

立法會
Legislative Council

LC Paper No. CB(1)1385/12-13

Ref: CB1/BC/7/12

Paper for the House Committee meeting

**Report of the
Bills Committee on Inland Revenue (Amendment) Bill 2013**

Purpose

This paper reports on the deliberation of the Bills Committee on Inland Revenue (Amendment) Bill 2013 ("the Bills Committee").

Background

Tax treaty policy

2. In the 1998-1999 Budget, the then Financial Secretary announced that the Government would actively negotiate comprehensive avoidance of double taxation agreements ("CDTAs") with its major trading and economic partners, which served as a business facilitation initiative to minimize the incidence of double taxation¹ that would hinder cross-border trade and investment. Since then, the Administration has been expanding Hong Kong's CDTA network. According to the Administration, up to the end of May 2013, Hong Kong has signed 29 CDTAs. The list of the relevant jurisdictions is at **Appendix I**.

Article on exchange of information in CDTAs

3. A CDTA normally includes an article that provides for the exchange of information ("EoI") necessary for the carrying out of the agreement between the two contracting parties. Before 2010, the Inland Revenue Department ("IRD") could exercise its powers under the Inland Revenue Ordinance (Cap. 112) ("IRO") to collect taxpayers' information

¹ 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.

only for ascertaining their liability, responsibility and obligation under the domestic tax law. Following legislative amendments to IRO that came into effect in March 2010², IRD was enabled to also exercise the information gathering powers and share the information obtained in response to EoI requests made by Hong Kong's CDTA partners for their own tax purposes.

4. Currently, Hong Kong adopts for its CDTAs the 2004 version of the EoI Article in the Organization for Economic Cooperation and Development ("OECD") Model Tax Convention on Income and on Capital ("Model Tax Convention") (at **Appendix II**) except for certain modifications to address local needs. The salient features of the current EoI arrangements are as follows --

- (a) information will only be exchanged with the contracting party upon receipt of requests and no information will be exchanged on an automatic or spontaneous basis;
- (b) information sought should be foreseeably relevant, i.e. no fishing expeditions;
- (c) the scope of EoI is confined to taxes covered by CDTAs;
- (d) Hong Kong will not accede to an EoI request for information that relates to any period before the relevant provisions of the relevant CDTA come into effect;
- (e) information received by CDTA partners should be treated as confidential;
- (f) 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 and shall be used for such purposes only; the information shall not be

² Prior to 2010, IRD might seek to exchange information only when there was domestic tax interest at stake. Such a provision had limited the ability of Hong Kong to conclude CDTAs with other jurisdictions, as most of them have already adopted the 2004 version of the EoI article in the Organization for Economic Cooperation and Development Model Tax Convention on Income and on Capital. Enactment of the Inland Revenue (Amendment) Ordinance 2010 in January 2010 has allowed IRD to collect and disclose a taxpayer's information in response to requests made by the CDTA partners even when the information is not required for domestic tax purposes.

released to their oversight bodies unless there are legitimate reasons given by the CDTA 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 will disclose any trade, business, industrial, commercial or professional secret or trade process, or which will be covered by legal professional privilege, etc; and
- (i) requests from CDTA partners for tax examinations abroad and assistance in collection of taxes will not be acceded to.

Need for further changes to the exchange of information regime

Peer review by the Global Forum on Transparency and Exchange of Information for Tax Purposes -- need for a legal framework for entry into Tax Information Exchange Agreements

5. According to the Administration, there have been increasing aspirations on the international front to enhance tax transparency with a view to preventing and combating fiscal evasion. The Global Forum on Transparency and Exchange of Information for Tax Purposes ("the Global Forum") formed under the auspices of OECD, of which Hong Kong is a member, has launched a two-phase peer review³ exercise to evaluate jurisdictions' compliance with the international EoI standard. In October 2011, the Global Forum endorsed the Phase 1 peer review report on Hong Kong. The review report has affirmed the efforts of Hong Kong in enhancing tax transparency and concluded that Hong Kong has adequate legal and regulatory framework to facilitate effective EoI. One of the recommendations in the review report is that Hong Kong should have in place a legal framework for entering into Tax Information Exchange Agreements ("TIEAs")⁴, because the latest international standard on EoI is that a jurisdiction should make available both CDTA and TIEA as EoI instruments with other jurisdictions. The Administration has stressed that

³ Phase 1 of the review examined the legal and regulatory framework in each jurisdiction whereas Phase 2 evaluated the implementation of the standard in practice.

⁴ Unlike CDTAs, TIEAs provide for EoI mechanism only without double taxation relief. The existing tax laws in Hong Kong only allow it to enter into tax agreements with other jurisdictions when there is double taxation relief.

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.

Development of Hong Kong's CDTA Network

6. Furthermore, according to the Administration, although the efforts to expand Hong Kong's CDTA network since 2010 have yielded fairly satisfactory results so far, the negotiations with different jurisdictions have revealed an emerging need to re-visit the current EoI arrangements, particularly in respect of the restrictive position in the area of tax types and limitation on information disclosure referred to in paragraphs 4(c) and (d) above. The Administration has indicated the need to adopt a minimum necessary approach to enhance the EoI arrangements under CDTAs, i.e. making the minimum amendments necessary to IRO and the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI) ("the Disclosure Rules"), so that Hong Kong could catch up with the prevailing international EoI standard. In this connection, it has proposed that relaxation be made on the scope of tax types of which information is to be exchanged and on the existing limitation on disclosure.

