

立法會
Legislative Council

LC Paper No. CB(1)1882/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/12

Bills Committee on Stamp Duty (Amendment) Bill 2013

**Minutes of twelfth meeting on
Monday, 14 April 2014, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Starry LEE Wai-king, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Charles Peter MOK
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen

Member absent : Hon Dennis KWOK

**Public officers
attending** : Agenda item I

Financial Services and the Treasury Bureau

Ms Mable CHAN, JP
Deputy Secretary for Financial Services and the
Treasury (Treasury) 2

Ms Shirley KWAN
Principal Assistant Secretary for Financial Services
and the Treasury (Treasury) (Revenue)

Transport and Housing Bureau

Mrs Vicki KWOK
Principal Assistant Secretary for Transport and
Housing (Housing) (Private Housing)

Inland Revenue Department

Mr TAM Tai-pang, JP
Deputy Commissioner (Operations)

Mr HONG Wai-kuen
Acting Chief Assessor (Stamp Office)

Department of Justice

Mr Allen LAI
Senior Government Counsel

Mr Manuel NG Man-chun
Acting Senior Government Counsel

Clerk in attendance: Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Mr Ken WOO
Senior Council Secretary (1)5

Action

- I. Meeting with the Administration**
(LC Paper No. CB(1)1150/13-14(01) -- List of follow-up actions
arising from the discussion at
the meeting on 14 March 2014

- LC Paper No. CB(1)1219/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 28 March 2014
- LC Paper No. CB(1)1219/13-14(02) -- Administration's responses to issues raised at the meetings on 14 and 28 March 2014
- LC Paper No. CB(1)971/13-14(01) -- Hon James TO Kun-sun's letter dated 24 February 2014
(*Chinese version only*)
- LC Paper No. CB(1)1219/13-14(03) -- Administration's response to Hon James TO Kun-sun's letter dated 24 February 2014

Clause-by-clause examination of the Bill

Starting from clause 18 - section 29DH

- LC Paper No. CB(3)471/12-13 -- The Bill
- LC Paper No. CB(1)1132/12-13(01) -- Mark-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)
- LC Paper No. CB(1)1096/13-14(02) -- Administration's response to Senior Assistant Legal Adviser's letter dated 14 January 2014 as set out in LC Paper No. CB(1)1096/13-14(01)

Committee stage amendments

- LC Paper No. CB(1)1847/12-13(01) -- Draft Committee stage amendments proposed by Hon Abraham SHEK Lai-him
- LC Paper No. CB(1)1847/12-13(02) -- Draft Committee stage amendment proposed by Hon Andrew LEUNG Kwan-yuen

- LC Paper No. CB(1)88/13-14(01) -- Administration's responses to draft Committee stage amendments proposed by Hon Abraham SHEK Lai-him and Hon Andrew LEUNG Kwan-yuen as set out in LC Paper Nos. CB(1)1847/12-13(01) and (02)
- LC Paper No. CB(1)584/13-14(01) -- Draft Committee stage amendments proposed by Hon Tommy CHEUNG Yu-yan
- LC Paper No. CB(1)779/13-14(03) -- Administration's response to draft Committee stage amendments proposed by Hon Tommy CHEUNG Yu-yan as set out in LC Paper No. CB(1)584/13-14(01)
- LC Paper No. CB(1)1201/13-14(01) -- Draft Committee stage amendments proposed by Hon Tony TSE Wai-chuen

Relevant papers issued previously

- LC Paper No. CB(1)105/13-14(01) -- Mark-up copy of Hon Abraham SHEK Lai-him's proposed Committee stage amendments to the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)105/13-14(02) -- Mark-up copy of Hon Andrew LEUNG Kwan-yuen's proposed Committee stage amendment to the Bill prepared by the Legal Service Division)

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

2. The Chairman, Mr Tony TSE, Mr Kenneth LEUNG, Mr WONG Ting-kwong, Mr LEUNG Che-cheung, Mr James TIEN, Mr Abraham SHEK, Mr Andrew LEUNG, Mr Paul TSE and Dr LAM Tai-fai disclosed their respective interests.

Follow-up action required of the Administration

3. The Administration was requested to provide a written response to the suggestion of Mr WONG Ting-kwong that, to address the self-use needs of owner-occupiers, the acquisition of a car parking space should be exempted from the enhanced ad valorem stamp duty rate on the conditions that the subject car parking space was located in the same residential development complex provided by the same developer and that the purchaser was a first-time buyer of a car parking space.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1468/13-14(02) on 20 May 2014.)

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Friday, 25 April 2014 at 2:30 pm to meet with the Administration.

