

Bills Committee on Inland Revenue (Amendment) Bill 2016
Follow-up to the meeting on 1 March 2016

This note sets out our response to the views submitted and expressed by the deputations at the meeting on 1 March 2016, in the following five key areas.

(1) Policy Approach

2. Most deputations support and agree with the policy approach that Hong Kong should implement automatic exchange of financial account information in tax matters (“AEOI”), though one group has reservation on the reciprocity principle adopted for conducting the exchange. We would like to stress that exchange of information (“EOI”) for tax purposes is an important avenue to enhance tax transparency and combat cross-border tax evasion. The entire AEOI framework is based on a reciprocity principle; otherwise the information flow would be in one single direction only, which would render the EOI arrangement unfair and out of line with the spirit and principle of the international standard.

(2) Reporting and Due Diligence Requirements

3. The deputations note that the relevant reporting and due diligence requirements have been set out in the new Schedule 17D in the Bill, but they would like the Government to draw up more detailed guidelines on the practical and operational arrangements, so as to facilitate the industry’s implementation. Upon passage of the Bill by the Legislative Council, we will draw up the relevant guidelines and will continue to keep close contact with the relevant industry when doing so.

(3) Scope of Exemption

4. In accordance with the Common Reporting Standard (“CRS”) and having regard to the views collected during the consultation period, we have incorporated those financial institutions (“FIs”) and accounts which present a low risk of being used for tax evasion into the lists of “non-reporting FIs” and “excluded accounts” respectively in the new Schedule 17C in the Bill.

(4) Proposed Sanctions

5. Some deputations have expressed concerns on the proposed sanctions. CRS provides that a jurisdiction must put in place rules and procedures to ensure effective implementation of AEOI. In formulating appropriate sanctions, we are mindful of the need to ensure effective implementation of the AEOI arrangement while not imposing disproportionately heavy sanctions on FIs and individuals. We have also made reference to similar penalty provisions in the existing Inland Revenue Ordinance.

(5) Safeguard Measures

6. Many deputations have expressed the views that they would like the Government to ensure the protection of the privacy of taxpayers and the confidentiality of information exchanged. We have to reiterate that the Government has all along attached great importance to the protection of taxpayers' information in the course of automatic exchange of financial account information. Regarding the safeguard measures for AEOI, they involve three main levels, namely the treaty level (i.e. the safeguard provisions in the relevant agreements), the system level (i.e. the safeguard measures for the information system of the Inland Revenue Department) and the FI level (i.e. FIs will inform its account holders of the use of the information collected through the Personal Information Collection Statement, and remind and allow account holders to provide updates so as to ensure the accuracy of the information concerned).

7. The Government's detailed response to the views raised by the deputations is at **Annex**.

Financial Services and the Treasury Bureau
March 2016

Inland Revenue (Amendment) Bill 2016 (“the Bill”)

**The Administration’s Responses to Written Submissions from Deputations and Views raised by Deputations
at the Bills Committee meeting on 1 March 2016**

Comments / Issues Raised	Organizations / Persons	The Administration’s Responses
A. Policy Approach		
A.1 Support / Agree with Hong Kong’s implementation automatic exchange of financial account information in tax matters (“AEOI”), as it will help Hong Kong maintain its position as an international financial and commercial centre and avoid it being labeled as a “tax haven”.	The Chinese General Chamber of Commerce (“CGCC”) Asia Securities Industry & Financial Markets Association (“ASIFMA”) Hong Kong Investment Funds Association (“HKIFA”) Hong Kong Trustees’ Association (“HKTA”) Hong Kong Association of Banks (“HKAB”) Private Wealth Management Association (“PWMA”) Hong Kong Institute of Certified Public Accountants (“HKICPA”) The Association of Hong Kong Accounts (“AHKA”) CMA Australia – Hong Kong Branch	<ul style="list-style-type: none"> Noted.
A.2 Support Hong Kong’s implementation of AEOI on a bilateral basis.	CGCC International Chamber of Commerce - Hong Kong, China (“ICC-HK”)	

