

Press Release

LCQ5: Assessments or additional assessments made under section 60 of the Inland Revenue Ordinance

Wednesday, June 28, 2017

Following is a question by the Hon Chung Kwok-pan and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (June 28):

Question:

Under section 60 of the Inland Revenue Ordinance (IRO), the Inland Revenue Department (IRD) may, within a year of assessment or within six years after the expiration thereof (the retrospective period), assess any person who has not been assessed for that year of assessment, and make additional assessment of any person who has been assessed at less than the proper amount. Where the discrepancies are due to fraud or wilful evasion, the retrospective period is 10 years. Under section 51C of IRO, a business operator shall keep sufficient records of his income and expenditure for a period of not less than seven years, so as to enable the assessable profits of such business to be readily ascertained. IRD has also advised that it is a good idea for a business operator to keep the business records for a year of assessment in which losses were recorded to facilitate the losses to be set off against the assessable profits for the various years of assessment thereafter. As such, a business operator often needs to keep his business records for more than seven years. In this connection, will the Government inform this Council:

(1) of the number of cases in which assessments or additional assessments were made by the authorities in the past three years under section 60 of IRO, and set out the total assessed amounts by the year of assessment involved; among such cases, the number of those involving small and medium enterprises (SMEs) as defined by the Government and the relevant total assessed amounts, as well as the number of responsible persons convicted of tax evasion and the penalties imposed on them;

(2) as some SMEs have relayed to me that IRD's practice of making additional assessments is too harsh and the retrospective period is too long, and that IRD has unfairly calculated the assessed amounts in the additional assessments on

grounds that SMEs were unable to provide their business records for more than 10 years, whether the authorities will exercise discretion in handling such cases according to the specific circumstances of individual cases; and

(3) given that the main contents of section 60 of IRO have not been amended for many years, whether the authorities will consider, in light of the current business and economic environment, amending the provision, including shortening the retrospective period, so as not to overburden SMEs in their business operation; if so, of the details; if not, the reasons for that?

Reply:

President,

As the tax administration of the Government of the Hong Kong Special Administrative Region, the Inland Revenue Department (IRD) is mainly responsible for the assessment and collection of taxes to safeguard government revenue. All along, the IRD handles tax matters in a fair, impartial and professional manner and assists members of the public to understand and fulfill their tax obligations.

My consolidated reply to the three parts of the question is set out below:

Under section 60 of the Inland Revenue Ordinance (IRO), where it appears to the IRD that any person chargeable to tax, irrespective of industry or business size, has not been assessed or has been assessed at less than the proper amount for any year of assessment, the IRD may make tax assessment on such person within six years after the expiration of the year of assessment concerned. The relevant IRD officers are guided by their professional experience and knowledge of the industry in selecting the cases. They will not cause undue nuisance to law-abiding taxpayers.

While both Unit 1 and the Field Audit and Investigation Unit of the IRD make additional assessments under section 60 of the IRO, the IRD has no statistics on the number of cases in which the provision is enforced or the amount of tax involved, etc.

It is of paramount importance to set a retrospective period for additional

assessments so that the IRD can perform its duties of safeguarding tax revenue. Tax authorities of other developed economies have also introduced similar retrospective periods. In fact, the retrospective period applies not only to the IRD in making additional assessments, but also to the taxpayers. The IRO provides that under specified circumstances, such as an excessive assessment due to an error or omission in the tax return, the taxpayer may apply for correction of the assessment within six years after the end of the relevant year of assessment. Likewise, a taxpayer who has paid tax in excess of the amount payable under certain circumstances may apply for a refund within six years after the end of the relevant year of assessment. Shortening the retrospective period will have a significant impact on the current tax assessment mechanism and the overall government revenue.

Meanwhile, section 51C of the IRO stipulates that every person carrying on a business in Hong Kong shall keep records of his income and expenditure for not less than seven years. Proper retention of relevant business records will safeguard the interests of taxpayers. Under the prevailing tax regime, the losses of an enterprise can offset its profits in future years without any time limit. If an enterprise has assessable profits in a year of assessment but is still in an overall loss position after deducting the losses brought forward from previous years of assessment, the enterprise concerned is not required to pay tax for that particular year of assessment, until the losses are fully set off. Insofar as the tax audit of these cases is concerned, the IRD will conduct review in respect of all relevant years of assessment, including those in which losses were incurred. Hence, taxpayers should keep the business records of those relevant years of assessment until seven years after the end of the year in which the losses have been fully set off. Therefore, there may be cases where record keeping spans a longer period of time. Keeping business records for seven years (i.e. including the current as well as the previous six years of assessment) ensures that the IRD can obtain the necessary information when conducting tax audit so as to make accurate tax assessments.

Given the above considerations, we have no plan to shorten the retrospective period for additional assessments for the time being. The Government will continue to review the prevailing tax regime from time to time so as to explore whether there is room for improvement.

Ends