

立法會
Legislative Council

LC Paper No. CB(1)639/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/15/2

Bills Committee on Inland Revenue (Amendment) Bill 2016

Minutes of first meeting
held on Tuesday, 2 February 2016, at 9:00 am
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon CHAN Hak-kan, JP
Hon NG Leung-sing, SBS, JP
Hon Charles Peter MOK, JP
Hon Kenneth LEUNG
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP

Member absent : Hon Dennis KWOK

Public Officers : **For item II**
attending

Financial Services and the Treasury Bureau

Ms Mable CHAN, JP
Deputy Secretary (Treasury)²

Mr Gary POON
Principal Assistant Secretary (Treasury)(Revenue)

Miss Crystal YIP
Assistant Secretary (Treasury)(Revenue)1

Inland Revenue Department

Mr Brian CHIU, JP
Deputy Commissioner (Technical)

Ms Peggy LEUNG
Senior Assessor (Tax Treaty)2

Department of Justice

Mr Alan CHONG
Senior Government Counsel

Ms Phyllis POON
Senior Government Counsel

Ms Alice CHOY
Deputy Principal Government Counsel (Treaties and Law)2

Clerk in Attendance : Ms Angel SHEK
Chief Council Secretary (1)1

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Mandy LI
Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Election of Chairman

1. Mr James TO, the member who had the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

Action

2. Mr Andrew LEUNG was nominated by Mr WONG Ting-kwong and the nomination was seconded by Mr Jeffrey LAM. Mr Andrew LEUNG accepted the nomination. There being no other nominations, Mr Andrew LEUNG was declared Chairman of the Bills Committee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

(LC Paper No. CB(3)290/15-16 — The Bill

File Ref: TsyB R 183/700-6/7/0 (C) — Legislative Council Brief

LC Paper No. LS28/15-16 — Legal Service Division Report

LC Paper No. CB(1)518/15-16(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)

LC Paper No. CB(1)518/15-16(02) — Assistant Legal Adviser's letter dated 26 January 2016 to the Administration

LC Paper No. CB(1)528/15-16(01) — Administration's reply to Assistant Legal Adviser's letter dated 26 January 2016

LC Paper No. CB(1)518/15-16(03) — Background brief prepared by the Legislative Council Secretariat)

Disclosure

4. The Chairman disclosed that he was an independent non-executive director of a bank and a director of the Hong Kong Mortgage Corporation Limited ("HKMCL").

5. Mr NG Leung-sing said that he was an independent director of a bank and a director of HKMCL.

Action

Discussion

6. The Deputy Secretary for Financial Services and the Treasury (Treasury)² briefed members on the Inland Revenue (Amendment) Bill 2016 ("the Bill").

7. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Follow-up actions to be taken by the Administration

Due diligence requirements

Admin 8. The Administration was requested to elaborate on the due diligence requirements (including relevant rules, guidelines and procedures) for reporting financial institutions ("FIs") to identify reportable accounts (whether the account holder was an individual or entity) held by tax residents of reportable jurisdictions, and collect the reportable information in respect of these accounts, under the proposed legislative framework for the implementation of automatic exchange of financial account information in tax matters in Hong Kong.

Offence relating to the signing of self-certification that was misleading, false or incorrect

Admin 9. The Bill provided for an offence against any person who, in making a self-certification that was required to be collected by a reporting FI, made a statement that was misleading, false or incorrect in a material particular; and knew, or was reckless as to whether, the statement was misleading, false or incorrect in a material particular ("the offence"). The person was liable on conviction to a fine at level 3. In this connection, the Administration was requested to –

- (a) address some members' concerns that the imposition of criminal sanction might not be justified in view of the nature of the offence; and the suggestion that the Inland Revenue Department should seek confirmation from the account holders concerned on the self-certification before establishing the offence or taking enforcement actions;
- (b) consider putting in place measures, such as by issuing relevant guidelines to reporting FIs on the presentation of documentation for collecting self-certification to alert account holders of the need to exercise caution in making self-certification and the liability to criminal sanction for making false self-certification; and

Action

- (c) clarify whether the offence would be a recordable offence and hence might affect the offender's application for Certificate of No Criminal Conviction processed by the Hong Kong Police Force.

(Post-meeting note: The Administration's response was issued vide LC Paper No. CB(1)611/15-16(02) on 26 February 2016.)

III. Any other business

Invitation of public views

10. Members agreed to post a notice on the website of the Legislative Council ("LegCo") and write to the 18 District Councils ("DCs") to invite views from the public and DCs on the Bill.

(Post-meeting note: The notice was posted on the LegCo website on 4 February 2016 and invitation letters were sent to DCs and relevant organizations on the same day.)

