

## **LEGISLATIVE COUNCIL BRIEF**

Inland Revenue Ordinance  
(Chapter 112)

### **INLAND REVENUE (AMENDMENT) BILL 2013**

#### **INTRODUCTION**

At the meeting of the Executive Council on 26 March 2013, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Amendment) Bill 2013 (“the Bill”), at Annex A, should be introduced into the Legislative Council. The Bill amends the Inland Revenue Ordinance (Cap. 112) (“IRO”) to enable Hong Kong to enter into standalone tax information exchange agreements (“TIEAs”<sup>1</sup>) and to enhance the existing exchange of information (“EoI”) arrangements under comprehensive avoidance of double taxation agreements (“CDTAs”) to meet the international standard adopting a minimum necessary approach.

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#### **JUSTIFICATIONS**

##### **Tax Treaty Policy**

2. Since 1998-99, the Administration has been committed to establishing a network of CDTAs with our major trading and investment partners so as to provide certainty on taxation of cross-border activities and relief for double taxation<sup>2</sup>, thereby facilitating flow of trade, investment and talent between Hong Kong and the rest of the world, as well as to enhance Hong Kong’s position as an international business and financial centre. Hong Kong, as a responsible member of the international

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<sup>1</sup> TIEAs provide for EoI mechanism without double taxation relief. The existing IRO only allows Hong Kong to enter into tax agreements with other jurisdictions when there is double taxation relief.

<sup>2</sup> Double taxation is generally defined as the imposition of comparable taxes in two or more places on the same taxpayer in respect of the same subject matter and for identical periods. It impedes trade investment and the flow of talent among economies if no appropriate relief measure is in place.

community, is also committed to enhancing tax transparency and preventing tax evasion. We have incorporated in all the CDTAs that Hong Kong has signed an EoI article that is on par with the prevailing international standard as far as practicable.

### **Complying with the Latest International EoI Standard**

3. On the international front, there have been increasing aspirations to enhance tax transparency with a view to preventing and combating fiscal evasion. As one of the 120 members of the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) of the Organisation for Economic Cooperation and Development (“OECD”), Hong Kong is now undergoing a two-phase peer review by the Global Forum which evaluates jurisdictions’ compliance with the international EoI standard. Phase 1 of the peer review on Hong Kong was completed in October 2011. This affirmed our efforts in enhancing tax transparency. However, the Global Forum has recommended that Hong Kong should put in place a legal framework for entering into TIEAs as the latest international standard is that a jurisdiction should make available **both** CDTA and TIEA as instrument for EoI with other jurisdictions.

4. In December 2012, the Global Forum launched the Phase 2 peer review on Hong Kong, which evaluates Hong Kong’s implementation of the EoI standard in practice and examines whether Hong Kong has taken forward the recommendations proposed by the Global Forum during the Phase 1 peer review. As advised by the Global 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 labelled 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. Other jurisdictions may also impose unilateral sanctions on Hong Kong. It is therefore critical for Hong Kong to have in place the legal framework for TIEAs by mid-2013 before the Global Forum finishes the Phase 2 peer review report on Hong Kong in September 2013.

### **Development of Hong Kong’s CDTA Network in Recent Years**

5. Meanwhile, we have also run into practical difficulties in further expanding Hong Kong’s CDTA network. We need to at least adopt a minimum necessary approach to enhance the EoI arrangement under CDTA so that it could catch up with the prevailing international EoI

standard to be provided under TIEA. Only through doing so can we be able to continue with our efforts in negotiating CDTAs with existing as well as potential partners and providing a legal framework for TIEA for Hong Kong to meet our international obligations.

B 6. Up to the end of March 2013, Hong Kong has signed 27 CDTAs (as listed in Annex B). Signatories include 11 of our top 20 trading partners. In all the CDTAs signed, we have incorporated an EoI article to fulfill Hong Kong's international obligation of enhancing tax transparency and preventing tax evasion.

## **Existing EoI Arrangement**

C 7. Our existing EoI regime is generally based on the 2004 version of the EoI Article in the OECD Model Tax Convention on Income and on Capital (see Annex C), except for certain modifications to address local needs. To recapitulate, the current EoI arrangement has the following salient features –

- (a) we will only exchange information upon receipt of requests and no information will be exchanged on an automatic or spontaneous basis;
- (b) the information sought should be foreseeably relevant, i.e. no fishing expeditions;
- (c) the scope of EoI is confined to taxes covered by the CDTAs;
- (d) we will only exchange information that does not relate to any period before the relevant provisions of the relevant CDTA come into effect;
- (e) information received by our treaty partners should be treated as confidential;
- (f) information would 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 treaty partners;

- (g) information requested should not be disclosed to a third jurisdiction;
- (h) 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 would be covered by legal professional privilege, etc; and
- (i) we will not accede to any requests from our treaty partners for tax examinations abroad and assistance in collection of taxes.

