

立法會
Legislative Council

LC Paper No. CB(1)1981/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/12

Bills Committee on Stamp Duty (Amendment) Bill 2013

**Minutes of seventeenth meeting on
Tuesday, 27 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 Tommy CHEUNG Yu-yan, SBS, 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 Kenneth LEUNG
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP

Members absent : Hon Charles Peter MOK
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Tony TSE Wai-chuen

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)1474/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 19 May 2014
- LC Paper No. CB(1)1517/13-14(01) -- Administration's response to issues raised at the meeting on 19 May 2014
- LC Paper No. CB(1)1449/13-14(02) -- The Government's proposed draft 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)1496/13-14(01) -- Hon Abraham SHEK
(*English version only*) Lai-him's letter dated 26 May 2014
- LC Paper No. CB(1)1496/13-14(02) -- Draft Committee stage amendments proposed by Hon Kenneth LEUNG
- LC Paper No. CB(1)1496/13-14(03) -- Draft Committee stage amendments proposed by Hon James TO Kun-sun
- LC Paper No. CB(1)1517/13-14(05) -- Further Committee stage amendments proposed by Hon James TO Kun-sun
- LC Paper No. CB(1)1517/13-14(06) -- Administration's responses to draft Committee stage amendments proposed by Hon Kenneth LEUNG and Hon James TO Kun-sun as set out in LC Paper Nos. CB(1)1496/13-14(02) and (03), and CB(1)1517/13-14(05)

- LC Paper No. CB(1)1496/13-14(04) -- Hon James TO Kun-sun's letter dated 26 May 2014
(*Chinese version only*)
- 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
- LC Paper No. CB(1)1517/13-14(02) -- Senior Assistant Legal Adviser's letter dated 21 May 2014 to the Administration
- LC Paper No. CB(1)1517/13-14(03) -- Administration's reply letter dated 27 May 2014 to Senior Assistant Legal Adviser
- LC Paper No. CB(1)1517/13-14(04) -- Letter of the Secretary for Financial Services and the Treasury dated 27 May 2014)

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

2. The Chairman, Mr Abraham SHEK, Mr Kenneth LEUNG, Mr WONG Ting-kwong and Mr Andrew LEUNG disclosed their respective interests.

Follow-up actions required of the Administration

3. The Administration was requested to:
- (a) provide information on the number of transactions under the Tenants Purchase Scheme since the introduction of the doubled ad valorem stamp duty measures on 23 February 2013; and
 - (b) consider whether "intended for the parking of 1 motor vehicle"

should be deleted from the proposed section (1)(a) of 29AJA and 29BBA as one car parking space might be allowed to park more than one vehicle under a deed of mutual covenant.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1545/13-14(01) on 30 May 2014.)

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Tuesday, 3 June 2014 at 4:30 pm to meet with the Administration.

II. Any other business

5. There being no other business, the meeting ended at 6:34 pm.

Council Business Division 1
Legislative Council Secretariat
5 September 2014

**Proceedings of the seventeenth meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
on Tuesday, 27 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			
000255 – 000400	Chairman Mr Abraham SHEK Mr Kenneth LEUNG	Opening remarks Disclosure of interests by members	
000401 – 000437	Chairman Mr Abraham SHEK	The Chairman advised that Mr Abraham SHEK had provided the Bills Committee an explanatory note on the effects of his proposed Committee stage amendments ("CSAs") (LC Paper No. CB(1)1496/13-14(01)).	
000438 – 000759	Chairman Administration Mr WONG Ting-kwong	<u>Discussion on the Administration's response to members' views and concerns raised at the meeting of the Bills Committee on 19 May 2014 (LC Paper No. CB(1)1517/13-14(01))</u> Briefing by the Administration on its response. Mr WONG Ting-kwong disclosed interests.	
000800 – 001453	Chairman Administration Dr LAM Tai-fai Mr WONG Ting-kwong	In reply to members, the Administration advised that if a non-Hong Kong Permanent Resident ("HKPR") and his/her close relative(s) fulfilled the criteria to purchase a public rental housing ("PRH") flat under the Tenants Purchase Scheme ("TPS"), as long as there was a HKPR and the purchasers were not beneficial owners of any other residential property in Hong Kong, they would be exempted from the doubled ad valorem stamp duty ("AVD") under the Stamp Duty (Amendment) Bill 2013 ("the Bill").	
001454 – 001932	Chairman Mr James TO Administration	Mr James TO requested the Administration to provide information on the number of transactions under the TPS since the introduction of the doubled AVD measures on 23 February 2013.	The Administration to follow up as stated in paragraph 3(a) of the minutes.
001933 – 002653	Chairman Administration	<u>Discussion on the letter of the Secretary for Financial Services and the Treasury dated 27 May 2014 (LC Paper No. CB(1)1517/13-14(04))</u> The Administration briefed members on the	

