立法會
Legislative Council

LC Paper No. CB(1)759/18-19(02)

Ref. : CB1/SS/9/18

Subcommittee on Rating (Exemption) Order 2019

Background Brief

Purpose

This paper provides background information on the Rating (Exemption) Order 2019 ("the 2019 Order"). It also summarizes the major views and concerns expressed by Members when related issues were discussed by the relevant subcommittees when scrutinizing similar orders in 2014, 2015, 2016 and 2018, and the Panel on Financial Affairs ("FA Panel") at the meeting on 18 December 2018.

Background

2. In the 2019-2020 Budget, the Financial Secretary announced a number of one-off concessionary measures, one of which is the proposal to waive rates for four quarters of 2019-2020 subject to a ceiling of $1,500 per quarter for each rateable property. The Administration estimates that the proposed rates exemption will benefit about 3.29 million properties liable to rates payment and reduce government revenue by $15 billion.[1] Rates exemption measures implemented in the last five financial years are summarized in the table in **Appendix I**.

Rating (Exemption) Order 2019

3. The 2019 Order is 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 2019-2020 Budget.[2] The Order declares that all

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[1] Paragraph 108(c) of the 2019-2020 Budget Speech.

[2] Section 36(2) of the Rating Ordinance (Cap.116) provides that the Chief Executive 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.

tenements are exempted from the payment of rates up to a maximum of $1,500 for each quarter in the period from 1 April 2019 to 31 March 2020. The amount of $1,500 is reduced proportionately if rates are payable for only part of a concessionary period.

4. The 2019 Order was gazetted on 8 March 2019 and tabled at the Legislative Council ("LegCo") meeting of 20 March 2019 for negative vetting. Under section 1 of the Order, the Order comes into operation on 1 April 2019.

Possible modifications to the rates concession mechanism examined by the Administration

5. When the Subcommittee on Rating (Exemption) Order 2018 ("Subcommittee on the 2018 Order") discussed the rates concession proposal for the 2018-2019 Budget in March and April 2018, some members expressed concern that a small number of ratepayers (such as property developers and owners with multiple rateable properties) might receive a considerable amount of rates concessions under the current mechanism, and questioned the effectiveness of the rates concession measure in relieving the financial pressure on the general public. The Subcommittee urged the Administration to review the current rates concession measure to achieve a more equitable distribution of the concessions so as to ensure that the measure would benefit the needy more, as well as to study the feasibility and implications of the following proposals:

(a) limiting the number of rateable properties per ratepayer eligible for rates concession;

(b) confining the rates concession measure to tenants and owners of self-occupied properties;

(c) providing rates concession to ratepayers of residential properties only; and

(d) requiring the ratepayers to apply to the Rating and Valuation Department ("RVD") for claiming rates concession.

6. In response to the request of the Subcommittee on the 2018 Order, the Administration has explored five options for improving the current mechanism the details of which are in **Appendix II**. Amongst the options explored, the Administration considers Option 1 in Appendix II may be a more feasible approach to pursue changes to the current rates concession mechanism. Under Option 1, rates

concession will be granted to one rateable property (which can be domestic or non-domestic) for each owner. Special treatment will be accorded to the tenants of public rental housing ("PRH") units of the Housing Authority ("HA"), the Housing Society and the Hong Kong Settlers Housing Corporation Limited so that they can continue to benefit from rates concession. RVD needs to build up a property ownership database and collate information from property owners.

Major views and concerns expressed by Members

7. Subcommittees have been formed to scrutinize the Rating (Exemption) Order 2014 ("the 2014 Order"), the Rating (Exemption) Order 2015 ("the 2015 Order"), the Rating (Exemption) Order 2016 and the Rating (Exemption) Order 2018. The Administration consulted FA Panel at the meeting on 18 December 2018 on possible modifications to the current mechanism for providing rates concession. The major views and concerns expressed by members of the subcommittees and FA Panel are summarized in the ensuing paragraphs.

