

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

**The Administration's responses to the list of follow-up actions arising
from the discussion at the meeting on 22 October 2013**

At the meeting held on 22 October 2013, Members raised questions on the following areas -

- (a) the Administration should provide concrete information on the benefits of the comprehensive avoidance of double taxation agreement (“CDTA”) between Hong Kong and Guernsey to Hong Kong people and companies;
 - (b) the Administration should set out its policy and legal considerations as well as the international standard/practice with respect to disclosure of information of the requesting jurisdictions pertaining to requests for exchange of information (“EoI”) under the CDTA mechanism; and
 - (c) the Administration should consider formulating a mechanism, under which the Inland Revenue Department (“IRD”) would provide information-holders pertaining to EoI requests with information about the requesting jurisdictions.
2. This paper sets out the Administration's responses to the above matters.

Benefits of the Hong Kong/Guernsey CDTA

3. Overall speaking, the Hong Kong/Guernsey CDTA sets out clearly the allocation of taxing rights between the two jurisdictions, thereby providing greater certainty on tax liabilities for cross-border trade and investment. Benefits that would accrue to Hong Kong residents under the Hong Kong/Guernsey CDTA are set out at **Annex**. Statistics on the number of Hong Kong residents living in Guernsey and the

number of Hong Kong companies doing business through a permanent establishment in Guernsey are not readily available.

4. Of particular note, Guernsey is one of the four overseas jurisdictions which were newly approved by the Hong Kong Stock Exchange (“HKEx”) Limited in 2011 to become acceptable overseas jurisdictions for the listing of overseas companies on the HKEx. Members of the Joint Liaison Committee on Taxation¹ have expressed support for the conclusion of the Hong Kong/Guernsey CDTA given the reasonably well-developed financial sector in Guernsey. As pointed out by a member of the Subcommittee at the meeting, a considerable number of mutual funds are domiciled in Guernsey. The tax certainty provided by the Hong Kong/Guernsey CDTA may attract more Guernsey resident companies and mutual funds to extend their businesses to Hong Kong, thus facilitating the flow of financial capital and services between the two places.

Handling of EoI Requests

5. Under the CDTAs that Hong Kong has entered into with other jurisdictions, there is treaty obligation for Hong Kong to exchange tax information with CDTA partners on request. To respond to an EoI request, it may be necessary for IRD to gather information from the subject person or a third party (i.e. the information holder) who holds the relevant information or documents. For this purpose and in conformity with the law, IRD will issue a notice asking the information holder to produce such information or documents. The formal notice that IRD issues to third parties generally includes the following information -

- (a) a reference to IRD’s access powers provided under the Inland Revenue Ordinance (“IRO”);
- (b) a general description of the information requested;
- (c) a detailed list of the information requested;
- (d) the time limit to produce the information;
- (e) a reference to the sanctions provided under the IRO for failure to comply with the formal notice; and

¹ Independent of the Government, the Committee is a forum set up on the initiative of the accountancy and commercial sectors to discuss and formulate recommendations on various tax matters. Its constituent members include chambers of commerce and professional associations.

- (f) the name of the subject person for identification purposes when the information holder is not the subject person.

6. Practically speaking, when seeking information from the information holders, IRD will disclose certain information contained in an EoI request to the extent necessary to enable the information holders to locate the requested information for the purpose of complying with the notice. The extent of information that IRD will disclose to the information holders depends on the circumstances of each case, including, for example, the type or form of information requested, and the person from whom the information is sought.

7. As far as international standard/practice is concerned, Article 26 of the Organisation for Economic Cooperation and Development Model Tax Convention on Income and on Capital, upon which the EoI Article of Hong Kong's CDTAs is based, states as a basic proposition that any information received by a jurisdiction in the context of EoI must be treated as confidential or secret, and shall be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or judicial decisions.

8. The confidentiality rules set out in paragraph 7 above cover not only the information exchanged but also letters issued by the competent authorities for the purpose of requesting information. Understandably, the requested authority can disclose the minimum information contained in a requesting authority's letter (but not the letter itself) necessary for the requested authority to be able to obtain or provide the requested information to the requesting authority, without frustrating the efforts of the requesting jurisdiction.

9. The Government's policy in this regard is to strike a balance between CDTA partners' expectation in line with the international standard/practice and information holders' right to know, without unduly

delaying effective EoI and compromising the practical operation of the EoI regime in Hong Kong. Against such policy backdrop, IRD is prepared to disclose the information of the requesting jurisdiction to the information holder concerned provided that such is agreeable to all interested parties. Specifically, where the information holder requests and the subject person expresses his/her consent, IRD would, having considered the circumstances of the case, approach the competent authority of the requesting jurisdiction and put forward the information holder's request for disclosure of the information pertaining to the requesting jurisdiction. Should the competent authority of the requesting jurisdiction have no objection, IRD will then disclose the information of the requesting jurisdiction to the information holder concerned.

Financial Services and the Treasury Bureau
October 2013

Annex

**Benefits that would accrue to Hong Kong residents
under the Hong Kong/Guernsey CDTA**

	Types of income	Existing tax liability	Tax liability under the CDTA
1.	Income received through a permanent establishment in Guernsey	Income is taxed in Guernsey and may also be taxed in Hong Kong if the income is sourced from Hong Kong	Income will be taxed in Guernsey, but the tax so paid shall be allowed as a credit against Hong Kong tax payable (if any) in respect of the income
2.	Income received from operation of aircraft in international traffic	Income from Guernsey is taxed in Guernsey and not taxable in Hong Kong	Income from Guernsey will be exempted in Guernsey and be taxed in Hong Kong instead
3.	Income received from operation of ships in international traffic	Income from Guernsey is taxed in Guernsey and exempted from tax in Hong Kong	Income from Guernsey will be exempted in Guernsey whilst exemption in Hong Kong remains unchanged
4.	Income received from employment exercised in Guernsey -		
	(a) if the exemption conditions as provided in Article 14(2) of the CDTA are satisfied (i.e. stays in Guernsey for an aggregate period of not exceeding 183 days in any relevant 12-month	Income is taxed in Guernsey and such income may also be taxed in Hong Kong if the employment is a Hong Kong employment and some services are rendered in Hong Kong as well	Income will be exempted in Guernsey whilst the tax position in Hong Kong remains unchanged

	Types of income	Existing tax liability	Tax liability under the CDTA
	period, etc. and the remuneration is taxable in Hong Kong)		
	(b) if the exemption conditions as provided in the CDTA are not satisfied	Income is taxed in Guernsey and such income may also be taxed in Hong Kong if the employment is a Hong Kong employment and some services are rendered in Hong Kong as well	Income will be taxed in Guernsey, but the tax so paid shall be allowed as a credit against Hong Kong tax payable (if any) in respect of the same income