

Stamp Duty (Amendment) (No. 2) Bill 2023

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A BILL

To

Amend the Stamp Duty Ordinance to provide for a mechanism under which persons who are admitted into Hong Kong as Hong Kong residents under certain admission schemes and who acquire residential properties not as Hong Kong permanent residents may be refunded certain amounts of ad valorem stamp duty and buyer's stamp duty if those persons subsequently become Hong Kong permanent residents.

Enacted by the Legislative Council.

1. **Short title and commencement**

- (1) This Ordinance may be cited as the Stamp Duty (Amendment) (No. 2) Ordinance 2023.
- (2) This Ordinance is deemed to have come into operation on 19 October 2022.

2. **Stamp Duty Ordinance amended**

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 6.

3. Part IIIA, Division 6A added

Part IIIA, after Division 6—

Add**“Division 6A—Refund of Certain Amounts of Stamp Duty for Hong Kong Permanent Residents Admitted into Hong Kong under Certain Admission Schemes****29DI. Interpretation**

In this Division—

applicable instrument (適用文書) means an instrument—

- (a) under which a single residential property is acquired; and
- (b) on which—
 - (i) buyer’s stamp duty had been paid; and
 - (ii) stamp duty had been paid according to Part 1 of Scale 1 of head 1(1), or Part 1 of Scale 1 of head 1(1A), in the First Schedule;

applicant (申請人), in relation to an application made under section 29DJ(1), means the person who makes the application;***co-buyer*** (共同買家), in relation to an application made under section 29DJ(1), means—

- (a) the applicant; or
- (b) any other person who, jointly with the applicant, acquired the subject property as mentioned in section 29DJ(1)(b)(ii);

remaining co-buyer (餘下共同買家), in relation to an application made under section 29DJ(1), means a

co-buyer who, on the date of the application, remains a beneficial owner of the subject property concerned;
subject property (標的物業), in relation to an applicable instrument, means the residential property acquired under the instrument.

29DJ. Application for refund

- (1) Subject to sections 29DK and 29DL, the Collector may, on an application made by a person who had paid stamp duty on an applicable instrument, refund the specified amount to the person if it is shown to the satisfaction of the Collector that—
 - (a) the date of the person's acquisition of the subject property falls on or after 19 October 2022; and
 - (b) in relation to the person—
 - (i) if the person alone acquired the subject property under the instrument—the conditions specified in subsection (2) are met; or
 - (ii) if the person, jointly with one or more than one other person, acquired the subject property under the instrument—the conditions specified in subsection (3) are met.
- (2) The conditions specified for subsection (1)(b)(i) are—
 - (a) that on the date of the applicant's acquisition of the subject property—
 - (i) the applicant was acting on his or her own behalf; and

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- (ii) the applicant was covered by a specified scheme;
 - (b) that the applicant—
 - (i) was not a beneficial owner of any other residential property in Hong Kong on the date of the applicant's acquisition of the subject property; and
 - (ii) is not a vendor under an agreement for sale of any other residential property in Hong Kong—
 - (A) that was made before the date of the applicant's acquisition of the subject property; and
 - (B) that is unperformed, or otherwise remains outstanding, on the date of the application;
 - (c) that on the date of the application—
 - (i) the applicant remains a beneficial owner of the subject property; and
 - (ii) no person other than one who falls within the following descriptions is a beneficial owner of the subject property in addition to the applicant—
 - (A) the person is closely related to the applicant; and
 - (B) the person was acting on his or her own behalf on the date of his or her acquisition of the subject property; and

- (d) that the applicant has after the date of the applicant's acquisition of the subject property become, and on the date of the application remains, a Hong Kong permanent resident.
- (3) Subject to subsection (4), the conditions specified for subsection (1)(b)(ii) are—
- (a) that on the date of the co-buyers' acquisition of the subject property—
 - (i) each of the co-buyers was acting on his or her own behalf; and
 - (ii) each of the co-buyers was covered by a specified scheme;
 - (b) that each of the co-buyers—
 - (i) was not a beneficial owner of any other residential property in Hong Kong on the date of the co-buyers' acquisition of the subject property; and
 - (ii) is not a vendor under an agreement for sale of any other residential property in Hong Kong—
 - (A) that was made before the date of the co-buyers' acquisition of the subject property; and
 - (B) that is unperformed, or otherwise remains outstanding, on the date of the application;
 - (c) that on the date of the application—
 - (i) at least one co-buyer who was, on the date of the co-buyers' acquisition of the subject property, covered by a specified scheme

