

《2013年印花稅(修訂)條例草案》委員會
委員在二零一三年十月二十一日會議上提出的事項
政府當局的回應

在本年十月二十一日舉行的會議上，委員提出以下事宜

- (a) 在判斷樓市的熾熱情況是否已穩定下來並回復正常時，政府當局所參考的指標為何，應加以闡釋；
- (b) 差餉物業估價署根據樓面面積計算物業市場的分類，政府當局應提供按此方法分類的住宅樓價變動百分率的分項數字；
- (c) 雙倍從價印花稅對經濟、自由市場的營商環境、跨國公司投資意欲，以及香港的競爭優勢和長遠經濟發展的影響為何，政府當局應提供有關評估和分析資料；以及
- (d) 香港律師會、香港銀行公會及其他專業團體對條例草案的技術及執行事宜提出意見和建議，政府當局對此應予回應。

2. 本文載述政府當局對上述事宜的回應。

參考指標

3. 樓價大幅波動，可能嚴重影響宏觀經濟和金融市場的穩定性。有見及此，政府一直參考不同的指標，以密切監察住宅物業市場的情況。該等指標包括(但不限於)樓價、置業負擔能力、物業成交量、供求平衡，以及按揭貸款增長。政府會視乎需要，參考其他相關的指標。此外，由於物業市場受多種因素影響，沒有單一指標可以完全反映其基本狀況，故參考指標時應全盤評估。各項指標概述如下：

(a) 樓價與置業負擔能力

樓價調整的趨勢和幅度，以及兩者於樓市高峯和低迷時期的表現，均可反映物業市場的發展。為估量樓價是否與基本經濟因素同步，置業負擔能力也是其中一項參考指標。置業負擔能力是指以一個 45 平方米的單位為例，按揭供款在住戶(公共房屋的住戶除外)的入息中位數中所佔的比率。

(b) 物業成交量

物業成交量可大致顯示物業市場是否活躍。此外，短期轉售活動(確認人交易及在轉讓後 24 個月內轉售的個案)和涉及非本地買家的成交量，均可用作監察投機活動的多寡，以及非本地買家參與住宅物業市場的情況。

(c) 住宅物業供求平衡

住宅物業供求情況失衡，會對樓價構成上行壓力。在這方面，差餉物業估價署每年公布的私營房屋空置率，可用作衡量市場狀況。此外，運輸及房屋局公布的中期供應量(包括已落成但未售出的單位、建築中未售出的單位，以及已批出土地而仍未動工的項目所涉及的單位)，也顯示未來數年的單位供應數量。

(d) 按揭貸款增長與利率

按揭貸款過度擴張，會令樓市熾熱，形成泡沫，而低利率亦會令投機活動增加，進而令樓市潛在的風險提高。因此，按揭貸款的增長、按揭利率和新造住宅樓宇按揭的按揭成數，均可作為監察樓市的信貸相關指標。

住宅樓價走勢

4. 一般而言，我們把 A 至 C 類私人住宅單位(實用面積少於 100 平方米)列為中小型住宅市場，而 D 至 E 類單位(實用面積達 100 平方米或以上)則列為豪宅市場。中小型住宅與豪宅市場近年的樓價走勢見附件 A 的圖表。

徵收雙倍從價印花稅的影響

住宅物業市場

5. 從物業市場統計資料顯示，自去年年底及今年年初先後推出兩輪需求管理措施至今，我們已看到顯著效果。在 2012 年首 10 個月，整體樓價上升達 24%，當時價位較二零零八年的低位大幅增加 113%。到 2012 年，即去年的十月宣布加強額外印花稅及推出買家印花稅後，即時對樓市產生降溫作用，令升勢放緩。雖然今年年初樓市回復熾熱，首兩個月平均每月上 2.7%，然而自今年 2 月推出全面

增加從價印花稅稅率措施後，樓市已穩定下來。今年 3 月至 9 月期間，這六個月期間整體樓價平均每月只是上升 0.3%；而九月份樓價按月回落 0.3%，終結了此前連續四個月的升勢。根據稅務局的資料統計，涉及持有香港身分證的個人買家的住宅物業買賣合約數目中，有關在進行交易時並沒擁有其他在港物業的人士比例，在 2013 年 4 月至 9 月平均為 70%，較 2013 年 1 月至 3 月期間平均的 51% 為高。同時，有關比例較 2011 年全年平均的 53% 以及 2012 年全年平均的 59% 亦為高。由此可見，自住用家的比例也所增加，這是符合我們推出多項需求管理措施的政策目標。

非住宅物業市場

6. 另一方面，增加從價印花稅稅率的建議適用於所有非住宅物業交易。有關建議，加上把徵收印花稅的時間提前（即由現時在訂立售賣轉易契時徵收，提前到在簽訂買賣協議時徵收）的措施，令炒賣人士的交易成本大幅上升，對現時非住宅物業價格的上升動力也會產生若干遏抑作用。在 2013 年 3 月至 9 月期間，零售舖位、寫字樓及分層工廠大廈的售價平均每月分別上升 0.1%、0.5% 及 0.7%，較今年首兩個月平均每月上升 1.9%、2.6% 及 4.1%，以及 2012 年平均每月上升 3.4%、2.1% 及 3.8%，均明顯放緩。

整體經濟

7. 最新一輪的需求管理措施，旨在確保物業市場健康平穩發展，對香港整體社會的可持續發展至為重要。儘管措施可能會對已擁有住宅物業而有意購入第二套房的本地買家和有意購入非住宅物業的工商企業造成不便，但是政府需要有效管理需求，並把物業市場亢奮對金融穩定可能造成的風險降低。我們留意到過往本地營商人士和海外機構對過去數年持續急升的物業價格，令經營成本上升，曾經表示關注。若不遏止樓市泡沫形成，資產泡沫一旦爆破，會對香港經濟造成更大的衝擊，從而對營商環境和投資氣氛帶來更負面的影響。

