

立法會
Legislative Council

LC Paper No. CB(1)770/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/15/2

Bills Committee on Inland Revenue (Amendment) Bill 2016

**Minutes of the second meeting
held on Tuesday, 1 March 2016, at 8:30 am
in Conference Room 1 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
attending** : **For item I**

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

**Attendance by
invitation** : **For item I**

Hong Kong Investment Funds Association

Mrs Sally WONG
Chief Executive Officer

STEP Hong Kong Ltd.

Mr William AHERN
Co-Chair, Legislative/Regulatory Sub-Committee

Asia Securities Industry & Financial Markets Association

Mr PANG Chi-wai
Managing Director, Head of Fixed Income and Compliance

Hong Kong Trustees' Association

Ms LAU Ka-shi
Vice Chairman and Pensions and Funds Subcommittee Chairman

The Hong Kong Association of Banks

Mr YUEN Hon-cheung
Acting Chairperson of the OECD Common Reporting Standard
Working Group

Hong Kong Institute of Certified Public Accountants

Mr Anthony TAM
Chairman of Taxation Faculty Executive Committee

The Institute of Certified Management Accountants — Hong
Kong Branch

Mr NG Kwok-yin
Honorary Advisor

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. Meeting with deputations and the Administration

Meeting with deputations

Submissions from deputations attending the meeting

(LC Paper No. CB(1)611/15-16(03) — Hong Kong Investment Funds
Association (English version
only)

Action

LC Paper Nos. CB(1)611/15-16(04) — STEP Hong Kong Ltd. (English
and CB(1)625/15-16(01) version only)

LC Paper No. CB(1)611/15-16(05) — Asia Securities Industry and
Financial Markets Association
(English version only))

LC Paper No. CB(1)622/15-16(01) — Hong Kong Institute of
Certified Public Accountants
(English version only)

LC Paper No. CB(1)689/15-16(01) — The Hong Kong Association of
Banks (English version only))

Submissions from deputations not attending the meeting

(LC Paper No. CB(1)611/15-16(06) — The Chinese General Chamber
of Commerce (Chinese version
only)

LC Paper No. CB(1)611/15-16(07) — The Association of Hong Kong
Accountants (English version
only)

LC Paper No. CB(1)611/15-16(08) — The Hong Kong Federation of
Insurers (English version only)

LC Paper No. CB(1)625/15-16(02) — Hong Kong International
Chamber of Commerce
(English version only))

Meeting with the Administration

Matters arising from the previous meeting

(LC Paper No. CB(1)611/15-16(01) — List of follow-up actions
arising from the meeting on
2 February 2016

LC Paper No. CB(1)611/15-16(02) — Administration's response to
the issues raised at the meeting
on 2 February 2016

Action

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

Other relevant papers

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(03) — Background brief prepared by the Legislative Council Secretariat)

Presentation of views by deputations

The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations that their written submissions provided to the Bills Committee and views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

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

3. The Bills Committee received views from seven deputations attending the meeting and noted the views from three deputations which did not attend the meeting.

Action

(Post-meeting note: Three submissions (LC Paper Nos. CB(1)625/15-16(01) to (02) and CB(1)689/15-16(01)) were received from deputations at/after the meeting and issued to members on 2 and 16 March 2016 respectively.)

Follow-up actions to be taken by the Administration

- Admin 4. The Administration was requested to provide a written response to the views raised by the deputations at the meeting or in their submissions.

(Post-meeting note: The Administration's response was issued vide LC Paper No. CB(1)697/15-16(02) on 21 March 2016.)

II. Any other business

Date of next meeting

5. The Chairman reminded members that the next meeting would be held on Tuesday, 22 March 2016, at 10:45 am.
6. There being no other business, the meeting ended at 10:24 am.

