

**CONTROLLING OFFICER'S REPLY**

**(Question Serial No. S0039)**

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:

Will the Government please explain the status of “not having applied for a valid Hong Kong Permanent Identity Card”, as referred to by the Government? If the buyer, on the day of purchase, not only holds a “Notice of Application Result for Verification of Eligibility for Permanent Identity Card”, but has also filled in the application form to apply for the Hong Kong Permanent Identity Card, though the buyer has not yet collected the Card, will such a buyer be regarded as a Hong Kong permanent resident (HKPR) as defined by the Stamp Duty Ordinance (SDO)?

For infants born in Hong Kong or children under the age of 18 who have not yet applied for a valid Hong Kong Permanent Identity Card, are they regarded as HKPRs as defined by the Stamp Duty Ordinance?

Is it the Government's intent to exclude those Hong Kong people who hold a “Notice of Application Result for Verification of Eligibility for Permanent Identity Card” but have not yet applied for or are not yet holding a valid Hong Kong Permanent Identity Card?

The aforementioned Hong Kong people are regarded as HKPRs under the Immigration Ordinance. What is the reason for a Hong Kong person, on the day of purchasing a property, to be regarded as a HKPR under the Immigration Ordinance and to be regarded as a local buyer (who shall be exempted from paying the Buyer's Stamp Duty (BSD)) but not a HKPR under the SDO? Is there a loophole in the SDO or a mistake in drafting the relevant provisions?

How many cases involving the aforementioned controversy over the definition of HKPR have been received by the Inland Revenue Department?

Will the Financial Services and the Treasury Bureau consider whether it is necessary to amend the relevant provisions, so that all Hong Kong people being regarded by the Immigration Department as HKPRs under the Immigration Ordinance will be regarded as conforming with the definition of HKPR under the SDO, and therefore can be exempted from payment of the “double stamp duty” and the BSD provided that they also meet the other eligibility criteria?

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

Reply:

Any purchaser (irrespective of age) who holds or later obtains a Hong Kong Permanent Identity Card (PIC) of which the date of issue is not later than the date of acquisition of a residential property, is considered falling within the definition of Hong Kong Permanent Residents (HKPR) under the Stamp Duty Ordinance (Cap. 117) (SDO).

When formulating the buyer’s stamp duty (BSD), the Government has clearly stated in the relevant Legislative Council Brief that the definition of a HKPR was a person who belonged to a class or description of person specified in Schedule 1 of the Immigration Ordinance (Cap. 115). As all HKPRs are eligible to apply for PICs under the Registration of Persons Ordinance (Cap. 177), a HKPR is defined as a person –

- (a) who holds a valid PIC issued under the Registration of Persons Ordinance; or
- (b) who is eligible to but exempted from applying for the issue of a PIC under regulation 25(e) of the Registration of Persons Regulations (Cap. 177A).

From 27 October 2012 (i.e. the effective date of relevant ordinance) up to 31 March 2019, the Inland Revenue Department (IRD) has processed 4 cases involving disputes over the definition of HKPR.

The Government considers the relevant legislative provisions clear and there is no need for amendments. As concluded by the court of Hong Kong in *Chen An v Collector of Stamp Revenue (DCSA 17/2015)*, holding only a “Notice of Application Result for Verification of Eligibility for Permanent Identity Card” does not meet the definition of HKPR under the SDO. IRD has recently updated the frequently asked questions of BSD and ad valorem stamp duty at its website to make clear that a person who only holds a “Notice of Application Result for Verification of Eligibility for Permanent Identity Card” issued by the Immigration Department cannot be regarded as a HKPR. Moreover, the Transport and Housing Bureau has recently notified the Estate Agents Authority to alert the licensed estate agents that the statutory definition of HKPR under the SDO refers to a person who holds a valid PIC.

- End -