

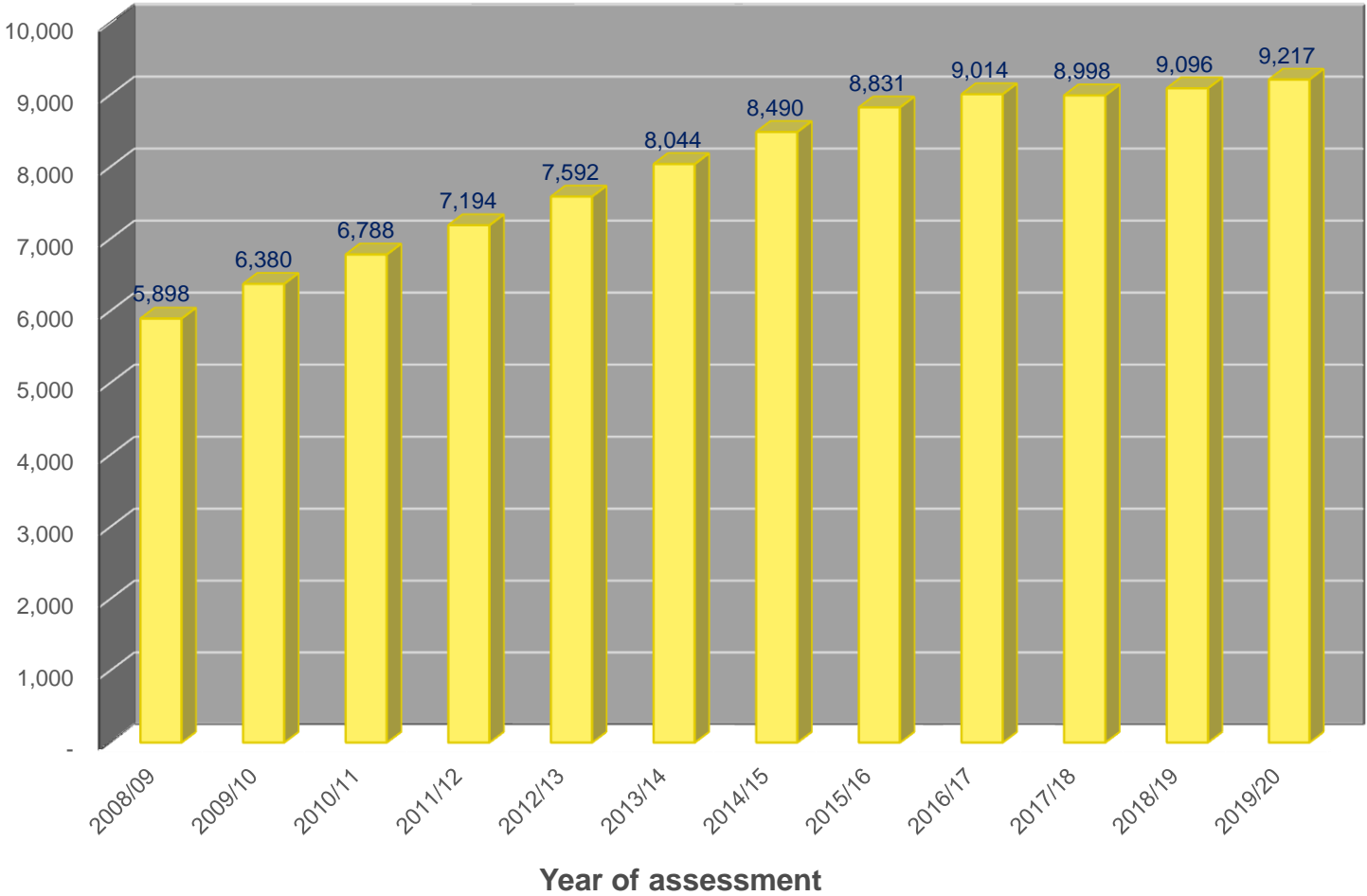
Compliance updates for tax-exempt charitable organizations

