

立法會
Legislative Council

LC Paper No. CB(1)16/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/16/2

Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2017

**Minutes of second meeting
held on Friday, 12 May 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon YIU Si-wing, BBS
Hon CHAN Chun-ying

Members absent : Hon James TO Kun-sun
Hon Charles Peter MOK, JP
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai

**Public Officers
attending** : **For item I**

Financial Services and the Treasury Bureau

Mr Andrew LAI, JP
Deputy Secretary (Treasury)²

Ms Pecvin YONG
Principal Assistant Secretary (Treasury) (Revenue)

Inland Revenue Department

Mr CHIU Kwok-kit, JP
Deputy Commissioner (Technical)

Ms LEUNG To-shan
Senior Assessor (Tax Treaty)2

Department of Justice

Ms Phyllis POON
Senior Government Counsel

Attendance by invitation : For item I

The Hong Kong Association of Banks

Mr YUEN Hon-cheung
Acting Chairperson of the OECD Common Reporting
Standard Working Group

The Civic Party

Ms Sarah WONG
District Developer of the Kowloon East Branch

Individual

Ms LEE Suk-yee

Private Wealth Management Association

Mr Peter Michael STEIN
Managing Director

Hong Kong Institute of Certified Public Accountants

Chairman of Taxation Faculty Executive Committee
Mr Anthony TAM

Clerk in Attendance : Ms Angel SHEK
Chief Council Secretary (1)1

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Anki NG
Senior Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Meeting with deputations and the Administration

Meeting with deputations/individuals and the Administration

The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations/individuals that their written submissions provided to the Bills Committee and views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

2. At the invitation of the Chairman, a total of five deputations/individual presented their views at the meeting.

(Post-meeting note: two submissions from deputations on the subject received after the meeting were issued to members vide LC Papers No. CB(1)937/16-17(01) on 12 May 2017 and CB(1)952/16-17(01) on 16 May 2017 respectively.)

3. The Administration provided a consolidated response to the views expressed by the deputations/individuals.

4. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Follow-up actions to be taken by the Administration

5. The Administration was requested to provide a written response to the following issues raised at the meeting:

- (a) the resources and budget in respect of the publicity to enhance the awareness of the general public on automatic exchange of financial

Action

account information in tax matters ("AEOI") and the revised AEOI requirements under the Bill (in particular the expanded scope of reportable jurisdictions), and the details of the publicity programmes; and

- (b) the views and concerns expressed by the deputations at the meeting and in their written submissions.

(Post-meeting note: The Administration's responses were issued to members vide LC Papers No. CB(1)942/16-17(02) on 15 May 2017 and CB(1)952/16-17(02) on 16 May 2017.)

Discussion

Meeting with the Administration

Matters arising from previous meeting

- (LC Paper No. CB(1)915/16-17(01) — List of follow-up actions arising from the meeting on 25 April 2017
- LC Paper No. CB(1)915/16-17(02) — Administration's response to the issues raised at the meeting on 25 April 2017
- LC Paper No. CB(1)915/16-17(03) — Draft Committee Stage amendments proposed by the Administration
- LC Paper No. CB(1)927/16-17(01) — Marked-up copy of the Bill showing the Committee Stage amendments proposed by the Administration (Restricted to Members)

6. The Bills Committee examined and supported the Committee Stage amendments ("CSAs") proposed by the Administration to the Bill.

7. The Chairman concluded that the Bills Committee had completed scrutiny of the Bill.

Action

Legislative timetable

8. The Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 7 June 2017 as proposed by the Administration. The Chairman informed members that the Bills Committee would report its deliberations to the House Committee on 19 May 2017, and the deadline for giving notice of CSAs to the Bill would be 27 May 2017.

