

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

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By email and fax
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15 March 2021

Dear Ms KAN,

Public Revenue Protection (Revenue) Order 2021 (L.N. 31)

Thank you for your letter of 4 March 2021, raising a number of issues in relation to the Public Revenue Protection (Revenue) Order 2021. Our responses are set out in the **Annex**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joanne'.

(Miss Joanne CHUI)
for Secretary for Transport and Housing

Encl.

c.c.:

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**Government's Responses to
Legislative Council Assistant Legal Adviser's Questions on
the Public Revenue Protection (Revenue) Order 2021**

Sections 4F(3), (4) and (4A) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) cover four scenarios where a motor vehicle has been first registered (with or without first registration tax ("FRT") paid) at a certain point of time in the past and has then become liable to pay FRT for the first time (*i.e. scenario (a)*) or additional FRT (*i.e. scenarios (b), (c) and (d)*) some point in time thereafter.

2. For the calculation of FRT, section 4E(1) of Cap. 330 stipulates that –

"The Commissioner shall calculate the FRT for a motor vehicle as the amount equal to the percentage, specified in column 3 of the Schedule, of the taxable value of the motor vehicle as at the date of first registration of the motor vehicle or the date of registration of the transfer of the motor vehicle or such other date as may be provided for in this Ordinance."

3. Under sections 4F(3) and (4), although it is stipulated that the FRT shall be calculated under section 4E(2)(d) of Cap. 330 (as set out below), section 4E(2)(d) does not expressly provide for the tax rates applicable in calculating the FRT for the first time or additional FRT –

"for a motor vehicle which has been legally used on a road in Hong Kong other than by the manufacturer or by an importer, distributor or retailer or under a movement permit prior to first registration, being a vehicle which has become liable to FRT for the first time or additional FRTthe taxable value calculated under paragraph (a), (b) or (c), as the case may be, less.....depreciation at the prescribed

rate¹, for the period from the date when the motor vehicle ceased to be a new motor vehicle until the date on which the motor vehicle became liable to FRT or additional FRT, excluding a part of a month of less than 15 days but counting a part of a month of 15 days or more as a whole month... .”

4. As for section 4F(4A), section 4E(2B) is applicable and it stipulates the calculation of the value of accessory or taxable warranty to be added to the existing taxable value of the motor vehicle (as set out below). Yet, neither does section 4E(2B) expressly provide for the tax rates applicable in calculating the additional FRT –

“the Commissioner shall add the value of the accessory or taxable warranty as declared in the declaration or, if applicable, the market value of the accessory or taxable warranty as assessed under [section 4E(2E)] to the existing taxable value of the motor vehicle.”

5. Under the above provisions (i.e. sections 4F(3), (4) and (4A), reading in conjunction with sections 4E(2)(d) and (2B) of Cap. 330), the key concern is to ensure that the change in the vehicle owner or change in the vehicle status would accordingly cause the relevant party to pay the FRT (or a portion of the FRT) that had not been paid at the time of the vehicle’s first registration. Following that, so long as the private car concerned has been first registered, the tax rates applicable **at the time of first registration** should be applicable in calculating FRT payable for the first time (i.e. in cases where the new owner / transferee has to pay back the FRT which has earlier been exempted) or additional FRT at any point in time in future. In other words, for private cars first registered before the commencement time of the Public Revenue Protection (Revenue) Order 2021, i.e. 11 a.m. on 24 February 2021 (“the Commencement Time”), **the old FRT rates as in force immediately before the Commencement Time** should be applicable for the purpose of calculating the FRT payable for the first time or the additional FRT even if the FRT or

¹ The prescribed rate of depreciation refers to the rates specified in section 2 of the Motor Vehicles (First Registration Tax) (Depreciation) Regulations (Cap. 330A), i.e. 25% per annum in respect of petrol-driven motor vehicles; 20% per annum in respect of all other motor vehicles.

additional FRT is payable after the Commencement Time.

6. On the other hand, for cases where the private cars are not required to be first registered in the first instance of usage (e.g. vehicles not covered by the licensing regime under the Road Traffic Ordinance (Cap. 374E), such as government vehicles or vehicles solely for running in the Restricted Area of the Airport), if the car is transferred to a new owner and is then required to be registered for the first time, the tax rates in force at the time of registration of the car upon the transfer should be applicable.

7. Our specific response to the four scenarios are set out below-

(a) *where FRT is not payable under section 4F(1) of Cap. 330 on the first registration of a private car and the car has subsequently been transferred to a transferee (who is not exempted from paying FRT) before the Commencement Time, but the notification of the transfer of ownership to the Commissioner for Transport ("Commissioner") is only given or made after the Commencement Time (section 4F(3) of Cap. 330);*

So long as the vehicle has been first registered, irrespective of whether the FRT was payable or not, the rates applicable at the time of first registration should be applicable if the vehicle is subsequently transferred to a transferee who is not exempted from paying FRT and is required to pay back the FRT or the difference of FRT, which if not for the exemption should have been payable at the time of first registration. The notification time would only affect the taxable value because of considerations of depreciation but would have no effect on the rates applicable. Therefore, under scenario (a), since the private car concerned has already been first registered before the Commencement Time, the rates as in force immediately before the Commencement Time would be applicable.

(b) *where the class of additions to the chassis or cab and chassis of a locally assembled private car or any other matter specified in*

section 4F(4) of Cap. 330 has been changed before the Commencement Time, but the notification of such a change is only made to the Commissioner after the Commencement Time (section 4F(4) of Cap. 330);

So long as the private car has been first registered before the Commencement Time, the rates applicable at the time of first registration, i.e. the rates as in force immediately before the Commencement Time, would be applicable in calculating any additional FRT irrespective of the notification time of the changes.

- (c) where a person has fitted, before the Commencement Time, an accessory (which has not been previously declared to the Commissioner) to a private car within six months after the first registration of the car, but the declaration in respect of such accessory is only delivered to the Commissioner after the Commencement Time (section 4F(4A) of Cap. 330); and*
- (d) where a registered owner of a private car has obtained, before the Commencement Time, a taxable warranty (which has not been previously declared to the Commissioner) for the car within six months after the first registration of the car, but the declaration in respect of the taxable warranty is only delivered to the Commissioner after the Commencement Time (section 4F(4A) of Cap. 330)*

For scenarios (c) and (d), same as scenario (b), so long as the private car has been first registered before the Commencement Time, the rates applicable at the time of first registration, i.e. the rates as in force immediately before the Commencement Time, would be applicable in calculating the additional FRT payable owing to the fitting of accessory to a private car or the obtaining of a taxable warranty for a private car within six months after the first registration of the car. The timing of declaration would not affect the rates applicable in calculating the additional FRT required.

8. In short, it is considered that the existing provisions in Cap. 330 have already covered the four scenarios mentioned in the letter and hence the inclusion of transitional provisions is not necessary.
