



24 May 2013

BY E-MAIL (at bc_07_12@legco.gov.hk)

Hon Kenneth Leung
Chairman,
Bills Committee on Inland Revenue (Amendment) Bill 2013
Legislative Council
Hong Kong SAR Government

Dear Kenneth,

Submission on Inland Revenue (Amendment) Bill 2013


We refer to your letter dated 10 May 2013 inviting our Institute to give written views on the Inland Revenue (Amendment) Bill 2013 (“the Bill”). On behalf of the Institute, I set out our comments on the Bill below.

1. As indicated in our previous submission made in June 2012 on the Consultation Paper on Provision of Legal Framework for Entering into Tax Information Exchange Agreements (“TIEA”), the Institute supports the HKSAR Government’s move of putting in place a legal framework for enabling Hong Kong to enter into a standalone TIEA. As an international business centre and a member of the Global Forum, it is important for Hong Kong to comply with the latest international standard on exchange of information (“EoI”) so as to avoid being labelled as an uncooperative jurisdiction. The Global Forum recommended in the Phase 1 peer review report on Hong Kong issued in October 2011 that Hong Kong should put in place a legal framework for TIEAs. Failure to do so put Hong Kong at the risk of failing in the Phase 2 peer review and damaging Hong Kong’s international reputation.
2. The Institute has all along taken the view that despite Hong Kong’s simple tax system and low tax rate, Hong Kong is not a tax haven and is supportive of greater transparency and closer international tax cooperation. Moving forward to put in place a legal framework for TIEAs can further demonstrate Hong Kong’s commitment in this area.
3. While the Institute is supportive of putting in place a TIEA regime in Hong Kong, we wish to emphasise that it is important that the HKSAR Government upholds its policy of giving greater priority to negotiation of a comprehensive double taxation agreement (“CDTA”) than a TIEA in future. Signing a TIEA should only be considered when concluding a

CDTA is not an option. Even if Hong Kong has decided to sign or has signed a TIEA with a particular jurisdiction, the HKSAR Government should continue its effort in pursuing that jurisdiction to enter into a CDTA with Hong Kong.

4. An area of concern for liberalising the EoI regime in Hong Kong is whether sufficient safeguards have been put in place to protect the confidentiality of personal data and prevent abuse of the EoI mechanism. To avoid abuse, we need to ensure that an EoI request is approved on a rightful basis (i.e. the EoI request complies with the provisions and procedures of the relevant CDTA or TIEA) and the information to be disclosed is appropriate (i.e. it is factually correct, would not disclose a trade, business industrial commercial or professional secret or trade process, and is foreseeably relevant). Under the current procedures of handling an EoI request, the Inland Revenue Department is the only body that assesses the appropriateness of the EoI request and decides whether such request should be approved. In addition, any request for amendment of any information can only be made to the Commissioner of Inland Revenue or the Financial Secretary, with the decision of the Financial Secretary being final. To address the public concern, the Institute recommends that there should be a mechanism in place to allow taxpayers recourse to the courts should they wish to challenge the information disclosures or any refusal by the Commissioner or the Financial Secretary to amend any information to be disclosed.
5. Finally, the Institute recommends that more guidance should be provided as to what is meant by information in a person's "control" as amended by Clauses 5 and 7. There is not a clear definition of the term "control" in the Bill. As there could be different interpretations of the term, more guidance and clarification on how the term will be interpreted by the IRD in the context of EoI will be welcomed by the business community and professional bodies.

Yours sincerely,



For and on behalf of
The Taxation Institute of Hong Kong
Philip Hung
President