

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

24 May 2013

Dear Sir

Bills Committee on Inland Revenue (Amendment) Bill 2013 (“the Bill”)

Thank you for the letter dated 10 May 2013 inviting our comments on the above Bill. ACCA (Association of Chartered Certified Accountants) Hong Kong agrees that it is imperative to change the law in order to uphold the international standards of tax information exchange. In addition, we would like to submit our further comments as below.

Part 2 Clause 4

It is proposed that (1B) be added after section 49(1A) with subsection (b) stating that arrangements may be made with the government of a territory outside Hong Kong for exchange of information in relation to any tax imposed by the laws of Hong Kong or the territory concerned.

We consider the drafting of wordings “in relation to *any tax imposed by the laws of Hong Kong or the territory concerned*” is too vague a scope which may result in unintended difficulties in any treaty negotiation. For example, should information on “customs and excise” or “social security payment” be included in the scope of information exchange? Though we understand that the types of tax would be restricted to those covered in the particular tax treaty which requires legislative vetting, we consider it necessary to be clear in the power given in the negotiation of a tax treaty or an agreement for tax information exchange. One way is to set out explicitly the types of taxes that can be included in a treaty.

Part 2 Clause 7

The word “possession” in section 52(1) is proposed to be substituted by “possession or control”. It is desirable for the purpose of this particular legislation that the information is confined to those physically located in Hong Kong in order to ensure the practicality of implementation of the legislation.

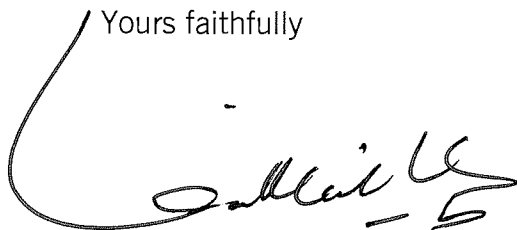
Part 3 Clause 8

Section 4 of the Inland Revenue (Disclosure of Information) Rules is proposed to be amended so that the Commissioner of Inland Revenue will be able to disclose information that relates to the carrying out of the relevant arrangements, or to tax assessment, in respect of any period that starts after the arrangement have come into operations.

We understand the spirit of the amendment for the collection of information relating to any arrangement prior to the enforcement of the relevant tax treaty or agreement for tax information exchange. However we consider that it should be clearly stated that the information so exchanged is not to be used for the purpose of imposing tax on any periods prior to the treaty or the tax information exchange agreement is in effect.

Should you wish to clarify any of the above issues, kindly please feel free to contact us at 2973 1113.

Yours faithfully

A handwritten signature in black ink, appearing to read 'William Mak', with a large, sweeping flourish on the left side and a horizontal line underneath.

William Mak
Chairman