



Compliance Requirements for Charities with Recognition of Tax Exemption Status under the Inland Revenue Ordinance

Inland Revenue Department
22 February 2019

Agenda

- IRD's administration of **tax exemption** (稅務豁免) of charities
- Commercial operations carried out by charities and **proviso to section 88** (第88條但書) of the Inland Revenue Ordinance (稅務條例)(IRO)

Government's Support and Monitoring of NPOs / Charities

Government's Support and Monitoring	Oversight Authorities
General tax exemption to charities (慈善團體)	Inland Revenue Department (IRD) (稅務局)
Use of government lands	Lands Department (地政總署)
Permit/licence for fundraising activities	Social Welfare Department/ Food and Environmental Hygiene Department/ Home Affairs Department (社會福利署 / 食物環境衛生署 / 民政事務總署)
Company limited by guarantee (擔保有限公司)	Companies Registry (公司註冊處)
Society (社團)	Societies Office of Hong Kong Police Force (香港警務署的社團事務處)
Incorporated Management Committee (法團校董會)	Education Bureau (教育局)
Chinese temples (華人廟宇)	Chinese Temples Committee of Home Affairs Bureau (民政事務局的華人廟宇委員會)

Guidelines and Useful References

- **IRD:**
"A tax guide for charitable institutions and trusts of a public character" (屬公共性質的慈善機構及信託團體的稅務指南)
https://www.ird.gov.hk/eng/tax/ach_tgc.htm
- **Social Welfare Department, Home Affairs Department, and Food and Environmental Hygiene Department:**
"Good Practice Guide on Charitable Fund-raising" (慈善籌款良好實務指引)
<https://www.gov.hk/en/theme/fundraising/guide/>
- **Independent Commission Against Corruption:**
"Best Practice Checklist - Management of Charities and Fund-raising Activities" (慈善機構及籌款活動的管理)
http://www.icac.org.hk/filemanager/en/content_218/fund_raising.pdf
- **Narcotics Division of the Security Bureau:**
"An Advisory Guideline on Preventing the Misuse of Charities for Terrorist Financing" (防止慈善團體被利用作恐怖分子資金籌集指引)
Guideline: https://www.nd.gov.hk/pdf/guideline_e_20180929.pdf
Appendix: https://www.nd.gov.hk/pdf/Appendix_e_20180929.pdf

Non-profit Organisations (非牟利機構)(NPOs) and charities (慈善團體) can be taxpayers. Section 88 concerns charities (not NPOs).

Non-profit Organisations (非牟利機構) (NPOs) vs Charities (慈善團體)

- NPOs are not necessarily “charities”.
- NPOs use surplus to achieve its objectives (charitable or non-charitable).
- If NPOs engage in any **trade or business** (經營行業或業務), the profits derived will be subject to tax.
- Depending on the purpose(s) of establishment, a **social enterprise** (社會企業)(**SE**) may be a charity or an NPO.



- **Section 88 of the IRO concerns the exemption of tax liability of any “charitable institution or trust of a public character”.**
- **Registration, monitoring or regulation of charities are outside the ambit of the IRO.**

IRD's Administration of Tax-exempt Charities (免稅慈善團體)

- Tax-exempt charities refer to charities that are recognised as tax-exempt under section 88 of the IRO.
- There is no statutory scheme for the registration of charities in Hong Kong.

Compliance Requirement

- **Charities and Tax Exemption Status**
 - Requirement of “exclusively charitable purposes”
 - Requirement of “public benefit”
 - Requirement of subject to jurisdiction of Hong Kong courts
- **Governing instrument and Crucial Clauses**
- **General Tax Exemption under section 88 of the IRO**
- **The Recognition Process**
 - Application
 - Periodic Review
 - Form C.D.1A (Part 1-8)
 - Withdrawal of recognition
- **“List of charitable institutions and trusts of a public character, which are exempt from tax under section 88 of the Inland Revenue Ordinance”免稅慈善團體的名單 (s88 List)**
- **Charity can trade: proviso to section 88 of the IRO**
 - Trade or Business
 - Proviso to section 88 of the IRO
 - Social Enterprises
 - Land/Property Transactions

A charity must be established for exclusively (純粹) charitable purposes (慈善用途) and for public benefit (公眾利益).

