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**By fax (2877 5029)**

7 April 2017

Ms Clara Tam  
Assistant Legal Advisor  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ms Tam,

**Inland Revenue (Amendment) (No. 3) Bill 2017**

Thank you for your letter dated 3 April 2017 on the captioned Bill. Our response is set out in the attached note.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'William Leung'.

( William Leung )

for Secretary for Financial Services and the Treasury

c.c.

Commissioner of Inland Revenue  
Department of Justice

(Attn: Mr KK Chiu)

(Attn: Ms Phyllis Poon)

# **Inland Revenue (Amendment) (No. 3) Bill 2017**

## **Government's Response**

### **Scope of the reportable jurisdictions**

The Bill aims to mandate financial institutions (“FIs”) in Hong Kong to conduct due diligence and collect the required information from account holders who are tax residents of both *prospective* and *confirmed* AEOI partners of Hong Kong in respect of automatic exchange of financial account information in tax matters (“AEOI”). This will enable Hong Kong to preserve the information for exchange in the near future. It is not the legislative intention of the Bill to enable the implementation of AEOI in Hong Kong on a multilateral basis.

2. The Government is considering the application of the Convention on Mutual Administrative Assistance in Tax Matters (“Multilateral Convention”) in Hong Kong. If the Multilateral Convention is extended and applicable to Hong Kong in due course, it would necessitate another legislative amendment to the Inland Revenue Ordinance (Cap. 112) (“IRO”). Following Hong Kong’s participation in the Multilateral Competent Authority Agreement on AEOI, the conduct of AEOI on a multilateral basis would then be permissible.

3. In any event, the scope of financial account information to be exchanged, be it conducted on a bilateral or a multilateral basis, is the same.

### **Taxpayers’ privacy and confidentiality of the information exchanged**

4. We should emphasise that Hong Kong would only conduct AEOI with jurisdictions which have fulfilled the Organisation for Economic Co-operation and Development (“OECD”)’s standard and the relevant safeguards for protecting data privacy and confidentiality of the information exchanged.

5. By virtue of sections 4(1) and 81(1)(b) of the IRO, returns containing the required information furnished to the Inland Revenue Department

("IRD") by the FIs are subject to official secrecy protection, contrary to which will constitute an offence<sup>1</sup> .

6. Having collected the required information furnished by the FIs under section 50C of the IRO, IRD officers are required by the provisions in sections 4(1) and 81(1)(b) of the IRO to preserve secrecy with regard to such information, including not to disclose the same to a reportable jurisdiction, except in the performance of their duties under the IRO. The IRD would disclose the information to the reportable jurisdictions concerned **only** when arrangements are in place with the reportable jurisdictions concerned (i.e. the *arrangements* specified in section 49(1A) of the IRO that cover Comprehensive Double Taxation Agreements ("CDTAs") and Tax Information Exchange Agreements ("TIEAs")) and declared as order (i.e. becoming a subsidiary legislation and thus forming a part of the IRO). This offers a safeguard against exchanging the information collected with a reportable jurisdiction before such CDTA/TIEA arrangements are in place.

7. The current Bill does not alter the high level of privacy and confidentiality safeguards currently applicable to the AEOI regime. Indeed similar requirements are also provided for under the Competent Authority Agreements as well as the CDTA/TIEA arrangements concerned, including but not limited to the non-disclosure of exchanged information to a third jurisdiction, the use of information received and the immediate suspension of exchange in case of significant non-compliance.

### **Retention of information by the IRD**

8. All along, the Government attaches great importance to data privacy and confidentiality. As mentioned in paragraphs 5 and 6 above, IRD officers are subject to the official secrecy provision under the IRO with respect to any information furnished to the IRD, be it relates to the tax residents of Hong Kong's confirmed or prospective AEOI partners. Information from FIs would be transmitted via the IRD's AEOI Portal system and stored in the IRD's back-end system with encryption under a high level of security. The data would be stored in a dedicated database and

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<sup>1</sup> Section 4(1) of the IRO stipulates that "*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 authorised 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.*" Any person who acts contrary to section 4(1) commits an offence pursuant to section 81(1)(b) of the IRO.

would not be coming. Stringent controls are put in place to restrict data access to a limited number of IRD officers after proper authentication. All data access will be logged and subject to review. The IRD would only extract the information in respect of confirmed AEOI partners and exchange it with the partners concerned.

9. To assess the standard of confidentiality and data safeguards in respect of the implementation of AEOI in Hong Kong, the Expert Panel team from the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) conducted an on-site examination at the IRD in April 2016. The on-site examination looked into overall information security management, system security, data security, access control, operation security as well as monitoring and enforcement. The assessment report on Hong Kong was approved by the AEOI Group under the Global Forum on 1 July 2016. It considered that Hong Kong has put in place the key risk management processes and adequate controls are used in an appropriate manner. Besides, the operational management processes are fit for purpose.

**Financial Services and the Treasury Bureau  
April 2017**