Tax types covered by EoI

7. As Hong Kong has a simple tax system under which only three direct taxes are imposed (i.e. profits tax, salaries tax and property tax), it is the Administration's current arrangement to seek to restrict EoI to similar direct taxes which are covered by CDTAs. According to the Administration, some jurisdictions have raised grave concerns on the issue of tax types covered by EoI during the negotiations of CDTAs, given that their tax systems are far more complex than that of Hong Kong, and cover a much wider range of tax types and sometimes different levels of taxes. Whilst the Administration has eventually managed to conclude CDTAs with those jurisdictions, it has undertaken to re-visit the issue of tax types with the jurisdictions in the event of any future relaxation of Hong Kong's position on the matter.

Limitation on information disclosure

8. Under section 4 of the Disclosure Rules, the Administration has currently adopted a stringent approach in EoI arrangements by not entertaining requests for any information relating to a period before the provisions of the relevant CDTA have taken effect. According to the Administration, this has posed practical problems and fallen short of

meeting CDTA partners' practical requirements, as information generated prior to the effective date of a CDTA may in fact be foreseeably relevant to the tax administration and enforcement after the relevant provisions of the CDTA came into effect.

A recent development in international EoI standard -- use of tax information for non-tax related purposes

9. In July 2012, OECD approved an update to the EoI article of its Model Tax Convention and its Commentary⁵. A new requirement featured by the 2012 version was to allow the use of tax information already exchanged for other (i.e. non-tax related) 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. The Administration has advised that it intends to abide by this new requirement, noting that certain existing provisions of Hong Kong's domestic legislation⁶ already require any persons with knowledge or suspicion to disclose relevant information to authorized officers of law enforcement agencies designated under the relevant legislation to enable them to perform their duties thereunder. However, the current legislative exercise does not involve any amendments to IRO for the purpose of allowing tax information exchanged under CDTAs to be used for non-tax related purposes.

The Bill

10. 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, the Administration introduced the Inland Revenue (Amendment) Bill 2013 ("the Bill") into the Legislative Council ("LegCo") on 12 April 2013. The main provisions of the Bill are --

- (a) to amend section 49 of 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

⁵ A copy of the 2012 version of the EoI article is at Annex B to LC Paper CB(1)988/12-13(03).

⁶ According to the Administration, the relevant provisions include section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), section 25A of the Organized and Serious Crimes Ordinance (Cap. 455) and section 12 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).

exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory;

- (b) to amend sections 51 and 52 of IRO respectively to expand the powers to obtain information under those sections to cover information in a person's control as well as that in his possession;
- (c) to amend section 4 of the Disclosure Rules to enable the Commissioner of Inland Revenue ("CIR") 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 requesting government's territory, in respect of any period that starts after the arrangements have come into operation; and
- (d) to make consequential and related amendments to section 51B of IRO and the Schedule to the Disclosure Rules.

The Bills Committee

11. At the House Committee meeting on 26 April 2013, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Kenneth LEUNG, the Bills Committee has held six meetings. The membership list of the Bills Committee is at **Appendix III**. The public including relevant business and professional organizations have been invited to give views on the Bill. The Bills Committee received oral representations from deputations at the meeting on 3 June 2013. A list of the organizations and individuals which/who have given views to the Bills Committee is at **Appendix IV**.

Deliberations of the Bills Committee

12. The Bills Committee recognizes the importance for Hong Kong, as an international business and financial centre, to uphold tax transparency, prevent tax evasion and pursue CDTAs with trading partners. While the Bills Committee generally supports the proposals in the Bill for the purpose of meeting the latest international standard for EoI, members have expressed concerns about the extent of the relaxation of the limitation on information disclosure, possible additional burden on taxpayers in respect of retention and reporting of tax information, adequacy of the safeguards

for protecting taxpayers' privacy and confidentiality of tax information exchanged, oversight and scrutiny of the Administration's compliance with the disclosure procedures, the use of tax information for non-tax related purposes by CDTA partners, the handling of disputes between CDTA/TIEA partners and the consultation process for entry into a CDTA/TIEA. Deliberations of the Bills Committee on the legislative proposals and related issues are summarized in the ensuing paragraphs.

Benefits of TIEAs to Hong Kong taxpayers

13. Some members including Hon Starry LEE and Hon YIU Si-wing have enquired whether entering into TIEAs would bring benefits to Hong Kong taxpayers, given that TIEAs would bring no double taxation relief but would involve the provision of confidential information of taxpayers to other tax jurisdictions. Mr YIU is concerned that the implementation of TIEAs may impose extra burden on taxpayers on retention and reporting of tax information. In his opinion, the Administration should take a progressive and prudent approach in meeting the expectations of the international community on EoI. The Bills Committee has also examined whether the Administration will be held liable for the related loss if a taxpayer suffers damages due to the tax imposed by the tax authorities of other jurisdictions based on the information disclosed by the Administration.

