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Clerk to Bills Committee
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Attn: Ms Christina Shiu, Legislative Council Secretariat

By e-mail: bc_07_12@legco.gov.hk

Dear Bills Committee,

BILLS COMMITTEE ON INLAND REVENUE (AMENDMENT) BILL 2013

The American Chamber of Commerce in Hong Kong ("AmCham") thanks you for your invitation to AmCham to provide our views regarding the Inland Revenue (Amendment) Bill 2013 (the "Bill").

AmCham supports the Bill and urges its enactment as soon as possible.

1. Changing International Norms Regarding Exchange of Taxpayer Information and the Prospect of Sanctions

International attitudes toward cross border exchange of tax information have changed dramatically in the past 15 years. In 1998 the OECD issued a landmark report on harmful tax competition,¹ which began substantial efforts to force so-called tax havens to undertake to comply with specified minimum levels of behaviours designed to counter international tax evasion. In light of political dynamics and possibility of adverse consequences if they did otherwise, all of the initially identified tax havens have since agreed to cooperate and apply OECD prescribed standards of information gathering (concerning beneficial ownership of entities formed in their jurisdictions) and exchange of information. Jurisdictions that initially resisted were "named and shamed" and threatened with sanctions. All have complied.

An OECD report in 2000² explicitly stated that, should a country refuse to meet these standards, OECD members would contemplate imposing sanctions against them. The original list of proposed sanctions included:

- To disallow deductions, exemptions, credits, or other allowances related to transactions with uncooperative tax havens or to transactions taking advantage of their harmful tax practices.
- To require comprehensive information reporting rules for transactions involving uncooperative tax havens or taking advantage of their harmful tax practices, supported by substantial penalties for inaccurate reporting or non-reporting of such transactions.
- To apply controlled foreign corporation or equivalent rules to entities established in uncooperative tax havens, to consider adopting such rules, and for countries that have such rules, to ensure that they apply in a fashion consistent with the desirability of curbing harmful tax practices.

¹ "Harmful Tax Competition: An Emerging Global Issue", OECD, 1998

² "Towards Global Tax Co-Operation: Progress in Identifying and Eliminating Harmful Tax Practices", OECD, 2000

- To deny any exceptions (e.g., reasonable cause) that may otherwise apply to the application of regular penalties in the case of transactions involving entities organised in uncooperative tax havens or taking advantage of their harmful tax practices.
- To deny the availability of foreign tax credits or participation exemptions with regard to distributions that are sourced from uncooperative tax havens or to transactions taking advantage of their harmful tax practices.
- To impose withholding taxes on certain payments to residents of uncooperative tax havens.
- To enhance audit and enforcement activities with respect to uncooperative tax havens and transactions taking advantage of their harmful tax practices.
- To ensure that any existing and new domestic defensive measures against harmful tax practices are also applicable to transactions with uncooperative tax havens and to transactions taking advantage of their harmful tax practices.
- Not to enter into any comprehensive income tax conventions with uncooperative tax havens, and to consider terminating any such existing conventions unless certain conditions are met.
- To deny deductions and cost recovery, to the extent otherwise allowable, for fees and expenses incurred in establishing or acquiring entities incorporated in uncooperative tax havens.
- To impose "transactional" charges or levies on certain transactions involving uncooperative tax havens.

Since the global financial crisis and widely publicized incidents in which certain individuals in the US and Europe did not report or pay taxes on their income from offshore investments, political pressure for tougher international tax compliance measures has increased dramatically in many countries internationally. This is a topic of intense focus currently in the US and in many countries in Europe.

