

《2013年印花稅(修訂)條例草案》

全體委員會審議階段修正案

修正案 動議人	修正案	擬修正條文	修正案 文本
局長	第一項	- 修正第1(2)條，以及在第1條加入第(2A)款； - 修正第1(3)條及刪去第22條； - 修正第8(4)條； - 修正在第9及14(4)條建議的第29AB(1)(c)及29C(5AB)(c)條； - 修正在第9條建議的第29AF(1)條及29AG(1)條； - 修正在第10條建議的第29AM(c)條； - 修正在第10及13條建議的第29AL(2)、29AN(1)、29AP(5)、 29AQ(4)、29BD(2)、29BF(1)(b)、29BH(5)及29BI(4)條； - 修正在第16(12)條建議的第29D(7)(b)條； - 修正在第18條建議的第29DG(2)(d)、29DH(3)及(5)條； - 修正第18條，刪去第5分部下建議的第29DE條； - 修正在第23條建議的第71(2)條；及 - 修正第24(8)及(16)條，以及加入第24(8A)、(20)及(21)條	附件1
	第二項	- 加入新訂的14A、17A、17B及17C條	
	第三項	- 修正第3條； - 修正第8(5)條； - 修正在第10條建議的第29AI條； - 修正在第13條建議的第29BA條； - 修正第24(15)條，以及加入24(15A)條；及 - 修正第26條	
	第四項	- 加入新訂的第3A條	
	第五項	- 修正在第9條建議的第29AH條	
	第六項	- 修正在第10及13條，加入建議的第29AJA及29BBA條	
	第七項	- 修正在第18條建議的第29DG(1)、29DH(1)、(2)及(4)條， 並加入第29DG(5)及29DH(6)條	
	第八項	- 修正第24(1)條	
	第九項	- 修正在第18條建議的第29DF條	
	第十項	- 修正第24條，加入第(1A)及(1B)款	

修正案 動議人	修正案	擬修正條文	修正案 文本
石禮謙 議員	第一項	- 修正第1(3)條及刪去第3及8(5)條	附件2
	第二項	- 修正在第10及13條建議的第29AI、29BA、29AL(3)(b)及29BD(3)(b)條 - 修正第16條，刪去第(2)至(9)款，以及第(12)款建議的第29D(8)條 - 修正在第23條建議的第71(1)條 - 修正第24條，刪去第(9)款及修正第(15)款	
涂謹申 議員	第一項	- 修正在第9條建議的第29AC條、第10條建議的第29AK、29AP及29AQ條、第13條建議的第29BC、29BH及29BI條、第16(10)及(12)條、及第24(16)條	附件3
	第二項	- 修正在第9條建議的第29AH條	附件4
	第三項	- 修正在第10及13條建議的第29AJ及29BB條，以及分別加入第29AJA及29BBA條	附件5
	第四項	- 修正第10及13條，分別加入第29AJA及29BBA條	附件6
	第五項	- 修正第18及24條，分別加入第29DI條及第24(1A)條	附件7
胡志偉 議員	第一項	- 修正第10及13條，分別加入第29AR及29BJ條	附件8
	第二項	- 修正第24(1)條	
張宇人 議員	第一項	- 修正在第18條建議的第29DF條	附件9
	第二項	- 修正第23條，在建議的第71條加入第(5)及(6)款	
梁繼昌 議員		- 修正第18條，加入第29DI條	附件10

Stamp Duty (Amendment) Bill 2013

Committee StageAmendments 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)— Repeal “subsections (1A) and (1B)” Substitute “subsection (1A) and section 15A”. (2) Section 15— Repeal subsection (1B).”.
New	By adding— “3A. Section 15A added After section 15— Add

“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”.”.

