



立法會 LEGISLATIVE COUNCIL
張宇人議員 Hon Tommy Yu-Yan CHEUNG

敬啟者：

提出修正案

本人就《2012年印花稅（修訂）條例草案》提出修正案，簡介如下：

- 第一、訂明香港永久性居民擁有的公司獲豁免繳納買家印花稅；
- 第二、於政府提交的修正案作出相應的修訂，以包括香港永久性居民的公
司；
- 第三、為額外印花稅及買家印花稅訂下「日落條款」，即為2014年12月31
日午夜為終結日期。

懇請各位議員支持。

此致

立法會《2012年印花稅（修訂）條例草案》委員會

立法會議員張宇人
謹啟

2013年12月4日

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendments to be moved by Hon Tommy Cheung Yu-yan

Clause

Amendment Proposed

- 5 In the proposed section 29A(1), by adding –
- “**HKPR company** (香港永久性居民的公司) means a company limited by shares, being a private company within the meaning of the Companies Ordinance (Cap 32) and –
- (a) the issued share capital of the company comprises solely of ordinary shares;
 - (b) the member or each of the members of the company is a Hong Kong permanent resident and holds one or more shares in the company on his or her own behalf as legal and beneficial owner;
 - (c) the director or each of the directors of the company is a Hong Kong permanent resident.”.
- 9 In the proposed section 29CB, by adding after subsection (2) –
- “(2A) (A) A chargeable agreement for sale is not chargeable with buyer’s stamp duty under head 1(1C) in the First Schedule if it is shown to the satisfaction of the Collector that the purchaser, or each of the purchasers, under the chargeable agreement for sale is a HKPR company acting on its own behalf, that the member or each of the members of the HKPR company is a Hong Kong permanent resident acting on his or her own behalf, and that the director or each of the directors of the HKPR company is a Hong Kong permanent resident, and –
- (1) For the purpose of this subsection, the Collector may require the member or each of the members of the HKPR company to provide a statutory declaration under the Oaths and Declarations Ordinance (Cap 11) declaring that –
 - (a) the purchaser is a Hong Kong permanent resident company acting on its own behalf;
 - (b) the member is a Hong Kong permanent resident and that he or she holds one or more shares in the HKPR company on his or her own behalf as legal and beneficial owner;
 - (c) the member is not acting on behalf of any person who is

not a Hong Kong permanent resident pursuant to a trust, power of attorney or other authorisation;

- (d) the member undertakes that he or she will not assign transfer or part with possession of the legal and beneficial ownership of his or her share or shares in the HKPR company, or enter into any agreement so to do, or grant any option over his or her share or shares in the HKPR company unless –
 - (i) where the transferee or intended transferee of the share or shares, or grantee of the share option, is a Hong Kong permanent resident, the member shall cause the transferee or intended transferee or grantee (as the case may be) to make a statutory declaration on or before the date of the share transfer or agreement for share transfer or granting of share option (as the case may be), which statutory declaration shall contain the contents provided under subsection(2A)(A)(1), and deliver the same to the Collector within 14 days of the share transfer or agreement for share transfer or granting of share option (as the case may be);
 - (ii) where the transferee or intended transferee of the share or shares, or grantee of the share option, is not a Hong Kong permanent resident, the member and the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the share transfer or agreement for share transfer or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1C) in the First Schedule which would be chargeable on the chargeable agreement for sale as if the same had been executed on the date of the share transfer or agreement for share transfer or granting of share option (as the case may be) without the relief granted under this subsection.
- (e) the member undertakes that he or she will not cause allow or permit any person who is not a Hong Kong permanent resident to be appointed as director of the HKPR company and will ensure that any new director appointed to the HKPR company shall provide the Collector with a statutory declaration containing the contents provided under subsection (2A)(A)(2) within 14 days of his appointment; and

