

立法會
Legislative Council

LC Paper No. LS19/09-10

**Paper for the House Committee Meeting
on 27 November 2009**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 20 November 2009**

Date of tabling in LegCo : 25 November 2009

Amendment to be made by : 16 December 2009 (or 13 January 2010 if extended by resolution)

Inland Revenue Ordinance (Cap. 112)

**Inland Revenue (Double Taxation Relief on Income from Aircraft Operations)
(Federal Democratic Republic of Ethiopia) Order (L.N. 231)**

**Inland Revenue (Double Taxation Relief on Income from Aircraft Operations)
(Republic of Maldives) Order (L.N. 232)**

L.N. 231 and L.N. 232 are made by the Chief Executive in Council under section 49 of the Inland Revenue Ordinance (Cap. 112) (IRO) to give effect to the double taxation relief arrangements specified in two bilateral air services agreements, namely –

- (a) the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China (HKSARG) and the Government of the Federal Democratic Republic of Ethiopia Concerning Air Services signed on 24 October 2006 (the Ethiopia Agreement); and
- (b) the Agreement between HKSARG and the Government of the Republic of Maldives Concerning Air Services signed on 11 June 2009 (the Maldives Agreement).

2. Under section 49 of IRO, the Chief Executive in Council may by order declare that arrangements specified in the order have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory.

3. According to the LegCo Brief, due to the international nature of airline operations, airlines are more susceptible to double taxation than other taxpayers. It is Government's policy to negotiate double taxation relief arrangements for airline income with aviation partners of HKSARG. The double taxation relief arrangements in the Ethiopia and Maldives Agreements will benefit aircraft operators of Hong Kong, Ethiopia and the Maldives. Such arrangements should help lower cost of operation, improve income and indirectly efficiency. Arrangements of a similar nature have been made with countries including United Mexican States (by L.N. 172 of 2008) and Republic of Finland (by L.N. 173 of 2008 and L.N. 174 of 2008).

4. L.N. 231 declares that the arrangements specified in Article 11 (Avoidance of Double Taxation from Exercise of International Air Transportation Activities) of the Ethiopia Agreement, which is reproduced in the Schedule to L.N. 231, have been made as double taxation relief arrangements and it is expedient that those arrangements should have effect for the purpose of section 49 IRO. The Legal Service Division has made enquiry with the Administration, and understand that while the Ethiopia Agreement was signed in June 2006, it was not until April 2009 did HKSARG receive notification of the Government of Ethiopia that the Ethiopia Agreement was approved by their internal procedure and they were ready to implement the relevant double taxation relief arrangements.

5. L.N. 232 declares that the arrangements specified in Article 9 (Avoidance of Double Taxation) of the Maldives Agreement, which is reproduced in the Schedule to L.N. 232, have been made as double taxation relief arrangements and it is expedient that those arrangements should have effect for the purpose of section 49 IRO.

6. The contents of Article 11 of the Ethiopia Agreement and Article 9 of the Maldives Agreement are similar.

7. Members may refer to the LegCo Brief issued by the Transport and Housing Bureau on 18 November 2009 (File Ref: EDB CR 17/936/89(04)) for further information.

8. L.N. 231 and L.N. 232 will come into operation on 18 January 2010.

Air Pollution Control Ordinance (Cap. 311)

Air Pollution Control (Motor Vehicle Fuel) (Amendment) Regulation 2009 (L.N. 233)

9. The Amendment Regulation is made by the Secretary for the Environment (SEN) under section 43 of the Air Pollution Control Ordinance (Cap. 311) (APCO) after consultation with the Advisory Council on the Environment (the Council).

10. Under section 43(1)(p) of APCO, SEN may, after consultation with the Council, propose amendments to the Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap. 311 sub. leg. L) (the Principal Regulation) to introduce specifications for the kinds of motor vehicle fuel. According to section 43(3) of APCO, where fuel is subject to the requirements imposed by regulations made under section 43, the regulations may impose labelling requirements.

11. The Amendment Regulation introduces, among others, a new Part V and two new schedules to the Principal Regulation for the specifications for a kind of fuel, namely, biodiesel, which is a fuel comprising certain kinds of esters derived from vegetable oils or animal fats and is a renewable fuel. Various specifications for biodiesel in accordance with European standards are set out in the Amendment Regulation. According to the LegCo Brief, replacing petroleum diesel with biodiesel helps reduce emission of greenhouse gas, such as carbon dioxide. Biodiesel may be used in pure form or in blends with motor vehicle diesel. To promote the use of biodiesel as vehicle fuel, biodiesel does not attract any duty in Hong Kong.

12. Under the Amendment Regulation, any motor vehicle biodiesel supplier or retailer knowingly supplies or distributes, sells or offers for sale any substance that is not motor vehicle biodiesel as motor vehicle biodiesel commits an offence and is liable to a fine of \$50,000. The person charged is presumed to know that the substance being sold or offered for sale, supplied or distributed is not motor vehicle biodiesel unless there is evidence to the contrary. However, the person does not commit an offence if he purchased or obtained the substance with a warranty or other written evidence from the supplier that the substance was motor vehicle biodiesel and at the time of the offence, the substance was in the same state as it was at the time of delivery.

