

立法會
Legislative Council

LC Paper No. CB(1)1016/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/12

Bills Committee on Stamp Duty (Amendment) Bill 2012

**Minutes of the thirteenth meeting on
Monday, 16 September 2013, at 10:45 am
in Conference Room 2 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 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 Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon Charles Peter MOK
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Hon Tony TSE Wai-chuen

- Members absent** : Hon WONG Kwok-hing, BBS, MH
Hon WONG Kwok-kin, BBS
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon CHAN Yuen-han, SBS, JP
Dr Hon CHIANG Lai-wan, JP
- Public officers attending** : Agenda item I
- Transport and Housing Bureau
- Professor Anthony CHEUNG, GBS, JP
Secretary for Transport and Housing
- Ms Agnes WONG, JP
Deputy Secretary for Transport and Housing
(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, 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 : Mr Andy LAU
Assistant Secretary General 1

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)1618/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 8 July 2013

LC Paper No. CB(1)1618/12-13(02) -- Administration's response to issues raised at the meeting on 8 July 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
(*English version only*) Lai-him's letter dated 8 July 2013

- LC Paper No. CB(1)1617/12-13(01) -- Administration's response to Hon Abraham SHEK Lai-him's letter dated 8 July 2013 as set out in LC Paper No. CB(1)1475/12-13(01)
- LC Paper No. CB(1)1784/12-13(01) -- Hon Abraham SHEK
(*English version only*) Lai-him's letter dated 12 September 2013
- LC Paper No. CB(1)1719/12-13(01) -- Draft Committee Stage amendments to be moved by the Administration
- 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)
- LC Paper No. CB(1)1806/12-13(01) -- Hon Abraham SHEK
(*Chinese version only*) Lai-him's letter dated 16 September 2013
- LC Paper No. CB(1)1806/12-13(02) -- Speaking notes of the Secretary for Transport and Housing

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(1)1617/12-13(02) -- Letter from The Law Society of Hong Kong dated 8 July 2013
(English version only)
- 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 Kenneth LEUNG, Mr Andrew LEUNG, Mr Jeffrey LAM, Mr Alan LEONG, Mr WONG Ting-kwong, Ms Emily LAU, Mr Abraham SHEK, Mr Tony TSE, Mr LEUNG Che-cheung, Mr POON Siu-ping, Mr CHAN Kam-lam, Mr YIU Si-wing, Mr TANG Ka-piu, Mr Ronny TONG and Mr Paul TSE made declaration of interests respectively.

4. The Administration was requested to:

- (a) explain the reasons and justifications for accepting declarations made by individual Hong Kong Permanent Resident (HKPR) buyers under the Buyer's Stamp Duty (BSD) regime or the "Hong Kong Property for Hong Kong People" measure on one hand but not considering the declaration mechanism proposed by members for the purpose of exempting companies whose shareholders were all HKPRs from the BSD or refunding the BSD paid on specific conditions, including how and why the risks of the abuse of the declaration mechanism for HKPR shareholders of Hong Kong companies were higher than that for individual HKPR buyers;
- (b) provide information/breakdown on the types of charitable organizations and the classification of charitable purposes that were exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112), and to elaborate the reasons and justifications for not exempting such charitable organizations from the BSD, including explaining the extent of the potential risks, possible loopholes, etc of the exemption;
- (c) provide a copy of Department of Justice's written advice on whether the Special Stamp Duty and the BSD were constitutional and legitimate taxation measures in conformity with the Basic Law, in particular Articles 25 and 105;
- (d) provide the speaking notes (in both English and Chinese) of the Secretary for Transport and Housing at the meeting; and
- (e) provide a written reply to Hon Abraham SHEK's letter of 12 September 2013.

(Post-meeting note: The information provided by the Administration on item (d) above was issued to members vide LC Paper No. CB(1)1806/12-13(02) on 18 and 24 September 2013. Information on the remaining items was issued to members vide LC Paper Nos. CB(1)1843/12-13(02) and (03) on 30 September 2013.)

