

**Bills Committee on
Inland Revenue (Amendment) (No. 3) Bill 2009**

Follow-up to issues raised at the fourth meeting on 5 November 2009

1. Hon Paul CHAN and Hon James TO were concerned that the Administration's policy of not entertaining any request for information relating to a period before the effective date of the respective comprehensive avoidance of double taxation agreements (CDTAs), i.e. the exchange of information (EoI) arrangement would have no retrospective effect, should not be negotiable. In this connection, the Administration was requested to consider and respond to members' views of incorporating a provision to set out clearly the above policy:
 - (a) in the primary legislation; or
 - (b) in the rules to be made under section 49(6) of the Inland Revenue Ordinance (Cap. 112) (the Rules),
instead of only in a protocol which would form part of the CDTAs or in other documents of records.
2. Hon James TO was concerned that the term "foreseeably relevant" adopted to restrict the scope of information exchange under the Organization for Economic Cooperation and Development 2004 version of EoI Article might not provide the best protection to the right of the persons concerned to seek legal remedies in the context of domestic law. In this connection, the Administration was requested to:
 - (a) examine, with reference to case laws in Hong Kong or other jurisdictions, whether an alternative term could be adopted to prevent "fishing expeditions"; and
 - (b) provide information on the channels available to the persons concerned to raise objections or appeal against the collection or disclosure of information under the EoI arrangement.
3. Referring to the provision in the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (MLAO) on refusal of assistance that "Where the criminal matter to which a request by a place outside Hong Kong for assistance under this Ordinance relates is an investigation into an external offence relating to taxation, then the request shall be refused" (section 5(2) of MLAO), Hon James TO expressed the following concerns:
 - (a) whether the proposed amendments in the Bill to extend the power of the Inland Revenue Department (IRD) to collect and disclose a taxpayer's

information in response to request made by CDTA partners would be at variance with the above provision in MLAO;

(b) the impact, if any, of the proposed amendments to enable collection and disclosure of information under the EoI arrangement on the refusal of assistance provision in MLAO; and

(c) whether the refusal of assistance provision in MLAO would have any implication on the EoI arrangement under CDTAs.

The Administration was requested to examine the proposed amendments in the Bill, making reference to the relevant provision in MLAO, and provide its response to Mr TO's above concerns.

4. In relation to members' (including Hon James TO, Hon Paul CHAN, Hon Miriam LAU and Hon Starry LEE) concern that procedural safeguards in relation to IRD's handling of EoI requests would have significant implications on the operation of the business and professional sectors, the Administration was requested to consider members' request of providing for the safeguards in the Rules, instead of in the Departmental Interpretation and Practice Note which was not legally binding.

Council Business Division 1
Legislative Council Secretariat
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