

Public Revenue Protection (Revenue) Order 1999
Reply to LegCo Assistant Legal Adviser's Letter of 16 April 1999

Items 1 and 2

The Administration's response to the issues raised in items 1 and 2 has been set out in the information paper attached to the letter of 20 April 1999 to the Clerk to the Subcommittee on Public Revenue Protection (Revenue) Order 1999.

Clauses 15 and 18 to 21, Stamp Duty Ordinance, Cap 117

Item 3

Transitional arrangements for stamping of conveyance on sale of non-residential property which is preceded by an agreement for sale made before 1 April 1999 are not necessary. A transaction of non-residential property has all along been stamped on the conveyance on sale effecting the transaction. As such, the stamp duty liability is determined by the date of execution of the conveyance, irrespective of whether and when an agreement for sale of the property has been made before the conveyance. This treatment has been consistently applied in the stamping of conveyances on sale of non-residential property on previous occasions when the stamp duty rates were adjusted.

Item 4

Section 29C(6), which is proposed to be repealed, makes an allowance of the stamp duty paid on an agreement which is *chargeable* to stamp duty. In making such an allowance, it is reasonable to impose any further conditions such as that the instrument has not been "used" for any purposes including being produced as evidence in the court. As for the proposed section 29C(5B), it is intended to make a refund of the stamp duty paid on an agreement for sale which has become *not chargeable* to stamp duty pursuant to section 29C(5A). As such, we consider imposing further conditions in effecting the refund on such agreement unreasonable.

The proposed section 29C(5B) may be compared with the situation where a person "has inadvertently used a stamp for an instrument *not* chargeable with stamp duty" in section 49 of the Stamp Duty Ordinance (Cap. 117) (the Ordinance) where the stamp duty paid will be refunded so long as the application is made within 2 years.

Item 5

The imposition of a 3-year limit for the stamping of a chargeable agreement and hence the payment of stamp duty is a measure to avoid any abuse of the deferral of stamp duty payment in order to protect the revenue. Without such a time limit, transactions between related parties may be left uncompleted for years so that the payment of the applicable stamp duty can be avoided, e.g. no conveyance on sale for a residential property is executed but the purchaser simply takes possession and enjoyment of the property by relying on his beneficial interest under the sale and purchase agreement. We consider that a three-year period should cover almost all of the sale and purchase of residential properties, including the sale of uncompleted flats by developers. Too long a time limit will increase the difficulties in recovering stamp duty and hence the risk of loss of revenue.

Item 6

With the use of the conjunction “and” for paragraphs (a), (b) and (c) of subsection (12), the proposed section 29C(11) would not apply unless all of the requirements set out in the three paragraphs are satisfied. The endorsement made by the Collector of Stamp Revenue (the Collector) under proposed section 29C(13)(a) conclusively shows that section 29C(11) applies to the agreement.

We do not consider that confusion would be caused where a specified event has occurred in the course of an application for deferring payment of stamp duty which is being processed by the Stamp Office. Before an agreement is endorsed under section 29C(13)(a), the usual time limit for stamping applies, i.e. 30 days after the relevant date [item (B) in head 1(1A) in the First Schedule to the Ordinance]. The 7-day rule is only applicable *after* the agreement is so endorsed. Therefore, if at the time when the application is under consideration by the Collector and a specified event occurs, (e.g. the purchaser under the agreement sub-sells the property), the applicant may, if he so wishes, immediately withdraw the application for deferring payment before it is approved whereupon the 30 days period for stamping will be preserved. Alternatively, the applicant may wait until the approval of the Collector is received and pay the stamp within seven days (i.e. under the proposed section 29C(11)(a)(iii)). We envisage that in practice the purchaser is likely to be pressed by the sub-purchaser to stamp the agreement earlier so that the latter can apply for deferring the payment of stamp duty in respect of the sub-sale agreement).

Item 7(a)

Section 29C(12)(b)(ii)(B) does not require the purchaser under a sub-sale agreement to provide the security for the preceding agreement. It only requires that where any of the instruments through which the vendor has acquired title to the property are not duly stamped, security should be provided to the satisfaction of the Collector for the payment of such stamp duty in order that the purchaser may apply for stamp duty deferment. Normally, it should be the vendor who would provide such security. Under usual circumstances, a banker's undertaking or an employer's guarantee will suffice.

Item 7(b)

The requirement for providing a banker's undertaking as a condition for deferring payment of stamp duty on an agreement under which a body corporate is the purchaser is a measure to guard against any possible abuse of the deferment mechanism by using shelf companies as a vehicle to avoid payment of stamp duty. Without such a provision, the Collector would have practical difficulties in collecting stamp duty on such agreements after the property is sub-sold by the shelf companies and all cash or other assets of the companies are dissipated soon after the re-sale of the property.

Item 7(c)

A specimen form of the banker's undertaking which is acceptable to the Collector will be published in due course. In normal circumstances, an undertaking which is valid for a period of not less than one year will be acceptable.

Item 7(d)

The Collector is obliged to endorse the agreement as soon as he is satisfied that subsections (12)(b) and (c) are satisfied.

Item 7(e)

The Collector would normally takes 6 working days to process an application for deferring payment of stamp duty. The reason(s) for rejecting an application will be set out in the notice of his decision. In view of the requirement under the Land Registration Ordinance (Cap. 128) for registration of the agreement with the

Land Registry within one month from the date of execution in order to preserve the purchaser's priority to title in the property, and the fact that the result of the refusal to defer payment of stamp duty only affects the time for stamping (and not the chargeability or the quantum of stamp duty payable), it is considered that an appeal or review of the Collector's decision would not be practicable or necessary.

