



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China



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LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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Financial Services and the Treasury Bureau  
The Treasury Branch  
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2 Tim Mei Road, Tamar  
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By Fax (2179 5848)

14 January 2014

Dear Ms KWAN

**Stamp Duty (Amendment) Bill 2013**

I am scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects.

My observations are set out in the Schedule attached for your consideration. I would be most grateful if you could let me have the response of the Administration in writing at your earliest convenience.

Yours sincerely

(KAU Kin-wah)  
Senior Assistant Legal Adviser

Encl (4 pages)

cc LA

Ms Shandy LIU SALD (Fax No. 2536 8135)

## **Schedule**

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

#### **Clause 9**

##### Proposed section 29AE(1)(b), (c), (d) and (e)(ii)

The captioned provisions prescribe the principles according to which the particular time of acquisition of a property is to be determined. At a practical level, unless the particular time of the signing of an agreement for sale is recorded, the captioned provisions would not be effective in enabling the time of an acquisition or disposal of a property to be determined. Please consider whether it is necessary to prescribe that the time of making the acquisitions and disposals of properties be recorded in the instrument of such acquisition or disposal in order that the provision may apply effectively in practice.

#### **Clause 10**

##### Proposed section 29AL(4)(a) and 29BD(4)(a)

Please clarify how it may be determined that a property acquired by a transferee/purchaser is for replacement of the original property.

If after the original property has been disposed of in circumstances that fall within section 29AL(2) or 29BD(2), the transferee/purchaser together with his or her child, who is a Hong Kong permanent resident and owns neither any property nor any part of the original property, acquire a property for the sole use of the child as his or her matrimonial home, could the transferee/purchaser in the circumstances rely on section 29AJ or 29BB for that conveyance or agreement and preserve his or her right to a replacement property under section 29AL or 29BD? In short, please clarify whether the transferee/purchaser has a choice in exercise his or her right to a replacement property in respect a particular property.

##### Proposed section 29AM(b)

Please consider whether it is necessary to provide expressly that only an order or decree of any court that by itself directly transfers or vests a

property in a transferee is regarded as a conveyance for the purpose of the proposed section.

Proposed sections 29BH and 29BI

Please clarify whether the original agreement referred to in each of the sections would still be regarded as such if before the second agreement is made the original agreement has been annulled, cancelled or rescinded. This scenario appears not to fall squarely within section 29C(4)(b).

**Clause 16(12)**

The proposed deletion in section 29D(6)(c)(ii) would change the law that could have applied to agreement for sale of non-residential property. The law as hitherto applied to agreement for sale of residential property before the amendment and could have applied to that of non-residential property is that in relation to a chargeable agreement for sale of residential property a person and a parent, spouse or child of that person would be treated as the same person. This would not now apply to a chargeable agreement for sale of non-residential property. Please clarify whether this is in accord with the Administration's policy intention.

**Clause 18**

Proposed section 29DE(7)

Please consider whether the definition of "lot" is adequate because lots are often further subdivided into **sections of subsections** and **subsection of sections of subsections**.

Proposed section 29DH(2)(b) and (c)

Please clarify why section 29AN(4) and 29AO(4) are not mentioned in section 29DH(2)(b) and (c) respectively.

Proposed section 29DH(4)(b) and (c)

Please clarify why section 29BF(4) and 29BG(4) are not mentioned in section 29DH(4)(b) and (c) respectively.

**Clause 23****Proposed section 71(1) and (3)**

Please clarify whether it is intended the pre-amended Ordinance means the Stamp Duty Ordinance (Cap. 117) as amended by the Stamp Duty (Amendment) Bill 2012 (2012 Bill). The ambiguity of the present drafting lies in the meaning of "in force immediately before 23 February 2013". As a historical fact, Cap. 117 that was in force immediately before 23 February 2013 did not include amendments effected by the enactment of the 2012 Bill but legally, due to the retrospective effect of the 2012 Bill, it could include such amendments as from 27 October 2012. Please consider whether it is desirable to make clear that the pre-amended Ordinance includes the amendments effected by the passing of the 2012 Bill.

**Clause 24(1)**

In view of the amendments effected by the Stamp Duty (Amendment) Bill 2012, please consider whether the section numbers set out between the square brackets need to be amended.

**Clause 24(17)**

Similar to the point raised in respect of clause 16(12) above, if it is the policy intention that for an agreement for sale of non-residential property a person and a parent, spouse and child of that person would be treated as the same person, please consider whether any amendment to the note or a separate note may be required.

**Clause 26**

Please consider whether the new section 15(3)(aa) should further be amended in sub-paragraph (ii) by adding after "an agreement for sale that" the words: "is made before 23 February 2013 and". Please also consider deleting the word "either" as it appears to have no meaning in the context.

## **Chinese version**

### **Clause 10**

Proposed section 29AP(5), 29AQ(4), 29BH(5) and 29BI(4)

Please consider whether the last "加蓋" should be "加蓋印花". As presently drafted, the meaning in Chinese is not as clear as in the English version.

### **Clause 18**

Proposed section 29DH(5)(b)

Please consider whether "may be proceeded against" may be rendered as "可被追討" as in the context the recovery of unpaid stamp duty and penalty involves civil proceedings only.