

財經事務及庫務局  
(庫務科)  
香港下亞厘畢道  
中區政府合署



FINANCIAL SERVICES AND THE  
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Clerks to Bills Committee  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong  
(Attn: Ms Rosalind Ma)

29 September 2009

Dear Ms Ma,

**Bills Committee on Inland Revenue (Amendment)(No. 3) Bill 2009  
Follow-up to meeting on 17 July 2009 and second meeting  
to be held on Thursday, 8 October 2009**

I refer to your letter dated 17 July 2009 and set out below a summary of views collected by the Administration in the 2005 and 2008 consultation exercises, in particular, highlighting the views of respondents who have given qualified support to the proposal in the 2008 consultation exercise.

2005 Consultation Exercise

2. A total of 34 letters were sent out in June 2005 to business chambers, professional bodies and advisory bodies. Views from 17 associations were received and are summarised below -

Support / no objection	Do not support / have reservation	No comment	Total
5	4	8	17

### 2008 Consultation Exercise

3. Between July and October 2008, we consulted 51 business chambers, professional bodies and advisory committees on the proposal and held six meetings with groups of stakeholders.

4. In this round of consultation, we received a total of 24 written submissions. Among them, -

- (a) 18 organisations indicate support for or no objection to the proposal;
- (b) five do not support or have reservation about the proposal; and
- (c) one has no comment.

5. Among the 18 organisations who indicate support for or no objection to the proposal, the concerns raised are set out in the ensuing paragraphs.

#### *(i) Fishing Expedition*

6. There are concerns that our comprehensive avoidance of double taxation agreement (CDTA) partners would abuse the exchange of information (EoI) arrangement and initiate "fishing expeditions" to trawl taxpayers' information. Respondents opine that appropriate safeguards against such abuse should be imposed. Some suggest that the provision of information should be within the scope of the CDTA and the Inland Revenue Ordinance (Cap. 112). It is also considered that any information request must be furnished with clear and justified reasons to demonstrate the subject person's tax liability in the requesting party and that the information requested is for taxation purpose. Some suggest that the Government should seek confirmation from our treaty partner that its information request will be limited to tax information only.

#### *(ii) Privacy and Confidentiality*

7. Another major concern is that a more liberal EoI regime would mean intrusion into taxpayers' privacy, and compromise the confidentiality of tax information. Similarly, some respondents are of the view that appropriate safeguards are necessary. Some respondents remark that any information requested should not exceed what is required for taxation reasons or what the requesting party can obtain under its domestic law, and the information obtained should be treated confidentially. There are views that during CDTA negotiations, the Government should ask for an explicit clarification that the treaty partner

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would not share the information with third parties, such as another country with whom it may have information sharing obligation or its other law enforcement agencies.

*(iii) Administrative Burden*

8. Some respondents opine that the existing straightforward administrative measures and data collection standards should be used to avoid imposing additional administrative burden to taxpayers. There are also views that Inland Revenue Department (IRD) should be appropriately resourced to cope with the increased workload to ensure that the information requested is within the allowed scope.

*(iv) Fairness and Transparency*

9. It is suggested that the Government should publicise clear rules, scope, timeframe and relevant legal basis for the information gathering power of IRD in the collection of information without domestic tax interest.

*(v) Notification or Review*

10. Some respondents suggest that a notice should be given, prior to the transmission of the information, to the person who is the subject of a request to verify the accuracy of the information exchanged unless there are exceptional reasons not to do so. A reasonable opportunity should also be allowed for the person to challenge the validity of the request. It is further suggested that objection or appeal should be allowed if the person feels that his rights are being infringed upon.

*(vi) Authority to Accede to Requests for Information*

11. Some respondents are of the opinion that the relevant decisions to provide information requested should be made by a senior official (e.g. a directorate or higher level official familiar with the details of the case). There are also views that approval by the Board of Review should be sought before IRD can serve a notice to a third person to seek information held by a bank or other financial institutions.

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*(vii) Scope for Adopting the 2004 EoI Article*

12. There are suggestions that the Government may not need to extend the more liberal EoI article to all existing or new CDTAs unless so requested by individual jurisdictions. It is also opined that Hong Kong should not enter into the new EoI article with countries the domestic law of which allows them to exercise more authority than is necessary or fair. Some respondents opine that an information request should not have retrospective effect before the coming into force of the relevant CDTA.

*(viii) Others*

13. Other views include that Hong Kong should resist entering into standalone EoI agreements and that we should insist that our treaty partners remove Hong Kong from any of their blacklists after our adoption of the 2004 EoI article in our CDTAs.

Yours sincerely,



( Ms Joan Hung )

for Secretary for Financial Services  
and the Treasury

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