

**Government's response to the issues raised at
the meeting of the Bills Committee on
Stamp Duty (Amendment) Bill 2017 and
Stamp Duty (Amendment) (No.2) Bill 2017 held on 7 November 2017
and the letter from the Hon James TO**

This paper sets out the Government's response to inquiries raised by Members at the above meeting (LC Paper No. CB(1)522/17-18(02) refers), and the letter from the Hon James TO dated 6 November 2017 (LC Paper No. CB(1)522/17-18(01) refers).

“Single residential property”

2. While it should be easy to determine in most cases what constitutes a “single residential property”, there are cases which require detailed consideration based on their own facts. Given the distinctions in each and every case, we consider it difficult to propose a precise and exhaustive definition for a “single residential property”. Therefore, the Stamp Duty (Amendment) (No.2) Bill 2017 (the Bill) proposes that in determining what constitutes a “single residential property”, the Inland Revenue Department (IRD) may take into account various documents, including approved building plan, deed of mutual covenant, occupation permit (OP) and any other document that IRD considers relevant. IRD will have to take into account all relevant facts and circumstances at the time of transaction of each individual case in order to determine what constitutes a “single residential property” for the purpose of determining the applicable rates of ad valorem stamp duty (AVD). We consider this a more appropriate approach and is in line with IRD's standing principle in processing stamping requests.

3. Moreover, to minimise the impact on genuine end-users and for the avoidance of doubt, the Bill also sets out some common examples which IRD has encountered and hitherto considered to be a “single residential property” in administering the partial refund mechanism for Hong Kong permanent residents (HKPRs) replacing their only residential properties. These examples are –

- (a) a unit and a roof situated immediately above the unit;
- (b) a unit and an adjacent garden; and
- (c) a unit that became a single unit following the demolition of the

walls, or any part of the walls, separating two adjoining units¹.

4. To facilitate the public's understanding of what constitutes a "single residential property", apart from the proposed legislative amendments, IRD will, as usual, set out some examples for illustration in its interpretation and practice notes.

5. With reference to the general principle set out in paragraph 2 and the proposed provisions of the Bill, we set out below our preliminary views on whether the property(ies) mentioned in several scenarios in the letter from the Hon James TO might be regarded as "single residential property" or "multiple residential properties". It should be cautioned that these preliminary views are based on the broad assumptions under each hypothetical case. They should by no means be taken to be the actual decision of IRD for similar cases in practice. In determining the applicable rates of AVD, IRD will have to take into account all relevant facts and circumstances at the time of transaction of each real case.

A unit and a roof / external wall

6. Stamp duty has all along been charged on an instrument basis. When scrutinising the Stamp Duty (Amendment) Bill 2013 which implements the doubled ad valorem stamp duty (DSD) measure, the relevant Bills Committee has thoroughly discussed how IRD would handle instruments involving both residential and non-residential properties at the same time. Under the prevailing AVD regime, if an instrument covers both residential and non-residential properties and the two are inseparable for trade, IRD has all along treated these properties as residential property as a whole, and has charged AVD under the rates applicable to residential property transactions by making reference to the total consideration of the entire instrument.

7. If the roof is not situated immediately above the unit but they are inseparable for trade, the instrument of purchasing the unit and the roof will be treated as an instrument of acquiring a single residential property in accordance with IRD's standing principle of charging stamp duty.

8. If the unit and the roof are separable for trade, IRD will treat them as separate and different properties. If the roof is a residential property, the

¹ The following document(s) should also demonstrate such condition – (i) 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 (ii) a plan signed by an authorised person after the completion of the building works relating to the demolition.

instrument of purchasing the unit and the roof will be treated as an instrument of acquiring more than one residential property; if the roof is a non-residential property, the instrument of purchasing the unit and the roof will be treated as an instrument of acquiring a residential property and a non-residential property.

9. The preliminary views above are also applicable to instruments of acquiring a residential unit and part of the external wall.

A unit and a car parking space

10. There are prevailing provisions in the Stamp Duty Ordinance to deal with instruments of purchasing residential property and car parking space at the same time. Under the existing exemption mechanism, if a buyer is a HKPR acting on his own behalf and does not own any other residential property or car parking space in Hong Kong at the time of acquiring residential property together with one car parking space, the relevant instrument is chargeable with AVD at the lower Scale 2 rates. Under the tightened exemption arrangement in accordance with the Bill, the buyer will be exempted from the payment of AVD at the new rate of 15% only if he acquires a **single** residential property and one car parking space under a single instrument.

