

Bills Committee on Stamp Duty (Amendment) Bill 2013

**The Government's further proposed draft Committee stage amendments to
the Stamp Duty (Amendment) Bill 2013**

At the meeting of the Bills Committee held on 13 May 2014, the Secretary for Financial Services and the Treasury proposed to introduce the following two modified proposals involving technical amendments to the Stamp Duty (Amendment) Bill 2013 (“the Bill”), having regard to the policy objective, legislative intent and under the principle of not undermining the effectiveness of the measures and after having fully considered the views of Members and relevant stakeholders –

- (a) relaxing the “six-month” timeframe for owners having acquired a new residential property before disposing of their original one; and
- (b) providing exemption from doubled ad valorem stamp duty (“AVD”) in respect of acquisition of residential property together with a car parking space.

The “six-month” timeframe for owners having acquired a new residential property before disposing of their original one

2. Under section 29DF of the current Bill, if a Hong Kong permanent resident (“HKPR”) who acquires a new residential property has entered into an agreement for sale to dispose of his or her original and only other residential property in Hong Kong within six months from the date of acquiring the new property, he or she can benefit from the refund mechanism purposely drawn up to cater for the replacement needs of HKPRs, i.e. the difference in AVD payment between the old and new rates will be refunded. Striking a balance between addressing the practical needs of the public and safeguarding the effectiveness of the measures, we propose to specify that the “six-month” timeframe is to commence from the date of the conveyance on sale instead of the date of the agreement for sale and purchase of the newly acquired property as proposed under the Bill. We believe the above formulation can address the replacement needs of owners who acquire either existing stocks or uncompleted flats. The refund criterion is applicable across the board, clear and fair. It is easy for public understanding and facilitates effective administration by the Inland Revenue Department (“IRD”).

3. In the light of the above arrangement, we also propose a slight modification to the “two-year” timeframe for application to IRD for stamp duty refund as specified in the Bill. While maintaining the two-year application timeframe after the execution of an agreement for sale and purchase of the newly acquired property, we propose to include a new clause to allow for application within two months from the date of the conveyance on sale of the original residential property, whichever is the later. This is meant to enable buyers changing properties, including those who acquire uncompleted flats, to apply for refund after completion of transactions to cater for actual circumstances.

Exemption arrangement in respect of acquisition of residential property together with a car parking space

4. In accordance with the Bill and the prevailing practice by the Stamp Office, where a HKPR acting on his or her behalf acquires a residential property and a car parking space by a single instrument and the concerned residential property and car parking space are independent and distinct properties, the concerned residential property in the transaction can be exempted from the doubled AVD whereas the car parking space will not be exempted given that it is a non-residential property and will be subject to the doubled AVD at new rates on the basis of the total consideration in the entire instrument.

5. Some Members recommends that where a HKPR acting on his or her behalf acquires a residential property and a car parking space by a single instrument (irrespective of whether the residential property and car parking space are separate and distinct properties), the Government should consider exempting the concerned car parking space from the doubled AVD so long as the HKPR is not a beneficial owner of any other residential property in Hong Kong. In other words, the concerned car parking space will still be subject to AVD at the old rates on the basis of the total consideration of the entire instrument (LC Paper No. CB(1)1280/13-14(01) refers). Striking a balance among such relevant considerations as the prevailing stamp duty regime on property, addressing the home ownership needs of the public and safeguarding the effectiveness of the measures, we are prepared to uphold the spirit of providing exemption for residential properties and to cater also to the home ownership needs of those who acquire a residential property and a car parking space by a single instrument by exempting the car parking space from the doubled AVD. However, given that car parking space is non-residential property in nature and any special exemption arrangement for car parking space should be closely related to the home ownership needs of the buyers, we propose that the exemption should be stringently

drawn up with the following conditions -

- (a) the buyer is a HKPR who is acting on his or her behalf and is not a beneficial owner of any other residential property and car parking space in Hong Kong at the time of acquisition of the concerned residential property and car parking space;
- (b) the concerned exemption is restricted to one car parking space, irrespective of whether the car parking space is acquired for self-use or by a first-time buyer; and
- (c) the concerned car parking space must be acquired together with residential property in a single instrument, irrespective of whether the car parking space is located in the same residential development. If the single instrument involves more than one car parking space, all the car parking spaces will not be exempted even if they are purchased together with residential property.

6. We are aware that the Bills Committee welcomed in principle the two aforesaid modification proposals. On the other hand, some Members have noted whether the above exemption arrangement in respect of acquisition of a residential property and a car parking space should equally apply to buyers changing properties (paragraph (b) in LC Paper No. CB(1)1440/13-14(01) refers). Since the current refund mechanism stipulated in the Bill for owners having acquired a new residential property before disposing of their original one is derived from the exemption from the doubled AVD available to HKPR buyers acquiring residential properties, in recognition of the current proposal to uphold the spirit of providing exemption for residential properties and to cater also to the home ownership needs of those acquiring a residential property and a car parking space by a single instrument, we consider it reasonable to provide refund arrangements correspondingly for owners having acquired a residential property and a car parking space before disposing of their original ones. Hence, we propose to slightly modify the definitions of “applicable instrument”, “original property” and “subject property” in section 29DF to make clear that the residential property referred to in the relevant definitions can cover residential

property and a car parking space¹. In other words, as long as buyers changing properties fulfill the requirements in section 29DF to dispose of their original property (which may include residential property and car parking space) and apply to IRD for refund, IRD will refund the difference in AVD payment between the old and new rates in respect of the newly acquired residential property and car parking space (if applicable).