II. Any other business

5. There being no other business, the meeting ended at 12:48 pm.

Council Business Division 1
Legislative Council Secretariat
30 July 2014

**Proceedings of the twelfth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
on Monday, 14 April 2014, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
000413 – 000529	Chairman Mr Tony TSE Mr Kenneth LEUNG Mr WONG Ting-kwong Mr LEUNG Che-cheung	Disclosure of interests by members	
000530 – 001556	Chairman Administration	<p>The Administration's response to members' views and concerns raised at the meetings of the Bills Committee on 14 and 28 March 2014 (LC Paper No. CB(1)1219/13-14(02)).</p> <p>In respect of the exchange of properties provided under the Stamp Duty (Amendment) Bill 2013 ("the Bill"), the Administration would propose to make technical amendments to the relevant provisions to the effect that exemption was only applicable to "any consideration paid for equality" in respect of the residential property under the exchange arrangement. If "any consideration paid for equality" was related to the non-residential property, the ad valorem stamp duty ("AVD") would be chargeable at the enhanced rate as in other cases of non-residential property transactions.</p>	
001557 – 001807	Chairman Administration	<p><u>Discussion on transactions involving both a residential unit and a car parking space</u></p> <p>In reply to the Chairman, the Administration explained that:</p> <p>(a) under the existing AVD regime, a residential unit and a car parking space covered by the same transaction instrument which could be separately transferred would be regarded as two properties, whereas a residential unit and a car parking space which had to be transferred together (e.g. as provided in a deed of mutual covenant ("DMC")) would be regarded as one single residential property;</p>	

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		<p>(b) if the original property included only one residential unit, whereas the replacement property included inseparable residential unit and car parking space (e.g. as provided in a DMC, the instrument for acquisition of the replacement residential unit and car parking space would be chargeable with AVD at the old rate. However, if the replacement property included a residential unit and a car parking space which could be separately transferred, the newly acquired residential unit would be chargeable with AVD at the old rate, while the car parking space would be chargeable at the enhanced AVD rate. The applicable rates for both the residential unit and the car parking space shall be determined by reference to the total consideration of the whole transaction. Such practice of determining the rates applicable to the whole transaction was in conformity with the existing AVD regime; and</p> <p>(c) it had no intention to exempt an instrument for acquiring a car parking space from the enhanced AVD regardless of whether the car parking space was acquired for self-use.</p>	
001808 – 002106	Chairman Mr WONG Ting-kwong Administration	Mr WONG Ting-kwong pointed out that car parking spaces in a residential development would usually only be put up for sale years after the residential units were sold. Owner-occupiers who had the genuine need for car parking space for self-use would usually rent a car parking space within the residential development. He suggested that, to address the self-use needs of owner-occupiers, the acquisition of a car parking space should be exempted from the enhanced AVD rate on the conditions that the subject car parking space was located in the same residential development complex provided by the same developer and that the purchaser was a first-time buyer of a car parking space.	The Administration to follow up as stated in paragraph 3 of the minutes.
002107 – 002857	Chairman Mr James TO Administration Senior Assistant Legal Adviser 3 ("SALA3")	<p>In response to Mr James TO's enquiries:</p> <p>(a) the Administration advised that under the DMC, a residential unit and a car parking space which had to be transferred together</p>	

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		<p>would be regarded as one single residential property, and the relevant instrument would be chargeable with AVD at the old rate; and</p> <p>(b) SALA3 clarified that whether undivided shares were allocated to the respective residential unit and car parking space in a DMC were only technical details and would not per se affect the AVD exemption.</p>	
002858 – 003434	Chairman Mr LEUNG Che-cheung Administration	<p>Mr LEUNG Che-cheung's views that:</p> <p>(a) the Bill should not penalize those owner-occupiers who acquired a car parking space for self-use. The Administration should assess the extent of possible abuse if exemption from the enhanced AVD was granted for the acquisition of a car parking space declared for self-use; and</p> <p>(b) the Administration should explain clearly and specify the new AVD liabilities under different scenarios to avoid causing misunderstanding and confusion to the public.</p> <p>The Administration responded that it had been examining various suggestions for exemptions under the Bill with reference to the existing stamp duty regime and implementation arrangements. It held the view that exemptions should be granted based on objective principles, not on every possible scenario, and effectively enforced. There was a need to strike a balance between addressing specific scenarios and ensuring that the effectiveness of the measures would not be undermined.</p>	
003435 – 004045	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE:</p> <p>(a) said that since a DMC would generally specify that car parking spaces of a residential development could only be sold to its owner-occupiers, providing exemption for the acquisition of car parking spaces by owner-occupiers risked giving rise to speculations as owners might acquire more than one car parking space for letting out. As regards transactions of car parking</p>	

