

**立法會**  
**Legislative Council**

LC Paper No. CB(1)206/17-18(04)

Ref: CB1/BC/1/17

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

**Background brief**

**Purpose**

This paper provides background information on the Inland Revenue (Amendment) (No. 5) Bill 2017 and summarizes the major views and concerns expressed by Members when issues related to the implementation of automatic exchange of financial account information in tax matters ("AEOI") in Hong Kong were discussed by relevant committees of the Legislative Council ("LegCo") since the 2014-2015 legislative session.

**Background**

Inland Revenue (Amendment) (No. 3) Ordinance 2016

2. For the purpose of enhancing tax transparency and combating cross-border tax evasion, the Organisation for Economic Co-operation and Development ("OECD") released in July 2014 the Common Reporting Standard ("CRS") for implementation of automatic exchange of financial account information in tax matters ("AEOI"). So far, 102 jurisdictions have committed to this global initiative. In September 2014, Hong Kong indicated its support for implementing AEOI on a reciprocal basis with appropriate partners with a view to commencing the first exchanges by the end of 2018. The AEOI initiative requires financial institutions ("FIs") to identify financial accounts held by tax residents of reportable jurisdictions, and to collect the reportable information of these financial accounts for reporting to the tax authority in accordance with CRS. Individual tax authorities will exchange information with their counterparts of other jurisdictions on an annual basis.

3. The Government's policy is to conduct AEOI only with partners with which Hong Kong has signed Comprehensive Avoidance of Double Taxation Agreements ("CDTAs") or Tax Information Exchange Agreements ("TIEAs") on a bilateral basis under the exchange of information mechanism.<sup>1</sup> Under this approach, Hong Kong will make use of the bilateral CDTAs or TIEAs signed as the legal basis for implementing AEOI.<sup>2</sup> To enable AEOI, the Inland Revenue Department ("IRD") will have to sign a new Competent Authority Agreement ("CAA"), which sets out the modalities of transfer of information collected pursuant to the AEOI standard, with the tax authority of the CDTA/TIEA partner concerned before the exchange of the relevant information takes place.

4. To provide for the legal framework for implementing AEOI in Hong Kong, the Government introduced amendments to the Inland Revenue Ordinance (Cap. 112) ("IRO"), which were subsequently enacted as the Inland Revenue (Amendment) (No. 3) Ordinance 2016 in June 2016.<sup>3</sup> The Amendment Ordinance has added a new section 50J to IRO empowering the Secretary for Financial Services and the Treasury to amend, among others, Schedule 17E to IRO to provide for a list of reportable jurisdictions. A reportable jurisdiction refers to a jurisdiction with which Hong Kong has entered into CDTA/TIEA and CAA for the conduct of AEOI (i.e. Hong Kong's AEOI partner). FIs are required to conduct due diligence procedures to identify reportable accounts held by tax residents of confirmed AEOI partners as included in the list of reportable jurisdictions and collect the required information in respect of these reportable accounts. FIs are also required to furnish such information to IRD from a specific reporting year for onward exchange with the relevant AEOI partners. As of 31 August 2017, Hong Kong

---

<sup>1</sup> Comprehensive avoidance of double taxation agreements ("CDTAs") are tax agreements which seek to minimize incidence of double taxation between the contracting parties and provide a mechanism for the exchange of information ("EOI") between tax authorities, whereas tax information exchange agreements ("TIEAs") serve as EOI instruments without offering any taxation relief.

<sup>2</sup> CDTAs and TIEAs signed between Hong Kong and other jurisdictions are giving effect in Hong Kong by orders made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112). Such orders are subject to the negative vetting procedure of the Legislative Council ("LegCo").