II. Any other business

5. There being no other business, the meeting ended at 1:03 pm.

Council Business Division 1
Legislative Council Secretariat
24 March 2014

**Proceedings of the thirteenth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2012
on Monday, 16 September 2013, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
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| 000232 – 000304 | Chairman | Opening remarks | |
| 000305 – 000629 | Chairman Mr Kenneth LEUNG Mr Andrew LEUNG Mr Jeffrey LAM Mr Alan LEONG Mr WONG Ting-kwong Ms Emily LAU Mr Abraham SHEK Mr Tony TSE Mr LEUNG Che-cheung Mr POON Siu-ping Mr CHAN Kam-lam Mr YIU Si-wing Mr TANG Ka-piu Mr Ronny TONG Mr Paul TSE | Disclosure of direct or indirect pecuniary interest by members | |
| 000630 – 001033 | Chairman Mr Abraham SHEK | <p>The Chairman informed members that the Secretary for Transport and Housing (STH) would attend the meeting. Due to other prior commitment, STH would be at the meeting from around 11:45 am.</p> <p>Members noted that the Administration had responded to Mr Abraham SHEK's letters of 24 June and 8 July 2013 respectively about the possible loopholes and operation difficulties which might arise from possible abuse of a declaration mechanism for the purpose of exempting companies solely owned by Hong Kong permanent residents (HKPRs) from the Buyer's Stamp Duty (BSD). Mr Abraham SHEK had further submitted a letter on 12 September 2013 commenting on the Administration's response and elaborating his views on the issue. Mr SHEK's letter of 12 September 2013 had been forwarded to the Administration for response.</p> | The Administration to follow up as stated in paragraph 4(e) of the minutes. |

| Time marker | Speaker | Subject(s) | Action required |
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| 001034 – 001619 | Chairman Mr Jeffrey LAM Administration | <p>Opening remarks by the Administration –</p> <p>(a) the Administration would provide a written reply to Mr Abraham SHEK's letter of 12 September 2013; and</p> <p>(b) having taken into account the views of members and The Law Society of Hong Kong, the Administration had proposed Committee Stage amendments (CSAs) to the Bill in respect of a revised mechanism to refund the BSD for redevelopment projects, as well as certain technical amendments (LC Paper No. CB(1)1719/12-13(01)).</p> | |
| 001620 – 002322 | Chairman Mr Abraham SHEK Administration | <p>Mr Abraham SHEK's views –</p> <p>(a) The Law Society of Hong Kong had suggested in its submission dated 28 May 2013 (LC Paper No. CB(1)1165/12-13(01) that it should be feasible to exempt HKPR-owned companies from the BSD by imposing restrictions on "alienation of shares" for a fixed period as a means to address the loopholes that shareholders of HKPR-owned companies could transfer the interest in the property to non-HKPRs through shares transfer;</p> <p>(b) the BSD, which imposed an extra 15% tax on HKPRs acquiring residential properties in the name of companies owned by them, as opposed to other HKPRs acquiring residential properties under their own name, constituted a breach of Article 25 of the Basic Law which stipulated that all Hong Kong residents should be equal before the law; and</p> <p>(c) would propose CSA to the Bill on a BSD refund mechanism for HKPR-owned companies.</p> <p>The Administration's response –</p> <p>(a) the Administration had carefully listened to and considered the views of members and various deputations on the BSD. For instance, having considered the suggestion for further relaxing the BSD refund mechanism for redevelopment, the Administration had</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>devised an enhanced refund mechanism and proposed the relevant CSAs accordingly; and</p> <p>(b) the Administration would carefully consider any CSAs to be proposed by Mr Abraham SHEK or other members.</p> | |
| 002323 – 003027 | Chairman Mr James TO Administration | <p>Mr James TO questioned the Administration's reasons and justifications for accepting declarations made by individual HKPR buyers under the BSD regime on one hand but not considering the declaration mechanism proposed by members for the purpose of exempting HKPR-owned companies from the BSD or refunding the BSD on specific conditions, including how and why the risks of the abuse of the declaration mechanism for HKPR shareholders of Hong Kong companies were higher than that for individual HKPR buyers.</p> <p>The Administration's response –</p> <p>(a) 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>(b) there were various ways of share transfer, and HKPR shareholders of a company could transfer their shares to a non-HKPR through undisclosed means whereby the residential property owned by the company would be transferred to the non-HKPR indirectly, thus circumventing the BSD. It was impossible for the Inland Revenue Department (IRD) to identify and to deter abuse of the declaration mechanism; and</p> <p>(c) to provide exemptions which were more than necessary would affect the effectiveness of the measure in according priority to the home ownership needs of HKPRs, which would not be in the best interest of the community as a whole, and 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.</p> | |

