

立法會
Legislative Council

LC Paper No. CB(1)778/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/16

**Bills Committee on Stamp Duty (Amendment) Bill 2017
and Stamp Duty (Amendment) (No. 2) Bill 2017**

**Minutes of meeting
on Monday, 29 January 2018, at 10:30 am
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon WONG Ting-kwong, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Hon WU Chi-wai, MH
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Holden CHOW Ho-ding
Hon Wilson OR Chong-shing, MH
- Member attending** : Hon Dennis KWOK Wing-hang
- Members absent** : Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Paul TSE Wai-chun, JP
Dr Hon Junius HO Kwan-yiu, JP

**Public officers
attending**

: Agenda Item I

Transport and Housing Bureau

Ms Esther LEUNG

Deputy Secretary for Transport and Housing
(Housing)

Miss Joyce KOK

Principal Assistant Secretary for Transport and
Housing (Housing)(Private Housing)

Mr Andrew FAN

Senior Administrative Officer (Private Housing) 1

Inland Revenue Department

Mr TAM Tai-pang

Deputy Commissioner of Inland Revenue
(Operations)

Ms TSE Yuk-yip

Assistant Commissioner of Inland Revenue 3

Mr HONG Wai-kuen

Acting Chief Assessor (Stamp Office)

Department of Justice

Ms Françoise LAM

Senior Assistant Law Draftsman

Miss Wendy HO

Government Counsel

Clerk in attendance:

Mr Desmond LAM

Chief Council Secretary (1)3

Staff in attendance:

Mr Kelvin LEE

Senior Assistant Legal Adviser 3

Ms Connie HO
Senior Council Secretary (1)3

Miss Zoe YIP
Clerical Assistant (1)3

Action

I. Meeting with the Administration

Matters arising from previous meetings

- (LC Paper No. CB(1)135/17-18(01) -- List of follow-up actions arising from the discussion at the meeting on 20 June 2017
- LC Paper No. CB(1)135/17-18(02) -- Administration's responses to issues raised at the meeting on 20 June 2017
- LC Paper No. CB(1)135/17-18(03) -- Senior Assistant Legal Adviser's letter dated 30 October 2017 to the Administration
- LC Paper No. CB(1)184/17-18(01) -- Administration's reply to Senior Assistant Legal Adviser's letter dated 30 October 2017
- LC Paper No. CB(1)522/17-18(01) -- Hon James TO Kun-sun's letter dated 6 November 2017
- LC Paper No. CB(1)522/17-18(02) -- List of follow-up actions arising from the discussion at the meeting on 7 November 2017
- LC Paper No. CB(1)522/17-18(03) -- Administration's responses to Hon James TO Kun-sun's letter dated 6 November 2017 and issues raised at the meeting on 7 November 2017
- LC Paper No. CB(1)522/17-18(04) -- Administration's responses to comments expressed by and written submissions received from deputations/individuals

Relevant papers

- LC Paper No. CB(3)609/16-17 -- The Bill
- LC Paper No. CB(1)1162/16-17(01) -- Mark-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)
- File Ref: HDCR4-3/PH/1-10/0-1 -- Legislative Council Brief issued by the Transport and Housing Bureau
- LC Paper No. LS73/16-17 -- Legal Service Division Report
- LC Paper No. CB(1)823/16-17(01) -- Administration's letter dated 12 April 2017 on "Tightening up of exemption arrangement under the New Residential Stamp Duty regime")

The Bills Committee deliberated (Index of proceedings attached at **Annex**).

2. The Chairman drew members' attention to Rule 83A of the Rules of Procedure which provided that members should not speak on a matter in which they had a direct or indirect pecuniary interest, except where they disclosed the nature of that interest. The Chairman also reminded members that for those members who had disclosed the nature of their pecuniary interest relating to the subject of the Bill at the previous Bills Committee meetings, they should disclose the same interest at each of the subsequent meetings before they spoke.

