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專責委員會(2)(UA)文件編號 : A1
SC(2)(UA) Paper No.: A1
INLAND REVENUE DEPARTMENT

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來函編號 : CB2/SC/16
Your Ref.:

來函請敘明本局檔案號碼
IN ANY COMMUNICATION PLEASE QUOTE OUR FILE NO.

本局檔案號碼 : DAD(CR)197/1046C
Our File No.:

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Legislative Council
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發出日期 :
Date of Issue: 12 October, 2017

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By post and by fax
(Fax No. : 2509 9055)

Dear Ms SO,

**Select Committee to Inquire into Matters about the Agreement between
Mr LEUNG Chun-ying and the Australian firm UGL Limited**

I refer to your letter of 1 September 2017 requesting the Inland Revenue Department to provide certain information on the requirements and relevant provisions under the taxation laws of Hong Kong which are relevant to the agreement(s) entered into between Mr LEUNG Chun-ying and the Australian firm UGL Limited in 2011; and inviting me or representative(s) of the Inland Revenue Department to attend before the Select Committee to give evidence by answering any question during the course of examination and/or presenting to the Select Committee any documents on matters relating to its inquiry.

I understand from Appendix I to your letter of 1 September 2017 that the “Terms of reference” of the Select Committee are:

***“To inquire into the following matters regarding Mr LEUNG Chun-ying’s signing of an agreement with the Australian firm UGL Limited in 2011 (‘UGL Agreement’) and his receipt of payments amounting to £4 million from UGL Limited (‘Payments’) in connection with the UGL Agreement after assuming the office of Chief Executive: (i) whether Mr LEUNG had complied with the*”**

declaration requirements under Article 47 of the Basic Law and the system of declaration of interests by Members of the Executive Council, (ii) whether the UGL Agreement had given rise to any conflict of interests on the part of Mr LEUNG as the Chief Executive, and (iii) whether the Payments were taxable under the laws of Hong Kong.”
[emphasis added]

According to the “Major areas of study” drawn up by the Select Committee and attached as Appendix III to your letter of 1 September 2017, Item IV is relevant to the Inland Revenue Department:

“IV. Taxation issues

- (a) *whether the Payments or any part(s) of the Payments were taxable under the laws of Hong Kong; and*
- (b) *if the answer to IV(a) above is in the affirmative, whether Mr LEUNG had complied with the taxation laws in force.* [emphasis added]

I wish to inform the Select Committee that the Commissioner of Inland Revenue and officers of the Inland Revenue Department are subject to the official secrecy provision under section 4 of the Inland Revenue Ordinance (Cap. 112) which obliges them to preserve secrecy of “all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under this Ordinance”. The relevant provision is extracted below for ease of reference:

- (1) *Except in the performance of his duties under this Ordinance, every person who has been appointed under or who is or has been employed in carrying out or in assisting any persons to carry out the provisions of this Ordinance shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under this Ordinance, and shall not communicate any such matter to any*

person other than the person to whom such matter relates or his executor or the authorized representative of such person or such executor, nor suffer or permit any person to have access to any records in the possession, custody or control of the Commissioner.

- (2) *Every person appointed under or employed in carrying out the provisions of this Ordinance, shall before acting under this Ordinance take and subscribe before a commissioner for oaths an oath of secrecy in such form as the Board of Inland Revenue may specify.*
- (3) *No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document, or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Ordinance, except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance.*
- (4) *Notwithstanding anything contained in this section, the Commissioner or any officer of the Inland Revenue Department authorized by the Commissioner in that behalf may communicate any matter which comes to his knowledge, including a copy of any return, accounts or other document submitted to him in connection with this Ordinance -*
 - (a) *to the Commissioner of Rating and Valuation, to the Collector of Stamp Revenue, or to the Estate Duty Commissioner, or*
 - (b) *(Repealed 12 of 1999 s. 3)*
 - (c) *to the Secretary for Justice, or any public officer authorized by him, for the purpose of reporting under section 68(5) an appeal to the Board of*

Review, or

- (d) *to any person appointed under or employed in carrying out the provisions of the Business Registration Ordinance (Cap. 310), as regards any matter required to be notified to the Commissioner pursuant to section 8 of that Ordinance by the person submitting such return, accounts or other document.*
- (5) *Notwithstanding anything contained in this section, the Commissioner may permit the Director of Audit or any officer of that department duly authorized by the Director of Audit in that behalf to have such access to any records or documents as may be necessary for the performance of his official duties. The Director of Audit or any officer so authorized shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purpose of subsection (2).*
- (6) *Notwithstanding anything contained in this section, where the Commissioner is of the opinion that any tax deemed to be in default under the provisions of section 71(1) has for the time being become irrecoverable, he may communicate to the Financial Secretary the names and descriptions of the persons charged with such tax together with particulars of the tax in default.*

A person who has breached the secrecy provision will be liable to criminal liability under section 81 of the Inland Revenue Ordinance, which is reproduced below:

- (1) *Any person who -*
- (a) *acts under this Ordinance without taking an oath of secrecy as required by section 4(2); or*

- (b) acts contrary to the provisions of section 4(1) or to an oath taken under section 4(2); or*
 - (c) aids, abets, or incites any other person to act contrary to the provisions of section 4, commits an offence and is liable on conviction to a fine at level 5.*
- (2) Proceedings in respect of an offence under this section must not be commenced after 2 years from the commission of the offence.*
- (3) Subsection (2) applies only to an offence committed on or after the commencement of the Inland Revenue (Amendment) (No. 2) Ordinance 2010 (4 of 2010).*

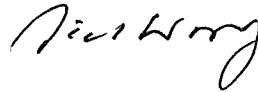
As seen from your letter of 1 September 2017 and its appendices, the information requested and the inquiry are specifically related to Mr LEUNG and his agreement(s) with UGL Limited. It seems likely that in acceding to the Select Committee's request, I or Inland Revenue Department's officers will be disclosing information relating to the affairs of Mr LEUNG that came to my/our knowledge in the performance of my/our duties under the Inland Revenue Ordinance, and be susceptible to breaching the official secrecy provision under section 4(1) of the same Ordinance.

In reply to Hon SIN Chung-kai's question raised at a meeting of the Legislative Council on 20 November 2014 relating to the payments made by UGL Limited to Mr LEUNG, the former Secretary for Financial Services and the Treasury commented generally on how an assessor would assess whether an income or profits would be chargeable to tax. He also stated in his reply that "[g]iven the official secrecy provision under section 4 of [the Inland Revenue Ordinance], the Inland Revenue Department will not comment or disclose any information on individual cases."

In the present case, providing information to or attending hearings before the Select Committee by me or Inland Revenue Department officers does not seem to be disclosure in the performance of our duties under the Inland Revenue Ordinance. Nor does it fall within any of the exemptions under sections 4(4) to (6) of the Ordinance. In the circumstances, I wish to

inform the Select Committee that the request for the provision of information cannot be acceded to and that neither I nor any other officer of Inland Revenue Department will attend the hearings of the Select Committee.

Yours sincerely,



(WONG Kuen-fai)
Commissioner of Inland Revenue

c.c. Hon Paul TSE Wai-chun, JP (Chairman)