

Rating (Amendment) Bill 2019

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A BILL

To

Amend the Rating Ordinance to introduce special rates chargeable on certain private domestic premises that are unsold after the issue of the occupation permits for the premises, and that are either unleased for a certain period of time or leased to a person below market rent; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Rating (Amendment) Ordinance 2019.
- (2) This Ordinance comes into operation on the expiry of 3 months beginning on the day on which it is published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Rating Ordinance (Cap. 116)

3. **Section 2 amended (interpretation)**

Section 2, definition of *rates*—

Repeal

“Ordinance”

Substitute

“Ordinance, but does not include special rates chargeable under Part XA”.

4. **Part XA added**

After Part X—

Add

“Part XA

Special Rates

Division 1—Interpretation and Application

49A. **Interpretation: Part XA**

(1) In this Part—

aggrieved person (感到受屈者) means a person referred to in section 49V(2);

agreement for sale and purchase (買賣合約), in relation to a specified tenement, means an instrument—

- (a) entered into between 2 or more parties with a view to transferring the ownership of the specified tenement to the purchaser (however called); and
- (b) delivered into the Land Registry with a memorial—
 - (i) for registration of the specified tenement; and
 - (ii) to which a memorial number is assigned by the Land Registry,

but does not include a preliminary agreement entered into by the parties with a view to making an agreement for the sale and purchase of the specified tenement;

appeal (上訴) means an appeal made under section 49Z;

assignment (轉讓、轉讓契), in relation to a specified tenement, means—

- (a) an instrument, or a decree or order of the court, by which the specified tenement is transferred to or vested in a person; or
- (b) an act of transferring the specified tenement to, or vesting the specified tenement in, a person by an instrument, decree or order mentioned in paragraph (a);

associated company (有聯繫公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

body corporate (法人團體) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

consolidated first return (綜合首報書) means a return made under section 49D(3);

consolidated subsequent return (綜合後報書) means a return made under section 49E(3);

control (控制), in relation to a body corporate, means the power of a person to secure—

- (a) by means of holding shares or possessing voting power in or in relation to the body corporate or any other body corporate; or
- (b) by virtue of any powers conferred by the articles of association or another document regulating the governance of the body corporate or any other body corporate,

that the affairs of the body corporate are conducted in accordance with the person's wishes;

electronic record (電子紀錄) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

employee (僱員) has the meaning given by section 9(6) of the Inland Revenue Ordinance (Cap. 112);

first-owner (初持者)—see section 49B;

first period (首報期), in relation to a specified tenement, means—

- (a) if the occupation permit for the specified tenement is issued 12 months or more before the specified date—the 12-month period before the specified date; or
- (b) if the occupation permit for the specified tenement is issued—
 - (i) less than 12 months before the specified date; or
 - (ii) on or after the specified date,

the 12-month period beginning on the OP date of the specified tenement;

first return (首報書) means a return made under section 49D(1);

hold (持有), in relation to a specified tenement, see subsection (2);

immediate family member (家人), in relation to an individual, means a spouse, parent, child, sibling, grandparent or grandchild of the individual;

in force (有效), in relation to an agreement for sale and purchase, means no negative event has happened in relation to the agreement;

leased (出租), in relation to a specified tenement, means the specified tenement being let during a reporting period—

- (a) under 1 or more tenancy agreements;
- (b) at a rent not less than the market rent; and
- (c) for not less than 183 days in aggregate;

market rent (市值租金), in relation to a specified tenement that is let under 1 or more tenancy agreements, means the rent at which the specified tenement might reasonably be expected to be let in the open market on the terms of the tenancy agreement or agreements, with both the landlord and the tenant to the tenancy acting at arm's length;

negative event (廢止事件), in relation to an agreement for sale and purchase, means—

- (a) the cancellation, annulment, rescission or other termination of the agreement; or
- (b) an event of non-performance of the agreement;

notional rateable value (名義應課差餉租值), in relation to a specified tenement, means the rateable value of the specified tenement ascertained under section 49K;

occupation permit (佔用許可證), in relation to a specified tenement, means—

- (a) an occupation permit or temporary occupation permit issued under section 21(2) of the Buildings Ordinance (Cap. 123) for the specified tenement; and
- (b) if more than one such permit is issued, the first such permit;

OP date (發證日), in relation to a specified tenement, means the day on which the occupation permit for the specified tenement is issued;

Part XA return (第XA部申報書) means—

- (a) a first return;
- (b) a consolidated first return;
- (c) a subsequent return; or
- (d) a consolidated subsequent return;

reference date (參照日期) means—

- (a) in relation to a specified tenement the occupation permit for which is issued 12 months or more before the specified date—
 - (i) for the first period for the specified tenement—the first day of the 12-month period before the specified date; or
 - (ii) for a subsequent period for the specified tenement—the specified date, or the anniversary of the specified date in the subsequent period; or

- (b) in relation to a specified tenement the occupation permit for which is issued less than 12 months before the specified date, or on or after the specified date—
 - (i) for the first period for the specified tenement—the OP date; or
 - (ii) for a subsequent period for the specified tenement—the anniversary of the OP date in the subsequent period;

related party (關連人士) means—

- (a) in relation to a person that is a body corporate—an associated company of the person; or
- (b) in relation to a person who is an individual—
 - (i) an immediate family member of the person;
 - (ii) a body corporate controlled by the person; or
 - (iii) a body corporate controlled by an immediate family member of the person;

reporting period (通報期) means—

- (a) a first period; or
- (b) a subsequent period;

special rates (額外差餉) means a tax chargeable on a specified tenement under this Part;

specified date (指明日期) means the day on which the Rating (Amendment) Ordinance 2019 (of 2019) comes into operation;

specified document (指明文件) means—

- (a) a first return;

- (b) a consolidated first return;
- (c) a subsequent return;
- (d) a consolidated subsequent return;
- (e) a notice given to the Commissioner under section 49I (whether or not in the specified form) relating to a negative event that has happened in relation to an agreement for sale and purchase of a specified tenement; or
- (f) a document required by the Commissioner under section 49ZE;

specified tenement (指明單位) means a building or structure (or any part of a building or structure) held as a distinct or separate holding and permitted for domestic use under the occupation permit;

subsequent period (後報期), in relation to a specified tenement, means—

- (a) a period of 12 months beginning on the date immediately after the first period for the specified tenement ends; or
- (b) each successive period of 12 months;

subsequent return (後報書) means a return made under section 49E(1);

tenancy agreement (租賃協議) means a tenancy agreement (however called) stamped under the Stamp Duty Ordinance (Cap. 117);

year of assessment (課稅年度) has the meaning given by section 2(1) of the Inland Revenue Ordinance (Cap. 112).

