
Stamp Duty (Amendment) Bill 2012

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A BILL

To

Amend the Stamp Duty Ordinance to impose a higher rate of special stamp duty on certain transactions of residential property acquired on or after 27 October 2012 if those transactions occur within 36 months after the acquisition, and to impose buyer's stamp duty on certain agreements for sale and conveyances on sale of residential property executed on or after 27 October 2012; and to provide for incidental and related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Stamp Duty (Amendment) Ordinance 2012.
 - (2) This Ordinance is deemed to have come into operation on 27 October 2012.
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Part 2

Amendments to Stamp Duty Ordinance

2. Stamp Duty Ordinance amended

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 18.

3. Section 2 amended (interpretation)

(1) Section 2(1), definition of *stamp duty*, before “and special”—

Add

“, buyer’s stamp duty”.

(2) Section 2(1)—

Add in alphabetical order

“*buyer’s stamp duty* (買家印花稅) means buyer’s stamp duty chargeable under head 1(1AAB) or (1C) in the First Schedule;”.

4. Section 4 amended (charging of, liability for, and recovery of stamp duty)

(1) Section 4(3)—

Repeal

“stamp duty is not duly stamped”

Substitute

“any stamp duty (other than buyer’s stamp duty) is not duly stamped in respect of that duty”.

(2) Section 4(3), after “stamping such instrument”—

Add

“with that duty”.

- (3) After section 4(3)—

Add

“(3AA) If any instrument chargeable with buyer’s stamp duty is not duly stamped in respect of that duty, the person or persons respectively specified in section 13(10) or the First Schedule as being liable for stamping the instrument with that duty—

- (a) is liable, or are jointly and severally liable, civilly to the Collector for the payment of that duty and any penalty payable under section 9; and
- (b) (where there is more than one person) may be proceeded against without reference to any civil liability of those persons inter se for the payment of that duty and penalty.”.

- (4) Section 4(5), after “subsection (3)”—

Add

“, (3AA)”.

5. Section 29A amended (interpretation and application of Part IIIA)

- (1) Section 29A(1)—

Add in alphabetical order

“*Hong Kong permanent resident* (香港永久性居民) means a person—

- (a) who holds a valid permanent identity card; or
- (b) who does not hold a valid permanent identity card but—
 - (i) is, under regulation 25(e) of the Registration of Persons Regulations (Cap. 177 sub. leg. A), not required to register or apply for the issue

of an identity card or for the renewal of an identity card under the Registration of Persons Ordinance (Cap. 177) and those Regulations; and

- (ii) is entitled to be issued with a permanent identity card if he or she makes an application to the registration officer as defined by section 1A(1) of that Ordinance for that purpose;

mentally incapacitated person (精神上無行為能力的人) means a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136);

permanent identity card (永久性居民身分證) has the meaning given by section 1A(1) of the Registration of Persons Ordinance (Cap. 177);”.

- (2) Section 29A(3A)—

Repeal

“and (1B)”

Substitute

“, (1B) and (1C)”.

- (3) Section 29A(4)—

Repeal

“and (1B)”

Substitute

“, (1B) and (1C)”.

- (4) Section 29A(5)—

Repeal

“and (1B)”

Substitute

“, (1B) and (1C)”.

(5) Section 29A(6)—

Repeal

“and (1B)”

Substitute

“, (1B) and (1C)”.

6. Section 29B amended (duty to execute agreement for sale)

Section 29B(6)—

Repeal

“chargeable on that agreement, which shall be deemed for the purposes of this subsection to be a chargeable agreement for sale,”

Substitute

“that the person would have been liable to pay under this Ordinance had that agreement (which is deemed for the purposes of this subsection to be a chargeable agreement for sale) been executed”.

7. Section 29C amended (chargeable agreements for sale)

(1) Section 29C(3)—

Repeal

“and (1B)”

Substitute

“, (1B) and (1C)”.

(2) Section 29C(4)—

Repeal

“and (1B)”

Substitute

“, (1B) and (1C)”.

- (3) Section 29C(5), before “section 29D(4)” —

Add

“, except for buyer’s stamp duty,”.

- (4) Section 29C(5A)(a) and (b) —

Repeal

“or (1B)”

Substitute

“, (1B) or (1C)”.

- (5) Section 29C(5AA)(a), after “special stamp duty” —

Add

“or buyer’s stamp duty”.

- (6) Section 29C(5B)(a) —

Repeal

“or (1B)”

Substitute

“, (1B) or (1C)”.

8. Section 29CA amended (further provisions on special stamp duty chargeable on certain agreements for sale)

- (1) Section 29CA(2) —

Repeal

“a period of 24 months”

Substitute

“the respective periods specified in the first column of that head”.

