

LCQ2: Regulation of online fundraising activities

Following is a question by the Hon Alice Mak and a reply by the Secretary for Financial Services and the Treasury, Mr Christopher Hui, in the Legislative Council today (October 28):

Question:

Currently, organisations that plan to conduct fundraising activities in public places must first apply for permits or licences from the relevant government departments. Applications of fundraising activities for charitable purpose are vetted and approved by the Director of Social Welfare, whereas applications of fundraising activities for other purposes are vetted and approved by the Secretary for Home Affairs. Organisations that conduct fundraising activities must, after conclusion of the activities, submit to the relevant government departments a copy of the accounts or reports audited by a professional. However, fundraising activities conducted online are not subject to such regulation. Some members of the public are concerned that lawbreakers may launder money from unknown sources through such activities in order to subsidise unlawful activities such as those which threaten national security. In this connection, will the Government inform this Council:

(1) whether it has considered, by following the current practice to regulate fundraising activities in public places, requiring organisations that plan to conduct fundraising activities online to first apply for permits or licences from the relevant government departments; if it has considered, of the decision; if not, the reasons for that;

(2) whether the net proceeds generated through online fundraising activities are regarded as assessable income or profits; whether it will require that organisations that plan to conduct fundraising activities online must, after conclusion of the activities, submit to the relevant government departments a copy of the accounts or reports audited by a professional; if so, of the details; if not, the reasons for that; and

(3) of the measures in place to step up the regulation of fundraising activities conducted online, in order to enhance the confidence of members of the public in making donations in such activities and to prevent the funds so raised from being used to subsidise unlawful activities?

Reply:

President,

Our reply to the Hon Alice Mak, in consultation with the Labour and Welfare Bureau, the Home Affairs Bureau and the Security Bureau, is as follows:

On parts (1) and (3) of the question, as I replied to the Hon Alice Mak's question on "Regulation of online crowdfunding activities" at the Council meeting on June 17 this year, online fund-raising activities, or crowd-funding, is commonly referred to accepting small amounts of money from individuals or organisations to fund a project, a business or other needs through an online platform. Depending on the purposes and nature of the online fund-raising activities, for example where it involves financial services-related activities such as an offer to the public to purchase securities or a lending element, they may already be subject to the provisions of the relevant regulations, such as the Securities and Futures Ordinance (Cap. 571), the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Money Lenders Ordinance (Cap. 163), etc., which may include applying a Securities and Futures Commission's licence or a money lender's licence. Depending on the purposes of these online fund-raising activities, the relevant regulations applicable to fund-raising activities in Hong Kong may also be applicable to overseas online platforms that raise funds for use in Hong Kong.

Currently, the Director of Social Welfare and the Secretary for Home Affairs may issue permits pursuant to Section 4(17) of the Summary Offences Ordinance (Cap. 228) for collection of money or sale of badges, tokens or similar articles in public places for charitable and any other purposes respectively. The legislative intent of the Ordinance is to prevent nuisance and obstruction caused by the relevant fund-raising activities in public places. Hence, the relevant regulation is not applicable to online fund-raising activities. We have no intention to extend the existing regulatory regime to online fund-raising activities at the moment.

We note that while the regulations on fund-raising activities and platforms in other places may vary, the relevant regulatory requirements are generally based on the nature of the fund-raising activity and the use of funds collected, rather than the means of fund-raising (e.g. online or in public places). The Government will continue to monitor and make reference to the latest development on regulation of online fund-raising activities in other places.

We understand the importance of safeguarding the public's interest to avoid members of the public unknowingly participating in fraudulent or unlawful fund-raising activities, thereby suffering from unnecessary losses. At present, regardless of whether they are online or held in public places, if the fund-raising activities involve money laundering, fraud and other unlawful acts, the relevant law enforcement agencies will conduct investigation in accordance with existing laws. When participating in fund-raising activities, particularly those through online platforms, members of the public should pay full attention to the background of the organising parties/organisations, the purpose of raising funds and how the funds will be used, so as to avoid being abused by lawbreakers for unlawful activities. Relevant departments will continue their public education efforts in this regard.

On part (2) of the question, pursuant to the Inland Revenue Ordinance (Cap. 112), persons, including corporations and bodies of persons, carrying on any trade or business in Hong Kong are chargeable to tax on all profits (excluding profits arising from the sale of capital assets) arising in or derived from Hong Kong from such trade or business. If organisations conducting fund-raising activities do not carry on any trade or business, regardless of whether such fund-raising activities are conducted online, the receipt of donations or gifts would not constitute any trading or business profits. Thus, they would not have any profits tax liabilities.

Thank you President.