

立法會
Legislative Council

LC Paper No. LS49/13-14

**Paper for the House Committee Meeting
on 2 May 2014**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 25 April 2014**

Tabling in LegCo : Council meeting of 30 April 2014

Amendment to be made by : Council meeting of 28 May 2014 (or that of 18 June 2014 if extended by resolution)

**Inland Revenue (Exchange of Information relating to Taxes)
(United States of America) Order**

(L.N. 54)

L.N. 54 is made by the Chief Executive (CE) in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) to specify certain arrangements made pursuant to a tax information exchange agreement (TIEA¹) which is made between Hong Kong and the United States of America (US) and certain provisions of a relevant protocol.

2. According to the Administration, Hong Kong signed the TIEA on 25 March 2014, which provides the necessary basis for Hong Kong to provide for exchange of information (EoI) upon request made by the US tax authorities in relation to the information reported by financial institutions in Hong Kong to US under the US Foreign Account Tax Compliance Act (which will take effect from 1 July 2014). In particular, TIEA will allow the US Internal Revenue Service to file a request for EoI to the Inland Revenue Department of Hong Kong under specified conditions and vice versa.

3. According to the LegCo Brief (File Ref: Tsy B R 183/800-1-1/4/0 (C)) issued by the Financial Services and the Treasury Bureau and dated 23 April 2014, the said TIEA adopts the 2002 version of TIEA of the Organisation for Economic Cooperation and Development. Salient features of the TIEA include:-

¹ Unlike a Comprehensive Agreement for Avoidance of Double Taxation that is signed between Hong Kong and another jurisdiction, TIEA is a form of EoI agreement which carries no double taxation relief.

- (a) TIEA covers, in relation to US, federal taxes on income, federal taxes related to employment and self-employment, federal estate and gift taxes and federal excise taxes and, in relation to Hong Kong, profits tax, salaries tax and property tax;
- (b) the EoI mechanism under TIEA is the same as the existing ones under the Comprehensive Agreements for Avoidance of Double Taxation (CDTAs) as entered between Hong Kong and other jurisdictions; and
- (c) measures for the protection of a taxpayer's privacy and confidentiality of information exchanged have been taken on board in the TIEA.

4. Further, as stated in the LegCo Brief, the Administration will not accede to any request for tax examination abroad. In addition, the ordinary cost incurred in providing the requisite assistance would be borne by the requested party whereas the requesting party would bear the associate extraordinary costs, if any.

5. As advised by the Clerk to Panel on Financial Affairs, the Panel has not been consulted on the Order. During scrutiny of the Inland Revenue (Amendment) Bill 2013, the relevant Bills Committee has examined the adequacy of safeguards to be introduced by the Administration for protecting taxpayers' privacy and confidentiality of tax information exchanged. The Administration undertook to the Bills Committee to follow the current approach on CDTAs to provide the relevant safeguards in each TIEA signed between Hong Kong and a TIEA partner for protecting taxpayers' privacy and confidentiality of information exchanged.

6. According to the Administration, as the Act will take effect from 1 July 2014, it is essential for Hong Kong to have TIEA in place with the US government in a timely manner. The CE in Council has also declared, in L.N. 54 and pursuant to section 49(1A) of Cap. 112, that it is expedient that the specified arrangements should have effect. Members may refer to the LegCo Brief for further details.

7. L.N. 54 comes into operation on 20 June 2014.

News Agencies Registration (Amendment) Regulation 2014 (L.N. 55)

Newspapers Registration and Distribution (Amendment) Regulation 2014 (L.N. 56)

8. L.N. 55 and L.N. 56 are made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses

Ordinance (Cap. 1) by virtue of section 18 of the Registration of Local Newspapers Ordinance (Cap. 268) to increase the fees as specified respectively in the News Agencies Registration Regulations (Cap. 268A) and Newspapers Registration and Distribution Regulations (Cap. 268B) as follows:-

Fees in respect of news agencies

	Current	From 1 November 2014
Searching and inspecting the news agency register	\$32	\$37
To obtain a certified copy of an extract from the register	\$125	\$145
First registration of a news agency	\$905	\$995
Annual renewal after the first year of registration	\$725	\$835
Change of relevant particulars	\$100	\$120

Fees in respect of local newspapers

	Current	From 1 November 2014
Searching and inspecting the register of local newspapers	\$33	\$38
To obtain a certified copy of an extract from the register	\$130	\$150
First registration of a local newspaper	\$905	\$1,040
Annual renewal after the first year of registration	\$680	\$780
Change of particulars	\$100	\$120
Annual fee for newspaper distributor's licence	\$865	\$950

9. According to the LegCo Brief (with no file reference) issued by the Constitutional and Mainland Affairs Bureau in April 2014, the increases are implemented in order to achieve full cost recovery gradually and to avoid a steep increase of the fees concerned. Members may refer to the LegCo Brief for further details.

10. As advised by the Clerk to Panel on Constitutional Affairs, the Panel was consulted on the proposed fee revisions at its meeting on 17 February 2014. Members did not raise objection to the proposed fee revisions. However, a concern was expressed about the large discrepancy in the cost recovery rate for various fee items after the proposed fee revisions, ranging from 43% to 85%. It was suggested that a standard cost recovery rate should be set. For those fees with a cost recovery rate below the standard rate, they should be increased on a gradual basis to achieve the standard rate.

11. L.N. 55 and L.N. 56 come into operation on 1 November 2014.

**Overseas Lawyers (Qualification for Admission)
(Amendment) Rules 2014**

(L.N. 57)

12. L.N. 57 is made by the Council of The Law Society of Hong Kong under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice to amend the Overseas Lawyers (Qualification for Admission) Rules (Cap. 159Q). The amendments include:–

- (a) adding a definition of "applicant" to the Rules;
- (b) if an applicant has been admitted in more than one jurisdiction as a lawyer, specifying that the applicant must be of good standing in each jurisdiction in which the applicant has been so admitted;
- (c) amending the qualifications that an applicant must have obtained or the conditions that an applicant must have satisfied in order to be qualified for admission as a solicitor in Hong Kong;
- (d) in relation to any length or duration of professional training, practice or experience that is considered to be relevant under the Rules, providing the manner in which the period is to be determined;
- (e) adding Hong Kong Constitutional Law as a subject to be assessed by the Examination as specified in the Rules;
- (f) repealing the transitional provisions; and
- (g) making certain textual amendments.

13. According to the Clerk to Panel on Administration of Justice and Legal Services, the Administration has not consulted the Panel on L.N. 57.

14. L.N. 57 will come into operation on a day to be appointed by the President of The Law Society of Hong Kong by notice published in the Gazette.

15. Further, a letter has been issued to The Law Society of Hong Kong to enquire whether any consultation has been conducted in respect of the amendment rules and the reasons for repealing the transitional provisions by this amendment exercise.

16. No difficulties on the legal and drafting aspects of L.N. 54 to L.N. 56 have been identified. The scrutiny of L.N. 57 is continuing and a further report will be made, if necessary, after receiving the reply from The Law Society of Hong Kong.

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