

立法會
Legislative Council

LC Paper No. CB(1)86/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/SS/10/09/2

**Subcommittee on the three Inland Revenue
(Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on
Income) Orders gazetted on 2 July 2010**

**First meeting on
Monday, 13 September 2010, at 2:44 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Alan LEONG Kah-kit, SC

Member absent : Hon Paul CHAN Mo-po, MH, JP

**Public officers
Attending** : Mr Clement LEUNG
Deputy Secretary for
Financial Services and the Treasury (Treasury)

Ms Shirley KWAN
Principal Assistant Secretary for Financial Services and the
Treasury (Treasury)

Mr Richard WONG
Deputy Commissioner of Inland Revenue

Miss Agnes CHEUNG
Senior Government Counsel
Department of Justice

Mr Peter SZE
Government Counsel
Department of Justice

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Mr Noel SUNG
Senior Council Secretary (1)4

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Election of Chairman and application for joining the Subcommittee

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr James TO was nominated by Ms Miriam LAU and the nomination was seconded by Mr Alan LEONG. Mr James TO accepted the nomination. There being no other nomination, Mr James TO was elected Chairman of the Subcommittee.

3. Mr James TO said that Mr CHAN Kam-lam had submitted a late application for joining the Subcommittee, which was tabled at the meeting. Members agreed that Mr CHAN's application should be accepted.

II Meeting with the Administration

(L.N. 89 of 2010

— Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order

L.N. 90 of 2010

— Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of the Netherlands) Order

- L.N. 91 of 2010 — Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Indonesia) Order
- FIN CR 44/10/2041/46 — Legislative Council Brief on Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order issued by the Financial Services and the Treasury Bureau
- FIN CR 2/10/2041/46 — Legislative Council Brief on Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of the Netherlands) Order issued by the Financial Services and the Treasury Bureau
- FIN CR 42/10/2041/46 — Legislative Council Brief on Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Indonesia) Order issued by the Financial Services and the Treasury Bureau
- LC Paper No. LS85/09-10 — Legal Service Division report on Subsidiary Legislation gazetted on 2 July 2010
- LC Paper No. CB(1)2802/09-10(01) — Letter from Assistant Legal Adviser to the Administration dated 6 July 2010 on Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order (L.N. 89 of 2010)

LC Paper No. CB(1)2802/09-10(02) — Administration's response to the letter from Assistant Legal Adviser to the Administration dated 6 July 2010 on Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order (L.N. 89 of 2010)

LC Paper No. CB(1)2801/09-10 — Background brief on the three Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) Orders gazetted on 2 July 2010 prepared by the Legislative Council Secretariat)

4. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).
5. The Administration was requested to take follow-up actions on the following and provide a written response to the Subcommittee:
 - (a) In connection with members' concern about the entities to be granted exemption from tax on "interest" in the Comprehensive Agreements for Avoidance of Double Taxation (CDTAs), the Administration was requested to provide information on the nature of Pusat Investasi Pemerintah (the Centre for Government Investment) and Lembaga Pembiayaan Ekspor Indonesia (the Indonesia Eximbank), mentioned in paragraph 3(b)(iii) and (iv) of Article 11 of the CDTA with the Republic of Indonesia, and the rationale for inclusion of the entities.
 - (b) The Administration was requested to consider using the same Chinese term "基金會" as the Chinese rendition of the word "foundation" in Article 11(3)(a)(iii) and Article 11(3)(b)(v) of the CDTA with Brunei Darussalam.

(Post-meeting note: The Administration's written response was circulated to members vide LC Paper No. CB(1)2890/09-10(01) on 22 September 2010.)

III Any other business

Way forward

6. The Chairman said that the Subcommittee had completed the scrutiny of the three Orders: i.e. L.N. 89 to 91 of 2010, and that no further meeting needed to be held, unless members decided otherwise upon receipt of the Administration's response to the issues requiring follow-up actions.

