

立法會
Legislative Council

LC Paper No. CB(1)1053/20-21
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/20

Bills Committee on Inland Revenue (Amendment)
(Miscellaneous Provisions) Bill 2021

Minutes of the first meeting on
Tuesday, 20 April 2021, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Holden CHOW Ho-ding (Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Wilson OR Chong-shing, MH

Public officers attending : Agenda item II

Financial Services and the Treasury Bureau

Mr Maurice LOO, JP
Deputy Secretary for Financial Services and the
Treasury (Treasury)²

Miss Helen CHUNG
Principal Assistant Secretary for Financial Services
and the Treasury (Treasury)(R1)

Inland Revenue Department

Mr LEUNG Kin-wa
Deputy Commissioner (Operations) (Acting)

Ms WONG Pui-ki
Chief Assessor (Profits Tax)^C (Acting)

Ms CHAN Ut-chan
Senior Assessor (Research)3

Department of Justice

Ms Rayne CHAI
Deputy Law Draftsman II (Acting)

Miss Selina LAU
Senior Government Counsel

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Miss Rachel DAI
Assistant Legal Adviser 2

Mr Joey LO
Senior Council Secretary (1)8

Ms Michelle NIEN
Legislative Assistant (1)5

Ms Michelle LEE
Clerical Assistant (1)5

Action

I. Election of Chairman

Mr WONG Ting-kwong, the member who had the highest precedence in the Council among members of the Bills Committee on Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021 ("the Bills Committee") present at the meeting, presided over the election of Chairman of the Bills Committee. He invited nominations for the chairmanship.

2. Mr Wilson OR nominated Mr Holden CHOW and the nomination was seconded by Ms Starry LEE Wai-king. Mr Holden CHOW accepted the nomination. There being no other nomination, Mr Holden CHOW was declared Chairman of the Bills Committee. Mr CHOW then took the chair.

3. Members agreed that it was not necessary to elect a Deputy Chairman.

Action

II. Meeting with the Administration

- (LC Paper No. CB(3)420/20-21 — The Bill
- File Ref: TsyB R 183/700-6/12/0 (C) — Legislative Council Brief issued by the Financial Services and the Treasury Bureau
- LC Paper No. LS57/20-21 — Legal Service Division Report
- LC Paper No. CB(1)804/20-21(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)
- LC Paper No. CB(1)804/20-21(02) — Assistant Legal Adviser's letter dated 15 April 2021 to the Administration
- LC Paper No. CB(1)804/20-21(03) — Paper on Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021 prepared by the Legislative Council Secretariat (background brief))

Discussion

4. The Bills Committee deliberated (Index of proceedings attached at the **Appendix**).

(Post-meeting note: The Administration's response to Assistant Legal Adviser's letter dated 15 April 2021 which was tabled at the meeting was provided to members vide LC Paper No. CB(1)819/20-21 on 20 April 2021.)

Action

III. Any other business

Invitation of views

5. The Bills Committee agreed that there was no need to invite members of the public to attend a meeting of the Bills Committee to give views on the Bill. A notice would be posted on the website of the Legislative Council ("LegCo") to invite written views on the Bill.

(Post-meeting note: The notice was posted on the LegCo website on 21 April 2021 to invite interested parties to provide submissions on the Bill. The 18 District Councils were also notified of the invitation. A total of five written submissions were received by the Bills Committee by the submission deadline on 29 April 2021. The Administration's consolidated response to the written submissions was tabled at the meeting on 4 May 2021 and circulated to members vide LC Paper No. CB(1)856/20-21(03) on the same date.)

Date of next meeting

6. The Chairman said that he would arrange a meeting of the Bills Committee with the Administration and notify members as soon as possible.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)816/20-21 issued on 20 April 2021 that the next meeting was scheduled to be held on 4 May 2021 at 9:00 am.)

7. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
25 June 2021

**Proceedings of the first meeting of the
Bills Committee on Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021
on Tuesday, 20 April 2021, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Election of Chairman			
000829 – 001003	Mr WONG Ting-kwong Mr Wilson OR Ms Starry LEE Mr Holden CHOW	Election of Chairman	
Agenda item II — Meeting with the Administration			
001004 – 001830	Chairman Administration	Briefing by the Administration on the Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021 ("the Bill") (LC Paper No. CB(3)420/20-21 and File Ref: TsyB R 183/700-6/12/0(C))	
001831 – 002542	Chairman Ms Starry LEE Administration	<p>Ms Starry LEE's enquiry about the details of the tax treatment for amalgamation of companies under the court-free procedures as provided for under the Companies Ordinance (Cap. 622) ("CO") and the Administration's response</p> <p>In response to Ms Starry LEE's enquiry about the set-off of unutilized pre-amalgamation losses or depreciation allowance of the amalgamating company under the special tax treatment, the Administration advised that –</p> <p>(a) the set-off of unutilized pre-amalgamation losses of the amalgamating company against the assessable profits of the amalgamated company would be allowed subject to certain restrictions and conditions to ensure that such set-off was not intended to achieve group loss relief or to reduce assessable profits through amalgamation via the purchase of a loss-making company as an amalgamating company;</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) such restrictions and conditions included: (i) the post-entry condition (only losses incurred after the amalgamating company and the amalgamated company had entered into a qualifying relationship (i.e. both were wholly owned subsidiaries of the same company or one was a wholly owned subsidiary of the other) were qualifying losses); (ii) the same trade condition (qualifying losses could only be used to set off against the assessable profits of the amalgamated company derived from the same trade, profession or business it succeeded from the amalgamating company, or to set off against the amalgamated company's share of assessable profits derived from a specified partnership); and (iii) anti-avoidance provisions; and</p> <p>(c) the amalgamated company would be allowed to claim depreciation allowance on certain assets acquired by the amalgamating company, as if the amalgamated company were the continuation of the amalgamating company.</p>	
002543 – 003152	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong raised the following concerns/enquires –</p> <p>(a) the post-entry condition would deter the purchase of loss-making companies by white knights if pre-amalgamation losses of the amalgamating company were not allowed to be carried forward to the amalgamated company; and</p> <p>(b) the main differences between the tax treatment under the proposed amendments and the administrative assessment practice which were currently being implemented by the Inland Revenue Department ("IRD").</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that –</p> <ul style="list-style-type: none"><li data-bbox="624 338 1181 517">(a) the proposed amendments aimed to deal with the tax treatment in respect of amalgamation of companies rather than equity injection by a white knight into a loss-making company;<li data-bbox="624 562 1181 920">(b) the purpose of the restrictions and conditions in the Bill, such as the same trade test and anti-avoidance provisions, was to prevent possible abuse of the proposed tax treatment by companies through amalgamation. Companies failing to meet such restrictions and conditions would not be able to enjoy the tax treatment concerned;<li data-bbox="624 965 1181 1099">(c) there were three main differences between the tax treatment under the Bill and the administrative assessment practice. Specifically,<ul style="list-style-type: none"><li data-bbox="671 1133 1181 1312">(i) the post-entry condition was extended to the set-off of unutilized pre-amalgamation losses of the amalgamating company in the Bill to prevent possible abuse;<li data-bbox="671 1346 1181 2036">(ii) under the administrative assessment practice, the amalgamated company was entitled to depreciation allowance in the year of amalgamation in respect of machinery or plant, whereas under the proposed legislative amendments, the amalgamating company would be entitled to such allowance, and the amalgamated company would be allowed to use the pre-amalgamation loss of the amalgamating company with the relevant depreciation allowance to set off against its assessable profits of the business succeeded from the amalgamating company. The tax implication would be neutral in such case; and	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(iii)if the amalgamated company in a qualifying amalgamation succeeded to any trading stock of a trade or business carried on by an amalgamating company in the qualifying amalgamation, and the amalgamated company continued to use the trading stock as its trading stock in carrying on a trade or business in Hong Kong from the date of amalgamation, the trading stock would be accounted for in the financial account of the amalgamated company at a value equal to the carrying amount of the trading stock of the amalgamating company immediately before the date of amalgamation, instead of being valued at the open market price on the date of cessation of the amalgamating company for the purposes of computing its chargeable profits under the existing Inland Revenue Ordinance ("IRO") (Cap. 112) provisions. This special tax treatment would facilitate qualifying amalgamation.</p>	
003153 – 003850	Chairman Ms Starry LEE Administration	<p>Ms Starry LEE raised the following concerns/enquiries –</p> <p>(a) it would be rather difficult to prove that a company was engaging in tax avoidance by amalgamating with a loss-making company;</p> <p>(b) the number of disputes concerning alleged tax avoidance by amalgamating with a loss-making company handled by IRD; and</p> <p>(c) details and rationale of the proposed amendments in relation to transfer or succession of specified assets without sale.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that –</p> <ul style="list-style-type: none"><li data-bbox="624 349 1182 674">(a) according to IRD's record, IRD had handled about 250 court-free amalgamation cases since 2014. IRD had been making tax assessments based on the existing administrative assessment practice guidelines published in 2015, which had so far been implemented smoothly without much controversy;<li data-bbox="624 719 1182 1043">(b) except for limited circumstances, there was currently no provision under IRO dealing with the transfer of assets without sale, such as in the case of a qualifying amalgamation. In the absence of specific provisions, capital expenditures which had been allowed deductions or allowance could not be clawed back;<li data-bbox="624 1088 1182 1413">(c) for the sake of clarity and consistency, the Administration proposed to amend IRO to provide for the tax treatment in circumstances when a taxpayer succeeded to specified assets. Specifically, it proposed to deem the transfer of the specified assets without sale under the circumstances mentioned above as sale; and<li data-bbox="624 1458 1182 1850">(d) for the purpose of computing the chargeable profits, the transferor would be deemed to have received the proceeds of sale of the specified asset at the lower of the open market value of the asset and the capital expenditure incurred by the person whereas the transferee would be deemed to have incurred expenditure on the purchase of the specified assets in the same amount.	

