

For discussion  
on 8 January 2018

## **Legislative Council Panel on Financial Affairs**

### **Application of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in Hong Kong**

#### **Purpose**

This paper informs Members of the upcoming key steps in extending the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (“Multilateral Convention”) to Hong Kong which will facilitate Hong Kong to deliver our obligations on international tax cooperation.

#### **Multilateral Convention**

2. At the meeting of this Panel on 5 June 2017, we briefed Members of the Government’s plan to extend the application of the Multilateral Convention to Hong Kong so as to effectively deliver our obligations on international tax cooperation. The Central People’s Government (“CPG”) gave in-principle agreement in May 2017 to extend the application of the Multilateral Convention to Hong Kong (LC Paper No. CB(1)1030/16-17(08)).

3. The Multilateral Convention was jointly developed by the Organisation for Economic Co-operation and Development (“OECD”) and the Council of Europe in 1988 and amended by Protocol in 2010. It provides for 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. The Multilateral Convention has been opened for signature by states since 1 June 2011 and the latest text is at **Annex A**. As at 15 December 2017, 116 jurisdictions participated in the Multilateral Convention, of which 15 jurisdictions are covered by territorial extension (**Annex B**).

4. The Multilateral Convention will provide a platform for Hong Kong to conduct, on a multilateral basis, automatic exchange of financial account information in tax matters (“AEOI”), automatic exchange of

Country-by-Country (“CbC”) reports<sup>1</sup>, as well as spontaneous exchange of information (“SEOI”) on tax rulings<sup>2</sup> under the base erosion and profit shifting (“BEPS”) package. These initiatives are the key drivers for international tax cooperation.

## **International Tax Cooperation**

### *AEOI*

5. The AEOI initiative requires financial institutions to identify financial accounts held by tax residents of reportable jurisdictions, and to collect the required information for reporting to the tax authority. Individual tax authorities will exchange information with their counterparts of other jurisdictions on an annual basis.

### *BEPS*

6. The BEPS package, comprising 15 action plans, seeks to counter the exploitation of gaps and mismatches in tax rules by multinational enterprises (“MNEs”) to artificially shift profits to low or no-tax locations where there is little or no economic activity. To fulfil Hong Kong’s commitment to implementing the BEPS package, we need to take forward the automatic exchange of CbC reports and SEOI on tax rulings.

### *Adoption of a Multilateral Approach*

7. Whilst a bilateral approach can be adopted for implementing AEOI and BEPS initiatives, it has become increasingly impractical given the continued expansion in the scope and network of tax information exchanges in the international community. In particular, the OECD requires committed jurisdictions to have the first exchange of AEOI with a wide network of partners by September 2018. A more practical

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<sup>1</sup> The OECD mandates multinational enterprises with annual consolidated group revenue not less than EUR750 million (or HK\$6.8 billion) to file CbC reports. Upon receipt of the CbC reports, participating jurisdictions are required to exchange these reports with other relevant jurisdictions on an automatic basis.

<sup>2</sup> To counter harmful tax practices by improving transparency through exchange of information, the OECD mandates compulsory SEOI on six specific types of tax rulings (i.e. (i) rulings relating to preferential regimes, (ii) unilateral advance pricing arrangements or any other cross-border unilateral rulings in respect of transfer pricing; (iii) cross-border rulings providing for a downward adjustment of taxable profits; (iv) permanent establishment rulings; (v) related party conduit rulings; and (vi) any other type of ruling that, in the absence of SEOI, could give rise to BEPS concerns).

approach is for jurisdictions to implement these initiatives through the Multilateral Convention.

8. In the absence of a wide network for tax information exchanges, it is essential for Hong Kong to participate in the Multilateral Convention<sup>3</sup>, lest we may not be able to meet the OCED and European Union (EU) requirements. Both the OECD and EU attach great importance to the timely implementation of AEOI and BEPS initiatives. In fact, they have started their respective reviews and are drawing up lists of “non-cooperative” tax jurisdictions. A “non-cooperative” tax jurisdiction could be subject to counter-measures which would make it a less attractive place for investment and business.