- (2) For the purposes of this Part, a reference to a person holding a specified tenement is a reference to a person whose name appears as the owner of the specified tenement in the records of the Land Registry.

49B. Meaning of *first-owner*

- (1) A first-owner of a specified tenement is the person who holds the specified tenement on its OP date (*original first-owner*).
- (2) Also, a person deriving title of the specified tenement directly or indirectly from the original first-owner (*successor*) becomes a first-owner of the specified tenement if—
 - (a) the successor is a related party of the person who assigns the specified tenement to the successor at the time of the assignment; and
 - (b) where the successor derives the title from the original first-owner through a series of 2 or more assignments—in each of those assignments the assignor and the assignee are related parties.
- (3) However, a successor does not become a first-owner of the specified tenement if the assignment of the specified tenement by the original first-owner was executed before 29 June 2018.
- (4) For the purposes of this section, if a first-owner is an individual, a reference to the first-owner includes (if applicable) the personal representative of the first-owner.
- (5) In this section—

personal representative (遺產代理人) has the meaning given by section 2 of the Probate and Administration Ordinance (Cap. 10).

49C. Application of Part XA

- (1) This Part—
 - (a) applies to a specified tenement for the purposes of charging of special rates; but
 - (b) does not apply to the premises specified in section 2 of Schedule 1.
- (2) The Secretary for Transport and Housing may, by notice published in the Gazette, amend Schedule 1.
- (3) A notice under subsection (2) may—
 - (a) specify any particular premises or a class of premises; and
 - (b) specify the circumstances in which, or the purposes for which, any premises are excluded from the application of this Part.

Division 2—Returns

49D. First returns and consolidated first returns

- (1) A first-owner who holds a specified tenement at any time during the first period for the specified tenement must make a return setting out the matters required under section 49F in relation to the specified tenement for the period during which the first-owner so holds the specified tenement.
- (2) The first-owner must submit the first return to the Commissioner within 28 days after the end of the first period for the specified tenement.

- (3) If the first-owner holds 2 or more specified tenements (for which a single occupation permit is issued) at any time during the first period for the specified tenements, the first-owner must make a consolidated first return (instead of separate first returns) for all those specified tenements setting out the matters required under section 49F in relation to each of the specified tenements for the period during which the first-owner so holds the specified tenements.
- (4) The first-owner must submit the consolidated first return to the Commissioner within 28 days after the end of the first period for the specified tenements.
- (5) A person who, without reasonable excuse, fails to comply with subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine at level 4.

49E. Subsequent returns and consolidated subsequent returns

- (1) A first-owner who holds a specified tenement at any time during a subsequent period for the specified tenement must make a return setting out the matters required under section 49F in relation to the specified tenement for the period during which the first-owner so holds the specified tenement.
- (2) The first-owner must submit the subsequent return to the Commissioner within 28 days after the end of the subsequent period for the specified tenement.
- (3) If the first-owner holds 2 or more specified tenements (for which a single occupation permit is issued) at any time during a subsequent period for the specified tenements, the first-owner must make a consolidated subsequent return (instead of separate subsequent returns) for all those specified tenements setting out the matters required under section 49F in relation to

each of the specified tenements for the period during which the first-owner so holds the specified tenements.

- (4) The first-owner must submit the consolidated subsequent return to the Commissioner within 28 days after the end of the subsequent period for the specified tenements.
- (5) A person who, without reasonable excuse, fails to comply with subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine at level 4.

49F. Matters required to be set out in Part XA returns by first-owners

- (1) The following are matters required under this section in relation to a specified tenement for a reporting period that a first-owner must set out for the purposes of sections 49D(1) and (3) and 49E(1) and (3)—
 - (a) whether the specified tenement was leased to any person during the reporting period and, if so, whether the tenant (however called) was a related party of the first-owner;
 - (b) whether the specified tenement was provided (whether or not at a rent) by the first-owner as an employer to an employee of the first-owner as a place of residence during the reporting period and, if so, whether the period of provision was not less than 183 days (in aggregate if there were 2 or more periods) during the reporting period;

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- (c) whether any agreement for sale and purchase of the specified tenement was entered into before or during the reporting period by the first-owner as vendor (however called) with another person as purchaser (however called) (*purchaser*) and, if so—
- (i) whether the agreement is still in force;
 - (ii) whether the purchaser is a related party of the first-owner; and
 - (iii) the date, and the Land Registry memorial number, of the agreement;
- (d) whether any assignment of the specified tenement was executed during the reporting period by the first-owner as assignor (however called) in favour of another person as assignee (however called) (*assignee*) and, if so, whether the assignee is a related party of the first-owner;
- (e) whether the first-owner holds any other specified tenement as a first-owner during the reporting period;
- (f) whether the specified tenement falls within the description of any of the premises specified in section 2 of Schedule 1 during any part of the reporting period;
- (g) any other matters specified by the Commissioner.
- (2) For the purposes of subsection (1)(b), a specified tenement is not regarded as being provided as a place of residence to an employee unless it is stated as the place of residence provided by the first-owner to the employee in—

- (a) if the reporting period straddles 2 years of assessment—the returns or notifications (as appropriate) furnished, or to be furnished, by the first-owner under section 52 of the Inland Revenue Ordinance (Cap. 112) for those years of assessment; or
- (b) if the reporting period overlaps wholly with a year of assessment—the return or notification (as appropriate) furnished, or to be furnished, by the first-owner under that section for the year of assessment.

