

LEGISLATIVE COUNCIL BRIEF

Air Passenger Departure Tax Ordinance
(Chapter 140)

Air Passenger Departure Tax Ordinance (Amendment of Second Schedule) Order 2003

INTRODUCTION

A At the meeting of the Executive Council today, the Council ADVISED and the Chief Executive ORDERED that the Air Passenger Departure Tax Ordinance (Amendment of Second Schedule) Order 2003, at Annex A, should be introduced into the Legislative Council to implement the Air Passenger Departure Tax (APDT) exemption.

JUSTIFICATIONS

2. Under the existing Air Passenger Departure Tax Ordinance (Cap. 140) (“the Ordinance”), direct transit and connecting airside transit passengers arriving and departing by air without passing arrival immigration control are exempted from payment of APDT.

3. With the commencement of operation of the cross-boundary ferry terminal at HKIA from 29 September 2003 onwards, passengers from Macau and certain parts of the Mainland may choose to arrive at HKIA by cross-boundary ferry service for direct onward departure by air. These passengers are all in transit. They will not be required to go through immigration control and will remain within the restricted area of HKIA before their onward departure. This new ferry service will attract passengers from the Mainland and Macau to use HKIA. It will be consistent from the policy perspective to provide exemption for these transit passengers from APDT on their departure from HKIA, given that the direct transit and connecting airside transit passengers are all exempted from the tax.

4. To implement the proposed APDT exemption, it is necessary to amend the Second Schedule to the Ordinance by way of an Order, which is a piece of subsidiary legislation, by the Chief Executive in Council. The

Order will be published in the Gazette on 27 September 2003, and will take immediate effect. The Order will then be tabled for negative vetting by the Legislative Council on 8 October 2003, which is the earliest opportunity as provided under established procedures. There are precedent cases for similar arrangements. It is necessary for the Order to take immediate effect so that the exemption is in place to tie in with the commencement of operation of the cross-boundary ferry terminal (which has been scheduled for 29 September 2003 by the Hong Kong Airport Authority).

OTHER OPTIONS

5. The proposed tax exemption can only be implemented by amending the Ordinance. There are no other options.

THE ORDER

A
B

6. The Order is at Annex A. The existing provisions for amendment are at Annex B.

LEGISLATIVE TIMETABLE

7. The legislative timetable will be -

Publication in the Gazette

27 September 2003

and commencement of operation

Table at Legislative Council

8 October 2003

IMPLICATIONS OF THE PROPOSAL

8. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation. It has no productivity, environmental, sustainability or civil service implications.

Financial Implications

9. According to the Hong Kong Airport Authority, about one million passengers annually will make use of the cross-boundary ferry service both ways (i.e. to arrive at or depart from the HKIA) in the initial stages.

Assuming that half of them are arrival passengers (i.e. departing from HKIA and hence liable to APDT if no exemption is given), revenue foregone for providing APDT exemption would be \$40 million a year less minor administration fees for collection if the tax is \$80 per passenger and \$60 million a year if the tax is \$120 per passenger. (It has been proposed in the 2003-04 Budget that the APDT should be increased from \$80 to \$120 per passenger.)

Economic Implications

10. The proposal will assist and encourage passengers from the Mainland and Macau to make use of HKIA for travelling and help develop Hong Kong into a regional and international aviation hub.

PUBLIC CONSULTATION

11. The proposal will confer a benefit on the passengers mentioned in paragraph 3. No consultation is considered necessary.

PUBLICITY

12. We will issue a press release. A spokesman will be available to answer media and public enquiries.

BACKGROUND

13. Under the Ordinance, passengers departing Hong Kong by air are required to pay APDT. Exemptions are provided to some classes of passengers. These include direct transit and connecting airside transit passengers arriving and departing by air without passing arrival immigration control. In addition, as a measure proposed in the 1999-2000 Budget to encourage same-day transit passengers with an extended stopover to make use of the few hours of their stay to visit and to shop in Hong Kong, exemption is granted to those who arrive and depart from Hong Kong by air within the same day.

14. At present, all passengers arriving Hong Kong through other modes of transport (i.e. by sea or by land) will need to pass through immigration control before arriving at HKIA for onward departure. They are required to pay APDT upon departure by air. However, with the commencement of operation of the cross-boundary ferry terminal at HKIA scheduled on 29 September 2003, passengers from Macau and the Mainland may choose to arrive at HKIA direct by ferry for onward departure by air without passing through Hong Kong immigration control.

This ferry service will provide greater convenience to passengers from the Mainland and Macau. It is expected to widen the catchment area of HKIA and will be conducive to the continued development of Hong Kong into a regional and international aviation hub. The cross-boundary ferry service will first operate between HKIA and Shenzhen Fuyong, Dongguan Taiping, Shekou and Macau.

ENQUIRY

15. In case of enquiries about this Brief, please contact Miss Erica NG, Principal Assistant Secretary for Financial Services and the Treasury (Treasury)(Revenue), at 2810 2370.

