

5 October 2009

The Hon Paul Chan Mo-po, MH, JP
Chairman
Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009
Legislative Council Secretariat
3/F, Citibank Tower
3 Garden Road, Central
Hong Kong

Dear Mr Chan,

**Liberalisation of Exchange of Information Article for
Comprehensive Double Taxation Agreements**

The Hong Kong General Chamber of Commerce is pleased to submit its views on the proposed liberalisation of the exchange of information (EoI) protocols contained in comprehensive double taxation agreements (CDTAs). In forming our views, we have consulted our members and benefited from briefings by responsible government officials.

Areas in which the Chamber strongly urges careful consideration include the power to revise EoI provisions; safeguards to ensure contracting parties do not pass confidential information on to third parties; and the responsibility to inform those who are the subject of information transfers as to the intent to comply with treaty obligations and to provide such persons with the opportunity to examine the contents of such information exchanges.

Revision. The proposed for Clause 3(2)b in the Inland Revenue Ordinance is too vague. If adopted, government will have the power to revise the EoI terms in accordance with changes dictated by its contracting parties or the OECD without necessarily consulting the public. While there are requirements for LegCo to consent, we believe any substantive changes to the OECD 2004 protocols should be subject to public consultation.

Confidentiality. As drafted, the clause prohibiting the sharing of information with a third-party will not be enshrined in law. There is, however, the right to unilaterally terminate agreements in the event that violations do occur. We are concerned that those with whom we sign CDTAs may have pre-existing obligations to share confidential information with other jurisdictions. In particular, we worry that a member of (for example) the European Union who requests information from Hong Kong may be obligated to share such information with other EU members. As a practical matter, we believe that if the sole option in response to such a violation is the complete termination of the entire CDTA, there will be inadequate incentives to fully enforce this clause. One option might be to enable the termination of exchanges of information *only*, in the event of an EoI violation.

Subjects' rights. We understand that investigations targets with accounts in Hong Kong but based abroad will not be contacted by the Inland Revenue Department if a request has been made by an overseas jurisdiction to access information on their holdings. The explanation for this decision is that the IRD's jurisdiction is limited to Hong Kong. Yet, there is no jurisdictional issue at hand. Further, if one holds an account in Hong Kong, one is required to provide a correspondence address, and so there should be no difficulty in contacting account holders under investigation, where ever they may reside.

The Chamber has long and fully supported international efforts to curtail money laundering and the transfer of funds for illegal purposes, most particularly terrorism and narcotics trafficking. We recognize the importance of being perceived as a good business and financial partner, and the responsibilities that go along with that status. Moreover, the Chamber is not opposed in principle to the provisions outlined in the consultation document, provided certain safeguards – expressed in the document, in some cases – are observed.

We trust the concerns raised above will assist you in your work.

Sincerely,



Alex Fong
CEO