

**立法會**  
**Legislative Council**

LC Paper No. CB(1)617/18-19  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/15/17/1

**Subcommittee on  
Two Orders Made under Section 49(1A) of the  
Inland Revenue Ordinance and Gazetted on 14 September 2018**

**Minutes of the third meeting on  
Friday, 16 November 2018, at 8:30 am  
in Conference Room 2B of the Legislative Council Complex**

**Members present** : Hon Kenneth LEUNG (Chairman)  
Hon James TO Kun-sun  
Hon WONG Ting-kwong, GBS, JP  
Hon Charles Peter MOK, JP  
Hon Alvin YEUNG

**Public officers  
attending** : **Agenda item I**

Financial Services and the Treasury Bureau

Mr Andrew LAI, JP  
Deputy Secretary (Treasury)<sup>2</sup>

Mr Stephen LO  
Principal Assistant Secretary (Treasury)(R2)

Inland Revenue Department

Mr Brian CHIU, JP  
Deputy Commissioner (Technical)

Ms Janny WU  
Senior Assessor (Tax Treaty)<sup>3</sup>

Department of Justice

Ms Linda LAM  
Deputy Law Officer (Mutual Legal Assistance)

Miss Bethany CHOI  
Senior Government Counsel

**Clerk in attendance :** Ms Doris LO  
Chief Council Secretary (1)2

**Staff in attendance :** Miss Evelyn LEE  
Assistant Legal Adviser 10

Mr Raymond CHOW  
Senior Council Secretary (1)6

Ms Christina SHIU  
Legislative Assistant (1)2

---

Action

**I Meeting with the Administration**

(L.N. 155 of 2018

— Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order

L.N. 156 of 2018

— Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order

File Ref: TsyB R2 183/800-1-1/29/0 — Legislative Council Brief  
(C) and TsyB R2 183/800-1-1/37/0  
(C)

LC Paper Nos. LS92/17-18 and — Legal Service Division Reports  
LS94/17-18

LC Paper No. CB(1)43/18-19(01) — Paper on the two Orders made under section 49(1A) of the Inland Revenue Ordinance and gazetted on 14 September 2018

Action

- prepared by the Legislative Council Secretariat (Background brief)
- LC Paper No. CB(1)43/18-19(02) — Letter from Assistant Legal Adviser to the Administration dated 20 September 2018
- LC Paper No. CB(1)43/18-19(03) — Administration's response to Assistant Legal Adviser's letter dated 20 September 2018 [LC Paper No. CB(1)43/18-19(02)]
- LC Paper No. CB(1)99/18-19(01) — List of follow-up actions arising from the discussion at the meeting on 19 October 2018
- LC Paper No. CB(1)99/18-19(02) — Administration's response to the issues raised at the meeting on 19 October 2018
- LC Paper No. CB(1)145/18-19(01) — Letter from Hon James TO Kun-sun dated 5 November 2018 (Chinese version only)
- LC Paper No. CB(1)163/18-19(01) — List of follow-up actions arising from the discussion at the meeting on 5 November 2018
- LC Paper No. CB(1)163/18-19(02) — Administration's response to the issues raised in Hon James TO Kun-sun's letter dated 5 November 2018 [LC Paper No. CB(1)145/18-19(01)] and at the meeting on 5 November 2018)

Discussion

The Subcommittee deliberated (index of proceedings attached at **Appendix**).

Legislative timetable

2. The Chairman said that the Subcommittee had completed the scrutiny of the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order (L.N. 155) and the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order (L.N. 156) (collectively referred to as the "two Orders").

Action

3. The Chairman further advised that the scrutiny period of the two Orders had been extended to the Council meeting of 28 November 2018 and the deadline for giving notice of motion to amend the two Orders would be 21 November 2018. He would report the deliberations of the Subcommittee to the House Committee at its meeting today (i.e. 16 November 2018).

4. Mr James TO indicated that he would give notices to move motions at the Council meeting of 28 November 2018 to repeal the two Orders.

