

**The Administration's response to the issues  
raised at the meetings of the Bills Committee on  
the Stamp Duty (Amendment) Bill 2012 held on 18 November 2013**

This paper serves as a response to the issues set out in the letter dated 20 November 2013 from the Legislative Council Secretariat (LC Paper No. CB(1)416/13-14(01) refers).

**Issues in relation to “guardians” and “trustees”**

2. When a minor or a mentally incapacitated person who is a Hong Kong permanent resident (HKPR) acquires a residential property, he/she has to rely on another person to act on his/her behalf as he/she lacks the capacity to enter into legally binding agreements. To cater for the needs of this special group of HKPRs, the Stamp Duty (Amendment) Bill 2012 (the Bill) proposes that if a residential property is acquired on behalf of a HKPR minor or a HKPR mentally incapacitated person by his/her guardian or trustee, the relevant transaction will also be exempted from the Buyer's Stamp Duty (BSD); and the beneficial owner of the residential property concerned remains to be the HKPR minor/mentally incapacitated person. The HKPR status of the trustee/guardian is irrelevant as the trustee/guardian is simply acting on behalf of the HKPR minor or mentally incapacitated person.

3. Regarding scenario (a)(i) as stated in the list of follow-up actions in LC Paper No. CB(1)416/13-14(01), the beneficial owner of the residential property concerned remains to be the HKPR minor, hence the BSD exemption applies. As regards scenarios (a)(ii) and (a)(v), since the acquisitions under these two scenarios involve non-HKPR beneficiaries, the acquisitions will not be exempted from the BSD. As for scenarios (a)(iii) and (a)(iv), given that the HKPR status of the trustee is irrelevant, whether the acquisitions concerned will be exempted from the BSD depends on whether the beneficiaries are HKPR minors.

**Joint acquisition of a residential property by a HKPR and a non-HKPR**

4. As explained in LC Paper No. CB(1)291/13-14(02), for a joint acquisition of a residential property by a HKPR and a non-HKPR, if the relevant agreement for sale does not meet the conditions of any of the proposed BSD exemptions, the instrument will be chargeable with the BSD according to the full value of the transaction. This is an anti-tax avoidance measure introduced into our existing taxation regime in order to prevent situations where a non-

HKPR acquires a residential property jointly with a HKPR with a view to reducing the amount of BSD payable while in fact the acquisition is funded by that non-HKPR.

5. As a matter of fact, other jurisdictions, such as the United Kingdom, Singapore and Macau, have also adopted similar measures. Details are at **Annex**.

### **Issues in relation to the BSD exemption for acquisitions of a replacement property under specified situations by non-HKPR**

6. To address the need of a non-HKPR owner who has been made to sell his/her residential property not of his/her own volition, the Government has proposed in the Bill that the replacement purchase made by a non-HKPR owner affected under any of the specified scenarios will be exempted from the BSD. Such scenarios include, among others, acquisitions by the Urban Renewal Authority (URA), compulsory sale pursuant to an order for sale made under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545), etc.

7. Our proposed BSD regime has not imposed any restriction regarding the size and value of the replacement property, nor the timeframe for the replacement purchase. This is to pursue the policy intention to provide flexibility in the replacement purchases of the affected non-HKPR flat owners who have been made to sell their original residential properties not of their own volition; and to facilitate the smooth implementation of the acquisitions under the specified scenarios which serve public purposes. In addition, given the lack of an objective basis to determine the suggested restrictions with regard to the size, value or timeframe of the replacement purchase, if the restrictions as suggested by Members were to be introduced, they would inevitably be arbitrary and may be subject to query.

8. As regards Members' question on whether resumption of underground strata would trigger the need for a replacement purchase and hence BSD exemption, we would like to reiterate that the policy intention to exempt BSD in replacement purchases by non-HKPR flat owners under the specified scenarios aims to address the needs of the affected flat owners to acquire a replacement residential flat. As explained in LC Paper No. CB(1)291/13-14(02), a resumption of underground strata will not affect the ownership of the flat on the site concerned, and there is no case for the affected owner to acquire a "replacement flat". In reality, it is also unlikely for the affected flat owner to acquire replacement underground strata. In extreme cases where IRD is indeed requested to consider whether the BSD exemption for replacement purchases should apply, the IRD would make reference to the existing conditions under the

relevant instruments, such as the Government lease, to determine whether the immovable property involved is a residential property. Besides, to trigger the exemption, the original residential property concerned and the replacement property should be similar to certain extent in order to constitute a “replacement purchase”<sup>1</sup>. It is therefore unlikely that the BSD exemption for replacement purchases would be granted when a non-HKPR flat owner affected by a resumption of underground strata acquires a residential flat as a “replacement”.

9. The above-mentioned BSD exemption for replacement purchases is applicable to flat owners affected under any of the relevant specified scenarios, irrespective of whether the flat owners are individual or company owners. The scope of the exemption is confined to the scenarios specified in the Bill only. The exemption is provided in pursuance of the policy intention to provide flexibility for the replacement purchases made by the affected non-HKPR flat owners who have been made to sell their original residential properties not of their own volition under these scenarios; and to facilitate the smooth implementation of the acquisitions under these specified scenarios which serve public purposes. As such, this is different from the purchase of residential properties by companies in the general sense and there is no inconsistency in terms of arrangements under the proposed BSD regime.

**Transport and Housing Bureau  
November 2013**

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<sup>1</sup> As explained in LC Paper No. CB(1)291/13-14(02), “replace” means “find or provide a substitute for”. Hence, a “replacement” involves a “substitute” which, according to its ordinary dictionary meaning, is “a thing which is used or stands in place of something else” or “a thing that takes the place or function of another”. In *Re Eskay Metalware Ltd (in liquidation)*[1978] 2 NZLR 46, it is held that to be “in substitution for” means to be put in the place or stand in the stead of... it must have the same kind of function and the subject-matter must be essentially the same without necessarily being identical in its scope...”. Accordingly, for a resumption of underground strata, a residential unit will not be a replacement since the residential unit on the lot affected by the resumption still extant; and the subject matters are not essentially the same and they serve different functions.

**Similar arrangements regarding joint acquisitions  
adopted in other jurisdictions**

**United Kingdom**

- ♦ Purchases by companies (and other non-natural persons) of interests in residential property where the consideration exceeds £2 million will be subject to a higher rate of Stamp Duty Land Tax. Where there are two or more purchasers acting jointly, the higher rate will apply to the full consideration of the transaction if at least one of those purchasers is a company or a non-natural person.

**Singapore**

- ♦ An acquisition of residential property may be subject to Additional Buyer's Stamp Duty (ABSD), which is similar to the BSD under the Bill. The rates of ABSD vary depending on the residential status of the purchaser. If the property is jointly acquired by buyers with different residential status, the higher ABSD rate will apply. For example, while the ABSD rates applicable to the first purchase by a foreign resident, a Singapore permanent resident and a Singapore Citizen are 15%, 5% and 0% respectively, if they buy a property jointly, the highest ABSD rate of 15% shall apply to the full consideration of the transaction, notwithstanding the fact that two of the joint purchasers are non-foreigners.

**Macau**

- ♦ If the purchaser of a residential property is a body corporate, a natural person business owner or a non-local resident, an additional stamp duty will be charged. The additional duty will also apply to the full consideration of the transactions in cases where the property is acquired by two or more persons jointly with one of them being a body corporate, a natural person business owner or a non-local resident.