

L.N. 59 of 2003

Public Revenue Protection (Revenue)

Order 2003

(Made under section 2 of the Public Revenue Protection
Ordinance (Cap. 120) after consultation with
the Executive Council)

1. Commencement

This Order shall come into force at 2.30 p.m. on 5 March 2003.

2. Operation of Scheduled Bill

The Bill set out in the Schedule shall have the full force and effect of law so long as this Order remains in force.

SCHEDULE [s. 2]

A BILL

To

Amend the Motor Vehicles (First Registration Tax) Ordinance to give effect to some of the proposals in the Budget introduced by the Government for the 2003--2004 financial year and to clarify the method of calculating the taxable value of a motor vehicle under section 4E(2)(ca) of that Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Revenue Ordinance 2003.

(2) This Ordinance shall be deemed to have come into operation at

2.30 p.m. on 5 March 2003.

Motor Vehicles (First Registration Tax) Ordinance

2. Interpretation

Section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) is amended---

(a) by repealing the definition of "exempted accessory";

(b) in the definition of "market value", by repealing "means the price that a motor vehicle" and substituting ", in relation to any motor vehicle, accessory or taxable warranty, means the price that the motor vehicle, accessory or taxable warranty";

(c) in the definition of "standard motor vehicle", by repealing everything after "a price" and substituting "published under section 4A(1)(a);";

(d) by adding---

""taxable warranty" (應課稅保證) means a warranty provided by a person in respect of a motor vehicle---

(a) which is not included in the retail price of the vehicle published under section 4A(1)(a); and

(b) under which the person undertakes to provide, within a fixed period and whether subject to payment of a fee on each occasion the service is provided, any of the following services for the vehicle---

- (i) checking the condition of the vehicle;
- (ii) the maintenance of equipment, parts, components or accessories;
- (iii) the repair or replacement of defective equipment, parts, components or accessories; or
- (iv) remedying any defective process involving painting or rust-proofing or like treatment,

and includes a warranty provided by a registered distributor or an associated person the retail price of which is published under section 4A(1)(c);".

3. Publication of retail price

Section 4A is amended---

(a) in subsection (1)---

(i) in paragraph (b)---

(A) by repealing "(other than exempted accessories)";

(B) by adding "and" at the end;

(ii) in paragraph (c), by repealing "; and" and substituting a full stop;

(iii) by repealing paragraph (d);

(b) in subsection (5), by repealing everything after "section 4E(2)(a)(i)" and substituting ", (ii) and (iia) without first obtaining the consent of the Commissioner.";

(c) in subsection (6)---

(i) in paragraph (a), by repealing "and (ii);" and substituting ", (ii) and (iia); and";

(ii) by repealing paragraphs (b) and (c);

(d) in subsection (7), by repealing everything after "4E(2)(a)(i)" and substituting ", (ii) and (iia) or (c) and the first registration tax paid or payable on the motor vehicle without first obtaining the consent of the Commissioner.";

(e) in subsection (8)---

(i) in paragraph (a), by repealing "and (ii)" and substituting ", (ii) and (iia)";

(ii) by repealing paragraphs (b) and (c);

(f) by repealing subsections (9), (10) and (11).

4. Commissioner may assess published retail price in certain circumstances

Section 4B is amended---

(a) in subsection (1)---

(i) in paragraph (a), by repealing "a published retail price of the taxable or the exempted elements" and substituting "the published retail price of an element";

(ii) in paragraph (b), by repealing "taxable and the exempted";

(iii) by repealing "taxable and exempted";

(b) in subsection (3), by repealing "taxable and exempted".

5. Commissioner may make regulation in respect of chassis or cab and chassis

Section 4C is amended---

(a) by repealing subsection (1)(b);

(b) by repealing subsection (2).

