

**Cocktail Reception of the Taxation Interest Group of
the Hong Kong Institute of Certified Public Accountants
Mrs Alice Lau, Commissioner of Inland Revenue
15 October 2007**

Ladies and Gentlemen,

Good evening!

Introduction

May I first thank the Institute for inviting me to speak to your fellow members and distinguished guests. This evening, I see many familiar faces. They warmly remind me of the launch reception of the Taxation Interest Group (TIG) two years ago in June 2005.

2. The TIG is an excellent forum for practitioners to exchange views and share experience on taxation matters. It also provides an interactive channel for the Inland Revenue Department (IRD) to communicate directly with tax practitioners. The IRD fully supports the TIG's activities. In fact, the first TIG event was held in the lecture hall of the IRD. IRD's officers have also actively participated by serving as panelists in several of the TIG's events. This has proved to be an effective means for the IRD to gauge the views of the industry and to clarify and discuss tax matters of mutual interest. We treasure the cooperative relationship built up so far and anticipate the ties with the industry to be further strengthened.

Comprehensive double taxation arrangement with the Mainland

3. I am going to share some of my thoughts with you this evening on the Comprehensive Double Taxation Arrangement with the Mainland and in particular the exchange of information mechanism.

4. Taxation issues arising from cross-border transactions are no doubt an important area of the work of many of you. And whether or not handling Mainland tax matters is part of your daily routine, the comprehensive double taxation arrangement between the Mainland and the Hong Kong SAR, which was signed in August 2006, could not have escaped your attention. The comprehensive arrangement is particularly valuable to Hong Kong vis-à-vis other arrangements with other jurisdictions as it gives prominence to Hong Kong's role as a springboard for international investors to enter the Mainland market. I believe the accounting and tax professions would, along with the economy as a whole, also benefit.

5. As you are probably aware, my colleagues and I met with the officials of the State Administration of Taxation (SAT) in Beijing in September this year to discuss issues relating to the implementation of the comprehensive arrangement. Prior to the meeting, professional bodies, including the Institute, had provided valuable views and suggestions regarding the matters to be discussed. They were all taken on board and the issues raised were discussed at the meeting as appropriate. Some progress has been made and in fact I would very much like to share with you the development of the discussion. Unfortunately, the SAT has to report the discussion to the State Council and seek its endorsement before any announcement can be made. Under the circumstances, I am unable to divulge details of the discussion at this stage. So be patient!

Exchange of information under the comprehensive arrangement with the Mainland

6. I would now turn to a related issue: exchange of information (EoI). While the business community and practitioners generally welcome the comprehensive arrangement with the Mainland, there have been concerns about the exchange of taxpayers' information between the SAT and the IRD under the arrangement. In this connection, Article 24 of the arrangement has specified that only such information as is necessary for carrying out the provisions of the arrangement or of the domestic laws of the two sides concerning taxes covered by the arrangement can be exchanged. Furthermore, there will not be any automatic exchange of information (e.g. regular supply of bank interest information). Nor will there be any spontaneous exchange (e.g. supply of information spotted by our officers in

the course of investigation which may be of interest to the other side). There are a number of other safeguards provided in the Article but the limited time span does not permit me to go into the details here.

7. Before the conclusion of the comprehensive arrangement, there were fears that, because of the sheer volume of cross-border transactions, there would be a large number of requests for information from the Mainland and the SAT might turn the exchange of information article into a tool of fishing expedition. I would say these worries are unfounded. The process of information exchange involves considerable resources, which, as you know, are scarce to all jurisdictions. There is no reason for the SAT, and, indeed, any responsible tax authorities, to waste its limited resources by initiating exchange of information indiscriminately. In this regard, it is pertinent to note that to date, the SAT has not delegated its authority to local tax authorities, although it can do so under the comprehensive arrangement. That is, matters relating to exchange of information remain centralised in the SAT. You may also be interested to know that so far the IRD has only received one request for information under the comprehensive arrangement from the SAT. While this number may not be representative (since the comprehensive arrangement has only become effective early this year), it is indicative that the SAT would exercise its right to information exchange with great care.

