

立法會
Legislative Council

LC Paper No. CB(1) 2815/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/10/2

Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010

Minutes of eleventh meeting
held on Thursday, 5 May 2011, at 8:30 am
in Conference Room A of the Legislative Council Building

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC

Members absent : Dr Hon Margaret NG
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon CHIM Pui-chung

Public officers : **For item II**
attending

Transport and Housing Bureau

Ms Annette LEE
Deputy Secretary for Transport and Housing (Housing)

Mr Eugene FUNG
Principal Assistant Secretary for Transport and
Housing (Housing)(Private Housing)

Inland Revenue Department

Mr WONG Kuen-fai
Deputy Commissioner of Inland Revenue (Technical)

Mr HONG Wai-kuen
Senior Superintendent of Stamp Office

Department of Justice

Ms Phyllis KO
Senior Assistant Law Draftsman

Mr CHEUNG Man-yiu
Senior Government Counsel

Mr Manuel NG
Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Council Secretary (1)1

I. Confirmation of minutes

(LC Paper No. CB(1) 2073/10-11 — Minutes of the meeting held
on 24 March 2011)

The minutes of the meeting held on 24 March 2011 were confirmed.

II. Meeting with the Administration

- (LC Paper No. CB(1) 2080/10-11(01) — Submission from Tai Hung Fai Enterprise Company Limited
- LC Paper No. CB(1) 2080/10-11(02) — Submission from The Real Estate Developers Association of Hong Kong
- LC Paper No. CB(1) 2080/10-11(03) — List of follow-up actions arising from the discussion at the meeting on 18 April 2011
- LC Paper No. CB(1) 2080/10-11(04) — Administration's response to CB(1) 2080/10-11(03))

Relevant papers

- (LC Paper No. CB(3) 278/10-11 — The Bill
Ref: HD(CR)5/50/1/177 — The Legislative Council Brief
- LC Paper No. CB(1) 1933/10-11(03) — Administration's response to the list of follow-up actions arising from the discussion at the meeting on 1 April 2011
- LC Paper No. CB(1) 1933/10-11(04) — Marked-up copy of the Bill incorporating the draft Committee Stage amendments received so far)

2. The Bills Committee deliberated (Index of proceedings attached in **Annex**).

3. The Administration was requested to -

- (a) provide a paper explaining the policy intent on the application of special stamp duty (SSD) on sale/transfer of bare sites (whether these were under Government leases or not) and residential units subsequently built on the sites concerned. To refine the drafting of proposed sections 29CA(2) and (3) as well as 29DA(2) and (3), where applicable, to reflect the policy intent;
- (b) consider amending the Bill to make it clear that both ad valorem stamp duty and SSD would not apply to a usual mortgage (or charge);
- (c) include in the speech to be delivered by the Secretary for Transport and Housing at the resumption of Second Reading debate on the Bill that the Administration would review the need for SSD on a regular interval (say every two years); and

- (d) advise whether the reference to parent, child, brother and sister in the proposed Note 2A added by the Committee Stage amendments (CSA) to Head 1(1B) in the First Schedule included those who were not blood-related/half blood-related/adopted.

4. As the Bills Committee had completed clause-by-clause examination of the Bill, the Chairman reminded members who wished to amend the Bill to brief the Bills Committee on their proposed CSAs at the next meeting on 12 May 2011 which might be the last meeting. Meanwhile, the Administration was requested to provide a full set of the latest draft CSAs for members' consideration at the next meeting.

(Post-meeting note: As the Administration had expressed difficulty in submitting the CSAs as mentioned in paragraph 3(a) above by the deadline, and as The Law Society of Hong Kong had requested for more time to prepare their submissions,. the meeting originally scheduled for 12 May 2011 was postponed to Thursday, 19 May 2011, at 10:45 am.)

