

立法會
Legislative Council

LC Paper No. LS53/10-11

Paper for the House Committee

Proposed Repeal of Public Revenue Protection Orders

At the meeting of the House Committee on 15 April 2011, some members requested that the effect and consequences of repealing the Public Revenue Protection (Dutiable Commodities) Order 2011 and the Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011 (the Orders) be clarified. Members also requested information on the administrative arrangements for the refund of the excess tobacco duties under section 6 of the Public Revenue Protection Ordinance (Cap. 120) (the Ordinance). The Legal Service Division was asked to provide the requested information.

2. To give immediate effect to the proposals in the 2011-12 Budget Speech delivered by the Financial Secretary on 23 February 2011, the Orders are made by the Chief Executive under section 2 of the Ordinance to increase the rates of duty on tobacco by about 41.5% and the first registration tax for private cars by about 15% respectively, both of which took effect at 11 a.m. on 23 February 2011 (Members may refer to LC Paper No. LS33/10-11 for the previous report on the Orders). The Dutiable Commodities (Amendment) Bill 2011 and the Motor Vehicles (First Registration Tax) (Amendment) Bill 2011, which are identical to the bills respectively scheduled to the Orders, were subsequently introduced into LegCo on 13 April 2011.

3. The Orders are temporary measures. Under section 5(2) of the Ordinance, the Orders shall expire and cease to be in force upon -

- (a) the expiration of 4 months (i.e. 11 a.m. on 23 June 2011); or
- (b) the bill concerned being rejected or passed by the Legislative Council (LegCo) with or without modification; or
- (c) withdrawal of the bill or the Order concerned,

whichever event first happens.

4. Under section 6 of the Ordinance, any duty or tax paid under the Orders in excess of the duty or tax payable immediately after the expiration of the Orders shall be repaid to the person who paid the same.

5. The Orders are subsidiary legislation subject to the negative vetting procedure under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). 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 under section 2 of the Ordinance is to make an order giving full force and effect of law to all the provisions of the bill. Consistent with this power, LegCo may repeal the Orders but may not amend the provisions therein (LC Paper No. LS45/10-11).

6. The effect and consequences of repealing the Order concerned have been considered by the Subcommittee on Public Revenue Protection (Motor Vehicles First Registration Tax) Order 2011. Members may wish to refer to LC Paper Nos. CB(1) 1683/10-11 and CB(1)1827/10-11(01). In gist, if the Order concerned is repealed by LegCo, the tax will be charged, from the date of publication of LegCo's resolution to repeal, at the old rates as before the commencement of the Order concerned. However, there will be no immediate refund in respect of the excess taxes paid before the repeal of the Order as the resolution to repeal the Order concerned will not, under section 34(2) of Cap. 1, prejudice anything done under the Order.

7. The repeal of the Order concerned would not affect the scrutiny of the bill concerned. Any refund in respect of the excess taxes paid will take place only after the bill is enacted (with or without modification), rejected or withdrawn. If the Order concerned is repealed and the bill is subsequently passed by LegCo without modification, the Administration will have to recover the tax underpaid after the repeal of the Order but before the enactment of the bill. In the event that the Order is repealed and the bill concerned is passed with tax rates lower than proposed or not passed at all, the excess tax collected will be refunded. These consequences will also be applicable in the case of the other Order relating to tobacco duty.

8. Regarding the administrative arrangements for refund of any excess tobacco duty, the Legal Service Division has made enquiries with the Administration. According to the Administration, the excess duty will be refunded to the party who has paid the duty in the first place. In most cases, that means the tobacco importers and distributors who have applied for duty-paid permits. The Administration has no authority to re-direct the excess duty to be refunded to any other persons or require the duty payers to pay the

refunded duty to any other persons, including the individual ultimate consumers (copy of the Administration's reply is at Annex).

9. Members may wish to note that in 1991, the then Financial Secretary proposed to increase the tobacco duty by 200% by a LegCo resolution in accordance with section 4(2) of the Dutiable Commodities Ordinance (Cap. 109). In response to strong public objection, the proposed increase was reduced to 100%. Instead of withdrawing the original resolution, the then Financial Secretary proceeded with two resolutions, namely, the original one for an increase of 200% with effect from 6 March 1991 and the second one for an increase of 100% from 18 May 1991 to avoid having to refund the excess duty to tobacco wholesalers, who could otherwise have a windfall as they had already passed on the increase to the retail consumers but would have no legal obligation to refund the same to individual ultimate consumers even if they could be identified.

Encl.

Prepared by
Legal Service Division
Legislative Council Secretariat
26 April 2011



中華人民共和國香港特別行政區政府總部食物及衛生局

Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

20 April 2011

Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Ms Clara Tam)

Dear Ms Tam,

**Public Revenue Protection
(Dutiable Commodities) Order 2011**

Thank you for your letter of 18 April 2011 enquiring about the administrative arrangements for the refund of excess tobacco duty under section 6 of the Public Revenue Protection Ordinance (Cap.120) in the event the Public Revenue Protection (Dutiable Commodities) Order 2011 ("the Order") is repealed by the Legislative Council.

The purpose of the Order is to protect public revenue by giving temporary effect to the proposals in the Dutiable Commodities (Amendment) Bill 2011 ("the Bill") to increase tobacco duty rate by 41.5% from 23 February 2011 to allow time for scrutiny of the Bill at the Legislative Council. The Administration considers that any repeal of the Order would impair the revenue-protection function of the Public Revenue Protection Ordinance.

Practically speaking, in the event that the Order is repealed by the Legislative Council, as from the date of publication in the Gazette of the resolution to repeal, the tobacco duty rate will be reverted to the level before 23 February 2011. There will be no immediate refund in respect of any tobacco duty collected during the period when the Order is in force. The refund of excess tobacco duty, if any, will only take place after the Bill is deliberated and the tobacco duty rate is finalized upon the passage or otherwise of the Bill in the Legislative Council.

In the event that the Order is repealed and the Bill is subsequently passed by the Legislative Council without amendment, the Administration will have to recover the tobacco duty under-paid for the period from the date the rate is reduced to the date of enactment of the Bill. In the event that the Order is repealed and the Bill is ultimately not passed, or the tobacco duty rate proposed in the Bill is reduced, refund of the excess tobacco duty collected during the period when the Order was in force will be made.

In the case of a refund, the excess duty will be paid to the party who has paid the duty in the first place, in most cases, the tobacco importers and distributors who have applied for duty-paid permits. The Administration has no authority to re-direct the excess duty to be refunded to any other persons, or require the duty payers to pay the refunded duty to any other persons, including the individual ultimate consumers.

Yours sincerely,



(Miss Monica CHEN)
for Secretary for Food and Health

C.C.

Secretary for Financial Services and the Treasury	(Attn: Ms Shirley Kwan)
Director of Administration	(Attn.: Mr Howard Lee)
Department of Justice	(Attn.: Mr M Y Cheung)