



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2179 5848)  
22 October 2015

Mr Gary POON  
Prin AS for Financial Services & the Treasury  
(Treasury)(R)  
Financial Services and the Treasury Bureau  
The Treasury Branch  
24/F, Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Mr POON,

**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 reply of 7 October 2015. We would like to seek your clarifications on the following matters:

Tax examinations abroad

As confirmed in paragraph 6 of the Comparison in the Annex to the your reply, Article 6 of the OECD model agreement, which provides for the arrangements for tax examinations abroad, has not been incorporated into the six Tax Information Exchange Agreements (Agreements) under scrutiny. As those arrangements are important safeguard measures, please clarify the reasons for not incorporating them into the relevant Agreements.

Provision of terms of request to affected persons

It is noted that:

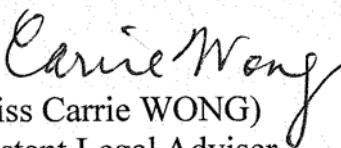
- (a) under paragraph 1 of Article 5 of the Agreements, "[t]he competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1";

- (b) under paragraph 6 of Article 5 of the Agreements, the competent authority of the applicant Party shall provide certain specified information to the competent authority of the requested Party when making a request for information under the relevant Agreement to demonstrate the foreseeable relevance of the information to the request;
- (c) under paragraph 1 of Article 6 of the Agreements, "[t]he competent authority of the requested Party may decline to assist where the request is not made in conformity with [the relevant] Agreement"; and
- (d) under paragraph 1 of Article 7 of the Agreements, "[a]ll information received by a contracting party shall be treated as confidential".

In *The Minister of Finance v Bunge Limited* [2013] CA(BDA) 4 CIV (a Bermuda Court of Appeal judgment), an order for mandamus was made requiring the requested party to produce to the affected person so much of the request for information as is necessary (with redaction to exclude any sensitive material where necessary) to show that the statutory requirements for the request have been complied with. The order was so made as "fairness and justice" so require. However, it is noted that under section 5(1)(a) of the Inland Revenue (Disclosure of Information) Rules (Cap. 112BI), the Commissioner of Inland Revenue is only required to notify the affected person in writing of "the nature of the information requested" (but not the terms of the request for information) before any information is disclosed in response to a disclosure request. Please confirm whether the Administration would review its domestic law in light of that judgment; and if not, please advise the reason(s) for not providing the same to the affected persons.

As there will be a meeting on 27 October 2015, please let me have your reply in English and Chinese by 24 October 2015.

Yours sincerely,

  
(Miss Carrie WONG)  
Assistant Legal Adviser