



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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本函檔號 OUR REF : **LS/B/8/16-17**
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By Fax (2761 7444)

27 February 2017

Miss KOK Sen Yee, Joyce
Prin Asst Secy (Housing)(Private Housing)
Housing Department
Housing Authority Headquarters
33 Fat Kwong Street
Ho Man Tin, Kowloon

Dear Miss KOK,

Stamp Duty (Amendment) Bill 2017

Further to my letter dated 8 February 2017, I would like to seek clarification on the following points -

Clause 5 – section 29AI and Clause 7 – section 29BA

It is noted in your letter dated 24 February 2017 that an example of "other cases" in the proposed amended sections 29AI(b) (in relation to a conveyance on sale) and 29BA(b) (in relation to an agreement for sale) was provided. It appears that "other cases" in the two sections are not exhaustive. As the purpose of the Bill, as stated in its long title, is to impose the new ad valorem stamp duty ("AVD") rate (i.e. a flat rate of 15%) on certain instruments dealing with residential properties, it is important to state clearly what instruments are subject to the new AVD rate in sections 29AI(b) and 29BA(b). Please explain the reason for adopting the expression "in any other case".

Clause 6 – section 29AIA and Clause 8 – section 29BAB

The proposed new sections 29AIA and 29BAB relate to the exchange of a residential property for a non-residential property. Please clarify whether the two sections are intended to provide for the exchange of one residential property for one non-residential property.

As the word "a" in front of "residential property" and "non-residential property" in the two sections can be generic and does not necessarily indicate the number of residential property and non-residential property, in the light of the Court of Appeal decision in *Ho Kwok Tai v Collector of Stamp Revenue* [2016] 5 HKLRD 713, which concerns the true construction of section 29DF(2)(b) of the Stamp Duty Ordinance (Cap. 117) relating to "the buy-first-sell-later exception" and in order to avoid unnecessary litigation, please consider amending the two sections to state the intention clearly by, for example, using "one" instead of "a" in front of "residential property" and "non-residential property" in the two sections and "某一" instead of "某" in front of "住宅物業" and "非住宅物業" in their Chinese rendition.

I would appreciate if you could let me have the said information (in both Chinese and English with soft copy to Miss Kathy NG at pcng@legco.gov.hk) at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Winnie LO', written in a cursive style.

(Winnie LO)

Assistant Legal Adviser

c.c. LA
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