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The Chairman
Bills Committee on Inland Revenue (Amendment) Bill 2013
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Hong Kong

24 May 2013

Dear Sir:

Bills Committee on Inland Revenue (Amendment) Bill 2013

I refer to the Bills Committee formed to consider the Inland Revenue (Amendment) Bill 2013 (the Bill). The Bill seeks to amend the Inland Revenue Ordinance (IRO) to enable Hong Kong to enter into standalone tax information exchange agreements (TIEAs) and to enhance the existing exchange of information arrangements under comprehensive avoidance of double taxation agreements (CDTAs).

The Bill will also expand the scope of taxes covered by a request for exchange of tax information to include any taxes imposed by Hong Kong and the other jurisdiction. Going forward, Hong Kong will similarly extend the exchange of information under a CDTA where appropriate. Further, the Bill also seeks to remove the restriction that information which came into existence prior to the effective date of the CDTA/TIEA cannot be exchanged. The Bill will also provide that persons who do not have possession but have control of the information requested will be obliged to supply the information upon request.

KPMG supports the Government in its work and continuing efforts at building a CDTA network with Hong Kong's major trading and investment partners. This can only reinforce Hong Kong's position as an international business and financial centre. Currently, Hong Kong has entered into 29 CDTAs and negotiations with a number of other countries are under away. However, we understand that a number of our major trading partners have expressed a reluctance to enter into negotiations with Hong Kong because our law does not provide for standalone TIEAs. The Government considers that the proposed measures may provide Hong Kong with additional flexibility in CDTA negotiations.

In 2010, the Global Forum on Transparency and Exchange of Information (the Global Forum) conducted a Phase 1 peer review on Hong Kong. In its report, it acknowledged that Hong Kong has an adequate legal and regulatory framework in place to facilitate effective exchange of information. However, it recommended that Hong Kong should put in place the legal framework for entering into TIEAs. The Phase 2 peer review currently being conducted by the Global Forum on Hong Kong will evaluate Hong Kong's practical implementation of exchange of information in practice and whether it has taken forward the Phase 1 review recommendations, in particular that on TIEAs.

The question of exchange of information has to be viewed against an international landscape which, increasingly, is seeking to enhance tax transparency and prevent and combat tax evasion. This is illustrated by the meeting of the G7 earlier this month which discussed the development of a new multi-lateral global standard on the automatic exchange of information based on the United States' Foreign Account Tax Compliance Act, and action to improve the transparency of legal structures and agreed the importance of collective action to tackle tax avoidance and evasion. It is therefore important that Hong Kong keeps abreast of international standards and demonstrates that it is a responsible member of the international community.

On balance we consider that the law should be amended to allow Hong Kong to enter into TIEAs. However, Hong Kong should retain the right to choose whether it enters into a CDTA or a TIEA with a particular jurisdiction. In this regard, Hong Kong's existing priority, of only agreeing to exchange information in the context of a CDTA is appropriate. This strikes a balance between exchanging information with a jurisdiction on the one hand whilst providing Hong Kong taxpayers with the benefits of reduced withholding taxes, allocating taxing rights, etc. on the other hand.

Further, it is important to ensure that adequate safeguards are in place to prevent "fishing expeditions" and that any information to be exchanged is "foreseeably relevant". That is, there is a direct connection between the information requested and the tax laws of the jurisdiction requesting the information. The same concern exits in respect of maintaining and protecting taxpayer confidentiality. KPMG would also like to see provisions introduced which would allow taxpayers recourse to the courts in the event of a dispute concerning any information to be exchanged.

KPMG sees that there may be some benefits from concluding TIEAs with jurisdiction such as the Cayman Islands and British Virgin Islands, which are common jurisdictions used to incorporate investment vehicles.

In conclusion, KPMG supports the Bill, with the caveat that Hong Kong should retain the right to determine for itself whether, for a particular jurisdiction, it concludes a CDTA or a TIEA.

Yours faithfully

Darren Bowdern
Partner