



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2523 0642)

20 September 2018

Mr Stephen LO  
Principal Assistant Secretary for Financial Services &  
the Treasury (Treasury)(R2)  
Financial Services and the Treasury Bureau  
24/F, Central Government Offices  
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Mr LO,

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion  
with respect to Taxes on Income) (Republic of India) Order (L.N. 155)**

**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)**

We are scrutinizing L.N. 155 and L.N. 156 with a view to advising Members on their legal and drafting aspects. Please find attached a schedule setting out our enquiries. We should be grateful for your information on the matters set out in the schedule. As the House Committee will consider L.N. 155 and L.N. 156 at its meeting on 5 October 2018, please let us have your reply in both Chinese and English by **26 September 2018**.

Yours sincerely

(Evelyn LEE)

Assistant Legal Adviser

Encl.

c.c. DoJ (Attn: Miss Annet LAI, Government Counsel (Fax: 2536 8631))  
Legal Adviser  
Senior Assistant Legal Adviser 3

## Schedule

### Exchange of information ("EoI") arrangements under L.N. 155 and L.N. 156

It is noted that L.N. 155 and L.N. 156 concern the Comprehensive Avoidance of Double Taxation Agreements ("CDTAs") signed by Hong Kong and the Republic of India ("India Agreement") on 19 March 2018, and by Hong Kong and the Republic of Finland on 24 May 2018 ("Finland Agreement"). Article 26 of the India Agreement together with Paragraph 5 of its Protocol and Article 25 of the Finland Agreement together with Paragraph 3 of its Protocol respectively provide for the exchange of information ("EoI") arrangements under these agreements. These arrangements differ from those under the sample EoI Article and sample Protocol (collectively known as "sample") provided by the Administration to the Legislative Council in Annex A to the LC Paper No: CB(1)466/09-10(02) as follows:

- (a) Article 26(2) of the India Agreement and Article 25(2) of the Finland Agreement respectively provide, among other things, that information received by a Contracting Party under the relevant agreement may be used for other purposes when such information may be used for such other purposes under the laws of the Contracting Parties and the competent authority of the supplying Party authorizes such use. Such provisions do not appear in the sample. Please explain the reason for incorporating such provisions in the Agreements;
- (b) under Paragraph 5(b) of the Protocol to the India Agreement, the competent authority of India may disclose information to Parliamentary Committees, the Special Investigation Team constituted by Government and any other oversight bodies mutually agreed upon in writing (collectively known as "specified bodies"). Similar arrangements are not provided in the sample. Please provide the following information:
  - (i) whether similar arrangements have been made between Hong Kong and any other jurisdiction(s) under any CDTA;
  - (ii) the reasons and justifications for incorporating the above arrangements and for including the specified bodies in the Protocol;
  - (iii) the other oversight bodies which are contemplated by the arrangements under the Protocol; and

- (iv) the safeguards to be adopted for the protection of personal data and confidentiality of the information disclosed to the specified bodies under the above disclosure arrangements; and
- (c) Paragraph 5(c) of the Protocol to the India Agreement provides that the requested Contracting Party shall disclose any information that precedes the date on which the India Agreement has effect for the taxes covered by the Agreement ("pre-date information"), insofar the information is foreseeably relevant for a fiscal year or taxable event following that date. Similar arrangements are not provided in the sample. Please provide the following information:
  - (i) whether similar arrangements have been made between Hong Kong and any other jurisdiction(s) under any CDTA;
  - (ii) the purposes of exchanging such pre-date information; and
  - (iii) as it appears that the pre-date information received by a Contracting Party may also be used for purposes not related to the original request (such as for a separate tax offence not relating to the India Agreement) if the relevant conditions under Article 26 of the India Agreement are satisfied, please confirm whether this is the position.

The meaning of "substantially supported by public funds" in the India Agreement

2. It is also noted that Article 18 of the India Agreement sets out the taxation arrangements for artistes and sportspersons. Article 18(3) provides, among other things, that the provisions of Article 18(1) and 18(2) shall not apply to income from activities performed in a Contracting Party by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting Parties or of political subdivisions or local authorities thereof. Please provide the parameters to be satisfied in order for such activities to be considered as "substantially supported by public funds".

Entitlement of benefits under the Finland Agreement

3. Article 21 of the Finland Agreement concerns the entitlement of benefits under the Agreement. The Article provides, among other things, that a benefit under the Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and

circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, *unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement* (emphasized part referred to as "exception"). It is also noted that similar provisions also appear in Articles 10(6), 11(8), 12(7), 13(7) and 14(7) of the India Agreement but without the exception. In the light of the above, please provide the following information:

- (a) the circumstances contemplated by the exception under which a benefit would be granted; and
- (b) the reasons for not providing a similar exception in the India Agreement.