



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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立法會 CB(1)521/12-13(01)號文件  
LC Paper No. CB(1)521/12-13(01)

The Honourable Starry LEE Wai-king, JP  
Chairman  
Bills Committee on Stamp Duty (Amendment) Bill 2012  
c/o Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

**Stamp Duty (Amendment) Bill 2012**

We thank you for your letter of 23 January and are pleased to enclose our submission on the subject Bill for the consideration of the members of the Bills Committee.

Yours sincerely

Stewart Leung  
Chairman, Executive Committee

c.c. Clerk to Bills Committee



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### **Stamp Duty (Amendment) Bill 2012**

#### **- Submission of The Real Estate Developers Association of Hong Kong**

The Chief Executive has stated in his Policy Address that the long-term solution to the present housing problem is to increase the supply of residential accommodation coming onto the market.

Prior to the Policy Address, the Financial Secretary introduced the new concept of Buyer's Stamp Duty ("BSD") for which the Administration is currently seeking legal ratification in the Legislative Council. The introduction of BSD is intended as a demand side management tool to reduce purchasing demand from Mainland buyers and allow Hong Kong Permanent Residents ("HKPRs") a better opportunity to join the housing ladder.

### **Urban Renewal**

The Administration has clearly stated that it is not the intention to impede the site assembly process and thereby the construction of new homes through private sector urban renewal projects. However, an unintended consequence of limiting the exemption to BSD to HKPRs only is to directly impact this supply chain and significantly reduce the production of new residential accommodation for the following reasons:

- 1) Site assembly is a lengthy and difficult process with a high degree of risk and uncertainty as to whether and when a site can be successfully assembled. One of the effective ways to minimize such risk as adopted by investors/developers for many years is to rely on anonymity and the use of corporate structures.
- 2) If site assembly were to be undertaken by individual HKPRs, the anonymity will be lost immediately and the process of site assembly will undoubtedly founder. It is practically impossible to use a wide range of individual purchasers to undertake the site assembly process given the



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high degree of risk and uncertainty with respect to the ownership by individuals which cannot be legally guaranteed.

- 3) Although there are other sound justifications for exempting HKPR-controlled companies from BSD (see below under “Company-owned properties” for further details), this would not in fact help overcome the site assembly problem due to the transparency requirement to show the identity of shareholders to ensure that they are HKPRs.
- 4) Even assuming that an investor/developer decides to use a corporate structure and absorb the additional cost of BSD (which is highly unlikely), the signal this will send to other owners will be clear as soon as several sales in a specific building are registered. As a result, the chances of a successful outcome of site assembly will become extremely low and the effort will likely fail.
- 5) A crucial step in the site assembly process is the ability to consolidate ownership into one entity once acquisition is complete. This can be done effectively and efficiently using a corporate structure (e.g. internal transfer between associated body corporate) but not under other circumstances.

Compounding the problem is that an investor/developer is required, under the Government’s proposal, to pay the 15% BSD *upfront* on each residential property it acquires even though it could not predict whether and when it would be able to amalgamate the entire site, which process could easily take over 10 years. The Government proposes that the investor/developer may apply for a *subsequent* refund of the BSD, but only after it has completed the amalgamation of the entire site and construction of the project with an arbitrarily set 6-year timespan. If the development is not completed within 6 years, then the BSD, which has already been tied up for, say, 10 to 15 years, during a time of economic uncertainty and unpredictable interest rates, would be forfeited.





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In short, the whole urban renewal process, except those situations initiated by the Urban Renewal Authority, will be significantly undermined with the unintended outcome that this important contribution to the supply side by the private sector will be dramatically reduced.

There is no solution to this problem if companies are to be charged BSD. However, in order to provide some encouragement to private sector investment in urban renewal, REDA proposes that the refund of the BSD should be made at the time when an investor/developer has accumulated an interest of not less than 80% in a residential building rather than having to wait until the completion of the redevelopment as proposed by the Government which could easily be 6 to 8 years later. REDA considers that the setting of 80% interest is reasonable and appropriate because it is the threshold for the majority owners of a building to make a compulsory sale application under the Land (Compulsory Sale for Redevelopment) Ordinance for buildings with the occupation permit issued for 50 years or more.