7. Members noted the following legislative time-table:
 - (a) the Subcommittee would report its deliberations to the House Committee on 8 October 2010.
 - (b) the scrutiny period of the subsidiary legislation would be up to 20 October 2010; and
 - (c) the deadline for giving notice of amendment to the subsidiary legislation would be 12 October 2010.
8. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 1
Legislative Council Secretariat
15 October 2010

**Proceedings of the Subcommittee on
the three Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion
with respect to Taxes on Income) Orders gazetted on 2 July 2010
First meeting on Monday, 13 September 2010, at 2:44 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
001358 – 001430	Mr James TO Ms Miriam LAU Mr Alan LEONG	Election of Chairman	
001431 – 001518	Chairman	Application for late membership	
001519 – 002015	Chairman Administration	Briefing by the Administration on the legislative proposals.	
002016 – 002428	Chairman Administration	(a) In response to the Chairman's enquiry, the Administration advised that the number of requests for exchange of information from the three contracting parties was expected to be few, although the actual number of requests would only be known after enactment of the orders. (b) In reply to the Chairman's enquiry, the Administration advised that based on the requirement of the Organization for Economic Cooperation and Development (OECD), Hong Kong should conclude 12 Comprehensive Agreements for Avoidance of Double Taxation (CDTAs) by 31 March 2010. Since the commencement of the Inland Revenue (Amendment) Ordinance 2010 in March 2010, the Government had signed / upgraded 10 CDTAs based on the 2004 version of the exchange of information (EoI) article of OECD. Negotiation on another five CDTAs had been completed and the agreements would be signed shortly.	
002429 – 003834	Mr CHAN Kam-lam Chairman Administration	(a) In response to Mr CHAN Kam-lam's enquiry why the term "resident" in the CDTAs included the governments of the contracting parties, the Administration advised that the governments of the contracting parties were regarded as "residents" of their respective	

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		<p>jurisdiction as the governments of the contracting parties might make investments in the other party's territories. Under the CDTAs, the interest accrued from the investments of the governments and the central banks of the contracting parties would be exempted from tax.</p> <p>(b) In response to the Chairman's enquiry about the entities to be granted exemption from tax on interest in the CDTAs (e.g. paragraph 3 of Article 11 in the CDTA with the Republic of Indonesia), the Administration advised that in general tax exemption would be granted on the interest accrued from the investments of government bodies of the contracting parties, and their central banks (or organizations performing the functions of a central bank, such as the Hong Kong Monetary Authority).</p> <p>(c) The Chairman asked whether organizations in which the government concerned had equity holdings would enjoy the tax exemption. The Administration responded that the policy intention was that in general the government bodies of the contracting parties, and their central banks (or organizations performing the functions of a central bank) would enjoy the tax exemption.</p>	
003835 – 004606	Chairman Administration	(a) In response to the Chairman's enquiry with reference to Article 2 of the CDTA with the Republic of Indonesia, the Administration advised that the three CDTAs covered primarily taxes on income, i.e. profits tax, salaries tax and property tax in the case of Hong Kong, and the agreements were made on a reciprocal and equitable basis.	
004607 – 005640	Ms Miriam LAU Chairman Administration	<p>(a) Ms Miriam LAU was of the view that the more CDTAs signed, the more Hong Kong's economy would benefit, especially for the logistics and transport sector.</p> <p>(b) The Chairman remarked that while CDTAs</p>	

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		<p>should be signed on an equitable basis, due consideration should be given to the overall benefits of the CDTAs to Hong Kong enterprises and residents. The Chairman opined that the Government should proactively solicit the views of local stakeholders regarding the terms of the CDTAs.</p> <p>(c) The Administration responded that relevant sectors had been made aware of the negotiations of the CDTAs which were publicized on the website of the Inland Revenue Department. The Administration would step up efforts in soliciting views from the relevant sectors.</p> <p>(d) In response to the Chairman's enquiry, the Administration advised that the impact on Hong Kong's loss of Government revenue under the CDTAs would be minimal since Hong Kong adopted the territorial basis of taxation whereby only income sourced from Hong Kong was subject to tax. The Administration added that precise information on the extent of benefits gained by Hong Kong enterprises and residents under the CDTAs was not available as the enterprises and residents would not provide such information to the Government unless they sought exemption against double taxation.</p>	
005641 – 010154	Mr CHAN Kam-lam Administration Chairman	<p>(a) Mr CHAN Kam-lam opined that it was not necessary to specify the business sectors that would be covered in a CDTA, as a standard CDTA applicable generally to the residents of the contracting parties would be more easily negotiated and more effectively enforced. Mr CHAN pointed out that the CDTAs were signed on an equitable and reciprocal basis.</p> <p>(b) The Administration responded that the OECD had provided a model CDTA and negotiations would generally be based on</p>	

