

立法會
Legislative Council

LC Paper No. LS5/17-18

**Paper for the House Committee Meeting
on 20 October 2017**

**Legal Service Division Report on
Inland Revenue (Amendment) (No. 5) Bill 2017**

I. SUMMARY

1. The Bill

The Bill seeks to amend the Inland Revenue Ordinance (Cap.112) 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.

2. Public Consultation

The Administration issued a letter to 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 said Multilateral Convention.

3. Consultation with LegCo Panel

The Panel on Financial Affairs was consulted on 5 June 2017. Panel members did not object to the introduction of the Bill to the Legislative Council.

4. Conclusion

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Members may consider whether to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 18 October 2017. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: TsyB R 00/800-2/20/0(C)) issued by the Financial Services and the Treasury Bureau on 4 October 2017 for further details.

Object of the Bill

2. The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to :
 - (a) empower the Chief Executive ("CE") in Council to give effect to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("Multilateral Convention"), 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 ("AEOI").

Background

3. The Organisation for Economic Co-operation and Development ("OECD") promotes the exchange of information for tax purposes across jurisdictions to enhance tax transparency and combat cross-border tax evasion. Hong Kong has adopted a bilateral approach to such exchange, i.e. by signing bilateral agreements for AEOI with individual jurisdictions and giving effect to these agreements by orders made under section 49(1A) of Cap. 112. According to paragraphs 11 and 13 of the LegCo Brief, as new international tax requirements are being introduced to combat base erosion and profit shifting, the Administration considers that the bilateral approach is no longer effective or efficient, and it is necessary to apply the Multilateral Convention to Hong Kong in order to allow all possible forms of administrative cooperation between state parties in the assessment and collection of taxes with a view to combating tax avoidance and evasion. As of 12 September 2017, 113 jurisdictions have participated in the Multilateral Convention. The latest text of the Multilateral Convention is at Annex C to the LegCo Brief.

Provisions of the Bill

4. The Bill seeks to empower CE in Council to give effect to the Multilateral Convention and the common reporting standard ("CRS") promulgated by OECD for AEOI. The proposed amendments are summarized below.

New types of tax information exchange arrangements which may be implemented under section 49(1A) of Cap. 112

5. At present, section 49(1A) of Cap. 112 empowers CE in Council to declare, by order, that arrangements specified in that order have been made with the government of any territory outside Hong Kong shall have effect if, among other things, such arrangements are made for the purposes of exchanging tax information. That section, as drafted, may be interpreted as empowering CE in Council to only declare that bilateral agreements entered into with individual jurisdictions for implementing arrangements for affording relief from double taxation and AEOI shall have effect.

6. Clause 4 of the Bill mainly seeks to amend section 49 to provide that the arrangements referred to in section 49(1A) would include arrangements that are made with more than one government, and arrangements that are made by the Central People's Government and applied to Hong Kong. The legal effect of clause 4, if enacted, is that CE in Council would be expressly empowered to declare that such arrangements (including the Multilateral Convention) shall have effect in Hong Kong.

Amendments relating to financial institutions, accounts and due diligence requirements

7. Part 8A (which consists of sections 50A to 50K) of Cap. 112 relates to returns by a reporting financial institution ("RFI") (i.e. a financial institution to which AEOI applies). Section 50A sets out the definitions which are applicable to Part 8A. Sections 50B and 50C provide for the due diligence obligations of RFIs and the obligations of RFIs to furnish returns respectively. The amendments proposed in clauses 5 to 11 seek to align the relevant provisions in Cap. 112 with CRS for AEOI stipulated by OECD. These amendments include:

- (a) amending the definitions of "annuity contract", "cash value" and "financial account" in section 50A(1) of Cap. 112 for the purpose of furnishing reports by RFIs;
- (b) amending section 50B of Cap. 112 to amend the record keeping requirements for RFIs; and

- (c) amending Schedule 17C to Cap. 112 relating to non-reporting financial institutions and excluded accounts.

Commencement

8. The Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

Public Consultation

9. According to paragraph 26 of the LegCo Brief, the Administration issued a letter to the 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.

Consultation with LegCo Panel

10. The Clerk to the Panel on Financial Affairs ("Panel") has advised that the Panel was briefed at its meeting on 5 June 2017 on the legislative proposal to extend the application of the Multilateral Convention to Hong Kong. Members discussed issues including the procedures for Hong Kong to join the Multilateral Convention, the mandatory provisions of the Multilateral Convention and the types of taxes that Hong Kong intended to cover under the Convention.

Conclusion

11. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Members may consider whether to form a Bills Committee to study the Bill in detail in view of the issues discussed at the Panel.

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19 October 2017