Assessors' Powers of Making Assessments
(Relevant to AAT Examination Paper 5 – Principles of Taxation)

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Introduction

An assessor is given various powers to make assessments under the Inland Revenue Ordinance (IRO), which are explained by the relevant IRO sections as quoted below:

Issue of assessments after issue of tax returns

An assessor is empowered by section 51(1) to give written notice to a person requiring that person to furnish a tax return within the time limit specified by the assessor. An assessor may assess a person whom he or she considers to be chargeable to tax under the IRO immediately after the expiration of the time limit for submitting a tax return (s.59(1)).

However, an assessor may assess any person at any time (even without the issue of the tax return) if he or she is of the opinion that:

- the person is about to leave Hong Kong, or
- for any other reason it is expedient to do so (s.59(1) proviso).

Assessments per return

If an assessor accepts the tax return submitted by a person, he may assess per return (s.59(2)(a)). However, the assessor is empowered to raise additional assessments afterwards under section 60, which are discussed below.

Estimated assessments where returns are not accepted

If an assessor does not accept the tax return submitted by a person, he is empowered to raise an estimated assessment (s.59(2)(b)). In raising an estimated assessment, the assessor need not inform the taxpayer of the reason for rejecting the return or the basis of assessment. So long as the assessor is not acting capriciously or dishonestly, the estimated assessment cannot be disturbed unless the taxpayer can prove that the assessment is wrong or excessive.

Estimated assessments in the absence of tax returns

If a person has not submitted a return within the prescribed time limit and the assessor considers that the person is chargeable for tax, the assessor may issue an estimated assessment to that person (s.59(3)).

Assessments based on the usual rate of net profits on turnover

If the account of a business is not kept satisfactorily, the assessor is empowered to assess on the basis of the usual rate of net profit on the turnover of such trade or business (s.59(4)). The Board of Inland Revenue may prescribe the amount of such usual rates of profit in particular classes of trade or business.

Additional assessments

Where it appears to an assessor that in any year of assessment:

- no assessment has been raised on any person chargeable to tax; or
- the taxpayer has been under-assessed,

the assessor is empowered to issue an assessment or additional assessment according to his judgment (s.60(1)).

The time limit for raising a s.60(1) assessment is six years after the end of the year of assessment concerned. The time limit can be extended from six years to ten years where the non-assessment or under-assessment is due to fraud or willful evasion (s.60(1) proviso (b)).

A loss computation is not an assessment. Thus, the assessor can revise a loss computation outside the six years' time limit outlined in section 60.

Assessment of a deceased person

Where a person died on or after 11 February 2006, the assessor is empowered to raise an assessment on the executor of the deceased's estate in respect of a period prior to the date of death within three years immediately after the year of assessment in which the deceased died (s.54(b)). The executor is chargeable to tax for all periods prior to the deceased's date of death for which the deceased would be chargeable if he were alive.