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Paper for the House Committee

Report of the Subcommittee on Rating (Exemption) Order 2014

Purpose

This paper reports on the deliberations of the Subcommittee on Rating (Exemption) Order 2014 ("the Subcommittee").

Background

2. In the 2014-15 Budget speech, the Financial Secretary announced five one-off relief measures, one of which is to waive rates for the first two quarters of 2014-2015, subject to a ceiling of \$1,500 per quarter for each rateable property. The Administration has estimated that the rates exemption measure will benefit about 3.1 million properties. During the two quarters with rates concession, about 73% of ratepayers (about 2.26 million) need not pay any rates for the relevant properties. The financial commitment to the Government resulting from the rates waiver (i.e. the amount of rates forgone) will be \$6,135 million.

Rating (Exemption) Order 2014

3. The Rating (Exemption) Order 2014 ("the Order") was made by the Chief Executive in Council under section 36(2) of the Rating Ordinance (Cap. 116) to give effect to the rates exemption measure announced in the 2014-15 Budget.

4. The Order declares that all tenements are exempted from the payment of rates in respect of any quarter in the period from 1 April 2014 to 30 September 2014 wholly, if the amount of rates payable for the quarter is \$1,500 or less, or up to \$1,500 if the amount is more than \$1,500. The amount of \$1,500 will be reduced on a pro rata basis if rates are payable for only part of the concession period.

5. The Order is subsidiary legislation subject to negative vetting by the Legislative Council ("LegCo"). It was gazetted on 26 February 2014 and tabled at the LegCo meeting of 19 March 2014. The Order comes into operation on 1 April 2014.

The Subcommittee

6. At the House Committee meeting held on 28 February 2014, members agreed to form a subcommittee to study the Order. The membership list of the Subcommittee is at the **Appendix**. Under the chairmanship of Hon Andrew LEUNG, the Subcommittee has held one meeting with the Administration to examine the Order.

Deliberations of the Subcommittee

Benefits to the grassroots and needy

7. The majority of members of the Subcommittee do not in principle object to providing rates concession to ease the financial burden of the public. However, some members including Hon LEE Cheuk-yan, Hon Cyd HO and Hon CHAN Yuen-han have queried the effectiveness of the Administration's rates exemption measure in achieving the purpose of benefiting the grassroots and the needy. Hon CHAN Chi-chuen is opposed to using rates exemption as a one-off relief measure for helping the public cope with short-term financial pressure.

8. The above members of the Subcommittee consider that the Administration's rates exemption measure should assist the grassroots and the needy rather than benefitting the rich. As rates payments of small properties should largely be lower than \$1,500 per quarter, these members are concerned that households of such properties cannot fully utilize the rates concession (i.e. \$3,000 in total) under the Administration's current rates exemption measure. In their view, the current measure appears to be lopsided towards the rich (e.g. property developers, owners of properties subject to higher rates payment, owners with many rateable properties) and fails to achieve its purpose of helping the grassroots who live in small properties with lower rates payments. These members also point out that low-income persons not living in public housing nor receiving Comprehensive Social Security Assistance ("CSSA") cannot benefit from other proposed relief measures in the 2014-15 Budget, such as one month's rent waiver for public housing tenants and provision of extra allowance to CSSA recipients. They have urged the Administration to consider adjusting the rates exemption measure to better help these persons.

9. The Administration explains that the rates concession is one of the five measures of the package of \$20 billion one-off relief measures¹ introduced by the Government in the 2014-15 Budget. When drawing up the package of relief measures, the Government has taken into account the series of recurrent measures introduced by Government earlier to help the grassroots, the economic outlook for the next financial year, especially a slight slowdown in inflation, and the financial position in the current financial year. The Administration stresses that one-off relief measures primarily serve to help the public cope with short-term financial pressure and to achieve the counter-cyclical stimulus effect for the purpose of preserving economic stability and short-term employment.

10. On members' concern that the grassroots and needy may not fully utilize the rates concession due to their lower rates payments, the Administration points out that rates concession is implemented on an equal-footing basis. All ratepayers are exempted from rates regardless of the rateable value and types of the relevant properties and whether the ratepayers are the owners of the relevant properties. Under the current rates exemption measure, about 3.11 million properties assessed to rates payment will benefit, including about 1.72 million private domestic properties, 0.76 million public domestic properties and 0.4 million non-domestic properties. If the amount of rates payable per quarter equals or is below the concession ceiling of \$1,500, the ratepayers will have the whole amount of rates payable waived, and hence there should be no question of unspent rates concession. The Administration stresses that a ceiling for rates concession can achieve a regressive effect, i.e. the higher the rateable valuable of the properties, the smaller the magnitude of benefit arising from the concession.

