

## **Stamp Duty (Amendment) Bill 2013**

### **The Administration's response to the draft Committee Stage Amendments proposed by the Hon Tony TSE Wai-chuen**

This paper sets out the Administration's response to the draft Committee Stage Amendments ("CSAs") proposed by the Hon Tony TSE Wai-chuen, as enclosed to the letter of 3 April 2014 from the Legislative Council Secretariat.

#### **The CSAs**

2. The CSAs proposed by the Hon Tony TSE Wai-chuen seek to amend the proposed section 29DF in the Stamp Duty (Amendment) Bill 2013 ("the Bill"). The proposed section 29DF stipulates that a Hong Kong permanent resident ("HKPR"), having entered into an agreement for sale and purchase to dispose of his/her original and only other residential property in Hong Kong within 6 months from the date of acquiring the new residential property, can benefit from the refund mechanism provided for residential property owners who acquire another residential property before disposing of the original one. Under the refund mechanism, the difference in ad valorem stamp duty ("AVD") payment between the old and new rates will be refunded. The Hon Tony TSE's CSAs, which target at acquisitions of uncompleted flats, propose to adjust the calculation of the "six-month" timeframe for changing properties. The CSAs suggest that the "six-month" timeframe should commence from the completion date of the new flats instead of the date of the instruments for acquiring the new flats as proposed in the Bill, so as to better cater for the actual needs of those changing properties by acquiring uncompleted flats.

3. Specifically, with reference to the Residential Properties (First-hand Sales) Ordinance, the Hon Tony TSE sets out in his CSAs the following methods for calculation of the "six-month" period for buyers of uncompleted flats of different categories to dispose of their original residential properties -

	<b>Category of uncompleted flats to which a newly-acquired property belongs</b>	<b>Calculation of the “six-month” timeframe for disposing of the original residential property by entering into an agreement for sale and purchase</b>
(1)	Consent Scheme development projects <sup>1</sup>	Within 6 months from the issuance of a Certificate of Compliance or Consent to Assign <sup>2</sup> by the Director of Lands in respect of the newly-acquired property
(2)	Non-Consent Scheme development projects <sup>3</sup> (in the case of developments other than specified New Territories developments)	Within 6 months from the issuance of an Occupation Permit <sup>4</sup> by the Building Authority in respect of the newly-acquired property
(3)	Non-Consent Scheme development projects (in the case of specified New Territories developments <sup>5</sup> )	Within 6 months from the issuance of a no-objection letter by the Director of Lands in respect of the newly-acquired property

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<sup>1</sup> A Consent Scheme development project refers to a development project where, under the Government land grant, prior consent of the Director of Lands is required for the sale of its residential flats before the land grant conditions have been fully complied with. A pre-sale consent for such projects can be up to 30 months in advance of the anticipated completion date.

<sup>2</sup> A Certificate of Compliance is granted to a Consent Scheme development project by the Lands Department when the land grant conditions in respect of the development in its entirety have been fully complied with. However, the Director of Lands will consider, according to individual circumstances, the granting of a Consent to Assign when the whole development or the specific phase of development of a Consent Scheme development project is completed and a Certificate of Compliance is yet to issue.

<sup>3</sup> A non-Consent Scheme development projects refers to a development project where, under the Government land grant, prior consent of the Director of Lands is not required for the sale of its residential flats before the land grant conditions have been fully complied with.

<sup>4</sup> An Occupation Permit is granted by the Building Authority (i.e. Director of Buildings) in respect of a new building when he is satisfied with the Certificate of Completion and the application for occupation submitted by an authorised person. For a Consent Scheme development project, an Occupation Permit will be issued by the Building Authority and a Certificate of Compliance/Consent to Assign by the Director of Lands. As for a non-Consent Scheme development project, only an Occupation Permit will be issued by the Building Authority and no Certificate of Compliance/Consent to Assign will be issued by the Director of Lands.

<sup>5</sup> According to the Residential Properties (First-hand Sales) Ordinance, a development is a specified New Territories development if a certificate of exemption is issued under section 5(a) of the Buildings Ordinance (Application to the New Territories) Ordinance in respect of the building works for every building in the development. Generally speaking, the buildings of specified New Territories developments are governed by the Buildings Ordinance (Application to the New Territories) Ordinance. The main features of such buildings are that they shall neither contain more than three storeys nor exceed a height of 8.23 metres (27 ft.) and the maximum roofed-over area normally shall not exceed 65.03 square metres (700 sq. ft.).

## Initial Response

4. To achieve the policy objective of managing demand under exceptional circumstances in the property market, we consider it necessary to specify a timeframe for changing properties. This is to prevent a property owner from acquiring another residential property under the guise of changing properties and yet delaying disposal of his/her original one, meaning that he/she holds more than one residential property for a long period of time, which is inconsistent with the Government's policy objective. In considering whether there is room for adjusting the "six-month" timeframe for changing properties in cases of acquisition of uncompleted flats, we need to strike a balance between addressing the actual needs of HKPRs in changing their properties and safeguarding the effectiveness of the demand-side management measures.

