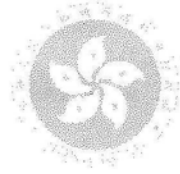


財經事務及庫務局



香港添馬添美道二號  
政府總部二十四樓

FINANCIAL SERVICES AND THE  
TREASURY BUREAU

24/F, Central Government Offices,  
2 Tim Mei Avenue, Tamar  
Hong Kong

傳真號碼 Fax No. : 2234 9757  
電話號碼 Tel. No. : 2810 2229  
本函檔號 Our Ref. : TsyB R 00/520-2/2/0 (C)  
來函檔號 Your Ref. : CB4/PAC/R68

16 May 2017

Mr Anthony CHU  
Clerk to Public Accounts Committee  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Mr CHU,

**Public Accounts Committee**  
**Consideration of Chapter 1 of the Director of Audit's Report No. 68**  
**Government's support and monitoring of charity**

As requested in your letter of 9 May 2017, I append below the information required –

- (a) Section 88 of the Inland Revenue Ordinance (IRO) provides general tax exemption to charitable institutions or trusts of a public character. The Inland Revenue Department (IRD) has been performing its role in accordance with the IRO.

Any organisation wishing to seek recognition of tax exemption status under section 88 of the IRO is required to submit an application to the IRD with a copy of the governing instrument, a list of any activities which have been carried out in the past 12 months and a list of activities planned for the next 12 months. Where the organisation has been established for 18 months or more, a copy of its financial statements for the last financial year is also required.

When considering an application under section 88 of the IRO, the IRD will examine, among other things, the governing instrument of the organisation. In particular, the IRD will scrutinise the object clause, income clause and dissolution clause to ensure that all the objects of the organisation are charitable in nature and that there are adequate safeguards to prevent the channelling of funds for non-charitable purposes. When necessary, the IRD will ask the organisation to provide further information to support its application. If the organisation fails to meet the requirement, the IRD will not approve the application and the number of applications that have not been approved by the IRD for the financial years 2012-13 to 2016-17 (up to 30 September 2016) are as follows –

Financial year	Applications not approved
2012-13	122
2013-14	137
2014-15	153
2015-16	163
2016-17 (up to 30.9.2016)	188

The tax exemption status of each approved charitable institution is subject to review regularly (normally on a cycle of four years) so as to ensure its objects are still charitable and its activities are compatible with its objects. The IRD will ask the organisation under review to submit documents, including its annual report and financial statements. The number of review questionnaires issued by the IRD for the review years from 2012 to 2016 (up to 30 September 2016) are as follows –

Review Year	Review questionnaire issued
2012	1 347
2013	1 371
2014	1 589
2015	1 364
2016 (up to 30.9.2016)	1 035

In the course of review, if it is discovered that the organisation might have engaged in activities which are possibly at variance with its charitable objects or other key provisions in the governing instrument, the IRD will seek clarification with the organisation. Taking into consideration of information obtained from the organisation and other

sources, the IRD may withdraw the recognition of tax exemption status in accordance with the reasons stated in the Staff Handbook of the Charitable Donations Section (CDS) (for details please see item (c)).

- (b) No. Paragraph 6.3.1 of the Staff Handbook of CDS has set out the five reasons for the IRD's withdrawal of recognition of tax exemption status of a charity. They have been listed out in paragraph 2.4(c) of the Audit Report with the two reasons set out in paragraphs 6.3.1.3 (untraceable despite of various efforts) and 6.3.1.5 (fail to reply to the IRD's enquiries) of the Staff Handbook combined to one reason in paragraph 2.4 (c)(iv) of the Audit Report.
- (c) The table below shows the breakdown of charities with tax exemption status withdrawn by the IRD from April 2012 to September 2016.

Year	Number of charities with tax exemption status withdrawn	Reasons for withdrawal as stated in paragraph 2.4(c) of Audit Report			
		(i) The charity was dissolved or wound up	(ii) The charity has ceased operation or is dormant	(iii) The charity no longer qualifies for the status of a charitable institution or trust of a public character	(iv) The charity did not respond to the IRD's enquiries or considered untraceable despite various efforts
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 (Up to September 2016)	113	51	17	-	45

As stated in paragraph 2.4(c)(iii) of the Audit Report, when a charity amends its objects in the governing instrument in a way that it is no longer exclusively charitable, it will not qualify for the status of a charitable institution or trust of a public character.

- (d) For ease of reference, the organisations in the Cases (with an alphabet) mentioned in the Audit Report will be described as Organisation (with the corresponding alphabet) in the reply below.

Organisation C is a company limited by guarantee established in 2000s with the object of advancement of education and it operated a

non-profit making kindergarten. In response to the IRD's review questionnaire, Organisation C produced a set of audited financial statements for the year ended 31 July 2009 which disclosed that there were related party transactions involving payment of rent to a related company for the periods ended 31 July 2008 and 2009 respectively. Upon enquiries by the IRD in May 2012, Organisation C replied in November 2012 that it paid an annual rental of \$480,000 to the related company in 2008 and 2009 for the use of the premises on which the kindergarten was operated and that the rateable value of the premises for the year ended 31 March 2009 was \$288,000.

In response to the IRD's follow-up enquiry in March 2014, Organisation C stated in its reply in June 2014 that the yearly rental payment of \$480,000 was a fair amount for the use of the premises. In replying to IRD's enquiries made in March 2015, Organisation C produced a copy of lease of the premises showing a monthly rent of \$40,000.

