

**立法會**  
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**Paper for the House Committee Meeting  
on 26 April 2013**

**Legal Service Division Report on  
Inland Revenue (Amendment) Bill 2013**

**I. SUMMARY**

- 1. The Bill**                      The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) and its subsidiary legislation by allowing:
- (a) arrangements to be made with the government of a territory outside Hong Kong (foreign territory) for the purpose of affording relief from double taxation and/or exchanging information in relation to any tax (not merely income or similar tax) imposed by the laws of Hong Kong or the foreign territory; and
- (b) the Commissioner of Inland Revenue to disclose information that relates to the carrying out of the provisions of the relevant arrangements, or the administration or enforcement of the tax law of the foreign territory, in respect of any period that starts after the arrangements have come into operation.
- 2. Public Consultation**      According to the Administration, business chambers and professional bodies were consulted in May and June 2012 and from November 2012 to January 2013, and were supportive of the legislative proposals.
- 3. Consultation with LegCo Panel**      The Panel on Financial Affairs (the Panel) was consulted on 5 November 2012 and 4 February 2013. Various concerns were expressed by Panel members.
- 4. Conclusion**                  In the light of the concerns raised by members of the Panel, Members may consider whether to study the policy aspects of the Bill in detail.

## **II. REPORT**

The date of First Reading of the Bill is 24 April 2013. Members may refer to the LegCo Brief (File Ref.: TsyB R 183/700-6/4/0 (C)) issued by the Financial Services and the Treasury Bureau on 10 April 2013 for further details.

### **Object of the Bill**

2. The main purpose of the Bill is to amend Part 8 of 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 (foreign territory).

### **Background**

3. The current regime for the exchange of information (EoI) for taxation purposes is provided for under Part 8 of the Ordinance and the Rules:

- (a) Under section 49(1A) of the Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any foreign territory with a view to affording relief from double taxation in relation to income tax and any similar tax imposed by the laws of the foreign territory, and that it is expedient that those arrangements should have effect. Upon such declaration, the arrangements have effect in relation to tax under the Ordinance despite anything in any enactment and, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of the foreign territory, have effect in relation to any tax of that territory that is the subject of that provision.
- (b) Section 4 of the Rules further provides that the Commissioner of Inland Revenue (the Commissioner) must not disclose any information in response to a disclosure request made by the government of the foreign territory unless the Commissioner is satisfied that the information does not relate to any period before the relevant arrangements came into operation.

4. According to the Administration, the current EoI regime under the Ordinance and the Rules falls short of the prevailing international EoI standard because of the following limitations:

- (a) section 49(1A) only permits EoI under comprehensive avoidance of double taxation agreements (CDTAs), but tax information exchange agreements without double taxation relief (TIEAs) are not allowed;

- (b) EoI is restricted to income taxes or taxes of a similar character covered by the CDTAs but is not permitted for other types of tax; and
- (c) the Commissioner must not entertain any request for any information relating to a period before the relevant CDTA has taken effect.

5. To enable Hong Kong to meet its international obligations as a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), the Administration considers it necessary to introduce amendments to enable Hong Kong to enter into TIEAs with other jurisdictions (where necessary) and to enhance the existing EoI arrangements under CDTAs. According to paragraph 4 of the LegCo Brief, it is 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.

### **Provisions of the Bill**

6. Clause 4 of the Bill seeks to amend section 49 of the Ordinance so that arrangements may be made with the government of a foreign territory for either or both of the following purposes:

- (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.

The effect is to enable Hong Kong to conclude standalone TIEAs and expand the coverage of tax types for EoI (from income or similar tax to any tax) under both CDTAs and TIEAs.

7. Clauses 5 and 7 seek to amend sections 51 and 52 of the Ordinance respectively to expand the powers to obtain information under those sections to cover information in a person's control apart from that in his possession. Related amendments are also proposed to the Schedule to the Rules.

8. Under section 51B(1AA) of the Ordinance, the Commissioner or an authorized officer may apply to a magistrate for a search warrant where there are reasonable grounds for suspecting that a person has understated his income or profits chargeable to any tax (the tax concerned) of a foreign territory with which arrangements having effect under section 49(1A) of the Ordinance are made. Clause 6 proposes to expand the application of section 51B(1AA) to cover any other sums or values in respect of which the person is chargeable to the tax concerned.

9. Clause 8 seeks to amend section 4 of the Rules to relax the current limitation on disclosure of information set out in paragraph 4(c) above. Under the proposed section 4, the Commissioner may disclose information (which may include information relating to a period before the commencement of the relevant arrangements) that relates to the carrying out of the provisions of the relevant arrangements, or the administration or enforcement of the tax law of the requesting government's territory, in respect of any period that starts after the arrangements have come into operation.

### **Commencement**

10. The Bill contains no commencement provision. By virtue of section 20(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill, if enacted, would come into operation on the day the enacted ordinance is published in the Gazette.

### **Public Consultation**

11. According to paragraph 22 of the LegCo Brief, business chambers and professional bodies were consulted in May and June 2012 and from November 2012 to January 2013, and were supportive of the legislative proposals to enhance EoI under CDTAs and to put in place a legal framework for TIEAs.

### **Consultation with LegCo Panel**

12. As advised by the Clerk to the Panel on Financial Affairs, the Panel was consulted on 5 November 2012 and 4 February 2013 on the proposed legislation and related matters. Panel members expressed a number of concerns. The major ones included the need of and justifications for enhancing EoI for tax purposes which might undermine the competitiveness of Hong Kong's simple tax regime in attracting foreign direct investment, that the proposed relaxation of the current limitation on disclosure in response to an EoI request might compromise the policy of no retrospectivity for EoI arrangements, implications of the availability of a legal framework for TIEAs on the Government's ability to negotiate CDTAs with its trading and investment partners, and safeguards on taxpayers' privacy and confidentiality of information in the exchanges.

## **Conclusion**

13. The Legal Service Division is seeking clarification from the Administration on certain technical and drafting issues relating to the Bill. In view of the concerns raised by members of the Panel, Members may consider whether to study the policy aspects of the Bill in detail.

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