8. 香港作為一個國際金融中心，國際投資者決定是否以香港作為營商地點有多項考慮因素，包括商機、國際網絡、人力質素、基建、法律制度、經營成本等。根據政府統計處與投資推廣署完成的「2013 年代表香港境外母公司的駐港公司按年統計調查」報告，代表香港境外母公司的駐港地區總部、地區辦事處和當地辦事處的總數，由 2012 年 6 月的 7 250 家增至 2013 年 6 月的 7 449 家，增幅為 2.7%。從現有資料顯示，香港吸引外資的競爭力沒有明顯的下降。

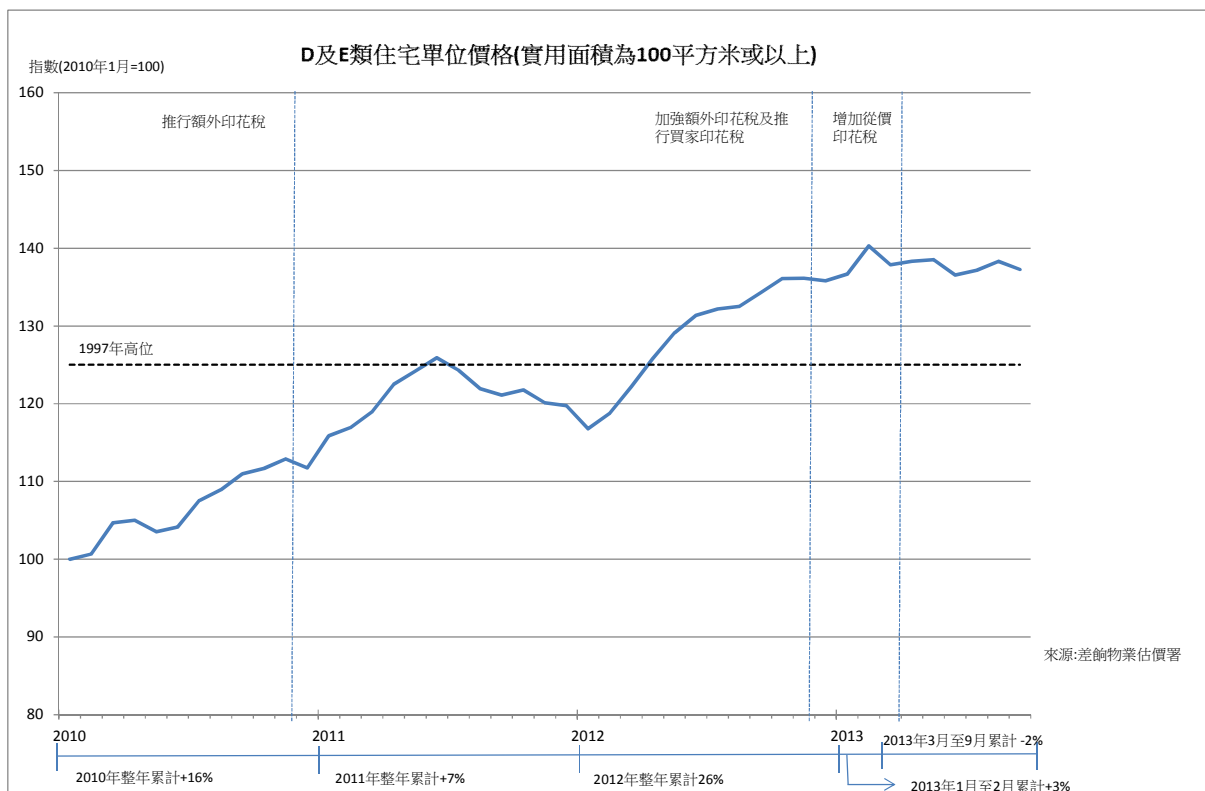
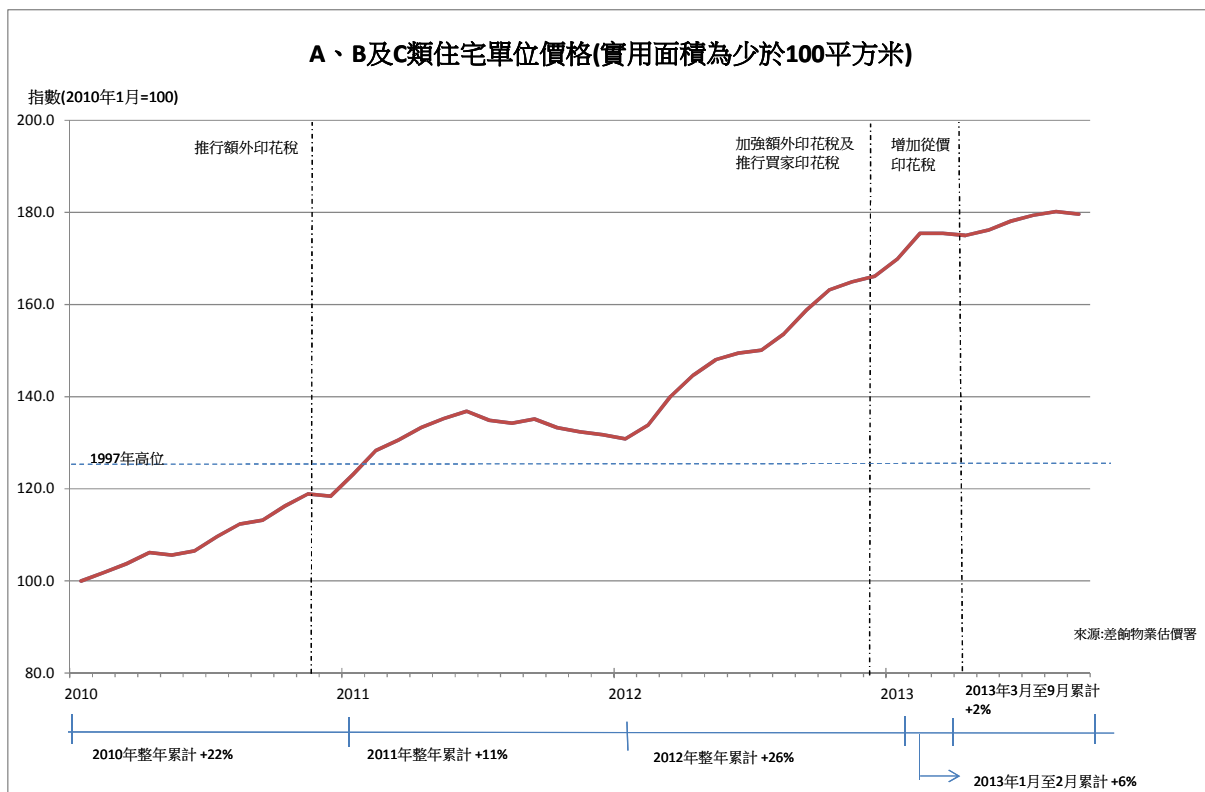
9. 至於有關的需求管理措施可能對各個與物業相關的行業帶來不同程度的影響，由於內部經濟強勁及整體勞工市場偏緊，大致減輕了這些影響。在平衡各方面的考慮因素後，我們相信推出有關措施符合整體社會的最大利益，工商企業最終受惠於一個擁有穩步發展的物業市場的營商環境，並能促進香港長遠的經濟發展。我們必須強調，在低利率、流動資金充裕及供求情況失衡的非常環境下，有關措施屬非常措施。在物業市場回復正常之後，我們會考慮撤銷這些措施。

