



# Module Preparation Seminar on Major or Difficult Syllabus Topics (Part I)

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*TAX ADMINISTRATION*

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# Administration procedures under the IRO

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- Overview
- Returns and record keeping
- Assessments
- Objection and holdover procedures
- The tax appeal channel
- Error or omission claim
- Offences and penalties
- Advance rulings system
- Payment of taxes
- Application to the Commissioner for a notice under s.88B

# 1. Overview

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- The IRO gives the IRD wide powers to obtain the standard return of income from a taxpayer.
- The Commissioner is an important administrative officer charged with assessing tax and collecting revenue on behalf of the HKSAR Government.
- Taxpayers are requested to submit a return in a form specified by the Board of Inland Revenue.
- After an assessment is raised by an assessor, the Commission will issue A Notice of Assessment under s.62 of the IRO to inform the taxpayer the amount assessed, the tax charged and due date.
- Any taxpayer who disagrees with the tax assessment raised by the IRD can lodge an objection with the Commissioner of Inland Revenue.

## 2. Returns and record keeping

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- Under s.51(1) of the IRO, an assessor may give notice to any person in writing, requesting that person, within a reasonable time stated in the notice, to furnish a return for property tax, salaries tax or/ and profits tax.
- The profits tax returns require the taxpayers to provide the taxpayer's particulars, its tax data and financial data, and details of the tax representatives.
- Exception the “Small Corporation” or “Small Business”, a profits tax return has to be filled with a certified copy of the audited financial report, a tax computation and other documents as specified in the Notes and Instructions enclosed with a return.
- Audited accounts may not be required if (1) the company was incorporated outside HK where no statutory audit is required, (2) the company has applied to be dormant under the Companies Ordinance, and (3) the company is in liquidation.

## 2. Returns and record keeping

- The time limit for submission of the relevant tax return is outlined as follows:

Type of return	Form	Normal time limit for submission	Code
Property tax return			
Jointly owned property	BIR 57	One month from date of issue	
Property owned by a corporation	BIR 58	One month from date of issue	
Salaries tax	BIR 60	One month from date of issue or two months from date of issue (eTAX)	
Profits tax - Sole proprietor business	BIR 60	Two months from date of issue or four months from date of issue (eTAX)	
Corporation – with year end date between 1 Dec and 31 Dec	BIR 51	15 August under block extension	D

## 2. Returns and record keeping

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Type of return	Form	Normal time limit for submission	Code
Corporation – with year end date between 1 Jan and 31 Mar	BIR 51	15 November under block extension, loss cases in usual practice allow to extension to 31 January of the following year	M
Corporation – with any other year end dates	BIR 51	One month from date of issue	N
Business other than a corporation			
– with year end date between 1 Dec and 31 Dec	BIR 52	15 August under block extension	D
– with year end date between 1 Jan and 31 Mar	BIR 52	15 November under block extension, loss cases in usual practice allow to extension to 31 January of the following year	M
– with any other year end dates	BIR 52	One month from date of issue	N

## 3. Assessment

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- Under s.59(1) of the IRO, an assessor shall assess every person (who is in the opinion of an assessor chargeable with tax under IRO) as soon as the time limited by the notice requiring him to furnish a return under s.51(1) has expired.
- Under s.60(1) of the IRO, an assessor may raise an assessment or an additional assessment:
  - Within the year of assessment;
  - Within six years after year of the assessment; or
  - Within ten years after the year of assessment if the non-assessment or under-assessment is due to fraud or wilful evasion
- The IRD has implemented an assessing programme called “**Assess First Audit Later**” (AFAL) for profits tax returns.

# 3. Assessment

- An assessor may raise assessment as follows:

Section	Assessment
59(1)	An assessment can be raised after the expiration of the time limit for submission of the return.
59(1) proviso	An assessment can be raised at any time when it is expedient to do so.
59(2)(a)	An assessment raised in accordance with a return accepted by an assessor.
59(2)(b)	An estimated assessment raised in the case that the return is not accepted by an assessor.
59(3)	An estimated assessment raised in the absence of a return.
59(4)	An estimated assessment raised on the basis of the usual rate of profit on the turnover of that trade or business if the accounts have not been kept in a satisfactory form.
60	An assessment (or additional assessment) raised where it appears to an assessor that taxpayer has not been assessed within the year of assessment or within 6 years after the expiration thereof.

