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Paper for House Committee meeting on 14 May 2010

**Report of the Subcommittee on Dutiable Commodities
(Exempted Quantities) (Amendment) Notice 2010**

Purpose

This paper reports on the deliberations of the Subcommittee on Dutiable Commodities (Exempted Quantities) (Amendment) Notice 2010.

Background

2. It has all along been the Government's approach to adopt a tobacco control policy to minimize the harmful effects of tobacco, by discouraging smoking, containing the proliferation of tobacco use, and reducing the impact of passive smoking on the public to the maximum possible extent. To achieve this, the Administration adopts a step-by-step and multi-pronged approach comprising legislation, taxation, publicity, education, enforcement and cessation programmes.

3. Further to the enactment of the Smoking (Public Health) (Amendment) Ordinance 2006 and the implementation of the smoking ban on 1 January 2007, the Administration has taken a series of measures to progressively strengthen tobacco control. These measures included: -

- (a) effecting new graphic warning and packaging restrictions on tobacco products in October 2007;
- (b) prohibiting the display of tobacco advertisements at retail dealers with two employees or less from 1 November 2007;
- (c) raising the duty for tobacco products by 50% from 25 February 2009;
- (d) extending smoking ban to the six types of qualified establishment namely bars, clubs, nightclubs, bathhouses, massage establishments, and mahjong-tinkau parlours hitherto exempted from the ban from 1 July 2009;

- (e) implementing the fixed penalty system for smoking offences in accordance with the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) from 1 September 2009;
- (f) extending the smoking ban to the first phase of 48 public transport facilities with superstructures from 1 September 2009; and
- (g) effecting the prohibition of tobacco advertisement display at hawker stalls on 1 November 2009.

4. According to the Administration, the World Health Organization has made clear that imposing duties on tobacco products to reduce tobacco consumption is an effective measure for controlling tobacco use. To further protect public health from the harmful effects of tobacco, the Financial Secretary has, in his 2010-2011 Budget, proposed to abolish duty-free concessions on tobacco products for incoming passengers to Hong Kong. To facilitate law enforcement, small amounts of tobacco products for own consumption would be exempted.

The Amendment Notice

5. To implement the budget proposal, the Administration introduced the Amendment Notice into the Legislative Council on 14 April 2010. The Amendment Notice is made by the Commissioner of Customs and Excise under regulation 12(1)(ea) of the Dutiable Commodities Regulations (Cap. 109 sub. leg. A) to amend the Dutiable Commodities (Exempted Quantities) Notice (Cap. 109 sub. leg. G) (the Principal Notice).

6. Section 1 of the Principal Notice is amended so that it does not apply to cigarettes, cigars and manufactured tobacco. Section 3 adds a new section 2 to the Principal Notice to specify the new quantities of duty-free tobacco products allowed to be brought into Hong Kong for own use by a passenger of any ship, aircraft, train or vehicle arriving in Hong Kong. Incoming passengers will be entitled to only any one kind of duty-free tobacco products, and the new quantities are 19 cigarettes, or 1 cigar (or 25 grams of cigars), or 25 grams of other manufactured tobacco. The 24-hour rule on time spent outside Hong Kong for entitlement of the duty-free concessions on tobacco products that currently applies to Hong Kong identity card holders is also removed.

7. The Amendment Notice will come into operation on 1 August 2010.

The Subcommittee

8. At the House Committee meeting held on 16 April 2010, Members agreed to form a subcommittee to study the Amendment Notice. Hon CHAN Kin-por

was elected chairman of the Subcommittee, and the membership list of the Subcommittee is in **Appendix I**. To allow time for the Subcommittee to study the subsidiary legislation, the scrutiny period was extended to 2 June 2010 by resolution of the Council.

9. The Subcommittee has invited public views on the Amendment Notice. The Subcommittee has held two meetings, including one meeting to exchange views with the duty-free trade and four anti-smoking concern groups. A list of the ten organizations/individuals that have provided views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

Quantity of duty-free cigarettes allowed to be brought into Hong Kong

10. Section 8 of the Smoking (Public Health) Ordinance (Cap. 371) stipulates that cigarettes sold in Hong Kong must be packed in a packet of at least 20 sticks. According to information gathered by the Customs and Excise Department (C&ED), the vast majority of pocket-sized cigarettes sold on the international market are also in a standard packing of 20 sticks per pack. The Administration has proposed in the Amendment Notice that the maximum number of duty-free cigarettes allowable for each incoming passenger is 19 sticks.

11. Some members, including Hon Vincent FANG and Hon WONG Ting-kwong, request the Administration to consider specifying the limit of duty-free cigarettes to 20 sticks so as to obviate the need for the incoming passenger to dispose one cigarette from a newly acquired packet. The Administration has explained that the policy intent is to abolish duty-free concessions on tobacco products brought into Hong Kong. Exempting small amounts of tobacco products for own consumption by incoming passengers only aims to facilitate law enforcement and minimize nuisance to incoming passengers who smoke, taking into account that there are about 300 000 passengers coming into Hong Kong daily and many of them are local day trippers. Capping the maximum number of cigarettes allowed to be brought into Hong Kong free of duty at 19 sticks is intended to be a facilitation measure, in that the cigarette packet should have been opened and at least one of the cigarettes therein consumed by the incoming passenger before passing Customs¹. Capping the cigarettes at 19 sticks would also greatly reduce the re-sale value of such cigarettes, thereby minimizing the possibilities of abuse by re-selling the duty-free cigarettes in full packets illegally.