By the same token, REDA also proposes that any outright purchase of an 80% interest or more in a residential building intended for redevelopment should be exempt from the BSD.

To be clear, this will not reverse any of the unintended consequences brought about by the Government's proposal; however, it will hopefully procure some form of relief to allow the private sector to continue their contribution to the production of new homes through urban renewal albeit to a much reduced scale.

### **Company-owned properties**

A second area of concern is the impact which BSD will have on the legitimate acquisition of residential properties by Hong Kong persons wishing to use companies for reasons of estate planning, family investments, the acquisition of an asset as collateral for bank financing, particularly in the case of the SMEs, and other legitimate reasons.



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There is no substantive difference between the acquisition of residential properties by HKPRs and the acquisition of residential properties by Hong Kong companies owned and controlled by HKPRs. There seems to be no sense or reason to penalize those HKPRs who wish to use a company to make a property purchase for some legitimate reasons.

The Government's excuse for not considering any exemption is that it is extremely difficult to put in place an exemption mechanism that can effectively cover all scenarios and plug all loopholes. REDA submits that this can easily be addressed by imposing some simple conditions for so long as the BSD is still in place. Details of our proposal are provided in the **Annex**. As a brief summary of our proposal:

- 1) The number of shareholders of a company incorporated under the Companies Ordinance is limited to no more than, say, 5 and all of them must be HKPRs.
- 2) Each shareholder will be required to file a declaration to the effect that he is holding the shares as beneficial owner for himself, or holding the shares on behalf of a HKPR.
- 3) Such shares must be held directly by individuals and not through any intermediate holding companies.
- 4) In the case of non-compliance of the conditions (e.g. transfer of ownership of the shares, or issue of new shares, to any non-HKPRs), the exemption would be lost and the BSD become payable immediately.
- 5) It is a criminal offence for any shareholder to make an ownership declaration which is false in any material respect.



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REDA believes it is in everyone's interest to resolve the long-standing issues facing Hong Kong's property market, but to do so in an effective and reasonable manner would require the Government to be open to practical solutions and suggestions from the industry and relevant experts that would meet its stated policy objectives and protect the long term future of the community.

At the end of the day, it is the Government's primary duty to use every resource available to protect Hong Kong people's rights and freedoms and that includes the inalienable right to buy and sell property as is guaranteed under the Basic Law.

**The Real Estate Developers Association of Hong Kong**  
**January 2013**





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### 2012 年印花稅(修訂)條例草案

#### - 香港地產建設商會意見書

行政長官在施政報告中明確表示，增加房屋供應是解決現時香港住屋問題的長遠方法。

早在施政報告出台之前，財政司司長已經提出徵收買家印花稅。該印花稅的相關條例草案現正由立法會審議。買家印花稅是政府新一輪管理需求的其中一項措施，目的為要降低來自內地買家的入市意欲，從而優先照顧港人的置業需求。

#### 市區重建

政府一再強調，政策目的並非要窒礙私營部門參與市區重建。然而，只豁免香港永久居民免繳買家印花稅，後果是市區重建將無可避免地受到打擊，直接降低新屋的興建量。理由如下：

1. 在市區重建的過程中，業權收集是艱辛而漫長的一環，投資者／發展商必須承擔重建計劃曠日甚久甚至功虧一簣的風險。為了減低這些風險，多年來投資者／發展商收集業權時，皆為隱密的原故以公司名義進行。
2. 假使經由香港永久居民以個人名義收集業權，一切賴以保密的程序將會蕩然無存，況且無論法律上以至實際上亦難以確保每一名參與收集業權的人士會由始至終地履行合作協議，向投資者／發展商交付業權。
3. 即使容許香港人管控的公司獲得豁免買家印花稅（下文[公司買家]將作詳細闡述），而使用該等公司收集業權，該等公司之股東亦必須公開他們



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的身份才可獲得豁免，此舉對保密的要求並無幫助。

4. 就算投資者／發展商願意承擔買家印花稅的額外成本，決定以公司名義收集業權（事實上機會幾近於零），隨着同一大廈數個單位交易曝光，重建計劃仍不免會公諸於世，最終能夠成功收集業權的機會微乎其微。
5. 業權收集的關鍵之處，是在於收購程序完成時整合分散的業權。使用公司架構(例如關聯公司的內部交易)是整合業權唯一可行的方法。

