

The Administration's Responses to Matters Arising from the Meeting of the Bills Committee on Stamp Duty (Amendment) Bill 2013 held on 22 November 2013

This paper sets out responses to the matters raised at the meeting held on 22 November 2013, covering mainly -

- (a) the considerations and impact assessment in relation to the 100% increase in the ad valorem stamp duty ("AVD") rate proposed under the Bill;
- (b) the provision of statistics on the number of transactions on residential and non-residential properties before and after the introduction of demand-side management measures for comparison in order to understand the impact of the measures on the property market;
- (c) the impact of the relevant measures on attracting overseas companies to operate business in Hong Kong and on Hong Kong's competitiveness vis-à-vis competitors in the region;
- (d) the AVD refund arrangement for Hong Kong permanent resident ("HKPR") buyers who dispose of their only other residential property after having acquired an uncompleted residential property; and
- (e) the discussions with the Law Society of Hong Kong ("the Law Society") in connection with the implementation of the Bill.

Enhanced AVD Rates

2. The Government's policy objective of introducing the relevant measure is to reinforce demand management on those who have already acquired residential properties and to prevent the overheating situation from spreading to the non-residential property market. We recommend doubling the existing AVD rates applicable to both residential and non-residential properties given the following considerations -

- (a) Integrity of the stamp duty regime on properties
The existing stamp duty regime on properties is applicable to all immovable properties, irrespective of whether the properties are for residential or non-residential purposes, by charging AVD having regard to the property value on a progressive scale. The Bill

proposes to double the AVD rates across the board, thus maintaining the relativity of the existing tax bands and protecting the integrity of the stamp duty regime whilst extending the demand-side management measures to both residential and non-residential properties, with a view to preventing the overheating situation in the residential market from spreading to the non-residential property market.

(b) Impact of measures

In the residential property market, the upward momentum in property prices was temporarily arrested upon the introduction of the enhanced Special Stamp Duty (“SSD”) and Buyer’s Stamp Duty (“BSD”) by the Government in October 2012. On entering 2013, the property market was again driven up by rising property prices and buoyant transactions. We need to enhance the measures having regard to the prevailing situation in the property market. We consider it appropriate to double the AVD rates in order to disseminate a clear message to the market and to cool down the overheated market immediately so as to reverse the market expectation that property prices could only go up.

(c) Making reference to overseas practice

We have made reference to the management measures introduced for the property market in overseas jurisdictions which include the imposition of additional stamp duty on the acquisition of the second residential property¹.

3. In fact, as revealed by statistics, there are signs of cooling down in the property market since the introduction of doubled AVD measure. Overall flat prices increased by an average 0.3% per month during March to October 2013, a deceleration from the monthly average increase of 2.7% in the first two months of 2013 and the Private Domestic Price Index registered a drop of 0.3% in September with the October figure remained at the same level. On the non-residential property market, prices of retail, office and flatted factory space increased by an average of 3.4%, 2.1% and 3.8% respectively in 2012 and 1.9%, 2.6% and 4.1% respectively in the first two months of 2013. However, the monthly average increase was 0.1%, 0.3% and 0.5% respectively during March to October 2013, representing a notable deceleration. The above shows that the doubled AVD measure has been effective in addressing the irrational property market exuberance, which is in line with our policy objective.

¹ Singapore launched further measures to cool down the housing market in January 2013. As regards the Additional Buyer’s Stamp Duty, with effect from 12 January 2013, Singapore Citizens and Singapore Permanent Residents purchasing their second residential property are subject to 7% and 10% additional stamp duty respectively.

Statistics on residential and non-residential properties

4. According to the statistics of the Inland Revenue Department (“IRD”), following the introduction of the demand-side management measures, the proportion of residential property transactions where the buyers are holders of Hong Kong identity cards (“HKIC”) has increased from 83.1% in 2011 to about 95% in 2013; and the proportion of non-HKIC holders and companies has decreased from 16.9% in 2011 to about 5% in 2013. This is in line with our policy objective of according priority to the housing needs of HKPRs. Relevant statistics are as follows:

