

1 March 2016

Ms Mandy Li  
Clerk to Bills Committee  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road,  
Central,  
Hong Kong

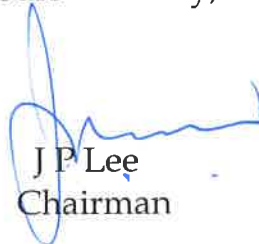
Dear Ms Li,

**Bills Committee on Inland Revenue (Amendment) Bill 2016**

Thank you for your email of February 4.

2. We regret that we are unable to attend the meeting.
3. However, we should like to present our views conveyed to The Secretary for Financial Services & The Treasury in our letter dated June 30, 2015, enclosed, together with our recent communication with the Bureau dated March 1.

Yours sincerely,

  
J P Lee  
Chairman

Enc.

1 March 2016

Ms Mable Chan  
Deputy Secretary for Financial Services and the Treasury  
24/F, Central Government Offices,  
2 Tim Mei Avenue,  
Tamar, Hong Kong

Dear Ms Chan,

**Automatic Exchange of Financial Account Information in Tax Matters  
(AEOI)**

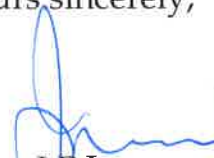
We received an invitation from the Legislative Council to give views on the Inland Revenue (Amendment) Bill 2016.

2. You would recall that at the meeting of the International Business Committee on October 6, 2015, the subject of AEOI was raised. It is noted that "the government was in the process of compiling a consolidated response in the light of the views received during public consultation and would publish the response for stakeholders' information". ICC-HK also provided its views in the letter June 30, 2015. We were expecting the government's consolidated response and government's answers to certain issues which remained unclear in the Consultation Paper.

3. In the event, we have not received the "government's consolidated response" and are surprised the matters has reached the Committee stage at the Legislative Council. In the circumstances, we have difficulty in providing further views.

4. We look forward to your reply.

Yours sincerely,

  
J P Lee  
Chairman

By Email rdiv@fstb.gov.hk and by Mail

30 JUN 2015

Secretary for Financial Services & the Treasury  
24/F., Central Government Offices,  
2 Tim Mei Avenue, Tamar,  
Hong Kong

Attn: Mr Gary Poon

Dear Sir,

**Consultation Paper on Automatic Exchange of Financial Account  
Information in Tax Matters (AEOI) in Hong Kong**

We refer to your letter of April 24, 2015.

2. From the outset, we prefer adoption of CDTA to TIEA. We have expressed our views on information exchange in general in our previous letters viz July 6, 2012, February 10, 2014, and December 2, 2014, a copy of each of which is enclosed.

3. In response to your Consultation paper enclosed in your letter, we should like to provide additional comments in the paragraphs below.

Definition

4. It is important to have a clear definition of a non-Hong Kong tax resident reporting account. For example, in case of a corporation registered in Hong Kong where the majority shareholding is Hong Kong tax resident, will it still be liable to become a non-Hong Kong tax resident reporting account? Or where a financial institution has no non-Hong Kong tax resident customer in respect of any AEOI agreement, presumably it will not be caught by definition? The term "low risk" used to depict financial institutions and accounts as being exempt needs careful description. Finally, when there is dispute between a tax authority and a financial institution and account holder there should be recourse for resolution.

Bilateral and Staged Approach

5. We agree Hong Kong should enter into bilateral agreement with individual tax jurisdictions and should adopt a phased approach. Hong Kong could start with jurisdictions with which it has entered into CDTA. The pace should depend on experience gained, workload, additional public resources being available, and the adverse impact on business. This may be followed by TIEA jurisdictions depending on circumstances. It is too early to consider AEOI agreement with other jurisdictions than these. With reference to paragraph 2.5 of the Consultation paper on mapping out priorities, we believe you will continue discussion with us before legislation.

On Request or Automatic

6. As we understand, an overseas tax authority would first request for information exchange in regard to an account or accounts. If the request is accepted, the account(s) will be reportable account(s). The AEOI scheme therefore starts with an external request, and thereafter, the Hong Kong tax authority will provide periodic (annual) reports on the relevant reportable account(s). Please advise if our understanding is correct.

