

LEGISLATIVE COUNCIL BRIEF

Stamp Duty Ordinance
(Chapter 117)

STAMP DUTY (AMENDMENT) BILL 2012

INTRODUCTION

At the meeting of the Executive Council on 18 December 2012, the Council ADVISED and the Chief Executive ORDERED that the Stamp Duty (Amendment) Bill 2012 (the Bill) at **Annex A** be introduced into the Legislative Council (LegCo). The Bill is to implement further measures to address the overheated residential property market, as approved by the Chief Executive-in-Council on 26 October 2012 and announced by the Financial Secretary on the same day. These measures include –

- (a) adjusting the duty rates and extending the holding period in respect of the Special Stamp Duty (SSD), as follows -
 - (i) 20% of the amount or value of the consideration if the residential property has been held for six months or less;
 - (ii) 15% of the amount or value of the consideration if the residential property has been held for more than six months but for 12 months or less; and
 - (iii) 10% of the amount or value of the consideration if the residential property has been held for more than 12 months but for 36 months or less; and
- (b) introducing a Buyer's Stamp Duty (BSD) on residential properties acquired by any person except a Hong Kong permanent resident (HKPR). The BSD is to be charged at a flat rate of 15% on all residential properties, on top of the existing stamp duty and the SSD, if applicable.

JUSTIFICATION

2. In the midst of a continuously exuberant state in the residential property market, arising from a tight supply of flats, extremely low interest

rates and the influx of capital from overseas, it is apparent that the property residential market is out of step with the real economy. Property prices are rising beyond the affordability of the general public and the risk of a property bubble has increased substantially.

3. In view of the above, having consulted the Executive Council on 26 October 2012, the Financial Secretary announced on the same day the new demand-side management measures, i.e. the enhancements to the SSD and introduction of the BSD. The objectives of these measures are to prevent even further exuberance in the housing market which may pose significant risks to our macro economic and financial sector stability; to ensure the healthy and stable development of the residential property market which is crucial to the sustainable development of Hong Kong as a whole; and to accord priority to HKPR buyers over non-HKPR buyers under the current market situation.

4. Given the price-sensitive nature of the property market, it is necessary for the proposed new measures to come into immediate effect once announced. This is to ensure that no one can take advantage of the new measures between the announcement and the enactment of the relevant bill. Hence, it is proposed in the Bill that the measures shall take effect on 27 October 2012, the day immediately following the announcement on 26 October 2012. The Inland Revenue Department (IRD) will record all the residential property transactions between 27 October 2012 and the date on which the Bill is enacted. Demand notes for the SSD underpaid / BSD will be issued after the enactment of the Bill.

5. The potential combined impact of the revised SSD and the proposed BSD on the housing market is expected to be significant. It will be important to keep the situation under close scrutiny so that adjustments can be made quickly as and when necessary. Accordingly, we propose to introduce a mechanism whereby SSD and BSD rates can be revised by means of subsidiary legislation subject to LegCo's negative vetting, so that changes to these rates can be made in a timely manner.

6. In drafting the Bill, we have taken into account various views expressed in the community, including those received from the LegCo Panel on Housing and Panel on Financial Affairs at their joint meeting on 2 November 2012, and during the meetings / briefings we arranged for relevant stakeholders, i.e. the Consuls-General, the Law Society of Hong Kong, the Real Estate Developers' Association of Hong Kong (REDA), the Estate Agents Authority, the estate agency trade, local and international chambers of commerce, and associations of small and medium enterprises.

The key features of the Bill are highlighted below.

Key Features of the Bill

(a) Definition of HKPRs

7. It is the policy intent that the BSD should be levied on agreements for sale and conveyances on sale of residential properties executed by any person (including companies) except a HKPR. For the purpose of the Immigration Ordinance (Cap.115), a “Hong Kong permanent resident” is defined to mean a person who belongs to a class or description of persons specified in Schedule 1 of Cap.115 at **Annex B**.

8. As all HKPRs are eligible to apply for permanent identity cards (PICs) under the Registration of Persons Ordinance (Cap.177), for the purposes of the BSD, we consider it appropriate to define a HKPR in the Bill as a person –

- (a) who holds a valid PIC issued under Cap.177; or
- (b) who is eligible to but exempted from applying for the issue of a PIC under regulation 25(e) of the Registration of Persons Regulation (Cap.177A)¹.

(b) Minor and mentally incapacitated persons

9. We propose that for a HKPR to be exempted from the BSD, the HKPR must be the purchaser / transferee acting on his or her own behalf in the acquisition of the residential property, except for a HKPR who is a minor or a mentally incapacitated person who, due to the lack of capacity to enter into legally binding agreements, must in practice require another person to act on his or her own behalf.

