

立法會 *Legislative Council*

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Subcommittee on Rating (Exemption) Order 2015

Background Brief

Purpose

This paper provides background information on the Rating (Exemption) Order 2015 ("the 2015 Order"). It also summarizes the discussions by Members when a similar order was made in 2012 and 2014 respectively.

Background

2. In the 2015-2016 Budget, the Financial Secretary announced five one-off relief measures, one of which is the proposal to waive rates for the first two quarters of 2015-2016 subject to a ceiling of \$2,500 per quarter for each rateable property. The Administration estimates that the proposed rates exemption will benefit about 3.15 million properties liable to rates payment and reduce government revenue by \$7.7 billion¹.

Rating (Exemption) Order 2015

3. The 2015 Order was made by the Chief Executive in Council under section 36(2) of the Rating Ordinance (Cap. 116) ("RO") to give effect to the rates concession proposed in the 2015-2016 Budget².

4. The 2015 Order declares that all tenements are exempted from the payment of rates in respect of any quarter in the period from 1 April 2015 to

¹ Paragraph 26(c) of [the 2015-16 Budget Speech](#).

² Section 36(2) of Cap.116 provides that the CE in Council may, by order, declare any class of tenements, or parts thereof, or any part of Hong Kong to be exempted from the payment of rates wholly or in part.

30 September 2015 wholly, if the amount of rates payable for the quarter is \$2,500 or less, or up to \$2,500 if the amount is more than \$2,500. The amount of \$2,500 is reduced on a pro rata basis if rates are payable for only part of the concession period.

5. The 2015 Order which was gazetted on 25 February 2015 will be tabled at the Legislative Council ("LegCo") meeting of 18 March 2015 for negative vetting. Under section 1 of the 2015 Order, the 2015 Order will come into operation on 1 April 2015.

Recent cases of rates exemption and deliberations by Members

6. Recent cases of rates exemption implemented in the last four LegCo sessions are as follows:

	Rating (Exemption) Order 2011	Rating (Exemption) Order 2012	Rating (Exemption) Order 2013	Rating (Exemption) Order 2014
Date of gazettal	23 February 2011	3 February 2012	1 March 2013	26 February 2014
Date of tabling in LegCo	2 March 2011	8 February 2012	20 March 2013	19 March 2014
Commencement date	1 April 2011	1 April 2012	1 April 2013	1 April 2014
Concession period	1 April 2011 to 31 March 2012 (4 quarters)	1 April 2012 to 31 March 2013 (4 quarters)	1 April 2013 to 31 March 2014 (4 quarters)	1 April 2014 to 30 September 2014 (2 quarters)
Ceiling (per quarter for each rateable property)	\$1,500	\$2,500	\$1,500	\$1,500

7. A subcommittee was formed to consider the Rating (Exemption) Order 2012³ ("the 2012 Order") and the Rating (Exemption) Order 2014⁴

³ The 2012 Order declared that all tenements were exempted from the payment of rates in respect of all quarters in the period from 1 April 2012 to 31 March 2013 wholly, if the amount of rates payable for the quarter was \$2,500 or less, or up to \$2,500, if the amount was more than \$2,500.

⁴ The 2014 Order declared that all tenements were exempted from the payment of rates in respect

("the 2014 Order") respectively. The major views and concerns raised by Members during the scrutiny of the relevant Orders are summarized in the ensuing paragraphs.

Benefits to the grassroots and needy

8. Some Members criticized that the rates concession measures benefited mainly the rich (such as property developers, owners of properties subject to higher rates payment and owners with many rateable properties in Hong Kong), and queried its effectiveness in achieving the purpose of benefitting the grassroots and the needy. As rates payable in respect of small properties were generally lower than the prescribed concession ceiling per quarter, low-income earners who lived in small properties with lower rates payment would not fully utilize the rates concession. These Members called on the Administration to consider allowing ratepayers, in particular individuals and small and medium enterprises ("SMEs") owning one property for self-use, to carry forward the "unused" amount of rates concession per quarter for each rateable property for future rates payment within a certain time limit, similar to the arrangement for the electricity charges subsidy introduced by the Government in recent years.