49G. Requirements for Part XA returns

- (1) A Part XA return—
 - (a) must be made in the specified form and (if applicable) in the way specified under section 49H;
 - (b) must be accompanied by the information and documents specified by the Commissioner; and
 - (c) must be signed by the first-owner.
- (2) A Part XA return may be submitted—
 - (a) in a paper form or similar form capable of being read without using an electronic device; or
 - (b) in the form of an electronic record.

49H. Electronic submission of Part XA returns

- (1) If a Part XA return is submitted in the form of an electronic record, the requirements in section 49G(1)(a) and (b) are satisfied if the electronic record—

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- (a) is sent using a system specified by the Commissioner;
 - (b) uses a template specified, and made available, by the Commissioner; and
 - (c) contains the information and documents—
 - (i) specified by the Commissioner; and
 - (ii) arranged in the format specified by the Commissioner.
- (2) If a Part XA return is submitted in the form of an electronic record, the requirement in section 49G(1)(c) is satisfied if the electronic record is transmitted with—
- (a) a digital signature of the first-owner; or
 - (b) the password assigned or approved under subsection (3)(b).
- (3) The Commissioner may—
- (a) for the purposes of subsection (1)(a)—specify any system; and
 - (b) for the purposes of subsection (2)(b)—assign or approve any sequence or combination of letters, characters, numbers or symbols as the password of a first-owner.
- (4) In this section—
- digital signature*** (數碼簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).

49I. Certain events relating to agreement for sale and purchase to be reported

- (1) This section applies if a first-owner of a specified tenement—
 - (a) has made 1 or more Part XA returns for the specified tenement; and
 - (b) has stated in a Part XA return that an agreement for sale and purchase of the specified tenement entered into by the first-owner as vendor (however called) with another person as purchaser (however called) was in force during the period covered by the Part XA return.
- (2) If a negative event has happened in relation to the agreement for sale and purchase during a reporting period, the first-owner must notify the Commissioner in writing of the event in the specified form within 28 days immediately after the date of the event.
- (3) For the purposes of subsection (2), a notice that is not in the specified form may, for the purposes of this section, be regarded as being in the specified form if the Commissioner considers that the notice substantially conforms to the specified form.
- (4) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence and is liable on conviction to a fine at level 4.
- (5) For the purposes of this Part, an agreement for sale and purchase of a specified tenement in relation to which a negative event has happened is to be regarded as not having been entered into in relation to the specified tenement.
- (6) Subsection (5) applies even if the agreement for sale and purchase is entered into before the specified date.

- (7) If special rates would have been chargeable on the specified tenement for 1 or more reporting periods had the agreement for sale and purchase not been entered into, the Commissioner may issue a demand note under section 49L(1) to the first-owner.
- (8) Subsection (7) applies whether or not the first-owner has notified the Commissioner under subsection (2).

Division 3—Payment and Refund of Special Rates

49J. Liability for special rates

- (1) This section applies (whether or not a Part XA return has been made under section 49D or 49E for a specified tenement for a reporting period) if—
 - (a) the specified tenement is held by its first-owner on the last day of the reporting period; and
 - (b) none of the circumstances specified in subsection (2) exists.
- (2) The following circumstances are specified for the purposes of subsection (1)(b)—
 - (a) the specified tenement is leased to a person (other than a related party of the first-owner) during the reporting period;
 - (b) the specified tenement is provided (whether or not at a rent) by the first-owner as an employer to an employee of the first-owner as a place of residence for any period not less than 183 days (in aggregate if there are 2 or more periods) during the reporting period;
 - (c) an agreement for sale and purchase of the specified tenement entered into by the first-owner as vendor (however called) with another

- person (other than a related party of the first-owner) as purchaser (however called) is in force on the last day of the reporting period;
- (d) the first-owner does not hold any other specified tenement as a first-owner during the reporting period;
 - (e) the specified tenement falls within the description of any of the premises specified in section 2 of Schedule 1 during any part of the reporting period.
- (3) For the purposes of subsection (2)(b), a specified tenement is not regarded as being provided as a place of residence to an employee unless it is stated as the place of residence provided by the first-owner to the employee in—
- (a) if the reporting period straddles 2 years of assessment—the returns or notifications (as appropriate) furnished, or to be furnished, by the first-owner under section 52 of the Inland Revenue Ordinance (Cap. 112) for those years of assessment; or
 - (b) if the reporting period overlaps wholly with a year of assessment—the return or notification (as appropriate) furnished, or to be furnished, by the first-owner under that section for the year of assessment.
- (4) A first-owner who holds the specified tenement on the last day of the reporting period is liable to the Commissioner for any special rates chargeable on the specified tenement for the reporting period.

- (5) If 2 or more persons jointly hold the specified tenement as its first-owner, each of them is jointly and severally liable for the special rates for the whole of the specified tenement.
- (6) Also, if the first-owner holds the specified tenement jointly (whether as joint tenants or tenants in common) with another person who does not hold the specified tenement as a first-owner, the first-owner is liable for the special rates for the whole of the specified tenement.
- (7) Special rates chargeable on the specified tenement are calculated at the rate specified in Schedule 2 of the rateable value of the specified tenement as at the reference date in the reporting period.
- (8) In this section, the rateable value of a specified tenement as at the reference date in a reporting period is—
 - (a) if the address and description of the specified tenement is identical to the address and description of a tenement (*relevant tenement*) appearing in a valuation list—the rateable value of the relevant tenement at that date as contained in the valuation list; or
 - (b) otherwise—the notional rateable value of the specified tenement at that date as ascertained by the Commissioner under section 49K.

49K. Notional rateable value

- (1) The Commissioner must ascertain the notional rateable value of a specified tenement at the reference date in a reporting period in accordance with subsections (2) and (3).