Follow-up actions to be taken by the Administration

3. In respect of the Stamp Duty (Amendment) (No. 2) Bill 2017 ("the No. 2 Bill"), the Administration was requested to –

- (a) elaborate further on the circumstances under which residential and non-residential properties involved in an instrument would be considered inseparable for trade by the Inland Revenue Department ("IRD"), thereby being treated as an instrument of acquiring a single residential property; and whether factors such as relevant provisions in the deed of mutual covenant ("DMC") concerned and the fact that there were undivided shares in the non-residential property concerned at the time of transaction would be IRD's considerations in

determining the applicable rates of ad valorem stamp duty ("AVD");

- (b) apart from the general principle of what constituted a "single residential property" as set out in the Administration's paper (LC Paper No. CB(1)522/17-18(03)) which included, among others, that the residential and non-residential properties under an instrument should be inseparable for trade, advise whether IRD would take into account other factors in considering an instrument covering both residential and non-residential properties (e.g. a unit and part of the external wall, a unit and a roof where it was not situated immediately above the unit or a unit and two car parking spaces) to be a "single residential property";
- (c) in respect of a scenario where the shares of the roof of a building might be held by a unit on the lower floor given that there was no specific provision in the DMC of the building which confined that the shares of the roof were bundled with a particular unit, advise whether the roof and the unit concerned under such a scenario would be regarded as inseparable for trade by IRD;
- (d) in respect of a scenario where a buyer acquired a unit and a roof immediately above the unit which was owned by two different vendors but under a single conveyance on sale, advise whether such a scenario would be regarded as a "single residential property";
- (e) consider a member's suggestion of relaxing the interpretation of a "single residential property" under clause 3(1) of the No. 2 Bill to include the following examples:
 - (i) a unit and a roof situated in the same building; and
 - (ii) a unit and a garden space situated within the same development or building for the exclusive use of the owner of the unit;
- (f) consider setting an upper limit on the total floor area or value of a unit that became a single unit following the demolition of the internal walls, or any part of the walls, separating two adjacent units, which was considered by IRD as a "single residential property" and subject to the lower AVD rates at Scale 2 so as to avoid abuse of the relevant exemption arrangement; and
- (g) consider a member's suggestion of revising (a) of the definition of "single residential property" under clause 3(1) of the No. 2 Bill from "a unit and a roof situated immediately above the unit;" to "a unit and a roof situated immediately above or inseparable for trade from the

unit;", to the effect that the acquisition of a unit and a roof not situated immediately above the unit but they were inseparable for trade would be regarded as a "single residential property".

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)641/17-18(02) on 5 March 2018.)

II. Any other business

4. There being no other business, the meeting ended at 12:26 pm.

Council Business Division 1
Legislative Council Secretariat
10 April 2018

**Proceedings of the meeting of
the Bills Committee on Stamp Duty (Amendment) Bill 2017
and Stamp Duty (Amendment) (No. 2) Bill 2017
on Monday 29 January 2018, at 10:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 001047	Chairman	<p>Opening remarks.</p> <p>The Chairman reminded members of the requirements under Rule 83A of the Rules of Procedure, which provided that members should not speak on a matter in which they had a direct or indirect pecuniary interest, except where they disclosed the nature of that interest.</p>	
001048 – 003752	Chairman Senior Assistant Legal Adviser 3 ("SALA 3") Administration	<p>The Administration briefed members on the following papers –</p> <p>(a) LC Paper No. CB(1)135/17-18(02) being the Administration's responses to issues raised at the meeting on 20 June 2017 (LC Paper No. CB(1)135/17-18(01));</p> <p>(b) LC Paper No. CB(1)184/17-18(01) being the Administration's reply to Senior Assistant Legal Adviser's letter dated 30 October 2017 (LC Paper No. CB(1)135/17-18(03));</p> <p>(c) LC Paper No. CB(1)522/17-18(03) being the Administration's responses to Mr James TO's written questions as set out in his letter dated 6 November 2017 (LC Paper No. CB(1)522/17-18(01)) and issues raised by members at the meeting on 7 November 2017 (LC Paper No. CB(1)522/17-18(02)); and</p> <p>(d) LC Paper No. CB(1)522/17-18(04) being the Administration's responses to comments expressed by and written submissions received from deputations/individuals at the meeting on 7 November 2017.</p> <p>SALA 3 raised no further question to the Administration's reply to his letter dated 30 October 2017 (LC Paper No. CB(1)135/17-18(03)).</p>	

