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Report of the Bills Committee on Revenue Bill 2003

Purpose

This paper reports on the deliberations of the Bills Committee on Revenue Bill 2003.

Background

2. The revenue proposals relating to motor vehicles first registration tax (FRT) were announced in the 2003-04 Budget on 5 March 2003. For the purpose of revenue protection, the Administration has arranged for the proposals to be covered by the Public Revenue Protection (Revenue) Order 2003 (the Order), which was gazetted on 5 March 2003 and put into effect as from 2:30 pm on the same day. All vehicles not registered before then will be subject to the revised tax system and rates. The Order gives legal effect to the FRT proposals for a maximum period of four months. The proposals will cease to have effect as from 5 July 2003 should the Revenue Bill 2003 (the Bill) not be passed by the Legislative Council by then.

3. In view of the trade's concerns over the impact of the FRT proposals, a Subcommittee was set up on 21 March 2003 to look into these concerns before recommending to the House Committee as to whether the Order should be repealed. The Subcommittee notes that by repealing the Order, FRT will be charged at old rates as before the commencement of the Order but there is no immediate refund of the excess taxes collected. On the other hand, if the Order remains in force, any excess tax collected under the Order will be refunded in the event that the Bill is subsequently passed with tax rates lower than proposed or not passed at all. Since the existing refund mechanism is fair and the interest of car owners will not be jeopardized, the Subcommittee considers it inappropriate to repeal the Order. Given the impact of the FRT proposals on the trade and related sectors, particularly in respect of employment opportunities, the Subcommittee recommends that a Bills Committee be formed to study the Bill as soon as possible.

The Bill

4. The Bill seeks to implement the revenue proposals in the 2003-04 Budget relating to FRT of motor vehicles. These proposals include -

(a) abolishing the existing exemption for three vehicle accessories, namely air-conditioners, audio equipment and anti-theft devices, and warranties provided by vehicle distributors;

(b) adjusting the tax bandwidths and increasing the tax rates for private cars as well as switching to a marginal tax system.

The Bills Committee

5. At the House Committee meeting on 11 April 2003, members agreed that priority be given to the formation of a Bills Committee to study the Bill. Under the chairmanship of Hon Audrey EU, the Bills Committee has held five meetings. The membership list of the Bills Committee is at **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from the trade and related sectors. 12 groups have made written and/or oral representations to the Bills Committee. A list of these groups is at **Appendix II**.

Deliberations of the Bills Committee

Abolishing exemptions

6. The Bill proposes to abolish the existing exemption for three vehicle accessories, namely air-conditioners, audio equipment and anti-theft devices, as well as warranties provided by vehicle distributors, from the taxable value of motors vehicles. To prevent tax avoidance, the Bill provides that registered vehicle owners have to declare to the Transport Department (TD) any accessories and warranties which are fitted or provided by any person (in addition to registered distributors and associated persons) and registered distributors to declare any accessories and warranties fitted or provided by them or associated persons within six months after first registration, failing which will be liable to a maximum fine of $500,000 and imprisonment for 12 months.

7. Doubt has been cast on the practicability of the declaration requirement which is not only hard to enforce but also creates an undue burden on the parties concerned. The Administration's explanation is that such a requirement is not new. At present, registered owners and registered distributors have a legal responsibility to declare to TD any accessories which have been fitted by registered distributors or associated persons within three months of first registration. The proposals in the Bill aim to strengthen the existing provisions to prevent avoidance of FRT through the purchase of accessories and warranties after first registration. They will also level the playing

field for all providers of accessories and warranties since under the previous arrangements, only accessories fitted by registered distributors and associated persons are subject to the declaration requirement whereas those fitted by independent repair shops are exempted.