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<p>A.3 Should not adopt the reciprocity principle in conducting AEOI; and propose that Hong Kong should send to its AEOI partners information about the latter's tax residents without requiring its AEOI partners to provide the Inland Revenue Department ("IRD") with information on Hong Kong's tax residents.</p>	<p>STEP Hong Kong Limited ("STEP")</p>	<ul style="list-style-type: none"> Exchange of Information ("EOI") for tax purposes is an important avenue to enhance tax transparency and combat cross-border tax evasion. The entire AEOI framework is based on a reciprocity principle; otherwise the information flow would be in one single direction only, which would render the EOI arrangement unfair and out of line with the spirit and principle of the international standard. We consider that Hong Kong can also benefit from implementing AEOI on a reciprocal basis, since it may enable IRD to obtain more comprehensive financial information of Hong Kong taxpayers, so as to facilitate IRD's assessment and recovery of tax in default from some Hong Kong taxpayers.
<p>A.4 Each AEOI agreement should be put in the Schedule to the legislation, and should be approved by negative vetting of the Legislative Council ("LegCo").</p>	<p>ICC-HK</p>	<ul style="list-style-type: none"> We have incorporated the key provisions of the Competent Authorities Agreement ("CAA") and the Common Reporting Standard ("CRS") into the Bill, so as to ensure effective implementation of the AEOI arrangement. We will set out the list of reportable jurisdictions in a Schedule to the Inland Revenue Ordinance ("IRO"). The Secretary for Financial Services and the Treasury may amend the Schedule by notice in the Gazette, subject to negative vetting by LegCo.
<p><i>B. Reporting and Due Diligence Requirements</i></p>		
<p>B.1 The relevant procedures should be simplified as far as practicable and clear guidelines should be drawn up for the industry to conduct due</p>	<p>CGCC HKTA HKAB</p>	<ul style="list-style-type: none"> CRS stipulates that, when conducting due diligence for AEOI, financial institutions ("FIs") may, where appropriate and necessary, make use of the information collected under the existing AML/KYC procedures when identifying if an account holder is a resident for tax

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diligence.	PWMA Hong Kong Federation of Insurers ("HKFI")	<p>purposes in a reportable jurisdiction. So long as it is permissible under CRS, the Bill has incorporated the relevant arrangement.</p> <ul style="list-style-type: none"> • Furthermore, in order to provide FIs with greater flexibility to conduct the relevant procedures, the Bill has incorporated various alternative options permissible under CRS, such as expanding the definition of "pre-existing account" to cover "new accounts" opened by pre-existing customers, so that the reporting FIs can adopt the same procedures for both types of accounts. • IRD will draw up clear guidelines to facilitate the implementation of the relevant arrangement by the industry.
B.2 The thresholds for exempting different types of accounts from due diligence (such as \$7,800 for dormant account, and \$7.8 million for pre-existing individual low-value account) should be aligned.	AHKA	<ul style="list-style-type: none"> • On whether an account can be exempted from due diligence procedures, CRS has provided for the threshold requirements for various types of accounts. If we take the liberty of adjusting the thresholds concerned, it will depart from the CRS requirements and we will not be able to meet the relevant international standard.
B.3 All account holders should be required to provide self-certification.	AHKA	<ul style="list-style-type: none"> • The Bill has already incorporated various alternative options permissible under CRS, including the option of allowing reporting FIs to apply the due diligence procedures of new accounts to pre-existing accounts where necessary, so that they may request pre-existing account holders to provide self-certification to ascertain their tax residence.
B.4 "Reporting FIs" and "non-Hong Kong tax resident reporting account" should be clearly defined.	ICC-HK	<ul style="list-style-type: none"> • The new section 50A to be introduced by the Bill has, in accordance with CRS, clearly set out the definitions of "reporting FIs" and "reportable accounts".

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<p>B.5 Since the new section 50C(3)(a) to be introduced by the Bill has clearly set out the information required to be furnished, there is no need to introduce section 50C(3)(b) for the Board of Inland Revenue to specify any other information.</p>	<p>HKICPA</p>	<ul style="list-style-type: none"> The proposed new section 50C(3)(b) is required because, apart from the information required by CRS, some other information is also required in the return for practical and operational need (such as information of the reporting FI (e.g. business registration number and address), the name of the service provider or authorized person engaged, the name of the person responsible for submitting the return and that person's declaration). According to the existing IRO, the Board of Inland Revenue may specify any forms or the form of any forms which may be necessary for carrying IRO into effect.
<p>B.6 Government should set out through legislation, guidelines or departmental instructions and practice notices ("DIPNs") further details on areas such as transitional arrangement, enforcement for the initial period, interface with other relevant regulatory regimes, and "reasonableness test" to be conducted by the reporting FIs (with examples). .</p>	<p>HKAB PWMA</p>	<ul style="list-style-type: none"> The areas raised involve practical and operational arrangements. The Government will consider providing further details on these areas when drawing up relevant guidelines or DIPNs. In formulating the relevant guidelines, IRD will keep close contact with the industry.
<p>B.7 Since account holders may not know their taxpayer identification number ("TIN"), it is suggested that account holders may use passport number instead of TIN.</p>	<p>HKFI</p>	<ul style="list-style-type: none"> According to CRS, the definition of TIN may include a functional equivalent. TIN to be collected in each jurisdiction is different. Should account holders have any questions, they may browse the website set up by OECD, which has listed the TIN information of various jurisdictions.

