

立法會

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Report of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2023

Purpose

This paper reports on the deliberations of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2023 (“the Bills Committee”).

Background

2. Currently under the Stamp Duty Ordinance (Cap. 117) (“the Ordinance”), ad valorem stamp duty (“AVD”) at the rate under Part 1 of Scale 1 of head 1(1) or (1A) in the First Schedule to the Ordinance (“Scale 1 rate”) is generally payable on a conveyance on sale or an agreement for sale of any residential property (i.e. a flat rate of 15% of the amount or value of the consideration) (which is referred to as the “New Residential Stamp Duty” (“NRSD”) in the Legislative Council (“LegCo”) Brief (File Ref: HDCR4-3/PH/1-10/0-1) issued by the Housing Bureau on 4 April 2023). However, where the transferee or purchaser under a conveyance on sale or an agreement for sale of a single residential property is a Hong Kong permanent resident (“HKPR”) acting on his or her own behalf and is not a beneficial owner of any other residential property in Hong Kong, the rate as applicable under Scale 2 of head 1(1) or (1A) in the First Schedule to the Ordinance (“Scale 2 rate”), which is a lower rate, is to apply generally.

3. In addition, buyer’s stamp duty (“BSD”) at the rate under head 1(1AAB) or (1C) in the First Schedule to the Ordinance is generally chargeable on a conveyance on sale or an agreement for sale of any residential property (i.e. a flat rate of 15% of the amount or value of the consideration), except where the transferee or purchaser concerned is a HKPR acting on his or her own behalf.

4. The Chief Executive’s 2022 Policy Address (“the 2022 Policy Address”) announced that as one of the measures to trawl for talents, a refund mechanism of certain amounts of AVD and BSD would be introduced for eligible non-HKPR talents who have entered Hong Kong, purchased residential properties in Hong

Kong on or after 19 October 2022 and subsequently become HKPRs.¹ The legal effect is that they would enjoy the stamp duty rate on par with that accorded to first-time home buyers who are HKPRs. The Stamp Duty (Amendment) (No. 2) Bill 2023 (“the Bill”) is introduced into LegCo to implement the proposed refund mechanism.

The Bill

5. The Bill was published in the Gazette on 6 April 2023 and received its First Reading at the Council meeting of 19 April 2023. The Bill proposes to add a new Division 6A (proposed new sections 29DI to 29DL) to Part IIIA and a new section 63B of, and a new Schedule 12 to, the Ordinance to provide for the proposed new mechanism (“the Mechanism”) of certain amounts of AVD and BSD (“the specified amount”). Under the proposed new section 29DJ of the Ordinance, the Collector of Stamp Revenue (“the Collector”) may, on an application made by a person (“applicant”) who had paid stamp duty on an instrument (“applicable instrument”) for acquiring a single residential property (“the subject property”) alone, refund the specified amount to the applicant if the following conditions are met:

- (a) the date of the applicant’s acquisition of the subject property (“the acquisition date”) falls on or after 19 October 2022;
- (b) on the acquisition date, the applicant was acting on his or her own behalf and was covered by a specified scheme (under the proposed new section 29DJ(5) of the Ordinance, “specified scheme” is defined to mean a scheme (including a policy or arrangement) that is specified in the proposed new Schedule 12 to the Ordinance);²
- (c) on the acquisition date, the applicant was not a beneficial owner of any other residential property in Hong Kong;
- (d) the applicant is not a vendor under an agreement for sale, which was made before the acquisition date, of any other residential property in Hong Kong that is unperformed, or otherwise remains outstanding, on the date of the application (“the application date”);

¹ See paragraph 29(vii) of the 2022 Policy Address.

² The proposed new Schedule 12 to the Ordinance currently contains seven schemes. They are (i) General Employment Policy; (ii) Admission Scheme for Mainland Talents and Professionals; (iii) Quality Migrant Admission Scheme; (iv) Immigration Arrangements for Non-local Graduates; (v) Technology Talent Admission Scheme; (vi) Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents; and (vii) Top Talent Pass Scheme.

- (e) on the application date, the applicant remains a beneficial owner of the subject property (and no person other than one who falls within the following descriptions is a beneficial owner of the subject property in addition to the applicant: (i) the person is closely related to the applicant; and (ii) the person was acting on his or her own behalf on the date of his or her acquisition of the subject property); and
- (f) the applicant has after the acquisition date become, and on the application date remains, a HKPR.