## **Facilitating the Conclusion of Further CDTAs**

8. We need to enhance our EoI arrangements in respect of our restrictive position in the area of tax types and limitation on disclosure (paragraph 7(c) and (d) above refer) in order to strive for a breakthrough in our future CDTA negotiations. Despite our repeated efforts, some of the jurisdictions that we have approached, particularly a number of major trading partners of Hong Kong, have yet to be convinced of the case for pursuing a CDTA with us and are adopting a wait-and-see attitude. By 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 could stand a better chance of persuading the key jurisdictions to commence CDTA negotiations with Hong Kong.

### *Tax Types*

9. Hong Kong has a simple tax system, under which only three direct taxes are imposed, namely profits tax, salaries tax and property tax. From Hong Kong's perspective, we considered that EoI for the purposes of these direct taxes would suffice and hence have sought to restrict the EoI Article to similar direct taxes which are covered by the CDTAs only. However, some of the jurisdictions with which we have successfully concluded CDTAs, such as the Netherlands, the United Kingdom, France, Japan, Mexico and Italy did raise grave concerns during negotiations on our restrictive position in the coverage of tax types for EoI. As a matter of fact, the tax systems of most jurisdictions are far more complex than that of Hong Kong and have a much wider range of tax types, e.g. value-added tax, inheritance tax, and sometimes different level of taxes, e.g. federal and state taxes. Understandably, the tax authorities of these jurisdictions would like information from CDTA partners to facilitate their investigation of tax evasion cases concerning income taxes (i.e. those taxes covered by the relevant CDTA) to also be applicable to other tax types.

This is particularly so where these other tax types may also be administered by the same tax authorities. Our existing restrictive stance inevitably frustrates CDTA partners' investigation of tax evasion cases concerning tax types other than income taxes.

### *Limitation on Disclosure*

10. As for limitation on disclosure, we now adopt a highly stringent approach and will not entertain any request for any information that may also relate to a period before the provisions of the relevant CDTA have taken effect. This, however, has posed practical problems and fallen short of meeting our CDTA partners' practical requirements. Information generated prior to the effective date of the relevant provisions of the CDTA may in fact also be foreseeably relevant to the tax administration and enforcement after the relevant provisions of the CDTA come into effect<sup>3</sup>. Similar to the case with tax types, we find the current arrangement not desirable in terms of enhancing tax transparency and combating tax evasion.

### **Safeguards on Taxpayers' Privacy and Confidentiality of Information Exchanged**

11. As indicated at the LegCo Panel on Financial Affairs ("FA Panel") meetings in November 2012 and February 2013, and earlier rounds of consultation with relevant stakeholders (including business chambers and professional bodies), some Members and stakeholders are concerned about taxpayers' privacy and confidentiality of information exchanged. To alleviate their concerns, we would ensure that the existing highly prudent safeguards as set out in paragraph 7(a) to (i) above (save for some proposed refinements to paragraph 7(c) and (d)) remain in place to protect taxpayers' privacy and confidentiality of information exchanged.

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<sup>3</sup> For instance, a UK resident opened a savings account with a bank in Hong Kong on 1 March 2010 and received interest therefrom. The tax authority in the UK suspects that the UK resident has failed to report his worldwide income attributable to the interest income arising in Hong Kong. The UK authority is investigating the tax affairs of the UK resident for the period from April 2011 onwards and requests the Inland Revenue Department ("IRD") of Hong Kong to provide bank statements of the account in Hong Kong for the period from 1 April 2011 to 31 March 2012 as well as a copy of the signature card for the account in question. The Hong Kong/UK CDTA has effect in Hong Kong for any year of assessment beginning on or after 1 April 2011, but the bank account was opened by the UK resident on 1 March 2010. Pursuant to section 4 of the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. Leg. BI), IRD is only able to provide the bank statements for the period from 1 April 2011 to 31 March 2012 but not copy of the signature card for the account in question, even though the latter is foreseeably relevant to a request relating to a period after the CDTA comes into operation.

12. To afford legal protection to taxpayers in this respect, similar to our existing practice with CDTAs signed, we will strive to include the relevant safeguards in the texts of future CDTAs/TIEAs, which will be implemented as subsidiary legislation domestically subject to negative vetting by the LegCo.

13. Currently, for EoI under CDTAs, we also have in place the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) (“Disclosure Rules”) as domestic statutory safeguards in addition to those provided in individual CDTAs to protect taxpayers’ privacy and confidentiality of information exchanged. The Disclosure Rules stipulate the particulars to be contained in an EoI request made by our treaty partner to demonstrate that the requested information is “foreseeably relevant”. It also provides for a notification and review system in handling EoI requests and related appeals. We would extend the applicability of the Disclosure Rules currently applicable to EoI under CDTAs to TIEAs to be signed in future.