Time marker	Speaker	Subject(s)	Action required
003753 – 004416	Chairman Mr James TO Administration	<p>Mr James TO's views and enquiry that –</p> <p>(a) the Administration should enhance the certainty of the provisions of the Stamp Duty (Amendment) (No. 2) Bill 2017 ("the No. 2 Bill") in respect of what constituted a "single residential property". He was concerned that some buyers might be inadvertently subject to payment of ad valorem stamp duty ("AVD") at the New Residential Stamp Duty rate of 15% if they procured a residential property and a non-residential property under one instrument in some justifiable circumstances (e.g. a residential unit and part of the external wall of the building where the two properties had their respective undivided shares and had all along been covered by a single title deed and transaction together) but the relevant properties were subsequently not regarded as a "single residential property" by the Inland Revenue Department ("IRD") in view that they were considered separable for trade; and</p> <p>(b) under what circumstances the IRD would consider a residential property and a non-residential property, such as a residential unit and part of the external wall of the building as suggested in the scenario above, as inseparable for trade.</p> <p>The Administration responded that –</p> <p>(a) under the prevailing AVD regime, IRD would consider whether the residential property and non-residential property (such as a car parking space(s)) covered under the same instrument were separable for trade in determining the applicable AVD rates. For example, for cases involving the acquisition of a village house and a car parking space(s) attached to it under a single instrument where the relevant title deed also specified that such properties could not be traded separately, the residential property (i.e. the village house) and non-residential property (i.e. the car parking space(s)) concerned would normally be considered inseparable for trade; and</p> <p>(b) so far IRD had not dealt with any case</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>involving an instrument which covered a residential unit and part of the external wall of the building in the scenario suggested by Mr James TO above. In determining the applicable AVD rates of the transaction covered by an instrument in each case, IRD would have to take into account all relevant facts and circumstances at the time of transaction. IRD would, on a need basis, seek legal advice from the Department of Justice on individual cases. It was hence impossible to set out all circumstances under which a residential property and a non-residential property would be considered as inseparable for trade by IRD.</p>	
004417 – 004651	Chairman Mr Dennis KWOK Administration	<p>Mr Dennis KWOK conveyed the concern of solicitors dealing with property conveyancing business over the uncertainty of the provisions in the No. 2 Bill regarding the definition of a "single residential property".</p> <p>The Administration was requested to provide a written response to Mr KWOK's written questions tabled at the meeting on the above issue, in particular for cases involving the acquisition of a unit and a roof which was not situated immediately above the unit.</p> <p><i>(Post-meeting note : Mr Dennis KWOK's written questions tabled at the meeting were issued to members vide LC Paper No. CB(1)539/17-18(01)(English version only) on 29 January 2018.)</i></p>	See LC Paper No. CB(1)641/17-18(02)
004652 – 005907	Chairman Mr Kenneth LEUNG Administration	<p>The Administration's response to Mr Kenneth LEUNG's enquiries on the applicable AVD rates in the following three scenarios which involved the acquisition of a residential unit and car parking space(s) in a residential development project where only buyers of residential units were eligible to procure the car parking spaces provided in the project, assuming that the buyer concerned was a Hong Kong permanent resident ("HKPR") acting on his own behalf and did not own any residential property or car parking space in Hong Kong at the time of acquisition –</p> <p>(a) <u>The procurement of one residential unit and one car parking space under a single conveyance on</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>sale</u></p> <p>The entire instrument would be subject to the lower AVD rates at Scale 2 in accordance with sections 29AK or 29BC of the Stamp Duty Ordinance (Cap. 117) ("SDO").</p> <p>(b) <u>The procurement of one residential unit and two car parking spaces under a single conveyance on sale</u></p> <p>The residential unit concerned would be subject to the lower AVD rates at Scale 2 while the two car parking spaces would be subject to the doubled AVD ("DSD") rates applicable to non-residential properties. The applicable rates had all along been determined by reference to the total consideration of the entire instrument.</p> <p>(c) <u>The procurement of one residential unit and the first car parking space under a single conveyance on sale, and a second car parking space was procured under another conveyance on sale later on</u></p> <p>The instrument which covered the residential unit and the first car parking space ("the first instrument") would be subject to lower AVD rates at Scale 2 in accordance with sections 29AK or 29BC of SDO. The second car parking space covered by another instrument would be subject to DSD and the applicable rates would be dependent on whether the said transaction was part of a series of connected transactions with the first instrument.</p> <p>The Administration explained that the condition imposed by the vendor that the residential units and car parking spaces concerned must be procured together by the purchaser was not a factor to be considered by IRD in determining whether the residential and non-residential properties in question were inseparable for trade. If a buyer could sell the residential unit and car parking space(s) separately in the market upon acquiring them from the vendor, the residential unit and car parking space(s) concerned would be regarded as separable for trade.</p>	