6. Under the proposed new section 29DJ(5) of the Ordinance, “specified amount” is defined to mean the sum of the following amounts:

- (a) an amount equal to the difference between AVD at Scale 1 rate paid on the applicable instrument and AVD that would have been payable on the applicable instrument if it were chargeable at the applicable Scale 2 rate; and
- (b) the amount of BSD paid on the applicable instrument.

7. The proposed new section 29DK of the Ordinance seeks to provide for a relaxation on the condition stated in paragraph 5(c) above where there is a replacement of property within a prescribed time. The proposed new sections 29DJ and 29DK of the Ordinance seek to provide for similar eligibility criteria and relaxation for an applicant who jointly with one or more than one other person (“co-buyer(s)”) acquired the subject property under an applicable instrument. The proposed new section 29DL of the Ordinance seeks to provide for the deadline for the application for refund under the Mechanism. The key features of the Bill as explained by the Administration are set out in paragraphs 5 to 8 of the LegCo Brief. The Bill, if passed, would be deemed to have come into operation on 19 October 2022.

The Bills Committee

8. At the House Committee meeting on 21 April 2023, Members agreed to form a bills committee to study the Bill. Hon Edmund WONG Chun-sek has been elected Chairman of the Bills Committee. The membership list of the Bills Committee is in **the Appendix**.

9. The Bills Committee has held one meeting with the Administration and has received one written submission from the Liberal Party Youth Committee.

Deliberations of the Bills Committee

Attractiveness and cost-effectiveness of the Mechanism

10. Under the proposed new section 29DJ of the Ordinance, the Collector may, on an application made by an applicant who had paid stamp duty on an applicable instrument for acquiring a subject property, refund the specified amount to the applicant if certain conditions are met. Whereas “specified amount” relates to BSD and AVD chargeable under head 1(1) or 1(1A) in the First Schedule to the Ordinance only, “stamp duty” is currently defined in section 2(1) of the Ordinance to mean stamp duty chargeable under the Ordinance and includes additional stamp duty chargeable under its section 13(10) or 47L(7), BSD and special stamp duty chargeable under head 1(1AA) or (1B) in the First Schedule to the Ordinance (i.e. “stamp duty” covers more than just BSD and AVD). The Legal Adviser to the Bills Committee has therefore sought clarification from the Administration as to why it is proposed that in order to be eligible for the refund of the “specified amount”, an applicant must have paid “stamp duty” on an “applicable instrument”. The Administration has explained that in order to avoid the situation where an eligible non-HKPR would have the specified amount refunded notwithstanding that the stamp duty payable under the applicable instrument by him or her remains unpaid, it is proposed that he or she should have paid the stamp duty chargeable on the applicable instrument first.

11. Members have noted that while it may take up to seven years for such non-HKPRs to obtain the refunds if they acquire the subject property soon after they have settled in Hong Kong, no interest on the refunds would be payable under the Mechanism. They have further pointed out that uncertainty prevails in the property market about future potential adjustments (including abolishment) of the demand-side management measures introduced to curb external demand and reduce investment demand respectively. Against the above, they have expressed concern over the attractiveness and cost-effectiveness of the Mechanism, especially to fresh graduates who in general have limited financial resources. They have enquired whether any study and survey have been conducted to evaluate the attractiveness of the Mechanism. Given that it is hard to estimate the expected number of persons to be benefited under the Mechanism according to the Administration, information has been sought on the price ranges of residential property transactions with which NRSD and BSD have been chargeable in recent years to evaluate potential impacts of the Mechanism on government revenue. Some members are of the view that in future, the Administration should make better use of community wisdom in its policy formulation process with a view to ensuring that the administrative measures will not inadvertently create hindrances in achieving the intended policy goal.

12. The Administration has advised that the total amount of BSD and that of AVD chargeable on Scale 1 rate under the NRSD regime so collected in the

Financial Year 2021-2022 were \$3.5 billion (on 1 118 transactions) and \$9.1 billion (on 3 663 transactions) respectively. During the public consultation for the 2022 Policy Address, the Administration has received specific suggestions from related stakeholders, among others, of providing stamp duty refund to incoming talents in their acquisition of residential properties in Hong Kong as an incentive for them to stay in Hong Kong for long-term development. In the course of devising the Mechanism, the Administration has been mindful of the policy objectives of the NRSD and BSD measures to, among others, reduce investment demand and external demand respectively. The Administration has no intention to encourage non-HKPRs (especially those aiming at property speculation) to acquire residential properties in Hong Kong. The Administration will continue to closely monitor the residential property market situation, and take appropriate measures as and when necessary. The Administration also considers that whether or not a talent would procure a residential property is a personal decision having regard to his or her needs and financial circumstances. As the Mechanism is one of the measures to trawl for talents as announced in the 2022 Policy Address, its effectiveness should be evaluated in conjunction with other related measures.