Time Marker	Speaker	Subject(s)	Action Required
003851 – 004437	Chairman Administration	<p>The Chairman made the following enquiries –</p> <p>(a) how did Hong Kong's regulatory requirements on court-free amalgamation of companies compare with that of other tax jurisdictions; and</p> <p>(b) whether the Administration would consider offering group loss relief to the amalgamated company.</p> <p>The Administration advised that –</p> <p>(a) other tax jurisdictions such as Singapore had similar legislative provisions on tax treatment for amalgamation of companies with the aim of preventing tax avoidance via the purchase of a loss-making company as an amalgamating company;</p> <p>(b) Hong Kong's simple and low tax regime remained attractive to large enterprises despite the fact that it offered no group loss relief. There would be a significant impact on Government's tax revenue if group loss relief was provided; and</p> <p>(c) given that the Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting Action Plan 2.0 had recently suggested an overhaul of international tax rules and the introduction of a global minimum tax, any reduction in tax liability as a result of group loss relief would likely be offset by the need to pay additional global minimum tax in Hong Kong or elsewhere.</p>	
004438 – 005857	Chairman Ms Starry LEE Administration	Ms Starry LEE enquired about industry response to the use of the eTax Portal and the electronic submission of tax returns ("e-filing").	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that –</p> <p>(a) at present, most of the e-filed profits tax returns were made by small companies as the system supporting the eTax Portal currently could not accept financial documents submitted by large companies due to its limited uploading capacity. In the circumstance, only less than 1% of corporate taxpayers were using e-filing;</p> <p>(b) the Legislative Council ("LegCo") Finance Committee approved in 2020 a new commitment of about \$742 million for the enhancement and relocation of information technology ("IT") systems and facilities of the IRD for the new Inland Revenue Tower in the Kai Tak Development Area. Among others, a Business Tax Portal would be developed to facilitate e-filing by businesses including accounting and financial data. The Administration therefore proposed to amend IRO to enhance the statutory framework for the filing of tax returns electronically;</p> <p>(c) the proposed amendments would provide legislative backing to IRD's plan to enable more businesses to voluntarily e-file profits tax returns including financial statements in 2023, with the ultimate goal of implementing e-filing of profits tax returns through the newly developed Business Tax Portal;</p> <p>(d) the first phase which enhanced the existing eTax Portal to enable more businesses to voluntarily e-file profits tax returns including financial statements would be launched in around 2023, whilst the second phase which developed a new Business Tax Portal was expected to be completed by 2025;</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(e) to cater for future technological changes, the proposed amendments included new provisions which would empower the Commissioner of Inland Revenue ("the Commissioner") to specify in a gazette notice the manner in which an e-return or a return to be furnished by a mixed mode of paper and electronic record ("mixed filing") was to be generated, signed and delivered to IRD;</p> <p>(f) IRD's current plan was to allow the furnishing of profits tax returns by mixed filing or e-filing as an alternative to paper filing. If and when IRD decided to make e-filing a mandatory requirement in future, the Administration would consult LegCo again on the implementation plan. A gazette notice would need to be made by the Commissioner on the classes or description of persons who must furnish their tax returns by e-filing, which was subject to negative vetting by LegCo; and</p> <p>(g) irrespective of the way in which a return was filed (i.e. paper, electronic or mixed), the Administration proposed to provide the framework to allow taxpayers to appoint service providers to file tax returns for or on their behalf. This function was not allowed to be performed by tax representatives at present.</p>	
005858 – 010208	Chairman Administration	<p>The Chairman urged the Administration to take into account users' response and adoption rate when it decided the time to make e-filing a mandatory requirement.</p> <p>The Administration advised that it did not envisage to make e-filing a mandatory requirement in the short term, the timing of which would be determined with regard to the degree of acceptance by the trade and the capacity of the Government's IT infrastructure.</p>	

