

## 《2010年印花稅(修訂)(第2號)條例草案》

### 有關“取得”以及“處置”物業以及進一步提供豁免的 委員會審議階段修正案

#### 目的

本文件介紹當局計劃就《2010年印花稅(修訂)(第2號)條例草案》(《條例草案》)所提出的修改，供議員考慮。

#### 背景

2. 當局在二零一一年三月九日向法案委員會提出了一套草擬的委員會審議階段修正案(修正案)(CB(1)1536/10-11(03))，以在《條例草案》中更明確地陳述用以決定「額外印花稅」是否適用時何謂“取得”以及“處置”了物業的日期。此外，當局告知法案委員會，就議員和團體代表提出有關進一步提供豁免的建議，當局會在審慎考慮後予以回覆。議員就我們提交的修正案提出了一些意見，並要求當局提交文件解釋提出修正案的理理由。

3. 當局現就進一步提供豁免提出了草擬的修正案，並就有關何謂“取得”以及“處置”了物業的修正案作進一步的修改。為方便議員審視修正案，我們將所有的修正案整合成一份修訂的草擬修正案，並載於附件 A(請參閱英文版本，中文版本容後補上)。

#### 何謂“取得”以及“處置”了物業的修正案

4. 《條例草案》訂明「額外印花稅」適用於在二零一零年十一月二十日或以後取得及在取得後的二十四個月或以內處置的物業交易。「額外印花稅」對不同持有期的交易有不同的逆進稅率。

5. 在《條例草案》下，當物業在衡平法上的擁有權或法律上的擁有權轉移到某人士，該人士為之“取得”該物業。當某人士在衡平法上的擁有權或法律上的擁有權被轉移走，該人士為之“處置”了該物業。

6. 自從政府在二零一零年十一月十九日宣布引入「額外印花稅」後，我們收到來自委員會、團體代表、專業和相關商會，以及公眾對《條例草案》中“取得”以及“處置”的用詞的意見以及疑問。我們在仔細聆聽這些意見後，認為有必要在《條例草案》中更明確地陳述用以決定「額外印花稅」是否適用時何謂“取得”以及“處置”了物業擁有權的日期。

7. 建基於物業在衡平法上的擁有權或法律上的擁有權經轉移時為之“取得”或“處置”了該項物業的原則，我們在二零一一年三月九日向法案委員會提交的修正案中建議，根據「可予徵收印花稅的買賣協議」的簽署日期作為“取得”以及“處置”了該項物業的日期。假如沒有買賣協議，則以簽署「轉易契約」的日期為準。現時，在《印花稅條例》(第 117 章)下，「可予徵收印花稅的買賣協議」的定義包括臨時買賣合約和買賣合約。假如在一項交易中有多於一份已加蓋印花的「可予徵收印花稅的買賣協議」，則以最早簽訂的協議的簽署日期，為“取得”及“處置”該項物業的日期。

8. 為界定“取得”及“處置”物業的日期，我們在二零一一年三月九日的修正案中亦進一步建議，「可予徵收印花稅的買賣協議」包括現有《印花稅條例》下第 29A 條中所定義的買賣協議 (agreements for sale)，但不包括《印花稅條例》第 29A(1)(b) 條中所定義的「在一份文書中某人賦予他人一項購買不動產的選擇權」。根據法律意見，“購買不動產的選擇權”並沒有把物業在衡平法上的擁有權由賣方轉移到買方。

9. 正如我們在二零一一年三月十日的法案委員會會議上表示，當局有就修正案與香港律師會(律師會)進行討論。律師會就二零一一年三月九日的修正案的其中一項建議，是在字眼方面宜更慎密，以準確地反映當局擬剔出那類買賣協議。特別是現有《印花稅條例》下，第 29A(1)(b) 條所定義的買賣協議，包括“購買不動產的選擇權”、“購買不動產的權利”以及“有關不動產的優先購買權利”。何謂“購買不動產的選擇權”及“有關不動產的優先購買權利”很清晰。不過，“購買不動產的權利”似乎與該條例第 29A(1)(a) 條所定義的買賣協議(即「在一份文書中某人訂立合約以售賣或購買不動產」)重疊。而當局並不打算剔出該類買賣協議。

10. 在考慮上文第 9 段所述律師會的意見後，我們在附件 A 的修訂的草擬修正案中進一步釐清，就決定何謂“取得”以及“處置”了物業的日期而言，「可予徵收印花稅的買賣協議」包括在現有《印花稅條例》下第 29A 條中所定義的買賣協議，但不包括《印花稅條例》第 29A 條中“買賣協議”定義 (b) 段所指的“購買不動產的選擇權”及“不動產的優先購買權”。