13. The Amendment Regulation requires any person who knowingly supplies, distributes, sells or offers for sale any motor vehicle biodiesel with ester content over 5% to display prominently a motor vehicle biodiesel label with the prescribed information and in the prescribed format on a motor vehicle biodiesel dispenser or a container other than the dispenser. Anyone who fails to display a label commits an offence and is liable to a fine of \$50,000.

14. The Amendment Regulation provides that a motor vehicle biodiesel supplier or retailer who knowingly supplies or distributes, sells or offers for sale, any motor vehicle biodiesel containing an ester content that is more than 1% higher or lower than the percentage of ester content indicated on the motor vehicle biodiesel label commits an offence and is liable to a fine of \$50,000. The person charged is, unless there is evidence to the contrary, presumed to have known the ester content of the motor vehicle biodiesel being sold or offered for sale, supplied or distributed. However, the person does not commit an offence if he purchased or obtained the motor vehicle biodiesel with a warranty or other written evidence from the supplier that the motor vehicle biodiesel contains an ester content of the percentage as indicated on the label and at the time of the offence, the motor vehicle biodiesel was in the same state as it was at the time of delivery.

15. According to the LegCo Brief, while vehicle manufactures generally accept the use of motor vehicle diesel containing up to 5% biodiesel to power their vehicles, a higher biodiesel content may cause incompatibility problems to certain vehicle models. The labelling requirements enable drivers to decide on the use of biodiesel-containing motor vehicle diesel, and alert drivers that such diesel may cause incompatibility problems.

16. The Administration has, according to the LegCo Brief, consulted biodiesel suppliers, oil companies and The Motor Traders Association of Hong Kong. They have no objection to the proposed regulatory control on motor vehicle biodiesel.

17. The Panel on Environment Affairs was briefed by the Administration on the proposal at its meeting on 25 May 2009. The Panel generally supported the proposals. To strengthen vehicle owners' confidence in biodiesel and create a biodiesel market in Hong Kong, some Members suggested that the Government fleet should switch to biodiesel. Apart from providing assistance to facilitate the supply and manufacture of vehicle biodiesel in Hong Kong, consideration should be given to offering financial incentives to vehicle owners to encourage them to switch to biodiesel. Some Members further pointed out that the selling price of biodiesel should be attractive enough to motivate drivers to switch to biodiesel. Safeguard should also be put in place to avoid monopolization of the supply of biodiesel, as there was only one supplier of biodiesel in Hong Kong at the moment. Members may refer to the minutes of the meeting for further information on the discussion (LC Paper No. CB(1)2196/08-09).

18. Members may refer to the LegCo Brief issued by the Environmental Protection Department in November 2009 (File Ref: EP 21/L3/16) for further information on the Amendment Regulation.

19. The Amendment Regulation will come into operation on 1 July 2010.

Public Finance Ordinance (Cap. 2)

Fees for Official Signatures and Miscellaneous Services (Amendment) Notice 2009 (L.N. 234)

20. L.N. 234 is made by the Secretary for Financial Services and the Treasury under section 17C of the Public Finance Ordinance (Cap. 2) to amend the Schedule to the Fees for Official Signatures and Miscellaneous Services Notice (Cap. 2 sub. leg. M), which prescribes the fees payable for providing certifications, alterations and duplicates of official documents by a public officer. According to the LegCo Brief, the fees have remained the same since October 1994.

21. On the basis of the results of the costing exercises at 2009–2010 price level, and in line with the "user pays" principle (i.e. full cost recovery), the fees in items 2 to 4 in the Schedule to the Notice are changed as follows –

Item	Description of Fees	Existing Fees	Updated cost recovery level at 2009-2010 Price Level	Proposed Fees	Changes
2	The issue of a duplicate of any document by a public officer	\$140	112%	\$125	-\$15 (-11%)
3	Any alteration, transfer or endorsement of or addition to a document by a public officer	\$140	72%	\$155	+\$15 (+11%)
4	The certification of a true extract of any document, book, record or instrument by a public officer	\$140	53%	\$160	+\$20 (+14%)

22. The Administration has provided an information note on 21 October 2009 to the Panel on Financial Affairs on the proposed revision of the three government fees (LC Paper No. CB(1)109/09-10(01)). The Panel did not request to discuss the paper.

23. Members may refer to the LegCo Brief issued by the Financial Services and the Treasury Bureau in November 2009 (File Ref.: F1/4 Pt.6) for further information.

24. The Notice will come into operation on 15 January 2010.

Concluding Remarks

25. No difficulties in the legal and drafting aspects on the above items of subsidiary legislation have been identified.

Prepared by

LEE Ka-yun, Kelvin
Assistant Legal Adviser
Legislative Council Secretariat
25 November 2009