

**The use of employers' returns and notifications
for assessing and collecting salaries tax**

利用僱主報稅表及通知書評定和收取薪俸稅

主席：

歡迎大家出席政府帳目委員會第三次公開聆訊，今天聆訊的題目是審計署署長第三十五號報告書第7章有關利用僱主報稅表及通知書評定和收取薪俸稅。出席證人包括庫務局局長俞宗怡女士、署理稅務局局長蘇信先生及庫務署署長沈文燾先生。我先請劉江華議員開始提問。

劉江華議員：

多謝主席。根據報告書第2.11段，有關終止審查僱主報稅表方面提到，自1996年起，稅務局已終止定期審查僱主報稅表。我們當然想知道箇中原因，審計署的資料顯示，在10宗隨機抽查的個案中，有8宗個案是沒有提供詳細資料以至漏報的。這是因為稅務局自96年終止定期審查僱主報稅表，引致稅收上的損失。故此，政府可否告知委員會，為何終止定期審查僱主報稅表？10宗個案有8宗漏報的情況，這是否證實，如果政府不進行審查工作，漏報的情況會越來越多呢？

Chairman:

The Acting Commissioner has not had a chance to put on his earphone and probably did not get the translation.

Mr Elmo Charles D'Souza, Acting Commissioner of Inland Revenue (Atg C of IR):

I did, Mr Chairman.

Chairman:

Would you like to take the question or, the Secretary, would you like to take it first? The Acting Commissioner?

Atg C of IR:

With your permission, Mr Chairman. The Honourable Member is quite right. As the Director of Audit says, in 1991 we slowed down what we referred to as the employers' return assessing. The principal reason why we did that was that, on the basis of past experience, we had found that it was just a routine check which was done and it was very unproductive in terms of revenue and very cost inefficient in terms of the number of staff who were engaged in the particular activity. If I could give you an example, in the three years to 31 March 1989, the net effect of the wages audits which were conducted as a consequence of the employers' return assessing resulted in an additional tax of only \$130,000.

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Mr Chairman, the reason why the Department has seen fit to adopt some other approach to add value to the services we provide was because this routine exercise was not cost-effective. However, we have replaced the actual exercise with a strategic approach to deal with the particular problems that we encounter. To give you a few examples, as a consequence of releasing the staff from dealing with employers' return assessing we now have the field audit approach. Field auditors, when they undertake the screening and scanning of files for field auditing and when they do actually field audit a case, they look at it in a total aspect and as part of their auditing activity they would look into the employers' returns and the way the employers have complied.

In addition to that, since we have focused on what we regard as more high-risk areas, we have been dealing with share option schemes. As a consequence, we have raised something like \$15 million in tax revenue. We have looked at multi-nationals in terms of the share option schemes they have. As a result, we have generated some \$22 million. More recently, since 1995 we have been looking at disguised employment cases. These are the service company cases. As a consequence of that, we raised something like \$228 million.

As you can see, Mr Chairman, the strategic approach, as compared to the results which I indicated earlier, has proven to be a much more effective way of dealing with the issue. However, now that the Director of Audit has requested that we go back and look into the matter, the Department has appointed an Assistant Commissioner to form an ad hoc committee and to have a complete fresh look at the matter to see if there is some other way whereby we can meet the objectives which the Director of Audit has explained to us.

To give an example of what may be involved, Mr Chairman, we have a working population of 3.3 million and only 40% of the people actually pay tax. There are 60% who are outside the tax net. If we take round figures, we are talking of 2 million people for whom now, as a consequence of what the Director of Audit is suggesting, and small employers, small and medium enterprises, would be required in respect of every single employee to complete an employers' return. The Department would have to process all of that when in fact there would be absolutely no tax consequence. I think it is a question of balancing the costs and the benefits.

Mr Chairman, we consider employers of restaurants and employers in the construction industry and the transport industry are going to be very, very severely affected if we have to introduce the recommendation of the Director of Audit in its totality. We are hoping that we can meet them and discuss the problems, and see to what extent the cost of compliance is going to increase because of the Director of Audit's recommendation. In the light of that, we will see whether we can in some way come out with a practical way of dealing with the problem.

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Chairman:

I think the Acting Commissioner has not fully answered the second part of the question, particularly on the nine cases which can be stated.

Atg C of IR:

Regarding the nine cases that the Department has investigated, the total tax involved is less than \$16,000. This is just another example that, notwithstanding there is a significant apparent discrepancy, the actual tax effect is very, very small.

Chairman:

Maybe for other Members who are not familiar with the tax system, can you explain quickly as well why it is such a small sum, where apparently from the table it looks a rather large discrepancy financially?

Atg C of IR:

In these nine cases, there were four cases in which the employees would have been within the tax bracket and their employers did not submit a return for them. Four other employees were within the \$108,000 exemption, and consequently there was no need for them to respond. In the remaining one case, the employer made an error. There was a duplication which the employer had done incorrectly. The tax effect of all the nine cases is less than \$16,000.

主席：

劉江華議員。

劉江華議員：

主席。為了弄清楚問題的嚴重性，局長剛才提到這9宗個案只牽涉萬多元的稅收，但根據表二來看，不準確的程度相當高。雖然最終只涉及萬多元的差異，在報告書第2.16段的個案中，僱主在僱主報稅表中漏報了7名僱員，而稅務局根據僱員的資料，只向其中3名發出了個人報稅表。第2.16(c)段更指出，稅務局未有為另外3名僱員評稅。我覺得錯漏比率相當高，在7名僱員中，有1名由僱主提供的資料有誤，3名有交稅，其餘3名則沒有交稅，即一半僱員沒有交稅，請問局長剛才所說的16,000元，是否已包括這3名人士？請你再清楚解釋，這個案的3名人士是否只牽涉萬多元？

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主席：

署理稅務局局長。

Atg C of IR:

Mr Chairman, in response to the Honourable Member, I would confirm the specific results of these nine cases. In the number one case in Table 2, there was an apparent 77% discrepancy due to the omission to report liable employees, the actual tax understated is \$15,967. In another four cases, the discrepancy was due to the omission to report low income employees or married employees, the non-reporting of single employees earning below the basic allowance, or the employees' income being non-taxable. There was no tax effect. In the remaining one case which I referred to earlier, the discrepancy was due to an error made by the employer in grouping salaries and wages of two related companies. There was no tax effect. These are the specific nine cases which the Honourable Member has referred to.

主席：

劉江華議員。

劉江華議員：

主席。我仍然想局長回應問題的嚴重性。現時提出的10宗個案，可能只涉及萬多元，但全港有很多僱主，10宗個案有8宗有問題，涉及萬多元，如果有10萬名僱主，所牽涉的範圍和金額便相當龐大，局長是否認為這情況繼續下去，少收的稅項也會相當龐大呢？

Atg C of IR:

Mr Chairman, if I may respond to the Honourable Member. As I explained to you at the beginning of my answer, in the three years prior to 1989, in those days we used to do all the employers' returns on a three-year cycle and we used to in fact each year look at 35,000 cases. Over a period of three years, we had looked at 35,000 cases each year, and the discrepancy we discovered in terms of tax was \$130,000. So, I would respond to the Honourable Member by saying that we cannot extrapolate from these nine cases, because our actual experience is that it is quite different.

