

**立法會**  
**Legislative Council**

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(These minutes have been seen  
by the Administration)

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**Subcommittee on the Three Orders Made under Section 49(1A) of the  
Inland Revenue Ordinance and Gazetted on 4 October 2013**

**Minutes of the first meeting on  
Tuesday, 22 October 2013, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon James TO Kun-sun (Chairman)  
Hon Dennis KWOK  
Hon SIN Chung-kai, SBS, JP
- Public officers  
Attending** : Ms Shirley KWAN  
Principal Assistant Secretary for Financial Services and  
the Treasury (Treasury) (Revenue)
- Mr CHIU Kwok-kit, JP  
Deputy Commissioner (Technical)  
Inland Revenue Department
- Ms Mandy NG  
Senior Government Counsel (Acting)  
Department of Justice
- Miss Cindy CHEUK  
Government Counsel  
Department of Justice
- Clerk in attendance** : Ms Connie SZETO  
Chief Council Secretary (1)4

**Staff in attendance** : Miss Evelyn LEE  
Assistant Legal Adviser 10

Mr Hugo CHIU  
Council Secretary (1)4

Ms Sharon CHAN  
Legislative Assistant (1)4

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Action

**I Election of Chairman**

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr James TO was nominated by Mr SIN Chung-kai and the nomination was seconded by Mr Dennis KWOK. Mr James TO accepted the nomination. There being no other nomination, Mr James TO was elected Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

**II Meeting with the Administration**

(L.N. 148 of 2013 -- Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Guernsey) Order

L.N. 149 of 2013 -- Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Italian Republic) Order

L.N. 150 of 2013 -- Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (State of Qatar) Order

- File Ref: TsyB R 183/800-1-1/94/0 (C) -- Legislative Council Brief on Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Guernsey) Order
- File Ref: TsyB R 183/800-1-1/28/0 (C) -- Legislative Council Brief on Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Italian Republic) Order
- File Ref: TsyB R 183/800-1-1/63/0 (C) -- Legislative Council Brief on Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (State of Qatar) Order
- LC Paper No. LS3/13-14 -- Legal Service Division Report
- LC Paper No. CB(1)95/13-14(01) -- Background brief on the Three Orders Made under Section 49(1A) of the Inland Revenue Ordinance and Gazetted on 4 October 2013 prepared by the Legislative Council Secretariat)

Discussion

4. The Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

- Admin 5. The follow-up actions arising from the discussion were as follows:

- (a) In order to allow members to better understand the benefits brought by the comprehensive avoidance of double taxation agreement ("CDTA") signed between Hong Kong and Guernsey to Hong Kong people and companies, the Administration was requested to provide concrete information on such benefits, including the number of Hong Kong residents living in Guernsey and the number of Hong Kong companies doing business through a permanent establishment in Guernsey;

- (b) In respect of the exchange of information ("EoI") mechanism under a CDTA, the Administration was requested to provide information on: (i) the Government's policy and legal considerations regarding disclosure of information of the jurisdiction which had made the EoI request to a third party that was required by the Inland Revenue Department ("IRD") to supply the information for the EoI request; and (ii) the international standard/practice in the disclosure of information in this regard; and
- (c) Given the Administration's advice on the importance to protect confidentiality of information exchanged in implementing EoI requests under CDTAs, in particular its views that the requesting jurisdiction might be unwilling to reveal information to a third party, the Administration was requested to consider members' suggestion to formulate a mechanism for IRD to consult the requesting jurisdiction or tax authority on whether there was objection to the disclosure of such information to the third party if IRD considered that the information could be disclosed.

### **III Any other business**

6. Members agreed that the Subcommittee would decide whether a further meeting would be required after considering the Administration's written responses on the outstanding issues set out in paragraph 5 above. Members also agreed that the Chairman would move a motion at the Council meeting of 30 October 2013 to extend the scrutiny period of the three Orders to 27 November 2013.

