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

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A BILL

To

Amend the Stamp Duty Ordinance to impose a special stamp duty on certain transactions of residential property if those transactions occur within 24 months after the property has been acquired, and to cancel the existing arrangements under the Ordinance for the deferral of payment of stamp duty chargeable with certain agreements for sale of residential property.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Stamp Duty (Amendment) (No. 2) Ordinance 2010.
 - (2) Subject to subsection (3), this Ordinance is deemed to have come into operation on 20 November 2010.
 - (3) Sections 5, 7(10) and (11), 17 and 18 come into operation on the day on which this Ordinance is published in the Gazette.
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Part 2

Amendments to Stamp Duty Ordinance

2. Stamp Duty Ordinance amended

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 14.

3. Section 2 amended (Interpretation)

(1) Section 2(1), definition of *stamp duty*, after “Ordinance”—

Add

“and includes additional stamp duty chargeable under section 13(10) and special stamp duty”.

(2) Section 2(1), after definition of *recognized stock market*—

Add

“*special stamp duty* (額外印花稅) means special stamp duty chargeable under head 1(1AA) or (1B) in the First Schedule;”.

4. Section 9 amended (Late stamping)

Section 9(1), before “before or within”—

Add

“under section 5(1)”.

5. Section 15 amended (Non-admissibility, etc. of instruments not duly stamped)

(1) Section 15(3)(a)—

Repeal

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

Part 2
Clause 6

(2) After section 15(4)—

Add

“(5) The amendment made by section 5(1) of the Stamp Duty (Amendment) (No. 2) Ordinance 2010 (of 2010) (*amending section*) 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 subsection (3)(a) as in force immediately before that date applies to the agreement as if that amendment had not been made.”.

6. Section 18A amended (Fraction of \$1 reckoned as \$1)

Section 18A—

Repeal

“, additional stamp duty”.

7. Section 29C amended (Chargeable agreements for sale)

(1) Section 29C—

Repeal subsection (2)

Substitute

“(2) A chargeable agreement for sale is chargeable with stamp duty even if—

(a) it does not contain the matters specified in section 29B(5); or

(b) it has not been executed by all persons who are required by section 29B(1) to execute it,

or both, but the Collector may refuse to stamp the agreement.”.

(2) Section 29C(3)—

Repeal

everything after “head 1(1A)”

Substitute

“and (1B) in the First Schedule and to section 29F) each agreement is chargeable with stamp duty.”.

- (3) Section 29C(4)—

Repeal

everything after “head 1(1A)”

Substitute

“and (1B) in the First Schedule and to section 29F) each agreement is chargeable with stamp duty.”.

- (4) Section 29C(5)—

Repeal

“section 29D(4) or (5)”

Substitute

“sections 29D(4) or (5) and 29DA(4) or (5)”.

- (5) Section 29C(5A)(a), after “head 1(1A)”—

Add

“or (1B)”.

- (6) Section 29C(5A)(b)—

Repeal

everything after “subsection”

Substitute

“(5AA), despite paragraph (a), the agreement continues to be regarded as an agreement for sale to which head 1(1A) and (1B) in the First Schedule applies.”.

Part 2
Clause 7

(7) After section 29C(5A)—

Add

“(5AA) In relation to an agreement for sale made in respect of any residential property (*first agreement*), there is occurrence of a specified event if—

(a) another agreement for sale is made by the purchaser under the first agreement in which the purchaser makes a nomination or gives a direction that—

(i) transfers, or gives a power to transfer, any benefit of the purchaser in respect of the property or any part of the property under the first agreement; or

(ii) authorizes another person to take a conveyance of the property or any part of the property or to execute such a conveyance in favour of a third party,

other than a nomination made, or a direction given, in favour of a person who is to be a trustee for the purchaser in respect of the property or the part of the property, or in favour of a person who is a parent, spouse or child of the purchaser, whether or not also in favour of the purchaser; or

(b) another agreement for sale is made for the sale of the property or any part of the property—

(i) between the vendor under the first agreement and a party introduced, directly or indirectly, to the vendor by the purchaser under the first agreement; or

(ii) under the direction of or upon the request of the purchaser.”.

