

立法會
Legislative Council

LC Paper No. CB(1)357/18-19
(These minutes have been seen
by the Administration)

Ref : CB1/SS/1/18

**Subcommittee on Tax Reserve Certificates (Rate of Interest)
(Consolidation) (Amendment) Notice 2018**

**First meeting on
Tuesday, 6 November 2018, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon CHUNG Kwok-pan
Hon SHIU Ka-fai

**Public officers
attending** : Agenda Item II

Financial Services and the Treasury Bureau

Mr Andrew LAI, JP
Deputy Secretary for Financial Services and the Treasury
(Treasury)²

Ms Pecvin YONG
Principal Assistant Secretary for Financial Services and
the Treasury (Treasury)(R1)

Inland Revenue Department

Ms TSE Yuk-yip, JP
Assistant Commissioner 3

Mr WONG Hok-wai
Senior Assessor (Management)/
Deputy Commissioner of Estate Duty

Clerk in attendance : Mr Desmond LAM
Chief Council Secretary (1)3

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Ms Connie HO
Senior Council Secretary (1)3

Miss Zoe YIP
Clerical Assistant (1)3

Action **I. Election of Chairman**

Election of Chairman

Mr Kenneth LEUNG, the member who had the highest precedence in Council among members of the Subcommittee present at the meeting, presided at the election of the chairman of the Subcommittee and invited nominations for the chairmanship of the Subcommittee.

2. Mr SHIU Ka-fai nominated Mr Kenneth LEUNG, and the nomination was seconded by Mr CHUNG Kwok-pan. Mr LEUNG accepted the nomination.

3. There being no other nominations, Mr Kenneth LEUNG was declared Chairman of the Subcommittee.

4. The Chairman sought members' views on the need for a deputy chairman. Members agreed that it was not necessary to elect a deputy chairman.

II. Meeting with the Administration

(LC Paper No. CB(1)57/18-19(01) -- Administration's paper on Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) Notice 2018

Relevant papers

- | | |
|--------------------------------|---|
| L.N. 147 of 2018 | -- Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) Notice 2018 |
| LC Paper No. LS86/17-18 | -- Legal Service Division Report |
| LC Paper No. CB(1)57/18-19(02) | -- Marked-up copy of the Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) Notice 2018 prepared by the Legal Service Division (Restricted to members only)) |

5. The Subcommittee deliberated (Index of proceedings attached at **Annex**).

Declaration of interest

6. Mr CHUNG Kwok-pan declared that he had purchased tax reserve certificates ("TRCs") and also had some TRCs used to cover the tax held over in tax dispute case(s). Mr CHUNG enquired whether he could participate in the meeting.

7. The Chairman advised that under Rule 83A of the Rules of Procedure, Members should disclose the nature of any direct or indirect pecuniary interest before they spoke. The Chairman considered that Mr CHUNG Kwok-pan could speak on the matter under the Subcommittee's scrutiny as he had already disclosed his direct or indirect pecuniary interest in connection with such matter.

Follow-up actions by the Administration

8. The Administration was requested to inform the Subcommittee:
- (a) of the respective numbers of objections in respect of tax assessment being processed at the beginning of 2017-2018 and received by the Inland Revenue Department ("IRD") during the year; among such objection cases –
 - (i) the number of those which were granted "conditional stand-over order" and the respective numbers of such cases

which were required to purchase TRCs and to furnish IRD with a banker's undertaking in respect of the amount of the tax held over; and

(ii) the respective numbers of those which were settled with and without determinations of the Commissioner of Inland Revenue, with a breakdown of the former cases by assessment type (e.g. assessments confirmed, assessments reduced, assessments increased and assessment annulled); and

(b) of the respective numbers of appeals to the Board of Review (Inland Revenue Ordinance) ("the Board") awaiting hearing or decision of the Board at the beginning of 2017-2018 and received during the year; among such appeal cases, the respective numbers of those which were withdrawn and disposed of with decisions, with a breakdown of the latter cases by decision type (e.g. assessment confirmed, assessment reduced in part, assessments increased and assessments annulled).

(Post-meeting note: The information provided by the Administration was circulated to members on 13 November 2018 (LC Paper No. CB(1)172/18-19(02).)

III. Any other business

Legislative timetable

9. The Subcommittee completed the scrutiny of the Tax Reserve Certificate (Rate of Interest) (Consolidation) (Amendment) Notice 2018 ("the Notice"), and would not propose any amendments to the Notice.

10. The Subcommittee noted that the resolution to extend the scrutiny period of the Notice to the Council meeting of 28 November 2018 moved by Mr Kenneth LEUNG was passed at the Council meeting of 31 October 2018. The Chairman would report the deliberations of the Subcommittee to the House Committee on 16 November 2018. The deadline for giving notice to move amendments to the Notice was 21 November 2018.