Time Marker	Speaker	Subject(s)	Action Required
010209 – 011054	Chairman Ms Starry LEE Administration	<p>Ms Starry LEE and the Chairman enquired about the detailed arrangements of deduction of foreign tax under specified circumstances, and stakeholders' views on the legislative proposals.</p> <p>The Administration advised that –</p> <p>(a) stakeholders had raised concerns that since the enactment of the Inland Revenue (Amendment) (No. 6) Ordinance 2018, the limited relief provided under section 16(1)(c) of IRO by way of deduction for foreign tax paid to address double taxation arising from charging profits tax on certain specified interest, gains and profits would not apply to foreign tax paid in a territory with a double taxation agreement ("DTA") in force with Hong Kong ("DTA territory");</p> <p>(b) there were concerns about the negative impact on the Hong Kong branches of foreign corporations, in particular the over 150 foreign banks operating in Hong Kong through branches, when they were dealing with DTA territories;</p> <p>(c) specifically, since no tax relief was available to these branches of foreign banks in Hong Kong, their income would be subject to tax in both Hong Kong and the DTA territories if relief was also not available to them in their jurisdiction of residence. The industry held the view that Hong Kong's attractiveness as a banking location might be undermined as a result; and</p> <p>(d) stakeholders had also raised concerns that the current scope of deduction for foreign tax paid in respect of specified interest, gains and profits was too narrow, and proposed to expand the scope to cover foreign tax paid in respect of other income such as royalty.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>They were of the view that this would be conducive to promoting Hong Kong as a research and development hub, as the taxpayers concerned could benefit from the tax regime when developing and exploiting the intellectual property they created in Hong Kong.</p> <p>The Administration advised that having considered stakeholders' views, it proposed the following changes to the foreign tax deduction regime under the IRO –</p> <ul style="list-style-type: none">(a) the existing deduction available for foreign tax paid in respect of specified interest, gains and profits by Hong Kong resident persons and non-Hong Kong resident persons in non-DTA territories would be extended to non-Hong Kong resident persons who paid such tax in DTA territories;(b) a new restriction would be incorporated such that deduction of foreign tax paid by a non-Hong Kong resident person (in either DTA territory or non-DTA territory) would be provided only to the extent of the portion of foreign tax paid for which the person would not be entitled to utilize for claiming any relief (whether by deduction or otherwise) in his jurisdiction of residence;(c) the existing deduction available for foreign tax paid in respect of specified interest, gains and profits would be extended to cover foreign tax paid in respect of certain income if the tax was charged on gross income (such as withholding tax on royalty), subject to the same set of limitations and restrictions in (a) and (b) above;(d) the Administration had consulted relevant industry representatives on the legislative proposals through the Joint Liaison Committee on Taxation ("JLCT"). JLCT members generally	

