

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

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24 February 2017

Miss Winnie LO
Assistant Legal Adviser 7
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss LO,

Stamp Duty (Amendment) Bill 2017

Thank you for your letter dated 8 February 2017. We set out below our clarification on the issues raised in your letter.

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

2. The proposed amended sections 29AI and 29BA are drafted in a manner similar to the existing sections 29AI and 29BA of the Stamp Duty Ordinance (Cap. 117) (SDO). To leave no uncertainty, the phrase “in any other case” is adopted in the proposed sections 29AI(b) and 29BA(b) to cover all the remaining instruments other than those concerning non-residential property. One example of these “other cases” will be an instrument that effects the exchange of a residential property for a non-residential property, and that the consideration is paid or given by the person who transfers the non-residential property under the instrument for equality. For this example, the proposed stamp duty rate under Part 1 of Scale 1 of head 1(1) in the First Schedule (i.e. the new flat rate of 15%) will be applicable.

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

3. The bilingual versions of the headings of the proposed new sections 29AIA and 29BAB are drafted in a manner similar to those of the existing sections 29AO and 29BG. While the Chinese rendition of the headings of all sections mentioned above refers to “以住宅物業交換非住宅物業 (the exchange of a residential property for a non-residential property)”, we are of the view that there is no difference in the meaning between the bilingual versions. From the syntax point of view, using “以…交換…” in the Chinese text and “...exchange between ...” in the English text seems to provide a better flow of language in the two texts. Given that the existing headings have not caused ambiguity to the public, for the sake of consistency and clarity, we consider that the headings of new sections 29AIA and 29BAB should remain unchanged.

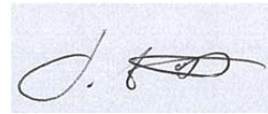
4. The proposed new section 29AIA(1) is drafted in a manner similar to the existing sections 29AO(1) and 29AP(1), both of which provide the applicable scales of ad valorem stamp duty (AVD) payable for instruments effecting exchange of properties, whereas section 29BAB(1) is drafted in a manner similar to the existing sections 29BG(1) and 29BH(1), both of which provide the applicable scales of AVD payable for agreements that provide for exchange of properties. To elaborate, an exchange of properties is completed only when an instrument is executed to “effect” the exchange at the time of execution. The proposed new section 29AIA(1) is thus drafted to provide for the applicable scale of AVD payable for a **performed** instrument by way of exchange (i.e. the necessary action for the exchange of properties has been performed). On the other hand, an agreement that provides for an exchange of properties is different – the agreement does not “effect” the exchange at the time of the signing of the agreement, and merely “provides for” the exchange. In view of the above, the proposed new sections 29AIA(1) and 29BAB(1) have to be drafted in a manner different from each other so as to deal with two distinct cases.

Other provisions

5. Under the existing stamp duty regime, partial refund and underpayment of AVD, as well as further AVD payable on failure to complete property transaction, as provided for under sections 29DF, 29DG and 29DH involve an amount equal to the difference between AVD chargeable under Scales 1 and 2 of head 1(1), or head 1(1A), in the First Schedule to SDO. If the Stamp Duty (Amendment) Bill 2017 (the Bill) is passed, the relevant references of “Scale 1”

in these existing provisions which relate specifically to residential property will unequivocally refer to Part 1 of Scale 1 of head 1(1), or Part 1 of Scale 1 of head 1(1A), in the First Schedule to the amended SDO. We consider that keeping the relevant references of “Scale 1” intact in these existing provisions does not cause ambiguity to the public and should thus remain unchanged.

6. Please feel free to contact the undersigned at 2761 5117 should you have further inquiries on the Bill.

A handwritten signature in black ink, appearing to be 'J. KOK', on a light blue rectangular background.

(Joyce KOK)
for Secretary for Transport and Housing

C.C.

Secretary for Justice

(Attn : Ms Françoise LAM)

(Attn : Miss Wendy HO)

Commissioner of Inland Revenue (Attn : Ms TSE Yuk-yip)