14. The Administration has explained that the introduction of the TIEA framework is essential to Hong Kong's international reputation and competitiveness. As advised by the Global Forum, whether Hong Kong can 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 its position and competitiveness as an international business and financial centre. To this end, the Bills Committee notes that the sanctions for uncooperative jurisdictions may include: placing the related jurisdictions on the "blacklist", which will affect the tax concessions and trade opportunities to be enjoyed by the companies of these jurisdictions; imposing more stringent requirements on documentation of transactions for companies from these jurisdictions; adding a new or higher withholding tax on payments to residents of these jurisdictions; applying controlled foreign corporation rules to corporations from these jurisdictions whereby all local and overseas subsidiaries of the corporation would be taxed together with the corporation; making every transaction from these jurisdictions be subjected to determination under the

anti-tax avoidance provisions, and so on. If any of these measures were to apply to Hong Kong, the transaction costs of local companies conducting business with foreign companies would be increased. Further negotiation of CDTAs would become more difficult as other countries would query Hong Kong's efforts in fulfilling its international obligations of enhancing tax transparency and preventing tax evasion.

15. To address the concerns expressed by the Bills Committee, the Administration has emphasized that it will only disclose the relevant information requested according to the provisions of CDTAs/TIEAs and the laws of Hong Kong. It will not make any investigation or take enforcement actions on behalf of tax authorities of other jurisdictions. Regarding the concern about claims for damages by taxpayers, the Administration has advised that while it will consider each claim individually, in general, multi-national enterprises are under the obligation and the duty to pay tax to the relevant jurisdictions as required by their tax laws. The Administration has reiterated that in making amendments to IRO for meeting the international standard on EoI, it has adopted a minimum necessary approach.

Relaxation of limitation on information disclosure

16. One of the proposals under the Bill is to amend section 4 of the Disclosure Rules so that CIR would be allowed to disclose tax information generated prior to the effective date of the relevant CDTA or TIEA if he is satisfied that the information relates to the carrying out of the provisions of the relevant CDTA/TIEA, or the administration or enforcement of the tax law of the requesting government's territory, in respect of any period that starts after the date on which the relevant CDTA/TIEA comes into operation.

Disclosure of information generated prior to the effective date of the relevant CDTA or TIEA

17. Sections 51C and 51D of IRO stipulate a seven-year period for the retention of business and rent records. Hon James TO is concerned that the proposed relaxation on limitation on information disclosure may lead to compulsory disclosure of information generated more than seven years before the relevant CDTA/TIEA comes into operation. Queries have been raised as to whether such disclosure requirements may apply to third parties (e.g. trading partners, taxation agents) as well as CIR and the taxpayer who is the subject of the request under a CDTA/TIEA. If so, the relaxation would have an effect of widening the coverage of tax information to be

disclosed to an unlimited extent as far as the timeframe and third parties involved are concerned. The Bills Committee has therefore examined whether the Administration would consider restricting disclosure of information to that generated within seven years prior to the effective date of the relevant CDTA/TIEA. Hon James TO has further suggested that a time limit be set on the period for which provision of retrospective information be considered; or only requests for "necessary and direct" information be considered so as to limit the scope of information to be provided.

18. The Administration has explained that when conducting EoI under the CDTA framework, it has all along adopted a policy of imposing a limitation on the information to be exchanged. That is, the information disclosed to CDTA partners must relate to the carrying out of the provisions of the relevant CDTA or the administration or enforcement of the tax laws of the CDTA partner concerning taxes imposed in the periods after the provisions of the CDTA come into effect. The Administration has stressed that, in introducing the Bill, it has no intention to deviate from the above-mentioned policy. The policy objective is to ensure that Hong Kong is able to meet CDTA/TIEA partners' practical requirements, whilst not following the practice of other jurisdictions in providing information under EoI for tax assessments for periods before the CDTA/TIEA comes into effect. Indeed, the proposal of relaxing the current limitation on disclosure serves to allow for the exchange of information generated prior to the effective date of the relevant CDTA or TIEA, provided that the standard of "foreseeable relevance" is satisfied upon examination of the particulars provided by the CDTA/TIEA partner in its EoI request. Such information at stake is expected to be related to the identity of individual taxpayers or information concerning transactions of assets which occur after the CDTA/TIEA comes into operation (e.g. the original purchase prices of assets purchased before, but subsequently resold after, the effective date of the CDTA/TIEA).

19. The Administration has advised that as far as the OECD standard is concerned, the formulation "foreseeably relevant" has been adopted to mean "necessary" and "relevant". Furthermore, the term "foreseeably relevant" is recommended by OECD in its Model Tax Convention and model text for TIEA, and has been adopted internationally in the EoI Article of CDTAs and TIEAs. As such, Hong Kong's CDTA/TIEA partners would unlikely agree to adopt an alternative term proposed unilaterally by Hong Kong. The Administration recommends maintaining the current formulation of "foreseeably relevant" in CDTAs/TIEAs.

No additional record-keeping requirements for the purpose of EoI

20. Regarding the concern about the possible burdens on taxpayers in respect of retention of transaction records, the Administration has advised that it has no plan to change the existing record-keeping requirements under sections 51C and 51D of IRO. Section 51C requires, among others, that every person carrying on a trade, profession or business in Hong Kong shall keep sufficient records in the English or Chinese language of his income and expenditure to enable the assessable profits of such trade, profession or business to be readily ascertained. Such records shall be retained for a period of not less than seven years after the completion of the transactions, acts or operations to which they relate. Section 51D requires, among others, that every person who is the owner of a landed property situated in Hong Kong shall keep sufficient records in the English or Chinese language of the consideration, in money or money's worth, payable or deemed to be payable to him, to his order or for his benefit in respect of the right of use of that property to enable the assessable value of that property to be readily ascertained. Such records shall be retained for a period of not less than seven years after the completion of the transactions, acts or operations to which they relate. Section 51(4)(a) of IRO provides that for domestic tax purposes (i.e. profits tax, salaries tax and property tax purposes), information in the possession of a person in Hong Kong is subject to disclosure to IRD. Under section 51(4AA) of IRO, any information in the possession of a person in Hong Kong may be subject to disclosure to IRD for EoI purposes in accordance with the provisions (including the required standard of "foreseeable relevance") of the respective CDTAs that Hong Kong has entered into with other jurisdictions.