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9 December 2021

Number of charities exempt from tax

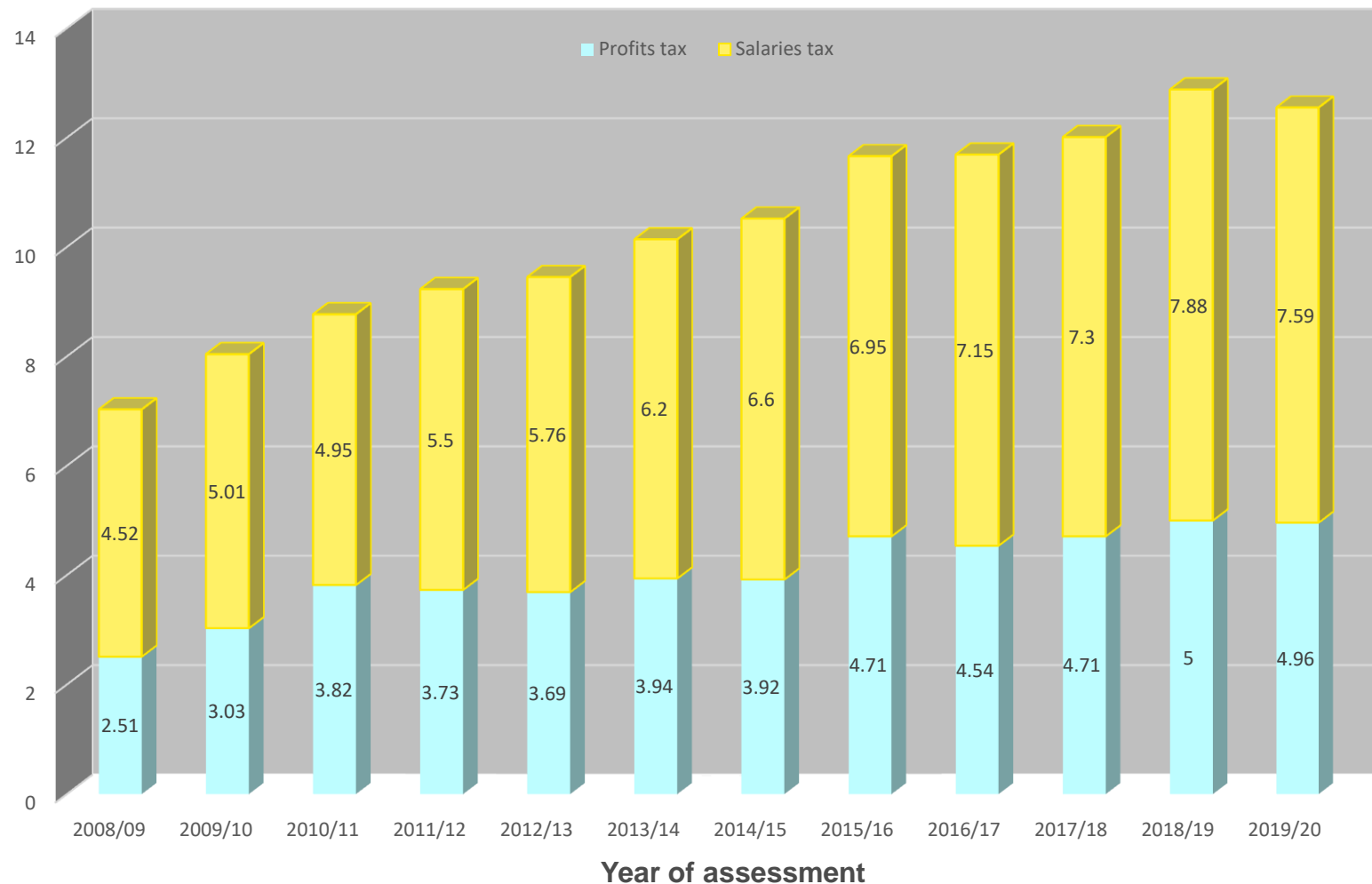
No. of charities
exempt from tax



Source: Annual Report of the Inland Revenue Department

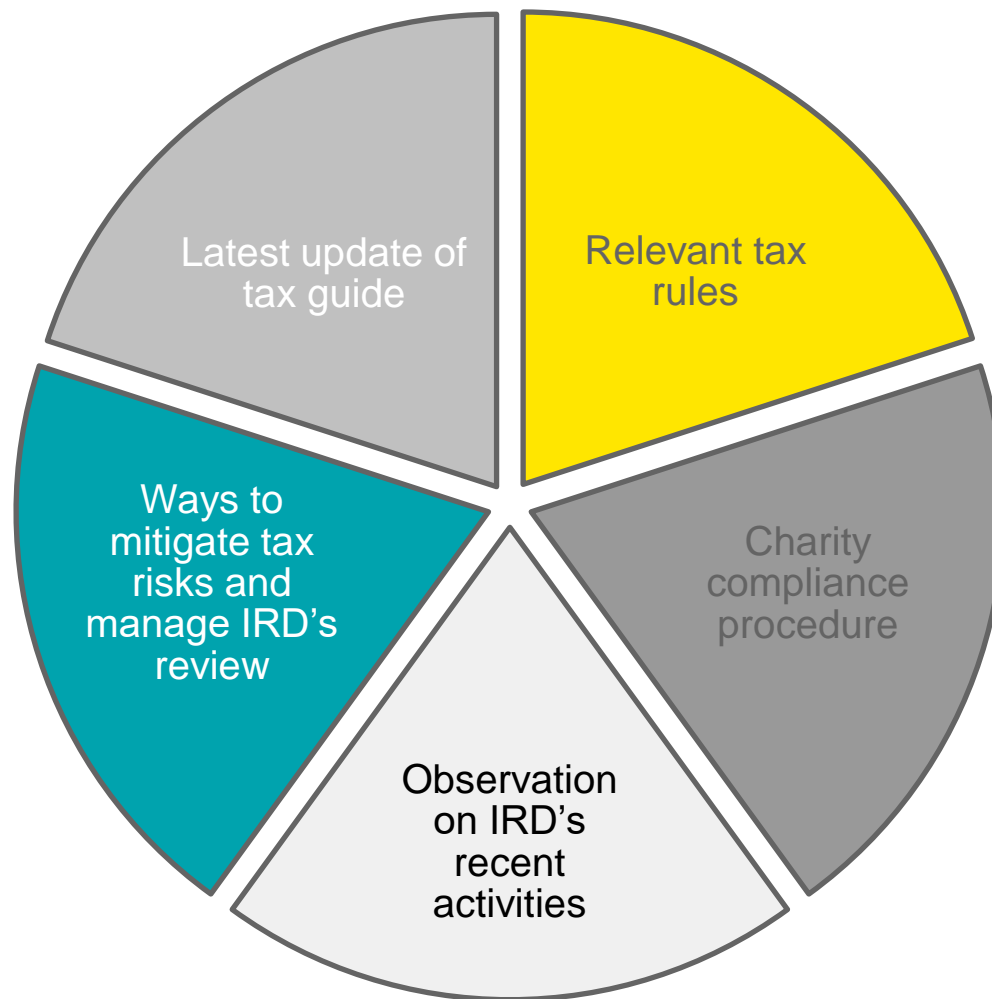
Approved charitable donations allowed

Amount of approved
charitable donations
allowed
(HK\$ 'billion)



Source: Annual Report of the Inland Revenue Department

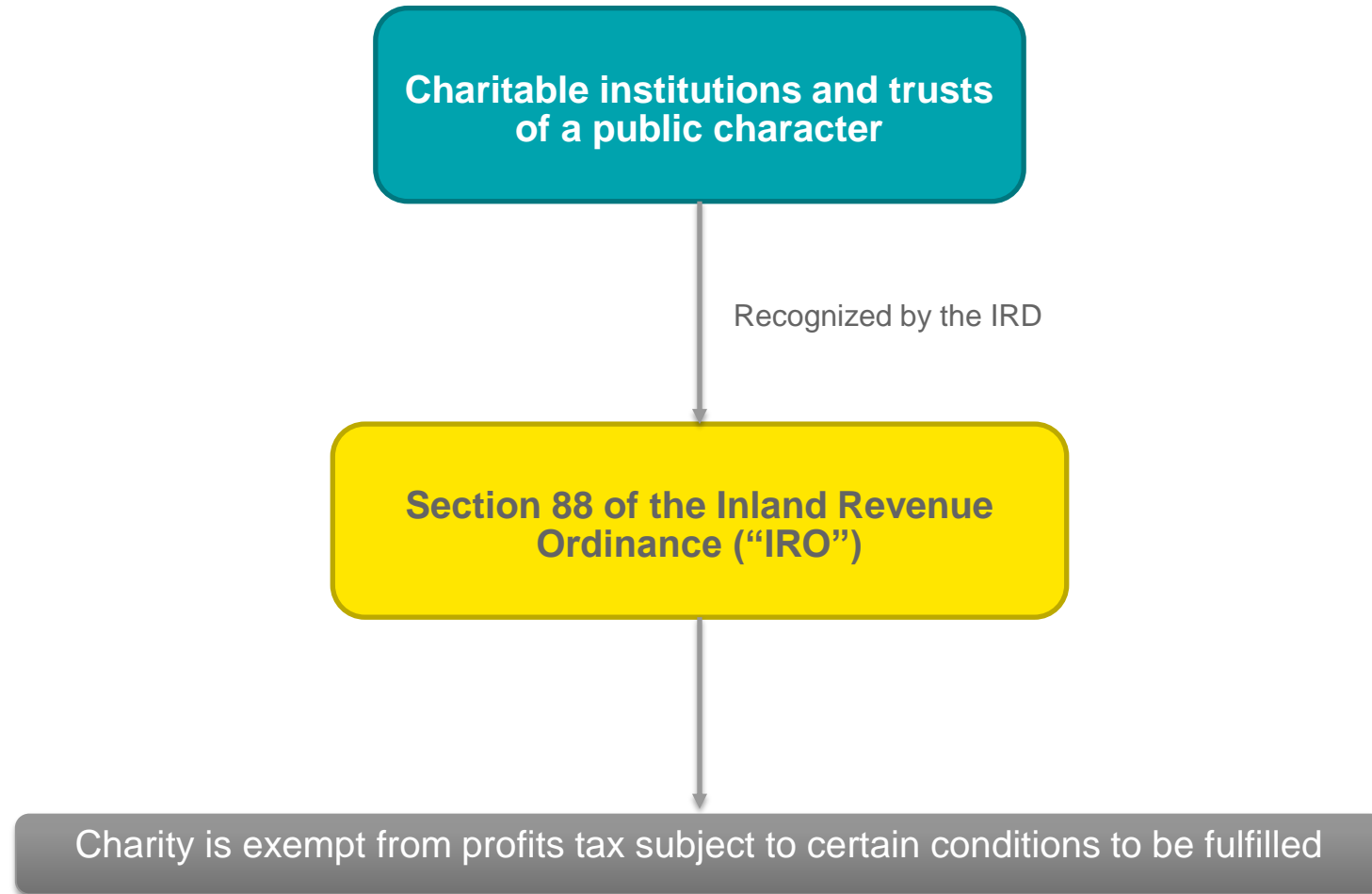
Agenda



Relevant tax rules



What is a charity from IRD's point of view?



Meaning of charity

- ▶ Charity is not equivalent to voluntary or so-called non-profits-making organization
- ▶ Charity must be exclusively established for charitable purposes which are charitable in strict legal sense.

