

立法會
Legislative Council

LC Paper No. CB(1)992/13-14
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by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of twelfth meeting on
Monday, 8 July 2013, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Starry LEE Wai-king, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon LEE Cheuk-yan
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-hing, BBS, MH
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
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 Kenneth LEUNG
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen

Members absent : Dr Hon LAM Tai-fai, SBS, JP
Hon WONG Kwok-kin, BBS
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP

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)

Mr Kasper NG
Senior Administrative Officer (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 TAM Tai-pang
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)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)1367/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 17 June 2013

LC Paper No. CB(1)1367/12-13(02) -- Administration's response to issues raised at the meeting on 7 and 17 June 2013

LC Paper No. CB(1)1373/12-13(01) -- Hon Abraham SHEK
(*English version only*) Lai-him's letter dated 24 June 2013

- LC Paper No. CB(1)1460/12-13(01) -- Administration's response to Hon Abraham SHEK Lai-him's letter dated 24 June 2013 as set out in LC Paper No. CB(1)1373/12-13(01)
- LC Paper No. CB(1)1475/12-13(01) -- Hon Abraham SHEK Lai-him's letter dated 8 July 2013 in response to the Administration's reply as set out in LC Paper No. CB(1)1460/12-13(01)
(English version only)
(tabled at the meeting and subsequently issued via email on 9 July 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)1367/12-13(03) -- Administration's response to the submission from The Hong Kong Institute of Estate Agents dated 29 May 2013 as set out in LC Paper No. CB(1)1165/12-13(02)
- 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(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(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 under rule 83A of the Rules of Procedure (RoP) of the Legislative Council, they should disclose the nature of any direct or indirect pecuniary interest before they spoke.

3. The Chairman, Mr Abraham SHEK, Mr Andrew LEUNG, Dr CHIANG Lai-wan, Mr WONG Ting-kwong, Ms Emily LAU, Mr CHAN Kam-lam, Mr Alan LEONG, Mr Tony TSE, Mr Jeffrey LAM, Mr POON Siu-ping and Mr Ronny TONG made declaration of interests respectively.

4. The Administration was requested to provide detailed explanation on the rationale and justifications for not granting exemption from or refunding the Buyer's Stamp Duty after a certain specified period in respect of

acquisition of a residential property solely for charitable purposes by a charitable organization which was exempted from tax under section 88 of the Inland Revenue Ordinance, to address concerns raised by members.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1618/12-13(02) on 26 July 2013.)

II. Any other business

5. There being no other business, the meeting ended at 12:37 pm.

Council Business Division 1
Legislative Council Secretariat
25 February 2014

**Proceedings of the twelfth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Monday, 8 July 2013, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000240 – 000543	Chairman Mr Abraham SHEK Mr Andrew LEUNG Dr CHIANG Lai-wan Mr WONG Ting-kwong Ms Emily LAU Mr CHAN Kam-lam Mr Alan LEONG Mr Tony TSE Mr Jeffrey LAM Mr POON Siu-ping Mr Ronny TONG	Opening remarks Disclosure of direct or indirect pecuniary interest by members	
000544 – 001021	Chairman Administration	Briefing by the Administration on its response to the issues raised at the meetings of the Bills Committee held on 7 and 17 June 2013 (LC Paper No. CB(1)1367/12-13(02))	
001022 – 001650	Chairman Mr Jeffrey LAM Administration	Mr Jeffrey LAM's views and concerns – (a) various sectors of the society, including the foreign chambers of commerce in Hong Kong, had expressed concerns about the introduction of the Buyer's Stamp Duty (BSD); (b) a number of deputations had suggested that companies whose shareholder were all Hong Kong permanent residents (HKPRs) should be exempted from the BSD by way of a declaration mechanism. The deputations had also suggested different ways to minimize abuse of the declaration mechanism. The Administration should consider carefully the suggestions; (c) many HKPR-owned companies acquired residential properties as long term investment or for staff accommodation. Such transactions, which were not for short-term speculative activities, should be exempted from the BSD; and	

