



Hong Kong Institute of  
**Certified Public Accountants**  
香港會計師公會

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# Tax Bulletin

## **2025 Annual Meeting**

**The Inland Revenue Department**

*and*

**The Hong Kong Institute of Certified Public Accountants**

**2025**  
**ANNUAL MEETING BETWEEN**  
**THE INLAND REVENUE DEPARTMENT AND**  
**THE HONG KONG INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS**

**Preamble**

As part of the Institute's regular dialogue with the government to facilitate tax compliance, improve procedural arrangements and clarify areas of interpretation, representatives of the Institute's Taxation Faculty Executive Committee (TFEC) met the Commissioner of Inland Revenue (CIR) and members of his staff in May 2025.

An agenda was proposed by the TFEC, taking account also of questions suggested by other members. The minutes of the meeting, prepared by the Inland Revenue Department (IRD), having considered comments from the Institute, are reproduced in full in this Tax Bulletin and should be of assistance in members' future dealings with the IRD. Part A contains items raised by the Institute and Part B, items raised by IRD.

**List of Discussion Items**

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**2025**  
**ANNUAL MEETING BETWEEN**  
**THE INLAND REVENUE DEPARTMENT AND**  
**THE HONG KONG INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS**

**Full Minutes**

The 2024/25 annual meeting between the Hong Kong Institute of Certified Public Accountants and the Inland Revenue Department was held on 30 May 2025 at the Inland Revenue Department.

**In Attendance**

**Hong Kong Institute of Certified Public Accountants (the Institute)**

Mr Eugene Yeung	Chair, Taxation Faculty Executive Committee
Ms Agnes Cheung	Deputy Chair, Taxation Faculty Executive Committee
Ms Sophia Chan	Member, Taxation Faculty Executive Committee
Ms Doris Chik	Member, Taxation Faculty Executive Committee
Mr Ming Lam	Member, Taxation Faculty Executive Committee
Mr Anthony Chan	Member, Taxation Faculty Executive Committee
Ms Carol Lam	Member, Taxation Faculty Executive Committee
Ms Vicky Wong	Member, Taxation Faculty Executive Committee
Mr Louis Lam	Member, Taxation Faculty Executive Committee
Ms Anita Tsang	Member, Taxation Faculty
Mr Alan Lau	Member, The Institute
Mr Peter Tisman	Director, Advocacy and Practice Development
Ms Selraniy Chow	Associate Director, Advocacy and Practice Development

**Inland Revenue Department (IRD)**

Mr Chan Sze-wai, Benjamin	Commissioner of Inland Revenue
Ms Chan Shun-mei, Michelle	Deputy Commissioner of Inland Revenue (Technical) (Acting)
Mr Leung Kin-wa, Wesley	Deputy Commissioner of Inland Revenue (Operations)
Ms Lam Pui-kuen, Florence	Assistant Commissioner of Inland Revenue, International and Taxation Development Unit
Ms Hui Chiu-po, Bo Bo	Assistant Commissioner of Inland Revenue, Unit 1 (Acting)
Ms Wong Pui-ki, Fiona	Assistant Commissioner of Inland Revenue, Unit 2 (Acting)
Mr Ng Man-kwan, Raymond	Assistant Commissioner of Inland Revenue, Unit 4
Ms Pan Hiu-yan, Sabrina	Senior Assessor (Research)
Mr Ching Wa-kong, Jacob	Assessor (Research)

Mr Benjamin Chan (CIR) welcomed the representatives of the Institute to the annual meeting and thanked the Institute's support for the past year. CIR introduced the IRD officers in attendance. He appreciated the efforts made by the members of the Taxation Faculty Executive Committee in preparing the agenda for this year's meeting. He expressed that the IRD always treasured the annual meeting as a platform for maintaining an active dialogue with the profession to resolve issues of common interest.

Mr Eugene Yeung (Mr Yeung) on behalf of the Institute's Taxation Faculty thanked CIR for arranging the annual meeting. He said that the Institute also viewed the annual meeting as an important event which offered a valuable opportunity to clarify technical issues which were useful and important to its members. He thanked the IRD for allowing the Institute to read through the draft responses before the meeting, and looked forward to continuing the cooperation between the Institute and the IRD in future.

The meeting then proceeded to discussion of the agenda items raised by both sides.

## **PART A - MATTERS RAISED BY THE INSTITUTE**

### **Agenda Item A1 - Profits Tax Issues**

#### **(a) Deduction of reinstatement costs**

Starting from the year of assessment 2024/25, reinstatement costs incurred for any premises under a lease are deductible under section 16(1)(gc) of the Inland Revenue Ordinance (IRO) if all of the conditions specified in section 16(2K) of the IRO are met. We would like to clarify the following two questions:

- (i) For the provision of reinstatement costs charged to the accounts in the prior years which have been treated as non-deductible, we would like to confirm with the IRD that the subsequent utilisation of the provision in the year 2024/25 or after is deductible if the conditions are satisfied.
- (ii) According to the FAQ on the IRD's website, in order for a person to claim deduction for reinstatement costs, amongst other conditions, the person claiming the deduction needs to be a lessee of the lease and the person has a reinstatement obligation for the premises. In some cases, a group holding company enters into tenancy agreement with landlord while recharging group entities the rental cost for sharing the office space and also the reinstatement cost when moving out of the premises. While there may not be a formal lease agreement between the holding company and the group entities, would the group entities being recharged the rent and reinstatement costs be considered a lessee and be considered as having a reinstatement obligation for the purpose of claiming deduction for reinstatement cost?

The IRD responded as follows –

- Section 16(1)(gc) of the IRO provided that reinstatement costs incurred for any premises under a lease were deductible only if all of the conditions specified in section 16(2K) of the IRO were met. The deduction for lease reinstatement costs applied starting from the year of assessment 2024/25. The conditions as specified in section 16(2K) were as follows:

- (a) the person claiming the deduction was a lessee of the lease;
  - (b) the person had a reinstatement obligation for the premises;
  - (c) the reinstatement costs did not relate to any provisions made under Hong Kong Financial Reporting Standard 16 (Leases) as issued by the Institute and in force from time to time; or any other similar accounting standards; and
  - (d) the amount of the reinstatement costs claimed was reasonable in the circumstances.
- As regards question (i), it was the legislative intent that a tax deduction should only be allowed for reinstatement costs that had been actually incurred in order to minimise the risk of abuse. Section 16(2K)(c) specifically provided that the reinstatement costs claimed to be deducted should not relate to any provisions made under the relevant accounting standards. In other words, mere provisions charged to the profit and loss account for the estimated reinstatement costs without actual liability or payment could not be deducted under section 16(1)(gc). For a provision of reinstatement costs charged to the accounts which had been treated as non-deductible, if the actual reinstatement costs were subsequently incurred or paid for reinstating the premises at the end of the term of the lease or on early termination of the lease in the year of assessment 2024/25 or afterwards, such costs were deductible under section 16(1)(gc), provided that all the other conditions for deduction were met.
  - In section 16(3) of the IRO, the term “reinstatement obligation” was defined to mean an obligation (whether express or implied, and whether arising from the lease or from another agreement between the lessor and lessee of the lease) to reinstate, or pay (whether in full or in part) for the reinstatement of, the premises to their original condition at the end of the term of the lease or on an early termination of the lease. Whether a lessee had a reinstatement obligation for leased premises under section 16(2K)(b) was a question of fact.
  - In the given scenario in question (ii), a group holding company entered into a tenancy agreement with the landlord and recharged other group entities the rental cost for sharing the office space as well as the reinstatement costs when moving out of the premises. As the IRD saw it, the group holding company was the lessee of the leased premises and had a reinstatement obligation for the premises. In the absence of the lease agreement, the group entities would not be regarded as the lessees of the lease in question and having lessees’ reinstatement obligation for the purpose of claiming a deduction for reinstatement costs under section 16(1)(gc).
  - Having said that, the IRD recognised that there might be other circumstances which warranted a deduction under section 16(1). For example, where the group holding company rendered rental services to group entities and received

intra-group service fees (including the rental cost for sharing the office space and the reinstatement cost when moving out of the premises) charged on an arm's length basis, such intra-group service fees made by the group entities to the group holding company could be allowed deduction under section 16(1) to the extent that they were incurred in the production of assessable profits.

Ms Carol Lam (Ms Lam) followed up on question (ii) and mentioned that there might be instances where the group entities would recognise their sharing of rental and reinstatement costs in their financial statements in accordance with a cost sharing agreement (CSA). She asked whether the group entities could claim a deduction in respect of the reinstatement costs in such circumstances.

Ms Bo Bo Hui (Ms Hui) replied that the CSA did not constitute a lease agreement. Hence, the group entities could not be allowed deduction of the reinstatement costs. Ms Hui, however, said that the group entities might be able to claim deduction of service fees paid to the holding company under section 16(1), provided that the intra-group service fees were incurred in the production of assessable profits and charged on an arm's length basis.

CIR supplemented that the cost charged under the CSA was not in the nature of reinstatement cost and was no different from that under the recharge arrangement mentioned above. He also pointed out that the deductibility of the cost charged would depend on whether the conditions under section 16(1) had been fulfilled and whether the cost was precluded from deduction under section 17 of the IRO.

Ms Sophia Chan followed up and sought further clarification on whether group companies could deduct the service fees at the time of recharge if the holding company recharged the rental expenses together with the provisions for reinstatement to group companies on an arm's length basis.

CIR responded that provided that the group entities had incurred the cost or service fee and the conditions under the IRO (particularly those in sections 16 and 17) were met, the relevant cost or service fee would be deductible.

#### **(b) Minimum asset threshold for tax concessions for Family-owned Investment Holding Vehicles (FIHVs)**

Under Section 10 of Schedule 16E to the IRO, the aggregate net asset value (NAV) of Schedule 16C assets managed by an eligible single family office (ESF Office) for the FIHV(s) must be at least HK\$240 million to qualify for the tax concessions.

The wording of this section appears to indicate that when determining the FIHV's asset value managed by the ESF Office, only the value of Schedule 16C assets (instead of the NAV of the entity as a whole) is taken into account. The calculation does not require deducting loans from the value of Schedule 16C assets.

To illustrate, according to this interpretation, if an FIHV holds Schedule 16C assets valued at HK\$240 million which are financed by a HK\$100 million shareholder's loan, the asset value managed by the ESF Office would still be regarded as HK\$240 million for the purpose of the tax concession.

The Institute would like to seek the IRD's confirmation that the above interpretation is correct, i.e., the NAV calculation for the purpose of the tax concessions does not require the deduction of loans from the value of Schedule 16C assets.

The IRD responded as follows –

- The term “net asset value” was not defined in Schedule 16E to the IRO. Thus, it should be construed according to its ordinary meaning and reference could be made to acceptable accounting standards. Although “net asset value” was not explicitly defined in the Hong Kong Financial Reporting Standards, the concept was widely recognised in accounting and finance as representing the value of total assets less total liabilities.
- A loan was generally classified as a financial liability unless it could be classified as an equity instrument under HKAS 32 Financial Instruments: Presentation. Paragraph 16 of HKAS 32 set out the conditions that had to be met in order for a financial instrument to be classified as an equity rather than a liability. The conditions were: (a) the instrument included no contractual obligation to deliver cash or another financial asset to, or exchange financial assets or liabilities with, another entity; and (b) the instrument would or might be settled by delivering the issuer's own equity.
- In the example given, in determining the amount of NAV of the Schedule 16C assets, the shareholder's loan of HK\$100 million would be treated as a financial liability and deducted from the total asset value of the Schedule 16C assets unless the loan could be classified as equity. For a shareholder's loan to be classified as equity, it should have the characteristics of equity, which might include: the loan did not have a contractual obligation to repayment (e.g. a perpetual loan without a maturity date); or the loan should be settled by equity (e.g. convertible loan which converted into shares after a certain period).

Ms Doris Chik mentioned that Singapore had recently amended the definition of “asset under management” (AUM) under the tax incentive schemes for funds and family offices, by which loans (including shareholder's loans) for financing the designated investments would not be considered as liabilities when calculating the value of AUM in designated investments. She asked whether the IRD could consider adopting a similar approach in ascertaining the minimum asset threshold. Mr Yeung also asked the policy intent of using the term “NAV” in the current legislation for FIHV.

CIR responded that the minimum asset requirements in Hong Kong's regime and Singapore's regime were different. He explained that liabilities could not be ignored when the term “NAV” was adopted in the legislation and that the policy intent was to

ensure that ESF Offices would bring net assets to Hong Kong without resort to borrowing.