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| 003028 – 003455 | Chairman Mr Kenneth LEUNG Administration | <p>Mr Kenneth LEUNG's views –</p> <p>(a) noted that there were various ways of share transfer, and HKPR shareholders of a company could through such ways indirectly transfer the interest in the property to non-HKPRs and circumvent the BSD. Therefore he had reservation about the suggestion of exempting HKPR-owned companies from the BSD; and</p> <p>(b) suggested the Bills Committee to proceed to clause-by-clause examination of the Bill, and consideration of the proposed CSAs by the Administration and members (if any) as soon as practicable.</p> | |
| 003456 – 004050 | Chairman Ms Emily LAU Administration | <p>Ms Emily LAU said that the Administration should listen to members' views on the BSD, in particular members' suggestion of exempting HKPR-owned companies from the BSD.</p> <p>The Administration responded that it had already explained repeatedly its concerns about the possible loopholes which might arise from a declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD and the difficulties to plug these loopholes, rendering such declaration mechanism vulnerable to abuse.</p> | |
| 004051 – 004805 | Chairman Mr Ronny TONG Administration | <p>Mr Ronny TONG's views –</p> <p>(a) supported the Administration's objective to combat short-term speculative activities in the residential property market to ensure the market's healthy and stable development. However, he cautioned against the introduction of excessively stringent measures restricting a HKPR to acquire a property in the name of company for self-use or for close relatives such as parents; and</p> <p>(b) increasing land and residential property supply was the ultimate solution to address the continued exuberant state of the residential property market. The demand-side management measures were introduced by the Administration to "buy time" before the medium and long-term</p> | |

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| | | <p>measures to increase land and property supply could address the demand-supply imbalance.</p> <p>The Administration's response –</p> <ul style="list-style-type: none"> (a) the proposed BSD exemption for HKPRs aimed to accord priority to address HKPRs' home ownership needs in the midst of the current tight housing supply. In fact, the majority of HKPRs acquired residential properties under their own name; (b) to provide exemptions which were more than necessary would affect the effectiveness of the measure in according priority to the home ownership needs of HKPRs, which would not be in the best interest of the community as a whole; and (c) the BSD did not prohibit HKPR-owned companies from buying residential property, but only increase the acquisition cost. | |
| 004806 – 010037 | Chairman Mr Andrew LEUNG Mr Jeffrey LAM Administration | <p>Mr Andrew LEUNG's and Mr Jeffrey LAM's views –</p> <ul style="list-style-type: none"> (a) the Business and Professionals Alliance for Hong Kong supported the introduction of extraordinary measures to combat short-term speculative activities, cool down the exuberant residential property market and stabilize the residential property prices; (b) nevertheless, such measures should not affect the normal operation of the residential property market, such as depriving HKPRs of their existing option to purchase residential properties in the name of companies owned by them; (c) there had been continued surge in residential property prices and rentals despite the introduction of the Special Stamp Duty (SSD) and the BSD; (d) increasing land and property supply was the ultimate solution to address the continued exuberant state of the residential property market; and | |

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| | | <p>(e) suggested to refund the BSD paid in respect of the acquisition of residential properties by HKPR-owned companies on specified conditions such as there had been no change in the shareholders of the companies and the properties concerned had not been sold within three years after the acquisition.</p> <p>Mr Andrew LEUNG and Mr Jeffrey LAM enquired –</p> <p>(a) at what time the Administration would withdraw the demand-side management measures; and</p> <p>(b) how the Administration would react if there was a sudden downturn of the residential property market when the United States adjusted the size of the quantitative easing measure or reduced asset purchase.</p> <p>The Administration's response –</p> <p>(a) the SSD and the BSD were extraordinary measures introduced under the current exceptional circumstances. The objectives of these measures were to prevent further exuberance in the housing market, and to ensure the healthy and stable development of the residential property market;</p> <p>(b) the demand-side management measures had effectively curbed market exuberance. The monthly average increase in overall residential property prices stood at 0.4% between March and July 2013, as compared with 2.7% between January and February 2013;</p> <p>(c) the current state of continued rise in residential property prices was largely due a combination of various factors, some of which were external factors outside the Administration's control such as influx of capital and the ultra-low interest rate environment. If the Administration did not cool down the overheated residential property market in a timely manner and should there</p> | |

