

**The Administration's Responses to Matters Raised at the Meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
held on 29 January 2014**

This paper aims to respond to the matters raised by the Bills Committee on Stamp Duty (Amendment) Bill 2013 ("Bills Committee") at the meeting held on 29 January 2014. The key matters are as follows -

- (a) in the light of the proposed Committee Stage Amendments ("CSAs") to the Stamp Duty (Amendment) Bill 2012 ("the 2012 Bill"), outline the corresponding amendments to the Stamp Duty (Amendment) Bill 2013 ("the 2013 Bill");
- (b) in relation to the percentage changes in the prices of retail, office and flatted factory space, explain how the percentage changes were worked out and the information on which the changes were based;
- (c) provide information on the price level of land sale, price level of residential properties and home purchase affordability on a yearly basis since 2008; and
- (d) provide the number of transactions and the transacted prices for non-residential properties (retail, office and flatted factory space as well as car parking space) before and after the announcement of the demand-side management measures to illustrate the exuberant state of the property market, thus justifying the application of the proposed increase of the ad valorem stamp duty rates to non-residential properties.

Proposed Committee Stage Amendments

2. Upon consideration by the Bills Committee on the 2012 Bill and consultation with relevant stakeholders, the Government proposed a number of CSAs, which can be classified into two main categories -

- (a) Appropriate changes at policy level
 - to revise the Buyer's Stamp Duty ("BSD") refund mechanism for redevelopment projects;
 - to extend the scope of exemption from the BSD for replacement properties acquired by a property owner affected by relevant ordinances;
 - to make amendments in order to allow an instrument not duly stamped with the BSD to be received in evidence in civil proceedings before a court; and

- to effect withdrawal of the BSD exemption for acquisitions of residential properties made on behalf of a minor who is a Hong Kong permanent resident (“HKPR”).
- (b) Minor and technical amendments
- These amendments serve to improve clarity of the relevant provisions and will not affect the substance of such provisions.
3. The proposed amendments to the 2013 Bill are set out at **Annex I**.

Property price index

4. To calculate the rate of property price change in respect of retail, office and flatted factory space, the Rating and Valuation Department (“RVD”) will use the prices of all transactions of the properties in a given period being divided by their respective rateable values¹ in order to reflect the qualitative differences between properties for the purpose of comparison of the same property category. RVD would consolidate the prices of all transactions of the same property category to calculate and compile the price index which can facilitate comparison of overall price trend and change of properties (including those in different districts and of different qualities) in the same category over time.

Comparison of statistics in different times

5. The rate of price change of residential properties and home purchase affordability since 2008 are at **Annex II**.

6. Government departments do not compile any index for the price level of land sale. Land prices hinge on various unique factors such as the location, characteristics and development potential of the sites; the costs and risks of property development; property market conditions and developers’ views on the prospect of the property market. Therefore, the price differences among individual sites vary significantly and we cannot consolidate such to derive a land price index or rate of change.

¹ Rateable values refer to the annual rental value of a property obtainable from the open market at a designated valuation reference date.

Non-residential property market

7. For the non-residential property market, the transactions for retail, office and flatted factory space in 2012 rose by 22%, 6% and 28% respectively over 2011. Prices of retail, office and flatted factory space surged by a cumulative 41%, 25% and 46% respectively in 2012. Compared with the recent trough in 2009, prices for these properties had soared by 152% to 206% in 2012. As regards the rental price level, there had been an overall increase in 2012 consistently. Rental prices of retail, office and flatted factory space registered a cumulative increase of 12.6%, 7.7% and 12.9% respectively. Given that the signs of overheating in the non-residential property market would affect the business environment and to forestall the shifting of the exuberant state of the residential property market to the already overheated non-residential property market, there was a need to manage demand in the non-residential property market altogether.

8. Following the introduction of a new round of demand-side management measures in February 2013, the property market had shown signs of cooling down with reduction of transactions, and thus eased the expectation that property prices could only go up. The prices of retail space between March and December 2013 showed virtually no change, while those of office and flatted factory space increased by an average of 0.4% and 0.1% respectively per month during March to December 2013, a notable deceleration from the monthly average increase of 1.9% to 4.1% in the first two months of 2013. The rental prices of retail, office and flatted factory space increased by an average of 0.4%, 0.65% and 0.8% respectively per month during March to December 2013, a deceleration from the monthly average increase of 0.7%, 0.8% and 0.8% respectively in the first two months of 2013 and from the monthly average increase of 1.0%, 0.6% and 1.0% respectively in 2012. The above shows that the various demand-side management measures have eased the irrational exuberance in the property market, which is in line with our policy objective. Relevant information regarding the transaction volume and prices of non-residential properties is at **Annex III**.