The relief of poverty



The advancement of education



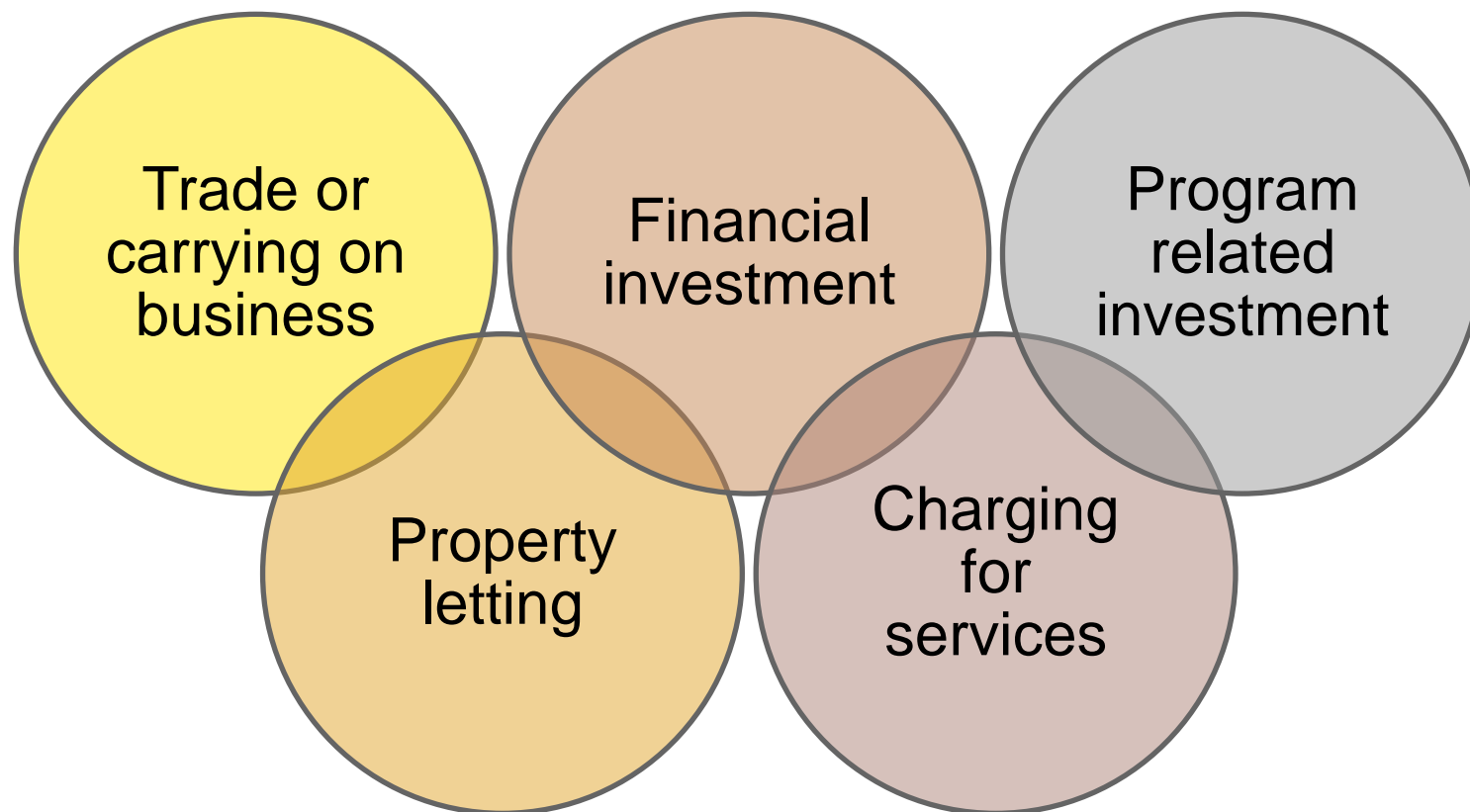
The advancement of religion



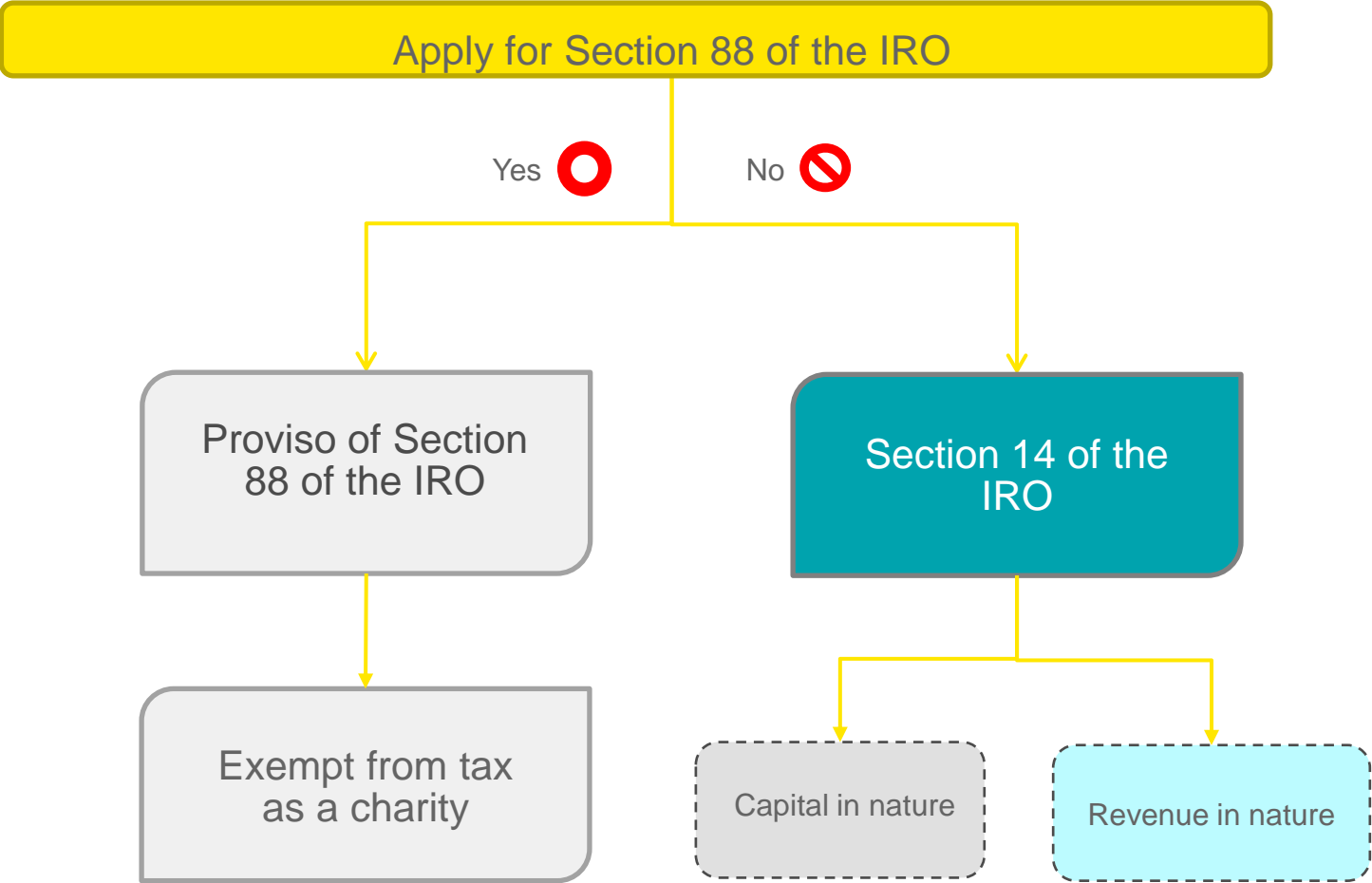
Other purposes of a charitable nature
beneficial to the community not falling
under any of the preceding heads



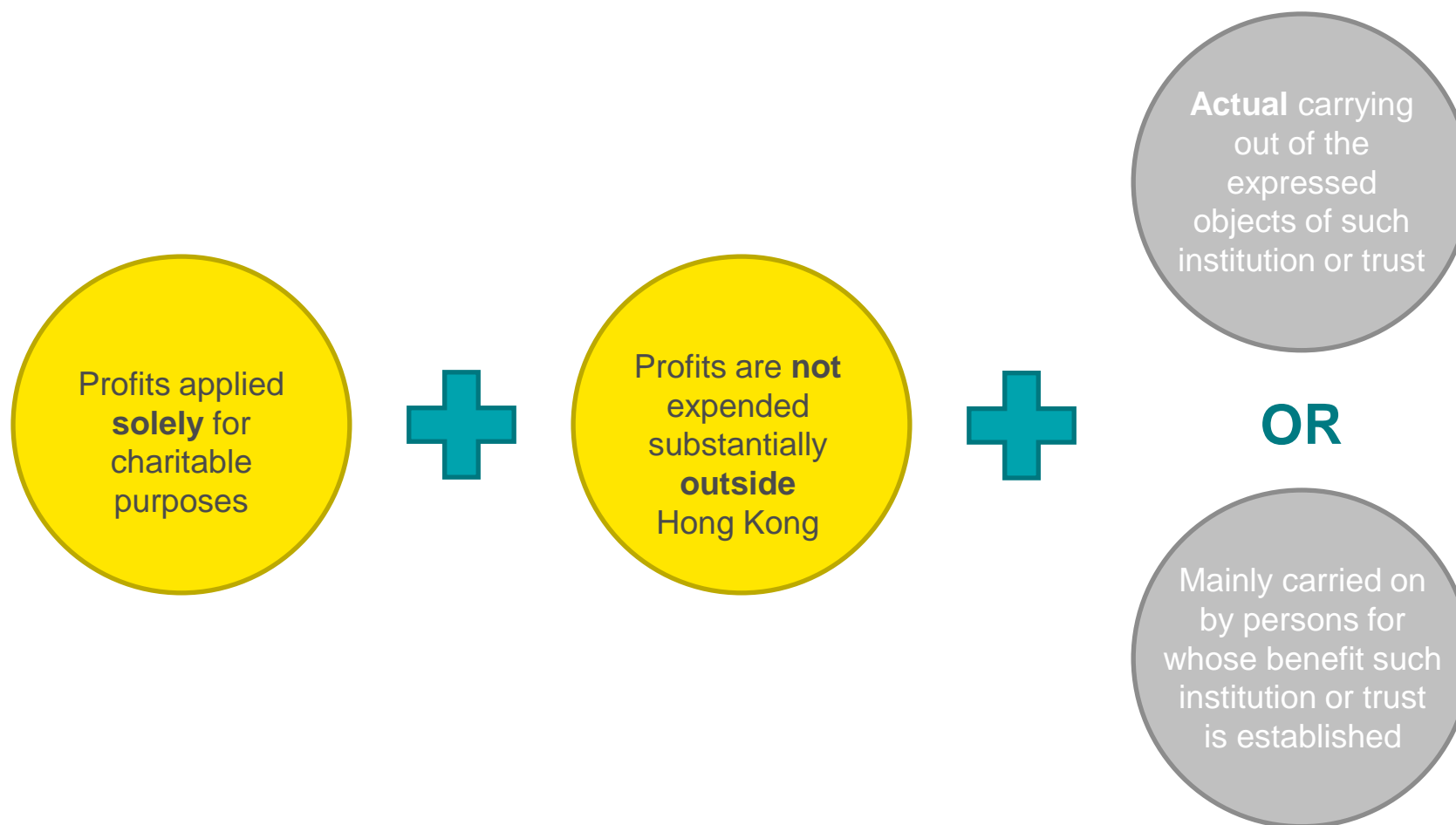
What if...