Ms Sophia Chan followed up and expressed her view that it was common for family offices to acquire the Schedule 16C assets through shareholders' loans. Consequently, many family offices might not be able to meet the minimum asset threshold based on the IRD's interpretation on the term "NAV".

Mr Yeung echoed the point and commented that family offices typically leveraged their assets (e.g. shares) as collaterals to secure additional financing, which could subsequently dilute the NAV of the Schedule 16C assets of the FIHVs managed by the ESF Offices. If the value of shares used as collaterals dropped, the NAV would fall short of the minimum asset threshold. CIR responded that when formulating the family office regime, fluctuation in asset value had already been taken into account and the law had allowed certain flexibility for the purpose of calculating the NAV.

While Mr Ming Lam (Mr Lam) appreciated the policy intent of adopting the "NAV" rule in the law, he sought clarification on its application. He questioned whether the NAV of the Schedule 16C assets would only refer to the inclusion/netting-off of reduction in the value, liability and loss of the Schedule 16C assets, such as unrealised/realised losses and impairment losses in respect of the Schedule 16C assets, rather than inclusion of any liability of the FIHV(s). Mr Lam emphasised that, in Schedule 16E to the IRO, the expression "the aggregate of the amount of the NAV of the Schedule 16C assets" should focus on the NAV of the assets only, not including other liabilities of the FIHV(s).

CIR acknowledged the concerns of the Institute's representatives and reiterated that the liabilities could not be disregarded when calculating the NAV of the Schedule 16C assets of the FIHV under the existing family office regime. He further remarked that a shareholder's loan might be considered as an equity for tax purposes under some circumstances, depending on various factors (e.g. accounting classification). Whether a shareholder's loan should be treated as an equity would be considered on a case-by-case basis. He added that if practitioners encountered any specific problems in determining the NAV of the Schedule 16C assets, they could relay to the IRD. He further said that the Institute's comments on the current NAV rule would be conveyed to the Financial Services and the Treasury Bureau for consideration.

**(c) Ascertaining the "embedded IP income" under the patent box tax concessionary scheme**

Section 7(2) of Schedule 17FD to the IRO stipulates that, for the purposes of ascertaining the portion of income from a sale of a product or service that is attributable to the value of an eligible intellectual property (IP) (embedded IP income), the embedded IP income is to be calculated in the way that best secures consistency with the requirements and guidance in the OECD rules.

However, in practice, it may be difficult for taxpayers to apply the OECD rules to ascertain the embedded IP income, especially when the IP involved is unique in nature. In this regard, we would like to check whether the IRD would be prepared to consider/accept other reasonable alternative methodologies that take into account commercial considerations, in order to ascertain the embedded IP income that is eligible for the concessionary tax rate.

The IRD responded as follows –

- Section 7(1)(c) of Schedule 17FD to the IRO provided that if the price of a sale of a product or service included an amount that was attributable to an eligible IP, the eligible IP income meant the portion of the income from that sale as, on a just and reasonable basis, was attributable to the value of the property (embedded IP income). Section 7(2) and (3) of Schedule 17FD further provided that the embedded IP income should be calculated in the way that best secured consistency with the requirements and guidance in the OECD rules, which included the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the Organisation for Economic Co-operation and Development (OECD) in 2022 (the OECD TPG 2022).
- Determination of embedded IP income in accordance with the OECD Transfer Pricing (TP) Guidelines was the approach suggested in Action 5 of the package of actions to tackle base erosion and profit shifting (BEPS) promulgated by the OECD in 2015 and also the one supported by the Secretariat of the OECD Forum on Harmful Tax Practices.
- The aforesaid TP mechanism required examination of the facts and circumstances of each transaction. On the other hand, non-TP approaches relied on certain fixed assumptions regarding the proportion of income attributable to the value of eligible IP. The latter might undervalue or overvalue the eligible IP.
- Section D.5.2.2 of Chapter VI of the OECD TPG 2022 (at pages 310-311) already provided flexibility on the choice of TP methods for transactions involving the use of intangibles in connection with the sale of goods or the provision of services. In appropriate circumstances, the OECD TPG 2022 allowed the use of a TP method not dependent on the identification of reliable comparable uncontrolled transactions provided that the method reflected the nature of goods or services provided and the contribution of intangibles and other factors relevant to the creation of value.
- Where a taxpayer could demonstrate that its TP methodology was in line with those provided in the OECD TPG 2022, the IRD would accept that the portion of income attributed to the eligible IP was determined on a just and reasonable basis for the purposes of section 7(1)(c) of Schedule 17FD.

Ms Anita Tsang (Ms Tsang) recognised that the IRD had updated its website to provide certain illustrative examples on the Patent Box Regime and how to determine the embedded IP income. She asked whether the IRD could offer some flexibility in allocating service fees attributable to the value of certain unique and in-house developed

IPs which might lack available comparables and benchmarking.

CIR noted Ms Tsang's concerns. He considered that it might be difficult to find comparables in the market for certain unique IPs, especially self-developed IPs. He advised that reference could be made to the OECD TPG 2022 which had provided flexibility for adopting alternative methodologies to determine the price of those unique IPs.

**(d) General insurance business – adjustment to assessable profits due to change in insurance capital requirements**

In accordance with Section 23AD of the IRO, only the "specified amount" will be assessed under a spread-over of five years. "Specified amount" in relation to general insurance business is defined as *"the amount arrived at by deducting the premium liabilities attributable to general insurance business in Hong Kong as at the Cap. 41 amendment date from the reserve for unexpired risks (as defined by section 23A(4)) immediately before that date"*. However, there could be changes in other liabilities (e.g. claims liabilities) due to the change in insurance capital requirement (i.e. adoption of the Risk-based Capital (RBC) regime).

With all the background and discussions in the past couple of years among the relevant stakeholders on the taxation arrangements particularly to alleviate the cash flow pressure on the one-off impact arising from adoption of the RBC regime, we would like to clarify whether the spread-over of five years will apply to all relevant one-off increase in assessable profits arising from the adoption of the RBC regime, e.g. change in claims liabilities.

The IRD responded as follows –

- The IRO had been amended to allow an insurer to spread the one-off profits arising from the adoption of the RBC regime over a period of five years for the assessment purpose upon an irrevocable written election.
- The reason why such spread-over arrangement was provided was that where the assessable profits of some insurers were calculated with reference to their liabilities (i.e. the basis of calculation for general insurance business under section 23A of the IRO), some insurers were expected to face a one-off increase in assessable profits under the RBC regime because of the release of prudent margins embedded in the insurance liabilities provided for the pre-regime period. To alleviate the cash flow pressure on those affected insurers, section 23AD of the IRO was enacted in 2023 to provide for such one-off increase to be assessed spreading over a period of five years.
- Under section 23A of the pre-amended IRO, the insurance liabilities featured in the calculation of assessable profits for general insurance business were reserve for unexpired risks. Thus, the policy intent was that the spread-over arrangement only applied to the one-off increase in assessable profits attributable to the change of

reserve for unexpired risks due to the implementation of the RBC regime.

- As regards claims liabilities, section 23A provided that actual losses incurred for insurance claims were deductible when computing the assessable profits for general insurance business. Any change in the basis for determining claims liabilities under the RBC regime should generally affect claim events in the post-regime period only. It followed that the implementation of the RBC regime should not lead to a one-off increase in claims liabilities (when compared with claims liabilities for the pre-regime period) for which the spread-over arrangement was justified.

Mr Lam pointed out that under the RBC regime, general insurance liabilities including outstanding claims liabilities were required, as part of the expected future cash flow, to be discounted. Due to the relevant discounting effect, it could result in a decrease in claims liabilities and lead to a one-off taxable gain which was akin to the one-off gain from premium liabilities. He enquired whether the five-year spread-over provision under section 23AD was applicable to any one-off gain resulting from the adoption of the RBC regime, but not limited to premium liabilities.

CIR responded that based on the consultations with the Insurance Authority, the impact on claims liabilities for the adoption of the RBC regime should only be reflected in the post-regime period rather than the pre-regime period. He explained that assessable profits of general insurance businesses were computed in accordance with the specified formula under section 23A. When designing the spread-over arrangement, it was considered that only items in the specified formula that would be affected by the adoption of the RBC regime should be taken into account and that only premium liabilities representing reserve for unexpired risks would be affected. As such, the spread-over arrangement under section 23AD was intended to apply solely to changes in premium liabilities. Regarding claims liabilities, CIR had reservation as to whether the change in value was relevant to the calculation of the taxable profits. He took the view that claims liabilities might be more relevant to actual losses rather than expected losses. He welcomed tax practitioners to provide more details if there were actual cases where assessable profits had been affected due to the revaluation of claims liabilities upon adoption of the RBC regime.

#### **(e) Certificate of resident status (HK CoR) for non-treaty purposes**

With the proposed introduction of a definition of “tax resident in Hong Kong” for an entity, in the proposed new section 2(9) of the IRO added under clause 3(3) of the Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024, which will form the basis for determining whether an entity is a tax resident in Hong Kong for general purposes, the Institute would like to ask whether the IRD will consider issuing a HK CoR, specifically for purposes of the Global Anti-Base Erosion (GloBE) rules under Pillar Two of BEPS 2.0 and the economic substance legislation in no or only nominal tax jurisdictions.

In addition, with the introduction of the company re-domiciliation regime, a non-Hong Kong incorporated company will become a re-domiciled company in Hong Kong upon issuance of a certificate of re-domiciliation by the Companies Registry. The Institute would like to confirm that the IRD will consider issuing a HK CoR for both tax treaty and non-treaty purposes to a re-domiciled company. Unless the re-domiciled company qualified as a Hong Kong tax resident under the relevant tax treaty prior to its re-domiciliation, e.g. being normally managed or controlled in Hong Kong (where the HK CoR is for treaty purposes), we assume that such a HK CoR would cover the period commencing from the date of issuance of the certificate of re-domiciliation, at which time it will be treated as a Hong Kong-incorporated company. This would apply, therefore, even before it is deregistered in its original domicile, which may take up to 120 days, or longer if an extension is granted (applicable to re-domiciled companies that are not financial institutions).

Additionally, the Institute would like to confirm that the streamlined process for issuing HK CoRs to Hong Kong-incorporated companies will apply equally to re-domiciled companies. If this is the case, the Institute suggests that the IRD clarify this on its website upon the passage of the bill implementing the re-domiciliation regime.

The IRD responded as follows –

The introduction of a general definition of “tax resident in Hong Kong” under the IRO and the issuance of CoRs were two separate matters. It was the IRD’s policy to issue CoRs if it was clearly necessary for the purpose of implementing Comprehensive Double Taxation Agreements/Arrangements (CDTAs) or our internal tax laws. In view of the international tax practices and commitments, the IRD had been very cautious in issuing CoRs with a view to avoiding the impression of facilitating tax avoidance and in turn undermining the integrity of the CoRs issued.

The IRD’s explanations in Agenda Item A4(a) of the 2020 Annual Meeting with the Institute, which concerned the issue of CoRs in the absence of a CDTA (specifically for the purposes of the economic substance legislation in no or nominal tax jurisdictions), still remained relevant regarding the issue of CoRs for non-treaty purposes.

With respect to the GloBE rules, Article 10.3 set out, among others, the rules for determining the location of an entity and a permanent establishment, and the tie-breaker rule for determining the location of a constituent entity in case the entity was regarded as a tax resident in two or more jurisdictions. Up to present, the IRD was not aware of any requirement under the GloBE rules that the tax residence of a constituent entity had to be proved by means of a CoR. For now, a CoR for such purpose did not seem necessary. The IRD would continue to watch out for the practices actually adopted by other jurisdictions implementing the GloBE rules and consider whether there would be a need to issue CoR as a proof of tax residence for the purposes of the GloBE rules.

A re-domiciled company would be accepted as a Hong Kong tax resident from the date on which the certificate of re-domiciliation was issued to the company (i.e. the re-domiciliation date). The IRD would process re-domiciled companies’ application for a CoR in accordance with its current practice. In other words, the Hong Kong competent authority would not issue a CoR to a re-domiciled company whose CoR application was for non-treaty purposes. To align with the effect of re-domiciliation registration under the

Companies Ordinance (CO), upon successful application, a CoR issued to a re-domiciled company would cover the period commencing from its re-domiciliation date. To provide certainty for businesses and tax authorities of other jurisdictions, a CoR would only be issued to a re-domiciled company after the company's deregistration from its place of incorporation as required under the CO. The IRD would publish relevant information on its website upon passage of the Companies (Amendment) (No. 2) Bill 2024.

