

立法會參考資料

《稅務條例》
(第 112 章)

《2017年稅務(修訂)(第5號)條例草案》

《2017年稅務(關於收入稅項的雙重課稅寬免 和防止逃稅)(新西蘭)(修訂)令》

引言

在二零一七年九月二十六日的會議上，行政會議**建議**，行政長官指令 -

- A**
- (a) 向立法會提交《2017 年稅務(修訂)(第 5 號)條例草案》(“《條例草案》”) (載於**附件 A**)，賦權行政長官會同行政會議可實施《多邊稅收徵管互助公約》(“《多邊公約》”)及任何其他適用於香港的稅務協定，並對《稅務條例》作出所需修訂，確保與經濟合作與發展組織(“經合組織”)頒布的共同匯報標準一致；以及
- (b) 根據《稅務條例》第 49(1A)條的規定，作出《2017 年稅務(關於收入稅項的雙重課稅寬免和防止逃稅)(新西蘭)(修訂)令》(“《命令》”) (載於**附件 B**)，以實施香港與新西蘭就《收入稅項避免雙重課稅和防止逃稅協定》(“《新西蘭協定》”)的第二議定書。
- B**

理據

2. 經合組織近年提倡各稅務管轄區互相交換稅務資料，以提升稅務透明度和打擊跨境逃稅活動。當中，稅務事宜自動交換財務帳戶資料(“自動交換資料”)安排及應對侵蝕稅基及轉移利潤(“BEPS”)是兩項最重要的措施。

自動交換資料安排

3. 二零一四年七月，經合組織就自動交換資料安排頒布共同匯報標準，以期提升稅務透明度。根據自動交換資料安排，財務機構須識辨申報稅務管轄區的稅務居民所持有的財務帳戶，以及收集這些財務帳戶的須申報資料，以便按照共同匯報標準向稅務當局匯報。個別稅務當局會每年與其他稅務管轄區的稅務當局交換資料。至今，已有 102 個稅務管轄區承諾實施這項國際標準。香港在二零一四年九月表示，支持以雙邊模式與合適伙伴實施自動交換資料安排，以期在二零一八年年底前進行首次交換。

4. 經合組織容許稅務管轄區採用雙邊或多邊模式實施自動交換資料安排。雙邊模式是以全面性避免雙重課稅協定(“全面性協定”)或稅務資料交換協定(“交換協定”)為基礎，與其他稅務管轄區再就自動交換資料安排簽訂雙邊主管當局協定；多邊模式則以《多邊公約》為基礎，另簽訂一分多邊主管當局協定。截至二零一七年八月三十一日，香港已簽訂 38 份全面性協定和七份交換協定¹，並就自動交換資料安排簽訂 14 份雙邊主管當局協定²。然而，商討雙邊主管當局協定需時，而且往往涉及修訂相關全面性協定／交換協定，才可進行自動交換資料。值得注意的是，現時 102 個承諾實施自動交換資料安排的稅務管轄區(包括香港和澳門)，全部已加入或已表明有意加入《多邊公約》。

BEPS

5. 二零一五年十月，經合組織及二十國集團推出一套涵蓋 15 個範疇的行動計劃應對 BEPS。BEPS 是跨國企業的稅務規劃策略，旨在利用不同經濟體在稅務規則方面的差異及錯配，人為地將利潤轉移至只有很少或沒有經濟活動的低稅或無稅地方，從而使企業整體上只繳納少量稅款或無需繳稅。香港於二零一六年六月向經合組織承諾實施 BEPS 方案。為符合

¹ 與香港簽訂**全面性協定**的38個稅務管轄區包括比利時(二零零三年)、泰國(二零零五年)、中國內地(二零零六年)、盧森堡(二零零七年)、越南(二零零八年)、文萊、荷蘭、印尼、匈牙利、科威特、奧地利、英國、愛爾蘭、列支敦士登、法國、日本、新西蘭(二零一零年)、葡萄牙、西班牙、捷克共和國、瑞士、馬耳他(二零一一年)、澤西島、馬來西亞、墨西哥、加拿大(二零一二年)、意大利、根西島、卡塔爾(二零一三年)、韓國、南非、阿拉伯聯合酋長國(二零一四年)、羅馬尼亞(二零一五年)、俄羅斯、拉脫維亞(二零一六年)、白俄羅斯、巴基斯坦和沙特阿拉伯(二零一七年)。與香港簽訂**交換協定**的七個稅務管轄區包括美國、挪威、丹麥、瑞典、冰島、格陵蘭和法羅群島(二零一四年)。(括號所示為簽訂年份)

² 與香港簽訂**雙邊主管當局協定**的14個稅務管轄區包括日本、英國(二零一六年)、韓國、比利時、加拿大、根西島、墨西哥、荷蘭、意大利、葡萄牙、南非、愛爾蘭、印尼和新西蘭(二零一七年)。(括號所示為簽訂年份)

BEPS 方案四項最低標準³，香港須落實自動交換國別報告以就跨國企業的轉讓定價風險作出評估(第 13 項行動計劃)⁴，以及自發交換稅務裁定資料(第 5 項行動計劃)⁵。

6. 雖然我們可採用雙邊模式實施上述 BEPS 措施，但由於國際社會交換稅務資料的範圍不斷擴大，這種模式已不切實際。較可行的做法是稅務管轄區以《多邊公約》作為實施 BEPS 措施的基礎。

經合組織和歐洲聯盟(“歐盟”)制訂“不合作”稅務管轄區名單

7. 在香港着手落實自動交換資料安排和 BEPS 方案的國際標準同時，經合組織和歐盟已開始制訂各自的“不合作”稅務管轄區名單，預期名單會在二零一七年年底前備妥。根據經合組織的準則，稅務管轄區如未能符合下述三項準則中至少兩項，會被視為“不合作”稅務管轄區 -

