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Paper for the House Committee

Report of Subcommittee on Rating (Exemption) Order 2012

Purpose

This paper reports on the deliberations of the Subcommittee on Rating (Exemption) Order 2012 (the Subcommittee).

Background

2. In the 2012-2013 Budget, the Financial Secretary (FS) announced seven one-off measures to help ease the pressure of the economic downturn, including the measures the Chief Executive (CE) proposed in his Policy Address. One of the measures is the proposal to waive rates for 2012-2013[1], subject to a ceiling of $2,500 per quarter for each rateable property. The Administration has estimated that about 90% of properties, or 2.7 million properties, will be subject to no rates in the new financial year. This proposal will cost the Government $11.7 billion.

Rating (Exemption) Order 2012

3. The Rating (Exemption) Order 2012 (the Order) was made by the CE in Council under section 36(2) of the Rating Ordinance (Cap. 116) to give effect to the rates concession proposed in the 2012-2013 Budget.

4. The Order declares that all tenements are exempted from the payment of rates in respect of all quarters in the period from 1 April 2012 to 31 March 2013 wholly, if the amount of rates payable for the quarter is $2,500 or less,

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[1] Comprehensive Social Security Assistance recipients who do not have to bear rates will not obtain any pecuniary advantage from the measure of waiving rates.

or up to $2,500 if the amount is more than $2,500. The amount of $2,500 is reduced on a pro rata basis if rates are payable for only part of the period.

5. The Order was gazetted on 3 February 2012 and tabled at the Legislative Council (LegCo) meeting on 8 February 2012. Under section 1 of the Order, it comes into operation on 1 April 2012.

The Subcommittee

6. At the House Committee meeting held on 10 February 2012, Members agreed to form a subcommittee to study the Order. Hon Mrs Sophie LEUNG was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in **Appendix**. The Subcommittee has held three meetings with the Administration to examine the Order.

7. To allow sufficient time for the Subcommittee to study the Order, the scrutiny period of the Order was extended to 28 March 2012 by resolution of the Council on 29 February 2012.

Deliberations of the Subcommittee

8. Some members of the Subcommittee including Ir Dr Raymond HO generally support the Order as this would help ease the hardship and tax burden of the middle class. However, some other members including Hon Albert CHAN has questioned the justifications for the rates exemption as it is unfair to the so-called "N-nothing" class who do not benefit from any relief measures announced in the 2012-2013 Budget. The major concerns raised by members are summarized in the ensuing paragraphs.

<u>Impact on ratepayers and the needy</u>

9. Noting that some 180 organizations are expected to receive rates concession of over $1 million in 2012-2013 and that the total sum of the highest amounts of rates concession expected to be received by the top ten organizations (excluding organizations providing public housing) is about $224.7 million, Hon Albert CHAN and Hon LEE Cheuk-yan have criticized that the proposed measure benefits mainly the property developers and investors who own the majority of properties in Hong Kong. These members urge the Administration to introduce more relief measures to support the disadvantaged groups, such as the low-income earners renting partitioned rooms in old buildings.

10. The Administration has advised that rates are one of Hong Kong's indirect taxes levied on properties and the rates exemption will benefit all ratepayers, including the owner or tenant of a property. The basket of initiatives announced by FS in the 2012-2013 Budget would help ease the pressure of the economic downturn, benefitting people from all sectors of the community, including the disadvantaged. For the proposed rates concession, it is estimated that about 94% of ratepayers would be relieved from the burden of paying rates in the financial year 2012-13.

11. Some members of the Subcommittee including Ir Dr Raymond HO and Hon Starry LEE consider that the "unused" amount of rates concession under the ceiling of $2,500 per quarter for each rateable property should be allowed to carry forward for paying the rates in the future within a certain time limit, similar to the arrangement for the electricity charges subsidy introduced by the Government in recent years. These members call on the Administration to consider introducing a carry-forward arrangement for rates concession in the future, in particular for individuals and small and medium enterprises owning one property for self-use.

