

**立法會**  
**Legislative Council**

LC Paper No. CB(1)445/17-18  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/1/17/1

**Bills Committee on Inland Revenue (Amendment) (No. 5) Bill 2017**

**Minutes of the first meeting on  
Tuesday, 14 November 2017, at 2:30 pm  
in Conference Room 2A of the Legislative Council Complex**

**Members present** : Hon WONG Ting-kwong, GBS, JP (Chairman)  
Hon James TO Kun-sun  
Prof Hon Joseph LEE Kok-long, SBS, JP  
Hon Frankie YICK Chi-ming, SBS, JP  
Hon WU Chi-wai, MH  
Hon Charles Peter MOK, JP  
Hon Kenneth LEUNG  
Hon KWOK Wai-keung, JP  
Hon Dennis KWOK Wing-hang  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon Alvin YEUNG  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon SHIU Ka-chun  
Hon YUNG Hoi-yan  
Dr Hon Pierre CHAN  
Hon CHAN Chun-ying  
Hon CHEUNG Kwok-kwan, JP

**Member absent** : Dr Hon Junius HO Kwan-yiu, JP

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

Ms Pecvin YONG  
Principal Assistant Secretary for Financial Services and  
the Treasury (Treasury) (Revenue 1)

Mr CHIU Kwok-kit, JP  
Deputy Commissioner (Technical)  
Inland Revenue Department

Mr CHAN Sze-wai  
Senior Assessor (Research)<sup>3</sup>  
Inland Revenue Department

Ms Phyllis POON  
Senior Government Counsel  
Department of Justice

**Clerk in attendance :** Ms Connie SZETO  
Chief Council Secretary (1)<sup>4</sup>

**Staff in attendance :** Miss Evelyn LEE  
Assistant Legal Adviser 10

Miss Sharon LO  
Senior Council Secretary (1)<sup>9</sup>

Mr Keith WONG  
Council Secretary (1)<sup>4</sup>

Ms Sharon CHAN  
Legislative Assistant (1)<sup>4</sup>

Ms Vivian CHAN  
Clerical Assistant (1)<sup>4</sup>

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Action

## **I Election of Chairman**

### Election of Chairman

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr WONG Ting-kwong was nominated by Mr CHAN Chun-ying and the nomination was seconded by Mr Holden CHOW. Mr WONG Ting-kwong accepted the nomination.

3. Mr Kenneth LEUNG was nominated by Prof Joseph LEE and the nomination was seconded by Mr WU Chi-wai. Mr LEUNG accepted the nomination.

4. As there was no other nomination, Mr James TO announced a vote by secret ballot. After all members present had cast their votes, Mr TO invited Mr CHAN Chun-ying and Prof Joseph LEE who had nominated the two candidates to oversee the counting of votes. Of the members present for voting, 9 members voted for Mr WONG Ting-kwong and 8 voted for Mr Kenneth LEUNG. Mr TO declared that Mr WONG Ting-kwong was elected the Chairman of the Bills Committee. Mr WONG then took the chair.

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

## **II Meeting with the Administration**

(LC Paper No. CB(3)10/17-18	— The Bill
File Ref: TsyB R 00/800-2/20/0(C)	— Legislative Council Brief
LC Paper No. LS5/17-18	— Legal Service Division Report
LC Paper No. CB(1)206/17-18(01)	— Marked-up copy of the Inland Revenue (Amendment) (No. 5) Bill 2017 prepared by the Legal Service Division (Restricted to members only)

Action

- LC Paper No. CB(1)206/17-18(02) — Letter dated 1 November 2017 from the Legal Service Division to the Administration
- LC Paper No. CB(1)206/17-18(03) — Administration's response to the Legal Service Division's letter dated 1 November 2017
- LC Paper No. CB(1)206/17-18(04) — Background brief prepared by the Legislative Council Secretariat)

Discussion

6. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

7. The Administration was requested to provide information on:
- (a) a breakdown per year on the number and nature of exchange of information on requests ("EOIR") handled by the Inland Revenue Department ("IRD") in recent years, including EOIR received from the tax authorities of Hong Kong's treaty partners and those made by IRD to overseas tax authorities; and
  - (b) a list of the 75 "reportable jurisdictions" as specified in Part 1 of Schedule 17E to the Inland Revenue Ordinance (Cap. 112) for the implementation of automatic exchange of financial account information in tax matters.

*(Post meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)257/17-18(02) on 23 November 2017.)*

Action

**III Any other business**

Invitation of views

8. Members agreed that the Bills Committee would discuss at the next meeting whether it should hold a meeting to receive views from deputations on the Bill.