Time marker	Speaker	Subject(s)	Action required
005908 – 012207	Chairman Mr James TO Administration	<p>Mr James TO considered that the Administration should state clearly the considerations of IRD in determining whether the residential and non-residential properties concerned under an instrument would be regarded as inseparable for trade to enable practitioners involved in real estate-related businesses, such as property agents and solicitors providing property conveyancing service, to better comprehend the principle of "inseparable for trade" as they might need to tender advice to their clients on stamp duty-related matters.</p> <p>The Chairman concurred with Mr James TO's views and opined that an unclear definition of a "single residential property" might affect the business environment of relevant industries. In this connection, the Administration was requested to –</p> <p>(a) elaborate further on the circumstances under which the residential and non-residential properties involved in an instrument would be considered inseparable for trade by IRD, thereby being treated as an instrument of acquiring a single residential property; and whether factors such as relevant provisions in the deed of mutual covenant ("DMC") concerned and the fact that there are undivided shares in the non-residential property concerned at the time of transaction would be IRD's considerations in determining the applicable rates of AVD; and</p> <p>(b) apart from the general principle of what constituted a "single residential property" as set out in the Administration's paper (LC Paper No. CB(1)522/17-18(03)) which included, among others, that the residential and non-residential properties under an instrument should be inseparable for trade, advise whether IRD would take into account other factors in considering an instrument covering both residential and non-residential properties (e.g. a unit and part of the external wall, a unit and a roof where it was not situated immediately above the unit or a unit and two car parking spaces) to be a "single residential property".</p>	See LC Paper No. CB(1)641/17-18(02)