<sup>3</sup> The Inland Revenue (Amendment) Bill 2016 was introduced into LegCo in January 2016. The Bill was passed by LegCo passed on 22 June 2016 which came into effect on 30 June 2016.

has signed 38 CDTAs,<sup>4</sup> seven TIEAs,<sup>5</sup> and 14 bilateral CAAs for AEOI.<sup>6</sup>

### **Expansion of Hong Kong's network for the implementation of automatic exchange of financial account information in tax matters**

5. The international community has been closely monitoring jurisdictions' progress in the implementation of AEOI and putting emphasis on a wide network of AEOI to ensure a level-playing field. Both OECD and the European Union ("EU") have kicked off their respective exercise to draw up lists of non-cooperative tax jurisdictions and non-compliant jurisdictions on tax transparency. The criteria adopted by OECD and EU in this respect are set out in **Appendix I**. Among the listing criteria are the progress and the network of implementing AEOI as well as participation in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("Multilateral Convention").

6. The Government has emphasized the importance for Hong Kong to take timely action in response to the mounting aspirations of OECD and EU for preserving data for exchange with other jurisdictions so as to avoid being listed as non-cooperative or non-compliant tax jurisdictions, which could then be subject to counter-measures including the imposition of withholding taxes and would make Hong Kong a less attractive place for investment and business.

#### Inland Revenue (Amendment) (No.2) Ordinance 2017

7. Hong Kong faces constraints in the negotiations of bilateral CAA because such discussions with individual jurisdictions take time, and in many cases, Hong Kong's bilateral tax treaties (i.e. CDTAs or TIEAs) will need to be amended to allow for AEOI. Moreover, FIs are mandated to identify and collect information in relation to accounts held by tax residents of confirmed

---

<sup>4</sup> 38 CDTAs signed with Belgium, Thailand, Mainland of China, Luxembourg, Vietnam, Brunei, the Netherlands, Indonesia, Hungary, Kuwait, Austria, the United Kingdom, Ireland, Liechtenstein, France, Japan, New Zealand, Portugal, Spain, the Czech Republic, Switzerland, Malta, Jersey, Malaysia, Mexico, Canada, Italy, Guernsey, Qatar, Korea, South Africa, the United Arab Emirates, Romania, Russia, Latvia, Belarus, Pakistan and Saudi Arabia.

<sup>5</sup> Seven TIEAs signed with the United States, Norway, Denmark, Sweden, Iceland, Greenland and the Faroes.

<sup>6</sup> 14 bilateral Competent Authority Agreements signed with Japan, the United Kingdom, Korea, Belgium, Canada, Guernsey, Mexico, the Netherlands, Italy, Portugal, South Africa, Ireland, Indonesia and New Zealand.

AEOI partners as included in the list of reportable jurisdictions only. To overcome the above challenges, the Government introduced amendments to IRO, which were subsequently enacted as the Inland Revenue (Amendment) (No.2) Ordinance 2017 in June 2017,<sup>7</sup> to mandate FIs to identify and collect information in relation to accounts held by tax residents of prospective AEOI partners, in addition to confirmed AEOI partners, of Hong Kong. The Amendment Ordinance 2017 has amended Part 1 of Schedule 17E to IRO to expand the list of reportable jurisdictions to cover 75 jurisdictions, comprising 13 confirmed AEOI partners and 62 prospective<sup>8</sup> AEOI partners.

### Multilateral Convention on Mutual Administrative Assistance in Tax Matters

8. The Multilateral Convention is jointly developed by OECD and the Council of Europe to provide for all possible forms of administrative cooperation between state parties in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. The Multilateral Convention provides a basis for jurisdictions to conduct AEOI and implement the initiatives to combat base erosion and profiting shifting ("BEPS")<sup>9</sup> on a multilateral basis by signing a multilateral CAA under the Convention. The Multilateral Convention has been open for signature by states since 1 June 2011. According to the Government, as at September 2017, 113 jurisdictions participated in the Multilateral Convention, including 15 jurisdictions covered by territorial extension.

---

<sup>7</sup> The Inland Revenue (Amendment) (No. 3) Bill 2017 was introduced into LegCo in March 2017. The Bill was passed by LegCo on 22 June 2017 which came into effect on 1 July 2017.

