

政府當局對《2013年印花稅（修訂）條例草案》委員會  
於2013年5月31日會議上  
所提事項作出的回應

在2013年5月31日法案委員會的會議上，多位議員就條例草案建議的需求管理措施的政策考慮和數據作出提問，並對有關措施的影響表達關注。具體的問題與關注主要包括-

- (i) 條例草案建議倍增從價印花稅的稅率涵蓋非住宅物業交易，這可能會對香港的營商環境帶來影響。當局推出有關措施前曾否進行影響評估，包括對處理非住宅物業市場過熱情況的預期成效，以及對本地及海外人士或機構在港購置物業作營商活動的影響；
- (ii) 當局應把購置非住宅物業的用途區分為自用及投機兩類，並為作自用的非住宅物業提供豁免。當局應參考並提供其他地區針對非住宅物業的措施，以及有關措施是否有效處理當地樓市過熱情況的資料；及
- (iii) 至於私人住宅物業市場方面，當局就有關措施對本地居民的影響評估，包括過往本地居民購置住宅物業時其持有其他住宅物業的數據。

2. 本文件旨在回應議員的提問及關注事宜。

**建議措施涵蓋非住宅物業的政策考慮和理據**

3. 政府當局於2013年2月再推出新一輪的需求管理措施的考慮和理據主要有以下三方面-

- (i) 住宅物業市場雖然在2012年10月政府推出加強額外印花稅及引入買家印花稅後，樓價升勢曾一度放緩，但受到供求失衡、超低利率和資金流動性氾濫的影響，樓市在今年年初再次出現亢奮的情況，與同期香港經濟基調背道而馳。

非住宅物業市場出現過熱跡象，交投暢旺和售價急升，影響營商環境。根據差餉物業估價署的數字，2012 年的非住宅物業市場交投數字持續飆升。各類物業的交投上升幅度如下－

成交量	零售舖位	寫字樓	分層工廠大廈
長期每季平均數 (a)	1 160 宗	630 宗	1 350 宗
2012 年第 4 季 (b)	2 430 宗	1 100 宗	3 640 宗
2012 年第 4 季相 對長期每季平均 數 (b)-(a)/(a) %	+109%	+75%	+170%
2012 年整年相對 2011 年	+21%	+6%	+28%

零售舖位、寫字樓及分層工廠大廈的售價在 2012 年分別累計躍升 41%、24% 及 46%。相比於 2009 年的近期低位，這些物業在 2012 年的全年平均售價已急升 151%-206%。

(ii) 為了在供應偏緊的情況下優先照顧香港永久性居民置居的需求，當局有需要加強對住宅物業市場的需求管理。而為免住宅物業市場的亢奮情況蔓延至本已相當熾熱的非住宅物業市場，我們有必要對非住宅物業市場一併作出需求管理。

(iii) 事實上，就物業交易徵收的從價印花稅，基本原意是針對所有物業交易，故此，不論交易屬住宅或非住宅物業，處理一直以來都是一致的。

4. 總體而言，住宅和非住宅物業的價格持續上升，將會進一步偏離經濟基調。若不及時採取措施，樓價會繼續處於螺旋式上升的風險，最終會帶來沉重代價的調整，危害本港整體宏觀經濟及金融穩定。

#### 為何不區分購置非住宅物業的用途為自用及投機兩類

5. 當局的政策目標是從管理需求著手，即時冷卻非住

宅物業市場的熾熱情況，扭轉樓價只升不跌的市場預期。為達到即時冷卻的目標，我們所選取的措施必須針對樓市當前的情況，而調整從價印花稅稅率的目的就是希望能產生立竿見影的效果。

6. 有關增加所有物業交易從價印花稅稅率的建議，配合提前在非住宅物業交易簽訂買賣協議時徵收印花稅，是相輔相成的安排，可望防止住宅物業市場的熾熱投機或投資活動轉移至非住宅物業市場，為非住宅物業市場起即時降溫作用。由於非住宅物業交易從價印花稅過去只是在訂立售賣轉易契時徵收，政府現時並沒有證據顯示非住宅物業市場熾熱的情況主要由短期投機活動造成。

7. 在考慮有關需求管理措施的過程中，我們也有參考海外做法。但我們必須強調，各地均會因應其實際情況、不同稅制及考慮自身特質而制訂合適的政策及措施，故不宜把各地的相關措施直接作出比較，以及為其成效作出定論。有委員在會議上曾問及新加坡有何需求管理措施。據我們了解，新加坡基本徵收的印花稅是買家負責承擔繳付，制度上與香港的從價印花稅由買賣雙方共同及個別承擔的有根本上的差異。因應住宅樓市的熾熱情況，新加坡先後推出針對短期炒賣的賣家印花稅和壓抑需求的買方附加印花稅。鑑於工業物業的投機活動有增加趨勢<sup>1</sup>，新加坡於 2013 年 1 月推出進一步冷卻樓市的措施，為工業物業首次引入賣家印花稅，按賣家在轉售時持有該物業的年期，徵收百分之五至十五的稅款。由於新加坡針對工業物業投機活動的賣家印花稅在 2013 年 1 月推行至今只有數月，成效有待觀察。

8. 新加坡以及其他地區例如澳門近月針對非住宅物業等實施的措施載於附件 A。此外，政府當局曾將部分其他地區就住宅物業市場採取的措施提交《2012 年印花稅（修訂）條例草案》委員會，現載錄於附件 B，以便委員參閱。

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<sup>1</sup> 根據新加坡財政部於 2013 年 1 月發出的新聞稿，新加坡工業物業的價格在過去 3 年間倍升，升幅遠超租金的升幅。此外，工業物業的投機活動有增加趨勢，2011 年全年及 2012 年首 11 個月，多用途廠房的成交中，分別有 15% 和 18% 是在買入後 3 年內轉售的交易，顯著高於 2006 年至 2010 年間約 10% 的平均數。

