

立法會
Legislative Council

LC Paper No. LS52/09-10

**Paper for the House Committee Meeting
on 9 April 2010**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 12 March 2010**

Date of tabling in LegCo : 17 March 2010

Amendment to be made by : 14 April 2010 (or 5 May 2010 if extended by resolution)

Inland Revenue (Amendment) Ordinance 2010 (1 of 2010)

Inland Revenue (Amendment) Ordinance 2010 (Commencement) Notice (L.N. 28)

L.N. 28 appoints 12 March 2010 as the date on which the Inland Revenue (Amendment) Ordinance 2010 (1 of 2010) (IR(A) Ordinance) (except sections 1, 2 and 3(4)) comes into operation.

2. The IR(A) Ordinance was enacted in January 2010 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 the Inland Revenue Ordinance (Cap. 112) (IRO), even if IRD has no domestic tax interest in such information. The IR(A) Ordinance further enables Hong Kong to adopt the latest international standard for exchange of information (EoI) in CDAs.

3. Sections 1, 2 and 3(4) of the IR(A) Ordinance came into operation on the date it was published in the Gazette (i.e. 15 January 2010). Section 1 provides for the short title and section 2 provides for the commencement of the IR(A) Ordinance. Section 3(4) provides that rules made under section 49(6) of IRO are subject to the approval of LegCo.

4. The other provisions of the IR(A) Ordinance (those covered by L.N. 28) have not been brought into operation pending the making of the rules under section 49(6) of IRO for carrying out the provisions of CDAs having effect under the new section 49(1A) of IRO.

5. On 3 March 2010, LegCo approved the Inland Revenue (Disclosure of Information) Rules (L.N. 26 of 2010) (the Rules) made under section 49(6) of IRO. These Rules provide for various safeguards in addition to those provided in individual CDTAs to protect taxpayers' privacy and confidentiality of the information exchanged in response to requests for disclosure of information under the relevant CDTAs. For more information about the Rules, Members may refer to the Legal Service Division report (LC Paper No. LS45/09-10) issued on 23 February 2010. No subcommittee has been formed on the Rules. The Rules came into operation on the day appointed for the commencement of the IR(A) Ordinance (except sections 1, 2 and 3(4)), i.e. 12 March 2010.

6. The provisions of the IR(A) Ordinance which came into operation on 12 March 2010 -

- (a) clarify that if a CDTA made with a foreign territory contains a provision that requires disclosure of information concerning tax of that territory (i.e. an EoI article), the CDTA shall have effect in relation to any tax of that territory that is the subject of that provision,
- (b) enable IRD to collect information concerning tax of a foreign territory for the purpose of EoI under a CDTA,
- (c) enable a magistrate to issue search warrants for information concerning tax of a foreign territory for the purpose of EoI under a CDTA,
- (d) provide that a person commits an offence if he, without reasonable excuse, gives any incorrect information in relation any matter that affects his or another person's liability to a foreign tax covered by an EoI article under a CDTA, and
- (e) amend the Personal Data (Privacy) Ordinance (Cap. 486) to provide that "tax" include a foreign tax covered by an EoI article under CDTA.

7. The Bills Committee which scrutinized the Inland Revenue (Amendment) (No. 3) Bill 2009 noted during its deliberations that the major provisions of the IR(A) Ordinance would come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette. The Panel on Financial Affairs has not been consulted on the commencement notice of L.N. 28.

**Toys and Children's Products Safety (Amendment) Ordinance 2010 (5 of 2010)
Toys and Children's Products Safety (Amendment) Ordinance 2010
(Commencement) Notice (L.N. 29)**

8. L.N. 29 appoints 1 April 2010 as the day on which the Toys and Children's Products Safety (Amendment) Ordinance 2010 (5 of 2010) (the Amendment Ordinance) shall come into operation. The Amendment Ordinance was enacted in February 2010 to replace the safety standards for toys and children's products with new standards, to revise the definitions of toys and children's products, and to enable the Secretary for Commerce and Economic Development to amend the standards by notice published in the Gazette.

9. The Panel on Economic Development was consulted on the proposed legislative amendments at the meeting on 16 November 2009 and members were in support of them. No Bills Committee was formed with respect to the relevant Bill.

Prepared by

Kitty CHENG
Assistant Legal Adviser
Legislative Council Secretariat
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