

立法會
Legislative Council

LC Paper No. CB(1)32/13-14
(These minutes have been seen
by the Administration)

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Bills Committee on Inland Revenue (Amendment) Bill 2013

**Minutes of the fifth meeting held on
Friday, 7 June 2013, at 9:00 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon CHAN Kin-por, BBS, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Starry LEE Wai-king, JP
Hon YIU Si-wing
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP

Members absent : Hon Alan LEONG Kah-kit, SC
Hon Charles Peter MOK
Hon Christopher CHEUNG Wah-fung, JP

Public officers attending : **Agenda item I**
Ms Mable CHAN, JP
Deputy Secretary for Financial Services and the
Treasury (Treasury) 2

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

Miss Crystal YIP
Assistant Secretary for Financial Services and the
Treasury (Treasury) (Revenue) 1

Mr Brian CHIU Kwok-kit, JP
Deputy Commissioner of Inland Revenue
(Technical)

Ms Mabel MEI
Chief Assessor (Tax Treaty)
Inland Revenue Department

Mrs Paulina WONG
Senior Assessor (Tax Treaty) 2
Inland Revenue Department

Mr Michael LAM
Senior Assistant Law Draftsman
Department of Justice

Mr Peter SZE
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Sharon CHUNG
Chief Council Secretary (1)6

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Fred PANG
Council Secretary (1)6

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I Meeting with the Administration

Matters arising from the meeting on 3 June 2013

(LC Paper No. CB(1)1243/12-13(01) -- Follow-up actions to be taken by the Administration for the meeting on 3 June 2013

LC Paper No. CB(1)1243/12-13(02) -- Administration's response to issues raised by members at the meeting on 3 June 2013

LC Paper No. CB(1)1243/12-13(03) -- Letter from The Law Society of Hong Kong dated 6 June 2013

LC Paper No. CB(1)1243/12-13(04) -- Submission from the Hong Kong Bar Association dated 4 June 2013)

Other relevant papers

(LC Paper No. CB(3)483/12-13 -- The Bill

LC Paper No. CB(1)988/12-13(01) -- Marked-up copy of the Bill prepared by the Legal Service Division
(Restricted to members)

File Ref.: TsyB R 183/700-6/4/0 (C) -- Legislative Council Brief

LC Paper No. LS41/12-13 -- Legal Service Division Report

LC Paper No. CB(1)988/12-13(02) -- Letter from Assistant Legal Adviser to the Administration dated 19 April 2013

LC Paper No. CB(1)988/12-13(03) -- Administration's response to the letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)988/12-13(02)

LC Paper No. CB(1)988/12-13(04) -- Paper on Inland Revenue (Amendment) Bill 2013 prepared by the Legislative Council Secretariat (Background brief)

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The Bills Committee deliberated (Index of proceedings attached at the **Appendix**).

2. The Bills Committee noted the submission from the Office of the Privacy Commissioner for Personal Data, Hong Kong ("PCPD") dated 6 June 2013 and tabled at the meeting.

(Post-meeting note: PCPD's submission was circulated to members vide LC Paper No. CB(1)1260/12-13(01) on 7 June 2013.)

Declaration of interest

3. The Chairman declared that his work involved the provision of international tax advisory services. He was also a member of the Joint Liaison Committee on Taxation. Ms Starry LEE declared that she was an accountant in a firm which provided tax advisory services but she was not involved in such services.

Follow-up actions

Oversight and scrutiny of compliance with the safeguards in the agreements and the Inland Revenue (Disclosure of Information) Rules

4. Members expressed concern on the monitoring of the Administration's compliance with the safeguards set out in the comprehensive avoidance of double taxation agreements ("CDTAs"), the future tax information exchange agreements ("TIEAs") and the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) ("the Disclosure Rules") for taxpayers' privacy, confidentiality of tax information and justifications for requests of exchange of tax information ("EoI") in processing EoI requests. Further to the information about the handling of EoI requests provided to the Bills Committee vide LC Paper No. CB(1)1145/12-13(02), the Administration was requested to provide information about --

- (a) its position on the establishment of an independent operation review committee or a similar oversight body on the processing of EoI requests;
- (b) the existing mechanism for handling complaints and appeals on taxation matters (including EoI requests); and

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- (c) statistics on complaints on taxation matters received by the Administration for the last two years, with breakdown on nature of complaints, numbers of complaints received and resolved.

