Preface to 2013–14 Edition

As noted last year, the Government has sought views on whether the Inland Revenue Ordinance (IRO) should be amended to provide the legal framework for entering into tax information exchange agreements (TIEAs). Enabling legislation was enacted in July 2013 which provides the framework for TIEAs (standalone agreements which only provide for the exchange of information with respect to tax matters —— they do not provide double taxation relief, specify taxing rights or lower withholding tax rates). The legislation will also enable Hong Kong to adopt the 2012 version of the exchange of information article of the Organisation for Economic Cooperation and Development (OECD) Model Taxation Convention. This latest amendment follows those in 2010 which removed the domestic tax interest requirement for exchanging tax information under a double taxation agreement (DTA).

It should also be noted that in June 2013, a new OECD report, prepared at the request of the G8, outlined a number of steps needed to put in place a model of automatic exchange of information. This followed the G20 Finance Minister's endorsement in April 2013 of automatic exchange of information for tax purposes as the expected new standard. It is anticipated that Hong Kong will come under pressure in the future to comply with this new standard.

A Phase 2 peer review on Hong Kong was launched by the Global Forum in December 2012. This review will evaluate Hong Kong's implementation, in practice, of the exchange of information standard and examine whether Hong Kong has taken forward the recommendations proposed by the Global Forum during the Phase 1 peer review. The amendments noted above on TIEAs will assist Hong Kong to pass the Phase 2 peer review. Should Hong Kong fail the Phase 2 peer review, it runs the risk of being labelled an uncooperative jurisdiction and having unilateral sanctions imposed by other jurisdictions.

It is noted that, going forward, the Administration's future policy

The Chinese University Press

priority is to seek to conclude DTAs with Hong Kong's trading and investment partners because of their benefits. However, the conclusion of TIEAs with some jurisdictions cannot be precluded. Last year, a further four comprehensive DTAs were signed by Hong Kong, bringing the total number concluded to 29. A DTA has been initialled with India and awaits formal signature and a number of other DTAs are in the pipeline.

In a welcome development, the Government has enacted legislation to place Islamic financial products on a level playing field vis-à-vis conventional bonds. This delivers the policy initiative first articulated by the then Chief Executive, Donald Tsang, in his policy address in 2007 and most recently by the Financial Secretary, John Tsang Chun-wah, in the 2012–13 Hong Kong Budget. The proposal was also the subject of a public consultation in March 2012. The legislation does not confer special tax concessions on the Islamic finance sector, but aims to ensure that financial instruments of equivalent economic substance are afforded similar tax treatment. In addition, the legislation does not make specific references to Shariah terminologies, but adopts a religion-neutral approach using the term "alternative bond scheme" (ABS), rather than Sukuk, to denote the arrangement to which the proposed tax treatment will apply.

The Budget for 2013–14 contained a number of one-off relief measures aimed at easing the pressure of the economic downturn, but was considered by some as unduly cautious and short on long term vision.

On the court front, a number of cases are scheduled to be heard:—

- Court of Appeal — *Turner Entertainment Networks Asia, Inc. for Muse Communication Co. Ltd*, the *Church Body of the Hong Kong Sheng Kung Hui* and the *Hong Kong Sheng Kung Hui Foundation.*
- Court of Final Appeal — *Aviation Fuel Supply Company, Nice Cheer Investment Limited* and *Moulin Global Eyecare Trading Limited (In Liquidation).*
- An application for leave to appeal to the Court of Final Appeal has been made by *Braitrim (Far East) Ltd*.

The outcome of these cases will be awaited with interest.

Two Bills currently before the Legislative Council seek to implement further measures proposed by the Government to address the overheated property market. The first Bill, introduced in December 2012, seeks to adjust, with effect from 27 October 2012, the duty rates and to extend the holding period in respect of the Special Stamp Duty (SSD) and to introduce a Buyer's Stamp Duty (BSD) on residential properties acquired by any person except a Hong Kong permanent resident. The BSD is to be

The Chinese University Press

charged at a flat rate of 15% on all residential properties, on top of the existing stamp duty and the SSD, if applicable.

The other Bill, introduced in April 2013, seeks to double the *ad valorem* stamp duty rates with effect from 23 February 2013. In addition, the charging of *ad valorem* stamp duty is to be advanced on non-residential property transactions from the conveyance on sale to the agreement for sale. Transactions which took place before 23 February 2013 will remain subject to the original stamp duty regime. It is proposed that the increased *ad valorem* stamp duty will not apply to an agreement/conveyance for a residential property where the purchaser/transferee is a Hong Kong permanent resident acting on his own behalf and who does not own any other residential property in Hong Kong at the time of acquisition; the old *ad valorem* stamp duty rates will continue to apply to such an agreement/ conveyance. The Bills are currently being considered by the Bills Committee which has raised a number of objections. Whether the bills are enacted in their present state remains to be seen.

Ayesha Macpherson Lau
hktaxationguide@kpmg.com.hk
July 2013, Hong Kong

The Chinese University Press