

For discussion
on 8 January 2018

Legislative Council Panel on Financial Affairs

Proposed Creation of a Chief Assessor Post in the Inland Revenue Department

PURPOSE

This paper seeks Members' views on the proposal to create one permanent Chief Assessor ("CA") (D1) post in the Tax Treaty Section ("TT Section") of the Inland Revenue Department ("IRD") with effect from 3 April 2018 or upon approval by the Finance Committee, whichever is the later, for spearheading international tax cooperation initiatives.

JUSTIFICATIONS

Background

2. The international landscape on tax cooperation has been evolving very rapidly in recent years. The Organisation for Economic Co-operation and Development ("OECD") has put forward new initiatives to enhance tax transparency and combat cross-border tax evasion. These initiatives include the common reporting standard released in July 2014 for automatic exchange of financial account information in tax matters ("AEOI"), and the package of measures released in October 2015 to combat base erosion and profit shifting ("BEPS") by enterprises. As an international financial centre and a responsible member of the international community, Hong Kong has committed to taking forward these initiatives. This has given rise to a tremendous increase in the workload of the TT Section of IRD.

3. Besides, there has been a strong call to expand Hong Kong's Comprehensive Double Taxation Agreement ("CDTA") network. Hong Kong has so far concluded CDTAs with 38 tax jurisdictions, covering 12 of the top 20 trading partners of Hong Kong. A list of our CDTA partners is at **Annex A**.

Proposed Creation of a Permanent CA Post in the TT Section

4. The TT Section is currently headed by one CA designated as CA(TT), underpinned by six teams each headed by a Senior Assessor (“SA”). The organisation chart of the TT Section is at **Annex B**. The current CA post in the TT Section was created in April 2014 to deal with the additional workload arising from the planned expansion of Hong Kong’s network of CDTA and Tax Information Exchange Agreement (“TIEA”) at that time¹; the subsequent implementation issues such as handling exchange of information (“EOI”) on request and applications for Certificate of Resident Status (“CoR”), negotiations on advance pricing arrangement (“APA”), and the conduct of mutual agreement procedure (“MAP”) (including arbitration); as well as involvement in other international tax matters. However, given the widening scope for international tax cooperation and the consequent increase in workload, the TT Section has been stretched to its capacity limit and the situation has become increasingly unsustainable.

5. There is an imminent need for IRD to expand the TT Section to cope with the additional workload². It is also essential to strengthen its directorate support to meet the challenges ahead. We therefore propose to create an additional permanent CA post in the TT Section with justifications set out in paragraphs 6 to 22 below.

(a) To further expand Hong Kong’s CDTA network

6. As announced in the 2017 Policy Address, we will continue to identify potential CDTA partners, especially countries along the Belt and Road. Quite a number of them are emerging economies with huge business opportunities and development potential while our CDTA network currently covers only 19 of these countries. The Government is committed to further expanding Hong Kong’s CDTA network, bringing the total number of such agreements to 50 over the next few years.

7. International tax is a highly specialised area, and CDTA

¹ So far, we have signed TIEAs with 7 jurisdictions, namely the United States, Norway, Denmark, Sweden, Iceland, Greenland and the Faroes.

² With the approval of the Finance Committee, a permanent post of Administrative Officer Staff Grade C (D2) in the Treasury Branch of the Financial Services and the Treasury Bureau has been created with effect from 1 April 2017 to strengthen the support for dealing with policy and legislative matters on various initiatives regarding Hong Kong’s cooperation with the international community on tax matters. The holder of the new directorate post leads a team of four non-directorate officers.

negotiations are normally handled by officials from the tax authorities or ministries of finance with rich experience in tax treaty negotiations. There is a practical need for IRD to enhance the directorate leadership to steer CDTA negotiation strategies and to head Hong Kong’s delegation. In practice, strategic planning and detailed research on the tax system and tax treaty policy of negotiation partners are key to the success in CDTA negotiations. Such preparatory work is intensive, technical and resource-demanding. So far, the negotiation work is mainly headed by the Deputy Commissioner of Inland Revenue (Technical) (“DCIR(T)”), with the assistance of CA(TT). As both DCIR(T) and CA(TT) have been fully stretched by the heavy workload of their duties, it is imperative to have an additional directorate officer to share out the leadership role in CDTA negotiations.