<sup>8</sup> The 62 prospective automatic exchange of financial account information in tax matters ("AEOI") partners are from the following three categories:

- (a) jurisdictions which have expressed an interest to the Organisation for Economic Co-operation and Development ("OECD") in conducting AEOI with Hong Kong or jurisdictions suggested by OECD;
- (b) Hong Kong's tax treaty partners which have committed to AEOI; and
- (c) all Member States of the European Union.

<sup>9</sup> Base erosion and profiting shifting ("BEPS") refers to tax planning strategies of multinational enterprises that exploit the gaps and mismatches in tax rules among economies to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. OECD and the Group of Twenty released a package of 15 actions to combat BEPS in October 2015. Hong Kong indicated to OECD in June 2016 its commitment to implementing the BEPS package. According to the Government, it will introduce a bill to amend IRO to implement the minimum standards under BEPS.

9. At present, Hong Kong is not covered by the Multilateral Convention. According to the Government, all 102 AEOI-committed jurisdictions have either joined or indicated to join the Multilateral Convention. Indeed, participation in the Multilateral Convention is a key element when OECD and EU consider whether a tax jurisdiction is "non-cooperative" or "non-compliant" in respect of tax transparency matters. In view of the continued expansion in the scope of tax information exchanges in the international community, the Government considers that the bilateral approach which Hong Kong has adopted is no longer effective or efficient in implementing the AEOI and BEPS initiatives, and it is necessary to seek the application of the Multilateral Convention to Hong Kong.

### **The Inland Revenue (Amendment) (No.5) Bill 2017**

10. The Inland Revenue (Amendment) (No.5) Bill 2017 ("the Amendment (No.5) Bill 2017") was gazetted on 6 October 2017, and received its First Reading at the LegCo meeting of 18 October 2017. The Amendment (No.5) Bill 2017 seeks to amend IRO to empower the Chief Executive in Council to give effect to the Multilateral Convention and any other tax agreements that apply to Hong Kong, and align the relevant provisions of IRO with CRS promulgated by OECD for AEOI.<sup>10</sup>

11. Details of the main provisions of the Amendment (No.5) Bill 2017 are set out in paragraph 21 of the LegCo Brief (File Ref: TsyB R 00/800-2/20/0(C) dated 4 October 2017), and paragraphs 4 to 7 of the Legal Service Division Report on the Amendment (No.5) Bill 2017 (LC Paper No. LS5/17-18). The Amendment (No.5) Bill 2017, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

### **Major views and concerns expressed by Members**

12. Matters relating to the implementation of the AEOI regime in Hong Kong were discussed at the meetings of the Panel on Financial Affairs ("FA Panel") on 3 November 2014, 6 July 2015, 16 March 2017 and 5 June 2017, the Bills Committee on Inland Revenue (Amendment) Bill 2016, the Finance

---

<sup>10</sup> According to the Government, after passage of the Inland Revenue Amendment (No.5) Bill 2017, it will recommend the Chief Executive in Council to make an order to declare that the Multilateral Convention on Mutual Administrative Assistance in Tax Matters shall have effect in Hong Kong. The order is subject to the negative vetting procedure of LegCo.

Committee during examination of the Estimates of Expenditure on 30 March 2015 and 3 April 2017, the Subcommittee on Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2016 and the Bills Committee on Inland Revenue (Amendment) (No.3) Bill 2017. The major views and concerns expressed by Members at these meetings are summarized in the ensuing paragraphs.

#### Justifications for implementing automatic exchange of financial account information in tax matters

13. While some Members considered that Hong Kong should implement AEOI in order to fulfil its responsibility in international tax cooperation, some other Members queried the benefits for Hong Kong to pursue AEOI given its territorial-based tax regime. These Members cautioned that following the international standards of AEOI indiscriminately and too closely might risk eroding the edges of simple tax regime and flexible business environment of Hong Kong in the long run.