## 4. Objective and holdover procedures

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- If a taxpayer **disagrees** with an assessment raised by an assessor, he/she may **lodge an objection** with the Commissioner.
- The notice of objection shall **be in writing; state precisely the grounds** for the objection; and be received by the Commissioner **within one month** after the date of the notice of assessment.
- The Commissioner may accept a late objection if the delay is caused by **sickness; absence from Hong Kong;** or other reasonable grounds.
- To object against an estimated assessment raised under s.59(3), a valid return has to be filed together with the notice of the objection within the objection period of one month.

## 4. Objective and holdover procedures

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- Upon the receipt of an objection, the Commissioner may give order for the payment of the tax as follows:
- To order the taxpayer to pay the tax as demanded on the notice of assessment
- To holdover the tax in dispute unconditionally
- To holdover the tax in dispute conditionally requiring the taxpayer to purchase tax reserve certificates
- To holdover the tax in dispute conditionally requiring the taxpayer to furnish a banker's undertaking

## 4. Objective and holdover procedures

- A taxpayer may apply in writing for a partial or complete holdover of provisional tax in circumstances as follows:

Property Tax	Salaries Tax	Profits Tax
N/A	Entitlement to further allowances under Part V of the IRO .	N/A
Assessable value of the property for the year is likely to be less than 90% of the provisional amount assessed.	Net charged income for the year is likely to be less than 90% of the provisional amount assessed.	Assessable profit for the year is likely to be less than 90% of the provisional amount assessed.
N/A	N/A	A loss brought forward has been omitted or is incorrect.
Cessation of income from property.	Cessation of income chargeable to salaries tax.	Cessation of trade, profession or business.
Election for personal assessment has been made which is likely to reduce the tax liability.	N/A	Election for personal assessment has been made which is likely to reduce the tax liability.
An objection has been lodged against the final assessment upon which the provisional assessment is based.	An objection has been lodged against the final assessment upon which the provisional assessment is based.	An objection has been lodged against the final assessment upon which the provisional assessment is based.

## 4. Objective and holdover procedures

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- The application for holdover of provisional tax must be submitted to the Commissioner **not later than**:
  - **Twenty – eight days** before the payment due date of the provisional tax; or
  - **Fourteen days** after the date of the notice for payment of provisional tax;
  - **Whichever is later.**
- The Commission has no discretionary power to extend the time limit for a holdover.

# 5. The tax appeal channel

- The tax appeal channel is summarised as follows:

Section	Hearing Body	Time Limit	Procedures
66	Board of Review	Within one month after the transmission of CIR's determination of the objection	Notice of appeal in writing to the Clerk to the BOR and copy of CIR's determination, reasons therefore and statements of facts and statement of grounds of appeal and copy of notice of appeal and the statement of grounds of appeals to CIR.
67	Court of First Instance	Within 21 days after receipt of the notice of appeal by the Clerk to the Board of Review or further time granted by the Board of Review	Either the taxpayer or the Commission may request to transfer the case to the Court of First Instance. Transfer will be made by the BOR with the consent of the other party.

# 5. The tax appeal channel

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Section	Hearing Body	Time Limit	Procedures
69	Court of First Instance	<p>Within one month after the decision of the Board of Review</p> <p>Within 14 days after receiving the stated case</p>	<p>Written application to the BOR to state a case on question of Law.</p> <p>Transfer of the stated case to the Court of First Instance and notice of transfer and stated case to the other party.</p>
69A	Court of Appeal	<p>Within one month after the decision of the Board of Review</p> <p>Within 14 days after receiving the stated case</p>	<p>Written application to the BOR to state a case on question of Law.</p> <p>Written application to the Court of Appeal for consent to the appeal.</p>

## 6. Error or omission claim

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- An assessment which is closed can be reopened with an error or omission claim under Section 70A of the IRO.
- A correction can be made if the assessment is excessive due to an error or omission.
- An application is made within the later of six years after the end of the year of the assessment, or within six months after the date of the Notice of Assessment.
- S. 70A cannot be invoked to reopen an estimated assessment if it was issued in **the absence of a return**.
- If an assessor refuses to correct an assessment under s.70A, the taxpayer can lodge an objection.

