

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

政府總部  
運輸及房屋局

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Government Secretariat  
Transport and Housing Bureau

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16 April 2013

Ms Kitty Cheng  
Assistant Legal Adviser  
Legislative Council Complex  
1 Legislative Council Road  
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Hong Kong

Dear Ms Cheng,

**Stamp Duty (Amendment) Bill 2012**

Thank you for your letter dated 3 April 2013, raising questions on the legal aspects of the Stamp Duty (Amendment) Bill 2012 (the Bill) (LC Paper No. CB(1)805/12-13(01) refers). Our reply to your questions is as follows.


2. You enquired that if the Financial Secretary by notice published in the Gazette revises the rates of the Special Stamp Duty (SSD) and / or the Buyer's Stamp Duty (BSD), and the rates are subsequently reduced by the Legislative Council (LegCo), whether there would be a refund of the SSD / BSD overpaid. According to section 28(3) of the Interpretation and General Clauses Ordinance (Cap.1), a subsidiary legislation comes into operation at the beginning of the day on which it is published in the Gazette, unless there is a provision specifying another commencement date. On the other hand, as stipulated in section 34(2) of Cap.1, if a subsidiary legislation is amended by LegCo by resolution, such an amendment will take effect from the date of publication of such resolution in the Gazette. Our reading of these provisions is that, under the scenario you mentioned, the SSD / BSD collected at the rates revised by the Financial Secretary would be lawfully collected and legally speaking no refund would be necessary. In fact, subject to the passage of the Bill, the

Administration would provide clear guideline if the rates of SSD and / or BSD are to be revised by notice published in the Gazette and would take appropriate administrative measures to facilitate the collection of the relevant duties.

3. Similar to other tax-adjustment proposals that are market sensitive in nature, we consider that if we are to revise the rates of SSD / BSD, it would be necessary for the change to come into immediate effect upon its announcement to ensure that no one could take advantage of the gap period between its announcement and its effective date.

4. The demand-side management measures, including the SSD and the BSD, are extraordinary measures introduced under the current exceptional circumstances. We would consider withdrawing these measures once the property market has returned to a more normal situation. Accordingly, we have proposed in the Bill that adjustments to the SSD and BSD rates should be made by means of subsidiary legislation subject to negative vetting by the LegCo, in order to have the necessary flexibility to adjust the applicable rates (to zero if necessary) in a timely manner with reference to the market situation. We consider that positive vetting may not be able to provide the flexibility for introducing timely adjustments to the relevant rates when necessary.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vicki Kwok', written in a cursive style.

(Mrs Vicki Kwok)

for Secretary for Transport and Housing