

Bills Committee on Inland Revenue (Amendment) Bill 2013

**Follow-up actions to be taken by the Administration
for the meeting on 21 May 2013**

Disclosure of information generated prior to the effective date of the relevant comprehensive avoidance of double taxation agreement or tax information exchange agreement

The Administration has proposed to amend section 4 of the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) ("the Disclosure Rules") so that that the Commissioner of Inland Revenue ("CIR") would be allowed to disclose tax information generated prior to the effective date of the relevant comprehensive avoidance of double taxation agreement ("CDTA") or tax information exchange agreement (TIEA) if he is satisfied that the information is foreseeably relevant to the carrying out of the provisions of the relevant CDTA/TIEA, or the administration or enforcement of the tax law of the requesting government's territory, in respect of any period that starts after the date on which the relevant CDTA/TIEA comes into operation.

2. Members are concerned that the proposed relaxation might lead to compulsory disclosure of information generated more than 7 years before the relevant CDTA/TIEA comes into operation, even though sections 51C and 51 D of the Inland Revenue Ordinance (Cap. 112) only stipulate a 7-year period for the retention of business and rent records, and that such disclosure requirements may apply to third parties (e.g. trading partners, taxation agents) as well as CIR and the taxpayer who is the subject of the request under a CDTA/TIEA. If so, the relaxation would have an effect of widening the coverage of tax information to be disclosed to an unlimited extent as far as the timeframe and third parties involved are concerned.

3. In this connection, the Administration was requested to provide the following information --

- (a) from the legal (citing the relevant provisions) and policy perspectives, whether the aforesaid concerns are valid; if not, the reasons;
- (b) the legal and policy considerations for not restricting disclosure to information generated no more than 7 years prior to the effective date of the relevant CDTA/TIEA;

- (c) the steps that CIR would take to notify the taxpayers concerned about the tax information to be disclosed to a requesting government under the relevant CDTA/TIEA; whether the taxpayer could object to the disclosure of all or any of the information CIR is prepared to disclose to the requesting government; if yes, on what grounds;
- (d) the particulars to be contained in a disclosure request (which are set out in the Schedule to the Disclosure Rules); and
- (e) to illustrate the merits of the proposed relaxation, examples of requests for information generated prior to the effective date of the relevant agreement which CIR considered to be foreseeably relevant to the carrying out of the provisions of the relevant agreement, or to the administration or enforcement of the tax law of the requesting government's territory, in respect of any period that starts after the date on which the agreement comes into operation, and the reasons why CIR considered such information to be foreseeably relevant.

Information requests received since the implementation of comprehensive avoidance of double taxation agreements

4. The Administration was requested to provide information about the number and nature of exchange of tax information requests received since Hong Kong entered into CDTAs with overseas tax authorities, including in particular --

- (a) the number of cases relating to "transfer pricing";
- (b) the number of cases which were not considered "foreseeably relevant"; and
- (c) whether objections or complaints had been received from taxpayers or third parties about the disclosure of such information.