14. The Government advised that the international community had been closely monitoring jurisdictions' progress in the implementation of AEOI and putting emphasis on a wide network of AEOI to ensure a level-playing field. Both OECD and EU had kicked off their respective exercises to draw up lists of "non-cooperative" tax jurisdictions. One of the listing criteria was the progress and the network of implementing AEOI. In the case of EU, a jurisdiction could be regarded as compliant on tax transparency if it fulfilled certain criteria, one of which was that arrangements had been in place for AEOI with all EU Member States by end 2017. A considerable number of jurisdictions had also indicated to OECD their interest in conducting AEOI with Hong Kong.

#### Operational arrangements for automatic exchange of information with reportable jurisdictions

15. Members noted that reporting FIs should start conducting due diligence procedures and collect information from account holders who were tax residents of an AEOI partner jurisdiction, in the calendar year following LegCo's approval of the inclusion of the AEOI partner as a reportable jurisdiction. FIs should lodge the AEOI returns within five months after the calendar year to which the information related and IRD would then commence the first information exchange with the tax authorities of the reportable jurisdictions in the following September (and September annually thereafter). Given the bulk of information involved, Members enquired about the feasibility of spreading out the deadlines for FIs to submit the AEOI returns in respect of different

jurisdictions over different months of a reporting year.

16. The Government responded that 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 AEOI returns to IRD by May in the reporting year concerned. OECD would put in place a Common Transmission System for exchange of information among tax authorities. At the domestic level, IRD would put in place a secure platform, i.e. the AEOI Portal, for FIs to submit notifications and file returns on required information of reportable accounts electronically. It was envisaged that with this new electronic platform in place, the processing and exchange of data would not create too much administrative burden on IRD.

#### Due diligence procedures

17. Members were concerned that the surge in the number of reportable jurisdictions after the enactment of the Inland Revenue (Amendment) (No. 2) Ordinance 2017 might create undue compliance burden on FIs in carrying out the due diligence procedures in verifying reportable financial accounts. Members enquired about how reporting FIs would be taken as having exercised all reasonable due diligence to identify the tax residences of account holders.

18. The Government advised that the essential requirements of OECD's AEOI standard, including the obligations on FIs to establish, maintain and apply due diligence procedures in respect of new accounts and pre-existing accounts, had already been included in IRO. Besides, under the existing Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO"), FIs were required to conduct due diligence for their customers, so as to identify and verify the customers' identity. In order to reduce the compliance burden of FIs in carrying out the due diligence procedures for AEOI, FIs might resort to information collected pursuant to the AMLO procedures in performing the relevant due diligence requirements under the AEOI regime.

19. The Government further pointed out that FIs would be taken as having exercised reasonable due diligence to identify the tax residences of account holders so long as they had followed the relevant requirements in IRO. Self-certification by account holders would be an important tool for reporting FIs to fulfil their reporting and due diligence obligations, in particular to determine the tax residences of account holders. Should any information provided by the account holders be apparently in conflict with the information held by FIs, the FIs should seek new self-certification or explanation from the account holders.

FIs were not expected to carry out independent legal analyses of relevant tax laws or carry out investigation to determine the tax residences of the account holders. IRD would promulgate guidelines, which would include a sample self-certification form for reporting FIs' reference and brief them on the due diligence and reporting requirements.

#### Safeguards to protect taxpayers' privacy and confidentiality of information exchanged

20. Members enquired how the privacy of personal data would be protected in implementing AEOI including measures to safeguard against misuse of information by Hong Kong's AEOI partners, and the penalties, if any, on IRD staff for leaking information in the course of handling AEOI data.

21. The Government emphasized that Hong Kong would only conduct AEOI with jurisdictions which had signed dedicated exchange agreements with Hong Kong and fulfilled OECD's standard and the relevant safeguards for protecting data privacy and confidentiality of the information exchanged. The scope and use of information to be exchanged followed CRS of AEOI set by OECD strictly. OECD would also examine the information technology systems of those tax jurisdictions which had committed to adopting AEOI, in order to ensure that the systems would meet the requirements in terms of confidentiality and information protection. Hong Kong passed OECD's examination in June 2016. At the domestic level, the Government had kept the Office of the Privacy Commissioner for Personal Data informed of the AEOI initiative and would ensure compliance with the relevant requirements in confidentiality and personal data privacy.

