

立法會
Legislative Council

LC Paper No. CB(1)1980/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/12

Bills Committee on Stamp Duty (Amendment) Bill 2013

**Minutes of sixteenth meeting on
Monday, 19 May 2014, at 4:30 pm
in Conference Room 2B 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 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 Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen

Member absent : Hon Tommy CHEUNG Yu-yan, SBS, JP

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)

Ms TSE Yuk-yip, JP
Assistant Commissioner 3

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

I. Meeting with the Administration

- (LC Paper No. CB(1)1338/13-14(01) -- Administration's response to Hon James TO Kun-sun's letter dated 16 April 2014 as set out in LC Paper No. CB(1)1280/13-14(02)
- LC Paper No. CB(1)1409/13-14(03) -- Hon Paul TSE Wai-chun's letter dated 12 May 2014
(*English version only*)
- LC Paper No. CB(1)1468/13-14(01) -- Administration's response to Hon Paul TSE Wai-chun's letter dated 12 May 2014
- LC Paper No. CB(1)1401/13-14(01) -- Administration's responses to issues raised at the meetings on 25 April and 5 May 2014
- LC Paper No. CB(1)1440/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 13 May 2014
- 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)1380/13-14(02) -- Revised draft Committee stage amendments proposed by Hon Abraham SHEK Lai-him
- LC Paper No. CB(1)1449/13-14(01) -- Administration's response to the revised draft Committee stage amendments proposed by Hon Abraham SHEK Lai-him

- LC Paper No. CB(1)1449/13-14(02) -- The Government's proposed Committee stage amendments to the Stamp Duty (Amendment) Bill 2013
- LC Paper No. CB(1)1468/13-14(02) -- The Government's further proposed draft Committee stage amendments to the Stamp Duty (Amendment) Bill 2013
- LC Paper No. CB(1)1380/13-14(03) -- Senior Assistant Legal Adviser's letter dated 6 March 2014 to the Administration
- LC Paper No. CB(1)1380/13-14(04) -- Administration's reply letter dated 11 April 2014 to Senior Assistant Legal Adviser

Committee stage amendments

- 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)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)1280/13-14(03) -- Administration's response to draft Committee stage amendments proposed by Hon Tony TSE Wai-chuen as set out in LC Paper No. CB(1)1201/13-14(01)
- 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

Relevant papers issued previously

- 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)
- LC Paper Nos. CB(1)1409/13-14(01) and (02) -- Speaking notes of the opening remarks and closing remarks delivered by the Secretary for Financial Services and the Treasury)

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

2. The Chairman, Mr Andrew LEUNG, Mr James TO, Mr LEUNG Che-cheung, Mr WONG Ting-kwong, Mr Abraham SHEK and Mr James TIEN disclosed their respective interests.

3. Mr James TO informed the meeting that he intended to move motion(s) at the next meeting of the Bills Committee to the effect that the Bills Committee should move the Committee stage amendments to be proposed by him to the Stamp Duty (Amendment) Bill 2013.

(Post-meeting note: Members were informed of Mr James TO's intention above vide LC Paper No. CB(1)1467/13-14 on 20 May 2014.)

Follow-up action required of the Administration

4. The Administration was requested:

- (a) in relation to the acquisition of public rental housing flats under the Tenants Purchase Scheme ("TPS"):
 - (i) to consider extending the scope of exemption from the doubled ad valorem stamp duty ("AVD") to also cover the acquisition of such flat by a non-Hong Kong Permanent Resident ("HKPR");
 - (ii) to consider allowing the Buyer's Stamp Duty and the doubled AVD to be paid by installments over a long period to alleviate the burden of non-HKPR purchasers; and
 - (iii) to provide information on the number of transactions involving TPS flats and their respective market value and the doubled AVD payable since the announcement of the doubled AVD measures on 23 February 2013; and
- (b) to confirm whether disposal of the original property by way of a deed of gift within six-month from the acquisition of a new residential property would fulfill the requirement for a refund of the difference between the AVD payment according to the old rates and that according to the new rates.