Date of next meeting

11. The Chairman said that he would work out the date of next meeting with the Clerk and inform members accordingly.

(Post-meeting note: With the concurrence of the Chairman, the second meeting was scheduled for Tuesday, 1 March 2016 from 8:30 am to 10:30 am to meet with deputations and the Administration. The notice of meeting was issued to members vide LC Paper No. CB(1)530/15-16 on 3 February 2016.)

12. There being no other business, the meeting ended at 10:25 am.

Council Business Division 1
Legislative Council Secretariat
11 March 2016

Bills Committee on Inland Revenue (Amendment) Bill 2016

**Proceedings of the first meeting
on Tuesday, 2 February 2016, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I - Election of Chairman			
000132 – 000232	Mr James TO Mr Jeffrey LAM Mr Andrew LEUNG Mr WONG Ting-kwong	Election of Chairman	
Agenda Item II - Meeting with the Administration			
000233 – 000341	Chairman	Opening remarks	
000342 – 001131	Administration	Briefing by the Administration on the Inland Revenue (Amendment) Bill 2016 ("the Bill") which sought to provide a legislative framework for the implementation of automatic exchange of financial account information in tax matters ("AEOI") in Hong Kong.	
001132 – 001732	Chairman Mr Jeffrey LAM Administration	<p>Disclosure of interest by the Chairman</p> <p>Mr LAM enquired about –</p> <p>(a) how the Administration would ensure protection of the privacy of taxpayers and the confidentiality of information exchanged under AEOI;</p> <p>(b) the schedule or frequency of transmission of information collected under AEOI to the tax authorities of reportable jurisdictions;</p> <p>(c) whether the holders of reportable accounts (i.e. reportable persons) would be informed of the possible use of information collected from them for AEOI purposes; and</p> <p>(d) the definition of "tax resident" of a jurisdiction.</p> <p>The Administration responded that –</p> <p>(a) the exchange of information ("EOI")</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>article of comprehensive avoidance of double taxation agreement ("CDTA") and relevant articles of the tax information exchange agreement ("TIEA") provided for safeguards to protect taxpayers' privacy and confidentiality of information exchanged. As AEOI would be implemented with CDTA and TIEA partners under the respective agreements, the relevant safeguards for EOI would continue to be applicable;</p> <p>(b) the EOI mechanism provided that any information received by a contracting party of CDTA/TIEA should be treated confidential and might be disclosed only to persons or authorities in the jurisdiction concerned for tax-related purposes. The exchanged information could not be released to their oversight bodies or enforcement authorities for non-tax purposes unless otherwise agreed between the contracting parties;</p> <p>(c) under AEOI, reporting financial institutions ("FIs") were required to report information on reportable accounts to the tax authority annually. Upon receipt of the information from FIs, the tax authority would exchange the relevant information with their counterparts in the reportable jurisdictions concerned also on an annual basis;</p> <p>(d) FI should comply with the existing requirements under the data protection principles in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). FIs should inform the account holders of the possible use of the information collected from them for AEOI purposes and that all practicable steps must be taken to ensure that the personal data were accurate. Account holders were entitled to request access to and correction of their personal data; and</p> <p>(e) Hong Kong had been practising a simple, territorial-based tax regime while some jurisdictions practised global taxation. In general, whether an individual or entity</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>was a tax resident of a jurisdiction was determined having regard to the person's physical presence or stay in a place (say, whether over 183 days within a tax year) or, in the case of a company, the place of incorporation or the place of central management and control of the entity.</p>	
001733 – 002404	Chairman Mr James TO Administration	<p>Mr TO enquired on whether and how FIs should proactively identify reportable accounts.</p> <p>The Administration responded that –</p> <p>(a) FIs would be required to perform the due diligence procedures (i.e. Sections II to VII provided for under the Common Reporting Standard ("CRS") which was a component of the AEOI standard promulgated by Organization for Economic Cooperation and Development ("OECD")) to identify reportable accounts. For new individual accounts, FIs should, among other things, obtain a self-certification from the account holders, and confirm the reasonableness of the self-certification based on the information obtained by the FIs in connection with the opening of the accounts or other procedures;</p> <p>(b) the self-certification must include, among other information, the account holder's jurisdiction(s) of residence and taxpayer identification number(s) ("TIN(s)"); and</p> <p>(c) following the spirit of CRS, account holders (and not FIs) were responsible for ascertaining their own tax residence.</p> <p>At the request of Mr TO, the Administration agreed to provide further information on the due diligence requirements (including relevant rules, guidelines and procedures) for FIs to identify reportable accounts and collect the reportable information.</p>	<p>The Administration to take action as paragraph 8 of the minutes</p>