8. Noting that a registered distributor who authorizes his employees or agents to make a declaration will be held liable for failure in making such a declaration, members query why the same offence is not applicable to the employees or agents concerned. The Administration agrees with members that instead of the registered distributor, the authorized employees or agents who make a false declaration or fail to deliver a declaration should be held liable. A Committee Stage amendment (CSA) will be moved to this effect. As regards the propriety of imposing a custodial sentence on a registered distributor, associated person or registered owner who fails to keep records of sale and purchase of motor vehicles, accessories and taxable warranties, the Administration's explanation is that the required records are essential to enable effective enforcement of the tax and prevent tax evasion. The penalty level of imprisonment for six months is also consistent with the existing penalty for cases where a person fails to comply with a requirement by an authorized person in performing a duty under the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330). Besides, the stated penalty is only the maximum that the Court may impose. The Court will take into account the circumstances of the case, when determining the appropriate level of penalty. Some members however hold the view that the custodial sentence is too heavy on a registered owner who is only an ordinary member of the public. According to the Administration, different penalties for different parties in respect of the same infringing act are inconsistent with legal policy in that the same maximum penalty should be attached to the same offence, leaving it to the Court to decide the appropriate level of penalty.

9. Concern has been raised on "double taxation" in the event that reinstallation of the three accessories within the prescribed six-month period after first registration is required due to breakdown or the need to ensure compatibility as in the case of anti-theft device. Consideration should be given to including in the Bill an exemption for additional FRT if the value of the reinstalled vehicle accessories is less than those being replaced. According to the Administration, FRT is levied on vehicles for use in Hong Kong. Even if an accessory that comes with a vehicle when first registered is subsequently replaced within the tax avoidance period of six months, the registered owner has actually made use of the accessory. Therefore, FRT is levied on the value of the newly fitted accessory without the value of the old accessory deducted. The Administration nevertheless agrees with members that it is arguable that the calculation of FRT should be on the difference between the old and newly fitted accessory instead of the value of the newly fitted accessory. In this connection, the Administration will move a CSA to the effect that the registered owner and the registered distributor (as applicable) should declare the value of the accessory being replaced, and that the value will be discounted when calculating the additional FRT payable. No additional FRT will be levied if the value of the reinstalled vehicle accessories is lower than those being replaced. To prevent tax evasion, the registered owner and the registered distributor (as applicable) will be required to make

declaration with supporting documents for verification of the operational departments. These documents will include those supporting a claim that the replaced accessory was with the vehicle, and that the accessory has been replaced together with certification of the value of the replaced accessory. To help to minimize abuse, TD may assess the market value of both the replaced and the new accessory if it considers that the declared values do not reflect the market value. The Administration will review the arrangements in one year's time in view of the operational complexities and taking into account any revenue leakage problem.

Adjusting the bandwidths and tax rates

10. As the value of the formerly tax-exempted items constitutes a larger percentage of the total value of the vehicle for lower-priced private cars, the Bill proposes to widen the tax bandwidths for private cars from $100,000 for the first three steps to $150,000 for the first two steps and $200,000 for the third step, and to decrease the effective rate for these cars to mitigate the impact of abolishing the exemptions. In order to raise additional revenue, the Bill also proposes to increase the tax rates for more expensive private cars and make the tax more progressive, through the introduction of a marginal tax system as suggested by the trade. The proposed marginal rates are 35%, 75%, 105% and 150% for the four tax bands respectively. The effective tax rates for private cars with taxable value below $150,000, between $150,001 and $300,000, between $300,001 and $500,000 and above $500,000 will be 35%, 46%, 65% and 95% respectively on average. For motorcycles, the Bill proposes that the existing rates of 40% be maintained as abolition of the exemption will have less impact on them. The pre-Budget system and the new system for all types of vehicles are set out in **Appendix III**.

11. The Bills Committee notes that the trade has expressed grave concern on the proposed increase in FRT rates for certain classes of private cars and motorcycles. It is pointed out that the trade has been experiencing a hard time as a result of the substantial drop in car sales amid the economic downturn. The situation is further aggravated following the outbreak of the Severe Acute Respiratory Syndrome (SARS). Notwithstanding, the trade recognizes its obligation to share the tax burden to raise revenue so as to help resolve the Budget deficits. However, the proposed new FRT rates are far beyond the market tolerance level and will inevitably deter new car purchase as illustrated by the downward trend of licences and closures over the past four months. To tide over the difficult time, the trade may have to lay off employees in order to cut cost. It is expected that 2 400 out of the some 12 000 employees engaged in the wholesale, retail, import and export as well as maintenance of motor vehicles will become redundant.

