

立法會
Legislative Council

LC Paper No. CB(1)988/13-14
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by the Administration)

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Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of eleventh meeting on
Monday, 17 June 2013, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Starry LEE Wai-king, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon LAM Tai-fai, SBS, JP
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon James TIEN Pei-chun, GBS, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon Charles Peter MOK
Hon CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen

Members absent : Hon LEE Cheuk-yan
Hon WONG Kwok-hing, MH
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Kenneth LEUNG
Hon TANG Ka-piu

Public officers attending : Agenda item I

Transport and Housing Bureau

Ms Agnes WONG, JP
Deputy Secretary for Transport and Housing
(Housing)

Mrs Vicki KWOK
Principal Assistant Secretary for Transport and
Housing (Housing) (Private Housing)

Financial Services and the Treasury Bureau

Ms Fiona CHAU
Principal Assistant Secretary for Financial Services
and the Treasury (Treasury) (Special Duties)

Inland Revenue Department

Mr Richard WONG, JP
Deputy Commissioner of Inland Revenue
(Operations)

Ms TSE Yuk-yip, JP
Assistant Commissioner of Inland Revenue

Mr HONG Wai-kuen
Senior Superintendent of Stamp Office

Department of Justice

Ms Monica LAW
Senior Assistant Law Draftsman

Ms Selina LAU
Senior Government Counsel

Clerk in attendance: Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Miss Rita YUNG
Council Secretary (1)3

Action

I. Meeting with the Administration

(LC Paper No. CB(1)1218/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 20 May 2013

LC Paper No. CB(1)1165/12-13(01) -- Submission from The Law Society of Hong Kong dated 28 May 2013 in response to the Administration's reply as set out in LC Paper No. CB(1)893/12-13(02)
(English version only)

LC Paper No. CB(1)1288/12-13(01) -- Administration's responses to issues raised at the meeting on 20 May 2013 and the submission from The Law Society of Hong Kong dated 28 May 2013

LC Paper No. CB(1)1288/12-13(02) -- List of follow-up actions arising from the discussion at the meeting on 7 June 2013

LC Paper No. CB(1)1288/12-13(03) -- Administration's response to issues raised at the meeting on 7 June 2013

- LC Paper No. CB(1)1165/12-13(02) -- Submission from The Hong Kong Institute of Estate Agents dated 29 May 2013 in response to the Administration's reply as set out in LC Paper No. CB(1)973/12-13(02)
(English version only)
- LC Paper No. CB(1)561/12-13(01) -- Administration's response to Assistant Legal Adviser's letter dated 1 February 2013 as set out in LC Paper No. CB(1)521/12-13(02)
- LC Paper No. CB(1)873/12-13(02) -- Administration's response to Assistant Legal Adviser's letter dated 3 April 2013 as set out in LC Paper No. CB(1)805/12-13(01)
- LC Paper No. CB(1)692/12-13(02) -- Administration's response to Assistant Legal Adviser's letter dated 20 February 2013 as set out in LC Paper No. CB(1)598/12-13(04)

Relevant papers issued previously

- LC Paper No. CB(3)263/12-13 -- The Bill
- LC Paper No. CB(1)454/12-13(02) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

2. The Chairman reminded members that in accordance with rule 83A of the Rules of Procedure of the Legislative Council, they should disclose the nature of any direct or indirect pecuniary interest before they spoke.

3. The Chairman, Mr James TO, Mr James TIEN, Mr POON Siu-ping, Mr Abraham SHEK, Mr WONG Ting-kwong, Mr LEUNG Che-cheung, Mr YIU Si-wing, Miss CHAN Yuen-han, Dr LAM Tai-fai, Mr Tony TSE and Mr Alan LEONG made declaration of interests respectively.

4. The Administration was requested to:

- (a) provide (in tabular form) a detailed response to all the comments and views on the Stamp Duty (Amendment) Bill 2012 in the second submission of The Law Society of Hong Kong dated 28 May 2013; and
- (b) consider exempting companies whose shareholders were all Hong Kong permanent residents from the Buyer's Stamp Duty, taking into account suggestions made by members and the Real Estate Developers Association of Hong Kong on measures to address the possible loopholes and enforcement difficulties which might arise from abuse of a declaration mechanism for the purpose of the exemption.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1367/12-13(02) on 28 June 2013.)