(*Post-meeting note:* The information provided by the Administration was issued to members vide LC Paper No. CB(1)1517/13-14(01) on 28 May 2014.)

Date of next meeting

5. The Chairman reminded members that the next meeting would be held on Tuesday, 27 May 2014 at 4:30 pm to meet with the Administration.

II. Any other business

6. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
5 September 2014

**Proceedings of the sixteenth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
on Monday, 19 May 2014, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
000400 – 000450	Chairman Mr Andrew LEUNG Mr James TO Mr LEUNG Che-cheung Mr WONG Ting-kwong	Opening remarks Disclosure of interests by members	
000451 – 000623	Chairman Administration	The Chairman requested the Administration, when taking members through the Committee stage amendments ("CSAs") proposed by the Administration to the Stamp Duty (Amendment) Bill 2013 ("the Bill"), to clarify from what date the modified proposals as announced by the Secretary for Financial Services and the Treasury at the Bills Committee meeting on 13 May 2014 would take effect.	
000624 – 002142	Chairman Mr Abraham SHEK Administration	<p data-bbox="603 1095 1254 1167"><u>Discussion on the CSAs proposed by Mr Abraham SHEK</u></p> <p data-bbox="603 1205 1254 1529">Mr Abraham SHEK disclosed interests and explained his proposed CSAs (LC Paper No. CB(1)1380/13-14(02)). In gist, he proposed to exempt non-residential property transactions from the doubled ad valorem stamp duty ("AVD"), and to maintain the existing law of charging AVD at the time of conveyance on sale and not to advance the timing for charging to the agreement for sale as proposed under the Bill.</p> <p data-bbox="603 1570 1254 1933">Mr Abraham SHEK further advised that he was considering withdrawing the CSAs proposed by him to relax the six-month period to 12 months for Hong Kong Permanent Residents ("HKPRs") who had acquired a new residential property to dispose of their only other residential property in Hong Kong in the light of the Administration's modified proposals which would, to a certain extent, address his concern on the period allowed for divesting the original properties.</p> <p data-bbox="603 1973 1254 2076"><i>(Post-meeting note: The letter from Mr Abraham SHEK withdrawing the draft CSAs to clause 18 of the Bill was issued to members vide LC Paper</i></p>	

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		<p>No. CB(1)1600/13-14(01) on 11 June 2014.)</p> <p>The Administration responded that:</p> <p>(a) given the differences in nature between residential and non-residential markets, they should not be treated in the same way. The policy considerations for non-residential properties were not on a par with those for addressing the home ownership needs of HKPRs;</p> <p>(b) the proposed increase in AVD rates and the advancement of the timing for charging AVD in respect of non-residential property transactions were complementary measures, which could hopefully forestall the shifting of speculation from the residential property market to the non-residential property market. Despite the preliminary results achieved, uncertainty still prevailed in the market and the supply of properties remained tight. It was thus necessary to maintain the measures in respect of non-residential properties; and</p> <p>(c) the Government had undertaken to conduct a review and report to the Legislative Council ("LegCo") one year after the enactment of the legislation.</p>	
002143 – 002854	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai said that the modified proposal to adjust the six-month timeframe to commence from the conveyance on sale instead of the agreement for sale and purchase of the newly acquired property might mean 1.5 months and 3 years extra for those seeking to replace an old property with an existing flat and an uncompleted flat respectively, and it had been reported in the media that the modified proposals were inclined to encourage the acquisition of an uncompleted flat as a replacement. Pointing out that Mr Abraham SHEK, a Member returned from the functional constituency of Real Estate and Construction, had indicated earlier at the meeting that he was considering withdrawing his proposed CSAs to relax the six-month timeframe for replacing property in the light of the modified proposals, he asked whether the Administration had conspired with the relevant industry to boost</p>	

