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Paper for the House Committee meeting on 11 April 2008

Report of the Subcommittee on Rating (Exemption) Order 2008

Purpose

This paper reports on the deliberations of the Subcommittee on Rating (Exemption) Order 2008 (the Order).

Background

2. In his 2008-09 Budget speech, the Financial Secretary (FS) announced a package of initiatives to leave wealth with the people of Hong Kong. One of the measures is the proposal to waive rates for the 2008-09 financial year, subject to a ceiling of \$5,000 per quarter for each rateable tenement. The Administration has estimated that 99% of domestic properties and 85% of non-domestic properties will not be subject to any rates in the new financial year, while the remaining properties will enjoy a quarterly concession of \$5,000. The rates waiver will cost the Government \$11.2 billion in the 2008-09 financial year.

The Order

3. The Order was made by the Chief Executive in Council under section 36(2) of the Rating Ordinance (Cap.116) (RO) to declare that all tenements are exempted from the payment of rates in respect of any quarter in the period 1 April 2008 to 31 March 2009 wholly, if the amount of rates payable for the quarter is \$5,000 or less, or up to \$5,000, if the amount is more than \$5,000. The amount of \$5,000 is reduced on a pro rata basis if rates are payable for only part of the quarter.

4. The Order is subsidiary legislation subject to negative vetting by the Legislative Council (LegCo). It was gazetted on 27 February 2008 and tabled at the LegCo meeting on 5 March 2008. The Order will come into operation on 1 April 2008.

The Subcommittee

5. At the meeting of the House Committee held on 7 March 2008, Members decided to form a subcommittee to study the Order. The membership list of the Subcommittee is at **Appendix I**. To allow sufficient time for scrutiny, Members passed a resolution at the LegCo meeting on 12 March 2008 to extend the scrutiny period to 23 April 2008. Under the chairmanship of Hon Albert HO Chun-yan, the Subcommittee has held one meeting with the Administration.

Deliberations of the Subcommittee

6. In principle, the Subcommittee supports the rates exemption announced by FS in the 2008-09 Budget and the Order made by the Chief Executive in Council to give effect to the exemption. The major concerns raised by members are summarized in the ensuing paragraphs.

Benefit to rates payers

7. Members of the Subcommittee are keen to ensure that the rates exemption will benefit the party who actually pays the rates for the tenement in question. Some members have pointed out that in practice, the rent payable by some tenants to their landlords includes an element of the rates payable on the tenement. They are concerned about the arrangement, if any, for the property owner to pass on the "savings" or the waived amount to the tenant, where the latter is the rates payer.

8. The Administration has advised that generally speaking, a tenant who pays rates should be able to benefit from the rates exemption directly. If rates are paid by the landlord, whether the landlord is required to pass on any rates concession to the tenant would depend on the terms in the tenancy agreement. The Administration has noted that in practice, terms of tenancy agreements may vary. Some tenancy agreements may contain a general provision that the rent payable is inclusive or exclusive of other payments such as rates, government rent or management fees; or there may be a clear stipulation of the exact amount of rates to be borne by the property owner or by the tenant. Whether the responsibility to pay rates rests with the landlord or the tenant is primarily a matter to be negotiated and agreed to by the parties concerned. As rates concession is not an entirely new measure¹, the Administration considers that landlords and tenants should have acquired experience over the years to work out mutually acceptable arrangements. While the Administration considers it inappropriate to intervene into private contractual matters, it has always encouraged both parties to engage in direct dialogue having regard to the terms of the tenancy agreement and where necessary, seek legal advice. As the amount of rates payable is based on the rateable value of the tenement which is subject to annual assessment, members are aware that while the party who pays the rates will benefit from a rates concession, they are also liable to pay higher rates when their tenement is re-assessed to a higher rateable value.

¹ According to the Administration, seven rates concessions have been implemented over the past 10 years.

9. The Subcommittee is also concerned that a tenant should be able to benefit from the rates concession if he is the rates payer for the tenement in question. In this regard, the Administration has highlighted the need to refer to the terms of the tenancy agreement on the arrangement as agreed between the landlord and the tenant. In case of disputes, the parties concerned may seek adjudication by the Lands Tribunal. If necessary, an aggrieved tenant may institute civil proceedings against his landlord if the latter refuses to pass on the rates concession to him.

10. On whether a tenant can have access to information on the rates payable in respect of the tenement in question if the demand note is not issued to him, the Administration has advised that currently, the amount of rates payable on a property is charged at 5% of its rateable value. The rateable value of all properties is reviewed annually in the general revaluation exercise to reflect the up-to-date rental value of the properties. Following revaluation, the new Valuation List and Government Rent Roll listing the rateable values of all assessed properties will be available for inspection at the Rating and Valuation Department (RVD) and posted on the website of the Department from end March to end May each year, during which time the rates payers may lodge objection to the newly assessed rateable values. Thereafter, entries in the List and the Rent Roll can be searched by payment of a fee. The rateable values of assessed properties are information in the public domain. The RVD has also advised that information on the rateable value of individual units in a property owned by a sole owner (such as office premises or shops let in a commercial building or a shopping mall) is also available.

