

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Ref : CB1/SS/9/15

**Subcommittee on the Two Orders Made under Section 49(1A) of
the Inland Revenue Ordinance and Gazetted on 13 May 2016**

**Minutes of the first meeting on
Tuesday, 31 May 2016, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon James TO Kun-sun
Hon Alan LEONG Kah-kit, SC

Public officers attending : Mr Gary POON
Principal Assistant Secretary for Financial Services
and the Treasury (Treasury) (Revenue)

Mr CHIU Kwok-kit, JP
Deputy Commissioner of Inland Revenue (Technical)

Mr Alex LAI
Government Counsel
Department of Justice

Clerk in attendance: Mr Desmond LAM
Chief Council Secretary (1)3

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Miss Rita YUNG
Senior Council Secretary (1)8

Action

I. Election of Chairman

Mr James TO, the member who had the highest precedence in Council among members of the Subcommittee present at the meeting, presided at the election of the chairman of the Subcommittee and invited nominations for the chairmanship of the Subcommittee.

2. Mr James TO nominated Mr Kenneth LEUNG, and the nomination was seconded by Mr Alan LEONG. Mr Kenneth LEUNG accepted the nomination.

3. There being no other nominations, Mr Kenneth LEUNG was declared Chairman of the Subcommittee.

4. Members agreed that it was not necessary to elect a Deputy Chairman.

II. Meeting with the Administration

(L.N. 61 of 2016

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

L.N. 62 of 2016

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

File Ref:
TsyB R 183/800-1-1/9/0 (C)

-- Legislative Council Brief issued by the Financial Services and the Treasury Bureau

LC Paper No. LS53/15-16

-- Legal Service Division Report

LC Paper No. CB(1)975/15-16(01)

-- Paper on Two Orders Made under Section 49(1A) of the Inland Revenue Ordinance and Gazetted on 13 May 2016 prepared by the Legislative Council Secretariat (background brief)

5. The Subcommittee deliberated (Index of proceedings attached at **Annex**).

Legislative timetable

6. The Subcommittee completed the scrutiny of the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Romania) Order and the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Russian Federation) Order ("the two Orders"). The Subcommittee would not propose any amendment to the two Orders.

7. The Subcommittee noted that the scrutiny period of the two Orders would expire at the Council meeting of 15 June 2016. To allow sufficient time for the Subcommittee to consider the report to be submitted to the House Committee ("HC"), members agreed that the Chairman would move a motion on behalf of the Subcommittee at the Council meeting of 8 June 2016 to extend the scrutiny period of the two Orders to the Council meeting of 6 July 2016. Upon extension of the scrutiny period, the Chairman would report the deliberations of the Subcommittee to HC on 24 June 2016. The deadline for giving notice of motion to amend the two Orders would be 28 June 2016.

(Post-meeting note: As the proposed resolution was not dealt with at the Council meeting of 15 June 2016 (i.e. the last Council meeting at which a proposed resolution might be moved to extend the scrutiny period for the two Orders), the scrutiny period of the two Orders had expired after the Council meeting of 15 June 2016.)