11. 簡單來說，在修訂的草擬修正案下，在有臨時買賣合約的情況下，除非該臨時買賣合約屬“購買不動產的選擇權”或“有關不動產的優先購買權利”，否則臨時買賣合約的簽署日期會被定義為“取得”及“處置”物業的日期。據我們了解，以上的做法適用於市場上絕大部分的臨時買賣合約。

12. 我們建議剔出上文第 10 及 11 段所述的“購買不動產的選擇權”及“有關不動產的優先購買權利”，是基於我們的法律意見認為在該等情況下，衡平法上的擁有權並沒有在這個選擇權或優先權下轉移。換句話說，《條例草案》下，買家並不被當作已“取得”該物業。在這個情況下，在其後簽訂的買賣合約的日期會被視作“取得”或“處置”該物業的日期。假如沒有買賣合約，會以簽訂轉易契約日期為“取得”或“處置”了該物業的日期。

#### *當局就議員所提出的事項的回應*

13. 議員關注若把“選擇權協議”剔出，可能會無意地造成一個漏洞，令炒家轉炒這些“選擇權協議”，以避過「額外印花稅」。據我們了解，目前絕大部份市場上的臨時買賣合約均不屬於這類買賣協議。此外，當局已經禁止所有在二零一零年八月十三日或以後批出預售樓花同意書的一手未建成物業在完成轉易契約前重售、轉售，或將臨時買賣合約或買賣合約中的權益轉讓。因此，我們認為剔出“選擇權協議”會產生漏洞的機會不大。

14. 議員亦就「額外印花稅」應否適用於在簽訂「可予徵收印花稅的買賣協議」或轉易契約時增加/刪除名字作出討論。在現有《印花稅條例》下，作為一項反避稅措施，除了增加/刪除名字的人士為原有買家的配偶、父母或子女外，在簽訂「可予徵收印花稅的買賣協議」或轉易契約增加/刪除名

字須繳付從價印花稅。

15. 我們在二零一一年三月九日的修正案中，清楚交待了「額外印花稅」會採用同一個原則。假設一名賣家與甲先生簽訂了一份「可予徵收印花稅的買賣協議」（例如臨時買賣合約），而在之後二十四個月內簽署買賣合約或轉易契約時，甲先生將另外一位人士的名字，例如乙先生，加入作為額外一位買家，甲先生會被視作將 50% 的物業擁有權在簽訂買賣合約或轉易契約時轉讓了給乙先生。所以，該買賣合約或轉易契約會被徵收按該合約上的交易金額而計算的「額外印花稅」的一半，以反映甲先生將 50% 的物業擁有權轉讓予乙先生。與從價印花稅一樣，如新加入的買家為原買家的配偶，父母或子女，可獲豁免「額外印花稅」。

16. 在二零一一年三月十日的會議上，議員表示在物業買賣過程的不同階段增加名字是一個很普遍的市場做法，而且在某些情況下有關做法並不涉及炒賣活動，因而應該獲豁免「額外印花稅」。不過，正如上文所述，建議在簽訂「可予徵收印花稅的買賣協議」或轉易契約時增加/刪除名字須徵收「額外印花稅」屬一項反避稅措施。建議豁免涉及配偶、父母及子女的個案亦是根據目前《印花稅條例》而訂定。我們認為如果將豁免範圍延伸至例如未婚伴侶、其他親戚以及商業夥伴，將會偏離現有的反避稅機制，並且會製造一個很大的炒賣漏洞。

17. 假如增加/刪除名字可獲豁免徵收「額外印花稅」，炒家可以透過這方法，分兩階段處理物業，從而大幅減少甚至完全避過「額外印花稅」。一個可能發生的情況是，當炒家甲先生與賣家簽訂臨時買賣合約，取得一個住宅物業，而在簽訂買賣合約時加入另一位買家乙先生的名字，在無須繳付「額外印花稅」下令乙先生取得 50% 的物業擁有權。甲先生可以在之後將該物業的剩餘 50% 賣給乙先生，遂將 100% 的物業擁有權完全轉讓給乙先生。如果該物業的剩餘 50% 是在甲先生取得有關物業的 24 個月以後轉讓給乙先生，有關交易毋須繳付「額外印花稅」。如果甲先生是在取得物業後的 24 個月內將該物業的剩餘 50% 轉讓給乙先生，應繳的「額外印花稅」是按轉讓該 50% 物業而計算。