- (*specified co-buyer*) remains a beneficial owner of the subject property; and
- (ii) no person other than one who falls within the following descriptions is a beneficial owner of the subject property in addition to the specified co-buyer—
 - (A) the person is closely related to all of the co-buyers; and
 - (B) the person was acting on his or her own behalf on the date of his or her acquisition of the subject property; and
 - (d) that each of the remaining co-buyers has after the date of the co-buyers' acquisition of the subject property become, and on the date of the application remains, a Hong Kong permanent resident.
- (4) If all the co-buyers were closely related on the date of their acquisition of the subject property, the condition specified in subsection (3)(a)(ii) is taken to be met so long as, on that date—
- (a) the applicant was covered by a specified scheme; and
 - (b) each of the co-buyers other than the applicant was not a Hong Kong permanent resident.
- (5) In this section—
- specified amount*** (指明款項), in relation to an applicable instrument, means the sum of the amounts under paragraphs (a) and (b)—
- (a) an amount equal to the difference between—

- (i) if the instrument is one on which stamp duty had been paid according to Part 1 of Scale 1 of head 1(1) in the First Schedule—the stamp duty so paid on the instrument and the stamp duty that would have been payable on the instrument if it were chargeable under Scale 2 of head 1(1) in the First Schedule in accordance with Division 2; or
 - (ii) if the instrument is one on which stamp duty had been paid according to Part 1 of Scale 1 of head 1(1A) in the First Schedule—the stamp duty so paid on the instrument and the stamp duty that would have been payable on the instrument if it were chargeable under Scale 2 of head 1(1A) in the First Schedule in accordance with Division 3;
- (b) the amount of buyer's stamp duty paid on the instrument;

specified scheme (指明計劃) means a scheme (including a policy or arrangement) that is specified in Schedule 12.

- (6) For the purposes of this section, a person is covered by a specified scheme if the person, despite not being a Hong Kong permanent resident, is permitted to stay in Hong Kong by virtue of being a person to whom a specified scheme applies.
- (7) In subsection (6), the reference to a person's being permitted to stay in Hong Kong is a reference to the person's being permitted to stay in Hong Kong pursuant to the exercise of a power under the Immigration Ordinance (Cap. 115).

- (8) For the purposes of this section—
 - (a) an agreement for sale of a residential property is unperformed if the agreement is cancelled, annulled or rescinded or is otherwise not performed; and
 - (b) such an agreement remains outstanding if the agreement provides for the conveyance of the residential property concerned but the conveyance is not yet executed.

29DK. Applicants or co-buyers regarded as not being beneficial owners of other residential properties in certain circumstances

- (1) Subsection (2) applies if section 29DJ(1)(b)(i) is relied on in making an application under section 29DJ(1).
- (2) Even if, on the date of the applicant's acquisition of the subject property concerned, the applicant was a beneficial owner of another residential property in Hong Kong (*original property A*), the applicant is, for the purposes of section 29DJ(2)(b)(i), taken not to be a beneficial owner of original property A on that date if the conditions specified in subsection (3) are met.
- (3) The conditions specified for subsection (2) are—
 - (a) that it is shown to the satisfaction of the Collector that—
 - (i) original property A is—
 - (A) disposed of by the applicant under an agreement for sale that is made within the period specified in subsection (7); and

- (B) transferred or divested from the applicant under a conveyance on sale that is executed in conformity with the agreement; or
- (ii) original property A is transferred or divested from the applicant under a conveyance on sale within the period specified in subsection (7);
- (b) that it is shown to the satisfaction of the Collector that, but for the subject property and original property A, the applicant would not be a beneficial owner of any residential property in Hong Kong on the date of the applicant's acquisition of the subject property; and
- (c) that no refund has been made under this Division in respect of original property A.
- (4) Subsection (5) applies if section 29DJ(1)(b)(ii) is relied on in making an application under section 29DJ(1).
- (5) Even if, on the date of the co-buyers' acquisition of the subject property concerned, any one of the co-buyers was a beneficial owner of another residential property in Hong Kong (*original property B*), that co-buyer is, for the purposes of section 29DJ(3)(b)(i), taken not to be a beneficial owner of original property B on that date if—
 - (a) where that co-buyer is a remaining co-buyer—the conditions specified in subsection (6)(a), (b) and (c) are met; or
 - (b) in any other case—the condition specified in subsection (6)(b) is met.

