

立法會
Legislative Council

LC Paper No. LS90/16-17

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

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 30 June 2017**

Tabling in LegCo : Council meeting of 5 July 2017

Amendment to be made by : Second meeting of LegCo in the next session (or the first meeting held not earlier than the 21st day after the second meeting of the next session if extended by resolution)

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Latvia) Order (L.N. 135)

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (Republic of Belarus) Order (L.N. 136)

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Islamic Republic of Pakistan) Order (L.N. 137)

Under section 49(1A) of the Inland Revenue Ordinance (Cap. 112), the Chief Executive ("CE") in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong for the purposes of affording relief from double taxation and/or exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned.

2. L.N. 135 to L.N. 137 are made by CE in Council under section 49(1A) of Cap. 112 to give effect to the following Comprehensive Agreements for Avoidance of Double Taxation ("CDTAs") respectively:

- (a) the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("HKSARG") and the Government of the Republic of Latvia ("Latvia") for the Avoidance of Double Taxation and the

Prevention of Fiscal Evasion with respect to Taxes on Income signed on 13 April 2016 ("Latvian Agreement");

- (b) the Agreement between HKSARG and the Government of the Republic of Belarus ("Belarus") for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital signed on 16 January 2017 ("Belarusian Agreement"); and
- (c) the Agreement between HKSARG and the Government of the Islamic Republic of Pakistan ("Pakistan") for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 17 February 2017 ("Pakistani Agreement").

3. According to paragraph 3 of the Legislative Council ("LegCo") Brief (File Ref.: TsyB R 183/800-1-1/43/0 (C)) issued by the Financial Services and the Treasury Bureau ("FSTB") on 28 June 2017, while a local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation, double taxation may occur where a foreign jurisdiction taxes its own residents' income derived from Hong Kong. Although many jurisdictions do provide their residents with unilateral tax relief for the Hong Kong tax they paid on income derived therefrom, the CDTAs will enhance the certainty and stability in respect of the elimination of double taxation. Besides, the tax relief provided under CDTAs may exceed the level provided unilaterally by the tax jurisdictions concerned.

4. For the purposes of section 49(1A) of Cap. 112, L.N. 135 to L.N. 137 declare respectively that the following arrangements have been made for the purposes of affording relief from double taxation and exchanging information in relation to any tax imposed by the laws of Hong Kong or the territories concerned, and that it is expedient that those arrangements should have effect:

- (a) arrangements in Articles 1 to 28 of the Latvian Agreement and Paragraphs 1 to 4 of the Protocol thereto;
- (b) arrangements in Articles 1 to 30 of the Belarusian Agreement; and
- (c) arrangements in Articles 1 to 30 of the Pakistani Agreement and Paragraphs 1 to 3 of the Protocol thereto.

5. The provisions in the above three Agreements set out the allocation of taxing rights between Hong Kong and the respective jurisdictions and the relief on tax rates on different types of income. Members may refer to the

summaries at Annexes E to G to the LegCo Brief for further details. Each Agreement also contains an article on exchange of information which is based on the Organisation for Economic Cooperation and Development 2004 version of the Exchange of Information ("EoI") Article. A sample EoI Article was presented to the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009 vide LC Paper No. CB(1)466/09-10(02). It is noted that consistent with the sample Article, the Latvian Agreement, the Belarusian Agreement and the Pakistani Agreement all provide that (a) information should be exchanged upon request; (b) the requested information must be foreseeably relevant; (c) the information received by a contracting party shall be treated as secret; (d) the information shall be disclosed only to the tax authorities (including courts and administrative bodies) but not their oversight bodies nor any third jurisdiction; and (e) there is no obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy. While paragraph 11(c) of the LegCo Brief suggests that information may be released to oversight bodies if "there are legitimate reasons", FSTB has confirmed, upon our enquiry, that under no circumstances would such release be made as this is not provided in the agreements signed with Latvia, Belarus and Pakistan.

6. The effect of the declarations mentioned in paragraph 4 above are:
 - (a) that the arrangements have effect in relation to tax under Cap. 112 despite anything in any enactment; and
 - (b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of Latvia, Belarus and Pakistan, have effect in relation to any tax of the respective jurisdictions that is the subject of that provision.
7. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 135 to L.N. 137.
8. L.N. 135 to L.N. 137 come into operation on 24 November 2017.

Industrial Training (Clothing Industry) Ordinance
(Amendment of Schedule 2) Order 2017 **(L.N. 138)**

9. The Clothing Industry Training Authority ("Authority") was established in 1975 under the Industrial Training (Clothing Industry) Ordinance (Cap. 318) to provide, among others, training courses for the clothing industry through its industrial training centres.¹ Under Schedule 2 to Cap. 318, the

¹ Sections 4(1) and 5(a) and (b) of Cap. 318.

Authority shall consist of 17 members, two of whom shall be persons nominated by the Textile and Clothing Training Board ("the Board") of the Vocational Training Council ("VTC") (section 1(c)).²

10. L.N. 138 amends Schedule 2 to Cap. 318 to replace the reference to the "Textile and Clothing Training Board" with the "Fashion and Textile Training Board" of VTC. According to paragraph 4 of the LegCo Brief (File Ref.: LWB(M)CR3/3037/70) issued by the Labour and Welfare Bureau on 28 June 2017, L.N. 138 is made to reflect the change of the Board's name with effect from 1 April 2017. The effect of L.N. 138 is that the renamed Board can continue to be represented in the Authority by nominating two persons to be its members.

11. As advised by the Clerk to the Panel on Manpower, the Panel has not been consulted on L.N. 138.

12. L.N. 138 came into operation on the day it was published in the Gazette, i.e. 30 June 2017.

Concluding observations

13. No difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

LOO Chi-pong, Bonny
Assistant Legal Adviser
Legislative Council Secretariat
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² Section 1(c) of Schedule 2 to Cap. 318 was amended in 1999 to provide for the nomination of two members of the Authority by the Board following the merger of the Clothing Industry Training Board with the Textile Industry Training Board to form the Board in January 1998 (L.N. 200 of 1999).