

**The Administration's Response to the Matter Raised at the Meeting of  
the Bills Committee on Stamp Duty (Amendment) Bill 2013  
held on 3 June 2014**

At the meeting held on 3 June 2014, a Member asked whether the word “intended” in sections 29AJA(1)(a) and 29BBA(1)(a) could be replaced by “approved” or any other similar term (e.g. “permitted”). This paper sets out the Administration’s response to the above matter.

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

2. On the formulation for car parking space in sections 29AJA and 29BBA of the Stamp Duty (Amendment) Bill 2013 (“the Bill”), we have made reference to the examples of the use of “intended” in the prevailing legislation in Hong Kong<sup>1</sup> and the reference to car parking space in relevant clauses in land leases. In the light of the Member’s suggestion, we have re-visited the draft wording of the relevant provisions. Having considered the comments by the Law Drafting Division of Department of Justice and the Inland Revenue Department, we agree to introduce technical amendments to replace the word “intended” by “permitted”. Besides, having made reference to the relevant instruments which the Collector of Stamp Revenue (“the Collector”) is satisfied in determining the classification of non-residential property under the existing Stamp Duty Ordinance, we propose, for the sake of clarity, to add a new subsection in the relevant provisions to specify that the Collector would adopt the established practice, i.e. to rely on the relevant instruments which include a Government lease, a deed of mutual covenant, an occupation permit or any other instrument that the Collector is satisfied effectively restricts the permitted user of the parking space, in determining the permitted use of the car parking space. When processing applications for exemption in respect of car parking space, a car parking space is permitted for the parking of one motor vehicle unless the conditions of the aforesaid instruments specify that the car parking space may be used at any time for the parking of more than one motor vehicle, and the Stamp Office will provide exemption for the concerned car parking space in accordance with the specified conditions under the exemption arrangement.

3. The above amendments aim to clarify the relevant provisions and do not constitute any substantial change to the exemption arrangement. The relevant revised provisions (as shaded in yellow) are enclosed at **Annex** for Members’ reference. In addition, we will incorporate the relevant provisions into the final version of the full set of CSAs to be moved by the Government and a copy of which will be submitted to the Bills Committee for record.

Financial Services and the Treasury Bureau  
June 2014

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<sup>1</sup> Examples of the use of “intended” in other legislation in Hong Kong include “intended for habitation” (section 2(1) of the Buildings Ordinance (Cap. 123)), “an article intended for display” (section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132)), and “any parking space or place intended for the parking of the vehicle” (section 17(4) of the Mass Transit Railway (Transport Interchange) Bylaw (Cap. 556D)).

To be added after section 29AJ ...

**29AJA. Certain conveyances on sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) A conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if—
  - (a) the properties concerned are residential property and a car parking space ~~intended~~ permitted for the parking of 1 motor vehicle; and
  - (b) it is shown to the satisfaction of the Collector that subsection (2) applies to the conveyance.
- (2) This subsection applies to the conveyance if, on the date of acquisition of the properties—
  - (a) the transferee, or each of the transferees, under the conveyance is a Hong Kong permanent resident acting on his or her own behalf; and
  - (b) that transferee, or each of those transferees, is neither a beneficial owner of any other residential property, nor a beneficial owner of any other car parking space, in Hong Kong.

(3) For subsection (1)(a), a car parking space is permitted for the parking of 1 motor vehicle unless any of the following provides that the parking space may be used, at any time during the term of the Government lease in respect of the parking space or during the term of the Government lease that has been agreed for in respect of the parking space (as is appropriate), for the parking of more than 1 motor vehicle—

- (a) a Government lease or an agreement for a Government lease;
- (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap 344);
- (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap 123);
- (d) any other instrument which the Collector is satisfied effectively restricts the permitted user of the parking space.

To be added after section 29BB ...