III. Any other business

5. There being no other business, the meeting ended at 10:20 am.

Council Business Division 1
Legislative Council Secretariat
25 July 2011

Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010

**Proceedings of eleventh meeting
held on Thursday, 5 May 2011, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000332 - 000503	Chairman	The minutes of the meeting held on 24 March 2011 (LC Paper No. CB(1) 2073/10-11) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000504 - 001412	Chairman Mr Abraham SHEK Ms Miriam LAU Mr CHAN Kam-lam	<p>Discussion on the submission from the Real Estate Developers Association (REDA) on the application of the Special stamp duty (SSD) to sale/transfer of bare sites (LC Paper No. CB(1) 2080/10-11(02)).</p> <p>Mr Abraham SHEK's concerns -</p> <p>(a) the application of SSD to sale/transfer of bare sites would adversely affect the free market economy of Hong Kong, and discourage the timely supply of new residential units in the market; and</p> <p>(b) the Administration should take heed of REDA's request for exempting sale/transfer of bare sites from SSD, which was meant to curb speculation.</p> <p>Ms Miriam LAU's concern that if SSD was applicable to disposal of new residential units by developers, the additional cost incurred from SSD would be transferred to purchasers.</p> <p>Mr CHAN Kam-lam's views -</p> <p>(a) not aware of the application of SSD to development of bare sites/redevelopment of old buildings which should be encouraged in order to improve living conditions; and</p> <p>(b) support for exemption of redevelopment of land/buildings from SSD.</p> <p>Chairman's views that as new residential units sold by developers were entirely</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>different from the bare sites or old buildings acquired by the developers for construction of these new units, it was not justified to apply SSD to first-hand residential properties. Besides, it was unlikely that developers could complete demolition and redevelopment of an old building for sale within 24 months.</p>	
001413 - 003225	<p>Chairman Administration Ms Audrey EU Ms Miriam LAU Assistant Legal Adviser 7 (ALA7)</p>	<p>Administration's explanation on the application of SSD to development of bare sites -</p> <p>(a) When a developer purchased a bare site, built on it, and then sold the flats built thereon within 24 months, SSD was not applicable regardless of whether the developer purchased the piece of land from the Government or from another developer;</p> <p>(b) Conditions of Sale or Conditions of Exchange was neither a chargeable agreement for sale nor a conveyance;</p> <p>(c) according to the proposed section 29CA(2), a chargeable agreement for sale would be subject to SSD if the residential property <i>concerned</i> was disposed of within a period of 24 months counting from the day on which the vendor under the agreement acquired the property. As the residential property <i>concerned</i> to be disposed of should be the same property acquired, developers who had constructed residential units on the bare site for sale within 24 months would not be subject to SSD as the bare site acquired was different from the units to be disposed of and thus could not be regarded as "the residential property <i>concerned</i>" under proposed section 29CA(2) in respect of which SSD was chargeable; and</p> <p>(d) sale of a bare sites not acquired from the Government within 24 months of acquisition would be subject to SSD, as the vendor would have "acquired" the bare site and "disposed of" it within 24 months after acquisition. Taking into account that the Administration had</p>	<p>The Administration to provide a paper explaining the policy intent on the application of SSD on sale/transfer of bare sites (whether these were under Government leases or not) and residential units subsequently built on the sites concerned.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>already proposed in the Bill that transfer (including bare sites) between associated companies be exempted from SSD, and having regard that the possibility of speculation in this respect could not be ruled out and that a specific exemption for this scenario could create loopholes, it was considered not appropriate to grant outright exemption to the sale of bare sites.</p> <p>Ms Audrey EU's view that "the residential property <i>concerned</i>" under proposed section 29CA(2) would be subject to interpretation, given that the conveyancing of individual units involved the transfer of undivided shares of a lot under the existing laws.</p>	
003226 - 003734	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's enquiries/views -</p> <p>(a) need to clarify the application of SSD to sale/development of land not under Government leases; and</p> <p>(b) introduction of SSD would adversely affect the supply of first-hand residential units in the property market and affect purchasers as they would have to bear the additional costs incurred.</p> <p>Administration's response that discussions were held with MTR Corporation Limited (MTRCL) and Urban Renewal Authority (URA). URA considered that the introduction of SSD should have no major impact on its residential development projects or its operational arrangements with developers. As regards the residential development projects of MTRCL, the introduction of SSD should have no particular implications on its projects in the light of its existing mode of operation.</p> <p>Mr Abraham SHEK's view that MTRCL and URA were grantees of Government leases and hence would not be affected by SSD.</p>	