Ms Sophia Chan asked whether the existing streamlined approach that applied to Hong Kong incorporated companies for CoR application would also be applicable to re-domiciled companies.

CIR confirmed that the same treatment would apply given that a re-domiciled company would be treated as a Hong Kong tax resident. Mr Peter Tisman expressed that there was a timing-mismatch as a re-domiciled company would be regarded as a Hong Kong tax resident upon issue of the certificate of re-domiciliation but CoR could only be issued after completion of its deregistration from its place of incorporation. He enquired about the rationale behind not issuing a CoR to re-domiciled companies once they had obtained the certificate of re-domiciliation.

CIR said that a re-domiciled company was required to complete the deregistration procedures in its place of incorporation within a specified time frame after the issue of the certificate of re-domiciliation. Otherwise, the certificate would be revoked. It would cause confusion to Hong Kong's CDTA partners if the IRD had issued CoRs upon the issue of the certificates of re-domiciliation and subsequently informed the CDTA partners of the cancellation of the CoRs as the re-domiciliation did not take effect. CIR also considered that re-domiciled companies would not be adversely affected by the aforesaid approach as the deregistration process would generally require a few months to complete and the companies would be recognised as Hong Kong tax residents as from the re-domiciliation date.

Ms Florence Lam supplemented that under the CO, a re-domiciled company had to take all reasonable steps to procure the deregistration from its place of incorporation as soon as practical, and submit proof of deregistration to the Companies Registry. The re-domiciled company would also be required to submit proof of deregistration to the IRD when applying for a CoR.

Mr Yeung asked whether the IRD had approached Hong Kong's CDTA partners to confirm whether they would recognise a re-domiciled company as a Hong Kong tax resident. CIR explained that according to the general rule of interpretation contained in the CDTAs, a term which was not defined therein had to be interpreted in accordance with the domestic laws of the relevant jurisdiction. The IRO provided that a reference to a company or entity incorporated in Hong Kong included a re-domiciled company. Furthermore, the new definition of "tax resident in Hong Kong" under the IRO covered companies or entities incorporated, constituted, and managed or controlled in Hong Kong. It followed that re-domiciled companies could clearly be regarded as a Hong

Kong resident entity.

Mr Lam pointed out that some jurisdictions would issue letters of residence to companies for non-treaty purposes. CIR added that Hong Kong did not adopt the definition of “resident” under the OECD Model Tax Convention (OECD Model) or the UN Model Double Taxation Convention (UN Model) because of its territorial source principle of taxation. To avoid giving an impression to other jurisdictions that Hong Kong facilitated companies to obtain tax or other benefits in other jurisdictions by issuing CoRs, the IRD had to exercise caution when issuing CoR for non-treaty purposes.

Ms Agnes Cheung (Ms Cheung) further asked whether the definition of “Hong Kong resident” would apply generally under the IRO. CIR replied that the definition of “tax resident in Hong Kong” had been added to section 2(11) of the IRO. This provision applied unless otherwise provided by the IRO. Even though the provision could be of general application in principle, the IRD would only apply the provision in the context of the GloBE Rules and HKMTT for the time being.

#### **(f) Interpretation of section 88 of the IRO**

According to the [Tax Guide for Charitable Institutions and Trusts of a Public Character](#) (Tax Guide) published by the IRD, the “four principal divisions” of charitable purposes refer to (a) the relief of poverty, (b) the advancement of education, (c) the advancement of religion, and (d) other purposes of a charitable nature beneficial to the community not falling under any of the preceding heads. In particular, paragraph 8 of the Tax Guide indicates that the purposes under the first three heads (i.e. poverty, education and religion) may be in relation to activities carried on in any part of the world.

However, referring to Section 88 of the IRO (also outlined in paragraph 22(b) of the Tax Guide), the profits of a charity are exempt from profits tax only if the profits are not expended substantially outside Hong Kong.

It appears that, on one hand, a charity is allowed to carry out charitable activities in any part of the world, and on the other hand, it must not expend its profits substantially outside Hong Kong to qualify for the exemption under Section 88. For example, if a charity derives income from provision of educational courses in Hong Kong (assuming this constitutes a trade and is exercised in the course of the charity’s expressed objects) and the profits are substantially used to build a school in the Chinese Mainland, those profits would not qualify for tax exemption.

The Institute would like the IRD to clarify whether the above interpretation is correct and, if so, the rationale behind this policy.

The IRD responded as follows –

Section 88 of the IRO provided that profits derived from a trade or business carried on by a charity were exempt from profits tax only if:

- (a) the profits were applied solely for charitable purposes; and

- (b) the profits were not expended substantially outside Hong Kong; and
- (c) either –
  - (i) the trade or business was exercised in the course of the actual carrying out of the expressed objects of the charity; or
  - (ii) the work in connection with the trade or business was mainly carried on by persons for whose benefit such charity was established.

Depending on the charitable purposes for which a charity was established, a charity might carry out activities outside Hong Kong for furthering its charitable purposes. However, in order for any profits derived from a trade or business carried on by a charity to be exempt from profits tax, all the conditions under the proviso to section 88 had to be satisfied, including the condition that the profits concerned were not expended substantially outside Hong Kong (i.e. condition (b)).

In the example given, since the profits from the trade were substantially used to build a school in the Chinese Mainland (i.e. expended substantially outside Hong Kong), it was correct that the profits concerned would not qualify for profits tax exemption as not all the conditions under the proviso to section 88 were satisfied.

In considering whether condition (b) was satisfied, it was the place where the profits concerned were expended and the extent to which such profits were expended in that place that mattered, which was a question of fact and degree. The charity had to show that a great extent or most part of its profits from the trade or business concerned were not expended outside Hong Kong. The place where the trade or business concerned was carried on had no relevance. The rationale behind this policy was to prevent abuse of the tax exemption as it would be difficult, if not impossible, to verify whether the profits expended outside Hong Kong were applied solely for charitable purposes. Having said that, if the profits of that trade or business were not sourced in Hong Kong, they would not be chargeable to tax under section 14 of the IRO regardless of whether or not condition (b) was satisfied.

Ms Tsang asked whether profits derived by a charity from certain common activities (e.g. selling flags or lottery tickets, or donations received through setting up a booth in the street) would be regarded as profits from business carried on in Hong Kong and thus had to fulfil the requirements under section 88. Mr Yeung supplemented that following the *Sheng Kung Hui* case, it appeared that the IRD's approach had been to deem all investment returns derived by a charity as taxable income.

Ms Michelle Chan replied that whether an activity would be regarded as carrying on a trade or business was a question of fact and degree. An activity that was organised in a systematic way might be regarded as carrying on a trade. Fund-raising activities such as selling flags or lottery tickets in a booth on street would normally not be considered as carrying on a trade. Regarding investment activities, if a charity invested surplus cash in listed shares as long term investments or interest-bearing time deposits, such

activities might not be regarded as carrying on a trade. The facts and circumstances of each case had to be taken into account before reaching a conclusion.

CIR said that if a charity operated hotels with a profit-making motive, it would be considered as carrying on a business. But whether its investment in shares would constitute a trade or business depended on the circumstances of the case. Assessors would consider the purpose for which the shares were purchased, such as whether the shares were held for long term capital appreciation or whether the shares were bought and sold regularly to make a gain. Ms Michelle Chan made reference to the “Tax Guide for Charitable Institutions and Trusts of a Public Character” issued by the IRD. Paragraph 26 of the Guide set out the factors to be considered for determining whether the sale of goods and services by a charity was considered as “trading”, including:

- (a) the number and frequency of transactions;
- (b) the nature of the goods or services being sold;
- (c) the intention of the charity in acquiring the goods which were to be sold;
- (d) whether the goods were capable of being used and enjoyed by the charity selling them;
- (e) the nature and mechanics of the sales, and
- (f) the presence or absence of a profit motive.

Ms Cheung asked whether a charity needed to fulfil the requirements under the proviso to section 88 if it carried on a trade or business outside Hong Kong. Ms Michelle Chan confirmed that if the profits were derived by a charity from the trade or business carried on outside Hong Kong, the conditions specified under the proviso would not be relevant. CIR supplemented that in such a case, the charity did not need to rely on the exemption provided under section 88.

Ms Vicky Wong (Ms Wong) further enquired whether a charity would be granted tax exemption under section 88 if it simply made donations to a Chinese Mainland trust for performing certain charitable activities in the Chinese Mainland.

CIR responded that charities intending to apply for tax exemption under section 88 would be required to provide a detailed activity plan during the application process. In the case mentioned by Ms Wong, the IRD would request additional information regarding the specific activities to be performed by the entity, such as its involvement in the Chinese Mainland’s projects. If an entity only made donations to other overseas charities without carrying out other charitable activities in Hong Kong, the IRD had reservation as to whether it was really a charity.

## **Agenda item A2 – Foreign-sourced income exemption (FSIE) regime**

### **(a) The EU’s review on the FSIE regime**

Given the FSIE regime has been effective in Hong Kong for more than two years, we would like to check with the IRD on whether the European Union (EU) would or has any plan to perform a review on the implementation of the FSIE regime in Hong Kong. If yes, we would like to check with the IRD on (1) the EU’s review timeline and (2) the IRD’s approach to responding to the EU’s review.

The IRD responded as follows –

In response to the EU's inclusion of Hong Kong in its watchlist in 2021, the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 was enacted in January 2023 to introduce in Hong Kong the FSIE regime. Under the FSIE regime, multinational enterprise entities which received in Hong Kong any foreign-sourced dividend, interest, income derived from the use of intellectual property and disposal gain in relation to shares or equity interests had to satisfy the economic substance requirement in order to enjoy tax exemption.

In December 2022, the EU promulgated an updated Guidance on FSIE Regimes, explicitly setting out disposal gains as a general class of income covered by an FSIE regime and subjecting the taxpayers concerned to the economic substance requirement. In this regard, the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 was enacted in December 2023 to refine the FSIE regime by expanding the scope of assets in relation to foreign-sourced disposal gains to cover assets other than shares or equity interests.

Subsequent to the above-mentioned amendments to the IRO, the EU removed Hong Kong from its watchlist on tax co-operation in February 2024. Since then, Hong Kong had not been informed by the EU about conducting any further review on the implementation of the FSIE regime in Hong Kong.

### **(b) Asymmetric treatments regarding interest income and interest expense**

#### ***(i) Offshore claim on interest income***

From time to time, the IRD emphasises that the determination of source of profits is not affected by the introduction of the economic substance requirement (ESR) under the FSIE regime and the source of profits and the ESR will be considered in separate contexts.

Subsequent to the IRD setting out its view in the 2023 Annual Meeting that, where the lending of a company’s fund is made from borrowing, the loan would not be regarded as a “simple loan of money”, no matter that the loan is one-off or that the company is not carrying on a money lending business, it appears that interest income is more frequently being treated as being subject to the operations test for determining its

source.

The Institute would like to clarify whether, under the operations test, offshore-sourced interest income received in Hong Kong can remain not chargeable to Hong Kong profits tax despite satisfying the ESR.

The concern is that by satisfying the ESR for the FSIE, this may inevitably make the source of the interest income onshore under the operations test, given that the activities counting towards the ESR may also be relevant operations for the purposes of the source rule.

To address this concern, could the IRD provide guidelines with examples, if possible, illustrating how the satisfaction of the ESR would not, in itself, undermine the offshore nature of interest income under the operations test?

The IRD responded as follows –

- The source of profits and the economic substance requirement were separate matters and would be considered in separate contexts.
- The source of profits continued to be determined based on the prevailing requirements of the IRO and the broad guiding principle as established by judicial precedents. The broad guiding principle was that one looked to see what the taxpayer had done to earn the profits in question and where he had done it. In other words, the proper approach was to ascertain what were the operations which produced the relevant profits and where those operations took place.
- Under the FSIE regime, only a multinational enterprise (MNE) entity carrying on a trade or business in Hong Kong would fall within the scope. For a non-pure equity-holding entity, the specified economic activities that should be carried out in Hong Kong under the economic substance requirement included making necessary strategic decisions and managing and bearing principal risks in respect of the assets the entity acquired, held or disposed of. The entity should have an adequate number of qualified employees in Hong Kong and incur an adequate amount of operating expenditure in Hong Kong for carrying out the specified economic activities so as to satisfy the economic substance requirement. The threshold of the aforesaid specified economic activities was relatively low and should not be difficult to be satisfied by an MNE entity carrying on a trade, profession or business in Hong Kong, to which the FSIE regime applied. Further, the specified economic activities were not necessarily the profits generating operations from which offshore income was derived. Hence, the determination of the source of profits was not affected by the economic substance requirement under the FSIE regime.

