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Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong

24 February 2014

Dear Mr Kau,

Stamp Duty (Amendment) Bill 2013

Thank you for your letter dated 14 January 2014, setting out your observations on the Stamp Duty (Amendment) Bill 2013. Our responses to the subject matters raised are set out at **Annex**.

Yours sincerely,



(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: Miss Shandy LIU
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
<p>1. Clause 9 <u>Proposed section 29AE(1)(b), (c), (d) and (e)(ii)</u></p> <p>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.</p>	<p>The proposed sections 29AE to 29AG of the Stamp Duty (Amendment) Bill 2013 ("the 2013 Bill") provide for the determination of the dates of acquisition or disposal of immovable property in different situations.</p> <p>Under the proposed sections 29AJ(2) and 29BB(2) of the 2013 Bill, the doubled ad valorem stamp duty ("AVD") rates would apply unless it is shown to the satisfaction of the Collector of Stamp Revenue ("the Collector") that the purchaser or transferee of a residential property is, among others, a Hong Kong permanent resident ("HKPR") not owning any other residential property in Hong Kong. For the purpose, the Inland Revenue Department ("IRD") will require the purchaser or transferee to submit a statutory declaration declaring that he/she is a HKPR acting on his/her own behalf in acquiring the property and that he/she is not a beneficial owner of any other residential property at the date of acquisition of the residential property concerned. If the purchaser or transferee acquired two or more residential properties on a particular date by separate instruments, he/she could only claim the doubled AVD exemption on the agreement for sale or the conveyance on sale in respect of a particular property he/she acquired first as indicated on the statutory declaration.</p>

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<p>2. Clause 10 <u>Proposed sections 29AL(4)(a) and 29BD(4)(a)</u></p> <p>How to determine a property acquired by a transferee/purchaser is for replacement of the original property?</p>	<p>The proposed sections 29AL and 29BD provide exemptions for conveyances on sale and agreements for sale respectively relating to replacement of properties disposed of under certain Ordinances.</p> <p>The proposed doubled AVD exemption would be applicable under the proposed section 29AL or 29BD to any one of the immovable properties acquired by the relevant owner after the disposal of the original property, <u>provided that</u> the conditions specified in the proposed section 29AL(3) or 29BD(3) are satisfied, i.e. the date of disposal of the original property is earlier than the date of acquisition of the replacement property, and the original property and the replacement property are both residential properties, or both non-residential properties.</p>
<p><u>Proposed section 29AM(b)</u></p> <p>Whether it is necessary to provide expressly that only an order or decree of any court by itself directly transfers or vests a property in a transferee is regarded as a conveyance for the purpose of the proposed section.</p>	<p>The proposed section 29AM(b) provides exemptions for the acquisition or transfer of a residential or non-residential property effected by a court order.</p> <p>The proposed section 29AM(b) was drafted in line with section 29DA(11)(a) of the Stamp Duty Ordinance (Cap. 117) ("SDO") and the proposed section 29DB(8)(b) of the Stamp Duty (Amendment) Bill 2012 ("the 2012 Bill") which provide for similar exemption for special stamp duty and the proposed buyer's stamp duty respectively. Under section 2 of the SDO, "conveyance" means every instrument (including a surrender) and every decree or order of any court whereby any immovable property is transferred to or vested in any person. Depending on its contents, a court order or a decree of any</p>

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		court may or may not be a conveyance.
	<p><u>Proposed sections 29BH and 29BI</u></p> <p>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.</p>	<p>The proposed sections 29BH and 29BI of the 2013 Bill cater for the addition of name to and deletion of name from a chargeable agreement for sale between close relatives, whereas section 29C(4)(b) of the SDO applies to sub-sale cases.</p> <p>Where the original agreement for sale is cancelled, annulled or rescinded before the second agreement is made, then both agreements would fall into section 29C(5A)(b) and would be chargeable with stamp duty under head 1(1A) by reference to the consideration for each agreement for sale subject to the notes provided under head 1(1A).</p>
3.	<p>Clause 16(12)</p> <p>Whether it is the Administration's policy intention to grant the doubled AVD exemption for sale and purchase or transfer of non-residential properties between closely related persons.</p>	<p>The proposed Clause 16(12) amends section 29D(6)(c)(ii) of the SDO to provide for the acquisition of a residential property by closely related persons.</p> <p>As reflected in Clause 16(2), it is our policy intent not to grant the doubled AVD exemption for sale and purchase or transfer of non-residential properties between closely related persons.</p>
4.	<p>Clause 18</p> <p><u>Proposed section 29DE(7)</u></p> <p>Whether the definition of "lot" is adequate because lots are often further subdivided into sections of subsections and</p>	<p>The proposed section 29DE of the 2013 Bill provides for partial refund of AVD in relation to redevelopment projects. Taking into account the deliberations of the Bills Committee on the 2012 Bill and the views of relevant stakeholders, the Government has introduced Committee Stage Amendments ("CSAs") to enhance the refund</p>

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<p>subsections of sections of subsections.</p>	<p>mechanism. For consistency's sake, we will introduce similar CSAs to the 2013 Bill.</p> <p>Under the proposed section 29DE(7) which follows the drafting of the 2012 Bill, "lot" has the meaning given by section 2(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545), which is extracted as follows -</p> <p>"lot (地段)</p> <p>(a) means-</p> <ul style="list-style-type: none"> (i) any piece or parcel of ground the subject of a Government lease; (ii) a section which by virtue of section 8(3) or 27(2) of the Government Rent and Premium (Apportionment) Ordinance (Cap. 125) is deemed to be a lot for the purposes of that Ordinance; <p>(b) includes a section and subsection of a lot;"</p> <p>We consider that the definition of "lot" in the 2013 Bill is sufficient to cover sections of subsections and subsections of sections of subsections of a lot.</p>
<p><u>Proposed section 29DH(2)(b) and (c)</u></p> <p>Clarify why sections 29AN(4) and 29AO(4) are not mentioned in section 29DH(2)(b) and (c) respectively.</p>	<p>The proposed section 29DH makes a transferee or purchaser under an instrument solely liable for underpayment of doubled AVD in certain circumstances.</p> <p>The proposed sections 29AN(4) and 29AO(4) would apply to the</p>

