

立法會
Legislative Council

LC Paper No. CB(1)268/16-17
(These minutes have been seen
by the Administration)

Ref : CB1/SS/2/16/1

**Subcommittee on Inland Revenue Ordinance
(Amendment of Schedule 17E) Notice 2016**

**Minutes of first meeting held on
Tuesday, 15 November 2016, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong, SBS, JP
Hon WU Chi-wai, MH
Dr Hon YIU Chung-yim

Member absent : Hon Christopher CHEUNG Wah-fung, SBS, JP

Public Officers attending : Mr Andrew LAI, JP
Deputy Secretary for Financial Services and the
Treasury (Treasury)²

Mr Gary POON
Principal Assistant Secretary for Financial Services
and the Treasury (Treasury) (Revenue)

Mr Brian CHIU, JP
Deputy Commissioner (Technical)
Inland Revenue Department

Ms Peggy LEUNG
Senior Assessor (Tax Treaty)²
Inland Revenue Department

Miss Bonita WONG
Government Counsel
Department of Justice

Clerk in attendance : Ms Doris LO
Senior Council Secretary (1)1

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Miss Sharon LO
Senior Council Secretary (1)9

Ms Sharon CHAN
Legislative Assistant (1)4

Action

I Election of Chairman

Mr James TO, the member who had the highest precedence, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr Kenneth LEUNG was nominated by Mr WU Chi-wai and the nomination was seconded by Mr James TO. Mr Kenneth LEUNG accepted the nomination. There being no other nominations, Mr Kenneth LEUNG was declared Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

(L.N. 165 of 2016

— Inland Revenue Ordinance
(Amendment of Schedule 17E)
Notice 2016

File Ref: TsyB R 183/700-6/7/0 (C) — Legislative Council Brief on
Inland Revenue Ordinance
(Amendment of Schedule 17E)
Notice 2016

Action

- LC Paper No. LS7/16-17 — Legal Service Division Report
- LC Paper No. CB(1)113/16-17(01) — Marked-up copy of L.N. 165 of 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(1)113/16-17(02) — Background brief prepared by the Legislative Council Secretariat)

Discussion

4. The Subcommittee deliberated (index of proceedings in the **Appendix**).

Follow-up actions to be taken by the Administration

5. According to the Administration, the Inland Revenue Department ("IRD") was developing a new electronic portal (i.e. the AEOI Portal), to facilitate financial institutions to fulfil their obligations under the regime of automatic exchange of financial account information in tax matters ("AEOI"), such as filing of AEOI returns to IRD. In response to the Subcommittee Chairman's enquiry, the Administration agreed to provide for members' reference supplementary information regarding the development and commissioning of the AEOI Portal by IRD, including whether the portal would be designed in-house by IRD, and any tendering exercise would be involved.

(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(1)180/16-17 on 24 November 2016.)

Invitation of views

6. Members considered it not necessary for the Subcommittee to meet with deputations to receive views on the Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2016 (L.N. 165 of 2016) ("the Notice").

Legislative timetable

7. The Chairman concluded that the Subcommittee had completed the scrutiny of the Notice and would not propose any amendment to the Notice.

Action

8. The Subcommittee noted that the scrutiny period of the Notice would expire at the Council meeting of 30 November 2016. To allow sufficient time for the Subcommittee to report its deliberations to the House Committee, members agreed that the Chairman would move a motion at the Council meeting of 23 November 2016 to extend the scrutiny period of the Notice to the Council meeting of 11 January 2017. Members noted that, upon extension of the scrutiny period, the deadline for giving notice of motion to amend the Notice would be 4 January 2017. The Chairman would report the deliberations of the Subcommittee to the House Committee at its meeting on 16 December 2016.

(Post-meeting note: At the Council meeting of 23 November 2016, the motion to extend the scrutiny period of the Notice to 11 January 2017 was passed.)