12. The Administration's explanation is that while the proposals pertaining to the Bill will bring about an increase in tax liability for the majority of private cars, the increase is merely due to the abolition of exemptions rather than any increase in the tax rate for the bulk of private cars. Besides, the slow-down in car sales will be only a temporary phenomenon, and car sales should pick up after the initial psychological impact of the tax increase on consumers has faded. According to TD's statistics, the

overall number of registrations of private cars has continued to pick up. In the first month after Budget announcement, the number of registrations of private cars was 898, representing 36% of the monthly average of 2002-03. In the second month after Budget announcement, the number rose to 1 353, representing 55% of the 2002-03 monthly average. In the third month after Budget announcement, the number rose to 1 783, representing 72% of the 2002-03 monthly average. The most recent figures are 456 registrations for the week beginning 26 May 2003, representing some 80% of the 2002-03 weekly average. As for motorcycles, latest information shows that in the week commencing 26 May 2003, there were 118 motorcycle registrations, representing 131% of the 2002-03 weekly average. On employment, there is no record of labour disputes handled by the Labour Department involving major vehicle distributors or accessories businesses closing down after the Budget proposals took effect on 5 March 2003. Besides, according to the record of the Companies Registry, up to mid-May, no active vehicle distributor has commenced winding up. Furthermore, those who are engaged in the servicing and repairing of motor vehicles and motorcycles may benefit if people tend to hold on to their existing vehicles for a longer period. To tide over cashflow and business difficulties during the outbreak of SARS, a $3.5 billion loan guarantee scheme has been put in place for restaurants and hotels, travel agents and related operations, retail outlets as well as cinemas and karaokes. Under the scheme, the Government will provide 100% guarantee for loans made by participating lending institutions to operators in these four industries. The loans must be used solely for paying the wages of employees. Vehicle distributors should be eligible for the scheme if they are suffering from business losses due to the outbreak of SARS.

13. Doubt has been cast on whether the figures provided by the Administration can truly reflect the market situation. According to the trade, car distributors have been liquidating their existing stock of cars in April 2003 at original FRT rates while paying the Government new FRT rates. Dealers have been reducing stock levels, bank debt and have moved out older models at old retail prices, prior to launching new models at the new retail prices. On the other hand, consumers have taken this as their last opportunity to buy expensive cars, knowing that they will not be able to afford one in the future. Members therefore query whether the sale trend is sustainable. They caution that instead of raising additional revenue, the proposed high FRT rates may result in a loss of revenue given the anticipated drop in sales volume. The Bills Committee urges the Administration to seriously consider the trade’s counter-proposal of reducing the marginal rates for the four tax bands of private cars to 35%, 55%, 75% and 95% respectively. Consideration should also be given to reducing the marginal tax rates for motorcycles to 35% in line with that for private cars. This will not only address the predicament facing the trade but also help to raise additional revenue.

14. The Administration’s explanation is that under the counter-proposal, the effective tax rates for private cars with taxable value below $150,000, between 150,001and $300,000, between $300,001 and $500,000 and above $500,000 will be 35%, 40%, 51% and 67% respectively on average. This is much less progressive than the average effective tax rates of 35%, 46%, 65% and 95% respectively for the same tax bands under the Bill. It is estimated that only $181 million additional

revenue will be yielded under the counter-proposal which is significantly less than that of $700 million under the Bill. Nevertheless, having regard to the effect of the outbreak of SARS on the economy in general and the trade in particular on the one hand and the need for additional revenue to help resolve the Budget deficits on the other, the Administration proposes to revise the marginal rates for the four tax bands of private cars to 35%, 70%, 85% and 105%. It is however not prepared to reduce motorcycle tax rates from the existing 40% to 35% given that the impact of abolishing exemptions is significantly lower on motorcycles than on private cars.