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		<p>(d) questioned the Administration's reason for accepting members' views to relax the refund mechanism for redevelopment, but rejecting members' and deputations' suggestions for exempting HKPR-owned companies from the BSD.</p> <p>The Administration's response –</p> <p>(a) as the demand-side management measures, including the BSD, were aimed to stabilize the property market by managing demand, it was vital not to weaken their effectiveness by granting too many exemptions lest it would send a wrong message to the public that the Administration was less than determined in cooling down the exuberance in the residential property market; and</p> <p>(b) relaxing the BSD refund mechanism for redevelopment was premised on the policy objective that the BSD should not hinder redevelopment, and not an intention to favour the developers.</p>	
001651 – 004605	<p>Chairman Mr Tony TSE Mr Abraham SHEK Mr James TO Mr Alan LEONG Administration</p>	<p>Mr Tony TSE welcomed the Administration's enhancement for the BSD refund mechanism for redevelopment.</p> <p>Mr Tony TSE and Mr Abraham SHEK suggested that the Administration should consider refunding the BSD to charitable organizations which were exempted from tax under section 88 of the Inland Revenue Ordinance (IRO) on the conditions that the residential property acquired was solely used for charitable purposes and was not sold within a certain specified period, such as three years, after the acquisition.</p> <p>Mr James TO and Mr Alan LEONG urged the Administration to exempt charitable organizations from the BSD in respect of residential properties acquired solely for charitable purposes, and not sold within a certain specified period after the acquisition. Mr James TO commented that while the demand-side management measures were introduced by the Administration to "buy time" before the medium and long-term measures to increase land and flat supply could materialize,</p>	

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		<p>these measures had disrupted the normal operation of the residential property market.</p> <p>The Administration's response –</p> <p>(a) section 88 of IRO did not prohibit charitable organizations from engaging in activities other than those carried out in pursuit of their charitable objects, although the profits generated from such activities would be subject to profits tax. As such, charitable organization might also engage in trading activities in the residential property market;</p> <p>(b) the objective of introducing the BSD was to accord priority to the home ownership needs of HKPRs in the midst of the current exceptional situation where the residential property market was exuberant and supply remained tight;</p> <p>(c) if charitable organizations exempted from tax under section 88 of the Inland Revenue Ordinance were to be exempted from the BSD, even with the conditions that the residential properties acquired should only be used for dormitory or other purposes consistent with the charitable organizations' expressed charitable objects, such an exemption would still increase the overall demand for residential properties, thereby reducing the residential properties available for HKPRs. This was contrary to the policy intention of the BSD, and it was vital not to weaken the effectiveness of the BSD by granting too many exemptions lest it would send a wrong message to the public that the Administration was less than determined in cooling down the exuberance in the residential property market; and</p> <p>(d) under the existing stamp duty regime, whether an acquisition was subject to stamp duty depended on whether a chargeable instrument was involved. The proposal to exempt or refund the BSD in accordance with the use of the residential property acquired was inconsistent with the present regime. From an operational perspective, the Inland</p>	

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		Revenue Department (IRD) would have difficulties in determining the actual use of the residential property concerned.	
004606 – 005133	Chairman Mr WONG Ting-kwong Administration	Mr WONG Ting-kwong noted that according to the guideline issued by IRD on the operation of section 88 of IRO, a charity exempted from profits tax should state precisely in its governing instrument certain clauses prohibiting distribution of its incomes and properties amongst its members, and specifying how the assets should be dealt with upon its dissolution (which should normally be donated to other charities). Mr WONG considered that the Administration should exempt charitable organizations from the BSD. He requested the Administration to provide a written response to explain the rationale and justifications for not granting exemption from or refunding the BSD to charitable organizations.	The Administration to follow up as stated in paragraph 4 of the minutes.
005134 – 005831	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's views –</p> <ul style="list-style-type: none"> (a) the Administration should listen to the views and concerns expressed by various sectors of the society about the SSD and the BSD; (b) the Administration should consider granting exemption from or refunding the BSD to charitable organizations on the conditions that the residential property acquired was solely used for charitable purposes and was not sold within a certain specified period after the acquisition, as they were not engaging in short-term speculative activities; and (c) questioned the effectiveness of the demand-side management measures as they failed to bring down residential property prices to an affordable level for the society. <p>The Administration's response –</p> <ul style="list-style-type: none"> (a) the Administration had carefully listened to the views of members and various deputations on the SSD and the BSD. Having considered the suggestion for further relaxing the refund mechanism for redevelopment, the Administration had devised an enhanced refund mechanism; 	

