

《2013年印花稅(修訂)條例草案》委員會

香港律師會(“律師會”)對政府建議為購買住宅物業連車位交易的豁免安排(載於立法會 CB(1)1468/13-14(02)號文件)所作的委員會審議階段修正案(“修正案”),來函要求就個別情況作澄清。本文件夾附律師會 5 月 30 日的來函及政府的回覆,以供參考。

購買住宅物業連車位交易的豁免安排

2. 律師會提出作澄清的事項如下:

- (一) 假如以一個總代價購入住宅物業和車位,而車位的數目超過一個,印花稅署將憑藉什麼的準則來判斷相關車位的代價,以及為何有關豁免不適用於涉及購置多個車位的交易;
- (二) 假如一個地段上蓋建有包含車位在內的住宅物業(例如獨立屋),如何徵收從價印花稅;及
- (三) 檢視條例草案第 29DF 條的“指明款項”的定義,使其可處理不同的情況。

政策原意

3. 正如財經事務及庫務局局長在 5 月 13 日的會議上解釋及其後政府的書面回應所述,因考慮到車位的本質是非住宅物業,而任何對車位的特別豁免安排必須緊扣與買家的置居需要有關,因此我們建議為香港永久性居民以一份文書購買住宅物業連車位交易的豁免安排,以一個車位為限。

4. 稅務局會要求加蓋印花的申請人,將住宅單位和車位各自的代價分開列出,並根據現行的做法計算應繳印花稅¹。如申請人不就各自物業的代價分開列出,稅務局可按差

¹ 就一份文書同時涉及住宅單位和車位而應繳稅率的準則,詳見立法會 CB(1)1219/13-14(02)號文件。

餉物業估價署為有關住宅單位和車位各自的市值而提供的專業意見，計算應繳印花稅。

5. 若某地段的住宅物業包含屬於不可分開的車位，則有關車位會被視作住宅物業的部分，如符合豁免資格，稅務局將以舊稅率就整份文書的總代價徵收應繳的從價印花稅。

6. 因應立法會法律顧問的意見，我們就條例草案第29DF條的“指明款項”的定義下，處理不同的豁免情況詳見附表；而有關的修正案擬稿已載於立法會CB(1)1545/13-14(03)號文件。

財經事務及庫務局
2014年6月

在「先買後賣」的情況下處理一名代表自己行事的香港永久性居民
購買住宅物業(不論是否連同車位)的退稅安排

	情況	原有物業	新置物業	是否可獲退稅
1.	以一份文書購入住宅物業	(a) 一個住宅物業	一個住宅物業	可獲退稅 (新置的住宅物業)
		(b) 一個住宅物業 連一個車位	一個住宅物業	可獲退稅 (新置的住宅物業)
2.	以一份文書購入住宅物業連車位	(a) 一個住宅物業	一個住宅物業連一個車位	可獲退稅 (新置的住宅物業連一個車位)
		(b) 一個住宅物業	一個住宅物業連兩個車位	可獲退稅 (新置的住宅物業) 兩個車位不獲退稅
		(c) 一個住宅物業 連一個車位	一個住宅物業連一個車位	可獲退稅 (新置的住宅物業連一個車位) [註:原有的住宅物業及車位必須以同一份文書出售]
		(d) 一個住宅物業 連一個車位	一個住宅物業連兩個車位	可獲退稅 (新置的住宅物業) 兩個車位不獲退稅
		(e) 一個住宅物業 連兩個車位	一個住宅物業連一個車位	可獲退稅 (新置的住宅物業) 車位不獲退稅



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President
會長

30 May 2014

Ambrose S.K. Lam
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Financial Services and the Treasury Bureau,
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Dear Mr. Lau

Committee Stage Amendments to Stamp Duty (Amendments) Bill 2013

I refer to the exemption arrangement in respect of acquisition of residential property together with a car parking space in your Committee Stage Amendments (“CSAs”) introduced into the Legislative Council in May 2014.