II. Any other business

5. There being no other business, the meeting ended at 4:02 pm.

Council Business Division 1
Legislative Council Secretariat
25 February 2014

**Proceedings of the eleventh meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Monday, 17 June 2013, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000450 – 000538	Chairman	Opening remarks	
000539 – 000627	Chairman Mr James TO Mr James TIEN Mr POON Siu-ping Mr Abraham SHEK Mr WONG Ting-kwong Mr LEUNG Che-cheung Mr YIU Si-wing	Disclosure of direct or indirect pecuniary interest by members	
000628 – 001712	Chairman Administration	Briefing by the Administration on its response to the issues raised at the meeting of the Bills Committee held on 20 May 2013 and the submission from the Law Society of Hong Kong of 28 May 2013 (LC Paper No. CB(1)1288/12-13(01))	
001713 – 002600	Chairman Mr James TO Administration	Referring to Examples 1 and 2 in Annex II of LC Paper No. CB(1)1288/12-13(01) on possible loopholes arising from "Nomination/Declaration of Trust/Power of Attorney", Mr James TO expressed the following suggestions to enhance deterrence against tax circumvention if BSD exemption was granted to HKPR-owned companies – (a) assuming any change in the company shareholders' legal/beneficial interests had to be reported to the Stamp Office with similar declaration(s) by new shareholder(s) for the purpose of BSD exemption, the Administration might consider widening the scope of information to be included in the notification/declaration to cover possible scenarios of shares transfer which might give rise to circumvention of the BSD; (b) imposing criminal sanctions and other penalties on both the HKPR shareholder and the non-HKPR to which the shares were transferred (i.e. the new shareholder) if they knowingly	

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		<p>gave false information in the declaration or failed to make the notification as required in (a) above after exemption from BSD was granted; and</p> <p>(c) the instruments effecting property interest indirectly through shares transfer without notifying the Stamp Office should be nullified and would not be admissible as evidence in court proceedings.</p> <p>The Administration's response –</p> <p>(a) whether it was refund of or exemption from the BSD, the suggestion to widen the scope of declaration or impose penalties for the purpose of BSD refund/exemption would not resolve the difficulties for IRD to know and verify whether the shares of the companies had been transferred so as to transfer the interest in the property indirectly and circumvent BSD; and</p> <p>(b) widening the scope of notification/declaration or imposing particular sanctions only for the purpose of BSD refund/exemption would involve fundamental changes to the existing company/taxation regime.</p>	
002601 – 003234	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's views and suggestions –</p> <p>(a) the loopholes referred to in Annex II of LC Paper No. CB(1)1288/12-13(01) could be plugged by a new declaration mechanism for the purpose of the BSD measure; and</p> <p>(b) the Administration should continue to consider exempting companies whose shareholders were all HKPRs from BSD, taking into account suggestions made by members and the Real Estate Developers Association of Hong Kong (REDA) on measures to address the possible loopholes and enforcement difficulties.</p> <p>The Administration reiterated that there were genuine operational difficulties in addressing the loopholes which might arise from abuse of the declaration mechanism to circumvent BSD, and more time was needed to study the suggestions made by members and REDA.</p>	The Administration to follow up as stated in paragraph 4(b) of the minutes.

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003235 – 003949	Chairman Mr CHAN Kam-lam Administration	<p>Mr CHAN Kam-lam considered that –</p> <p>(a) the HKPR shareholders of a company might not take the risks lightly to transfer the interest in the property indirectly to non-HKPRs through shares transfer since the benefit of circumventing the BSD payment would likely be small (in particular if the property value was not high and the payable amount of BSD was small) compared to the serious consequence of criminal sanction and other penalties for tax circumvention;</p> <p>(b) for the purpose of BSD exemption to HKPR-owned companies, the HKPR shareholders concerned could be required to declare that the property in question would not be sold/transferred (including transfer of interest in the property indirectly through shares transfer) within a specified period; and</p> <p>(c) as there would not be many property transactions conducted since late October 2012 (when the BSD measure was announced) by companies whose shareholders were all HKPRs, it should be manageable to put in place a new mechanism that just applied to those transactions with a view to plugging possible loopholes of BSD circumvention.</p> <p>The Administration's response –</p> <p>(a) for the purpose of granting BSD exemption to HKPR-owned companies, the HKPR shareholders could only be required to declare the HKPR status in their best knowledge at the time of declaration, but not the potential status/changes in the post-declaration period;</p> <p>(b) while HKPR shareholders could undertake meeting certain conditions in a specified period after the BSD exemption was granted, the legal implications and enforceability of such an undertaking vis-à-vis a declaration were doubtful unless legislative provisions were put in place to set out the liabilities; and</p> <p>(c) it was envisaged that IRD's difficulties to verify the HKPR status of the company would likely become an "incentive" encouraging circumvention of BSD by transferring the interest</p>	