In October 2015, the IRD commenced another review of Organisation C and noticed that a related party transaction involving rental payment was disclosed in the financial statements for the year ended 31 July 2014. The IRD enquired in May 2016 for the particulars of the owner of premises and the relationship between the owner and the directors of Organisation C. Organisation C, in its reply of June 2016 to the IRD's enquiry, stated that owner of the premises were two individuals who did not have any relationship with Organisation C and that the floor area of the premises was about 20,000 square feet.

The IRD asked Organisation C in September 2016 why the rental payment in respect of the premises was stated as a related party transaction. In October 2016, Organisation C confirmed that the owners had never been its directors and that they operated a kindergarten which had been taken over by Organisation C. Taking into consideration that the owners are not directors of Organisation C and the floor area of the premises, the IRD accepted that the rental payments, though higher than the rateable value, were not non-arm's length. As the objects of Organisation C remained charitable and its activities were compatible with its stated charitable objects, the IRD considered that it was a charitable institution. The review was closed on 13 March 2017.

The long periods of inactions for this case were due to the heavy workload of the subject officer and his inadvertence. Since 2016, follow-up actions were speeded up and the IRD responded within 1 to 4 months from the receipt of the correspondences from Organisation C.

- (e) (i) To prevent disclosure of the identity of the parties concerned given the official secrecy provision in section 4 of the IRO, the relevant information are summarised below instead of producing the correspondence.

#### Case D

Organisation D is a company limited by guarantee established in the 1960s for the advancement of Buddhism. It carried out activities, including operating 5 centres and publishing monthly magazines and books to promote Buddhism. At all relevant times, Organisation D had 15 to 21 committee members on its Committee of Management (Executive Committee).

In March 2016, the IRD received a complaint that some members of the Executive Committee were in breach of the governing instrument of Organisation D by receiving remuneration. In response to the IRD's enquiry, Organisation D provided its audited financial statements for the years ended 31 March 2011 to 2015. Organisation D recorded total income ranged from \$51 million to \$114 million and total expenditure ranged from \$40 million to \$84 million. Upon further enquiry by the IRD, Organisation D submitted a breakdown of salaries and wages (**Annex A**) which showed that 9 Executive Committee members were paid remuneration for the years ended 31 March 2012 to 2014. All of them resigned or retired from the Executive Committee in December 2013, January 2014 and October 2014 respectively and no Executive Committee members received any remuneration for the year ended 31 March 2015. Organisation D advised that the Executive Committee members whose names were shown in Annex A received salaries and wages for rendering services as staff on full time basis and that the details of their duties were set out in their respective employment contracts. The IRD noted that Organisation D had filed employer's returns for the years ended 31 March 2012 to 2015 in respect of its employees including the Executive Committee members and the

capacities in which they were employed are shown in Annex A. In light of the above information, the IRD was of the view that the Executive Committee members received the remuneration in the capacity of an employee and that their remuneration did not appear to be excessive. Furthermore, the relevant employees had retired or resigned from the Executive Committee by 31 March 2015. Having regard to all the relevant facts and circumstances, the IRD considered that Organisation D's payment of remuneration to its Executive Committee members, though might be a technical breach of the director's remuneration provision of its governing instrument, did not affect its charitable status.

In paragraph 2.14(a) of the Audit Report, the Director of Audit pointed out that ten Executive Committee members had received remuneration totalling \$5 million in the year ended 31 March 2011. Details of the payment are shown in Annex A. It can be seen that nine of the Executive Committee members are the same persons receiving remuneration for the years ended 31 March 2012 to 2015. The additional member only received remuneration in the year ended 31 March 2011 and he was not on the payroll for the other years. For the reasons given in the preceding paragraph, the IRD considered that the charitable status of Organisation D was not affected.

#### Case E

Organisation E was established in the form of incorporated trustees in late 1970s for the advancement of Christianity and carried out church activities such as Sunday service and fellowship. Under its constitution, Organisation E has an Executive Committee consisted of not less than nine and not more than thirteen members; and a Board of Trustees, consisted of not less than five and not more than seven trustees. Members of the Executive Committee and Board of Trustees are elected from the members of the organisation at its annual general meeting or extraordinary general meeting.

The following information was provided by Organisation E during the IRD's periodic reviews –

<u>Year</u>	<u>1999</u>	<u>2006</u>	<u>2007</u>
	\$	\$	\$
Total income (mainly donation income)	4 million	4.7 million	3.6 million
Donation expenses (供給及顧念/ 捐款)	833,900	979,186	967,400
- Total no. of recipients	85	79	87
- Including:			
Payments to trustee/ executive committee member(s)	20,700	21,400	22,100
No. of trustee/ executive committee member(s) involved	3	1	1
Total no. of trustees/ executives committee members of the charity	20	20	20

### 1999

Organisation E advised that donations, described as “顧念款”, were made to the 85 recipients for two reasons:

- (1) To members and officers of the organisation who took an active interest in spreading the Gospel and rendering services to the organisation, in the form of subsidy to enable them to meet travelling expenses and basic living requirements; and
- (2) To members and friends of the organisation who were old, sick and needed to enable them to meet their financial difficulties.

For reason (1), there were 11 recipients and the payments ranged from \$3,000 to \$47,000. The IRD found that one of the recipients was a trustee of Organisation E who had received \$9,000. For reason (2), there were 74 recipients with monthly payments ranged from \$200 to around \$14,000. Some of the recipients received ad hoc payments instead of monthly payments. The IRD found that the above-mentioned trustee received an ad hoc payment of \$2,000 and two Executive Committee members of the organisation received monthly payments of \$600 (totalling \$7,200) and an ad hoc payment of \$2,500 respectively. The IRD advised Organisation E that it had to

ensure that it made use of its income and property exclusively for charitable purposes. In reply, Organisation E provided evidence to show all the payments totalling \$20,700 to the trustee and two Executive Committee members had been fully repaid to it. Having regard to all relevant facts and circumstances, the IRD considered that Organisation E was a charitable institution and continued recognising its tax exemption status.