Ms Chik indicated that it would be helpful if the IRD could provide more examples on its website to illustrate how the economic substance requirement could be satisfied without undermining the offshore status of interest income. She asked

whether a company holding meetings in Hong Kong solely for making strategic decisions related to its loan lending (e.g. type of borrowers, short-term/long-term loan..., etc.) but without discussing the details of the specific loan, while satisfying the economic substance requirement, would affect its offshore claim for interest income under the operations test.

Ms Hui responded that in the given scenario where strategic decisions were made in Hong Kong, the economic substance requirement under the FSIE regime could be satisfied. She further advised that the source of profits was a question of fact to be determined by the totality of the circumstances of the case. In determining the source of interest income on the loan, the IRD would take into account all relevant facts. One of the key considerations was whether the relevant activities in Hong Kong were profit-generating activities performed in earning the interest income in question. In this example, the mere making of strategic decisions in Hong Kong might not necessarily be the profit-generating activities. Provided that the profit-generating activities were all carried out outside Hong Kong, the holding of a meeting in Hong Kong would not undermine the company's offshore claim for interest income.

CIR further clarified that the operations test in the context of interest income focused on substantive activities that put the loan in place for earning interest income, such as sourcing funds and discussing the loan terms with the borrower.

Ms Chik followed up by asking whether a company holding a board meeting to discuss general matters could satisfy the economic substance requirement. Ms Hui replied that the economic substance requirement would only be met if strategic decisions were made in the board meeting. She indicated that the facts of the case had to be examined before deciding whether the economic substance requirement was met and more information would be required.

Ms Cheung also asked whether outsourcing of economic activities by an MNE entity to a third party would be permitted for the purpose of satisfying the economic substance requirement. She illustrated with an example whereby a foreign company engaged a Hong Kong service provider (e.g. a secretarial firm) and the provider held board meetings two or three times a year virtually with the directors who were physically located outside Hong Kong to conduct loans and finance reviews. Routine functions were carried out in Hong Kong. The Hong Kong service provider was paid a fee commensurate with the activities performed in Hong Kong.

CIR responded that subject to certain requirements, outsourcing of specified economic activities by an MNE entity to an outsourced entity in Hong Kong was permitted. Guidance on the outsourcing requirements could be found on the dedicated webpage for the FSIE regime on the IRD's website. He went on to say that in the example mentioned by Ms Cheung, more details of the activities carried out by the directors of the foreign company in Hong Kong would be required in determining whether the foreign company had exercised adequate monitoring and control on the carrying out of specified economic activities by the outsourced entity.

On this point, Mr Yeung sought clarification on whether the situation as illustrated by Ms Cheung would be clearer if the directors of the foreign company gave instructions to the Hong Kong service provider directly and those directors also monitored the progress of the service provider's work during the meetings. CIR said that subject to the satisfaction of other requirements, the economic substance requirement under the FSIE regime might have been met if there was sufficient evidence showing the directors' performance of supervision and monitoring activities as mentioned by Mr Yeung.

**(ii) Deductibility of interest expense**

If a taxpayer conducted certain activities to fulfil the ESR, but thereby tainted the offshore claim, such that the interest income became taxable, the deductibility of interest expense would be subject to sections 16(1)(a) and 16(2) of the IRO.

If the taxpayer did not carry out any activities in Hong Kong to derive offshore interest income, the interest income would be chargeable to profits tax under FSIE regime as the ESR would not be satisfied. Under the FSIE regime, there is a specific provision regarding deduction of expenditure (i.e. section 15Q of the IRO) in accordance with Division 4 of the IRO. Division 4 of the IRO covers sections 16(1)(a) and 16(2) which govern the deductibility of interest expense.

In both cases, section 16(2) would need to be considered for the deduction of interest expenses. However, the current interest deduction rules under section 16(2) remain stringent, notwithstanding that section 16(2)(g) was introduced in 2016 to address the issue of asymmetry for intra-group financing businesses.

As more cases fall into either of the aforementioned dilemmas after the implementation of the FSIE regime, it results in more asymmetric circumstances, where interest income is taxable, but the corresponding interest expense is non-deductible. For example, if a company (not carrying on an intra-group financing business) borrows from lenders outside Hong Kong to generate interest income, generally, the relevant interest expense will be non-deductible, as it cannot fulfil any conditions under section 16(2), yet the resulting interest income will be taxable because either it will be onshore sourced, or offshore sourced but does not satisfy FSIE non-taxation criteria.

Would the IRD consider reviewing the interest deduction rules or providing concessions for the above situations, in order to retain Hong Kong's competitiveness as an international financial centre?

The IRD responded as follows –

- The current deduction rules for interest expenses were introduced under the Inland Revenue (Amendment) Ordinance 1984 so as to prevent the avoidance of profits tax through the payment of interest after the abolition of interest tax. Section 16(1)(a) of the IRO allowed a deduction of interest expenses subject to satisfying one of the prescribed conditions in section 16(2)(a) to (g) of the IRO. The section 16(2) conditions, which were anti-avoidance provisions, should apply to all claims for interest deductions, whether or not the interest expense

concerned was incurred in the production of taxable onshore interest income or offshore interest income chargeable to tax under the FSIE regime.

- As regards the competitiveness of our interest deduction rules, the IRD noted that quite a number of jurisdictions had introduced other safeguards for interest deduction:
  - (a) Withholding tax on interest income;
  - (b) Thin capitalisation rule;
  - (c) BEPS Action 4 measures (mainly a fixed-ratio rule that limited deductions for interest to a fixed percentage of earnings before interest, taxes, depreciation and amortisation (i.e. EBITDA)); and
  - (d) Specific anti-arbitrage rules (e.g. deduction with no corresponding taxation of receipt).
- These safeguards appeared to be more impactful or complicated and might not be suitable for Hong Kong. As such, the IRD had no plan to review the existing interest deduction rules under the IRO. Any change of the interest deduction rules would require justifications and in-depth policy consideration.

Mr Yeung asked whether the IRD was considering any refinements to the existing interest deduction rules which were introduced more than 40 years ago. He opined that taxpayers had found it challenging to meet the interest expense deduction criteria under the current business models. For example, a Hong Kong subsidiary might find it difficult to meet the interest deduction criteria for the loans advanced by its overseas parent company.

Ms Tsang added that in foreign jurisdictions which had implemented the “thin capitalisation” rules, deduction of interest expenses paid to overseas parties was permitted based on a certain debt-to-equity ratio. She took the view that the interest deduction rules in Hong Kong appeared to be more stringent on this aspect. Mr Lam also expressed the view that since Hong Kong was being designated as the “super connector” and “super value-adder”, it was crucial that the interest deduction rules could support such roles as well as the transaction and capital flow.

CIR responded that Hong Kong’s tax system was unique and different from other jurisdictions. If approaches similar to other jurisdictions were to be contemplated, corresponding safeguards would need to be in place to prevent potential abuse. Currently, the transfer pricing rules in Hong Kong were generally not applicable to domestic transactions, which demonstrated flexibility. Certain exceptions to the general interest deduction rules had also been incorporated to cater for the needs of specific industries or business activities (e.g. interest incurred for the acquisition of aircraft by a qualifying aircraft lessor and that for acquisition of machinery or plant for R&D activities). He stressed that any amendments to the interest deduction rules would require a strong policy justification and careful consideration as well as other safeguards to be put in place to prevent tax avoidance.

Ms Chik clarified that the issue was raised because of the asymmetrical situation. She gave an example where a Hong Kong company borrowed money from a group company to make a one-off loan to another group company, according to the IRD's position as set out in Agenda Item A1(f) of the 2023 Annual Meeting, the operations test would be used to determine the source of interest income which would be taxable in most of the case. She, however, said that the Hong Kong company could not be allowed deduction of interest expenses as the provision of the one-off loan would unlikely be regarded as carrying on an intra-group financing business.

Ms Michelle Chan reiterated that the conditions prescribed in section 16(2) were anti-abuse measures and companies could choose how to structure their activities, for example, provision of the one-off loan from the overseas group company to another overseas group company without passing through Hong Kong.

Mr Yeung observed that in some jurisdictions, capital flow might be restricted and only shareholder's loans were permitted to be provided to companies. He commented that if overseas companies provided finance to their group companies directly without passing through Hong Kong, this might affect Hong Kong's businesses and weaken its role as a "super connector".

CIR acknowledged that refinement to the interest deduction rules could be explored, but the possible impact on Hong Kong's economy needed to be carefully evaluated. He remarked that a full-scale review would take time. In the interim, it might be worthwhile to explore whether there were strong justifications to relax the rules for certain industries or business activities such that more targeted enhancements could be explored.

### **(c) Filing of BIR Form 54**

Where a taxpayer is engaged in the sublicensing of a trademark for use outside Hong Kong and the licensing and sublicensing contracts were effected outside of Hong Kong, the historical tax position is that the royalty income is offshore sourced and non-taxable. Accordingly, no deduction would be claimed by the taxpayer on its royalty expense to the non-resident IP owners. As the trademark was used outside Hong Kong and no deduction was claimed on the royalty expense, the non-resident royalty recipient is not subject to withholding tax on the relevant royalty.

Under the FSIE regime, a trademark is not qualifying IP and hence such offshore royalty income derived by the taxpayer would be deemed taxable when received in Hong Kong. If the royalty income is received by the taxpayer in an overseas bank account, this would create a timing difference between the income booked in the accounts (accrual basis) and the income subject to tax (cash basis). When the money is received in Hong Kong, the taxpayer is required to report the relevant royalty income as taxable and claim a deduction in respect of the relevant expenses (the expenses were disallowed during the year of accrual). In the event, the royalty will be deemed to be taxable under section 15(1) of the IRO in the hands of the non-resident IP owner.

Please confirm that the assessing year should be the year when the offshore royalty income is received by the taxpayer (i.e. the Hong Kong paying entity) for informing chargeability and filing BIR 54 for the non-resident IP.

The IRD responded as follows –

- Section 15(1)(ba) of the IRO provided that any sums, not otherwise chargeable to profits tax, received by or accrued to a person for the use, or the right to the use, outside Hong Kong of any trademark or other intellectual property, which were deductible in ascertaining the assessable profits of a person, were deemed to be receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong.
- With respect to the FSIE regime, section 15(1)(a) of the IRO provided that specified foreign-sourced income (SFSI) was to be regarded as a receipt arising in or derived from Hong Kong for the basis period of the year of assessment during which the income was received in Hong Kong (the year of receipt). Section 15Q of the IRO provided that an outgoing or expense incurred in the production of SFSI was deductible for the year of receipt.
- As the offshore royalty income derived by the taxpayer was chargeable to profits tax for the year of receipt pursuant to section 15(1)(a), the royalty expense paid by the taxpayer to the non-resident IP owner became deductible in ascertaining the taxpayer's assessable profits for that year by virtue of section 15Q. Consequently, section 15(1)(ba) applied to deem the royalty income received by the non-resident IP owner as its taxable trading receipt for its basis period of the year of receipt. It followed that the taxpayer should inform the IRD of the chargeability of the royalty income of the non-resident IP owner for the year of receipt and file BIR 54 on behalf of the non-resident IP owner for that year.

Ms Tsang asked, in a case where there was no plan to remit the offshore royalty income to Hong Kong at the time of payment, whether a taxpayer could claim that section 15(1)(ba) did not apply and therefore withholding of tax under section 20B(3) of the IRO was not required. Ms Hui replied that section 15(1)(ba) would not apply in the aforementioned case so long as the royalty expense paid by the taxpayer to the non-resident IP owner was not deductible in ascertaining the taxpayer's assessable profits.

Ms Lam enquired whether the IRD might consider implementing an administrative measure that allowed a taxpayer to elect to assess its royalty income in the year of accrual rather than the year of receipt. She elaborated that this consideration arose from the potential legal issues faced by the taxpayer to withhold tax when making payments to the non-resident IP owner, particularly when the royalty income was received outside Hong Kong and only taxed during the year of receipt.