<u>Distribution of the concession amount among ratepayers</u>

8. While some Members considered that rates concession could ease the financial pressure on the public, some Members expressed grave concern that a small number of ratepayers, such as property developers, owners of properties subject to higher rates payment and owners with many rateable properties (especially owners with many non-residential properties, e.g. office premises and shopping malls), would reap a large proportion of the total rates concession. They raised criticism that the rates concession measure was lopsided to the rich and returning wealth to the rich, thus ran counter to the Administration's objectives of targeting the concessionary measures at the grassroots and the needy, and sharing the fruits of Hong Kong's economic success with the community. In view of the above, some Members suggested excluding property owners who owned more than one property (especially involving non-domestic property) from the rates concession measure, so that the measure would only benefit tenants and owners of self-occupied properties and avoid widening the wealth gap.

9. 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 rates concession was an effective way to provide one-off relief to a wide spectrum of Hong Kong people. As regards the suggestion of confining the rates concession measure to tenants and owners of self-occupied properties, the

Administration pointed out that it would involve fundamental changes in the collection of rates, which were based on tenements. Moreover, under RO, both the property owner and the tenants were liable to pay rates. Introducing fundamental changes to rates collection might risk implication on the effectiveness of the rates collection system and excluding these tenants from rates concession they would otherwise receive.

10. Some Members expressed concern that the rates exemption would not benefit the tenants in cases where the rents were rates-inclusive as it was unlikely that their landlords would refund the concession amount to them.

11. The Administration advised that in accordance with RO, the valuation and collection of rates were based on tenements. The owner and the occupier should both be liable for the payment of rates and the arrangement of whether rates were paid by the owner or the tenant depended on the provisions of individual tenancy agreements. For ease of management, many owners of non-domestic properties collected the amount of rates payable in one go when collecting rent from the tenants, and then made rates payment on behalf of the tenants who were liable for the payment of rates under the tenancy agreements. Under such an arrangement, the tenants themselves would remain to be the actual beneficiaries of the rates concession, in accordance with the provisions of the tenancy agreements. Individual tenancy agreements might set out who would benefit from rates concession, if any, for clarity.

12. The Administration further advised that over 82% of the tenancies (mainly involving non-residential properties) of the estimated top 10 ratepayers in 2018-2019 were of rates exclusive basis. In other words, most of the rates concessions would be rebated to the tenants concerned in accordance with the provisions of tenancy agreements. Under the arrangements effected by the 2018 Order, about 87% of the ratepayers of residential properties and 55% of the ratepayers of non-residential properties (or 83% overall) would not be required to pay any rates. Such properties had rateable values at or below $200,000 (i.e. about $16,667 per month). The 3.25 million properties liable to rates in Hong Kong that would be covered by the rates concession measures in the 2018 Order included 796 000 public residential premises such as PRH estates owned by HA. HA would rebate the rates concession to PRH tenants.

<u>Possible modifications to the rates concession mechanism</u>

13. At the FA meeting on 18 December 2018, members expressed grave reservation over Option 1 in Appendix II in view of the implications on existing beneficiaries of the rates concession measure, in particular tenants who paid rates

under tenancy agreements including many small and medium enterprises and small business operators renting non-domestic properties. Some members considered that Option 1, if implemented, would be very unfair to these tenants as they could no longer benefit from rates concession. Moreover, some members considered it unfair to restrict owners with a number of properties to rates concession for only one of their properties while they paid rates for all. These members further pointed out that some people might hold more than one property for meeting various needs (e.g. one for self-use and another for use by family members, one for residential use and one for doing business, elderly people who relied on rental income to support their living, etc.) and the proposed change would significantly reduce their benefits from rates concession. Furthermore, as RVD would not trace the ultimate beneficial owners of property holding companies, individuals might hold each property through a separate limited company and would still be able to benefit from the rates concession in respect of more than one property.

14. In addition, some members opined that the Administration should consider amending Option 1 to provide rates concession to more than one rateable property (which could be domestic or non-domestic) held by an owner, and to provide rates concession to tenants if the tenants of such properties were responsible for paying rates under the tenancy agreements.

15. Noting that the set-up costs required in the initial two years for implementing a revised rates concession mechanism (including the setting up of a new computer system for capturing property ownership information) would be $200 million to $300 million and considering that rates concession was a one-off budget measure that might not be granted every year, members expressed reservation for investing vast amount of resources to develop and maintain the required computer system.

