

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance (Chapter 112)

INLAND REVENUE (AMENDMENT)(NO. 3) BILL 2009

INTRODUCTION

At the meeting of the Executive Council on 23 June 2009, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Amendment)(No. 3) Bill 2009 (the Bill), at Annex A, should be introduced into the Legislative Council (LegCo). The Bill amends the Inland Revenue Ordinance (Cap. 112) (IRO) to enable Hong Kong to adopt the latest international standard for exchange of information (EoI) in a comprehensive avoidance of double taxation agreement (CDTA).

JUSTIFICATIONS

Benefits of CDTA

2. Double taxation, which arises when the same income or profits is subject to tax in more than one jurisdiction, impedes trade, investment and the flow of talent among economies. To avoid this problem, jurisdictions sign bilateral avoidance of double taxation agreements to clarify each other's taxing rights. Besides, a CDTA will normally result in reduced withholding tax rates on passive incomes such as dividends, royalties and interest. As a business facilitation initiative, the Government has been seeking to sign CDTAs with our major trading partners¹ since 1998-99.

¹ So far, we have concluded CDTAs with Belgium (2003), Thailand (2005), Mainland China (2006), Luxembourg (2007) and Vietnam (2008) and are negotiating CDTAs with 11 economies.

EoI Article

3. A CDTA would normally include an EoI article that provides for the exchange of information necessary for the carrying out of the agreement between the two contracting parties. The EoI article currently adopted in our CDTAs is based on the 1995 version of the Organisation for Economic Cooperation and Development (OECD) Model Tax Convention (**Annex B**). According to this version, the Inland Revenue Department (IRD) may refuse to collect and supply the information requested by another contracting party if the Department does not need it for domestic tax purposes. Most economies have, however, adopted the **Annex C** OECD 2004 version of the EoI article (**Annex C**). This version categorically states that the lack of domestic tax interest does not constitute a valid reason for refusing to collect and supply the information requested by another contracting party.

Constraints under Hong Kong's tax law

4. Hong Kong currently cannot adopt the 2004 version of the EoI article because under the IRO, IRD can only collect taxpayers' information for the ascertainment of liability, responsibility and obligation under the domestic tax law. In other words, IRD cannot collect any tax information unless it is for domestic tax purposes. This legal constraint on IRD's information gathering power has been a major obstacle to our CDTA negotiations because most economies have adopted the 2004 version of the EoI article. This constraint has reduced the number of our potential CDTA partners, and restricted the progress of our negotiations.

Consultations on liberalisation of EoI

5. Despite our legal constraints, Hong Kong has been very supportive of efforts by the international community to promote transparency in tax administration. As early as in 2005, we openly endorsed OECD's Principles of Transparency and Effective Exchange of Information at the OECD Global Forum on Taxation held in Melbourne. On the domestic front, we consulted the business and professional sectors on the liberalisation of EoI under CDTAs in 2005 and 2008. While views were divided in the 2005 consultation exercise, most of the stakeholders in some 50 business chambers, professional bodies and advisory committees we consulted between July and October 2008 indicated support for liberalisation so as to expand Hong Kong's CDTA network. In view of this consultation outcome, the Financial Secretary announced in the 2009-10 Budget that the Government would put forward legislative proposals by the middle of this year to align our EoI arrangements with the international standard.

Recent development

6. Our inability to adopt the 2004 EoI version has also caused negative perceptions on the transparency of Hong Kong's tax regime. At the London Summit held on 2 April 2009, G20 Leaders called on countries to adopt the international standard for exchange of information. After the Summit, the OECD published three lists identifying respectively tax jurisdictions which have substantially implemented the OECD standard, tax jurisdictions which have committed to the OECD standard but have not yet substantially implemented it, and tax jurisdictions which have not committed to the standard². The OECD did not put Hong Kong on any list, but pointed out our commitment to implement the OECD standard in a footnote to the lists. G20 Leaders also agreed to develop a toolbox of counter measures by the end of 2009 and review countries' implementation of the OECD standard at the next G20 Finance Ministers and Central Bank Governors Meeting to be held in November 2009.

7. We have explained to overseas authorities that Hong Kong maintains a simple and highly transparent tax regime and our relatively low tax rate is not because of any wish to perform as tax haven but a result of our prudent fiscal policy. Recently, the Director of the OECD's Centre for Tax Policy and Administration published an article to commend Hong Kong's effort in complying with the international standards of transparency and EoI. He pointed out in his article that under the OECD criteria, Hong Kong was not considered a tax haven.

8. While the international community has generally accepted that Hong Kong should not be compared to those jurisdictions which seek to attract tax evading foreign capitals through zero or nominal tax rates, complicated and opaque tax rules, as well as bank secrecy laws, any negative perceptions on the transparency of our tax regime would harm Hong Kong's reputation as an international financial centre, and could lead to sanctions imposed by other economies.

