

# 立法會

## *Legislative Council*

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Tel : 3919 3308

Date : 2 July 2014

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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### **Council meeting of 9 July 2014**

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

### **Committee stage amendments**

The Second Reading debate on the above Bill will be resumed at the Council meeting of 9 July 2014. Subject to the Bill receiving Second Reading, the President has given permission for the Secretary for Financial Services and the Treasury to move proposed amendments to the Bill at its Committee stage.

2. As directed by the President, the proposed amendments are attached for Members' consideration.

(Ms Doris LO)  
for Clerk to the Legislative Council

Encl.

Stamp Duty (Amendment) Bill 2013

**Committee Stage**

Amendments to be moved by the Secretary for Financial Services  
and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting “subsection” and substituting “subsections (2A) and”.
1	By adding— “(2A) Section 24(1B) is deemed to have come into operation on 19 July 2013.”.
1(3)	By deleting “22,”.
3	(a) By renumbering the clause as clause 3(3). (b) By adding before subclause (3)— “(1) Section 15(1)— <b>Repeal</b> “subsections (1A) and (1B)” <b>Substitute</b> “subsection (1A) and section 15A”. (2) Section 15— <b>Repeal subsection (1B).”.</b>
New	By adding— <b>“3A. Section 15A added</b> After section 15— <b>Add</b>

**“15A. Exception to non-admissibility of instruments not duly stamped with ad valorem stamp duty and buyer’s stamp duty**

- (1) This section applies to an instrument that is not duly stamped only because it falls within either or both of the following—
- (a) the specified amount (as defined by section 29DH(1)) payable for the instrument under section 29DH(3) or (5) is not paid;
  - (b) the buyer’s stamp duty chargeable on the instrument is not paid.
- (2) Despite section 15(1), the instrument may be received in evidence in civil proceedings before a court if—
- (a) for a conveyance on sale—it is produced in evidence by a person who is not the transferee under the instrument; or
  - (b) for an agreement for sale—it is produced in evidence by a person who is not the purchaser under the instrument.””.

8

By deleting subclause (4) and substituting—

“(4) Section 29A(1)—

**Add in alphabetical order**

“*transferee* (承讓入), in relation to a conveyance on sale (except as provided in section 29AN(5)(b) or 29DC(1)(b) and (2)(b)), means the person to whom the property concerned is transferred, or in whom the property is vested, under the conveyance;

*transferor* (轉讓入), in relation to a conveyance on sale (except as provided in section 29AN(5)(a) or 29DC(1)(b) and (2)(b)), means the person from whom the property

concerned is transferred or divested under the conveyance;”.”.

- 8 By deleting subclause (5) and substituting—
- “(5) Section 29A(5)—
- Repeal**
- “1(1A), (1B)”
- Substitute**
- “1(1B)”.”.
- 9 In the proposed section 29AB(1)(c), by adding “and (1C)” after “head 1(1B)”.
- 9 In the proposed section 29AF(1), by deleting “and (3)” and substituting “, (3) and (4)”.
- 9 In the proposed section 29AG(1), by deleting “and (3)” and substituting “, (3) and (4)”.
- 9 In the proposed section 29AH, by deleting “and 29DA) and head 1 (except sub-heads (1AA) and (1B))” and substituting “, 29CB, 29DA and 29DB) and head 1 (except sub-heads (1AA), (1AAB), (1B) and (1C))”.
- 10 In the proposed section 29AI, by adding “and Notes 1B and 1C to head 1(1) in the First Schedule” after “29AQ”.
- 10 By adding—
- “29AJA. Certain conveyances on sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at**

**Scale 2 rates**

- (1) A conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if—
  - (a) the properties concerned are residential property and a car parking space permitted for the parking of 1 motor vehicle; and
  - (b) it is shown to the satisfaction of the Collector that subsection (2) applies to the conveyance.
- (2) This subsection applies to the conveyance if, on the date of acquisition of the properties—
  - (a) the transferee, or each of the transferees, under the conveyance is a Hong Kong permanent resident acting on his or her own behalf; and
  - (b) that transferee, or each of those transferees, is neither a beneficial owner of any other residential property, nor a beneficial owner of any other car parking space, in Hong Kong.
- (3) For subsection (1)(a), a car parking space is permitted for the parking of 1 motor vehicle unless any of the following provides that the parking space may be used, at any time during the term of the Government lease in respect of the parking space or during the term of the Government lease that has been agreed for in respect of the parking space (as is appropriate), for the parking of more than 1 motor vehicle—
  - (a) a Government lease or an agreement for a Government lease;
  - (b) a deed of mutual covenant, within

the meaning of section 2 of the Building Management Ordinance (Cap. 344);

- (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123);
- (d) any other instrument which the Collector is satisfied effectively restricts the permitted user of the parking space.”.

