LEGISLATIVE COUNCIL BRIEF

New Measures to Address the Overheated Property Market

INTRODUCTION

At the meeting of the Executive Council on 22 February 2013, the Council ADVISED and the Chief Executive ORDERED that the Stamp Duty Ordinance (Cap. 117) (the Ordinance) be amended to implement the following proposals -

(a) to increase the ad valorem stamp duty (AVD) rates on transactions for residential as well as non-residential properties, as follows –

Property consideration or market value (whichever is	Existing AVD rate	Proposed AVD rate
the higher)		
Up to \$2,000,000	\$100	1.50%
\$2,000,001 to \$3,000,000	1.50%	3.00%
\$3,000,001 to \$4,000,000	2.25%	4.50%
\$4,000,001 to \$6,000,000	3.00%	6.00%
\$6,000,001 to \$20,000,000	3.75%	7.50%
\$20,000,001 and above	4.25%	8.50%

The proposed AVD rates will apply for all transactions **except** for those in respect of residential properties where –

- (i) the buyer(s) is/are Hong Kong Permanent Residents (HKPRs) who is/are not beneficial owner(s) of any other residential property 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); or
- (ii) one of the buyers is a HKPR and all the other buyers (be they HKPRs or not) are his/her close relatives (i.e. parent, spouse, child, brother or sister) and none of them is a beneficial owner of any other residential property in Hong Kong at the time of acquisition;
- (b) to advance the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement for sale, to tally with the existing arrangement for residential properties; and
- (c) to empower the Financial Secretary (FS) to adjust the value bands and

existing and proposed AVD rates by way of subsidiary legislation subject to negative vetting by the Legislative Council (LegCo).

JUSTIFICATIONS

Renewed Signs of Exuberance in the Residential Property Market

2. In October 2012, the Government introduced a further package of property market measures, including an enhanced Special Stamp Duty $(SSD)^1$ to further combat speculative activities and a Buyer's Stamp Duty $(BSD)^2$ to accord priority to the housing need of HKPRs under a tight demand-supply situation.

3. The measures helped cool down the residential property market towards the Transactions in November and December 2012 plunged sharply as end of 2012. speculative activities and non-local demand were significantly reduced. Specifically, short-term trading of residential property (comprising resale before assignment and resale within 24 months) went down to only 245 cases or 3.4% of total transactions in January 2013, markedly lower than the long-term average of 1 570 cases or 17.1% over 1997-2010. The BSD has also significantly curtailed demand from non-local buyers. Stamp duty statistics from the Inland Revenue Department (IRD) indicate that purchases of residential property by non-local individuals and companies (local and non-local) plunged to 318 cases or 4.5% of total transactions in January 2013³, markedly below the respective monthly averages of 1 089 cases or 13.6% in January to October 2012 (i.e. the period before the announcement of the BSD). The upward momentum in flat prices, having risen by an average of 2% per month during January to October 2012, was temporarily arrested in November and December, which rose by an average of only 0.7% per month during these two months. Tables and graph showing the effect of the enhanced SSD and BSD are at Annex A.

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Holding period	SSD rates for residential properties acquired between 20 November 2010 and 26 October 2012	Proposed SSD rates for residential properties acquired on or after 27 October 2012
Property held for six months or less	15%	20%
Property held for more than six months	10%	15%
but for 12 months or less		
Property held for more than 12 months	5%	10%
but for 24 months or less		
Property held for more than 24 months	N/A	10%
but for 36 months or less		

¹ The Government proposed to increase the duty rates and extend the holding period of SSD as follows –

² The Government proposed to impose BSD on residential properties acquired by any person except a HKPR acquiring residential properties in his own name and as the beneficial owner thereof. The proposed BSD is to be charged at a flat rate of 15% on the stated consideration of the residential property transaction or market value of the property, whichever is the higher, in addition to the existing AVD and SSD, if applicable.

³ Total number of potential BSD cases for January 2013 is 318 (including 74 cases of non-local individuals, 16 cases of non-local companies, as well as 228 cases of local companies).

4. Despite these measures, the market turned more bullish again on entering 2013, amidst expectations of a persistently low interest rate environment and still tight demand-supply balance. Preliminary data from the Rating and Valuation Department (RVD) indicates that overall flat prices resumed upward momentum with a 2% gain in January 2013. Overall flat prices have rallied by 120% over the recent trough in 2008 and were 34% above the peak in 1997. Trading activities also bounced back quite notably in January, though the official figure for February (which reflects the transaction level in January given the time lag between execution and registration of deeds) is not available at this juncture.

