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**Report of the Bills Committee on Stamp Duty (Amendment) Bill 2013**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Stamp Duty (Amendment) Bill 2013 ("the Bills Committee").

**Background**

2. Under the influence of exceptionally low interest rates and abundant liquidity, as well as the tight supply of residential properties, the property market has shown signs of irrational exuberance over the past few years. Under the exceptional circumstances of an overheated property market with supply shortage, the Administration has launched successive rounds of demand-side management measures to curb short-term speculative activities, mitigate further exuberance in the local residential property market, alleviate the demand for housing by according priority to meeting the home ownership needs of Hong Kong Permanent Residents ("HKPRs") and to forestall the shifting of exuberance from the residential market to the non-residential market. The demand-side management measures rolled out since November 2010 include:

- (a) the Special Stamp Duty<sup>1</sup> ("SSD") in November 2010 on transactions of residential property acquired on or after 20 November 2010 and resold within 24 months after acquisition;

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<sup>1</sup> The Stamp duty (Amendment) Ordinance 2011 (No. 14 of 2011) was enacted in June 2011 to impose SSD to curb short-term speculative activities in the local residential property market.

- (b) an enhancement of SSD in October 2012<sup>2</sup> to adjust upward the duty rates and to extend the property holding period in respect of SSD, as follows:
  - (i) 20% of the amount or value of the consideration of the property if the property has been held for six months or less;
  - (ii) 15% if the property has been held for more than six months but for 12 months or less; and
  - (iii) 10% if the property has been held for more than 12 months but for 36 months or less; and
- (c) a 15% Buyer's Stamp Duty<sup>2</sup> ("BSD") in October 2012 on all residential properties acquired by any person (including companies) except a HKPR acting on his/her own behalf in the acquisition of the property, on top of the existing ad valorem stamp duty ("AVD") and SSD, if applicable.

3. To further address the overheated property market, the Financial Secretary ("FS") announced on 22 February 2013 a new round of demand-side management measures, i.e. to increase the AVD rates on instruments for transactions in residential and non-residential properties and to charge AVD on the agreement for sale of non-residential property transactions in order to reinforce management of demand for residential properties and forestall the shifting of speculation and investment demand from the residential property market to the non-residential property market.

## **The Bill**

4. The Stamp Duty (Amendment) Bill 2013 ("the Bill"), introduced into the Legislative Council ("LegCo") on 17 April 2013, seeks to amend the Stamp Duty Ordinance (Cap. 117) ("SDO") to:

- (a) increase the AVD rates on transactions for residential and non-residential properties acquired on or after 23 February 2013 (except exemptions provided under the Bill) as follows:

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<sup>2</sup> The Stamp duty (Amendment) Ordinance 2014 was enacted in February 2014 to enhance SSD and to impose BSD on non-HKPRs. Both measures apply to residential properties acquired on or after 27 October 2012.

<i>Consideration for purchase</i>	<i>New rate under the Bill</i>	<i>Existing rate under the SDO<sup>3</sup></i>
Up to \$2,000,000	1.5%	\$100
\$2,000,001 to \$3,000,000	3.0%	1.5%
\$3,000,001 to \$4,000,000	4.5%	2.25%
\$4,000,001 to \$6,000,000	6.0%	3.00%
\$6,000,001 to \$20,000,000	7.5%	3.75%
\$20,000,001 and above	8.5%	4.25%

(Subject to marginal relief at the turn of each band)

- (b) to charge AVD on agreement for sale of non-residential properties, to tally with the existing arrangement for residential property transactions<sup>4</sup>.

5. Given the price-sensitive nature of the property market, the Bill proposed that the new measures be deemed to have taken effect on 23 February 2013, the day immediately following the announcement on 22 February 2013. Inland Revenue Department ("IRD") will keep track of all the property transactions between 23 February 2013 and the gazettal date of the Amendment Ordinance, if enacted. IRD will also issue reminders on the collection of the AVD underpaid to the solicitors handling the relevant transactions after the gazettal date.

### **The Bills Committee**

6. At the House Committee meeting held on 19 April 2013, Members decided that a Bills Committee be formed to study the Bill. Hon Starry LEE and Hon James TO were elected Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**.

7. The Bills Committee has held a total of 18 meetings with the Administration and received views on the Bill from relevant stakeholders and the public at its meeting held on 13 June 2013. A list of the organizations/individuals which/who have submitted views to the Bills Committee is in **Appendix II**.

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<sup>3</sup> Under the provisions of the SDO, the AVD payable will be calculated according to the stated consideration for the transaction or the market value of the property as assessed by the Collector of Stamp Revenue (i.e. the Commissioner of Inland Revenue), whichever is the higher.

<sup>4</sup> In 1992, with a view to discouraging speculation in residential properties, legislative amendment was introduced to make AVD fully payable on signing of each agreement for sale with a nominal stamp duty of \$100 to be charged on the actual conveyance on sale.

## **Deliberations of the Bills Committee**

8. The deliberations of the Bill Committee and the Administration's views are set out in this report according to issues in the following order:

<u>Issues</u>	<u>Paragraphs</u>
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## Effectiveness of the demand-side management measures

9. As property prices have remained high despite the implementation of the successive rounds of market cooling measures since November 2010, many members doubted the effectiveness of yet another round of demand-side management measures in addressing the over-priced property market. These members are of the view that while the measures have notably reduced the volume of property transactions, they have not achieved the stated policy objectives of bringing down property prices to a level affordable to genuine local first-home buyers and assisting HKPRs in acquiring residential properties. Neither could the measures tackle the problem of property supply shortage at source. A majority of members consider that a fundamental solution is to increase land and property supply and review the high land premium policy as soon as practicable to tackle the root cause of the property price spiral.

10. The Administration has explained that the market exuberance in the residential property sector is due to a combination of factors, including the overall demand and supply imbalance, the influx of capital, and the ultra-low interest rates environment, all of which have driven up property prices to a level deviated from economic fundamentals, increasing the risk of a property bubble.

11. The Administration takes the view that the successive rounds of demand-side management measures have eased the irrational market exuberance and are reversing the irrational public expectation that property prices can only go up, both of which are in line with the policy objectives. According to the Administration, the enhanced SSD and BSD have effectively suppressed speculative short-term resale of residential properties and reduced the purchase of residential properties by non-HKPR buyers. As reflected in the statistics, the property market has shown signs of cooling down, with transaction volume dwindling and property prices levelling off since the introduction of the doubled AVD measures. Overall property prices increased by an average of 0.1% per month during March 2013 to March 2014, a notable deceleration from the monthly average increase of 2.7% in the first two months of 2013. The rental level went up by an average of 0.1% per month during March 2013 to March 2014, a reduction from the monthly average increase of 0.4% in the first two months of 2013 and a notable deceleration from the monthly average increase of 1.9% in 2012.

12. For the non-residential property market, the prices of office and flatted factory space increased by an average of 0.3% and 0.1% respectively per month during March 2013 to March 2014, a notable deceleration from the

monthly average increases of 2.6% and 4.1% respectively in the first two months of 2013. The prices of retail space between March 2013 and March 2014 showed virtually no change after a monthly average increase of 1.9% in the first two months of 2013. During the same period, the monthly average increase of rental prices of retail, office and flatted factory space continued to decelerate<sup>5</sup>.

13. According to the Administration, the measures have addressed the home ownership needs of HKPRs. IRD statistics show that following the introduction of the measures, there is an evident increase in the proportion of residential property transactions where the buyers are holders of Hong Kong identity cards<sup>6</sup> ("HKIC holders"). Amongst the number of agreements for sale and purchase of residential properties involving buyers who are HKIC holders, the percentage of buyers who do not own any other properties in Hong Kong at the time of acquisition rises from the monthly average of 51% for January to March 2013 to 70% for April to September 2013, which is in line with the policy objective of according priority to meeting HKPRs' home ownership needs.

14. The Administration has reiterated its commitment to addressing the demand-supply imbalance at source by a supply-led strategy to achieve a sustained increase in the supply of land and housing. The Chief Executive has announced in the 2013 Policy Address an overall blueprint and various measures for increasing land supply in the short-, medium- and long-term through a multi-pronged approach to re-balance demand and supply so as to meet the housing and other development needs of Hong Kong. The Government will continue to closely monitor the land supply for commercial properties to ensure a stable and adequate supply of land for business and commercial uses to tie-in with the sustainable development of the Hong Kong economy and maintain the status of Hong Kong as a business hub and financial centre.

#### Justifications for the demand-side management measures

15. Given the Administration's claim that the demand-side management measures have eased the irrational market exuberance, members belonging to the Business and Professionals Alliance for Hong Kong ("BPA") and the Liberal Party, Hon James TO, Hon Paul TSE, and Dr Hon LAM Tai-fai have questioned the justifications for doubling the AVD rates on transactions for residential properties where the HKPR buyer concerned is the beneficial

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<sup>5</sup> For example, in the case of retail space, the increase was reduced to 0.4% from 0.7%, with an obvious drop when compared with the monthly average increase of 1.0% in 2012.

