

Press release

LCQ14: Filing of tax returns and payment of taxes

Wednesday, June 22, 2011

Following is a question by the Hon Jeffrey Lam and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (June 22):

Question:

Regarding the filing of tax returns and payment of taxes by taxpayers, will the Government inform this Council:

(a) what mechanism the Inland Revenue Department (IRD) has to ensure that it maintains effective means of contact with taxpayers, so as to prevent some taxpayers from claiming that they have not received letters from IRD;

(b) what mechanism IRD has to ensure that taxpayers have duly received its letters, so as to prevent some taxpayers from claiming that they are not able to complete and file tax returns and pay taxes on time because they have not received letters from IRD;

(c) given that at present, IRD does not issue any written acknowledgement to taxpayers upon receipt of the tax returns they completed in writing and their tax payments, what mechanism is in place at present to assure taxpayers that IRD has duly received their tax returns and tax payments, so as to prevent their being accused of omitting to file tax returns and pay taxes; and

(d) given that at present, when taxpayers file their tax returns, they are not required to provide documents to support their application for deduction of expenses, e.g. expenses of self-education and approved charitable donations, etc, how IRD, in making assessments, review the taxpayers' tax returns to ensure that there is no misrepresentation or tax evasion by deception; of the number of cases reviewed by IRD in each of the past five years, and, among them, the number of cases in which prosecution was instituted, as well as the penalties imposed?

Reply:

President,

(a) and (b) Section 51(8) of the Inland Revenue Ordinance (IRO) stipulates that a taxpayer who changes his/her address shall within one month inform the Inland Revenue Department (IRD) in writing of the particulars of the change. Taxpayers may notify IRD of their updated correspondence addresses through various means, such as tax return, notification of change of correspondence address, letter or online service provided by "eTax" on the "GovHK" platform. Any person who without reasonable excuse fails to comply with the relevant requirement commits an offence under section 80(1) of the IRO and is liable on conviction to a fine of \$10,000.

According to section 58(2) of the IRO, every notice given by virtue of the IRO may be served on a person either personally or by being delivered at, or sent by post to, his/her last known postal address, place of abode, business or employment or any place at which he/she is, or was during the year to which the notice relates, employed or carrying on business or the address of the property in respect of which he/she is chargeable to property tax.

According to section 58(3) of the IRO, any notice sent by post shall be deemed, unless the contrary is shown, to have been served on the day succeeding the day on which it would have been received in the ordinary course by post. If taxpayers have opted to receive tax returns and/or notices of assessment through the online service provided by "eTax", they are deemed to have received the above documents once the relevant electronic records are accepted by their accounts maintained at the "GovHK" system.

In fact, many notifications issued pursuant to the IRO, including tax returns, demand notes and other correspondences, require taxpayers to take certain actions within the stipulated periods. To avoid delay, taxpayers should take the initiative to notify the IRD of their latest correspondence addresses as soon as possible. In this regard, the IRD reminds taxpayers at appropriate time every year the importance of updating their correspondence addresses, submitting tax returns and paying tax in time by publishing notices on the newspapers or through the Information Services Department and holding press conferences. The above reminders are conducive to encouraging taxpayers to

submit tax returns and pay tax in a timely manner in compliance with the requirements of the IRO. At the same time, they help remind taxpayers to approach the IRD for appropriate assistance where necessary.

(c) Since January 1, 2009, the IRD has terminated the issuance of paper receipts for tax payments made through cheque sent in by post or through electronic means (except for profits tax paid by corporations and partnerships and property tax paid in respect of jointly owned properties). The above arrangement has taken into consideration circumstances that taxpayers sending in cheque by post or using electronic means for tax payments could ascertain the payment status through various means, including the transaction records generated by the automatic teller machines, the payment reference numbers and payment confirmation records issued by the institutions offering the payment service as well as the bank statements. Should there be special needs, taxpayers may still apply for "certificates of payment" from the IRD. If taxpayers pay tax at a post office in person by cash, cheque or the Easy Pay System, the amount paid will be printed on their tax demand notes as proof of payment. Taxpayers using the online service provided by "eTax" will receive in the message box of their "eTax" accounts electronic receipts issued by the IRD for their tax payments. They can also check the status of their tax returns through the "tax position" in their "eTax" accounts.

Irrespective of the means adopted in submitting tax returns and paying tax, taxpayers can make enquiries to the IRD either by phone, letter or e-mail on matters relating to their submission of tax returns or tax payments.

(d) In making tax assessments, the IRD would first examine the information furnished by taxpayers in their tax returns. The IRD would conduct tax assessments based on the information furnished in the tax returns after confirming the prima facie accuracy of the information. There is also a computer monitoring system to detect any anomalies in the information such as the self-education expenses and approved charitable donations filed by the taxpayers in their tax returns. For dubious cases, the IRD would double check the information furnished in the tax returns or request further information before issuing notices of assessment.

After issuing notices of assessment, the assessors would screen out cases for review based on the IRD's guidelines. In addition, the IRD would conduct special reviews on certain number of cases which have claimed deduction for individual items such as self-education expenses and approved charitable donations and request the taxpayers concerned to provide the required supporting documents. The IRD does not keep statistics on the number of cases reviewed.

Although taxpayers are not required to furnish documentary evidence for their deduction claims together with their tax returns, according to section 60 of the IRO, the IRD can raise additional assessment for that year and six previous years if the tax charged is lower than the appropriate amount. If the IRD discovers from post-assessment audits that a taxpayer has submitted incorrect information in his/her tax return, the IRD would raise additional assessment on the taxpayer concerned within the statutory time limit, demand for the tax undercharged, and consider instituting prosecution having regard to the relevant circumstances of individual cases. Taxpayers should therefore retain the relevant receipts and records for at least seven years for examination by the IRD in future inspections.

According to section 80(2) of the IRO, a taxpayer who without reasonable excuse makes an incorrect statement in connection with a claim for any deduction or allowance under the IRO commits an offence and is liable on conviction to a fine of \$10,000 and a further fine of treble the amount of tax undercharged. According to section 82 of the IRO, any person who wilfully with intent to evade tax omits from a tax return any sum which should be included, or makes any false statement in connection with a claim for any deduction or allowance, commits an offence. The maximum penalty on conviction is three years' imprisonment and a fine of \$50,000, plus a further fine of treble the amount of tax undercharged.

In the past five years, the numbers of convicted cases before the court pursuant to sections 80 and 82 of the IRO are as follows -

<u>Year</u>	<u>Number of cases</u>	
	<u>Prosecution under section 80 of the IRO</u>	<u>Prosecution under section 82 of the IRO</u>
2006-07	1	3
2007-08	2	8
2008-09	1	1
2009-10	0	3
2010-11	0	4

For the above four convicted cases pursuant to section 80 of the IRO, the fines imposed range from \$10,000 to \$54,650. Among the above convicted cases pursuant to section 82 of the IRO, one taxpayer concerned was sentenced to perform 240 hours of community service and the other taxpayers concerned were fined for an amount ranging from \$23,000 to about \$1.3 million and/or sentenced for imprisonment from six weeks to 24 months.

Ends