

By Email ([yhcheung@legco.gov.hk](mailto:yhcheung@legco.gov.hk))  
Your Ref: CB1/BC/10/08

2 November 2009

Chairman of the Bills Committee  
Legislative Council  
Legislation Council Building  
8 Jackson Road  
Central, Hong Kong

**CB(1)260/09-10(07)**

Dear Sir,

**RE: INLAND REVENUE (AMENDMENT) (NO. 3) BILL 2009**

We refer to your letter dated 21 October 2009 enclosing the draft outline of proposed safeguards to be covered by the Inland Revenue (Disclosure of Information) Rules ("IRR") and the draft Departmental Interpretation and Practice Notes on Implementation Details of Exchange of Information Provisions under Comprehensive Double Taxation Agreements (Extract of the part on "Administrative Guidelines") ("DIPN").

While we basically agree with the contents of draft IRR and DIPN in general, we would like to submit below our comments on specific points for your consideration.

***Comments on draft IRR***

**Paragraph 5 – notification given to person**

- Original request document made available to the person

We would suggest that while the Commissioner notifies the person of the request and the nature of the information sought, the "original request document" from the overseas requesting government should also be forwarded to the person for reference. In this regard, the person can assess whether the information that the Commissioner is prepared to disclose to the overseas requesting government is relevant or not.

- More time for the person to decide whether amendment is required

The draft IRR stated that the person may request the Commissioner to amend the information to be exchanged. However, it must be made within 14 days after a copy of information to be exchanged is given by the Commissioner to the person. We trust in most cases, a period of 14-days is insufficient for a person to review and make necessary amendments with supporting documents especially if the information involved is substantial or related to back years.

We would recommend a reasonable time (say 30 days) should be given for the person to review the information. Meanwhile, we would suggest that a further extension of time (say up to 60 days after a copy of information to be exchanged is given by the Commissioner to the person) should be allowed if the person is required to amend the information.

Paragraphs 7 & 8 – circumstance where notification/prior notification is not required

- Preserve the right of being prior notified

As stated in our last submission dated 16 September 2009, we are of the view that the right of being notified should be preserved as far as possible. In particular, we trust "prior" notification is necessary. However, paragraph 8 of the draft IRR suggested that prior notification is not required if the Commissioner is under a tight time constraint to disclose the information to the overseas requesting government and the failure of disclosing the information within the time constraint will likely frustrate the efforts of the overseas requesting government in enforcing its tax law.

We trust we should take a proper balance in this regard. While assisting the overseas requesting government, the right of prior notification should also be preserved as far as possible. It may not be fair to deprive a person of the right on being prior notified simply by the reason of time constraint. Therefore, we would suggest the above clause to be deleted from the draft IRR.

- Clearly define what constitutes "undermine the chance of success of the investigation"

The draft IRR stated that notification is not required if the notification is likely to undermine the chance of success of the investigation in relation to which the request is made. As mentioned above and in our last submission, we are of the view that notification is very important. To preserve the right of being notified, we suggest it is necessary to define clearly what constitutes "undermine the chance of success of the investigation" as the term appears to be vague and subjective. We suggest the Commissioner should state in DIPN the guidelines for determining what constitutes "undermine the chance of success of the investigation" with examples quoted for public's reference.

Paragraphs 9 to 11 – amendments of information and resolving of disputes

- Independent tribunal

The draft IRR suggested that the person may request the Financial Secretary to resolve the disputes regarding amendments of information and the decision of Financial Secretary shall be final. In our submission dated 16 September 2009, we suggested setting up an independent tribunal for resolving any issues and disputes regarding the collection of information to be exchanged. We trust an independent tribunal is necessary in this regard and its function should be similar to the existing Board of Review which helps to resolve the tax disputes between taxpayer and the Inland Revenue Department ("IRD").

- Information can only be exchanged after disputes are resolved

We suppose that during the course of disputes or amendments of information, the Commissioner is not obligated to disclose any information to the overseas requesting government. It is only until the disputes are fully resolved and the information is amended as appropriate can the Commissioner disclose the information to the overseas requesting government. For the avoidance of doubt, we suggest to state this rule clearly in the IRR.

*Comments on draft DIPN*

- Usage of the information obtained under the new law by domestic party (i.e. the IRD)

As stated in our submission dated 16 September 2009, we would suggest placing a restriction on the usage information by the domestic party (i.e. the IRD). As the underlying objective of the collection of the information is for the use of the requesting party, we are of the opinion that information collected should be treated as secret information and restricted for access by any other party for purpose other than the stated purpose, including the use of this information for domestic tax purpose by the domestic party (i.e. IRD) so as to avoid any unfair treatment to the person being investigated. We suggest setting out such restriction in DIPN accordingly.

- To define what constitutes "undermine the chance of success of the investigation" with examples

As stated above, we would appreciate if the Commissioner can define clearly what constitutes "undermine the chance of success of the investigation" in the DIPN with examples.

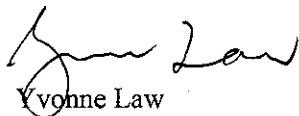
- Timeframe of information request

As taxpayers in Hong Kong is required by law to keep business records for up to seven years, it may practically be difficult for them to verify the correctness of the information to be exchanged if they relate to records of more than seven years ago. Therefore, we would suggest the Commissioner restrict the timeframe of information request up to seven years ago and set out such criterion in DIPN accordingly.

We would appreciate the Bills Committee to consider our above suggestions and propose necessary amendments on the IRR and DIPN as appropriate.

If you have any questions on the above, please do not hesitate to contact Davy Yun, our Tax Director at 2852 6538 or the undersigned at 2852 1667.

Yours sincerely,  
For and on behalf of  
Deloitte Touche Tohmatsu



Yvonne Law  
National Chief Knowledge Officer & Partner

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