(8) Section 29C(5B)—

Repeal paragraph (a)

Substitute

“(a) Subject to paragraph (b), if any monies have been paid under this Ordinance, whether by way of stamp duty or penalty, in respect of an agreement for sale as an agreement for sale to which head 1(1A) or (1B) in the First Schedule applies, but the agreement is under subsection (5A)(a) not regarded as an agreement for sale to which that head applies, the Collector must refund the monies paid.”.

(9) Section 29C(10)—

Repeal

“for the consideration”.

(10) Section 29C—

Repeal subsections (11), (12) and (13).

(11) At the end of section 29C—

Add

“(16) The amendments made by section 7(10) of the Stamp Duty (Amendment) (No. 2) Ordinance 2010 (of 2010) do not apply in respect of a chargeable agreement for sale that was entered into before the date of commencement of that section, and subsections (11), (12) and (13) as in force immediately before that date apply to the agreement as if those amendments had not been made.”.

8. Section 29CA added

After section 29C—

Add

“29CA. Special stamp duty chargeable with certain agreements for sale

- (1) Head 1(1B) in the First Schedule applies to a chargeable agreement for sale of any residential property acquired on or after 20 November 2010 by the vendor under the agreement.
- (2) A chargeable agreement for sale is chargeable with special stamp duty under head 1(1B) in the First Schedule if the residential property concerned is disposed of within a period of 24 months beginning on the day on which the vendor under the agreement acquired the property.
- (3) If only part of the residential property is acquired within the 24-month period, special stamp duty is chargeable only by reference to that part.
- (4) For the purposes of this section and head 1(1B) in the First Schedule, and subject to subsection (5), a person acquires any residential property when equitable ownership or legal ownership of the property is passed to the person (whichever occurs first).
- (5) If a person acquires any residential property under a will, the law of intestacy or right of survivorship, the date of acquisition by the person is the date on which the deceased person concerned acquired the property.
- (6) For the purposes of this section and head 1(1B) in the First Schedule, a person disposes of any residential property when equitable ownership or legal ownership of the property passes from the person to another person (whichever occurs first).
- (7) Head 1(1B) in the First Schedule does not apply to a chargeable agreement for sale if the purchaser under the agreement is a parent, spouse or child of the vendor under the agreement.

Part 2
Clause 9

- (8) Head 1(1B) in the First Schedule does not apply to a chargeable agreement for sale if the residential property in respect of which the agreement is made relates solely to—
- (a) a bankrupt's estate; or
 - (b) the property of a company which is being wound up by the Court of First Instance under section 177(1)(d) of the Companies Ordinance (Cap. 32).
- (9) The special stamp duty chargeable with a chargeable agreement for sale under head 1(1B) in the First Schedule is in addition to any other stamp duty with which the agreement is chargeable.
- (10) If an instrument is not chargeable with stamp duty under head 1(1A) in the First Schedule, it is not chargeable with special stamp duty under head 1(1B) in that Schedule.”.

9. Section 29D amended (Conveyances on sale of residential property)

- (1) Section 29D(2)(b)(i), after “head 1(1)”—

Add

“and (if applicable) (1AA)”.

- (2) Section 29D(3)(a), after “head 1(1)”—

Add

“and (if applicable) (1AA)”.

- (3) Section 29D(3)(b), after “head 1(1)”—

Add

“and (if applicable) (1AA)”.

- (4) Section 29D(4)(b)—

Repeal subparagraph (i)

Part 2

Clause 10

Substitute

“(i) the Collector may refuse to stamp the conveyance.”.

(5) Section 29D(5)(b)—

Repeal subparagraph (i)

Substitute

“(i) the Collector may refuse to stamp the conveyance.”.