Charities and tax exemption status

- Charities are not defined in the IRO.
- **Director of Audit Report No. 68 (published in April 2017) 審計署2017年4月第68號報告書:**

"There is no overall statutory scheme for the registration and regulation of charities in Hong Kong. Depending on their legal forms and whether they have sought recognition of tax exemption status and government support, charities are subject to the monitoring and/or registration framework of different government bureaux/departments" (Para. 1.7)
- Case law definition: established for exclusively charitable purposes and for public benefit
- Whether an organisation is a charity at law is a matter for the court to decide in case there is a dispute.

**The organisation must have clear,
well-defined charitable purposes.**

Requirement of “exclusively charitable purposes” (純粹慈善用途)

Charitable purposes:

- Relief of poverty (救助貧困)
- Advancement of education (促進教育)
- Advancement of religion (推廣宗教)
- Other purposes of a charitable nature beneficial to the **Hong Kong community** not falling under any of the preceding heads (除上述之外，其他有益於香港社會而具慈善性質的宗旨)

The beneficiaries (受益人) must be public in general.

Requirement of “public benefit”

- Public benefit (公眾利益)
 - ▣ A purpose is not charitable unless directed to the public or a sufficient section of it.
 - ▣ An organisation cannot generally be charitable if it is in principle established for the benefit of specific individuals.
- Sufficient section: A charitable purpose can benefit a section of the public, but the section must be appropriate (or “sufficient”) in relation to the specific purpose.



**The organisation must be
subject to the jurisdiction of
Hong Kong courts.**

Subject to jurisdiction of Hong Kong courts (香港法院司法管轄)

- Tax exemption will only be given to charities subject to the jurisdiction of the courts in Hong Kong, that is to say, charities established in Hong Kong or Hong Kong establishment of overseas charities

- **Crucial clauses (重要條款) are essential in determining whether an organisation is a charity.**
- **Activities have to be compatible (符合) with its stated charitable purposes for which the charity is established and for public benefit.**

Governing instrument (規管文書) and Crucial Clauses (重要條款)

- Clauses stating precisely and clearly the **objects** (宗旨) for which it is established;
- Clause **limiting** the **application** of its funds towards the attainment of its stated objects;
- Clause **prohibiting distribution** of incomes and properties amongst its members;
- Clause **prohibiting** members of governing body (e.g. directors, trustees, etc.) from receiving **remuneration**;
- Clause requiring members of governing body to **disclose material interests** and **not to vote** in respect of any transaction, arrangement or contract or proposed transaction, arrangement or contract in which they are so interested;
- Clause specifying how the assets should be dealt with upon its **dissolution** (The remaining assets should normally be donated to other charities); and
- Clause requiring the **keeping of sufficient records** of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements.

Charities may apply to IRD for recognition of the exemption status and give consent to publish their names on the list of tax-exempt charities (免稅慈善團體的名單) published on IRD's website.

General Tax Exemption under Section 88 of the IRO

- General tax exemption (一般稅務豁免)
 - ▣ Inland Revenue Ordinance (Cap 112)
(稅務條例)
 - ▣ Stamp Duty Ordinance (Cap 117)
(印花稅條例)
 - ▣ Business Registration Ordinance (Cap 310)
(商業登記條例)

In general, tax exemption status is recognised with effect from the date when the applicant becomes a charity at law (法理上的慈善團體).

Application for Recognition as a tax-exempt charity

- Information and documents required:
 - Application letter
 - Certificate of Incorporation/Registration (if already established)
 - Governing instrument
 - Activities for the past 12 months (if any)
 - Activities planned for the coming 12 months
 - Accounts for the last financial year (if established for more than 18 months)
 - A list of members of governing body and/or founder members
- IRD will need to determine whether the applicant is a **charity at law** (i.e. established for charitable purposes and for public benefit) and is **subject to the jurisdiction of Hong Kong courts**

The Recognition Process: Periodic Review

- Newly recognised tax-exempt charities: subject to review in (year + 2)
- Existing tax-exempt charities: subject to review at least once every 3 years

Review Questionnaire (覆查問卷)

- Form C.D.1A (表格C.D.1A)

- The Review Questionnaire (Form C.D.1A), which consists of 8 parts, should be completed and returned **within one month** of issue.

Tax-exempt charities should notify timely any change of correspondence address (聯絡地址) to avoid non-delivery of review questionnaires.