Year/ Month	Total number of agreements for sale & purchase [#]	Proportion of residential property transactions where buyers are holders of HKIC	Primary market			Secondary market		
			Proportion of HKIC holders	Proportion of non-HKIC holders	Proportion of companies	Proportion of HKIC holders	Proportion of non-HKIC holders	Proportion of companies
2011	96 034	83.1%	63.2%	18.1%	18.7%	85.5%	3.9%	10.6%
2012	91 264	86.5%	73.2%	12.1%	14.7%	88.6%	2.6%	8.8%
Jan–Mar 2013 [^]	18 700	95.7%	95.2%	4.3%	0.5%	95.8%	0.86%	3.3%
Apr–Oct 2013	29 101	95.0%	94.4%	4.9%	0.7%	95%	1.4%	3.6%

[#] It refers to the number of stamping applications received by the IRD within the relevant period. IRD cannot provide breakdown on the age profile of non-company buyers because applicants are not required to provide the relevant information when submitting stamping applications.

[^] The doubled AVD measure was introduced with effect from 23 February 2013. Since buyers can submit for stamping within 30 days from the date of the agreements for sale and purchase, the figures in March broadly reflect the number of agreements for sale and purchase signed in February.

5. On the non-residential property market, following the introduction of the demand-side management measures, the proportion of transactions where buyers are HKIC holders has remained at more than 60% while non-HKIC holders and companies at more than 30%. There is no significant change to such ratio as compared to the period before the introduction of the measures. Relevant statistics are as follows -

Year/Month	Total number of conveyances on sale [*]	Proportion of HKIC-holders	Proportion of non-HKIC holders	Proportion of companies
2011	33 772	61.1%	3.4%	35.5%
2012	34 002	65.1%	2.4%	32.4%
Jan–Mar 2013	13 305	68.9%	2.0%	29.1%
Apr–Oct 2013	14 422	61.5%	2.9%	35.6%

^{*} It refers to the number of stamping applications received by the IRD within the relevant period. At present, there is no need to stamp on the agreements for sale for non-residential properties. IRD cannot provide breakdown on the age profile of non-company buyers because applicants are not required to provide the relevant information when submitting stamping applications.

Situation of the establishment of offices by overseas agencies in Hong Kong

6. Hong Kong is an international financial centre. International investors will consider various factors before deciding whether to run their business in Hong Kong. These factors include business opportunities, international networks, human quality, infrastructure, legal system, operating costs, etc. According to the results of the past Annual Survey of Companies in Hong Kong Representing Parent Companies Located Outside Hong Kong conducted by the Census and Statistics Department and InvestHK, the total number of regional headquarters, regional offices and local offices in Hong Kong representing their parent companies outside Hong Kong has continued to increase, indicating that there has been no obvious decrease in Hong Kong’s competitiveness in attracting foreign investment. Relevant breakdown of figures is as follows -

	2009	2010	2011	2012	2013
Regional Headquarters	1 252	1 285	1 340	1 367	1 379
Regional Offices	2 328	2 353	2 412	2 516	2 456
Local Offices	2 817	2 923	3 196	3 367	3 614
Total	6 397	6 561	6 948	7 250	7 449

7. Relevant information of other jurisdictions is set out at **Annex** for reference.

Refund arrangements for owners having acquired a new residential property before disposing of their original one

8. At the Bills Committee’s meeting held in October, the Government explained that the refund mechanism for owners having acquired a new residential property before disposing of their original one fulfills the Government’s policy objective whilst having due regard to the practicalities of changing properties and overseas practice. Our policy objective is to accord priority to the home ownership needs of HKPRs. As revealed from statistics and because of cash flow consideration, a considerable portion of buyers replacing residential properties sold their original ones within the “six-month” period. Overall speaking, the current six-month arrangement strikes a balance between addressing the needs of HKPRs to replace their properties and safeguarding the effectiveness of the demand-side management measures.

9. The Bills Committee noted the necessity of setting a specified timeframe for a residential property owner having acquired another residential property to sell the original one. However, some Members consider that the

six-month timeframe should commence from the issue date of an occupation permit so as to better suit the actual needs of buyers replacing properties if they acquire uncompleted flats which involve a time span from completion to delivery.

10. In response to Members’ views, we approach the relevant suggestion from different perspectives. Firstly, from the angle of policy formulation, we should take a stringent approach in drawing up the exemption rules. The stipulation of a timeframe for the buyers replacing properties to sell their original one is to prevent individuals from acquiring another residential property under the guise of replacement and delaying disposal of their original one, which in effect let them hold more than one residential property for a long period of time. Worse still, they may take advantage to engage in speculative activities.