Council Business Division 1
Legislative Council Secretariat
8 April 2016

Bills Committee on Inland Revenue (Amendment) Bill 2016

**Proceedings of the second meeting
on Tuesday, 1 March 2016, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I - Meeting with deputations and the Administration			
000153 - 000345	Chairman	Opening remarks	
000346 - 000621	Hong Kong Investment Funds Association	Presentation of views [LC Paper No. CB(1)611/15-16(03)]	
000622 - 001130	STEP Hong Kong Ltd. ("STEP")	Presentation of views [LC Paper Nos. CB(1)611/15-16(04) and CB(1)625/15-16(01)]	
001131 - 001602	Asia Securities Industry & Financial Markets Association	Presentation of views [LC Paper No. CB(1)611/15-16(05)]	
001603 - 001946	Hong Kong Trustees' Association ("HKTA")	Presentation of views	
001947 - 002552	The Hong Kong Association of Banks ("HKAB")	Presentation of views [LC Paper No. CB(1)689/15-16(01)]	
002553 - 003042	Hong Kong Institute of Certified Public Accountants ("HKICPA")	Presentation of views [LC Paper No. CB(1)622/15-16(01)]	
003043 - 003306	The Institute of Certified Management Accountants – Hong Kong Branch ("ICMA–HK")	Presentation of views	
003307 - 003710	Chairman Administration	<p>The Administration's initial response to the views of the deputations:</p> <p>(a) timely implementation of the automatic exchange of financial account information in tax matters ("AEOI") would avoid Hong Kong being labelled as a "tax haven" or an uncooperative tax jurisdiction;</p> <p>(b) under the tight timeframe for Hong Kong to commence the first automatic information exchanges by the end of 2018 (i.e. the latest</p>	

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		<p>timeline permissible by the Global Forum on Transparency and Exchange of Information for Tax Purposes ("the Global Forum")), financial institutions ("FIs") would need to start collecting reportable information in 2017. The Administration would maintain close liaison with FIs with a view to drawing up relevant industry guidelines, and step up publicity; and</p> <p>(c) the exchange of information ("EOI") 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 Hong Kong would implement AEOI with CDTA and TIEA partners under the respective agreements, these safeguards would be equally applicable to information exchanged under the AEOI mode.</p>	
003711 - 004454	Chairman Mr Jeffrey LAM Administration	<p>Mr LAM raised the following enquiries and suggestions:</p> <p>(a) whether implementation of AEOI in Hong Kong would suffice to meet the latest international standard on EOI and demonstrate its commitment to enhancing tax transparency;</p> <p>(b) how the Administration would ensure that Hong Kong's AEOI partners would observe their obligations to protect the privacy of taxpayers and the confidentiality of information exchanged; and</p> <p>(c) the Administration should step up publicity and education to enhance understanding of AEOI by the public at large.</p> <p>The Administration responded that:</p> <p>(a) AEOI was a new standard of EOI promulgated by the Organisation for Economic Co-operation and Development ("OECD") to enhance tax transparency and combat cross-border tax evasion. Hong Kong would adopt a pragmatic and orderly approach to implement AEOI on a bilateral basis with CDTA / TIEA partners, rather than going for a multilateral approach;</p>	

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		<p>(b) the Administration would identify potential AEOI candidates from CDTA/TIEA partners which could meet relevant requirements on protection of privacy and confidentiality of information exchanged and ensuring proper use of the data exchanged; and</p> <p>(c) the Inland Revenue Department ("IRD") would step up publicity of AEOI, including disseminating information on its website to enhance public understanding of how to determine tax residence.</p>	
004455 - 005707	<p>Chairman Mr Kenneth LEUNG HKAB HKICPA STEP Administration</p>	<p>Mr LEUNG enquired about:</p> <p>(a) the measures to ensure security of information collected and exchanged under AEOI; and</p> <p>(b) whether Hong Kong would request AEOI partners to provide financial account information of Hong Kong tax residents.</p> <p>The Administration advised that:</p> <p>(a) IRD would provide a secure platform, i.e. the AEOI Portal, for FIs to submit notifications and file AEOI returns electronically. FIs would be required to use digital certificate for authentication and open an online account in the AEOI Portal for transacting with IRD on matters relating to AEOI. Likewise, OECD would provide a secure platform for exchange of information between jurisdictions for AEOI purposes; and</p> <p>(b) as AEOI would be implemented on a reciprocal basis, the tax authorities of AEOI partners would provide to IRD the financial account information of Hong Kong tax residents.</p> <p>Discussion on the compliance burden on FIs arising from implementation of the Foreign Account Tax Compliance Act ("FATCA") (i.e. an Act passed by the United States ("US") Congress in 2010 requiring foreign FIs including those in Hong Kong to report the financial information in respect of their US clients), and AEOI in the current context</p>	

