

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

**List of follow-up actions arising from the discussion  
at the meeting on 26 April 2016**

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

According to paragraph 3 of the Administration's paper (LC Paper No. CB(1)830/15-16(02)), even if an account holder, in making a self-certification to a reporting financial institution ("FI") for the purpose of automatic exchange of financial account information in tax matters ("AEOI"), is suspected to provide misleading, false or incorrect information in a material particular, the Administration will not and cannot rely on the self-certification provided by the account holder to establish that the person concerned commits an offence. The Administration must conduct investigation in the first place so as to confirm if there is sufficient evidence to prove that the person concerned provides such information knowingly or in a reckless manner before taking prosecution actions. In this connection, the Administration is requested to:

- (a) provide a list of information required to be provided by an account holder when making self-certification to a reporting FI, together with a sample self-certification form; and information required to be furnished by the FI (or its service provider) to the Inland Revenue Department ("IRD") for AEOI;
- (b) provide information on past cases of successful prosecution for similar and comparable offences against a person providing information that is "misleading" or "incorrect" under the Inland Revenue Ordinance (Cap. 112) ("IRO") or other local legislation;
- (c) address a member's concern about whether IRD may exercise its information gathering powers under the existing provisions of IRO to request an account holder, who is suspected of making false self-certification, to provide certain information in respect of the self-certification made and that person will not be able to exercise his/her right to keep silent under such circumstances; and
- (d) consider adding a provision in the proposed amended section 80 of IRO or other provisions as appropriate to stipulate explicitly that the Administration may not solely rely on the self-certification provided by an account holder to establish that the person concerned commits an offence under the new section 80(2E) relating to the signing of self-certification that is misleading, false or incorrect.

Offences of service provider

2. The Administration is requested to:

- (a) provide information on the relevant provisions, if any, in overseas legislation which provide for offences of service provider engaged by FI to carry out the FI's obligations under AEOI, similar to those proposed in the new section 80D of IRO; and
- (b) re-consider whether the offence provisions in respect of service providers under the Bill can be removed in the light that:
  - (i) no offence provisions are in place under the existing section 80 for similar contexts (e.g. engagement of service providers such as accountants or tax consultants by tax payers); and
  - (ii) the contractual arrangement between the reporting FI and the service provider will normally include provisions governing the service provider's liabilities in the event of its failure to carry out the reporting FI's obligations under the Bill.

Council Business Division 1  
Legislative Council Secretariat  
3 May 2016