Financial Services and the Treasury Bureau

26 September 2003

**AIR PASSENGER DEPARTURE TAX ORDINANCE
(AMENDMENT OF SECOND SCHEDULE)
ORDER 2003**

(Made by the Chief Executive in Council under section 12(2) of the Air
Passenger Departure Tax Ordinance (Cap. 140))

**2. Passengers exempted from liability
to pay the tax**

The Second Schedule to the Air Passenger Departure Tax Ordinance (Cap. 140)
is amended by adding –

"12. Passengers who –

- (a) arrive at the Hong Kong International Airport from any place
in China (other than Hong Kong) on board a ship that is
approved by the Airport Authority of Hong Kong to
berth at the Airport;
- (b) subsequently depart from Hong Kong by aircraft; and
- (c) before such departure remain at all times within the
Restricted Area specified pursuant to section 37 of the
Airport Authority Ordinance (Cap. 483)."

Clerk to the Executive Council

COUNCIL CHAMBER

September 2003

Explanatory Note

This Order amends the Second Schedule to the Air Passenger Departure Tax Ordinance (Cap. 140) to exempt passengers from liability to pay the air passenger departure tax if the passengers arrive at the Hong Kong International Airport from any place in China (other than Hong Kong) on board a ship and remain at all times within the Restricted Area of the Airport before they depart from Hong Kong by aircraft.

Chapter:	140	AIR PASSENGER DEPARTURE TAX ORDINANCE	Gazette Number	Version Date
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Schedule:	2	PASSENGERS EXEMPTED FROM LIABILITY TO PAY THE TAX	L.N. 83 of 2000	07/04/2000
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[section 12]

1. Direct transit passengers, that is to say passengers arriving at the airport by aircraft from a place outside Hong Kong who-
 - (a) do not, otherwise than for reasons which are, to the satisfaction of the Director, beyond the passengers' control, pass through arrival immigration controls; and
 - (b) subsequently depart from Hong Kong on the same aircraft or, by reason of that aircraft being declared unserviceable, on a substituted aircraft.

2. Connecting airside transfer passengers, that is to say passengers arriving at the airport by aircraft from a place outside Hong Kong who-
 - (a) do not, otherwise than for reasons which are, to the satisfaction of the Director, beyond the passengers' control, pass through arrival immigration controls; and
 - (b) subsequently depart from Hong Kong on another aircraft,
 not being direct transit passengers.

- 2A. Passengers who-
 - (a) arrive at the airport from a place outside Hong Kong by an aircraft which, when the passenger ticket for the flight of the aircraft by which they so arrive at the airport was issued, has been scheduled to land at the airport on a particular day; and
 - (b) subsequently depart from Hong Kong by an aircraft which, when the passenger ticket for the flight of the aircraft by which they so depart from Hong Kong was issued, has been scheduled to take off at the airport on the same day as the particular day referred to in paragraph (a). (Added L.N. 90 of 1999 and 44 of 1999 s. 23)

3. Passengers who-
 - (a) arrive on an aircraft landing in Hong Kong solely by reason of distress, emergency or adverse weather; and
 - (b) subsequently depart from Hong Kong by aircraft as soon as practicable.

4. Passengers departing from Hong Kong by aircraft being used at the time of departure-
 - (a) for official or ceremonial purposes of the Government;
 - (b) for military, diplomatic or ceremonial purposes of the government of any country; or
 - (c) for official or diplomatic purposes of the United Nations or any Specialized Agency thereof.

5. Passengers departing from Hong Kong by civilian aircraft, who-
 - (a) are members of Her Majesty's forces or are civilians sponsored by the Ministry of Defence of Her Majesty's Government in the United Kingdom; and
 - (b) are present in Hong Kong with or in connexion with Her Majesty's forces in Hong Kong,

and members of their families forming part of their households, if their passages have been arranged by the appropriate authority or with the approval of the appropriate authority, as evidenced by a certificate issued by or on behalf of the Commander British Forces. (Amended L.N. 207 of 1985)

6. Passengers who are Vietnamese refugees as defined by section 2 of the Immigration Ordinance (Cap 115), and who are permanently departing from Hong Kong for resettlement elsewhere.
7. Passengers who are entitled to be accorded exemption from the tax by operation of the International Organizations and Diplomatic Privileges Ordinance (Cap 190) or the International Organizations (Privileges and Immunities) Ordinance (Cap 558). (Amended 17 of 2000 s. 9)
8. Passengers who-
 - (a) are consuls or consular staff within the meaning of regulation 2 of the Registration of Persons Regulations (Cap 177 sub. leg.) (other than consuls or consular staff who are Chinese citizens or permanent residents of the Hong Kong Special Administrative Region), and members of their families forming part of their households; or (Amended L.N. 207 of 1985; 28 of 1998 s. 2)
 - (b) are employed exclusively in the private service of consuls or consular staff of a consular post in Hong Kong, who are nationals of the country represented by the consular post and who have been brought to Hong Kong solely for the purposes of such service; or
 - (c) are otherwise entitled to be accorded exemption from the tax by operation of the Consular Relations Ordinance (Cap 557), (Amended 16 of 2000 s. 14)upon production by such persons of evidence of their status in a form satisfactory to the Director.
9. (Repealed 81 of 1999 s. 3)
10. Passengers who are persons to whom the Privileges and Immunities (Joint Liaison Group) Ordinance (Cap 36) applies upon production by such persons of evidence of their status in a form satisfactory to the Director. (Added 18 of 1985 s. 5. Amended 44 of 1985 s. 7; 81 of 1999 s. 3)
11. Passengers under 12 years of age. (Added L.N. 193 of 1991)