### **Other Recent Developments Relating to EoI**

14. While not directly related to the Bill, we wish to take this opportunity to keep the Legislative Council abreast of some recent developments relating to EoI in the international arena. In July 2012, the OECD approved an update to the EoI Article of its Model Tax Convention and its Commentary. In gist, the 2012 version of the EoI Article features a new requirement to allow the use of information exchanged for other purposes (i.e. non-tax related) provided that such use is allowed under the laws of both contracting parties and the competent authority of the supplying party authorizes such use. This new mandatory feature was previously an optional provision to be decided by the contracting parties. Apart from this, the 2012 version also carries major changes in the following ways -

- (a) it has provided more detailed interpretation of the prevailing standard of “foreseeable relevance” and the existing term “fishing expeditions”, both of which are relevant to the consideration of the competent authority of the requested party as to whether an EoI request should be entertained or not. In this context, it has considerable elaboration on how a request which relates to a group of taxpayers not individually identified should be treated; and
- (b) it has provided for an optional default standard of time limits for supplying information with a view to improving the speediness

and timeliness of EoI.

15. On the use of tax information exchanged for non-tax related purposes, we are prepared to abide by OECD's new requirement by allowing our CDTA or future TIEA partners to use the information exchanged 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 the supplying party (i.e. IRD) authorizes 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)) already 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.

16. As regards requests concerning a group of taxpayers, we consider that as long as the requesting party could substantiate that its request is related to tax purposes and could demonstrate that the request could meet the standard of "foreseeable relevance", the existing EoI regime already provides necessary flexibility for IRD to accede to such requests.

17. As the default standard of time limits for supplying information is an optional provision, we do not intend to adopt the standard at this stage. We will continue to respond to our CDTA or future TIEA partners' EoI requests in a timely manner.

## **OTHER OPTIONS**

18. We must amend the IRO in order to bring our proposals into effect. There are no other options.

## **THE BILL**

19. In order to enable Hong Kong to enter into standalone TIEAs with other jurisdictions and to enhance the EoI arrangements in respect of tax types and limitation on disclosure under CDTAs, we propose to adopt the minimum necessary approach to amend the IRO. The main provisions of the Bill are as follows -

- (a) **Clause 4** amends section 49 of the IRO so that arrangements may be made with the government of a territory outside Hong Kong not only for affording relief from double taxation, but also for exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory;
- (b) **Clauses 5 and 7** amend sections 51 and 52 of the IRO respectively to clarify that the power under those sections to obtain information is exercisable not only in respect of information possessed by a person, but also in respect of information in a person's control;
- (c) **Clause 8** amends section 4 of the Disclosure Rules to enable the Commissioner of Inland Revenue to disclose information that relates to the carrying out of the relevant arrangements, or to tax assessment, in respect of any period that starts after the arrangements have come into operation; and
- (d) **Clauses 6 and 9** contain consequential amendments to section 51B of the IRO and the Schedule to the Disclosure Rules.

D The existing provisions being amended are at Annex D.

## **LEGISLATIVE TIMETABLE**

20. The legislative timetable will be as follows -

Publication in the Gazette	12 April 2013
First Reading and commencement of Second Reading debate	24 April 2013
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

## **IMPLICATIONS OF THE PROPOSAL**

21. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the IRO and its subsidiary legislation. The financial, economic and civil service implications of the

E proposal are set out at Annex E. The proposal has no productivity, sustainability, environmental or family perspective implications.

## **PUBLIC CONSULTATION**

22. On the provision of a legal framework for TIEAs, we completed at the end of June 2012 a two-month consultation exercise with some 50 business chambers and professional bodies. We conducted a further round of briefing and consultation sessions from November 2012 to January 2013 with various stakeholders, including tax and accountants' associations, banking and insurance associations, as well as chambers of commerce. We consulted the LegCo FA Panel on 5 November 2012 and 4 February 2013. In general, various stakeholders supported our proposed approach to enhance the EoI under CDTA framework and to put in place a legal framework for TIEA.

## **PUBLICITY**

23. We will issue a press release on 12 April 2013. A spokesperson will be available to answer media and public enquiries.

## **ENQUIRIES**

24. In case of enquiries about this Brief, please contact Ms Shirley Kwan, Principal Assistant Secretary for Financial Services and the Treasury (Treasury) at 2810 2370.

**Financial Services and the Treasury Bureau  
10 April 2013**

# **LEGISLATIVE COUNCIL BRIEF**

Inland Revenue Ordinance  
(Chapter 112)

## **INLAND REVENUE (AMENDMENT) BILL 2013**

### **ANNEXES**

- |         |  |
|---------|--|
| Annex A | Inland Revenue (Amendment) Bill 2013   |
| Annex B | List of jurisdictions with which Hong Kong has signed CDTAs  |
| Annex C | 2004 version of the EoI Article in the Organisation for Economic Cooperation and Development Model Tax Convention on Income and on Capital |
| Annex D | Existing provisions of the IRO being amended   |
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Part 1  
Clause 1

Inland Revenue (Amendment) Bill 2013

1

# A BILL

## To

Amend the Inland Revenue Ordinance to make further provisions to facilitate the collection and disclosure of tax information under arrangements made with the government of a territory outside Hong Kong, and to provide for related matters.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

##### 1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2013.

##### 2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

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Part 2  
Clause 3

Inland Revenue (Amendment) Bill 2013

2

### Part 2

#### Amendments to Inland Revenue Ordinance (Cap. 112)

##### 3. Part 8 heading amended (double taxation relief)

Part 8, heading, after “Relief”—

Add

“and Exchange of Information”.

