President's ruling on
Committee Stage Amendments to
Revenue Bill 2003
proposed by Hon Audrey EU Yuet-mee, SC, JP and
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP

Hon Audrey EU Yuet-mee and Hon Mrs Selina CHOW LIANG Shuk-yee have given separate notices to move amendments to the Revenue Bill 2003 (the Bill) at the Committee Stage, if the Bill gets its Second Reading at the Council meeting to be held on 25 June 2003. Before ruling on the admissibility of these amendments, I have invited the Secretary for Financial Services and the Treasury (SFST) to offer his comments, and Ms EU and Mrs CHOW to offer their responses. I have also sought the advice of Counsel to the Legislature.

2. The main purpose of the Bill is to amend the Motor Vehicles (First Registration Tax) Ordinance (Cap 330) to give effect to some of the proposals in the Budget introduced by the Government for the 2003/04 financial year. The Bill proposes to cancel the exemption from first registration tax (FRT) currently given in respect of certain vehicle accessories and warranties. In relation to this proposal, the Bill also proposes, among others, to adjust the tax bandwidths and replace the FRT rates for private cars and van-type light goods vehicles not exceeding 1.9 tonnes permitted gross vehicle weight, as well as to adopt a marginal tax system.

3. In regard to the tax rates originally proposed in the Bill for private cars in the marginal tax system, SFST has given notice to amend them at the Committee Stage, from 35%, 75%, 105% and 150% to 35%, 70%, 85% and 105% respectively. In regard to van-type light goods vehicles not exceeding 1.9 tonnes, SFST also intends to amend the respective rates at the Committee Stage, from 35%, 75% and 105% to 35%, 70% and 85% respectively.

4. The amendments proposed by both Ms EU and Mrs CHOW seek to adjust the rates for private cars, van-type light goods vehicles and motorcycles. For Ms EU, the respective rates for private cars are proposed to be at 35%, 55%, 75% and 95% respectively; for Mrs CHOW, the rates are proposed to be at 35%, 60%, 85% and 105% respectively. For van-type vehicles, both propose to adjust the rates to 35%, 55% and 75% respectively. For motorcycles, both seek to adjust the rates from 40% as provided in the Bill to 35%.

The Administration's View

5. SFST has provided a rather lengthy submission in which, based on various assumptions, including those that are based on the various numbers of vehicles that will be registered in different scenarios, he is able to conclude that Ms EU's and Mrs CHOW's amendments will reduce not only Government's intended FRT income as proposed in the Bill, but also the income that would have been collectible under the pre-Budget tax arrangements, particularly in relation to private cars. As an example, SFST states that Ms EU's proposal to adjust the tax rates for private cars would yield \$181 million of additional income, compared to his proposed amendments (see paragraph 3 above) to be moved at the Committee Stage, which would yield an additional \$421 million. He has previously made the same statement in a paper (LC Paper No. CB(1) 1817/02-03(02)) submitted to the Bills Committee that examined the Bill. That paper included an impact analysis which I now attach in **Appendix I**. In another example, based on some other assumptions, SFST states in his submission that Ms EU's amendments will reduce Government's FRT income by \$189 million, as compared to the pre-Budget tax position. There are many such examples in the Secretary's submission.

6. The Secretary also submits that, for the purpose of Rule 57(6) of the Council's Rules of Procedure, the proposed amendments have the effect of disposing of the Government's anticipated FRT revenue as proposed in the Bill. The rationale for this position seems to be that, to quote the Secretary's submission:

> "…the concept of 'revenue' has within it a clear meaning of prospective income rather than what has been received or accrued in the past. So, the increased revenue anticipated to be collected from the general public may properly be regarded as 'revenue of Hong Kong' even though it may not as yet have accrued due. If the intention (of Rule 57(6)) had been to limit the powers of Members of the Legislative Council only in relation to revenue already collected, the phrase would have been 'revenue collected' or 'revenue received or accrued' and not 'revenue of'."

