

**The Administration's Responses to Matters Raised at the Meeting of  
the Bills Committee on Stamp Duty (Amendment) Bill 2013  
held on 24 February 2014**

This paper sets out the Administration's responses to the matters raised by the Bills Committee on Stamp Duty (Amendment) Bill 2013 at the meeting held on 24 February 2014. The key matters are as follows -

- (a) explain how the Inland Revenue Department ("IRD") handles cases where a buyer acting in the capacity of a trustee or guardian on behalf of a Hong Kong Permanent Resident ("HKPR") who is a minor or mentally incapacitated person in the acquisition or possession of a residential property cannot provide a declaration of trust or guardianship order;
- (b) provide the number of transactions involving minors or mentally incapacitated persons acquiring residential properties through trustees or guardians since the announcement of the enhanced Special Stamp Duty ("SSD"), Buyer's Stamp Duty ("BSD") and the doubled ad valorem stamp duty ("AVD") measures;
- (c) provide the criteria adopted in determining whether the use of a property is residential or non-residential;
- (d) consider imposing restrictions on the size and value of the replacement property;
- (e) provide different examples to illustrate the exemption arrangements under the doubled AVD regime; and
- (f) address the concern that property transactions in respect of in-laws would not be exempted since the definition of "closely related persons" in section 29AD of the Bill is not applicable to them.

**Minors and mentally incapacitated persons**

2. The Stamp Duty (Amendment) Bill 2013 ("the Bill") proposes that all the purchasers/transferees to be exempted from the adjusted AVD rates must be acting on their own behalf in the acquisition of the residential properties, except for a HKPR who is a minor or a mentally incapacitated person who, due to the lack of capacity to enter into legally binding agreements, must in practice require another person to act on his/her own behalf. A

purchaser or transferee who is acting as a trustee or guardian for a minor or a mentally incapacitated person in the transaction will be liable to AVD at the old rates, provided that the minor or the mentally incapacitated person for whom the trustee or guardian is acting on behalf is not the beneficial owner of any other residential property in Hong Kong.

3. According to IRD's records, since the announcement of the SSD, BSD and doubled AVD measures, there are about 30 cases where the trustees acted on behalf of holders of Hong Kong Identity Card ("HKIC") who were minors in the acquisition of residential properties<sup>1</sup>. There are no cases registered in respect of trustees acting on behalf of mentally incapacitated persons.

4. To handle applications for exemption from the doubled AVD, IRD will request a buyer who claims to be acting on behalf of a HKPR minor or mentally incapacitated person to produce written evidence. The concerned buyer should provide relevant documentary evidence such as the birth certificate, an instrument to appoint a guardian pursuant to the Guardianship of Minors Ordinance (Cap. 13), a valid and legally binding trust instrument, and a court order or guardianship order pursuant to the Mental Health Ordinance (Cap. 136) to prove his/her capacity as a guardian or trustee in the transaction under consideration. Depending on the circumstances, IRD will require that buyer or the alleged beneficiary to submit documentary evidence (e.g. to prove the source of funds for purchasing the property) and other documents showing the identities of that buyer or the alleged beneficiary in the relevant transaction to ascertain whether the alleged beneficiary is the beneficial owner of the property.

### **Criteria for determination of the property nature**

5. According to section 29A(1) of the Stamp Duty Ordinance (Cap. 117) ("SDO"), it is based on the following documents to determine whether a property is residential property or non-residential property -

- a Government lease or an agreement for a Government lease;
  - a deed of mutual covenant within the meaning of section 2 of the Building Management Ordinance (Cap. 344);
  - an occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123);
- or

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<sup>1</sup> Under the existing stamp duty regime, IRD can only provide the relevant information relating to buyers who are HKIC-holders because applicants are only required to state whether they possess HKICs and not required to declare if they are HKPRs.

- any other instrument which the Collector of Stamp Revenue is satisfied effectively restricts the permitted use of the property (e.g. new town planning legislation).

6. A property is regarded as a non-residential property if according to the existing conditions specified in any of the above-mentioned documents do not permit the property wholly or partly to be used for residential purposes. If the concerned property is not determined as non-residential property, it is regarded as residential property. If necessary, IRD will seek clarifications from the issuing authorities for the above-mentioned documents to ascertain the permitted use of a property and charge the transaction in respect of immovable property with applicable stamp duty.

7. Please refer to **Annex I** for illustrations of handling different scenarios of an instrument involving residential and non-residential properties.

