

Bills Committee on Inland Revenue (Amendment) Bill 2013

**Follow-up actions to be taken by the Administration
for the meeting on 3 June 2013**

Information covered by legal professional privilege

The Administration has stressed that under the future tax information exchange agreements ("TIEAs"), there is no obligation for the contracting parties to supply information which would be covered by legal professional privilege. According to the Administration, this and other safeguards will be included in the texts of future TIEAs, which will be implemented as subsidiary legislation subject to negative vetting by the Legislative Council. The Bills Committee requested that a model TIEA promulgated by the Organization for Economic Cooperation and Development be provided for members' reference.

Clause 6 -- Section 51B amended (power to issue search warrant)

2. The Administration has emphasized that the proposed amendment to subsection (1AA), i.e. repealing "tax concerned" and substituting "tax concerned or any other sums or values in respect of which a person is chargeable to the tax concerned", would only apply to provision of tax information under comprehensive avoidance of double taxation agreements (and the future TIEAs) and have no effect on the requirement for taxpayers to retain business and rent records under sections 51C and 51D of the Inland Revenue Ordinance (Cap. 112) ("IRO"). Members noted that subsection (1) of section 51B, which empowered a magistrate to authorize a search by warrant, also applied to any tax of a territory outside Hong Kong under the circumstances prescribed in subsection (1AA). Members were concerned that if under such a search, a person was found to possess books, records, accounts or documents which might be reasonably required for any tax assessment, the person might commit an offence under IRO on the ground of giving false representation.

3. Members were concerned that the proposed amendment might impose new liabilities on taxpayers over retention and provision of business and rent records. The Administration was requested to provide information about the justifications and purpose of the proposed amendment, and whether the amendment would lead to possible criminal offences.

Clause 8 -- Section 4 amended (information that may be disclosed in response to disclosure request)

4. It was proposed that section 4 of the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) be amended as follows -- "The Commissioner must not disclose any information in response to a disclosure request unless the Commissioner is satisfied that the information relates to: (a) the carrying out of the provisions of the relevant arrangements in respect of any period that starts after the arrangements have come into operation; or (b) the administration or enforcement of the tax law of the requesting government's territory in respect of any period that starts after the relevant arrangements have come into operation. The Administration was requested to provide the rationale for the proposed amendments and to elaborate on the differentiation between (a) and (b).

Submission from the Society of Chinese Accountants and Auditors

5. The Administration was requested to provide a written response to the above submission, which was received after the meeting.

Council Business Division 1
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