13. Members have enquired whether instead of providing for the refunds, the Administration would consider allowing eligible non-HKPRs to enjoy the stamp duty arrangement same as that for HKPRs as early as at the time of their acquisition of the subject properties. A mechanism could be put in place to recover the specified amount if they fail to meet all the relevant criteria, say by adding relevant provisions to the assignments to require subsequent buyers, among others involved in the transaction of the subject properties, to ensure payment of the stamp duty due to be recovered. Members have pointed out that there are similar tax arrangements, say the withholding obligation under section 20B of the Inland Revenue Ordinance (Cap. 112) (“IRO”)³.

14. The Administration has advised that practical difficulties and disproportionate administrative costs would be expected in taking forward the proposed alternative measures, for instance those arising from the continuous duty to perform checks on the status of the properties and non-HKPRs concerned. In case a non-HKPR has left Hong Kong, the Administration is left with limited means to demand payment from him or her. On the proposed recovery mechanism, it may cause complication if the non-HKPRs concerned sell their properties before becoming HKPRs. At policy level, shifting the responsibility

³ Under section 20B of IRO, in case a non-resident person is chargeable to tax in respect of the sums described in its subsection (1), the non-resident person concerned is chargeable to tax in respect of the sums in the name of any person in Hong Kong who paid or credited those sums to that or any other non-resident person and the tax so charged shall be recoverable by all means provided in IRO from that person in Hong Kong. That person in Hong Kong shall, at the time when making the payment or credit, deduct from those sums so much thereof as is sufficient to produce the amount of such tax.

of ensuring payment of stamp duty from the initial buyer to the subsequent buyer, and thus their legal representatives, would require careful examination. That apart, when formulating measures to trawl for talents by lowering the cost for property purchase, a balance has to be struck between the attractiveness of the proposed measures and the policy objective of the BSD and NRSD measures to stabilize the residential property market.

Eligibility criteria

15. One of the eligibility criteria under the Mechanism would be that in the case of an acquisition of the subject property by an applicant solely, the applicant has after the acquisition date become, and on the application date remains, a HKPR (the proposed new section 29DJ(2)(d) of the Ordinance), or in the case of joint acquisition of the subject property, each of the remaining co-buyers (i.e. a co-buyer who, on the application date, remains a beneficial owner of the subject property) has after the acquisition date become, and on the application date remains, a HKPR (the proposed new section 29DJ(3)(d) of the Ordinance). Members have enquired whether in the unfortunate event where a non-HKPR who has passed away after acquiring the subject property in Hong Kong but before becoming a HKPR, the heir to that non-HKPR can still apply for the refund. The Administration has advised that the Mechanism aims to attract incoming talents to stay in Hong Kong for long-term development. In the above unfortunate event, no refund would be made in respect of the property concerned since the buyer who has passed away before becoming a HKPR cannot meet all the refund conditions.

16. Members have pointed out that joint acquisition of property is rather common in Hong Kong in view of the high property price. They have enquired about the circumstances under which a non-HKPR who jointly acquired a subject property with other non-HKPRs would be eligible for the refund if some of the co-buyers eventually have not become HKPRs after the acquisition. The Administration has advised that pursuant to the proposed new section 29DJ(3)(d) of the Ordinance, each of the remaining co-buyers must have become a HKPR after the acquisition date and must remain so on the application date, which is in line with other stamp duty refund arrangements involving HKPRs where no refund for partial ownership of the property is allowed. By way of illustration, in case two non-HKPRs (whether closely related or not), Mr X and Ms Y, have jointly acquired a subject property and only Mr X has eventually become a HKPR, Mr X would still be eligible for the refund if (a) Ms Y has transferred her property ownership wholly to Mr X, and (b) Mr X still possesses the ownership of the entire property on the application date and has met the refund conditions.

