

**The Administration's Responses to Matters Raised at the Meetings of
the Bills Committee on Stamp Duty (Amendment) Bill 2013
held on 14 and 28 March 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 meetings held on 14 and 28 March 2014. The key matters are as follows -

- (a) consider exempting the car parking space from the doubled ad valorem stamp duty ("AVD") and the applicable AVD rate should not be based on the total consideration of the transaction involving both a residential flat and a car parking space which can be separately and distinctly traded with their respective considerations set out in an agreement;
- (b) consider imposing restrictions in cases where multiple residential properties acquired under a single agreement by a Hong Kong Permanent Resident ("HKPR") who is not the beneficial owner of any other residential property in Hong Kong on the date of acquisition of the properties will only be chargeable at the old AVD rate on the total consideration;
- (c) explain how to deal with the original property consisting of a residential flat and a non-residential unit (e.g. a car parking space) in respect of replacement property under the proposed section 29AL(3);
- (d) provide the number of transactions and the considerations in respect of acquisitions of replacement properties to replace original properties affected by specified ordinances since the announcement of the enhanced Special Stamp Duty ("SSD"), Buyer's Stamp Duty ("BSD") and the doubled AVD measures;
- (e) explain what documentary proof is required by the Inland Revenue Department ("IRD") for applications for exemption, how to determine the beneficial ownership in residential properties in the case of succession of estate by a beneficiary and the stamp duty payable under different arrangements in respect of property transactions between close relatives and the applicable exemption arrangements;
- (f) consider clarifying the applicable exemption arrangements in respect of exchange of properties involving residential and non-residential properties in order to fully reflect the policy intent; and

- (g) consider exempting the non-HKPR buyer, jointly with his/her child who is a HKPR minor, in the acquisition of a public housing flat under the “Tenants Purchase Scheme” (“TPS”) from payment of the doubled AVD.

Stamp duty on an instrument basis

2. The doubled AVD measure is built upon the prevailing AVD regime. The policy objective is to reinforce demand management on those who have already owned residential properties and forestall the shifting of overheating in the residential property market to the non-residential property market. The Stamp Duty (Amendment) Bill 2013 (“the Bill”) proposes that the doubled AVD is chargeable on instruments covering all transactions on residential or non-residential properties. The exemption provided for HKPRs under the Bill hinges on whether the buyer is a beneficial owner of any other residential property in Hong Kong on the date of acquisition of the residential property. The number of properties involved in the transaction covered by the instrument concerned is not a determining factor.

3. Under the Stamp Duty Ordinance (Cap. 117) (“SDO”), stamp duty is chargeable on an instrument basis. If multiple properties are covered by a single transaction instrument, the instrument will be regarded as one whole transaction by IRD, and the applicable value bands and rates of AVD will be determined by reference to the total consideration. If both residential and non-residential properties¹ which do not belong to the same title deed and involve different exemption arrangements are covered by the same instrument, IRD shall determine whether exemption is applicable having regard to the nature of the properties in accordance with SDO and the Bill (i.e. the instrument will be chargeable with stamp duty at either Scale 1 or Scale 2 rate by reference to the consideration of the properties). The proposed doubled AVD measure is to double the rate applicable to each existing value band under the existing AVD regime. Therefore, it is necessary to uphold the existing instrument-based stamp duty regime under which the applicable value bands and rates are determined on the basis of the total consideration of the instrument.

¹ According to section 29A(1) of 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
- 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).

A property is regarded as a non-residential property if 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.

4. Some Members are concerned that if a HKPR buyer who is not a beneficial owner of any other residential property in Hong Kong acquires multiple residential units under a single instrument and can be exempted from the doubled AVD, it might induce the buyer to engage in speculative activities, which would undermine the effectiveness of the demand-side management measures. In this regard, our considerations are as follows –

- (a) Charging stamp duty on an instrument basis is an inherent feature under SDO. As long as there is a single instrument, AVD will be charged on the total consideration for once, irrespective of the number of properties involved. We have no intention to make a fundamental change to the stamp duty regime for the exceptional measure introduced in exceptional circumstances;
- (b) The purpose of a series of demand-side management measures introduced by the Government is to target at different demands of different buyers. These measures are interrelated and work collectively to achieve the objectives of combating speculations and managing demand. If the buyer sells his/her residential properties within a short time span (less than 36 months) and acquires other residential properties, he/she has to pay SSD on the instrument in respect of the properties sold. If the buyer is not a HKPR (including a company buyer), he/she has to pay BSD on the instrument in respect of the properties acquired. Therefore, we believe that the concern will have been addressed to a considerable extent; and
- (c) On the other hand, we cannot rule out the possibility of HKPRs who are not beneficial owners of any other residential properties having to use an instrument to acquire more than one residential property for home ownership needs. Under such circumstances, they will pay AVD on the total consideration of all properties. The same treatment applies.