21. The Administration has further explained that a person has no obligation to provide to IRD, for EoI purposes, information which is not in his possession or control and is not required to be kept or beyond the statutory retention period under IRO, even when IRD acts on a valid EoI request and exercises its information-gathering power under section 51(4AA) of IRO to approach him for the relevant information. Hence, the Administration considers that there is no need to restrict IRD in its request for information from taxpayers, for EoI purposes, to that generated within seven years prior to the effective date of the relevant CDTA/TIEA, taking into consideration that there is no such restriction on IRD in so far as domestic tax purposes are concerned. The Administration holds the view that if Hong Kong were to adopt an approach in respect of EoI requests under CDTAs/TIEAs that is more restrictive than that for domestic tax

purposes, Hong Kong would be perceived as an uncooperative tax jurisdiction in not adopting the prevailing international standard.

Safeguards to protect taxpayers' privacy and confidentiality of information exchanged

22. Members of the Bills Committee are gravely concerned about the safeguards to be put in place under the Bill and the future TIEAs to ensure that taxpayers' privacy and confidentiality of information exchanged is duly protected and IRD will not release information for inappropriate reasons. The Administration has advised that, after the legal framework for TIEAs is in place following the passage of the Bill, in order to afford legal protection to taxpayers in terms of privacy and confidentiality of information exchanged, it will follow the current approach on CDTAs to strive to provide relevant safeguards in the texts of TIEAs. The safeguards will include, among others: to exchange information only upon request; only to disclose information which is "foreseeably relevant"; to treat information received as confidential; to disclose information 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; not to disclose the information requested to a third jurisdiction; no obligation to supply information under certain circumstances, for example, where the information will disclose any trade, business, industrial, commercial or professional secret or trade process, or which will be covered by legal professional privilege, etc.; and not to accede to requests for tax examinations abroad and assistance in collection of taxes. Each CDTA and TIEA signed will be implemented as subsidiary legislation domestically, subject to negative vetting by LegCo. The existing Disclosure Rules, providing for domestic statutory safeguards in addition to those provided in individual agreements, will be extended and become applicable to EoI under both CDTAs and TIEAs.

23. The Administration has briefed the Bills Committee on the relevant provisions of the Disclosure Rules, including the particulars to be contained in a disclosure request, the steps that CIR would take to notify the taxpayers concerned about the tax information to be disclosed to a requesting government under the relevant CDTA/TIEA, the grounds on which the taxpayer could object to the disclosure of all or any of the information that CIR is prepared to disclose to the requesting government, and the procedures for making objection to CIR and the Financial Secretary.

The notification and review system

24. The Administration has explained that under the existing EoI arrangements, upon receipt of an EoI request, Hong Kong's competent authority (i.e. IRD) will examine, with reference to the particulars provided by the requesting partner, whether the information requested is "foreseeably relevant" according to the conditions laid down in the relevant CDTA (CDTA protection) and the conditions laid down in the Disclosure Rules (Disclosure Rules protection). The particulars that a CDTA partner has to provide in its EoI request are set out in the Schedule to the Disclosure Rules (at **Appendix V**). They include, among others, the purpose of the disclosure request, the identity of the person who is the subject of the request, a statement about the relevance of the information to the purpose of the disclosure request, a statement that the disclosure request complies with the relevant agreement, etc. The Administration has emphasized that, if the conditions are not fulfilled, CIR will not approve the EoI request.

25. For an approved EoI request, CIR will notify in writing the person who is the subject of the request (including the taxpayer concerned even if the information requested is in the possession of a third party) of the nature of the information requested by a CDTA partner and of his right to request within 14 days after the date of notification a copy of the information that CIR is prepared to disclose to the CDTA partner concerned. Within 21 days after CIR has provided a copy of the information to be disclosed, the taxpayer can ask CIR to amend any part of the information on the grounds that the information is factually incorrect or does not relate to him/her. CIR may make full amendment, partial amendment or no amendment. If the person remains not satisfied, he/she can, within 14 days after CIR's notice of decision, further ask the Financial Secretary to direct CIR to make the amendments requested. The Administration has advised that it will apply the same mechanism to EoI requests under the future TIEAs.

Restriction on disclosure of information covered by legal professional privilege

26. The Bills Committee notes the view of the Law Society of Hong Kong that the legislative framework for TIEAs should contain restriction on disclosure of items subject to legal professional privilege. In this connection, the Bills Committee has examined how the Administration would ensure that information covered by legal professional privilege would not be released. The Administration has explained that one of the safeguards provided for in the provisions of CDTAs/TIEAs is that there is no obligation on a contracting party to supply information which would

disclose any trade, business, industrial, commercial or professional secret or trade process, including such information covered by legal professional privilege. The restriction on disclosure of legally privileged materials is legally binding on IRD. It is stated in the Commentary on the EoI Article of the OECD Model Tax Convention that a requested jurisdiction may decline to disclose information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under domestic law. Moreover, the protection of legal professional privilege has all along been afforded under section 51(4A) of 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".