CIR said that the law clearly stated that foreign-sourced royalty income should be assessed in the year of receipt. For ease of compliance and subject to the taxpayer's

agreement, the IRD could explore an administrative arrangement whereby such royalty income would be assessed in the year of accrual regardless of whether the income was received in Hong Kong. In such case, profits tax could be assessed and withheld in respect of the royalty payment made by the taxpayer to the non-resident IP owner in accordance with sections 15(1)(ba) and 20B(3). Alternatively, the taxpayer might consider negotiating a royalty agreement with the non-resident IP owner on a “tax-borne” basis and in turn the withholding obligation under section 20B(3) should not be an issue.

## Agenda Item A3 - Salaries Tax Issues

### **(a) Reimbursement of relocation expenses**

According to paragraph 19 of DIPN 41, *"if it could be established that a journey is not for holiday, such as for the relocation of an employee and his family in or out of Hong Kong upon assumption of a new post or termination of an existing post here, as the case may be, the payment made by the employer would be out of the scope of the charge. For any such trips, any stopover visits to another place en route to or from Hong Kong would be disregarded as a concession."* In the 2023 annual meeting between the IRD and the Institute, the IRD expressed the view that the reimbursement of relocation expenses by the employer would constitute a discharge of the employee's personal liability and therefore be chargeable to salaries tax.

We note that some jurisdictions treat the relocation expenses reimbursed by the employer as not taxable, on the basis that it is for the employer's benefit rather than the employee, as it is solely meant to cover costs without any direct benefit to the employee. In line with the Government's initiative to continuously enhance Hong Kong's competitiveness in attracting international enterprises and international talents to come to Hong Kong, the Institute hopes that the IRD would consider expanding its concession on relocation expenses under paragraph 19 of DIPN 41 to exempt not only (1) payments made by the employer for relocation services that it has directly engaged, but also (2) payments made by the employer either (i) to the employees for reimbursement of relocation expenses incurred; or (ii) to the vendors for the relocation services engaged by the employees.

The IRD responded as follows –

By virtue of section 9(1)(a) of the IRO, all perquisites, whether derived from the employer or others, were included as income from an office or employment and were thus chargeable to salaries tax. Section 9(1)(a)(iv) provided an exception in that any amount paid by the employer to a third party in discharge of the employer's own contractual liability was not to be included as the employee's income.

In the 2023 Annual Meeting with the Institute (the 2023 Meeting), the IRD explained the applicable tax provisions in relation to the taxability of reimbursement of relocation expenses incurred by an employee. Briefly, the reimbursement was chargeable to salaries tax as a perquisite under section 9(1)(a) while the exemption under section 9(1)(a)(iv) was not applicable as the amount paid by the employer was not in discharge of the employer's own contractual liability.

The IRD did not consider that the reimbursement of relocation expenses was merely for the sole benefit of the employer because the employee, by taking up the employment, had the personal responsibility to get himself/herself to the place of work as required. Irrespective of whether the employer reimbursed the relocation expenses incurred by the employee (Scenario 1) or paid to the vendors for the relocation services engaged by the employee (Scenario 2), this was in effect a discharge of the employee's pecuniary

liability. Following the principle enunciated in *David Hardy Glynn v CIR* [1990] 3 HKTC 245, such reimbursement or payment constituted a taxable perquisite under section 9(1)(a).

It should also be noted that paragraph 19 of Departmental Interpretation and Practice Notes No. 41 was not meant to be a tax concession on payments made by an employer for the relocation of an employee. As mentioned in the 2023 Meeting, the paragraph sought to clarify that any payment made by an employer in connection with a non-holiday journey, an example of which included a journey upon assumption of a new post or termination of an existing post, was excluded from the charge to salaries tax. It was explained that the exclusion only applied to a payment made by the employer in discharge of its own liability, which was specifically exempt from salaries tax pursuant to section 9(1)(a)(iv), as distinct from a concession. The IRD, as a tax administrator, was duty-bound to adhere to the prevailing law and the well-established legal principles, and did not see fit to grant a tax concession to payments under Scenario 1 and Scenario 2.

Mr Louis Lam set out hypothetical examples in Scenario 3 and Scenario 4 below and would like to confirm that the relocation reimbursement was not taxable under sections 8(1)(a) and 9(1)(a).

Scenario 3: This scenario concerned finishing a Hong Kong employment and departing for a new employment overseas (also known as a "local to local transfer"). The relocation reimbursement for departure from Hong Kong was not provided under the existing Hong Kong employment contract but was provided under a subsequent employment contract by an overseas group company to work in that overseas location. The relocation reimbursement was either reimbursed by that overseas group company directly or reimbursed by the Hong Kong based employer with a recharge of the same amount to that overseas group company.

Ms Fiona Wong responded that in Scenario 3, the Hong Kong employment ceased and the overseas employment was a separate employment. Provided that the employee was no longer required to render any services in Hong Kong and the reimbursement was made under the overseas employment contract, the amount would not be subject to salaries tax. The recharge arrangement within the group would not alter the nature of the amount. CIR added that the real question was whether the reimbursement constituted an income from the Hong Kong employment or the overseas employment, and that the means by which the reimbursement was paid to the employee did not matter.

Scenario 4: This scenario concerned finishing an international assignment and departing for either (i) another international assignment overseas; or (ii) relocation to home location where the non-Hong Kong employment had all along been located. The relocation reimbursement for departure from Hong Kong was not provided under the existing international assignment letter to work in Hong Kong, but was provided under either (i) the subsequent international assignment with an overseas group company; or

(ii) the terms of relocation back to the overseas home entity to work in that home location. The amount was either reimbursed by that overseas group company or overseas home entity directly, or reimbursed by the Hong Kong based host entity with a recharge of the same amount to that overseas group company or overseas home entity.

Ms Fiona Wong said that in Scenario 4, the employee all along had a non-Hong Kong employment. During his assignment in Hong Kong, only income attributable to his services rendered in Hong Kong was chargeable to salaries tax. If the reimbursement was income derived from his assignment outside Hong Kong or derived from his employment with the overseas home entity after relocation back, and the employee was no longer required to render any services in Hong Kong, the reimbursement would not be subject to salaries tax.

**Agenda item A4 – Base Erosion and Profit Shifting Project (BEPS) 2.0 initiative, Double Taxation Agreements and other International Tax issues**

**(a) Transfer pricing issues after the implementation of global minimum tax and Hong Kong minimum top-up tax (HKMTT)**

With the implementation of global minimum tax and HKMTT in 2025, we would like to check how it will affect the transfer pricing assessment of exempted domestic transactions for Hong Kong entities, given that the top-up tax payable under the GloBE rules or HKMTT regime is profits tax by nature. For example:

- (i) in considering “whether an actual provision confers a potential advantage in relation to Hong Kong tax” and “no actual tax difference condition” under 50AAJ of the IRO, will the top-up tax payable by a Hong Kong entity be taken into account?
- (ii) the deadline for filing top-up tax return is no later than 15 months after the last day of the reporting fiscal year (extended to 18 months for the transition year), whereas the deadline of preparing the local file is no later than 9 months after the end of a Hong Kong entity’s accounting period. If the top-up tax will be taken into account for the assessment of exempted domestic transactions, how should taxpayers manage the timing difference between the top-up tax assessment and preparation of the local file?

The IRD responded as follows –

Under the Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024 (the Bill), profits tax under the IRO was generally defined as profits tax under Part 4 of the IRO or top-up tax under Part 4AA of the IRO, whereas profits tax in Part 8AA of the IRO was defined as profits tax under Part 4. This definition made it clear that, in the context of profits tax, the provisions under Part 8AA, which related to transfer pricing rules, applied to controlled transactions between associated persons for determining the person’s profits tax liability under Part 4 only. Further, Committee Stage Amendments to the Bill had been proposed to clarify that for the purposes of Part 8AA, the definition of “foreign tax” under section 50AAC of the IRO did not include a foreign IIR top-up tax, a foreign UTPR top-up tax or a foreign DMTT, and the definition of “Hong Kong tax” therein did not include a top-up tax. The Bill was passed by the Legislative Council on 28 May 2025.

Upon the enactment of the Bill, the implementation of the global minimum tax and HKMTT would not change the transfer pricing rules under Part 8AA and their application to controlled transactions between associated persons, including those related to “exempted domestic transactions”. As top-up tax under Part 4AA would be excluded from the application of Part 8AA, it should not be taken into account in assessing whether an actual provision conferred a potential advantage in relation to Hong Kong tax and whether the no actual tax difference

condition under section 50AAJ was met. Also, the deadline of filing a top-up tax return by a Hong Kong entity should not affect the timing of its preparation of a local file.

**(b) Application of Article 8 (International Shipping and Air Transport) of Comprehensive Double Taxation Agreements (CDTAs)**

Article 8 in most existing CDTAs in Hong Kong follows the standard OECD model (reproduced as follows):

Article 8

1. *Profits of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.*
2. *The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.*

According to OECD's commentary, Article 8 shall cover not only ocean freight but also ancillary charges (e.g. container detention, inland haulage, etc.). Some jurisdictions have incorporated such commentary into their CDTAs. For example, the Pakistan-UAE CDTA defines "operation of ships" as "business of transportation by sea of passengers, mail, livestock or goods transported by ship owned or by any title managed by an enterprise of a Contracting Party including the sale of passage, tickets and similar documents for such transportation, it will also include ancillary activities such as charter or rental of ships, containers and related equipment and alienation thereof."

Since Hong Kong's relevant CDTA articles do not explicitly include ancillary charges as profits from operations of ships, some treaty partners have sought to argue that these ancillary charges are not eligible for treaty benefits and demand tax from taxpayers, resulting in potential double taxation issues.

The Institute would like to ask if the IRD will follow the OECD's commentary on treatment of ancillary charges. Also, whether the IRD would consider incorporating a more comprehensive definition of "profits from operation of ships" in the CDTAs to provide increased tax certainty.

The IRD responded as follows –

The latest OECD Model and UN Model did not provide a definition for "profits from operation of ships or aircraft in international traffic". Detailed explanations and examples of activities that were directly connected with or ancillary to the operation of ships or aircraft were included in their commentary. As the OECD Model and UN Model had been widely used as reference documents in treaty negotiations, the commentary on their provisions had also been well accepted by many jurisdictions (including Hong Kong) for the interpretation and application of existing CDTAs.

Article 8 (International Shipping and Air Transport) of Hong Kong's CDTA model followed the OECD Model. Whether or not a definition for "profits from operation of ships or aircraft in international traffic" was to be adopted in Hong Kong's CDTAs was a matter

of negotiations. Given that most of Hong Kong's potential CDTA partners adopted the OECD Model or UN Model in their tax treaty model, including such a definition under Article 8 was generally not necessary. Because of this, it might also be challenging to convince them of the necessity of having such a definition, as suggested by the Institute.

Having said that, where circumstances warranted and with the consent of the CDTA partner, Hong Kong would consider incorporating such a definition in its CDTAs similar to those entered into with Bahrain, Bangladesh, India and Mauritius.

### **(c) Bulk applications for HK CoR for the purposes of STA Circular 2018 No. 9 (PN 9)**

We would like to raise a practical issue on the bulk applications for HK CoR for the purposes of PN 9, by using the following example:

- The parent company incorporated in the Cayman Islands (the Cayman Co) obtained a HK CoR under the Chinese Mainland-Hong Kong double tax arrangement in 2022 which is valid for calendar years 2022, 2023 and 2024.
- Its subsidiaries incorporated in the British Virgin Island (BVI) and Hong Kong obtained HK CoRs under the Chinese Mainland-Hong Kong CDTA in 2023 which are valid for calendar years 2023, 2024 and 2025.
- On the expiry of the Cayman Co's HK CoR by the end of 2024, the taxpayer would like to apply for a HK CoR for all of the three companies (i.e. the Cayman Co as well as the BVI and Hong Kong subsidiaries) in bulk for the purposes of PN 9.

We understand that the IRD currently rejects such bulk applications, as the BVI and Hong Kong subsidiaries' HK CoRs are still valid for 2025. As a result, the taxpayer will have to apply for a new HK CoR for the BVI and Hong Kong subsidiaries upon expiry of the old ones separately.

To streamline the HK CoR application process and reduce the administrative burden of both taxpayers and the IRD, we would like to check whether the IRD could accept a bulk HK CoR application in the above situation in the future, so that the validity periods of the various HK CoRs concerned can be aligned and future bulk applications can be done effectively.