就香港律師會及香港銀行公會等專業團體所提意見的回應

10. 自推出雙倍從價印花稅後，相關的決策局及部門不時與持份者如香港律師會及地產代理業界等專業團體保持溝通及會面，就關注的事宜交換意見。各專業團體對本條例草案的技術及執行事宜提出了寶貴意見和建議，大致可歸納以下幾方面－

- (a) 要求釐清一併購入住宅和非住宅物業(如車位)的交易應繳交從價印花稅的稅率；
- (b) 建議改善特定豁免情況的施行(包括重建項目的退款、受法例收地影響而重新購置替代物業，和換樓人士處置其原先唯一擁有的在港其他住宅物業的規定等方面)；
- (c) 要求釐清若干法律責任(如銀行或律師核實買家的聲明內容、少付從價印花稅的責任及在法律程序中提呈有關文件等)；及
- (d) 要求釐清若干條文的釋義。

11. 立法會 CB(1)1503/12-13(02)號文件已詳細列出政府就代表團體/個別人士提交的意見書的回應。我們現摘錄香港銀行公會、香港律師會等專業團體所提技術及實施事宜意見的回應，載於附件 B，方便委員參考。另政府於 2013 年 11 月 20 日致函香港律師會，副本(只有英文本)見附件 C。政府當局一直與持份者保持溝通，我們已聯絡香港律師會安排於 12 月上旬與該會再次會面，就條例草案的技術及執行事宜作進一步交流。



《2013 年印花稅(修訂)條例草案》

政府當局對香港律師會、香港銀行公會及其他專業團體對條例草案的技術及實施事宜提出意見的回應撮要

技術及實施事宜	專業團體	政府的回應
<p>1. 建議把「先買後賣」的換樓人士處置其唯一擁有的在港其他住宅物業的 6 個月期限延長，如放寬至 12 或 24 個月。</p>	<p>香港律師會 地產代理聯會 消費者委員會 香港地產建設商會</p>	<ul style="list-style-type: none"> ● 因應香港永久性居民可能在換樓的過程出現持有多於一個住宅物業的情況，我們為此已設立退回稅款機制，以妥善處理換樓安排。 ● 為「先買後賣」的換樓人士訂下退回新舊稅率差額的機制，即先按新稅率繳交印花稅，並就出售其原有的住宅物業和提出退稅申請設下時間表，有其必要性。假若有關期限延伸至超過六個月，無形中讓買家在一段長時間持有多於一個住宅物業，這會削弱需求管理措施的成效。 ● 我們會繼續聆聽法案委員會及社會就此事的意見。
<p>2. 建議向持有住宅物業不少於 2 年的買家退回新舊從價印花稅稅率的差額。</p>	<p>香港地產建設商會 香港工業總會</p>	<ul style="list-style-type: none"> ● 現時利率偏低和資金氾濫的環境仍然持續，外圍環境仍然不穩，加上住宅單位的短期供求依然偏緊，樓市的泡沫風險仍然不容忽視，擴大豁免範圍只會令雙倍印花稅措施的效力減少。
<p>3. 認為獲得住宅物業時可能涉及由買家以外人士提供的資金，因而牽涉歸復信託或法律構定信託。希望了解有關交易是否須繳付雙倍印花稅，及稅務局會如何斷定有關買家是否代表自己行事。</p>	<p>香港律師會 香港銀行公會</p>	<ul style="list-style-type: none"> ● 如住宅物業交易涉及由買家以外人士提供的資金，一般會以餽贈、借貸或以委託形式提供。買家應因應其對有關資金的事實和性質的所知，聲明他在交易中是否代表自己行事。如提供有關資金的人士並無向買家清楚說明提供資金的目的是，買家宜於作出聲明前，向提供資金人士作出了解。

4. 釐清用以重新分配遺產的家庭協議書及倘若遺產受益人只是某住宅物業的一部份而非全部的實益擁有人，當他其後自行購買新的住宅物業時是否要繳付雙倍印花稅；及受託人或監護人代表他人購買新的住宅物業時是否要繳付雙倍印花稅。

