

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1875/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/11/13/1

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

**Minutes of the Third meeting on  
Tuesday, 27 May 2014, at 2:30 pm  
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon James TO Kun-sun (Chairman)  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Starry LEE Wai-king, JP  
Hon Kenneth LEUNG  
Hon Christopher CHEUNG Wah-fung, JP  
Hon CHUNG Kwok-pan
- Public officers  
Attending** : Ms Shirley KWAN  
Principal Assistant Secretary for Financial Services and  
the Treasury (Treasury) (Revenue)
- Mr Jackie LIU  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services) 5
- Mr CHIU Kwok-kit, JP  
Deputy Commissioner (Technical)  
Inland Revenue Department
- Ms Alice CHOY  
Senior Government Counsel (Treaties and Law)1  
Department of Justice

Miss Cindy CHEUK  
Government Counsel  
Department of Justice

**Clerk in attendance** : Ms Connie SZETO  
Chief Council Secretary (1)4

**Staff in attendance** : Miss Evelyn LEE  
Assistant Legal Adviser 10

Ms Angel SHEK  
Senior Council Secretary (1)4

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Action

**I Meeting with the Administration**

(LC Paper No. CB(1)1495/13-14(01) — List of follow-up actions arising from the discussion at the meeting on 21 May 2014

LC Paper No. CB(1)1495/13-14(02) — Administration's response to the issues arising from the meeting on 21 May 2014

LC Paper No. CB(1)1463/13-14(01) — List of follow-up actions arising from the discussion at the meeting on 13 May 2014

LC Paper No. CB(1)1463/13-14(02) — Administration's response to the issues arising from the meeting on 13 May 2014

File Ref: TsyB R 183/800-1-1/4/0 (C) — Legislative Council Brief

L.N. 54 of 2014 — Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order

LC Paper No. LS49/13-14 — Legal Service Division Report

LC Paper No. CB(1)1397/13-14(01) — Background brief on the Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order prepared by the Legislative Council Secretariat)

### Discussion

The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

2. The Subcommittee completed scrutiny of the Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order ("the Order").

### Follow-up action to be taken by the Administration

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3. To facilitate the Legislative Council in monitoring the implementation of the Agreement between the Hong Kong Special Administrative Region and the United States of America for the Exchange of Information ("EoI") relating to Taxes, the Administration agreed to provide annual reports to the Panel on Financial Affairs on the Agreement, including information on the number of EoI requests made or received, approved, declined by the Inland Revenue Department under the Agreement, and assessment on the impact of the Agreement (such as resources implication) in the light of operational experience.

## **II Any other business**

### Way forward

4. Members noted that if the motion to extend the scrutiny period of the Order ("the extension motion") was passed, the scrutiny period would be extended to 18 June 2014 and the deadline for giving notice to amend the Order would be 11 June 2014. However, due to the continued consideration of the Appropriation Bill 2014 at LegCo meetings, the extension motion was unlikely to be dealt with at the LegCo meeting of 28 May 2014 (the last LegCo meeting in which extension of the scrutiny period of or amendment to the Order could be made). As such, the scrutiny period would lapse at the LegCo meeting of 28 May 2014. The Order would commence on 20 June 2014. The Chairman informed members that he had given notice to move a motion under his name to repeal the Order at the Council meeting of 28 May 2014 but it was also unlikely that his motion could be dealt with at the LegCo meeting of 28 May 2014.

5. Members further noted that the Chairman had given a verbal report of the Subcommittee's deliberations to the House Committee at its meeting on 16 May 2014. The Subcommittee would provide a written report to the House Committee in due course. Members agreed that the Chairman would table the Subcommittee's report and seek the permission of the President to address the Council on the report at the LegCo meeting of 18 June 2014, in accordance with Rule 21(1) and (3) of the Rules of Procedure.

6. There being no other business, the meeting ended at 3:20 pm.

Council Business Division 1  
Legislative Council Secretariat  
29 July 2014

**Proceedings of the Subcommittee on Inland Revenue (Exchange of Information  
relating to Taxes) (United States of America) Order  
Third meeting on Tuesday, 27 May 2014, at 2:30 pm  
in Conference Room 2A of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000034 – 000208	Chairman	Opening remark	
000209 – 000843	Administration	Briefing by the Administration on its written response to issues arising from the discussion at the meeting held on 21 May 2014 (LC Paper No. CB(1)1495/13-14(02))	
000844 – 001843	Chairman Administration	<p>Discussion on whether and how the Inland Revenue Department ("IRD") would consider requests for exchange of information ("EoI") having regard to supporting evidence and facts of proof provided by the applicant party, instead of relying on claims made by the applicant party, with reference to a hypothetical EoI request made pursuant to the Agreement between the Hong Kong Special Administrative Region and the United States of America for the Exchange of Information relating to Taxes ("US Agreement").</p> <p>The Administration advised that -</p> <ul style="list-style-type: none"> <li>(a) in lodging an EoI request to IRD, the US should provide supporting information and evidence (e.g. remittance advice) to demonstrate the "foreseeable relevance" of the information requested to its case. IRD would not be obliged to identify any bank account and transaction on behalf of the US; and</li> <li>(b) IRD would ascertain whether the US had attempted to obtain the requested information from the US taxpayer concerned or other available sources before acceding to the EoI request.</li> </ul> <p>The Chairman remained unconvinced that measures/procedures adopted by IRD in handling EoI requests would be sufficient in safeguarding the interests of Hong Kong persons/companies and minimizing their compliance burden in the provision of information. In view of close economic ties</p>	

