

立法會
Legislative Council

LC Paper No. LS86/17-18

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 3 August 2018**

Tabling in LegCo : Council meeting of 10 October 2018

Amendment to be made by : Council meeting of 7 November 2018 (or that of 28 November 2018 if extended by resolution)

**Tax Reserve Certificates (Rate of Interest) (Consolidation)
(Amendment) Notice 2018** **(L.N. 147)**

Under rule 7(2)(h) of the Tax Reserve Certificates (Fourth Series) Rules (Cap. 289A), in relation to tax reserve certificates issued on or after 11 April 1980, the rate of interest is such as may be fixed by the Financial Secretary¹ from time to time and is in force at the date of issue thereof. Under rule 7(2A) of Cap. 289A, notice of the rate of interest so fixed shall be published in the Gazette.

2. L.N. 147 is made by the Secretary for Financial Services and the Treasury under rule 7(2)(h) of Cap. 289A to amend the Schedule to the Tax Reserve Certificates (Rate of Interest) (Consolidation) Notice (Cap. 289B) to provide that the rate of interest payable on tax reserve certificates issued on or after 6 August 2018 shall be 0.0767% per annum. The rate of interest was last fixed at 0.0433% per annum in January 2010 pursuant to the Tax Reserve Certificates (Rate of Interest) (No. 6) Notice 2009 (L.N. 264 of 2009) ("the Previous Notice").

3. It is noted that unlike the Previous Notice and other similar previous notices under which the rate of interest payable on tax reserve certificates was prescribed, followed by corresponding amendments to the

¹ "Financial Secretary" ("FS") is defined under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to mean FS of the Hong Kong Special Administrative Region and the Secretary for Financial Services and the Treasury.

Schedule to Cap. 289B, L.N. 147 only amends the Schedule to Cap. 289B. In response to our enquiry on the reason for adopting a different drafting approach in L.N. 147, the Administration explained that as paragraph 2 of Cap. 289B provides that the rates of interest payable on tax reserve certificates issued at different specified times shall be those contained in the Schedule to Cap. 289B, the amendments of the Schedule to Cap. 289B made by L.N. 147, when read together with paragraph 2 of Cap. 289B, is a sufficient and legally effective way for an exercise of the power under rule 7(2)(h) of Cap. 289A. While we consider that the drafting approach adopted in the previous notices reflects more accurately the provisions in rule 7(2)(h) and rule 7(2A) of Cap. 289A, the drafting approach in L.N. 147 does not appear to give rise to legal difficulties in the light of the Administration's explanation.

4. No Legislative Council Brief has been issued by the Administration on L.N. 147. According to our enquiry made with the Administration, the above rate of interest payable on tax reserve certificates is fixed by reference to the average prevailing interest rate for the six-month time deposit below \$100,000 offered by the three note-issuing banks as at 30 July 2018. Given that the adjustment on the rate of interest payable on tax reserve certificates is a routine exercise, the Administration does not consider it necessary to conduct public consultation.

5. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 147.

6. Subject to Members' view on the issue raised in paragraphs 3 above, no difficulties have been identified in relation to the legal and drafting aspects of L.N. 147.

Prepared by

KAN Wan-ye, Wendy
Assistant Legal Adviser
Legislative Council Secretariat
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