10 By deleting the proposed section 29AL(2)(b) and substituting—

“(b) resumed under an order made under section 3 of the Lands Resumption Ordinance (Cap. 124) or purchased by agreement under section 4A of that Ordinance;”.

10 In the proposed section 29AL(2)(c), by deleting “(Cap. 545).” and substituting “(Cap. 545);”.

10 In the proposed section 29AL(2), by adding—

- “(d) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);
- (e) resumed under an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
- (f) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap. 519);
- (g) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); or
- (h) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).”.

- 10 In the proposed section 29AM(c)—
- (a) by deleting “a mortgagee that” and substituting “its mortgagee that”;
  - (b) by deleting “such a mortgagee” and substituting “the mortgagee”.

- 10 In the proposed section 29AN(1)—
- (a) in paragraph (a), in the Chinese text, by deleting “亦” and substituting “而”;
  - (b) in paragraph (b), by adding “by the transferee” after “given”.

- 10 In the proposed section 29AP(5), in the Chinese text, by adding “印花” after “上加蓋”.

- 10 In the proposed section 29AQ(4), in the Chinese text, by adding “印花” after “上加蓋”.

- 13 In the proposed section 29BA, by adding “and Note 1A to head 1(1A) in the First Schedule” after “29BI”.

- 13 By adding—

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

- (1) An agreement for sale is chargeable with stamp duty under Scale 2 of head 1(1A) in the First Schedule if—
  - (a) the properties concerned are residential property and a car parking space permitted for the

parking of 1 motor vehicle; and

- (b) it is shown to the satisfaction of the Collector that subsection (2) applies to the agreement.
- (2) This subsection applies to the agreement if, on the date of acquisition of the properties—
- (a) the purchaser, or each of the purchasers, under the agreement is a Hong Kong permanent resident acting on his or her own behalf; and
  - (b) that purchaser, or each of those purchasers, is neither a beneficial owner of any other residential property, nor a beneficial owner of any other car parking space, in Hong Kong.
- (3) For subsection (1)(a), a car parking space is permitted for the parking of 1 motor vehicle unless any of the following provides that the parking space may be used, at any time during the term of the Government lease in respect of the parking space or during the term of the Government lease that has been agreed for in respect of the parking space (as is appropriate), for the parking of more than 1 motor vehicle—
- (a) a Government lease or an agreement for a Government lease;
  - (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap. 344);
  - (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123);
  - (d) any other instrument which the



Collector is satisfied effectively restricts the permitted user of the parking space.”.

13 By deleting the proposed section 29BD(2)(b) and substituting—

“(b) resumed under an order made under section 3 of the Lands Resumption Ordinance (Cap. 124) or purchased by agreement under section 4A of that Ordinance;”.

13 In the proposed section 29BD(2)(c), by deleting “(Cap. 545).” and substituting “(Cap. 545);”.

13 In the proposed section 29BD(2), by adding—

“(d) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);

(e) resumed under an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370);

(f) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap. 519);

(g) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); or

(h) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).”.

13 In the proposed section 29BF(1)(b), by adding “by the purchaser under the agreement” after “be paid or given,”.

13 In the proposed section 29BH(5), in the Chinese text, by adding “印花” after “上加蓋”.

13 In the proposed section 29BI(4), in the Chinese text, by adding “印花” after “上加蓋”.

14(4) In the proposed section 29C(5AB)(c), by adding “and (1C)” after “head 1(1B)”.

New By adding—

**“14A. Section 29CB amended (further provisions on buyer’s stamp duty chargeable on certain agreements for sale)**

Section 29CB—

**Repeal subsection (13).”.**

16(12) In the proposed section 29D(7)(b), by adding “and (1AAB)” after “head 1(1AA)”.