Financial Services and the Treasury Bureau
February 2014

**Proposed Committee Stage Amendments
to the Stamp Duty (Amendment) Bill 2013**

(1) Corresponding changes in the light of the CSAs made in the 2012 Bill

Proposed amendments	Provisions to be amended
Mechanism of stamp duty refund for the difference between the enhanced and the existing ad valorem stamp duty (“AVD”) rates for redevelopment projects	To amend the proposed section 29DE by adding the following conditions for refund application - <ul style="list-style-type: none"> (a) having obtained consent to commence any foundation works for the lot; or (b) having demolished all buildings existing on the lot and obtained approval in respect of the general building plan for the redevelopment.
Extension of exemption from doubled AVD to cover acquisitions of replacement properties affected by relevant ordinances	To amend the proposed sections 29AL(2) and 29BD(2) by adding the following to cover resumed or acquired properties under the ordinances - <ul style="list-style-type: none"> ➤ Section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276); ➤ Section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370); ➤ Sections 3(1) and (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); ➤ Sections 16 and 28(1) of the Railways Ordinance (Cap. 519); and ➤ Section 37(2) of the Land Drainage Ordinance (Cap. 446).
Instruments not duly stamped in respect of doubled AVD may be received in evidence in civil proceedings before a court	To add a new section to allow an instrument not duly stamped in respect of doubled AVD to be received in evidence in civil proceedings before a court subject to the following conditions - <ul style="list-style-type: none"> (a) in the case of a chargeable agreement for sale, it is produced in evidence by a person who is not the purchaser under the agreement; or (b) in the case of a conveyance on sale, it is produced in evidence by a person who is not the transferee under the conveyance. <p>The above amendment is in line with the policy intent that an innocent party’s right to present the relevant documentation in court proceedings should not be affected.</p>

(2) **Minor and technical amendments not affecting the substance of the provisions**

Provisions to be amended	Brief description of the amendments
Section 29A(1) (Interpretation and application of Part IIIA)	The terms of “Hong Kong permanent resident”, “permanent identity card” and “mentally incapacitated person” have been defined in the 2012 Bill. It is proposed to amend the 2013 Bill by deleting the repetition of the same definitions in the light of the 2012 Bill.
Section 29A(5) (Interpretation and application of Part IIIA)	A reference to “and (1C)” is added to section 29A(5) in the 2012 Bill. A technical amendment should be made to the 2013 Bill by replacing the word “and” before “(1B)” with a comma in the light of the 2012 Bill.
Sections 29DB (16) and (17) (Further provisions on BSD chargeable on certain conveyances on sale)	The meanings of transferee and transferor are defined in both sections 29DB(16) and (17) of the 2012 Bill and the 2013 Bill. It is proposed to delete the repetition of the same definitions under sections 29DB(16) and (17) added by the 2012 Bill.
Section 29CB(13) (Further provisions on BSD chargeable on certain agreements for sale) Section 29DB(15) (Further provisions on BSD chargeable on certain conveyances on sale)	Both sections 29CB(13) and 29DB(15) of the 2012 Bill and the 2013 Bill define the meaning of closely related persons. It is proposed to delete the repetition of same definition under sections 29CB(13) and 29DB(15) added by the 2012 Bill.
Section 29AM(c) (Other conveyances on sale chargeable with AVD at Scale 2 rates)	To amend the reference to mortgagee and receiver correspondingly in the light of the amendments to such reference under section 29DB(8)(c) of the 2012 Bill for the sake of enhancing clarity.

Provisions to be amended	Brief description of the amendments
<p>Section 29AP(5) (Certain conveyances on sale of residential property involving additional closely related persons chargeable with AVD at Scale 2 rates)</p> <p>Section 29AQ(4) (Certain conveyances on sale of residential property involving withdrawal of closely related persons chargeable with AVD at Scale 2 rates)</p> <p>Section 29BH(5) (Certain agreements for sale of residential property involving additional closely related persons chargeable with AVD at Scale 2 rates)</p> <p>Section 29BI(4) (Certain agreements for sale of residential property involving withdrawal of closely related persons chargeable with AVD at Scale 2 rates)</p>	<p>To replace the reference to “加蓋” in these provisions with “加蓋印花” for the sake of enhancing clarity in the light of the recommendation by the LegCo Legal Adviser.</p>

Provisions to be amended	Brief description of the amendments
Sections 29DH(3)(b) and (5)(b) (Liability for underpayment of AVD in certain circumstances)	To amend the reference to “可被起訴” in the Chinese text for the sake of enhancing clarity in the light of the recommendation of the LegCo Legal Adviser.
Section 29C(5AB)(c) (General provisions on chargeable agreements for sale)	It is proposed to include in the 2013 Bill a cross-reference to head 1(1C) of the First Schedule concerning BSD in the new section 29C(5AB)(c) in the light of the 2012 Bill.
Section 29D(7)(b) (Conveyances on sale and agreements for sale involving same immovable property)	It is proposed to include in the 2013 Bill a cross-reference to head 1(1AAB) of the First Schedule concerning BSD in the new section 29D(7)(b) in the light of the 2012 Bill.
Section 63B (Amendment of First Schedule)	It is proposed to rearrange sections 63B and 63A to avoid repetition of headings in the light of the 2012 Bill.
Section 71(2) (Transitional provisions for Stamp Duty (Amendment) Ordinance 2013)	It is proposed to make corresponding changes to the liability for overdue payment of doubled AVD in the light of the amendment to the liability for overdue payment of the enhanced Special Stamp Duty in the 2012 Bill for the sake of enhancing clarity.
First Schedule	The 2013 Bill needs to be amended by aligning the provisions listed against the headings of the Schedule for reference in the light of the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 as well as the 2012 Bill.