18. 附件 B 闡釋在上述情況下，炒家如何避過整項或部份「額外印花稅」。

19. 考慮到上述情況，我們認為比較合適的方法處理議員的關注，是加強對買家的教育和宣傳工作，以提醒買家在原買家取得物業的 24 個月或以內簽訂「可予徵收印花稅的買賣協議」或轉易契約時增加/刪除非獲豁免人士的名字，須繳付「額外印花稅」。在《條例草案》通過後，稅務局會更新其作業手冊供律師及地產代理參考，並會將一些常見的問題和答案上載到稅務局網頁供公眾參考。

### 修正案中提出的進一步豁免

20. 在目前的《條例草案》下，我們建議在某些特定情況下，豁免在二零一零年十一月二十日或以後取得及在取得後的二十四個月或以內處置的物業交易，即提名由一名近親人士（即父母、配偶或子女）接受物業權益、把物業轉售或轉讓予近親人士、聯營公司之間進行物業轉讓、因破產/非自願的清盤而出售物業，以及把物業轉售予政府。此外，雖然在目前的《條例草案》下沒有就受益人在二零一零年十一月二十日或以後繼承了離世者的住宅物業並在二十四個月或以內將有關物業轉售時豁免「額外印花稅」，但是《條例草案》有特許措施，在計算持有期時，以離世者購入物業該日作為其受益人取得該物業的日期。

21. 委員會、團體代表以及專業和相關商會建議在不同的情況下提供更多的豁免。我們認為法例必須清晰及毫不含糊，在考慮任何豁免都必須公平及能夠以客觀的方式衡量，豁免的種類應清楚載列於《條例草案》中。為個別或個人情況例如財政困難逐個個案考慮提供豁免，執行上並不可行，亦會製造很多漏洞令投機人士可以避過「額外印花稅」，從而削弱其成效。

22. 不少持分者認為在非自願情況下出售物業應該儘量獲得豁免。在小心考慮第 23 至 31 段所述的因素後，我們建議在修訂的修正案中增加以下的豁免。

(a) 由法庭頒令作出或依據法庭頒令作出而非自願的物業出售或轉讓

23. 我們知道法庭會在不同的情況下頒令將物業出售/

轉讓，或有關物業須依據法庭的頒令出售，例如離婚個案。由於在執行或依據法庭頒令而出售/轉讓物業屬非自願，而且濫用的機會不大，所以我們建議豁免那些由法庭頒令或依據法庭頒令而非自願出售/轉讓的物業，但不豁免由土地審裁處根據《土地（為重新發展而強制售賣）條例》（第 545 章）下發出售賣令而售出的住宅物業<sup>1</sup>。

24. 我們不建議豁免對那些因為《土地（為重新發展而強制售賣）條例》下發出的售賣令而須出售物業的個案豁免「額外印花稅」，因為我們無法排除這些個案中可能存有投機成份。當個別小業主集合在一起成為多份數擁有人，然後自行將他們的業權整合進行集體出售以實現重建潛力，少份數擁有人有可能是那些在申請強制拍賣前 24 個月內購入單位的人士。豁免那些依據《土地（為重新發展而強制售賣）條例》下發出的售賣令出售的物業「額外印花稅」可能會吸引炒家炒賣有高重建潛力大廈內的物業，因為炒賣該些物業的成本較其他的物業為低。

25. 對於在有關地段被強制售賣土地前的 24 個月內，在不知情的情況下購入物業的真正小業主，如果是在有關強制售賣土地的申請還未送交土地審裁處所以沒有任何公眾渠道（例如土地註冊處的記錄、張貼在該地段上的建築物的告示，或報章刊物上的通告）可以讓他們核實有關地段是否屬被申請強制售賣土地的目標時購買了有關物業，有關小業主有機會就將由土地審裁處發出的售賣令的草擬售賣條款向土地審裁處作出陳述（多份數擁有人須向土地審裁處提交有關草擬條款供土地審裁處在有關強制售賣土地申請的聆訊時考慮），包括應由那方繳付「額外印花稅」的陳述。《印花稅條例》經修訂以引入「額外印花稅」後，土地審裁處仍然可以根據《土地（為重新發展而強制售賣）條例》第 4(6)(a)(i) 條下就有關土地的買賣發出指令，包括擬定出售的細節以及條件。