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| | | <p>be a change in the interest rates or other external factors, the subsequent adjustment to residential property prices would bring great pain to the community;</p> <p>(d) the Administration disagreed with the suggestion to introduce a sunset clause for these demand-side management measures, because it was simply impossible to speculate on future market changes and external factors, and to predict when these measures were no longer required;</p> <p>(e) to have the necessary flexibility to adjust the applicable rates of the SSD and the BSD (to zero if necessary) in a timely manner with reference to the market situation, the Administration had proposed in the Bill that adjustments to the SSD and the BSD rates should be made by means of subsidiary legislation subject to negative vetting by the Legislative Council; and</p> <p>(f) assured that the Administration would continue to monitor the development of the residential property market closely, and undertook to report to the Legislative Council a year after the Bill was enacted.</p> | |
| 010038 – 011456 | Chairman Administration | <p>STH attended the meeting of the Bills Committee</p> <p>Opening remarks by STH (LC Paper No. CB(1)1806/12-13(02))</p> | The Administration to follow up as stated in paragraph 4(d) of the minutes. |
| 011457 – 012303 | Chairman Mr Tony TSE Administration | <p>Mr Tony TSE's views and concerns –</p> <p>(a) questioned the Administration's rationale for not considering members' suggestion that charitable organizations should be exempted from the BSD or get refund for the BSD paid if the residential property acquired was solely used for charitable purposes; and</p> <p>(b) the number of cases of charitable organizations acquiring residential properties for charitable purposes was not high. Therefore exempting charitable organizations from the BSD in such cases would unlikely</p> | |

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| | | <p>lead to big increase in demand for residential properties and would not undermine the Administration's objective to accord priority to the home ownership needs of HKPRs.</p> <p>The Administration's views –</p> <p>(a) charitable organizations which were exempted from tax under section 88 of the Inland Revenue Ordinance (IRO) had always been required to pay ad valorem stamp duty under the Stamp Duty Ordinance upon purchase of any property. The proposal of exempting these charitable organizations from the BSD would be inconsistent with the existing stamp duty regime; and</p> <p>(b) there was at present no statutory definition of "charitable organizations" or "charitable purposes" in Hong Kong. The nature of the charitable organizations which were exempted from tax varied and they existed in different forms including companies, trusts or societies. If charitable organizations were to be exempted from the BSD, it might provide an incentive for tax evasion, prompting those who intended to evade the BSD to establish a charitable organization in the form of a company, control the charitable organization and purchase residential properties in its name. In order to plug the loophole, a comprehensive review of the monitoring mechanism for charitable organizations had to be conducted, leading to a more complicated arena.</p> | |
| 012304 – 012946 | Chairman Mr Alan LEONG Administration | <p>Mr Alan LEONG's views and enquiries –</p> <p>(a) the Civic Party supported the objective of the BSD to accord priority to HKPR buyers over non-HKPR buyers under the tight supply situation in the residential property market. Nevertheless, HKPR-owned companies and charitable organizations should be exempted from the BSD if they acquired residential properties for self-use, long-term investment or charitable purposes; and</p> <p>(b) whether non-natural persons such as companies or bodies corporate were</p> | |

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| | | <p>exempted from similar measures adopted by overseas jurisdictions in relation to the acquisition of residential properties by non-locals.</p> <p>The Administration reiterated that –</p> <ul style="list-style-type: none"> (a) to provide exemptions which were more than necessary would affect the effectiveness of the BSD in according priority to the home ownership needs of HKPRs, which was not in the best interest of the community as a whole, and 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; (b) the Administration had already explained its concerns about the possible loopholes and operation difficulties in relation to the proposals of exempting HKPR-owned companies or charitable organizations from the BSD. Given the fact that the BSD was an extraordinary measure introduced under exceptional circumstances, the Administration considered that it would be against the principle of proportionality if various changes to the existing company and taxation regimes were to be adopted to plug the loopholes; and (c) there was no exemption for companies from similar measures adopted by overseas jurisdictions in relation to the acquisition of residential properties by non-locals. | |
| 012947 – 013442 | Chairman Dr LAM Tai-fai Administration | <p>Dr LAM Tai-fai's enquiry about –</p> <ul style="list-style-type: none"> (a) the Administration's definition of the exuberant state of the residential property market; (b) the Administration's definition of a normal state of the residential property market under which the demand-side management measures could be withdrawn; and (c) the target indicators set by the Administration to measure the effectiveness of the demand-side management measures, such as the yearly target number of HKPRs to have | |