#### 2006 and 2007

Organisation E made donations in 2006 and 2007 to members of the organisation for reasons similar to those in 1999. The monthly allowance ranged from \$500 to \$6,500. For some cases, ad hoc payments were made to the recipients. For the year ended 31 March 2006, 16 and 63 recipients received donation for reasons (1) and (2) respectively. The IRD found that only one Executive Committee member, who was a retiree, was paid for reason (2). He received monthly payments of \$1,700 during the year and an additional payment of \$1,000 in January 2016, totalling \$21,400. For the year ended 31 March 2007, 27 and 60 recipients received donation for reasons (1) and (2) respectively. Again, the IRD found that the above mentioned Executive Committee member received monthly payments of \$1,700 during the year and an additional payment of \$1,700 in February 2007, totalling \$22,100. In both 2006 and 2007, more than 10 recipients received total payments of \$20,000 or more. The IRD drew Organisation E's attention to the potential contravention of the clause relating to the remuneration of the trustees and Executive Committee members and asked it to take remedial actions. In reply, Organisation E provided evidence to show the payments of \$43,500 in total received by the Executive Committee member had been fully repaid to it and undertook not to make such payments in future. Having regard to all the relevant facts and circumstances, the IRD considered that Organisation E was a charitable institution and continued recognising its tax exemption status.

#### Case F

Organisation F is a company limited by guarantee established in mid 1990s to advance Christianity. It is a church conducting normal church activities such as Saturday and Sunday morning and afternoon



services, discipleship training, prayer walk and members street evangelism, etc. The Articles of Association of Organisation F provides that the Board of Elders would be the church governing body. In 2002, the IRD conducted a review on Organisation F. Upon its failure to reply to the IRD's enquiry letters issued in July 2002 and December 2002 respectively, its recognition of tax exemption status was withdrawn in 2003. In 2011, Organisation F requested to reinstate its recognition of tax exemption status. In response to the IRD's enquiry, Organisation F stated that it had never carried on any trade or business activity during the years from 2003 to 2014 (i.e. date of reply). The IRD examined Organisation F's audited financial statements for the years ended 30 June 2003 to 2013 and noticed that Organisation F's total income ranged from \$355,885 to \$546,127 and it paid love gifts in the range from \$3,773 to \$53,582 to a pastor who was also a member of the Board of Elders (see **Annex B**). During the relevant times, Organisation F had two to three members on the Board of Elders. Organisation F advised that it was its members' decision to pay love gifts to the pastor. Such payments were gift and gratuity for their respect to the pastor and not remuneration. Upon advice by the IRD of the potential contravention of the clause relating to payment of remuneration to members of the Board of Elders in Organisation F's governing instrument, the pastor returned the love gifts received in the past two years, i.e. \$3,773 (for 2012) and \$9,400 (for 2013) to Organisation F. According to Organisation F's financial statements, no love gifts were paid in 2014. Having regard to all the relevant facts and circumstances, the IRD considered that Organisation F was a charitable institution and reinstated the recognition of its tax exemption status in 2015.

### Case G

Organisation G is a company limited by guarantee established in early 2000s with the objects to advance Christian faith by relieving the sufferings and needs of drug abusers and marginal youth. Its Articles of Association provide that the Board of Directors shall consist of not less than three and not more than fifteen members. In 2006, the IRD issued a review questionnaire to Organisation G. Upon its failure to response to the review questionnaire, the IRD withdrew the recognition of tax exemption status. In 2012, Organisation G requested the IRD to reinstate the recognition of its tax exemption status. Information

provided by Organisation G for the years 2002 to 2012 showed that it was engaged in anti-drug projects and training of workers for drug rehabilitation and that it had 3 directors on the Board of Directors. The IRD noticed that Organisation G's audited financial statements for the years ended 31 December 2008, 2009 and 2010 recorded directors' remuneration of \$30,000, \$130,000 and \$80,000 respectively. The IRD drew Organisation G's attention that directors should not receive remuneration. In reply, Organisation G advised that it employed 3 salaried employees, i.e. a chief executive (總幹事), a training director (培訓總監) and a ministry officer (事工主任), in 2002. The work of the former two posts included preparation of accounting and administrative records, liaison and meetings, fund-raising, printing the organisation's newsletters, preparation of training materials for anti-drugs programmes and preaching Christianity and carrying out ministry visits and training. In 2003 and 2007, the chief executive and the training director left Organisation G respectively and Organisation G did not have sufficient fund to employ replacements. The director took up their work on a voluntary basis. After four years of voluntary work and in view of the increasing workload of the director, in 2008, Organisation G agreed to pay a monthly remuneration of \$10,000 to the director if it had surplus after deducting operating expenses. As such, the director did not get paid each month. For the years 2008 to 2012, the total income of Organisation G ranged from \$287,571 to \$759,783. The director received \$30,000 in 2008, \$130,000 in 2009, \$80,000 in 2010, \$70,000 in 2011 and \$65,000 in 2012. Upon advice by the IRD of the potential contravention of the clause relating to payment of remuneration to directors in its governing instrument, Organisation G replied that its members were not aware that its directors could not receive remuneration. Having understood such prohibition, the above-mentioned director resigned from the Board of Directors in April 2013 and agreed to repay half of his remuneration for the years 2008 to 2012 to the organisation. Having regard to all the relevant facts and circumstances, the IRD considered that Organisation G was a charitable institution and reinstated the recognition of its tax exemption status in 2015.