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		<p>the sale of uncompleted flats.</p> <p>The Administration clarified that the modified proposals were not introduced to facilitate the business of any industry, but in response to the calls of the Bills Committee and members of the public for addressing the needs of those changing properties through the acquisition of an uncompleted flat as a replacement property. The modified proposal to count the six-month period from the conveyance on sale was applicable across-the-board and was thus a fair arrangement to all.</p> <p>Mr Abraham SHEK clarified that there was no agreement between real estate developers and the Government on introducing the modified proposals.</p>	
002855 – 003316	Chairman Mr Andrew LEUNG Administration	<p>Mr Andrew LEUNG opined that enterprises, especially small and medium enterprises, were penalized by the doubled AVD measures which would severely impact on their business expansion and survival. He reiterated that the Administration should consider modeling on the practice of the Singapore Government on refunding the difference between the old and the doubled AVD payment for non-residential properties that were acquired and held for more than three or five years.</p> <p>The Administration responded that the monthly average increase in both prices and rentals of retail, office and flatted factory space had recorded a notable deceleration since the introduction of the doubled AVD measures. While the measures would cause inconvenience to the business community, it was essential to manage demand so as to address the exuberance in the non-residential property market and to minimize the possible risk to financial stability. Hence it was necessary to maintain the measures.</p>	
003317 – 003759	Chairman Dr LAM Tai-fai Administration	<p>Dr LAM Tai-fai was neither convinced of any sign of overheating in the non-residential property market nor subscribed to the Administration's observation that increase in rentals for retail, office and flatted factory space had continued to decelerate upon introduction of the doubled AVD measures. Subjecting</p>	

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		<p>non-residential properties to measures under the Bill had only resulted in a plunge in transaction and a surge in rentals, thus hindering the operations of the commerce and industries.</p> <p>The Administration reiterated the policy objective of the doubled AVD measures.</p>	
003800 – 004229	Chairman Mr James TO Mr Abraham SHEK	<p>At the request of Mr James TO, Mr Abraham SHEK agreed to provide the Bills Committee an explanatory note on the effects of his proposed CSAs.</p> <p><i>(Post-meeting note: The letter from Mr Abraham SHEK on the above was issued to members vide LC Paper No. CB(1)1496/13-14(01) on 26 May 2014.)</i></p> <p>Mr James TO informed the meeting that he would propose a number of CSAs to the Bill.</p>	
004230 – 004648	Chairman Mr James TIEN	Mr James TIEN disclosed interests. He said that the Liberal Party was opposed to the Bill as the measures did not help HKPRs purchasing their own home.	
004649 – 005111	Chairman Mr James TO Administration	In reply to Mr James TO, the Administration advised that it was studying in depth the mechanism to adjust future AVD rates on account of members' views, and would report to the Bills Committee its latest position when available.	
005112 – 005536	Chairman Administration	<p><u>Discussion on Mr James TO's letter dated 16 April 2014 (LC Paper No. CB(1)1280/13-14(02))</u></p> <p>The Administration's response to Mr James TO's letter dated 16 April 2014 (LC Paper No. CB(1)1338/13-14(01)).</p>	
005537 – 011344	Chairman Mr James TO Administration Senior Assistant Legal Adviser 3 ("SALA3")	Mr James TO reiterated his concern about possible abuse 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.	