## 7. Offences and penalties

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- An offence may be committed either by non-compliance without a reasonable excuse or by wilful wrongdoing.
- Most of the compliance requirements are contained in s.51 and 52 of IRO.
- For non-compliance offences not affecting the amount of tax charged, the Court may grant an order to instruct the defaulter to comply within a specified time together with a fine.
- The penalty may consist of a fine and/or up to 300% of the tax undercharged or the tax would have been undercharged.
- Six levels of fine are Level 1 \$2,000, Level 2 \$5,000, Level 3 \$10,000, Level 4 \$25,000, Level 5 \$50,000, and Level 6 \$100,000.

# 7. Offences and penalties

- The obligation of a taxpayer under s.51 of the IRD

Section	Obligation	Penalty for non-compliance
s.51(1)	Complete return within the time limit as requested in the notice from an assessor in writing	A fine at Level 3 & a fine of treble the amount of tax undercharged
s.51(2)	Notify Commissioner of the chargeability of tax not later than 4 months after the end of the basis period in which the income was derived	Same as above
s.51(3)	Answer enquiries, i.e. to furnish fuller or further returns, raised by assessor to support the tax returns	A fine at Level 3 and court order for compliance within the time specified in the order
s.51(4)(a)	Answer enquiries as a third party	Same as above
s.51(6)	Notify Commissioner in writing of cessation of income within 1 month of such cessation	Same as above

# 7. Offences and penalties

- The obligation of a taxpayer under s.51 of the IRD

Section	Obligation	Penalty for non-compliance
s.51(7)	Notify Commissioner in writing of the departure from HK for any period exceeding 1 month not later than 1 month before the expected date of departure	Same as above
s.51(8)	Notify Commissioner in writing of the change of address within 1 month of such change	A fine at Level 3 & a fine of treble the amount of tax undercharged
s.51C	Keep record of business income and expenditure for a period not less than 7 years	A fine at <b>Level 6</b> and court order for compliance within the time specified in the order
s.51D	Keep record of property income for a period not less than 7 years	A fine at Level 3 and court order for compliance within the time specified in the order

# 7. Offences and penalties

- The obligation of a taxpayer under s.52 of the IRD

Section	Obligation	Penalty for non-compliance
s.52(1)	Furnish information requested in a notice given by the Commissioner within the time specified in the notice	A fine at Level 3 and court order for compliance within the time specified in the order
s.52(2)	File employer's return within the time specified in the return	Same as above
s.52(4)	Notify Commissioner in writing of the commencement of employment of staff not later than 3 months after the date of commencement of such employment	Same as above
s.52(5)	Notify Commissioner in writing of cessation of employment of staff not later than 1 month before such individual ceases to be employed in HK	Same as above

# 7. Offences and penalties

- The obligation of a taxpayer under s.52 of the IRD

Section	Obligation	Penalty for non-compliance
s.52(6)	Notify Commissioner in writing of departure of staff from HK for more than 1 month not later than 1 month before the expected date of departure	A fine at Level 3 and court order for compliance within the time specified in the order
s.52(7)	Not to make any payment of money to staff who is leaving HK for a period of 1 month from the date the employer serves the notice to Commissioner under s.52(6)	Same as above

