

立法會
Legislative Council

LC Paper No. LS73/16-17

**Paper for the House Committee Meeting
on 9 June 2017**

**Legal Service Division Report on
Stamp Duty (Amendment) (No. 2) Bill 2017**

I. SUMMARY

1. The Bill

The Bill seeks to amend, among others, sections 29AJ, 29AK, 29BB and 29BC of the Stamp Duty Ordinance (Cap. 117) that impose ad valorem stamp duty rates at Scale 2 of head 1(1) and head 1(1A) respectively in the First Schedule to Cap. 117 on instruments dealing with residential properties (with or without car parking spaces) acquired by Hong Kong permanent residents who are acting on their own behalf and are not beneficial owners of any other residential property in Hong Kong on the date of acquisition so that those provisions apply, with effect from 12 April 2017, only to an instrument that deals with a single residential property (with or without a car parking space).

2. Public Consultation

No public consultation has been conducted.

**3. Consultation with
LegCo Panel**

No LegCo Panel has been consulted. According to the Clerk to the Bills Committee on Stamp Duty (Amendment) Bill 2017 ("SD(A) Bill"), the Bills Committee was briefed on the policy aspects of the Bill on 21 April and 15 May 2017. Members in general had no objection to the Administration's proposal and expressed views and concerns on a number of issues.

4. Conclusion

In light of the views and concerns expressed by members of the Bills Committee on SD(A) Bill, 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 7 June 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 May 2017 for further details.

Object of the Bill

2. The Bill seeks to amend, among others, sections 29AJ, 29AK, 29BB and 29BC of the Stamp Duty Ordinance (Cap. 117) that impose ad valorem stamp duty ("AVD") rates at Scale 2¹ of head 1(1) and head 1(1A) respectively in the First Schedule to Cap. 117 ("Scale 2 AVD") on instruments dealing with residential properties, with or without car parking spaces, acquired by Hong Kong permanent residents ("HKPRs"), 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.

Background

3. On 23 February 2013, Scale 2 AVD were doubled. The doubled AVD rates ("DSD") ranging from 1.5% to 8.5% are set out under Scale 1 of head 1(1) and head 1(1A) in the First Schedule to Cap. 117. Unless specifically exempted, DSD applies to both residential and non-residential properties with effect from 23 February 2013. Sections 29AJ and 29BB of Cap. 117 are exemption provisions which provide respectively that Scale 2 AVD is payable for conveyances on sale and agreements for sale dealing with residential properties purchased by HKPRs who are acting on their own behalf and are not beneficial owners of any other residential property in Hong Kong on the date of acquisition ("the Relevant HKPRs"). Sections 29AK and 29BC provide to the Relevant HKPRs similar exemption from DSD in relation to a conveyance on sale and an agreement for sale of a residential property together

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Property consideration or market value (whichever is the higher)	AVD rates at Scale 2
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%

with a car parking space. Under the above sections, the Relevant HKPRs may acquire more than one residential property under one instrument ("the Existing Exemption for HKPRs").

4. During the scrutiny of Stamp Duty (Amendment) Bill 2017 ("SD(A) Bill"), which seeks to impose a flat rate of 15% of AVD ("the New AVD") payable on certain instruments dealing with residential properties executed on or after 5 November 2016 in lieu of DSD, members of the Bills Committee on SD(A) Bill and deputations invited to express views on SD(A) Bill have expressed views that the Administration should put in place specific measures to plug the loophole under the New AVD regime whereby multiple properties could be acquired under one instrument by the Relevant HKPRs to circumvent payment of the New AVD².

5. According to paragraphs 4 and 5 of the LegCo Brief, the Inland Revenue Department ("IRD")'s statistics showed an increasing trend of cases relating to acquisition of multiple residential properties under one instrument by the Relevant HKPRs from around 0.5% of the total residential property transactions before the introduction of the New AVD in November 2016 to 2.4% in March 2017. The Government announced that the Existing Exemption for HKPRs be tightened with effect from 12 April 2017 to plug the loophole by way of a new bill, i.e. the Bill.