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		<p>(b) if charitable organizations were to be exempted from the BSD, even with the conditions that the residential properties acquired should only be used for dormitory or other purposes consistent with the charitable organizations' expressed charitable objects, such an exemption would still increase the overall demand for residential properties, thereby reducing the residential properties available for HKPRs. This was contrary to the policy intention of the BSD, and it was vital not to weaken the effectiveness of the BSD by granting too many exemptions lest it would send a wrong message to the public that the Administration was less than determined in cooling down the exuberance in the residential property market; and</p> <p>(c) the current exuberant market situation was the combined result of various factors, including the overall demand and supply imbalance, the influx of capital, the ultra-low interest rate environment, etc. The objectives of the demand-side management measures were to prevent further exuberance in the housing market, to ensure the healthy and stable development of the residential property market, and to accord priority to HKPR buyers over non-HKPR buyers under the tight supply situation in the residential property market.</p>	
005832 – 010235	Chairman Mr Andrew LEUNG Administration	Mr Andrew LEUNG urged the Administration to relay members' suggestion on refunding the BSD to charitable organizations on specified conditions to the Secretary for Transport and Housing.	
010236 – 010825	Chairman Dr CHIANG Lai-wan Administration	Dr CHIANG Lai-wan pointed out that many HKPR-owned companies and charitable organizations acquired residential properties as long term investment or for staff accommodation. The Administration should consider refunding the BSD paid for such transactions, which were not short-term speculative activities, on specified conditions.	

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010826 – 011524	Chairman Mr WU Chi-wai Administration	<p>Mr WU Chi-wai considered that charitable organizations had to fulfill various requirements of IRD before they could become qualified for tax exemption under section 88 of IRO. Therefore the Administration should exempt these charitable organizations from the BSD if they purchase residential properties solely for charitable purposes.</p> <p>The Administration's response –</p> <p>(a) at present, there were about 7 600 organizations that were qualified for tax exemption under section 88 of IRO, among which about 5 300 were registered in accordance with the Companies Ordinance (Cap. 32); and</p> <p>(b) as section 88 of IRO did not restrict such charitable organizations from carrying out any activity, these charitable organizations might, as with any other companies, carry out trading activities in the property market. Charitable organizations did not enjoy tax exemption across-the-board, and the profits generated from trading activities in the property market could not be exempted from tax in accordance with section 88 of IRO. Exempting these charitable organizations from the BSD might have read-across implications for the entire stamp duty regime, and would inevitably undermine the effectiveness of the demand-side management measures.</p>	
011525 – 012044	Chairman Mr CHAN Kam-lam Administration	<p>Mr CHAN Kam-lam's enquiry and views –</p> <p>(a) the time by which the BSD refund for redevelopment could be advanced under the enhanced refund mechanism; and</p> <p>(b) the Administration should consider refunding the BSD to HKPR-owned company on the conditions that the residential property acquired was used as the residence for its HKPR shareholder(s) and was not sold within a certain specified period after the acquisition.</p> <p>The Administration's response –</p>	

