

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (EXCHANGE OF INFORMATION RELATING TO TAXES) (UNITED STATES OF AMERICA) ORDER

INTRODUCTION

A At the meeting of the Executive Council on 15 April 2014, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order (the Order), at Annex A, should be made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) (the Ordinance). The Order implements the Agreement between the Hong Kong Special Administrative Region and the United States of America (the US) for the Exchange of Information relating to Taxes (the US Agreement) signed on 25 March 2014.

JUSTIFICATIONS

Policy on Exchange of Information Arrangements

2. It has been the Government's policy priority to conclude comprehensive agreements for avoidance of double taxation (CDTAs) with Hong Kong's trading and investment partners, thereby facilitating the flow of trade, investment and talent between Hong Kong and the rest of the world, as well as enhancing Hong Kong's position as an international business and financial centre. Up to mid-April 2014, Hong Kong has signed 29 CDTAs¹. At the same time, Hong Kong is committed to delivering its international

¹ Our 29 CDTA partners include Belgium (2003), Thailand (2005), Mainland China (2006), Luxembourg (2007), Vietnam (2008), Brunei, the Netherlands, Indonesia, Hungary, Kuwait, Austria, the United Kingdom, Ireland, Liechtenstein, France, Japan, New Zealand (2010), Portugal, Spain, the Czech Republic, Switzerland, Malta (2011), Jersey, Malaysia, Mexico, Canada (2012), Italy, Guernsey and Qatar (2013). (*Note: The years in brackets denote the years in which the relevant CDTAs were signed.*)

obligations on promoting tax transparency. Hence, all the CDTAs signed embody a mechanism for exchange of information (EoI) up to the international standard as far as practicable.

3. According to the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) of the Organisation for Economic Cooperation and Development (OECD), a jurisdiction should make available both CDTA and tax information exchange agreement (TIEA) as instruments for EoI with other jurisdictions. TIEA is a form of EoI agreement which carries no double taxation relief. During an earlier review of Hong Kong's compliance with the international EoI standard, the Global Forum recommended that Hong Kong should put in place a legal framework for entering into TIEAs with other jurisdictions, otherwise Hong Kong would run the risk of being labelled as an uncooperative tax jurisdiction. Against such backdrop, we introduced relevant legislative amendments into the Legislative Council (LegCo) in April 2013 and secured the passage of the Inland Revenue (Amendment) Bill 2013 in July 2013, thereby enabling Hong Kong to enter into TIEAs with other jurisdictions where necessary.

4. While it remains our policy priority to expand Hong Kong's network of CDTAs, according to the prevailing international standard, preference for a CDTA over a TIEA cannot be a reason for refusing to enter into an EoI agreement with relevant partners. Hence, in response to a number of jurisdictions' request, we have commenced TIEA discussions with them as they have indicated no interest in pursuing CDTAs with Hong Kong at the current juncture despite our repeated persuasion. The US is a case in point. We are also negotiating TIEAs with a number of other jurisdictions, such as Denmark, Norway and Sweden. Notwithstanding the above, Hong Kong would, as a business facilitation initiative, continue its efforts to expand the network of CDTAs with its trading and investment partners. Even though we may conclude TIEAs with certain jurisdictions, we do not rule out the possibility of pursuing CDTAs with individual jurisdictions later if they are interested.

Urgency of Entering into a TIEA with the US

5. It is time-critical to enter into a TIEA with the US, so that the treaty can enter into force by July 2014. It provides the necessary basis for Hong Kong to provide for EoI upon requests made by the US tax authorities in relation to the information reported by financial institutions in Hong Kong to the US under the US Foreign Account Tax Compliance Act (FATCA). FATCA, an Act passed by the US Congress in 2010, will take effect from 1 July 2014. It requires US persons, including those who live outside the US, to report to the US tax authorities their financial accounts held in other jurisdictions, and requires foreign financial institutions (FFIs) including

those in Hong Kong to report the financial information in respect of their US clients². Hong Kong will need to enter into an intergovernmental agreement (IGA) with the US to lay down the arrangements which help facilitate compliance by the financial institutions in Hong Kong. As a complementary measure, the TIEA will allow the US IRS to file a request to the Inland Revenue Department (IRD) for EoI under specified conditions. The IGA must be underpinned by an EoI agreement with the US, be it CDTA or TIEA. However, the US has all along shown no interest in pursuing a CDTA with Hong Kong. To facilitate the early conclusion of the IGA with the US before the imminent implementation of FATCA in July 2014, it is essential for us to have in place a TIEA with the US in a timely manner.