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主席：

我想作少許跟進。我完全理解局長的答覆，根據過往數年的經驗，現在大家已公開知道稅務局沒有定期審查僱主報稅表，沒有所謂的防禦功能。如果僱主知道有審查，便會全數填報所有資料。沒有審查便失去了防禦功能，連“sample”也不做，局長的答覆似乎是說一是全部作出審查，否則全部都不作審查。可否以“on sample basis”來審查呢？最少這樣可以加強防禦的能力。尤其是根據現時的《稅務條例》，漏報稅項的懲罰頗重，需要做“field audit”，即實地察視。若結合以上的測試，可以把防禦的能力加強。局長為何不考慮這一點呢？

Atg C of IR:

Mr Chairman, we thank you for that suggestion. There are two answers to the question. One is that we appreciate your suggestion, and we are certainly going to take that on board. In future, we are going to do what we shall refer to as a compliance check. We shall take a random sample of cases and have a look at it, so that we keep people honest.

The second aspect of your question, Mr Chairman, is that the principal obligation for filing a return is not necessarily with the employer, because there is no tax involved there. It is with the employee. Regardless of what information employers provide in their returns, the principal obligation is still upon employees to file true and accurate returns.

I may just extend that answer, Mr Chairman. We do a matching exercise by comparing the returns filed by employers with the returns filed by individual taxpayers. In the past two years, for example, we have recovered tax and penalties of \$34 million and \$38 million respectively.

To extend this point of the employers' return check again, it stands as a fact that if an employer lodges his accounts and gives us certain figures, it seems highly improbable that he would give the same Department completely different figures in the employers' returns. That is why our experience over the years has shown this to be such an unprofitable exercise.

Chairman:

Having filed numerous returns myself, I quite understand that. The financial accounts figures have no direct bearing on the employers' return at all. I think even the Director of Audit's Report recognises that. So, making a comparison of those figures is a very laborious and difficult process. First of all, there are different closing dates for annual accounts and, secondly, there may be a lot of salary elements which are not taxable.

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Atg C of IR:

Absolutely.

Chairman:

I think to compare the two figures is really a hit-and-miss affair.

Atg C of IR:

It is a futile exercise.

Chairman:

I would still ask the Acting Commissioner to try to explain clearly to the public and through the Committee to the Members why on the other eight cases where the Director of Audit has no information to pursue the reconciliation further, whether you can provide a more detailed explanation of what went wrong in the other cases? You pick up Employer A. But for the other eight cases is there a logical explanation of the deviation?

Atg C of IR:

I just gave you a specific answer, Mr Chairman. Would you like me to repeat it?

Chairman:

You have dealt with Table 3.

Atg C of IR:

These are the 10 cases. Table 2.

Chairman:

Table 3 includes all the 10 cases?

Atg C of IR:

Exactly.

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Chairman:

I see. Regarding the discrepancy which you see, you have told us of the tax effect. But can you give us an explanation on how the figure is reconciled as well? Is it possible to actually have a reconciliation?

Atg C of IR:

It should be possible, sir. You can reconcile any two figures. We can certainly do that.

Chairman:

I think that is what I am really looking for, a reconciliation statement, so that I can take it to the Committee and explain to Members how such a big figure when it gets to become a taxable sum becomes such a small figure. Then I think it will become clear.

Atg C of IR:

Could we provide that for you in writing, sir?

主席：

Yes. 劉議員，我想若看過所有有關數字後，我會較容易向大家解釋當中的差異。是否有其他問題？劉慧卿議員。

Ms Emily LAU:

I want to ask about the Director of Audit's recommendation about requiring employers to do the reconciliation. According to the Commissioner's reply in paragraph 2.22(a), you said you need time to consider the requirement. Do you foresee that posing difficulties with the employers? Just then on the other point about requiring all the employers to make returns on the employees, you say there is going to be cost involved and you have to consult the employer associations and so on. On this part, is it going to cost them money? Do you think it is going to help?

Atg C of IR:

Mr Chairman, if I may respond to the question. At present, the big employers lodge their employers' returns electronically. At the moment we have 1.6 million employees who are covered electronically. To that extent, there would be no great cost of compliance for the big employers. But, for the remainder, which is in the region of 1.6

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million-plus, these people actually in respect of every single employee would have to prepare an employers' return, and that is a significant additional cost to small employers. It will also be a significant cost to the Department to merely process these papers, and our past experience would suggest the tax is not significant to the extent of the cost.

Chairman:

I would also add that there is another one-point-something million employers who are not filing returns now and who may have to file in the future.

Atg C of IR:

This is correct.

Chairman:

We are talking about something like two-thirds additional files.

Atg C of IR:

Absolutely right.

Ms Emily LAU:

The question I also asked, Mr Chairman, is to submit reconciliation statements. You say that would also be very costly?

Atg C of IR:

We were indebted to the Chairman for the answer there, because what you have in your accounts includes a lot of other figures than simply remuneration and salaries. A reconciliation statement includes a lot of fringe benefits. It includes other items which appear in different sections of the accounts, and this would impose a considerable extra cost on the employer.

In addition to that, we file our employers' returns on 31 March, but of course accounts have all different dates. So it would add a lot of reconciliation problems, which may not necessarily result in an additional dollar of revenue.

Ms Emily LAU:

You do not think the proposal is very practical and feasible?

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Atg C of IR:

This has been our past experience. But, as the Director of Audit has raised the matter and as perhaps things are changing today, we have undertaken to have a fresh look at it. We will speak to the employer groups and find out the extent to which it is going to impact on their members and, as a consequence of that, we will see if we can come up with a more practical approach as to what we can do.

Chairman:

To put the matter in its proper perspective, I think that it is certainly technically feasible, it is workable. It is just that I think the Acting Commissioner is saying that it may not be cost-effective. I think this is a figure that the Director of Audit may not have in hand before. It may not be cost-effective. There would be a lot of work on the part of the employer, the employee and, in particular, to the Department concerned, in vetting all this information. At the end of the day, having all these resources put into it, the actual tax revenue likely to be missed in the past three years is quite small.

Atg C of IR:

You put it very succinctly, Mr Chairman.

Ms Emily LAU:

The points are not made in the response from the Administration in the Report. From what you said here, it seems you have accepted the recommendations and you are going to look into ways of implementing them.

Atg C of IR:

That is correct.

Ms Emily LAU:

But that is not my impression from what you just said?

Atg C of IR:

What we said is we are going to look for more practical ways of dealing with the exact point.

