

Press release

LCQ19: Joint Liaison Committee on Taxation

Wednesday, March 17, 2010

Following is a question by Dr Hon Lam Tai-fai and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (March 17):

Question:

It has been learnt that when attending the briefing session on the 2010-2011 Budget for this Council on February 25 this year, the Secretary for Financial Services and the Treasury indicated that he would be pleased to review the implementation of section 39E of the Inland Revenue Ordinance (section 39E) through the Joint Liaison Committee on Taxation (JLCT). In this connection, will the Government inform this Council:

(a) of the reasons for reviewing section 39E through JLCT; whether the review can be conducted through other channels apart from JLCT;

(b) whether JLCT conducts monthly meetings at present; if not, of the reasons for that;

(c) why there is only a representative from the Hong Kong General Chamber of Commerce in the membership of JLCT, and no representative from the Chinese Manufacturers' Association of Hong Kong, the Federation of Hong Kong Industries and the Chinese General Chamber of Commerce are included;

(d) whether the Government had reviewed the composition of JLCT since its establishment; whether it will consider appointing representatives from the three major business associations in (c), as well as those from business associations relating to small and medium enterprises, to JLCT; if it will, of the details; if not, the reasons for that;

(e) of the details of the reviews on tax issues conducted by JLCT in each of the past 10 years, and whether the Government had implemented all JLCT's recommendations; if it had, of the details; if not, the reasons for that;

(f) whether JLCT had, since its establishment, conducted reviews on tax issues in response to the aspirations of the industrial sector; if it had, of the details; if not, the reasons for that;

(g) when JLCT will commence reviewing the implementation of section 39E, when the review is expected to be completed, and whether it will make public the review report; if it will, of the details; if not, the reasons for that; whether the Government will, during the review period, consider suspending the application of section 39E to recover relevant taxes from Hong Kong enterprises; if not, of the reasons for that; and

(h) given that at present, the Inland Revenue Department may, on a 50:50 basis of apportionment, assess Hong Kong profits tax payable by Hong Kong enterprises in respect of profits from sale of products processed by mainland manufacturing units under "contract processing", whether the authorities will request JLCT to review this arrangement to expand its scope of application to include Hong Kong enterprises engaged in "import processing", so as to encourage the upgrading and restructuring of Hong Kong enterprises on the Mainland; if they will, of the details; if not, the reasons for that?

Reply:

President,

(a) to (g) The Joint Liaison Committee on Taxation (JLCT) is a discussion forum set up on the initiative of the accountancy and commercial sectors in 1987. It discusses various tax issues and reflects the views of the industry to the Government. The JLCT is not an advisory body established or appointed by the Government, though Government officials are invited to attend its meetings. Hence, we are not in a position to respond to questions in relation to its composition and operation. Nevertheless, we have relayed to the JLCT Chairman the questions and concerns of Dr Hon Lam Tai-fai.

Since its establishment, the JLCT has provided valuable professional advice to the Government on a wide range of tax issues. In the process of formulating or reviewing policies, the Administration will take into account the views of various stakeholders. We do not have information on the number of proposals from individual organisations that have been adopted by the Government ultimately.

With regard to section 39E of the Inland Revenue Ordinance (IRO), as explained in the Administration's letter dated March 10, 2010 to the Legislative Council Panel on Financial Affairs, we consider that the completeness of the anti-avoidance provisions in the IRO would be affected if the restriction under section 39E is relaxed. There are also practical difficulties in the implementation and the provision could easily be abused. In response to the request of the industry, we have invited the JLCT at its meeting of March 4, 2010 to study the issue of section 39E. In view of its members' professional background as well as their knowledge of the tax regime and tax law in Hong Kong, we hope that the JLCT can explore at the technical level whether there is any practical and feasible solution to address the concerns of the industry and the Administration. Besides, we have suggested the JLCT to consider the views of relevant business associations in the course of the study. Meanwhile, the Inland Revenue Department has to enforce the tax law and could not suspend the application of section 39E.

(h) In my reply to Dr Hon Lam Tai-fai's written question on January 13, 2010, I have explained in detail the differences between "contract processing" and "import processing" as well as the different tax arrangements under these two modes of operation. If the 50:50 tax apportionment method under "contract processing" is to be extended to apply to profits arising from general trading activities, there will be a fundamental change to the prevailing tax principles in Hong Kong. At present, we have no intention to invite the JLCT to study this issue.

Ends