- (a) 《多邊公約》——加入《多邊公約》，或擁有廣闊的資料交換網絡，容許按請求交換資料及自動交換資料；
- (b) 自動交換資料——最遲在二零一八年首次交換資料(涵蓋二零一七年的財務帳戶資料)；以及
- (c) 按請求交換資料——獲稅務透明化及資料交換全球論壇(“全球論壇”)給予至少“大致符合標準”的評級⁶。

³ 四項最低標準包括打擊具損害性的稅務措施(第5項行動計劃)、防止濫用稅收協定的情況(第6項行動計劃)、訂立國別報告的規定(第13項行動計劃)，以及改善跨境爭議解決機制(第14項行動計劃)。

⁴ 經合組織規定每年集團總收入達7.5億歐元或以上的跨國企業須提交國別報告。參與BEPS計劃的稅務管轄區須在收到國別報告後與其他稅務管轄區進行自動交換。

⁵ 為打擊損害性稅務措施及透過交換資料提升稅務透明度，經合組織規定須自發交換六種特定的稅務裁定資料，即(a)與優惠制度有關的裁定；(b)單方面的預先定價安排及其他就跨境轉讓定價作出的單方面裁定；(c)就調低應課稅利潤的跨境裁定；(d)就常設機構的裁定；(e)就關聯轉付公司的裁定；以及(f)任何在沒有自發交換資料情況下會引起BEPS問題的其他各類裁定。

⁶ 香港在全球論壇二零一三年就按請求交換資料進行的首輪成員相互評估中獲評為“大致符合標準”。我們將會在二零一八年上半年接受第二輪評估，屆時的評級須視乎香港能否按照經合組織的標準交換資料。

8. 另一方面，任何稅務管轄區如未能符合下述三項準則中至少兩項，會被歐盟視為在稅務透明度方面不符合標準 -

- (a) 《多邊公約》——加入《多邊公約》，或容許按請求交換資料及自動交換資料的協定網絡已涵蓋歐盟所有成員國，而該等協定須已生效或預計會在合理時限內生效；
- (b) 自動交換資料——在二零一七年年底前與歐盟所有成員國訂立自動交換資料安排，該等安排可藉簽訂多邊主管當局協定，或通過雙邊主管當局協定而訂立；以及
- (c) 按請求交換資料——獲全球論壇給予至少“大致符合標準”的評級。

除稅務透明度外，歐盟也會評估該稅務管轄區在公平課稅和實施 BEPS 措施(包括國別報告安排)方面是否符合標準；未能達標者會被列為“不合作”稅務管轄區。

9. 被列為“不合作”的稅務管轄區或會遭受**抵制措施**，其投資和營商吸引力會因而下降。有關的抵制措施或會包括被其他稅務管轄區徵收預扣稅項，以及在計算須在當地應繳稅款時不獲扣減交易成本。

香港面對的挑戰

10. 為了與國際交換稅務資料的標準接軌，我們近年修訂了《稅務條例》，以提供法律依據進行按請求交換資料，落實全面性協定以外的交換協定，以及實施自動交換資料安排。

11. 香港至今一直以**雙邊**模式實施所有相關交換資料安排。隨着國際間陸續推行新稅務規定打擊BEPS活動，以雙邊模式商討和修訂稅務協定，不再是有效率和具成效的方法。我們須向中央人民政府(“中央政府”)提請把《多邊公約》的適用地區延伸至香港。

12. 香港暫未建立廣泛的自動交換資料網絡，亦未加入《多邊公約》，因此面對**未能符合經合組織和歐盟就自動交換資料所定評估準則的風險**。加入《多邊公約》不但可加快擴闊自動交換資料網絡，更是經合組織和歐盟考慮稅務管轄區是否屬“不合作”的重要因素。

《多邊公約》

13. 《多邊公約》由經合組織與歐洲委員會在一九八八年共同訂立，其後在二零一零年藉議定書修訂。該公約旨在便利締約國在評稅和徵稅方面一切可行形式的行政合作，特別是針對打擊避稅和逃稅活動。《多邊公約》自二零一一年六月一日起開放予各國簽署，最新文本載於**附件 C**。截至二零一七年九月十二日，共有 113 個稅務管轄區參與《多邊公約》，當中包括 15 個藉地域延伸身分加入的稅務管轄區(**附件 D**)。

行政長官會同行政會議實施稅務安排的權力

14. 根據《稅務條例》第 49(1A)條的規定，如行政長官會同行政會議藉命令宣布，已與香港以外某地區政府訂立安排，而該等安排的生效是有利的，該等安排即屬有效。《稅務條例》第 49(1B)條進一步訂明，只有為以下兩個或其中一個目的而訂立的安排，方可在《稅務條例》第 49(1A)條所指的命令中指明 - (a)給予雙重課稅寬免；(b)就香港或有關地區的法律所施加的任何稅項交換資料。香港簽訂的雙邊全面性協定及交換協定，均藉上述條文所作出的命令在香港實施。

15. 現行《稅務條例》第 49(1A)條並無賦權行政長官會同行政會議就多邊稅務協定作出命令，也沒有賦權行政長官會同行政會議就為給予雙重課稅寬免和交換稅項資料以外目的而訂立的安排，作出命令。此等限制不利香港加入多邊稅務協定或參與新的國際稅務合作領域。鑑於國際稅務環境迅速發展，國際間着力推動更緊密的稅務合作，我們必須擴大行政長官會同行政會議的權力範圍，以根據《稅務條例》實施各項稅務安排。

建議

16. 我們建議修訂《稅務條例》，賦權行政長官會同行政會議可藉命令宣布，香港與香港以外多於一個地區政府訂立的稅務安排，或由中央政府訂立並適用於香港的安排，具有效力。賦予行政長官會同行政會議更廣泛的權力，有助香港推展國際稅務合作方面的新措施。

