

President's ruling on Hon Albert CHAN's proposed resolution to amend the Rating (Exemption) Order 2012

1. Hon Albert CHAN has given notice to move a proposed resolution to amend the Rating (Exemption) Order 2012 ("the Order") at the meeting of the Legislative Council ("LegCo") of 28 March 2012. In considering whether the proposed resolution is in order under the Rules of Procedure, I invited the Administration to comment on the proposed resolution and Mr CHAN to respond to the Administration's comments.

The Order

2. In the 2012-2013 Budget, the Financial Secretary announced seven one-off measures to help ease the pressure of the economic downturn. One of these measures is the proposal to waive rates for 2012-2013, subject to a ceiling of \$2,500 per quarter for each rateable property. The Administration estimates that about 90% of properties, or 2.7 million properties, will be subject to no rates in the new financial year.

3. The Order was made by the Chief Executive in Council under section 36(2) of the Rating Ordinance (Cap. 116) ("RO") to give effect to the above rates concession proposal. The Order was gazetted on 3 February 2012 and tabled in Council on 8 February 2012. 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, 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 a quarter. Under section 1 of the Order, it will come into operation on 1 April 2012.

Hon Albert CHAN's proposed resolution

4. Counsel to the Legislature advises me that Hon Albert CHAN's proposed resolution seeks to amend the Order to add a condition that the number of tenements in respect of which any one person is liable for payment of rates on 1 April 2012 (whether he is the owner or occupier) to be exempted from payment of rates must not exceed three in each quarter.

The Administration's views

5. The Administration submits that the proposed resolution, if implemented, would impose a new and distinct function on the Rating and Valuation Department ("RVD") and the performance of the new function will require additional public expenditure of approximately \$48 million and such amount is not nominal or negligible. The Administration therefore argues that the proposed resolution has a charging effect within the meaning of Rule 31(1) of the Rules of Procedure¹.

The new function

6. The Administration explains that the database of RVD currently maintains records of the payers of rates, who can be owners or occupiers, and that a person may use different identities to own different tenements and to enter into different tenancy agreements/agency arrangements. There is no provision under RO which obliges RVD to cross-check its records of the payers of rates of various tenements to verify whether the ownerships, occupations and agency arrangements of certain tenements are related to the same person.

7. The Administration further explains that to implement Hon Albert CHAN's proposed resolution and also to guard against possible abuses which would result in loss of government revenue, RVD would need to take up a new function to ensure that rates concession is only provided for eligible payers (i.e. those who are the owners or occupiers of more than three tenements will only receive rates concession for up to three tenements). In this connection, RVD will need to verify the identity information of each and every payer of rates as at 1 April 2012, to obtain their consent for RVD to cross-check their identity information with the data held by other government departments, and to request those payers with more than three tenements under their names to elect the three tenements that will enjoy rates concession.

8. The Administration submits that at the outset of implementation of Hon Albert CHAN's proposed resolution, RVD will have to issue over 2.3 million forms to all payers of rates to collect their identity information and to obtain their consent for RVD to cross-check the data with that held by other government departments. Every payer of rates

¹ Rule 31(1) of the Rules of Procedure provides that a motion or 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 the Chief Executive; or a designated public officer; or a Member, if the Chief Executive consents in writing to the proposal.

will be required to provide his/her name, a unique identifier (e.g. Hong Kong identity (“HKID”) card number for individuals or the Business Registration Number for companies) for verification purpose. For tenements registered under non-Hong Kong residents or non-Hong Kong companies, copies of identification documents will be required to be submitted together with the forms. At the same time, in cases of owners or occupiers holding more than three tenements under their names, RVD has to request the persons to indicate their preference and to elect the tenements which will obtain rates concession. After obtaining the consent and preference of the payers, RVD will have to cross-check the data with that held by the Immigration Department or the Business Registration Office to verify whether the persons concerned are eligible to enjoy rates concession. If a single payer does not give consent or does not make any response, RVD will not be able to start the relevant cross-checking process to implement Hon Albert CHAN’s proposed resolution.