(2) Section 29CA(3)—

Repeal

“24-month period”

Substitute

“relevant specified period”.

9. Sections 29CB and 29CC added

After section 29CA—

Add

“29CB. Further provisions on buyer’s stamp duty chargeable on certain agreements for sale

(1) Subject to the other provisions of this section, head 1(1C) in the First Schedule applies to a chargeable agreement for sale of any residential property executed on or after 27 October 2012.

(2) A chargeable agreement for sale is not chargeable with buyer’s stamp duty under head 1(1C) in the First Schedule if it is shown to the satisfaction of the Collector—

(a) that the purchaser, or each of the purchasers, under the agreement is a Hong Kong permanent resident acting on his or her own behalf;

(b) that—

(i) the purchasers under the agreement consist of—

(A) one, or more than one, person who is a Hong Kong permanent resident; and

(B) one, or more than one, person who is not a Hong Kong permanent resident;

(ii) those purchasers are closely related; and

- (iii) each of them is acting on his or her own behalf; or
- (c) that—
 - (i) the purchaser or purchasers under the agreement and the vendor or each of the vendors under the agreement are closely related;
 - (ii) where there is more than one purchaser under the agreement, the purchasers are also closely related; and
 - (iii) the purchaser or each of the purchasers is acting on his or her own behalf.
- (3) Where a chargeable agreement for sale (*original agreement*) is made in respect of any residential property, and another chargeable agreement for sale (*second agreement*) is made in respect of all or any part of the property, which is, under section 29C(5), chargeable with stamp duty as if it were a conveyance on sale executed in pursuance of the original agreement, the second agreement is not chargeable with buyer's stamp duty under head 1(1C) in the First Schedule if it is shown to the satisfaction of the Collector—
 - (a) that the purchasers under the second agreement include one, or more than one, person (*newcomer*) who is not named in the original agreement as a purchaser, and—
 - (i) that the newcomer or each of the newcomers is a Hong Kong permanent resident acting on his or her own behalf; or
 - (ii) that—
 - (A) the newcomer or each of the newcomers is acting on his or her own behalf; and

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- (B) the person or persons named in the original agreement as a purchaser or purchasers and the newcomer or newcomers are closely related;
- (b) that the purchaser under the second agreement (*second agreement purchaser*) is one of the persons named in the original agreement as the purchasers, and—
- (i) that the second agreement purchaser is a Hong Kong permanent resident acting on his or her own behalf; or
 - (ii) that—
 - (A) the second agreement purchaser is not a Hong Kong permanent resident but the other person or persons named in the original agreement as a purchaser or purchasers and the second agreement purchaser are closely related; and
 - (B) the second agreement purchaser is acting on his or her own behalf; or
- (c) that the purchasers under the second agreement (*second agreement purchasers*) are some of the persons named in the original agreement as the purchasers, and—
- (i) that each of the second agreement purchasers is a Hong Kong permanent resident acting on his or her own behalf; or
 - (ii) that—
 - (A) each of the second agreement purchasers is acting on his or her own behalf; and
 - (B) the other person or persons named in the original agreement as a purchaser or purchasers and the second agreement purchasers are closely related.

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- (4) Subject to subsections (5) and (6), where the purchaser under a chargeable agreement for sale is not a Hong Kong permanent resident, the agreement is not chargeable with buyer's stamp duty under head 1(1C) in the First Schedule if it is shown to the satisfaction of the Collector—
- (a) that the purchaser is acting on his or her own behalf; and
 - (b) that the residential property concerned is acquired by the purchaser to replace another residential property that was owned by the purchaser alone or jointly with any other person or persons and that has been—
 - (i) purchased or otherwise acquired by the Urban Renewal Authority for the purposes of any of its projects as defined by section 2 of the Urban Renewal Authority Ordinance (Cap. 563);
 - (ii) resumed under the Lands Resumption Ordinance (Cap. 124) or purchased by agreement under section 4A of that Ordinance; or
 - (iii) sold pursuant to an order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).
- (5) To avoid doubt, if the property replaced was jointly owned by 2 or more than 2 persons—
- (a) subsection (4) does not require the joint owners to jointly acquire a replacement property in order for that subsection to apply; and
 - (b) each joint owner may acquire a replacement property alone or jointly with the other joint owner or any of the other joint owners.

- (6) If the purchaser referred to in subsection (4) acquires the replacement property jointly with—
- (a) (where the property replaced was owned by the purchaser alone) any other person; or
 - (b) (where the property replaced was owned by the purchaser jointly with any other person or persons) any person who was not a joint owner of the property replaced,

subsections (2) and (3) also apply to the chargeable agreement for sale concerned as if the purchaser were a Hong Kong permanent resident.