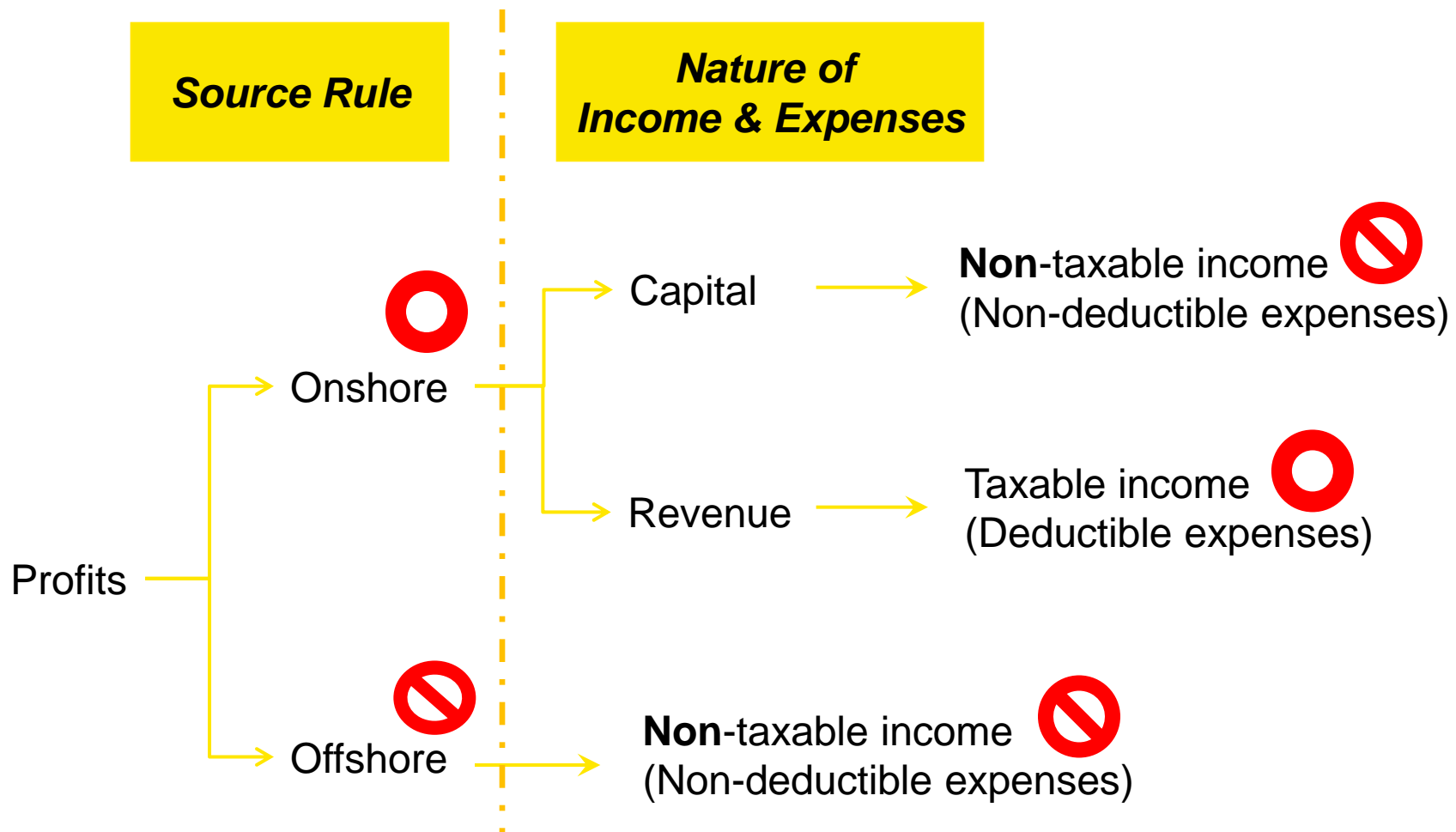
Determination process



Proviso of Section 88 of the Inland Revenue Ordinance



Determination of assessable profits – an overview



Section 14 of the IRO

▶ Section 14(1) of IRO

- ▶ “Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person **carrying on a trade, profession or business in Hong Kong** in respect of his ***assessable profits arising in or derived from Hong Kong*** for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part.”

Charge of Profits Tax – statutory provision

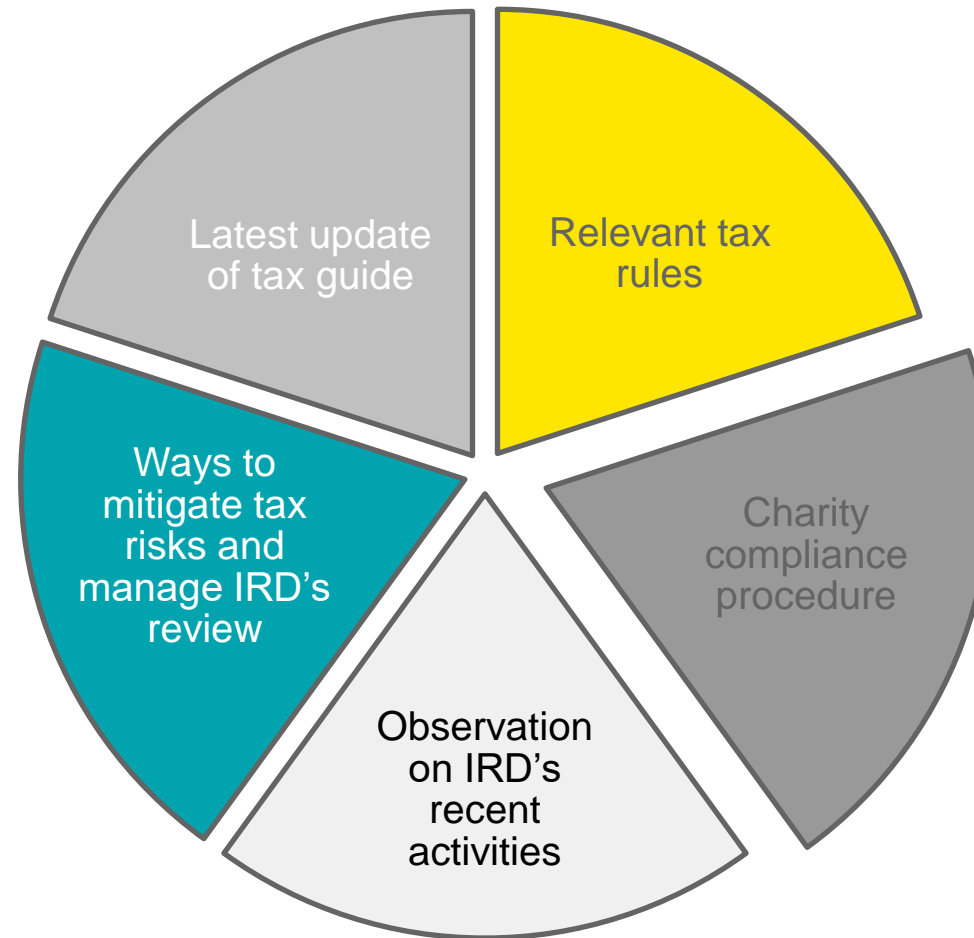
3 conditions for a person be liable to Profits Tax (Section 14 of IRO)

1. Carrying on a trade, profession or business in HK;
2. Profits derived therefrom (***exclude profits from capital assets***); and
3. Profits **arising in or derived from HK** (i.e. sourced in HK)

Capital vs Revenue

Criteria	Capital in nature	Revenue in nature
Subject matter of the transactions (nature, quantity and intention)	For internal use Smaller quantity	For sales Larger quantity
Number of the transactions	Smaller	Larger
Frequency of the transactions	Less frequent	More frequent
Length of the ownership	Held longer period	Turn over quickly
Supplementary work done on the items sold	Less value added	More value added
Source of finance	Tends to use own assets	Tends to use loan
Methods of acquisition	Not actively acquire (gifts etc.)	Acquire in market

Charity compliance procedure



Constitution of charity's governing instrument

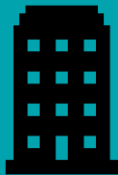
A trust



A society registered under the Societies Ordinance



A company incorporation under the Companies Ordinance



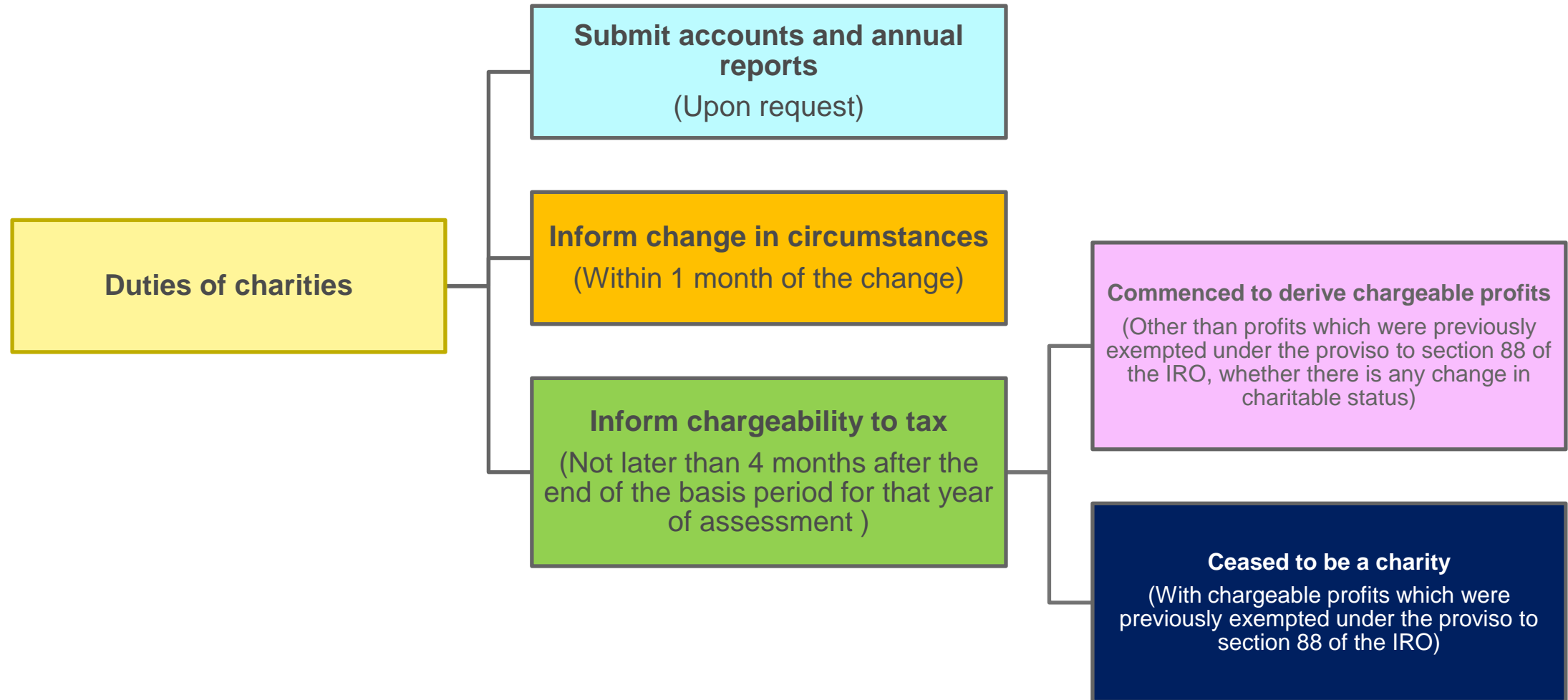
A statutory body incorporated under a specific Ordinance



