

立法會
Legislative Council

LC Paper No. LS41/11-12

Paper for the Subcommittee on Rating (Exemption) Order 2012

Amendment to the Rating (Exemption) Order 2012 (L.N. 14 of 2012)

Background

The Rating (Exemption) Order 2012 (L.N. 14 of 2012) ("the Exemption Order") was made by CE in Council under section 36(2) of the Rating Ordinance (Cap. 116) to give effect to the rates concession proposed in paragraph 59(1) of the 2012-2013 Budget Speech. The Exemption 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, or up to \$2,500 if the amount is more than \$2,500. The Exemption Order will come into operation on 1 April 2012.

2. At the meeting of the Subcommittee on Rating (Exemption) Order 2012 held on 23 February 2012, Hon Albert Chan Wai-yip enquired about whether amendments to the Exemption Order could be made by LegCo to provide for a condition for the rates concession in that an individual owner or occupier (be it a natural person or a corporate) of more than three tenements who are liable to pay rates may only have the benefit of rates concession up to three tenements owned or occupied by him. The legal adviser to the Subcommittee was asked to advise on the matter.

Relevant issues

LegCo's power to amend subsidiary legislation

3. Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), where subsidiary legislation has been laid on the table of the Legislative Council under section 34(1) of Cap. 1, LegCo may, by resolution passed at a LegCo sitting, provide that such subsidiary legislation shall be amended in any manner whatsoever consistent with the power to make such subsidiary legislation.

4. LegCo's power to amend subsidiary legislation is also subject to the charging effect restrictions provided in Rule 31(1) of the Rules of Procedure ("ROP").

Whether a condition may be imposed on the rates exemption

5. 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.

6. By virtue of the application of section 40(2) of Cap. 1, it would appear that 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 Exemption Order under section 34(2) of Cap. 1 includes the power to impose reasonable conditions subject to which the exemption may be granted.

Conclusion

7. While the amendment to the Exemption Order to be proposed by Hon Albert Chan may be permissible under section 34(2) of Cap. 1, such motion or amendment must also be consistent with the provisions of RoP. In particular, consideration should be given to Rule 31(1) of RoP, which provides the following criteria with regard to the admissibility of any motion or amendment -

"A motion or an amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by -

- (a) the Chief Executive; or
- (b) a designated public officer; or
- (c) a Member, if the Chief Executive consents in writing to the proposal."

Prepared by

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