Response from the Member

<u>Hon Audrey EU's response</u>

7. In her response, Ms EU states that the applicable principle, in relation to amendments to revenue-raising measures, is whether the proposed amendments to the proposed measures would result in less revenue than that collectible under the existing scheme as authorized by legislation. Applying the principle to the present case, there would be charging effect under Rule

57(6) when the overall FRT receipt under her proposed amendments is lower than that under the pre-Budget tax position (i.e. before 2:30 pm on 5 March 2003). However, since the proposed scheme under the Bill and the existing scheme are founded on different bases in terms of taxable value and bandwidths, it would not be meaningful to make a direct comparison.

8. Ms EU states that the Administration does not say that her amendments would impact on the overall FRT receipt for private cars. In fact, the Administration concedes that the overall FRT receipt for private cars under her amendments would be higher than that in the pre-Budget tax position (i.e. $181 million of additional receipt), subject to there being a 4% projected natural decline in the number of registrations in 2003-04, 10% drop in average FRT payable due to possible changes in pricing strategy of vehicle distributors after the cancellation of exemption for vehicle items, and a further 15% drop in the number of registrations pursuant to adjustments to the tax system. If the percentage drop of these factors is less, the additional receipt would be more than $181 million.

9. As regards motorcycles, Ms EU points out that although the Administration says that there would be individual cases paying less FRT under her proposed amendments than in the pre-Budget tax position, it agrees that her amendments would increase Government receipt from motorcycles by $5 million compared with the pre-Budget tax position, assuming that both the average tax payable and the number of registrations would not be affected by the tax changes.

10. In respect of the tax rates for van-type light goods vehicles not exceeding 1.9 tonnes, Ms EU notes the Administration's information that, in 2002-03, there were only five such vehicles registered in the first band of the existing scheme. The Administration does not say that her amendments would impact on the overall FRT receipt for such vehicles. In fact, in the Administration's letter of 14 June 2003 to an Assistant Legal Adviser of the Council, it confirmed that the FRT of the five vehicles payable under her proposed amendments would be higher than that in the pre-Budget position.

11. Summing up, Ms EU contends that, as the overall FRT receipt for private cars, motorcycles and van-type light goods vehicles not exceeding 1.9 tonnes under her proposed amendments would not be less than that under the pre-Budget tax arrangements, there is no charging effect within the meaning of Rule 57(6).

<u>Hon Mrs Selina CHOW's response</u>

12. Mrs CHOW shares the points made by Ms EU, which are equally applicable to her proposed amendments. She states that, compared to Ms EU's proposed amendments relating to private cars, her amendments will

generate more than the $181 million additional income that the Administration estimates will be generated under Ms EU's proposal. Mrs CHOW's proposed amendments regarding private cars only differ from the Government's proposed amendments in one respect - the tax rate for the second tier in the marginal tax system.

Advice of Counsel to the Legislature

13. Counsel to the Legislature advises that the principle suggested by Ms EU represents the correct principle which the President may apply when forming her opinion on whether a proposed CSA to a proposed revenue measure contained in a bill may have charging effect within the meaning of Rule 57(6). In view of the fundamental difference in the bases for the calculation of the taxable value and classification of the relevant class of vehicles into bands, a direct comparison of tax rates prescribed under existing law and those proposed in the CSAs would not assist the President.

14. The structural changes to the existing tax scheme proposed in the Members' CSAs are the same as those proposed in the Bill except for the tax rates. It would be reasonable, under the circumstances, that the Administration should bear the burden of satisfying the President that its view that the Members' CSAs would have charging effect is supported by cogent evidence. Where the President considers necessary, she may also take into account views presented by the Members and other relevant information made available to her.

My opinion

15. On the point made by SFST concerning what constitutes 'revenue' referred to in Rule 57(6), in the ruling I made yesterday, regarding the amendments proposed by Hon SIN Chung-kai to the Revenue (No. 2) Bill 2003, I already restated the principle that I have been adopting. I do not intend to repeat myself here.