16. The Administration explained that allowing each owner to enjoy rates concession for say, two or three eligible rateable properties or providing rates concession to tenants as suggested by members would complicate the rates concession mechanism and create difficulties to RVD as it had to make different rates concession arrangements. Apart from setting up a new computer system for capturing information on property ownership and tenancies, there would be significant manpower implications on RVD for updating the system on an ongoing basis, as well as to handle related enquiries and complaints. It was also considered not cost-effective to invest considerable resources to keep track of changes to tenancies (e.g. changes arising from the signing of new tenancy agreements and termination of agreements).

17. After deliberation at the FA meeting on 18 December 2019, the Panel passed a motion requesting the Administration to shelve Option 1 for the time being in consideration that implementation of the option and development of the new property

ownership system for implementing the option might not be in line with the principle of genuine fairness and the "value for money" principle respectively. The wording of the motion is in **Appendix III**.

Rates concession period and ceiling per quarter

18. On the basis of keeping the financial commitment of the Government 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 so that more households could fully utilize the total rates concession amount for each rateable property.

19. The Administration responded that 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. Moreover, additional administrative expenses would be incurred if new rates concession arrangement was introduced. The Administration stressed that rates exemption involved significant financial implications given its broad-based nature and 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.

20. In this connection, the Subcommittee on the 2014 Order had requested the Legal Service Division ("LSD") to provide information on (a) whether Rule 31(1) of the Rules of Procedure[3] ("RoP") was inconsistent with Article 74 of the Basic Law[4] ("BL74"); and (b) 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 Government would have any charging effect for the purposes of Rule 31(1) of RoP.

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[3] 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 -
(a) the Chief Executive; or
(b) a designated public officer; or
(c) a Member, if the Chief Executive consents in writing to the proposal."

[4] Article 74 of the Basic Law provides, among others, that "Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council".

21. According to LSD in its paper (LC Paper No. LS37/13-14) submitted to the Subcommittee on the 2014 Order, BL74 only applied 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 might be proposed under Rule 31(1) of RoP.[5] 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 the President of LegCo to decide. 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 (a) result in any additional loss of rates beyond the $6,135 million already envisaged to be forgone under the 2014 Order; or (b) impose a new and distinct function on the Government, the performance of which would require the spending of an amount of public money that was not nominal or negligible.[6]

22. No amendment was proposed by Members to the 2014 Order nor the subsequent Rating (Exemption) Orders.

Latest development

23. At the House Committee meeting on 15 March 2019, Members agreed to form a subcommittee to study the 2019 Order.

References

24. A list of relevant papers is in **Appendix IV**.

Council Business Division 1
Legislative Council Secretariat
25 March 2019

[5] Paragraph 8 of LC Paper No. LS37/13-14.

[6] Paragraph 18 of LC Paper No. LS37/13-14.

Appendix I

Rates exemption measures implemented in recent years

	Rating (Exemption) Order 2014	**Rating (Exemption) Order 2015**	**Rating (Exemption) Order 2016**	**Rating (Exemption) Order 2017**	**Rating (Exemption) Order 2018**
Date of gazettal	26 February 2014	25 February 2015	24 February 2016	22 February 2017	28 February 2018
Date of tabling in LegCo	19 March 2014	18 March 2015	2 March 2016	1 March 2017	21 March 2018
Commencement date	1 April 2014	1 April 2015	1 April 2016	1 April 2017	1 April 2018
Concession period	1 April 2014 to 30 September 2014 (2 quarters)	1 April 2015 to 30 September 2015 (2 quarters)	1 April 2016 to 31 March 2017 (4 quarters)	1 April 2017 to 31 March 2018 (4 quarters)	1 April 2018 to 31 March 2019 (4 quarters)
Ceiling (per quarter for each rateable property)	\$1,500	\$2,500	\$1,000	\$1,000	\$2,500

