

立法會
Legislative Council

LC Paper No. LS53/15-16

**Paper for the House Committee Meeting
on 20 May 2016**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 13 May 2016**

Tabling in LegCo : Council meeting of 18 May 2016

Amendment to be made by : Council meeting of 15 June 2016 (or that of 6 July 2016 if extended by resolution)

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Romania) Order (L.N. 61)

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Russian Federation) Order (L.N. 62)

L.N. 61 and L.N. 62

Under section 49(1A) of the Inland Revenue Ordinance (Cap. 112), the Chief Executive ("CE") in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong for the purposes of affording relief from double taxation and/or exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned.

2. L.N. 61 and L.N. 62 are made by CE in Council under section 49(1A) of Cap. 112 to give effect to the following Comprehensive Agreements for Avoidance of Double Taxation ("CDTAs") respectively:

- (a) the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("HKSARG") and the Government of Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 18 November 2015 ("the Romanian Agreement"); and

- (b) the Agreement between the HKSARG and the Government of the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 18 January 2016 ("the Russian Agreement").

3. According to paragraph 3 of the LegCo Brief (File Ref: TsyB R 183/800-1-1/9/0 (C)) issued by the Financial Services and the Treasury Bureau on 11 May 2016, while a local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation, double taxation may occur where a foreign jurisdiction taxes its own resident's income derived from Hong Kong. Although many jurisdictions do provide their residents with unilateral tax relief for the Hong Kong tax payable on the income derived therefrom, the existence of CDTAs will enhance the certainty and stability in respect of the elimination of double taxation. Besides, the tax relief provided under CDTAs may exceed the level provided unilaterally by the tax jurisdictions concerned.

4. For the purposes of section 49(1A) of Cap. 112, L.N. 61 and L.N. 62 declare respectively that the following arrangements have been made for the purposes of affording relief from double taxation and for exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned, and that it is expedient that those arrangements should have effect:

- (a) the arrangements specified in Articles 1 to 28 of the Romanian Agreement; and
- (b) the arrangements specified in Articles 1 to 29 of the Russian Agreement and paragraphs 1 to 3 of the Protocol thereto.

5. The provisions in the Romanian Agreement and the Russian Agreement set out respectively the allocation of taxing rights between HKSARG and the respective jurisdictions and the relief on tax rates on different types of income. Each of the above Agreements contains an article on exchange of information ("EoI Article") which is based on the Organisation for Economic Cooperation and Development ("OECD") 2004 version of the EoI Article. A sample EoI Article was presented to the Bills Committee on the Inland Revenue (Amendment) (No. 3) Bill 2009 vide LC Paper No. CB(1)106/09-10(02). It is noted that both Agreements provide that information should only be exchanged upon request, that the requested information must be foreseeably relevant, that the information received by a contracting party shall be treated as secret, that the information must be disclosed only to the tax authorities and not their oversight bodies nor any third jurisdiction and that there is no obligation to

supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy. Upon enquiry, the Administration confirmed that the Romanian Agreement and the Russian Agreement have adopted all the safeguards in the sample EoI Article.

6. The effect of the declarations mentioned in paragraph 4 above is that:

- (a) the arrangements have effect in relation to tax under Cap. 112 despite anything in any enactment; and
- (b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of the Government of Romania and the Government of the Russian Federation, have effect in relation to any tax of the respective jurisdictions that is the subject of that provision.

7. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 61 and L.N. 62.

8. Both L.N. 61 and L.N. 62 come into operation on 29 July 2016.

**Road Traffic (Parking) (Approved Cards) (Amendment)
Notice 2016**

(L.N. 63)

Background

9. "Octopus" is at present approved by the Commissioner for Transport ("Commissioner") under the Road Traffic (Parking) (Approved Cards) Notice (Cap. 374V) as a means of payment for the card operated parking meters or pay and display machines provided for the Road Traffic (Parking) Regulation (Cap. 374C). It is a multi-purpose card issued pursuant to section 16(3A)(a) of the Banking Ordinance (Cap. 155). Since the provisions in the Clearing and Settlement Systems (Amendment) Ordinance 2015 (Ord. 18 of 2015) relating to the issue of multi-purpose stored value facilities (including "Octopus") will come into operation on 13 November 2016, the existing regulation of stored value facilities will be transferred from Cap. 155 to the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) and the relevant sections concerning the stored value facilities regime under Cap. 155 (including section 16(3A)(a)) will be repealed as from 13 November 2016.

L.N. 63

10. L.N. 63 is made by the Commissioner under regulation 12A of Cap. 374C to:

- (a) provide the legal basis for the continuous use of "Octopus" as an approved card for the purposes of regulation 12A(a) of Cap. 374C;
- (b) approve new cards or devices (including "MasterCard Contactless", "UnionPay QuickPass" and "Visa payWave") that are enabled with a contactless payment function and support offline transaction as payment means for card operated parking meters or pay and display machines specified in Cap. 374V; and
- (c) modify the definition of "Octopus" in view of the amendments in Ord 18 of 2015.

11. According to the LegCo Brief (no reference number) issued by the Transport and Housing Bureau on 11 May 2016, the amendments in L.N. 63 would enable the new approved cards or devices to be used for payment of parking meter fees under the New Parking Meter System Trial Scheme ("Scheme") introduced by the Transport Department in 2015.

12. As advised by the Clerk to the Panel on Transport, the Panel was consulted on 12 July 2012 on the proposed Scheme which aimed to assess the technical feasibility and public acceptance of the new features and functions to be incorporated in the new generation of parking meters. The Panel generally endorsed the proposal to put on trial a new generation of parking meters. The Panel has not been consulted on L.N. 63.

13. L.N. 63 comes into operation on 5 July 2016.

Concluding Observations

14. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 61 to L.N. 63.

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