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**Paper for the House Committee Meeting
on 9 October 2015**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 2 October 2015**

Tabling in LegCo : Council meeting of 14 October 2015

Amendment to be made by : Council meeting of 11 November 2015 (or that of 2 December 2015 if extended by resolution)

**PART I ORDERS MADE UNDER THE INLAND REVENUE
ORDINANCE (CAP. 112)**

Inland Revenue (Exchange of Information relating to Taxes) (Kingdom of Denmark) Order	(L.N. 183)
Inland Revenue (Exchange of Information relating to Taxes) (Faroes) Order	(L.N. 184)
Inland Revenue (Exchange of Information relating to Taxes) (Greenland) Order	(L.N. 185)
Inland Revenue (Exchange of Information relating to Taxes) (Iceland) Order	(L.N. 186)
Inland Revenue (Exchange of Information relating to Taxes) (Kingdom of Norway) Order	(L.N. 187)
Inland Revenue (Exchange of Information relating to Taxes) (Kingdom of Sweden) Order	(L.N. 188)
Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fourth Protocol) Order	(L.N. 189)

Empowering provision for L.N. 183 to L.N. 189

Under section 49(1A) of the Inland Revenue Ordinance (Cap. 112), the Chief Executive (CE) 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 and/or exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned.

L.N. 183 to L.N. 188

2. L.N. 183 to L.N. 188 are made by the CE in Council under section 49(1A) of Cap. 112 to give effect to the following agreements on information exchange relating to tax matters (TIEAs) –

- (a) the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) and the Government of the Kingdom of Denmark for the Exchange of Information (EoI) relating to Tax Matters;
- (b) the Agreement between the Government of HKSAR and the Government of the Faroes for EoI relating to Tax Matters;
- (c) the Agreement between the Government of HKSAR and the Government of the Greenland for EoI relating to Tax Matters;
- (d) the Agreement between the Government of HKSAR and the Government of the Iceland for EoI relating to Tax Matters;
- (e) the Agreement between the Government of HKSAR and the Government of the Kingdom of Norway for EoI relating to Tax Matters; and
- (f) the Agreement between the Government of HKSAR and the Government of the Kingdom of Sweden for EoI relating to Tax Matters.

3. For the purposes of section 49(1A) of Cap. 112, it is declared that the arrangements in Articles 1 to 13 of the respective TIEAs have been made with a view to providing assistance through EoI that is relevant to the administration and enforcement of the internal laws of the Contracting Parties concerning taxes covered in the TIEAs and that it is expedient that those arrangements should have effect.

4. The effects of the declarations are –

- (a) that the arrangements have effect in relation to tax under 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 six countries referred to in paragraph 2(a) to (f) above (the Nordic countries), have effect in relation to any tax of the Nordic countries that is the subject of that provision.

5. The main provisions of the six TIEAs are summarized below –

- (a) Taxes covered

The tax types covered in the six TIEAs include (i) in relation to Hong Kong, profits tax, salaries tax and property tax; and (ii) in relation to the Nordic countries, wider tax types such as taxes on dividends, royalties, capital gains, net wealth, inheritance, immovable property, consumption and energy products.¹

- (b) EoI mechanism

There is no automatic EoI. Upon receipt of an EoI request, the competent authority of the requested Party shall provide assistance through EoI that is foreseeably relevant to the administration and enforcement of the internal laws of the Contracting Parties concerning taxes covered by the TIEA. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under the TIEA to the extent allowable under its internal laws.

- (c) Safeguard measures to protect a taxpayer's privacy, etc.

There are safeguard measures for protecting taxpayers' privacy and confidentiality of information exchanged, including (i) no disclosure of information generated before the effective date of the TIEAs to the TIEA partner unless certain conditions are met; (ii) information received should be treated as confidential, and may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.²

¹ Please see Article 3 of the respective Agreements with the Nordic countries in the Schedule to L.N. 183 to L.N. 188 for the tax types covered by those countries.

² Please refer to Article 7 of the relevant Agreement in the Schedule to L.N. 183 to L.N. 188.

(d) Possibility of declining a request

The requested Party is not required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for the administration or enforcement of its own tax laws. For example, the TIEA does not impose on a Contracting Party the obligation to supply information which would disclose any commercial or professional secret or trade process. Nor does it impose the obligation to obtain or provide information protected by legal professional privilege. Further, the requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

(e) Costs

Insofar as costs for handling EoI requests are concerned, 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 cost, 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.

(f) Termination

Either of the Contracting Parties may terminate the TIEA by giving written notice of termination to the other Contracting Party. In the event of termination, both Contracting Parties shall remain bound by the Article on confidentiality with respect to any information obtained under the TIEA.

6. According to the Legislative Council (LegCo) Brief (File Ref: TsyB R 183/800-1-1/10/0 (C)) issued by the Financial Services and the Treasury Bureau (FSTB) dated 30 September 2015, while it has been the Government's policy priority over the years to conclude comprehensive agreements for avoidance of double taxation (CDTAs) embodying a mechanism for EoI with Hong Kong's trading and investment partners, L.N. 183 to L.N. 188 are made having regard to the Global Forum on Transparency and EoI for Tax Purposes of the Organization for Economic Cooperation and Development (OECD) that a jurisdiction should make available both CDTA and TIEA³ as instruments for EoI with other jurisdictions. According to paragraph 5 of the

³ Unlike CDTA, TIEA is a form of EoI agreement which carries no double taxation relief.