Consultation and approval process for entry into a CDTA/TIEA

5. Members opined that in entering into a CDTA or a future TIEA, the Administration might not have fully taken into account the technical/operational problems for business operators that would arise from the requirements under the agreements. The Administration was requested to provide a description, preferably in the form of a flow chart, of the procedures, if any, that it would undertake to gauge the views of concerned parties, including business and professional groups and other steps (such as discussion with a potential CDTA/TIEA partner on the incidence of the costs for providing assistance, the domestic legislative process etc.) before entering into a CDTA/TIEA.

Disclosure of information generated prior to the effective date of an agreement

6. The Bills Committee noted the proposal to amend section 4 of the Disclosure Rules to allow the Commissioner of Inland Revenue ("CIR") to disclose tax information generated prior to the effective date of the relevant CDTA/TIEA when he was satisfied that the information was foreseeably relevant to the carrying out of the provisions of the relevant agreement, or the administration or enforcement of the tax law of the requesting government's territory, in respect of any period that started after the date on which the relevant CDTA/TIEA came into operation. The Administration advised that the existing record-keeping requirements under sections 51C and 51D of the Inland Revenue Ordinance (Cap. 112), which stipulated a seven-year period for the retention of business and rent records, would remain unchanged. Notwithstanding that the "seven-year" retention requirement would not be affected, some members were concerned that the proposed amendment would allow a requesting tax authority to ask for information generated more than seven years before the relevant agreement came into operation on the ground of foreseeable relevance; and if such information were to be provided, the requesting authority might ask for further information dating back to even earlier periods on the ground of foreseeable relevance. It was suggested that: (i) a time limit be set on the period for which provision of retrospective information would be considered; or (ii) only requests for "necessary and direct" information be considered so as to limit the scope of information to be provided. The

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Administration was requested to provide information on how it would handle EoI requests for the above scenarios and a written response to suggestions (i) and (ii) (together with any proposed Committee Stage amendments to the Bill).

Submission from the Office of the Privacy Commissioner for Personal Data, Hong Kong

7. The Administration was requested to provide a written response to the above submission (LC Paper No. CB(1)1260/12-13(01)), which had been sent to the Bills Committee on 6 June 2013. In particular, the Administration was requested to explain how, if at all, tax information disclosed to overseas authorities under CDTAs/TIEAs would be allowed to be used for "other non-tax related purposes", what those purposes would be, which provisions of local Ordinances would be relied on for such disclosure, and whether such disclosure would contravene the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) (including section 58).

(Post-meeting note: The Administration's supplementary information was circulated to members vide LC Paper Nos. CB(1)1285/12-13(02) on 13 June 2013.)

II Any other business

8. The Bills Committee agreed that the sixth meeting would be held as originally scheduled, i.e. on 14 June 2013 at 9:00 am, to discuss, among others, the Administration's response to issues raised by members at the meeting.

9. There being no other business, the meeting ended at 10:37 am.

Bills Committee on Inland Revenue (Amendment) Bill 2013

**Proceedings of the fifth meeting
on Friday, 7 June 2013, at 9:00 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000121 - 000328	Chairman	Opening remarks and declaration of interest	
000329 - 001031	Administration	The Administration's briefing on its response to issues raised by members at the meeting on 3 June 2013 (LC Paper No. CB(1)1243/12-13(02))	
001032 - 002100	Mr SIN Chung-kai Administration	In light of the views of the Hong Kong Bar Association given in its written submission (LC Paper No. CB(1)1243/12-13(04)), Mr SIN Chung-kai enquired about the Administration's position on the establishment of an independent oversight body similar to the Operations Review Committee of the Independent Commission Against Corruption or the Process Review Panel of the Securities and Futures Commission to monitor the compliance of the Inland Revenue Department ("IRD") with the procedures for handling exchange of information ("EoI") requests. The Administration's response	
002101 - 002438	Ms Starry LEE Administration	Ms Starry LEE's enquires about the existing mechanism for handling disagreements between taxpayers and IRD on taxation matters and whether consideration should be given to extending the mechanism to cover taxpayers' complaints with respect to EoI The Administration's response	