11. As regards assistance for low-income persons not living in public housing nor receiving CSSA, the Administration considers that the matter concerns wider issues and should not be addressed in the context of the rates exemption measure.

12. Hon LEE Cheuk-yan has suggested that the Administration may consider excluding non-residential properties from the rates exemption measure so as to make available more resources for providing rates exemption to ratepayers of residential properties, given that ratepayers of non-residential properties can still benefit from rates concession in respect of their residential properties. Hon Andrew LEUNG points out that the rates payments of non-residential properties are generally higher than those of residential properties, and the suggestion in question will adversely affect the rates concession to be enjoyed by ratepayers of non-residential properties which include small and medium-sized enterprises ("SMEs"). In this connection, the Subcommittee notes from the information

¹ Including \$9.2 billion for reducing salaries tax, \$6.1 billion for rates concession, \$1 billion for reducing profits tax, \$1 billion for paying one-month rent for public housing tenants, and \$2.7 billion for providing extra one-month allowance to CSSA, Old Age Allowance, Old Age Living Allowance and Disability Allowance recipients.

provided by the Administration that under the current measure, 0.4 million rateable properties are non-domestic properties (including shops, offices and factories). The Administration considers that the rates exemption measure should also benefit these properties.

Limiting the number of rateable properties in respect of which each ratepayer is to be eligible for rates exemption

13. The Subcommittee notes that under the Administration's current measure, excluding organizations providing public housing, the rates concession expected to be received by the top 100 ratepayers amounts to \$171.8 million (holding a total of 78 733 rateable properties). The first ranked ratepayer (holding 16 974 rateable properties) will receive rates concession of about \$36 million. Some members including Hon CHAN Chi-chuen and Hon CHAN Yuen-han have criticized that rates exemption benefits mainly the property developers and investors who own many properties. They have called on the Administration to limit the number of rateable properties in respect of which any one ratepayer will be eligible for the measure. In their views, the "savings" achieved under this suggestion should be able to offset the additional financial commitment arising from extending the rates concession period to four quarters with a lower per quarter ceiling. Some other members including Hon Andrew LEUNG and Hon YIU Si-wing are opposed to this suggestion on the grounds that it may exclude certain ratepayers such as SMEs from the rates exemption measure.

14. The Administration explains that the party liable to rates payment under a tenancy agreement is not necessarily the ratepayer as recorded in the billing system of the Rating and Valuation Department ("RVD"). Based on the latest information collected by RVD, among the top ten ratepayers that receive the highest amounts of rates concession, over 85% of their tenancy agreements are rates-exclusive, i.e. the tenants pay the rates. In other words, according to the provisions of the tenancy agreements, these tenants should benefit when there is rates concession. If the landlords as the ratepayers are only allowed to enjoy rates concession for up to a certain number of properties as suggested by some Subcommittee members, some individuals or business establishments renting properties and are responsible for paying rates under their tenancy agreements cannot benefit from the rates concession.

15. The Administration further advises that valuation and collection of rates are conducted on the basis of tenements (i.e. "tenement" is the rateable unit of assessment) rather than individual landlord/occupier/agent of the rateable tenements. There will be practical difficulties in determining objectively the number of properties that should be capped as suggested by the members, and which properties pertaining to the same ratepayer should benefit from rates concession if he holds more than the specified number of properties under his name. Moreover, since a person may jointly own a property with other persons, own properties under different identities, as well as enter into different tenancy agreements/agency arrangements, the suggestion of capping the number

of properties per any one ratepayer for rates exemption will be controversial and practically difficult to implement.

16. Some Subcommittee members are concerned as to how the rates exemption measure can benefit tenants where the rents are rates-inclusive. The Administration advises that the measure will not take into account whether the ratepayer is the owner or tenant of the relevant property. Whether the rental is rates-inclusive and whether the tenants will be responsible for rates payment through the owners will depend on the considerations of both the owners and the tenants when drawing up the tenancy agreements. The Administration considers that individual tenants may stipulate separate provisions under the tenancy agreements to set out who will benefit from the rates concession, so as to protect their own interests.