In short, having considered the overall demand-side management measures, the home ownership needs of the public and the instrument-based stamp duty regime, we have no intention to impose restrictions (e.g. in respect of the number of properties involved in the instrument) on circumstances where an instrument covers more than one residential property.

Replacement properties

5. Since the announcement of the introduction of the demand-side management measures, IRD has not received any application for exemption from BSD and doubled AVD

on the ground of acquisitions of replacement properties to replace original properties affected by specified ordinances. The Bill proposes exemption from the doubled AVD to cover acquisitions of replacement properties² with reference to the corresponding arrangements under the BSD regime. The policy intent is to cater for the replacement purchases of the affected owners (irrespective of whether they are 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. As explained in the LC Paper No. CB(1)1060/13-14(02), given the lack of objective basis to determine the relevant restrictions, we do not impose restrictions on size or value of the replacement property. After due consideration, we intend to follow the enacted Stamp Duty (Amendment) Ordinance 2014 in taking a lenient approach to handle the arrangements, so as to avoid causing unnecessary constraints and disputes to the affected owners.

6. In line with the principles of implementing the relevant exemption provisions under the BSD regime, if the original property includes a residential unit and a car parking space which do not belong to the same title deed, the transaction will be regarded as involving two properties; if the affected owner acquires a residential unit and a car parking space as replacement property which do not belong to the same title deed, that transaction will also be regarded as involving two properties and both can be eligible for exemption from the doubled AVD³.

² Sections 29AL(3) and 29BD(3) of the Bill specify 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. In the context of the Bill, “replace” means to find and provide a “substitute” for the original property. In general, the original property and the replacement property should be similar to certain extent in order to constitute a “substitute”.

³ Under the existing AVD, SSD and BSD regimes, in general, a residential unit and a car parking space covered by the same transaction instrument which are separable for independent transaction will be regarded as two properties (i.e. a residential property and a non-residential property), whereas a residential unit and a car parking space which are inseparable for transaction (e.g. under the same title deed) will be regarded as one single residential property.

If the original property includes only one residential unit, while the replacement property includes inseparable residential unit and car parking space (e.g. under the same title deed), the instrument for acquisition of the replacement residential unit and car parking space may also be chargeable with AVD at the old rate according to the aforementioned provisions. However, if the replacement property includes a residential unit and a car parking space which are separable for independent transaction, the applicable exemption arrangement will depend on the nature of such properties. In other words, the newly acquired residential unit may be chargeable with AVD at the old rate, while the car parking space will be chargeable with AVD at the new rate. The applicable rates for both shall be determined by reference to the total consideration of the whole transaction. Such practice of determining the rates applicable to the whole transaction is in conformity with the existing AVD regime.

If the original property is a unit which can be used for commercial/residential purposes, IRD will regard the property as residential property given that part of that property can be used for residential purpose in accordance with the definition set out in section 29A(1) of SDO. Based on the criteria mentioned in paragraph 5 above, if that commercial/residential unit is resumed under specified ordinances, the affected owner can acquire a residential property (which can be a unit for commercial/residential uses) as “substitute” and pay AVD at the old rate.

Exemption application

7. At the meetings of the Bills Committee on Stamp Duty (Amendment) Bill 2012, the Government had explained in detail the arrangements for applying for exemption under the BSD regime. The mechanism requires an individual buyer to make a statutory declaration to declare that he/she is a HKPR acting on his/her own behalf when acquiring the relevant residential property. In line with the BSD regime, when a buyer applies for exemption from the doubled AVD, he/she has to submit document to IRD to declare that he/she is a HKPR acting on his/her own behalf and he/she is not a beneficial owner of any other residential property in Hong Kong when acquiring the relevant property. IRD will verify the content of the declaration made by the buyer and ascertain whether the buyer is a beneficial owner of any other residential property in Hong Kong⁴. For application for exemption from the doubled AVD involving residential property transactions between close relatives, the parties concerned shall submit relevant documents to prove their relationships. IRD will consider each application with all relevant facts, documents provided (e.g. birth certificate, marriage certificate) and other supporting information in totality.