## 措施的成效

9. 初步看來，我們注意到本港樓市氣氛在過去數月有所冷卻，成交縮減，整體住宅樓價的按月升勢有所放緩。非住宅物業市場方面，零售舖位、寫字樓及分層工廠大廈的成交量明顯下降，而售價則轉趨平穩。我們認為在最新一輪需求管理措施推出之後，物業價格只升不跌的預期有望改變。不過，由於利率偏低和資金氾濫的環境持續，樓市的泡沫風險仍然不容忽視。正如我們一再強調，政府會繼續致力持續地增加土地及房屋供應，以促進樓市健康平穩發展。但與此同時，我們有需要管理需求，以處理樓市非理性亢奮的情況。

## 就私人住宅物業市場的措施對本地居民的影響評估

10. 在需求管理措施醞釀時，我們曾參考稅務局的資料，以評估措施可能對本地居民的影響。在過去3年，即2010年至2012年，在涉及持有香港身分證的個人買家的住宅物業交易中，少於一半的買家在進行交易時持有其他物業。換句話說，若以過去的統計數字作出推論，多於一半的本地買家將不會受到措施的影響。有關的資料載於附件C。

## 審時度勢、非常措施

11. 鑑於樓市受各種不斷轉變的因素所影響，我們會一如以往密切留意樓市的發展，審時度勢，在有需要時對需求管理措施作出適時的調整。

12. 我們明白措施會對擁有住宅物業的本地買家、非本地買家和工商企業造成不便，但這是在非常情況下引入的非常措施，目的是避免物業市場的大幅波動影響宏觀經濟及金融穩定。另一方面，我們亦留意到過往本地營商人士和海外機構對過去數年持續急升的物業價格，曾經表示關注。政府有必要從需求管理著手，以減低非住宅物業市場亢奮和對金融穩定可能造成的風險。

13. 我們認為，本地企業及其他地方駐港的公司最終會受惠於一個擁有穩步發展的物業市場的營商環境。我們會繼續聆聽法案委員會及社會就此事宜的意見。

## 意見書

14. 除了送交法案委員會的意見書外，現應委員會要求並在徵得有關團體的同意下，夾附政府當局就條例草案所收到的意見，以供委員參考：

- (i) 香港律師會在 2013 年 4 月 2 日致財經事務及庫務局的信件；
- (ii) 香港地產建設商會在 2013 年 4 月 3 日致運輸及房屋局的信件(連同運輸及房屋局在 2013 年 5 月 13 日的回信)；及
- (iii) 宏利人壽保險(國際)有限公司在 2013 年 4 月 9 日致財政司司長的信件(連同財經事務及庫務局在 2013 年 5 月 16 日的回信)。

財經事務及庫務局  
2013 年 6 月

## 附件 A

### 新加坡和澳門就工業物業交易徵收賣家印花稅

#### 新加坡

鑑於物業市場持續熾熱，新加坡於 2013 年 1 月 11 日推出進一步冷卻樓市的措施，當中首次就工業物業引入賣家印花稅，措施如下-

受影響的實體	2013 年 1 月 12 日或以後進行的工業物業交易
新加坡公民、新加坡永久居民、外國人及其他實體 <sup>2</sup>	1 年或不足 1 年的轉售：15%
	2 年或不足 2 年但多於 1 年的轉售：10%
	3 年或不足 3 年但多於 2 年的轉售：5%

#### 澳門

澳門於 2012 年 10 月 30 日，向涉及商業、寫字樓或機動車輛停泊用途的不動產交易徵收特別印花稅如下：

受影響的實體	2012 年 10 月 30 日或以後進行的商業、寫字樓或機動車輛停泊用途的不動產交易
有關不動產的納稅主體或其權利的移轉人	1 年或不足 1 年的轉售：20%
	2 年或不足 2 年但多於 1 年的轉售：10%

<sup>2</sup> “實體”指非屬個人的人士，包括非法團組織、以集體投資計劃受託人的身分行事者，以及以商業信託的信託管理人身分行事者；在轉易、移轉或轉讓的物業是作為合伙財產而持有的情況下，則不論持有合伙財產的合伙人是否以個人身分行事，也屬實體。

## 其他地區就住宅物業市場的需求管理措施

### 新加坡

- ◆ 新加坡於 2011 年 1 月 14 日起，將住宅物業的賣家印花稅稅率和受管制的持有物業年期提高如下：
  - 1 年內轉售：16%
  - 2 年內轉售：12%
  - 3 年內轉售：8%
  - 4 年內轉售：4%
- ◆ 新加坡於 2011 年 12 月 8 日推出「買方附加印花稅」(Additional Buyer's Stamp Duty)。外國人及以非個人身份（即法人團體）購入住宅物業均須繳交成交價或物業市值 10% 的「買方附加印花稅」（以價高者為準）。已擁有一個住宅物業而購入第二或更多個住宅物業的新加坡永久性居民<sup>3</sup>，及已擁有兩個住宅物業而購入第三或更多個住宅物業的新加坡公民，則須繳交 3% 的「買方附加印花稅」。
- ◆ 有鑑於物業市場持續熾熱，新加坡於 2013 年 1 月推出進一步冷卻樓市的措施。就「買方附加印花稅」而言，由 2013 年 1 月 12 日起，有關稅率將增加 5% 至 7% 不等。有關稅項亦伸延至涵蓋新加坡永久性居民購買首個住宅物業，及新加坡公民購買第二個住宅物業。
- ◆ 新加坡的「買方附加印花稅」制度如下：

