

立法會

Legislative Council

LC Paper No. CB(3) 819/13-14

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Tel : 3919 3308

Date : 8 July 2014

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 9 July 2014

Stamp Duty (Amendment) Bill 2013

Committee stage amendments

Members were informed vide LC Paper Nos. CB(3) 782/13-14 and CB(3) 794/13-14 issued respectively on 2 and 3 July 2014 that the President had given permission for the Secretary for Financial Services and the Treasury, Hon Tommy CHEUNG, Hon Abraham SHEK and Hon WU Chi-wai to move proposed amendments to the above Bill at the Council meeting of 9 July 2014.

2. Members are invited to note that the President has also given permission for the following Members, subject to the Bill receiving a Second Reading, to move their proposed amendments:

Mover of amendment(s) (set out in the order of receipt)	Appendix
Hon Kenneth LEUNG	1
Hon James TO	2(a) to (e)

3. 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 Honourable Kenneth LEUNG

Clause

Amendment Proposed

18

By adding—

“29DI. Partial refund of ad valorem stamp duty on instruments relating to non-residential property in certain circumstances

(1) In this section—

applicable instrument (適用文書) means an instrument relating to non-residential property (*the subject property*) 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;

business (業務) includes every type of businesses and a business carried on by any charitable institution or trust of a public character which is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112), but excludes the letting or sub-letting to any person of any premises or portion thereof, and the sub-letting of any premises or portion of any premises held under a lease or tenancy;

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;

trade (行業、生意) includes every trade and manufacture, every adventure and concern in the nature of trade, and a trade carried on by any charitable institution or trust of a public character which is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112), but excludes the letting or sub-letting to any person of any premises or portion thereof, and the sub-letting of any premises or portion of any premises held under a lease or tenancy.

(2) 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 subject property,

the Collector may, on an application made by the person (*applicant*), refund to the applicant the specified amount.

(3) The conditions are—

(a) the applicant is a Hong Kong incorporated company or a Hong Kong permanent resident;

(b) the applicant has continuously used the subject property solely for the purpose of carrying on the applicant's trade, profession or business in Hong Kong for not less than 3 years from the date of the applicable instrument (*the relevant period*); and

(c) the application for refund is made by the applicant not later than 2 years after the date of the expiry of the relevant period.”.

Stamp Duty (Amendment) Bill 2013

Committee StageAmendments to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
9	<p>In the proposed section 29AC—</p> <p>(a) in the heading, by deleting “residential property” and substituting “residential property or non-residential property”;</p> <p>(b) by deleting “residential property” (wherever appearing) and substituting “residential property or non-residential property”.</p>
10	<p>In the proposed section 29AK—</p> <p>(a) in the heading, by deleting “residential property” and substituting “immovable property”;</p> <p>(b) in subsection (1)(a), by deleting “residential property” and substituting “immovable property”.</p>
10	<p>In the proposed section 29AP—</p> <p>(a) in the heading, by deleting “residential property” and substituting “immovable property”;</p> <p>(b) in subsection (1), by deleting “29D(6)(c)(ii) and (7)” and substituting “29D(6)(c)(ii), (7) and (7A)”;</p> <p>(c) in subsection (1)(a), by deleting “residential property” and substituting “immovable property”.</p>
10	<p>In the proposed section 29AQ—</p> <p>(a) in the heading, by deleting “residential property” and substituting “immovable property”;</p> <p>(b) in subsection (1), by deleting “29D(6)(c)(ii) and (7)” and substituting “29D(6)(c)(ii), (7) and (7A)”;</p> <p>(c) in subsection (1)(a), by deleting “residential property” and substituting “immovable property”.</p>

