

**立法會**  
**Legislative Council**

LC Paper No. LS44/07-08

**Paper for the House Committee Meeting  
on 15 February 2008**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 1 February 2008**

**Date of tabling in LegCo** : 20 February 2008

**Amendment to be made by** : 12 March 2008 (or 9 April 2008 if extended by resolution)

**PART I AVOIDANCE OF DOUBLE TAXATION**

**Inland Revenue Ordinance (Cap. 112)**

**Specification of Arrangements (Government of the Grand Duchy of Luxembourg)  
(Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal  
Evasion) Order (L.N. 18)**

On 2 November 2007, the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Grand Duchy of Luxembourg signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital ("the Agreement").

2. Under section 49(1) of the Inland Revenue Ordinance (Cap. 112) ("the Ordinance"), if the Chief Executive in Council by order declares that arrangements specified in the order have been made with the Government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax under the Ordinance notwithstanding anything in any enactment. This Order is made by the Chief Executive in Council under section 49 of the Ordinance. By this Order, it is declared that arrangements have been made with the Government of the Grand Duchy of Luxembourg with a view to affording the said relief, and that it is expedient that those arrangements should have effect. The effect of such a declaration is that the arrangements have effect in relation to tax under the Ordinance notwithstanding anything in any enactment.

3. The Panel on Financial Affairs has not been consulted on the above Order.

4. There are currently a number of other Orders under the Ordinance relating to avoidance of double taxation concerning air services and shipping income which are not comprehensive. This is the fourth comprehensive agreement for the avoidance of double taxation and the prevention of fiscal evasion concluded by Hong Kong with another jurisdiction. Members may refer to the LegCo Brief (File Ref.: FIN CR 25/10/2041/46) issued by the Financial Services and the Treasury Bureau dated 30 January 2008 for background information.

5. The Order will come into operation on 1 April 2008.

## **PART II ADJUSTMENT OF FEES**

### **Import and Export Ordinance (Cap. 60)**

#### **Import and Export (Fees) (Amendment: Fee Revision) Regulation 2008 (L.N. 19)**

6. This Regulation is made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) by virtue of section 31 of the Import and Export Ordinance (Cap. 60) (“the Ordinance”). It adjusts a number of fees to take into account the updated costs of providing various services under the Ordinance. As a result, some fees under the Import and Export (Fees) Regulations (Cap. 60 sub. leg. B) are increased by 6% to 22% whereas some fees are reduced by 1% to 21%.

7. Adjustment of fees under item 4 of the Schedule to the Import and Export (Fees) Regulations (Cap. 60 sub. leg. B) will come into operation on 1 July 2008. Other adjustment of fees will come into operation on 27 March 2008.

### **Chemical Weapons (Convention) Ordinance (Cap. 578)**

#### **Chemical Weapons (Convention) Ordinance (Amendment of Schedule 4: Revision of Permit Fee) Order 2008 (L.N. 20)**

8. This Order is made by the Secretary for Financial Services and the Treasury under section 40(2) of the Chemical Weapons (Convention) Ordinance (Cap. 578) (“the Ordinance”). It increases the fee for an application of a permit (from \$495 to \$570) to take into account the updated cost of issue of permit under section 9 of the Ordinance.

9. This Order will come into operation on 27 March 2008.

10. Members may refer to the LegCo Brief (with no file reference) issued by

the Commerce and Economic Development Bureau in February 2008 for background information about the above-mentioned adjustment of fees under the Import and Export Ordinance (Cap. 60) and the Chemical Weapons (Convention) Ordinance (Cap. 578).

11. According to paragraph 3 of the LegCo Brief, it is government policy that fees should in general be set at levels sufficient to recover the full costs of providing the services. A recent costing review shows that some fees payable under the Import and Export (Fees) Regulations (Cap. 60 sub. leg. B) and the Chemical Weapons (Convention) Ordinance (Cap. 578) are not adequate to recover the full costs of providing the relevant services, whilst some fees payable exceed the full costs. To reflect the costs of providing the relevant services at 2007-2008 prices, the Import and Export (Fees) (Amendment: Fee Revision) Regulation 2008 and the Chemical Weapons (Convention) Ordinance (Amendment of Schedule 4: Revision of Permit Fee) Order 2008 provide for increases in some fees (ranging from 6% to 22%). On the other hand, some fees under the Import and Export (Fees) Regulations (Cap. 60 sub. leg. B) are reduced by 1% to 21% to reflect the reduced cost of providing the services.

12. The Panel on Commerce and Industry was consulted on the above-mentioned adjustments of fees at its meeting on 18 December 2007. The majority of Panel members were, in principle, supportive of the Administration's proposed adjustments of fees and charges. However, one of the members expressed dissatisfaction with the proposed fee increases for the concerned items, the increase rate of which was over 20%. He was of the view that the commerce and industry sector would be in opposition to the proposed adjustments which were far from being convincing or acceptable given that the Government was recording a fiscal surplus ranging from about \$50 billion to \$80 billion generated mostly from the business carried on in the sector concerned in the 2007-2008 financial year. While understanding that the Government had been upholding the principles of "user pay" and "cost recovery" in adjusting its fees and charges, the member raised objection to the proposed fee increases as this would have a negative impact on the commerce and industry sector.

### **PART III WITHDRAWAL OF DECLARATION OF PROPOSED MONUMENT**

#### **Antiquities and Monuments Ordinance (Cap. 53)**

#### **Antiquities and Monuments (Withdrawal of Declaration of Proposed Monument) (No. 128 Pok Fu Lam Road) Notice (L.N. 21)**

13. This notice is made by the Secretary for Development under sections 2A and 2B of the Antiquities and Monuments Ordinance (Cap. 53) ("the Ordinance"). The object of this Notice is to withdraw the declaration made by virtue of the Antiquities and Monuments (Declaration of Proposed Monument) (No. 128 Pok Fu

Lam Road) Notice (L.N. 59 of 2007). Members may recall that the latter Notice declared the buildings and the adjoining land situated within the Rural Building Lot No. 324, No. 128 Pok Fu Lam Road, Hong Kong together with all structures erected on such land as a proposed monument for the purposes of the Ordinance.

14. The Panel on Home Affairs has not been consulted on the above Notice.

15. Members may refer to the LegCo Brief (File Ref: DEVB/CS/CR 4/1/83) issued by the Development Bureau in February 2008 for background information.

#### **PART IV TAX RESERVE CERTIFICATES (RATE OF INTEREST)**

##### **Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A)**

##### **Tax Reserve Certificates (Rate of Interest) Notice 2008 (L.N. 22)**

16. This Notice is made by the Secretary for Financial Services and the Treasury under rule 7(2)(h) of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289 sub. leg. A). By this Notice, the rate of interest payable on tax reserve certificates issued on or after 4 February 2008 is fixed at 1.25% per annum.

17. The Panel on Financial Affairs has not been consulted on the above Notice.

#### **Concluding observation**

18. No difficulties have been observed in the legal or drafting aspects of the above items of subsidiary legislation.

Prepared by

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