

立法會

Legislative Council

LC Paper No. LS 86/02-03

**Paper for the Subcommittee on
Public Revenue Protection (Revenue) Order 2003 made under
section 2 of the Public Revenue Protection Ordinance (Cap. 120)**

**Legal options available to the Subcommittee in scrutiny of the
Public Revenue Protection (Revenue) Order 2003**

Purpose

At the meeting on 25 March 2003, the Subcommittee requested the legal adviser to write a paper on the legal options available to the Subcommittee in scrutiny of the Public Revenue Protection (Revenue) Order 2003 ("the Order").

Legal options

2. The Order is a temporary measure for raising revenue proposal in the 2003-04 Budget. The Administration has accepted that it is a subsidiary legislation, subject to negative vetting under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) (Annex I).

3. Section 34(2) of Cap. 1 provides that Members may amend subsidiary legislation in any manner whatsoever consistent with the power to make such subsidiary legislation. The power of the Chief Executive in Council under section 2 of the Public Revenue Protection Ordinance (Cap. 120) is to make an order giving full force and effect of law to all the provisions of the Bill contained in the Public Revenue Protection Order. Consistent with this power, LegCo has the power to repeal the Order but does not have power to amend the provisions therein.

Legal consequences of repealing the Order

In general

4. Upon repeal of the Order under section 34 of Cap. 1, with effect from the date of publication in the Gazette of the LegCo's resolution to repeal, any tax payable under the Order will cease to be paid and the motor vehicle first registration

tax will be charged at the rate existing before the commencement of the Order. In respect of excess taxes collected under the Order, there will not be refund. In respect of taxes collected at a lower rate under the Order, for example Items 2, 3 etc., it appears that there is no legal basis for the Administration to collect the difference in tax underpaid under the Order (Members may wish to ask the Administration to express its view on this point). It is because pursuant to section 34(2) of Cap. 1, the resolution to repeal the Order, will not prejudice anything done under the Order.

5. The repeal of the Order by LegCo's resolution does not prevent the Administration from introducing into LegCo a Revenue Bill identical to the Revenue Bill 2003 contained in the Schedule to the Order. There are two scenarios upon introduction of the Bill.

The first scenario: introduction of the Revenue Bill upon repeal of the Order

6. If LegCo does not support the Bill, there is an argument, as advocated by the Administration in paragraph 14 of its paper to the Subcommittee (CB(1)1226/02-03(01)) ("the Administration's paper"), that sections 5 and 6 of the Public Revenue Protection Ordinance (Annex II) will come into play. In short, it means that there is a refund of the excess taxes collected at the new rate under the Order before its repeal. We agree with the Administration's argument in this respect because section 5 of the Public Revenue Protection Ordinance does not provide for the repeal of an order made thereunder. Therefore, the argument runs, the repeal is for the purpose of section 34 of Cap. 1 but not for the purpose of the Public Revenue Protection Ordinance. The combined effect of the repeal of the Order and rejection of the Bill is that there will be refund of excess taxes collected at the new rate under the Order before its repeal and the motor vehicle first registration tax will be charged at the rate existing before the commencement of the Order. In relation to those items subject to a lower rate of tax in the Order, section 7 of the Public Revenue Protection Ordinance provides that where an order has the effect of lowering tax and where the order ceases to be in force and is not replaced, with or without modification, by the bill in respect of which it was made, the tax which was payable immediately before the coming into force of the order shall thereupon again become payable in full. But it is unclear as to whether the Administration may collect the difference in taxes underpaid at the new rate under the Order before its repeal (Members may wish to ask the Administration to express its view on this point).

