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23 February 2018

The Honourable Mr. Kenneth Leung
Chairman
Bills Committee on Inland Revenue (Amendment) (No.6) Bill 2017
Legislative Council Secretariat
Hong Kong

Dear Mr. Leung,

Submission on Inland Revenue (Amendment) (No.6) Bill 2017

We write to make a submission concerning the Bill. This submission is organized as follows: Part I of the submission concerns general comments on the policies reflected in the Bill. Part II contains specific comments on particular sections of the Bill.

Part I: General comments

1) Domestic transactions

While there is a broad consensus that Hong Kong should legislate to implement the minimum standards as required by the OECD's anti-BEPS Package, there is little support within the business community for extending the transfer pricing ("TP") rules to cover all domestic transactions. This is in excess of the OECD's minimum requirements and would give rise to more onerous compliance burdens for Hong Kong businesses, without offering any discernible benefit in return.

Many other jurisdictions do not generally apply their TP rules to domestic transactions. The jurisdictions that apply TP rules to domestic transactions usually do so to address risks of tax arbitrage which might be the result of different domestic tax rates, different taxation rates per state/province, or indirect taxes.

a. Our preferred approach

We urge caution in rushing to apply the TP system to domestic transactions until the related policy issues have been thoroughly considered and an analysis has been conducted as to how unnecessary burdens on taxpayers can be minimized. There is no reason to rush quickly. The main focus of the OECD's anti-BEPS initiative and the EU's concern is cross-border transactions, and that is the immediate concern that must be addressed quickly. Applying TP to domestic transactions raises many issues that require careful consideration from both policy and technical viewpoints. In addition, our impression is that the business community in Hong Kong has not yet focused on this issue, and more

briefing paper to LegCo states that revenue generation is not the driver for this Bill, so there would appear to be no harm in delaying such an important decision.

Our concern is this. The Government's position is that the proposed TP regime is designed to codify existing administrative practices. The reality is that, under existing practices, TP is not applied in all cases involving domestic transactions. One example is inter-group lending arrangements which are often implemented on an interest-free basis. To impose a TP requirement to such loans would require corporate groups to undertake burdensome TP studies and to charge interest to each borrower company concerned. Another example is the provisions by parent and headquarters companies of services to local affiliates. Currently, many groups do not charge service fees to their affiliates. To impose a TP requirement in such cases would require groups to monitor precisely the quantum of services provided to each individual affiliate and to charge a service fee to each of them. In large corporate groups, companies can number in the dozens and even hundreds. In many cases, applying a TP requirement would not generate additional tax revenue, at least in those cases where both companies are Hong Kong taxpayers having the same tax profile. Imposing a TP requirement would therefore result in an unnecessary administrative burden on such groups. It would be preferable to apply TP requirements only in specified types of cases where there is likely to be a real concern about tax leakage and where a conscious policy decision has been made to apply the administrative burdens entailed by the TP process.

Imposing a TP requirement in all cases involving interest-free loans would encourage groups to convert such loans into capital contributions or to undertake steps to provide loans offshore to ensure non-taxability of interest. It may also encourage the use of non-Hong Kong companies (whose capital redemption rules are more flexible). This distortion of routine economic activity would be burdensome and undesirable.

In JLCT's view, the main concern should be to ensure that the TP system that is finally adopted is appropriate for Hong Kong's situation and needs, and does not impose unnecessary burdens on taxpayers. It is therefore necessary to first identify *which* domestic transactions should be covered, rather than arbitrarily apply TP requirements to *all* domestic transactions. Identifying such transactions needs further analysis. The Hong Kong tax system has been long renowned for its relative simplicity. We should not quickly introduce complications until such time that a well-founded decision has been made that this is necessary.

We therefore suggest that, initially, the TP requirements be restricted to cross-border transactions. The Government can them consult more widely and decide over time whether it is appropriate to extend the TP regime to particular types of domestic transactions. We suggest that the Financial Secretary be given authority to introduce regulations from time to time to specify what domestic transactions should be brought within the TP regime once the suitability of doing this has been analyzed. (As an aside, we believe strongly that any such application should be by way of regulation and not merely through administrative fiat through a DIPN or otherwise. It is important that any such application be done by way of legal requirement in a transparent manner.)