- 13 In the proposed section 29BC—
- (a) in the heading, by deleting “**residential property**” and substituting “**immovable property**”;
 - (b) in subsection (1)(a), by deleting “residential property” and substituting “immovable property”.
- 13 In the proposed section 29BH—
- (a) in the heading, by deleting “**residential property**” and substituting “**immovable property**”;
 - (b) in subsection (1), by deleting “Note 5” and substituting “Notes 5 and 5A”;
 - (c) in subsection (1)(a), by deleting “residential property” and substituting “immovable property”.
- 13 In the proposed section 29BI—
- (a) in the heading, by deleting “**residential property**” and substituting “**immovable property**”;
 - (b) in subsection (1), by deleting “Note 5” and substituting “Notes 5 and 5A”;
 - (c) in subsection (1)(a), by deleting “residential property” and substituting “immovable property”.
- 16 In subclause (10), by deleting “subject to subsection (7),” and substituting “subject to subsections (7) and (7A),”.
- 16 In subclause (12), by adding—
- “(7A) For subsection (6)(c)(ii), if the property concerned is non-residential property—
 - (a) for the purposes of head 1(1) in the First Schedule, 2 or more persons are treated as the same person if, on the date of the conveyance concerned—
 - (i) they are closely related;
 - (ii) each of them is acting on his or her own behalf; and
 - (iii) the person, or each of the persons, in

whose favour the conveyance is executed is not a beneficial owner of any other non-residential property in Hong Kong; and

- (b) for the purposes of head 1(1AA) and (1AAB) in the First Schedule, 2 or more persons are treated as the same person if they are closely related.”.

24 In subclause (16), by adding—

Note 5A

For the purposes of Notes 2, 3 and 4, and if the immovable property concerned is non-residential property, 2 or more persons are treated as the same person if, on the date of the agreement made between those persons—

- (a) they are closely related;
- (b) each of them is acting on his or her own behalf; and
- (c) each of them is not a beneficial owner of any other non-residential property in Hong Kong”.

Stamp Duty (Amendment) Bill 2013

Committee StageAmendment to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
9	<p>By deleting the proposed subsection 29AH and substituting—</p> <p style="padding-left: 40px;">“ 29AH. Instruments involving minors or mentally incapacitated persons</p> <p style="padding-left: 40px;">For determining the stamp duty payable on an instrument under this Part (except sections 29CA, 29CB, 29DA and 29DB) and head 1 (except sub-heads (1AA), (1AAB), (1B) and (1C)) in the First Schedule, if it is shown to the satisfaction of the Collector that—</p> <ul style="list-style-type: none"> (a) a party to the instrument is acting in the transaction as a trustee or guardian for another person; (b) the other person is a Hong Kong permanent resident who is a minor or mentally incapacitated person; (c) in the case of the other person is a minor, the trustee or guardian is a closely related person of the other person, or otherwise appointed by the court; and (d) in the case of the other person is a mentally incapacitated person, the trustee or guardian is appointed under the Mental Health Ordinance (Cap. 136), or otherwise by the court, <p style="padding-left: 40px;">the Collector must treat the other person as</p>

a party to the instrument in place of the trustee or guardian.”.

Stamp Duty (Amendment) Bill 2013

Committee StageAmendments to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
10	<p>In the proposed section 29AJ—</p> <p>(a) by deleting subsection (1) and substituting —</p> <p style="padding-left: 40px;">“(1) Subject to subsection (4), a conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if—</p> <p style="padding-left: 80px;">(a) the property concerned is a residential property; and</p> <p style="padding-left: 80px;">(b) it is shown to the satisfaction of the Collector that subsection (2) or (3) applies to the conveyance.”;</p> <p>(b) by adding—</p> <p style="padding-left: 40px;">“(4) Where there is more than one residential property transferred by the conveyance on sale, then for the purposes of stamp duty chargeable under head 1(1) in the First Schedule, each residential property is deemed to be transferred by a separate conveyance on sale and the conveyances on sale so deemed are deemed to have been executed in consecutive order.”.</p>
10	<p>By adding—</p> <p style="padding-left: 40px;">“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</p> <p style="padding-left: 80px;">(1) Subject to subsection (5), a</p>

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 a 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) or (3) 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) This subsection applies to the conveyance if, on the date of acquisition of the properties—
- (a) the transferees under the conveyance consist of—
 - (i) one, or more than one, person who is a Hong Kong permanent resident; and
 - (ii) one, or more than one, person who is not a Hong Kong permanent resident;

- (b) those transferees are closely related;
 - (c) each of them is acting on his or her own behalf; and
 - (d) each of them is neither a beneficial owner of any other residential property, nor a beneficial owner of any other car parking space, in Hong Kong.
- (4) 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) 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.
- (5) Where there is more than one residential property transferred by the

conveyance on sale, then for the purposes of stamp duty chargeable under head 1(1) in the First Schedule, each residential property (whether with or without any car parking space permitted for the parking of 1 motor vehicle) is deemed to be transferred by a separate conveyance on sale and the conveyances on sale so deemed are deemed to have been executed in consecutive order.”.