26. 為了在《土地（為重新發展而強制售賣）條例》下的法律程序開展前向業主提供行政支援，發展局在「聯合調解

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<sup>1</sup> 根據《土地（為重新發展而強制售賣）條例》（第 545 章）下由土地審裁處發出售賣令而售出的住宅物業，如有關業主是在取得有關物業後二十四個月或以內出售該物業，有關交易須繳納「額外印花稅」。

專線辦事處有限公司」(由有參與提供調解服務的八間主要機構聯合組成的非牟利組織)的支持下，推行了一項調解先導計劃，協助涉及或正考慮在《土地(為重新發展而強制售賣)條例》下申請強制售賣土地或涉及強制售賣土地的人士，進行自願性的調解。該計劃由政府提供財政支援，包括開發成本、營運成本及向合資格的長者業主提供資助以支付調解費用。土地審裁處庭長根據《土地審裁處條例》第10(5)(a)條發出的指示，從二零一一年二月十五日起，把訴訟人士有否參與調解程序加入作為根據該條例進行的強制售賣土地案件的審理和裁定訟費的其中一項考慮。

27. 此外，為了向舊樓的長者業主提供進一步的支援，發展局亦委托長者安居服務協會(協會)推行「支援長者業主外展服務先導計劃」。由於長者業主可能較難獲得全面的資訊，協會的社工會主動向長者業主講解在《土地(為重新發展而強制售賣)條例》下物業收購的一般做法和強制售賣的程序。為了向長者業主提供貼身和到位的外展支援服務，協會的社工會向有需要進一步支援的長者業主作跟進，包括免費為長者核實其物業在強制售賣時是否屬任何特別申請門檻的地段類別。協會的社工亦會按長者業主的意願，將其個案轉介測量師等專業人士徵求意見。

(b) 屬《稅務條例》(第112章)第2條所指的財務機構的承按人，或該承託人委任的接管人，透過不同方式把已承按的物業作非自願性出售

28. 議員及公眾向我們反映，個別人士或公司會因為拖欠供款而被銀行或財務機構強制將承按的物業出售。在這種情況下出售物業並沒有炒賣性質。在拖欠供款的情況下，行使承按人的權力出售一個承按物業是銀行或財務機構最常見用以處理有關物業以及取回尚未繳清的欠款的方法。其他途徑包括以接管或行使止贖令出售承按物業。在現時的《條例草案》下，無論銀行/財務機構採用上述任何一種方式處理欠款個案，只要有關物業在出售時是在業主取得物業的24個月或以內，有關的出售須繳付「額外印花稅」。

29. 與豁免其他聲稱因為財政困難而須出售物的個案不同，財務機構就拖欠供款而須處置有關物業有客觀標準。此外，我們認為業主為了逃避「額外印花稅」而刻意拖欠供款的機會不大，因為拖欠供款的紀錄會對他個人的信貸紀錄帶

來負面影響。我們建議只豁免屬《稅務條例》(第 112 章)第 2 條中所指的財務機構的承按人，或由上述承按人委託的接管人，透過不同方式把已承按的物業作非自願性出售。止贖令會把物業在法律上的擁有權轉移，我們建議在止贖令的情況下，財務機構或由它們委任的接管人在出售業權已轉移到財務機構的物業時亦可獲豁免「額外印花稅」，雖然據我們了解，透過止贖令出售承按物業的情況並不普遍。《稅務條例》第 2 條中所界定的財務機構，即《銀行業條例》(第 155 章)的認可機構，或這些認可機構的附屬機構，它們在謹慎理財及專業經營操守方面都同樣受到香港金融管理局的嚴格規管和監督。此外，它們會委任信譽良好的接管人。

(c) 受益人出售/轉讓一個從離世者遺產中繼承的住宅物業

30. 在現時的《印花稅條例》下，在一名受益人繼承離世者的物業時，有關的法律上擁有權由離世者轉至受益人毋須繳付印花稅，所以亦毋須繳付「額外印花稅」。不過，假如受益人在從離世者購入該物業的 24 個月或以內將有關物業出售，該交易便須繳付「額外印花稅」。有意見認為，受益人繼承離世者的物業並不是出於受益人本身的意願，而受益人若因為各種不同的原因而要將物業出售，不應該需要就有關的出售繳交「額外印花稅」。

31. 考慮到議員的意見，以及考慮到透過繼承物業而濫用的機會很小，我們建議當受益人出售/轉讓離世者遺產下的物業時可獲豁免「額外印花稅」。有了這項建議的豁免，我們不再需要在《條例草案》下就計算受益人取得物業的日期設定寬免措施，即以離世者購入單位的日期作為受益人取得物業的日期。因此，我們建議在修訂的修正案將該部份刪除。

