



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2529 1663)

1 December 2014

Miss Susanna LAI
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)3
Financial Services and the Treasury Bureau
Financial Services Branch
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Miss LAI,

Mandatory Provident Fund Schemes (Amendment) Bill 2014

I am scrutinizing the draft committee stage amendments (Draft CSAs) proposed by the Administration (File Ref: CB(1)234/14-15(01)) with a view to advising Members on its legal and drafting aspects in relation to the captioned Bill and would like to seek information or clarification on the following matters –

Disclosure of information under the respective clauses 11 and 57

To whom may information be disclosed

- (a) in respect of the respective proposed sections 42AAB(1A)(a) and 78A(1A)(a), whether information may be disclosed to a person who is located in Hong Kong and has a duty to disclose the information to a person who satisfies the respective requirements in the proposed section 42AAB(1A)(b) and (c) (and as regards the proposed section 78A(1A)(a), the respective requirements under the proposed section 78A(1A)(b) and (c));

Functions that are performed or exercised by the person concerned

- (b) in respect of the respective proposed sections 42AAB(1A)(b) and 78A(1A)(b), whether all the functions which are performed or exercised by the person have to correspond to the functions which are performed or exercised by the Commissioner of Inland Revenue (including administrative functions and functions in relation to the determination of taxation matters under the Inland Revenue Ordinance (Cap. 112)) in order to satisfy the requirements under the respective proposed sections;
- (c) in respect of the respective proposed section 42AAB(1A)(c) and 78A(1A)(c), whether "official functions" include both administrative functions and functions in relation to the determination of taxation matters;
- (d) if the answer to (c) above is affirmative, whether the respective requirements in the proposed sections 42AAB(1A)(c) and 78A(1A)(c) would be satisfied if the disclosure will only enable or assist the person to exercise or perform the person's administrative functions which are included in the "official functions";

Considerations in relation to arrangements for exchange of information under section 49 of Cap. 112

- (e) According to footnote three of the Draft CSAs, the policy objectives of allowing the disclosure under clause 11 of the Draft CSAs are to enhance tax transparency and combat tax evasion by complying with international reporting requirements. Footnote 10 of the Draft CSAs states that the amendment in clause 55 is consequential to the proposed amendment made to clause 11 and refers to footnote three. According to section 49(1A) and (1B)(b) of Cap. 112, if the Chief Executive in Council (CE in Council) by order declares that, for the purpose of exchanging information in relation to any tax imposed by the laws of Hong Kong or a territory outside Hong Kong, arrangements that are specified in the order have been made with the government of the territory concerned and that it is expedient that those arrangements should have effect, those arrangements shall have effect in relation to tax under Cap. 112 despite anything in any enactment and, 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. Such order has been made by the CE in Council (i.e. the Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order (Cap. 112 CK). In addition, a set of disclosure rules is provided under the Inland Revenue (Disclosure of Information) Rules (Cap. 112BI) in relation to a request for disclosure of information that is made by the government of a territory outside Hong Kong under any arrangements made with that government and having effect under section 49 of Cap. 112. In the light of the aforesaid—

- (i) in respect of the respective proposed sections 42AAB(1A) and 78A(1A), since it appears that the United States of America (USA) is "a place" for the purposes of the proposed sections 42AAB(1A)(a) and 78(1A)(a) respectively, whether the Administration has considered the factors in the proposed sections 42AAB(1A) and 78(1A) respectively in the light of section 49 of Cap. 112, Cap. 112BI, Cap. 112CK and the relevant safeguard measures that was pledged by the Administration to the Legislative Council in respect of Cap. 112CK;
- (ii) if the answer to (i) above is affirmative, information regarding how the proposed factors would operate in the light of the pieces of legislation mentioned in (e) above and vice versa in relation to USA; and
- (iii) if the answer to (i) above is negative, the relevant legal considerations and justifications of not taking the relevant pieces of legislation under Cap.112 and the relevant safeguard measures into account;

Clause 51 in relation to Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485B)

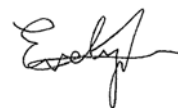
- (f) in respect of the addition of the phrase "the earliest of" under the respective clauses 51(1A) and 51(1D), information on how to determine the earliest date in the definition of final average monthly relevant income in Schedule 2 to Cap. 485B if more than one event provided in the definition appears on the same day (and similarly, as regards clause 51(1H) in respect of the definition of years of post-MPF service in Schedule 2 to Cap.485B);

Proposed transitional and saving provisions in clause 58

- (g) in respect of clause 58(1)(a) to (c) and 58(2), insofar as the clause relates to the permitted period in section 7AA of Cap. 485, section 122 of Cap. 485A and sections 1 and 2 of the Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap. 485F) respectively, the relevant considerations of applying the proposed computation of the permitted period for a person who begins employment with an employer (or, in case of a self-employed person, a person who begins self-employment) on or after the commencement of the relevant amendment but not for a person who begins employment with an employer or self-employment before the commencement date; and
- (h) in respect of clause 58(3), insofar as it relates to the period prescribed in section 131 of Cap. 485A, information regarding how the proposed transitional provision would operate in the light of the proposed section 131(4) and (5) in relation to a person who becomes self-employed before the relevant commencement date.

As the Bills Committee will consider the Draft CSAs at its meeting on 2 December 2014, I look forward to receiving your reply in both Chinese and English languages before the meeting commences.

Yours sincerely,



(Miss Evelyn LEE)
Assistant Legal Adviser

c.c. DoJ (Attn: Ms Elaine NG, SGC) (Fax: 2869 1302)
Clerk to Bills Committee