15. On the difference in additional revenue generated under the Government's revised proposal and the trade's counter-proposal, the Administration's explanation is that the estimated tax revenue for 2003-04 under the pre-Budget position (i.e. no adjustments to the tax rates and no abolition of exemptions) will be around $2.5 billion. This estimate has reflected a projected natural decline of 4% in the overall sale of cars in 2003-04 compared with the previous year. Under like circumstances, the trade's counter-proposal and the Government's revised proposal will yield $181 million and $421 million additional revenue respectively. The difference of some $240 million in additional revenue to be generated is attributed to the relatively moderate increase on more expensive cars (with a taxable value of $300,000 or above) under the trade's proposal. As these cars contribute more than half (55%) of the total FRT from private cars, a lesser increase will depress additional revenue rather substantially.

16. Some members however query the accuracy of the figures provided by the Administration which are worked out based on the same assumptions (i.e. a 15% drop in total number of private cars to be registered, and a 10% drop in the average tax payable for private cars) without taking into account the actual market situation. They point out that the drop in total number of private cars to be registered under the Government's revised proposal may be greater than 15% as the proposed marginal tax rates are far beyond the market tolerance level. It is therefore questionable whether the revised proposal can yield $421 million additional revenue. The moderate increase under the trade's proposal may however generate more than $181 million additional revenue as expected. According to the Administration, the trade's counter-proposal will unlikely yield more additional revenue than Government's revised proposal, taking into account the extent of market elasticity and possible changes in the pricing strategy of vehicles dealers pursuant to the inclusion of the formerly-exempted items in the calculation of taxable value.

17. A member welcomes the revised proposal while another member is opposed to any forms of tax increase amid the economic slump. The majority of members hold the view that the revised proposal is at variance with the Administration's pledge to revive the economy. They express grave disappointment that the Administration has ignored the predicament facing the trade and caution that the closing down of vehicle distributors or accessories businesses as a result of a shrinkage in car sales volume is not conducive to the well being of the economy as a whole. To this end, the Bills Committee will move CSAs to reduce the marginal rates for the four tax bands of private cars to 35%, 55%, 75% and 95% respectively and of motorcycles to 35%. According to the Administration, the CSAs to be moved by the Bills Committee would

have the effect of disposing of or charging Government's revenue in accordance with Rule 57(6) of the Rules of Procedure of the Legislative Council. As the question of charging effect is to be determined by the President of the Legislative Council, members decide to put forward the CSAs. Hon Mrs Selina CHOW has also indicated her intention to move CSAs to amend the marginal rates for the four tax bands of private cars.

18. Given the divergent views on the marginal rates, concern has been raised on whether the pre-Budget system can tie in with the provisions in the Bill in the event that the marginal rates pertaining to the Bill, the Administration's proposal and the Bills Committee's counter-proposal are not passed. The Administration's view is that under such circumstances, the present tax bands and rates will be in force again. With the taxable value inflated by the abolition of exemptions proposed in the Bill, but without the tax bands widened or the tax rates for the lowest band adjusted as proposed, the tax liability of all vehicles will increase. Since the values of formerly-exempted items constitute a relatively larger portion of the taxable value of the less expensive private cars, the impact on the tax payable for these cars will be more significant.

19. The Bills Committee has also considered the option of granting exemption to cars for which orders have been placed and deposits paid before the Order took effect. Noting that most of the transactions have already been completed, members decide to maintain status quo since any change at this stage may cause undue inconvenience to the trade and incur additional administrative cost.

Committee Stage amendments

20. A set of CSAs to be moved is at **Appendix IV**.

Recommendation

21. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 25 June 2003.

Consultation with the House Committee

22. The House Committee at its meeting on 13 June 2003 supported the recommendation of the Bills Committee to resume the Second Reading debate on the Bill on 25 June 2003.

Prepared by
Council Business Division 1
Legislative Council Secretariat
19 June 2002

Appendix I

Bills Committee on Revenue Bill 2003

Membership list

Chairman	Hon Audrey EU Yuet-mee, SC, JP
Members	Dr Hon David CHU Yu-lin, JP Hon Cyd HO Sau-lan Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP Hon HUI Cheung-ching, JP Hon CHAN Kam-lam, JP Hon SIN Chung-kai Hon Andrew WONG Wang-fat, JP Hon Miriam LAU Kin-yee, JP Hon Emily LAU Wai-hing, JP Hon MA Fung-kwok, JP
	(Total : 11 Members)
Clerk	Miss Becky YU
Legal Adviser	Mr Stephen LAM
Date	24 April 2003