Salient Features of the US Agreement

6. Hong Kong adopts the OECD 2002 version of TIEA model in pursuing TIEAs with other jurisdictions, except for certain modifications to address local needs, which are permissible under the commentary of the OECD model. The salient features of the US Agreement are detailed in the ensuing paragraphs.

7. Regarding tax types, following the enactment of the Inland Revenue (Amendment) (No. 2) Ordinance 2013, we have relaxed the coverage of tax types for the purpose of EoI under CDTAs/TIEAs to the effect that EoI will no longer be restricted to income taxes³. Specifically, in the US Agreement, we have honoured our earlier commitment to LegCo in adopting a positive listing approach to set out the tax types covered, which include –

- (a) federal taxes on income;
- (b) federal taxes related to employment and self-employment;
- (c) federal estate and gift taxes; and
- (d) federal excise taxes.

² FFIs under FATCA include any non-US entity that is a bank, broker-dealer, custodian, or trust company, or is engaged primarily in investing or trading in securities. The FFIs are expected to enter into an agreement with the US Internal Revenue Service (IRS), under which the FFIs agree to identify any US accounts and report account information to the IRS, including the identity of the holders, the balance in the accounts, and the amount of withdrawals or payments from the accounts. If an FFI fails to register or report the required information, it would be subject to 30% withholding on all US-sourced payments made to it.

³ Income taxes refer to those imposed on taxpayers (i.e. individuals or entities) that vary with the income or profits of the taxpayers, such as taxes on business profits, employment income, rental income, capital gains, interest, royalty, dividends and pensions.

8. Although the US Agreement embodies a seemingly much wider scope of tax types when compared with our CDTAs signed, we envisage that the information requested for EoI purpose will essentially be the same as that provided to our CDTA partners previously, notably ownership and banking information as well as accounting and transaction records.

9. In fact, the EoI mechanism under TIEAs is exactly the same as the existing one under CDTAs. The TIEA partner (the US in the present case) will have to lodge EoI requests to the competent authority of Hong Kong (i.e. IRD) if it wishes to obtain information from Hong Kong under the EoI arrangement of the TIEA. Upon receipt of an EoI request, IRD will examine, with reference to the particulars provided by the US, whether the information requested is foreseeably relevant according to the conditions laid down in the US Agreement and in the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. leg. BI). If the conditions are not fulfilled, IRD will not approve the EoI request. Even when IRD acts on a valid EoI request and exercises its information-gathering power to approach a person for the requested information, that person has no obligation to provide to IRD, for EoI purposes, information which is not in his/her possession or control and is not required to be kept or is beyond the statutory retention period under the Ordinance.

10. In order to protect taxpayers' privacy and confidentiality of information exchanged, the Government has undertaken to LegCo that same for CDTAs, we will adopt highly prudent safeguard measures in our TIEAs to be signed and will highlight deviations, if any, from the pledged safeguards when we submit the subsidiary legislation implementing TIEAs to LegCo for negative vetting. The safeguard measures, which have all been taken on board in the US Agreement, are –

- (a) we only exchange information upon receipt of requests and no information will be exchanged on an automatic or spontaneous basis;
- (b) the information sought should be foreseeably relevant to the administration and enforcement of domestic tax laws of the Contracting Parties, i.e. no fishing expedition;
- (c) information generated before the effective date of the relevant TIEA can be disclosed to the TIEA partner only if the standard of foreseeable relevance is satisfied upon examination of the particulars provided by the TIEA partner in its EoI request, and the requested information relates to the carrying out of the relevant TIEA or the administration or enforcement of the tax laws of the

TIEA partner concerning taxes imposed in periods after the TIEA becomes effective;

