

立法會

Legislative Council

LC Paper No. LS 40/99-00

Paper for the House Committee Meeting of the Legislative Council on 17 December 1999

Legal Service Division Further Report on Stamp Duty (Amendment) Bill 1999

Members may recall that the Legal Service Division made a report to the House Committee on 15 October 1999 on the Bill (LC Paper No. LS5/99-00 refers). The Bill proposes to amend the Stamp Duty Ordinance (Cap. 117) ("the Ordinance") to abolish the fee charged for mandatory adjudication, increase the fee for voluntary adjudication from \$20 to \$50, and transfer the regulation-making power from the Chief Executive in Council to the Financial Secretary. The House Committee has agreed to defer the decision on the Bill pending clarifications from the Administration.

2. The new section 13(1B) proposed under Clause 3 of the Bill provides that adjudication fee is not payable in respect of certain instruments. These instruments are subject to mandatory adjudication for revenue protection purposes and are set out in paragraph 5 of our previous report to the House Committee. The Administration has clarified that section 13(1B) applies to the instruments described in section 28(1) of the Ordinance whereby property is conveyed or transferred to any person in contemplation of a sale of that property. By virtue of section 28(1), such an instrument would be treated as a conveyance or transfer operating as a voluntary disposition inter vivos of that property, and section 27(1) and (3) of the Ordinance would apply. Since section 13(1B) has referred to section 27(3), there is no need to make express reference to section 28(1).

3. The new section 13(1C) proposed under Clause 3 of the Bill sets out the circumstances under which adjudication fee would be refunded. The Administration has clarified that the conditions for refund are :

- (a) payment of adjudication fee after the commencement of section 13(1B) in respect of an instrument to which that section applies;
- (b) application for refund is made not later than 2 years after the Collector has expressed his opinion; and

- (c) if the instrument is chargeable with stamp duty, subject to the instrument being stamped with a stamp denoting payment of the stamp duty chargeable thereon; alternatively, if the instrument is not chargeable with stamp duty, subject to the instrument being stamped with a stamp denoting that it is not chargeable with stamp duty.

4. Section 13(1C), as it is now drafted, is not clear that refund is possible where the instrument is not chargeable with stamp duty. The Administration proposes to introduce Committee Stage amendments to the Bill to the effect that the adjudication fee would be refunded if the instrument is stamped under subsection (3). Subsection (3) prescribes how an instrument would be stamped if it is chargeable with stamp duty or if it is not so chargeable. Hence, refund of adjudication fee would be possible irrespective of whether the instrument is chargeable with stamp duty. A copy of the draft Committee Stage amendments is at the Annex.

5. The proposed Committee Stage amendments would also give effect to the policy intent that refund of adjudication fee is possible after the instrument has been stamped. The Administration has given an undertaking to clarify on resumption of the Second Reading debate of the Bill the circumstances under which adjudication fee would be refunded, and that such refund is not confined only to the time when an instrument is presented for stamping.

6. With the proposed Committee Stage amendments, we are satisfied that the legal and drafting aspects of the Bill are in order. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

Encl

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STAMP DUTY (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Treasury

Clause

Amendment Proposed

3(b)

In the proposed section 13(1C), by deleting from ",
on application" up to and including "the fee.;" and
substituting -

"cancel the stamp denoting payment of the fee and
refund the fee if -

- (a) an application for this purpose is
made to him not later than 2 years
after the day on which the Collector
expressed his opinion under
subsection (1); and
- (b) the instrument is stamped under
subsection (3).;"