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		<p>(a) under the original BSD refund mechanism, developers might apply for refund of the BSD paid only after the completion of the construction and obtained the first occupation permit in respect of the redevelopment;</p> <p>(b) under the enhanced refund mechanism, the developer might apply for refund of the BSD paid after the developer had obtained ownership of the entire lot to be redeveloped and satisfied specified conditions in relation to foundation works or the building plan for the redevelopment project; and</p> <p>(c) it was estimated that the BSD refund might be advanced by between four to five years under the enhanced refund mechanism as compared with the original one.</p>	
012045 – 012217	Chairman Administration	<p>The Chairman's enquiries –</p> <p>(a) whether the Administration had consulted the property-related industries on the enhanced BSD refund mechanism for redevelopment;</p> <p>(b) when the Administration would submit the relevant committee stage amendments (CSAs) to the Bills Committee for consideration; and</p> <p>(c) whether The Law Society of Hong Kong (the Law Society) had any comments on the Administration's response (LC Paper No. CB(1)893/12-13(02)) to its written submissions.</p> <p>The Administration's response –</p> <p>(a) the enhanced BSD refund mechanism for redevelopment was devised having considered the views and suggestions of members, relevant organizations and trade representatives concerned;</p> <p>(b) the Administration would introduce CSAs to implement the enhanced BSD refund mechanism for redevelopment and consult the Bill Committee on the CSAs as soon as practicable; and</p>	

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		<p>(c) the Administration had provided two written responses to the Bills Committee (LC Paper Nos. CB(1)893/12-13(02) and CB(1)1288/12-13(01)) in relation to the submissions of the Law Society. Copy of the responses were provided to the Law Society. The Administration had also held a meeting with the Law Society on 3 June 2013. The Administration had not received further comments from the Law Society.</p>	
012218 – 012412	Chairman Administration	<p>The Chairman concluded that members had clearly expressed their views on exempting charitable organizations from the BSD. The Administration had also explained its consideration and stance on the issue.</p>	
012413 – 013018	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK expressed disapproval of the Administration's response (LC Paper No. CB(1)1460/12-13(01) to his letter of 24 June 2013 about the possible loopholes and operation difficulties arising from abuse of a declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD. Mr SHEK tabled a letter (LC Paper No. CB(1)1475/12-13(01) at the meeting to further elaborate his views on the issue. He suggested and members agreed that the Bills Committee would discuss the issue in the next meeting after the Administration had provided a detailed response to his letter tabled at the meeting.</p>	
013019 – 013555	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK opined that the Administration should refund the BSD for redevelopment when a developer had acquired not less than 80% of the total interest in a residential building, the same as the threshold of compulsory sale for redevelopment.</p> <p>The Administration responded that it did not consider such a suggestion acceptable, as at that stage it could not ascertain the ownership of the entire lot to be redeveloped and there was no solid proof to show that the acquisition was indeed for the purpose of redevelopment. Nor could it be determined how quickly the redevelopment project could proceed.</p>	

Time marker	Speaker	Subject(s)	Action required
013556 – 014136	Chairman Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM's views –</p> <ul style="list-style-type: none"> (a) supported the objectives of the demand-side management measures to prevent further exuberance in the housing market, and to ensure the healthy and stable development of the residential property market; (b) many HKPR-owned companies and charitable organizations acquired residential properties as long term investment or for staff accommodation. Such transactions, which were not short-term speculative activities, should be exempted from the BSD; (c) a number of deputations had suggested different ways to minimize abuse of the declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD. The Administration should consider carefully the suggestions; and (d) questioned the justifications for accepting declarations made by individual HKPR buyers under the "Hong Kong Property for Hong Kong People" measure on one hand but rejecting declaration mechanism for HKPR shareholders of HKPR-owned companies for the purpose of exemption from the BSD as suggested by members and deputations. <p>The Administration reiterated that it was not appropriate to exempt HKPR-owned companies from the BSD given various considerations from both the policy and the operational perspectives. The Administration had provided concrete examples to illustrate possible loopholes and enforcement difficulties in safeguarding against possible abuse of the suggested declaration mechanism.</p>	
014137 – 015045	Chairman Mr Tony TSE Mr WU Chi-wai Mr Abraham SHEK Administration	Members reiterated their requests for granting exemption from or refunding the BSD on specified conditions to charitable organizations.	

Time marker	Speaker	Subject(s)	Action required
015046 – 015303	Chairman Mr Abraham SHEK	Meeting arrangements	

Council Business Division 1
Legislative Council Secretariat
25 February 2014