Provisions to be amended	Brief description of the amendments
Head 1(1C) of the First Schedule	A technical amendment has to be made to the 2013 Bill by repealing Note 2 to head 1(1C) in the light of the 2012 Bill, and reference can be made to the handling of Note 4 to head 1(1B) in the 2013 Bill in revising Note 3 to head 1(1C) in the light of the amendment made in the 2013 Bill to the Notes to head 1(1A) of the First Schedule.

(3) Exemption arrangement for HKPR minors under the 2013 Bill

When the relevant Bills Committee of the Legislative Council considered the 2012 Bill, some Members were worried that since minors might not be able to protect their own interest, the exemption arrangement concerned would provide incentives for non-HKPR trustees or guardians to use the names of the minors to acquire residential properties and hence evade the BSD. Having considered the possibility of abuse of the arrangement, the Government accepted Member's CSA and made a motion to put forward the relevant CSA to withdraw the BSD exemption for acquisitions of residential properties made on behalf of a HKPR minor by his or her trustee or guardian.

2. The introduction of the doubled AVD measure is to reinforce demand management on those who have already acquired residential properties, and accord priority to the home ownership needs of HKPRs who have no residential properties under the tight housing supply situation. Under the doubled AVD regime, purchasers are to be exempted from the adjusted AVD rates if they act on their own behalf and are not beneficial owners of any other residential property in Hong Kong when acquiring the subject residential properties. In the case of a HKPR minor who does not have any other residential property and acquires a residential property through his or her trustee or guardian, the property transaction can equally be exempted from the enhanced rates. We consider there is a need to maintain the exemption arrangement under the doubled AVD regime because this would allow those HKPRs who wish to acquire residential properties on behalf of their minor children to be exempted from the doubled AVD for the relevant transactions.

3. In addition, a HKPR minor who acquires a residential property through his or her trustee or guardian has to pay the BSD for the relevant transaction under the amendments made to the 2012 Bill and so the possible abuse will have been addressed to a considerable extent. Hence, we have no intention to withdraw the exemption arrangement concerned in the 2013 Bill. Otherwise, it would further strengthen the demand-side management measure, which would be inconsistent with our policy intent.

4. After balancing all the above policy considerations, we do not intend to make corresponding amendment in respect of the exemption arrangement available for HKPR minors under the 2013 Bill.

Information on Overall Residential Property Prices and Home Purchase Affordability

	Overall residential property prices		Change of home purchase affordability (using the fourth quarter of each year for comparison)
	Rate of price change	Average monthly rate of change	
2008	-11%	-1%	-6.8 percentage points
2009	+29%	+2.1%	+6.5 percentage points
2010	+21%	+1.6%	+6.4 percentage points
2011	+11%	+0.9%	+1.1 percentage points
2012	+26%	+1.9%	+6.7 percentage points
2013	+8%	+0.6%	+2.1 percentage points (up to the third quarter)
January to February	+5%	+2.7%	
March to December	+2%	+0.2%	

Annex III

Statistical Information on Non-residential Properties

	Retail space		Office space		Flatted factory space		Car park ^(Note)
	Rate of price change	Number of transactions (rate of change of annual total transactions)	Rate of price change	Number of transactions (rate of change of annual total transactions)	Rate of price change	Number of transactions (rate of change of annual total transactions)	Number of transactions
2008	-10%	4 149(-24%)	-17%	2 845(-31%)	-9%	5 741(-37%)	7 353
2009	+33%	5 359(+29%)	+25%	2 521(-11%)	+20%	5 554(-3%)	7 592
2010	+27%	7 639(+43%)	+25%	3 591(+42%)	+32%	8 206(+48%)	12 082
2011	+20%	5 980(-22%)	+18%	3 071(-14%)	+25%	7 619(-7%)	11 106
2012	+41%	7 282(+22%)	+25%	3 269(+6%)	+46%	9 731(+28%)	17 648
2013	+3%	4 284(-41%)	+9%	1 698(-48%)	+10%	4 267(-56%)	8 394

Note: RVD does not compile rate of price change for analysis in respect of car park. The number of transactions covers both domestic and non-domestic car park to the best knowledge of and based on information available to RVD. The figures above are not exhaustive as they do not include those transactions involving other types of properties.