### **Replacement property**

8. With reference to the handling approach in the Stamp Duty (Amendment) Bill 2012 (“the 2012 Bill”), the Bill proposes exemption from doubled AVD to cover acquisitions of replacement properties affected by specified ordinances. The Government has explained the policy intent at the Bills Committee for the 2012 Bill, that is, to provide flexibility in the replacement purchases of the affected owners (including non-HKPRs) who have been made to sell their original properties not of their own volition; and to facilitate the smooth implementation of acquisitions under the specified scenarios which serve public purposes. In addition, to address the possible need of affected owners having to split households when their original properties have been disposed of, if the property replaced is jointly owned by two or more persons, each of them can be exempted from the doubled AVD for making one replacement purchase.

9. We consider that there is no objective basis to determine the restrictions on size or value of the replacement property as suggested by some Members. Such restrictions would inevitably be arbitrary and arouse disputes. After due consideration, we intend to follow the Stamp Duty (Amendment) Ordinance 2014 to take a lenient approach in handling the arrangements, i.e. not to impose restrictions on size or value of the replacement property. However, the Bill has specified that in order to be eligible for the proposed exemption, the affected owners must have disposed of the original property before acquiring a new property as replacement. In addition, the replacement property and the original property must belong to the same category, i.e. one residential property to replace another residential property or one non-residential property to replace another non-residential property.

## Exemption arrangements under the doubled AVD regime

10. Under the doubled AVD regime, a buyer can be exempted from the adjusted AVD in the acquisition of a residential property if he/she is acting on his/her own behalf and is not beneficial owner(s) of any other residential property in Hong Kong. In addition, we have made reference to the existing SSD and BSD regimes in providing a series of exemption arrangements<sup>2</sup>. The relevant arrangements are set out below –

<b>Exemption arrangements</b>	<b>Clauses</b>
Acquisition or transfer of a residential property between close relatives	Sections 29AK and 29BC
Nomination of a close relative(s) to take up the agreement for sale for a residential property	Sections 29AB and 29BC
Addition or withdrawal of name(s) of close relative(s) in an agreement for sale or a conveyance on sale for a residential property	Sections 29AP, 29AQ, 29BH, 29BI, 29D and head 1(1A) in Schedule 1
Acquisition or transfer of a residential or non-residential property by a court order or pursuant to a court order	Sections 29AM and 29BE
Transfer of a mortgaged residential or non-residential property to a mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112) or to a receiver appointed by such a mortgagee	Section 29AM
Acquisition of replacement property affected by specified ordinances	Sections 29AL and 29BD
Exchange of residential properties for residential/non-residential properties	Sections 29AN, 29AO, 29BF and 29BG
Refund mechanism for acquisition of residential or non-residential properties for the purpose of redevelopment	Section 29DE
Refund mechanism for the acquisition of a new residential property before disposing of the original one	Section 29DF

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<sup>2</sup> The exemption arrangements for transfer of properties relating to the estate of a deceased person, acquisition or transfer of immovable properties by or to a body corporate from an associated body corporate, acquisition or transfer of immovable properties by or to the Government and gift of immovable properties received by charitable institutions are provided for under the existing provisions in the SDO.

## **Exemption arrangements involving the acquisition or transfer of a residential property between close relatives**

11. The Bill proposes that the acquisition or transfer of a residential property between close relatives should be subject to the old AVD rates, irrespective of whether they are HKPRs and whether they are beneficial owners of any other residential property in Hong Kong on the date of the relevant acquisition or transfer. The said exemption arrangement adopts the same principle as in the SSD and BSD regimes, that is, exempting transactions involving persons who (a) are blood-related or half blood-related, (b) have spousal relationship, or (c) have adoption or step relationship.

12. The proposed exemption arrangements under the Bill follow the existing SSD and BSD regimes and strike a balance between safeguarding the effectiveness of the doubled AVD and facilitating the needs of the HKPRs in acquiring residential properties. The Government has no intention to draw up different criteria for the acquisition or transfer of properties between close relatives under the doubled AVD regime. Separately, having regard to the existing AVD regime, the Bill proposes that where there is nomination of a close relative(s) to take up the assignment of a residential property or the additional buyer(s) in the conveyance on sale/agreement for sale is/are closely related to the buyer(s) in the original instrument and all buyers are not beneficial owners of any other residential properties in Hong Kong, the new instrument (involving nomination or addition of close relatives) can be exempted from AVD.

13. We set out in **Annex II** some illustrations of the exemption arrangements involving property transactions between close relatives.

### **Other matters**

14. Our response to the question raised by a member of the public in LC Paper No. CB(1)817/13-14(01) is at **Annex III**.

