

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

**List of follow-up actions arising from the discussion
at the meeting on 19 October 2018**

The Administration is requested to provide supplementary information, as set out in the ensuing paragraph, in respect of the issues raised by members regarding the exchange of information ("EoI") arrangements under the Comprehensive Avoidance of Double Taxation Agreements signed by the Hong Kong Special Administrative Region ("HKSAR") and the Republic of India on 19 March 2018 ("India Agreement"), and by HKSAR and the Republic of Finland on 24 May 2018 ("Finland Agreement"), to be implemented respectively by L.N. 155 of 2018 and L.N. 156 of 2018.

Use of information exchanged for non-tax related purposes

2. Given that 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 EoI agreement may be **used for other purposes** ("non-tax related purposes") **when such information may be used for such other purposes under the laws of the Contracting Parties and the competent authority** (*which, in the case of HKSAR, means the Commissioner of Inland Revenue or his authorized representative*)¹ **of the supplying Party authorizes such uses**, please provide the following information:

- (a) whether HKSAR has made arrangements for mutual legal assistance with India and/or Finland under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLA arrangements") respectively;
- (b) if the answer to (a) is in the affirmative, and if the tax information requested or received by India or Finland under the relevant agreement is or concerns a criminal matter covered by Cap. 525, how a request made by India and/or Finland to use such information for non-tax related purposes will be dealt with, in particular,

¹ See Article 3(1)(c) of the India Agreement and Article 3(1)(d) of the Finland Agreement.

- (i) whether legal advice will be sought from the Department of Justice in the circumstances;
 - (ii) whether the requesting state will be requested to seek such information under Cap. 525 if no such request has been made;
 - (iii) the guiding principles (including any legal consideration) in determining whether such information should be provided under the relevant agreements or in accordance with the relevant MLA arrangements under Cap. 525; and
 - (iv) if it is decided that such information will be provided under the relevant agreements, whether any protection which is similar to those provided under Cap. 525 will be available to the subject person concerned;
- (c) an explanation on the operational procedure for supplying tax information referred to in (b) above under the relevant MLA arrangements and Cap. 525; and
- (d) in cases where the tax information requested under the relevant agreement is not covered by Cap. 525, an explanation on how such information would be provided to the requesting party in the light of the relevant agreements, the Inland Revenue (Disclosure of Information) Rules (Cap. 112BI) and the Departmental Interpretation and Practice Notes No. 47.