligence ("AI"), chatbot, computer software and programmes, etc., Mr Charles Peter MOK has enquired whether any of them falls within the definition of "qualifying R&D activity" under section 4 of the new Schedule 45 in the Bill.

13. The Administration considers it impossible to determine whether each of those projects cited by Mr Charles Peter MOK is a "qualifying R&D activity" without considering all the relevant facts, including the state of knowledge and technology at the commencement of the project, the scientific or technological uncertainties involved, etc. As a general rule, if an R&D project seeks to directly contribute to achieving an advance in science or technology by resolving scientific or technological uncertainty, it would be regarded as a qualifying R&D activity. The Administration has explained that an advance in science or technology means an advance in overall knowledge or capability in a field of science or technology (not a company's own state of knowledge or capability alone). This includes the adaptation of knowledge or

capability from another field of science or technology in order to make such an advance where this adaptation was not readily deducible. A material, device, product, process, system or service does not become an advance in science or technology simply because science or technology is used in its creation.

14. The Administration has advised that scientific or technological uncertainty exists when knowledge of whether something is scientifically possible or technological feasible, or how to achieve it in practice, is not readily available or deducible by a competent professional working in the field. This includes system uncertainty. Scientific or technological uncertainty will often arise from turning something that has already been established as scientifically feasible into a cost-effective, reliable and reproducible material, device, product, process, system or service.

15. The Administration has advised that to enable the Inland Revenue Department ("IRD") to process taxpayers' claims efficiently, taxpayers should provide full and accurate information in their tax returns and sufficient supporting documents upon request. If necessary, CIR may consult CIT on any technical issues involved. If an enterprise wishes to know whether its planned R&D project meets the requirements of qualifying R&D activity and/or the expenditures to be incurred are eligible for enhanced tax deduction, it could submit an advance ruling application to IRD.

R&D activities carried out outside Hong Kong

16. Some members including Mr Paul TSE consider that enhanced tax deduction should also be provided to R&D activities carried out outside Hong Kong, for example, 150% for those R&D activities carried out in the Greater Bay Area.

17. The Administration has advised that the key policy objective of the Bill is to encourage more local R&D activities. Granting enhanced deduction to R&D activities outside Hong Kong would run contrary to this objective and it would be difficult for IRD to verify the overseas R&D expenditure in the absence of cross-border tax audits. Operationally, it is infeasible for IRD or the Innovation and Technology Commission ("ITC") to ascertain the qualifications of overseas R&D institutions or the eligibility of tax deduction claims for R&D expenditures incurred overseas. Since Hong Kong does not accept, as a general rule, other jurisdictions' requests for conducting on-site tax examinations, it is impossible for IRD or ITC to perform on-site tax audits for R&D activities conducted overseas on the basis of reciprocity. Hence, subsidizing overseas R&D activities by way of enhanced tax deduction would

not be a good use of public funds. The Administration has however pointed out that R&D expenditures on R&D activities conducted outside Hong Kong may still be eligible for the existing 100% deduction as Type A expenditure.

18. Some members including Mr Alvin YEUNG and Mr WONG Ting-kwong have enquired about the tax deduction arrangement for an R&D activity which was spearheaded by an overseas research institute at first but was subsequently carried on by its branch in Hong Kong.

19. The Administration has advised that apportionment of R&D expenditures might be required for cases where the R&D activity was carried on both locally and outside Hong Kong by the same research institute (if its branch institution has been designated as a DLRI and is the party contracted to undertake the R&D activity) for the purpose of enhanced tax deduction. The payment attributable to the part of the R&D activity carried on overseas might still be eligible for the existing 100% deduction as Type A expenditure as defined in section 8 of the proposed Schedule 45 in the Bill, whereas the payment attributable to the part conducted in Hong Kong satisfying the criteria in section 10 of the proposed Schedule 45 might be eligible for the enhanced tax deduction as Type B expenditure.

Cost-sharing arrangement

20. Members have sought clarification on whether payments made for R&D activities outsourced to other entities, including a private company within a business group under a cost-sharing arrangement ("CSA"), will be deductible if the private company is not a DLRI.

21. The Administration has advised that if the claimant has undertaken part or all of the underlying R&D activities under a CSA, the share of R&D expenditure borne by the claimant under the CSA may be treated as its in-house R&D expenditure and qualify for 100% deduction or 300%/200% enhanced deduction. IRD will provide further explanations in its Departmental Interpretation and Practice Note ("DIPN") to be issued after the passage of the Bill.