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration was also requested to –</p> <p>(a) in respect of a scenario suggested by the Chairman where a buyer acquired a unit and a roof immediately above the unit which was owned by two different vendors but under a single conveyance on sale, advise whether such a scenario would be regarded as a "single residential property"; and</p> <p>(b) in respect of a scenario suggested by Mr James TO where the shares of the roof of a building might be held by a unit on the lower floor given that there was no specific provision in the DMC of the building which confined that the shares of the roof were bundled with a particular unit, advise whether the roof and the unit concerned under such a scenario would be regarded as inseparable for trade by IRD.</p> <p>Mr James TO further requested the Administration to consider relaxing the interpretation of a "single residential property" under clause 3(1) of the No. 2 Bill to include the following examples:</p> <p>(a) a unit and a roof situated in the same building; and</p> <p>(b) a unit and a garden space situated within the same development or building for the exclusive use of the owner of the unit.</p> <p>With a view to avoiding abuse of the relevant exemption arrangement, the Administration was requested to consider Mr James TO's suggestion of setting an upper limit on the total floor area or value of a unit that became a single unit following the demolition of the internal walls, or any part of the walls, separating two adjacent units, which was considered by IRD as a "single residential property" and subject to the lower AVD rates.</p>	
012208 – 012700	Chairman Mr Holden CHOW Administration	<p>Mr Holden CHOW enquired whether a village house where its ground floor, 1st floor and 2nd floor were interconnected by an internal staircase up to the roof of the building would be regarded as a "single residential property" by IRD.</p> <p>The Administration advised that it would depend on</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the relevant facts and circumstances of the residential property in question at the time of transaction (e.g. whether the alteration works were carried out by the vendor and completed before the transaction and such condition was demonstrated by the documents specified in the No. 2 Bill).</p>	
012701 – 013517	Chairman Mr James TO Administration	<p>The Administration's response to Mr James TO's enquiry about the definition of a "single residential property" provided for in paragraph (c) under clause 3(1) of the No. 2 Bill.</p> <p>Mr James TO reiterated his request for the Administration to consider setting an upper limit on the total floor area or value of a unit that became a single unit following the demolition of the internal walls, or any part of the walls, separating two adjacent units, which was considered by IRD as a "single residential property" and subject to the lower AVD rates at Scale 2 so as to avoid abuse of the relevant exemption arrangement.</p>	
<i>Clause-by-clause examination of the No. 2 Bill (LC Paper No. CB(3)609/16-17)</i>			
013518 – 014217	Chairman Administration	<p>The Administration took members through the No. 2 Bill clause by clause.</p> <p><u>Clause 1 – Short-title and commencement</u></p> <p><u>Clause 2 – Stamp Duty Ordinance amended</u></p> <p><u>Clause 3 – Section 29A amended (interpretation and application of Part IIIA)</u></p> <p><u>Clause 4 – Section 29AJ amended (certain conveyances on sale of residential property to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)</u></p> <p><u>Clause 5 – Section 29AK amended (certain conveyances on sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)</u></p> <p><u>Clause 6 – Section 29BB amended (certain agreements for sale of residential property to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 7 – Section 29BC amended (certain agreements for sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)</u></p> <p><u>Clause 8 – Section 73 added</u> <u>Section 73 – Transitional provisions for sections 29AJ, 29AK, 29BB and 29BC as amended by Stamp Duty (Amendment) (No. 2) Ordinance 2017</u></p> <p><u>Clause 9 – First Schedule amended</u></p>	
014218 – 014905	Chairman Mr Kenneth LEUNG Administration	<p><u>Clause 3 (1)</u></p> <p>The Administration was requested to consider Mr Kenneth LEUNG's suggestion of revising (a) of the definition of "single residential property" under clause 3(1) from "a unit and a roof situated immediately above the unit;" to "a unit and a roof situated immediately above or inseparable for trade from the unit;", to the effect that the acquisition of a unit and a roof not situated immediately above the unit but they were inseparable for trade would be regarded as a "single residential property".</p> <p>In respect of the existing exemption mechanism for acquisition of a residential property and a car parking space at the same time by HKPRs, Mr Kenneth LEUNG enquired whether a car parking space which was large enough for the parking of two private cars would be regarded as one parking space by IRD, thereby subject to the lower AVD rates at Scale 2 under the relevant exemption arrangement. The Administration advised that a car parking space was permitted for the parking of one motor vehicle only under sections 29AK(1)(a) and 29BC(1)(a) of SDO.</p>	See LC Paper No. CB(1)641 /17- 18(02)
014906 – 015555	Chairman Mr Holden CHOW Administration	The Administration's response to Mr Holden CHOW's enquiry on the arrangements provided for under the newly added section 73 under clause 8 of the No. 2 Bill which was to deal with transitional matters, including those necessitated by the retrospective operation of the No. 2 Bill.	

Time marker	Speaker	Subject(s)	Action required
015556 – 015755	Chairman Mr Abraham SHEK Administration	Mr Abraham SHEK's criticism and views that – (a) the Administration had never addressed the problems arising from acquisition of multiple residential properties under a single instrument in the past despite the fact that such a policy loophole had been pointed out by members of the Bills Committee scrutinizing the Stamp Duty (Amendment) Bill 2013; and (b) some buyers might have been subject to payment of NRSD inadvertently due to the unclear definition of a "single residential property". The Administration should set out clearly in the relevant provisions under the No. 2 Bill regarding what constituted a "single residential property" such that potential buyers of residential properties in the market could make informed decisions in determining whether to proceed with a property transaction.	
015756 – 015845	Chairman Mr Holden CHOW Administration	In response to Mr Holden CHOW's enquiry, the Administration advised that a buyer who was dissatisfied with the assessment of the Collector of Stamp Revenue in connection with the stamp duty chargeable on an instrument which was affected by the determination on whether the residential property concerned was a "single residential property" could lodge an appeal against the Collector's assessment to the District Court in accordance with the existing appeal mechanism provided for under section 14 of SDO.	
015846 – 020000	Chairman Administration	Members completed clause-by-clause examination of the Bill. Meeting arrangements.	