



香港稅務學會

THE TAXATION INSTITUTE OF HONG KONG

(Incorporated in Hong Kong as a company limited by guarantee)

7 August 2009

BY FAX (2121 0420) & BY E-MAIL (yhcheung@legco.gov.hk)

Your ref: CB1/BC/10/08

For the attention of:

Ms. Amy Lee

For Clerk to Bills Committee

Dear Ms. Lee,

**BILLS COMMITTEE ON INLAND REVENUE (AMENDMENTS) (NO.3)
BILL 2009**

Thank you for your letter dated 20 July 2009 asking The Taxation Institute of Hong Kong (the "Institute") to submit written submission on the above Bill.

The Institute has always been in favour of adopting a more liberal version of exchange of information ("EOI") article in the double tax agreements ("CDTAs") entered into by Hong Kong with other regions. We agree that an EOI article which facilitates the competing authority of a foreign contracting party to request information concerning taxes will enhance the transparency of our tax system and will help the international community (not least the OECD or the G20 countries) not to perceive Hong Kong as a tax haven.

The Bill was drafted quite neatly and we have no further comments on its technical contents.

We would like though to address two points.

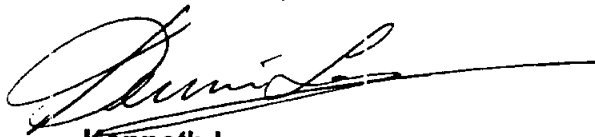
First, while the spirit of the Bill is not controversial, there will be concerns from the business community that such exchange of information provisions will have adverse implications on the preservation of trade secret and confidential information. We understand that safeguards will be put into the relevant CDTA itself and rules under section 49(6) of the Inland Revenue Ordinance to restrict the scope of tax information to be provided and the usage of such information by the contracting party – these safeguards may not be adequate. We would like the Government to explore the possibility of setting up an appeal panel to

hear objections if a taxpayer thinks that if information is wrongfully disclosed or if power of disclosure is wrongly administered.

Second, will Hong Kong be considered by the international community to be in full compliance with international standard if the Bill were implemented? We do note that the spirit of the 2004 version of the EOI article of the OECD Model Tax Convention allows exchange of information concerning "taxes of every kind and description imposed on behalf of the Contracting States" while Hong Kong is only prepared to exchange information regarding income tax (i.e. profits tax, salaries tax and property taxes or similar taxes) covered by a CDTA, this dichotomy in approach may in the long run cast doubts on Hong Kong's sincerity in complying with the highest international standard.

We will make an oral presentation to the Administration on the Bill at the Bills Committee meeting on 8 October 2009 at 2:30 p.m. We will return the reply slip under a separate cover to provide details of the representatives from the Institute.

Yours sincerely,



Kenneth Leung
Vice-President