17. 《條例草案》如獲通過，我們計劃建議行政長官會同行政會議作出命令，宣布《多邊公約》在香港具有效力。我們打算只實施《多邊公約》的**強制性條文**，同時對**非強制性條文**作出適當的保留／聲明，令這些非強制性條文不適用於(或只會局部適用於)香港。我們就《多邊公約》主

要條文的分析載於**附件 E**。根據經修訂的《稅務條例》作出的命令，須由立法會以先訂立後審議的程序進行審議。

18. 我們亦藉此機會提出所需的法例修訂，修正由我們或經合組織近期檢視本港落實自動交換資料安排法例時發現的不一致之處，使《稅務條例》與共同匯報標準一致。共同匯報標準列明所須交換的財務帳戶資料、須作出匯報的財務機構、所涵蓋的各類帳戶和納稅人，以及財務機構須依循的劃一盡職審查程序。修訂事項包括 -

- (a) 釐清**年金合約、現金值、存款帳戶、財務帳戶、先前帳戶和指明保險公司**的定義；
- (b) 使控權人的界定門檻與共同匯報標準的規定一致(即符合財務特別行動組織於二零一二年確立的建議)；
- (c) 使備存紀錄的要求與共同匯報標準一致；
- (d) 釐清免申報財務機構下合資格信用卡發行人和豁免集體投資工具的準則；以及
- (e) 釐清不活躍帳戶以及辨識被動非財務實體控權人居住地的盡職審查程序。

與新西蘭的雙邊自動交換資料安排

19. 另一方面，香港在二零一七年六月就《新西蘭協定》簽訂第二議定書。第二議定書旨在 -

- (a) 剔除《新西蘭協定》第一議定書第 4(a)段，即有關締約雙方不須自動或自發交換資料的規定；以及
- (b) 修正《新西蘭協定》第一議定書第 4(b)段中有關「申訴專員公署」的英文錯字(即由“Office of the Ombudsmen”改為“Office of the Ombudsman”)。

我們建議落實第二議定書，為與新西蘭以雙邊模式實施自動交換資料作好準備。由於我們已經與新西蘭簽訂雙邊主管當局協定，當第二議定書於兩地生效後，雙方便可進行自動交換資料。

其他方案

20. 我們須修訂《稅務條例》，以提供法律框架，實施《多邊公約》和任何其他適用於香港的稅務協定，以及使《稅務條例》與共同匯報標準的要求一致。另外，由行政長官會同行政會議根據《稅務條例》第49(1A)條作出命令，是實施《新西蘭協定》第二議定書的唯一方法，並沒有其他可行方案。

條例草案

21. 《條例草案》的主要條文如下 -

- (a) **草案第 4 條**修訂《稅務條例》第 49 條，擴大行政長官會同行政會議可根據第 49(1A)條藉命令指定的安排的範圍及目的，使可指定的安排包括多邊協議；而除了給予雙重課稅寬免及交換稅項資料外，亦可指定為實施國際稅務合作措施為目的而訂的安排；以及
- (b) **草案第 5 至 11 條**修訂《稅務條例》第 50A、50B 及 50C 條，以及附表 17C 及 17D，使有關實施自動交換資料條文與共同匯報標準一致。

命令

22. 《命令》對《稅務(關於收入稅項的雙重課稅寬免和防止逃稅)(新西蘭)令》(第 112 章，附屬法例 BV)(“《主體命令》”)作出以下修正 -

- (a) 在《主體命令》加入新的**第 3(1)(c)及 3(4)條**，以宣布與新西蘭政府已達成第二議定書中的安排，而該等安排的生效是有利的；
- (b) 在《主體命令》的附表加入**第 3 部**，以列明第二議定書的安排；以及
- (c) 對《主體命令》作出相應修訂。

立法程序時間表

23. 立法程序時間表如下 -

《條例草案》
刊登憲報

二零一七年十月六日

首讀和開始二讀辯論

二零一七年十月十八日

恢復二讀辯論、委員會
審議階段和三讀

另行通知

《命令》
刊登憲報

二零一七年十月六日

提交立法會

二零一七年十月十八日

《命令》生效

二零一七年十二月二十二日

建議的影響

24. 建議符合《基本法》，包括有關人權的條文。建議不會影響《稅務條例》及其附屬法例現有條文的約束力，對環境、性別議題、家庭、生產力或可持續發展也沒有影響。

25. 經濟影響方面，建議可顯示香港致力提高稅務透明度和參與國際稅務合作的承諾。此舉對香港保持國際金融及商業中心的競爭力和聲譽，以及避免被列為“不合作”稅務管轄區，尤其重要。對財政和公務員的影響方面，政府已預留額外資源，以供財經事務及庫務局與稅務局在二零一七至一八年度及往後年度，就國際稅務合作事宜與各稅務管轄區商討協定、與持份者溝通、進行立法工作及落實各項安排。

公眾諮詢

26. 我們已在立法會財經事務委員會二零一七年六月五日的會議上，向委員簡介將《多邊公約》的適用範圍延伸至香港的建議；委員對此並無異議。我們亦於二零一七年六月發信予相關持份者，包括財務機構、監管機構、商會和專業團體，闡述政府擬參與《多邊公約》的最新情況。

宣傳安排

27. 我們會在《條例草案》及《命令》刊憲後發出新聞稿，並會安排發言人回答傳媒查詢。

背景

28. 中國在二零一三年八月二十七日簽署《多邊公約》，成為第 56 個簽約國。中國在二零一五年十月交存《多邊公約》的批准書時，同時作出《多邊公約》不適用於香港及澳門的聲明。《多邊公約》自二零一六年二月一日起在中國生效。因應香港的要求，中央政府在二零一七年五月原則上同意將《多邊公約》的適用地區延伸至香港。

29. 《新西蘭協定》在二零一零年十二月簽訂，並在香港和新西蘭完成相關審批程序後於二零一一年十一月生效。當香港與新西蘭商討為自動交換資料簽訂雙邊主管當局協定時，後者認為有需要剔除《新西蘭協定》第一議定書中有關不須自動或自發交換資料的規定。因此，雙方在二零一七年六月簽訂第二議定書。

