

立法會 *Legislative Council*

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Report of the Bills Committee on Dutiable Commodities (Amendment) Bill 2023

Purpose

This paper reports on the deliberations of the Bills Committee on Dutiable Commodities (Amendment) Bill 2023 (“the Bills Committee”).

Object of the Bill

2. The date of First Reading of the Bill is 15 March 2023. The Bill seeks to amend the Dutiable Commodities Ordinance (Cap. 109) to increase the rates of duty on various types of tobacco to give effect to the proposal in the 2023-2024 Budget Speech delivered by the Financial Secretary (“FS”) on 22 February 2023 (“Budget Speech”) with effect from 11:00 am on 22 February 2023.

Provisions of the Bill

3. The Bill proposes to amend Part II of Schedule 1 to Cap. 109 to increase the rates of duty on various types of tobacco by about 31.48% with details as follows:

Tobacco products	Original rates (HK\$)	Proposed rates (HK\$)
(a) for each 1 000 cigarettes	1,906	2,506
(b) cigars	2,455/kg	3,228/kg
(c) Chinese prepared tobacco	468/kg	615/kg
(d) all other manufactured tobacco except tobacco intended for the manufacture of cigarettes	2,309/kg	3,036/kg

4. Tobacco duty was last increased in 2014. As stated in paragraph 10 of the Legislative Council (“LegCo”) Brief (File Ref.: HHB CR 1/4041/23) issued by the Health Bureau on 1 March 2023, the proposed increase is to sustain the effectiveness of tobacco duty as a tobacco control measure. In paragraphs 169

and 170 of the Budget Speech, FS remarked that due to various factors including inflation, tobacco duty lately accounted for only about 62% of the retail price of cigarettes in Hong Kong, which was far lower than the proportion of 75% recommended by the World Health Organization (“WHO”). Therefore, it was proposed that the duty on cigarettes be increased by 60 cents per stick (i.e. an increase of HK\$12 per pack)¹ and the duties on other tobacco products be increased at the same rate with immediate effect. According to the Administration, this would bring the proportion of tobacco duty to retail price of cigarettes to 67.96%,² under the phased approach to increasing tobacco duty that takes into consideration the Government’s commitment to deter smoking and the public receptiveness.

Public Revenue Protection (Duty on Tobacco) Order 2023 (L.N. 16 of 2023)

5. On the day of the Budget Speech (i.e. 22 February 2023), the Chief Executive (“CE”), after consultation with the Executive Council, made the Public Revenue Protection (Duty on Tobacco) Order 2023 (L.N. 16 of 2023) (“Order”) under section 2 of the Public Revenue Protection Ordinance (Cap. 120), which is a temporary measure to give immediate effect to the proposed increase of tobacco duty, i.e. from 11:00 am on 22 February 2023. The Schedule to the Order contains a proposed bill to amend Cap. 109, which is identical to the Bill. Under section 5 of Cap. 120, the Order shall expire and cease to be in force upon the Bill becoming law or upon expiration of four months from the day on which the Order came into force (i.e. 22 June 2023), whichever first happens.

Commencement

6. The Bill, if passed, would be deemed to have come into operation at 11:00 am on 22 February 2023. This would bring the commencement of the enacted Ordinance retrospectively to the commencement of the Order.

The Bills Committee

7. At the House Committee meeting on 17 March 2023, Members agreed to form a Bills Committee to scrutinize the Bill. The membership list of the Bills Committee is in the **Appendix**.

8. Under the Chairmanship of Mr KWOK Wai-keung, the Bills Committee has held a meeting with the Administration. No written submissions from the public have been received by the Bills Committee.

¹ According to the table under paragraph 11 of the LegCo Brief, the average retail price of a pack of cigarettes would increase from HK\$61.75 to HK\$73.75.

² As stated in the table under paragraph 11 of the LegCo Brief.

Deliberations of the Bills Committee

9. A majority of members support the Bill. Nevertheless, there is a view that the increase of tobacco duty would create an unfair burden on low-income individuals, might not decrease the rate of smoking prevalence, and may lead to more illicit cigarette activities. The major deliberations of the Bills Committee are set out in the ensuing paragraphs.

