

**Consolidated response to PAC's questions
on Chapter 7 of the Director of Audit's Report No. 65
Protection of revenue on dutiable commodities and
motor vehicle first registration tax**

This note sets out the response of the Customs and Excise Department (C&ED) to the various questions, and the consolidated response of C&ED and the Financial Services and the Treasury Bureau ("FSTB") to a question addressed to both, as set out in the list attached to the letter dated 23 December 2015 from the Clerk to PAC.

Question 1 (First Part): Does C&ED agree that non-compliance with the customs clearance permit condition would undermine its efforts to detect duty evasion and hence warrants more stringent enforcement action? Are there any guidelines for C&ED to take enforcement actions? Under what conditions would C&ED institute (i) prosecution action and (ii) give verbal warning against non-compliances? What improvement measures will be implemented?

2. C&ED has all along attached great importance to the protection and collection of excise duties.

3. C&ED will investigate all cases of non-compliance with permit conditions, and will take appropriate follow-up actions accordingly. We will seek legal advice from the Department of Justice ("DoJ"), where necessary, as to whether or not there is a case to initiate any prosecution action so as to ensure effective enforcement. For the ten cases mentioned in the Audit Report, C&ED's investigations revealed that there was sufficient evidence for prosecution action in one case only. As for the remaining nine cases, they were all related to minor technical mistakes made in data submission. Further, whilst two permit holders (i.e. Permit Holder B and Permit Holder C as mentioned in the Director of Audit's Report) were each involved in three cases, we consider that instead of initiating any prosecution action, strengthened liaison with the permit holders concerned would be an appropriate and effective way to ensure compliance. In this connection, all permit holders concerned were reminded of the correct data inputting methods to avoid

recurrence of similar technical mistakes. C&ED has also separately briefed and reminded the industry on the data submission requirements through regular liaison meetings (e.g. Dutiable Commodities Customer Liaison Group meetings on 14 and 15 December 2015) and written notifications (e.g. circular letter on 28 December 2015). C&ED will continue to take stringent enforcement actions against non-compliance cases in consultation with DoJ.

Question 1 (Second Part): Why was it that of the 2 461 permits issued for the import / export of DCs by sea via public cargo working areas in 2014, permit conditions were not imposed on 700 (28%) permits to enable C&ED staff to arrange checking of the DCs prior to their loading to / unloading from the carriers? Were the permit conditions not imposed because of perceived lower risks? If so, what were the risk factors considered? What improvement measures will be taken by C&ED?

4. C&ED did not impose permit conditions on 700 permits issued for the import/export of DCs via public cargo working areas (“PCWA”). The considerations were as follows –

- (a) **489 permits** were issued for transshipment consignments only. The subject items did not undergo vanning/devanning in Hong Kong;
- (b) **121 permits** were supplementary permits for surplus items. C&ED already imposed permit conditions (which allowed checking by C&ED prior to their loading / unloading) on the original permits under the same consignments; and
- (c) **90 permits** were issued for consignments which were considered to be of low risk after risk assessments by C&ED’s intelligence system and on which no permit conditions were considered necessary. The risk factors considered included, amongst others, credibility of licensees and latest smuggling trends.

C&ED will conduct regular review and continue to carry out prudent risk assessment. Appropriate permit conditions will be imposed on import/export of DCs via PCWA to guard against cases of duty evasion.

Question 2: According to paragraph 3.12(b), 27 (25%) of 109 repeated offenders who had committed six offences or more each for the past five years from 2010 to 2014 had not been prosecuted. What actions will be taken to address the worsening situation of abuse of duty-free concession and the problem of repeated offenders?

5. In response to the recommendation of the Director of Audit, C&ED will take follow-up actions on two fronts –

- (a) stepping up publicity and education efforts to promote law-abiding behaviour of incoming passengers and promulgate the offences for any abuse of the duty-free cigarette concession, such as increasing the frequency of public announcements and putting up posters at control points to remind passengers about the duty-free concession and the relevant penalties of breaching the law; and
- (b) reviewing the enforcement guidelines with a view to stepping up enforcement actions against recalcitrant offenders as well as those with non-payment records of compound penalty.

