

LEGISLATIVE COUNCIL BRIEF

Stamp Duty Ordinance (Chapter 117)

STAMP DUTY (AMENDMENT) BILL 2017

INTRODUCTION

At the meeting of the Executive Council on 17 January 2017, the Council ADVISED and the Chief Executive ORDERED that the Stamp Duty (Amendment) Bill 2017 (the Bill) at **Annex A** should be introduced into the Legislative Council (LegCo).

2. The Bill is to implement the new round of demand-side management measure announced on 4 November 2016, i.e. to introduce a new flat rate of 15% for the ad valorem stamp duty (AVD) chargeable on residential property transactions, in lieu of the existing AVD rates at Scale 1 set out in the Stamp Duty Ordinance (Cap.117) (the Ordinance) (commonly known as “doubled ad valorem stamp duty” (DSD))¹.

JUSTIFICATIONS

3. In the past few years, due to tight housing demand-supply balance and ultra-low interest rates, local property prices have been out of line with economic fundamentals, with heightened risk of a bubble. To address the demand-supply imbalance, the Government has strived to increase land supply for new housing through short, medium and long-term means. At the same time, the Government has also introduced several rounds of demand-side management measures, including Special Stamp Duty (SSD) (November 2010 and October 2012), Buyer’s Stamp Duty (BSD) (October 2012) and DSD (February 2013) to combat short-term speculation, curb external demand and reduce investment demand, thereby stabilising the property market.

¹ Under the existing AVD regime, unless otherwise specified in the Ordinance, transactions in respect of immovable properties (**both** residential and non-residential) acquired on or after 23 February 2013 are subject to AVD rates at Scale 1 (i.e. DSD). The major exception is where the subject property is a residential property and the buyer is a Hong Kong Permanent Resident (HKPR) acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition. For such exception or other exceptions/exemptions as specified in the Ordinance, AVD rates at Scale 2 will be applicable.

4. The above demand-side management measures have largely achieved their intended objectives. However, after a brief period of cooling down in late 2015 and early 2016, the residential property market has staged a sharp rebound since April 2016 amidst a still tight demand-supply situation and repeated delay in the United States interest rate hike back then. Signs of exuberance re-emerged in the third quarter of 2016, particularly in the mass market flats. Besides, there has been a reacceleration of investment demand, which aggravates the already tight demand-supply imbalance. The residential property market is apparently moving away from economic fundamentals again, with heightened risks of a property market bubble. Failure to take action now carries a high risk of an unabated upward spiral in residential property prices, eventually precipitating a very costly adjustment and endangering the overall macroeconomic and financial stability of Hong Kong.

5. Against such background, we see the need to introduce further demand-side management measure to help cool down the residential property market. Having sought the advice of the Executive Council on 4 November 2016, the Government announced on the same day the new measure as set out in paragraph 2 above.

Key features of the proposal

(a) Raising the AVD rates on transactions for residential properties

6. The Bill proposes to introduce a **new flat rate of 15%** across the different value bands under the AVD regime, in lieu of the existing DSD rates, for **residential property transactions**. Non-residential property transactions will not be affected by the proposed new flat rate and will continue to be subject to the existing DSD rates. The existing DSD rates and the proposed new flat rate are set out below –

Property consideration or market value (whichever is the higher)	Existing DSD rates which came into effect on 23 February 2013 ² With effect from 5 November 2016, the rates below apply only to non-residential properties transactions	Proposed new flat rate for residential properties transactions with effect from 5 November 2016
Up to \$2,000,000	1.50%	15%
\$2,000,001 to \$3,000,000	3.00%	
\$3,000,001 to \$4,000,000	4.50%	
\$4,000,001 to \$6,000,000	6.00%	
\$6,000,001 to \$20,000,000	7.50%	
\$20,000,001 and above	8.50%	

As seen from the table above, the proposed new flat rate of 15% has a larger impact on lower-priced residential properties compared to the existing DSD rates which are progressive. This is in line with our policy intent to address exuberance in the mass market in particular.