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Chairman:

I think the Acting Commissioner is trying to say he will suggest other counter-measures and talk to the Director of Audit. He will probably not take on the recommendation in its totality. I think that is what I heard.

Atg C of IR:

Absolutely right.

主席：

劉江華議員。

劉江華議員：

主席。我問下一部分的問題。

主席：

我相信這部分已作了詳細的討論。請開始下一部分。

劉江華議員：

主席。第二部分是有關從香港以外招聘的僱員在終止受僱後未有先交稅便離港。根據表四，納稅人離港前未交應繳薪俸稅是稅收撇帳的最大項目，根據報告書第3.12段，過去3年，每年度在這方面的撇帳達5千多萬至7千多萬元，款額龐大。審計署指出多個撇帳原因，其中一個原因是稅務局沒有及時評稅。報告書第3.16段舉出了一個案例，稅務局其實可以及早發出繳稅通知書以追回稅款，卻未能做到，該段沒有說明原因。稅務局局長在第3.29(d)段表示，評定和收取稅款的程序規定，已載於員工手冊和有關通告內。他會採取所需措施，確保所有負責人員嚴格遵照這些程序規定，並從速及時採取行動評定和收取高風險類別的僱員的薪俸稅，但就此個案而言，稅務局是未能做到，讓納稅人走了。究竟是否有實質的防禦措施，可以防止類似的情況再次發生？

主席：

署理稅務局局長。

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Atg C of IR:

Mr Chairman, with your permission, in an ideal situation, if the employers complied with their obligations and gave us timely notice of the departure of an employee and withheld any monies until they got a letter of clearance from the Department, we would have no problem. Problems do arise genuinely for the employer, because you have situations where the employee leaves all of a sudden. The employer has no prior notification and, as a consequence, is not able to withhold the money, and he do not even have an idea that the employee was going to leave. You then get a second type of situation where, even though the employer has withheld money, it is not sufficient to cover the tax of the employee who has left early. Then there is a third possibility, that an employer actually becomes untraceable or does not have the funds to provide the cash.

We do have this particular problem in relation to this category of taxpayer. The only thing I can suggest to the Honourable Member is that we are going to ensure that the employers take their obligation more seriously. In instances where they say to us that the employee did a flit by night, as it were, we are going to ensure that that is the case. We are not going to take their word quite so easily. The important thing is, of course, education, to ensure that the employer understands his obligation and is going to discharge it.

In addition to that, sir, we have now got the ad hoc committee working to see what other measures we can introduce in order to deal with this particular problem. As we have indicated before, in respect of visiting sportsmen and entertainers we do have a provision whereby tax is withheld. That may provide a model for dealing with this category of taxpayer, but we will need to consider the matter more seriously and it may well be that legislation will be required before we can do anything.

The other aspect of this problem is that once we get the notification that the employee is leaving we do have urgent teams who deal with the problem. In the majority of cases, if no tax is payable the employer will get a letter of release to pay the employee. In those cases where there is a liability, in most of the cases the employee will come to the Department, make his return, pay his tax, and we will issue a letter of release.

In the cases that the Director of Audit has pointed to and drawn to our attention, there has been a problem for the reasons which I gave you. Of those 20 cases, in 17 of them the employer said to us that they did not know the employee was going to leave, he just did a flit overnight. In one of the cases, the prosecution is presently in train, and in two of the cases, we have issued warning letters to the employer. That is the actual outcome on the 20 cases which the Director of Audit has notified.

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So, in relation to stopping a taxpayer from leaving Hong Kong, prior to 1993 it was a relatively simple matter. The Commissioner merely provided a certificate to a District Judge and said that tax was owing and we should stop this person from leaving Hong Kong and we had knowledge that he was about to depart. With the introduction of the liberty of movement regulations under the Bill of Rights Ordinance in 1993, we had to revise the law and we now have what is known as a departure prevention direction. In order to achieve this, we have to ensure that the taxpayer knows he had a liability to tax, and the Department must be satisfied that this person was intending to depart or had departed for good before we can actually go to a judge to achieve the departure prevention direction.

As a consequence of this, because the bar has been raised to such an extent, it has been somewhat difficult for us in many cases to have the necessary clear evidence to satisfy a judge that in fact he would agree to provide us with a departure prevention direction. That is one of the difficulties we face. Having said that, we certainly will speed up as much as we possibly can our procedures to ensure that at the earliest possible time we can obtain direction.

主席：

劉江華議員。

劉江華議員：

主席。局長的答覆很詳細。他剛才的答覆牽涉兩部分，第一部分是僱主的責任，特別在懲罰方面，所以，審計署署長建議加重罰則，局長表示已成立專責委員會，研究落實審計署的建議的最佳方法，請問結果為何？第二部分是向納稅人離港前或其後返港發出阻止離境指示，審計署注意到，稅務局在10宗撤帳個案中取得阻止離境指示所需的時間，平均為800多天，有數宗個案是僱員其後返港時未能及時發出阻止離境指示，800多天相等於兩年多，他們可以自由出、入境，這情況十分不理想。審計署認為稅務局應檢討有關程序，以期大幅縮短取得阻止離境指示所需的時間，稅務局已成立了專責委員會，請問最新的程序為何？局長估計可以把時間縮短多少天呢？大家都知道讓該等人士在兩年多自由出、入境是不妥當的。

主席：

署理稅務局局長。

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Atg C of IR:

Mr Chairman, how soon we can get a departure prevention direction is purely dependent on whether we have the relevant evidence that the particular person had knowledge that he was owing tax. To give you an example, sir, if this taxpayer left Hong Kong without his employer or the Department knowing, if we have since issued a demand note but he has not received it, if it is returned to the Department undelivered, we cannot take action because we do not know that he had knowledge that he owed tax.

The second hurdle is that we must have knowledge that he intends to depart Hong Kong for good. People going in and out of Hong Kong is not a good enough reason to get a departure prevention direction. There are people in every line of business going into China and out of China and crossing the border by plane. We cannot stop them, unless we have knowledge and can satisfy a judge that he had the intention to depart permanently without paying tax. This is the high bar that we have to cross before we can convince a judge to give us a departure prevention direction. It could be one year or it could be one week if we have the relevant evidence.

劉江華議員：

可否回應罰則方面的問題？

Atg C of IR:

With regard to penalties, this is a matter which the ad hoc committee is looking into. If we want to increase it, we will have to come before this body in order to do so. We are considering it and we will seek policy approval in the fullness of time before we can do anything.

