

The Government's response to the draft Committee Stage amendments proposed by the Hon James TO Kun-sun

This paper sets out the Government's response to the draft Committee Stage Amendment (CSA) proposed by the Hon James TO Kun-sun to the Stamp Duty (Amendment) Bill 2012 (the Bill) (LC Paper No. CB(1)517/13-14(01) refers).

2. The CSA proposed by the Hon TO seeks to exempt acquisitions of residential properties made by charitable institutions or trusts which are exempted from tax under section 88 of the Inland Revenue Ordinance (Cap.112) (IRO) from the Buyer's Stamp Duty (BSD). As explained at previous Bills Committee meetings, the Government cannot agree with the proposal to exempt charitable institutions from the BSD. We consider that the Hon TO's proposed CSA is inconsistent with the existing taxation and stamp duty regimes, and will also undermine the effectiveness of the BSD.

3. We need to emphasise that the policy objective of introducing the BSD is to accord priority to the home ownership needs of Hong Kong permanent residents (HKPRs) in the midst of the tight housing supply situation, by increasing the transaction costs of non-HKPRs in acquiring residential properties. Any exemption or refund will undermine the effectiveness of the BSD in according priority to the home ownership needs of HKPRs. While the Government recognises that charitable institutions may have the need to purchase residential properties, we need to reiterate that we should be careful in determining the priorities of different sectors' demands for residential properties under the current market condition. Drawing reference from the present ad valorem stamp duty and the Special Stamp Duty regimes, we have proposed in the Bill that gifts of residential property to charitable institutions exempted from tax under section 88 of the IRO should be exempted from the BSD. We are of the view that the Bill has struck the right balance in preserving the policy objective of the BSD on the one hand while addressing the needs of charitable institutions on the other.

4. Besides, as we have repeatedly stated, the scope of section 88 of the IRO is confined to whether individual charitable institutions are liable to tax. Charitable institutions exempted from tax under section 88 of the IRO have been established in different legal forms, such as a company incorporated under the Companies Ordinance (Cap.32), a trust, a society established under the Societies Ordinance (Cap.151), etc. As a point of reference, over 70% of the section 88

charitable institutions are in the form of companies. Moreover, there is at present no statutory definition of what constitutes a charity or a charitable purpose in Hong Kong. The Inland Revenue Department (IRD) has all along made reference to the common law in determining charitable bodies and charitable purposes under section 88 of the IRO. The charitable purposes are therefore very diverse and subject to dispute. As we have stated earlier, the IRD is only responsible for the tax exemption aspect of charitable institutions. It is not involved in regulating the day-to-day activities of the charitable institutions, including their fund-raising activities, financial transparency, governance structure, etc. These charitable institutions are, as with any other companies, at liberty to carry out trading activities in the property market and they may acquire residential properties for investment purpose to support their operation. In this regard, these charitable institutions are no different from any other company. Exempting them from the BSD may stimulate their demand for residential properties and hence undermine the effectiveness of the BSD in according priority to the home ownership needs of HKPRs.

5. Moreover, under the Hon TO's CSA, the Collector of Stamp Revenue (the Collector) must, on the application made by a charitable institution, exempt the charitable institution from paying the BSD if it is shown to the satisfaction of the Collector that it was a charitable institution or trust which is exempt from tax under section 88 of the IRO on the date of the acquisition of the residential property concerned, regardless of how the residential property concerned is used. There is no condition under the Hon TO's CSA to ensure that the residential property so acquired should be used for charitable purpose, not even within a specified period of time. As such, the Hon TO's CSA might provide an incentive for one to avoid the BSD by acquiring residential properties through charitable institutions for various purposes including investment, which would in turn undermine the effectiveness of the BSD.

6. Furthermore, under the Hon TO's CSA, it appears that a charitable institution may still be exempted from the BSD even if it is not acting on its own behalf in acquiring a residential property. Besides, it appears that joint acquisition of a residential property by a charitable institution and non-HKPRs would also be exempted from the BSD under the Hon To's CSA. These arrangements may provide a channel for non-HKPRs to circumvent the BSD, and hence undermine the effectiveness of the BSD.

7. Taking into account the above considerations, the Government does not

consider it appropriate to grant BSD exemption or provide BSD refund to charitable institutions or trusts.

**Transport and Housing Bureau
December 2013**