

**Press Release**  
**LCQ11: Filing of Employer's Return**  
Wednesday, February 19, 2014

Following is a question by the Hon Tang Ka-piu and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (February 19):

Question:

At present, employers are required to file with the Inland Revenue Department (IRD) an Employer's Return of Remuneration and Pensions (Employer's Return) in respect of each employee, furnishing information such as the employee's personal particulars and remuneration paid to the employee in the relevant year of assessment, etc. Recently, some members of the public have approached me for assistance, saying that they had accidentally discovered that the information furnished by their former employer about them, including their annual income, was untrue, and that they were merely temporary staff of that employer, rather than full-time employees, as furnished by the employer. They have also pointed out that there are loopholes in the aforesaid arrangement because employees will not know that their employers have furnished IRD with untrue information about them if they have not received the tax demand notes from IRD, and no confirmation by employees by means of signature is required for the Employer's Returns filed with IRD by employers. In this connection, will the Government inform this Council:

(1) whether IRD has conducted random checks regularly on the Employers' Returns filed by employers; if it has, how it verifies the existence of employment relationship between employers and employees, as well as the truthfulness of the employees' personal particulars and remuneration reported on the Employer's Returns;

(2) since it is stated on IRD's web site that after filing the Employer's Return, the employer should pass a copy of the document to his employee, of the measures put in place by the authorities to conduct random checks and verify if the employers have done so; of the number of cases uncovered by the authorities in the past five years in which the employers had not done so, and whether the employers concerned have been penalised; if they have, of the

penalties in general; and

(3) of the respective numbers of cases in the past five years in which the authorities uncovered that the employers had furnished false information on their employees' remuneration because of the complaints received or through other channels; among such cases, of the number of those in which the employers had exaggerated their employees' remuneration, the relevant total amount of taxes that should have been paid by the employers, and the number of employers consequently convicted; how the authorities will plug the aforesaid loopholes?

Reply:

President,

(1) The IRD adopts the "Assess First, Audit Later" (AFAL) system for tax assessment, i.e. assessments will be issued based on the information reported in tax returns first and, assessments will then be selected for audit using customised computer-assisted case selection programme and risk assessment tools. The AFAL system is applicable to both Salaries Tax assessments for employees and Profits Tax assessments for employers. When conducting post-assessment audits or based on information available, if there is doubt on the salary expenses charged in the accounts of the employers or on the remuneration reported in the Employer's Returns, the IRD's assessing officers will request the employers to furnish further supporting information and documents, such as copies of employment contracts, salary payment records, employees' acknowledgement and bank statements. In addition, the IRD may request the employees to provide relevant information to verify the correctness of the remuneration reported in the Employer's Returns. According to the Inland Revenue Ordinance (the IRO), any person who fails to comply with the requirements specified in the IRO or makes an incorrect return or false report with intent to evade tax or assist any other person to evade tax would be subject to heavy penalties. The maximum penalty for tax evasion is a fine of \$50,000 plus a further fine of three times the amount of tax undercharged and imprisonment for three years.

(2) Generally, the IRD issues Employer's Returns (BIR56A) to employers in April each year, requiring employers to report their employees' remuneration

for the relevant year of assessment. In the "Notes and Instructions" enclosed with the Employer's Returns, the IRD reminds employers to provide a copy of the completed Employer's Return of Remuneration and Pension (IR56B) to their employees concerned so as to facilitate the latter's completion of tax returns. However, this is not a statutory requirement. This guideline has also been uploaded to the IRD's website for public reference.

(3) The IRD could not provide statistical data for the past five years on incorrect reporting of employees' remuneration discovered due to complaints or by other means as the IRD does not keep such statistics. The IRD would follow up on informer's cases concerning incorrect filing of Employer's Returns. Penalty actions under the IRO will be taken if the IRD discovers that an employer, without reasonable excuse, makes an incorrect return. The IRD will also continue its effort to combat tax evasion and tax avoidance and to reinforce the use of information technology, staff training and investigation techniques so as to enhance the overall effectiveness of its work.

Ends