22. As regards the handling of AEOI data by IRD staff, the Government advised that there were established procedures on appointment or authorization of persons to carry out duties including AEOI arrangements under IRO. By virtue of sections 4(1) and 81(1)(b) of IRO, returns containing the required information furnished to IRD by FIs were subject to official secrecy protection, contravention of which constituted an offence. Non-compliances with the official secrecy provisions would also be followed up in accordance with the established civil service disciplinary mechanism. Furthermore, the information from FIs would be transmitted via IRD's AEOI Portal system and stored in IRD's back-end system with encryption under a high level of security. The data would be stored in a dedicated database and would not be commingle. Stringent controls were put in place to restrict data access to a limited number of IRD officers after proper authentication. All data access would be logged and subject to review. IRD would also engage information technology security



companies every year to examine its information technology system in order to ensure that the system would meet security requirements.

Application of the Convention on Mutual Administrative Assistance in Tax Matters to Hong Kong

23. Members enquired about the procedures for Hong Kong to join the Multilateral Convention, given that the Multilateral Convention was only opened for signature by state parties. The Government advised that upon the request of Hong Kong, the Central People's Government ("CPG") had recently given in-principle approval to extend the application of the Multilateral Convention to Hong Kong. The Government had to amend IRO to provide for the legislative framework for Hong Kong to participate in the Multilateral Convention. Upon enactment of the amendment ordinance, the Government would seek CPG's assistance to deposit a declaration to OECD for territorial application of the Multilateral Convention to Hong Kong.

24. Noting that "simultaneous tax examinations" was one of the mandatory provisions of the Multilateral Convention, but it would be up to a party to decide whether to participate in a particular examination, Members enquired about the purpose of conducting simultaneous tax examinations and the reasons for the Government's decision of not participating in any simultaneous tax examinations.

25. The Government explained that simultaneous tax examination referred to an arrangement which jurisdictions, each in its own territory, to examine tax affairs of persons in which they had a common or related interest, with a view to exchanging any relevant information which they so obtained. Given that Hong Kong had been practising a territorial-based tax regime, it appeared unlikely that Hong Kong would need to conduct tax examinations with other jurisdictions. It was therefore the Government's policy that Hong Kong, as a general rule, would not participate in any simultaneous tax examinations. In addition, Hong Kong would not accept requests from other jurisdictions allowing their representatives to be present at a tax examination of Hong Kong given that "tax examinations abroad" was an optional provision of the Multilateral Convention.

26. As regards the types of taxes that Hong Kong intended to cover under the Multilateral Convention, the Government advised that a wide range of taxes were covered under the Multilateral Convention and Hong Kong would only provide assistance on information exchange for taxes on income or profits, taxes on capital gains which were imposed separately from the tax on income or

profits, and taxes on net wealth (i.e. the minimum requirement under the Multilateral Convention).

### **Latest development**

27. At the House Committee meeting on 20 October 2017, Members agreed to form a Bills Committee to study the Amendment (No.5) Bill 2017.

### **Relevant papers**

28. A list of relevant papers is set out in the **Appendix II**.

Council Business Division 1  
Legislative Council Secretariat  
13 November 2017

### **Criteria adopted by the Organisation for Economic Co-operation and Development and the European Union for considering non-cooperative tax jurisdictions and non-compliant jurisdictions on tax transparency**

1. A jurisdiction will be considered by the Organisation for Economic Co-operation and Development as "non-cooperative" if it fails to meet the benchmarks of at least two of the following three criteria-

- (a) exchange of information on request ("EOIR") - obtain at least a rating of "Largely Compliant" from the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum");
- (b) automatic exchange of financial account information in tax matters ("AEOI") - first exchanges commence in 2018 (with respect to the financial account information for the year 2017) at the latest; and
- (c) the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("Multilateral Convention") - participation in the Multilateral Convention or a sufficiently broad exchange network permitting both EOIR and AEOI.