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B.8 The Government should provide guidelines for FIs on how to identify the controlling persons.	HKFI	<ul style="list-style-type: none"> • Having regard to the CRS requirements, we have provided a definition of “controlling persons” in the Bill, and elaborated what is meant by exercising control over an entity under different circumstances (i.e. as a corporation, partnership or trust; or neither of the above) for the purpose of identifying the controlling persons. • IRD will issue guidelines in this aspect in future, so as to facilitate the actual implementation by reporting FIs.
C. Scope of Exemption		
C.1 Support Government's proposal to include low-risk FIs and financial accounts into the lists of “non-reporting FIs” and “excluded accounts” to reduce compliance costs.	CGCC	<ul style="list-style-type: none"> • Noted.
C.2 Apart from Class A and C insurance products, all other insurance products should be included in the list of “excluded accounts” given the low risk of their being used to evade tax. If such products cannot be exempted, exemptions should be provided for insurance products with no investment-linked component, such as reinsurance contracts, property and casualty contracts, contracts	HKFI	<ul style="list-style-type: none"> • The Bill has, in accordance with CRS, provided that reporting FIs only have to report insurance accounts concerning annuity contracts and cash value insurance contracts. The Bill has also provided a clear definition on “cash value”. For example, “cash value” does not include an amount payable under an insurance contract solely because of the death of an individual insured under a life insurance contract, nor does it include an amount payable as a personal injury or sickness benefit or other benefit providing indemnification of economic loss incurred on the occurrence of the event insured against, etc. Moreover, the Bill has clearly set out that an indemnity reinsurance contract between two insurance companies do not fall under cash value insurance contract.

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without cash value (e.g. accident and medical policies, credit life policy and group insurance products).		<ul style="list-style-type: none"> • Since the Bill has clearly set out the insurance accounts required to be reported, we consider it unnecessary to incorporate the relevant items into “excluded accounts”.
C.3 Charities under section 88 of IRO should be exempted.	ICC-HK	<ul style="list-style-type: none"> • CRS has stipulated that a jurisdiction cannot define an entity as “non-reporting FI” solely because it is a non-profit-making organisation.
C.4 All entities which are not reporting FIs should be incorporated into the list of “non-reporting FIs”.	ICC-HK	<ul style="list-style-type: none"> • The Bill has clearly defined “non-reporting FIs”. An organization will not be subject to the regime for “reporting FIs” as set out in the Bill if it does not fall under the scope of “reporting FIs”. Moreover, we have already incorporated 13 exempted organisations into the list of “non-reporting FIs” (Schedule 17C to the Bill).
D. Proposed Sanctions		
D.1 Agree with the proposed sanctions on FIs, whilst the sanctions on employees should not be too harsh.	CGCC	<ul style="list-style-type: none"> • In order to achieve deterrent effect, we have to put in place appropriate penalty provisions to ensure effective implementation of the AEOI arrangement while not imposing disproportionately heavy sanctions on FIs and individuals. • Having considered the views collected during the consultation period, we have proposed to do away with sanctions for employees unless they have caused or permitted the FIs to provide incorrect return in a willful manner.
D.2 Proposed additional daily fine (\$500) in the new section 80B(4):	AHKA	<ul style="list-style-type: none"> • The penalty proposed under the new section 80B(4) will apply to the following scope of non-compliance –