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| | | <p>fulfilled their home ownership needs.</p> <p>The Administration's response –</p> <p>(a) it was considered that the residential property market had deviated from the economic fundamentals. Residential property prices were rising beyond the affordability of the general public and the risk of a property bubble had increased substantially;</p> <p>(b) the demand-side management measures were therefore introduced to curb market exuberance and reverse the community's irrational expectation that residential property prices could only go up further, thereby reducing the risk of a property market bubble and the adverse impact on the overall macroeconomic and financial stability of Hong Kong; and</p> <p>(c) the Administration did not set any target indicators of the demand-side management measures. Since the introduction of these measures, the Administration had been closely monitoring the overall development of the residential property market.</p> | |
| 013443 – 014337 | Chairman Mr Paul TSE Administration | <p>Mr Paul TSE's views and request –</p> <p>(a) questioned the constitutionality of the BSD which imposed different taxation on HKPR buyers, non-HKPR buyers, or company buyers of residential properties;</p> <p>(b) the Administration should provide a copy of Department of Justice's written advice on whether the SSD and the BSD were constitutional and legitimate taxation measures in conformity with the Basic Law, in particular Articles 25 and 105;</p> <p>(c) the BSD would, in effect, deprive HKPRs of their existing option to purchase residential properties in the name of companies owned by them, and would undermine the reputation and status of Hong Kong as a free-market economy; and</p> <p>(d) Mr TSE was dissatisfied that the</p> | The Administration to follow up as stated in paragraph 4(c) of the minutes. |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>Administration would not consider members' suggestion to exempt HKPR-owned companies from the BSD and various measures to minimize abuse of the declaration mechanism.</p> <p>The Administration's response –</p> <p>(a) the Department of Justice had been consulted on the constitutionality of the SSD and the BSD. Its views were summarized in the Administration's response to the issues raised at the meeting of the Bills Committee held on 8 April 2013 (LC Paper No. CB(1)893/12-13(01));</p> <p>(b) Singapore and Australia, which were recognized as free-market economies, had also adopted measures similar to the BSD in relation to the acquisition of residential properties by non-locals; and</p> <p>(c) reiterated the Administration's concerns about the possible loopholes which might arise from a declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD and the difficulties to plug these loopholes, rendering such declaration mechanism vulnerable to abuse.</p> | |
| 014338 – 015032 | Chairman Mr CHAN Kam-lam Administration | <p>Mr CHAN Kam-lam's views –</p> <p>(a) the Democratic Alliance for the Betterment and Progress of Hong Kong supported the introduction of the demand-side management measures to cool down the exuberant residential property market;</p> <p>(b) it was not uncommon for HKPRs to purchase residential properties in the name of companies owned by them. The Administration should consult the Bills Committee and carefully consider members' suggestions of various measures to minimize abuse of the declaration mechanism for exempting HKPR-owned companies from the BSD; and</p> <p>(c) protracted deliberation on the Bill would bring about uncertainties to the operation of</p> | |

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| | | <p>the residential property market.</p> <p>The Administration's response –</p> <p>(a) the Administration had already explained repeatedly its concerns about the possible loopholes which might arise from a declaration mechanism for the purpose of exempting HKPR-owned companies from the BSD and the difficulties to plug these loopholes;</p> <p>(b) given the rate and amount of the BSD payable, if HKPR-owned companies were to be exempted from the BSD, the incentive for and the risk of tax evasion should not be under-estimated;</p> <p>(c) to provide exemptions which were more than necessary would affect the effectiveness of the measure in according priority to the home ownership needs of HKPRs, which was not in the best interest of the community as a whole; and</p> <p>(d) if the scope of exemption were to be extended to HKPR-owned companies or those with less than a certain number of HKPR shareholders, it would call into question whether the level playing field among companies in Hong Kong could be maintained. The establishment of an exemption for certain types of company to the exclusion of others would give rise to questions over the equity of such exemptions.</p> | |
| 015033 – 015043 | Chairman | To allow sufficient time for discussion, the Chairman directed the meeting be extended for 15 minutes. | |
| 015044 – 015949 | Chairman Mr Abraham SHEK Mr Andrew LEUNG Administration | <p>Mr Abraham SHEK's views –</p> <p>(a) the Administration in fact created inequalities among companies in Hong Kong, as companies engaging in redevelopment projects could receive refund of the BSD paid; and</p> <p>(b) tabled a letter at the meeting expressing his intention to propose CSA to the Bill on a BSD refund mechanism for HKPR-owned</p> | |