Right to privacy and confidentiality of information

9. In adopting the OECD 2004 version of EoI article in our CDTAs, we will include the most prudent safeguards acceptable under the version to protect an individual's right to privacy and confidentiality of the information exchanged. The safeguards will be incorporated in individual CDTAs (which will be implemented as subsidiary legislation subject to LegCo's negative vetting) or in documents of record between the two contracting parties. Specifically, the

² Subsequently, all jurisdictions in this list have been moved to the second list after they have announced commitment to OECD's standard.

restrictions or requirements imposed on the scope of exchange and the usage of the information obtained include -

restrictions in terms of scope

- (a) information exchange will only be conducted on a case-specific basis in response to legitimate requests. There will not be any automatic or wholesale exchange of information;
- (b) only information on taxes covered by the CDTA, mainly income taxes (including profits tax, salaries tax and property tax) will be exchanged;
- (c) the relevant authority of the requesting party must satisfy IRD that the information it requests is “necessary” or “foreseeably relevant” for the carrying out of the CDTA or the administration or enforcement of its local tax laws. This is a safeguard against “fishing expeditions”;

restrictions in terms of usage

- (d) the requesting party must treat the information provided as secret information under its domestic laws;
- (e) the requesting party must not share the information provided with any third party (including a third jurisdiction or another government department of its own jurisdiction), regardless of domestic information disclosure laws such as freedom of information or other legislation that allows greater access to governmental documents;
- (f) the requesting party must only use the information provided for purposes specified in the request; and

restrictions imposed by domestic laws of the requesting party

- (g) the requested party is not obliged to supply information that the requesting party itself could not obtain under its own laws.

10. Apart from adopting the safeguards provided by individual CDTAs, we will also put in place domestic safeguards through subsidiary legislation. Under section 49(6) of IRO, the Chief Executive in Council may make rules for carrying

out the provisions of CDTAs. Subsequent to the introduction of this Bill, we will proceed to prepare a set of rules under section 49(6) of IRO to set out the following domestic safeguards –

- (a) The decision on whether to accede to an EoI request has to be made by a directorate officer of IRD, who has to be satisfied that the request is made in accordance with the law and the CDTA concerned;
- (b) Save in exceptional circumstances where notification would prevent or unduly delay the effective exchange of information or where prior notification would otherwise undermine the chance of success of the investigation conducted by the requesting party, IRD has to notify and provide the person the information that the Department is going to transmit to the requesting party; and
- (c) The person can verify the accuracy of the information with IRD. If IRD refuses to accept the proposed correction to the information, the person may seek a review by a higher authority (which we propose to be the Financial Secretary), whose decision on the matter shall be final.

11. Furthermore, IRD will issue a Departmental Interpretation and Practice Note setting out the procedural safeguards IRD must adopt in processing EoI requests, including the requirements that the requesting party should -

- (a) be the competent authority of the requesting state;
- (b) make the EoI request in writing only;
- (c) confirm that it has pursued all means available in its own territory to obtain the information except those that would give rise to disproportionate difficulties;
- (d) confirm that the request is in conformity with the laws and administrative practices of the requesting party and that the requesting party could obtain the information if it were within its jurisdiction;
- (e) state grounds for believing that the information requested is held in Hong Kong or is in the possession or control of a person in Hong Kong; and

- (f) provide other specific background information of the case concerned (e.g. the tax purpose for which the information is sought, the reasons for the request, why the information requested is needed, the taxes concerned, the tax periods under examination and the tax periods for which information is requested).

12. Since tax authorities usually have extensive investigation, information collection and enforcement powers under their domestic laws, they do not rely upon CDTAs as a major tool for seeking tax information. The presence of an EoI article with treaty partners would encourage compliance and deter taxpayers from withholding information from their tax authorities. According to the OECD, there are few cases of abuse of the EoI provisions because of the stringent safeguards and such provisions are seldom invoked. For example, a developed economy in North East Asia with a treaty network of 50 countries receives an average of 100 EoI requests each year, whereas Hong Kong has so far received 21 requests since the inception of the CDTA programme.

OTHER OPTIONS

13. We must amend the existing legislation in order to bring this proposal into effect. There are no other options.

THE BILL

14. We propose to amend the relevant provisions of IRO to enable IRD to collect and disclose a taxpayer's information in response to requests made by our CDTA partners for their own tax purposes. The main provisions of the Bill are as follows -

- (a) **Clause 3** clarifies that if a CDTA made with a foreign territory contains a provision that requires disclosure of information concerning tax of that territory (i.e. an EoI article), the CDTA shall have effect in relation to any tax of that territory that is the subject of that provision.
- (b) **Clause 5** enables IRD to exercise the same power under section 51(4) of IRO to collect information concerning tax of a foreign territory for the purpose of EoI under a CDTA.
- (c) **Clause 6** enables a magistrate to exercise the same power under section 51B of IRO to issue search warrants for information concerning tax of a foreign territory for the purpose of EoI under a CDTA.