- (7) A chargeable agreement for sale is not chargeable with buyer's stamp duty under head 1(1C) in the First Schedule if it is shown to the satisfaction of the Collector that the agreement is made pursuant to any decree or order of any court.
- (8) If it is shown to the satisfaction of the Collector that—
- (a) any purchaser under a chargeable agreement for sale is acting in the transaction as a trustee or guardian for another person; and
 - (b) the other person is a Hong Kong permanent resident and is either a minor or a mentally incapacitated person,

the Collector must, in determining whether the agreement is chargeable with buyer's stamp duty under head 1(1C) in the First Schedule in accordance with this section, treat the other person as a purchaser under the agreement in place of the trustee or guardian, and this section is to apply to the agreement accordingly.

- (9) If it is shown to the satisfaction of the Collector that—

- (a) any vendor under a chargeable agreement for sale is acting in the transaction as a trustee or guardian for another person; and
- (b) the other person is a Hong Kong permanent resident and is either a minor or a mentally incapacitated person,

the Collector must, in determining whether the agreement is chargeable with buyer's stamp duty under head 1(1C) in the First Schedule in accordance with this section, treat the other person as a vendor under the agreement in place of the trustee or guardian, and this section is to apply to the agreement accordingly.

- (10) To avoid doubt, a chargeable agreement for sale that is chargeable with buyer's stamp duty under head 1(1C) in the First Schedule is chargeable with that duty by reference to the full amount or value of the consideration for the agreement.
- (11) The buyer's stamp duty chargeable on a chargeable agreement for sale under head 1(1C) in the First Schedule is in addition to any other stamp duty with which the agreement is chargeable.
- (12) If an instrument is not chargeable with stamp duty under head 1(1A) in the First Schedule, it is not chargeable with buyer's stamp duty under head 1(1C) in that Schedule.
- (13) In this section, 2 or more than 2 persons are closely related if—
 - (a) where there are 2 persons, 1 person is the parent, spouse, child, brother or sister of the other person; or
 - (b) where there are more than 2 persons, each of the persons is a parent, spouse, child, brother or sister of each of the other persons.

- (14) This section does not apply to a chargeable agreement for sale executed on or after 27 October 2012 if it was preceded by another chargeable agreement for sale executed between the same parties and on the same terms that was executed before 27 October 2012.

29CC. Agreements for exchange of properties

- (1) Subject to subsection (3), if an agreement executed on or after 27 October 2012 provides for the exchange of any residential property for any non-residential property (whether or not any consideration is paid or given, or agreed to be paid or given, for equality)—
- (a) the agreement—
 - (i) is deemed to be a chargeable agreement for sale for the purposes of section 29CB; and
 - (ii) despite section 29CB(10), is chargeable with buyer's stamp duty under head 1(1C) in the First Schedule by reference to the value of the residential property; and
 - (b) the person or persons to whom the residential property is to be transferred is or are deemed to be the purchaser or purchasers under the agreement.
- (2) Subject to subsection (3), if an agreement executed on or after 27 October 2012 provides for the exchange of any residential property for any other residential property, and any consideration is paid or given, or agreed to be paid or given, for equality—
- (a) the agreement—
 - (i) is deemed to be a chargeable agreement for sale for the purposes of section 29CB; and
 - (ii) despite section 29CB(10), is, subject to section 29F, chargeable with buyer's stamp duty under head 1(1C) in the First Schedule by reference to the consideration; and

- (b) the person or persons by whom the consideration is paid or given, or to be paid or given, is or are deemed to be the purchaser or purchasers under the agreement.
- (3) An agreement that is deemed to be a chargeable agreement for sale under subsection (1) or (2) is not chargeable with buyer's stamp duty under head 1(1C) in the First Schedule if it is shown to the satisfaction of the Collector that, in relation to the chargeable agreement, any of the conditions set out in section 29CB(2)(a), (b) and (c) is met.”.

10. Section 29D amended (conveyances on sale of residential property)

- (1) Section 29D(2)(b)(i), after “(1AA)”—

Add

“or (1AAB)”.

- (2) Section 29D(3)(a), after “(1AA)”—

Add

“or (1AAB)”.

- (3) Section 29D(3)(b), after “(1AA)”—

Add

“or (1AAB)”.

- (4) Section 29D(6)(c)(ii), after “special stamp duty”—

Add

“or buyer's stamp duty”.

11. Section 29DA amended (further provisions on special stamp duty chargeable on certain conveyances on sale)

- (1) Section 29DA(2)—

Repeal

“a period of 24 months”

Substitute

“the respective periods specified in the first column of that head”.

(2) Section 29DA(3)—

Repeal

“24-month period”

Substitute

“relevant specified period”.