- (f) the member undertakes that he or she will not cause allow or permit any existing or new share or shares in the HKPR company to be issued or allotted to, or any option to acquire any such share or shares in the HKPR company to be granted to, any person or persons unless:
 - (i) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is a Hong Kong permanent resident, that person shall on or before the date of the issuance or allotment or granting of share option (as the case may be), make a statutory declaration, which statutory declaration shall contain the contents provided under subsection (2A)(A)(1), and deliver the same to the Collector within 14 days of the issuance or allotment or granting of share option (as the case may be);
 - (ii) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is not a Hong Kong permanent resident, the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the issuance or allotment or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1C) in the First Schedule which would be chargeable on the chargeable agreement for sale as if the same had been executed on the date of the issuance or allotment or granting of share option (as the case may be) without the relief granted under this subsection.
- (2) The Collector may require the director or each of the directors of the HKPR company to provide a statutory declaration under the Oaths and Declarations Ordinance (Cap 11) declaring that –
 - (a) the purchaser is a Hong Kong permanent resident company acting on its own behalf;
 - (b) the director is a Hong Kong permanent resident;
 - (c) the director is not acting as such director on behalf of any person who is not a Hong Kong permanent resident pursuant to a power of attorney or other authorisation; and
 - (d) the director undertakes that he or she will not cause allow or permit any existing or new share or shares in the HKPR

company to be issued or allotted to, or any option to acquire any such share or shares in the HKPR company to be granted to, any person or persons unless:

- (i) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is a Hong Kong permanent resident, that person shall on or before the date of the issuance or allotment or granting of share option (as the case may be), make a statutory declaration, which statutory declaration shall contain the contents provided under subsection (2A)(A)(1), and deliver the same to the Collector within 14 days of the issuance or allotment or granting of share option (as the case may be);
 - (ii) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is not a Hong Kong permanent resident, the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the issuance or allotment or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1C) in the First Schedule which would be chargeable on the chargeable agreement for sale as if the same had been executed on the date of the issuance or allotment or granting of share option (as the case may be) without the relief granted under this subsection.
- (3) Any member or director of the HKPR company who breaches any of the undertakings under subsection (2A)(A) shall incur a penalty at level 6 which shall be recoverable by the Collector as a civil debt due to the Government.
- (B) If any member or director of the HKPR company shall breach any of the undertakings under subsection (2A)(A), the HKPR company shall be liable to pay to the Collector within 30 days of such breach, by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1C) in the First Schedule which would be chargeable on the chargeable agreement for sale as if the same had been executed on the date of such breach without the relief granted under this subsection.
- (C) If the amount referred to in subsection (2A)(B) is not paid within the 30 days –
- (1) the HKPR company is liable to a penalty;

- (2) the amount of the penalty payable after a lapse of a period of time after the 30 days is the same as that calculated under section 9 for an instrument chargeable with stamp duty of the amount referred to in subsection (2A)(B) that –
 - (i) is not stamped before or within the time for stamping it; and
 - (ii) is stamped after the lapse of the same period of time after the time for stamping it.
- (D) the Collector may remit the whole or any part of any penalty payable under subsection (2A)(C).”.

9 In the proposed section 29CB –

- (1) by adding after subsection (3)(a)(ii) –
 - “(iii) that the newcomer or each of the newcomers is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.
- (2) by adding after subsection (3)(b)(ii) –
 - “(iii) that the second agreement purchaser is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.
- (3) by adding after subsection (3)(c)((ii) –
 - “(iii) that each of the second agreement purchasers is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.

12 In the proposed section 29DB, by adding –

- “(2A) (A) A conveyance on sale is not chargeable with buyer’s stamp duty under head 1(1AAB) in the First Schedule if it is shown to the satisfaction of the Collector that the purchaser, or each of the purchasers, under the conveyance is a HKPR company acting on its own behalf, that the member or each of the members of the HKPR company is a Hong Kong permanent resident acting on his or her own behalf, and that the director or each of the directors of the HKPR company is a Hong Kong permanent resident, and –
 - (1) For the purpose of this subsection, the Collector may require the member or each of the members of the HKPR company to provide a statutory declaration under the Oaths and Declarations

