

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

Follow-up to issues raised at the third meeting on 27 October 2009

1. In relation to Hon James TO's concern about details of the provisions under comprehensive avoidance of double taxation agreements (CDTAs) to ensure that the exchange of information (EoI) arrangement would have no retrospective effect, the Administration was requested to provide supplementary information (including but not limited to the commencement Articles of some of the CDTAs in force) to illustrate how the provisions under CDTAs would stipulate that requests from treaty partners for information on cases or periods before commencement of the CDTAs would be declined.
2. In response to members' (Hon James TO and Hon Miriam LAU) view that the EoI safeguards to be provided in CDTAs should be stipulated in primary legislation to ensure that the fundamental safeguards would not be compromised in the course of treaty negotiations, the Administration was requested to:
 - (a) provide information on the EoI safeguards provided by other jurisdictions (including Singapore and Switzerland) and the practices of these jurisdictions in providing for the safeguards; and
 - (b) consider Hon James TO's view that in case the Commissioner of Inland Revenue (the Commissioner) had to apply for a court order for the taxpayer concerned to provide the information requested under an EoI arrangement, whether the court could disallow the application on grounds of EoI safeguards if these were not stipulated in the primary legislation.
3. On the notification of proposed disclosure, members (including Hon James TO, Hon Miriam LAU and Hon Alan LEONG) were concerned that protection of the right of the person concerned would be undermined in cases stipulated in paragraphs 7 and 8 of Annex B to LC Paper No. CB(1)106/09-10(02) under which notification or prior notification would not be required. In this connection, the Administration was requested to take heed of members' concerns and provide the following information:
 - (a) the "reasonable grounds" for the Commissioner to decide that notification was not required as "notification is likely to undermine the chance of success of the investigation in relation to which the request is made" (as stipulated in paragraph 7(b)); and
 - (b) the criteria for the Commissioner to decide that prior notification was not required as "failure of disclosing the information within the time

constraint will likely frustrated the efforts of the requesting government in enforcing its tax laws"(as stipulated in paragraph 8).

Council Business Division 1
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