

**Bills Committee on Inland Revenue (Amendment) (No. 6) Bill 2017**  
**Follow-up to the meeting on 14 May 2018**

At the meeting on 14 May 2018, the Government explained that assessors of the Inland Revenue Department (“IRD”) make tax assessments/re-assessments based on, among other things, the two principles –

- (a) the assessments/re-assessments should be objective and grounded on facts, and
  - (b) the motive of the assessments/re-assessments should be legitimate; and that assessors should explain the basis/assumptions of their assessments/re-assessments to the taxpayers in question.
2. The Government is requested to provide supplementary information on the above principles, and advise whether the IRD has stated those principles in its relevant Departmental Interpretation and Practice Notes (“DIPNs”) and/or other internal guidelines for the reference of its assessors.

**Assessor’s power to make tax assessments**

3. The assessor’s power to make assessment is provided under section 59 of the Inland Revenue Ordinance (Cap. 112) (“IRO”). Under section 59(1), an assessor is under a duty to assess a taxpayer if he is of the opinion that the taxpayer is chargeable with tax and the time limit for the taxpayer to furnish a return has expired. Where the taxpayer has furnished a return, the assessor may accept the return and make an assessment on the basis of the return under section 59(2)(a). However, if the return furnished is not accepted or the taxpayer has not furnished a return, the assessor may estimate the sum in respect of which the taxpayer is chargeable to tax and make an assessment accordingly under section 59(2)(b) or (3).

4. Furthermore, section 60(1) of the IRO empowers the assessor to make an additional assessment according to his judgment if it appears that a taxpayer has not been assessed or has been assessed at less than the proper amount. A typical example which calls for an additional assessment is where the IRD has conducted a post-assessment audit or investigation in respect of a taxpayer and the original assessment is found to be inadequate after further facts and information are gathered.

## **How an assessment is made**

5. The assessor's power to make assessment must be honestly, sensibly and realistically exercised. This principle is particularly important when an assessor has to make an estimated assessment where the taxpayer's return is not available or such return is not accepted. In considering whether an estimated assessment is justified and in arriving at a realistic estimate of assessable profits, the assessor takes into account all relevant available information, including (but not limited to) the following –

- (a) the general conditions of the industry in which the taxpayer engages;
- (b) the functions performed, the assets employed and the risks assumed by the taxpayer;
- (c) the geographical markets and location of operations of the taxpayer;
- (d) the profit trend of the taxpayer's business;
- (e) key financial indicators (e.g. profit margin, stock level, etc.) of comparable enterprises;
- (f) any specific findings in the taxpayer's accounts and records; and
- (g) any information relating to the taxpayer and its industry from other sources (e.g. the taxpayer's website, press reports, trade reports, etc.).

6. While the assessor can make an estimated assessment according to the best of his judgment, he cannot act capriciously or dishonestly. The assessor will normally explain to the taxpayer the facts and circumstances which have been taken into account in arriving at the assessment, provided that such disclosure will not prejudice any audit or investigation work. The taxpayer will also be reminded of his right of objection against the assessment and his right of appeal to the Board of Review or the Court.

7. Assessors need to follow the aforementioned principles, as part of the internal practice of the IRD, in making assessments. In respect of field audit and investigation cases, the IRD's practice of making additional assessments or protective assessments is set out in DIPN No. 11<sup>1</sup>.

**Financial Services and the Treasury Bureau**  
**Inland Revenue Department**  
**May 2018**

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<sup>1</sup> An electronic copy of DIPN No. 11 is available at [https://www.ird.gov.hk/eng/pdf/e\\_dipn11.pdf](https://www.ird.gov.hk/eng/pdf/e_dipn11.pdf).