

Hong Kong Tax News

Tax Information Exchange Agreements (TIEAs) Inland Revenue (Amendment) Bill 2013 gazetted



Issue 5
22 April 2013

Background

Hong Kong is now undergoing a two-phase peer review by the Global Forum of OECD which evaluates Hong Kong's compliance with the international EoI standard. After the Phase 1 review, the Global Forum recommended that Hong Kong should put in place a legal framework for entering into TIEAs.

Hong Kong is currently under the Phase 2 peer review which examines whether Hong Kong has taken forward the above recommendations. If Hong Kong does not put in place the legal framework for TIEAs by mid-2013, Hong Kong may run the risk of being labeled as an uncooperative jurisdiction which will harm its international reputation and competitiveness as an international business and financial center. In addition, the Government considers that the provision of the legal framework for TIEAs can facilitate Hong Kong's negotiation of CDTAs with existing and potential partners.

In view of the above, the Government has introduced the Bill to enable Hong Kong to enter into standalone TIEAs and to enhance the EoI standard.

Key amendments

1. *Provision of legal framework for TIEAs*

Existing Arrangement	Proposed Amendment
The existing Inland Revenue Ordinance	The amended s49 of the IRO will allow

(IRO) only allows Hong Kong to enter into tax agreements with other jurisdictions when there is double taxation relief (s49 of the IRO).	Hong Kong to enter into standalone TIEAs which provide for Eol mechanism without double taxation relief.
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Our comments: While the Government considers that the provision of a legal framework of TIEAs can enable Hong Kong to expand its tax treaty network, we have reservation on this. It is possible that some jurisdictions after entering into TIEAs with Hong Kong will have less interest to enter into tax treaties with Hong Kong.

2. *Tax Types*

Existing Arrangement	Proposed Amendment
Only allow exchanging information in relation to taxes covered by CDTAs (s49 of the IRO)	Allow exchanging information in relation to any tax imposed by the laws of the contracting party

Our comments: The CDTAs that Hong Kong has concluded mainly cover income taxes for corporations and individuals, meaning that the Inland Revenue Department (IRD) currently is only required to disclose information in relation to these taxes to the treaty partners' tax authorities. With the relaxation on the types of tax to be covered, the IRD will be requested to disclose information in relation to other types of taxes imposed by the partners' jurisdictions e.g. value-added tax, inheritance tax, federal and state taxes etc, for Eol purpose. As Hong Kong has a simple tax system with only three direct taxes imposed which are already covered in the CDTAs, the existing Eol arrangement should be sufficient from Hong Kong's perspective. Hence, Hong Kong would not benefit much from the above amendment. Such amendment is proposed mainly to address the concerns of the partners' tax authorities.

3. *Limitation on Disclosure*

Existing Arrangement	Proposed Amendment
Only exchange information that does not relate to any period before the relevant provisions of the relevant CDTA come into effect (section 4 of Disclosure Rules)	Enable the IRD to disclose information in response to an Eol request if the IRD is satisfied that such information relates to tax assessments in respect of any period after the date on which the relevant CDTA comes into operation

Our comments: In the Legislative Council Brief, there is an example on the information

generated before the effective date of the CDTA but foreseeably relevant to a request relating to a period after the CDTA comes into operation. The example is about the UK tax authority's investigation on the tax affairs of a UK resident for the period from April 2011 onwards (i.e. after the effective date of the HK-UK CDTA). The UK tax authority requests the IRD to provide the Hong Kong bank statements for the period from April 2011 and a copy of the signature card for that bank account. However, as the bank account was opened on 1 March 2010 (before the effective date of the HK-UK CDTA), the IRD is restricted from providing the copy of the signature card according to the existing law, but could do so after the new law is enacted. Although such an example is provided, the proposed wording of the amended legislation appears to be broad and vague in terms of what information are relevant. It is hard to predict to what extent the new law would apply to the information generated before the effective date of the CDTAs.

4. *Power on Information Collection*

Existing Arrangement	Proposed Amendment
The IRD is empowered to obtain any information a person is in possession of (s51 / s52 of the IRO).	The IRD is empowered to obtain any information not only a person is in possession of, but also in a person's control.

Our comments: The amended s51 / s52 may have implications on issues other than Eol for CDTAs and TIEAs purposes. For example, a Hong Kong holding company, although not in possession of, may be in control of the information of its offshore subsidiaries. According to the new law, the IRD is empowered to obtain such information from the Hong Kong holding company. In other words, the exposure of offshore companies to the IRD may be higher.

Concluding remarks

In order to continue to step out into the international playfield, Hong Kong has no choice but to amend the law to meet the international Eol standard and to enter into TIEAs. The Government said the (Amendment) Bill adopts the minimum necessary approach in order to safeguard our taxpayers' privacy and confidentiality of information to the extent possible. It will be introduced into the Legislative Council on 24 April 2013.

contents are of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this newsletter. For more information or advice on the above subject or analysis of other tax issues, please contact **Davy Yun** or **Doris Chik**

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