

財經事務及庫務局

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FINANCIAL SERVICES AND THE
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香港中區
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政府帳目委員會秘書
朱漢儒先生

朱先生：

政府帳目委員會
就審計署署長第六十八號報告書第1章的考慮
政府對慈善機構的支援和監察

根據你在 2017 年 5 月 9 日信件中的要求，現附上所需資料如下－

- (a) 《稅務條例》(下稱《稅例》)第88條訂明屬公共性質的慈善機構或慈善信託的一般免稅規定。稅務局依據稅例履行它的職責。

有意根據稅例第88條申請確認豁免繳稅地位的團體須向稅務局遞交申請，並提供其規管文書副本、一份列出其過去12個月舉辦活動的列表及一份列出其未來12個月擬舉辦活動的列表。若有關團體已成立18個月或以上，則須提供其上一個財政年度的財務報表副本。

在處理根據稅例第88條提出的申請時，稅務局會審閱有關團體的規管文書等資料，並會特別仔細審閱其宗旨、收入及解散條文以確保有關團體的所有宗旨皆屬慈善性質，並且有足

夠的保障防止資金被用作非慈善用途。稅務局有需要時會要求有關團體提供進一步資料以支持其申請。如有關團體未能符合要求，稅務局不會批准其申請。在2012-13至2016-17(截至2016年9月30日)財政年度期間，未能獲稅務局批准的申請數目如下－

財政年度	未能獲批准的申請
2012-13	122
2013-14	137
2014-15	153
2015-16	163
2016-17 (截至30.9.2016)	188

各認可慈善團體的豁免繳稅地位會受定期覆查(一般是每隔四年一次)，以確保其宗旨仍屬慈善性質及其活動符合其宗旨。稅務局會要求被覆查的慈善團體提交文件，包括其年報及財務報表。稅務局就2012年至2016年(截至2016年9月30日)的覆查年度所發出的覆查問卷數目如下－

覆查年度	已發出的覆查問卷
2012	1 347
2013	1 371
2014	1 589
2015	1 364
2016 (截至 30.9.2016)	1 035

覆查期間，如發現有關團體可能參與不符其慈善宗旨或與其規管文書重要條文有抵觸的活動時，稅務局會向有關團體了解及跟進。考慮有關團體所提供，以及從其他渠道所得的資料後，稅務局或會根據慈善捐款組的員工手冊所列的原因[詳情請見項目(c)]撤銷確認豁免繳稅地位。

- (b) 沒有。慈善捐款組的員工手冊第6.3.1段已列明稅務局撤銷確認豁免繳稅地位的五項原因。該五項原因已列於審計署報告書第2.4(c)段，當中第2.4(c)(iv)段包含慈善捐款組員工手冊第6.3.1.3段[儘管多番努力但仍被認為失去聯絡]及第6.3.1.5段[不回應稅務局的查詢]兩個原因。

- (c) 下表列出2012年4月至2016年9月，被稅務局撤銷免稅地位的慈善團體分類數字。

年度	免稅地位被撤銷的慈善團體數目	以審計報告第2.4(c)段所述理由撤銷			
		(i) 慈善團體已解散或清盤	(ii) 慈善團體停止運作或不活躍	(iii) 慈善團體不再符合屬公共性質的慈善機構或慈善信託	(iv) 慈善團體不應稅務局的查詢，或儘管多番努力但仍被認為失去聯絡
2012-13	128	53	12	-	63
2013-14	156	81	18	-	57
2014-15	175	109	23	-	43
2015-16	213	147	18	-	48
2016-17 (截至 30.9.2016)	113	51	17	-	45

正如審計報告書第2.4(c)(iii)段所述，若一個慈善團體修改其規管文書內的宗旨，使其不再純粹為慈善用途而設立，該團體將不再符合屬公共性質的慈善機構或慈善信託。

- (d) 為方便參閱，審計報告書提及的個案(有英文字母)中的團體，會在下面答覆中描述為團體(有相對應的英文字母)。

團體C是一間成立於2000年代的擔保有限公司，宗旨為促進教育，該團體營運一間非牟利幼稚園。在回覆稅務局的覆查問卷時，團體C提供一份經核數師審核的截至2009年7月31日止年度的財務報表，當中披露團體C分別於2008年及2009年7月31日止的期間，有涉及支付租金予一間關聯公司的關聯交易。在回覆稅務局2012年5月的查詢時，團體C在2012年11月表示曾在2008年及2009年度支付480,000元的全年租金予關聯公司，以使用營運幼稚園的處所。此外，在2009年3月31日止的年度，該處所的應課差餉租值為288,000元。

在回應稅務局2014年3月的跟進查詢時，團體C在2014年6月的回覆中表示，該筆480,000元的年計租金是使用該處所的合理款額。在回應稅務局2015年3月的查詢時，團體C提供一份租約副本，顯示該處所的月租為40,000元。

在2015年10月，稅務局展開對團體C的跟進覆查，發現截至2014年7月31日止年度的財務報表，披露涉及關聯交易的租

金支出。稅務局於2016年5月向團體C查詢關於該處所業主的詳情及該業主與團體C董事的關係。團體C在2016年6月回覆指業主為兩名個人，他們與團體C並無關係，而該處所的樓層面積約為20,000平方呎。

在2016年9月，稅務局詢問團體C為何敘述該處所的租金是屬於關聯方交易。在2016年10月，團體C確認該等業主從來不是該團體的董事，但曾營運該團體現在營運的幼稚園。經考慮該等業主並非團體C的董事，與及該處所的樓層面積，稅務局接納有關租金雖然高於應課差餉租值，但並非不符合獨立交易原則的交易。基於團體C的宗旨仍屬慈善性質，而其活動亦與其敘述的慈善宗旨相符，稅務局認為該團體仍是慈善機構。覆查於2017年3月13日完成。

由於處理有關個案的職員工作繁重及有所疏漏，令致稅務局曾有一段時間未有就此個案採取跟進行動。由2016年起，稅務局已加快採取有關跟進行動，並於收到團體C的信件後1至4個月內作出回覆。

- (e)(i) 根據稅例第4條的公事保密規定，為免公開有關人士的身份，現將個案有關資料摘錄如下，以代替呈交有關往來函件——

個案D

團體D是一所於1960年代成立的擔保有限公司，以推廣佛教。該團體的活動包括營運5個中心，及出版月刊及書籍，以促進佛教。在有關時段內，團體D的管理委員會(執行委員會)有15至21個委員。

2016年3月，稅務局接獲投訴指稱該團體的執行委員會中個別成員違反團體D規管文書的規定收取酬金。團體D在答覆稅務局的查詢時，提供其截至2011年3月31日止年度至2015年3月31日止年度的經審核財務報表，顯示團體D錄得介乎5千1百萬元至1億1千4百萬元的總收入，以及介乎4千萬元至8千4百萬元的總支出。在答覆稅務局進一步查詢時，團體D呈交一份酬金與工資明細表[附錄A]，列明2012年3月31日止年度至2014年3月31日止年度的期間，有9個執行委員會成員獲支付酬金。而相關人士已分別在2013年12月、2014年1月及2014年10月辭任或退任委員，而在截至2015年3月31日止年度內，並沒有委員收取酬金。團體D說明在附錄A所列的人

士是因在團體內擔任全職服務職員而獲發薪金和工資，其職責詳情亦列明於有關人士的僱用合約之內。稅務局注意到團體D曾就其僱員，包括上述委員，提交截至2012年3月31日止年度至截至2015年3月31日止年度的薪俸稅僱主報稅表，而其受僱所擔當的職責已列明於附錄A。基於上述資料，稅務局認為，委員是以僱員身份獲發酬金，而所得酬金看似並非過度。再者，相關員工已分別於2015年3月31日前退任或辭任委員。考慮所有相關事實及情況之後，稅務局認為團體D支付酬金予其委員，儘管可能技術上違反了規管文書上有關董事酬金的條文，未有影響其慈善地位。

在審計報告書第2.14(a)段，審計署署長指出十名執行委員會成員在截至2011年3月31日止年度內合共收取5百萬酬金。款項詳情列明於附錄A。從中可見，九名執行委員會成員皆為在截至2012年3月31日止年度至截至2015年3月31日止年度受薪的人士。多出的一位成員只在截至2011年3月31日止年度內收取酬金，而在其他年度沒有支薪。基於上一段所述理由，稅務局認為團體D的慈善地位不受影響。

個案E

團體E在1970年代後期以信託人法團形式成立，以推廣基督教，並舉辦禮拜日崇拜、團契等教會活動。根據其章程，團體E設有一個成員人數為不少於9名及不多於13名成員的執行委員會及一個成員人數為不少於5名及不多於7名成員的受託人委員會。執行委員會及受託人委員會的成員是由該團體的成員在周年大會或特別大會中選出。

以下是團體E在稅務局定期覆查時所提供的資訊：

年	<u>1999</u>	<u>2006</u>	<u>2007</u>
	元	元	元
總收入 (以捐贈為主)	四百萬	四百七十萬	三百六十萬
供給及顧念/捐款	833,900	979,186	967,400
- 收款人總數	85	79	87
- 包括：			
給予受託人/執行委員會委員的款項	20,700	21,400	22,100
涉及受託人人數/執行委員會委員人數	3	1	1
慈善團體受託人人數/執行委員會委員人數	20	20	20

團體E說明捐款[形容為「顧念款」]予85位收款人有兩個原因:

- (1) 捐予該慈善團體內，積極傳播福音和服務該團體的成員及職員，以資助他們的交通費用和基本生活需要。
- (2) 捐予該慈善團體年老、有病及有需要的成員及朋友，以應付他們的財務困難。

就原因(1)，共有11位收款人，款項由3,000元至47,000元。稅務局發現有一位收取9,000元的收款人是團體E的受託人。就原因(2)，有74位收款人，他們每月得到200元至約14,000元。有些收款人得到單次性的款項，而非月付款項。稅務局發現前述受託人，得到2,000元的單次性款項，而兩位慈善團體執行委員，一位得到每月600元[總數7,200元]，另一位則得到單次性款項2,500元。稅務局告知團體E須確保其收入及資產是用作慈善用途。在回覆中，團體E提供證明，顯示支付予受託人及兩名執行委員會成員合共20,700元的款項已經全數退還。考慮所有相關事實及情況之後，稅務局認為團體E是一個慈善組織，亦繼續承認其免稅地位。

2006年及2007年

團體E在2006年及2007年以類似1999年時的原因向其成員作出捐款。每月津貼由500元至6,500元。有個別案例，向收款人發出單次性的款項。在截至2006年3月31日止的年度內，有16位及63位收款人，以原因(1)和(2)得到捐款。稅務局發現，只有一位已退休的執行委員，以原因(2)得到捐款。該名人士在該年度內每月得到1,700元，並在2016年1月收取額外款項1,000元，合共21,400元。在截至2007年3月31日止的年度內，有27位及60位收款人，分別以原因(1)和(2)得到捐款。同樣地，稅務局發現，上述執行委員，在該年度內每月得到1,700元，並在2007年2月收取額外款項1,700元，合共22,100元。在2006年及2007年，有多於10位的收款人收取總數20,000元或以上的捐款。稅務局已要求團體E注意，並就其可能違反章程條款向受託人及執行委員發出酬金的事宜採取補救行動。在回覆中，團體E提供證明，顯示執行委員收取的合共43,500元款項，已經全數退還，並承諾未來不會支付該等款項。考慮所有相關事實及情況之後，稅務局認為團體E是一個慈善組織，亦繼續承認其免稅地位。