Time Marker	Speaker	Subject(s)	Action Required
		<p>welcomed proposals that would provide more legal clarity and certainty with regard to the tax treatment as well as IRD's plan to facilitate better use of electronic means for furnishing of tax returns. JLCT also supported broadening the scope of foreign tax deduction under IRO. The Administration took into account the industry's feedback when preparing the legislative amendments. The industry supported the legislative proposals in general; and</p> <p>(e) the banking industry suggested that the relevant amendments should have retrospective effect to the enactment of the Inland Revenue (Amendment) (No.6) Ordinance 2018 when such relief by way of deduction was restricted to foreign tax paid in non-DTA territories only. The Administration had reservations on the suggestion as it would affect companies concerned if the proposed new restriction to prevent double-benefit took effect retrospectively.</p>	
011055 – 011642	Chairman Administration	<p>The Chairman expressed concern that the provision of foreign tax deduction under specified circumstances might discourage other tax jurisdictions from entering into DTAs with Hong Kong.</p> <p>The Administration advised that tax relief under DTAs were usually provided by way of tax credit rather than by tax deduction. The proposed amendment would only allow tax deduction on foreign tax paid and would result in a smaller tax saving.</p>	

Time Marker	Speaker	Subject(s)	Action Required
<p>Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)420/20-21)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)804/20-21(01))]</p>			
011643 – 012027	Chairman Administration	<p>Part 1: Preliminary</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Inland Revenue Ordinance amended</u></p> <p>Members raised no questions.</p> <p><i>Part 2: Amendments relating to Qualifying Amalgamations</i></p> <p><i>Clause 3 – Part 6C added</i></p> <p><i>Part 6C: Qualifying Amalgamations</i></p> <p><i>Section 40AE Interpretation</i></p> <p><i>Section 40AF Application of Part 6C</i></p> <p><i>Section 40AG Amalgamating company treated as having ceased to carry on trade, profession or business</i></p> <p><i>Section 40AH Provisional profits tax for amalgamating company</i></p> <p><i>Section 40AI Provisional profits tax for amalgamated company</i></p> <p><i>Section 40AJ Obligations and liabilities of amalgamating companies</i></p> <p><i>Section 40AK Rights, powers and privileges of amalgamating companies</i></p> <p><i>Section 40AL Returns for profits tax for amalgamating companies</i></p> <p><i>Section 40AM Election for Schedule 17J</i></p> <p><i>Clause 4 – Schedule 17J added</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Schedule 17J Qualifying Amalgamations — Special Tax Treatment</i></p> <p><i>Section 1 Interpretation</i></p> <p><i>Section 2 Application of Schedule 17J</i></p> <p><i>Section 3 Succession of business and asset etc.</i></p> <p>Members raised no questions.</p>	
012028 – 012152	Chairman Administration	<p><i>Section 4 Reclassification of asset from revenue account to capital account on amalgamation</i></p> <p>In response to the Chairman's enquiry about the pricing of an asset upon reclassification, the Administration responded that the existing valuation mechanism on asset pricing would be used for determining the consideration of an asset upon reclassification from revenue account to capital account on amalgamation. The existing appeal mechanism would apply if there was dispute in the valuation.</p> <p><i>Section 5 Reclassification of asset from capital account to revenue account on amalgamation</i></p> <p>Members raised no questions.</p>	
012153 – 012246	Chairman Ms Starry LEE Administration	<p><i>Section 6 Succession of trading stock</i></p> <p>In response to Ms Starry LEE's enquiry on whether the Administration would make adjustment to the valuation of the trading stock of the amalgamating company if the mark-to-market accounting approach was elected, the Administration responded that the book value of the trading stock would be adopted and no adjustment would be made.</p>	