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Does it cover all kinds of non-compliance of the FI concerned, and is the penalty too lenient?		<ul style="list-style-type: none"> (a) breaching the new section 50C(1), i.e. the reporting FI fails to furnish a return to IRD in accordance with a notice given by IRD; or (b) breaching the new section 51B(1AAAD) or 50BA(6), i.e. the reporting FI fails to take any action as specified in the notice issued by IRD that is necessary for rectifying its compliance system and process, within a reasonable time and in a manner as specified in the notice. <ul style="list-style-type: none"> • The relevant sanction is formulated with reference to the penalties for similar offences in the existing IRO.
D.3 Since service providers only act upon FIs' instructions, and a reporting FI would not be relieved from its reporting and due diligence obligations even if a service provider has been engaged (the proposed new section 50H), is it necessary to impose sanctions on service providers and, even if yes, should the level of sanctions be adjusted?	AHKA HKICPA	<ul style="list-style-type: none"> • CRS provides that a jurisdiction must put in place rules and procedures to ensure effective implementation of AEOI. We consider it necessary to impose sanctions on service providers to ensure effective implementation of AEOI.
D.4 The penalty provisions for employee, director, service provider or any other person who, with intent to defraud, causes or permits an FI to provide any information that is misleading,	AHKA	<ul style="list-style-type: none"> • The Bill proposes that for the relevant person that, with intent to defraud, causes or permits the reporting FIs to provide any information that is misleading, false or inaccurate, the penalties are set as follows for all – <ul style="list-style-type: none"> (a) a fine at level 3 and imprisonment for 6 months (on summary conviction); or

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false or inaccurate in a material particular, should be aligned.		(b) a fine at level 5 and imprisonment for 3 years (on conviction on indictment).
D.5 Under the new section 80C, it is unclear whether the person (other than an employee and a service provider) engaged to work for a reporting FI or the person who is in the management of a reporting FI will be caught.	HKICPA	<ul style="list-style-type: none"> The new section 80C(1) has set out the three circumstances under which a person will be regarded as a person employed by the reporting FIs. If such person, with intent to defraud, causes or allows the FI to provide any information that is misleading, false or inaccurate in a material particular in a return furnished under section 50C, the person commits an offence.
<i>E. Safeguard Measures for Taxpayers</i>		
E.1 The Government should ensure that taxpayers' information is kept confidential.	CGCC	<ul style="list-style-type: none"> The Government has all along attached great importance to the protection of the privacy of taxpayers and the confidentiality of information exchanged, in the course of automatic exchange of financial account information. The EOI article of CDTA and relevant articles of the TIEA provide for safeguards to protect taxpayers' privacy and confidentiality of information exchanged. The relevant CDTAs and TIEAs are implemented by way of Orders made under section 49(1A) of the IRO. Given that we would implement AEOI under the existing CDTA and TIEA framework, the relevant safeguards will continue to be applicable. The AEOI standard also provides for similar safeguards. The Model CAA provides that all information exchanged is subject to the confidentiality rules and other safeguards provided for in the Convention/Instrument. It also provides that a competent authority may suspend EOI by giving notice in writing to the other competent
E.2 There are no effective safeguard measures or penalties to ensure that the exchanged information is protected.	STEP	
E.3 Support adopting the safeguard provisions provided in the existing comprehensive avoidance of double taxation agreements ("CDTAs") and tax information exchange agreements ("TIEAs") for AEOI.	ICC-HK	

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E.4 Not sure how the Government will monitor compliance of the AEOI partners with the safeguard provisions in the relevant agreements.		<p>authority if there is or has been significant non-compliance with CAA by the other competent authority. The competent authority may also terminate CAA by giving notice of termination to the other competent authority.</p> <ul style="list-style-type: none"> In fact, OECD also attached importance to the safeguard measures for information protection. The Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) is now conducting a review, through means such as questionnaire survey and on-site visit, on the measures taken by its members to safeguard the privacy and confidentiality of information exchanged. In case a jurisdiction cannot meet these standards (whether in law or in practice), the transmission of information to that treaty partner can be suspended.
E.5 The existing Inland Revenue (Disclosure of Information) Rules (Cap. 112BI) (“Disclosure Rules”) should be applicable to the AEOI arrangement.	CGCC	<ul style="list-style-type: none"> At present, the Disclosure Rules have provided for a notification and review system in handling EOI requests and related appeals. The Disclosure Rules are <i>not applicable</i> to the AEOI arrangement. If a notification and review mechanism is in place for AEOI, it would unduly delay effective EOI, which is against the EOI principles of OECD. No similar notification and review system is introduced by the competent authorities of other jurisdictions.
E.6 Reporting FIs should be allowed to rely on the general notifications to customers on the possible use of the information collected through the Terms and Conditions. The reporting FI is only required to provide a copy of the relevant account and personal data to its account holder upon	HKFI	<ul style="list-style-type: none"> According to the existing relevant legislation to protect privacy, account holders can request access to and request correction of their personal data, so as to ensure the information is accurate. In fact, having regard to these concerns, we have communicated with FI groups and reminded them to take appropriate measures as follows – (a) to amend Personal Information Collection Statement to ensure that customers are duly informed of the purpose of the use of the

