

LS/S/24/01-02
2869 9204
2877 5029

Secretary for the Treasury
Finance Bureau
"R" Division
4/F, Main and East Wings
Central Government Offices
11 Ice House Street
Hong Kong
(Attn : Ms Erica Ng
Principal Assistant Secretary)

13 March 2002

BY FAX

Fax No. : 2234 9757
Total no. of page(s) : 3

Dear Ms Ng,

**Revenue (Variation and Reduction of
Fees and Charges) Order 2002 (L.N. 35 of 2002)**

I refer to the above Order made by the Chief Executive after consultation with the Executive Council and published in the Gazette on 12 March 2002. I shall be grateful if you could clarify the following :—

1. Please explain the legislative intent of section 39A of the Public Finance Ordinance (Cap. 2) (previously appeared as section 96 of the Interpretation and General Clauses Ordinance (Cap. 1)) and how that power has been exercised in the past.
2. Please provide justifications for the Administration to use an order under section 39A of Cap. 2 instead of other legislative proposals. On the basis that the Order is subsidiary legislation, please let us know :
 - (a) the reasons why section 39A of Cap. 2 is applicable in the light that each of the charging regime in the respective Ordinances and Regulations has specific provisions for their variation;
 - (b) in relation to business registration fee, whether the making of the Order subject to negative vetting of the Council would effectively remove the powers of the Council under section 35 of the Interpretation and General Clauses Ordinance (Cap.1), since section 18(1) of the Business Registration Ordinance (Cap. 310) provides that the Legislative Council may by resolution amend Schedule 1.

- (c) if the binding effect of the existing provisions of the Business Registration Ordinance (Cap. 310) is not affected, as stated in paragraph 13 of the LegCo Brief, would the making of the Order under section 39A of Cap. 2 be regarded as inconsistent with section 18 of Cap. 310?

Waiver of business registration fee

3. Paragraph 3 of the LegCo Brief states that those who apply afresh or apply for renewal of a one-year certificate or a three-year certificate during the concessionary period will be relieved from the payment of a business registration fee of \$2,000. Section 2 of the Order, however, provides that section 3 shall apply only to fees payable in respect of business registration certificates and branch registration certificates which commence on or after 1 April 2002 and before 1 April 2003. Is it the policy intent that the waiver of fee applies also to application made during the specified period for a certificate that commences after 1 April 2003?

4. In the event that business registration fee has been paid for a certificate that commences on and after 1 April 2002, would the Administration arrange for refund of such fee, and if so, what is the legal authority for the refund?

5. Please confirm that no concession is intended for those businesses whose business registration certificate or branch registration certificate has been issued for a period of 3 years that would not expire during the concessionary period.

6. Please also confirm that the levy prescribed in item 3 of Schedule 2 to the Business Registration Ordinance (Cap.310) continues to be payable.

Reduction of water and sewage charges

7. According to paragraphs 4 and 6 of the LegCo Brief, water and sewage charges for domestic accounts and fresh water supply for flushing are billed at four-monthly intervals. Item 1(b) and (c) in Part III of Schedule 1 to the Waterworks Regulations (Cap. 102 sub. leg.) prescribes the charge on a 4-month period. Please explain the reason for providing the maximum amount allowed to be deducted in respect of a bill for a 1-month period of supply under sections 4(3)(a) and 5(3)(a) of the Order.

8. Section 5(1)(a) of the Order refers to the rate for sewage charge based on the volume of water supplied for non-domestic accounts. Please clarify whether the reduction applies to those trade, business or manufacture listed in the Schedule to the Sewage Services (Sewage Charge) Regulation (Cap. 463 sub. leg.) where the amount charged is equal to 70% of the volume of water supplied.

To facilitate my reporting to the House Committee on 22 March 2002, I shall be grateful if you could let me have your reply by 18 March 2002.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

c.c. D of J (Attn : Miss Miranda Ng, SALD) (Fax No. 2845 2215)
LA
SALA1

Fax No. : 2530 5921
Tel No. : 2810 2370
Our Ref. : FIN CR 4/7/2201/01
Your Ref. : LS/S/24/01/02

20 March 2002

Ms Bernice Wong
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2877 5029)

Dear Ms Wong,

**Revenue (Variation and Reduction of
Fees and Charges) Order 2002 (L.N. 35 of 2002)**

I refer to your letter of 13 March 2002 and set out below our response to the questions raised in your letter.

Legislative intent of section 39A of the Public Finance Ordinance

Our records show that when the concerned clause first appeared, it was included as section 96 of the Interpretation and General Clauses Ordinance (Cap. 1) enacted in 1966. The clause was modelled on section 54 of the Sarawak Interpretation Ordinance and the intention was to give wider power to the Governor to reduce fees and charges. This clause was subsequently transferred to the Public Finance Ordinance (Cap. 2) by virtue of the Interpretation and General Clauses (Amendment) (No. 2) Ordinance 1993 for the reason that Cap. 2 was considered the more appropriate Ordinance for that provision.

We are not aware of any order having been made under section 39A(a) of Cap. 2 or the former section 96 of Cap. 1 in the past.

As regards section 39A(b) of Cap. 2, the Administration has in the past invoked the power under this section to remit or refund, in whole or in part, fees or charges based on the merits of individual cases. For example, the fee for replacing a Hong Kong Special Administrative Region passport was remitted upon application where the passport was damaged by chemicals not due to the fault of the passport holder.

