



Inland Revenue Department

The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

STAMP OFFICE INTERPRETATION AND PRACTICE NOTES

NO. 8 (REVISED)

AD VALOREM STAMP DUTY

These notes are issued for the information of duty payers and their tax representatives. They contain the Department's interpretation and practices in relation to the law as it stood at the date of publication. Duty payers are reminded that their right of appeal to the Court is not affected by the application of these notes.

These notes replace those issued in October 2014.

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INTRODUCTION

The Government has launched successive rounds of demand-side management measures to curb short-term speculative activities and to address the overheated property market. Special stamp duty (“SSD”) was introduced on 20 November 2010 on certain residential property transactions in which the property was acquired on or after 20 November 2010 and resold within 24 months after acquisition. SSD was enhanced on 27 October 2012 extending the property holding period for charging SSD from 24 months to 36 months and adjusting upward the SSD rates. Buyer’s stamp duty (“BSD”) was introduced on 27 October 2012 on the acquisitions of residential properties. The stamping requirements and the practices adopted by the Collector of Stamp Revenue (“the Collector”) in relation to SSD and BSD are outlined in Stamp Office Interpretation and Practice Notes (“SOIPN”) No. 5 (Revised) and No. 7 respectively.

2. To further address the overheated property market, the Financial Secretary announced on 22 February 2013 to increase the ad valorem stamp duty (“AVD”) rates on transactions for both residential and non-residential properties and to advance the timing for charging AVD on non-residential property transactions from the conveyance on sale to the agreement for sale. Upon enactment of the relevant amendment ordinance in July 2014, a conveyance on sale or a chargeable agreement for sale of immovable property executed on or after 23 February 2013 is subject to AVD at higher rates (Scale 1) under head 1(1) or head 1(1A) in the First Schedule to the Stamp Duty Ordinance (Cap 117) (“the Ordinance”), as the case may be. However, in certain circumstances, AVD at lower rates (Scale 2) is applicable to the conveyance on sale or chargeable agreement for sale. Scale 2 rates are, in essence, the prevailing AVD rates immediately before 23 February 2013.

3. To help cool down the property market, the Government announced on 4 November 2016 to increase the AVD rates chargeable on residential property transactions to a flat rate of 15 per cent. In January 2017, the Government introduced the Stamp Duty (Amendment) Bill 2017 (“the 2017 Bill”) into the Legislative Council. The 2017 Bill was enacted as the Stamp Duty (Amendment) Ordinance 2018 (“the 2018 Amendment Ordinance”), which was published in the Gazette on 19 January 2018. By virtue of the 2018 Amendment Ordinance, Scale 1 rates are divided into Part 1 (a flat rate of

15%) and Part 2 (original Scale 1 rates) with effect from 5 November 2016. Any instrument executed on or after 5 November 2016 for the acquisition of residential property, unless specifically exempted or otherwise provided, is subject to AVD at the rate under Part 1 of Scale 1. The 2018 Amendment Ordinance did not introduce any change to the exemption arrangements under which conveyances on sale and chargeable agreements are chargeable to AVD at Scale 2 rates. On the other hand, for Hong Kong permanent residents (“HKPRs”) who change their residential property and wish to claim partial refund of the AVD paid in respect of the new property acquired on or after 5 November 2016, the time limit for the disposal of the original property has been extended from within 6 months to within 12 months after the date of conveyance of the new property.

4. During the scrutiny of the 2017 Bill, there were concerns expressed by members of the Legislative Council and the public over the increase in transactions involving acquisitions of multiple residential properties under a single instrument by HKPRs, thus avoiding payment of AVD at the flat rate of 15%. To address the issue, the Government announced on 11 April 2017 that it would tighten the exemption arrangement for HKPR from payment of AVD at the rate under Part 1 of Scale 1 such that the exemption would only apply to acquisition of a single residential property under one instrument. In May 2017, the Government introduced the Stamp Duty (Amendment) (No. 2) Bill 2017 (“the 2017 (No. 2) Bill”) into the Legislative Council. The 2017 (No. 2) Bill was enacted as the Stamp Duty (Amendment) (No. 2) Ordinance 2018 (“the 2018 (No. 2) Amendment Ordinance”), which was published in the Gazette on 20 April 2018. The tightened exemption arrangement came into effect on 12 April 2017.

5. This Practice Note sets out how the Collector will apply the provisions in relation to the different rates of AVD under head 1(1) and head 1(1A) of the First Schedule to the Ordinance from 23 February 2013 onwards and explains the Department’s practices in connection therewith. This Practice Note should be read in conjunction with SOIPN No. 1 (Revised) which outlines the stamping requirements and the practices followed by the Collector in relation to agreements for sale and purchase of immovable properties and subsequent conveyances on sale as well as the Collector’s interpretation on certain terms.