New By adding—

**“17A. Section 29DB amended (further provisions on buyer’s stamp duty chargeable on certain conveyances on sale)**

Section 29DB—

**Repeal subsections (15), (16) and (17).**

**17B. Part IIIA, Division 4A heading added**

Before section 29DD—

**Add**

**“Division 4A—Refund of Stamp Duty in case of Redevelopment”.**

**17C. Section 29DE added**

After section 29DD—

**Add****“29DE. Partial refund of ad valorem stamp duty in case of redevelopment**

(1) In this section—

***applicable instrument*** (適用文書) means an instrument on which stamp duty had been paid according to Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule;

***specified amount*** (指明款項) means—

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

(2) Subject to subsection (4), if—

- (a) a person has paid stamp duty on an applicable instrument according to Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule; and
- (b) the conditions specified in

subsection (3) are satisfied in relation to the immovable property concerned,

the Collector may, on an application made by the person, refund to the person the specified amount.

- (3) The conditions are—
- (a) the immovable property concerned consisted, or formed part, of a lot (*the lot*);
  - (b) the person—
    - (i) alone or jointly with an associated body corporate within the meaning of section 45(2), became the owner of the lot; or
    - (ii) after becoming the owner as mentioned in subparagraph (i), was, alone or jointly with the associated body corporate, granted a new lot (*the new lot*) by the Government consequent on either or both of the following—
      - (A) the surrender to the Government of the lot (wholly or partly and whether or not together with any other lot);
      - (B) the acquisition by the Government through purchase by agreement under section 4A of the Lands Resumption Ordinance (Cap. 124), or resumption

by the Government under an order made under section 3 of that Ordinance, of the lot (wholly or partly and whether or not together with any other lot); and

(c) the person, alone or jointly with the associated body corporate—

(i) has—

(A) demolished or caused to be demolished all buildings (if any) existing on the lot or the new lot, other than a building or part of a building the demolition of which is prohibited under any Ordinance; and

(B) obtained approval of plans and details prescribed in regulation 8(1)(a), (b), (f), (g), (h), (j), (k) and (m) of the Building (Administration) Regulations (Cap. 123 sub. leg. A) in respect of building works to be carried out on the lot or the new lot (whether or not together with any other lot) from the Building Authority under the Buildings Ordinance (Cap.

123); or

- (ii) has obtained consent to commence any foundation works for the lot or the new lot (whether or not together with any other lot) from the Building Authority under the Buildings Ordinance (Cap. 123).

(4) If—

- (a) immovable property was acquired by a body corporate (*first body corporate*) under an instrument on which it had paid stamp duty according to Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule;
- (b) the property was subsequently transferred by the first body corporate to another body corporate (*second body corporate*) directly or through one, or more than one, other body corporate; and
- (c) the instrument or instruments effecting the transfer of the property to the second body corporate were, by virtue of section 45, not chargeable with stamp duty,

the second body corporate is regarded, for the purposes of subsection (2)(a), as the person who has paid the stamp duty on the instrument as described in paragraph (a).

- (5) For the purposes of this section, in relation to a lot that has been divided into undivided shares, a person becomes the owner of the lot when

the person becomes the legal owner of all the undivided shares in the lot.

(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).”.”.

18 By deleting the proposed section 29DE.

18 In the proposed section 29DF(1)—

- (a) in the definition of *applicable instrument*, in paragraph (a), by adding “(whether or not together with a car parking space permitted for the parking of 1 motor vehicle)” after “property”;
- (b) in the definition of *original property*, by adding “(whether or not together with a car parking space permitted for the parking of 1 motor vehicle)” after “residential property”;
- (c) in the definition of *specified amount*—
  - (i) in paragraph (a), by adding “in accordance with Division 2” after “Scale 2 of head 1(1) in the First Schedule”;
  - (ii) in paragraph (b), by adding “in accordance with Division 3” after “Scale 2 of head 1(1A) in the First Schedule”;
- (d) in the definition of *subject property*, by adding “, or the residential property and car parking space,” after “property”.

18 In the proposed section 29DF(3)—

- (a) in paragraph (a), by deleting “within 6 months after the date of the applicable instrument” and substituting “within the period specified in subsection (5)”;
- (b) in paragraph (c), by adding “, or not later than 2 months after the date of the conveyance on sale under which the original property is transferred or divested, whichever is the later” after “instrument”.

18

In the proposed section 29DF(4)—

- (a) in paragraph (a), by deleting “within 6 months after the date of the applicable instrument” and substituting “within the period specified in subsection (5)”;
- (b) in paragraph (b), by adding “, or not later than 2 months after the date of the conveyance on sale under which the original property is transferred or divested, whichever is the later” after “instrument”.