主席：

李華明議員。

李華明議員：

主席。請翻閱報告書中文版第14頁第3.9段，我有兩項提問，一項是詢問署理稅務局局長，另一項是詢問庫務局局長。我引述第3.9段，“稅務局一般會處理僱主遞交的每一份僱員開始受僱通知書／僱員行將停止受僱通知書。不過，稅務局其後即使發現有僱主沒有遞交這些通知書，也不會採取任何跟進或懲處行動”。因而造成日後納稅人離港所產生的問題。為何沒有任何跟進和懲處行動呢？如果這句是事實的，為何有此習慣？局長在第15頁表四註1中指出，撇帳稅款超逾25萬元的個案，需由庫務

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局局長批核，25萬元或以下則由稅務局局長或授權的稅務局首長級人員批核，我相信庫務局局長曾經批核超逾25萬元的撇帳稅款個案，在稅務局沒有採取任何跟進或懲處行動的情況下，請問庫務局局長以甚麼準則批核此類撇帳？是否表示庫務局局長大意批核撇帳，令庫房少收稅款呢？

主席：

兩項問題，先請稅務局局長回答。

Atg C of IR:

Sir, if I may, with your permission, provide the Honourable Member with an answer. In relation to notification of commencement and cessation, the law presently provides for a maximum penalty of \$10,000 for failure to comply. The first point is we are going to increase the number of actions we take against employers, but the reason why we have not taken prior to this action perhaps as much as the Honourable Member would like is that if an employer lodges a return late he has complied, even though he has not strictly complied with the law. Our experience has been, if we go and prosecute such an employer, we are accused of being vindictive. All the judge is concerned with is that he has in fact filed that return. The fact that he has filed it late you are wasting the court's time. That has been one of the factors which has dissuaded us from perhaps taking as much action as we would like to.

Now that the Director of Audit has drawn this matter to our attention, we will again speed up actions on employers not fully complying with their obligation. As I say, if the court is not minded to see it our way, then we do have a problem in taking matters further.

李華明議員：

主席，我可否即時跟進這點？

主席：

主席。如果庫務局局長俞宗怡女士不介意，李華明議員，你可以跟進這一點。

李華明議員：

我希望署理稅務局局長留意，審計署署長該段表示要有跟進或懲處行動，並非要你們動輒提出控告或懲罰，但起碼要發出警告或呼籲，這些也是跟進行動。我同意遲填報資料的解釋，但局長似乎完全沒有任何跟進行動，這才是我最關注的問題。

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主席：

即不只是黑和白這麼簡單。

Atg C of IR:

We do issue warning letters.

李華明議員：

一直有這樣做嗎？

Atg C of IR:

We have been doing that.

主席：

OK，請庫務局局長俞宗怡女士回答第二項問題。

庫務局局長俞宗怡女士：

主席。李華明議員提及，表四註1指出，撇帳稅款超逾25萬元的個案，需要得到庫務局局長批核。事實上，每次稅務局局長都會向庫務局提供有關的詳細資料，但資料並不包括法例所不容透露的納稅人個人資料，因此，我不會知道欠帳人是誰，只知道是納稅人A、納稅人B。稅務局局長提交的資料一般包括：稅務局已用盡法例賦予他們的法定權力追尋納稅人，但在過去7年仍無法追查納稅人的下落，或有理由相信納稅人已不在香港。此外，請李議員留意，即使該筆稅款是撇帳，但日後如果稅務局局長能夠找到該納稅人，稅務局局長仍然可向該納稅人追討欠帳，換言之，從行政角度來看，政府把稅款撇帳，但並不代表寬免該納稅人要繳交稅款的責任。所以，如果稅務局局長發覺納稅人再次出現，而且又能夠把稅單交予納稅人，他仍然需要繳交所欠稅款。

主席：

李華明議員。

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李華明議員：

主席。請問局長有否留意撇帳稅款超逾25萬元以上的個案中，有多少宗是納稅人已離開香港的？審計署指出，因為僱主漏報或遲報從海外招聘的僱員資料，以致稅務局未能及時發出有關文件。如果局長有留意該類個案，妳有否任何建議或補救的方法，使情況不會繼續下去？根據審計署報告，離港前未交應繳稅款的款額龐大，而這些可能是25萬元以上的撇帳，請問局長有否留意這情況呢？

主席：

庫務局局長。

庫務局局長：

主席。多謝李議員的問題。在我記憶中，經我批准超逾25萬元的薪俸稅撇帳個案是非常少的，經我批核的個案主要與利得稅有關，超逾25萬元的薪俸稅個案並不多。由於李議員提出了這項問題，我回去會翻查過去數年的紀錄，如果李議員認為這是有用的資料，我可以提供書面答覆。

至於李議員詢問從政策上所能採取的措施方面，在審計署署長提出問題時，我們已從政策層面作出考慮，但仍未有最後的決定。事實上，很多海外僱員都是守法的市民，因此，我們要取得平衡，任何事情都不會100%完美的。如果不守法的人佔很少數，我們是否需要執行一些令所有海外僱員都受影響的措施呢？我們會從政策層面上考慮平衡這些因素，但現時仍未有最後的決定。

主席：

劉慧卿議員。

劉慧卿議員：

謝謝主席。我想詢問有關搜集抵港及離港人士資料的問題。根據報告書第3.29(f)段，稅務局局長回應：“稅務局不能直接查閱個別納稅人的抵港及離港資料，因為這些敏感資料由另一部門擁有。”我相信該部門是入境事務處。特別是“自《個人資料(私隱)條例》(第486章)制定後，稅務局須依照更嚴格的程序，方可取得這些資料作追討稅款之用。”但在報告書第3.11段卻指出，在1999至2000年度有739名人士未交稅便離港，這是稅務局向入境事務處查詢抵港／離港人士資料後所發現的。請問署理稅務局局長，稅務局是可以調查得到有關的資料的，只不過調查所得的資料可能沒有甚麼幫助，究竟在這方面有甚麼困難呢？

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主席：

蘇先生。

Atg C of IR:

With your permission, Mr Chairman. In the old days we were able to get information from all the entry and exit points of the movements of taxpayers and it used to be a very helpful way to locate taxpayers who had become untraceable because in the immigration they had given their current addresses where they were living and such things. Nowadays, of course, that is not possible because of the privacy requirements, and also because not all travellers passing through immigration checkpoints are required to complete arrival/departure cards which can show the most current addresses. We can only now get the Immigration to give us the information when we get a departure prevention direction from a court, who then empowers the Immigration to stop somebody and give us the information. That is the problem.

Ms Emily LAU:

Mr Chairman, how did the Department get the 739 names? All were after the court had given the order?

Atg C of IR:

This is not in respect of all the 739. Some of these must be old cases because on average we now produce around 100 to 120 departure prevention directions per annum. We actually have concurrently on our books 1,000 departure prevention directions. That is the accumulation over the years which have not been closed. That could be one of the bases on which the 700 figure is arrived at.

Ms Emily LAU:

Mr Chairman, can the Acting Commissioner provide maybe in writing a clearer breakdown of how the 739 was arrived at?

Atg C of IR:

Certainly.