17. That apart, one of the other eligibility criteria under the Mechanism would be that a non-HKPR (or each of the co-buyers) must not be (a) a beneficial owner of any other residential property in Hong Kong on the acquisition date; and (b) a

vendor under an agreement for sale of any other residential property in Hong Kong that was made before the acquisition date and is unperformed, or otherwise remains outstanding, on the application date (the proposed new section 29DJ(2)(b) and (3)(b) of the Ordinance). Members have enquired whether a non-HKPR who has acquired a new residential property before disposing of his or her only original residential property prior to becoming a HKPR would be eligible for the refund under the Mechanism. The Administration has responded that the proposed new section 29DK of the Ordinance provides for the related relaxation for the above case of replacing property with reference to the existing arrangement under the NRSD regime. In gist, if on the acquisition date, the applicant, was a beneficial owner of another residential property in Hong Kong (“original property”), the applicant would be taken not to be a beneficial owner of the original property on that date, if (a) the original property is (i) disposed of by, or (ii) transferred or divested from, the applicant under an agreement for sale or a conveyance on sale that is made within 12 months after the date of the relevant conveyance on sale in respect of the subject property, and (b) no refund has been made under the proposed new Division 6A of Part IIIA of the Ordinance in respect of the original property.

18. Referring to the above, members have opined that certain circumstances (say death) would be outside the eligible non-HKPRs’ control but may render them ineligible for the refund under the Mechanism. The eligibility criteria may, in their views, be relatively stringent. The Administration has responded that BSD and AVD on Scale 1 rate under the NRSD measure are generally applied to non-HKPRs. The aim of the Mechanism is to provide eligible non-HKPRs with refunds to attract them to stay in Hong Kong for long-term development. The Mechanism would also cater for family and personal needs of eligible non-HKPRs say in case of replacement of property. In case of subsequent changes in property ownership arising from the non-HKPR’s personal or family circumstances (say marriage), as explained by the Administration, the proposed new section 29DJ(2)(c) and (3)(c) of the Ordinance provides that refund would still be made if (a) these changes involve only person(s) who are closely related to the buyer (or all of the co-buyers)⁴ and (b) the buyer (or at least one co-buyer who was covered by a specified scheme on the acquisition date) remains a beneficial owner of the subject property on the application date.

19. Members have suggested that the Administration should clearly explain to the public the eligibility criteria of the Mechanism with the aid of illustrative examples to enable the public to better understand such eligibility criteria. The Administration has taken note of the suggestion and has provided supplementary

⁴ Pursuant to section 29AD of the Ordinance, two persons are closely related if one of them is the parent, spouse, child, brother or sister of the other; and three or more persons are closely related if each of them is a parent, spouse, child, brother or sister of each of the others.

written information to illustrate whether the non-HKPRs can still apply for the refund under the Mechanism under certain scenarios.⁵

Amendments to the list of specified schemes

20. The Legal adviser to the Bills Committee has drawn the attention of the Bills Committee that pursuant to the proposed new section 63B of the Ordinance, the Financial Secretary may, by notice published in the Gazette, amend the proposed new Schedule 12 to the Ordinance (which contains the specified schemes as mentioned in paragraph 5(b) above). Such notice would be subsidiary legislation subject to the negative vetting procedure of LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). Members have no other views on such arrangement.

Amendments to the Bill

21. Neither the Bills Committee nor the Administration will propose any amendments to the Bill.

Resumption of Second Reading debate on the Bill

22. The Bills Committee has completed scrutiny of the Bill and raises no objection to the resumption of the Second Reading debate on the Bill. The Administration has indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 21 June 2023.

Consultation with the House Committee

23. The Bills Committee reported its deliberations to the House Committee on 9 June 2023.

Council Business Division 2
Legislative Council Secretariat
16 June 2023

⁵ See LC Paper No. CB(2)496/2023(02) which is accessible at <https://www.legco.gov.hk/yr2023/english/bc/bc51/papers/bc51cb2-496-2-e.pdf>.

Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2023

Membership list*

Chairman Hon Edmund WONG Chun-sek

Members Hon Paul TSE Wai-chun, JP
Hon LAU Kwok-fan, MH, JP
Hon Doreen KONG Yuk-foon

Total: 4 members

Clerk Ms Maisie LAM

Legal Adviser Ms Wendy KAN

* Change in membership is shown in Annex to the Appendix.

Annex to the Appendix

Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2023

Changes in membership

| Member | Relevant date |
|---------------|----------------------|
| Hon YIM Kong | Up to 2 May 2023 |