

Stamp Duty (Amendment) Bill 2017

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A BILL

To

Amend the Stamp Duty Ordinance to introduce a new flat rate for the ad valorem stamp duty payable on certain instruments dealing with residential property; 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) Ordinance 2017.
- (2) This Ordinance is deemed to have come into operation on 5 November 2016.

2. Stamp Duty Ordinance amended

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 10.

3. Section 2 amended (interpretation)

- (1) Section 2(1)—
Add in alphabetical order
“*agreement for sale* (買賣協議) has the meaning given by section 29A(1);”.
- (2) After section 2(5)—

Add

- “(6) For the purposes of this Ordinance—
- (a) a conveyance on sale is executed in conformity with an agreement for sale only if it is executed as provided in section 29D(6)(c); and
 - (b) a conveyance on sale is executed in pursuance of an agreement for sale only if it is executed as provided in section 29D(6)(d).”.

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

Section 29A—

Repeal subsection (8).

5. Section 29AI substituted

Section 29AI—

Repeal the section

Substitute

“29AI. Scales of rates applicable to conveyances on sale chargeable with ad valorem stamp duty

Except as provided in sections 29AIA, 29AJ, 29AK, 29AL, 29AM, 29AN, 29AO, 29AP, 29AQ, 29AR and 29AS and Notes 1B and 1C to head 1(1) in the First Schedule, a conveyance on sale is chargeable with stamp duty—

- (a) if the property concerned is non-residential property, under Part 2 of Scale 1 of head 1(1) in the First Schedule; or
- (b) in any other case, under Part 1 of Scale 1 of head 1(1) in the First Schedule.”.

6. Section 29AIA added

After section 29AI—

Add**“29AIA. Certain instruments effecting exchange between residential property and non-residential property chargeable with ad valorem stamp duty at Part 2 of Scale 1 rates**

- (1) An instrument falls within this subsection if—
 - (a) the instrument effects the exchange of a residential property for a non-residential property; and
 - (b) consideration is paid or given by the person who transfers the residential property under the instrument for equality.
- (2) An instrument that falls within subsection (1) is chargeable with stamp duty as a conveyance on sale under Part 2 of Scale 1 of head 1(1) in the First Schedule by reference to the consideration mentioned in subsection (1).”.

7. Section 29BA substituted

Section 29BA—

Repeal the section**Substitute****“29BA. Scales of rates applicable to agreements for sale chargeable with ad valorem stamp duty**

Except as provided in sections 29BAB, 29BB, 29BC, 29BD, 29BE, 29BF, 29BG, 29BH, 29BI, 29BJ and 29BK and Note 1A to head 1(1A) in the First Schedule, an agreement for sale is chargeable with stamp duty—

- (a) if the property concerned is non-residential property, under Part 2 of Scale 1 of head 1(1A) in the First Schedule; or
- (b) in any other case, under Part 1 of Scale 1 of head 1(1A) in the First Schedule.”.

8. Section 29BAB added

After section 29BA—

Add

“29BAB. Certain agreements for exchange between residential property and non-residential property chargeable with ad valorem stamp duty at Part 2 of Scale 1 rates

- (1) An agreement falls within this subsection if—
 - (a) the agreement provides for the transfer of a residential property by a person in exchange for a non-residential property; and
 - (b) consideration is paid or given, or agreed to be paid or given, by the person for equality.
- (2) An agreement that falls within subsection (1) is chargeable with stamp duty as an agreement for sale under Part 2 of Scale 1 of head 1(1A) in the First Schedule by reference to the consideration mentioned in subsection (1).”.

9. Section 72 added

After section 71—

Add

“72. Transitional provisions for Stamp Duty (Amendment) 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 1 of head 1(1) in the First Schedule to the pre-amended Ordinance; 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 1 of head 1(1A) in the First Schedule to the pre-amended Ordinance;

Amendment Ordinance (《修訂條例》) means the Stamp Duty (Amendment) Ordinance 2017 (of 2017);

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

- (a) executed on or after 5 November 2016 and before the gazettal date; and
- (b) 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;

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 5 November 2016.

- (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 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule to 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 5 November 2016;
 - (b) an agreement for sale that supersedes another agreement for sale made between the same parties and on the same terms before 5 November 2016; or
 - (c) a conveyance on sale that is executed in conformity with an agreement for sale made before 5 November 2016.”.

10. First Schedule amended

- (1) First Schedule, within the square brackets, after “29AI,”—

Add

“29AIA,”.

- (2) First Schedule, within the square brackets, after “29BA,”—

Add

“29BAB,”.

- (3) First Schedule, within the square brackets—

Repeal

“& 71”

Substitute

“, 71 & 72”.

- (4) First Schedule, head 1(1)—

Repeal

“SCALE 1—”

Substitute

“SCALE 1—

Part 1

- (A) 15% of the amount or value of the consideration
- (B) 30 days after the execution; but see Note 2 to this sub-head
- (C) All parties, and all other persons executing; but see Notes 2 and 7 to this sub-head

Part 2”.

- (5) First Schedule, head 1(1)—

Repeal

“Exchange, Instruments effecting—see sections 25(7), 29AO and 29AP”

Substitute

“Exchange, Instruments effecting—see sections 25(7), 29AIA, 29AO and 29AP”.

- (6) First Schedule, head 1(1A)—

Repeal

“SCALE 1—”

Substitute

“SCALE 1—

Part 1

- (A) 15% of the amount or value of the consideration
- (B) 30 days after the relevant date (within the meaning of section 29B(3)); but see Notes 2 and 3 to this sub-head
- (C) All parties except a party who on the relevant date (within the meaning of section 29B(3)) does not know that the agreement affects that party, and all other persons executing; but see Note 7 to this sub-head

Part 2".

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Explanatory Memorandum

The object of this Bill is to introduce a new flat rate for the ad valorem stamp duty payable on certain instruments dealing with residential property under the Stamp Duty Ordinance (Cap. 117) (*Ordinance*).

2. Clause 1 sets out the short title and provides for the retrospective operation of the Bill.
3. Clause 3(1) adds to section 2(1) of the Ordinance a definition of *agreement for sale* by reference to its existing meaning given by section 29A(1) of the Ordinance. Clauses 3(2) and 4 transpose, among others, the interpretation provision for “a conveyance on sale executed in conformity with an agreement for sale” from the existing section 29A(8) to the new section 2(6). Those amendments are consequent on the addition of the new section 72 to the Ordinance by clause 9 in which the relevant expressions are used.
4. Clauses 5 and 7 respectively amend sections 29AI and 29BA of the Ordinance to set out the applicable scales of ad valorem stamp duty payable for conveyances on sale and agreements for sale after the introduction of the new flat rate.
5. Clauses 6 and 8 add new sections 29AIA and 29BAB to the Ordinance to clearly set out the scales of ad valorem stamp duty payable for certain instruments that deal with the exchange between residential property and non-residential property after the introduction of the new flat rate.

6. Clause 9 adds a new section 72 to the Ordinance to deal with transitional matters, including those necessitated by the retrospective operation of the Bill.
7. Clause 10 amends the First Schedule to the Ordinance to introduce the new flat rate for the ad valorem stamp duty payable on the conveyances on sale, and agreements for sale, of residential property.