(b) Exception for HKPRs and other exemptions under specified circumstances

7. We are mindful that any new demand-side management measures should not impose undue financial burden on HKPRs who aspire to be homeowners, having regard to the Government’s prevailing policy of according priority to their housing needs. Hence, we propose to **maintain the existing exception for HKPRs** provided for under the DSD regime. In other words, for residential property transactions where the buyer is a HKPR³ acting on his/her

² To avoid a substantial increase in the absolute amount of AVD paid upon entry into a higher value band, marginal relief is available among different value bands.

³ For the purpose of this exception, HKPR is defined in the Ordinance as –
(a) a person who holds a valid permanent identity card (PIC) issued under the Registration of Persons Ordinance (Cap. 177); or
(b) a person who is eligible to but exempted from applying for the issue of a PIC under regulation 25(e) of the Registration of Persons Regulation (Cap. 177 sub. leg. A).

own behalf and is not a beneficial owner of any other residential property⁴ in Hong Kong at the time of acquisition (which means the time when the first chargeable agreement or conveyance is executed, if there is more than one such instrument), AVD rates at Scale 2 (as set out in the table below) will continue to apply.

Property consideration or market value (whichever is the higher)	AVD rates at Scale 2⁵
Up to \$2,000,000	\$100
\$2,000,001 to \$3,000,000	1.50%
\$3,000,001 to \$4,000,000	2.25%
\$4,000,001 to \$6,000,000	3.00%
\$6,000,001 to \$20,000,000	3.75%
\$20,000,001 and above	4.25%

8. We also propose to **maintain the existing refund mechanism** under the DSD regime for a HKPR-buyer who replaces his/her single residential property⁶. The refund mechanism is also applicable to cases where a HKPR-buyer replaces his/her only residential property and a car parking space with another residential property (with or without a car parking space) under one single instrument.

⁴ A buyer who already holds a non-residential property will not be charged the proposed new flat rate when buying a residential property, provided that he/she is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition. Such a buyer will continue to be subject to the existing AVD rates at Scale 2. Non-residential property is defined in section 29A(1) of the Ordinance to mean immovable property which, under the existing conditions of –

- (a) a Government lease or an agreement for a Government lease;
- (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap. 344);
- (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123); or
- (d) any other instrument which the Collector of Stamp Revenue is satisfied effectively restricts the permitted use of the property,

may not be used, at any time during the term of the Government lease in respect of the property or during the term of the Government lease that has been agreed for in respect of the property (as is appropriate), wholly or partly for residential purposes. However, if an agreement for sale and purchase covers both residential and non-residential properties (e.g. a residential flat plus a car parking space) and the two are inseparable for transaction with one consideration, the Inland Revenue Department (IRD) has all along treated such an agreement for sale and purchase as a chargeable agreement for residential properties for the purpose of charging AVD, SSD and BSD (if applicable).

⁵ To avoid a substantial increase in the absolute amount of AVD paid upon entry into a higher value band, marginal relief is available among different value bands.

⁶ A HKPR who is acquiring a residential Property B to replace his/her only other residential Property A can apply for partial refund of AVD paid for acquiring Property B. He/she will be subject to the proposed new flat rate in the first instance, but he/she may seek a refund of the stamp duty paid in excess of that computed under the lower AVD rates upon proof that Property A has been disposed of within six months from the date Property B was assigned to him. There is a general time limit for claiming refunds, which is within two years after the date of the chargeable instrument for acquisition of Property B or not later than two months after the date of the assignment for the disposal of Property A, whichever is the later.

9. Besides, we propose to **maintain the other exemptions** provided for under the existing DSD regime. Having regard to the exceptions for HKPRs as set out in paragraphs 7 and 8 above and the other exemptions which mirror those under the existing DSD regime, a list of circumstances to which the proposed new flat rate is not applicable is set out at **Annex B**.

10. As the existing exceptions/exemptions provided for under the DSD regime will continue to be adopted in implementing the new measure, it is not necessary to introduce amendments to the Ordinance in the Bill in this regard.

