立法會
Legislative Council

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Subcommittee on Rating (Exemption) Order 2016

Background Brief

Purpose

This paper provides background information on the Rating (Exemption) Order 2016 ("the 2016 Order"). It also summarizes the discussions by the relevant subcommittees to scrutinize similar orders in 2012, 2014 and 2015.

Background

2. In the 2016-2017 Budget, the Financial Secretary announced three one-off relief measures, one of which is the proposal to waive rates for four quarters of 2016-2017 subject to a ceiling of $1,000 per quarter for each rateable property. The Administration estimates that the proposed rates exemption will benefit about 3.17 million properties liable to rates payment and reduce government revenue by $11 billion[1].

Rating (Exemption) Order 2016

3. The 2016 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 rates concession proposed in the 2016-2017 Budget[2].

4. The 2016 Order declares that all tenements are exempted from the payment of rates up to a maximum of $1,000 for each quarter in the period

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1 Paragraph 34(b) of the 2016-2017 Budget Speech.

2 Section 36(2) of Cap.116 provides that the CE in Council may, by order, declare any class of tenements, or parts thereof, or any part of Hong Kong to be exempted from the payment of rates wholly or in part.

from 1 April 2016 to 31 March 2017. The amount of $1,000 is reduced proportionately if rates are payable for only part of a concession period.

5. The 2016 Order was gazetted on 24 February 2016 and tabled at the Legislative Council ("LegCo") meeting of 2 March 2016 for negative vetting. Under section 1 of the 2016 Order, the 2016 Order will come into operation on 1 April 2016.

Recent cases of rates exemption and deliberations by Members

6. Recent cases of rates exemption implemented in the last five LegCo sessions are as follows:

	Rating (Exemption) Order 2011	**Rating (Exemption) Order 2012**	**Rating (Exemption) Order 2013**	**Rating (Exemption) Order 2014**	**Rating (Exemption) Order 2015**
Date of gazettal	23 February 2011	3 February 2012	1 March 2013	26 February 2014	25 February 2015
Date of tabling in LegCo	2 March 2011	8 February 2012	20 March 2013	19 March 2014	18 March 2015
Commencement date	1 April 2011	1 April 2012	1 April 2013	1 April 2014	1 April 2015
Concession period	1 April 2011 to 31 March 2012 (4 quarters)	1 April 2012 to 31 March 2013 (4 quarters)	1 April 2013 to 31 March 2014 (4 quarters)	1 April 2014 to 30 September 2014 (2 quarters)	1 April 2015 to 30 September 2015 (2 quarters)
Ceiling (per quarter for each rateable property)	$1,500	$2,500	$1,500	$1,500	$2,500

7. A subcommittee was formed to consider the Rating (Exemption) Order 2012[3] ("the 2012 Order"), the Rating (Exemption) Order 2014[4]

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[3] The 2012 Order declared that all tenements were 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 was $2,500 or less, or up to $2,500, if the amount was more than $2,500.

[4] The 2014 Order declared that all tenements were exempted from the payment of rates in respect of any quarter in the period from 1 April 2014 to 30 September 2014 wholly, if the amount of rates payable for the quarter was $1,500 or less, or up to $1,500, if the amount was more than $1,500.

("the 2014 Order") and the Rating (Exemption) Order 2015[5] ("the 2015 Order") respectively. The major views and concerns raised by Members during the scrutiny of the relevant Orders are summarized in the ensuing paragraphs.

<u>Benefits to the grassroots and needy</u>

8. Some members criticized that the rates concession measures benefited mainly the rich (such as property developers, owners of properties subject to higher rates payment and owners with many rateable properties in Hong Kong), and queried its effectiveness in achieving the purpose of benefitting the grassroots and the needy. Some members further criticized that the rates concession measure could not relieve the hardships of the grassroots, in particular those "five have-nots", nor could the measure help narrow the disparity between the rich and the poor, since individuals and corporations who owned many properties could reap most benefits from the measure whereas the poor who were without any property could not benefit from it. The Administration explained that rates concession was implemented on an equal-footing basis in that the measure benefited all ratepayers, regardless of the types (domestic or non-domestic) and rateable value of the relevant properties, and whether the ratepayer was the owner or the tenant. The Administration considered that it was an effective way to provide one-off relief to a wide spectrum of Hong Kong people.

9. Some members were concerned that as rates payable in respect of small properties were generally lower than the prescribed concession ceiling per quarter, it was likely that low-income earners who lived in small properties with lower rates payment would not fully benefit from the rates concession. These members called on the Administration to consider allowing ratepayers, in particular individuals and small and medium enterprises ("SMEs") owning one property for self-use, to carry forward the "unspent" amount of rates concession per quarter for each rateable property for future rates payment within a certain time limit, similar to the arrangement for the electricity charges subsidy introduced by the Government in recent years.

