

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 21 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) the measures and procedures adopted by the Inland Revenue Department ("IRD") to ensure that EoI request lodged by the US' competent authority will satisfy the conditions listed in paragraph 5 of Article 5 of the US Agreement regarding foreseeable relevance of the information requested. In particular, IRD should undertake that it will base on evidence instead of claims by the US' competent authority in considering whether an EoI request meets the conditions in paragraph 5 of Article 5, including the information requested is foreseeably relevant to tax administration or enforcement of the applicant party, is held in the requested party or is in the possession or control of a person within the jurisdiction of the requested party, etc.;
- (b) how IRD will protect the interests of non-financial institutions which are not subject to requirements of the US Foreign Account Tax Compliance Act ("FATCA") but will be adversely affected by the EoI mechanism under the US Agreement including measures to reduce possible burden on these institutions in provision of information;
- (c) the number of cases and considerations involved in respect of (i) IRD's decline on EoI requests made by partners of comprehensive double taxation agreements; (ii) subjects of EoI requests who have objected to IRD's disclosing the relevant information to the requesting jurisdictions or requested IRD to amend the information; (iii) subjects of EoI requests who have challenged IRD's decisions on information disclosure by applying judicial review or taking other legal proceedings;

- (d) the Administration's follow-up actions in the event that the Order for implementing the US Agreement is repealed by the Legislative Council, including whether the Administration will conduct further negotiation with US to pursue exemption for exchange of information held by non-financial institutions in Hong Kong under specified conditions;
- (e) circumstances under which commercial information exchanged under the US agreement will be disclosed/referred to an enforcement authority (e.g. Commercial Crime Bureau in Hong Kong or comparable authorities in US); and
- (f) mechanism/measures to resolve disputes regarding implementation of the US Agreement or interpretation of its provisions.

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

- (a) estimated number of US taxpayers in Hong Kong (including US citizens, US resident individuals, or specified entities established in US or controlled by US persons) who are likely to be affected by FATCA;
- (b) template of Model 2 intergovernmental agreement ("IGA") developed by US and a summary to explain the major provisions; and
- (c) a summary of the Hong Kong-US IGA, in particular to demonstrate how FATCA requirements will be simplified in reducing reporting burden on financial institutions in Hong Kong and facilitating their compliance with FATCA, including the meaning of "institutions with a predominantly local clientele" (e.g. in terms of the institutions' locations of business and balance of clients' assets held by the institutions) which will be exempted from FATCA reporting requirement.