

**Inland Revenue (Amendment) Bill 2013 (“the Bill”)**

**The Administration’s Responses to Written Submissions from Deputations**

Comments / Issues Raised	Organizations / Persons	The Administration’s Responses
<i>A. General Matters</i>		
<p>1. The Government’s move of putting in place a legal framework for Hong Kong to enter into standalone tax information exchange agreements (“TIEAs”) is supported.</p>	<p>Association of Chartered Certified Accountants Hong Kong</p> <p>Capital Markets Tax Committee of Asia</p> <p>German Chamber of Commerce, Hong Kong</p> <p>Hong Kong Securities</p>	<ul style="list-style-type: none"> <li>• Noted.</li> </ul>

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	<p>Association</p> <p>Hong Kong Trustees' Association</p> <p>Hong Kong Investment Funds Association</p> <p>KPMG</p> <p>The American Chamber of Commerce in Hong Kong</p> <p>The Taxation Institute of Hong Kong</p>	
<p>2. The Bill should be passed as soon as possible.</p>	<p>The American Chamber of Commerce in Hong Kong</p>	<ul style="list-style-type: none"> <li>• Agreed.</li> </ul>

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	<p>Hong Kong Investment Funds Association</p> <p>The Hong Kong Association of Banks</p>	
<p>3. Hong Kong should proceed to work on a comprehensive legal framework for TIEAs provided that there is adequate statutory protection to protect taxpayers' confidentiality and the constitutional rights of Hong Kong residents.</p>	<p>Law Society of Hong Kong</p>	<ul style="list-style-type: none"> <li>Noted. As we work to put in place a legal framework to allow Hong Kong to enter into TIEAs, we are mindful of the need to continue to uphold the existing highly prudent safeguards to protect taxpayers' privacy and confidentiality of information exchanged under both comprehensive agreements for avoidance of double taxation ("CDTAs") and TIEAs. Same as the current approach for CDTAs, we will strive to include the safeguards in the texts of the future TIEAs, which will be implemented as subsidiary legislation domestically subject to negative vetting by the Legislative Council ("LegCo"). The current Inland Revenue (Disclosure of Information) Rules (Cap. 112BI) ("the Disclosure Rules"), which provides for a notification</li> </ul>

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		<p>and review system in handling requests for exchange of information ("EoI") and related appeals in the context of CDTAs, has been functioning well. Against this background, we propose extending the same mechanism to both CDTAs and TIEAs signed in future.</p>
<p>4. Hong Kong cannot afford to be labelled by the international community as uncooperative in terms of EoI. However, if Hong Kong is to conclude TIEAs which do not provide for double taxation relief, there may be a higher incidence of double taxation on Hong Kong companies.</p>	<p>Federation of Hong Kong Industries</p>	<ul style="list-style-type: none"> <li>Given the benefits of CDTAs, it will remain our future policy priority to seek to conclude CDTAs with our trading and investment partners.</li> </ul>
<p>5. Hong Kong should not take forward the proposals to introduce a legal framework for TIEAs and to enhance the existing EoI arrangement under</p>	<p>The Chinese Manufacturers' Association of Hong Kong</p>	<ul style="list-style-type: none"> <li>The introduction of the TIEA framework is essential to Hong Kong's international reputation and competitiveness. As advised by the Global Forum on Transparency and Exchange of Information for Tax Purposes ("the Global</li> </ul>

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<p>CDTAs. If Hong Kong takes an aggressive approach with respect to EoI, Hong Kong's attractiveness to international investors would be undermined and Hong Kong enterprises' compliance costs would increase. The Government should instead step up efforts to expand Hong Kong's network of CDTAs and ride on CDTA as a vehicle for EoI.</p>		<p>Forum"), whether Hong Kong could pass the Phase 2 peer review will largely hinge on the availability of a legal framework for TIEAs. Failing the Phase 2 peer review, Hong Kong may run the risk of being labeled as an uncooperative jurisdiction, which is highly undesirable for Hong Kong's international reputation and may in turn undermine our position and competitiveness as an international business and financial centre.</p> <ul style="list-style-type: none"> <li>• As for providing flexibility in the coverage of tax types and modifying in the light of operational requirements the limitation on disclosure for EoI under the CDTA framework, we aim to meet our CDTA partners' practical requirements, thereby standing a better chance of persuading the key jurisdictions to commence CDTA negotiations with Hong Kong.</li> </ul>
<p>6. It is unnecessary for the Government to release information of Hong Kong people to another jurisdiction with a</p>	<p>Mr David Lai</p>	<ul style="list-style-type: none"> <li>• It is well-recognised that CDTAs provide enhanced certainty and stability in respect of tax liabilities arising from cross-border trade and investment. As a business</li> </ul>