##### 4. Section 49 amended (double taxation arrangements)

(1) Section 49, heading—

Repeal

“Double taxation arrangements”

Substitute

“Arrangements for relief from double taxation and exchange of information”.

(2) Section 49(1A)—

Repeal

“Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory,”

Substitute

“Hong Kong.”

(3) After section 49(1A)—

Add

“(1B) But only arrangements made for either or both of the following purposes may be specified in an order under subsection (1A)—

- (a) affording relief from double taxation;
- (b) exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned.”.

**5. Section 51 amended (returns and information to be furnished)**

- (1) Section 51(4)(a), after “possession” (wherever appearing)—

Add

“or control”.

- (2) Section 51(4A)(i), after “possession”—

Add

“or control”.

**6. Section 51B amended (power to issue search warrant)**

- Section 51B(1AA)—

**Repeal**

“tax concerned,”

**Substitute**

“tax concerned or any other sums or values in respect of which a person is chargeable to the tax concerned.”.

**7. Section 52 amended (information to be furnished by officials and employers)**

- Section 52(1), after “possession”—

Add

“or control”.

## **Part 3**

### **Amendments to Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI)**

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

Section 4—

**Repeal**

“does not relate to any period before the relevant arrangements came into operation.”

**Substitute**

“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.”.

**9. Schedule amended (particulars to be contained in disclosure request)**

- (1) The Schedule, item 5, after “possession”—

Add

“or control”.

- (2) The Schedule, item 6, after "possession"—

Add

"or control".

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### **Explanatory Memorandum**

The main purpose of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (*the Ordinance*) and the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) (*the Rules*) to make further provisions to facilitate the collection and disclosure of tax information under arrangements made with the government of a territory outside Hong Kong.

2. The Bill is divided into 3 Parts.

#### **Part 1**

3. Clause 1 sets out the short title.

#### **Part 2**

4. Clause 4 amends section 49 of the Ordinance so that arrangements may be made with the government of a territory outside Hong Kong not only for affording relief from double taxation, but also for exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory.
5. Clauses 5 and 7 respectively amend sections 51 and 52 of the Ordinance to clarify that the power under those sections to obtain information is exercisable not only in respect of information possessed by a person, but also in respect of information in a person's control.
6. Clause 6 contains a consequential amendment to section 51B of the Ordinance.

#### **Part 3**

7. Clause 8 amends section 4 of the Rules to enable the Commissioner of Inland Revenue to disclose information that relates to the carrying out of the relevant arrangements, or to tax assessment, in

- respect of any period that starts after the arrangements have come into operation.
8. Clause 9 contains consequential amendments to the Schedule to the Rules.

## Annex B

### **List of Jurisdictions with which Hong Kong has Signed CDTAs** (as at end March 2013)

	<b>Jurisdictions</b>	<b>Date of Signing</b>
1	Belgium*	10.12.2003
2	Thailand*	7.9.2005
3	Mainland China*	21.8.2006
4	Luxembourg	2.11.2007
5	Vietnam*	16.12.2008
6	Brunei	20.3.2010
7	Netherlands*	22.3.2010
8	Indonesia	23.3.2010
9	Hungary	12.5.2010
10	Kuwait	13.5.2010
11	Austria	25.5.2010
12	United Kingdom*	21.6.2010
13	Ireland	22.6.2010
14	Liechtenstein	12.8.2010
15	France*	21.10.2010
16	Japan*	9.11.2010
17	New Zealand	1.12.2010
18	Portugal	22.3.2011
19	Spain	1.4.2011
20	Czech Republic	6.6.2011
21	Switzerland*	4.10.2011
22	Malta	8.11.2011
23	Jersey	22.2.2012
24	Malaysia*	25.4.2012
25	Mexico	18.6.2012
26	Canada	11.11.2012
27	Italy*	14.1.2013

\* Among the top 20 trading partners of Hong Kong

## **Annex C**

### **EoI Article in the OECD Model Tax Convention on Income and on Capital (2004 version)**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

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## Annex D

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
Part:	8	Double Taxation Relief*	E.R. 1 of 2012	09/02/2012

**Note:**

\* (Amended 49 of 1956 s. 32)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
Section:	49	Double taxation arrangements	E.R. 1 of 2012	09/02/2012