受影響人士	稅率	
	2011 年 12 月 8 日至 2013 年 1 月 11 日	2013 年 1 月 12 日及 以後
外國人及以非個人身份 (即法人團體) 購入住宅物業	10%	15%

<sup>3</sup> 新加坡永久性居民一般指獲准長期居留新加坡的移民人士，但其“永久性居民”身份須約每五年申請延續。如果條件不符合，該延續申請可能會被拒而失去“永久性居民”身份。

受影響人士	稅率	
	2011年12月8日至 2013年1月11日	2013年1月12日及 以後
新加坡永久性居民購買 首個住宅物業	不適用	5%
新加坡永久性居民購買 第二個住宅物業	3%	10%
新加坡公民購買首個住 宅物業	不適用	不適用
新加坡公民購買第二個 住宅物業	不適用	7%
新加坡公民購買第三個 或更多個住宅物業	3%	10%

### 澳門

- ◆ 澳門於 2011 年 6 月 13 日引入特別印花稅，向住宅物業交易徵收最高 20%（一年或不足一年的轉移）或 10%（兩年或不足兩年但多於一年的轉移）的稅款。
- ◆ 澳門於 2012 年 10 月 30 日引入額外印花稅，向涉及非澳門永久性居民（包括公司）的住宅物業交易徵收 10% 的稅款

### 澳洲

- ◆ 澳洲並無就外地人士於澳洲購買住宅物業特別徵稅。然而，外地人士如以投資信託方式持有澳洲的住宅物業，則須繳交較高的預扣所得稅，有關稅率為 7.5% 至 15%。
- ◆ 另外，短暫居留人士（如於澳洲居住的非澳洲永久性居民或公民）、外國居民及由外地人士控制的公司或信託，如購買住宅物業，則須經「外來投資審批委員會」（Foreign Investment Review Board）批核。例如，短暫居留人士只可購入一個住宅物業作居住之用，並須於離開時強制出售有關物業；亦不可購入住宅物業作投資用途。



## 英國

- ◆ 英國政府在其 2012 年財政預算案推出一籃子措施，確保個人及公司就住宅物業交易公平納稅，並打擊逃稅行為，例如以公司及其他方式持有物業。有關措施包括：
  - 由 2012 年 3 月 21 日起，部分非自然人（即公司，以及由公司及匯集投資工具組成的合夥企業）獲得價值 200 萬英鎊或以上的住宅物業須繳交 15% 的「土地印花稅」(stamp duty land tax)；
  - 由 2013 年 4 月 1 日起，由部分非自然人擁有，價值 200 萬英鎊或以上的住宅物業，每年須繳交額外稅項（即「年度住宅物業稅」(Annual Residential Property Tax)）；及
  - 由 2013 年 4 月 6 日起，將「資產增值稅」(Capital Gains Tax)擴展至由「非常駐公司」(non-resident companies)或其他（不包括個人）處置價值 200 萬英鎊或以上的住宅物業的得益。

附件 C

私人住宅物業市場的措施對本地居民的影響評估

當香港身分證個人買家購買住宅物業時	2012年		2011年		2010年	
	數目	百分比	數目	百分比	數目	百分比
沒持有其他在港物業*	44 074	59.02%	39 634	53.23%	61 974	56.11%
擁有一項或多於一項其他在港物業*	30 604	40.98%	34 825	46.77%	48 472	43.89%
總數	74 678	100%	74 459	100%	110 446	100%

\*其他物業包括有關人士全權／聯權擁有的住宅及非住宅物業。

註：稅務局是從加蓋印花申請人的資料庫編製以上數據。如持有香港身分證的個人買家在該年內進行多於一宗交易，稅務局會按最後一宗交易計算其擁有的物業數目。



## THE LAW SOCIETY'S SUBMISSIONS NEW REGIME OF AD VALOREM STAMP DUTY

### 1. Background

The Government has introduced three rounds of special measures on Stamp Duty since November 2010 as follows:

#### 1.1 1<sup>st</sup> Round

The Financial Secretary announced in November 2010 the introduction of Special Stamp Duty ("SSD") effective 20 November 2010 to "*curb speculation in residential properties*". The Stamp Duty (Amendment) (No.2) Bill 2010 was passed by the Legislative Council in 2011.

#### 1.2 2<sup>nd</sup> Round

On 26 October 2012, the Financial Secretary announced the Administration's policy to launch the 2nd round of measures to "*help narrow the supply-demand gap and contribute to the stable development of our property market*". These measures included:

- (a) Enhancing SSD by increasing its rates and extending its application from 2 years to 3 years; and
- (b) Introduction of Buyers' Stamp duty ("BSD") set at 15% payable by non-Hong Kong Permanent Resident ("HKPRs") buyers of residential properties in addition to existing stamp duty. BSD will not apply to HKPRs. However, there will be no exemption for corporate entities both local and non-local as all companies have to pay BSD.

These measures came into effect on 27 October 2012.

#### 1.3 Stamp Duty (Amendment) Bill 2012 ("Bill")

This was gazetted on 28 December 2012 and introduced into the Legislative Council on 9 February 2013. The Bills Committee is still deliberating on the measures.

The Law Society published its first submission on the 2<sup>nd</sup> round of measures on 21 December 2012; the Administration responded in early January 2013. A second set of submissions dated 5 February 2013 were made a copy of which is attached hereto as **Appendix A**.

#### **1.4 3<sup>rd</sup> Round**

On 22 February 2013, the Financial Secretary announced another round of measures covering both residential and non-residential properties as follows:

- (a) increasing the costs of transactions by doubling across the board the rates of existing ad valorem stamp duty (“New AVD”) with specific exemptions; and
- (b) standardising the stamp duty regime by charging stamp duty on an agreement for sale and purchase on both residential and non-residential properties.

The Administration’s stated policy objective is the “*stable development of our property market and the stability of [our] financial system*”.

