

CB(1)469/09-10(03)

Your ref: CB1/BC/10/08

Hon Paul Chan, MH, JP  
Chairman  
Bills Committee on Inland Revenue  
(Amendment) (No. 3) Bill 2009  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

18 November 2009

Dear Mr Chan

**Bills Committee on Inland Revenue (Amendment) (No.3) Bill 2009**

Thank you for your letter dated 21 October 2009 inviting ACCA Hong Kong's views on the captioned Bill. We welcome the quick response of the Administration to our request of putting forward the Inland Revenue (Disclosure of Information) Rules (the proposed Rules) and the Departmental Interpretation and Practice Notes on Implementation Details of Exchange of Information Provisions under Comprehensive Double Taxation Agreements (the draft DIPN). We have considered the proposed documents and like to raise the following further issues for the Committee to consider.

- (a) We note that under the proposed Rules (Rule 3), the disclosure request is required to be approved only by the Commissioner of Inland Revenue or any officer of the Inland Revenue Department not below the rank of chief assessor authorized in writing by the Commissioner personally. However, in the draft DIPN, it states that the Commissioner has authorized the Chief Assessor (Special Duties) as an authorized officer in this connection. ACCA Hong Kong is of the view that the disclosure request should be approved by a higher authority in the Inland Revenue Department.

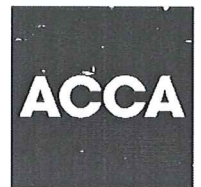
Provision 4(c) of the proposed Rules allows the request can be approved in "any other procedures that may be specified by the Commissioner". These procedures at the present form are provided in the Appendix to the draft DIPN. It is not clear as to the legal status of the Appendix as the proposed Rules are part of the law while the draft DIPN will not be legally binding.



- (b) We also note that it is now specifically stipulated under Rule 7 of the proposed Rules that where “all the addresses of the person known to the Commissioner are inadequate for the purpose of giving the notification”, notification is not required. Notification is also not required if the Commissioner has reasonable grounds to believe that the notification is likely to undermine the chance of success of the investigation in relation to which the request is made.

We are of the view that guidelines should be included in the DIPN to determine what constitutes “undermine the chance of success of the investigation in relation to which the request is made” as it helps enhance transparency of the process as well as protect the taxpayers' right to know.

- (c) Under the proposed Rules (Rule 5), the taxpayer may request the Commissioner to amend the information on the grounds that either the information does not relate to the person or the information is factually incorrect within 14 days after a copy of the information is given by the Commissioner. We consider that this timeframe is extremely tight, and a more reasonable duration of time should be given. Following other practices such as timeframe allowed for objection cases, we consider it is more reasonable to allow taxpayers to send their amendment request to the Commissioner within 30 days.
- (d) The proposed Rules (Rule 5(c)) limits the grounds for taxpayers to request the Commissioner to amend the information to two particular situations, namely the information does not relate to the person; or the information is factually incorrect. ACCA Hong Kong considers it important to allow the taxpayer to request the Commissioner to amend the information where the taxpayer considers that excessive information is to be transmitted.
- (e) Where the Commissioner partially approves or refuses a request for amendments of the information on the grounds set out in the proposed Rule 5(c), the person may request the Financial Secretary to direct the Commissioner to make the amendments, and the decision of the Financial Secretary is final (Rule 10 refers). ACCA Hong Kong retains its view in its submission on 17 September 2009 that an appeal mechanism is necessary where the taxpayer considers that excessive / incorrect information is to be transmitted, or the information to be transmitted is not in accordance with the EoI article.



Regarding the proposed mechanism, we consider a further review conducted by an independent tribunal before the decision is final is necessary to ensure that the decision is objective and independent.

Should you wish to discuss any of the above issues in detail, kindly please contact the co-chairmen of our Tax sub committee, Mr Fergus Wong and Mr Davy Yun, at 2524 4988.

Yours sincerely

A handwritten signature in purple ink that reads 'Judy Wong'.

Judy Wong  
President