10. Section 29DA added

After section 29D—

Add

“29DA. Special stamp duty chargeable with certain conveyances on sale

- (1) Head 1(1AA) in the First Schedule applies to a conveyance on sale of any residential property acquired on or after 20 November 2010 by the transferor under the conveyance.
- (2) A conveyance on sale is chargeable with special stamp duty under head 1(1AA) in the First Schedule if the residential property concerned is disposed of within a period of 24 months beginning on the day on which the transferor under the conveyance acquired the property.
- (3) If only part of the residential property is acquired within the 24-month period, special stamp duty is chargeable only by reference to that part.
- (4) If a conveyance on sale of residential property is executed in pursuance of a chargeable agreement for sale within 24 months after the date of the agreement, and is in favour of a person named in the agreement

Part 2

Clause 10

as the purchaser and another person who is not so named, then—

- (a) if the agreement is duly stamped, the conveyance is chargeable with special stamp duty under head 1(1AA) in the First Schedule, less a fraction of the special stamp duty representing the proportion of the property that is vested in the person named in the agreement as the purchaser; or
 - (b) if the agreement is not so stamped, the Collector may refuse to stamp the conveyance.
- (5) If a conveyance on sale of residential property is executed in pursuance of a chargeable agreement for sale within 24 months after the date of the agreement, and is in favour of one or some (but not all) of the persons named in the agreement as the purchaser or purchasers, then—
- (a) if the agreement is duly stamped, the conveyance is chargeable with special stamp duty under head 1(1AA) in the First Schedule, less a fraction of the special stamp duty representing the proportion of the property that, according to the agreement, was to be conveyed to the person or persons in whose favour the conveyance was executed; or
 - (b) if the agreement is not so stamped, the Collector may refuse to stamp the conveyance.
- (6) For the purposes of the calculation of special stamp duty chargeable under subsections (4) and (5)—
- (a) the residential property is deemed to have been acquired at the date of the agreement and disposed of at the date of the conveyance;
 - (b) joint tenants are treated as having equal undivided shares in the residential property.

Part 2

Clause 10

- (7) For the purposes of this section and head 1(1AA) in the First Schedule, and subject to subsection (8), a person acquires any residential property when equitable ownership or legal ownership of the property is passed to the person (whichever occurs first).
- (8) If a person acquires any residential property under a will, the law of intestacy or right of survivorship, the date of acquisition by the person is the date on which the deceased person concerned acquired the property.
- (9) For the purposes of this section and head 1(1AA) in the First Schedule, a person disposes of any residential property when equitable ownership or legal ownership of the property passes from the person to another person (whichever occurs first).
- (10) Head 1(1AA) in the First Schedule does not apply to a conveyance on sale if the person to whom the residential property is vested or transferred under the conveyance is a parent, spouse or child of the transferor under the conveyance.
- (11) Head 1(1AA) in the First Schedule does not apply to a conveyance on sale if the residential property in respect of which the conveyance is made relates solely to—
 - (a) a bankrupt's estate; or
 - (b) the property of a company which is being wound up by the Court of First Instance under section 177(1)(d) of the Companies Ordinance (Cap. 32).
- (12) The special stamp duty chargeable with a conveyance on sale under head 1(1AA) in the First Schedule is in addition to any other stamp duty with which the conveyance is chargeable.

Part 2

Clause 11

(13) If an instrument is not chargeable with stamp duty under head 1(1) in the First Schedule, it is not chargeable with special stamp duty under head 1(1AA) in that Schedule.

(14) In this section—

transferor (轉讓方), in relation to a conveyance on sale of residential property, means the person from whom the property is transferred or divested under the conveyance.”.

11. Section 29H amended (Exemptions and relief)

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

Add

“and (1B)”.

12. Section 45 amended (Relief in case of conveyance from one associated body corporate to another)

Section 45(1), after “1(1),”—

Add

“1(1AA),”.