- (d) information received by our TIEA partners should be treated as confidential;
- (e) information would only be disclosed to the persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of and the determination of appeals in relation to taxes falling within the scope of EoI but not for release to their oversight bodies unless there are legitimate reasons given by the TIEA partners and where applicable, such oversight bodies should be positively listed in the relevant TIEA or its protocol. Upon the US' request, the US Agreement specifically provides that the US competent authority (i.e. the US Treasury) may disclose information received under the agreement to administrative bodies that are authorized to review tax return information under its domestic confidentiality laws, covering bodies whose duties include auditing the tax authority (the Treasury Inspector General for Tax Administration and the congressional Government Accountability Office) and bodies whose duties require inquiries into tax administration for planning tax law enactments and implementation and proposing tax law changes (the Office of the Treasury Assistant Secretary for Tax Policy and the tax-writing committees in Congress);
- (f) information received should not be disclosed to a third jurisdiction;
- (g) there is no obligation to supply information under certain circumstances, for example, where the information would disclose any trade, business, industrial, commercial or professional secret or trade process, or which is not obtainable under the laws of the requesting party for the purposes of the administration or enforcement of its own tax laws, including information that would be covered by legal professional privilege, etc.; and
- (h) we will not accede to any requests for tax examinations abroad, i.e. representatives of one Contracting Party will not be permitted to conduct tax examinations in the territory of another Contracting Party.

11. Insofar as costs for handling EoI requests are concerned, the US Agreement provides that while the requested party shall bear the ordinary costs incurred in providing assistance for the purpose of responding to an EoI request, the requesting party shall bear the associated extraordinary costs, if any, such as fees charged by third parties for carrying out research, costs of engaging experts, interpreters or translators, litigation costs in relation to the EoI requests and costs of obtaining depositions and testimony.

Legal Basis

12. Under section 49(1A) of the Ordinance, the Chief Executive in Council may, by order, declare that arrangements specified in the order have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect. By such order, those arrangements shall have effect in relation to tax under the Ordinance 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. Under section 49(1B)(b) of the Ordinance, arrangements made for exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned may be specified in an order under section 49(1A) of the Ordinance.

OTHER OPTIONS

13. An order made by the Chief Executive in Council under section 49(1A) of the Ordinance is the only way to give effect to the US Agreement. There is no other option.

THE ORDER

14. **Section 2** of the Order declares that the arrangements specified in section 3 for the exchange of information have been made and that it is expedient that those arrangements should have effect. **Section 3** states that the arrangements are those in Articles 1 to 11 of the US Agreement as well as Paragraphs 1 to 2 of the Protocol to the US Agreement, as set out in the **Schedule** to the Order.

LEGISLATIVE TIMETABLE

15. The legislative timetable is as follows –

Publication in the Gazette	25 April 2014
Tabling at LegCo	30 April 2014
Commencement of the Order	20 June 2014

IMPLICATIONS OF THE PROPOSAL

B 16. The proposal has financial, economic and civil service implications as set out in Annex B. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation. It has no productivity, environmental, sustainability or family implications.

PUBLIC CONSULTATION

17. We have kept the business and professional sectors informed of the negotiation of a TIEA with the US. They generally reckon the imminent need for the TIEA given the impending implementation of FATCA.

PUBLICITY

18. We issued a press release on the signing of the US Agreement on 25 March 2014. A spokesperson will be available to answer media and public enquiries.

BACKGROUND

19. The US Agreement is the first TIEA concluded by Hong Kong with another jurisdiction.

ENQUIRY

20. In case of enquiries about this Brief, please contact Ms Shirley Kwan, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2370.

Financial Services and the Treasury Bureau
23 April 2014

LEGISLATIVE COUNCIL BRIEF

**Inland Revenue Ordinance
(Chapter 112)**

**INLAND REVENUE
(EXCHANGE OF INFORMATION RELATING TO TAXES)
(UNITED STATES OF AMERICA) ORDER**

ANNEXES

- | | |
|---------|---|
| Annex A | Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order |
| Annex B | Financial, Economic and Civil Service Implications of the Proposal |

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

Section 1

1

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

(Made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112))

1. Commencement

This Order comes into operation on 20 June 2014.