<sup>6</sup> Percentage of residential property transactions where buyers are HKIC holders out of total transactions increases from 83.1% in 2011 and 86.5% in 2012 to 95.6% during January to April 2013. The proportion of non-HKIC holders and companies has decreased from 16.9% in 2011 to about 5% in 2013.

owner<sup>7</sup> of any other residential property in Hong Kong at the time of acquisition. Members consider that this provision would penalize those who choose to invest in properties to hedge against inflation. These members also question the justifications for doubling the AVD rates on transactions for non-residential properties and advancing permanently the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement of sale. Members are of the view that the doubled AVD measures on both residential and non-residential properties would penalize genuine users and long-term investors, such as corporate buyers purchasing residential properties for use as staff quarters or office premises for business expansion in Hong Kong as many of them, in particular small and medium enterprises ("SMEs"), would mortgage their properties to finance their business operations. The measures would also deter investors from acquiring non-residential properties for leasing out to SMEs, thus further driving up the rentals. There is also concern that the measures would not only dampen investment sentiments and curtail business development but would also damage Hong Kong's established reputation as a free market economy, thus harming the economy as a whole.

16. The Administration explains that although the upward momentum in residential property prices has been temporarily arrested following the introduction of the enhanced SSD and BSD in October 2012, there are renewed signs of exuberance in the residential property market amidst the supply-demand imbalance, exceptionally low interest rate, and abundant liquidity environment on entering 2013<sup>8</sup>. There are also signs of overheating in the non-residential property market with hectic trading activities and soaring prices for non-residential properties. Prices of retail, office and flatted factory space surged by a cumulative 41%, 24% and 46% respectively in 2012, as well as a cumulative 145%, 68% and 231% respectively compared with the peak in 1997. The rental level of non-residential properties has been on the rise in 2012 and that the rents of retail, office and flatted factory space have increased by 12.59%, 7.68% and 12.89% respectively. The ratio of mortgage payment to income has risen from the quarterly average of 48% to 56% in the second quarter of 2013, which is higher than the long-term average of 48% over 1993-2012. After balancing various considerations, the Administration considers the introduction of the doubled AVD measures necessary to bring an immediate relief to the overheated property market by

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<sup>7</sup> Under the proposed section 29AC of the Bill, beneficial owner, in relation to a residential property-  
(a) includes a purchaser under an agreement for sale of the property that is subsisting; and  
(b) excludes a vendor under an agreement for sale of the property that is subsisting.

Beneficial owner of a residential property includes a beneficial owner of part of the property.

<sup>8</sup> The renewed pick-up was more evident in the mass market (i.e. flats smaller than 70 square meters in saleable area), with a 2% price gain in January 2013 and a cumulative 124% gain over the recent trough in 2008.

way of managing demand to contain the risks posed to the property market and financial stability.

17. The Administration also highlights that the various demand-side management measures are inter-related and work collectively to achieve the objective of ensuring the healthy and stable development of the property market. As land and property in Hong Kong is finite in supply, there is a need to reinforce the management on demand from those who have already owned residential properties in Hong Kong in line with the Government's policy to accord priority to the housing needs of HKPR first-home buyers amidst the current exceptional market exuberance and supply shortage. Measures targeted at non-residential properties are also necessary at the same time to achieve an immediate cooling effect on the non-residential market and forestall the spread of market exuberance from the residential sector to the already overheated non-residential property sector. The Administration cautions that if the build-up of a property bubble is left to balloon unchecked, there could be an even greater impact on Hong Kong's economy and more painful market correction in the event of an asset bubble burst should there be any change in interest rates or other external factors.

#### Impact on business environment and Hong Kong's image

18. Members belonging to the BPA and the Liberal Party and Hon Paul TSE are gravely concerned that the application of the doubled AVD measures to transactions of non-residential properties would indiscriminately affect genuine users and investors. In their view, the overall increase in the business set up and operation costs would dampen investment sentiments of local and multi-national enterprises and might send a negative message to global investors that Hong Kong does not welcome foreign investments, thereby adversely affecting Hong Kong's competitiveness in the region and harming the business operating environment of Hong Kong. Relaying the grave concerns of various chambers of commerce and the Real Estate Development Association of Hong Kong ("REDA") over the adverse impact of the measures on foreign long-term investors and local SMEs, a majority of members are concerned that over-regulation of the normal market operation would not only go against Hong Kong's long-held free market principles and simple tax regime but would also erode market confidence in Hong Kong, undermine Hong Kong's hard-earned reputation as one of the world's freest economies with a level playing field, and weaken its status as an international financial centre and the preferred destination of choice for foreign investment.



19. The Administration has reaffirmed its commitment to free market principles, highlighting that Hong Kong's long-standing free-market economy is built on multiple institutions, policies and practices that protect private property, market freedom and free flow of information and capital. International investors will consider various factors (such as business opportunities, international networks, human quality, infrastructure, legal system, operating costs, etc) before deciding whether to run their business in Hong Kong. Moreover, other jurisdictions have also formulated measures on property market with reference to their specific circumstances<sup>9</sup>. Citing the results of the Annual Survey of Companies in Hong Kong Representing Parent Companies Located Outside Hong Kong conducted by the Census and Statistics Department and InvestHK, the Administration maintains that there has been no obvious decrease in Hong Kong's competitiveness in attracting foreign investment<sup>10</sup>.

20. Some members have raised concern that the stagnant market with a sharp decline in transaction volume has hard hit the business of the property-related sectors, including real estate agencies, the decoration and furniture business, the building repair and maintenance sectors, and the cleaning and related service sectors, creating unemployment and damaging the overall economy. Sharing the concern of the affected trades as expressed by some deputations, including the Lion Rock Institute, Property Agencies Association and Joint Council of Estate Agents Association, these members urge the Administration to consider relaxing the measures.

21. According to the Administration, the overall economic impact of the demand-side management measures has been cushioned by a vibrant domestic sector and the tight labour market so far. The employment situation in the property-related sectors has generally improved over the past few years, with the unemployment rates showing a noticeable decline amid a generally tight labour market with full employment. Moreover, the demand-side management measures aside, soaring prices will also bring down the transaction volume. The Administration reiterates that although the measures may bring short-term pain to certain trades and cause inconveniences to the business community, these measures are conducive to maintaining a healthy property market for business investments.

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<sup>9</sup> For instance, Singapore introduced the Seller's Stamp Duty at the rates of 5-15% on industrial properties depending on the length of holding period in January 2013. On 30 October 2012, Macau introduced the Special Stamp Duty for transactions on immovable properties involving commercial, office or car park for mechanical vehicles.

<sup>10</sup> The total number of regional headquarters, regional and local offices in Hong Kong representing their parent companies outside Hong Kong increased by 2.7% from 7 250 as at June 2012 to 7 499 as at June 2013.

### Constitutionality of the demand-side management measures

22. Hon Abraham SHEK has questioned the constitutionality of the demand-side management measures. In his view, the measures might infringe the fundamental rights of individuals and legal persons to the acquisition, use, disposal and inheritance of property provided under Article 105 of The Basic Law. The doubled AVD measure coupled with the BSD and the SSD, which would substantially increase property acquisition costs and jag up business operation costs of local and overseas corporations, are in breach of Articles 108, 109 and 115 of The Basic Law in relation to low tax policy, maintenance of Hong Kong as an international financial centre and the pursuit of the policy of free trade. The differential treatment of exempting only HKPRs who do not own any other residential property might be discriminatory against HKIC holders who are not HKPRs as the right of equality to Hong Kong residents is protected under Article 25 of The Basic Law.

23. The Administration maintains that the doubled AVD measure, same as the BSD and the SSD, is constitutional and is legitimate taxation governed by The Basic Law Article 108. While Article 25 of The Basic Law provides that all Hong Kong residents should be equal before the law, this guarantee does not invariably require exact equality amongst all Hong Kong residents in all cases, as far as the differences in legal treatment is justified for good reason. The proposed exemption for HKPRs from the doubled AVD pursues the legitimate aim of according priority to meeting the home ownership needs of HKPRs who have a close connection with Hong Kong, and reinforcing the management of the demand on those who already own residential properties in Hong Kong. The measures are therefore reasonable, appropriate and no more than necessary to accomplish the policy objective.