Provisions of the Bill

Amendment of the Existing Exemption for HKPRs

6. Clauses 4 and 6 of the Bill respectively amend sections 29AJ and 29BB of Cap. 117 to provide respectively that Scale 2 AVD is payable for a conveyance on sale and an agreement for sale of a "single residential property" purchased by the Relevant HKPRs. Clauses 5 and 7 of the Bill respectively introduce similar amendments to sections 29AK and 29BC of Cap. 117 relating to instruments dealing with a "single residential property" together with a car parking space.

7. Clause 3(1) of the Bill amends section 29A(1) of Cap. 117 to, among others, define "single residential property" as one that includes:

- (a) a unit and a roof situated immediately above the unit;

² Minutes of meetings of the Bills Committee on SD(A) Bill on 28 February 2017 and 28 March 2017.

- (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 certain specified documents such as a plan signed by an authorized person (as defined in the Buildings Ordinance (Cap. 123)) after the completion of the building works relating to the demolition.

8. The Bill further proposes to add a new section 29A(1A) to Cap. 117 to provide for the documents that may be taken into account by the Collector of Stamp Revenue when determining whether a residential property is a single residential property.

9. The effect of the above proposed provisions is that acquisition of a "single residential property" (with or without one car parking space) under one instrument by the Relevant HKPRs would continue to be subject to Scale 2 AVD. However, if the Relevant HKPRs acquire more than one residential property under one instrument on or after 12 April 2017, the transaction would no longer be exempted and would be subject to the New AVD under sections 29AI (conveyances on sale) or 29BA (agreements for sale) of Cap. 117 proposed to be amended by SD(A) Bill.

Transitional arrangements

10. New section 73 is proposed to be added to provide for transitional arrangements. In gist, if Scale 2 AVD has been paid under sections 29AJ, 29AK, 29BB and 29BC of Cap. 117 on instruments (i.e. conveyance on sale and agreement for sale) dealing with more than one residential property which were or are executed on or after 12 April 2017 and before the date on which the Bill, if enacted as an Ordinance, is published in the Gazette ("gazettal date"), the instruments would be required to be stamped with the difference between Scale 2 AVD and the New AVD within 30 days commencing immediately after the gazettal date.

Commencement

11. Under clause 1(2), the Bill, if enacted as an Ordinance, would be deemed to have come into operation on 12 April 2017.

Public Consultation

12. According to paragraph 13 of the LegCo Brief, no consultation has been conducted.

Consultation with LegCo Panel

13. According to paragraph 13 of the LegCo Brief, no consultation has been carried out prior to the Government's announcement on 11 April 2017 on the tightening of the Existing Exemption for HKPRs. According to the Clerk to the Bills Committee on SD(A) Bill, the Bills Committee was briefed on the policy aspects of the Bill on 21 April and 15 May 2017. Members of the Bills Committee in general had no objection to the proposals and urged the Administration to consult the relevant scholars, professionals and industries on the technical aspects of the Bill given its complexity. Members were keen to ensure that genuine residential property buyers would not be affected by the newly announced exemption arrangement, and the Administration should carefully define the interpretation of "single residential property" to avoid possible abuse of the exemption arrangement. Some members expressed concern about the Administration's suggestion to provide for the handling of special cases regarding "single residential property" in the relevant Practice Note of IRD. They considered that such a suggestion would give IRD's officers a discretionary power in dealing with individual cases, thereby giving rise to disputes. Members of the Bills Committee on SD(A) Bill in general did not object to the Administration's suggestion of having the same Bills Committee to study the Bill, as it was introduced to address the concerns of members of the Bills Committee on acquisition of multiple residential properties under one instrument.

Conclusion

14. In light of the views and concerns expressed by members of the Bills Committee on SD(A) Bill, Members may wish to consider whether a Bills Committee should be set up to study the Bill in detail.

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