2. Declaration under section 49(1A)

For the purposes of section 49(1A) of the Ordinance, it is declared—

- (a) that the arrangements specified in section 3(1) have been made with the Government of the United States of America; and
- (b) that it is expedient that those arrangements should have effect.

3. Arrangements specified

- (1) The arrangements specified for the purposes of section 2(a) are the arrangements in—
 - (a) Articles 1 to 11 of the agreement titled “Agreement between the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and the Government of the United States of America for the Exchange of Information relating to Taxes” (which is translated into Chinese as “《中華人民共和國香港特別行政區政府與美國政府關於稅項資料交換的協定》” in this Order), done in duplicate at

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

Section 3

2

Hong Kong on 25 March 2014 in the English language; and

- (b) Paragraphs 1 and 2 of the protocol to the agreement, done in duplicate at Hong Kong on 25 March 2014 in the English language.
- (2) The English text of the Articles referred to in subsection (1)(a) is reproduced in Part 1 of the Schedule; a Chinese translation of the Articles is also set out in that Part.
- (3) The English text of the Paragraphs referred to in subsection (1)(b) is reproduced in Part 2 of the Schedule; a Chinese translation of the Paragraphs is also set out in that Part.

Schedule [s. 3]

Part 1

Articles 1 to 11 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United States of America for the Exchange of Information relating to Taxes

ARTICLE 1

Object and Scope of this Agreement

The competent authorities of the Contracting Parties shall provide assistance to each other through exchange of information that is foreseeably relevant to the administration and enforcement of the internal laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 7 (Confidentiality).

ARTICLE 2

Jurisdiction

A requested Party shall not be obligated to provide information that is neither held by its authorities nor in the possession or control of persons who are within its geographic area of jurisdiction. With respect to information held by its authorities or in the possession or control of persons who are within its geographic area of jurisdiction, however, the requested Party shall provide information in accordance with this Agreement regardless of the residence or nationality of the person holding the information or to whom the information relates.

ARTICLE 3

Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the Contracting Parties:
 - (a) in the case of the United States,
 - (i) federal taxes on income;
 - (ii) federal taxes related to employment and self-employment;
 - (iii) federal estate and gift taxes; and
 - (iv) federal excise taxes;
 - (b) in the case of the Hong Kong Special Administrative Region,
 - (i) profits tax;
 - (ii) salaries tax; and

(iii) property tax;

whether or not charged under personal assessment.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of this Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree in writing. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

ARTICLE 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
- (a) the term “Contracting Party” means the United States or the Hong Kong Special Administrative Region as the context requires;
 - (b) the term “competent authority” means:
 - (i) in the case of the United States, the Secretary of the Treasury or his delegate, and

- (ii) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative;
- (c) the term “person” includes an individual, a company and any other body of persons;
- (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognized stock exchange if the purchase or sale of its listed shares is not implicitly or explicitly restricted to a limited group of investors;
- (f) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (g) the term “recognized stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (h) the term “public collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form, if the purchase, sale or redemption of the units, shares or other interests in the investment vehicle is not implicitly or explicitly restricted to a limited group of investors;
- (i) the term “tax” means any tax to which this Agreement applies and does not include customs duties;

- (j) the term “applicant Party” means the Contracting Party requesting information;
 - (k) the term “requested Party” means the Contracting Party requested to provide information;
 - (l) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
 - (m) the term “information” means any fact, statement or record in any form whatever; and
 - (n) the term “geographic area of jurisdiction” means:
 - (i) in the case of the United States, the territory of the United States of America, including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands and any other U.S. possession or territory; and
 - (ii) in the case of the Hong Kong Special Administrative Region, the geographic area of jurisdiction within which the tax laws of the Hong Kong Special Administrative Region of the People’s Republic of China apply.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 9 (Mutual Agreement Procedure), have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax

laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide information for the purposes referred to in Article 1 (Object and Scope of this Agreement) upon request by the competent authority of the applicant Party. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes. In the execution of a request by the requested Party, only those privileges under the laws and practices of the requested Party shall apply.
3. If specifically requested by the competent authority of the applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its internal laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority, for the purposes specified in Article 1 (Object and Scope of this Agreement) of this Agreement, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees; and
- (b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2 (Jurisdiction), ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

