HKGCC

Hong Kong General Chamber of Commerce
香港總商會 1861

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5 November 2018

Ms Alice Law Shing-mui
Deputy Chairman and Managing Director
Mandatory Provident Fund Schemes Authority
Level 8, Tower 1, Kowloon Commerce Centre
51 Kwai Cheong Road
Kwai Chung, NT
Hong Kong

Dear Ms Law,

<u>Proposed Amendments to the Occupational Retirement Scheme Ordinance</u>

The Hong Kong General Chamber of Commerce ("HKGCC") would like to share our members' views on the key legislative proposals as an update on the Occupational Retirement Scheme Ordinance (Cap. 426) ("ORSO"). Below please find our comments on the proposed legislation.

We note that against the backdrop of the Automatic Exchange of Financial Account Information in Tax Matters ("AEOI"), some companies have misused or abused Hong Kong as a jurisdiction for schemes to be set up in order to obtain ORSO exemption as an investment vehicle for holding monies of unknown sources and also rely on such exemption status to avoid tax charges in other jurisdictions. Therefore, we welcome the Government when formulating the legislative proposals on ORSO as it is conscious of the need to combat tax evasion and mindful for the improvement that "*will not inadvertently exclude bona fide employment-based retirement schemes set up by employers who have staff of mixed employment arrangements, nor increase compliance costs unreasonably*".

The Chamber supports the Government's efforts to implement anti-tax avoidance measures but we are concerned that it may go way beyond plugging the loopholes. For instance, in countering ORSO exemption certificate abuses, the Mandatory Provident Fund Schemes Authority ("MPFA") has proposed four main changes. These are:-

(a) Confirmation that each ORSO scheme satisfies the "employment-based criterion"[1];
(b) An absolute ban on new exemption applications under ORSO[2];

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[1] The employer of all existing ORSO schemes will be required to file annually a statement confirming that the benefits provided for scheme members derive from an employment relationship. Every application for new registration of a retirement scheme under ORSO will need to include certain statements from the employer, solicitor and auditor.

[2] The Authority will not entertain any new application for an ORSO exemption certificate for any retirement scheme.

(c) The imposition of a new restriction on transfers to ORSO schemes[3]; and
(d) Increased powers for the Authority[4].

We feel that the proposed change (b), i.e. an absolute ban on new exemption applications under ORSO, would undermine Hong Kong's competitiveness. Despite our existing economic strengths and tax incentives, a business friendly environment should on its own be an attractive enticement to multi-national corporations ("MNCs") when considering a suitable location for establishing their regional headquarters or corporate treasury centres. The ORSO schemes set up in the US, UK or the Netherlands by MNCs especially for their most senior internationally mobile executives may not be able to register in Hong Kong under the proposed ORSO legislation as the proposed registration requires major change to the retirement scheme. In fact, we believe that no MNCs are going to restructure a global scheme for a handful of employees in Hong Kong. Accordingly, an absolute ban on new exemption applications would be a distraction for MNCs to choose Hong Kong as an office destination.

We recognise that conformation with international development is inevitable and, at times, necessary and mandatorily required. Nonetheless, most of the MNCs' ORSO schemes are bona fide retirement schemes and they do not have the intention of engaging in tax-evasion activities. If exemption is no longer available for their ORSO schemes, their executives will need to give up membership of the scheme if they plan to move to Hong Kong (which is not likely), or the executives may refuse to come to work in Hong Kong and instead choose to work in some other cities in the region, such as Singapore. In view of the existing fierce global competition for talent across various sectors, we certainly do not want to see Hong Kong losing out to other places because of the proposed legislation. Accordingly, **we urge the Administration to do its utmost to strike a balance between protecting our competitiveness and aligning with international standards in handling the proposed ORSO legislation.**

Despite the Government's good intention of attempting to avoid increasing compliance costs unreasonably, businesses may perceive such amendment as a harmful practice to their flexibility when the regulation is unnecessarily tightened. Moreover, the MPFA would implement an effective measure to regulate the existing ORSO schemes to make sure that they would not be abused. From its letter to employers dated 10 September under circular letter: *SUCOT2018001* [5], *ORSO registered schemes, ORSO pooling agreements and approved pooled investment funds would not be considered as NRFIs [non-reporting financial institutions] and the Government would commence a legislative amendment exercise to remove these entities from the list of NRFIs under the Inland Revenue Ordinance.* That said, the Government would exchange ORSO information with the tax authorities of Hong Kong's AEOI partner jurisdictions. It would achieve parity with the international norms. **We would therefore suggest that the Government should carry out a proper regulatory impact assessment to see if the proposed change (b) be removed from the amendment bill.**

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[3] ORSO schemes can only accept transfers from other retirement schemes that satisfy certain conditions.
[4] It has proposed to empower the Authority on inspection, investigation and enforcement, and for the cancellation of registration or withdrawal of exemption of existing schemes.
[5] AEOI in Tax Matters - Implications for ORSO registered schemes
http://www.mpfa.org.hk/eng/legislation_regulations/legulations_ordinance/circulars/orso/files/Circular%20letter%20of%2020180910_Eng%20(Post).pdf

Although the proposed amendments would be useful in dealing with some perceived problems encountered by ORSO, the aforementioned issue may affect Hong Kong's competitiveness and restrict businesses' flexibility. We hope you will agree that our suggestion is both pragmatic and attainable, and together we could make the ORSO regulations more relevant and user-friendly.

We shall be happy to provide further information as appropriate.

Yours sincerely

Shirley Yuen
CEO

Encl.

cc: Mr James Lau, Secretary for Financial Services and the Treasury