

LEGISLATIVE COUNCIL BRIEF

Stamp Duty Ordinance (Chapter 117)

STAMP DUTY (AMENDMENT) (NO.2) BILL 2017

INTRODUCTION

At the meeting of the Executive Council on 16 May 2017, the Council ADVISED and the Chief Executive ORDERED that the Stamp Duty (Amendment) (No.2) Bill 2017 (the Bill) at the **Annex** should be introduced into the Legislative Council (LegCo).

2. The Government announced on 11 April 2017 the tightening of the prevailing exemption arrangement for Hong Kong permanent residents (HKPRs) under the New Residential Stamp Duty (NRSD) regime with effect from 12 April 2017. The Bill is to give effect to the tightened exemption arrangement.

JUSTIFICATIONS

3. The Stamp Duty Ordinance (Cap.117) (the Ordinance) was designed to enable stamp duty to be collected on instruments recording transactions in property and stocks. Under the established ad valorem stamp duty (AVD) regime, for a single instrument involving multiple residential properties, the Inland Revenue Department (IRD) will determine the AVD payable at the applicable rate based on the total consideration of the instrument. When announcing the NRSD measure in November 2016, the Government proposed to maintain the prevailing exemption arrangements under the doubled ad valorem stamp duty (DSD) regime. The major exemption is the acquisition of residential property by a HKPR 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. Such acquisitions are exempted from the NRSD rate of 15% and are only subject to the lower AVD rates at Scale 2. There was no restriction on the number of residential properties acquired under a single instrument.

4. During the scrutiny of the Stamp Duty (Amendment) Bill 2017 (the 2017 Bill) that implements the NRSD measure, the majority of LegCo Members and members of the public expressed grave concern over the increasing trend where some HKPR-buyers acquired multiple residential properties under a single instrument to avoid payment of NRSD, thereby undermining the intended effect of the measure. According to IRD's statistics, while acquisition of multiple residential properties under a single instrument constitutes a small percentage of the total residential property transactions, there has been an increasing trend of these cases since the introduction of NRSD in November 2016. The ratio of such cases to the total residential property transactions increased from around 0.5% before the introduction of NRSD to 1.3% in February 2017, and further to 2.4% in March 2017.

5. Against such background, the Government saw the need to tighten the exemption arrangement for HKPRs to prevent some local buyers from making use of it to avoid payment of NRSD, and announced the tightened arrangement on 11 April 2017. Taking into account the scope of the 2017 Bill, we have to introduce a new bill, i.e. the current Bill, into LegCo to give effect to the tightened exemption arrangement.

Key features of the Bill

6. The Bill proposes to tighten the prevailing exemption arrangement for HKPRs under the NRSD regime. Under the tightened exemption arrangement, acquisition of a single residential property (with or without one car parking space) under a single instrument by a HKPR 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 continue to be subject to the lower AVD rates at Scale 2. However, if the HKPR concerned acquires more than one residential property under a single instrument, the transaction will no longer be exempted and will be subject to the NRSD rate of 15%.

7. 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. The Bill proposes that in determining what constitutes a single residential property, IRD may take into account various documents, including approved building plans, deed of mutual covenant, occupation permit and any other document that IRD considers relevant.

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 HKPR¹. These include a unit and a roof situated immediately above the unit; a unit and an adjacent garden; and a unit that became a single unit following the demolition of the walls, or any part of the walls, separating two adjoining units as shown by the documents set out in the Bill.

9. Given the price-sensitive nature of the property market, the tightened exemption arrangement for HKPRs has to come into immediate effect once announced. Hence, the Bill proposes that the tightened exemption arrangement be deemed to have come into operation on 12 April 2017, the day immediately following the Government's announcement on 11 April 2017. IRD will record all the property transactions between 12 April 2017 and the date on which the Stamp Duty (Amendment) (No. 2) Ordinance is gazetted. Reminders to demand for the stamp duty underpaid will be issued after the gazettal of the Stamp Duty (Amendment) (No. 2) Ordinance.

THE BILL

10. 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 12 April 2017.
- (b) **Clause 3** adds to section 29A(1) of the Ordinance various definitions, including the definition of single residential property and adds a new subsection to section 29A of the Ordinance to set out the documents that may be taken into account when determining whether a residential property is a single residential property;
- (c) **Clauses 4, 5, 6 and 7** amend sections 29AJ, 29AK, 29BB and 29BC of the Ordinance respectively so that the residential property covered by the instruments referred to in those sections must be a single residential property; and
- (d) **Clause 8** adds a new section 73 to the Ordinance to deal with transitional matters, including those necessitated by the retrospective

¹ Under the NRSD regime, 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 NRSD 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.

operation of the Bill.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be as follows –

Publication in the Gazette	26 May 2017
First Reading and commencement of Second Reading debate	7 June 2017
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

12. The Bill will not affect the current binding effect of the Ordinance. It is in conformity with the Basic Law, including the provisions concerning human rights. It has no civil service, productivity, environmental and gender implications. It has no significant family implication. On financial implications, NRSD is not intended to be a revenue-generating measure. The impact of the Bill on NRSD receipts is difficult to estimate. On economic implications, the Bill represents a refinement of the NRSD regime, thereby enabling the Government to curb the investment demand more effectively. On sustainability implications, the tightened exemption arrangement is in line with the Government's policy objective to accord priority to self-use home ownership needs of HKPR-buyers and to stabilise the property market.