- (1) If the Chief Executive in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax under this Ordinance despite anything in any enactment. (Amended 7 of 1986 s. 12; 12 of 1999 s. 3; 1 of 2010 s. 3)
- (1A) If the Chief Executive in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, those arrangements shall have effect and, in particular—
  - (a) shall have effect in relation to tax under this Ordinance despite anything in any enactment; and
  - (b) for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of that territory, shall have effect in relation to any tax of that territory that is the subject of that provision. (Added 1 of 2010 s. 3)
- (2) (Repealed 49 of 1956 s. 36)
- (3) (Repealed 32 of 1998 s. 29)
- (4) Any order made under this section may be revoked by a subsequent order.
- (5) Where any arrangements have effect by virtue of this section, the obligation as to secrecy imposed by section 4 shall not prevent the disclosure to any authorized officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.
- (6) The Chief Executive in Council may make rules for carrying out the provisions of any arrangements having effect under this section. (Amended 12 of 1999 s. 3)
- (7) Rules made under subsection (6) are subject to the approval of the Legislative Council. (Added 1 of 2010 s. 3)  
(Amended 49 of 1956 s. 36)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
Section:	51	Returns and information to be furnished	E.R. 1 of 2012	09/02/2012

- (1) An assessor may give notice in writing to any person requiring him within a reasonable time stated in such notice to furnish any return which may be specified by the Board of Inland Revenue for—
  - (a) property tax, salaries tax or profits tax; or
  - (b) property tax, salaries tax and profits tax, under Parts 2, 3, 4, 10A, 10B, and 10C. (Replaced 52 of 1993 s. 5. Amended 5 of 2003 s. 7)
- (2) Every person chargeable to tax for any year of assessment shall inform the Commissioner in writing that he is so chargeable not later than 4 months after the end of the basis period for that year of assessment unless he has already been required to furnish a return under the provisions of subsection (1). (Replaced 49 of 1956 s. 37)
- (2A) An assessor shall give notice to any individual who has elected to be personally assessed under Part 7 requiring that individual within a reasonable time stated in the notice to furnish a return in the specified form of his total income assessable under this Ordinance. (Added 43 of 1989 s. 16)
- (2B) Where a notice is required to be given under subsection (2A) to an individual who is married and not living apart from his or her spouse—
  - (a) such notice shall be given to both that individual and his or her spouse; and
  - (b) they shall be required to furnish a return of their joint total income assessable under this Ordinance.

(Added 43 of 1989 s. 16)

- (2C) For the purposes of this section, compliance by a person, and his or her spouse when they have jointly elected to be personally assessed, with the requirements of a notice issued under subsection (1) shall be deemed to be compliance with the requirements of a notice issued under subsection (2A) or (2B). (Added 52 of 1993 s. 5)
- (3) An assessor may give notice in writing to any person when and as often as he thinks necessary requiring him within a reasonable time stated in such notice to furnish fuller or further returns respecting any matter of which a return is required or prescribed by this Ordinance.
- (4) For the purposes of obtaining full information in regard to any matter which may affect any liability, responsibility or obligation of any person under this Ordinance-
- an assessor or an inspector may give notice in writing to such person, or to any other person whom he considers may be in possession of information or documents in regard to any such matter as aforesaid, requiring him within such reasonable time as is stated in the notice to furnish all information in his possession respecting any such matter, and to produce for examination any deeds, plans, instruments, books, accounts, trade lists, stock lists, vouchers, bank statements or other documents which the assessor or inspector giving the notice considers are or may be relevant for the purpose aforesaid:  
Provided that in the case of a notice under this paragraph requiring the production of any account kept by a solicitor and relating to the affairs of any client or clients of his, production of a copy of all relevant entries therein respecting any matter upon which information is sought shall be a sufficient compliance with the aforesaid requirement of the notice if the copy is certified by the solicitor as being a correct copy of all relevant entries in such account respecting the matter aforesaid;
  - an assistant commissioner may give notice in writing to such person, or to such other person, requiring him, at a time and place to be named by the assistant commissioner, to attend and be examined, and upon such examination to answer truthfully all questions put to him, respecting any such matter as aforesaid.
- (Replaced 35 of 1965 s. 26. Amended 40 of 1972 s. 4)
- (4AA) Subsection (4) also applies for the purposes of obtaining full information in regard to any matter (referred to in this subsection as the matter concerned ) that may affect any liability, responsibility or obligation of any person (referred to in this subsection as the person concerned ) under the laws of a territory outside Hong Kong concerning any tax of that territory if-
- arrangements having effect under section 49(1A) are made with the government of that territory; and
  - that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,
- and, for the purposes of the application of subsection (4) under this subsection, references to any such matter and any such matter as aforesaid in subsection (4)(a) and (b) are to be construed as references to the matter concerned, and references to such person in subsection (4)(a) and (b) are to be construed as references to the person concerned. (Added 1 of 2010 s. 5)
- (4A) For the avoidance of doubt it is hereby declared that the powers conferred by subsection (4) include the power to require information from, and to require the attendance for the purpose of being examined of,-
- any person, or any employee of any person, who was a party to any particular land or property transaction;
  - any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction;
  - any person who either paid or received, directly or indirectly, any consideration, brokerage, commission or fee in respect of or in connection with any particular land or property transaction; and
  - any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, respecting any particular land or property transaction,
- as to any of the following matters, that is to say-
- the full names (including aliases) and addresses of any of the persons referred to in paragraphs (a) to (d) and any other information in his possession which may be helpful in identifying or locating any such persons;
  - any consideration, brokerage, commission or fee paid or received in respect of or in connection with any such land or property transaction; and
  - the terms and conditions of any such land or property transaction;
- and the existence in respect of any communication, whether oral or written, of privilege from disclosure shall not constitute any excuse for the non-disclosure of information as to any of the matters specified in paragraphs (i) to (iii) where disclosure thereof is required from any of the persons referred to in paragraphs (a) to (d), but except