(c) Application of the BSD to companies

10. It is the policy intent that all companies, regardless of whether the shareholder(s) or director(s) is / are HKPR(s), should be subject to the BSD.

¹ Regulation 25(e) of the Registration of Persons Regulation (Cap. 177A) provides that the aged, blind and infirm are exempted from registering or applying for the issue of an identity card. Administratively, certificates of exemption are issued to these exempted persons.

We are aware that, since the announcement of the new measures, there have been those who advocate that companies whose shareholders are all HKPRs should be exempted from the BSD. In law, a company is an entity independent of its shareholders. Under the legal framework of Hong Kong, we have all along distinguished companies by whether they are established locally or overseas, instead of making reference to the HKPR status of shareholders. Furthermore, apart from the above stated policy and legal considerations, it is commonly known that the structure of a company can be complicated and can take various forms. In order to achieve different controlling objectives, in addition to realising them through various forms of disposal, the issue of new shares is a simple way to change the controlling stake.

11. There have been suggestions that it should be possible to put in place a self-declaration mechanism to confirm the HKPR status of the directors / shareholders of a Hong Kong-registered company. Alternatively, consideration should be given to require companies registered in Hong Kong, with all shareholders being HKPRs, to declare the change in shareholding and identity of shareholders every time they tender the share transfer instruments for stamping. However –

- (a) there could be a huge number of shareholders involved and the shareholders themselves could be bodies corporate. Such an arrangement would call into question how many tiers of company structure should be captured by the suggested self-declaration mechanism for the purpose of verifying the identity of the ultimate shareholders;
- (b) it is extremely difficult to put in place a mechanism that can effectively cover all scenarios and plug all the loopholes identified. The monitoring work so required would be extremely complicated; burdensome to both IRD and the potential duty payers and yet still be ineffective; and the efforts needed to put in place a monitoring system might not be proportionate to the effectiveness of the BSD.

All said, it is not feasible to exempt companies whose shareholders are all HKPRs.

12. On the other hand, we do propose that exemption from BSD be given to the acquisition or transfer of a residential property between associated bodies corporate. By virtue of this exemption, the current relief

provided under section 45 of the Stamp Duty Ordinance (Cap.117) (the Ordinance) will be extended to the BSD. For the purpose of such relief, “associated bodies corporate” are defined as, for two bodies corporate, one is a beneficial owner of not less than 90% of the issued share capital of the other or a third such body is a beneficial owner of not less than 90% of the issued share capital of each. Besides, there is a two-year restriction against de-association of a transferee body corporate from a transferor body corporate or a third body corporate after the transaction. In other words, should there be any change in the issued share capital of the transferee body corporate within two years, the exempted BSD will be recouped from the corporations concerned.

(d) Refund of BSD for redevelopments

13. The policy intent is that the BSD should not hinder redevelopment (whether the residential property acquired is for redevelopment into a residential or a non-residential property). Under the Bill, a refund mechanism will be put in place so that acquisition of residential properties for the construction of immovable properties will be exempted from the BSD, provided that the immovable properties being constructed are completed within six years, with extension allowed in specific circumstances. In drawing up this proposal, we have made reference to the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545) which stipulates (Schedule 3) that the redevelopment of the lot sold under an order for sale made by the Lands Tribunal under Cap.545 shall be completed and made fit for occupation within six years after the date on which the purchaser of the lot became the owner of the lot. For BSD purposes, the general rule is that the “six-year period” will start when the relevant developer has become the owner of the entire lot of the redevelopment concerned. The developer will be considered as having completed the construction if it has obtained, within six years thereafter, the Occupation Permit (OP) in respect of the redevelopment, or the first OP if there is more than one for the entire redevelopment. If the lot is the subject of an order for sale made by the Lands Tribunal under Cap.545 and the Lands Tribunal, on an application by the developer for extending the time for completion of the redevelopment of the lot, allows a further period, then the further period prevails. In the scenario where lease modification is required after the developer has acquired the lot(s), the counting of this “six-year period” commences from the completion of first such lease modification of the lot(s) i.e. the date of the lease modification document. In the scenario where a new lot is granted by the Government, the counting of this “six-year period” commences with the grant of a new lot by the Government consequent upon either or both of the following, namely, surrender of the whole or a part of

the lot or the lots to the Government; resumption of the whole or a part of the lot or the lots by the Government under the Lands Resumption Ordinance (Cap.124).