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		<p>spaces which were not restricted to owner-occupiers, the chance of abuse of the exemption might even be higher; and</p> <p>(b) asked whether a replacement purchase of a residential unit and a car parking space which had to be transferred together would be exempted from the enhanced AVD if the purchaser was only able to sell the old residential property and not the car parking space.</p>	
004046 – 004408	Chairman Mr Kenneth LEUNG	Mr Kenneth LEUNG said that examination of DMC alone was insufficient for legal practitioners and estate agents to advise property buyers of the stamp duty liabilities under the enhanced AVD regime. He requested the Administration to consider setting out in the practice notes to the Amendment Ordinance all foreseeable scenarios chargeable with AVD to facilitate reference by the trade and the public.	
004409 – 004700	Chairman Mr Abraham SHEK	Mr Abraham SHEK said that under certain lease conditions, car parking spaces would not be regarded as non-residential properties when provided along with residential units. He highlighted the complications in differentiating between residential and non-residential properties, and urged the Administration to work with the Planning Department and the Lands Department to address members' concerns on the stamp duty arrangements under various scenarios.	
004701 – 004847	Chairman Mr Andrew LEUNG	Mr Andrew LEUNG pointed out that it was common for respective considerations of a residential unit and a car parking space which had to be transferred together be separately set out in an agreement for sale. The provisions of DMC in respect of old and new buildings might differ greatly. It was therefore important for the Bills Committee to consider the market situation in totality and ensure that the enhanced AVD measure would not create undue hardships for the public.	
004848 – 005444	Chairman Mr James TO Administration	Mr James TO stressed that when acquiring a residential unit, it was common for home buyers to also acquire a car parking space in the same residential development for self-use. It was	

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		<p>unreasonable that for a transaction involving both a residential unit and a car parking space, the latter would be chargeable with the enhanced AVD with the applicable rate based on the total consideration of the whole transaction. He did not subscribe to the Administration's explanation that charging stamp duty on an instrument basis was an inherent feature of the Stamp Duty Ordinance (Cap. 117) ("SDO") and hence a change would be undesirable. He urged the Administration to consider Mr WONG Ting-kwong's suggestion above.</p> <p>The Administration explained that car parking spaces were broadly non-residential properties, and the policy objective of the enhanced AVD measure was to forestall the shifting of overheating in the residential property market to the non-residential property market. The arrangement for car parking spaces under the AVD regime would have to be in conformity with those of the Special Stamp Duty ("SSD") and Buyer's Stamp Duty ("BSD") regimes to ensure consistency in the various stamp duty measures.</p>	
005445 – 005825	Chairman Mr WONG Ting-kwong	Citing the provision of twin parking spaces in particular for residential developments in rural areas as an example, Mr WONG Ting-kwong pointed out that many complications would arise if the acquisition of car parking spaces for self-use was not granted exemption.	
005826 – 010031	Chairman Mr Tony TSE	Mr Tony TSE pointed out that given an instrument for the acquisition of a car parking space alone might be charged less AVD than an instrument for the acquisition of a car parking space with a residential unit as the applicable rate would be determined by reference to the total consideration of the whole transaction, purchasers of a residential unit and a car parking space in the same residential development might choose to effect the transaction under separate instruments to save on the AVD charges. He urged the Administration to re-think whether this was the intended outcome of the Bill.	
010032 – 010635	Chairman Mr James TO	Mr James TO referred to the sale of a new residential development in Argyle Street where a large space, packaged to be a "store room" by the	

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		<p>developer but permitted to be used as retail space under the DMC, was provided underneath each residential unit. The residential unit and the "store room" as a single property would therefore be chargeable with AVD at the old rate if the purchaser was not the owner of any other residential property in Hong Kong on the date of acquisition. In view of the above, he considered reference to DMC in determining whether a car parking space could be transferred separately from a residential unit unreliable and inappropriate. He reiterated his request for exemption from the enhanced AVD for the purchase of a car parking space provided under the same residential development for self-use.</p> <p>The Chairman considered that car parking space acquired for self-use was fundamentally different from other non-residential properties usually acquired for commercial purposes. She urged the Administration to consider members' views.</p>	
010636 – 011302	Chairman Mr James TIEN Administration	<p>Mr James TIEN disclosed interests and expressed the following views and concerns:</p> <ul style="list-style-type: none"> (a) the mild drop in property prices in recent months had in fact been fully offset by an increase in AVD chargeable. The fact that the transaction figures remained stagnant since the introduction of the Bill showed that the measures had not been effective in facilitating Hong Kong Permanent Residents ("HKPRs") to buy home; and (b) legal practitioners and the estate agency trade had been applying new stamp duty requirements under the Bill in anticipation of its passage. <p>The Administration responded that the various stamp duty measures introduced in recent years were complementary to each other in managing demand and curbing exuberance in the property market. A drop in property prices in recent months had demonstrated the effectiveness and hence the necessity of the demand-side management measures. The Administration was actively examining members' views on the Bill with a view to optimizing the provisions and</p>	