9. The Administration explained that if the amount of rates payable per quarter equaled to or was below the concession ceiling, ratepayers would have the whole amount of rates payable waived. Hence, there should be no question of unspent rates concession. The Administration further advised that while the electricity charges subsidy was based on environmental concerns to allow users to have sufficient time to fully utilize the subsidy, rates concession was a one-off measure proposed in the light of the overall economic situation, the livelihood burden of the people, and the Government's fiscal situation of the relevant financial year. A carry-forward arrangement for rates concession would entail additional cost of a recurrent nature and might involve substantial adjustments to the accounting system of the Rating and Valuation Department ("RVD") which would delay the implementation of the rates concession measure. Moreover, setting a ceiling for rates concession could already achieve a regressive effect, i.e. the higher the rateable value of the properties, the smaller the magnitude of benefit arising from the concession.

10. Some Members expressed concern that the rates exemption would not benefit the tenants in cases where the rents were rates-inclusive. The Administration advised that the rates concession measure would not take into account whether the ratepayer was the owner or tenant of the relevant

of any quarter in the period from 1 April 2014 to 30 September 2014 wholly, if the amount of rates payable for the quarter was \$1,500 or less, or up to \$1,500, if the amount was more than \$1,500.

property. Whether the rental was rates-inclusive would depend on the terms of the tenancy agreement. The individual tenant might negotiate with the owner and stipulate separate provisions under the tenancy agreement to set out who would benefit from the rates concession so as to protect their own interests.

11. Some Members suggested excluding non-residential properties from the rates concession measure so as to make available more resources for providing rates exemption to ratepayers of residential properties given that ratepayers of non-residential properties could still benefit from rates concession in respect of their residential properties. Some members however were concerned that the rates concession to be enjoyed by ratepayers of non-residential properties which included SMEs would be adversely affected as the rates payments of non-residential properties were generally higher than those of residential properties.

Limiting the number of rateable properties

12. Considering that the rates concession measure mainly benefited property developers and investors who owned many properties, some Members called on the Administration to limit the number of rateable properties in respect of which any one ratepayer would be eligible for rate concession. Some Members, on the other hand, were against the suggestion on the grounds that certain ratepayers such as SMEs might be excluded from the rates concession measure.

13. The Administration advised that the suggestion of limiting the number of properties per any one ratepayer for rate concession would be controversial and would entail practical difficulties in determining objectively the number of properties that should be capped, and which properties pertaining to the same ratepayer should benefit from rates concession if he held more than the specified number of properties under his name. The Administration further pointed out that the suggestion might render some individuals or business establishments renting the properties and responsible for paying rates under their tenancy agreements unable to benefit from the rates concession.

14. During the examination of the 2012 Order, Hon Albert CHAN proposed to amend the 2012 Order to provide that the number of tenements in respect of which any one person was liable for payment of rates (whether he was the owner or occupier) to be exempted from payment of rates should not exceed three in each quarter. The President of Legco ("PLC") ruled that Hon Albert CHAN's proposed resolution had a charging effect within the meaning of Rule 31(1) of the Rules of Procedure ("RoP") of the LegCo and required the consent in writing of the Chief Executive for it to be moved because the implementation of the proposed amendments would create a new and distinct function for RVD to cross-check its records of payers of rates of

all tenements which would entail an additional expenditure of \$48 million that was not nominal or negligible⁵.

Rates concession period and ceiling per quarter

15. On the basis of keeping the financial commitment of the Administration unchanged, some members of the Subcommittee on the 2014 Order requested the Administration to consider lowering the concession ceiling or setting an appropriate ceiling per quarter while extending the rates exemption period from two quarters to four quarters⁶ such that more households could fully utilize the total rates concession amount for each rateable property.

16. According to the Administration, members' suggestion would result in further revenue foregone, and reduce the total full-year amount of rates concession enjoyed by all private domestic properties (including small, medium and large units) and non-domestic properties. Moreover, additional administrative expenses would be incurred for re-printing the pamphlets to be attached to the rates demand notes to explain the new rates concession arrangement.

17. In this connection, members of the Subcommittee on the 2014 Order requested the Legal Service Division ("LSD") to provide information on (i) whether Rule 31(1) of RoP is inconsistent with Article 74 of the Basic Law ("BL74"); and (ii) whether a Member's proposed amendment to the 2014 Order that would not affect the amount of rates to be forgone (i.e. \$6,135 million) as proposed by the Administration would have any charging effect for the purposes of Rule 31(1) of RoP.