香港律師會

- 以新稅率計算的從價印花稅而言，如一個人佔有該物業的任何份額的業權，他會被視為擁有該住宅物業。因此，即使他與其他聯權擁有一個住宅物業，或他是該物業的分權擁有人，佔有該物業的任何份額的業權，他亦會被視為擁有一個住宅物業。當他其後自行購買新的住宅物業時要繳付雙倍印花稅。
- 我們擬訂立一個簡單而清晰的豁免機制，以便運作。若果容許已擁有其他住宅物業的香港永久性居民買家享有豁免，儘管他只佔某住宅物業的部份權益，便會與政府現行的政策不相符，即優先照顧並沒有住宅物業的香港永久性居民的置居需要。
- 從實際角度出發，要為擁有物業的權益份額設下門檻，作為豁免繳交新的從價印花稅稅率的依據，有實際困難，特別是設定有關的權益的百分比，難免會惹起爭議。
- 對於未成年或精神上無行為能力的香港永久性居民而言，由於其沒有達成具法律約束力的協議的能力，實際上必須由另一人代其行事。條例草案建議，為保障這類未成年或精神上無行為能力的人作為香港永久性居民的權利，其受託人或監護人應獲豁免繳納雙倍印花稅。至於更換受託人或轉移權益至受益人而進行的移轉安排，按前文所述，也無須繳納雙倍印花稅。

<p>5. 政府當局應釐清，當香港永久性居的民買家購入一個住宅物業連車位的交易，有關的住宅和車位各自在協議中分開列出，而該買家在購買時不是香港任何住宅物業的實益擁有人，在這種情況下購置的車位會否視作住宅單位的一部分併處理，因而可按舊有的印花稅率繳付。</p>	<p>香港律師會</p>	<ul style="list-style-type: none"> ● 稅務局會按照每宗個案的相關事實而作出處理。一般而言，對於一份同時涵蓋住宅及非住宅單位（如車位）並以一個款額為代價的買賣協議，須就代價全額繳納從價印花稅，以及額外印花稅和買家印花稅（如適用的話）。 ● 就所述的買賣協議中的住宅單位和車位是分開的代價在協議中分開列出，則稅務局為施行《印花稅條例》的目的，會按住宅和非住宅物業作分類處理，但適用的從價印花稅稅率會根據整項交易的總代價釐定。根據條例草案建議，該香港永久性居民買家只可就住宅物業交易獲豁免繳交雙倍印花稅，而車位交易則按適用的雙倍從價印花稅稅率徵收。
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<p>6. 建議放寬重建項目的退款規定，只要發展商完成舊樓宇拆卸工程及獲政府批出重建圖則，便可獲退回新舊從價印花稅稅率的差額。</p>	<p>香港專業及資深行政人員協會</p>	<ul style="list-style-type: none"> ● 政府的政策目的，是雙倍印花稅不應窒礙重建。為配合此政策目的，我們參考建議的買家印花稅設立退回稅款機制，使任何人或公司如取得住宅物業作重建用途，可於符合特定條件下，申請退回新舊從價印花稅稅率的差額。 ● 在《2012年印花稅（修訂）條例草案》委員會的討論中，政府應委員的建議考慮放寬有關退回買家印花稅的機制。現引述詳情如下-
<p>7. 建議放寬重建項目的退款規定，倘發展商已取得住宅地段30%的不可分割份數，而該地段樓齡不少於30年，便可獲退回新舊從價印花稅稅率的差額。</p>	<p>香港律師會</p>	<ul style="list-style-type: none"> ● 在訂定退回買家印花稅稅款機制時，政府認為在退回已繳付的買家印花稅前，必須符合兩項主要原則：(a)有關發展商必須已經擁有重建所涉及的整個地段；及(b)有證據證明發展商會將有關地段作重建之用。政府基於上述兩項原則，制訂以下新的退稅機制，供發展商申請退回已繳付的買家印花稅： <ul style="list-style-type: none"> (a) 發展商必須擁有整個重建地段的業權；及 (b) 發展商必須滿足以下其中一個條件： <ul style="list-style-type: none"> (i) 獲屋宇署同意展開重建項目的地基工程；或 (ii) 須清拆有關地段上的原有建築物（如有的話），並獲屋宇署批准有關重建項目的建築圖則。 ● 我們會因應立法會審議上述有關《2012年印花稅（修訂）條例草案》的最終修訂措施，對本條例草案作出相應調整，令處理相關情況的做法一致。

<p>8. 建議受以下法例影響而需重新購置替代物業時應獲免繳交雙倍印花稅：</p> <ul style="list-style-type: none"> ◆ 《地下鐵路（收回土地及有關規定）條例》（第 276 章）； ◆ 《道路（工程、使用及補償）條例》（第 370 章）； ◆ 《鐵路條例》（第 519 章）；及 ◆ 《已拆卸建築物（原址重新發展）條例》（第 337 章）。 	<p>香港律師會</p>	<ul style="list-style-type: none"> ● 政府經研究香港律師會向《2012 年印花稅（修訂）條例草案》委員會提交同一建議後，同意提出的部分情況涉及條例草案就非自願收地而重新購置替代物業應獲豁免繳交買家印花稅。政府當局已表明會就《2012 年印花稅（修訂）條例草案》提交相關的全體委員會審議階段修正案，以涵蓋下述的情況： <ul style="list-style-type: none"> ◆ 《地下鐵路（收回土地及有關規定）條例》（第 276 章）第 4(1)條； ◆ 《道路（工程、使用及補償）條例》（第 370 章）第 13(1)條； ◆ 《土地徵用（管有業權）條例》（第 130 章）第 3 條； ◆ 《鐵路條例》（第 519 章）第 16 條；及 ◆ 《土地排水條例》（第 446 章）第 37(2) 條。 ● 我們會因應立法會審議上述《2012 年印花稅（修訂）條例草案》的修正案，對本條例草案作出相應調整，令處理相關情況的做法一致。
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9. 建議倘若投資物業的公司實體的所有股東均為香港永久性居民，並代表自己行事和只持有一類股份，政府當局在這情況下應考慮豁免這類公司實體繳付雙倍印花稅。