9. The Administration also submits that to ensure that Hon Albert CHAN’s proposed resolution can be implemented, there may be a need to impose a statutory requirement for all payers of rates to give consent to RVD to verify their identities. Furthermore, 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.

10. The Administration also argues that it would not be unreasonable to expect that during the period between the passage of Hon Albert CHAN’s proposed resolution and 1 April 2012, there will be a huge influx of requests for change of rates payers’ names in order to be qualified for the rates concession, as the snapshot on the liability for rates payment on 1 April 2012 will form the basis for rates concession for the entire year, thus creating a sudden and significant workload for RVD.

Additional expenditure

11. The Administration estimates that the implementation of Hon Albert CHAN’s proposed resolution will incur additional public expenditure of \$48 million for both manpower and other support comprising the following:

- (a) a special team headed by 1 Treasury Accountant, supported by 1 Accounting Officer I and 14 clerical staff will be required to handle this special task for the year (\$7 million);

- (b) about 320 temporary clerks will be required for capturing the verified data and election results of some 2.3 million verification and election forms into the new computer system during a span of four months (\$12 million);
- (c) a new registration and election system will need to be set up by RVD to store and process the data collected during the verification process. The existing billing system of RVD will also need to be enhanced to adapt to the proposed complicated concession arrangement (\$10 million for development cost and \$0.5 million for staff cost for maintaining the systems during the implementation year);
- (d) an additional clerical team comprising 23 staff members will be required to handle a huge influx of requests for change of payers' names before 1 April 2012 and the tremendous work involved such as account adjustments, enquiries, complaints, etc. (\$9 million); and
- (e) incidental charges for printing of the verification and election forms and the associated postages (\$7 million) and the accommodation cost for housing the expanded clerical workforce will be incurred (\$2.5 million).

Implication on implementation of rates concession

12. The Administration also estimates that based on the major tasks expected, preparation to implement Hon Albert CHAN's proposed resolution will take at least around a year and all payers will not be able to obtain rates concession in the 2012-2013 financial year, hence Mr CHAN's proposed resolution defeats the original purpose of the measure.

Hon Albert CHAN's response

13. Hon Albert CHAN submits that if his proposed resolution is implemented, the Administration can use the name of the payer on the Demand for Rates to ascertain the number of tenements that the payer has. Even if the Administration needs to verify the identities of some payers for reason that their names are common, the procedure should be very simple as the Administration needs only to require the payers to provide their HKID card numbers or the Business Registration Numbers. Mr CHAN notes that the Administration was able to provide information on

the top 10 private companies which are expected to receive the highest amounts of rates concession² and the number of organizations which are expected to receive rates concession of over \$1 million within a short time without the need to put in place a new computer system to calculate the figures. He believes that the Administration will be able to assess the number of tenements of each payer using existing information.

14. Mr CHAN also submits that according to a reply provided to a special Finance Committee question, the estimated amount of administration expenses involved in rates concession is only \$300,000. Further, in 2011, the administration expenses incurred for the “Scheme \$6,000” which involved more than six million people amounted to only around \$39 million. He considers that the Administration’s estimate that the implementation of his proposed resolution will incur \$48 million lacks justifications. Mr CHAN points out that if his proposed resolution is implemented, the amounts of rates concession of the top 10 private companies will be reduced from \$224.7 million to only \$300,000. The expenditure to be incurred for implementing his proposed resolution is negligible compared to the additional rates income of \$224.4 million if his proposed resolution is implemented.

15. Mr CHAN does not agree with the Administration that there will be a huge influx of requests for change of payers’ names in order to be qualified for the rates concession. He points out that even if his proposed resolution is passed at the Council meeting of 28 March 2012, there are only 120 hours between 28 March and 1 April 2012 and RVD does not open on 31 March and 1 April 2012. It is unlikely that requests for change of payers’ names can be approved by 1 April 2012 and upon implementation of his proposed resolution, the Administration may use the name of the payer shown on the Demand for Rates as at 1 April 2012 to ascertain the number of tenements in respect of which the payer is liable to pay rates.