### **Extending the Multilateral Convention to Hong Kong**

9. China became the 56<sup>th</sup> signatory to the Multilateral Convention on 27 August 2013. Upon depositing the instrument of ratification of the Multilateral Convention in October 2015, China made a declaration that the Multilateral Convention shall not apply to Hong Kong and Macau, which was in accordance with the intent of Hong Kong at that time. The Multilateral Convention has entered into force in China since 1 February 2016. In view of the considerations discussed in paragraphs 7 and 8 above, Hong Kong requested and the CPG gave in-principle agreement in May 2017 to extend the application of the Multilateral Convention to Hong Kong.

10. With the support of this Panel at its meeting on 5 June 2017, we introduced the Inland Revenue (Amendment) (No. 5) Bill (“Bill”) into the Legislative Council (“LegCo”) on 18 October 2017 to pave the way for the extension of the Multilateral Convention in Hong Kong. Currently, bilateral Comprehensive Avoidance of Double Taxation Agreements (“CDTAs”) or Tax Information Exchange Agreements (“TIEAs”) signed by Hong Kong are given effect in Hong Kong through orders made by the Chief Executive-in-Council (“CE-in-C”) in accordance with section

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<sup>3</sup> Apart from tax transparency, the EU would also evaluate the jurisdiction’s compliance on fair taxation and implementation of BEPS measures, failure of which may render the jurisdiction being identified as a “non-cooperative” tax jurisdiction.

49(1A) of the Inland Revenue Ordinance (Cap. 112) (“IRO”)<sup>4</sup>. However, the IRO currently does not empower the CE-in-C to make orders for multilateral tax agreements. Such a constraint is not conducive to Hong Kong’s participation in multilateral tax agreements and new areas of international tax cooperation.

11. In light of the fast evolving international tax landscape and the emphasis on closer international tax cooperation, we have proposed in the Bill that the IRO be amended to empower the CE-in-C to declare by order that any tax arrangements having been made by Hong Kong with more than one government of any territories outside Hong Kong, or having been made by the CPG and applied to Hong Kong, shall have effect.

### **Upcoming Key Steps**

12. The OECD requires committed jurisdictions to have the first exchange of AEOI with a wide network of partners by September 2018. To meet this timetable, Hong Kong needs to complete the following critical steps in the months ahead.

#### *Step 1 – Passage of the Bill*

13. The Bills Committee has recently completed scrutiny of the Bill. Subject to its passage, hopefully in early 2018, the Bill will provide the legal framework for Hong Kong to implement multilateral tax arrangements under the amended IRO.

#### *Step 2 – Depositing the Declaration for Extension by CPG*

14. We will then seek the CPG’s assistance in making a declaration to the OECD that the application of the Multilateral Convention shall be extended to Hong Kong (“Declaration for Extension”). The Multilateral Convention would enter into force in Hong Kong on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the OECD (i.e. about four months of time).

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<sup>4</sup> By virtue of section 49(1A) of the IRO, arrangements made with the government of any territory outside Hong Kong shall have effect if the CE-in-C by order declares that those arrangements have been made and that it is expedient that those arrangements should have effect. Section 49(1B) of the IRO further stipulates that only arrangements made for either or both of the following purposes may be specified in an order under section 49(1A) of the IRO - (a) affording relief from double taxation; (b) exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned.

15. We plan to take forward the mandatory provisions of the Multilateral Convention only while making suitable reservations/declarations for the optional provisions. Our intended list of reservations and declarations under the Multilateral Convention is set out at **Annex C**. The relevant reservations/declarations applicable to Hong Kong will be reflected in the Declaration for Extension to be made by the CPG.

#### *Step 3 - Giving Effect to the Multilateral Convention in Hong Kong*

16. The Multilateral Convention shall have effect in Hong Kong if the CE-in-C by order declares, under the IRO to be amended by the Bill, that the Multilateral Convention (as arrangements specified in the order) has been made and that it is expedient that the Multilateral Convention should have effect. This is similar to the prevailing practice where the CE-in-C makes orders under the IRO to declare that bilateral CDTAs/TIEAs signed by Hong Kong shall have effect.

17. After the first two steps are completed, we plan to recommend the CE-in-C to make an order to declare that the Multilateral Convention shall have effect in Hong Kong, subject to the reservations/declarations entered by the CPG in respect of Hong Kong. The order would set out the full text of the Multilateral Convention and all the reservations and declarations made thereunder by the CPG in respect of Hong Kong. The order to be made under the IRO (as amended by the Bill) will be subject to the scrutiny of LegCo by negative vetting.