8. With more CDTAs entering into force, the number of EOI requests from treaty partners and applications for CoR from Hong Kong residents for claiming treaty benefit received by IRD have been soaring over the past six years as shown in the table below –

Year	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
EOI requests³	13	24	76	144	201	495
CoR applications	1 904	2 664	3 611	3 649	4 748	6 895

9. Volume aside, some of the EOI requests are becoming increasingly complicated and highly demanding. IRD handles every single case very cautiously in order to observe the requirements specified in the Inland Revenue (Disclosure of Information) Rules (Cap. 112 BI) (“Disclosure Rules”). In particular, the Disclosure Rules require that the decision on whether to accede to an EOI request has to be made personally by a directorate officer authorised by the Commissioner of Inland Revenue so as to safeguard the privacy of taxpayers and the confidentiality of information exchanged. Besides, it is an international practice to complete EOI within 90 days upon request. As for the handling of CoR applications, steer from a directorate officer is required from time to time, and his/her decision is needed in all dispute cases. The existing manpower of IRD at the directorate level renders it difficult to provide the necessary leadership support.

³ Including EOI requests from the United States relating to the implementation of Foreign Account Tax Compliance Act.

(b) To ensure effective implementation of AEOI

10. In September 2014, Hong Kong indicated its support for implementing AEOI with a view to commencing the first exchanges by the end of 2018. AEOI is a regime completely different from EOI on request. In June 2016, we amended the Inland Revenue Ordinance (Cap. 112) (“IRO”) to put in place a legal framework for the implementation of AEOI in Hong Kong. There are now 75 “reportable jurisdictions” under our AEOI regime.

11. The TT Section has been heavily involved in the preparatory work for AEOI. These include developing the AEOI Portal to facilitate financial institutions (“FIs”) to furnish returns and notifications for AEOI purposes; preparing guidelines, pamphlets and FAQs; conducting briefing sessions for FIs; setting up telephone hotlines and email accounts to handle enquiries; and testing the interface with the Common Transmission System developed by the OECD. Starting from 2018, the TT Section will call for AEOI returns from FIs in January each year, which will be due in May of the same year. The TT Section will need to take follow-up actions on the returns as well as enforcement to ensure compliance.

12. Meanwhile, the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) under the OECD has put in place a “Staged Approach” to monitor, assess and assist the implementation of the AEOI standards by jurisdictions. Further, a full peer review process of the AEOI implementation will commence in 2020. It is imperative to strengthen the directorate support in IRD to ensure effective implementation of AEOI in accordance with the required standards and oversee the peer review process.

(c) To ensure effective implementation of measures to tackle BEPS

13. The BEPS package promulgated by the OECD seeks to counter the exploitation of gaps and mismatches in tax rules by multinational enterprises (“MNE”) to artificially shift profits to low or no-tax locations where there is little or no economic activity. In June 2016, Hong Kong indicated its commitment to implementing the BEPS package.

14. We will be introducing into LegCo an amendment bill on BEPS-related matters including the transfer pricing regulatory framework, country-by-country (“CbC”) reporting and dispute resolution. In parallel, we are also working on another legislative proposal to give effect to the

Multilateral Instrument⁴ in Hong Kong for the purpose of modifying the existing CDTAs in a synchronised and efficient manner. Given the wide range of measures involved, the workload for the TT Section will grow substantially. Meanwhile, the OECD will conduct a comprehensive peer review on all participating jurisdictions to assess their compliance with the anti-BEPS requirements. It will be crucial for IRD to strengthen the directorate support of the TT Section to ensure the effective implementation of the BEPS package in Hong Kong and oversee the peer review process.

(d) To cope with the increased workload arising from the Multilateral Convention on Mutual Administrative Assistance in Tax Matters

15. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (“Multilateral Convention”), jointly developed by OECD and the Council of Europe, 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 open for signature by states since 1 June 2011. As at 15 December 2017, 116 jurisdictions participated in the Multilateral Convention, of which 15 jurisdictions are covered by territorial extension.

16. We introduced the Inland Revenue (Amendment) (No. 5) Bill (“Bill”) into the Legislative Council on 18 October 2017 to pave the way for the extension of the Multilateral Convention to Hong Kong. This will enable Hong Kong to take a multilateral approach in implementing AEOI and taking forward the automatic exchange of CbC reports and spontaneous exchange of information (“SEOI”) on tax rulings under the BEPS package⁵. The Bills Committee has recently completed the scrutiny of the Bill. Even though less time would be spent on negotiations for bilateral AEOI arrangements after the Multilateral Convention has entered into force in Hong Kong, the number of our EOI partners will rise from 45 to all participating jurisdictions of the Multilateral Convention, thereby leading to a surge in number and an increasing complexity of EOI requests to be handled. There is a genuine need to have one more directorate officer in the TT Section to process EOI requests timely and effectively in

⁴ As one of the action plans under the BEPS package, the Multilateral Instrument seeks to ensure swift, co-ordinated and consistent implementation of treaty-related BEPS measures in a multilateral context. Hong Kong obtained the endorsement of the Central People’s Government in December 2016 to extend the application of the Multilateral Instrument to Hong Kong. On 7 June 2017, China became a signatory of the Multilateral Instrument and Hong Kong was covered by way of territorial extension.