Financial Centres - both "onshore" and "offshore" - around the world have recognized these developments and have taken steps to be more accommodating to these concerns of OECD countries. For example, on 14 May 2013, in announcing a series of steps to strengthen its Exchange of Tax Information framework, the Singapore government announced:

- "Singapore is significantly strengthening its framework for international cooperation to combat cross-border tax offences."
- "This follows a comprehensive review of the current Exchange of Information (EOI) framework, and represents a further, major step to enhance cooperation following the changes made in 2009. Singapore had then endorsed the internationally agreed Standard for EOI for tax purposes (hereafter referred to as the "Standard"). Since then, we had amended our laws to implement the Standard and started renegotiating our tax agreements to incorporate the Standard. The Global Forum on Transparency and Exchange of Information for Tax Purposes ("the Global Forum") has recently affirmed that Singapore's practice of EOI has been in line with the Standard."

2. Hong Kong's Position Vis-à-Vis the OECD Peer Review

The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes identified a number of deficiencies in Hong Kong's current law.³ The Forum's Peer Review Group noted that Hong Kong's laws do not permit taxpayer information to be exchanged under stand-alone taxation information exchange agreements (TIEAs), but only pursuant to comprehensive double tax agreements ("CDTAs"). The Group recommended that Hong Kong should amend its tax laws to permit it to enter into TIEAs. The OECD's Global Forum very clearly rejects the view that jurisdictions should exchange taxpayer information only pursuant to CDTAs (as has been Hong Kong's policy to date), and emphatically states that jurisdictions must be willing to enter into TIEAs as well.

The model TIEA promulgated by the OECD represents the globally accepted template for TIEAs. It is therefore essential that Hong Kong's tax laws permit it to comply with the terms of such model agreement.

3. Merits of the Bill

AmCham believes the Bill is a critical step to enabling Hong Kong to demonstrate its willingness to move toward the new international norms regarding exchange of taxpayer information. Failure to adopt the Bill would leave Hong Kong clearly behind international norms in this area. Hong Kong would be like a "nail that sticks out," and would become a target for international attention and criticism - out of step with international norms adopted by other financial centres.

We believe that enactment of the Bill is essential to maintain the competitiveness and reputation of Hong Kong and Hong Kong's financial services sector. If the OECD and / or member countries were to impose sanctions against Hong Kong as listed above for Hong Kong's failure to enact the Bill, that would have a severe, adverse effect on Hong Kong and its economy.

The Panel on Financial Affairs expressed concern about "the implications of the availability of a legal framework for TIEAs on the Government's ability to negotiate CDTAs with its trading and investment partners.

While we share this concern, it appears clear that certain countries do not wish to enter into a CDTA with Hong Kong, and instead increasingly insist on a TIEA with Hong Kong. In our view, the Hong Kong government has been very proactive in recent years pursuing CDTAs with significant trading partners, including the US, but some trading partners including the US have not wished to enter into CDTAs with Hong Kong. The OECD is supporting countries that take this position.

Furthermore, the OECD has adamantly taken the position that jurisdictions such as Hong Kong cannot insist on entry into a CDTA as a prerequisite for exchange of information.

In our view, the Hong Kong government has a realistic assessment of these considerations. The IRD has undertaken to continue to prioritise CDTAs over TIEAs and to seek to persuade other countries to enter into the former rather than the latter.

For reasons described above, it is very important that the Bill be enacted before the Peer Review Group completes its Phase 2 report (in September 2013). The Phase 2 report will measure Hong Kong's actual implementation of, and compliance with, the OECD's standards relating to exchange of information.

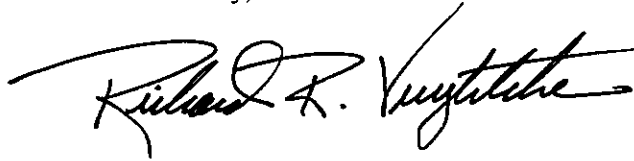
³ "Peer Review Report of Hong Kong, China - Phase 1: Legal and Regulatory Framework", OECD, 2011

4. Conclusions

AmCham supports the Bill. We believe the Hong Kong government has a realistic assessment of the various policy considerations. We urge enactment of the Bill as soon as possible.

AmCham consents to the disclosure of this submission.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Richard R. Vuytche". The signature is fluid and cursive, with a long horizontal stroke at the end.

For and on behalf of
The American Chamber of Commerce in Hong Kong