

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

Committee Stage Amendments on the acquisition and disposal of properties, and further exemptions

Purpose

This paper presents the amendments we intend to make to the Stamp Duty (Amendment) (No.2) Bill 2010 (the Bill) for Members' consideration.

Background

2. The Administration submitted to the Bills Committee on 9 March 2011 a set of draft Committee Stage Amendments (CSAs) (CB(1)1536/10-11(03)) to set out the original proposal in more explicit terms as to how the date of acquisition or disposal of residential properties for the purpose of charging of the Special Stamp Duty (SSD) should be determined. Also, the Administration informed the Bills Committee that as regards the various proposals received from the Bills Committee Members and deputations for more exemptions, we would carefully consider the matter before reverting. Members made various comments on the CSAs, and requested the Administration to prepare a paper to explain the rationale for the CSAs.

3. The Administration has now come up with draft CSAs on further exemptions, and has refined the CSAs on the definition of "acquisition" and "disposal of" properties. To facilitate Members' examination of the draft CSAs, we have put all the CSAs into a consolidated CSA document (revised draft CSAs) at **Annex A**.

CSAs on Definition of "Acquisition" and "Disposal" of Properties

4. The Bill stipulates that SSD applies to the disposal of properties which is acquired on or after 20 November 2010 and resold within 24 months after acquisition. Also, the SSD adopts a set of regressive rates for different holding periods.

5. Under the Bill, a person “acquires” a residential property when equitable ownership or legal ownership of the property is passed to the person, and a person “disposes of” a property when equitable ownership or legal ownership of the property passes from that person to another person.

6. Since the announcement of the introduction of SSD on 19 November 2010, we have received various comments and enquiries from Members, deputations, professional and related trade associations, and the public on the terms “acquire” and “dispose of” in the context of the Bill. The Administration has carefully listened to these views and considers there is a need to set out the original proposal in more explicit terms as to how the date of acquisition or disposal of ownership for the purpose of charging of SSD should be determined.

7. Premised on the principle that a person “acquires” or “disposes of” a property when equitable ownership or legal ownership of the property is passed, we proposed in the CSAs submitted to the Bills Committee on 9 March 2011 that the acquisition and disposal dates of a property will be based on the signing date of the chargeable agreement for sale, or if no such chargeable agreement exists, the signing date of conveyance (i.e. Assignment). Chargeable agreement as currently defined in the Stamp Duty Ordinance (Cap. 117) (SDO) includes the Provisional Agreement for Sale and Purchase (PASP) and the Agreement for Sale and Purchase (ASP). When there is more than one chargeable agreement for sale in a transaction, the signing date of the earliest agreement will be taken as the date of acquisition or disposal of the property.

8. We have further proposed in the CSAs of 9 March 2011 that for the purpose of the determination of the date of acquisition or disposal, chargeable agreements include those “agreements for sale” as defined in section 29A of the existing SDO, except those instruments which have conferred a person with an option to purchase a property as defined under paragraph (b) of section 29A(1) of SDO. Based on legal advice, “equitable ownership” in a property will not pass from the vendor to the purchaser under those types of “agreement for sale”.

9. As we mentioned at the Bills Committee meeting on 10 March 2011, the Administration has been in discussion with the Law Society of Hong Kong (the Law Society) regarding the CSAs. One of the comments made by the Law Society regarding the CSAs of 9 March 2011 is that tighter wordings should be used to precisely reflect our intention of

exclusion. More specifically, “agreement for sale” as defined under paragraph (b) of section 29A (1) of SDO includes “an option to purchase immovable property”, “a right to purchase immovable property” and “a right of pre-emption in respect of immovable property”. “An option to purchase immovable property” and “a right of pre-emption in respect of immovable property” are clear. “A right to purchase immovable property”, however, appears to overlap with the “agreement for sale” as defined under paragraph (a) of section 29A (1) of SDO which is an instrument in which a person contracts to sell or purchase immovable property and which we have no intention to exclude.

10. Having taken into account the Law Society’s views in paragraph 9, we have further clarified in the revised draft CSAs at Annex A that, for the purpose of the determination of the date of acquisition or disposal, chargeable agreements include those “agreements for sale” as defined in section 29A of the existing SDO, except “an option to purchase immovable property” and “a right of pre-emption in respect of immovable property” as referred to in paragraph (b) of the definition of “agreement for sale” in section 29A(1) of the SDO.

11. In gist, under the CSAs, when there is a signed PASP, the signing date of the PASP, other than an instrument which confers an option to purchase or a right of pre-emption, will be the date of acquisition or disposal of the property for the purpose of calculating the holding period of the residential property. We understand this applies to the majority of PASPs used in the market.

