



# Stamp Duty (Amendment) Bill 2012

## 《2012年印花稅(修訂)條例草案》

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25 January 2013

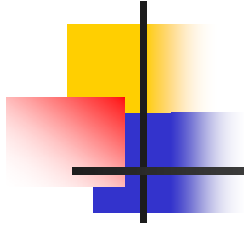
2013年1月25日

# Background

## 背景

- In the midst of a continuously exuberant state in the residential property market, arising from a tight supply of flats, extremely low interest rates and the influx of capital from overseas, it is apparent that the property residential market is out of step with the real economy.

從現時住宅物業供應緊張、利率超低及外地資金不斷湧入，以致住宅物業市場持續升溫的情況來看，住宅物業市場與實體經濟的發展步伐明顯並不一致。



- The Financial Secretary announced the new demand-side management measures, i.e. the enhancement to the Special Stamp Duty (SSD) and the introduction of the Buyer's Stamp Duty (BSD), on 26 October 2012.

財政司司長於2012年10月26日，公布新的需求管理措施，即加強額外印花稅及引入買家印花稅。

# Enhancement to the SSD

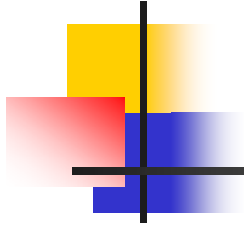
## 加強額外印花稅

- The Bill proposes increasing the SSD rates and extending its coverage from 24 months to 36 months.

條例草案建議增加額外印花稅稅率，及將其涵蓋範圍由24個月延長至36個月。

- The SSD rates under the enhanced SSD regime are as follows –

加強後的額外印花稅的稅率如下：

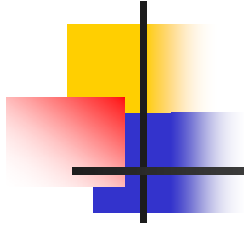


- 20% of the amount or value of the consideration if the residential property has been held for six months or less;

若持有有關的住宅物業不超過六個月，稅率為交易金額或物業市值的20%；

- 15% of the amount or value of the consideration if the residential property has been held for more than six months but for 12 months or less; and

若持有有關的住宅物業超過六個月但在十二個月或以內，稅率為交易金額或物業市值的15%；及



- 10% of the amount or value of the consideration if the residential property has been held for more than 12 months but for 36 months or less.

若持有有關的住宅物業超過十二個月但在三十六個月或以內，稅率為交易金額或物業市值的10%。

# Introduction of the BSD

## 引入買家印花稅

- The Bill also proposes introducing the BSD on residential properties acquired by any person (including companies) except a Hong Kong permanent resident (HKPR).

條例草案亦建議引入適用於香港永久性居民以外的任何人士(包括公司)取得住宅物業的買家印花稅。

- The BSD is to be charged at a flat rate of 15% on all residential properties.

所有住宅物業亦受限於劃一15%的買家印花稅。



# The Stamp Duty (Amendment) Bill 2012

## 《2012年印花稅(修訂)條例草案》

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- In drafting the Bill, we have taken into account various views expressed in the community, including those received from the LegCo Panel on Housing and Panel on Financial Affairs at their joint meeting on 2 November 2012, and during the meetings / briefings we arranged for relevant stakeholders.

我們在擬備條例草案時，已考慮社會各界所表達的意見，包括立法會房屋事務委員會及財經事務委員會於2012年11月2日聯席會議上提出的看法，以及我們為相關持份者安排的會議／簡介會上所蒐集的意見。

- The key issues of the Bill are highlighted below.  
條例草案的重點載於下文。



# Definition of HKPRs

## 香港永久性居民的定義

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- Holders of valid permanent identity cards under the Registration of Persons Ordinance (Cap. 177).