### Application of the doubled AVD measures to non-residential properties

24. Members belonging to the BPA and the Liberal Party strongly oppose to the application of the doubled AVD measure to non-residential property, and have great reservation over the proposal to permanently advance the charging of AVD for non-residential property transactions from the conveyance of sale to the agreement for sale. Hon Andrew LEUNG, Hon Abraham SHEK, and Dr Hon LAM Tai-fai are of the view that in the absence of evidence showing that the non-residential property market is overheated, an indiscriminate across-the-board doubling of AVD rates on non-residential properties is grossly inappropriate, and would make it difficult for SMEs to acquire commercial premises for self-use, forcing them to bear high rentals and jeopardizing their survival. Echoing the views of some deputations,

such as the various chambers of commerce, REDA, the Hong Kong Small and Medium Enterprises Association, Royal Institution of Chartered Surveyors, The Taxation Institution of Hong Kong, etc, Hon Kenneth LEUNG, Hon Paul TSE, Dr Hon LAM Tai-fai, Hon Charles Peter MOK and Hon Dennis KWOK are concerned that the measures, which add to the operating costs of enterprises, would increase the burden on both local and overseas enterprises, adversely impact the ability of businesses to contain costs and raise finance, and would slow down economic growth and hurt Hong Kong's competitiveness in the region. These members also consider the fundamental change to the existing stamp duty regime by permanently advancing the charging of AVD for non-residential property transactions highly undesirable and unjustified, since the demand-side management measures are meant to be extraordinary measures that would be withdrawn when the supply-demand balance has been restored and the property market returns to normal.

25. Members belonging to the BPA and the Liberal Party and Hon Kenneth LEUNG hold the view that the Administration should differentiate between non-residential properties acquired for self-use and those for speculation. Referring to Singapore's practice whereby industrial properties that are held for more than three years are exempted from additional stamp duty, these members strongly urge the Administration to exempt non-residential property transactions from the doubled AVD or refunding the difference in AVD payment between the new and the old rates for the first-time acquisitions of non-residential properties for self-use and long-term investment (e.g. holding for at least 3 years).

26. The Administration does not agree to provide exemption or refund for non-residential property transactions. The Administration is of the stance that non-residential and residential properties are different in nature and should not be treated in the same way. The policy considerations for non-residential properties are not on a par with those for addressing the home ownership needs of HKPRs. The doubled AVD regime is intended to apply the new rates to all immovable properties, irrespective of the actual usage of the property and the purpose of usage. The Administration highlights that to ensure the effectiveness of the measures, exemptions should be drawn up by taking a stringent approach with due regard to the general circumstances rather than individual scenarios so that all exemptions provided could be appropriately codified.

27. The Administration further explains that the proposed increase in AVD rates on all property transactions and the advancement of the timing for charging AVD in respect of non-residential property transactions are complementary measures intended to instantly cool down the non-residential

property market and turn around the market expectation that property prices can only go up, thereby preventing the macroeconomic and financial stability from being affected by wide fluctuations in the property market. Despite the preliminary effectiveness of the demand-side management measures in addressing the overheated property market, uncertainty still prevails in the market and the supply of properties remains tight. It is essential to maintain the doubled AVD measures for non-residential properties at the same time to address the exuberance in the non-residential property market and forestall the shifting of rampant speculation or investment demand from the residential property market to the non-residential property market. While the measures will impact the business community, local and foreign companies running operations in Hong Kong will ultimately benefit from a stable business environment with steady development in the property market.

28. Some members are unconvinced. Hon Abraham SHEK has proposed Committee stage amendments ("CSAs") seeking to exempt non-residential property transactions from the doubled AVD and to keep intact the existing practice of charging conveyance on sale of non-residential property transactions, i.e. not to charge AVD on the agreement for sale as proposed in the Bill. Hon Kenneth LEUNG has proposed CSAs seeking to provide a refund mechanism for a Hong Kong incorporated company or a HKPR for acquisition of non-residential properties. Under the proposed refund mechanism, a HKPR or a Hong Kong company that has continuously used the concerned non-residential property solely for the purpose of carrying on the trade, profession or business (including business or trade carried on by any charitable institution or trust of a public character which is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap.112) ("IRO"), but excludes the letting or sub-letting or the sub-letting of any premises or portion of any premises held under a lease or tenancy) for not less than 3 years ("relevant period") from the date of acquisition can apply to IRD for a refund of AVD of an amount equal to the difference between the payments according to the old and new rates in respect of the newly acquired non-residential property. Applicants for refund would be required to provide documentary evidence to prove to IRD's satisfaction the fulfilment of the conditions during the relevant period.

29. The Administration considers Hon Abraham SHEK's CSAs inconsistent with the policy objective of the measures, and if implemented, would encourage short-term speculative activities in non-residential properties, dilute the effectiveness of the measure, and send a wrong message to the public, calling into question the Government's determination to stabilize the property market. This might in turn trigger a return to the cycle of irrational exuberance, frustrating all the efforts to curb property speculation. The Administration also considers it justifiable to charge AVD

on instruments for non-residential property transactions on a permanent basis to align with the existing arrangement for residential properties. The Administration points out that the AVD chargeable in relation to transactions of immovable properties has in fact all along been applicable to all types of properties, irrespective of whether they are residential or non-residential.

30. The Administration holds the view that the refund arrangement proposed by Hon Kenneth LEUNG upsets the integrity of the doubled AVD regime, which is intended to apply the new rates on all immovable property, including residential property and non-residential property, irrespective of the actual usage of the property and the purpose of usage. The scope of the suggested refund mechanism covers virtually every type of business, trade and manufacture. The suggested refund mechanism in effect exempts all Hong Kong companies or HKPRs (including charitable bodies) from payment of doubled AVD for acquisition of non-residential properties, which is inconsistent with the Administration's policy objective in implementing the relevant demand-side management measures. There is concern that the refund proposal will disseminate to the market a wrong message that the non-residential properties concerned will not be subject to the doubled AVD regime under specified circumstances upon expiration of the specified relevant period, thus stimulating market demand for non-residential properties and affecting the effectiveness of the measures. Moreover, providing stamp duty refund to "company" will create hard-to-plug loopholes as any person can, by way of transfer of shares in a company, acquire indirectly the beneficial interest in the non-residential property owned by the company and get refund after the relevant period. The Administration also points out that the refund proposal will bring about fundamental changes to the stamp duty regime under which stamp duty have been charged on the basis of instrument effecting transfer of properties, irrespective of their usage by the buyers within a few years after acquisition. Apart from the difficulties in determining whether a HKPR or Hong Kong company has continuously used the non-residential property concerned solely for the purpose of carrying on the owner's trade, profession or business in Hong Kong, the additional staff and resources required to process and verify each and every refund application will entail substantial financial implications to the Stamp Office.

31. On overseas practices, such as that of Singapore, the Administration takes the view that different jurisdictions would formulate appropriate policies and measures affecting property market having regard to their own specific circumstances. It may not be appropriate to make direct comparison with measures adopted by other jurisdictions. Moreover, as the Seller's Stamp Duty for industrial properties has been implemented in Singapore for only a few months, its effectiveness has yet to be observed.

AVD refund mechanism for owners having acquired a new residential property before disposing of the original property (Clause 18)

32. The proposed section 29DF stipulates that a HKPR, having entered into an agreement for sale and purchase to dispose of his/her original and only other residential property in Hong Kong within six months from the date of acquiring a new residential property, can apply to the IRD, within two years from the date of the instrument in acquiring the new residential property, for the refund of AVD of an amount equal to the difference between payments according to the old and new rates on the newly acquired property. The refund mechanism for HKPR purchasers/transferees having acquired a new residential property before disposing of their original property is to cater for the replacement needs of HKPRs having regard to the fact that one may own more than one residential property during the transitional period in the process of acquiring a new property for replacement of the original one.

33. Considering that property acquisition is a major decision involving a substantial amount of money, the Chairman and a majority of members hold a strong view that the prescribed "six-month" period is too short for purchasers/transferees having acquired a new residential property to dispose of their only other property at a reasonable price in view of the current sluggish property market. The Chairman, Hon WONG Ting-kwong, Hon LEUNG Che-cheung, Hon Tony TSE, and Hon James TO are gravely concerned that the short timeframe cannot cater for the actual needs of those changing properties by acquiring uncompleted flats before disposing of their original one, rendering them unable to benefit from the refund mechanism. Given that the presale period of individual projects under the Consent Scheme may be up to 30 months in advance of the anticipated completion date, buyers of long-term uncompleted flats may not be able to file their AVD refund applications to IRD within two years from the date of the instrument for acquiring the new property. In addition, even if an owner holds more than one residential property for a long time during the process of replacement, the new properties, being an uncompleted flat, does not provide immediate accommodation. In order to obtain a refund, these purchasers may have to sell their existing flat with six months and rent a place while waiting for the completion of the newly acquired pre-sale flat. Sharing a similar view, Hon Abraham SHEK, Hon Tommy CHEUNG and Hon James TIEN point out that the Bill has in effect discouraged the replacement of properties by uncompleted flats. Members strongly urge the Administration to extend the proposed six-month timeframe for divesting the original property to 12 months for the purpose of refunding the doubled AVD. Members are of the view that such relaxation would not give rise to speculation as re-sales within 36 months would still be subject to the enhanced SSD.

