

**The Administration's Responses to Matters Raised at the Meetings of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
held on 25 April and 5 May 2014**

This paper sets out the Administration's responses to the matters raised by the Bills Committee on Stamp Duty (Amendment) Bill 2013 at the meetings held on 25 April and 5 May 2014. The key matters are as follows -

- (a) consider extending the exemption from the doubled ad valorem stamp duty ("AVD") to cover the acquisition of flats under the Tenants Purchase Scheme ("TPS") by a trustee/guardian acting on behalf of a Hong Kong Permanent Resident ("HKPR") minor;
- (b) clarify the arrangement to make a declaration that the minor is a HKPR and is not a beneficial owner of any other residential property in Hong Kong in respect of acquisition of a residential property by the concerned trustee or guardian acting on behalf of the HKPR minor;
- (c) clarify the meaning of "beneficial owner" which should not include a person/company who acquires the properties on other's behalf by virtue of any trust arrangements and suggest that the Secretary for Financial Services and the Treasury should elaborate the meaning of "beneficial owner" in his speech on the resumption of the second reading debate on the Bill; and
- (d) provide information on the application of sunset clause in the legislation in Hong Kong and in other jurisdictions.

Acquisition of a public housing unit under TPS

2. As explained in the LC Paper Nos. CB(1)1219/13-14(02) and CB(1)1338/13-14(01), flats acquired under TPS are subject to the doubled AVD, same as other residential properties. If the HKPR tenants of TPS estates are not able to

fulfill the TPS requirement that eligible purchasers must be 18 years old or above¹, they cannot acquire their own flats under TPS. This is a matter which concerns the eligibility criteria as stipulated by the Housing Authority for TPS. On the other hand, if a TPS tenant acquires the unit jointly with a closely related person, provided that one of the purchasers is a HKPR or all of them are HKPRs and they all act on their own behalf and are not a beneficial owner of any other residential property in Hong Kong at the time of acquiring the flat, the relevant transaction will be exempted from the doubled AVD and the original AVD rates will apply.

Declaration of beneficial ownership

3. The Bill proposes that a purchaser or transferee who is acting as a trustee for a HKPR minor in the acquisition of the relevant residential property will be liable to AVD at the old rates, provided that the minor for whom the trustee is acting on behalf is not the beneficial owner of any other residential property in Hong Kong at the time of acquisition. When the purchaser or transferee acting for the HKPR minor applies for exemption from the Inland Revenue Department (“IRD”), he/she should provide relevant documentary evidence, which includes proof of his/her capacity as a guardian or trustee, and parents or guardian of the minor should be responsible for making a statutory declaration to confirm that the minor is a HKPR and not a beneficial owner of any other residential property in Hong Kong at the time of acquisition. IRD will examine the documents provided by the purchaser or transferee and, depending on the actual circumstances, seek for other evidence in order to consider whether to accept the application for exemption from the doubled AVD.

Meaning of “beneficial owners”

4. Generally speaking, the legal owner of a property is the beneficial owner of the property². In addition, the beneficial owner of the property means that even though the legal ownership of the property does not belong to him/her, he/she is regarded as the owner of that property under the equity law given he/she has the right to use and owns the property. Under the doubled AVD regime, IRD will verify if a

¹ According to the existing policy of the Housing Authority, sitting tenants in self-contained flats in the selected estates under TPS may purchase their own flats provided that there is no breach of the existing tenancy agreement. TPS purchasers, regardless of whether it is a joint acquisition of the flat concerned, must be 18 years old or above and are occupants of the relevant flat. It is also required under TPS that the purchasers have to be acting on their own behalf in purchasing the relevant TPS flats.

² Beneficial owner of a residential property can wholly own or partly own that property.

HKPR is a beneficial owner of any other residential property in Hong Kong to determine if the HKPR is subject to the payment of the doubled AVD because of having more than one residential property. Besides, IRD will uphold the fundamental legal principle that “a company is an entity independent of its shareholders” and will not regard the shareholders or directors of a company through which a residential property is held as the beneficial owners of the residential property.

5. The Government will make appropriate elaboration during the resumption of the second reading debate on the Bill.

Sunset clause

6. Our research indicates that as far as the relevant pieces of legislation implementing property market measures in Hong Kong and other jurisdictions³ are concerned, there is no sunset clause. Since the formulation of other legislation is based on various specific circumstances and policy considerations, it may not be appropriate to make direct comparison.

Financial Services and the Treasury Bureau
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³ We understand that Singapore, Macao, Australia and the United Kingdom have implemented demand-side management measures on the property market. For information of the relevant measures, please refer to LC Paper No. CB(1)1289/12-13(02).