#### *Step 4 - Activating Exchange Relationships with Other Jurisdictions*

18. Riding on the Multilateral Convention, Hong Kong will need to sign the respective Multilateral Competent Authority Agreements (“MCAAs”) before AEOI and automatic exchange of CbC reports on a multilateral basis can take place. The MCAAs for these two initiatives are developed by the OECD, which set out the modalities of exchange between tax authorities, including confidentiality requirements, timings for exchange, medium of transfer, etc. On the other hand, SEOI on tax rulings do not require specific competent authority agreements to be signed.

19. In summary, upon passage of the Bill in LegCo hopefully in early 2018 (*Step 1*), we plan to seek the CPG’s assistance in depositing the Declaration for Extension within the first quarter of 2018 (*Step 2*).

After that, we would recommend the CE-in-C to make an order under the IRO (to be amended by the Bill) in the first or the second quarter of 2018 so that the Multilateral Convention shall have effect in Hong Kong (*Step 3*). Finally, activation of the MCAA for AEOI will follow (*Step 4*), before the deadline of September 2018 as set by the OECD. We will make our best endeavours and exercise flexibility where necessary to complete the requisite steps in time to enable Hong Kong to meet our international obligations.

20. As for automatic exchange of CbC reports, we will be introducing the Inland Revenue (Amendment) (No. 6) Bill 2017 into LegCo to provide the legislative framework for the filing of CbC reports. Subject to passage of this bill, the filing regime is expected to commence in 2018 and the reports so filed would be exchanged with Hong Kong's treaty partners on a multilateral or bilateral basis as appropriate<sup>5</sup>.

## **Way Forward**

21. The extension of the Multilateral Convention to Hong Kong in a timely manner is crucial for Hong Kong to meet the new standards in international tax cooperation and to preserve our reputation as an international financial and business centre. We will work closely with the LegCo to ensure that the relevant legislative exercise is completed on time.

## **The Treasury Branch Financial Services and the Treasury Bureau December 2017**

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<sup>5</sup> Exchange of CbC reports on bilateral basis may apply to the CbC reports in respect of an accounting period not covered by the Multilateral Convention, or where Hong Kong's treaty partners concerned are not the signatories of the MCAA on the exchange of CbC reports.

# Convention on Mutual Administrative Assistance in Tax Matters

Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1<sup>st</sup> June 2011.

## **Preamble**

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention,

Considering that the development of international movement of persons, capital, goods and services – although highly beneficial in itself – has increased the possibilities of tax avoidance and evasion and therefore requires increasing co-operation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters in all States and that States should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;

Desiring to conclude a convention on mutual administrative assistance in tax matters,

Have agreed as follows:



## **Chapter I – Scope of the Convention**

### **Article 1 – Object of the Convention and persons covered**

- 1 The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies.
- 2 Such administrative assistance shall comprise:
  - a exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
  - b assistance in recovery, including measures of conservancy; and
  - c service of documents.
- 3 A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

### **Article 2 – Taxes covered**

- 1 This Convention shall apply:
  - a to the following taxes:
    - i taxes on income or profits,
    - ii taxes on capital gains which are imposed separately from the tax on income or profits,
    - iii taxes on net wealth,imposed on behalf of a Party; and
  - b to the following taxes:
    - i taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party,
    - ii compulsory social security contributions payable to general government or to social security institutions established under public law, and
    - iii taxes in other categories, except customs duties, imposed on behalf of a Party, namely:
      - A. estate, inheritance or gift taxes,

- B. taxes on immovable property,
  - C. general consumption taxes, such as value added or sales taxes,
  - D. specific taxes on goods and services such as excise taxes,
  - E. taxes on the use or ownership of motor vehicles,
  - F. taxes on the use or ownership of movable property other than motor vehicles,
  - G. any other taxes;
- iv taxes in categories referred to in sub-paragraph iii. above which are imposed on behalf of political subdivisions or local authorities of a Party.
- 2 The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.
- 3 The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the "Depositaries") of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.
- 4 The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the Depositaries of the adoption of the tax in question.

