



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : HDCR4-3/PH/10-5/30  
本函檔號 OUR REF : LS/B/30/18-19  
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By Fax (2761 7444)

8 November 2019

Miss Joyce KOK  
Prin Asst Secy (Housing) (Private Housing)  
Housing Department  
Strategy Division  
Private Housing Sub-division  
Housing Authority Headquarters  
33 Fat Kwong Street  
Ho Man Tin, Kowloon

Dear Miss KOK,

### **Rating (Amendment) Bill 2019**

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we should be grateful if you could clarify the issues as stated in the **Appendix**.

We would appreciate it if you could let us have your reply (in both English and Chinese) as soon as practicable.

Yours sincerely,

(Linda CHAN)  
Assistant Legal Adviser

c.c. Department of Justice

(Attn: Ms Rayne CHAI, Sr Asst Law Draftsman (By Fax: 3918 4613))

(Attn: Mr Gary LI, Govt Counsel (By Fax: 3918 4613))

Legal Adviser

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### Implications for the right of disposal of private property

In essence, the Special Rates regime proposed under the Bill imposes on a first-owner of a specified tenement a restriction to hold (or keep) his/her own property beyond a specified period of time after the day on which the occupation permit for the specified tenement is issued. Those first-owners who do not dispose of their properties in accordance with the proposed provisions would be subject to Special Rates. Evasion of Special Rates may lead to criminal liability.

Article 105 of the Basic Law ("BL 105") protects the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. In the light of BL 105, it appears that the Special Rates regime could affect individuals' right in disposal of private property. Please explain how the proposed Special Rates regime can reconcile with the right of individuals and legal persons in private property under BL 105.

### Related party of first-owner who is an individual

Under the proposed new section 49A, a "related party" in relation to a person who is an individual includes an "immediate family member" of the person, namely "a spouse, parent, child, sibling, grandparent or grandchild of the individual".

Please explain why the Bill adopts a reference to "immediate family member" instead of a wider reference to "member of the family", for instance, one that is akin to the definition under Employees' Compensation Ordinance (Cap. 282), which may include, whether by blood or an adoption, a spouse or cohabitee, a child, a parent or grandparent or a grandchild, stepparents, stepchildren and in-laws etc.

### Related party of first owner that is a body corporate

Under the proposed new section 49A, for a first-owner that is a body corporate, its related party is its associated company as defined in the Companies Ordinance (Cap. 622), i.e. (a) a subsidiary of the body corporate, (b) a holding company of the body corporate and (c) a subsidiary of such a holding company. In the light of the definitions of "holding company" and "subsidiary" provided under sections 13 and 15 of Cap. 622 respectively, please explain whether a company which has the identical director(s) and/or shareholder(s) with a first-owner that is a

body corporate would be regarded as a related party under the proposed new section 49A and if not, why not.

#### Amendment to Schedule 2 by way of negative vetting

Under the proposed new section 53A, the Secretary for Transport and Housing may by notice published in the Gazette amend the new Schedule 2, i.e. by way of subsidiary legislation subject to negative vetting procedure of the Legislative Council ("LegCo") under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). The new Schedule 2 would provide for the specific rate of the Special Rates. Since the Special Rates regime involves the civil right to private property, please consider whether it would be more desirable that the amendment to the new Schedule 2 be subject to the approval of LegCo under section 35 of Cap. 1 instead of negative vetting procedure of LegCo.

#### Meaning of first-owner

Please clarify whether the Official Receiver or trustee(s) appointed under the Bankruptcy Ordinance (Cap. 6) of the property of a bankrupted first-owner of a specified tenement would also be regarded as a first owner of the specified tenement under the proposed new section 49B. If not, why not.

#### Liability for Special Rates

Please elaborate and illustrate by examples the operation of Special Rates regime under the proposed new section 49J(6) where the specified tenement is jointly held by a first-owner and another person, who is not a first owner of such tenement, as joint tenants.

Please clarify that where two independent first-owners of two specified tenements, not being related parties, enter into an agreement for and conveyance on sale before the last day of the reporting period which effects an exchange of two specified tenements with or without payment for the difference in value of the two tenements, whether such an exchange arrangement would be regarded as an agreement for sale and purchase of the respective specified tenements in question under the proposed new section 49J(2)(c). If so, in light of the legislative intent of the Bill as set out in the LegCo Brief (File Ref.: HDCR4-3/PH/10-5/30) issued by the Transport and Housing Bureau on 11 September 2019, whether an exchange arrangement in such scenario would create a loophole in the proposed Special Rates regime.

## Offences

Under the proposed new section 49Q, a person who, without reasonable excuse, provides the Commissioner of Rating and Valuation ("CRV") any incorrect information would commit an offence and face a maximum fine at level 5 (i.e. \$50,000) upon conviction. Please clarify:

- (a) whether a careless mistake in providing incorrect information to CRV would incur criminal liability under the proposed new section 49Q; and
- (b) what would constitute a "reasonable excuse" under the proposed new section 49Q.

The proposed new section 49P provides that a person who knowingly or recklessly provides false or misleading information to CRV commits an offence and would be liable on conviction to a fine at level 6 (i.e. \$100,000) and imprisonment for one year. Please clarify how and on what basis the CRV differentiates between the information provided by a first-owner that is false, misleading or incorrect under proposed new sections 49P and 49Q.

The proposed new section 49U provides for the offences committed by a body corporate. Please explain why the proposed new section 49Q is not included under the proposed new section 49U(1) as one of the offences that can be committed by a body corporate.

## Additional penalty

Under the proposed new section 49S, a person convicted of an offence under the proposed new Part XA would be liable to a fine of treble any undercharged amount. Please clarify how would the actual amount of the undercharged amount be calculated and in particular, whether it is the CRV, the criminal court where trial of the offence concerned is conducted or the Lands Tribunal that would be responsible for determining such amount.

## Excluded premises

The proposed new section 2(9) under the new Schedule 1 provides that premises built, and used wholly or mainly for the purpose of holding services or saying prayers by congregation loyal to a belief in accordance with the practice of religious principles or a monastery or convent are excluded from the application of Special Rates regime.

Please clarify whether Chinese temples within the meaning of Chinese Temples Ordinance (Cap. 153) are also regarded as excluded premises under the proposed new section 2(9) of Schedule 1. If not, why not. For the sake of clarity, please also explain whether Schedule 1 should also include Chinese temples for the purposes of excluding the application of Special Rates.