

**The Administration's response to the submission from  
the Hon Tony Tse Wai-chuen**

This paper serves to respond to the issues as set out in the letter dated 25 January 2013 from the Hon Tony Tse Wai-chuen.

**The refund mechanism for redevelopments**

2. The objectives of the demand-side management measures, i.e. the enhancement to the Special Stamp Duty (SSD) and the introduction of the Buyer's Stamp Duty (BSD), are to mitigate further exuberance in the private residential property market and to ensure its healthy and stable development.

3. Under the Stamp Duty (Amendment) Bill 2012 ("the Bill"), a mechanism to refund the BSD paid has been proposed for redevelopment projects. This is to reflect our policy intent that the BSD should not hinder redevelopment projects which are considered conducive to increasing the supply of residential stock and, in turn, addressing further exuberance in the housing market. This is in line with the policy objective behind the introduction of BSD.

4. Under the refund mechanism, acquisition of residential properties for redevelopment purposes will be exempted from the BSD, provided that the immovable properties being constructed are completed within six years, with extensions allowed in specific circumstances. For BSD purposes, the general rule is that the "six-year period" will start when the relevant developer has become the owner of the entire lot of the redevelopment concerned. The developer will be considered as having completed the construction if it has obtained, within six years thereafter, the Occupation Permit (OP) in respect of the redevelopment, or the first OP if there is more than one for the entire redevelopment. The Government will refund the exact amount of the BSD paid by the relevant developers upon successful application.

5. The refund mechanism has taken into account the practical steps involved in redevelopment. For example, noting that it takes time to acquire properties to be redeveloped, we have proposed in the Bill that the “six-year period” will start only after the entire lot has been acquired. If the redevelopment project involves more than one lot, the period will not start until the last lot has been acquired. To make it more flexible, once the development has been granted the first OP within the “six-year period”, the whole development will be regarded as satisfying the refund requirement.

6. The above-mentioned refund mechanism does not cover acquisition of residential property for refurbishment or renovation. It is not apparent to us how the acquisition and wholesale renovation of properties by investors will support the policy objective of the demand-side management measures. That said, the Administration attaches importance to the safety of our existing housing stock and welcomes private sector initiatives to rehabilitate old buildings.

### **Calculation basis of the BSD**

7. Whether an agreement for sale of a property is chargeable with the SSD and BSD is determined according to the permitted use of the property. According to section 29A(1) of the Stamp Duty Ordinance (Cap.117) (the Ordinance), the following documents will be used in determining whether the permitted use of a property is residential or non-residential -

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

A property is regarded as a residential property **if** any of the above-mentioned documents permits the property wholly or partly to be used for residential purposes.

8. If an agreement for sale involves both residential and non-residential units, it is regarded as an agreement for sale of a residential property that is liable to stamp duty including ad valorem duty, the SSD and the BSD, if applicable. The Collector may compute the amount of stamp duty based on the consideration of the residential units only, provided that –

- (a) the residential and non-residential units are separate and distinct properties; and
- (b) the respective considerations of residential and non-residential units are separately set out by the executing parties in the agreement.

9. If the market value of the residential units exceeds the consideration stated in the agreement, the market value will be used to calculate the stamp duty payable.

10. As mentioned in paragraph 7 above, in case an OP is not available to show the permitted use of a property, such as New Territories Exempted Houses, the Inland Relevant Department will resort to the other documents mentioned in paragraph 7 above to determine whether such a house is a residential property.

11. As to whether the SSD would apply to a redevelopment which involves lease modification by surrender and re-grant, as stipulated in section 39(c) of the Ordinance, all grants by the Government, all Government leases and all surrenders of such grants and leases shall not be chargeable with any stamp duty under the Ordinance. As such, such a redevelopment will not be subject to the SSD.