002405 – 002840	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN sought the reasons for Hong Kong to implement AEOI and the potential adverse impact on Hong Kong if it would not pursue this standard.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that –</p> <p>(a) the international standard on EOI (including the latest standard on AEOI) was promulgated by OECD while the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum") monitored and reviewed the progress of implementation. Hong Kong, as one of the Global Forum members, was invited to commit to implementing AEOI. In view of the increasing aspirations of the international community for AEOI to enhance tax transparency, and the need to maintain Hong Kong's competitiveness as an international financial centre, it was necessary for Hong Kong to put in place a legal framework for implementing AEOI;</p> <p>(b) in September 2014, Hong Kong indicated to the Global Forum that subject to the passage of local legislation, AEOI would be implemented on a reciprocal basis with appropriate partners which could meet relevant requirements, with a view to commencing the first information exchanges by the end of 2018; and</p> <p>(c) the Global Forum would conduct a peer review on members regarding AEOI implementation from 2017 onwards. It would be crucial for Hong Kong to pass the peer review to avoid being labelled as a "non-cooperative" tax jurisdiction and the possibility of having sanctions imposed on Hong Kong unilaterally.</p>	
002841 – 004121	Chairman Mr Kenneth LEUNG Administration	<p>Mr LEUNG raised the following enquiries and suggestions –</p> <p>(a) whether a person who stayed in a place for less than 183 days within a tax year would not be considered a tax resident of the relevant jurisdiction;</p> <p>(b) the number of jurisdictions which had yet to commit to implementing AEOI;</p> <p>(c) how the Administration would ensure effective implementation of AEOI while</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>not creating undue burden of compliance on FIs (e.g. the burden to conduct due diligence procedures afresh with pre-existing/new account holders each time after a new agreement was signed with the tax authorities of CDTA/TIEA partners for AEOI);</p> <p>(d) the legislative procedures for giving effect to AEOI through CDTA/TIEA and whether a new template of CDTA/TIEA would need to be adopted to include an AEOI article; and</p> <p>(e) the Administration should step up publicity to enhance the awareness of the general public on the AEOI regime, in particular how to determine tax residence.</p> <p>The Administration responded that –</p> <p>(a) tax laws might differ amongst jurisdictions and the tax residence of individual account holders might change from one year to another. In this connection, OECD had established a portal providing information regarding tax residency rules applicable in jurisdictions that were committed to implementing AEOI;</p> <p>(b) basically, if a person was not a tax resident in any territory outside Hong Kong, FIs were not required to report the person's financial account information to the Inland Revenue Department ("IRD");</p> <p>(c) out of the 100 members of the Global Forum invited to commit to the AEOI standard, 97 jurisdictions, which adopted either territorial-based tax regime (e.g. Singapore, Macao) or global taxation (e.g. the United Kingdom and Japan), had so far expressed commitment to implementing AEOI, while three had not;</p> <p>(d) whilst Hong Kong had so far only implemented EOI upon request, the international landscape on tax cooperation had been evolving rapidly, and Hong Kong had pledged to implement the new international standard promulgated by</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>OECD for AEOI. The Administration intended to conduct AEOI only with partners with which Hong Kong had signed bilateral CDTA or TIEA. Hong Kong would rely on the CDTAs or TIEAs as the basis for implementing AEOI. IRD would still have to sign a new Competent Authority Agreement ("CAA") which set out the modalities of transfer of information collected pursuant to the AEOI standard, with the tax authority of CDTA/TIEA partners concerned for implementing AEOI;</p> <p>(e) CDTA/TIEA would continue to be implemented by way of an order to be made under the Inland Revenue Ordinance (Cap. 112) ("IRO"), subject to negative vetting by the Legislative Council ("LegCo"). Separately, the Administration would include in a Schedule to IRO the names of jurisdictions with which Hong Kong had signed a CAA. The Schedule might be amended by notice in the Gazette, subject to negative vetting by LegCo. FIs would be obliged to start collecting information from account holders who were tax residents of an AEOI partner, in the calendar year following LegCo's approval of the inclusion of the AEOI partner as a reportable jurisdiction. FIs would then report the information to IRD in the next calendar year; and</p> <p>(f) as the EOI article of certain existing CDTAs did not explicitly provide for a particular mode of EOI (i.e. EOI upon request or on automatic basis), these agreements would not need to be updated for AEOI purposes.</p>	
004122 – 004951	Chairman Mr NG Leung-sing Administration	<p>Disclosure of interest by Mr NG</p> <p>Mr NG expressed the following views and suggestions –</p> <p>(a) the Bills Committee should meet with deputations to receive their views on the Bill;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the timetable for implementing AEOI should be reasonable by taking into account factors such as the cumulative impacts on FIs arising from compliance with other new regulatory requirements (e.g. due diligence requirements for Anti-Money Laundering and Counter Terrorist Financing purposes) in recent years, and the need to maintain competitiveness of the local financial services industry; and</p> <p>(c) the Administration should step up publicity and education efforts to enhance understanding of AEOI by the industry and the public at large.</p> <p>The Administration advised that –</p> <p>(a) during the consultation exercise in relation to AEOI, it had noted the concerns about the potential compliance burden on FIs arising from implementation of AEOI, and refined the legislative proposals in the light of the views gauged;</p> <p>(b) with a view to commencing the first information exchanges by end of 2018, and subject to enactment of the Bill by mid 2016, it was necessary to identify potential AEOI partners and conclude CAA negotiations with them by the end of 2016 such that FIs could start collecting reportable information in 2017; and</p> <p>(c) IRD had published and would continue to update AEOI-related information on its website to enhance public understanding of the latest EOI standard. IRD would also promulgate relevant industry guidelines and organize workshops for FIs.</p>	
