

**The Administration's response to the submission from  
the Hon James To Kun-sun**

This paper serves to respond to the issues set out in the letter dated 30 January 2013 from the Hon James To Kun-sun.

**Application of the Buyer's Stamp Duty ("BSD") to minor and mentally incapacitated persons**

2. It is the policy intent that the BSD should be levied on agreements for sale and conveyances on sale of residential properties executed by any person (including companies) except a Hong Kong permanent resident ("HKPR"). Under the Stamp Duty (Amendment) Bill 2012 ("the Bill"), for a HKPR to be exempted from the BSD, the HKPR must be the purchaser / transferee acting on his or her own behalf in the acquisition of the residential property, except for a HKPR who is a minor or a mentally incapacitated person who, due to the lack of capacity to enter into legally binding agreements, must in practice require another person to act on his or her own behalf.

3. We do not have any readily available figure of minor HKPRs whose parents are non-HKPRs. As an indicator, some 200,000 children were born in Hong Kong in the past ten years to Mainland mothers and non-HKPR fathers. We do not have information on how many of these families will acquire residential properties in Hong Kong. Besides, the relevant buyer will only apply for the exemptions provided for under the Bill when the Inland Revenue Department ("IRD") issues demand notes in due course after the Bill is enacted. Therefore, at this stage IRD does not have information on the number of exemption cases under the above-mentioned scenario.

**Number of transactions subject to the enhanced Special Stamp Duty ("SSD") or the BSD**

4. As the Bill is still being scrutinised by the Legislative Council, the IRD will record all the residential property transactions between 27 October 2012 and the date on which the Bill is enacted, and will issue demand notes for the SSD underpaid / BSD after the enactment of the Bill. In this connection, no transaction has been charged with the enhanced SSD and the BSD thus far.

5. According to the IRD's records, since 27 October 2012, there has not been any case subject to the enhanced SSD. In other words, there has not been any resale of residential properties purchased on or after 27 October 2012. This reaffirms the effectiveness of the SSD in combating short-term speculative activities.

6. On the number of potential BSD cases, since the relevant buyers may apply for the exemptions provided for under the Bill when they are demanded by the IRD to pay the duty after the Bill is enacted, we do not know the actual number of BSD cases. According to the IRD's records, among the residential property transactions that took place between 27 October 2012 and 31 January 2013, there were a total of 620 transactions involving non-HKPR (166 cases) or company buyers (454 cases). IRD would ascertain whether these cases are subject to payment of the BSD after the enactment of the Bill.

7. The required information in relation to residential property transactions recorded by the IRD is at **Annex I** for reference.

### **Application of the BSD to companies**

8. It is the policy intent that all companies, regardless of whether the shareholder(s) or director(s) is / are HKPR(s), should be subject to the BSD. We do not consider it appropriate to exempt company buyers from the BSD. In law, a company is an entity independent of its shareholder(s). Under the legal framework of Hong Kong, we have all along distinguished companies by whether they are established locally or overseas, instead of making reference to the HKPR status of shareholders. Besides, even if a self-declaration mechanism is in place as some have proposed, this approach would fail to tackle the problem that the HKPR shareholders can circumvent the BSD through transferring property entitlement to non-HKPR shareholders by ways of nomination, declaration of trust or authorisation, allotment of new shares, or issue of new class of shares, etc. Upon the completion of entitlement transfer, the original shareholders may appear to remain as shareholders of the company. In reality, however, the control of the company has been transferred to someone else. In view of the above, our current view is that it is inappropriate to exempt companies from the BSD simply on the basis that their shareholders are HKPRs.

9. IRD does not keep information on the total number of cases

involving share transfer of “property holding companies”, but has been keeping a close watch on suspected speculation cases in the form of share transfer of “property holding companies”, to ensure that profits derived from property speculations are duly taxed. IRD has been compiling such statistics since April 2010, which are at **Annex II**. The information on suspected share transfer cases of “property holding companies” which were charged to profits tax is at **Annex III**.

10. On the other hand, we do propose that exemption from the BSD be given to the acquisition or transfer of a residential property between associated bodies corporate. By virtue of this exemption, the current relief provided under section 45 of the Stamp Duty Ordinance (Cap.117) will be extended to the BSD. For the purpose of such relief, “associated bodies corporate” are defined as, for two bodies corporate, one is a beneficial owner of not less than 90% of the issued share capital of the other or a third such body is a beneficial owner of not less than 90% of the issued share capital of each. Besides, there is a two-year restriction against de-association of a transferee body corporate from a transferor body corporate or a third body corporate after the transaction. In other words, should there be any change in the issued share capital of the transferee body corporate within two years, the exempted BSD will be recouped from the corporations concerned. The required information in relation to section 45 of Cap.117 is at **Annex IV**.

**Transport and Housing Bureau**  
**February 2013**

**Annex I****Table 1(a): Quarterly breakdown of the numbers of residential property transactions**

<b>Period</b>	<b>Number of agreements for sale of residential properties</b>	<b>As compared with November 2012 to January 2013</b>
Q1 2012	22,796	+4,745
Q2 2012	23,620	+5,569
Q3 2012	24,209	+6,158
November 2012 to January 2013	18,051	N/A

**Table 1(b): Breakdown of residential property transactions in recent three months\***

<b>Month</b>	<b>Total no. of agreements for sale of residential properties (a)</b>	<b>Individual buyer</b>				<b>Company buyer</b>			
		<b>Primary market</b>	<b>Secondary market</b>	<b>Sub-total (b)</b>	<b>Proportion (b)/(a)</b>	<b>Primary market</b>	<b>Secondary market</b>	<b>Sub-total (c)</b>	<b>Proportion (c)/(a)</b>
<b>Nov 2012</b>	6,964	719	5,407	6,126	88%	85	753	838	12%
<b>Dec 2012</b>	3,951	270	3,512	3,782	96%	1	168	169	4%
<b>Jan 2013</b>	7,136	859	6,033	6,892	97%	4	240	244	3%

\* It refers to the number of stamping applications received by the IRD within the particular months. Some of the transactions took place prior to 27 October 2012, and thus not subject to the enhanced SSD or the BSD.

## Annex II

### **Number of suspected speculation cases in the form of share transfer of “property holding companies” (since April 2010)**

<b>Year</b>	<b>Number of cases*</b>
2010**	282
2011	236
2012	423
2013***	38
<b>Total</b>	<b>979</b>

\* IRD does not have breakdown by types of property (i.e. residential vis-à-vis non-residential).

\*\* April to December 2012

\*\*\* January 2013

### Annex III

**Information on share transfer cases of “property holding companies”  
which were charged to profits tax  
(in financial year)**

<b>Financial year</b>	<b>Number of cases*</b>	<b>Amount of profits tax assessed</b>
2010-11	22	\$15.53 million
2011-12	7	\$3.63 million
2012-13**	4	\$0.54 million

\* IRD does not have breakdown by types of property (i.e. residential vis-à-vis non-residential), and hence it is not possible to compare the amount of profits tax assessed and the SSD that may be collected.

\*\* Up to 31 December 2012 only.

## Annex IV

### **The stamp duty relief applications for transfer of residential properties between associated bodies corporate\***

<b>Year / Month</b>	<b>No. of applications**</b>	<b>No. of revoked cases by reason of cessation of associated relationship</b>
2011	259	0
2012	276	1***
November 2012	24	0
December 2012	21	0
January 2013	27	0

\* IRD does not have the breakdown of the cases by types of applicants, e.g. whether the applicant is a developer.

\*\* Each application may involve more than 1 residential property.

\*\*\* SSD / BSD is not involved.