## **Chapter II – General definitions**

### **Article 3 – Definitions**

- 1 For the purposes of this Convention, unless the context otherwise requires:
- a the terms "applicant State" and "requested State" mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;
  - b the term "tax" means any tax or social security contribution to which the Convention applies pursuant to Article 2;
  - c the term "tax claim" means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;

- d the term “competent authority” means the persons and authorities listed in Annex B;
- e the term “nationals” in relation to a Party means:
  - i all individuals possessing the nationality of that Party, and
  - ii all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

- 2 As regards the application of the Convention by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.
- 3 The Parties shall notify one of the Depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

### **Chapter III – Forms of assistance**

#### **Section I – Exchange of information**

##### **Article 4 – General provision**

- 1 The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.
- 2 Deleted.
- 3 Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

##### **Article 5 – Exchange of information on request**

- 1 At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.
- 2 If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

#### **Article 6 – Automatic exchange of information**

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

#### **Article 7 – Spontaneous exchange of information**

- 1 A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:
  - a the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;
  - b a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;
  - c business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
  - d a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
  - e information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.
- 2 Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

#### **Article 8 – Simultaneous tax examinations**

- 1 At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.
- 2 For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

### **Article 9 – Tax examinations abroad**

- 1 At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.
- 2 If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State.
- 3 A Party may inform one of the Depositaries of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration may be made or withdrawn at any time.

### **Article 10 – Conflicting information**

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

## **Section II - Assistance in recovery**

### **Article 11 – Recovery of tax claims**

- 1 At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.
- 2 The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested.

However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.

- 3 The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

### **Article 12 – Measures of conservancy**

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

### **Article 13 – Documents accompanying the request**

- 1 The request for administrative assistance under this section shall be accompanied by:
  - a a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested,
  - b an official copy of the instrument permitting enforcement in the applicant State, and
  - c any other document required for recovery or measures of conservancy.
- 2 The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

### **Article 14 – Time limits**

- 1 Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period.
- 2 Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.
- 3 In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

### **Article 15 – Priority**

The tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State even if the recovery procedure used is the one applicable to its own tax claims.

### **Article 16 – Deferral of payment**

The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant State.

### **Section III – Service of documents**

#### **Article 17 – Service of documents**

- 1 At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention.
- 2 The requested State shall effect service of documents:
  - a by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;
  - b to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.
- 3 A Party may effect service of documents directly through the post on a person within the territory of another Party.
- 4 Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.
- 5 When a document is served in accordance with this article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested State shall arrange to have it translated into or a summary drafted in its or one of its official languages. Alternatively, it may ask the applicant State to have the document either translated into or accompanied by a summary in one of the official languages of the requested State, the Council of Europe or the OECD.

### **Chapter IV – Provisions relating to all forms of assistance**

#### **Article 18 – Information to be provided by the applicant State**

- 1 A request for assistance shall indicate where appropriate:
  - a the authority or agency which initiated the request made by the competent authority;
  - b the name, address, or any other particulars assisting in the identification of the person in respect of whom the request is made;
  - c in the case of a request for information, the form in which the applicant State wishes the information to be supplied in order to meet its needs;
  - d in the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;

- e in the case of a request for service of documents, the nature and the subject of the document to be served;
  - f whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 21.2.g.
- 2 As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant State shall forward it to the requested State.

#### **Article 19 – Deleted**

#### **Article 20 – Response to the request for assistance**

- 1 If the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible.
- 2 If the request is declined, the requested State shall inform the applicant State of that decision and the reason for it as soon as possible.
- 3 If, with respect to a request for information, the applicant State has specified the form in which it wishes the information to be supplied and the requested State is in a position to do so, the requested State shall supply it in the form requested.

#### **Article 21 – Protection of persons and limits to the obligation to provide assistance**

- 1 Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.
- 2 Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:
- a to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;
  - b to carry out measures which would be contrary to public policy (*ordre public*);
  - c to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;
  - d to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*);
  - e to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;



- f to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;
  - g to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;
  - h to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.
- 3 If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.
- 4 In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### **Article 22 – Secrecy**

- 1 Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.
- 2 Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.

- 3 If a Party has made a reservation provided for in sub-paragraph a. of paragraph 1 of Article 30, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.
- 4 Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.