根據第177章發出的有效永久性居民身份證持有人。



## Minor and mentally incapacitated persons

### 未成年和精神上無行為能力的人

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- For a HKPR to be exempted from the BSD, the HKPR must be the purchaser / transferee acting on his or her own behalf in the acquisition of the residential property, except for a HKPR who is a minor or a mentally incapacitated person who, due to the lack of capacity to enter into legally binding agreements, must in practice require another person to act on his or her own behalf.

香港永久性居民在取得住宅物業時，必須是物業的買家／承讓人，代表自己行事，方可獲豁免繳納買家印花稅，惟未成年或精神上無行為能力的香港永久性居民除外。他們由於沒有能力簽訂具法律約束力的協議，現實上須由他人代其行事。

# Exemptions

## 豁免

- We have made reference to the existing exemption arrangement of the SSD. We suggest that similar exemptions be provided in respect of the BSD.

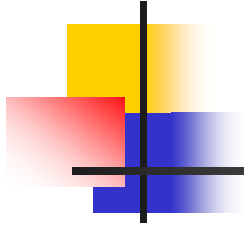
在買家印花稅的豁免安排方面，我們大體會參照額外印花稅現時的安排，建議提供類似的豁免。

- Exemptions include:

有關豁免包括：

- acquisitions of a residential property by a HKPR jointly with a non-HKPR close relative;

一名香港永久性居民及其非香港永久性居民的近親聯名取得住宅物業；

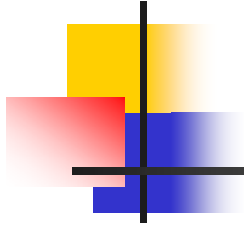


- assignment of a residential property to a non-HKPR close relative;

轉讓住宅物業予非香港永久性居民近親；

- acquisition or transfer of a residential property by a court order;

由法院判令或命令作出或依據法院判令或命令作出的住宅物業取得或轉讓



- residential properties as a gift to charitable institutions exempted from tax under the Inland Revenue Ordinance;

餽贈住宅物業予於《稅務條例》（第112章）下豁免繳稅的慈善機構；

- acquisition or transfer of a residential property in respect of which the chargeable document is made relates solely to the estate of a deceased person; etc.

藉「可予徵收印花稅的買賣協議」由一個離世者遺產權中取得或轉讓住宅物業，等等。

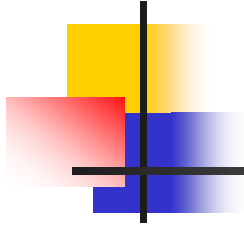


## Application of the BSD on companies 買家印花稅於公司的適用範圍

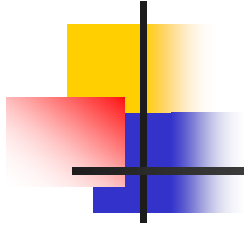
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- Our policy intention is to accord priority to the home ownership needs of HKPRs in the midst of the tight supply, ultra-low interest rate and abundant liquidity by managing the demand of non-HKPRs and companies.

我們的政策原意是於現時住宅物業供應緊張、利率超低及資金充裕的情況下，管理非香港永久性居民及公司的需求，以優先滿足香港永久性居民的置居需要。



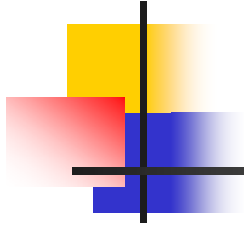
- There are views that companies whose shareholders are all HKPRs should be exempted from the BSD.  
有意見指股東全屬香港永久性居民的公司應獲豁免買家印花稅。
- To identify a company on the basis of the HKPR status of its shareholder(s) for the purpose of BSD will deviate from the basic legal principle that a company being an entity should be independent from its shareholder(s).  
以股東的香港永久性居民身分來界定公司可否獲豁免繳納買家印花稅，將會混淆公司是一個實體，獨立於其股東這重要的基本法律原則。



- It is also not practical to exempt companies whose shareholders are all HKPRs by putting in place a self-declaration mechanism as it would lead to tax evasion.

