

## LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance  
(Chapter 112)

### INLAND REVENUE (AMENDMENT) (NO. 5) BILL 2017

### INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (NEW ZEALAND) (AMENDMENT) ORDER 2017

#### INTRODUCTION

At the meeting of the Executive Council on 26 September 2017, the Council ADVISED and the Chief Executive ORDERED that –

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(a) the Inland Revenue (Amendment) (No. 5) Bill 2017 (“Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”) to empower the Chief Executive in Council (“CE-in-C”) to give effect to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (“Multilateral Convention”) and any other tax agreements that apply to Hong Kong, and to make necessary amendments to the Inland Revenue Ordinance (“IRO”) to align with the Common Reporting Standard (“CRS”) promulgated by the Organisation for Economic Co-operation and Development (“OECD”); and

B

(b) the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) (Amendment) Order 2017 (“Order”), at **Annex B**, should be made under section 49(1A) of the IRO to implement the Second Protocol to the Agreement between Hong Kong and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (“New Zealand Agreement”).

## JUSTIFICATIONS

2. In recent years, the OECD has been advocating exchange of information for tax purposes across jurisdictions to enhance tax transparency and combat cross-border tax evasion. The automatic exchange of financial account information in tax matters (“AEOI”) and combating base erosion and profit shifting (“BEPS”) are the two most important initiatives.

### *AEOI*

3. In July 2014, the OECD promulgated the CRS for AEOI with a view to enhancing tax transparency. The AEOI initiative requires financial institutions 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 the CRS. Individual tax authorities will exchange information with their counterparts of other jurisdictions on an annual basis. So far, 102 jurisdictions have committed to this global initiative. In September 2014, Hong Kong indicated its support for implementing AEOI on a bilateral basis with appropriate partners with a view to commencing the first exchanges by the end of 2018.

4. The OECD allows jurisdictions to conduct AEOI on either a bilateral or multilateral basis. The bilateral approach involves the signing of bilateral Competent Authority Agreements (“CAAs”) for AEOI with other jurisdictions having a Comprehensive Avoidance of Double Taxation Agreement (“CDTA”) or a Tax Information Exchange Agreement (“TIEA”) as the basis for exchange; whereas the multilateral approach involves the signing of a multilateral CAA under the Multilateral Convention. Up to 31 August 2017, Hong Kong has signed 38 CDTAs, seven TIEAs<sup>1</sup>, and 14 bilateral CAAs for AEOI<sup>2</sup>. However, negotiations of bilateral CAAs take time, and in many cases, the relevant CDTAs/TIEAs would need to be amended to allow for AEOI. It is worth highlighting that all 102 AEOI-committed jurisdictions, including

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<sup>1</sup> 38 CDTAs signed with Belgium (2003), Thailand (2005), Mainland of China (2006), Luxembourg (2007), Vietnam (2008), Brunei, the Netherlands, Indonesia, Hungary, Kuwait, Austria, the United Kingdom, Ireland, Liechtenstein, France, Japan, New Zealand (2010), Portugal, Spain, the Czech Republic, Switzerland, Malta (2011), Jersey, Malaysia, Mexico, Canada (2012), Italy, Guernsey, Qatar (2013), Korea, South Africa, the United Arab Emirates (2014), Romania (2015), Russia, Latvia (2016), Belarus, Pakistan and Saudi Arabia (2017). Seven TIEAs with the United States, Norway, Denmark, Sweden, Iceland, Greenland and the Faroes (2014). (*Years of signing in brackets*)

<sup>2</sup> 14 Bilateral CAAs signed with Japan, the United Kingdom (2016), Korea, Belgium, Canada, Guernsey, Mexico, the Netherlands, Italy, Portugal, South Africa, Ireland, Indonesia and New Zealand (2017). (*Years of signing in brackets*)

Hong Kong and Macao, have either joined or indicated the intention to join the Multilateral Convention.

### *BEPS*

5. In October 2015, the OECD and the Group of Twenty (“G20”) released a package of 15 actions to combat BEPS. 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. Hong Kong indicated to the OECD in June 2016 its commitment to implementing the BEPS package. To meet the four minimum standards in the BEPS package<sup>3</sup>, Hong Kong needs to take forward automatic exchange of Country-by-Country (“CbC”) reports for the assessment of transfer pricing risks of multinational enterprises (Action 13)<sup>4</sup> and spontaneous exchange of information on tax rulings (Action 5)<sup>5</sup>.

6. Whilst a bilateral approach could be adopted for implementing these initiatives under BEPS, it has become **increasingly impractical** given the continued expansion in the scope of tax information exchanges in the international community. A more practical approach is for jurisdictions to adopt the Multilateral Convention as a basis to implement the BEPS initiatives.

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<sup>3</sup> The four minimum standards are: countering harmful tax practices (Action 5), preventing treaty abuse (Action 6), imposing CbC reporting requirement (Action 13) and improving cross-border dispute resolution mechanism (Action 14).

<sup>4</sup> The OECD mandates multinational enterprises with annual consolidated group revenue of EUR750 million or more to file CbC reports. Upon receipt of the CbC reports, jurisdictions participating in the initiative are required to exchange these reports with other jurisdictions on an automatic basis.

<sup>5</sup> As a way to combat harmful tax practices by improving transparency through exchange of information, the OECD mandates compulsory spontaneous exchange of information on tax rulings under six specific categories, namely (a) rulings relating to preferential regimes; (b) unilateral advance pricing arrangements or any other cross-border unilateral rulings in respect of transfer pricing; (c) cross-border rulings providing for a downward adjustment of taxable profits; (d) permanent establishment rulings; (e) related party conduit rulings; and (f) any other type of ruling that, in the absence of spontaneous information exchange, could give rise to BEPS concerns.