Notwithstanding subparagraph 4(b), this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties to the requested Party.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person or ascertainable group or category of persons under examination or investigation;

- (b) a statement of the information sought, including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (c) the period of time with respect to which the information is requested;
- (d) the tax purpose for which the information is sought including the tax type of the applicant Party;
- (e) grounds for believing that the information requested is foreseeably relevant to tax administration or enforcement of the applicant Party with respect to the person or group or category of persons identified in subparagraph 5(a);
- (f) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the requested information;
- (h) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement; and

- (i) a statement that the applicant Party has pursued all means available in its geographic area of jurisdiction to obtain the information, except those that would give rise to disproportionate difficulties.

ARTICLE 6

Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement. The competent authority of the requested Party may decline to assist where the applicant Party has not pursued all means available in its geographic area of jurisdiction to obtain the information, except those that would give rise to disproportionate difficulties.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information that would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5 (Exchange of Information upon Request), paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information that would reveal confidential communications between a client and an

attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice; or
 - (b) produced for the purposes of use in existing or contemplated legal proceedings.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).
 5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

ARTICLE 7

Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person, entity, authority or jurisdiction.

ARTICLE 8

Costs

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party and extraordinary costs incurred in providing assistance shall be borne by the applicant Party.

ARTICLE 9

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavor to resolve the matter by mutual agreement.
2. The competent authorities may adopt and implement procedures to facilitate the implementation of this Agreement.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching a mutual agreement under this Article.

ARTICLE 10

Entry Into Force

This Agreement shall enter into force on the date of the Hong Kong Special Administrative Region's written notification to the United States that the

Hong Kong Special Administrative Region has completed its necessary internal procedures for entry into force of this Agreement. The provisions of this Agreement shall have effect for requests made on or after the date of entry into force, in respect of any period that starts on or after the date of entry into force, and for all charges to tax arising on or after the date of entry into force.

ARTICLE 11

Termination

1. The Agreement shall remain in force until terminated by a Contracting Party.
2. Either Contracting Party may terminate the Agreement by giving notice of termination in writing to the other Contracting Party. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of the notice of termination.
3. If the Agreement is terminated, both Contracting Parties shall remain bound by the provisions of Article 7 (Confidentiality) with respect to any information obtained under the Agreement.

(Chinese Translation)

第一條

本協定的目的及範圍

締約双方的主管當局須透過交換可預見攸關施行及強制執行締約雙方關乎本協定所涵蓋的稅項的內部法律的資料，互相提供協助。該等資料包括可預見攸關該等稅項的釐定、評估及徵收、稅收申索的追討及執行，或稅收事宜的調查或檢控的資料。資料須按照本協定的規定交換，並須按第七條(保密)所規定的方式保密處理。

第二條

管轄權

被請求方沒有責任提供並非由其當局持有的資料，或提供並非由在其司法管轄區地域內的人管有或控制的資料。然而，如資料是由其當局持有，或由在其司法管轄區地域內的人管有或控制，則被請求方均須按照本協定提供資料(不論持有資料的人的居民身分或國籍，亦不論資料關乎何人)。

第三條

所涵蓋的稅項

1. 本協定適用於以下由締約雙方課徵的稅項：

(a) 就美國而言，

(i) 聯邦所得稅；

(ii) 與受僱工作及自僱有關的聯邦稅項；

(iii) 聯邦遺產稅及饋贈稅；及

(iv) 聯邦工商稅；

(b) 就香港特別行政區而言，

(i) 利得稅；

(ii) 薪俸稅；及

(iii) 物業稅；

不論是否按個人入息課稅徵收。

2. 本協定亦適用於在本協定的簽訂日期後，在現有稅項以外課徵或為取代現有稅項而課徵的任何與現有稅項相同的稅項。如締約双方的主管當局以書面同意，本協定亦適用於在本協定的簽訂日期後，在現有稅項以外課徵或為取代現有稅項而課徵的任何與現有稅項實質上類似的稅項。如本協定所涵蓋的稅務事宜有任何重大改變，以及相關的收集資料措施有任何重大改變，締約双方的主管當局須將改變通知對方。