Exemptions

7. We suggest that the Administration should start with a low threshold in defining low risk financial institutions and accounts. The charities under Section 88 of the Inland Revenue Ordinance shall be exempted. We agree MPF and ORSO should be exempted.

Safeguards and Review Mechanism

8. We agree adoption of the provisions in respect of CDTA and TIEA set out in paragraph 2.28 of the Consultation paper, and maintain our views contained in our previous letters under reference.

9. In addition, the Administration should establish a committee with independent members to consider each request for AEOI. There should also be an appeal mechanism in respect of definitions, reports by Hong Kong tax authority to an overseas tax authority, etc. In this connection, we are concerned that while under the CDTA and TIEA regimes, an account holder can seek redress up to judicial review; the AEOI proposals do not seem to provide for this to account holders and

financial institutions. Provision should be in place in legislation to safeguard their rights.

10. There should be a review mechanism in respect of each AEOI agreement. Any change should be approved by negative vetting of the Legislative Council (LegCo) after consultation with the relevant stakeholders.

11. The Consultation paper says that Hong Kong will monitor the non-compliance of an overseas authority with which it has signed an AEOI agreement. We should like to know how this will be put into practice, and suggest that future legislation will empower the Hong Kong tax authority to enter into, change, suspend or rescind an agreement subject to negative vetting of the LegCo.

#### Other issues

12. The Consultation paper proposes to include a list of non-reporting financial institutions in the form of a Schedule to IRO. We presume these relate to different types of institutions rather than individual institutions. However, this may give the impression that other than those types of institutions listed, all institutions are reporting institutions. The same misconception may happen in the case of excluded accounts. It will be necessary to clarify in law that all other financial institutions or accounts are not reporting subjects, unless any one of them is designated by the Hong Kong tax authority or is an account referred by an overseas tax authority of a particular agreement. On the other hand, you may wish to consider instead listing by Schedule those reporting financial institutions and accounts, since after all, IRO has to keep a register of reporting financial institutions with reportable accounts as pointed out in the Consultation paper.

13. Paragraph 2.23 of the Consultation paper states that “.... In order to implement AEOI, we propose to empower IRO to

- “a)
- b)
- c) use the information obtained from FIs for the administration of IRO and
- d) .....”.

We should be obliged if you could clarify this intention before we offer comment.

14. Looking ahead, we envisage business may face 2 separate regimes, CDTA/TIEA and AEOI. We shall be grateful to know if they are run in parallel, or they will be merged into one mode of operation. If it is the latter, we should like to know the adverse implications to the financial institutions and taxpayers affected.

15. The Consultation paper says key provisions of CAA and CRS may be incorporated in legislation. It may be an alternative that an AEOI agreement should be put in Schedule so that any variation of agreements may be covered. Moreover, if a change in content of an agreement is demanded or imposed, it will not invalidate implementation of the existing agreement based on what was first agreed.

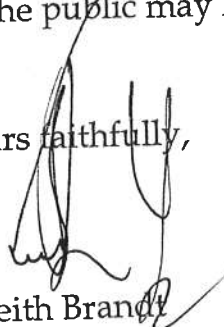
Burden on Financial Institutions and Service Users

16. It may be foreseen that whether or not caught by any AEOI agreement a financial institution will have to set up the necessary structure, and to build up its competence to equip itself in anticipation of complying with the new legislation. There will be cost, manpower and administration implications in addition to foreseeable inconvenience and harassment to service users. Compliance requirements have been growing over the years, and we hope the Administration will try its best to maintain a business friendly environment, through, in this case, adopting measures to keep compliance work simple and to the minimum.

Publicity

17. Credit goes to the Bureau and IRD in giving advance notice of AEOI. We hope that you will also give ample publicity to the new measures once legislation is passed, and the public may have sufficient time to attune to the new requirements.