Exchange of information under double taxation arrangements generally

8. You would all appreciate that the EoI article adopted in the comprehensive arrangement with the Mainland, as well as the ones with Belgium and Thailand, is basically modeled on the 1995 version of the model tax convention of the Organisation for Economic Co-operation and Development (OECD). Under this version, the requested side is not obliged to supply information, which is not obtainable under the laws of that side or the other side. In the context of Hong Kong, the Inland Revenue Ordinance (IRO) only empowers the assessor to obtain information in regard to any matter which may affect any liability, responsibility or obligation of any person under the IRO. In other words, the IRD may only seek tax information for exchange purposes if a domestic tax interest exists.

9. With the rapid globalisation of economies, developed countries advocate expanding the scope of exchange of information between jurisdictions so as to combat tax avoidance or evasion at the international level. The 2004 OECD version of the EoI article has a much wider scope than the 1995 version. In particular, under the 2004 version, the requested party is not permitted to decline to supply the requested information solely because it has no domestic tax interest in such information. If Hong Kong is to adopt the 2004 version, amendment to the IRO would be required.

10. Although Hong Kong's current adoption of the more restrictive 1995 version of EoI article has not posed much problem in the negotiation of Comprehensive Double Taxation Agreement (CDTA) with some countries, many other countries have insisted on a more liberated 2004 version of EoI article, especially OECD member countries.

11. There is thus a need to assess if Hong Kong should move speedily to the 2004 version in order to help conclude more CDTAs with our major trading partners or we might be forced to adopt a further version of an even wider scope in a few years' time.

12. Besides, co-operation between tax jurisdictions through exchange of information is the international trend. Hong Kong as an international financial centre could hardly afford to stay away from the global tide. It is therefore in Hong Kong's interest to strive to comply with international standards and to demonstrate that it is a responsible member of the global community.

13. Having said that, I am not suggesting that we should now proceed to amend the IRO and adopt the 2004 version of EoI in our CDTAs. The Administration understands that this is a sensitive issue. We have been consulting the business sector and interested parties. So far, there is no overwhelming view in support of or against Hong Kong changing the EoI provisions in its CDTAs.

Standalone information exchange agreements

14. On the other hand, liberalising our EoI provisions would not necessarily guarantee successful conclusion of CDTAs with other jurisdictions. Given the low incidence of double taxation under our territorial basis of taxation and our low tax rate, some countries are not enthusiastic at all. Instead, some countries are mainly interested in entering into standalone information exchange agreements. While Hong Kong holds a positive attitude towards exchange of information, our policy is that we would only pursue this within the ambit of a CDTA so that some benefits in terms of tax rates and concessions could also be agreed in the same package.

IRD's obligation to disclose information to third parties

15. Before leaving the subject of information exchange, it may be relevant to mention that, apart from fulfilling obligations under a CDTA, there are other situations where IRD may disclose taxpayers' information to other government agencies. Some exceptions to the preservation of secrecy are provided for in section 4 of the IRO, under which the IRD may communicate tax matters to certain public officers, including the Commissioner of Rating and Valuation, the Collector of Stamp Revenue, the Secretary for Justice, etc.

16. The duty to preserve secrecy is also subject to the provisions of other ordinances, such as the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455). Persons authorised under those Ordinances may apply to the Court of First Instance for an order to require the IRD to produce materials specified in the order.

17. Disclosure of information under the specified circumstances is, and will continue to be, carried out in strict accordance with legal requirements and established procedures. This also applies to exchange of information under a CDTA. Taxpayers should rest assured that all IRD officers have committed, by taking oath, to preserving the secrecy of all taxpayer information and that no exception is allowed to compromise the confidentiality of their

information.

18. I would also take this opportunity to appeal to members of our society to express their views to help the Administration decide if we should move onto the 2004 EoI provision and empower the IRD to collect and exchange information for the purposes of DTAs.

19. Finally, let me conclude my talk by wishing the TIG continued success. Thank you for your attention!