

**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 6 March 2018**

This paper sets out the Government's response to issues raised by the Hon James TO at the above meeting (LC Paper No. CB(1)683/17-18(01) refers).

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

2. The Hon James TO suggested the Government to reconsider his proposed committee stage amendments (CSAs) to amend the proposed definition of "single residential property" under section 3(1) of the Stamp Duty (Amendment) (No.2) Bill 2017 (the Bill) to include a unit and an exterior wall (or any part of an exterior wall) of the same building.

3. As we pointed out earlier in the response to the relevant proposed CSAs ((LC Paper No. CB(1)641/17-18(03) refers), 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.

4. Subject to the content of individual deed of mutual covenant, 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. According to record of the Inland Revenue Department (IRD), there were not many transactions of residential unit together with exterior wall, and the exterior walls involved in these transactions did not have undivided shares. In other words, the residential unit and exterior wall concerned were inseparable for trade and hence were treated as residential property as a whole under IRD's

standing principle. IRD has not come across transactions of purchasing residential unit and exterior wall with undivided shares under a single instrument.

5. According to IRD's record, some instruments involved only the trading of exterior wall with undivided shares; no units were involved under the same transaction. The value of these exterior walls ranged from about \$220,000 to \$9 million. Under the prevailing ad valorem stamp duty (AVD) regime, an instrument acquiring exterior wall which is non-residential property is subject to AVD rates at Part 2 of Scale 1 (commonly known as Doubled Ad Valorem Stamp Duty (DSD) rates). If it is prescribed in the Bill that a unit and an exterior wall (or any part of it) of the same building will be regarded as "single residential property", some buyers who are Hong Kong permanent residents and do not own any other residential property in Hong Kong at the time of acquisition may purchase a small residential unit together with an exterior wall with considerable value under the same instrument, such that the instrument concerned will meet the exemption requirement to pay AVD at the lower Scale 2 rates for the entire instrument, thereby avoiding the payment of DSD with respect to the exterior wall.

6. Noting that transactions of purchasing residential unit together with exterior wall are not common, and that including a unit and an exterior wall in the examples of "single residential property" may result in abuses mentioned above, we consider it not suitable to propose CSAs in this regard. 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 adjacent flat roof

7. The Hon TO has also proposed to amend the proposed definition of "single residential property" under section 3(1) of the Bill to include a unit and an adjacent flat roof, as in line with a unit and an adjacent garden, 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.

#### CSAs proposed by the Government

8. The draft CSAs as referred to in paragraph 7 above, together with the two draft CSAs proposed by the Government at the meeting on 6 March 2018 in relation to the proposed definition of "single residential property" (LC Paper No. CB(1)662/17-18(01) refers), are set out at **Annex** for Members' reference.

**Transport and Housing Bureau  
March 2018**

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

Committee Stage

Amendments to be moved by the Secretary for Transport and Housing

Draft

<u>Clause</u>	<u>Amendment Proposed</u>
3(1)	In the proposed definition of <i>single residential property</i> , by deleting paragraph (a) and substituting— “(a) a unit and a roof situated in the same building;”.
3(1)	In the proposed definition of <i>single residential property</i> , by adding— “(ab) a unit and an adjacent flat roof situated in the same building;”.
3(1)	In the proposed definition of <i>single residential property</i> , in paragraph (c), by deleting “walls, or any part of the walls, separating two adjoining” and substituting “walls or the floor, or any part of the walls or the floor, separating two”.