5. The property market is now clearly and increasingly driven up by an irrational expectation that flat prices could only go up further in the near term, thereby creating a self-fulfilling upward price spiral. What is more worrying is that the renewed pick-up is more evident in the mass market (i.e. flats smaller than 70 square metres in saleable area), with price gain of 2% in January 2013, and a cumulative 124% gain over the recent trough in 2008. The luxury end, conceivably more affected by BSD and enhanced SSD, saw only a modest price gain of 0.7% in January. Graphs showing the residential property prices and transaction volume are at **Annex B**.

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6. With flat prices rising substantially faster than income growth, the ratio of mortgage payment to median household income, or the home purchase affordability ratio⁴, worsened to around 52% in the fourth quarter of 2012, exceeding for the first time the long-term average of 49% over 1992-2011 (see graph at **Annex C**). Were interest rates to increase by three percentage points to a more normal level, the affordability ratio would deteriorate sharply to 68%. The re-acceleration in prices and transactions in the past few weeks, coupled with the continued worsening in housing affordability, are clear evidence that the property market is moving further away from economic fundamentals. Further demand-side measures are thus warranted before the demand-supply situation returns to a more balanced level. Failure to take action now carries with it a high risk of the upward spiral in property prices continuing unabated, eventually precipitating a very costly adjustment and endangering the overall macroeconomic and financial stability of Hong Kong.

Evident Signs of Overheating in the Non-residential Property Market

7. The non-residential property market rallied during most of 2012 amidst the low interest rate environment and a tight demand-supply balance. Indeed, with almost uninterrupted increases through the year, prices of retail, office and flatted factory space surged by a cumulative 39%, 23% and 44% respectively in 2012. Compared with the recent trough in 2009, sale prices for these properties have soared by 148%-202%.

8. Trading activities for non-residential properties were also hectic,

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⁴ This refers to the ratio of mortgage payment for a 45-square metre flat to median income of households (excluding those living in public housing), for a tenure of 20 years at the prevailing mortgage rate.

particularly so in late 2012. According to RVD, in the fourth quarter of 2012, trading in retail space jumped by 51% over the preceding quarter to around 2 550 cases and office space by 45% to around 1 180 cases. These were very rampant levels by historical standards, when compared with their respective long-term averages of 1 160 and 630 cases per quarter over 1998-2011. Also, transactions for flatted factory space soared by 54% in the fourth quarter of 2012 to a record high of 3 760 cases, also markedly above the long-term average of 1 350 cases. For 2012 as a whole, trading volumes for retail, office and flatted factory space rose by 23%, 9% and 30% respectively over 2011. Graphs showing the property prices and transaction volume for office, retail and flatted factory space are at **Annex D**.

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9. Given the above, the Government sees the need to introduce a new round of fiscal measures to help cool down the property market.

PROPOSALS

Raising the AVD Rates

10. In order to reduce immediate demand for both residential and non-residential properties, we propose to increase the cost of acquisition generally by doubling across the board the rates of the existing AVD applicable to both residential and non-residential properties. For properties valued below \$2 million, the Government reduced in 2007 the AVD of 0.75% to a fixed duty of \$100; if we merely double the flat stamp duty rate for these properties, we see a high risk that buyers could flock to these lower priced units, thus driving up prices in that sector. We see the need to set the new rate for properties in this price range by reference to the previous 0.75% rate. Accordingly, the new rate for these properties will be 1.5%. The impact of the proposed increase in rates on potential buyers is illustrated as follows -

Assumed property price	AVD payable at existing rates	AVD payable at proposed rates	Increase in monetary and percentage terms		
\$2,000,000	\$100	\$30,000	\$29,900 (299 times)		
\$3,000,000	\$45,000	\$90,000	\$45,000 (100%)		
\$4,000,000	\$90,000	\$180,000	\$90,000 (100%)		
\$6,000,000	\$180,000	\$360,000	\$180,000 (100%)		
\$20,000,000	\$750,000	\$1,500,000	\$750,000 (100%)		
\$25,000,000	\$1,062,500	\$2,125,000	\$1,062,500 (100%)		

<u>E</u> A one-page table summing up our stamp duty regime is at **Annex E**.