(c) Exchange of residential properties for residential/non-residential properties

11. In line with the existing AVD regime, in respect of an exchange of immovable property, the equality money (i.e. the money paid for the difference in value of the properties concerned) is chargeable to the AVD. The applicable AVD rates depend on the circumstances of the particular exchange transaction. For an exchange of residential property for another residential property, or an exchange of residential property for a non-residential property with the payment of equality money by the purchaser/transferee of the residential property, the instrument will be chargeable with AVD at the proposed new flat rate on the equality money. The existing exemption arrangements provided for under the DSD regime will be retained⁷. For an exchange of non-residential property for another non-residential property, or an exchange of residential property for a non-residential property with the payment of equality money by the vendor/transferor of the residential property, the instrument will be chargeable with AVD at the existing Scale 1 rates (i.e. DSD rates) on the equality money.

(d) Liability for payment of AVD

12. For revenue protection purpose, the existing stamp duty regime holds both sellers and buyers jointly and severally liable to the payment of the AVD. We propose that this joint liability arrangement should also be applicable to the new measure. However, same as the existing regime, if AVD has been charged at Scale 2 rates on an instrument based on the buyer's declaration that he/she is a

⁷ In relation to exchange of residential property for residential property, if each party to the instrument is a HKPR acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of exchange; or all parties to the instrument are close relatives (i.e. parent, spouse, child, brother or sister) and each of them is acting on his/her own behalf, then the instrument will be chargeable with AVD at Scale 2 rates. In relation to exchange of a residential property for a non-residential property with the payment of equality money by the purchaser/transferee of the residential property, if each of them is a HKPR acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of exchange; or all parties to the instrument are close relatives and each of them is acting on his/her own behalf, then the instrument will be chargeable with AVD at Scale 2 rates.

HKPR acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition of the subject property, and it is subsequently found that the declaration of the buyer is not correct, only the buyer is liable for the difference of the AVD computed at the proposed new flat rate and Scale 2 rates. No legislative amendment is required in this regard.

(e) Effective date

13. Given the price-sensitive nature of the property market, the proposed new flat rate has to come into immediate effect once announced. This is to ensure that no one can take advantage between the announcement of the new measure and the gazettal of the Stamp Duty (Amendment) Ordinance after the Bill is passed. Hence, we propose in the Bill that the new measure be deemed to have taken effect on 5 November 2016, the day immediately following the announcement of the new measure on 4 November 2016. IRD will record all the property transactions between 5 November 2016 and the date on which the Stamp Duty (Amendment) Ordinance is gazetted. Reminders to demand for the stamp duty underpaid will be issued after the gazettal of the Stamp Duty (Amendment) Ordinance.

THE BILL

14. The main provisions of the Bill are as follows –

- (a) **Clause 1** sets out the short title and provides that the Bill, when enacted, is deemed to have come into operation on 5 November 2016.
- (b) **Clauses 5 and 7** respectively amend sections 29AI and 29BA of the Ordinance to set out the applicable scales of AVD payable for conveyances on sale and agreements for sale after the introduction of the new flat rate.
- (c) **Clauses 6 and 8** add new sections 29AIA and 29BAB to the Ordinance to clearly set out the scales of AVD payable for certain instruments that deal with the exchange between residential property and non-residential property after the introduction of the new flat rate.
- (d) **Clause 9** adds a new section 72 to the Ordinance to deal with transitional matters, including those necessitated by the retrospective operation of the Bill.

- (e) **Clause 10** amends the First Schedule to the Ordinance to introduce the new flat rate for the AVD payable on the conveyances on sale, and agreements for sale, of residential property.

LEGISLATIVE TIMETABLE

15. The legislative timetable will be as follows –

Publication in the Gazette	27 January 2017
First Reading and commencement of Second Reading debate	8 February 2017
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

16. The economic, financial, civil service, sustainability and family implications of the proposal are set out at **Annex C**. The proposed legislative amendments will not affect the current binding effect of the Ordinance. It has no productivity, environmental and gender implications. It is in conformity with the Basic Law, including the provisions concerning human rights.

PUBLIC CONSULTATION

17. Owing to the confidentiality of the new measure, no consultation has been carried out prior to the announcement on 4 November 2016. In formulating the new measure, we have taken into account concerns from the public about the overheated property market and the need to ensure that the housing demand from HKPR-buyers who do not own any other residential property in Hong Kong at the time of acquisition is accorded priority amidst the tight demand-supply balance in the residential property market. Following the announcement of the new measure, we have briefed the LegCo Panel on Housing on the new measure at the meeting on 5 December 2016.