Time marker	Speaker	Subject(s)	Action required
		<p>The Chairman requested the Administration to provide statistics on complaints received by IRD.</p>	<p>The Administration to take action as in paragraphs 4(b) and 4(c) of the minutes</p>
<p>002439 - 003613</p>	<p>Mr YIU Si-wing Administration Chairman</p>	<p>Noting that in its response (in Annex C to LC Paper No. CB(1)1243/12-13(02)) to the written submission of the Law Society of Hong Kong ("LSHK"), the Administration had advised that same as the current approach for comprehensive agreements for avoidance of double taxation ("CDTAs"), it would strive to include the safeguards to protect taxpayers' privacy and confidentiality of information exchanged in the texts of the future CDTAs/standalone tax information exchange agreements ("TIEAs"), Mr YIU Si-wing opined that --</p> <ul style="list-style-type: none"> (a) the Administration's response had not addressed LSHK's concern; and (b) there should be consultative procedures in place to engage relevant stakeholders in pursuing CDTAs/TIEAs with a view to taking into account the operational problems that would arise from the requirements under the agreements. <p>The Administration's response</p> <p>Mr YIU Si-wing asked to put on record the Administration's undertaking to --</p> <ul style="list-style-type: none"> (a) enhance the existing procedures with a view to ensuring that the views of relevant stakeholders, including business chambers, on the provisions of CDTAs/TIEAs would be collected in a more systematic and effective 	

Time marker	Speaker	Subject(s)	Action required
		<p>way when formulating the negotiation strategies; and</p> <p>(b) keep the stakeholders informed of the Administration's plan in pursuing negotiations with potential contracting partners.</p> <p>Declaration of interest by the Chairman</p> <p>The Administration's advice on the membership of the Joint Liaison Committee on Taxation ("JLCT") and the tasks being carried out regularly by the Administration to update JLCT and the public on the progress of CDTA negotiations</p>	
003614 - 003819	Chairman Administration	<p>The Bills Committee noted from paragraph 11 of the Administration's paper (LC Paper No. CB(1)1243/12-13(02)) that under the proposed section 4 of the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) ("the Disclosure Rules"), the Commissioner might disclose information that related to (i) the carrying out of the provisions of the relevant arrangements, or (ii) the administration or enforcement of the tax law of the requesting government's territory, in respect of any period that started after the arrangements had come into operation.</p> <p>In response to the Chairman's enquiry, the Administration clarified that as far as (ii) was concerned, the Administration would not make any investigation or take enforcement actions on behalf of the tax authorities of other jurisdictions.</p> <p>The Chairman requested that the above clarification be put on record</p>	
003820 -	Ms Starry LEE	Ms Starry LEE requested the	The