Vetting of applications for designation as designated local research institution

22. Members note that as part of the new scheme, a payment made by a person to a DLRI qualifies for the enhanced tax deduction as a Type B expenditure if the payment is made for a qualifying R&D activity related to the person's trade, profession, or business, or if an object of the institution is the undertaking of a qualifying R&D activity related to the class of trade,

profession or business to which the person's trade, profession or business belongs and the payment is used for pursuing that object. Some members including Mr Charles Peter MOK, Mr CHAN Chun-ying, Mr CHUNG Kwok-pan and Mr WONG Ting-kwong have sought information on the requirements for designation as a DLRI and the time required by CIT for processing applications by local research institutions for such designation and the performance pledge of ITC, if any, in processing such applications.

23. The Administration has advised that irrespective of its scale, a local institution or corporation which satisfies the specified requirements (for example, having expertise in providing R&D services in one or more specified fields of science or technology, with sufficient qualified and experienced R&D talents, equipment and facilities for the provision of R&D services in the specified fields, sound project management experience and appropriate track records, etc.) may apply to become a DLRI. The Administration will make reference to overseas experience in drawing up an implementation framework that will suit the needs of Hong Kong, and will set up an expert panel comprising members from relevant industries and the academia to advise on the assessment process.

24. As regards ITC's processing of applications for designation as DLRI, the Administration has advised that ITC will examine the documentary evidence provided by the applicants and seek their clarification in order to verify their compliance with the designation criteria. If necessary, an on-site assessment will be arranged with the applicants. The assessment time for each application would depend on the complexity and number of research fields for which designation is sought and whether an on-site assessment is needed. In general, for a less complex single field application where no on-site assessment is needed, ITC would require six weeks to complete the assessment after it has received all the required information and clarifications from the applicant. In case where an applicant is unable to provide some of the supporting documents, ITC will review its application and determine whether there is sufficient evidence to substantially demonstrate its compliance with the specified criteria as well as its competence to conduct the research work.

Claims for payment to a designated local research institution before it was designated

25. Given the time it takes ITC to process applications by research institutions for designation as DLRI, some members including Mr CHAN Chun-ying, Mr CHUNG Kwok-pan and Mr WONG Ting-kwong have expressed concerns that a taxpayer might decline to enter into formal

agreement with, or defer payments to, the research institution until its designation, thereby adversely affecting the cash flow of the research institution. The research institution would be disadvantaged as a result. These members have suggested that the Administration should allow payments made to a research institution within a certain period before its designation to be qualified as Type B expenditure eligible for enhanced deduction. In other words, the Administration should prescribe an eligibility period under section 6 of the proposed Schedule 45 in the Bill so that a taxpayer is allowed to claim enhanced tax deduction for a payment made during the said eligibility period prior to designation of the research institution.

26. The Administration considers that the eligibility period suggested by members has the risk that the Administration would not be able to verify whether the research institution was competent as a DLRI in the eligibility period before designation. However, having regard to members' views, the Administration has initially proposed to add section 6(2A) to Schedule 45 in the Bill which widens the scope of the meaning of "R&D expenditure" to include payments made to a local institution within three months before its designation as a DLRI. Some members, including Mr CHAN Chun-ying and Mr CHUNG Kwok-pan, have expressed concern that, given the anticipated large number of applications by research institutions for designation as DLRI, a three-month eligibility period might not be sufficient. The Chairman, Mr CHAN and Mr CHUNG have made suggestions for a longer eligibility period. Noting members' concerns in that regard, the Administration has proposed to extend the eligibility period to six months, adding that the difficulty faced by the Administration in vetting the research institutions increases with the length of the eligibility period. Members in general consider that the extension could effectively avert the problem that a taxpayer might defer payments to a research institution which has yet to be designated as a DLRI.

27. Mr WU Chi-wai has further suggested that a provision be added in the Bill for CIT and/or CIR to exercise discretion in considering whether a payment to a research institution is a payment to an R&D institution/a DLRI, if the research institution is yet to be designated as a DLRI beyond the six-month eligibility period. On Mr WU's suggestion, the Administration responded that extending the eligibility period from three months to six months would cover almost all applications and hence a discretion provision is unnecessary.

Definition of intellectual property

28. The Administration proposes to amend section 15 of IRO to deem royalties from licensing intellectual property or know-how generated from "R&D activity" to be trading receipts chargeable to tax. The proposed section 15(8) sets out various categories of intellectual properties. The Chairman and some members including Mr CHUNG Kwok-pan and Mr WU Chi-wai have sought the Administration's elaboration on the eligibility of expenditures on R&D activities relating to art performances, including fees paid to performers, for enhanced tax deduction claims, and the scope of "any other property or right of a similar nature" stipulated in paragraph (g) of the definition of "intellectual property" under the proposed section 15(8).