香港律師會

- 正如政府在立法會審議《2012年印花稅（修訂）條例草案》的法案委員會會議中表示，我們認為於當前供應緊張而樓市仍然存在熾熱風險的情勢下，實在不能掉以輕心。在目前的利率超低、資金泛濫、房屋供應仍然緊張的情況下，接納有關建議將向公眾發出錯誤的信息，令市場誤以為政府沒有決心冷卻樓市，很可能令樓市再次熾熱。
- 政府的政策原意是不欲擴大豁免範圍，使雙倍印花稅效力減少，因此，縱使是由香港永久性居民以其持有的公司名義購買的住宅物業，我們認為一律仍須徵收雙倍印花稅。這是在全面冷卻物業市場及優先照顧香港永久性居民置居需要的政策目標之間，尋求一個合理的平衡。
- 如以股東是否香港永久性居民去界定公司可否獲豁免繳納印花稅，將會混淆「公司規管」與「公司管理」的現行法律原則。基於一致的法律理據，在雙倍印花稅建議下，判別有關人士可否獲得豁免時，政府不會把香港永久性居民在內。政府現時推出的加強額外印花稅、買家印花稅和雙倍印花稅的措施，針對買家光譜中的不同需求，以達致打擊炒賣和管理需求的總目標，所以我們必須採取統一的標準去處理公司購買物業所需要繳付各項印花稅的問題。

<p>10. 建議不應就核實買家的聲明內容，向銀行或律師施加額外的法律責任。</p>	<p>香港銀行公會 香港律師會</p>	<p>● 政府當局已澄清，交易中代表買方的律師或銀行承接按揭申請服務時並無責任。稅務局會永久性有關工作，以釐定文書印花稅額。釐定文書印花稅額不足額措施下，稅務局會決定文書應否繳納印花稅。</p>
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11. 建議如少付從價印花稅是因買家一方聲稱自己符合豁免的資格而回其後證實並不符合資格，則繳的新舊稅率差額的印花稅，款律責任應只由買家承擔，也不影響無辜賣家於法律程序中提呈有關文件作證據或該物業的業權，以保障日後進行住宅物業交易的真誠買家及承按人。

香港銀行公會
香港律師會

● 現時，《印花稅條例》（第 117 章）第 15 條規定，除刑事法律程序及稅務局為追討印花稅和罰款而提出的民事法律程序外，未加蓋適當印花的文書不得於法律程序中被收取為證據。香港律師會及香港銀行公會就相關意見提交《2012 年印花稅（修訂）條例草案》委員會，認為繳付買家印花稅的責任在於買家，如買家未有繳付買家印花稅，則不應影響無辜賣家於法律程序中提呈有關文件作證據，以證明有關物業的業權等用途。我們同意有關建議，並建議如符合以下條件，應繳付而未繳付買家印花稅的文書亦可於民事法律程序中被收取為證據：

- (一) 有關文書僅未就其應繳的買家印花稅加蓋適當印花；
- (二) 有關文書已根據《土地註冊條例》（第 128 章）於土地註冊處註冊；及
- (三) 有關文書由任何人士（該文書中買家除外）提交作證據。

政府會向《2012 年印花稅（修訂）條例草案》委員會提交相關的全體委員會審議階段修正案。

● 就條例草案而言，我們會考慮因應上述《2012 年印花稅（修訂）條例草案》的發展而作出適當的調整。

<p>12. 政府應澄清，依據任何法院判令或命令中涵蓋的承諾而作出的物業轉讓，可否視為條例草案中第29BE條所指的依據任何法院判令或命令而作出，從而可按舊有的稅率繳付從價印花稅。</p>	<p>香港產業交易法律學會有限公司</p>	<ul style="list-style-type: none"> ● 若購買人購買物業是依據法院判令或命令作出的，則根據條例草案第29BE條，該買賣協議可獲得豁免雙倍印花稅。這是以現時處理根據第29CA(11)(a)條提出的豁免額外印花稅個案的做法為依據。只要法院依據有關同意傳票發出同意令，而買賣協議又依據該同意令訂立，該協議即視為符合豁免資格。
<p>13. 建議條例草案第29AD條就近親的定義應涵蓋祖父母、孫及外孫、孫女及外孫女、女婿及媳婦。</p>	<p>香港律師會</p>	<ul style="list-style-type: none"> ● 政府現行的政策，是優先照顧香港永久性居民的置居需要。因此，我們建議近親之間(包括配偶、父母、子女或兄弟姊妹)買賣或轉讓住宅物業，不論他們是否香港永久性居民，以及他們在購買或轉讓該物業當日是否香港任何其他住宅物業的實益擁有人，均可按舊有的從價印花稅稅率徵收。 ● 條例草案的近親豁免安排，採用與額外印花稅和擬議的買家印花稅制度相同的原則，即涉及(a)有血緣關係或有半血緣關係，(b)有夫婦關係或(c)有領養或繼養關係的人的交易，均可獲得豁免。政府認為，擬議的豁免安排可在照顧市民的置居需要與堵塞避稅的漏洞以確保雙倍從價印花稅成效之間，取得平衡。