### **Article 23 – Proceedings**

- 1 Proceedings relating to measures taken under this Convention by the requested State shall be brought only before the appropriate body of that State.
- 2 Proceedings relating to measures taken under this Convention by the applicant State, in particular those which, in the field of recovery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of that State. If such proceedings are brought, the applicant State shall inform the requested State which shall suspend the procedure pending the decision of the body in question. However, the requested State shall, if asked by the applicant State, take measures of conservancy to safeguard recovery. The requested State can also be informed of such proceedings by any interested person. Upon receipt of such information the requested State shall consult on the matter, if necessary, with the applicant State.
- 3 As soon as a final decision in the proceedings has been given, the requested State or the applicant State, as the case may be, shall notify the other State of the decision and the implications which it has for the request for assistance.

## **Chapter V – Special provisions**

### **Article 24 – Implementation of the Convention**

- 1 The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorise subordinate authorities to act on their behalf. The competent authorities of two or more Parties may mutually agree on the mode of application of the Convention among themselves.
- 2 Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant State shall consult each other and endeavour to resolve the situation by mutual agreement.

- 3 A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.
- 4 A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.
- 5 Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.
- 6 The Secretary General of OECD shall inform the Parties, and the Signatory States which have not yet ratified, accepted or approved the Convention, of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

#### **Article 25 – Language**

Requests for assistance and answers thereto shall be drawn up in one of the official languages of the OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

#### **Article 26 – Costs**

Unless otherwise agreed bilaterally by the Parties concerned:

- a ordinary costs incurred in providing assistance shall be borne by the requested State;
- b extraordinary costs incurred in providing assistance shall be borne by the applicant State.

### **Chapter VI – Final provisions**

#### **Article 27 – Other international agreements or arrangements**

- 1 The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

- 2 Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules.

#### **Article 28 – Signature and entry into force of the Convention**

- 1 This Convention shall be open for signature by the member States of the Council of Europe and the member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.
- 2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 3 In respect of any member State of the Council of Europe or any member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.
- 4 Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on 27<sup>th</sup> May 2010 (the “2010 Protocol”), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositaries.
- 5 After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositaries, who shall transmit it to the Parties. The Depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.
- 6 The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.

- 7 Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

#### **Article 29 – Territorial application of the Convention**

- 1 Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.
- 3 Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the Depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

#### **Article 30 – Reservations**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:
- a not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;
  - b not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;
  - c not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under sub-paragraph a. or b. above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;
  - d not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

- e not to permit the service of documents through the post as provided for in paragraph 3 of Article 17;
  - f to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.
- 2 No other reservation may be made.
  - 3 After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.
  - 4 Any Party which has made a reservation under paragraphs 1 and 3 may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.
  - 5 A Party which has made a reservation in respect of a provision of this Convention may not require the application of that provision by any other Party; it may, however, if its reservation is partial, require the application of that provision insofar as it has itself accepted it.

#### **Article 31 – Denunciation**

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to one of the Depositaries.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.
- 3 Any Party which denounces the Convention shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

#### **Article 32 – Depositaries and their functions**

- 1 The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the member countries of OECD and any Party to this Convention of:
  - a any signature;

- b the deposit of any instrument of ratification, acceptance or approval;
  - c any date of entry into force of this Convention in accordance with the provisions of Articles 28 and 29;
  - d any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;
  - e any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;
  - f any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;
  - g any other act, notification or communication relating to this Convention.
- 2 The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform immediately the other Depositary thereof.

In witness whereof the undersigned, being duly authorised thereto, have signed the Convention.

Established by the Depositaries the 1<sup>st</sup> day of June 2011 pursuant to Article X.4 of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, in English and French, both texts being equally authentic, in two copies of which one shall be deposited in the archives of each Depositary. The Depositaries shall transmit a certified copy to each Party to the Convention as amended by the Protocol and to each State entitled to become a party.

**Jurisdictions participating in the  
Multilateral Convention on Mutual Administrative Assistance in Tax Matters**

(as at 15 December 2017)