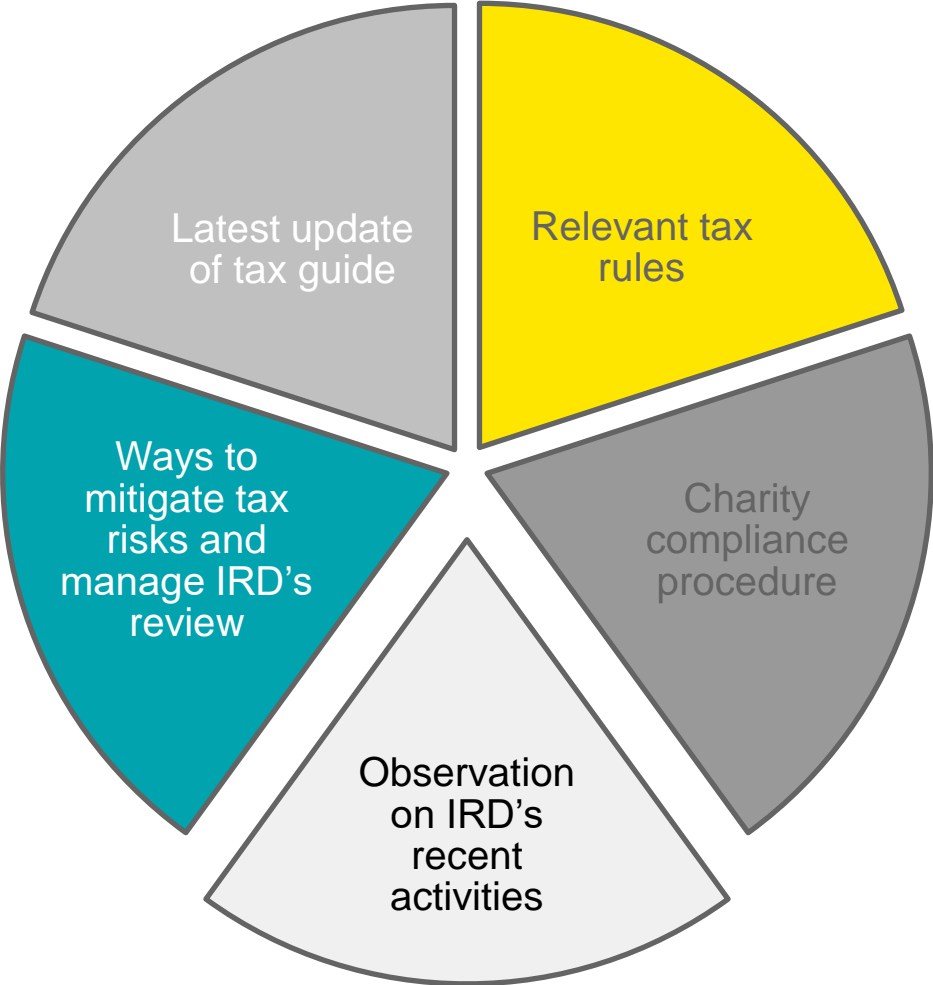
Procedures for tax-exempt entity application

Letter to IRD	
Organization has been established: i.(i) a copy of the relevant certificate of registration; ii.(ii) a certified true copy of the instrument and rules governing its activities; iii.(iii) a list of any activities which have been carried out in the past 12 months and a list of activities planned for the next 12 months; iv.(iv) a list of members of governing body (e.g. directors, trustees, etc.); and v.(v) a copy of its accounts for the last financial year.	Organization <u>not</u> yet established: (i) a draft of the instrument and rules governing its activities; (ii) a list of the activities planned for the next 12 months from the date of establishment or date of application, where appropriate; and (iii) a list of founder members / settlors (for trusts only) and proposed members of governing body (e.g. directors, trustees, etc.).
Respond within 4 months	

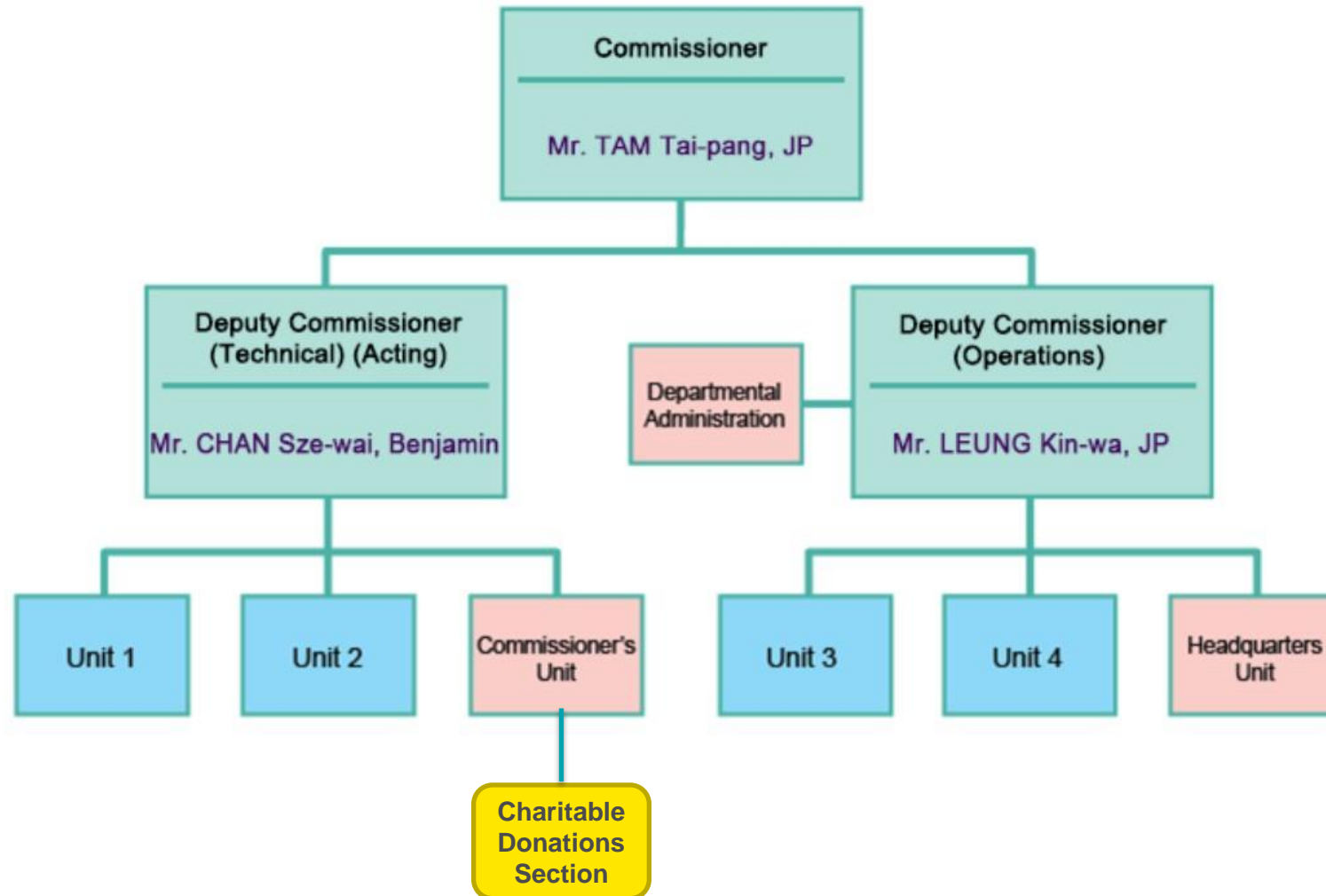
Review of tax exemption and tax obligation