11. There being no other business, the meeting ended at 11:36 am.

**Proceedings of the first meeting of the Subcommittee on Tax Reserve Certificates
(Rate of Interest) (Consolidation) (Amendment) Notice 2018
on Tuesday, 6 November 2018, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000804	Mr Kenneth LEUNG Mr SHIU Ka-fai Mr CHUNG Kwok-pan	<u>Election of Chairman</u> Mr Kenneth LEUNG was elected Chairman of the Subcommittee.	
000805 – 000944	Chairman	Opening remarks by the Chairman.	
000945 – 001058	Chairman Mr CHUNG Kwok-pan Administration	Declaration of interest by Mr CHUNG Kwok-pan.	
001059 – 001616	Chairman Administration	Briefing by the Administration on Tax Reserve Certificates (Rate of Interest) (Consolidation) (Amendment) Notice 2018 ("the Notice") (LC Paper No. CB(1)57/18-19(01)).	
001617 – 002609	Chairman Mr CHUNG Kwok-pan Administration	<p>Mr CHUNG Kwok-pan noted that the existing mechanism for adjustment of the interest rate on tax reserve certificates ("TRCs") had been in place since January 1999. There had been cases in which enterprises were required to purchase TRCs of huge amounts. He enquired whether the Administration would make changes to the existing mechanism to specify a separate rate of interest payable on TRCs of huge amounts, with reference to the average prevailing interest rate offered by banks for time deposits of more significant amounts (e.g. amounts in the region of one to two million Hong Kong dollars).</p> <p>The Administration explained that –</p> <p>(a) the rate of interest payable on TRCs ("the TRC rate") had been kept at a low level during the past few years as a result of the global low interest rate environment. In fact, in view of the recent increases in interest rate, the Notice was published to effect an adjustment of the TRC rate from 0.0433% per annum to 0.0767% per annum starting from 6 August 2018. Another Legal Notice was published afterwards to</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>effect a further increase to the TRC rate to 0.25% per annum starting from 5 November 2018; and</p> <p>(b) as the information on the interest rate offered by banks for time deposits of a large sum of money was not transparent in the market, there were practical difficulties in making reference to the relevant interest rates when determining the rate of interest payable on TRCs of huge amounts.</p>	
002610 – 003857	Chairman Mr CHUNG Kwok-pan Administration	<p>Mr CHUNG Kwok-pan enquired what options could be offered to the enterprises in lieu of purchase of TRCs, as requiring the enterprises concerned (in particular small and medium enterprises) to purchase TRCs before their tax disputes were settled would exert tremendous pressure on their cash flow and impose heavy financial and psychological burdens on them. The processing of some objection or appeal cases in respect of tax assessment might continue for years, and some enterprises were required to purchase TRCs of huge amounts.</p> <p>The Administration explained that according to the Inland Revenue Department ("IRD"), of the objection cases being processed at the beginning of 2017-2018 and received during the year, a significant proportion of the objection cases received arose from estimated assessments and most of such cases were settled promptly by reference to the returns subsequently received. Taxpayers might approach IRD for payment of tax by installments. A banker's undertaking in lieu of purchase of TRCs might also be accepted.</p> <p>Mr CHUNG Kwok-pan further enquired about the circumstances under which an enterprise would be allowed to present a banker's undertaking in lieu of purchase of TRCs for the amount of tax held over in relation to an objection/appeal case in respect of tax assessment. The Administration explained that a banker's undertaking would be accepted if the taxpayer could demonstrate financial difficulties.</p>	

Time marker	Speaker	Subject(s)	Action required
003858 – 004659	Chairman Mr CHUNG Kwok-pan Administration	<p>Mr CHUNG Kwok-pan considered that there was a substantial disparity between the judgment debt rate (8%) chargeable on the amount of the tax held over if the relevant appeal/objection case in respect of tax assessment was unsuccessful and the interest rate payable on TRCs (0.0767% as provided in the Notice) in respect of the amount of the tax held over if the relevant appeal/objection case was successful.</p> <p>The Administration explained that the existing provisions under the Inland Revenue Ordinance (Cap. 112) aimed to protect tax revenue by preventing taxpayers from abusing the objection mechanism for the purpose of deferring tax payment. Also, the judgment debt rate was determined by the Judiciary.</p>	
004700 – 005130	Chairman Administration	The Chairman requested the Administration to furnish the Subcommittee with statistical information on appeals and objections in respect of tax assessment handled by IRD in 2017-2018 as detailed in paragraph 8 of the minutes of meeting.	See LC Paper No. CB(1) 172/18-19(02))
Clause-by-clause examination of the Notice (Annex to LC Paper No. CB(1)57/18-19(01))			
005131 – 005334	Chairman Administration	<p><u>Section 1: Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice amended</u></p> <p><u>Section 2: Schedule amended</u></p> <p>Members raised no question.</p>	
005335 – 005515	Chairman Administration	<p>The Chairman's advice that the Subcommittee had completed scrutiny of the Notice and no further meeting would be held.</p> <p>Legislative timetable.</p>	