5. Regarding the Hon Tony TSE's CSAs, our preliminary analysis is as follows -

(a) Necessity for a tailor-made refund mechanism for acquisition of uncompleted flats for the purpose of changing properties

According to the statistics compiled by the Inland Revenue Department ("IRD") based on its database of stamping applications, the majority of transactions on residential properties involve the sales and purchases of existing stocks. There are relatively few transactions on uncompleted flats. The relevant statistics are as follows -

Year	Proportion of primary market transactions (including existing stocks and pre-sale uncompleted flats)	Proportion of secondary market transactions
2012	13.4%	86.6%
2013	18.9%	81.1%

(b) Whether the definition of uncompleted flats is specific and clear, and whether the coverage is comprehensive

With reference to the Residential Properties (First-hand Sales) Ordinance, the CSAs propose that the date of issuance of different instruments by relevant authorities in respect of different types of uncompleted flats be taken as the starting point of the six-month

timeframe for changing properties for the purpose of implementing the AVD refund arrangements.

However, since the Residential Properties (First-hand Sales) Ordinance is effective only from 29 April 2013, before which date there was no legislation requiring the vendor to notify the purchaser in writing of the completion of the sale and purchase within a specified timeframe. Therefore, the CSAs could not clearly deal with cases where the new residential properties being uncompleted flats were acquired between 23 February 2013 (when the doubled AVD measure was introduced) and 28 April 2013.

- (c) Whether the six-month timeframe for changing properties drawn up for different types of uncompleted flats is consistently applied from the perspective of those changing their properties

Since different types of instruments are used as the basis for calculating the six-month timeframe for uncompleted flats of different development projects, under the existing relevant regulatory regimes, the time available for changing properties would appear to be inconsistent from the perspective of those changing their properties.

For instance, the Residential Properties (First-hand Sales) Ordinance requires that the sale and purchase agreements of first-hand residential properties should contain mandatory provisions, including provisions specifying the date of completion of the sale and purchase of such properties. According to those mandatory provisions, the vendor of projects under the Consent Scheme shall notify the purchaser in writing of the completion of the sale and purchase within one month after the issue of the Certificate of Compliance or the Consent to Assign, whichever is the earlier, and both parties shall complete the sale and purchase within 14 days of the issue of such notice. As for non-Consent Scheme projects (for projects other than specified New Territories developments), the vendor shall notify the purchaser in writing of the completion of the sale and purchase within six months after the issue of the Occupation Permit, and both parties shall complete the sale and purchase within 14 days of the issue of such notice. As for non-Consent Scheme projects (for specified New Territories developments), the vendor shall notify

the purchaser in writing of the completion of the sale and purchase within six months after the issue of an no-objection letter, and both parties shall complete the sale and purchase within 14 days of the issue of such notice. In other words, when the purchaser of non-Consent Scheme projects and specified New Territories developments is notified by the vendor, the six-month timeframe for changing properties may almost be over.

6. Besides, the Hon Tony TSE's CSAs propose that those changing properties by acquiring uncompleted flats can file AVD refund applications to IRD within two years from the date of the conveyance on sale of the new property. This will differ from the "two-year" specified period as proposed in the Bill which counts from the date of the instrument for acquiring the new property (referring to the applicable instrument upon which doubled AVD has been paid, i.e. the agreement for sale in relation to the acquisition of the new property). Our proposed "two-year" period counting from the date of the agreement for sale for acquiring the new property is applicable to those changing properties by acquiring existing stocks and uncompleted flats. As regards the need for these purchasers to complete the disposal of their original residential property and file AVD refund applications within two years, we have made reference to the existing criterion in handling stamp duty refund under the Stamp Duty Ordinance ("SDO") which requires applicants to file any requests for refund within two years from the date of the instrument upon which stamp duty has been paid. Overall, we consider it necessary to apply the same objective basis in calculating the "two-year" specified period from the date of the applicable instrument, for consistency with the existing criterion in handling stamp duty refund under SDO. However, given that the pre-sale period of individual projects under the Consent Scheme may be up to 30 months in advance of the anticipated completion date, for some purchasers who have acquired a long-term uncompleted flat, they may not be able to file their AVD refund applications to IRD within two years from the date of the instrument for acquiring the new property. We need to consider how to implement the refund arrangement under such circumstances, with a view to striking a balance between upholding the standing practice under SDO and addressing the practical needs of individual purchasers changing properties.

7. In short, we must examine the matter from different angles with a view to assessing whether the proposed amendment is necessary, clear, fair and easy for public understanding and could be effectively implemented by IRD. In addition, we note that Members are also concerned about how to respond to

the request for relaxing the timeframe for changing properties for buyers acquiring existing stocks. We are studying the matter in detail in a comprehensive manner and will report to the Committee on the Administration's overall views.

Financial Services and the Treasury Bureau  
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