

**Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2017**  
**Follow-up to the meeting on 12 May 2017**

**Purpose**

At the meeting on 12 May 2017, the Government was requested to provide a written response to the following –

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

This note sets out the Government’s response in the following four key areas.

**A. Policy Approach**

2. We are pleased to note that all deputations recognise the need for Hong Kong to cope with the latest international standard on tax co-operation, and render their support towards the proposed legislative amendments for the implementation of AEOI in Hong Kong. We thank for their support in this regard.

**B. Reporting Requirements**

3. Some deputations have suggested changes to the proposed reporting requirements such as allowing financial institutions (“FIs”) an option to submit full year data for 2017 instead of data for the second half of 2017 only and to have the data be kept by FIs before the Inland

Revenue Department (“IRD”) is ready for exchange such information with other jurisdictions. We consider that the reporting requirements proposed in the Bill are in line with Hong Kong’s commitment made to the Organisation for Economic Co-operation and Development (“OECD”). It will be prudent for FIs to submit only the required data for the second half of 2017 so as to avoid undue misunderstanding or queries by their clients. In any case, the submission of half-year data will be a special one-off arrangement for FIs. To ensure the integrity and security of the data, it is necessary for FIs to submit the required data to IRD annually.

### **C. Privacy and Confidentiality Safeguards**

4. Some deputations have expressed concerns over the protection of the privacy of taxpayers and the confidentiality of information being exchanged. The Bill does not alter the privacy and data protection requirements on AEOI in the Inland Revenue Ordinance as approved by this Council in June 2016. We would like to emphasise that the Government has all along attached great importance to the protection of taxpayers’ information. Hong Kong will only conduct AEOI with jurisdictions which have signed dedicated exchange agreements with us and have fulfilled OECD’s standard and the relevant safeguards for protecting data privacy and confidentiality of the information exchanged.

### **D. Support and Publicity**

5. In view of the new compliance obligations on FIs, the deputations would like the Government to revise the guidelines for FIs and update the relevant publicity materials to enhance public awareness.

6. After the legal framework for AEOI was put in place in mid-2016, the Government has introduced a number of initiatives to enhance public awareness of the new international standard as well as the obligations of FIs. We have launched TV and Radio Announcements in the Public Interests (“API”), which have been broadcast over 4 000 times since December 2016. We have also prepared posters and pamphlets to

help FIs explain the new requirements to their customers. Besides, dedicated webpages have been set up by IRD with relevant information on AEOI. The related publicity cost more than \$400,000 so far. Separately, IRD has drawn up guidelines for FIs to facilitate them in implementing AEOI and has organised seminars to disseminate the relevant information.

7. Upon the passage of the Bill, the Government will roll out a new round of publicity to highlight the key changes. IRD will revise the guidelines. Besides, we will revise the API, posters and pamphlets so as to raise public awareness of the latest arrangements.

8. The Government's detailed response to the views raised by the deputations is at **Annex**.

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

**Inland Revenue (Amendment) (No. 3) Bill 2017 (the “Bill”)**

**The Government’s Responses to Written Submissions from Deputations and Views raised by Deputations  
at the Bills Committee meeting on 12 May 2017**

| <b>Comments / Issues Raised</b>   | <b>Organisations / Persons</b>                                | <b>The Government’s Responses</b>   |
|---|---|---|
| <b>A. Policy Approach</b>   |   |   |
| A.1 The list of reportable jurisdictions should be limited to, for example, (i) those jurisdictions with which Hong Kong already has or is negotiating a Comprehensive Double Taxation Agreement (“CDTA”)/ Tax Information Exchange Agreement (“TIEA”); (ii) those with which Hong Kong has significant commercial dealings; and (iii) those which are on the priority list for CDTAs/ TIEAs. | Hon Kong Institute of Certified Public Accountants (“HKICPA”) | <ul style="list-style-type: none"> <li>• To ensure a level playing field, the Organisation for Economic Co-operation and Development (“OECD”) requires each jurisdiction participating in AEOI should have exchange relationships with all interested appropriate partners.</li> <li>• To foster closer tax co-operation with our tax treaty partners, we have included all jurisdictions having CDTA/TIEA with Hong Kong and participating in AEOI in the proposed list of reportable jurisdictions.</li> </ul>  |
| A.2 The reasons why Hong Kong might risk being listed as a “non-cooperative” jurisdiction, the necessary measures to be taken and the possible related counter measures for being a “non-cooperative” jurisdiction.   | HKICPA  | <ul style="list-style-type: none"> <li>• As set out in paragraphs 5 and 6 of our Legislative Council Brief issued on 22 March 2017, in identifying “non-cooperative” jurisdictions, both OECD and the European Union would look into the implementation of AEOI, participation in the Convention on Mutual Administrative Assistance in Tax Matters (“Multilateral Convention”), as well as the implementation of exchange of information on request. Failure in meeting at least two of these three criteria would risk Hong Kong being listed as a “non-cooperative” jurisdiction.</li> </ul> |

