

立法會
Legislative Council

LC Paper No. CB(1)995/18-19
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/18/2

Bills Committee on Inland Revenue (Amendment) (No. 7) Bill 2018

**Minutes of the second meeting on
Monday, 17 December 2018, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon James TO Kun-sun
Hon Charles Peter MOK, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon CHUNG Kwok-pan

**Public Officers
attending** : **Agenda item I**

Financial Services and the Treasury Bureau

Mr Andrew LAI, JP
Deputy Secretary (Treasury)²

Ms Pecvin YONG
Principal Assistant Secretary (Treasury)(Revenue 1)

Inland Revenue Department

Mr CHIU Kwok-kit, JP
Deputy Commissioner (Technical)

Mr LEUNG Kin-wa
Chief Assessor (Profits Tax)

Ms WONG Pui-ki
Senior Assessor (Research)

Department of Justice

Miss Betty CHEUNG
Senior Assistant Law Draftsman

Ms Carmen CHAN
Senior Government Counsel

**Attendance by
Invitation : Agenda item I**

Mr Fergus WONG Wang-tai
Member, Tax Sub-committee
Association of Chartered Certified Accountants Hong Kong

Mr Jeremy CHOI Heng-chio
President
The Taxation Institute of Hong Kong

Mr Alvin LEUNG Heung-ying
Committee Member
Hong Kong Securities Professionals Association

Mr Tom CHAN Pak-lam
Chairman
The Institute of Securities Dealers

Mr John LEVACK
Vice Chairman
Hong Kong Venture Capital and Private Equity Association

Clerk in attendance : Ms Doris LO
Chief Council Secretary (1)2

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 4

Mr Raymond CHOW
Senior Council Secretary (1)10

Ms Christina CHIU
Legislative Assistant (1)2

I Meeting with deputations and the Administration

Matters arising from the meeting on 30 November 2018

- (LC Paper No. LS26/18-19 — Paper on the decision of the Court of Final Appeal in *Nice Cheer Investment Ltd v. Commissioner of Inland Revenue* (2013) 16 HKCFAR 813 prepared by the Legal Service Division
- LC Paper No. CB(1)337/18-19(01) — List of follow-up actions arising from the discussion at the meeting on 30 November 2018
- LC Paper No. CB(1)337/18-19(02) — Administration's response to issues raised at the meeting on 30 November 2018)

Relevant papers

- (LC Paper No. CB(3)98/18-19 — The Bill
File Ref.: TsyB R 00/800/24/0 (C) — Legislative Council Brief
LC Paper No. LS14/18-19 — Legal Service Division Report
LC Paper No. CB(1)241/18-19(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(1)241/18-19(02) — Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)241/18-19(03) — Letter from Assistant Legal Adviser to the Administration dated 12 November 2018
- LC Paper No. CB(1)241/18-19(04) — Administration's response to Assistant Legal Adviser's letter dated 12 November 2018 [LC Paper No. CB(1)241/18-19(03)]
- LC Paper No. CB(1)247/18-19(01) — Letter from Assistant Legal Adviser to the Administration dated 30 November 2018

LC Paper No. CB(1)337/18-19(03) — Administration's response to Assistant Legal Adviser's letter dated 30 November 2018 [LC Paper No. CB(1)247/18-19(01)]

Submissions from deputations/individuals not attending the meeting

(LC Paper No. CB(1)321/18-19(02) — Joint submission from Dr Agnes W Y LO and Dr Raymond M K WONG (English version only)

LC Paper No. CB(1)321/18-19(03) — Submission from PricewaterhouseCoopers Limited (English version only)

LC Paper No. CB(1)321/18-19(04) — Submission from Hong Kong Institute of Certified Public Accountants (English version only)

LC Paper No. CB(1)344/18-19(01) — Submission from The Hong Kong Association of Banks (English version only)

LC Paper No. CB(1)360/18-19(01) — Submission from Stephen YIP (English version only) (Restricted to members))

Discussion

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

2. The Bills Committee received oral representation from five deputations on the Inland Revenue (Amendment) (No. 7) Bill 2018 ("the Bill") and noted five written submissions from deputations/individuals not attending the meeting.