6. Declaration as to price paid

Section 4D is amended---

(a) in subsection (1)(a)---

(i) in subparagraph (ii)---

(A) by repealing "3 months" and substituting "6 months";

(B) by adding "and" at the end;

(ii) in subparagraph (iii), by repealing "; and" and substituting ", irrespective of whether the warranty takes immediate effect;";

(iii) by repealing subparagraph (iv);

(b) in subsection (1)(b)---

(i) in subparagraph (ii), by repealing "(including exempted accessories)";

(ii) by adding---

"(iia) the value of any warranty, other than a manufacturer's warranty and any other warranty that is mandatory, included in the purchase of the motor vehicle, irrespective of whether the warranty takes immediate effect;";

(c) in subsection (1)(c), by adding ", (iia)" after "(ii)";

(d) by repealing subsection (2) and substituting---

"(2) If a person fits an accessory to a motor vehicle within 6 months after the first registration of the vehicle and the accessory has not been declared in a declaration signed under subsection (1)---

(a) in the case where the accessory is fitted by a registered distributor or an associated person, the registered owner and the registered distributor; or

(b) in the case where the accessory is fitted by a person other than a registered distributor or an associated person, the registered owner,

shall, within 5 working days after the fitting of the accessory, make and deliver to the Commissioner a declaration, in the form approved by the Commissioner, setting out details, including the value, of the accessory and attaching such documentary

evidence as the Commissioner may reasonably require in support of the declared value of the accessory.

(2A) If the registered owner of a motor vehicle obtains a taxable warranty for the vehicle within 6 months after the first registration of the vehicle and the taxable warranty has not been declared in a declaration signed under subsection (1)---

(a) in the case where the taxable warranty is provided by a registered distributor or an associated person, the registered owner and the registered distributor; or
(b) in the case where the taxable warranty is provided by a person other than a registered distributor or an associated person, the registered owner, shall, within 5 working days after the date on which the contract for the taxable warranty is entered into, make and deliver to the Commissioner a declaration, in the form approved by the Commissioner, setting out details, including the value, of the taxable warranty and attaching such documentary evidence as the Commissioner may reasonably require in support of the declared value of the taxable warranty.".

7. Calculation of first registration tax and taxable value

Section 4E is amended---

(a) in subsection (2)(a)---

- (i) in subparagraph (ii), by repealing "3 months" and substituting "6 months";
- (ii) by repealing subparagraphs (iia) and (iii);
- (iii) by adding---

"(iia) the published retail price of any warranty, other than a manufacturer's warranty and any other warranty that is mandatory, attaching to the sale of the vehicle, irrespective of whether the warranty takes immediate effect;"

(b) in subsection (2)(b)---

- (i) in subparagraph (ii), by repealing "3 months" and substituting "6 months";
- (ii) by repealing subparagraphs (iia) and (iii);
- (iii) by adding---

"(iia) the published retail price of any warranty, other than a manufacturer's warranty and any other warranty that is mandatory, attaching to the sale of the vehicle, irrespective of whether the warranty takes immediate effect;"

(c) in subsection (2)(c)---

- (i) in subparagraph (i), by repealing "less any deduction for the value, as determined by the Commissioner, of the exempted accessories";
- (ii) in subparagraph (ii), by repealing "less any deduction for the value,

as determined by the Commissioner, of exempted accessories";

(d) in subsection (2)(ca), by repealing everything after "shall be" and substituting "the declared value of the motor vehicle under section 4D less the depreciation allowed by the Commissioner under subsection (5)";

(e) in subsection (2)(d)---

(i) in subparagraph (i), by repealing everything after "as the case may be," and substituting---

"less---

(A) depreciation at the prescribed rate, for the period from the date when the motor vehicle ceased to be a new motor vehicle until the date on which the motor vehicle became liable to first registration tax or additional first registration tax, excluding a part of a month of less than 15 days but counting a part of a month of 15 days or more as a whole month; and

(B) the value of any expired portion of a warranty, other than a manufacturer's warranty and any other warranty that is mandatory, calculated on the basis of the published retail price or, where there is no published retail price, the declared value under section 4D, of the warranty; or";

(ii) in subparagraph (ii), by repealing "less any deduction for the value, as determined by the Commissioner, of the exempted accessories";

(f) by adding---

"(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 by adding 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 vehicle calculated under this section and calculate the additional first registration tax payable for the vehicle.

(2B) If the Commissioner is of the opinion that the declared value of an 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 (2A), having regard to the declared value or the range of market values of any similar accessory or taxable warranty.

(2C) The Commissioner shall give the registered owner and (if applicable) the registered distributor notice of his refusal to accept the declared value of an accessory or a taxable warranty immediately on reaching his opinion referred to in subsection (2B) and inform the registered owner and (if applicable) the registered distributor in the notice that written representation concerning the value of the accessory or taxable warranty may be made to the Commissioner within 14 days after

the date of the notice.

