

LCQ17: Monitoring of charitable institutions

Following is a question by the Hon Carmen Kan and a written reply by the Secretary for Home and Youth Affairs, Miss Alice Mak, in the Legislative Council today (November 6):

Question:

Regarding the monitoring of charitable institutions, will the Government inform this Council:

(1) of the following information of charitable institutions as at 30 September of each of the past three years (set out in a table):

(i) the respective numbers of tax-exempt charitable institutions recognised by the Inland Revenue Department under section 88 of the Inland Revenue Ordinance (Cap. 112) whose tax exemption status was approved and withdrawn, as well as the percentages of such numbers in the total number of institutions for that year and the year-on-year rates of change;

(ii) the number of charitable institutions (set out by type) as well as the amounts of donations exempted from tax and the year-on-year rates of change; and

(iii) a list of the 50 charitable institutions being granted the highest amounts of government funding, the amounts of funding granted to them, as well as the percentages of such amounts in the total amount of funding for that year and the year-on-year rates of change;

(2) whether it will, on the basis of its experience in making reference to common law precedents over the years, study the formulation of a legal definition of "a charitable institution or charitable trust of a public character" under section 88 of Cap. 112 applicable to the situation in Hong Kong; if so, of the details; if not, the reasons for that;

(3) as the newly amended Charity Law of the People's Republic of China has been formally implemented on the Mainland since September 5 this year to regulate charitable organisations, whether the authorities will enact a Charity Ordinance; if so, of the details; if not, the reasons for that;

(4) given that in reply to a question raised by a Member of this Council on February 21 this year, the Financial Services and the Treasury Bureau indicated that the Bureau would, in the light of the relevant circumstances, consider setting up a dedicated department or organisation as the regulator of charitable institutions, of the factors considered by the authorities in the light of the current situation, and whether they will set up the relevant organisation as soon as possible; if so, of the details; if not, the reasons for that, as well as the measures in place to monitor the operation of charitable institutions; and

(5) given that pursuant to a recommendation in Report No. 68 of the Public Accounts Committee, the authorities have drawn up a new "Good Practice Guide on Charitable Fund-raising" (the Guide), of the effectiveness of the Guide; whether they will consider making it mandatory for charitable institutions to comply with the Guide; if so, of the details; if not, the reasons for that?

Reply:

President,

In consultation with the Financial Services and the Treasury Bureau (FSTB), the Food and Environmental Hygiene Department (FEHD), the Home Affairs Department (HAD) and the Social Welfare Department (SWD), my reply, on behalf of the Government, to the various parts of the question raised by the the Hon Carmen Kan is as follows:

(1) (i) Charities are exempted from tax if they meet the conditions stipulated in section 88 of the Inland Revenue Ordinance (Cap. 112) (IRO), i.e. (a) the profits are applied solely for charitable purposes; (b) the profits are not expended substantially outside Hong Kong; and (c) either the trade or business is exercised in the course of the actual carrying out of the expressed objects of the charity, or the work in connection with the trade or business is mainly carried on by persons for whose benefit the charity is established.

As at September 30 of the past three years, the total number of tax-exempt charities, charities newly exempted from paying tax and charities with tax exemption status withdrawn by the Inland Revenue Department (IRD); and their year-on-year rates of change and percentages in the total number of tax-exempt charities are set out below:

Year	Total number of tax-exempt charities	Charities newly exempted from paying tax		Charities with tax exemption status withdrawn	
		Number (Note) and year-on-year change	Percentage in total number of tax-exempt charities	Number and year-on-year change	Percentage in total number of tax-exempt charities
2022	9 856	449	4.6%	211	2.1%
2023	10 347	655 (+45.9%)	6.3%	208 (-1.4%)	2%
2024	10 699	578 (-11.8%)	5.4%	267 (+28.4%)	2.5%

Note: The figures do not include charities tax exemption status of which had been withdrawn and later reinstated.

(ii) As at September 30 of the past three years, the numbers of tax-exempt charities (categorised by legal structure) are as follow:

Year	Number of tax-exempt charities				Total
	Incorporated under the Companies Ordinance	Registered under the Societies Ordinance	Trusts	Others (Note)	
2022	7 586	743	432	1 095	9 856
2023	8 071	742	438	1 096	10 347
2024	8 419	743	441	1 096	10 699

Note: "Others" comprises mostly incorporated management committees established under the Education Ordinance, statutory bodies, ad hoc special committees and overseas companies registered under the Companies Ordinance.