This is not a case of unnecessarily deferring making decisions. This is more about making sure that Hong Kong's TP system is properly implemented, taking into account the best interests of Hong Kong.

b. Our alternative proposal

That said, assuming that the decision is indeed taken to extend the TP regime to all domestic transactions from the outset, we submit as an alternative that it would be inappropriate to apply the system to *all* domestic transactions. Only those domestic transactions that give rise to a threat of tax leakage should be brought within the TP system.

To explain this further, we accept in Hong Kong some tax arbitrage from domestic transactions can arise, eg, where there are transactions between related companies one of which has (a) a preferential

tax rate, or (b) tax losses or (c) earns offshore sourced (tax-free) income. In our view, this could be handled by applying s. 50AAF only in cases where a non-arm's length transaction results in a reduction of Hong Kong tax *on an overall group basis*, rather than cases where the transaction results in a reduction of tax payable by a single entity but where corresponding additional tax is payable by the other party to the transaction.

In other words, we urge that s. 50AAF should not apply where the two related parties to a transaction have identical tax profiles. Where this is the case, there is no benefit in applying TP rules to domestic transactions in Hong Kong because there is no tax saving overall.

We understand that, if a TP adjustment were made, a corresponding adjustment will be made to the other company, so that the group will not pay any additional tax at the end of the day. However, three complications arise in such a case. First, the compliance burden on both the group and the IRD is unnecessarily increased. Secondly, the parties, as well as the IRD, would have to follow burdensome procedures to sort out the matter. Thirdly, and most significantly, the odd situation arises where the company that saves tax can be subjected to a penalty under the new s.82A(1G) even though no Hong Kong tax has been lost overall and even though compensating adjustments have been made. This is nonsensical.

For your information, the following are examples of exemptions and safe harbours adopted by other jurisdictions in Asia:

(a) Mainland China: Article 18 of Public Notice No. 42 [2016] allows for enterprises with only domestic related party transactions to choose not to prepare a master file nor a local file. In addition, Article 38 of Public Notice No. 6 [2017] also excludes transfer pricing adjustments on domestic transactions between related parties with the same effective tax burden, so long as the transactions do not directly / indirectly reduce overall domestic tax revenue.

(b) Japan: Articles 66-4 and 68-88 of the Act on Special Measures concerning Taxation provide that transfer pricing in Japan does not apply to domestic transactions.

(c) India: Section 92BA provides for safe harbour thresholds below which domestic transfer pricing rules do not apply. India only applies its TP rules to certain "specified domestic transactions," and not to all domestic transactions.

(d) The United Kingdom, which applies TP rules to domestic transactions, provides an exemption from these rules for SMEs (TIOPA10/S166).

We do not accept that the application of TP rules to purely domestic transaction is required by the OECD/EU nor under international tax norms. Both are fundamentally concerned with cross-border transactions. The fact that other countries exempt domestic transactions supports our assertion.

We strongly urge that Hong Kong should follow Mainland China and Japan by excluding domestic transactions from the new TP regime. Alternatively, you could consider following the Indian approach and apply the TP rules only to specified types of domestic transactions and provide safe harbours. If these preferred options are not feasible, we would recommend that Hong Kong should exempt SMEs from the application of TP rules, similar to the approach taken by the United Kingdom.

If the government's intention is to eliminate aggressive tax avoidance practices arising from domestic related-party transactions, there are already wide provisions under the existing legislation (e.g. s. 61A and s. 61B) that address these issues.

To ensure certainty and clear understanding of the applicable TP requirements, we strongly support that the application of TP requirements should be addressed in the legislation, and not only in an administrative guidance which would not be legally binding.

2) <u>Resourcing and administration of the TP rules</u>

We have concern that the IRD may not have either the resources nor the experience to implement the new TP regime at the moment.

We recommend that the Government should provide the IRD with adequate resources to hire qualified personnel and train other personnel so as to properly administer the new TP regime.

As TP is a highly specialized expertise, we recommend that the IRD establish a specialist TP unit that would handle all TP matters arising from audits, assessments and disputes. The members of this unit should have extensive experience in the practice of TP. Where an assessor identifies a TP risk in an audit, he or she should refer the matter to the TP unit for its examination and handling. This would ensure a fair and consistent application of the TP rules, and mitigate the risk that assessors that do not have this specialized expertise would inappropriately apply these rules. TP is complicated and sophisticated, and cannot be properly applied by people who do have the necessary qualifications. Accounting and law firms who undertake TP analyses employ specialized economists to undertake the relevant studies. For a TP system to operate smoothly, advisers need to be able to interact with similarly-qualified professionals within the tax administration who are trained to understand the economic concepts involved and who "speak the same language" of globally accepted TP methodology. Just as a person cannot conduct surgery just by reading a medical book, an assessor cannot properly review TP matters just by reading the OECD guidelines.