*Listing of “non-cooperative” jurisdictions by the OECD and the European Union (“EU”)*

7. While Hong Kong is moving forward to implement the international standards under the AEOI and BEPS regimes, both the OECD and the EU have kicked off their respective exercises to draw up lists of “non-cooperative” tax jurisdictions by end of 2017. In the case of the OECD, a jurisdiction would be considered “non-cooperative” if it fails to meet **at least two of the following three criteria** –

- (a) the Multilateral Convention - participation in the Multilateral Convention or having a sufficiently broad exchange network permitting both the exchange of tax information upon request (“EOIR”) and AEOI;
- (b) AEOI - first exchanges commencing in 2018 (with respect to the financial account information for the year 2017) at the latest; and
- (c) EOIR - obtaining at least a rating of “Largely Compliant” from the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”)<sup>6</sup>.

8. On the other hand, a jurisdiction could be regarded by the EU as non-compliant on tax transparency if it fails to meet **at least two of the following three criteria** –

- (a) the 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;
- (b) AEOI - arrangement in place for exchange with all Member States of EU by end of 2017, either by signing the multilateral CAA or through bilateral CAAs; and
- (c) EOIR - obtaining at least a rating of “Largely Compliant” from the Global Forum.

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<sup>6</sup> Hong Kong received a “Largely Compliant” rating in the first round of peer review on EOIR by the Global Forum in 2013. We will undergo the second round of review in first half of 2018, and the rating would depend on Hong Kong’s ability to exchange information in accordance with the OECD’s standard.

Apart from tax transparency, the EU would also evaluate the jurisdiction's compliance on fair taxation and implementation of BEPS measures (including CbC reporting), failure of which may render the jurisdiction being identified as a "non-cooperative" tax jurisdiction.

9. A tax jurisdiction listed as "non-cooperative" could be subject to **counter-measures which would make it a less attractive place for investment and business**. Such counter-measures might include the imposition of withholding taxes and non-deductibility of costs of transactions by other jurisdictions.

#### *Challenges for Hong Kong*

10. In order to keep pace with international standards on the exchange of tax information, we have been updating the IRO in the past few years to provide a legal basis for EOIR, for the execution of TIEAs other than CDTAs, and for the implementation of AEOI.

11. Hong Kong has so far relied on a **bilateral** approach to the execution of all these exchange of information arrangements. As new international tax requirements are being introduced to combat BEPS, a bilateral approach to tax treaty negotiations and amendments is **no longer efficient or effective**. We need to seek the application of the Multilateral Convention to Hong Kong.

12. In the absence of a wide AEOI network and not being a participant in the Multilateral Convention, Hong Kong faces a **risk of not** meeting the assessment criteria of the OECD and the EU for being **AEOI compliant**. Participation in the Multilateral Convention is not only a catalyst to expand AEOI network quickly, but also a key element when the OECD and the EU consider whether a tax jurisdiction is "**non-cooperative**".

#### *Multilateral Convention*

13. The Multilateral Convention was jointly developed by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010. It was designed 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 has been open for signature by states since 1 June 2011 and the latest text is at **Annex C**. As at 12 September 2017, 113 jurisdictions participated in the Multilateral Convention, including 15 jurisdictions covered by territorial extension (**Annex D**).

*Power of the CE-in-C in giving effect to tax arrangements*

14. By virtue of section 49(1A) of the IRO, arrangements made with the government of any territory outside Hong Kong shall have effect if the CE-in-C by order declares that those arrangements have been made and that it is expedient that those arrangements should have effect. Section 49(1B) of the IRO further stipulates that only arrangements made for either or both of the following purposes may be specified in an order under section 49(1A) of the IRO - (a) affording relief from double taxation; (b) exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned. Bilateral CDTAs and TIEAs signed by Hong Kong are given effect in Hong Kong through orders made under the aforementioned provisions.

15. Section 49(1A) of the IRO currently does not empower the CE-in-C to make orders for multilateral tax agreements, nor does it empower the CE-in-C to make orders regarding arrangements for purposes other than affording relief from double taxation and exchange of information in relation to tax. Such limitations are not conducive to Hong Kong's participation in multilateral tax agreements and new areas of international tax cooperation. In light of the fast evolving international tax landscape and the emphasis on closer international tax cooperation, it would be necessary to widen the power of the CE-in-C in giving effect to tax arrangements under the IRO.

*Proposal*

16. We propose to amend the IRO to empower the CE-in-C to declare by order that any tax arrangements having been made by Hong Kong with more than one government of any territories outside Hong Kong, or having been made by the Central People's Government and applied to Hong Kong, shall have effect. The wider powers of CE-in-C will facilitate Hong Kong in taking forward new initiatives on international tax cooperation.

17. Subject to the passage of the Bill, we plan to recommend the CE-in-C to make an order to declare that the Multilateral Convention shall have effect in Hong Kong. We intend to take forward the **mandatory provisions** of the Multilateral Convention only while making suitable reservations/declarations for the **optional provisions** so that such provisions will not apply (or will only apply partially) to Hong Kong. Our analysis of the major provisions of the Multilateral Convention is set out at E **Annex E**. The order to be made under the amended IRO is subject to the scrutiny of the LegCo by negative vetting.