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|   |   | <ul style="list-style-type: none"> <li>• If Hong Kong does not take steps to preserve the data at least for the second half of 2017 for exchange with other jurisdictions, Hong Kong could fail in the AEOI assessment. Furthermore, the Multilateral Convention is currently not applicable to Hong Kong.</li> <li>• A listed “non-cooperative” jurisdiction would no doubt suffer from reputational damages, and could be subject to counter-measures by other jurisdictions including the imposition of withholding taxes and non-deductibility of costs of transactions.</li> </ul>   |
| <b>B. Reporting Requirements</b>  |   |   |
| <p>B.1 Financial Institutions (“FIs”) should be made responsible for holding the relevant data for all reportable jurisdictions and only provide the data to the Inland Revenue Department (“IRD”) for those jurisdictions with which Hong Kong has signed a bilateral competent authority agreement (“CAA”).</p> | <ul style="list-style-type: none"> <li>• Hong Kong Association of Banks (“HKAB”)</li> <li>• Private Wealth Management Association (“PWMA”)</li> </ul> | <ul style="list-style-type: none"> <li>• To manage the additional work for FIs, we propose to add 73 reportable jurisdictions to the Inland Revenue Ordinance in one go with the first reporting taking place in 2018. This would have the benefit of easing the compliance burden on FIs by saving their need to file back-year returns subsequently with information covering different reporting periods in respect of each jurisdiction whenever Hong Kong enters into a CAA with a new jurisdiction.</li> <li>• Moreover, should the relevant data be only held by FIs in the interim and, in case of there is data loss in FIs, IRD would be unable to fulfil the international obligations for data exchange.</li> <li>• Further, with FIs providing data of reportable jurisdictions to IRD starting from 2018, it would facilitate us in monitoring and ensuring the smooth implementation of AEOI.</li> </ul> |
| <p>B.2 The Government should consider allowing FIs, as an option, to submit data for the full year of 2017 for all the newly-added</p>  | <ul style="list-style-type: none"> <li>• HKAB</li> <li>• PWMA</li> </ul>  | <ul style="list-style-type: none"> <li>• We appreciate that submitting data for the second half of 2017 only may require additional efforts by some FIs especially those which adopted the wider approach in data collection. However, the period of data so required by IRD should be in line with the commitment</li> </ul>   |