II. Any other business

9. There being no other business, the meeting ended at 9:54 am.

Council Business Division 1
Legislative Council Secretariat
11 October 2017

Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2017

**Proceedings of the second meeting
on Friday, 12 May 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item 1 — Meeting with deputations and the Administration</i>			
000112 – 000437	Chairman	Opening remarks	
000438 – 001049	The Hong Kong Association of Banks	Presentation of views [LC Paper No. CB(1)927/16-17(02)](Joint submission)	
001050 – 001702	Private Wealth Management Association	Presentation of views [LC Paper No. CB(1)927/16-17(02)](Joint submission)	
001703 – 002143	Hong Kong Institute of Certified Public Accountants	Presentation of views [LC Paper No. CB(1)937/16-17(01)]	
002144 – 002433	Ms LEE Suk-ye	<p>Presentation of views:</p> <p>(a) expressed support for the legislative proposal and opined that the Government should define clearly the scope of information to be exchanged under the automatic exchange of financial account information in tax matters ("AEOI");</p> <p>(b) the Government should guard against "fishing" requests in order to protect Hong Kong taxpayers' privacy; and</p> <p>(c) the Government should take steps to update its official information sources, including publicity materials and guidance for financial institutions ("FIs") in a timely manner upon passage of the Inland Revenue (Amendment) (No. 3) Bill 2017 ("the Bill").</p>	
002434 – 004157	Chairman Administration	<p>The Administration's consolidated response to the views of the deputations:</p> <p>(a) the Administration had consulted with the stakeholders in March 2017 on the new requirements and the due diligence to be conducted by FIs. While some stakeholders expressed concerns over the compliance burden, stakeholders in general understood the international requirements concerning AEOI and</p>	

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		<p>recognized the need for Hong Kong to brace for the impact;</p> <p>(b) the scope of information to be exchanged under AEOI was governed by the Common Reporting Standard laid by the Organisation for Economic Co-operation and Development ("OECD"), and Hong Kong would follow the requirements strictly;</p> <p>(c) upon the passage of the Bill, the Inland Revenue Department ("IRD") would update the guidelines for FIs, and the Administration would also revise the publicity materials (including television and radio Announcements in the Public Interests, posters and pamphlets) to assist FIs in complying with the new obligations and raise public awareness;</p> <p>(d) the Administration proposed to add 73 reportable jurisdictions to the Inland Revenue Ordinance (Cap. 112) ("IRO") in one go with the first reporting taking place in 2018 (except Republic of Korea where the first reporting would take place in 2019). This would save FIs' need to file back-year returns subsequently with information covering different reporting periods in respect of each jurisdiction whenever Hong Kong entered into a competent authority agreement ("CAA") with a new jurisdiction. Should the relevant data be held only by FIs in the interim and only provided to IRD for those jurisdictions with which Hong Kong had signed a CAA subsequently, in case of data loss in FIs, IRD would not be able to fulfill the international obligations for data exchange;</p> <p>(e) submission of data to IRD for the second half of 2017 instead of the full year of 2017 would be in line with the commitment that Hong Kong had made to OECD. After this one-off arrangement for reporting six-months' data in 2017, the normal full-year reporting would be conducted in subsequent years;</p> <p>(f) should the full year data instead of half year data of 2017 be submitted by certain FIs to IRD beyond the legal requirement, it could give rise to misunderstanding or queries by some customers on the basis for those FIs doing so;</p> <p>(g) prospective AEOI partners which the Administration proposed to include as Hong</p>	