10. The Administration explained that if the amount of rates payable per quarter equaled to or was below the concession ceiling, ratepayers would have the whole amount of rates payable waived. Hence, there should be no question of "unspent" rates concession. The Administration further advised

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5 The 2015 Order declared that all tenements were exempted from the payment of rates in respect of any quarter in the period from 1 April 2015 to 30 September 2015 wholly, if the amount of rates payable for the quarter was $2,500 or less, or up to $2,500 if the amount was more than $2,500. The amount of $2,500 was reduced on a pro rata basis if rates were payable for only part of the concession period.

that the electricity charges subsidy was based on environmental concerns to allow users sufficient time to fully utilize the subsidy, whereas rates concession was 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. A carry-forward arrangement for rates concession would entail additional cost of a recurrent nature and might involve substantial adjustments to the accounting system of the Rating and Valuation Department ("RVD") which would delay the implementation of the rates concession measure. Moreover, setting a ceiling for rates concession could already achieve a regressive effect, i.e. the higher the rateable value of the properties, the smaller the magnitude of benefit arising from the concession.

11. Some members also suggested excluding non-residential properties from the rates concession measure so as to make available more resources for providing rates exemption to ratepayers of residential properties. Some other members however did not support the suggestion and pointed out that excluding non-residential properties from the rates concession would adversely affect SMEs.

Benefits to tenants

12. Some members expressed concern that the rates exemption would not benefit the tenants in cases where the rents were rates-inclusive. The Administration advised that in accordance with RO, the valuation and collection of rates were based on tenements, rather than individual landlord/occupier/agent of the rateable tenements. Therefore, the rates concession measure would not take into account whether the ratepayer was the owner or tenant of the relevant property. The individual tenant might negotiate with the owner to stipulate separate provisions under the tenancy agreement to set out who would benefit from the rates concession so as to protect their own interests.

13. The Administration also advised that for ease of management, many owners of non-domestic properties collected the amount for rates payment from the tenants in one go when collecting rent payments and then paid the rates on behalf of the tenants. Under such an arrangement, depending on the provisions of the tenancy agreements, the actual beneficiaries of the rates concession measure should still be the tenants. The Administration had further advised that according to the information on the leasing arrangements of properties collected from the Requisition for Particulars of Tenements issued by RVD, rates for about 54% of the leased non-domestic properties in 2014-2015 were paid by tenants. Furthermore, among the top 10 ratepayers that received the largest amounts of rates concession, over 85% of the relevant tenancy agreements were rates exclusive, i.e. the tenants paid the rates. In other words, according to the provisions of the tenancy agreements,

these tenants should benefit when there was rates concession.

Limiting the number of rateable properties

14. Considering that the rates concession measure mainly benefited property developers and investors who owned many properties, some members called on the Administration to limit the number of rateable properties in respect of which any one ratepayer would be eligible for rate concession. Some other members, on the other hand, were against the suggestion on the grounds that certain ratepayers such as SMEs might be excluded from the rates concession measure.

15. The Administration advised that the suggestion of limiting the number of properties per any one ratepayer for rate concession would be controversial and would entail practical difficulties in determining objectively the number of properties that should be capped, and which properties pertaining to the same ratepayer should benefit from rates concession if he held more than the specified number of properties under his name. The Administration further pointed out that the suggestion might render some individuals or business establishments renting the properties and responsible for paying rates under their tenancy agreements unable to benefit from the rates concession.

16. During the examination of the 2012 Order, Hon Albert CHAN proposed to amend the 2012 Order to provide that the number of tenements in respect of which any one person was liable for payment of rates (whether he was the owner or occupier) to be exempted from payment of rates should not exceed three in each quarter. The President of LegCo ("PLC") ruled that Hon Albert CHAN's proposed resolution had a charging effect within the meaning of Rule 31(1) of the Rules of Procedure ("RoP") of LegCo and required the consent in writing of the Chief Executive for it to be moved because the implementation of the proposed amendments would create a new and distinct function for RVD to cross-check its records of payers of rates of all tenements which would entail an additional expenditure of $48 million that was not nominal or negligible[6].

Rates concession period and ceiling per quarter

17. On the basis of keeping the financial commitment of the Administration unchanged, some members of the Subcommittee on the 2014 Order and Subcommittee on the 2015 Order had respectively requested the Administration to consider lowering the concession ceiling or setting an appropriate ceiling per quarter while extending the rates exemption period from two quarters to four quarters such that more households could fully

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[6] See paragraphs 17 to 24 of the President's Ruling on Hon Albert CHAN's proposed resolution to amend the 2012 Order.

utilize the total rates concession amount for each rateable property.

