

**Government's response to the issues raised at
the meeting of the Bills Committee on
Stamp Duty (Amendment) Bill 2017 held on 5 June 2017**

Members at the above meeting asked the Government to provide written response to various views raised by Members (LC Paper No. CB(1)1119/16-17(01) refers). The Government has earlier provided response to the view on the drafting of the amendments to sections 29AI and 29BA of the Stamp Duty Ordinance (the Ordinance). This paper sets out the Government's response to other views expressed by Members.

To avoid payment of New Residential Stamp Duty by transferring shares of a property-holding company

2. Under the current stamp duty regime, any person who transfers local company shares to another person has to pay stamp duty chargeable on the contract notes for the share transfer. At the same time, the Inland Revenue Department (IRD) has been actively tracking and taking follow-up actions on property speculation cases (including transactions via transfer of company shares) so as to charge profits tax on gain from property speculation. The prevailing profits tax rate for corporations is 16.5%, whereas unincorporated businesses are charged at a standard tax rate (currently 15%).

3. Transfer of property by transfer of company shares involves considerable risk. For instance, the company concerned may have hidden debts or is involved in legal actions. Buyers acquiring a property in haste in this way are liable for the debts or liability incurred. We believe that buying and selling properties by transfer of company shares is not a common way adopted by the general public.

4. In addition, after the Government's announcement of the New Residential Stamp Duty (NRSD) measure, acquisition of residential property in the name of a company is subject to the Buyer's Stamp Duty at 15% and NRSD at 15%. We believe that this can effectively reduce cases where buyers acquire and hold residential properties in the name of a company.

Applicable ad valorem stamp duty rates for exchange of properties

5. According to section 29A(1) of the Ordinance, non-residential property refers to immovable property which, under the existing conditions of certain documents specified in the Ordinance (such as Government lease or agreement for a Government lease, deed of mutual covenant, occupation permit, etc.) may not be used wholly or partly for residential purposes; whereas residential property refers to any immovable property other than non-residential property. In other words, any immovable property which is not determined as non-residential property is regarded as residential property.

6. When scrutinising the Stamp Duty (Amendment) Bill 2013 (the 2013 Bill) which implements the doubled ad valorem stamp duty measure, the relevant Bills Committee has thoroughly discussed how IRD would handle instruments involving both residential and non-residential properties at the same time. Stamp duty has all along been charged on an instrument basis. Under the prevailing ad valorem stamp duty (AVD) regime, if an instrument covers both residential and non-residential properties and the two are inseparable for trade, IRD has all along treated these properties as residential property as a whole, and has charged AVD under the rates applicable to residential property transactions by making reference to the total consideration of the entire instrument.

7. If two parties exchange several properties (comprising both residential and non-residential properties) for several other properties (comprising both residential and non-residential properties) under a single instrument, since part of the several properties can be used for residential purposes, IRD will regard such several properties as residential property as a whole in accordance with section 29A(1) of the Ordinance. IRD will thus treat the transaction as an exchange of residential property for residential property, and charge AVD accordingly.

Persons liable for the payment of NRSD

8. Head 1(1) and Head 1(1A) in the First Schedule to the Ordinance currently provide that all parties of the instrument (i.e. the chargeable agreement for sale and conveyance on sale) and all other persons executing the instrument are liable for the payment of AVD. The Stamp Duty (Amendment) Bill 2017 has not made any amendment thereto. In general, an estate agent signing a

provisional agreement for sale and purchase in the capacity of a witness will not be regarded as a liable person.

9. On the other hand, according to section 4(3) of the Ordinance, any person who uses an instrument chargeable with stamp duty shall be liable for the payment of the stamp duty. Therefore, if an estate agent wishes to recover agent commission from the buyer or seller by submitting a provisional agreement for sale and purchase as evidence, the agent may be liable for the payment of stamp duty. However, we gather from the market that in general, estate agents will separately enter into an estate agency agreement with their clients on provision of services and relevant commission.

Date of execution of instrument

10. In determining whether an instrument that transfers a residential property is chargeable with NRSD, IRD will refer to the date of the instrument executed by both buyer and seller. In the example quoted by Members, since the provisional agreement for sale and purchase was executed by both buyer and seller on or after 5 November 2016, unless an exemption arrangement applies to the transaction (for example, the buyer is a Hong Kong permanent resident acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition of the single residential property concerned), the instrument will be subject to NRSD rate at 15%.

**Transport and Housing Bureau
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