

Table of Contents

	Page
About Wolters Kluwer Hong Kong Limited	iii
About the Author.....	v
Disclaimer.....	vii
Preface	ix
Abbreviations	xi
Chapter 1 Introduction.....	1
¶1-010 Tax Evasion.....	2
¶1-020 Tax Avoidance	3
¶1-030 How field audit/investigation cases are initiated.....	4
¶1-040 Departmental Interpretation and Practice Notes No. 11 (October 2007) (“DIPN 11”)	5
¶1-050 Full Voluntary Disclosure	6
¶1-060 Penalty Policy.....	6
¶1-070 Field Audits and Investigation Unit.....	7
¶1-080 Field Audit and Investigation Cases Handled in 2014-15	7
¶1-090 Period covered by an Audit & Protective Assessment.....	7
¶1-100 Process of an Audit.....	8
¶1-110 Difference between Field Audit and Investigation....	9
¶1-120 File Number	9
Chapter 2 The Initial Interview.....	11
¶2-010 Tax Representative and Secrecy Provision of the IRO.....	12
¶2-020 Preparation for the Initial Interview	13
¶2-021 Incorrect Returns.....	13
¶2-022 Accounting Records.....	14
¶2-023 Questions Asked	14
¶2-024 Commencement of the interview	14
¶2-030 Full Voluntary Disclosure	15
¶2-040 Details of other income.....	15

¶2-050	Family background.....	15
¶2-060	Private Assets and Liabilities.....	16
¶2-070	List of Bank Accounts - Business and Private	16
¶2-080	Living expenses	16
¶2-090	Money held in trust	17
¶2-100	Windfall profits	17
¶2-110	Remittances	17
¶2-120	Review of Past returns.....	17
¶2-130	Record of Interview	18
¶2-140	After the Initial Interview	19
Chapter 3 Power of IRD to Obtain Information and Documents		
21		
¶3-010	Statutory power to obtain information for audit/investigation purpose.....	21
¶3-020	Section 51(4)(a), IRO	22
¶3-021	Accounting Papers and Advice Papers	23
¶3-030	Section 51(4)(b) Examination by an Assistant Commissioner.....	24
¶3-040	Exchange of Information ("EoI")	24
¶3-041	DIPN47 - IRD's practices in relation to EoI.....	25
¶3-042	Trade business or other secrets	26
¶3-043	Legal professional privilege	26
¶3-044	Disclosure Rules (s49(6))	27
¶3-050	Non-compliance	28
¶3-051	Reasonable excuse	28
¶3-060	Legal Professional Privilege.....	29
¶3-070	Self -Incrimination.....	29
¶3-080	Statement of Assets and Liabilities (s51A).....	31
¶3-090	Search Warrant (s51B).....	32
¶3-100	Information from Other Government Departments or Public Bodies s52(1)	34
Chapter 4 Methods of Determining the Understatement		
35		
¶4-010	Specific or Indirect Approach.....	36

¶4-020	Direct Method (Specific Omission).....	36
¶4-021	Failure to notify chargeability s51(2)	37
¶4-022	Accounting records	37
¶4-023	Adjustments to tax computations	38
¶4-024	Prosecution.....	39
¶4-030	Where accounting records are incomplete	40
¶4-040	Assets Betterment Statement ("ABS").....	40
¶4-050	Bank Deposit Method	40
¶4-060	Business Economics (Percentage Computation) Method	43
¶4-070	Projection Method	45
¶4-080	Gross Profit Method	47
¶4-081	Trading business - Cash trade.....	48
¶4-082	Service income	49
¶4-083	Factors affecting the accuracy of the Gross Profit Ratio	49
¶4-090	Report by the Tax Representative	50
¶4-100	Deposit for Tax	50
Chapter 5 Assets Betterment Statement.....		
51		
¶5-010	Format of an ABS	52
¶5-020	Periods Covered in an ABS	55
¶5-030	Loans from Other Persons	55
¶5-040	Living Expenses.....	56
¶5-050	Unidentified Withdrawals	56
¶5-051	Cash in Hand	57
¶5-052	Gambling Wins	57
¶5-053	Investments.....	58
¶5-060	Discrepancy and Head of Charge	58
¶5-070	Non-trading Profits/Income.....	59
¶5-080	Opportunity for Comment by the Taxpayer	60
¶5-090	What Evidences are Required?.....	61
¶5-100	Negotiation.....	62
Chapter 6 Sample ABS - Sole Proprietor.....		
63		
¶6-010	Illustration of an ABS of a Sole Proprietor	63

