

財經事務及庫務局
(庫務科)

香港添馬添美道2號
政府總部24樓



FINANCIAL SERVICES AND THE
TREASURY BUREAU
(The Treasury Branch)

24/F, Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong

傳真號碼 Fax No. : 2234 9757
電話號碼 Tel. No. : 2810 2229
本函檔號 Our Ref. :
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By fax (2877 5029) and by email

Mr KAU Kin-wah
Senior Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong

11 April 2014

Dear Mr Kau,

Stamp Duty (Amendment) Bill 2013

Thank you for your letter dated 6 March 2014, setting out your further observations on the Stamp Duty (Amendment) Bill 2013. Our responses to the subject matters raised are set out at **Annex**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lau Wai-ming', written over a light blue circular stamp.

(LAU Wai-ming)

for Secretary for Financial Services
and the Treasury

c.c.

Secretary for Transport and Housing
Commissioner of Inland Revenue
Department of Justice

(Attn: Mrs Vicki KWOK)
(Attn: Mr TAM Tai-pang)
(Attn: Mr Allen LAI
Mr Manuel NG
Mr CHEUNG Man-yiu)

**The Administration's responses to the issues raised by
the Legal Service Division of the Legislative Council Secretariat**

Issues		The Administration's Responses
1.	<p>Clause 9 <u>Proposed section 29AH</u></p> <p>In view of the amendments introduced by the Stamp Duty (Amendment) Ordinance 2014 (2 of 2014), please clarify whether the references to sections 29CB and 29DB and head 1(1AAB) and 1(C) should be added to the respective provisions within the parentheses.</p>	<p>The Administration agrees that in view of the amendments introduced by the Stamp Duty (Amendment) Ordinance 2014 (2 of 2014), the provisions on buyer's stamp duty should be excluded from the scope of the proposed section 29AH which deals with instruments involving minors or mentally incapacitated persons. References to sections 29CB and 29DB and head 1(1AAB) and 1(C) will be added to the proposed section 29AH to achieve that effect by way of CSAs.</p>
2.	<p>Clause 9 and 13 <u>Proposed sections 29AN and 29BF</u></p> <p>Whether it is necessary to make it clear that the provisions only apply to equality money paid by the transferee of the residential property?</p>	<p>The exemption provisions in relation to the transferee(s) of the residential property in the proposed sections 29AN and 29BF (i.e. relating to equality money) are introduced to achieve consistency with the exemption provisions in other parts of the Bill relating to the purchase of residential properties by Hong Kong Permanent Residents ("HKPRs") who are acting on their own behalf and are not beneficial owners of any other residential properties in Hong Kong, or transactions of residential properties involving HKPRs and their close relatives.</p> <p>Given that the other exemption arrangements in the Bill are not provided for non-residential properties, we will consider confining the scope of the exemption in the proposed sections 29AN and 29BF to cover only equality money paid by the transferee of the residential property, but not that paid for in exchange of a non-residential property, for the sake of ensuring consistency with the policy intent of the Bill.</p>

Issues	The Administration's Responses
<p>3. Clause 16 <u>Proposed section 29D(8)</u></p> <p>Given that the proposed amendments made to section 29D(3) are subject to the transitional provisions under section 71, please clarify the need of the proposed section 29D(8).</p>	<p>Currently, section 29D(3) deals with the situation where a conveyance on sale of residential property is executed in conformity with two or more agreements for sale, each relating to different parts of the property and one or more of those agreements is a chargeable agreement for sale while the other(s) is or are not. This is to ensure that the correct total amount of ad valorem stamp duty ("AVD") and fixed duty is payable irrespective of how it is split between several agreements. To cater for an agreement for sale that was made before the beginning of the existing regime under section 29D(3), section 29D(6)(e) further stipulates that a reference in subsection (3) to an agreement for sale includes a reference to an agreement for sale made before the commencement of the Stamp Duty (Amendment) Ordinance 1992 (8 of 1992).</p> <p>The purpose of the proposed amendment to section 29D(3) is to cover the situation where a conveyance on sale of non-residential property is executed in conformity with two or more agreements for sale relating to different parts of the concerned property, and one or more of those agreements is or are chargeable agreement for sale while the other(s) is or are not (particularly the agreements for sale in respect of the non-residential property executed before 23 February 2013).</p> <p>Since the proposed section 71(3) and (4) specifies that the new AVD provisions do not apply to, among others, an agreement for sale in respect of non-residential property executed before 23 February 2013, we consider that to avoid doubts, it is necessary to stipulate in the proposed section 29D(8), which is modeled on section 29D(6)(e), that all agreements for sale, irrespective of whether it was executed before or</p>

Issues	The Administration's Responses
	<p>after 23 February 2013, should be taken into consideration when applying section 29D(3).</p> <p>We have explained the above during the examination of this clause at the Bills Committee meeting on 28 March 2014.</p>