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		<p>Kong's "reportable jurisdictions" were from the following three categories —</p> <ul style="list-style-type: none"> (i) jurisdictions which expressed an interest to OECD in late 2016 in conducting AEOI with Hong Kong; (ii) Hong Kong's tax treaty partners which had committed to AEOI; and (iii) all Member States of the European Union ("EU"). <p>(h) Hong Kong would only conduct AEOI with jurisdictions which had signed dedicated exchange agreements with Hong Kong and had fulfilled OECD's standard and relevant safeguards for protecting data privacy and confidentiality of the information exchanged; and</p> <p>(i) regarding exchange of information on request, IRD had been handling the requests prudently and no "fishing" requests would be entertained. The jurisdiction initiating the request had to prove to IRD that the information so required was foreseeably relevant to its tax administration.</p>	
004158 – 004849	The Civic Party Administration	<p>Presentation of views [LC Paper No. CB(1)952/16-17(01)]</p> <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) OECD and EU released the criteria for identifying "non-cooperative" tax jurisdictions in late 2016. The criteria included the implementation of AEOI, participation in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("Multilateral Convention"), and the implementation of exchange of information on request; (b) if Hong Kong did not take timely steps to preserve the data at least for the second half of 2017 for exchange with other jurisdictions and expand the list of reportable jurisdictions, Hong Kong would be unfavourably rated in the AEOI assessment; (c) the Multilateral Convention was currently not applicable to Hong Kong. Failure in meeting two of the three criteria would risk Hong Kong being listed as a "non-cooperative" jurisdiction, 	

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		<p>which would not only bring reputational damages, but could also subject Hong Kong to counter-measures by other jurisdictions including the imposition of withholding taxes and non-deductibility of costs of transactions;</p> <p>(d) to prepare for the first round of exchanges in 2018, IRD had organized a number of seminars to help FIs familiarize with the reporting requirements, and drawn up dedicated guidelines to support FIs in implementing AEOI; and</p> <p>(e) regarding enforcement during the initial stage of AEOI implementation, the Administration would adopt a facilitating approach and keep compliance burden of FIs to a minimum in AEOI implementation.</p>	
004850 – 010218	Chairman Mr CHAN Chun-ying	<p>Mr CHAN enquired:</p> <p>(a) whether Hong Kong should ask the other 72 reportable jurisdictions (except the Republic of Korea which had indicated their wish to conduct AEOI in 2019) for the year of commencing AEOI with them;</p> <p>(b) about the established mechanism or criteria for compliance which would enable IRD to release data and conduct AEOI with other jurisdictions;</p> <p>(c) about the mechanism to allow for inaccurate or incomplete information to be corrected as provided for under the Personal Data (Privacy) Ordinance (Cap. 486) ("PD(P)O") and for supplementary transmissions of corrected information to be made to foreign jurisdictions; and</p> <p>(d) about the resources and budget in respect of publicity on AEOI and the revised AEOI requirements under the Bill (in particular the expanded scope of reportable jurisdictions), and details of the publicity programmes.</p> <p>The Administration responded that:</p> <p>(a) OECD had provided two timelines for jurisdictions to commence AEOI, one in 2017 and the other in 2018 at the latest. For jurisdictions which had entered into bilateral CAAs with Hong Kong, the year of commencement of AEOI would be 2018, except the Republic of Korea (which would be 2019);</p>	Admin (paragraph 4 of the minutes refers)

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		<p>(b) Hong Kong would only conduct AEOI with jurisdictions which had signed dedicated exchange agreements with Hong Kong and fulfilled OECD's standard and the relevant safeguards for protecting data privacy and confidentiality of the information exchanged. The Administration was also considering the possibility of seeking the application of the Multilateral Convention to Hong Kong with a view to expanding Hong Kong's AEOI network more efficiently;</p> <p>(c) the Bill did not alter the privacy and data protection requirements on AEOI in IRO as approved by the Legislative Council in June 2016. According to the legislation, account holders could request access to and correction of their personal data, so as to ensure the information was accurate; and</p> <p>(d) IRD had already drawn up dedicated guidelines for FIs' reference. The Administration had also disseminated information about the AEOI regime through television and radio Announcements in the Public Interests, posters, pamphlets, seminars as well as dedicated webpages of IRD. Details of the resources and budget in respect of the publicity efforts would be provided after the meeting.</p>	
010219 – 011851	<p>Chairman Administration Mr CHAN Chun-ying Assistant Legal Adviser 9 ("ALA9")</p>	<p>Conclusion of meeting with deputations</p> <p>Briefing by the Administration on its response to the issues raised at the meeting on 25 April 2017, and proposed Committee Stage amendments ("CSAs") to the Bill (LC Papers No. CB(1)915/16-17(02) and CB(1)915/16-17(03)).</p> <p>The Chairman enquired whether:</p> <p>(a) OECD would have any views or concerns regarding the amendment of the reporting year in respect of "Republic of Korea" under Part 1 of Schedule 17E of IRO from "2018" to "2019"; and</p> <p>(b) the AEOI requirements of starting the data collection obligation on 1 July 2017 and the reporting year in 2018 in the proposed new Schedule 17E were endorsed by OECD.</p>	