- (d) **Clause 7** provides that a person commits an offence if he, without reasonable excuse, gives any incorrect information in relation to any matter that affects his or another person's liability to a foreign tax covered by an EoI article under a CDTA.
- (e) **Clause 9** contains a related amendment to the Personal Data (Privacy) Ordinance (Cap. 486) to provide that the word "tax" in section 58(1)(c) of that Ordinance includes a foreign tax covered by an EoI article under a CDTA.

D The existing provisions which we are seeking to amend are at **Annex D**.

LEGISLATIVE TIMETABLE

15. The legislative timetable will be as follows -

| | |
|--|----------------|
| Publication in the Gazette | 26 June 2009 |
| First Reading and commencement of Second Reading debate | 8 July 2009 |
| Resumption of Second Reading Debate, committee stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSAL

E 16. The financial, economic and civil service implications of the proposal are set out in **Annex E**. The Bill, which will be read together with a CDTA once implemented as subsidiary legislation, and the rules to be made by the Chief Executive in Council for the carrying out of the provisions of CDTAs, will provide safeguards necessary for the protection of the right to privacy, in compliance with the human rights provisions of the Basic Law. The Bill is in conformity with those provisions of the Basic Law which do not carry human rights implications. The proposal will not affect the binding effect of the existing provisions of the IRO and its subsidiary legislation. The proposal has no productivity, sustainability or environmental implications.

PUBLIC CONSULTATION

17. We consulted the business and professional sectors on the liberalisation of EoI under CDTAs in 2005 and 2008. While views were divided in the 2005 consultation exercise, most of the stakeholders we consulted in 2008 indicated support for liberalisation so as to expand Hong Kong's CDTA network. Some organisations have raised concerns over privacy and confidentiality.

18. We consulted the LegCo Panel on Financial Affairs on 4 May 2009. Members support the proposal in general but raised questions over appropriate safeguards.

PUBLICITY

19. We will issue a press release on 26 June 2009. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

20. In case of enquiries about this Brief, please contact Mr Kenneth Cheng, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2370.

Financial Services and the Treasury Bureau
24 June 2009

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance (Chapter 112)

INLAND REVENUE (AMENDMENT)(NO. 3) BILL 2009

ANNEXES

- Annex A** Inland Revenue (Amendment) (No.3) Bill 2009
- Annex B** 1995 version of the Organisation for Economic Cooperation and Development (OECD) Model Tax Convention – Exchange of Information (EoI) article
- Annex C** 2004 version of the OECD Model Tax Convention – EoI article
- Annex D** Relevant Provisions to be amended
- Annex E** Implications of the Proposal

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".

(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 a specified officer 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.

1995 OECD MODEL

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

2004 OECD MODEL
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Annex D

| | | | | |
|----------|-----|--------------------------|----------------|--------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
|----------|-----|--------------------------|----------------|--------------|

| | | | | |
|----------|----|------------------------------|------------|------------|
| Section: | 49 | Double taxation arrangements | 32 of 1998 | 17/04/1998 |
|----------|----|------------------------------|------------|------------|

Remarks:

Adaptation amendments retroactively made - see 12 of 1999 s. 3

(1) 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, the arrangements shall have effect in relation to tax under this Ordinance notwithstanding anything in any enactment. (Amended 7 of 1986 s. 12; 12 of 1999 s. 3)

(2) (Repealed 49 of 1956 s. 36)

(3) (Repealed 32 of 1998 s. 29)

(4) Any order made under this section may be revoked by a subsequent order.

(5) Where any arrangements have effect by virtue of this section, the obligation as to secrecy imposed by section 4 shall not prevent the disclosure to any authorized officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.

(6) The Chief Executive in Council may make rules for carrying out the provisions of any arrangements having effect under this section. (Amended 12 of 1999 s. 3)

(Amended 49 of 1956 s. 36)

| | | | | |
|----------|-----|--------------------------|----------------|--------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
|----------|-----|--------------------------|----------------|--------------|

| | | | | |
|----------|----|-------------|--|------------|
| Section: | 50 | Tax credits | | 30/06/1997 |
|----------|----|-------------|--|------------|

(1) The provisions of this section shall have effect where, under arrangements having effect under section 49, tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Hong Kong; and in this section the expression "foreign tax" (外地稅款) means any tax payable in that territory which under the arrangements is to be so allowed and the expression "tax" (稅款) means tax chargeable under this Ordinance. (Amended 7 of 1986 s. 12)

(2) The amount of the tax chargeable in respect of the income shall be reduced by the amount of the credit:

Provided that credit shall not be allowed against tax for any year of assessment unless the person entitled to the income is resident in Hong Kong for that year. (Amended 7 of 1986 s. 12)

(3) The credit shall not exceed the amount which would be produced by computing the amount of the income in accordance with the provisions of this Ordinance and then charging it to tax at a rate ascertained by dividing the tax chargeable (before allowance of credit under any arrangements having effect under section 49) on the total income of the person entitled to the income by the amount of his total income.