Time Marker	Speaker	Subject(s)	Action Required
012247 – 012550	Chairman Administration	<p><i>Section 7 Trading stock accounted for in financial account of amalgamated company at different value</i></p> <p><i>Section 8 Amalgamating company's trading stock not used by amalgamated company as trading stock</i></p> <p><i>Section 9 Effect of cancellation of shares of amalgamating company</i></p> <p><i>Section 10 Succession of machinery or plant, or rights or entitlement to rights, related to R&D activities</i></p> <p><i>Section 11 Succession of patent rights etc.</i></p> <p>Members raised no questions.</p>	
012551 – 012652	Chairman Administration	<p><i>Section 12 Succession of specified intellectual property rights</i></p> <p>The Chairman's enquiry and the Administration's response on the amalgamated company's remaining years of entitlement to the balance of deduction allowable under section 16 EA(2).</p>	
012653 – 013038	Chairman Administration	<p><i>Section 13 Succession of refurbished buildings or structures</i></p> <p><i>Section 14 Succession of prescribed fixed assets</i></p> <p><i>Section 15 Succession of environmental protection facilities</i></p> <p><i>Section 16 Succession of commercial or industrial buildings or structures — initial and annual allowances</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Chairman enquired whether the definition of prescribed fixed assets overlapped with that of commercial or industrial buildings or structures.</p> <p>The Administration advised that the definition of prescribed fixed asset was provided under section 16G of IRO which included the machinery or plant used specifically and directly for any manufacturing process.</p>	
013039 – 013505	Chairman Administration	<p><i>Section 17 Succession of commercial or industrial buildings or structures — balancing allowances and charges</i></p> <p><i>Section 18 Succession of machinery or plant not related to R&D activities — annual allowances</i></p> <p><i>Section 19 Succession of machinery or plant not related to R&D activities — balancing allowances and charges</i></p> <p><i>Section 20 Deduction of special payment under recognized retirement scheme</i></p> <p><i>Section 21 Deduction for bad debts, impairment losses, expenditure or losses</i></p> <p><i>Section 22 Amount of debt recovered or impairment loss reversed treated as trading receipt</i></p> <p><i>Section 23 Release of debt</i></p> <p>Members raised no questions.</p>	
013506 – 014357	Chairman Assistant Legal Adviser 2 ("ALA2") Administration	<p><i>Section 24 Treatment of pre-amalgamation losses of amalgamating companies</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>In response to ALA2's enquiry about the factors that the Commission would take into account when determining whether the reasons for carrying out the qualifying amalgamation are "good commercial reasons" and whether avoidance of tax is the "main purpose" or "one of the main purposes", the Administration explained that in determining whether there were good commercial reasons for carrying out the qualifying amalgamation and whether there was a main purpose for avoidance of tax, all relevant facts and circumstances would be considered, including but not limited to the following –</p> <ul style="list-style-type: none">(a) the purposes for carrying out the amalgamation;(b) the reasons for selecting the amalgamated company as the amalgamated company (if under horizontal amalgamation);(c) what result was intended to be achieved, or achieved, by the amalgamation;(d) the non-tax purposes of the amalgamation and any alternative way that the non-tax purposes could be achieved; and(e) the functions, assets and risks of each entity involved in the amalgamation. <p>In response to the Chairman's enquiry about the possibility of mistaking a company's main purpose for amalgamation as tax avoidance, the Administration clarified that a amalgamated company would not be denied the set off of pre-amalgamation loss of amalgamating companies if the avoidance of tax was not the main purpose or one of the main purposes. The amalgamating companies were expected to provide sufficient documentary proof that the avoidance of</p>	