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- (6) The conditions specified for subsection (5) are—
- (a) that it is shown to the satisfaction of the Collector that—
 - (i) original property B is—
 - (A) disposed of by the co-buyer under an agreement for sale that is made within the period specified in subsection (7); and
 - (B) transferred or divested from the co-buyer under a conveyance on sale that is executed in conformity with the agreement; or
 - (ii) original property B is transferred or divested from the co-buyer under a conveyance on sale within the period specified in subsection (7);
 - (b) that it is shown to the satisfaction of the Collector that, but for the subject property and original property B, each of the co-buyers would not be a beneficial owner of any residential property in Hong Kong on the date of the co-buyers' acquisition of the subject property; and
 - (c) that no refund has been made under this Division in respect of original property B.
- (7) The period specified for the purposes of subsections (3)(a)(i)(A) and (ii) and (6)(a)(i)(A) and (ii) is—
- (a) if the applicable instrument is a conveyance on sale—12 months after the date of the conveyance; or

- (b) if the applicable instrument is an agreement for sale—12 months after the date of the conveyance on sale executed in conformity with the agreement.

29DL. Deadline for application

No refund may be made under this Division if the application for refund is made after—

- (a) subject to paragraph (b), 6 months after—
 - (i) the date on which the Stamp Duty (Amendment) (No. 2) Ordinance 2023 (of 2023) is published in the Gazette; or
 - (ii) the date on which—
 - (A) if section 29DJ(1)(b)(i) is relied on in making the application—the applicant became a Hong Kong permanent resident; or
 - (B) if section 29DJ(1)(b)(ii) is relied on in making the application—the person who, among the remaining co-buyers, last became a Hong Kong permanent resident became such a resident,whichever is the later; or
- (b) if section 29DK is relied on in making the application—
 - (i) 6 months after the date mentioned in paragraph (a)(i);
 - (ii) 6 months after the date mentioned in paragraph (a)(ii);

- (iii) 2 years after the date of the applicable instrument; or
- (iv) 2 months after the date of the conveyance on sale under which—
 - (A) if section 29DJ(1)(b)(i) is relied on in making the application—original property A is transferred or divested as mentioned in section 29DK(3)(a); or
 - (B) if section 29DJ(1)(b)(ii) is relied on in making the application—original property B is transferred or divested as mentioned in section 29DK(6)(a),whichever is the latest.”.

4. Section 63B added

After section 63A—

Add

“63B. Amendment of Schedule 12

The Financial Secretary may, by notice published in the Gazette, amend Schedule 12.”.

5. First Schedule amended

First Schedule, within the square brackets, after “29DH,”—

Add

“29DI, 29DJ”.

6. Schedule 12 added

At the end of the Ordinance—

Add

“Schedule 12

[ss. 29DJ & 63B]

Schemes Specified for Division 6A of Part IIIA

Column 1	Column 2
Item	Scheme
1.	General Employment Policy
2.	Admission Scheme for Mainland Talents and Professionals
3.	Quality Migrant Admission Scheme
4.	Immigration Arrangements for Non-local Graduates
5.	Technology Talent Admission Scheme
6.	Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents
7.	Top Talent Pass Scheme”.

Explanatory Memorandum

The object of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) (*principal Ordinance*) to provide for a mechanism under which persons who are admitted into Hong Kong as Hong Kong residents under certain admission schemes and who acquire residential properties not as Hong Kong permanent residents may be refunded certain amounts of ad valorem stamp duty and buyer's stamp duty if those persons subsequently become Hong Kong permanent residents.

2. Clause 1 sets out the short title and provides that the Bill, when enacted, is deemed to have come into operation on 19 October 2022.
3. Clause 3 adds a new Division 6A (new sections 29DI to 29DL) to Part IIIA of the principal Ordinance.
4. The new section 29DI provides for the interpretation of terms used in the new Division 6A.
5. The new section 29DJ provides that the Collector of Stamp Revenue may, on an application made by a person who had paid stamp duty for a residential property, refund to the person a certain amount of the stamp duty. The person is eligible for the refund only if the person was admitted into Hong Kong as a Hong Kong resident under certain admission schemes specified in the new Schedule 12 to the principal Ordinance (added by clause 6), and if the person acquired the property not as a Hong Kong permanent resident, but has subsequently become one. The amount of stamp duty to be refunded is, generally speaking, an amount equal to the sum of—

- (a) the amount of ad valorem stamp duty paid for the property in excess of such stamp duty that would have been payable for the property had a lower rate of such stamp duty (which applies to Hong Kong permanent residents in certain circumstances) applied; and
 - (b) the amount of buyer's stamp duty paid for the property.
- 6. Another condition for the refund is that the person, when acquiring the residential property concerned, must not own any other residential property in Hong Kong. The new section 29DK provides that the condition may be relaxed in certain specific circumstances.
- 7. The new section 29DL provides for the deadline for the application for refund.
- 8. Clause 4 adds a new section 63B to the principal Ordinance to empower the Financial Secretary to amend the list of admission schemes contained in the new Schedule 12 by way of subsidiary legislation.
- 9. Clause 5 makes a consequential amendment to the First Schedule to the principal Ordinance.