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本函檔號 Our Ref. : FINCR 6/3231/89
來函檔號 Your Ref. : CB1/BC/3/99

20 May 2000

Ms Leung Siu-kum
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong
[fax: 2869 6794]

Dear Ms Leung,

**Bills Committee on
Dutiable Commodities (Amendment) Bill 1999**

Thank you for your letter of 16 May 2000 conveying the concern of Hon. Mrs Miriam Lau. Mrs. Lau's concern is whether our proposed amendments will adversely affect innocent drivers who are genuinely not aware that the fuel in their tanks is a kind of illicit fuel.

I would like to stress that the Bill does not seek to create any new offences for sale and use of illicit fuel. What it does is to expand the scope of application of existing presumptions provisions on dutiability of certain light diesel oil or petrol. The effect of the expansion, in a gist, is as follows –

- (a) diesel oil or petrol is presumed to be dutiable if it is being sold, supplied, bought, received or otherwise dealt in in a place other than premises licensed for storage of petrol and diesel oil under Part VI of the Dangerous Goods (General) Regulations; and
- (b) diesel oil in the fuel tank of the motor vehicle is also presumed to be dutiable if its sulphur content is higher than the standard specified in the Air Pollution Control (Motor Vehicle Fuel) Regulation.

It is important to note that even *an effective application of the above presumptions is not by itself sufficient to establish an offence*. It will merely facilitate the proving of an offence by shifting the evidential burden to the suspect, and requiring the latter to provide evidence that duty has been paid, for example, he bought the fuel at a licensed petrol station.

Taking the taxi driver case in your letter, for example, if the fuel found in the fuel tank of the taxi has a sulphur content higher than the specified standard, Customs officers may invoke the proposed presumption in (b) above. In that case, the taxi driver will simply be required to explain whether the diesel oil is dutiable. He may claim that the fuel was filled by the driver in the earlier shift and that he has no reason to suspect that the fuel is duty-not-paid. Customs officers will then conduct follow-up investigations, including probing the driver of the earlier shift. Depending on what has transpired in evidence, the innocent driver may not be prosecuted.

In fact, the example of taxi driver mentioned above may also happen even in the absence of the proposed expanded presumption. Under the existing Dutiable Commodities Ordinance, the use of illicit fuel is already an offence. Customs officers have come across cases where taxi drivers were found to be using detreated oil (i.e. marked oil with their marker illegally removed) in their fuel tanks and subsequent investigation revealed that the fuel had been filled by drivers in an earlier shift and the drivers in the subsequent shift did not know the fuel was detreated oil. The innocent taxi drivers were eventually not prosecuted in these cases.

I hope the above has addressed the concern of Hon Mrs Miriam Lau.

Yours sincerely,

(Ms Esther Leung)
for Secretary for the Treasury

c.c.

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