Donations made by taxpayers to charities exempted from paying tax under section 88 of the IRO are tax deductible. In the past three financial years, the amounts of approved charitable donations allowed and the year-on-year rates of change are set out below. However, as there is a cap on the amount of tax-deductible donations to charities, the following figures do not represent the amount of tax-exempt donations received by charities each year:

Year of assessment	Approved charitable donations allowed under profits tax	Approved charitable donations allowed under salaries tax	Total and year-on-year rate of change (\$ billion)
	Amount and year-on-year rate of change (\$ billion)	Amount and year-on-year rate of change (\$ billion)	
2020/21	4.35	7.45	11.8
2021/22	6.9 (+58.6%)	7.4 (-0.7%)	14.3 (+21.2%)
2022/23	5.16 (-25.2%)	7.27 (-1.8%)	12.43 (-13.1%)

The tax returns for the year of assessment 2023/24 are being processed. Hence, IRD is unable to provide the statistics for that financial year at the moment.

(iii) At present, the monitoring of different charitable organisations currently involves various policy bureaux/departments. The Government does not centrally maintain and consolidate the relevant data.

(2) to (4) In processing applications for tax exemption under section 88 of the IRO, IRD has been making reference to the relevant common law cases to determine whether an organisation's object is a charitable purpose at law, and whether the organisation is established for public benefit. IRD regularly reviews the tax-exempt charities to ascertain whether their objects are still

of charitable nature and whether the activities are compatible with their stated objects. The existing mechanism has been effective in handling tax matters under section 88 of the IRO.

In addition to the abovementioned tax arrangement for charitable organisations, charitable organisations which wish to conduct fund-raising activities in public places shall apply for the relevant permits or licences from the FEHD, HAD or SWD.

With reference to the recommendations in the Law Reform Commission Report on Charities published in December 2013 (LRC Report), relevant Audit Report and the Public Accounts Committee Report (PAC Report), the Government has introduced a series of administrative measures in phase since 2018 with a view to further enhancing the transparency and accountability of charitable fund-raising activities. For example, uploading all audited accounts submitted by organisations which obtained approval to organise charitable fund-raising activities to the fund-raising activities page of GovHK for reference by the public; issuing the "Good Practice Guide on Charitable Fund-raising" (Good Practice Guide) and encourage adoption by charitable organisations; and setting up a dedicated hotline for handling enquiries or complaints in relation to charitable fund-raising activities held by organisations in public places, etc.

Since the legislation and monitoring in relation to charitable organisations involve different bureaux / departments, and that the recommendation of setting up a dedicated department or organisation as the regulator of charitable organisations carries significant implications on the definition and operation of charitable organisations in Hong Kong, it takes time for the Government to study and consider the recommendations thoroughly and carefully.

(5) As mentioned above, with reference to the LRC Report, relevant Audit Report and the PAC Report, the HAD, SWD and FEHD issued the Good Practice Guide to provide the best practices for organising charitable fund-raising activities. Relevant departments have been encouraging the adoption of the Good Practice Guide by charitable organisations to ensure the accountability and transparency of charitable fund-raising activities and the use of donations so received.

In respect of the HAD, under the Gambling Ordinance (Cap. 148), anyone who wishes to conduct a lottery event in Hong Kong has to apply for a licence. The Office of the Licensing Authority (OLA) under the HAD is responsible for processing applications for lottery licences. Lottery licences are issued to bona fide organisations to conduct lottery ticket sales for the purpose of fund-raising, and funds so raised are to be used to meet the organisations' operating expenses or for donations to local registered charities, or both. In fact, the conditions stated in the lottery licences issued have already covered some of the suggested good practices, including the preparation of income and expenditure statement regarding the sales of lottery tickets. The OLA will continue to promote the voluntary adoption of the Good Practice Guide.

Besides, the FEHD also encourages charitable organisations which applied for a Temporary Hawker Licence for setting up any booth in public places to sell goods for raising funds, to adopt the Good Practice Guide on a voluntary basis. The FEHD has provided a link for downloading the Guidelines on its website.

In respect of the SWD, since the publication of the Good Practice Guide, all organisations that have applied for a Public Subscription Permit (PSP) from the SWD have committed to observing the Guide (except for one organisation that had adopted another set of guidelines which also complies with the standards of good practice). The major arrangements contained in the Good Practice Guide, including the rights of donors, fund-raising practices and financial accountability, etc., have been incorporated into the permit conditions of the PSP for organisations issued with the PSP to comply with.

As some of the major arrangements contained in the Good Practice Guide have already been incorporated into the conditions stated in different permits or licences for conducting charitable fund-raising activities, the Government has no plan to further mandate the charitable organisations to adopt the Good Practice Guide at this stage. The Government will continue to encourage charitable organisations to adopt the Good Practice Guide.