(Post meeting note: Submissions from the Hong Kong Baptist University (English version only) and the Hong Kong Bar Association (English version only) subsequently received were circulated to members vide LC Paper Nos. CB(1)361/18-19(01) and CB(1)420/18-19(01) on 18 December 2018 and 7 January 2019 respectively.)

Follow-up actions to be taken by the Administration

3. The Administration was requested to provide written responses to the written submissions received and views expressed by deputations at the meeting.

(*Post meeting note:* The written responses provided by the Administration were circulated to members vide LC Paper No. CB(1)402/18-19(01) on 2 January 2019.)

Date of next meeting

4. The Chairman said that the next meeting of the Bills Committee would be held on 8 January 2019 to continue the clause-by-clause examination of the Bill and consider the draft amendments proposed by the Administration to the Bill.

(*Post meeting notes:*

- Members were notified vide LC Paper No. CB(1)363/18-19 issued on 18 December 2018 that a meeting was scheduled for Tuesday, 8 January 2019, from 2:30 pm to 4:30 pm; and
- the draft amendments proposed by the Administration to the Bill were circulated to members vide LC Paper No. CB(1)410/18-19(01) on 3 January 2019.)

[At 3:19 pm, the Chairman suspended the meeting temporarily such that members could vote on a motion at the meeting of the Panel on Constitutional Affairs being held concurrently. The meeting resumed at 3:22 pm.]

II Any other business

5. There being no other business, the meeting ended at 4:18 pm.

Council Business Division 1
Legislative Council Secretariat
2 May 2019

**Proceedings of the second meeting of the
Bills Committee on Inland Revenue (Amendment) (No. 7) Bill 2018
on Monday, 17 December 2018, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with deputations and the Administration			
000508-000845	Chairman	Opening remarks	
000846-001501	Association of Chartered Certified Accountants Hong Kong ("ACCA(HK)")	Presentation of views on the proposed amendments seeking to align the tax treatment of financial instruments with their accounting treatment ("proposed amendments in Part 2 of the Bill")	
001502-002033	The Taxation Institute of Hong Kong ("TIHK")	Presentation of views on the proposed amendments in Part 2 of the Bill [LC Paper No. CB(1)321/18-19(01) (English version only)]	
002034-002420	Hong Kong Securities Professionals Association ("HKSPA")	Presentation of views on the proposed amendments in Part 2 of the Bill	
002421-002509	The Institute of Securities Dealers	Presentation of views on the proposed amendments in Part 2 of the Bill	
002510-002600	Hong Kong Venture Capital and Private Equity Association	Indication of no comments on the Bill	
002601-003457	Chairman Administration	The Administration's initial responses to the views expressed by deputations at the meeting	
003458-004752	Chairman Mr James TO ACCA(HK) HKSPA TIHK Administration	Further exchange of views with deputations on the proposed amendments in Part 2 of the Bill	
004753-010356	Chairman Mr Christopher CHEUNG Administration	Mr Christopher CHEUNG sought clarifications on: (a) whether the proposal in the Bill to allow taxpayers to elect the fair value basis for computing its assessable profits for tax reporting would depart from the Court of Final Appeal ("CFA")'s judgment in <i>Nice Cheer Investment Limited v Commissioner of Inland</i>	