18. We have also taken the opportunity to make necessary legislative amendments to align the IRO with the CRS by removing inconsistencies identified either by ourselves or by the OECD during its recent examination of our legislation for the implementation of AEOI. The CRS sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. The amendments include –

- (a) clarifying the definitions of *annuity contract*, *cash value*, *depository account*, *financial account*, *pre-existing account* and *specified insurance company*;
- (b) aligning the threshold of defining controlling person with the CRS requirements (i.e. consistent with the recommendations of Financial Action Task Force adopted in 2012);
- (c) aligning the record keeping requirements with the CRS;
- (d) clarifying the criteria for qualified credit card issuer and exempt collective investment vehicle under non-reporting financial institutions; and
- (e) clarifying the due diligence procedures for dormant account and determining residence of controlling persons of passive Non-Financial Entity.

### *Bilateral AEOI with New Zealand*

19. As a separate matter from the Multilateral Convention, Hong Kong signed the Second Protocol to the New Zealand Agreement in June 2017. The Second Protocol –

- (a) removes paragraph 4(a) from the First Protocol to the New Zealand Agreement which provides that contracting parties are not required to exchange information on an automatic or a spontaneous basis; and
- (b) corrects a typo in paragraph 4(b) of the First Protocol by amending the term “Office of the Ombudsmen” to “Office of the Ombudsman”.

We propose to implement the Second Protocol to pave way for implementing AEOI with New Zealand on a bilateral basis. As we have already signed the bilateral CAA with New Zealand, both sides will be ready to implement AEOI once the Second Protocol enters into effect in both jurisdictions.

### **OTHER OPTIONS**

20. The IRO has to be amended in order to provide a legal framework for giving effect to the Multilateral Convention and any other tax agreements that apply to Hong Kong, as well as to align the IRO with the CRS. Separately, an Order made by the CE-in-C under section 49(1A) of the IRO is the only way to give effect to the Second Protocol to the New Zealand Agreement. There is no other viable option.

### **THE BILL**

21. The main provisions of the Bill are as follows –

- (a) **Clause 4** of the Bill amends section 49 of the IRO to expand the arrangements under section 49(1A) that may be specified by the CE-in-C in an order to include multilateral arrangements, and for the purpose of implementing an initiative of international cooperation in addition to affording relief from double taxation and exchange of information in relation to tax; and



- (b) **Clauses 5 to 11** of the Bill amend sections 50A, 50B and 50C of, and Schedules 17C and 17D to, the IRO to align the provisions concerned with the CRS in the implementation of AEOI.

## **THE ORDER**

22. The Order makes the following amendments to the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) Order (Cap. 112BV) (“Principal Order”) –

- (a) new **sections 3(1)(c) and 3(4)** are added to the Principal Order for declaring that the arrangements in the Second Protocol have been made with the Government of New Zealand and that it is expedient that those arrangements shall have effect;
- (b) a new **Part 3** is added to the Schedule to the Principal Order to set out the arrangements in the Second Protocol; and
- (c) consequential amendments are also made to the Principal Order.

## **LEGISLATIVE TIMETABLE**

23. The legislative timetable will be as follows–

<u>The Bill</u>	
Publication in the Gazette	6 October 2017
First Reading and commencement of Second Reading debate	18 October 2017
Resumption of Second Reading debate, committee stage and Third Reading	to be notified
<u>The Order</u>	
Publication in the Gazette	6 October 2017
Tabling at LegCo	18 October 2017
Commencement of the Order	22 December 2017

## **IMPLICATIONS OF THE PROPOSAL**

24. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the IRO and its subsidiary legislation. It has no environmental, gender, family, productivity or sustainability implications.

25. As for economic implications, the proposal will demonstrate Hong Kong's commitment to enhance our tax transparency and participate in international tax cooperation. This is particularly crucial for Hong Kong to preserve our competitiveness and reputation as an international financial and business centre, and to avoid being listed as a "non-cooperative" tax jurisdiction. For financial and civil service implications, additional resources have been earmarked for the Financial Services and the Treasury Bureau and the Inland Revenue Department in 2017-18 and beyond to cope with treaty negotiations, stakeholders' engagement, legislative exercises and implementation work arising from international tax cooperation.

## **PUBLIC CONSULTATION**

26. We briefed the Panel on Financial Affairs of the LegCo at its meeting on 5 June 2017 on extending the application of the Multilateral Convention to Hong Kong and Members raised no objection. We also issued a letter to relevant stakeholders, including financial institutions, regulators, chambers of commerce and professional bodies in June 2017 updating them of the Government's plan to participate in the Multilateral Convention.

## **PUBLICITY**

27. We will issue a press release upon gazettal of the Bill and the Order and arrange a spokesperson to answer media enquiries.

## **BACKGROUND**

28. China signed and became the 56<sup>th</sup> signatory to the Multilateral Convention on 27 August 2013. Upon depositing the instrument of ratification of the Multilateral Convention in October 2015, China made a declaration that the Multilateral Convention shall not apply to Hong Kong and Macau. The Multilateral Convention has entered into force in China since 1 February 2016. Upon the request of Hong Kong, the Central People's Government gave **in-principle agreement** in May 2017 to extend the application of the Multilateral Convention to Hong Kong.

29. The New Zealand Agreement was signed in December 2010 and entered into force in November 2011 after Hong Kong and New Zealand had completed the relevant approval processes. When Hong Kong negotiated a bilateral CAA with New Zealand for AEOI, the latter considered it necessary to remove the reference to the non-requirements for exchanging information on an automatic or a spontaneous basis in the First Protocol. The two sides signed the Second Protocol in June 2017.

## **ENQUIRIES**

30. Enquiries on this Brief can be addressed to Ms Pecvin Yong, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2370.

**Financial Services and the Treasury Bureau**

**4 October 2017**

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

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**A BILL**

**To**

Amend the Inland Revenue Ordinance to empower the Chief Executive in Council to give effect to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, and other tax agreements that apply to Hong Kong; and to amend the Ordinance to align the relevant provisions with the international standard for the automatic exchange of financial account information in tax matters.