令收集業權百上加斤的是按照政府現時的建議，投資者／發展商即使無法預計重建項目會否成功或需時多久(動輒 10 年以上)，在收集業權時仍必須為每個購入單位預繳 15%的買家印花稅。

除此以外，政府還硬性規定投資者／發展商只可以在收集所有業權後起計算的 6 年內完成重建才可獲退還已預繳的買家印花稅。須知重建項目往往要花上 10 年甚至 15 年的時間才可完成，過程中還必須經歷幾許經濟起伏以及借貸息口上落的週期，假若投資者／發展商不能在 6 年內完成項目，便會喪失追回所預繳的買家印花稅的權利。

一言以蔽之，買家印花稅勢將嚴重打擊一切市區重建的活動，除了市區重建局以外，所有投資者／發展商皆無一倖免，變相減少了私營部門所提供的房屋供應。相信這樣的結果，對政府來說是始料不及。

政府一日堅持向公司買家徵收買家印花稅，上述問題將無法解決。在這大環境下，香港地產建設商會只可無奈地提出以下建議：容許投資者／發展商在取得 8 成或以上業權後即可以獲得退回該 15%之稅款，免得他們動輒





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需要再等上 6 至 8 年時間待項目完成才可收回稅款。商會考慮到現時在土地（為重新發展而強制售賣）條例下是以 8 成業權作為多數份數業主申請強制出售樓齡 50 年或以上樓宇的門檻，相信這是一個合理和合適的水平。

基於同一原則，商會建議所有牽涉業權 8 成或以上用作重建之用的物業買賣亦應獲豁免此稅項。

事先聲明，上述措施只是杯水車薪，不能力挽狂瀾，只可提供少許誘因，令投資者／發展商在在形勢比人強的環境下依然勉力而為，繼續參與市區重建工作。然而由此而產生的新屋供應定必大大減少。

## 公司買家

買家印花稅同時限制了香港市民以公司名義購買物業的自由。事實上，港人以公司名義購買物業由來已久，原因種種，包括遺產分配，家族投資，以至中小企以物業向銀行融資的各樣正常商業行為。

一宗物業買賣，無論是經由香港永久居民，還是一間由香港永久居民所擁有或管控的公司進行，本質上並無分別。因此，政府實在毫無理據向香港永久居民所擁有或管控的公司徵收懲罰性的稅項。

政府用難以制訂一套可以有效涵蓋所有避稅安排並且堵塞所有可見漏洞的機制為藉口，拒絕考慮任何豁免。商會希望能夠為政府解決疑難，因此嘗試出謀獻策，建議在買家印花稅實施其間附設幾項簡單而可行的條件，以容許豁免。商會的建議載於附錄中，主要內容是：



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1. 限制涉及物業買賣之公司必須在香港成立，其股東人數必須不多於 5 人，並規定他們全部必須為香港永久居民。
2. 所有股東必須申報是以個人身份或是為一位香港永久居民持有公司股份。
3. 公司股份必須由個人而非公司所持有。
4. 一切因股權變更(例如轉讓股權或配發新股予一非香港永久居民等)而違反上述條件者，豁免會即時撤銷，公司必須立刻繳交稅款。
5. 將股東虛假申報股權定為刑事罪行。

總的而言，解決香港房屋問題是合乎全港市民的利益，然而要有效解決問題，政府必須尊重業界的專業意見，虛心聆聽他們的建議，才能使政策達到預期效果，以及照顧港人的長遠利益。

歸根到底，政府的首要任務，是要竭盡所能保護港人所擁有的一切權利，包括基本法所賦予自由買賣物業的權利。

香港地產建設商會

2013 年 1 月

**BUYER'S STAMP DUTY ("BSD")**  
**REDA's proposal on company purchaser**

Objective of BSD

1. As explained to REDA, Government's objective in introducing BSD is to manage demand by giving priority to Hong Kong Permanent Residents ("HKPRs").