as aforesaid 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. (Added 35 of 1965 s. 26)

- (4B) (a) Any person who without reasonable excuse, the burden of proof whereof shall lie upon him, fails to comply with the requirements of a notice given to him under subsection (4)(a) or fails to attend in answer to a notice issued under subsection (4)(b) or having attended fails to answer any questions put to him, being questions which under that paragraph may be put to him, shall be liable to a penalty at level 3 recoverable under section 75 as a civil debt due to the Government: (Amended 11 of 1985 s. 3; L.N 338 of 1995; 19 of 1996 s. 15)

Provided that-

- (i) the Commissioner may compound any such penalty and may before judgment in proceedings therefor stay or compound such proceedings, or may refuse to accept payment of such penalty or any part thereof except under a judgment of the court in proceedings for the recovery thereof;
- (ii) the court before which any proceedings for such penalty are brought may, if it thinks fit, give judgment for a less amount.

- (b) In addition to giving judgment for the penalty or any less amount as aforesaid, the court may order the person against whom the proceedings were brought to do, within a time specified in the order, the act which he has failed to do. (Added 35 of 1965 s. 26)

- (5) A return, statement, or form purporting to be furnished under this Ordinance by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement, or form shall be deemed to be cognizant of all matters therein.

- (6) Any person who ceases to carry on any trade, profession or business or who ceases to own any source of income or to be the owner of any land or buildings or land and buildings in respect of which tax is chargeable under the provisions of Part 2, 3, 4 or 7 shall so inform the Commissioner in writing within 1 month of such cessation. (Replaced 49 of 1956 s. 37. Amended 8 of 1983 s. 14)

- (7) Any person chargeable to tax under Part 3, 4 or 7 who is about to leave Hong Kong for any period exceeding 1 month shall give notice in writing to the Commissioner of his expected date of departure, and if he intends to return to Hong Kong the approximate date of his return. Such notice shall be given not later than 1 month before the expected date of departure:

Provided that-

- (a) the Commissioner may accept such shorter notice as he may deem reasonable; and
- (b) this subsection shall not apply in the case of an individual who is required in the course of his employment, business or profession to leave Hong Kong at frequent intervals. (Added 49 of 1956 s. 37. Amended 7 of 1986 s. 12)

- (8) Any person chargeable to tax under Part 2, 3, 4 or 7 who changes his address shall within 1 month inform the Commissioner in writing of the particulars of the change. (Added 2 of 1971 s. 33. Amended 8 of 1983 s. 14)

- (9) (Repealed 43 of 1975 s. 2)

(Amended E.R. 1 of 2012)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	51B	Power to issue search warrant	E.R. 1 of 2012	09/02/2012
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- (1) If the Commissioner, or an officer of the Inland Revenue Department not below the rank of chief assessor authorized in writing by the Commissioner for the purpose (in this section referred to as the authorized officer), satisfies a magistrate, by statement made on oath,-

- (a) that there are reasonable grounds for suspecting that a person has made an incorrect return or supplied false information having the effect of understating his income or profits chargeable to tax and has done so without reasonable excuse and not through an innocent oversight or omission; or
- (b) that a person has failed to comply with an order of a court made under section 80(1) or (2A) directing him to comply with the requirements of a notice given to him under section 51(1) or (3), (Amended 56 of 1993 s. 22)

the magistrate may by warrant authorize the Commissioner or authorized officer to exercise the following powers-

- (i) without previous notice at any reasonable time during the day, to enter and have free access to any land,

buildings, or place where he suspects there to be any books, records, accounts or documents of that person, or of any other person, which may afford evidence material in assessing the liability of the first-mentioned person for tax, and there to search for and examine any books, records, accounts or documents; (Amended 43 of 1975 s. 4)