SCOPE

Rates of AVD

6. The amount of AVD payable on a conveyance on sale or chargeable agreement for sale of an immovable property is calculated by reference to the stated consideration or the market value of the property, whichever is the higher, at the applicable rates under Scale 1 or Scale 2 in head 1(1) or head 1(1A), as the case may be. Scale 1 rates are further divided into Part 1 and Part 2 with effect from 5 November 2016.

7. The various AVD rates are as follows:

Scale 2 rates

Consideration or value of the property (whichever is the higher)	Rates
Up to \$2,000,000	\$100
\$2,000,001 to \$2,351,760	\$100+10% of the excess over \$2,000,000
\$2,351,761 to \$3,000,000	1.50%
\$3,000,001 to \$3,290,320	\$45,000+10% of the excess over \$3,000,000
\$3,290,321 to \$4,000,000	2.25%
\$4,000,001 to \$4,428,570	\$90,000+10% of the excess over \$4,000,000
\$4,428,571 to \$6,000,000	3.00%
\$6,000,001 to \$6,720,000	\$180,000+10% of the excess over \$6,000,000
\$6,720,001 to \$20,000,000	3.75%
\$20,000,001 to \$21,739,120	\$750,000+10% of the excess over \$20,000,000
\$21,739,121 and above	4.25%

Scale 1 rates

Part 1: A flat rate of 15%

Part 2:

Consideration or value of the property (whichever is the higher)	Rates
Up to \$2,000,000	1.50%

Consideration or value of the property (whichever is the higher)	Rates
\$2,000,001 to \$2,176,470	\$30,000+20% of the excess over \$2,000,000
\$2,176,471 to \$3,000,000	3.00%
\$3,000,001 to \$3,290,330	\$90,000+20% of the excess over \$3,000,000
\$3,290,331 to \$4,000,000	4.50%
\$4,000,001 to \$4,428,580	\$180,000+20% of the excess over \$4,000,000
\$4,428,581 to \$6,000,000	6.00%
\$6,000,001 to \$6,720,000	\$360,000+20% of the excess over \$6,000,000
\$6,720,001 to \$20,000,000	7.50%
\$20,000,001 to \$21,739,130	\$1,500,000+20% of the excess over \$20,000,000
\$21,739,131 and above	8.50%

8. Unless specially exempted or otherwise provided (see paragraphs 37 to 83), AVD at the rate under Part 1 of Scale 1 is payable on a conveyance on sale or chargeable agreement for sale of any residential property executed on or after 5 November 2016 under head 1(1) or head 1(1A), as the case may be. The major exception is where the purchaser or transferee of a residential property is a HKPR acting on his or her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition of the property concerned. With effect from 12 April 2017, the exception is tightened to be applicable only to acquisition of a single residential property.

9. AVD at Part 2 of Scale 1 rates is payable on a conveyance on sale or chargeable agreement for sale of any non-residential property executed on or after 5 November 2016. Part 2 of Scale 1 rates are in essence the prevailing Scale 1 rates before 5 November 2016.

10. The changes brought about by the 2018 Amendment Ordinance do not apply to the following instruments, and the pre-amended Ordinance continues to apply in relation to them as if the relevant amendments had not been made [section 72(3)]:

- (a) an instrument that was executed before 5 November 2016;
- (b) an agreement for sale that supersedes another agreement for

sale made between the same parties and on the same terms before 5 November 2016; or

- (c) a conveyance on sale that is executed in conformity with an agreement for sale made before 5 November 2016.

The following examples explain the application of the different AVD rates to instruments of residential property transactions executed before 5 November 2016 and those executed from that date onwards:

Scenario 1

Mr A, a HKPR, entered into a provisional agreement for sale and purchase (“PASP”) on 1 November 2016 to acquire a residential property at a price of \$10,000,000. The formal agreement for sale and purchase (“ASP”) and the assignment were signed on 14 November 2016 and 30 December 2016 respectively. Mr A owned another residential property in Hong Kong on 1 November 2016.

AVD payable

Since the PASP was executed before 5 November 2016 and the ASP was executed within 14 days from the date of the PASP, the ASP is chargeable with AVD at the then prevailing Scale 1 rates. The AVD payable is \$750,000 ($\$10,000,000 \times 7.5\%$). Provided that the ASP is duly stamped, the assignment will be chargeable with fixed duty of \$100 and the obligation to stamp the PASP will be discharged.