Ordinance (Cap 11) declaring that –

- (a) the purchaser is a Hong Kong permanent resident company acting on its own behalf;
- (b) the member is a Hong Kong permanent resident and that he or she holds one or more shares in the HKPR company on his or her own behalf as legal and beneficial owner;
- (c) the member is not acting on behalf of any person who is not a Hong Kong permanent resident pursuant to a trust, power of attorney or other authorisation;
- (d) the member undertakes that he or she will not assign transfer or part with possession of the legal and beneficial ownership of his or her share or shares in the HKPR company, or enter into any agreement so to do, or grant any option over his or her share or shares in the HKPR company unless –
 - (i) where the transferee or intended transferee of the share or shares, or grantee of the share option, is a Hong Kong permanent resident, the member shall cause the transferee or intended transferee or grantee (as the case may be) to make a statutory declaration on or before the date of the share transfer or agreement for share transfer or granting of share option (as the case may be), which statutory declaration shall contain the contents provided under subsection (2A)(A)(1), and deliver the same to the Collector within 14 days of the share transfer or agreement for share transfer or granting of share option (as the case may be);
 - (ii) where the transferee or intended transferee of the share or shares, or grantee of the share option, is not a Hong Kong permanent resident, the member and the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the share transfer or agreement for share transfer or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1AAB) in the First Schedule which would be chargeable on the conveyance as if the same had been executed on the date of the share transfer or agreement for share transfer or granting of share option (as the case may be) without the relief granted under this subsection.

- (e) the member undertakes that he or she will not cause allow or permit any person who is not a Hong Kong permanent resident to be appointed as director of the HKPR company and will ensure that any new director appointed to the HKPR company shall provide the Collector with a statutory declaration containing the contents provided under subsection (2A)(A)(2) within 14 days of his appointment; and
 - (f) the member undertakes that he or she will not cause allow or permit any existing or new share or shares in the HKPR company to be issued or allotted to, or any option to acquire any such share or shares in the HKPR company to be granted to, any person or persons unless:
 - (i) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is a Hong Kong permanent resident, that person shall on or before the date of the issuance or allotment or granting of share option (as the case may be), make a statutory declaration, which statutory declaration shall contain the contents provided under (2A)(A)(1), and deliver the same to the Collector within 14 days of the issuance or allotment or granting of share option (as the case may be);
 - (ii) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is not a Hong Kong permanent resident, the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the issuance or allotment or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1AAB) in the First Schedule which would be chargeable on the conveyance as if the same had been executed on the date of the issuance or allotment or granting of share option (as the case may be) without the relief granted under this subsection.
- (2) The Collector may require the director or each of the directors of the HKPR company to provide a statutory declaration under the Oaths and Declarations Ordinance (Cap 11) declaring that –
- (a) the purchaser is a Hong Kong permanent resident company acting on its own behalf;

- (b) the director is a Hong Kong permanent resident;
 - (c) the director is not acting as such director on behalf of any person who is not a Hong Kong permanent resident pursuant to a power of attorney or other authorisation; and
 - (d) the director undertakes that he or she will not cause allow or permit any existing or new share or shares in the HKPR company to be issued or allotted to, or any option to acquire any such share or shares in the HKPR company to be granted to, any person or persons unless:
 - (i) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is a Hong Kong permanent resident, that person shall on or before the date of the issuance or allotment or granting of share option (as the case may be), make a statutory declaration, which statutory declaration shall contain the contents provided under subsection (2A)(A)(1), and deliver the same to the Collector within 14 days of the issuance or allotment or granting of share option (as the case may be);
 - (ii) where the issuance or allotment of share or shares, or granting of option over such share or shares, is made to a person who is not a Hong Kong permanent resident, the HKPR company shall notify the Collector of that fact and pay to the Collector within 14 days after the date of the issuance or allotment or granting of share option (as the case may be), by way of stamp duty an amount equal to the buyer's stamp duty under head 1(1AAB) in the First Schedule which would be chargeable on the conveyance as if the same had been executed on the date of the issuance or allotment or granting of share option (as the case may be) without the relief granted under this subsection.
 - (e) Any member or director of the HKPR company who breaches any of the undertakings under subsection (2A)(A) shall incur a penalty at level 6 which shall be recoverable by the Collector as a civil debt due to the Government.
- (B) If any member or director of the HKPR company shall breach any of the undertakings under subsection (2A)(A), the HKPR company shall be liable to pay to the Collector within 30 days of such breach, by way of stamp duty an amount equal to the buyer's stamp duty under head

1(1AAB) in the First Schedule which would be chargeable on the conveyance as if the same had been executed on the date of such breach without the relief granted under this subsection.