Stamp Duty (Amendment) Bill 2013

Committee StageAmendments to be moved by the Honourable Abraham SHEK Lai-him

<u>Clause</u>	<u>Amendment Proposed</u>
1(3)	By deleting “3,”.
3	By deleting the clause.
8	By deleting subclause (5).
10	<p>(a) By deleting the proposed section 29AI and substituting—</p> <p style="padding-left: 40px;">“29AI. Conveyances on sale chargeable with ad valorem stamp duty at Scale 1 rates and Scale 2 rates</p> <p style="padding-left: 80px;">(1) Except as provided in subsection (2) and sections 29AJ to 29AQ, a conveyance on sale is chargeable with stamp duty under Scale 1 of head 1(1) in the First Schedule.</p> <p style="padding-left: 80px;">(2) A conveyance on sale of non-residential property is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule.”.</p> <p>(b) In the proposed section 29AL(3)(b), by deleting “, or both non-residential properties”.</p>
13	<p>(a) By deleting the proposed section 29BA and substituting—</p> <p style="padding-left: 40px;">“29BA. Agreements for sale of residential property generally chargeable with ad valorem stamp duty at Scale 1 rates</p> <p style="padding-left: 80px;">Except as provided in sections 29A(5) and sections 29BB to 29BI, an agreement for sale of residential property is chargeable with stamp duty under Scale 1 of head 1(1A) in the First Schedule.”.</p> <p>(b) In the proposed section 29BD(3)(b), by deleting “, or both non-residential properties”.</p>
16	<p>(a) By deleting subclauses (2), (3), (4), (5), (6), (7), (8) and (9).</p> <p>(b) In subclause (12), by deleting the proposed section 29D(8).</p>

23 In the proposed section 71(1), in the definition of *additional stamp duty*—

- (a) in paragraph (b), by deleting “; and” and substituting a semicolon;
- (b) by deleting paragraph (c).

24 (a) By deleting subclause (9).

- (b) By deleting subclause (15) and substituting—

“(15) First Schedule, head 1(1A)—

Repeal Note 1

Substitute

“Note 1

This sub-head does not apply to an agreement for sale in respect of non-residential property (see section 29A(5)). This sub-head applies to an agreement for sale according to sections 29BA to 29BI”.

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 style="padding-left: 40px;">(a) the properties concerned are residential property and a car parking space permitted for the parking of 1 motor vehicle; and</p> <p style="padding-left: 40px;">(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 style="padding-left: 40px;">(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 style="padding-left: 40px;">(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="padding-left: 40px;">“ 29DI. Instruments involving charity bodies</p> <p style="padding-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="padding-left: 40px;">“(1A) First Schedule, within the square brackets, after “29DC,”—</p> <p style="padding-left: 80px;">Add</p> <p style="padding-left: 80px;">“29DE, 29DF, 29DG, 29DH, 29DI,”.”.</p>

Stamp Duty (Amendment) Bill 2013

Committee StageAmendments to be moved by the Honourable WU Chi-wai

<u>Clause</u>	<u>Amendment Proposed</u>
10	<p>By adding—</p> <p>“29AR. Certain conveyances on sale of residential property related to Public Rental Housing Flats under Tenants Purchase Scheme to tenants or authorized occupants 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 head1(1) in the First Schedule if—</p> <p style="padding-left: 40px;">(a) the property concerned is residential property;</p> <p style="padding-left: 40px;">(b) the acquisition of the property is made under the Tenants Purchase Scheme of the Housing Authority; and</p> <p style="padding-left: 40px;">(c) it is shown to the satisfaction of the Collector that subsection (2) applies to the conveyance.</p> <p>(2) This subsection applies to the conveyance if, on the date of acquisition of the property—</p> <p style="padding-left: 40px;">(a) the transferee, or each of the transferees, under the conveyance is a tenant or an authorized occupant of the Housing Authority in respect of the property acting on his or her</p>

own behalf; and

- (b) that transferee, or each of those transferees, is not a beneficial owner of any other residential property in Hong Kong.”.

