

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

Follow-up to issues raised at the fifth meeting on 12 November 2009

1. In connection with members' concerns about details and the way of setting out safeguards to protect individual privacy and confidentiality of information in the exchange of information under comprehensive avoidance of double taxation agreements (CDTAs), the Administration was requested to provide the following information:
 - (a) sample of a standard CDTA to illustrate how the safeguard provisions would be incorporated;
 - (b) the full version of the draft Departmental Interpretation and Practice Note (DIPN) in addition to the extract of the part on "Administrative Guidelines" provided in Annex C to LC Paper No. CB(1)106/09-10(02); and
 - (c) a consolidated response to members' requests for setting out the safeguards in the primary or subsidiary legislation.

2. In relation to the concern of Hon James TO, Hon Paul CHAN and Hon Miriam LAU about the interpretation of the term "foreseeably relevant" which would be adopted to restrict the scope of information exchange under CDTAs, the Administration was requested to take the following actions:
 - (a) state clearly the principle that the test of relevancy should be based on the information provided by the requesting party in the request; and
 - (b) make reference to paragraph 4 of the Eighth Schedule to the Singapore legislation and refine the drafting of paragraph 3(c) of the Appendix to the draft extract of DIPN at Annex C to LC Paper No. CB(1)106/09-10(02), to set out in clear terms that the request must contain information on the relevance of the information to the purpose of the request.

3. Hon Miriam LAU, Hon James TO and Hon Paul CHAN shared the concern about the application of the provision of the Organization for Economic Cooperation and Development 2004 version of EoI Article which stipulated that a contracting party had no obligation to supply information which would disclose any trade, business and other secrets. They were concerned about the types of information which would fall under these categories and the possibility of judicial challenges to the Administration's interpretation in future exchange of information. In this connection, the Administration was requested to explain and provide definition, with examples for illustration, what information would be regarded as trade, business and other secrets and would not be supplied to the requesting party.

4. Hon Paul CHAN expressed concern about the time allowed for the person concerned to request a copy of the information to be disclosed and to amend the information upon receipt of the notification by the Commissioner of Inland Revenue. In this connection, the Administration was requested to examine the feasibility of giving prior notification to the person concerned at an earliest possible date upon receipt of the EoI request, so that more time would be allowed (instead of 14 days in the current proposal) for the person concerned to respond and take necessary actions in respect of the information to be disclosed.
5. In relation to Hon James TO's concern about the channels available to the persons concerned to raise objections against the collection or disclosure of information under the EoI arrangement, the Administration was requested to
 - (a) consider Mr TO's suggestion of empowering the Financial Secretary (FS) to review the question of law on the decision of the Inland Revenue Department on the collection or disclosure of information, in addition to the current review procedure for FS to review the question of fact only; and
 - (b) consider Hon Andrew LEUNG's suggestion of reporting to the Panel on Financial Affairs the operation of the proposed notification system, say 18 months after implementation.
6. Hon Paul CHAN was concerned that the prohibition of "whistle-blowing" under the anti-money laundering regime might affect the operation of the proposed notification system. In this connection, the Administration was requested to provide a written response to address his concern.
7. In relation to Hon James TO's concern, the legal adviser to the Bills Committee would examine whether it would provide the same level of protection to a taxpayer who seeks legal remedies, if the information of a disclosure request was set out in-
 - (a) the primary legislation like the Eighth Schedule to the Singapore legislation;
 - (b) the subsidiary legislation; or
 - (c) the DIPN.