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Ms Emily LAU:

Also, I want to ask the Chairman whether the Acting Commissioner would like to see maybe the law amended or any help given to you so that you can get information on people departing? Or do you think that is actually a breach of the Ordinance and a breach of privacy and you do not think you want to venture into that area?

Atg C of IR:

Sir, we would like as much information as we could get, but there are other considerations which we have to bow down to. Our ad hoc committee will look at the matter and be very grateful for the suggestion which the Honourable Member has made, and we will take it on board that if there are more stringent disclosure requirements that we could get from other government departments, then we would certainly take that on board.

Ms Emily LAU:

Mr Chairman, I have not made any suggestion. I am just asking a question. I think at the end of the day our Committee will make recommendations and no doubt we may have some intense discussions behind closed doors on the way forward on this because we have to balance a number of things, privacy and also how your Department can operate efficiently. I am just asking you a question on what you think. We have not made any suggestion yet. I hope the Acting Commissioner will understand.

Atg C of IR:

Mr Chairman, when I was actually the senior assessor in enforcement I would find it extremely helpful. Even at 10 o'clock at night I would get a call from the Immigration to say that this person is on the stop list, he is leaving, and I would be down at the airport and I would actually get people to pay their tax before they left Hong Kong. Nowadays, unfortunately those type of facilities are no longer available to us and so we have to scratch for these sort of pieces of information that we can now obtain on people's movements.

Ms Emily LAU:

I think we have to deliberate carefully first, Mr Chairman, before we make any recommendations. What I am asking, Acting Commissioner, is for your view? You would like to have that power, that is what you are saying?

Atg C of IR:

That would be very useful.

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Ms Emily LAU:

You also understand the privacy concerns?

Atg C of IR:

That is our hurdle at the moment which prevents us from getting the information.

Ms Emily LAU:

Not just a hurdle, but also something that you respect.

Atg C of IR:

That is the law which we adhere to, yes.

Ms Emily LAU:

Mr Chairman, may I move on to ask about discrimination, or what may be discrimination in some people's eyes. In paragraph 3.29 (i) and (j), your advice is to target the so-called high-risk employees, and these are mainly people recruited from outside Hong Kong. I notice at the beginning of that sentence (i) you said it is your policy to maintain a simple and non-discriminatory tax system, which is of course something I whole-heartedly support. I do not know whether you have taken any advice, including legal advice, as to whether it is really desirable to target a particular group of employees, i.e. those recruited from outside Hong Kong, because you regard them as high-risk and to apply a treatment to them that would not be applied to other taxpayers. Is that something that is desirable? Is there something for us to even explore adopting?

Atg C of IR:

With your permission, Mr Chairman, the Honourable Member makes a point which we wholly recognise, that we should not discriminate between the two types of employees. The problem is, of course, that the Administration faces the problem that these people are much more likely to leave Hong Kong, as we have found out, without paying their tax. Of course, some of them. And once they are out of our jurisdiction, it is then very difficult to in fact recover the tax.

As an example of different treatment, for example, visiting sportsmen and entertainers, when they come to Hong Kong, their agents have to withhold the tax and remit that tax to the Department. Now, that system seems to work reasonably efficiently. If we could look upon that as a possible model in respect of a high-risk category of employees, that may well provide us with some suggested solution to the problem which the Director of Audit has identified.

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Ms Emily LAU:

Mr Chairman, I asked the Acting Commissioner whether he has taken any legal advice on the question of discrimination or any possible challenge on the grounds of discrimination. Have you taken any advice?

Atg C of IR:

The ad hoc committee is actually looking at the possible solutions, and as we ponder them, we will also seek legal advice. At the moment we have not.

Ms Emily LAU:

I think we would like to hear from the Acting Commissioner after he has taken all sorts of advice. Will you be able to assist this Committee in the next few weeks because we will be deliberating on our own report. Will you be able to give us further information after you have taken your legal advice and other advice that you think that is the way forward?

Atg C of IR:

Mr Chairman, we had anticipated that we would have to make continuing reports to this Committee and part of those reports would be the progress we had made on the various issues which the Director of Audit has identified.

Chairman:

I think Ms LAU is really saying that it would be much more useful to us if it could be done before you even finalise the initial report, so we can take that into account as well.

Atg C of IR:

Certainly.

Ms Emily LAU:

Mr Chairman, if the lawyers think it is problematic, and I am sure we will take advice from our own legal adviser as well, but if there is something that could be opened up to challenge, then we as a committee will be very careful before we make the recommendation.

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Chairman:

Even to deal with that I think we need to know much more precisely what is meant by "high-risk group" than the mere description here.

Ms Emily LAU:

I think they have supplied a list to us, Mr Chairman. Have you got that letter, Mr Chairman? 29 November 2000, that is the list. I think Mr Lau Kong-wah asked for the list in relation to paragraph 3.12 of the Audit Report and the Acting Commissioner has very helpfully given us a list of these people, the write-off cases, and the 20 employees. Out of them, eight are engineers and managers of construction companies, six are senior officers of banks and other financial institutions, four are managers of manufacturing and trading companies, one is an accountant, and the last one is a consultant of an executive search company. This is an indication anyway.

The Acting Commissioner has quite helpfully pointed to the visiting entertainers and sportsmen that they do get special treatment and so far that has not been challenged. One way forward is to group them in that same category but then you will be requiring the employers to withhold the money. I do not know whether these people, these accountants, will challenge. We would look forward to your further report after you have consulted the various bodies.

Chairman:

I think the reply really is a sample. I am not sure when they say "high-risk group", whether it actually means that sample group. If there is any way you can more clearly define "high-risk group", I think it would be helpful, from your point of view. The Director of Audit mentioned extensively "high-risk group" but they have been using the examples supplied to the Mr Lau but I think the policy must come from the Department and not from the Director of Audit. In that respect, I think how you look at what is meant by "high-risk group" is very relevant.

Atg C of IR:

Mr Chairman, the ad hoc committee will look at all these points, but prior to their final deliberation, we will provide this Committee with legal advice as to whether we can reasonably proceed on the basis of discriminating against this high-risk group.

