立法會
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Paper for the House Committee Meeting on 19 December 2014

Legal Service Division Report on Stamp Duty (Amendment) Bill 2014

I. SUMMARY

1.	**The Bill**	The Bill seeks to amend the Stamp Duty Ordinance (Cap. 117) to waive stamp duty payable on the transfer of shares or units of exchange traded funds to give effect to the proposal in the Budget introduced by the Government for the 2014-2015 financial year.
2.	**Public Consultation**	There is no information on whether any public consultation has been conducted.
3.	**Consultation with LegCo Panel**	According to the Clerk to the Panel on Financial Affairs, the Panel was consulted on 7 July 2014 and members supported the proposal in principle.
4.	**Conclusion**	The Legal Service Division is seeking clarification with the Administration on certain technical issues and will report further if necessary. Members may wish to consider whether a Bills Committee should be formed to study the policy aspects of the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 17 December 2014. Members may refer to the Legislative Council (LegCo) Brief (File Ref: SF&C/1/2/57/1C Pt 3) issued by the Financial Services and the Treasury Bureau on 3 December 2014 for further details.

Object of the Bill

2. The Bill seeks to amend the Stamp Duty Ordinance (Cap. 117) to waive stamp duty payable on the transfer of shares or units of exchange traded funds to give effect to the proposal in the Budget introduced by the Government for the 2014-2015 financial year.

Background

3. Under section 19(1) of Cap. 117, a person who effects any sale or purchase of Hong Kong stock as principal or agent is required to make and execute a contract note and cause the note to be stamped under head 2(1)[1] or 2(2)[2] in the First Schedule to Cap. 117. A transfer of Hong Kong stock is also chargeable with stamp duty under head 2(3)[3] or 2(4)[4] in the First Schedule to Cap. 117.

4. In Hong Kong, exchange traded funds (ETFs), according to paragraph 2 of the LegCo Brief, are open-ended collective investment schemes the shares or units of which are listed or traded on the Stock Exchange of Hong Kong. Without any exemption or remission provided, sale or purchase or transfer of shares or units of ETFs is subject to stamp duty under Cap. 117.

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[1] Under head 2(1) of the First Schedule to the Ordinance, contract notes for the sale or purchase of any Hong Kong stock, not being jobbing business, are charged to ad valorem duty at the rate of 0.1% of the amount of the consideration or of its value on which the contract note falls to be executed. The agent is liable for the payment of duty, or where there is no agent, the principal effecting the sale or purchase is liable for stamp duty.

[2] Under head 2(2) of the First Schedule to the Ordinance, stamp duty is charged on a contract note in respect of jobbing business on every note required to be made at a fixed duty of $5. The exchange participant effecting the sale or purchase is liable for stamp duty.

[3] Under head 2(3) of the First Schedule to the Ordinance, a transfer which operates as a voluntary disposition inter vivos of Hong Kong stock or is made for the purpose of effectuating a transaction whereby the beneficial interest in Hong Kong stock passes otherwise than on sale and purchase is chargeable to ad valorem duty at the rate of 0.2% by reference to the value of the stock plus a fixed duty of $5. Both the transferor and transferee are liable to pay stamp duty.

[4] Under head 2(4) of the First Schedule to the Ordinance, transfer of Hong Kong stock of any other kind is subject to stamp duty. A transfer falling with this charging head is liable to a fixed duty of $5. The transferor and the transferee are liable for the payment of stamp duty.

5. Under section 52 of Cap. 117, the Chief Executive may remit, wholly or in part, the stamp duty payable or refund, wholly or in part, the stamp duty paid in respect of any instrument chargeable with stamp duty. According to paragraph 3 of the LegCo Brief, the Government has since 2010 granted on a case-by-case basis stamp duty remission pursuant to section 52 of Cap. 117 to ETFs with their registers of holders maintained in Hong Kong that track indices comprising not more than 40% in Hong Kong stocks as an initiative to encourage the listing of ETFs tracking regional indices in Hong Kong. ETFs with a higher percentage of Hong Kong stocks in their portfolios are still subject to stamp duty. This, according to the Administration, is different from other jurisdictions including Australia, Japan, Korea, Mainland China, Singapore and the United States, which do not impose stamp duty on the transactions of ETF shares or units.

6. The Financial Secretary proposed in the 2014-15 Budget to waive the stamp duty for the transfer of all ETF shares or units, so that the transaction cost of ETFs with their registers of holders in Hong Kong and with more than 40% of Hong Kong stocks in their portfolios can also be reduced. According to paragraph 7 of the LegCo Brief, this will help promote the development, management and trading of ETFs in Hong Kong which will be conducive to fostering Hong Kong's position as an asset management centre and the development of our financial services centre as a whole.

Provisions of the Bill

7. To give effect to the above proposal, the Bill adds a new Schedule 8 to Cap. 117 to specify the types of transactions and transfers relating to ETFs that are not chargeable with stamp duty under Cap. 117. These include a sale or purchase of a share or unit of an ETF and a transfer executed for a transaction by which the beneficial interest in a share or unit of an ETF passes otherwise than on sale or purchase.

8. Clause 6 of the Bill adds the definitions of "exchange traded fund" and other related terms in Part 1 of the new Schedule 8. "Exchange traded fund" is defined to mean an open-ended collective investment scheme the shares or units of which are listed or traded on a recognized stock market. As proposed in the new Schedule 8, the term "collective investment scheme" has the same meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

9. Clause 4 of the Bill amends section 63 of Cap. 117 to empower the Financial Secretary to amend the new Schedule 8 by regulations. Such regulations would be subsidiary legislation subject to amendment by the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

Commencement

10. The Bill, if passed, would come into operation on the day on which it is published in the Gazette.

Public Consultation

11. There is no information on whether any public consultation has been conducted.

Consultation with LegCo Panel

12. The Clerk to the FA Panel has advised that the Panel was consulted on the proposal to implement the stamp duty waiver for the transfer of shares or units of all ETFs on 7 July 2014. While members supported the proposal in principle, they had made enquiries on various issues, including the benefits of the proposed stamp duty waiver, measures to address possible abuse of the proposed waiver, factors affecting ETF issuers' decision to domicile or list an ETF in a particular area, and measures taken by the Administration to promote the development of Hong Kong's asset management industry.

Conclusion

13. The Legal Service Division is seeking clarification with the Administration on certain technical issues and will report further if necessary. In view of the above questions raised by members of the FA Panel, Members may wish to consider whether a Bills Committee should be formed to study the policy aspects of the Bill in detail.

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