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		<p>in the property indirectly through shares transfer, in particular if the property value, and hence the payable BSD amount, were high.</p>	
003950 – 004604	<p>Chairman Mr WONG Ting-kwong Administration</p>	<p>Mr WONG Ting-kwong expressed the following views and suggestions –</p> <ul style="list-style-type: none"> (a) the Administration should consult more parties, including seeking advice from the legal advisers to REDA if necessary, to examine how HKPR-owned companies could be exempted from BSD; (b) there should not be an over-assumption that the shareholders of HKPR-owned companies would all be inclined to abuse the declaration mechanism and circumvent the BSD when acquiring properties; and (c) to address the limitations in the scope of declaration for the purpose of BSD exemption, the possible changes in the HKPR status of the shareholders after the declaration was made, and the concern about enforcement of the relevant undertaking in the declaration mechanism, the shareholders of HKPR-owned companies could be required to sign the undertaking in the form of a legal document. <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) it was not an assumption of the Administration that all HKPR-owned companies would make use of the loopholes to circumvent BSD. The purpose of the examples set out in Annex II was to illustrate the possible loopholes and operational difficulties based on IRD's experience in handling stamp duty cases, which could not be prevented simply by imposing heavy penalties; and (b) requiring notification to IRD of any activities involving changes in the control of companies (e.g. issue of new shares which currently did not require stamping) would entail fundamental changes to the company and taxation regimes, which was considered unnecessary only for the sake of BSD as a temporary measure. 	

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004605 – 004752	Chairman Mr James TIEN Administration	Mr James TIEN remarked that it was unrealistic to expect that a legislation could plug all possible loopholes arising from the abuse of a declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD. He said that Members belonging to the Liberal Party would vote against the Bill if the Administration did not consider granting the said exemption.	
004753 – 005448	Chairman Mr James TO Administration	<p>Mr James TO's suggestion that –</p> <p>(a) the undertaking for the purpose of granting exemptions to HKPR-owned companies should include the condition that if there were changes in the HKPR status of the company's shareholders or the controlling stake of the company within a specified period after the declaration was made, the shareholders concerned should pay the BSD to IRD;</p> <p>(b) expanding the scope of declaration/undertaking, imposing criminal liabilities for the purpose of BSD exemption, together with targeted enforcement (including offering "covert rewards" for reporting cases of tax circumvention to enhance surveillance if necessary) should be able to minimize the risks of possible tax circumvention by the HKPR-owned companies; and</p> <p>(c) as the suggestion of granting exemption to HKPR-owned companies was supported by members of different parties after taking into account the possible loopholes and operational difficulties, it should be relatively safe for the Administration to pursue the suggestion on the basis of collective responsibility of the decision. Resolving this issue early would accelerate the scrutiny and passage of the Bill.</p>	
005449 – 011324	Chairman Dr LAM Tai-fai Administration	<p>Dr LAM Tai-fai's views –</p> <p>(a) the Administration should not reject the suggestion to grant exemptions to HKPR-owned companies from paying BSD just because of possible loopholes, having regard that no legislation could possibly plug all the potential loopholes that might arise under different circumstances, and the loopholes could be</p>	

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		<p>minimized, if not removed, by putting in place preventive measures, heavy penalties for tax circumvention and public education;</p> <p>(b) granting exemption to HKPRs (and not the companies owned by them) as proposed by the Administration was not short of loopholes. In fact, it was easier to circumvent the BSD by HKPRs who could acquire and hold a residential property on behalf of a non-HKPR in lieu of property transfer, and the risks of information leakage in such case was also much smaller compared to dealings at the company level likely involving more people;</p> <p>(c) the Administration should also take into account the possible adverse impact on the property market and property-related services sectors if the suggested exemption was not to be granted; and</p> <p>(d) the effectiveness of the BSD measure to achieve the objective of according priority to the housing needs of HKPRs was doubtful without supporting evidence to show that the number of residential property transactions conducted by HKPRs had indeed substantially increased since announcement of the measure.</p> <p>The Administration responded that –</p> <p>(a) the Administration could not ignore the possible loopholes foreseeable at this stage for granting exemptions to HKPR-owned companies based on IRD's experience in handling stamp duty cases;</p> <p>(b) while an HKPR could hold a property on behalf of a non-HKPR without transferring the property, the entitlements of the non-HKPR over the property in question would not receive the same protection that would otherwise be afforded by due stamping and registration by the Land Registry. There were also far more channels for HKPR-owned companies to circumvent BSD by changing the controlling stake of the companies after acquiring a property;</p> <p>(c) the loopholes arising from abuse of a declaration mechanism for the purpose of exempting</p>	