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- (2) The notional rateable value of the specified tenement at the reference date is to be ascertained by reference to a designated date on the assumption that at the designated date—
- (a) the specified tenement is in the same state as at the reference date in the reporting period;
 - (b) any factors affecting the mode or character of occupation are those subsisting as at the reference date in the reporting period; and
 - (c) the locality in which the specified tenement is situated is in the same state as at the reference date in the reporting period with regard to—
 - (i) other premises situated in the locality;
 - (ii) the occupation and use of those premises;
 - (iii) the transport services and other facilities available in the locality; and
 - (iv) any other matters affecting the amenities of the locality.
- (3) The notional rateable value is an amount equal to the rent at which the Commissioner considers the specified tenement might reasonably be expected to be let, from year to year, if—
- (a) the tenant undertakes to pay all usual tenant's rates and taxes; and
 - (b) the landlord undertakes to pay the Government rent, any costs of repairs and insurance and any other expenses necessary to maintain the specified tenement in a state to command the rent.

- (4) For the purposes of subsection (2)(a), if the specified tenement is undergoing substantial alteration at the reference date, a reference to in the same state as at the reference date is a reference to in the same state as at the date immediately before the alteration begins.
- (5) In this section—
designated date (指定日期) means the date designated under section 11(1)(b).

49L. Payment of special rates

- (1) If the Commissioner considers that a first-owner is liable for any special rates, the Commissioner may issue a demand note to the first-owner specifying the amount of special rates required to be paid.
- (2) On receiving the demand note, the first-owner must pay to the Commissioner the special rates—
- (a) on or before the date specified by the Commissioner in the demand note; or
 - (b) if no such date is specified—on or before the 28th day after the date of the demand note.

49M. Additional charge for late payment

- (1) This section applies if a person fails to pay under a demand note any special rates for a specified tenement for a reporting period on or before the date mentioned in section 49L(2) (*due date*).
- (2) The amount of special rates unpaid on the due date is taken to be in default (*default amount*).

- (3) The Commissioner may order that a sum not exceeding 10% of the default amount be added to the default amount, and recovered from the person.
- (4) Any amount payable under this section and section 49L that is in default is recoverable as a debt due to the Government.
- (5) The acceptance or receipt of payment of any part of an amount payable under this section and section 49L is not a waiver by the Commissioner for the part not paid.

49N. Refund of special rates

The Commissioner must, if satisfied that, in relation to a specified tenement—

- (a) an amount paid by way of special rates and any additional charge 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.

Division 4—Other Offences and Related Provisions

49O. Making false or misleading statements or representations in specified documents

- (1) If a person makes a statement or representation in a specified document, the person commits an offence if—
 - (a) the statement or representation is false or misleading in a material particular; and

- (b) the person knows that, or is reckless as to whether, the statement or representation is false or misleading in a material particular.
- (2) A person who commits the offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

49P. Providing false or misleading information

- (1) If a person provides the Commissioner with any information (whether or not it is contained in a specified document) required under this Part, the person commits an offence if—
 - (a) the information is false or misleading in a material particular; and
 - (b) the person knows that, or is reckless as to whether, the information is false or misleading in a material particular.
- (2) A person who commits the offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

49Q. Providing incorrect information

A person who, without reasonable excuse, provides the Commissioner with any information (whether or not it is contained in a specified document) required under this Part that is incorrect commits an offence and is liable on conviction to a fine at level 5.

49R. Evasion of special rates

- (1) A person commits an offence if the person, with intent to evade, or to assist another person to evade, special rates—

- (a) makes use of any fraud, art or contrivance; or
 - (b) authorizes the use of such fraud, art or contrivance.
- (2) A person who commits the offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

49S. Additional penalty

- (1) A person convicted of an offence under this Part is, in addition to any penalty imposed for the offence, liable to a fine of treble any undercharged amount.

- (2) In this section—

undercharged amount (少徵款額) means the amount of special rates—

- (a) that has been undercharged because of the offence; or
- (b) that would have been undercharged had the offence not been detected.

49T. Compounding of offences

- (1) The Commissioner may—
- (a) compound any compoundable offence; and
 - (b) if proceedings for a compoundable offence have been commenced—apply for a stay and compound the proceedings.
- (2) If the Commissioner compounds a compoundable offence under subsection (1), the Commissioner must serve a notice in writing on the person reasonably suspected of having committed the offence, specifying the amount of money to be paid as a penalty for the offence.

(3) A penalty payable under subsection (2) is recoverable as a debt due to the Government.

(4) In this section—

compoundable offence (可罰款抵罪的罪行) means an offence under section 49D(5), 49E(5), 49I(4) or 49ZE(5).

49U. Offences by bodies corporate

(1) If an offence under section 49O, 49P or 49R is committed by a body corporate, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to the neglect or omission of, a person specified in subsection (2), the person also commits the offence.

(2) A person who, at the time of the offence, was one of the following persons, is a person specified for subsection (1)—

(a) a director or shadow director of the body corporate;

(b) a company secretary of the body corporate;

(c) a principal officer or manager, or any other person concerned in the management, of the body corporate;

(d) a person purporting to act in the capacity of a person referred to in paragraph (a), (b) or (c).

(3) In this section—

company secretary (公司秘書) includes any person occupying the position of company secretary, by whatever name called;

principal officer (主要人員), in relation to a body corporate, means—

- (a) a person employed or engaged by the body corporate who (either alone or jointly with 1 or more other persons) is responsible under the immediate authority of the directors of the body corporate for the conduct of the body corporate's business; or
- (b) a person employed or engaged by the body corporate who, under the immediate authority of a director of the body corporate or a person to whom paragraph (a) applies, performs managerial functions in respect of the body corporate;

shadow director (幕後董事), in relation to a body corporate, means a person under whose directions or instructions (excluding advice given in a professional capacity) the directors, or a majority of the directors, of the body corporate are accustomed to act.

