

A BILL

To

Amend the Inland Revenue Ordinance to facilitate the collection and disclosure of information concerning tax of a territory outside Hong Kong under arrangements made with the government of that territory for the avoidance of double taxation, and to provide for related matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) (No. 3) Ordinance 2009.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

3. Double taxation arrangements

(1) Section 49(1) of the Inland Revenue Ordinance (Cap. 112) is amended, in the English text, by repealing “Government” and substituting “government”.

(2) Section 49 is amended by adding—

“(1A) If the Chief Executive in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, those arrangements shall have effect and, in particular—

- (a) shall have effect in relation to tax under this Ordinance despite anything in any enactment; and
- (b) for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of that territory, shall have effect in relation to any tax of that territory that is the subject of that provision.”.

4. Tax credits

Section 50(1) is amended, in the English text, by repealing “Government” and substituting “government”.

5. Returns and information to be furnished

(1) Section 51(4)(a) is amended, in the Chinese text, by repealing “規定該人” and substituting “規定該人或該等其他人士”.

- (2) Section 51 is amended by adding immediately after subsection (4)—
- “(4AA) Subsection (4) also applies for the purposes of obtaining full information in regard to any matter (referred to in this subsection as “the matter concerned”) that may affect any liability, responsibility or obligation of any person (referred to in this subsection as “the person concerned”) under the laws of a territory outside Hong Kong concerning any tax of that territory if—
- (a) arrangements having effect under section 49(1A) are made with the government of that territory; and
 - (b) that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,

and, for the purposes of the application of subsection (4) under this subsection, references to “any such matter” and “any such matter as aforesaid” in subsection (4)(a) and (b) are to be construed as references to the matter concerned, and references to “such person” in subsection (4)(a) and (b) are to be construed as references to the person concerned.”.

6. Power to issue search warrant

Section 51B is amended by adding immediately after subsection (1)—

“(1AA) Subsection (1) also applies to any tax (referred to in this subsection as “the tax concerned”) of a territory outside Hong Kong if—

- (a) arrangements having effect under section 49(1A) are made with the government of that territory; and
- (b) the tax concerned is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,

and, for the purposes of the application of subsection (1) under this subsection, a reference to a person's income or profits chargeable to tax in subsection (1)(a) is to be construed as a reference to a person's income or profits chargeable to the tax concerned, and a reference to a person's liability for tax in subsection (1)(i) and (iii) is to be construed as a reference to a person's liability for the tax concerned.”.

7. Penalties for failure to make returns, making incorrect returns, etc.

(1) Section 80(2)(a) is amended by repealing “or a partnership”.

(2) Section 80(2)(c) is amended by repealing “to tax or the liability of any other person or of a partnership” and substituting “(or the liability of any other person) to tax”.

(3) Section 80 is amended by adding—

“(2D) Any person who without reasonable excuse gives any incorrect information in relation to any matter or thing affecting the person's own liability (or the liability of any other person) to any tax of a territory outside Hong Kong commits an offence if—

- (a) arrangements having effect under section 49(1A) are made with the government of that territory; and
- (b) that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,

and is liable to a fine at level 3.”.

8. Additional tax in certain cases

(1) Section 82A(1)(a) is amended by repealing “or a partnership”.

(2) Section 82A(1)(c) is amended by repealing “to tax or the liability of any other person or of a partnership” and substituting “(or the liability of any other person) to tax”.

Related Amendment

Personal Data (Privacy) Ordinance

9. Crime, etc.

Section 58 of the Personal Data (Privacy) Ordinance (Cap. 486) is amended by adding—

“(1A) In subsection (1)(c), “tax” (稅項) includes any tax of a territory outside Hong Kong if—

- (a) arrangements having effect under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) are made with the government of that territory; and
- (b) that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory.”.

Explanatory Memorandum

The main purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (“the Ordinance”) to facilitate the collection and disclosure of information concerning tax of a territory outside Hong Kong under arrangements made with the government of that territory for the avoidance of double taxation.

2. Clause 1 provides for the short title of the Bill when enacted.

3. Clause 2 provides for the commencement of the Bill when enacted.

4. The Ordinance presently provides that arrangements made with the government of a territory outside Hong Kong for the avoidance of double taxation have effect in relation to tax chargeable under the Ordinance. Clause 3(2) adds section 49(1A) to the Ordinance to clarify that if those arrangements contain a provision that requires disclosure of information concerning tax of that territory, then, for the purposes of that provision, those arrangements also have effect in relation to any tax of that territory that is the subject of that provision. (In the following paragraphs, a reference to tax of a territory outside Hong Kong means a tax of that territory that is the subject of that provision.)

5. The Ordinance presently empowers specified officers of the Inland Revenue Department to require a person to provide information, produce documents or answer questions for the purposes of obtaining full information in regard to any matter that may affect any liability, responsibility or

obligation of any person under the Ordinance. Clause 5(2) adds section 51(4AA) to the Ordinance to enable those officers to exercise the same power for the purposes of obtaining full information in regard to any matter that may affect any liability, responsibility or obligation of any person under the laws of a territory outside Hong Kong concerning tax of that territory.

6. The Ordinance presently empowers a magistrate to issue search warrants in respect of a person if the magistrate is satisfied that there are reasonable grounds for suspecting that the person has made an incorrect return or supplied false information having the effect of understating the person's income or profits chargeable to tax under the Ordinance. Clause 6 adds section 51B(1AA) to the Ordinance to enable the magistrate to exercise the same power if the magistrate is satisfied that there are reasonable grounds for suspecting that the person has made an incorrect return or supplied false information having the effect of understating the person's income or profits chargeable to tax of a territory outside Hong Kong.

7. The Ordinance presently provides that a person who without reasonable excuse gives any incorrect information in relation to any matter or thing affecting the person's own liability (or the liability of any other person) to tax under the Ordinance commits an offence. Clause 7(3) adds section 80(2D) to the Ordinance to provide for a similar offence. Under the new section 80(2D), a person who without reasonable excuse gives any incorrect information in relation to any matter or thing affecting the person's own liability (or the liability of any other person) to tax of a territory outside Hong Kong also commits an offence.

8. Clause 9 amends the Personal Data (Privacy) Ordinance (Cap. 486) to provide that the word "tax" in section 58(1)(c) of that Ordinance includes tax of a territory outside Hong Kong.