Financial Services and the Treasury Bureau  
March 2014

**Handling different scenarios of an instrument chargeable with stamp duty involving residential and non-residential properties**

	<b>Scenario</b>	<b>Arrangement</b>	<b>Remarks</b>
(a)	Where a commercial/residential property (“A”) is acquired by a HKPR who is not a beneficial owner of any other residential property in Hong Kong.	<ul style="list-style-type: none"> <li>➤ Can be exempted from the doubled AVD.</li> <li>➤ Pay at the old AVD rate.</li> </ul>	<ul style="list-style-type: none"> <li>➤ In accordance with the definition set out in section 29A(1) of the SDO, IRD will regard the property as residential property if part of that property can be used for residential purpose.</li> </ul>
(b)	If the above-mentioned buyer subsequently acquires another residential property (“B”).	<ul style="list-style-type: none"> <li>➤ Cannot be exempted from the doubled AVD.</li> <li>➤ Pay at the new AVD rate for the newly-acquired residential property (“B”).</li> </ul>	<ul style="list-style-type: none"> <li>➤ Exemption is subject to the newly-acquired property being residential property and the buyer not being a beneficial owner of any other residential property in Hong Kong on the date of acquisition.</li> <li>➤ If the newly-acquired property (“B”) is regarded as residential property according to section 29A(1) of the SDO and IRD has determined that the existing property (“A”), which is held by the buyer on the date of acquisition of the new property, is residential property based on the same provision of the SDO, the buyer will not be exempted from the doubled AVD as he/she is the beneficial owner of another residential property.</li> </ul>
(c)	Where a residential property with a non-residential property (e.g. a residential flat and a car parking space) is acquired by a HKPR who is not the beneficial owner of any other residential property in Hong Kong -		
	(i) A single agreement	<ul style="list-style-type: none"> <li>➤ IRD will ascertain if the</li> </ul>	

	<b>Scenario</b>	<b>Arrangement</b>	<b>Remarks</b>
	with one consideration (the concerned immovable properties cannot be separately traded)	concerned residential and non-residential properties are held by a single title deed. If it is confirmed that the concerned residential and non-residential properties cannot be separately and distinctly traded <sup>3</sup> , IRD will regard the agreement as an agreement for a residential property transaction and charge at the old applicable AVD rate on the whole consideration.	
	(ii) Where the residential and non-residential properties are separate and distinct properties with their respective considerations separately set out in the agreement	<ul style="list-style-type: none"> <li>➤ The residential property can be exempted from the doubled AVD but the stamp duty rate applicable will be based on the total consideration of the whole transaction.</li> <li>➤ The non-residential property will be liable to AVD at new rates and the applicable rate will be based on the total consideration of the whole transaction.</li> </ul>	➤ Where the instrument involves both residential and non-residential properties, the applicable exemption arrangement depends on the nature of individual properties but the stamp duty rate applicable will be based on the total consideration of the whole transaction.
(d)	Where multiple residential properties are acquired under a single agreement by a HKPR who is not the beneficial owner of any other residential property in Hong Kong.	➤ The agreement is regarded as one single transaction and IRD will charge it at the applicable old AVD rate on the total consideration.	

<sup>3</sup> According to section 10 of the SDO, IRD can charge an instrument with stamp duty containing or relating to several distinct matters separately and distinctly.

**Some illustrations of the exemption arrangements  
involving property transactions between close relatives**

	<b>Scenario</b>	<b>Arrangement</b>
(a)	<p><u>Close relatives</u></p> <p>(Each transferee is closely related to each transferor. The transferees are closely related and each transferee is acting on his/her own behalf.)</p> <p>(i) Acquisition or transfer between close relatives</p> <p>➤ Acquisition or transfer of residential property between close relatives, irrespective of whether they are HKPRs and whether they are beneficial owners of any other residential property in Hong Kong when carrying out the relevant acquisition or transfer.</p>	<p>➤ Can be exempted from the doubled AVD.</p> <p>➤ Pay at the old AVD rate.</p>
	<p>(ii) Nomination</p> <p>➤ Nomination of a close relative(s) to take up the assignment of a residential property, irrespective of whether the nominated close relatives are HKPRs, and the nominated close relatives are beneficial owners of any other residential property in Hong Kong when carrying out the relevant acquisition or transfer.</p>	<p>➤ Can be exempted from the doubled AVD.</p> <p>➤ Pay at the old AVD rate.</p>