Date of next meeting

9. The Chairman said that he would work out the date of the next meeting with the Clerk and inform members in due course.

*(Post-meeting note: The second meeting was scheduled for 20 December 2017 to meet with the Administration. The notice of meeting was issued vide LC Paper No. CB(1)231/17-18 on 20 November 2017.)*

10. There being no other business, the meeting ended at 3:58 pm.

Council Business Division 1  
Legislative Council Secretariat  
9 January 2018

**Proceedings of the first meeting of the Bills Committee on  
Inland Revenue (Amendment) (No. 5) Bill 2017  
on Tuesday, 14 November 2017, at 2:30 pm  
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
<b>Agenda item I — Election of Chairman</b>			
000413 – 001003	Mr James TO Mr CHAN Chun-ying Mr Holden CHOW Mr WONG Ting-kwong Prof Joseph LEE Mr WU Chi-wai Mr Kenneth LEUNG	Election of Chairman	
<b>Agenda item II — Meeting with the Administration</b>			
001004 – 001917	Chairman Administration	Briefing by the Administration on the background and purposes of the Bill. [File Ref.: TsyB R 00/800-2/20/0(C)]	
001918 – 002612	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN noted that one of the purposes of the Bill was to align the provisions of the Inland Revenue Ordinance ("IRO") (Cap. 112) for implementing automatic exchange of financial account information in tax matters ("AEOI") with the Common Reporting Standard ("CRS") promulgated by the Organisation for Economic Co-operation and Development ("OECD"). He enquired about the key amendments in this area, and the reasons for making the amendments as the Inland Revenue Department ("IRD") should have followed the relevant template of OECD in developing the AEOI provisions in IRO.</p> <p>The Government advised that –</p> <p>(a) while the key components of CRS had been incorporated in IRO, some provisions did not fully follow the text of CRS as appropriate modifications had been made to cater for the situations in Hong Kong;</p> <p>(b) OECD had recently identified some inconsistencies between the relevant</p>	

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		<p>provisions of IRO and CRS. In order to address the concern of OECD, some textual amendments were proposed; and</p> <p>(c) the key amendments included clarifying the definitions of terms, e.g. cash value and specified insurance company.</p>	
002613 – 004002	Chairman Mr WU Chi-wai Administration	<p>Mr WU enquired about the procedures for (a) applying the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("Multilateral Convention") to Hong Kong; and (b) taking forward the optional provisions of the Multilateral Convention in future if necessary.</p> <p>The Government responded that –</p> <p>(a) the Multilateral Convention was only open for signature by state parties, and as at September 2017, 113 jurisdictions had participated in the Multilateral Convention, among them, 15 jurisdictions had joined by territorial application;</p> <p>(b) upon the request of Hong Kong, the Central People's Government ("CPG") had given in-principle approval to extend the application of the Multilateral Convention to Hong Kong;</p> <p>(c) annex C to TsyB R 00/800-2/20/0(C) listed out all provisions of the Multilateral Convention, and annex E provided an analysis and assessment of the major provisions (i.e. both mandatory and optional provisions) of the Multilateral Convention;</p> <p>(d) it was the Government's policy that Hong Kong would take forward the mandatory provisions of the Multilateral Convention while making suitable reservations/declarations for the optional provisions so that such provisions would not apply (or partially apply) to Hong Kong;</p>	

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		<p>(e) upon passage of the Inland Revenue (Amendment) (No. 5 ) Bill 2017 ("IR(A) No.5 Bill"), the Government would request CPG to deposit a declaration to OECD for territorial application of the Multilateral Convention to Hong Kong, together with the reservations/declarations applicable to Hong Kong; and</p> <p>(f) the Government would seek CPG's assistance to update the reservations/declarations deposited with OECD as and when it was necessary for Hong Kong to take forward the optional provisions in future. It would also be necessary to effect the changes by way of subsidiary legislation, which would be subject to negative vetting by the Legislative Council ("LegCo").</p> <p>Mr WU enquired whether the application of the Multilateral Convention to Hong Kong would have impact on the Comprehensive Avoidance of Double Taxation Agreements ("CDTAs") Hong Kong had entered into with other jurisdictions including the CDTA signed with the Mainland, and whether Hong Kong would make use of CDTAs, Tax Information Exchange Agreements ("TIEAs") or the Multilateral Convention as the instrument in implementing AEOI with other jurisdictions.</p> <p>The Government advised that Hong Kong had signed 38 CDTAs and 7 TIEAs with other jurisdictions including the CDTA signed with the Mainland. CDTAs were tax agreements seeking to minimize incidence of double taxation between the contracting parties and provided a mechanism for the exchange of information ("EOI") between tax authorities, whereas TIEAs served as EOI instruments without offering any double taxation relief. IRD would continue to use CDTAs/TIEAs as the legal basis for the exchange of tax information with Hong Kong's CDTA/TIEA partners where appropriate. Typically, the Multilateral Convention would be used as the instrument for EOI if the jurisdiction concerned was a party to the Multilateral Convention but</p>	



