

For information

Legislative Council Panel on Financial Affairs

**Notification and Review System for Disclosure of Information under
Comprehensive Agreements for the Avoidance of Double Taxation**

Introduction

This paper reports on the operation of the notification and review system for disclosure of information under Comprehensive Agreements for the Avoidance of Double Taxation (“CDTAs”).

Background

2. When the Inland Revenue (Amendment) (No. 3) Bill 2009 (“the Bill”) was scrutinized by the relevant Bills Committee in 2009, members requested the Administration to provide a report on the effectiveness of the then proposed notification and review system in 18 months after the enactment of the Bill. The Inland Revenue (Amendment) Ordinance 2010 (“the Amendment Ordinance”) was enacted on 15 January 2010 and the Inland Revenue (Disclosure of Information) Rules (“the Disclosure Rules”) providing for the notification and review system were passed on 3 March 2010. Both pieces of legislation took effect on 12 March 2010.

The Amendment Ordinance and the Disclosure Rules

3. The Amendment Ordinance enables Hong Kong to enter into CDTAs adopting the international exchange of information (“EoI”) standard. On the other hand, the Disclosure Rules put in place statutory safeguards in addition to those provided in individual CDTAs to protect taxpayers’ privacy and confidentiality of the information exchanged.

4. According to the Disclosure Rules, unless the stipulated exceptions occur (paragraphs 6 to 7 below refer), the Inland Revenue Department (“IRD”) must, before any information is disclosed, notify the

data subject of the request. The person may, within 14 days after the notice is given by IRD, request a copy of the information that IRD is prepared to disclose to the requesting treaty partner. Within 21 days after a copy of the information is given by IRD, the person may further request IRD to amend the information on the grounds that -

- (a) the information does not relate to the person; or
- (b) the information is factually incorrect.

5. Where the Commissioner of Inland Revenue (“CIR”) partially approves or refuses a request for amendment, the person may request the Financial Secretary (“FS”) to direct CIR to make the amendment. The request has to be made in writing within 14 days after CIR’s notice is given to the person. The FS’s decision shall be final.

6. Notification is not required if -

- (a) all the addresses of the person known are inadequate for the purpose of giving the notification; or
- (b) the notification is likely to undermine the chance of success of the investigation in relation to which the request is made.

7. If IRD is under a tight time constraint to disclose the information to the requesting treaty partner and the failure of disclosing the information within the time constraint will likely frustrate the efforts of the requesting treaty partner in enforcing its tax laws, prior notification is not required but IRD must notify the person at the same time when the information is disclosed. The review mechanism as stated in paragraphs 4 and 5 above is also applicable to such cases.

Operation of the Notification and Review System

8. Since the Amendment Ordinance and the Disclosure Rules came into effect in March 2010, IRD has received as at 15 June 2011 a total of 21 EoI requests from our treaty partners. Of these 21 EoI requests, four have been rejected as they do not comply with the Disclosure Rules. While some of the EoI requests are still under processing, IRD has so far

issued 20 notifications and received 17 requests for sight of the information to be sent out to the requesting treaty partners. To date, there is one request for correction or review, which is being handled by IRD.

Financial Services and the Treasury Bureau
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