Division 5—Objections

49V. Notice of objection

- (1) This section applies if the Commissioner has served on a person a demand note issued under section 49L(1) demanding that the person pays special rates for a specified tenement.
- (2) The person may object to the demand note if aggrieved on any of the following grounds—
 - (a) the notional rateable value ascertained for the specified tenement is above the proper rateable value of the specified tenement;
 - (b) the specified tenement is not subject to any special rates;

- (c) the person is not liable to make the payment.
- (3) For the purposes of making an objection under subsection (2), the aggrieved person must, within 28 days of having been served the demand note, serve on the Commissioner a notice in the specified form stating the ground of the objection.
 - (4) On receiving the notice of objection under subsection (3), the Commissioner must consider the objection.
 - (5) Despite the notice of objection, the aggrieved person must pay the special rates by the date required in accordance with section 49L(2) and (if applicable) any additional charge under section 49M without delay.

49W. Agreement to confirm, vary or set aside demand note

- (1) This section applies if an aggrieved person has made an objection under section 49V.
- (2) The Commissioner and the aggrieved person may agree to confirm, vary or set aside the demand note by signing an agreement in the specified form and in the way specified by the Commissioner.
- (3) For the purposes of subsection (2), an officer of the Rating and Valuation Department not below the rank of Valuation Surveyor may sign the agreement on behalf of the Commissioner.

49X. No agreement to confirm, vary or set aside demand note

- (1) This section applies if—
 - (a) an aggrieved person has made an objection under section 49V; and

- (b) no agreement to confirm, vary or set aside the demand note is signed by the Commissioner and the aggrieved person under section 49W.
- (2) The Commissioner must, within 6 months of serving the notice of objection by the aggrieved person—
 - (a) consider the objection; and
 - (b) serve on the aggrieved person a notice informing the aggrieved person of the Commissioner's decision whether to confirm, vary or set aside the demand note.
- (3) If the Commissioner decides that the demand note is to be varied, the Commissioner must state in the notice the variation.

49Y. Withdrawal of objection

- (1) This section applies if—
 - (a) an aggrieved person has made an objection under section 49V; and
 - (b) a notice of decision in respect of the objection has not been served under section 49X(2).
- (2) The aggrieved person may, by serving on the Commissioner a notice of withdrawal in writing, withdraw the objection.
- (3) On the withdrawal of the objection, section 49X(2) ceases to apply to the Commissioner in relation to the objection.

Division 6—Appeals

49Z. Appeals against Commissioner's decisions

- (1) This section applies if—

- (a) an aggrieved person has made an objection under section 49V; and
 - (b) a notice of decision in respect of the objection has been served under section 49X(2).
- (2) The aggrieved person may, within 28 days of service of the notice of decision—
 - (a) appeal against the decision to the Lands Tribunal; and
 - (b) serve a copy of notice of appeal on the Commissioner.
- (3) The Commissioner is to be the respondent in the appeal.
- (4) The ground of the appeal may only be the ground stated in the notice of objection served by the aggrieved person under section 49V(3).
- (5) The Lands Tribunal Ordinance (Cap. 17) applies in relation to, and only for the purposes of, an appeal under this section as it applies to an appeal made to the Lands Tribunal under that Ordinance.

49ZA. Special rates payable despite appeal

A person's appeal under section 49Z does not affect the application of sections 49L(2) and 49M(3) to the person.

49ZB. Offer of settlement before decision of Lands Tribunal

- (1) This section applies to an appeal on the ground mentioned in section 49V(2)(a).

- (2) Before the appeal is decided by the Lands Tribunal, either of the parties may in writing advise the other party of the valuation (*advised valuation*) that it regards as the proper rateable value of the specified tenement to which the appeal relates.
- (3) A settlement is reached if the other party accepts the advised valuation, and the parties must then withdraw the appeal from the Lands Tribunal.
- (4) If the other party does not accept the advised valuation, a copy of the advice enclosed in a sealed envelope may be lodged with the registrar of the Lands Tribunal.
- (5) The contents of the advice must not be disclosed to the Lands Tribunal before it decides the proper rateable value of the specified tenement.
- (6) Subject to any claim as to privilege by any party to the appeal, the Lands Tribunal may open the envelope containing the advice after it has made the decision.
- (7) If—
 - (a) the appellant advises a valuation but the valuation is not accepted by the Commissioner; and
 - (b) the valuation decided by the Lands Tribunal is equal to or less than the valuation so advised, the Lands Tribunal must (unless for any special reason it considers appropriate not to do so) order the Commissioner to bear the Commissioner's own costs and pay the appellant's costs incurred after the appellant has so advised the valuation.

- (8) If—
- (a) the Commissioner advises a valuation but the valuation is not accepted by the appellant; and
 - (b) the valuation decided by the Lands Tribunal is equal to or more than the valuation so advised, the Lands Tribunal must (unless for any special reason it considers appropriate not to do so) order the appellant to bear the appellant's own costs and pay the Commissioner's costs incurred after the Commissioner has so advised the valuation.

49ZC. Hearing of appeal

- (1) The Lands Tribunal must hear and decide an appeal.
- (2) The Lands Tribunal may—
 - (a) make an order that it considers appropriate;
 - (b) award costs to any party;
 - (c) direct the Commissioner to amend the notional rateable value of the specified tenement concerned in any way; and
 - (d) make any other necessary direction for the payment of special rates.
- (3) Subject to subsections (4) and (5), section 11 of the Lands Tribunal Ordinance (Cap. 17) applies to an appeal.
- (4) The Lands Tribunal may, and on application by a party must, reserve any question of law for the consideration of the Court of Appeal.
- (5) The Court of Appeal may hear and decide the question and send its opinion on the question to the Lands Tribunal.

49ZD. Consent order

- (1) Despite section 49ZC(1), if the parties to an appeal have agreed on the terms of an order to be made by the Lands Tribunal, particulars of the terms, signed by or on behalf of the parties, may be sent to the Lands Tribunal.
- (2) The Lands Tribunal may, if it considers appropriate, make an order in accordance with the terms.
- (3) Unless the Lands Tribunal requires the parties to attend for any special reason, the order may be made in their absence.
- (4) Section 49ZC(2)(b), (c) and (d) applies to an appeal decided under subsection (2).

