

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

**Government's response to the draft committee stage amendments
proposed by the Hon James TO**

This paper sets out the Government's response to the draft committee stage amendments (CSAs) to the Stamp Duty (Amendment) (No.2) Bill 2017 (the Bill) proposed by the Hon James TO in his letter dated 12 February 2018 (LC Paper No. CB(1)594/17-18(01) refers).

Issues covered by the proposed CSAs

2. The Hon James TO's proposed CSAs seek to amend Clauses 3(1) and 3(2) of the Bill as follows –

(a) to amend the proposed definition of “single residential property” under section 29A(1) of the Stamp Duty Ordinance (Cap. 117) (the Ordinance) to include the following –

- (i) a unit and a roof situated above in the same building;
- (ii) a unit and a garden situated in the same building;
- (iii) a unit and a garden situated in the same housing estate;
- (iv) a unit and an exterior wall (or any part of an exterior wall) of the same building;
- (v) a unit and a car parking space in the same housing estate;
- (vi) a unit that became a single unit following the demolition of the walls or the floor, or any part of the walls or the floor, separating two units; and

(b) to amend the proposed section 29A(1A), to the effect that in determining whether a residential property is a “single

residential property”, the Stamp Duty Collector may have regard to relevant agreement for sale or conveyance on sale registered at the Land Registry.

Government’s response

3. As we have earlier explained to the Bills Committee, the definition of “single residential property” as proposed in the Bill comprises **common examples** which the Inland Revenue Department (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. 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 and whether they would result in abuses.

4. Response to each of the proposed amendments is set out in the ensuing paragraphs.

A unit and a roof situated above in the same building

5. The existing Bill has already proposed that a “single residential property” includes a unit and a roof situated immediately above the unit. At previous meetings of the Bills Committee, some Members suggested that the relevant definition should be **relaxed** to include a unit and a roof situated in the same building, i.e. it is not necessary for the roof to be situated immediately above the unit, and considered it unlikely to result in abuses. Having considered Members’ views, we agree with the suggested amendment and will propose CSAs in this regard.

A unit and a garden situated in the same building or in the same housing estate

6. 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”. On the other hand, it is rare for a buyer to purchase a unit together with a garden which is situated in the same building but not adjacent to the unit. We therefore consider it not suitable to include these cases as examples of a “single residential property”. Rather, IRD should determine whether the properties concerned constitute a “single residential property” in accordance with the mechanism prescribed in the Bill by taking into account various documents and all relevant facts and circumstances at the time of transaction of each individual case.

A unit and an exterior wall (or any part of an exterior wall) of the same building

7. Subject to the content of individual deed of mutual covenant (DMC), exterior walls of a building are usually common parts. Even if the exterior wall (or any part of it) is sold to the owner of a unit, the exterior wall is not allocated with undivided shares and is inseparable for trade from the unit in general. Under its standing principle in charging stamp duty, 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, and has charged ad valorem stamp duty (AVD) under the rates applicable to residential property transactions by making reference to the total consideration of the entire instrument. Therefore, it is not necessary to include a unit and an exterior wall in the examples of a “single residential property”. Rather, IRD should determine whether the properties concerned constitute a “single residential property” in accordance with the mechanism prescribed in the Bill by taking into account various documents and all relevant facts and circumstances at the time of transaction of each individual case.

A unit and a car parking space in the same housing estate

8. The prevailing Ordinance provides for an exemption mechanism for instruments of purchasing residential property and one car parking space at the same time. According to sections 29AK and 29BC of the

Ordinance, 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 under a single instrument, the relevant instrument is chargeable with AVD at the lower Scale 2 rates. Under the Bill, the buyer will be exempted from the payment of AVD at 15% only if he acquires a **“single residential property”** and one car parking space under a single instrument. The prevailing legal provisions do not specify that the residential property and the car parking space must be situated in the same housing estate. The CSAs proposed by the Hon TO overlap with the prevailing exemption mechanism. We consider it not necessary to amend the Bill in this regard, lest this may cause confusion.

A unit that became a single unit following the demolition of the floor separating two units

9. As we have earlier explained to the Bills Committee, if at the time of transaction the two vertically adjoining residential units have already become a single unit (e.g. there is an internal staircase between upper and lower levels) through building works and this is properly reflected in an approved plan or other relevant documents, the two units could be regarded as a “single residential property”. The amendment put forward by the Hon TO may further clarify circumstances covered by “single residential property” under the Bill. The Government agrees with the suggested amendment and will propose CSAs in this regard.

Documents to be considered in determining whether a residential property is a “single residential property”

10. The Bill proposes that in determining what constitutes a “single residential property”, IRD may take into account various documents, including approved building plan, DMC, occupation permit and any other document that IRD considers relevant. The proposed provisions of the Bill have already allowed IRD, if required, to take into account any other relevant documents (i.e. including records in respect of the property registered at the Land Registry, deeds of past transactions in respect of the property, etc.) other than the several major documents as set out in the

Bill in determining what constitutes a “single residential property”. We consider it not necessary to amend the Bill in this regard.

Transport and Housing Bureau
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