¶6-020	Revision of ABS1.....	75
¶6-030	Acceptance of the ABS and Issue of Assessments.....	87
Chapter 7 Assets Betterment Statement — Partnership and Corporation.....		
¶7-010	Partnership	89
¶7-020	Illustration.....	90
¶7-030	Corporation	93
¶7-040	Illustration.....	94
Chapter 8 Process of Audit, Protective Assessments and Hold over of Tax under Objection		
¶8-010	Bank Analysis	108
¶8-020	Examination of Accounting Records	110
¶8-030	Obtaining Information from Third Parties.....	112
¶8-040	Performance Pledge	113
¶8-050	Protective Assessments and Alternative Assessments.....	113
¶8-060	Hold over of tax pending settlement of objection.....	113
¶8-070	Recovery of tax under objection.....	116
Chapter 9 Anti-Tax Avoidance and Technical Adjustments to Assessments.....		
¶9-010	Anti-Tax Avoidance.....	120
¶9-020	Offshore Companies	121
¶9-030	Transfer Pricing and Offshore Companies.....	121
¶9-040	Profits from Property and Share Transactions	122
¶9-050	Rental income from Real Properties.....	123
¶9-060	Manufacturing in Mainland China	123
¶9-070	Bad Debt	123
¶9-080	Entertainment Expenses.....	124
¶9-090	Interest expenses	125
¶9-100	Management and Consultancy Fees.....	126
¶9-110	Private and domestic expenses	126

Chapter 10 Negotiation and Settlement.....	129	
¶10-010	Conclusion of an Audit	129
¶10-020	Letter of Settlement	130
¶10-030	Penalty	131
¶10-040	Approval by Top Management	131
¶10-050	Issue of Assessments and Penalty.....	131
¶10-060	Finality of Assessments	132
¶10-070	Installments.....	132
¶10-080	Cases Which Cannot Be Settled	133
Chapter 11 Offence and Penalties in Taxation		135
¶11-010	Levels of Fine	136
¶11-020	Compounding.....	136
¶11-030	Failure to Supply Information or to Answer Questions.....	137
¶11-040	Keeping Business Records	137
¶11-050	Tax Evasion Offences	138
Chapter 12 Penalty Policy of the IRD.....		139
¶12-010	The IRD's Penalty Policy - Field Audit/Investigation Cases	139
¶12-020	Category of Disclosure and Work Involved	141
¶12-030	Late Returns	143
¶12-040	IRD's Penalty Policy – Non-investigation/Field Audit Cases.....	144
¶12-050	Salaries tax and Property tax Cases	145
¶12-060	Personal Assessment Cases	145
Chapter 13 Tariff of Penalties		147
¶13-010	Starting point – 100%.....	147
¶13-020	Late Returns Cases (infringing s51(1)).....	148
¶13-030	Tariffs in Board Cases	149
¶13-040	Salaries Taxpayers.....	150
¶13-050	Profits Taxpayers	152
¶13-060	Property Tax	155

¶13-070 Late Returns	155
¶13-080 Failure to Notify Chargeability to Tax	159
Chapter 14 Section 82A — Additional Tax	161
¶14-010 Section 82A — The Offences and Penalty	162
¶14-020 Failure to Submit Tax Return (s51(1) or (2A) or Notify Chargeability to Tax (s51(2)).....	162
¶14-030 Right to Make Written Representation.....	163
¶14-040 Deceased Person.....	163
¶14-050 Appeals to the Board of Review.....	164
¶14-060 Not liable to Additional Tax.....	165
¶14-061 The amount of additional tax exceeding the amount for which he/she is liable under s82A.....	165
¶14-062 Excessive in the Circumstances.....	166
¶14-063 Cannot Go Back to the Basic Tax	166
¶14-070 Onus of Proof.....	167
¶14-080 Procedure on Appeal	168
¶14-090 Appeal to the High Court.....	169
¶14-100 Increase in Penalty by the Board.....	170
¶14-110 Section 82A Additional Tax — Criminal Penalty	170
Chapter 15 Prosecution for Tax Evasion	171
¶15-010 Section 80(2)	171
¶15-020 Section 82 Fraud or Wilful Evasion	172
¶15-030 Compounding.....	173
¶15-040 Section 82 or Section 80(2)?	174
¶15-050 Assisting Others to Evade Tax	174
¶15-060 Signing any Return or Statement without Reasonable Grounds for Believing the Same to Be True (s82(1)(d))	174
¶15-070 Mandatory Custodial Sentences	175
¶15-080 Decision to Prosecute	175
¶15-090 The Level of Penalty	176
¶15-100 Possibility of Prosecution for Tax Evasion.....	180