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<p>view to eliminating double taxation. Disclosure of information would become a disincentive to investors and undermine Hong Kong's competitiveness. In any event, there is no obligation for Hong Kong, being part of China rather than a sovereign state, to disclose Hong Kong people's information.</p>		<p>facilitation initiative, the Government has been committed to establishing a network of CDTAs with Hong Kong's major trading and investment partners. Hong Kong, as a responsible member of the international community, is also committed to enhancing tax transparency and preventing tax evasion. We have therefore incorporated in all the CDTAs that Hong Kong has signed an article on EoI that is on par with the prevailing international standard as far as practicable. Under the EoI article, Hong Kong as a party to the relevant CDTA has the obligation to carry out information exchange upon request by the CDTA partner.</p>

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<b><i>B. Policies/Strategies for Pursuing CDTAs or TIEAs</i></b>		
1. The Government has been very proactive in recent years in pursuing expansion of Hong Kong's network of CDTAs with significant trading partners.	The American Chamber of Commerce in Hong Kong  German Chamber of Commerce, Hong Kong	<ul style="list-style-type: none"> <li>• Agreed.</li> </ul>
2. The Government's practical approach to continue to prioritise CDTAs over TIEAs and to seek to persuade other jurisdictions to enter into the former rather than the latter is supported.	The Hong Kong Association of Banks	<ul style="list-style-type: none"> <li>• Noted.</li> </ul>
3. The Government should uphold its policy of giving priority to negotiation of CDTAs rather than TIEAs in future. Where there is a	International Chamber of Commerce - Hong Kong, China	<ul style="list-style-type: none"> <li>• Given the benefits of CDTAs, it will remain our future policy priority to seek to conclude CDTAs with our trading and investment partners. Nonetheless, we reckon the international standard that preference for CDTA over TIEA</li> </ul>

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<p>jurisdiction insisting on a TIEA with Hong Kong, the jurisdiction concerned should provide clear explanation for not entering into a CDTA. Even if Hong Kong has signed a TIEA with a particular jurisdiction, the Government should continue its efforts in persuading that jurisdiction to enter into a CDTA with Hong Kong.</p>	<p>The Taxation Institute of Hong Kong</p>	<p>cannot be a reason for refusing to enter into an EoI agreement. Hence, while we will make our utmost efforts to persuade our trading and investment partners to pursue CDTAs with Hong Kong, we could not preclude the possibility of entering into TIEAs with some jurisdictions.</p>
<p>4. Hong Kong should retain the right to choose whether it enters into a CDTA or a TIEA with a particular jurisdiction. There may be some benefits to conclude TIEAs with jurisdictions commonly used to incorporate investment vehicles, e.g. Cayman Islands and British Virgin Islands.</p>	<p>KPMG</p>	<ul style="list-style-type: none"> <li>• The prevailing international standard is that preference for CDTA over TIEA cannot be a reason for refusing to enter into an EoI agreement. Hence, while we will make our utmost efforts to persuade our trading and investment partners to pursue CDTAs with Hong Kong, we could not preclude the possibility of entering into TIEAs with some jurisdictions. Suggested TIEA partners for Hong Kong noted.</li> </ul>



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5. The EoI arrangement under CDTAs and TIEAs need not be the same. The EoI arrangement under CDTAs could be made more attractive.	Hong Kong Institute of Certified Public Accountants  International Chamber of Commerce - Hong Kong, China	<ul style="list-style-type: none"> <li>The EoI arrangement under TIEAs should be on par with that under CDTAs. Otherwise, Hong Kong would likely be questioned on its sincerity in adopting the prevailing international EoI standard.</li> </ul>
6. Once there is in place a legal framework for TIEAs, the prospect of entering into CDTAs with other jurisdictions would be compromised.	The Chinese Manufacturers' Association of Hong Kong  Hong Kong Institute of Certified Public Accountants	<ul style="list-style-type: none"> <li>Given the benefits of CDTAs, it will remain our future policy priority to seek to conclude CDTAs with our trading and investment partners. Nonetheless, we reckon the international standard that preference for CDTA over TIEA cannot be a reason for refusing to enter into an EoI agreement. Hence, while we will make our utmost efforts to persuade our trading and investment partners to pursue CDTAs with Hong Kong, we could not preclude the possibility of entering into TIEAs with some jurisdictions.</li> </ul>
7. The Government should negotiate CDTAs where the partners have	Law Society of Hong Kong	<ul style="list-style-type: none"> <li>Agreed.</li> </ul>