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request.		personal data for AEOI arrangement and the relevant authorities/persons that the information may be transferred to;
E.7 It is proposed that the reporting FIs should be required to send a copy of the information to be reported to both IRD and the relevant account holders at the same time. If this is not feasible to provide a copy of the information to each relevant account holder, the reporting FIs should provide a document to their relevant clients on the information they have reported to IRD after furnishing the information to IRD. Account holders should have the right to obtain a copy of the information submitted by FIs from IRD and to request IRD to correct the relevant information.	HKICPA	(b) to duly inform their account holders in advance, as a matter of good corporate governance, that FIs will collect information such as TINs or dates of birth when the relevant accounts are identified as "reportable accounts"; and (c) to take all practicable steps to ensure that the personal data is accurate and that account holders will be allowed to review and correct their personal and financial data.
E.8 The Government should clearly set out the approach of protecting the confidentiality of the taxpayers' information through legislation, guidelines or DIPNs.	HKAB PWMA	
E.9 The Government should set up an	ICC-HK	<ul style="list-style-type: none"> • Since AEOI arrangement does not involve requests for exchange, the

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independent committee to consider each request for AEOI and put in place a review mechanism.		proposal is not feasible.
E.10 Concern that the tax authorities are not able to effectively protect the information exchanged to prevent the information from being used by criminals.	STEP	<ul style="list-style-type: none"> • IRD has attached great importance to the security of the information system and data, so as to ensure that the taxpayers' information and the exchanged information are properly protected and kept confidential. IRD has, in accordance with the international standards and the industry best practices, formulated and implemented its departmental information security policies, strictly carried out system security management, conducted regular security risk assessments and third party audits, and continuously enhanced their security management systems and facilities. Furthermore, IRD has also adopted advanced information security technologies in the industry and implemented stringent security control, monitoring and detection procedures and measures, so as to ensure its normal operation and prevent cyber attacks and intrusions, as well as ensuring that only authorised staff could gain access to taxpayers' information when carrying out duties. • The Global Forum is now conducting a review, through means such as questionnaire survey and on-site visit, on the measures (including computer security measures) taken by its members to safeguard the privacy and confidentiality of information exchanged.
F. Others		
F.1 The Government should launch publicity programmes to clearly explain the AEOI requirements to	HKFI	<ul style="list-style-type: none"> • IRD has already uploaded a set of frequently asked questions onto its website to succinctly explain, with examples, the operation and requirements of AEOI. IRD will update the relevant information in

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the public and FIs.	HKAB PWMA ICC-HK	a timely manner. Furthermore, IRD will draw up relevant guidelines to facilitate the industry operation.
F.2 Why the proposed new section 50K is necessary?	HKICPA ICC-HK	<ul style="list-style-type: none"> At present, IRD may administer and enforce the relevant provisions of IRO having regard to the information furnished by the relevant persons in accordance with IRO. For the sake of clarity, we propose to add section 50K to the Bill to avoid doubt.
F.3 Why the proposed new section 61C is necessary and why the terminology used is different from that in the existing section 61A of IRO?	HKICPA	<ul style="list-style-type: none"> CRS provides that a jurisdiction must put in place rules and procedures to ensure effective implementation of AEOI, including preventing any persons or FIs from adopting any practices to circumvent their obligations. The relevant new provision is necessary. The terminology proposed to be used in new section 61C (i.e. "the main purpose or one of the main purposes") is in line with the latest international practice. The relevant terminology is commonly adopted in overseas tax legislation and CDTAs (including tax agreements signed between Hong Kong and its partners, as incorporated in the subsidiary legislation of IRO). We have also made reference to similar provisions of other jurisdictions, such as the UK.