Rates concession period and ceiling per quarter

17. Members of the Subcommittee note that under the rates exemption measures implemented in recent years, rates were exempted for four quarters of the financial years concerned and were subject to different ceilings². Some members, including Hon LEE Cheuk-yan, Hon Cyd HO, Hon CHAN Yuen-han, Hon SIN Chung-kai and Hon CHAN Chi-chuen, have urged the Administration to consider extending the concession period from two quarters to four quarters and subject the concession amount to a lower per quarter ceiling, such as \$750, \$700, \$650 or \$600, thereby enabling more households to fully utilize the total rates concession amount for each rateable property.

18. The Administration advises that members' proposals above will incur additional financial commitment for the Government. If the rates concession period is extended to four quarters with the ceiling set at \$750 per quarter, the Government's financial commitment will increase by \$2,116 million. Even if the ceiling is lowered to \$600 to \$700 per quarter, compared to the Administration's current measure, there will be additional financial commitment to the Government ranging from \$764 million to \$1,687 million. The Administration emphasizes that rates exemption involves significant financial implications given the wide basis of rateable properties, and it does not intend to incur additional financial commitment for the rates exemption measure.

19. On the basis of maintaining the financial commitment at \$6,135 million and extending the rates concession period to four quarters, some members of the Subcommittee have requested the Administration to explore setting an appropriate per quarter ceiling so as to enable more households to fully utilize the total rates concession amount.

² The ceiling of rates concession is \$2,500 per quarter in 2012-2013, and \$1,500 in 2010-2011, 2011-2012 and 2013-2014 respectively.

20. The Administration advises that the members' suggestion above will entail that the rates concession ceiling has to be further adjusted downwards to below \$600 per quarter. Nonetheless, except that the total rates concession amount enjoyed by the public domestic properties under this suggestion will increase, the total amount of rates concession received by all private domestic properties (including small, medium and large units) and non-domestic properties will drop. For instance, if the ceiling is set at \$500 per quarter, the total amount of rates concession enjoyed by private domestic properties will be reduced by 15% when compared to the Government's proposal, and the total amount of rates concession enjoyed by non-domestic properties will be even reduced by 19%. The Administration also points out that RVD will need to incur additional administrative expenses of about \$0.41 million for re-printing the pamphlets to be attached to the rates demand notes to explain the new rates concession arrangement. In view of the above concerns, the Administration considers that the rates concession measure as announced in the Budget is more preferable.

Possible charging effect of amendments to be proposed by Members

21. Some members have indicated that they may propose amendments to the Order to vary the Government's rates exemption measure. In this connection, the Subcommittee has examined whether a Member's proposed amendment to the Order that would not affect the amount of rates to be forgone (i.e. \$6,135 million) under the Order would have any charging effect for the purpose of Rule 31(1) of the Rules of Procedure ("RoP") of LegCo. The Legal Adviser of the Subcommittee advises that the admissibility of a Member's proposed amendment to the Order is ultimately a matter for the President of LegCo ("PLC") to decide. Based on previous rulings made by PLC, and subject to the Administration's views and the Legal Service Division's consideration of the Member's proposed amendment when it is available, it may be argued that an amendment to the Order would have no "charging effect" under Rule 31(1) of RoP if the amendment would not result in any additional loss of rates beyond the \$6,135 million already envisaged to be forgone under the Order or impose a new and distinct function on the Administration, the performance of which would require the spending of an amount of public money that is not nominal or negligible.

Advice sought

22. The Subcommittee and the Administration will not move amendments to the Order. The Subcommittee notes that Hon LEE Cheuk-yan and Hon CYD HO have indicated that they may consider proposing amendments to the Order.

23. The Chairman of the Subcommittee has given a verbal report on the Subcommittee's deliberations at the House Committee meeting on 28 March 2014. Members are invited to note the contents of this report.

Council Business Division 1
Legislative Council Secretariat
4 April 2014

Subcommittee on Rating (Exemption) Order 2014

Membership list

Chairman Hon Andrew LEUNG Kwan-yuen, GBS, JP

Members Hon LEE Cheuk-yan
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon YIU Si-wing
Hon CHAN Chi-chuen
Hon CHAN Yuen-han, SBS, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP

(Total : 10 members)

Clerk Ms Angel SHEK

Legal Adviser Mr Bonny LOO