12. Sections 29DB, 29DC and 29DD added

After section 29DA—

Add

“29DB. Further provisions on buyer’s stamp duty chargeable on certain conveyances on sale

- (1) Subject to the other provisions of this section, head 1(1AAB) in the First Schedule applies to a conveyance on sale of any residential property executed on or after 27 October 2012.
- (2) A conveyance on sale is not chargeable with buyer’s stamp duty under head 1(1AAB) in the First Schedule if it is shown to the satisfaction of the Collector—
 - (a) that the transferee, or each of the transferees, under the conveyance is a Hong Kong permanent resident acting on his or her own behalf;
 - (b) that—
 - (i) the transferees under the conveyance consist of—

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- (A) one, or more than one, person who is a Hong Kong permanent resident; and
 - (B) one, or more than one, person who is not a Hong Kong permanent resident;
 - (ii) those transferees are closely related; and
 - (iii) each of them is acting on his or her own behalf; or
- (c) that—
- (i) the transferee or transferees under the conveyance and the transferor or each of the transferors under the conveyance are closely related;
 - (ii) where there is more than one transferee under the conveyance, the transferees are also closely related; and
 - (iii) the transferee or each of the transferees is acting on his or her own behalf.
- (3) Where a conveyance on sale is executed in pursuance of a chargeable agreement for sale as referred to in section 29D(4), and the transferees under the conveyance include one, or more than one, person (*newcomer*) who is not named in the agreement as a purchaser, the conveyance is not chargeable with buyer's stamp duty under head 1(1AAB) in the First Schedule if it is shown to the satisfaction of the Collector—
- (a) that the newcomer or each of the newcomers is a Hong Kong permanent resident acting on his or her own behalf; or
 - (b) that—
 - (i) the newcomer or each of the newcomers is acting on his or her own behalf; and

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- (ii) the person or persons named in the agreement as a purchaser or purchasers and the newcomer or newcomers are closely related.
- (4) A conveyance on sale that is executed in pursuance of a chargeable agreement for sale as referred to in section 29D(5) is not chargeable with buyer's stamp duty under head 1(1AAB) in the First Schedule if it is shown to the satisfaction of the Collector—
- (a) that the transferee under the conveyance is one of the persons named in the agreement as the purchasers, and—
 - (i) that the transferee is a Hong Kong permanent resident acting on his or her own behalf; or
 - (ii) that—
 - (A) the transferee is not a Hong Kong permanent resident but the other person or persons named in the agreement as a purchaser or purchasers and the transferee are closely related; and
 - (B) the transferee is acting on his or her own behalf; or
 - (b) that the transferees under the conveyance are some of the persons named in the agreement as the purchasers, and—
 - (i) that each of the transferees is a Hong Kong permanent resident acting on his or her own behalf; or
 - (ii) that—
 - (A) each of the transferees is acting on his or her own behalf; and

- (B) the other person or persons named in the agreement as a purchaser or purchasers and the transferees are closely related.
- (5) Subject to subsections (6) and (7), where the transferee under a conveyance on sale is not a Hong Kong permanent resident, the conveyance is not chargeable with buyer's stamp duty under head 1(1AAB) in the First Schedule if it is shown to the satisfaction of the Collector—
- (a) that the transferee is acting on his or her own behalf; and
 - (b) that the residential property concerned is acquired by the transferee to replace another residential property that was owned by the transferee alone or jointly with any other person or persons and that has been—
 - (i) purchased or otherwise acquired by the Urban Renewal Authority for the purposes of any of its projects as defined by section 2 of the Urban Renewal Authority Ordinance (Cap. 563);
 - (ii) resumed under the Lands Resumption Ordinance (Cap. 124) or purchased by agreement under section 4A of that Ordinance; or
 - (iii) sold pursuant to an order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).
- (6) To avoid doubt, if the property replaced was jointly owned by 2 or more than 2 persons—

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- (a) subsection (5) does not require the joint owners to jointly acquire a replacement property in order for that subsection to apply; and
 - (b) each joint owner may acquire a replacement property alone or jointly with the other joint owner or any of the other joint owners.
- (7) If the transferee referred to in subsection (5) acquires the replacement property jointly with—
- (a) (where the property replaced was owned by the transferee alone) any other person; or
 - (b) (where the property replaced was owned by the transferee jointly with any other person or persons) any person who was not a joint owner of the property replaced,
- subsections (2), (3) and (4) also apply to the conveyance on sale concerned as if the transferee were a Hong Kong permanent resident.
- (8) A conveyance on sale is not chargeable with buyer's stamp duty under head 1(1AAB) in the First Schedule if it is shown to the satisfaction of the Collector that—
- (a) the conveyance is made pursuant to any decree or order of any court;
 - (b) the conveyance is a decree or order of any court by which the residential property concerned is transferred to or vested in the transferee; or
 - (c) under the conveyance, a mortgaged property is transferred to or vested in a mortgagee that is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112) or a receiver appointed by such a mortgagee.
- (9) If it is shown to the satisfaction of the Collector that—

- (a) any transferee under a conveyance on sale is acting in the transaction as a trustee or guardian for another person; and
- (b) the other person is a Hong Kong permanent resident and is either a minor or a mentally incapacitated person,

the Collector must, in determining whether the conveyance is chargeable with buyer's stamp duty under head 1(1AAB) in the First Schedule in accordance with this section, treat the other person as a transferee under the conveyance in place of the trustee or guardian, and this section is to apply to the conveyance accordingly.