## **2. Analytical Review of SSD/BSD/AVD**

- 2.1 As a result of these three rounds of special measures within such a short period, the stamp duty regime in Hong Kong is now complicated and uncertain, such that it is difficult for the general public to grasp the full impact of the changes and it is also very difficult for lawyers to advise their clients.
- 2.2 The Law Society invited the Administration to release its research papers/studies and/or analyses on the success or otherwise of SSD/BSD and the justification for the New AVD.
- 2.3 The Administration indicated to the Law Society’s representatives that these measures are “*temporary in nature*”, yet it is noteworthy that it refuses to agree to add any “sunset clauses” to the proposed legislation. In our view, the Administration should adopt a twin pronged approach – it should add sunset clauses into the new legislation and provide flexibility in the subsidiary legislation so that these measures can be adjusted when the “policy objectives” have been achieved. In our view, if there are sunset clauses in place, then the Administration will be required to conduct a thorough review of its policies as currently it appears to be disjointed, implemented on an ad hoc basis and lacking in any forensic analysis.
- 2.4 It is also essential that such measures can be withdrawn without delay should the economic climate face a sudden downturn, otherwise, any delay in withdrawing such measures may result in serious damage to the economy.

**We request the Administration to provide:**

- (a) An analytical review of the goals to be achieved by all three rounds of amendments to the Stamp Duty Ordinance;**
- (b) An analysis of the success or otherwise of BSD/SSD within a specified timeframe; and**
- (c) Sunset provisions for all these measures together with a regular review of the success or otherwise of its policy.**

### **3. Comments on the New AVD**

The Law Society's Revenue and Property Law Committees have reviewed the New AVD and note the following issues require clarification:

#### **A. Exemptions**

##### **1. HKPRs not owning other Residential Properties**

1.1 Exemptions will be available to the following HKPRs:

- (a) acquisition of a residential property by an HKPR who does not own any other residential properties at the time of acquisition; or
- (b) acquisition of a residential property by two or more HKPRs jointly, and where each is acting on their own behalf and do not own any other residential properties at the time of acquisition; or
- (c) acquisition of a residential property by a HKPR jointly with a close relative or close relatives who is/are not HKPRs and where each of them is acting on their own behalf and do not own any other residential properties at the time of acquisition.

1.2 In the letter from the Inland Revenue Department to the Law Society dated 22 February 2013 ("IRD's Letter"), it provides a sample Statutory Declaration - IRSD-XX1 ("SD") and proposes that each buyer must declare and submit the same to the Stamp Office when the agreement is presented for stamping. By completing the SD, a buyer confirms:

- his HKPR status; and
- he is not the beneficial owner of any other residential properties.

We note the IRD's Letter further stated that "*Both the buyer and the seller are jointly and severally liable to pay the New AVD, as well as other persons who use such instruments*".

### 1.3 **HKPRs**

As pointed out in our earlier submissions, whether a buyer is a HKPR is a complicated issue and only the Director of Immigration is in a position to verify this status. Unless the Immigration Department can provide solicitors with a quick mechanism to verify a buyer's HKPR's status, it is unfair to impose this verification burden on the seller and his solicitors and to make the seller equally liable for the New AVD if the SD made by the buyer is subsequently found to be untrue.<sup>1</sup> Neither the vendor nor his solicitor can guard against the risk of a false declaration made by a buyer.

The Administration has failed to address the practical problems the SD imposes on solicitors. This matter must be addressed otherwise there will be future problems over the title to such properties. (See also our comments in Paragraph 3E below).

### 1.4 **“Not owning other Properties”**

There is no mechanism in place for a seller to check whether the buyer has any beneficial interest in any other residential properties.

The current land search system only enables solicitors to carry out a land search on the basis of property addresses, not by the names of owners.

We note there are many scenarios involving this “exemption”, the following is only one example:

- A buyer may not own a property in his own name but is a beneficial owner under a trust - a seller cannot obtain information on beneficial ownership.
- The Administration has failed to consider the practical problems of this example.

Unless a quick mechanism is put into place to verify whether a buyer has any beneficial interest in other residential properties, it will be inequitable:

- to impose such an impracticable burden on the seller and his solicitors as the vendor cannot guard against a false declaration made by a buyer
- to make the seller liable for the New AVD if the buyer's SD is subsequently found to be invalid.

- 1.5 We note the Administration's intention is to make all “*other persons who use the instruments*” (which phrase is so wide that it may cover all subsequent mortgagees and buyers) to be liable for the New AVD. This is totally inequitable as “innocent parties” will be caught by the legislation.

The statement in the IRD's Letter requires a full review. It will clearly result in problems over title going forward.

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<sup>1</sup> See the Law Society's Submissions dated 5 February 2013, page 9, para C (Appendix 1 hereto)

- 1.6 By a letter dated 28 March 2013 from Financial Services and the Treasury Bureau, the Administration accepted our view that it would not be equitable to hold the vendor liable for unpaid New AVD arising from statutory declarations made by purchasers/transferees in acquiring properties. The Administration proposes to clarify the liability of such vendors in the amendment bill. We welcome this clarification but note the Administration has failed to clarify the position of “*other persons who use the instruments*” as they too are innocent persons.

**The Law Society submits that any person, including subsequent mortgagees and buyers, who use the instrument should not be liable for the New AVD if it subsequently turns out that the buyer’s SD is invalid, unless there has been fraudulent activity.**

## **2. Residential Property and Car Park**

- 2.1 If a buyer purchases a flat, for HK\$25,000,000, with a car park for HK\$1,000,000 covered by one agreement for sale and purchase, this buyer (assuming a HKPR and not owning any other residential properties) will be exempted under the category set out in paragraph 1.1(a) above and will pay the old rate of AVD (i.e. 4.25%).