Time Marker	Speaker	Subject(s)	Action Required
		tax was not the main purpose, especially when there was substantial tax benefit arising from the amalgamation.	
014358 – 014746	Chairman Administration	<p><i>Section 25 Treatment of pre-amalgamation losses of amalgamated companies</i></p> <p><i>Section 26 Conditions for purposes of section 25(4) of this Schedule</i></p> <p><i>Section 27 Election for basis for ascertainment of profits and concessionary tax rate treatment etc.</i></p> <p><i>Section 28 Income accrued or derived after date of amalgamation</i></p> <p><i>Section 29 Refund from approved retirement scheme after date of amalgamation</i></p> <p>Members raised no questions.</p>	
014747 – 015044	Chairman Administration	<p>Part 3: Amendments relating to Specified Assets</p> <p><u>Clause 5 – Part 6D added</u></p> <p>Part 6D: Specified Assets</p> <p><i>Section 40AN Interpretation</i></p> <p><i>Section 40AO Meaning of specified asset</i></p> <p><i>Section 40AP Meaning of specified event</i></p> <p><i>Section 40AQ Application of Part 6D</i></p> <p><i>Section 40AR Non-application of certain provisions because of application of Part 6D</i></p> <p><i>Section 40AS Deemed selling price of specified asset</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Section 40AT Deemed proceeds of sale</i></p> <p><i>Section 40AU Deemed expenditure</i></p> <p>Members raised no questions.</p>	
015045 – 015236	Chairman Administration	<p>Part 4: Amendments relating to Furnishing of Returns</p> <p><u>Clause 6 – Section 2 amended (interpretation)</u></p> <p><u>Clause 7 – Section 51AA amended (form and manner of furnishing return, etc. under section 51)</u></p> <p>Members raised no questions.</p> <p><u>Clause 8 – Sections 51AAB, 51AAC and 51AAD added</u></p> <p><i>Section 51AAB Commissioner may require certain returns to be furnished in form of electronic record</i></p> <p>The Chairman's enquiry and the Administration's response on the requirement by the Commissioner that certain returns should be furnished in the form of electronic record.</p>	
015237 – 015328	Chairman Administration	<p><i>Section 51AAC Return disregarded if requirement not complied with</i></p> <p>Members raised no questions</p>	
015329 – 020323	Chairman Ms Starry LEE Administration ALA2	<p><i>Section 51AAD Service provider to be engaged to furnish return</i></p> <p>In response to ALA2's enquiry about the circumstances under which the Commissioner would specify by a gazette notice by reference to a class or description</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>of persons or returns that a taxpayer might engage a service provider to furnish a tax return and Ms Starry LEE's enquiries about the engagement of a service provider and e-filing, the Administration advised that –</p> <p>(a) the timing for gazetting the notice would depend on the progress of system enhancement. The first class of returns to be specified would be profits tax returns;</p> <p>(b) taxpayers would be allowed to engage service providers to furnish tax returns on their behalf irrespective of the way in which a return was furnished. Despite the main reason for introducing the measure was to assist taxpayers to furnish tax returns by electronic means, it would equally apply to paper filing and mixed filing; and</p> <p>(c) enhancement of the existing eTax Portal to enable more businesses to voluntarily e-file profits tax returns including financial statements would be launched in mid-2023 at the earliest.</p> <p>Ms Starry LEE enquired about the timing of implementation of section 51AAB on the requirement by Commissioner that certain returns should be furnished in the form of electronic record.</p> <p>The Administration advised that as the new Business Tax Portal was expected to be completed only by 2025, the requirement would not be expected to be implemented until then.</p> <p>Ms Starry LEE said that the Administration should exercise prudence when implementing the requirement in future, and should duly inform the industry of the requirement.</p>	

Time Marker	Speaker	Subject(s)	Action Required
Agenda item III — Any other business			
020324– 020435	Chairman Ms Starry LEE	Invitation of views Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
25 June 2021