(2D) The Commissioner shall consider any written representation made by the registered owner or (if applicable) the registered distributor and shall---

(a) within 14 days after giving notice under subsection (2C); or

(b) where any written representation is made to the Commissioner, within 14 days after receipt of the representation,

give the registered owner and (if applicable) the registered distributor notice of the market value of the accessory or taxable warranty as assessed by the Commissioner.

(2E) The Commissioner shall state in the notice given under subsection (2D) the reasons for---

(a) his rejection of the declared value of the accessory or taxable warranty; and

(b) his assessment of the market value of the accessory or taxable warranty under this section.

(2F) If the Administrative Appeals Board finds that the amount of additional first registration tax paid exceeds the amount properly assessable, the Commissioner shall refund the excess as soon as practicable after the decision of the Administrative Appeals Board is published."

8. Payment of tax

Section 4F is amended---

(a) by adding---

"(4A) Any additional first registration tax attributable to the increase in total taxable value of a motor vehicle shall be paid at the time the declaration made under section 4D(2) or (2A) is delivered to the Commissioner.";

(b) in subsection (5), by repealing "or (e)" and substituting ", (e) or (ea)".

9. Section added

The following is added---

"4FA. Duty to keep records of sale and purchase
of motor vehicles, accessories and
taxable warranties

(1) A registered distributor and an associated person shall keep proper records in respect of the distribution or sale of any motor vehicle by the registered distributor or associated person, as the case may be, and the fitting of any accessory to, or the provision of any taxable warranty for, the vehicle within 6 months after the first registration of the vehicle.

(2) The registered owner of a motor vehicle shall keep proper records in respect of the purchase of the vehicle and the fitting of any accessory to, or the obtaining of any taxable warranty for, the vehicle within 6 months after the first registration

of the vehicle.

(3) A person shall not be regarded as having kept proper records under this section unless the person, in respect of each transaction for which record is required to be kept---

(a) keeps all the invoices and agreements relating to the transaction; and

(b) records the particulars of---

(i) the names of the parties to the transaction;

(ii) the subject matter of the transaction, including in each case, the model and the registration mark or, where the registration mark is not available, the chassis number of the motor vehicle to which the transaction relates;

(iii) the date of the transaction; and

(iv) the value of the relevant motor vehicle, accessory or taxable warranty, as the case may be.

(4) A record which a person is required by this section to keep shall be retained for 30 months after the first registration of the vehicle to which the record relates.

(5) Without prejudice to the generality of section 4H, an authorized person may, for the purpose of ascertaining whether section 4D(2) or (2A) has been complied with, require a person referred to in subsection (1) or (2) to produce any record kept by the person under this section for his inspection."

10. Offences

Section 4I is amended---

(a) in subsection (1)---

(i) in paragraph (e), by repealing "or (2)";

(ii) by adding---

"(ea) being a registered distributor or a registered owner, fails to deliver a declaration as required under section 4D(2) or (2A), or makes a false declaration in purported compliance with that section, or fails to include all of the particulars or to attach to the declaration the documentary evidence required within the time as required under that section;"

(b) by adding---

"(1A) A person who, being a registered distributor or an associated person or a registered owner, fails to keep any record as required under section 4FA, commits an offence and is liable on conviction to a fine of \$10,000 and to imprisonment for 6 months."

11. Schedule substituted

The Schedule is repealed and the following substituted---

"SCHEDULE [s. 4E]

Classes of Motor Vehicles and Rate of Tax

Item	Class of motor vehicle	Rate of tax
	%	

1. Private cars---

- | | | |
|-----|------------------------|-----|
| (a) | on the first \$150,000 | 35 |
| (b) | on the next \$150,000 | 75 |
| (c) | on the next \$200,000 | 105 |
| (d) | on the remainder | 150 |

2. Taxis 3.7

3. Public light buses and private light buses 3.7

4. Public buses, except buses which are to be used solely in connection with operating a public bus service under the Public Bus Services Ordinance (Cap. 230) or under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) within the North-west Transit Service Area as defined in that Ordinance

3.7

5. Private buses, except buses which are to be used solely in connection with the training of drivers for the purposes of operating a public bus service under the Public Bus Services Ordinance (Cap. 230) or within the North-west Transit Service Area under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372)

3.7

6. Motor cycles 40

7. Motor tricycles 40

8. (a) Goods vehicles, other than van-type light goods vehicles 15

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

ii(i) on the first \$150,000 35

i(ii) on the next \$150,000 75

(iii) on the remainder 105

(c) Van-type light goods vehicle exceeding 1.9 tonnes permitted gross vehicle weight

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9. Special purpose vehicles 3.7".

