

Investigation into the assets held by a person in Hong Kong

At the meeting on 30 November 2001, the Legislative Council Panels on Security, Administration of Justice and Legal Services and Financial Affairs requested a written response on whether investigations arising from the request of other countries into the assets held by a person in Hong Kong were consistent with the requirements under local taxation-related legislation. The Administration's response is set out in the following paragraphs.

2. Local law enforcement agencies, insofar as permissible under the laws of Hong Kong, will assist overseas law enforcement agencies for purposes of criminal investigation and criminal proceedings where the conduct which is being investigated or which is the subject of proceedings, had it occurred in Hong Kong, would be criminal in nature.

3. Section 4 of the Inland Revenue Ordinance (Cap. 112) prohibits the communication of tax information to any person other than the person to whom such matters relate (that is a taxpayer) or his authorized representative. In other words, the law does not allow the Inland Revenue Department (the Department) to entertain requests for taxpayers' information made by other countries direct.

4. A formal request for assistance in relation to a foreign criminal matter relating to taxation pursuant to the Mutual Legal Assistance (MLA) in Criminal Matters Ordinance (Cap. 525) may, however, result in relevant information or evidence (such as evidence in relation to a person's bank accounts) being supplied. In this respect section 5(2) of Cap. 525 should be noted. It provides that if the foreign criminal matter is an investigation into a taxation offence (rather than a prosecution) the request must be refused unless MLA arrangements exist between Hong Kong and the place concerned (which are the subject of an order under Cap. 525) AND the Secretary of Justice is satisfied that the primary purpose of the request is NOT the assessment or collection of tax. It should be noted that section 3(3) of Cap. 525 provides that the provisions of Cap. 525 shall not operate to prejudice the generality of section 4 of the Inland Revenue Ordinance (Cap. 112).