11. Some members are concerned whether there is any statutory requirement on the landlord to pass on the rates concession to the tenant if the latter is the rates payer. The Administration has confirmed that currently, there is no provision under the Rating Ordinance (Cap.116) (RO) or the Landlord and Tenant (Consolidation) Ordinance (Cap.7) governing such arrangements. As to whether the Order can be amended to provide for such a requirement, the Subcommittee notes that pursuant to section 34(2) of the Interpretation and General Clauses Ordinance (Cap.1) (IGCO), the subsidiary legislation may only be amended in any manner whatsoever consistent with the power to make such subsidiary legislation. In this connection, the Order has been made under section 36(2) of RO which provides that "[t]he Chief Executive in Council may, by order, declare any class of tenements, or parts thereof, or any part of Hong Kong to be exempted from the payment of rates wholly or in part." The Subcommittee has noted the advice of its legal adviser that a proposal to amend the Order in the aforesaid manner (i.e. to require the passing on of the rates concession to the tenant or the actual rates payer) may not be consistent with the power to make orders as provided under section 36(2) of RO.

Passing on the benefit of the rates concession to the needy

12. Some members consider that the Hong Kong Housing Society (HS), the Hong Kong Housing Authority (HA) and The Link Management Limited should pass on the rates concession to their tenants. According to Hon WONG Kwok-hing, HS has not returned the rates concessions in 2007 to its tenants. Moreover, HS has

decided to increase the rental of parking spaces in HS-managed car parks with effect from 1 April 2008 at a percentage even higher than the rise in inflation; but without undertaking to pass on the rates concession to the tenants. While Mr WONG has indicated that he would take up the matter with HS, some members are also concerned whether the Government will take any action to ensure that tenants of these public or statutory bodies will benefit from the rates concession. The Administration's general advice is that the relevant arrangement would depend on the terms of the tenancy agreement and the policy of the organization concerned.

13. Regarding the arrangement for HA tenants, the Subcommittee notes that HA will pass on the rates concession to its tenants over a period of 12 months. The Administration has also confirmed that those HA tenants now paying additional or market rental are also entitled to the rates concession announced in the 2008-09 Budget. As regards Hon WONG Kwok-hing's concern about the arrangement put in place by HS, the Administration considers that this is primarily a contractual matter between HS and its tenants. Nevertheless, the Administration has conveyed members' concern to the Transport and Housing Bureau, which is responsible for housing matters, for follow-up. Members also note that the matter may be followed up at the Panel on Housing, or where necessary, at the relevant session of the special Finance Committee meeting to examine the 2008-09 Estimates.

14. Concern has also been raised on the Government's effort to support disadvantaged groups, such as whether low-income earners renting bedspaces or partitioned rooms in old buildings will be able to benefit from the rates exemption announced in the 2008-09 Budget. In this connection, the Administration has advised that the rates exemption aims at reducing the tax burden on the public, while the relevant arrangement between the landlord and the tenant would depend on the terms of their tenancy agreement. The Administration has also drawn members' attention to a host of other initiatives announced in the 2008-09 Budget targeted at supporting disadvantaged social groups, such as an additional month of allowance at the standard rate of payment for Comprehensive Social Security Assistance recipients and one additional month of allowance for recipients of Disability Allowance, relaxation of the eligibility criteria and subsidy period of the pilot Transport Support Scheme introduced in June 2007 etc. The Administration is of the view that disadvantaged groups including low-income groups will be able to benefit from various support initiatives proposed in the 2008-09 Budget.

Commencement date of the Order

15. Section 1 of the Order provides that the Order shall come into operation on 1 April 2008, i.e. before the expiry of the scrutiny period on 23 April 2008 as extended by resolution of LegCo. Members are aware that such an arrangement is not unprecedented as the Administration has preferred to implement one-off relief measures on an early date or to tie in with the start of the new financial year². On the

² See, for example, the Rating (Exemption) Order 2007 and the Rating (Exemption) (No.2) Order 2007. The former commenced operation on 1 April 2007 and the latter, on 1 January 2008. Both Orders commenced operation before the expiry date of their respective extended scrutiny period.

legal position, the Subcommittee notes that pursuant to section 34(2) of IGCO, if the Order is amended or repealed by resolution passed by LegCo during the extended scrutiny period, it will be deemed to be amended or repealed as from the date of the publication in the Gazette of such resolution. In other words, rates payers will enjoy the rates exemption as specified in the Order from 1 April 2008 until the date of amendment or repeal of the Order.

16. Rates are payable quarterly in advance and RVD usually sends out the demand notes at the beginning of each quarter (i.e. January, April, July and October). As such, the Administration has informed members that should the Order be amended or repealed, RVD would need to issue a revised demand note for the quarter of April to June 2008 to reflect the changes. Given the policy objective of the rates concession to relieve the tax burden of rates payers, the Administration has urged the Subcommittee to support the Order in its current form. Notwithstanding their concerns about the benefit of the relief measure to tenants or disadvantaged groups, members of the Subcommittee reaffirm their support for the rates exemption and agree that the Order should come into operation on 1 April 2008.

Recommendation

17. The Subcommittee supports the Order and will not propose any amendment thereto.

Advice sought

18. Members are invited to note the Subcommittee's recommendation in the preceding paragraph.

Council Business Division 1
Legislative Council Secretariat
9 April 2008

Subcommittee on Rating (Exemption) Order 2008

Membership list

Chairman	Hon Albert HO Chun-yan
Members	Hon CHAN Kam-lam, SBS, JP Hon WONG Kwok-hing, MH Hon Alan LEONG Kah-kit, SC Hon WONG Ting-kwong, BBS Hon TAM Heung-man Hon Mrs Anson CHAN, GBM, JP

(Total : 7 Members)

Clerk	Miss Polly YEUNG
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Legal Adviser	Mr Stephen LAM
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Date	19 March 2008
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