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		<p>implementation arrangements. It would be most desirable for the Bill to be passed as soon as possible to allow the Administration to respond timely to market changes.</p>	
<p>011303 – 020019</p>	<p>Chairman Mr James TO Administration Mr Abraham SHEK Mr Andrew LEUNG Mr Paul TSE SALA3 Dr LAM Tai-fai Mr Kenneth LEUNG Mr James TIEN Mr WONG Ting-kwong Mr Tony TSE</p>	<p><u>Discussion on AVD chargeable for a single transaction instrument covering multiple residential properties</u></p> <p>Mr James TO noted with concern that where multiple residential properties were acquired under a single transaction instrument by a HKPR who was not the beneficial owner of any other residential property in Hong Kong, the multiple acquisitions would be regarded as one single transaction and the instrument would be chargeable at the old AVD rate on the total consideration. Referring to the Administration's explanation that it could not rule out the possibility of HKPRs who were not beneficial owners of any other residential properties had the need to acquire more than one residential property for home ownership needs, he casted doubt on one's need to acquire many, and commented that the provision was contrary to the policy intent of the Bill to combat speculation. He urged the Administration to plug the loophole by charging the second property onwards in such an instrument at the enhanced AVD rate.</p> <p>The Administration responded that:</p> <p>(a) charging stamp duty on an instrument basis was an inherent feature under SDO. As long as there was only one single instrument, AVD would be charged on the total consideration stated, irrespective of the number of properties involved;</p> <p>(b) the purpose of the series of demand-side management measures was directed at different demands of different buyers. These measures were interrelated and worked collectively to achieve the objectives of combating speculations and managing demand. With the implementation of the SSD and BSD measures, the concern about speculation would have been addressed to a considerable</p>	

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		<p>extent;</p> <p>(c) subjecting the second property onwards to the enhanced AVD rate where an instrument covered more than one residential property would further enhance the demand-side management measures, which had to be considered carefully from the perspectives of market response and enforceability; and</p> <p>(d) the Administration had no intention to make a fundamental change to the stamp duty regime for the exceptional measure introduced in exceptional circumstances, and had no intention to impose restrictions on circumstances where an instrument covered more than one residential property.</p> <p>Mr Abraham SHEK, Mr Andrew LEUNG, Mr Paul TSE and Dr LAM Tai-fai disclosed interests.</p> <p>Members including Mr Abraham SHEK, Mr Andrew LEUNG, Mr Paul TSE, Dr LAM Tai-fai, Mr Kenneth LEUNG, Mr James TIEN, Mr WONG Ting-kwong and Mr Tony TSE echoed Mr James TO's views above.</p> <p>Mr Paul TSE, Dr LAM Tai-fai, Mr Kenneth LEUNG and Mr WONG Ting-kwong noted with concern that the public as well as the legal practitioners and the estate agency trade were confused by the requirements of the Bill. Legal practitioners and estate agents could hardly advise property purchasers the AVD chargeable under different scenarios. It was also a fact that property buyers had since 23 February 2013, the date when the Bill was deemed to have taken effect, been requested by legal practitioners to temporarily deposit the difference between the enhanced and the existing AVD rate when they entered into agreements for sale. Mr Kenneth LEUNG said that some property buyers had in fact been incurring soaring consultancy fees due to the unclear AVD requirements at the time of purchase. Citing a recent case in which a small law firm was sued for its stamp duty advice in respect of a residential property transaction, Mr Paul TSE said that the trade was facing a very hard time in conducting business.</p>	

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		<p>SALA3 advised that although the Bill was not yet law, transactions that were entered into after 23 February 2013 were legally bound by the Bill given the retrospective effect it carried. If the public were unclear about the stamp duty liability under the Bill, they could not make informed decisions.</p> <p>Mr James TIEN and Mr WONG Ting-kwong expressed concern that some of the provisions of the Bill might not be operationally enforceable. They said that the political party to which they belonged would need to consider whether or not to support the Bill.</p> <p>Dr LAM Tai-fai and Mr Tony TSE agreed that the Secretary for Financial Services and the Treasury should be invited to attend the next meeting of the Bills Committee to respond to members' concerns.</p> <p>The Chairman reiterated her request for the Administration to consider members' views of not applying the enhanced AVD to transactions in respect of non-residential properties.</p>	
020020 – 020315	Chairman Mr WONG Ting-kwong Administration	In response to Mr WONG Ting-kwong, the Administration explained that under the SDO, an "instrument" meant an agreement for sale or a conveyance on sale whereby any immovable property was transferred to or vested in any person.	
020316 – 020414	Chairman Administration	Meeting arrangements	