HKGCC

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25 June 2015

Prof K C Chan, GBS, JP
Secretary for Financial Services and the Treasury
Financial Services and the Treasury Bureau
24/F., Central Government offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear K. C.,

Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong

1. The Hong Kong General Chamber of Commerce ("HKGCC") appreciates the opportunity to provide comments on the Consultation Paper on Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong ("The CP").

2. We are pleased to note from the CP that the Government is committed to upholding the range of safeguards[1] that the HKGCC has advocated during the 2012 consultation on providing a legal basis for entering into Tax Information Exchange Agreements ("TIEAs"). We are also encouraged to see that the Government is conscious of the need to avoid *"creating undue burden of compliance on the Financial Institutions (FIs)"*[2] and "*will strive to keep the cost of compliance for affected FIs as low as possible*"[3] when developing an Automatic Exchange of Information ("AEOI") model for Hong Kong.

3. In general, we support efforts to enhance international tax compliance through the development of a global standard for the exchange of information ("EoI"). However, we continue to feel very strongly that any undertakings concerning EoI or AEOI should be conducted solely under the aegis of Comprehensive Double Taxation Agreements ("CDTAs") instead of Taxation Information Exchange Agreements ("TIEAs"). We continue to maintain the view that TIEAs are nothing

[1] para 2.28, Consultation Paper on Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong ("The CP")
[2] para 5 of the CP's executive summary
[3] para 2.1 of the CP

more than a stripped down variant of CDTAs and have nothing of value to offer in terms of promoting cross-border trade and investment.

4. We remain concerned that despite the Government's good intentions, the associated costs with fulfilling information requirements brought on by AEOI can be quite substantial for both the public and private sectors. With respect to the former, we note from the CP that the Inland Revenue Department ("IRD") will have to retool and expand its reporting processes, as well as to develop new software solutions to harmonise its reporting systems under AEOI's Model Competent Authority Agreement ("CAA").

5. As far as FIs are concerned, we feel that quite a number of the issues raised by the British Bankers' Association ("BBA") on AEOI's Common Reporting Standard ("CRS") in its 17 October 2014 response[4] to the UK Government to be quite instructive and relevant to FIs in Hong Kong. As noted in the BBA's submission, the adoption of CRS will inevitably impose on FIs additional administrative and cost burden as a result of "*having to cater for multi layered criterion filtering and the processing of a significant increase in the number of accounts*".[5]

6. Issues identified by the BBA in relation to CRS implementation include, among others:
    - An increased volume of reportable accounts that will drive up recurrent costs for reporting. To accommodate CRS requirements, FIs will have to introduce or modify new customer processes such as collecting, processing, holding and maintaining self-certification information. Training for staff will also be required. The sweeping nature of CRS and the lack of a *de minimis* provision mean that due diligence will be required for low value retail customers as well. Although FIs are not compelled to collect information on TIN or Place of Birth according to the CP, they will still need to search their records to verify if they hold such data. This will require more staff to evaluate customer accounts resulting in additional costs. The requirement to validate self-certification information will further compound FIs' compliance burden as self-certification could potentially take on many different forms.

    - Given the foregoing, investments in flexible and scalable information technology architecture would have to be made in order to not only adapt to the requirements, which could vary across participating jurisdictions, but also accommodate an ever growing list of subsequent adopter jurisdictions.

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[4] https://www.bba.org.uk/policy/financial-and-risk-policy/taxation/operational-tax-and-aeoi-issues/bba-response-to-hmrcs-consultation-on-implementing-the-global-standard-on-aeoi/

[5] para 4, page 12, BBA response to the HM Revenue and Customs consultation 'Implementing Agreements under the Global Standard on Automatic Exchange of Information to Improve International Tax Compliance' ("BBA response")

7. We urge the Government to give serious consideration to mitigation measures to the greatest extent where permitted under CRS to provide some sort of relief to FIs. Specifically and borrowing from the BBA's proposals, we suggest that low value and dormant accounts be excluded as these present a low risk of tax evasion. The BBA paper, in fact, proposes that certain exemption threshold be introduced, which would have the benefit of materially reducing "*the volume of low value reportable accounts*" and enabling "*tax authorities to focus on the key area of tax risk*"[6]. We also feel that *de minimis* thresholds similar to FATCA rules should apply under AEOI as the CRS requirements currently spelt out are too wide ranging to be useful. Gathering data on individuals with low value accounts even when there is no evidence to suggest that they have ties to or are suspected of any crime offers minimal benefit, if any, in addressing tax evasion.

8. As regards dormant accounts, we also subscribe to the view that a reasonable and pre-determined threshold (developed in consultation with FIs) should be established to relieve "*disproportionate reporting burden on FIs on accounts where there is a low risk of tax evasion*"[7]. If necessary and to provide assurance, controls could be put in place to prevent the activation of dormant accounts at a prescribed level without additional due diligence.

9. With respect to the proposed penalties on FIs, their employees and account holders for non-compliance with the collection and provision of information, and the furnishing of incorrect information under the AEOI regime, we would like to make the observation that ascertaining tax residence can sometimes be quite difficult due to the varying degrees of ambiguities and complexities associated with certain accounts. We suggest that the Government publish written guidelines to provide clarity and certainty on what constitutes "reasonable excuse".

10. We would like to conclude by reiterating our longstanding call to the Government to review the extent of compliance burden on Hong Kong businesses as and when new regulations, whether of the domestic or international variety, are being considered for implementation. We believe that Hong Kong should work with other jurisdictions as in the case of AEOI and BEPS to anticipate and reduce the burden and cost that may be imposed on businesses while doing our utmost, as a responsible member of the international community, to discharge our obligations to promote transparency.

Yours sincerely

Shirley Yuen
CEO

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[6] para 3, page 12, BBA response
[7] para 1, page 13, BBA response