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**Paper for the House Committee Meeting
on 7 April 2017**

**Legal Service Division Report on
Inland Revenue (Amendment) (No. 3) Bill 2017**

I. SUMMARY

1. The Bill

The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to expand the scope of reportable jurisdictions and add 72 jurisdictions to the list of reportable jurisdictions in respect of the arrangements relating to automatic exchange of financial account information in tax matters ("AEOI").

2. Public Consultation

According to the Administration, the stakeholders were briefed on the latest international developments of AEOI and the Administration's proposal in February and March 2017. In general, stakeholders supported the proposal but raised concerns about the implementation timetable for the exchange of the information with other jurisdictions.

**3. Consultation with
LegCo Panel**

The Panel on Financial Affairs was consulted on 16 March 2017 and members had no objection to the introduction of the Bill into the Legislative Council. Members also discussed issues including measures for protecting personal data privacy and criteria adopted by the Administration in identifying AEOI partners.

4. Conclusion

In the light of the Administration's proposal to expand the scope of reportable jurisdictions under Cap. 112 and its potential implications on the implementation of AEOI in Hong Kong, Members may wish to set up a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 29 March 2017. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: TsyB R 183/700-6/7/0(C)) issued by the Financial Services and the Treasury Bureau on 22 March 2017 for further details.

Object of the Bill

2. The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to expand the list of reportable jurisdictions for implementation of the arrangement relating to automatic exchange of financial account information in tax matters ("AEOI").

Background

3. The legal framework for implementing AEOI in Hong Kong is provided under the Inland Revenue Ordinance (Cap. 112), as amended by the Inland Revenue (Amendment) (No. 3) Ordinance 2016 (Ord. No. 22 of 2016) which came into operation on 30 June 2016. Under the newly added Part 8A of Cap. 112, reporting financial institutions which principally refer to banks, securities firms, insurance companies and investment funds are required to (a) conduct due diligence procedures to identify financial accounts held by tax residents of reportable jurisdictions as set out in Schedule 17E to Cap. 112; (b) collect the required information in respect of these accounts (e.g. name and address of account holder and account balance); and (c) furnish the Inland Revenue Department ("IRD") with such information for exchange with the relevant reportable jurisdictions starting from 2018.

4. Under section 50A of Cap. 112, "reportable jurisdiction" is defined as a territory outside Hong Kong that is a party to an arrangement having effect 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")); and that is specified in Part 1 of Schedule 17E. Under CDTAs or TIEAs, certain safeguards are provided to protect taxpayers' privacy and confidentiality of the information exchanged at the treaty level¹. At present, only two jurisdictions, i.e. Japan and the United Kingdom of Great Britain and Northern Ireland, are listed as reportable jurisdictions in Part 1 of Schedule 17E².

¹ For example, 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.

² Added by the Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2016 (L.N. 165 of 2016) in December 2016.

5. In view of the latest international developments of AEOI by end 2016, i.e. the drawing up of lists of "non-cooperative tax jurisdictions" by the Organisation for Economic Co-operation and Development ("OECD") and the European Union ("EU") with regard to a jurisdiction's progress and its network of implementing AEOI, the Administration considers that it is necessary for Hong Kong to expand its network of AEOI partners more quickly so as to avoid being listed as "non-cooperative tax jurisdiction" which could be subject to counter-measures including the imposition of withholding taxes (paragraphs 5 and 6 of the LegCo Brief).

Provisions of the Bill

6. The Bill seeks to expand the list of reportable jurisdictions as specified in Schedule 17E to Cap. 112. The amendments proposed under the Bill are set out in the ensuing paragraphs.

Scope of reportable jurisdictions

7. The Bill proposes to amend the definition of "reportable jurisdiction" in section 50A of Cap. 112 so that a reportable jurisdiction is not required to be a party to the bilateral arrangements under CDTA or TIEA (clause 3).

List of reportable jurisdictions

8. In addition to the two reportable jurisdictions set out in Part 1 of Schedule 17E to Cap. 112, the Bill seeks to add 72 jurisdictions to the list of reportable jurisdictions with "2018" as the reporting year (clause 4). The effect would be that the requirements in Part 8A of Cap. 112 as mentioned in paragraph 3 above would apply in respect of financial accounts held by tax residents of a total of 74 reportable jurisdictions for conducting AEOI starting from 2018.

9. According to paragraph 9 of the LegCo Brief, out of the 72 proposed jurisdictions, seven jurisdictions are confirmed AEOI partners (i.e. Belgium, Canada, Guernsey, Italy, Korea, Mexico and the Netherlands) with which relevant bilateral agreements have been signed. The remaining 65 jurisdictions are prospective AEOI partners including Hong Kong's tax treaty partners which have committed to AEOI, all EU Member States, and jurisdictions which expressed an interest to OECD in late 2016 in conducting AEOI with Hong Kong. According to paragraph 11 of the LegCo Brief, the information so reported to IRD would only be exchanged with the jurisdictions concerned after an AEOI agreement with data protection safeguards has been put in place.

Commencement

10. The Bill, if passed, would come into operation on 1 July 2017 (clause 1(2)).

Public Consultation

11. According to paragraphs 18 and 19 of the LegCo Brief, an information note on the latest international developments of AEOI and the Administration's revised implementation strategy were issued to the relevant stakeholders including key financial institutions, business chambers and professional bodies in mid-February 2017 and a briefing session was conducted in March 2017. In general, stakeholders supported Hong Kong's continued commitments in AEOI but concerns were raised about the implementation timetable of AEOI in Hong Kong (such as the timing for the financial institutions to furnish information in relation to the reportable accounts) and the timeline for IRD to exchange the information with other jurisdictions.

Consultation with LegCo Panel

12. On 16 March 2017, the Panel on Financial Affairs was briefed on the legislative proposal to expand the list of reportable jurisdictions to facilitate the implementation of AEOI with prospective and confirmed AEOI partners. Members of the Panel had no objection to the introduction of the Bill into LegCo. They had however discussed issues including measures for protecting personal data privacy, criteria adopted by the Administration in identifying AEOI partners, and the consequences if Hong Kong could not meet the international standard on AEOI.

Conclusion

13. In the light of the Administration's proposal to expand the scope of reportable jurisdictions under Cap. 112 and its potential implications on the implementation of AEOI in Hong Kong, Members may wish to set up a Bills Committee to study the Bill in detail.

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