

**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 5 November 2018**

**Government Response**

At the meeting on 5 November 2018, the Subcommittee requested the Department of Justice (“DoJ”) to provide its views on the application of the two Comprehensive Avoidance of Double Taxation Agreements (“CDTAs”) signed with India and Finland and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (“MLAO”) in respect of tax information requested or received by India and Finland under the relevant CDTAs. This note sets out the Administration’s response.

**Exchange of information under CDTAs**

2. As explained in our previous submission to the Subcommittee (LC Paper No. CB(1)99/18-19(02)), the exchange of information (“EoI”) under CDTAs has to be conducted for tax purposes in the first place. The requesting party must first demonstrate to the Inland Revenue Department (“IRD”) that the information requested is foreseeably relevant to the application of the provisions of the CDTA or the administration or enforcement of the domestic laws of the contracting parties concerning taxes imposed on the parties. The IRD will reject requests from other jurisdictions for tax information that are based on purely non-tax related grounds.

3. If our CDTA partner has already obtained tax information from the IRD for tax-related purposes after satisfying the “foreseeable relevance” requirement but subsequently intends to use such information for non-tax related purposes, it will have to seek the prior agreement of IRD. Such subsequent use for non-tax related purposes will only be allowed where (a) the use is allowed under the laws of both Hong Kong and the CDTA partner and (b) IRD authorises such use. The arrangement is in line with the prevailing international requirement. DoJ’s views on the handling of requests from our CDTA partners for using exchanged tax information for non-tax related purposes are elaborated in the ensuing paragraphs.

## **DoJ's views**

4. The EoI arrangement under the CDTAs and the mutual legal assistance (“MLA”) arrangements with India and Finland as implemented by the MLAO are two separate regimes independent of each other. Provision of assistance pursuant to the MLAO is subject to the restrictions laid down in section 3(3) of the MLAO, which stipulates that the provisions of the MLAO shall not operate to prejudice the generality of section 4 of the Inland Revenue Ordinance (Cap. 112) (“IRO”). Section 4 of the IRO is about preserving secrecy of tax information kept by IRD. By operation of section 3(3) of the MLAO, as read with section 4 of the IRO, the MLAO cannot be invoked to obtain tax information direct from IRD. Accordingly, if India or Finland makes a request for legal assistance pursuant to the relevant MLA arrangement for obtaining tax information kept in the custody of IRD, the request will be declined in light of section 3(3) of the MLAO.

5. The CDTAs with India and Finland provide that tax information provided by one contracting party to the other party may be used for non-tax related purposes when (a) such information may be used for such purposes under the laws of both parties, and (b) the competent authority of the supplying party authorises such use. When IRD has to decide, upon request, whether to permit the information already released to a CDTA partner to be used for non-tax related purposes, IRD will consult the relevant law enforcement agencies (“LEAs”) and DoJ.

6. To assist IRD from the legal perspective, DoJ provides opinion on whether the information can be used for any non-tax related purposes under the laws of Hong Kong. IRD may be reminded that under the laws of Hong Kong, tax information may only be used for limited non-tax related purposes, covering purposes relating to recovery of proceeds from drug trafficking, organised and serious crimes and terrorist acts under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organized and Serious Crimes Ordinance (Cap. 455) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) respectively. Since the use of the information for non-tax related purposes should be allowed under the laws of both contracting parties, a CDTA partner may only use the tax information for the above limited non-tax related purposes if the CDTA partner also has similar laws permitting the use of the information for such limited purposes. It cannot use the information for a non-tax related purpose even if permitted under its laws if such a purpose is not permitted under the laws of Hong Kong.

7. Where the information constitutes personal data, IRD may also be reminded to have due regard to the requirements under the Personal Data (Privacy) Ordinance (Cap. 486), including whether the proposed use of personal data is likely to fall within the current exemption provided under section 58 of the PDPO in relation to prevention or detection of crime under the laws of a place outside Hong Kong with which Hong Kong has legal or law enforcement cooperation.

**Financial Services and the Treasury Bureau**  
**Department of Justice**  
**November 2018**