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Founded in 1913

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香港華人會計師公會
The Society of Chinese Accountants & Auditors

(在香港註冊成立之有限公司)
(Incorporated in Hong Kong as a company limited by guarantee)

1 June 2013

Hon. Kenneth Leung
Chairman
Bills Committee on Inland Revenue (Amendment) Bill 2013
The Legislative Council
Government of the Hong Kong Special Administrative Region
The People's Republic of China

Dear Sir,

Inland Revenue (Amendment) Bill 2013 Submission

Thank you for inviting The Society of Chinese Accountants and Auditors to send in our submission on the proposed amendments of the Bills Committee to Inland Revenue (Amendment) Bill 2013.

The Society of Chinese Accountants and Auditors was formed in 1913 and incorporated in 1948. We have over 1,000 members representing hundreds of Certified Public Accountants ("CPA") firms in Hong Kong. The CPA firms, of which our members are partners, directors or managers, audit a significant majority of the companies incorporated or formed in Hong Kong. Our members have direct communications with their clients, directors and shareholders and understand their needs.

With the support of our members who expressed their views during a members' forum specifically organized to solicit their views on the Tax Information Exchange Agreement ("TIEA"), we hereby submit our views and comments for your consideration:

1. "Control" - Section 51 amended (returns and information to be furnished) and Section 51 (4A)

"Control" of documents may not be easily defined. The proposal to add "or control" in addition to "possession" may pose practical difficulties to the persons concerned. Hong Kong is a regional hub for many businesses in Asia; and many investors may make use of Hong Kong companies to invest into other countries. Although someone may legally have "control" of documents that exist in other countries, there may be



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foreign laws that forbid the producing of such documents by the Hong Kong companies. Our taxpayers may be in breach of such foreign laws for something that is beyond their own control.

2. Costs

As stated previously, Hong Kong is a regional hub. Our taxpayers may be subject to numerous requests from different tax authorities from all over the world for voluminous documentation. It is not clear as to who will be responsible for the costs and expenses for satisfying such requests from various jurisdictions. As Hong Kong taxes only on income derived in Hong Kong, one can foresee that Hong Kong will be involved mainly in answering requests from (as opposed to making request to) other jurisdictions.

We suggest that the tax laws be amended so that the reasonable costs and expenses (including, without limitation, legal and professional fees and expenses) for and in connection with the provision by our tax authorities and/or tax payers of the relevant and requested information should be borne fully or partially by the requesting parties.

3. Extension of time period before TIEA comes into operation.

Retroactive effect of TIEA may mean that our taxpayers will be subject to requests for documents that are dated back a lengthy period of time, and these documents and/or information may be lost, misplaced or otherwise unavailable.

We propose that a higher criteria than “foreseeably relevant” be set for requests for documents and/or information before TIEA comes into operation so as to protect the interests of our taxpayers

4. Safeguards

Although our members object to TIEA, we understand that the Government of the Hong Kong Special Administrative Region is facing severe pressure to put into place a legislation that provides for tax information exchange as soon as possible. We support that it is also critical for Hong Kong to align with international practice.

However, it is important that various safeguards for the present comprehensive double taxation agreements be effective in conjunction with TIEA.

We propose that the safeguards be included in the main legislations. The difficulties in amending the safeguards can also assure taxpayers of the mandatory use of the



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safeguards in all negotiations.

We would like to thank the Financial Services and the Treasury Bureau and Inland Revenue Department for explaining the proposed amendments to our society representatives.

We hope the above suggestions can help to balance the pressures received by the Government and its protection and responsibility to our local taxpayers.

Should you have any further questions, please feel free to contact Ms. Elizabeth Law, Chairman of Taxation Committee, of our Society or the undersigned.

Yours sincerely

Nelson Lam
President