

立法會
Legislative Council

LC Paper No. CB(1)1982/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/12

Bills Committee on Stamp Duty (Amendment) Bill 2013

**Minutes of eighteenth meeting on
Tuesday, 3 June 2014, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Starry LEE Wai-king, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Charles Peter MOK
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen

Members absent : Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP

Public officers attending : Agenda item I
Financial Services and the Treasury Bureau

Ms Mable CHAN, JP
Deputy Secretary for Financial Services and the
Treasury (Treasury) 2

Ms Shirley KWAN
Principal Assistant Secretary for Financial Services
and the Treasury (Treasury) (Revenue)

Inland Revenue Department

Mr TAM Tai-pang, JP
Deputy Commissioner (Operations)

Ms TSE Yuk-yip, JP
Assistant Commissioner 3

Mr HONG Wai-kuen
Acting Chief Assessor (Stamp Office)

Department of Justice

Mr Allen LAI
Senior Government Counsel

Mr Manuel NG Man-chun
Acting Senior Government Counsel

Clerk in attendance: Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Mr Ken WOO
Senior Council Secretary (1)5

Action

- I. Meeting with the Administration**
(LC Paper No. CB(1)1535/13-14(01) -- List of follow-up actions
arising from the discussion
at the meeting on 27 May
2014

- LC Paper No. CB(1)1545/13-14(01) -- Administration's response to issues raised at the meeting on 27 May 2014
- LC Paper No. CB(1)1540/13-14(01) -- Hon Tony TSE
(*Chinese version only*) Wai-chuen's letter dated 28 May 2014
- LC Paper No. CB(1)1545/13-14(02) -- New draft Committee stage amendment proposed by Hon Kenneth LEUNG
- LC Paper No. CB(1)1554/13-14(01) -- Administration's response to the new draft Committee stage amendment proposed by Hon Kenneth LEUNG as set out in LC Paper No. CB(1)1545/13-14(02)
- LC Paper No. CB(1)1496/13-14(04) -- Hon James TO Kun-sun's
(*Chinese version only*) letter dated 26 May 2014
- LC Paper No. CB(1)1554/13-14(02) -- Administration's response to The Law Society of Hong Kong's letter dated 30 May 2014
- LC Paper No. CB(1)1545/13-14(03) -- The Government's revised proposed draft Committee stage amendments to the Stamp Duty (Amendment) Bill 2013
- LC Paper No. CB(1)1449/13-14(02) -- The Government's proposed draft Committee stage amendments to the Stamp Duty (Amendment) Bill 2013
- LC Paper No. CB(1)1380/13-14(03) -- Senior Assistant Legal Adviser's letter dated 6 March 2014 to the Administration

LC Paper No. CB(1)1380/13-14(04) -- Administration's reply letter dated 11 April 2014 to Senior Assistant Legal Adviser

LC Paper No. CB(1)1517/13-14(02) -- Senior Assistant Legal Adviser's letter dated 21 May 2014 to the Administration

LC Paper No. CB(1)1517/13-14(03) -- Administration's reply letter dated 27 May 2014 to Senior Assistant Legal Adviser)

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

2. The Chairman, Mr Abraham SHEK, Mr Kenneth LEUNG and Mr Tony TSE disclosed their respective interests.

3. The Bills Committee examined and supported the Committee stage amendments ("CSAs") proposed by the Administration to the Bill.

Motions

4. Mr James TO moved the following four motions to the effect that the Bills Committee should move the CSAs to be proposed by him to the Bill:

Motion no. 1

"本委員會就《2013年印花稅(修訂)條例草案》動議全體委員會審議階段修正案，以達致就一份涉及多過一個住宅物業的可予徵收印花稅的文書，只有其中一個住宅物業可獲豁免繳付雙倍從價印花稅。"

(Translation)

"That, this Bills Committee moves Committee stage amendments to the Stamp Duty (Amendment) Bill 2013, to the effect that for a chargeable instrument involving more than one residential properties, only one residential property listed therein should be exempted from the doubled ad valorem stamp duty."