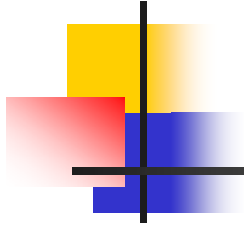
以自我申報機制豁免股東全屬香港永久性居民的公司繳交買家印花稅並不可行，因有關做法會導致避稅情況。





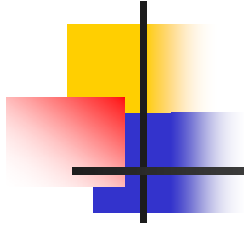
- First, a registered company may involve a huge number of shareholders, some of them can be bodies corporate. It will call into question how many tiers of company structure should be captured to verify the identity of the ultimate shareholders.

首先，有關註冊公司可能涉及龐大數量的股東，當中部分可能是法人團體。就此，建議的主動申報機制究竟需要涵蓋多少層的公司架構方可確認實際股東的身分，頓成疑問。



- Besides, companies incorporated overseas are not required to provide information on their shareholders to the Stamp Office or Companies Registry, thus investigation is virtually impossible.

另外，在海外成立的公司，其股東並不需向印花稅署或公司註冊處申報，因此在追查海外成立的公司存在相當大的困難。



- Furthermore, the shareholders with HKPR status can circumvent the BSD through transferring property entitlement to non-HKPRs by various ways such as nomination, allotment of new shares, etc. The shareholders would appear to remain the original shareholders but in reality the control of the company has been transferred.

再者，香港永久性居民股東可以透過轉讓住宅物業權益予非香港永久性居民的股東以避過買家印花稅，有關方法包括作出提名、配發新股等。轉讓業權後，表面上原有的股東仍然是有關公司的股東，但實際上公司的控制權已經轉到其他人手上。



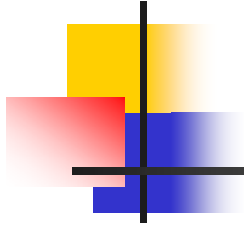
## Refund of BSD paid for redevelopments

### 退回重建項目的買家印花稅

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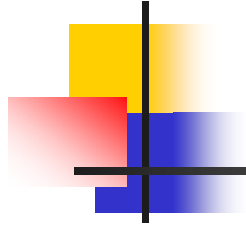
- The policy intent is that the BSD should not hinder redevelopment (be it for redevelopment into a residential or a non-residential property).

我們的政策原意是，買家印花稅不應窒礙重建，不論取得的住宅物業將重新發展作住宅或非住宅物業。



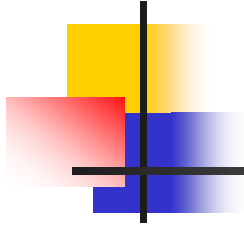
- Under the Bill, a refund mechanism will be put in place. Acquisition of residential properties for the construction of immovable properties will be exempted from the BSD, provided that the immovable properties are constructed within six years.

條例草案建議就買家印花稅制定退回稅款機制，使任何人或公司如取得住宅物業，並在六年內重建成不動產，可獲退還已繳交的買家印花稅。



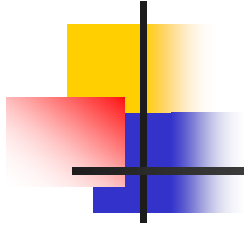
- The general rule is that the “six-year period” starts when the relevant developer has become the owner of the entire lot of the redevelopment concerned.

有關的基本原則，是當發展商成為重建所涉及的整個地段的擁有人，該段「六年期」即開始計算。



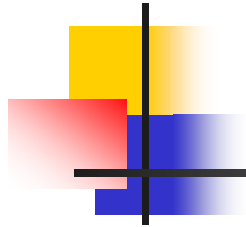
- The developer will be considered as having completed the construction if it has obtained, within six years thereafter, the Occupation Permit (OP) in respect of the redevelopment, or the first OP if there is more than one for the entire redevelopment.