III Any other business

9. There being no other business, the meeting ended at 5:20 pm.

Council Business Division 1
Legislative Council Secretariat
7 December 2016

**Proceedings of the first meeting of the
Subcommittee on Inland Revenue Ordinance
(Amendment of Schedule 17E) Notice 2016
on Tuesday, 15 November 2016, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000500 – 000527	Mr James TO Mr WU Chi-wai Mr Kenneth LEUNG	Election of Chairman	
000528 – 000707	Chairman	Introductory remarks	
Meeting with the Administration			
000708 – 001844	Chairman Administration	Briefing by the Administration on the Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2016 (L.N. 165 of 2016) ("the Notice") and the implementation of automatic exchange of financial account information in tax matters ("AEOI") in Hong Kong [Legislative Council Brief (File Ref: TsyB R 183/700-6/7/0 (C))]	
001845 – 002050	Chairman Mr WU Chi-wai Administration	Pointing out that some jurisdictions including the United States ("US") and certain Southeast Asian countries such as Thailand were not committed to adopting AEOI and hence would not be included as participating jurisdictions in Part 2 of Schedule 17E to the Inland Revenue Ordinance (Cap. 112) ("Schedule 17E") pursuant to the Notice, Mr WU asked whether and how the non-participation of these jurisdictions would affect the implementation of AEOI in Hong Kong. The Administration said that: (a) a total of 101 jurisdictions (including Hong Kong) had already committed to adopting AEOI by 2018 (as at 31 October 2016), and they had covered most of the major economies in the world and economies with necessary capacity to implement the standard for AEOI released by the Organisation for Economic Co-operation and Development ("OECD"); (b) US did not sign up to implement AEOI because its Foreign Account Tax Compliance Act had	

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		<p>served a similar purpose to require foreign financial institutions ("FIs") (including those in Hong Kong) to report financial account information in respect of their US clients to the US Internal Revenue Service directly; and</p> <p>(c) other jurisdictions which had yet to commit to AEOI might also undertake to adopt AEOI in due course.</p>	
002051 – 003024	Chairman Mr James TO Administration	<p>Mr TO enquired about:</p> <p>(a) the Administration's plan to include other jurisdictions in addition to Japan and the United Kingdom of Great Britain and Northern Ireland ("UK") as reportable jurisdictions, in particular those that were actively pushing forward AEOI; and</p> <p>(b) the respective legal implications and obligations of FIs associated with the listing of reportable jurisdictions vis-à-vis participating jurisdictions under Schedule 17E.</p> <p>The Administration stated that:</p> <p>(a) the Administration's plan was to conduct AEOI only with those jurisdictions with which Hong Kong had signed comprehensive avoidance of double taxation agreements ("CDTAs") (i.e. currently 35 jurisdictions) or tax information exchange agreements ("TIEAs") (i.e. currently seven jurisdictions), by separately signing Competent Authority Agreements ("CAAs") with them on a bilateral basis. After signing the CAAs, the Administration would include the relevant jurisdictions as "reportable jurisdictions" under Part 1 of Schedule 17E;</p> <p>(b) following the passage of the Inland Revenue (Amendment) (No. 3) Ordinance 2016 in June 2016, the Inland Revenue Department ("IRD") had liaised with 10 jurisdictions from July to September 2016, and among them Japan and UK had signed CAAs with Hong Kong so far. The current progress was in line with the Administration's plan to adopt a pragmatic and progressive approach to meet the requirement of commencing the first automatic exchanges by 2018 whilst minimizing the compliance burden</p>	

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		<p>on FIs and their non-Hong Kong tax resident account holders;</p> <p>(c) under the AEOI regime, FIs were required to perform due diligence procedures to identify financial accounts held by tax residents of reportable jurisdictions (i.e. reportable accounts) in 2017 and furnish the reportable information to IRD starting from the reporting year (i.e. 2018 in the cases of Japan and UK);</p> <p>(d) there was a "look through" requirement in the OECD standard for AEOI under which FIs should "look through" an account holder which was a professionally managed investment entity, with its income primarily attributable to investing, reinvesting, or trading in financial assets (i.e. a passive non-financial entity) ("relevant entity"), if the relevant entity was resident in a non-participating jurisdiction. In such case, FIs would be required to see if any of the controlling persons of the relevant entity was a tax resident of a reportable jurisdiction. If affirmative, the FI concerned would be required to report such information to IRD for exchange with the reportable jurisdictions concerned; and</p> <p>(e) as the "look through" requirement would not apply if the relevant entity was a resident in a participating jurisdiction, the extent to which FIs would be required to conduct "look through" checks depended on the list of participating jurisdictions. The Administration had adopted the approach to include all the 100 jurisdictions committed to adopting AEOI by 2018 (excluding Hong Kong) as "participating jurisdictions" under Part 2 of Schedule 17E, having regard to OECD's requirements and the aim of reducing the compliance burden of FIs.</p>	
003025 – 003426	Chairman Dr YIU Chung-yim Administration	In response to Dr YIU's enquiry about the impact of the "look through" requirement on Hong Kong's taxpayers, the Administration explained that while "look through" checks by FIs of Hong Kong were not targeted at Hong Kong tax resident account holders, the same "look through" checks would be conducted by Hong Kong's AEOI partners (i.e. Japan and UK, and other reportable jurisdictions subsequently included). That would mean FIs of these reportable jurisdictions would	