(4) Without prejudice to the provisions of subsection (3), the total credit to be allowed to a person for any year of assessment for foreign tax under all arrangements having effect under section 49 shall not exceed the total tax payable by him for that year of assessment. (Amended 17 of 1989 s. 13)

(5) In computing the amount of the income-

- (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);
- (b) where the tax chargeable depends on the amount received in Hong Kong, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the income; (Amended 7 of 1986 s. 12)
- (c) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit,

but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

(6) Subsection (5)(a) and (b) (but not the remainder thereof) shall apply to the computation of total income for the purposes of determining the rate mentioned in subsection (3), and shall apply thereto in relation to all income in the case of which credit falls to be given for foreign tax under arrangements for the time being in force under section 49.

(7) Where-

- (a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and
- (b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls, directly or indirectly not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the income of any person for any year of assessment if he elects that credits shall not be allowed in the case of his income for that year.

(9) Any claim for an allowance by way of credit shall be made not later than 2 years after the end of the year of assessment, and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.

(10) Where the amount of a credit given under the arrangement is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Hong Kong or elsewhere, nothing in this Ordinance limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than 2 years from the time when all such assessments, adjustments and other determinations have been made, whether in Hong Kong or elsewhere, as are material in determining whether any and if so what credit falls to be given. (Amended 7 of 1986 s. 12)

| | | | | |
|----------|-----|--------------------------|----------------|--------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
|----------|-----|--------------------------|----------------|--------------|

| | | | | |
|----------|----|---|-----------------|------------|
| Section: | 51 | Returns and information to be furnished | L.N. 69 of 2003 | 17/04/2003 |
|----------|----|---|-----------------|------------|

Remarks:

Due to technical constraints, sections 51A and 51AA of this Ordinance are placed after section 51

in the BLIS system. The correct sequence of the sections should be "51, 51AA, 51A".

PART IX

RETURNS, ETC.

(1) An assessor may give notice in writing to any person requiring him within a reasonable time stated in such notice to furnish any return which may be specified by the Board of Inland Revenue for-

- (a) property tax, salaries tax or profits tax; or
- (b) property tax, salaries tax and profits tax,

under Parts II, III, IV, XA, XB, and XC. (Replaced 52 of 1993 s. 5. Amended 5 of 2003 s. 7)

(2) Every person chargeable to tax for any year of assessment shall inform the Commissioner in writing that he is so chargeable not later than 4 months after the end of the basis period for that year of assessment unless he has already been required to furnish a return under the provisions of subsection (1). (Replaced 49 of 1956 s. 37)

(2A) An assessor shall give notice to any individual who has elected to be personally assessed under Part VII requiring that individual within a reasonable time stated in the notice to furnish a return in the specified form of his total income assessable under this Ordinance. (Added 43 of 1989 s. 16)

(2B) Where a notice is required to be given under subsection (2A) to an individual who is married and not living apart from his or her spouse-

- (a) such notice shall be given to both that individual and his or her spouse; and
- (b) they shall be required to furnish a return of their joint total income assessable under this Ordinance. (Added 43 of 1989 s. 16)

(2C) For the purposes of this section, compliance by a person, and his or her spouse when they have jointly elected to be personally assessed, with the requirements of a notice issued under subsection (1) shall be deemed to be compliance with the requirements of a notice issued under subsection (2A) or (2B). (Added 52 of 1993 s. 5)

(3) An assessor may give notice in writing to any person when and as often as he thinks necessary requiring him within a reasonable time stated in such notice to furnish fuller or further returns respecting any matter of which a return is required or prescribed by this Ordinance.

(4) For the purposes of obtaining full information in regard to any matter which may affect any liability, responsibility or obligation of any person under this Ordinance-

- (a) an assessor or an inspector may give notice in writing to such person, or to any other person whom he considers may be in possession of information or documents in regard to any such matter as aforesaid, requiring him within such reasonable time as is stated in the notice to furnish all information in his possession respecting any such matter, and to produce for examination any deeds, plans, instruments, books, accounts, trade lists, stock lists, vouchers, bank statements or other documents which the assessor or inspector giving the notice considers are or may be relevant for the purpose aforesaid:

Provided that in the case of a notice under this paragraph requiring the production of any account kept by a solicitor and relating to the affairs of any client or clients of his, production of a copy of all relevant entries therein respecting any matter upon which information is sought shall be a sufficient compliance with the aforesaid requirement of the notice if the copy is certified by the solicitor as being a correct copy of all relevant entries in such account respecting the matter aforesaid;

- (b) an assistant commissioner may give notice in writing to such person, or to such other person, requiring him, at a time and place to be named by the assistant commissioner, to attend and be examined, and upon such examination to answer truthfully all questions put to him, respecting any such matter as aforesaid.