個案F

團體F在1990年代中以擔保有限公司形式成立，以推廣基督教。該團體是一間教會，進行一般教會活動，包括星期六、日早上及下午服務，信徒訓練，祈禱行及成員街頭傳福音等等。團體F的組織章程細則訂明長老董事會是教會的管治團體。在2002年，稅務局對團體F進行覆查。該團體未有回覆稅務局分別於2002年7月及2002年12月發出的查詢信件，因此稅務局於2003年撤銷確認其免稅地位。在2011年，團體F要求恢復其免稅地位。在回覆稅務局的查詢時，團體F表示該團體在2003年至2014年[即回覆的日期]期間從未經營任何行業或業務活動。稅務局審核團體F在截至2003年6月30日止年度至2013年6月30日止年度的財務報表時留意到，團體F的總收入介乎355,885元至546,127元，並支付由3,773元至53,582元的愛心禮物予一位同時身兼長老董事會成員的牧師[見附錄B]。團體F的長老董事會在相關年度內有兩至三位成員。團體F解釋，支付愛心禮物予該名牧師，是該團體會員的決定。該等款項是致送給該位牧師，以表達敬意的禮物，並非酬金。當稅務局忠告團體F，向長老董事會成員發出酬金，會違反其規管文書內的條款後，該名牧師向團體F歸還過去兩年所收的愛心禮物，即2012年[3,773元]及2013年[9,400元]。根據團體F的財務報表，2014年沒有支付愛心禮物。考慮所有相關事實及情況之後，稅務局認為團體F是一個慈善組織，並在2015年恢復確認其免稅地位。

個案G

團體G在2000年代初以擔保有限公司形式成立，其宗旨是緩減濫藥者及邊緣青少年的苦難及需要，從而推廣基督教。其組織章程細則訂明董事局須由不少於三位及不多於十五位的成員組成。在2006年，稅務局向團體G發出覆查問卷。因團體G未有回覆覆查問卷，稅務局撤銷確認其豁免繳稅地位。在2012年，團體G要求稅務局恢復其豁免繳稅地位。團體G提供的2002年至2012年期間的資訊顯示，團體G從事禁毒項目，訓練吸毒康復事工工作，而其董事局有三名董事。稅務局注意到團體G截至2008年12月31日止年度、截至2009年12月31日止年度及截至2010年12月31日止年度的經審核財務報表分別載有董事酬金30,000元、130,000元及80,000元。稅務局要求團體G注意董事不應收取酬金。團體G在回覆中表示該團體僱用三位受薪員工，即在2002年時有一位總幹事，一

位培訓總監及一位事工主任。前兩個職位的工作包括:準備會計及行政紀錄、聯絡及會議、籌款、印刷該團體的通訊、擬備禁毒方案培訓資料、宣教及執行事工探訪及培訓。在2003年及2007年,總幹事及培訓總監分別離任,由於團體G並無足夠資金填補空缺,所以董事以義務方式承擔工作。經過四年義務工作,考慮到董事的工作量日增,在2008年,團體G同意,如果扣除營運開支後有餘款,會支付月薪10,000元予董事。因此,董事並非每月可獲款項。由2008年至2012年,團體G的總收入介乎287,571元至759,783元。董事在2008年收取30,000元、在2009年收取130,000元、在2010年收取80,000元、在2011年收取70,000元及在2012年收取65,000元。稅務局告知團體G支付酬金予董事乃違反其規管文書的條款後,團體G回覆表示不知道其董事不可以收取酬金。明白有關規定後,上述提及的董事在2013年4月辭任董事局,並同意退還該團體由2008年至2012年所給予酬金的一半。考慮所有相關事實及情況之後,稅務局認為團體G是一個慈善組織,並在2015年恢復其免稅地位。

- (ii) 稅務局會審閱不同資料,其中包括有關團體的規管文書,以釐清其宗旨是否符合「慈善用途」的意義。這是稅務局執行稅例第88條時一項重要的門檻測試。當某慈善團體違反其規管文書的條款時,會否根本性地影響其慈善性質視乎事實及程度問題。

在上述四個個案中,有關慈善團體的規管文書內的宗旨仍是純粹屬慈善性質,其活動亦大致上與其宗旨相符。並無證據顯示,其管治團體的成員公然從有關慈善團體中尋求私人利益。雖然有個別受託人或董事收取酬金或利益,但所得資訊顯示,他們並非以董事或受託人身份收取酬金或利益,而是以員工身份收取[如團體D、F和G],或者是年老及有需要的教會成員[如團體E],而所得酬金款額看似並非過度。考慮所有相關事實及情況之後,包括有關慈善團體的運作規模及方式,稅務局認為,有關違反屬技術上的違反,但不會對該等慈善團體的慈善地位有根本上的影響。因此,稅務局沒有撤銷確認其免稅地位。

如果某慈善團體公然違反其規管文書的條款,稅務局在全面審視後,認為有關違反會根本性地影響其慈善地位,就會撤銷確認其免稅地位。現時沒有這方面的個案。

- (iii) 在該四個個案，稅務局曾忠告相關慈善團體，但並無規定補救行動的類型。補救行動是由有關慈善團體建議。如慈善團體違反條款向管治團體成員支付酬金，但沒有根本性地影響其慈善地位，稅務局認為在法理上不可撤銷確認其免稅地位。
- (iv) 稅例第88條提供一般免稅予慈善團體。稅務局的角色是衡量所有相關事實及情況後，考慮某一團體是否一個慈善組織，如果是，則確認其免稅地位。考慮的重點是有關團體的宗旨是否屬慈善性質。若該慈善團體從事行業或業務，稅務局要釐清，有關行業或業務帶來的利潤，是否符合第88條但書的規定，可獲豁免繳付利得稅。

請參考項目(e)(i)及(ii)關於個案D至G的詳情及稅務局確認其免稅地位的原因。稅務局處理4個個案時，均貫徹地履行其執行稅例第88條的職責。

如同在項目(a)所解釋，稅務局已採取所需行政措施以履行其執行稅例第88條的職責。稅務局認為稅務局已有效地執行其職責。

- (v) 在第29號審計報告書中，審計署署長指出，當稅務局在1987年發現一間認可慈善機構向其董事發放薪酬後，便規定慈善團體如向董事發放薪酬，須制定條款，訂明董事須具備特別的資歷，而有關機構又無法從其他途徑物色到具備相同資歷的人選，機構才可向董事發放薪酬。審計署的帳目審查顯示，七間在1988年之前獲確認其豁免繳稅地位的認可機構，均有在其規管文書訂明條款，容許向董事發放薪酬，作為他們服務機構的報酬，但文書並無納入條款規管向董事發放薪酬的條件。雖然上述七間認可慈善機構都是在1988年前根據當時行事常規獲確認其豁免繳稅地位，不過，由於監管向董事發放薪酬可防止有人挪用公款，中飽私囊，因此，審計署認為全港的認可慈善機構均需受到這方面的監管。

部份於1988年前獲確認其豁免繳稅資格的慈善機構的規管文書並沒有規管其管治團體成員收取薪酬的條款。為回應審計報告書，稅務局曾於1997年尋求法律意見，以確定倘若稅務局要求現有慈善機構考慮修訂其規管文書以規管向管治團體成員支付薪酬的條款，於法律上是否恰當。根據當時所取得的法律意見，加入該條款對稅務局確認慈善機構的豁免繳稅地位並不屬關鍵性。同時，稅務局亦無權單憑慈善機構未有

依從稅務局要求加入有關條款而撤銷確認其免稅資格。稅務局已將有關法律意見告知審計署署長及政府帳目委員會。

自1988年開始，機構依據稅例第88條向稅務局提出豁免繳稅申請須於其規管文書中加入禁止向管治團體成員支付薪酬的條款，此為稅務局現時的行事常規。另外，當稅務局得悉慈善機構打算修訂其規管文書的其他條款[例如關於會議法定人數的條款]，而該慈善機構的規管文書並沒有關於董事酬金的條款，稅務局亦會要求慈善機構加入有關條款。一般而言，慈善機構均會依從稅務局的要求。

為推廣良好守則，稅務局往後對慈善機構作出定期覆核時，如發現慈善機構的規管文書並沒有關於董事酬金的條款，稅務局會要求慈善機構加入有關條款。

(f)(i) 個案H

團體H於1990年年代以擔保有限公司方式成立，以促進佛教，並營運一間寺院。在2010年，團體H的總收入超過12,000,000元，當中99%為捐款收入，虧損約1,000,000元。在審查團體H截至2010年3月31日止年度的已核數的財務報表時，稅務局向團體H發出查詢，包括要求團體H提供交通開支的細節，及該等開支如何促進其慈善宗旨。團體H聲稱，該筆704,519元的交通開支，是海外弟子回港，參加寺院法師的葬禮的機票開支。稅務局向團體H指出，該等開支可能沒有用於貫徹其慈善宗旨。稅務局要求團體H若同意稅務局的觀點應說明其補救行動。團體H在2013年3月的回覆說，為了符合公眾利益要求，已決定向弟子索回交通開支，並已索回500,000元。在2014年4月，稅務局詢問團體H，是否已索回交通開支餘款。團體H在2014年5月的答覆中表示，在適當時候會收回餘額。衡量所有相關事實與客觀情況，包括團體H了解到交通開支，與其慈善宗旨未必相符，並已採取補救行動，稅務局認為，團體H仍然是一間慈善機構。稅務局繼續確認團體H的免稅地位。

個案I

團體I於1960年代初註冊為擔保有限公司。其主要宗旨為提供緩解予因年紀、惡劣健康、厄運或體弱而致的貧困，與及促進教育。該團體的活動是根據其所述宗旨，作出捐贈。2008年之前，團體I已接受8次定期覆查。在2008年9月，稅

務局向團體I發出覆查問卷，並於2009年9月收回問卷、2007年5月31日止年度的已核數財務報表，與及2007年6月至2008年5月的活動一覽表。稅務局在活動一覽表上，注意到一項撥款是修葺先人的祖墳，在2009年11月，稅務局查問團體I該等活動如何符合該機構的慈善宗旨。儘管多番催辦，團體I並無答覆，稅務局於2011年撤銷其免稅地位的確認。

在2014年，團體I要求稅務局恢復確認其免稅地位。在回應稅務局的詢問時，團體I說，該團體從2009年起，已沒有從事籌款活動，其最重要及唯一的活動，是運用香港一間銀行管理的投資基金、海外未上市的股份及存款利息，捐贈予貧困者及災民。團體I亦提供分別截至2008年至2013年5月31日止年度的已核數的年度財務報表。

