

Bills Committee on Stamp Duty (Amendment) Bill 2013

The Law Society of Hong Kong (“the Law Society”) has written to seek clarification on individual cases in respect of the proposed exemption arrangement for acquisition of residential property together with a car parking space as set out in the Government’s Committee Stage Amendment (“CSA”) (LC Paper No. CB(1)1468/13-14(02)). This paper encloses copies of the Law Society’s letter dated 30 May 2014 and the Government’s reply for Members’ reference.

Exemption arrangement in respect of acquisition of residential property together with a car parking space

2. The Law Society has raised the following matters for clarification -
 - (a) if there is a total consideration for acquisition of residential property together with car parking space but the number of car parking space exceeds one, what criteria the Stamp Office will base on to determine the considerations for the car parking space concerned; and why the relevant exemption does not apply to transactions involving more than one car parking space;
 - (b) how to charge the ad valorem stamp duty (“AVD”) if the residential property (e.g. individual houses) built on a lot comprises car parking space; and
 - (c) review the definition of “specified amount” in section 29DF of the Bill so that it can cater for different scenarios.

Policy intent

3. As explained by the Secretary for Financial Services and the Treasury at the meeting held on 13 May 2014 and in subsequent written response from the Government, given that car parking space is non-residential property in nature, and that any special exemption arrangement for car parking space should be closely related to the home ownership needs of the buyers, we propose that the exemption for Hong Kong permanent residents for acquisition of residential property together with a car parking space is restricted to one car parking space only.

4. The Inland Revenue Department (“IRD”) will ask the applicant for stamping to list out the respective consideration for each residential unit and car parking space and calculate the AVD payable in accordance with the prevailing

practice¹. If the applicant does not list out the respective consideration for each property, IRD can charge AVD with reference to the professional advice from the Rating and Valuation Department in relation to the market price for each residential unit and car parking space concerned.

5. If the residential property on a certain lot consists of inseparable car parking space, the car parking space concerned will be regarded as part of the residential property. Provided that exemption conditions are satisfied, IRD will charge AVD at the old rates with reference to the total consideration of the instrument.

6. Having regard to the LegCo Legal Adviser's comment, we set out in full in the attached table the treatment of different exemption scenarios as defined by "specified amount" in section 29DF of the Bill. The relevant draft CSA is at LC Paper No. CB(1)1545/13-14(03).

**Financial Services and the Treasury Bureau
June 2014**

¹ For the criteria adopted in determining the applicable AVD rates in connection with a single instrument involving both residential unit and car parking space, please refer to LC Paper No. CB(1)1219/13-14(02).

Table

Refund arrangement for a Hong Kong permanent resident acting on his/her own behalf in
acquiring residential property (whether or not together with a car parking space) before disposing of his/her original residential property

	Scenario	Original Property	New Property	Whether refund is available
1.	To acquire residential property by a single instrument	(a) One residential property	One residential property	Refund is available (for the newly-acquired residential property)
		(b) One residential property together with one car parking space	One residential property	Refund is available (for the newly-acquired residential property)
2.	To acquire residential property together with car parking space by a single instrument	(a) One residential property	One residential property together with one car parking space	Refund is available (for the newly-acquired residential property together with one car parking space)
		(b) One residential property	One residential property together with two car parking spaces	Refund is available (for the newly-acquired residential property) Refund is not available for the two car parking spaces
		(c) One residential property together with one car parking space	One residential property together with one car parking space	Refund is available (for the newly-acquired residential property together with one car parking space) [Remarks: The original residential property and car parking space must be disposed of by a single instrument]
		(d) One residential property together with one car parking space	One residential property together with two car parking spaces	Refund is available (for the newly-acquired residential property) Refund is not available for the two car parking spaces
		(e) One residential property together with two car parking spaces	One residential property together with one car parking space	Refund is available (for the newly-acquired residential property) Refund is not available for the car parking space



THE
LAW SOCIETY
OF HONG KONG
香港律師會

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話) : (852) 2846 0500
FACSIMILE (傳真) : (852) 2845 0387
E-MAIL (電子郵件) : sg@hklawsoc.org.hk
WEBSITE (網頁) : www.hklawsoc.org.hk

Our Ref :
Your Ref :
Direct Line :

PPTY

BY EMAIL & BY POST

President
會長

30 May 2014

Ambrose S.K. Lam
林新強

Mr. Lau Wai Ming,
Financial Services and the Treasury Bureau,
The Treasury Branch,
24/F, Central Government Offices,
2 Tim Mei Avenue, Tamar
Hong Kong

Vice-Presidents
副會長

Stephen W.S. Hung
熊運信
Thomas S.T. So
蘇紹聰

Council Members
理事

Dieter Yih
葉禮德
Junius K.Y. Ho
何君堯
Huen Wong
王桂壩
Peter C.L. Lo
羅志力
Michael J. Lintern-Smith
史密夫
Billy W.Y. Ma
馬華潤
Sylvia W.Y. Siu
蕭詠儀
Cecilia K.W. Wong
黃吳潔華
Kenneth S.Y. Ng
伍成業
Joseph C.W. Li
李超華
Amirali B. Nasir
黎雅明
Melissa K. Pang
彭韻僊
Angela W.Y. Lee
李慧賢
Brian W. Gilchrist
喬柏仁
Gavin P. Nesbitt
倪廣恒
Denis Brock
白樂德
Charles C.C. Chau
周致聰

Dear Mr. Lau

Committee Stage Amendments to Stamp Duty (Amendments) Bill 2013

I refer to the exemption arrangement in respect of acquisition of residential property together with a car parking space in your Committee Stage Amendments (“CSAs”) introduced into the Legislative Council in May 2014.