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| | | <p>companies (LC Paper No. CB(1)1806/12-13(01)).</p> <p>Mr Andrew LEUNG shared Mr Abraham SHEK's views and expressed support for Mr SHEK's proposal to refund the BSD paid to HKPR-owned companies on specific conditions.</p> <p>The Administration's response –</p> <p>(a) the BSD refund mechanism for redevelopment proposed by the Administration was premised on the policy objective that the BSD should not hinder redevelopment. The two major principles held by the Administration in formulating the BSD refund mechanism for redevelopment were that before the BSD paid could be refunded, the developer concerned had to obtain ownership of the entire lot to be redeveloped, and that there was solid proof that the developer concerned would use the site for redevelopment purpose; and</p> <p>(b) the Administration was open to and would carefully consider any CSAs to be proposed by members.</p> | |
| 015950 – 020733 | Chairman Mr James TO Administration | <p>Mr James TO requested the Administration to provide a written response to –</p> <p>(a) explain the reasons and justifications for accepting declarations made by individual HKPR buyers under the BSD regime or the "Hong Kong Property for Hong Kong People" measure on one hand but not considering the declaration mechanism proposed by members for the purpose of exempting companies whose shareholders are all HKPRs from the BSD or refunding the BSD paid on specific conditions, including how and why the risks of the abuse of the declaration mechanism for HKPR shareholders of Hong Kong companies are higher than that for individual HKPR buyers; and</p> <p>(b) provide information/breakdown on the types of charitable organizations and the classification of charitable purposes that are exempted from tax under section 88 of the</p> | The Administration to follow up as stated in paragraphs 4(a) and 4(b) of the minutes. |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>IRO, and to elaborate the reasons and justifications for not exempting such charitable organizations from the BSD, including explaining the extent of the potential risks, possible loopholes, etc. of the exemption.</p> | |
| 020734 – 020929 | Chairman Mr Kenneth LEUNG Administration | <p>In response to Mr Kenneth LEUNG's enquiries on the exemption of profits tax for charitable organizations, the Administration advised that –</p> <ul style="list-style-type: none"> (a) section 88 of the IRO stipulated that only the profits from primary purpose trading carried out by a charitable organization (i.e. trading in the course of the actual carrying out of its expressed charitable objects or trading that was mainly carried out by the beneficiaries of the charity) were exempted from profits tax; (b) the IRO did not prohibit charitable organizations from engaging in investment or trading 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; and (c) the IRD would, from time to time, review a charitable organization's objects and its activities. | |
| 020930 – 021426 | Chairman Dr LAM Tai-fai Administration | <p>Discussion on –</p> <ul style="list-style-type: none"> (a) the Administration's definition of the exuberant state of the residential property market; (b) the Administration's definition of a normal state of the residential property market under which the demand-side management measures could be withdrawn; and (c) the differential treatment and the inequalities whereby companies engaging in redevelopment projects could receive refund of the BSD paid while other HKPR-owned companies or charitable organizations could not enjoy any exemption or refund. | |

| Time marker | Speaker | Subject(s) | Action required |
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| 021427 – 021615 | Chairman Mr Abraham SHEK | <p>The Chairman advised members that the Bills Committee would proceed to clause-by-clause examination of the Bill, and consideration of the proposed CSAs by the Administration at the next meeting.</p> <p>Mr Abraham SHEK expressed that he would provide his draft CSAs to the Bill next week for the consideration of the Bills Committee.</p> | |
| 021616 – 021850 | Chairman Mr James TO Mr Abraham SHEK Administration | Mr Abraham SHEK 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 not considering the declaration mechanism proposed by members for the purpose of exempting HKPR-owned companies from the BSD or refunding the BSD paid on specific conditions. | The Administration to follow up as stated in paragraph 4(a) of the minutes. |
| 021851 – 021906 | Chairman | Concluding remarks | |