III. Any other business

8. There being no other business, the meeting ended at 3:17 pm.

Council Business Division 1
Legislative Council Secretariat
14 July 2016

**Proceedings of the first meeting of
the Subcommittee on the Two Orders Made under Section 49(1A) of
the Inland Revenue Ordinance and Gazetted on 13 May 2016
on Tuesday, 31 May 2016, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
001044 – 001154	Mr James TO Mr Alan LEONG Mr Kenneth LEUNG	Election of Chairman Mr Kenneth LEUNG was elected Chairman of the Subcommittee.	
001155 – 001233	Chairman	Opening remarks	
001234 – 001556	Chairman Administration	<p>Briefing by the Administration on the two Orders made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and gazetted on 13 May 2016 as follows:</p> <p>(a) the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Romania) Order (L.N. 61 of 2016) was made to give effect to the Comprehensive Agreement for Avoidance of Double Taxation ("CDTA") which was signed between the Government of the Hong Kong Special Administrative Region ("HKSARG") and the Government of Romania on 18 November 2015 ("the Romanian Agreement"); and</p> <p>(b) the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Russian Federation) Order (L.N. 62 of 2016) was made to give effect to the CDTA which was signed between HKSARG and the Government of the Russian Federation on 18 January 2016 ("the Russian Agreement").</p>	
001557 – 001756	Chairman Mr James TO Administration	<p>Mr James TO's enquiry about whether there was any deviation from the Organization for Economic Co-operation and Development Model Tax Convention on Income and on Capital ("OECD Model Tax Convention") in the articles of the Romanian Agreement and the Russian Agreement.</p> <p>The Administration's response that the Romanian Agreement and the Russian Agreement generally adopted the articles in the OECD Model Tax</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Convention except for certain modifications allowable under the OECD model to address the various concerns of the contracting parties respectively. The articles in the two Agreements were similar to those in the CDTAs signed between HKSARG and other jurisdictions previously, except for certain references specific to individual contracting parties, such as the scope of tax types covered by the CDTAs and the definitions of the contracting parties.</p>	
001757 – 002401	Chairman Mr James TO Administration	<p>Noting that there had been territory disputes between Russia and China, Mr James TO's concern about the definition of the term "Russia" in the Russian Agreement, particularly in a geographical sense, and the application of the Agreement in the cases involving a resident or a company of a disputed territory.</p> <p>The Administration's response that:</p> <ul style="list-style-type: none"> (a) due consideration was given to the definition of the country or territory involved during the negotiations of CDTAs with other jurisdictions, and the Russian Agreement was of no exception; and (b) the definition of the term "Russia" in the Russian Agreement was the same as that used in the CDTA signed between China and Russia. 	
002402 – 002803	Chairman Mr James TO Administration	<p>Mr James TO's enquiry about the tax relief in terms of withholding tax rates on royalties as set out in the Russian Agreement.</p> <p>The Administration's explanation that:</p> <ul style="list-style-type: none"> (a) the current withholding tax rates on royalties in Russia were 20% and 30% for companies and individuals respectively, while the current withholding tax rates on royalties in Hong Kong was 4.95%; (b) under the Russian Agreement, both tax jurisdictions were given the right to tax royalty income. The resident jurisdiction was required to give double taxation relief to its resident for the income doubly assessed (i.e. the source jurisdiction had the primary 	

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		<p>right to tax and the resident jurisdiction was left with a secondary right). The source jurisdiction's right to tax royalty income was subject to a limit of 3% on the gross amount of the royalties, if the beneficial owner of the royalties was a resident of the resident jurisdiction; and</p> <p>(c) the relief on tax rates on royalties would help investors foster closer economic and trade links, and provide added incentives for enterprises of Russia to do business or invest in Hong Kong, and vice versa.</p>	
002804 – 003122	Chairman Mr James TO Administration	<p>Mr James TO's reiteration of his enquiry about the deviation from the OECD Model Tax Convention in the Romanian Agreement and the Russian Agreement.</p> <p>The Administration's reiteration that:</p> <p>(a) the Romanian Agreement and the Russian Agreement generally adopted the articles in the OECD Model Tax Convention except for certain modifications to address the various concerns of the contracting parties respectively;</p> <p>(b) the differences mainly related to those references specific to the contracting party concerned, such as the scope of tax types covered by the CDTAs and the definitions of the contracting parties. In terms of tax types, for instance, under the Romanian Agreement, the tax types applicable to Romania included the tax on income and the tax on profit, while under the Russian Agreement, the tax types applicable to Russia included the tax on profits of organizations and the tax on income of individuals; and</p> <p>(c) as another example, Article 28 (Entry into Force) of the Russian Agreement included a paragraph which provided that Article 12 of the Air Services Agreement previously signed between HKSARG and the Government of the Russian Federation should cease to have effect in respect of taxes on income when the Russian Agreement became effective. There was no such a paragraph in Article 27 (Entry</p>	

