

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

**INLAND REVENUE
(EXCHANGE OF INFORMATION RELATING TO TAXES)
(KINGDOM OF DENMARK) ORDER**

**INLAND REVENUE
(EXCHANGE OF INFORMATION RELATING TO TAXES)
(FAROEES) ORDER**

**INLAND REVENUE
(EXCHANGE OF INFORMATION RELATING TO TAXES)
(GREENLAND) ORDER**

**INLAND REVENUE
(EXCHANGE OF INFORMATION RELATING TO TAXES)
(ICELAND) ORDER**

**INLAND REVENUE
(EXCHANGE OF INFORMATION RELATING TO TAXES)
(KINGDOM OF NORWAY) ORDER**

**INLAND REVENUE
(EXCHANGE OF INFORMATION RELATING TO TAXES)
(KINGDOM OF SWEDEN) ORDER**

INTRODUCTION

At the meeting of the Executive Council on 22 September 2015, the Council ADVISED and the Chief Executive ORDERED that the following six Orders should be made under section 49(1A) of the Inland Revenue Ordinance, Cap. 112 (the Ordinance) –

- A (a) Inland Revenue (Exchange of Information relating to Taxes) (Kingdom of Denmark) Order (at Annex A);
- B (b) Inland Revenue (Exchange of Information relating to Taxes) (Faroes) Order (at Annex B);
- C (c) Inland Revenue (Exchange of Information relating to Taxes) (Greenland) Order (at Annex C);
- D (d) Inland Revenue (Exchange of Information relating to Taxes) (Iceland) Order (at Annex D);
- E (e) Inland Revenue (Exchange of Information relating to Taxes) (Kingdom of Norway) Order (at Annex E); and
- F (f) Inland Revenue (Exchange of Information relating to Taxes) (Kingdom of Sweden) Order (at Annex F);

The six Orders implement the Tax Information Exchange Agreements (TIEAs) between the Hong Kong Special Administrative Region and Denmark, the Faroes, Greenland, Iceland, Norway and Sweden respectively. These six TIEAs were signed on 22 August 2014.

JUSTIFICATIONS

Policy on Exchange of Information Arrangements

2. Over the years, it has been the Government's policy priority to conclude comprehensive agreements for avoidance of double taxation (CDTAs) with Hong Kong's trading and investment partners, thereby facilitating the flow of trade, investment and talent between Hong Kong and the rest of the world, as well as enhancing Hong Kong's position as an international business and financial centre. Up to mid-September 2015, Hong Kong has signed 32 CDTAs¹. At the same time, Hong Kong is committed to delivering its international commitment to promoting tax transparency. Hence, all the CDTAs signed embody a mechanism for exchange of information (EoI) up to the international standard as far as practicable.

¹ Our 32 CDTA partners include Belgium (2003), Thailand (2005), the Mainland of China (2006), Luxembourg (2007), Vietnam (2008), Brunei, the Netherlands, Indonesia, Hungary, Kuwait, Austria, the United Kingdom, Ireland, Liechtenstein, France, Japan, New Zealand (2010), Portugal, Spain, the Czech Republic, Switzerland, Malta (2011), Jersey, Malaysia, Mexico, Canada (2012), Italy, Guernsey, Qatar (2013), Korea, South Africa and the United Arab Emirates (2014). (*Note: The years in brackets denote the years in which the relevant CDTAs were signed.*)

3. According to the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) of the Organisation for Economic Cooperation and Development (OECD), a jurisdiction should make available both CDTA and TIEA as instruments for EoI with other jurisdictions. TIEA is a form of EoI agreement which carries no double taxation relief. During an earlier review of Hong Kong's compliance with the international EoI standard, the Global Forum recommended that Hong Kong should put in place a legal framework for entering into TIEAs with other jurisdictions, otherwise Hong Kong would run the risk of being labelled as an uncooperative tax jurisdiction. Against such backdrop, we introduced relevant legislative amendments into the Legislative Council (LegCo) in April 2013. The Inland Revenue (Amendment) (No.2) Ordinance 2013 was enacted in July 2013, enabling Hong Kong to enter into TIEAs with other jurisdictions where necessary.