34. Hon WONG Ting-kwong requests the Administration to consider that for the purchase of an uncompleted flat to replace the only other residential property, the counting of the six-month period should commence on the date of the issuance of an occupation permit for the new flat so as to better suit the actual needs of buyers changing properties by acquiring uncompleted flats. Hon Abraham SHEK has proposed CSAs that a HKPR who has entered into an agreement for sale to dispose of his/her original and only other residential property within 12 months from the date of acquiring a new one should be refunded AVD of an amount equal to the difference between payments according to the old and the new AVD rates. Hon Tommy CHEUNG has proposed CSAs to the effect that a HKPR having entered into an agreement for sale to dispose of his/her original and only other residential property in Hong Kong or that the original property is transferred or divested under a conveyance on sale within 12 months from the date of acquiring a new one can obtain a refund.

35. The Administration highlights that consistent with the policy objective to accord priority to the home ownership needs of HKPRs by way of managing the demand of those who already owned a property, it is necessary to stipulate a specified timeframe for the buyers replacing properties to sell their original one so as to prevent property owners from acquiring another residential property under the guise of replacement and delaying disposal of their original one, which in effect allows them to hold more than one residential property for a long period of time. In considering whether there is room for adjusting the "six-month" timeframe for changing properties in cases of acquisition of uncompleted flats, there is a need to strike a balance between addressing the practical needs of HKPRs changing properties and safeguarding the effectiveness of the demand-side management measures as well as upholding the standing practice under SDO. The matter must be examined from different angles with a view to assessing whether the proposed amendment is necessary, clear, fair, and easy for the public to understand, and could be effectively implemented by IRD.

36. The Administration points out that according to the IRD's statistics, the majority (over 80%) of the residential property transactions in 2012 and 2013 belonged to the secondary market involving existing stocks and not the primary market (including existing stocks and pre-sale uncompleted flats). Given that the doubled AVD measure is an exceptional measure under exceptional circumstances, any exemption or change should be consistent with the principle of proportionality in handling the problem concerned. Moreover, IRD's data show that roughly half of the HKIC purchasers who sold their other residential properties after acquiring new ones between 2011 and 2012 had their disposal transactions done within six months from the acquisition, and the repayment period for bridging loans provided by local

banks for customers replacing their properties is usually six months. The Administration therefore considers that the proposed six-month timeframe is practical and appropriate.

37. Members remain unconvinced. Hon Tony TSE has proposed CSAs targeting acquisitions of uncompleted flats to the effect that the calculation of the "six-month" timeframe for changing properties be adjusted to commence from the completion date of the new flats instead of the date of the instruments for acquiring the new flats as proposed in the Bill. Hon Tony TSE has also proposed that those changing properties by acquiring uncompleted flats can file AVD refund applications to IRD within two years from the date of the conveyance on sale of the new property.

38. The Administration is of the view that since Hon Tony TSE's CSAs propose using different types of instruments as the basis for calculating the six-month timeframe for uncompleted flats of different development projects, the time available for changing properties would appear to be inconsistent from the perspective of those divesting their properties. In addition, the Residential Properties (First-hand Sales) Ordinance (Cap. 621) came into effect on 29 April 2013, before which date there was no legislation requiring the vendor to notify the purchaser in writing of the completion of the sale and purchase within a specified timeframe. As such, Hon Tony TSE's CSAs left a loophole for cases involving uncompleted flats acquired between 23 February 2013 (when the doubled AVD measure was introduced) and 28 April 2013. Furthermore, the proposed CSA which allows those who divest property through acquiring an uncompleted flat to file AVD refund application within two years from the date of the conveyance on sale would give rise to an in-between lead time of over 36 months. This is inconsistent with the requirements of the SDO under which applicants are required to file any requests for refund within two years from the date of the instrument when the stamp duty is paid.

39. After having fully considered members' views, the Administration indicates that with regard to the policy objective and legislative intent of the Bill and under the principle of not undermining the effectiveness of the measures, it will relax the "six-month" timeframe for owners who have acquired a new residential property to dispose of their original one. The Administration proposes to move CSAs specifying that the "six-month" timeframe under the current arrangement in the Bill would be adjusted to commence from the conveyance on sale instead of the agreement for sale and purchase of the newly acquired property. While maintaining the two-year application timeframe after the execution of an agreement for sale and purchase of the newly acquired property, a new clause will be proposed to allow application for stamp duty refund of an amount equal to the difference



between the new and the old AVD rates be made within two months from the conveyance on sale of the original residential property or two years after the execution of an agreement for sale and purchase of the newly acquired property, whichever is the later. The Administration considers the proposed arrangements can strike the right balance between safeguarding the effectiveness of the measures and addressing the replacement needs of both owners who acquire existing stocks and uncompleted flats, and would enable buyers changing properties, including those who acquire uncompleted flats, to apply for refund after completion of transactions. The Administration has stressed that the modified proposal does not represent any relaxation by the Government on the existing demand-side management measures and the Government is determined to uphold the existing policy in order to safeguard the healthy and stable development of the property market.

40. Members generally welcome the Administration's positive response to address members' concerns. Hon Tony TSE and Hon Abraham SHEK have subsequently withdrawn their proposed CSAs. A few members however question whether the modified proposal, which provides up to two months extra for those seeking to replace their original property with an existing stock and up to three years extra for an uncompleted flat respectively may provide greater flexibility to purchasers of uncompleted flats, thereby encouraging the acquisition of an uncompleted flat as a replacement property, which will in turn benefit developers in selling their flats. The Administration maintains that the refund criterion is applicable across the board, clear and fair. It is also easy for the public to understand and would ensure policy consistency and facilitate effective administration by IRD. The Administration is of the stance that the modified refund arrangement has addressed the replacement needs of those changing properties while safeguarding the effectiveness of the doubled AVD measure, thereby preserving the policy objective of the demand-side management measures.

Exemption arrangements for acquisition of a residential unit together with a car parking space (Clause 10 - proposed section 29AJA, Clause 13 - proposed section 29BBA, Clause 18 - proposed section 29DF)

41. Members take note that, under the Bill and in line with the practice of the existing AVD regime, if a HKPR who is acting on his/her own behalf and is not the beneficial owner of any other residential property in Hong Kong acquires a residential property along with a non-residential property (e.g. a residential flat and a car parking space) that are inseparable for transaction (e.g. under the same title deed) in a single agreement with one consideration, 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. Where the residential unit and the car parking space that are

separable for independent transaction are covered in one agreement with their respective considerations set out in the agreement, the residential unit will be chargeable with AVD at the old rate, while the car parking space will be liable to AVD at the new rate. The applicable stamp duty rates for both the residential unit and the car parking space will be based on the total consideration of the whole transaction.

42. The Chairman and a majority of members have great reservation over the application of the doubled AVD to car parking space. Hon James TO, Hon WONG Ting-kwong, Hon Andrew LEUNG and Hon Abraham SHEK have pointed out that when acquiring a residential unit, it is common for home buyers to also acquire a car parking space in the same residential development for self-use. It is also a common practice that considerations for a residential flat and a car parking space purchased are set out separately in an agreement for sale or that the two properties are acquired through separate instruments. Moreover, car parking spaces in a residential development would usually only be put up for sale years after the residential units are sold. Given that the price of a residential flat can be much more expensive than a car parking space, members consider it inappropriate and unreasonable that for a transaction involving a residential unit and a car parking space, the latter would be chargeable with the doubled AVD with the applicable rate based on the total consideration of the whole transaction. These members hold the view that car parking space acquired for self-use is fundamentally different from other non-residential properties usually acquired for commercial purposes, and should be exempted from the doubled AVD. Some members have also highlighted the complexity in determining whether a residential unit and a car parking space are separate and distinct properties as various interpretations are possible under different legal documents, and the provisions of the deed of mutual covenant in respect of old and new buildings may differ greatly.

43. The Administration has advised that car parking spaces are non-residential properties, and should be subject to the doubled AVD measure which is consistent with the policy objective of the measures to forestall the shifting of overheating in the residential property market to the non-residential property market. The Administration holds the view that exemptions should be granted based on objective principles, not on every possible scenario, to ensure enforcement effectiveness. The arrangement for car parking spaces under the AVD regime would have to be in conformity with those of the SSD and BSD regimes to ensure consistency in the various stamp duty measures.

44. Members do not subscribe to the Administration's explanation and stress that owner-occupiers who acquire a car parking space for self-use should not be penalized. To address the self-use needs of owner-occupier, these members recommend that where a HKPR acting on his or her behalf acquires a residential property and a car parking space by a single instrument (irrespective of whether the residential property and car parking space are separate and distinct properties), the concerned car parking space in the transaction should be exempted from the doubled AVD and be chargeable at the old AVD rates on the basis of the total consideration of the whole instrument so long as the HKPR is not a beneficial owner of any other residential property in Hong Kong.