12. The Administration has explained that the carry-forward arrangement for electricity charges subsidy is based on environmental concerns. Since any unused subsidy in a month can be carried forward under the same account till the expiry of a three-year period or the close of the account, whichever is the earlier, users will have sufficient time to fully utilize the subsidy and there would be no need for them to increase normal electricity consumption to exhaust the subsidy. Rates concession is a one-off measure proposed in the light of the overall economic situation, the livelihood burden of the people and the Government's fiscal situation of the relevant financial year. The Government does not intend to introduce a carry-forward arrangement as it would entail additional cost of a recurrent nature. Moreover, such an arrangement might involve substantial adjustments to the accounting system of the Rating and Valuation Department (RVD) over a period of at least six months, thus delaying the commencement of the Order.

13. Hon LEE Cheuk-yan has expressed concern that the rates exemption does not benefit the tenants in cases where the rent payable to landlords includes an element of the rates payable on the property. The Administration has responded that whether the rent is inclusive of rates only reflects the trend of the prevailing property rental market, and that the terms of tenancy agreements may vary. The owner and the tenant may negotiate and agree on whom the liability to pay rates would fall on. If rates are to be paid by the owner, whether the owner is required to pass on any rates concession to the tenant will depend on the terms of the tenancy agreement. As rates concession is not an entirely new measure, the Administration

considers that owners and tenants should have acquired experience over the years to work out mutually acceptable arrangements.

Proposed amendments to the Order

14. Hon Albert CHAN has asked whether amendments could be made to the Order to provide that an individual owner (be it a natural person or a corporate) of a number of tenements who is liable to pay rates may only have the benefit of rates concession up to a certain number of tenements owned by him. The legal adviser to the Subcommittee has advised that pursuant to section 34(2) of the Interpretation and General Clauses Ordinance (Cap.1), the subsidiary legislation may be amended in any manner whatsoever consistent with the power to make such subsidiary legislation. Under section 40(2) of Cap.1, where any Ordinance confers power to grant a licence, Government lease, permit, authority, approval or exemption, such power shall include power to impose reasonable conditions subject to which such licence, Government lease, permit, authority, approval or exemption may be granted. By virtue of the application of section 40(2) of Cap.1, the power of CE in Council under section 36(2) of the Rating Ordinance to declare certain class or classes of tenements to be exempted from the payment of rates wholly or in part includes a power to impose reasonable conditions subject to which the exemption may be granted. As such, the power of LegCo to amend the Order under section 34(2) of Cap.1 includes the power to impose reasonable conditions subject to which the exemption may be granted. However, any proposed amendment is also subject to the charging effect restrictions provided in Rule 31(1) of the Rules of Procedure.

15. Hon Albert CHAN expresses the view that the proposed rates exemption is a form of "transfer of benefits" to private consortia. In order to safeguard against the "transfer of benefits" by the Government, he has proposed to amend the Order to provide that the number of tenements in respect of which any one person is liable for payment of rates under the Rating Ordinance (whether he is the owner or occupier) to be exempted from payment of rates shall not exceed three.

16. The Administration has advised that the Order is made under section 36(2) of the Rating Ordinance on the basis of tenements. Same as the rating systems in other jurisdictions, the valuation and collection of rates are also conducted on the basis of individual tenements. Hon Albert CHAN's proposed amendments to the order would entail difficulties in a number of areas during implementation. For instance, when a ratepayer is responsible for paying the rates of more than three tenements, the Administration would need to consider how the tenements would be selected to enjoy the rates exemption, and how the share of ownership under different circumstances

(e.g. joint ownership, ownership through holding companies or ownership through trustees) would be calculated. In addition, the proposed amendments have not specified the relevant dates to determine the ownership or the right of occupation of a property for the purpose of rates concession in each quarter, nor the arrangements for rates concession when there is a change in ownership or right of occupation after the relevant dates. The Administration is of the view that the proposed amendments could hardly be enforced in the absence of clear and certain exemption criteria.

