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**Subcommittee on
Public Revenue Protection (Dutiable Commodities) Order 2011**

Background brief

Purpose

This paper provides background information on the Public Revenue Protection (Dutiable Commodities) Order 2011. It also summarizes Members' views and concerns expressed when examining the Dutiable Commodities (Amendment) Bill 2009 and the Dutiable Commodities (Exempted Quantities) (Amendment) Notice 2010.

Background

2. Over the years, the Government has been strengthening its tobacco control in an effort to minimize the harmful effects of tobacco, by discouraging smoking, containing the proliferation of tobacco use, and enforcing a smoking ban to reduce public exposure to second-hand smoke. To achieve this, the Administration adopts a step-by-step and multi-pronged approach comprising legislation, taxation, publicity, education, enforcement and smoking cessation.

3. Further to the enactment of the Smoking (Public Health) (Amendment) Ordinance 2006 and the implementation of the smoking ban on 1 January 2007, the Administration has taken a series of measures in a progressive manner to strengthen tobacco control. These measures included: -

- (a) effecting new graphic warning and packaging restrictions on tobacco products in October 2007;

- (b) prohibiting the display of tobacco advertisements at retail dealers with two employees or less from 1 November 2007;
- (c) commencing a three-year pilot programme of community-based smoking cessation services based on evidence-based service model in collaboration with a non-government organization in January 2009;
- (d) raising the duty for tobacco products by 50% from 25 February 2009;
- (e) extending smoking ban to the six types of qualified establishment namely bars, clubs, nightclubs, bathhouses, massage establishments, and mahjong and tinkau parlours hitherto exempted from the ban from 1 July 2009;
- (f) implementing the fixed penalty system for smoking offences in accordance with the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) from 1 September 2009;
- (g) extending smoking ban to the first phase of 48 covered public transport interchanges (PTIs) and bus terminus with superstructures from 1 September 2009;
- (h) effecting the prohibition of tobacco advertisement display at hawker stalls from 1 November 2009;
- (i) abolishing the duty-free concessions on tobacco products for incoming passengers (except for small quantity for self-consumption) at border entries from 1 August 2010; and
- (j) extending smoking ban to 129 PTIs in open air and 2 PTIs with cover from 1 December 2010.

4. According to the Administration, the World Health Organization has made clear that increasing tobacco duties is an effective means of tobacco control. To further protect public health from the harmful effects of tobacco, the Financial Secretary has, in his 2011-2012 Budget, proposed to increase the duty on cigarettes by \$0.5 per stick or 41.5 %. Duties on other tobacco products will also be increased by the same percentage.

Public Revenue Protection (Dutiable Commodities) Order 2011 (L.N. 32)

5. In order to give immediate effect to increase the duty rates on tobacco, the Chief Executive (CE), after consultation with the Executive Council, made the Public Revenue Protection (Dutiable Commodities) Order 2011 (the Order) under section 2 of the Public Revenue Protection Ordinance (Cap. 120) (PRPO) on 23 February 2011.

6. Section 2 of PRPO provides, among other things, that if the CE approves of the introduction into the Legislative Council (LegCo) of a bill whereby, if the bill were to become law any duty, tax, fee, rate, etc., would be imposed, removed or altered, the CE may make an order giving full force and effect of law to all the provisions of the bill. The Order is made to give full force and effect to all the provisions of the bill contained in the Schedule to the Order. The bill will be introduced into LegCo in accordance with the normal legislative procedures.

7. The Order is a temporary measure. Under section 5(2) of PRPO, the Order shall come into force immediately upon signing by the CE and shall expire and cease to be in force –

- (a) upon the notification in the Gazette of the rejection by LegCo of the bill in respect of which the Order was made; or
- (b) upon the notification in the Gazette of the withdrawal of the bill or the Order; or
- (c) upon the bill, with or without modification, becoming law in the ordinary manner; or
- (d) upon the expiration of four months from the day on which the Order came into force,

whichever event first happens.

8. Under section 6 of PRPO, any duty paid under the Order in excess of the respective duty immediately after the expiry of the Order shall be repaid to the person who paid the same.

9. The bill contained in the Schedule to the Order proposes to amend Part II of Schedule 1 to the Dutiable Commodities Ordinance (Cap. 109) to increase the duty on various tobacco product by 41.5% as follows-

Tobacco Products	Existing rates (\$)	Proposed rates (\$)
(a) for each 1 000 cigarettes	1,206	1,706
(b) cigars	1,553/kg	2,197/kg
(c) Chinese prepared tobacco	296/kg	419/kg
(d) all other manufactured tobacco except tobacco intended for the manufacture of cigarettes	1,461/kg	2,067/kg

10. The Order came into force at 11 a.m. on 23 February 2011.

Views and concerns expressed by Members

Bills Committee on Dutiable Commodities (Amendment) Bill 2009

11. During the scrutiny of the Dutiable Commodities (Amendment) Bill 2009 (the Bill) which sought to increase tobacco duty by 50%, some members of the Bills Committee queried the effectiveness of the tobacco duty increase in reducing tobacco consumption and smoking prevalence. These members considered that the increase would only prompt smokers to switch to consuming illicit cigarettes, making the smuggling activities of illicit cigarettes more rampant. They expressed concern that many illicit cigarettes were counterfeit cigarettes, which posed an even greater health hazard. The Administration had undertaken to devote sufficient resources to enhance enforcement against illicit cigarette activities.