查詢

30. 如對本摘要有任何查詢，請聯絡財經事務及庫務局首席助理秘書長(庫務)翁佩雲女士(電話：2810 2370)。

財經事務及庫務局
二零一七年十月四日

《2017 年稅務(修訂)(第 5 號)條例草案》

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本條例草案

旨在

修訂《稅務條例》，賦權行政長官會同行政會議，實施《多邊稅收徵管互助公約》及其他適用於香港的稅務協議；並修訂該條例，使有關條文與稅務事宜的自動交換財務帳戶資料方面的國際標準一致。

由立法會制定。

1. 簡稱

本條例可引稱為《2017 年稅務(修訂)(第 5 號)條例》。

2. 修訂《稅務條例》

《稅務條例》(第 112 章)現予修訂，修訂方式列於第 3 至 11 條。

3. 修訂第 8 部標題(雙重課稅寬免及資料交換)

第 8 部，標題 ——

廢除

“及資料交換”

代以

“、資料交換及其他國際稅務合作”。

4. 修訂第 49 條(寬免雙重課稅及資料交換安排)

(1) 第 49 條，標題 ——

廢除

“寬免雙重課稅及資料交換安排”

代以

- “安排：寬免雙重課稅、資料交換及其他國際稅務合作”。
- (2) 在第 49(1A)條之後 ——
加入
“(1AB) 可在第(1A)款所指的命令中指明的安排，包括 ——
(a) 與多於一個政府訂立的安排；及
(b) 由中央人民政府訂立而適用於香港的安排。”。
- (3) 第 49(1B)條 ——
廢除
“兩個目的或其中之一”
代以
“一個或多於一個目的”。
- (4) 第 49(1B)(b)條 ——
廢除
在“香港或”之後的所有字句
代以
“任何有關地區的法律所施加的任何稅項，交換資料；”。
- (5) 在第 49(1B)(b)條之後 ——
加入
“(c) 實施關於國際稅務合作的措施。”。

5. 修訂第 50A 條(釋義)

- (1) 第 50A(1)條 ——
廢除年金合約的定義
代以
“年金合約 (annuity contract) ——
(a) 指符合以下說明的合約：有關合約發出者根據該合約，同意就某段期間支付款項，而該期間

- 的釐定，是完全或局部參照一名或多於一名個人的預期壽命的；及
- (b) 包括在某司法管轄區發出的、符合以下說明的合約 ——
(i) 按照該司法管轄區的法律、規例或常規，被視為屬年金合約；及
(ii) 根據該合約，其發出者同意就某段年期支付款項；”。
- (2) 第 50A(1)條，現金值的定義，(a)(ii)段 ——
廢除
“根據有關合約能夠”
代以
“能夠根據有關合約(或能夠就有關合約)”。
- (3) 第 50A(1)條，存款帳戶的定義 ——
廢除
“財務機構在銀行業務或相類業務的通常運作中”
代以
“存款機構”。
- (4) 第 50A(1)條，財務帳戶的定義，(d)段 ——
廢除
“並非投資實體”
代以
“屬託管機構、存款機構或指明保險公司，或第(12)款所指的顧問經理”。
- (5) 第 50A(1)條，先前帳戶的定義，(b)(ii)(A)段，在“該機構”之後 ——
加入

- “(或該機構在香港境內的有關連實體)”。
- (6) 第 50A(1)條，*指明保險公司*的定義 ——
廢除
在“合約付款”之後的所有字句
代以分號。
- (7) 第 50A(1)條 ——
按筆劃數目順序加入
“*保險公司* (insurance company)指以下任何人或實體 ——
- (a) 根據《保險業條例》(第 41 章)獲授權的保險人；
 - (b) 符合以下說明的實體：判別該實體是否屬保險公司的時間，是在某公曆年之內，而在該年的對上一個公曆年中，該實體來自保險、再保險及年金合約的總收入，佔該實體的總收入超過 50%；
 - (c) 符合以下說明的實體：判別該實體是否屬保險公司的時間，是在某公曆年之內，而在該年的對上一個公曆年中的任何時間，該實體涉及保險、再保險及年金合約的資產的總價值，佔該實體的總資產價值超過 50%；”。
- (8) 第 50A(6)(a)(i)(A)及(B)條 ——
廢除
“不少於”
代以
“超過”。
- (9) 第 50A(6)(a)(i)(B)及(b)(i)(B)條 ——
廢除
“；或”

- 代以分號。
- (10) 第 50A(6)(b)(i)(A)及(B)條 ——
廢除
“不少於”
代以
“超過”。
- (11) 在第 50A(6)(a)(i)(C)條之後 ——
加入
“(D) 如沒有符合(A)、(B)或(C)分節說明的個人——擔任該實體的高級管理人員職位；或”。
- (12) 在第 50A(6)(b)(i)(C)條之後 ——
加入
“(D) 如沒有符合(A)、(B)或(C)分節說明的個人——擔任該實體的高級管理人員職位；或”。
- (13) 第 50A(6)(c)(i)條 ——
廢除
“不少於”
代以
“超過”。
- (14) 第 50A(6)(c)(iii)條，在“保護人”之後 ——
加入
“或執行人”。
- (15) 第 50A(6)(c)(iv)條 ——
廢除
“對該實體的管理行使”
代以

“擁有對該實體的”。

(16) 第 50A(12)條 ——

廢除

“(c)段”

代以

“(c)及(d)段(關乎顧問經理)”。

6. 修訂第 50B 條(申報財務機構的盡職審查責任)

(1) 第 50B(1)(a)(iii)條 ——

廢除

“或所”

代以

“，以及所”。

(2) 第 50B(1)(a)(iii)條，英文文本 ——

廢除

“is kept”

代以

“are kept”。

7. 修訂第 50C 條(申報財務機構提交報表的責任)

