

**Bills Committee on Stamp Duty (Amendment) Bill 2013**

**The Administration's responses to written questions raised by Hon Paul TSE and the same matter discussed at the meeting held on 13 May 2014**

This paper sets out the Administration's responses to questions raised by Hon Paul TSE, as enclosed to the letter of 12 May 2014 from the Legislative Council Secretariat, and the same matter discussed at the meeting of the Bills Committee held on 13 May 2014.

2. The questions and discussions are related to how ad valorem stamp duty ("AVD") should be charged on a single instrument for acquisition of more than one residential property. The main concerns are as follows -

- (a) whether the Government's approach is in line with the policy intent of the doubled AVD measure;
- (b) what complexities would be involved if the exemption from doubled AVD were to be limited to one residential property only under a single instrument; and
- (c) how the Inland Revenue Department ("IRD") explains and clarifies the arrangement with the Law Society of Hong Kong ("the Law Society") and the public.

**Stamp duty on an instrument basis**

3. We are aware of some Members' concern that if a Hong Kong permanent resident ("HKPR") buyer who is not a beneficial owner of any other residential property in Hong Kong acquires on his/her own behalf more than one residential units under a single instrument and the residential units covered can be exempted from the doubled AVD, it might induce the buyer to engage in speculative activities, which would undermine the effectiveness of the measures. In this regard, our considerations are reiterated as follows -

- (a) Charging stamp duty on an instrument basis is a fundamental principle under the Stamp Duty Ordinance ("SDO"). For a single instrument involving residential properties only, irrespective of the number of residential properties covered, IRD will regard the concerned residential

properties as a single transaction and the payable AVD will be determined by the value bands and duty rates on the basis of the total consideration in respect of the concerned residential properties. If a single instrument involves both residential and non-residential properties which are not independent and distinct properties, IRD will regard them as one property and apply the definitions of residential property and non-residential property<sup>1</sup> as provided under SDO to determine the nature of the property and to charge stamp duty in accordance with the categories as stated in the First Schedule to SDO. If the concerned properties are independent and distinct properties, IRD will regard them as different matters and charge stamp duty on the basis of their respective considerations in accordance with the categories as stated in the First Schedule to SDO. The applicable duty rates and value bands shall be determined by reference to the total consideration of the entire instrument. We have no intention to make a fundamental change to the stamp duty regime for the exceptional measure introduced in exceptional circumstances.

Besides, the proposal of restricting that only one residential property in the instrument is eligible for exemption from the doubled AVD will entail a number of associated issues that need to be clearly addressed in the legislation. For example, we need to decide how to select the residential property in the instrument for exemption and how to evaluate the respective considerations of all properties covered in the instrument, etc. This will inevitably complicate the stamp duty regime and the legislative provisions, and will be inconsistent with the principle of proportionality in handling the problem;

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<sup>1</sup> According to section 29A(1) of the SDO, it is based on the following documents to determine whether a property is residential property or non-residential property -

- a Government lease or an agreement for a Government lease;
- a deed of mutual covenant within the meaning of section 2 of the Building Management Ordinance (Cap. 344);
- an occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123); or
- any other instrument which the Collector of Stamp Revenue is satisfied effectively restricts the permitted use of the property (e.g. new town planning legislation).

A property is regarded as a non-residential property if the existing conditions specified in any of the above-mentioned documents do not permit the property wholly or partly to be used for residential purposes. If the concerned property is not determined as non-residential property, it is regarded as residential property.

- (b) The purpose of a series of demand-side management measures introduced by the Government is to target at different demands of different buyers. These measures are complementary to achieve the objectives of combating speculations and managing demand. For a non-HKPR buyer (including a company buyer), he/she has to pay not only the Buyer's Stamp Duty but also the doubled AVD on the instrument for acquiring residential properties. If the buyer sells his/her residential properties within a short time span (i.e. within 36 months) and acquires other residential properties, he/she also has to pay the Special Stamp Duty ("SSD") on the instrument for disposal of the properties.

We consider that the investment risk is not insignificant for an individual to circumvent the doubled AVD by acquiring more than one residential property in a single instrument, with a view to engaging in speculative activities. Since speculative activities are subject to SSD, Members' concern should have been addressed to a considerable extent;

- (c) On the other hand, we cannot rule out the possibility that there is a need for HKPRs who are not beneficial owners of any other residential properties in Hong Kong to use one single instrument to acquire more than one residential property due to individual and family considerations (e.g. to acquire adjoining flats or different units within the same residential development). Under such circumstances, they only have to pay AVD at old rates based on the total consideration of all residential properties. The treatment is applied on an equal-footing basis in respect of HKPRs who do not have any other residential properties in Hong Kong.

In the absence of any objective basis, if we were to take a simplistic approach to subject the second and subsequent residential property in the same instrument to the doubled AVD, there may be unintended consequences;

- (d) Any change to the existing regime requires careful consideration and the message must be clearly disseminated. Otherwise, it will invite market overreaction and unnecessary disputes. Having regard to the aforesaid considerations, soon after the announcement by the Government on the introduction of the doubled AVD measures (i.e. since the evening of 22

February 2013), IRD has uploaded onto its website some frequently-asked questions for reference by the public. One of the questions and answers<sup>2</sup> explains that under the doubled AVD measures, where a HKPR who acts on his/her own behalf and does not own any other residential property in Hong Kong executes an agreement for sale to acquire several residential property units, IRD will uphold the principle of charging stamp duty on an instrument basis. As there is only one instrument, all the residential property units involved will be regarded as a single transaction and charged at the old rates on the basis of the total consideration.

In addition, the Government has been maintaining contact with the Law Society to exchange views on the implementation matters relating to the Bill. We re-confirmed the above arrangement in our reply dated 24 January 2014 to the Law Society<sup>3</sup>. This can show that the Government's position has remained the same and correct messages have been disseminated in a timely manner; and

- (e) More importantly, any change to the doubled AVD measures will highly likely create enormous impact on and send confusing messages to the market, rendering the public difficult to grasp the actual situation. This is especially so if we were to impose restriction on exemption according to the number of residential properties covered in a single instrument, as this represents "tightening up" of the measures and will bring uncertainties to the market's hitherto approach in handling property transactions.

4. In short, having considered relevant factors such as the instrument-based stamp duty regime, the complementary nature of the overall demand-side management measures and the home ownership needs of the public, the Government does not intend to impose additional restrictions on the exemption from the doubled AVD for

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<sup>2</sup> The relevant question and answer are reproduced as follows -

Q32: A HKPR, who does not own any other residential property in Hong Kong, executes one agreement to acquire several residential property units in one single transaction. Which property unit will be chargeable with the old AVD rates and which ones will be chargeable with the New AVD rates?

A32: Stamp duty is chargeable on a document basis. As there is only one chargeable agreement in the transaction, all the property units comprised in that instrument will be charged at the old rates. In fact, all the property units will be regarded as a single bunch of "residential property" which is the subject matter of the chargeable agreement in question.

<sup>3</sup> Covered in Annex 4 to LC Paper No. CB(1)779/13-14(1).

HKPRs who do not have any other residential properties in Hong Kong at the time of executing the concerned instrument.

Financial Services and the Treasury Bureau  
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