004952 – 005544	Chairman Administration	<p>Discussion on due diligence requirements with reference to certain hypothetical scenarios involving account holders who were (a) returned overseas Hong Kong migrants; and (b) account holder who was previously a tax resident of a jurisdiction outside Hong Kong.</p> <p>Arising from the discussion, the Administration advised that –</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) reportable persons were defined with reference to their tax residence (rather than citizenship or nationality). That a person had paid taxes charged by a jurisdiction did not automatically render that person a tax resident of that jurisdiction. Indeed, the tax residence of individual account holders might change from one year to another according to the prevailing tax laws of reportable jurisdictions;</p> <p>(b) self-certification, which included information on TINs, would be an important tool under CRS for FIs to fulfill its reporting and due diligence obligations, in particular to determine the tax residence of account holders; and</p> <p>(c) an FI would commit an offence of providing incorrect return to IRD if the FI knew that the information was misleading, false or inaccurate; was reckless as to whether the information was misleading, false or incorrect; or had no reasonable ground to believe that the information was true or accurate.</p>	
005545 – 011617	Chairman Mr SIN Chung-kai Mr James TO Administration	<p>Mr SIN enquired about the sanctions on persons who (a) provided, knowingly or in a reckless manner, misleading, false or incorrect information in a material particular, in making a self-certification to FIs, or (b) provided the incorrect information to FIs out of misunderstanding or inadvertent mistakes.</p> <p>The Administration advised that the Bill provided for an offence in the case of (a) and not (b) above. The sanction provision had struck a balance between providing sufficient deterrence to ensure effective implementation of the AEOI regime in Hong Kong, while not imposing disproportionately heavy sanctions on FIs and individuals.</p> <p>Mr SIN and Mr TO were concerned that the imposition of criminal sanction might not be justified in view of the nature of the offence involving provision of false information to FIs (and not the Government). Mr TO suggested that where there was reasonable doubt, IRD should seek confirmation from the account holders concerned on the self-certification</p>	The Administration to take action as paragraph 9(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>before establishing the offence or taking enforcement actions.</p> <p>Mr SIN and the Chairman enquired about how FIs should deal with the situation where accounts holders refused to provide information on tax residence, or did not respond to FIs' requests for the information.</p> <p>The Administration advised that for pre-existing accounts, FIs were required to review information maintained for regulatory or customer relationship purposes to determine the account holders' tax residence, and obtain a self-certification if necessary. If, after having exercised all reasonable due diligence, the FIs were still not able to determine the account holders' tax residence, FIs would be required to treat such accounts as undocumented accounts and report to IRD.</p> <p>At the requests of Mr SIN and Mr TO, the Administration undertook to clarify whether the said offence would be a recordable offence and hence might affect the offender's application for Certificate of No Criminal Conviction processed by the Police.</p>	<p>The Administration to take action as paragraph 9(c) of the minutes</p>
<p>011618 – 012510</p>	<p>Chairman Mr Kenneth LEUNG Administration</p>	<p>Mr LEUNG suggested the Administration consider putting in place measures, such as by issuing guidelines to reporting FIs on the format of self-certification, to alert account holders to exercise caution in making self-certification and of the liability to criminal sanction for making false self-certification in a material particular. He also enquired about –</p> <p>(a) the resources implications on IRD arising from the implementation of AEOI, in particular the development of AEOI Portal for FIs to submit notifications and file AEOI returns electronically; and</p> <p>(b) the criteria for selecting AEOI partners for Hong Kong.</p> <p>The Administration responded that –</p> <p>(a) IRD had requested additional manpower and other resources under the resource allocation exercise for implementing</p>	<p>The Administration to take action as paragraph 9(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>AEOI; and</p> <p>(b) in identifying potential AEOI candidates from existing or future CDTA/TIEA partners, the guiding principles were that they should be capable to meet the OECD standard and relevant safeguards. Trading relationships and industry views would also be taken into consideration.</p> <p>Discussion on issues relating to the inclusion of Hong Kong on the list of "non-cooperative tax jurisdictions" by some Member States of the European Union, which was published by the European Commission in July 2015.</p>	
Agenda Item III – Any other business			
012511 – 012626	Chairman	Invitation of public views Meeting arrangements	