Determination of proposed rate of increase of tobacco duty

How the proposed rate of increase is determined

10. It is noted that the Hong Kong Council on Smoking and Health (“COSH”) has suggested that the Administration should raise the duty by 100% but the rate of increase proposed by the Administration is only 31.48%. As such, a question is raised on how the proposed rate of increase is determined.

11. The Administration explains that its goal is to reduce the smoking prevalence of Hong Kong from 9.5% in 2021 to 7.8% by 2025. WHO recommended a minimum of 75% duty as a proportion of retail price. Before the proposed duty increase, the proportion of tobacco duty to retail price was only 62%. The duty on cigarette in Hong Kong has not increased since 2014. It was last increased by 11.72% in 2014 to \$38.12 per pack. Before that, tobacco duty was increased by 50% and 41.5% in 2009 and 2011 respectively. In deciding the proposed rate of increase at 31.48%, the Administration has balanced the views of different stakeholders and all relevant factors. The Administration has explained to COSH about the above decision and COSH has expressed understanding of that decision and would continue to support the Administration in this regard.

Proposed statutory mechanism for automatically adjusting tobacco duty

12. A concern is raised that the proportion of tobacco duty to retail price was 70.59% in 2014, but such proportion is only 67.96% after the proposed increase in the duty. The Administration is requested to consider establishing a statutory mechanism to link the tobacco duty with the target proportion of tobacco duty to retail price (i.e. 75%), such that once the latter dropped to lower than 75%, the tobacco duty would be adjusted automatically. This mechanism would help the Administration to achieve the goal mentioned in paragraph 11 above.

13. The Administration advises that a public consultation exercise on the next-phase tobacco control would be launched in the first half of 2023. The Administration will consider to include the proposal in the consultation paper.

Expected outcome and impact of tobacco tax increase

Expected outcome

14. A concern is raised about the expected outcome of raising the duty (e.g. the number of smokers quitting smoking). Regarding the target of reducing the smoking prevalence to 7.8% by 2025,³ the Administration is asked about how the rate is arrived at and whether it is the expected outcome of merely raising the duty or raising the duty together with other tobacco control measures.

15. According to the Administration, raising the duty is the most effective tobacco control measure. However, the effectiveness of raising the duty would be affected by many factors, e.g. the removal of mask wearing requirement might lead to a rebound of smoking prevalence. The Administration has made reference to WHO's target of a 30% relative reduction in prevalence of tobacco use in 2010 and is committed to achieving a smoking prevalence rate of 7.8% by 2025. To achieve this challenging target, apart from raising the duty, a public consultation exercise on the next-phase tobacco control would be launched in the first half of 2023.

Impact

16. Other concerns are also raised as to the impact of the duty increase as follows:

- (a) according to paragraph 2 of the LegCo Brief, smoking is the most preventable risk factor for premature death and chronic diseases. There is a view that the Administration should not exaggerate the negative impact of smoking as people died of many reasons. The Administration should not interfere with individuals' personal choice of smoking. There is also a remark that the duty increase would create an unfair burden on low-income individuals;
- (b) paragraph 2 of the LegCo Brief also mentions that the progressive tightening of tobacco control measures since the early 1980s has gradually reduced the smoking prevalence rate of Hong Kong from 23.3% in 1982 to 9.5% in 2021. However, the cigarette sale had risen by 11.6% from about 3 002 million sticks in 2017 to 3 350 million sticks in 2021. A question is therefore raised about the reasons for the decreasing number of smokers during the period that is coupled with an increasing cigarette sale, and whether it was due to increased consumption by smokers. In this connection, the Administration is also asked about the definition of smoker and

³ As mentioned in paragraph 11 above.

whether the actual number of smokers would be higher after including individuals who have smoking habits but do not smoke daily;

- (c) whether the Administration has studied the trend of consuming cigar and waterpipe; and
- (d) whether there are cigarette merchants who have not increased the retail price of cigarettes by \$12/pack after the tobacco duty increase, as this would reduce the effectiveness of the tax increase.