45. Having considered members' views and striking a balance among relevant considerations, such as the prevailing stamp duty regime on property, addressing the home ownership needs of the public, and safeguarding the effectiveness of the measures, the Administration proposes to, while upholding the spirit of providing exemption for residential properties, cater also to the home ownership needs of those who acquire a residential property and a car parking space by a single instrument by exempting the concerned car parking space from the doubled AVD. Given that car parking space is non-residential property in nature and any special exemption arrangement for car parking space should be closely related to the home ownership needs of buyers, the Administration proposes that the exemption should be subject to the condition that the buyer is a HKPR who is acting on his or her behalf and is not a beneficial owner of any other residential property and car parking space in Hong Kong at the time of acquisition of the residential property and car parking space concerned. Also, the exemption is restricted to one car parking space, irrespective of whether the car parking space is acquired for self-use or by a first-time buyer. The car parking space concerned must also be acquired together with the residential property in a single instrument, irrespective of whether the car parking space is located within the same residential development. The Administration will propose CSAs to the Bill to this effect.

46. The Bills Committee welcomes in principle the proposal. Hon James TO however is concerned that under the proposal, exemption would be granted to purchasers who do not own any car parking space, but not those who purchase a car parking space as a replacement. He suggests that the exemption arrangement for acquiring a residential property and car parking space should equally apply to those who purchase a car parking space as a replacement property. The Administration takes note of the concern, and considers it reasonable to provide refund arrangements correspondingly for owners having acquired a residential property and a car parking space before disposing of their original ones. The Administration would propose to

modify the definitions of "applicable instrument", "original property" and "subject property" in section 29DF to make clear that the residential property referred to in the relevant definitions could cover residential property and a car parking space<sup>11</sup>.

#### AVD chargeable to acquisition of multiple properties under one instrument

47. Members note that under the Bill, if a HKPR who acts on his/her own behalf and does not own any other residential properties in Hong Kong acquires more than one residential units under a single instrument, all the residential properties covered in the instrument will be regarded as a single transaction and charged at the old AVD rates determined by the value bands and duty rates on the basis of the total consideration in respect of the concerned residential properties.

48. The Chairman and some members including Hon WONG Ting-kwong, Hon James TO, Hon Kenneth LEUNG, Hon Abraham SHEK and Hon Paul TSE are concerned that the exemption arrangement would be open to abuse and would encourage speculation thus undermining the effectiveness of the measures, contrary to the policy intent of the measures to combat speculation and to manage demand of those who have already acquired residential properties. Moreover, the public might perceive the policy as favouring rich people who can afford to buy multiple properties at one go. The Administration is urged to consider limiting the exemption to one residential property only under a single instrument.

49. The Administration explains that charging stamp duty on an instrument basis is the fundamental principle under SDO. For a single instrument involving residential properties only, irrespective of the number of residential properties covered in the instrument, the concerned properties will be regarded as a single transaction. The applicable duty rates and value bands shall be determined by reference to the total consideration of the entire instrument. As the doubled AVD is an exceptional measure, the Administration considers it inappropriate to make a fundamental change to the stamp duty regime for the exceptional measure introduced in exceptional circumstances.

50. In view of the complementary nature of the various demand-side management measures, the Administration considers that members' concern about possible abuse and circumvention of the doubled AVD has been

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<sup>11</sup> In line with the spirit of providing exemption for residential properties and to cater also to the home ownership needs of those acquiring a residential property and a car parking space by a single instrument, if the concerned "original property" and "subject properties" in the instrument involve car parking space without residential property, the transaction in respect of the concerned car parking space will not be exempted from the doubled AVD.

addressed to a considerable extent. With the implementation of the SSD and the BSD measure, the investment risk is considerable for a person to engage in speculative trading activities by acquiring more than one residential property in a single instrument with a view to getting around the doubled AVD. In addition, one cannot rule out the possibility of a HKPR who is not a beneficial owner of any other residential property using an instrument to acquire more than one residential property due to individual and family considerations. In the absence of any objective basis, to subject the second and subsequent residential property in the same instrument to the doubled AVD would further enhance the demand-side management measures, resulting in much complexity and problems.

51. The Administration is also concerned that restricting exemption from the doubled AVD to one residential property only in an instrument that covers multiple properties will entail a number of associated issues (such as how to select the residential property in an instrument for exemption and the ways to evaluate the respective considerations of all properties covered in the instrument) that need to be clearly addressed in the legislation. This will inevitably complicate the stamp duty regime and the legislative provisions, and will be inconsistent with the principle of proportionality in handling the problem. The Administration further cautions that any change to the doubled AVD measures will very likely create an enormous market impact and send confusing messages to the public. This is especially so if it imposes restriction on exemption according to the number of residential properties covered in a single instrument, which represents "tightening up" of the measures and will bring uncertainties to the market's hitherto approach in handling property transactions.

52. Having considered relevant factors such as the instrument-based stamp duty regime, the complementary nature of the overall demand-side management measures and the home ownership needs of the public, the Administration does not agree to imposing additional restrictions on circumstances where an instrument covers more than one residential property. Hon James TO indicates that he may propose CSAs to the effect that except one property, all other properties in a single agreement for sale executed by a HKPR who is not a beneficial owner of any other residential property in Hong Kong on the date of acquisition should be subject to the doubled AVD.

Exemption arrangements for property transactions involving closely related persons (Proposed sections 29AK, 29BC, 29AB, 29AP, 29AQ, 29BH, 29BI, 29D and head 1(1A) in Schedule 1)

53. The Bill proposes that the acquisition or transfer of a residential property between closely related persons (including parents, spouse, children,

brothers or sisters) 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 acquisition or transfer provided that they are acting on their own behalf. For the purpose of exemption, the proposed section 29AD(b) stipulates that where purchasers consist of more than two persons, they are considered to be closely related if each of them is a parent, spouse, child, brother or sister of each of the other persons.

54. Some members, including Hon James TO, share the views of The Law Society of Hong Kong ("the Law Society") that the scope of exemption should be expanded to include in-laws, such as son-in-law, daughter-in-law, father-in-law and mother-in-law. To cater for the needs of passing on small family businesses, Hon James TO urges the Administration to grant the same exemption to the transfer of non-residential property between closely related persons. This in his view would not give rise to speculation and the chance for abuse would be very small. Hon James TO indicates his intention to move CSAs to this effect.

55. The Administration has advised that the exemption arrangement proposed in the Bill follows the same principle of the SSD and BSD regimes, which exempts transactions involving persons who (a) are blood-related or half blood-related, (b) have spousal relationship, or (c) have adoption or step relationship. The Administration considers that such exemption arrangement strikes a balance between safeguarding the effectiveness of the doubled AVD and facilitating the needs of the HKPRs in acquiring residential properties. The Government will take a stringent approach in drawing up the exemption rules to ensure the effectiveness of the measures. As such, 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 or to extend the relevant exemption in respect of residential property to cover transactions involving transfer of non-residential property between closely related persons.

56. The Administration explains that exemption has been provided to address the practical needs of transactions involving residential properties between close relatives as far as possible. Noting that the addition of names or nomination arrangements before assignment of property currently are not subject to AVD, the Administration proposes that if the close-relative(s) concerned (be they HKPRs or not) 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 payable at the old AVD rate. In the case of an instrument effecting the deletion of name of a closely related person in a joint or tenants in common ownership, no AVD

would be chargeable in respect of the transfer of the share of the ownership if the closely related person concerned is not the beneficial owner of any other residential property in Hong Kong at the time of deletion, otherwise the relevant instrument would be chargeable with AVD at the old rate on the total consideration or the value of the property, whichever is the higher, less part of the stamp duty representing the share of the interest of the withdrawn purchaser in the property.

57. At members' request, the Administration has provided some illustrations of the AVD payable under different scenarios and the applicable exemption arrangement for property transactions involving close relatives.

#### AVD chargeable to acquisition of a public housing unit under the Tenants Purchase Scheme

58. Members note that non-HKPR sitting tenants, though not being beneficial owners of any other residential property in Hong Kong, would be liable to the doubled AVD in acquiring a Tenants Purchase Scheme ("TPS") flat. Moreover, under existing policy of the Hong Kong Housing Authority, TPS purchasers, irrespective of whether they acquire the flats jointly with others, must be sitting tenants who are 18 years old or above and acting on their own behalf at the time of acquisition. Therefore, the exemption arrangement under the Bill in respect of acquisition of a residential property on behalf of a HKPR minor by his/her trustee/guardian has no application to the purchase of a TPS flat because only sitting tenants attaining the age of 18 may be purchasers.

59. The Chairman and some members, including Hon WONG Ting-kwong, Hon LEUNG Che-cheung, Hon James TO and Hon Abraham SHEK strongly urge the Administration to extend the scope of exemption from the doubled AVD to cover the acquisitions of TPS flats by non-HKPRs sitting tenants who are not the beneficial owners of any other residential property in Hong Kong. These members are of the view that as only eligible sitting tenants can purchase a TPS flat, the risk of abuse is minimal. Such acquisitions would not encourage speculation or affect the private housing market and the home ownership needs of the community at large. Given that the acquisition of a residential property by non-HKPR or on behalf of a HKPR minor is already subject to the 15% BSD, the risk of abuse and speculation would have been addressed to a considerable extent. Moreover, subjecting non-HKPR purchasers of TPS to the doubled AVD would be contrary to the purpose of the TPS in encouraging sitting tenants to purchase their own flats. Hon James TO indicates his intention to move CSAs to the effect that transactions involving TPS should be exempted from the doubled AVD.