3) Guidance

We strongly support the IRD's plan to publish TP guidance on the IRD's website even before an updated DIPN is published. We recommend publishing this guidance as soon as the TP legislation is enacted, because companies will need such guidance as soon as possible.

To meet this timeline, the IRD should start the preparation of such guidance now. If the Government's plan is to rely on the UK TP guidance materials, it would be helpful if the IRD could provide references to the parts in these materials that should be followed by Hong Kong companies.

4) Choice between TP arrangement and tax adjustment

There may be situations in which non-tax considerations support an arrangement between related parties that does not follow the TP rules. If the TP rules are not followed, but the taxpayer makes an appropriate adjustment in its tax filing to make good the tax short-fall that would otherwise arise, then there would be no revenue lost by the Government. We recommend that the legislation or the administrative guidance address whether it would be permissible for taxpayers to apply a tax adjustment instead of following the TP rules where this does not result in lower taxes being paid.

Part II: Comments on specific sections

1) s. 50AAF

This section is the crux of the proposed TP regime. It contains one glaring problem that makes it wholly inconsistent with generally-accepted global TP philosophy and TP practices around the world. The problem is this.

If an assessor challenges the taxpayer's TP, ss. (3) empowers the assessor to require the taxpayer to prove that the amount of income reported by the taxpayer is "the" arm's length amount. Furthermore, if the assessor does not accept the taxpayer's evidence as to what is "the" arm's length amount, the assessor can estimate "the" amount accordingly.

The problem is that, in TP methodology, there is no such thing as "the" arm's length amount. TP is not an exact science. At best, there can only be "an" arm's length amount. This is because economists, when calculating arm's length pricing, can only ever point to an acceptable range of values and not a precise value. Under global TP practice, an amount is treated as acceptable for TP purposes if it falls

within the appropriate range. The phrase "the", as opposed to "an", arm's-length amount is therefore very problematic and would be inconsistent with the OECD TP guidelines (e.g., para. 3.60).

The difficulty this causes is that, if a taxpayer seeks to challenge the assessor's amount by litigation, the taxpayer ordinarily has the burden of proving that the assessor's amount is incorrect. This would be impossible to prove if both the taxpayer's and the assessor's amount are both within the range. Yet, in such a case, the taxpayer behaved entirely properly in setting its pricing at the level it did.

The JLCT therefore recommends amending s.50AAF by replacing references to "the arm's length amount" with the concept of pricing within "the appropriate arm's length range." Thus, it would be sufficient for a taxpayer to prove that its TP fell within the correct range. Where this is the case, the assessor should not be permitted to substitute a different amount for the amount that was adopted by the taxpayer.

The phrase "more reliable" is similarly problematic. All amounts within the acceptable range are *equally* reliable.

The JLCT therefore recommends that the section should either provide a safe harbour of a contemporaneously documented interquartile range outcome or, more simply, amend this language to "equally or more reliable".

The IRD has indicated to us that it will not take such an extreme position, and we are grateful for that. We would be interested to know what steps the IRD will take to ensure that this is the case, eg, will it notify all assessors and formally amend its assessing manuals to reflect this practice, issue a DIPN to the same effect, and undertake not to amend these policies in the future? But in any event, if this is indeed the IRD's position, we do not understand why this should not be set out correctly in the Bill. If an amendment is not made, Hong Kong can be rightly criticised for taking an extreme position that violates global TP norms.

2) s. 50AAH

We suggest that the definition of "control" is too broad. Eg, if a person is retained to provide management services or give advice (e.g., a manager of a fund or a CEO of a corporation), that person could be regarded under the current wording as having control of the fund or the corporation because the entity is accustomed to act in accordance with his or her wishes. It is unlikely that they could be dealing otherwise than at arm's length, and yet the TP provisions as currently drafted would apply to dealings between them.

More generally, we suggest that it would be beneficial to reduce the number of definitions for "control" and "associates" in the Inland Revenue Ordinance. There are already many different definitions in different contexts. It would be better to have a single definition for all purposes set out in the general definitions section of the ordinance (namely, s. 2).