<p>14. 建議條例草案第 29AM(c)條應明文規定其所指的承按人必須為已承接物業的承按人。</p>	<p>香港銀行公會 香港律師會</p>	<ul style="list-style-type: none"> ● 我們小心研究香港銀行公會和香港律師會向《2012年印花稅(修訂)條例草案》委員會提交同一建議後，同意提出全體委員審議階段修正案，就該條例草案第 29DB(8)(c)條的行文作出修訂，以更清晰指出該條所指的承按人必須為有關已承接物業的承按人。 ● 因應立法會審議上述《2012年印花稅(修訂)條例草案》的全體委員會審議階段修正案，我們會對本條例草案作出適當調整，令行文一致。
<p>15. 認為根據《印花稅條例》(第 117 章)第 9 條實施逾期繳交從價印花稅的 10 倍罰款過高。</p>	<p>香港律師會</p>	<ul style="list-style-type: none"> ● 逾期繳交稅項的最高罰款(所須繳納的印花稅款額的 10 倍)屬《印花稅條例》(第 117 章)下的統一最高罰則，適用於印花稅制度下所有稅項，並非只限於從價印花稅。我們認為以印花稅制度下的既定罰款機制處理逾期繳交雙倍印花稅的情況屬審慎及合理的做法。如不按既定罰款機制處理有關情況，則可能對市場傳達錯誤訊息。
<p>16. 建議加入日落條款。</p>	<p>香港律師會 香港產業交易法律學會有限公司</p>	<ul style="list-style-type: none"> ● 政府並不贊同設立日落條款，因為我們根本無法對市場往後變化以及各項外圍因素作出揣測，從而預計有關需求管理措施於甚麼時候不再需要存在。日落條款可能只會刺激稍後的需求，發放錯誤的市場信息。反之，我們會密切留意市場的情況，並在有需要時對措施作出適時調整。為此，我們在條例草案建議，以「先訂立、後審議」的附屬法例形式調整從價印花稅的稅階以及稅率，以確保靈活地參照市場狀況及時調整。

財經事務及庫務局
(庫務科)



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20 November 2013

Dear Mr Lee,

Submissions on New Regime of Ad Valorem Stamp Duty

Thank you for your letter of 2 April 2013 enclosing the Law Society of Hong Kong (the Law Society)'s submission on the doubled ad valorem stamp duty (DSD) measures to further address the overheated property market. We have had useful exchanges of views with your members at the March and June meetings, at which we clarified the policy objectives of the demand-side management measures and addressed the concerns on the operational matters that the Law Society has expressed in connection with the implementation of these measures respectively.

The Law Society has, further to the letter of April 2013, made a submission dated 2 May 2013 to the Legislative Council (the LegCo)'s Bills Committee on the Stamp Duty (Amendment) Bill 2013 (the 2013 Bill). The Administration has provided a consolidated response to the submissions received to the Bills Committee in July. We would like to set out the Administration's responses on the key issues raised by the Law Society in the following paragraphs.

Demand-side Management Measures

The Government has introduced Special Stamp Duty (SSD), enhanced SSD, Buyer's Stamp Duty (BSD) and DSD to manage demand in the midst of the tight housing supply situation. These measures serve to address the exuberant property market caused by the tight supply, extremely low interest rates and abundant liquidity,

to reduce the risk of a property bubble, and to prevent the property prices from deviating further from the economic fundamentals, with a view to helping the community to avoid being affected should there be any adjustment caused by a change in the interest rates or other external factors. At the same time, it is also the Government policy to accord priority to address the home ownership needs of Hong Kong permanent residents (HKPRs) in the midst of the tight supply situation.

While the Government is determined to adopt the supply-led strategy as the basis to address the housing situation at source, the Government considers that the demand-side management measures are essential to ensure the healthy and stable development of the property market and the overall macroeconomic and financial stability of Hong Kong under the current exceptional circumstances. We are fully aware that these extraordinary and targeted measures will inevitably cause pain and inconvenience to certain parties. However, after giving due consideration in various aspects, we believe that the launch of such demand-side management measures serves the best interest of the community as a whole.

Verification of the Status of HKPRs

In brief, the DSD will be applicable to all property transactions except for transactions under which the buyers are HKPRs acting on their own behalf in acquisition of residential properties, and they are not beneficial owners of any other residential property in Hong Kong at the time of acquisition. We have clarified that the solicitor acting for the purchaser in the transaction has no obligation to confirm the capacity of the HKPR buyer. Under the existing and proposed DSD regimes, it is the Inland Revenue Department (IRD) which has the responsibility to determine the correct amount of stamp duty payable on the relevant instrument.

Residential Property and Parking Space

We understand that there can be different scenarios and ways of handling a transaction involving the residential property and parking space. IRD will process each and every transaction based on relevant facts of the case. Generally speaking, when a single agreement for sale involves both residential and non-residential properties (such as parking space) and with a single amount as consideration, the whole consideration is liable to the stamp duty as applicable. Where the residential property and the parking space in the agreement for sale are separate and distinct properties, and their respective considerations are separately set out in the agreement, IRD will make stamp duty assessments with regard to the classification of residential and non-residential properties accordingly. The stamp duty rate applicable will be based on the total consideration of the whole transaction¹.

¹ As the purchases of the residential property and the parking space from the same vendor under a single agreement for sale can be regarded as forming part of a larger transaction or a series of transactions, the stamp duty rate applicable will be based on the total consideration of the two purchases, not the rates applicable to the respective considerations of the residential property and the parking space.

Closely Related Persons

In accordance with the policy to accord priority to the home ownership needs of HKPRs, DSD will not be applicable to acquisition or transfer of a residential property between closely related persons (including spouse, parents, children, brothers or sisters), provided that the purchasers or transferees are acting on their own behalf, irrespective of whether they are HKPRs and whether they are beneficial owners of any other residential property in Hong Kong at the time of acquisition or transfer. Such "closely related persons" arrangement follows the same principle of the SSD regime and the proposed BSD regime, which exempt transactions involving persons who (a) are blood-related or half blood-related, (b) have spousal relationship, or (c) have adoption or step relationship. The Government considers that the proposed exemption arrangement strikes a balance between addressing the genuine needs of the public and safeguarding the effectiveness of DSD by avoiding loopholes for circumvention.

Mortgagee

After due consideration of the same proposal put forward by the Law Society to the Bills Committee on Stamp Duty (Amendment) Bill 2012 (the 2012 Bill), the Government has agreed to propose Committee Stage Amendments (CSAs) to amend the texts of section 29DB(8)(c) of the 2012 Bill to make clear that the mortgagee referred to in that section must be the same mortgagee of the mortgaged property. In the light of LegCo's scrutiny of those proposed CSAs to the 2012 Bill, we will consider proposing appropriate CSAs to the 2013 Bill for sake of consistency.