在第 50C(2)條之後 ——

加入

“(2A) 然而，凡某申報稅務管轄區於某日期成為申報稅務管轄區，關乎該管轄區的指明資料期間，不得涵蓋該日期之前的期間。”。

8. 修訂附表 17C 第 2 部第 8 條(合資格信用咭發行人)

附表 17C，第 2 部，第 8(2)條 ——

廢除

“(ii)”。

9. 修訂附表 17C 第 2 部第 9 條(豁免集體投資工具)

(1) 附表 17C，中文文本，第 2 部，第 9(1)(b)(i)條 ——

廢除分號

代以

“；或”。

(2) 附表 17C，第 2 部，第 9(1)(b)條 ——

廢除第(ii)節

代以

“(ii) 均由不屬申報對象的實體持有，或透過不屬申報對象的實體持有。”。

(3) 附表 17C，第 2 部，在第 9(1)條之後 ——

加入

“(1A) 如 ——

(a) 某投資實體的任何權益，由屬被動非財務實體的實體持有，或透過屬被動非財務實體的實體持有；及

(b) 該被動非財務實體的任何一名控權人，屬申報對象，

則第(1)款並不適用於該投資實體。”。

10. 修訂附表 17C 第 3 部第 7 條(不活躍帳戶)

(1) 附表 17C，第 3 部 ——

將第 7 條重編為第 7(1)條。

(2) 附表 17C，第 3 部，第 7(1)(b)條 ——

廢除

“通；”

代以

“通；及”。

- (3) 附表 17C，第 3 部，第 7(1)條 ——

廢除(c)段。

- (4) 附表 17C，第 3 部，在第 7(1)條之後 ——

加入

“(2) 在以下情況下，任何於申報財務機構維持的、結餘不多於\$7,800 的帳戶(年金合約除外)，亦屬豁除帳戶 ——

- (a) 該帳戶 ——

(i) 按照適用於該機構的法律或規例；或

(ii) 根據該機構的、並貫徹應用於在該機構維持的所有帳戶的正常操作程序，

被視為不活躍帳戶；及

- (b) (a)段所述的法律、規例或程序，載有實質上類似第(1)(a)、(b)及(d)款的條文。”。

11. 修訂附表 17D 第 6 部第 6 條(斷定被動非財務實體的控權人的居留地)

附表 17D，第 6 部，第 6 條 ——

廢除

在“倚賴”之前的所有字句

代以

“為斷定被動非財務實體的控權人的居留地，申報財務機構只可”。

摘要說明

本條例草案修訂《稅務條例》(第 112 章)(《條例》)——

(a) 賦權行政長官會同行政會議，實施《多邊稅收徵管互助公約》及其他適用於香港的稅務協議；及

(b) 使有關條文與稅務事宜的自動交換財務帳戶資料方面的國際標準一致(參閱第 3 段)。

2. 草案第 4 條修訂《條例》第 49 條，將行政長官會同行政會議可根據《條例》第 49(1A)條作出的命令的範圍及目的擴大。

3. 草案第 5、6 及 7 條分別修訂《條例》第 50A、50B 及 50C 條，而草案第 8 至 11 條則修訂《條例》附表 17C 及 17D，使有關條文，與經濟合作與發展組織就稅務事宜的自動交換財務帳戶資料而訂定的國際標準一致。

《2017 年稅務(關於收入稅項的雙重課稅寬免和防止逃稅)(新西蘭)(修訂)令》

(由行政長官會同行政會議根據《稅務條例》(第 112 章)第 49(1A)條作出)

1. 生效日期
本命令自 2017 年 12 月 22 日起實施。
2. 修訂《稅務(關於收入稅項的雙重課稅寬免和防止逃稅)(新西蘭)令》
《稅務(關於收入稅項的雙重課稅寬免和防止逃稅)(新西蘭)令》(第 112 章，附屬法例 BV)現予修訂，修訂方式列於第 3 及 4 條。
3. 修訂第 3 條(指明的安排)
 - (1) 第 3(1)(a)條 ——
廢除
“及”。
 - (2) 第 3(1)(b)條 ——
廢除句號
代以
“；及”。
 - (3) 在第 3(1)(b)條之後 ——
加入
“(c) 在 2017 年 6 月 15 日在香港及在 2017 年 6 月 28 日在威靈頓以英文一式兩份簽訂的、名為“Second Protocol to Amend the Agreement between the Government of the Hong Kong Special Administrative

Region of the People's Republic of China and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Auckland on 1 December 2010 and the Protocol thereto”的議定書(在本命令中，該議定書的中文譯名為“《修訂 2010 年 12 月 1 日在奧克蘭簽訂的〈中華人民共和國香港特別行政區政府與新西蘭政府就收入稅項避免雙重課稅和防止逃稅協定〉及其議定書的第二議定書》”)的第 1 及 2 段的安排。”。

- (4) 第 3(2)條，中文文本 ——
廢除
“協定的”
代以
“的協定”。
 - (5) 第 3(3)條 ——
廢除
“上述議定書的”
代以
“第(1)(b)款提述的議定書”。
 - (6) 在第 3(3)條之後 ——
加入
“(4) 第(1)(c)款提述的議定書條文的英文本，載錄於附表第 3 部英文文本。該等議定書條文的中文譯本，於該部中文文本列明。”。
4. 修訂附表
附表，在第 2 部之後 ——
加入

“第 3 部

《修訂 2010 年 12 月 1 日在奧克蘭簽訂的〈中華人民共和國香港特別行政區政府與新西蘭政府就收入稅項避免雙重課稅和防止逃稅協定〉及其議定書的第二議定書》第 1 及 2 段

(中文譯本)

1. 刪去本協定的議定書的第 4 段，而代以：

“就第二十四條而言：

凡有就對新西蘭稅務部門的行政行動作出之投訴而進行的調查，新西蘭主管當局可向申訴專員公署披露資料。”