主席 :

劉江華議員。

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劉江華議員：

主席。剛才庫務局局長表示，撇帳並不等於納稅人回港時不會被追討欠稅，換言之，政府應該有一個資料庫，記錄欠稅人士的數目和欠稅的款額，才可以在有關納稅人回港時向他們追討欠稅。一年內已有5千多萬元的撇帳及700多人未交稅便離開香港，請問庫務局局長，根據現時資料庫的資料，累積未能收回的稅款有多少？而人數又是多少？

主席：

庫務局局長。

庫務局局長：

主席。庫務局並無此類資料庫，即使有，亦沒有用處。根據《稅務條例》第4條，稅務局局長申請撇帳時，不會提供納稅人的名字和身份，所以，提交予庫務局的文件只是個案1、個案2、個案3。資料庫應該設在執行和運作的部門內，即稅務局。我只可以向劉議員提供在過去數年內所批核的個案總數，但這些個案在撇帳後有多少能被稅務局成功討回稅款，便不得而知，因為稅務局局長無須就此向庫務局匯報。

劉江華議員：

可否請署理稅務局局長回答這條問題？他有這類資料庫嗎？

Chairman :

Mr D'Souza

Atg C of IR:

I regret because the question was directed at the Secretary for the Treasury that perhaps I did not pay enough attention. Just to let the Honourable Member know, for example, in the year ended 31 March 2000 we wrote off 12,588 cases and of course, as the Director of Audit has pointed out, 739 were taxpayers who had departed from Hong Kong and 10,078 were in fact taxpayers with no known source of income. These 10,078 taxpayers were still in Hong Kong but, on the basis of our database scanning, these taxpayers had no known source of income. If at any time in the future these taxpayers take up employment, own a property, open a business, we will then go back to them to collect it, notwithstanding that the tax has been written off. Finally, there were 1,700 untraceable taxpayers.

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Chairman:

I do not think that is the question.

劉江華議員：

主席。稅務局應有這一個資料庫，局長可於稍後才提交有關累積欠稅的總額和已離港的欠稅人數。稅務局局長剛才提及出境的資料，表示入境事務處過去可以即時通知稅務局，但現時就未必可以這樣做；我擔心逃稅人士再入境時，入境事務處會否第一時間通知稅務局？局方可以採取甚麼行動呢？抑或是在他們回港時，根本不能採取任何行動呢？究竟現時的程序是怎樣？

庫務局局長：

稅務局局長。

Atg C of IR:

Prior to the Privacy Ordinance, we had what we call a watch list and when tax was written off we automatically advised the Director of Immigration to place this person on the watch list. Then every time he made movements in or out of Hong Kong we would be advised that taxpayer A has entered or left and on occasions what his address was. Since the privacy ordinance, this information is not so readily available. It is a bit more difficult for us to trace the movements of taxpayers.

劉江華議員：

主席。這是最擔心的地方。現時稅務局不容易知道他們何時出境，而《個人資料(私隱)條例》實施後，他們返港亦無法知悉，那麼如何追討欠稅呢？剛才庫務局局長表示在欠稅人回港時定必向他們追討欠稅。究竟如何追討？這裏是否有漏洞呢？

主席：

庫務局局長。

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庫務局局長：

主席。這問題也是由稅務局局長回答。但我想澄清我剛才所說的話，我剛才說撇帳後並不代表寬恕了該納稅人要交稅的責任，稅務局局長會繼續盡力，盡力而非擔保，以法律賦予的權力之下盡量追稅。如果法律並無賦予稅務局局長現時可透過入境事務處處長協助調查，稅務局局長的工作便變得困難，不過，稅務局局長一定要依法辦事，在法律容許的情況下，盡量向欠稅人追討。

主席：

好。謝謝，庫務局局長。

Chairman:

Mr D'Souza, we probably have not dealt with the main question, which is how are you going to go about finding these people coming back to Hong Kong and hand them a notice to demand for tax?

Atg C of IR:

Sir, we are going to have to operate within the constraints of the law. We can always recommend but, if the other reasons for the law are greater than the Department's requirement, no doubt we will have to operate under those constraints.

The thing that we have in our favour of course is that if somebody comes back to Hong Kong and takes up employment again or enters into business again or earns any income from Hong Kong again which comes to our notice, then we are in a position to recover the tax at that time. We do have a database today whereby it is very easy for the collector and the enforcement section to know all the taxpayer's sources of income, whether he has property, etc.

Chairman:

Mr LAU has asked whether it is possible to have accumulated figures?

Atg C of IR:

No problem.

Chairman:

Can you confirm to us in writing again whether any of this tax written off

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Atg C of IR:

Are recovered?

Chairman:

That would be useful too, but whether there could be a taxpayer who is faced with tax written off twice. That would be an indicative figure because if they are all one-time offenders and they do not repeat that offence, then what you said is probably right, that they cannot come back and redo the whole thing again. I think that would be a sort of assurance.

Atg C of IR:

Sir, we shall certainly give you the figure in writing. Perhaps I could ask the Honourable Member as to over what period he would like the cumulative tax effect. The Department has been going since 1947 and I am sure he does not want to go that far back. If he wants it for the last five years, I can give it to him now.

Chairman:

Five years, I think will be useful.

Atg C of IR:

Five years, I can give it to you now but not the cumulative figure. I can give you each individual year.

劉江華議員：

5年的資料足夠了，這問題可以書面答覆。接着我想問另一個更重要的問題。主席。根據局長剛才所說，除非逃稅人士返港工作，若他是旅遊或路經香港，便無法向他追討欠稅，我們只知道他返港，但不能向他追稅，正確嗎？其他國家有否這類情況呢？

Chairman:

If he comes back I think there is a limit to your radar screen, as you could describe it. If he comes back for tourism or any other reason besides conducting business which is registerable with the government, then there is no other means for you to detect him?

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Atg C of IR:

No.

Ms Emily LAU:

After you have detected, what can you do?

Atg C of IR:

After that, very often we will send our inspectors and immediately get a departure prevention direction if we know he has left Hong Kong. Very often in a situation like that, I say "very often", but there are cases where a taxpayer who subsequently wants to come back to Hong Kong will settle his tax liabilities before he does because he does not know what our procedures are and he is afraid that he will be arrested by the Immigration. Very often they settle before they come to Hong Kong.

主席:

劉議員，請繼續。

劉江華議員:

當納稅人離開香港時欠稅，即使他返回香港，他是涉嫌逃稅，政府為何不盡一切執法力量向逃稅人士追討？在這情況下，欠稅人只要“過了海便是神仙”，他可以不用交稅了。

Atg C of IR:

All I can suggest to the Honourable Member is that we do in fact use whatever resources are available and means available to us to identify and track down taxpayers. We have an inspectorate group, and they assist the collector in searching untraceable taxpayers. We follow up addresses, we follow up with neighbours, we follow up telephone numbers. We do whatever is within our power and within the law to identify and track these taxpayers down.

Chairman:

When you are seeking legal advice, it may be useful I think to slightly clarify this for us too. There is no more stop list really on the immigration point because of the Privacy Ordinance and all these considerations. But, there are exemptions or possible exemptions from the Privacy Ordinance, particularly where there is a criminal offence

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being committed, etc. At what point in time would you consider that exemption or an application of an exemption possible? In view of the fact of what Mr Lau has said, it is clearly a tax offence, but it is probably not a criminal offence and the offence may be a failure to file notice or failure to pay tax, which is a different offence again. All these need to be sorted out clearly through legal advice.

Atg C of IR:

Sir, we can do that, but the Department's view of whether something is taxable or not may not coincide with the taxpayer's view. Very often a taxpayer may leave Hong Kong and because in his view his income has arisen offshore, for example, therefore he feels the Department is being unduly oppressive in trying to clear his case. But, before that, he has to leave Hong Kong, because he has made up his mind to go. In that sense he leaves without having a conscience that he has not paid tax because he fully believes that is not taxable.