Appendix II

List of individual/organizatons which have made written and/or oral representations to the Bills Committee

Mr DIK Kong-sang

Hong Kong Auto (Parts & Machinery) Association Ltd

Hong Kong Motorcycle Commercial Chamber

Hong Kong Motorcycle Association and Motorcycle Alliance

Hong Kong Right Hand Drive Motors Association Ltd

Hong Kong Small and Medium Enterprises Association

Hong Kong Vehicle Repair Merchants Association Ltd

Motor Traders Association of Hong Kong

Motor Alliance

Stuttgart Motors Holdings Ltd

Taxation Institute of Hong Kong

The Experience Group, Limited

First Registration Tax on Motor Vehicles

Vehicle type	Present tax bands and rates	Proposed tax bands and rates #
Private cars	(a) taxable value does not exceed $100,000 — 40% (b) taxable value exceeds $100,000 but does not exceed $200,000 — 45% (c) taxable value exceeds $200,000 but does not exceed $300,000 — 50% (d) taxable value exceeds $300,000 — 60%	(a) for first $150,000 of taxable value — 35%@ (b) for next $150,000 — 75%@ (c) for next $200,000 — 105%@ (d) for the balance (i.e. for taxable value over $500,000) — 150%@
Motor cycles	40%	40%
Motor tricycles	40%	40%
Goods vehicles Van-type light goods vehicles not exceeding 1.9 tonnes permitted gross vehicle weight	(a) taxable value does not exceed $100,000 — 40% (b) taxable value exceeds $100,000 but does not exceed $200,000 — 45% (c) taxable value exceeds $200,000 — 50%	(a) for first $150,000 of taxable value — 35%@ (b) for next $150,000 of taxable value — 75%@ (c) for the balance (i.e. for taxable value over $300,000) — 105%@
Van-type light goods vehicles exceeding 1.9 tonnes permitted gross vehicle weight	20%	17%
Goods vehicles, other than van-type light goods vehicles	18%	15%
Taxis Public and private light buses Public and private buses (except those exempted from the Motor Vehicle First Registration Tax as specified in the relevant Ordinance) Special purpose vehicles	4%	3.7%

\# Under the proposed tax system, no exemption will be given to air-conditioners, audio equipment, anti-theft devices or distributors' warranties. Also, the marginal tax system will be adopted for private cars and van-type light goods vehicles not exceeding 1.9 tonnes.

@ These are marginal tax rates.

Appendix IV

REVENUE BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services and the Treasury

Clause	Amendment Proposed
2	By adding before paragraph (a) – "(aa) in the definition of "declared value", by adding ", an employee or agent authorized by a registered distributor under section 4D(3)" after "registered distributor";".
6(d)	(a) By adding after the proposed section 4D(2) – "(2AA) Where an accessory declared in a declaration made under subsection (2) ("new accessory") is fitted to the motor vehicle to replace another accessory ("replaced accessory"), the registered owner may, together with the registered distributor who fits the new accessory (if the distributor so wishes), apply to the Commissioner to deduct the value of the replaced accessory from the taxable value of the vehicle by setting out in the declaration such details of the replaced accessory as the Commissioner may reasonably require and attaching to the declaration such documentary evidence as the Commissioner may reasonably require in support of the application.".

(b) By deleting the full stop at the end and substituting a semicolon.

6 By adding –

"(e) by adding –

"(3A) Subject to subsection (3B), where a registered distributor has authorized a person under subsection (3), a reference to registered distributor in this section, in so far as it relates to an obligation to make a declaration, shall be deemed to be a reference to the person so authorized, and a reference to registered distributor in section 4I(1)(ea) shall be construed accordingly.

(3B) Subsection (3A) shall not apply in relation to a matter in respect of which the registered distributor has made a declaration under this section despite the authorization.".".

7(f) By deleting the proposed section 4E(2A) and (2B) and substituting –

"(2A) After receiving a declaration made under section 4D(2) or (2A), the Commissioner shall revise the taxable value of the motor vehicle to which the declaration relates in the manner provided in subsection (2AA) and, if applicable, subsection (2AB) and calculate the additional first registration tax payable for the vehicle, if any, accordingly.