- (ii) in carrying out any such search, to open or cause to be removed and opened, any article in which he suspects any books, records, accounts or documents to be contained;
- (iii) to take possession of any books, records, accounts or documents of that person or that person's spouse, and to make copies of such parts of any books, records, accounts or documents of any other person, as may afford evidence material in assessing the liability of the first-mentioned person for tax; (Replaced 43 of 1975 s. 4. Amended 71 of 1983 s. 27)
- (iv) to retain any such books, records, accounts or documents for as long as they may be reasonably required for any assessment to be made or for any proceedings under this Ordinance to be completed:  
Provided that if the Commissioner or authorized officer shall retain any book, record, account or document for a period of more than 14 days, the person aggrieved may apply in writing to the Board of Review for an order directing the return thereof and the Board of Review, after hearing the applicant or his authorized representative and the Commissioner or his representative, may so order, either unconditionally or subject to any condition which the Board may consider it proper to impose. (Amended 7 of 1975 s. 34)

(1AA) Subsection (1) also applies to any tax (referred to in this subsection as *the tax concerned*) of a territory outside Hong Kong if-

- (a) arrangements having effect under section 49(1A) are made with the government of that territory; and
- (b) the tax concerned is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory,

and, for the purposes of the application of subsection (1) under this subsection, a reference to a person's income or profits chargeable to tax in subsection (1)(a) is to be construed as a reference to a person's income or profits chargeable to the tax concerned, and a reference to a person's liability for tax in subsection (1)(i) and (iii) is to be construed as a reference to a person's liability for the tax concerned. (Added 1 of 2010 s. 6)

- (1A) Any officer of the Inland Revenue Department under the direction of the Commissioner or an authorized officer may assist the Commissioner or an authorized officer in the execution of a warrant issued under subsection (1) and may exercise any of the powers referred to in subsection (1)(i), (ii) and (iii). (Added 40 of 1972 s. 6)
- (2) When exercising any power under subsection (1), the Commissioner or authorized officer shall produce on demand the warrant issued to him under that subsection.
- (3) The person to whose affairs any books, records, accounts or documents taken possession of under subsection (1) relate shall be entitled to examine and make extracts from them at such times and under such conditions as the Commissioner may determine.
- (4) Any person who obstructs or hinders the Commissioner or an authorized officer acting in the discharge of his duty under subsection (1) or an officer assisting him under subsection (1A) commits an offence and is liable on conviction to a fine at level 3 and imprisonment for 6 months. (Amended 56 of 1993 s. 22; L.N. 338 of 1995; 4 of 2010 s. 8)

(Added 26 of 1969 s. 28. Amended 40 of 1972 s. 6)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	52	Information to be furnished by officials and employers	E.R. 1 of 2012	09/02/2012
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- (1) The Commissioner may give notice in writing to any officer in the employment of the Government or of any public body requiring him within a reasonable time stated in such notice to furnish any particulars which he may require for the purposes of this Ordinance which may be in the possession of such officer:  
Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he is under any express statutory obligation to observe secrecy.
- (2) Every person who is an employer shall, when required to do so by notice in writing given by an assessor, furnish within a reasonable time stated in such notice a return containing the names and places of residence and the full amount of the remuneration, whether in cash or otherwise, for the period specified in the notice, of-
  - (a) all persons employed by him in receipt of remuneration in excess of a minimum figure to be fixed by the assessor; and
  - (b) any other person employed by him named by the assessor.

- (3) For the purposes of this section, any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed by the company. (Amended 7 of 1986 s. 9)
- (4) Where any person who is an employer commences to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part 3, or any married person, he shall give notice thereof in writing to the Commissioner not later than 3 months after the date of commencement of such employment, stating the full name and address of the individual, the date of commencement and the terms of employment. (Added 49 of 1956 s. 38. Amended 7 of 1986 s. 9; 43 of 1989 s. 17)
- (5) Where any person who is an employer ceases or is about to cease to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part 3, or any married person, he shall give notice thereof in writing to the Commissioner not later than 1 month before such individual ceases to be employed in Hong Kong, stating the name and address of the individual and the expected date of cessation: (Amended 7 of 1986 s. 9; 43 of 1989 s. 17)  
Provided that the Commissioner may accept such shorter notice as he may deem reasonable. (Added 49 of 1956 s. 38)
- (6) The employer of any individual who is chargeable to tax under Part 3 and is about to leave Hong Kong for any period exceeding 1 month shall give notice in writing to the Commissioner of the expected date of departure of such individual. Such notice shall be given not later than 1 month before the expected date of departure:  
Provided that-
- (a) the Commissioner may accept such shorter notice as he may deem reasonable; and
  - (b) this subsection shall not apply in the case of an individual who is required in the course of his employment to leave Hong Kong at frequent intervals. (Added 49 of 1956 s. 38)
- (7) An employer who is required by subsection (6) to give notice to the Commissioner of the expected departure of an individual shall not, in the case of an individual whom he has ceased, or is about to cease, to employ in Hong Kong, except with the consent in writing of the Commissioner or in the case of money paid to the Commissioner on the direction of the individual, make any payment of money or money's worth to or for the benefit of the individual for a period of 1 month from the date on which he gave the notice; and compliance with this subsection shall constitute a defence in any proceedings against an employer in respect of his failure to make any payment to or for the benefit of the individual during the said period. (Added 26 of 1969 s. 29. Amended 2 of 1971 s. 34)
- (8) Notwithstanding anything to the contrary in subsections (4) and (5) an employer shall not be required to give notice under those subsections in respect of a married person if he has reasonable grounds for believing that neither that person nor his or her spouse are, or are likely to be, chargeable to tax under Part 3. (Added 7 of 1986 s. 9. Amended 43 of 1989 s. 17)