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		<p>The Administration responded that:</p> <ul style="list-style-type: none"><li data-bbox="603 331 1254 658">(a) during the period between 22 February 2013 (when the doubled AVD measures were announced) and 31 March 2014, there were some 1 000 transactions which involved the acquisition of multiple residential properties under a single instrument, with the majority being two to three properties. The relevant transaction figures had been stable compared with those of previous years;<li data-bbox="603 696 1254 1424">(b) charging stamp duty on an instrument basis was a fundamental principle under the Stamp Duty Ordinance (Cap. 117). Soon after the Government's announcement on the introduction of the doubled AVD measures (i.e. since the evening of 22 February 2013), the Inland Revenue Department ("IRD") had uploaded frequently-asked questions onto its website and explained that under the doubled AVD measures, IRD would uphold the principle of charging stamp duty on an instrument basis. The Administration had maintained contact with The Law Society of Hong Kong ("the Law Society") on the Bill and had re-confirmed the above arrangement in its reply letter dated 24 January 2014 to the Law Society. The Government's position had remained the same and correct messages had been disseminated in a timely manner; and<li data-bbox="603 1462 1254 2085">(c) the proposal of exempting only one residential property in an instrument from the doubled AVD would entail a number of associated issues that needed to be clearly addressed in the legislation and would represent "tightening up" of the measures. Also, it could not rule out the possibility of the need to acquire more than one residential property due to individual and family considerations (such as to acquire adjoining flats or different units within the same residential development). More importantly, any change to the doubled AVD measures would likely create enormous impact on and send confusing messages to the market, rendering the public difficult to grasp the actual situation. In view of the	

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		<p>above, the Administration did not intend to impose additional restrictions as some members had suggested.</p> <p>Mr James TO reiterated his request for the Administration to make amendments to the Bill to the effect that an instrument for the transfer of non-residential properties between closely related persons would be chargeable with AVD at the old rate to cater for the needs of passing on family businesses. The exemption, in his view, would not give rise to speculation and the chance for abuse would be very small.</p> <p>The Administration responded that the meaning of "closely related persons" under the Bill was the same as that of the Stamp Duty (Amendment) Bill 2012. The Administration had no intention to extend the relevant exemption to cover transactions involving the transfer of non-residential property between closely related persons.</p> <p>Mr James TO suggested that the Bills Committee to move the following CSAs to be proposed by him to the effect that:</p> <ul style="list-style-type: none"> (a) except one property, all other properties in a single agreement for sale executed by a HKPR who was not the beneficial owner of any other residential property in Hong Kong on the date of acquisition were to be chargeable with AVD at the doubled rate; (b) an instrument for the transfer of non-residential properties between closely related persons would be chargeable with AVD at the old rate; and (c) exemption from the doubled AVD would be granted for agreements for sale and conveyances on sale of residential properties involving in-laws. <p>On the advice of SALA3, Mr James TO said that he would move motion(s) at the next meeting of the Bills Committee to such effect.</p>	