Time marker	Speaker	Subject(s)	Action required
003735 - 004513	Chairman Ms Audrey EU Administration Ms Miriam LAU	<p>Ms Audrey EU's enquiry on the rationale for exempting the resale of land under Government leases within 24 months of acquisition from SSD while similar exemption was not applicable to land acquired from private owners.</p> <p>Administration's explanation -</p> <p>(a) as Conditions of Sale or Conditions of Exchange was neither a chargeable agreement for sale nor a conveyance, SSD was not applicable to the sale of the land (if allowed) or the residential units constructed thereon by the grantee to a third party; and</p> <p>(b) developers who acquired land directly from the Government were required to construct residential units on the land for sale in the property market in accordance with the terms and conditions of the Conditions of Sale or Conditions of Exchange.</p>	
004514 - 005213	Chairman Administration Ms Audrey EU	<p>Discussion on the application of SSD in the case where a developer acquired a piece of land from a private landowner and constructed residential units thereon for sale within 24 months.</p> <p>Ms Audrey EU's reiteration that the conveyancing of individual units involved the transfer of undivided shares of a lot.</p> <p>Administration's explanation that while the conveyancing of an individual unit involved the transfer of undivided shares of a lot, it would also specify the exclusive use of the unit.</p>	
005214 - 005639	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's concern that the introduction of SSD would delay development as developers who acquired land from private landowners would not sell the land within 24 months to avoid payment of SSD.</p> <p>Administration's explanation that developers would often set up associated companies to acquire properties for redevelopment since sale/transfer of land or property between</p>	

Time marker	Speaker	Subject(s)	Action required
		associated companies were exempted from SSD.	
005640 - 010153	Chairman Ms Audrey EU Ms Miriam LAU	<p>Ms Audrey EU's concerns that the present drafting of proposed section 29CA (2) and (3) was not able to reflect the policy intent that SSD would not be chargeable if the land was developed into units for sale within 24 months.</p> <p>Ms Miriam LAU's support for the need to refine the drafting of proposed sections 29CA (2) and (3) as well as 29DA(2) and (3), where applicable.</p>	The Administration to refine the drafting of proposed sections 29CA(2) and (3) as well as 29DA(2) and (3), where applicable, to reflect the policy intent.
010154 - 010358	Chairman Mr Abraham SHEK	Mr Abraham SHEK's indication that he might consider moving CSAs if SSD would be chargeable on the sale/transfer of bare sites not obtained from the Government within 24 months after acquisition, as this would adversely affect the pace of development and hence the supply of residential units.	
010359 - 011856	Chairman Administration Ms Audrey EU Mr Albert HO	<p>Administration's explanation on its response to issues raised by members at the meeting on 18 April 2011 (LC Paper No. CB(1) 2080/10-11(04)).</p> <p>Mr Albert HO's view that instead of requesting the Secretary for Transport and Housing (STH) to include in her speech to be delivered at the resumption of the Second Reading debate on the Bill that both ad valorem stamp duty and SSD would not apply to a usual mortgage (or charge), consideration should be given to amending the Bill to this effect.</p> <p>Chairman's request for an undertaking that the Administration would review the need for SSD on a regular interval (say every two years).</p>	<p>The Administration to -</p> <p>(a) consider amending the Bill to make it clear that both ad valorem stamp duty and SSD would not apply to a usual mortgage (or charge); and</p> <p>(b) include in the speech to be delivered by STH at the resumption of Second Reading debate on the Bill that the Administration would review the need for SSD on a regular interval (say every two years).</p>
011857 - 015024	Chairman Administration Mr Albert HO Ms Miriam LAU	Continuation of clause-by-clause examination of the Bill starting from clause 10 (proposed section 29DA)	The Administration to advise whether the reference to parent, child, brother and sister

Time marker	Speaker	Subject(s)	Action required
	ALA7 Ms Audrey EU	<p>ALA7 pointed out that, as agreed with the Senior Assistant Law Draftsman, the proposed Note 3 of Head 1 (1AA) in the First Schedule would be deleted.</p> <p>Members' enquiry on whether the reference to parent, child, brother and sister in the proposed Note 2A added by CSAs to Head 1(1B) in the First Schedule included those who were not blood-related/half blood-related/adopted.</p>	<p>in the proposed Note 2A added by CSA to Head 1(1B) in the First Schedule included those who were not blood-related/half blood-related/adopted.</p>
015025 - 015216	Chairman Administration	<p>As the Bills Committee had completed clause-by-clause examination of the Bill, the Chairman reminded members who wished to amend the Bill to brief the Bills Committee on their proposed CSAs at the next meeting, which might be the last meeting.</p>	