

立法會（會計界）譚香文議員辦事處

香港中環雪廠街 11 號 中區政府合署西座 425 室

28th October 2004

Hon. Bernard Chan, JP
Chairman, LegCo Panel on Financial Affairs

Dear Bernard,

Review of Inland Revenue Ordinance (Cap. 112)

At the first panel meeting on 12th October 2004, I propose to discuss the review of Inland Revenue Ordinance (IRO) during this legislative session. The details are as follows :-

1. Penalty regime under section 82A

The penalty regime under section 82A gives the Inland Revenue Department (IRD) too much discretion to impose additional tax. Although it is stated in section 82A(1) that the amount of additional tax should not exceed treble of the amount of tax undercharged and IRD has also set out in its website its policy of how to raise additional tax. Some parameters need to be set out in the IRO itself or as a regulation made under the IRO. The level of additional tax should be linked to the period of delay of payment of tax, the number of repeated offences and presence of mitigating circumstances. A lot of appeals on additional tax have been made to the Board of Review in the past and I believe this is a waste of the Board's time (three professional members and a clerk have to sit for a hearing) hearing in most cases frivolous amounts. If the IRD's power could be fettered, this will definitely waste the society's resources.

2. Sections 61 & 61A

Sections 61 and 61A give very convenient powers to the IRD to disregard / ignore

transactions which are artificial or carried out for the main purpose of reaping a tax benefit. Transactions with commercial substance are ignored by the IRD simply because of their very wide interpretation and application of these sections. These sections are quite antiquated, rather we should try to legislate for specific anti-avoidance provision. The general approach / policy towards anti avoidance or overly aggressive tax planning, I believe, should be left for the court to decide.

3. Carrying back of tax losses

The current tax system only allows tax losses to be carried forward without any time limit, but does not allow any carrying back of tax losses to prior years. As such, there is no tax relief for companies/individuals, to enable them to obtain any tax benefits/incentives when currently making tax losses, but having paid tax in previous years when profits were made. Carrying back tax losses would allow companies to claim tax refunds.

4. Double deduction of expenses for companies employing new staff members

In Hong Kong, there is no double deduction of expenses, such as staff wages. However, in Singapore, the tax system allows deduction for tax purposes for certain expenses incurred by Singapore companies with a view to encouraging the development of certain industries. Accordingly, Hong Kong could adopt such an approach by giving double deductions to companies employing new staff, for example, school leavers or new starters, for the first two years' operational expenses, so as to encourage companies to take on more staff members (to create more job opportunities) with lower costs.

5. Other technical suggestions

- (a) The IRD may consider to increase the penalty in order to enhance the correct filing.
- (b) It is suggested that the Commercial Building Allowance (CBA) and the Industrial Building Allowance (IBA) should be computed on the cost of purchase instead of the cost of construction, as the latter may be based on out-of-date data and may not be easy to be evaluated.

- (c) Sales of properties by non-residents may escape from tax net when they made a short-term profit. In terms of fairness to all property transactions, the IRD may request for the clearance on any sales of properties by non-residents and the solicitor handling the sales on their behalf shall inform and seek IRD's approval prior to completion of the sales.

- (d) The current practice requires the taxpayer to request for personal assessment at the time of filing his tax return. It is suggested that the IRD convert the process by allowing the tax being computed on personal assessment basis unless the taxpayer chooses non-personal assessment.

I am very much grateful if certain arrangements to put the above-mentioned issues into the outstanding list could be discussed at the next panel meeting. Thank you.

Yours sincerely,

TAM Heung Man