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		<p>HKPR-owned companies from BSD could not be minimized or plugged unless fundamental changes were made to the company and taxation regimes; and the existence of many loopholes given rise by such exemptions would seriously affect the effectiveness of the BSD measure; and</p> <p>(d) consideration had already been given to not counting the property held by HKPRs in the name of a company for the purpose of tax assessment for the doubled ad valorem stamp duty proposed under the Stamp Duty (Amendment) Bill 2013.</p> <p>The Chairman requested the Administration to discuss with the Secretary for Transport and Housing on the suggestion of granting exemptions to HKPR-owned companies from BSD payment in the light of suggestions made by members and revert to the Bills Committee on its decision, if any, at the next meeting.</p> <p>Dr LAM Tai-fai suggested the Administration withdrawing the BSD proposal from the Bill or suspending the discussion on the Bill until a more thoroughly considered proposal was drawn up for members' consideration.</p> <p>The Administration said that it had taken into consideration members' views and suggestions throughout the past discussions, such as refining the BSD refund mechanism for redevelopment projects. Withdrawing the BSD proposal at this stage or suspending the discussion on the Bill would convey a wrong message to the market that the Administration would make concessions on the demand-side management measures, thereby weakening their effectiveness.</p>	
011325 – 011706	Chairman Miss CHAN Yuen-han Administration	<p>Miss CHAN Yuen-han expressed the following views –</p> <p>(a) agreed that it was necessary to cool down the exuberant property market by implementing demand-side management measures as it would take time to increase land and property supply to resolve the housing problem; but the Administration had to strike a careful balance of interests in taking forward the measures; and</p>	

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		(b) the Administration should try to resolve all the technical issues and address members' concerns where appropriate as soon as possible in order to speed up the scrutiny of the Bill.	
011707 – 011720	Chairman Miss CHAN Yuen-han Dr LAM Tai-fai	Disclosure of direct or indirect pecuniary interest by Miss CHAN Yuen-han, Dr LAM Tai-fai	
011721 – 012040	Chairman Assistant Legal Adviser 5 (ALA5) Administration	<p>The Administration was requested to provide (in tabular form) a detailed response to all the comments and views on the Stamp Duty (Amendment) Bill 2012 in the second submission of The Law Society of Hong Kong dated 28 May 2013 (LC Paper No. CB(1)1165/12-13(01)), including clarifying whether non-payment of BSD would result in an encumbrance and thereby affect title.</p> <p>In reply to the Chairman about the issue raised by the Law Society of Hong Kong on the need for clear guidelines on treatment for car parks (paragraph 2.3 of LC Paper No. CB(1)1165/12-13(01)), the Administration advised that if a residential property and the car park were purchased as one single unit and that the residential property and car park could not be purchased separately, the instrument for acquisition of the residential property and car park concerned would be chargeable with the BSD by reference to the total value of the whole transaction. However, if the car park was a separate and independent property from the residential unit and its occupation permit did not allow it to be used for residential purposes, the instrument for purchase of the car park would not be chargeable with the BSD.</p>	The Administration to follow up as stated in paragraph 4(a) of the minutes.
012041 – 012236	Chairman Administration	<p>On the enquiry of the Chairman, the Administration advised that it would –</p> <p>(a) submit the Committee Stage amendments (CSAs) for the Bills Committee's consideration at the next meeting, in relation to the following issues as stated in LC Paper No. CB(1)1288/12-13(01) –</p> <p>(i) exemptions to replacement purchases made by a non-HKPR property owner(s) not of his/her own volition to be granted under certain circumstances;</p> <p>(ii) admissibility of an instrument that was</p>	

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		<p>chargeable with BSD but had not been duly stamped in civil proceedings before a court under specified conditions; and</p> <p>(iii) CSAs for improving the drafting of the Bill.</p> <p>(b) provide at the next meeting information on the enhanced mechanism for refunding BSD for redevelopment; and</p> <p>(c) provide a written response to the submission from the Hong Kong Institute of Estate Agents dated 29 May 2013 in response to the Administration's reply as set out in LC Paper No. CB(1)973/12-13(02) after seeking legal advice on some issues concerned.</p>	
012237 – 012733	Chairman Dr LAM Tai-fai Mr Tony TSE Mr Alan LEONG Administration	<p>Disclosure of direct or indirect pecuniary interest by Mr Tony TSE and Mr Alan LEONG</p> <p>In response to the enquiry of the Chairman, the Administration reiterated the difficulties to exempt charitable organizations which were exempted from tax under section 88 of the Inland Revenue Ordinance (Cap.112) from BSD. It would provide a written response to this issue and other issues raised at the meeting held on 7 June 2013.</p> <p>Mr Alan LEONG and Dr LAM Tai-fai remarked that, as BSD was an extraordinary measure to address an overheated property market, the Administration should not maintain a steadfast position on not granting exemptions to charitable organizations just because these organizations were subject to stamp duties in the existing taxation regime. Dr LAM pointed out that the Administration should trust that it was relatively unlikely for charitable bodies to make covert arrangements to circumvent BSD.</p> <p>Chairman's concluding remarks</p>	