

**CONTROLLING OFFICER'S REPLY**

**S-FSTB(Tsy)05**

**(Question Serial No. S0038)**

Head: (76) Inland Revenue Department

Subhead (No. & title): ( )

Programme: (1) Assessing Functions, (2) Collection, (3) Investigation and Field Audit

Controlling Officer: Commissioner of Inland Revenue (WONG Kuen Fai)

Director of Bureau: Secretary for Financial Services and the Treasury

Question:

It was mentioned that where a Central People's Government (CPG)'s organ in Hong Kong acquired a local property through its subsidiary company, section 41 of the Stamp Duty Ordinance (SDO) was not directly applicable. Please advise how the Government of the Hong Kong Special Administrative Region (HKSAR) makes reference to the principles of section 41(1) of the SDO in its application of section 52(1); and the principles which have been referred to. Does it mean that exemption of stamp duty will be granted indiscriminately to any organ as long as it is a subsidiary company? Will consideration be given to other factors such as whether the property acquired by a subsidiary company is of residential or commercial nature; whether it is for serving operational, rental or self-occupation purpose? If the answer is in the affirmative, will the exemption of stamp duty be granted under all circumstances?

Please advise the ranks of the officials of the Financial Services and the Treasury Bureau (FSTB) who are authorised to exercise the power under section 52(1). What was the time the authorisation of the power under section 52(1) was initially granted to these officials? In exercising such power, are the applicants required to submit a written application stating the reasons for application in detail? If the applicant claims that it is with a subsidiary company of a CPG's organ in Hong Kong, are the officials required to learn about the background of the property or the purchaser concerned? Are they required to check documentary proof to verify whether the applicant is a genuine subsidiary company of an organ of the CPG? How is the verification conducted? How will they notify the Inland Revenue Department to grant the exemption? Will written justifications for granting the exemption be presented?

Please give the details of the 48 properties acquired by the subsidiary companies of the CPG from 2015 to 2019 by the year of acquisition, the type of property (residential property, car parking space or non-residential property) and floor area of each property.

Did the HKSAR Government make enquiry with the CPG about the reasons why the subsidiary companies of the CPG's organs in Hong Kong need to increase the number of Hong Kong properties, especially residential properties they acquired in recent years? If the answer is in the affirmative, what are the results of the enquiry?

Regarding the execution of the power authorised under section 52(1) by the relevant officials of the FSTB, did they receive any application filed by individual citizens in addition to applicants which are subsidiary companies of the CPG's organs in Hong Kong? If the answer is in the affirmative, what are the reasons for filing such applications? Please provide the total number of applications received, the breakdown of the relevant figures, the reasons for and results of the applications. For the applications which have failed in obtaining the exemption, please provide the total number of such applications, the breakdown of the relevant figures and the reasons for not granting the exemption.

Asked by: Hon TO Kun-sun, James (LegCo internal reference no.: )

Reply:

Under section 41(1) of the Stamp Duty Ordinance (SDO), the Central People's Government (CPG), the HKSAR 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. 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 (including that the CPG's organs in Hong Kong are exempt from the payment of stamp duty for the acquisition of properties in Hong Kong under section 41, and that there is no specified condition for such exemption), 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 first delegated the power to exercise the power under section 52(1) of the SDO to the Financial Secretary and the Secretary for Financial Services and the Treasury. Since September 2005, the power has been further delegated to the relevant Permanent Secretary, Deputy Secretary and Principal Assistant Secretary in the Financial Services and the Treasury Bureau (FSTB). In exercising the delegated authority, FSTB will examine and consider the information submitted by the applicants, such as agreements for sale and purchase, declarations of trust, notarial certificates, declarations of shareholdings and/or companies search records, etc.

We would not comment on individual cases or disclose specific information of individual cases. Nevertheless, it should be emphasised that in implementing the SDO, including its provisions on stamp duty exemption, 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.

Information on types of properties acquired by the subsidiary company of the CPG's organ in Hong Kong between the financial years 2014-15 and 2018-19 is tabulated below:

Financial Year	2014-15	2015-16	2016-17	2017-18	2018-19 (as at 28.02.2019)
No. of residential property	0	15	8	0	22
No. of car parking space	0	0	0	0	3

IRD does not maintain the information about the floor area of the properties concerned.

Details of application for remission of stamp duty under section 52 of the SDO submitted by individuals in connection with acquisitions of properties in Hong Kong between the financial years 2014-15 and 2018-19 are tabulated below:

Financial Year	2014-15	2015-16	2016-17	2017-18	2018-19 (as at 28.02.2019)
No. of application	0	0	1	0	2
No. of remission disapproved	0	0	1	0	2

IRD would not comment on individual cases or disclose specific information of individual cases.

- End -