

立法會
Legislative Council

LC Paper No. CB(1) 2816/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/10/2

Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010

Minutes of twelfth meeting
held on Thursday, 19 May 2011, at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon James TO Kun-sun (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king, JP
Hon Paul TSE Wai-chun

Members absent : Hon Albert HO Chun-yan
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Alan LEONG Kah-kit, SC

Public officers : **For item II**
attending

Transport and Housing Bureau

Ms Annette LEE
Deputy Secretary for Transport and Housing (Housing)

Mr Eugene FUNG
Principal Assistant Secretary for Transport and
Housing (Housing)(Private Housing)

Inland Revenue Department

Mr WONG Kuen-fai
Deputy Commissioner of Inland Revenue (Technical)

Mr HONG Wai-kuen
Senior Superintendent of Stamp Office

Department of Justice

Ms Phyllis KO
Senior Assistant Law Draftsman

Mr CHEUNG Man-yiu
Senior Government Counsel

Mr Manuel NG
Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Council Secretary (1)1

I. Confirmation of minutes

(LC Paper No. CB(1) 2152/10-11 — Minutes of the meeting held
on 1 April 2011)

The minutes of the meeting held on 1 April 2011 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 2183/10-11(01) — List of follow-up actions arising from the discussion at the meeting on 5 May 2011

LC Paper No. CB(1) 2183/10-11(02) — Administration's response to CB(1) 2183/10-11(01)

LC Paper No. CB(1) 2183/10-11(03) — Submissions from three members of the public

LC Paper No. CB(1) 2221/10-11(01) — Administration's response to CB(1) 2183/10-11(03)

LC Paper No. CB(1) 2221/10-11(02) — Marked-up copy of the Bill incorporating the draft Committee Stage amendments received so far)

2. The Bills Committee deliberated (Index of proceedings attached in **Annex**).

3. The Administration was requested to -

(a) provide a paper explaining the Administration's interpretation of the term "the residential property concerned" in proposed section 29CA(2), and the application of the term to both land and properties;

(b) advise the application of special stamp duty (SSD) to the following cases -

(i) a developer acquired a site, demolished the existing building and sold 50% of the bare site to a joint venture company within 24 months of acquisition, as well as the situation where the joint venture took place before demolition of the building; and

(ii) a buyer acquired a property, build an additional storey according to the permitted plot ratio and sold the property (with the additional storey built thereon) within 24 months of acquisition; and

(c) re-consider the need for exemption of option to purchase immovable property from the payment of SSD lest this might be exploited for speculation.

4. Members agreed to continue discussion at the next meeting scheduled for Monday, 30 May 2011, at 8:30 am.

III. Any other business

5. There being no other business, the meeting ended at 12:15 pm.

Council Business Division 1
Legislative Council Secretariat
25 July 2011

Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010

**Proceedings of twelfth meeting
held on Thursday, 19 May 2011, at 10:45 am
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
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| <i>Agenda Item I - Confirmation of minutes</i> | | | |
| 000437 - 000521 | Chairman | The minutes of the meeting held on 1 April 2011 (LC Paper No. CB(1) 2152/10-11) were confirmed. | |
| <i>Agenda Item II - Meeting with the Administration</i> | | | |
| 000522 - 001328 | Chairman Administration | Administration's explanation on its response to issues raised at the meeting on 5 May 2011(LC Paper No. CB(1) 2183/10-11(02)). | |
| 001329 - 001634 | Chairman Mr Abraham SHEK Administration | Mr Abraham SHEK's remarks that - (a) he would consider moving Committee Stage amendments (CSAs) to exempt the sale/transfer of bare sites not obtained from the Government within 24 months after acquisition from payment of special stamp duty (SSD) to ensure that the pace of development and supply of residential units would not be affected; (b) he would also consider moving CSAs to provide a sunset clause for SSD; and (c) the draft CSAs would be ready for members' consideration as soon as practicable. | |
| 001635 - 001758 | Chairman | Chairman's view that the Administration should be clear about the policy intent on the application of SSD to the sale/transfer of bare sites and residential units built thereon to avoid misinterpretation. | |
| 001759 - 002022 | Chairman Ms Miriam LAU Administration | Ms Miriam LAU's enquiry on the means through which the policy intent on the application of SSD to the sale/transfer of bare sites could be conveyed to the | |

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| | | <p>public.</p> <p>Administration's explanation-</p> <p>(a) had explained to the Law Society of Hong Kong (LS) that it was not the policy intention to apply SSD to the sale of first-hand residential properties;</p> <p>(b) would maintain close liaison with LS on the application of SSD; and</p> <p>(c) would clearly explain the policy intent in the speech to be delivered at the resumption of Second Reading debate on the Bill.</p> | |
| 002023 - 002506 | <p>Chairman Ms Audrey EU Administration Dr Margaret NG</p> | <p>Ms Audrey EU's requests -</p> <p>(a) confirmation on LS's agreement to the policy intent as set out in the Administration's paper; and</p> <p>(b) frequently asked questions and pamphlets on the application of SSD should be prepared to facilitate public understanding.</p> <p>Administration's response -</p> <p>(a) LS had set out its views in the submission to the Bills Committee dated 18 May 2011 (LC Paper No. CB(1) 2232/10-11(01)); and</p> <p>(b) publicity efforts would be stepped up to enhance public understanding on the application of SSD.</p> | |
| 002507 - 002913 | <p>Chairman Administration Mr Abraham SHEK</p> | <p>Discussion on the applicability of SSD to sale/transfer of bare sites.</p> <p>Administration's explanation that, in general, the sale of first-hand residential properties would not be SSD-chargeable.</p> | |
| 002914 -004654 | <p>Chairman Administration Ms Audrey EU Mr CHAN Kam-lam Ms Miriam LAU</p> | <p>Discussion on the phrase "residential property concerned" under proposed sections 29CA(2) and 29CA(3A) under the revised CSAs</p> | |