2. 本第二議定書構成本協定整體的一部分，並在締約雙方以書面通知已完成各自所需的批准程序後，自上述通知的較後一份的日期起生效。”。

行政會議秘書

行政會議廳

2017 年 月 日

註釋

香港特別行政區政府與新西蘭政府，於 2010 年 12 月 1 日就收入稅項簽訂關於避免雙重課稅和防止逃稅的協定(《協定》)，以及《協定》的議定書(《原議定書》)。《協定》及《原議定書》中的安排，藉《稅務(關於收入稅項的雙重課稅寬免和防止逃稅)(新西蘭)令》(第 112 章，附屬法例 BV)(《主體命令》)而有效。

2. 2017 年 6 月 15 日及 2017 年 6 月 28 日，兩地政府簽訂另一份議定書(《第二議定書》)，以修訂《原議定書》。本命令修訂《主體命令》，加入新條文，宣布《第二議定書》第 1 及 2 段中的安排，為《稅務條例》(第 112 章)第 49(1A)條所指的雙重課稅寬免安排，而該等安排的生效是屬於有利的。《第二議定書》是以英文簽訂的。上述《第二議定書》條文的中文譯本，於《主體命令》附表中文文本中新的第 3 部列明。
3. 上述新條文的效力如下 ——
 - (a) 即使任何成文法則另有規定，第 2 段提述的安排仍就根據《稅務條例》(第 112 章)徵收的稅項而有效；及
 - (b) 就該等安排中規定披露關乎新西蘭的稅項資料的條文而言，該等安排就該條文所關乎的新西蘭稅項而有效。
4. 本命令亦對《主體命令》作出相應修訂。

Convention on Mutual Administrative Assistance in Tax Matters

Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1st June 2011.

Preamble

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention,

Considering that the development of international movement of persons, capital, goods and services – although highly beneficial in itself – has increased the possibilities of tax avoidance and evasion and therefore requires increasing co-operation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters in all States and that States should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;

Desiring to conclude a convention on mutual administrative assistance in tax matters,

Have agreed as follows:

Chapter I – Scope of the Convention

Article 1 – Object of the Convention and persons covered

- 1 The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies.
- 2 Such administrative assistance shall comprise:
 - a exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
 - b assistance in recovery, including measures of conservancy; and
 - c service of documents.
- 3 A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

Article 2 – Taxes covered

- 1 This Convention shall apply:
 - a to the following taxes:
 - i taxes on income or profits,
 - ii taxes on capital gains which are imposed separately from the tax on income or profits,
 - iii taxes on net wealth,imposed on behalf of a Party; and
 - b to the following taxes:
 - i taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party,
 - ii compulsory social security contributions payable to general government or to social security institutions established under public law, and
 - iii taxes in other categories, except customs duties, imposed on behalf of a Party, namely:
 - A. estate, inheritance or gift taxes,

- B. taxes on immovable property,
 - C. general consumption taxes, such as value added or sales taxes,
 - D. specific taxes on goods and services such as excise taxes,
 - E. taxes on the use or ownership of motor vehicles,
 - F. taxes on the use or ownership of movable property other than motor vehicles,
 - G. any other taxes;
- iv taxes in categories referred to in sub-paragraph iii. above which are imposed on behalf of political subdivisions or local authorities of a Party.
- 2 The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.
 - 3 The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the “Depositaries”) of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.
 - 4 The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the Depositaries of the adoption of the tax in question.

Chapter II – General definitions

Article 3 – Definitions

- 1 For the purposes of this Convention, unless the context otherwise requires:
 - a the terms “applicant State” and “requested State” mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;
 - b the term “tax” means any tax or social security contribution to which the Convention applies pursuant to Article 2;
 - c the term “tax claim” means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;

- d the term “competent authority” means the persons and authorities listed in Annex B;
- e the term “nationals” in relation to a Party means:
 - i all individuals possessing the nationality of that Party, and
 - ii all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

- 2 As regards the application of the Convention by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.
- 3 The Parties shall notify one of the Depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

Chapter III – Forms of assistance

Section I – Exchange of information

Article 4 – General provision

- 1 The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.
- 2 Deleted.
- 3 Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

Article 5 – Exchange of information on request

- 1 At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.
- 2 If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

Article 6 – Automatic exchange of information

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

Article 7 – Spontaneous exchange of information

- 1 A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:
 - a the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;
 - b a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;
 - c business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
 - d a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
 - e information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.
- 2 Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

Article 8 – Simultaneous tax examinations

- 1 At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.
- 2 For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

Article 9 – Tax examinations abroad

- 1 At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.
- 2 If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State.
- 3 A Party may inform one of the Depositaries of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration may be made or withdrawn at any time.

Article 10 – Conflicting information

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

Section II - Assistance in recovery

Article 11 – Recovery of tax claims

- 1 At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.
- 2 The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested.

However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.

- 3 The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

Article 12 – Measures of conservancy

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

Article 13 – Documents accompanying the request

- 1 The request for administrative assistance under this section shall be accompanied by:
 - a a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested,
 - b an official copy of the instrument permitting enforcement in the applicant State, and
 - c any other document required for recovery or measures of conservancy.
- 2 The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

Article 14 – Time limits

- 1 Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period.
- 2 Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.
- 3 In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

Article 15 – Priority

The tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State even if the recovery procedure used is the one applicable to its own tax claims.

Article 16 – Deferral of payment

The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant State.

Section III – Service of documents

Article 17 – Service of documents

- 1 At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention.
- 2 The requested State shall effect service of documents:
 - a by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;
 - b to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.
- 3 A Party may effect service of documents directly through the post on a person within the territory of another Party.
- 4 Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.
- 5 When a document is served in accordance with this article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested State shall arrange to have it translated into or a summary drafted in its or one of its official languages. Alternatively, it may ask the applicant State to have the document either translated into or accompanied by a summary in one of the official languages of the requested State, the Council of Europe or the OECD.