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	<p>conveyances on sale involving the exchange of properties between close relatives whereas the proposed sections 29AN(1) to (3) and 29AO(1) to (3) apply to the exchange of properties between persons who are not close relatives. In the latter cases, the transferor may not know whether the transferee is a HKPR acting on his/her own behalf and not a beneficial owner of any other residential property in Hong Kong. In this connection, it is proposed under section 29DH(3) of the 2013 Bill that only the transferee is liable to pay the specified amount if the specified amount is payable solely because it is subsequently found that the transferee did not satisfy any one of the two conditions mentioned above. However, the situation may be different in cases where the properties were exchanged between close relatives. Whether they are closely related and the transferee is acting on his/her own behalf should be within the knowledge of both parties. If it is subsequently found that the transferee fails to meet these conditions in such a case, it is considered that both the transferor and the transferee should be jointly and severally liable to the stamp duty underpaid. Hence, sections 29AN(4) and 29AO(4) are not included in section 29DH(2)(b) and (c) respectively.</p>
<p><u>Proposed section 29DH(4)(b) and (c)</u></p> <p>Clarify why sections 29BF(4) and 29BG(4) are not mentioned in section 29DH(4)(b) and (c) respectively.</p>	<p>The proposed sections 29BF(4) and 29BG(4) would apply to the agreements for sale involving the exchange of properties between close relatives whereas the proposed sections 29BF(1) to (3) and 29BG(1) to (3) apply to the exchange of properties between persons who are not close relatives. For the same reason explained under section 29DH(2)(b) and (c), sections 29BF(4) and 29BG(4) are not included in section 29DH(4)(b) and (c) respectively.</p>

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<p>5. Clause 23 <u>Proposed section 71(1) and (3)</u></p> <p>Clarify whether it is intended the pre-amended Ordinance means the SDO as amended by the 2012 Bill.</p>	<p>The proposed section 71 provides for transitional matters, including those necessitated by the retrospective operation of the relevant new provisions added by the 2013 Bill.</p> <p>If the 2013 Bill is passed into law, it is anticipated that by the date of its enactment, the amendments proposed to be made to the SDO by the 2012 Bill would have already been passed and deemed to have come into operation from 27 October 2012. The definition of <i>pre-amended Ordinance</i> in the proposed new section 71(1) will then be construed as referring to the SDO with those retrospective amendments included because when read from the date of the enactment of that definition, the retrospectively amended version of the SDO is regarded as the one “as in force immediately before 23 February 2013”.</p>
<p>6. Clause 24(1)</p> <p>Whether the section numbers set out between the square brackets need to be amended.</p>	<p>It is the Administration's intent to propose CSAs to update the square-bracketed cross-references appearing next to the First Schedule heading, taking on board the latest amendments made to the SDO by other legislation since the publication of the 2013 Bill.</p>
<p>7. Clause 24(17)</p> <p>Clarify 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; and whether any amendment to the note or a separate note may be required.</p>	<p>It appears that the reference should have been made to clause 24(16) instead of 24(17).</p> <p>As explained under clause 16(12) above, it is our policy intent that doubled AVD exemption would not be granted for sale and purchase or transfer of non-residential properties between close relatives. In this connection, we consider that no amendment to the note is</p>

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		required.
8.	<p>Clause 26</p> <p>Whether the new section 15(3)(aa) should be amended in sub-paragraph (ii) by adding after “an agreement for sale that” the words: “is made before 23 February 2013 and” and consider deleting the word “either”.</p>	<p>Under the existing SDO, an agreement for sale in respect of a non-residential property is not chargeable with stamp duty and so such instrument can be registered at the Land Registry (“LR”) without stamping. In the 2013 Bill, we propose to make agreements for sale of non-residential property chargeable with stamp duty, a complementary measure along with the proposed increase in AVD rates on all property transactions to forestall the shifting of rampant speculation or investment demand from the residential property market to the non-residential property market. Hence, section 15(3)(a) of the SDO is proposed to be amended so that an agreement for sale of a non-residential property can no longer be registered at the LR without stamping. Likewise, we also propose making a consequential amendment to section 41 in Schedule 3 to the Land Titles Ordinance (Cap. 585). We have no objection to the proposed amendments to spell out clearly that the agreements for sale of non-residential property made before 23 February 2013 will not be affected by the change and will introduce relevant CSAs to this effect.</p>
Chinese version		
9.	<p>Clause 10</p> <p><u>Proposed sections 29AP(5), 29AQ(4), 29BH(5) and 29BI(4)</u></p> <p>Whether the last “加蓋” should be “加蓋印花” .</p>	<p>We have no objection to the proposed refinements to the Chinese version and will introduce relevant CSAs. The changes will not affect the substance of the 2013 Bill.</p>

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10.	<p>Clause 18 <u>Proposed section 29DH(5)(b)</u></p> <p>Whether “may be proceeded against” may be rendered as “可被追討”.</p>	<p>With reference to the CSAs proposed to the 2012 Bill, we will revise the Chinese text of the proposed 29DH(5)(b) by way of CSAs accordingly to achieve consistency.</p>