Division 7—Administrative and Miscellaneous Provisions**49ZE. Commissioner may require information and document**

- (1) For the purposes of this Part and without limiting section 49G(1)(b), the Commissioner may, by written notice, require a first-owner of a specified tenement or any other person (*addressee*) to—
 - (a) provide any information that relates to special rates payable in relation to the specified tenement; or
 - (b) produce for inspection any document that relates to special rates payable in relation to the specified tenement.
- (2) The power under subsection (1) includes a power to—

- (a) specify whether the information should be provided orally or in writing and in what form; and
 - (b) specify the time by which, and the place at which, the information should be provided or the document should be produced for inspection.
- (3) Subject to subsection (4), the addressee of the notice must comply with the notice.
 - (4) If the addressee does not possess the information or document required, the addressee must inform the Commissioner in writing of the fact within the time specified by the Commissioner in the notice.
 - (5) A person who, without reasonable excuse, fails to comply with subsection (3) commits an offence and is liable on conviction to a fine at level 4.
 - (6) In this section—
document (文件) includes—
 - (a) an agreement for sale and purchase;
 - (b) an assignment;
 - (c) a tenancy agreement;
 - (d) a receipt for rent;
 - (e) a rent-book;
 - (f) an account;
 - (g) audited financial statements;
 - (h) a register of shareholders;
 - (i) a register of directors;
 - (j) a birth certificate;
 - (k) a marriage certificate; and

- (l) any other document specified by the Commissioner.

49ZF. Commissioner may determine market rent

- (1) This section applies if—
 - (a) in a Part XA return made by a first-owner of a specified tenement, the first-owner states that the specified tenement is leased to another person during the reporting period covered by the Part XA return; or
 - (b) the Commissioner is otherwise informed that the specified tenement has been let to another person during the reporting period.
- (2) The Commissioner may, based on the terms of the tenancy, determine whether the rental for the specified tenement is, or is not, less than the market rent for the purposes of assessing any special rates chargeable on the specified tenement for the reporting period.

49ZG. Mode of service

- (1) Despite section 50, any document required to be served (however called) under this Part may, subject to section 49H, be served—
 - (a) on the Commissioner—only by personal service or by post; or
 - (b) on another person—
 - (i) by personal service or by leaving the document at the person's last known address; or

- (ii) by sending the document through the post to the person's last known address.
- (2) A certificate purporting to be signed by a person who states in the certificate that the person served the document under subsection (1) is evidence of the facts stated in it relating to the service.”.

5. Section 53A added

After section 53—

Add

“53A. Amendment of Schedule 2

The Secretary for Transport and Housing may, by notice published in the Gazette, amend Schedule 2.”.

6. Schedules 1 and 2 added

After section 56—

Add

“Schedule 1

[ss. 49C, 49F & 49J]

Premises Excluded from Application of Part XA

1. Interpretation: Schedule 1

(1) In this Schedule—

incorporated public officer (公職人員法團) means—

- (a) The Financial Secretary Incorporated;
- (b) Permanent Secretary for Education Incorporated;

- (c) The Director of Social Welfare Incorporated; or
- (d) The Secretary for Home Affairs Incorporated;

renewal project (重建項目) means a project implemented by the Urban Renewal Authority by way of a development scheme under section 25, or a development project under section 26, of the Urban Renewal Authority Ordinance (Cap. 563);

social services organization (社會服務機構) means a non-profit-making organization operating on a non-profit-making basis for the purposes of providing social services.

- (2) For the purposes of this Schedule, a reference to premises that are held by a person is a reference to premises that are registered under the person's name as the owner of the premises as it appears in the records of the Land Registry.

2. Excluded premises

- (1) Premises held by the Government or an incorporated public officer.
- (2) Premises held by the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region.
- (3) Premises held by the Hong Kong Science and Technology Parks Corporation.
- (4) Premises held by the Hong Kong-Shenzhen Innovation and Technology Park Limited.
- (5) Premises held by the Urban Renewal Authority for—
 - (a) rehousing eligible persons affected by a renewal project; or

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- (b) offering under the Flat-for-Flat Scheme pursuant to an urban renewal strategy prepared under section 20 of the Urban Renewal Authority Ordinance (Cap. 563) to eligible persons affected by a renewal project.
- (6) Premises certified by the Secretary for Transport and Housing as—
- (a) subsidized housing units;
 - (b) transitional housing units;
 - (c) housing units developed under the Government's Youth Hostel Scheme; or
 - (d) housing units for elderly persons developed under the Government's Special Scheme on Privately Owned Sites for Welfare Uses,
- for the purposes of exclusion from the application of Part XA.
- (7) Premises exclusively for use as—
- (a) a hotel or guesthouse within the meaning of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) for which a licence or a certificate of exemption under that Ordinance is in force;
 - (b) a bedspace apartment within the meaning of the Bedspace Apartments Ordinance (Cap. 447) for which a licence or a certificate of exemption under that Ordinance is in force;
 - (c) a hospital (including a nursing home) or maternity home registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165);

- (d) a clinic registered under the Medical Clinics Ordinance (Cap. 343);
- (e) a private healthcare facility within the meaning of the Private Healthcare Facilities Ordinance (Cap. 633) for which a licence under that Ordinance is in force;
- (f) a scheduled nursing home within the meaning of the Private Healthcare Facilities Ordinance (Cap. 633) for which an exemption granted under section 128 of that Ordinance is in force;
- (g) a prescribed hospital within the meaning of the Hospital Authority Ordinance (Cap. 113);
- (h) a residential care home within the meaning of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) for which a licence or a certificate of exemption under that Ordinance is in force;
- (i) a residential care home for PWDs within the meaning of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) for which a licence or a certificate of exemption under that Ordinance is in force;
- (j) a registered child care centre or mutual help child care centre within the meaning of the Child Care Services Ordinance (Cap. 243);
- (k) a treatment centre within the meaning of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566) for which a licence or a certificate of exemption under that Ordinance is in force; or