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<p>significant trading or investment relations with Hong Kong, practise residence-based income tax regimes and levy substantial withholding taxes. For jurisdictions which do not meet the aforesaid criteria, Hong Kong could consider negotiating TIEAs with them.</p>		
<b>C. Tax Types</b>		
<p>1. The draft wording “in relation to any tax imposed by the laws of Hong Kong or the territory concerned” under Clause 4 of the Bill is too vague which may result in unintended difficulties in treaty negotiation. It is necessary to be clear in the power given in the negotiation of a CDTA/TIEA. It is suggested to set</p>	<p>Association of Chartered Certified Accountants Hong Kong</p> <p>International Chamber of Commerce - Hong Kong, China</p>	<ul style="list-style-type: none"> <li>• We need to enhance our EoI arrangement in respect of our current restrictive position in the area of tax types, so that we can have more flexibility in this respect to persuade the key jurisdictions to commence CDTA negotiations with Hong Kong, to meet the practical needs of our CDTA/TIEA partners and to ensure that our EoI arrangement is on par with the international standard. The relevant provision is an enabling provision which reflects the relevant Article in the Model Tax Convention of the Organisation for</li> </ul>

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out explicitly the types of tax that can be included in a CDTA/TIEA.		Economic Cooperation and Development ("OECD"). We will in practice adopt a positive listing approach to set out the tax types to be covered in each CDTA/TIEA. The relevant CDTA/TIEA will be implemented as subsidiary legislation domestically subject to negative vetting by LegCo.
<b><i>D. Limitation on Disclosure</i></b>		
1. It should be clearly stated that the information exchanged is not to be used for the purpose of imposing tax on any periods prior to the CDTA/TIEA is in effect.	Association of Chartered Certified Accountants Hong Kong	<ul style="list-style-type: none"> <li>It is clearly stated in the Bill that the requested information should relate to the carrying out of the provisions of the relevant CDTA/TIEA or the administration or enforcement of the tax laws of the CDTA/TIEA partner concerning taxes imposed in periods after the CDTA/TIEA becomes effective.</li> </ul>
2. The proposed enhancement to the existing EoI arrangement (as reflected in Clause 8 of the Bill) violates privacy of personal information	Mr David Lai	<ul style="list-style-type: none"> <li>As we work to enhance the EoI arrangement under CDTAs, we will continue to uphold the existing highly prudent safeguards to protect taxpayers' privacy and confidentiality of information exchanged. The Disclosure Rules, which</li> </ul>

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related to income or finances.		provides for a notification and review system in handling requests for EoI and related appeals, will continue to be applicable.
<b><i>E. Safeguards for Taxpayers</i></b>		
1. Necessary safeguards are already in place to protect taxpayers' privacy and confidentiality of information exchanged. The proposed extension of the existing Disclosure Rules to cover both CDTAs and TIEAs in future is agreeable.	Federation of Hong Kong Industries  The Hong Kong Association of Banks  Hong Kong Investment Funds Association  Hong Kong Securities Association	<ul style="list-style-type: none"> <li>• Noted.</li> </ul>
2. The current approach that protections for taxpayers are enshrined in the	Federation of Hong Kong Industries	<ul style="list-style-type: none"> <li>• As we work to put in place a legal framework to allow Hong Kong to enter into TIEAs, we will continue to uphold</li> </ul>

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<p>Disclosure Rules and Inland Revenue Department's non-binding Departmental Interpretation and Practice Notes ("DIPN") is unsatisfactory. A number of key safeguards which are now featured in IRD's DIPN should be placed within the legislative framework, namely -</p> <ul style="list-style-type: none"> <li>(a) EoI should be conducted upon request only;</li> <li>(b) EoI should be restricted to taxes covered by CDTAs;</li> <li>(c) there should be no sharing of information exchanged with other law enforcement authorities and judicial authorities for non-tax related purposes;</li> <li>(d) there should be no disclosure of information to oversight authorities or third jurisdiction;</li> </ul>	<p>Hong Kong Institute of Certified Public Accountants</p> <p>Hong Kong Trustees' Association</p> <p>Law Society of Hong Kong</p>	<p>the existing highly prudent safeguards to protect taxpayers' privacy and confidentiality of information exchanged under both CDTAs and TIEAs. To recapitulate, Hong Kong will continue to undertake to provide the following safeguards when pursuing CDTAs or TIEAs -</p> <ul style="list-style-type: none"> <li>(a) we will only exchange information upon receipt of requests and no information will be exchanged on an automatic or spontaneous basis;</li> <li>(b) information sought should be foreseeably relevant, i.e. no fishing expeditions;</li> <li>(c) information received by our CDTA/TIEA partners should be treated as confidential;</li> <li>(d) information will only be disclosed to the tax authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of and the determination of appeals in relation to taxes falling within the scope of EoI but not for release to their oversight bodies unless there are legitimate reasons given by the CDTA/TIEA partners;</li> </ul>