**29BBA. Certain agreements for sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates**

- (1) An agreement for sale is chargeable with stamp duty under Scale 2 of head 1(1A) in the First Schedule if—
  - (a) the properties concerned are residential property and a car parking space ~~intended-permitted~~ for the parking of 1 motor vehicle; and
  - (b) it is shown to the satisfaction of the Collector that subsection (2) applies to the agreement.
- (2) This subsection applies to the agreement if, on the date of acquisition of the properties—
  - (a) the purchaser, or each of the purchasers, under the agreement is a Hong Kong permanent resident acting on his or her own behalf; and
  - (b) that purchaser, or each of those purchasers, is neither a beneficial owner of any other residential property, nor a beneficial owner of any other car parking space, in Hong Kong.
- (3) For subsection (1)(a), a car parking space is permitted for the parking of 1 motor vehicle unless any of the following provides that the parking space may be used, at any time during the term of the Government lease in respect of the parking space or during the term of the Government lease that has been agreed for in respect of the parking space (as is appropriate), for the parking of more than 1 motor vehicle—
  - (a) a Government lease or an agreement for a Government lease;
  - (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap 344);
  - (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap 123);
  - (d) any other instrument which the Collector is satisfied effectively restricts the permitted user of the parking space.

## Amend section 29DF of the Stamp Duty (Amendment) Bill 2013

### 29DF. Partial refund of ad valorem stamp duty on disposal of residential property in certain circumstances

(1) In this section—

**applicable instrument** (適用文書) means an instrument—

- (a) under which a residential property (whether or not together with a car parking space intended permitted for the parking of 1 motor vehicle) is acquired; and
- (b) on which stamp duty had been paid according to Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule;

**original property** (原物業), in relation to a person who acquires a subject property under an applicable instrument, means another residential property (whether or not together with a car parking space intended permitted for the parking of 1 motor vehicle) of which the person is a beneficial owner on the date of that acquisition;

**specified amount** (指明款項) means—

- (a) for an applicable instrument on which stamp duty had been paid according to Scale 1 of head 1(1) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 2 of head 1(1) in the First Schedule in accordance with Division 2 of Part IIIA; or
- (b) for an applicable instrument on which stamp duty had been paid according to Scale 1 of head 1(1A) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 2 of head 1(1A) in the First Schedule in accordance with Division 3 of Part IIIA;

**subject property** (標的物業) means the residential property, or the residential property and car parking space, acquired under an applicable instrument.

(2) The Collector may, on an application made by a person (**applicant**) who had paid stamp duty on an applicable instrument, refund to the applicant the specified amount if—

- (a) subsection (3) or (4) applies to the disposal of an original property of the applicant; and
- (b) had the original property been disposed of before the subject property was acquired, the applicable instrument would have been chargeable with stamp duty under Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule.

(3) This subsection applies to the disposal of an original property of the applicant if—

- (a) it is shown to the satisfaction of the Collector that the original property is disposed of by the applicant under an agreement for sale that is made ~~within 6 months after the date of the applicable instrument~~ within the period specified in subsection (5);

- (b) it is shown to the satisfaction of the Collector that the original property is transferred or divested from the applicant under a conveyance on sale executed in conformity with that agreement; and
  - (c) the application for refund is made by the applicant not later than 2 years after the date of the applicable instrument, or not later than 2 months after the date of the conveyance on sale under which the original property is transferred or divested, whichever is the later.
- (4) This subsection applies to the disposal of an original property of the applicant if—
- (a) it is shown to the satisfaction of the Collector that the original property is transferred or divested from the applicant under a conveyance on sale ~~within 6 months after the date of the applicable instrument~~within the period specified in subsection (5); and
  - (b) the application for refund is made by the applicant not later than 2 years after the date of the applicable instrument, or not later than 2 months after the date of the conveyance on sale under which the original property is transferred or divested, whichever is the later.

(5) For subsection (3)(a) and (4)(a), the following period is specified—

- (a) if the applicable instrument is a conveyance on sale—6 months after the date of that instrument; or
- (b) if the applicable instrument is an agreement for sale—6 months after the date of the conveyance on sale executed in conformity with the agreement for sale.

(6) For subsection (1), a car parking space is permitted for the parking of 1 motor vehicle unless any of the following provides that the parking space may be used, at any time during the term of the Government lease in respect of the parking space or during the term of the Government lease that has been agreed for in respect of the parking space (as is appropriate), for the parking of more than 1 motor vehicle—

- (a) a Government lease or an agreement for a Government lease;
- (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap 344);
- (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap 123);
- (d) any other instrument which the Collector is satisfied effectively restricts the permitted user of the parking space.