

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

**List of follow-up actions arising from the discussion  
at the meeting on 13 May 2014**

1. In respect of the Agreement between the Hong Kong Special Administrative Region and the United States of America ("US") for the Exchange of Information ("EoI") relating to Taxes ("the US Agreement"), the Administration is requested to provide information on –

- (a) comparison of the US Agreement with the 2002 version of tax information exchange agreement ("TIEA") developed by the Organization for Economic Cooperation and Development, including explanation for the differences, if any;
- (b) how the US Agreement will complement operation of the future intergovernmental agreement ("IGA") to be entered into with US to facilitate compliance by Hong Kong's financial institutions with the requirements under the US Foreign Account Tax Compliance Act ("FATCA");
- (c) justifications for signing the US Agreement to provide for the EoI mechanism in respect of FATCA, given the concern that TIEA covers a wider scope including non-financial institutions while FATCA involves reporting by financial institutions only; and why the EoI mechanism under the US Agreement cannot be restricted to exchange of information covering financial institutions only; and
- (d) list of jurisdictions which have entered into TIEAs with US.

2. As regards the implementation of FATCA in US with effect from 1 July 2014, the Administration is requested to provide information on –

- (a) details of available models (i.e. Model 1 and Model 2) for Hong Kong's financial institutions to comply with FATCA, including the respective requirements on financial institutions under the two models, e.g. the agreements that the financial institutions have to enter into with the US Internal Revenue Services ("IRS");

- (b) the benefits on Hong Kong's financial institutions with the Government entering into the IGA with US (i.e. Model 2), and compliance difficulties for Hong Kong's financial institutions to enter into agreement with IRS without the basis of an IGA/TIEA;
- (c) customer due diligence ("CDD") and other requirements (e.g. identification of US accounts and account information storage/reporting) under FATCA with regard to existing/new clients, account balance, risks of tax avoidance, etc., including –
  - (i) comparison of the CDD requirements under FATCA and similar requirements under the anti-money laundering ("AML") regime, or stipulated by the financial regulators (e.g. Hong Kong Monetary Authority, Securities and Futures Commission); and
  - (ii) impacts, if any, of the implementation of FATCA and the IGA on existing CDD requirements under AML or other financial regulatory regimes in Hong Kong;
- (d) the basis for calculating the 30% withholding on all US-sourced payments made to a Hong Kong's financial institution if it fails to register or report the required information to IRS under FATCA;
- (e) liability of Hong Kong's financial institutions if their clients provide false information on whether they are US persons;
- (f) the procedures to be adopted by the Inland Revenue Department ("IRD") in processing EoI requests under the US Agreement, including IRD's powers to demand or compel provision of information in respect of "non-consenting accounts" under FATCA;
- (g) how Hong Kong's financial institutions, in particular those which are not under the purview of any financial regulator, will be apprised of their obligations/requirements under FATCA, and measures to be taken by the Administration to promote awareness of Hong Kong's financial institutions in this respect;
- (h) views or submissions from the financial services industry and institutions expressing support or concerns on the arrangement for Hong Kong to enter into the IGA in question with US for the purpose of FATCA;

- (i) clarification on the scope/definition of foreign financial institutions and their investing/trading activities under FATCA; and
- (j) information on other jurisdictions adopting Model 1 or Model 2 for complying with FATCA.

3. The Administration is requested to explain the legal mechanism and considerations in determining whether an IGA between Hong Kong and other jurisdiction should be subject to approval of the Legislative Council ("LegCo") either under the positive or negative vetting procedures, and the reasons that the IGA to be signed with US in respect of FATCA will not require LegCo's vetting.

Council Business Division 1  
Legislative Council Secretariat  
20 May 2014