Enacted by the Legislative Council.

**1. Short title**

This Ordinance may be cited as the Inland Revenue (Amendment) (No. 5) Ordinance 2017.

**2. Inland Revenue Ordinance amended**

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 11.

**3. Part 8 heading amended (double taxation relief and exchange of information)**

Part 8, heading—

**Repeal**

**“and Exchange of Information”**

**Substitute**

**“, Exchange of Information and Other International Tax Cooperation”.**

4. **Section 49 amended (arrangements for relief from double taxation and exchange of information)**

(1) Section 49, heading—

**Repeal**

“Arrangements for relief from double taxation and exchange of information”

**Substitute**

“Arrangements: relief from double taxation, exchange of information and other international tax cooperation”.

(2) After section 49(1A)—

**Add**

“(1AB) Arrangements that may be specified in an order under subsection (1A) include—

- (a) arrangements that are made with more than one government; and
- (b) arrangements that are made by the Central People’s Government and applied to Hong Kong.”.

(3) Section 49(1B)—

**Repeal**

“either or both”

**Substitute**

“one or more”.

(4) Section 49(1B)(b)—

**Repeal**

“the territory concerned.”

**Substitute**

“any territory concerned;”.

(5) After section 49(1B)(b)—

**Add**

“(c) implementing an initiative of international tax cooperation.”.

5. **Section 50A amended (interpretation)**

(1) Section 50A(1)—

**Repeal the definition of *annuity contract***

**Substitute**

“*annuity contract* (年金合約)—

- (a) means a contract under which its issuer agrees to make payments for a period of time determined, in whole or in part, by reference to the life expectancy of one or more individuals; and
- (b) includes a contract—
  - (i) that is considered to be an annuity contract in accordance with the law, regulation or practice of the jurisdiction in which the contract was issued; and
  - (ii) under which its issuer agrees to make payments for a term of years;”.

(2) Section 50A(1), definition of *cash value*, paragraph (a)(ii), after “under”—

**Add**

“, or with regard to,”.

(3) Section 50A(1), definition of *depository account*—

**Repeal**

“financial institution in the ordinary course of a banking business or similar business”

**Substitute**

“depository institution”.

- (4) Section 50A(1), definition of *financial account*, paragraph (d)—

**Repeal**

“not an investment entity”

**Substitute**

“a custodial institution, depository institution or specified insurance company, or an advising manager within the meaning of subsection (12)”.

- (5) Section 50A(1), definition of *pre-existing account*, paragraph (b)(ii)(A), after “the institution”—

**Add**

“, or its related entity within Hong Kong”.

- (6) Section 50A(1), definition of *specified insurance company*—

**Repeal**

everything after “annuity contract”

**Substitute a semicolon.**

- (7) Section 50A(1)—

**Add in alphabetical order**

“*insurance company* (保險公司) means any of the following—

- (a) an insurer authorized under the Insurance Ordinance (Cap. 41);
- (b) an entity the gross income of which arising from insurance, reinsurance and annuity contracts exceeds 50% of the entity’s total gross income for the calendar year immediately preceding the

calendar year in which the determination as to whether the entity is an insurance company is made;

- (c) an entity the aggregate value of the assets of which associated with insurance, reinsurance and annuity contracts exceeds 50% of the entity’s total assets at any time during the calendar year immediately preceding the calendar year in which the determination as to whether the entity is an insurance company is made;”.

- (8) Section 50A(6)(a)(i)(A) and (B)—

**Repeal**

“not less than”

**Substitute**

“more than”.

- (9) Section 50A(6)(a)(i)(B) and (b)(i)(B)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (10) Section 50A(6)(b)(i)(A) and (B)—

**Repeal**

“not less than”

**Substitute**

“more than”.

- (11) After section 50A(6)(a)(i)(C)—

**Add**

- “(D) (if no individual falls within sub-subparagraph (A), (B) or (C)) holds the position of senior managing official of the entity; or”.
- (12) After section 50A(6)(b)(i)(C)—  
**Add**  
 “(D) (if no individual falls within sub-subparagraph (A), (B) or (C)) holds the position of senior managing official of the entity; or”.
- (13) Section 50A(6)(c)(i)—  
**Repeal**  
 “not less than”  
**Substitute**  
 “more than”.
- (14) Section 50A(6)(c)(iii), after “protector”—  
**Add**  
 “or enforcer”.
- (15) Section 50A(6)(c)—  
**Repeal subparagraph (iv)**  
**Substitute**  
 “(iv) has ultimate control over the entity; or”.
- (16) Section 50A(12)—  
**Repeal**  
 “paragraph (c)”  
**Substitute**  
 “paragraphs (c) and (d) (in relation to an advising manager)”.

6. **Section 50B amended (due diligence obligations on reporting financial institutions)**
- (1) Section 50B(1)(a)(iii)—  
**Repeal**  
 “or a record”  
**Substitute**  
 “and any record”.
- (2) Section 50B(1)(a)(iii), English text—  
**Repeal**  
 “is kept”  
**Substitute**  
 “are kept”.
7. **Section 50C amended (obligations of reporting financial institutions to furnish returns)**
- After section 50C(2)—  
**Add**  
 “(2A) However, the specified information period for a reportable jurisdiction may not cover any period that is earlier than the date on which the jurisdiction becomes a reportable jurisdiction.”.
8. **Schedule 17C, Part 2, section 8 amended (qualified credit card issuer)**
- Schedule 17C, Part 2, section 8(2)—  
**Repeal**  
 “(ii)”.

