

**Government's response to the issues raised at
the meeting of the Bills Committee on
Stamp Duty (Amendment) Bill 2017 and
Stamp Duty (Amendment) (No.2) Bill 2017 held on 20 June 2017**

This paper sets out the Government's response to inquiries raised by Members at the above meeting as set out in LC Paper No. CB(1)135/17-18(01).

Change in circumstances after charging of stamp duty

2. Stamp duty has all along been charged on an instrument basis. Under the Stamp Duty Ordinance (SDO) (Cap.117), both the buyer and seller of a property shall, within 30 days after executing a chargeable instrument, present the instrument concerned to the Inland Revenue Department (IRD) for stamping and pay ad valorem stamp duty (AVD) at the applicable rate. Section 11(1) of SDO provides that all the facts and circumstances affecting the liability of any instrument to stamp duty or the amount of the stamp duty chargeable on instrument should be fully and truly set forth in the instrument presented for stamping. Hence, the liability of an instrument to stamp duty is dependent on the facts and circumstances at the time of the transaction. In general, a subsequent court judgment would not affect the stamp duty liability in respect of the instrument.

“Single residential property”

3. As a matter of principle, when processing each stamping request, IRD determines the amount of stamp duty payable by taking into account all relevant facts and circumstances at the time of transaction, including whether the buyer is a Hong Kong permanent resident, whether the buyer is a beneficial owner of any other residential property in Hong Kong, the permitted uses of the property concerned as shown in the relevant documents, etc. Any change in circumstances subsequent to the transaction (e.g. how the property concerned is disposed of) would not affect the amount of stamp duty payable.

4. The Stamp Duty (Amendment) (No.2) Bill 2017 (the Bill) proposes that in determining what constitutes a “single residential property”, IRD may take into account various documents, including approved building plans, deed of mutual covenant (DMC), occupation permit (OP) and any other document that IRD considers relevant.

5. The Bill also sets out some common examples which IRD has encountered and hitherto considered to be a “single residential property” in administering the partial refund mechanism for Hong Kong permanent residents replacing their only residential properties. These examples are –

- (a) a unit and a roof situated immediately above the unit;
- (b) a unit and an adjacent garden; and
- (c) a unit that became a single unit following the demolition of the walls, or any part of the walls, separating two adjoining units as shown by –
 - (i) a building plan and a letter issued by the Building Authority acknowledging receipt of a certificate of completion of the building works relating to the demolition as required under the Building (Administration) Regulations (Cap.123A); or
 - (ii) a plan signed by an authorised person after the completion of the building works relating to the demolition.

6. On the basis of the above provisions, IRD will have to take into account all relevant facts and circumstances of each individual case at the time of transaction in order to determine what constitutes a “single residential property” for the purpose of determining the applicable rates of AVD.

7. With reference to the general principle set out in paragraph 5 and the proposed provisions of the Bill, we set out below our preliminary views on whether the property(ies) mentioned in the four scenarios raised by Members at the meeting held on 20 June 2017 might be regarded as “single residential property” or “multiple residential properties”. It should be cautioned that these preliminary views are based on the broad assumptions under each hypothetical case. They should by no means be taken to be the actual decision of IRD for similar cases in practice. In determining the applicable rates of AVD, IRD will have to take into account all relevant facts and circumstances of each real case at the time of transaction.

Scenarios 1 to 3

8. If at the time of transaction the internal wall between the two adjoining flats has already been demolished and properly reflected in the documents

required under the Bill, i.e. a building plan and a letter issued by the Building Authority acknowledging receipt of a certificate of completion of the building works relating to the demolition as required under the Building (Administration) Regulations; or a plan signed by an authorised person after the completion of the building works relating to the demolition, then the two adjoining flats could be regarded as a single residential property.

Scenario 4

9. If at the time of acquisition of the four sub-divided flats the building plans or plans signed by an authorised person in respect of the flats show that they are four separate units, they could be regarded as multiple residential properties notwithstanding that the four flats are shown as one unit in the OP and that they will be reinstated back to one unit subsequent to the acquisition.

**Transport and Housing Bureau
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