14. It is difficult to give any exemption from BSD before there is solid proof that such an acquisition is for the purpose of redevelopment and that it can subsequently fulfill the various conditions for exemption. Thus, under the proposed mechanism, the person or company pursuing redevelopment has to pay the BSD upfront as and when individual units are acquired. It may take years before the entire lot is fully acquired and before the “six-year period” starts to run. The BSD paid will be refunded when IRD is satisfied that the Buildings Department has issued the OP or the first OP (if there is more than one) for the redevelopment. In case the individual units were transferred from a body corporate to an associated body corporate within the meaning of section 45 of the Ordinance before the redevelopment is completed, the associated body corporate may also apply for refund of the BSD paid by the body corporate upon completion of the redevelopment and the six-year rule would still apply.

15. To forestall hardship created for a non-HKPR property owner who has been made to sell or part with his or her residential property not on his or her own volition, as in the case of voluntary acquisition by the Urban Renewal Authority, or resumption by the Government under the Lands Resumption Ordinance (Cap.124), or pursuant to an order for sale made under Cap.545 and has to make a replacement purchase, the replacement purchase of the non-HKPR property owner will be exempted from BSD. If the property replaced is jointly owned by two or more persons, each of them may make one replacement purchase.

(e) Mechanism to adjust the SSD and BSD rates by means of subsidiary legislation

16. The measures we propose are extraordinary measures to respond to exceptional circumstances. It is important that such measures can be reversed as and when it is appropriate. Accordingly, we propose that adjustments to the SSD and BSD rates should be made by means of subsidiary legislation subject to negative vetting by LegCo, in order to have the necessary flexibility to adjust the applicable rates (to zero if necessary) in a timely manner with reference to the market situation.

OTHER OPTIONS

17. The aforementioned proposals cannot be implemented without legislative amendments to the Ordinance. There are no other options.

THE BILL

18. The main provisions of the Bill are as follows –

- (a) **Clause 1** provides for the short title and commencement. The amendments will come into operation with effect from 27 October 2012.
- (b) **Clause 3** adds a new definition of “buyer’s stamp duty”.
- (c) **Clause 5(1)** adds the new definitions of “Hong Kong permanent resident”, “mentally incapacitated person” and “permanent identity card”.
- (d) **Clauses 7 and 10** amend sections 29C and 29D of the Ordinance to take into account the introduction of the BSD.
- (e) **Clauses 8 and 11** amend sections 29CA and 29DA of the Ordinance to remove the reference to the 24-month coverage period of SSD. The coverage periods are specified in the First Schedule to the Ordinance.
- (f) **Clause 9** adds new sections 29CB and 29CC to set out the applicability and exemption arrangements of the BSD concerning agreements for sale of residential properties and agreements for exchange of immovable properties.
- (g) **Clause 12** adds new sections 29DB and 29DC to set out the applicability and exemption arrangements of the BSD concerning conveyance on sale of residential properties and instruments effecting exchange of immovable properties. It also adds a new section 29DD to provide for the refund of the BSD on the completion of redevelopment projects.
- (h) **Clause 14** amends section 44(1) of the Ordinance to extend the relief in the case of gift to exempted institution to cover the BSD.
- (i) **Clause 15** amends section 45(1) of the Ordinance to extend the

relief in the case of conveyance from one associated body corporate to another to cover the BSD.

- (j) **Clause 16** adds a new section 63A to enable the Financial Secretary to amend SSD and BSD rates by gazette notice. Such a notice is subject to negative vetting.
- (k) **Clause 17** adds a new section 70 to provide for transitional arrangements necessitated by the introduction of the new SSD rate and the BSD.
- (l) **Clause 18** amends the First Schedule to the Ordinance to specify the revised rates of SSD and the rate of BSD.
- (m) **Clause 20** amends the Schedule to the Stamp Duty (Specification of Instruments) Notice (Cap.117 sub. leg. B) to allow the payment of BSD through electronic stamping.

LEGISLATIVE TIMETABLE

19. The legislative timetable will be as follows -

Publication in the Gazette	28 December 2012
First Reading and commencement of Second Reading debate	9 January 2013
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

20. The financial, civil service, economic, and sustainability implications of the proposal are set out at **Annex C**. The proposed legislative amendments will not affect the current binding effect of the Ordinance. It has no productivity and environmental implications. It is in conformity with the Basic law, including the provisions concerning human rights.

PUBLIC CONSULTATION

21. As mentioned in paragraph 6 above, we briefed the LegCo Panel on Housing and the Panel on Financial Affairs at a joint meeting on 2 November 2012, and arranged meetings / briefing sessions for the relevant stakeholders following the announcement of the new measures. In general, the community at large supports the objectives of the new demand-side management measures to address the overheated residential property market and to ensure its healthy and stable development. We have also received comments on certain operational details of the BSD.

