

**The Administration's response to the issues
raised at the meetings of the Bills Committee on
the Stamp Duty (Amendment) Bill 2012 held on 3 December 2013**

This paper serves as a response to the issues set out in the letter dated 6 December 2013 from the Legislative Council Secretariat (LC Paper No. CB(1)554/13-14(01) refers).

Clause 9 – Proposed section 29CB(13)(b)

2. Under the Stamp Duty (Amendment) Bill 2012 (the Bill), if a non-Hong Kong permanent resident (non-HKPR) acquires a residential property, the acquisition will be subject to the Buyer's Stamp Duty (BSD), unless it falls under any of the scenarios exempted from the BSD, such as a joint acquisition made with a HKPR who is a closely related person of the non-HKPR.

3. The BSD exemption arrangement in respect of joint acquisitions made by a HKPR with closely related persons is an exceptional arrangement to exempt certain non-HKPRs from the BSD, with a view to facilitating the needs of HKPRs in acquiring residential properties. For the purpose of this exemption arrangement, the proposed section 29CB(13) of the Bill provides that, where the purchasers consist of more than one person, they are considered to be closely related if each of them is a parent, spouse, child, brother or sister of each other. Indeed, the same arrangement has also been adopted for the existing Special Stamp Duty regime. If this exemption arrangement is to be further expanded as suggested by Members, it could result in BSD exemption being granted even if the purchasers consist of non-HKPRs who are not closely related to all other HKPR purchasers or transferees in a purchase of residential property. The Government considers that the exemption arrangement proposed in the Bill has struck the right balance in ensuring the effectiveness of the BSD on the one hand, and adequately facilitating HKPRs in acquiring residential properties on the other. The Government has no plan to expand the scope of this exemption arrangement.

Clause 12 – Proposed section 29DB(6)

4. As explained in LC Paper No. 416/13-14(02), the reason for not imposing any restriction regarding the size and value of the replacement property nor the timeframe for the replacement purchase is to pursue the policy intention to provide flexibility in the replacement purchases of the affected non-HKPR flat owners who have been made to sell their original residential

properties not of their own volition; and to facilitate the smooth implementation of the acquisitions under the specified scenarios which serve public purposes. In addition, given the lack of an objective basis to determine the suggested restrictions with regard to the size, value or timeframe of the replacement purchase, if the restrictions as suggested by Members were to be introduced, they would inevitably be arbitrary and may be subject to query.

Clause 12 – Proposed section 29DB(8)

5. Claims for adverse possession will be handled by the court. In such cases, if the court rules that a claim for adverse possession is substantiated, the relevant court order that operates to convey to the claimant the legal and beneficial interest in the residential property concerned would not be chargeable with the BSD in accordance with section 29DB(8)(b) of the Bill.

Clause 12 – Proposed section 29DB(10)

6. If a HKPR acquires a residential property jointly with a non-HKPR who is a closely related person (e.g. parents) to the HKPR, the relevant acquisition will be exempted from the BSD, regardless of whether the HKPR is a minor or an adult. However, as minor lack the capacity to enter into legally binding agreements, sections 29CB(8) and 29DB(9) of the Bill propose that if the purchaser or transferee under a chargeable agreement for sale or conveyance on sale is acting in the transaction as a trustee or guardian for a HKPR minor, such minor will be treated as a purchaser under the agreement or a transferee under the conveyance in place of the trustee or guardian for BSD purposes and the relevant acquisitions will be exempted from the BSD. These provisions do not extend to the minor's non-HKPR parents. As a result, if the trustee is acting on behalf of both the HKPR minor and the minor's non-HKPR parents to acquire a residential property, no BSD exemption would be granted.

Clause 12 – Proposed section 29DD

7. In accordance with the committee stage amendments set out in LC Paper No. CB(1)1719/12-13(01), a developer may apply for a refund of the BSD paid after the developer has become the owner of the entire lot to be redeveloped, AND –

- (a) EITHER has obtained, from the Building Authority under the Buildings Ordinance (Cap.123), the consent to commence any foundation work for the lot;

(b) OR has -

- (i) demolished all building existing on the lot, other than a building the demolition of which is prohibited under any Ordinance; and
- (ii) obtained the approval of the Building Authority in respect of the general building plan for the redevelopment.

8. The BSD refund mechanism mainly serves to facilitate redevelopment activities in the market, under which owner of a lot may apply for a refund of the BSD paid after the conditions of refund as detailed in paragraph 7 above are met. It should be noted that obtaining the ownership and rebuilding only part of a building is not a common kind of redevelopment. The flat gain arising from such activities, if any, should also be limited. Accordingly, the BSD refund mechanism does not apply to cases where the applicants fail to obtain the ownership of the entire lot.

9. The BSD refund mechanism for redevelopment does not apply to rebuilding of New Territories Exempted Houses which meet the requirements set out under the Buildings Ordinance (Application to New Territories) Ordinance (Cap.121) and are issued with a Certification of Exemption by virtue of the Ordinance. Rebuilding of such houses will not result in any flat gain in general as their development parameters such as height and roofed-over area are restricted by the relevant legislation. Such activities are akin to renovation which does not entitle to BSD refund.

Clause 14 – To amend section 44

10. According to IRD's record, there is no such precedent court case in Hong Kong.

**Transport and Housing Bureau
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