

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendments to be moved by Hon Abraham SHEK Lai Him

| <u>Clause</u> | <u>Amendment Proposed</u> |
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| 5 | <p>In the proposed section 29A(1), by adding—</p> <p>“HKPR company (香港永久性居民的公司) means a company limited by shares, being a private company, within the meaning of the Companies Ordinance (Cap. 32) and—</p> <ul style="list-style-type: none">(a) the issued share capital of the company comprises solely of ordinary shares;(b) the number of members of the company is not more than 5 and, for this purpose, where 2 or more persons hold one or more shares in the company jointly, they shall be treated as a single member;(c) the member or each of the members of the company is a Hong Kong permanent resident and he or she as such member holds the one or more shares in the company on his or her own behalf as registered and beneficial owner; and(d) the number of directors of the company is not more than 3 and the director or each of the directors of the company is a Hong Kong permanent resident.” |
| 12 | <p>In the proposed section 29DD—</p> <ul style="list-style-type: none">(a) in the heading, by deleting “in case of redevelopment”;(b) by adding after subsection (1)—<p>“(2) Despite anything in this Ordinance, the Collector must, on an application made by an applicant who has paid buyer’s stamp duty in respect of an instrument, refund the buyer’s stamp duty if it is shown to the satisfaction of the Collector that—</p><ul style="list-style-type: none">(a) the applicant was a HKPR company on the date of acquisition of the residential property concerned;(b) the residential property concerned has not been |

disposed of by the applicant during a period of 3 years beginning on the date on which it was acquired (*the three year period*);

- (c) the applicant has continued to be and has not ceased to be a HKPR company throughout the three year period;
 - (d) the residential property concerned has not been demolished, or replaced by another building or part of a building (*redeveloped*), during the three year period; and
 - (e) the application for refund is made by the applicant not later than 5 years after the date of the applicable instrument.
- (2A) On an application for refund of buyer's stamp duty under subsection (2), the Collector may require the applicant to produce—
- (a) a statutory declaration made by one or more members of the applicant—
 - (i) that he or she was a Hong Kong permanent resident and that he or she as such member held the one or more shares in the company on his or her own behalf as registered and beneficial owner during the three year period;
 - (ii) that the residential property concerned has not been demolished or redeveloped during the three year period;
 - (iii) that he or she had no intention to cause the residential property concerned to be demolished or redeveloped at the time when the residential property was acquired and throughout the three year period; and
 - (iv) in respect of any matters mentioned in subsection (2)(a) to (c) which are within his or her own knowledge.
 - (b) a statutory declaration made by every person who during the three year period was a director of the applicant that—

(i) he or she was a Hong Kong permanent resident when he or she was appointed as a director and has not ceased to be a Hong Kong permanent resident during the period when he or she was a director; and

(ii) either—

(A) he or she did not at any time during the three year period hold any share either as registered owner or as beneficial owner in the applicant; or

(B) if he or she has at any time during the three year period held any share in the applicant, he or she did so on his or her own behalf as registered and beneficial owner.

(2B) The Collector may waive one or more of the requirements stipulated in subsection (2A) having regard to all circumstances of the applicant or of its members or directors.”.

(c) by adding after subsection (4)—

“(5) For the purposes of subsection (2)(c) but subject to subsection (6), the applicant shall be deemed to have ceased to be a HKPR company if—

(a) there is any change in the person who is a member of the applicant;

(b) any member of the applicant transfers or enters into an agreement for the transfer of the beneficial interest of any share held by him or her; or

(c) any new share of the applicant is allotted or issued or any agreement is entered into for the allotment or issue of any new share of the applicant.

(6) Subsections (5)(a) and (b) does not apply to a change in the person (*the first person*) who is a member of the applicant or a transfer or an agreement for the transfer of the beneficial interest of any share held by the first person, if the share concerned of the applicant—

- (a) is transferred to or vested in another person (*the second person*) by or pursuant to any decree or order of any court;
- (b) relates solely to the estate of the first person who is deceased;
- (c) is devised by or otherwise passed on the death of the first person under a will, the law of intestacy or right of survivorship to the second person; or
- (d) relates solely to the estate of the first person who has become bankrupt.”.