

Bills Committee on Inland Revenue (Amendment) Bill 2013

**Follow-up actions to be taken by the Administration
for the meeting on 7 June 2013**

Oversight and scrutiny of compliance with the safeguards in the agreements and the Inland Revenue (Disclosure of Information) Rules

The Bills Committee expressed concern on the monitoring of the Administration's compliance with the safeguards set out in the comprehensive avoidance of double taxation agreements ("CDTAs"), the future tax information exchange agreements ("TIEAs") and the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) ("the Disclosure Rules") for taxpayers' privacy, confidentiality of tax information and justifications for requests of exchange of tax information ("EoI") in processing EoI requests. Further to the information about the handling of EoI requests provided to the Bills Committee vide LC Paper No. CB(1)1145/12-13(02), the Administration was requested to provide information about --

- (a) its position on the establishment of an independent operation review committee or similar oversight body on the processing of EoI requests;
- (b) the existing mechanism for handling complaints and appeals on taxation matters (including EoI requests); and
- (c) statistics on complaints on taxation matters received by the Administration for the last two years, with breakdown on nature of complaints, numbers of complaints received and resolved.

Consultation and approval process for entry into a CDTA/TIEA

2. Members opined that in entering into a CDTA or a future TIEA, the Administration might not have fully taken into account the technical/operational problems for business operators that would arise from the requirements under the agreements. The Administration was requested to provide an account, preferably in the form of a flow chart, of the procedures, if any, that it would undergo to gauge the views of concerned parties, including business and professional groups and other steps (such as discussion with a potential CDTA/TIEA partner on the incidence of the

costs for providing assistance, the domestic legislative process etc.) before entering into a CDTA/TIEA.

Disclosure of information generated prior to the effective date of an agreement

3. The Bills Committee noted the proposal to amend section 4 of the Disclosure Rules to allow the Commissioner of Inland Revenue ("CIR") to disclose tax information generated prior to the effective date of the relevant CDTA/TIEA when he is satisfied that the information is foreseeably relevant to the carrying out of the provisions of the relevant agreement, or the administration or enforcement of the tax law of the requesting government's territory, in respect of any period that starts after the date on which the relevant CDTA/TIEA comes into operation. The Administration advised that the existing record-keeping requirements under sections 51C and 51D of the Inland Revenue Ordinance (Cap. 112), which stipulated a seven-year period for the retention of business and rent records, would remain unchanged.

4. Notwithstanding that the 'seven-year' retention requirement would not be affected, some members were concerned that the proposed amendment would allow a requesting tax authority to ask for information generated more than seven years before the relevant agreement came into operation on the ground of foreseeable relevance; and if such information were to be provided, the requesting authority might ask for further information dating back to even earlier periods on the ground of foreseeable relevance. It was suggested that: (a) a time limit be set on the period for which provision of retrospective information would be considered; or (b) only requests for 'necessary and direct' information be considered so as to limit the scope of information to be provided.

5. The Administration was requested to provide information on how it would handle EoI requests for the above scenarios and a written response to suggestions (a) and (b) at paragraph 4 (together with any proposed Committee Stage Amendments to the Bill).

Submission from the Office of the Privacy Commissioner for Personal Data, Hong Kong

6. The Administration was requested to provide a written response to the above submission (LC Paper No. CB(1)1260/12-13(01)), which was received by the Bills Committee on 6 June 2013. In particular, the Administration was requested to explain how, if at all, tax information

disclosed to overseas authorities under CDTAs/TIEAs would be allowed to be used for "other non-tax related purposes", what those purposes would be, which provisions of local Ordinances would be relied on for such disclosure, and whether such disclosure would contravene the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) (including section 58).

Council Business Division 1
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