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<p>(e) there should be no obligation to carry out measures at variance with domestic laws and practices; and</p> <p>(f) there should be no obligation to provide information not obtainable under domestic laws.</p>		<p>(e) information requested should not be disclosed to a third jurisdiction;</p> <p>(f) there is no obligation to supply information under certain circumstances, for example, where the information would disclose any trade, business, industrial, commercial or professional secret or trade process, or which is not obtainable under the laws or in the normal course of administration, including information that would be covered by legal professional privilege, etc.; and</p> <p>(g) we will not assist in conducting tax examinations abroad or collecting taxes for other jurisdictions.</p>
<p>3. Provisions should be introduced to allow taxpayers recourse to the courts / administrative appeals tribunal in the event of a dispute concerning any information to be exchanged.</p>	<p>Federation of Hong Kong Industries</p> <p>Hong Kong Institute of Certified Public Accountants</p> <p>Hong Kong Trustees' Association</p> <p>KPMG</p>	<p>(g) we will not assist in conducting tax examinations abroad or collecting taxes for other jurisdictions.</p> <p>The above safeguards would be reflected in the texts of CDTAs/TIEAs (including their protocols), which would each be enacted as a piece of subsidiary legislation subject to LegCo's negative vetting.</p> <ul style="list-style-type: none"> <li>• Under the current regime, the safeguards on taxpayers' rights and confidentiality of information exchanged are</li> </ul>

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<p>4. Individuals should be able to challenge information disclosures not merely on the basis that the information is factually incorrect, but also on the basis that it is legally privileged, would disclose a trade, business, industrial, commercial or professional secret or trade process, on the basis that it is not foreseeably relevant, on the basis that the EoI breaches the safeguard stated in DIPN, or IRD releasing information for inappropriate reasons. There should be a right to appeal to the courts in order to satisfy the test of Article 35 of the Basic Law.</p>	Law Society of Hong Kong	<p>provided in the texts of individual CDTAs (including their protocols). After signature thereof, the CDTAs are implemented as subsidiary legislation domestically, which would afford legal protection to taxpayers of their rights and confidentiality of information exchanged. At the same time, the Disclosure Rules put in place domestic statutory safeguards in addition to those provided in individual CDTAs by way of providing for a notification and review system and setting out the particulars to be contained in a disclosure request. The Disclosure Rules provide that a disclosure request may only be approved if the Commissioner of Inland Revenue or an officer not below the rank of chief assessor authorised by him is personally satisfied that the disclosure request complies with the arrangements, conditions and safeguards as set out under the relevant CDTA. The Disclosure Rules, providing the statutory safeguards, are legally binding on IRD. The DIPN only serve to enable the public to better understand the safeguards provided in the CDTAs and how the Disclosure Rules operate.</p>

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		<ul style="list-style-type: none"> <li>• A person may challenge the validity of the decision in respect of a disclosure request made under the Disclosure Rules, including approval of a disclosure request, permission to waive particulars in the Schedule to the Disclosure Rules, and partial approval or refusal for amendments to information to be disclosed, by way of an application to court for a judicial review.</li> <li>• Besides, OECD requires that a jurisdiction's internal procedures cannot unduly delay effective EoI. We believe that our existing approach has taken into account various considerations and struck a balance between the protection of taxpayers' rights and the facilitation of effective EoI.</li> <li>• As for the scope of EoI in terms of tax types, it is one of our current legislative proposals to enhance the existing arrangements by providing flexibility in the coverage of tax types for the purpose of EoI (i.e. not confined to taxes covered by the CDTAs). In doing so, we could stand a</li> </ul>



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		better chance of persuading jurisdictions to commence CDTA negotiations with Hong Kong.
5. The legislative framework for TIEAs should contain restriction on disclosure of items subject to legal professional privilege.	Law Society of Hong Kong	<ul style="list-style-type: none"> <li>All along, the protection of legal professional privilege has been afforded under section 51(4A) of the Inland Revenue Ordinance (Cap. 112) ("IRO"), which states that "nothing in subsection (4) shall require disclosure by counsel or solicitor of any privileged information or communication given or made to him in that capacity". Accordingly, we consider that it is not necessary to repeat the safeguard in the legal framework for TIEAs.</li> </ul>
6. It is not clear whether there will be any restrictions on the provision of information to a requesting party where the information relates to a third jurisdiction.	Hong Kong Institute of Certified Public Accountants	<ul style="list-style-type: none"> <li>EoI is not limited to information relating to the affairs of residents of the contracting parties. Often, the tax administration of one of the contracting parties will have an interest in receiving information on activities carried on in the other contracting party by a particular person resident in a third jurisdiction because the tax liability of the latter as a non-resident taxpayer is at issue. There are also circumstances under which a person of a third jurisdiction</li> </ul>