Form C.D.1A – Part 1 (Address 地址)

1. 聯絡資料 Contact Details	
請敘明地址及聯絡資料。 Please provide address and contact details.	
(a) 地址 Address	
<input type="checkbox"/> _{1a} 地址同上 Address as above	
<input type="checkbox"/> _{1b} 新地址 New address	<input type="text"/>
	<input type="text"/>
(b) 聯絡人 Contact person	
<input type="checkbox"/> _{1d} 姓名 Name	<input type="text"/>
	<input type="checkbox"/> _{1e} 電話 Telephone No. <input type="text"/>

- Review questionnaires are issued to correspondence address last made known to IRD by tax-exempt charities.
- The contact person will act as the **first point of contact** between IRD and the tax-exempt charity.

Members of governing body refer to persons who oversee (監察) or supervise (管理) the operations (運作) of the charity.

Form C.D.1A – Part 2 (Members of Governing Body 管治組織成員)

2. 管治團體成員（即董事、社團註冊幹事及受託人等）

Members of Governing Body (such as the directors, the society's registered office-bearers, trustees, etc.)

請遞交一份貴機構的管治團體成員清單，載明貴機構各管治團體成員的中文及英文姓名。
Please forward a list of **members of governing body** of your organisation showing the Chinese and English names for each of them.

_{2a} 附上管治團體成員清單 List of members of governing body attached

- If there is no change to the list last filed with IRD, a **confirmation** will suffice.

Changes to crucial clauses (e.g. object clause) may affect the tax exemption status previously recognised.

Form C.D.1A – Part 3 (Governing Instruments 規管文書)

3. 規管文書 Governing Instruments

自 2016 年 2 月 2 日 起，貴機構的規管文書(例如組織章程細則/會章/信託契約)曾否更改?
Have there been any changes in your organisation's governing instrument (e.g. Articles of Association/Constitution/Trust Deed) since 02/02/2016?

_{3a} 是 Yes 請敘明更改詳情及遞交有關經修訂的規管文書認證本。

Please furnish the details of amendments made, and forward a certified true copy of the amended governing instrument.

詳情 Details: _{3b} _____

附上文件 Documents attached _{3c}

_{3d} 否 No

- Tax-exempt charities should notify IRD if there is any alteration to their governing instrument **within one month** of the date of change.
- A marked-up version highlighting the changes made could be provided.

A tax-exempt charity which is inactive (不活躍) or temporarily suspended (暫停活動) during the last financial year and wishes to maintain its exemption status should furnish a concrete plan to resume its charitable activities.

Form C.D.1A – Part 4 (Activities 活動)

4. 活動 Activities

請遞交一份活動清單或年報，載明貴機構在上一個財政年度所舉辦之活動(包括作出捐款以作慈善用途)，並註明那些活動是由「附屬組織」舉辦(見第7部)。

Please forward a list of the activities (including donations made for charitable purposes) or annual report showing details of these activities carried out by your organisation during the last financial year and indicate the activities carried out by the “subsidiary bodies” (see Part 7).

_{4a} 有活動 Activities
附上活動清單/年報 List of activities / Annual report attached _{4b}
所列的活動是否符合貴機構規管文書的規定? Were activities listed above within the terms of your organisation’s governing instrument?
_{4c} 是 Yes
_{4d} 否 No; 原因 Reason:

_{4f} 沒有活動 No activities
停止活動日期及原因 Date of cessation of activities and reasons:

- A charity should report activities (such as making donations) which **directly further the charitable objects**. Those pre-preparation work (e.g. directors’ meetings held to discuss how to organise the activities concerned) could be excluded.
- A tax-exempt charity ceases to have activities or becomes dormant no longer continues to be a charity for the purpose of section 88 of the IRO. The effective date of cessation of the tax exemption status is normally the **date of cessation of activities or became dormant**.

- **A charity should provide details of the trading activities (商業活動)(whether directly linked to its objects or purely to raise funds).**
- **If relevant, it should state how the conditions under proviso to section 88 (第88條但書) can be fulfilled.**

Form C.D.1A – Part 5 (Trade or Business 行業或業務)

5. 行業或業務 Trade or Business
貴機構有否經營任何行業或業務? Does your organisation carry on a trade or business?
<input type="checkbox"/> _{5a} 是 Yes
請敘明所經營的行業或業務之性質及在上一個財政年度的收入。Please state the nature of such trade or business and income received during the last financial year.
收入 Income received: _{5b} _____
業務性質 Business nature : _{5c} _____
<input type="checkbox"/> _{5d} 否 No

- Trading or business activities should be reported no matter the requirements of proviso to section 88 can be satisfied or not.
- Examples of trading activities:
 - ▣ bible selling
 - ▣ operating a care home to provide housing and care services for elderly people
 - ▣ selling products made by its beneficiaries (e.g. disabled, drug rehabilitants)



The latest accounts can be furnished while the last year's accounts to follow.

