

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

**Summary of views submitted by organizations/individuals on the
Stamp Duty (Amendment) (No. 2) Bill 2010
Government's Response to Further Written Submissions on the Bill**

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Organization/Individual	Comments/Issues	Government's Response
CHEUNG Kwai Chun (or CHEUNG Kwai Yun) (LC Paper No. CB(1)2183/10-11(03) 3.5.2011)	There is no reasonable ground to exclude an option to purchase from Special Stamp Duty (SSD).	<ul style="list-style-type: none"> ➤ Premised on the principle as set out in the Bill that a person “acquires” or “disposes of” a property when equitable ownership or legal ownership of the property is passed, under the proposed Committee Stage Amendments (CSAs), the acquisition and disposal dates of a property will be based on the signing date of the chargeable agreement for sale, or if no such chargeable agreement exists, the signing date of conveyance (i.e. Assignment). Also, for the purpose of the determination of the date of acquisition or disposal, chargeable agreements include those “agreements for sale” as defined in section 29A of the existing Stamp Duty Ordinance (SDO), except “an option to purchase immovable property” and “a right of pre-emption in respect of immovable property” as referred to in paragraph (b) of the definition of “agreement for sale” in section 29A(1) of the SDO. ➤ The reason that the Administration proposes to exclude an

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		<p>instrument which confers an option to purchase or a right of pre-emption as mentioned above is that, according to legal advice, in such cases, "equitable ownership" does not pass from the vendor to the purchaser upon the granting of such an option or a right of pre-emption. In other words, the purchaser is not considered under the Bill as having "acquired" the property. Under such circumstances, the date of signing of the Agreements for Sale and Purchase (ASPs) or, if there is no ASP, the signing date of the Assignment will be the date of acquisition or disposal of the property.</p> <p>➤ We understand that the majority of the Preliminary Agreements for Sale and Purchase (PASPs) currently used in the market do not fall under this category. Moreover, the Administration has disallowed confirmor transactions of first-hand uncompleted properties which are granted pre-sale consent on or after 13 August 2010, and purchasers of any such properties will not be allowed to re-sell, sub-sell or transfer the benefits of the PASPs/ASPs before completion of Assignment. We therefore consider that the chance of creating a loophole by excluding an option to purchase and a right of pre-emption from chargeable agreements for the purpose of charging SSD should be low.</p>
Stanley CHAN (<i>LC Paper No. CB(1)2183/10-11(03) 4.5.2011</i>)	Resale of a property within 24 months by way of nomination should not be chargeable with SSD	<p>➤ Under the Bill and the proposed CSAs, nomination of the spouse, parents, children, brothers or sisters to take up the assignment of the property, and sale or transfer of the property to spouse, parents, children, brothers or sisters will be exempted from SSD. The</p>

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		<p>Administration considers that extending the exemptions to cover persons other than the above will depart from the existing Stamp Duty Ordinance regime and create a big loophole for speculation.</p>
<p>Rex Ng (LC Paper No. CB(1)2183/10-11(03) 9.5.2011)</p>	<p>Addition of brother as an additional mortgagor when applying for mortgage loans should not be chargeable with SSD</p>	<ul style="list-style-type: none"> ➤ As explained in the Administration's response dated 4 May 2011 to the Bills Committee (LC Paper No. CB(1)2080/10-11(04)), the Inland Revenue Department (IRD) has consistently taken the view that paragraph (c) of the definition of "agreement for sale" in section 29A(1) of the SDO has no application in respect of a bona fide mortgage or charge. IRD has stated the same in the Stamp Office Interpretation and Practice Notes No.1 (Revised) – "Stamping of Agreements for Sale and Purchase of Residential Property" (the Practice Note). In other words, a bona fide mortgage or charge is not chargeable with ad valorem stamp duty or SSD. ➤ IRD will update the Practice Note upon the enactment of the Stamp Duty (Amendment) (No. 2) Bill 2010 to state explicitly that a bona fide mortgage or charge is not considered as an agreement for sale as defined and is therefore not chargeable with SSD. ➤ Also, addition/deletion of name(s) to/from a chargeable agreement for sale or Assignment will be exempted from SSD if the person(s) is the spouse, parents, children, brothers or sisters of the original purchaser(s).

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