

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

Follow-up to issues raised at the seventh meeting on 1 December 2009

1. Hon Paul CHAN and Hon James TO were concerned whether the draft provision in paragraph 4A of the proposed Inland Revenue (Disclosure of Information) Rules (the Rules) could clearly set out the policy that the exchange of information arrangement under comprehensive avoidance of double taxation agreements (CDTAs) would have no retrospective effect. In this connection, the Administration was requested to consider revising paragraph 4A along the following line:
"The Commissioner shall not disclose any information in response to a disclosure request unless the Commissioner is satisfied that the information does not relate to any period before the relevant arrangements that are applicable to the request come into operation."
2. In relation to Hon Miriam LAU's concern about the discretion of the Commissioner of Inland Revenue to refuse a disclosure request under paragraph 4(ii) of the Rules, the Administration was requested to refine the draft by making reference to section 105D(2) of the Income Tax (Amendment) (Exchange of Information) Act of Singapore.
3. To address Hon James TO's concern about the justifications provided by a requesting party to substantiate its request for not giving notification or prior notification of the disclosure request to the taxpayer concerned (paragraphs 7 and 8 of the Rules), the Administration was requested to examine whether elaboration could be provided by revising item 10 of the Schedule to the Rules.
4. Hon James TO was concerned that the drafting of the proposed section 49(1A)(a) which stipulated that arrangements specified in CDTAs "shall have effect in relation to tax under this Ordinance despite anything in any enactment" might result in excessive overriding effect on provisions in other ordinances. In this connection, the Administration was requested to examine the propriety of the proposed section 49(1A)(a), taking into consideration the suggestion of the legal adviser to the Bills Committee to revise the proposed subsection by adding, say, "provisions in relation to the collection of tax" after the word "despite".
5. In response to the view shared by Hon Miriam LAU and Hon Jeffrey LAM about consistency in law drafting, the Administration was requested to consider the merits of amending section 49(1) by replacing the word "notwithstanding" by "despite", to achieve consistency with the drafting of the proposed section 49(1A)(a).