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**Paper for the House Committee Meeting
on 24 October 2014**

**Legal Service Division Report on
Subsidiary Legislation and Non-Legislative Instrument
Gazetted on 17 October 2014**

Tabling in LegCo : Council meeting of 22 October 2014

Amendment to be made by : Council meeting of 19 November 2014 (or that of 10 December 2014 if extended by resolution)

PART I SUBSIDIARY LEGISLATION

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Korea) Order (L.N. 119)

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Socialist Republic of Vietnam) (Amendment) Order 2014 (L.N. 120)

L.N. 119

L.N. 119 is made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) (the Ordinance) to give effect to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China (HKSARG) and the Government of the Republic of Korea (Korea) for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income together with a Protocol to the Agreement signed on 8 July 2014 (the Korean Agreement).

2. The provisions in the Korean Agreement set out the allocation of taxing rights between HKSARG and the Republic of Korea and the relief on tax rates on different types of income. The Korean Agreement contains an article on exchange of information which is based on the Organisation for Economic Cooperation and Development (OECD) 2004 version of the Exchange of Information (EoI) Article. During the scrutiny of the Inland Revenue (Amendment) (No. 3) Bill 2009, the Administration presented a sample EoI Article to the Bills Committee vide LC Paper No. CB(1)106/09-10(02). According to paragraph 11 of the LegCo Brief (File Ref: TsyB R 183/800-1-1/19/0 (C)), the Korean Agreement has adopted all the safeguards in the sample EoI Article, and the scope of information exchange is confined to taxes covered by the Korean Agreement.

3. Under section 49(1A) of the Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory. The effects of the declaration are –

- (a) that the arrangements have effect in relation to tax under the Ordinance despite anything in any enactment; and
- (b) that the arrangements shall, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of that territory, have effect in relation to any tax of the Republic that is the subject of that provision.

4. L.N. 119 declares that for the purposes of section 49(1A) of the Ordinance, the arrangements specified in Articles 1 to 28 of the Korean Agreement and paragraphs 1 to 7 of the Protocol to the Korean Agreement have been made as double taxation relief arrangements and it is expedient that those arrangements should have effect.

L.N. 120

5. L.N. 120 is made by the Chief Executive in Council under section 49 of the Ordinance.

6. The Government of HKSARG and the Government of the Socialist Republic of Vietnam signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the

Vietnamese Agreement) together with a protocol to the Agreement (the Protocol) on 16 December 2008. The arrangements in the Vietnamese Agreement and the Protocol have effect by virtue of the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Socialist Republic of Vietnam) Order (Cap. 112BE).

7. The abovementioned two Governments signed another protocol (Second Protocol) on 13 January 2014 to modify the Vietnamese Agreement. By making L.N. 120 to amend Cap. 112BE, the arrangements in Articles 1 to 3 of the Second Protocol are declared to be double taxation relief arrangements under section 49(1A) of the Ordinance and that it is expedient that those arrangements should have effect. A new Schedule 2 is also added to set out the arrangements contained in the Second Protocol.

8. The effects of the declaration are –

- (a) that the arrangements referred to in paragraph 7 have effect in relation to tax under the Ordinance 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 Socialist Republic of Vietnam, have effect in relation to any tax of the Republic that is the subject of that provision.

9. L.N. 120 also makes consequential amendments to Cap. 112BE.

10. According to paragraphs 3 and 4 of the LegCo Brief (File Ref: TsyB R 183/800-1-1/32/0 (C)) issued by the Financial Services and the Treasury Bureau on 15 October 2014 –

- (a) the Second Protocol modifies the Vietnamese Agreement by removing the domestic tax interest requirement in the EoI article. The Second Protocol enables the EoI arrangement under the Vietnamese Agreement to be compliant with the OECD standard on tax transparency. It should be read together with the Vietnamese Agreement and shall form an integral part of the Vietnamese Agreement; and
- (b) according to the prevailing international standard, exchange of tax information should be conducted regardless of a domestic tax interest. As the Vietnamese Agreement was signed in 2008, the EoI article of the Vietnamese Agreement has adopted the old version of the OECD

EoI article which contains domestic tax interest requirement and is not up to the prevailing international standard.

L.N. 119 and L.N. 120

11. L.N. 119 and L.N. 120 come into operation on 12 December 2014.
12. As advised by the Clerk to the Panel on Financial Affairs, the Administration has not consulted the Panel on L.N. 119 and L.N. 120.

**Child Abduction and Custody (Parties to Convention)
(Amendment) Order 2014**

(L.N. 121)

13. L.N. 121 is made by the Chief Executive under section 4 of the Child Abduction and Custody Ordinance (Cap. 512) after consultation with the Executive Council. It amends the Schedule to the Child Abduction and Custody (Parties to Convention) Order (Cap. 512A) (the Order) to add the Principality of Andorra (Andorra), Japan, the Republic of Korea (Korea), the Kingdom of Morocco (Morocco) and the Russian Federation (Russia) to the list of Contracting States to the Convention on the Civil Aspects of International Child Abduction (the Convention) so that the Convention will apply between Hong Kong Special Administrative Region (HKSAR) and each of those five States respectively.
14. The Convention, which was signed at The Hague in 1980 and is now in force in 92 States and Territories, provides a mechanism for the return of children wrongfully removed from their place of habitual residence to another Contracting State in violation of custodial rights. The Convention does not apply to the People's Republic of China but an agreement was reached at the Sino-British Joint Liaison Group in September 1996 on the continued application of the Convention to HKSAR after 30 June 1997 and that the declaration of acceptance of new accessions would be made by the Central People's Government (CPG) on behalf of HKSAR.
15. According to Article 38 of the Convention, the Convention will enter into force between an acceding State and a Contracting State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.
16. According to paragraph 7 of the LegCo Brief (File Ref.: LWB CR 1/3281/86) issued by the Labour and Welfare Bureau on 14 October 2014 –

- (a) CPG deposited, with the depository of the Convention (the Ministry of Foreign Affairs of the Kingdom of the Netherlands), the declaration of acceptance on behalf of HKSAR of the accession of Andorra, Korea, Morocco and Russia on 5 November 2013; and the Convention has entered into force between HKSAR and each of those four States on 1 February 2014; and
- (b) Japan has ratified the Convention on 24 January 2014; and the Convention has entered into force as between HKSAR and Japan on 1 April 2014.