**9. Schedule 17C, Part 2, section 9 amended (exempt collective investment vehicle)**

- (1) Schedule 17C, Chinese text, Part 2, section 9(1)(b)(i)—

**Repeal the semicolon****Substitute**

“; 或”.

- (2) Schedule 17C, Part 2, section 9(1)(b)—

**Repeal subparagraph (ii)****Substitute**

“(ii) entities that are not reportable persons.”.

- (3) Schedule 17C, Part 2, after section 9(1)—

**Add**

“(1A) Subsection (1) does not apply to an investment entity if—

- (a) any of the interests in the entity is held by, or through, an entity that is a passive NFE; and
- (b) any one of the controlling persons of the passive NFE is a reportable person.”.

**10. Schedule 17C, Part 3, section 7 amended (dormant account)**

- (1) Schedule 17C, Part 3—

**Re number section 7 as section 7(1).**

- (2) Schedule 17C, Part 3, section 7(1)(b)—

**Repeal**

“years;”

**Substitute**

“years; and”.

- (3) Schedule 17C, Part 3, section 7(1)—

**Repeal paragraph (c).**

- (4) Schedule 17C, Part 3, after section 7(1)—

**Add**

“(2) An account (other than an annuity contract) with a balance that does not exceed \$7,800 maintained with a reporting financial institution is also an excluded account if—

- (a) the account is treated as a dormant account—
  - (i) in accordance with the laws or regulations applicable to the institution; or
  - (ii) under the normal operating procedures of the institution that are consistently applied for all accounts maintained with the institution; and
- (b) the laws, regulations or procedures mentioned in paragraph (a) contain provisions that are substantially similar to subsection (1)(a), (b) and (d).”.

**11. Schedule 17D, Part 6, section 6 amended (determining residence of controlling person of passive NFE)**

Schedule 17D, Part 6, section 6, after “rely”—

**Add**

“only”.



### **Explanatory Memorandum**

This Bill amends the Inland Revenue Ordinance (Cap. 112) (*Ordinance*) to—

- (a) empower the Chief Executive in Council to give effect to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, and other tax agreements that apply to Hong Kong; and
  - (b) align the relevant provisions with the international standard for the automatic exchange of financial account information in tax matters (see paragraph 3).
2. Clause 4 amends section 49 of the Ordinance to expand the scope and purposes of an order that the Chief Executive in Council may make under section 49(1A) of the Ordinance.
  3. Clauses 5, 6 and 7 respectively amend sections 50A, 50B and 50C of the Ordinance, and clauses 8 to 11 amend Schedules 17C and 17D to the Ordinance, to align the relevant provisions with the international standard for the automatic exchange of financial account information in tax matters stipulated by the Organisation for Economic Co-operation and Development.

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) (Amendment) Order 2017**

(Made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112))

**1. Commencement**

This Order comes into operation on 22 December 2017.

**2. Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) Order amended**

The Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) Order (Cap. 112 sub. leg. BV) is amended as set out in sections 3 and 4.

**3. Section 3 amended (arrangements specified)**

(1) Section 3(1)(a)—

**Repeal**

“; and”

**Substitute a semicolon.**

(2) Section 3(1)(b)—

**Repeal the full stop**

**Substitute**

“; and”.

(3) After section 3(1)(b)—

**Add**

“(c) Paragraphs 1 and 2 of the protocol titled “Second Protocol to Amend the Agreement between the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Auckland on 1 December 2010 and the Protocol thereto” (which title is translated into Chinese as “《修訂 2010 年 12 月 1 日在奧克蘭簽訂的〈中華人民共和國香港特別行政區政府與新西蘭政府就收入稅項避免雙重課稅和防止逃稅協定〉及其議定書的第二議定書》” in this Order), done in duplicate at Hong Kong on 15 June 2017 and at Wellington on 28 June 2017 in the English language.”.

(4) Section 3(2), Chinese text—

**Repeal**

“協定的”

**Substitute**

“的協定”。

(5) Section 3(3)—

**Repeal**

“Paragraphs is reproduced”

**Substitute**

“Paragraphs referred to in subsection (1)(b) is reproduced”.

(6) After section 3(3)—

**Add**

“(4) The English text of the Paragraphs referred to in subsection (1)(c) is reproduced in Part 3 of the English

text of the Schedule. A Chinese translation of the Paragraphs is set out in the Chinese text of that Part.”.

**4. Schedule amended**

The Schedule, after Part 2—

**Add**

**“Part 3**

**Paragraphs 1 and 2 of the Second Protocol to Amend the Agreement between the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Auckland on 1 December 2010 and the Protocol thereto**

1. Paragraph 4 of the Protocol to the Agreement shall be deleted and replaced by the following:

“With reference to Article 24:

The New Zealand competent authority may disclose information to the Office of the Ombudsman in the investigation of complaints against the administrative actions of the New Zealand Inland Revenue Department.”

2. This Second Protocol, which shall form an integral part of the Agreement, shall, upon written notifications by both

Contracting Parties of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2017

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### Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of New Zealand signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (*Agreement*) together with a protocol to the Agreement (*original Protocol*) on 1 December 2010. The arrangements in the Agreement and the original Protocol have effect by virtue of the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (New Zealand) Order (Cap. 112 sub. leg. BV) (*principal Order*).

2. On 15 June 2017 and 28 June 2017, the two Governments signed another protocol (*Second Protocol*) to amend the original Protocol. This Order amends the principal Order by adding new provisions that declare the arrangements in Paragraphs 1 and 2 of the Second Protocol to be double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and that it is expedient that those arrangements should have effect. The Second Protocol was signed in the English language. A Chinese translation of the Paragraphs is set out in the new Part 3 of the Chinese text of the Schedule to the principal Order.
3. The effects of the new provisions are—
  - (a) that the arrangements referred to in paragraph 2 have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) despite anything in any enactment; and
  - (b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of New Zealand, have effect

in relation to any tax of New Zealand that is the subject of that provision.