As shown in the CSAs, the said exemption is limited to one car parking space purchased with a residential flat. The Property Committee (“Committee”) invites the Administration to clarify how would the Stamp Office treat the following situation:-

1. (a) It is common for a flat to be purchased with two car parking spaces by one instrument with one consideration only. There should be a number of transactions like this having entered into since the introduction of the double ad valorem stamp duty (“DVD”) in February 2013. If it involves more than one car parking space, all the car parking spaces cannot benefit from the proposed exemption, please clarify how, and on what basis, would the Stamp Office apportion the consideration?
- (b) According to the FAQs posted to the website of the Stamp Office relating to DVD (i.e. FAQ Nos. 31 and 32), it is stated that exemption will apply even if more than one residential property be acquired under one single agreement. It is difficult to reconcile why more than one car parking space acquired under one single agreement in (a) above cannot enjoy the exemption, but acquisition of more than one residential property under a

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single agreement can enjoy the exemption. Please clarify your principle and rationale behind.

2. In case a whole block of residential building/a house erected on a lot is acquired by an individual, the said block of building/house is described as a "lot" in the agreement and assignment. However, there may be car parking spaces in the building/house. Please clarify how would the Stamp Office treat such building/house and the car parking spaces inside for DVD purpose and the basis and reasoning thereof?

In view of the complication arising out of the aforesaid and the need to apportion the consideration between residential properties and car parking spaces, the Committee urges the Administration to review the definition of "*specified amount*" in the Bill to ensure it can cover all scenarios to avoid any loopholes or omission.

I understand that the Bills Committee will have a further meeting on Tuesday, 3 June 2014 to discuss the CSAs. Please circulate this letter to the members of the Bills Committee for consideration and let us and the Bills Committee know how would the Stamp Office address the aforesaid situation.

Yours sincerely,



Edwin Lee
Assistant Director of Practitioners Affairs

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Mr Edwin LEE
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong
3/F, Wing On House
71 Des Voeux Road, Central
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3 June 2014

Dear Mr Lee,

Committee Stage Amendments to Stamp Duty (Amendment) Bill 2013

Thank you for your letter of 30 May 2014 setting out the Law Society of Hong Kong's comments on the exemption arrangement in respect of acquisition of residential property together with one car parking space as implemented by the proposed Committee Stage Amendments ("CSA"). Our responses to the issues raised are set out in the ensuing paragraphs please.

Government's policy

A car parking space is a non-residential property, the acquisition of which should not be exempted from the doubled ad valorem stamp duty ("AVD"). Striking a balance among such relevant considerations as the prevailing stamp duty regime on property, addressing the home ownership needs of the public and safeguarding the effectiveness of the measures, the Government proposes to, while upholding the spirit of providing exemption for residential properties, cater also to the home ownership needs of those who acquire residential property together with car parking space. The exemption for Hong Kong permanent residents for acquisition of residential property together with a car parking space is restricted to one car parking space only.

An instrument covering more than one car parking space

If more than one car parking space is acquired together with residential property under one single instrument and the respective consideration of the residential property and the car parking spaces are not separately shown, the Collector may, based on the valuation of the Rating and Valuation Department, ascertain the respective values of the residential property and the car parking spaces and adopt such values in calculating the amount of AVD payable¹.

Residential property/house on a lot

If under the Government lease or other relevant instrument, the residential property or house erected on the lot (which may comprise car parking(s)) can be used wholly or partly for residential purpose, the lot will be regarded as a residential property for stamp duty purposes. If the conditions for doubled AVD exemption are satisfied, the acquisition of the residential property or house erected on the lot will be charged with AVD at the existing rate.

Specified amount

The proposed definition of “specified amount” in section 29DF(1) has been refined to cater for appropriate scenarios in respect of the proposed exemption for the acquisition of residential property together with a car parking space. The relevant CSA is set out in Annex B to LC Paper No. CB(1)1545/13-14(03).

Yours sincerely,



(Lau Wai Ming)

for Secretary for Financial Services
and the Treasury

c.c.

Secretary for Transport and Housing
Commissioner of Inland Revenue
Department of Justice

(Attn: Mrs Vicki Kwok)
(Attn: Mr Tam Tai-pang)
(Attn: Mr Allen Lai
Mr Manuel Ng)

¹ Under the prevailing practice, the AVD payable at the existing rate in respect of acquisition of the residential property will be charged on the chargeable instrument which is calculated based on the consideration of the residential property only and the AVD at the doubled rate in respect of the acquisition of the car parking spaces will be charged on the chargeable instrument based on the consideration of the car parking spaces only. The applicable stamp duty rate will be determined on the basis of the total consideration of the car parking spaces and the residential property.