Chapter IV – Provisions relating to all forms of assistance

Article 18 – Information to be provided by the applicant State

- 1 A request for assistance shall indicate where appropriate:
 - a the authority or agency which initiated the request made by the competent authority;
 - b the name, address, or any other particulars assisting in the identification of the person in respect of whom the request is made;
 - c in the case of a request for information, the form in which the applicant State wishes the information to be supplied in order to meet its needs;
 - d in the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;

- e in the case of a request for service of documents, the nature and the subject of the document to be served;
 - f whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 21.2.g.
- 2 As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant State shall forward it to the requested State.

Article 19 – Deleted

Article 20 – Response to the request for assistance

- 1 If the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible.
- 2 If the request is declined, the requested State shall inform the applicant State of that decision and the reason for it as soon as possible.
- 3 If, with respect to a request for information, the applicant State has specified the form in which it wishes the information to be supplied and the requested State is in a position to do so, the requested State shall supply it in the form requested.

Article 21 – Protection of persons and limits to the obligation to provide assistance

- 1 Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.
- 2 Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:
- a to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;
 - b to carry out measures which would be contrary to public policy (*ordre public*);
 - c to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;
 - d to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*);
 - e to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;

- f to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;
 - g to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;
 - h to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.
- 3 If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.
- 4 In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 22 – Secrecy

- 1 Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.
- 2 Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.

- 3 If a Party has made a reservation provided for in sub-paragraph a. of paragraph 1 of Article 30, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.
- 4 Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.

Article 23 – Proceedings

- 1 Proceedings relating to measures taken under this Convention by the requested State shall be brought only before the appropriate body of that State.
- 2 Proceedings relating to measures taken under this Convention by the applicant State, in particular those which, in the field of recovery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of that State. If such proceedings are brought, the applicant State shall inform the requested State which shall suspend the procedure pending the decision of the body in question. However, the requested State shall, if asked by the applicant State, take measures of conservancy to safeguard recovery. The requested State can also be informed of such proceedings by any interested person. Upon receipt of such information the requested State shall consult on the matter, if necessary, with the applicant State.
- 3 As soon as a final decision in the proceedings has been given, the requested State or the applicant State, as the case may be, shall notify the other State of the decision and the implications which it has for the request for assistance.

Chapter V – Special provisions

Article 24 – Implementation of the Convention

- 1 The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorise subordinate authorities to act on their behalf. The competent authorities of two or more Parties may mutually agree on the mode of application of the Convention among themselves.
- 2 Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant State shall consult each other and endeavour to resolve the situation by mutual agreement.

- 3 A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.
- 4 A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.
- 5 Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.
- 6 The Secretary General of OECD shall inform the Parties, and the Signatory States which have not yet ratified, accepted or approved the Convention, of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

Article 25 – Language

Requests for assistance and answers thereto shall be drawn up in one of the official languages of the OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

Article 26 – Costs

Unless otherwise agreed bilaterally by the Parties concerned:

- a ordinary costs incurred in providing assistance shall be borne by the requested State;
- b extraordinary costs incurred in providing assistance shall be borne by the applicant State.

Chapter VI – Final provisions

Article 27 – Other international agreements or arrangements

- 1 The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

- 2 Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules.

Article 28 – Signature and entry into force of the Convention

- 1 This Convention shall be open for signature by the member States of the Council of Europe and the member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.
- 2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 3 In respect of any member State of the Council of Europe or any member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.
- 4 Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on 27th May 2010 (the “2010 Protocol”), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositaries.
- 5 After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositaries, who shall transmit it to the Parties. The Depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.
- 6 The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.

- 7 Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

Article 29 – Territorial application of the Convention

- 1 Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.
- 3 Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the Depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

Article 30 – Reservations

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:
- a not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;
 - b not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;
 - c not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under sub-paragraph a. or b. above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;
 - d not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

- e not to permit the service of documents through the post as provided for in paragraph 3 of Article 17;
 - f to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.
- 2 No other reservation may be made.
- 3 After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.
- 4 Any Party which has made a reservation under paragraphs 1 and 3 may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.
- 5 A Party which has made a reservation in respect of a provision of this Convention may not require the application of that provision by any other Party; it may, however, if its reservation is partial, require the application of that provision insofar as it has itself accepted it.

Article 31 – Denunciation

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to one of the Depositaries.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.
- 3 Any Party which denounces the Convention shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

Article 32 – Depositaries and their functions

- 1 The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the member countries of OECD and any Party to this Convention of:
- a any signature;

- b the deposit of any instrument of ratification, acceptance or approval;
 - c any date of entry into force of this Convention in accordance with the provisions of Articles 28 and 29;
 - d any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;
 - e any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;
 - f any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;
 - g any other act, notification or communication relating to this Convention.
- 2 The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform immediately the other Depositary thereof.

In witness whereof the undersigned, being duly authorised thereto, have signed the Convention.

Established by the Depositaries the 1st day of June 2011 pursuant to Article X.4 of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, in English and French, both texts being equally authentic, in two copies of which one shall be deposited in the archives of each Depositary. The Depositaries shall transmit a certified copy to each Party to the Convention as amended by the Protocol and to each State entitled to become a party.