PUBLICITY

22. A press release on the Bill will be issued on 28 December 2012.

ENQUIRIES

23. Enquiries on this brief can be addressed to Mrs Vicki Kwok, Principal Assistant Secretary (Housing) (Private Housing), at 2761 5094.

**Transport and Housing Bureau
December 2012**

Stamp Duty (Amendment) Bill 2012

Contents

Clause		Page
Part 1		
Preliminary		
1.	Short title and commencement	1
Part 2		
Amendments to Stamp Duty Ordinance		
2.	Stamp Duty Ordinance amended.....	2
3.	Section 2 amended (interpretation)	2
4.	Section 4 amended (charging of, liability for, and recovery of stamp duty)	2
5.	Section 29A amended (interpretation and application of Part IIIA).....	3
6.	Section 29B amended (duty to execute agreement for sale).....	5
7.	Section 29C amended (chargeable agreements for sale)	5
8.	Section 29CA amended (further provisions on special stamp duty chargeable on certain agreements for sale)	6
9.	Sections 29CB and 29CC added.....	7
	29CB. Further provisions on buyer's stamp duty chargeable on certain agreements for sale	7

Clause		Page
	29CC. Agreements for exchange of properties	13
10.	Section 29D amended (conveyances on sale of residential property).....	15
11.	Section 29DA amended (further provisions on special stamp duty chargeable on certain conveyances on sale).....	15
12.	Sections 29DB, 29DC and 29DD added.....	16
	29DB. Further provisions on buyer's stamp duty chargeable on certain conveyances on sale.....	16
	29DC. Instruments effecting exchange of properties.....	22
	29DD. Refund of buyer's stamp duty in case of redevelopment.....	24
13.	Section 29H amended (exemptions and relief).....	29
14.	Section 44 amended (relief in case of gift to exempted institution).....	29
15.	Section 45 amended (relief in case of conveyance from one associated body corporate to another).....	29
16.	Section 63A added.....	30
	63A. Amendment of First Schedule	30
17.	Section 70 added.....	30
	70. Transitional provisions for Stamp Duty (Amendment) Ordinance 2012.....	30
18.	First Schedule amended	31

Clause	Page
Part 3	
Amendments to Stamp Duty (Specification of Instruments) Notice	
19.	Stamp Duty (Specification of Instruments) Notice amended37
20.	Schedule amended (specification of instruments).....37

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.
-

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
 - (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.
- (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—
 - (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
 - (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—
- (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.
- (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;
 - (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
 - (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;
- (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 | (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 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.
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.

Stamp Duty (Amendment) Bill 2012

Explanatory Memorandum

Paragraph 15

40

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.

Definition of Permanent Resident of the Hong Kong Special Administrative Region under the Immigration Ordinance (Cap.115)

Permanent resident of Hong Kong shall include a person who is within one of the following categories -

- (a) A Chinese citizen born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region.
- (b) A Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than 7 years before or after the establishment of the Hong Kong Special Administrative Region.
- (c) A person of Chinese nationality born outside Hong Kong before or after the establishment of the Hong Kong Special Administrative Region to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b).
- (d) A person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than 7 years and has taken Hong Kong as his place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region.
- (e) A person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the Hong Kong Special Administrative Region in category (d) before or after the establishment of the Hong Kong Special Administrative Region if at the time of his birth or at any later time before he attains 21 years of age, one of his parents has the right of abode in Hong Kong.
- (f) A person other than those residents in categories (a) to (e), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

Implications of the Proposal

Financial and civil service implications

The proposed adjustments to the existing SSD and the introduction of the BSD are not intended to be revenue-generating measures to meet fiscal or budgetary objectives, although they are expected to bring about additional revenue to the Government. The amount of additional revenue is uncertain as it depends on the number and value of the transactions caught by the new measures.

2. Additional workload and administrative cost arising from the measures will be absorbed within the existing resources of relevant departments as far as possible.

Economic implications

3. The enhancement of SSD would further increase the cost of speculation and it is expected that a significant portion of such transactions would vanish, especially resale cases at the shorter end. The BSD should be effective in reducing demand from non-HKPR buyers, thereby according priority to meeting the housing needs of HKPRs under the current tight demand / supply balance in the housing market. Taken together, the proposals should help forestall a further build up of exuberance in the property market in the midst of global liquidity glut and exceptionally low interest rates, thereby safeguarding overall macroeconomic and financial stability of Hong Kong.

Sustainability implications

4. The measures aim to ensure the healthy and stable development of the property market, which is crucial to the sustainable development of Hong Kong as a whole.