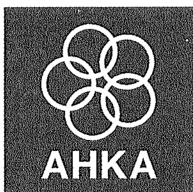

THE ASSOCIATION OF
HONG KONG
ACCOUNTANTS

(incorporated in Hong Kong as a company limited by guarantee)

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Clerks to Bills Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By Fax – (852) 3529 2837 & By E-mail

Attn. Miss Mandy POON

23 February 2016

Dear Sirs,

Written Submission on Inland Revenue (Amendment) Bill 2016 (the "Bill")

Thank you for inviting The Association of Hong Kong Accountants ("**AHKA**") to express views on the Bill. We are pleased to enclose herewith our comments on the Bill regarding the implementation of Automatic Exchange of Financial Account Information in Tax Matters ("**AEOI**") in Hong Kong for your kind attention.

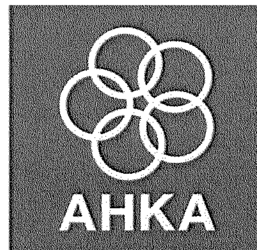
We appreciate that the implementation of AEOI in Hong Kong would not only promote the international image and awareness of Hong Kong SAR on tax transparency but also benefit our economic development. Adopting a pragmatic approach to legislate all essential requirements of the OECD standard on AEOI seems to be appropriate; however, AHKA observes that there are a couple of issues that should be addressed and clarified with a view to enhancing the effectiveness of the Bill. Please refer to AHKA's comments as set out in the enclosed Appendix for details.

If you have any questions regarding our comments, please feel free to contact the undersigned at (852) 3520 2546.

Yours faithfully,
For and on behalf of The Association of Hong Kong Accountants

Mrs. Jennifer Wong
(Council Member and Taxation Working Committee Co-convenor)

Enclosures



THE ASSOCIATION OF
HONG KONG
ACCOUNTANTS

香港會計師專業協會

Comments on the Inland Revenue (Amendment) Bill 2016

23 February 2016

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Association of Hong Kong Accountants ("AHKA")
Comments on the Inland Revenue (Amendment) Bill 2016

We are honored to express our views on the Inland Revenue (Amendment) Bill 2016 in relation to the implementation of Automatic Exchange of Financial Account Information in Tax Matters ("**AEOI**") in Hong Kong as follows:

Page	Section under the IRO	Content	AHKA's Comments
54	80B(4)	"*In the case of an offence under…the reporting financial institution is liable to a further fine of* ***$500 for every day or part of a day*** *during which the offence continues after conviction.*" (emphasis added)	1. Please clarify whether the additional penalty of $500 would be charged on each offence per day or for each reporting financial institution ("**FI**") per day. 2. Should the penalty be imposed on a "per entity" basis, please consider whether the proposed amount (i.e. a fine at level 3 plus a further penalty of $500 per day, or $182,500 per annum) would be sufficient to create a deterrent effect.
53 – 60	80B to 80E	The penalty provisions are drafted in a way that the relevant sanctions for a reportable FI in respect of certain offences would equally apply to a service provider engaged by the FI to fulfill its due diligence and reporting obligations. In addition, an employee of, or a person engaged to work for, a reporting FI	1. The liability of a service provider in respect of its work performed for a principal (e.g. FI) is typically governed by the terms of engagement agreed between both parties. For any civil claim against the FI arising from whatever act of its service provider, the service provider would only be liable to the loss incurred by the FI to the extent and in the manner as stipulated

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		will only be held liable if he or she, with an intent to defraud, causes or allows the FI to provide misleading, false or inaccurate information.	under the subject terms of engagement. In this connection, unless the service provider has an intent to defraud, the Government may re-consider whether it is necessary to specifically levy penalties on any non-compliance act of a service provider. 2. The Inland Revenue Ordinance currently does not impose any penal action against service providers. Is it equitable and justifiable to introduce penalty provisions against service provides under AEOI? 3. Even if it is considered necessary to take penal actions against service providers, the level of penalty may need to be re-considered, given that, under normal circumstances, the service provider is only acting upon the instructions of and information provided by the reportable FI, which indeed is the party responsible for making final decisions. 4. Please consider whether the penalty provisions should be generalized where any person (regardless of whether he is an employee, director/officer

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			concerned in the management or a service provider or any other person) would commit an offence if he or she, with an intent to defraud, causes or allows the FI to provide any information that is misleading, false and inaccurate in a material particular.
60	80E(b)	"*the offence was committed* ***with the consent or connivance of a director, or other officer concerned in the management****, of the corporation, or any person purporting to act as such director or officer (that person), the director or officer or that person, as the case requires, also commits the offence and is liable on conviction to the penalty provided for that offence.*" (emphasis added)	It appears that this provision is overly stringent on a director or other officer concerned in the management. For instance, where a director or officer, in good faith and having exercised due care, relies on the misleading, false or inaccurate information supplied by a staff in giving a consent and inadvertently causes or allows the FI to commit an offence, he/ she would invariably be committing an offence under the current provisions and liable to conviction to the penalty provided for that offence. The does not seem to be equitable. Please consider whether any carve-out (e.g. wording such as "*where the director or other officer concerned in the management has exercised due care in…*") should be added in this respect.
70-76,	Schedule 17C	"***Dormant account:*** *An account (other than an annuity contract) with a*	1. To be consistent, please consider to align the thresholds for determining excluded accounts

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77 - 103	Schedule 17D	***balance that does not exceed $7,800*** *is an excluded account if…*" "***A depository account is also an excluded account*** if both of the following conditions are met: ….(b) Beginning on or before 1 January 2017, the financial institution implements policies and procedures either to prevent a customer from making ***an overpayment in excess of $390,000***….." "***Individual accounts not required to be reviewed, identified or reported:*** The requirements in this section applies to ***low value account.*** (Low value account is a pre-existing individual account with an ***aggregate balance or value that does not exceed $7,800,000*** as at 31 December of the second year before reporting.) "***Entity accounts not required to be reviewed, identified or reported:*** *(1) A pre-existing entity account with an*	(e.g. dormant account (i.e. $7,800) and depository account (i.e. $390,000)) and pre-existing individual (i.e. not exceeding $7,800,000/ entity (i.e. not exceeding $1,950,000) accounts.

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		aggregate account balance or value that does not exceed $1,950,000 *as at 31 December of the second year before the reporting year, is not required to be reviewed, identified, or reported as a reportable account until the* ***aggregate account balance or value exceeds $1,950,000*** *as at the last day of any subsequent calendar year."* "On the ***opening of a new individual account***, a reporting ***FI must (a) obtain a self-certification***, which may be part of the account opening documentation…." "A ***FI must (a) obtain a self-certification from an entity that opens an account,*** which may be part of the account opening documentation…." (emphasis added)	2. It is proposed that a FI is required to obtain self-certification for the opening of all new reportable accounts; whilst on the other hand, pre-existing individual or entity accounts with an aggregate account balance or value under certain thresholds are exempt from the self-certification requirement. It is suggested to adopt a consistent approach with regard to mandatory self-certification for all account holders.

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