

立法會
Legislative Council

LC Paper No. LS45/09-10

**Paper for the House Committee Meeting
on 26 February 2010**

**Legal Service Division Report on
Proposed Resolution under section 49 of the
Inland Revenue Ordinance (Cap. 112)**

The Secretary for Financial Services and the Treasury (the Secretary) has given notice to move a motion under section 49 of the Inland Revenue Ordinance (Cap. 112) (IRO) at the Legislative Council (LegCo) meeting on 3 March 2010. The motion seeks LegCo's approval of the Inland Revenue (Disclosure of Information) Rules (the Rules).

2. The Inland Revenue (Amendment) Ordinance (Ord. No. 1 of 2010) (the Amendment Ordinance), which was enacted in January 2010, amends IRO to empower the Inland Revenue Department (IRD) to collect and transfer information that relates to a person to a competent authority under a comprehensive avoidance of double taxation arrangement (CDTA) having effect under the new section 49(1A) of IRO, even if IRD has no domestic tax interest in such information. The Amendment Ordinance further enables Hong Kong to adopt the latest international standard for exchange of information (EoI) in CDTAs. Under section 49(6) of IRO, the Chief Executive in Council may make rules for carrying out the provisions of any arrangements having effect under section 49. Under section 49(7) of IRO, rules made under subsection (6) are subject to the approval of LegCo.

3. The Rules seek to provide safeguards in addition to those provided in individual CDTAs to protect taxpayers' privacy and confidentiality of the information exchanged. Key provisions of the Rules are summarised as follows-

- (a) The decision on whether to accede to an EoI request is to be made by a directorate officer of IRD in accordance with specified criteria (section 3).
- (b) Any information that relates to a period before the relevant CDTA comes into operation shall not be disclosed (section 4).
- (c) Save in specified circumstances, the Commissioner of Inland Revenue (CIR) must notify the person who is the subject of the disclosure request

(the relevant person) and, upon request, provide the relevant person with a copy of the information before CIR transmits the information to the requesting party (sections 5).

- (d) If CIR is not required to notify the relevant person under the specified circumstances, CIR must notify the person at the same time when the information is disclosed and, upon request, provide the person with a copy of the information (section 8).
- (e) The relevant person can request CIR to make factual corrections to the information referred to in paragraphs (c) and (d) above. If CIR refuses to accept the proposed corrections in all or in parts, the person may seek a review by Financial Secretary (FS), whose decision on the matter shall be final (sections 7 and 10).
- (f) The manner of giving notice to CIR or FS (section 11).
- (g) The particulars to be contained in a disclosure request (the Schedule).

4. Members may refer to the draft speech of the Secretary annexed to the motion and LegCo Brief: FIN CR 12/2041/46 of 10 February 2010 issued by the Financial Services and the Treasury Bureau for background information.

5. The Panel on Financial Affairs has not been consulted on the Rules. According to paragraph 3 of the draft speech and paragraph 8 of the LegCo Brief, the Administration has consulted members of the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009 on the framework of the Rules (the draft Rules). The draft Rules were circulated to the Bills Committee on 7 December 2009 vide LC paper No. CB(1)573/09-10(02). The business and professional sectors were also given opportunities to express their views. Both members of the Bills Committee and the stakeholders supported the draft Rules.

6. Other than some textual improvements, the Rules resemble substantially the draft Rules. However, Members may wish to note the following differences between the Rules and the draft Rules-

- (a) The Schedule to the Rules sets out the list of mandatory particulars which the requesting party must provide in a disclosure request, unless CIR otherwise permits on reasonable grounds. It is noted that while the Schedule to the draft Rules contains an item (i.e. item 13) which requires the requesting party to provide "[a]ny other information that may assist the Commissioner in giving effect to the disclosure request", the said item is not included in the Schedule to the Rules. In response to our enquiries, the Administration explained that item 13 is not included in the Schedule to the Rules because they consider that while in certain cases, the

requesting party may want to provide supplementary information in addition to the mandatory items to facilitate CIR's decision, it is not a compulsory requirement for the requesting party to do so. In the course of approving a disclosure request, CIR can always seek clarification with the requesting party regarding particulars furnished under items 1 to 12, or ask for further information in relation to the request.

- (b) Section 5(5)(c)(i) of the Rules provides that CIR is not required to notify the person who is the subject of a disclosure request if CIR is under a tight time constraint to disclose the information in response to the request, such that it is not practicable for the notification to be given, and the subsequent requests that the person may make in relation to the information to be finally determined under these Rules, within the time constraint. It is noted that the underlined part is not contained in the draft Rules. In response to our enquiries, the Administration explained that section 5(5)(c)(i) is added for the sake of clarity as in practice, when deciding not to give prior notification because of time constraint, CIR will take into account not only the time needed to issue the notification, but also the time needed to determine the subsequent requests the relevant person may make in relation to the information.

7. It is further noted that while section 11 of the Rules provides for the manner of giving notice to CIR or FS, there is no provision providing for the manner of giving notice to the relevant person. In response to our enquiries, the Administration explained that as section 58 of IRO contains provisions on the manner of giving notices by virtue of the Ordinance which would include notices given to the relevant person, it is not necessary to make separate provision in the Rules.

8. The Rules will come into operation on the day appointed for the commencement of the Amendment Ordinance (except sections 1, 2 and 3(4) of the Amendment Ordinance, which came into operation on the day on which the Amendment Ordinance was published in the Gazette on 15 January 2010). In response to our enquiries, the Administration expressed their intention to commence the remaining sections of the Amendment Ordinance and the Rules as soon as possible after LegCo has approved the Rules.

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23 February 2010