Exceptions for HKPRs

11. We are mindful that any new 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 the housing needs of HKPRs. Hence, we propose that the existing lower AVD rates should continue to be applicable to residential property transactions where -

- (a) the buyer(s) is/are HKPRs who is/are not beneficial owner(s) of any other residential property in Hong Kong at the time of acquisition; or
- (b) one of the buyers is a HKPR and all the other buyers (be they HKPRs or not) are his/her close relatives (i.e. parent, spouse, child, brother and sister) and none of them is a beneficial owner of any other residential property in Hong Kong at the time of acquisition.

12. For the purpose of this exemption for HKPR-buyers, we will adopt the same definition of HKPR used in the BSD context, i.e. -

- (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. 177A).

When submitting relevant transaction documents to IRD for stamping, HKPR-buyers will need to declare that they are HKPRs and that they are **not** beneficial owners of any other residential property in Hong Kong. IRD will then verify the declarations against the records held by the Land Registry.

13. For revenue protection purpose, the existing stamp duty regime holds both sellers and buyers jointly and severally liable to the payment of the AVD. In practice, stamp duty has mostly been paid by the buyer. We have extended this arrangement to the SSD and its enhanced version. We propose to extend this joint liability arrangement to the enhanced AVD. As for BSD which targets buyers, we have suggested in the Stamp Duty (Amendment) Bill 2012 currently under LegCo scrutiny that this be only chargeable on buyers.

14. It should be noted that the above exceptions from the enhanced stamp duty rates are only available to HKPR-buyers, not sellers, of residential properties. IRD will remind potential sellers of their liabilities under the law.

15. In order to cater for the situation where the HKPR-buyers intend to change their single residential properties, the proposed arrangements upon enactment of the

Stamp Duty (Amendment) Bill 2013 (the Amendment Bill) will be as follows -

- (a) for HKPRs who have disposed of all their old residential properties before acquiring a residential property (先賣後買), they would be charged the old AVD rates. However, should they fail to complete any of the disposal transactions (i.e. where the agreement for sale is cancelled, annulled or rescinded or is otherwise not performed), IRD would recoup the difference between the old and new AVD rates on the newly acquired property⁵; and
- (b) for HKPRs who have acquired a residential property before disposing of their original one (must be their only other residential property) (先買後賣), they should be charged the new AVD rates in the first instance as usual. They would be given six months from the date of acquisition of the new property to dispose of their old property. When they complete the conveyance on the sale of the old property, they may seek a refund of stamp duty for the difference between the new and old AVD rates on the newly acquired property.

Other Exemptions for Specified Circumstances

16. Having made reference to the existing SSD and BSD regime, our current thinking is to propose to grant exemptions to the enhanced AVD rates under the following circumstances (in which case the old AVD rates would apply, where appropriate) -

- (a) 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 (the old AVD rates would apply);
- (b) nomination⁶ of a close relative(s) (be they HKPRs or not) who are beneficial owners of any other residential property in Hong Kong at the time of nomination, to take up the assignment of a residential property (the old AVD rates would apply). If the close relatives are not beneficial owners 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;
- (c) acquisition or transfer of a residential or non-residential property by a court

⁵ IRD would check with Land Registry on whether an agreement for sale is cancelled, annulled or rescinded.

⁶ Under the existing Ordinance, nomination of a close relative to take up the assignment of a property will not attract any AVD liability. As an anti-avoidance measure, we will propose to amend the relevant provision to the effect that the current exemption would only be applicable to close relatives who are not beneficial owners of any other residential property in Hong Kong at the time of nomination. We will also align the scope of close relatives under AVD (both existing and enhanced), SSD and BSD to cover parent, spouse, child, brother or sister.

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) (the old AVD rates would apply);

- (d) transfer of a mortgaged residential or non-residential property in various forms 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 (the old AVD rates would apply);
- (e) transfer of a residential or non-residential property which relates solely to the estate of a deceased person (exempted from all AVD);
- (f) acquisition or transfer of a residential or non-residential property by or to a body corporate from another associated body corporate (exempted from all AVD);
- (g) acquisition or transfer of a residential or non-residential property by or to the Government (exempted from all AVD);
- (h) acquisition of a residential or non-residential property (including bare sites) for the purpose of redevelopment. Persons (HKPRs and non-HKPRs including companies) may apply for a refund of the stamp duty paid in excess of that computed under the old rates if the relevant residential or non-residential property formed part of a lot on which the applicant has constructed a new building within six years. This exemption is analogous to that under the BSD regime in the Stamp Duty (Amendment) Bill 2012 (the old AVD rates would apply);
- (i) acquisition of a residential or non-residential property by persons whose existing residential or non-residential properties are sold pursuant to redevelopment projects pursued by the Urban Renewal Authority, resumed 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). This exemption is analogous to that under the BSD regime in the Stamp Duty (Amendment) Bill 2012 (the old AVD rates would apply); and
- (j) gift of a residential or non-residential property received by charitable institutions exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) (exempted from all AVD).