4. This Order also makes consequential amendments to the principal Order.

# Convention on Mutual Administrative Assistance in Tax Matters

Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1<sup>st</sup> June 2011.

## **Preamble**

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention,

Considering that the development of international movement of persons, capital, goods and services – although highly beneficial in itself – has increased the possibilities of tax avoidance and evasion and therefore requires increasing co-operation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters in all States and that States should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;

Desiring to conclude a convention on mutual administrative assistance in tax matters,

Have agreed as follows:

## **Chapter I – Scope of the Convention**

### **Article 1 – Object of the Convention and persons covered**

- 1 The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies.
- 2 Such administrative assistance shall comprise:
  - a exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
  - b assistance in recovery, including measures of conservancy; and
  - c service of documents.
- 3 A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

### **Article 2 – Taxes covered**

- 1 This Convention shall apply:
  - a to the following taxes:
    - i taxes on income or profits,
    - ii taxes on capital gains which are imposed separately from the tax on income or profits,
    - iii taxes on net wealth,imposed on behalf of a Party; and
  - b to the following taxes:
    - i taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party,
    - ii compulsory social security contributions payable to general government or to social security institutions established under public law, and
    - iii taxes in other categories, except customs duties, imposed on behalf of a Party, namely:
      - A. estate, inheritance or gift taxes,

- B. taxes on immovable property,
  - C. general consumption taxes, such as value added or sales taxes,
  - D. specific taxes on goods and services such as excise taxes,
  - E. taxes on the use or ownership of motor vehicles,
  - F. taxes on the use or ownership of movable property other than motor vehicles,
  - G. any other taxes;
- iv taxes in categories referred to in sub-paragraph iii. above which are imposed on behalf of political subdivisions or local authorities of a Party.
- 2 The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.
- 3 The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the "Depositaries") of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.
- 4 The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the Depositaries of the adoption of the tax in question.

## **Chapter II – General definitions**

### **Article 3 – Definitions**

- 1 For the purposes of this Convention, unless the context otherwise requires:
- a the terms "applicant State" and "requested State" mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;
  - b the term "tax" means any tax or social security contribution to which the Convention applies pursuant to Article 2;
  - c the term "tax claim" means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;



- d the term “competent authority” means the persons and authorities listed in Annex B;
- e the term “nationals” in relation to a Party means:
  - i all individuals possessing the nationality of that Party, and
  - ii all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

- 2 As regards the application of the Convention by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.
- 3 The Parties shall notify one of the Depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

### **Chapter III – Forms of assistance**

#### **Section I – Exchange of information**

##### **Article 4 – General provision**

- 1 The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.
- 2 Deleted.
- 3 Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

##### **Article 5 – Exchange of information on request**

- 1 At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.
- 2 If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

#### **Article 6 – Automatic exchange of information**

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

#### **Article 7 – Spontaneous exchange of information**

- 1 A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:
  - a the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;
  - b a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;
  - c business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
  - d a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
  - e information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.
- 2 Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

#### **Article 8 – Simultaneous tax examinations**

- 1 At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.
- 2 For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

### **Article 9 – Tax examinations abroad**

- 1 At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.
- 2 If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State.
- 3 A Party may inform one of the Depositories of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration may be made or withdrawn at any time.

### **Article 10 – Conflicting information**

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

## **Section II - Assistance in recovery**

### **Article 11 – Recovery of tax claims**

- 1 At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.
- 2 The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested.

However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.

- 3 The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

### **Article 12 – Measures of conservancy**

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

### **Article 13 – Documents accompanying the request**

- 1 The request for administrative assistance under this section shall be accompanied by:
  - a a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested,
  - b an official copy of the instrument permitting enforcement in the applicant State, and
  - c any other document required for recovery or measures of conservancy.
- 2 The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

### **Article 14 – Time limits**

- 1 Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period.
- 2 Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.
- 3 In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

### **Article 15 – Priority**

The tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State even if the recovery procedure used is the one applicable to its own tax claims.

### **Article 16 – Deferral of payment**

The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant State.

### **Section III – Service of documents**

#### **Article 17 – Service of documents**

- 1 At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention.
- 2 The requested State shall effect service of documents:
  - a by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;
  - b to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.
- 3 A Party may effect service of documents directly through the post on a person within the territory of another Party.
- 4 Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.
- 5 When a document is served in accordance with this article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested State shall arrange to have it translated into or a summary drafted in its or one of its official languages. Alternatively, it may ask the applicant State to have the document either translated into or accompanied by a summary in one of the official languages of the requested State, the Council of Europe or the OECD.

### **Chapter IV – Provisions relating to all forms of assistance**

#### **Article 18 – Information to be provided by the applicant State**

- 1 A request for assistance shall indicate where appropriate:
  - a the authority or agency which initiated the request made by the competent authority;
  - b the name, address, or any other particulars assisting in the identification of the person in respect of whom the request is made;
  - c in the case of a request for information, the form in which the applicant State wishes the information to be supplied in order to meet its needs;
  - d in the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;

- e in the case of a request for service of documents, the nature and the subject of the document to be served;
  - f whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 21.2.g.
- 2 As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant State shall forward it to the requested State.

#### **Article 19 – Deleted**

#### **Article 20 – Response to the request for assistance**

- 1 If the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible.
- 2 If the request is declined, the requested State shall inform the applicant State of that decision and the reason for it as soon as possible.
- 3 If, with respect to a request for information, the applicant State has specified the form in which it wishes the information to be supplied and the requested State is in a position to do so, the requested State shall supply it in the form requested.