第四條

定義

1. 就本協定而言，除經另行界定外：

(a) “締約方”一詞指美國或香港特別行政區，按文意所需而定；

(b) “主管當局”一詞：

- (i) 就美國而言，指財政部長或獲其轉授權力者，及
- (ii) 就香港特別行政區而言，指稅務局局長或其獲授權代表；
- (c) “人”一詞包括個人、公司及任何其他團體；
- (d) “公司”一詞指任何法團，或就稅收而言視作法團的任何實體；
- (e) “公眾可買賣的公司”一詞指其主要類別股份是於認可證券交易所上市的任何公司，而其上市股份並非暗示或明示地只供限定類別的投資者買賣；
- (f) “主要類別股份”一詞指代表某公司過半數的表決權及價值的某類別(或多於一個類別的)股份；
- (g) “認可證券交易所”一詞指締約双方的主管當局議定的任何證券交易所；
- (h) “公眾集體投資基金或計劃”一詞指任何匯集投資工具(不論其法律形式)，而該投資工具中的單位、股份或其他權益並非暗示或明示地只供限定類別的投資者買賣或贖回；
- (i) “稅項”一詞指本協定適用的任何稅項，但不包括關稅；
- (j) “申請方”一詞指請求提供資料的締約方；

- (k) “被請求方”一詞指被請求提供資料的締約方；
 - (l) “收集資料措施”一詞指令締約方可取得及提供所請求的資料的法律及行政或司法程序；
 - (m) “資料”一詞指任何形式的事實、陳述或紀錄；及
 - (n) “司法管轄區地域”一詞指：
 - (i) (就美國而言)美國的領土，包括美屬薩摩亞、關島、北馬里亞納群島、波多黎各、美屬維爾京群島，以及任何其他美國屬地或領土；及
 - (ii) (就香港特別行政區而言)中華人民共和國香港特別行政區的稅務法律所適用的司法管轄區地域。
2. 在締約方於任何時候施行本協定時，凡有任何詞語在本協定中並無界定，則除文意另有所指或雙方主管當局依據第九條(相互協商程序)的規定就該詞語的涵義達成協議外，該詞語具有它當其時根據該方的法律所具有的涵義，而在根據該方適用的稅務法律給予該詞語的涵義與根據該方的其他法律給予該詞語的涵義兩者中，以前者為準。

第五條

按請求交換資料

1. 在申請方的主管當局提出請求後，被請求方的主管當局須為第一條(本協定的目的及範圍)所述的目的提供資料。不論被請求方是

否為其本身的稅務目的而需要該等資料，亦不論假使受調查的行為在被請求方發生，在該方的法律下是否構成罪行，該等資料均須交換。

2. 如被請求方的主管當局所管有的資料，不足以令其遵從提供資料的請求，該方須採用所有相關的收集資料措施，以向申請方提供所請求的資料(即使被請求方就其本身的稅務目的而言，未必需要該等資料)。在被請求方執行請求時，只有該方的法律及慣例下的特權適用。
3. 如申請方的主管當局提出特定請求，被請求方的主管當局須根據本條規定，在其內部法律所容許的程度內，以證人書面供詞及原本紀錄的經認證副本的形式提供資料。
4. 各締約方均須確保其主管當局在接獲請求時，有權為本協定第一條(本協定的目的及範圍)所指明的目的取得和提供：
 - (a) 銀行、其他金融機構，以及以代理人或受信人身分行事的人(包括代名人及受託人)持有的資料；及
 - (b) 關於公司、合夥、信託、基金會、“機構”及其他人的擁有權的資料，包括在符合第二條(管轄權)的規限下，在連鎖擁有權中所有人的擁有權資料；就信託而言，包括財產授予人、受託人及受益人的資料；以及就基金會而言，包括創辦人、基金會理事會成員及受益人的資料。