	Scenario	Arrangement
	<p>(iii) Addition/Withdrawal of names</p> <p>➤ Adding or withdrawing the name(s) of close relative(s) in conveyances on sale or agreements for sale in respect of residential properties, irrespective of whether they are HKPRs, and they are beneficial owners of any other residential property in Hong Kong on the date of addition/withdrawal.</p>	<p>➤ Can be exempted from the doubled AVD.</p> <p>➤ Pay at the old AVD rate.</p>
	<p><u>Example</u></p> <p>Acquisition and addition of names between close relatives</p> <p>The father (“A”) and mother (“B”) own a residential property and enter into an agreement for sale to sell the property to the son (“C”). Then, the son (“C”) adds the name of his wife (“D”) in the assignment.</p>	<p><u>Acquisition/transfer</u></p> <p>➤ Pay at the old AVD rate, irrespective of whether the son (“C”) is a HKPR and is the beneficial owner of any other residential property in Hong Kong.</p> <p><u>Addition of name</u></p> <p>➤ If the son (“C”) and the wife (“D”) are not beneficial owners of any other residential property in Hong Kong, no matter whether they are HKPRs, it will not be necessary for them to pay any stamp duty (i.e. both the new and old AVD are exempted).</p>
(b)	<p>Exchange of residential properties for non-residential properties</p> <p>(i) Exchange between persons who are not close relatives</p>	<p>➤ If the person(s) who acquires the residential property is/are HKPR(s) and is/are not beneficial owner(s) of any other residential property in Hong Kong at the time of exchange, “any consideration paid for equality” can be exempted from the doubled AVD and is chargeable at the old AVD rate.</p>
	<p>(ii) Exchange between close relatives</p>	<p>➤ If the persons who exchange properties are closely related (i.e. parents, spouses, children or siblings), “any consideration paid for equality” can be exempted from the doubled AVD and is chargeable at the old AVD rate, irrespective of</p>

	Scenario	Arrangement
		whether they are HKPRs and whether they are beneficial owners of any other residential property in Hong Kong at the time of exchange.
(c)	Exchange of residential properties for residential properties	
	(i) Exchange between persons who are not close relatives	➤ If the parties to the exchange are HKPRs and are not beneficial owners of any other residential property in Hong Kong at the time of exchange, “any consideration paid for equality” can be exempted from the doubled AVD and is chargeable at the old AVD rate.
	(ii) Exchange between close relatives	➤ If the parties to the exchange are closely related (i.e. parents, spouses, children or siblings), no matter whether they are HKPRs and whether they are beneficial owners of any other residential property in Hong Kong at the time of exchange, “any consideration paid for equality” can be exempted from the doubled AVD and is chargeable at the old AVD rate.

**Response to the question raised by a member of the public  
in LC Paper No. CB(1)817/13-14(01)**

Scenario	Arrangement	Remarks
<p>Case stated in LC Paper No. CB(1)817/13-14(01)</p> <p>A buyer acquires a residential flat (“C”) under a single instrument first before entering into an agreement to dispose of the original adjoining residential flats (“A” and “B”) within the specified period (six months) in the Bill.</p>	<ul style="list-style-type: none"> <li>➤ The buyer should pay at the new AVD rate for the residential flat (“C”).</li> <li>➤ In general, if the original residential flats (“A” and “B”) are held by different title deeds, since the concerned properties are not the relevant person’s only other residential property in Hong Kong (i.e. the relevant person owns more than one residential property), it does not meet our policy intent of providing the refund mechanism for owners having acquired a new residential property before disposing of their original one. The refund arrangement is not applicable to the current case.</li> <li>➤ If the aforesaid residential flats (“A” and “B”) are held by a single title deed and are not distinct properties, the concerned property (“A” and “B”) will be regarded as the only other residential property stipulated under the Bill. IRD will arrange refund on this basis.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Our policy intent for the refund mechanism for owners having acquired a new residential property before disposing of their original one is to cater for the replacement needs of HKPRs and having regard to the fact that they may own more than one residential property during the process.</li> <li>➤ Under the proposed refund mechanism, an owner having acquired a new residential property before disposing of his/her original one will have to pay for the newly-acquired residential property at the new AVD rate in the first instance. The difference in AVD payment between the old and new rates will be refunded upon application to IRD within two years from the date of instrument in acquiring the new residential property provided that the owner has entered into an agreement for sale to dispose of his/her only other residential property in Hong Kong within six months from the date of acquiring the new property (but the owner is not required to complete the conveyance on sale within the six-month period) and completed the disposal transaction thereafter.</li> </ul>