

Press release

Inland Revenue (Amendment)(No. 3) Bill 2009 to be gazetted

Wednesday, June 24, 2009

The Government will publish in the Gazette on June 26 the legislative amendments to the Inland Revenue Ordinance (Cap. 112) (IRO) to enable Hong Kong to adopt the latest international standard for exchange of information (EoI) in a comprehensive avoidance of double taxation agreement (CDTA).

The Financial Secretary announced in his 2009-10 Budget that the Government would put forward legislative proposals by the middle of this year to align our EoI arrangements with the international standard.

A CDTA would normally include an EoI article that provides for the exchange of information necessary for the carrying out of the agreement between the two contracting parties. The EoI article currently adopted in our CDTAs is based on the 1995 version of the Organisation for Economic Cooperation and Development (OECD) Model Tax Convention. According to this version, the Inland Revenue Department (IRD) may refuse to collect and supply the information requested by another contracting party if the department does not need it for domestic tax purposes. Most economies have, however, adopted the OECD 2004 version of the EoI article. This version categorically states that the lack of domestic tax interest does not constitute a valid reason for refusing to collect and supply the information requested by another contracting party.

Hong Kong currently cannot adopt the 2004 version of the EoI article because under the IRO, IRD cannot collect any tax information unless it is for domestic tax purposes. This legal constraint on IRD's information gathering power has been a major obstacle to our CDTA negotiations because most economies have adopted the 2004 version of the EoI article. This constraint has reduced the number of our potential CDTA partners, and restricted the progress of our negotiations. The legislative proposal aims to amend the IRO to enable IRD to collect and disclose taxpayer information requested by another contracting party for the taxation of that party, even if IRD does not need the information for domestic tax purposes.

"Despite our legal constraints, Hong Kong has been very supportive of efforts by the international community in promoting transparency in tax administration. As early as in 2005, we openly endorsed OECD's Principles of Transparency and Effective Exchange of Information at the OECD Global Forum on Taxation held in Melbourne. The legislative proposal will give impetus to our effort to expand our CDTA network and reaffirm Hong Kong's commitment to tax transparency. In adopting the OECD 2004 version of the EoI article in our CDTAs, we will adopt prudent safeguards at different levels to protect individuals' right to privacy and confidentiality of the information exchanged," a government spokesman said.

The bill will be introduced into the Legislative Council on July 8, 2009.

Ends