- (ii) The IRD examines, among other things, the governing instrument of an organisation to ascertain if its objects fall within the meaning of "charitable purposes". This is an important threshold test for the IRD to deliver its role in accordance with section 88 of the IRO. In case a

charity breaches a clause of the governing instrument, it is a question of fact and degree whether such breach would fundamentally affect its charitable status.

In each of the four cases, the charity's objects in its governing instrument remain exclusively charitable and its activities were at large compatible with its stated objects. There was no evidence that the members of their governing body had blatantly sought private advantages from the charities. Whilst some of their trustees or directors had received remuneration or benefits, the available information showed that they received the remuneration or benefits in the capacity of other than director or trustee, i.e. an employee (in Cases D, F and G) or being old and needy members of the church (in Case E) and that the amount of remuneration or benefits received by them did not appear to be excessive. Having regard to all the relevant facts and circumstances including the scale and mode of operations of the charities, the IRD considered that such breaches were technical breaches and did not fundamentally change the charitable status of the charities. Hence the recognition of their tax exemption status was not withdrawn by the IRD.

If a charity blatantly breaches the provisions of its governing instrument and the IRD, after taking a holistic view, considers that such breach fundamentally changes its charitable status, it would withdraw the recognition of the tax exemption status. There are no precedent cases in this regard.

- (iii) In these four cases, the IRD gave its advice to the charities concerned which did not involve prescribed form of remedial actions. The remedial actions were proposed by the charities concerned. So long as a charity's non-compliance with the clause relating to payment of remuneration to members of governing body does not fundamentally change its charitable status, the IRD does not consider that it is legally defensible to withdraw tax exemption status of the charity.
- (iv) Section 88 of IRO provides general tax exemption to charities. The role of the IRD is to consider if an organisation is a charitable institution having regard to all the relevant facts and circumstances and if so, recognise the tax exemption status. The key consideration is whether the objects of the organisations are charitable in nature. If the

charity carries on a trade or business, the IRD has to ascertain if the profits derived from such trade or business has satisfied the conditions in the proviso to section 88 in order to be exempt from profits tax.

Please refer item (e)(i) and (ii) for the details of Cases D to G and the reasons for the IRD's recognition of their tax exemption status. The IRD has consistently performed its role in administering section 88 of IRO in relation to the four cases.

As explained in item (a), the IRD has taken the necessary administrative measures to perform its role as set out in section 88 of the IRO. The IRD considers that it has performed its role effectively.

- (v) In Audit Report No. 29, the Director of Audit noted that, in 1987, the IRD found that an approved charity had paid remuneration to its directors. Subsequently, the IRD required charities to include a provision if they allowed payment of remuneration to directors who had special qualifications not otherwise available to the charities. The audit review revealed that seven approved charities, which were granted tax-exemption status before 1988, had a provision in their governing instruments permitting the payment of remuneration to directors in return for services actually rendered to the organisations, but the provision on the conditions for remuneration to directors had not been included. Although the seven approved charities were granted the exemption status prior to 1988 in accordance with the practice prevailing at that time, the Director of Audit considered that, as the control on remuneration to directors would help guard against misappropriation of charities' income for the private gain of individuals, it was necessary that all approved charities should be subject to this control.

For charities recognised by the IRD as tax-exempt bodies before 1988, some of them might not contain the clause for the control on remuneration to directors. In response to the Audit Report, the IRD had sought legal advice in 1997 as to whether it was legally proper to request existing charities to consider amending their governing documents in order to incorporate provision relating to the remuneration to directors. According to the legal advice at that time, such provision was not vital to the recognition of tax exemption and the IRD was not entitled to withdraw the tax exemption recognition of

those organisations which failed to accede to the request. The legal advice had been conveyed to the Director of Audit and the Public Accounts Committee.

Since 1988, all organisations applying for recognition of tax exemption status under section 88 of the IRO have been required to have the director remuneration prohibition clause in their governing instruments. Such practice has been consistently implemented. For those tax exempt charities which did not have such clause in its government instrument, when they notified the IRD that they intended to revise some other clauses (e.g. change of quorum of meeting) in their governing instruments, the IRD would request them to incorporate or update the director remuneration clause. In general, the charities took up the IRD's request seriously.

To promote the best practice, the IRD will, in future periodic reviews, invite those tax exempt charities which do not have the director remuneration clause to incorporate the same in their governing instruments.

(f) (i) Case H

Organisation H is a company limited by guarantee established in 1990s for the promotion of Buddhism and operated a monastery. The total income of Organisation H for 2010 was over \$12 million, 99% of which was donation income, and it had a deficit of around \$1 million. In reviewing Organisation H's audited financial statements for the year ended 31 March 2010, the IRD asked, among other things, Organisation H to furnish details of travelling expenses and reasons why such expenditure was considered as expenses in furtherance of its charitable objects. Organisation H stated that the travelling expenses of \$704,519 were expenses on flight tickets of disciples in overseas who came to Hong Kong to attend the funeral services of the master of the monastery. The IRD pointed out to Organisation H that the travelling expense did not appear to be expenses in furtherance of its charitable object, and asked what remedial actions it would take if it agreed to IRD's view. Organisation H in its reply of March 2013 stated that to fulfill the public benefit requirement, it had resolved to claim back the travelling expenses from the disciples and so far \$500,000 had been recovered. In April 2014, the IRD asked Organisation H whether

it had recovered the balance of travelling expenses. Organisation H stated in its reply of May 2014 that the balance would be recovered in due course. Having regard to all the relevant facts and circumstances, including that Organisation H realised that payment of the travelling expenses might not be compatible with the charitable object and that it had taken remedial actions, IRD considered that Organisation H remained as a charitable institution. IRD continued recognising the tax exemption status of Organisation H.

