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 OF HONG KONG  
 香港律師會

**110**<sup>th</sup>  
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The Honourable Wong Ting Kwong  
 Chairman of Bills Committee on  
 Stamp Duty (Amendment) Bill 2017  
 Legislative Council Complex  
 1 Legislative Council Road  
 Central, Hong Kong.

**BY E-MAIL and BY POST**  
 (bc\_01\_16@legco.gov.hk)

Dear Mr. Wong,

### Stamp Duty (Amendment) Bill 2017

The Law Society has reviewed the Stamp Duty (Amendment) Bill 2017 ("the Amendment Bill"). We have considered the Administration's policy intent of maintaining the existing exceptions/exemptions and refund mechanism of stamp duty under the Double Stamp Duty (DSD) regime for a Hong Kong Permanent Resident (HKPR)-buyer who replaces his/her single residential property. The refund mechanism which the Administration is proposing to maintain is spelt out in details in a footnote (6) in a LegCo Brief prepared by the Housing and Transport Bureau in January 2017 (File Ref.: HDCR4-3/PH/1-10/0-1):

*"A HKPR who is acquiring a residential Property B to replace his/her only other residential Property A can apply for partial refund of AVD paid for acquiring Property B. He/she will be subject to the proposed new flat rate in the first instance, but he/she may seek a refund of the stamp duty paid in excess of that computed under the lower AVD rates upon proof that Property A has been disposed of within six months from the date Property B was assigned to him. There is a general time limit for claiming refunds, which is within two years after the date of the chargeable instrument for acquisition of Property B or not later than two months after the date of the assignment for the disposal of Property A, whichever is the later"*

.../P.2



The above follows squarely the Court of Appeal ruling in *Ho Kwok Tai v Collector of Stamp Revenue* [2016] 5 HKLRD 713, whereby the Court of Appeal reversed the decision of the Court of First Instance; it agreed that the Collector was correct in refusing to refund part of the stamp duty to the Appellant on the ground that the Appellant owned two, instead of one, properties at the time of purchase of the Subject Property. Section 29DF of the Stamp Duty Ordinance, Cap 117, which provides for refund of stamp duty under certain circumstances, would be available to the party which possess only *one* property at the material times.

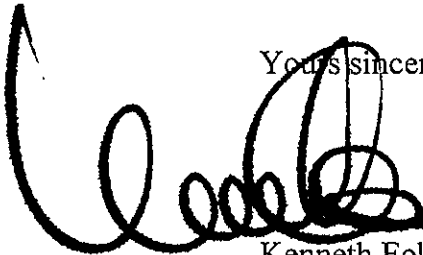
We ask that the Administration to have a re-think on the above policy intent and consider whether, in the light of the recent trends in the market, it is desirable to relax section 29DF in view of the stringent construction of section 29DF by the Court of Appeal in the refund mechanism, so that stamp duty could be refundable, if the purchaser who used to own more than one residential properties, has sold all his properties within the time limit after the date of conveyance on sale of the new residential property. Should the Administration consider it desirable to relax section 29DF, we ask that the Amendment Bill be amended to (i) implement the relaxation and (ii) adopt the same relaxation for the new flat rate ad valorem stamp duty on transactions involving residential properties that the Amendment Bill seeks to introduce.

We make the above appeal because

1. recently, developers have been building flats of shrinking sizes to meet surging demand for more affordable homes, amid sky-high prices and a perennial shortage of living space. These flats (labelled sarcastically as "nano flats") are much sought after by first-time buyers, whose budgets are limiting their choices. An owner of a nano flat may, when he/she has added family members, have bought two or more such nano flats for self-occupation. When such an owner intends to change for a larger housing unit to accommodate more or all of his/her family members, he/she will need to raise capital from the sale of all of their nano flats so as to raise sufficient finance. A limitation of refund mechanism, as what has been construed by the Court of Appeal in the case of *Ho Kwok Tai* (supra), and been followed in the Amendment Bill, would only frustrate the intention of people to change for larger housing units. That would throttle the market, freeze the supply, thus jerk up the property prices;

2. a relaxation of section 29DF to allow partial refund of stamp duty provided that he/she shall dispose of all his/her currently-owned residential properties within the time limit after the date of conveyance of the new residential property could encourage owners of two or more units to sell those units in exchange for the procurement of a larger unit. As a matter of mathematics, this would increase the supply of units in the secondary market, thereby help stabilizing or even cooling the property market.

Yours sincerely,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Kenneth Fok  
Director of Practitioners Affairs