

**The Government's response to the issues raised by
the Hon Abraham SHEK in his letter of 24 June 2013**

This paper serves to respond to the issues set out in the letter from the Hon Abraham SHEK of 24 June 2013 (LC Paper No. CB(1)1373/12-13(01) refers).

2 As we have repeatedly explained at the meetings of the Bills Committee, the Government does not consider it appropriate to exempt companies owned by HKPRs from BSD given various considerations from both the policy and the operational levels. We would not repeat the details here. In response to request of Members and based on the experience of the Inland Revenue Department in handling stamp duty cases, we have provided concrete examples in LC Paper No. CB(1)1288/12-13(01) to illustrate possible loopholes and enforcement difficulties in monitoring possible abuse of the proposed self-declaration mechanism for the purpose of exempting companies owned by HKPRs from the BSD. In his letter of 24 June 2013, the Hon Abraham Shek raised different views on the examples which we provided. Our response is set out below.

Examples 1 and 2: Nomination / Declaration of Trust / Power of Attorney

3. The Hon Shek considers that every nomination / declaration of trust / power of attorney ("Relevant Documents") that transfers beneficial interest in company shares will be submitted for stamping within the statutory time limit as laid down in the existing Stamp Duty Ordinance (Cap.117). In reality, the parties involved in the transfer of beneficial interest in company shares may not submit the required contract note in accordance with the Stamp Duty Ordinance. Separately, the Inland Revenue Department has handled cases (in particular those involving trust documents) where the vendors transfer their beneficial interest in shares to the purchasers but both parties fail to submit the Relevant Documents for stamping. In the absence of voluntary disclosure by the duty payers, the Stamp Office ("SO") can hardly uncover the existence of such documents without in-depth investigation, as they are not required to be registered in the company's share register or filed with the Companies Registry.

4. As previously explained on page 3 of Annex II to LC Paper No. CB(1)1288/12-13(01), for the transfer of beneficial interest in shares by the Relevant Documents, Mr. B may ask Mr. A to sign blank instrument of transfer and surrender all seals of Company X. Mr. B may also be appointed as the company's director and the authorized signatory of the company's bank accounts. As such, Mr. B has effectively controlled Company X and in turn the property owned by it. From the perspective of Mr. B, there will not be too much risk to withhold the Relevant Documents from stamping.

5. To plug the above-mentioned loopholes, it will inevitably require introducing fundamental changes to the registration requirements for company share transfers¹. As BSD is an extraordinary measure introduced under exceptional circumstances, the Government considers that such changes, which will have far-reaching implications on the existing effective taxation and company regimes, should not be made for the sake of this measure.

Example 3 – Allotment of new shares

6. Under the exemption mechanism put forth by the Hon Abraham Shek, before completing the transaction, the solicitor acting for the purchaser of the property held by Company X has to carry out thorough examination in order to ascertain whether Company X has satisfied the conditions for the BSD exemption, i.e. no new share has been allotted, or new shares have only been allotted to HKPRs as approved by the SO. The Government considers that this exemption mechanism is not able to deal with abuse cases where the property concerned is still held by Company X, and beneficial interests in the shares of Company X are transferred through execution of the Relevant Documents and / or allotment of new shares. As we have previously explained on page 6 of Annex II to LC Paper No. CB(1)1288/12-13(01), it would not be practical, if not impossible, for SO to continuously check with the Company Registry or enquire the relevant persons as to whether each and every company exempted from BSD has allotted new shares. Besides, under the mechanism suggested by the Hon Abraham Shek, SO would only be able to discover the violation of exemption

¹ In order to make the transfers of beneficial interest in company shares more transparent for inspection purposes, it may be necessary to amend the Companies Ordinance (Cap. 32) to introduce certain new registration and reporting requirements for such transfers.

conditions and arrange to recoup the BSD exempted when the property concerned is disposed of by Company X, which may take place years after acquisition of the property concerned, and the shares of Company X may have already been transferred for many times during that period.

7. Furthermore, as explained in paragraph 13 of LC Paper No. CB(1)1288/12-13(01), under the existing system, the solicitors acting for the parties in a property transaction are not responsible for determining the amount of duty payable on an instrument or whether the instrument is understamped. To implement the mechanism suggested by the Hon Shek, amendments to the Conveyancing and Property Ordinance (Cap 219) may be required. It will also lead to a fundamental change to solicitors' role and duty in conveyancing. As BSD is an extraordinary measure introduced under exceptional circumstances, the Government considers that such changes, which will lead to far-reaching implications, should not be made for the sake of this measure.

Example 4 – Reclassification of issued shares

8. The Hon Shek suggests that if Company X reclassifies its shares and issues new shares, it should not be entitled to the exemption from BSD. The solicitor acting for the purchaser of the property held by Company X has to carry out thorough examination in order to ascertain whether Company X has satisfied the conditions for the BSD exemption. The same problems as highlighted in paragraphs 6 and 7 would also apply to this suggestion.

Statistics on stamp duty evasion cases

9. The SO has from time to time carried out post-assessment audit to ensure that the instruments chargeable with stamp duty are duly stamped. There are also cases of voluntary disclosure where the liable persons submit the unstamped instruments to the SO for stamping. However, the SO does not maintain separate statistics on stamp duty recovered from evasion cases. As far as the BSD is concerned, under the present extraordinary situation where supply remains tight and the property market remains exuberant, as a responsible Government, we cannot ignore the obvious loopholes that may be created by exempting companies from the BSD, which would undermine the effectiveness of the BSD in cooling down the property market and according

priority to HKPRs in addressing their home ownership needs.

Transport and Housing Bureau
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