12. Saving and transitional provisions

(1) The amendments made to the principal Ordinance by this Ordinance shall not apply in relation to any motor vehicle the first registration of which has been effected before the commencement of this Ordinance and the principal Ordinance as

in force immediately before the commencement of this Ordinance shall continue to apply in relation to such vehicle as if this Ordinance had not been enacted.

(2) If, after the commencement of this Ordinance, an accessory that was an exempted accessory immediately before the commencement of this Ordinance is fitted to a motor vehicle at the time the motor vehicle is offered for sale, then before the registered distributor publishes a new retail price under section 4A of the amended Ordinance, the retail price of the accessory published under the repealed section 4A(1)(d) of the principal Ordinance and in force immediately before the commencement of this Ordinance shall be deemed to form part of the retail price of the model of the motor vehicle and be added to the retail price of the model of the motor vehicle published under section 4A(1)(a) of the principal Ordinance and in force immediately before the commencement of this Ordinance and a reference to the published retail price of a motor vehicle in the amended Ordinance shall be construed accordingly.

(3) If, after the commencement of this Ordinance, an accessory that was an exempted accessory immediately before the commencement of this Ordinance is offered as an optional accessory at the time a motor vehicle is offered for sale, then before the registered distributor publishes a new retail price under section 4A of the amended Ordinance, the retail price of the accessory published under the repealed section 4A(1)(d) of the principal Ordinance and in force immediately before the commencement of this Ordinance shall be deemed to be the retail price of the accessory published under section 4A(1)(b) of the amended Ordinance and a reference to the published retail price of an optional accessory in the amended Ordinance shall be construed accordingly.

(4) In this section---

"amended Ordinance" (經修訂條例) means the principal Ordinance as amended by this Ordinance;

"principal Ordinance" (主體條例) means the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

Consequential Amendments

Motor Vehicles (First Registration Tax) Regulation

13. Interpretation

Section 1 of the Motor Vehicles (First Registration Tax) Regulation (Cap. 330 sub. leg.) is amended by repealing the definitions of "air-conditioner" and "anti-theft device".

14. Exempted accessories

Section 2 is repealed.

Explanatory Memorandum

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. The fitting of any accessory to, or the obtaining of any taxable warranty for, a motor vehicle within 6 months after its first registration will be subject to first registration tax.

2. Clause 2 defines the meaning of a taxable warranty.

3. Clauses 3, 4 and 5 amends sections 4A, 4B and 4C of the principal Ordinance to remove references to exempted accessories and references to their exemption from first registration tax.

4. Clause 6 amends section 4D of the principal Ordinance to require the registered owner and registered distributor of a motor vehicle to declare the value of any accessory fitted or taxable warranty obtained or provided within 6 months after its first registration.

5. Clause 7 amends section 4E of the principal Ordinance to make the value of an optional warranty provided by a registered distributor part of the taxable value of a motor vehicle for the purpose of calculating its first registration tax. It also enables the Commissioner for Transport to, for the purpose of calculating additional first registration tax payable, assess the market value of an accessory or a taxable warranty if he is not satisfied that its declared value reflects its market value.

6. Clause 8 amends section 4F of the principal Ordinance to require payment of additional first registration tax to be made when the declaration made under the proposed section 4D(2) or (2A) of the principal Ordinance is delivered to the Commissioner for Transport.

7. Clause 9 imposes a duty on a registered distributor, its associated person and a registered owner of a motor vehicle to keep records in respect of the sale and purchase of the vehicle, any accessory and taxable warranty.

8. Clause 10 amends section 4I of the principal Ordinance to provide for the penalty for contravention of the requirements to make declarations and to keep records.

9. Clause 11 substitutes the existing Schedule to the principal Ordinance.

10. Clause 12 contains saving and transitional provisions.

11. Clauses 13 and 14 contain consequential amendments to the Motor Vehicles (First Registration Tax) Regulation (Cap. 330 sub. leg.).

Donald TSANG

Acting Chief Executive

5 March 2003