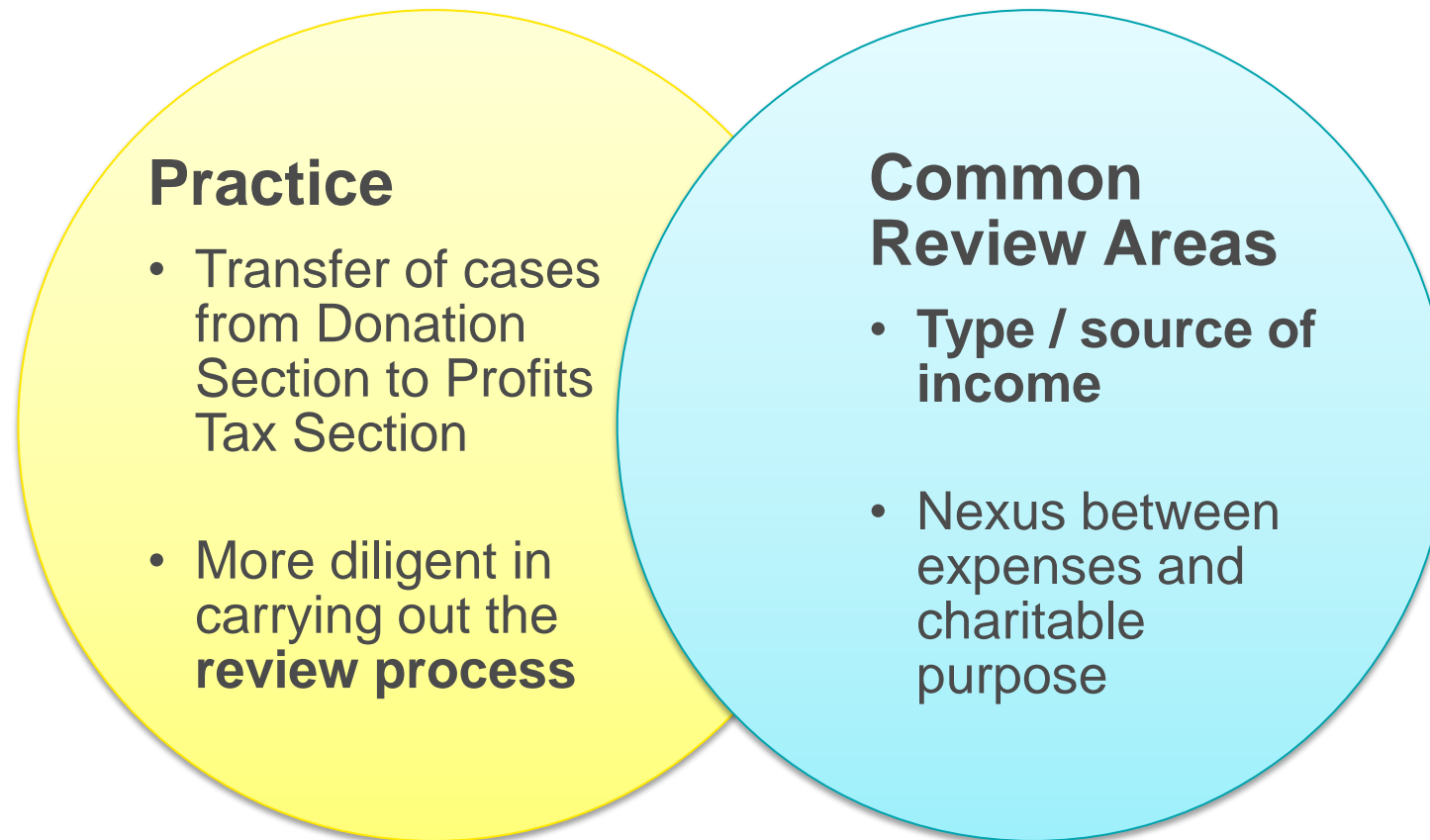
Observation on IRD's recent activities



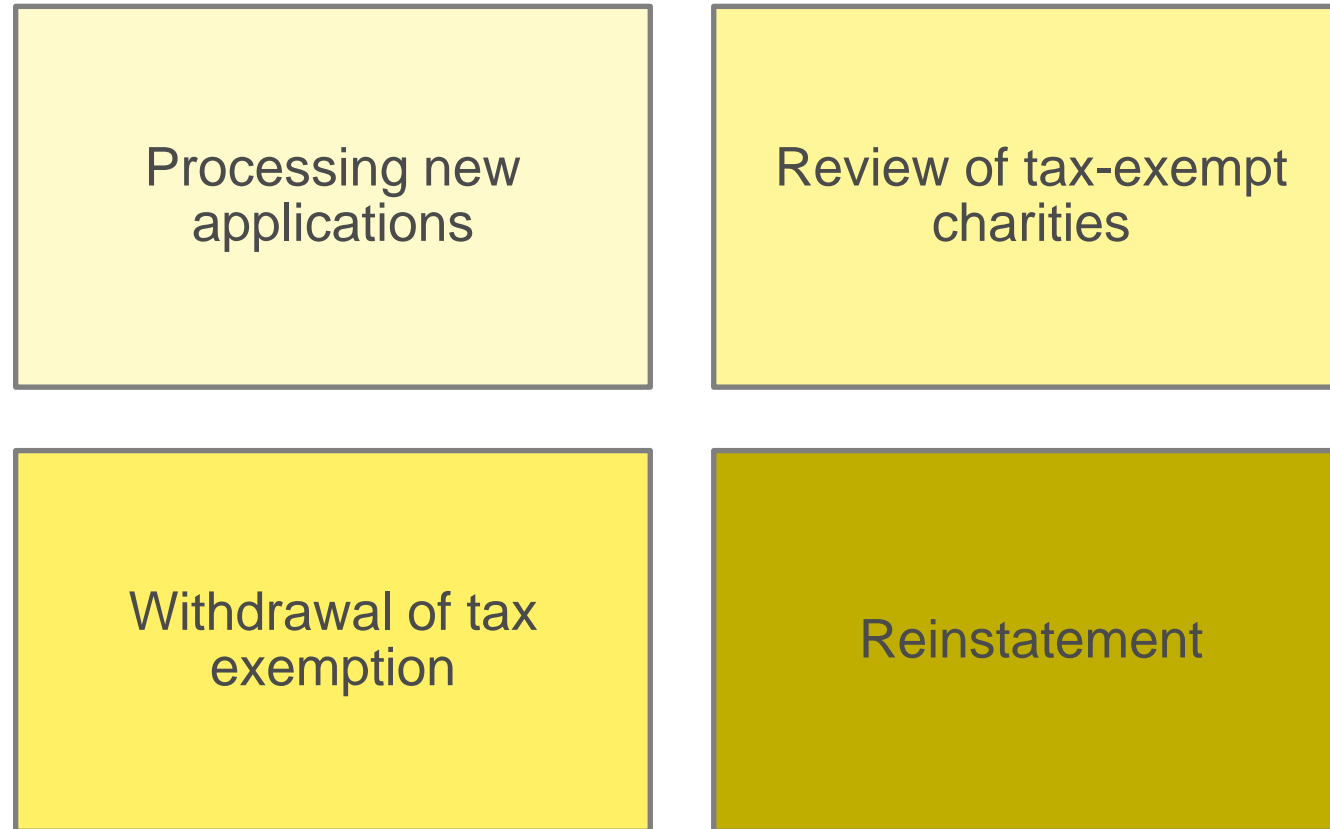
Organization chart of the IRD



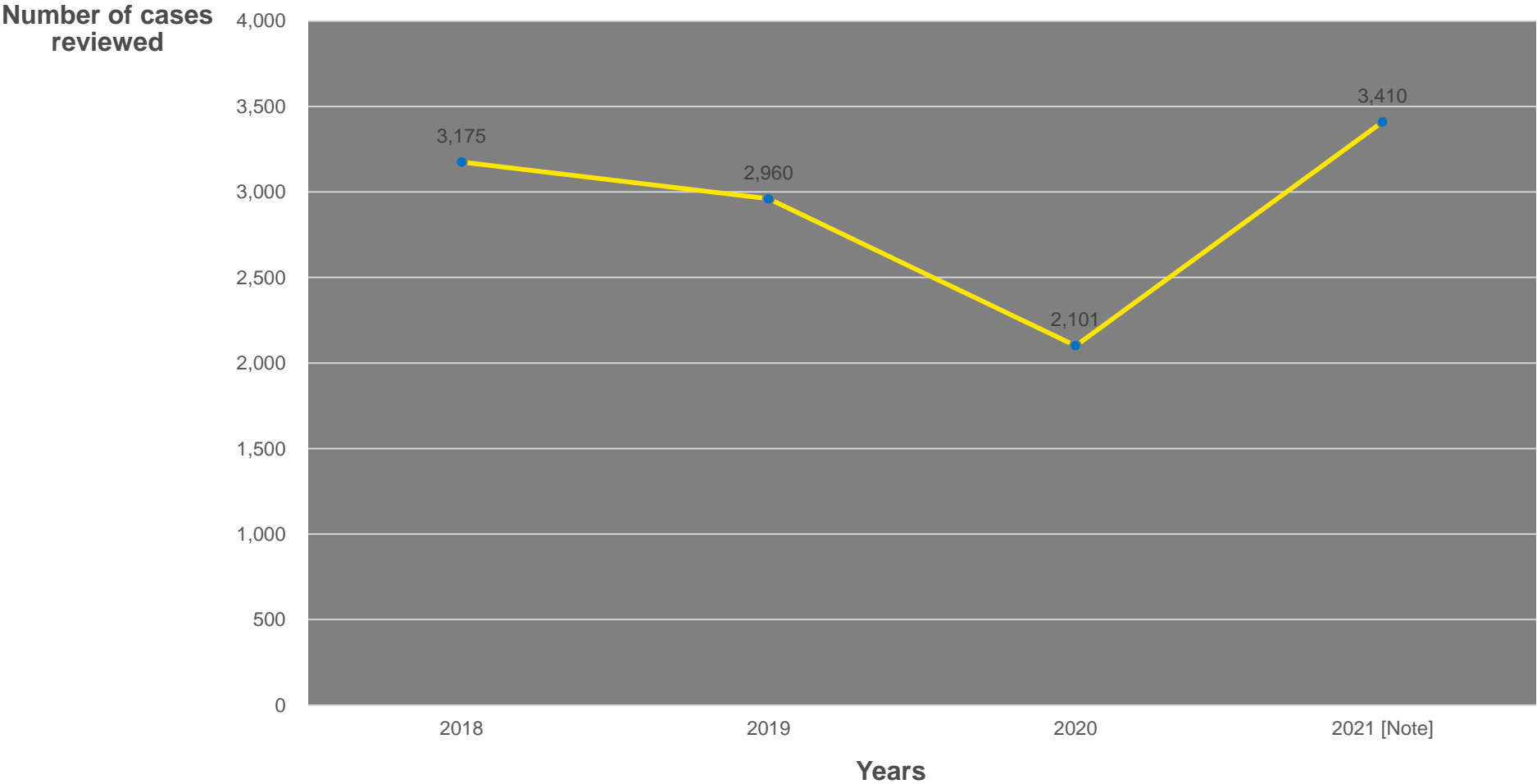
Our Observations



IRD's current practices and review process