- (C) If the amount referred to in subsection (2A)(B) is not paid within the 30 days –
 - (a) the HKPR company is liable to a penalty;
 - (b) the amount of the penalty payable after a lapse of a period of time after the 30 days is the same as that calculated under section 9 for an instrument chargeable with stamp duty of the amount referred to in subsection (2A)(B) that –
 - (i) is not stamped before or within the time for stamping it; and
 - (ii) is stamped after the lapse of the same period of time after the time for stamping it.
- (D) the Collector may remit the whole or any part of any penalty payable under subsection (2A)(C).”.

12

In the proposed section 29DB –

- (1) by adding after subsection 3(b) –
 - “(c) that the newcomer or each of the newcomers is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.
- (2) by adding after subsection 4(a) (ii) –
 - “(iii) that the transferee is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.
- (3) by adding after subsection 4(b) (ii)
 - “(iii) that each of the transferees is a HKPR company which has fulfilled the requirements under subsection (2A)(A).”.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendments to be moved by Hon Tommy Cheung Yu-yan

Clause

Amendment Proposed

New

By adding –

“4A. Section 15 amended (non-admissibility, etc. of instruments not duly stamped)

(1) Section 15(1) –

Repeal

“subsection (1A)”

Substitute

“subsections (1A) and (1B)”.

(2) After section 15(1A) –

Add

“(1B) Despite anything in subsection (1), an instrument that is chargeable with buyer’s stamp duty but is not stamped with that duty may be received in evidence in civil proceedings before a court if it has been registered in the Land Registry under the Land Registration Ordinance (Cap 128) and –

(a) in the case of a chargeable agreement for sale –

(i) it was believed by the Collector to be not so chargeable because of a misrepresentation made by the purchaser under the agreement (*purchaser*) that the purchaser, at the date of the agreement, was a Hong Kong permanent resident or was acting on the purchaser’s own behalf, or was a HKPR company which has fulfilled the Collector’s requirements under section 29CB(2A)(A); and

(ii) it is produced in evidence –

(A) by a person who is not the purchaser for proving the person's title to the property concerned; or

(B) by the vendor under the agreement or by the person who, under the terms of the agreement, is to transfer the property concerned to the purchaser for enforcing the agreement; or

(b) in the case of a conveyance on sale –

(i) it was believed by the Collector to be not so chargeable because of a misrepresentation made by the transferee under the conveyance that the transferee, at the date of the conveyance, was a Hong Kong permanent resident or was acting on the transferee's own behalf, or was a HKPR company which has fulfilled the Collector's requirements under section 29DB(2A)(A); and

(ii) it is produced in evidence by a person who is not the transferee under the conveyance for proving the person's title to the property concerned.”.”.

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Clause

Amendment Proposed

17

In the proposed section 70, by adding after subsection (3) –

“(4) Section 29CB, 29CC, 29DB and 29DC and head 1(1AAB) and (1C) in the First Schedule shall cease to have effect at midnight on 31 December 2014.

(5) The Secretary for Transport and Housing may, subject to the approval of the Legislative Council, by notice published in the Gazette amend subsection (4) by substituting for the date specified in that subsection such date as may be specified in the notice.”.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendments to be moved by Hon Tommy Cheung Yu-yan

Clause

Amendment Proposed

17

In the proposed section 70, by adding after subsection (3) –

“(4) Section 29CA and 29DA and head 1(1AA) and 1(1B) in the First Schedule shall cease to have effect at midnight on 31 December 2014.

(5) The Secretary for Transport and Housing may, subject to the approval of the Legislative Council, by notice published in the Gazette amend subsection (4) by substituting for the date specified in that subsection such date as may be specified in the notice.”.