17. The Administration correspondingly explains that:

- (a) there is a pressing need for low-income smokers to quit smoking, as smoking is harmful to health and would create a heavy economic burden to them in case that they have developed chronic diseases caused by smoking;
- (b) according to the Thematic Household Survey (“Survey”) on smoking status, current cigarette smokers refer to those persons who reported to smoke cigarette at the time of the Survey. The latest Survey showed that among the 9.9% of the population who were current cigarette smokers, 9.5% were daily smokers. As tobacco use is an addiction, the great majority of cigarette smokers have persistent tobacco cravings and therefore smoke daily. The Survey is conducted once every two years. It provides data on smoking patterns including consumption of tobacco and related products by smokers in Hong Kong. The data would help to evaluate the effectiveness of tobacco control measures;
- (c) the great majority of tobacco users in Hong Kong use cigarettes, and the regulation of cigar and waterpipe is the same as that of cigarette; and
- (d) the Administration has no information on how individual cigarette brands react to the duty increase but it has noticed that some tobacco merchants have taken this opportunity to increase the retail price of cigarettes at a greater level than the increase in duty.

Enforcement against illicit tobacco and Cheap Whites

18. Some members have expressed concern that the increase in the duty may lead to more illicit cigarette activities particularly in public housing estates. Questions and concerns relating to enforcement against such activities are raised as follows:

- (a) details of the measures for combating the sale and distribution of illicit cigarettes and whether a hotline would be set up for reporting illicit cigarettes. In this regard, the Administration is asked about the number of allegations of illicit cigarette activities received by the Customs and Excise Department (“C&ED”) in the past five years;
- (b) whether the Administration would step up enforcement actions towards buying illicit cigarettes and strengthen the publicity of the message that even buying illicit cigarettes is illegal. The Administration is also asked about the details on the number of persons arrested for having committed illicit cigarette offences in 2022, and the relevant penalties imposed. A concern is also raised on whether the current manpower of the enforcement units is sufficient for combating illicit tobacco activities;
- (c) whether there is a scheme to reward informers for assisting C&ED in combating illicit tobacco activities; and
- (d) there is a view that increasing the duty might not be able to decrease smoking prevalence. A concern is also raised that after the duty increase, there would be rampant selling of cheap cigarettes (commonly known as "Cheap Whites"), which are usually sold at a price far below those of conventional brands and might not be fully taxed. In this connection, the Administration is asked about the amount of Cheap Whites seized in the recent past and its measures to combat Cheap Whites.

19. The Administration gives the following response respectively:

- (a) in 2022, C&ED seized about 730 million sticks of illicit cigarettes whereas the number was about 430 million in 2021, representing an increase of 71%. C&ED will continue to step up the enforcement to vigorously combat illicit tobacco activities through intelligence analysis and interception at source. C&ED has been closely liaising with the management offices of public housing estates in combating the sale of illicit cigarettes. Estate management offices will refer suspected cases to C&ED for following up. C&ED has also set up a dedicated team to deal with illicit cigarette telephone ordering activities, including carrying out inspections and investigations. A designated hotline has been set up for management offices and their personnel to report any illicit tobacco activities detected. The number of allegations on illicit cigarette activities received by C&ED in the past five years is as follows:

Year	2018	2019	2020	2021	2022
No. of allegations on illicit cigarette activities	1 043	1 152	2 620	2 989	3 427

- (b) under Cap. 109, it is an offence to buy or sell illicit cigarettes. The maximum penalty upon conviction is a fine of \$1 million and imprisonment for two years. Among the 2 812 persons arrested for having committed illicit cigarette offences in 2022, the penalties imposed are as follows:

	No. of persons arrested in 2022	Fine	Imprisonment
Cases under "Compounding Scheme" at entry points	2 107	\$2,010 - \$11,463	N/A
Other illicit cigarette cases#	705	\$100 - \$24,000	7 days - 16 months

#Some cases are still under legal proceedings

C&ED will continue to step up the enforcement to combat illicit cigarette activities in town at the storage, distribution and peddling level. In 2022, 418 persons were arrested at the peddling level, 72% of them were buyers and 28% sellers. C&ED will step up promotional efforts to remind the public that buying illicit cigarettes is an offence;

