



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China

立法會 LEGISLATIVE COUNCIL

謝偉俊 *Paul W. Tse*

Ref: 20140512-LC

Hon. Lee Wai King

Chair

Committee on the Stamp Duty (Amendment) Bill 2013 ("the Committee")

Date: 12 May 2014

Dear Madam,

Re: Exemption under the Stamp Duty (Amendment) Bill 2013 ("the Bill")

I refer to the Administration's Response to matters raised at the meetings of the Committee held on 14 and 28 March 2014 ("the Response"). In particular, reference is made to the proposed exemption of double AVD for purchases/ transferees who are HKPRs and who are not beneficial owners of any other residential property in Hong Kong at the date of the acquisition ("the Exemption").

Pursuant to Paragraphs 2 to 4 inclusive of the Response, it is patent that the Exemption is intended to apply to purchase of more than one property if via a single instrument.

However, in the letter dated 22 February 2013 of the Inland Revenue Department ("IRD") to the Law Society ("the Letter"; enclosed), in particular at (c) (i) under the 3<sup>rd</sup> paragraph, it is stated that the Exemption is applicable to acquisition of a residential property (emphasis added)

I am given to understand that it has been widely assumed in the profession that the Exemption is applicable only to one property under one instrument and not where there are more than one property acquired albeit under one single instrument.

Indeed, I understand that the profession may have been advising clients on that basis since the announcement of the Bill in April 2013.

During the meeting of the Committee on 25 April 2014, the Administration confirmed that it had written to the Law Society on 24 January 2014 further clarifying (one of the issues canvassed at the meeting on 6 December 2013 between the Administration and the Law Society) the position where multiple flats are acquired under a single instrument.



RM 714, LEGISLATIVE COUNCIL COMPLEX,  
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Nevertheless, I am given to understand that such clarification has not been widely publicised by either the IRD or the Law Society.

Kindly therefore circulate this letter with enclosure to the Administration for its response and clarification, in particular:-

- (1) whether it would reconsider its position, in line with its avowed policy of dampening demand, in regard to the Exemption, viz limiting the Exemption only to one property under one instrument;
- (2) if the response to (1) is in the negative, whether it would direct the IRD to issue a clarification to the Law Society and to the public at large; and
- (3) whether it would consider any special allowance for purchasers who may have been misled and thereby adversely affected by the Letter or by the advice of solicitors given on the basis of the Letter.

Yours sincerely,

Paul W. Tse

Enclosure

Copy to the Law Society of Hong Kong (Attn: Mr. Edwin Lee)



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INLAND REVENUE DEPARTMENT  
REVENUE TOWER,  
5 GLOUCESTER ROAD, WAN CHAI,  
HONG KONG.

網址 Web site: www.ird.gov.hk

來函請寄「香港郵政總局郵箱 132 號稅務局局長收」  
ALL CORRESPONDENCE SHOULD BE ADDRESSED TO:  
COMMISSIONER OF INLAND REVENUE,  
G.R.O. BOX 132, HONG KONG.

來函編號:  
Your Ref.:

來函請敘明本局檔案號碼  
IN ANY COMMUNICATION PLEASE QUOTE OUR FILE NO.

檔案號碼: SDO-11-10-4-1(3)

File No.:

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發出日期:

Date of issue: 22 February 2013

(BY HAND)

Dear Ms Chu,

Stamp Duty Ordinance ("the Ordinance")  
Stamping of Agreements for Sale and Purchase / Assignments  
New Measures with effect from 23 February, 2013

I refer to the announcement made by the Financial Secretary today.

As you are aware, the Financial Secretary has proposed to amend the Ordinance to adjust the rates of ad valorem stamp duty ("AVD") and to advance the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement for sale. Unless specifically exempted or excepted (as set out in paragraph (c) below), AVD charged at the new rates ("the New AVD") is payable on an agreement for sale for the acquisition of any residential property or non-residential property executed on or after 23 February 2013. It also applies to a conveyance on sale of such a property to any person on or after that date if there is no preceding chargeable agreement for sale such as in gift cases (the cases of voluntary disposition inter vivos).

