

CIR advised that what was a reasonable time for determining an objection by the Commissioner must be considered in the light of all the circumstances: see *Nina T.H. Wang v. CIR* (1994) 4 HKTC 15 at p. 24 and the *Yue Yuen* judgment itself at para. 48 [HCAL 49/2009]. It was thus impracticable to set down rigid rules for ascertaining what constituted a reasonable time in all possible cases. While the IRD always aimed at processing objections in an efficient and effective manner, this could only be achieved with the cooperation of the taxpayer and his/her representative in providing any further information requested by the Assessor. At present, the IRD's performance pledge already covered replies to notices of objection and processing of objections.

**(g) Block extension for filing salaries tax returns**

The Institute would like to ask if the IRD would consider one of the following options in order to ease the administrative burden of processing monthly extension request for filing salaries tax returns:

- (i) Extended block extension – The current block extension scheme extends the time to July 2 for filing forms BIR60. A longer period of time to file the returns would mitigate the need to process additional extension requests.

Mr Wong advised that at the time of completion of his Individuals Tax Return, the taxpayer should have received one copy of the employer's return of remuneration and pensions. Therefore, completion of the Individuals Tax Return, which only involved salaries tax matters, should be relatively simple and straightforward. As a result, it had always been the policy of the IRD not to grant a long period of extension. For represented cases not involving sole proprietorship business accounts, a block extension would be granted to end of June or early July. For those involving sole proprietorship business accounts (irrespective of accounting date), extension would be granted to end of September or early October. The IRD wished to state that it did not have much room to manoeuvre as any further extension would have adverse impact on its assessment and collection programme.

- (ii) Subsequent block extension – Currently a single block extension request can be filed by tax practitioners. Further extensions have to be filed individually. A second block extension would mitigate the number of individual extension requests to be processed.

Mr Wong advised that unless there were exceptional circumstances e.g. the taxpayer was in serious illness, no further extension would be allowed. Requests for further extension for filing an Individuals Tax Return would be considered on a case by case basis. A subsequent block extension would not be acceded to.

- (iii) Individual extension for multiple months – Currently an individual extension request is generally limited to 30 days. Extending the period of time covered by such an extension request would mitigate the number of extension requests that have to be processed by the IRD.

Mr Wong advised that since it had not been the intention of the IRD to grant a long extension of time for filing an Individuals Tax Return, requests for an extension of time which exceeded 30 days would not be considered.

#### **(h) Filing of employer's returns**

It is understood that an employer has to file an IR56B annually for its employees. This includes employees working outside Hong Kong. In addition, the IRO also requires an employer to file an IR56G (and withhold payments) when an employee leaves Hong Kong for more than one month, unless the individual is required in the course of his employment to leave Hong Kong at frequent intervals.

Where an employee is posted overseas and remains an employee of the Hong Kong company, the Institute would like to clarify whether an IR56G (and withholding of payments) is required, or whether an annual IR56B is sufficient. The Institute believes the latter should be sufficient as the individual should be considered as leaving Hong Kong in the course of his employment, but would like to seek the IRD's confirmation of this.

On a related question, if an employee is entitled to treaty benefits under the CDTA between Hong Kong and another jurisdiction, e.g. (a) he is present in Hong Kong for not more than 183 days in any 12-month period, (b) the remuneration is not paid by an employer resident in Hong Kong, and (c) the remuneration is not borne by a permanent establishment which the employer has in Hong Kong, the Institute would like to ask if the employer and employee are required to file employer's return/individual tax return.

Mr Chiu advised that in the first case, if the employee posted overseas remained an employee of an employer in Hong Kong, an annual IR56B had to be filed, and this alone would be sufficient.

Mr Chiu explained that in the second case, the employer and the employee were required to file the employer's return/Individuals Tax Return respectively. The employer's return was required because the employer was not in a position to ascertain whether the employee was really exempt from Hong Kong tax, e.g. the employee might be regarded as a Hong Kong resident by the Hong Kong Competent Authority under the terms of the relevant CDTA. The Individuals Tax Return was required because of the same reason. In addition, where the employee wanted to make a claim for a tax credit under section 50(9), he would have to do so on the Individuals Tax Return for the relevant year of assessment.