The IRD responded as follows –

According to the administrative arrangement agreed in the notes exchanged between the Chinese Mainland and Hong Kong on 16 March 2016 and 15 April 2016, a CoR issued by the IRD to an applicant for a particular calendar year generally served as a proof of the Hong Kong resident status of the applicant for that calendar year and two succeeding calendar years (i.e. the 3-year validity period). It would not be necessary for the applicant to apply for a CoR for the latter two calendar years. The above administrative arrangement applied to all applications made in respect of the Chinese Mainland-HKSAR CDTA. The IRD would not entertain an applicant's request for a CoR for Year 2 or Year 3 if a CoR for Year 1 had been issued. The above arrangement had

been working smoothly since its implementation.

From the IRD's practical experience, it was not uncommon for groups with complex holding structures to apply CoRs for different years regarding companies engaged in different business lines. The IRD did not entertain bulk applications involving companies for which a CoR had been issued within the 3-year validity period as such CoR could be used to prove the Hong Kong resident status of the relevant company for the purposes of PN 9. As the IRD saw it, issuing multiple CoRs to the same company within the 3-year validity period might lead to confusion and attract enquiries from the State Taxation Administration. Further, the Institute's suggestion could not streamline the process or reduce the administrative burden if the applicant kept changing its holding structure over the years.

The IRD was committed to providing Hong Kong residents with assistance in claiming tax treaty benefits to which they were entitled under the Chinese Mainland-HKSAR CDTA. If a Hong Kong resident company encountered real difficulties in claiming treaty benefits and was specifically requested by the Chinese Mainland tax authority to submit a CoR for Year 2 or Year 3, it might elaborate in its CoR application the reasons and circumstances for requesting a CoR for Year 2 or Year 3 despite having been issued a CoR for Year 1. The IRD would consider the facts and circumstances of each individual case to see if the application should be entertained.

#### **(d) HK CoR for disposal gains**

We understand that the current practice of the IRD is to issue a HK CoR for Hong Kong residents seeking proof of residency to claim treaty benefits under the CDTAs. For claiming treaty benefits on disposal gains, we recognise that some assessors may require proof that the disposal has been completed. However, we have received feedback from the market indicating that it is impractical to wait until the completion of the disposal to apply for the HK CoR, as it takes time for the IRD to issue the HK CoR and, without a HK CoR, taxpayers may not be able to effect the tax clearance in the DTA jurisdiction where the disposal has taken place. We request that the IRD consider issuing the HK CoR once the applicant has a concrete plan for the disposal, such as signing of a memorandum of understanding or the draft sales and purchase agreement.

The IRD responded as follows –

A CoR was an official document issued by the Hong Kong competent authority to a Hong Kong resident who required proof of resident status for the purpose of claiming tax benefits under a CDTA. As such, a CoR would generally be issued where the income in respect of which tax benefit was to be claimed under the CDTA arose.

Having said that, the IRD recognised that some taxpayers might have a genuine need to apply for a CoR before the subject income arose under certain circumstances. The IRD was prepared to consider such application if the taxpayer could show that there was reasonable certainty that the subject income would arise in the year for which a CoR

was applied. To facilitate the processing of the relevant application, the applicant would be advised to provide documents showing at what stage the transactions or activities giving rise to the subject income had been undertaken and the level of certainty that the subject income would arise in the relevant year. For disposal gains, such documents might include the agreement for sale and purchase, memorandum of understanding, etc. A mere assertion that the gains were expected without documentary evidence would not be accepted.

**(e) Country-by-country (CbC) filing obligation in demerger case**

In the case where a Hong Kong entity (and its subsidiaries) which belongs to a CbC reportable group (Group A) was sold and subsequently becomes an independent Group (Group B) during year 1 (the HK entity will be the new ultimate parent entity), according to OECD's Guidance on the implementation of CbC Reporting (CbCR), to determine whether Group B should be subject to CbCR requirement for year 1, jurisdictions may take the view that, as Group B did not exist legally as an independent Group in year 0, Group B is not required to file a CbCR for year 1. Can the IRD confirm whether the above position is correct?

The IRD responded as follows –

- Hong Kong had committed to implementing the minimum standards of the BEPS package promulgated by the OECD, including CbCR under Action 13. The provisions relating to CbCR under the IRO were formulated based on the requirements set out in, among others, the consolidated report published by the OECD, titled *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report* (the Action 13 Report). To ensure consistent implementation of CbCR, the provisions should be construed in the way that was consistent with the relevant OECD's guidance.
- As regards cases where a merger, acquisition or demerger occurred, the Action 13 Report did not provide specific guidance on how to treat a group that was part of another MNE group in the previous accounting period. In its *Guidance on the Implementation of Country-by-Country Reporting* (the Guidance), the OECD provided two approaches for jurisdictions to consider whether Group B should be subject to CbCR requirement for year 1:

Approach 1: Group B did not exist legally as an independent group in year 0 (i.e. the year immediately before the year in which the demerger occurred). Group B was not required to file a CbC report for year 1; and

Approach 2: The sub-group of entities (which upon sale became an independent Group B) already existed from an economic point of view before the sale, as part of Group A and should therefore be required to file a CbC report for year 1 if the total consolidated group revenue for the

sub-group of entities for year 0 was equal to or greater than the relevant threshold amount.

- Same as jurisdictions such as Australia, Belgium, Denmark, Germany, Luxembourg, Sweden and the United States, Hong Kong adopted Approach 2.
- In the given case, Group B was required to file a CbCR notification under section 58H of the IRO and a CbC return under section 58E(1) of the IRO if the total consolidated group revenue for the Hong Kong entity being the ultimate parent entity of Group B and its subsidiaries for year 0 was equal to or greater than HK\$6.8 billion.
- Currently, the OECD had noticed that the existing CbCR and GloBE rules seemed to be different in the way they tested the threshold when a merger, acquisition or demerger had occurred in one or more of the previous years. The threshold test for CbCR was being reviewed by the OECD. Hong Kong would stay tuned to the latest development of the OECD on this matter.

Ms Lam asked whether an MNE group needed to notify the IRD and comply with the CbCR requirements under Approach 2 if the group adopted Approach 1 in filing prior years' CbC returns.

Ms Hui replied in the affirmative and said that if the MNE group was a Hong Kong group, the ultimate parent entity was required to notify the IRD and comply with the CbCR requirements under Approach 2 which Hong Kong had adopted. If the MNE group was a foreign group with its ultimate parent entity in a jurisdiction adopting Approach 1, then the Hong Kong constituent entity was not required to notify the IRD and file the CbC report for year 1.

Ms Michelle Chan supplemented that whether Group B was required to file a CbC return for year 1 depended on the approach adopted by the residence jurisdiction of the ultimate parent entity. If the residence jurisdiction of the ultimate parent entity adopted Approach 2, then Group B had to file the CbC return for year 1, and vice versa.

Ms Lam further asked whether a foreign headquartered MNE group needed to comply with the CbC filing requirements under Approach 2. CIR responded that Hong Kong had established a wide exchange network for CbC reports through the Convention on Mutual Administrative Assistance in Tax Matters. It was very unlikely that the IRD needed to apply the local filing requirements. He concluded that if a foreign MNE group adopted Approach 1, the IRD would respect that and would not ask a Hong Kong constituent entity to file a CbC report in Hong Kong. He, however, said that if an MNE group was a Hong Kong headquartered group with its ultimate parent entity in Hong Kong, CbC report was required to be filed in Hong Kong since Approach 2 had been adopted in Hong Kong.

## Agenda item A5 – Departmental Policy and Administrative Matters

### **(a) Completion of Profits Tax Return – Supplementary Form S2 (Transfer pricing)**

According to the notes and instruction, section 4 of the Supplementary Form S2 must be completed if you are a constituent entity of an MNE group with a total consolidated group revenue of at least EUR 750 million, or an equivalent amount, as at the accounting period end date, for the immediate preceding accounting period. There is no further FAQ on the IRD's website regarding how to complete Section 4 of the Supplementary Form S2. We would like to clarify in cases where the MNE group use a reporting currency other than Euros, what exchange rate should be used to convert the consolidated group revenue to Euros for the purpose of determining whether section 4 should be completed? Can the IRD confirm that the guidelines under the GloBE Rules should apply and provide some guidance under its FAQs?

Extract from Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023)

*“20.1. To minimise potential distortions and to ensure consistent application of the monetary thresholds in the GloBE Rules, the MNE Group must translate the relevant threshold amounts from its presentation currency to the currency used in the implementing jurisdiction's domestic law based on the same average foreign exchange rate for the December month of the calendar year prior to the commencement of the relevant Fiscal Year. The average foreign exchange rate for the December month of the previous Fiscal Year will be determined by:*

- a. If the domestic threshold is expressed in EUR - the foreign exchange reference rates as quoted by the European Central Bank (ECB). Where the ECB does not provide a foreign exchange reference rate for the local currency of a jurisdiction, the average foreign exchange rate will be determined by that quoted by the implementing jurisdiction's Central Bank.*
- b. If the domestic threshold is expressed in a non-EUR currency - the average foreign exchange rate will be determined by that quoted by the implementing jurisdiction's Central Bank.”*

The IRD responded as follows –

Section 4 of Supplementary Form S2 was first added to the form used for the year of assessment 2022/23 to collect information for the purpose of identifying MNE groups potentially subject to the GloBE rules. At that time, the Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023) had not been published and the Bill had not yet been introduced to the Legislative Council. The revenue thresholds for the purposes of completing section 4 of the Supplementary Form S2 and the GloBE rules were not exactly the same. The revenue threshold for completing section 4 of the Supplementary Form S2 was EUR 750 million, or an

equivalent amount as at the accounting period end date for the immediate preceding accounting period. Where an MNE group prepared its consolidated financial statements in a currency other than Euro, for the purpose of determining whether a taxpayer, being a constituent entity of the group, was required to complete section 4 of the Supplementary Form S2, the relevant amounts in the group's consolidated financial statements should be converted into Euro using the published spot rate on the accounting period end date. Taxpayers might make reference to the Euro foreign exchange reference rates published by the European Central Bank. To provide for future audit trail, taxpayers were advised to document the spot rate adopted for conversion as well as the source of information. Upon the enactment of the Bill, section 4 of the Supplementary Form S2 would be refined to align with the revenue threshold of the GloBE rules and submitted to the Board of Inland Revenue for approval.

Ms Lam asked whether the above guidance would be published on the IRD's website before the refinement of the Supplementary Form S2. Ms Hui said that the Supplementary Form S2 was being revised to reflect the changes arising from the enactment of the Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Ordinance 2025. Regarding the exchange rate, the IRD would publish the relevant information on its dedicated webpage in due course.

## **(b) Updates of New Service Portals**

The IRD is planning to implement three interconnected new service portals, namely Individual Tax Portal (ITP), Business Tax Portal and Tax Representative Portal this year. Would the IRD provide the latest update, e.g. the types of new electronic services to be provided to the public under these new service portals?

The IRD responded as follows –

- The IRD planned to launch three interconnected service portals in July 2025: the Individual Tax Portal (ITP), the Business Tax Portal (BTP) and the Tax Representative Portal (TRP). These portals aimed to modernise the tax administration by consolidating existing eTAX services and introducing new features designed to enhance convenience, efficiency and transparency for taxpayers, businesses and service providers.
- The ITP would replace the current eTAX system for individual taxpayers with an upgraded and user-friendly platform. It would retain all existing eTAX services, such as electronic filing (e-filing) of tax returns, viewing tax records and receiving e-Receipts for salaries tax, property tax for solely owned properties, profits tax for sole proprietorship businesses and personal assessment. Key enhancements included the introduction of a "Make a Request/Reply" tool for submitting queries or requests directly to the IRD, which would be automatically routed to the

appropriate IRD Units for faster processing. An upgraded Message Box would allow taxpayers to manage e-communication with the IRD more effectively, while a new mobile app with biometric login and push notifications would make accessing tax services even more convenient. The ITP would also expand tax record access to cover properties other than solely owned properties, allowing users to retrieve property tax assessments, e-filed tax returns, and notices issued within the past three years (starting after the portal launched). Furthermore, taxpayers would receive e-Alerts for upcoming tax payment deadlines, which would include notifications for property tax on jointly owned properties.