29. The Administration has advised that with regard to R&D activities which aim at enhancing art or sports performances, a new or substantially improved algorithm developed through resolution of scientific or technological uncertainties is considered to be an intellectual property as defined under the proposed section 15(8) and the expenditures incurred might be eligible for enhanced tax deduction. In the circumstances, the intellectual property refers to the algorithm, not the art or sports performance concerned. The fee paid to a performer might be eligible for enhanced tax deduction if the performer is a contract employee who is engaged directly and actively in the qualifying R&D activity.

30. The Administration has advised that the intent of including "any other property or right of a similar nature" in the definition of "intellectual property" under the proposed section 15(8) is to cover any other property or right which is of similar nature as copyright material, design, layout-design (topography) of an integrated circuit, patent, plant variety right or secret process or formula. Thus, a new invention or discovery which does not fall within the aforesaid categories of intellectual properties will be covered. The Administration has further advised that the same expression "other property of a similar nature" has been used in the existing section 15(1)(b) and (ba) of IRO, which deems any sums accrued to a person for the use of or right to use in Hong Kong certain intellectual properties as trading receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong.

Apportionment of expenditures on R&D activities for tax deduction

31. Members note that in ascertaining the qualifying expenditure in relation to an employee who is only partly engaged directly and actively in a qualifying R&D activity related to a trade, profession or business or on a

consumable item that is only partly used directly in a qualifying R&D activity related to the trade, profession or business, it is proposed in section 12(2) and (3) of the new Schedule 45 to IRO that "the appropriate proportion of the expenditure is to be taken into account". However, a different approach is used in ascertaining the amount allowed to be deducted for a Type A expenditure that is incurred for an R&D activity carried on outside Hong Kong in relation to a trade, profession or business and the trade, profession or business is carried on partly in, and partly out of, Hong Kong under section 13(3) of the new Schedule 45 to IRO. The wording "the appropriate proportion of the expenditure that CIR considers is reasonable in the circumstances" is used in section 13(3). The Legal Adviser to the Bills Committee has sought clarifications on the reason for adopting different approaches and how the "appropriate proportion of the expenditure" as stated in section 12(2) and (3) of the new Schedule 45 would be calculated.

32. The Administration has advised that section 12(2) and (3) of the new Schedule 45 serves to attribute an appropriate amount of the relevant expenditure on employees and consumables to Type B expenditure which qualifies for a higher rate of tax deduction. Section 13(3) of the new Schedule 45 is to prevent multinational corporations from using their global expenditure on R&D to completely off-set their tax liabilities in Hong Kong for years. It empowers CIR to attribute an appropriate portion of Type A expenditure incurred on R&D activities (other than qualifying R&D activities) carried on outside Hong Kong to the part of trade or business in Hong Kong.

33. The Administration has further advised that the "appropriate proportion of the expenditure" under section 12(2) and (3) of the new Schedule 45 can be determined by direct attribution or indirect allocation (for example, allocation keys or cost drivers) in a single year. The claimant should keep sufficient records on the staff costs of employees engaged directly and actively in a qualifying R&D activity and on the expenditures incurred on consumables used directly in such activity. If an employee is only partly engaged directly and actively in the qualifying R&D activity, the staff costs should be apportioned accordingly. Only that portion attributed or allocated to the qualifying R&D activity is eligible for enhanced deduction. Similarly, apportionment can be applied to expenditures incurred on the consumables partly used directly in the qualifying R&D activity.

34. As regards the appropriate proportion of Type A expenditure under section 13(3) of the new Schedule 45, the Administration has advised that it may relate to an R&D project spanning over a few years during which the extent of the trade or business carried on in Hong Kong and the scope of trading or business activities may differ from year to year. Thus, CIR is given

a discretionary power to determine the deductible amount on a reasonable basis.

Preventing abuse and tax avoidance

35. Some members including Mr Christopher CHEUNG consider that given the significant enhancement in tax deduction, taxpayers may be tempted to inflate claims artificially or make other tax avoidance arrangements involving tax deductions under section 16B. These members have sought elaboration on the provisions in IRO and/or the Bill which serve to prevent abuses or tax evasion which may arise under the enhanced tax deduction regime for R&D expenditures proposed by the Bill.