⁵ Automatic exchange of CbC reports and SEOI on tax rulings are minimum standards of the BEPS package.

accordance with the statutory procedures.

(e) To cope with the increased workload attributable to MAP and APA

17. As mentioned in paragraph 14 above, we will be introducing into LegCo an amendment bill on BEPS-related matters including codification of the international transfer pricing standard into our domestic legislation such that enterprises operating in Hong Kong will be required to transact with their associated enterprises at arm's length. The number of cross-border treaty-related disputes requiring resolution via MAP or arbitration will inevitably increase thereafter. As one of the minimum standards of the BEPS package, we will establish a statutory dispute resolution mechanism so as to resolve such disputes in a timely, effective and efficient manner. The OECD's peer review on this minimum standard is scheduled to be conducted on Hong Kong at the end of 2018. To prepare for the peer review process, IRD will promulgate a set of rules, guidelines and procedures relating to MAP. An additional directorate officer is urgently required to oversee the preparatory work and ensure the effective operation of the statutory dispute resolution mechanism.

18. Since 2012, IRD has been implementing an APA regime which seeks to provide enterprises with an opportunity to reach prior agreement with IRD on the method of applying the arm's length principle to major transactions or arrangements between associated enterprises. With the implementation of statutory transfer pricing rules, we anticipate that there will be a rising demand for APAs, particularly for high-valued transactions within large MNE groups. Legislative proposal will be introduced to strengthen our APA regime by providing it with a statutory basis⁶. As APA cases are highly technical, IRD will have to collect and examine substantial information including comparable pricing information, pricing methodologies and critical assumptions when processing these cases. Strengthening the directorate support at the TT Section will facilitate the processing of APA cases in a timely and effective manner.

(f) To participate actively in meetings on international tax cooperation

19. Over the past few years, IRD has increasingly participated in meetings on international tax cooperation. These include meetings of the Global Forum, the Inclusive Framework on BEPS, the Forum on Harmful Tax Practices, the MAP Forum, the Ad Hoc Group on the Multilateral

⁶ This legislative proposal will be included in the amendment bill on BEPS-related matters as mentioned in paragraph 14 above.

Instrument, the OECD's Annual Tax Treaty meeting and various working parties of OECD's Committee on Fiscal Affairs, etc. Active participation in these international fora enables Hong Kong to keep track of major developments and safeguard our interest. It also demonstrates Hong Kong's commitment to international tax cooperation. They require intensive inputs and technical knowledge from participants to achieve the desired effects. Having an additional directorate officer to participate in these meetings is highly warranted in order to closely monitor the global trend on tax matters and to build up networks with the tax authorities of other jurisdictions for effective communication as and when necessary.

(g) To plan and supervise the computerisation work of the TT Section

20. With the development of the AEOI Portal, it is necessary to maintain the system on an ongoing basis so that AEOI can be carried out smoothly and securely. Also, with more functions being carried out by the TT Section, there is a need to develop the IT system further so that the operational efficiency can be enhanced in the long term. As a number of IT enhancements/projects will be launched in the near future, an additional directorate officer is essential for the planning and supervision work.

(h) To lead the additional teams to be created in the TT Section

21. As mentioned in paragraph 4, CA(TT) now oversees six teams at present, each headed by an SA. There is also a support team comprising of three Taxation Officers and three Assistant Taxation Officers. Given the increasing workload arising from various initiatives, three additional teams each comprising of one SA, one Assessor and one Assistant Assessor will be created in the TT Section in 2018-19. In addition, the support team will be strengthened by the creation of one Senior Taxation Officer and three Clerical Assistant posts. Hence there will be 13 new non-directorate permanent posts to be created in the TT Section with effect from 2018-19.

22. The expansion of the TT Section is beyond the effective management span of the existing CA(TT). It is imperative to have an additional CA to share out the management work and strengthen the leadership so as to ensure operational efficiency.