A Bill to introduce these amendments will be tabled before the Legislative Council shortly. Subject to the Bill being enacted, details of the proposed amendments as well as the procedures for stamping are set out below for the information of your members and their appropriate actions.

Ad valorem stamp duty

(a) Rates

Consideration or value of the property (whichever is the higher)	New AVD rate
Up to \$2,000,000	1.50%
\$2,000,001 to \$3,000,000	3.00%
\$3,000,001 to \$4,000,000	4.50%
\$4,000,001 to \$6,000,000	6.00%

IR 670(1) (7/2010)

你提供的資料將用於稅務用途。本局亦可能會把部分資料交給法律授權的其他人士。除《個人資料(私隱)條例》另訂的限例外，你有權要求撤回或更正個人資料。有關資料的詳情請向稅務局查詢。  
The Department will use the information provided by you for tax purposes and may give some of the information to other parties authorized by law to receive it. Subject to exemptions under the Personal Data (Privacy) Ordinance, you have the right to request access to or correction of personal data. Such request should be addressed to the Assessor.

\$6,000,001 to \$20,000,000	7.50%
\$20,000,001 and above	8.50%

*(Note: There is a marginal relief of 20% among different value bands. See Annex A for details.)*

(b) Persons liable to the New AVD

There is no change in the Ordinance in connection with the persons liable to pay the New AVD. Both the buyer and the seller are jointly and severally liable to pay the New AVD, as well as other persons who use such instruments.

(c) Exemptions and Exceptions

It is proposed that the New AVD will not be applicable under the following circumstances –

- (i) acquisition of a residential property by a HKPR who is acting on his/her own behalf and does not own any other residential property in Hong Kong at the date of acquisition, that means the date of the chargeable agreement for sale (if any) or conveyance on sale, and if there are more than one chargeable agreements for sale in respect of the same transaction, the date of the earliest of such agreements.;
- (ii) acquisition of a residential property by two or more HKPRs jointly and each of the purchasers is acting on his/her own behalf and does not own any other residential property in Hong Kong at the date of acquisition;
- (iii) acquisition of a residential property by a HKPR jointly with a close relative or close relatives (i.e. spouse, parents, children, brothers and sisters) who is/are not HKPR and each of the purchaser is acting on his/her own behalf and does not own any other residential property in Hong Kong at the date of acquisition;
- (iv) acquisition or transfer of residential property between close relatives (HKPR or non-HKPR) who may or may not own other residential properties;
- (v) acquisition or transfer of a residential or non-residential property by a court order or pursuant to a court order, which includes a foreclosure order obtained by a mortgagee whether or not it falls under the definition of a financial institution within the meaning of section 2 of the Inland Revenue Ordinance;
- (vi) transfer of a mortgaged property (residential or non-residential) to a mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap.112), or to a receiver appointed by such a mortgagee;

- (vii) acquisition or transfer of a residential or non-residential property by or to a body corporate from an associated body corporate;
- (viii) acquisition of a residential or non-residential property by a person to replace another property which was owned by that person and that has been purchased or acquired pursuant to redevelopment projects pursued by the Urban Renewal Authority, or is resumed under the Lands Resumption Ordinance (Cap. 124) or purchased under section 4A of that Ordinance, or is sold pursuant to an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545) and the person is acting on his/her own behalf;
- (ix) acquisition or transfer of a residential or non-residential property by or to the Government; and
- (x) gift of a residential or non-residential property received by a charitable institution exempted from tax under section 88 of the Inland Revenue Ordinance.

(d) Meaning of "HKPR"

Same as that for the Buyer's Stamp Duty, for the purposes of the New AVD, "HKPR" refers to the holders of valid Hong Kong Permanent Identity Cards (PICs), the aged, the blind or the infirm who are not required to apply for an identity card under regulation 25(e) of the Registration of Persons Regulations (Cap. 177A) and are entitled to be issued with a PIC if they make an application for a PIC.

