

Stamp Duty (Amendment) Bill 2017

**Government's response to the draft committee stage amendments
proposed by the Hon James TO**

This paper sets out the Government's response to the draft committee stage amendments (CSAs) proposed by the Hon James TO in his letter dated 9 June 2017 (LC Paper No. CB(1)1095/16-17(01) refers).

Issues covered by the proposed CSAs

2. The Hon James TO's proposed CSAs seek to amend Clauses 5 and 7 of the Stamp Duty (Amendment) Bill 2017 (the Bill), as follows –

- (a) to amend the proposed sections 29AI and 29BA of the Stamp Duty Ordinance (the Ordinance), to the effect that a Hong Kong permanent resident (HKPR) who acquires a new residential property before disposing of his/her only original property is allowed to pay the basic ad valorem stamp duty (AVD) at Scale 2 for acquisition of the new property in the first instance, and to provide the Inland Revenue Department (IRD) with a bank guarantee of an amount equal to the difference between stamp duty payments calculated at the New Residential Stamp Duty (NRSD) rate of 15% and Scale 2 rates). The bank guarantee shall be dismissed if the application for partial refund of AVD as provided for under section 29DF of the Ordinance is approved; or shall be honoured if the application concerned is rejected or no application is made within the statutory time limit; and
- (b) to amend the proposed sections 29AI and 29BA, to the effect that the statutory time limit for disposal of the original property as provided for under section 29DF of the Ordinance is extended from six months to nine months or 12 months from the date of executing the conveyance on sale of the new property.

Government's response

Policy considerations

3. The draft CSAs proposed by Hon James TO aims to relax the requirements under the refund mechanism as provided for under the Ordinance. We have already provided detailed responses to the proposals vide LC Papers Nos. CB(1)930/16-17(02) and CB(1)1050/16-17(03), which have been thoroughly discussed at previous meetings. We will not repeat our views here, but suffice to say that in considering whether certain requirements under the existing refund mechanism should be relaxed, the Government has to take into account impacts of the proposals on the property market as a whole, and to strike a right balance between taking care of the needs of HKPRs in replacing their properties on the one hand, and safeguarding the effectiveness of the demand-side management measures on the other. In view of the current buoyancy in the property market, we consider it important to act prudently and to avoid sending a wrong message to the market that we are relaxing the demand-side management measures. The Government therefore considers it not an appropriate timing to adjust the refund mechanism, lest this will undermine the effectiveness of the NRSD and further aggravate the risk of a housing bubble.

Scope of the Bill

4. Apart from the considerations from the policy perspective, we are of the view that the draft CSAs proposed by Hon James TO are outside the scope of the Bill. In considering the scope of a bill, the established approach is to take into account the long title, the explanatory memorandum and the provisions of the bill, as well as the Legislative Council Brief on the bill and other relevant factors. For the current Bill, its explanatory memorandum states that the object of the Bill is to introduce a new flat rate for the AVD payable on certain instruments dealing with residential property under the Ordinance. Besides, when introducing the Bill into the Legislative Council in February 2017, the Government stated clearly, in both the Legislative Council Brief on the Bill and the speech in moving the Second Reading of the Bill, that the NRSD measure would continue to adopt the exemption arrangements and

maintain the refund mechanism under the doubled ad valorem stamp duty regime. This indicates that the Government has no intention to change the prevailing exemption arrangements and refund mechanism by way of the Bill.

5. We therefore consider that any CSA which seeks to change the prevailing exemption arrangements or refund mechanism would likely be considered as outside the scope of the Bill. This is also the reason why when the Government decided to tighten the exemption arrangement for HKPRs to address the concerns over acquisition of multiple residential properties under a single instrument, we have to introduce a new bill, the Stamp Duty (Amendment) (No.2) Bill 2017, to give effect to the tightened exemption arrangement as announced on 11 April 2017.

Drafting aspect

6. From the drafting perspective, we note that reference is made to section 29DF of the Ordinance in the draft CSAs. However, the proposed provisions cannot be implemented without explaining how the concepts and defined terms in section 29DF (e.g. original property; subject property; specified amount; application period, etc.) are to be applied in the context of the provisions. In other words, concepts and definitions in section 29DF have to be set out clearly (with suitable modifications) in the proposed section 29AI in order to make the section intelligible and workable. Furthermore, the draft CSAs seek to place all the amendments to the refund mechanism under Clauses 5 and 7 of the Bill (i.e. the proposed sections 29AI and 29BA of the Ordinance). Yet, these sections only prescribe the scale of rates that are applicable to a certain type of instrument, and do not deal with payment of stamp duty and the time limit for disposal of the original property. We therefore consider it inappropriate to place the application for extending the statutory time limit as referred to in section 29DF(5) of the Ordinance in these sections.

**Transport and Housing Bureau
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