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Legal Service Division
Legislative Council Building
8 Jackson Road
Central, Hong Kong
(Attn: Mr Stephen Lam)

29 September 2009

Dear Mr Lam,

Inland Revenue (Amendment)(No. 3) Bill 2009

I refer to your letter dated 14 August 2009 regarding the captioned Bill and set out below our response to the questions raised.

Clause 3(2)

2. Article 2(2) of the Organisation for Economic Cooperation and Development ("OECD") Model Tax Convention sets out that taxes on income comprise taxes on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation. The phrase "any tax of a similar character imposed by the laws of that territory" is to cater for less commonly known income-based taxes that could be imposed by our treaty partners. Examples include inhabitant tax (in Japan) and religious taxes (common in the Middle East countries).

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Clause 7(2), 8(1) and 8(2)

3. The offence of making incorrect returns or giving incorrect information under existing sections 80(2)(a), 80(2)(c), 82A(1)(a) and 82A(1)(c) of the Inland Revenue Ordinance ("IRO") (Cap. 112) makes reference to "another person or a partnership". As the term "person" is defined in section 2(1) to include "a corporation, a partnership, or body of persons", the reference to "a partnership" under sections 80(2)(a), 80(2)(c), 82A(1)(a) and 82A(1)(c) is otiose. We would like to take this opportunity to tidy up the relevant provisions.

Clause 9

4. Clause 9 is a related amendment to the Personal Data (Privacy) Ordinance (Cap. 486) ("PD(P)O") such that the word "tax" in section 58(1)(c) of the PD(P)O would include a foreign tax covered by an Exchange of Information ("EoI") article under a Comprehensive Avoidance of Double Taxation Agreement ("CDTA"). The proposed amendment is meant to complement the proposed widening of the Inland Revenue Department's information gathering power under the IRO.

5. This clause is proposed to address the Privacy Commissioner's concern raised during the consultation exercise that the word "tax" under section 58(1)(c) of the PD(P)O means Hong Kong tax but not overseas tax.

Paragraph 9 of the Legislative Council Brief

6. The safeguards set out in paragraphs 9(b) to (g) of the Legislative Council brief are provided in the OECD Model Tax Convention and will be included in individual CDAs to be implemented as subsidiary legislations.

7. The OECD Model Tax Convention, however, does not restrict the forms of information exchange. Therefore, the safeguard under paragraph 9(a) of the Legislative Council brief (i.e. case-specific rather than automatic or wholesale information exchange) could be stipulated either in a protocol which forms part of the CDTA (and hence part of the subsidiary legislation) or in other documents of records (e.g. an MoU between the two

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contracting parties) which are not part of the CDTA but have to be observed by both parties in carrying out the CDTA.

2004 OECD Model of EoI, paragraph 3

8. Under sub-paragraph 3(a), a contracting party, for example, should not be asked not to notify the data subject if its domestic laws requires it to do so under normal circumstances of information exchange.

9. Under sub-paragraph 3(b), Hong Kong, for example, will decline a request for bank records that go beyond the 7-year time limit, which is the statutory requirement for record-keeping under IRO.

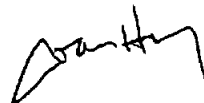
10. Under sub-paragraph 3(c), a contracting party, for example, may refuse to provide the information about a pending patent application being made by the taxpayer in question, or a secret trade process or formula owned by or in the custody of the taxpayer.

2004 OECD Model of EoI, paragraph 5

11. Under paragraph 5, a contracting party cannot refuse to disclose information because of the restrictions of its domestic bank secrecy law. Hong Kong has no bank secrecy law and we have no problem in observing this provision.

12. Please feel free to contact me if you need any further clarifications.

Yours sincerely,



(Ms Joan Hung)
for Secretary for Financial Services
and the Treasury