

## **LEGISLATIVE COUNCIL BRIEF**

Inland Revenue Ordinance  
(Chapter 112)

Business Registration Ordinance  
(Chapter 310)

### **EXEMPTION FROM PROFITS TAX (FEED-IN TARIFF SCHEME) ORDER**

### **BUSINESS REGISTRATION (AMENDMENT) REGULATION 2019**

#### **INTRODUCTION**

Pursuant to the Government's policy to promote renewable energy ("RE") in Hong Kong, we encourage individuals to install RE systems at their residential premises under the Feed-in Tariff ("FiT") Scheme and would simplify the relevant procedures as far as possible in order to facilitate their participation. In this connection, we are putting forward legislative amendments to exempt these individuals from relevant business registration requirements and taxation obligations.

2. At the meeting of the Executive Council on 10 December 2019, the Council ADVISED and the Chief Executive ORDERED that the Exemption from Profits Tax (Feed-in Tariff Scheme) Order ("the Exemption Order"), at **Annex A**, should be made by the Chief Executive in Council ("CE-in-C") pursuant to section 87 of the Inland Revenue Ordinance ("IRO"); and the Business Registration (Amendment) Regulation 2019 ("the Amendment Regulation"), at **Annex B**, should be made by the Secretary for Financial Services and the Treasury (SFST) pursuant to section 14(1A)(g) of the Business Registration Ordinance ("BRO") to exempt individuals who install RE systems at their residential premises from –

- (a) the payment of profits tax in respect of their income derived from selling electricity generated by such systems to the relevant power companies under the FiT Scheme; and

(b) the provisions of the BRO in respect of their FiT businesses.

## **JUSTIFICATIONS**

### The FiT Scheme

3. The FiT Scheme is a strong financial incentive for private investment in RE because the power generated can be sold to the power companies at rates<sup>1</sup> higher than the normal electricity tariff rate, which can help recover the costs of investment, operation and maintenance in around 10 years<sup>2</sup>.

4. The FiT Scheme has been open to application since 2018. As at end November 2019, the two power companies have received over 6 000 applications, of which over 5 000 have been approved. Such an enthusiastic response, compared to the situation before<sup>3</sup>, proves that the FiT Scheme is instrumental in the promotion of RE in the community.

### Requirements under BRO and IRO

5. According to the definition of “business” in section 2 of the BRO<sup>4</sup>, individuals participating in the FiT Scheme are considered as carrying on a business and are thus required to apply for a business registration within one month of the commencement of such “business” as stipulated in section 5(2) of the BRO. In addition, under section 14 of the IRO, profits tax is charged on every person carrying on a trade, profession or business in Hong Kong in respect of his/her assessable profits arising in or derived from Hong

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<sup>1</sup> The three FiT rates for systems of different generating capacities at the moment are \$5 for  $\leq 10\text{kW}$ ; \$4 for  $>10\text{kW}$  to  $\leq 200\text{kW}$ ; and \$3 for  $>200\text{kW}$  to  $\leq 1\text{MW}$ . The rates are intended to reflect the costs of systems of different capacities and were set having regard to the outcome of a consultancy study commissioned by the Government. The FiT rates will be reviewed annually, taking into consideration changes in the costs of RE systems, and will apply until any new FiT rates are announced.

<sup>2</sup> The normal life span of a solar PV panel is around 25 years and, without FiT, the payback period for such equipment can be longer than its life span.

<sup>3</sup> Prior to the introduction of the FiT Scheme, there were only some 200 private RE systems connected to the power companies’ grid over the last decade.

<sup>4</sup> According to section 2 of the BRO, “business” means any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain and also means a club.

Kong from such trade, profession or business. As individuals who participate in the FiT Scheme sell electricity generated by their RE systems to either of the power companies, the FiT payments received by them are profits derived from business transacted with the power companies in Hong Kong, and are hence chargeable to profits tax under Part 4 of the IRO. Accordingly, these individuals are required to file tax returns to report such profits and pay profits tax on the same.

6. While the financial implications of such requirements are unlikely to be substantial for small-scale RE systems installed by individuals at their residential premises, requiring these individuals to apply for business registration and report FiT payments in tax returns annually are perceived as cumbersome, and will very likely discourage them from installing the RE systems, thereby going against our policy intent and seriously undermining the effectiveness of the FiT Scheme.