稅務局審查已核數的財務報表，注意到在2008年至2013年，團體I的總收入介乎三百萬元至二千五百萬元，而其總捐款支介乎三百萬元至二千三百萬元。稅務局要求團體I提供2008年至2013年的所有捐款細節。審查團體I提供的資料後，稅務局考慮到在2008年有兩筆分別為102,267元及133,956元，即合共236,223元的開支，看來並非為促進其慈善宗旨或為公眾利益。團體I解釋，該兩筆合共236,223元的款額，是支付予一間創辦人與團體I有密切關係的海外慈善基金會。其中102,267元的捐贈，是用以支付部份祖先寺廟建築費用，133,956元的捐贈，是用以修葺祖先墳墓與墳場。團體I辯稱，其創辦人是一位慈善家，建築學校及醫院，以捐贈其祖先村落。重修祖墳的目的是為了提供場所以安置已去世村民的骨灰，而修葺創辦人父親的墓地是因為很多村民定期拜祭以向他表達敬意。因此，團體I認為有關款項與推廣儒家思想的孝道教育有關，能推動及促進人類的生活水平及人類的社會、公德及身心健康，故符合其慈善宗旨。稅務局認為有關開支跟團體I的慈善宗旨的聯繫並不明顯，不同意團體I的說法。儘管團體I仍維持對該兩筆開支的看法，它向稅務局確認往後不會再作出相同的捐款/開支。考慮到該個案的所有相關事實及情況，包括並未發現其他違規事項，及該團體保證往後不會再作出相同的捐款/開支，稅務局認為團體I屬慈善機構並於2015年恢復確認其豁免繳稅資格。

- (ii) 稅例第88條是在1949年通過《1949年稅務(修訂)條例》〔當時序號為第89A條〕而新增至稅例。在引入《1949年稅務(修訂)條例草案》時，當時的律政司提出了有關修訂的宗旨及原因如下－

「17. 向屬慈善性質、基督教性質或教育性質的機構徵收稅款為不理想的，除非該等機構經營任何行業或業務。根據主體條例第89條，總督會同行政局有權豁免任何個人、職位或機構的繳稅責任。但由於此權力須因應個別情況而行使，而並非一般權力，因此，通過一條新法例以給予一般豁免為理想做法。」

現時第88條與當時第89A條並沒有重大差異，現時的第88條如下：

「即使本條例載有相反規定，任何屬公共性質的慈善機構或慈善信託，均獲豁免並當作一直獲豁免繳稅：

但凡任何行業或業務是由任何該等機構或信託經營，而得自該行業或業務的利潤是純粹作慈善用途及其中大部分並非在香港以外地方使用，並符合以下規定，在此情況下，該等利潤方獲豁免並當作獲豁免繳稅－

- (a) 該行業或業務是在實際貫徹該機構或信託明文規定的宗旨時經營的；或
- (b) 與該行業或業務有關的工作主要是由某些人進行，而該機構或信託正是為該等人的利益而設立的。」

從有關修訂的宗旨及原因，以及第88條的結構可見，屬公共性質的慈善機構及信託團體被賦予一般稅務豁免。一個慈善機構只會在經營任何行業或業務，而未能合乎第88條但書所列明的條件下，才需要繳交利得稅，但在此等情況下，該慈善機構根據稅例第88條被賦予的一般稅務豁免並不會受到影響。

就團體H及團體I的情況而言，並無資料顯示該等機構有經營任何行業或業務。而即使該等機構經營任何行業或業務，亦無資料顯示有應課利得稅的利潤。基於上述第(f)(i)項所述的原因，稅務局並不認為應撤銷確認其豁免繳稅資格。

- (iii) 否。詳情請參閱上述第(f)(i)項。

(g)(i)(ii)因應申訴專員及政府帳目委員會對規管慈善籌款活動的關注，政府探索能加強相關規管的方法。因此，稅務局於2003年9月向律政司尋求法律意見。尋求有關意見屬一般性的政策範疇而不涉及任何特定個案。

在徵詢律政司的意見後，稅務局在2017年5月4日給予政府帳目委員會的回覆內已列出有關法律意見的要點。由於有關法律意見受法律專業保密權保障，政府並不認為公開該意見屬恰當的。

(iii)沒有。稅務局不時更新《職員手冊》。該手冊主要列明慈善捐款組的工作程序。慈善捐款組是一個小組別，組內職員透過討論、匯報及經驗分享，完全清楚在2003年所獲得的法律意見的詳情。

(iv)由於稅務局已在2003年徵詢法律意見，澄清上述(g)(i)及(ii)項所述事宜，故未再就該等事宜尋求法律意見。財經事務及庫務局亦知悉該法律意見。

(v)稅例是一條旨在對物業、入息及利潤徵收稅項的法例。作為一稅務執行機關，稅務局一直以來努力不懈地履行稅例下的責任。稅例第88條規定，任何屬公共性質的慈善機構或慈善信託均獲豁免繳稅。

在執行稅例第88條時，稅務局小心地考慮所有情況，從而確定一個團體是否符合「慈善機構」的意思，以及是否符合稅例第88條訂明關於獲豁免繳稅的條件。

稅例第88條已清晰列明關於獲豁免繳稅的條件。除稅例第88條訂明關於獲豁免繳稅的條件外，《釋義及通則條例》第40(1)條並無賦予稅務局增加獲豁免繳稅的條件或向某一機構施加該等條件的額外權力。

(h)(i)稅務局執行稅例，主要職責為評估及徵收稅項，包括辦理慈善機構根據稅例第88條提出的免稅確認申請。稅務局認為有必要確保免稅慈善機構的宗旨屬慈善性質，而有關機構的活動亦與其慈善宗旨相符。事實上，稅務局一直採取所需的執行措施，以確保相關慈善機構符合稅例第88條所訂明的免稅條件。稅務局會在考慮有關個案的相關事實和情況，以及參考經其他渠道取得的資料後，就覆查個別免稅慈善機構的頻密程度作出決定。通常，稅務局每隔四年會對免稅慈善機構

進行一次覆查。四年一次的覆查週期屬一般做法，但如有其他資料[例如來自傳媒、慈善機構的過往記錄、第三方所提供的資料等]顯示某慈善機構曾進行懷疑非慈善活動，稅務局會展開行動[例如提早覆查免稅慈善機構]。換言之，稅務局會調撥額外和合適的資源，處理有可能屬於「高危」性質的個案。

稅務局在履行各項職責時，一直根據部門的服務需要和工作優次，以及相關工作的風險和影響，從而分配資源。申請免稅確認的慈善機構和需要進行覆查的個案均逐漸增多。為應付上述情況，慈善捐款組的員工在2013年4月已增至八人。

- (ii) 正如上文第(h)(i)項所述，稅務局已調配額外人手處理慈善機構的個案。

稅務局在2012至2015年期間，每年平均向1 300至1 600間免稅慈善機構發出覆查問卷。由於受電腦程式所限，慈善捐款組未能提供有關已完成的覆查個案宗數的資料。不過，從第68號審計報告書中的表二及圖四可見，完成覆查個案的平均辦理時間，以及有待慈善捐款組辦理的個案和通訊數目，均在近年錄得明顯跌幅。

- (iii) 法改會在其2013年有關慈善機構的報告書中所提出的第16項建議如下：「稅務局應按需要更頻密地覆查個別免稅慈善組織的帳目，以確定這些慈善組織的活動是否與其慈善宗旨相符」。稅務局在進行定期覆查時，會仔細審視慈善機構在覆查問卷中所提供的資料、財務報表和活動列表，以識別懷疑違反的情況，並向有關方面提出查詢。
- (iv) 就符合稅例第88條的立法原意而言，稅務局認為並無急切需要檢討稅例的相關條文。稅務局的主要職責是以稅務管理機構的身分評定和徵收稅項。
- (v) 稅務局認為上文第(h)(i)項指出，四年一次的覆查週期屬一般做法，而且現行的覆查機制足夠。如可得的資料顯示某慈善機構曾進行懷疑非慈善活動，稅務局會展開特別行動。
- (vi) 稅務局認為慈善捐款組的現有人手足以應付現時因辦理慈善機構的免稅申請和定期覆查慈善機構而產生的工作量。稅務局會繼續評估實際運作需要和相關人手所受到的影響。如有需要，稅務局會考慮透過現行機制申請增加人手。

- (i) 團體L在1990年代中註冊成立為擔保有限公司，其宗旨是推廣基督教。在2002年進行的首次覆查中，團體L向稅務局表示，團體L自註冊成立而來從未進行任何活動，並計劃在2002年或2003年初營辦一家教堂。稅務局完成了2002年的覆查，並決定在2004年進行下一次覆查。

稅務局在2004年向該團體發出覆查問卷，該團體回覆時，提供了截至2002年3月31日止的年度、2003年3月31日止的年度和2004年3月31日止的年度經審計的財務報表。財務報表所匯報的收入為零，而所匯報的開支則介乎105元至685元。該機構回應稅務局有關未來活動計劃的查詢時，表示其成員已決定在2005年開辦一個周六團契和另外兩個家庭小組團契。稅務局接納該等活動計劃為符合團體L的慈善宗旨，並完成有關覆查。

團體L在稅務局於2009年發出的覆查問卷中，表示其尚未開展任何活動。稅務局告知團體L，如團體L屬不活躍的慈善機構，其免稅地位會被撤銷。在2009年10月，該機構向稅務局表示其已計劃聘請一名海外牧師協助該機構在香港提供服務，而教堂將於2009年11月開始運作。稅務局接納該等活動計劃為符合團體L的慈善宗旨，並完成有關覆查。

稅務局在2014年10月向團體L發出覆查問卷。團體L在填妥的問卷中表示其尚未開始營運。稅務局在2014年7月要求團體L就過往一個財政年度提供經審計財務報表的副本，以及團體L最近發出的捐款收據的樣本。團體L就此提供了一張發出日期為2015年9月13日的捐款收據，捐款金額為389.5元。收據所載的捐款機構的英文名稱沒有“Limited”一字，但中文名稱則包含「有限公司」。團體L在回應稅務局有關捐款收據應印上捐款機構全名的查詢時，提供了截至2015年3月31日止的年度的經審計財務報表的副本、一張發出日期為2016年7月31日的捐款收據[捐款金額為450元，收據載有捐款機構的英文及中文全名]，以及一份活動小冊子。稅務局接納該等活動計劃為符合團體L的慈善宗旨，並在2016年9月完成有關覆查。

2017年3月，稅務局要求團體L解釋為何先前所提供的資料，與截至2016年3月31日止的年度的經審計財務報表所載的資料不符。團體L在2017年5月10日回覆時表示，有意舉辦教會