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- (l) a care home, halfway house or similar establishment in which sleeping accommodation is provided by a social services organization that is certified by the Secretary for Transport and Housing as excluded premises for the purposes of exclusion from the application of Part XA.
- (8) Premises built for the purpose of—
- (a) a school within the meaning of the Education Ordinance (Cap. 279);
 - (b) a College within the meaning of the Post Secondary Colleges Ordinance (Cap. 320);
 - (c) a University within the meaning of—
 - (i) the University of Hong Kong Ordinance (Cap. 1053);
 - (ii) The Chinese University of Hong Kong Ordinance (Cap. 1109);
 - (iii) The Hong Kong University of Science and Technology Ordinance (Cap. 1141);
 - (iv) the City University of Hong Kong Ordinance (Cap. 1132);
 - (v) the Hong Kong Baptist University Ordinance (Cap. 1126);
 - (vi) The Hong Kong Polytechnic University Ordinance (Cap. 1075);
 - (vii) The Open University of Hong Kong Ordinance (Cap. 1145);
 - (viii) the Lingnan University Ordinance (Cap. 1165); or
 - (ix) The Education University of Hong Kong Ordinance (Cap. 444);

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- (d) an Academy within the meaning of The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135);
 - (e) an industrial training centre, skills centre, technical college or technical institute within the meaning of the Vocational Training Council Ordinance (Cap. 1130);
 - (f) an industrial training centre established and maintained by the Construction Industry Council under section 6(b) of the Construction Industry Council Ordinance (Cap. 587);
 - (g) an industrial training centre established and maintained by the Clothing Industry Training Authority under section 5(b) of the Industrial Training (Clothing Industry) Ordinance (Cap. 318);
 - (h) arts and cultural facilities within the meaning of the West Kowloon Cultural District Authority Ordinance (Cap. 601);
 - (i) a residential care home within the meaning of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) for which a licence or a certificate of exemption under that Ordinance has not yet been issued;
 - (j) a residential care home for PWDs within the meaning of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) for which a licence or a certificate of exemption under that Ordinance has not yet been issued;

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- (k) a child care centre within the meaning of the Child Care Services Ordinance (Cap. 243) for which a certificate of registration or a certificate of exemption under that Ordinance has not yet been issued; or
 - (l) a treatment centre within the meaning of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566) for which a licence or a certificate of exemption under that Ordinance has not yet been issued.
- (9) Premises built, and used wholly or mainly, for the purpose of—
- (a) holding services or saying prayers by congregations loyal to a belief in accordance with the practice of religious principles; or
 - (b) a monastery or convent.

Schedule 2

[ss. 49J & 53A]

Special Rates Chargeable on Specified Tenements

1. The rate specified for the purposes of section 49J(7) is 200%.”.
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Part 3

Related and Consequential Amendments

Division 1—Amendments to Lands Tribunal Rules (Cap. 17 sub. leg. A)

7. Rule 60 amended (notice of appeal)

Rule 60—

Repeal

“42 of the Rating Ordinance (Cap. 116) shall”

Substitute

“42 or 49Z of the Rating Ordinance (Cap. 116) are to”.

8. Schedule amended (forms)

(1) The Schedule, Form 19—

Repeal

“42(1)”

Substitute

“*42(1)/49Z(2)(a)”.

(2) The Schedule, Form 19—

Repeal

“*39/40(2)”

Substitute

“*39/40(2)/49X(2)”.

(3) The Schedule, Form 19—

Repeal

“44(1)”

Substitute

“*44(1)/49ZC(2)”.

- (4) The Schedule, Form 19—

Repeal

“42(2)”

Substitute

“42(2) or 49Z(4) (whichever is applicable)”.

**Division 2—Amendment to Inland Revenue Ordinance
(Cap. 112)**

9. Section 17 amended (deductions not allowed)

After section 17(1)(g)—

Add

“(ga) any special rates and additional charges paid or payable under Part XA of the Rating Ordinance (Cap. 116);”.

**Division 3—Amendment to Electronic Transactions
Ordinance (Cap. 553)**

10. Schedule 3 amended (service of documents)

Schedule 3, item 2—

Repeal

“Section 50(1)”

Substitute

“Sections 49ZG(1) and 50(1)”.

Explanatory Memorandum

The objects of this Bill are to amend the Rating Ordinance (Cap. 116) (*Ordinance*) to introduce special rates chargeable on certain private domestic premises that are unsold after the issue of the occupation permits for the premises, and that are either unleased for a certain period of time or leased to a person below market rent, and to provide for related matters.

Part 1—Preliminary

2. Clause 1 sets out the short title and provides for commencement. The Bill after enactment is to come into operation on the expiry of 3 months beginning on the day on which it is published in the Gazette.

Part 2—Amendments to Ordinance

3. Clause 3 amends the definition of *rates* in section 2 of the Ordinance to exclude special rates chargeable under a new Part XA of the Ordinance from the meaning of *rates*.
4. Clause 4 adds the new Part XA (that is, new sections 49A to 49ZG) to the Ordinance. That Part provides for a new regime of tax chargeable on premises that fall within the definition of *specified tenement* in the new section 49A(1) in certain circumstances.

5. The new section 49A contains definitions that are necessary for the interpretation of the Bill, including the expressions *consolidated first return*, *consolidated subsequent return*, *control*, *first-owner*, *first period*, *first return*, *immediate family member*, *leased*, *market rent*, *negative event*, *notional rateable value*, *Part XA return*, *reference date*, *related party*, *reporting period*, *special rates*, *specified date*, *specified document*, *specified tenement*, *subsequent period* and *subsequent return*. That section also explains what a reference to a person holding a specified tenement means.
6. The new section 49B gives the meaning of *first-owner*. A person who holds a specified tenement on the date on which its occupation permit is issued (*OP date*) is a first-owner (*first-owner*) of the specified tenement. Also, a person deriving title from the first-owner who holds the specified tenement on the OP date becomes a first-owner of the specified tenement in certain circumstances.
7. The new section 49C provides for the application of the new Part XA. That Part applies to a specified tenement for the purposes of charging special rates (*special rates*). A specified tenement is a building or structure (or any part of a building or structure) held as a distinct or separate holding and permitted for domestic use under the occupation permit. That Part does not apply to the premises specified in section 2 of the new Schedule 1 to the Ordinance (*Schedule 1*). That section also enables the Secretary for Transport and Housing (*Secretary*) to amend Schedule 1 to specify any premises to be excluded from the application of that Part.