36. The Administration has advised that to prevent tax abuses arising from the enhanced tax deduction regime, section 14(c) of the proposed Schedule 45 in the Bill provides that no deduction is to be allowed under section 16B for an R&D expenditure incurred by a person if the expenditure is incurred under an arrangement the main purpose, or one of the main purposes, of which is to enable the person to obtain —

- (a) a deduction to which the person would not otherwise be entitled under section 16B; or
- (b) a deduction of a greater amount than the amount to which the person would otherwise be entitled under section 16B.

According to the Administration, this specific provision is to forestall artificially inflated claims or other tax avoidance arrangements involving tax deductions under section 16B. For example, a taxpayer has artificially inflated the fee paid to a DLRI for undertaking an R&D activity whereas the excess fee can be returned to the taxpayer by other means. In such circumstances, no deduction under section 16B would be allowed in respect of the inflated fee.

37. The Administration has further advised that section 61 of IRO specifies that where an assessor is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the person concerned shall be assessable accordingly. This is a general anti-avoidance provision which serves to nullify artificial or fictitious transactions that avoid tax.

38. Moreover, section 61A of IRO stipulates that where a transaction has, or would have had but for this section, the effect of conferring a tax benefit on a person ("the relevant person"), and, having regard to the seven matters listed in the section, it would be concluded that the person, or one of the persons, who entered into or carried out the transaction, did so for the sole or dominant purpose of enabling the relevant person, either alone or in conjunction with other persons, to obtain a tax benefit, an Assistant Commissioner of Inland Revenue ("the Assistant Commissioner") shall assess the liability to tax of the relevant person as if the transaction or any part thereof had not been entered into or carried out or in such other manner as the Assistant Commissioner considers appropriate to counteract the tax benefit which would otherwise be obtained. This general anti-avoidance provision empowers the Assistant Commissioner to disregard or restructure any tax avoidance transaction with the sole or dominant purpose of conferring a tax benefit on a taxpayer.

Guidelines for taxpayers

39. Some members including Mr CHUNG Kwok-pan have enquired whether IRD would issue guidelines or DIPN regarding the eligibility of claims for tax deductions under the enhanced tax deduction regime and make the relevant draft available for LegCo's information and consideration.

40. The Administration has advised that IRD is now drafting DIPN which would elaborate its interpretation and practices regarding the deduction claims under proposed section 16B. After the passage of the Bill, the DIPN will be submitted to LegCo for information in due course.

Attracting overseas scientific research institutions to Hong Kong

41. In the course of scrutiny, members have taken the opportunity to study the specific measures taken by the Administration to incentivize overseas R&D institutions to establish their branches in Hong Kong and encourage the further development of innovation and technology ("I&T") by its various policy initiatives and amendments to the relevant ordinances. These measures include enhancing the capital market, facilitating the admission of talents, upgrading research capability of local universities and R&D institutions and investment in infrastructure.

42. According to the Administration, the Government has earmarked \$10 billion in the 2018-19 Budget to support the establishment of two world-class research clusters on healthcare technologies and on AI and robotics technologies at the Hong Kong Science Park with a view to attracting top-notch universities, research institutions and technology enterprises from local,

Mainland and overseas to set up research operation and conduct more collaborative R&D work.

43. The Government has also earmarked a funding of \$10 billion to Hong Kong Science and Technology Parks Corporation ("HKSTPC"), of which \$3 billion will be used to make available a range of facilities to foster research work in healthcare and AI/robotics technologies, and \$7 billion to strengthen support for tenants/incubatees of HKSTPC. Furthermore, \$20 billion is set aside in the 2018-19 Budget for the first phase development of the Hong Kong-Shenzhen Innovation and Technology Park ("HSITP") in the Lok Ma Chau Loop. After completion, HSITP will be the largest I&T platform in Hong Kong. In the long run, it will become a strategic base for conducting more collaborative R&D operation and thus add to the growing momentum of the I&T ecosystem in Hong Kong. ITC has also recently launched a three-year pilot Technology Talent Admission Scheme to expedite admission of technology talent from outside Hong Kong to fill the manpower gap in areas that talents are not readily available in Hong Kong.

44. In addition, the Government has just expanded the scope of profits tax deduction for capital expenditure incurred for the purchase of intellectual property rights ("IPRs") by including three additional IPRs in layout design (topography) of integrated circuits, plant varieties and performances. Thus, the scope of deduction for the purchase of IPRs has been expanded from five types to eight types. This tax measure could encourage businesses to further consider using and purchasing the three types of newly added IPRs. The increased demand for such IPRs would help contribute to a more favourable I&T ecosystem in Hong Kong as more businesses would invest in R&D for the creation of such IPRs. With "proprietary interest" of such IPRs, taxpayers would also be able to exploit the IPRs for further improvement or development, which is in line with the policy objective to promote innovation and upgrading.