*(Post-meeting note: The Administration's written response was circulated to members vide CB(1)215/13-14(02) on 4 November 2013.)*

7. There being no other business, the meeting ended at 9:39 am.

Council Business Division 1  
Legislative Council Secretariat  
9 April 2014

**Proceedings of the  
Subcommittee on the Three Orders Made under Section 49(1A) of the Inland  
Revenue Ordinance and Gazetted on 4 October 2013  
First meeting on Tuesday, 22 October 2013, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000050 – 000116	Mr James TO Mr Dennis KWOK Mr SIN Chung-kai	Election of Chairman	
000117 – 000318	Chairman	Introductory remark	
000319 – 000737	Administration	<p>Briefing by the Administration on the policy of entering into Comprehensive Agreement for Avoidance of Double Taxation ("CDTA") with other jurisdictions and the current position on CDTAs signed with other jurisdictions.</p> <p>The Administration's advices as follows:</p> <p>(a) The three CDTAs under scrutiny was the eighth batch of CDTAs Hong Kong had entered into with other jurisdictions since enactment of the Inland Revenue (Amendment) Ordinance 2010 to provide for the exchange of information ("EoI") mechanism for implementation of CDTAs. The changes brought by the Inland Revenue (Amendment) Bill 2013, which would enable Hong Kong to enter into standalone Tax Information Exchange Agreements with other jurisdictions and enhance EoI arrangements in respect of tax types and limitation on disclosure under CDTAs, passed by the Legislative Council ("LegCo") in July 2013 were not reflected in the three CDTAs under scrutiny as they were signed prior to the passage of the Bill.</p> <p>(b) The three CDTAs had incorporated the same safeguards to protect taxpayers' privacy and confidentiality in responding to EoI requests as the previous seven batches of CDTAs signed by Hong Kong with other jurisdictions since 2010.</p>	