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		<p>"look through" a relevant entity that was resident in a non-participating jurisdiction, and would furnish relevant information of the controlling persons who were Hong Kong tax residents to their respective tax authorities for exchange with IRD.</p> <p>On Dr YIU and the Chairman's further enquiries, the Administration supplemented that, for the purpose of identifying reportable accounts, FIs would be required to obtain self-certification from new account holders to ascertain their tax residences and obtain information on their taxpayer identification numbers. As regards pre-existing account holders, FIs might review the available information they had maintained to determine their tax residences, though FIs could also obtain self-certification from the pre-existing account holders if the FIs had doubts on their tax residences.</p>	
003427 – 003610	Chairman Administration	<p>The Chairman sought clarifications regarding whether the list of participating jurisdictions in Part 2 of Schedule 17E had to be constantly updated if more jurisdictions committed to adopting AEOI, and the updating mechanism thereof.</p> <p>The Administration replied that in principle, Hong Kong would include all jurisdictions committed to adopting AEOI as participating jurisdictions in Part 2 of Schedule 17E. Frequent additions were however unlikely, and could be dealt with in batches when updating the list of reportable jurisdictions in Part 1 of Schedule 17E.</p>	
Clause-by-clause examination of the subsidiary legislation			
003611 – 004807	Chairman Administration	<p><u>Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2016 (L.N. 165 of 2016)</u></p> <p><i>Section 1 - Commencement</i></p> <p><i>Section 2 - Inland Revenue Ordinance amended</i></p> <p><i>Section 3 - Schedule 17E amended (reportable jurisdictions and participating jurisdictions)</i></p> <p>Noting that some "tax havens" like British Virgin Islands and Cayman Islands were on the list of participating jurisdictions, the Chairman sought clarifications regarding:</p>	

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		<p>(a) the Government's policy towards exchange of information in tax matters with such jurisdictions; and</p> <p>(b) whether the Administration would initiate negotiations or explore the opportunity for bilateral agreements with these tax havens as appropriate, so as to enable IRD to obtain more comprehensive financial information of Hong Kong's taxpayers in these jurisdictions.</p> <p>The Administration responded that:</p> <p>(a) IRD would consider whether it would be in the best interest of Hong Kong to adopt CDTA or TIEA when pursuing exchange of tax information with other jurisdictions;</p> <p>(b) TIEAs provided an alternative route, other than CDTAs, for jurisdictions to pursue exchange of tax information between them without providing any taxation relief; and</p> <p>(c) the Administration would, for the time being, need to focus its efforts in concluding more CAAs with Hong Kong's existing CDTA/TIEA partners regarding the AEOI initiative.</p> <p>In reply to the Chairman's enquiry, the Administration explained that:</p> <p>(a) "reporting year" referred to the year that IRD had to start exchanging reportable information with the concerned reportable jurisdictions; and</p> <p>(b) upon inclusion of Japan and the UK as reportable jurisdictions in Part 1 of Schedule 17E with 2018 as the reporting year, (i) FIs should start conducting due diligence procedures in respect of their financial accounts in 2017; (ii) IRD would issue notices to all FIs maintaining reportable accounts in January 2018 (and January annually thereafter); (iii) FIs should lodge the AEOI returns ("Returns") within five months after the calendar year to which the information related; and (iv) IRD would then commence the first information exchange with the tax authorities of Japan and UK in September 2018 (and September annually thereafter).</p>	

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		<p>Given the bulk of information involved and the volume would further increase when Hong Kong progressively expanded its list of reportable jurisdictions in future, the Chairman asked about the feasibility of spreading out the deadlines for FIs to submit Returns in respect of different jurisdictions over different months of a reporting year.</p> <p>The Administration advised that:</p> <p>(a) the automatic exchange of information among tax authorities in September each year was a common timeframe for all reportable jurisdictions. To meet this timeframe, FIs would be required to submit their returns to IRD by May in the reporting year concerned; and</p> <p>(b) OECD would put in place a Common Transmission System for exchange of information among tax authorities. At the domestic level, IRD would also put in place a secure platform, i.e. an AEOI Portal, for FIs to submit notifications and file Returns electronically. With this new electronic platform in place, it was envisaged that the processing and exchange of data would not create too much administrative burden on IRD.</p> <p>At the Chairman's request, the Administration agreed to provide supplementary information regarding the development and commissioning of the AEOI Portal, including whether the portal would be designed in-house by IRD, and any tendering exercise would be involved.</p>	<p>Adm (paragraph 5 of the minutes refers)</p>
004808 – 005059	Chairman Assistant Legal Adviser 9 ("ALA9")	<p>At the invitation of the Chairman, ALA9 confirmed that no difficulties in the drafting and legal aspects of the Notice had been identified.</p> <p>Extension of the scrutiny period, legislative timetable, and concluding remarks</p>	