32. 在《條例草案》以及修訂的修正案中建議的所有豁免見附件 C。

運輸及房屋局  
稅務局  
律政司  
二零一一年三月



**Revised draft CSAs**

Stamp Duty (Amendment) (No. 2) Bill 2010

**Committee Stage**

Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	In the English text, by deleting “with” and substituting “on”.
1(3)	By adding “14(2A), (2B), (2C), (2D) and (2E),” after “and (11),”.
4	By deleting the clause.
5(2)	In the proposed section 15(5), by deleting “( <i>amending section</i> ) does not apply in respect of a chargeable agreement for sale within the meaning of section 29A(1) that was entered into before the date of commencement of the amending section” and substituting “does not apply in respect of a chargeable agreement for sale that was entered into before the date of commencement of that section”.
New	By adding—  <b>“6A. Section 29A amended (Interpretation and application of Part IIIA)</b> (1) Section 29A(3A), after “and head 1(1A)”— <b>Add</b> “and (1B)”. (2) Section 29A(4), after “head 1(1A)”—

**Add**

“and (1B)”.

- (3) Section 29A(5), after “Head 1(1A)”—

**Add**

“and (1B)”.

- (4) Section 29A(6), after “head 1(1A)”—

**Add**

“and (1B)”.

**6B. Section 29B amended (Duty to execute agreement for sale)**

After section 29B(5)(g)—

**Add**

“(ga) if the first such agreement referred to in paragraph (g) is an instrument conferring an option or a right of pre-emption referred to in paragraph (b) of the definition of *agreement for sale* in section 29A(1), a statement to that effect;”.

7 By deleting subclause (4).

7(6) By deleting “and” and substituting “or”.

7(7) In the proposed section 29C(5AA), by deleting “any residential” and substituting “immovable”.

7(7) In the proposed section 29C(5AA)(b), by deleting “for the sale” and substituting “in respect”.

7 By deleting subclause (9).

8 In the proposed section 29CA, in the heading, by deleting “**Special stamp duty chargeable with**” and substituting “**Further provisions on special stamp duty chargeable on**”.

8 In the proposed section 29CA(2), in the Chinese text, by adding “有關” after “取得”.

8 In the proposed section 29CA(3), by deleting “acquired” and substituting “disposed of”.

8 In the proposed section 29CA(4), by deleting everything after “First Schedule,” and substituting—

“the vendor acquired the residential property on—

(a) subject to subsections (4A) and (6B)—

(i) the date on which the vendor made a chargeable agreement for sale (other than an instrument conferring an option or a right of pre-emption referred to in paragraph (b) of the definition of *agreement for sale* in section 29A(1)) that provided for the conveyance of the property to the vendor; or

(ii) (if the chargeable agreement for sale consisted of 2 or more instruments) the date on which the first of those instruments was made; or

(b) in any other case—

(i) the date of the conveyance under which the property was transferred to or vested in the vendor; or

(ii) (if the conveyance consisted of 2 or more instruments) the date on which the first of those instruments was made.”.

8 In the proposed section 29CA, by adding—

“(4A) If more than one chargeable agreement for sale was made between the same parties and on the same terms in respect of a residential property, the vendor acquired the property on the date on which the first chargeable agreement for sale referred to in subsection (4)(a) was made.”.

8 By deleting the proposed section 29CA(5).

8 In the proposed section 29CA(6), by deleting everything after “First Schedule,” and substituting—

“the vendor disposes of the residential property on, subject to subsections (6A) and (6B)—

- (a) the date on which the vendor makes a chargeable agreement for sale (other than an instrument conferring an option or a right of pre-emption referred to in paragraph (b) of the definition of *agreement for sale* in section 29A(1)) that provides for the conveyance of the property from the vendor; or
- (b) (if the chargeable agreement for sale consists of 2 or more instruments) the date on which the first of those instruments is made.”.

8 In the proposed section 29CA, by adding—

“(6A) If more than one chargeable agreement for sale is made between the same parties and on the same terms in respect of a residential property, the vendor disposes of the property on the date on which the first chargeable agreement for sale referred to in subsection (6)(a) is made.

