

**The Government's response to the issues
raised at the meetings of the Bills Committee on
the Stamp Duty (Amendment) Bill 2012 held on 8 July 2013**

This paper sets out our response to the issues raised in the letter from the Legislative Council Secretariat of 9 July 2013 (LC Paper No. CB(1) 1618/12-13(01) refers).

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

2. The Government has carefully listened to the views of Members on the proposed exemption of charitable organisations which are exempted from tax under section 88 of the IRO from the BSD. We need to emphasise that the 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 current exceptional situation where the property market is exuberant and supply remains tight, by increasing the transaction costs of non-HKPRs in acquiring residential properties. Any exemption or refund will affect the effectiveness of the BSD in according priority to the home ownership needs of HKPRs. As such, before any exemption is made, the Government has to carefully consider whether such an exemption is necessary, and the possible impact it may have on the effectiveness of the BSD. As a matter of fact, having regard to the actual situation, the Government has already proposed that certain acquisitions of residential properties may be exempted from the BSD, including acquisitions jointly by a HKPR and his / her close relatives; and transfers of residential properties between associated bodies corporate; as well as the refund of BSD for redevelopment projects, etc. To provide exemptions which are more than necessary will affect the effectiveness of the measure in according priority to the home ownership needs of HKPRs, which is not in the best interest of the community as a whole.

3. As we have explained at the meetings of the Bills Committee, section 88 of the IRO stipulates that only the profits from primary purpose trading carried out by a charitable organisation (i.e. trading in the course of the actual carrying out of its expressed charitable objects or trading that is mainly carried out by the beneficiaries of the charity) are exempted from profits tax. The IRO does not prohibit charitable organisations from engaging in activities other than those carried out in pursuit of their charitable objects, although the profits generated from such activities will be subject to profits tax. Exempting

charitable organisations from the BSD is inconsistent with the policy objective of the BSD to accord priority to the home ownership needs of HKPRs in the midst of the current situation where supply remains tight and the property market is still exuberant. Drawing reference from the present ad valorem stamp duty and the Special Stamp Duty regimes, we have proposed in the Stamp Duty (Amendment) Bill 2012 (the Bill) that gifts of residential property to charitable organisations exempted from tax under section 88 of the IRO should also 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 and addressing the needs of charitable organisations.

4. In respect of the issues raised by the Hon Wong Ting-kwong at the Bills Committee meeting, according to the guideline issued by the Inland Revenue Department (IRD) on the operation of section 88 of the IRO, a charity exempted from profits tax should state precisely in its governing instrument certain clauses stipulated in the guideline, including those prohibiting distribution of its incomes and properties amongst its members, and those specifying how the assets should be dealt with upon its dissolution (which should normally be donated to other charities). That said, as mentioned above, section 88 of the IRO does not prohibit charitable organisations from engaging in any kind of business or trade. As such, charitable organisations may also engage in trading activities in the property market.

5. The Hon Tony Tse Wai-chuen suggested that charitable organisations should be exempted from the BSD or get refund for the BSD paid in accordance with the use of the residential property acquired. As we have explained at the Bills Committee meeting, the proposal to exempt or refund the BSD in accordance with the use of the residential property acquired is inconsistent with the existing stamp duty regime. Under the present regime, whether an acquisition is subject to stamp duty depends on whether a chargeable instrument is involved. The Hon Tse's suggestion will result in fundamental and far-reaching implications for the stamp duty regime. From an operational perspective, the IRD will have difficulties determining the actual use of the residential property. More importantly, if charitable organisations exempted from tax under section 88 of the IRO were to be exempted from the BSD, even with the conditions that the residential properties acquired should only be used for dormitory or other purposes consistent with the charitable organisations' expressed charitable objects, such an exemption would still increase the overall demand for residential properties, thereby reducing the residential properties available for HKPRs. This is contrary to the policy intention of the BSD to accord priority to the home ownership needs of HKPRs.

6. We do not disagree with the view that charitable organisations may have the need to purchase residential properties, yet we should be careful in

determining the priorities of different sectors' demands for residential properties. We consider that under the present exceptional circumstances, there is a need to accord priority to the home ownership needs of HKPRs. Based on the above-mentioned policy and other relevant considerations, we do not consider it appropriate to grant BSD exemption or refund to charitable organisations.

Transport and Housing Bureau
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