Chairman:

I remember the Bills Committee deliberation as well. He may be a genuine businessman, an international businessman, flying all over the place doing work, and you cannot stop him from doing his business simply for suspicion.

Atg C of IR:

And there may be tax in dispute and other such matters.

Ms Emily LAU:

Can I ask the Acting Commissioner to confirm again the point raised by Mr Lau that if that person comes back and if you happen to know that he is back, what is it that you can do to chase back the money? You can send your inspector to the guy. But, of course you cannot arrest him, you can just ask him to pay and, if he does not pay and if he wants to leave a week later, there is not much you can do. Is that what you are telling this Committee?

Atg C of IR:

The first thing the inspector would do - assuming he did not have knowledge of his demand note, for example - the first thing the inspector would do is go to the hotel room and hand him a copy of his demand note. He would then be apprised that he has his liability outstanding, and we would immediately then in those circumstances seek to obtain a departure prevention direction, so we would stop him from leaving Hong Kong.

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Ms Emily LAU:

Would you be successful in getting the notice from the court?

Atg C of IR:

If we are satisfied on the basis of the evidence in our file that this taxpayer had departed from Hong Kong, that he had been away for a significant period of time, that he had not paid his tax, then I think there would be no problem.

主席：

我們已就此問題討論了很長時間，大家是否仍有其他問題？我仍想問一個簡單的問題，為了方便大家，我會以英文提問，On page 25 of the English text, which is the Audit recommendations on employers' notifications in paragraph 3.28, the general recommendation seeks to highlight the need for enforcing existing legislation, reviewing it, which we do not know what it is going to be like soon, or focusing on high-risk groups, which again I think we are not sure how to go about at this point in time until we get a clearer definition. In the assessment of the Acting Commissioner, even if you had done all this, is it possible at all to prevent these people from leaving or, if they are going to be effective, how effective do you think they are? I would like the assessment of the Director of Audit as well. Again, is it a matter of cost and benefit, to put it into a proper perspective, or is it going to be a comprehensive solution to plug the loophole?

Atg C of IR:

Sir, regarding those aspects of the Director of Audit's Report, there are some which in our view are more important than others. To the extent that they are more important, of course we will take immediate steps, either within the Department to implement them or, if that is not possible, then seek policy approval to take matters further to the extent that we cannot do it ourselves. In some other respects, as I say, in respect of getting employers to provide all this detail which in our view would have no tax consequence, I think it is imposing an undue obligation on employers and perhaps on the Department to process a great deal of paperwork which our past experience has clearly demonstrated would have no tax effect.

Chairman:

The question also is that even if you had done all this, the loophole is still there. Even if you had done all this, you cannot prevent things from happening the way it is.

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Atg C of IR:

No. The Director of Audit has not been forthcoming with us as to how he has identified this group who are employed outside and came into Hong Kong. Assuming we had that information, I presume he has got it from perhaps the Immigration Department.

Chairman:

It is really just the audit sample.

Atg C of IR:

Once we had that type of information, we could then focus more carefully on a very, very narrow group. There may well be people recruited from outside Hong Kong who are formerly permanent identity card holders. Those type of people would not come in this group, you see. But it would be necessary for the Director of Audit to let us know how he identified this group of people?

Mr Dominic CHAN Yin-tat, Director of Audit (D of A):

Mr Chairman, I think we got all our information from Inland Revenue Department records, from your records. I think we share the same records. As to whether if you follow all the recommendations you plug all the loopholes, I do not think you can. These are merely suggestions for you to consider. With the best will in the world, I am sure that you will minimise the occurrence of this kind of cases, that is the intention.

Ms Emily LAU:

Mr Chairman, to follow up. I think the Acting Commissioner is going to provide us with the list of so-called high-risk groups and how they come to be branded as such. If we look at Table 4 attached to paragraph 3.10, it has the analysis of salaries tax written off. There are several groups of write-offs. The first one is those taxpayers departed from Hong Kong, and I guess those would be branded by the Director of Audit as a high-risk group. Then if you look at the others, the taxpayers with no known source of income, percentage-wise, in terms of amount it is 30%, it is \$47 million. That is also quite substantial. Then the other, of course, is untraceable taxpayers, and that is 29%.

Even if you look at the amount, the others are also quite substantial in terms of money that has to be written off. I think it would be quite interesting to find out how such people come to be targeted. My worry, Mr Chairman, is that we do not want certain people in Hong Kong, whether they are visitors or local people, to feel that they have been singled out as high-risk.

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Chairman:

Actually I have read the Report of the Director of Audit. I am not sure I read it comprehensively enough, but my impression was that the description was the choice of words of the Audit Report. There is no such distinction within the Inland Revenue Department at this point of time?

Atg C of IR:

That is correct, Mr Chairman.

Chairman:

I think it is just a description without a clear definition at this point in time, loosely used by the Director of Audit in his Report.

D of A:

I think it is also a term used by the Inland Revenue Department officials when you talk to them. Anyway, it is not well defined, I agree. It is just a general description.

Atg C of IR:

The only thing we would refer to as "high-risk" is there are certain groups who have a propensity perhaps who are not as honest as some other groups.

Chairman:

Given the sensitivity of the issue, I think we need to revisit the whole thing and to even look at whether it is feasible to target selective groups.

Ms Emily LAU:

Is the Acting Commissioner able to assist us?

Atg C of IR:

We have undertaken that my ad hoc committee who is considering the high-risk proposals will also try and identify for you the high-risk group, as it were, and define them more clearly.

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Chairman:

If one can be identified at all.

Ms Emily LAU:

If you look at Table 4, if you can give us more information? The taxpayers departed from Hong Kong is only one of the groups. As for the others, the Director of Audit does not brand them as high-risk?

Chairman:

I would suggest that we remove the words "high-risk" once and for all quickly. I would perhaps ask the Acting Commissioner to consider looking at the characteristics of certain taxpayers who are more likely to evade tax by departing. If you describe the characteristics of those people, rather than a particular group, I think it would be a lot easier for everybody to accept.

Ms Emily LAU:

Mr Chairman, if you say that, then we are just looking at 37%, those who have departed. The others have not departed but the tax has been written off, and that should also be an issue of concern.

Chairman:

I rather suspect it is a matter for a different audit report, is that right?

Ms Emily LAU:

They have targeted the high-risk group.

Chairman:

The Director of Audit, how would you like to deal with it?

D of A:

Mr Chairman, I think, as you just said, it is a term that even Inland Revenue officials use but it is not well defined. The Acting Commissioner has already given examples as visiting entertainers and sportsmen, that they are a high-risk group, that that is an example of a high-risk group. It is a general term. If you do not like that term, I agree that we can use another term to describe a category of taxpayer. We can use another term.

