

## Chapter 1 of the Director of Audit's Report No.66

### Supplementary information requested by the Public Accounts Committee

This note sets out the supplementary information provided by the Financial Services and the Treasury Bureau ("FSTB") in the light of the request of the Public Accounts Committee as set out in its letter of 10 May 2016.

**(a) In view of the long time taken to demolish illegal rooftop structures and other assessable unauthorised building works ("UBWs") and the 24-month time bar in recovering rates, whether the Administration would consider reviewing the 2000-01 policy decision of not collecting rates from new or re-erected illegal rooftop structures.**

1. The decision of not collecting rates from new or re-erected illegal rooftop structures is part of the package of measures drawn up by the Government in 2000-01 to tackle UBWs. Since the Government expected at that time that new or re-erected illegal rooftop structures would be stopped promptly, the decision concerned was in line with the principles adopted by the Rating and Valuation Department ("RVD") all along, i.e. properties of transient nature would not be assessed to rates.
2. Having examined the matter, we consider that the policy intention of the decision concerned remains appropriate, though there is room for improvement in its implementation. As the Audit report points out, it may take some time for individual UBWs to be demolished after removal orders have been issued by the Buildings Department ("BD"). We therefore consider that, on the premise of maintaining the above rating principles, the Government would need to ensure that UBWs would not keep on being exempted from rating assessment due to delay in their demolition. The Government would therefore improve the arrangements. For new or re-erected illegal rooftop structures, RVD will put in place a bring-up system to keep track of those new or re-erected illegal rooftop structures with removal orders issued but not yet demolished. The bring-up system will also cover other UBWs with removal orders issued but not yet demolished, such that timely interim valuations would be made and rates be charged on that basis before the 24-month time-bar, so as to better safeguard rates revenue. As regards existing illegal rooftop structures (i.e. those not being new or re-erected cases) and UBWs already assessed to rates, RVD has all along been collecting rates from these structures until they are demolished.

- (b) Whether consideration would be given to using big data technology to capture information on UBWs to facilitate the sharing of information among relevant departments for the purpose of rates and government rent assessment.**

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3. As mentioned by RVD in paragraph 13 of its ~~reply to the Public Accounts Committee~~, RVD has discussed the matter with BD, and the two departments have agreed to put in place a cost-effective, regular and paperless notification mechanism. BD would retrieve from its computer system, on a quarterly basis, a list of UBWs with removal orders issued but not yet demolished and may thus be assessable to rates, and a list of demolished UBWs, and would forward the lists to RVD. The notification mechanism will also cover UBWs which are not issued with removal orders, but involve high rental values and are difficult to detect merely by general external inspections (e.g. subdivided properties and basements), so as to facilitate RVD's assessment of rates and government rent of the properties concerned in a more effective manner.
4. RVD will, when enhancing its information technology system, consider the views of Members and consider whether there is a need to make use of the big data technology. From the rating perspective, not all UBWs in BD's records are rateable items. Moreover, according to the analysis of reassessed cases completed in recent years, the average increase in rateable values which could be brought about by UBWs on the rooftop, flat roof and lane/yard was less than 5%. RVD would therefore need to consider the actual effectiveness of using the technology in enhancing the collection of property information for assessment of rates and government rent, and whether it is cost-effective to do so.
- (c) The penalties in respect of non-compliance with Form R1A submission requirement vis-a-vis those for not filling tax returns on time or providing incorrect information in tax returns.**
5. According to the Rating Ordinance (Cap 116) and the Government Rent (Assessment and Collection) Ordinance (Cap 515), any person who refuses to furnish particulars requested in the Requisition Form for Particulars of Tenements (Form R1A) is liable to a fine at level 3 (i.e. \$10,000), and any person who knowingly makes a false statement in Form R1A is liable to a fine at level 4 (i.e. \$25,000). In addition to the above penalties, a person convicted under the circumstances as mentioned above is also liable to a fine of treble the amount of rates and/or government rent undercharged.

6. As regards the Inland Revenue Ordinance (Cap 112), any person who without reasonable excuse fails to file a tax return is liable to a fine at level 3 (i.e. \$10,000) (i.e. same with the penalty for refusing to furnish particulars requested in Form R1A), and any person who without reasonable excuse makes an incorrect return is liable to a fine at level 3 (i.e. \$10,000). Any person who wilfully with intent to evade tax makes any false statement in a tax return is liable to a maximum penalty of a fine at level 5 (i.e. \$50,000) and imprisonment for 3 years. In addition to the above penalties, a person convicted under the circumstances as mentioned above is also liable to a fine of treble the amount of tax undercharged.
  7. We have to point out that Form R1A and tax return are of different nature. Whilst the penalty provisions relating to the two are similar in certain parts, they are not entirely comparable to each other. For tax return, generally, each taxpayer has to file tax return annually, and Inland Revenue Department (“IRD”) would compute the tax amount to be payable by a taxpayer based on the information furnished in the tax return filed by the taxpayer and other information available to IRD. In other words, the information (say, on income and deductions) furnished by the taxpayer in the tax return would affect the tax amount required to be paid by that taxpayer for a certain Year of Assessment. On the other hand, for Form R1A, it serves as one of the sources from which RVD collects rental information. RVD would make use of the rental information provided by ratepayers in Form R1A as well as information collected from other sources to analyse the overall market rental level, on which the assessment of the rateable value of the tenement concerned is based. In other words, the rates chargeable by RVD is based on rateable value of the tenement concerned, rather than the rental amount provided by the ratepayer in Form R1A.
- (d) Whether consideration would be given to increasing the penalties for failure to return Form R1As or providing incorrect information in Form R1As by making reference to the penalties for failure to make tax returns or making incorrect tax returns, with a view to achieving a greater deterrent effect.**
8. As mentioned in paragraph 7 above, Form R1A and tax return are of different nature. Whilst the penalty provisions relating to the two are similar in certain parts, they are not entirely comparable to each other. The current penalties relating to Form R1A (i.e. \$10,000 for refusal to

furnish particulars requested in the form, and \$25,000 for knowingly making a false statement in the form) are appropriate. RVD would enhance the prosecution work in accordance with the legislative provisions and the actual facts of the case, to the extent permitted by the manpower resources available. At present, the amount of fines sentenced by the court is around \$1,000 to \$2,000, which is lower than the statutory limit. RVD would closely monitor the return rate of Form R1A. In case the situation deteriorates notably, RVD would seek to reflect the situation through the Department of Justice to the court, so that the court may take the latest trend into account when sentencing.