Scenario 2

Mr A, a non-HKPR, entered into a PASP on 17 November 2016 to acquire a residential property at a price of \$10,000,000. The ASP and the assignment were signed on 2 January 2017 and 15 March 2017 respectively. Mr A owned another residential property in Hong Kong on 17 November 2016.

AVD payable

Since the PASP was executed on or after 5 November 2016 and the ASP was executed after 14 days from the date of the PASP, the PASP is chargeable with AVD at Part 1 of Scale 1 rate. The AVD payable is \$1,500,000 ($\$10,000,000 \times 15\%$). Provided that the PASP is duly stamped, the ASP and the assignment will each be chargeable with fixed duty of \$100.

Meaning of HKPR

11. Following the BSD regime, a HKPR means a person who holds a valid permanent identity card (“PIC”). HKPRs also include the aged, the blind or the infirm who are not required to register or apply for the issue of an identity card or for the renewal of an identity card and are entitled to be issued with a PIC if they make an application for it.

Beneficial owner of residential property

12. Generally speaking, the legal owner of a residential property is also the beneficial owner. However, there are cases where a person other than the legal owner is a beneficial owner of a property, e.g. where the property is held by the legal owner on trust for that person. On the other hand, when a residential property is registered under the name of a trustee, the trustee will not be regarded as the beneficial owner of the property concerned.

13. Furthermore, the beneficial owner of a residential property includes a purchaser under an agreement for sale of the property even if the transaction has not been completed, unless the agreement for sale has been cancelled, annulled or rescinded or otherwise not performed. Likewise, a vendor under an agreement for sale of residential property will not be regarded as the beneficial owner of the property being disposed of, unless the agreement for sale has been cancelled, annulled or rescinded or otherwise not performed. [Section 29AC(1) and (2)]

14. For the purposes of AVD, a person who owns a residential property jointly with other person(s) as a co-owner or a joint owner will be regarded as a beneficial owner of the residential property. [Section 29AC(3)]

15. If a person inherits a residential property, whether solely or jointly with others, from an estate of a deceased person, he or she will be regarded as a beneficial owner of the residential property when the relevant legal procedures for inheriting the residential property are completed.

16. Where a limited company holds a residential property, a question may arise as to whether its shareholder(s) is/are beneficial owner(s) of the residential property. Given that the limited company is a legal entity separate

and independent from its shareholder(s), the latter will not be regarded as the beneficial owner of the residential property concerned. However, in the case of liquidation of a limited company by distribution in specie, a shareholder will be regarded as becoming a beneficial owner of the residential property previously owned by the company on the date of execution of an instrument to effect the distribution in specie of the property to him or her.

Dates of acquisition and disposal of immovable property

17. Under the Ordinance, the date of acquisition of an immovable property by a person is the date of the agreement for sale that provides for the conveyance of the property to him or her. If more than one such agreement is made between the same parties and on the same terms in respect of the property, it is the date of the first of those agreements. However, if there is no such agreement for sale, it is the date of the conveyance on sale under which the property is transferred to or vested in the person. As a corollary, the date of disposal of an immovable property by a person is the date of the agreement for sale that provides for the conveyance of the property from him or her. If more than one such agreement is made between the same parties and on the same terms in respect of the property, it is the date of the first of those agreements. A reference to the date of an instrument is a reference to the date the instrument is executed. [Section 29AE(2) and (3)]

18. If a person acquires 2 or more immovable properties on the same date, a reference to the date of acquisition by the person of one of those properties is a reference to the particular time at which that property is acquired by the person on that date. Conversely, if a person disposes of 2 or more immovable properties on the same date, a reference to the date of disposal by the person of one of those properties is a reference to the particular time at which that property is disposed of by the person on that date. [Section 29AE(1)]

19. If after entering into an agreement for sale of an immovable property, one of the original purchasers withdraws (“the withdrawn purchaser”) from the transaction and the conveyance on sale executed in pursuance of the agreement for sale is not in favour of him or her, the withdrawn purchaser will be regarded as having acquired the property on the date of the agreement for sale and disposed of the property on the date of the conveyance on sale [section 29AF(7) and (8)]. Similarly, if before the conveyance on sale, another agreement for

sale is made in respect of the property and the withdrawn purchaser is not one of the purchasers under the second agreement for sale, the withdrawn purchaser will be regarded as having acquired the property on the date of the first agreement for sale and disposed of the property on the date of the second agreement for sale [section 29AG(7) and (8)].

Scenario 3

On 1 January 2014, Mr A and Ms B signed a PASP to acquire a property jointly. Before the completion of the transaction, Ms B withdrew from the transaction and in the ASP dated 15 January 2014, only Mr A was named as the purchaser.