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		<p>this model. Then, it would not be justifiable to negotiate for more favourable terms under any particular CDTA for particular business sectors.</p>	
<p>010155 – 011216</p>	<p>Ms Miriam LAU Administration Chairman</p>	<p>(a) Ms Miriam LAU remarked that whilst Hong Kong might consider herself as losing out on some issues under a CDTA, other governments might also have reservation in concluding a CDTA with Hong Kong as they might also consider that Hong Kong would benefit more from the agreements. Ms LAU said that the Government should study relevant work done by the Singapore government, which had already concluded about fifty CDTAs with other jurisdictions.</p> <p>(b) The Administration responded that the Singapore government had a far longer history than Hong Kong in negotiating and concluding CDTAs with other places. Since the commencement of the Inland Revenue (Amendment) Ordinance 2010 in March 2010, the Government had already signed / upgraded 10 CDTAs, and another five CDTAs were expected to be signed in the near future. The Government had indeed been working hard in this respect. The Government had also mapped out a strategy in that Hong Kong would attempt first to conclude a CDTA with an identified jurisdiction in each major region, such as the northern Asian region, the Asian Pacific region, in Europe and the Middle East, so that other countries in the same region could make reference to that CDTA and be more prepared to negotiate a CDTA with Hong Kong. The Government worked hard on other fronts, e.g. during overseas duty visits, senior officials would endeavour to promote trade relationship and seek to start CDTA discussions with other jurisdictions.</p> <p>(c) Given that Hong Kong was part of China, and paragraph 3(a)(iii) of Article 11 of the CDTA signed with the Republic of Indonesia</p>	

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		<p>specified that a statutory body, institution, or financial establishment appointed by the HKSAR Government and mutually agreed upon by the competent authorities of the two contracting parties might be granted tax exemption, the Chairman enquired whether Mainland Government sponsored corporations based in Hong Kong and operating in Indonesia would be granted tax exemption on interest earned.</p> <p>(d) In response, the Administration advised that as specified in the relevant Article of the CDTAs, only entities specified in the Article and entities appointed by either contracting party and mutually agreed upon by the competent authorities of the contracting parties would be granted exemption from tax on interest.</p>	
011217 – 011605	Chairman Administration	<p><u>CDTA with Brunei Darussalam</u></p> <p>(a) In response to the Chairman's enquiry about tax exemption for entertainers and sportspersons, the Administration advised that based on paragraph 3 of Article 17 of the CDTA, only income derived by entertainers or sportspersons who were residents of a contracting party from activities exercised in the other contracting party under a plan of cultural exchange between the governments of both contracting parties would be exempt from tax in that other contracting party. Similar provisions were included in paragraph 3 of Article 17 of the CDTA with the Republic of Indonesia, and paragraph 3 of Article 16 of the CDTA with the Kingdom of Netherlands.</p>	
011606 – 012840	ALA2 Chairman Administration	<p><u>CDTA with the Kingdom of the Netherlands</u></p> <p>(a) ALA2 drew members' attention to the arrangement in the CDTA with the Kingdom of the Netherlands that under paragraph 2 of Article 25, the Dutch side was permitted to disclose information received under</p>	

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		<p>paragraph 1 of Article 25 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.</p> <p>(b) The Administration explained that based on the OECD model CDTA, oversight bodies were allowed access to the information exchanged, but in view of the concern of the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009, the Administration sought to exclude oversight bodies in negotiating the CDTAs. However, if the negotiating partner insisted and there were sufficient justifications to include the oversight bodies for access to the information exchanged, the negotiating partner concerned would be allowed to add in suitable provisions. As far as the CDTA with the Netherlands was concerned, the disclosure of information to "de Algemene Rekenkamer" (the Court of Audit) and "de Nationale Ombudsman" (the National Ombudsman) under paragraph 2 of Article 25 was necessary to enable these Dutch oversight bodies to review the work of the relevant tax authorities. In Hong Kong, the Board of Review was allowed access to the tax information exchanged for the purpose of handling appeals of tax cases under the Inland Revenue Ordinance (Cap. 112) (IRO), whereas the Financial Services and the Treasury Bureau, which would be the administrative oversight body of the Inland Revenue Department (IRD), would not be given access to the tax information exchanged.</p> <p>(c) In reply to the Chairman's enquiry, the Administration remarked that under Article 18 of the CDTA, Hong Kong civil servants retiring in the Netherlands would be taxed by</p>	

