

CB(1)2622/08-09(15)

Your ref: CB1/BC/10/08

Hon Paul Chan, MH, JP
Chairman
Bills Committee on Inland Revenue
(Amendment) (No. 3) Bill 2009
Legislative Council Building
8 Jackson Road
Central
Hong Kong

17 September 2009

Dear Mr Chan

Bills Committee on Inland Revenue (Amendment) (No.3) Bill 2009

Thank you for your letter dated 20 July 2009 inviting ACCA Hong Kong's views on the captioned Bill.

We would like to reiterate ACCA Hong Kong's position as set out in our letter sent to the Financial Services and the Treasury Bureau on 22 September 2008 that we support the liberalization of Exchange of Information (EoI) article in a Double Taxation Agreement. In our letter, we also pointed out that:

- there should be safeguards in place to ensure adequate protection of taxpayers' right and the confidentiality of their tax affairs. Hence, a proper mechanism for objections and appeals should be available where taxpayers feel that their rights are being infringed upon; and
- the subsequent necessary legislative amendments to the Inland Revenue Ordinance will need to be widely consulted so as to ensure that the administration and execution of the exchange of information provision properly takes care of confidentiality and privacy of taxpayers.

Based on the above principle, we would like to raise our comments relating to the Bill as below:

- We understand that a set of rules is to be set out to ensure domestic safeguards are in place. However, we consider that this subsidiary legislation should be set out as well in the Bill for public comments.

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- In particular, we have the following concerns relating to the proposed safeguards set out in paragraph 10 (a), (b) and (c) in the Legislative Council Brief in respect of Inland Revenue (Amendment)(No.3) Bill 2009 (the Legislative Council Brief):
 - (a) The decision on whether to accede to an Eol request has to be made by a directorate office of IRD, who has to be satisfied that the request is made in accordance with the law and the CDTA concerned.

ACCA Hong Kong is of the view that the decision of whether to accede to Eol request should be made by a higher authority in the IRD. Instead of a directorate officer, i.e. a Chief Assessor grade, we consider that an Assistant Commissioner is in a more appropriate position to make this decision.

- (b) Save in exceptional circumstances where notification would prevent or unduly delay the effective exchange of information or where prior notification would otherwise undermine the chance of success of the investigation conducted by the requesting party, IRD has to notify and provide the person the information that the Department is going to transmit to the requesting party.

We assume that these “exceptional circumstances” will be explicitly stated in the subsidiary legislation once it is ready for public consultation, as it helps enhance transparency of the process as well as protect the taxpayers’ right to know.

In notifying the taxpayer the information that the Department is going to transmit to the requesting party, ACCA Hong Kong suggests that the original request from the requesting party be forwarded together with the notification. In addition, we would like to clarify that such a notification is forwarded to the taxpayer in advance of the Department transmitting the requested information to the requesting party. We consider these procedures are important to ensure the taxpayers’ right to know.

- (c) The person can verify the accuracy of the information with IRD. If IRD refuses to accept the proposed correction to the information, the person may seek a review by a higher authority (which we propose to be the Financial Secretary), whose decision on the matter shall be final.



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Apart from an appeal regarding the IRD refusing to accept the proposed correction to the information, ACCA Hong Kong considers it necessary for an appeal mechanism where the taxpayer considers that excessive information is to be transmitted, or the information to be transmitted is not in accordance with the Eol article.

Regarding the proposed mechanism, we recommend that a decision only be final where a further review is conducted by an independent tribunal other than the higher authority as proposed in the Legislative Council Brief.

ACCA Hong Kong welcomes a Departmental Interpretation and Practice Note (DIPN) be issued by the IRD setting out the procedural safeguards IRD must adopt in processing Eol requests. In this regard, we consider it necessary for the draft DIPN to be consulted before it is finalized.

Apart from the proposals set out in the Bill, ACCA Hong Kong is aware of certain concerns in the public regarding abuse of information collected under an Eol request. We suggest the government providing the public with a clear position that will be taken by the government on how an abuse will be treated. This is critical in ensuring public confidence in the process of liberalizing the Eol, which aims to enhance transparency of Hong Kong's tax regime as well as to enhance Hong Kong's reputation as an international financial centre.

Should you wish to discuss any of the above issues in detail, kindly please contact the co-chairmen of our Tax sub committee, Mr Fergus Wong and Mr Davy Yun, at 2524 4988.

Yours sincerely

A handwritten signature in purple ink, appearing to read "Judy Wong".

Judy Wong
President