

Press release

LCQ4: Charitable bodies operating private hospitals

Wednesday, December 12, 2012

Following is a question by the Hon Chan Kin-por and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (December 12):

Question:

Quite a number of middle-class people have relayed to me their dissatisfaction that while they hope to have access to the quality healthcare service of local private hospitals, the significant increase in service charges in recent years has deterred them from doing so and they can only seek medical treatment in public hospitals instead. Most of the private hospitals are charitable institutions which are exempt from tax under section 88 of the Inland Revenue Ordinance (section 88). They must be established solely for charitable purposes recognised by the law. The Inland Revenue Department (IRD) will conduct reviews periodically and ask those private hospitals to submit their account statements and other relevant documents so as to ascertain whether their activities have deviated from their charitable objects, and whether their business and profits derived therefrom meet the requirements under section 88. IRD will then decide whether their tax exemption status should continue or be revoked. In this connection, will the Government inform this Council:

(a) of the details of the reviews conducted by IRD in the past decade on whether the tax-exempt private hospitals were still eligible for tax exemption, including the frequency of such reviews, the years in which the reviews were conducted and the outcome for each hospital;

(b) of the criteria based on which IRD determines if the uses of the private hospitals' income and assets have deviated from their charitable purposes, and whether their business meets the requirements under section 88; in cases where deviations have been identified, whether IRD will first issue a warning to the hospital concerned and revoke its tax exemption status only when the situation has not been rectified; whether IRD had issued any such warning and revoked the tax exemption status of any private hospital in the past decade; and

(c) whether there are differences between the criteria applicable to private hospitals mentioned in (b) and those adopted by IRD for other charitable institutions or trusts; of the number of charitable institutions or trusts, other than private hospitals, whose tax exemption status was revoked by IRD

in the past decade; whether IRD will review if the relevant criteria are too lax?

Reply:

President,

My replies to the questions raised by the Hon Chan Kin-por are as follows -

(a) At present, among the 11 private hospitals in Hong Kong, nine of them are operated by seven charitable bodies which have obtained tax exemption status in accordance with section 88 of the Inland Revenue Ordinance (IRO). Over the past 10 years, the Inland Revenue Department (IRD) conducted a total of 19 reviews of the above-mentioned charitable bodies. Owing to the secrecy provisions in the IRO, the IRD could not disclose information of any tax cases, including the details and results of the reviews concerning the above-mentioned charitable bodies which operate private hospitals.

(b) and (c) Currently, there is no statutory definition of what constitutes a charity or a charitable purpose in Hong Kong. In handling charitable bodies and charitable purposes, the IRD has all along made reference to the cases in the common law as the determining criteria. According to past case law, charitable purposes include relief of poverty, advancement of education, advancement of religion and other purposes of charitable nature that are beneficial to the community. Relief of sickness is also a charitable purpose as ruled by the court. The above criteria are applicable to all charitable bodies with tax exemption status under section 88 of the IRO, including charitable bodies which operate private hospitals.

Apart from the above criteria, according to the requirements under section 88 of the IRO and same as other charitable bodies carrying on trade or business, charitable bodies which operate private hospitals have to comply with the following conditions in order to maintain their tax exemption status –

(1) their trade or business shall serve to carry out the objects stated in their governing instruments, or such trade or business are mainly carried on by persons benefiting from such charitable purposes; and

(2) the profits derived from such trade or business are solely used for charitable purposes and are expended substantially in Hong Kong.

For revenue protection, the IRD conducts from time to time reviews of tax-exempt charitable bodies. Same as the treatment for other tax-exempt bodies, the IRD would require

charitable bodies operating private hospitals to furnish account statements, financial reports, annual reports and any other information related to their activities, etc. to verify if they are still in compliance with the legal requirements.

If any tax-exempt charitable bodies are found to be carrying out activities incompatible with the charitable objects stated in their governing instruments, or if their income and assets are found not wholly used for the charitable purposes stated, the IRD would require them to provide further information so as to decide whether their tax exemption status should be retained or revoked. Generally, the IRD would allow the charitable bodies concerned to give an explanation and take appropriate remedial measures, including termination of all activities not relating to the charitable objects of their governing instruments, before revoking their tax exemption status. If they fail to comply on or before the deadline, the IRD would revoke their tax exemption status. In the 10 financial years between March 2002 and December 2011, the IRD revoked the tax exemption status of a total of 909 charitable bodies.

Currently, the above-mentioned seven charitable bodies which operate private hospitals are all on the list of tax-exempt bodies under section 88 of the IRO. Owing to the secrecy provisions in the IRO, the IRD could not disclose if it has ever issued warning letters to any of the charitable bodies which operate private hospitals.

Section 88 of the IRO serves to provide tax exemption for organisations which have fulfilled specified eligibility criteria. The scope of that provision is mainly confined to the determination of whether or not an organisation is liable to tax. From the taxation perspective, we consider that the relevant provision has served the dual purposes of granting appropriate tax exemption for various types of charitable bodies and protecting revenue.

Ends