Having regard to the exceptions for HKPRs as set out in paragraph 11 above and the other exemptions which mirror those under SSD and BSD regime as mentioned above, a list of circumstances under which the enhanced AVD rates are not applicable is set out in **Annex F**.

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17. In respect of an exchange of a residential property for another residential property or for a non-residential property, the equality money and only the equality money would be chargeable to the AVD, which shall be at the higher rates unless all purchaser(s)/transferee(s) of the residential property(ies) do not own any other residential property in Hong Kong at the time of the exchange (in which case, the lower rates would apply).

Advancing the Charging of Stamp Duty for Non-residential Property Transactions

18. Prior to 1992, stamp duty on both residential and non-residential property transactions was not payable until conveyance on sale. After the legislative amendment in 1992 which was meant to dampen speculation, the stamp duty payment for residential property transactions was shifted from the conveyance on sale to the agreement for sale and purchase with only a nominal duty of \$100 for conveyance on sale.

19. For non-residential property, the agreement for sale is not chargeable with any stamp duty, whereas the conveyance on sale is chargeable with the AVD. For consistency sake, we propose to charge stamp duty in respect of non-residential property transactions from the conveyance on sale to the agreement for sale. This proposed measure, coupled with the proposed increase in AVD rates applicable to both residential and non-residential property transactions, could hopefully forestall the shifting of speculation or investment demand from the residential market to the non-residential market.

Power to Adjust the Value Bands and Rates of AVD

20. We propose to empower FS to adjust the value bands and rates of both the existing and enhanced AVD by means of subsidiary legislation subject to LegCo's negative vetting, so that adjustments can be made in a timely manner as and when necessary having regard to the market situation.

IMPLEMENTATION

21. The proposed new round of measures will come into **immediate effect** once announced. We will propose in our Amendment Bill that the measures shall take effect on 23 February 2013, the day immediately following the announcement on 22 February 2013. IRD will record all the property transactions between 23 February 2013 and the date on which the Amendment Bill is enacted. Demand notes for the stamp duty underpaid will be issued after the enactment of the Amendment Bill.

IMPLICATIONS OF THE PROPOSAL

<u>G</u> 22. The economic, financial and civil service, and sustainability implications of the proposal are set out at **Annex G**. The proposed legislative amendments will not affect the current binding effect of the Ordinance. It has no productivity and environmental implications. It is in conformity with the Basic law, including the provisions concerning human rights.

PUBLIC CONSULTATION

23. Owing to the confidentiality of the measures, no formal consultation has been carried out specifically for the proposed measures at paragraph 1 above. That said, in formulating the proposals, we have taken into account calls from the public for further measures to address the overheated property market and to ensure that the housing demand from HKPR-buyers is accorded priority amidst the tight supply in the residential property market.

PUBLICITY

24. The FS has announced the new round of stamp duty measures at a press conference on 22 February 2013. Press release will be issued. A spokesman will be available to answer press enquiries.

ENQUIRIES

25. Enquiries on this brief can be addressed to Ms Shirley Kwan, Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (Revenue) at 2810 2370.

Financial Services and the Treasury Bureau February 2013

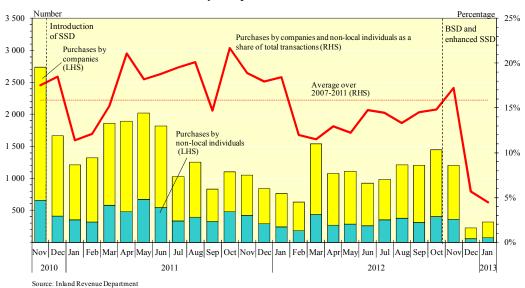
	2009	2010	2011	2012
Confirmor	3 622	3 543	708	78
(held less than 24 months)	-	(-2.2%)	(-80.0%)	(-89.0%)
Confirmor	428	175	175	218
(held more than 24 months)	-	(-59.1%)	(0.00%)	(24.6%)
Resale within 6	5 339	9 147	2 617	83
months	-	(71.3%)	(-71.4%)	(-96.8%)
Resale between 6 and	2 998	7 719	4 857	168
12 months	-	(157.5%)	(-37.1%)	(-96.5%)
Resale between 12	12 286	10 744	9 649	7 382
and 24 months	-	(-12.6%)	(-10.2%)	(-23.5%)
No. of confirmor and short-term resale (% of total)	24 673 (18.58%)	31 328 (20.12%)	18 006 (18.75%)	7 929 (8.69%)
Total transactions	132 775	155 723	96 034	91 264

Transactions involving Confirmor and Short-term Resale Cases

Note: Within brackets are the year-on-year changes.