活動，但仍未進行；先前向稅務局所提供的資料是機構計劃進行的活動，而有關的捐款收據純粹是樣本收據。團體L又表示，沒有持有任何銀行帳戶。

為跟進帳目委員會在2017年5月6日的聆訊中所提出的問題，在重新審視個案L後，稅務局希望指出，由2014年起就個案L進行覆檢，直至2016年9月完成覆檢的期間，稅務局並未取得截至2016年3月31日止的年度的經審計財務報表。事實上，有關的核數師報告是在2016年11月30日由核數師簽署，而該等經審計的帳目亦是在同一日期經有關董事審批。關於日期為2016年7月31日的捐款收據，截至2016年3月31日止的年度的經審計財務報表並不涵蓋該日期。至於日期為2015年9月13日的捐款收據，雖然截至2016年3月31日止的年度的經審計財務報表涵蓋該日期，但沒有確鑿證據證明團體L確曾收取有關的捐款。

由於團體L在一段長時間內從未展開活動，稅務局已於2017年5月15日透過通函，取消該團體豁免繳稅資格。

- (j) 《職員手冊》只有英文版。**附錄C**載列整份《職員手冊》[截至2016年3月的版本]。《職員手冊》訂明稅務局的執行慣例及工作程序。

財經事務及庫務局局長



(勞逸民 代行)

二零一七年五月十六日

副本送：

稅務局局長 (經辦人：王慧敏女士)

個案 D
薪金及工資明細表

僱主填報的薪 酬及退休金報 稅表內申報的			截至各年度3月31日止					退任/辭任執 行委員會成員 的日期
職位	受僱職位	2015	2014	2013	2012	2011		
1	職員	Clerk	256,580	248,660	243,720	175,600	-	
2	副主任	Clerk	337,700	327,000	320,200	308,300	305,640	
3 *	局長	Clerk	363,510	354,280	295,240	500,920	624,960	15.1.2014
4 *	主任	Clerk	373,860	362,560	356,540	417,960	409,260	14.12.2013
5	副主任	Clerk	378,740	365,980	357,840	353,140	352,840	
6	副主任	Clerk	412,680	391,680	380,300	382,230	406,660	
7	副局長	Clerk	329,860	319,720	319,240	313,000	452,950	
8 *	局長	Clerk	391,790	408,452	425,840	419,280	469,230	15.1.2014
9	職員	Clerk	350,320	337,580	331,680	325,400	323,340	
10	副主任	Clerk	-	-	356,710	378,520	377,660	
11	副主任	Clerk	384,040	371,380	363,260	330,500	66,300	
12	副主任	Clerk	310,260	301,200	295,480	288,080	270,960	
13	副主任	Clerk	337,540	313,580	304,960	293,240	290,080	
14	主任	Clerk	393,400	395,760	396,780	383,520	380,300	
15	副主任	Clerk	-	-	-	178,930	408,600	
16	副主任	Clerk	325,940	314,220	307,360	304,470	308,580	
17	副主任	Clerk	347,320	334,820	325,960	328,280	327,460	
18	主任	Clerk	450,060	439,740	428,770	425,400	419,140	
19 *	主任	Clerk	529,500	591,974	610,320	610,000	598,920	15.1.2014
20	副主任	Clerk	-	306,965	352,940	345,400	341,800	
21	副主任	Clerk	387,340	394,920	374,640	370,390	379,180	
22	主任	Clerk	436,600	423,480	412,480	359,800	-	
23	職員	Clerk	-	-	-	34,660	164,040	
24 *	局長	Clerk	287,467	568,740	686,140	739,520	705,140	14.12.2013
25 *	事務總長	Manager	747,020	733,220	724,080	716,120	712,860	15.1.2014
26	職員	Clerk	433,980	419,800	410,800	395,720	389,960	
27	副主任	Clerk	343,460	332,780	327,640	335,600	330,280	
28	職員	Clerk	234,790	239,040	244,340	145,594	-	
29 *	副局長	Clerk	569,910	572,280	563,300	534,350	536,720	14.12.2013
30	職員	Clerk	271,900	252,150	66,200	-	-	
31	主任	Clerk	366,980	377,800	369,480	368,240	371,020	
32	職員	Clerk	200,600	156,267	-	-	-	
33 *	主任	Clerk	413,880	401,080	392,800	385,400	382,160	14.12.2013
34	職員	Clerk	225,160	217,540	210,200	141,667	-	
35	職員	Clerk	198,160	191,140	184,120	173,800	150,750	

僱主填報的薪 酬及退休金報 稅表內申報的			截至各年度3月31日止					退任/辭任執 行委員會成員 的日期
職位	受僱職位	2015	2014	2013	2012	2011		
36	職員 Clerk	-	34,960	198,200	120,250	-		
37	職員 Clerk	381,580	361,470	352,700	342,080	361,460		
38	主任 Clerk	-	-	-	87,400	376,160		
39 *	局長 Sub-manager	-	617,860	339,490	422,240	447,890	24.10.2014	
40	Clerk	-	-	-	-	255,690		
41	Clerk	-	-	-	-	136,150		
42 *	Manager	-	-	-	-	393,780	3.1.2014	
43	Clerk	-	-	-	-	367,140		
		<u>11,771,927</u>	<u>12,780,078</u>	<u>12,629,750</u>	<u>12,735,001</u>	<u>13,595,240</u>		
前執行委員會成員的總酬金		-	<u>4,610,446</u>	<u>4,393,750</u>	<u>4,745,790</u>	<u>5,280,920</u>		
佔總薪金及工資的百分比		=	<u>36.1%</u>	<u>34.8%</u>	<u>37.3%</u>	<u>38.8%</u>		
團體D總入息		<u>56,168,854</u>	<u>56,257,346</u>	<u>51,366,505</u>	<u>114,087,813</u>	<u>55,624,666</u>		
佔總入息的百分比		=	<u>8.2%</u>	<u>8.6%</u>	<u>4.2%</u>	<u>9.5%</u>		

*執行委員會成員

個案 F
贈予牧師的愛心禮物

<u>截至各年度6月30日止</u>	<u>愛心禮物</u>	<u>團體F總收入</u>
2003	\$35,904	\$546,127
2004	47,066	470,618
2005	53,582	443,032
2006	25,336	500,636
2007	8,066	421,257
2008	28,947	529,241
2009	33,096	363,134
2010	30,917	395,816
2011	-	355,885
2012	3,773	411,573
2013	9,400	458,881
2014	-	501,774
總共	<u>276,087</u>	<u>5,397,974</u>

Charitable Donations Section Staff Handbook

***委員會秘書附註：本文件只備英文本。**

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Part I - GENERAL ORGANIZATION

Chapter 1 - Organization and Establishment of the Section

1.1 Introduction

- 1.1.1 The Charitable Donations Section (“the Section”) is one of the sections of the CIR Unit, directly responsible to Chief Assessor (Special Duty) (“CA(SD)”). Assessors (Donations) are responsible for the general overall supervision of the Section.

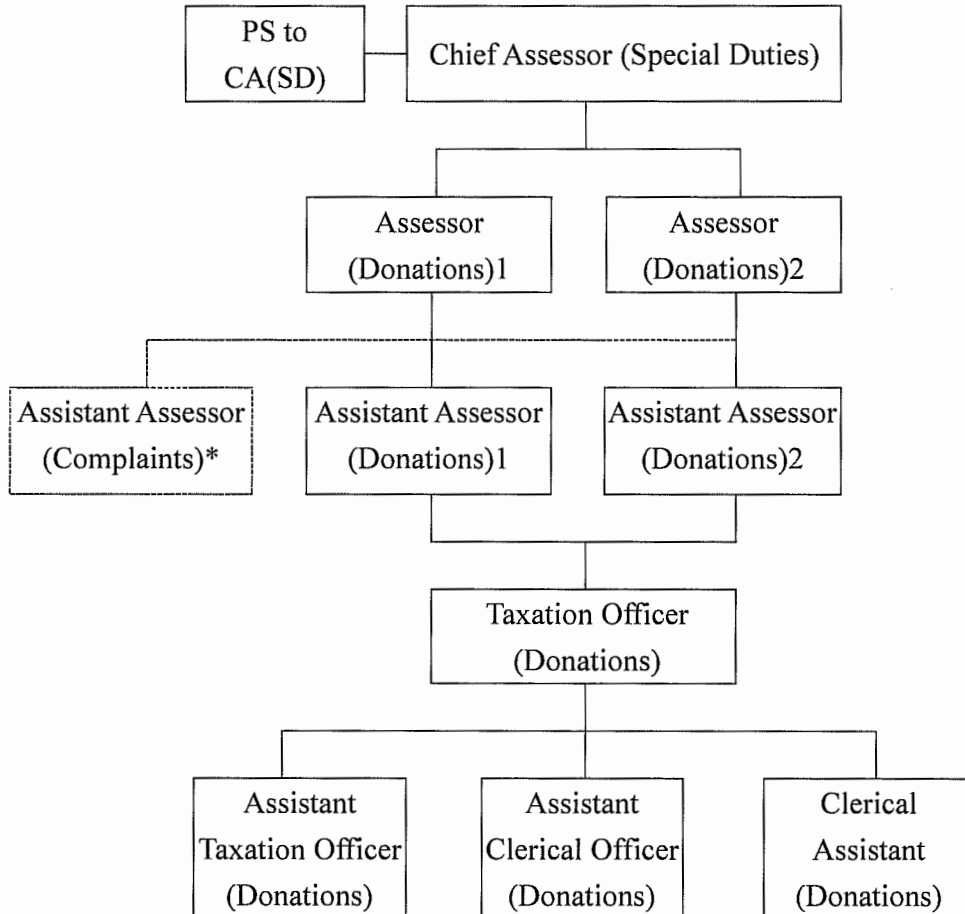
1.2 Nature and Scope of Work

- 1.2.1 Section 88 of the Inland Revenue Ordinance (“IRO”) gives tax exemption to charitable institutions or trust of a public character. Claims under this section are processed by the Section.
- 1.2.2 The Section is responsible for all the works in connection with the exemption from tax under section 88 of the IRO including:
 - 1.2.2.1 Processing claims for recognition of tax exemption entitled under section 88 of the IRO.
 - 1.2.2.2 Conducting review from time to time on tax-exempt charities to ascertain if continued tax exemption should be recognized.
 - 1.2.2.3 Maintaining the list of charitable institutions and trusts of a public character, which are exempt from tax under section 88 of the IRO and uploaded on the Department’s homepage.

1.3 Establishment

- 1.3.1 The existing establishment of the Section is two Assessors (“Assr”), two Assistant Assessors (“AA”), one Taxation Officer (“TO”), one Assistant Taxation Officer (“ATO”), one Assistant Clerical Officer (“ACO”) and one Clerical Assistant (“CA”).