11. Secondly, given that the doubled AVD measure is an exceptional measure under exceptional circumstances, we need to assess whether any exemption or change is consistent with the principle of proportionality in handling the problem concerned. To this end, we have examined the proportion of the number of cases involving acquisition of uncompleted flats in the overall residential property transactions. According to the statistics compiled by IRD based on its database of stamping applications, transactions in the primary market (including existing stock and pre-sale uncompleted flats) accounted for 13.4% of the total transactions on residential properties in 2012, which is largely the same as the monthly average of 15.8% for January to October 2013. In other words, the majority of transactions (i.e. over 80%) on residential properties involve the sales and purchases of existing stocks in the secondary market.

	Proportion of primary market transactions (including existing stock and pre-sale uncompleted flats)	Proportion of secondary market transactions
2012	13.4%	86.6%
Jan – Oct 2013	15.8%	84.2%

12. Thirdly, any targeted arrangement must come with clear definition and objective criteria in the legislation so as to facilitate effective implementation by IRD. There are views that if the buyer acquires an uncompleted flat (not existing stock), consideration can be given to counting the relevant “six-month” period from the issue date of the occupation permit for the new property in respect of the requirement for selling the original one.

However, we need to give careful consideration to how to clearly define “the issue date of occupation permit for the uncompleted flat”. We understand that under the Consent Scheme, developers have to comply with the requirements of different government departments and get their approvals before the completion of transactions of the relevant residential properties. For example, developers need to get the occupation permit for the uncompleted flats from the Buildings Department first before applying for the Certificate of Compliance from the Lands Department. Upon receipt of the Certificate of Compliance, the developers have to sign conveyances on sale with respective buyers before completion of the relevant transactions. Given the many procedures involved, there is considerable complexity in setting out the objective criteria for the purpose of defining the transaction of uncompleted flats and drawing up the specified timeframe for disposing of the original residential property for buyers acquiring uncompleted flats.

13. Fourthly, any proposal can only be accepted provided that the effectiveness of the measures or the reception of the message by the market would not be affected. If the timeframe for disposing of the original residential property for buyers acquiring uncompleted flats is to be relaxed, we need to consider how to handle similar request for relaxing the timeframe because of some unforeseeable reasons for other buyers who acquire existing stocks. All in all, the refund arrangement should strike a balance between addressing the needs of people to replace their properties and safeguarding the effectiveness of the doubled AVD measure, thereby preserving the policy objective and the effectiveness of the measure.

14. We will listen to the views of Members and, based on the above preliminary analysis, further study and follow up in collaboration with the Transport and Housing Bureau, Lands Department and Department of Justice.

Discussion with the Law Society

15. The Administration met with the Law Society on 6 December to exchange views over technical and enforcement issues arising from the Bill. The Law Society was concerned about the progress of scrutiny of the Bill. They would like to see early completion of the legislative exercise so that the market and individuals concerned, including both the buyers and sellers and their solicitors, could conduct the relevant business in respect of the property transactions on a clear basis. On the other hand, the Administration had made some initial clarifications and would follow by a written reply in respect of the specifics and views raised by the Law Society. Besides, as suggested by the Law Society, IRD will organise a workshop in collaboration with the Law

Society after the passage of the Bill so as to enhance their members' understanding of the measures.

**Financial Services and the Treasury Bureau
December 2013**

Information on Foreign-owned Corporations in Other Jurisdictions

Singapore

- According to the website of the Ministry of Communications and Information of Singapore, there are over 7 000 regional headquarters of multi-national enterprises in Singapore.

(Source:<http://app.singapore.sg/work-and-business/setting-up-a-business>)

Shanghai

- According to the statistics of the Shanghai Municipal Commission of Commerce, a total of 393 multi-national corporations have set up their regional headquarters in Shanghai as at September 2013.

(Source: http://big5.taiwan.cn/jm/list/201211/t20121105_3349215.htm)

Taiwan

- According to the Ministry of Economic Affairs of Taiwan, around 150 multi-national corporations have set up their regional headquarters in Taiwan as at October 2013.

(Source: <http://www.globalautoindustry.com/article.php?id=8870&jaar=2012&maand=10&target=China>)