倘若發展商在其後六年內就有關重建項目取得佔用許可證，一般情況下會被視作已履行上述「六年期」條件；如整個重建項目涉及多於一張佔用許可證，則在六年內取得第一張佔用許可證，便會視作已完成有關重建。



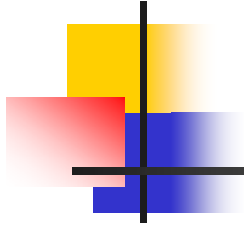
- If the lot is the subject of an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545) and the Lands Tribunal, on application by the developer, allows a further period, then the further period prevails.
- 如有關地段是根據《土地(為重新發展而強制售賣)條例》(第545章)下土地審裁處所批出的售賣土地命令而售賣的地段，而土地審裁處於收到有關發展商申請延長重建期限而批准額外限期，則以該額外限期為準。





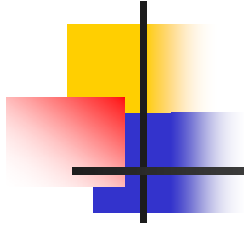
- Where lease modification is required after the developer has acquired the lot(s), the counting of this “six-year period” commences from the completion of first such lease modification of the lot(s) i.e. the date of the lease modification document.

在發展商取得有關地段後須作出契約修訂的情況下，該段「六年期」會在有關地段的第一項契約修訂完成後(即契約修訂文件的日期)開始計算。



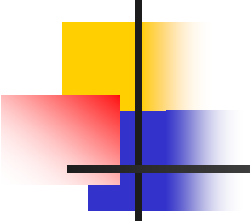
- Where a new lot is granted by the Government, the counting of this “six-year period” commences with the grant of a new lot by the Government.

假如政府批出新地段，該段「六年期」會在政府批出新地段時開始計算。



- It is difficult to give any exemption from BSD before there is solid proof that such an acquisition is for the purpose of redevelopment and that it can subsequently fulfil the various conditions for exemption. Thus, the person or company pursuing redevelopment has to pay the BSD upfront as and when individual units are acquired.

在確實證明取得有關的物業是作重建用途而發展商之後能履行各項豁免條件之前，難以批准豁免買家印花稅。因此，進行重建項目的個人或公司須在取得個別單位時繳交買家印花稅。

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- Where the individual units were transferred from a body corporate to an associated body corporate within the meaning of section 45 of the Stamp Duty Ordinance before the redevelopment is completed, the associated body corporate may also apply for refund of the BSD paid by the body corporate upon completion of the redevelopment and the six-year rule would still apply.

如有關的物業是由一個法人團體於《印花稅條例》第45條的情況下在重建完成前轉讓予相聯法人團體，有關的相聯法人團體可以於該重建項目完成後，申請退還原法人團體已繳付的買家印花稅，而有關的「六年期」規定仍然適用。



## Mechanism to adjust SSD and BSD rates by means by subsidiary legislation

以附屬法例調整額外印花稅及買家印花稅稅率的機制

- Adjustments to the SSD and BSD rates are proposed to be made by means of subsidiary legislation subject to negative vetting by LegCo, in order to have the necessary flexibility to adjust the applicable rates (to zero if necessary) in a timely manner.

條例草案建議以先訂立後審議的附屬法例形式調整額外印花稅及買家印花稅的稅率，以便靈活地因應市場情況，及時調整適用的稅率(如有需要稅率可調整至零)。



# Implementation of the measures 落實措施的安排

- The Bill proposes that the measures should take effect on 27 October 2012. IRD will record all residential property transactions between 27 October 2012 and the date on which the Bill is enacted. Relevant demand notes will be issued afterwards.

條例草案建議有關措施於2012年10月27日生效。稅務局會記錄所有在2012年10月27日起至相關條例草案獲通過期間的一切住宅物業交易，並於條例草案獲通過後，發出繳費通知書。

Thank you

多謝