### Case I

Organisation I is a company limited by guarantee incorporated in the early 1960s. Its principal objects are to provide relief to the poor and needy by reason of age, ill health, misfortune or infirmity and to advance education. Its activities were to make donations for its stated charitable objects. Organisation I had been subject to eight periodic reviews prior to 2008. The IRD issued a review questionnaire to Organisation I in September 2008 and received the return in September 2009, including audited financial statements for the year ended 31 May 2007 and a list of activities held during the period from June 2007 to May 2008. The IRD, having noticed from the list of activities that there was a grant for repairing the ancestral tomb and graveyard, in November 2009, asked Organisation I how such activity was compatible with its charitable objects. The IRD withdrew the recognition of its tax exemption status in 2011 when Organisation I, despite repeated reminders, did not respond to its enquiry.

In 2014, Organisation I requested the IRD to reinstate the recognition of its tax exemption status. In response to the IRD's enquiry, Organisation I stated that it had not conducted any fund raising activities since September 2009 and that its principal and only activities were making donations to the poor, needy and victims of calamity which were funded by investments managed by a bank in Hong Kong, investment income derived from overseas unlisted shares and interest income on deposits. Organisation I also provided audited financial statements for the years ended 31 May 2008 to 2013.

The IRD examined the audited financial statements and noticed that for the years 2008 to 2013, Organisation I's total income ranged from \$3 to \$25 million and the total donation expenses ranged from \$3 to \$23

million. Organisation I was requested to provide details of all the donation expenses made for the years 2008 to 2013. Having examined the information provided by Organisation I, the IRD considered two payments in the amount of \$102,267 and \$133,956, i.e. \$236,223 in total, both made in 2008 appeared not to be expenses in furtherance of its charitable objects nor for public benefit. Organisation I explained that the two sums totalling \$236,223 were made to an overseas charitable foundation whose founders were closely related to those of Organisation I. The sum of \$102,267 was a donation to finance part of the construction cost of an ancestral temple while the sum of \$133,956 was a donation to repair the ancestral tomb and graveyard. Organisation I contended that its founder was a philanthropist who had made donations to his ancestral village by building schools and hospitals. The reconstruction of the ancestral temple was carried out to provide a place to house the ashes of villagers who passed away and the repair of the tomb of the founder's father was carried out because many villagers regularly visited the tomb to pay respect to him. Organisation I therefore was of the view that the payments were relevant in fostering education of the Confucian doctrine of filial piety for the advancement and improvement of standards of living of humans and their social, moral and physical well-being and compatible with its charitable objects. The IRD did not share Organisation I's view and considered the link of the expenses and its charitable object was remote. Organisation I, though still maintained its views regarding the two payments, confirmed that it would not make similar donations/payments in future. Having regard to all the relevant facts and circumstances including the absence of other irregularities and the charity's undertaking of not making similar donations/payments in future, the IRD considered that Organisation I was a charitable institution and reinstated the recognition of its tax exemption in 2015.

- (ii) Section 88 of the IRO was added to the IRO in 1949 by the Inland Revenue (Amendment) Ordinance 1949, which was then numbered as section 89A. When introducing the Inland Revenue (Amendment) Bill 1949, the then Attorney General stated the Objects and Reasons of the amendment as follows:

*“17. It is not thought desirable to impose tax on institutions of a charitable, ecclesiastical or educational nature except in so far as such bodies may be engaged in trade or*

*business. Under section 89 of the principal Ordinance, the Governor in Council has power to exempt any person, office or institutions from the payment of tax, but as this power refers to specific cases and does not grant general powers, it is desirable to provide general exemption by means of a new section.”*

The current version of section 88, which is not materially different from the then section 89A reads as follows:

*“Notwithstanding anything to the contrary in this Ordinance contained there shall be exempt and there shall be deemed always to have been exempt from tax any charitable institution or trust of a public character:*

*Provided that where a trade or business is carried on by any such institution or trust the profits derived from such trade or business shall be exempt and shall be deemed to have been exempt from tax only if such profits are applied solely for charitable purposes; and are not expended substantially outside Hong Kong and either –*

- (a) the trade or business is exercised in the course of the actual carrying out of the expressed object of such institution or trust; or*
- (b) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution or trust is established.” (emphasis added)*

Having regard to the objects and reasons and the structure of section 88, it is clear that a general tax exemption is provided to charitable institutions and trusts of a public character. A charity will only be liable to tax on the profits it made from trading or business activities if it fails to satisfy the conditions in the proviso to section 88, i.e. it carries on a trade or business and that profits are derived from that trade or business. However, the general tax exemption accorded to the charitable institution or trust of a public character by section 88 of the IRO is not affected.



Insofar as Organisation H and Organisation I are concerned, there is no indication that they had carried on any trade or business and even if they had, profits derived from such trade or business should be chargeable to profits tax. The IRD, for the reasons stated in item (f)(i) above, considered that withdrawal of recognition of tax exemption status is not warranted.

(iii) No. Please see item (f)(i) for details.

(g)(i),(ii) In view of the concerns of the Ombudsman and the Public Accounts Committee (PAC) regarding the control of charitable fund-raising activities, the Government explored means to strengthen the control. For this reason, the IRD sought the advice of the Department of Justice (DoJ) in September 2003. The legal advice was sought in a general policy context without the reference to any specific case.

