



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

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By Fax (2761 7444)

13 May 2020

Miss KOK Sen Yee, Joyce
Prin AS for (Housing) (Private Housing)/
Asst Dir (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

Further to our letter of 8 November 2019 ("1st Letter"), we should be grateful if you could clarify the following matters:

Proportionality test

1. As mentioned in our 1st Letter, the proposed Special Rates regime could affect individuals and legal persons' right in the disposal of property which is guaranteed by Article 105 of the Basic Law ("BL 105"). As to the issue on whether the proposed Special Rates regime would be consistent with BL 105, please also clarify whether the proposed measure could satisfy the four-step proportionality test as laid down in the case of *Hysan Development & Others v Town Planning Board* (2016) 19 HKCFAR 372 as follows:

- (a) whether the measure pursues a legitimate aim;
- (b) whether the measure is rationally connected to that legitimate aim;
- (c) whether the measure is no more than is necessary to accomplish that legitimate aim; and
- (d) where an encroaching measure had passed the aforesaid three steps, whether a reasonable balance has been struck between the societal

benefits of the encroachment and the inroads made into the constitutionally protected rights of the individuals, in particular whether pursuit of the societal interest would result in an unnecessary harsh burden on the individual.

Clause 4 – new section 49N (refund of special rates)

2. The proposed new section 49N provides that the Commissioner of Rating and Valuation ("the Commissioner") must, if satisfied that, in relation to a specified tenement - (a) an amount paid by way of special rates and any additional charges was in excess of the amount payable under sections 49L and 49M; or (b) the person who paid the special rates and additional charge was not liable to make the payment, refund any excess amount. It appears that in the proposed new section 49N, as presently drafted, by referring to "refund any excess amount" is not suitable for the scenario of special rates and additional charges paid by a person who was not liable to make the payment under the new section 49N (b), as all the payment of special rates and additional charges should be refunded to the person in the scenario under new section 49N(b) not just the "excess amount" of such payment. Please consider if necessary amendments should be made to the proposed new section 49N for the scenario mentioned in the new section 49N(b).

Clause 4 – new section 49T (compounding of offences)

3. Under the proposed new section 49T(1), the Commissioner may compound any compoundable offence (i.e. an offence under new section 49D(5), 49E(5), 49I(4) or 49ZE(5)); and if proceedings for a compoundable offence have been commenced – apply for a stay and compound the proceedings. Please let us know the rationale for making an offence under new section 49D(5), 49E(5), 49I(4) or 49ZE(5) as a compoundable offence. What are the considerations that would be taken into account by the Commissioner in determining whether the said offences can be compounded or not?

We would be grateful if you could let us have the reply (in both English and Chinese) as soon as practicable, preferably before 22 May 2020.

Yours sincerely,


(Vanessa CHENG)
Assistant Legal Adviser

c.c. DoJ (Attn.: Ms Rayne CHAI (SALD))

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