12. The reason that we propose to exclude an instrument which confers an option to purchase or a right of pre-emption as mentioned in paragraphs 10 and 11 above is that, according to legal advice, in such cases, “equitable ownership” does not pass from the vendor to the purchaser upon the granting of such an option or a right of pre-emption. In other words, the purchaser is not considered under the Bill as having “acquired” the property. Under such circumstances, the date of signing of the ASP or, if there is no ASP, the signing date of the Assignment will be the date of acquisition or disposal of the property.

Administration’s Response to Issues Raised by Members

13. Members expressed concern that excluding instrument which confers an Option to Purchase Agreements may inadvertently result in a loophole for speculating on such Option to Purchase Agreements with a view to circumventing SSD. We understand that the majority of the PASPs used in the market currently do not fall under this category.

Moreover, the Administration has disallowed confirmor transactions of first-hand uncompleted properties which are granted pre-sale consent on or after 13 August 2010, and purchasers of the properties will not be allowed to re-sell, sub-sell or transfer the benefits of the PASPs/ASPs before completion of Assignment. We therefore consider that the chance of creating a loophole by excluding Option to Purchase Agreements from chargeable agreements for the purpose of charging SSD should be low.

14. Members also deliberated on the application of SSD in the case where there is addition or deletion of names when executing a chargeable agreement or Assignment. In this respect, Members may wish to note that under the existing SDO, as a tax avoidance measure, chargeable agreements or Assignments with names of purchasers added or deleted will be subject to ad valorem stamp duty except for cases when the persons added or deleted are spouses, parents or children of the original purchaser(s).

15. We have made clear in the CSAs of 9 March 2011 that the same principle will apply to SSD. For example, if a vendor has executed a chargeable agreement for sale (e.g. a PASP) with a Mr. A but in the ASP or the Assignment (which occurs within 24 months after the signing of the PASP) another person, say, Mr. B, is named as an additional purchaser, Mr. A will be regarded as having disposed of 50% of the ownership of the property to Mr. B on the date of the signing of the ASP or the Assignment. As such, 50% of SSD will be applied to the ASP/Assignment by reference to the consideration for the agreement/conveyance to reflect the transfer of 50% of the ownership of the property from Mr. A to Mr. B. Same as ad valorem stamp duty, exemption from SSD will apply where the additional persons are spouses, parents or children of the original purchaser(s).

16. At the meeting of 10 March 2011, Members expressed that adding names in different stages of a property transaction is a common market practice and that under some circumstances, the adding of names does not involve speculation and should be exempted from SSD. However, as mentioned above, the proposed arrangement that adding/deleting names to/from a chargeable agreement or Assignment will be subject to SSD is a tax avoidance measure. Exemptions are proposed for cases involving spouses, parents and children in accordance with the existing SDO regime. We consider that it will create a big loophole for speculation if we depart from the existing tax avoidance regime and extend the exemption to cover, say, unmarried couples, other relatives, and business partners.

17. If adding names are exempted from SSD, a speculator can substantially avoid SSD in part or in full using a two-staged property disposal approach through adding names. A possible scenario is that speculator Mr. A makes a PASP with the vendor to acquire a residential property, and adds the name of another buyer Mr. B in the ASP to take up 50% of the property without triggering SSD. Mr. A may sell the remaining 50% of the property to Mr. B afterwards, thereby successfully passing 100% of the property to Mr. B. If that remaining 50% of the property is passed to Mr. B 24 months after Mr. A has acquired the property, no SSD is payable. If it is passed to Mr. B within 24 months after Mr. A has acquired the property, the amount of SSD payable will be premised on the transfer of 50% of the property.

18. We set out at Annex B for illustration how speculators may avoid SSD in full or in part under the aforementioned scenario.

19. Having regard to the above, we consider a more appropriate way to address Members' concern is to enhance education and publicity efforts to remind home purchasers of the need to pay SSD if non-exempted persons are to be added to or deleted from a chargeable agreement or Assignment in 24 months or less counting from the date of acquisition of the property by the original purchaser(s). Upon the passing of the Bill, IRD will update its practice notes to solicitors and estate agents. Frequently asked questions will also be uploaded onto IRD's websites for public reference.

