

For information on
25 March 2003

**Paper for Subcommittee on the
Public Revenue Protection (Revenue) Order 2003**

Purpose

This paper provides the Administration's response to the Clerk to the Subcommittee's letter of 22 March.

Background

2. The Financial Secretary proposed in the Budget for 2003-04 to amend the motor vehicles first registration tax (FRT) system by (a) removing the tax exemption for vehicle accessories and distributor's warranties; (b) introducing a marginal tax system for private cars; and (c) raising the tax rates for private cars, especially for the more expensive ones.

3. For revenue protection purposes, the proposals were effected on Budget Day (5 March) under the Public Revenue Protection (Revenue) Order 2003.

Rationale for the use of PRPO

4. Since the enactment of the Public Revenue Protection Ordinance (Cap. 120), it has been the established practice of the Administration, accepted by the Legislative Council of the day, to use Public Revenue Protection Orders (PRPOs) to give temporary effect to those revenue-raising proposals which, if not implemented immediately upon announcement, would result in revenue loss through measures such as stockpiling and advanced sale. Accordingly, increases in the duty rates on dutiable commodities such as cigarettes and alcoholic beverages and increases in traffic-related licence fees and FRT on motor vehicles have come into immediate effect through the issue of PRPOs. For example, when the FRT rates were last raised in 1991, the increases took immediate effect on Budget Day under a PRPO.

5. The Public Revenue Protection (Revenue) Order 2003 made on 5 March is no different in principle from PRPOs made in previous years. The Order contains the Budget proposals on FRT in the 2003-04 Budget. We have not included other Budget revenue measures this year in the Order because we do not consider that immediate effect needs to be given to those proposed tax increases in order to counter avoidance. However, if we did not implement the FRT proposals in respect of all vehicles which had not been registered by Budget Day and were to wait until after LegCo had enacted the Bill to implement the proposed rates, we expect that many vehicle buyers would advance their purchases and thus anticipate the increase. We consider that the revenue loss would be serious.

6. As required by the Public Revenue Protection Ordinance (Cap. 120), the Public Revenue Protection (Revenue) Order 2003 is accompanied by a Revenue Bill (to be known as the Revenue Bill 2003) which is identical to the draft Bill in the schedule to the Order. The Bill will be introduced into the Legislative Council for consideration and scrutiny in the normal manner.

Repeal of PRPO

7. The Administration would be opposed to any attempt to repeal the Public Revenue Protection (Revenue) Order 2003. We believe that discussion on the merits of the Budget proposals relating to FRT should take place in the context of the Revenue Bill 2003, not the Order. Furthermore, the repeal of a PRPO will not be in line with the spirit of the Public Revenue Protection Ordinance. Our detailed arguments are set out below.

8. The sole purpose of the Public Revenue Protection Ordinance, as stated in section 2 therein, is to enable a PRPO to be made by the Chief Executive to protect the revenue by provisionally amending the relevant legislation. Section 5(2) of the Ordinance details the specific circumstances in which a PRPO shall cease to have effect, namely: -

“Every such order shall expire and cease to be in force -

- (a) upon the notification in the Gazette of the rejection by the Legislative Council of the bill or resolution in respect of which the order was made; or*

- (b) *upon the notification in the Gazette of the withdrawal of the bill or resolution or order; or*
- (c) *upon the bill or resolution, with or without modification, becoming law in the ordinary manner; or*
- (d) *upon the expiration of 4 months from the day on which the order came into force,*

whichever event first happens.”

9. Since the enactment of the Public Revenue Protection Ordinance, all PRPOs made have been accepted by the Legislative Council of the day in recognition of the legislative intent of the Ordinance and in the certain knowledge that LegCo would debate fully the merits or otherwise of the measures contained in the PRPOs in the context of the Revenue Bills scheduled to the PRPOs.

10. Any repeal of the Public Revenue Protection (Revenue) Order 2003 would impair the revenue-protection function of the Public Revenue Protection Ordinance. We do not consider this to be in the overall public interest.

11. Practically speaking, any attempt to move a resolution to repeal the Public Revenue Protection (Revenue) Order 2003 would in effect require Members either to reject the validity of the Public Revenue Protection Ordinance itself or to debate the revenue raising measures relating to FRT prematurely. As already explained, the clear legislative purpose of the Ordinance is to provide a method of giving provisional legal effect to proposed revenue measures pending full consideration of those measures by the Legislative Council. By moving a resolution now to repeal an order made under the Ordinance, the Legislative Council would be invited either to ignore the provisions of section 5 of the Ordinance (set out above) or to treat the resolution as an opportunity to debate the Revenue Bill 2003 in full with a view to “rejecting” it in terms of section 5(2)(a) of the Ordinance. Clearly such a debate would be premature because -

- (a) the Revenue Bill 2003 has not yet been introduced into this Council;

and

- (b) the debate on the resolution does not allow exhaustive scrutiny which full debate on the Bill will provide when it is introduced (debate on the Second Reading, Bills Committee if Members think fit and further debate at Committee stage).

Legal effect if the PRPO was repealed

12. In case any Member were to move a resolution to repeal the Public Revenue Protection (Revenue) Order 2003 in the negative vetting process under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) and the resolution were passed by the Legislative Council, with effect from the date of publication of the resolution, FRT would be charged at the old rate, i.e. based on the tax system which was effective before the commencement of the Order.

Consequences of repeal of PRPO

13. The question of refund will not arise in respect of the FRT already collected under the Public Revenue Protection (Revenue) Order 2003. Based on Section 34(2) of the Interpretation and General Clauses Ordinance, the resolution to repeal the Order, if any, moved by a Member shall not prejudice anything done under the Order.

14. The Government will propose in the Revenue Bill 2003 that the relevant provisions are to take effect retrospectively from 2:30 PM on 5 March. On the assumption that the Revenue Bill 2003 were to be subsequently rejected by the Legislative Council, FRT would continue to be charged at the old rates. Refund would then be made in respect of the FRT that had already been collected at the new rates under the Public Revenue Protection (Revenue) Order 2003 before its repeal.

15. On the other hand, in the event that the Revenue Bill 2003 were to be passed by LegCo, the Government would have to recover the FRT underpaid in respect of first registration applications made after the date of publication of the resolution repealing the PRPO.

Legislative timetable for introducing the Revenue Bill 2003

16. The Administration intends to introduce the Revenue Bill 2003 into the Legislative Council on 9 April 2003. A Legislative Council Brief was issued earlier today.

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