Item 7(f)

Consequent upon the issue of a rejection notice under section 29C(13)(b), the standard time for stamping the agreement will apply, i.e. 30 days after the relevant date as stipulated in item (B) in head 1(1A) in the First Schedule to the Ordinance (or as otherwise provided by the Ordinance). Any late stamping will be subject to penalty as provided by section 9 of the Ordinance. In practice, however, the Collector will allow at least 7 days for the applicant to arrange payment without penalty. Such date will be stated in the rejection notice.

The person making the application may submit another banker's undertaking or a revised undertaking if the previous form of undertaking is not acceptable to the Collector.

Item 8

The reference "of the immovable property subject to the agreement" in the proposed section 29C(5B)(b)(i)(B) is intended to cover the immovable property which is the subject of the agreement. We consider that the wording is sufficiently clear. The same wording is used in existing sections 29D(6)(c)(i) and (d), section 29F(1) and section 29G(2) of the Ordinance.

Item 9

"A chargeable agreement for sale which, if implemented, would be implemented by a conveyance on sale" is intended to cover all the chargeable agreements which when completed will result in the execution of a conveyance on sale of the subject property. A typical case is where a person contracts to sell an immovable property to a purchaser. At the completion date, the vendor will execute an assignment to convey the property to the purchaser. On the other hand, a declaration of trust in respect of immovable property would not have to be implemented by an assignment of the property; it is complete and perfectly effectual as soon as it is made.

As the various items under the definition are not mutually exclusive, items (a) to (d) and (f) to (h) in the definition of “agreement for sale” in section 29A are not excluded. As explained in the paragraph above, an instrument in which a person contracts to sell or purchase immovable property under item (a) is also an instrument which, if implemented, would be implemented by a conveyance on sale under item (e).

Clauses 28 to 32, Business Registration Ordinance, Cap 310

Item 10

There can be cases where there is a branch registration certificate without a relevant business registration certificate. This usually happens where the business owner renews the branch registration certificate for the current year but does not renew the business registration certificate for the same year. Under such a case, there would not be a “relevant business registration certificate” as defined in proposed section 6(5B)(b) since neither of the circumstances mentioned in paragraph (i) or (ii) of that section would apply.

Item 11

The reference to “已在或可在…後” in the Chinese text of section 6(5D)(a)(i) should already qualify “發出”. We consider the Chinese wording sufficiently clear.

Item 12 - the question has been withdrawn.

Clauses 34 to 37, Road Tunnels (Government) Regulations, Cap. 368 sub. leg.

Item 13

The notice which set out the existing toll levels for Cross-Harbour Tunnel is enclosed.

Clause 48, Power to make regulation for consequential amendments etc.

Item 14

The subsidiary legislation will upon enactment of the Bill be made under the enabling provisions in an ordinance which are expressed in a manner indicative of the intention of the legislature. Similar examples of such provisions are found in sections 5 and 6 of Schedule 2 to the Legal Services Legislation (Miscellaneous Amendments) Ordinance (94 of 1997), and section 47 of the Airport Authority Ordinance (Cap. 483).

The amendments included in the Revenue Bill 1999 in respect of the Cross-Harbour Tunnel tolls are the essential amendments which enable Government to collect the revised tolls as from 1 September 1999. There are other amendments which would require to be done (e.g. replace in other legislation the reference to “Cross-Harbour Tunnel Ordinance” by “Road Tunnels (Government) Ordinance”, delete references to “Cross-Harbour Tunnel (Passage Tax) Ordinance”). The Secretary for Transport is considering the amendments/legislation which require him to exercise his authority proposed under clause 48.

Finance Bureau
FIN CR 7/2201/98
April 1999

CROSS-HARBOUR TUNNEL TOLLS

(Cap. 203, section 40(2))

[19 May 1972]

In accordance with the provisions of section 40(2) of the Cross-Harbour Tunnel Ordinance, a list of the tolls fixed by the Cross-Harbour Tunnel Company, Limited, and approved by the Governor in Council is hereby published—

	Vehicle	Toll
Category 1	Motorcycles, Motor Tricycles	\$ 2.00
Category 2	Private Cars, Public Cars, Taxis	\$ 5.00
Category 3	Public and Private Light Buses, Dual Purpose Vehicles	\$ 8.00
Category 4	Light goods vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes (L.N. 269 of 1992)	\$10.00
Category 5	Medium goods vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes (L.N. 269 of 1992)	\$15.00
Category 6	Heavy goods vehicles of a permitted gross vehicle weight exceeding 24 tonnes (L.N. 269 of 1992)	\$25.00
Category 7	Public and Private Single-decker Buses	\$10.00
Category 8	Public and Private Double-decker Buses	\$15.00
Category 9	Each additional axle in excess of two	\$10.00

(L.N. 269 of 1992)

海底隧道隧道費

(第203章第40(2)條)

[1972年5月19日]

茲按照《海底隧道條例》第40(2)條的條文，公布由海底隧道有限公司釐定並經由地產會同行政局通過的隧道費收費表如下——

	車輛	隧道費
分類1	電單車、機動三輪車	\$2.00
分類2	私家車、公共汽車、的士	\$5.00
分類3	公共及私家小型巴士、客貨兩用車	\$8.00
分類4	許可車輛總重不超過5.5公噸的輕型貨車 (1992年第269號法律公告)	\$10.00
分類5	許可車輛總重超過5.5公噸但不超過24公噸的中型貨車 (1992年第269號法律公告)	\$15.00
分類6	許可車輛總重超過24公噸的重型貨車 (1992年第269號法律公告)	\$25.00
分類7	公共及私家單層巴士	\$10.00
分類8	公共及私家雙層巴士	\$15.00
分類9	超過兩條車軸的每條額外車軸	\$10.00

(1992年第269號法律公告)