

**The Government's response to the draft Committee Stage amendments  
proposed by the Hon Kenneth Leung**

This paper sets out the Government's response to the draft Committee Stage Amendment (CSA) proposed by the Hon Kenneth Leung to the Stamp Duty (Amendment) Bill 2012 (the Bill) (LC Paper No. CB(1)291/13-14(03) refers).

2. The CSA proposed by the Hon Kenneth Leung would introduce the "domicile" concept into the Bill, with the intention of further safeguarding the effectiveness of the Buyer's Stamp Duty (BSD). However, the Government considers that the Hon LEUNG's proposal will have implications for the BSD policy and may not be effective in achieving its intended purpose. It will also create unnecessary complications to the Bill and is extremely difficult, if not impossible, to implement.

3. The Government's policy intent is that the home ownership needs of Hong Kong permanent residents (HKPRs) should be accorded priority under the current tight housing supply situation. In pursuance of this policy intent, the Bill proposes that all HKPRs acquiring a residential property on their own behalf will be exempted from the BSD. We consider it an appropriate arrangement as HKPR status is only accorded to individuals who can demonstrate a close connection with Hong Kong.

4. Introducing the domicile concept into the Bill will have implications for the BSD policy. As the Hon LEUNG has rightly pointed out, permanent residency and domicile are two different concepts. According to the Domicile Ordinance (Cap.596), generally speaking, for one to be domiciled in a place, his/her physical presence **and** intention to regard the place as home will be required. The CSA would unnecessarily subject certain HKPRs (who would otherwise be exempted) to the BSD, which is contrary to our intention that all HKPRs acting on their own behalf in acquiring residential properties should be entitled to the same BSD exemption. For instance, it is not uncommon nowadays for a HKPR to settle for a prolonged period in both Hong Kong and another place for family reasons. The CSA may preclude these HKPRs from being exempted from BSD.

5. Apart from the implications for the BSD policy, we have grave concern over the actual implementation of the CSA. Under the Domicile Ordinance, one has to be physically present in a place **and** intend to make a home there for an indefinite period in order to be domiciled in that place. While the general principles of the domicile concept have been set out in the Domicile Ordinance, the determination of one's domicile usually involves detailed examination of

factual evidence and ascertaining of one's state of mind. Making such a judgment involves examining issues such as where a person considers to be his/her real or permanent home; whether a person intends to remain and live in a place permanently, etc. These are contentious issues and often have to be dealt with by the court. Moreover, the situation would be more complicated if the claimant is a child, as in such cases various factors including the domicile of the child's parents, the place of the child's home, whether the parents are living with the child, etc. would have to be taken into account in order to determine the child's domicile. In short, due to the complications involved in determining one's domicile, as well as the substantial amount of residential property transactions handled by the Inland Revenue Department (IRD) on a daily basis, it would not be possible for the IRD to verify the domicile of each HKPR buyer. The CSA would only result in significant complications and uncertainties to the implementation of the Bill.

6. It is also doubtful whether the CSA is effective in achieving its intended purpose of addressing Members' concern relating to acquisitions of residential properties by non-HKPR parents through their HKPR children. Specifically, these HKPR children may stay in Hong Kong with their relatives (even though their non-HKPR parents may be living outside Hong Kong). Under such circumstances, they might be considered (by virtue of section 11 of the Domicile Ordinance) as being most closely connected with Hong Kong (for the purpose of section 4 of the Domicile Ordinance) and thus are domiciled in Hong Kong. If so, they would still be entitled to the BSD exemption.

7. Taking into account the above consideration, the Government does not consider it appropriate to include the concept of domicile into the BSD regime.