13 By adding—

“29BJ. Certain agreements for sale of residential property related to Public Rental Housing Flats under Tenants Purchase Scheme to tenants or authorized occupants chargeable with ad valorem stamp duty at Scale 2 rates

- (1) An agreement for sale is chargeable with stamp duty under Scale 2 of head1(1A) in the First Schedule if—
 - (a) the property concerned is residential property;
 - (b) the acquisition of the property is made under the Tenants Purchase Scheme of the Housing Authority; and
 - (c) 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 property—
 - (a) the purchaser, or each of the purchasers, under the agreement is a tenant or an authorized occupant of the Housing Authority in respect of the property acting on his or her own behalf; and

(b) that purchaser, or each of those purchasers, is not a beneficial owner of any other residential property in Hong Kong.”.

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, 29AR, 29BA, 29BB, 29BBA, 29BC, 29BD, 29BE, 29BF, 29BG, 29BH, 29BI, 29BJ,”.”.

Stamp Duty (Amendment) Bill 2013

Committee Stage

Amendments to be moved by the Honourable Tommy CHEUNG Yu-yan

<u>Clause</u>	<u>Amendment Proposed</u>
18	<p>By deleting the proposed section 29DF and substituting—</p> <p style="margin-left: 40px;">“29DF. Partial refund of ad valorem stamp duty on disposal of residential property in certain circumstances</p> <p style="margin-left: 40px;">(1) In this section—</p> <p style="margin-left: 80px;"><i>applicable instrument</i> (適用文書) means an instrument—</p> <p style="margin-left: 120px;">(a) under which a residential property (whether or not together with a car parking space permitted for the parking of 1 motor vehicle) is acquired; and</p> <p style="margin-left: 120px;">(b) 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;</p> <p style="margin-left: 80px;"><i>original property</i> (原物業), in relation to a person who acquires a subject property under an applicable instrument, means another residential property (whether or not together with a car parking space permitted for the parking of 1 motor vehicle) of which the person is a beneficial owner on the date of that acquisition;</p> <p style="margin-left: 80px;"><i>specified amount</i> (指明款項) means—</p> <p style="margin-left: 120px;">(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</p>

First Schedule in accordance with Division 2;
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 in accordance with Division 3;

subject property (標的物業) means the residential property, or the residential property and car parking space, acquired under an applicable instrument.

- (2) The Collector may, on an application made by a person (***applicant***) who had paid stamp duty on an applicable instrument, refund to the applicant the specified amount if—

- (a) subsection (3) or (4) applies to the disposal of an original property of the applicant; and
- (b) had the original property been disposed of before the subject property was acquired, the applicable instrument would have been chargeable with stamp duty under Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule.

- (3) This subsection applies to the disposal of an original property of the applicant if—

- (a) it is shown to the satisfaction of the Collector that the original property is disposed of by the applicant under an agreement for sale that is made within the period specified in subsection (5);
- (b) it is shown to the satisfaction of the Collector that the original property is transferred or divested from the applicant under a conveyance on sale executed in conformity with that agreement; and

- (c) the application for refund is made by the applicant not later than 2 years after the date of the applicable instrument, 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.
- (4) This subsection applies to the disposal of an original property of the applicant if—
- (a) it is shown to the satisfaction of the Collector that the original property is transferred or divested from the applicant under a conveyance on sale within the period specified in subsection (5); and
 - (b) the application for refund is made by the applicant not later than 2 years after the date of the applicable instrument, 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.
- (5) For subsections (3)(a) and (4)(a), the following period is specified—
- (a) if the applicable instrument is a conveyance on sale—12 months after the date of that instrument; or
 - (b) if the applicable instrument is an agreement for sale—12 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.”.

23 In the proposed section 71, by adding—

- “(5) Save and except sections 29DE, 29DF, 29DG and 29DH and other provisions of this Ordinance in so far as they are necessary to give effect to those sections, the Amendment Ordinance must cease to have effect at midnight on 23 February 2015 and the pre-amended Ordinance must be reinstated at midnight on the same date.
- (6) The Financial Secretary may, subject to the approval of the Legislative Council, by notice published in the Gazette amend subsection (5) by substituting for the date specified in that subsection such date as may be specified in the notice.”.

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.”.