18. According to LSD in its paper (LC Paper No. LS37/13-14) submitted to the Subcommittee on the 2014 Order, BL74 only applies to bills but not subsidiary legislation or motions (including motions to amend subsidiary legislation). On this basis, no issue of inconsistency with BL74 should arise in considering whether an amendment to the 2014 Order may be proposed under Rule 31(1) of RoP⁷. As regards the possible charging effect of a Member's proposed amendment in relation to Rule 31(1) of RoP, LSD held that the admissibility of a Member's proposed amendment to the 2014 Order was ultimately a matter for PLC to decide. Based on previous rulings made by PLC on Hon Albert CHAN's proposed resolution to amend the 2012 Order and subject to the Administration's views and LSD's consideration of the relevant amendment, it might be argued that an amendment to the 2014 Order

⁵ See paragraphs 17-24 of the [President's Ruling](#) on Hon Albert CHAN's proposed resolution to amend the 2012 Order.

⁶ In 2014-2015, the rates concession period is from 1 April 2014 to 30 September 2014 (i.e. two quarters) and the ceiling of rates concession per quarter is \$1,500.

⁷ Paragraph 8 of [LC Paper No. LS37/13-14](#)

would have no "charging effect" under Rule 31(1) of RoP if the amendment would not (i) result in any additional loss of rates beyond the \$6,135 million already envisaged to be forgone under the 2014 Order or (ii) 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 negligible⁸.

Council questions

19. At the Council meeting on 8 June 2011, Hon Audrey EU raised a written question regarding the assessment of rateable values of different types of buildings to enquire, among others, whether the Administration had considered raising the maximum amount of rates to be waived in response to the increase in rateable values when setting the rates concession ceiling for 2011-2012. At the Council meeting on 18 January 2012, Hon CHAN Kam-lam raised an oral question regarding the payment of Government rent. Details of the relevant LegCo questions and the Administration's replies are given in the hyperlink in the **Appendix**.

Latest development

20. At the House Committee meeting on 27 February 2015, Members agreed to form a subcommittee to study the 2015 Order.

References

21. A list of relevant papers is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
16 March 2015

⁸ Paragraph 18 of [LC Paper No. LS37/13-14](#)

Appendix

List of relevant papers

Date	Event	Papers/Minutes of meeting
2 March 2011	The Rating (Exemption) Order 2011 was tabled in the Legislative Council	The Order Legal Service Division Report (LC Paper No. LS33/10-11)
8 June 2011	Hon Audrey EU's written question regarding the assessment of rateable values	Hansard (page 11491-11494)
18 January 2012	Hon CHAN Kam-lam raised an oral question regarding the payment of Government rent	Hansard (page 4705-4710)
February 2012 – March 2012	The Legislative Council formed a Subcommittee to scrutinize the Rating (Exemption) Order 2012	The Order Legal Service Division Report (LC Paper No. LS26/11-12) President's Ruling Report of the Subcommittee (LC Paper No. CB(1)1353/11-12)
20 March 2013	The Rating (Exemption) Order 2013 was tabled in the Legislative Council	The Order Legal Service Division Report (LC Paper No. LS29/12-13)
March 2014 – April 2014	The Legislative Council formed a Subcommittee to scrutinize the Rating (Exemption) Order 2014	The Order Legal Service Division Report (LC Paper No. LS31/13-14)

Date	Event	Papers/Minutes of meeting
		<p>Report of the Subcommittee (LC Paper No. CB(1)1202/13-14)</p> <p>Administration's paper on "Rates Exemption Proposal in the 2014-15 Budget" (LC Paper No. CB(1)1068/13-14(01))</p> <p>Administration's response to issues raised at the meeting on 13 March 2014 (LC Paper No. CB(1)1133/13-14(02))</p> <p>Paper for the Subcommittee on Rating (Exemption) Order 2014 prepared by the Legal Service Division (LC Paper No. LS37/13-14)</p>
18 March 2015	Tabling of the Rating (Exemption) Order 2015 in the Legislative Council	<p>The Order</p> <p>Legal Service Division Report (LC Paper No. LS46/14-15)</p>