1.3.2 The chart showing the organization and establishment of the Section is as follows:



*Share to handle new claims and review cases

Chapter 2 - Duties and Responsibilities of Officers

2.1 Assessor – the Assessor is directly responsible to CA(SD). The main duties are:

2.1.1 To supervise the staff and the operation of the Section including:

2.1.1.1 Allotment of new claims to AAs;

2.1.1.2 Maintaining the list of tax-exempt charities which is uploaded on the Department's homepage;

2.1.1.3 Keeping all tax-exempt charities under periodic review.

2.1.2 To examine and recommend on claims re tax-exemption status under section 88 of the IRO;

2.1.3 To conduct review of tax-exempt charities cases and examine cases handled by AAs and TO;

2.1.4 To handle general correspondences, interviews and answer telephone enquiries in connection with charities including enquiries raised by press, Legislative Council members and other government departments;

2.1.5 To handle enquiry and informer's cases;

2.1.6 To examine and recommend on tax exemption claims under section 87 of the IRO; and

2.1.7 To act in other matters as assigned by CA(SD) and other senior officers.

2.2 Assistant Assessor

2.2.1 To examine and recommend on claims re tax-exemption status under section 88 of the IRO;

2.2.2 To conduct review of tax-exempt charities cases;

- 2.2.3 To handle general correspondences, interviews and answer telephone enquiries in connection with charities;
- 2.2.4 To upload the list of tax-exempt charities on the Department's homepage;
- 2.2.5 To supervise clerical officers and the operation of the Section including the issue of review questionnaires to tax-exempt charities for the periodic review exercises; and
- 2.2.6 To act in other matters as instructed by Assrs and other senior officers.

2.3 Taxation Officer

- 2.3.1 To supervise and control the Support Team under his/her supervision, including allocating works among the staff, maintaining efficient clerical support, undertaking various administrative duties etc.;
- 2.3.2 To monitor and assess staff performance, provide on-the-job training, maintaining staff discipline and ensuring standing instructions / working procedures are complied with;
- 2.3.3 To screen and process simple and straightforward review cases on tax-exempt charities in accordance with laid-down criteria;
- 2.3.4 To prepare management reports and maintain records/registers of the Section under his/her supervision;
- 2.3.5 To answer telephone enquiries and interview callers on matters relating to tax-exempt charities; and
- 2.3.6 To perform any other duties as instructed by AAs and senior officers.

2.4 Assistant Taxation Officer and Assistant Clerical Officer

- 2.4.1 To handle all inward and outward correspondences, make the necessary record and amendments, and carry out the subsequent follow-up actions as required;

- 2.4.2 To open, reopen and cancel files and to maintain such records. Also to put up files and return files to filing cabinets;
- 2.4.3 To keep the appropriate records to show the work-in-progress and outstanding work in the Section and prepare monthly reports on these records;
- 2.4.4 To carry out on-line enquiries and update ORSO monthly records from Mandatory Provident Fund Schemes Authority (“MPFSA”);

[Work procedures: The computer reports (passed from the MPFSA in softcopy) contain particulars of occupational retirement schemes registered, exempted, cancelled and withdrawn. Besides, MPFSA would also provide hardcopies of termination notices from the designated persons and employers of the schemes confirming payment of the members’ benefits to all members concerned (terminated schemes with payout). After conducting on-line enquiry on terminated schemes with payout, these paper reports would be passed to Unit 1 and Unit 2 for the cases with active file.]

- 2.4.5 To answer telephone enquiries from public and conduct interview with callers; and
- 2.4.6 To act in such other matters as instructed by TO and other senior officers.

2.5 Clerical Assistant

- 2.5.1 To perform general supporting work including collecting, delivering, sorting, filing and making photocopy of documents;
- 2.5.2 To monitor file movement and to issue outward correspondence;
- 2.5.3 To provide general typing support to office including fair draft memos, standard forms and letters, correspondences, and reports;
- 2.5.4 To handle telephone enquiries from public; and
- 2.5.5 To act in all other matters as instructed by the TO and senior officers.

Part II - CHARITABLE DONATIONS DIVISION

Chapter 3 - Scope and Duties of Work

[Revoked (see Chapter 1.2)]

Chapter 4 - Files

4.1 Cat 91/Files

4.1.1 An individual file is opened for every formal claim for exemption under section 88 of the IRO.

4.1.2 All files bear two numbers with a stroke in between, the first number is 91/ and the second number indicates the institution's individual number within that category.

4.1.3 The File Cover (I.R. 105):-

4.1.3.1 The file number, name of the institution or trust, the last known corresponding address, the name of the authorized representative (if any) are noted on the file cover. The barcode for the Barcoding File Management System ("BCFMS") is also attached.

4.1.3.2 Any change in the corresponding address must be amended immediately when it is known.

4.1.3.3 When the I.R. 105 is worn out, torn or the fold-in page is missing, the file cover should be replaced.

4.1.4 The Correspondence Jacket (Form I.R. 16B) is for filing in chronological sequence all inward and outward correspondences, submissions, notes and memos etc. (excluding those arising from review and informer's cases).

4.1.5 The Permanent Notes Jacket (I.R. 16D) is for filing documents of a permanent nature such as copies of the duly executed governing instrument (e.g. Memorandum and Articles of Association, Articles of Association, Constitution, Trust Deed and Special Resolution), copies of approval letter and certificate of exemption.

4.1.6 The Accounts Jacket is for filing the accounts of the tax-exempt charity.

4.1.7 The Review Jacket is for filing all the correspondences and

submissions in relation to a review.

4.1.8 The Draft Jacket is for filing the drafts of the governing instrument submitted.

4.1.9 The Informer's Jacket (for informer's cases only) is for filing all the correspondences and submissions in relation to an informer's case.

4.2 Headquarter File HQ 52/225/88

This file was originally kept for filing all general correspondences concerning charitable institutions or trusts. In order to facilitate easy reference to the past rulings, all general correspondences which bear no permanent value have been removed out and placed in a separate file (91/GEN). Documents were filed up to January 2007.

4.3 Headquarter File HQ 52/225/88A

This file keeps in chronological order all miscellaneous correspondences concerning the list of charitable institutions and their subsidiaries. Documents were filed up to July 2008.

4.4 Headquarter File HQ 52/225/88B

This file keeps in chronological order the correspondences concerning the publishing of the annual Gazette List of charitable institutions and their subsidiaries. In addition, the correspondences with other Units regarding the distribution of published Gazette to them are filed herein. The publication of the Gazette List has ceased since 2003. Documents were filed up to January 2003.

4.5 91/GEN

This file incorporates all general correspondences on the interpretation and practices on section 88 of the IRO between other Units and Government Departments bearing no permanent value.

4.6 91/Not Worth Review ("NWR") List

These are mainly well-established charities and regulated charities receiving

government subsidies or subventions. These charities in general have good governance and transparency with clear charitable objects. The risk that a NWR case fails to remain a charity is low. NWR cases are to be removed from the List by phases. After each periodic review exercise, NWR cases selected for issue of review questionnaires are removed from the List.

4.7 91/MISC

This is a control file for recording all general queries and preliminary claims for exemption under section 88 of the IRO. All correspondences are filed in date order and properly indexed. When a formal claim is subsequently made by the institution, the relevant correspondences previously filed herein will be detached and transferred to the individual Cat 91/file.

4.8 91/GOV/DON

This file is kept for all correspondences concerning the charitable donations made to the Government.

4.9 91/Computer

The file contains the correspondences related to computer issues, such as intranet, internet, computer inventory etc.

4.10 Charitable Donation Matching CRN Report

The file contains company registration number ("CRN") matching reports between the data stored in the EUC Program of the Section and the data received from the Companies Registry (see Chapter 6.5).

4.11 ICAC Checklist

The file contains the correspondences with the Independent Commission Against Corruption, such as assisting to distribute checklist to tax-exempt charities. Documents were filed up to March 2012.

4.12 IRD Homepage – Updated List of Tax-Exempt Charities

The file contains the monthly report for updating the list of charities and trusts of a public character, which are exempt from tax under section 88 of the IRO

in the homepage of the Department (see Chapter 6.2.1.4).

4.13 91/BSD

This file contains the correspondences concerning the proposed exemption of tax-exempt charities from Buyer's Stamp Duty and related press reports. Documents were filed up to February 2014.

4.14 91/DMS

This file contains the correspondences concerning the development of Document Management System for the Section.

4.15 91/Education

This file contains the correspondences concerning the tax-exemption of schools and incorporated management committees of schools.

4.16 91/Fundraising

This file contains correspondences concerning fundraising activities of tax-exempt charities. Documents were filed up to November 2007.

4.17 91/Statistics

This file contains statistics concerning tax-exempt charities and amount of approved charitable donations. Documents were filed up to December 2006.

4.18 91/MPF

This file keeps in chronological order the newspaper cuttings concerning the Mandatory Provident Fund Scheme.

[Note: Following the repeal of s.87A of the IRO on 19 November 1993, CIR ceased to approve retirement schemes. To reflect the changed role of the section, the Section was renamed as "Charitable Donations Section" on 1 April 2009. See Departmental Circular No. 13/2009.]

4.19 91/Newspaper Cutting

This file keeps in chronological order the newspaper cutting concerning tax-exempt charities.

4.20 91/Press

This file keeps in chronological order the press enquiries received concerning tax-exempt charities and replies issued.

4.21 91/Records Management

This file contains the correspondences concerning records management of the Section.

4.22 91/Sports

This file contains the correspondences concerning the tax-exemption of sports promoting organisations and charities. Documents were filed up to January 2007.

4.23 91/Intern

This file contains the correspondences regarding the deployment of summer interns for the Section.

4.24 91/IAS

This file contains the correspondences concerning the internal audit on the Section.

4.25 DOJ Comments

This file contains the legal opinions sought from the Department of Justice about the various topics related to charities.

Chapter 5 - Records

5.1 Charitable Donation EUC Program

5.1.1 A EUC Program was developed by the Computer Section for the use of the Section for:

- storing the data regarding details of the tax-exempt charities, their subsidiaries, sub-subsidiaries and unapproved claims / removed charities
- updating the data regarding the name, approval status, approval date and deletion date of tax-exempt charities, their subsidiaries and sub-subsidiaries stored in the FoxPro program called “Charities” at the Windows Desktop, a program enabling the officers of the Department to check those charities recognized and previously recognized as tax-exempt
- generating the Review Exercise Control Lists
- matching CRN stored in the EUC Program against the data received from the Companies Registry
- generating letters and forms commonly used by the Section
- generating the sectional reports

5.1.2 To access the program, it is required to execute the file “charity_w7.exe” stored at the directory Q:\UNIT5\Charity\Charity_EUC.