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		not a CDTA/TIEA partner of Hong Kong.	
004003 – 004611	Chairman Mr Holden CHOW Administration	<p>Mr CHOW sought clarification on whether Hong Kong would exchange information with all jurisdictions participating in the Multilateral Convention. He also asked if CDTAs could be implemented on a multilateral basis.</p> <p>The Government clarified that –</p> <p>(a) financial institutions in Hong Kong had been required to collect and furnish IRD with the required information in relation to the reportable accounts of 75 "reportable jurisdictions" as specified in Part 1 of Schedule 17E to IRO which included jurisdictions that had expressed an interest to OECD in conducting AEOI with Hong Kong, Hong Kong's CDTA/TIEA partners and all Member States of the European Union;</p> <p>(b) among the 75 "reportable jurisdictions", IRD would make use of the Multilateral Convention as a platform to exchange information with the tax authorities of those jurisdictions which had not signed CDTAs/TIEAs with Hong Kong; and</p> <p>(c) the Government would continue to expand Hong Kong's CDTA network though it was noted that there would be less incentives for overseas jurisdictions to sign CDTAs with Hong Kong as one of the purposes of a CDTA was to provide a mechanism for EOI on tax matters which could now be achieved by the Multilateral Convention.</p>	
004612 – 005158	Chairman Mr KWOK Wai-keung Administration	<p>Mr KWOK enquired about:</p> <p>(a) the actions by CPG for extending the application of the Multilateral Convention to Hong Kong; and</p> <p>(b) the number and nature of EOI requests handled by IRD in recent years, including requests received from the tax authorities of Hong Kong's treaty partners and those made by IRD to overseas tax authorities.</p>	The Administration to take action as per paragraph 7(a) of the minutes

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		<p>The Government advised that –</p> <ul style="list-style-type: none"> <li>(a) CPG had given in May 2017 in-principle approval to extend the application of the Multilateral Convention to Hong Kong;</li> <li>(b) to provide for the legal basis for the extension, IRO would need to be amended to empower the Chief Executive in Council ("CE-in-C") to declare by order that any tax arrangements made by Hong Kong with more than one government of any territories outside Hong Kong, or made by CPG and applied to Hong Kong, should have effect;</li> <li>(c) subject to the passage of IR(A) No.5 Bill, the Government planned to recommend CE-in-C to make an order to declare that the Multilateral Convention shall have effect in Hong Kong;</li> <li>(d) the Multilateral Convention would apply to Hong Kong on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration for territorial application of the Multilateral Convention to Hong Kong by OECD; and</li> <li>(e) IRD received around 400 EOI requests in 2016-2017 from the tax authorities of Hong Kong's treaty partners.</li> </ul>	
005159 – 005657	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN noted that the Government had issued letters to relevant stakeholders to update them on its plan to participate in the Multilateral Convention, and enquired about the feedback from the stakeholders.</p> <p>The Government remarked that no major feedback had been received from the stakeholders. In general, the stakeholders understood the latest international developments and were positive towards the proposed extension of the Multilateral Convention to Hong Kong.</p>	

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		<p>Mr CHAN suggested that the Government should state clearly in its letter if it intended to invite views from stakeholders. The Government took note of Mr CHAN's suggestion.</p>	
<p>005658 – 011006</p>	<p>Chairman Mr Kenneth LEUNG Administration</p>	<p>Mr LEUNG sought information on –</p> <ul style="list-style-type: none"> <li>(a) the purpose of the proposed new section 49(1AB) of IRO;</li> <li>(b) the provisions of the Multilateral Convention that would be taken forward by Hong Kong;</li> <li>(c) the details for implementing the initiatives to counter base erosion and profit shifting ("BEPS") on a multilateral basis;</li> <li>(d) details regarding the Multilateral Instrument which would be used to modify bilateral tax treaties for BEPS purposes; and</li> <li>(e) whether CDTAs signed on a multilateral basis could also be taken effect by virtue of the proposed new section 49(1AB).</li> </ul> <p>The Government advised that –</p> <ul style="list-style-type: none"> <li>(a) the proposed new section 49(1AB) was to empower CE-in-C to declare by order that any tax arrangements made by Hong Kong with more than one government of any territories outside Hong Kong, or made by CPG and applied to Hong Kong, shall have effect;</li> <li>(b) the new power provided to CE-in-C would facilitate Hong Kong in taking forward new initiatives on international tax cooperation;</li> <li>(c) orders made by CE-in-C under section 49(1A), including the order to declare that the Multilateral Convention shall have effect in Hong Kong, were subject to the negative vetting procedure of LegCo;</li> </ul>	