Form C.D.1A – Part 6 (Accounts 帳目)

6. 帳目 Accounts	
<p>請遞交一份貴機構上一個財政年度之帳目之副本（若貴機構為有限公司，須遞交經核數師核實的帳目的副本），並提供下列資料： Please forward a copy of accounts of your organisation for the last financial year (if your organisation is a limited company, a copy of audited accounts is required) and provide the following information:</p>	
<input type="checkbox"/> ^{6a} 附上帳目副本 Copy of accounts attached	
(a)	<p>會計年度 Accounting period</p> <p>^{6b} _____</p>
(b)	<p>該年度總收入 Total income for that financial year</p> <p>^{6c} _____</p>
(c)	<p>貴機構有否為支取薪酬的僱員填報僱主報稅表(IR56B)? 如有，請填寫貴機構的僱主檔案號碼。如否，請敘明原因。 Has your organisation filed any employer's returns (IR56) for remunerated employees? If yes, please provide the Employer's File Number. If no, state the reasons.</p> <p>是 Yes <input type="checkbox"/> ^{6d} 僱主檔案號碼 Employer's File number: ^{6e} _____</p> <p>否 No <input type="checkbox"/> ^{6f} 原因 Reasons: ^{6g} _____</p>
(d)	<p>貴機構在該年度是否有捐款的支出?如有，請另紙提供明細表，列明各接受捐款者的姓名、款額及每筆捐款的用途。 Was there any donation made by your organisation for the financial year? If yes, please provide a breakdown on a separate sheet showing name of each recipient, amount paid to each and purposes of such donations made.</p> <p>有 Yes <input type="checkbox"/> ^{6h} 附上明細表 Breakdown attached <input type="checkbox"/> ⁶ⁱ</p> <p>否 No <input type="checkbox"/> ^{6j}</p>

Form C.D.1A – Part 6 (Accounts 帳目)

- The **signed accounts** (簽署帳目) should be furnished with the completed questionnaire.
- For charities that are guarantee companies, a complete set of audited accounts together with **directors' report** (董事報告), **auditor's report** (核數師報告) and **notes to accounts** (帳目附註) should be provided.
- "**Total income**" (總收入) refers to the sum of receipts (before deduction of expenses) including the trading receipts (if any) reported in Part 5.
- A **charity's obligations as an employer** (僱主責任)(such as reporting remuneration paid to employees) are the same as a non-charity (including NPO). See "*Obligations of An Employer*" (IR56H) for details (https://www.ird.gov.hk/eng/pdf/ir56h_e.pdf).

Donations made by a charity should be compatible with its charitable objects.

Form C.D.1A – Part 6 (Accounts 帳目)

- The **breakdown of donations** (捐款明細) made should include name (受助人名稱) of and amount paid (金額) to each recipient, and purpose (目的) of each donation made.

Charities should notify cessation of a Subsidiary Body timely so that its name if being shown on the s.88 List (免稅慈善團體的名單) could be removed.

Form C.D.1A – Part 7 (Subsidiary Body 附屬組織)

7. 附屬組織 Subsidiary Body

貴機構有否設辦「附屬組織」^(註)以推行慈善工作？

[註：「附屬組織」由貴機構完全擁有，並無獨立章程。]

Does your organisation operate any “subsidiary body” ^(Note) to carry out charitable works?

[Note: A “subsidiary body” is wholly-owned by your organisation and does not have separate constitution.]

_{7a} 有 Yes

(a) 請遞交一份完整的清單，詳列有關「附屬組織」的名稱和地址(包括已上載在稅務局網頁(<https://www.ird.gov.hk>)「根據《稅務條例》第 88 條獲豁免繳稅的慈善機構及慈善信託的名單」的「附屬組織」)。

Please submit a complete list of the relevant “subsidiary bodies” showing their name and address (including those already shown in the list of charitable institutions and trusts of a public character uploaded on the Department’s website (<https://www.ird.gov.hk>)).

_{7b} 附上「附屬組織」清單 List of “subsidiary bodies” attached

(b) 該等「附屬組織」的收支情況是否已包括在上述第 6 部遞交的帳目內？

Whether the income and expenditure of these “subsidiary bodies” have been included in the accounts submitted in Part 5 above?