16. My task is to consider whether the amendments proposed by the two Members have the object or effect of disposing of or charging the revenue of Hong Kong for the purpose of Rule 57(6), by weighing the proposals against what may be collected under existing statutory authority. I take the point, made by Ms EU, that since the tax scheme proposed in the Bill and the existing statutory scheme are founded on different bases, in terms of taxable value, bandwidth, and tax rates, it would be very difficult, if not impossible, to make an accurate comparison of the two and determine definitively the effects of the Members' proposed amendments or, indeed, of the Bill's original proposals or the revised proposals the Administration now intends to put before the Council.

I suspect the difficulties explain why the Secretary's submission has been based on a variety of assumptions each of which is capable of producing a different revenue projection. In this, he has my sympathy for trying hard. However, human behaviour being often not predictable, much less so consumer behaviour because a host of factors come into play, I do not think that I can rely solely on his submission to me to make my assessment.

17. In delivering his Budget speech to the Council on 5 March 2003, the Financial Secretary said:

> "Providing such (FRT) exemptions creates a loophole in the tax system. I therefore propose to abolish them. In response to the trade's request, I also propose to increase the bandwidths and introduce a marginal tax system for private cars. In addition, we shall make suitable adjustments to the tax bands and tax rates for revenue purposes."

18. In the Legislative Council Brief on the Bill, the Administration stated, regarding the abolition of the exemption, that:

> "As the value of exempted items constitutes a larger percentage of the total value of the vehicle for low-priced private cars … we propose to widen the tax bandwidths for private cars, … to decrease the effective tax rate for these cars to mitigate the impact of abolishing the exemptions … For van-type light goods vehicles less than 1.9 tonnes, we propose a marginal tax system similar to that for private cars …"

19. The Bill's Explanatory Memorandum states:

> "The main purpose of this Bill is to amend the Motor Vehicles (First Registration Tax) Ordinance (Cap 330) ("principal Ordinance") to give effect to some of the proposals in the Budget introduced by the Government for the 2003-2004 financial year. After this Bill comes into effect, the exemption from first registration tax now given in respect of certain accessories and warranties will be cancelled."

20. The passages I have quoted all point to the fact that the adjustment of tax bandwidths, replacement of FRT rates and adoption of a marginal tax system are part and parcel of the Government's main proposal to cancel the exemption given for certain vehicle items. That being the case, it will be proper for me to consider the Members' proposal against the background that the cancellation of exemption has been approved. The Administration agrees that, in that scenario, the Members' proposal will still generate additional FRT income from the three types of vehicles, although not as much as the

Government would have liked to achieve under its proposals. I am, therefore, of the opinion that the Members proposals will not have charging effect if the cancellation is approved.

21. I have examined whether, in the event that the cancellation is not approved, the Members' proposed amendments to tax rates in the Bill will result in reduction of the FRT receipt the Government may receive under the system provided in the existing law. The analysis in **Appendix II** illustrates that the Members' proposed rates will result in less FRT income from private cars than under the existing system, at the taxable values thresholds of \$150,000, \$300,000 (\$150,000 + \$150,000), and \$500,000 (\$150,000 + \$150,000 + \$200,000) proposed in the Bill. The same goes for van-type light goods vehicles and motorcycles. I therefore conclude that, unless the cancellation of exemption is approved by the Council, the Members' proposals will have a charging effect under Rule 57(6).

Ruling

22. In view of the relationship between the proposed cancellation of exemption and to the proposed tax rates, the uniqueness of this case and the basis upon which I opine that the Members' proposed amendments will not have a charging effect, I rule that Ms EU's and Mrs CHOW's may move their amendments if the relevant provisions in the Bill relating to the cancellation of the exemption have been approved by the Council.

