

**Subcommittee on Dutiable Commodities
(Exempted Quantities) (Amendment) Notice 2010**

**The Administration's response to follow-up issues
arising from the meeting on 27 April 2010**

Introduction

At the meeting of the Subcommittee on Dutiable Commodities (Exempted Quantities) (Amendment) Notice 2010 (the Amendment Notice) held on 27 April 2010, Members requested the Administration to consider specifying in the Amendment Notice 20 instead of the proposed 19 sticks as the new quantity of duty-free cigarettes allowed to be brought into Hong Kong for own use by a passenger. This paper sets out the Administration's detailed response to the proposal.

Tobacco Control Policy and Measures

2. The Amendment Notice serves to give effect to the proposal made by the Financial Secretary in the Budget 2010-11 to abolish duty-free concessions on tobacco products for incoming passengers to Hong Kong as part of the government's tobacco control policy and measures to further safeguard public health. We therefore need to take into account the overall background of our tobacco control policy and the rationale of the currently proposed implementation arrangements when we consider Members' proposed amendments.

3. The Government has all along adopted a progressive approach in implementing its tobacco control policy. Over the years, it has made multi-pronged efforts encompassing publicity, education, legislation, enforcement, taxation as well as promotion of smoking cessation to contain the proliferation of tobacco use and reduce the impact of passive smoking on the public. It is now commonly acknowledged among members of the public that smoking and passive smoking are hazardous to health and should be controlled.

4. As the World Health Organization (WHO) made clear, imposing duties on tobacco products to reduce tobacco consumption is an effective measure for controlling tobacco use. With the support of the Legislative Council, the tobacco duty in Hong Kong was increased by 50% with effect from 25 February 2009. This has encouraged many smokers to quit smoking or smoke less. The quantity of duty-paid cigarettes has also decreased substantially by 23.8%

from 3,790,221,000 sticks in 2008 to 2,887,303,000 sticks in 2009. Meanwhile, despite an increase in the number of illicit cigarette cases detected by the Customs and Excise Department (C&ED) in 2009 as compared with the same period in 2008, the quantity of illicit cigarettes seized did not record a corresponding surge.

5. Other than duty-paid cigarettes sold locally, duty-free cigarettes constitute another major source of cigarettes in Hong Kong, and are not subject to variations of our tobacco duty. According to our understanding, the total quantity of duty-free cigarettes brought into Hong Kong through various points of entry in 2009 was 1,639,646,000 sticks¹, representing only a slight decrease of 1.4% over 2008.² For better protection of public health, the Financial Secretary has therefore proposed in the Budget 2010-11 the abolition of duty-free concessions for tobacco products brought in by incoming passengers to complement the imposition of tobacco duty and to reduce the source of duty-free cigarettes.

Implementation arrangements for the abolition of duty-free concessions on tobacco products brought into Hong Kong

6. From the perspective of containing tobacco use and safeguarding public health, the Administration considers that the basic premise, as a matter of principle, should be a complete abolition of duty-free concessions on tobacco products for incoming passengers to Hong Kong. In other words, all tobacco products brought into Hong Kong should be subject to tobacco duty just as those sold locally. The Administration has nonetheless taken note that Hong Kong's very busy control points have to handle a daily arrival of about 300,000 passengers, of whom many are day-trippers travelling between the Mainland and Hong Kong, and that incoming passengers who are smokers may bring with them small amounts of unconsumed tobacco products for own use. Requiring all such passengers to make a declaration and pay duty will cause inconvenience to travelers, affect the passenger flow at points of entry, and put much strain on the law enforcement resources.

7. As such, on the premise of abolishing duty-free concessions on tobacco products for incoming passengers to Hong Kong, the Administration has proposed to exempt passengers carrying opened packets of cigarettes or small amounts of other manufactured tobacco products for own consumption from

¹ The quantity of duty-free cigarettes sold at the arrival halls of control points in Hong Kong (include airport, Lo Wu, Hung Hom, Lok Ma Chau Spur Line, China Ferry Terminal and Macau Ferry Terminal); the departure halls of control points in the Mainland (include Luohu, Huanggang and Futian); and the departure hall of control point in Macau (Macau-HK Ferry Terminal).

