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Our Ref. : FIN CR 4/7/2201/01
Your Ref. : LS/S/24/01/02

27 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 22 March and wish to reply as follows.

Reduction of water and sewage charges

Section 39A(a) of the Public Finance Ordinance (Cap. 2) provides 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, provided that “no variation thereof shall cause such fee or charge to exceed the original figure”. It follows that an order made under this section may vary the method by which the fee or charge is calculated as well as the level of the fee or charge imposed. However, for the reasons stated below, we do not consider that there is any change of the existing method of charging for fresh water supplied and for sewage services provided under the Revenue (Variation and Reduction of Fees and Charges) Order (hereafter referred to as “the Order”).

With regard to charging for fresh water supplied, section 46 of the Waterworks Regulations (Cap.102 sub. leg.) provides that “The Water Authority shall charge the rates specified in Part III of Schedule 1 for fresh water supplied under the Ordinance”. The rates specified in Part III of Schedule 1 (items 1(b) and 1(c)) are for per 4-month period. However, there is no restriction under the Waterworks Ordinance (Cap. 102) on the Water Authority to apply these rates to charge the domestic and fresh water flushing accounts on a pro-rata basis for a period less than four months. There is no restriction under the Waterworks Ordinance on the Water Authority to issue bills for these accounts more frequently as the circumstances may require. Indeed, there are practical circumstances requiring the Water Authority to issue bills for fresh water supplied for periods less than four months, for example, upon an account-holder vacating his/her premises and requesting the Water Authority to cut off fresh water supply to his/her premises. In the absence of any express provision otherwise, neither the Schedule nor the rates per se dictate the method by which the Water Authority may collect the charges. The rates specified in Part III of Schedule 1 only provide the basis of calculation. Section 2 of the same Schedule, which defines the four month period as 121.64 days, provides a clear reference point for working out the charges on a pro-rata basis for billing periods of less than four months.

With regard to sewage services, section 2(1) of the Sewage Services (Sewage Charge) Regulation (Cap. 463 sub. leg.) stipulates a charge expressed in the form of a unit rate per cubic metre of water supply. There is no provision in the Regulation for the billing frequency.

It follows from the above that the Administration does not agree that the Order has varied the existing method of charging for fresh water supplied and for sewage services provided. It also follows from the above that the Administration considers that sections 4(3)(a) and 5(3)(a) of the Order do not have any conflict with the Waterworks Regulations and the Sewage Services (Sewage Charge) Regulation. These two sections have been included in the Order for the sake of clarity and completeness.

Waiver of business registration fee

Section 39A(b) of the Public Finance Ordinance specifically provides for refund of any fee or charge made payable by or under any ordinance to the Government, in whole or in part, in any particular case and on any special ground by the Chief Executive. This section has provided specific power to the Chief Executive to refund a fee. It would be entirely proper for the Chief Executive to exercise this power to make refund arrangements in justifiable cases as we have proposed in our previous letter to you dated 20 March.

With regard to the business registration certificates or branch registration certificates described in para. 2(a) of your letter, the Business Registration Office (BRO) of the Inland Revenue Department will send a note to holders of the certificates informing them that they may apply for a refund of the fee paid for the period between 1 April 2002 and 31 March 2003. The BRO will calculate the appropriate amount of refund for each application, which will differ from case to case having regard to whether the said period falls within the first year or second/third year of the particular 3-year business/branch registration certificate. As each application for refund will need to be dealt with in the light of the particulars of the application, the Administration considers it is appropriate to exercise the power under section 39A(b) of the Public Finance Ordinance.

With regard to the business registration certificates described in para. 2(b) of your letter, the BRO will, upon receipt of notice of cessation of business in the concessionary period between 1 April 2002 to 31 March 2003, advise the holders that they may apply for refund of the business registration fees paid for the part of time that falls within the concessionary period. Upon examination and approval of applications, BRO will calculate and refund the appropriate amounts, which will vary from application to application depending on the duration of the certificate falling within the period of 1 April 2002 to 31 March 2003. The Administration considers it is appropriate to exercise the power under section 39(A)(b) of the Public Finance Ordinance.

Summary

In conclusion, therefore, we consider that the Order to be in order. We look forward to any further discussion with the relevant Legislative Council Subcommittee on Thursday 28 March.

Yours sincerely,

(Miss Erica Ng)
for Secretary for the Treasury