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		<p>Hong Kong on their retirement benefits. The Administration pointed out that in negotiating CDTAs, the Government would seek to secure exclusive taxing right for Hong Kong on retirement benefits for Hong Kong people but the Government might not be successful in securing such right in each and every CDTA.</p>	
<p>012841 – 013836</p>	<p>Chairman Administration</p>	<p><u>CDTA with the Republic of Indonesia</u></p> <p>(a) In connection with members' concern about the entities to be granted exemption from tax on interest in the CDTAs, the Administration was requested to provide information on the nature of Pusat Investasi Pemerintah (the Centre for Government Investment) and Lembaga Pembiayaan Ekspor Indonesia (the Indonesia Eximbank), mentioned in paragraph 3(b)(iii) and (iv) of Article 11 of the CDTA with the Republic of Indonesia, and the rationale for inclusion of the entities.</p> <p>(b) In reply to the Chairman's enquiry about the taxation arrangement for Indonesians working as domestic helpers in Hong Kong, the Administration advised that the Indonesians working as domestic helpers in Hong Kong were subject to taxation under the IRO, but since the salaries of the domestic helpers were below the threshold for income tax, the domestic helpers did not have to pay any income tax in Hong Kong.</p> <p>(c) In response to the Chairman's enquiry about the definition of "resident" in Article 4 of the CDTA, the Administration responded that the definition of "resident" in Article 4 was a standard clause in the CDTAs. A "resident" as defined under paragraph 1(a)(i) of Article 4 was an individual who ordinarily resided in the contracting parties' territory, taking into account the location of the individual's normal residence, his social relationships such as friends and relatives, and job and capital investments, etc. The definition was</p>	<p>The Administration to take action as per paragraph 5(a) of the minutes</p>

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		<p>based on the concept of "ordinary residence" as developed in case law in relation to taxation and immigration cases. As regards the length of stay mentioned in paragraph 1(a)(ii) of Article 4, i.e. more than 180 days during a year of taxation assessment or more than 300 days in two consecutive years of assessment, the requirement was modeled on the relevant provision in the IRO. With regard to paragraph 1(a)(iii) of Article 4 concerning corporations, the definition was based on the provisions in the IRO for taxing shipping enterprises. Paragraph 1(a)(iv) was a catch all provision and meant to cover entities such as partnerships.</p> <p>(d) The Administration added that it would seek to include the same provisions for Hong Kong residents as set out in Article 4 of the CDTA with the Republic of Indonesia in other CDTAs, but some other negotiation partners might not be prepared to accept all those provisions and this was one area in which Hong Kong might have to revise her position in future.</p>	
013837 – 015013	Chairman ALA2 Administration Ms Miriam LAU Mr Alan LEONG	<p><u>LC Paper No. CB(1)2802/09-10(01) and (02)</u></p> <p>(a) ALA2 pointed out that in Article 11(3)(a)(iii) of the CDTA with Brunei Darussalam, "基金會" was used as the Chinese rendition of "foundation", whereas "協會" was used in Article 11(3)(b)(v).</p> <p>(b) The Administration explained that "基金會" was used as the Chinese rendition of "foundation" in Article 11(3)(a)(iii) in accordance with Hong Kong's legislation. The word "foundation" in Article 11(3)(b)(v) was rendered as "協會" because while the term "基金會" had an established meaning equivalent to "foundation" in the context of Hong Kong, it was not certain whether "基金會" had been so used to convey the</p>	

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		<p>same meaning in the context of Brunei Darussalam. Thus, "協會", which was a more general term, was used.</p> <p>(c) The Administration was requested to consider using the same Chinese term "基金會" as the Chinese rendition of the word "foundation" in Article 11(3)(a)(iii) and Article 11(3)(b)(v) of the CDTA with the Brunei Darussalam.</p>	<p>The Administration to take action as per paragraph 5(b) of the minutes</p>
015014 015154	– Chairman Administration Clerk	Legislative timetable	

Council Business Division 1
Legislative Council Secretariat
15 October 2010