- (10) If it is shown to the satisfaction of the Collector that—

- (a) any transferor under a conveyance on sale is acting in the transaction as a trustee or guardian for another person; and
- (b) the other person is a Hong Kong permanent resident and is either a minor or a mentally incapacitated person,

the Collector must, in determining whether the conveyance is chargeable with buyer's stamp duty under head 1(1AAB) in the First Schedule in accordance with this section, treat the other person as a transferor under the conveyance in place of the trustee or guardian, and this section is to apply to the conveyance accordingly.

- (11) To avoid doubt, a conveyance on sale that is chargeable with buyer's stamp duty under head 1(1AAB) in the First Schedule is chargeable with that duty by reference to the full amount or value of the consideration for the conveyance.

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- (12) The buyer's stamp duty chargeable on a conveyance on sale under head 1(1AAB) in the First Schedule is in addition to any other stamp duty with which the conveyance is chargeable.
- (13) If an instrument is not chargeable with stamp duty under head 1(1) in the First Schedule, it is not chargeable with buyer's stamp duty under head 1(1AAB) in that Schedule.
- (14) Paragraphs (a), (b), (c) and (d) of section 29D(6) also apply for the purposes of this section.
- (15) In this section, 2 or more than 2 persons are closely related if—
- (a) where there are 2 persons, 1 person is the parent, spouse, child, brother or sister of the other person; or
 - (b) where there are more than 2 persons, each of the persons is a parent, spouse, child, brother or sister of each of the other persons.
- (16) In this section and in head 1(1AAB) in the First Schedule—
- transferee* (承讓入), in relation to a conveyance on sale of residential property, means the person to whom the property is transferred, or in whom the property is vested, under the conveyance.
- (17) In this section—
- transferor* (轉讓入), in relation to a conveyance on sale of residential property, means the person from whom the property is transferred or divested under the conveyance.

29DC. Instruments effecting exchange of properties

- (1) Subject to subsection (3), if the exchange of any residential property for any non-residential property is effected by an instrument that is executed on or after 27 October 2012 (whether or not any consideration is paid or given for equality)—
 - (a) the instrument—
 - (i) is deemed to be a conveyance on sale for the purposes of section 29DB; and
 - (ii) despite section 29DB(11), is chargeable with buyer's stamp duty under head 1(1AAB) in the First Schedule by reference to the value of the residential property; and
 - (b) the person or persons to whom the residential property is transferred is or are deemed to be the transferee or transferees under the conveyance.
- (2) Subject to subsection (3), if the exchange of any residential property for any other residential property is effected by an instrument that is executed on or after 27 October 2012, and any consideration is paid or given for equality—
 - (a) the instrument—
 - (i) is deemed to be a conveyance on sale for the purposes of section 29DB; and
 - (ii) despite section 29DB(11), is, subject to section 29F, chargeable with buyer's stamp duty under head 1(1AAB) in the First Schedule by reference to the consideration; and
 - (b) the person or persons by whom the consideration is paid or given is or are deemed to be the transferee or transferees under the conveyance.
- (3) An instrument that is deemed to be a conveyance on sale under subsection (1) or (2) is not chargeable with

buyer's stamp duty under head 1(1AAB) in the First Schedule if it is shown to the satisfaction of the Collector that, in relation to the conveyance, any of the conditions set out in section 29DB(2)(a), (b) and (c) is met.