(Replaced 35 of 1965 s. 26. Amended 40 of 1972 s. 4)

(4A) For the avoidance of doubt it is hereby declared that the powers conferred by subsection (4) include the power to require information from, and to require the attendance for the purpose of being examined of,-

- (a) any person, or any employee of any person, who was a party to any particular land or property transaction;
- (b) any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction;
- (c) any person who either paid or received, directly or indirectly, any consideration, brokerage, commission or fee in respect of or in connection with any particular land or property transaction; and
- (d) any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, respecting any particular land or property transaction,

as to any of the following matters, that is to say-

- (i) the full names (including aliases) and addresses of any of the persons referred to in paragraphs (a) to (d) and any other information in his possession which may be helpful in identifying or locating any such persons;
- (ii) any consideration, brokerage, commission or fee paid or received in respect of or in connection with any such land or property transaction; and
- (iii) the terms and conditions of any such land or property transaction;

and the existence in respect of any communication, whether oral or written, of privilege from disclosure shall not constitute any excuse for the non-disclosure of information as to any of the matters specified in paragraphs (i) to (iii) where disclosure thereof is required from any of the persons referred to in paragraphs (a) to (d), but except as aforesaid nothing in subsection (4) shall require disclosure by counsel or solicitor of any privileged information or communication given or made to him in that capacity. (Added 35 of 1965 s. 26)

(4B)(a) Any person who without reasonable excuse, the burden of proof whereof shall lie upon him, fails to comply with the requirements of a notice given to him under subsection (4)(a) or fails to attend in answer to a notice issued under subsection (4)(b) or having attended fails to answer any questions put to him, being questions which under that paragraph may be put to him, shall be liable to a penalty at level 3 recoverable under section 75 as a civil debt due to the Government: (Amended 11 of 1985 s. 3; L.N 338 of 1995; 19 of 1996 s. 15)

Provided that-

- (i) the Commissioner may compound any such penalty and may before judgment in proceedings therefor stay or compound such proceedings, or may refuse to accept payment of such penalty or any part thereof except under a judgment of the court in proceedings for the recovery thereof;
 - (ii) the court before which any proceedings for such penalty are brought may, if it thinks fit, give judgment for a less amount.
- (b) In addition to giving judgment for the penalty or any less amount as aforesaid, the court may order the person against whom the proceedings were brought to do, within a time specified in the order, the act which he has failed to do. (Added 35 of 1965 s. 26)

(5) A return, statement, or form purporting to be furnished under this Ordinance by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement, or form shall be deemed to be cognizant of all matters therein.

(6) Any person who ceases to carry on any trade, profession or business or who ceases to own any source of income or to be the owner of any land or buildings or land and buildings in respect of which tax is chargeable under the provisions of Part II, III, IV or VII shall so inform the Commissioner in writing within 1 month of such cessation. (Replaced 49 of 1956 s. 37.

Amended 8 of 1983 s. 14)

(7) Any person chargeable to tax under Part III, IV or VII who is about to leave Hong Kong for any period exceeding 1 month shall give notice in writing to the Commissioner of his expected date of departure, and if he intends to return to Hong Kong the approximate date of his return. Such notice shall be given not later than 1 month before the expected date of departure:

Provided that-

- (a) the Commissioner may accept such shorter notice as he may deem reasonable; and
- (b) this subsection shall not apply in the case of an individual who is required in the course of his employment, business or profession to leave Hong Kong at frequent intervals. (Added 49 of 1956 s. 37. Amended 7 of 1986 s. 12)

(8) Any person chargeable to tax under Part II, III, IV or VII who changes his address shall within 1 month inform the Commissioner in writing of the particulars of the change. (Added 2 of 1971 s. 33. Amended 8 of 1983 s. 14)

(9) (Repealed 43 of 1975 s. 2)

| | | | | |
|----------|-----|-------------------------------|----------------|--------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
| Section: | 51B | Power to issue search warrant | | 30/06/1997 |

(1) If the Commissioner, or an officer of the Inland Revenue Department not below the rank of chief assessor authorized in writing by the Commissioner for the purpose (in this section referred to as the authorized officer), satisfies a magistrate, by statement made on oath,-

- (a) that there are reasonable grounds for suspecting that a person has made an incorrect return or supplied false information having the effect of understating his income or profits chargeable to tax and has done so without reasonable excuse and not through an innocent oversight or omission; or
- (b) that a person has failed to comply with an order of a court made under section 80(1) or (2A) directing him to comply with the requirements of a notice given to him under section 51(1) or (3), (Amended 56 of 1993 s. 22)

the magistrate may by warrant authorize the Commissioner or authorized officer to exercise the following powers-