3) s. 50AAK

There is much concern within the tax community that, if profits are allocated to a permanent establishment ("PE"), the IRD will assert that those profits are automatically taxable. To allay such concerns, s. 50AAK should state expressly that the existing axiomatic source principle overrides the new allocation principle so that, where profits are allocated to a PE, such allocated amount shall not be subject to tax unless it meets the normal criteria for taxability under s. 14 (primarily, that it is sourced in HK).

Section 50AAK raises two further issues.

First is the issue of the characterization of such allocated profits. Eg, if a bank branch in Hong Kong provides services to its offshore head office to trade in US listed equities, will the allocation to the HK branch be a portion of the bank's global profits (which is offshore sourced and not taxable) or an

imputed services fee (which is onshore sourced and taxable)? For a PE, the normally accepted rule is that the amount allocated to the PE should bear the same characterization as the profit earned by the head office. This issue should be clarified.

The second issue is that entities will effectively be required to adopt the Authorised OECD Approach ("AOA") contained within the model tax treaty commentary dealing with Article 7. This would be extremely complex practically and unduly burdensome for taxpayers. For example, for banks, the strange position would arise that branch accounts acceptable to the HKMA would not necessarily be the starting point for Hong Kong tax purposes. Also, the AOA is not universally adopted by OECD members, and so its adoption in Hong Kong will not result in global consistency and coherence. Adopting the AOA therefore would not appear of itself to advance the Government's reasons for adopting key anti-BEPS measures. This issue could be resolved by clarifying that the AOA is not required to be adopted.

4) s. 50AA (amending s. 8(1A)(c) and s. 16(1)(c)):

Under this amendment, the current tax exemption for salary for work performed and taxed abroad would be replaced with a tax credit if the other jurisdiction is a DTA jurisdiction. In some cases (where the tax paid abroad is less than the tax payable in Hong Kong), this means that income that would have been tax-free in Hong Kong will now be taxed. Introducing such a tax charge goes beyond the anti-BEPS rationale for the Bill, and this has not been previously the subject of a public consultation. It seems odd to us that the existence of a tax treaty should be used as a reason to increase the tax payable by the employee concerned.

Even accepting that this amendment is desirable, there is a fundamental flaw in the drafting of the Bill. This is because a tax credit will be available only if the taxpayer (an employee) who performs his/her employment services in the DTA jurisdiction is actually a tax resident of Hong Kong. If in fact the employee is tax resident in a third jurisdiction (even a jurisdiction with which Hong Kong has a DTA), no tax credit would be available to that employee under any DTA, nor would the existing tax exemption apply. This would give rise to double taxation of the same amount of income. This is unconscionable and presumably was not intended by the draftsman. An amendment is definitely required.

An analogous issue arises under s. 16(1)(c) where a profits tax payer pays withholding tax in another jurisdiction on income that is also subject to Hong Kong tax. Where the other jurisdiction is a DTA territory, the proposal is that the withholding tax should no longer be deducted, but a tax credit should be claimed in Hong Kong instead. This only works if the taxpayer is a resident of Hong Kong – otherwise, it cannot claim a credit under the relevant DTA.

Taking an example – if a German bank operating through a branch in Hong Kong lends money to an Indonesian borrower and suffers Indonesian withholding tax, the withholding tax will no longer be deductible, not will a credit be allowed. This is because the German bank is a resident of Germany, not Hong Kong, so that a credit will not be allowed under the Hong Kong/Indonesia tax treaty. In such a case, the German bank will be worse off, tax-wise, then it was before the Bill was enacted.

5) s. 13 (adding s. 15BA)

This section, which deals with transfers of trading stock, is unrelated to TP. That said, we understand the rationale for this proposed amendment and do not object to it in principle, but in concept we suggest it is objectionable to "sneak in" a provision unrelated to IP in this manner.

However, if this section remains in the legislation, we recommend clarifying the interaction between this section and s.15C(a) which has been applied in the past to justify transfers of trading stock for less than market value. Other issues that should be clarified are the following: (a) Ss. (3) will not apply if the entity doesn't carry on a trade before acquiring the trading stock, eg, if it has been newly established to acquire the trading stock. (b) The provisions do not work well if the taxpayer carries on

two trades. (c) It would be clearer if the reference was to carrying on a business rather than a trade, because the word "business" is wider in scope than the word "trade".

6) s. 14 (adding s. 15F)

We query the need for this provision, and strongly oppose its indiscriminate breadth and effective retrospectivity.