29DD. Refund of buyer's stamp duty in case of redevelopment

- (1) Despite anything in this Ordinance and subject to subsection (3), the Collector may, on an application made by a person (*applicant*) who had paid buyer's stamp duty in respect of an instrument, refund the buyer's stamp duty if—
 - (a) the residential property concerned consisted, or formed part, of a lot (*the lot*);
 - (b) the applicant—
 - (i) became the owner of the lot, or 2 or more lots (including the lot) (collectively *the lots*); or
 - (ii) after becoming the owner of the lot or the lots, was granted a new lot (*new lot*) by the Government consequent on either or both of the following—
 - (A) the surrender of the lot or the lots, wholly or partly, to the Government;
 - (B) the acquisition of the lot or the lots, wholly or partly, by the Government through purchase by agreement under section 4A of the Lands Resumption Ordinance (Cap. 124) or resumption of the lot or the lots, wholly or partly, by the Government under that Ordinance;
 - (c) any building or buildings existing on the lot, the lots or the new lot was or were demolished, or caused to be demolished, by the applicant;

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- (d) the applicant has constructed, or caused to be constructed, on the lot, the lots or the new lot—
 - (i) a new building (whether or not residential property); or
 - (ii) where more than one new building (whether or not residential property) is to be constructed, the first new building; and
 - (e) the new building or first new building is completed within the period specified in subsection (2).
- (2) The specified period is—
- (a) where the new building or first new building is constructed on a single lot other than a new lot—
 - (i) if the lot was the subject of an order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) and was sold to the applicant in the sale, the latest of the following—
 - (A) within 6 years after the date on which the applicant became the owner of the lot;
 - (B) where the Lands Tribunal, on an application by the applicant for extending the time for completion of the redevelopment of the lot, allows a further period, within that period; or
 - (C) where the applicant has made one or more than one application to the Government for a modification of any condition in the lease of the lot, within 6 years after the date of the instrument effecting the first modification; or

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- (ii) in any other case, the later of the following—
 - (A) within 6 years after the date on which the applicant became the owner of the lot; or
 - (B) where the applicant has made one or more than one application to the Government for a modification of any condition in the lease of the lot, within 6 years after the date of the instrument effecting the first modification;
 - (b) where the new building or first new building is constructed on 2 or more lots—
 - (i) if the lots were the subject of one or more than one order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) and were sold to the applicant in the sale or sales, the latest of the following—
 - (A) within 6 years after the date on which the applicant became the owner of the lots or, where there is more than one order for sale, the owner of the last lot;
 - (B) where the Lands Tribunal, on an application by the applicant for extending the time for completion of the redevelopment of the lots, allows a further period, within that period; or
 - (C) where the applicant has made one or more than one application to the Government for a modification of any condition in the lease of any of the lots, within 6 years after the date of the instrument effecting the first modification;

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- (ii) if the lots include one, or more than one, lot (*relevant lot*) that was the subject of one or more than one order for sale referred to in subparagraph (i), and the relevant lot or lots was or were sold to the applicant in the sale or sales, the latest of the following—
- (A) within 6 years after the date on which the applicant became the owner of the last of the lots;
 - (B) where the Lands Tribunal, on an application by the applicant for extending the time for completion of the redevelopment of the relevant lot or lots, allows a further period, within that period; or
 - (C) where the applicant has made one or more than one application to the Government for a modification of any condition in the lease of any of the lots, within 6 years after the date of the instrument effecting the first modification; or
- (iii) in any other case, the later of the following—
- (A) within 6 years after the date on which the applicant became the owner of the last of the lots; or
 - (B) where the applicant has made one or more than one application to the Government for a modification of any condition in the lease of any of the lots, within 6 years after the date of the instrument effecting the first modification; or

- (c) where the new building or first new building is constructed on a new lot, within 6 years after the date on which the new lot was granted to the applicant.
- (3) If—
- (a) a residential property was acquired by a body corporate (*first body corporate*) under an instrument in respect of which it had paid buyer's stamp duty;
- (b) the property was subsequently transferred to another body corporate (*second body corporate*)—
- (i) by the first body corporate; or
- (ii) through one or more than one other body corporate (*other bodies corporate*); and
- (c) the instrument effecting the transfer of the property to the second body corporate and (if applicable) the instruments effecting the transfer of the property to the other bodies corporate were, by virtue of section 45, not chargeable with buyer's stamp duty,
- the second body corporate may also apply to the Collector under subsection (1) for a refund to the second body corporate of the buyer's stamp duty paid by the first body corporate in respect of the instrument referred to in paragraph (a), and such an application is to be treated by the Collector as if the second body corporate were the person who had paid the buyer's stamp duty.
- (4) For the purposes of this section, in relation to a lot that has been divided into undivided shares, a person does not become the owner of the lot until the person is the legal owner of all the undivided shares in the lot.

(5) For the purposes of subsection (1)(e), a building is completed on the date on which an occupation permit in respect of the building is issued by the Building Authority under section 21(2)(a) of the Buildings Ordinance (Cap. 123).

(6) In this section—

lot (地段) has the meaning given by section 2(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).”.

13. Section 29H amended (exemptions and relief)

Section 29H(3)(a)—

Repeal

“and (1B)”

Substitute

“, (1B) and (1C)”.

14. Section 44 amended (relief in case of gift to exempted institution)

Section 44(1)—

Repeal

“or (1AA)”

Substitute

“, (1AA) or (1AAB)”.