- (i) without previous notice at any reasonable time during the day, to enter and have free access to any land, buildings, or place where he suspects there to be any books, records, accounts or documents of that person, or of any other person, which may afford evidence material in assessing the liability of the first-mentioned person for tax, and there to search for and examine any books, records, accounts or documents; (Amended 43 of 1975 s. 4)
- (ii) in carrying out any such search, to open or cause to be removed and opened, any article in which he suspects any books, records, accounts or documents to be contained;
- (iii) to take possession of any books, records, accounts or documents of that person or that person's spouse, and to make copies of such parts of any books, records, accounts or documents of any other person, as may afford evidence material in assessing the liability of the first-mentioned person for tax; (Replaced 43 of 1975 s. 4. Amended 71 of 1983 s. 27)
- (iv) to retain any such books, records, accounts or documents for as long as they may be reasonably required for any assessment to be made or for any proceedings under this Ordinance to be completed:

Provided that if the Commissioner or authorized officer shall retain any book, record, account or document for a period of more than 14 days, the person

aggrieved may apply in writing to the Board of Review for an order directing the return thereof and the Board of Review, after hearing the applicant or his authorized representative and the Commissioner or his representative, may so order, either unconditionally or subject to any condition which the Board may consider it proper to impose. (Amended 7 of 1975 s. 34)

(1A) Any officer of the Inland Revenue Department under the direction of the Commissioner or an authorized officer may assist the Commissioner or an authorized officer in the execution of a warrant issued under subsection (1) and may exercise any of the powers referred to in subsection (1)(i), (ii) and (iii). (Added 40 of 1972 s. 6)

(2) When exercising any power under subsection (1), the Commissioner or authorized officer shall produce on demand the warrant issued to him under that subsection.

(3) The person to whose affairs any books, records, accounts or documents taken possession of under subsection (1) relate shall be entitled to examine and make extracts from them at such times and under such conditions as the Commissioner may determine.

(4) Any person who obstructs or hinders the Commissioner or an authorized officer acting in the discharge of his duty under subsection (1) or an officer assisting him under subsection (1A) shall be guilty of an offence: Penalty a fine at level 3 and imprisonment for 6 months. (Amended 56 of 1993 s. 22; L.N. 338 of 1995)

(Added 26 of 1969 s. 28. Amended 40 of 1972 s. 6)

| | | | | |
|----------|-----|--------------------------|----------------|--------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
|----------|-----|--------------------------|----------------|--------------|

| | | | | |
|----------|----|---|--|------------|
| Section: | 80 | Penalties for failure to make returns, making incorrect returns, etc. | | 30/06/1997 |
|----------|----|---|--|------------|

PART XIV

PENALTIES AND OFFENCES

- (1) Any person who without reasonable excuse-
- (a) fails to comply with the requirements of a notice given to him under section 51(3), 51A(1), 52(1) or (2), or 64(2); or
 - (b) fails to attend in answer to a summons issued under section 64(2) or 68(6), or having attended fails to answer any questions put to him, being questions which, under section 64(2) or 68(6), as the case may be, may be put to him; or
 - (c) fails to comply with the requirements of section 5(2)(c), 51(6), (7) or (8), 51D(1), 52(4), (5), (6) or (7), or 76(3), (Amended 48 of 1995 s. 11)

shall be guilty of an offence: Penalty a fine at level 3, and the court may order the person convicted within a time specified in the order to do the act which he has failed to do. (Replaced 35 of 1965 s. 40. Amended 26 of 1969 s. 37; 2 of 1971 s. 46; 43 of 1975 s. 6; 8 of 1983 s. 19; L.N. 411 of 1984; 17 of 1989 s. 18; 56 of 1993 s. 31; L.N. 338 of 1995)

(1A) Any person who without reasonable excuse fails to comply with the requirements of section 51C shall be guilty of any offence: Penalty a fine at level 6 and the court may order the person convicted within a time specified in the order to do the act which he has failed to do. (Added 48 of 1995 s. 11)

(1AA) Without prejudice to the generality of the term "reasonable excuse" as it is used in subsection (1) in relation to section 52(4), (5), (6) or (7), where a person has failed to comply with the requirements of that section in the case of an individual in respect of whom that person is treated as the employer by virtue of the operation of section 9A, then it shall constitute a defence in any proceedings under this section against that person in respect of such failure if he shows

that-

- (a) he did not comply with those requirements because he relied upon a statement in writing-
 - (i) by that individual; and
 - (ii) in the form specified under subsection (1AC); and
- (b) it was reasonable for him to rely upon that statement. (Added 54 of 1995 s. 3)

(1AB) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (1AA)(a) which in a material respect is false or misleading shall be guilty of an offence: Penalty a fine at level 3. (Added 54 of 1995 s. 3)

(1AC) The Commissioner may, by notice in the Gazette, specify a form for the purposes of subsection (1AA)(a). (Added 54 of 1995 s. 3)

(1AD) For the avoidance of doubt, it is hereby declared that a form specified under subsection (1AC) is not subsidiary legislation. (Added 54 of 1995 s. 3)