18. According to the Administration, the above suggestion would result in further revenue foregone, and reduce the total full-year amount of rates concession enjoyed by all private domestic properties (including small, medium and large units) and non-domestic properties. The Administration stressed that rates exemption involved significant financial implications given its broad-based nature. Moreover, additional administrative expenses would be incurred if new rates concession arrangement was introduced. Therefore, the Administration reiterated that it was important to strike a balance between the provision of relief for the public by means of rates concession and preserving the fiscal position of the Government.

19. In this connection, members of the Subcommittee on the 2014 Order requested the Legal Service Division ("LSD") to provide information on (i) whether Rule 31(1) of RoP is inconsistent with Article 74 of the Basic Law ("BL74"); and (ii) whether a Member's proposed amendment to the 2014 Order that would not affect the amount of rates to be forgone (i.e. $6,135 million) as proposed by the Administration would have any charging effect for the purposes of Rule 31(1) of RoP.

20. According to LSD in its paper (LC Paper No. LS37/13-14) submitted to the Subcommittee on the 2014 Order, BL74 only applies to bills but not subsidiary legislation or motions (including motions to amend subsidiary legislation). On this basis, no issue of inconsistency with BL74 should arise in considering whether an amendment to the 2014 Order may be proposed under Rule 31(1) of RoP[7]. As regards the possible charging effect of a Member's proposed amendment in relation to Rule 31(1) of RoP, LSD held that the admissibility of a Member's proposed amendment to the 2014 Order was ultimately a matter for PLC to decide. Based on previous rulings made by PLC on Hon Albert CHAN's proposed resolution to amend the 2012 Order and subject to the Administration's views and LSD's consideration of the relevant amendment, it might be argued that an amendment to the 2014 Order would have no "charging effect" under Rule 31(1) of RoP if the amendment would not (i) result in any additional loss of rates beyond the $6,135 million already envisaged to be forgone under the 2014 Order or (ii) impose a new and distinct function on the Administration, the performance of which would require the spending of an amount of public money that is not nominal or negligible[8].

21. Other than the proposed resolution submitted by Hon Albert CHAN to the 2012 Order as detailed in paragraph 16, no Member had submitted proposed amendments to the similar orders in 2013, 2014 and 2015 to the

7 Paragraph 8 of LC Paper No. LS37/13-14.
8 Paragraph 18 of LC Paper No. LS37/13-14.

President for approval.

Latest development

22. At the House Committee meeting on 26 February 2016, members agreed to form a subcommittee to study the 2016 Order.

References

23. A list of relevant papers is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
4 March 2016

Appendix

List of relevant papers

Date	Event	Papers/Minutes of meeting
2 March 2011	The Rating (Exemption) Order 2011 was tabled in the Legislative Council	The Order Legal Service Division Report (LC Paper No. LS33/10-11)
February – March 2012	The Legislative Council formed a Subcommittee to scrutinize the Rating (Exemption) Order 2012	The Order Legal Service Division Report (LC Paper No. LS26/11-12) President's Ruling Report of the Subcommittee (LC Paper No. CB(1)1353/11-12)
20 March 2013	The Rating (Exemption) Order 2013 was tabled in the Legislative Council	The Order Legal Service Division Report (LC Paper No. LS29/12-13)
March – April 2014	The Legislative Council formed a Subcommittee to scrutinize the Rating (Exemption) Order 2014	The Order Legal Service Division Report (LC Paper No. LS31/13-14) Report of the Subcommittee (LC Paper No. CB(1)1202/13-14) Administration's paper on "Rates Exemption Proposal in the 2014-15 Budget" (LC Paper No. CB(1)1068/13-14(01))

Date	Event	Papers/Minutes of meeting
		Paper on Rating (Exemption) Order 2014 prepared by the Legislative Council Secretariat (background brief) (LC Paper No. CB(1)1068/13-14(02)) Administration's response to issues raised at the meeting on 13 March 2014 (LC Paper No. CB(1)1133/13-14(02)) Paper for the Subcommittee on Rating (Exemption) Order 2014 prepared by the Legal Service Division (LC Paper No. LS37/13-14)
March – May 2015	The Legislative Council formed a Subcommittee to scrutinize the Rating (Exemption) Order 2015	The Order Legal Service Division Report (LC Paper No. LS46/14-15) Report of the Subcommittee (LC Paper No. CB(1)766/14-15) Administration's paper on "Rating (Exemption) Order 2015 (LC Paper No. CB(1)642/14-15(01)) Paper on Rating (Exemption) Order 2015 prepared by the Legislative Council Secretariat (background brief) (LC Paper No. CB(1)642/14-15(02))

Date	Event	Papers/Minutes of meeting
		Administration's reponse to issues raised at the meeting on 17 March 2015 (LC Paper No. CB(1)708/14-15(02))
2 March 2016	Tabling of the Rating (Exemption) Order 2016 in the Legislative Council	The Order Legal Service Division Report (LC Paper No. LS39/15-16)