27. At the request of the Bills Committee, the Administration has provided a model text for TIEAs⁷ to show that the concern about protection of information covered by legal professional privilege would be duly addressed. Article 7(3) of the model text reads as follows --

"The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice or
- (b) produced for the purposes of use in existing or contemplated legal proceedings."

28. To illustrate that EoI would be conducted in a prudent manner and in compliance with domestic laws, the Administration has also drawn members' attention to Article 7(1) of the model text for TIEAs which states that --

"The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the

⁷ The model text is at Annex A to LC Paper No. CB(1)1243/12-13(02).

requested Party may decline to assist where the request is not made in conformity with this Agreement."

Challenges to disclosures

29. Some deputations have suggested that provisions should be introduced to allow taxpayers recourse to the court or an administrative appeals tribunal in the event of a dispute concerning any tax information to be exchanged. The Law Society of Hong Kong has urged that individuals should be allowed to challenge information disclosures not merely on the basis that the information is factually incorrect, but also on the basis that (a) it is legally privileged; (b) it would disclose a trade, business, industrial, commercial or professional secret or trade process; (c) it is not "foreseeably relevant"; (d) the EoI breaches the safeguard stated in IRD's Departmental Interpretation and Practice Notes ("DIPN") No. 47⁸; or (e) IRD releases information for inappropriate reasons.

30. The Administration has responded that 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 of amendments to information to be disclosed, by way of an application to court for a judicial review. It has emphasized that OECD requires that a jurisdiction's internal procedures cannot unduly delay effective EoI and considers that the existing approach has taken into account various considerations and struck a balance between protection of taxpayers' rights and facilitation of effective EoI.

31. Given that the "foreseeable relevance" criterion is adopted in assessing an EoI request to guard against fishing expeditions for information to be exchanged, the Bills Committee has examined whether a taxpayer may challenge the "foreseeable relevance" of an EoI request. The Administration has advised that the particulars to be contained in an EoI request as set out in the Schedule to the Disclosure Rules, including the statement about the relevance of the information to the purpose of the request to be made by the requesting party, together with the legal status of the Rules, should provide adequate protection to the concerned taxpayers. The Administration has also advised that from 2009 to 2012, IRD has received a total of 61 EoI requests, among which IRD has not provided the

⁸ DIPN No. 47 (downloadable at http://www.ird.gov.hk/eng/pdf/e_dipn47.pdf) serves to enable the public to better understand the safeguards provided in CDTAs and how the Disclosure Rules operate. The Disclosure Rules, legally binding on IRD, provide the statutory safeguards to protect taxpayers' privacy and confidentiality of information to be exchanged.

information requested in five cases for reason that the requesting parties failed to demonstrate the "foreseeable relevance" of the information requested. So far, IRD has not received any objections or complaints received from taxpayers or other parties about the disclosure of information.

Independent oversight and scrutiny of compliance with disclosure procedure

32. The Bills Committee notes the views of the Hong Kong Bar Association that there should be independent oversight and scrutiny of IRD's compliance with the safeguards/procedure as provided in the Disclosure Rules and DIPN No. 47. While acknowledging the need to strike a balance between meeting international requirements and protecting tax information privacy, Hon SIN Chung-kai holds the view that the Administration should set up an independent oversight body similar to the Operations Review Committee of the Independent Commission Against Corruption or the Process Review Panel of the Securities and Futures Commission to ensure that IRD would deal with individual EoI requests in a fair and consistent manner, and that the actions taken and decisions made strictly adhere to internal procedures and guidelines.

33. The Administration has advised that without gauging the views of the concerned parties and the public on the proposal of setting up an independent review panel under the law to monitor the handling of EoI requests, it is premature to take it forward in parallel with the proposals in the Bill. The Disclosure Rules, to be applied to EoI arrangement under both future CDTAs and TIEAs, provide for domestic statutory safeguards in addition to those provided in individual CDTAs to protect taxpayers' privacy and confidentiality of information exchanged, as well as a notification and review system in handling EoI requests and related appeals. Moreover, section 3(1) of the Disclosure Rules provides that an EoI request may only be approved by CIR personally, or by an officer of IRD not below the rank of chief assessor authorized in writing by CIR personally for the purpose. The Administration considers that the above mechanism (including the notification and review procedures detailed in paragraph 25 above) has balanced various factors, such as personal privacy, effective implementation of EoI and compliance with international treaty obligations.

34. Notwithstanding the above, to address the concern expressed by Hon SIN Chung-kai, the Administration is prepared to extend the ambit of IRD's Users' Committee, which comprises members from various sectors

including legal practitioners, tax practitioners and academics and meets quarterly to review the services of IRD, to cover the performance of IRD in respect of the handling of EoI matters. IRD would provide report on its compliance in respect of EoI to the Users' Committee on a regular basis, such as the number of EoI requests received, the breakdown by types of information requested, status of processing, number of appeals received as well as any complaints lodged by persons concerned, etc. However, IRD would not disclose to the Users' Committee any details of individual EoI requests in order to abide by the confidentiality provisions provided in individual CDTAs/TIEAs which are implemented as domestic subsidiary legislation.

35. The Bills Committee notes that Hon SIN Chung-kai is not convinced of the Administration's reply. In his opinion, the expansion of the ambit of the Users' Committee, which would not deal with confidential information and has no role in conducting reviews on individual cases, could not address his concern about the need to have independent oversight of IRD's compliance with the safeguards for protecting taxpayers' privacy and confidentiality of information disclosed in response to EoI requests.

