



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : TsyB R 183/700-6/12/0 (C)
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15 April 2021

Miss CHUNG Chi-ching, Helen
Prin AS for Financial Services &
the Treasury (Treasury)(R1)
Financial Services and the Treasury Bureau
The Treasury Branch
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Miss CHUNG,

Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we should be grateful if you could clarify the following matters:

Clause 3 – proposed new section 40AM (election for Schedule 17J)

1. Under the proposed new section 40AM(1) of the Inland Revenue Ordinance (Cap. 112), the amalgamated company in a qualifying amalgamation may, within one month after the date of amalgamation (or any further period that the Commissioner of Inland Revenue ("Commissioner") may allow), elect for Schedule 17J to apply to the amalgamated company and each amalgamating company in the qualifying amalgamation. Please clarify and provide examples of the circumstances in which the Commissioner would allow the extension of the one-month period for making the election.

Clause 4 – proposed new Schedule 17J

2. In relation to the treatment of pre-amalgamation losses of amalgamating companies and amalgamated companies, under the proposed new sections 24(5) and 26(3) of Schedule 17J, the Commissioner must be satisfied that (a) there are good commercial reasons for carrying out the qualifying amalgamation; and (b) avoidance of tax is not the main purpose, or one of the main purposes, of carrying out the qualifying amalgamation. Please clarify and illustrate with examples the factors that the Commissioner would take into account when determining whether:
 - (a) the reasons for carrying out the qualifying amalgamation are "good commercial reasons"; and
 - (b) avoidance of tax is "the main purpose" or "one of the main purposes" of carrying out the qualifying amalgamation.
3. Under the proposed new section 27(3) of Schedule 17J, the election ceases to have effect if the conditions for the election in the relevant provisions are not met by the amalgamated company at any time after the amalgamation. Please provide example(s) to illustrate the application of the proposed new section 27(3) of Schedule 17J.

Clause 8 – proposed new section 51AAD (service provider to be engaged to furnish return)

4. Under the proposed new section 51AAD, the Commissioner may specify by notice published in the Gazette and by reference to a class or description of persons or returns that a taxpayer may engage a service provider to furnish a return for or on behalf of the taxpayer. Please clarify:
 - (a) the circumstances in which the Commissioner would do so; and
 - (b) why, insofar as a class or description of persons or returns may be affected, the Commissioner's notice is not proposed to be subsidiary legislation subject to scrutiny by the Legislative Council under the proposed new section 51AAD(7).

Clause 12 – proposed new section 80N (Commissioner may compound offences)

5. Under the proposed new section 80N of Cap. 112, the Commissioner may compound an offence under the proposed new section 80K(2), (3) or (4); and before judgment, stay or compound any proceedings for the offence. Please explain:
- (a) the rationale for making an offence under the proposed new section 80K(2), (3) or (4) a compoundable offence;
 - (b) the circumstances in which the Commissioner would compound an offence or stay or compound the proceedings for an offence under the proposed new section 80K(2), (3) or (4); and
 - (c) the factors that the Commissioner would take into account when determining whether an offence under the proposed new section 80K(2), (3) or (4) or the relevant proceedings should be compounded.

We would appreciate your early reply in both English and Chinese as soon as possible, preferably before the first meeting of the Bills Committee scheduled for 20 April 2021.

Yours sincerely,



(Rachel DAI)
Assistant Legal Adviser

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