4. While it remains our policy priority to expand Hong Kong's network of CDTAs, according to the prevailing international standard, preference for a CDTA over a TIEA cannot be a reason for refusing to enter into an EoI agreement with relevant partners. Hence, in response to requests from a number of jurisdictions, we have commenced TIEA discussions with them as they have indicated no interest in pursuing CDTAs with Hong Kong at the current juncture despite our repeated persuasion. The six Nordic jurisdictions are cases in point. While we have signed TIEAs with these jurisdictions, Hong Kong would, as a business facilitation initiative, continue its efforts to expand the network of CDTAs with its trading and investment partners. The conclusion of TIEAs with certain jurisdictions does not rule out the possibility of pursuing CDTAs with any of them later if they are interested.

Salient Features of the six TIEAs with the Nordic jurisdictions

5. Hong Kong adopts the OECD 2002 version of TIEA model in pursuing TIEAs with other jurisdictions, except for certain modifications to address local needs, which are permissible under the commentary of the OECD model. Salient features of the six TIEAs with the Nordic jurisdictions are set out in the ensuing paragraphs.

6. Regarding tax types, following the enactment of the Inland Revenue (Amendment) (No. 2) Ordinance 2013, we have relaxed the coverage of tax types for the purpose of EoI under CDTAs/TIEAs to the effect that EoI will no longer be restricted to income taxes² or other taxes of

² Income taxes refer to those imposed on taxpayers (i.e. individuals or entities) that vary with the income or profits of the taxpayers, such as taxes on business profits, employment income, rental income, capital gains, interest, royalty, dividends and pensions.

a similar character. Specifically, in the six agreements with the Nordic jurisdictions, we have adopted a positive listing approach, in the light of the views expressed by LegCo, to set out the tax types covered. A list of tax types covered by each of the TIEAs is set out in Annex G.

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7. Although the six TIEAs with the Nordic jurisdictions embody a seemingly wider scope of tax types when compared with most of our CDTAs signed, we envisage that the information requested for EoI purpose will essentially be the same as that provided to our CDTA partners previously, notably ownership and banking information as well as accounting and transaction records.

8. In fact, the EoI mechanism under TIEAs is exactly the same as the existing one under CDTAs. The TIEA partner will have to lodge EoI requests to the competent authority of Hong Kong (i.e. Inland Revenue Department (IRD)) if it wishes to obtain information from Hong Kong under the EoI arrangement of the TIEA. Upon receipt of an EoI request, IRD will examine, with reference to the particulars provided by the Nordic jurisdiction(s), whether the information requested is foreseeably relevant according to the conditions laid down in the TIEAs with the Nordic jurisdictions and in the Inland Revenue (Disclosure of Information) Rules (Cap. 112 sub. Leg. BI). If the conditions are not fulfilled, IRD will not accede to the EoI request. Even when IRD acts on a valid EoI request and exercises its information-gathering power to approach a person for the requested information, that person has no obligation to provide to IRD, for EoI purposes, information which is not in his/her possession or control and is not required to be kept or is beyond the statutory retention period under the Ordinance.

9. In order to protect taxpayers' privacy and confidentiality of information exchanged, the Government has undertaken to LegCo that same for CDTAs, we will adopt highly prudent safeguard measures in our TIEAs to be signed and will highlight deviations, if any, from the pledged safeguards when we submit the subsidiary legislation implementing TIEAs to LegCo for negative vetting. The safeguard measures, which have all been taken on board in the six TIEAs with the Nordic jurisdictions, are -

- (a) we only exchange information upon receipt of requests and no information will be exchanged on an automatic or spontaneous basis;
- (b) the information sought should be foreseeably relevant to the administration and enforcement of domestic tax laws of the Contracting Parties, i.e. no fishing expedition;