12. The Subcommittee notes that the Amendment Notice does not specify the condition of the packet of cigarettes, i.e. opened or remained intact. Hon WONG Ting-kwong is concerned whether, according to the Amendment Notice, two

¹ Alternatively, the incoming passenger may make a declaration and pay the duty for the extra cigarette while keeping the packet intact.

incoming passengers together could bring into Hong Kong free of duty one un-opened 20-stick packet of cigarettes and 18 cigarettes in an opened packet. The Administration has subsequently clarified its position on the matter in its paper (LC Paper No. CB(1)1893/09-10(01)), advising that the exempted quantity under the Principal Notice applies to each individual passenger provided that the duty-free tobacco is imported or bought by the passenger for his/her own use. For example, if two incoming passengers travelling together bring into Hong Kong one un-opened packet of 20 cigarettes and one opened packet of 18 cigarettes for their own use, the one carrying 20 cigarettes will need to pay duty for 1 cigarette and no duty is payable for the 18 cigarettes carried by the other passenger. Given that the Amendment Notice also recommends removing the 24-hour rule on time spent outside Hong Kong for entitlement of the duty-free concessions on tobacco products, Hon WONG Ting-kwong expresses concern that the proposed change may encourage the carrying of duty-free cigarettes in un-opened packets for resale as illicit cigarettes in an "ants-moving" manner (i.e. carrying small quantity each time with frequent trips in and out of Hong Kong every day). In this connection, the Administration is of the view that setting the tax free ceiling at a small amount of 19 sticks should effectively minimize "ants-moving" actions.

Banning the sale of duty-free cigarettes at the inbound boundary control points

13. Hon Vincent FANG expresses concern that the measures to be implemented under the Amendment Notice will have a direct impact on the businesses of duty-free shops (DFS) at the boundary control points. As indicated by DFS, the new requirement would lead to a business loss at the inbound DFS of up to 60% (which was \$300 million based on the 2009 sales volume).

14. According to the Administration, the existing 31 DFS sales outlets at the boundary control points were run by two companies under the same enterprise, and 13 of them are located at the inbound area where incoming passengers may visit. In 2009, the sales of cigarettes, cigars and manufactured tobacco products at the inbound DFS accounted for just around 11.7%, 3.6% and 1.7 % of the overall sales of such tobacco products at all inbound and outbound DFS which are also selling a large range of other products. As such, the Administration envisages that the Amendment Notice should not have much bearing on the business of the DFS, which in fact should have already got used to Government's adjustments of the duty-free concessions on dutiable commodities made under the Budget from time to time.

15. Hon WONG Ting-kwong expresses grave concern that as the Government proposes to cap the maximum number of duty-free cigarettes allowable for each passenger at 19 sticks while still allowing the sale of 20-stick cigarette by inbound DFS, those incoming passengers who are unaware of the new limit may inadvertently breach the law by carrying an un-opened packet of cigarette bought from these inbound DFS. If the Administration does not accept members' request of adjusting the statutory limit of duty-free cigarettes to 20 sticks, it should consider banning the sale of duty-free cigarettes at the inbound DFS.

16. The Administration emphasizes that the new measure is not intended to encourage passengers to buy and bring into Hong Kong any whole new packet of duty-free cigarettes. The policy is to abolish duty-free concession on tobacco products and the exemption of a small quantity of cigarettes for personal use is only to facilitate law enforcement and not to cause impediments to the daily heavy passenger traffic at the control points. Nevertheless, the Administration agrees to actively and carefully consider the request of banning the sale of tobacco products at inbound DFS by amending the Dutiable Commodities Ordinance (Cap. 109) as well as other relevant legislation, and brief the Panel on Health Services if such a decision is to be taken. Hon Vincent FANG and Hon WONG Ting-kwong draw the Administration's attention to possible violation of the contract terms entered between DFS and the landlords (including the Government, the Mass Transit Railway Corporation Limited (MTRC) and the Airport Authority of Hong Kong (AA). Hon Vincent FANG also urges the Administration to consider whether the sale of duty-free cigarettes and other tobacco products on board aircraft landing Hong Kong should also be subject to the same ban. The Administration pointed out that the contract signed between DFS and the Government Property Agency states clearly that the sale of duty-free products is subject to changes in duty-free concessions. As for contracts signed with MTRC and AA, the Administration is not party to such and believes that the matter would be dealt with according to the contract terms and commercial principles.