Tax types to be covered by EoI

36. The Bills Committee notes that under the current arrangement, EoI under CDTAs is restricted to the direct taxes imposed in Hong Kong (i.e. profits tax, salaries tax and property tax). According to the Administration, given that the tax systems of many other tax jurisdictions are far more complex than that of Hong Kong, the existing restrictive position regarding the tax types covered by CDTAs has raised concerns among CDTA partners. As a matter of fact, tax authorities 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. In this connection, the Administration has proposed clause 4 of the Bill to provide flexibility in the coverage of tax types for EoI under the existing CDTA framework and the future TIEA framework in order to stand a better chance of persuading the key jurisdictions to commence CDTA negotiations with Hong Kong. To this end, clause 4 of the Bill seeks to amend section 49(1A) of IRO, and to add a new subsection (1B), 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 concerned.

37. Some deputations have pointed out that the wording "in relation to any tax imposed by the laws of Hong Kong or the territory concerned" in clause 4 is too vague and may result in unintended difficulties in CDTA/TIEA negotiation. They have suggested that the tax types to be included in a CDTA/TIEA be set out explicitly.

38. The Administration has responded that clause 4 is intended to be an enabling provision which reflects the relevant article in the OECD Model Tax Convention. The Administration has undertaken that it will in practice adopt a positive listing approach to set out the tax types to be covered in each CDTA/TIEA.

Information in a person's control

39. The Bills Committee notes that clauses 5 and 7 amend sections 51 and 52 of IRO respectively to expand the powers to obtain information under those sections to cover information in a person's control as well as that in his possession. The Society of Chinese Accountants and Auditors has queried whether a person who legally has control of some documents which exist in other countries need to provide the information to IRD under an EoI request if the law of the other countries forbids the provision of such documents.

40. The Administration has responded that, similar to the existing requirement for information in the possession of a person, a person is required under the proposed amendment to section 51(4) to furnish information that is in his control notwithstanding that such information may be in other jurisdictions. Where the provision of such information is forbidden by the law of the relevant jurisdiction, the person may be able to plead in defence a "reasonable excuse" within the meaning of section 51(4B)(a).

Use of tax information exchanged for non-tax related purposes

41. The Bills Committee notes that the Administration is prepared to abide by OECD's new requirement by allowing future CDTA partners to use the tax information exchanged for other purposes. The Administration has stressed that the purpose of the current Bill is only to put in place a legal framework for Hong Kong to enter into standalone TIEAs with other jurisdictions and to enhance the existing EoI arrangements under CDTAs in terms of tax types and limitation on information disclosure to facilitate Hong Kong to meet the international standard on EoI. The purposes (including non-tax related purposes) for

which the tax information exchanged may be used are to be governed by the terms of the relevant CDTAs, which is a matter of agreement between Hong Kong and its future CDTA partners. The Administration has explained that under the 2012 version of the EoI Article, non-tax related purposes must be purposes for which the tax information exchanged may be so used under the laws of both parties to the relevant CDTA and the use of the information exchanged for such purposes must have the prior authorization of the competent authority of the supplying party (i.e. IRD). OECD only 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). The Administration has advised that such information exchanged cannot be passed to any third jurisdiction, which is a safeguard stipulated in any CDTA. The Administration has taken into account the fact that Hong Kong's 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 to disclose relevant information to authorized officers of law enforcement agencies designated under the relevant legislation to enable them to perform their duties.

42. The Bills Committee notes that under the Ordinances referred to in paragraph 41 above, a person with relevant knowledge or suspicion must disclose that knowledge or suspicion or related information to an authorized officer who in turn may disclose the relevant information to the law enforcement authorities of any place outside Hong Kong for the purposes of combating drug trafficking or crime or preventing and suppressing terrorist financing. Under those Ordinances, "authorized officer" means, among others, a police officer and a member of the Customs and Excise Service but does not specifically include CIR or an officer of IRD.

43. The Administration has confirmed that Hong Kong will not accept the 2012 version of the EoI Article lightly unless both jurisdictions have similar legislation on use of tax information for non-tax related purposes together with law enforcement cooperation arrangements in place between them. In future, if Hong Kong enters into CDTAs with any other jurisdictions that contain the updated wording about the use of tax information exchanged for non-tax related purposes in the EoI Article, the Administration has agreed to specify the abovementioned Ordinances, for the purposes of which tax information exchanged under CDTAs may be

used in the texts of future CDTAs or their protocols, which would be implemented by way of subsidiary legislation subject to negative vetting by LegCo.

44. Noting that the Administration's proposal on use of tax information exchanged under CDTAs for non-tax related purposes would have the effect that personal data of Hong Kong taxpayers may be transferred to the requesting party situated outside Hong Kong for an overseas offence, the Privacy Commissioner for Personal Data ("PCPD") has expressed concern that this may not be entirely consistent with the existing exemption provision in respect of prevention and detection of crime under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). Under section 58(2) of PDPO, personal data may be used or disclosed for a purpose not directly related to the original purpose of collection as required under Data Protection Principle 3 ("DPP3") in Schedule 1 to PDPO if the following criteria are satisfied --

- (a) the use of the data is for prevention or detection of crime; and
- (b) the application of DPP3 to such use would be likely to prejudice the prevention or detection of crime.

