

[29AK.02] Commentary

Section 29AK is one of the exceptions to s 29AI, which is the general charging provision for conveyances on sale. It provides for ad valorem stamp duty to be chargeable at Scale 2 rates on certain conveyances on sale of residential property together with a car parking space to Hong Kong permanent residents.

Section 29AK applies where the properties concerned are a single residential property and a car parking space permitted for the parking of 1 motor vehicle, and it is shown to the satisfaction of the Collector that sub-s (2) applies.

Subsection (2) applies where the transferee(s) are Hong Kong permanent resident(s) acting on their own behalves, and they are not beneficial owners of any other residential properties or car parking spaces, in Hong Kong.

Subsection (3) defines the circumstances where a car parking space would be

Two examples are given under para 48 in SOIPN No 8 which illustrate the application of the similarly worded s 29BC (see [29BC.02]), which apply *mutatis mutandis* to s 29AK.

29AL. Certain conveyances on sale of residential property between closely related persons chargeable with ad valorem stamp duty at Scale 2 rates

- permitted for the parking of more than 1 motor vehicle.
- (1) A conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if—
 - (a) the property concerned is residential property; and
 - (b) it is shown to the satisfaction of the Collector that subsection (2) applies to the conveyance.
 - (2) This subsection applies to the conveyance if, on the date of acquisition of the property—
 - (a) the transferee, or each of the transferees, under the conveyance is closely related to the transferor, or to each of the transferors, under the conveyance;
 - (b) where there is more than one transferee under the conveyance, the transferees are also closely related; and
 - (c) that transferee, or each of those transferees, is acting on his or her own behalf.
 - (3) For the purpose of subsection (2)(a), if a transferor is acting in the transaction as a trustee for another person, that other person is treated as the transferor in place of the trustee.
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[29AL.01] Enactment history

This section was added by s 11 of the Stamp Duty (Amendment) (No 2) Ordinance 2014 (14 of 2014), deemed to have come into operation on 23 February 2013.

[29AL.02] Commentary

Section 29AL is one of the exceptions to s 29AI, which is the general charging provision for conveyances on sale. It provides for ad valorem stamp duty to be chargeable at Scale 2 rates on certain conveyances on sale of residential property between closely related persons. It applies where the property concerned is residential property, and it is shown to the satisfaction of the Collector that sub-s (2) applies.

Subsection (2) applies where:

- (1) the transferee(s) are all closely related to the transferor(s);
- (2) the transferee(s) are all closely related to each other; and
- (3) the transferee(s) are all acting on their own behalves. For the definition of ‘closely related’, see [29AD.02].

Under sub-s (3), if a transferor is acting as a trustee for another person, that other person is treated as the transferor in place of the trustee.

In *Wong Suet Foon Shirley v Collector of Stamp Revenue* [2019] 2 HKLRD 227, [2019] HKCU 751, [2019] HKDC 268 the deceased intestate owned a property, and the personal representative of the deceased’s estate was her daughter (the administratrix). Including the administratrix, the deceased had 5 children. For a reason not relevant for present purposes, the 5 children agreed under a deed of family arrangement that 3 of them would renounce their interests in the property in favour of the administratrix and another sister. The administratrix executed an asset to transfer the property to herself and the sister. The Court held that s 29AL did not apply to this transfer because the 3 renouncing siblings were not the transferors, nor was the administratrix, because she did not hold any interest over the estate of the deceased which she could in her personal capacity act as transferor. It is noted that an appeal of this decision is pending.

29AM. Conveyances on sale of property for replacing other property disposed of under certain Ordinances chargeable with ad valorem stamp duty at Scale 2 rates

- (1) A conveyance on sale is chargeable with stamp duty under Scale 2 of head 1(1) in the First Schedule if it is shown to the satisfaction of the Collector that—
 - (a) the transferee under the conveyance is acting on the transferee’s own behalf;
 - (b) the property concerned (*replacement property*) is acquired by the transferee to replace another property (*original property*);

- (c) the original property—
 - (i) was owned by the transferee alone or jointly with any other person or persons; and
 - (ii) falls within subsection (2); and
- (d) subsection (3) applies to the replacement property.
- (2) The original property falls within this subsection if it has been—
 - (a) purchased or otherwise acquired by the Urban Renewal Authority for the purposes of any of its projects as defined by section 2 of the Urban Renewal Authority Ordinance (Cap. 563);
 - (b) resumed under an order made under section 3 of the Lands Resumption Ordinance (Cap. 124) or purchased by agreement under section 4A of that Ordinance;
 - (c) sold pursuant to an order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545);
 - (d) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);
 - (e) resumed under an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
 - (f) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap. 519);
 - (g) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); or
 - (h) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).
- (3) This subsection applies to the replacement property if—
 - (a) the date of disposal of the original property under subsection (2) is earlier than the date of acquisition by the transferee of the replacement property; and
 - (b) the original property and the replacement property are both residential properties, or both non-residential properties
- (4) Subsection (1) does not apply to a conveyance on sale under which a replacement property is acquired by a transferee to

replace an original property if—

- (a) the transferee has acquired another replacement property to replace the original property under another instrument; and
 - (b) stamp duty has been charged on that other instrument according to Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule because of the operation of subsection (1) or section 29BE(1).
- (5) If an original property was owned by more than one person, subsection (1) applies to each owner in relation to 1 replacement property acquired by the owner, regardless of whether or not the replacement property is acquired—
- (a) by the owner alone; or
 - (b) by the owner jointly with—
 - (i) another owner of the original property; or
 - (ii) any other person.

[29AM.01] Enactment history

This section was added by s 11 of the Stamp Duty (Amendment) (No 2) Ordinance 2014 (14 of 2014), deemed to have come into operation on 23 February 2013.

[29AM.02] Commentary

Section 29AM is one of the exceptions to s 29AI, which is the general charging provision for conveyances on sale. It provides for ad valorem stamp duty to be chargeable at Scale 2 rates where there is a conveyance on the sale of property to replace other property disposed of under the particular Ordinances specified therein.

This section applies where it can be shown to the satisfaction of the Collector that the transferee is acting on his/her own behalf, the property concerned (replacement property) was acquired to replace another property (original property), the original property was owned by the transferee alone or jointly with another person(s), and the original property was:

- (1) purchased or otherwise acquired by the Urban Renewal Authority for the purposes of any of its projects as defined by s 2 of the Urban Renewal Authority Ordinance (Cap 563);
- (2) resumed under an order made under s 3 of the Lands Resumption Ordinance (Cap 124) or purchased by agreement under s 4A of that Ordinance;
- (3) sold pursuant to an order for sale made by the Lands Tribunal under s 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545);