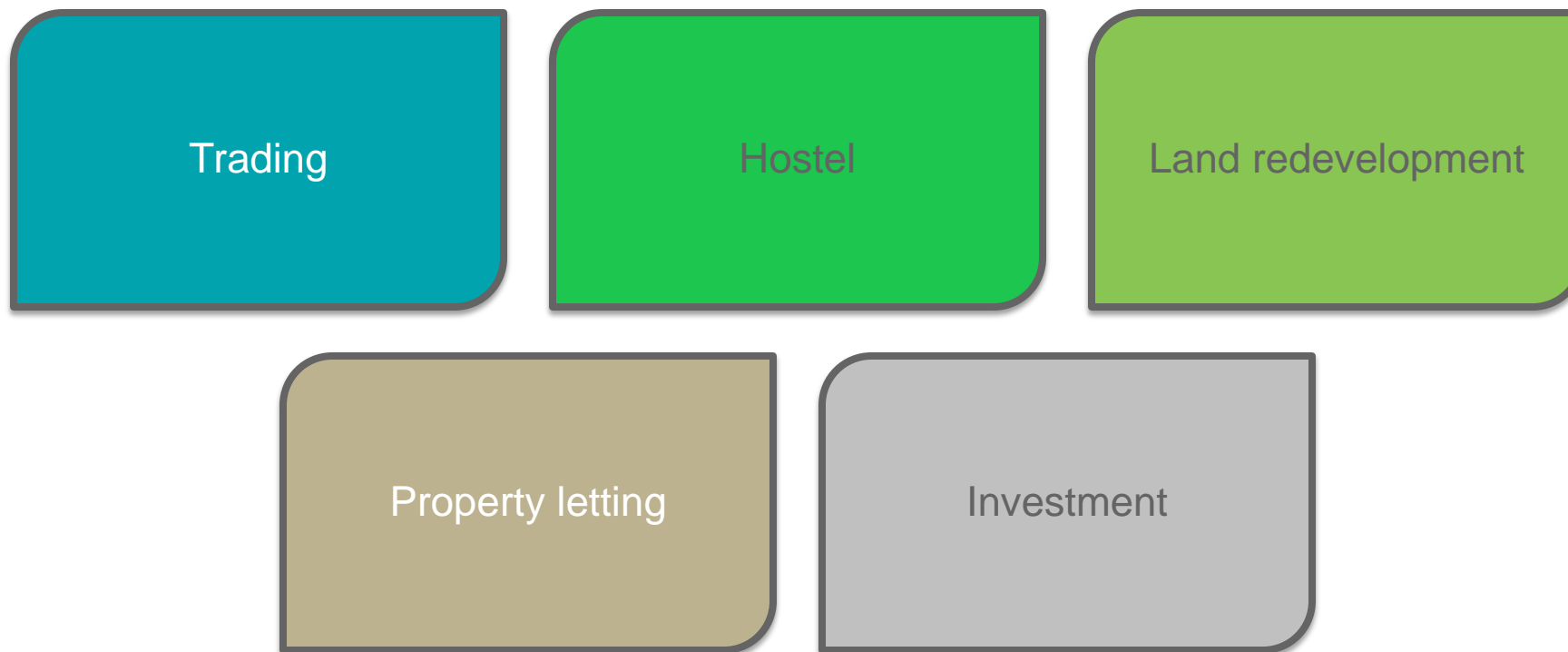
IRD's current reviews on tax exemption status of charities



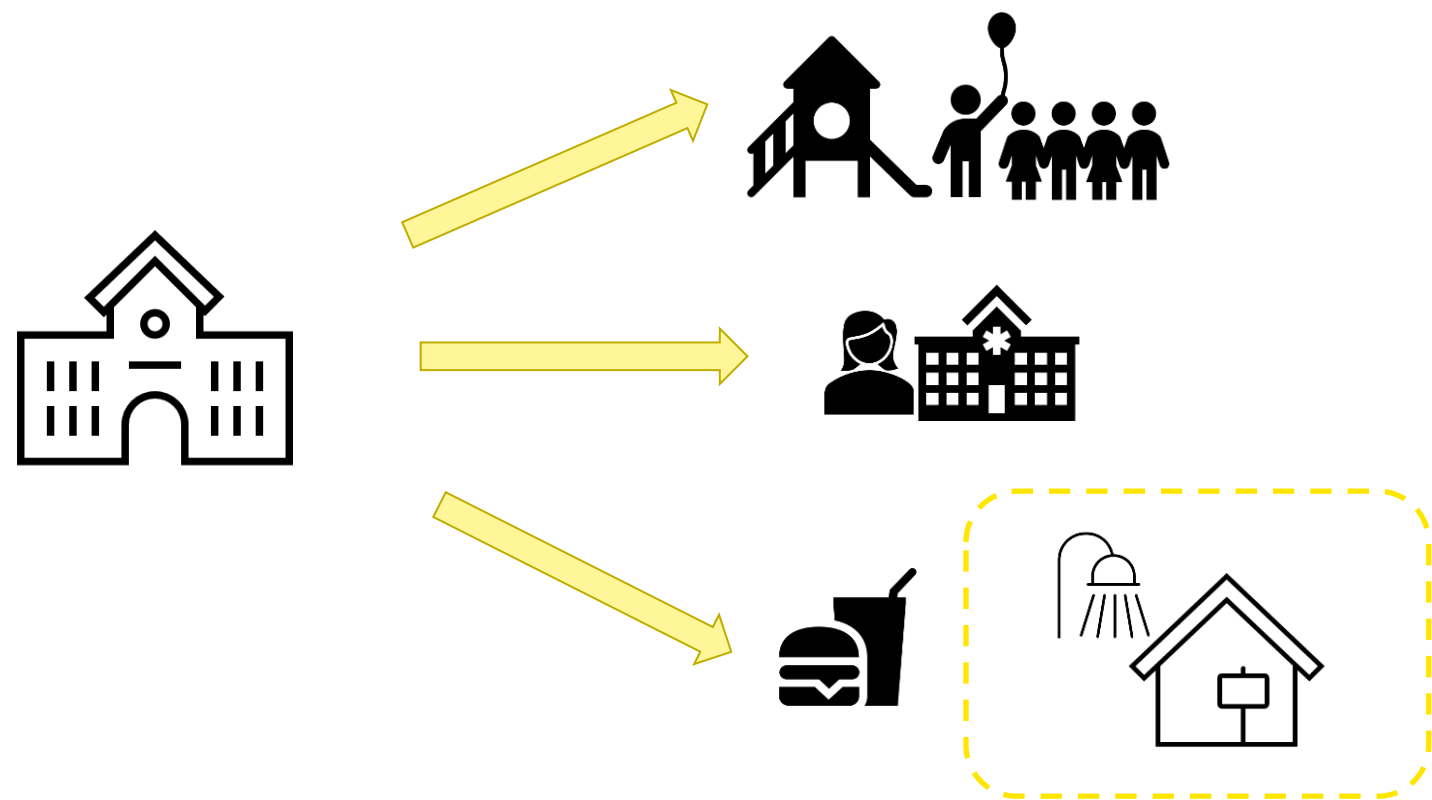
Note: Assumed the cases under review by the IRD from 1 July 2021 onwards will be the same as the first 6 months.