- (c) C&ED has put in place a reward scheme for reporting illicit cigarette activities. Under the scheme, informers who provide quality information would be rewarded; and
- (d) the large amount of illicit cigarettes seized in 2022 and the sharp rise seen in that year vis-à-vis the 2021 figure (as mentioned in item (a) of this paragraph) show the efforts of C&ED in combating illicit tobacco activities through interception at source at the cross-boundary smuggling level. The 2 812 persons arrested for engaging in illicit cigarette activities in 2022 is less than that in 2021, which was 3 555 persons. The decrease is mainly due to the border control measures taken as a result of the COVID-19 epidemic. As for the questions about "Cheap Whites", there is no legal definition of "Cheap Whites". In the industry, it generally refers to cigarette brands that are not popular in the market, and the packaging is no different from that of the ordinary duty-paid cigarettes that sold in the market at a low price (i.e. lower than the tobacco duty of \$50.12 per pack of cigarettes). Among the illicit cigarettes seized by

C&ED, it is estimated that about 3 to 5% are “Cheap Whites”. C&ED will closely monitor the situation of the Cheap White trade.

Measures to combat alternative smoking products

20. There is a concern that smokers might convert to use alternative smoking products (“ASPs”), e.g. heated tobacco products, after the duty increase, as possessing heating devices and accessories of electronic cigarettes for self-use is not illegal. As ASPs are not subject to the duty increase, the Administration is requested to explain how it will stop people from using ASPs as well as the measures to combat the sale and distribution of such products. The Administration is also requested to provide the statistics of smokers switching from the ASPs to conventional cigarettes after the ban of ASPs.

21. The Administration explains that the Smoking (Public Health) (Amendment) Ordinance 2021 (“Ordinance”) came into operation on 30 April 2022. The Ordinance prohibits the import, promotion, manufacture, sale, and possession of ASPs for commercial purposes, irrespective of whether they contain nicotine or not. The Administration will institute prosecution upon seizure of illegal ASPs. There is no nicotine-containing electronic smoking products registered as pharmaceutical product, and the product could not be imported into Hong Kong. The prevalence of daily conventional cigarette smokers was 9.5% in 2021. In 2021, the figures for electronic smoking products and heated tobacco products were only 0.3% and 0.1% respectively. The next Survey will be conducted in mid-2023 and its results will show the changes in smoking prevalence after the ban of ASPs. The majority of smokers smoke conventional cigarettes. The Department of Health (“DH”) will conduct inspections of suspected illegal sale of ASPs upon receipt of complaints. It will also monitor online selling activities of ASPs. If there are any people who sell ASPs through the Facebook (“FB”), the Administration will request FB to delete the relevant post(s). Enforcement officers might even be buyers as a decoy to contact the sellers. However, if the host of the relevant website is outside Hong Kong, the Administration could not carry out such operation. Since the enactment of the new legislation on 30 April 2022, four summonses against face-to-face retail sale have been issued and it is observed that there are still people using ASPs. The Administration will study the reasons behind in the coming Survey.

Role of Tobacco and Alcohol Control Office

22. A concern is raised that the Director of Audit’s Report No. 70 (published in April 2018) (“the Audit Report”) has revealed that there were cases where the Tobacco and Alcohol Control Office of DH (“TACO”) (previously known as Tobacco Control Office) only conducted first inspection eight calendar days after receiving the complaints. The Audit Report has recommended that TACO

should conduct more inspections at venue types having higher incidences of smoking offences, e.g. bus interchange and amusement game centre. The Administration is therefore asked about the improvement measures it has taken in response to the Audit Report's recommendations and the effectiveness of such measures. The Administration is also requested to advise the number of fixed penalty notices ("FPNs") or summonses issued by TACO in recent years to smoking offenders by venues, including bus interchanges and amusement game centres in which smoking offences are prevalent.