60. The Administration holds the view that the same treatment should apply across the board and TPS flats should be subject to the doubled AVD, same as all other residential properties. Residential properties are not differentiated by types under the Bill and the Administration has no intention to provide exemption for a particular type of residential property. The Administration has advised that under the Bill, if a TPS tenant who fulfills the criteria to purchase a TPS flat acquires the unit jointly with a closely related person, the relevant transaction will be exempted from the doubled AVD as long as one of the purchasers is a HKPR or all of them are HKPRs and they all act on their own behalf and are not beneficial owners of any other residential property in Hong Kong at the time of acquisition.

61. To address members' concern about the financial burden on non-HKPR purchasers of TPS who are subject to BSD and the doubled AVD, the Administration has advised that IRD may, depending on the circumstances of each individual case, consider accepting payment of stamp duty by installments.

Exemption arrangements for HKPR minors and mentally incapacitated persons (Clause 9 – proposed section 29AH)

62. The proposed section 29AH of the Bill provides that a purchaser or transferee who is acting as a trustee/guardian for a HKPR minor or a mentally incapacitated person in the acquisition of a residential property will be liable to AVD at the old rates, provided that the HKPR minor or the mentally incapacitated person for whom the trustee/guardian is acting on behalf is not the beneficial owner of any other residential property in Hong Kong at the time of acquisition. However, if the minor and mentally incapacitated person has owned any other residential property, the relevant transaction shall be subject to the doubled AVD. If a person as a trustee/guardian acquires a property for a HKPR minor or a mentally incapacitated person to replace the beneficiary's original property which has been purchased or acquired under specified ordinances, the exemption from the doubled AVD also applies.

63. Hon James TO raises concern about possible abuse in the case of non-HKPR parents/guardians/trustees of HKPR minors or mentally incapacitated persons circumventing the doubled AVD through trust arrangement. He questions the rationale for the exemption which he considers would weaken the effectiveness of the doubled AVD measure. To guard against potential abuse, Hon James TO suggests tightening up the proposed exemption arrangement by specifying that a trustee/guardian for a minor must be the close relative of the minor or a person appointed under the Guardianship of Minors Ordinance (Cap. 13) ("GMO") while the trustee/guardian for a mentally incapacitated person must be appointed



pursuant to the Mental Health Ordinance ("MHO") (Cap. 136) or by the court.

64. The Administration maintains that the exemption arrangements provided for minors and mentally incapacitated persons under the Bill is appropriate and does not consider it necessary to tighten the exemption. It holds the view that possible abuse arising from trust or guardianship arrangement will have been addressed to a considerable extent as a HKPR minor who acquires a residential property through his/her trustee/guardian has to pay BSD under the enacted Stamp Duty (Amendment) Ordinance 2014. The Administration highlights that the introduction of the doubled AVD measure is to reinforce demand management on those who have already acquired residential properties, and to accord priority to the home ownership needs of HKPRs who have no residential properties under the tight housing supply situation. Withdrawing the exemption arrangement for acquisitions of residential properties on behalf of HKPR minors or mentally incapacitated persons in the Bill will further tighten up the demand-side management measures which will be inconsistent with the policy intent.

65. The Administration has advised that a purchaser or transferee who claims to be acting on behalf of a HKPR minor or mentally incapacitated person will be required to provide relevant documentary evidence, such as the birth certificate, an instrument to appoint a guardian pursuant to the GMO, a valid and legally binding trust instrument, and a court order or guardianship order pursuant to the MHO to prove their relationships and his/her capacity as a guardian/trustee in the transaction under consideration. IRD will consider each application with all relevant facts, documents provided and other supporting information in totality. 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. Parent(s)/guardian(s)/trustee(s) would be responsible for making a statutory declaration to confirm that the minor or mentally incapacitated person concerned is a HKPR and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition.

#### Application of the doubled AVD measures to charitable bodies

66. Hon James TO has expressed disappointment that in addition to the BSD, charitable institutions exempt from tax under section 88 of the IRO are also subject to the doubled AVD measures. He is of the view that charitable institutions have the genuine need to purchase residential and non-residential

properties as staff quarters and offices. He urges the Administration to consider exempting these institutions from the doubled AVD in acquisitions of properties for carrying out charitable business so as not to undermine their charitable activities which are in the interest of the community as a whole. Hon James TO indicates that he might move CSAs to the effect that charitable institutions should be exempted from the doubled AVD.

67. The Administration explains that section 88 of the IRO stipulates that only the profits from primary purpose trading carried out by a charitable body (i.e. trading in the course of the actual carrying out of its expressed charitable objects or trading that is mainly carried out by the beneficiaries of the charity) are exempted from profits tax. The IRO does not prohibit charitable bodies from engaging in activities other than those carried out in pursuit of their charitable objects, but the profits generated from such activities will be subject to profits tax. The Administration considers that the proposed exemption for charitable institutions from the doubled AVD in acquisition of properties is inconsistent with the policy intent of according priority to the home ownership needs of HKPRs amidst the current tight supply situation and will undermine the effectiveness of the demand-side management measures. With reference to the present AVD, SSD and BSD arrangements, and having considered the policy intent of the introduction of the doubled AVD, the Administration does not consider it appropriate to provide exemption for charitable institutions under the Bill. The Administration has further advised that in line with the existing stamp duty regimes, gifts of a residential or non-residential property to tax-exempt charitable institutions would be exempted from all AVD.

Exemption arrangements for acquisition of a replacement property by owners affected by specified ordinances (Clauses 10 and 13 - proposed sections 29AL and 29BD)

68. With reference to the relevant exemption arrangements under the BSD regime in the Stamp Duty (Amendment) Bill 2012, the Bill proposes exemption from the doubled AVD to cover acquisitions of replacement properties made by owners (irrespective of whether they are HKPRs) affected by specified ordinances<sup>12</sup>. In line with the enacted Stamp Duty

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<sup>12</sup> These include acquisition by the Urban Renewal Authority under the Urban Renewal Authority Ordinance (Cap. 563), resumption by the Government under the Lands Resumption Ordinance (Cap. 124), or compulsory sale pursuant to an order for sale made under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545).

(Amendment) Ordinance 2014, the Administration will move CSAs to extend the exemption to cover five additional scenarios<sup>13</sup>.

69. The Bills Committee takes note that there is no restriction on the size and value of the replacement property or the time interval within which the replacement purchase has to be made. 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 enhanced AVD for making one replacement purchase. Hon James TO is concerned about possible abuse of the exemption in the case of each of the affected owners (including companies) purchasing a replacement property of significantly larger size and higher value compared with the property to be replaced. He requests the Administration to consider tightening up the exemption by imposing reasonable restrictions on the size and value of the replacement property as well as the timeframe within which such purchase is to be made.

70. The Administration has advised that the policy intent of the exemption is to cater for the replacement purchases of the affected owners who have been made to sell their original properties not of their own volition; and to facilitate the smooth implementation of the acquisitions under the specified scenarios which serve public purposes. Moreover, proposed sections 29AL(3) and 29BD(3) stipulate that the date of disposal of the original property must be before the date of acquisition of the replacement property, and the replacement property must belong to the same category as the original property in order to qualify for the exemption, i.e. one residential property to replace another residential property or one non-residential property to replace another non-residential property. Since there is no objective basis to determine the relevant restrictions on size, value or the appropriate time interval of the replacement purchase, any restrictions thus imposed would be arbitrary and subject to challenge. After due consideration, the Administration has decided to follow the enacted Stamp Duty (Amendment) Ordinance 2014 in taking a lenient approach and would not impose any additional restrictions to avoid causing unnecessary constraints to the affected owners.

71. In response to members' enquiry about the applicable AVD rates under different scenarios, the Administration clarifies that in line with the

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<sup>13</sup> These include resumption order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276), an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370), an order made under section 16 or section 28(1) of the Railways Ordinance (Cap. 519), an acquisition order made section 3(1) or (2) of the Land Acquisition (Possession Title) Ordinance (Cap. 130), and an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).

principles of implementing the relevant exemption provisions under the BSD regime, if an affected owner acquires a residential unit and a car parking space to replace the original property which includes a residential unit and a car parking space not belonging to the same title deed, that transaction will be regarded as involving two properties and both can be eligible for exemption from the doubled AVD<sup>14</sup>. 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 (together being regarded as residential property under the SDO) may also be chargeable with AVD at the old rate. However, if the replacement property includes a residential unit and a car parking space which are separable and distinct from each other, the applicable exemption arrangement will depend on the nature of each property (i.e. the residential unit being residential property and the car parking space being non-residential property under the SDO). 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.