SSD Cases

Holding Period	Sep/12	Oct/12	Nov/12	Dec/12	Jan/13
\leq 6 months	8	5	7	6	2
>6 months≤ 12 months	11	12	22	17	18
>12 months≤24 months	218	275	225	127	167
Total SSD cases	237	292	254	150	187
(% of total transactions)	(2.86% of 8 299)	(3.00% of 9 724)	(3.65% of 6 964)	(3.80% of 3 951)	(2.62% of 7 136)





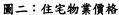
圖一:公司及非本地個人買家



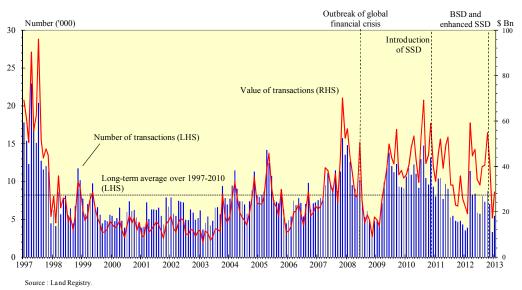


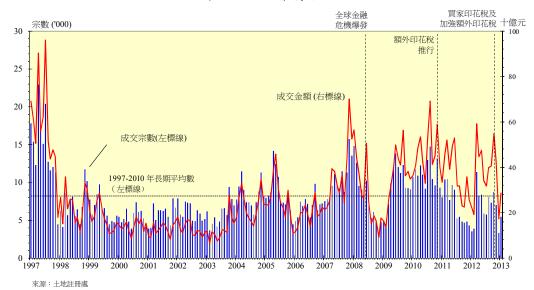
Source: Rating and Valuation Department.











圖三:住宅物業成交

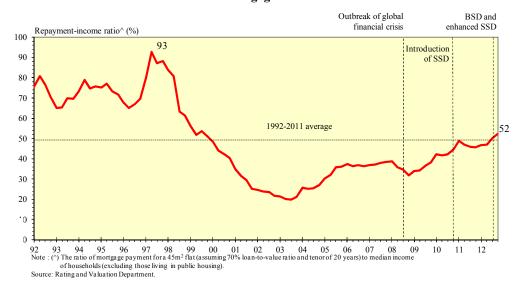


Chart 4: Mortgage-to-income ratio



圖四:按揭供款相對入息比率

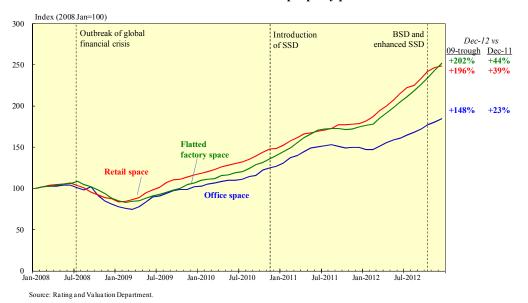
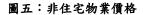


Chart 5: Non-residential property prices





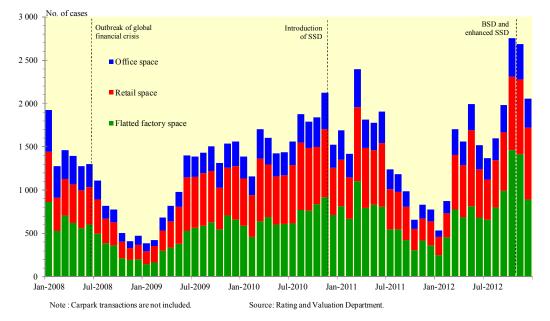
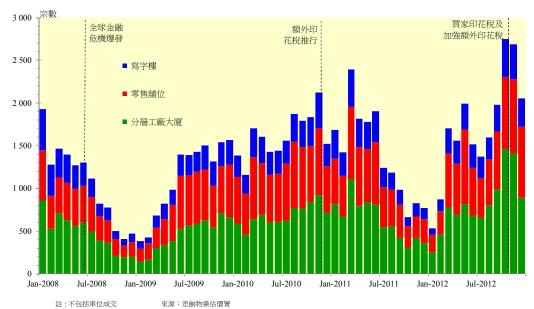