23. The Administration advises that statutory no smoking areas spread across the territory of Hong Kong. TACO follows up and carries out investigation on every case, and arranges inspection and take enforcement action on the premises concerned. Arrangement of operations would take into account the proximity of the inspected locations for the sake of efficiency, and therefore the lead time between receipt of complaint and first inspection varied. Apart from that, TACO will conduct proactive as well as plain-clothes inspections at premises with prevalent smoking offences. The effectiveness of enforcement could be seen from the number of FPNs or summonses issued by TACO in these operations. In the past two years, TACO increased the frequency of inspections proactively at premises with prevalent smoking offences such as certain public transport facilities and bus interchanges. It is also observed that plain-clothes operations at these premises were effective.

24. The Administration supplements the numbers of FPNs and summonses issued by TACO for the period from 2018 to 2022 for smoking offences under the Smoking (Public Health) Ordinance (Cap. 371) and Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) in amusement game centres, food premises, shops and shopping malls, public transport facilities, public transport carriers, bus interchanges and other statutory no smoking areas as shown in the table below. The prosecution figure for smoking offences in 2022 is lower than that of 2021. This is partly due to the COVID-19 epidemic and the implementation of social distancing measures.

Types of premises	2018	2019	2020	2021	2022
Amusement game centres	1 028	816	513	777	414
Food premises	542	345	241	327	264
Shops and shopping mall	2 035	1 833	1 799	1 991	1 845
Public transport facilities	1 194	1 237	972	1 655	930
Public transport carriers	98	67	88	133	95
Bus interchanges	507	904	535	145	65
Other statutory no smoking areas	3 420	2 933	2 497	2 715	2 718
Total	8 824	8 135	6 645	7 743	6 331

Other tobacco control measures

Lowering rate of smoking prevalence

25. A question is raised as to whether the Administration will further adjust the target rate of smoking prevalence and implement other tobacco control measures if the target of bringing down the rate to 7.8% by 2025 can be achieved. The Administration is also asked about the measures it will take if the target cannot be achieved by 2025. Some members consider that 7.8% should be a mid-term target and urge the Administration to set a long-term target. In this connection, the Administration is asked whether it would designate a year after which any people born would be prohibited from smoking. Some other members point out that even though the tobacco duty has not increased for almost 10 years since 2014, the smoking prevalence of Hong Kong dropped to 9.5% in 2021. They therefore ask whether there would be other measures for achieving the target of 7.8% apart from increasing the tobacco duty. For instance, they point out that New Zealand has legalized electronic smoking products with a view to decreasing the number of smokers of conventional cigarettes.

26. The Administration advises that 7.8% is a short to medium term target. After this target can be achieved, the Administration would continue its work on tobacco control to further bring down the smoking prevalence. Regarding the Administration's follow-up if the target is not achieved by 2025, it advises that increasing the duty would be the first step, a public consultation on next-phase tobacco control will be launched in the first half of 2023. The consultation paper will include a basket of suggestions to solicit the public's views. Regarding the long-term target and the proposed smoking prohibition measures mentioned in paragraph 25 above, the Administration explains that it would draw reference to experience of overseas countries and consider the local situation when determining the long-term target. It would also include views from LegCo Members in the public consultation paper. It is hoped that practicable tobacco control measures based on consensus could be introduced as soon as possible after the public consultation exercise.

27. Regarding the questions about measures to achieve the target rate of smoking prevalence without resorting to tobacco duty and about the overseas practice in legalizing ASPs, the Administration advises that the rate of smoking prevalence in Hong Kong has not increased even in the absence of the duty increase. It might be due to the efforts made by the Administration in other aspects such as its work on providing smoking cessation services, publicity and education work. Tobacco control work consists of a chain of interconnected elements, none of which could be missing. The Administration notes that various countries are studying how ASPs will affect individuals' health and gateway effect of ASPs on the initiation of use of conventional cigarettes. The Administration will keep in view the results of such study.

No smoking area

28. A concern is expressed over how the health of non-smokers could be protected as they are forced to breathe in second-hand smoke on the streets. Given that the proportion of non-smokers (about 90% of the population) is far more than that of smokers (about 10% of the population), some members ask whether the Administration will consider setting up smoking areas instead of no smoking areas. In their view, this will reduce the impact of passive smoking on non-smokers, help improve the city's appearance and environmental hygiene, as well as encourage more smokers to quit smoking by increasing the difficulty of smoking. In this connection, the Administration is also requested to remind travellers not to smoke in statutory no smoking areas. On the other hand, some other members consider that whilst taking measures to reduce the impact of smoking by people walking on streets should be supported, minorities should not be deprived of their right to smoke.

