

The Government's response to the committee stage amendments proposed by the Hon James TO Kun-sun and the Hon Dennis KWOK

This paper sets out the Government's response to the committee stage amendments (CSAs) to the Stamp Duty (Amendment) Bill 2012 (the Bill) proposed by the Hon James TO and the Hon Dennis Kwok (LC Paper No. CB(1)831/13-14(01) and LC Paper No. CB(1)833/13-14(01) refers).

CSAs proposed by the Hon James TO

2. As explained in LC Paper No. CB(1)594/13-14(03), the Government cannot agree to the Hon TO's proposal to accord exemption from the Buyer's Stamp Duty (BSD) for property acquisitions made by charitable organisations. Members may refer to the relevant paper for the Government's views.

3. As regards the other CSA proposed by the Hon TO to tighten up the exemption arrangement for mentally incapacitated persons, under the BSD regime proposed by the Government, acquisitions of residential properties made by mentally incapacitated persons who are Hong Kong permanent residents (HKPRs) through their trustees or guardians will be exempted from the BSD. The Hon TO proposes CSAs to tighten up this exemption arrangement so that the BSD exemption would only be granted when the relevant trustees or guardians are appointed under the Mental Health Ordinance (Cap.136) or otherwise by the court. The Government would like to emphasise that the purpose of the exemption arrangement is to cater for the home ownership needs of mentally incapacitated persons who are HKPRs, as they lack the capacity to enter into legally binding agreements and in practice require another person to act on his or her behalf in acquiring a residential property. While the Government has agreed to withdraw similar exemption arrangement for HKPR minors in response to the Bills Committee's concerns about potential loopholes, the situation of HKPR mentally incapacitated persons is different. As we have explained at the meetings of the Bills Committee, mentally incapacitated persons have a greater need to acquire residential properties than minors. Unlike minors who are under the supervision of, and are more likely to live with, their parents or guardians, mentally incapacitated persons who are adults have a right to choose their place of residence and where and with whom they live. Besides, we have also explained that¹, in order to claim the relevant BSD exemption, documentary evidence to prove the legal authority of the claimant as the

¹ For details, please refer to LC Paper No. CB(1)133/13-14/(02) and LC Paper No. CB(1)291/13-14/(02).

guardian of the mentally incapacitated person should be produced, such as the guardianship order granted by court or the Guardianship Board. Documentary evidence such as a valid and legally binding trust instrument would be required in the case of a trustee. In this regard, we do not consider it necessary to further tighten up the exemption arrangement for mentally incapacitated persons who are HKPRs.

4. The Hon TO also proposes to require that adjustments to the rates of the Special Stamp Duty (SSD) and the BSD could only be made by the Financial Secretary by way of a subsidiary legislation subject to the Legislative Council's (LegCo's) positive vetting, or by resolution of the LegCo. We would like to reiterate that the property market is extremely sensitive to any change in external factors. Rapid change in the property market situation may take place should there be any change in the external factors, such as interest rates and the state of the global economy. As suggested by various stakeholders from the financial and property-related sectors, the Government must ensure that the demand-side management measures may be adjusted (or even withdrawn) in a timely manner in light of the market situation. The mechanism under the Bill to adjust the SSD and BSD rates by way of negative vetting, which ensures that the demand-side management measures can be adjusted promptly as and when necessary in future, will be able to address the concerns of stakeholders. The Hon TO's proposal would have adverse implications for the property market by delaying any necessary adjustments to the demand-side management measures. As a matter of fact, a piece of subsidiary legislation to adjust the relevant rates under the negative vetting procedure is still subject to LegCo's scrutiny.

CSAs proposed by the Hon Dennis KWOK

5. In the submission of the Wong, Hui & Co., Solicitors, it is suggested that the Government's CSA to withdraw the BSD exemption for acquisitions made by HKPR minors through their trustees or guardians should not apply to transactions made before the passage of the Bill. In our reply to the submission, we have already explained in details the reasons why the Government considers this suggestion not acceptable. For details, please refer to LC Paper No. 793/13-14(02). As a matter of principle, the exemption arrangement concerned as set out in the original Bill represents the Government's original proposal on how the BSD should be implemented. As with all bills, the Bill is a proposed piece of legislation, which is invariably subject to deliberation and may be altered during the legislative process before it is enacted as law. The Government has mentioned on many occasions that the Bill is subject to the scrutiny of the LegCo and that the

Government will work closely with the Bills Committee and listen to the views of stakeholders to ensure that the BSD regime could effectively achieve its policy objectives. In fact, in addition to the CSA on the exemption arrangement for HKPR minors, the Government has also proposed other CSAs in response to the comments and feedback made by Bills Committee Members and other stakeholders, such as the introduction of an enhanced BSD refund mechanism for redevelopment.

6. The suggestion not to apply the relevant CSA to acquisitions of residential properties made by HKPR minors through their trustees or guardians before the gazettal of the Amendment Ordinance would be contradictory to the principle of the processing of bills and cause unnecessary confusion to the public regarding the BSD regime. Worse still, it would provide incentive for those who wish to use this potential loophole to use the names of the minors to acquire residential properties during this interim period to evade the BSD. The Hon KWOK's CSA would open a window to encourage such abuse to take place before the gazettal of the relevant Amendment Ordinance. This is contrary to the very intention of the Government's CSA which aims to address the Bills Committee's grave concern to close the potential loophole. As such, the Government cannot agree to the Hon Kwok's CSA.

**Transport and Housing Bureau
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