17. The Administration has pointed out that the database of the RVD only maintains records of ratepayers, who can be owners, tenants or their agents. RVD does not have information on whether a ratepayer is the owner or occupier of the property concerned. In order to implement Hon Albert Chan's proposal before rates concession is offered, RVD needs to request ratepayers of over 3 million properties to provide their identity information, submit documents to prove themselves as the owners or occupiers of the tenements concerned (e.g. lease documents, tenancy agreements or other supporting documents) and provide their consent for RVD to cross-check the data with records held by other Government departments so as to ensure the accuracy of the identity information. For ratepayers with more than three tenements under their names, they need to indicate in their replies to RVD whether they agree that the tenements concerned will receive rates concession and whether the concession will be counted against the owners' or occupiers' entitlement. If a single ratepayer does not give consent or does not make any response, RVD cannot start the relevant cross-checking process to implement Hon Albert Chan's proposal. The situation will be more complicated in case of joint ownership and ownership through trustee. To accurately reflect the latest status of ownership and occupation of the properties, the owners or occupiers also need to provide updates to RVD whenever there is any change in status in order to enable RVD to determine whether the relevant tenements still enjoy quota for rates concession.

18. From the public finance perspective, the Administration has advised that under the existing system and arrangement, RVD does not have the information to estimate the amount of rates concession to be saved under Hon Albert Chan's proposal. On the other hand, if the proposed amendments were to be implemented, RVD needs to put in place a new computer system to store and process registrations and identity information collected during the verification process. The existing billing system of RVD will need to be substantially revamped as well to cope with the complicated arrangement proposed. In addition, a dedicated team has to be set up to carry out the measure and several hundreds of temporary staff have to be employed for inputting the verified information collected from some 2.3 million of forms into the computer. RVD also needs to increase the manpower resources to

handle additional workload arising from the anticipated large number of applications for change of ratepayers' particulars and account adjustments triggered by the proposed arrangement. According to RVD's rough estimate, the implementation of Hon Albert Chan's proposal may cost over $60 million and will take at least one year to complete the preparatory work and procedures.

19. In view of the above implementation difficulties, the Administration considers that Hon Albert CHAN's proposal would cause delay to the commencement of the Order, thus rendering it impossible for all ratepayers to obtain rates concession with effect from 1 April 2012. It is also for certain that the rates concession cannot be implemented in the financial year 2012-2013. The verification procedures will also cause inconvenience to ratepayers. As regards individuals or business establishments renting properties and are liable for the payment of rates under their tenancy agreements, there would be occasions that they could not benefit from the proposed arrangement if the owners were only allowed to enjoy rates concession for up to three tenements. Furthermore, the proposal cannot tackle the problem of owners or occupiers registering their properties under different ratepayer's names in order to obtain rates concession.

20. The Subcommittee notes that the rates concession to be implemented by the Order is one of the one-off measures proposed by FS in his 2012-2013 Budget to provide timely relief to the public, having regard to comments received during Budget consultation, the prevailing economic conditions and the Government's fiscal position, etc. Ir Dr Raymond HO and Hon Starry LEE are of the view that Hon Albert CHAN's proposed amendments would defeat the original purpose of the measure as ratepayers would no longer be able to obtain rates concession in a timely manner. As the proposal could not tackle the problem of owners or occupiers holding properties under different names, it might not achieve the purpose to safeguard against the "transfer of benefits" to private consortia. The proposal is also not cost-effective and would entail additional manpower and public expenditure. Hon Alan LEONG opines that the criteria for exclusion as proposed by Hon Albert CHAN is somewhat arbitrary. The proposal has not stipulated the criteria for exemption in clear and certain terms and would give rise to practical difficulties during implementation.

21. While the majority of members are not in favour of Hon Albert CHAN's proposed amendments, they suggest that the Administration should review the intended purpose of the rates concession taking into account the views expressed by members when it plans to introduce the measure again in the future. The Administration has responded that the proposed arrangement of rates concession is introduced in the light of the feedback

received in the 2012-2013 Budget's consultation exercise and that the public have been expecting this concession, as announced in this year’s Budget, to be implemented on the same basis as in the past. The concerns expressed by members might have impact on the fundamentals of the rates concession arrangement affecting the public, and this would need careful considerations by all concerned.

22. Hon Albert CHAN has indicated his intention to move a motion to amend the Order at the Council meeting on 28 March 2012.

Advice sought

23. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
21 March 2012

Appendix

Subcommittee on Rating (Exemption) Order 2012

Membership List

Chairman	Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Members	Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
	Hon LEE Cheuk-yan
	Hon Starry LEE Wai-king, JP
	Hon Alan LEONG Kah-kit, SC
	Hon Albert CHAN Wai-yip
	(Total : 6 members)
Clerk	Ms YUE Tin-po
Legal Adviser	Miss Kitty CHENG