Appendix II

Options explored by the Administration to modify the rates concession mechanism

Option 1	Confining the rates concession measure to one rateable property for each owner (who can be individuals or companies) meeting the following criteria – • the owner must be a holder of a valid Hong Kong Identify Card ("HKIC") or a Certificate of Incorporation or a Certificate of Registration of a Non-Hong Kong Company under the Companies Ordinance (Cap.622); • if the owner owns more than one property (whether solely owned or co-owned), he can only elect one property to enjoy rates concession; and • only one owner of a co-owned rateable property may opt to receive rates concession for that property. The eligibility of a property for rates concession for an entire quarter will be determined on a reference date for that quarter. Tenants of public rental housing ("PRH") will receive special treatment and be granted rates concession.
Option 2	Confining the rates concession measure to one rateable property for an individual owner meeting the following criteria – • the owner must be a holder of a valid HKIC; • if the owner owns more than one property (whether solely owned or co-owned), he can only elect one property to enjoy rates concession; and • only one owner of a co-owned rateable property may opt to receive rates concession for that property. The eligibility of a property for rates concession for an entire quarter will be determined on a reference date for that quarter. PRH tenants will receive special treatment and be granted rates concession.

Option 3	Confining rates concession to ratepayers of domestic properties
Option 4	Limiting the number of rateable properties eligible for rates concession per ratepayer PRH tenants will receive special treatment and be granted rates concession.
Option 5	Confining the rates concession measure to tenants and owners of self-occupied rateable properties The eligibility of a property for rates concession for an entire quarter will be determined on a reference date for that quarter.

(Source: Extract from Annex A to LC Paper No. CB(1)309/18-19(07).)

Appendix III

財經事務委員會

在2018年12月18日會議上通過的議案

本委員會認為━

(i) 方案一的實施可能並未能符合真正公平原則；及

(ii) 建立新物業業權系統可能不符合「衡工量值」原則，

故要求政府暫時擱置方案一。

動議人 : 梁繼昌議員

(Translation)

Panel on Financial Affairs

Motion passed at the meeting on 18 December 2018

That this Panel considers that**—**

(i) the implementation of Option 1 may not be in line with the principle of genuine fairness; and

(ii) the building of the new property ownership system may not be in line with the "value for money" principle,

and therefore requests that the Government should shelve Option 1 for the time being.

Moved by : Hon Kenneth LEUNG

Appendix IV

List of relevant papers

Date	Event	Papers/Minutes of meeting
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)) 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)

Date	Event	Papers/Minutes of meeting
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)) Administration's reponse to issues raised at the meeting on 17 March 2015 (LC Paper No. CB(1)708/14-15(02))
March – April 2016	The Legislative Council formed a Subcommittee to scrutinize the Rating (Exemption) Order 2016	The Order Legal Service Division Report (LC Paper No. LS39/15-16) Report of the Subcommittee (LC Paper No. CB(1)787/15-16) Administration's paper on "Rating (Exemption) Order 2016 (LC Paper No. CB(1)643/15-16(01)) Paper on Rating (Exemption) Order 2016 prepared by the Legislative Council Secretariat (background brief) (LC Paper No. CB(1)643/15-16(02))

Date	Event	Papers/Minutes of meeting
1 March 2017	The Rating (Exemption) Order 2017 was tabled in the Legislative Council	The Order Legal Service Division Report (LC Paper No. LS39/16-17)
21 March 2018	The Rating (Exemption) Order 2018 was tabled in the Legislative Council	The Order Legal Service Division Report (LC Paper No. LS39/17-18) Report of the Subcommittee (LC Paper No. CB(1)861/17-18) Administration's paper on "Rating (Exemption) Order 2018 (LC Paper No. CB(730/17-18(01)) Paper on Rating (Exemption) Order 2018 prepared by the Legislative Council Secretariat (background brief) (LC Paper No. CB(1) 730/17-18(02))
18 December 2018	Meeting of the Panel on Financial Affairs	Administration's paper (LC Paper No. CB(1)309/18-19(07)) Background brief (LC Paper No. CB(1) 309/18-19(08))
20 March 2019	The Rating (Exemption) Order 2019 was tabled in the Legislative Council	The Order Legal Service Division Report (LC Paper No. LS54/18-19)