

Press release

LCQ12: Charitable institutions

Wednesday, January 26, 2011

Following is a question by the Hon Abraham Shek and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (January 26):

Question:

According to section 88 of the Inland Revenue Ordinance (the Ordinance) (Cap. 112), "there shall be exempt and there shall be deemed always to have been exempt from tax any charitable institution or trust of a public character" provided that the profits derived from the trade or business carried on by such institution are applied solely for charitable purposes and are not expended substantially outside Hong Kong. It has been reported that there are more than 6,000 registered charities in Hong Kong of which only 170 are monitored by the Social Welfare Department. In this connection, will the Government inform this Council:

(a) of the details of the criteria adopted for vetting and approving applications for registering charitable institutions bearing tax exemption status;

(b) whether any review of the Ordinance had been conducted in the past three years so as to enhance the financial transparency over the operation of tax-exempted charitable institutions; if so, whether it has considered including public access to financial information as a necessary condition in vetting and approving the applications in (a) and of the details; if not, the reasons for that;

(c) of the details of the established measures for monitoring the fund-raising activities and financial operation of registered tax-exempted charitable institutions;

(d) given that only the "Reference Guide on Best Practices for Charitable Fund-raising Activities" was issued as a voluntary guideline in 2004, whether it has considered since 2004, with reference to the examples of overseas jurisdictions, drafting charity law to regulate the operation of charitable institutions; if so, of the details regarding its proposed timetable for conducting public consultation; if not, the reasons for that; and

(e) of the number of charitable institutions that had been prosecuted in the past three years for carrying out fund-raising activities not serving charitable purposes, and respectively of the details of the penalties imposed on such institutions; whether it has considered raising the penalties on such improper activities; if so, of the details; if not, the reasons for that?

Reply:

President,

(a) to (d) Currently, there is no statutory definition of what constitutes a charity or a charitable purpose, nor is there a single piece of legislation which governs charities in Hong Kong and how donations are applied. A charity can be established in different forms, including a trust body, a society established under the Societies Ordinance, a corporate registered under the Companies Ordinance, an organisation established under a statute, etc.

According to section 88 of the Inland Revenue Ordinance, charitable institutions or trusts of a public character should apply to the Commissioner of Inland Revenue if they wish to enjoy tax exemption. Applications should be supported by copies of relevant certificates of registration, the instruments and rules governing their activities (e.g. the Memorandum and Articles of Association, the Trust Deed, or the Constitution) and lists of activities carried out in the past year and/or to be carried out in the coming year, so as to demonstrate that the applicants' objects are charitable and their activities are compatible with their objects.

In processing tax exemption applications of charitable institutions, the Inland Revenue Department has all along made reference to the case law in the common law. In general, tax-exempt charitable institutions must be of a public character and established solely for charitable purposes recognised by the law. According to past case law, "charitable purposes" include (a) relief of poverty; (b) advancement of education; (c) advancement of religion; and (d) other purposes of charitable nature that are beneficial to the community.

As for monitoring of the fund-raising activities and the financial operation of charitable institutions, the Law Reform Commission of Hong Kong (the Commission) is conducting a review of the legal and regulatory framework relating to charities in Hong Kong, including the regulation of on-street fund-raising activities. The Commission is now studying the draft public consultation document on the subject prepared by its sub-committee and plans to issue it in the first half of 2011. The Administration will keep in view the progress of the review and its recommendations.

(e) Several government departments, including the Food and Environmental Hygiene Department (FEHD), the Television and Entertainment Licensing Authority (TELA) and the Social Welfare Department (SWD), are responsible for regulating charitable fund-raising activities. FEHD has not compiled specific enforcement statistics on unauthorised fund-raising activities concerning illegal hawking on the streets for non-charitable purposes. According to TELA's records, in the past three years, no charitable organisation granted with a lottery licence was prosecuted for carrying out fund-raising activities not serving charitable purposes. Besides, in the past three years, there were two cases prosecuted by the Police for unauthorised charitable fund-raising in public places under the Summary Offences Ordinance (Cap. 228). Three persons involved in the two cases were convicted and fined from \$500 to \$2,000. Upon receipt of reports on charitable fund-raising activities suspected to obtain money by deception, SWD will refer such reports to the Police for investigation and follow-up action. According to section 16A of the Theft Ordinance (Cap. 210), anyone who is convicted of fraud may be sentenced to imprisonment for a maximum of 14 years.

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