

**For information
on 10 April 2003**

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

Purpose

This paper provides the Administration's response to the questions raised by Members at the meeting of the Subcommittee on the Public Revenue Protection (Revenue) Order 2003 (PRPO 2003) held on 3 April.

Change in first registration tax in 1982-83

2. In May 1982 (separately from the 1982-83 Budget), the then Secretary for Transport moved the Second Reading of the Motor Vehicles (First Registration Tax) (Amendment) Bill 1982 in LegCo to increase motor vehicle first registration tax (FRT). The increase for private cars was 100% for all tax bands. As explained in the debate, the objective of the measure was to act as a restraint on vehicle usage (which had grown at an annual rate of 8.4% from 1971 to 1981, with the number of private cars increasing from 80,000 to over 211,000 during the period), and curb the growth of congestion on the roads of Hong Kong. As the purpose of the measure was not revenue-raising but to suppress the number of first registrations, it was to be expected that FRT revenue did not increase but was suppressed together with the number of first registrations. The number of registrations of private cars in 1982-83 dropped by 64%, and FRT revenue dropped by 21% compared with the previous year. A table showing the FRT revenue and number of registrations of private cars from 1981-82 to 1988-89 as requested by Members is at **Annex A**.

First registration situation for motorcycles

3. Motorcycles normally do not have air-conditioners and audio-equipment. According to a survey we conducted, motorcycles are

usually provided with one or two of the items exempted under the old taxation regime. Compared with private cars which are usually fitted with three to four such items, the impact of abolishing exemptions is significantly higher on private cars than on motorcycles. We therefore propose not to make any adjustment to the tax rates on motorcycles.

4. Based on the published retail prices of the motorcycles registered in 2002-03, their price inclusive of the tax component should rise by 8% on average after the abolition of the exempted items, assuming no change in pricing strategies. This is smaller than the projected increase in retail price of 11% for the representative models of lower-priced private cars with taxable value below \$150,000 (see Annex C to the Legislative Council Brief on the Revenue Bill 2003).

5. According to Transport Department's statistics, there were 105 motorcycle first registrations in the week before the Budget this year, as compared with the weekly average of 92 for 2002-03. The number dropped to 61 for the week from 6 to 12 March. However, this has started to pick up again and is gradually rising back to its normal level. During the week from 24 to 30 March, the number of first registrations for motorcycles rose to 91. For the month following the Budget announcement there have been 316 first registrations for motorcycles. This represents 86% of the monthly average of 368 for 2002-03.

Breakdown of private cars registered in 2002-03 by price ranges

6. The impact of the FRT proposals in the Budget will be higher for more expensive private cars. Nevertheless, these represent only a small portion of the private car market in Hong Kong. In 2002-03 (up to 5 March 2003), only about 6% or 1,803 of the private cars first registered had a taxable value (after including the formerly tax-exempted items) in excess of \$500,000. The number of cars in each of the tax bands and the shares of each group of these cars as a percentage of the total number are set out in **Annex B**. For the bulk of the private cars, i.e. the 94% with taxable value below \$500,000, their retail prices are projected to increase by 5% - 12%, assuming no change in pricing strategies (although according to our findings some distributors have absorbed part of the tax increase.)

Registration of private cars with companies as registered owner

7. The Road Traffic (Registration and Licensing of Vehicles) Regulation (Cap. 374 subleg.) provides that the Commissioner for Transport may refuse to accept an application for first registration from a vehicle owner who is not a body corporate or is a natural person under the age of 18 years. The Regulation also provides that in the case of a body corporate, its identity document means a certificate of incorporation. The Transport Department can therefore differentiate company owners from individual owners by reference to the identity documents produced when conducting vehicle registration.

8. In the week before the 2003-04 Budget Day, 1,636 private cars were registered. 1,034 of these were registered in the name of individuals while 602 were registered in the name of companies. A breakdown of the companies registering more than one private car in the week before the Budget is at **Annex C**. 19 companies have registered two or more private cars (totalling 68 cars) during the period.