Time marker	Speaker	Subject(s)	Action required
011345 – 011704	Chairman Administration	<p data-bbox="603 259 1256 331"><u>Discussion on Mr Paul TSE's letter dated 12 May 2014 (LC Paper No. CB(1)1409/13-14(03))</u></p> <p data-bbox="603 371 1256 479">The Administration's response to Mr Paul TSE's letter dated 12 May 2014 (LC Paper No. CB(1)1468/13-14(01)).</p>	
011705 – 013847	Chairman Mr Paul TSE Administration Mr James TO	<p data-bbox="603 519 1256 954">Mr Paul TSE referred to the letter dated 22 February 2013 issued by the IRD informing the Law Society of the introduction of the doubled AVD measures where it stated at point (c)(i) under the third paragraph that exemption was applicable to the "acquisition of a residential property". He said that it had been widely assumed in the legal profession that the exemption was applicable to one residential property only under one instrument and the profession might have been advising clients on that basis since the announcement of the Bill.</p> <p data-bbox="603 994 1256 1505">The Administration responded that as provided in IRD's Stamp Office Interpretation and Practice Notes, for a single instrument involving residential properties only, irrespective of the number of residential properties covered, IRD would regard the residential properties concerned as a single transaction and the AVD payable would be determined by the value bands and duty rates on the basis of the total consideration in respect of the residential properties concerned. The same was clearly explained in the frequently-asked question section in IRD's website and to the Law Society in its letter dated 24 January 2014.</p> <p data-bbox="603 1545 1256 1908">Mr Paul TSE did not subscribe to the Administration's explanation. He asked whether the Administration would consider making any special allowance, such as providing a certain grace period after the announcement of the doubled AVD measures, for purchasers who had been misled and incurred extra stamp duty in effecting the acquisition of more than one residential properties through separate instruments.</p> <p data-bbox="603 1948 1256 2087">The Administration clarified that the letter dated 24 January 2014 to the Law Society was to address the Law Society's concerns on various technical and policy issues related to the Bill.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration had taken the opportunity to reiterate the long established mechanism to charge stamp duty on an instrument basis.</p> <p>Mr Paul TSE asked when would the modified proposal, which exempted the acquisition of a residential property and a car parking space by a single instrument from the doubled AVD, deem to have taken effect. Since the public had made decisions as to whether or not to acquire properties based on the provisions of the Bill as announced, he criticized the Administration for introducing the Bill by way of negative vetting as any modified proposals before completion of scrutiny of the Bill, as in the current case, might confuse the public and bring uncertainties to transactions entered into before the Bill was passed.</p> <p>The Administration responded that any legislative proposals were subject to LegCo's scrutiny and hence possible amendments. The modified proposals, if passed by the LegCo, would take effect retrospectively on 23 February 2013.</p> <p>Mr James TO opined that as the Bill was not yet law, any stamp duty prepaid that had been temporarily deposited in the solicitor firms could actually be returned to the property purchasers.</p>	
013848 – 015419	Chairman Mr James TO Administration	<p>Mr James TO reiterated his request to exempt non-HKPRs from the doubled AVD in the acquisition of a public rental housing ("PRH") flat under the Tenants Purchase Scheme ("TPS") as such flats would only be sold to sitting tenants and the exemption would not amount to speculation.</p> <p>The Chairman said that she was approached by some non-HKPR purchasers of TPS flats who were aggrieved by the soaring Buyer's Stamp Duty ("BSD") payment ranging from tens of thousands to over one hundred thousands. Since the stamp duty payment for the purchase of TPS flats was based on the market value rather than the consideration of the relevant instrument, she was concerned that TPS purchasers who were PRH tenants could hardly afford the doubled AVD, in addition to the BSD. The charging of the doubled AVD in respect of the acquisition of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>TPS flats was also contrary to the purpose of the TPS to encourage sitting tenants to purchase their own home.</p> <p>The Administration responded that flats acquired under the TPS, same as any other residential units, should be subject to the doubled AVD. The Administration had no intention to introduce the relevant exemption arrangements. The IRD and Housing Department had been in contact with the relevant purchasers in need to explore feasible options, such as making the stamp duty payments by installments.</p> <p>The Chairman and Mr James TO requested the Administration to, in relation to the acquisition of PRH flats under the TPS:</p> <ul style="list-style-type: none"> (a) consider extending the scope of exemption from the doubled AVD to also cover the acquisition of such flats by non-HKPRs; and (b) consider allowing the BSD and the doubled AVD to be paid by installments over a long period to alleviate the burden of non-HKPR purchasers. <p>Mr James TO requested the Administration to provide information on the number of transactions involving TPS flats and their respective market value and the doubled AVD payable since the announcement of the doubled AVD measures on 23 February 2013.</p>	<p>The Administration to follow up as stated in paragraph 4(a) of the minutes.</p>
015420 – 015606	Chairman Administration	<p><u>Discussion on the Administration's response to members' views and concerns raised at the meetings of the Bills Committee on 25 April and 5 May 2014 (LC Paper No. CB(1)1401/13-14(01))</u></p> <p>Briefing by the Administration on its response.</p>	
015607 – 015958	Chairman Mr James TO Mr Kenneth LEUNG Administration	<p>Mr James TO requested the Administration to confirm whether disposal of the original property by way of a deed of gift within six-month from the acquisition of a new residential property would fulfill the requirement for a refund of the difference between the AVD payment according to the old rates and that according to the new rates.</p>	<p>The Administration to follow up as stated in paragraph 4(b) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
015959 – 020040	Chairman	Meeting arrangements	

Council Business Division 1
Legislative Council Secretariat
5 September 2014