香港工業總會
FHKI

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The Hon Kenneth Leung
Chairman
Bills Committee on Inland Revenue (Amendment) (No. 6) Bill 2017

Dear Mr Leung,

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

With reference to the Inland Revenue (Amendment) (No. 6) Bill 2017 (the Bill), the Federation of Hong Kong Industries (FHKI) has the following comments after soliciting views from members. In particular, majority of the comments are concerning the implementation of transfer pricing (TP) rules to domestic transactions.

As mentioned in our submission to the Financial Services and the Treasury Bureau in December 2016, the FHKI gives its full support for implementing the standards as required by the Organisation for Economic Co-operation and Development's (OECD) anti-BEPS Package. However, the FHKI is very concerned about the proposed extension of TP rules to cover all of the domestic transactions as this will bring heavy compliance and tax burdens to Hong Kong companies and taxpayers, especially when this is deemed in excess of OECD's minimum implementation requirement.

Evidently, OECD's priority in its anti-BEPS Package is to curb cross-border but not domestic transactions, which led us to believe that there is no urgency for Hong Kong to adopt such rules. From a technical standpoint, imposing TP rules will undoubtedly complicate the administrative process due to its complexity and expertise required, let alone the additional hiring cost affiliated with professionals and consultancy required; from a financial standpoint, imposing TP rules do not necessarily yield higher tax revenue to the Government.

Making reference to neighbouring economies, domestic transactions are not subject to TP rules in the Mainland and Japan; in India, TP rules only apply to a specified group of domestic transactions; while in the UK, TP rules are indeed applied to domestic transactions, but with small and medium sized enterprises being exemption. As such, we are of the view that the enforcement of TP rules on domestic transaction will have impacts on the Hong Kong business environment and our competitiveness as compared with other jurisdictions.

While we appreciate the Government to waive the TP documentation requirement on domestic transactions and revise the proposed regulations that the TP rules will generally not applicable on domestic related party transactions that do not give rise to tax difference, this is not sufficient to address the concerns of the taxpayers. Taxpayers would worry that tax officials will ask them to demonstrate the tax differences before they decide on whether TP adjustment is required. Therefore, we urge the Bills Committee to review the necessity to impose such rules to Hong Kong's existing tax system, one that is renowned for its simplicity and served as the bedrock of one of the city's strongest competitive edges.

Furthermore, we find that the function of deeming provision Section 15F is ambiguous and questionable. Should a person after performing development, enhancement, maintenance, protection or exploitation (DEMPE) functions and not being remunerated on an arm's length basis, Section 50AAF would call for a transfer pricing adjustment; on the other hand, if the person was remunerated on an arm's length basis, he/she would be taxed properly. Based on the above, we see the addition of Section 15F will only create further complication in the legislation process, and it will damage Hong Kong's position to attract high tech investment.

We urge the Bills Committee to take the above-mentioned views into consideration when formulating the TP rules, in a bid to maintain Hong Kong's competitiveness and strive to become a regional innovation and technology hub.

Yours sincerely,

Jimmy Kwok

Jimmy Kwok
Chairman
Federation of Hong Kong Industries