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		<p>modified proposal for future adjustments to the value bands and duty rates of AVD (including the doubled AVD). To address members' concerns, the Administration agreed not to insist on the adjustment mechanism by way of negative vetting as provided in the Bill. To this end, the Administration would propose CSAs to delete the relevant provision in the Bill (i.e. the proposed section 63B added by clause 22). Any future adjustments to AVD (including the doubled AVD) would be effected by way of a bill subject to the Legislative Council's scrutiny.</p>	
002654 – 002905	<p>Chairman Mr Andrew LEUNG Mr James TO</p>	<p>Mr Andrew LEUNG disclosed interests.</p> <p>Mr James TO and Mr Andrew LEUNG welcomed the above modified proposal in respect of adjustment of future AVD rates. Mr TO said that The Democratic Party would support the Bill.</p>	
002906 – 003934	<p>Chairman Mr Kenneth LEUNG Administration</p>	<p><u>Discussion on CSAs proposed by Mr Kenneth LEUNG (LC Paper No. CB(1)1496/13-14(02))</u></p> <p>Mr Kenneth LEUNG explained his proposed CSAs. In gist, he proposed to provide a refund mechanism for a Hong Kong incorporated company ("Hong Kong company") or a HKPR for acquisition of non-residential properties, provided that the Hong Kong company or the HKPR had continuously used the concerned non-residential property solely for the purpose of carrying on the trade, profession or business (but excluded the letting or sub-letting or the sub-letting of the premises held under a lease or tenancy) of the company or the HKPR in Hong Kong for not less than two years from the date of acquisition ("the relevant period"), and applied to the Inland Revenue Department ("IRD") for refund not later than two years after the date of expiry of the relevant period. If an applicant ceased to carry on a trade, profession or business at the concerned non-residential property within six months from the date of the application, the applicant was liable to repay to the IRD, within 30 days after the date of the cessation, the amount so refunded.</p> <p>The Administration took members through its response to Mr Kenneth LEUNG's proposed</p>	

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		<p>CSAs as detailed in LC Paper No. CB(1)1517/13-14(06). The Administration was particularly concerned that the increased administrative work would incur extra resources of the IRD. It did not agree to the proposed CSAs which were inconsistent with the legislative intent of the Bill.</p> <p>Mr Kenneth LEUNG maintained that the proposed CSAs would be conducive to the conduct of businesses in Hong Kong. By excluding the letting or sub-letting or the sub-letting of the premises held under a lease or tenancy, the chance of abusing the refund mechanism would be minimized.</p>	
003935 – 010819	<p>Chairman Mr James TO Mr Andrew LEUNG Administration Mr Kenneth LEUNG Mr WONG Ting-kwong</p>	<p>Mr James TO opined that Mr Kenneth LEUNG's proposed CSAs would ensure the acquisition of non-residential properties for self-use, and therefore would not contravene the legislative intent of the Bill to combat speculation. The two-year holding period proposed should however be extended to three years to remove uncertainty in implementation. He said that he might not pursue his proposed CSAs in relation to the granting of exemption for charitable bodies if this was covered by Mr LEUNG's CSAs.</p> <p>Mr Andrew LEUNG said that the Business and Professionals Alliance for Hong Kong supported Mr Kenneth LEUNG's proposed CSAs as business enterprises acquiring non-residential properties for self-use would be exempted from the doubled AVD. This would benefit Hong Kong's business environment and competitiveness.</p> <p>In reply to the Chairman, the Administration advised that the proposed CSAs would increase considerably the administrative burden of IRD as it had to verify each application for refund.</p> <p>Mr Kenneth LEUNG opined that administrative work could be minimized by requiring those seeking a refund to make statutory declaration supplemented with supporting documents.</p> <p>Mr WONG Ting-kwong pointed out that in applying for refund under the proposal, the</p>	

