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**Legislative Council**

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**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 13 July 2018**

**Tabling in LegCo** : Council meeting of 10 October 2018

**Amendment to be made by** : Council meeting of 7 November 2018 (or that of 28 November 2018 if extended by resolution)

**Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order** **(L.N. 142)**

The Inland Revenue Ordinance (Cap. 112), as amended by the Inland Revenue (Amendment) Ordinance 2018 (Ord. No. 5 of 2018) ("Amendment Ordinance"), empowers the Chief Executive ("CE") in Council to give effect to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, and other tax agreements that apply to Hong Kong. Under section 49(1A) of Cap. 112, if CE in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect, those arrangements shall have effect in Hong Kong. Section 49(1AB) of Cap. 112, as added by the Amendment Ordinance, provides that the arrangements that may be specified in an order under section 49(1A) would include arrangements that are made with more than one government, and arrangements that are made by the Central People's Government ("CPG") and applied to Hong Kong (including the Convention).

2. L.N. 142 was made by CE in Council under section 49(1A) of Cap. 112 to give effect to the Convention on Mutual Administrative Assistance in Tax Matters ("the Convention")<sup>1</sup> in Hong Kong. It declares that for the

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<sup>1</sup> According to paragraphs 7 to 9 of the Legislative Council Brief (File Ref.: TsyB R2 00/800-2/1/0(C)) issued by the Financial Services and the Treasury Bureau on 11 July 2018, the Convention was jointly developed by the Organization for Economic Co-operation and Development and the Council of Europe in 1988 and amended by a Protocol in 2010. It provides a multi-party platform which allows participating jurisdictions to mutually agree with each other on all possible forms of administrative co-operation in the assessment and collection of taxes, including various modes of exchange of information. Pursuant to Article 29(2) of the Convention, the Convention will enter into force in respect of Hong Kong on 1 September 2018.

purposes of section 49(1A) of Cap. 112, the following arrangements have been made by CPG and applied to Hong Kong and it is expedient that those arrangements should have effect:

- (a) the Convention signed by CPG on 27 August 2013 in the English language reproduced in Schedule 1;
  - (b) the Declarations and Reservations made under the Convention by CPG on 29 May 2018 in the English language reproduced in Schedule 2; and
  - (c) the Declaration on the Effective Date for Exchanges of Information under the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information made under the Convention by CPG on 25 June 2018 in the English language reproduced in Schedule 3.
3. The legal effects of the above declaration include the following:
- (a) the Convention, including the provisions relating to exchange of information concerning the taxes covered by the Convention and the safeguard measures,<sup>2</sup> shall apply to Hong Kong;
  - (b) the types of assistance that Hong Kong will not provide include assisting in the recovery of tax claim or administrative fine, service of documents; and service of documents through post under the Convention;
  - (c) information on the types of taxes in Hong Kong that are subject to exchange with the relevant jurisdictions are profits tax, salaries tax and property tax;
  - (d) the Commissioner of Inland Revenue of the Hong Kong Government or the authorized representative of the Commissioner is the competent authority of Hong Kong;
  - (e) Hong Kong may inform its resident or national before the information concerning that resident or national is transmitted to another party to the Convention when handling exchange of information on request under the Convention; and

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<sup>2</sup> The safeguard measures include: (a) the information exchanged should be foreseeably relevant for the administration or enforcement of the receiving party's domestic laws concerning the taxes covered by the Convention; and (b) the information received by a party under the Convention shall be treated as secret and should not be disclosed to a third party without prior authorization of the supplying party.

- (f) Hong Kong and other parties to the Convention that have made similar declarations as that stated in paragraph 2(c) above agree to provide administrative assistance under Article 6 of the Convention in relation to automatic exchange of financial account information and under Article 5 of the Convention in relation to follow-up requests related to financial account information exchanged for taxable periods earlier than the date on which the Convention comes into effect between Hong Kong and the relevant parties.

4. In relation to Articles 8 and 21 of the Convention reproduced in Schedule 1 to L.N. 142, the Legal Service Division ("LSD") has asked the Administration to clarify Hong Kong's position regarding simultaneous tax examinations under the Convention and whether confidential communications protected by legal professional privilege ("LPP") would be protected from disclosure. The Administration's reply is summarized as follows:

- (a) as a general rule, Hong Kong will not participate in any simultaneous tax examinations. Indeed, Article 8 provides that it will be up to a jurisdiction to decide whether to participate in a particular simultaneous tax examination, and hence no reservation concerning such examinations is required; and
- (b) LPP communications will be protected from disclosure under the Convention. LPP is also protected by virtue of section 51(4A) of Cap. 112 and the Departmental Interpretation and Practice Notes No. 47 ("the Note") issued by the Inland Revenue Department ("IRD"). According to the Note, information covered by LPP will not be exchanged, the general law on LPP will be maintained under the exchange of information regime, and the restriction on disclosure of LPP materials is legally binding on IRD.

5. In the light of the Administration's above explanation, we have no further queries on the issues concerned.

6. According to the Legislative Council ("LegCo") Brief (File Ref.: TsyB R2 00/800-2/1/0(C)) issued by the Financial Services and the Treasury Bureau on 11 July 2018, L.N. 142 is made to fulfil Hong Kong's commitment made in September 2014 to implementing the automatic exchange of financial account information in tax matters ("AEOI") with a view to enhancing tax transparency and combating cross-border tax evasion.

7. According to paragraph 18 of the LegCo Brief, the Administration issued a letter to relevant stakeholders, including financial institutions, regulators, chambers of commerce and professional bodies in April 2017 to update them on the Government's plan to participate in the Convention. In response to LSD's enquiries, the Administration informed us that no objection had been received from the relevant stakeholders.

8. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed by the Administration on the proposal of extending the application of the Convention to Hong Kong at the meetings on 5 June 2017, 8 January 2018 and 3 July 2018. Members did not object to the proposal but raised enquiries on various issues including the need to extend the Convention to Hong Kong, provisions of the Convention which would apply to Hong Kong, and how exchanges of tax information with other jurisdictions would be conducted under the Convention.

9. L.N. 142 came into operation on the day of publication in the Gazette, i.e. 13 July 2018. According to paragraph 11 of the LegCo Brief, the commencement of L.N. 142 on its gazettal date will enable Hong Kong to conduct the first round of AEOI with other jurisdictions, including the Member States of the European Union, by September 2018.

10. Subject to the views of Members on the issues mentioned in paragraph 4 above, no difficulties have been identified in the legal and drafting aspects of L.N. 142.

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