In our reply to PAC on 4 May 2017, we provided the gist of the legal advice on this matter after consulting DoJ. The Government does not consider that it is appropriate to disclose the legal advice it has obtained which is subject to legal professional privilege.

(iii) The CDS updates the Staff Handbook from time to time. The Staff Handbook mainly sets out the work procedures of the section. Since the CDS is a small section, its staff-members are aware of the details of the legal advice in 2003, through discussion, debriefing and experience sharing.

(iv) As legal advice had been sought in 2003 to clarify the matter mentioned in item (g)(i) and (ii) above, the IRD did not seek legal advice again on this matter. The Financial Services and the Treasury Bureau was aware of the legal advice in 2003.

(v) As a tax administration, the IRD has been diligently discharging its duty in accordance with the IRO which is a piece of legislation imposing taxes on property, earnings and profits. Section 88 of the IRO exempts from tax any charitable institution or trust of a public character.

In administering section 88 of the IRO, the IRD carefully considers whether an organisation falls within the meaning of “charitable

institution” and has met the conditions for exemption set out under section 88, taking into account all the circumstances.

The legislature has specifically set out the conditions for exemption under section 88 of the IRO. Section 40(1) of the Interpretation and General Clauses Ordinance (Cap. 1) does not confer upon IRD the power to add extra conditions for exemption, or to impose the same on an institution, in addition to those conditions which are specifically set out by the legislature under section 88 of the IRO.

- (h) (i) The IRD administers the IRO and is mainly responsible for the assessment and collection of taxes, including processing applications for recognition of tax exemption under section 88 of IRO. The IRD acknowledges the importance to ensure the objects of tax-exempt charities remain charitable and that their activities are compatible with their charitable objects. In fact, the IRD has been taking necessary measures to ensure that the relevant charities comply with the tax exemption conditions as stipulated under section 88 of the IRO. Having regard to the relevant facts and circumstances of the case concerned and making reference to information obtained from other channels, the IRD determines the frequency of review for individual tax-exempt charity. In general, the IRD conducts review on tax-exempt charities once every four years. The 4-year review cycle is a general practice, but the IRD will initiate actions (e.g. early review on tax-exempt charities) if available information (e.g. from media, past record of the charity, third party information, etc.) indicates that suspected non-charitable activities have been carried out. In other words, additional and sufficient attention would be given to tackle the “high risk” cases as necessary.

The IRD all along allocates its resources according to service needs, work priorities as well as the corresponding risks and impacts in carrying out its various responsibilities. To cope with the steadily-increasing number of charities applying for recognition of tax exemption as well as cases subject to review, the number of staff working in CDS increased from five to eight in April 2013.

- (ii) As mentioned in item (h)(i) above, additional manpower resources have been deployed to deal with charity cases in April 2013.

The IRD issued on average 1,300 to 1,600 review questionnaires per year to tax-exempt charities from 2012 to 2015. Owing to the limitation of its computer programme, CDS cannot extract the number of reviews completed. Yet it can be seen in Table 2 and Figure 4 of Audit Report No. 68 that the average processing time to complete a review and the number of cases and correspondence pending for attention of CDS both record a substantial drop in recent years.

- (iii) In its Report on Charities in 2013, the LRC recommended in Recommendation 16 that “the IRD should conduct more frequent reviews of the accounts of individual tax-exempt charities as and when necessary, to ascertain whether the activities of these charities are compatible with their charitable objects”. In the periodic review, the IRD diligently examined the information provided in the review questionnaire, financial statements and list of activities to identify suspected breaches and raised enquiries with the relevant parties.
- (iv) For meeting the legislative intent of section 88, the IRD considers that there is not an imminent need to review the relevant provision of the IRO. The key responsibility of the IRD, as a tax administration, is the assessment and collection of taxes.
- (v) The IRD considers that the current review mechanism adequate. As indicated in item (h)(i) above, the 4-year review cycle is a general practice and the IRD will initiate special actions if available information indicates that suspected non-charitable activities have been carried out.
- (vi) The IRD considers that the current manpower resources of CDS can cope with the existing workload arising from processing applications for tax exemption and conducting periodic reviews of charities. The IRD will continue to assess the operational needs and evaluate the impact on its manpower resources. The IRD will consider seeking additional manpower resources through the established mechanism, if necessary.
- (i) Organisation L is a company limited by guarantee incorporated in mid 1990s with the object of advancing Christianity. In the first review conducted in 2002, Organisation L informed the IRD that no activities had been carried on since incorporation and it planned to operate a

church in 2002 or early 2003. The IRD concluded the 2002 review and decided to conduct the next review in 2004.

In response to the IRD's review questionnaire issued in 2004, the organisation provided audited financial statements for the years ended 31 March 2002, 2003 and 2004. No income was reported in the financial statements and expenses varying from \$105 to \$685 were reported. In response to the IRD's enquiry on its future activity plan, Organisation L stated that its members had decided to set up a Saturday fellowship and open two more home group fellowships in 2005. The IRD noted that the planned activities were compatible with the organisation's charitable object and concluded the review.

In the review questionnaire issued in 2009, Organisation L stated that it had not started any activity. The IRD informed Organisation L that its tax exemption status would be withdrawn if it was dormant. In October 2009, the organisation informed the IRD that it planned to engage a pastor from overseas to help it extend its services in Hong Kong and the church would start operation in November 2009. The IRD noted that the planned activities were compatible with the organisation's charitable object and concluded the review.