- |                                  |                      |                                      |
|----------------------------------|----------------------|--------------------------------------|
| 1. Albania                       | 41. Germany          | 81. Niue                             |
| 2. Andorra                       | 42. Ghana            | 82. Norway                           |
| 3. Anguilla #                    | 43. Gibraltar #      | 83. Pakistan                         |
| 4. Argentina                     | 44. Greece           | 84. Panama                           |
| 5. Aruba #                       | 45. Greenland #      | 85. Peru                             |
| 6. Australia                     | 46. Guatemala        | 86. Philippines                      |
| 7. Austria                       | 47. Guernsey #       | 87. Poland                           |
| 8. Azerbaijan                    | 48. Hungary          | 88. Portugal                         |
| 9. Bahamas                       | 49. Iceland          | 89. Qatar                            |
| 10. Bahrain                      | 50. India            | 90. Romania                          |
| 11. Barbados                     | 51. Indonesia        | 91. Russia                           |
| 12. Belgium                      | 52. Ireland          | 92. Saint Kitts and Nevis            |
| 13. Belize                       | 53. Isle of Man #    | 93. Saint Lucia                      |
| 14. Bermuda #                    | 54. Israel           | 94. Saint Vincent and the Grenadines |
| 15. Brazil                       | 55. Italy            | 95. Samoa                            |
| 16. British Virgin Islands #     | 56. Jamaica          | 96. San Marino                       |
| 17. Brunei Darussalam            | 57. Japan            | 97. Saudi Arabia                     |
| 18. Bulgaria                     | 58. Jersey #         | 98. Senegal                          |
| 19. Burkina Faso                 | 59. Kazakhstan       | 99. Seychelles                       |
| 20. Cameroon                     | 60. Kenya            | 100. Singapore                       |
| 21. Canada                       | 61. Korea            | 101. Sint Maarten #                  |
| 22. Cayman Islands #             | 62. Kuwait           | 102. Slovak Republic                 |
| 23. Chile                        | 63. Latvia           | 103. Slovenia                        |
| 24. China (People's Republic of) | 64. Lebanon          | 104. South Africa                    |
| 25. Colombia                     | 65. Liechtenstein    | 105. Spain                           |
| 26. Cook Islands                 | 66. Lithuania        | 106. Sweden                          |
| 27. Costa Rica                   | 67. Luxembourg       | 107. Switzerland                     |
| 28. Croatia                      | 68. Malaysia         | 108. Tunisia                         |
| 29. Curacao #                    | 69. Malta            | 109. Turkey                          |
| 30. Cyprus                       | 70. Marshall Islands | 110. Turks and Caicos Islands#       |
| 31. Czech Republic               | 71. Mauritius        | 111. Uganda                          |
| 32. Denmark                      | 72. Mexico           | 112. Ukraine                         |
| 33. Dominican Republic           | 73. Moldova          | 113. United Arab Emirates            |
| 34. El Salvador                  | 74. Monaco           | 114. United Kingdom                  |
| 35. Estonia                      | 75. Montserrat #     | 115. United States                   |
| 36. Faroe Islands #              | 76. Morocco          | 116. Uruguay                         |
| 37. Finland                      | 77. Nauru            |                                      |
| 38. France                       | 78. Netherlands      |                                      |
| 39. Gabon                        | 79. New Zealand      |                                      |
| 40. Georgia                      | 80. Nigeria          |                                      |

# By territorial extension



**Intended list of Reservations and Declarations  
under the Multilateral Convention on  
Mutual Administrative Assistance in Tax Matters**

<b><u>Reservations/Declarations</u></b>	<b><u>Purpose*</u></b>
1. Pursuant to Article 29, paragraph 2, of the Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (hereinafter referred to as “the Convention”), the Convention shall apply to the Hong Kong Special Administrative Region of the People’s Republic of China (hereinafter referred to as “the Hong Kong SAR”).	To declare the application of the Multilateral Convention to Hong Kong.
2. Pursuant to Article 30, paragraph 1.a, of the Convention, the Hong Kong SAR shall not provide any form of assistance in relation to the taxes of other Parties included in any of the categories listed in Article 2, paragraph 1.b.	To reserve that Hong Kong will only provide assistance to the minimum tax types (i.e. Article 2, paragraph 1.a) under the Multilateral Convention.
3. Pursuant to Article 30, paragraph 1.b, of the Convention, the Hong Kong SAR shall not provide assistance in the recovery of any tax claims, or in conservancy measures, for all taxes.	To reserve that Hong Kong will not assist in recovery of tax claims or in conservancy measures under the Multilateral Convention.
4. Pursuant to Article 30, paragraph 1.c, of the Convention, the Hong Kong SAR shall not provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention (in accordance with Article 29, paragraph 2, of the Convention) in respect of the Hong Kong SAR or, where a reservation has previously been made under Article 30, paragraph 1.a or 1.b of the Convention, at the date of withdrawal of such a reservation in relation to taxes in the category in question.	To reserve that Hong Kong will not assist in tax claim that is in existence at the date on which the Multilateral Convention enters into force in Hong Kong or at the date on which the reservation(s) in paragraph(s) 2 or 3 above is withdrawn.