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		<p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) the Republic of Korea had entered into a bilateral CAA with Hong Kong on AEOI arrangements and was therefore a confirmed AEOI partner. The time for first AEOI exchange might be agreed upon by both parties; (b) if a jurisdiction failed to meet at least two of the three criteria of identifying "non-cooperative" tax jurisdictions endorsed by OECD, it would be considered "non-cooperative". One of the criteria was that AEOI first exchanges should commence in 2018 (with respect to the financial account information for the year 2017) the latest. As Hong Kong would not be able to conduct AEOI with the information of the first half of 2017 due to the need for legislative amendment, OECD had agreed that Hong Kong should at least conduct AEOI with respect to information of the second half of 2017; and (c) bilateral CAA discussions with individual jurisdictions would take time. In order to preserve the data for exchange, the Administration considered it necessary for Hong Kong to amend IRO so as to mandate FIs to identify and collect information in relation to accounts held by tax residents of prospective AEOI partners, in addition to confirmed AEOI partners, of Hong Kong. <p>Mr CHAN enquired whether more restrictive financial and taxation regulations would be adopted in Hong Kong in future after implementing AEOI requirements.</p> <p>The Administration responded that it would strike a balance between maintaining Hong Kong's edges as an international financial centre and providing financial or tax information in accordance with international standards in future.</p> <p>ALA9 enquired whether the exemption from compliance with Data Protection Principles 3 (use) and 6 (access) of PD(P)O on the collection of personal data from FIs and the exchange of such information by IRD with another jurisdiction with which Hong Kong had signed either a comprehensive avoidance of double taxation agreement or tax information exchange agreement as provided for under section 58 of PD(P)O would still apply after the amendment of "reportable jurisdiction" under the Bill.</p>	

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		<p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) Hong Kong would only conduct AEOI with jurisdictions which had signed dedicated exchange agreements with Hong Kong and fulfilled OECD's standard and the relevant safeguards for protecting data privacy and confidentiality of the information exchanged; (b) the scope and use of information to be exchanged would follow the Common Reporting Standard set by OECD strictly; and (c) the Bill did not alter the privacy and data protection requirements on AEOI in IRO or at the treaty level. <p>The Bills Committee supported the CSAs proposed by the Administration to the Bill.</p>	
011852 – 012235	Chairman Administration	<p>The Administration was requested to provide a written response to the views and concerns expressed by the deputations at the meeting or in their written submissions.</p> <p>The Chairman requested for information on OECD's assessment on whether Hong Kong had fulfilled OECD's standard on implementation of AEOI requirements and relevant safeguards for protecting data privacy and confidentiality of the information exchanged.</p> <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) Hong Kong had provided regular reports to OECD for implementation of AEOI requirements; and (b) the Expert Panel team from the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes conducted an on-site examination at IRD in April 2016, and considered that Hong Kong had put in place the key risk management processes and adequate controls in relation to AEOI. <p>The Chairman concluded that the Bills Committee had completed scrutiny of the Bill.</p>	Admin (paragraph 4 of the minutes refers)

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<i>Agenda Item II — Any other business</i>			
012236 – 012519	Chairman Administration	Legislative timetable Closing remarks	

Council Business Division 1
Legislative Council Secretariat
11 October 2017