² The figure of 2008 is 1,662,546,000 sticks.

paying tobacco tax. This is meant to cater for the actual circumstances and prevent any adverse impact on the operation at the various points of entry. Accordingly, the Amendment Notice 2010 specifies that incoming passengers to Hong Kong may carry up to 19 cigarettes, or one stick or 25 grammes of cigar, or 25 grammes of other manufactured tobacco products free of duty into Hong Kong for own use. They have to pay duty if the tobacco products they carry are in excess of the quantity permitted by the law. Moreover, the current legislation provides that passengers must have spent more than 24 hours outside Hong Kong before they can enjoy duty-free concessions for tobacco products. On the basis of the aforementioned considerations, we have proposed in the Amendment Notice to remove this time requirement in-order to not to cause disturbance to the public and put extra strain on law enforcement resources.

8. Under Section 8 of the Smoking (Public Health) Ordinance, all cigarettes currently on sale in Hong Kong must be packed in a packet of at least 20 sticks. According to information gathered by the C&ED, the vast majority of cigarettes sold on the international market are also in a standard packing of 20 sticks per pack. Capping the maximum number of cigarettes allowed to be brought into Hong Kong free of duty at 19 sticks (i.e. in an opened packet with at least one stick consumed) is meant to reflect the intention that only passengers carrying small amounts of unconsumed cigarettes in opened packets for own use will be exempted from tax. Furthermore, the new measure is not intended to encourage passengers to buy and bring into Hong Kong whole packs of unsealed or unconsumed duty-free cigarettes. Capping the maximum number of tax free cigarettes at 19 sticks or less than a pack is therefore in line with the policy intent of eliminating the source of duty-free tobacco products.

9. Meanwhile, C&ED's statistics show that duty-free cigarettes constitute a source of illicit cigarettes. The proposed new measure that caps the maximum number of tax-free cigarettes at 19 sticks ensures that cigarettes brought into Hong Kong by passengers will only be exempted from duty if the packets are opened with at least one stick consumed. This will reduce the resale value of such cigarettes and significantly minimize the chance of duty-free cigarettes legally brought in through control points being illegally resold as illicit cigarettes. Taking into account the fact that the Amendment Notice also recommends to remove the 24-hour rule on time spent outside Hong Kong for entitlement of the duty-free concessions on tobacco products, the Administration considers that setting the tax free ceiling at 19 sticks would effectively prevent law-breakers from smuggling un-opened duty-free cigarettes into Hong Kong for resale as illicit cigarettes in the so-called "ants-moving" manner, i.e. in a small quantity each time yet with frequent trips in and out of Hong Kong's control points every day .

10. The WHO has clearly stated that reducing the supply of duty-free tobacco and eliminating the illicit trade of tobacco products are important components of tobacco control efforts. The WHO's Framework Convention on Tobacco Control therefore requires all member states to seek to reduce the source of duty-not-paid cigarettes and combat the illicit trade of tobacco products. The Amendment Notice, if approved by the Legislative Council, will enable the tobacco control measures in Hong Kong to better meet the requirements of the WHO and significantly facilitate the crackdown on illicit cigarettes. This will help minimize the harmful effects of tobacco on the public and further safeguard public health.

The Administration's position

11. In view of the policy intent to abolish the duty-free concessions on tobacco products brought into Hong Kong, as well as the need to minimize the inconvenience caused to incoming passengers while not creating a loophole for illicit cigarettes, the Administration has reservations over Member's proposal to change the maximum number of cigarettes allowed to be brought into Hong Kong by incoming passengers free of duty for own use from 19 sticks to 20.

Food and Health Bureau
Customs and Excise Department

May 2010