

**立法會**  
***Legislative Council***

LC Paper No. LS3/13-14

**Paper for the House Committee Meeting  
on 11 October 2013**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 4 October 2013**

**Tabling in LegCo** : Council meeting of 9 October 2013

**Amendment to be made by** : Council meeting of 6 November 2013 (or that of 27 November 2013 if extended by resolution)

**Post Office (Amendment) Regulation 2013**

**(L.N. 147)**

L.N. 147 is made by the Chief Executive (CE) in Council under section 3 of the Post Office Ordinance (Cap. 98) (the POO) to increase certain postal fees under the Post Office Regulations (Cap. 98A). The fees include postal box and bag rentals, fee for redirection of postal packet, registration and compulsory registration fees and recorded delivery fee. The increase will take effect from 1 December 2013.

2. According to the Administration, some postal fees that are prescribed under Cap. 98A have not been adjusted since the Post Office Trading Fund was established on 1 August 1995. The proposed percentage increases on the above said items range from 13% to 25% and are intended to broadly recover the cumulative inflation since their last adjustments<sup>1</sup> up to the end of December 2012. Members may refer to Annex H to J of the LegCo Brief (File Ref: CITB CR 5/4-60/1C) issued by the Commerce and Economic Development Bureau dated 11 July 2013 for a summary regarding the proposed fee increases.

3. Further, according to the LegCo Brief, the Postmaster General (PMG) will also increase certain principal postage<sup>2</sup> rates with effect from 1 October 2013. These rates are postage rates for Local, Surface and Air Mail (Letters and Packets),

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<sup>1</sup> According to the LegCo Brief, postal box and bag rentals, fee for redirection of postal packet, registration and compulsory registration fees were last adjusted in June 1995 and the recorded delivery fee in March 1997.

<sup>2</sup> Principal postages refer to postages of traditional services which include local, air and surface mails as well as their respective bulk mails. Members may refer to footnote 1 of the LegCo Brief.

Bulk Air and Local Mail, Local Parcel and Surface Bulk Bag. Under section 4(1) of the POO, the PMG may, subject to any direction of the CE in Council, determine any of these rates by administrative means. As such, the aforesaid increases do not require LegCo's approval and are not covered by L.N. 147. Members may refer to Annex B to Annex G of the LegCo Brief for a summary regarding such increases.

4. According to the Clerk to Panel on Economic Development, at the Panel meeting on 22 July 2013, the Administration briefed members on the postal fee adjustments to be made under the Post Office (Amendment) Regulation 2013. Members noted and raised no objection to the date of commencement of the Amendment Regulation being 1 December 2013. Members generally considered that percentage-wise, the postal fees increases were substantial, and that in future, the Administration should review postal fees, and postages as well, more frequently in order to avoid the need for large increases after a long interval as in this instance.

5. The Clerk further advised that, at the same meeting, the Panel took note of the PMG's plan to increase a number of principal postage rates from 1 October 2013 and passed a motion<sup>3</sup> expressing dissatisfaction with the postage revision system of the Hong Kong Post which, in effect, allows the Hong Kong Post to circumvent the LegCo since postage revision does not require the latter's approval.

6. L.N. 147 comes into operation on 1 December 2013.

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Guernsey) Order (L.N. 148)**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Italian Republic) Order (L.N. 149)**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (State of Qatar) Order (L.N. 150)**

7. L.N. 148 to L.N. 150 are made by the CE in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) (the IRO) to give effect to the following agreements for avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (Agreements) -

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<sup>3</sup> "That, this Panel expresses its strong dissatisfaction with the fees revision system whereby the Post Office does not have to notify the Legislative Council when it decides to introduce postage revisions. The system allows the Post Office to simply bypass the Legislative Council when introducing service fee increases, thereby making it impossible for the voices of the people to be heard in the fee review process and eventually the affordability of the people in the face of such increases is ignored. In this connection, this Panel urges the Government to enhance the transparency of the postage revision system and to make every possible effort to alleviate the impact brought about by postage revisions on the people." (Translation)

- (a) the Guernsey Agreement, which is made between the Government of the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) and the Government of Guernsey and signed on 22 April 2013, and its relevant protocol;
- (b) the Italian Agreement, which is made by the Government of the HKSAR and the Government of the Italian Republic and signed on 14 January 2013, and its relevant protocol; and
- (c) the Qatari Agreement, which is made by the Government of the HKSAR and the Government of the State of Qatar and signed on 13 May 2013, and its relevant protocol.

8. Under section 49(1A) of the IRO, CE in Council may by order declare that arrangements 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 similar tax imposed by the laws of that territory.

9. According to the LegCo Briefs (ref: TsyB R 183/800-1-1/94/0 (C), TsyB R 183/800-1-1/28/0 (C) and TsyB R 183/800-1-1/63/0 (C)) issued by the Financial Services and the Treasury Bureau on 2 October 2013, while a local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation, double taxation may occur where a foreign jurisdiction taxes its own residents' income derived from Hong Kong. Although many jurisdictions provide their residents with unilateral tax relief for the Hong Kong tax they paid on income derived from Hong Kong, the existence of such Agreements will provide enhanced certainty and stability for the elimination of double taxation. Besides, the tax relief provided under such Agreements may exceed the level provided unilaterally by a tax jurisdiction.

10. For the purposes of section 49(1A), it is respectively declared in L.N. 148 to L.N. 150 that the following arrangements have been made with a view to affording relief from double taxation in relation to income tax and any similar tax, and that it is expedient that the following arrangements should have effect –

- (a) the arrangements in Articles 1 to 28 of the Guernsey Agreement and paragraphs 1 to 3 of the protocol thereto;
- (b) the arrangements in Articles 1 to 29 of the Italian Agreement and paragraphs 1 to 6 of the protocol thereto; and
- (c) the arrangements in Articles 1 to 28 of the Qatari Agreement and paragraphs 1 to 4 of the protocol thereto.

11. Upon such declaration, the arrangements have effect in relation to tax prescribed under the IRO despite anything in any enactment and, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of the relevant jurisdictions, have effect in relation to any tax of those jurisdictions that is the subject of that provision.

### Salient features of the Guernsey, Italian and Qatari Agreements

12. The provisions in the respective Agreements set out the allocation of taxing rights between HKSAR and the respective jurisdictions and the relief on tax rates on different types of income. The Italian, Guernsey and Qatari Agreements are respectively the twenty-seventh, twenty-eighth and twenty-ninth of such Agreements which are concluded by Hong Kong with other jurisdictions. Further, according to the Administration, Hong Kong adopts the Organisation for Economic Development 2004 version of the Exchange of Information (EoI) Article in the Agreements. A copy of the EoI Article was annexed to LC Paper No. CB(1) 106/09-10(02) and presented to the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009. According to the relevant LegCo Briefs, these Agreements have adopted the safeguards in the EoI Article. It is also noted that each Agreement (or its protocol) provides that information should only be exchanged upon request (i.e. no automatic or spontaneous exchange), that the requested information must be foreseeably relevant, and that the information will be disclosed only to the tax authorities and not their oversight bodies nor any third jurisdiction.

13. According to the Clerk to Panel on Financial Affairs, the Panel has not been consulted on L.N. 148 to L.N. 150.

14. L.N. 148 to L.N. 150 come into operation on 29 November 2013.

### **Concluding Observations**

15. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

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9 October 2013  
LS/S/1/13-14