- (2) Any person who without reasonable excuse-
 - (a) makes an incorrect return by omitting or understating anything in respect of which he is required by this Ordinance to make a return, either on his behalf or on behalf of another person or a partnership;
 - (b) makes an incorrect statement in connection with a claim for any deduction or allowance under this Ordinance;
 - (c) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership;
 - (d) fails to comply with the requirements of a notice given to him under section 51(1) or (2A); or
 - (e) fails to comply with section 51(2),

shall be guilty of an offence: Penalty a fine at level 3 and a further fine of treble the amount of tax which has been undercharged in consequence of such incorrect return, statement or information, or would have been so undercharged if the return, statement or information had been accepted as correct, or which has been undercharged in consequence of the failure to comply with a notice under section 51(1) or (2A) or a failure to comply with section 51(2), or which would have been undercharged if such failure had not been detected. (Replaced 43 of 1975 s. 6. Amended L.N. 411 of 1984; 43 of 1989 s. 27; L.N. 338 of 1995)

(2A) In the case of an offence under subsection (2)(d), the court may order the person convicted to comply with the requirements of the notice given to him under section 51(1) or (2A) within such time as may be specified in the order. (Added 43 of 1975 s. 6. Amended 43 of 1989 s. 27)

(2B) Any person who does not comply with an order of the court under subsection (1) or (2A) or under section 51(4B)(b) shall be guilty of an offence: Penalty a fine at level 4. (Added 43 of 1975 s. 6. Amended L.N. 338 of 1995)

(2C) Any person who does not comply with an order of the court under subsection (1A) shall be guilty of an offence: Penalty a fine at level 6. (Added 48 of 1995 s. 11)

(3) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made in the year of assessment in respect of or during which the offence was committed or within 6 years after the expiration thereof. (Amended 49 of 1956 s. 61)

(4) Any person who aids, abets or incites another person to commit an offence under this section shall be deemed to have committed the same offence and to be liable to the same penalty. (Added 49 of 1956 s. 61)

(5) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder. (Amended 49 of 1956 s. 61)

| | | | | |
|----------|-----|--------------------------|-------------------|-----------------|
| Chapter: | 112 | INLAND REVENUE ORDINANCE | Gazette Number | Version Date |
|----------|-----|--------------------------|-------------------|-----------------|

| | | | |
|----------|-----|---------------------------------|------------|
| Section: | 82A | Additional tax in certain cases | 30/06/1997 |
|----------|-----|---------------------------------|------------|

- (1) Any person who without reasonable excuse-
- (a) makes an incorrect return by omitting or understating anything in respect of which he is required by this Ordinance to make a return, either on his behalf or on behalf of another person or a partnership; or
 - (b) makes an incorrect statement in connection with a claim for any deduction or allowance under this Ordinance; or
 - (c) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership; or
 - (d) fails to comply with the requirements of a notice given to him under section 51(1) or (2A); or
 - (e) fails to comply with section 51(2),

shall, if no prosecution under section 80(2) or 82(1) has been instituted in respect of the same facts, be liable to be assessed under this section to additional tax of an amount not exceeding treble the amount of tax which-

- (i) has been undercharged in consequence of such incorrect return, statement or information, or would have been so undercharged if the return, statement or information had been accepted as correct; or
- (ii) has been undercharged in consequence of the failure to comply with a notice under section 51(1) or (2A) or a failure to comply with section 51(2), or which would have been undercharged if such failure had not been detected. (Amended 43 of 1975 s. 8; 43 of 1989 s. 28)

(2) Additional tax shall be payable in addition to any amount of tax payable under an assessment, or an additional assessment under section 60.

(3) An assessment of additional tax may be made only by the Commissioner personally or a deputy commissioner personally. (Amended 48 of 1995 s. 12)

(4) Before making an assessment of additional tax the Commissioner or a deputy commissioner, as the case may be, shall- (Amended 48 of 1995 s. 12)

- (a) cause notice to be given to the person he proposes so to assess which shall-
 - (i) inform such person of the alleged incorrect return, incorrect statement or incorrect information or alleged failure to comply with the requirements of the notice given to him under section 51(1) or (2A) or the alleged failure to comply with section 51(2) in respect of which the Commissioner or a deputy commissioner intends to assess additional tax under subsection (1); (Replaced 43 of 1975 s. 8. Amended 43 of 1989 s. 28; 48 of 1995 s. 12)
 - (ii) include a statement that such person has the right to submit written representations to him with regard to the proposed assessment on him of additional tax;
 - (iii) specify the date, which shall not be earlier than 21 days from the date of service of the notice, by which representations which such person may wish to make under subparagraph (ii) must be received;
- (b) consider and take into account any representations which he may receive under paragraph (a) from or on behalf of a person proposed to be assessed for additional tax.

(4A) Notwithstanding subsection (4), if the Commissioner or a deputy commissioner is of the opinion that the person he proposes to assess to additional tax under subsection (1) is about to leave Hong Kong, he need not serve a notice under subsection (4)(a), but may assess that person to additional tax under subsection (1). (Added 43 of 1975 s. 8. Amended 7 of 1986 s. 12; 48 of 1995 s. 12)

(5) Notice of intention to assess additional tax and notice of an assessment to additional tax shall be given in the same manner as is provided in section 58(2) in respect of a notice of assessment under section 62.