儘管有第 4 款(b)項的規定，本協定並不規定締約雙方有義務取得或提供關於公眾可買賣的公司或公眾集體投資基金或計劃的擁有權的資料，除非該資料可在不對被請求方造成不成比例的困難的情況下取得。

5. 申請方的主管當局在根據本協定作出資料請求時，須向被請求方的主管當局提供以下資料，以顯示所請求的資料是可預見攸關該請求的：
 - (a) 以下人士的身分：被審查或調查的人，或被審查或調查而可予確定的群體或類別的人；
 - (b) 所請求的資料的陳述，包括資料的性質，以及申請方欲以何形式從被請求方收取資料；
 - (c) 請求提供的資料所涉及的期間；
 - (d) 請求提供的資料的稅務目的，包括申請方的稅項種類；
 - (e) 相信請求提供的資料，就第 5 款(a)項示明的人、群體或類別的人而言，是可預見攸關施行申請方的稅務管理或強制執法的理由；
 - (f) 相信請求提供的資料，是由被請求方持有，或是由在該方的司法管轄權內的人管有或控制的理由；
 - (g) 在所知的範圍內，相信管有或控制被請求提供的資料的人的姓名或名稱及地址；
 - (h) 述明以下事宜的陳述：有關請求符合申請方的法律和行政慣例；假若請求提供的資料是在申請方的司法管轄權內，則該方的主管當局能根據其法律或在行政慣例的正常過程中，取得該等資料；及有關請求符合本協定的規定；及

- (i) 述明以下事宜的陳述：申請方已用盡在其司法管轄區地域內所有可用的方法，以取得該等資料(造成不成比例的困難的方法除外)。

第六條

拒絕請求的可能

1. 如申請方不能為施行或強制執行其稅務法例而根據其本身法律取得某資料，被請求方不會被要求取得或提供該資料。如請求不符合本協定的規定，則被請求方的主管當局可拒絕提供協助。如申請方未有用盡在其司法管轄區地域內所有可用的方法，以取得有關資料(造成不成比例的困難的方法除外)，則被請求方的主管當局可拒絕提供協助。
2. 本協定的條文不會向締約方施加以下義務：提供會將任何貿易、業務、工業、商業或專業秘密或貿易程序披露的資料。儘管有以上條文，第五條(按請求交換資料)第 4 款所述種類的資料，不會純粹因為符合該款的準則而被視為上述秘密或貿易程序。
3. 本協定的條文不會向締約方施加以下義務：取得或提供會揭露委託人與律師或其他認可的法律代表之間的保密通訊的資料，而該等通訊是：
 - (a) 為尋求或提供法律意見而作出的；或
 - (b) 為在現正進行或擬進行的法律程序中使用而作出的。

4. 如披露某資料會違反公共政策(公共秩序)，被請求方可拒絕提供該資料的請求。
5. 提供資料的請求，不可因引起該請求的稅收申索受爭議，而遭拒絕。

第七條

保密

締約方根據本協定收取的任何資料須保密處理。該等資料只可向在該締約方的司法管轄區內與本協定所涵蓋的稅項的評估或徵收、執行或檢控有關，或與關乎該等稅項的上訴的裁決有關的人員或當局(包括法院及行政部門)披露。該等人員或當局只可為上述目的使用該等資料。他們可在公開的法庭程序中或司法裁定中披露該等資料。該等資料不可向任何其他人、實體、當局或司法管轄區披露。

第八條

費用

除締約雙方的主管當局另有協議外，提供協助所招致的一般費用，須由被請求方承擔，而提供協助所招致的特殊費用，則須由申請方承擔。

第九條

相互協商程序

1. 如締約雙方就本協定的實施或解釋出現任何困難或疑問，雙方的主管當局須致力共同協商，以解決問題。
2. 雙方的主管當局可採納和執行利便於實施本協定的程序。
3. 締約雙方的主管當局可為達成本條所指的共同協商，而直接與對方聯絡。

第十條

生效

在香港特別行政區以書面通知美國，香港特別行政區已完成使本協定生效所需的內部程序時，本協定自該通知的日期起生效。本協定的規定，對在本協定生效當日或之後提出的以下請求具有效力：在與本協定生效當日或之後開始的任何期間有關的請求；以及與徵收在生效當日或之後產生的稅項有關的請求。