PUBLICITY

18. A press release on the Bill will be issued on 27 January 2017.

ENQUIRIES

19. Enquiries on this brief can be addressed to Miss Joyce Kok, Principal Assistant Secretary (Housing) (Private Housing), at 2761 5117.

**Transport and Housing Bureau
January 2017**

Stamp Duty (Amendment) Bill 2017

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A BILL

To

Amend the Stamp Duty Ordinance to introduce a new flat rate for the ad valorem stamp duty payable on certain instruments dealing with residential property; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Stamp Duty (Amendment) Ordinance 2017.
- (2) This Ordinance is deemed to have come into operation on 5 November 2016.

2. Stamp Duty Ordinance amended

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 10.

3. Section 2 amended (interpretation)

- (1) Section 2(1)—
Add in alphabetical order
“*agreement for sale* (買賣協議) has the meaning given by section 29A(1);”.
- (2) After section 2(5)—
Add

“(6) For the purposes of this Ordinance—

- (a) a conveyance on sale is executed in conformity with an agreement for sale only if it is executed as provided in section 29D(6)(c); and
- (b) a conveyance on sale is executed in pursuance of an agreement for sale only if it is executed as provided in section 29D(6)(d).”.

4. Section 29A amended (interpretation and application of Part IIIA)

Section 29A—

Repeal subsection (8).

5. Section 29AI substituted

Section 29AI—

Repeal the section

Substitute

“29AI. Scales of rates applicable to conveyances on sale chargeable with ad valorem stamp duty

Except as provided in sections 29AIA, 29AJ, 29AK, 29AL, 29AM, 29AN, 29AO, 29AP, 29AQ, 29AR and 29AS and Notes 1B and 1C to head 1(1) in the First Schedule, a conveyance on sale is chargeable with stamp duty—

- (a) if the property concerned is non-residential property, under Part 2 of Scale 1 of head 1(1) in the First Schedule; or
- (b) in any other case, under Part 1 of Scale 1 of head 1(1) in the First Schedule.”.

6. Section 29AIA added

After section 29AI—

Add**“29AIA. Certain instruments effecting exchange between residential property and non-residential property chargeable with ad valorem stamp duty at Part 2 of Scale 1 rates**

- (1) An instrument falls within this subsection if—
 - (a) the instrument effects the exchange of a residential property for a non-residential property; and
 - (b) consideration is paid or given by the person who transfers the residential property under the instrument for equality.
- (2) An instrument that falls within subsection (1) is chargeable with stamp duty as a conveyance on sale under Part 2 of Scale 1 of head 1(1) in the First Schedule by reference to the consideration mentioned in subsection (1).”.

7. Section 29BA substituted

Section 29BA—

Repeal the section**Substitute****“29BA. Scales of rates applicable to agreements for sale chargeable with ad valorem stamp duty**

Except as provided in sections 29BAB, 29BB, 29BC, 29BD, 29BE, 29BF, 29BG, 29BH, 29BI, 29BJ and 29BK and Note 1A to head 1(1A) in the First Schedule, an agreement for sale is chargeable with stamp duty—

- (a) if the property concerned is non-residential property, under Part 2 of Scale 1 of head 1(1A) in the First Schedule; or
- (b) in any other case, under Part 1 of Scale 1 of head 1(1A) in the First Schedule.”.

8. Section 29BAB added

After section 29BA—

Add**“29BAB. Certain agreements for exchange between residential property and non-residential property chargeable with ad valorem stamp duty at Part 2 of Scale 1 rates**

- (1) An agreement falls within this subsection if—
 - (a) the agreement provides for the transfer of a residential property by a person in exchange for a non-residential property; and
 - (b) consideration is paid or given, or agreed to be paid or given, by the person for equality.
- (2) An agreement that falls within subsection (1) is chargeable with stamp duty as an agreement for sale under Part 2 of Scale 1 of head 1(1A) in the First Schedule by reference to the consideration mentioned in subsection (1).”.

