whether a similar tax treatment will be applied to the actuarial gains or losses recognised in OCI (as the DIPN was issued before the revision of HKAS 19). It has come to the Institute's attention that there are currently different practices within the IRD in dealing with the deductibility of actuarial losses recognised in OCI. Below are some examples of the different treatments encountered so far:

(i) The actuarial losses were treated as non-deductible as no actual payment was made. Some assessors have indicated that this treatment is consistent with the deduction for ordinary/ special contribution, which is allowed on a paid basis only.

(ii) The actuarial losses were treated as non-deductible as they were regarded as a provision for special contribution.

(iii) The actuarial losses were treated as fully deductible, as the actuarial gains were fully taxable in previous years.

(iv) The actuarial losses were treated as deductible, but subject to the 15% limit, as they were regarded as a specific provision for ordinary contribution (i.e. same treatment as those actuarial losses recognised in the profit and loss account).

The Institute would like to know whether the IRD is planning to set out a standard tax treatment on actuarial losses (and gains) recognised in OCI and provide clarification to taxpayers by updating DIPN 23.

Discussion withheld. CIR advised that the IRD needed more time to study the issue. A written reply would be given by the IRD later on.

[Post meeting note: The IRD has revised its assessing practice on the tax treatment for defined benefit retirement schemes, particulars of which have been uploaded to the IRD's website.]

Mr Ong left the meeting after the discussion of items A1(a) to A1(c).

(d) Interaction of section 23B, section 15(1)(d) and section 14

By way of reference to a taxpayer carrying on business as an owner of ship in Hong Kong within the meaning of section 23B of the Inland Revenue Ordinance ("IRO") and the taxpayer, being the legal owner of a ship, charters out the ship to another person who will not navigate the ship mainly within Hong Kong waters or between Hong Kong waters and trade river limits. As such, the charter hire income of legal ship owner would not be relevant sums within the terms of section 23B.

However, while the ship under charter hire is ocean-going, the ship does call at Hong Kong ports. Furthermore, the charter party agreement contains no provision to restrict the charterer to use the ship anywhere in the world, i.e., the charterer has a right to use the ship in Hong Kong and actually used the ship in Hong Kong when the ship called at Hong Kong ports.

The Institute would like to clarify:

(i) Whether, despite the charter hire income not being caught by section 23B, the income of the legal ship owner could nonetheless be caught by section 15(1)(d), on the basis that the charterer has a right to use the ship in Hong Kong or the charterer actually used the ship in Hong Kong when the ship called at Hong Kong ports? If on the other hand, the shipping income of a person falls within the ambit of section 23B, but is not chargeable under this section (e.g. the ship calls at Hong Kong ports to deliver goods or passengers, but takes no Hong Kong uplifts), whether it is correct to say that the chargeability of the same would not need to be looked at again under section 14? The same issue also arises in relation to sections 23C and 23D, and the Institute would like to seek IRD's advice on this issue in respect of these sections.

Mr Wong Kuen-fai ("Mr Wong") explained that the crux of the question was whether the person was carrying on business as an owner of ships. This was basically a question of fact to be decided on the peculiar facts of individual cases. If a person carried on business as an owner of ships, section 23B would apply to the exclusion of section 15(1)(d) and section 14(1). This was also the case for sections 23C and 23D where the question was whether the person was carrying on business as an owner of aircraft.

(ii) The general interaction of other specific sections of the IRO (e.g., sections 23, 23A and 24) with the general charging section of section 14 and the deeming provision of section 15.

Mr Wong further explained that in general, for the special categories of taxpayers, sections 14 and 15 were subject to the provisions of the specific mini-tax regimes. This followed the principles enunciated in *CIR v Far East Exchange Ltd* (1979) 1 HKTC 1036 at 1065 – 1066 and *CIR v Carlingford Life and General Assurance Co Ltd* (1989) 3 HKTC 229. Where the tests prescribed in the specific regimes were not satisfied (e.g. the test under section 24(2)), it remained a question of fact to be decided on the normal charging provisions as to whether the profits should be assessable.

Ms Chan noted that, if a person carried on the business as an owner of ships whereby section 23B was applicable, then it would not be necessary to consider the chargeability again under section 14. CIR said the chargeability under section 14 was relevant if the person was not carrying on a business as an owner of ships.

Mr Lee asked if it was possible for a single legal entity to operate separate lines of business, one of which constituted the business of an owner of ships, such that the assessable profits of the entity were determined in accordance with both sections 14 and 23B. CIR agreed that this would be the proper tax treatment in the scenario described.