



民主黨立法會議員秘書處

Secretariat of Legislative Councillors of The Democratic Party

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致：《2012年印花稅(修訂)條例草案》委員會 立法會 CB(1)831/13-14(01)號文件
LC Paper No. CB(1)831/13-14(01)

李慧琼主席

涂謹申議員擬就《2012年印花稅(修訂)條例草案》提出修正案

繼早前致函草案委員會，提出修訂草案，以加入豁免慈善機構或慈善信託繳交買家印花稅，本人現續有三項修訂，包括容許修訂印花稅稅率的立法程序，改由「先審議後訂立」或由立法會藉決議修訂，以及收緊以受託人或監護人身分購買住宅物業而獲豁免買家印花稅的規定，該受託人或監護人須由《精神健康條例》(第136章)或法庭所任命，以防止豁免被人濫用，懇請一併交付草案委員會各委員考慮，支持相關的修正案。

豁免慈善機構或信託繳交買家印花稅

本人曾於2013年12月向法案委員會提交第一個修正案，修正案旨在讓慈善機構或慈善信託在購入住宅物業時，可以其慈善宗旨及活動所需，獲豁免繳交買家印花稅。現時有約7000多個慈善團體，按《稅務條例》第88條獲豁免繳付利得稅；稅務局早已制定實用指引，並按既定機制審核各慈善團體的帳目、年報及其他文件，故藉慈善團體名義以逃避繳交買家印花稅的可行性極低。

收緊受託人或監護人的定義

根據草案的建議，以受託人或監護人身分，為精神無行為能力的香港永久性居民購買住宅物業，可獲豁免繳交買家印花稅，而草案卻沒有對受託人或監護人的身分有所規限，即任何一位人士，不論是非香港永久性居民或香港永久性居民，都可假借受託人或監護人的身分而獲豁免買家印花稅。本人的第二個修正案，就是要收緊受託人或監護人的定義，即修訂擬建議的第 29CB(8)、29CB(9)、29DB(9)及 29DB(10)條，加入條款，以確保在以受託人或監護人身分，為精神無行為能力的香港永久性居民，購買住宅物業而獲豁免買家印花稅的情況下，該些受託人或監護人是由《精神健康條例》（第 136 章）或法庭所任命的，以防止有人隨便假借受託人或監護人的身分，藉以逃避繳交買家印花稅。

修訂更改印花稅稅率的立法程序

就更改印花稅稅率的立法程序，政府建議改為「先訂立後審議」。在這程序下，審議時限只得 28+21 天，更重要是當有大多數立法會議員不贊成政府建議時，須由議員動議廢除議案，以分組點票方式通過才可行。這樣，即是有大多數議員，如 50 票贊成廢除議案，只要在地區或功能組別其中一組有過半數議員，如 18 票反對議案，就能否決大多數議員的意願，扭曲立法會

整體意向，大大削弱立法會監察政府的職能，尤其是涉及調整印花稅稅率這重要的民生事項。

「先審議後訂立」的附屬立法程序

在平衡修訂印花稅稅率需要靈活性，以及維護立法會監察政府和審議法例的職責，本人分別建議兩個附屬立法形式的修正案，供議員考慮支持。

第一個附屬立法形式是改為「先審議後訂立」，即由財政司司長藉憲報公告，修訂附表 1 第 1(1AA)、(1AAB)、(1B) 或 (1C) 類所列的印花稅稅率，但須經立法會批准。「先審議後訂立」的程序有 2 個優點：一是沒有 28+21 天的審議時限，而由於只是審議稅率，範圍集中，不會像審議草案般需時。二是因為「先審議後訂立」的議案是由政府動議，要以簡單多數票，如 35 票贊成，才能通過成為法例，更合理地反映立法會的整體意向，做好監察政府的把關作用。

「由立法會藉決議修訂」的附屬立法程序

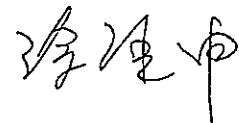
另一個附屬立法形式是由立法會可藉決議修訂附表 1 第 1(1AA)、(1AAB)、(1B) 或 (1C) 類所列的印花稅稅率。這形式主要是

除了政府官員外，亦同時賦予立法會有主動權，提出修訂稅率。

在現存法例中，約有近 80 多項條文是採用這方式修訂附屬法例，其中《汽車(首次登記稅)條例》第 8 條訂明立法會可藉決議將任何須繳付稅款的比率更改。採用這方式的優點是修改稅率的主動性更靈活，不論是政府官員或立法會議員，認為是適當時間修訂稅率，則可向立法會提出相關議案，交由立法會審議，以更快、更準地回應社會的訴求。