However, the exemption applies to acquisition of only residential property and it is unclear whether the old rate will apply to both the “flat” and “car park”, or the “flat” alone in the above example?

- 2.2 Under existing Stamp Office practice<sup>2</sup>, both the “flat” and “car park” in our example will be treated solely as residential property, therefore the old rate of 4.25% would be applied to both the “flat” and “car park”, not 4.25% for the flat and 8.5% for the car park.

**The Law Society invites the Administration to clarify the situation in the example in paragraph 2.1 above.**

## **3. “Close Relative”**

- 3.1 Acquisition or transfer of residential properties between close relatives, HKPR or non-HKPR, who may or may not own any other residential properties will be exempted.
- 3.2 However, the Administration has indicated that close relatives will be restricted to “spouses, parents, children, brothers and sisters”.

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<sup>2</sup> Stamp Office Interpretation and Practice Note 1

- 3.3 The following “close relatives” have been excluded: grandparents, grandchildren, son-in laws and daughter-in-laws even though transactions between such close relatives have been a common practice in Hong Kong.

**The Law Society submits that close relatives should be expanded to include grandparents, grandchildren, son-in laws and daughter-in-laws.**

#### **4. Mortgagee**

- 4.1 The Administration proposes to exempt transfers of a mortgaged property, residential or non-residential, to a mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap.112), or to a receiver appointed by such a mortgagee.
- 4.2 The Administration has failed to provide any rationale why mortgagees should be restricted to those within s.2 of the Inland Revenue Ordinance (Cap.112). As Hong Kong is an international financial centre, the exemption should cover foreign banks as well. We note mortgagees of genuine staff loans should also be covered.

**The Law Society submits that the definition of mortgagee should be expanded to include foreign banks as well as genuine staff loan mortgagees.**

#### **5. Estate**

- 5.1 The Administration should provide clarification on the following situations to enable solicitors to advise their clients on estate planning:
- (a) If a beneficiary acquires a residential property pursuant to a Will or under the law of intestacy, does this mean such beneficiary cannot thereafter buy additional residential properties unless he pays the New AVD?
  - (b) If the answer to (a) is positive, is this fair because the beneficiary may not have any occupation rights or is subject to certain restrictions in the Will?
  - (c) In case of renunciation by a beneficiary in favour of others by way of a Deed of Family Arrangement, will such renunciation be subject to the New AVD?
  - (d) Will persons holding properties as trustee/personal representative be liable for the New AVD?

**The Administration is invited to clarify the situations in 5.1 above.**

#### **6. Replacement of Properties**

- 6.1 We note an exemption will be available to persons who acquire residential or non-residential property to replace previously owned property in the following circumstances:



- purchased or acquired by an Urban Renewal Authority (URA) re-development projects; or
- under the Lands Resumption Ordinance Cap.124; or
- sold, pursuant to an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance Cap.545.

6.2 However, the list of statutory acquisitions or resumptions is incomplete and we query the failure to include the following Ordinances:

- MTR (Land Resumption and Related Provisions) Ordinance Cap.276;
- Roads (Works use and Compensation) Ordinance Cap.370; and
- Railways Ordinance Cap.519.

**The Administration is invited to expand the list to include the Ordinances in 6.2 above.**

## **B. Change of Residence**

The IRD Letter states:

*“Where a HKPR owns only one residential property (the 1<sup>st</sup> property) at the time he acquires another residential property (the 2<sup>nd</sup> property) but with the intent to dispose of the 1<sup>st</sup> property shortly, the New AVD will apply to the acquisition of the 2<sup>nd</sup> property as usual in the first instance, but he may seek a refund of the stamp duty paid in excess of that computed under the old rates upon proof that the 1<sup>st</sup> property has been disposed of within six months from the date when he executed the agreement to acquire the 2<sup>nd</sup> property.”*

In our view, the six months period is too short as it may take more than 6 months for an owner to sell and complete the transfer of his property. A period of one year is preferable and more reasonable.

**The Administration is invited to extend the period from 6 months to 12 months.**

## **C. Redevelopment**

We note the proposal to provide similar relief as that under the BSD regime for acquisition of residential and non-residential properties for redevelopment under the New AVD regime, thus the amount of New AVD paid in excess of the old rates would be refunded.

As we stated in our earlier submissions, the acquisition of all units in a building for redevelopment may constitute “*a series of transactions*” subject to a higher rate of ad

valorem stamp duty, the maximum of which will now be 8.5% under the New AVD regime.

We note that if a developer is required to pay 15% BSD at the time of acquisition, the aggregated rate, including NEW ADV, would be 23.5%. This aggregate amount of tax increases the financial burden for smaller developers. We note that if the acquisition project fails, and there is no refund of the BSD, which added together with the New AVD rates will create an undesirable side effect as it will have a disproportionate effect on smaller developer namely that *“the small developers become smaller while the big developers become bigger”*.<sup>3</sup>

**The Administration is invited to reconsider its policy in order to minimize any disruption to redevelopment activities. We suggest an exemption for the New AVD where a developer has acquired up to 30% of the undivided shares in a residential lot<sup>4</sup> which is not less than 30 years old.**

#### **D. Companies**

In Hong Kong it is a common practice for investment purchasers to own properties through a corporate entity in order to maximise tax advantages. We note that before the Administration changed its policies on Stamp Duty that a company buying a property worth say HK\$25 million only paid 4.25% as stamp duty. However, if the same company buys now, it has to pay 8.5% as New AVD plus 15% BSD amounting in total to 23.5% duty; this is a substantial increase in costs.

