

Stamp Duty (Amendment) (No. 2) Bill 2017

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A BILL

To

Amend certain provisions of the Stamp Duty Ordinance that impose ad valorem stamp duty at Scale 2 rates on instruments of residential properties, with or without car parking spaces, acquired by Hong Kong permanent residents, so that those provisions apply only to an instrument that deals with a single residential property, with or without a car parking space; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Stamp Duty (Amendment) (No. 2) Ordinance 2017.
- (2) This Ordinance is deemed to have come into operation on 12 April 2017.

2. Stamp Duty Ordinance amended

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 9.

3. Section 29A amended (interpretation and application of Part IIIA)

- (1) Section 29A(1)—

Add in alphabetical order

“*authorized person* (認可人士) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

Building Authority (建築事務監督) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

building plan (建築圖則) means a plan that is approved by the Building Authority for the purposes of section 14(1) of the Buildings Ordinance (Cap. 123);

single residential property (單一住宅物業) includes—

~~(a) a unit and a roof situated immediately above the unit;~~

(a) a unit and a roof situated in the same building;

(b) a unit and an adjacent garden; and

(c) a unit that became a single unit following the demolition of the walls or the floor, or any part of the walls or the floor, separating two walls, or any part of the walls, separating two adjoining units as shown by—

(i) a building plan and a letter issued by the Building Authority acknowledging receipt of a certificate of completion of the building works relating to the demolition as required under the Building (Administration) Regulations (Cap. 123 sub. leg. A); or

(ii) a plan signed by an authorized person after the completion of the building works relating to the demolition;”.

- (2) After section 29A(1)—

Add

“(1A) The Collector may determine whether a residential property is a single residential property and, in making

such determination, may have regard to any of the following documents—

- (a) the building plans, or plans signed by an authorized person, in respect of the residential property or the building of which the residential property forms part;
- (b) the deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap. 344), of the building of which the residential property forms part;
- (c) the occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123) in respect of the residential property or the building of which the residential property forms part;
- (d) any other document that the Collector considers relevant.”.

4. Section 29AJ amended (certain conveyances on sale of residential property to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)

Section 29AJ(1)(a), before “residential property”—

Add

“a single”.

5. Section 29AK amended (certain conveyances on sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)

Section 29AK(1)(a), before “residential property”—

Add

“a single”.

6. Section 29BB amended (certain agreements for sale of residential property to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)

Section 29BB(1)(a), before “residential property”—

Add

“a single”.

7. Section 29BC amended (certain agreements for sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)

Section 29BC(1)(a), before “residential property”—

Add

“a single”.

8. Section 73 added

After section 72—

Add

“73. Transitional provisions for sections 29AJ, 29AK, 29BB and 29BC as amended by Stamp Duty (Amendment) (No. 2) Ordinance 2017

(1) In this section—

additional stamp duty (附加印花稅)—

- (a) in relation to an applicable instrument that is chargeable with stamp duty under Part 1 of Scale 1 of head 1(1) in the First Schedule, means the difference between that stamp duty and the stamp duty chargeable on the instrument under Scale 2 of head 1(1) in the First Schedule; and

- (b) in relation to an applicable instrument that is chargeable with stamp duty under Part 1 of Scale 1 of head 1(1A) in the First Schedule, means the difference between that stamp duty and the stamp duty chargeable on the instrument under Scale 2 of head 1(1A) in the First Schedule;

Amendment Ordinance (《修訂條例》) means the Stamp Duty (Amendment) (No. 2) Ordinance 2017 (of 2017);

applicable instrument (適用文書) means an instrument that —

- (a) was executed on or after 12 April 2017 and before the gazettal date;
- (b) was chargeable with stamp duty under Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule under section 29AJ, 29AK, 29BB or 29BC of the pre-amended Ordinance; and
- (c) is chargeable with stamp duty under Part 1 of Scale 1 of head 1(1), or Part 1 of Scale 1 of head 1(1A), in the First Schedule because of the Amendment Ordinance;

gazettal date (刊憲日期) means the date of publication of the Amendment Ordinance in the Gazette;

pre-amended Ordinance (《未經修訂條例》) means this Ordinance as in force immediately before 12 April 2017.

- (2) If, but for this section, the time for stamping an applicable instrument with any additional stamp duty payable on the instrument begins before the gazettal date—

- (a) that time for stamping is to be replaced by a period of 30 days commencing immediately after the gazettal date; and
- (b) if stamp duty had been paid on the instrument according to Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule under section 29AJ, 29AK, 29BB or 29BC of the pre-amended Ordinance, section 9 applies only in relation to the additional stamp duty if it is not paid within the period specified in paragraph (a).
- (3) The pre-amended Ordinance continues to apply, as if the Amendment Ordinance had not been enacted, to—
- (a) an instrument that was executed before 12 April 2017;
- (b) an agreement for sale that supersedes another agreement for sale made between the same parties and on the same terms before 12 April 2017; or
- (c) a conveyance on sale that is executed in conformity with an agreement for sale made before 12 April 2017.”.

9. First Schedule amended

First Schedule, within the square brackets—

Repeal

“& 72”

Substitute

“, 72 & 73”.

Explanatory Memorandum

The object of this Bill is to amend certain provisions of the Stamp Duty Ordinance (Cap. 117) (*Ordinance*) that provide for instruments of residential properties, with or without car parking spaces, to be chargeable with ad valorem stamp duty at Scale 2 rates so that those provisions apply only to an instrument that deals with a single residential property with or without a car parking space.

2. Clause 1 sets out the short title and provides for the retrospective operation of the Bill.
3. Clause 3 adds to section 29A(1) of the Ordinance various definitions, including the definition of *single residential property*, and adds a new subsection to section 29A of the Ordinance to set out the documents that may be taken into account when determining whether a residential property is a single residential property.
4. Clauses 4, 5, 6 and 7 amend sections 29AJ, 29AK, 29BB and 29BC of the Ordinance respectively so that the residential property covered by the instruments referred to in those sections must be a single residential property.
5. Clause 8 adds a new section 73 to the Ordinance to deal with transitional matters, including those necessitated by the retrospective operation of the Bill.