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| | Mr Abraham SHEK | <p>Dr Margaret NG's views and enquiries -</p> <p>(a) whether a lot with a building thereon would be regarded as the same property after demolition of the building;</p> <p>(b) if the property concerned was the lot, this would still be the same property irrespective of whether there was a building on it; and</p> <p>(c) there should be a clear interpretation for the phrase "residential property concerned".</p> <p>Audrey EU's view and enquiry -</p> <p>(a) under existing laws, conveyancing of properties was in fact the transfer of undivided shares of the lot concerned; and</p> <p>(b) whether the resale of a property with an additional storey subsequently built on it after acquisition would be regarded as the "residential property concerned", and whether this would be subject to SSD.</p> <p>Administration's explanation -</p> <p>(a) proposed section 29CA(3A) under the revised CSAs provided exemption for sale/transfer of redeveloped residential flats after demolition of the original properties acquired within 24 months; and</p> <p>(b) a developer who acquired a bare site not from the Government and, instead of building on it, sold/transferred the bare site within 24 months would be subject to SSD.</p> | |
| 004655 - 004809 | Chairman Mr Abraham SHEK Ms Miriam LAU Administration | <p>Discussion on joint venture for redevelopment.</p> <p>Ms Miriam LAU's enquiry on the applicability of SSD to a developer who acquired a site but had to sell 50% of the bare site to a joint venture company</p> | |

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| | | <p>within 24 months because he did not have the financial means to redevelop the site.</p> <p>Administration's explanation that if a developer acquired a site not from the Government and disposed of whole or part of it within 24 months, SSD would be chargeable on the part which had been disposed of.</p> | |
| 004810 - 010334 | <p>Chairman Ms Miriam LAU Dr Margaret NG Administration Mr LEE Wing-tat</p> | <p>Ms Audrey's EU and Dr Margaret NG's enquiries/views -</p> <p>(a) whether the "residential property concerned" under proposed section 29CA(2) included a property with an additional storey subsequently built thereon, and/or substantial alterations being made for the purposes of SSD; and</p> <p>(b) the interpretation for "residential property concerned" under the Bill might change the existing concept of conveyancing which involved the sale of undivided shares.</p> <p>Ms Miriam LAU's further enquiries on the applicability of SSD to a developer who acquired a site, demolished the existing building and sold 50% of the bare site to a joint venture company within 24 months of acquisition, as well as the situation where the joint venture took place before demolition of the building.</p> <p>Chairman's concerns about possible litigations associated with the interpretation of the "residential property concerned" and the applicability of SSD.</p> <p>Administration's explanation -</p> <p>(a) a property which had undergone internal alterations after acquisition would still be the "residential property concerned"; and</p> <p>(b) will provide a paper on the applicability of SSD to the case</p> | <p>The Administration to -</p> <p>(a) provide a paper explaining its interpretation of the term "the residential property concerned" in proposed section 29CA(2), and the application of the term to both land and properties; and</p> <p>(b) advise the application of SSD to the following cases -</p> <p>(i) a developer acquired a site, demolished the existing building and sold 50% of the bare site to a joint venture company within 24 months of acquisition, as well as the situation where the joint venture took place before demolition of the building; and</p> <p>(ii) a buyer acquired a property, build an additional storey according to the permitted plot ratio and</p> |

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| | | <p>where additional floors were built on a property and resold within 24 months.</p> | <p>sold the property (with the additional storey built thereon) within 24 months of acquisition.</p> |
| 010335 - 010541 | <p>Chairman Mr Abraham SHEK Ms Miriam LAU Administration</p> | <p>Mr Abraham SHEK's views -</p> <p>(a) the provisions in the Bill should be clear to avoid possible loopholes; and</p> <p>(b) SSD should be introduced as a special measure to curb property speculation rather than as a regular tax.</p> | |
| 010542 - 010914 | <p>Chairman Mr Abraham SHEK</p> | <p>Discussion on the proposal to provide regular progress reports on SSD to the Panel on Housing, and the reference to parent, child, brother and sister in the proposed Note 2A of head 1(1B) in the First Schedule under the revised CSAs.</p> | |
| 010915 - 011435 | <p>Chairman Administration Mr Abraham SHEK Ms Audrey EU</p> | <p>Administration's explanation on its response to submissions from organizations and individuals (LC Paper No. CB(1) 2221/10-11(01)).</p> <p>Members' concern that the exemption of option to purchase immovable property from the definition of "agreement for sale" might be exploited for speculation.</p> <p>Administration's explanation -</p> <p>(a) ad valorem stamp duty would apply to option to purchase immovable property; and</p> <p>(b) the reason for proposing the exclusion of "an option to purchase immovable property" and "a right of pre-emption in respect of immovable property" from the definition of "agreement for sale" was that according to legal advice equitable ownership did not pass from the vendor to the purchaser upon granting of option or right of pre-emption. In other words, the</p> | <p>The Administration to re-consider the need for exemption of option to purchase immovable property from the payment of SSD lest this might be exploited for speculation.</p> |

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| | | purchaser was not considered under the Bill as having “acquired” the property. | |
| 011436 - 012217 | Chairman Administration Mr Abraham SHEK Ms Miriam LAU | Members' agreement to hold the next meeting on Monday, 30 May 2011, at 8:30 am. Ms Miriam LAU's request to expedite the legislative process of the Bill on account of its retrospective effect. | |

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Legislative Council Secretariat
25 July 2011