參與《多邊公約》的稅務管轄區

(截至二零一七年九月十二日)

- | | | |
|---------------|--------------|------------------|
| 1. 阿爾巴尼亞 | 41. 迦納 | 81. 挪威 |
| 2. 安道爾 | 42. 直布羅陀 # | 82. 巴基斯坦 |
| 3. 安圭拉 # | 43. 希臘 | 83. 巴拿馬 |
| 4. 阿根廷 | 44. 格陵蘭 # | 84. 菲律賓 |
| 5. 阿魯巴 # | 45. 危地馬拉 | 85. 波蘭 |
| 6. 澳大利亞 | 46. 根西島 # | 86. 葡萄牙 |
| 7. 奧地利 | 47. 匈牙利 | 87. 羅馬尼亞 |
| 8. 阿塞拜疆 | 48. 冰島 | 88. 俄羅斯 |
| 9. 巴林 | 49. 印度 | 89. 聖基茨和尼維斯 |
| 10. 巴巴多斯 | 50. 印度尼西亞 | 90. 聖盧西亞 |
| 11. 比利時 | 51. 愛爾蘭 | 91. 聖文森特和格林納丁斯 |
| 12. 伯利茲 | 52. 萌島 # | 92. 薩摩亞 |
| 13. 百慕達 # | 53. 以色列 | 93. 聖馬力諾 |
| 14. 巴西 | 54. 意大利 | 94. 沙地阿拉伯 |
| 15. 英屬維爾京群島 # | 55. 牙買加 | 95. 塞內加爾 |
| 16. 文萊達魯薩蘭國 | 56. 日本 | 96. 塞舌爾 |
| 17. 保加利亞 | 57. 澤西島 # | 97. 新加坡 |
| 18. 布基納法索 | 58. 哈薩克斯坦 | 98. 聖馬丁島 # |
| 19. 喀麥隆 | 59. 肯亞 | 99. 斯洛伐克共和國 |
| 20. 加拿大 | 60. 韓國 | 100. 斯洛文尼亞 |
| 21. 開曼群島 # | 61. 科威特 | 101. 南非 |
| 22. 智利 | 62. 拉脫維亞 | 102. 西班牙 |
| 23. 中華人民共和國 | 63. 黎巴嫩 | 103. 瑞典 |
| 24. 哥倫比亞 | 64. 列支敦士登 | 104. 瑞士 |
| 25. 庫克群島 | 65. 立陶宛 | 105. 突尼西亞 |
| 26. 哥斯達黎加 | 66. 盧森堡 | 106. 土耳其 |
| 27. 克羅地亞 | 67. 馬來西亞 | 107. 特克斯和凱科斯群島 # |
| 28. 庫拉索 # | 68. 馬爾他 | 108. 烏干達 |
| 29. 塞浦路斯 | 69. 馬紹爾群島 | 109. 烏克蘭 |
| 30. 捷克共和國 | 70. 毛利求斯 | 110. 阿拉伯聯合酋長國 |
| 31. 丹麥 | 71. 墨西哥 | 111. 英國 |
| 32. 多米尼加共和國 | 72. 摩爾多瓦 | 112. 美國 |
| 33. 薩爾瓦多 | 73. 摩納哥 | 113. 烏拉圭 |
| 34. 愛沙尼亞 | 74. 蒙特塞拉特島 # | |
| 35. 法羅群島 # | 75. 摩洛哥 | |
| 36. 芬蘭 | 76. 瑙魯 | |
| 37. 法國 | 77. 荷蘭 | |
| 38. 加蓬 | 78. 新西蘭 | |
| 39. 格魯吉亞 | 79. 尼日利亞 | |
| 40. 德國 | 80. 紐埃 | |

藉地域延伸身分加入

附件 E

《多邊公約》主要條文的分析及評估

條文	性質	分析及評估
(a) 涵蓋的稅種 (第二條)	-	<p>《多邊公約》涵蓋的基本稅種，包括所得稅或利得稅、在所得稅或利得稅以外另行徵收的資本增值稅，以及淨值財富稅。</p> <p>雖然《多邊公約》可涵蓋其他稅種，但我們建議香港只就以上基本稅種提供協助。</p>
(b) 按請求交換資料 (第五條)	強制性	<p>香港一直有處理全面性協定／交換協定伙伴提出的交換資料要求。按照經合組織的標準，根據全面性協定／交換協定與根據《多邊公約》提供的資料範圍相同。</p> <p>我們建議這項強制條文適用於香港。</p>
(c) 自動交換資料 (第六條)	強制性	<p>香港已為實施自動交換資料安排提供法律框架，並打算藉《多邊公約》擴展自動交換資料網絡。另一方面，香港可依據此條文實施自動交換國別報告的安排；這項安排屬 BEPS 方案的最低標準。</p> <p>我們建議這項強制性條文適用於香港。</p>

條文	性質	分析及評估
(d) 自發交換資料 (第七條)	強制性	<p>雖然香港至今沒有自發與全面性協定／交換協定伙伴交換資料，但我們承諾根據 BEPS 方案的最低標準，自發交換六種稅務裁定資料。香港可依據此條文實施有關交換資料安排。</p> <p>我們建議這項強制性條文適用於香港。</p>
(e) 同步稅務調查 (第八條)	強制性，但由締約一方決定是否參與某項調查	<p>同步稅務調查指以下安排：由稅務管轄區在各自境內對彼此有共同或關聯利益的人進行稅務調查，以便交換各自由此所得的相關資料。</p> <p>我們建議香港一般不會參與任何同步稅務調查。</p>
(f) 境外稅務調查 (第九條)	強制性，但締約一方可作出聲明，表示一般不會接納這類請求	<p>境外稅務調查指以下安排：某稅務管轄區可按另一稅務管轄區的請求，在境內進行稅務調查的某一適當環節時，允許後者的代表在場。</p> <p>我們建議根據《多邊公約》作出聲明，表示香港一般不會接納這類請求。</p>
(g) 協助追討稅款 (第十一至十二條)	非強制性	<p>這些條文指稅務管轄區可協助另一稅務管轄區追討其徵收的稅款。</p> <p>我們建議香港不會提供這類協助。</p>
(h) 送達文書 (第十七條)	非強制性	<p>這項條文指稅務管轄區可按另一稅務管轄區的請求，協助後者送達與《多邊公約》涵蓋的稅種有關的文書，包括與司法判決有關的文書。</p> <p>我們建議香港不會提供這類協助。</p>

上表並未載列的其他條文涉及技術和運作層面，例如定義、收到互相矛盾資料的處理方法，以及傳送資料的語言。