



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2179 5848)
22 November 2011

Ms Shirley KWAN
Principal Assistant Secretary for Financial Services and
the Treasury (Treasury)
Financial Services and the Treasury Bureau
Room 2416, 24/F, Central Government Offices
2 Tim Mei Avenue,
Tamar
Hong Kong

Dear Ms KWAN,

**Inland Revenue (Double Taxation Relief and
Prevention of Fiscal Evasion with respect to Taxes on Income) Orders
re the Portuguese Republic, Kingdom of Spain and Czech Republic Orders
(L.N. 155 - L.N. 157)**

To assist me in scrutinizing the legal and drafting aspects of the English text of the above Orders, please let me have your clarification on the following matters.

Mutual Agreement Procedure

At the subcommittee meeting on five similar Orders on 8 June 2011 (Subcommittee meeting), the Administration indicated its willingness to include provisions for arbitration in future Comprehensive Agreements for Avoidance of Double Taxation (CDTA). It is however noted that the relevant Articles in the Agreements signed with Portugal, Spain and the Czech Republic do not provide for arbitration or any other method of dispute resolution in the event that the competent authorities of the contracting parties are unable to resolve a case by mutual agreement.

Exchange of Information (EoI)

At the Subcommittee meeting, members expressed concern about the disclosure of information exchanged to a third party, including the oversight body of the tax authorities. The reason for not incorporating the Sample Protocol into the three Agreements is not explained in the LegCo Briefs. Please also clarify whether the Board of Review and the oversight bodies of the tax authorities are caught by "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" under the relevant EoI Article of the three Agreements.

The Administration also advised at the Subcommittee meeting that Hong Kong would attempt to include provisions in the CDTA, as far as possible, to clarify that automatic and/or spontaneous exchange of information was not allowed. In all the three Agreements, there is no such clarification in the EoI Articles or the Protocols to the Agreements.

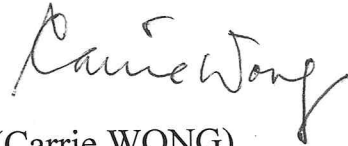
Paragraph 6 of the Protocol to the Agreement signed with Portugal states that in respect of Article 25 on exchange of information, it is understood that (i) the exchange of information provided in the Article does not include measures which constitute 'fishing expeditions'; (ii) the provisions of the Article shall not apply retrospectively; (iii) the Contracting Parties shall ensure the protection of personal data transferred according to the Agreement and their domestic laws. Please confirm whether there are similar provisions giving such safeguards in the Spanish Agreement and its Protocol, and the Czech Agreement. Please also clarify whether there are any provisions in the three Agreements to limit the exchange of information to information relating to a specific taxpayer in a case, but not to that relating to the taxpayer's business counterparts and associates.

Entry into Force

Although the above Orders, subject to the negative vetting procedure, will come into operation on 12 January 2012, the three Agreements and their Protocols (if any) will not enter into force before the requirements set out in the relevant Article on Entry into Force have been satisfied. When the relevant Order enters into force, please clarify whether any public notice will be published; and if so, whether such a notice has legislative effect and needs to be published as Legal Notice in the Gazette.

I would appreciate it if you could let me have the Administration's reply in both languages by 29 November 2011.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Carrie Wong". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

(Carrie WONG)
Assistant Legal Adviser

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