2. In the case of the European Union ("EU"), a jurisdiction will be regarded as compliant on tax transparency if it fulfills at least two of the following three criteria-

- (a) EOIR - obtain at least a rating of "Largely Compliant" from the Global Forum;
- (b) AEOI - arrangement in place for exchange with all Member States of EU by end 2017, either by signing the Multilateral Competent Authority Agreement ("CAA") or through bilateral CAAs; and
- (c) Multilateral Convention - participation in the Multilateral Convention, or having a network of agreements covering all Member States of EU (allowing both EOIR and AEOI), either already in force or expected to enter into force within a reasonable time frame.

## List of relevant papers

Date	Event	Paper
3 November 2014	Meeting of the FA Panel	<a href="#">Administration's paper</a> (LC Paper No. CB(1)122/14-15(03))  <a href="#">Background brief</a> (LC Paper No. CB(1)122/14-15(04))  <a href="#">Minutes</a> (paragraphs 38-51) (LC Paper No. CB(1)379/14-15)
30 March 2015	Special meetings of the Finance Committee to examine the Estimates of Expenditure 2015-16 (session on public finance)	<a href="#">Speaking note of the Secretary for Financial Services and the Treasury</a>  <a href="#">Report on the examination of the Estimates of Expenditure 2015-2016</a>
6 July 2015	Meeting of the FA Panel	<a href="#">Administration's paper</a> (LC Paper No. CB(1)1034/14-15 (06))  <a href="#">Updated background brief</a> (LC Paper No. CB(1)1034/14-15 (07))  <a href="#">Minutes</a> (paragraphs 54-64) (LC Paper No. CB(1)1258/14-15)
22 June 2016	The Legislative Council passed the Inland Revenue (Amendment) Bill 2016	<a href="#">Hansard</a>  <a href="#">The Bill passed</a>  <a href="#">Report of the Bills Committee</a> (LC Paper No. CB(1)984/15-16)
2 November 2016	Subcommittee on Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2016	<a href="#">Report</a> (LC Paper No. CB(1)281/16-17)

Date	Event	Paper
16 March 2017	Meeting of the FA Panel	<a href="#">Administration's paper</a> (LC Paper No. CB(1)660/16-17 (09))  <a href="#">Updated background brief</a> (LC Paper No. CB(1)660/16-17 (10))  <a href="#">Minutes</a> (paragraphs 56-61) (LC Paper No. CB(1)1178/16-17)
29 March 2017	The Legislative Council passed the Inland Revenue (Amendment) (No.3) Bill 2017	<a href="#">Hansard</a>  <a href="#">The Bill passed</a>  <a href="#">Report of the Bills Committee</a> (LC Paper No. CB(1)1008/16-17)
3 April 2017	Special meetings of the Finance Committee to examine the Estimates of Expenditure 2017-18 (session on public finance)	<a href="#">Speaking note of the Secretary for Financial Services and the Treasury</a>  <a href="#">Report on the examination of the Estimates of Expenditure 2017-2018</a>
5 June 2017	Meeting of the FA Panel	<a href="#">Administration's paper</a> (LC Paper No. CB(1)1030/16-17 (08))  <a href="#">Updated background brief</a> (LC Paper No. CB(1)1030/16-17 (09))  <a href="#">Minutes</a> (paragraphs 52-62) (LC Paper No. CB(1)1356/16-17)
18 October 2017	The Inland Revenue Revenue (Amendment) (No. 5) Bill 2017 was introduced into the Legislative Council	<a href="#">The Bill</a>  <a href="#">Legislative Council Brief</a> (File Ref: TsyB R 00/800-2/20/0(C))  <a href="#">Legal Service Division Report</a> (LC Paper No. LS5/17-18)