Time marker	Speaker	Subject(s)	Action required
004011	Administration	Administration to provide information, preferably in the form of a flow chart, about the procedures that it would undertake to gauge the views of relevant stakeholders before entering into a CDTA/TIEA.	Administration to take action as in paragraph 5 of the minutes.
004012 - 005308	Mr SIN Chung-kai Administration Chairman	<p>Discussion on the ambit of JLCT</p> <p>Mr SIN Chung-kai reiterated the need to set up an independent oversight body to ensure that IRD would deal with individual EoI requests in a fair and consistent manner, and that the actions taken and decisions made would strictly adhere to internal procedures and guidelines.</p> <p>Discussion on the ambit of IRD's Users' Committee</p> <p>Mr SIN Chung-kai's remarks that IRD's Users' Committee would not deal with confidential information and had no role in conducting reviews on individual cases</p> <p>The Administration's response</p>	
005309 - 005939	Ms Starry LEE Administration	<p>Declaration of interest by Ms Starry LEE</p> <p>Referring to the suggestion of the Society of Chinese Accountants and Auditors made in its submission (LC Paper No. CB(1)1231/11-12(01)) that the requesting party of an EoI request should be responsible for the cost of the receiving party in providing assistance, Ms Starry LEE enquired about the Administration's position.</p> <p>The Administration's response</p> <p>Noting that technically speaking, two jurisdictions might negotiate and agree on</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>a charging practice under which the requesting party could be charged for the extraordinary costs incurred by the receiving party in obtaining and providing the requested information, such as costs of engaging experts, interpreters or translators, Ms Starry LEE suggested that as part of its negotiations with potential contracting partners in future, the Administration should seek the contracting partners' agreement to adopt the above charging practice.</p> <p>The Administration's response</p>	
005940 - 011734	Mr James TO Administration Chairman Mr SIN Chung-kai	<p>Mr James TO's enquiry on whether the provisions about the protection of legal professional privilege included in the existing CDTAs would be incorporated into future CDTAs/TIEAs</p> <p>The Administration's response</p> <p>Mr James TO's views that although the "seven-year" retention requirement would not be affected under the Bill, the Administration should (a) expressly confine disclosure under section 4 of the Disclosure Rules to information that was "necessary and direct" as opposed to the international EoI standard of "foreseeably relevant"; and (b) set a time limit on the period for which provision of information generated before the entry into force of CDTAs/TIEAs would be considered</p> <p>The Administration's response</p> <p>The Chairman requested the Administration to provide a written response to Mr TO's views.</p> <p>Mr SIN Chung-kai reiterated the need to include in the Bill the establishment of an</p>	The Administration to take action as in paragraph 6 of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>independent operation review committee or a similar oversight body on the processing of EoI requests. He emphasized that the Democratic Party would less likely support the Bill if such a change was not made.</p> <p>Mr James TO echoed Mr SIN's view and considered that the proposal would offer better protection to taxpayers against non-compliance of IRD in handling EoI requests.</p> <p>The Administration undertook to consider Mr SIN's view and revert to the Bills Committee.</p>	<p>The Administration to take action as in paragraph 4(a) of the minutes</p>
011735 - 012004	Mr James TO Administration	<p>Mr James TO enquired --</p> <p>(a) whether the disclosure requirements under the proposed section 4 of the Disclosure Rules might lead to compulsory disclosure of information generated more than seven years before the relevant CDTA/TIEA came into operation, even though sections 51C and 51D of the Inland Revenue Ordinance (Cap. 112) only stipulated a seven-year period for the retention of business and rent records; and</p> <p>(b) whether such disclosure requirements might apply to third parties as well as the taxpayer who was the subject of the request under a CDTA/TIEA.</p> <p>The Administration's response</p>	
012005 - 013229	Chairman Administration	Discussion on the views of the Privacy Commissioner for Personal Data	

Time marker	Speaker	Subject(s)	Action required
	Mr James TO Assistant Legal Adviser 3	<p data-bbox="624 250 1222 327">("PCPD") given in its submission (LC Paper No. CB(1)1260/12-13(01))</p> <p data-bbox="624 371 1222 1010">Mr James TO requested the Administration to provide a written response to PCPD's submission, in particular the concern that the Administration's proposal on use of tax information exchanged under CDTAs for non-tax related purposes would have the effect that personal data of Hong Kong taxpayers might be transferred to the requesting party situated outside Hong Kong for an overseas offence, and hence not entirely consistent with the existing exemption provision in respect of prevention and detection of crime under section 58 of the Personal Data (Privacy) Ordinance (Cap. 486).</p> <p data-bbox="624 1055 1222 1335">The Chairman's enquiry on whether on every occasion of intended use of tax information for specified non-tax related purposes, the competent authorities of the CDTA partner had to seek prior authorization from IRD in accordance with the terms of the relevant CDTA</p> <p data-bbox="624 1379 1050 1417">The Administration's response</p>	The Administration to take action as in paragraph 7 of the minutes
013230 - 013750	Chairman	Date of next meeting	