#### Announcement of Policy Intent

7. As such, the Government announced in April 2018 and included in its Policy Agenda 2018 that it would pursue legislative amendments to exempt individuals who install small RE systems at their residential premises from the requirements of applying for business registration and filing tax returns. The announcement was well received.

8. For enterprises, they will continue to be required to apply for business registration under the BRO and pay profits tax for the earnings arising from the joining the FiT Scheme. Their investments for installing the RE systems are fully deductible under the depreciation allowance of the IRO.

### **IMPLEMENTATION**

9. Section 87 of the IRO provides that the CE-in-C may by order exempt any person, office or institution from payment of the whole or any portion of any tax chargeable under the IRO. The Exemption Order at Annex A covers premises where electricity tariffs are charged by the power companies based on the rates applicable to residential premises. This will provide a clear criterion in layman's terms, so that the public can easily understand the group of individuals to whom the exemption applies. In this connection, the individuals should be the holders of the electricity account of the premises concerned. Moreover, the exemption is only granted where

the RE system(s) installed for the purpose of participating in the FiT Scheme is/are not for any business purposes of the individual other than the participation in the FiT Schemes.

10. Section 14(1A)(g) of the BRO provides that SFST may, by regulation, provide for exemption of any person or category of persons or business either wholly or in part from the provisions of the BRO. The Amendment Regulation at Annex B refers to the Exemption Order so that the two pieces of subsidiary legislation would, when enacted, provide exemption to the same group of individuals.

11. Pending these legislative amendments, facilitation has been provided to the target beneficiaries through an administrative notice issued by the Commissioner of Inland Revenue (“CIR”) in October 2018, so that they are not obliged to meet the existing BRO and relevant IRO requirements (pertaining to the reporting of FiT payments in tax returns) in the meantime.

## **LEGISLATIVE TIMETABLE**

12. The two power companies, namely, CLP Power Hong Kong Limited and The Hongkong Electric Co., Limited, have started purchasing electricity under their respective FiT Schemes since October 2018 and January 2019 respectively. In respect of the IRO, the exemption shall apply to the profits tax chargeable for the year of assessment commencing on 1 April 2018 and for all subsequent years of assessment to cover FiT payments that may be received by the participating individuals starting from 1 October 2018.

13. The BRO requires that an application for business registration be made within one month of the commencement of any business provided that CIR extends such period if he sees fit. As mentioned in para.11 above, CIR has already announced by way of an administrative notice that, individuals (not in the course of any other business) who install small-scale RE systems at their residential premises and participate in the FiT Scheme do not have to apply for business registration for the time being. When the BRO exemption comes into effect on 1 March 2020, it will cover all FiT businesses, regardless of their commencement dates (i.e. including those which have commenced operation since October 2018) as long as the exemption conditions are fulfilled.

14. The legislative timetable for the introduction of the Exemption Order and Amendment Regulation is as follows –

Publication in the Gazette	27 December 2019
Tabling at the Legislative Council (LegCo)	8 January 2020
Commencement date	1 March 2020

### **IMPLICATIONS OF THE LEGISLATIVE AMENDMENTS**

15. The legislative amendments are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the binding effect of the existing provisions of the BRO and IRO. There are no productivity, family, gender and civil service implications.

16. On financial implications, while the implementation of the Exemption Order and the Amendment Regulation might reduce government revenue arising from the exemption from the payment of business registration fee and levy under the BRO and the payment of profits tax by eligible individuals, the amount of tax forgone should not be substantial.

17. On economic implications, the exemption arrangement should help facilitate individuals' investment in RE systems through reducing their compliance burden, and therefore be conducive to the development of RE in Hong Kong.

18. On environmental implications, further adoption of RE by the community will help us achieve the carbon intensity reduction target we have set for 2030 (i.e. to reduce Hong Kong's carbon intensity by 65% - 70% by 2030 as compared with the 2005 level). In addition to reducing carbon emissions, the promotion of this cleaner form of electricity generation will reduce emissions of air pollutants (i.e. sulphur dioxide, nitrogen oxides and respirable suspended particulates) and contribute to our efforts in improving air quality.

19. On sustainability implications, the legislative amendments should contribute positively to the sustainable development of Hong Kong through promotion of the development of RE, which is a more sustainable source of electricity as compared with conventional generation by burning fossil fuels,

and is internationally recognised as an integral and important part of the efforts to combat climate change.

## **PUBLIC CONSULTATION**

20. At the meetings of the LegCo Panel on Environmental Affairs on 23 April 2018 and 22 October 2018, we briefed Members on measures to promote RE, including the exemption proposal. It was well received.