**The Law Society invites the Administration to consider an exemption for corporate entities from the New AVD which invest in property where all the shareholders are HKPRs and which maintain only one class of shares.**

#### **E. Liabilities**

The New AVD is a temporary and exceptional measure. A transaction will be exempted if the buyer is a HKPR and does not own any other residential properties, which the buyer has to confirm by way of SD.

We note there is no requirement for the buyer to supply the seller with a certified copy of the SD filed with the Stamp Office, thus the seller has no idea what the buyer has declared in such SD.

Section 15 of the Stamp Duty Ordinance (“SDO”) provides that no instrument chargeable with stamp duty shall be received in evidence in any proceedings (save and

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<sup>3</sup> See the Law Society’s Submission dated 5 February 2013, pages 5-6, para 7 (Appendix 1 hereto)

<sup>4</sup> Definition of Lot in the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545)

except: (i) criminal proceedings and (ii) civil proceedings by the Collector to recover stamp duty and penalty) unless such instrument is duly stamped.

We note an issue may arise in relation to a transaction which had been exempted from the New AVD but it subsequently comes to light the buyer was liable for the New AVD, thus all other persons, including the seller, may not be able to produce the relevant instrument (to which such buyer is a party) in court as evidence. This inability to produce the document may form a blot on title.

**The Law Society recommends that:**

- (i) the buyer shall supply the seller with a certified copy of the SD filed with the Stamp Office;**
- (ii) only the buyer be liable for the New AVD if it subsequently transpires that the buyer's SD is invalid; and**
- (iii) to exclude Section 15 of the SDO to assist innocent parties who need to present documentation in court proceedings.**

**The Law Society of Hong Kong**  
**2 April 2013**

12:14 15:15 FROM RECD W

(ii) 香港地產建設商會意見書連運輸及房屋局的回信  
(ii) Submission from The Real Estate Developers Association of Hong Kong and the reply letter from the Transport and Housing Bureau



# 香港地產建設商會

## THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

香港中環德輔道中19號環球大廈1403室  
1403 World-Wide House, 19 Des Voeux Road Central, Hong Kong  
Tel: 2826 0111 Fax: 2845 2521 www.rtda.hk

3 April 2013

By fax and mail

Mr. Duncan Pescod, JP  
Permanent Secretary for Transport and Housing  
Housing Authority Headquarters  
33 Fat Kwong Street  
Homantin  
Kowloon

### New Round of Measures to Address the Overheated Property Market

I wish to thank you and your colleagues for meeting with our members on 15 March. I have summarized below the views expressed by our members during the meeting and trust that you would give them due consideration.

Firstly, we are afraid that this latest round of "demand-side management" measures in doubling the ad valorem stamp duty on *all* property transactions will bring even greater distortion to an already distorted property market. Our overheated property market is the result of a shortage in housing supply (caused by the Government's constriction on land supply in the previous years) exacerbated by a super-low interest rate environment and abundance of liquidity, both arising from the quantitative easing measures taken by the Fed and other central banks.

We have pointed out time and again that the solution lies in increasing land supply. We are encouraged to see that the Government is finally taking steps to enhance land supply. This is beginning to bear fruit as corroborated by the findings of our own supply forecast survey showing an increase in new housing coming onto the market in the next few years.



# 香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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In contrast, the "demand-side management" measures taken by the Government are, to say the least, unfair to the investors who had been making investment decisions in the property market based on the merits of a housing policy that is clear and certain, which is now suddenly thrown into complete disarray. The risk appetite of developers will inevitably be curtailed by such change in policy and the result is a reduction in housing supply in the long run.

While the Government has repeatedly justified such "extreme" measures in the name of "extraordinary times", we are disappointed that it refuses to date to provide a set of objective criteria upon which achievement it would be prepared to withdraw from the market.

The latest proposal to double the ad valorem stamp duty on all and not just the residential properties is the proverbial last straw. It has sent a clear message to international investors that they are not welcome to do business in Hong Kong. The reputation that we have been fostering painstakingly as an open economy with a level playing field and the destination of choice for foreign investments has been tarnished significantly.

Locally, the 6-month window proposed for those owners who intend to sell their current homes and buy later is too short to be of use, as such homeowners will be subject to undue time pressure and may have to accept a lower than market offer for their existing homes and suffer monetary losses. Further, with the 20-month presale period currently set for the sale of uncompleted properties, they will not be able to purchase a flat from pre-sale projects, thus needlessly limiting their freedom of choice.

To address the overheated property market, we believe the Government should:

1. Set a good example to bring down land price by being more realistic with the land premium.
2. Speed up the delivery of housing supply by extending the pre-sale period of uncompleted properties from 20 months to 30 months, and removing hurdles in the development process by being more realistic with the premium assessment.



# 香港地產建設商會

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simplifying the protracted DD&H approval procedure, and streamlining other control procedures which are often repeated under different authorities.

Insofar as the "demand-side management" measures is concerned, the Government should

1. Introduce a sunset clause with periodic reviews in the enabling legislation.
2. Extend the window for exemption for owners to trade up/down from 6 months to 24 months.

At our meeting, I believe we have come to the agreement that the market has a mind of its own. I would urge the Government to be extremely cautious in trying to temper with the market and refrain from taking any action that may destroy the underpinning principles of the economic success of Hong Kong.

Yours sincerely

Stewart Leung  
Chairman, Executive Committee

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

政府總部  
運輸及房屋局  
香港九龍何文田佛光街33號



Government Secretariat  
Transport and Housing Bureau  
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13 May 2013

Mr Stewart Leung  
Chairman, Executive Committee  
The Real Estate Developers Association of Hong Kong  
1403, World Wide House  
19 Des Voeux Road, Central  
Hong Kong

Dear *Stewart*,

**New Round of Measures to Address the Overheated Property Market**

Thank you for your letter of 3 April 2013, summarizing the views of your members on the new measures the Government announced on 22 February 2013. This serves as a consolidated reply from the Administration.