However, "crime" is defined under section 58(6) of PDPO to mean (a) an offence under the laws of Hong Kong; or (b) if personal data is held or used in connection with legal or law enforcement cooperation between Hong Kong and a place outside Hong Kong, an offence under the laws of that place. Hence, in PCPD's view, in so far as overseas offence is concerned, the transfer or disclosure is permissible under PDPO only if it is in connection with legal or law enforcement cooperation between Hong Kong and that overseas jurisdiction. Taking into consideration PCPD's concern, the Bills Committee has sought clarification from the Administration as to whether IRD would authorize the use of tax information from Hong Kong by a CDTA partner for prevention or detection of offences only when there is legal or law enforcement cooperation between both sides.

45. The Administration has explained that under the laws of Hong Kong, tax information may only be used for limited non-tax related purposes, such as recovery of proceeds from drug trafficking, organized and serious crimes and terrorist acts under the three Ordinances mentioned in paragraph 41 above. It would follow that in reality, the competent authorities of Hong Kong's CDTA partners may only use the tax information exchanged under CDTAs for the said limited non-tax related purposes if they also have similar laws permitting the use of tax

information for the said non-tax related purposes. The Administration has emphasized that on every occasion of intended use of tax information for such specified non-tax related purposes, the competent authorities of CDTA partners have to seek prior authorization from IRD in accordance with the terms of the relevant CDTA. By way of administrative arrangements, IRD will then consult relevant law enforcement agencies (i.e. the "authorized officers" designated under the relevant Ordinance(s)) and the Department of Justice in Hong Kong for their views and advice. IRD will not consent to the request of the competent authorities of CDTA partners if the relevant law enforcement agencies or Government departments raise any objection or such use of information is not covered by the current exemption as provided under section 58 of PDPO in relation to crime under the laws of a place outside Hong Kong with which Hong Kong has in place legal or law enforcement cooperation. In response to an enquiry of the Legal Adviser to the Bills Committee, the Administration has explained that the limited non-tax related purposes only relate to the permitted use that the competent authority of the other jurisdiction may make in relation to the tax information exchanged it receives from IRD under a CDTA. Such "other use" of the information is restricted by the terms of the CDTA, which provide, among others, that the information can only be used if IRD so authorizes. The Administration has further confirmed that where arrangements for mutual legal assistance are in place under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLAO") between Hong Kong and a CDTA partner seeking to use tax information for non-tax related purposes, the CDTA partner can also follow the procedures under the MLAO.

Handling of disputes between CDTA/TIEA partners

46. The Bills Committee has enquired how contracting parties would handle their different views on whether an EoI request should be entertained under the EoI Article, or whether the request has been properly handled. The Administration has advised that the partners under a CDTA/TIEA would normally resolve their different views on EoI requests through direct communication. The tax authority being requested to provide information could ask for supplementary information from the requesting party if the former considers that the information received does not provide full justifications or is not sufficient for making an EoI request. The Global Forum holds workshops and seminars on EoI for CDTA/TIEA participating governments from time to time to facilitate exchanges of experience and explore solutions for problems. As the last resort, contracting partners in disagreement over the handling of EoI could terminate the CDTA/TIEA that they have entered into.

47. The Legal Adviser to the Bills Committee has pointed out that under the CDTA between Hong Kong and Canada reproduced in the Schedule to the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income)(Canada) Order (Cap. 112 sub. leg. CF), paragraph 6 of Article 23 (Mutual Agreement Procedure) sets out that disputes between the partners could be submitted for arbitration --

"If any difficulty or doubt arising as to the interpretation or application of this Agreement cannot be resolved by the competent authorities pursuant to the preceding paragraphs of this Article, the case may be submitted for arbitration if both competent authorities and the taxpayer agree and the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both Parties with respect to that case. The procedure shall be established in an exchange of notes between the Parties."

48. The Administration has explained that the arbitration provision under CDTAs was introduced in 2010 and has only been incorporated recently in a few CDTAs among the total of 29 signed by Hong Kong. The Commentary on the EoI Article of the OECD Model Tax Convention has set out guidelines on the appointment and remuneration for the arbitrator. However, it is understood that the provision usually applies to the interpretation of costs and profits under CDTA rather than the issues related to EoI. As the arbitration mechanism is one of the appropriate channels for dealing with disputes on EoI, the Administration has accepted the suggestion put forward by Hon Alan LEONG that the arbitration provision should be incorporated in future CDTAs/TIEAs if both sides agree to do so.

Abuse of information by CDTA/TIEA partners

49. The Bills Committee has enquired about the action the Administration could take in the event that a CDTA/TIEA partner makes use of tax information exchanged for purposes other than those agreed or has passed it to third parties without IRD's authorization. The Administration has advised that, in commencing any CDTA/TIEA discussions, it will examine the legal frameworks of potential partners to ensure that they provide sufficient protection for the confidentiality of tax information. Both parties of the bilateral agreement have the obligation to enforce and honour the provisions therein. In extreme cases, Hong Kong

could terminate the relevant agreement and bring the case to OECD but such cases have not been heard of.