Time marker	Speaker	Subject(s)	Action required
		<p><i>Revenue</i> (2013) 16 HKCFAR 813 ("Nice Cheer case");</p> <p>(b) whether a taxpayer had to provide justifications for making an election under the proposed new section 18H(2), and for subsequently revoking the election pursuant to the proposed new section 18H(4); and</p> <p>(c) the tax computation adjustments for the profits/losses of financial instruments at the juncture of changing from realization accounting to fair value accounting and vice versa.</p> <p>The Administration advised that:</p> <p>(a) the proposed amendments in the Bill could address the industry's need and provide a statutory basis for the Inland Revenue Department ("IRD") to accept fair value accounting for tax reporting. It was up to the taxpayers whether to opt for computing their assessable profits on a fair value basis;</p> <p>(b) an election made under the proposed new section 18H(2) for aligning the tax treatment of financial instruments with their accounting treatment was, in general, irrevocable. The taxpayer making such an election would not be required to provide justification; and</p> <p>(c) pursuant to the proposed new sections 18H(4) and (5), such an election might be revoked with the approval of the Commissioner of Inland Revenue ("CIR") but the taxpayer had to prove to CIR's satisfaction that (i) there were good commercial reasons for the revocation; and (ii) tax avoidance was not the main purpose, or one of the main purposes, of the revocation.</p> <p>Temporary suspension of the meeting</p>	
010357-011234	Chairman ACCA(HK) TIHK Administration	<p>Further exchange of views with deputations on the proposed amendments in Part 2 of the Bill</p> <p>The Administration was requested to provide written responses to the written submissions received and views expressed by deputations at the meeting.</p>	Administration (paragraph 3 of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
011235-012217	Chairman Assistant Legal Adviser 4 ("ALA4") Administration	<p>Briefing by ALA4 on the short note prepared by the Legal Service Division explaining how the Bill proposed to address the decision of CFA in the Nice Cheer case (LC Paper No. LS26/18-19)</p> <p>Discussion on the Administration's response (LC Paper No. CB(1)337/18-19(03)) to ALA4's letter dated 30 November 2018 (LC Paper No. CB(1)247/18-19(01)) concerning the interim administrative measures to accept tax returns prepared on a fair value basis</p> <p>On ALA4's enquiry regarding whether taxpayers were aware that it was up to those taxpayers who submitted computation of profits on a fair value basis to exclude unrealized profits which as decided by CFA were not taxable, the Administration advised that after the Nice Cheer case, information regarding the interim administrative measure for accepting profit tax returns with assessable profits computed on a fair value basis was made available at IRD's website, and the Department would update the Departmental Interpretation and Practice Notes ("DIPN") after the passage of the Bill to provide further elaborations in relation to the relevant legislative amendments.</p>	
012218-012653	Chairman ALA4 Administration	<p>Briefing by the Administration on its response (LC Paper No. CB(1)337/18-19(02)) to the issues raised by members at the meeting on 30 November 2018 (LC Paper No. CB(1)337/18-19(01))</p> <p>On ALA4's enquiry, the Administration clarified that:</p> <p>(a) the issue whether "tax is paid or payable" in the visited territory by a person in respect of the person's income derived from services rendered as a visiting teacher or researcher in that visited territory within the meaning of the proposed new section 8(1AB) was a question of fact that CIR would have to be satisfied of; and</p> <p>(b) the above applied regardless of whether tax was exempted or assessed to be nil in respect of such income in the visited territory.</p>	

