

**立法會**  
**Legislative Council**

LC Paper No. LS29/14-15

**Paper for the House Committee Meeting  
on 9 January 2015**

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

Members may recall that at the House Committee meeting on 19 December 2014, the Legal Service Division (LSD) reported that it was seeking clarification with the Administration on certain technical issues on the Stamp Duty (Amendment) Bill 2014 (the Bill) and a further report would be made, if necessary.

2. The Bill seeks to waive stamp duty payable on the transfers of shares or units of exchange traded funds (ETFs) to give effect to the proposal in the 2014-15 Budget. Part 3 of the new Schedule 8 to the Stamp Duty Ordinance (Cap. 117) as proposed in the Bill sets out the types of transfer of ETFs on which the stamp duty payable under head 2(3) in the First Schedule to Cap. 117 is not payable. It is noted that the Administration's intent under that Part is to exempt (a) transfer operating as a voluntary disposition inter vivos of a share or unit of an ETF and; (b) transfer made for the purpose of effectuating a transaction whereby the beneficial interest in a share or unit of an ETF passes otherwise than on sale and purchase, irrespective of whether an ETF is a unit trust scheme, from stamp duty under head 2(3) in the First Schedule to Cap. 117. However, as there is no express reference to "transfer operating as a voluntary disposition inter vivos" in Part 3 of the new Schedule 8, we are concerned that it may not be entirely clear whether such transfer would be covered in the proposed waiver scheme.

3. In response to our above concern, the Administration has explained as follows:-

- (a) A transfer executed in respect of a transaction in a share or unit of an ETF is chargeable with stamp duty under head 2(3) in the First Schedule to Cap. 117 if the transaction is undertaken for no valuable consideration. Such a transfer is a transfer operating as a voluntary disposition inter vivos and is not, for stamp duty purposes, a transfer in respect of a sale and purchase.

- (b) If by reason of the inadequacy of the sum paid as consideration or other circumstances, a transfer confers a substantial benefit on the person to whom an ETF share or unit is transferred, that transfer is deemed to be a transfer operating as a voluntary disposition inter vivos under section 27(4) of Cap. 117. Section 27(4) of Cap. 117 further provides that the consideration for the transfer concerned is deemed not to be valuable consideration. It follows that, for stamp duty purposes, the underlying transaction of that transfer would not be regarded as a sale and purchase of an ETF share or unit. According to the Administration, its view is supported by section 19(16) of Cap. 117 which provides that "sale or purchase" includes, amongst others, any disposal or acquisition (other than an allotment) for valuable consideration, and any reference to "sale" or "purchase" shall be construed accordingly.

4. While it would be desirable to include an express reference to "transfer operating as a voluntary disposition inter vivos" in Part 3 of the new Schedule 8 to Cap. 117 to put it beyond doubt that such transfer would not be chargeable with stamp duty under Cap. 117, given that a transfer operating as a voluntary disposition inter vivos involves the passing of beneficial interest in an ETF share or unit otherwise than on sale and purchase, we agree that such transfer could be regarded as being covered by the proposed exemption provided under section 1 of Part 3 of the new Schedule 8 to Cap. 117 as suggested by the Administration.

5. Subject to Members' views on this issue, we have no further comments relating to the legal or drafting aspect of the Bill.

Prepared by

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