LegCo Brief, Hong Kong adopts the OECD 2002 version of TIEA model in pursuing TIEAs with other jurisdictions.

7. According to the LegCo Brief, the Administration has kept the business and professional sectors informed of the negotiation of the six TIEAs, and those sectors generally reckon the need for the TIEAs given the international trend on tax transparency.

8. As advised by the Clerk to Panel on Financial Affairs, the Panel has not been consulted on L.N. 183 to L.N. 188.

9. L.N. 183 to L.N. 188 come into operation on 4 December 2015.

L.N. 189

10. The Mainland of China and HKSAR entered into an arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the Mainland Arrangement) together with a protocol to the Arrangement (the First Protocol) in August 2006 (L.N. 234 of 2006). The Second Protocol was signed in 2008 to clarify some post-implementation issues of the Mainland Arrangement (L.N. 89 of 2008). The Third Protocol was signed in May 2010 to upgrade the then EoI Article in the Mainland Arrangement to the 2004 version of the OECD which had adopted all the safeguards in the EoI Article in the Mainland Arrangement (L.N. 128 of 2010). On 1 April 2015, both sides entered with another Protocol (i.e. the Fourth Protocol) to the Mainland Arrangement at Hong Kong. These Protocols form integral parts of the Mainland Arrangement.

11. L.N. 189 is made by the CE in Council under section 49(1A) of Cap. 112 to specify the arrangements in Articles 1 to 6 of the Fourth Protocol as double taxation relief arrangements under section 49(1A) of Cap. 112, and to declare that it is expedient that those arrangements should have effect. The effects of such declaration are –

- (a) that the arrangements have effect in relation to tax under Cap. 112 despite anything in any enactment; and
- (b) that the arrangements, for the purposes of any provision of the arrangements that requires disclosure of information concerning tax of the Mainland of China, have effect in relation to any tax of the Mainland that is the subject of that provision.

12. The arrangements in Articles 1 to 6 of the Fourth Protocol are summarized below –

- (a) Article 1 repeals paragraph 1 of Article 8 of the Mainland Arrangement and substitutes it with a new provision to the effect that income and profits derived by an enterprise of one Contracting Party from the operation of ships, aircraft or land transport vehicles in shipping, air and land transport in the other Contracting Party shall be exempt from tax (including value added tax and other similar taxes in the Mainland) (as compared to "including business tax in the Mainland of China" in the repealed provision of the Mainland Arrangement) in that other Contracting Party.
 - (b) Article 2 amends paragraph 2 of Article 12 of the Mainland Arrangement to reduce the cap on the withholding tax imposed by the Mainland on royalties paid to aircraft and ship leasing business from 7 per cent to 5 per cent.
 - (c) Article 3 repeals paragraph 6 of Article 13 of the Mainland Arrangement and substitutes it with a new provision to set out the tax liabilities of residents of one Contracting Party in relation to gains derived from the sale and purchase of shares in companies listed on the other Contracting Party. The gains derived by a Hong Kong resident from the sales and purchases of shares in a Mainland listed company shall be taxable only in Hong Kong. Meanwhile, the provision also states that the arrangement of such a tax liability will be applicable to those investment funds complying with the conditions as set out in the provision.
 - (d) In relation to Articles 10 (Dividends), 11 (Interest), 12 (Royalties) and 13 (Capital gains) of the Mainland Arrangement, if the creation or disposition of the interests acquired is caused by any person with the main purpose of taking advantages of any of such Articles, the Article shall not apply (Article 4).
 - (e) The scope of tax types under the EoI under Article 24 of the Mainland Arrangement is expanded to cover other taxes enforced and imposed in the Mainland, namely, value added tax, consumption tax, business tax, land appreciation tax and real estate tax (Article 5).
13. Members may refer to the LegCo Brief (File Ref: TsyB R 183/800-1-1/17/0 (C)) issued by FSTB dated 30 September 2015 for further information.
14. According to paragraph 9 of the LegCo Brief, the business and professional sectors have all along supported the Administration's policy to

conclude CDTAs with its trading partners, as well as to meet global standards for enhancing tax transparency.

15. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 189.

16. L.N. 189 comes into operation on 4 December 2015.

PART II COMMENCEMENT NOTICE

Port Control (Public Cargo Working Area) Order 2015 (Commencement) Notice

(L.N. 190)

17. By L.N. 190, the Secretary for Transport and Housing appoints 3 December 2015 as the day on which the Port Control (Public Cargo Working Area) Order 2015 (L.N. 28 of 2015) (the 2015 Order) comes into operation.

18. The 2015 Order declares new boundaries for the Western District public cargo working area (PCWA) and repeals an earlier Order relating to the Western District PCWA in order to release a portion of land for the Signature Project Scheme in Central and Western District.

19. Members may refer to the LegCo Brief (no file reference) issued by the Transport and Housing Bureau dated 23 September 2015 for further information.

20. As advised by the Clerk to the Panel on Economic Development, the Panel has not been consulted on L.N. 190.

Concluding Observations

21. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 183 to L.N. 189. A further report will be provided, if necessary.

22. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 190.

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