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LC Paper No. CB(1)900/13-14(01)

(English version only)



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11th February 2014

By Hand

Bills Committee on Stamp Duty (Amendment) Bill 2012

Legislative Council

Legislative Council Complex,

1 Legislative Council Road, Central,

Hong Kong

Dear Sir,

Re: Stamp Duty (Amendment) Bill 2012 (the "Bill")

We refer to the Government's Response to our letter dated 29th January 2014 addressed to the Bills Committee.

Although a bill is a proposed piece of legislation and is subject to deliberations and alterations during the legislative process before it is enacted as law, we are of the view that a separate non-retrospective commencement date should be fixed for the proposed amendment to remove the Hong Kong Permanent Resident minors (HKPR minors) exemption from the Bill for the following reasons:-

1. There are two unique features of the Bill, namely the retrospective effect of the Bill and the structure of the Bill.

2. It is provided in the Bill that BSD applies to a chargeable agreements for sale and conveyances on sale of any residential property executed on or after 27th October 2012. The Bill goes on to stipulate a list of categories of chargeable agreements for sale and conveyances on sale which are not chargeable with BSD and they include, inter alia, chargeable agreements for sale and conveyances on sale executed by persons as trustees for HKPR minors. The Bill in its entirety effectively stipulates all chargeable agreements for sale and conveyances on sale of residential properties executed on or after 27th October 2012 are chargeable with BSD unless the buyers or transferees belong to certain categories of persons as provided in the Bill. The Bill therefore tells the public when gazetted who have to pay and who do not have to pay BSD.

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3. By the Bill and the government's representation, advance notice has therefore been given to the general public as to how and who will be adversely affected in monetary terms so that the public will be able to take that into account before they embark on property transactions. The intention of the government in gazetting the Bill is to tell parties who enter into property transactions on or after 27th October 2012 whether they have to pay BSD by ascertaining whether they belong to any exemption categories.

4. If the government wants to withdraw the exemption of HKPR minors, advance notice has to be given to the general public before such withdrawal should take effect. If withdrawal of exemption to HKPR minors was to take effect on the Gazette Date, there would be no such advance notice. It would adversely affect concluded transactions with retrospective effect, and the misrepresentation is unconscionable, however innocent.

5. The doctrine of estoppel by convention may come into play where a transaction is carried out in reliance on Government's representation contained in the original of the Bill which says in effect that Government will not seek to impose BSD on HKPR minors.

6. Although it is true that the substance of a Bill may be subject to changes when they go through the legislative process, we are here concerned not with the substance of the Bill but its implementation. A Bill to impose tax does not normally have retrospective effect but due to circumstances which the Government sees fit, it introduces retrospective effect in the Bill. It is therefore all the more important for the Government to make sure the implementation of the Bill will not result in setting a trap, though unintentionally, for innocent buyers or transferees.

7. If the government's argument as contained in the Government's Response to our letter is given effect, it leads to the absurd situation that nobody including HKPR adults holding no property, can rely on the Bill as any category of exemption may be removed during the legislative process. Nobody can enter into property transactions between 27th October 2012 and the date of the passing of the Bill with the certainty that they do not have to pay BSD. This cannot be the intention of the Government. By the same token, nobody can be certain that the BSD is no more than 15% as this rate may also be changed during legislative process. Again, this cannot be the intention of the government.



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For reasons aforesaid, I strongly feel in the absence of a separate non-retrospective commencement date for the proposed amendment to remove the exemption for HKPR minors, affected cases or concluded transactions are amenable to judicial review and we will so advise our clients.

Yours faithfully,



Anthony S.K. Lo
Senior Partner

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