Enforcement

17. Under the Dutiable Commodities Ordinance (Cap. 109), a passenger carrying tobacco products into the territory in excess of the duty-free concession limits but does not make a declaration to the Customs is liable to prosecution, with a maximum penalty of two years' imprisonment and \$1 million in fines. Compounding of such an offence is possible under the Ordinance with a fine of \$2,000 and five times the duty payable on the tobacco products concerned.

18. Some members, including Hon WONG Ting-kwong and Dr Hon Joseph LEE, express concern about possible enforcement difficulties as incoming passengers may evade declaration and duty payment for the excessive cigarettes brought into Hong Kong. The Administration has advised that incoming passengers carrying cigarettes or other tobacco products in excess of the statutory duty-free limits would need to declare the dutiable quantity. These passengers can either pay the duty or abandon the excessive amount of cigarette(s) or tobacco products to Customs under simple procedures. The Customs would conduct inspections at the boundary control points based on risk assessment. The Administration would review the enforcement situation in the light of implementation of the Amendment Notice. To enhance public awareness of the new requirements, C&ED would launch publicity and education campaign through pamphlets, posters and the media about one month before the Amendment Notice came into operation on 1 August 2010.

Impact of tobacco control policy

19. Hon Vincent FANG is of the view that the increasingly stringent tobacco control policy measures, including the enforcement of the smoking ban, have adverse impact on businesses of the catering, hospitality and entertainment industries and the operation of newspaper stalls.

20. The Subcommittee notes the views expressed by anti-smoking concern groups that smoking not only leads to human life losses, but is also a substantial economic burden to Hong Kong in terms of health care costs and productivity losses due to premature death. According to a research study by the University of Hong Kong in 2005, the total annual costs of diseases caused by tobacco, including the annual value of direct medical costs, long term care and productivity loss for both active smoking and passive smoking, amounted to \$5.3 billion in Hong Kong.

21. The Administration stresses that it has all along adopted a step-by-step and multi-pronged approach comprising legislation, publicity, education, enforcement, taxation, and promotion of smoking cessation in implementing the tobacco control policy. The Department of Health (DH) adopts a consistent enforcement policy for all no smoking areas and conducts investigations into all complaints of non-compliance. From 1 July 2009 (when the smoking ban were extended to bars, clubs, nightclubs, bathhouses, massage establishments, and mahjong-tinkau parlours) to 31 March 2010, 720 complaints (or around 10% of the overall complaint cases) of non-compliance related to these establishments were received, and 380 fixed penalty notices were issued. According to the data of the Census and Statistics Department in 2008 and the latter half of 2009, the businesses of bars and restaurants have not been significantly affected by the extended smoking ban. In fact, similar to overseas experience, the businesses of the catering establishments have increased after the implementation of the smoking ban probably because of improvements to the eatery environment. Moreover, DH and the Food and Environmental Hygiene Department have liaised with the concern groups of newspaper stalls to resolve the issues about tobacco product display requirements. The proposed new rules may also benefit local retailers, including the newspaper vendors.

22. Hon Vincent FANG expresses concern that the implementation of tobacco control policy has led to increased sale of illicit and counterfeit cigarettes. The Administration has pointed out that although the number of cases involving smuggling, storage, distribution or peddling of illicit cigarettes detected by C&ED have increased after the increase of the tobacco tax in 2009, the quantity of illicit cigarettes seized during enforcement have dropped, reflecting that the situation is under control. On counterfeit cigarettes, C&ED is working in collaboration with the Government Laboratory to conduct tests on suspected counterfeit tobacco products upon the request of the Food and Health Bureau.

Proposed amendments

23. Both the Administration and the Subcommittee have not proposed any amendments to the Amendment Notice.

Advice sought

24. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
13 May 2010

**Subcommittee on Dutiable Commodities
(Exempted Quantities) (Amendment) Notice 2010**

Membership list

Chairman	Hon CHAN Kin-por, JP
Members	Hon CHEUNG Man-kwong Hon Vincent FANG Kang, SBS, JP Dr Hon Joseph LEE Kok-long, SBS, JP Hon WONG Ting-kwong, BBS, JP Dr Hon LEUNG Ka-lau Hon CHEUNG Kwok-che (Total: 7 members)
Clerk	Ms Debbie YAU
Legal Adviser	Mr KAU Kin-wah
Date	27 April 2010

**Subcommittee on Dutiable Commodities
(Exempted Quantities) (Amendment) Notice 2010**

**List of organizations/individuals that have provided views
to the Subcommittee**

1. Asian Consultancy on Tobacco Control, Hong Kong
2. Free Duty of Sky Connection Limited and Anway Limited
3. Hong Kong Council on Smoking and Health
4. Life Education Activity Programme
5. Professor LAM Tai-hing, JP, School of Public Health, The University of Hong Kong
6. Clear the Air *
7. Miss Agnes SO *
8. Mr CHEUNG Lap-kei *
9. Mr Phil VAUDIN, ALFA International Logistics Co. Limited *
10. Mr YEUNG Wai-sing, Eastern District Council member *

* Provide submissions only