(6) Where a person who is liable to be assessed to additional tax has died, an assessment to additional tax may be made on his executor, and the additional tax shall be recovered as a debt due from and payable out of the deceased person's estate.

(7) A person who has been assessed to additional tax under subsection (1) shall not be liable to be charged on the same facts with an offence under section 80(2) or 82(1).

(Added 26 of 1969 s. 38)

| | | | | |
|----------|-----|--------------------------------------|-------------------|-----------------|
| Chapter: | 486 | PERSONAL DATA (PRIVACY) ORDINANCE | Gazette Number | Version Date |
|----------|-----|--------------------------------------|-------------------|-----------------|

| | | | | |
|----------|----|-------------|-----------------|------------|
| Section: | 58 | Crime, etc. | L.N. 70 of 1999 | 03/08/1999 |
|----------|----|-------------|-----------------|------------|

- (1) Personal data held for the purposes of-
- (a) the prevention or detection of crime;
 - (b) the apprehension, prosecution or detention of offenders;
 - (c) the assessment or collection of any tax or duty;
 - (d) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
 - (e) the prevention or preclusion of significant financial loss arising from-
 - (i) any imprudent business practices or activities of persons; or
 - (ii) unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
 - (f) ascertaining whether the character or activities of the data subject are likely to have a significantly adverse impact on any thing-
 - (i) to which the discharge of statutory functions by the data user relates; or
 - (ii) which relates to the discharge of functions to which this paragraph applies by virtue of subsection (3); or
 - (g) discharging functions to which this paragraph applies by virtue of subsection (3),
- are exempt from the provisions of data protection principle 6 and section 18(1)(b) where the application of those provisions to the data would be likely to-
- (i) prejudice any of the matters referred to in this subsection; or
 - (ii) directly or indirectly identify the person who is the source of the data.
- (2) Personal data are exempt from the provisions of data protection principle 3 in any case in which-
- (a) the use of the data is for any of the purposes referred to in subsection (1) (and whether or not the data are held for any of those purposes); and
 - (b) the application of those provisions in relation to such use would be likely to prejudice any of the matters referred to in that subsection,
- and in any proceedings against any person for a contravention of any of those provisions it shall be a defence to show that he had reasonable grounds for believing that failure to so use the data would have been likely to prejudice any of those matters.
- (3) Paragraphs (f)(ii) and (g) of subsection (1) apply to any functions of a financial regulator-
- (a) for protecting members of the public against financial loss arising from-
 - (i) dishonesty, incompetence, malpractice or seriously improper conduct by persons-
 - (A) concerned in the provision of banking, insurance, investment or other financial services;
 - (B) concerned in the management of companies;
 - (BA) concerned in the administration of provident fund schemes registered under the Mandatory Provident Fund Schemes Ordinance (Cap 485);

(Added 4 of 1998 s. 14)

- (C) concerned in the management of occupational retirement schemes within the meaning of the Occupational Retirement Schemes Ordinance (Cap 426); or
- (D) who are shareholders in companies; or
- (ii) the conduct of discharged or undischarged bankrupts;
- (b) for maintaining or promoting the general stability or effective working of any of the systems which provide any of the services referred to in paragraph (a)(i)(A); or
- (c) specified for the purposes of this subsection in a notice under subsection (4).
- (4) For the purposes of subsection (3), the Chief Executive may, by notice in the Gazette, specify a function of a financial regulator. (Amended 34 of 1999 s. 3)
- (5) It is hereby declared that-
 - (a) subsection (3) shall not operate to prejudice the generality of the operation of paragraphs (a), (b), (c), (d) and (f)(i) of subsection (1) in relation to a financial regulator;
 - (b) a notice under subsection (4) is subsidiary legislation.

(Enacted 1995)

**Financial, Economic and Civil Service Implications
of the Proposal**

Financial Implications

The proposal will facilitate our work to conclude more CDTAs with our trading partners. While detailed terms of the CDTA are subject to negotiation, normally under a CDTA, the Government would have to forgo some revenue which is currently being collected in respect of profits of non-resident companies not attributable to a permanent establishment in Hong Kong, and may include shipping and air services profits of operators of our treaty partners. However, the overall financial implications would be insignificant.

Economic Implications

2. The proposal will facilitate our work to expand Hong Kong's CDTA network, which will in turn enhance business development between Hong Kong and our treaty partners and contribute positively to the economic development of Hong Kong. It will strengthen the economic interaction between Hong Kong and treaty partners by providing enhanced certainty and stability regarding the tax liabilities of investors. It will also reinforce the reputation of Hong Kong as an international financial centre.

Civil Service Implications

3. There will be additional work for the IRD in negotiating CDTAs and administering the implementation of the agreed CDTAs, including handling requests for EoI from treaty partners. We will review the manpower requirement after implementation of the proposal. Additional staffing resources, if required, will be sought through established procedures.