



香港華人會計師公會
The Society of Chinese Accountants & Auditors

(在香港註冊成立之有限公司)
(Incorporated in Hong Kong as a company limited by guarantee)

Date : 23rd September 2009
Your ref. : CBI/BC/10/08

CB(1)2682/08-09(03)

The Clerk to Bills Committee
Bill Committee on Inland Revenue (Amendment) No.3 Bill 2009
Legislative Council

Attn.: Miss Amy Lee

Dear Miss Lee,

Re: Inland Revenue (Amendment) (No. 3) Bill 2009 (the "Bill")

We refer to your letter dated 20 July 2009. It is our pleasure being invited to give our views and thoughts in respect of the Bill.

We understand that the government of HKSAR (the "Government") is under a very great pressure of economies come from the Organization for Economic Cooperation and Development ("OECD") urging Hong Kong to adopt the latest international standard for exchange of information ("EoI") in a comprehensive avoidance of double taxation agreement ("CDTA"). We also understand that Hong Kong has openly endorsed OECD's Principles of Transparency and Effective Exchange of Information at OECD Global Forum on Taxation held in Melbourne in 2005. Under these circumstances, it seems that we have no better choices but to amend the Inland Revenue Ordinance (Cap. 112)("IRO") to enable Hong Kong to adopt the OECD 2004 version of the EoI article.

Based of the above facts, the Society of Chinese Accountants and Auditors ("SCAA") has no objections to the captioned bill in respect of the amendment of the IRO. Having said that our members show great concerns on the "effects" come along with signing CDAs with other economies under the OECD 2004 version of the EoI article which empowers a contracting party to request another contracting party to collect and supply taxation information for the taxation of that party, even if that another contracting party does not need the information for domestic tax purposes.



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Our concerns and recommendations are summarized as follows :

- (1) Given the simple taxation system of Hong Kong, it is not difficult to foresee that Hong Kong will be the one being request for information rather than requesting information from the counter party of a CDTA. That means the more CDTAs Hong Kong entered into, the more exposure there will be.

The Government repeatedly claims that historical figures show no abuses of the system of information exchange. The Government also claims that it will involve considerable resources to initiate the process of information exchange for both parties of the CDTA, which are scare to all jurisdictions. There is no reason for any responsible tax authorities to waste its limited resources by initiating exchange of information indiscriminately. Moreover the Government claims that the system of information exchange is under strict control from both sides. However, our members' concern is that the above is only our understanding of the current situation. In many countries, especially in the western countries, the government may be changed over every four to five years by election. The direction and philosophy might greatly varied from government to government. It is anticipated that after the adoption of the 2004 version of EoI, the number of CDTAs will increase dramatically. With the increase in number of CDTAs entered into, the higher the exposure of Hong Kong will be in the request of EoI from its counter parties. This will create an administrative burden on Hong Kong. Thus we recommend that it is fair and reasonable for each party of the CDTA to bear the administrative cost of the other party for collecting information on their request and providing administrative assistance to them.

- (2) Basically, our members do not see any material benefits bring to Hong Kong by entering into the CDTAs apart from being viewed as countries improving transparency and international co-operation to counter offshore tax evasion and not being assessed by the Global Forum as against the international standard for exchange of tax information. In this connection, our members urge the Government to strive for the best benefits out of the CDTAs for Hong Kong as a



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whole before entering into any such CDTA say for example, (i) to minimize the withholding tax on interest, dividends, royalties, capital gains; (ii) to allow for corresponding adjustments in the event of transfer pricing adjustments being made by the counter party; and (iii) to strike for a well defined "permanent establishment" to benefit those Hong Kong business operating overseas..

- (3) The press release in respect of the Bill mentioned that the Government would adopt prudent safeguards at different levels to protect individuals' right to privacy and confidentiality of the information exchanged. Our members recommended that IRD should laid down those possible prudent safeguards as well as the procedures and details of the system of information exchange in a Departmental Interpretation & Practice Note so as to give a higher transparency of the information exchange system to the taxpayers.

We should be glad to discuss with our comments in further details if so required. Please contact the undersigned at our email address at info@scaacpa.com.hk, facsimile no. (852) 2526-6434 or telephone no. (852) 2550-8965.

Thank you for your kind attention.

Yours truly,

Ivy Chua
President