13 In the proposed section 29BB—

(a) by deleting subsection (1) and substituting—

“(1) Subject to subsection (4), an agreement for sale is chargeable with stamp duty under Scale 2 of head 1(1A) in the First Schedule if—

(a) the property concerned is a residential property; and

(b) it is shown to the satisfaction of the Collector that subsection (2) or (3) applies to the agreement.”;

(b) by adding—

“(4) Where there is more than one residential property purchased by the agreement for sale, then for the purposes of stamp duty chargeable under head 1(1A) in the First Schedule, each residential property is deemed to be purchased by a separate agreement for sale and the agreements for sale so deemed are deemed to have been signed in consecutive order.”.

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) Subject to subsection (5), 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 a 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) or (3) 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) This subsection applies to the agreement if, on the date of acquisition of the properties—
 - (a) the purchasers under the agreement consist of—
 - (i) one, or more than one, person who is a Hong Kong

permanent resident; and

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

(b) those purchasers are closely related;

(c) each of them is acting on his or her own behalf; and

(d) each of them is neither a beneficial owner of any other residential property, nor a beneficial owner of any other car parking space, in Hong Kong.

(4) 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.

- (5) Where there is more than one residential property purchased by the agreement for sale, then for the purposes of stamp duty chargeable under head 1(1A) in the First Schedule, each residential property (whether with or without any car parking space permitted for the parking of 1 motor vehicle) is deemed to be purchased by a separate agreement for sale and the agreements for sale so deemed are deemed to have been signed in consecutive order.”.

Stamp Duty (Amendment) Bill 2013

Committee StageAmendments to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
10	<p>By adding —</p> <p>“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</p> <p>(1) A conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if—</p> <p>(a) the properties concerned are residential property and a car parking space permitted for the parking of 1 motor vehicle; and</p> <p>(b) it is shown to the satisfaction of the Collector that subsection (2) or (3) applies to the conveyance.</p> <p>(2) This subsection applies to the conveyance if, on the date of acquisition of the properties—</p> <p>(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</p> <p>(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</p>

Hong Kong.

- (3) This subsection applies to the conveyance if, on the date of acquisition of the properties—
 - (a) the transferees under the conveyance consist of—
 - (i) one, or more than one, person who is a Hong Kong permanent resident; and
 - (ii) one, or more than one, person who is not a Hong Kong permanent resident;
 - (b) those transferees are closely related;
 - (c) each of them is acting on his or her own behalf; and
 - (d) each of them is neither a beneficial owner of any other residential property, nor a beneficial owner of any other car parking space, in Hong Kong.
- (4) 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 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) or (3) 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) This subsection applies to the agreement if, on the date of acquisition of the properties—
 - (a) the purchasers under the agreement consist of—
 - (i) one, or more than one, person who is a Hong Kong permanent resident; and
 - (ii) one, or more than one, person who is not a Hong Kong permanent resident;
 - (b) those purchasers are closely related;
 - (c) each of them is acting on his or her own behalf; and
 - (d) each of them is neither a beneficial owner of any other residential property, nor a beneficial owner of any other car parking space, in Hong Kong.
- (4) 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.”.

Stamp Duty (Amendment) Bill 2013

Committee StageAmendment to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
18	<p>By adding</p> <p style="margin-left: 40px;">“ 29DI. Instruments involving charity bodies</p> <p style="margin-left: 80px;">For an instrument chargeable with stamp duty under head 1(1) or (1A) in the First Schedule, notwithstanding anything to the contrary in this Ordinance contained, if it is shown to the satisfaction of the Collector that a purchaser or a transferee of the immovable property under the instrument is a charitable institution or a trust, which is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112), the instrument is only chargeable with stamp duty under Scale 2 of head 1(1) or (1A) in the First Schedule as the case may be.”.</p>
24(1)	<p>By adding—.</p> <p style="margin-left: 40px;">“(1A) First Schedule, within the square brackets, after “29DC,”—</p> <p style="margin-left: 80px;">Add</p> <p style="margin-left: 80px;">“29DE, 29DF, 29DG, 29DH, 29DI,”.”.</p>