9. We would like to point out that some of the companies which have registered a vehicle or vehicles may not be vehicle dealers but companies who purchase vehicles for their own use.

Response to LegCo Legal Service Division's Paper

10. We have studied the paper on "legal options available to the Subcommittee in scrutiny of the Public Revenue Protection (Revenue) Order 2003" prepared by the LegCo Legal Service Division (LSD). We generally agree with the LSD's views concerning the following scenarios: under a PRPO which has the effect of raising taxes, the Government would need to refund excess FRT collected by virtue of sections 5 and 6 of the Public Revenue Protection Ordinance (Cap. 120) (viz. paragraphs 6 and 8 of LSD's paper); in case the PRPO was repealed and the corresponding Revenue Bill 2003 was subsequently passed by LegCo (viz. paragraph 7 of LSD's paper), given the retrospective effect of the Revenue Ordinance, tax underpaid after the repeal of the PRPO should be collected again.

11. As regards the questions raised by the LSD in the paper regarding the scenarios where a PRPO has the effect of lowering taxes, we generally agree with the LSD's views that there is no legal basis for the Administration to collect the difference in tax underpaid under the PRPO after it is repealed but pending the outcome of the Revenue Bill 2003 by virtue of section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) (viz. the latter part of paragraph 4 of LSD's paper).

12. On the interpretation of section 7 of Cap. 120, we believe that this section is the proper authority for recovering the tax underpaid in the scenarios mentioned in the latter part of paragraphs 6 and 8 of LSD's paper on the following grounds:-

- (a) the reference to "payable in full" in section 7 clearly implies that section 7 deals with underpayment of tax (i.e. payment made by virtue of the PRPO during the period when it is in force);
- (b) bearing in mind the objective of the PRPO (i.e. to protect revenue), any construction of its provision in such a way as to effectively give a waiver of tax would be most unreasonable; and
- (c) section 6 deals with refund of excess in respect of tax overpaid by virtue of a PRPO. Section 7 is a corresponding section dealing with recovery of shortfall in respect of tax underpaid by virtue of the PRPO.

13. On the latter part of paragraph 7 of the LSD's paper, we agree that in relation to the difference in tax overpaid after the repeal of the tax-reducing PRPO, the Administration has a duty to refund it in the light of the retrospective effect of the Revenue Ordinance.

14. To ease Members' consideration, we attach a table at **Annex D** that shows the scenarios with different combinations of passage or repeal of the PRPO and Revenue Bill, and the corresponding legal consequences.

Treasury Branch
Financial Services and the Treasury Bureau
April 2003

	Total FRT revenue for all vehicle types (\$million)	Date of Budget / Change in tax rates	Total number of private car first registrations
1981-82	484	25.2.1981 (Budget Day)	32,978
1982-83	384	24.2.1982 (Budget Day)	12,009
		5.5.1982 *	
1983-84	316	23.2.1983 (Budget Day)	6,319
1984-85	350	29.2.1984 (Budget Day)	7,336
1985-86	634	27.2.1985 (Budget Day)	12,074
1986-87	964	26.2.1986 (Budget Day)	14,965
1987-88	1,447	25.2.1987 (Budget Day)	21,177
1988-89	1,922	2.3.1988 (Budget Day)	27,303

* Change of tax rates

Annex B

Private cars first registered in 2002-03 (up to 5 March 2003)

