

**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 FSTB to a question addressed to both, as set out in the letters dated 13 January 2016 from the Clerk to PAC.

Question (a): (i) Under what situation would C&ED seek legal advice from DoJ to initiate prosecution action against cases of non-compliance? Are there any guidelines in this regard? (ii) Has legal training been provided to staff of C&ED so as to facilitate their effective discharge of enforcement duties? (iii) Referring to the case in which prosecution has been taken [as mentioned in our previous reply], what is the result of the prosecution and the penalty imposed, if any?

2. C&ED will investigate all cases of non-compliance with permit conditions and, based on the outcome of investigation and sufficiency of evidence, consider whether there is a case to initiate prosecutions. Our responses to the specific questions are:

- (i) C&ED would 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 of permit conditions for customs clearance. C&ED has issued internal guidelines for staff regarding prosecution actions. According to the guidelines, C&ED would seek legal advice from DoJ if there is doubt as to the adequacy of evidence, or points of law relevant to the case, the appropriateness of the charges, etc.
- (ii) C&ED has also been providing training to their staff on, among others, the relevant legal provisions, the prosecution procedures, the court process, and the relevant key court cases, to facilitate their effective discharge of enforcement duties.

- (iii) Regarding the case mentioned in ~~the reply~~ in which prosecution action was taken, the permit holder was convicted and fined \$8,000.

Question (b): Please provide details of the review [of the enforcement guidelines against recalcitrant offenders and those with non-payment records of compound penalty], including its programme, scope, timetable for completion, publication of review findings and implementation of recommended actions

3. For the purpose of reviewing the enforcement guidelines to step up enforcement actions against recalcitrant offenders and those with non-payment records of compound penalty, C&ED will look into the latest situation and trend of the offence, prevalence of repeated offenders, non-payment of compound penalty, and past records of offenders. The aim is to refine the current enforcement guidelines for ensuring better consistency in the actions taken and achieving better enforcement results by providing greater deterrent to recalcitrant offenders. The review is scheduled to be completed by the end of March 2016, and C&ED would duly implement the refined guidelines accordingly.

Question (c): (i) Whether at this stage FSTB and C&ED consider it necessary to introduce legislative amendments to the [Motor Vehicles (First Registration Tax) Ordinance]? If not, the reasons? (ii) What were the factors and the issues examined in the review? What is the updated status of the review and when will the review be completed and the findings published? If the review is still in progress, what are the reasons that hold up the review?

4. FSTB and C&ED do not see the need to proceed with the introduction of legislative amendments to the Motor Vehicles (First Registration Tax) Ordinance at this stage because –

- (a) Amongst the various aspects of the Ordinance that may merit tightening up, C&ED has stepped up measures and deployed additional resources to enhance the administration of the first registration tax regime, in particular on the assessment of the published retail price and the timely processing of cases for prosecution.

- (b) Drawing on the operational experience gained in the light of the enhanced enforcement strategy, C&ED is reviewing the effectiveness of the legislative provisions. The review covers a number of issues, such as the registration system of importers and distributors, the submission requirements for the published retail price lists, the six-month time bar for prosecution, and the penal provisions, etc.
- (c) The effectiveness of the administrative measures to address the issues covered in the review, in particular on timely processing of cases for prosecution, is also a key factor for considering whether or not it warrants tightening up the legislative regime through amendments to the Ordinance. The review is targeted for completion by mid-2016.

Question (d): Will C&ED consider installing electronic system(s) to facilitate it to identify the existence of DC stock that are left idle for a long time and take necessary actions?

5. To support the mechanism to monitor the storage period of stocks (as mentioned in ^{Appendix 69}~~our previous reply~~), C&ED is developing a computer programme to identify idle DC stocks which will facilitate staff to take timely follow-up actions. The programme is scheduled to complete in the second quarter of 2016, and will put into operation after proper testing and trial runs.

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