For TP purposes, this deeming provision is unnecessary. To the extent there is TP abuse, the new general TP rule under s. 50AAF (which states that a transaction between associated persons not conducted at arm's length and which creates a tax advantage may be adjusted by the IRD) should be wide enough to counteract the situation described in s. 15F. Thus, introducing s. 15F is unnecessary and would complicate this complicated legislation.

As a specific anti-avoidance provision, this section is not specific or targeted enough. It does not seek to specify what types of objectionable arrangements are within its scope. It therefore potentially would apply to many legitimate and commercially justifiable arrangements that are not tax abusive.

Section 15F, as currently drafted, would apply to any value creation activity in Hong Kong performed by a Hong Kong person in relation to any intellectual; property owned or to be owned by an overseas associated company. This would be the case even if the Hong Kong person performs the value creation activity as an arm's length service, eg, undertaking R&D functions in Hong Kong for the benefit of overseas associated companies. Typically, under such a service or subcontracting arrangement, the Hong Kong taxpayer would be properly remunerated and pay taxes in Hong Kong in respect of such remuneration. Where the Hong Kong taxpayer is not remunerated on an arms' length basis, section 50AAF would apply. Therefore, s. 15F is unnecessary to curb TP abuse.

Under such a commercial arrangement, the Hong Kong person cannot be said to be the owner (economic or otherwise) of the intellectual property, so it is inappropriate to attribute any royalties subsequently derived by the overseas associated company to the Hong Kong person.

In those cases where it could be said that the Hong Kong taxpayer is in truth an economic owner of the intellectual property, then the arrangement could be challenged under s. 50AAF or under the general anti-avoidance provision in section 61A. As such, section 15F is unnecessary.

That said, primarily, this section is objectionable because it applies to past transactions which were perfectly appropriate when they were entered into and were in accordance with the tax norms and TP norms then in existence. (Eg, it would apply if 50 years ago a Hong Kong company provided some research & development services to its offshore parent company and was remunerated by way of an appropriate service fee which was calculated at arm's length.) At worst, the provision is retrospective, and at best it is excessive over-reach.

If this provision is to remain in the Bill, we would urge that its application be restricted to cases where the relevant value creation activity occurs *after* the commencement date of the legislation. We do not accept that the OECD/EU require the application of this principle to past transactions. Just as the transition provisions in the Bill stipulate that the new TP provisions do not apply to transactions entered into before the commencement date of the legislation, we urge a similar carve-out for value creation functions performed before the commencement date.

Thirdly, this provision should apply only if the value creation contribution in Hong Kong was made under a commercially justifiable arrangement.

Fourthly, the Bill does not provide any basis for allocation, and this vagueness will inevitably create unnecessary disputes.

Fifthly, where the Hong Kong entity was previously remunerated for performing the value creation services by way of a services fee which was taxed in Hong Kong, there would be effective double taxation by virtue of taxing in addition the proposed imputed income.

Sixthly, we would observe that enacting this section would be inconsistent with the Government's efforts to promote Hong Kong as an R&D hub and attract MNEs to base their R&D activities to Hong Kong.

Seventhly, and more significantly, this provision will result in double taxation where, eg, the offshore entity is taxed on its actual profits in its own jurisdiction. This is because imputed income would be taxed to the Hong Kong entity in addition. There would be no tax credit in this situation even where a DTA exists between that jurisdiction and Hong Kong, because the tax is not being borne by the same entity. We do not accept the IRD's assertion that TP principles dictate that the profits of the offshore entity must be attributed to Hong Kong, especially where the value creation services performed in Hong Kong are relatively minor. We would remind the Bills Committee that the fundamental premises behind the OECD's tax treaty and anti-BEPS initiatives are to prevent double taxation and double non-taxation, but never to impose double taxation.

This provision might make sense if the purpose behind it were to prevent double non-taxation of income that arises from the exploitation of intellectual property. However, as currently drafted, it goes far beyond this concept and also applies to cause double taxation of such income. It appears that the draftsman assumed, falsely, that all intellectual property is held by tax haven companies. In fact, many US, European and other jurisdictions have multinational companies that exploit intellectual property and pay tax in their jurisdictions.

If LegCo decides to enact this section, it would be important to clarify the following matters:

(a) It is important to state in ss. (3) that this attribution will not be applied in respect of past value creation.

(b) The exact interaction between "value creation contributions" and the more typical DEMPE TP analysis should be addressed.

(c) This section should be drafted so that the attribution should not result in double taxation. The HK entity will already have been taxed on whatever it earned for providing its value creation functions, and yet will continue to be taxed without any refund or credit for prior tax paid. The offshore entity will be taxed on its actual earnings in its own jurisdiction, and the HK entity will be taxed on its attributed earnings.