Time marker	Speaker	Subject(s)	Action required
Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)98/18-19)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)241/18-19(01))]			
012654-013106	Chairman ALA4 Administration	<u>Clause 1 – Short title and commencement</u> <u>Clause 2 – Inland Revenue Ordinance Amended</u> The Chairman suggested that, in addition to numbering the various amendment bills to the Inland Revenue Ordinance (Cap. 112) in their short titles, the Administration should consider including also a short description in their short titles in future to specify the subject matter of the proposed amendments of the bills so as to avoid confusion among various amendment bills being concurrently scrutinized by the Legislative Council. ALA4 agreed that specifying the subject matter of the proposed amendments in the short title would avoid confusion. The Administration undertook to consider the suggestion.	
013107-013717	Chairman ALA4 Administration	<u>Clause 3 – Sections 18G to 18L added</u> <i>18G – Financial instrument: interpretation of this section and sections 18H, 18I, 18J, 18K and 18L</i> ALA4 drew members attention to the proposed new section 18G(2)(b) which stated that an expression (e.g. "effective interest rate" in the proposed new section 18J(5)) not defined in the proposed new sections 18G to 18L would have the same meaning as the expression had in the specified financial reporting standard if so defined therein (e.g. the definition of "effective interest rate" in the Hong Kong Financial Report Standard 9). That said, ALA4 pointed out the Administration's advice (in LC Paper No. CB(1)241/18-19(04)) that the meaning of an undefined expression "effective rate" used in paragraph 3(b) of the "note without legislative effect" ("Note") to be added after section 18F by clause 3 was clear in context and the use of defined terms in the Note seemed not essential. The Chairman enquired in the event of any inconsistency between the Note and the relevant DIPN issued by IRD, which of the two would prevail.	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that the Note served to explain the effect of the provisions in simple terms. When updating the DIPN in relation to the relevant legislative amendments in the Bill, IRD would, among others, ensure its consistency with the Note.</p> <p>On ALA4's enquiry, the Administration confirmed that it would propose an amendment to the Bill to remove the tag-definition "(有關條文)" from the Chinese text of the proposed new section 18G(2)(b), as mentioned in the Administration's response (LC Paper No. CB(1)241/18-19(04)) to ALA4's letter dated 12 November 2018 (LC Paper No. CB(1)241/18-19(03)).</p>	
013718-014311	Chairman ALA4 Administration	<p><u>Clause 3 – Sections 18G to 18L added</u></p> <p><i>18H – Financial instrument: application of sections 18I, 18J, 18K and 18L</i></p> <p>On the enquiry of the Chairman and ALA4, the Administration confirmed that taxpayers (a) were not required to provide justifications for making an election under the proposed new section 18H(2) to align tax treatment of financial instruments with their accounting treatment for assessing profits; but (b) would be required, on applying for CIR's approval to revoke an earlier election made under the proposed new section 18H(2), to prove to CIR's satisfaction that (i) there were good commercial reasons for the revocation; and (ii) tax avoidance was not the main purpose, or one of the main purposes, of the revocation. The proposed new section 18H did not prohibit a taxpayer who had revoked an election under the proposed new section 18H(2) with CIR's approval from subsequently making a fresh election under the proposed section 18H(2).</p> <p>ALA4 pointed out that the term "good commercial reasons" was not defined in the Bill, and drew members' attention to the Administration's advice (in LC Paper No. CB(1)241/18-19(04)) that the term should be understood as having its ordinary meaning in the context of the proposed new section 18H and a definition of the term was considered not necessary. He advised that similar terms (e.g. "commercial reasons") used in other legislation were also not defined.</p>	

Time marker	Speaker	Subject(s)	Action required
014312-014713	Chairman ALA4 Administration	<p><u>Clause 3 – Sections 18G to 18L added</u></p> <p><i>18I – Financial instrument: effect of sections 18J, 18K and 18L on other Part 4 provisions</i></p> <p>On the enquiry of ALA4 regarding the reason for excluding fair value accounting under sections 17C and 17D of Cap. 112, the Administration explained that sections 17C and 17D respectively applied in ascertaining profits in respect of which the issuer of a regulatory capital security and a specified connected person of the issuer of a regulatory capital security was chargeable to tax.</p>	
014714-015107	Chairman Administration	<p><u>Clause 3 – Sections 18G to 18L added</u></p> <p><i>18J – Financial instrument: generally, profits etc. for accounting purpose taken to be profits etc. for taxation purpose</i></p> <p>No enquiry from members on this section</p>	
015108-015147	Chairman	Meeting arrangement	
Agenda Item II – Any other business			
015148-015157	Chairman	Concluding remarks	