CSAs on Proposed Further Exemptions

20. Under the current Bill, we have proposed to grant exemptions to the disposal of residential properties acquired on or after 20 November 2010 and resold within 24 months or less under various specific circumstances, namely nomination of a close relative (i.e. spouse, parent or child) to take up the assignment of the property, sale or transfer of the property to a close relative, transfer between associated companies, sale of property due to bankruptcy/involuntary winding up, and sale of property to the Government. In addition, while the current Bill does not provide for exemptions to transactions of residential properties which are acquired on or after 20 November 2010 by a beneficiary of a deceased person and resold in 24 months or less, the Bill provides a concession that, for the purpose of counting the holding period of the property, the date of acquisition of the property by the deceased person will be deemed to be

the date on which the beneficiary acquires the property.

21. Members, deputations, professional and related trade associations have suggested various additional exemptions under different circumstances. We consider that it is very important that the law should be clear and without ambiguity, and that any exemptions to be considered have to be fair and measurable in an objective manner, and the types of exemptions should be clearly set out in the Bill. Exemptions on a case by case basis in the light of individual or personal circumstances such as financial hardship will not be practicable for implementation, and will likely create loopholes for speculators to circumvent the SSD, thereby undermining its effectiveness.

22. We note that many of the stakeholders have made the point that involuntary sale of properties should be exempted as far as possible. Having carefully taken into account the considerations as set out in paragraphs 23 - 31, we have proposed further exemptions under the following circumstances in the revised draft CSAs.

(a) involuntary sale or transfer of properties made by the courts or pursuant to court orders

23. We note that the courts may make orders to direct the sale/transfer of properties under various circumstances or that properties have to be sold pursuant to the court orders, such as in divorce cases. Given that the sale/transfer of properties in execution of or pursuant to a court order is involuntary and that abuse is unlikely, we propose that exemption be granted to involuntary sale or transfer of properties made by the courts or pursuant to court orders, except the compulsory sale of residential properties under a Compulsory Sale Order granted under the Land (Compulsory Sale for Redevelopment) Ordinance¹, (Cap 545) (LCSRO).

¹ Under a sale of residential property carried out pursuant to an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545), SSD may apply if an owner sells the property under the aforementioned order for sale in 24 months or less after acquiring the property.

24. We propose not to exempt SSD in respect of the compulsory sale of properties under a Compulsory Sale Order granted under LCSRO as we cannot rule out the possibility of speculation in the transactions. When individual small owners join together to become majority owners to organise joint sales to realise the redevelopment potential of their lots, the minority owner can be individuals who have made the purchase less than 24 months before the application for compulsory sale. Exempting compulsory sale of properties under a Compulsory Sale Order granted under LCSRO may attract speculation on flats in buildings with high redevelopment potential, given that the costs of speculation will be lower for these flats as compared with other flats.

25. For a genuine minority owner who has unknowingly purchased a property less than 24 months before the lot is put to compulsory sale, and before an application for compulsory sale is even filed with the Lands Tribunal, such that no public channel (such as through the Land Registry records, the notices posted at the subject building on the lot, or through newspaper publications) is available for the genuine minority owners to ascertain whether the lot is a target of compulsory sale application, he will have an opportunity to make representation to the Lands Tribunal on the draft conditions of sale to be prescribed in the compulsory sale order to be granted (the majority owner is required to submit such a draft to the Lands Tribunal for a decision during the hearing of the application for compulsory sale), including any representation on who should pay the SSD. The proposed amendments to SDO to introduce SSD will not affect the power of the Lands Tribunal under section 4(6)(a)(i) of LCSRO to give directions which include such directions as to the settling of the conditions of sale.

26. To provide administrative support to building owners even before the commencement of legal proceedings under the LCSRO, the Development Bureau (DevB) has enlisted the support of the Joint Mediation Helpline Office Limited (a non-profit making organization formed jointly by the eight key institutions in Hong Kong involved in the provision of mediation services) to operate a pilot mediation scheme to facilitate parties involved in or contemplating compulsory sale applications under the LCSRO to undertake mediation on a voluntary basis. The Scheme is financially supported by the Government, including setup and operating costs, as well as financial assistance for

eligible elderly owners to cover the fees of mediators. Under a direction issued by the President of the Lands Tribunal pursuant to section 10(5)(a) of the Lands Tribunal Ordinance and with effect from 15 February 2011, the Lands Tribunal will take into account whether the parties have engaged in mediation when hearing applications for compulsory sale and in exercising its discretion on costs under the Ordinance.