#### **Article 21 – Protection of persons and limits to the obligation to provide assistance**

- 1 Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.
- 2 Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:
- a to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;
  - b to carry out measures which would be contrary to public policy (*ordre public*);
  - c to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;
  - d to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*);
  - e to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;

- f to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;
  - g to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;
  - h to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.
- 3 If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.
- 4 In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### **Article 22 – Secrecy**

- 1 Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.
- 2 Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.

- 3 If a Party has made a reservation provided for in sub-paragraph a. of paragraph 1 of Article 30, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.
- 4 Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.

### **Article 23 – Proceedings**

- 1 Proceedings relating to measures taken under this Convention by the requested State shall be brought only before the appropriate body of that State.
- 2 Proceedings relating to measures taken under this Convention by the applicant State, in particular those which, in the field of recovery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of that State. If such proceedings are brought, the applicant State shall inform the requested State which shall suspend the procedure pending the decision of the body in question. However, the requested State shall, if asked by the applicant State, take measures of conservancy to safeguard recovery. The requested State can also be informed of such proceedings by any interested person. Upon receipt of such information the requested State shall consult on the matter, if necessary, with the applicant State.
- 3 As soon as a final decision in the proceedings has been given, the requested State or the applicant State, as the case may be, shall notify the other State of the decision and the implications which it has for the request for assistance.

## **Chapter V – Special provisions**

### **Article 24 – Implementation of the Convention**

- 1 The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorise subordinate authorities to act on their behalf. The competent authorities of two or more Parties may mutually agree on the mode of application of the Convention among themselves.
- 2 Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant State shall consult each other and endeavour to resolve the situation by mutual agreement.



- 3 A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.
- 4 A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.
- 5 Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.
- 6 The Secretary General of OECD shall inform the Parties, and the Signatory States which have not yet ratified, accepted or approved the Convention, of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

#### **Article 25 – Language**

Requests for assistance and answers thereto shall be drawn up in one of the official languages of the OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

#### **Article 26 – Costs**

Unless otherwise agreed bilaterally by the Parties concerned:

- a ordinary costs incurred in providing assistance shall be borne by the requested State;
- b extraordinary costs incurred in providing assistance shall be borne by the applicant State.

### **Chapter VI – Final provisions**

#### **Article 27 – Other international agreements or arrangements**

- 1 The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

- 2 Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules.

#### **Article 28 – Signature and entry into force of the Convention**

- 1 This Convention shall be open for signature by the member States of the Council of Europe and the member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.
- 2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 3 In respect of any member State of the Council of Europe or any member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.
- 4 Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on 27<sup>th</sup> May 2010 (the “2010 Protocol”), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositaries.
- 5 After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositaries, who shall transmit it to the Parties. The Depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.
- 6 The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.

- 7 Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

#### **Article 29 – Territorial application of the Convention**

- 1 Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.
- 3 Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the Depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

#### **Article 30 – Reservations**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:
- a not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;
  - b not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;
  - c not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under sub-paragraph a. or b. above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;
  - d not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

- e not to permit the service of documents through the post as provided for in paragraph 3 of Article 17;
  - f to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.
- 2 No other reservation may be made.
  - 3 After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.
  - 4 Any Party which has made a reservation under paragraphs 1 and 3 may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.
  - 5 A Party which has made a reservation in respect of a provision of this Convention may not require the application of that provision by any other Party; it may, however, if its reservation is partial, require the application of that provision insofar as it has itself accepted it.

#### **Article 31 – Denunciation**

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to one of the Depositaries.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.
- 3 Any Party which denounces the Convention shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

#### **Article 32 – Depositaries and their functions**

- 1 The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the member countries of OECD and any Party to this Convention of:
  - a any signature;

- b the deposit of any instrument of ratification, acceptance or approval;
  - c any date of entry into force of this Convention in accordance with the provisions of Articles 28 and 29;
  - d any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;
  - e any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;
  - f any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;
  - g any other act, notification or communication relating to this Convention.
- 2 The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform immediately the other Depositary thereof.

In witness whereof the undersigned, being duly authorised thereto, have signed the Convention.

Established by the Depositaries the 1<sup>st</sup> day of June 2011 pursuant to Article X.4 of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, in English and French, both texts being equally authentic, in two copies of which one shall be deposited in the archives of each Depositary. The Depositaries shall transmit a certified copy to each Party to the Convention as amended by the Protocol and to each State entitled to become a party.

**Jurisdictions participating in the Multilateral Convention**

(as at 12 September 2017)