In October 2014, the IRD issued a review questionnaire to Organisation L. Organisation L completed the questionnaire stating that it had not yet started operation. The IRD in July 2014 requested the Organisation L to provide a copy of audited financial statements for the last financial year and specimen of donation receipt currently issued by it. In response, Organisation L provided a donation receipt dated 13 September 2015 in the amount of \$389.50 bearing the name of the organisation but without the word "Limited" in English and "有限公司" in Chinese. In reply to the IRD's enquiry that the full name of the organisation should be printed in its donation receipts, Organisation L provided a copy of audited financial statements for the year ended 31 March 2015, a donation receipt dated 31 July 2016 in the amount of \$450 bearing the organisation's full name in English and Chinese and an activity pamphlet. The IRD accepted the planned activities were compatible with the organisation's charitable object and concluded the review in September 2016.

The IRD in March 2017 asked Organisation L to explain the inconsistencies between information previously provided by it and the audited financial statements for the year ended 31 March 2016. On 10 May 2017, Organisation L replied that it intended to, but had not yet carried out any church activity. The information previously submitted to the IRD were activities that it planned to carry out and the donation receipts were merely sample receipts. Organisation L stated that it did not maintain any bank account.

To follow up the question raised by the Public Accounts Committee at the hearing on 6 May 2017 and having reviewed Case L again, the IRD wishes to state that when conducting the review, which was started in 2014 and concluded in September 2016, the audited financial statements for the year ended 31 March 2016 were not available to the IRD. In fact, the auditor's report was signed off by the auditor on 30 November 2016 while the audited accounts were approved by the directors on the same date. The donation receipt dated 31 July 2016 falls outside the period covered by the audited financial statements ended 31 March 2016. As for the donation receipt dated 13 September 2015, though it falls with the period covered by the audited accounts ended 31 March 2016, there is no concrete evidence that the organisation did receive the donation in question.

As Organisation L has never carried on any activities over a long period of time, the IRD withdrew the recognition of its tax exemption status by a notice dated 15 May 2017.

- (j) A copy of the entire Staff Handbook (as at March 2016) is at **Annex C**. Only the English version of the Staff Handbook is available. The Staff Handbook set out the practices and work procedures of the CDS.

Yours sincerely,



( Kelvin Lo )

for Secretary for Financial Services and the Treasury

c.c. Commissioner of Inland Revenue (Attn: Ms. Michelle Ong)

**Case D**  
**Breakdown of salaries and wages**

Name	Position	Capacity employed as reported in Employer's Return	<u>Year ended 31 March</u>					Date of retirement/resignation from executive committee
			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	-	

Name	Position	Capacity employed as reported in Employer's Return	<u>Year ended 31 March</u>					Date of retirement/resignation from executive committee	
			2015	2014	2013	2012	2011		
35	職員	Clerk	198,160	191,140	184,120	173,800	150,750		
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>	
Total remuneration of ex-committee members				<u>-</u>	<u>4,610,446</u>	<u>4,393,750</u>	<u>4,745,790</u>	<u>5,280,920</u>	
Percentage of total salaries & wages			=	<u>36.1%</u>	<u>34.8%</u>	<u>37.3%</u>	<u>38.8%</u>		
Total income of Organisation D				<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>	
Percentage of total income			=	<u>8.2%</u>	<u>8.6%</u>	<u>4.2%</u>	<u>9.5%</u>		

\*Executive Committee member

**Case F**  
**Love gifts to pastor**

<u>For year ended 30 June</u>	<u>Love gifts</u>	<u>Turnover of Organisation F</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	-	<u>501,774</u>
Total	<u>276,087</u>	<u>5,397,974</u>



# **Charitable Donations Section Staff Handbook**

## CONTENTS AND ARRANGEMENT OF CHAPTERS

<u>Part I - GENERAL ORGANIZATION</u>		<u>PAGE</u>
Chapter 1	<u>Organization and Establishment of the Section</u>	
1.1	Introduction	<u>1</u>
1.2	Nature and Scope of Work	<u>1</u>
1.3	Establishment	<u>1</u>
Chapter 2	<u>Duties and Responsibilities of officers</u>	
2.1	Assessor	<u>3</u>
2.2	Assistant Assessor	<u>3</u>
2.3	Taxation Officer	<u>4</u>
2.4	Assistant Taxation Officer and Assistant Clerical Officer	<u>4</u>
2.5	Clerical Assistant	<u>5</u>
 <u>Part II - CHARITABLE DONATIONS DIVISION</u>		
Chapter 3	<u>Scope and Duties of Work</u>	<u>6</u>
Chapter 4	<u>Files</u>	
4.1	Cat 91/Files	<u>7</u>
4.2	Headquarter File HQ 52/225/88	<u>8</u>
4.3	Headquarter File HQ 52/225/88A	<u>8</u>
4.4	Headquarter File HQ 52/225/88B	<u>8</u>
4.5	91/GEN	<u>8</u>
4.6	91/Not Worth Review List	<u>9</u>
4.7	91/MISC	<u>9</u>
4.8	91/GOV/DON	<u>9</u>
4.9	91/Computer	<u>9</u>
4.10	Charitable Donation Matching CRN Report	<u>9</u>
4.11	ICAC Checklist	<u>9</u>
4.12	IRD Homepage – Updated List of Tax-Exempt Charities	<u>9</u>