- The BTP was a new platform dedicated to businesses, offering expanded e-filing capabilities and enhanced payment and recovery options. Businesses would be able to file Profits Tax Returns (BIR51 & BIR52), employer's returns (e.g., IR56B/E/F/G/M) and amendment requests online. Detailed payment records, including outstanding, overpaid, and settled tax bills issued within the past three years, would also be accessible. For profits tax and property tax on jointly owned properties, businesses would receive e-Receipts for payments, replacing or supplementing paper receipts. The BTP would also integrate Business Registration (BR) services, allowing users to download BR demand notes and certificates, subscribe to the BR e-Monitoring Service for notification of changes in business particulars, and utilise a bulk change service for updating multiple business addresses. Additionally, the BTP would incorporate e-Stamping services, enabling businesses to view stamping applications submitted in the past year—a feature not available in the existing e-Stamping system.
- The TRP was designed specifically for tax representatives, company secretaries and service providers to manage multiple clients' tax matters more efficiently. The TRP would allow representatives to perform electronic transactions, such as completing returns, filing returns and making requests on behalf of their clients, as authorised. They would also have access to all the e-services available under the ITP and BTP, including BR services and bulk updates to business addresses. This portal would streamline the workflows for representatives, enabling them to manage their clients' tax affairs seamlessly.
- The migration of existing eTAX services to these new portals, combined with the introduction of advanced features such as mobile access, automated workflows and enhanced communication tools, would bring significant benefits to users. Taxpayers and businesses would experience greater convenience, as they would be able to manage their tax matters securely online, anytime, and from anywhere. Automated processes, such as routing requests to the relevant IRD Units, would improve operational efficiency, while expanded access to tax records and submission status would provide greater transparency and confidence in managing tax obligations. Furthermore, the user-friendly design of the new portals, coupled with the availability of mobile apps and e-Alerts, was expected to encourage wider adoption of the IRD's digital services, reducing reliance on paper-based processes.

- To ensure a smooth transition, the BTP and TRP were pre-launched on 22 April 2025, allowing businesses and service representatives to register their accounts in advance. This early registration would enable users to access the full range of e-services immediately upon the official launch in July 2025, ensuring continuity and seamless integration into the new system.

Ms Wong enquired whether a group application for registering BTP business accounts under the new service portals would be available as some groups comprised thousands of entities. Ms Hui responded that the IRD was studying the feasibility of allowing group application under the new service portals. She expected that the new bulk registration function would be available by the end of 2025.

Ms Wong further raised the concern that Chinese Mainland-based directors might encounter difficulties in applying for BTP accounts given that they did not possess Hong Kong Identity Cards (HKIDs) to register for an "iAM Smart" account. Ms Hui clarified that a Chinese Mainland-based director who did not have HKID could provide his personal information to the IRD before an ITP account was created, and could subsequently register, in the capacity of the responsible person of the company, for a BTP business account.

Ms Wong raised concerns that this could be difficult in practice for large groups with thousands of entities and non-Hong Kong directors. Ms Hui invited Ms Wong to share her experience after the meeting to see whether assistance could be offered to address the difficulty encountered. Mr Yeung said that overseas-based directors had similar concerns and difficulties. He suggested that a separate meeting on this issue might be needed.

[Post-meeting notes: In September 2025, the IRD introduced a new function for a group of companies to register BTP business accounts in bulk. By this bulk upload function, the common Director or Company Secretary (i.e. the responsible person) of a group of companies could use the "Register for BTP Business Accounts by Bulk Upload" function to register up to 500 BTP business accounts for the group simultaneously.]

### **(c) E-filing of profits tax returns**

To facilitate early planning by taxpayers and tax representatives, it would be helpful if the IRD could provide a more definite timeline for the implementation of mandatory e-filing and indicate which entities will be in scope for the first phase in 2025/26 and subsequent phases.

The IRD responded as follows –

- As mentioned in Agenda Item A5(a) of the 2023 Annual Meeting with the Institute, the IRD proposed to implement mandatory e-filing by phases, starting with large MNEs first and then progressing to small and medium-sized entities. The ultimate

goal of the IRD was to achieve full-scale implementation of mandatory e-filing by 2030. During the consultation on the Bill, the IRD also briefed the Institute's representatives that we would first mandate entities of MNE groups with an annual consolidated revenue of EUR 750 million or more in at least 2 of the 4 fiscal years immediately preceding the fiscal year concerned under the global minimum tax and Hong Kong minimum top-up tax regimes (in-scope MNE groups) to e-file their profits tax returns starting from the year of assessment 2025/26. The IRD would like to update the Institute on the latest progress.

- In April 2025, Committee Stage Amendments to the Bill were proposed, among others, to incorporate the requirement for mandatory e-filing of profits tax returns by in-scope MNE groups through amending section 51AAB of the IRO and introducing a new Schedule 65.
- Upon the enactment of the Bill, the entities of in-scope MNE groups would be the phase 1 applicable entities which were required to e-file their Profits Tax Returns—Corporations (BIR 51) and Profits Tax Returns—Persons Other Than Corporations (BIR 52) for a year of assessment beginning on or after 1 April 2025 (i.e. starting from the year of assessment 2025/26).
- Section 2 in Part 2 of the new Schedule 65 provided that an entity or a permanent establishment (subject entity) was a phase 1 applicable entity for a year of assessment (subject year of assessment) if both of the following conditions (a) and (b) were met:
  - (a) The subject entity was a Part 4AA entity of an MNE group for the corresponding fiscal year of the group for the subject year of assessment. Part 4AA entity, in relation to an MNE group, meant—
    - (i) a HK constituent entity of the MNE group;
    - (ii) a HK standalone JV of the MNE group;
    - (iii) a HK member of a JV group of the MNE group; or
    - (iv) a Part 4AA stateless constituent entity of the MNE group.
  - (b) Any of the following applied—
    - (i) the MNE group was an in-scope MNE group for the corresponding fiscal year of the group (beginning on or after 1 January 2025) for the subject year of assessment;
    - (ii) the MNE group was an in-scope MNE group for a fiscal year of the group (beginning on or after 1 January 2025) preceding the fiscal year mentioned in (b)(i) above.
- The IRD was considering to extend mandatory e-filing gradually to cover other classes of businesses or entities in later phases. After the implementation of the first phase of mandatory e-filing, the IRD would gauge views from stakeholders,

including the Institute, for mapping out the timeline and the scope of taxpayers for subsequent phases of mandatory e-filing.

- Meanwhile, the IRD would continue reviewing the e-filing services and listening to stakeholders' feedback. Any feedback from the Institute was always welcome. Taking this opportunity, the IRD would like to appeal to the Institute's members to participate in this year's voluntary e-filing of profits tax returns to get early prepared for the mandatory e-filing.

Ms Chik asked whether a Hong Kong entity of an in-scope MNE group that was exempt from filing profits tax returns under Form IRC1812 in prior years would receive a profits tax return in the 2025/26 bulk issue exercise on 1 April 2026. If not, whether it needed to notify the IRD given that the earliest notification due date would be 30 June 2026 following the implementation of Pillar Two of BEPS 2.0 in Hong Kong.

Ms Hui replied that all Hong Kong entities of in-scope MNE groups were required to file profits tax returns electronically starting from the year of assessment 2025/26 even if they had received Form IRC1812 previously. The IRD would write to potential in-scope MNE groups advising them of the implementation of mandatory e-filing of profits tax returns and requesting them to provide a list of their Hong Kong entities that would be subject to mandatory e-filing (the reach-out letter). Based on the list provided, the IRD would require those entities to file returns electronically starting from the year of assessment 2025/26.

CIR explained that all Hong Kong entities of in-scope MNE groups were required to file profits tax returns as the GloBE income was computed on a group basis under the GloBE rules and HKMTT. Hence, every Hong Kong entity of in-scope MNE groups had to be covered.

Mr Yeung was concerned that some groups might not be able to easily ascertain the exact number of entities that were incorporated in Hong Kong and might inadvertently overlook one or two entities in the list to be filed to the IRD.

CIR said that under CbC Reporting, relevant MNE groups were also required to provide a list of all constituent entities located in each jurisdiction of operation. The IRD would apply the same practice in handling this requirement under the GloBE rules and HKMTT. Despite that the IRD would retrieve information from the CbC reports filed previously, the thresholds for determining in-scope MNE groups under CBC Reporting and Pillar Two of BEPS 2.0 were slightly different. To ensure accuracy of information, the IRD needed to obtain a list of Hong Kong entities from in-scope MNE groups.

In replying to Mr Yeung's question about the issuance of profits tax returns in paper form to Hong Kong entities of in-scope MNE groups subject to mandatory e-filing, Ms Hui acknowledged that some in-scope MNE groups had not yet registered for their BTP business accounts at this stage. However, the IRD encouraged in-scope MNE groups to register for their BTP business accounts before the issue of the 2025/26 profits tax

returns such that electronic notices could be issued to the message boxes of their BTP business accounts notifying them of the e-filing obligation. CIR supplemented that the IRD was in the process of preparing the reach-out letters to be issued to the potential in-scope MNE groups identified from the previous CbC returns. He envisaged that the reach-out letter would be issued in the coming months to provide sufficient time for the potential in-scope MNE groups to register for their BTP business accounts and get prepared for the implementation of GloBE rules and HKMTT regime from January 2025 and mandatory e-filing from the year of assessment 2025/26.

Ms Lam further asked whether in-scope MNE groups should voluntarily provide a list of Hong Kong entities to the IRD if they did not receive the letter. CIR replied that voluntary disclosure by such MNE groups would be welcome.

Mr Yeung followed up and enquired whether in-scope MNE groups were required to notify the IRD if there were entities newly incorporated in or re-domiciled to Hong Kong after subsequently submitting the list of entities to the IRD. CIR responded that in-scope MNE groups had to inform the IRD as soon as possible if there was any change to the list within the accounting period.

[Post-meeting notes: In September 2025, the reach-out letters were issued to the potential in-scope MNE groups identified from the previous CbC returns and their tax representatives.]

#### **(d) E-filing of salaries tax returns**

Currently, taxpayers can file their salaries tax returns through eTax if, in the year of assessment, they:

- (i) do not claim exemption in respect of part or all of their salaries income;
- (ii) do not own any sole proprietorship business with gross income of more than HK\$2,000,000;
- (iii) does not have any deemed assessable profits pursuant to section 20AE, 20AF, 20AX and/or 20AY of the IRO;
- (iv) have not obtained an advance ruling on any of their tax matters in relation to that year; and
- (v) do not claim any double taxation relief pursuant to an arrangement specified under section 49(1) or 49(1A) of the IRO in relation to that year.

While it is expected that the eTax Portal will be replaced by the ITP in July 2025, we would like to ask whether there is any timeline for enhancing the functions of ITP to accommodate the above scenarios, particularly the first item, to enable personal taxpayers to submit applications for full or partial exemption of income through the ITP.

The IRD responded as follows –

To allow more individual taxpayers to enjoy the electronic filing service for Tax Return -

Individuals (individual e-filing), the IRD planned to enhance the individual e-filing function to accommodate all the above scenarios, subject to the availability of resources. In particular, starting from May 2026, taxpayers who owned any sole proprietorship business with gross income of more than HK\$2,000,000 could e-file their tax returns through the ITP.

Mr Louis Lam asked, from a service enhancement perspective and subject to resources consideration, whether a ticketing system could be made available in the individual tax counter or whether taxpayers with an appointment could be prioritised.

CIR said that the Stamp Office had put in place a ticketing system to serve a large number of customers daily. He would evaluate whether the IRD had sufficient resources to implement a ticketing system in the individual tax counter, although ultimately it depended on the demand and utilisation rate of different services.

#### **(e) E-application for certificate of resident**

Some jurisdictions allow electronic application for the certificate of resident status. The certificate of resident status may also be made available to the applicants through an electronic portal, where they can print or download the certificate of residence.

During the trial run, Institute representatives noted that a similar function appears to be provided (although it was not tested) under the new electronic portal to be launched. We would like to ask the IRD's plan and timeline for launching this function, and whether there will be any transitional arrangements, etc.

The IRD responded as follows –

The IRD would launch in July 2025 three new tax portals, namely Individual Tax Portal, Business Tax Portal and Tax Representative Portal, providing an additional means for the public to submit applications for CoR electronically.

At the same time, the IRD planned to issue electronic CoRs in respect of certain jurisdictions to successful applicants via the new tax portals, tentatively in the second half of 2025. Applicants could then download and print the relevant electronic CoR. The IRD had been actively liaising with the tax authorities of certain jurisdictions about issuance of electronic CoRs to replace paper CoRs and would make relevant announcement on the IRD's website as appropriate.

#### **(f) Lodgement of profits tax returns and filing deadlines for 2024/25**

The Institute would ask the IRD to share the latest statistics on the filing of tax returns and information on the 2024/25 tax filing deadlines.

The IRD provided four tables at Appendix A showing the lodgement statistics for 2023/24 Profits Tax Returns in respect of corporations and partnerships.

