

**Bills Committee on
Revenue Bill 1999**

**Administration's Response to Concerns
raised by Members at the meeting on 27 May 1999**

Increase of Cross-Harbour Tunnel Tolls

- (a) The traffic flow in respect of Cross-Harbour Tunnel (CHT), Eastern Harbour Crossing (EHC) and Western Harbour Crossing (WHC) and the percentage of vehicular flow against their designed capacity are as follows -

	CHT	EHC	WHC
Design Daily Capacity	80,000	80,000	120,000
Actual Daily Traffic Flow (average for 1/99 to 4/99)	119,400	65,800	38,000
Ratio of flow to capacity	150%	80%	30%

The average daily traffic flows of the three tunnels in the last three years were as follows :-

	1998	1997	1996
Cross-Harbour Tunnel	120,010	123,158	123,974
Eastern Harbour Crossing	70,999	85,812	88,134
Western Harbour Crossing	33,100	22,348	-

- (b) The assessment on the possible traffic impact of the toll adjustment for private cars at CHT on the three tunnels is as follows -

	CHT⁽¹⁾	EHC⁽¹⁾	WHC⁽¹⁾
Case A Estimated daily flow (without toll increase)	120,000	64,000	44,000
Case B⁽²⁾ - with toll increase from \$10 to \$15 for private cars only. Estimated daily flow (estimated change comparing with Case A)	115,000 (-5,000)	66,000 (+2,000)	47,000 (+3,000)
Case C⁽²⁾ - with toll increase form \$10 to \$20 for private cars only. Estimated flow (estimated change comparing with Case A)	110,000 (-10,000)	68,000 (+4,000)	50,000 (+6,000)

(1) The figures have taken into account the natural traffic growth of the three tunnels.

(2): The estimated traffic flow has taken into account the stabilisation of traffic flow after CHT tolls have been increased.

A reduction in 10,000 vehicles/day in Case C for CHT can be roughly translated into a reduction of about 500 vehicles during peak hour and shortening of traffic queues by about 300m.

Deferred payment of stamp duty chargeable on agreement for sale and purchase of residential property

- (c) Before 1 April 1999, the stamp duty chargeable on agreements for the sale and purchase of residential properties was payable within 30 days after their execution. Therefore, even if the property was subsequently sub-sold before the completion of the assignment, the applicable stamp duty was already fully paid and thus there was no scope for property speculators to avoid stamp duty.

The Revenue Bill 1999 proposes, among other things, to allow a purchaser under an agreement for sale and purchase of residential property to apply for deferment of payment of the applicable stamp duty until 30 days after the completion of the transaction (i.e. execution of the relevant assignment). In case the property is sub-sold before completion, the deferred duty has to be paid within seven days after the date of the sub-sale. The revised scheme is designed to relieve the initial cash outlay of home buyers. However, it would also give rise to opportunities for stamp duty avoidance where a purchaser fails to pay the deferred duty after sub-selling the property. We are concerned that the problem will be exacerbated if purchasers are corporations or even offshore companies. Speculators may use such companies to avoid stamp duty payment as well as the resultant profits tax liability. In this regard, the Inland Revenue Department (IRD) has handled cases where the property dealing companies concerned are being abandoned, dissolved or struck-off while owing substantial amounts of additional stamp duty and/or profits tax. Details of the relevant statistics are given in the Administration's response of May 1999.

The Administration does recognize the conveyancing solicitors' practice in ensuring the stamping of agreements for sale and purchase in the course of the examination of title documents. Nevertheless, the Court of Appeal in the case of *Town Bright Industries Ltd. v. Bermuda Trust (Hong Kong) Ltd. & Another* ruled that "a failure to ensure that an instrument chargeable with stamp duty is duly stamped does not go to title". It therefore follows that a conveyance solicitor, when checking all the transaction documents of the property concerned to ensure that a good title could be passed, does not strictly speaking have to ensure that all such documents are stamped before proceeding with the conveyancing. We are aware of the usual

conveyancing practice for solicitors to insist on stamping of the agreements from which their clients derive title to the property. However, that is founded on a duty of care or contractual duty owed to clients which are subject to varied or contrary instructions by clients, especially in a seller's market.

The commonly used sub-sale technique, i.e. "cancellation" arrangement, could also be deployed to avoid stamp duty in the situation where we allow deferment of stamp duty payment. Under the "cancellation" arrangement, a purchaser's agreement for sale and purchase will be cancelled and replaced by a new agreement signed between the vendor and another purchaser introduced by the original purchaser. As the first agreement is cancelled, there may be the impression, albeit a wrong one, that stamp duty liability has been discharged according to a new exemption proposed in the Bill [proposed section 29C(5A)(a)]. However, according to the proposed section 29C(5A)(b), the cancelled agreement should still remain chargeable with the applicable stamp duty as the cancellation was made as part of an arrangement to re-sell the property. Under this arrangement, the conveyancing solicitor for the new purchaser would unlikely be concerned about the previously cancelled agreement as his client derives title directly from the vendor through the newly executed agreement. In the circumstances, the conveyancing solicitor may not insist upon the stamping of the cancelled agreement.

In view of the above, we consider that with the proposal to allow deferment of stamp duty payment, there is a need of more definite and legally enforceable means to protect loss of Government revenue from stamp duty payment in cases of property purchases by companies. While we do not have any doubt in the professionalism and integrity of conveyancing solicitors, our concern is entirely founded on the premises that there are occasions where even after conveyancing solicitors have acted reasonably, stamp duty still cannot be guaranteed to be paid. Thus, the Bill proposes to require a corporate purchaser to furnish a banker's undertaking as a precondition for applying deferred payment of stamp duty chargeable on an agreement for sale and purchase of residential property.