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005708 - 010548	Chairman Mr NG Leung-sing Administration	<p>Mr NG considered that the Administration should:</p> <ul style="list-style-type: none"> (a) ensure effective implementation of AEOI while not creating undue compliance burden on FIs, and exercise flexibility in handling inadvertent non-compliances at the initial stage of implementation; (b) review regularly the reporting requirements on FIs arising from various regulatory initiatives; and (c) make contingency plan for possible delay in legislating for the AEOI framework. <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) it would adopt a pragmatic and orderly approach to implement AEOI with a view to minimizing undue compliance burden on FIs. The Administration would keep in touch with relevant FI groups on the AEOI-related issues; and (b) given the tight timeframe to commence the first automatic information exchanges by end of 2018 (subject to enactment of the Bill in mid 2016), Hong Kong could hardly afford to have any fallback plan. It would be necessary to identify at least one AEOI partner and conclude AEOI negotiations with its tax authority by the end of 2016. 	
010549 - 011421	Chairman Mr James TO HKAB HKICPA HKTA	<p>Discussion on how FIs should identify reportable accounts under the Common Reporting Standard ("CRS") promulgated by OECD for AEOI</p> <p>Responding deputations pointed out that CRS did not expect FIs to carry out an investigation to determine the tax residence of the account holders but only to perform a reasonableness test of their self-certification. The relevant due diligence procedures for different types of accounts (e.g. pre-existing or new accounts, low value or high value accounts) had been set out in CRS.</p> <p>HKAB stressed that it should be made clear to the public that it was the responsibility of account holders to notify their FIs of changes in their tax residence status after making self-certification for the purpose of AEOI.</p>	

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011422 - 011914	Chairman Mr Kenneth LEUNG HKICPA Administration	<p>Mr LEUNG sought information on the differences of the exemption regimes under AEOI and FATCA. He also expressed concern that as the Hong Kong tax regime was territorial-based, the general public of Hong Kong were not used to the concept of "tax resident" and might not know how to ascertain their tax residence in relation to AEOI.</p> <p>HKICPA suggested putting in place a mechanism to notify account holders the information furnished by FIs to IRD under AEOI, and allow the account holders to correct the data.</p> <p>The Administration advised that:</p> <p>(a) the scopes of exemptions under AEOI and FATCA were similar. For AEOI, apart from those exemptions provided by CRS, the Administration had identified additional items (pursuant to certain criteria under CRS) as non-reporting FIs and excluded accounts as proposed under the Bill; and</p> <p>(b) OECD had established a portal providing information regarding tax residency rules applicable in jurisdictions that were committed to implementing AEOI. IRD would consider how to make good use of such information for conducting AEOI-related publicity in Hong Kong.</p>	
011915 - 013743	Chairman Mr James TO ICMA-HK HKAB STEP Administration	<p>Exchange of views on whether a mechanism should be established such that "raw data" about tax residence of account holders be provided by FIs to IRD so that IRD might verify and, if in doubt, seek confirmation from the account holders concerned direct, and that enforcement actions be taken on the basis of the information provided by the account holders to IRD</p> <p>HKAB pointed out that FIs were not required to submit the account holders' self-certification to IRD under the Bill.</p> <p>Responding deputations generally opined that it might not be practicable for IRD to verify the information furnished by FIs having regard to the volume of information concerned, and the tight timeframe of information exchange with AEOI partners.</p>	