The second scenario: introduction of the Revenue Bill upon repeal of the Order

7. The Administration will propose in the Revenue Bill that the relevant provisions are to take effect retrospectively from 2:30 p.m. on 5.3.2003 (see paragraph 14 of the Administration's paper). If LegCo subsequently passes the Bill without amendment, we agree with the Administration's view (see paragraph 15 of the Administration's paper) that it has power to recover the first registration tax underpaid in respect of first registration applications made after the date of publication of the resolution repealing the Order. The retrospective effect of the Revenue Ordinance

(upon enactment of the Revenue Bill) will override the effect of the repealed Order. In relation to the difference in tax overpaid after the repeal of the Order, in the light of the retrospective effect of the Revenue Ordinance, it appears that the Administration has a duty to refund the overpaid tax (Members may wish to ask the Administration to express its view on this point).

Legal consequences of not repealing the Order

8. So long as the Order remains in force, motor vehicles first registration tax will be paid according to the rates contained therein. If LegCo passes the Revenue Bill 2003 without amendment, the question of refund of excess taxes or collection of underpaid taxes will not arise. However, if LegCo passes the Bill with modification of rate of tax lower than that proposed or does not pass the Bill at all, there will be refund of the excess taxes collected at the new rate under the Order. Sections 5 and 6 of the Public Revenue Protection Ordinance are relevant. In relation to those items subject to a lower rate of tax in the Order, section 7 of the Public Revenue Protection Ordinance provides that where an order has the effect of lowering tax and where the order ceases to be in force and is not replaced, with or without modification, by the bill in respect of which it was made, the tax which was payable immediately before the coming into force of the order shall thereupon again become payable in full. But it is unclear as to whether the Administration has power to collect the difference in taxes underpaid at the new rate after the coming into force of the Order (Members may wish to ask the Administration to express its view on this point).

Amendments to the Revenue Bill contained in the Schedule to the Order

9. As explained in paragraph 2 of this paper, the power of LegCo under section 34 of Cap. 1 in this matter is to repeal the Order. No legislative power is given at this stage to propose amendments to the Bill. Members will have an opportunity to debate the Revenue Bill 2003 in full when it is subsequently introduced into LegCo.

Encl

Prepared by

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(2) 凡附屬法例已根據第(1)款提交立法會會議席上省覽，在該次省覽的會議之後 28 天內舉行的會議上，立法會可藉通過決議，訂定將該附屬法例修訂，修訂方式不限，但須符合訂立該附屬法例的權力；此等決議一經通過，該附屬法例須當作由憲報刊登該決議之日起修訂，但已根據該附屬法例而作出的任何事情，其法律效力不受影響。

(3) 若第(2)款所指期限的屆滿日期(如非因本款規定)原應是——

(a) 在立法會會期結束前或在立法會解散前的最後一次會議後；但 (由 1993 年第 89 號第 17 條代替)

(b) 在立法會下一會期的第二次會議日或該日之前，(由 1993 年第 89 號第 17 條代替)

則該期限須視為延展至該第二次會議的翌日，並在該日屆滿。

* (4) 立法會可於第(2)款所指的期限或憑藉第(3)款而延展的該期限屆滿之前，藉決議就其中指明的附屬法例——

(a) (就第(2)款所指的期限而言) 將該期限延展至在該期限屆滿之日後第 21 天或之後舉行的首次立法會會議；

(b) (在第(2)款所指的期限已憑藉第(3)款而延展的情況下) 將經如此延展的該期限延展至在該下一會期的第二次會議日後第 21 天或之後舉行的首次立法會會議。(由 2002 年第 8 號第 2 條代替)

(5) 立法會按照本條通過的決議，須於通過後 14 日內在憲報刊登，或在特別情況下行政長官准許延展的期限內刊登。

(6) 在本條內——

“附屬法例”(subsidiary legislation) 不包括立法會的決議；

“會議”(sitting)，用於計算時間時，只包括其議事程序表上載有附屬法例的會議，並指該會議開始當日。(由 1993 年第 89 號第 17 條代替)

(由 1986 年第 39 號第 2 條代替。由 1998 年第 26 號第 37 條修訂)