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		<p>into Force) of the Romanian Agreement as no Air Services Agreement was signed with Romania.</p>	
003123 – 003523	Chairman Administration	<p>The Chairman's enquiry about whether there was any difference between Article 25 (Fiscal Privileges) of the Romanian Agreement and Article 26 (Members of Government Missions) of the Russian Agreement.</p> <p>The Administration's response that:</p> <p>(a) the above two articles adopted the Members of Diplomatic Missions and Consular Posts Article in the OECD Model Tax Convention. In accordance with the Basic Law, Hong Kong was a special administrative region of the People's Republic of China, and the reference to "diplomatic missions" and the text of the relevant articles should therefore be modified in the tax agreements signed between HKSARG and other jurisdictions; and</p> <p>(b) Article 25 of the Romania Agreement followed the general format of the article used in the CDTAs signed by Hong Kong, though there were also cases where reference to "consular posts" was also included, as in Article 26 of the Russian Agreement in response to Russia's request. There was no material difference in the practical operation between the versions.</p>	
003524 – 003726	Chairman Administration	<p>The Chairman's enquiry about the tax relief in terms of withholding tax rates on interest in the Romanian Agreement and the Russian Agreement.</p> <p>The Administration's explanation that:</p> <p>(a) under the Romanian Agreement, the right to tax interest income was a shared taxing right, i.e. both tax jurisdictions were given the right to tax interest income. The resident jurisdiction was required to give double taxation relief to its resident for the income doubly assessed (i.e. the source jurisdiction had the primary right to tax and the resident jurisdiction was left with a secondary right);</p>	

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		<p>(b) it was agreed under the Romanian Agreement that the source jurisdiction's tax rate on interest income was subject to a limit of zero per cent if Hong Kong levied no withholding tax on the interest. Otherwise, the rate was capped at 3%;</p> <p>(c) in effect, the tax rates on interest income would be zero per cent since Hong Kong levied no withholding tax on interest income; and</p> <p>(d) under the Russian Agreement, the right to tax interest income was allocated exclusively to the resident jurisdiction.</p>	
003727 – 004147	<p>Chairman Legal Adviser to the Subcommittee ("ALA4") Mr Alan LEONG Administration</p>	<p>ALA4's enquiry about the different wording used in the Dividends Articles of the Romanian Agreement (i.e. paragraph 3 of Article 10) and the CDTA with New Zealand ("New Zealand Agreement") (i.e. paragraph 4 of Article 10).</p> <p>The Administration's explanation that:</p> <p>(a) the formulation of the relevant paragraph of the Dividends Article was allowable under the OECD Model Tax Convention. The wording used in paragraph 4 of Article 10 of the New Zealand Agreement was slightly different as it had been modified to address the concerns of New Zealand; and</p> <p>(b) there was no material difference in the practical operation relating to the relief on tax rates on dividends between the Romanian Agreement and the New Zealand Agreement.</p> <p>Extension of the scrutiny period.</p>	
004148 – 004335	<p>Chairman ALA4 Administration</p>	<p>ALA4's enquiry about the implication on the application of the Exchange of Information ("EoI") Article in the Romanian Agreement and the Russian Agreement if the Inland Revenue (Amendment) Bill 2016, which was related to the implementation of automatic exchange of financial account information in tax matters ("AEOI") in Hong Kong, was enacted.</p> <p>The Administration's response that:</p>	

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		<p>(a) the Inland Revenue (Amendment) Bill 2016 sought to put in place a legal framework for the implementation of AEOI in Hong Kong. The Bill, if enacted, would not affect the application of the EoI Article in the Romanian Agreement and the Russian Agreement, because EoI would be conducted on a request basis under both agreements; and</p> <p>(b) if any AEOIs were to be conducted between Hong Kong and its CDTA partners, separate competent authority agreements (in addition to the CDTA signed) would have to be entered into with the partners concerned, and a notice (which was subject to negative vetting by the Legislative Council) would be required to include the name of the partners concerned in the relevant schedule to be added to the Inland Revenue Ordinance.</p>	
<i>Examination of provisions of the two Orders</i>			
004336 – 004630	Chairman Administration	<p><u>Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Romania) Order (L.N. 61 of 2016)</u></p> <p><i>Section 1 – Commencement</i></p> <p><i>Section 2 – Declaration under section 49(1A)</i></p> <p><i>Section 3 – Arrangements specified</i></p> <p><i>Schedule</i></p> <p>Members raised no query.</p> <p><u>Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Russian Federation) Order (L.N. 62 of 2016)</u></p> <p><i>Section 1 – Commencement</i></p> <p><i>Section 2 – Declaration under section 49(1A)</i></p> <p><i>Section 3 – Arrangements specified</i></p> <p><i>Schedule</i></p> <p>The Chairman's enquiry on the application of the</p>	

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		Russian Agreement in the Russian Federation.	
004631 – 004754	Chairman Administration	The Subcommittee completed the scrutiny of the two Orders, and confirmed that no amendment would be proposed to the two Orders. Extension of the scrutiny period and legislative timetable.	

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14 July 2016