11. With reference to IRD's standing principle in charging stamp duty as set out in paragraph 6, if an instrument covers both a residential property and two car parking spaces and they are inseparable for trade, IRD will treat the properties as residential property as a whole, and charge AVD under the rates applicable to residential property transactions by making reference to the total consideration of the entire instrument. If the residential property and two car parking spaces are separable for trade, IRD will treat them as separate and different properties, and charge AVD under the rates applicable to residential property and non-residential property respectively.

Two vertically adjoining units

12. OP reflects only the condition of the property concerned at the time of completion but not the alterations made to the property by owners thereafter. In processing stamping requests, IRD will have to take into account facts and circumstances at the time of transaction in order to determine stamp duty payable. If at the time of transaction the two vertically adjoining units have already become a single unit (e.g. there is an internal staircase between upper and lower floors) through building works and this is properly reflected in an

approved plan or other relevant documents, the two adjoining units could be regarded as a single residential property.

Demolition of walls through minor works

13. In general, it would be more cautious for owners to hire an authorised person before demolition of walls to discern whether the relevant works would affect building structure safety and whether prior approval from the Building Authority is required. IRD does not have the expertise to discern whether the walls of units concerned have been demolished. To prevent abuse of the relevant exemption proposed under the Bill, we consider that a plan signed by an authorised person after completion of the works, or a letter issued by the Building Authority acknowledging receipt of a certificate of completion of the works signed by an authorised person is a valid document to prove that the walls separating two adjoining units have been demolished.

Acquisition of sub-divided units and reinstatement into one unit

14. IRD determines stamp duty payable by taking into account facts and circumstances at the time of executing a chargeable instrument (including a provisional agreement for sale and purchase). Therefore, if at the time of executing the provisional agreement for sale and purchase, the properties concerned are four separate units, they could be regarded as multiple residential properties even if they will be reinstated back to one unit subsequently.

Acquisition of single residential property and disposal of two original residential properties in sequence

15. Under the New Residential Stamp Duty (NRSD) regime, a HKPR who acquires a new residential property to replace his **only** original residential property will be subject to NRSD in the first instance, but he may apply to IRD for a partial refund of the AVD paid upon proof that his **only** original property has been disposed of within 12 months from the date of executing the assignment of the new residential property. The amount to be refunded is the stamp duty paid at the new rate of 15% in excess of that computed at Scale 2 rates. The refund mechanism is not applicable if the buyer owns more than one original residential property at the time of acquiring the new residential property.

Other statistics

16. Statistics as inquired in the letter from the Hon TO is set out at **Annexes A to F**.

Transport and Housing Bureau
January 2018

Number of residential property transactions involving HKPR buyers

	Residential property transactions where at least one buyer is HKPR
December 2016	3 403
January 2017	3 826
February 2017	4 212
March 2017	7 524
April 2017	7 190
May 2017	5 659
June 2017	6 053
July 2017	3 978
August 2017	4 305
September 2017	5 797
October 2017	5 664
November 2017	5 821
December 2017	5 335

Source: IRD

**Number of properties acquired under a single instrument
of residential property transaction**

Number of properties (including at least one residential property) acquired under a single instrument	From March 2013 to November 2016 (after introduction of DSD but before introduction of NRSD)	From December 2016 to December 2017 (after introduction of NRSD)
1	226 487	69 864
2-3	8 234	2 820
4-7	213	103
8-10	32	12
11-15	19	10
over 15	36	7
Total	235 021	72 816

Source: IRD

Note:

1. When presenting instruments for stamping, applicants are only required to fill in the number of properties acquired under the instrument. The figures above may include non-residential properties (e.g. car parking spaces).
2. Owing to the time lag between executing a provisional agreement for sale and purchase and presenting an instrument for stamping, there is a time lag in the data above.