The 2013 Bill recognizes the mortgagee which is the "financial institution" as defined in section 2 of the Inland Revenue Ordinance (IRO) which means, amongst others, an authorized institution within the meaning of section 2 of the Banking Ordinance (BO). Under section 2 of the BO, "authorized institution" means "a bank", "a restricted licence bank" (RLB) or "a deposit-taking company". A bank and a RLB mean a company which holds a valid banking licence and restricted banking licence granted under section 16 of the BO respectively. An authorized institution can be incorporated in or outside Hong Kong. Pursuant to the Hong Kong Monetary Authority's Guide to Authorization, an overseas applicant seeking a banking licence or a restricted licence bank presence in Hong Kong can enter in the form of a branch or a locally incorporated subsidiary. An overseas bank which is authorized to carry on banking business / business of taking deposits in Hong Kong shall fall within the definition of "authorized institution" under the BO and therefore a "financial institution" under the IRO.

The 2013 Bill allows an agreement for sale or conveyance on sale that is made pursuant to a decree or order of any court, or a conveyance on sale that is a decree or order of any court by which the property concerned is transferred to the transferee or vested in the transferee, to be chargeable with ad valorem duty at old rates. Hence, if a mortgagee of staff loan acquires the mortgaged property pursuant to a court order

(including a foreclosure order) upon default on the repayment of loan by the staff, the relevant instrument will be chargeable with the ad valorem duty at old rates.

Estate

For the purposes of DSD, a person “owns” a residential property if he or she is the beneficial owner of whole or part of the property. Therefore, a person “owns” a residential property if he or she jointly owns the property with one or more other persons, or is a co-owner of the property. This applies to the situations in which a person acquires a residential property pursuant to a will or under the law of intestacy by way of an assent or renunciation pursuant to a deed of family arrangement. When the person subsequently purchases a new residential property, he or she has to pay DSD. A person who holds a residential property as trustee or personal representative not involving any beneficiary interest of the residential property will not be liable for DSD.

We intend to put in place a simple and clear exemption mechanism to facilitate operation. Allowing HKPRs who own other residential properties, even just in part, to enjoy exemption, is not in line with the Government’s prevailing policy of according priority to the housing needs of those HKPRs who do not own any residential properties. From a practical point of view, there are difficulties in setting a threshold of the share of ownership interest in a property as the basis for deciding whether DSD could be exempted. In particular, it would be controversial to decide on the appropriate share of interest for the purpose.

Purchase of Replacement Properties

Having studied the same suggestion made by the Law Society to the Bills Committee on 2012 Bill, the Government has agreed that some of the suggested scenarios involve similar resumption of land not of the land owner’s volition and that BSD exemption should be offered for replacement purchases thus made. The additional scenarios to be covered include those who are affected by Mass Transit Railway (Land Resumption and Related Provisions) Ordinance, Roads (Works, Use and Compensation) Ordinance, Land Acquisition (Possessory Title) Ordinance, Railways Ordinance and Land Drainage Ordinance.

The Government has agreed to propose CSAs to cover the identified scenarios. Depending on the LegCo Bills Committee’s scrutiny of those proposed CSAs to the 2012 Bill, we intend to propose corresponding CSAs to the 2013 Bill for consistency in handling similar situations.

Arrangements for owners having acquired a new residential property before disposing of the original one

In order to cater for the replacement need of HKPRs and having regard to the fact that HKPRs may own more than one residential property during the process of purchasing a new property for replacement of the existing one, we have purposely drawn up a refund mechanism to properly handle cases of replacement of properties.

The proposed refund mechanism fulfills the Government's policy objective with due regard to the practicalities of changing properties and overseas practice. The justifications are -

- (a) The policy objective of the demand-side management measures is to accord priority to the home ownership needs of HKPRs (including those who may hold two residential properties for a short period of time during the process of replacement of their properties) given the tight housing supply. We consider it necessary to require a residential property owner having acquired another residential property to sell the original one within a specified timeframe. This is to prevent a property owner from acquiring another residential property under the guise of replacement and delaying disposal of his original one, which in effect result in the person holding more than one residential property for a considerable long period of time, inconsistent with the Government's policy objective;
- (b) According to the preliminary findings based on IRD's database of stamping agreements for sale and purchase, between 2011 and 2012, roughly half of buyers who held Hong Kong Identity Card and sold their other residential properties after acquiring residential properties, had their disposal transactions done within six months from acquisition. Besides, a residential property owner having acquired another residential property, in general, will not hold the original one for a long period of time for cash flow considerations. We understand that some banks in the market are providing bridging loans for customers replacing their properties so that they can complete the mortgage procedures for their newly-acquired residential properties. The repayment period of such bridging loans usually spans six months; and
- (c) We have taken into account overseas practices in formulating the relevant arrangement. Specifically, under Singapore's refund mechanism, a married couple (with a Singapore citizen spouse) can get refund of "Additional Buyer's Stamp Duty" paid on their second residential property provided that they enter into an agreement for sale for their first residential property within six months from the date of acquiring the second one.

Overall speaking, the current “six-month period” allowed in the refund mechanism strikes a balance between addressing the needs of HKPRs to replace their properties and safeguarding the effectiveness of the demand-side management measures.

Redevelopment Projects

It is the Government’s policy objective that DSD should not hinder redevelopment. To implement this policy objective, we have made reference to the proposed BSD regime to establish a refund mechanism which enables a person or a company acquiring residential properties for redevelopment to apply for the refund of the difference between the new and old ad valorem stamp duty rates, subject to specified conditions being fulfilled.

