



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/23/16-17
電 話 TELEPHONE : 3919 3512

傳真 FAX : 2877 5029
電郵 E-MAIL : ctam@legco.gov.hk

By Fax (2179 5848)

3 April 2017

Mr LEUNG Wai Shing, William
AS for Financial Services & the Treasury
(Treasury)(R)1
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Mr LEUNG,

Re: Inland Revenue (Amendment) (No. 3) Bill 2017

I am scrutinizing the Bill with a view to advising Members on its legal and drafting aspects. I would like to seek information on the following matters.

Scope of reportable jurisdictions

Clause 3 of the Bill proposes to amend the definition of "reportable jurisdiction" as set out in section 50A(1) of the Inland Revenue Ordinance (Cap. 112) to refer to a jurisdiction irrespective of whether it is a party to an arrangement under section 49(1A) of Cap. 112 and requiring disclosure of information concerning tax of the territories (i.e. jurisdictions with which Hong Kong has entered into either comprehensive agreements for avoidance of double taxation ("CDTAs") or tax information exchange agreements ("TIEAs")).

According to paragraphs 10 and 12 of the LegCo Brief, the exchange of information will be conducted only with a reportable jurisdiction when a CDTA/TIEA (having effect under section 49(1A) of Cap. 112) is in

place to provide for the basis for exchange, together with a bilateral Competent Authority Agreements signed on that basis for conducting Automatic exchange of financial account information in tax matters ("AEOI") but the Administration is also considering the possibility of seeking the application of the Multilateral Convention to Hong Kong for conducting AEOI. Under the proposed new definition of "reportable jurisdiction", it appears that the application of the Multilateral Convention may be introduced for AEOI. Please clarify whether it is the legislative intent of the Bill to enable the implementation of AEOI in Hong Kong on a multilateral basis in future.

Taxpayers' privacy and confidentiality of the information exchanged

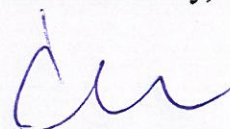
Under CDTAs or TIEAs, certain safeguards are provided to protect taxpayers' privacy and confidentiality of the information exchanged at the treaty level such as information exchanged should not be disclosed to a third jurisdiction, information received should be treated as confidential and be disclosed to the tax authorities and not for release to their oversight bodies unless there are legitimate reasons given by CDTA/TIEA partners. However, under the Bill, a reportable jurisdiction would not be required to be a party to bilateral arrangements under CDTA or TIEA. In this regard, please let us know what safeguards on taxpayers' privacy and confidentiality of the information exchanged would be available at the treaty level as well as under domestic legislation if the Bill is enacted.

Retention of information by the Inland Revenue Department ("IRD")

Under the Bill, IRD would be receiving tax information in respect of all 74 reportable jurisdictions from the reporting financial institutions but it will only exchange such information with the jurisdiction concerned after a relevant AEOI agreement has been put in place (paragraph 11 of the LegCo Brief). Please let us know the mechanism for preservation of the information so retained by IRD during the period before the exchange is actually conducted.

I would be grateful if you would let me have your response in bilingual form at your earliest convenience, preferably before 7 April 2017.

Yours sincerely,



(Clara TAM)

Assistant Legal Adviser

cc. DoJ (Attn: Ms Phyllis POON, SGC (By Fax: 3918 4613))