***Need for the Latest Round of Demand-side Management Measures***

At our meeting with your Association on 15 March 2013, we have elaborated on the policy justifications for the Government to introduce the latest round of demand-side management measures. In short, amidst a low interest rate, tight supply and abundant liquidity environment as well as the exuberant state of the property market, we see the need to introduce new demand-side management measures to dampen local demand for residential and non-residential properties. As we have emphasised on various occasions, the measures (including the enhanced Special Stamp Duty (SSD) and Buyer's Stamp Duty (BSD) introduced in October 2012) are extraordinary ones introduced under the current exceptional circumstances. The Government would consider withdrawing these measures (except for the advancement of the timing for charging ad valorem stamp duty (AVD) on non-residential property transactions from the conveyance on sale to the agreement for sale) once the demand-supply situation of the property market has regained its balance.

### ***Mechanism for Future Adjustments to the Measures***

We note that the property market has recently cooled down and consolidated with price adjustment after successive rounds of measures. However, we do not consider it possible for us to pre-determine a date on which the measures would be deemed no longer necessary. We will continue to closely monitor the property market by making reference to a basket of indicators, including property prices, the housing affordability for the general public, the volume of property transactions, the supply of residential properties, mortgage payments, rent-to-income ratio, etc.

In order to have the necessary flexibility for the Government to make adjustments to the measures in a timely manner with reference to market situation, we have proposed in both the Stamp Duty (Amendment) Bill 2012 and the Stamp Duty (Amendment) Bill 2013 to empower the Financial Secretary to adjust the applicable SSD and BSD rates, and the AVD value bands and rates respectively by means of subsidiary legislation subject to negative vetting by the Legislative Council (LegCo).

### ***Six-month Grace Period for Hong Kong Permanent Residents (HKPRs) to Change Residential Properties***

In formulating the latest round of demand-side management measures, the Government is mindful of the possible situation that HKPRs may own more than one residential property in the course of changing their properties. To cater for such situation, we have proposed a refund mechanism for HKPR buyers. In short, if HKPR buyers choose to acquire a new residential property before disposing of their original and only residential property in Hong Kong, they have to pay AVD for the new property at the proposed new rates in the first instance. Provided that they have disposed of their old property by way of an agreement for sale within six months from the date of acquisition of the new property, after completion of the disposal of the old property, they can make an application within two years from the date of acquisition of the new property to the Inland Revenue Department for refund of stamp duty for the difference between the enhanced and the old AVD rates on the newly acquired property. The Government considers that the six-month grace period can meet the needs of HKPR buyers for replacing their residential properties without undermining the policy intent and effectiveness of the new measures in curbing demand of those buyers who already hold one or more residential properties in Hong Kong.



### ***Increasing Housing Land Supply***

Demand-side management measures aside, the Government reckons that increasing supply of flats is the key to solving the housing problem. In this regard, the Chief Executive has set out in his 2013 Policy Address an overall blueprint for increasing land supply in the short, medium and long term through a multi-pronged approach, involving both optimizing the use of developed land and identifying new land for development.

### ***Land Premium Assessment and Streamlining of the Land Development Process***

While taking note of your Association's remarks about land premium assessment by the Government, we would like to point out that the professional valuers of the Lands Department (LandsD) assess premium with reference to prevailing market evidence, including the transacted prices of completed units and the prices bid through Government land sales as determined by developers. As regards the suggestion on streamlining the land administration and control procedures, we understand that there is a regular dialogue between your Association and LandsD in this respect. Some enhancement proposals and practices regarding lease conditions were presented at the last meeting of the Land Sub-committee of the Land Development Advisory Committee on 20 March 2013, at which your Association was represented. We trust that your Association will continue to contribute to this constructive two-way communication process.

### ***Pre-sale Period of Uncompleted Properties***

As part and parcel of the overall package of measures to tackle the housing problem, the Government has been speeding up the processing of pre-sale consent applications in order to increase the supply of housing units. While taking note of your Association's suggestion of further extending the pre-sale period of uncompleted properties, the Government does not consider it suitable to change the prevailing mechanism under the present market situation.

### ***Legislation for Effecting the New Round of Measures***

As you may be aware, the Secretary for Financial Services and the Treasury introduced the Stamp Duty (Amendment) Bill 2013 into the LegCo on 17 April 2013 to implement the latest round of demand-side management measures. In the coming months, the Administration will as usual work

closely with the LegCo Bills Committee to facilitate its scrutiny of the Bill. Meanwhile, we will continue to listen to the views of the community.

Yours sincerely,



( Agnes Wong )

for Secretary for Transport and Housing

c.c. Secretary for Financial Services

and the Treasury

(Attn: Ms Elizabeth Tse)

Secretary for Development

(Attn: Ms Judy Chung)

Commissioner of Inland Revenue (Attn: Mr Wong Kuen-fai)

9 April 2013

The Honorable Tsang Chun Wah, John  
The Financial Secretary  
25/F, Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Sir,

### **Proposed measures to increase Stamp Duty on commercial property acquisitions**

Further to recent discussions between our advisors and the Financial Services and the Treasury Bureau, and following the Gazettal on 5 April 2013 of the implementing legislation, we write to set out certain concerns relating to the proposed increase in Stamp Duty on commercial property acquisitions. We are aware that these concerns are shared by other entities in the commercial sector, and are therefore likely to be raised when the bill is considered at the Committee stage.

We are supportive of the Government's moves to curb speculation in both the residential and non-residential market, and there appears to be a general level of public acceptance of those measures. While the Government's measures are aimed at addressing speculation in the market, it would not be in the interest of Hong Kong to impact genuine long-term investment in the commercial property sector. Should the final legislation penalize genuine investors in non-residential property (either as a long term investment and/or for their own use) this could have an adverse impact on occupancy costs, diversity of supply and the market perception of Hong Kong as a location for a regional business headquarters.