## Reservations/Declarations

## Purpose\*

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|---|--|
| 5. Pursuant to Article 30, paragraph 1.d, of the Convention, the Hong Kong SAR shall not provide assistance in the service of documents for all taxes.  | To reserve that Hong Kong will not assist in service of documents under the Multilateral Convention.   |
| 6. Pursuant to Article 30, paragraph 1.e, of the Convention, the Hong Kong SAR shall not permit the service of documents through the post as provided for in Article 17, paragraph 3 of the Convention.   | To reserve that Hong Kong will not assist in service of documents through post under the Multilateral Convention.  |
| 7. Pursuant to Article 30, paragraph 1.f, of the Convention, the Hong Kong SAR shall apply Article 28, paragraph 7, of the Convention exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of the Hong Kong SAR, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of the Hong Kong SAR. | To reserve that for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party, Hong Kong reserves the right not to provide any assistance to charges to tax before 1 January of the third year preceding the year in which the Multilateral Convention enters into force in Hong Kong ( <i>i.e. before 1 January 2015, assuming the Multilateral Convention enters into force in Hong Kong in 2018</i> ). |
| 8. Pursuant to Article 2, paragraph 1, of the Convention, for the Hong Kong SAR, the Convention shall apply to the following taxes:<br><br><i>Article 2, paragraph 1.a.i: Taxes on income or profits</i><br><i>- Profits Tax;</i><br><i>- Salaries Tax; and</i><br><i>- Property Tax.</i>   | To declare the types of taxes to which the Multilateral Convention applies in Hong Kong.   |
| 9. Pursuant to Article 3, paragraph 1.d, of the Convention, in relation to the Hong Kong SAR, the term “competent authority” means the Commissioner of Inland Revenue or his authorised representative.   | To declare the definition of competent authority in Hong Kong.   |

### **Reservations/Declarations**

### **Purpose\***

- |   |  |
|---|--|
| 10. Pursuant to Article 3, paragraph 1.e, of the Convention, for the Hong Kong SAR, the term “national” means any person having the right of abode, or is incorporated or otherwise constituted in the Hong Kong SAR.   | To declare the definition of “national” in Hong Kong, in accordance with the formulation usually adopted in our Comprehensive Avoidance of Double Taxation Agreements.   |
| 11. Pursuant to Article 4, paragraph 3, of the Convention, the Hong Kong SAR may inform its resident or national before transmitting information concerning him to another Party, in conformity with Article 5 of the Convention.   | To declare that Hong Kong may inform its resident or national before the information concerning that resident is transmitted to another Party when handling exchange of information on request under the Multilateral Convention.                                |
| 12. Pursuant to Article 9, paragraph 3, of the Convention, the Hong Kong SAR will not accept, as a general rule, such requests as are referred to in Article 9, paragraph 1, of the Convention.   | To declare that Hong Kong would generally not accept requests for tax examinations abroad.   |
| 13. The Convention shall have effect in accordance with the terms of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (hereafter referred to as “CRS MCAA”) for administrative assistance under the CRS MCAA between the Hong Kong SAR and the other Parties to the Convention that have made similar declarations, irrespective of the taxable periods or charges to tax to which such information relates in the receiving jurisdiction. | To declare that the Multilateral Convention shall have effect for AEOI purposes in accordance with the timeline for exchanges (i.e. first exchanges in 2018 with respect of information starting from 1 July 2017) under the CRS MCAA to be signed by Hong Kong. |

The Convention shall also have effect for administrative assistance under its Article 5, between the Hong Kong SAR and the other Parties to the Convention that have made similar declarations, irrespective of the taxable periods or charges to tax to which such information relates in the receiving jurisdiction, when such assistance concerns follow-up requests related to information exchanged under the CRS MCAA with respect to reporting periods of the sending jurisdiction covered by the CRS MCAA.

\* For reference only and not forming part of the reservations/declarations under the Multilateral Convention or the order referred to in paragraph 17 in the paper.