



**The British
Chamber of Commerce
in Hong Kong**

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16 November, 2009

Ms. Noel Sung
Clerk for the Bills Committee
Legislative Council
Hong Kong

Dear Ms. Sung

Thank you for your letter with attachments dated 21st October 2009. We note there was no Annex A.

We would like to respond with some comments:

(a) Outline of Proposed Safeguards to be covered by the Inland Revenue (Disclosure of Information) Rules

It is not clear whether these Rules will be enacted at the same time as the main amendments to the Inland Revenue Ordinance or at a later time.

Our primary concern is that the safeguards proposed in our two earlier letters are not spelled out in this outline. These rules deal with administrative matters only, which is not what we had been led to expect. This means that there will be no detailed safeguards in the Hong Kong legislation and any such safeguards will need to be negotiated within each treaty. This puts Hong Kong at a negotiating disadvantage as we have previously described.

Whilst we do note that individuals will be advised of disclosure in the majority of cases, the timescales envisaged are too tight; we would suggest 30 days instead of 14 days in each case.

We note any Appeal is to the Financial Secretary. We would prefer an independent party, such as an Ombudsman, to review such requests.

A major concern is not covered at all; these draft provisions do not preclude automatic exchanges of information. Thus requests for substantial exchanges of information may need to be complied with (e.g. information will need to be maintained in suitable formats by banks or brokerage houses to enable this). This is an important area for the future because it cannot always be assumed there will only be a few requests each year. Banks are the most likely target in practice.

(b) Draft DIPN on Implementation Details of Exchange of Information Provisions under CDTAs.

Any safeguards are primarily left to the Commissioner or his or her authorised officer, *whom we believe should be of directorate level or above*. These individuals would be allowed a lot of discretion as the base level safeguards are not spelled out in the draft DIPN, but will be left to each CDTA negotiation.

Where business gets done

Furthermore the draft DIPN does not explain the criteria which the Commissioner will adopt in practice in selecting/approving which cases to respond to. It reflects only the administrative processes for handling such cases.

We have only been given an extract of the DIPN relating to administrative issues. When will the whole draft DIPN be released? In general we have no comments on this extract but we do wonder what the rest of this proposed DIPN says, and why it has not been revealed.

I regret to say that we do not believe these documents add anything to an understanding of the approach to be adopted by the Commissioner of Inland Revenue or the Government in this sensitive and important area for Hong Kong.

We continue to wish to get the best result for Hong Kong when this legislation is enacted and would hope that Legco will insist on the safeguards we have suggested being included in the primary legislation, as we have outlined previously.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'James Riley', with a long, sweeping horizontal stroke extending to the right.

James Riley
Chairman

Cc: Ms. Debbie Annells
Brig. Christopher Hammerbeck