

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 1 June 2012**

**Legal Service Division Further Report on
three Double Taxation Relief Orders under section 49(1A)
of the Inland Revenue Ordinance (Cap. 112)
(L.N. 96 to L.N. 98)**

Members may recall that at the House Committee meeting on 25 May 2012, the Legal Service Division (LSD) reported on three Orders made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) to implement the comprehensive agreements for avoidance of double taxation (CDTA) signed with Kuwait (L.N. 96), Switzerland (L.N. 97) and Malta (L.N. 98) respectively.

2. In the LSD's Report, it was stated that LSD was seeking clarification from the Administration on certain technical issues in relation to L.N. 96 to L.N. 98. The salient issues and the Administration's response are summarized below.

Entry into force of CDTAs

3. Although L.N. 96 to L.N. 98 will come into operation on 13 July 2012, the provisions of all three CDTAs and their Protocols will not enter into force until the prescribed notification requirements have been satisfied. To inform the public that the relevant CDTAs have become effective, the Administration advises that upon the entry into force of each CDTA, the Inland Revenue Department will issue a press release, publish an announcement on its website and email tax practitioners and registered foreign and local business associations.

Exchange of information

4. According to paragraph 18 of the LegCo Brief (File Ref.: TsyB R 183/800-1-1/31/0 (C)) issued by the Financial Services and the Treasury Bureau on 16 May 2012, a provision in the Protocol to the original CDTA with Switzerland (the Swiss Agreement) relating to exchange of information (EoI) was considered too stringent, as a result of which the Swiss side requested to abrogate the original Swiss Agreement and enter into the present one with the relevant EoI provision suitably amended. The Administration advises that the relevant provision is Paragraph 8(c) of the Protocol which previously required the requesting Party to provide, among other information, "the name and address of the person(s) under examination or investigation and, if available, other particulars facilitating the identification of the person(s), such as date of birth, marital status, tax identification number". In the current version of the Swiss Agreement, that provision has been revised to refer to merely "the identity of the person under examination or investigation".

5. Under Article 25(2) of the Swiss Agreement, information exchanged may be disclosed in public court proceedings or in judicial decisions. In response to LSD's enquiry on whether the disclosure would cover arbitration or arbitration decisions, the Administration explains that while it would appear that the information exchanged may be provided to the arbitrators under Article 24(5), the disclosure of such information in arbitration decisions might require permission of all relevant parties. Whether such information may be disclosed in the arbitration or in the arbitration decision would need to be further worked out between Hong Kong and Switzerland.

6. Paragraph III(c) of the Protocol to the CDTA with Malta (the Maltese Agreement) permits information exchanged to be disclosed to the Maltese National Audit Office (MNAO). Upon enquiry by LSD, the Administration explains that MNAO is responsible for auditing the accounts of all Departments and Offices of the Government of Malta, and other public authorities or bodies administering, holding or using funds belonging to the Government of Malta. According to the Administration, the disclosure of the information exchanged to MNAO would facilitate its carrying out of audit duties.

Chinese text

7. The Chinese texts of the CDTAs render "non-discrimination" as "反歧視" and "無差別待遇" respectively. The Administration advises that it would seek to adopt in future CDTAs the latter expression which is used in the CDTAs signed by Mainland China with other jurisdictions. Similarly, while the CDTAs signed

with Kuwait and Switzerland render "public policy (*ordre public*)" and "government missions" as "公共政策" and "政府代表團" respectively, the Chinese translation of the Maltese Agreement uses the terms "公共政策 (公共秩序)" and "政府使團". The Administration advises that it would seek to adopt the terms used in the Chinese translation of the Maltese Agreement in future CDTAs as it considers that the Chinese translations concerned can reflect the meaning of the corresponding English texts. According to the Administration, as the Chinese texts for the same terms used in the CDTAs with Kuwait and Switzerland have been agreed between the parties concerned, they are not amenable to unilateral changes by Hong Kong.

Concluding observations

8. Apart from the issues set out above, we have no further questions on the legal or drafting aspects of L.N. 96 to L.N. 98.

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