第十一條

終止

1. 本協定維持有效，直至被任何締約方終止為止。
2. 任何締約方均可藉向另一締約方發出書面終止通知，終止本協定。終止生效日期，為自發出書面終止通知當日起計六個月屆滿後的翌月首日。

3. 如本協定終止，就根據本協定取得的任何資料而言，締約雙方仍須繼續受第七條(保密)的規定約束。

Part 2

Paragraphs 1 and 2 of the Protocol to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the United States of America for the Exchange of Information relating to Taxes

1. With reference to subparagraph (n)(ii) of paragraph 1 of Article 4 (Definitions) of the Agreement, the Government of the Hong Kong Special Administrative Region of the People's Republic of China notes that the "geographic area of jurisdiction" within which the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply includes the Shenzhen Bay Port Hong Kong Port Area.
2. With reference to Article 7 (Confidentiality) of the Agreement, in the case of the United States, the competent authority may disclose information received under the Agreement to administrative bodies that are authorized to review tax return information under its domestic confidentiality laws, including bodies whose duties include auditing the tax authority (the Treasury Inspector General for Tax Administration and the congressional Government Accountability Office) and bodies whose duties require inquiries into tax administration for planning tax law enactments and implementation and proposing tax law changes (the Office of the

Treasury Assistant Secretary for Tax Policy and the tax-writing committees in Congress).

(Chinese Translation)

1. 就協定第四條(定義)第 1 款(n)(ii)項而言，中華人民共和國香港特別行政區政府指出中華人民共和國香港特別行政區的稅務法律所適用的“司法管轄區地域”包括深圳灣口岸港方口岸區。
2. 就協定第七條(保密)而言，就美國而言，主管當局可將根據本協定收取的資料披露予根據當地保密法律獲授權覆核報稅表資料的行政部門，包括職責涵蓋對稅務當局進行審計的部門(財政部稅務管理監察長及國會的政府責任署)，以及職責須對稅務管理進行審查，以就稅務法例立法進行規劃、實施和建議稅務法例修訂的部門(財政部稅務政策助理部長辦公室及國會稅法起草委員會)。

Clerk to the Executive Council

COUNCIL CHAMBER

2014

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the United States of America signed an agreement for the exchange of information relating to taxes (*Agreement*) together with a protocol to the Agreement (*Protocol*) in March 2014. This Order specifies the arrangements for exchanging information relating to taxes in Articles 1 to 11 of the Agreement and Paragraphs 1 and 2 of the Protocol as arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The Agreement and Protocol were signed in the English language. The Chinese texts set out in the Schedule are translations.

2. The effects of the declaration are—
 - (a) that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) despite anything in any enactment; and
 - (b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of the United States of America, have effect in relation to any tax of the United States of America that is the subject of that provision.

**Financial, Economic and Civil Service
Implications of the Proposal**

Financial Implications

Under the US Agreement, the Government would be able to request tax information from the US, which may assist IRD in investigating any tax evasion cases, where applicable. However, given the territorial source principle of taxation in Hong Kong, we do not expect that there will be significant financial benefits to the Government arising from any crackdown on tax evasion cases by way of EoI.

2. IRD will incur costs in handling EoI requests from the US under the US Agreement. The ordinary costs will be absorbed by IRD from existing resources as far as possible. Any extraordinary costs incurred will be borne by the US pursuant to the US Agreement.

Economic Implications

3. The US Agreement will facilitate the conclusion of a FATCA IGA with the US, which will in turn facilitate compliance of FATCA by financial institutions in Hong Kong in a way that reduces their overall reporting burden. This will save the compliance costs of the financial institutions in Hong Kong. Having a TIEA with the US also demonstrates Hong Kong's commitments to enhancing tax transparency in the international arena, which will be positive to the international reputation and image of Hong Kong, and in turn be conducive to the overall business environment.

Civil Service Implications

4. There will be additional work for IRD in handling EoI requests from the US under the US Agreement which will be absorbed by its own resources as far as possible. Where necessary, additional manpower resources will be sought under the established mechanism.