Yours faithfully,

  
Keith Brandt  
Secretary

Enc.



sent on  
2 Dec

International Chamber of Commerce - Hong Kong, China 國際商會 - 中國香港區會

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By Mail

2 December 2014

Ms Shirley Kwan  
Financial Services and Treasury Bureau  
24/F., Central Government Offices,  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Ms Kwan,

**Hong Kong's Programme for  
Comprehensive Avoidance of Double Taxation Agreement ("CDTA")  
and Tax Information Exchange Agreement ("ITEA")**

In reply to your letter of October 31, 2014 addressed to Mr. J. P. Lee, Chairman, I enclose a copy of our letters dated on 6 July 2012 and 10 February 2014 for your consideration.

Yours sincerely,

Daisy Lau  
Manager-Administration

Enc.

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10 February, 2014

Miss Shirley Kwan  
Financial Services and The Treasury Bureau  
24/F., Central Government Offices,  
2 Tim Mei Avenue, Tamar,  
Hong Kong.

Dear Ms Kwan,

### Taxation Information Exchange Agreements

Please refer to your letter of January 8, 2014 and the discussion at the meeting of the International Business Committee on January 24, 2014.

2. From the outset, we believe that the treatment of entering into CDTA and TIEA should be different, because they serve different purposes. We agree the government could proceed with CDTAs as a means to further economic development and as a form of jurisdictional cooperation demonstrating Hong Kong's not being a tax haven. It is gratifying that Hong Kong has gone a long way in this regard based on the information you provide, and we feel that signing further CDTAs will much depend on the economic benefit derived.

3. We note that in paragraph 5 of IBC Paper No. 04/2014, it is said that "conclusion of TIEAs would not preclude the possibility of entering into CDTAs with these jurisdictions in future." With respect, we think this is rather optimistic. If a jurisdiction has the real intention of signing a CDTA knowing it contains provisions on exchange of information, it can from the beginning state its intention clearly, unless domestic political considerations bar it from doing so. Otherwise, it does not have to seek entering into a TIEA first.

International Chamber of Commerce - Hong Kong, China 國際商會 - 中國香港區會

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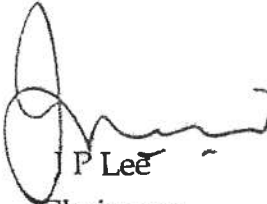
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4. We are not aware of any interest in Hong Kong or any urgency for Hong Kong to enter into TIEAs, and we doubt the need for the Administration to take the initiative. As regards suggesting potential partners for TIEA, we should like to refer to our letter to you on 6 July, 2012. In this connection, we should be obliged to know the outcome of our suggestions in the letter under reference, and also any TIEA Hong Kong has entered into.

Yours sincerely,



J P Lee  
Chairman

cc Commission for Inland Revenue  
Chairman, International Business Committee



International Chamber of Commerce - Hong Kong, China 國際商會 - 中國香港區會

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By Email: [rdiv@fstb.gov.hk](mailto:rdiv@fstb.gov.hk)

6 July 2012

Ms. Shirley Kwan  
Financial Services and the Treasury Bureau  
24/F, Central Government Offices,  
2 Tim Mei Avenue, Tamar,  
Hong Kong

Dear Ms. Kwan,

**Consultation Paper on  
Provision of the Legal Framework for Entering into  
Tax Information Exchange Agreement (TIEA)**

We refer to the Consultation Paper and various meetings we have had with you and other officials of the Financial Services & Treasury Bureau and the Inland Revenue Department.

2. We realize that TIEA is a growing trend, and Hong Kong as a member of the international community will have to be party. Having said that, we believe it will be in the interest of Hong Kong, without prejudicing the interest of other nations, to set its priority in entering into comprehensive double taxation agreements (CDTA), before contemplating to explore TIEAs.

3. We further suggest that the bases of CDTA and TIEA are different. CDTA is based on the interest of taxpayers of contracting parties; TIEA, however is based on the information need of the tax service, often unilaterally, of the contracting parties. Since the basis is different, we believe it is reasonable that the scope, the mode or the process for exchange of information need not be the same. That is, they should be narrower and more restrictive than in the case of CDTA.