(2AA) The Commissioner shall add the value of the accessory or taxable warranty as declared in the declaration or, if applicable, the market value of the accessory or taxable warranty as assessed under subsection (2B) to the existing taxable value of the motor vehicle.

(2AB) Where an application is made under section 4D(2AA) to deduct the value of a replaced accessory from the taxable value of the motor vehicle, if the Commissioner is satisfied that -

(a) the function of the new accessory is the same or substantially the same as that of the replaced accessory; and

(b) the replaced accessory was fitted to the vehicle and has been removed,

the Commissioner shall deduct from the total taxable value of the vehicle as calculated under subsection (2AA) the value of the replaced accessory as declared in the declaration or, if applicable, the market value of the replaced accessory as assessed under subsection (2B).

(2AC) Where the revised taxable value of a motor vehicle is lower than its taxable value before the accessory declared in the declaration is fitted, any excess first registration tax paid shall not be refunded.

(2B) If the Commissioner is of the opinion that the declared value of an accessory, including a replaced accessory, or a taxable warranty does not reflect the market value of the accessory or taxable warranty, the Commissioner may assess the market value of the accessory or taxable warranty for the purposes of subsection (2AA) or (2AB), having regard to the declared value or the range of market values of any similar accessory or taxable warranty.”.

8 By deleting paragraph (b) and substituting –

“(b) in subsection (5), by repealing “or (e)” and substituting “, (e), (ea) or (eb)”.”.

10(a) By deleting subparagraph (i) and substituting -

“(i) in paragraph (e) -

(A) by adding “, an employee or agent authorized by a registered distributor under section 4D(3)” after “registered distributor”;

(B) by repealing “or (2)”;”.

10(a)(ii) (a) In the proposed section 4I(1)(ea), by adding “, an employee or agent authorized by a registered distributor under section 4D(3)” after “registered distributor”.

(b) By adding –

“(eb) being a registered owner, a registered distributor or an employee or agent authorized by a registered distributor under section 4D(3), makes a false declaration in connection with an application made under section 4D(2AA);”.

REVENUE BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services
and the Treasury

Clause	Amendment Proposed
11	In the proposed Schedule –

(a) by deleting item 1 and substituting –

"1. Private cars –

(a) on the first $150,000 35

(b) on the next $150,000 70

(c) on the next $200,000 85

(d) on the remainder .... 105";

(b) by deleting item 8(b) and substituting –

"(b) Van-type light goods vehicle not exceeding 1.9 tonnes permitted gross vehicle weight –

(i) on the first $150,000 35

(ii) on the next $150,000 70

(iii) on the remainder .... 85".

REVENUE BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Honourable Audrey EU Yuet-mee, SC, JP

Clause	Amendment Proposed
11	In the proposed Schedule –

(a) by deleting item 1 and substituting –

"1. Private cars –

(a) on the first $150,000 35

(b) on the next $150,000 55

(c) on the next $200,000 75

(d) on the remainder .... 95";

(b) by deleting item 6 and substituting –

"6. Motor cycles ………………………… 35";

(c) by deleting item 8(b) and substituting –

"(b) Van-type light goods vehicle not exceeding 1.9 tonnes permitted gross vehicle weight –

(i) on the first $150,000 35

(ii) on the next $150,000 55

(iii) on the remainder .... 75".

REVENUE BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Honourable Mrs Selina CHOW LIANG Shuk-yee, GBS, JP

Clause	Amendment Proposed
11	In the proposed Schedule –

(a) by deleting item 1 and substituting –

"1. Private cars –

(a) on the first $150,000....................35
(b) on the next $150,000....................60
(c) on the next $200,000....................85
(d) on the remainder........................105";

(b) by deleting item 6 and substituting –
"6. Motor cycles .... 35";

(c) by deleting item 8(b) and substituting –
"(b) Van-type light goods vehicle not exceeding 1.9 tonnes permitted gross vehicle weight –
(i) on the first $150,000 35
(ii) on the next $150,000 55
(iii) on the remainder .... 75".