16. Mr CHAN also does not agree with the Administration that his proposed resolution defeats the original purpose of the measure of providing rates concession. He further points out that under the “Scheme \$6,000”, there are still eligible persons who have not collected the payment. This does not mean that the “Scheme \$6,000” fails to achieve its purpose of alleviating people’s hardship.

² The figures were provided by the Administration in response to the request of the Subcommittee on Rating (Exemption) Order 2012.

My opinion

17. It has been established in my past rulings that an amendment will have charging effect within the meaning of Rule 31(1) of the Rules of Procedure only if it imposes a new and distinct function on the Administration, i.e. a statutory function which is not provided in the existing law, and I am satisfied that the performance of the new and distinct function will require the spending of an amount of public money that is not nominal or negligible.

18. Counsel to the Legislature advises me that the Commissioner of the Rating and Valuation (“the Commissioner”) appointed under section 4 of RO is entrusted with the statutory function of valuation of properties for the purpose of rating, and the valuation and collection of rates are conducted on the basis of tenements (i.e. “tenement” is the rateable unit of assessment). Under section 2 of RO, “tenement” means any land (including land covered with water) or any building, structure, or part thereof which is held or occupied as a distinct and separate tenancy or holding or under any licence. Judicial authorities held that some types of tenements extend to sea bed leases and cross-harbour tunnels. Special provisions are also made under RO for the treatment of certain machinery, plant and advertising stations for the purpose of ascertaining the rateable value of a tenement³.

19. Counsel explains that under section 21(1) of RO, the “owner” and “occupier” of a tenement shall both be liable to the Commissioner for payment of the rates assessed thereon, and that under section 2 of RO, both “owner” and “occupier” are given a wide meaning. An “owner” means the holder of any tenement direct from the Government, whether under lease, licence or otherwise, or the immediate landlord of any tenement, or the agent of any such holder or landlord, and also means a mortgagee or chargee. An “occupier” includes the agent of any such occupier.

20. Under Hon Albert CHAN’s proposed resolution, the number of tenements in respect of which any one person is liable for payment of rates on 1 April 2012 (whether he is the owner or occupier) to be exempted from payment of rates must not exceed three in respect of each quarter. According to Counsel to the Legislature, there is no provision under RO which requires RVD to cross-check its records of payers of rates or records of tenements to verify whether the ownerships, occupations and agency arrangements of certain tenements are related to

³ Sections 8, 8A and 9 of RO.

the same person. There is also no statutory requirement that the owner or occupier must use the same name or vehicle (e.g. a limited company) for the purpose of holding or occupying a tenement, which may comprise properties other than real property (e.g. machinery including a lift used as adjunct to the tenement).

21. In view of the above, I accept that the implementation of Hon Albert Chan's proposed amendments will create a new and distinct function for RVD to cross-check its records of payers of rates of all tenements for the purpose of ascertaining the total liability of individual payers in rates payments in respect of different tenements.

22. The Administration has set out in detail in its submission to me the additional manpower and support necessary for discharging the duties to implement the proposed resolution. The Administration estimates that the additional expenditure amounts to \$48 million which in my opinion is not nominal or negligible.

23. In their submissions to me, both the Administration and Hon Albert CHAN have put forward arguments which are not procedural issues but points of merit, such as whether Mr CHAN's proposed resolution will defeat the original purpose of the rates concession measure. I wish to point out that as President, I should not consider points of merit or possible notional setting off of increased expenditure by income that may be generated when making a ruling on the admissibility of the amendments proposed by a Member under the Rules of Procedure.

My ruling

24. I rule that the proposed resolution has a charging effect within the meaning of Rule 31(1) of the Rules of Procedure and requires the consent in writing of the Chief Executive for it to be moved.

(Jasper TSANG Yok-sing)
President
Legislative Council

26 March 2012

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