## **PUBLICITY**

21. Upon enactment of the legislative amendments, we would issue a press release to inform the public of the same with a view to further encouraging target beneficiaries to develop RE at their residential premises.

## **ENQUIRIES**

22. Enquiries on this brief may be directed to Ms Queenie Lee, Principal Assistant Secretary for the Environment (Renewable Energy Research and Development), at 3509 8629.

**Environment Bureau**  
**December 2019**

## Exemption from Profits Tax (Feed-in Tariff Scheme) Order

(Made by the Chief Executive in Council under section 87 of the Inland Revenue Ordinance (Cap. 112))

### 1. Commencement

This Order comes into operation on 1 March 2020.

### 2. Application

This Order applies in relation to profits tax chargeable for the year of assessment commencing on 1 April 2018 and for all subsequent years of assessment.

### 3. Interpretation

In this Order—

*Feed-in Tariff Scheme* (上網電價計劃) means a scheme—

- (a) administered by a power company in accordance with the Scheme of Control Agreement made between the Government and the company on 25 April 2017 (or if any amendment is made to the Agreement, the Agreement as amended from time to time); and
- (b) under which the company may purchase electricity generated by a renewable energy system;

*power company* (電力公司) means—

- (a) CLP Power Hong Kong Limited; or
- (b) The Hongkong Electric Company, Limited;

*qualifying FiT business* (合資格上網電價業務)—see section 4;

*residential premises* (住用處所) means premises in respect of which the class of electricity tariff chargeable by a power company is residential tariff.

### 4. Meaning of *qualifying FiT business*

- (1) A qualifying FiT business is the participation by an individual in a Feed-in Tariff Scheme administered by a power company in the following circumstances—
  - (a) the participation is for the purchase by the company of electricity generated by a renewable energy system installed on any residential premises;
  - (b) the individual holds an electricity account in respect of the premises; and
  - (c) in relation to the system, all conditions specified in subsection (2) are satisfied.
- (2) The conditions are—
  - (a) the renewable energy system was not acquired with the funds of another business;
  - (b) the system is not used in another business; and
  - (c) the system is not recognized as assets in the financial statements of another business.
- (3) In subsection (2)—
 

*another business* (另一業務) means any other trade, profession or business carried on by the individual in Hong Kong that is not a qualifying FiT business.

### 5. Exemption

An individual is exempt from the payment of profits tax chargeable under Part 4 of the Ordinance in respect of sums received by, or accrued to, the individual as payment by a power company for the

purchase of electricity generated in the course of a qualifying FIT business carried on by the individual.

Clerk to the Executive Council

COUNCIL CHAMBER

2019

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**Explanatory Note**

This Order exempts, subject to certain conditions, an individual from the payment of profits tax chargeable under Part 4 of the Inland Revenue Ordinance (Cap. 112) in respect of the income from selling electricity generated by a renewable energy system to CLP Power Hong Kong Limited or The Hongkong Electric Company, Limited under a Feed-in Tariff Scheme.



## Business Registration (Amendment) Regulation 2019

(Made by the Secretary for Financial Services and the Treasury under section 14(1A)(g) of the Business Registration Ordinance (Cap. 310))

### 1. Commencement

This Regulation comes into operation on 1 March 2020.

### 2. Business Registration Regulations amended

The Business Registration Regulations (Cap. 310 sub. leg. A) are amended as set out in section 3.

### 3. Regulation 8 amended (exemptions)

(1) Regulation 8, English text—

**Repeal**

“shall be”

**Substitute**

“are”.

(2) Regulation 8(b)—

**Repeal**

“building.”

**Substitute**

“building;”.

(3) After regulation 8(b)—

**Add**

“(c) a qualifying FiT business within the meaning of section 4 of the Exemption from Profits Tax (Feed-in Tariff Scheme) Order.”.

Secretary for Financial Services and  
the Treasury

2019

**Explanatory Note**

This Regulation amends regulation 8 of the Business Registration Regulations (Cap. 310 sub. leg. A) to exempt from the provisions of the Business Registration Ordinance (Cap. 310) a qualifying FiT business within the meaning of section 4 of the Exemption from Profits Tax (Feed-in Tariff Scheme) Order.

2. In summary, a qualifying FiT business is the participation by an individual in a Feed-in Tariff Scheme, in circumstances that satisfy certain conditions, for selling electricity generated by a renewable energy system to CLP Power Hong Kong Limited or The Hongkong Electric Company, Limited.