12. Some members of the Bills Committee also expressed grave concern about the impact of the tobacco duty increase on the livelihood of newspaper hawkers. The Administration advised that it was in active discussion with the trade to explore possible ways of enhancing their income, such as by permitting newspaper stalls to sell additional commodities and relaxing restrictions on the size of these stalls.

13. At the request of the Bills Committee, the Administration had undertaken to provide within one year after the enactment of the Bill information on the effectiveness of its efforts in combating illicit cigarette activities, sale figures of duty-free cigarettes, statistical changes in the number of smokers in Hong Kong and measures taken to increase the business opportunities of newspaper hawkers. The information provided by the Administration which has been circulated to members of the Panel on Financial Affairs vide LC Paper No. CB(1)2479/09-10(02) on 7 July 2010 is in **Appendix**.

Dutiable Commodities (Exempted Quantities) (Amendment) Notice 2010 (L.N. 35 of 2010)

14. During the scrutiny of the Dutiable Commodities (Exempted Quantities) (Amendment) Notice 2010 (the Amendment Notice), some members of the Subcommittee requested the Administration to consider adjusting the maximum number of duty-free cigarettes allowable for each incoming passengers from 19 sticks to 20 sticks. The Administration explained that the policy intent was to abolish duty-free concessions on tobacco products brought into Hong Kong, and the purpose of exempting a small quantity of tobacco products for own consumption was to facilitate law enforcement and minimize nuisance to incoming passengers who smoked. In response to members' request, the Administration would consider actively and carefully banning the sale of duty-free cigarettes at inbound duty-free shops.

15. Some members of the Subcommittee expressed concern about possible enforcement difficulties as incoming passengers might evade declaration and duty payment for the excessive cigarettes brought into Hong Kong. The Administration advised that incoming passengers carrying cigarettes or other tobacco products in excess of the statutory duty-free limits would need to declare the dutiable quantity. These passengers could either pay the duty or abandon the excessive amount of cigarette(s) or tobacco products to Customs under simple procedures. The Customs would conduct inspections at the boundary control points based on risk assessment. The Administration would review the enforcement situation in the light of implementation of the Amendment Notice.

The Subcommittee

16. At the House Committee meeting on 11 March 2011, Members agreed that a subcommittee should be formed to study the Order. To allow time for the Subcommittee to study the Order, the scrutiny period was extended to 4 May 2011 by resolution of the Council on 16 March 2011.

Relevant papers

Report of the Bills Committee on Dutiable Commodities (Amendment) Bill 2009

<http://www.legco.gov.hk/yr08-09/english/hc/papers/hc0612cb1-1876-e.pdf>

Report of the Subcommittee on Dutiable Commodities (Exempted Quantities)
(Amendment) Notice 2010

<http://www.legco.gov.hk/yr09-10/english/hc/papers/hc0514cb1-1867-e.pdf>

Council Business Division 1
Legislative Council Secretariat
23 March 2011

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CB(1)2479/09-10(02)

6 July 2010

Mr Noel Sung
Clerk to Panel on Financial Affairs
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr Sung,

Legislative Council Panel on Financial Affairs
Follow-up Actions

In respect of items 1, 2 and 4 in the list of follow-up actions, the Administration's response is provided in the ensuing paragraphs.

Item 1: Report in the year after increasing the tobacco duty rates by 50%

The 2009-10 Budget proposed to increase tobacco duty rates by 50%. In examining the Dutiable Commodities (Amendment) Bill 2009, the Administration, in response to the request of the Bills Committee, undertook to provide the following information to the Legislative Council within six months to one year after enactment of the Bill -

- (a) effectiveness of the Administration's efforts in combating illicit cigarette activities;
- (b) statistics on changes in the number of smokers in Hong Kong;
- (c) sales figures of duty-free cigarettes and the duty involved; and
- (d) measures taken by the Administration to increase the business opportunities of newspaper hawkers.

Effectiveness of the efforts in combating illicit cigarette activities

Since the tobacco duty rates were increased by 50% in late February 2009, the Customs and Excise Department (C&ED) has strengthened its manpower in combating illicit cigarette activities at different levels, including smuggling, storage, distribution and retail. In the light of complaints about increased peddling of illicit cigarettes and use of leaflets to promote the sale of illicit cigarettes, C&ED has enhanced intelligence collection and carried out intensive raids against such illegal activities. Between March 2009 and April 2010, the number of illicit cigarette cases detected increased by 47.8% while the quantity of illicit cigarettes seized decreased by 21.8% over the same period in the previous year (see Annex). This demonstrates that C&ED's efforts in combating illicit cigarette activities have delivered results to deter such illegal activities. In addition to enforcement actions, C&ED has also stepped up its publicity to arouse public awareness that it is against the law to buy illicit cigarettes and that there are potential hazards in consuming counterfeit cigarettes which may contain unknown ingredients.

