

Report No. 48 of the Director of Audit — Chapter 1

ADMINISTRATION OF HOTEL ACCOMMODATION TAX

Summary

1. Under the Hotel Accommodation Tax Ordinance (HATO — Cap. 348 enacted in 1966), hotel accommodation tax (HAT) is currently levied at 3% on all accommodation charges payable by guests of hotels, and is recoverable from proprietors of hotels as a debt due to the Government. The Collector of Stamp Revenue is responsible for administering and collecting HAT. The Commissioner of Inland Revenue, appointed by the Chief Executive under the Stamp Duty Ordinance (Cap. 117), holds the office of the Collector of Stamp Revenue. In 2005-06, the total amount of HAT collected was \$310 million.

Charging of hotel accommodation tax

2. **HAT.** The Inland Revenue Department (IRD) charges HAT on establishments providing short-term accommodation but not on establishments providing long-term accommodation. According to the IRD, long-term accommodation refers to accommodation provided on the basis of a minimum period of 28 continuous days for each letting.

3. **Exemption for establishments providing only long-term accommodation.** In December 1998, the definition of “hotel” in the HATO was amended. Since the enactment of the HATO in 1966 and notwithstanding the amendments in 1998, the IRD had taken the view that establishments providing long-term accommodation exclusively were not chargeable to HAT because they were not normally providing accommodation to guests. According to the legal advice obtained by the IRD in March 1999, with the amended definition of “hotel”, the scope of coverage of the HATO was much widened. The demarcation between what was and what was not a hotel became unclear. Audit considers that the IRD’s practice of exempting establishments providing only long-term accommodation from HAT becomes questionable. *Audit has recommended that the Commissioner of Inland Revenue should, in consultation with the Secretary for Financial Services and the Treasury and the Department of Justice, consider amending the HATO to the effect that the Collector of Stamp Revenue would be empowered to grant exemption to establishments providing only long-term accommodation, if it is intended that exemption from HAT should be granted.*

4. **Concessionary exemption for establishments providing both short-term and long-term accommodation.** Four hotels, providing both short-term and long-term accommodation, were granted concessionary exemption by the IRD as they were considered as operating two separate and distinct lines of businesses (i.e. hotel guest rooms and serviced suites). Audit notes that the HATO is silent on whether hotels letting serviced suites in the form of long-term accommodation through a separate line of business are exempt from HAT. *Audit has recommended that the Commissioner of Inland Revenue should, in consultation with the Department of Justice, consider charging HAT for long-term accommodation on hotels providing both short-term and long-term accommodation.*

5. **Granting and withdrawal of concessionary exemption.** Audit found that improvements in the administration of concessionary exemption could be made. *Audit has recommended that for the granting and withdrawal of concessionary exemption, the Commissioner of Inland Revenue should: (a) set objective criteria for determining long-term accommodation to be exempt from HAT; and (b) critically monitor the mode of operation of the four hotels which have been granted concessionary exemption.*

6. **Accommodation charges under barter agreements.** The commercial value of room-nights offered by hotels under barter agreements is liable to HAT. Audit review of three cases involving 14 barter agreements for various periods between 2003-04 and 2006-07 found that the barter values used for calculating HAT might not reflect a fair valuation of the accommodation charges of the hotel rooms. *Audit has recommended that the Commissioner of Inland Revenue should devise an acceptable basis for determining accommodation charges and ensure that hotels apply a fair valuation of the accommodation charges of the hotel rooms for the charging of HAT under barter agreements.*

7. **Tax implications of exemption provisions.** Section 6(1) of the HATO states that the provisions of the HATO shall not apply to accommodation charges where the Collector of Stamp Revenue is satisfied that: (a) the accommodation charge is less than \$15 a day; (b) the accommodation is provided by a society not established or conducted for profit; or (c) the hotel contains less than 10 rooms normally available for lodging guests. These exemption provisions have remained unchanged since 1966. Audit noted that for many years, no hotel and guesthouse had charged fees below \$15 and that there was a significant increase in the number of guesthouses over the past forty years. The number of exempt establishments with less than 10 rooms increased significantly by 40 times, from 22 in 1966 to 892 in September 2006. *Audit has recommended that the Commissioner of Inland Revenue should, in consultation with the Secretary for Financial Services and the Treasury, consider reviewing the exemption provisions of the HATO on: (a) the accommodation charge of less than \$15 per day; and (b) establishments with less than 10 rooms, taking into account the significant increase in the number of such guesthouses, the borderline exempt cases (i.e. guesthouses with 9 rooms or more but with 9 rooms for hire) and the cost-effectiveness of the collection of HAT.*

Collection of hotel accommodation tax

8. ***Payment of hotel accommodation tax.*** HAT is collected on a quarterly basis. Audit analysis of overdue HAT for the ten quarters from 1 April 2004 to 30 September 2006 indicated that, on average, 69 cases involving \$14.4 million were overdue in each quarter. No surcharge is imposed on overdue HAT because there is no such provision in the HATO. *Audit has recommended that the Commissioner of Inland Revenue should consider introducing a surcharge on HAT in default similar to that imposed on tax in default under the Inland Revenue Ordinance (Cap. 112).*

9. ***Feasibility of electronic filing of tax returns and electronic payment of tax.*** The filing of HAT returns and the payment of HAT are manually processed by a clerical officer in the Inspection Section. Audit notes that electronic means of filing of salaries tax returns and payment of tax are available to taxpayers. *Audit has recommended that the Commissioner of Inland Revenue should, in consultation with the hotel industry, explore the feasibility of introducing electronic means for filing of HAT returns and payment of HAT.*

Inspection of hotels and guesthouses

10. ***Frequency of inspections.*** Tax inspectors conduct regular inspections of hotels and guesthouses at frequencies ranging from once in three months to once a year according to the types and the number of rooms available for hire. Each inspection involves a minimum degree of record check of one month in each quarter. Audit analysis of discrepancies found by tax inspectors indicated that there were variations in the amounts of underpayments and overpayments of HAT from 2003-04 to 2005-06. Audit found that notwithstanding the discrepancies found during inspections of hotels and guesthouses, the IRD did not extend the degree of record check in most of these inspections. *Audit has recommended that the Commissioner of Inland Revenue should consider: (a) reviewing the frequency of regular inspections, and the extent of checking the records of different types of hotels and guesthouses, taking into account the level of risk and materiality; and (b) increasing the extent of checking the records of hotels and guesthouses when discrepancies are found during regular inspections.*

11. ***Checking of unlicensed establishments.*** The IRD identifies unlicensed establishments that may be liable to HAT through referrals from its Business Registration Office, search of advertisements in newspapers and the Internet, and information provided by the Hong Kong Tourism Board. However, the IRD does not check the records of unlicensed establishments kept by the Office of the Licensing Authority (OLA) of the Home Affairs Department. *Audit has recommended that the Commissioner of Inland Revenue should, in consultation with the Director of Home Affairs, obtain information on convicted cases of unlicensed establishments from the OLA and assess whether these establishments are required to pay HAT under the HATO.*

12. ***Inspection of suspected unlicensed establishments.*** The HATO does not empower the Collector of Stamp Revenue to enter any suspected unlicensed establishment or obtain any information and records for the purpose of determining whether any establishment is a hotel. *Audit has recommended that the Commissioner of Inland Revenue should consider amending the HATO to empower IRD officers to conduct inspections on suspected unlicensed establishments.*

Response from the Administration

13. The Administration generally agrees with the audit recommendations.

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