

LCQ21: Non-liability for payment, remission and refund of stamp duty

Following is a question by the Hon Kenneth Leung and a written reply by the Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (March 27):

Question:

Under section 41 of the Stamp Duty Ordinance (Cap 117), the Central People's Government, the Government or any incorporated public officer or any person acting in his capacity as a public officer shall not be liable for the payment of stamp duty chargeable on any instrument. Under section 52 of Cap 117, the Chief Executive (CE) may remit, wholly or in part, the stamp duty payable, or refund, wholly or in part, the stamp duty paid, in respect of any instrument chargeable with stamp duty. Regarding the enforcement of those provisions, will the Government inform this Council:

(1) of the number of cases in each of the past 10 years in which the payment of stamp duty was exempted under section 41 of Cap 117 and the details of such cases (including the identities of the beneficiaries, as well as the amounts and types of stamp duty involved);

(2) of the number of cases in each of the past 10 years in which remission or refund of stamp duty was granted under section 52 of Cap 117 and the details of such cases (including the identities of the beneficiaries, as well as the amounts and types of stamp duty involved);

(3) of the number of cases among those in (1) and (2) in which the beneficiary was the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG) or companies associated with it, and the details of such cases (including the amounts and types of stamp duty involved);

(4) whether the Government will stipulate specific conditions (e.g. the property involved to be for self-use or for non-profit-making purposes only) to be met by property transactions before exemption or remission of stamp duty may be granted; if so, of the details, including the mechanism for monitoring the compliance with the relevant conditions; if not, the reasons for that;

(5) of the policy intents of the aforesaid provisions and the procedures for vetting and approval of the applications concerned; what information the persons applying for exemption, remission or refund of stamp duty have to furnish in support of their applications; and

(6) as it has been reported that the transactions for acquisition of properties in Hong Kong by a private company owned by two staff members of

LOCPG have been granted remission by CE under section 52 of Cap 117 of all the stamp duty payable, of the reasons why the company was accorded such treatment; if it was because the persons concerned claimed that the company was controlled by LOCPG, how the authorities verified the claim?

Reply:

President,

Under section 41(1) of the Stamp Duty Ordinance (SDO), the Central People's Government (CPG), the Government of the Hong Kong Special Administrative Region (HKSAR) or any incorporated public officer or any person acting in his capacity as a public officer shall not be liable for the payment of stamp duty chargeable on any instrument. Therefore, the CPG is exempt from the payment of stamp duty for the acquisition of properties in Hong Kong. Before Hong Kong's return to China, the same exemption was also available to the British Government for the acquisition of properties in Hong Kong. Moreover, under section 52(1) of the SDO, the Chief Executive (CE) may remit, wholly or in part, the stamp duty payable, or refund, wholly or in part, the stamp duty paid, in respect of any instrument chargeable with stamp duty.

The organs of the CPG in Hong Kong are exempt from the payment of stamp duty for the acquisition of properties in Hong Kong under section 41 of the SDO. There is no specified condition for such exemption. Where a CPG's organ in Hong Kong acquires a local property through its subsidiary company, section 41 is not directly applicable. With reference to the principle of section 41, the HKSAR Government will apply section 52(1) to remit the stamp duty chargeable on the relevant transaction instrument. To ensure the consistency of the exemption arrangement, remission of stamp duty on transaction instruments is granted under section 52(1) for local properties acquired either by the CPG's organs in Hong Kong or through their subsidiary company. The Chief Executive has authorised relevant officials of the Financial Services and the Treasury Bureau (FSTB) to exercise the power under section 52(1) of the SDO. In exercising the delegated authority, the FSTB will examine and consider the information submitted by the CPG's organs in Hong Kong or their subsidiary company, such as agreements for sale and purchase, declarations of trust, notarial certificates, declarations of shareholdings and/or company search records, etc.

Information on stamp duty remission accorded to the CPG's organs in Hong Kong or their subsidiary company in respect of local properties they acquired between the financial years 2009-10 and 2018-19 is tabulated below:

Financial Year	Organisations	Stamp duty involved (\$ million)	No. of properties involved
2009-10	—	0	0
2010-11	—	0	0

2011-12	–	0	0
2012-13	Subsidiary company of a CPG's organ in Hong Kong	1.9	15
2013-14	–	0	0
2014-15	Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region	52.3	6
2015-16	Ministry of Commerce of the People's Republic of China	3.6	8
	Subsidiary company of a CPG's organ in Hong Kong	15.6	15
2016-17	Subsidiary company of a CPG's organ in Hong Kong	8.4	8
2017-18	–	0	0
2018-19 (as at February 28, 2019)	Subsidiary company of a CPG's organ in Hong Kong	47.9	25

The Government does not comment on individual cases. Nevertheless, the HKSAR Government would emphasise that in implementing the SDO (including its provision on stamp duty remission), the HKSAR Government will carefully examine each case and the information provided by the persons concerned and confirm that the requirements are met before granting remission in accordance with the law.