PROPOSED ORGANISATION CHART

23. The proposed permanent CA post in the TT Section will be designated as CA(TT)2 whereas CA(TT) will be re-designated as CA(TT)1. Both CAs will directly report to DCIR(T). The proposed job description of CA(TT)2 is at **Annex C**. CA(TT)2 will share out the heavy workload of the current CA(TT) on various subjects by, for example, geographical locations of the tax treaty partners or negotiation parties. The proposed organisation chart of the TT Section is at **Annex D**.

ALTERNATIVE CONSIDERED

24. We have critically examined the feasibility for IRD to redeploy a CA to take up the new responsibilities. However, all existing CAs are already fully engaged in their existing schedules with distinctively different duties. We have come to the conclusion that redeployment is neither practicable nor desirable as a long term solution. We have also examined but do not consider it appropriate to create a supernumerary CA(TT)2 post having regard to the on-going nature of the additional duties involved.

FINANCIAL IMPLICATIONS

25. The proposed creation of one permanent CA post will incur an additional notional annual salary cost at mid-point of \$1,765,200. For the 13 new non-directorate permanent posts as set out in paragraph 21 above, their notional annual salary cost at mid-point is \$9,634,920. We will include sufficient provision in the draft Estimates for 2018-19 and subsequent years to meet the cost of the proposal.

WAY FORWARD

26. Subject to Members' views on the proposed creation of one permanent CA post in the TT Section of IRD, we will follow up and seek approval in accordance with the established mechanism.

**Financial Services and the Treasury Bureau
Inland Revenue Department
December 2017**

Annex A

List of Hong Kong's CDTA Partners
(as at 30 November 2017)

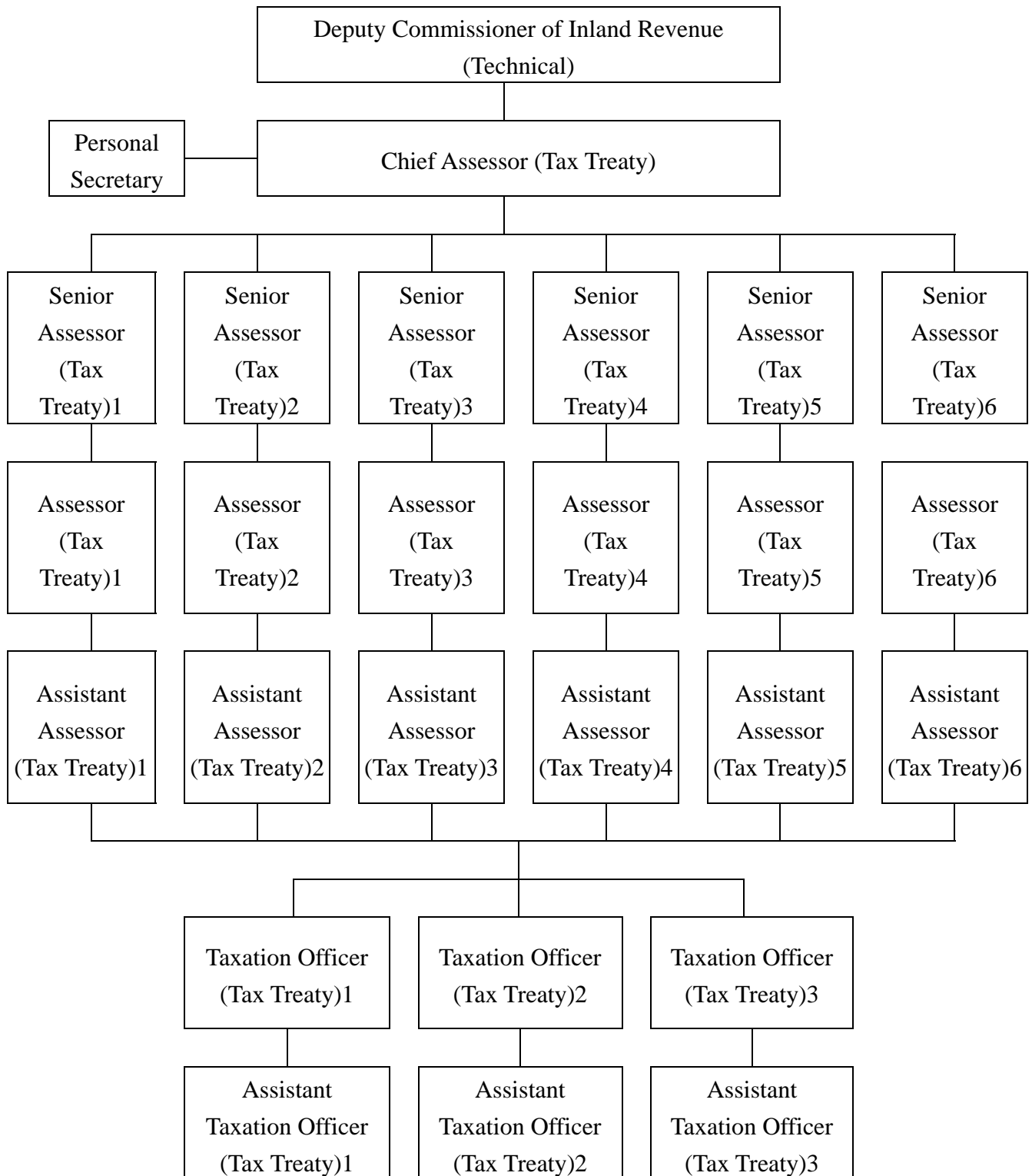
	Jurisdictions	Date of Signing
1	Belgium	10.12.2003
2	Thailand* [#]	7.9.2005
3	Mainland China*	21.8.2006
4	Luxembourg	2.11.2007
5	Vietnam* [#]	16.12.2008
6	Brunei [#]	20.3.2010
7	Netherlands*	22.3.2010
8	Indonesia [#]	23.3.2010
9	Hungary [#]	12.5.2010
10	Kuwait [#]	13.5.2010
11	Austria	25.5.2010
12	United Kingdom*	21.6.2010
13	Ireland	22.6.2010
14	Liechtenstein	12.8.2010
15	France*	21.10.2010
16	Japan*	9.11.2010
17	New Zealand [#]	1.12.2010
18	Portugal	22.3.2011
19	Spain	1.4.2011
20	Czech Republic [#]	6.6.2011
21	Switzerland*	4.10.2011
22	Malta	8.11.2011
23	Jersey	22.2.2012
24	Malaysia* [#]	25.4.2012
25	Mexico	18.6.2012
26	Canada	11.11.2012
27	Italy*	14.1.2013
28	Guernsey	22.4.2013
29	Qatar [#]	15.5.2013
30	Korea* [#]	8.7.2014