72. In the case of the original property resumed under specified ordinances is a unit which can be used for commercial-residential purposes<sup>15</sup>, the affected owner can acquire a residential property (which can be a unit for commercial/residential uses) as a replacement in which case AVD would be chargeable at the old rate.

Exemption arrangements for exchange of residential property and non-residential property (Clauses 9 and 13 - proposed sections 29AN and 29BF)

73. Members note that as a standing practice under the SDO, an agreement for exchange or an instrument effecting the exchange will be stamped by reference to the "any consideration paid for equality" (i.e.

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<sup>14</sup> 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.

<sup>15</sup> Whether a property is a "residential" or "non-residential property" is determined by reference to the permitted use provided in the specified documents (such as a Government lease, occupation permit or deed of mutual covenant or any other instrument which the Collector of Stamp Revenue is satisfied effectively restricts the permitted use of the property) in the definition of "non-residential property" under the SDO. If the whole or part of that property can be used for residential purpose in accordance with the definition set out in section 29A(1) of the SDO, the property will be regarded as a residential property.

equality money, the money paid for the difference in value of the properties) instead of the full value of each of the respective properties. The Bill proposes that the AVD for the "equality money" in relation to exchange of residential properties for residential/non-residential properties would be charged at the old rates, provided that on the date of the relevant instrument, either each party to the relevant instrument is a HKPR acting on his/her own behalf and each of them is not a beneficial owner of any other residential property in Hong Kong, or the parties are closely related and acting on their own behalf.

74. Given that no exemption arrangement for non-residential property transactions is provided for under the Bill, for consistent application of the policy intent under the situation of exchange, the Administration will propose 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. 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. Members have no objection to the proposed amendments.

Meaning of "beneficial owner" of residential property (Clause 9 – proposed section 29AC)

75. Under the doubled AVD regime, a purchaser or transferee who is a beneficial owner of another residential property in Hong Kong will be liable to AVD at the new rates when acquiring a new residential property. Hon James TO and Hon Paul TSE have sought clarifications on the meaning of "beneficial owner" in relation to a residential property under proposed section 29AC. Given that the actual beneficial ownership of a property might belong to a person other than the purchaser by virtue of trust arrangements and that a company is legally an entity independent of its shareholders, the Administration is requested to consider clarifying the meaning of "beneficial owner" as defined in the Bill to the effect that any company or person who acquires a residential property on other's behalf by virtue of any trust arrangements would not be regarded as the beneficial owner of the subject residential property. The Administration is also requested to set out in the relevant declaration form that the purchaser and the beneficial owner of an acquired property is the same person.

76. The Administration explains that the beneficial owner of a property means that even though the legal ownership of the property does not belong to him/her, he/she is regarded as the owner of that property under the equity law given he/she has the right to use and owns the property. IRD will verify

if a HKPR is a beneficial owner of any other residential property in Hong Kong to determine if the HKPR is subject to the payment of the doubled AVD.

77. The Administration has further clarified that even though a residential property is registered under the name of the trustee, the trustee will not be regarded as the beneficial owner of the residential property concerned. If the trustee is a HKPR who acts on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition of a residential property, he/she is not liable to the doubled AVD even though he/she has held a residential property in the capacity of a trustee. In line with the fundamental legal principle that "a company is an entity independent of its shareholders", the shareholders or directors of a company through which a residential property is held will not be regarded as the beneficial owners of the company's residential property.

78. As requested by Hon James TO, the Secretary for Financial Services and the Treasury will make appropriate elaboration during the resumption of the Second Reading debate on the Bill.

79. In the case of ownership of residential property due to inheritance, some members have requested the Administration to consider exempting from double AVD a HKPR who owns a residential property jointly with a closely-related person(s) by inheritance when acquiring a residential property on his/her own behalf for the first time.

80. The Administration has clarified that for the purpose of the doubled AVD, a person is regarded as having owned a residential property if he/she is the beneficial owner of a residential property or owns any share or interest of that property. As such, if a person inherits a residential property from an estate of a deceased person and owns the property jointly with a closely related person(s) either as a co-owner or as a joint owner, he/she will be regarded as a beneficial owner of that property. If he/she acquires another residential property, the instrument for acquiring the new property is chargeable with the doubled AVD. For sake of consistency of the measures, the Administration has no intention to exempt those people from the doubled AVD. However, 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.

AVD adjustment mechanism (Clause 22 - proposed section 63B)

81. Members take note that the Bill seeks to add a section empowering the FS to, by notice published in the Gazette, amend the value bands and AVD rates under head 1(1) and (1A) in the first Schedule to the SDO by way of subsidiary legislation subject to negative vetting by LegCo within the specified period under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). A majority of members, including Hon James TO, Hon SIN Chung-kai, Hon Abraham SHEK, Hon Andrew LEUNG, Dr Hon LAM Tai-fai, Hon Paul TSE, Hon Kenneth LEUNG, Hon Tommy CHEUNG and Hon James TIEN consider such an arrangement highly undesirable and are gravely concerned that it would seriously undermine the scrutiny power of LegCo and its gate-keeping role in monitoring the Government. These members are dissatisfied that under the negative vetting procedure, deliberations of important issues impacting Hong Kong people, such as the one now at stake, should be confined to a specified scrutiny period. There is also concern that the proposed negative vetting mechanism to amending Scale 2 rates (i.e. the original AVD rates) chargeable in respect of transactions under exempted circumstances might breach the provisions of The Basic Law and contravene the established mechanism in which adjustments to stamp duty rates are subject to LegCo's approval.

82. Hon James TO and some members question why the Government would not adopt other options, such as different legislative means for increasing or reducing stamp duties under different circumstances<sup>16</sup> ("the hybrid adjustment mechanism") as in the case of the Stamp Duty (Amendment) Bill 2012 or the mechanism as proposed by Hon Martin LIAO<sup>17</sup> during the earlier scrutiny of the legislative proposals relating to the SSD and BSD. Hon James TO and some members support the mechanism proposed by Hon Martin LIAO which they consider would enable the relevant legislation to come into effect immediately, thus providing the necessary flexibility for the Administration to make timely response to any changes in the property market and have the merits of retaining LegCo's scrutiny power to ensure that the legislative proposal would be implemented only with the support of the majority of the Members returning from the geographical and functional constituencies.

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<sup>16</sup> The Secretary for Transport and Housing has, at the resumption of the Second Reading debate on the Stamp Duty (Amendment) Bill 2012, undertaken that in future, any proposed increase in SSD or BSD rates would be taken forward by way of a bill to amend the SDO while downward adjustments would be effected by way of subsidiary legislation subject to negative vetting.

<sup>17</sup> Hon Martin LIAO has proposed CSAs for FS to amend the rates of SSD and BSD under negative vetting by notice published in the Gazette. FS is required to move a motion to seek LegCo's approval of the notice. If such a motion is not passed within six months of the date of gazettal or is negated by LegCo, the notice would cease to have effect.

83. The Administration explains that as the demand-side management measures are extraordinary measures introduced under the current exceptional circumstances, it is important that such measures can be adjusted as and when appropriate after the demand-supply situation of the property market has regained balance. The mechanism to effect adjustments to the value bands and duty rates of AVD (including the doubled AVD) by way of subsidiary legislation is proposed to provide the necessary flexibility for adjustment in a timely manner, to provide certainty for the charging of AVD, and clarity for implementation of any adjustments to the measure. LegCo's scrutiny power is in no way compromised as it could amend the proposed rates within the specified period.

84. The Administration is of the view that the "hybrid adjustment mechanism" is difficult to implement under the Bill as, unlike the BSD regime, the doubled AVD is built upon the AVD regime which involves more than a single charge rate that is applicable across different value bands<sup>18</sup>. Attempts to adjust AVD under the "hybrid adjustment mechanism" will create uncertainties and complications in implementation and cannot give the market a clear message. The Administration is also concerned that AVD adjustment under the proposed mechanism, whereby the notice as published in the Gazette should cease to have effect once the relevant resolution is not passed by the LegCo or upon expiration of a specified period from the date of publication of the notice in the Gazette, will bring uncertainties to the market as the proposed amended rates published in the Gazette notice will be subject to scrutiny and cannot be relied upon. If the relevant adjustment is amended or negated, or the scrutiny cannot be completed before the specified period, the duty rates that have been applied to collect stamp duty during the interim period will cease to have effect, thus affecting all the transactions during the interim period. This will affect the clarity of any adjustments to the measure and cannot help achieve the objective of making timely adjustments in response to market changes.

85. A majority of members do not subscribe to the Administration's explanation. Hon James TO indicates that the Democratic Party objects to the negative vetting procedures proposed under Clause 22, and strongly urges that any future adjustments by FS should be subject to "positive vetting" of LegCo, or by resolution of the LegCo.