| <b>Comments / Issues Raised</b>  | <b>Organisations / Persons</b>   | <b>The Government's Responses</b>   |
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| reportable jurisdictions in order to lessen their burden of managing and submitting six-month data on a one-off basis.   |  | <p>that Hong Kong has undertaken to OECD. Moreover, should the full 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> <ul style="list-style-type: none"> <li>• After this special one-off arrangement for reporting six-month data, we will go for the normal full-year reporting in subsequent years.</li> </ul> |
| B.3 FIs are under a short timeframe to complete the due diligence procedures with respect to the newly-added reportable jurisdictions, and the Government should recognise FIs' difficulties from compliance monitoring and sanction application points of view. | <ul style="list-style-type: none"> <li>• HKAB</li> <li>• PWMA</li> </ul> | <ul style="list-style-type: none"> <li>• We appreciate the additional work for FIs arising from the new obligations. The Government would adopt a facilitating approach and keep FIs' compliance burden to the minimum.</li> <li>• IRD will also provide revised guidelines to FIs and the necessary support, especially during the early years of the implementation of AEOI.</li> </ul>   |
| <b>Comments / Issues Raised</b>  | <b>Organisations / Persons</b>   | <b>The Government's Responses</b>   |
| <b><i>C. Privacy and Confidentiality Safeguards</i></b>  |  |   |
| C.1 Whether Hong Kong has, or expects to have, the exchange arrangements with sufficient privacy and confidentiality safeguards in place.  | <ul style="list-style-type: none"> <li>• HKICPA</li> <li>• CP</li> </ul> | <ul style="list-style-type: none"> <li>• All along, the Government attaches great importance to data privacy and confidentiality. Hong Kong would only conduct AEOI with jurisdictions which have signed dedicated exchange agreements with us and have fulfilled the OECD's standard and the relevant safeguards for protecting data privacy and confidentiality of the information exchanged.</li> </ul>  |
| C.2 If practicable, account holders should be provided with a copy of  | HKICPA   | <ul style="list-style-type: none"> <li>• This amendment bill does not alter the privacy and data protection requirements on AEOI in the Inland Revenue Ordinance as approved</li> </ul>   |

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| <p>any information to be reported on them, if not in advance of being reported to IRD, then as soon as practicable afterwards. There should be appropriate mechanisms to allow for inaccurate or incomplete information, whether in the hands of financial institutions or IRD, to be corrected and for supplementary transmissions of corrected information to be made to foreign jurisdictions.</p> |                         | <p>by the Legislative Council in June 2016. According to the existing legislation, account holders can request access to and request correction of their personal data, so as to ensure the information is accurate.</p> <ul style="list-style-type: none"> <li>• We have also informed FIs and reminded them to take appropriate measures as follows – <ul style="list-style-type: none"> <li>(a) to amend the Personal Information Collection Statement to ensure that customers are duly informed of the purpose of the use of the personal data for AEOI arrangement and the relevant authorities/persons that the information may be transferred to;</li> <li>(b) to duly inform their account holders in advance, as a matter of good corporate governance, that FIs will collect information such as Taxpayer Identification Numbers or dates of birth when the relevant accounts are identified as “reportable accounts”; and</li> <li>(c) to take all practicable steps to ensure that the personal data is accurate and that account holders will be allowed to review and correct their personal and financial data.</li> </ul> </li> </ul> |
| <p>C.3 The Government should guard against “fishing” requests in protecting Hong Kong taxpayers’ privacy</p>  | <p>Miss LEE Suk-yee</p> | <ul style="list-style-type: none"> <li>• The scope of information to be exchanged under AEOI is governed by the Common Reporting Standard laid by OECD. Hong Kong will follow the requirements strictly.</li> <li>• As regard to exchange of information on request, IRD has been handling the requests prudently and no “fishing” requests would be entertained. The jurisdiction initiating the request has to prove to IRD that the information so required is foreseeably relevant to its tax assessment before IRD would entertain the request.</li> </ul>  |
| <p><b><i>D. Support and Publicity</i></b></p>   |                         |  |

| Comments / Issues Raised  | Organisations / Persons  | The Government's Responses   |
|---|--|--|
| <p>The Government should take steps to update its official information sources, including publicity materials and guidance for FIs in a timely manner upon passage of the Bill.</p> | <ul style="list-style-type: none"> <li>• HKAB</li> <li>• PWMA</li> <li>• Miss LEE Suk-yee</li> </ul> | <ul style="list-style-type: none"> <li>• To facilitate the implementation of AEOI by FIs, IRD has already drawn up dedicated guidelines for FIs' reference. On the other hand, we have been disseminating the information about the AEOI regime through TV and Radio Announcements in the Public Interests ("API"), posters, pamphlets, seminars as well as dedicated webpages in IRD.</li> <li>• Upon the passage of the Bill, IRD will update the guidelines for FIs. We will also revise the publicity materials (including the API, posters and pamphlets) so as to support FIs in complying with the new obligations and raise public awareness.</li> </ul> |