5.1.3 Details stored in the EUC Program include:

5.1.3.1 Main body

- (a) File number
- (b) Name of institution or trust in English and Chinese
- (c) Language
- (d) Code
- (e) Review year
- (f) Status
- (g) File creation date
- (h) Approval, withdrawal, reinstatement, incorporation and last amendment to constitution date
- (i) Name of preceding body

- (j) Postal Address
- (k) Former name or alias
- (l) Tax representative
- (m) Informer's Case Indicator
- (n) Objects
- (o) Legal structure
- (p) TRC indicator
- (q) Company Registration Number (CRN)
- (r) Society Registration Number (SRN)
- (s) Remarks

5.1.3.2 Subsidiary or Sub-subsidiary

- (a) Main body file no.
- (b) Sub or Sub_sub no.
- (c) Name of subsidiary or sub-subsidiary in English and Chinese
- (d) Status
- (e) Deletion date
- (f) Former name or alias

5.2 Barcoding File Management System ("BCFMS")

5.2.1 Each charity file also has a record in the BCFMS which serves to record the physical file movement and B.U action. The record is kept in numerical order showing the following details:-

5.2.1.1 File No.

5.2.1.2 File Name

5.2.1.3 Barcode

5.2.1.4 Approval Status

5.2.1.5 Date of file opened

5.2.1.6 Remark (containing other relevant information)

5.2.2 The records of main bodies are kept in BCFMS.

5.3 Review Exercise Control List

This is kept to record the progress of review on tax-exempt charities included in a particular review exercise. The following data are on the list:-

5.3.1 File number

5.3.2 Date of the review questionnaire and covering letter (C.D.1A & C.D.1)

5.3.3 Date of the first reminder (C.D.2)

5.3.4 Date of the final reminder (F.R.2)

5.3.5 Receipt date of the review questionnaire

5.3.6 Date of withdrawal letter (C.D.3)

5.3.7 Date of the letter granting continued approval (C.D.5)

5.3.8 Remark

5.4 Batch Control Sheet for Cancelled Files

Copies of control sheets are filed in chronological order of the serial number of batches to record cancellation of files. The following information is recorded on each sheet:-

5.4.1 Serial number of the control sheet

5.4.2 Total number of files included in the batch

5.4.3 File numbers of the files included in the batch

5.4.4 Batch No. allotted by Tax Record Centre

5.5 File Movement Record Book

This book is divided into two sections:-

5.5.1 Transfer out record, with details of dates and file references.

5.5.2 Transfer in record, with details of dates and file references.

5.6 Work Reports

5.6.1 Charitable Institution Work Book

This is kept to record the actions taken in respect of each claim for exemption under section 88 of the IRO. The following details are recorded:-

5.6.1.1 File number

5.6.1.2 Name of the institution or trust

5.6.1.3 Date of the claim

5.6.1.4 Date of approval, provisional approval, rejection, or enquiry

5.6.1.5 Other remark

5.6.2 Monthly Report

At the end of each month, relevant information is extracted from the work book and EUC Program for the preparation of monthly reports for submission to CIR via DCIR(T), DCIR(O) and CA(SD).

Chapter 6 - Office Practices and Procedures

6.1 Opening, Cancellation and Reopening of Charitable Institution Files

6.1.1 Opening of Charitable Institution Files

When a claim for tax exemption under section 88 of the IRO is received, the procedures of opening a file are as follows:-

- 6.1.1.1 TO will check the EUC Program to ascertain whether there is any existing record of the institution or trust (“claimant”). If no, he/she will pass the claim to Assr for grading (i.e. for deciding the case is to be handled by Assr/AA).
- 6.1.1.2 Assr will determine whether the case is to be handled by Assr/AA depending on the circumstances of each case, such as the head of objects for which the claimant is established and complexity.
- 6.1.1.3 If information suggests that the claimant is established to take over/replace an existing tax-exempt charity (e.g. a company is incorporated to take over the assets and operations of an existing tax-exempt charity registered in the form of a society), the case is still considered as a new claim.
- 6.1.1.4 A Cat 91/file will be opened by allotting a file number following numerical sequence.
- 6.1.1.5 TO will mark down the details of the claim in the Register for New Cases and Charitable Institution Work Book.
- 6.1.1.6 ACO / ATO / CA will enter the record in the EUC Program.
- 6.1.1.7 ACO / ATO will prepare an acknowledgement letter for issue to the claimant advising that the claim for tax exemption is being considered.
- 6.1.1.8 ACO / ATO will enter the necessary details in the Work Book.

- 6.1.1.9 ACO / ATO will prepare a file cover and insert the necessary details about the claimant.
- 6.1.1.10 ACO / ATO will prepare a Permanent Note Jacket and put the copies of the duly executed governing instrument (e.g. Memorandum and Articles of Association, Articles of Association, Constitution, Trust Deed and special resolution) therein.
- 6.1.1.11 ACO / ATO will prepare a Correspondence Jacket for filing all general correspondences (except those arising from reviews and informer's case).
- 6.1.1.12 ACO / ATO will prepare an Accounts Jacket for filing all accounts of the claimant.
- 6.1.1.13 ACO / ATO will prepare a draft Jacket for filing all draft governing instruments.
- 6.1.1.14 ACO / ATO will record the opening of file in BCFMS and allot a barcode, and then pass the file to Assr/AA for action.

6.1.2 Cancellation of Files / Transfer of files to Tax Record Centre

- 6.1.2.1 A charitable institution or trust file is normally cancelled/transferred for the following reasons:-
 - 6.1.2.1.1 The institution or trust has ceased operation (e.g. dissolved, struck-off or dormant);
 - 6.1.2.1.2 Tax exemption is withdrawn with no response from the institution or trust in respect of any enquiry raised;
 - 6.1.2.1.3 The institution or trust is untraceable; or

- 6.1.2.1.4 The claim for tax exemption recognition made by the claimant was turned down by the Department and no response was received from the claimant after the rejection.
- 6.1.2.2 Assr/AA will give instructions to cancel these files periodically.
- 6.1.2.3 The procedures of canceling / transferring a charitable institution file are as follows:-
 - 6.1.2.3.1 When a file is to be cancelled, care must be taken to ensure that all outstanding actions have been completed.
 - 6.1.2.3.2 ACO / ATO / CA will put up the files to be cancelled and the Batch Control Sheet to Assr for endorsement.
 - 6.1.2.3.3 Assr will give instructions to cancel / transfer the file if there is no outstanding action.
 - 6.1.2.3.4 The relevant details will be input in the EUC Program.
 - 6.1.2.3.5 The file with the Batch Control Sheet will then be passed to the Tax Record Centre for storage.
 - 6.1.2.3.6 Tax Record Centre will allot a cancelled file number to the file and write it down on the Batch Control Sheet.
 - 6.1.2.3.7 The Batch Control sheet will then be returned to the Section to note down the cancelled file number in the EUC Program.
- 6.1.2.4 All cancelled files are to be kept as permanent files and no destruction of files is required.

6.1.3 Re-opening of Files

6.1.3.1 A cancelled file may be re-opened upon the instruction of Assr/AA (e.g. the claimant of a previously rejected case provides fresh information for the Department's consideration of its claim).

6.1.3.2 ACO / ATO / CA will then put up the file from the Tax Record Centre and arrange for re-opening of the cancelled file.

6.2 Approval of Tax Exemption Claims from Charitable Institution or Trust of a Public Character

6.2.1 Approval of claims for tax exemption under section 88 of the IRO

6.2.1.1 Upon receipt of tax exemption claims, Assr / AA will consider the claims and make recommendations to CA(SD) on whether tax exemptions can be given. The procedures in considering new claims are set out below:

6.2.1.1.1 The case officer will check whether the information and documents provided by the claimant are sufficient for his/her consideration of the claim.

6.2.1.1.2 In considering the claims, the case officer will make reference to the tax guide, viz. "A Tax Guide for Charitable Institutions and Trusts of a Public Character" which is published on the Department's homepage. In general, the followings are considered:

- (a) whether the claimant is established for exclusively charitable purposes;
- (b) whether the claimant is established for public benefit;
- (c) whether the claimant is under the

- jurisdiction of Hong Kong courts (if not, the claimant cannot be recognised as tax-exempt under section 88 of the IRO);
- (d) whether the following crucial clauses that the governing instrument of a charity should generally contain are specified in the governing instrument of the claimant:
- (i) clause stating precisely and clearly its objects;
 - (ii) clause limiting the application of its funds towards the attainment of its stated objects;
 - (iii) clause prohibiting distribution of its incomes and properties amongst its members;
 - (iv) clause prohibiting members of its governing body (e.g. directors, trustees, etc.) from receiving remuneration;
 - (v) clause specifying how the assets should be dealt with upon its dissolution (the remaining assets should normally be donated to other charities);
 - (vi) clause requiring the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements; and
 - (vii) clauses about avoidance of conflict of interests of the members of the governing body;
- (e) whether the claimant's activities for the past twelve months and/or activities planned for the coming twelve months are compatible with its stated charitable objects; and
- (f) for claimants established for more than eighteen months, whether its accounts for

the last financial year has any irregularity.

6.2.1.1.3 The case officer may raise enquiries to obtain further information and documents in considering the tax exemption claim until he/she is satisfied that the issues in Chapter 6.2.1.1.2 are fulfilled.

6.2.1.1.4 If the case officer considers that the claimant can be recognised as tax-exempt under section 88 of the IRO, he/she should make recommendation for CA(SD)'s approval by stating briefly in the submissions the reasons therefor.

6.2.1.2 Approval to the main body – When it is satisfied that tax exemption under section 88 of the IRO can be given to a charitable institution or trust of a public character, actions in the following paragraphs will be taken:

6.2.1.2.1 CA will type the Exemption Certificate (I.R. 302) (in duplicate) and Approval Letter (in triplicate) for Assr's signature for issue to the claimant.

6.2.1.2.2 CA will also prepare a Circular Letter drawing the claimant's attention to the meaning of approved charitable donations for issue to the claimant (signature not required).

6.2.1.2.3 One copy of the Approval Letter will be passed to the Business Registration Office for their necessary action and record.

6.2.1.2.4 ACO / ATO will issue Approval Letter, Exemption Certificate (I.R. 302) (both signed by Assr), as well as Circular Letter to the claimant.

6.2.1.2.5 ACO / ATO will enter all necessary details in the following records:-

- EUC Program (including the indicator whether the charity consents to disclose its name on the List of Tax-Exempt Charities uploaded to the Department's homepage or not)
- BCFMS
- Work Book

6.2.1.3 Approval to the subsidiary body or sub-subsidiary body –

When it is satisfied that a subsidiary body is part and parcel of the tax-exempt charity (i.e. under the sole ownership and control of the tax-exempt main body and does not have a separate written governing document), the tax exemption under section 88 of the IRO will be extended to the subsidiary body.

6.2.1.3.1 Assr/AA will state briefly in the file the reasons for extending exemption to the subsidiary body. Upon the charity's request, a letter recognizing the extension of its tax exemption status to the subsidiary body is to be issued.

6.2.1.3.2 ACO / ATO will update the relevant details in the EUC Program.

6.2.1.4 For those tax-exempt charities (main body and subsidiary bodies) consenting to have their names published in the List of Tax-Exempt Charities uploaded to the Department's homepage, their names will be included in the preparation of the List of Tax-Exempt Charities (see Chapter 6.7).