17. L.N. 121 specifies 1 February 2014 and 1 April 2014 as the respective dates on which the Convention comes into force as between HKSAR and the four States mentioned in paragraph 16(a) and as between HKSAR and Japan. Members may wish to note that although L.N. 121 has retrospective effect, it does not affect criminal liability.

18. As advised by the Clerk to the Panel on Welfare Services, the Administration has not consulted the Panel on L.N. 121.

**Overseas Lawyers (Qualification for Admission) (Amendment)
Rules 2014 (Commencement) Notice (L.N. 122)**

19. The President of The Law Society of Hong Kong (the Law Society) made L.N. 122 under section 1 of the Overseas Lawyers (Qualification for Admission) (Amendment) Rules 2014 (L.N. 57 of 2014) (the Amendment Rules) to appoint 2 January 2015 as the day on which the Amendment Rules come into operation.

20. The Amendment Rules are made by the Council of the Law Society 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) to provide for, among others, matters relating to admission of an overseas qualified lawyer as a Hong Kong solicitor.

21. According to the LegCo Brief (with no reference number) issued by the Law Society in October 2014, the Amendment Rules would apply to the Overseas Lawyers Qualification Examination in 2015.

22. No subcommittee has been formed to scrutinize the Amendment Rules when it was considered at the House Committee meeting held on 2 May

2014. According to the information supplied by the Law Society on 30 April 2014 for the Amendment Rules, consultation had been made with the academics and professional support lawyers involved in the Overseas Lawyers Qualification Examination.

23. As advised by the Clerk to Panel on Administration of Justice and Legal Services, the Administration has not consulted the Panel on the Amendment Rules and L.N. 122.

PART II NON-LEGISLATIVE INSTRUMENT

Fourth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences

(S.S. No. 5 to Gazette No. 42/2014)

24. The Fourth Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences is issued by the Secretary for the Environment under section 26G of the Air Pollution Control Ordinance (Cap. 311).

25. The Fourth Technical Memorandum seeks to allocate for each emission year from 1 January 2019 the quantities of emission allowances for the three specified pollutants, namely sulphur dioxide (SO₂), nitrogen oxides (NO_x) and respirable suspended particulates (RSP) for each of the four power plants and possible new electricity works in Hong Kong. The allowances for the power plants are reduced from those allowed under the Third Technical Memorandum issued in 2012.

26. Under section 37B of Cap. 311, where a technical memorandum has been laid on the table of LegCo, LegCo may, by resolution passed at its sitting held before the expiration of a period of 28 days after the sitting at which it was so laid, amend the technical memorandum in any manner consistent with the power to issue the technical memorandum. Before expiry of the 28-day period, LegCo may by resolution extend that period to the first LegCo sitting held not earlier than the twenty-first day after the day of the expiry of that period.

27. Under section 37C of Cap. 311, the technical memorandum shall commence to have effect upon the expiry of the above amendment period or the period as extended if LegCo does not pass a resolution to amend it. In the case where LegCo passes a resolution amending the technical memorandum, it shall come into effect on the day of the publication in the Gazette of such resolution.

28. According to the LegCo Brief (with no reference number) issued by the Environmental Protection Department in October 2014, the proposed reduction of emission allowances is the result of a recent review of the Third Technical Memorandum issued in 2012. The proposal, when compared with the emission allowances allocated under the Third Technical Memorandum, will see a reduction of 11% for SO₂, 2% for NO_x and 7% for RSP for the power sector. The two local power companies, namely the CLP Power Hong Kong Limited and the Hongkong Electric Co. Ltd, have been consulted on the proposal and support the reduction. Members may refer to paragraph 19 of the LegCo Brief for further background information.

29. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted, at its meeting on 6 October 2014, on the proposal to reduce emission allowances for power plants starting from 1 January 2019 by way of issuing the Fourth Technical Memorandum. Members did not raise any objection to the proposal. They expressed concerns that the tightening of emission allowances for power plants might have tariff implications, and the affordability of the public was not one of the factors of consideration in making emission allocations by the Administration. There was the view that over-reliance on natural gas supplied from the Mainland might increase the susceptibility of electricity tariffs to the price volatility of natural gas. The Administration was urged to diversify the source of natural gas supply for power generation in Hong Kong. Members also urged the Administration to increase the share of renewable energy in the fuel mix, and enquired how the Fourth Technical Memorandum would tie in with the goal to achieve the new Air Quality Objectives by 2020.

Concluding Observations

30. No difficulties have been identified in the legal or drafting aspects of L.N. 121 and L.N. 122 and the Technical Memorandum. The scrutiny of L.N. 119 and L.N. 120 is continuing, and a further report will be made if necessary.

Prepared by

Carrie WONG
Assistant Legal Adviser
Legislative Council Secretariat
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