**Statistics by time of executing the agreement for sale and purchase
for disposal of the original residential property
(in relation to the execution of assignment for the new residential property)**

Time to execute the agreement for sale and purchase for disposal of the original residential property	Number of refund applications received from 25 July 2014 to November 2016	Number of refund applications received from December 2016 to December 2017
Before executing the assignment of the new residential property	3 757	1 222
Within 3 months after executing the assignment of the new residential property	834	295
In the 4th or 5th month after executing the assignment of the new residential property	355	121
In the 6th month after executing the assignment of the new residential property	153	48
More than 6 months after executing the assignment of the new residential property	7	4
Total ^{Note}	5 106	1 690

Source: IRD

Note: Among the refund applications received by IRD, buyers in some cases did not own any other residential property in Hong Kong at the time of acquisition of the new residential property. In other words, these are not cases where a new residential property is acquired prior to disposing of the original property, and thus cannot be classified by the time of disposing of the original residential property. Therefore, the table above does not contain these cases.

Residential property transactions involving local buyers

	2012	2013	2014	2015	2016	2017
Local individuals						
Not exceeding \$2 million	58 463	8 819	7 854	6 217	5 775	5 345
Over \$2 million to \$3 million	15 877	10 227	9 952	5 575	5 846	4 954
Over \$3 million to \$4 million	2 378	11 519	12 967	9 555	11 263	7 986
Over \$4 million to \$6 million	958	11 652	16 842	16 706	17 010	17 758
Over \$6 million to \$20 million	756	11 196	19 101	19 186	17 917	26 052
Over \$20 million	519	1 222	2 151	2 063	2 481	3 692
Total	78 951	54 635	68 867	59 302	60 292	65 787
Percentage of total residential property transactions	86.5%	95%	96.7%	96.4%	96.8%	95.0%
Local companies						
Not exceeding \$2 million	3 451	180	84	71	34	54
Over \$2 million to \$3 million	2 107	273	79	82	34	312
Over \$3 million to \$4 million	893	289	81	197	56	329
Over \$4 million to \$6 million	490	403	161	118	234	531
Over \$6 million to \$20 million	513	455	533	646	382	794
Over \$20 million	640	115	166	159	133	350
Total	8 094	1 715	1 104	1 273	873	2 370
Percentage of total residential property transactions	8.9%	3%	1.6%	2.1%	1.4%	3.4%

Source: IRD

Note: Local individuals refer to Hong Kong identity card holders.

**Number of agreements for sale and purchase
of first-hand and second-hand residential units received by the Land Registry
(Breakdown by consideration range)**

Primary transactions	2010	2011	2012	2013	2014	2015	2016	2017
Not exceeding \$2 million	733	431	405	222	175	229	79	71
\$2 million to less than \$3 million	1 527	493	401	688	323	393	419	182
\$3 million to less than \$4 million	1 427	716	1 417	2 495	564	1 267	1 891	711
\$4 million to less than \$6 million	2 582	2 233	3 657	2 733	4 286	5 058	4 502	2 592
\$6 million to less than \$20 million	5 953	5 344	5 839	4 318	10 008	8 811	8 265	12 700
\$20 million or above	1 424	1 663	1 249	590	1 501	1 068	1 637	2 389
Total	13 646	10 880	12 968	11 046	16 857	16 826	16 793	18 645

Source: Land Registry

Secondary transactions	2010	2011	2012	2013	2014	2015	2016	2017
Not exceeding \$2 million	50 548	18 446	10 553	3 514	2 694	1 787	1 553	1 327
\$2 million to less than \$3 million	30 086	20 994	19 667	9 491	8 551	3 889	4 028	2 814
\$3 million to less than \$4 million	15 452	12 214	13 599	9 670	12 653	8 483	9 043	6 594
\$4 million to less than \$6 million	13 588	11 731	13 316	9 071	12 804	12 462	12 065	15 614
\$6 million to less than \$20 million	10 882	8 945	9 916	7 063	9 395	11 422	10 271	15 163
\$20 million or above	1 576	1 252	1 314	821	853	1 113	948	1 434
Total	122 132	73 582	68 365	39 630	46 950	39 156	37 908	42 946

Source: Land Registry

**Number of applications for charging AVD at Scale 2 rates
on the grounds of acquiring a replacement property**

Value of replacement property	Number of property transaction instruments presented for stamping from 25 July 2014 to November 2016	Number of property transaction instruments presented for stamping from December 2016 to December 2017
Not exceeding \$2,000,000	-	3
\$2,000,001 to \$3,000,000	2	8
\$3,000,001 to \$4,000,000	10	25
\$4,000,001 to \$6,000,000	7	51
\$6,000,001 to \$20,000,000	8	50
More than \$20,000,000	1	5
Total	28	142

Source: IRD

Note: The number of applications above includes replacement of non-residential properties.