Motion no. 2

"本委員會就《2013年印花稅(修訂)條例草案》動議全體委員會審議階段修正案，以達致有關近親之間轉讓非住宅物業的可予徵收印花稅的文書，可獲豁免繳付雙倍從價印花稅。"

(Translation)

"That, this Bills Committee moves Committee stage amendments to the Stamp Duty (Amendment) Bill 2013, to the effect that a chargeable instrument in respect of transfer of non-residential properties between closely related persons should be exempted from the doubled ad valorem stamp duty."

Motion no. 3

"本委員會就《2013年印花稅(修訂)條例草案》動議全體委員會審議階段修正案，以達致有關公屋租戶，只要是代表自己行事，及並非任何其他香港住宅物業的實益擁有人，其透過「租者置其屋計劃」，向香港房屋委員會購買出租公屋的可予徵收印花稅的文書，可獲豁免繳付雙倍從價印花稅。"

(Translation)

"That, this Bills Committee moves Committee stage amendments to the Stamp Duty (Amendment) Bill 2013, to the effect that for a public rental housing ("PRH") tenant who is acting on his or her own behalf and is not a beneficial owner of any other residential property in Hong Kong, the chargeable instrument effecting the purchase of a PRH flat by the tenant concerned from the Hong Kong Housing Authority under the Tenants Purchase Scheme should be exempted from the doubled ad valorem stamp duty."

Motion no. 4

"本委員會就《2013年印花稅(修訂)條例草案》動議全體委員會審議階段修正案，以達致該條例草案中近親的定義得以涵蓋已婚子女的配偶和配偶的父母。"

(Translation)

"That, this Bills Committee moves Committee stage amendments to the Stamp Duty (Amendment) Bill 2013, to the effect that the

meaning of a closely related person under the Bill should cover the spouse of a married child and the spouse's parent."

5. The Chairman put the four motions to vote one by one. The voting results for the four motions were the same, with three members voted for the motions, three members voted against them and one member abstained. The Chairman declared that all four motions were negated.

Follow-up action required of the Administration

6. The Administration was requested to, in relation to the proposed section (1)(a) of 29AJA and 29BBA which stipulated that "the properties concerned are residential property and a car parking space intended for the parking of 1 motor vehicle", consider whether the word "intended" should be replaced by "approved".

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1598/13-14(01) on 11 June 2014.)

Legislative timetable

7. The Chairman concluded that the Bills Committee had completed scrutiny of the Bill. The Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 9 July 2014. The Chairman informed members that the Bills Committee would report its deliberations to the House Committee on 20 June 2014, and the deadline for giving notice of CSAs to the Bill would be 28 June 2014.