86. The Administration has advised that on the basis of seeking common grounds and accommodating differences in the overall interest of the society, the Government, after having duly considered members' concerns, agrees not

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<sup>18</sup> The regime comprises both Scale 1 rates chargeable in respect of general transactions of immovable properties (i.e. the doubled AVD rates) and Scale 2 rates chargeable in respect of transactions under exempted circumstances (i.e. the original AVD rates).



to insist on the adjustment mechanism by way of the negative vetting approach in relation to AVD (including the doubled AVD) as introduced by the Bill. Any intended adjustments to AVD (including the doubled AVD) will be effected by way of a Bill introduced into LegCo for its scrutiny. The Administration will move CSAs to delete the proposed section 63B in the Bill. The Bills Committee welcomes the Administration's proposed amendments.

#### Sunset clause for the demand-side management measures

87. Members note that the Administration has time and again indicated that the demand-side management measures are extraordinary measures introduced under the current exceptional circumstances and would be withdrawn when the property market returns to a normal state and after the demand-supply balance has been restored. As Hong Kong is an externally-oriented economy vulnerable to external economic volatility, there are concerns that the Administration will not be able to revoke the demand-side management measures in time once the property market trend reverses should there be a change in the interest rates or other external factors such as the United States Federal Reserve adjusting the size of the quantitative easing measures and reducing asset purchase. Some members are of the view that policy uncertainty due to the lack of Government indication on the timing for withdrawal of the measures would add to uncertainty in long-term business planning. Concurring with the view expressed by some deputations, such as the Law Society, the Federation of Hong Kong Industries and the American Chamber of Commerce in Hong Kong, Dr Hon LAM Tai-fai, Hon SIN Chung-kai, Hon Paul TSE and members belonging to the BPA and Liberal Party urge the Administration to draw up objective criteria to review the measures and set quantifiable target indicators to which the Administration would make reference in determining the timing for withdrawing the measures. This would enhance transparency of the Government's decision on the withdrawal of the measures and provide more information to enable business investors and home buyers to make an overall risk assessment and informed acquisition decisions. These members urge the Administration to consider introducing sunset provisions for the measures to give policy certainty to the business community and the general public, which is crucial to sustaining business confidence and the stable development of the property market. A sunset provision would also set a timeframe for the Administration to review the effectiveness and the future need of the measures.

88. Hon Andrew LEUNG has proposed CSAs to introduce a sunset clause to the effect that the doubled AVD measure will expire by midnight on 23 February 2016 (or another date to be specified by resolution). Hon Tommy

CHEUNG has proposed CSAs for the doubled AVD measure to lapse by the midnight of 23 February 2015, or subject to LegCo's approval, another date specified by the FS by notice in the Gazette.

89. The Administration does not agree to include a sunset clause in the Bill. The Administration maintains that it is not possible to predict with certainty future market directions and various external changes factors to pre-determine a date as to when the demand-side management measures would no longer be applicable. The Administration holds the view that any prescribed sunset clause will only send out erroneous signals to the market and fuel potential demand, thus affecting the effectiveness of the measures. The Administration explains that the development of the property market is a complicated and dynamic process involving the interplay of various factors. Given the complexity of the property market, no single indicator could fully reflect the underlying market dynamics. It is also impractical to set quantitative targets for the indicators that reflect only domestic environment. The Administration has been monitoring the property market closely with reference to a basket of indicators, including, but not limited to, property prices, home purchase affordability, property transactions, demand-supply balance, rent-to-income ratio, mortgage loan growth and interest rate, etc. The Administration will continue to closely monitor the property market and keep a close watch on changes in the external factors with reference to all relevant indicators in totality, and take appropriate measures, including making timely adjustment to the measures with a view to safeguarding the healthy and stable development of the property market. The Administration also undertakes to review and report to the LegCo one year after the enactment of the legislation. Hon Andrew LEUNG has subsequently withdrawn his proposed CSAs.

#### Communication with the relevant trades

90. In view of the complexity of the measures and the different scenarios involved, members urge the Administration to upload frequently asked questions ("FAQs") onto its website, and issue guidance notes to the estate agency trade and solicitors dealing with property transactions to facilitate understanding of the measures by the public and the relevant trades. The Administration advised that it has all along maintained close contacts with the relevant trades, and the IRD has, since the introduction of the demand-side management measures, uploaded the FAQs and will continuously update them on its website. The Administration undertakes to organize workshops for the relevant trades after the enactment of the Bill.

### **Committee stage amendments to be moved by the Administration**

91. The Administration has proposed to move some corresponding amendments to the Bill in the light of the Stamp Duty (Amendment) Ordinance 2014, technical amendments to improve the clarity of the provisions as well as amendments in relation to the modified AVD refund mechanism for owners having acquired a new residential property before disposing of the original property (paragraph 39), the exemption arrangement for acquisition of a residential unit together with a car parking space (paragraph 45) and the AVD adjustment mechanism (paragraph 86).

### **Committee stage amendments to be moved by members**

92. The Bills Committee takes note that Hon James TO intends to move CSAs to the Bill as detailed in paragraphs 52, 54, 59, 63 and 66 above. Hon Abraham SHEK and Hon Kenneth LEUNG have indicated intention to propose CSAs in relation to the application of the doubled AVD measures to the transactions on non-residential properties as set out in paragraph 28 above. Hon Tommy CHEUNG intends to move CSAs in relation to the AVD refund mechanism for acquisition of a new residential property before disposing of the original one and to include a sunset provision in the Bill as detailed in paragraphs 34 and 88 respectively.

### **Resumption of Second Reading debate on the Bill**

93. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting on 9 July 2014.

### **Consultation with the House Committee**

94. The Bills Committee reported its deliberations to the House Committee on 20 June 2014.

**Bills Committee on Stamp Duty (Amendment) Bill 2013**

**Membership List**

<b>Chairman</b>	Hon Starry LEE Wai-king, JP
<b>Deputy Chairman</b>	Hon James TO Kun-sun
<b>Members</b>	Hon Abraham SHEK Lai-him, GBS, JP
	Hon Tommy CHEUNG Yu-yan, SBS, JP
	Hon Andrew LEUNG Kwan-yuen, GBS, JP
	Hon WONG Ting-kwong, SBS, JP
	Dr Hon LAM Tai-fai, SBS, JP
	Hon Paul TSE Wai-chun, JP
	Hon James TIEN Pei-chun, GBS, JP
	Hon Charles Peter MOK, JP
	Hon LEUNG Che-cheung, BBS, MH, JP
	Hon Kenneth LEUNG
	Hon Dennis KWOK
	Hon SIN Chung-kai, SBS, JP
	Hon Tony TSE Wai-chuen, BBS

(Total : 15 members)

<b>Clerk</b>	Ms Annette LAM
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<b>Legal Adviser</b>	Mr KAU Kin-wah
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**Bills Committee on Stamp Duty (Amendment) Bill 2013**

**List of organizations/individuals which/who have  
submitted views to the Bills Committee**

1. Hong Kong Economic Development Strategy Studies Centre
2. The British Chamber of Commerce in Hong Kong
3. The Australian Chamber of Commerce in Hong Kong and Macau
4. Hong Kong Chamber of Professional Property Consultants Ltd
5. The Real Estate Developers Association of Hong Kong
6. Cordells
7. The Lion Rock Institute
8. Momentum 107
9. Hong Kong Real Estate Agencies General Association
10. Property Agencies Association
11. KPMG Tax Limited
12. Labour Party
13. The Hong Kong Institute of Surveyors
14. The Canadian Chamber of Commerce in Hong Kong
15. Colliers International Agency Limited
16. Hong Kong Professionals and Senior Executives Association
17. Mr Louie HUI Chi-ling
18. Mr Andy YEUNG
19. Mr Simon LEE Chao-fu
20. Webb-site.com
21. Royal Institution of Chartered Surveyors
22. Mr Raymond HO Man-kit, Sai Kung District Councillor
23. Civic Party
24. Mr LEE Yuk-cheung
25. Hong Kong Christian Council
- \* 26. The Law Society of Hong Kong
- \* 27. The American Chamber of Commerce in Hong Kong
- \* 28. Hong Kong Bar Association
- \* 29. Hong Kong Institute of Estate Agents
- \* 30. Consumer Council
- \* 31. The Taxation Institute of Hong Kong
- \* 32. The Hong Kong Association of Banks
- \* 33. The Hong Kong Conveyancing and Property Law Association Ltd
- \* 34. Professor Stephen WONG Yuen-shan, Adjunct Associate Professor at the Hong Kong University SPACE for the Institute for China Business and Adjunct Lecturer at the Chinese University of Hong Kong for the Master of Social Science in Global Political Economy
- \* 35. Joint Council of Estate Agents Associations
- \* 36. Federation of Hong Kong Industries
- \* 37. 愛港關注組
- \* 38. 30 members of the public
- \* 39. Mr Terry YEUNG, Solicitor
- \* submitted written views only