PUBLIC CONSULTATION

13. Owing to confidentiality of the demand-side management measures, no consultation has been carried out prior to the announcement of the tightened exemption arrangement on 11 April 2017. In formulating the proposal, we have taken into account concerns from the public and the Bills Committee on the 2017 Bill over the increasing trend of avoiding the payment of NRSD through acquisition of multiple residential properties under a single instrument. Following the announcement of the tightened exemption arrangement, we briefed the Bills Committee on the 2017 Bill the proposal at the meeting on 21 April 2017.

PUBLICITY

14. A press release on the Bill will be issued on 26 May 2017.

ENQUIRIES

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

**Transport and Housing Bureau
May 2017**

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

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A BILL

To

Amend certain provisions of the Stamp Duty Ordinance that impose ad valorem stamp duty at Scale 2 rates on instruments of residential properties, with or without car parking spaces, acquired by Hong Kong permanent residents, so that those provisions apply only to an instrument that deals with a single residential property, with or without a car parking space; 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) (No. 2) Ordinance 2017.
- (2) This Ordinance is deemed to have come into operation on 12 April 2017.

2. Stamp Duty Ordinance amended

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 9.

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

- (1) Section 29A(1)—

Add in alphabetical order

“*authorized person* (認可人士) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

Building Authority (建築事務監督) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

building plan (建築圖則) means a plan that is approved by the Building Authority for the purposes of section 14(1) of the Buildings Ordinance (Cap. 123);

single residential property (單一住宅物業) includes—

- (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 units as shown by—
 - (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. 123 sub. leg. A); or
 - (ii) a plan signed by an authorized person after the completion of the building works relating to the demolition;”.

- (2) After section 29A(1)—

Add

“(1A) The Collector may determine whether a residential property is a single residential property and, in making such determination, may have regard to any of the following documents—

- (a) the building plans, or plans signed by an authorized person, in respect of the residential property or the

building of which the residential property forms part;

- (b) the deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap. 344), of the building of which the residential property forms part;
- (c) the occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123) in respect of the residential property or the building of which the residential property forms part;
- (d) any other document that the Collector considers relevant.”.

4. Section 29AJ amended (certain conveyances on sale of residential property to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)

Section 29AJ(1)(a), before “residential property”—

Add

“a single”.

5. Section 29AK amended (certain conveyances on sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)

Section 29AK(1)(a), before “residential property”—

Add

“a single”.

6. Section 29BB amended (certain agreements for sale of residential property to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)

Section 29BB(1)(a), before “residential property”—

Add

“a single”.

7. Section 29BC amended (certain agreements for sale of residential property together with car parking space to Hong Kong permanent residents chargeable with ad valorem stamp duty at Scale 2 rates)

Section 29BC(1)(a), before “residential property”—

Add

“a single”.

8. Section 73 added

After section 72—

Add

“73. Transitional provisions for sections 29AJ, 29AK, 29BB and 29BC as amended by Stamp Duty (Amendment) (No. 2) 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 2 of head 1(1) in the First Schedule; 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 2 of head 1(1A) in the First Schedule;

Amendment Ordinance (《修訂條例》) means the Stamp Duty (Amendment) (No. 2) Ordinance 2017 (of 2017);

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

- (a) was executed on or after 12 April 2017 and before the gazettal date;
- (b) was chargeable with stamp duty under Scale 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule under section 29AJ, 29AK, 29BB or 29BC of the pre-amended Ordinance; and
- (c) is 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 because of the Amendment Ordinance;

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 12 April 2017.

- (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 2 of head 1(1), or Scale 2 of head 1(1A), in the First Schedule under section 29AJ, 29AK, 29BB or 29BC of 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 12 April 2017;
- (b) an agreement for sale that supersedes another agreement for sale made between the same parties and on the same terms before 12 April 2017; or
- (c) a conveyance on sale that is executed in conformity with an agreement for sale made before 12 April 2017.”.

9. First Schedule amended

First Schedule, within the square brackets—

Repeal

“& 72”

Substitute

“, 72 & 73”.

Explanatory Memorandum

The object of this Bill is to amend certain provisions of the Stamp Duty Ordinance (Cap. 117) (*Ordinance*) that provide for instruments of residential properties, with or without car parking spaces, to be chargeable with ad valorem stamp duty at Scale 2 rates so that those provisions apply only to an instrument that deals with a single residential property with or without a car parking space.

2. Clause 1 sets out the short title and provides for the retrospective operation of the Bill.
3. Clause 3 adds to section 29A(1) of the Ordinance various definitions, including the definition of *single residential property*, and adds a new subsection to section 29A of the Ordinance to set out the documents that may be taken into account when determining whether a residential property is a single residential property.
4. Clauses 4, 5, 6 and 7 amend sections 29AJ, 29AK, 29BB and 29BC of the Ordinance respectively so that the residential property covered by the instruments referred to in those sections must be a single residential property.
5. Clause 8 adds a new section 73 to the Ordinance to deal with transitional matters, including those necessitated by the retrospective operation of the Bill.