Chapter 16 Miscellaneous Issues Arising in an Audit	181
¶16-010 Payment of Tax and Penalty	181
¶16-020 Protective Assessments	182
¶16-030 Current Year Return.....	182
¶16-040 Partnership	183
¶16-050 Directors of a Corporation.....	184
¶16-060 Deceased Person	185
¶16-070 Spouses	186
Chapter 17 Mentality and Attitude of Taxpayers	187
¶17-010 Keeping Proper Accounts	187
¶17-020 Tax Advice	188
¶17-030 Stress of an Audit	188
¶17-040 Reaction to an Audit	189
¶17-050 Protective Assessments	190
¶17-060 Basis of Settlement.....	190
¶17-070 Attitude and Approaches during an Audit.....	190
¶17-080 What Should a Taxpayer Do and What Not to Do.....	191
¶17-090 After the Audit.....	191
¶17-100 Professional Fees.....	192
Chapter 18 Case Studies.....	193
¶18-010 Omission of Income and Overstatement of Purchases.....	193
¶18-020 Excess Deposit and Gross Profits Approach.....	194
¶18-030 <i>R Wong Yue Hung Johnson</i> (1992) 3 HKTC 733	195
¶18-040 <i>The Queen v Ng Wing Keung, Paul</i> (First Defendant "D1") and <i>Choi Sin-biu</i> (Second Defendant "D2") 4 HKTC 264 (see Appendix A).....	195
¶18-050 <i>HO Lui</i> 3 HKTC 289 (see Appendix B).....	196
¶18-060 <i>Yip Kam Sing</i> DCC640/1994, 4 HKTC 68 (see Appendix C)	197
¶18-070 <i>HKSAR v Chan Kin-man Ivan</i> 5 HKTC 535 (see Appendix D).....	198

¶18-080 <i>Asia Master Ltd v CIR</i> [2006] HCAL 114/2005 (see Appendix E).....	199
Appendix A	201
Appendix B.....	213
Appendix C	219
Appendix D	223
Appendix E.....	233
Frequently Referred Parts of Inland Revenue Ordinance (Cap 112)....	259
Table of Cases	287
Table of Legislation	291
Subject Index	295

CHAPTER 1 INTRODUCTION

Tax Evasion	¶1-010
Tax Avoidance.....	¶1-020
How field audit/investigation cases are initiated.....	¶1-030
Departmental Interpretation and Practice Notes No. 11 (October 2007) ("DIPN 11").....	¶1-040
Full Voluntary Disclosure	¶1-050
Penalty Policy.....	¶1-060
Field Audits and Investigation Unit	¶1-070
Field Audit and Investigation Cases Handled in 2014-15	¶1-080
Period covered by an audit & Protective Assessment	¶1-090
Process of audit	¶1-100
Difference between Field Audit and Investigation	¶1-110
File Number	¶1-120

This text encompasses:

- (a) field audit (the term for tax audit in Hong Kong) and investigation of tax evasion and avoidance in Hong Kong by the Inland Revenue Department ("IRD"). Investigation is more in-depth and detailed than field audit. For the purpose of this book, "audit" refers to a field audit or investigation;
- (b) penalties applicable for infringement of law discovered after an audit; and
- (c) methods to handle an audit.

This book only covers taxes levied under the *Inland Revenue Ordinance* (Cap 112). Indirect taxes including taxes for tobacco and cigarettes, alcohol, hydrocarbon oil etc are outside the scope of this book.