



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2761 7444)

8 February 2017

Miss KOK Sen Yee, Joyce
Prin Asst Secy (Housing)(Private Housing)
Housing Department
Housing Authority Headquarters
33 Fat Kwong Street
Ho Man Tin, Kowloon

Dear Miss KOK,

Stamp Duty (Amendment) Bill 2017

I am scrutinizing the legal and drafting aspects of the Bill and would like to seek clarification on the following points -

Clause 5 – section 29AI and Clause 7 – section 29BA

The proposed amended section 29AI provides that a conveyance on sale is chargeable with stamp duty at the existing ad valorem stamp duty ("AVD") rates if the property concerned is non-residential property (section 29AI(a)), and at the new AVD rate (i.e. a flat rate of 15%) "in any other case" (section 29AI(b)). There is a similar provision in the proposed amended section 29BA in relation to an agreement for sale. As the Bill seeks to impose the new AVD rate on certain instruments dealing with residential properties, please explain the reason for stating "in any other case" in sections 29AI(b) and 29BA(b) instead of "if the property concerned is residential property" similar to their respective subsection (a). What "other cases" are contemplated other than residential properties?

Clause 6 – section 29AIA and Clause 8 – section 29BAB

The headings of the proposed new sections 29AIA and 29BAB provide "...exchange between residential property and non-residential property...". This means the exchange of a residential property for a non-residential property,

or vice versa. However, it is noted that the Chinese rendition of the two headings and the relevant provisions refer to the exchange of a residential property for a non-residential property. Although section 18(3) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that a section heading shall not have any legislative effect and shall not in any way vary, limit or extend the interpretation of any Ordinance, for the sake of clarity and consistency, please consider amending the two English headings.

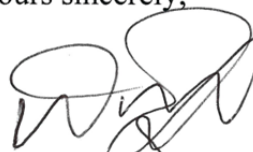
Further, the proposed new sections 29AIA and 29BAB are substantially similar except that they relate to different instruments. However, it is noted that the provisions are drafted differently in that section 29AIA(1) provides "...the instrument effects the exchange of a residential property for a non-residential property and consideration is paid or given by the person who transfers the residential property..." while section 29BAB(1) provides "...the agreement provides for the transfer of a residential property by a person in exchange for a non-residential property and consideration is paid or given, or agreed to be paid or given, by the person...". Please explain the difference and consider amending the provisions so that they are drafted in similar manner.

Other provisions

There are provisions in the Stamp Duty Ordinance (Cap. 117) which relate specifically to residential property ("the Provisions") such as sections 29DF, 29DG and 29DH. As the proposed new AVD rate applicable to residential properties are set out in the amended Part 1 of Scale 1 of head 1(1) (in relation to conveyance on sale) and Part 1 of Scale 1 of head 1(1A) (in relation to agreement for sale) in the First Schedule to Cap. 117, for the sake of clarity, please consider amending all relevant references of "Scale 1" to "Part 1 of Scale 1" in the Provisions.

I would appreciate if you could let me have the said information (in both Chinese and English with soft copy to Miss Kathy NG at pcng@legco.gov.hk) at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Winnie LO', written in a cursive style.

(Winnie LO)

Assistant Legal Adviser

c.c. LA
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