

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 10 February 2017**

**Legal Service Division Report on
Stamp Duty (Amendment) Bill 2017**

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the Stamp Duty Ordinance (Cap. 117) to:

 - (a) impose a flat rate of 15% of ad valorem stamp duty ("AVD") payable on certain instruments dealing with residential properties executed on or after 5 November 2016, in lieu of the existing AVD rates ranging from 1.5% to 8.5% at Scale 1 in the First Schedule to Cap. 117; and
 - (b) provide that certain instruments effecting the exchange of a residential property for a non-residential property would be chargeable with existing AVD rates.

- 2. Public Consultation**

No public consultation has been conducted.

- 3. Consultation with LegCo Panel**

According to the Clerk to the Panel on Housing, the Panel was consulted on 5 December 2016. Members expressed views and concerns including the effectiveness of the new AVD in suppressing speculative activities in the residential property market and whether it could help ease the difficulty in buying homes faced by first-time buyers.

- 4. Conclusion**

In view of the concerns and views expressed by members of the Panel on Housing, Members may wish to consider whether a Bills Committee should be set up to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 8 February 2017. Members may refer to the LegCo Brief (File Ref.: HDCR4-3/PH/1-10/0-1) issued by the Transport and Housing Bureau in January 2017 for further details.

Object of the Bill

2. The Bill seeks to amend the Stamp Duty Ordinance (Cap. 117) to:
 - (a) impose a flat rate of 15% of ad valorem stamp duty ("the New AVD") payable on certain instruments dealing with residential properties executed on or after 5 November 2016, in lieu of the existing ad valorem stamp duty ("AVD") rates ranging from 1.5% to 8.5% at Scale 1 in the First Schedule to Cap. 117; and
 - (b) provide that certain instruments effecting the exchange of a residential property for a non-residential property would be chargeable with existing AVD rates.

Background

3. According to paragraph 3 of the LegCo Brief, in order to address the demand-supply imbalance of the property market, the Government has introduced several rounds of demand-side management measures, including doubling across the board the AVD rates applicable to both residential and non-residential properties with effect from 23 February 2013 ("DSD") unless specifically exempted. DSD rates are set out in Scale 1 in the First Schedule to Cap. 117, which are on a scale basis ranging from 1.5% to 8.5% based on the value of property.

4. On 4 November 2016, the Government announced that Cap. 117 would be amended to increase the AVD rates to a flat rate of 15% chargeable on certain instruments dealing with residential properties executed on or after 5 November 2016 (i.e. the New AVD). According to paragraph 5 of the LegCo Brief, the proposal was introduced as a further demand-side management measure to help cool down the residential property market.

Provisions of the Bill

5. The Bill seeks to implement the proposal on the New AVD with effect from 5 November 2016. The main provisions of the Bill are summarized in the following paragraphs.

Adjustment of AVD rates

6. Clauses 5 and 7 of the Bill respectively amend sections 29AI and 29BA of Cap. 117 to provide for the applicable AVD rates in the First Schedule to Cap. 117 payable for conveyances on sale¹ and agreements for sale² for both residential and non-residential properties. Clause 10 amends Scale 1 of head 1(1) (in relation to conveyance on sale) and Scale 1 of head 1(1A) (in relation to agreement for sale) in the First Schedule to Cap. 117 to the effect that the New AVD rates would be applicable to residential properties and the existing DSD rates would remain applicable to non-residential properties.

Exchange of a residential property for a non-residential property

7. The Bill proposes to add new sections 29AIA and 29BAB to provide respectively that conveyance on sale and agreement for sale which effect the exchange of a residential property for a non-residential property with the payment of equality money (i.e. the money paid for the difference in value of the properties concerned) by the transferor of the residential property would be chargeable with the existing DSD rates.

8. The effect of the above provisions is summarized in the table below.

<i>Amount or value of consideration of the property</i>	<i>Existing DSD rates from 23 February 2013*</i>	<i>New AVD rates under the Bill applicable to residential property transactions as from 5 November 2016</i>
Up to \$2,000,000	1.5%	15%
\$2,000,001 to \$3,000,000	3.0%	
\$3,000,001 to \$4,000,000	4.5%	
\$4,000,001 to \$6,000,000	6.0%	
\$6,000,001 to \$20,000,000	7.5%	
\$20,000,001 and above	8.5%	
* remain applicable to non-residential properties transactions as from 5 November 2016 and applies to equality money for the exchange of a residential property for a non-residential property paid by the transferor.		

Transitional arrangement

9. New section 72 is proposed to be added to provide for transitional arrangements. In gist, if existing DSD is paid on instruments (i.e. conveyance on

¹ Under section 2 of Cap. 117, "conveyance on sale" means every conveyance whereby any immovable property, upon the sale thereof, is transferred to or vested in a purchaser or any other person on his behalf or by his direction, and includes a foreclosure order.

² The meaning of "agreement for sale" is provided in section 29A(1) of Cap. 117 and includes an instrument in which a person contracts to sell or purchase immovable property.

sale and agreement for sale) dealing with residential properties executed on or after 5 November 2016 and before the date of publication of the enacted Ordinance in the Gazette ("gazettal date"), the instruments would be required to be stamped with the difference between the existing DSD and the New AVD within 30 days commencing immediately after the gazettal date.

Commencement

10. Under clause 1(2), the Bill, if enacted, would be deemed to have come into operation on 5 November 2016.

Public Consultation

11. According to paragraph 17 of the LegCo Brief, no consultation has been conducted.

Consultation with LegCo Panel

12. According to the Clerk to the Panel on Housing, the Administration briefed the Panel on 5 December 2016 regarding the New AVD. Members expressed concerns about the effectiveness of the New AVD in suppressing speculative activities in the residential property market and whether it could help ease the difficulty in buying homes faced by first-time buyers. In response to some members' enquiry as to whether the Administration could relax the six-month period for acquiring a new property during which Hong Kong permanent residents having disposed of their original property could claim the partial refund of AVD, the Administration advised that it had no plan to relax such timeframe.

Conclusion

13. In view of the concerns and views expressed by members of the Panel on Housing, Members may wish to consider whether a Bills Committee should be set up to study the Bill in detail.

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