Proposed amendments to the Bill

45. The Administration will propose amendments to allow a taxpayer to claim 100% tax deduction or enhanced tax deduction for a payment made to a local institution if the institution is designated as a DLRI within six months after the date of payment (see paragraphs 25 to 27 above). The Administration will also propose amendments involving renumbering and re-organization of several provisions in section 15 necessitated by the passing of the Inland Revenue (Amendment) (No. 2) Bill 2018.

46. The Bills Committee has taken note of the proposed amendments of the Administration set out in **Appendix III** and agrees to the proposed amendments. The Bills Committee will not propose any amendment to the Bill.

Resumption of Second Reading debate on the Bill

47. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 24 October 2018.

Advice sought

48. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 1
Legislative Council Secretariat
3 October 2018

Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2018

Membership List*

Chairman Hon Kenneth LEUNG

Members Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH
Hon Charles Peter MOK, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHAN Chun-ying, JP

(Total : 10 members)

Clerk Mr Derek LO

Legal Adviser Mr Alvin CHUI

* Changes in membership are shown in Annex to Appendix I

Annex to Appendix I

Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2018

Changes in membership

Member	Relevant date
Dr Hon Elizabeth QUAT, BBS, JP	Up to 17 May 2018
Hon Dennis KWOK Wing-hang	Up to 17 May 2018

Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2018

**List of organizations which have submitted views to
the Bills Committee**

1. Association of Chartered Certified Accountants Hong Kong
2. Capital Markets Tax Committee of Asia
3. Democratic Alliance for the Betterment and Progress of Hong Kong
4. Federation of Hong Kong Industries
5. Hong Kong Institute of Certified Public Accountants
6. Liberal Party Youth Committee
7. Plover Bay Technologies Limited
8. PricewaterhouseCoopers Limited
9. The Taxation Institute of Hong Kong

Inland Revenue (Amendment) (No. 3) Bill 2018

Committee StageAmendments to be moved by the Secretary for Innovation and Technology

<u>Clause</u>	<u>Amendment Proposed</u>
5(1)	By deleting “15(1)(ba)” and substituting “15(1)(bb)”.
5(1)	By renumbering the proposed section 15(1)(bb) as section 15(1)(bc).
5(2)	By deleting “15(6)” and substituting “15(7)”.
5(2)	By renumbering the proposed section 15(7) as section 15(7A).
5(2)	By deleting the proposed section 15(8).
5	By adding— <ul style="list-style-type: none"> “(3) Section 15(8), English text, definition of <i>performer</i>— <ul style="list-style-type: none"> Repeal the full stop Substitute a semicolon. (4) Section 15(8)— <ul style="list-style-type: none"> Add in alphabetical order “<i>intellectual property</i> (知識產權) includes— <ul style="list-style-type: none"> (a) copyright material; (b) a design; (c) a layout-design (topography) of an integrated circuit; (d) a patent; (e) a plant variety right; (f) a secret process or formula; and (g) any other property or right of a similar nature;

know-how (工業知識) means any industrial information or techniques likely to assist in the manufacture or processing of goods or materials;

R&D activity (研發活動) has the meaning given by section 2 of Schedule 45.”.”.

- 13 In the proposed Schedule 45, in section 6, by adding—
- “(2A) For the purposes of subsection (1)(a) and (b), a payment to a local institution—
- (a) that is not a university or college; and
 - (b) that is not, and never has been, a designated local research institution,
- is a payment to an R&D institution if the local institution is designated as a designated local research institution within 6 months after the date of payment.”.
- 13 In the proposed Schedule 45, in section 8(a), by deleting “section 10(a)” and substituting “section 10(1)(a)”.
- 13 In the proposed Schedule 45, in section 9(1)(b) and (3)(b), by deleting “section 10(a)” and substituting “section 10(1)(a)”.
- 13 In the proposed Schedule 45, by renumbering section 10 as section 10(1).
- 13 In the proposed Schedule 45, in section 10, by adding—
- “(2) For the purposes of subsection (1)(a)(i) and (ii), a payment to a local institution—
- (a) that is not a university or college; and
 - (b) that is not, and never has been, a designated local research institution,
- is a payment to a designated local research institution if the local institution is designated as a designated local research institution within 6 months after the date of payment.”.
- 13 In the proposed Schedule 45, in section 11(1)(b) and (2)(b), by deleting “section 10(a)” and substituting “section 10(1)(a)”.