

14 November 2014

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Financial Services and the Treasury Bureau  
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Dear Shirley,

**Automatic Exchange of Information for Taxation Purposes**

We are pleased to offer our comments on the Government's plan to implement automatic exchange of information (AEOI) in Hong Kong as mentioned in your letter of 24<sup>th</sup> September, 2014. As a preface to our remarks, we would like to make the observation that the trend towards alignment with the global standards on tax transparency has, for the most part, been made at the expense of the business community. The proposed AEOI is a case in point given that the responsibility of collecting and reporting falls on those making payments, namely, employers and financial institutions, among others.

The Chamber supports unequivocally the adoption of a global standard that promotes the transparent and non-discriminatory treatment of cross-border investment and earnings, while also eliminating tax-related obstacles to international trade and investment. Unfortunately, it would appear that there is currently an over-emphasis on achieving transparency rather than to resolve double taxation as a means to promote cross-border business.

As stated under, we recognise that conformation with international developments is inevitable and, at times, mandatory. The foregoing notwithstanding, we strongly believe that the Administration should do its utmost to strike a balance between protecting local interests and alignment with global developments.

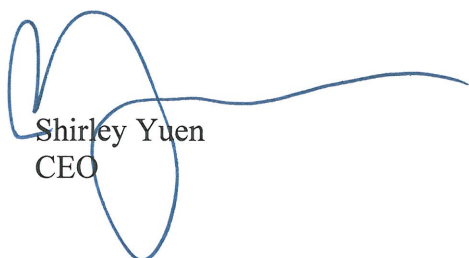
Our comments on AEOI implementation are as under:

- In view of the growing number of major financial centres and jurisdictions such as China, Singapore and Switzerland that have already indicated support for the implementation of AEOI, we recognise and accept that adoption of this standard in Hong Kong is more a matter of when than if. As such, Hong Kong will be required to amend its laws to put in place a legislative framework enabling AEOI implementation.

- International obligations aside, the consequence of not complying with the latest global standard on AEOI can be quite serious: Hong Kong runs the risk of being described as an uncooperative jurisdiction, a label that carries severe implications on our international reputation and competitiveness as an international financial and business centre.
- To comply with the AEOI, Hong Kong will have to amend relevant aspects of its legislation. In this regard, the proposed legislative amendments should have the following key features:
  - AEOI should only be relevant to jurisdictions that have / will have Comprehensive Avoidance of Double Taxation Agreements (CDTA) or Tax Information Exchange Agreements (TIEA) with Hong Kong. This will have the advantage of vesting Hong Kong with the requisite safeguards, which include the refusal to enter into a CDTA or TIEA with another jurisdiction on the grounds that the domestic legal framework and practices of the counterparty on the protection of taxpayers' privacy and confidentiality of information exchanged are deemed to be inadequate.
  - Stringency of the highest denominator permissible under existing international standards should be incorporated into safeguard provisions to protect data privacy and confidentiality. For example, it would be desirable to extend to the AEOI the existing notification and review mechanism under our tax code, which requires the Commissioner of Inland Revenue (CIR) to notify and provide the taxpayer concerned with the information that the CIR is preparing to transmit to the requesting party under a CDTA or TIEA. This arrangement allows the taxpayer to verify the factual accuracy of the information to be exchanged and request changes where relevant.
  - Hong Kong may consider exempting certain "low-risk" entities or accounts from reporting so as to reduce the administrative burden on financial institutions. This is only recommended subject to the OECD's adoption of the new global standard for AEOI, which is expected to provide guidance on the definition and treatment of "low risk" entities or accounts. It is suggested that the Administration monitor developments with the new reporting standard to ensure Hong Kong is in full compliance of the latest provisions if and when they are rolled out.

We look forward to providing further views on the detailed legislative proposals when these are available.

Yours sincerely,



Shirley Yuen  
CEO