II. Any other business

8. There being no other business, the meeting ended at 5:50 pm.

**Proceedings of the eighteenth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
on Tuesday, 3 June 2014, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
000613 – 000834	Chairman Mr Abraham SHEK Mr Kenneth LEUNG Mr Tony TSE	<p>Opening remarks</p> <p>Disclosure of interests by members</p> <p>Mr Abraham SHEK informed the meeting that he would write to the Bills Committee to withdraw his proposed Committee stage amendment ("CSA") to clause 18 of the Stamp Duty (Amendment) Bill 2013 ("the Bill").</p> <p><i>(Post-meeting note: Mr Abraham SHEK's letter on the above was issued to members vide LC Paper No. CB(1)1600/13-14(01) on 11 June 2014.)</i></p> <p>The Chairman advised that Mr Tony TSE had written to the Bills Committee on 28 May 2014 to withdraw his proposed CSAs to the Bill (LC Paper No. CB(1)1540/13-14(01)).</p>	
000835 – 002927	Chairman Administration Senior Assistant Legal Adviser 3 ("SALA3")	<p><u>Discussion on CSAs proposed by the Administration (LC Paper No. CB(1)1545/13-14(03))</u></p> <p>The Administration advised that it had provided the Bills Committee another paper (LC Paper No. CB(1)1545/13-14(03)) setting out the full set of final CSAs proposed by the Administration in place of the one being discussed at the last meeting (LC Paper No. CB(1)1449/13-14(02)).</p> <p>The Bills Committee continued examination of the CSAs proposed by the Administration in relation to the following:</p> <p>(a) corresponding amendments in the light of the enactment of the Stamp Duty (Amendment) Ordinance 2014 (to start from item seven (concerning section 29AM(1)(c)) in Annex A);</p> <p>(b) minor and technical amendments to the relevant provisions in the Bill; and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) other amendments to uphold the policy intent of the Bill.</p> <p>Members raised no question.</p> <p>The Chairman advised that the Bills Committee had completed examining the CSAs proposed by the Administration to the Bill.</p>	
002928 – 003844	Chairman Administration Mr James TO	<p><u>Discussion on the Administration's response to members' views and concerns raised at the meeting of the Bills Committee on 27 May 2014 (LC Paper No. CB(1)1545/13-14(01))</u></p> <p>Briefing by the Administration on its response.</p> <p>With reference to the CSAs proposed by the Administration to provide exemption from the doubled ad valorem stamp duty in respect of the acquisition of a residential property together with a car parking space, Mr James TO requested the Administration to consider whether the word "intended" should be replaced by "approved" in relation to the proposed section (1)(a) of 29AJA and 29BBA which stipulated that "the properties concerned are residential property and a car parking space intended for the parking of 1 motor vehicle".</p>	The Administration to follow up as stated in paragraph 6 of the minutes.
003845 – 004800	Chairman Mr Kenneth LEUNG Administration	<p><u>Discussion on the revised CSA proposed by Mr Kenneth LEUNG (LC Paper No. CB(1)1545/13-14(02))</u></p> <p>Mr Kenneth LEUNG explained the revised CSA proposed by him. In gist, the definitions of trade and business were extended to cover a business carried on by any charitable institution or trust of a public character which had been exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) but excluded the letting or sub-letting to any person of any premises or portion thereof, and the sub-letting of any premises or portion of any premises held under a lease or tenancy. The "relevant period" condition for refund of stamp duty was changed from not less than two years from the date of acquiring the non-residential property concerned to not less than three years.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration took members through its response to Mr Kenneth LEUNG's revised CSA as detailed in LC Paper No. CB(1)1554/13-14(01). The Administration did not agree to the revised CSA as it was inconsistent with the policy objective of the demand-side management measures and would have substantial financial implications on the Stamp Office.</p> <p>Mr Kenneth LEUNG did not subscribe to the Administration's views. He opined that the proposed CSA would mitigate the impact of the Bill on normal business operations which was of pivotal importance. It was also unlikely that the administrative work of the Stamp Office would increase significantly as it was incumbent upon the applicant for a refund to provide the relevant supporting documents. The Stamp Office was not required to assume an active role in the refund mechanism.</p>	
004801 – 005818	Chairman Mr Abraham SHEK Mr James TO Mr Kenneth LEUNG	<p>Mr Abraham SHEK and Mr James TO expressed support for the revised CSA proposed by Mr Kenneth LEUNG.</p> <p>In reply to members, Mr Kenneth LEUNG advised that "business" under his revised CSA referred to businesses that provided goods and/or services. Leaving a non-residential property idle or leasing out non-residential properties for rental income would not satisfy the meaning of "business" under his revised CSA.</p> <p>Mr Kenneth LEUNG agreed to consider Mr James TO's view on specifying that leaving a non-residential property idle would not satisfy the meaning of "business" under his revised CSA.</p>	
005819 – 010413	Chairman Administration	<p><u>Discussion on the Administration's response to The Law Society of Hong Kong's letter dated 30 May 2014 (LC Paper No. CB(1)1554/13-14(02))</u></p> <p>Briefing by the Administration on its response.</p> <p>Members raised no question.</p>	

Time marker	Speaker	Subject(s)	Action required
010414 – 010533	Chairman SALA3 Administration	<p><u>Discussion on SALA3's letters dated 6 March and 21 May 2014 to the Administration (LC Paper Nos. CB(1)1380/13-14(03) and CB(1)1517/13-14(02)) and the Administration's replies (LC Paper Nos. CB(1)1380/13-14(04) and CB(1)1517/13-14(03))</u></p> <p>SALA3 advised that the Administration's replies had addressed his various concerns on the Bill. He had no further comments on the draft CSAs proposed by the Administration.</p>	
010534 – 010911	Chairman Mr Tony TSE Mr Abraham SHEK Mr James TO Administration	Legislative timetable	
010912 – 012036	Chairman Mr James TO Mr Abraham SHEK	Voting on motions moved by Mr James TO	
012037 – 012118	Chairman	Concluding remarks	