29. The Administration advises that it is aware of comments for setting up smoking areas or expanding the existing statutory no smoking areas. The proposed measures to be put forward in the public consultation exercise, which are mentioned in paragraph 26 above, will include, among others, reducing the public's exposure to second-hand smoking. The Administration will study the impact of smoking by people while walking on other road users and of smoking at designated areas based on scientific evidence. It will also study the practicability of law enforcement against such offences.

Measures to assist persistent smokers in quitting

30. Given that some people would keep on smoking despite the duty increase, a question is raised on what other measures will be taken to help those smokers quit smoking.

31. The Administration explains that according to WHO, raising tobacco duty is considered the single most effective tobacco control measure. DH and other social welfare organizations would strengthen the smoking cessation services. After the duty increase in February 2023, the call volume of the cessation Quitline, which is an indicator of smokers' intention to quit or quit attempts, is three times of the week before Budget day, showing an increasing motivation for smokers to quit smoking. As mentioned in paragraph 26 above, the public consultation exercise on the next-phase tobacco control will provide more suggested measures on increasing the incentives for smokers to quit smoking.

Teenager smoking problem

32. A concern is raised over smoking problem among teenagers. The Administration is asked about the measures (apart from education against smoking through the television, textbooks and talks) taken to strengthen education in this regard and make the education more down-to-earth and impactful, such that teenagers would understand the disadvantages of smoking. A question is also asked as to whether the Administration understands why teenagers smoke and how to stop them from smoking at source.

33. According to the Administration, teenager education is one of the focuses of tobacco control. The Administration has taken note of members' views on making education more down-to-earth and impactful. It has been making efforts to discourage teenagers from smoking, such as organizing the Smoke-free Elite Teens Programme with COSH. In 2010, there was 3.2% secondary students smoking, whereas such number was reduced to 1.2% in 2021. Apart from via the television, the Administration is promoting a scheme called Tobacco-free Generation with a view to letting the young generation understand the disadvantages of smoking.

Use of Chinese medicine for smoking cessation

34. Regarding the question on using Chinese medicine for smoking cessation, the Administration explains that it has made use of Chinese medicine and practices (such as acupuncture) to help smokers quit smoking. It will strengthen the promotion of smoking cessation by Chinese medicine.

Alleviating impact of tobacco duty increase on newspaper hawkers

35. As newspaper hawkers are affected by the increase in tobacco duty, the Administration is asked whether it would relax the kinds of products that could be sold by newspaper hawkers so that their business will not rely heavily on the revenue from tobacco sales. It is also suggested for the Administration to help newspaper hawkers switch to other businesses. The Administration advises that the Food and Environmental Hygiene Department is liaising with newspaper hawker associations in this regard.

Proposed amendments to the Bill

36. Neither the Administration nor the Bills Committee will propose amendments to the Bill.

Resumption of Second Reading debate

37. The Bills Committee has completed scrutiny of the Bill. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 10 May 2023.

Consultation with the House Committee

38. The Bills Committee reported its deliberations to the House Committee on 21 April 2023.

Council Business Division 4
Legislative Council Secretariat
4 May 2023

Bills Committee on Dutiable Commodities (Amendment) Bill 2023

Membership list

Chairman Hon KWOK Wai-keung, JP

Members Hon Frankie YICK Chi-ming, SBS, JP
Hon SHIU Ka-fai, JP
Hon Tony TSE Wai-chuen, BBS, JP
Dr Hon David LAM Tzit-yuen
Hon Dennis LEUNG Tsz-wing, MH
Hon CHAN Hoi-yan
Hon Lillian KWOK Ling-lai
Hon Adrian Pedro HO King-hong
Prof Hon CHAN Wing-kwong

(Total: 10 members)

Clerk Mr Colin CHUI

Legal Adviser Ms Doreen WAN

Date 29 March 2023