

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

運輸及房屋局

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3 November 2017

Mr Kelvin LEE
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Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr LEE,

Stamp Duty (Amendment) (No.2) Bill 2017

Thank you for your letter dated 30 October 2017. We set out below our response to the observations set out in Appendix I to your letter. As for the issues set out in Appendix II to your letter, please refer to the Government's response vide LC Paper No. CB(1)135/17-18(01).

Clause 3

2. With the proposed amendments under the Stamp Duty (Amendment) (No.2) Bill 2017 (the Bill) to sections 29AJ, 29AK, 29BB and 29BC of the Stamp Duty Ordinance (SDO) (Cap.117), the property concerned (in relation to the conveyance on sale or agreement for sale referred to in these sections) must be a "single residential property". The expressions "unit", "roof" and "garden" are used in the proposed definition of "single residential property" in the Bill.

Those expressions are to be given their ordinary meanings¹ and to be construed in the context of those relevant sections and the proposed definition of “single residential property”. It is not necessary to define those expressions in the Bill.

3. The Bill proposes that a unit that became a single unit following the demolition of the walls, or any part of the walls, separating two adjoining units be regarded as a “single residential property”, if this is shown by –

- (a) a building plan and a letter issued by the Building Authority acknowledging receipt of a certificate of completion of the building works relating to the demolition as required under the Building (Administration) Regulations (Cap.123A); or
- (b) a plan signed by an authorised person after the completion of the building works relating to the demolition.

4. On the basis of the above provisions, IRD will have to take into account all relevant facts and circumstances of each individual case in order to determine what constitutes a “single residential property” for the purpose of determining the applicable rates of AVD. The Bill does not propose the extent to which the wall between two adjoining units has to be demolished.

5. We understand that some building works in relation to demolition may not require the approval of the Building Authority or engagement of an authorised person. However, to prevent abuse which may undermine the effectiveness of the New Residential Stamp Duty, we consider it appropriate to require the applicant to present relevant document(s) in relation to the demolition works as required under the Bill for IRD’s reference in determining whether the property concerned is a single residential property.

6. There may also be cases which require more detailed consideration having regard to their unique facts and circumstances. The Bill thus proposes that in determining what constitutes a “single residential property” in each of such cases, IRD may take into account various documents, including approved building plans, deed of mutual covenant, occupation permit (OP) and any other document that IRD considers relevant. Depending on the facts and

¹ For example, according to the Concise Oxford Dictionary, 10th edition, the expressions carry the following meaning: “unit” means (in its core sense) an individual thing regarded as single and complete, and (in its subsidiary sense) a self-contained or distinct section of a building or group of buildings; “roof” means the structure forming the upper covering of a building; “garden” means a piece of ground adjoining a house, used for growing flowers, fruit or vegetables.

circumstances of the case, "other document" which IRD considers relevant may include, but is not limited to, a tenancy agreement of the residential property, records in respect of the residential property kept by the Land Registry, a sale brochure of the development or building of which the residential property forms part as issued by the developer, etc.

7. As regards the case mentioned in paragraph 2(b)(ii) of Appendix I to your letter, IRD, in determining whether such "adjoining units" (which are merely separated by a door or a gate) constitute one unit or two units, may have regard to the relevant documents such as OP and approved building plans.

Appeal

8. Pursuant to section 14 of SDO, if an applicant is dissatisfied with the assessment of the Collector of Stamp Revenue, he/she may, within one month from the date on which the assessment was made, lodge an appeal to the District Court on the ground that the amount of stamp duty so assessed is excessive. In other words, if an applicant is dissatisfied with the Collector's assessment of the stamp duty chargeable on an instrument, which is affected by the determination on whether the residential property concerned is a "single residential property" under the proposed section 29A(1A), he/she may lodge an appeal to the District Court under SDO.

9. Please feel free to contact the undersigned at 2761 5117 should you have further inquiries on the Bill.



(Joyce KOK)

for Secretary for Transport and Housing

c.c.

Secretary for Justice

(Attn : Ms Françoise LAM)

(Attn : Miss Wendy HO)

(Attn : Dr Boyce YUNG)

Commissioner of Inland Revenue (Attn : Ms TSE Yuk-yip)

Clerk to Bills Committee

(Attn : Mr Desmond LAM)