(6B) If a chargeable agreement for sale is made in respect of a residential property, and another chargeable agreement for sale is made in respect of all or any part of the property which is, under section 29C(5),

chargeable with stamp duty as if it were a conveyance on sale executed in pursuance of the first-mentioned agreement, the property or that part of the property was acquired, and is disposed of, on—

- (a) (if under that other agreement the purchasers are those referred to in section 29C(5)(c)(i)) the dates specified in section 29DA(9A) as if that other agreement were a conveyance on sale executed in pursuance of a chargeable agreement for sale as referred to in section 29D(4); or
- (b) (if under that other agreement the purchaser is that, or the purchasers are those, referred to in section 29C(5)(c)(ii)) the dates specified in section 29DA(9B) as if that other agreement were a conveyance on sale executed in pursuance of a chargeable agreement for sale as referred to in section 29D(5).”.

8

In the proposed section 29CA(8), by deleting everything after “in respect of which the agreement is” and substituting—

“made—

- (a) was transferred to or vested in the vendor by or pursuant to any decree or order of any court, which does not include—
  - (i) a foreclosure order obtained otherwise than by a mortgagee referred to in paragraph (f); and
  - (ii) an order for sale as defined in section 2(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545);
- (b) relates solely to the estate of a deceased person;
- (c) was devised by or otherwise passed on the death of the deceased person under a will, the law of intestacy or right of survivorship to the vendor;
- (d) relates solely to a bankrupt’s estate;
- (e) relates solely to the property of a company being wound up under section 177(1)(d) of the Companies

Ordinance (Cap. 32); or

- (f) is the subject of a sale by a mortgagee (being a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112)) or a receiver appointed by such a mortgagee.”.

8 In the proposed section 29CA(9), in the English text, by deleting “with a” and substituting “on a”.

9 By adding before subclause (1)—

“(1A) Section 29D(1)—

**Repeal**

“or issue a stamp certificate in respect of the conveyance on sale”.”.

9 By adding—

“(3A) Section 29D(4)(a), after “head 1(1)”—

**Add**

“and (if applicable) (1AA)”.”.

9(4) In the proposed section 29D(4)(b)(i), by adding “on sale” after “conveyance”.

9 By adding—

“(4A) Section 29D(5)(a), after “head 1(1)”—

**Add**

“and (if applicable) (1AA)”.”.

9(5) In the proposed section 29D(5)(b)(i), by adding “on sale” after “conveyance”.

- 10 In the proposed section 29DA, in the heading, by deleting “**Special stamp duty chargeable with**” and substituting “**Further provisions on special stamp duty chargeable on**”.
- 10 In the proposed section 29DA(2), in the Chinese text, by adding “有關” after “取得”.
- 10 In the proposed section 29DA(3), by deleting “acquired” and substituting “disposed of”.
- 10 By deleting the proposed section 29DA(4), (5) and (6).
- 10 In the proposed section 29DA(7), by deleting everything after “First Schedule,” and substituting—
- “the transferor acquired the residential property on—
  - (a) subject to subsections (7A), (9A) and (9B)—
    - (i) the date on which the transferor made a chargeable agreement for sale (other than an instrument conferring an option or a right of pre-emption referred to in paragraph (b) of the definition of *agreement for sale* in section 29A(1)) that provided for the conveyance of the property to the transferor; or
    - (ii) (if the chargeable agreement for sale consisted of 2 or more instruments) the date on which the first of those instruments was made; or
  - (b) in any other case—
    - (i) the date of the conveyance under which the property was transferred to or vested in the transferor; or
    - (ii) (if the conveyance consisted of 2 or more

instruments) the date on which the first of those instruments was made.”.

10 In the proposed section 29DA, by adding—

“(7A) If more than one chargeable agreement for sale was made between the same parties and on the same terms in respect of a residential property, the transferor acquired the property on the date on which the first chargeable agreement for sale referred to in subsection (7)(a) was made.”.

10 By deleting the proposed section 29DA(8).

10 In the proposed section 29DA(9), by deleting everything after “First Schedule,” and substituting—

“the transferor disposes of the residential property on, subject to subsections (9A) and (9B) and section 29CA(6), (6A) and (6B)—

- (a) the date of the conveyance on sale of the property under which the property is transferred or divested from the transferor; or
- (b) (if the conveyance on sale consists of 2 or more instruments) the date on which the first of those instruments is made.”.

