

**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 29 January 2018
and the written inquiry from the Hon Dennis KWOK**

This paper sets out the Government's response to issues raised by Members at the above meeting (LC Paper No. CB(1)641/17-18(01) refers), and the written inquiry tabled by the Hon Dennis KWOK at the meeting (LC Paper No. CB(1)539/17-18(01) refers).

Instruments involving both residential and non-residential properties at the same time

2. Stamp duty has all along been charged on an instrument basis. In determining whether residential and non-residential properties under a single instrument are separable for trade, the Inland Revenue Department (IRD) may take into account various documents, including approved building plan, deed of mutual covenant (DMC), occupation permit (OP) and any other document that IRD considers relevant. For instance, if the relevant DMC specifies that the residential and non-residential properties have taken certain undivided shares in common (i.e. the residential and non-residential properties concerned do not have their respective undivided shares), the properties concerned will be regarded as inseparable for trade by IRD. Under the prevailing ad valorem stamp duty (AVD) regime, IRD has all along treated residential and non-residential properties which are inseparable for trade 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.

3. The Stamp Duty (Amendment) (No.2) Bill 2017 (the Bill) proposes that in determining what constitutes a "single residential property", IRD may take into account various documents, including approved building plan, DMC, OP and any other document that IRD considers relevant, such as records (including agreement for sale and

conveyance on sale) in respect of the property as registered at the Land Registry, deeds of past transactions in respect of the property, etc.. 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 AVD.

Different scenarios involving a unit and a roof

4. 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) under the two scenarios raised by Members at the meeting 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.

5. If the roof is not situated immediately above a residential unit and the DMC does not specify that the undivided shares of the residential unit and the roof are bundled, IRD will treat them as two separate properties. If the roof is a residential property, the instrument of purchasing the unit and the roof will be regarded 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 regarded as an instrument of acquiring a residential property and a non-residential property.

6. Another scenario raised by Members was that a buyer has acquired a residential unit and a roof situated immediately above the unit from different vendors yet under a single instrument. According to the proposed provisions of the Bill, a unit and a roof situated immediately above the unit will be regarded as a “single residential property”. Therefore, if the residential unit and the roof are purchased under a single instrument, IRD will regard the instrument as one that acquires a “single residential property”, regardless of whether the unit and the roof were held by different vendors.

7. IRD will not comment on individual cases mentioned in the written inquiry raised by the Hon. Dennis KWOK. With reference to the general principle stated above and the proposed provisions of the Bill, 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 whether a property (e.g. a unit and a roof) constitutes a “single residential property” for the purpose of determining the applicable rates of AVD.

Amendments to the definition of a “single residential property”

8. To minimise the impact on genuine end-users and for the avoidance of doubt, the Bill 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 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.

9. The Government was asked at the meeting to consider amending the provisions of the Bill to include the following examples –

- (a) a unit and a roof situated in the same building;
- (b) a unit and a garden situated in the same development or building for the exclusive use of the owner of the unit; and
- (c) a roof which is inseparable for trade from a unit.

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.

10. We appreciate Members' concerns. In considering whether more examples should be included under the definition of "single residential property", we have to strike an appropriate balance between safeguarding the effectiveness of demand-side management measures and minimising impacts on genuine users. We have to consider whether the examples conform to general understanding, whether they are common practice and whether they would result in abuses. After deliberation, we consider it an acceptable amendment to relax the definition of "single residential property" to include a unit and a roof situated in the same building. On the contrary, the area of a development could be rather extensive. Regarding a unit and a garden situated in the same development as a "single residential property" may be too lenient and does not conform to the general understanding of the public with regard to a "single residential property".

11. As regards the proposal in paragraph 9(c) above, as set out in paragraph 2 above, IRD has all along treated residential and non-residential properties acquired under a single instrument which are inseparable for trade as residential property as a whole. Since this has been IRD's standing principle in handling instruments which cover residential and non-residential properties at the same time, it is not necessary to amend the Bill in this regard.

12. On the other hand, it was proposed by Members at the meeting that the Bill should specify that a unit that became a single unit following demolition of the walls (or any part of the walls) separating two adjoining units could only be regarded as a "single residential property" if the area or value of the unit did not exceed certain upper limit. The Government does not agree with the proposal. The existing Stamp Duty Ordinance has not set out any restriction with regard to the area or value of properties acquired by buyers. Given the lack of an objective basis to determine the relevant restrictions, we do not agree to impose any such restriction on a "single residential property".

Transport and Housing Bureau
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