

Inland Revenue (Amendment) Bill 2013 (“the Bill”)

The Administration’s Responses to Written Submissions from Deputations (Second Batch)

Comments / Issues Raised	Organizations / Persons	The Administration’s Responses
A. Policies/Strategies for Pursuing Comprehensive Avoidance of Double Taxation Agreements (“CDTAs”) or Tax Information Exchange Agreements (“TIEAs”)		
1. The Government should only enter into TIEAs with jurisdictions where there is similar legal protection of privacy as afforded under the Personal Data (Privacy) Ordinance (Cap. 486).	Hong Kong Bar Association	<ul style="list-style-type: none"> Noted. Before commencement of any TIEA discussions, we will model on our current approach on CDTAs to examine the legal framework of potential partners to ensure that there is such protection in the jurisdiction concerned.
B. Tax Types		
1. It is uncertain whether the proposal of relaxing the current restrictive position on tax types will have the effect of attracting other jurisdictions to enter into CDTAs with Hong Kong.	Hong Kong Bar Association	<ul style="list-style-type: none"> As revealed from our past experiences of CDTA discussions, some jurisdictions have raised concerns about our restrictive position on tax types. By providing flexibility in the coverage of tax types and fine-tuning the limitation on disclosure for exchange of information (“EoI”) under the CDTA framework as now proposed under the Bill, we believe that we could stand a better

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		chance of persuading key jurisdictions to commence CDTA discussions with Hong Kong, as the EoI arrangement under CDTA will then be no less favourable than that under TIEA.
C. Limitation on Disclosure		
1. The proposed relaxation of the current limitation on disclosure is a sensible way to address the practical problem identified.	Hong Kong Bar Association	<ul style="list-style-type: none"> • Agreed.
D. Safeguards for Taxpayers		
1. All CDTAs and TIEAs into which Hong Kong enters should contain a clause similar to that in the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Canada) Order (Cap. 112 sub. leg. CF) which reads "In no case shall the provisions of [the relevant	Law Society of Hong Kong	<ul style="list-style-type: none"> • Agreed. In fact, the clause as quoted from the CDTA between Hong Kong and Canada is a standard provision in the Organisation for Economic Cooperation and Development ("OECD")'s Model Tax Convention on Income and on Capital (paragraph 3(b) of the EoI Article), which has been adopted in Hong Kong's CDTA model text. As a matter of fact, all 29 CDTAs that Hong Kong has signed thus far contain such a provision. Similar clause

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agreement] be construed so as to impose on a Party the obligation to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Party;”.		can also be found in the OECD's TIEA model text (Article 7(1)), which will be adopted in Hong Kong's model text for future TIEAs.
2. There should be independent oversight and scrutiny of compliance with the safeguards/procedures as provided in the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) (“the Disclosure Rules”) and the Inland Revenue Department (“IRD”)’s Departmental Interpretation and Practice Note No. 47.	Hong Kong Bar Association	<ul style="list-style-type: none"> • Since the operation of the existing notification and review mechanism, IRD has not received any objections or complaints from taxpayers or other parties about disclosure of information. As such, we consider that the existing arrangement is effective in providing safeguards to taxpayers’ privacy and confidentiality of information exchanged.
<i>E. Others</i>		
1. Entering into TIEAs would bring no double taxation relief but erode privacy rights of Hong Kong taxpayers and	Hong Kong Bar Association	<ul style="list-style-type: none"> • According to the Global Forum on Transparency and Exchange of Information for Tax Purposes, the latest international standard is that a jurisdiction should make

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<p>become disincentive to investment in Hong Kong.</p>		<p>available both CDTA and TIEA as instrument for EoI with other jurisdictions. Under the proposed TIEA framework, we will continue to uphold the existing highly prudent safeguards to protect taxpayers' privacy and confidentiality of information exchanged for the purpose of EoI under both CDTAs and TIEAs. The existing Disclosure Rules, which provides for a notification and review system in handling requests for EoI and related appeals, will be extended to become applicable to EoI under both CDTAs and TIEAs.</p>

Financial Services and the Treasury Bureau
6 June 2013