Our concern with the proposed measures, which is shared by others in the business community, is that companies like Manulife who wish to purchase new commercial premises for their own use so as to control occupancy costs and thus secure their own commercial future in Hong Kong are being strongly discouraged from doing so.

Manulife has had a significant presence in Hong Kong for more than 100 years and is a major employer. As a key player in the insurance industry, Manulife has made a significant contribution to Hong Kong as an international financial centre. With rising rents and a lack of future supply, Manulife looked to secure its future in Hong Kong by acquiring a property for its own long term use and occupation. After a long search, Manulife identified a suitable property under construction in Kwun Tong. Negotiations with the developer were complex and prolonged, but an application for early consent to pre-sell was submitted to Legal Advisory and Conveyancing Office (LACO) in December 2012. Although comments from LACO were minor, consent was delayed and was not finally issued until 1 March 2013, a week after the February 22<sup>nd</sup> introduction of the new Stamp Duty. Through this acquisition, Manulife is making a significant, long term and non-speculative investment into Hong Kong, and the imposition of the new ad valorem stamp duty well after we had negotiated the principle terms of the purchase has significantly added to the costs of this acquisition.

Page 1 of 2

We would suggest that the Government consider an exemption to the application of the new *ad valorem* stamp duty for genuine non-speculative acquisitions of non-residential property. This could follow the approach taken by the Government for SSD, where the amount of SSD payable varies depending on the period for which the property has been held. For example, the legislation could provide that the new *ad valorem* stamp duty rates for non-residential property would not be payable in a situation where a non-residential property was acquired for non-speculative purposes (as to which appropriate declarations could be made) and held for a period of more than, say, 3 years. This would also reflect the approach taken by the Singapore government. The proposed measures to double the *ad valorem* stamp duty should be aimed at addressing speculation in the market, however they should not affect transactions by investors such as Manulife who have a long-term investment outlook or who intend to use the property for their own use.

Additionally in light of the length of time we required to locate an appropriate commercial property and then to negotiate its acquisition and obtain LACO consent, we would also ask the Government to consider whether there should also be an exemption for purchase of new buildings for which LACO consent was being sought prior to the February 22 announcement of legislation.

In writing this letter we hope to assist the Government in responding to our concerns and those which will be raised by the commercial sector when the bill is discussed by the Bills Committee of the Legislative Council. We believe that the proposal we have outlined is fair, it addresses our specific circumstances and will encourage other owner occupiers to make long term investments in Hong Kong, while strongly discouraging speculative activity.

We would welcome the opportunity to meet with you at a mutually convenient time so that we may discuss these matters further with you in person.

Yours faithfully  
*For and on behalf of*  
*Manulife (International) Limited*



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Robert A. Cook  
Senior Executive Vice President and  
General Manager, Asia

RAC/lc

c.c.: Professor K C Chan, Secretary for Financial Services and the Treasury  
Ms. Julia Leung, Financial Services and the Treasury Bureau

財經事務及庫務局  
(庫務科)



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Via fax no.: 2104 8508

16 May 2013

Mr Robert A. Cook  
Senior Executive Vice President and  
General Manager, Asia  
The Manufacturers Life Insurance Company  
48/F, The Lee Gardens  
33 Hysan Avenue, Causeway Bay  
Hong Kong

Dear Mr Cook,

**New Measures to Address the Overheated Property Market**

Thank you for your letter of 9 April 2013 to the Financial Secretary, expressing views on the new measures the Government announced on 22 February 2013 to further address the overheated property market. We are authorized to reply on behalf of the Financial Secretary.

As briefly outlined by the Permanent Secretary for Financial Services and the Treasury (Financial Services) to the President and CEO of Manulife Financial Corporation, Mr Donald Guloien, at their meeting on 12 April 2013, it is amidst a low interest rate, tight supply and abundant liquidity environment as well as the exuberant state of the property market that the Government sees the need to introduce the new demand-side management measures to dampen local demand for residential and non-residential properties. The measures are extraordinary ones introduced under the current exceptional circumstances.

To implement the measures, we have on 17 April 2013 introduced into the Legislative Council the Stamp Duty (Amendment) Bill 2013. Under the Bill, the enhanced ad valorem stamp duty (AVD) rates are applicable to all non-residential property transactions taking place on or after 23 February 2013 on a fair basis, irrespective of the identity of the buyers and the purpose of acquisitions. In other words, whether the non-residential properties acquired are intended for long-term investment or for self-use does not constitute grounds for exemptions from the

enhanced AVD rates. Further, under the existing Stamp Duty Ordinance (Cap. 117), an application for consent to pre-sell is not relevant to or recognised as an agreement for sale and purchase. As such, there is no basis for granting an exemption under the Bill for Manulife's case.

We reckon that the demand-side management measures would inevitably cause inconvenience to the business community. Nonetheless, we find such measures essential to forestall the risk of a property market bubble, thereby safeguarding the macroeconomic and financial stability in Hong Kong. Indeed, we note that the property market has recently cooled down and consolidated with price adjustments after successive rounds of demand-side management measures. We will continue to closely monitor the property market and take necessary actions to respond to market conditions in a timely manner.

Last but not least, we are grateful for Manulife's commitment to Hong Kong over the past decades, and we look forward to its continued contributions to the prosperity of the financial industry in the years to come.

Yours sincerely,



( Ms Mable Chan )  
for Secretary for Financial Services  
and the Treasury

c.c.

Administrative Assistant to Financial Secretary  
Administrative Assistant to Secretary for Financial Services and the Treasury  
Commissioner of Inland Revenue  
(Attn: Mr Wong Kuen-fai)