8. As regards HKPRs who are not beneficial owners of any other residential property in Hong Kong, the Bill provides exemptions for their residential property transactions (all the non-residential property transactions will not be exempted) with a view to according priority to their home ownership needs. At the same time, we wish to address the practical needs of transactions involving residential properties between close relatives as far as possible. We set out in **Annex** some illustrations of the AVD payable under different scenarios and the applicable exemption arrangement for property transactions involving close relatives.

Exchange of properties

9. As regards exchange of any residential properties for any residential or non-residential properties, IRD will charge AVD on “any consideration paid for equality” as a standing practice. Where the person(s) who acquires a residential property by way of

⁴ A buyer shall make the statutory declaration based on the true facts that he/she faithfully believes. For example, the buyer is the beneficiary of an estate of a deceased in a will but has no knowledge that the estate includes a residential property. Unknowingly, the buyer makes the statutory declaration that he/she is not a beneficial owner of any other residential property in Hong Kong in acquisition of a residential property. Under this situation, even though the representations in the declaration are ruled by the court as untrue, since the buyer faithfully believed they were true facts and were declared without knowing intent to make false representation, he/she is not liable to the relevant criminal offence. In addition, we understand that a beneficiary of an estate of a deceased must first complete actions for grant of probate of the will and arrangements for claiming the estate in accordance with the law before he/she can formally become the beneficial owner of the relevant property. If the beneficiary of an estate of a deceased has not completed the relevant legal procedures at the time of acquiring the residential property, he/she is not regarded as a beneficial owner of any other residential property in Hong Kong and is eligible for exemption.

exchange is/are HKPR(s) acting on their own behalf and is/are not beneficial owner(s) of any other residential property in Hong Kong, **or** where they as the transferee(s) are acting on their own behalf and are closely related to each other as well as to the transferor(s), the Bill provides exemption for such transaction which is chargeable at the old AVD rate. Given that no exemption arrangement for non-residential property transactions is available under the Bill, for consistent application of the policy intent under the situation of exchange, we propose to make technical amendments to the relevant provisions to the effect that the exemption is only applicable to “any consideration paid for equality” in respect of the residential property under the exchange arrangement. In other words, if “any consideration paid for equality” is related to the non-residential property under the exchange arrangement, IRD will charge doubled AVD for “any consideration paid for equality” as in other cases of non-residential property transactions.

Acquisition of a public housing unit under TPS

10. According to the prevailing policy of the Hong Kong Housing Authority, sitting tenants in self-contained flats in the selected TPS estates can purchase their flats provided that there is no breach of the existing tenancy agreement. Under TPS, the purchasers, irrespective of whether they acquire the flats jointly with others, must be sitting tenants who are 18 years old or above. If a person and his/her close relative(s) fulfill the criteria to purchase a flat under TPS, as long as there is a HKPR and they are not beneficial owners of any other residential property in Hong Kong, the Bill provides exemption for the transaction which is chargeable at the old AVD rate.

Communication with the estate agency trade

11. The Government briefed representatives of estate agency trade associations on the scope and applicability of the doubled AVD in April 2013 and met with the representatives of the Joint Council of Estate Agents Associations to understand the views of the trade in July 2013. Since the announcement of the implementation of the doubled AVD on 22 February 2013, IRD has uploaded the frequently asked questions onto its website (<http://www.ird.gov.hk/chi/faq/index.htm#avd>) to facilitate understanding of the measure by the trade and the public.

12. With the gazettal of the Stamp Duty (Amendment) Ordinance 2014 on 28 February 2014, IRD will join the Law Society of Hong Kong in organizing a workshop for solicitors and plans to organize another workshop for the estate agency trade through the arrangement by the Estate Agents Authority. Similarly, when the Bill is passed by the

Legislative Council, we will be pleased to organize workshops for relevant parties and maintain communication with the trade.

Financial Services and the Treasury Bureau

April 2014

Some illustrations of the AVD payable under different scenarios and the applicable exemption arrangement for property transactions involving close relatives

Under the doubled AVD regime, the AVD rates will be doubled for all transactions on residential and non-residential properties. As regards HKPRs who are not beneficial owners of any other residential property in Hong Kong, the Bill provides exemptions for their transactions on residential properties (all non-residential property transactions will not be exempted) with a view to according priority to their home ownership needs. The basic principles are as follows -

- (a) The buyer(s) is/are HKPRs who is/are not beneficial owner(s) of any other residential property in Hong Kong on the date of acquisition (the old AVD rates will apply to the total consideration); or
- (b) If there is more than one buyer, as long as there is a HKPR and all the other buyers (be they HKPRs or not) are his/her close relatives and none of them is a beneficial owner of any other residential property in Hong Kong on the date of acquisition (the old AVD rates will apply to the total consideration).