(Mrs Rita FAN)
President
Legislative Council

24 June 2003

Appendix I

<u>Impact analysis of revised Government proposal on FRT for private cars</u>

			Old tax system #						Revised Government proposal *					
			Tax rate (Non-marginal / Effective rate) <=$100,000 @40% $100,001 - $200,000 @45% $200,001 - $300,000 @50% > $300,001 @60%						Marginal tax rate First $150,000 @ 35% Next $150,000 @ 70% Next $200,000 @ 85% Value > $500,000 @ 105%			Effective rate 35% 44% 59% 76%		
Value of cars	No. of cars registered in 2002-03	% of FRT receipts	(I) Taxable value under old FRT regime	(II) Value of exempted items	(III) Tax under old FRT regime	(IV) Old tax as % of old taxable value	(V) Retail price (including the old taxable value) under old FRT regime	(VI) Old tax as % of old retail price (including the old taxable value)	(VII) New taxable value after including exempted items	(VIII) Tax payable under the revised tax regime	(IX) New retail price (including the new taxable value)	(X) New tax as % of new taxable value	(XI) New tax as % of new retail price (including the new taxable value)	**(XII) % difference in retail price (including the taxable value) after tax increase**
$150,000 and below	13,776 (46%)	15%	64,259	42,607	25,704	40%	132,570	19%	106,866	37,403	144,269	35%	26%	**9%**
$150,001 - $300,000	10,740 (36%)	30%	140,600	64,946	63,270	45%	268,816	24%	205,546	91,382	296,928	44%	31%	**10%**
$300,001 - $500,000	3,408 (12%)	25%	306,478	68,656	183,887	60%	559,021	33%	375,134	221,364	596,498	59%	37%	**7%**
$500,001 or above	1,860 (6%)	30%	589,486	93,631	353,692	60%	1,036,809	34%	683,117	519,773	1,202,890	76%	43%	**16%**
Total	29,784	100%												

Old tax system refers to the system which was in place before 2:30p.m. on 5 March 2003 when the Public Revenue Protection Order took effect.

* Revised Government proposal represents the latest proposal of the Government as revised from the original 2003-04 Budget proposal (which is marginal system with rates at 35-75-105-150%). Proposed rate for motorcycles under Government's revised proposal is to be maintained at 40%.

Estimated additional revenue : $421 million
(assuming 15% drop in sales and 10% drop in average FRT)

Impact analysis of 35%-55%-75%-95% counter-proposal on FRT for private cars

			Old tax system #						35%-55%-75%-95% counter-proposal *					
			Tax rate (Non-marginal / Effective rate) <=$100,000 @40% $100,001 - $200,000 @45% $200,001 - $300,000 @50% > $300,001 @60%						Marginal tax rate First $150,000 @ 35% Next $150,000 @55% Next $200,000 @ 75% Value > $500,000 @ 95%			Effective rate 35% 40% 51% 67%		
Value of cars	No. of cars registered in 2002-03	% of FRT receipts	(I) Taxable value under old FRT regime	(II) Value of exempted items	(III) Tax under old FRT regime	(IV) Old tax as % of old taxable value	(V) Retail price (including the old taxable value) under old FRT regime	(VI) Old tax as % of old retail price (including the old taxable value)	(VII) New taxable value after including exempted items	(VIII) Tax payable under the revised tax regime	(IX) New retail price (including the new taxable value)	(X) New tax as % of new taxable value	(XI) New tax as % of new retail price (including the new taxable value)	**(XII) % difference in retail price (including the taxable value) after tax increase**
$150,000 and below	13,776 (46%)	15%	64,259	42,607	25,704	40%	132,570	19%	106,866	37,403	144,269	35%	26%	**9%**
$150,001 - $300,000	10,740 (36%)	30%	140,600	64,946	63,270	45%	268,816	24%	205,546	83,050	288,596	40%	29%	**7%**
$300,001 - $500,000	3,408 (12%)	25%	306,478	68,656	183,887	60%	559,021	33%	375,134	191,351	566,485	51%	34%	**1%**
$500,001 or above	1,860 (6%)	30%	589,486	93,631	353,692	60%	1,036,809	34%	683,117	458,961	1,142,078	67%	40%	**10%**
Total	29,784	100%												

Old tax system refers to the system which was in place before 2:30p.m. on 5 March 2003 when the Public Revenue Protection Order took effect.