_{7c} 是 Yes

_{7d} 否 No; 原因 Reasons: _{7e} _____

_{7f} 不適用 / Not applicable

Form C.D.1A – Part 7

(Subsidiary Body 附屬組織)

- “**Subsidiary Body (附屬組織)**” being part and parcel of a charity, does not have a separate legal personality (法人身分). It is under the sole ownership (擁有權) and control (控制) of the charity in the pursuit of its charitable objects.
- “**Subsidiary or subsidiary company (子公司)**”, being a separate legal entity, has its own constitution or governing instrument.
- If a tax-exempt charity wishes to include the name of its subsidiary bodies in the s88 List, it should inform IRD.
- A tax-exempt charity should provide its **updated list of Subsidiary Bodies** including those whose names are being uploaded (with consent given) on IRD’s website (s88 List) (https://www.ird.gov.hk/eng/pdf/s88list_emb.pdf).

- **“Donation” means a gift (饋贈) from the donor.**
- **Must be transferred voluntarily (自願地).**
- **No material benefit (實質利益) should be accrued to the donors.**
- **Not as a result of a contractual obligation (合約上的義務) to transfer it.**

Form C.D.1A – Part 8 (Donation Receipt 捐款收據)

8. 捐款收據

請遞交一份貴機構現時發給捐款人的捐款收據樣本或副本^(註)。

[註：捐款收據須載明貴機構/「附屬組織」的完整名稱。]

Please forward a specimen or copy of donation receipt currently issued by your organisation to a donor^(Note).

[Note: The full official name of your organisation / “subsidiary body” should be shown on the donation receipt.]

^{8a} 附上捐款收據副本

Copy of donation receipt attached

^{8b} 沒有發出捐款收據 No donation receipt issued

原因 Reasons: ^{8c} _____

- The **full official name** of the tax-exempt charity should be shown on donation receipt issued to donors.
- If **no donation receipts** have been issued, the tax-exempt charity should provide explanations.
- Only **one copy or specimen** of the donation receipt needs to be provided.

Unsigned Form C.D.1A will not be accepted.



Form C.D.1A – Signature (簽署)

簽署：
Signature:

陳志善

姓名：
Name:

陳志善

代表 For and on behalf of
甲乙丙慈善有限公司
ABC Charity Limited

職位：
Designation:

董事

電話號碼：
Telephone:

1234 5678

日期：
Date:

22/2/2019

就本文件的要求及於本局處理你的個案的過程中提供個人資料屬自願性質。然而，如你未能提供充分資料，本局可能無法處理你的個案。本局會把你提供的資料，用於施行本局專責執行的法例。本局並可在法律授權或准許的情況下，向任何其他人士或機構披露／轉移該等資料的任何或全部內容。你有權要求查閱及改正你的個人資料，但屬《個人資料（私隱）條例》豁免披露的情況除外。如欲查閱或改正個人資料，請致函評稅主任（地址為香港郵政總局郵箱 132 號），同時請註明你於本局的檔案號碼。

The provision of personal data required by this document and during the processing of your case is voluntary. However, if you do not provide sufficient information, the Department may not be able to process your case. The Department will use the information provided by you for the purposes of the Ordinances administered by it and may disclose/transfer any or all of such information to any other parties provided that the disclosure/transfer is authorised or permitted by law. Except where there is an exemption provided under the Personal Data (Privacy) Ordinance, you have the right to request access to and correction of your personal data. You should send such request in writing to the Assessor at GPO Box 132, Hong Kong and quote your file number in this Department.

CD1A (7/2018)

- The **designation (職位)** (e.g. director, chairperson, board member, etc.) of the representative who signed Form C.D.1A should be stated.

- **Absence of reply to review questionnaire may cause withdrawal of tax exemption status.**
- **Charities with recognition withdrawn may apply for reinstatement of recognition. Reinstatement applications will be processed in the same manner as new applications.**
- **Charities should update IRD when there is any change to its correspondence address.**

Withdrawal (撤銷) of tax exemption status

- Recognition of tax exemption status is normally withdrawn for the following reasons:
 - a) The charity was dissolved / wound up / struck-off / liquidated / deregistered;
 - b) The charity has ceased operation or is dormant;
 - c) The charity is untraceable;
 - d) The charity did not reply to IRD's enquiries;
and
 - e) The charity no longer qualifies for the status of a charitable institution or trust of a public character.