The Government has considered the suggestion for relaxing the refund mechanism for redevelopment arising from discussions at the Bills Committee on 2012 Bill. The two major principles held by the Government in formulating the BSD refund mechanism for redevelopment are that before the BSD paid can be refunded, (a) the developer concerned has to obtain ownership of the entire lot to be redeveloped; and (b) there is proof that the developer concerned will use the site for redevelopment purpose. The Government has, based on the aforesaid two principles, devised the following enhanced refund mechanism for developers to apply for refund of BSD paid after -

- (a) the developer has obtained ownership of the entire lot to be redeveloped; and
- (b) the developer has satisfied any one of the following conditions -
 - (i) the Buildings Department has consented to the commencement of foundation works for the redevelopment project; or
 - (ii) the original building(s) on the lot concerned (if any) has been demolished and the Buildings Department has approved the building plan for the redevelopment project.

The original “six-year period” within which the developer has to produce the first occupation permit would no longer be required and the refund of BSD may be advanced by between four to five years under the enhanced refund mechanism. Depending on the scrutiny by LegCo on the proposed CSAs to the 2012 Bill, we intend to propose corresponding CSAs to the 2013 Bill in handling similar situations.

Companies Owned by HKPRs

Granting exemption to companies owned by HKPRs is contrary to our policy objective to accord priority to HKPRs in order to address their home ownership

needs. Due to excessive liquidity worldwide, many major international cities, including Hong Kong, are facing the risk of a property market bubble. Until the property market returns to a normal state, the Government must put in place effective demand-side management measures to curb market exuberance and to safeguard the healthy and stable development of the property market.

As the Administration has repeatedly pointed out in the context of the 2012 Bill, if we are to determine the chargeability of BSD on the basis of the HKPR status of a company's shareholders, this will cause confusion to the fundamental legal principle currently governing companies that "a company is an entity independent of its shareholders". Based on the same legal principle, the Government will not take into account the residential properties held by HKPRs through a company in determining whether the relevant persons can be exempted from DSD. The enhanced SSD, BSD and DSD measures target at different demands in the spectrum of buyers for the primary objective of combating speculation and managing demand. Therefore, we need to adopt the same yardstick to address issues concerning stamp duties payable by companies in acquiring properties.

In Hong Kong, it is commonly known that the cost of setting up a company is low and the procedures involved are simple. Besides, to acquire the ownership and control of assets held by a company (including residential properties) through changing the shares and ownership of the company holding such assets is a very common commercial activity in Hong Kong. The crux of the problem is that there are numerous means to transfer company shares and ownership. Under the current regime, the validity of the transfer of the ownership in the company would not be affected even if such transactions are not registered with the Companies Registry and the instruments involved (which may need to be stamped) are not presented to IRD for stamping.

In other words, if HKPR-owned companies were exempted from the DSD, people outside Hong Kong could easily make use of various means which would be hard to be uncovered or traced to acquire the beneficial interest of the shares of the company and gain control of the company in a concealed way.² This would in effect allow that person outside Hong Kong to gain control of the residential property owned by the company, and at the same time evade the applicable stamp duty.

A person from outside Hong Kong may also, through arrangements and ways that are hard to be traced, acquire the control of the HKPR company concerned behind the scene, and in turn assume the effective ownership of the residential properties held by the company, thus successfully evading the applicable stamp duty. As we have repeatedly pointed out, fundamental changes to the existing simple yet effective taxation and company regimes will be required if we are to plug these

² For example, through a company with only one HKPR as its shareholder and director who is asked to sign a blank instrument of transfer and surrender all seals of the company to the person from outside Hong Kong.

loopholes³. Furthermore, even if the present taxation and company regimes were changed, there is still no guarantee that the IRD could uncover the non-compliance cases. The effort required would be disproportionate when seen against the implementation of an extraordinary measure such as DSD.

Admissibility of an Instrument in Civil Proceedings

The Government agrees to the Law Society's suggestion to the Bills Committee on 2012 Bill that as it is the property buyer's liability to pay BSD, any failure to pay BSD by such a buyer should not affect the innocent seller's right to present relevant documentation in court proceedings for purposes including to prove his/her title to the property. The Government proposes that an instrument that is chargeable with BSD but has not been duly stamped may still be received in evidence in civil proceedings before a court, provided that -

- (a) the buyer under the instrument has made a misrepresentation that he/she was a HKPR or was acting on his/her own behalf;
- (b) the instrument has been registered with the Land Registry under the Land Registration Ordinance; and
- (c) the instrument is produced in evidence by any person other than the buyer in order to prove the person's title to the property concerned or is produced by the vendor to enforce the instrument.

The Government has agreed to propose the relevant CSAs to the 2012 Bill. In the context of the 2013 Bill, we propose that the liability to pay for the underpaid AVD on the basis of the statutory declarations made by the purchasers/transferees (who have subsequently been found to be non-HKPRs or found to be the beneficial owners of other residential properties in Hong Kong at the material time) shall rest with the purchasers/transferees only. In other words, the sellers and subsequently buyers would not be liable for the underpaid AVD. Depending on the scrutiny by the LegCo on those proposed CSAs to the 2012 Bill, we will propose necessary CSAs to the Bill as appropriate.

Looking Ahead

We are most grateful for the Law Society's active participation and constructive comments. We look forward to the Law Society's continued contributions and support to the early passage of the two Amendment Bills. We and IRD colleagues will be pleased to meet with the Law Society again in early December to exchange

³ Such as making fundamental changes to the Company Ordinance and the Stamp Duty Ordinance by requiring that the Company Registry and the IRD should be informed of all actions that involve changes in company controlling stake. This will result in actual changes to the operation of all companies.

views on the technical and operational details where necessary. In addition, we will be glad to attend the seminar to be arranged by the Hong Kong Academy of Law to enhance the participants' understanding and handling of matters in relation to these measures upon their passage by the LegCo.

Yours sincerely,



(LAU Wai-ming)
for Secretary for Financial Services
and the Treasury

C.C.
Commissioner of Inland Revenue

(Attn: Mr TAM Tai-pang)