

立法會
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LC Paper No. LS12/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 10 November 2000**

**Legal Service Division Report on
Dutiable Commodities (Amendment) Bill 2000**

Object of the Bill

To amend the Dutiable Commodities Ordinance (Cap. 109) (the Ordinance) to provide for the presumption of dutiability of light diesel oil based on its sulphur contents.

LegCo Brief Reference

2. FINCR 6/3231/89 issued by the Finance Bureau dated 25 October 2000.

Date of First Reading

3. 8 November 2000.

Comments

4. This Bill is to add a new presumption to section 40 of the Ordinance so that any light diesel oil found in the fuel tank of a motor vehicle with a sulphur content in excess of 0.05% by weight is presumed to be dutiable goods in the absence of evidence to the contrary. The legal effect of this presumption is that if oil in the fuel tank of a motor vehicle is found to be in excess of the maximum sulphur content prescribed under the Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap. 311 sub. leg.), then instead of the prosecution to prove dutiability of that oil, an accused charged with an offence under the Ordinance will have to adduce evidence as to the dutiability of that oil.

5. Under the above Regulation, it is an offence for a motor vehicle diesel supplier or a retailer to sell any motor diesel oil which contains more than 0.05% by weight of sulphur. Thus, one can only get light diesel oil with a sulphur content at or below 0.05% from legitimate sources. It follows that any such oil used by vehicles with a sulphur content above 0.05% is very likely to be detreated oil or duty-not-paid light diesel oil.

6. The proposed presumption does not apply to marked oil (Regulation 12(1)(n) of the Dutiable Commodities Regulations) (Cap. 109 sub. leg.) since marked oil is easily distinguishable from normal light diesel oil. The C&ED does not need the presumption to take action against its use. It also does not apply to light diesel oil in the fuel tank of vehicles, other than goods vehicles, arriving from Mainland of China for use in those vehicles (Regulation 12(1)(p)). Further, it does not apply to specified volume of fuel in the fuel tank of goods vehicles from Mainland (Regulation 12(1)(pa)). These two kinds of light diesel oil are currently exempted from payment of duty.

7. Any person who imports, exports, possesses, deals with or disposes of any illicit oil commits an offence under section 17(1) of the Ordinance. He is liable on conviction to a fine of \$1,000,000 and imprisonment for 2 years (section 46 and Schedule 2 of the Ordinance). He may also be disqualified from holding or obtaining a driving licence (section 46AA).

8. This presumption provision was introduced to the former LegCo as part of the Dutiable Commodities (Amendment) Bill 1999. According to the Administration, this presumption is targeted at the use of illicit oil, in particular, the use of detreated oil and duty-not-paid oil smuggled into Hong Kong from other places. The use of illicit oil has not only led to revenue loss but also has caused air pollution and fire hazards. These two kinds of oil are no different in appearance from legitimate oil and it has been practically difficult for the Customs and Excise Department (C&ED) to prove that the oil in question is duty-not-paid when doing their spot checks at roadblocks.

9. During the meeting of the Bills Committee on that Bill, members opined that the transport trade should first be consulted and that a proper record-keeping system be established before enacting this presumption provision. The provision was therefore deleted from the Bill at Committee Stage.

10. The Administration has now completed its consultation. A guideline is also set out (see Annex C to the Brief) and, in particular, drivers are advised to keep the last 3 of fuel filling receipts for establishing the source of fuel.

11. It has been reported in a newspaper that the Chairman of the Hong Kong Bar Association is of the view that this presumption provision may be inconsistent with the Hong Kong Bill of Rights Ordinance (Cap. 383). The Department of Justice (DoJ) states in paragraph 14 of the Brief that it has considered the presumption and that it is consistent with the right to be presumed innocent guaranteed by Article 11(1) of the Hong Kong Bill of Rights under the Hong Kong Bill of Rights Ordinance. We are writing to the Chairman of the Hong Kong Bar Association to see if he would express his view in writing to Members. We are still considering the legal implications of this presumption provision and would make a further report to the House Committee as soon as we receive a reply from the Chairman of the Hong Kong Bar Association.

Public Consultation

12. According to paragraph 8 of the Brief, the Administration has consulted a total of 86 trade organizations and individuals representing different sectors of the transport trade (see Annex B to the Brief). All the bodies consulted have expressed no objection to the re-introduction of this presumption provision.

Consultation with the LegCo Panel

13. This presumption provision had been discussed by the members of the Bills Committee on the Dutiable Commodities (Amendment) Bill 1999 (see LC Paper No. CB (1)1839/99-00) but has not been referred to a LegCo Panel.

Conclusion

14. The wordings of the presumption provision are identical to that introduced in the Dutiable Commodities (Amendment) Bill 1999. Nonetheless, the human rights implications of this presumption provision have not been examined in depth by the Bills Committee. Members may decide whether to set up a Bills Committee to examine this presumption provision or defer the decision till we receive a reply from the Chairman of the Hong Kong Bar Association.

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