- (c) information generated before the effective date of the relevant TIEA can be disclosed to the TIEA partner only if the standard of foreseeable relevance is satisfied upon examination of the particulars provided by the TIEA partner in its EoI request, and the requested information relates to the carrying out of the relevant TIEA or the administration or enforcement of the tax laws of the TIEA partner concerning taxes imposed in periods after the TIEA becomes effective;
- (d) information received by our TIEA partners should be treated as confidential;
- (e) information would only be disclosed to the persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of and the determination of appeals in relation to taxes falling within the scope of EoI but not for release to their oversight bodies unless there are legitimate reasons given by the TIEA partners and where applicable, such oversight bodies should be positively listed in the relevant TIEA or its protocol;
- (f) information received should not be disclosed to a third jurisdiction;
- (g) there is no obligation to supply information under certain circumstances, for example, where the information would disclose any trade, business, industrial, commercial or professional secret or trade process, or which is not obtainable under the laws of the requesting party for the purposes of the administration or enforcement of its own tax laws, including information that would be covered by legal professional privilege, etc.; and
- (h) we will not accede to any requests for tax examinations abroad, i.e. representatives of one Contracting Party will not be permitted to conduct tax examinations in the territory of another Contracting Party.

10. Insofar as costs for handling EoI requests are concerned, the six TIEAs with the Nordic jurisdictions provide that while the requested party shall bear the ordinary costs incurred in providing assistance for the purpose of responding to an EoI request, the requesting party shall bear the associated

extraordinary costs, if any, such as fees charged by third parties for carrying out research, costs of engaging experts, interpreters or translators, litigation costs in relation to the EoI requests and costs of obtaining depositions and testimony.

Legal Basis

11. Under section 49(1A) of the Ordinance, the Chief Executive in Council may, by order, declare that arrangements specified in the order have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect. By such order, those arrangements shall have effect in relation to tax under the Ordinance despite anything in any enactment; and for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of that territory, shall have effect in relation to any tax of that territory that is the subject of that provision. Under section 49(1B)(b) of the Ordinance, arrangements made for exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned may be specified in an order under section 49(1A) of the Ordinance.

OTHER OPTIONS

12. An order made by the Chief Executive in Council under section 49(1A) of the Ordinance is the only way to give effect to the six TIEAs with the above six Nordic jurisdictions. There is no other option.

THE SIX ORDERS WITH THE NORDIC JURISDICTIONS

13. **Section 2** of each of the six Orders mentioned in paragraph 1 above declares that the arrangements specified in section 3 for the exchange of information have been made and that it is expedient that those arrangements should have effect. **Section 3** of each of the six Orders states that the arrangements are those in Articles 1 to 13 of each of the six Orders, as set out in the **Schedule** to each of the six Orders.

LEGISLATIVE TIMETABLE

14. The legislative timetable will be as follows –

Publication in the Gazette	2 October 2015
Tabling at LegCo	14 October 2015
Commencement of the Order	4 December 2015

IMPLICATIONS OF THE PROPOSAL

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15. The proposal has financial, economic and civil service implications as set out in Annex H. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation. It has no productivity, environmental, sustainability, family or gender implications.

PUBLIC CONSULTATION

16. We have kept the business and professional sectors informed of the negotiation of TIEAs with the six Nordic jurisdictions. They generally reckon the need for the TIEAs given the international trend on tax transparency.

PUBLICITY

17. We issued a press release on the signing of the six TIEAs with the Nordic jurisdictions on 22 August 2014. A spokesperson will be available to answer media and public enquiries.

BACKGROUND

18. The agreements with the six Nordic jurisdictions are the second batch of TIEAs concluded by Hong Kong with other jurisdictions. The first TIEA was signed with the United States in March 2014 and came into force on 20 June 2014 upon completion of the internal procedures for entry into force on both sides.

ENQUIRY

19. In case of enquiries about this Brief, please contact Mr Gary Poon, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2370.

Financial Services and the Treasury Bureau
30 September 2015