18

In the proposed section 29DF, by adding—

- “(5) For subsections (3)(a) and (4)(a), the following period is specified—
  - (a) if the applicable instrument is a conveyance on sale—6 months after the date of that instrument; or
  - (b) if the applicable instrument is an agreement for sale—6 months after the date of the conveyance on sale executed in conformity with the agreement for sale.
- (6) For the definitions of *applicable instrument* and *original property* in subsection (1), a car parking space is permitted for the parking of 1 motor vehicle unless any of the following provides that the parking space may be used, at any time during the term of the Government lease in respect of the parking space or during the term of the Government lease that has been agreed for in



respect of the parking space (as is appropriate), for the parking of more than 1 motor vehicle—

- (a) a Government lease or an agreement for a Government lease;
- (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap. 344);
- (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123);
- (d) any other instrument which the Collector is satisfied effectively restricts the permitted user of the parking space.”.

18

In the proposed section 29DG(1)—

- (a) in the definition of *applicable instrument*—
  - (i) in paragraph (a), by adding “(whether or not together with a car parking space permitted for the parking of 1 motor vehicle)” after “property”;
  - (ii) in paragraph (b)(i), by adding “29AJA,” after “29AJ,”;
  - (iii) in paragraph (b)(ii), by adding “29BBA,” after “29BB,”;
- (b) in the definition of *original property*, by adding “(whether or not together with a car parking space permitted for the parking of 1 motor vehicle)” after “residential property”;
- (c) in the definition of *subject property*, by adding “, or the residential property and car parking space,” after “property”.

18

In the proposed section 29DG(2)(d), by deleting “49” and substituting “29C(5B)”.

18

In the proposed section 29DG, by adding—

- “(5) For the definitions of *applicable instrument* and *original property* in subsection (1), a car parking space is permitted for the parking of 1 motor vehicle unless any of the following provides that the parking space may be used, at any time during the term of the Government lease in respect of the parking space or during the term of the Government lease that has been agreed for in respect of the parking space (as is appropriate), for the parking of more than 1 motor vehicle—
- (a) a Government lease or an agreement for a Government lease;
  - (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap. 344);
  - (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123);
  - (d) any other instrument which the Collector is satisfied effectively restricts the permitted user of the parking space.”.

18

In the proposed section 29DH(1)—

- (a) in the definition of *applicable agreement*, by adding “29BBA,” after “29BB,”;
- (b) in the definition of *applicable conveyance*, by adding “29AJA,” after “29AJ,”.

18

In the proposed section 29DH(2)—

- (a) by adding “(whether or not together with a car parking space permitted for the parking of 1 motor vehicle)” after “property”;
- (b) by adding—
  - “(ab) if stamp duty had been paid on the conveyance according to Scale 2 of head 1(1) in the First Schedule because of the operation of section 29AJA—the conveyance should have been

chargeable with stamp duty under Scale 1 of head 1(1) in the First Schedule because section 29AJA(1)(b) was not satisfied;”.

- 18 In the proposed section 29DH(3), in the Chinese text—
- (a) by deleting “，有關轉易契中的承讓人或各承讓人”;
  - (b) in paragraph (a), by adding “有關轉易契中的承讓人或各承讓人，” before “須在”;
  - (c) in paragraph (b), by deleting “均可被起訴” and substituting “有關法律程序可針對各承讓人提出”.
- 18 In the proposed section 29DH(4)—
- (a) by adding “(whether or not together with a car parking space permitted for the parking of 1 motor vehicle)” after “property”;
  - (b) by adding—
    - “(ab) if stamp duty had been paid on the agreement according to Scale 2 of head 1(1A) in the First Schedule because of the operation of section 29BBA—the agreement should have been chargeable with stamp duty under Scale 1 of head 1(1A) in the First Schedule because section 29BBA(1)(b) was not satisfied;”.
- 18 In the proposed section 29DH(5), in the Chinese text—
- (a) by deleting “，有關協議中的購買人或各購買人”;
  - (b) in paragraph (a), by adding “有關協議中的購買人或各購買人，” before “須在”;
  - (c) in paragraph (b), by deleting “均可被起訴” and substituting “有關法律程序可針對各購買人提出”.
- 18 In the proposed section 29DH, by adding—

“(6) For subsections (2) and (4), a car parking space is permitted for the parking of 1 motor vehicle unless any of the following provides that the parking space may be used, at any time during the term of the Government lease in respect of the parking space or during the term of the Government lease that has been agreed for in respect of the parking space (as is appropriate), for the parking of more than 1 motor vehicle—

- (a) a Government lease or an agreement for a Government lease;
- (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap. 344);
- (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123);
- (d) any other instrument which the Collector is satisfied effectively restricts the permitted user of the parking space.”.