Conclusion

7. The above two adjustment proposals are only technical in nature to address the home ownership needs of HKPRs, which are consistent with our prevailing policy. The proposed two adjustment proposals do not represent any relaxation on the existing demand-side management measures. We are determined to uphold the existing policy and safeguard the healthy and stable development of the property market.

8. The draft CSAs² in relation to the modification proposals are at **Annex** for Members' reference.

Financial Services and the Treasury Bureau
May 2014

¹ In line with the spirit of providing exemption for residential properties and to cater also to the home ownership needs of those acquiring a residential property and a car parking space by a single instrument, if the concerned "original property" and "subject properties" in the instrument involve car parking space without residential property, the transaction in respect of the concerned car parking space will not be exempted from the doubled AVD.

² The CSAs are in draft form. It would be necessary to check against the final version of the full set of CSAs to be moved by the Government.

To be added after section 29AJ ...

29AJA. Certain conveyances on sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates

- (1) A conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if—
 - (a) the properties concerned are residential property and a car parking space intended for the parking of 1 motor vehicle; and
 - (b) it is shown to the satisfaction of the Collector that subsection (2) applies to the conveyance.
- (2) This subsection applies to the conveyance if, on the date of acquisition of the properties—
 - (a) the transferee, or each of the transferees, under the conveyance is a Hong Kong permanent resident acting on his or her own behalf; and
 - (b) that transferee, or each of those transferees, is neither a beneficial owner of any other residential property, nor a beneficial owner of any other car parking space, in Hong Kong.

To be added after section 29BB ...

29BBA. Certain agreements for sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates

- (1) An agreement for sale is chargeable with stamp duty under Scale 2 of head 1(1A) in the First Schedule if—
 - (a) the properties concerned are residential property and a car parking space intended for the parking of 1 motor vehicle; and
 - (b) it is shown to the satisfaction of the Collector that subsection (2) applies to the agreement.
- (2) This subsection applies to the agreement if, on the date of acquisition of the properties—
 - (a) the purchaser, or each of the purchasers, under the agreement is a Hong Kong permanent resident acting on his or her own behalf; and
 - (b) that purchaser, or each of those purchasers, is neither a beneficial owner of any other residential property, nor a beneficial owner of any other car parking space, in Hong Kong.

Amend section 29DF of the Stamp Duty (Amendment) Bill 2013

29DF. Partial refund of ad valorem stamp duty on disposal of residential property in certain circumstances

(1) In this section—

applicable instrument (適用文書) means an instrument—

- (a) under which a residential property (whether or not together with a car parking space intended for the parking of 1 motor vehicle) is acquired; and
- (b) on which stamp duty had been paid according to Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule;

original property (原物業), in relation to a person who acquires a subject property under an applicable instrument, means another residential property (whether or not together with a car parking space intended for the parking of 1 motor vehicle) of which the person is a beneficial owner on the date of that acquisition;

specified amount (指明款項) means—

- (a) for an applicable instrument on which stamp duty had been paid according to Scale 1 of head 1(1) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 2 of head 1(1) in the First Schedule; or
- (b) for an applicable instrument on which stamp duty had been paid according to Scale 1 of head 1(1A) in the First Schedule—an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable on that instrument if it were chargeable under Scale 2 of head 1(1A) in the First Schedule;

subject property (標的物業) means the residential property, or the residential property and car parking space, acquired under an applicable instrument.

(2) The Collector may, on an application made by a person (**applicant**) who had paid stamp duty on an applicable instrument, refund to the applicant the specified amount if—

- (a) subsection (3) or (4) applies to the disposal of an original property of the applicant; and
- (b) had the original property been disposed of before the subject property was acquired, the applicable instrument would have been chargeable with stamp duty under Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule.

(3) This subsection applies to the disposal of an original property of the applicant if—

- (a) it is shown to the satisfaction of the Collector that the original property is disposed of by the applicant under an agreement for sale that is made ~~within 6 months after the date of the applicable instrument~~within the period specified in subsection (5);
- (b) it is shown to the satisfaction of the Collector that the original property is transferred or divested from the applicant under a conveyance on sale executed in conformity with that agreement; and

- (c) the application for refund is made by the applicant not later than 2 years after the date of the applicable instrument, or not later than 2 months after the date of the conveyance on sale under which the original property is transferred or divested, whichever is the later.
- (4) This subsection applies to the disposal of an original property of the applicant if—
 - (a) it is shown to the satisfaction of the Collector that the original property is transferred or divested from the applicant under a conveyance on sale ~~within 6 months after the date of the applicable instrument~~within the period specified in subsection (5); and
 - (b) the application for refund is made by the applicant not later than 2 years after the date of the applicable instrument, or not later than 2 months after the date of the conveyance on sale under which the original property is transferred or divested, whichever is the later.
- (5) For subsection (3)(a) and (4)(a), the following period is specified—
 - (a) if the applicable instrument is a conveyance on sale—6 months after the date of that instrument; or
 - (b) if the applicable instrument is an agreement for sale—6 months after the date of the conveyance on sale under which the subject property is transferred to or vested in the applicant.