

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

Revised Committee Stage Amendments

Purpose

Following the Bills Committee meeting on 19 May 2011, we attach a revised set of the Committee Stage Amendments (CSAs) to the Stamp Duty (Amendment) (No.2) Bill 2010 (the Bill) for Members' consideration.

Background

2. At the Bills Committee meeting on 19 May 2011, Members requested the Administration to reconsider the need to exclude an instrument which confers "an option to purchase immovable property" on the grounds that such means might be exploited for speculation in future.

3. Members also discussed briefly the CSAs submitted on 13 May 2011 to set out clearly that it was not the policy intention of the Administration to apply the Special Stamp Duty (SSD) on first-hand residential properties.

Revised CSAs

As regards 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"

4. As explained in previous meetings, premised on the principle as set out in the Bill that a person "acquires" or "disposes of" a property when equitable ownership or legal ownership of the property is passed, under the proposed CSAs, 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. For the purpose of determining the date of acquisition or disposal, chargeable agreements include those "agreements for sale" as defined in section 29A of the existing Stamp Duty Ordinance (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. The reason that the Administration proposes to exclude an instrument which confers an option to purchase or a right of pre-emption 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.

5. That said, Members expressed concern that such exclusions would create possible loophole for speculators to avoid the SSD in future. Having carefully considered Members’ views, the Administration is prepared to remove the exclusion of “an option to purchase immovable property” and “a right of pre-emption in respect of immovable property”. We have reflected this in the revised CSAs attached.

As regards supply of first-hand residential properties

6. At the request of the Bills Committee, the Administration proposed on 13 May 2011 to add in new sections 29CA(3A) and 29DA(3A) to SDO by way of CSAs to set out clearly that it is not the policy intention to apply SSD to the sale of first-hand residential properties. In gist, the sale/transfer of residential units built on a bare site will not be SSD-chargeable, regardless of whether the developer has acquired the bare site from the Government or from another developer. Sale/transfer of redeveloped residential flats after demolition of the original properties acquired will also not be SSD-chargeable. We now propose to add a new paragraph (b) under the proposed sections 29CA(3A) and 29DA(3A) of SDO respectively to state explicitly that sale/transfer of a bare site after demolition of the original properties acquired will also not be SSD-chargeable.

7. The remaining issues raised by Members at the Bills Committee meeting on 19 May 2011 do not involve CSAs. The Administration will respond in a separate paper.

Transport and Housing Bureau
Inland Revenue Department
Department of Justice
24 May 2011

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)”.

7

By adding—

“(3A) Section 29C(5)(c)(i), Chinese text—

Repeal

“購買人等”

Substitute

“眾購買人的”.

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)(a)—

- (a) by adding “(or, only in so far as it relates to special stamp duty, a person who is a parent, spouse, child, brother or sister of the purchaser)” after “child of the purchaser”;
- (b) in the Chinese text, by deleting “該物業” (wherever appearing) and substituting “該不動產”.

- 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, by adding—
- “(3A) For the purposes of subsections (2) and (3), head 1(1B) in the First Schedule does not apply to a chargeable agreement for sale if the residential property disposed of by the vendor under the agreement, or part of the residential property, consists of—
- (a) any building or any part of a building (whether completed or uncompleted), and—
- (i) the building is constructed, or caused to be constructed, by the vendor;
- (ii) the land on which the building is constructed was acquired by the vendor (irrespective of whether or not any building existed on the land before the construction commenced); and

(iii) the existing building (if any) was demolished, or caused to be demolished, by the vendor; or

(b) any land, and—

(i) a building existed on the land when the land was acquired by the vendor;

(ii) the building was demolished, or caused to be demolished, by the vendor; and

(iii) there is no building on the land at the time of disposal by the vendor.”.

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 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 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(7), by deleting “or child” and substituting “, child, brother or sister”.

8 In the proposed section 29CA(8), by deleting everything after “chargeable agreement for sale” and substituting—

“if—

- (a) the agreement is made pursuant to any decree or order of any court; or
- (b) the residential property in respect of which the agreement is made—

- (i) was transferred to or vested in the vendor by or pursuant to any decree or order of any court;
- (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 vendor;
- (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.”.

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”.

9 By adding—

“(6) Section 29D(6)(c)(ii), after “child of that person”—

Add

“(or, only in so far as it relates to special stamp duty, a parent, spouse, child, brother or sister of that person)”.”.

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(1), by adding “on sale” after “under the conveyance”.

10 In the proposed section 29DA(2)—

- (a) by adding “on sale” after “under the conveyance”;
- (b) 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 In the proposed section 29DA, by adding—

“(3A) For the purposes of subsections (2) and (3), head 1(1AA) in the First Schedule does not apply to a conveyance on sale if the residential property disposed of by the transferor under the conveyance on sale, or part of the residential property, consists of—

- (a) any building or any part of a building (whether completed or uncompleted), and—
 - (i) the building is constructed, or caused to be constructed, by the transferor;
 - (ii) the land on which the building is constructed was acquired by the transferor (irrespective of whether or not any building existed on the land before

- the construction commenced); and
- (iii) the existing building (if any) was demolished, or caused to be demolished, by the transferor; or
- (b) any land, and—
 - (i) a building existed on the land when the land was acquired by the transferor;
 - (ii) the building was demolished, or caused to be demolished, by the transferor; and
 - (iii) there is no building on the land at the time of disposal by the transferor.”.

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 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 on—
 - (i) the date on which that purchaser made a chargeable agreement for sale 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) on—
 - (i) 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 on—
 - (i) 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 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 on—
 - (i) 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 deleting everything after
“transferred under the conveyance” and substituting “on sale is a
parent, spouse, child, brother or sister of the transferor under the
conveyance on sale.”.

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, or is executed pursuant to,
any decree or order of any court; or
- (b) the property—
 - (i) was transferred to or vested in the transferor by or
pursuant to any decree or order of any court;
 - (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), by deleting Note 3.
- 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”.

14(3) In the proposed head 1(1B), by adding—

“Note 2A

A nomination made, or a direction given, by a purchaser as referred to in paragraph (h) of the definition of *agreement for sale* in section 29A(1) in favour of one, or more than one, person who is a parent, spouse, child, brother or sister of the purchaser (whether or not also in favour of the purchaser) is not chargeable with special stamp duty”.

14(3) In the proposed head 1(1B), in Note 3, by adding “; but a person and a brother or sister of that person are also to be treated as the same person for the purposes of special stamp duty” after “under head 1(1A)”.