

Bills Committee on Inland Revenue (Amendment) Bill 2016

**List of follow-up actions arising from the discussion
at the meeting on 11 April 2016**

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

According to paragraph 3(b) of the Administration's paper (LC Paper No. CB(1)772/15-16(02)), the Inland Revenue Department ("IRD") may contact an account holder and examine the information in the self-certification provided by that person to a reporting financial institution ("FI") for the purpose of automatic exchange of financial account information in tax matters, so as to establish whether the information in the self-certification is correct or not. The Administration is requested to clarify whether the account holder concerned may exercise the right of silence when being requested to make a defence in respect of the self-certification made, and if so, whether IRD will caution the account holder about his/her entitlement to this right.

Issue of search warrant

2. The new section 51B(1AAAB) of the Inland Revenue Ordinance (Cap. 112) ("IRO") provides for the powers which the Commissioner of Inland Revenue or authorized officer may exercise with a search warrant obtained from a magistrate under the new section 51B(1AAA), including entering and having free access to a place where the Commissioner or authorized officer suspects there to be any articles or data of the FI or its service provider (if any), or of any other person, that may afford evidence material in assessing, among others, the liability of a person for tax of a reportable jurisdiction (subsection (1AAAB)(a)(ii)). In this connection, the Administration is requested to clarify why the liability of a person for tax of a reportable jurisdiction is not among the matters stipulated in the new section 51B(1AAA) which the Commissioner or authorized officer must satisfy the magistrate for the purpose of obtaining the search warrant.

Offences relating to reporting financial institutions

3. In connection with the offences relating to reporting FIs under the new section 80B of IRO, the Administration is requested to explain how an FI may be regarded as having provided, in a knowing or reckless manner, information that is "misleading, false or inaccurate", with reference to past cases of successful prosecution for similar offences in IRO or other local legislation.

Offences of service provider

4. Regarding engagement of service provider under the new section 50H of IRO to carry out a reporting FI's obligations under the new sections 50B(1), 50B(2) or 50C(1), and related offences under the new section 80D(1) to (3) whereby a service provider commits an offence if the service provider, without reasonable excuse, fails to fulfill any of the aforesaid obligations, the Administration is requested to:

- (a) elaborate on engagement of service providers by FIs and the services involved, with reference to similar practices in the financial services industry;
- (b) clarify whether and how a service provider will be solely or jointly liable if it is engaged by an FI to carry out part, and not all, of the FI's obligations in the new section 50B(1), 50B(2) or 50C(1), in particular if more than one service provider is engaged by the FI to carry out the obligations;
- (c) explain whether and how the provisions in respect of the obligations and offences of service providers will be applicable to, and sufficient to catch, service providers incorporated or operating overseas and engaged by FIs in Hong Kong; and
- (d) explain the intended meaning of "without reasonable excuse" in the context of the new section 80D and address members' concerns that the proposed offences appear to be strict offences and unfair to the service providers (as they may act according to the FIs' instructions only), and in particular, consider whether the service providers should be held liable only if they fail to meet those requirements knowingly or recklessly.

Drafting issues

5. The Administration is requested to provide justifications as to the use of different expressions (i.e. "incorrect" and "inaccurate") in similar context in the new sections 80(2E), 80B and 80C of IRO and whether the drafting in the above sections may be aligned to achieve consistency.