現謹附上上述四個修正案的中、英文文本，以交付草案委員會各委員考慮，望予以支持。

如有查詢，請致電 2537 2385 與民主黨經濟政策研究主任張先生聯絡。



立法會議員涂謹申

2014 年 1 月 29 日

附件：涂謹申議員擬提出的修正案

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by Hon. James TO Kun-sun

Clause

Amendment Proposed

12

After the proposed subsection 4 of section 29DD, add a subsection -

(5) Despite anything in this Ordinance, the Collector must, on an application made by an applicant, exempt the buyer's stamp duty if it is shown to the satisfaction of the Collector that the applicant was a charitable institution or a trust which is exempt from tax under section 88 of the Inland Revenue Ordinance on the date of acquisition of the residential property concerned.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by Hon. James TO Kun-sun

Clause

Amendment Proposed

9

By deleting the proposed subsection 29CB(8) and substituting

“(8) If it is shown to the satisfaction of the Collector that—

(a) any purchaser under a chargeable agreement for sale is acting in the transaction as a trustee or guardian for another person;

(b) the trustee or guardian for another person is appointed under the Mental Health Ordinance (Cap. 136), or otherwise by the court; and

(c) the other person is a Hong Kong permanent resident and is a mentally incapacitated person,

the Collector must, in determining whether the agreement is chargeable with buyer’s stamp duty under head 1(1C) in the First Schedule in accordance with this section, treat the other person as a purchaser under the agreement in place of the trustee or guardian, and this section is to apply to the agreement accordingly.”.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by Hon. James TO Kun-sun

Clause

Amendment Proposed

9 By deleting the proposed subsection 29CB(9) and substituting

“(9) If it is shown to the satisfaction of the Collector that —

(a) any vendor under a chargeable agreement for sale

is acting in the transaction as a trustee or guardian for another person;

(b) the trustee or guardian for another person is appointed under the Mental Health Ordinance (Cap. 136), or otherwise by the court; and

(c) the other person is a Hong Kong permanent resident and is a mentally incapacitated person,

the Collector must, in determining whether the agreement is chargeable with buyer’s stamp duty under head 1(1C) in the First Schedule in accordance with this section, treat the other person as a vendor under the agreement in place of the trustee or guardian, and this section is to apply to the agreement accordingly.”.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by Hon. James TO Kun-sun

Clause

Amendment Proposed

12 By deleting the proposed subsection 29DB(9) and substituting

“(9) If it is shown to the satisfaction of the Collector that —

(a) any transferee under a conveyance on sale is acting in the transaction as a trustee or guardian for another person;

(b) the trustee or guardian for another person is appointed under the Mental Health Ordinance (Cap. 136), or otherwise by the court; and

(c) the other person is a Hong Kong permanent resident and is a mentally incapacitated person,

the Collector must, in determining whether the conveyance is chargeable with buyer’s stamp duty under head 1(1AAB) in the First Schedule in accordance with this section, treat the other person as a transferee under the conveyance in place of the trustee or guardian, and this section is to apply to the conveyance accordingly.”.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by Hon. James TO Kun-sun

Clause

Amendment Proposed

12 By deleting the proposed subsection 29DB(10) and substituting

“(10) If it is shown to the satisfaction of the Collector that —

(a) any transferor under a conveyance on sale is acting in the transaction as a trustee or guardian for another person;

(b) the trustee or guardian for another person is appointed under the Mental Health Ordinance (Cap. 136), or otherwise by the court; and

(c) the other person is a Hong Kong permanent resident and is a mentally incapacitated person,

the Collector must, in determining whether the conveyance is chargeable with buyer’s stamp duty under head 1(1AAB) in the First Schedule in accordance with this section, treat the other person as a transferor under the conveyance in place of the trustee or guardian, and this section is to apply to the conveyance accordingly.”.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by Hon. James TO Kun-sun

Clause

Amendment Proposed

16

By deleting the proposed section 63A and substituting

“63A. Amendment of First Schedule

The Financial Secretary may, subject to the approval of the
Legislative Council, by notice published in the Gazette,
amend head 1(1AA), (1AAB), (1B) or (1C) in the First
Schedule to effect a change to the rate of stamp duty set out
in that head.”.

Stamp Duty (Amendment) Bill 2012

Committee Stage

Amendment to be moved by Hon. James TO Kun-sun

Clause

Amendment Proposed

16

By deleting the proposed section 63A and substituting

“63A. Amendment of First Schedule

The Legislative Council may, by resolution, amend head 1(1AA), (1AAB), (1B) or (1C) in the First Schedule to effect a change to the rate of stamp duty set out in that head.”.