22 By deleting the clause.

23 In the proposed section 71(2), by deleting everything after “begins” and substituting—

“before the gazettal date—

- (a) that time for stamping is to be replaced by a period of 30 days commencing immediately after the gazettal date; and
- (b) where stamp duty had been paid on the instrument according to head 1(1) or (1A) in the First Schedule to the pre-amended Ordinance, section 9 applies only in relation to the additional stamp duty if it is not paid within the period specified in paragraph (a).”.

24 By deleting subclause (1) and substituting—

“(1) First Schedule, within the square brackets, after

“29A,”—

**Add**

“29AB, 29AC, 29AD, 29AE, 29AH, 29AI, 29AJ, 29AJA, 29AK, 29AL, 29AM, 29AN, 29AO, 29AP, 29AQ, 29BA, 29BB, 29BBA, 29BC, 29BD, 29BE, 29BF, 29BG, 29BH, 29BI,”.”.

24

By adding—

“(1A) First Schedule, within the square brackets, after “29DC,”—

**Add**

“29DE, 29DF, 29DG, 29DH,”.

(1B) First Schedule, within the square brackets—

**Repeal**

“& 70”

**Substitute**

“, 70 & 71”.”.

24(8)

In the proposed Note 1A, by deleting “sections 29AI to 29AQ” and substituting “section 29AI”.

24(8)

By adding—

“Note 1B

Scale 2 of this sub-head applies in relation to the stamp duty chargeable on a conveyance on sale by which a leasehold interest in land is transferred to, or vested in, a person by another person (*transferor*) if it is shown to the satisfaction of the Collector that the leasehold interest was acquired by the transferor under an instrument that was stamped or chargeable with stamp duty under sub-head (2)

Note 1C

Scale 2 of this sub-head applies in relation to the stamp duty chargeable on a lease or an agreement for a lease if the lease or agreement is chargeable with stamp duty as

a conveyance on sale under section 27(1) by virtue of section 27(4)".

24 By adding—

“(8A) First Schedule, head 1(1)—

**Repeal Note 1**

**Substitute**

“Note 1

Scale 2 of this sub-head applies in relation to the stamp duty chargeable by reference to it by virtue of sub-head (2)(a), in a case where part of the consideration for a lease consists of rent, as if paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) in Scale 2 and the words “in any other case” in paragraph (k) in Scale 2 were omitted”.”.

24(15) In the proposed Note 1, by deleting “sections 29BA to 29BI” and substituting “section 29BA”.

24 By adding—

“(15A) First Schedule, head 1(1A), after Note 1—

**Add**

“Note 1A

Scale 2 of this sub-head applies in relation to the stamp duty chargeable on an agreement for sale if it is shown to the satisfaction of the Collector that—

- (a) the agreement is an instrument which, if implemented, would be implemented by a conveyance on sale; and
- (b) the conveyance on sale would, by the operation of Note 1B to sub-head (1), be chargeable with stamp duty under Scale 2 of sub-head (1)”.”.

24(16) In the proposed Note 5, in the English text, in paragraph (b), by adding “behalf” after “own”.

24 By adding—

“(20) First Schedule, head 1(1C)—

**Repeal Note 2.**

(21) First Schedule, head 1(1C)—

**Repeal Note 3**

**Substitute**

“Note 3

Notes 2, 3 and 4 to head 1(1A) apply to buyer’s stamp duty chargeable on an agreement for sale of residential property under this sub-head as they apply to stamp duty chargeable under head 1(1A); and for the purposes of applying those Notes to buyer’s stamp duty, 2 or more persons are treated as the same person if they are closely related”.

26 By deleting the clause and substituting—

**“26. Schedule 3 amended (consequential amendments)**

Schedule 3, section 41(b), new section 15(3)(aa)—

**Repeal**

everything after “registration of the”

**Substitute**

“matter—

- (i) is stamped under section 5(1), 13(2) or 18E(1); or
- (ii) is an agreement for sale that was made before 23 February 2013 and contains a statement to the effect that it relates to

non-residential property  
within the meaning of section  
29A(1); or”.”.