- **The s88 List does not constitute a “register” of charities (免稅慈善團體的名單並不是“登記冊”).**
- **The List enables members of the public to check whether donations to these institutions qualify for tax deduction (申索認可慈善捐款扣除).**

“List of charitable institutions and trusts of a public character, which are exempt from tax under section 88 of the Inland Revenue Ordinance”

(根據《稅務條例》第88條獲豁免繳稅的慈善機構及慈善信託的名單)

- With the consent of the tax-exempt charities, IRD will publish their names on its website to enable members of the public to check whether donations to these institutions qualify for tax deduction.
- Tax-exempt charities should notify its suspension of activities (i.e. dormancy) or cessation of its Subsidiary Bodies timely.
- The s88 List will be updated for every month end position.

- **A charity can trade (慈善團體可以經營行業) and is subject to profits tax if the conditions prescribed under proviso to section 88 (第88條但書) of the IRO are not met.**
- **A charity is required to notify chargeability to tax in respect of the profits derived from a trade or business carried on by it.**
- **The IRO stipulates the 6-year time limit for raising back year assessments under section 60 of the IRO.**

Charity can trade and proviso to section 88 of the IRO

- A charity may engage in trade or business. It will be liable to profits tax on its profits derived from such trade or business if the conditions of the proviso to section 88 (第88條但書) of the IRO cannot be satisfied.

- **Director of Audit Report No. 68 (April 2017)**
審計署2017年4月第68號報告書:

*"Audit has recommended that the Commissioner of Inland Revenue should review the taxability of the income derived from the **commercial operations of the 13 sites** for revenue protection.*

審計署建議，稅務局局長應檢視**13幅相關用地上商業營運**所得的收入須否課稅，以保障稅收。”

(Para. 3.28)

Trade or Business

- Whether an activity is, or isn't, trading depends on the **facts (事實)** in each case. It will be necessary to look at all the circumstances surrounding the activity.
- **Law Reform Commission Report on Charities (December 2013)** 法律改革委員會 2013年12月報告書:

"The case turned on the application of the proviso to section 88 (T)he onus was on the charity to positively establish that it had satisfied all of the requirements of section 88." (Para. 7.10)

“Proviso to section 88 of the IRO”

- The conditions (適用條件):
 - a) The profits are applied solely for charitable purposes (所得利潤純粹作慈善用途), and
 - b) The profits are not expended substantially outside Hong Kong (所得利潤大部分不是在香港以外地方使用), and
 - c) Either
 - A. The trade or business is exercised in the course of the actual carrying out of the expressed objects of such charity (該行業或業務是在實際貫徹該慈善團體明文規定的宗旨時經營的); or
 - B. The work in connection with the trade or business is mainly carried on by persons for whose benefit such charity is established (與該行業或業務有關的工作主要是由某些人進行，而該慈善團體正是為該等人的利益而設立的).

Examples of “The trade or business is exercised in the course of the actual carrying out of the expressed objects of such charity”

- Provision of educational services by a charitable school or college in return for course fees
- Holding of an exhibition by a charitable art gallery or museum in return for admission fees
- Sale of tickets for a theatrical production staged by a charitable theatre company
- Provision of healthcare services or residential accommodation by a care charity in return for payment
- Sale of certain educational goods by a charitable art gallery or museum

Examples of “The work in connection with the trade or business is mainly carried on by persons for whose benefit such charity is established”

- A cafe operated by students as part of a catering course at a further education college
- Sale of goods manufactured by disabled people who are beneficiaries of a charity for the disabled

Social Enterprises (SE) (社會企業)

- SE is not defined in the IRO.
- No provision in the IRO which specifically exempts an SE from tax.
- Profits derived by an SE without tax exemption status (i.e. not a charity) from carrying on a trade or business are still subject to profits tax.
- Profits derived by an SE with tax exemption status (i.e. a charity) from carrying on a trade or business are not subject to profits tax only if the requirements of proviso to section 88 of the IRO are satisfied.
- If an SE is a separate legal entity (e.g. a limited company), it has to apply section 88 recognition separately.

Land/Property Transactions

- Under the IRO, letting of property (出租物業) may constitute a trade or business. Rental income derived therefrom by a charity may be subject to profits tax.
- If such letting constitutes a trade or business, the rental income derived will only be exempted from profits tax upon fulfillment of the conditions of the proviso to section 88 (第88條但書).



Thank you

Q & A