### **Efforts by other departments in safeguarding revenue on rates and government rent**

9. In its letters of 10 May 2016 to BD, Home Affairs Department (“HAD”) and Lands Department (“Lands D”), the Public Accounts Committee has requested the relevant departments to provide information for certain improvement measures to FSTB for consolidation. The following sets out the consolidated reply based on information provided by the relevant departments.

#### ***Buildings Department (regarding UBWs)<sup>1</sup>***

10. RVD has discussed the matter with BD, and the two departments have agreed to put in place a regular notification mechanism. BD would retrieve the relevant information from its computer system, on a quarterly basis, and would forward the information to RVD in a paperless manner (as detailed in paragraph 3 above), so as to facilitate RVD’s assessment of rates and government rent of the properties concerned in a more effective manner.

#### ***Home Affairs Department (regarding village houses outside the designated village area)***

11. HAD relies heavily on the assistance of other departments for detecting non-compliance of rates exemption conditions, and amongst these, UBWs. Under the existing mechanism, HAD has implemented various measures to ensure that timely actions would be taken on ineligible rates-exempted houses outside designated village areas (“DVAs”). The measures are listed in the Annex. If non-compliance of application condition is found,

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<sup>1</sup> Regarding Items (a) to (c) in the Public Accounts Committee’s letter of 10 May 2016 to BD, BD has set out its response in its reply of 24 May 2016 to the Committee.

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**\*Note by Clerk, PAC: Please see Appendix 10 of this Report for Annex.**

HAD will take follow up actions including revoking the exemption granted to the tenements, if appropriate.

12. At present, HAD randomly selects exempted cases for Lands D to conduct field inspection regarding the existence of UBWs. Regarding paragraph 4.23(b) of the Audit report which recommends stepping up field inspections of rates-exempted houses outside the DVAs, this would involve additional resources. HAD would need to further discuss the matter with Lands D, and consider how to make the best use of existing resources to enhance the effectiveness of field inspections.
13. Moreover, regarding the recommendation in paragraph 4.23(c) of the Audit Report (about village houses with UBWs detected), HAD has already started exploring with BD the sharing of information on UBWs in rates-exempted houses in the New Territories through the use of information technology. It is expected that, through efficient electronic data matching and checking, it would enable early detection of non-compliance due to UBWs without generating unaffordable additional workload.

***Lands Department (regarding unauthorised structures on agricultural lands / village houses, and bona vacantia cases)***

14. Regarding paragraph 4.21 of the Audit Report (about unauthorised structures on agricultural land), Lands D has already followed up with RVD to explore extending the notification arrangement to cover unauthorised structures on agricultural land to which Lands D has issued warning letters. As agreed between the two departments, the New Territories District Lands Offices (“NTDLOs”) would copy warning letters issued by them in respect of these unauthorised structures to RVD in parallel, so that the latter can revoke the rates exemption for the agricultural land involved.
15. Regarding paragraph 4.24(a) of the Audit Report (about village houses with UBWs detected), HAD provides a list of all rates exempted houses to Lands D for matching check against the latter’s records on houses detected to have UBWs during its routine work. Lands D has reminded all the NTDLOs in writing on 21 April 2016 of the following:
  - (a) the result of the field inspections and matching checks should be provided to HAD in a timely manner;
  - (b) all matched cases should be reported to HAD as and when UBW

was detected, without waiting for the registration of the warning letter in the Land Registry; and

- (c) when reporting to HAD, sufficient information of the matched cases should be provided, including the date of detection of the UBW and the information of the properties on which the UBW was erected/detected.

Moreover, in order to enhance the efficiency of the matching checks, Lands D will further liaise with HAD to explore measures to improve the compatibility of data between the two departments, so that automated checking could be introduced as far as practicable.

16. As regards paragraph 5.8(b) of the Audit Report (about bona vacantia cases), in the course of recovering arrears, RVD searches for information on the owners or occupiers through different channels. For bona vacantia properties of dissolved companies, if RVD cannot recover the arrears from the occupier, RVD will request Lands D to inform RVD upon taking possession of the relevant property, so that RVD can delete the rating assessment and update the account records, so as to complete the accounting procedure. Whilst RVD does not possess first-hand information, RVD has reminded its staff to forward such notifications to Lands D as soon as practicable, with a view to further facilitating Lands D in taking action on bona vacantia cases. According to Lands D, the Government may not be in a position to take possession or dispose of the bona vacantia properties under certain circumstances. Moreover, Lands D's follow up action on bona vacantia properties may not achieve the purpose of recovering outstanding rates and/or government rent thereof. For bona vacantia cases mentioned by RVD, Lands D will continue to conduct investigation and take appropriate action. Lands D has reminded its staff to keep RVD informed, in a timely manner, of the possession and disposal of the property or other relevant information, including bona vacantia cases where the dissolved companies have applied for restoration, so as to facilitate RVD's updating of the rating assessment and account records.