4.13	91/BSD	<u>10</u>
4.14	91/DMS	<u>10</u>
4.15	91/Education	<u>10</u>
4.16	91/Fundraising	<u>10</u>
4.17	91/Statistics	<u>10</u>
4.18	91/MPF	<u>10</u>
4.19	91/Newspaper Cutting	<u>11</u>
4.20	91/Press	<u>11</u>
4.21	91/Records Management	<u>11</u>
4.22	91/Sports	<u>11</u>
4.23	91/Intern	<u>11</u>
4.24	91/IAS	<u>11</u>
4.25	DOJ Comments	<u>11</u>

Chapter 5 Records

5.1	Charitable Donation EUC Program	<u>12</u>
5.2	Barcoding File Management System (“BCFMS”)	<u>13</u>
5.3	Review Exercise Control List	<u>14</u>
5.4	Batch Control Sheet for Cancelled Files	<u>14</u>
5.5	File Movement Record Book	<u>14</u>
5.6	Work Reports	<u>15</u>

Chapter 6 Office Practices and Procedures

6.1	Opening, Cancellation and Reopening of Charitable Institution Files	<u>16</u>
6.2	Approval of Tax Exemption Claims from Charitable Institution or Trust of a Public Character	<u>19</u>
6.3	Withdrawal of Tax Exemption Given under Section 88 of the IRO	<u>22</u>
6.4	Claim under Section 16(a) of the Business Registration Ordinance (prior to 1984) – Revoked	<u>24</u>
6.5	Matching of Tax-exempt Charities against Data Transmitted from the Companies Registry	<u>24</u>
6.6	Reinstatement of Tax Exemption Status under Section 88 of the IRO	<u>26</u>
6.7	Preparation of List of Tax-Exempt Charities	<u>27</u>
6.8	Review of Tax-Exempt Charities	<u>27</u>
6.9	Informer’s Cases	<u>32</u>

6.10	Physical Check	<u>33</u>
6.11	Conflict of Interest	<u>33</u>

Part III - RETIREMENT SCHEMES DIVISION

Chapter 7	<u>Scope of Work and Duties of Retirement Scheme Division – Revoked</u>	<u>36</u>
Chapter 8	<u>Files – Revoked</u>	<u>36</u>
Chapter 9	<u>Records and Registers – Revoked</u>	<u>36</u>
Chapter 10	<u>Office Procedures and Practices - Revoked</u>	<u>36</u>

Part IV - MISCELLANEOUS

Chapter 11	<u>Information Pamphlet, Standard Forms and File Control</u>	
11.1	Information Pamphlet	<u>37</u>
11.2	Standard Forms	<u>37</u>
11.3	File Control	<u>38</u>

## 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.

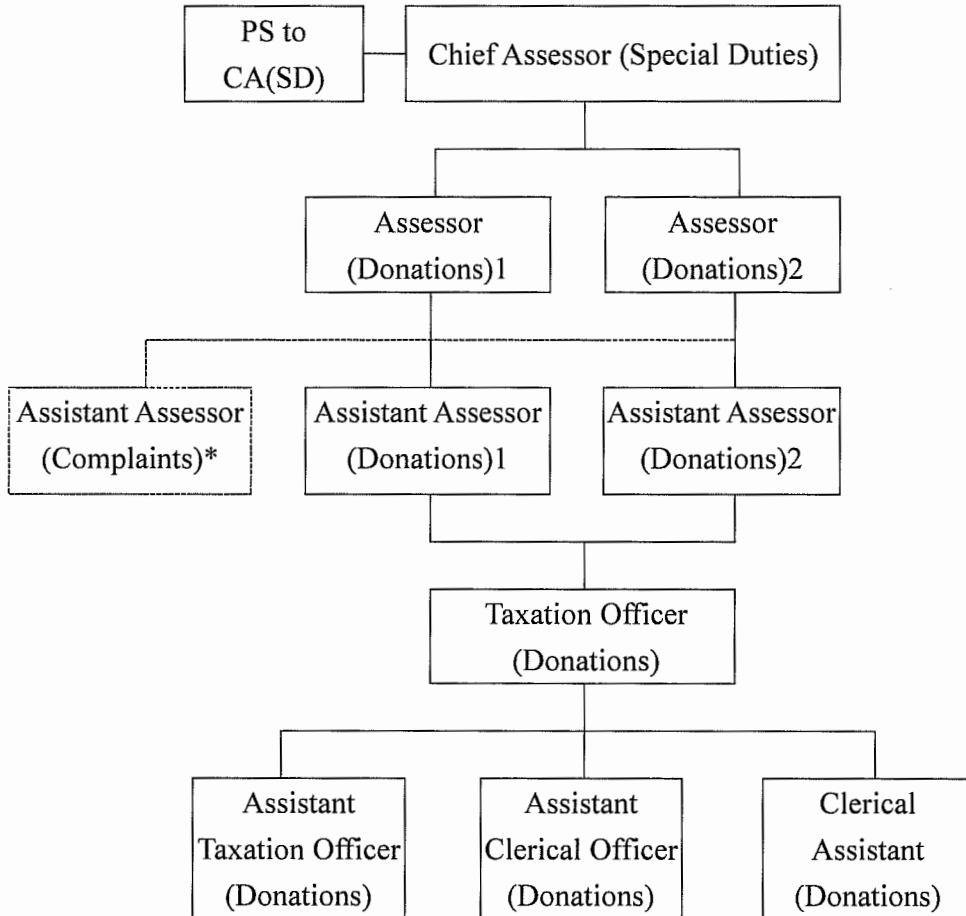
1.2.2.2 Conducting review from time to time on tax-exempt charities to ascertain if continued tax exemption should be recognized.

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](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*

*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.*

**CONFIDENTIAL**

**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](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.