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		<p>The Administration advised that FIs would be required to follow the due diligence procedures and IRD would not be able to verify the reportable information collected from FIs before exchanging the information with the tax authorities concerned. If the tax authority of a reportable jurisdiction raised question or query on the tax residence of a particular account holder, IRD would follow up with the FI concerned.</p>	
<p>013744 - 014225</p>	<p>Chairman Mr Christopher CHEUNG Administration</p>	<p>Mr CHEUNG urged the Administration to:</p> <ul style="list-style-type: none"> (a) adopt a lenient approach of implementing AEOI to avoid causing undue compliance burden to FIs including securities firms; and (b) take into account the views of small and medium-sized enterprises (and not just the large ones), with a view to formulating appropriate industry guidelines in relation to AEOI. <p>Mr CHEUNG enquired about:</p> <ul style="list-style-type: none"> (a) how FI should deal with the situation where an account holder claimed that he was not/no longer a tax resident of a reportable jurisdiction but there was reasonable cause for the FI to suspect otherwise after performing the reasonableness test; and (b) the frequency to update the self-certification with account holders. <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) FIs should seek clarification from account holders in case of any doubts about the information provided in their self-certification; (b) FIs should ensure that the relevant information with the account holders concerned was up-to-date and account holders should inform their FIs when circumstances changed; and (c) FIs should inform the account holders, through the Personal Information Collection Statement, of the possible use of the information collected from them for AEOI purposes and that all practicable steps must be 	

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		<p>taken to ensure that the personal data were accurate.</p>	
<p>014226 - 014528</p>	<p>Chairman Administration</p>	<p>The Chairman expressed concern about the unfair situation that US could refuse to implement AEOI, which might give rise to loopholes in the AEOI regime, whereas Hong Kong had to implement AEOI for the sake of avoiding being labelled as an uncooperative tax jurisdiction, even though AEOI information exchanges would not benefit Hong Kong much given its territorial-based tax regime.</p> <p>The Administration advised that:</p> <p>(a) US did not sign up to implement AEOI because FATCA had served a similar purpose to require foreign FIs (including those in Hong Kong) to report financial information in respect of their US clients to the US Internal Revenue Service directly; and</p> <p>(b) about 97 jurisdictions had so far expressed commitment to implementing AEOI and around 50 of them would implement the new standard from 2017. It was also notable that more than half of the 20 top trading partners of Hong Kong had indicated support for AEOI. In view of the increasing aspirations of the international community for AEOI, it was necessary for Hong Kong to follow suit.</p>	
<p>014529 - 015449</p>	<p>Chairman Mr Kenneth LEUNG HKAB STEP HKICPA Administration</p>	<p>Discussion on the civil and/or criminal liabilities imposed on FIs in relation to AEOI</p> <p>HKAB pointed out that under the Bill, FIs would be held liable to sanctions for non-compliance with the due diligence and reporting obligations; providing misleading, false or inaccurate information and knew, or was reckless as to whether, the information was misleading, false or inaccurate; or providing, with intent to defraud, any information that was misleading, false or inaccurate.</p> <p>Mr LEUNG suggested that FIs might build or strengthen rapport with representatives from OECD or the Group of Twenty, and convey concerns and suggestions to them, with a view to ensuring a smooth implementation of AEOI.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>In reply to the Chairman, the Administration affirmed that it would maintain close liaison with FIs and promulgate guidelines to facilitate their compliance with the due diligence and reporting obligations under AEOL.</p> <p>As requested by the Chairman, the Administration would provide a written response to the views raised by the deputations at the meeting or in their submissions.</p>	<p>The Administration to take action as paragraph 4 of the minutes</p>
Agenda Item II – Any other business			
015450 - 015548	Chairman	Date of next meeting Closing remarks	