Consultation and approval process for entry into a CDTA/TIEA

50. The Bills Committee has examined the consultation and approval process for entry into a CDTA/TIEA with a view to understanding whether the Administration has made any efforts in addressing the possible impact on business operators in complying with the necessary requirements under the agreements. The Administration has advised that under its current practice for drawing up a CDTA programme, it consults from time to time the business and professional sectors and public organizations involved in the promotion of trade and investment so as to gauge their views on potential partners to be approached and the strategies to be adopted in expanding Hong Kong's CDTA network. Having taken into account stakeholders' views and suggestions, the Administration would consider and work out the priorities in pursuing negotiations with potential CDTA partners for the coming years. Prior to the commencement of CDTA discussions with a particular jurisdiction, IRD will make known to the public through its website the upcoming negotiations such that interested parties could submit to IRD their specific views with respect to the negotiations. Where necessary, IRD will meet with individual organizations so as to exchange views on upcoming negotiations. Separately, the Administration provides regular updates to the Joint Liaison Committee on Taxation⁹ on the progress of CDTA negotiations. The Administration will adopt similar arrangements in engaging stakeholders in pursuing both CDTAs/TIEAs in future. Like the existing arrangement for CDTAs, every CDTA/TIEA to be signed in future will be effected by means of subsidiary legislation domestically, subject to negative vetting by LegCo.

Resource implication

51. On the sharing of costs between partners on EoI under TIEAs, the Administration has advised that the OECD model text for TIEAs carries a standard provision on costs, which provides that "incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties". With reference to some other jurisdictions' existing practices, the Administration will consider charging the requesting party for the

⁹ Independent of the Government, the Joint Liaison Committee on Taxation is a forum set up on the initiative of the accountancy and commercial sectors to discuss and formulate recommendations on various tax matters. Its constituent members include chambers of commerce and professional associations.

extraordinary costs incurred in obtaining and providing the requested information, such as fees charged by third parties for copying huge bulk of documents and conveying these documents to the requesting party, costs of engaging experts, interpreters or translators, any litigation costs in relation to the EoI requests, and costs of obtaining deposition and testimony. The Administration is prepared to bear the costs for the assistance which can be provided in the ordinary course of administering Hong Kong tax law.

Strategies for pursuing CDTAs or TIEAs

52. Some deputations consider that it is important for the Administration to uphold its policy of giving greater priority to negotiation of a CDTA than a TIEA in future. They opine that signing a TIEA should only be considered when concluding a CDTA is not an option. According to the Administration, given the benefits of CDTAs, it will remain a future policy priority to seek to conclude CDTAs with Hong Kong's trading and investment partners. Nonetheless, the international standard is that preference for CDTA over TIEA cannot be a reason for refusing to enter into an EoI agreement. Hence, while the Administration will continue its efforts in persuading trading and investment partners to pursue CDTAs with Hong Kong, it cannot preclude the possibility of entering into TIEAs but not CDTAs with some jurisdictions.

Review of agreements

53. Members and some deputations have urged the Administration to conduct regular reviews of the CDTAs/future TIEAs that Hong Kong has entered/will enter into to ensure that Hong Kong taxpayers' interests are not adversely affected by the agreements. The Administration has advised that 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 issues arising from the implementation of the agreements.

Committee Stage amendments

54. Neither the Administration nor the Bills Committee has proposed any Committee Stage amendments.

Recommendation

55. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 10 July 2013.

Advice sought

56. Members are invited to note the Bills Committee's deliberations and the recommendation in paragraph 55.

Council Business Division 1
Legislative Council Secretariat
26 June 2013

Appendix I

List of jurisdictions with which Hong Kong has signed CDTAs (as at end of May 2013)

	Jurisdictions	Date of Signing
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
28	Guernsey	22.4.2013
29	Qatar	13.5.2013

* Among the top 20 trading partners of Hong Kong

**EoI Article in
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.

Bills Committee on Inland Revenue (Amendment) Bill 2013

Membership list

Chairman Hon Kenneth LEUNG

Deputy Chairman Hon CHAN Kin-por, BBS, JP

Members Hon James TO Kun-sun
Hon Starry LEE Wai-king, JP
Hon Alan LEONG Kah-kit, SC
Hon YIU Si-wing
Hon Charles Peter MOK
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen (up to 8 May 2013)

(Total: 10 members)

Clerk Ms Sharon CHUNG

Legal Adviser Mr Bonny LOO

Bills Committee on Inland Revenue (Amendment) Bill 2013

List of deputations which have given views to the Bills Committee

Organizations

1. The American Chamber of Commerce in Hong Kong
2. Association of Chartered Certified Accountants Hong Kong
3. Capital Markets Tax Committee of Asia
4. The Chinese Manufacturers' Association of Hong Kong
5. Federation of Hong Kong Industries
6. German Industry and Commerce Ltd./German Chamber of Commerce, Hong Kong
7. The Hong Kong Association of Banks
8. Hong Kong Bar Association
9. Hong Kong General Chamber of Commerce
10. Hong Kong Institute of Certified Public Accountants
11. Hong Kong Investment Funds Association
12. Hong Kong Securities Association
13. Hong Kong Small & Medium Enterprises Association
14. Hong Kong Trustees' Association
15. International Chamber of Commerce -- Hong Kong, China
16. KPMG Tax Limited
17. The Law Society of Hong Kong
18. The Lion Rock Institute
19. Office of the Privacy Commissioner for Personal Data, Hong Kong
20. The Society of Chinese Accountants & Auditors
21. The Taxation Institute of Hong Kong

Individual

22. Mr David LAI, Wan Chai District Council member

Inland Revenue (Disclosure of Information) Rules (Cap. 112BI)

Schedule

**PARTICULARS TO BE CONTAINED
IN A 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.
