

財經事務及庫務局

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**FINANCIAL SERVICES AND THE
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By Fax (2877 5029)

7 October 2015

Miss Carrie Wong
Assistant Legal Advisor
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
Legislative Council Road
Central, Hong Kong

Dear Miss Wong,

**Six Orders Made under Section 49(1A) of the Inland Revenue
Ordinance and Gazetted on 2 October 2015 (L.N. 183 to L.N. 188)**

Thank you for your letter of 5 October 2015 on the captioned Orders. Our responses to your questions are set out in the following paragraphs.

L.N. 183 to L.N. 188

2. Please find attached the comparison table of the six TIEAs and the OECD TIEA model.

L.N. 184

3. For the Inland Revenue (Exchange of Information relating to Taxes) (Faroes) Order, the reference to “the Government of the Faroes” and the definition of “the Faroes” in the TIEA signed with the Faroes are provided and confirmed by the Government of the Faroes. As for the

reference to “the Faroe Islands” in the Inland Revenue (Exchange of Information relating to Taxes) (Kingdom of Denmark) Order, it is used in the definition of the term “Denmark” for the purpose of the TIEA signed with Denmark, and the definition is also officially provided and confirmed by the Government of the Kingdom of Denmark. These formulations are in fact found in other TIEAs signed by the Faroes and Denmark with other jurisdictions. The use of these references in the TIEAs they signed with Hong Kong would not give rise to any inconsistency or implementation problems. As regards the reference to “Faeroes Islands” (i.e. with an additional “e” in the English version) in the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609A), we will draw your observation to the attention of the Department of Justice as the Order concerned is under its purview.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Crystal Yip'.

(Miss Crystal Yip)
for Secretary for Financial Services and the Treasury

c.c. CIR (Attn.: Ms Mabel Mei)

Fax no. 2511 7414

Comparison between the six TIEAs with the Nordic jurisdictions and the OECD Model TIEA

Articles	OECD Model TIEA	Six TIEAs with the Nordic Jurisdictions
1. Object and Scope of the Agreement	This article defines the scope of the Agreement, which is the provision of assistance through EoI that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by the Agreement, and foreseeably relevant to the determination, assessment and collection of such taxes, recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be treated as confidential in the manner provided in Article 8.	In general, the six TIEAs adopt the OECD model. Only the TIEA with Sweden contains one more paragraph which states that “this Agreement shall not affect the application in the Contracting Parties of the provisions on mutual legal assistance in criminal matters”. This is the practice of Sweden which is considered acceptable.
2. Jurisdiction	This Article addresses the jurisdictional scope of the Agreement. A requested party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons within its territorial jurisdiction.	All six TIEAs adopt the OECD model.
3. Taxes Covered	This Article intends to identify taxes with respect to which the Contracting Parties agree to exchange information in accordance with the provisions of the Agreement. Its scope is not restricted and a positive listing is not required.	To honour our earlier commitment to LegCo, we have adopted a positive listing approach in setting out the taxes covered by the six TIEAs. The tax types covered in each of the six TIEAs are set out in Annex G to the LegCo Brief.

Articles	OECD Model TIEA	Six TIEAs with the Nordic Jurisdictions
4. Definitions	This Article contains the definitions of terms for purposes of the Agreement.	The six TIEAs contain all the definitions in the model, except the ones on “criminal laws” and “criminal tax matters”, which are not required because there are no differential treatments between criminal matters and other matters.
5. Exchange of Information Upon Request	This Article provides the general rule that the Competent Authority of the requested party must provide information upon request for the purposes referred to in Article 1, clarifies that a Contracting Party will have to take action to obtain the information requested, and lists out the information the applicant party must provide to the requested party in order to demonstrate the foreseeable relevance of the information requested.	The six TIEAs adopt the OECD model. We have added paragraph 5 to state it clearly that information exchanged preceding the date on which the Agreement has effect for the taxes covered by the Agreement has to be foreseeably relevant for a taxable period or taxable event following that date. We have also added one more item to the list of information that the applicant party should provide to demonstrate the foreseeable relevance of the information requested.
6. Tax Examinations Abroad	This Article provides the arrangement for tax examinations abroad.	No such Article in the six TIEAs, because our policy does not allow for tax examinations abroad.
7. Possibility of Declining a Request	This Article identifies the situations in which a requested party is not required to obtain or provide information in response to a request.	This becomes Article 6 in the six TIEAs, which covers all the paragraphs in the OECD model.

Articles	OECD Model TIEA	Six TIEAs with the Nordic Jurisdictions
8. Confidentiality	This Article intends to ensure that adequate protection is afforded to information received from another Contracting Party. Safeguards include: information received shall be treated as confidential, disclosure is only allowed to persons or authorities (including courts and administrative bodies) 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 the Agreement, information shall be used for tax purposes only, and no disclosure to third jurisdiction is allowed.	This becomes Article 7 in the six TIEAs, which in general adopts the OECD model.
9. Costs	This Article provides that incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.	This becomes Article 8 in the six TIEAs. Given that it is our policy intention to charge the applicant party for extraordinary costs incurred while the requested party will bear the ordinary costs, we have crafted the Article accordingly to reflect such intention. This is allowable under the OECD model.
10. Implementation Legislation	This Article provides that the Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.	This becomes Article 9 in the six TIEAs, which adopts the OECD model.
11. Language	This Article provides the Competent Authorities of the Contracting Parties with the flexibility to agree on the language that will be used in making and responding to requests. This Article may not be required in a bilateral version.	This becomes Article 10 in the six TIEAs. We have included that English shall be used for requests for assistance and answers for clarity sake.

Articles	OECD Model TIEA	Six TIEAs with the Nordic Jurisdictions
12. Other International Agreements or Arrangements	This Article intends to ensure that the applicant party is able to use the international instrument it deems most appropriate for obtaining necessary information. This Article may not be required in a bilateral version.	No such Article in the six TIEAs, because this article is not required in the bilateral context.
13. Mutual Agreement Procedure	This Article provides that Competent Authorities shall endeavor to resolve disputes by mutual agreement where difficulties or doubts arise regarding the implementation or interpretation of the Agreement.	This becomes Article 11 in the six TIEAs , which in general adopts the OECD model.
14. Depositary's Functions	This Article would be unnecessary in a bilateral version.	No such Article in the six TIEAs, because this is unnecessary in the bilateral context.
15. Entry into Force	This Article provides that the Agreement is subject to ratification, acceptance or approval by the Contracting Parties in accordance with their respective laws. Date of entry into force with respect to exchange of information for criminal tax matters is earlier than that for all other matters.	<p>This becomes Article 12 in the six TIEAs. Under all these six TIEAs, each of the Contracting Parties shall notify the other in writing the completion of the procedures required by its law for bringing into force of the Agreement. All six TIEAs, except the one with Sweden, shall enter into force on the date of the later of these notifications. The one with Sweden will enter into force on the thirtieth day after receipt of the later of the notifications. This is the practice of Sweden which is considered acceptable.</p> <p>Also, there is no mention of criminal tax matters as we have no differential treatment between criminal tax matters and other matters with respect of time limit on disclosure.</p>

Articles	OECD Model TIEA	Six TIEAs with the Nordic Jurisdictions
16. Termination	This Article provides that termination becomes effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination.	This becomes Article 13 in the six TIEAs, which in general adopts the OECD model.