15. Section 45 amended (relief in case of conveyance from one associated body corporate to another)

Section 45(1)—

Repeal

“or (1AA)”

Substitute

“, (1AA) or (1AAB)”.

16. Section 63A added

After section 63—

Add

“63A. Amendment of First Schedule

The Financial Secretary may, by notice published in the Gazette, amend a percentage specified in the second column of head 1(1AA), (1AAB), (1B) or (1C) in the First Schedule.”.

17. Section 70 added

Before the First Schedule—

Add

“70. Transitional provisions for Stamp Duty (Amendment) Ordinance 2012

(1) In this section—

additional special stamp duty (附加額外印花稅), in relation to a relevant instrument, means the difference between—

- (a) the amount of special stamp duty payable on the instrument before the Amendment Ordinance was published in the Gazette; and
- (b) the amount of special stamp duty payable on the instrument on the day on which the Amendment Ordinance was published in the Gazette;

Amendment Ordinance (《修訂條例》) means the Stamp Duty (Amendment) Ordinance 2012 (of 2012);

relevant instrument (有關文書) means an instrument chargeable with special stamp duty under Part 2 of

head 1(1AA) or Part 2 of head 1(1B) in the First Schedule.

- (2) If, but for this section, the time for stamping any relevant instrument with any additional special stamp duty payable on the instrument begins before the day on which the Amendment Ordinance was published in the Gazette, that time for stamping is to be replaced by a period of 30 days commencing immediately after that day.
- (3) If, but for this section, the time for stamping any instrument chargeable with buyer's stamp duty begins before the day on which the Amendment Ordinance was published in the Gazette, that time for stamping is to be replaced by a period of 30 days commencing immediately after that day."

18. First Schedule amended

- (1) First Schedule—

Repeal

"[ss. 2, 4, 5, 5A, 13, 18D, 19, 19A, 20, 29, 29A, 29C, 29CA, 29D, 29DA,"

Substitute

"[ss. 2, 4, 5, 5A, 13, 18D, 19, 19A, 20, 29, 29A, 29C, 29CA, 29CB, 29CC, 29D, 29DA, 29DB, 29DC,"

- (2) First Schedule, before "& 2nd Sch."—

Add

“, 63A & 70”.

- (3) First Schedule, head 1(1AA), first column, before paragraph (a)—

Add

“Part 1—for residential property acquired on or after 20 November 2010 but before 27 October 2012”.

(4) First Schedule, head 1(1AA), before Note 1—

Add

“Part 2—for residential property acquired on or after 27 October 2012

- (a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired
- (b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day
- (c) if the residential property is disposed of within a period of 36 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day

(A) (a) 20% of the amount or value of the consideration

(b) 15% of the amount or value of the consideration

(c) 10% of the amount or value of the consideration

(B) The same time as that which applies to a conveyance on sale specified under sub-head (1)

(C) The same parties as those who are liable in respect of a conveyance on sale specified under sub-head (1)”.

(5) First Schedule, after head 1(1AA)—

Add

“(1AAB) CONVEYANCE
ON SALE
CHARGEABLE
WITH BUYER’S
STAMP DUTY

(A) 15% of the amount or value of the consideration

(B) The same time as that which applies to a conveyance on sale specified under sub-head (1)

(C) The transferee”.

Note

This sub-head is subject to sections 29D, 29DB and 29DC

(6) First Schedule, head 1(1B), first column, before paragraph (a)—

Add

“Part 1—for residential property acquired on or after 20 November 2010 but before 27 October 2012”.

(7) First Schedule, head 1(1B), before Note 1—

Add

“Part 2—for residential property acquired on or after 27 October 2012

- | | |
|--|--|
| (a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired | (A) (a) 20% of the amount or value of the consideration |
| (b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day | (b) 15% of the amount or value of the consideration |
| (c) if the residential property is disposed of within a period of 36 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day | (c) 10% of the amount or value of the consideration |
| | (B) The same time as that which applies to an agreement for sale specified under sub-head (1A) |
| | (C) The same parties as those who are liable in respect of an agreement for sale specified under sub-head (1A)". |

(8) First Schedule, after head 1(1B)—

Add

“(1C) AGREEMENT
FOR SALE
CHARGEABLE
WITH BUYER’S
STAMP DUTY

- (A) 15% of the amount or value of the consideration
- (B) The same time as that which applies to an agreement for sale specified under sub-head (1A)
- (C) The purchaser”.