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		<p>burden of proof rested upon the applicants, and the IRD could decline an application should the supporting documents required were unavailable.</p> <p>Mr Kenneth LEUNG said that he might revise his proposed CSAs in the light of the views expressed by members.</p>	
010820 – 012722	<p>Chairman Mr James TO Administration Senior Assistant Legal Adviser 3 ("SALA3")</p>	<p><u>Discussion on Mr James TO's letter dated 26 May 2014 requesting the Bills Committee to move CSAs to be proposed by him to the Bill (LC Paper No. CB(1)1496/13-14(04))</u></p> <p>Mr James TO explained his intention to move motions to the effect that the Bills Committee should move the following CSAs to be proposed by him to the Bill:</p> <ul style="list-style-type: none"> (a) for a chargeable instrument involving more than one residential properties, only one residential property listed therein should be exempted from the doubled AVD; (b) a chargeable instrument in respect of transfer of non-residential properties between closely related persons should be exempted from the doubled AVD; (c) for a PRH tenant who was acting on his/her own behalf and was not a beneficial owner of any other residential property in Hong Kong, the chargeable instrument effecting the purchase of a TPS flat by the tenant concerned from the Hong Kong Housing Authority should be exempted from the doubled AVD; and (d) the definition of a closely related person under the Bill should cover the spouse of a married child and the spouse's parent. <p>The Administration reiterated its relevant responses given at previous meetings.</p> <p>In reply to the Chairman, SALA3 advised that any proposed CSAs in relation to the definition of a closely related person, if passed, would also apply to the Buyer's Stamp Duty and AVD regimes, subject to the conditions specified.</p>	

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		<p>The Chairman advised that the above motions would be dealt with when there was a quorum.</p>	
<p>012723 – 013017</p>	<p>Chairman Mr James TO Administration</p>	<p><u>Discussion on CSAs proposed by Mr James TO (LC Paper No. CB(1)1496/13-14(03))</u></p> <p>Mr James TO explained his proposed CSAs which sought to:</p> <ul style="list-style-type: none"> (a) amend clause 9 of the Bill to specify that a trustee or guardian for a minor must be the close relative of the minor or a person appointed by the court, while the trustee or guardian for a mentally incapacitated person must be appointed pursuant to the Mental Health Ordinance (Cap. 136) or by the court; and (b) exempt charitable bodies from the doubled AVD. <p>The Administration advised that its response to Mr TO's proposed CSAs had been given in LC Paper No. CB(1)1517/13-14(06).</p>	
<p>013018 – 015323</p>	<p>Chairman Administration Mr James TO</p>	<p><u>Discussion on CSAs proposed by the Administration (LC Paper No. CB(1)1468/13-14(02))</u></p> <p>The Administration briefed members on the following proposed CSAs:</p> <ul style="list-style-type: none"> (a) to relax the six-month timeframe for owners having acquired a new residential property before disposing of their original one; and (b) to provide exemption from the doubled AVD in respect of the acquisition of a residential property together with a car parking space, subject to the specified conditions. <p>Mr James TO requested the Administration to consider whether "intended for the parking of 1 motor vehicle" should be deleted from the proposed section (1)(a) of 29AJA and 29BBA as one car parking space might be allowed to park more than one vehicle under a deed of mutual covenant.</p>	<p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p>

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015324 – 020415	Chairman Administration Mr James TO SALA3	<p><u>Discussion on further CSAs proposed by the Administration (LC Paper No. CB(1)1449/13-14(02))</u></p> <p>The Administration briefed members on the corresponding amendments to the Bill in the light of the enactment of the Stamp Duty (Amendment) Ordinance 2014.</p> <p>In response to Mr James TO, SALA3 explained that the new section 15A was proposed to consolidate the provisions which allowed an instrument not duly stamped to be received in evidence in civil proceedings before a court.</p> <p>The Chairman concluded that the Bills Committee had completed scrutinizing item six (sections 29AL(2) and 29BD(2)) of the CSAs as set out in Annex A.</p>	
020416 – 020502	Chairman	Meeting arrangements	