13. Section 68 added

Before the First Schedule—

Add

“68. Transitional provision for Stamp Duty (Amendment) (No. 2) Ordinance 2010

If, but for this section, the time for stamping of any instrument chargeable with special stamp duty falls before the day on which the Stamp Duty (Amendment) (No. 2) Ordinance 2010 (of 2010) was published in the

Part 2

Clause 14

Gazette, that time for stamping is to be replaced by a period of 30 days commencing immediately after that day.”.

14. First Schedule amended

(1) First Schedule—

Repeal

“[ss. 4, 5, 5A, 19, 20, 29, 29A, 29C, 29D, 29G, 29H, 29I, 30, 45 & 47B]”

Substitute

“[ss. 2, 4, 5, 5A, 13, 18D, 19, 19A, 20, 29, 29A, 29C, 29CA, 29D, 29DA, 29G, 29H, 30, 44, 45 & 47B & 2nd Sch.]”.

(2) First Schedule, after head 1(1)—

Add

Part 2

Clause 14

“(1AA) CONVEYANCE ON SALE
CHARGEABLE WITH
SPECIAL STAMP DUTY

- | | |
|---|---|
| <p>(a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired</p> | <p>(A) (a) 15% of the amount or value of the consideration</p> |
| <p>(b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day</p> | <p>(b) 10% of the amount or value of the consideration</p> |
| <p>(c) if the residential property is disposed of within a period of 24 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day</p> | <p>(c) 5% of the amount or value of the consideration</p> |
| | <p>(B) The same time as that which applies to a conveyance on sale specified under sub-head (1)</p> |

Part 2

Clause 14

Note 1

This sub-head is subject to section 29DA

Note 2

(a) If only part of the residential property is disposed of within a period specified in the first column of this sub-head, the special stamp duty chargeable under this sub-head is the percentage (specified opposite to that period) of the amount or value of the consideration for that part as indicated by the parties to the conveyance concerned to the Collector (*part consideration*)

(C) The same parties as those who are liable in respect of a conveyance on sale specified under sub-head (1)".

Part 2

Clause 14

- (b) If different parts of the residential property are disposed of within different periods specified in the first column of this sub-head, the special stamp duty chargeable with any of those parts under this sub-head is the percentage (specified opposite to the period applicable to that part) of the amount or value of the consideration for that part as indicated by the parties to the conveyance concerned to the Collector (*part consideration*), and the special stamp duty chargeable with the property under this sub-head is the total of the special stamp duty chargeable with those parts
- (c) If the Collector is of the opinion that the part consideration does not represent the value of the part concerned, the Collector may substitute that value for the part consideration for the purpose of the calculation of special stamp duty chargeable under this sub-head

Part 2

Clause 14

Note 3

Notes 2, 3 and 4 to head 1(1) apply to special stamp duty chargeable under this sub-head as they apply to stamp duty chargeable under head 1(1)

(3) First Schedule, after head 1(1A)—

Add

**“(1B) AGREEMENT FOR SALE
CHARGEABLE WITH
SPECIAL STAMP DUTY**

- | | |
|---|--|
| <p>(a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired</p> | <p>(A) (a) 15% of the amount or value of the consideration</p> |
| <p>(b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day</p> | <p>(b) 10% of the amount or value of the consideration</p> |
| <p>(c) if the residential property is disposed of within a period of 24 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day</p> | <p>(c) 5% of the amount or value of the consideration</p> |

Part 2

Clause 14

- (B) The same time as that which applies to an agreement for sale specified under sub-head (1A)
- (C) The same parties as those who are liable in respect of an agreement for sale specified under sub-head (1A)".