# 7. Offences and penalties

- Comparison of offences and penalty under s.80(2), 82A and 82

Section	Offences	Penalty	Appeal
s.80(2) (without reasonable excuse)[criminal offence]	Incorrect return Incorrect statement Incorrect information s.51(1) and s.51(2)	Level 3 penalty 3 times tax undercharged	Appeal to court of higher level
s.82A (without reasonable excuse)[Administrative penalty]	Same offences as s.80(2)	Additional tax equals 3 times tax undercharged	Appeal to BOR under s.82B
s.82 (wilful intent to evade tax)[criminal offence]	Omission of income False return / claim Sign but not believe true False answer/ records Fraudulent acts	<b>Summary conviction</b> (Level 3 penalty, 3 times tax undercharged, 6 months imprisonment) <b>Indictment</b> (Level 5 penalty, 3 times tax undercharged, 3 years' imprisonment)	Appeal to court of higher level

## 8. Advance rulings system

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- Any person who wishes to ascertain the tax position of a contemplated transaction or arrangement by obtaining an advance ruling from the Commissioner has to make application for an advance ruling.
- The completed Form IR1297, together with requested supporting documents and specified application fee, should be mailed to the Deputy Commissioner of Inland Revenue.
- Commission assesses whether ruling will be made or no ruling issue due to not seriously transaction, frivolous or similar to an arrangement currently in place which is the subject of a tax audit.

## 9. Payment of taxes

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- Taxpayers can pay tax by various methods as below:
- Cash in person or post;
- Cheque in person or post;
- Tax Reserve Certificates (TRC);
- Auto tax Payment Service;
- Electronic TRC schemes;
- Internet;
- Telephone banking

# 10. Application for a notice under s.88B



- Under s.88B of the IRO and payment of a fee, the Commissioner will issue the notice of no objection in respect of an application to deregister a private company under s.291AA of the Companies Ordinance.
- The deregistration will occur if:
  - The company has never commenced operation; or has already ceased business;
  - The company will not start/ resume business in the future;
  - The company has disposed of all trading stock, landed property and securities;
  - The company has no outstanding tax liabilities;
  - The company has no outstanding obligations under the IRO;
  - There are no unanswered enquiries from the IRD;
  - There are no unsettled objectives or appeals in respect of assessments already raised.

# Practical Question

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Mr. Smith sold a luxury flat and made a profit of \$5million. A profits tax assessment was issued to him. He lodged an objection to the assessment on the ground that the property was purchased as a long-term investment. The profit on sale was a capital gain which should be exempt from profits tax. The Commissioner of Inland Revenue (CIR) did not agree with his grounds of objection and issued a Determination to him confirming the assessment.

Mr. Smith said he did not agree with CIR's determination and wished to appeal against the determination. You are an accountant. He is your friend and asks you for assistance.

***Required:***

Explain to Mr. Smith what he should do with the above situation.

# Answer

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- If Mr. Smith does not agree with the CIR's determination, he can lodge an appeal to the BOR under s.66. The appeal procedures are as follows:
- Provide the written notice of appeal to the Clerk to the BOR within one month after the transmission of the CIR's determination.
- State the grounds of appeal in the notice of appeal.
- Accompany the notice of appeal with a statement of facts.
- Send a copy of notice of appeal and the statement of grounds of appeal to the CIR.
- The one-month appeal period may be extended if the BOR is satisfied that the appellant is prevented by illness or absence from Hong Kong , or other reasonable causes from giving notice of appeal.

# Answer

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- The hearing of the BOR is informal and not open to the public.
- In the case, it involves the existence of a property dealing business which is a hard practical matter of fact, the BOR will determine the case based on a balance of probability.
- Therefore, Mr. Smith should have concrete objective evidence to prove the subjective intention of purchase of the property as a long-term investment.
- If the BOR members find that Mr. Smith's oral evidence is credible, his chance of winning the case is higher.

# Summary

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- ✓ Understand of various rights and obligations of taxpayers and employers under the IRO.
- ✓ Understand the tax administration procedures, e.g. objection, holdover the provisional tax liability.
- ✓ The related penalties for non-compliance tax advisors should be familiar with the appeal procedures and the possible use of advance ruling.

# Any Question?

Questions?

Discussion?

Brainstorm?

*The end!*