Concerns of Government

2. If a company purchaser were to be exempted from BSD, Government's primary concern, as explained to REDA, is the difficulty in plugging loopholes. The following examples were given :-
  - (a) A company can have many shareholders.
  - (b) Shares may be held by nominees or through intermediate holding companies and it might be difficult to determine who are the ultimate beneficial shareholders.
  - (c) New shares may be issued, thereby altering the ownership of the company.
3. REDA submits that, for so long as the BSD is still in place as proposed in the Stamp Duty (Amendment) Bill 2012, the following simple conditions for the exemption can be imposed to effectively address Government's concerns.

Conditions for exemption

4. A company purchaser is exempt from BSD only if the following conditions are fulfilled :-
  - (a) The company must be incorporated under the Companies Ordinance and limited by shares.
  - (b) The number of shareholders is limited to no more than, say, 5.
  - (c) All the shareholders or the sole shareholder must be HKPRs.
  - (d) Each of the shareholders or the sole shareholder has made a declaration ("**Ownership Declaration**") to the effect that he is the registered owner of the shares, and holds the shares as beneficial owner for himself, or holds the shares on behalf of a HKPR.
  - (e) Each of the shareholders or the sole shareholder holds the shares directly and not through any intermediate holding companies.



Loss of exemption

5. The exemption is lost and BSD will be payable within 30 days of the date when any of the following events (each a “**Relevant Event**”) occurs :-
  - (a) If any of the shareholders transfers or enters into an agreement for the transfer of the legal or beneficial ownership of any of the shares held by him unless :-
    - (i) the transferee is a HKPR; and
    - (ii) an Ownership Declaration has been made by the transferee.
  - (b) If any new shares are issued unless :-
    - (i) the new shares are issued to a HKPR; and
    - (ii) the person to whom the new shares are issued makes an Ownership Declaration.
6. When a Relevant Event occurs, BSD shall be payable at 15% of whichever the higher of the value of the Property or the consideration of the transfer which would have been chargeable as if no BSD exemption had been granted.
7. If the amount is not paid within the 30 days from the date of occurrence of a Relevant Event, then the company shall be liable to a penalty calculated under section 9 of the Stamp Duty Ordinance (i.e. penalty for late stamping outside the prescribed time limit for stamping the instrument).

Obligation to give notice

8. A shareholder must give notice to the Collector of Stamp Duty within 14 days of the occurrence of a Relevant Event.

Penalties

9. It is an offence for a shareholder to make an Ownership Declaration which is false in any material respect.

Loss of exemption arrangement follows section 45 of Stamp Duty Ordinance

10. The arrangement regarding the loss of exemption (i.e. payment of BSD within 30 days of the date of occurrence of a Relevant Event) and the notification requirement as proposed in paragraphs 5, 6, 7 and 8 above in fact follow the arrangement regarding the loss of stamp duty relief

granted for internal transfer between associated body corporate under section 45 of the Stamp Duty Ordinance.

11. Under section 45(5A) of the Stamp Duty Ordinance, if the transferor and transferee cease to be the associated body corporate (the “**cessation**”) within 2 years after the date of execution of the relevant instrument, and stamp duty relief has been claimed under section 45, then, among other things :-
  - (a) the transferor and transferee shall notify the Collector of that fact and of the date of the cessation within 30 days after the date of the cessation [*It should be noted that, in REDA’s proposal in paragraph 8 above, REDA even proposes to shorten the notification period for BSD to 14 days from the date of the Relevant Event*];
  - (b) if any relief from stamp duty has been granted under section 45, then such relief shall be lost and the parties to the transaction shall pay, within 30 days after the date of the cessation, by way of stamp duty an amount equal to the stamp duty which would have been chargeable on the instrument as if no relief from stamp duty had been granted under section 45; and
  - (c) if the amount is not paid within the 30 days, the parties shall be liable to a penalty calculated under section 9 of the Stamp Duty Ordinance (i.e. penalty for late stamping outside the prescribed time limit for stamping the instrument).
12. The arrangement on loss of stamp duty relief under section 45(5A) of the Stamp Duty Ordinance above has been in effective operation for many years. There is no reason why the same arrangement should not be adopted for loss of exemption of BSD in relation to company purchaser.

**The Real Estate Developers Association of Hong Kong**  
**January 2013**