9. Section 72 added

After section 71—

Add

“72. Transitional provisions for Stamp Duty (Amendment) Ordinance 2017

(1) In this section—

additional stamp duty (附加印花稅)—

- (a) in relation to an applicable instrument that is chargeable with stamp duty under Part 1 of Scale 1 of head 1(1) in the First Schedule, means the difference between that stamp duty and the stamp duty chargeable on the instrument under Scale 1 of head 1(1) in the First Schedule to the pre-amended Ordinance; and
- (b) in relation to an applicable instrument that is chargeable with stamp duty under Part 1 of Scale 1 of head 1(1A) in the First Schedule, means the difference between that stamp duty and the stamp duty chargeable on the instrument under Scale 1 of head 1(1A) in the First Schedule to the pre-amended Ordinance;

Amendment Ordinance (《修訂條例》) means the Stamp Duty (Amendment) Ordinance 2017 (of 2017);

applicable instrument (適用文書) means an instrument that is—

- (a) executed on or after 5 November 2016 and before the gazettal date; and
- (b) chargeable with stamp duty under Part 1 of Scale 1 of head 1(1), or Part 1 of Scale 1 of head 1(1A), in the First Schedule;

gazettal date (刊憲日期) means the date of publication of the Amendment Ordinance in the Gazette;

pre-amended Ordinance (《未經修訂條例》) means this Ordinance as in force immediately before 5 November 2016.

(2) If, but for this section, the time for stamping an applicable instrument with any additional stamp duty payable on the instrument begins before the gazettal date—

- (a) that time for stamping is to be replaced by a period of 30 days commencing immediately after the gazettal date; and
- (b) if stamp duty had been paid on the instrument according to Scale 1 of head 1(1), or Scale 1 of head 1(1A), in the First Schedule to the pre-amended Ordinance, section 9 applies only in relation to the additional stamp duty if it is not paid within the period specified in paragraph (a).

(3) The pre-amended Ordinance continues to apply, as if the Amendment Ordinance had not been enacted, to—

- (a) an instrument that was executed before 5 November 2016;
- (b) an agreement for sale that supersedes another agreement for sale made between the same parties and on the same terms before 5 November 2016; or
- (c) a conveyance on sale that is executed in conformity with an agreement for sale made before 5 November 2016.”.

10. First Schedule amended

- (1) First Schedule, within the square brackets, after “29AI,”—
Add
“29AIA,”.

- (2) First Schedule, within the square brackets, after “29BA,”—

Add

“29BAB,”.

- (3) First Schedule, within the square brackets—

Repeal

“& 71”

Substitute

“, 71 & 72”.

- (4) First Schedule, head 1(1)—

Repeal

“SCALE 1—”

Substitute

“SCALE 1—

Part 1

- (A) 15% of the amount or value of the consideration
- (B) 30 days after the execution; but see Note 2 to this sub-head
- (C) All parties, and all other persons executing; but see Notes 2 and 7 to this sub-head

Part 2”.

- (5) First Schedule, head 1(1)—

Repeal

“Exchange, Instruments effecting—see sections 25(7), 29AO and 29AP”

Substitute

“Exchange, Instruments effecting—see sections 25(7), 29AIA, 29AO and 29AP”.

- (6) First Schedule, head 1(1A)—

Repeal

“SCALE 1—”

Substitute

“SCALE 1—

Part 1

- (A) 15% of the amount or value of the consideration
- (B) 30 days after the relevant date (within the meaning of section 29B(3)); but see Notes 2 and 3 to this sub-head
- (C) All parties except a party who on the relevant date (within the meaning of section 29B(3)) does not know that the agreement affects that party, and all other persons executing; but see

Part 2”.

Note 7 to this sub-head

Explanatory Memorandum

The object of this Bill is to introduce a new flat rate for the ad valorem stamp duty payable on certain instruments dealing with residential property under the Stamp Duty Ordinance (Cap. 117) (*Ordinance*).