* 本款經《2002 年延展審議期限(立法會)條例》(2002 年第 8 號) 第 2 條修訂，相關的過渡性條文見載於該條例第 3 條。

(2) Where subsidiary legislation has been laid on the table of the Legislative Council under subsection (1), the Legislative Council may, by resolution passed at a sitting of the Legislative Council held not later than 28 days after the sitting at which it was so laid, provide that such subsidiary legislation shall be amended in any manner whatsoever consistent with the power to make such subsidiary legislation, and if any such resolution is so passed the subsidiary legislation shall, without prejudice to anything done thereunder, be deemed to be amended as from the date of publication in the Gazette of such resolution.

(3) If the period referred to in subsection (2) would but for this subsection expire—

(a) after the last sitting before the end of a session or dissolution of the Legislative Council; but (Replaced 89 of 1993 s. 17)

(b) on or before the day of the second sitting of the Legislative Council in the next session, (Replaced 89 of 1993 s. 17)

that period shall be deemed to extend to and expire on the day after that second sitting.

* (4) Before the expiry of the period referred to in subsection (2) or that period as extended by virtue of subsection (3), the Legislative Council may by resolution in relation to any subsidiary legislation specified therein—

(a) in the case of the period referred to in subsection (2), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;

(b) in the case where the period referred to in subsection (2) has been extended by virtue of subsection (3), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session. (Replaced 8 of 2002 s. 2)

(5) Any resolution passed by the Legislative Council in accordance with this section shall be published in the Gazette not later than 14 days after the passing thereof or within such further period as the Chief Executive may allow in any particular case. (Amended 26 of 1998 s. 37)

(6) In this section—

“sitting”(會議)，when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper;

“subsidiary legislation”(附屬法例) does not include a resolution of the Legislative Council. (Replaced 89 of 1993 s. 17)

(Replaced 39 of 1986 s. 2)

* For the transitional provision relating to this subsection as amended by section 2 of the Extension of Vetting Period (Legislative Council) Ordinance 2002 (8 of 2002), see section 3 of that Ordinance.

4. 應課稅貨物的交付限制

行政長官可在任何時間藉命令授權香港海關關長，於命令所指明的不超過 4 個月的期間內，凡要求於繳付關稅後交付供本地使用的應課稅貨物或商品的數量，是關長覺得在當時情況下超出合理數量的，可拒絕容許自船邊或貨倉交付該等貨物或商品供本地使用。

(由 1931 年第 37 號第 2 條增補。由 1939 年第 33 號補充附表修訂；由 1940 年第 840 號政府公告修訂；由 1977 年第 206 號法律公告修訂；由 1982 年第 294 號法律公告修訂；由 1997 年第 362 號法律公告修訂；由 1999 年第 68 號第 3 條修訂)

[比照 1915 c. 89 s. 15 U.K.]

5. 命令的生效及有效期

(1) 根據本條例作出的每項命令，一經行政長官簽署，立即生效，但如在該命令中指明其他生效時間，則該命令在所指明的時間生效。

(2) 每項此類命令在下列情況即告有效期屆滿並停止生效——

- (a) 該命令是就某條例草案或決議作出的，而憲報公布立法會已否決該條例草案或決議；或
- (b) 憲報公布該條例草案、決議或命令已被撤回；或 (由 1931 年第 37 號第 2 條修訂)
- (c) 該條例草案或決議按一般方式成為法律，不論有否修改；或
- (d) 自該命令生效日期起計的 4 個月屆滿，

以上各項以最早發生者為準。(由 1939 年第 33 號補充附表修訂；由 1940 年第 840 號政府公告修訂)

(3) 凡本條規定根據本條例作出的命令，在憲報公布某事項時即告有效期屆滿並停止生效，則有關公告如看來是在某日於憲報刊登，該命令在緊接該日午夜前的時間有效期屆滿並停止生效。