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		<p>is interposed in the chain of information flow. For these reasons, the standard EoI Article invariably stipulates that EoI is not restricted by Article 1 (which defines the persons covered by the CDTA).</p>
<p>7. The Government should clarify its policy position in relation to allowing information exchanged to be passed to third parties in other jurisdictions. It is not clear how the restriction stated by the Government in this regard, i.e. allowing the use of tax information exchanged for non-tax purposes, when such information may be used for such other purposes under the laws of both sides, will be reflected in the context of a specific CDTA or TIEA and how it will be monitored or enforced. It is also uncertain whether information used</p>	<p>Hong Kong Institute of Certified Public Accountants</p>	<ul style="list-style-type: none"> <li>• The OECD EoI Article allows the use of tax information exchanged for other purposes provided that such use is allowed under the laws of both contracting parties and the competent authority of the supplying party authorizes such use. OECD allows the sharing of tax information by the tax authorities of the receiving party with other law enforcement agencies and judicial authorities in that jurisdiction on certain high priority matters (e.g. to combat money laundering, corruption and terrorism financing). In this regard, we would meet the requirement by allowing our present and future CDTA/TIEA partners to use the information received from Hong Kong for other purposes when such information may be used for such other purposes as specified under the laws of both sides and the competent authority of Hong Kong (i.e. IRD) authorizes</li> </ul>

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<p>for non-tax purposes by CDTA/TIEA partners could be passed on to a third jurisdiction.</p>		<p>such use. This has taken into account the fact that our domestic legislation (i.e. the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organized and Serious Crimes Ordinance (Cap. 455) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)) require any persons with knowledge or suspicion, including IRD officers, to disclose confidential information to authorized officers of law enforcement agencies designated under the relevant legislation to enable them to perform their duties thereunder. It should be noted that such information exchanged cannot be passed to any third jurisdiction, which is a safeguard stated in the CDTA/TIEA.</p>
<p><b><i>F. Operational Matters</i></b></p>		
<p>1. The Government should provide more guidance as to what is meant by information in a person's "control" as amended by Clauses 5 and 7 of the Bill.</p>	<p>The Taxation Institute of Hong Kong</p>	<ul style="list-style-type: none"> <li>It is necessary to amend sections 51 and 52 of the IRO to include the term "control" so as to align with the wording of the OECD EoI article. Clauses 5 and 7 of the Bill seek to amend sections 51 and 52 of the IRO respectively to provide that the power under those sections to obtain</li> </ul>

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2. It is desirable that information to be exchanged is confined to that physically located in Hong Kong in order to ensure the practicality of implementation of the legislation.	Association of Chartered Certified Accountants Hong Kong	information is exercisable not only in respect of information possessed by a person, but also in respect of information in a person's control.
<b>G. Administrative Matters</b>		
1. IRD should have adequate resources to handle requests under TIEAs.	Law Society of Hong Kong	<ul style="list-style-type: none"> <li>At present, IRD's Tax Treaty Section is responsible for CDTA negotiation and implementation. We will keep in view the need for additional resources for IRD after the TIEA framework is in place.</li> </ul>
2. There is no need for IRD to seek new/additional resources so as to accord favoured treatment to TIEAs.	International Chamber of Commerce - Hong Kong, China	
3. The requesting party to EoI should be responsible for the cost of providing assistance.	Law Society of Hong Kong	<ul style="list-style-type: none"> <li>We will keep in view the need for charging after the TIEA framework is in place, by having reference to the practice of other jurisdictions in implementing TIEAs.</li> </ul>

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4. There should be regular review of agreements that Hong Kong has entered into.	International Chamber of Commerce - Hong Kong, China	<ul style="list-style-type: none"> <li>• Similar to the current approach, after the entry into force of CDTAs/TIEAs, IRD will keep under constant review the relevant agreements and stand ready to raise with the competent authorities of the CDTA/TIEA partners any particular issue arising from the implementation of the agreements.</li> </ul>

Financial Services and the Treasury Bureau  
June 2013