

**Response to further comments raised by
the Hong Kong Institute of Certified Public Accountants (“HKICPA”)**

HKICPA submitted a written submission for the meeting of the Bills Committee on the Inland Revenue (Amendment) Bill 2016 (“the Bill”) on 1 March 2016. The submission expressed, among others, HKICPA’s view on its suggestion of setting up a mechanism for account holders to get access to and correct information furnished to financial institutions (“FIs”) / information submitted from IRD to partners implementing automatic exchange of financial account information in tax matters (“AEOI”), and its views / questions on section 50C(3)(b) (about the scope of any other information that the Board of Inland Revenue specifies), section 50K (about IRD’s use of information provided by reporting FIs) and the scope of targets covered by section 80C. The Administration already provided its response in March 2016 (LC Paper No. CB(1)697/15-16(02)). Having regard to the further comments raised by HKICPA on these few areas, the Administration’s response is set out as follows –

Notifying account holders of the information exchanged

2. HKICPA considers that the Bill should provide for a mechanism for account holders to apply to FIs and the Inland Revenue Department (“IRD”) to get access to and correct their personal data.
3. Regarding access to and correction of personal data held by FIs, according to the Data Protection Principles provided under the Personal Data (Privacy) Ordinance (“PDPO”), it is incumbent upon FIs to ensure that account holders are duly informed of the purpose of the use of the information, and to take all practical steps to ensure that the personal data is accurate and that the account holders will be allowed to review and correct their personal and financial data. As we indicated to the Bills Committee when responding to the deputations, we had already communicated with the FI groups and reminded them to amend the Personal Information Collection Statement.
4. The information furnished annually by the reporting FIs to IRD basically includes the specified personal data and financial data (such as account balance or value) of the account holders. In terms of practical operation, when FIs collect relevant personal data from the account holders for AEOI purposes,

the FIs will inform the account holders that the information collected will be transmitted to IRD and used for purposes relating to AEOI arrangement. We will also request FIs to inform account holders of the categories of financial data to be transmitted to IRD for AEOI purposes.

5. The above administrative arrangement should have addressed the further comments raised by the HKICPA, i.e. for AEOI implementation, the reporting FIs will inform their relevant clients of the use of the personal data and account information collected, and state that the information collected under section 50C of the Bill will be transferred to IRD. We will keep contact with the relevant FI groups to ensure that they will put in place appropriate measures and procedures.

6. Since account holders can get access to and correct their personal data held by FIs through the above channel directly, we consider it unnecessary to separately stipulate that the account holders have the right to get access to the information furnished by the FIs to IRD and request correction of the relevant information. Basically, IRD will transfer the data files furnished by FIs to the relevant jurisdictions, and FIs can already inform the account holders of the use of the information submitted (i.e. for purposes relating to AEOI arrangement) and the authorities/persons to which the information may be transferred. In fact, in accordance with section 58 of PDPO, the exchange of information by IRD with another jurisdiction with which Hong Kong has signed either a comprehensive avoidance of double taxation agreement or tax information exchange agreement is exempt from the Data Principles 3 and 6 of PDPO, if meeting the requirements of the relevant provisions. We will also rely on such agreements as the basis for implementing AEOI in future.

Section 50C (Information in the returns)

7. According to the Bill, FIs are required to furnish returns to IRD so as to report the “required information” of the reportable accounts, which covers “any other information that the Board of Inland Revenue specifies” (section 50C(3)(b)). HKICPA is concerned whether the Administration will make use of the relevant provision to require FIs to seek personal data of the relevant account holders beyond the requirement in the legislation.

8. The scope of information to be furnished by the reporting FIs to IRD

under the Bill is formulated in accordance with the Common Reporting Standard, and the details are set out in the new sections 50F and 50G in the Bill. Should the Administration require the FIs to provide financial account information beyond those required under CRS, the Administration must amend sections 50F and 50G before it can require FIs to collect and furnish the relevant information to IRD.

9. “Any other information that the Board of Inland Revenue specifies” as set out in the new section 50C(3)(b) in the Bill refers to the relevant information of the form and format specified in the return, so as to facilitate the practical operation of AEOI, such as the information of the reporting FI (e.g. business registration number and address) and name of the person responsible for submitting the return and that person’s declaration. Section 50C(4) also provides that the return must be furnished by using the system and in the form specified by the Board of Inland Revenue. In fact, according to section 86 of 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. The relevant provision is formulated in line with the current arrangement.

Section 50K (Use of Information provided by reporting FIs)

10. HKICPA has reservations on the possible use of reportable information under AEOI for the administration and enforcement of the Inland Revenue Ordinance (“IRO”). As we have explained, IRD at present may administer and enforce the relevant provisions of the IRO having regard to the information furnished by the relevant persons in accordance with IRO. For the sake of clarity, section 50K is added to the Bill, which provides for the relevant power, to avoid doubt. We have nothing further to supplement in this regard.

Section 80C (Offences of persons employed by reporting FIs, etc.)

11. HKICPA would like the Administration to clarify the coverage of target persons of the new sections 80C(1)(b) and (c). The purpose of the new section 80C in the Bill is to provide for the offence for persons **employed or engaged** by FIs and persons concerned in the management of the FI, who with intent to defraud causes or allows the FI to provide information that is misleading, false or inaccurate in a material particular in a return furnished to IRD. Apart from the **employees** of the FIs under section 80C(1)(a), section 80C(1)(b) covers

those persons **engaged** by the reporting FIs but do not have the employer-employee relationship, such as consultants or agents engaged by FIs and they are not service providers delivering tasks specified under sections 50B or 50C. As for section 80C(1)(c), it covers persons who are concerned in the **management** of an FI, such as partners.

12. The Government is happy to listen to further views from HKICPA, and respond to its questions.

Financial Services and the Treasury Bureau
May 2016