- |                                  |                      |                                      |
|----------------------------------|----------------------|--------------------------------------|
| 1. Albania                       | 41. Ghana            | 81. Norway                           |
| 2. Andorra                       | 42. Gibraltar #      | 82. Pakistan                         |
| 3. Anguilla #                    | 43. Greece           | 83. Panama                           |
| 4. Argentina                     | 44. Greenland #      | 84. Philippines                      |
| 5. Aruba #                       | 45. Guatemala        | 85. Poland                           |
| 6. Australia                     | 46. Guernsey #       | 86. Portugal                         |
| 7. Austria                       | 47. Hungary          | 87. Romania                          |
| 8. Azerbaijan                    | 48. Iceland          | 88. Russia                           |
| 9. Bahrain                       | 49. India            | 89. Saint Kitts and Nevis            |
| 10. Barbados                     | 50. Indonesia        | 90. Saint Lucia                      |
| 11. Belgium                      | 51. Ireland          | 91. Saint Vincent and the Grenadines |
| 12. Belize                       | 52. Isle of Man #    | 92. Samoa                            |
| 13. Bermuda #                    | 53. Israel           | 93. San Marino                       |
| 14. Brazil                       | 54. Italy            | 94. Saudi Arabia                     |
| 15. British Virgin Islands #     | 55. Jamaica          | 95. Senegal                          |
| 16. Brunei Darussalam            | 56. Japan            | 96. Seychelles                       |
| 17. Bulgaria                     | 57. Jersey #         | 97. Singapore                        |
| 18. Burkina Faso                 | 58. Kazakhstan       | 98. Sint Maarten #                   |
| 19. Cameroon                     | 59. Kenya            | 99. Slovak Republic                  |
| 20. Canada                       | 60. Korea            | 100. Slovenia                        |
| 21. Cayman Islands #             | 61. Kuwait           | 101. South Africa                    |
| 22. Chile                        | 62. Latvia           | 102. Spain                           |
| 23. China (People's Republic of) | 63. Lebanon          | 103. Sweden                          |
| 24. Colombia                     | 64. Liechtenstein    | 104. Switzerland                     |
| 25. Cook Islands                 | 65. Lithuania        | 105. Tunisia                         |
| 26. Costa Rica                   | 66. Luxembourg       | 106. Turkey                          |
| 27. Croatia                      | 67. Malaysia         | 107. Turks and Caicos Islands #      |
| 28. Curacao #                    | 68. Malta            | 108. Uganda                          |
| 29. Cyprus                       | 69. Marshall Islands | 109. Ukraine                         |
| 30. Czech Republic               | 70. Mauritius        | 110. United Arab Emirates            |
| 31. Denmark                      | 71. Mexico           | 111. United Kingdom                  |
| 32. Dominican Republic           | 72. Moldova          | 112. United States                   |
| 33. El Salvador                  | 73. Monaco           | 113. Uruguay                         |
| 34. Estonia                      | 74. Montserrat #     |                                      |
| 35. Faroe Islands #              | 75. Morocco          |                                      |
| 36. Finland                      | 76. Nauru            |                                      |
| 37. France                       | 77. Netherlands      |                                      |
| 38. Gabon                        | 78. New Zealand      |                                      |
| 39. Georgia                      | 79. Nigeria          |                                      |
| 40. Germany                      | 80. Niue             |                                      |

# By territorial extension

## Annex E

### Analysis and assessment of the major provisions of the Multilateral Convention

Provision	Nature	Analysis and Assessment
(a) Types of taxes covered (Article 2)	-	<p>The minimum types of taxes covered by the Multilateral Convention include taxes on income or profits, taxes on capital gains which are imposed separately from the tax on income or profits, and taxes on net wealth.</p> <p>While the Multilateral Convention may also cover other types of taxes, we propose that Hong Kong would <b>only</b> provide assistance to the minimum types of taxes above.</p>
(b) Exchange of information on request (Article 5)	Mandatory	<p>Hong Kong has been handling exchange of information requests from our CDTA/TIEA partners and, in accordance with the OECD's standard. The scope of information to be provided under CDTA/TIEA or under the Multilateral Convention is the same.</p> <p>We propose that this mandatory provision <b>should apply</b> to Hong Kong.</p>
(c) Automatic exchange of information (Article 6)	Mandatory	<p>Hong Kong has already put in place the legal framework for implementing AEOI, and is prepared to expand AEOI network through the Multilateral Convention. Hong Kong can also rely on this provision to take forward automatic exchange of CbC reports which is a minimum standard under the BEPS package.</p> <p>We propose that this mandatory provision <b>should apply</b> to Hong Kong.</p>

Provision	Nature	Analysis and Assessment
(d) Spontaneous exchange of information (Article 7)	Mandatory	<p>While Hong Kong has not conducted spontaneous exchange of information with our CDTA/TIEA partners so far, Hong Kong has undertaken to exchange information on six types of tax rulings, under the minimum standard of the BEPS package, on a spontaneous basis. Hong Kong can rely on this provision to take forward such exchange.</p> <p>We propose that this mandatory provision <b>should apply</b> to Hong Kong.</p>
(e) Simultaneous tax examinations (Article 8)	Mandatory, but it will be up to a party to decide whether to participate in a particular examination	<p>Simultaneous tax examination refers to an arrangement between two or more jurisdictions, each in its own territory, to examine tax affairs of persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.</p> <p>We propose that Hong Kong, as a general rule, <b>will not participate</b> in any simultaneous tax examinations.</p>
(f) Tax examinations abroad (Article 9)	Mandatory provision, but a party can make a declaration not to accept such requests as a general rule	<p>Tax examinations abroad refers to an arrangement which a jurisdiction may allow the representative from another jurisdiction, upon the latter's request, to be present at the appropriate part of a tax examination in the former's territory.</p> <p>We propose to declare under the Multilateral Convention that, as a general rule, Hong Kong <b>will not</b> accept such requests.</p>
(g) Assistance in recovery of taxes (Articles 11-16)	Optional	<p>These provisions refer to the assistance which a jurisdiction provides for recovery of taxes that are charged by another jurisdiction.</p> <p>We propose that Hong Kong <b>will not</b> provide such assistance.</p>
(h) Service of documents (Article 17)	Optional	<p>This provision refers to the assistance which a jurisdiction provides for service of documents, including those relating to judicial decisions, which relate to a tax covered by the Multilateral Convention at the request of another jurisdiction.</p> <p>We propose that Hong Kong <b>will not</b> provide such assistance.</p>

Provisions not listed in the above table are technical and operational in nature, e.g. definitions, how to deal with conflicting information received and language of transmission.