

Bills Committee on Stamp Duty (Amendment) Bill 2013

**List of follow-up actions arising from the discussion
at the meeting on 28 March 2014**

The Administration has been requested to provide written response on the following issues:

- (a) in the case of an acquisition of a public rental housing flat under the "Tenants Purchase Scheme" by a non-Hong Kong Permanent Resident ("HKPR") parent jointly with his/her child who is a HKPR minor, consider exempting the non-HKPR parent from the payment of the enhanced ad valorem stamp duty ("AVD") on the consideration for his/her share in the flat;
- (b) address members' concern that the transferee of a non-residential property in an exchange between a residential property and a non-residential property under the proposed section 29AN who has paid the equality money would be charged less AVD than a transferee of the non-residential property who has made full payment of the price for it under an agreement for sale or conveyance on sale as in the latter's case the instrument would be chargeable with the enhanced AVD;
- (c) in the case of persons become joint owners of a residential property by succession as beneficiaries under a will, each of whom would be the beneficial owner of the property, and hence would not satisfy the condition under the proposed section 29AJ(2)(b) for exemption from the enhanced AVD if he/she subsequently purchases a residential property in Hong Kong:
 - (i) explain what legal procedures are required to be completed for the property to be vested in these beneficiaries and at what point of time or juncture each of them would, for the purposes of stamp duty, be regarded as beneficial owner of the property; and
 - (ii) advise whether the beneficiary concerned could be exempted from the enhanced AVD if when s/he made the purchase, s/he bona fide declared that s/he was not the beneficial owner of any other residential property in Hong Kong but later s/he came to the knowledge that s/he was a beneficial owner by succession pursuant to a will;

- (d) provide information on the existing practice on handling cases where a transferee is unable to provide the usual official documents to prove that s/he is closely related to the transferor(s) and to other transferee(s) under an instrument, and consider accepting a statutory declaration as proof of one's relationships to the other transferee(s) as a closely related person;
- (e) as the addition of the name of the same transferee by different closely related persons, irrespective of their number, to separate agreements for sale or conveyances on sale in respect of residential properties would not subject the relevant instruments to additional AVD under the Stamp duty Ordinance (Cap. 117) ("SDO"), address members' concern that such instruments from the second onwards should be chargeable at the enhanced AVD rate under the Stamp Duty (Amendment) Bill 2013 ("the 2013 Bill"), as the transferee would be beneficial owner of a residential property in Hong Kong after the first instrument;
- (f) address members' concern that the payment of the enhanced AVD could be evaded by addition of name of a spouse who is the beneficial owner of any other residential property in Hong Kong (in which case the relevant instrument would only be chargeable on 50% of the consideration at the old AVD rate) as opposed to a joint acquisition from the start (in which case the whole consideration stated in the relevant instrument would be chargeable at the enhanced AVD rate);
- (g) advise the applicable provisions of the 2013 Bill and AVD rate chargeable in respect of the following scenarios:
 - (i) a person who is not the beneficial owner of any other residential property in Hong Kong nominates his/her spouse who owns other residential property in Hong Kong to take up the assignment of the subject property; and
 - (ii) a person who is not the beneficial owner of any other residential property in Hong Kong adds as purchaser/transferee the name of his/her spouse who is the beneficial owner of other residential property in Hong Kong before the assignment of the subject property;
- (h) provide a copy of all the materials prepared by the Administration in briefing estate agents on the stamp duty requirements under the 2013 Bill;
- (i) consider exempting the acquisition or transfer of non-residential properties between closely related persons from the enhanced AVD; and

- (j) in respect of an acquisition of a replacement property after the original property being resumed or acquired under any of the ordinances specified in the proposed section 29AL, address members' concern on the possible liabilities for stamp duty in different scenarios (e.g. the different user of the original property) arising from the replacement of a commercial-residential property by a residential or commercial property in the light of the definitions of "non-residential property" and "residential property" in section 29A(1) of the SDO.

Council Business Division 1
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