(Amended 7 of 1986 s. 12; E.R. 1 of 2012)

Chapter:	112BI	INLAND REVENUE (DISCLOSURE OF INFORMATION) RULES	Gazette Number	Version Date
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Rule:	4	Information that may be disclosed in response to disclosure request	L.N. 26 of 2010; L.N. 28 of 2010	12/03/2010
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The Commissioner must not disclose any information in response to a disclosure request unless the Commissioner is satisfied that the information does not relate to any period before the relevant arrangements came into operation.

Chapter:	112BI	INLAND REVENUE (DISCLOSURE OF INFORMATION) RULES	Gazette Number	Version Date
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Schedule:		SCHEDULE	L.N. 26 of 2010; L.N. 28 of 2010	12/03/2010
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[section 3]

## PARTICULARS TO BE CONTAINED IN DISCLOSURE REQUEST

1. The identity of the person or authority that makes the disclosure request ( competent authority ).
2. The purpose of the disclosure request and the tax type concerned.
3. The identity of the person who is the subject of the disclosure request.
4. A statement on the information requested, including—
  - (a) the nature of the information;
  - (b) the relevance of the information to the purpose of the disclosure request; and
  - (c) the form in which the competent authority wishes to receive the information from the Commissioner.
5. The ground for believing that the information requested is held by the Commissioner or is in the possession of a person in Hong Kong.
6. The name and address of any person believed to have possession of the information requested.
7. A statement that—
  - (a) the disclosure request complies with the laws and administrative practices of the requesting government s territory;
  - (b) the competent authority is able to obtain the information under the laws of the requesting government s territory or in the normal course of the administrative practices of the requesting government s territory; and
  - (c) the disclosure request complies with the relevant arrangements.
8. A statement that the requesting government has pursued all means available in its territory to obtain the information, including getting the information directly from the person who is the subject of the disclosure request.
9. The tax period for which information is requested.
10. The period within which the competent authority wishes the disclosure request to be met.
11. If applicable, a statement—
  - (a) confirming that the competent authority is of the opinion that notification to the person who is the subject of the disclosure request is likely to undermine the chance of success of the investigation in relation to which the request is made; and
  - (b) giving reasons for the opinion.
12. If applicable, a statement—
  - (a) confirming that the competent authority is of the opinion that prior notification to the person who is the subject of the disclosure request is likely to frustrate the timely enforcement of the tax laws of the requesting government s territory; and
  - (b) giving reasons for the opinion.

## Annex E

### **Financial, Economic and Civil Service Implications of the Proposal**

#### Financial Implications

The proposal will facilitate conclusion of further CDTAs with our trading partners and enable Hong Kong to enter into TIEAs with other jurisdictions where necessary.

2. We expect the number of EoI requests to increase and hence there may be additional expenditure on the part of IRD (e.g. photocopying charges) in gathering relevant information not in its ready possession. The overall financial implications should be insignificant. The additional expenditure would be absorbed by IRD.

#### Economic Implications

3. The proposal will facilitate further expansion of Hong Kong's CDTA network, which will in turn enhance economic interactions between Hong Kong and our treaty partners and contribute positively to the economic development of Hong Kong. It will strengthen the economic interaction between Hong Kong and treaty partners by providing enhanced certainty and stability regarding the tax liabilities of investors. The legal framework for TIEAs will enable Hong Kong to stand a better chance of passing the Phase 2 peer review by the Global Forum, thus minimising the risk of Hong Kong being labelled as an uncooperative jurisdiction or having sanctions imposed on Hong Kong. It will demonstrate Hong Kong's commitment to combating tax evasion and enhancing tax transparency, which will in turn reinforce the reputation of Hong Kong as a responsible international player.

#### Civil Service Implications

4. The proposal will facilitate conclusion of further CDTAs with our trading partners and enable Hong Kong to enter into TIEAs with other jurisdictions where necessary. There will be additional work for IRD in negotiating CDTAs/TIEAs and administering the implementation of the agreements, particularly with respect to the handling of EoI requests from CDTA/TIEA partners. We will review the manpower requirement after implementation of the proposal. Additional staffing resources, if required, will be sought through the established resource allocation mechanism.