- Table 1 showed that the IRD issued some 5,000 more returns in the 2023/24 bulk issue exercise and some 26,400 returns were not filed by the due dates.
- Table 2 showed the filing position under different accounting date codes.
- Table 3 showed the progressive filing results. Upon request from the industry last year, the filing deadlines for 2023/24 returns were further extended to 29 August 2024 and 29 November 2024 for “D” code and “M” code respectively. Though there were slight improvements in the lodgement rates for “D” code returns (from 77% to 83%) and “M” code returns (from 78% to 81%) by the deadline, the overall performance was still far from satisfactory. The graduated lodgement rates were significantly below the lodgement standards. Tax representatives were urged to improve their performance in the coming year.
- Table 4 was a comparative analysis of compliance with the block extension scheme.

#### Bulk Issue of 2024/25 Profits Tax Returns

The 2024/25 Profits Tax Returns for “active” files were bulk-issued on 1 April 2025. The extended due dates for filing 2024/25 Profits Tax Returns were shown below:

<u>Accounting Date Code</u>	<u>Extended Due Date</u>	<u>Further Extended Due Date if opting for e-filing</u>
“N” code	2 May 2025 (no extension)	2 June 2025
“D” code	15 August 2025	15 September 2025
“M” code	17 November 2025	17 December 2025
“M” code – current year loss cases	2 February 2026	2 February 2026 (same as paper returns)

Despite the above extension, tax representatives were encouraged to file as many returns as possible well before the extended due dates.

Furthermore, the IRD would implement full adoption of electronic applications for the Block Extension Scheme starting from April 2026. To get familiarised with the electronic Block Extension Service early, the Institute’s members were encouraged to lodge extension applications or notifications electronically on a voluntary basis this year.

## **PART B – MATTERS RAISED BY THE IRD**

### **Agenda Item B1 – Investigation and Field Audit: Discrepancies Detected by Field Audit**

The IRD responded as follows –

Appendix B was compiled to illustrate the specific problem areas detected in corporations with tax audits completed during the year ended 31 December 2024. Comparative figures for the years 2022 and 2023 were included.

Field Audit teams uncovered discrepancies in 467 corporation cases, of which 385 carried clean auditor's reports. The amount of discrepancies detected in the clean report cases accounted for 93% (2023: 82%) of the total discrepancies detected in the year 2024 and total tax of \$1,730 million was recovered from these cases. Average understatement per clean report case was \$34.17 million (2023: \$40.40 million) while tax undercharged per clean report case was \$4.5 million (2023: \$4.2 million).

In 2024, discrepancies resulted mainly from understatement of sales and offshore income/profits disallowed. In the majority of cases, the discrepancies were detected after examining the business ledgers and source documents.

In 2024, there was no case in which the IRD considered that the auditor should have detected the irregularities through statutory audit.

## **Agenda Item B2 – Date of Next Annual Meeting**

The date of the next meeting would be agreed between the Institute and the IRD in due course.

**Lodgment of Corporations and Partnerships Profits Tax Returns****Table 1****Lodgment Comparison from 2021/22 to 2023/24**

	Y/A <u>2021/22</u>	Y/A <u>2022/23</u>	Y/A <u>2023/24</u>	Comparison 2022/23 and <u>2023/24</u>
1. Returns issued on 1st working day in April	223,000	219,000	224,000	2%
2. Returns not filed by due date				
"N" code	3,100	3,100	3,300	6%
"D" code	7,400	7,600	7,500	-1%
"M" code	<u>13,900</u>	<u>15,300</u>	<u>15,600</u>	2%
	24,400	26,000	26,400	2%
3. Compound offers issued	7,600	7,900	7,100	-10%
4. Estimated assessments issued	8,900	9,500	10,100	6%

**Table 2****2023/24 Detailed Profits Tax Returns Statistics**

	<u>"N"</u>	<u>"D"</u>	<u>"M"</u>	<u>Total</u>
Total returns issued	24,000	83,000	117,000	224,000
Failure to file on time	3,300	7,500	15,600	26,400
Compound offers issued	900	2,400	3,800	7,100
Estimated assessments issued	1,600	2,700	5,800	10,100

**Table 3**  
**Represented Profits Tax Returns - Lodgment Patterns**

Code	<u>Lodgment Standard</u>	<u>Y/A</u> <u>2023/24</u>	<u>Y/A</u> <u>2022/23</u>
D - extended due date on 29 August	100%	83% <sup>(1)</sup>	77%
M - 31 August	25%	14%	13%
M - 30 September	55%	19%	18%
M - 31 October	80%	34%	31%
M - extended due date on 29 November	100%	81% <sup>(2)</sup>	78%

Notes: (1) 24% lodged within a few days before 29 August 2024 (27% lodged within a few days before 29 August 2023)

(2) 16% lodged within a few days before 29 November 2024 (18% lodged within a few days before 29 November 2023)

**Table 4**  
**Tax Representatives with Lodgment Rate of Less Than 81% of "M" Code Returns as at 29 November 2024**

1,514 tax representatives have "M" code clients. Of these, 653 (43%) firms were below the average performance rate of 81%. An analysis of the firms, based on size, is as follows-

	<u>No. of clients per firm</u>	<u>Current Year Performance</u>				<u>Last Year Performance</u>			
		<u>Total No. of firms</u>	<u>No. of firms below the average of 81%</u>	<u>No. of non-compliance cases</u>	<u>% of total non-compliance cases</u>	<u>Total No. of firms</u>	<u>No. of firms below the average of 78%</u>	<u>No. of non-compliance cases</u>	<u>% of total non-compliance cases</u>
Small size firms	100 or less	1,418	611	4,612	71%	1,404	621	5,453	75%
Medium size firms	101 - 300	85	40	1,736	27%	87	39	1,849	25%
Large size firms	over 300	11	2	152	2%	9	0	0	0%
		<u>1,514</u>	<u>653</u>	<u>6,500</u>	<u>100%</u>	<u>1,500</u>	<u>660</u>	<u>7,302</u>	<u>100%</u>

**Table 1 [Appendix B]**

Analysis of Completed FA Corporation Cases for the years ended 31 December 2022, 2023 and 2024

Auditor's Report = Unqualified	Number			Discrepancy Amount by Nature			Tax Undercharged by Nature		
	2022	2023	2024	2022	2023	2024	2022	2023	2024
				\$	\$	\$	\$	\$	\$
Sales omitted	58	110	72	49,923,542	341,167,150	122,298,170	6,584,107	40,682,199	17,218,019
Purchases overstated	11	15	21	37,080,899	19,242,114	53,334,762	5,723,893	3,101,204	7,410,390
Gross profit understated	42	27	41	112,139,969	41,323,306	80,804,917	17,060,401	3,769,502	14,688,507
Expenses over-claimed	96	120	110	66,913,566	519,090,718	41,409,226	7,579,244	39,560,403	10,204,008
Technical adjustments	83	73	79	70,273,261	29,876,032	95,596,839	8,793,000	3,641,513	11,529,658
Offshore income / profits disallowed	11	7	34	82,092,640	72,991,814	1,063,775,381	11,791,219	12,009,849	168,697,916
Other	113	94	134	292,527,205	620,537,111	485,671,761	40,054,271	83,652,027	49,342,615
<b>TOTAL</b>	<b>414*</b>	<b>446*</b>	<b>491*</b>	<b>710,951,082</b>	<b>1,644,228,245</b>	<b>1,942,891,056</b>	<b>97,586,135</b>	<b>186,416,697</b>	<b>279,091,113</b>
<b>Total number of cases for unqualified Auditor's Report</b>	288*	329*	385*	(D)	(E)	(F)	(G)	(H)	(I)
	(A)	(B)	(C)						
<b>Average amount per case</b>				\$2,468,580	\$4,997,654	\$5,046,470	\$338,841	\$566,616	\$724,912
				(D)/(A)	(E)/(B)	(F)/(C)	(G)/(A)	(H)/(B)	(I)/(C)
	* in one case there may be more than one type of discrepancy								
				<b>Total Discrepancy for All Years</b>			<b>Total Tax Undercharged for All Years</b>		
				2022	2023	2024	2022	2023	2024
<b>Other statistics for the above cases:</b>	<b>Total amount</b>			<b>\$5,075,086,618</b>	<b>\$13,293,074,686</b>	<b>\$13,156,914,080</b>	<b>\$686,984,945</b>	<b>\$1,382,673,292</b>	<b>\$1,730,433,833</b>
	<b>Average amount per case</b>			<b>\$17,621,829</b>	<b>\$40,404,482</b>	<b>\$34,173,803</b>	<b>\$2,385,364</b>	<b>\$4,202,654</b>	<b>\$4,494,633</b>

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Auditor's Report = Qualified	Number			Discrepancy Amount by Nature			Tax Undercharged by Nature		
	2022	2023	2024	2022	2023	2024	2022	2023	2024
				\$	\$	\$	\$	\$	\$
Sales omitted	18	18	25	34,893,063	39,559,884	14,316,688	4,996,982	5,425,400	1,875,663
Purchases overstated	1	6	4	76,862	21,450,264	14,734,056	9	3,624,232	2,204,522
Gross profit understated	13	16	15	17,849,608	43,751,840	32,807,263	2,932,785	6,162,965	3,976,639
Expenses over-claimed	9	23	19	(36,249)	21,378,916	23,694,355	(106,861)	3,142,096	3,105,670
Technical adjustments	15	17	21	18,807,703	63,218,024	6,627,499	3,065,150	10,208,284	358,769
Offshore income / profits disallowed	1	2	1	9,993,054	132,724,003	3,185	1,648,854	21,768,534	0
Other	23	19	30	39,342,872	37,218,491	49,019,024	4,215,786	5,084,245	6,553,707
<b>TOTAL</b>	<b>80*</b>	<b>101*</b>	<b>115*</b>	<b>120,926,913</b>	<b>359,301,422</b>	<b>141,202,070</b>	<b>16,752,705</b>	<b>55,415,756</b>	<b>18,074,970</b>
<b>Total number of cases for qualified Auditor's Report</b>	53*	67*	82*						
<b>Average amount per case</b>	(J)	(K)	(L)	\$2,281,640	\$5,362,708	\$1,721,976	\$316,089	\$827,101	\$220,426
	* in one case there may be more than one type of discrepancy								
				<b>Total Discrepancy for All Years</b>			<b>Total Tax Undercharged for All Years</b>		
				2022	2023	2024	2022	2023	2024
<b>Other statistics for the above cases:</b>	<b>Total amount</b>			<b>\$872,939,590</b>	<b>\$2,819,736,991</b>	<b>\$972,275,954</b>	<b>\$124,497,955</b>	<b>\$425,761,771</b>	<b>\$135,572,817</b>
	<b>Average amount per case</b>			<b>\$16,470,558</b>	<b>\$42,085,627</b>	<b>\$11,857,024</b>	<b>\$2,349,018</b>	<b>\$6,354,653</b>	<b>\$1,653,327</b>

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<b>Grand total number of cases</b>	341	396	467						
	(A)+(J)	(B)+(K)	(C)+(L)						
				<b>Total Discrepancy for All Years</b>			<b>Total Tax Undercharged for All Years</b>		
				2022	2023	2024	2022	2023	2024
<b>Other statistics for the above cases:</b>	<b>Grand total amount</b>			<b>\$5,948,026,208</b>	<b>\$16,112,811,677</b>	<b>\$14,129,190,034</b>	<b>\$811,482,900</b>	<b>\$1,808,435,063</b>	<b>\$1,866,006,650</b>
	<b>Average amount per case</b>			<b>\$17,442,892</b>	<b>\$40,688,918</b>	<b>\$30,255,225</b>	<b>\$2,379,715</b>	<b>\$4,566,755</b>	<b>\$3,995,732</b>

### Extracts of Analysis in Appendix B

	<u>2023</u>	<u>2024</u>
(a) No. of corporation cases with discrepancies uncovered	396	467
(b) No. of corporation cases in item (a) carried clean auditor's reports	329	385
(c) Total discrepancies detected in all cases	\$16,113M	\$14,129M
(d) Total discrepancies detected in clean auditor's report cases	\$13,293M	\$13,157M
(e) Percentage of (d) over (c)	82%	93%
(f) Total tax uncovered in clean auditor's report cases	\$1,383M	\$1,730M
(g) Average understatement per clean auditor's report case [(d) / (b)]	\$40.40M	\$34.17M
(h) Average tax undercharged per clean auditor's report case [(f) / (b)]	\$4.2M	\$4.5M