

財經事務及庫務局

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FINANCIAL SERVICES AND THE  
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By Fax (3529 2837)

11 November 2013

Clerk to Subcommittee  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
(Attn.: Ms Sharon Chan)

Dear Ms Chan,

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

**Third meeting on Monday, 11 November 2013**

I refer to your letter of 6 November 2013 (ref.: CB1/SS/1/13) on the captioned subject, and thank you for the invitation to the Financial Secretary or Secretary for Financial Services and the Treasury to attend the next meeting of the Subcommittee.

After further considering the views expressed by Members at the last Subcommittee meeting held on 6 November 2013, we have set out in the note at the **Annex** our considered approach to gather information for exchange of information purposes in order to address the issues raised by Members.

We wish to inform you that the Administration's attendance for the next meeting is as follows –

**Financial Services and the Treasury Bureau** 財經事務及庫務局

Ms Shirley Kwan 關如璧女士

Principal Assistant Secretary for Financial Services and the Treasury  
(Treasury) (Revenue) 財經事務及庫務局首席助理秘書長(庫務)(收入)

**Inland Revenue Department** 稅務局

Mr Chiu Kwok-kit 趙國傑先生

Deputy Commissioner (Technical) 副局長(技術事宜)

**Department of Justice** 律政司

Ms Alice Choy 蔡敏斯女士

Senior Government Counsel (Treaties & Law)<sup>1</sup> 高級政府律師(條約法律)<sup>1</sup>

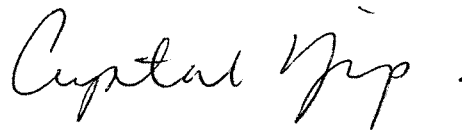
Miss Michelle Fung 馮奔奔女士

Government Counsel (Treaties & Law) 政府律師(條約法律)

Miss Cindy Cheuk 卓芷穎女士

Government Counsel 政府律師

Yours sincerely,



( Miss Crystal Yip )

for Secretary for Financial Services and the Treasury

Encl

**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 6 November 2013**

At the meeting held on 6 November 2013, Members raised the following matters -

- (a) the Administration should provide information on the legal and contractual obligations which bind the Inland Revenue Department ("IRD") in disclosing information about the requesting jurisdictions or tax authorities when handling requests for exchange of information ("EoI") under comprehensive avoidance of double taxation agreements ("CDTAs"); and
- (b) the Administration should consider disclosing the name of the relevant CDTA pertaining to an EoI request in the formal notice issued by IRD to the third party (i.e. the information holder) who holds the relevant information or documents requested for exchange so that the third party can take necessary actions with the relevant jurisdiction or tax authority to protect his/her own interests (e.g. claiming privilege against self-incrimination).

2. This paper sets out the Administration's responses to the above matters.

**International standards of EoI**

3. International standards of EoI for tax purposes are primarily reflected in the EoI Article of the Organisation for Economic Cooperation and Development Model Tax Convention on Income and on Capital ("OECD Model Tax Convention") and its Commentary as updated in 2012.

4. The Commentary of the OECD Model Tax Convention provides that the confidentiality rules contained in the EoI Article apply to all types of information received through such exchange, including both information provided in an EoI request and information transmitted in response to an EoI request. Hence, the confidentiality rules cover, for instance, competent authority letters, including the letter requesting information.

At the same time, it is understood that the requested jurisdiction can disclose the **minimum information contained in a competent authority letter (but not the letter itself) necessary for the requested jurisdiction to be able to obtain or provide the requested information** to the requesting jurisdiction, without frustrating the efforts of the requesting jurisdiction.

### **Legal obligations of Hong Kong under CDTAs**

5. Enacted as part of our domestic legislation, Hong Kong's CDTAs, including the EoI Article therein, are by and large based on the OECD Model Tax Convention. It follows that when handling EoI requests under our CDTAs, IRD will refer to the Commentary<sup>1</sup> of the OECD Model Tax Convention to interpret the EoI Article.

### **Gathering information from third party for EoI purposes**

6. For the purpose of handling EoI requests under CDTAs, IRD may gather information from a third party (i.e. the information holder) who holds the relevant information or documents. To this end 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
- (f) the name of the subject person for identification purposes when the information holder is not the subject person.

7. In view of the Subcommittee's concern, after striking a balance between the international standard/practice and information holders' right

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<sup>1</sup> Protocol to the Hong Kong/Netherlands CDTA explicitly refers to the OECD Commentary as an important guideline when interpreting the provisions in the CDTA. Protocol to the Hong Kong/Mexico CDTA says provisions formulated on the basis of the United Nations/OECD Model Tax Convention shall have the meaning expressed in the United Nations/OECD Commentary.

to know, we are prepared to take a pragmatic approach to deal with the situation. Specifically, where the information holder requests to know the name of the requesting jurisdiction upon receipt of IRD's formal notice for information, IRD would approach the competent authority of the requesting jurisdiction and put forward the information holder's request. Should the competent authority of the requesting jurisdiction raise any objection, IRD will then let the information holder know accordingly. If the information holder refuses to provide the information requested as he/she does not know the name of the requesting jurisdiction, IRD will, having considered the circumstances of the case, decline the EoI request for reason that it could not disclose to the information holder the name of the requesting jurisdiction, which is considered necessary to facilitate the gathering of the requested information.

Financial Services and the Treasury Bureau  
November 2013