Changes in the number of smokers

Between March 2009 and April 2010, the quantity of duty-paid cigarettes fell by 23% compared with the same period in the previous year. To track the changes in the number of smokers, a Thematic Household Survey on the health status of Hong Kong residents conducted by the Census and Statistics Department between November 2009 and February 2010 has also covered a survey on the number of smokers among Hong Kong residents. It is expected that the survey would be completed and the findings be released in the third quarter this year.

Besides, in January this year, the Department of Health commissioned the Social Sciences Research Centre of the University of Hong Kong to conduct a telephone survey on tobacco control measures. The Centre interviewed 1 797 Hong Kong residents aged 15 or above. The survey findings reveal that 38% of the respondents who were smokers one year ago has reduced or ceased smoking in the past year. Among the respondents who have reduced smoking, 54.1% and 32.4% of them indicated that it was due to the smoking ban or the increase in tobacco duty respectively. For those who have ceased smoking in the past year, 74.1% and 18.3% of them indicated that it was due to health reasons or the increase in tobacco duty respectively.

We would like to point out that the increase in tobacco duty is only one of the measures under the Administration's overall tobacco control policy. Other major areas include legislation, enforcement, control on the sale of tobacco, public education, public awareness of the adverse effect of tobacco, and promotion of tobacco cessation services, etc. The Administration will continue to monitor the results of different measures (including the increase in

tobacco duty) under the tobacco control policy with a view to reviewing their effectiveness and to further considering how to enhance efforts in tobacco control.

Statistics on duty-free cigarettes

Between March 2009 and April 2010, a total of 1 916 848 000 sticks of duty-free cigarettes were brought into Hong Kong (sold at the duty-free shops in the arrival halls of the control points in Hong Kong and the duty-free shops in the departure halls of the control points in Lo Wu, Huanggang, Futian and Macao), representing a slight year-on-year decrease of 1.5%. The duty involved was approximately \$2,311.7 million.

Measures to increase the business opportunities of newspaper hawkers

To address the concern of newspaper hawkers' associations about possible decrease in incomes of licensed newspaper hawkers as a result of the increase in tobacco duty, the Food and Environmental Hygiene Department (FEHD) has relaxed the restriction on the sale of other goods at newspaper stalls. In September 2009, FEHD issued letters to all licensed newspaper hawkers informing them that they could apply for permission to sell four additional types of goods at their stalls, namely bottled distilled water, red packets, trinkets and prepaid SIM cards. At the same time, FEHD has also relaxed the restriction on the stall space for selling the additional goods by increasing the proportion of such space from not exceeding 25% of the total stall area to not more than 50%. In addition, FEHD has all along allowed newspaper hawkers to display at their stalls lawful advertisements for the permitted goods specified in their hawker licences.

Item 2 : Depreciation allowances in respect of machinery or plants under "import processing" arrangements

At the Panel meeting on 14 December 2009, Members requested the Administration to provide information on the number of tax assessment cases in the past few years where Hong Kong enterprises had been denied depreciation allowances under "import processing" arrangements pursuant to section 39E of the Inland Revenue Ordinance. As the Inland Revenue Department does not keep statistical breakdown on cases with claims of allowances rejected, the requisite information could not be provided.

Item 4 : Legislative proposals to enhance the efficiency of the existing tax appeal mechanism

At the Panel meeting on 4 January 2010, the Administration briefed Members on the legislative proposals to enhance the efficiency of the existing tax appeal mechanism. ~~The Administration originally planned to introduce~~

~~the relevant legislative amendments into the Legislative Council in the latter half of the current legislative session. However, in the course of drafting the legislative amendments, a few unforeseeable legal issues arise and require thorough deliberation to ensure that the amended legislation would achieve our policy objective of improving the efficiency of the tax appeal mechanism. In the light of the current progress, the Administration now plans to introduce the relevant legislative amendments into the Legislative Council in the 2010-2011 legislative session. As tax appeal cases could still be handled under the existing tax appeal mechanism, the above revised legislative timetable is not expected to affect the public at large. We will provide the supplementary information as requested by the Panel when we submit the legislative amendments to the Legislative Council.~~

Yours sincerely,



(Ms Shirley Kwan)
for Secretary for Financial Services
and the Treasury

Encl

Annex

Statistics on Cases of Illicit Cigarettes Detected by C&ED

	March 2008 – April 2009	March 2009 - April 2010 (% of increase/decrease compared with the same period in the previous year)
Cases of smuggling, storage, distribution and peddling of illicit cigarettes	2 288 cases	3 383 cases (+47.8%)
Number of persons arrested	1 707	2 756 (+61.4%)
Number of illicit cigarettes seized	89.5 million sticks	69.9 million sticks (-21.9%)