2. Clause 1 sets out the short title and provides for the retrospective operation of the Bill.
3. Clause 3(1) adds to section 2(1) of the Ordinance a definition of *agreement for sale* by reference to its existing meaning given by section 29A(1) of the Ordinance. Clauses 3(2) and 4 transpose, among others, the interpretation provision for “a conveyance on sale executed in conformity with an agreement for sale” from the existing section 29A(8) to the new section 2(6). Those amendments are consequent on the addition of the new section 72 to the Ordinance by clause 9 in which the relevant expressions are used.
4. Clauses 5 and 7 respectively amend sections 29AI and 29BA of the Ordinance to set out the applicable scales of ad valorem stamp duty payable for conveyances on sale and agreements for sale after the introduction of the new flat rate.
5. Clauses 6 and 8 add new sections 29AIA and 29BAB to the Ordinance to clearly set out the scales of ad valorem stamp duty payable for certain instruments that deal with the exchange between residential property and non-residential property after the introduction of the new flat rate.
6. Clause 9 adds a new section 72 to the Ordinance to deal with transitional matters, including those necessitated by the retrospective operation of the Bill.
7. Clause 10 amends the First Schedule to the Ordinance to introduce the new flat rate for the ad valorem stamp duty payable on the

conveyances on sale, and agreements for sale, of residential property.

List of exceptions and exemptions

We propose to adopt the exceptions and exemptions provided for under the existing DSD regime. In other words, the proposed new flat rate will not be applicable under the following circumstances –

- (a) acquisition of a residential property (whether or not together with a car parking space) by a HKPR who is acting on his/her own behalf and is not a beneficial owner of any other residential property (and car parking space, if applicable) in Hong Kong at the time of acquisition (AVD rates at Scale 2 would apply);
- (b) acquisition of a residential property (whether or not together with a car parking space) by two or more HKPRs jointly and each of the purchasers is acting on his/her own behalf and is not a beneficial owner of any other residential property (and car parking space, if applicable) in Hong Kong at the time of acquisition (AVD rates at Scale 2 would apply);
- (c) acquisition of a residential property by a HKPR jointly with a close relative (i.e. parent, spouse, child, brother or sister) or close relatives (i.e. each of the purchasers is a close relative of each other) who is/are not HKPR and each of the purchaser is acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition (AVD rates at Scale 2 would apply);
- (d) acquisition of a residential property (and a car parking space, if applicable) by a HKPR acting on his/her own behalf for the purpose of replacing his/her only other residential property (and a car parking space, if applicable) (payment of AVD at the new flat rate first, subsequent refund of the difference between AVD paid and AVD computed at Scale 2 rates if specified conditions are met);
- (e) acquisition of a residential property by a purchaser (be he/she HKPR or not) who is acting as trustee or guardian for a minor or a mentally incapacitated person in the transaction and that the minor or the mentally incapacitated person for whom the trustee or guardian is acting on behalf is a HKPR and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition (AVD rates at Scale 2 would apply);

- (f) acquisition or transfer of a residential property between close relatives, irrespective of whether they are HKPRs and whether they are beneficial owners of any other residential property in Hong Kong at the time of acquisition or transfer (AVD rates at Scale 2 would apply);
- (g) nomination of a close relative(s) (be they HKPRs or not) who is/are beneficial owner(s) of other residential property(ies) in Hong Kong on the date of nomination, to take up the assignment of a residential property (AVD rates at Scale 2 would apply). If the close relative(s) is/are not beneficial owner(s) of any other residential property in Hong Kong at the time of nomination, the nomination will continue to be exempt from all AVD as under the present regime;
- (h) a close relative is added as one of the purchasers in the agreement for sale or conveyance on sale of residential property after the original purchaser signed a provisional agreement for sale and each of the parties concerned is acting on his/her own behalf and the new purchaser owns other residential property in Hong Kong (AVD rates at Scale 2 would apply to the share in the property acquired by the new purchaser). If each of them is not a beneficial owner of any other residential property in Hong Kong, the instrument will continue to be exempt from all AVD as under the present regime;
- (i) a close relative who is one of the purchasers in a provisional agreement for sale of residential property is no longer included as a purchaser in the agreement for sale or conveyance on sale and each of the parties concerned is acting on his or her own behalf and the remaining purchaser owns other residential property in Hong Kong (AVD rates at Scale 2 would apply to the share in the property acquired by the remaining purchaser(s) from the withdrawn purchaser). If each of them is not a beneficial owner of any other residential property in Hong Kong, the instrument will continue to be exempt from all AVD as under the present regime;
- (j) acquisition or transfer of a residential property by a court order or pursuant to a court order, which includes a foreclosure order obtained by the mortgagee whether or not it falls under the definition of a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112) (AVD rates at Scale 2 would apply);