2. In accordance with the above principles and consistent with the policy intent to manage demand, if one of the joint purchasers (even though they are all HKPRs) of the relevant residential property is the beneficial owner of any other residential property in Hong Kong, the transaction shall be subject to the doubled AVD. On the other hand, we wish to cater for the needs of addition of names or nomination in respect of residential property transactions involving close relatives as far as possible under the doubled AVD regime. Having considered the fact that the addition of names or nomination arrangements currently are not subject to AVD, we propose that if the close relative(s) concerned is/are the beneficial owner(s) of any other residential property in Hong Kong on the date of addition or nomination, the transaction can be exempted from the doubled AVD and pay at the old AVD rate. The current exemption from any AVD is applicable to close relative(s) who is/are not the beneficial owner(s) of any other residential property in Hong Kong on the date of addition or nomination. We set out some illustrations of the AVD payable under different scenarios and the applicable exemption arrangement for property transactions involving close relatives as follows -

	Scenario	Existing AVD regime	Doubled AVD regime
(a)	Where a couple among whom the husband owns a residential property -		
	1. Acquire another residential property jointly		
	➤ The husband and the wife jointly acquire a new residential property.	➤ AVD is payable at prevailing rates on the total consideration (no exemption).	➤ AVD is payable at new rates on the total consideration (no exemption from the doubled AVD).

	<p>2. Addition of the husband's name after the wife has acquired a residential property</p> <ul style="list-style-type: none"> ➤ The wife first executes an agreement for sale to acquire a new residential property. ➤ The wife then adds her husband's name in the conveyance on sale to become a joint ownership. 	<ul style="list-style-type: none"> ➤ AVD is payable at prevailing rates on the total consideration (no exemption). ➤ Exempted from AVD. 	<ul style="list-style-type: none"> ➤ AVD is payable at old rates on the total consideration (exempted from the doubled AVD). ➤ Chargeable at the old rates on the total consideration but AVD is payable in proportion to the share of ownership acquired by the husband (exempted from the doubled AVD).
	<p>3. The wife first executes an agreement for sale, and then nominates her husband to execute a conveyance on sale</p> <ul style="list-style-type: none"> ➤ The wife executes an agreement for sale to acquire a new residential property. ➤ Nominates the husband to execute the conveyance on sale alone. 	<ul style="list-style-type: none"> ➤ AVD is payable at prevailing rates on the total consideration (no exemption). ➤ Exempted from AVD. 	<ul style="list-style-type: none"> ➤ AVD is payable at old rates on the total consideration (exempted from the doubled AVD). ➤ AVD is payable at old rates on the total consideration (exempted from the doubled AVD).
	<p>4. The wife executes a conveyance on sale and then transfers half of the ownership to her husband to become a joint ownership.</p> <ul style="list-style-type: none"> ➤ The wife executes an agreement for sale and conveyance on sale to acquire a new residential property. ➤ The wife executes a new agreement for sale to transfer half of the ownership to her husband. 	<ul style="list-style-type: none"> ➤ AVD is payable at prevailing rates on the total consideration (no exemption). ➤ AVD is payable at prevailing rates on the total consideration in respect of the half of the ownership (no exemption). 	<ul style="list-style-type: none"> ➤ AVD is payable at old rates on the total consideration (exempted from the doubled AVD). ➤ AVD is payable at old rates on the total consideration in respect of the half of the ownership (exempted from the doubled AVD).
(b)	<p>Where the name of a son who is not a beneficial owner of any other residential property in Hong Kong has been added to different residential properties respectively by his father, mother and spouse:</p> <ul style="list-style-type: none"> ➤ The name of the son is 	<ul style="list-style-type: none"> ➤ Exempted from AVD. 	<ul style="list-style-type: none"> ➤ No AVD is payable in respect of

	<p>added to the conveyance on sale of the residential property (“A”) by his father.</p> <p>➤ The name of the son is added to the conveyance on sale of the residential property (“B”) by his mother.</p> <p>➤ The name of the son is added to the conveyance on sale of the residential property (“C”) by his spouse.</p>	<p>➤ Exempted from AVD.</p> <p>➤ Exempted from AVD.</p>	<p>addition of name (i.e. exempted from AVD at both new and old rates).</p> <p>➤ Chargeable at the old rates on the total consideration but AVD is payable in proportion to the share of ownership acquired by the son (exempted from the doubled AVD).</p> <p>➤ Chargeable at the old rates on the total consideration but AVD is payable in proportion to the share of ownership acquired by the son (exempted from the doubled AVD).</p>
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