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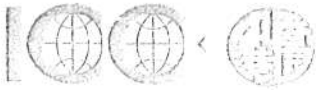
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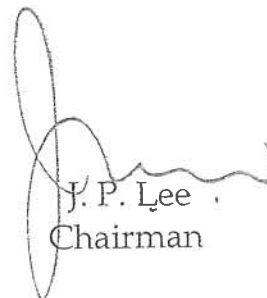
Website 網址: [www.icchkcbc.org](http://www.icchkcbc.org) E-mail 電子郵箱: [general@icchkcbc.org](mailto:general@icchkcbc.org)



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4. A taxpayer resident in a host country is under certain protection, and the host government has the duty to ensure that his protection might not be compromised either by law or by public administration because of an external request for tax information.
5. When a party refuses to enter into a CDTA with Hong Kong, but instead seeks to enter into a TIEA, it should provide clear explanation for not entering into CDTA and for the need of TIEA. The party's position should be submitted to the Legislative Council.
6. In considering a TIEA, the government should specify clearly the taxes referred to. Thus, the words "income tax" as applied to Hong Kong are generic, and it is preferred to state "profits tax" or "salaries tax" etc. Also, we agree that there should be no examination abroad.
7. Between CDTA and TIEA, there is no reason to accord favoured treatment to TIEA. Therefore, there is no need to seek new / additional resources if Hong Kong is to proceed with TIEA.
8. In any agreement, we are seeking fair treatment and to safeguard the rights of citizens. We believe Hong Kong could sign TIEAs with jurisdictions which manifestly govern by the rule of law, upkeep independence of the judiciary and honour human rights. Further, there should be regular review of agreements entered into, and where circumstances warrant, an agreement should be modified or annulled.
9. Thank you for the opportunity to exchanging views.

Yours sincerely



J. P. Lee  
Chairman



cc IBC - chambers  
of Commerce

aeoie  
fstb.gov.hk  
via post +  
email  
on 29/12

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29 DEC 2014

Financial Services and the Treasury Bureau  
24/F., Central Government Office  
2 Tim Mei Avenue, Tamar,  
Hong Kong

Attn: Ms. Shirley Kwan

Dear Ms Kwan,

### **Automatic Exchange of Information for Tax Purpose (AEOI)**

I refer to your letter of October 13.

2. As your briefing paper points out “moving towards AEOI represents a quantum leap” for Hong Kong. It deserves very serious consideration on its content, implementation and implications on business. Having studied the information provided, we should like to comment on the matter below:

3. While we are aware of the OECD, we are not certain about the Global Forum, and the relationship or legal tie between the two. Also, what authority the Global Forum has on its members.

4. Introduction of AEOI will invariably increase compliance cost of financial institutions and the like falling within the scope of AEOI, and probably on public expenditure. Hong Kong is already a high cost business centre and it is a matter of concern if AEOI will compromise the competitiveness of Hong Kong.

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5. AEOI is a new instrument with which many businesses are unfamiliar. Time must be given to those concerned to understand the scheme, and be able to accommodate with it. Thus, although the Global Forum has a timeline of end 2018 for AEOI to commence, we should urge the government to let business be ready for AEOI before its implementation in Hong Kong; if necessary beyond 2018. Further consultation will be helpful.

6. In regard to the parties with which Hong Kong could consider entering into AEOI on a bilateral basis, we believe Hong Kong can choose those countries which have significant economic ties with Hong Kong, as there is no need for Hong Kong to have AEOI with all members of the Global Forum. A tax jurisdiction which already has a CDTA with Hong Kong could be the starting point. In this connection, we should also draw your attention to our letters to you dated 6 July 2012 and 10 February 2014. At the same time, we should like to know whether AEOI and CDTA/TIEA are mutually exclusive, complementary to one another or can co-exist.

7. Concerning the content of AEOI, we should like to seek clarification of the following :

- a) the definition of a reportable account, a low risk account, or entity, and a lower value account in respect of individual accounts,
- b) whether charities and charity accounts are exempted for AEOI; and
- c) which AEOI can be signed between China Mainland and Hong Kong, and if so, whether non disclosure of sensitive State information may affect its functioning.

Yours sincerely,

  
Keith Brandt  
Secretary