	Jurisdictions	Date of Signing
31	South Africa [#]	16.10.2014
32	United Arab Emirates* [#]	11.12.2014
33	Romania [#]	18.11.2015
34	Russia [#]	18.1.2016
35	Latvia [#]	13.4.2016
36	Belarus [#]	16.1.2017
37	Pakistan [#]	17.2.2017
38	Saudi Arabia [#]	24.8.2017

* *These 12 CDTA partners are among the top 20 trading partners of Hong Kong.*

These 19 CDTA partners are among the Belt and Road countries.

Existing Organisation Chart of Tax Treaty Section
(Position as at 30 November 2017)



**Proposed Job Description -
Chief Assessor (Tax Treaty) 2**

Rank : Chief Assessor (D1)

Responsible to : Deputy Commissioner (Technical) [DCIR(T)] (D3)

Main Duties and Responsibilities -

1. To update the model Comprehensive Double Taxation Agreement (“CDTA”) and Tax Information Exchange Agreement (“TIEA”) of Hong Kong in consultation with the Financial Services and the Treasury Bureau, supervise preparatory work for CDTA/TIEA negotiations, lead the negotiations and formulate negotiation strategies.
2. To vet draft Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) Orders and other treaty related legislative proposals for submission to the Executive Council and the Legislative Council.
3. To oversee the adoption of and compliance with the latest exchange of information (“EOI”) standards in CDTAs/TIEAs that Hong Kong has entered into. To monitor the implementation of automatic exchange of financial account information in tax matters and other relevant measures to tackle base erosion and profit shifting.
4. To safeguard the privacy of taxpayers and confidentiality of information exchanged under the Inland Revenue (Disclosure of Information) Rules; to personally consider and decide on EOI requests having regard to the proper statutory procedures.
5. To resolve disputes with treaty partners through the Mutual Agreement Procedure (including arbitration); liaise and negotiate with treaty partners on Advance Pricing Arrangements with multi-national companies on the acceptable transfer prices.
6. To represent Hong Kong/the Inland Revenue Department at meetings on international tax cooperation.
7. To oversee the IT development and computerization work of the Tax Treaty Section.

Proposed Organisation Chart of Tax Treaty Section