Time Marker	Speaker	Subject(s)	Action Required
		between Hong Kong and the US, and the large number of Hong Kong persons/companies connected with/controlled by US taxpayers, it was likely that the US competent authority might put forward a large number of EoI requests to Hong Kong and this would have resources implication on IRD.	
001844 – 002207	Mr CHUNG Kwok-pan Chairman Administration	In reply to Mr CHUNG, the Administration advised that the jurisdictions which had signed Model 1 or 2 intergovernmental agreements ("IGAs") with the US for the US Foreign Account Tax Compliance Act ("FATCA") were given in footnotes 2 and 3 respectively of Annex B to the Administration's paper (LC Paper No. CB(1)1463/13-14(02)).	
002208 – 003522	Chairman Administration	<p>Discussion on the information that an applicant party should provide to IRD in order to demonstrate that the information requested was "foreseeably relevant" and not "fishing expedition".</p> <p>The Administration supplemented that –</p> <p>(a) for the period between 2009 and April 2014, IRD received about 170 EoI requests pursuant to comprehensive avoidance of double taxation agreements ("CDTAs") and IRD did not provide information in relation to 17 requests as the applicant parties had failed to demonstrate the foreseeable relevance of the information requested. The high rate of declined cases (i.e. one in 10 EoI requests) reflected that IRD had adopted a stringent approach in handling EoI requests;</p> <p>(b) compared to the tax information exchange agreements ("TIEAs") signed by the US with other jurisdictions, Hong Kong had included more stringent requirements in the US Agreement with regard to the information required from the applicant party in demonstrating the foreseeable relevance of the information requested;</p> <p>(c) if IRD had the requested information (e.g. tax returns filed by taxpayers and supporting documents such as financial statements,</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>balance sheet and statement of income/profit and loss account), or the information was public records, it would not gather the information from the subject of request or relevant information holders; and</p> <p>(d) most of the subjects of EoI requests handled by IRD in the past were large multi-national corporations.</p> <p>The Chairman reiterated his concern about compliance burden on Hong Kong persons/companies in providing information, in particular IRD was vested with power to compel provision of information by the subjects of requests. He was worried that the US would take vigorous measures to combat tax evasion by US persons/entities, thereby generating a large number of EoI requests under the US Agreement. This would have serious impacts on Hong Kong people and companies, as well as resources implication on IRD.</p>	
003523 – 004229	Mr CHUNG Kwok-pan Chairman Administration	<p>Mr CHUNG reiterated his view that the Administration should exclude non-financial institutions ("non-FIs") from the scope of EoI under the US Agreement so as to minimize burden on non-FIs in the provision of information.</p> <p>In response to Mr CHUNG's enquiries, the Administration advised that –</p> <p>(a) it was in line with international standard that the EoI mechanism for CDTA/TIEA covered all information relating to the taxes covered by the agreements, which might or might not be held by FIs. The TIEAs signed by US with other jurisdictions generally followed the international standard;</p> <p>(b) the HK-US IGA in respect of FATCA must be underpinned by an EoI agreement with the US to provide for the necessary basis for Hong Kong to provide information upon EoI requests by the US; and</p> <p>(c) Hong Kong and the US had reached consensus in substance of the HK-US IGA. It was envisaged that the IGA would be</p>	

Time Marker	Speaker	Subject(s)	Action Required
		signed within 2014 after the US completed its relevant due procedures.	
004230 – 004827	Chairman Mr Christopher CHEUNG Administration	<p>In reply to the Chairman, the Administration advised that –</p> <p>(a) Hong Kong could not sign the HK-US IGA without first putting in place an EoI mechanism with the US. The US Agreement provided the requisite EoI mechanism and the Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order was to implement the US Agreement; and</p> <p>(b) the conclusion of the HK-US IGA did not require prior approval of the Legislative Council ("LegCo").</p> <p>The Chairman reiterated his concerns about far-reaching adverse consequences of the US Agreement on trading and investment activities involving US persons/companies. He maintained his view that non-FIs should be excluded from the EoI scope under the US Agreement.</p> <p>At the request of the Chairman and Mr CHEUNG, the Administration agreed to provide annual reports to the Panel on Financial Affairs on the US Agreement, including information on the number of EoI requests made or received, approved, declined by IRD under the Agreement, and assessment on the impact of the Agreement (such as resources implication) in the light of operational experience, so as to facilitate LegCo's monitoring of the implementation of the Agreement.</p>	The Administration to take action as required in paragraph 3 of the minutes.
004828 – 005118	Chairman Clerk	Legislative timetable and way forward	