27. Moreover, to provide further assistance to the elderly owners of old buildings, DevB has also commissioned the Senior Citizen Home Safety Association (SCHSA) to launch the Pilot Scheme on Outreach Support Service for Elderly Owners. Since elderly owners may have difficulties in accessing all the relevant information, SCHSA's social workers will proactively explain to them the general practice of property acquisition and the process of compulsory sale under the Ordinance. In order to provide tailor-made outreach support services to them, the social workers will also follow up with elderly owners who need further assistance, including checking for them free-of-charge whether their properties fall within any particular class of lot in terms of compulsory sale application. The social workers will also refer the elderly owners to professionals such as surveyors for advice if they wish.

(b) Involuntary sale of mortgaged properties in various forms by a mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance, (Cap.112), or by a receiver appointed by such a mortgagee for the purpose of enforcing the mortgage

28. Members of the Bills Committee and members of the public have reflected to us that individuals or companies which have mortgaged their properties with banks and financial institutions may be forced to sell the properties due to default in mortgage loan repayment. The sale of properties under such circumstances is not speculative in nature. Exercising the mortgagee's power to sell is the most common way for banks and financial institutions to dispose of a mortgaged property to recover the outstanding loans in the case of default payment. Other avenues include sale by a receiver and sale subsequent to a foreclosure order. Under the current Bill, no matter which of the aforementioned

ways a bank or a financial institution disposes of a property in the case of default, as long as the owner has acquired the property for 24 months or less at the point of sale, the sale will be subject to SSD.

29. Unlike granting exemptions to cases claimed to have financial difficulties, there is an objective yardstick when financial institutions have to dispose of properties in the case of default payment. Also, we consider that it is unlikely that property owners will deliberately default to avoid SSD, because default history will adversely affect their credit profile. We propose the exemption to cover only the sale of mortgaged properties in various forms by a mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112), and by a receiver appointed by such mortgagee for the purpose of enforcing the mortgage. The legal ownership of a property will be passed in a foreclosure order. We propose that, in the case of foreclosure order, the resale of the property by the financial institutions or the receivers to which the ownership of the property has been passed will also be exempted from SSD, though we understand that sale of mortgaged properties by foreclosure order is not common. Financial institutions within the meaning of section 2 of IRO are the Authorized Institutions under the Banking Ordinance (Cap. 155), or associated corporations of such authorized institutions, and all of them are subject to the same high level of regulation and monitoring under the Hong Kong Monetary Authority on financial prudence and professionalism in business practices. Also, these financial institutions will appoint receivers which are trustworthy.

(c) sale or transfer of a residential property by a beneficiary whose property is inherited from a deceased person's estate

30. Under the existing SDO, when an individual inherits a property from a deceased person, the assent which vests legal ownership of the property from the deceased person to the beneficiary is not chargeable with stamp duty. It will therefore also not be chargeable with SSD. However, if the beneficiary sells the inherited property in 24 months or less counting from the date of acquisition of the property by the deceased person, the transaction is SSD-chargeable. There are views that as a beneficiary has inherited rather than acquired the property on his

own accord, and if the beneficiary needs to sell the inherited property shortly for various reasons, such sale should not be caught by SSD.

31. Having carefully considered Members' views and given that the risk of abuse under inheritance cases is remote, we propose that the sale or transfer of a residential property by a beneficiary whose property is inherited from a deceased person's estate be exempted from SSD. With this proposed exemption, the concession as set out in the current Bill that, for the purpose of counting the holding period, the date of acquisition of the property by the deceased person will be deemed to be the date on which the beneficiary acquires the property will not be necessary. We have proposed its deletion in the revised CSAs.

32. A full list of exemptions included in the current Bill and the revised draft CSAs is at **Annex C**.

Transport and Housing Bureau
Inland Revenue Department
Department of Justice
March 2011

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— “6A. Section 29A amended (Interpretation and application of Part IIIA) (1) Section 29A(3A), after “and head 1(1A)”— Add “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”.

List of Proposed Exemptions

(a) Exemptions under the Current Bill

- (i) nomination of a close relative (i.e. spouse, parent or child) to take up the assignment of the property and resale or transfer of the property to a close relative.
- (ii) transfer between associated companies.
- (iii) sale of property due to bankruptcy/involuntary winding up.
- (iv) sale of property to the Government.

(b) Proposed further exemptions in the revised CSAs

- (i) involuntary sale or transfer of property made by or pursuant to a court order (including a foreclosure order obtained by a mortgagee or receiver referred to in subparagraph (ii) below, but does not include a Compulsory Sale Order granted under LCSRO).
- (ii) involuntary sale of mortgaged properties in various forms by a mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance, (Cap.112), or by a receiver appointed by such a mortgagee for the purpose of enforcing the mortgage.
- (iii) sale or transfer of a residential property by a beneficiary whose property is inherited from a deceased person's estate.