Note 1

This sub-head is subject to section 29CA

Note 2

- (a) If only part of the residential property is disposed of within a period specified in the first column of this sub-head, the special stamp duty chargeable under this sub-head is the percentage (specified opposite to that period) of the amount or value of the consideration for that part as indicated by the parties to the agreement concerned to the Collector (*part consideration*)

Part 2

Clause 14

- (b) If different parts of the residential property are disposed of within different periods specified in the first column of this sub-head, the special stamp duty chargeable with any of those parts under this sub-head is the percentage (specified opposite to the period applicable to that part) of the amount or value of the consideration for that part as indicated by the parties to the agreement concerned to the Collector (*part consideration*), and the special stamp duty chargeable with the property under this sub-head is the total of the special stamp duty chargeable with those parts
- (c) If the Collector is of the opinion that the part consideration does not represent the value of the part concerned, the Collector may substitute that value for the part consideration for the purpose of the calculation of special stamp duty chargeable under this sub-head

Part 2

Clause 14

Note 3

The Notes to head 1(1A) apply to special stamp duty chargeable under this sub-head as they apply to stamp duty chargeable under head 1(1A)

Part 3

Amendments to Stamp Duty (Specification of Instruments) Notice

15. Stamp Duty (Specification of Instruments) Notice amended

The Stamp Duty (Specification of Instruments) Notice (Cap. 117 sub. leg. B) is amended as set out in section 16.

16. Schedule amended (Specification of instruments)

(1) The Schedule, Part 1, item 1, after “head 1(1)”—

Add

“or (1AA)”.

(2) The Schedule, Part 1, item 2, after “head 1(1A)”—

Add

“or (1B)”.

Part 4

Consequential Amendment

17. Land Titles Ordinance amended

The Land Titles Ordinance (Cap. 585) is amended as set out in section 18.

18. Schedule 3 amended (Consequential amendments)

Schedule 3, section 41(b), new section 15(3)(aa)(ii)—

Repeal

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

Explanatory Memorandum

The object of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) (*the Ordinance*) to impose a special stamp duty chargeable with an agreement for sale or a conveyance on sale of any residential property if the property has been acquired by the vendor under the agreement or the transferor under the conveyance for 24 months or less. The Bill also cancels the existing arrangements under the Ordinance for the deferral of payment of stamp duty chargeable with certain agreements for sale of residential property.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 adds a new definition of *special stamp duty*.
4. Clauses 4, 7(1) to (9), 9, 11 and 12 amend sections 9, 29C, 29D, 29H and 45 of the Ordinance to extend the application of those sections, which are currently applicable to conveyances on sale or agreements for sale chargeable with stamp duty under head 1(1) or (1A) in the First Schedule to the Ordinance, to conveyances on sale or agreements for sale chargeable with special stamp duty under head 1(1AA) or (1B) in that Schedule.
5. Clause 7(10) and (11) amends section 29C of the Ordinance to cancel the existing provisions providing for the deferral of payment of stamp duty chargeable with an agreement for sale made in respect of certain residential property, and to make a transitional provision for the cancellation.
6. Clause 8 adds a new section 29CA to impose, subject to certain exceptions, special stamp duty on an agreement for sale made in respect of any residential property that is—
 - (a) acquired by the vendor under the agreement on or after 20 November 2010; and

Explanatory Memorandum
Paragraph 7

- (b) disposed of by that vendor within a period of 24 months beginning on the day of that acquisition.
- 7. Clause 10 adds a new section 29DA to impose, subject to certain exceptions, special stamp duty on a conveyance on sale made in respect of any residential property that is—
 - (a) acquired by the transferor under the conveyance on or after 20 November 2010; and
 - (b) disposed of by that transferor within a period of 24 months beginning on the day of that acquisition.
- 8. Clause 13 adds a new section 68 to provide for a transitional arrangement as regards special stamp duty which, but for that section, would have been payable before the enactment of the Bill.
- 9. Clause 14 amends the First Schedule to the Ordinance to specify the rate of special stamp duty chargeable with a conveyance on sale and an agreement for sale of residential property, the time for stamping and the persons who are liable to pay special stamp duty.
- 10. Clause 16 amends the Schedule to the Stamp Duty (Specification of Instruments) Notice (Cap. 117 sub. leg. B) to allow payment of special stamp duty through electronic stamping.