- (k) transfer of a mortgaged residential property to the mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance, or to a receiver appointed by such a mortgagee (AVD rates at Scale 2 would apply);
- (l) transfer of a residential property to a beneficiary of the estate of a deceased person in accordance with a will or the law of intestacy; or acquisition of the property by the right of survivorship (exempted from all AVD);
- (m) acquisition or transfer of a residential property by or to a body corporate from an associated body corporate (exempted from all AVD);
- (n) acquisition or transfer of a residential property by or to the Government (exempted from all AVD);
- (o) acquisition of a residential property (including bare sites) for the purpose of redevelopment (payment of AVD at the new flat rate first, subsequent refund of the difference between AVD paid and AVD computed at Scale 2 rates if specified conditions are met);
- (p) acquisition of a replacement residential property by a person affected by specified ordinances¹ (AVD rates at Scale 2 would apply);
- (q) gift of a residential property received by charitable institutions exempted from tax under section 88 of the Inland Revenue Ordinance (exempted from all AVD); and
- (r) acquisition of a flat under the Tenants Purchase Scheme by a tenant or authorised occupant of the flat who is acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition (AVD rates at Scale 2 would apply).

¹ These include situations where the original property owned by that person is subject to acquisition by the Urban Renewal Authority under the Urban Renewal Authority Ordinance (Cap. 563); resumption by the Government under the Lands Resumption Ordinance (Cap. 124); compulsory sale pursuant to an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545); resumption order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276); an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370); an order made under section 16 or section 28(1) of the Railways Ordinance (Cap. 519); an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); and an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).

Implications of the Proposal

Economic implications

The proposed new flat rate will directly affect potential buyers of residential property who are HKPRs and currently own one or more residential properties in Hong Kong. Non-HKPR buyers and companies will also be affected, although they only constitute a small proportion of the total transactions. The proposed increase in the AVD rates should produce an immediate and visible effect in further deterring investment demand and thus curbing transactions. It may also help dampen the upward momentum of flat prices. The exact magnitude and duration are, however, difficult to gauge in any precise manner given the confluence of many external and local factors that may affect the residential property market, including the global and local economic outlook, the pace of United States interest rate normalisation process (and thus the international liquidity situation and direction of fund flows), and people's expectation on the future supply situation.

2. Overall, the proposed hike in the AVD rates, coupled with the demand-side management measures (i.e. SSD and BSD) already in place, aims at forestalling a further build-up of housing market exuberance. The objective is to safeguard macroeconomic and financial sector stability, and to lessen the pain of eventual adjustments.

Financial and civil service implications

3. The proposed increase in AVD rates is not intended to be a revenue-generating measure to meet fiscal or budgetary objectives. The impact on stamp duty revenue generated from the new measure is uncertain, as it depends on the number and value of the transactions caught by the new measure and whether the new measure will reduce the overall residential property transactions afterwards.

4. Additional manpower resources, if required, will be sought with justifications in accordance with the established mechanism to handle workload arising from the new measure. Other administrative cost arising from the new measure will be absorbed within the existing resources of relevant bureaux/departments as far as possible.

Sustainability implications

5. The new measure aims to ensure the healthy and stable development of the property market by curbing excessive investment demand in the residential property market, which is crucial to the sustainable development of Hong Kong as a whole.

Family implications

6. Whether or not the proposed new flat rate will affect families depends on the individual circumstances of each family. In order not to impose undue financial burden on HKPRs who aspire to be homeowners, the Government proposes to maintain the exemption under the existing DSD regime whereby a HKPR-buyer who is acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition will be exempted from the proposed new flat rate, and will continue to be subject to the lower AVD rates at Scale 2.