

立法會
Legislative Council

LC Paper No. LS90/19-20

**Further Report by Legal Service Division on
Inland Revenue (Amendment) (Profits Tax Concessions for
Insurance-related Businesses) Bill 2019**

Members may recall from LC Paper No. LS32/19-20 dated 10 January 2020 and issued to Members vide LC Paper No. CB(2)508/19-20 that the Legal Service Division ("LSD") was scrutinizing the legal and drafting aspects of the Bill.

2. The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to provide for profits tax concessions for (i) general reinsurance business and certain types of general insurance business of direct insurers, and (ii) certain types of insurance brokerage business of licensed insurance broker companies. LSD has sought clarifications from the Administration on certain matters relating to the Bill. Our enquiries and the Administration's responses (at Annex) are summarized in the following paragraphs.

Ascertainment of assessable profits

3. Under clause 12 of the Bill, the proposed new section 23AB of Cap. 112 seeks to provide for a mechanism for ascertaining the assessable profits from a qualifying insurance business (i.e. specified general insurance business and general reinsurance business carried on by a specified insurer as defined in the proposed section 14AB(1)) for which profits tax concessions are proposed to be given. The Commissioner of Inland Revenue ("the Commissioner") would be empowered to ascertain the assessable profits by reference to the proportion of the total profits and income of the specified insurer corresponding to the proportion that its premiums from the qualifying insurance business bears to its total premiums or on any other basis that appears to the Commissioner to be fair (proposed section 23AB(3)(a) and (b)). We have enquired with the Administration about the matters that may be taken into account by the Commissioner when considering what constitutes a fair basis of assessment under the proposed section 23AB(3)(b) and whether such matters should be set out in the proposed section 23AB.

4. The Administration has replied that in ascertaining the assessable profits of the qualifying insurance business, apart from the premium basis, any other basis such as by reference to net premium, insurance funds, etc., so long as it is reasonable, may also be considered. The Commissioner may take into account certain matters, e.g. correlation between the premium and fund assets, whether any income can be directly attributable to the qualifying insurance business, whether any expenditure is wholly incurred for the qualifying insurance business, etc. If an insurer disagrees with the basis adopted by the

Commissioner for ascertainment of the assessable profits, the insurer has the right under Cap. 112 to object to the assessment concerned.¹ As the operations of each insurer may differ, each case has to be considered on its own facts and circumstances. Therefore, it would not be practicable to set out an exhaustive list of matters to be considered in ascertaining the assessable profits for qualifying insurance business in the proposed section 23AB of Cap. 112.

Proposed new Schedule 49

5. The proposed section 14AB(4) of Cap. 112 seeks to empower the Secretary for Financial Services and the Treasury ("SFST") to amend the proposed new Schedule 49 which sets out the types of risks and liabilities that do not fall within the definition of "specified general insurance business" and as such would not qualify for the proposed profits tax concessions. In reply to our enquiry on the factors SFST would take into account when amending Schedule 49 and who would be consulted on any such proposed amendment, the Administration confirms that in considering whether and if so, how to amend the proposed Schedule 49 in future, SFST may take into account market practices in underwriting marine related risks or specialty risks and whether the proposed amendments are conducive to the development of marine insurance and underwriting of specialty risks in Hong Kong. In doing so, SFST may consult the Insurance Authority and relevant stakeholders in the insurance industry in line with established practice.

Target commencement date

6. Under clause 1(2) of the Bill, the enacted Ordinance would come into operation on a day to be appointed by SFST by notice published in the Gazette. In response to our enquiry, the Administration has replied that subject to the passage of the Bill by the Legislative Council, they would finalize the implementation details and aim to commence the operation of the enacted Ordinance by the end of 2020. In doing so, the Administration will continue to engage the industry stakeholders.

7. Subject to Members' views on the matters above, no difficulties have been identified in relation to the legal and drafting aspects of the Bill.

Encl.

Prepared by

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¹ Part 11 of Cap. 112 provides for objections and appeals in relation to an assessment made under Cap. 112.

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來函檔號 YOUR REF: LS/B/5/19-20

(By email)

25 May 2020

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Dear Ms Tam,

Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Bill 2019

Thank you for your letter dated 20 May 2020 on the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Bill 2019 (“the Bill”). I write to provide our response to matters as set out in your letter.

Proposed section 23AB (Ascertainment of assessable profits)

2. The proposed section 23AB under clause 12 of the Bill is modelled on the existing section 23A of the Inland Revenue Ordinance (Cap. 112) (“IRO”). If a specified insurer keeps separate accounts, the assessable profits of the qualifying insurance business will be ascertained by reference to the profits disclosed in those accounts. Where no separate accounts are kept, the assessable profits of the qualifying insurance business can be ascertained by reference to the portion of qualifying insurance business premium bears to the

total premium, or any other basis appears to the Commissioner of Inland Revenue (“CIR”) to be fair.

3. In ascertaining the assessable profits of the qualifying insurance business, the objective is to find a basis which is reasonable and equitable. Apart from the premium basis, other basis, such as by reference to net premium, insurance funds, etc., so long as it is reasonable, may also be considered. In this process, the CIR may take into account certain matters, e.g. correlation between the premium and fund assets, whether any income can be directly attributable to the qualifying insurance business, whether any expenditure is wholly incurred for the qualifying insurance business, etc. If an insurer disagrees with the basis adopted by CIR for ascertainment of the assessable profits, the insurer has the right under the IRO to object against the assessment concerned.

4. As the operations of each insurer may differ, each case has to be considered on its own facts and circumstances. Therefore, it would not be practicable to set out an exhausted list of matters to be considered in ascertaining the assessable profits for qualifying insurance business under the IRO.

Proposed Schedule 49

5. The proposed section 14B(1)(c)(i) under clause 5 of the Bill seeks to provide for a new profits tax concession for “specified general insurance business” of direct insurers. The objective is to promote the development of marine insurance and underwriting of specialty risks in Hong Kong. The definition of “specified general insurance business” is stipulated in the proposed section 14AB(1) under clause 4 of the Bill.

6. The proposed section 14AB(4) under clause 4 of the Bill provides that the Secretary for Financial Services and the Treasury (“SFST”) may amend the proposed Schedule 49 which sets out the types of risks and liabilities that do not fall within the definition of “specified general insurance business” and accordingly would not qualify for the proposed tax concession. In considering whether and if so, how to amend the proposed Schedule 49 in future, SFST may take into account market practices in underwriting marine related risks or specialty risks and whether the proposed amendments are conducive to the objective of promoting the development of marine insurance and underwriting of specialty risks in Hong Kong. In doing so, SFST may consult the Insurance

Authority (“IA”) and relevant stakeholders in the insurance industry in line with established practice.

Proposed commencement of the Bill

7. Subject to the passage of the Bill by the Legislative Council, we will work with the Inland Revenue Department and the IA to finalize the implementation details, including the threshold requirements regarding the number of full-time qualified Hong Kong employees and the amount of operating expenditure under section 26AB of the IRO for determining whether an activity producing the concessionary profits is carried out in Hong Kong or is arranged to be carried out in Hong Kong by the relevant insurer or broker. In doing so, we will continue to engage the industry stakeholders. Our current target is to commence the operation of the Bill by end 2020.

Yours sincerely,



(Ms Noel TSANG)

for Secretary for Financial Services and the Treasury

c.c.

Inland Revenue Department (Attn: Ms UC CHAN)
Department of Justice (Attn: Mr Salvador TSANG)
Insurance Authority (Attn: Mr Simon LAM)