

財經事務及庫務局

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17 May 2021

Mr Derek LO  
Clerk to Bills Committee on  
Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Mr LO,

**Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021**

Thank you for the Secretariat's email dated 13 May 2021, conveying the further written submission made by the Hong Kong Institute of Certified Public Accountants in relation to the captioned Bill. Please find the Government's response at Annex.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Helen Chung'.

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

c.c.  
Hong Kong Institute of Certified Public Accountants  
Commissioner of Inland Revenue

(Attn: Mr Peter TISMAN)  
(Attn: Mr LEUNG Kin-wa)

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

**Summary of Views of the Hong Kong Institute of Certified Public  
Accountants' Submission and the Government's Responses**

Item	Summary of views	Government's response
1.	<p>The proposed section 80K(2) (i.e. offence of service provider in relation to failure to furnish tax return for or on behalf of the taxpayer) should be removed, having regard to the following –</p> <ul style="list-style-type: none"><li>- It seems that section 51AAD(1) does not create a statutory obligation or requirement on the service provider to furnish a return.</li><li>- If the service provider fails to fulfill the terms of his engagement with the taxpayer, it is more appropriate to deal with the matter by the civil law.</li><li>- Section 80(2) of the Inland Revenue Ordinance (“IRO”) already protects the interest of a taxpayer who fails to furnish a tax return under section 51(1) and has a reasonable</li></ul>	<p>A taxpayer has the statutory obligation to furnish tax returns under section 51(1) of the IRO. The Administration fully agrees that the primary responsibility for furnishing a tax return rests with the taxpayer, and therefore a taxpayer is not relieved from such statutory obligation despite the engagement of a service provider under section 51AAD(1) (see section 51AAD(5)).</p> <p>When a service provider is appointed under section 51AAD(1), the said obligation under section 51(1) is carried out by the service provider on behalf of the taxpayer. If the failure to furnish tax returns is solely caused by the service provider, the taxpayer may have a reasonable excuse for the failure. In such case and in the absence of the proposed section 80K(2), an undesirable outcome may ensue with no one being held accountable for the failure to furnish tax returns under the IRO. Therefore, it is reasonable to impose sanction on the service provider if the service provider fails to carry out the obligation without reasonable excuse both to protect the interest of the taxpayer and to ensure the integrity of the tax return filing regime.</p>

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	<p>excuse for not doing so.</p> <ul style="list-style-type: none"> <li>- Tax agents are generally not made liable under the law for simple failures to submit tax returns for or on behalf of their clients.</li> </ul>	
2.	<p>Given that the offences under the proposed section 80K(3) relate to specific obligations imposed on the service provider by the Bill, they are clearer and more understandable.</p>	<p>The supportive view is welcomed.</p>
3.	<p>It is not clear how the proposed offence of a service provider, without reasonable excuse, furnishing the return not in accordance with the information provided or instructions given by the taxpayer (and the return so furnished is incorrect in a material particular) under section 80K(4) is to be construed.</p>	<p>Before furnishing a tax return, the service provider must obtain the taxpayer's confirmation stating that the information contained in the return is correct and complete to the best of the taxpayer's knowledge and belief (see section 51AAD(3)). If the tax return is subsequently furnished by the service provider but the information contained in the tax return is not the same as those confirmed by the taxpayer, the service provider will be regarded as having furnished the return not in accordance with the information provided or instructions given by the taxpayer and is liable for sanction under section 80K(4) if the return so furnished is incorrect in a material particular and he has no reasonable excuse.</p>
4.	<p>Comparing with the offences under sections 80D and 80H, the proposed offences under</p>	<p>The threshold for invoking the proposed offences under section 80K is in fact higher than that for the offences under sections 80D</p>

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	<p>section 80K are much more extensive and require no mens rea (i.e. wilful or reckless behavior) to be established and are disproportionate.</p>	<p>and 80H. A service provider will not be regarded as having committed an offence under section 80K(4)(b) as long as the tax return is furnished in accordance with the information provided, or instructions given, by the taxpayer. The service provider is not required to verify the correctness of the information provided, or instructions given, by the taxpayer.</p>
5.	<p>The circumstances under which a service provider could be engaged are not entirely clear, in particular regarding whether it will replace the existing system for filing paper returns, which may be submitted by a tax representative.</p>	<p>The Administration's current plan is to allow a taxpayer to engage a service provider to furnish profits tax returns for or on behalf of the taxpayer irrespective of the mode in which a return is furnished (i.e. paper, electronic or mixed). The engagement of a service provider is entirely optional.</p> <p>Unless and until a tax return is required to be furnished in the form of an electronic record under the proposed section 51AAB(1), it can still be filed in paper form either by a service provider (if engaged) (i.e. signed by the service provider) or under the existing practice being adopted by certain taxpayers, e.g. submitted through a tax representative but signed by the taxpayer concerned.</p>
6.	<p>A new system for e-filing, which could be made mandatory, represents a major operational change to the process of furnishing tax returns and merits a broader public discussion. The related legislation can be deferred until more detailed</p>	<p>The Bill provides a legislative framework for implementing the Inland Revenue Department'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>

Item	Summary of views	Government's response
	<p>plans for system design and operation have been worked out.</p>	<p>Before the implementation of mandatory e-filing, the Inland Revenue Department will duly gauge views from stakeholders and consider the actual situation and feasibility, including whether taxpayers and tax practitioners have sufficient time to get familiar with the new e-filing mechanism. The Legislative Council ("LegCo") will be consulted again on the implementation plan if and when it has been decided to make e-filing mandatory. A Gazette notice, which is subject to negative vetting by LegCo, will need to be made by the Commissioner of Inland Revenue on the class(es) or description(s) of persons who must furnish their tax returns by e-filing.</p>
7.	<p>Certain issues can be addressed through the design architecture of the e-filing system rather than by trying to take action against the service provider.</p>	<p>The purpose of allowing taxpayers to engage service providers to furnish tax returns for or on their behalf is to provide an optional means for taxpayers to furnish tax returns irrespective of the mode in which a return is furnished (i.e. paper, electronic or mixed). Therefore, system design cannot address all the issues arising from different situations. Further, as service providers are engaged under the IRO to carry out taxpayers' obligation under the IRO, introduction of penalty provisions on service providers is considered reasonable and necessary to ensure compliance of the statutory requirements and to protect the interest of taxpayers.</p>