The use of section 39A of the Public Finance Ordinance to effect the proposed one-off concessions

Section 39A(a) of Cap. 2 has provided clear and express power to the Chief Executive to reduce or vary, by way of order, “any fee or charge made payable by or under any Ordinance to the Government”, subject to the restriction that “no variation thereof shall cause such fee or charge to exceed the original figure”. Section 39A(a) is therefore clearly applicable to our present circumstances, viz. to waive business registration fees provided under the Business Registration Ordinance (Cap. 310); and reduce water charge, sewage charge, fresh water flushing charge and trade effluent surcharge provided under the Waterworks Ordinance (Cap. 102) and the Sewage Services Ordinance (Cap. 463). Our proposed variations would not cause the fees and charges concerned to exceed their original figures.

We acknowledge that there are provisions in the Waterworks Ordinance (Cap. 102), the Sewage Services Ordinance (Cap. 463) as well as the Business Registration Ordinance (Cap. 310) which enable regulations to be made in respect of charges payable or granting of exemption from payment of fees. However, as the proposed business registration fee waiver and the proposed water and sewage charges reductions are intended to be a one-off package providing for a time-limited relief to the community in the current economic downturn, we consider it appropriate to engage the general power of the Chief Executive to make the Revenue (Variation and Reduction of Fees and Charges) Order 2002 under section 39A(a) of the Public Finance Ordinance to achieve the purpose, so that the public will have a clearer,

overall picture of the intention of the Administration. The necessary Order has been published as subsidiary legislation and is subject to scrutiny by the Legislative Council.

In relation to the waiver of business registration fees (as indeed the same with the reduction of water and sewage charges), the making of the Revenue (Variation and Reduction of Fees and Charges) Order 2002 would not remove the powers of the Legislative Council (LegCo) to scrutinise the fee waiver proposal. As stated above, the Order made by the Chief Executive under section 39A(a) of Cap. 2 has been published as subsidiary legislation subject to scrutiny by the Legislative Council. The Legislative Council may repeal or amend the Order during the negative vetting period. The making of the Order is not inconsistent with section 18 of the Business Registration Ordinance (Cap. 310) and does not prejudice the statutory power of the Legislative Council under section 18 of the Ordinance.

Waiver of business registration fee

Our policy intent of the waiver of business registration fees and branch registration fees is that these fees payable in respect of certificates commencing between 1 April 2002 and 31 March 2003, both days inclusive, will be waived for one year at the time of application or renewal. The waiver of fees to be effected by the Order does not therefore apply to fees payable for certificates commencing on or after 1 April 2003. The basis for the waiver under the Order is the commencement date of the registration certificate, not the date of application.

Based on information available in the Inland Revenue Department, no payment has been collected in respect of fresh/renewal applications concerning business/branch registration certificates which commence within the concessionary period (1 April 2002 to 31 March 2003). (If such payment is found subsequently to have been collected by the Government, the payments collected will be refunded.) The Inland Revenue Department plans to issue renewal notices and demand notes in late March to the batch of businesses who would be affected by

the Order the earliest, i.e. businesses whose certificates would expire in the month of April 2002, assuming the Order would become effective on 1 April 2002. The situation that a business having already paid a registration fee eligible to be waived under the Order will not arise and hence there will not be a need to refund such cases.

In addition to the waiver provided for in the Order, we intend to extend the concession on business registration to those businesses whose business registration certificate or branch registration certificate has been issued for a period of 3 years and would not expire during the concessionary period between 1 April 2002 and 31 March 2003, and to businesses whose registration certificates expire between 1 April 2002 and 31 March 2003 but are not renewed because of cessation of business. These businesses will, upon application, be refunded the registration fee already paid on a pro-rata basis by reference to the concessionary period. The refund will be effected through section 39A(b) of the Public Finance Ordinance which provides that the Chief Executive may remit or refund in whole or in part a fee or charge payable to the Government in any particular case and on any special ground.

Notwithstanding the waiver of business/branch registration fee, the levy prescribed in item 3 of Schedule 2 to the Business Registration Ordinance, i.e. the levy dedicated for the use of the Protection of Wages on Insolvency Fund, will continue to be payable.

Reduction of water and sewage charges

While it is true that water and sewage charges for domestic accounts and fresh water supply for flushing are normally billed at four-monthly intervals, there is no restriction under the Waterworks Ordinance on the Water Authority's ability to issue bills for these accounts more frequently. As a matter of fact, if a domestic account or a fresh water flushing account has regularly consumed a high volume of water which falls within the threshold set for monthly billing, the Authority may change the billing schedule for that particular account from a four-monthly to a monthly basis. There is therefore a need to provide for a maximum deductible amount for one-month bills.

Section 5(1)(a) of the Order, which refers to the rate for sewage charge based on the volume of water supplied for non-domestic accounts, will apply to the trade, business or manufacture listed in the Schedule to the Sewage Services (Sewage Charge) Regulation (Cap. 463 sub. leg.) where the amount charged is equal to 70% of the volume of water supplied.

I hope the preceding paragraphs have adequately addressed your enquiries. Should you have any questions on the above, please feel free to contact the undersigned.

Yours sincerely,

(Miss Erica Ng)
for Secretary for the Treasury