Questions 3 and 7: According to paragraph 4.20, C&ED reviewed in 2013 the provisions of the Motor Vehicles (First Registration Tax) Ordinance, including extending the prosecution time bar but the review was still in progress as at July 2015. What is the timeframe for introducing the legislative amendments? [Note: Same question has been addressed to both FSTB and C&ED.]

6. C&ED has put in place various measures to improve the situation, pending any legislative exercise. In order to secure timely prosecution within the statutory time bar, C&ED has already been taking the following steps which have proved to be effective in expediting the prosecution actions –

- (a) enhancing coordination with the Transport Department so as to shorten the referral process of cases;
- (b) reinforcing flexible staff deployment to expedite collection of evidence (e.g. statement-taking from witnesses, verification with the banks and overseas transport authorities); and

- (c) seeking DoJ's legal advice on the case for prosecution at the earliest opportunity.

7. Since the injection of additional manpower in 2013 for reinforcing assessment and inspection, the number of malpractice cases has been declining. Coupled with the measures mentioned in paragraph 6 above, this has allowed C&ED to expedite its investigation work upon referral from TD. The time taken for C&ED to complete the investigation and institute prosecution has been significantly reduced. In the past 12 months, the suspected cases upon referral from TD were all investigated by C&ED, with prosecution instituted on appropriate cases within the statutory time bar of six months.

8. FSTB and C&ED will continue to closely monitor the FRT regime and consider relevant legislative proposals where necessary, having regard to the stakeholders' concerns and the C&ED's operational experience. We will re-visit the need for any legislative amendment in the light of the latest enforcement strategy and identify any specific aspect of the FRT regime that may still warrant tightening up through legislation. Should there be any proposal to amend the law, we will need to engage stakeholders and consult affected parties before introduction of any such proposal into the Legislative Council in the next LegCo term.

Question 4: Beyond procedural guidelines, are there any checks and balances that incentivise the warehouse operators to promptly report DC stock that are left idle for more than three years? Are there any electronic systems in place for C&ED to identify and flag for actions the existence of DC stock that are left idle for over three years?

9. The warehouse operators are now required to submit monthly returns to C&ED to report the particulars of dutiable goods being stored for over three years in their warehouses. The reporting mechanism has been operating smoothly and C&ED will closely monitor the storage period of stocks. C&ED will take timely follow-up actions to direct the owners to remove idle stocks from the warehouses which would, apart from saving C&ED's administrative work, help reduce rental expenses.

Question 5: Has C&ED considered hiring staff to speed up the clearing of long outstanding cases of seized goods and vehicles in order to lower the need and cost for storage space?

10. As mentioned in paragraph 3.40 of the Audit Report, C&ED has already put in place a mechanism to monitor seizure disposal actions and long outstanding cases. C&ED will step up the monitoring under the established mechanism to prevent any unnecessary delays in seizure disposal. This, coupled with the on-going measures to monitor and clear the outstanding seizure cases, has reduced the yearly total rental costs for storage of seized goods from \$16.7 million in 2011-12 to \$11.3 million in 2014-15. Furthermore, C&ED will continue to speed up the disposal of case seizures after the conclusion of the related criminal proceedings and the issuance of confiscation orders by court. Temporary staff will be employed, if necessary, to speed up the disposal work.

Question 6: Would C&ED explain whether the above problem [i.e. lack of will to implement the guidelines more stringently] is attributable to a lack of clear and concise guidelines for execution, a lack of manpower for execution, or other reasons? Could C&ED indicate whether, and how, it would undertake follow-up reviews to ensure that [the reminders to staff] are sufficient to implement the Audit Commission's suggestions?

11. C&ED has all along strived to implement and improve the relevant guidelines in a prudent manner, coupled with communication with the frontline staff. C&ED welcomes the recommendations made by the Audit Commission regarding the work on the protection of revenue on dutiable commodities and first registration tax. C&ED will continue to regularly review the comprehensiveness and clarity of the departmental guidelines, and will incorporate the latest requirements into the training programmes for staff. C&ED will put in place internal measures to monitor the progress in following through the implementation of relevant recommendations in the Director of Audit's Report.

Financial Services and the Treasury Bureau
Customs and Excise Department
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