6.3 Withdrawal of Tax Exemption given under Section 88 of the IRO

6.3.1 The tax exemption given to the main body of a charity under section 88 of the IRO is normally withdrawn for the following reasons:-

6.3.1.1 The institution or trust was dissolved or wound up.

6.3.1.2 The institution or trust has ceased operation or is dormant.

- 6.3.1.3 The institution or trust is considered as untraceable despite of various efforts.
- 6.3.1.4 The institution or trust no longer qualifies for a status of a charitable institution or trust of a public character.
- 6.3.1.5 The institution or trust did not reply to the Department's enquiries.
- 6.3.2 Upon withdrawal of exemption under section 88, a Withdrawal Letter (C.D.3) will be issued to the institution or trust (except for untraceable cases as no valid corresponding address is available for issuing C.D.3) advising that its tax exemption status has been removed.
 - 6.3.2.1 If ceased or untraceable

Pass a memo together with a copy of the Withdrawal Letter (C.D.3) (for cessation cases) to the Business Registration Office for their necessary action.
 - 6.3.2.2 If other cases

B.U. 6 months for response. If nil reply is received after expiry of B.U., pass a memo together with a copy of Withdrawal Letter (C.D.3) to Business Registration Office and Unit 1 respectively for their necessary action.
- 6.3.3 ACO / ATO will enter the relevant details in the EUC program.
- 6.3.4 ACO / ATO will mark the withdrawal control list when a copy of the Withdrawal Letter (C.D.3) has been passed to other Units.
- 6.3.5 The tax exemption of a charity extended to its subsidiary body or sub-subsidiary body is normally withdrawn for the following reasons:
 - 6.3.5.1 The charity informs the cessation of the subsidiary or sub-subsidiary body. In this case, ACO / ATO will have to update the relevant details in the EUC Program.

6.3.5.2 The main body of the charity's tax exemption is removed. In this case, ACO / ATO does not need to update in the EUC Program the withdrawal of tax exemption of the subsidiary or sub-subsidiary body, as the relevant details are automatically updated when the removal of the charity's tax exemption status is updated in the EUC Program.

6.3.6 The names of the charities (main body and subsidiary bodies) with tax exemption status withdrawn will be removed from the List of Tax-Exempt Charities uploaded to the Department's homepage (see Chapter 6.7).

6.4 Claim under Section 16(a) of the Business Registration Ordinance (prior to 1984)

[Revoked]

6.5 Matching of Tax-exempt Charities against Data Transmitted from the Companies Registry

6.5.1 The Companies Registry transmits the Company Registration Number ("CRN") of the companies struck off and impending striking off to the Department daily, which is stored at a designated server.

6.5.2 The EUC Program provides a function to identify corporate tax-exempt charities that are impending striking off or have already been struck off by matching the CRN of the corporations transmitted from the Company Registry and stored in the designated server with the CRN of the corporate tax-exempt charities (whether on list of tax-exempt charities published on the Department's homepage or not) ("Matching Process").

6.5.3 AA and TO are assigned to retrieve the data from the designated server to perform the Matching Process which is conducted twice each month.

6.5.4 The matching result is filed to the folder named as "Charitable Donation Matching CRN Report" for action and record purpose.

6.5.5 ACO / ATO will put up the file of the corporate charities identified in the matching result immediately and enclose therewith a copy of the matching result, and pass the file to the case officer for prompt follow-up actions.

6.5.5.1 If any corporate tax-exempt charity is identified as impending striking off/struck off:

6.5.5.1.1 The case officer will issue enquiries to the charity immediately to ascertain whether the charity is going to dissolve or cease operations, and to ask for the following information/documents:

- A copy of accounts (audited for corporate charities) for the last financial year and a copy of the accounts making up to the date of its dissolution/cessation – to see if there is any irregularity.
- To whom the charity's remaining assets have been/will be donated – to ascertain whether the provisions in the Dissolution Clause (i.e. clause prohibiting the distribution of remaining assets amongst the members but to other charities upon dissolution, see item (d)(v) of Chapter 6.2.1.1.2 above) of its governing instrument are complied with.

6.5.5.1.2 If the charity fails to give reply to the enquiry or is found untraceable, its tax exemption status will be removed. Also, its name will be removed from the list of tax-exempt charities uploaded to the Department's homepage. A copy of Withdrawal Letter (C.D.3) will be issued to the charity notifying the removal of the tax exemption status.

- 6.5.5.2 If any corporate tax-exempt charity identified has already been dissolved by striking off, the case officer will remove its tax exemption status immediately. A copy of Withdrawal Letter (C.D.3) will be issued to the charity notifying the removal of the tax exemption status as it has been struck off.
- 6.5.5.3 ACO / ATO will enter the relevant details of the charity in the EUC program. Its name will be removed from the list of tax-exempt charities uploaded to the Department's homepage after updating the relevant details in the EUC Program (see Chapters 6.3.3 and 6.3.6).
- 6.5.5.4 The case officer will pass a memo together with a copy of C.D.3 to the Business Registration Office for their necessary action.
- 6.5.5.5 ACO / ATO will mark the withdrawal control list when a copy of the Withdrawal Letter (C.D.3) has been passed to the Business Registration Office.

6.6 Reinstatement of Tax Exemption Status under Section 88 of the IRO

- 6.6.1 A charity whose tax exemption status is removed because it was untraceable or failed to give reply to the Department's enquiries may apply for reinstatement of tax exemption status.
- 6.6.2 If the file of the charity with tax exemption status removed has been transferred to the Tax Record Centre, ACO / ATO / CA will follow the procedures outlined in Chapter 11.3.2 below to retrieve the cancelled file for passing to the case officer for necessary actions.
- 6.6.3 In processing a tax exemption reinstatement application, the case officer will adopt an approach similar to processing new claims for tax exemption by considering the issues outlined in Chapter 6.2.1.1.2. Where necessary, the case officer may raise enquiries on the charity including the details of its past activities.

6.6.4 If the case officer considers that the charity's tax exemption status can be reinstated, he/she will make recommendation for CA(SD)'s approval by stating briefly in the submission the reasons therefor and the effective date of the tax exemption status.

6.6.5 ACO / ATO will update the details of the charity with tax exemption reinstated in the EUC Program.

6.7 Preparation of List of Tax-Exempt Charities

6.7.1 A list of Charitable Institutions or Trusts exempt from tax under section 88 of the IRO is uploaded in the Department's homepage monthly (http://www.ird.gov.hk/eng/pdf/e_s88list_emb.pdf).

6.7.2 AA will use the EUC Program to generate data and pass it to the Computer Section for uploading.

6.7.3 [Revoked]

6.8 Review of Tax-Exempt Charities

6.8.1 To protect revenue, review on the tax exemption status of charities are conducted from time to time having regard to their circumstances. Such reviews are conducted at least once every four years. In December every year, a control list comprising all the files that are due for review for the next year is prepared by AA by using a specially designed function in the EUC Program.

6.8.2 The review exercise is conducted in three to four batches depending on the number of cases scheduled for review for each year, the workload of and resources available to the Section.

6.8.2.1 After preparation of the control list, Form C.D.1s and Form C.D.1As (the review questionnaires) will be prepared for issue to the tax-exempt charities (signature not required). The Form C.D.1s and C.D.1As are sent to those tax-exempt charities selected for review for completion and review within one month. The charities are also required to file their financial statements and reports on activities they have conducted.

6.8.2.2 The following information and documents are sought for review purposes (stated in Form C.D.1A):

- (a) The charity's current corresponding address;
- (b) Whether the charity's governing instrument has had any changes since the last review/recognised as tax-exempt;
- (c) Annual report or list of activities for the last financial year;
- (d) Whether the charity carries on any trade or business;
- (e) A copy of the charity's accounts for the last financial year;
- (f) Whether the charity has any subsidiary body to carry out charitable work; and
- (g) A copy or specimen of donation receipt currently issued by the charity to a donor.

6.8.2.3 Reminder (Forms C.D.2) will be issued in around eight weeks' time if the review questionnaire is not received by then.

6.8.2.4 Final reminder (Forms F.R.2) will be issued in around sixteen weeks' time if the review questionnaire is still not received by then.

6.8.3 Upon receipt of the review questionnaire from the tax-exempt charity (Form C.D. 1A):

6.8.3.1 ACO / ATO will enter record in the Review Exercise Control List.

6.8.3.2 TO will conduct preliminary check on the followings:

- 6.8.3.2.1 Whether an annual report or a list/details of activities of the last financial year are provided;
- 6.8.3.2.2 Whether a copy of the accounts duly signed by the responsible person/officer of the charity is provided. If the charity is a body corporate or whose governing instrument requires the

preparation of audited accounts, such accounts should be audited and contain a duly signed directors' and auditor's report; and

6.8.3.2.3 Whether a copy or specimen of donation receipt currently issued by the charity to a donor is provided, and if so, whether the charity's full official name is imprinted thereon.

6.8.3.3 If any of the information/document in Chapter 6.8.3.2 is outstanding or insufficient/incorrect, TO will instruct CA to type the appropriate enquiry letters (signed by Assr) for issue to the charity seeking the outstanding/correct information/document.

6.8.3.4 ACO / ATO will pass those C.D.1A containing the sufficient information/document sought with their respective files to the case officer to take necessary review action.

6.8.4 During the review:

6.8.4.1 The case officer will examine the charity's replies to the C.D.1A and its financial statements to ensure that the objects of the charity are still charitable and that its activities are compatible with its charitable objects, and ultimately consider whether the recognition of its tax exemption status could be continued. He/she will state briefly in the file the reasons therefor. If warranted, the case officer may raise enquiries on the charities. Failure to furnish information required by the C.D.1A may lead to the withdrawal of the tax exemption status.

6.8.4.2 If the case officer is finally satisfied that the charity's tax exemption status can be continued, he/she will summarize the findings by preparing a Form C.D.4 and inserting therein all updated information of the tax-exempt charity as well as the year for the next review, and will, depending on the circumstances of the case, prepare usual or modified C.D.5 (signed by the case officer) if continued tax exemption is warranted.

- 6.8.4.2.1 For cases that the charity cannot provide an annual report or a list of activities held for the last financial year for examination, if the case officer considers that the continued recognition of tax exemption is warranted based on other available information (e.g. the charity's accounts where there may reflect that expenses were incurred for activities held, the provision of a future activity plan, etc.), he/she should state so briefly in the C.D.4 and with the reasons therefor.
- 6.8.4.2.2 For charities that have prepared audited accounts and whose auditor expressed an adverse opinion on their accounts and the issues involved may affect their charitable status and hence their tax exemption status, the case officer may raise enquiries on the pertinent issues/concern and seek for the remedial actions. If he/she is satisfied with the remedial action proposed by the charity and is of the view that the tax exemption status can be continued, he/she should state briefly in C.D.4 the issues involved, the remedial actions proposed by the charity, and the justification of giving continued tax exemption.
- 6.8.4.2.3 For the copy or specimen of donation receipt provided by the charity which is issued to a donor, the case officer has to ensure that the name of the charity imprinted is the correct official name of the charity.
- 6.8.4.2.4 For charities that paid remuneration to members of the governing body, the case officer should check whether this is permitted in the governing instrument (i.e. the presence of the relevant overriding provisions). If so, he/she has to ascertain if such overriding provisions are duly

followed. If not, he/she has to draw the charity's attention for violating the rules prohibiting the payment of remuneration to members of the governing body in the governing instrument and seek the charity's remedial actions in that regard.

