

**The Government's response
to the issues raised at the meetings of the Bills Committee on
the Stamp Duty (Amendment) Bill 2012 held on 7 and 17 June 2013**

This paper sets out our response to the issues raised in the letters from the Legislative Council Secretariat of 10 June 2013 (LC Paper No. CB(1) 1288/12-13(02) refers) and 18 June 2013 (LC Paper No. CB(1) 1367/12-13(01) refers).

Mechanism for refunding Buyer's Stamp Duty (BSD) for redevelopment

2. As the Secretary for Transport and Housing explained at the Bills Committee meeting on 7 June 2013, our policy intent is that the BSD should not hinder redevelopment. In pursuance of this policy intent, we have proposed in the Stamp Duty (Amendment) Bill 2012 (the Bill) a refund mechanism to the effect that acquisitions of residential properties for redevelopment purpose are entitled to a refund of the BSD paid, provided that the construction of the redevelopment project can be completed within six years.

3. The two major principles held by the Government in formulating the BSD refund mechanism for redevelopment are that before the BSD paid can be refunded, (a) the developer concerned has to obtain ownership of the entire lot to be redeveloped; and (b) there is proof that the developer concerned will use the site for redevelopment purpose. Having considered Members' suggestion for further relaxing the refund mechanism for redevelopment, the Government has, based on the two principles stated above, devised the following enhanced refund mechanism. Under this, a developer may apply for a refund of the BSD paid after -

(a) the developer has obtained ownership of the entire lot to be redeveloped; **and**

(b) the developer has satisfied any one of the following conditions –

(i) the Buildings Department has consented to the commencement of foundation works for the redevelopment project; **or**

(ii) the original building(s) on the lot concerned (if any) has been demolished and the Buildings Department has approved the building plan for the redevelopment project.

4. Under the proposed enhanced refund mechanism in paragraph 3 above, developers may apply for refund of the BSD paid prior to the completion of the redevelopment projects. As such, the original “six-year period” within which the developer has to produce the first occupation permit would no longer be required. As compared with the original refund mechanism proposed in the Bill, the BSD refund may be advanced by between four to five years under the enhanced refund mechanism. This should provide additional flexibility for developers to undertake redevelopment projects. The Government will introduce committee stage amendments (CSAs) to implement the enhanced BSD refund mechanism for redevelopment as mentioned above.

5. We note that some have suggested that a developer should be entitled to the refund after it has obtained a certain percentage of ownership of the lot to be redeveloped, say, 80%. However, we do not consider such a suggestion acceptable, as at that stage we cannot ascertain the ownership of the entire lot to be redeveloped and there is no solid proof to show that the acquisition is indeed for the purpose of redevelopment nor can it be determined how quickly redevelopment can proceed.

Exempting charitable organisations which are exempted from tax under section 88 of the Inland Revenue Ordinance (Cap.112) (the IRO) from the BSD

6. We have proposed in the Bill that gift of residential properties to charitable organisations exempted from tax under section 88 of the IRO should be exempted from the BSD. This is in line with the existing arrangement under the stamp duty regime. Regarding some Members’ suggestion to provide further exemption for charitable organisations, we have to emphasise that under the existing system, section 88 charitable organisations do not enjoy tax exemption across-the-board. Instead, as stipulated in the IRO, only profits which are generated from activities carried out for the expressed charitable object of the charity, applied solely for charitable purposes and not expended substantially outside Hong Kong will be exempted from profits tax. Exempting residential property purchases by charitable organisations from the BSD is inconsistent with the existing taxation and stamp duty regimes.

7. At present, there are about 7 600 organisations that are exempted from tax under section 88 of the IRO, among which about 5 300 are registered in accordance with the Companies Ordinance (Cap.32). Since section 88 of the IRO does not restrict such charitable organisations from carrying out any activity,

these charitable organisations may, as with any other companies, carry out trading activities in the property market. In usual cases, the profits generated from such activities cannot be exempted from tax in accordance with section 88 of the IRO. Exempting charitable organisations from the BSD may have read-across implications on the entire exemption arrangement for stamp duty, which will inevitably undermine the effectiveness of the demand-side management measures.

Responses to the views of the Hong Kong Law Society

8. The key issues of concern raised by the Law Society of Hong Kong at its meeting with the Government on 3 June 2013, as well as the Government's response, have already been set out in LC Paper No. CB(1)1288/12-13(01) which Members considered at the Bills Committee meeting on 17 June 2013. Other than these issues, the Law Society's submission of 28 May 2013 mainly repeated the issues raised in its previous submission of 5 February. The Government's response was already set out in LC Paper No. CB(1)893/12-13/(02), which had been shared with the Law Society prior to the above-mentioned meeting.

Committee stage amendments

9. The Government will consult the Bills Committee on the CSAs for the enhanced BSD refund mechanism for redevelopment as mentioned in paragraphs 2 to 4 above as soon as practicable, as well as the CSAs to implement the technical amendments to the Bill as explained in LC Paper No. CB(1)1288/12-13(01).

Others

10. The Government has already provided the Chinese version and the English translation of the opening remarks made by Secretary for Transport and Housing at the Bills Committee meeting held on 7 June 2013 to the Legislative Council Secretariat on 7 June and 17 June respectively.

11. Regarding the proposal by some members to exempt HKPR-owned companies from the BSD, the Government has taken note of the views further raised by some Members. At the same time, we have just received a copy of the letter from the Hon Abraham Shek dated 24 June 2013 requesting further explanation on possible loopholes cited earlier by the Government in exempting companies from BSD (LC Paper No. CB(1)1373/12-13(01) refers). We will provide a detailed response to the Bills Committee separately.

**Transport and Housing Bureau
June 2013**