(4) 在任何法律程序中，如出現關於行政長官在何時根據本條例簽署某命令的問題，則出示一份看來是由政務司司長簽署並述明該命令簽署時間的證明書，即為該命令是在該證明書所註明的時間簽署的表面證據。(由 1997 年第 362 號法律公告修訂)

(由 1939 年第 33 號補充附表修訂；由 1940 年第 840 號政府公告修訂；由 1999 年第 68 號第 3 條修訂)

4. Restriction of delivery of dutiable goods

The Chief Executive may at any time by order authorize the Commissioner of Customs and Excise, during any period named in the order not exceeding 4 months, to refuse to allow the delivery of dutiable goods or commodities for local use from ship's side or warehouse on payment of duty in any cases where deliveries are demanded of amounts exceeding the deliveries which appear to the Commissioner to be reasonable deliveries in the circumstances.

(Added 37 of 1931 s. 2. Amended 33 of 1939 Supp. Schedule; G.N. 840 of 1940; L.N. 206 of 1977; L.N. 294 of 1982; 68 of 1999 s. 3)

[cf. 1915 c. 89 s. 15 U.K.]

5. Coming into force and duration of order

(1) Every order made under this Ordinance shall come into force immediately upon the signing thereof by the Chief Executive unless some other time be specified in the order for the coming into force thereof, in which case the order shall come into force at the time so specified. (Amended 68 of 1999 s. 3)

(2) 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 (Amended 37 of 1931 s. 2)
- (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. (Amended 33 of 1939 Supp. Schedule; G.N. 840 of 1940)

(3) Where it is provided in this section that an order made under this Ordinance shall expire and cease to be in force upon the notification in the Gazette of any act, such order shall expire and cease to be in force on the day which purports to be the date of the Gazette in which the notification appears, and immediately before midnight on that day.

(4) If in any proceedings any question arises as to the time when the Chief Executive signed any particular order under this Ordinance, the production of a certificate purporting to be under the hand of the Chief Secretary for Administration and stating the time of such signature shall be prima facie evidence that such order was signed at the time stated in such certificate. (Amended L.N. 362 of 1997; 68 of 1999 s. 3)

(Amended 33 of 1939 Supp. Schedule; G.N. 840 of 1940)

6. 多付的稅項等的退還

按根據本條例作出的命令繳付的稅項、費用、差餉或其他稅收項目，如超過在緊接該命令有效期屆滿後須繳付的稅項、費用、差餉或其他稅收項目的各自的款額，則多付的款額須付還付款人。

(由 1939 年第 33 號補充附表修訂；由 1940 年第 840 號政府公告修訂)

7. 在若干情況下稅項等的原有稅率的恢復

凡根據本條例就某條例草案或決議作出的命令，有減低稅項、費用、差餉或其他稅收項目的效力，而該命令已停止生效和沒有被該條例草案或決議所取代（不論有否修改），則在緊接該命令生效前須繳付的稅項、費用、差餉或其他稅收項目，在緊接該命令停止生效之後即變為須全數繳付。

(由 1939 年第 33 號補充附表修訂；由 1940 年第 840 號政府公告修訂)

6. Refund of excess duty, etc.

So much of any duty, tax, fee, rate or other item of revenue as may have been paid under any order made under this Ordinance in excess of the respective duty, tax, fee, rate or other item of revenue payable immediately after the expiration of the order shall be repaid to the person who paid the same.

(Amended 33 of 1939 Supp. Schedule; G.N. 840 of 1940)

7. Restoration of former rate of duty, etc., in certain cases

Where an order under this Ordinance has the effect of lowering any duty, tax, fee, rate or other item of revenue and where the order ceases to be in force and is not replaced, with or without modification, by the bill or resolution in respect of which it was made, the duty, tax, fee, rate or other item of revenue which was payable immediately before the coming into force of the order shall thereupon again become payable in full.

(Amended 33 of 1939 Supp. Schedule; G.N. 840 of 1940)