10 In the proposed section 29DA, by adding—

“(9A) In the case of a conveyance on sale of residential property executed in pursuance of a chargeable agreement for sale as referred to in section 29D(4), the person named in the agreement as the purchaser (*that purchaser*)—

- (a) acquired the property—
  - (i) on the date on which that purchaser made a chargeable agreement for sale (other than an instrument conferring an option or a right of pre-emption referred



to in paragraph (b) of the definition of *agreement for sale* in section 29A(1)) that provided for the conveyance of the property to that purchaser; or

(ii) (if the chargeable agreement for sale consisted of 2 or more instruments) the date on which the first of those instruments was made; and

(b) disposes of the proportion of the property to be vested in the other person not named in the agreement as a purchaser as referred to in section 29D(4)—

(i) on the date on which the conveyance on sale is executed; or

(ii) (if the conveyance on sale consists of 2 or more instruments) the date on which the first of those instruments is made.

(9B) In the case of a conveyance on sale of residential property executed in pursuance of a chargeable agreement for sale as referred to in section 29D(5), a person named in the agreement as one of the purchasers (*that person*), if the conveyance on sale is not executed in favour of that person—

(a) acquired that person's proportion of the property—

(i) on the date on which that person, together with the other person or persons named in the agreement as a purchaser or purchasers as referred to in that section, made a chargeable agreement for sale (other than an instrument conferring an option or a right of pre-emption referred to in paragraph (b) of the definition of *agreement for sale* in section 29A(1)) that provided for the conveyance of the property to that person and that other person or persons; or

(ii) (if the chargeable agreement for sale

consisted of 2 or more instruments) the date on which the first of those instruments was made; and

- (b) disposes of that person's proportion of the property—
  - (i) on the date on which the conveyance on sale is executed; or
  - (ii) (if the conveyance on sale consists of 2 or more instruments) the date on which the first of those instruments is made.”.

10 In the proposed section 29DA(10), by adding “on sale” after “the conveyance” (wherever appearing).

10 In the proposed section 29DA(11), by deleting everything after “conveyance on sale” and substituting—

“of residential property if—

- (a) the conveyance on sale is any decree or order of any court, which does not include a foreclosure order obtained otherwise than by a mortgagee referred to in paragraph (b)(vi)); or

- (b) the property—

- (i) was transferred to or vested in the transferor by or pursuant to any decree or order of any court, which does not include—
  - (A) a foreclosure order obtained otherwise than by a mortgagee referred to in subparagraph (vi); and
  - (B) an order for sale as defined in section 2(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545);
- (ii) relates solely to the estate of a deceased person;
- (iii) was devised by or otherwise passed on the death of the deceased person under a will, the law of

intestacy or right of survivorship to the transferor;

- (iv) relates solely to a bankrupt's estate;
- (v) relates solely to the property of a company being wound up under section 177(1)(d) of the Companies Ordinance (Cap. 32); or
- (vi) is the subject of a sale by a mortgagee (being a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112)) or a receiver appointed by such a mortgagee.”.

10

In the proposed section 29DA(12)—

- (a) in the English text, by deleting “with a” and substituting “on a”;
- (b) by adding “on sale” after “the conveyance”.

10

In the proposed section 29DA, by adding—

“(13A) Paragraphs (a), (b), (c) and (d) of section 29D(6) also apply for the purposes of this section.”.

10

In the proposed section 29DA(14), by adding “on sale” after “the conveyance”.

New

By adding—

**“11A. Section 44 amended (Relief in case of gift to exempted institution)**

Section 44(1)—

**Repeal**

“or head”

**Substitute**

“or (1AA) or ”.”.

- 12 By deleting everything after “Section” and substituting—  
 “45(1)—  
**Repeal**  
 “, 2(1) and 2(3)”  
**Substitute**  
 “or (1AA) or 2(1) or (3)”.”.
- 14(2) In the proposed head 1(1AA), in Note 1, by deleting “section” and substituting “sections 29D and”.
- 14(2) In the proposed head 1(1AA), in paragraph (a) of Note 2, by adding “on sale” after “the conveyance”.
- 14(2) In the proposed head 1(1AA), in paragraph (b) of Note 2—  
 (a) in the English text, by deleting “with” (wherever appearing) and substituting “in respect of”;  
 (b) by adding “on sale” after “the conveyance”.
- 14(2) In the proposed head 1(1AA), in Note 3, by adding “; but see section 29DA(11)” after “under head 1(1)”.
- 14 By adding—  
 “(2A) First Schedule, head 1(1A), paragraph (B)—  
**Repeal**  
 “section 29C(11) and”.  
 (2B) First Schedule, head 1(1A), Note 2, paragraph (a)—

**Repeal**

“but subject to section 29C(11)”.

(2C) First Schedule, head 1(1A), Note 2, paragraph (b)—

**Repeal**

“, or is endorsed under section 29C(13)(a)”.

