

財經事務及庫務局

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本函檔號 Our Ref. : TsyB R 183/800-1-1/10/0(C)
來函檔號 Your Ref. : LS/S/42/14-15

By Fax (2877 5029)

26 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 22 October 2015 on the captioned Orders. Our responses to your questions are set out in the following paragraphs.

Tax examinations abroad

2. Article 6 (“Tax Examinations Abroad”) of the OECD model agreement provides that a Contracting Party may allow representatives of the other Contracting Party to enter its territory to conduct tax examinations. However, the OECD has made it clear that the decision of whether to allow such examinations lies exclusively in the hands of the requested party. In the case of Hong Kong, as explained in paragraph 9 of the Legislative Council (“LegCo”) Brief on the captioned Orders, we will adopt in our TIEAs the same highly prudent safeguard measures as provided for under the comprehensive avoidance of double taxation

agreements (“CDTAs”), and one of the safeguard measures is that we will not accede to any requests for tax examinations abroad. Accordingly, it is not necessary or appropriate to incorporate the article in our TIEAs.

Provision of terms of request to affected persons

3. Under the CDTAs/TIEAs that Hong Kong has entered into with other jurisdictions, there is treaty obligation for Hong Kong to exchange tax information with CDTA/TIEA partners on request. To respond to an EoI request, it may be necessary for IRD to gather information from the subject person or a third party (i.e. the information holder) who holds the relevant information or documents. For this purpose and in conformity with the law, IRD will issue a notice asking the information holder to produce such information or documents.

4. When seeking information from the information holders, IRD will disclose certain information contained in an EoI request to the extent necessary to enable the information holders to locate the requested information for the purpose of complying with the notice. The extent of information that IRD will disclose to the information holders depends on the circumstances of each case, including, for example, the type or form of information requested, and the person from whom the information is sought.

5. As far as international standard/practice is concerned, Article 8 of the Organisation for Economic Cooperation and Development Model Agreement, upon which Hong Kong’s TIEAs are based, states as a basic proposition that any information received by a jurisdiction under such an 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 the agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or judicial decisions.

6. The confidentiality rules set out in paragraph 5 above cover not only the information exchanged but also letters issued by the competent authorities for the purpose of requesting information. Understandably, the requested authority can disclose the minimum information contained in a requesting authority’s letter (but not the letter itself) necessary for the requested authority to be able to obtain or provide the requested

information to the requesting authority, without frustrating the efforts of the requesting jurisdiction.

7. The Government's policy in this regard is to strike a balance between CDTA/TIEA partners' expectation in line with the international standard/practice and information holders' right to know, without unduly delaying effective EoI and compromising the practical operation of the EoI regime in Hong Kong. Against such policy backdrop, IRD is prepared to disclose the information of the requesting jurisdiction to the information holder concerned provided that such is agreeable to all interested parties.

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)

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