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Chairman:

I think Ms LAU is also referring to Table 4 of the analysis.

Ms Emily LAU:

And, Mr Chairman, I think it is unfair to say the entertainers and sportsmen are a high-risk group. I do not think we have been given any indication that they have evaded taxes. I think the arrangement right now is that there is no problem with them, isn't it?

Atg C of IR:

Yes.

Ms Emily LAU:

Then how can we say they are high-risk?

Chairman:

Maybe the Acting Commissioner would like to reflect on all this.

Ms Emily LAU:

We all have to reflect on this.

Chairman:

Maybe the Acting Commissioner would like to reflect on all this.

Atg C of IR:

May I clarify the thing about visiting entertainers and sportsmen? We do have a withholding system so, we do not have a problem. If we did not have that then obviously.

Chairman:

There is specific legislation dealing with a specific category of taxpayer. That has been the past way of dealing with it.

Atg C of IR:

That is correct.

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Chairman:

OK, shall we move on? There is one section we have not covered yet. Does any Member want to deal with it? On the Government side, I think Mr Shum gets off very, very lightly today.

I would like to ask one question. I do not want to put the civil servants into a high-risk category. It seems part of the recommendations on the private sector side seems to be increased penalty, enforcement of penalties on the area of filing and perhaps speed up some of the procedures. We are not sure whether we can or cannot. This is something we can obviously review. But, given the limitation of the Privacy Ordinance, there is a limit to what you can do. The rest of the recommendations really focus on enforcing the existing law and penalties of errors in filing.

I think on the civil service side on the wrong coding there are numerous department heads admitting clerical errors, oversight and all that, but there is no equivalent penalty clause ensuring that they file properly. I am just wondering - I do not want the PAC report to come out to be a double standard - why we are penalising the private sector for errors and oversights but the civil service does not seem to have any way of enforcing or making sure that the employers' returns on their side are correct.

Atg C of IR:

Mr Chairman, it is not that we want to distinguish between Mr Shum and other employers but we operate within the constraints of the law and under the Interpretation and General Clauses Ordinance we are not able to sue Mr Shum.

Chairman:

The question really should be directed to Mr Shum. I am not saying that we should enact a law to put them into a high-risk group. What I am saying is what they can do internally to make sure enforcement is done properly. It seems that even the Director of Audit has no further thing they can say; if you have an oversight, do it better next time. What can be said? Why is it that other people have to go to gaol, pay fines and not the Government side? As an employer, if they do not file correctly there is no consequence. Is there an answer to this double standard?

Mr SHUM Man-to, Director of Accounting Services (DAS):

Mr Chairman, I think we have taken on the recommendation in the Report and what we are going to do is that we shall remind the departments again and again to follow the procedure. We have improved our system so that now whenever they are going to pay part-time employees there will be a prompt warning on the computer screen to remind them to identify this as a taxable income so that there will be no omission in future.

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As regards the penalty, I do not think I can speak for the Government on this. Each individual case would have been looked at individually to see what sort of negligence has been involved. There are procedures within the Government to deal with that. So, I do not think I can give a blanket answer in this respect. If certain staff are found to be negligent of their duty there will be well-established procedures within the Government to deal with that.

Chairman:

Denise.

庫務局局長：

主席。多謝你給我回應的機會。稅務局局長已就法例方面作出解釋，他是政府的一部分，其他政府部門亦是政府的一部分，根據香港法例第1章，稅務局局長不能以法律程序跟進其他政府部門未完成的工作。我們現時主要採用教育和提醒的方法，我理解這類工作主要由部門內的文職同事處理，我相信文職的同事可透過更多培訓，使他們了解工作範圍內的每一環節。當然，如果證實有同事嚴重疏忽的極端情況，我們會按公務員銓敘條例來跟進事件。不過，我相信，到目前為止，還沒有這類事件發生。我們可向文職人員提供更多培訓，庫務署透過這些機制來提醒同事，從而得到改善。

主席：

好，多謝庫務局局長。劉慧卿議員。

劉慧卿議員：

“好”並不等如你是接受了。你提出這一點很好，其實，很多市民都不明白，為何香港法例第1章會容許政府有不同的對待。可能有人說是政策，我們不應該做，但在過程當中，最少要我們感到公平，否則，我們向其他人不停追討，但政府按香港法例第1章則指他們是不需要的。我留意到審計署署長在其他方面有很多修例的建議，但就這一點卻沒有建議修例，我覺得委員會需要詳細考慮這一點。

主席：

劉慧卿議員。我完全同意你的意見。我提出這一點，並不是要“追打”政府，我希望指出的，政府作為一個最大的機構、最專業的隊伍，同樣會出現這類情況，所以，我們對待其他人士時也應持公平及一視同仁的態度。委員會在提出建議時會平衡這兩方面，不會使人感到對private sector便窮追猛打，對政府部門則輕輕放過。但如何

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才是最好的平衡呢？委員會再作討論時，相信會有處理的方法，我只想在公開聆訊時提出這觀點。

劉慧卿議員：

主席。在討論時，希望法律顧問能就有關香港法例第1章及其他有關資料提供協助，我們希望市民會感覺公平，私人機構和政府都得到相同對待，不會令人感到政府可以凌駕於法律之上。

主席：

庫務局局長。

庫務局局長：

主席。我考慮了30秒，因劉議員最後這番說話，我認為必須記錄在案。政府從來無意圖要凌駕於法律之上，我們接受審計署署長報告書內指出，列舉的個案是部門疏忽所致，但不代表政府有意凌駕於法律之上。政府現時的編制總數有19萬公務員，我不是代表其他部門指現時的情況是正確的，當然，如果情況可以改善，我們會努力改善。雖然政府不受制於《稅務條例》，但從來無意不遵守法律，即使法例約束不了政府，政府仍是會遵守法律的。雖然，有些特別的個案可能由於同事一時的疏忽，但並不代表政府有意凌駕於法律之上。

劉慧卿議員：

這是很有趣的，雖然法例不能約束政府，但政府會像受法例約束般辦事，但署長和稅務局局長又不能處理。主席，委員會對這一點確實要慢慢研究了。局長已證實政府不受法例約束，但政府為何不受法例約束，而其他人卻要受約束呢？局長說雖不受約束，但仍然會盡力去做，試問有多少市民會相信呢？有規管時亦不依足法例辦事，何況沒有法例規管？

主席：

這是有理由的，但我不想再詳細討論，基本上有很多法例.....

劉慧卿議員：

基本上有很多法例也不能規管政府。這一點是正確的。

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主席：

主要在罰款方面，政府向政府繳交罰款，便等於沒有罰款。

劉慧卿議員：

主席。要讓市民知道，政府也會受罰，罰款當然不會給你或我，會向政府繳交的。

主席：

我明白。我們稍後再作討論，今天的公開聆訊到此為止，委員會在商討後會作出建議。