(e) Change of residence

If a HKPR owns only one residential property (the first property) at the time he or she acquires another residential property (the second property) but with the intent to dispose of the first property shortly, the New AVD will apply to the acquisition of the second property as usual in the first instance, but he/she may seek a refund of the stamp duty paid in excess of that computed under the old rates upon proof that the first property has been disposed of within six months from the date when he/she executed the agreement to acquire the second property. After the disposal transaction for the first property has been completed, the person can lodge an application to the Stamp Office for a refund of the excess stamp duty paid on the agreement to acquire the second property. Note that the refund is subject to the usual time limit of 2 years from the date of execution of the agreement.

(f) Adding of names of close relatives to agreement for sale or in the assignment

Under the present regime, adding the names of close relatives to an agreement for sale (e.g. in the formal agreement for sale) or in the ensuing assignment (e.g. by way of a nomination) does not attract AVD. Under the new regime, such exemption will only be applicable where the close relatives do not own any other residential properties; otherwise, the old AVD rates, but not the New ADV rates, will apply.

(g) Properties for redevelopment

It is proposed that the same relief as for acquisitions of residential properties for redevelopment under the Buyer's Stamp Duty regime will apply equally to acquisitions of residential and non-residential properties for redevelopment under the New AVD regime. The amount of the New AVD paid in excess of that payable under the old rates would be refunded.

(h) Stamping of agreements for sale in respect of non-residential properties

Under the existing stamp duty regime, for non-residential property, the agreement for sale is not chargeable with any stamp duty, whereas the conveyance on sale is chargeable with the ad valorem stamp duty. It is proposed to advance the charging of stamp duty in respect of non-residential property transactions from the conveyance on sale to the agreement for sale.

(i) Transitional arrangement

(A) *Residential properties*

Before the Bill is enacted, instruments relating to residential properties chargeable with the New AVD will be stamped by reference to the old rates within the time for stamping as usual. The additional AVD, representing the difference between the old rates and the new rates, has to be paid within 30 days commencing immediately after the date of gazettal of the amendment ordinance. A stamp certificate will be issued to denote the payment of the additional AVD; or the additional AVD will be imprinted on the original instrument if it is submitted to the Stamp office for stamping.

(B) *Non-residential properties*

Similarly, before the Bill is enacted, stamp duty based on the old rates will be payable on the conveyances on sale as usual. The additional AVD, representing the difference between the old rates and the new rates, has to be paid within 30 days commencing immediately after the date of gazettal of the amendment ordinance.

Provided that the conveyance on sale is duly stamped, the preceding agreement for sale, of which the conveyance on sale was executed in

pursuance, will be chargeable with stamp duty of \$100 only. If there are any other preceding agreements for sale (e.g. in confirmor cases), stamp duty on these preceding agreement(s), based on the New rates, will have to be paid within 30 days commencing immediately after the date of gazettal of the amendment ordinance.

(i) Declaration

When presenting an agreement for sale/conveyance on sale in respect of a residential property to the Stamp Office for stamping, for which a claim is made that the new AVD applies, the Collector will require in support of such claim a statutory declaration made by the purchaser/transferee declaring (i) that he is a HKPR; (ii) that he acts on his own behalf; and (iii) that he does not own any other residential property in Hong Kong. The Stamp Office will verify the correctness of the information deposed, including a check with the Land Registry records. A draft sample statutory declaration is attached with this letter for your information and comments.

Other legislative amendments

(a) Power to adjust the value bands and the rates of ad valorem stamp duty

In order to react swiftly to the property market, it is proposed that the Financial Secretary be empowered to adjust the value bands and AVD rates by way of subsidiary legislation subject to negative vetting by the Legislative Council.

If you or your Members have any further enquiries or comments, please feel free to contact Ms LEE Wing-sing at 2594 3162, or the undersigned at 2594 3161. They are also welcome to visit our homepage ([www.ird.gov.hk](http://www.ird.gov.hk)) where some Frequently Asked Questions and Examples are available for the general information of the public.

Yours sincerely,



(HONG Wai-kuen)  
for Collector of Stamp Revenue