Note 1

This sub-head is subject to sections 29C, 29CB and 29CC

Note 2

A nomination made, or a direction given, by a purchaser as referred to in paragraph (h) of the definition of *agreement for sale* in section 29A(1) in favour of one, or more than one, person who is a parent, spouse, child, brother or sister of the purchaser (whether or not also in favour of the purchaser) is not chargeable with buyer’s stamp duty

Note 3

The Notes to head 1(1A) apply to buyer's stamp duty chargeable under this sub-head as they apply to stamp duty chargeable under head 1(1A); but a person and a brother or sister of that person are also to be treated as the same person for the purposes of buyer's stamp duty

Part 3

Amendments to Stamp Duty (Specification of Instruments) Notice

19. Stamp Duty (Specification of Instruments) Notice amended

The Stamp Duty (Specification of Instruments) Notice (Cap. 117 sub. leg. B) is amended as set out in section 20.

20. Schedule amended (specification of instruments)

(1) The Schedule, Part 1, item 1—

Repeal

“or (1AA)”

Substitute

“, (1AA) or (1AAB)”.

(2) The Schedule, Part 1, item 2—

Repeal

“or (1B)”

Substitute

“, (1B) or (1C)”.

Explanatory Memorandum

The object of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) (*the Ordinance*) to impose a higher rate of special stamp duty on certain agreements for sale and conveyances on sale of residential properties that are acquired on or after 27 October 2012 and are disposed of within 36 months of acquisition, and to impose a new duty, known as the buyer's stamp duty, on certain agreements for sale and conveyances on sale of residential properties executed on or after that date.

2. Clause 1 sets out the short title and provides that the Bill, when enacted, is deemed to have come into operation on 27 October 2012.
3. Clause 3 adds a new definition of *buyer's stamp duty* to section 2(1) of the Ordinance.
4. Clause 4 amends section 4 of the Ordinance to provide that a person liable for stamping an instrument with buyer's stamp duty is also liable for the payment of any penalty payable on the instrument if it is not duly stamped in respect of that duty.
5. Clause 5(1) adds new definitions of *Hong Kong permanent resident*, *mentally incapacitated person* and *permanent identity card* to section 29A(1) of the Ordinance.
6. Clauses 5(2) to (5), 7(1), (2) and (4) to (6), 10 and 13 respectively amend sections 29A, 29C, 29D and 29H of the Ordinance to extend the application of those sections to agreements for sale or conveyances on sale chargeable with buyer's stamp duty under head 1(1C) or (1AAB) in the First Schedule to the Ordinance.
7. Clauses 6 and 7(3) respectively make a consequential amendment to sections 29B(6) and 29C(5) of the Ordinance.

8. Clause 8 amends section 29CA of the Ordinance to remove the reference to the 24-month period. The special stamp duty coverage periods for chargeable agreements for sale are specified in the first column of head 1(1B) in the First Schedule to the Ordinance.
9. Clause 9 adds new sections 29CB and 29CC to the Ordinance. Section 29CB imposes, subject to exceptions, buyer's stamp duty on any chargeable agreement for sale of any residential property that is executed on or after 27 October 2012. Section 29CC imposes buyer's stamp duty on certain agreements for exchange of immovable properties that are executed on or after that date.
10. Clause 11 amends section 29DA of the Ordinance to remove the reference to the 24-month period. The special stamp duty coverage periods for conveyances on sale are specified in the first column of head 1(1AA) in the First Schedule to the Ordinance.
11. Clause 12 adds new sections 29DB, 29DC and 29DD to the Ordinance. Section 29DB imposes, subject to exceptions, buyer's stamp duty on any conveyance on sale of any residential property that is executed on or after 27 October 2012. Section 29DC imposes buyer's stamp duty on certain instruments effecting the exchange of immovable properties that are executed on or after that date. Section 29DD provides for the refund of buyer's stamp duty on the completion of redevelopment projects.
12. Clause 14 amends section 44 of the Ordinance so that the relief provided in the case of gifts to exempted institutions also covers buyer's stamp duty.
13. Clause 15 amends section 45 of the Ordinance so that the relief provided in the case of transfers between associated bodies corporate also covers buyer's stamp duty.

Stamp Duty (Amendment) Bill 2012

Explanatory Memorandum

Paragraph 14

C1457

14. Clause 16 adds a new section 63A to the Ordinance to enable the Financial Secretary to amend the rates of special stamp duty and buyer's stamp duty.
15. Clause 17 adds a new section 70 to the Ordinance to provide for transitional arrangements that are necessitated by the retrospective operation of the Bill when enacted.
16. Clause 18 amends the First Schedule to the Ordinance to specify the new rates of special stamp duty and the rates of buyer's stamp duty, the time for stamping the relevant instruments and the persons liable to pay those duties.
17. Clause 20 amends the Schedule to the Stamp Duty (Specification of Instruments) Notice (Cap. 117 sub. leg. B) to allow payment of buyer's stamp duty through electronic stamping.