Time Marker	Speaker	Subject(s)	Action Required
<b>Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Guernsey) Order (L.N. 148 of 2013) ("the Guernsey Agreement")</b>			
000738 – 001040	Chairman Administration	<p><u>The article on EoI in the Guernsey Agreement (Article 24)</u></p> <p>The Administration pointed out that at the request of Guernsey, the information exchanged could be passed to responsible officials of Guernsey's Treasury and Resources Department and used for hearings connected with taxation matters as specified in paragraph 3(c) of the protocol to the Guernsey Agreement.</p>	
001041 – 001613	Chairman Administration	<p>In response to the Chairman's enquiry on Article 24.1 (i.e. "The exchange of information is not restricted by Article 1."), the Administration advised that the provision was based on the standard EoI provision of the Organization for Economic Co-operation and Development ("OECD template"), and the effect was that under an EoI request, information could be sought in respect of the residents of the contracting parties or persons not being residents in the contracting parties.</p>	
001614 – 001856	Chairman Administration	<p><u>Directors' fees (Article 15)</u></p> <p>In response to the Chairman's enquiry, the Administration pointed out that under the Guernsey Agreement, both Hong Kong and Guernsey had tax rights over directors' fees and Article 21 set out the methods for eliminating double taxation. If a resident of Guernsey receiving directors' fees from a Hong Kong company and the fees were to be taxed in Hong Kong, the relevant tax paid in Hong Kong would be deducted from the tax payable in Guernsey.</p>	
001857 – 002352	Chairman Administration	<p><u>Students (Article 19)</u></p> <p>In response to the Chairman's enquiry, the Administration confirmed that payments provided solely for the purpose of education or maintenance for a Hong Kong student studying in Guernsey would not be taxed in Guernsey irrespective of the methods through which the payments were made from outside Guernsey.</p> <p>The Chairman enquired if the payments were made through arrangements other than remittance from</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>sources outside Guernsey, e.g. a pre-arranged agreement which offset the education or maintenance payments with payments of other purposes, whether the payments would be subject to tax in Guernsey.</p> <p>The Administration advised that the situation referred to by the Chairman should be exempted from tax in Guernsey as "payments arise from outside" entitled a wide scope. However, the merit of each case must be determined based on the relevant facts and circumstances pertaining to the case.</p> <p>The Chairman suggested that the Administration should consider setting out the arrangements eligible for double taxation relief in a clearer manner in CDTAs signed with other jurisdictions in future.</p> <p>The Administration took note of the Chairman's views and pointed out that the Guernsey Agreement had included an article on mutual agreement procedure (i.e. Article 23) which provided for procedures for resolving dispute cases by mutual agreement, and handling unresolved cases through arbitration.</p>	
002353 – 003150	Chairman Administration Mr SIN Chung-kai	<p><u>Benefits of the Guernsey Agreement for Hong Kong residents and Hong Kong enterprises</u></p> <p>Mr SIN enquired about the concrete benefits brought by the Guernsey Agreement to Hong Kong residents and companies.</p> <p>The Administration responded that it did not have at hand information on the number of Hong Kong residents living in Guernsey. Guernsey was a member of the Commonwealth and Hong Kong had trade and economic relations with Guernsey.</p> <p>In order to allow members to better understand the benefits brought by the Guernsey Agreement to Hong Kong people and companies, the Administration was requested to provide concrete information on such benefits, including the number of Hong Kong residents living in Guernsey and the number of Hong Kong companies doing business through a permanent establishment in Guernsey.</p>	The Administration to take action as per paragraph 5(a) of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>In response to the Chairman's enquiry, the Administration advised that the meaning of "resident of a Contracting party" was given in Article 4 of the Guernsey Agreement. Different definitions were adopted by Guernsey and Hong Kong which were set out in Article 4.1(a) and 4.1(b) respectively. For the case of Hong Kong, the term "resident" had different meaning when used for immigration and taxing purposes. In the case of Guernsey, the purpose of the last sentence of Article 4.1(a) was to prevent a non-resident of Guernsey from becoming its resident solely by paying tax to Guernsey.</p>	
<p><b>Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Italian Republic) Order (L.N. 149 of 2013) ("the Italian Agreement")</b></p>			
<p>003151 – 003542</p>	<p>Chairman Administration</p>	<p><u>The EoI article in the Italian Agreement (Article 25)</u></p> <p>In response to the Chairman's enquiry, the Administration responded that:</p> <p>(a) the details were set out in paragraph 10 of the LegCo Brief (ref: TsyB R 183/800-1-1/28/0(c)) and the relevant provisions were in Article 25; and</p> <p>(b) paragraph 4 of the Protocol to the Agreement stipulated that if Hong Kong agreed in future to exchange information with other jurisdictions on taxes other than those covered by the Italian Agreement, Hong Kong would negotiate with Italy to extend the scope of EoI to apply to such other taxes.</p>	
<p>003543 – 003735</p>	<p>Chairman Administration</p>	<p>In response to the Chairman's enquiry about the provision in Article 25.4, the Administration advised that:</p> <p>(a) the effect of the provision was that Hong Kong could not decline to supply information sought under an EoI request by Italy solely because Hong Kong had no domestic interest in such information; and</p> <p>(b) similar provisions were adopted in CDTAs signed with other jurisdictions after the enactment of Inland Revenue (Amendment) Ordinance 2010.</p>	