*(Post-meeting note: With the permission of the President, Mr James TO moved at the Council meeting of 28 November 2018 two proposed resolutions to repeal the two Orders. The two proposed resolutions were negatived.)*

**II Any other business**

5. There being no other business, the meeting ended at 9:13 am.

Council Business Division 1  
Legislative Council Secretariat  
21 February 2019

**Proceedings of the third meeting of the  
Subcommittee on Two Orders Made under Section 49(1A) of the  
Inland Revenue Ordinance and Gazetted on 14 September 2018  
on Friday, 16 November 2018, at 8:30 am  
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
<b>Agenda item I — Meeting with the Administration</b>			
000422– 000512	Chairman	Opening remarks	
000513– 001020	Chairman Administration	Briefing by the Administration on its response (LC Paper No. CB(1)163/18-19(02)) to the issues raised in Mr James TO's letter dated 5 November 2018 (LC Paper No. CB(1)145/18-19(01)) and at the meeting on 5 November 2018 (LC Paper No. CB(1)163/18-19(01))	
001021– 004528	Chairman Mr James TO Administration	<p>While taking note of the Administration's explanation that the provision of mutual legal assistance ("MLA") pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) was subject to the restrictions laid down in section 3(3) of Cap. 525, which stipulated that the provision of Cap. 525 would not operate to prejudice the generality of section 4 of the Inland Revenue Ordinance (Cap. 112) about preserving secrecy of tax information kept by the Inland Revenue Department ("IRD"), Mr James TO sought clarifications/expressed views on:</p> <p>(a) based on the above, whether an MLA request for obtaining tax information kept in the custody of IRD would be declined;</p> <p>(b) whether an MLA counterpart (if not being a party to a Comprehensive Avoidance of Double Taxation Agreement ("CDTA") signed with Hong Kong that contained an exchange of information ("EoI") article) of Hong Kong might be unable to obtain any tax information so kept through the relevant MLA arrangement, even if such information was requested for any specified non-tax related purposes under the relevant ordinances;</p> <p>(c) the Administration should consider making amendments to the relevant ordinances (including the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organized and Serious Crimes Ordinance (Cap. 455), the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) and Cap. 525), to provide for the means of handling requests for tax information in such cases, such as through MLA; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(d) the Administration should, before making the relevant legislative amendments, consider withdrawing the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order (L.N. 155) and the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order (L.N. 156) (collectively referred to as the "two Orders").</p> <p>The Chairman enquired whether there was any statutory provision that could override the secrecy provision in section 4 of Cap. 112, and whether there were other approaches adopted by other jurisdictions in handling tax information requests for non-tax related purposes from their CDTA partners. As regards Mr James TO's suggestion of making amendments to Cap. 405, Cap. 455, Cap. 575 and Cap. 525 that were beyond the purview of the Subcommittee, the Chairman suggested that Mr TO should follow up the matter on other occasions.</p> <p>The Administration reiterated that:</p> <p>(a) by operation of section 3(3) of Cap. 525, as read with section 4 of Cap. 112, Cap. 525 could not be invoked to obtain tax information direct from IRD, whereas tax information not kept by IRD but by any individuals, companies, banks, etc. fell outside the scope of section 4 of Cap. 112;</p> <p>(b) the inclusion of an EoI article under CDTAs to allow the use of tax information exchanged for non-tax related purposes was in line with the prevailing requirements on international tax cooperation. Similar arrangement was incorporated in the Model Tax Convention on Income and on Capital promulgated by the Organisation for Economic Co-operation and Development ("OECD") and the United Nations Model Double Taxation Convention;</p> <p>(c) EoI should first be conducted for tax purposes in accordance with the relevant CDTA. If the receiving party of the tax information subsequently intended to use such information for non-tax related purposes, OECD's guideline stipulated that this should only be allowed where such use was allowed under the laws of both contracting parties and the competent authority of the supplying party authorized such use;</p> <p>(d) the two Orders should come into operation as scheduled to implement the two CDTAs which would bring economic benefits to Hong Kong. India and Finland had respectively completed their local legislative procedure for implementing the relevant CDTA; and</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		(e) Mr TO's above suggestion on amending Cap. 405, Cap. 455, Cap. 575 and Cap. 525 would be relayed to the relevant policy bureaux for consideration.  While taking note of the Administration's explanation, Mr James TO indicated that he would give notices to move motions to repeal the two Orders.	
004529– 004703	Chairman	Legislative timetable	
<b>Agenda item II — Any other business</b>			
004704– 004706	Chairman	Concluding remarks	