8. The new section 49D requires a first-owner who holds a specified tenement at any time during the first period (*first period*) to make a first return for the specified tenement for the period during which the first-owner so holds the specified tenement. The first period is—
- (a) if the occupation permit for the specified tenement is issued 12 months or more before the commencement date of the Bill (*specified date*)—the 12-month period before the specified date; or
 - (b) if the occupation permit for the specified tenement is issued less than 12 months before, or on or after the specified date—the 12-month period beginning on the OP date of the specified tenement.

If the first-owner holds 2 or more specified tenements (for which a single occupation permit is issued), the first-owner must make a consolidated first return instead of separate first returns. Failing to comply with any relevant requirement is an offence.

9. The new section 49E requires a first-owner who holds a specified tenement at any time during a subsequent period (*subsequent period*) to make a subsequent return for the specified tenement for the period during which the first-owner so holds the specified tenement. A subsequent period is a period of 12 months beginning on the date immediately after the first period for the specified tenement ends, or each successive period of 12 months. If the first-owner holds 2 or more specified tenements (for which a single occupation permit is issued), the first-owner must make a consolidated subsequent return instead of separate subsequent returns. Failing to comply with any relevant requirement is an offence.

10. The new section 49F sets out the matters required to be set out in a first return, consolidated first return, subsequent return or consolidated subsequent return (*Part XA return*).
11. The new section 49G sets out the requirements for making a Part XA return. That section allows a Part XA return to be submitted in a paper form or in the form of an electronic record.
12. The new section 49H provides how a Part XA return submitted in the form of an electronic record can satisfy certain requirements under the new section 49G.
13. The new section 49I requires a first-owner of a specified tenement to notify the Commissioner of Rating and Valuation (*Commissioner*) in writing if certain events relating to an agreement for sale and purchase of the specified tenement happen.
14. The new section 49J provides for the liability for special rates. Except in the circumstances specified in that section, a first-owner who holds a specified tenement on the last day of a first period or subsequent period (*reporting period*) is liable for any special rates chargeable on the specified tenement for the reporting period. Special rates are calculated at a rate (200%) specified in the new Schedule 2 to the Ordinance (*Schedule 2*) of the rateable value of the specified tenement as at a certain date.
15. The new section 49K deals with how a notional rateable value of a specified tenement is ascertained if the rateable value of the specified tenement is not included in a valuation list.

16. The new section 49L enables the Commissioner to issue a demand note to a first-owner who is liable for special rates for a specified tenement.
17. The new section 49M provides that an additional charge is payable if a person fails to pay any special rates under a demand note.
18. The new section 49N deals with refund of special rates.
19. The new section 49O deals with the offence of knowingly or recklessly making a false or misleading statement or representation in a material particular in a specified document (*specified document*).
20. The new section 49P deals with the offence of knowingly or recklessly providing to the Commissioner any information (whether or not it is contained in a specified document) required under the new Part XA that is false or misleading in a material particular.
21. The new section 49Q deals with the offence of providing to the Commissioner any information (whether or not it is contained in a specified document) required under the new Part XA that is incorrect.
22. The new section 49R deals with the offence of evading special rates.
23. The new section 49S provides that a person convicted of an offence under the new Part XA is liable to a fine of treble the undercharged amount of special rates because of the offence.
24. The new section 49T deals with compounding of offences.

25. The new section 49U deals with the situation in which an offence under the new section 49O, 49P or 49R is committed by a body corporate. A director, company secretary or other principal officer concerned in the management of the body corporate is equally liable for the offence in certain circumstances.
26. The new section 49V provides that a person to whom a demand note for special rates is issued may object to the demand note if the person is aggrieved on certain grounds (*aggrieved person*).
27. The new section 49W deals with a situation in which the Commissioner and an aggrieved person agree to confirm, vary or set aside a demand note.
28. The new section 49X deals with a situation in which the Commissioner and an aggrieved person do not agree to confirm, vary or set aside a demand note.
29. The new section 49Y deals with the withdrawal of an objection by an aggrieved person.
30. The new section 49Z provides for an appeal to the Lands Tribunal against the Commissioner's decision on an objection under the new section 49V.
31. The new section 49ZA provides that a person's appeal under the new section 49Z does not affect the application of the new sections 49L(2) and 49M(3) to the person.
32. The new section 49ZB deals with an offer of settlement between the parties to an appeal before the Lands Tribunal has decided on the appeal.

33. The new section 49ZC deals with the hearing of appeals by the Lands Tribunal.
34. The new section 49ZD enables the Lands Tribunal to make an order in accordance with the terms agreed between the parties to an appeal.
35. The new section 49ZE enables the Commissioner to require information and certain documents from a first-owner of a specified tenement or any other person.
36. The new section 49ZF enables the Commissioner to determine if the rental of certain specified tenement is, or is not, less than the market rent.
37. The new section 49ZG deals with the mode of service under the new Part XA.
38. Clause 5 adds a new section 53A to the Ordinance enabling the Secretary to amend Schedule 2.
39. Clause 6 adds Schedule 1 and Schedule 2.

Part 3—Related and Consequential Amendments

40. Clauses 7 and 8 deal with certain consequential amendments to the Lands Tribunal Rules (Cap. 17 sub. leg. A).
41. Clause 9 adds special rates and additional charges as a new type of payment not allowed to be deducted under section 17 of the Inland Revenue Ordinance (Cap. 112).

42. Clause 10 adds a reference to the new section 49ZG(1) of the Ordinance to item 2 of Schedule 3 to the Electronic Transactions Ordinance (Cap. 553) to construe that service of a document in the form of an electronic record satisfies the requirement of service of documents under that section.