

Inland Revenue (Amendment) No. 3 Bill Submissions

The Bill is a relatively brief seven pages, amending half a dozen sections of the Inland Revenue Ordinance and a section of the Personal Data (Privacy) Ordinance. It authorizes the Administration to enter into a comprehensive agreement for the avoidance of double taxation (CDTA) with another territory that may require the Administration to collect information relevant to the taxes imposed by that other territory. This obligation is contemplated by the exchange of information provision in the 2004 version of the OECD model tax convention (the OECD 2004 EoI standard), which has been adopted by most territories around the world. We do not have objections to or comments on the Bill itself.

The Law Society supports the Government's efforts to enable Hong Kong to enter into CDTAs containing the OECD 2004 EoI standard. However, that support is not unconditional. We have previously identified to the Administration our concerns¹, including safeguards against our CDTA partners divulging information obtained from Hong Kong to third countries; safeguards against allowing our CDTA partners to engage in "fishing expeditions"; an undertaking that the Administration will not enter into standalone exchange of information agreements; and a clear policy not to negotiate CDTAs incorporating the OECD 2004 EoI standard unless the potential CDTA partner removes Hong Kong from any "blacklist" it maintains.

The Legislative Council Brief indicates that the Administration will (i) address these issues in any subsequent CDTA it negotiates; (ii) introduce safeguards through subsidiary legislation; and (iii) introduce further safeguards by way of an Inland Revenue Department Departmental Interpretation and Practice Note (DIPN). Unfortunately none of these are available for comment, and we

¹ These are sent out in our Position Paper on the Potential Liberalization of the Exchange of Information Article to be Included in Hong Kong's Double Tax Agreements which was delivered to the Secretary for Financial Services and the Treasury 16 September 2008.

understand that they will not be available for comment prior to the date you have set for oral presentations on the Bill (8 October 2009).

In our view the subsidiary legislation and the DIPN are crucial pieces of the puzzle, and must be examined in order to give an informed view of the overall picture. By tabling only the Bill, without the subsidiary legislation and DIPN which will govern its implementation, the Administration is avoiding the real debate. The key in this instance is not the discretion given to the Administration by virtue of the proposed legislative amendments, but how that discretion is exercised, and we are unable to determine that by examining the Bill itself.

We therefore request the Administration to supply the draft subsidiary legislation and DIPN so that all can engage in an intelligent debate on the issues.

The Law Society of Hong Kong
The Revenue Law Committee
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