Time Marker	Speaker	Subject(s)	Action Required
003736 – 005625	Chairman Administration	<p><u>Handling of EoI requests</u></p> <p>In response to the Chairman's enquiry, the Administration advised as follows:</p> <p>(a) A notification system was in place under the existing EoI mechanism under which the Inland Revenue Department ("IRD") would inform the person who was the subject of the request (e.g. the taxpayer concerned) of the relevant EoI request. The information disclosed by IRD to the third party, being an information holder, could include certain information contained in the EoI request made by the CDTA partner, such as the type or form of the information requested, the subject person involved, etc. While IRD would inform the third party that the EoI request was made pursuant to Hong Kong's obligation under a CDTA, IRD might not disclose to the third party the jurisdiction or tax authority concerned which had made the EoI request.</p> <p>(b) The Administration had to protect confidentiality of the information exchanged in implementing EoI requests under CDTAs, which was in line with the international practice to keep such information confidential.</p> <p>(c) The requesting jurisdiction might be unwilling to reveal its information to the third party concerned.</p> <p>The Chairman's view that as the third party who possessed the requested information was under legal obligation to provide the information to IRD, it should be provided with the details of the EoI request including the jurisdiction or tax authority concerned making the EoI request. Disclosure of such information to the third party would enable it to take follow-up actions, for example, initiating legal proceedings with the relevant jurisdiction or tax authority concerned to protect its interests where necessary. The Chairman suggested that the Administration should consider putting in place a mechanism for IRD to consult the requesting jurisdiction or tax authority whether it objected to the disclosure of such information to the third party.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>In respect of EoI mechanism under a CDTA, the Administration was required to provide information on:</p> <p>(a) the Government's policy and legal considerations regarding disclosure of information of the jurisdiction or tax authority which had made the EoI request to a third party which was required by IRD to supply the information for the EoI request; and</p> <p>(b) the international standard/practice in the disclosure of information in this regard.</p> <p>Given the Administration's advice on the importance to protect confidentiality of information exchanged in implementing EoI requests under CDTAs, in particular that the requesting jurisdiction might be unwilling to reveal its information to a third party, the Administration was requested to consider members' suggestion to formulate a mechanism for IRD to consult the requesting jurisdiction on whether there was objection to the disclosure of such information to the third party.</p>	<p>The Administration to take action as per paragraph 5(b) of the minutes</p> <p>The Administration to take action as per paragraph 5(c) of the minutes</p>
<p><b>Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (State of Qatar) Order (L.N. 150 of 2013) ("the Qatar Agreement")</b></p>			
<p>005626 – 005741</p>	<p>Administration</p>	<p>The Administration pointed out that the details of the EoI article in the Qatar Agreement were given in paragraph 7 of the LegCo Brief (ref. TsyB R 183/800-1-1/63/0(c)), and the relevant provisions were set out in Article 25 of the Agreement.</p>	
<p>005742 – 010101</p>	<p>Chairman Administration</p>	<p><u>Treatment for income</u></p> <p>On Article 21 ("Other Income") of the Qatar Agreement, the Administration advised that the provision was drafted based on OECD template. It was a residual provision to provide for double taxation relief for other items of income not covered in the Agreement. Under Article 21, the taxing right for other items of income not covered by any articles of the Agreement was allocated to the resident jurisdiction. For example, if the tax laws of Qatar imposed a tax on income from prizes of Mark Six in Hong Kong, a resident of Qatar would be taxed in Qatar for such income.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>On the tax treatment for dividends, the Administration advised that:</p> <ul style="list-style-type: none"> <li>(a) Article 10 of the Qatar Agreement set out the tax treatment for dividends; and</li> <li>(b) a resident of Qatar receiving dividends from a Hong Kong company would be taxed in Qatar only.</li> </ul>	
010102 – 010639	Chairman Administration	<p><u>Tax treatment for dividends under the Italian Agreement</u></p> <p>In response to the Chairman's enquiries, the Administration advised as follows:</p> <ul style="list-style-type: none"> <li>(a) An Italian resident living in Hong Kong would be taxed in Italy for the dividends he/she received from an Italian company listed in Hong Kong.</li> <li>(b) A Hong Kong resident receiving dividends from an Italian company listed in Hong Kong would be subject to the Italian withholding tax on dividends, which was currently at 20 per cent. The withholding tax would be capped at 10 per cent under the Italian Agreement. As such, the tax on dividend imposed on a Hong Kong resident would be lower than that of an Italian resident.</li> <li>(c) To benefit from the reduced withholding tax on dividends, a Hong Kong resident had to submit a relevant form to the Italian authority to apply for a tax rebate. The relevant procedures had been set out in the website of IRD.</li> </ul> <p>Given the substantial benefits of the Italian Agreement for Hong Kong residents, the Chairman suggested that the Administration should step up its publicity on the benefits brought by the Agreement, in particular the reduction of Italian withholding tax on dividends.</p> <p>The Administration took note of the suggestion.</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
010640 – 010816	Chairman Mr SIN Chung-kai Administration	<u>Follow-up and legislative timetable</u>  Members agreed that the Subcommittee would decide whether a further meeting would be required after considering the Administration's written responses on the outstanding issues arising from the above discussions.  The Subcommittee also agreed that the scrutiny period of the three Orders be extended to 27 November 2013.	

Council Business Division 1  
Legislative Council Secretariat  
9 April 2014