Chart 6 : Transactions for office, retail and flatted factory space



圖六:寫字樓、零售舖位及分層工廠大廈的成交

Stamp Duty Regime

A table summing up the existing and enhanced AVD rates, the SSD rates imposed in November 2010 and enhanced rates in October 2012, as well as the BSD rate imposed in October 2012 is set out below -

Property value	AVD		SSD (residential)		SSD (residential)		BSD		
	(residential & non-residential)		(20.11.10 - 26.10.12)		(27.10.12 – after)		(residential)		
		23.2.2013	$Held \leq$	$Held \leq$	$Held \leq$	Held≤	$Held \leq$	$Held \leq$	(27.10.12 -
		onwards	6 mths	1 yr	2 yrs	6 mths	1 yr	3 yrs	after)
		(except for							
		residential							
	Existing	properties of							
		HKPRs with no							
		residential							
		property)							
Up to	\$100	1.50%	15%	10%	5%	20%	15%	10%	15%
\$2,000,000									
\$2,000,001 to	1.50%	3.00%	15%	10%	5%	20%	15%	10%	15%
\$3,000,000									
\$3,000,001 to	2.25%	4.50%	15%	10%	5%	20%	15%	10%	15%
\$4,000,000									
\$4,000,001 to	3.00%	6.00%	15%	10%	5%	20%	15%	10%	15%
\$6,000,001									
\$6,000,001 to	3.75%	7.50%	15%	10%	5%	20%	15%	10%	15%
\$20,000,000									
\$20,000,001	4.25%	8.50%	15%	10%	5%	20%	15%	10%	15%
and above									

List of Exceptions and Exemptions

The new AVD, subject to legislation, will not be applicable under the following circumstances –

- (a) acquisition of a 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;
- (b) acquisition of a residential property 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 in Hong Kong at the time of acquisition;
- (c) acquisition of a residential property by a HKPR jointly with a close relative or close relatives (i.e. parent, spouse, child, brother or sister) 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;
- (d) 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;
- (e) nomination of a close relative(s) (be they HKPRs or not) to take up the assignment of a residential property if they are beneficial owners of any other residential property in Hong Kong at the time of nomination;
- (f) acquisition or transfer of a residential or non-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);
- (g) transfer of a mortgaged residential or non-residential property 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;
- (h) transfer of a residential or non-residential property which relates solely to the estate of a deceased person;
- (i) acquisition or transfer of a residential or non-residential property by or to a body corporate from an associated body corporate;
- (j) acquisition or transfer of a residential or non-residential property by or to the Government;

- (k) acquisition of a residential or non-residential property (including bare sites) for the purpose of redevelopment;
- (1) acquisition of a residential or non-residential property by a person to replace another property which was owned by that person and that has been purchased or acquired pursuant to redevelopment projects pursued by the Urban Renewal Authority, or is resumed under the Lands Resumption Ordinance (Cap. 124) or is sold pursuant to an order for sale made by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) and the person is acting on his/her own behalf; and
- (m) gift of a residential or non-residential property received by charitable institutions exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112).

Implications of the Proposal

Economic implications

The proposed across-the-board increase in the AVD rates will affect all potential buyers of residential and non-residential properties, except for those HKPR individuals who do not possess any other residential property at the time of purchase. Overall, the latest demand-management measure on residential property is deemed necessary to forestall a further build-up in property market exuberance, thereby safeguarding macro-economic and financial sector stability, and hence lessening the pain of eventual adjustments.

2. Separately, the AVD hike would apply to all non-residential property acquisitions without any exemption. Together with the advancement of stamp duty payment from the date of assignment to the date of agreement for sale and purchase, the transaction costs to speculators and investors would increase markedly, yielding possibly also some dampening effects on the current momentum in commercial property prices.

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, although they are expected to bring about additional revenue to the Government. The amount of additional revenue is uncertain as it depends on the number and value of the transactions caught by the new measure.

4. Additional workload and administrative cost arising from the measures will be absorbed within the existing resources of relevant departments as far as possible.

Sustainability implications

5. The measures aim to ensure the healthy and stable development of the property market, which is crucial to the sustainable development of Hong Kong as a whole.