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		<p>(d) the declaration to be deposited with OECD for applying the Multilateral Convention to Hong Kong would cover the details regarding the reservations/declarations applicable to Hong Kong;</p> <p>(e) the provisions in the Multilateral Convention which were applicable to CPG were wider than those applicable to Hong Kong;</p> <p>(f) the Government would introduce legislative proposals for implementing the BEPS initiatives, and the Multilateral Instrument in Hong Kong separately;</p> <p>(g) the Multilateral Instrument sought to ensure swift, co-ordinated and consistent implementation of treaty-related BEPS measures in a multilateral context (e.g. avoid abuse of CDTA provisions) which would avoid modifications to the existing CDTAs signed by various jurisdictions on a bilateral basis; and</p> <p>(h) CDTAs signed on a multilateral basis could take effect in Hong Kong by virtue of the proposed new section 49(1AB)(a) (i.e. arrangements that were made with more than one government).</p>	
011007 – 011521	<p>Chairman Assistant Legal Adviser 10 ("ALA10") Administration</p>	<p>ALA10 noted that Hong Kong had signed CDTAs/TIEAs with various jurisdictions which had taken effect by orders made by CE-in-C under section 49(1A) of IRO. These jurisdictions might have also participated in the Multilateral Convention. She enquired about –</p> <p>(a) Government's follow-up actions if conflicting provisions were identified between the Multilateral Convention and the respective CDTAs/TIEAs signed with the jurisdictions; and</p> <p>(b) when making EOI requests to IRD, whether the tax authorities concerned had to state explicitly that the requests were made in accordance with the provisions in</p>	

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		<p>the Multilateral Convention, CDTAs or TIEAs.</p> <p>The Government explained that –</p> <ul style="list-style-type: none"> <li>(a) the Multilateral Convention, CDTAs, or TIEAs were different platforms to facilitate EOI on tax matters;</li> <li>(b) the rights and obligations of a jurisdiction under the Multilateral Convention, a CDTA or TIEA were more or less the same. The Government had not identified any conflicting provisions among the three sets of instruments so far; and</li> <li>(c) OECD has taken the bilateral modules of EOI and CDTA agreements into account when it designed the Multilateral Convention; and</li> <li>(d) each EOI request must identify the basis of the request (i.e. made in accordance with the Multilateral Convention, a CDTA or TIEA) and state the information requested. The Government would consider the request in the light of the basis upon which the request claimed to be made and with references to the relevant laws of Hong Kong. These principles were also applicable to Hong Kong in case where Hong Kong was the requesting party.</li> </ul>	
011522 – 012353	Chairman Administration	<p>The Chairman enquired about the implications of the Multilateral Convention on Hong Kong residents working in the Mainland for a period not exceeding 183 days a year. He also expressed concern about the tax arrangements of Hong Kong residents working in Southeast Asian countries (e.g. Vietnam, Laos and Cambodia).</p> <p>The Government advised that –</p> <ul style="list-style-type: none"> <li>(a) income derived by a Hong Kong resident, which was not borne by a Mainland entity or a permanent establishment in the Mainland or from employment exercised</li> </ul>	

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		<p>in the Mainland, would be exempt from Mainland tax if the resident's aggregate stay in the Mainland in any relevant 12-month period did not exceed 183 days;</p> <p>(b) in general, a Hong Kong resident whose income was derived from Hong Kong employment would be subject to salaries tax of Hong Kong regardless of his/her place of work;</p> <p>(c) contract splitting was not encouraged as it might be regarded as a kind of tax evasion activities; and</p> <p>(d) Hong Kong had signed a CDTA with the Mainland and hence EOI on tax matters of Hong Kong residents working in the Mainland could be exchanged through the CDTA platform.</p> <p>The Chairman requested the Government to provide the list of 75 "reportable jurisdictions" as specified in Part 1 of Schedule 17E to IRO for the implementation of AEOI.</p>	<p>The Administration to take action as per paragraph 7(b) of the minutes</p>
<b>Agenda item III — Any other business</b>			
012354 – 012700	Chairman Mr CHAN Chun-ying Administration	Discussion on the need for the Bills Committee to invite public views on the Bill	
012701 – 012831	Chairman Clerk	Date of next meeting	