(2D) First Schedule, head 1(1A), Note 3, paragraph (b)—

**Repeal**

“, or is endorsed under section 29C(13)(a)”.

(2E) First Schedule, head 1(1A), Note 3, paragraph (b)(ii)—

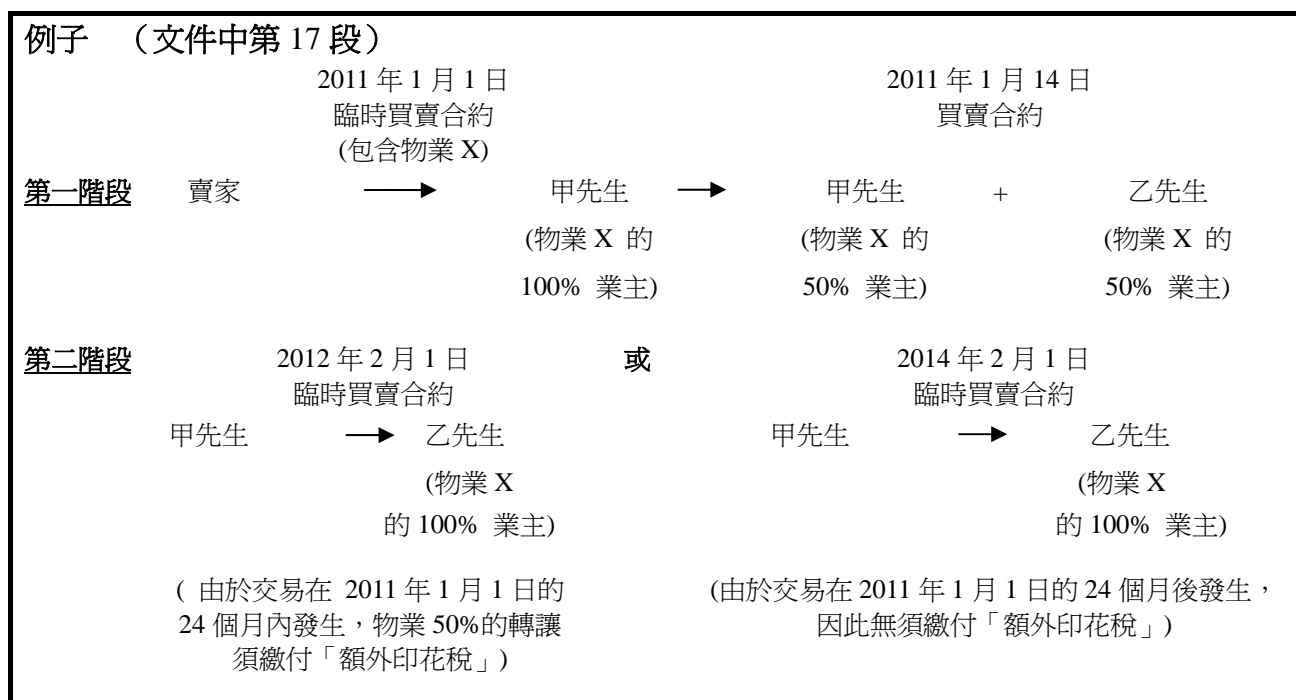
**Repeal**

“and section 29C(11)”.

14(3) In the proposed head 1(1B), in Note 1, by deleting “section” and substituting “sections 29C and”.

14(3) In the proposed head 1(1B), in the English text, in paragraph (b) of Note 2, by deleting “with” (wherever appearing) and substituting “in respect of”.

假如增加名字獲豁免，炒家可避過「額外印花稅」的例子



## 建議的豁免

### (a) 《條例草案》下建議的豁免

- (i) 提名由近親人士（即父母、配偶或子女）接受物業權益以及把物業轉售或轉讓予近親人士
- (ii) 聯營公司之間進行物業
- (iii) 因破產/非自願的清盤而出售物業
- (iv) 把物業轉售予政府

### (b) 在修訂的修正案中建議的進一步豁免

- (i) 由法庭頒令作出或依據法庭頒令作出而非自願的物業出售或轉讓(包括下文(ii)段所講承按人或接管人的止贖令，但不包括因為《土地（為重新發展而強制售賣）條例》下發出售賣令而須出售的住宅單位
- (ii) 屬《稅務條例》（第 112 章）第 2 條所指的財務機構的承按人，或該承託人委任的接管人，透過不同方式把已承按的物業作非自願性出售
- (iii) 受益人出售/轉讓一個從離世者遺產中繼承的住宅物業