- 6.8.4.3 Under normal circumstances, the next review will be conducted four years after the current review is closed. However, the case officer may suggest advancing the next review and state the reasons therefor in C.D.4.
 - 6.8.4.4 In appropriate cases, the case officer may recommend issuing modified C.D.5 to draw the charities' attention to any irregularity identified and the remedial actions taken (if any) during the review.
 - 6.8.4.5 Cases that do not warrant the issue of C.D.5 are submitted to CA(SD) for approval.
 - 6.8.4.6 If withdrawal from exemption is considered warranted, the case officer will prepare and issue the Withdrawal Letter (C.D.3) (signed by case officer). The procedures in Chapter 6.3.2 will also be followed.
 - 6.8.4.7 For those cases that require approval by senior officers according to the approval limits, if the approving officer holds a view contrary to the recommendation of the case officer, he / she should state briefly in C.D.4 the reasons for the decision and may give instructions to the case officer for follow-up.
 - 6.8.4.8 ACO / ATO will enter the details of all actions taken in the Review Exercise Control List and input the next review year in the EUC Program following the instruction of Assr/AA.
- 6.8.5 Whenever enquiries are raised, the case officer has to handle each reply received. The review action on a tax-exempt charity is not regarded as to be completed unless a decision to continue or withdraw the tax exemption status is made by the case officer with endorsement

sought with appropriate senior officer(s) (depending on approval limits).

6.8.6 The Review Exercise Control List is to be kept as permanent record.

6.9 Informer's Cases

6.9.1 Upon receipt of an informer's case referred from Unit 4 for review of the tax exemption status of a charity targeted by the informer, CA(SD) will assign an Assr to handle the case.

6.9.2 PS to CA(SD) will enter the details of the informer's case in the Informer's Cases Register. She will also prepare a "Working Paper Jacket" to be put in the file for containing the Informer's Case Control Sheets.

6.9.3 ACO / ATO will switch on the Informer's Case Indicator in the EUC Program. He/she will put up the file and attach a blue card at the bottom right hand corner marked "INFORMER'S CASE BACK TO ASSR", and then pass the file to the assigned case officer for necessary actions. An Informer's Case Jacket will be opened to contain all the relevant correspondences.

6.9.4 The case officer will review the informer's allegations and consider whether the allegations will have an impact on the charitable status and hence the tax exemption status of the charity entitled under section 88 of the IRO. Where necessary, the case officer may issue enquiries to the charity.

6.9.5 After examination of all the available information and documents, if the case officer is satisfied that the informer's allegations do not affect the charity's charitable status and the tax exemption can be continued, he/she should state in his/her submission the reasons therefor for CA(SD)'s approval.

6.9.6 After CA(SD)'s approval of the recommendation of continuing the tax exemption given, the case officer will then pass a copy of the closing submission together with the Working Paper Jacket to PS to CA(SD) for record. Also, the case officer will give instructions to ACO / ATO to update the relevant details of the charity in the EUC Program, and

in particular, switching off the Informer's Case Indicator and updating the next year of review.

6.9.7 Control of review of outstanding Informer's Cases

6.9.7.1 Informer's Cases aged over 9 months from date of receipt as at 30 June or 31 December will be reviewed by CA(SD). All Informer's Cases due for review will be passed to CA(SD) on or before 31 January and 31 July annually.

6.9.7.2 PS to CA(SD) will pass the relevant memos and the updated Informer's Case Control List to each case officers on 2 July and 2 January each year. The control list sets out all outstanding Informer's Cases due for review and their respective submission date to CA(SD).

6.9.7.3 The case officers are required to complete the progress report in the control list for each case and complete the submission date in the control list as and when the cases are passed to CA(SD) for review.

6.9.7.4 By 31 January and 31 July each year, the case officers should submit the completed control list together with the Informer's Case files then not yet closed to CA(SD) for review.

6.9.7.5 PS to CA(SD) will record the submission of the Informer's Cases that have been reviewed by CA(SD).

6.10 Physical Check

[Revoked]

6.11 Conflict of Interest

Officers should follow the guidelines set out in Departmental Circular 34/2007 AND THE Booklet on Official Secrecy; and avoid entering into a conflict of interest situation, actual or perceived. An officer must not take any part in handling the exemption claim or review of any institution or trust of which the officer or his / her spouse is a director / member of the governing body. If such circumstances arise, the handling officer must declare interest

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and report to his / her supervisor by completing Part A of the form per attached. On receipt of such report, the supervisor should decide whether the matter should be handled by the case officer or another officer, complete Part B, and inform the case officer or the other officer by way of a note in the file. The note can simply be stated as "You can continue to handle the case." or "Please take over this case for processing.", as the case may be. The supervisor should then forward the completed form to CA(SD) under "Confidential" cover for information and retention. To protect the confidentiality of personal data, there is no need to keep any copy of the declaration and no surprise check on the declaration is necessary. PS to CA(SD) will keep a register for such reports which will be retained for 5 years after the relevant officer has left service. There is no need to transfer the reports to other units on the transfer of the officer concerned.

Similar arrangement would be made if any director / member of the governing body of the institution or trust is the close relative or close friend of the handling officer. The handling officer should also avoid dealing with any case where his / her spouse has been connected with the lodging of claims and the handling of review in a professional or representative capacity.

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**Charitable Donations / Complaints Section
Report of a Conflict of Interest Situation**

Part A - To be completed by case officer

Name and post of case officer : _____
Section : _____
Case file number : _____
Name of - taxpayer : _____
- representative : _____
Reason(s) for conflict of interest : _____

Signature of case officer : _____
Date : _____

Part B - To be completed by Supervisor

Arrangement made : _____

Signature of Supervisor : _____
Name and post of Supervisor : _____
Date : _____

Part C - Instruction by CA(SD)

☐ PS to file this form in the register.

☐ Other : _____

CA(SD)

Date : _____

Part III – RETIREMENT SCHEMES DIVISION

Chapter 7: Scope of Work and Duties of Retirement Schemes Division

Chapter 8: Files

Chapter 9: Records and Registers

Chapter 10: Office Procedures and Practices

[ALL Revoked (See Chapter 2.4.4)]

Part IV - MISCELLANEOUS

Chapter 11 – Information Pamphlets, Standard Forms and File Control

11.1 Information Pamphlet

- 11.1.1 An information Pamphlet on Charitable Institutions or Trust known as “A Tax Guide for Charitable Institutions or Trusts of a Public Character” is available on the Department’s homepage (http://www.ird.gov.hk/eng/tax/ach_tgc.htm). The Pamphlet introduces the role of the Department in processing claims of charities for recognition of tax exemption under section 88 of the IRO, the meaning of “charity”, what crucial clauses that the governing instrument of a charity should generally contain, the tax privileges enjoyed by a tax-exempt charity, the meaning of “donation”, and how a charity may lodge a claim for recognition of tax exemption under section 88 of the IRO, etc.

11.2 Standard Forms

11.2.1 Retirement Schemes

[Revoked]

11.2.2 Charitable Donations

- 11.2.2.1 C.D.1 and C.D.1A – covering letter and review questionnaire on review of charities.
- 11.2.2.2 C.D.2 - a reminder for return of C.D.1A.
- 11.2.2.3 C.D.3 - the standard letter for withdrawal of exemption given under section 88 of the IRO.
- 11.2.2.4 C.D.4 - a processing form used by Assr / AA in connection with the review exercise.
- 11.2.2.5 C.D.5 - a standard letter for giving continued tax exemption under section 88 of the IRO (may be modified if circumstances warrant).

11.2.2.6 C.D.6 - outdated.

11.2.2.7 C.D.7 - outdated.

11.2.2.8 C.D.8 - outdated.

11.2.2.9 C.D.9 - outdated.

11.2.2.10 C.D.10A - passing information to the Employers' Section of the Document Processing Centre about those tax-exempt charities with salary and allowance charged in their accounts submitted exceeding \$500,000.

11.2.2.11 Circular Letter - a standard letter issued to every tax-exempt charity explaining the meaning of "approved charitable donations".

11.2.2.12 F.R.1 – a final reminder for return of reply to enquiries

11.2.2.13 F.R.2 – a final reminder for return of reply to C.D.1A

11.2.3 Reprint of Forms

[Revoked]

11.3 File Control

11.3.1 In order to control the movement of files which contain information which is covered by section 4 of the IRO, files of this Section will only be issued to officers who are authorized to handle the file in the course of ordinary routine and to the officers of the rank of AA grade and above who apply for a file on Form I.R. 146.

11.3.2 When a file which belongs to another section is required, the procedure will be:-

11.3.2.1 ACO / ATO / CA is required to complete the Form I.R. 146 and submit it to the case officer for signature.

- 11.3.2.2 The case officer has to satisfy himself that the file is needed for the proper performance of duties in the Section before he signs the Form I.R. 146.
- 11.3.2.3 The signature must be full - not initials - and the name of the persons signing must be written legibly under the signature.
- 11.3.2.4 When the file is required immediately, this will be stated in red in Form I.R. 146 with an Urgent Slip attached to it.
- 11.3.2.5 ACO / ATO / CA will then pass the Form I.R. 146 to the relevant section.
- 11.3.2.6 ACO / ATO / CA is required to bring up the file to check receipt of the requested file. If the requested file is not received by then, prepare another set of Form I.R. 146 for the signature of Assr/AA.
- 11.3.2.7 Upon receipt of the requested file, ACO / ATO / CA has to mark the record in the File Requisition Register.
- 11.3.3 When a file of the Section is required by another Unit/Section, upon receipt of the Form I.R. 146 (the white copy and the yellow copy), the following actions will be taken within a few days:
 - 11.3.3.1 ACO / ATO / CA has to satisfy himself that the signature and name is that of an AA or above. If not satisfied, consult his/her senior officers for instruction.
 - 11.3.3.2 File the white copy of Form I.R. 146 in the File Requisition Register and mark movement record. Then complete the middle part (Part B) of the yellow copy of Form I.R. 146 and pass it to the requesting officer with the requested file.
 - 11.3.3.3 If the file is not available, e.g. file cancelled or file is in action, ACO / ATO / CA will complete the middle part (Part B) of the yellow copy of Form I.R. 146 and return the same to the requesting section. If the file is in action, ACO / ATO / CA is required to make a note in the file and pass the file to

the requesting section when the action in the file is completed.

11.3.3.4 Upon receipt of the file returned by the requesting section, ACO / ATO / CA has to mark the movement record in the File Requisition Register and file the yellow copy of Form I.R. 146 in the Register for record.

11.3.3.5 The passing and returning of the requested file to and from the requesting section should be in person and not by transit.