



梁繼昌議員 Hon Kenneth Leung

11 November 2013

The Honourable Starry LEE Wai-king, JP
Chairman, Bills Committee on Stamp Duty (Amendment) Bill 2012
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
c/o Ms Annette Lam, CCS(1)3

Dear Starry

**Stamp Duty (Amendment) Bill 2012
Committee Stage Amendment (“CSA”)**

I intend to move a committee stage amendment to the Stamp Duty (Amendment) Bill 2012. The bilingual texts of the proposed amendment are attached for your consideration.

The introduction of the CSA will address concerns of certain members of the Committee expressed in the Bills Committee meeting held on 28 October 2013 concerning persons who are not permanent residents in Hong Kong making use of trust set up to circumvent buyer's stamp duty.

The amendment will enhance and clarify the mischief of the Bill which, amongst other things, imposes a buyer's stamp duty on residential property on buyers who are not Hong Kong permanent residents.

The introduction of the domicile concept is to ensure that only those Hong Kong permanent residents with real nexus with Hong Kong will be exempted from buyer's stamp duty when purchasing the first residential property in Hong Kong.

I would urge the whole Committee to support this amendment for the following reasons.



- (1) Domicile is an established common law concept commonly used in the legislative domain concerning taxation and other areas of law;
- (2) The domicile concept is codified under the Domicile Ordinance (Cap. 596) of the laws of Hong Kong;
- (3) It is a neat and tidy amendment;
- (4) The amendment plugs certain avoidance loopholes in the Bill without creating any discriminatory effect;
- (5) It gives more legal back-up to the Inland Revenue Department to exercise administrative discretion in order to screen out those aggressive tax planning cases to avoid buyer's stamp duty; and
- (6) Most people who fall within the definition of Hong Kong permanent residents (before the CSA in this letter) will not be affected by the CSA since in most circumstances they should also be domiciled in Hong Kong (although one should note that permanent residency and domicile are two different but sometimes overlapping concepts).

I attach a very brief explanation of the concept of a domicile in the annex to this letter. Members of the Committee should refer to the Domicile Ordinance for further detail.

Yours sincerely,

Kenneth Leung

Encl.

c.c. Members of the Bills Committee on Stamp Duty (Amendment) Bill 2012



Enclosure

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendments to be moved by Hon Kenneth Leung

Clause

Amendment Proposed

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In the proposed section 29A(1), by adding at the end of the definition of “Hong Kong permanent resident (香港永久性居民)”

“and under either (a) or (b) is domiciled in Hong Kong.”



《2012 年印花稅 (修訂) 條例草案》

委員會階段

梁繼昌議員將動議的修正案

條文

動議的修訂

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在建議的第 29A(1)條，在香港永久性居民 (Hong Kong permanent resident) 的定義的最後部份中，加入—

“同時，(a) 或(b) 情況下的相關人士的居籍必須為香港。”



Annex

Interpretation of this annex

In this annex, a reference to one gender includes all genders.

Understanding domicile

Domicile is not the same as nationality or residence. A person's domicile is decided under general law, which means it must be interpreted according to previous rulings of the courts. In Hong Kong, domicile is determined in accordance with the provisions of the Domicile Ordinance, which has basically codified the rulings of the courts in some of the common law jurisdictions.

Questions of domicile can be complex but broadly speaking a person will have a domicile in the country or jurisdiction that is his 'real' or permanent home which, if he has left, he intends to return to.

A person cannot be without a domicile, and one can only have one domicile at a time.

There are three types of domicile:

- domicile of origin
- domicile of dependence
- domicile of choice

Domicile of origin

Everyone acquires a domicile of origin at birth. This is usually the place that has the person's father considered to be his real or permanent home at the time of the person's birth. If a person's parents were not married when he was born, his domicile of origin comes from his mother.

A person's domicile of origin will continue until he acquires a new domicile – therefore if a person has a domicile of origin outside Hong Kong, then this is likely to still apply unless that person intends to remain and live in Hong Kong permanently or indefinitely.



Domicile of dependence

If a person is legally dependent on another person, for example, because first mentioned person is a child, he will automatically have the same domicile as the other person – so if the other person's domicile changes, the first mentioned person's domicile will change too.

Domicile of choice – changing one's domicile

After attaining the age of 18, a person can change one's domicile. To do this he will need to settle with the intention to settle permanently or indefinitely in a country or jurisdiction other than one's previous country of domicile.