* Proposed rate for motorcycles : reduced to 35%

Estimated additional revenue : $181 million

(assuming 15% drop in sales and 10% drop in average FRT)

Appendix II

Revenue Bill 2003

Contending tax rate proposals

Private cars

Taxable value	Motor Vehicles (First Registration Tax) Ordinance: Tax payable	Overall tax rate (%)	Revenue Bill 2003: Tax payable	Marginal tax rate (%)	Administation's CSA: Tax payable	Marginal tax rate (%)	Hon Audery EU's CSA: Tax payable	Marginal tax rate (%)	Hon Mrs Selina CHOW's CSA: Tax payable	Marginal tax rate (%)
50,000	20,000	40	17,500		17,500		17,500		17,500	
100,000	40,000	40	35,000		35,000		35,000		35,000	
100,001	45,000	45	35,000	35	35,000	35	35,000	35	35,000	35
150,000	**67,500**	**45**	**52,500**		**52,500**		**52,500**		**52,500**	
150,001	67,500	45	52,500		52,500		52,500		52,500	
200,000	90,000	45	90,000		87,500		80,000		82,500	
200,001	100,001	50	90,000	75	87,500	70	80,000	55	82,500	60
250,000	125,000	50	127,500		122,500		107,500		112,500	
300,000	**150,000**	**50**	**165,000**		**157,500**		**135,000**		**142,500**	
300,001	180,001	60	165,001		157,500		135,000		142,500	
350,000	210,000	60	217,500		200,000		172,500		180,000	
400,000	240,000	60	270,000	105	242,500	85	210,000	75	217,500	85
450,000	270,000	60	322,500		285,000		247,500		255,000	
500,000	**300,000**	**60**	**375,000**		**327,500**		**285,000**		**292,500**	
500,001	**300,001**	**60**	**375,001**		**327,501**		**285,000**		**292,500**	
550,000	330,000	60	450,000	150	380,000	105	332,500	95	340,000	105
600,000	360,000	60	525,000		432,500		380,000		387,500	

Motor cycles

	Motor Vehicles (First Registration Tax) Ordinance	Revenue Bill 2003	Administation's CSA	Hon Audery EU's CSA	Hon Mrs Selina CHOW's CSA
Tax rate (%)	40	No proposed change	Nil	35	35

Van-type light goods vehicle not exceeding 1.9 tonnes permitted gross vehicle weight

Taxable value	Motor Vehicles (First Registration Tax) Ordinance: Tax payable	Overall tax rate (%)	Revenue Bill 2003: Tax payable	Marginal tax rate (%)	Administation's CSA: Tax payable	Marginal tax rate (%)	Hon Audery EU's CSA: Tax payable	Marginal tax rate (%)	Hon Mrs Selina CHOW's CSA: Tax payable	Marginal tax rate (%)
50,000	20,000	40	17,500		17,500		17,500		17,500	
100,000	40,000	40	35,000		35,000		35,000		35,000	
100,001	45,000	45	35,000	35	35,000	35	35,000	35	35,000	35
150,000	**67,500**	**45**	**52,500**		**52,500**		**52,500**		**52,500**	
150,001	67,500	45	52,500		52,500		52,500		52,500	
200,000	90,000	45	90,000		87,500		80,000		80,000	
200,001	100,001	50	90,000	75	87,500	75	80,000	55	80,000	55
250,000	125,000	50	127,500		122,500		107,500		107,500	
300,000	**150,000**	**50**	**165,000**		**157,500**		**135,000**		**135,000**	
300,001	**150,001**	**50**	**165,001**		**157,500**		**135,000**		**135,000**	
350,000	175,000	50	217,500		200,000		172,500		172,500	
400,000	200,000	50	270,000	105	242,500	85	210,000	75	210,000	75
450,000	225,000	50	322,500		285,000		247,500		247,500	

(marginal) tax bands are shaded alternately for clarity