As shown in the CSAs, the said exemption is limited to one car parking space purchased with a residential flat. The Property Committee (“Committee”) invites the Administration to clarify how would the Stamp Office treat the following situation:-

- (a) It is common for a flat to be purchased with two car parking spaces by one instrument with one consideration only. There should be a number of transactions like this having entered into since the introduction of the double ad valorem stamp duty (“DVD”) in February 2013. If it involves more than one car parking space, all the car parking spaces cannot benefit from the proposed exemption, please clarify how, and on what basis, would the Stamp Office apportion the consideration?
- (b) According to the FAQs posted to the website of the Stamp Office relating to DVD (i.e. FAQ Nos. 31 and 32), it is stated that exemption will apply even if more than one residential property be acquired under one single agreement. It is difficult to reconcile why more than one car parking space acquired under one single agreement in (a) above cannot enjoy the exemption, but acquisition of more than one residential property under a

.../P.2

Secretary General
秘書長

Heidi K.P. Chu
朱潔冰

Deputy Secretary General
副秘書長

Christine W.S. Chu
朱穎雪

1618651

- 2 -

single agreement can enjoy the exemption. Please clarify your principle and rationale behind.

2. In case a whole block of residential building/a house erected on a lot is acquired by an individual, the said block of building/house is described as a "lot" in the agreement and assignment. However, there may be car parking spaces in the building/house. Please clarify how would the Stamp Office treat such building/house and the car parking spaces inside for DVD purpose and the basis and reasoning thereof?

In view of the complication arising out of the aforesaid and the need to apportion the consideration between residential properties and car parking spaces, the Committee urges the Administration to review the definition of "*specified amount*" in the Bill to ensure it can cover all scenarios to avoid any loopholes or omission.

I understand that the Bills Committee will have a further meeting on Tuesday, 3 June 2014 to discuss the CSAs. Please circulate this letter to the members of the Bills Committee for consideration and let us and the Bills Committee know how would the Stamp Office address the aforesaid situation.

Yours sincerely,



Edwin Lee
Assistant Director of Practitioners Affairs

P.60

1618651

財經事務及庫務局
(庫務科)

香港添馬添美道2號
政府總部24樓



FINANCIAL SERVICES AND THE
TREASURY BUREAU
(The Treasury Branch)

24/F, Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong

傳真號碼 Fax No. : 2179 5848
電話號碼 Tel. No. : 2810 2229
本函檔號 Our Ref. :
來函檔號 Your Ref. :

By fax (2845 0387) and email

Mr Edwin LEE
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong
3/F, Wing On House
71 Des Voeux Road, Central
Hong Kong

3 June 2014

Dear Mr Lee,

Committee Stage Amendments to Stamp Duty (Amendment) Bill 2013

Thank you for your letter of 30 May 2014 setting out the Law Society of Hong Kong's comments on the exemption arrangement in respect of acquisition of residential property together with one car parking space as implemented by the proposed Committee Stage Amendments ("CSA"). Our responses to the issues raised are set out in the ensuing paragraphs please.

Government's policy

A car parking space is a non-residential property, the acquisition of which should not be exempted from the doubled ad valorem stamp duty ("AVD"). Striking a balance among such relevant considerations as the prevailing stamp duty regime on property, addressing the home ownership needs of the public and safeguarding the effectiveness of the measures, the Government proposes to, while upholding the spirit of providing exemption for residential properties, cater also to the home ownership needs of those who acquire residential property together with car parking space. The exemption for Hong Kong permanent residents for acquisition of residential property together with a car parking space is restricted to one car parking space only.

An instrument covering more than one car parking space

If more than one car parking space is acquired together with residential property under one single instrument and the respective consideration of the residential property and the car parking spaces are not separately shown, the Collector may, based on the valuation of the Rating and Valuation Department, ascertain the respective values of the residential property and the car parking spaces and adopt such values in calculating the amount of AVD payable¹.

Residential property/house on a lot

If under the Government lease or other relevant instrument, the residential property or house erected on the lot (which may comprise car parking(s)) can be used wholly or partly for residential purpose, the lot will be regarded as a residential property for stamp duty purposes. If the conditions for doubled AVD exemption are satisfied, the acquisition of the residential property or house erected on the lot will be charged with AVD at the existing rate.

Specified amount

The proposed definition of “specified amount” in section 29DF(1) has been refined to cater for appropriate scenarios in respect of the proposed exemption for the acquisition of residential property together with a car parking space. The relevant CSA is set out in Annex B to LC Paper No. CB(1)1545/13-14(03).

Yours sincerely,



(Lau Wai Ming)

for Secretary for Financial Services
and the Treasury

c.c.

Secretary for Transport and Housing
Commissioner of Inland Revenue
Department of Justice

(Attn: Mrs Vicki Kwok)
(Attn: Mr Tam Tai-pang)
(Attn: Mr Allen Lai
Mr Manuel Ng)

¹ Under the prevailing practice, the AVD payable at the existing rate in respect of acquisition of the residential property will be charged on the chargeable instrument which is calculated based on the consideration of the residential property only and the AVD at the doubled rate in respect of the acquisition of the car parking spaces will be charged on the chargeable instrument based on the consideration of the car parking spaces only. The applicable stamp duty rate will be determined on the basis of the total consideration of the car parking spaces and the residential property.