

A BILL

To

Amend the Stamp Duty Ordinance to give effect to the proposal in the Budget introduced by the Government for the 2014–2015 financial year to waive stamp duty payable on the transfer of shares or units of exchange traded funds.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Stamp Duty (Amendment) Ordinance 2014.

2. Stamp Duty Ordinance amended

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 6.

3. Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)

After section 19(1D)—

Add

“(1DA) Subsection (1) does not apply to a transaction specified in Part 2 of Schedule 8.”.

4. Section 63 amended (regulations)

Section 63(c), after “Schedules”—

Add

“, and Schedule 8”.

5. First Schedule amended

(1) First Schedule—

Repeal

“Sch. 7]”

Substitute

“Schs. 7 & 8]”.

(2) First Schedule, head 2(3), paragraph (A), after “stock”—

Add

“; but see Note 4 to this sub-head”.

(3) First Schedule, head 2(3), after Note 3—

Add

“Note 4

Stamp duty under this sub-head is not payable on a transfer specified in Part 3 of Schedule 8”.

(4) First Schedule, head 2(4), paragraph (A)—

Repeal

“Note”

Substitute

“Notes 1 and 2”.

- (5) First Schedule, head 2(4)—

Renumber the Note as Note 1.

- (6) First Schedule, head 2(4), after Note 1—

Add

“Note 2

Stamp duty under this sub-head is not payable on a transfer specified in Part 4 of Schedule 8”.

6. Schedule 8 added

After Schedule 7—

Add

“Schedule 8

[ss. 19 & 63 &
1st Sch.]

**Transactions and Transfers Relating to Exchange
Traded Funds**

Part 1

Interpretation

1. In this Schedule—

collective investment scheme (集體投資計劃) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

constitutive documents (組成文件), in relation to a collective investment scheme, means the principal documents governing the establishment of the scheme;

exchange traded fund (交易所買賣基金) means an open-ended collective investment scheme the shares or units of which are listed or traded on a recognized stock market;

offering document (要約文件), in relation to a collective investment scheme, means a document—

- (a) inviting participation in the scheme by prospective shareholders or prospective unit holders of the scheme; and
- (b) containing information relating to the establishment or administration of the scheme;

open-ended collective investment scheme (開放式集體投資計劃) means a collective investment scheme the shares or units of which may be repurchased or redeemed at the request of any of its shareholders or unit holders—

- (a) at a price calculated wholly or mainly by reference to the net asset value of the scheme; and
- (b) in accordance with the frequency for repurchase or redemption, requirements and procedures set out in the offering document or constitutive documents of the scheme;

purchase (購買), ***sale*** (售賣) and ***sale or purchase*** (售賣或購買) have the meaning given by section 19(16).

Part 2

Transactions to which Section 19(1) does not Apply

1. A sale or purchase of a share or unit of an exchange traded fund.
2. A transaction that is deemed under section 19(1E)(a) or (12) to be a sale and purchase of Hong Kong stock where the stock involved is a share or unit of an exchange traded fund.

Part 3

Transfers on which Stamp Duty under Head 2(3) in First Schedule is not Payable

1. A transfer executed for a transaction by which the beneficial interest in a share or unit of an exchange traded fund passes otherwise than on sale and purchase.
2. An instrument that is deemed under section 30(3) to be a transfer operating as a voluntary disposition inter vivos under section 27(4) where the unit trust scheme involved is an exchange traded fund.

Part 4

Transfers on which Stamp Duty under Head 2(4) in First Schedule is not Payable

1. A transfer executed for a transaction by which a share or unit of an exchange traded fund is transferred.
 2. An instrument that is deemed under section 30(3), (4) or (5) to be a transfer falling within head 2(4) in the First Schedule where the unit trust scheme involved is an exchange traded fund.”.
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Explanatory Memorandum

The object of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) (**Ordinance**) to give effect to one of the proposals in the Budget introduced by the Government for the 2014–2015 financial year. The proposal is to waive stamp duty payable on the transfer of shares or units of exchange traded funds.

2. Clause 1 sets out the short title.
3. Subsection (1) of section 19 of the Ordinance provides that a person who effects any sale or purchase of Hong Kong stock must execute a contract note and cause the note to be stamped under head 2(1) or (2) in the First Schedule to the Ordinance. Clause 3 adds a new subsection (1DA) to that section. It provides that subsection (1) of that section does not apply to the transactions specified in Part 2 of the new Schedule 8 (namely a sale or purchase of a share or unit of an exchange traded fund and a transaction that is deemed under section 19(1E)(a) or (12) of the Ordinance to be a sale and purchase of Hong Kong stock where the stock involved is a share or unit of an exchange traded fund).
4. Clause 4 amends section 63 of the Ordinance to enable the Financial Secretary to amend the new Schedule 8 by regulations.
5. Clause 5(3) adds a new Note 4 to head 2(3) in the First Schedule to the Ordinance. It provides that stamp duty under that head is not payable on the transfers specified in Part 3 of the new Schedule 8 (namely a transfer executed for a transaction by which the beneficial interest in a share or unit of an exchange traded fund passes otherwise than on sale and

purchase and an instrument that is deemed under section 30(3) of the Ordinance to be a transfer operating as a voluntary disposition inter vivos under section 27(4) of the Ordinance where the unit trust scheme involved is an exchange traded fund).

6. Clause 5(6) adds a new Note 2 to head 2(4) in the First Schedule to the Ordinance. It provides that stamp duty under that head is not payable on the transfers specified in Part 4 of the new Schedule 8 (namely a transfer executed for a transaction by which a share or unit of an exchange traded fund is transferred and an instrument that is deemed under section 30(3), (4) or (5) of the Ordinance to be a transfer falling within that head where the unit trust scheme involved is an exchange traded fund).
7. Clause 6 adds a new Schedule 8 to the Ordinance. Part 1 of the Schedule defines *collective investment scheme*, *constitutive documents*, *exchange traded fund*, *offering document*, *open-ended collective investment scheme*, and *purchase, sale and sale or purchase*. Part 2 of the Schedule sets out the transactions to which section 19(1) of the Ordinance does not apply by operation of the newly added section 19(1DA) mentioned in paragraph 3. Part 3 of the Schedule sets out the transfers on which stamp duty under head 2(3) in the First Schedule to the Ordinance is not payable. Part 4 of the Schedule sets out the transfers on which stamp duty under head 2(4) in the First Schedule to the Ordinance is not payable.