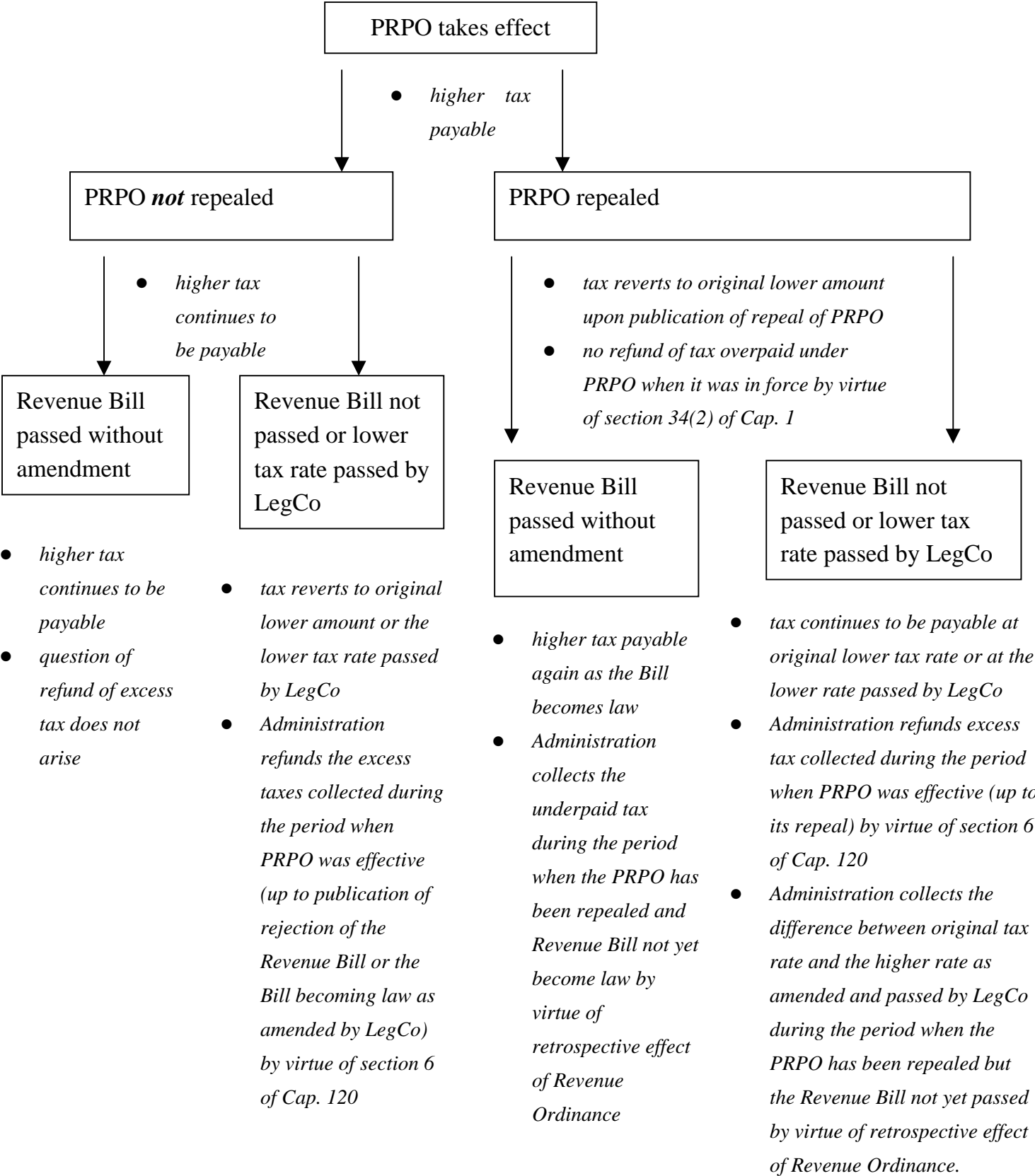
Taxable value (including formerly tax-exempt items)	No. of cars liable to FRT	% of the total no. of first registrations
Below \$150,000	13,369	46%
\$150,001 - \$300,000	10,427	36%
\$300,001 - \$500,000	3,363	12%
Over \$500,000	1,803	6%
Total:	28,962	100%

Annex C

**Company owners registering two or more private cars in the week
before the 2003-04 Budget Day**

No. of company owners	No. of private cars registered
14	2
1	3
1	5
1	6
1	12
1	14

If PRPO and Revenue Bill have the effect of raising taxes



If PRPO and Revenue Bill have the effect of lowering taxes

