

LCQ4: Registration of business by online auction platform users

Following is a question by the Hon Chan Han-pan and a reply by the Secretary for Financial Services and the Treasury, Mr Christopher Hui, in the Legislative Council today (July 14):

Question:

It has been reported that a girl, currently aged 12, who had made 10-odd transactions through an online auction platform (OAP) in the past three years, received a letter recently from the Inland Revenue Department (IRD) demanding her to pay, for the past three years, the relevant fees payable under the Business Registration Ordinance (BRO). In this connection, will the Government inform this Council:

(1) whether IRD has compiled statistics on the current number of OAP users in the territory who carry on business through such platforms and, among them, the number of those who have not completed the registration of their businesses; of the number of such users from whom IRD collected various fees under BRO in the past three years;

(2) given that quite a number of active OAP users are unclear about the circumstances under which business registration is required, and they are worried about breaching the law inadvertently, whether IRD will step up the relevant publicity and education efforts; and

(3) whether it will require OAPs, before allowing minors to open accounts on their platforms, to obtain from their parents or guardians an undertaking of assuming, on behalf of the minors, the tax liabilities associated with the accounts concerned; if so, of the details and the timetable; if not, the reasons for that?

Reply:

President,

Every person who carries on a business in Hong Kong, regardless of the mode of business operation, is required to apply for business registration under the Business Registration Ordinance (Cap. 310) (BRO). "Business" required to be registered includes any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain.

The BRO also stipulates certain situations under which exemption can be given. For example, operators carrying on not more than one small business may apply for exemption from payment of business registration fee and levy if the following conditions are satisfied:

(i) profits are derived primarily from the sale of services, and the monthly average sales or receipts of the business do not exceed \$10,000; or

(ii) profits are derived primarily from other business, and the monthly average sales or receipts of the business do not exceed \$30,000.

Inspection carried out to ascertain whether businesses, be they brick-and-mortar or conducted via the internet, comply with the requirements of the BRO is part of the daily operations of the Inland Revenue Department (IRD). In determining whether an activity constitutes a business operating in Hong Kong, the IRD would consider all relevant facts relating to the activity, including procurement, sale, delivery, settlement of trade, the scale of operation and the locations at which the activity is carried out. If the activity constitutes a business operating in Hong Kong but has not been registered, the IRD would advise and assist the business operator to obtain the registration required promptly.

My response to the Hon Chan Han-pan's question is as follows:

(1) The IRD does not have statistics regarding business operations conducted through online trading or auction platforms by their users. However, IRD's daily operations include the inspection of transactions carried out on the internet with a view to ascertaining the compliance of the BRO requirements. In each of the three financial years from 2018/19 to 2020/21, the number of cases involving internet transactions that were reviewed by the IRD concerning business registration were 1 817, 1 084 and 2 657 respectively, and the number of cases whereby the businesses concerned were asked to obtain business registration and pay the relevant fees upon the IRD's review were 247, 180 and 231 respectively.

(2) To raise public awareness of the BRO, the IRD website offers relevant information for reference by members of the public, including the requirements for business registration and information on application for exemption from payment of business registration fee and levy. The IRD will provide on its website information relating to online transactions so as to help online platform users develop a better understanding of the issues they need to be aware of.

(3) The terms and conditions of an online trading or auction platform form an agreement between the provider and users of the platform. It is noted that some commonly used online trading or auction platforms have reminded their users to abide by the tax regulations of the relevant jurisdictions in their terms of use. Furthermore, the IRD will contact major online trading or auction platforms to appeal for their assistance in alerting their users to the potential business registration and profits tax obligations when making transactions in Hong Kong.

Thank you, President.