(d) How does this section impact HK withholding tax on royalties where the IP is being used in Hong Kong?

7) s. 20

The existing s. 20 is a rudimentary TP provision. It will be redundant after the Bill is enacted. To avoid confusion, we urge that s. 20 be repealed.

8) s. 82A(1G)

The IRD should clarify what would be considered as "reasonable efforts" in this context. The IRD should provide guidance on the documentation standard that would be acceptable by the IRD to establish "reasonable efforts." Providing a safe harbour would be very helpful for taxpayers.

The real problem that arises is this. The TP provisions apply to all transactions between related parties, yet the mandatory documentation requirements (master and local files) only apply if certain thresholds are exceeded. Where the thresholds are exceeded and master and local files are prepared, the taxpayer would normally be able to demonstrate that it exercised "reasonable efforts". However, if the

thresholds are not exceeded, and the taxpayer therefore did not prepare master and local files (because there was no obligation to do so), how would it demonstrate that it exercised "reasonable efforts"? Would the IRD assert that the taxpayer should nevertheless have prepared master and local files? Otherwise, what would the taxpayer need to demonstrate? Presumably, where lesser amounts are involved, the steps taken by the taxpayer would not need to be as elaborate as where larger amounts are involved, but what degree of analysis would the IRD accept as being reasonable? Without some guidance, this issue will inevitably create many disputes between taxpayers and the IRD.

9) s. 48A

There is a fundamental flaw in the drafting of this section. The Bill requires amendment to state that the definition of "DTA territory" applies only if Hong Kong has a comprehensive tax treaty with that jurisdiction. As currently drafted, the definition would apply if Hong Kong has merely an airlines or shipping income agreement with that territory. Such a limited agreement would not apply to other types of business income, and thus the tax credits and the dispute resolution mechanisms that the Bill assumes would be available will not in fact be available.

10) s. 58C

According to the proposed s. 58C(2)(a), the local and master files should be filed 6 months after the reporting period. This will in almost all cases be before the taxpayer is required to file its ordinary tax return, and in any event is more stringent than the deadline stated in the OECD's own guidelines. The JLCT recommends that the date of filing should be 12 months after the reporting period (or at least commensurate with the taxpayer's normal tax filing date). This former would be consistent with the international norm.

Secondly, on a separate point, s. 58C(3) requires the local and master files to deal with information items and to reflect the format, including terminology and order of presentation, set out in Schedule 17I. This seems unnecessarily restrictive practically. We therefore suggest that this requirement be removed.

In this regard, we note that, in the UK legislation, notwithstanding the three-tiered TP documentation approach recommended by the OECD, there are no formal content requirements for TP documentation. It is only when the UK Revenue makes a request for information as part of a tax enquiry that it then will request evidence to be submitted by means of a "full form" TP report prepared by a professional adviser. However, there is no obligation for the taxpayer to produce the evidence in any particular form. We recommend that Hong Kong follow the UK approach as regards the TP documentation requirement.

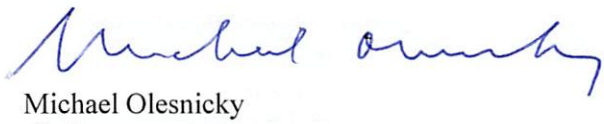
Thirdly, we suggest that, to simplify matters, the section should allow a roll-forward of documentation so long as substantial changes to the business have not occurred during the period. This practice is recommended in the OECD's 2017 guidelines (Chapter V, D.5 (5.38).

11) s. 50AA(2) and (3)

As currently drafted, the requirement to minimize foreign taxes when read literally suggests that the taxpayer is required to take reasonable tax planning steps in the other jurisdiction to reduce its taxes there. This is certainly not the aim of the OECD's anti-BEPS initiative, and indeed such an obligation would certainly be regarded by the OECD as objectionable. We understand that this is also not the Government's intention. The wording should be amended to require the taxpayer to "take reasonable steps to ensure that the correct amount of foreign tax is paid".

We hope you find our comments helpful. Please let me know if you have any questions or if you would like to discuss. If you wish any further explanation or clarification, please call me at 98378049. We would be happy to provide further clarifications and specific drafting suggestions.

Yours sincerely,



Michael Olesnicky
Chairman
For and on behalf of
The Joint Liaison Committee on Taxation