Source: <https://www.info.gov.hk/gia/general/202107/14/P2021071400274.htm?fontSize=1>

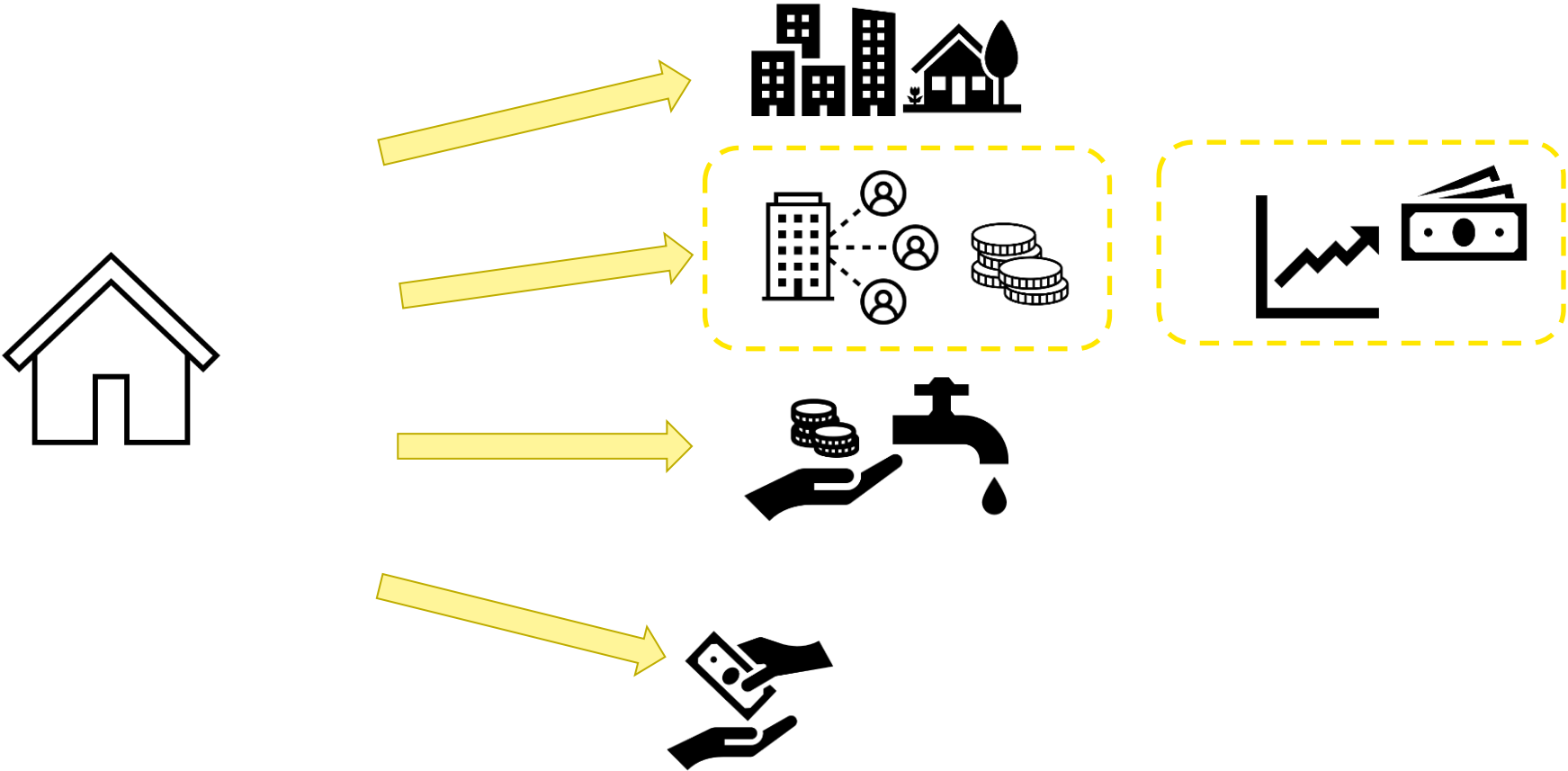
IRD's review on type / source of income



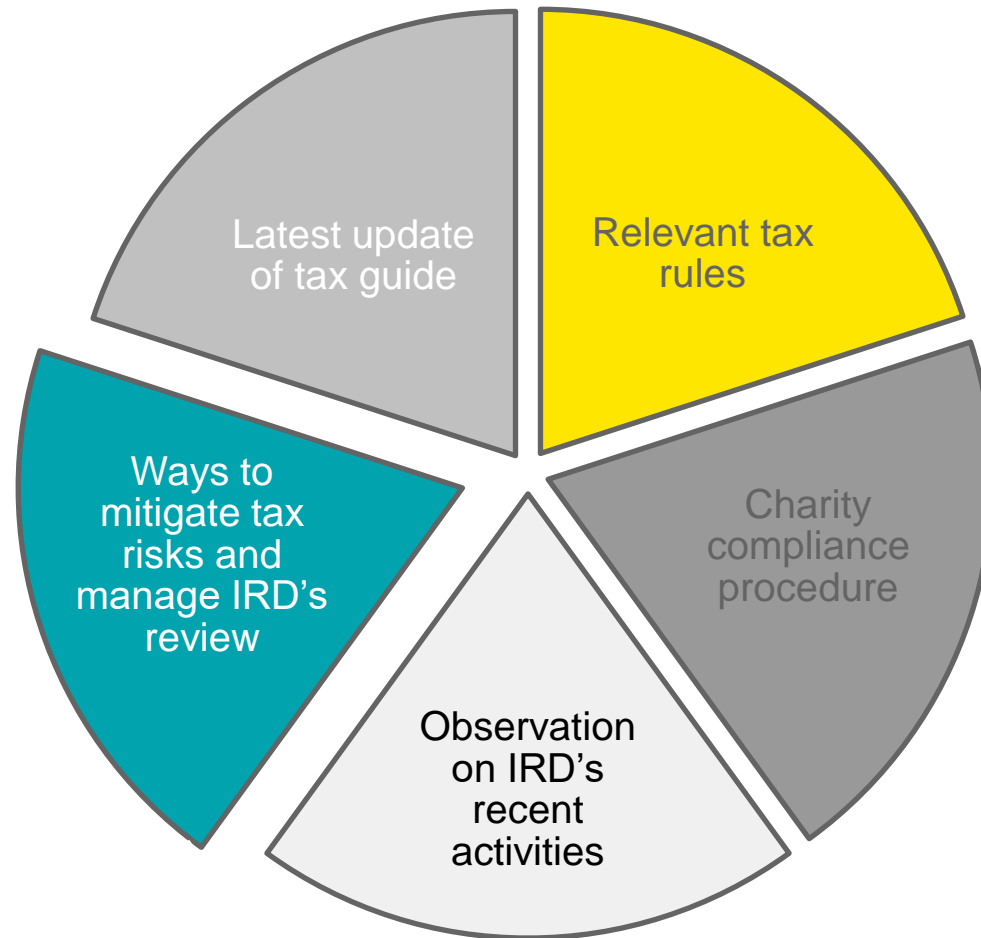
Case sharing 1



Case sharing 2



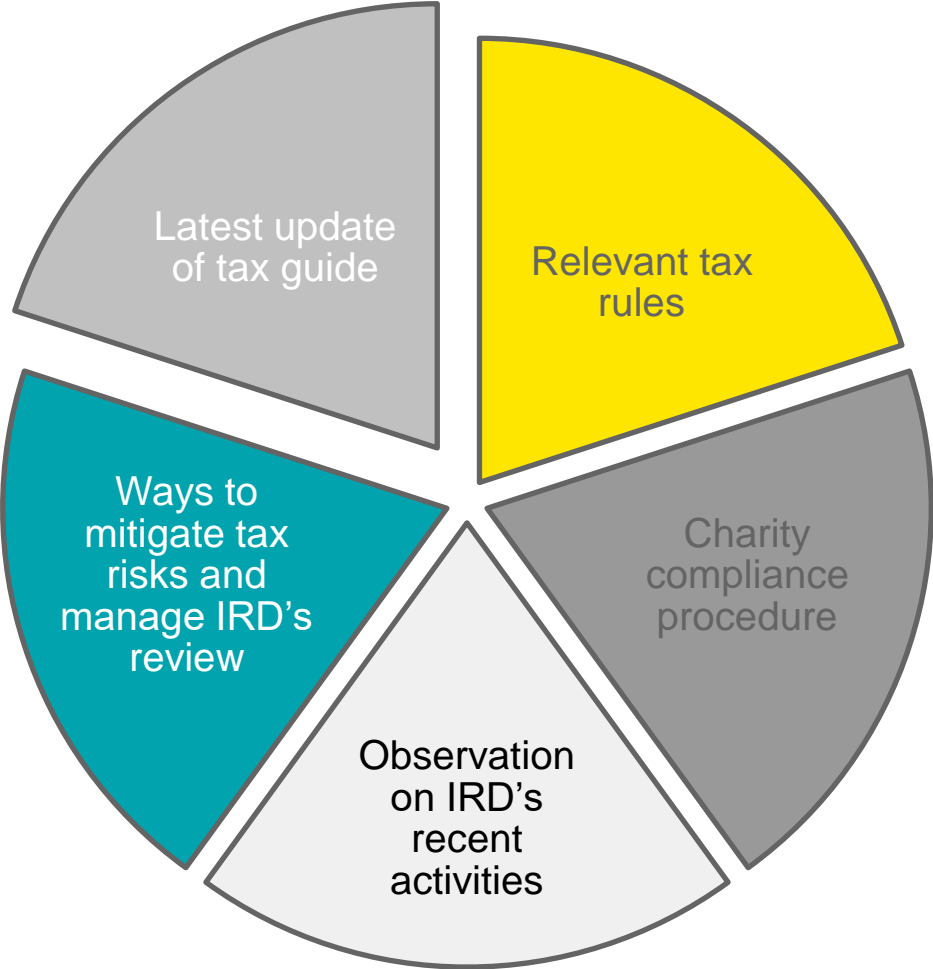
Ways to mitigate tax risks and manage IRD's review



Mitigation of tax risks



Latest update of tax guide



“Meaning of Charity”

- ▶ *Charity must act lawfully and has duty to safeguard national security*

Article 3 and 6 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Security in the HKSAR (“NSL”)

- Institution, organization or individual shall:
 - Abide by the NSL; and
 - Not engage in any act or activity which endangers national security;
 - Safeguard national security.

A charity which takes part in acts or activities which are unlawful or contrary to the interests of national security will not be regarded as a genuine charity.

Questions and answers



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