In the above scenario, the date of acquisition of the property by Ms B is the date of the PASP (i.e. 1 January 2014) and the date of disposal of the property by Ms B is the date of the ASP (i.e. 15 January 2014).

20. If after a purchaser (“the original purchaser”) enters into an agreement for sale of an immovable property, another purchaser (“the additional purchaser”) joins in as one of the purchasers when the conveyance on sale in pursuance of the agreement for sale is executed, the original purchaser is regarded as having acquired the property on the date of the agreement for sale and disposed of part of the property on the date of the conveyance on sale [section 29AF(2) and (3)]. The date of acquisition of part of the property by the additional purchaser is the date of the conveyance on sale [section 29AF(4)]. Similarly, if before the conveyance on sale, another agreement for sale is made in respect of the property and the original purchaser and the additional purchaser are the purchasers under the second agreement for sale, the original purchaser is regarded as having acquired the property on the date of the first agreement for sale and disposed of part of the property on the date of the second agreement for sale [section 29AG(2) and (3)]. The date of acquisition of part of the property by the additional purchaser is the date of the second agreement for sale [section 29AG(4)].

Scenario 4

By a PASP dated 1 January 2014, Mr A acquired a residential property. Before the completion of the transaction, Ms B joined in the transaction and in the ASP dated 15 January 2014, Ms B was named as one of the purchasers.

In the above scenario, the date of acquisition of the property by Mr A is the date of the PASP (i.e. 1 January 2014) and the date of disposal of part of the property by Mr A is the date of the ASP (i.e. 15 January 2014). Besides, the date of the ASP is also the date of acquisition of part of the property by Ms B.

RESIDENTIAL PROPERTY AND NON-RESIDENTIAL PROPERTY

21. The Department's interpretation on the respective meanings of residential property and non-residential property is set out in SOIPN No. 1 (Revised).

CHARGEABLE INSTRUMENT

22. Before 23 February 2013, an agreement for sale and purchase of non-residential property is not chargeable with stamp duty. Starting from 23 February 2013, all agreements for sale and purchase of non-residential properties that are executed on or after that date are chargeable with AVD. In other words, agreements for sale of residential properties and non-residential properties are both chargeable to AVD on or after 23 February 2013.

23. "Chargeable agreement for sale" is defined under section 29A(1) of the Ordinance to mean an agreement for sale chargeable with stamp duty under head 1(1A) in the First Schedule to the Ordinance. The Department's interpretation on the meaning of agreement for sale is set out in SOIPN No. 1 (Revised). "Agreement for sale" includes both PASP and ASP. Furthermore, an agreement for sale may consist of two or more instruments, that is, a principal agreement and supplemental agreement(s). In such circumstances, only the principal agreement but not the supplemental one(s) is chargeable with stamp duty.

24. "Conveyance" is defined under section 2 of the Ordinance to mean every instrument (including a surrender) and every decree or order of any court whereby any immovable property is transferred to or vested in any person. For a sale and purchase transaction of an immovable property, a deed of assignment is the conveyance. A conveyance also includes a deed of gift for a non-sale and purchase transfer of an immovable property. Where there are two or more instruments of conveyance for completing the purchaser's title to

the immovable property, only the principal instrument is chargeable with stamp duty and the other instruments are not chargeable with stamp duty.

25. The following examples explain how immovable property transactions with instruments executed before and on or after 23 February 2013 are dealt with:

Scenario 5

Mr A entered into a PASP on 17 February 2013 to acquire a non-residential property at a price of \$10,000,000. The ASP and the assignment were signed on 28 February 2013 and 28 March 2013 respectively.

AVD payable

Since the PASP was executed before 23 February 2013, both the PASP and ASP are not chargeable with AVD and Scale 1 rates do not apply to this case. The assignment is chargeable with AVD at Scale 2 rates. The AVD payable is \$375,000 ($\$10,000,000 \times 3.75\%$).

Scenario 6

Mr A entered into a PASP on 17 February 2014 to acquire a non-residential property at a price of \$10,000,000. The ASP and the assignment were signed on 28 March 2014 and 28 October 2014 respectively.

AVD payable

Since the PASP was executed on or after 23 February 2013 and the ASP was executed after 14 days from the date of the PASP, the PASP is chargeable with AVD at the original Scale 1 rates. The AVD payable is \$750,000 ($\$10,000,000 \times 7.5\%$). Provided that the PASP is duly stamped, the ASP and the assignment will each be chargeable with fixed duty of \$100.

Multiple properties under one instrument

26. Before 12 April 2017, for a single instrument involving residential properties only, irrespective of the number of residential properties covered, the acquisition of the residential properties concerned was regarded as a single transaction and the AVD payable was determined by the duty rates applicable to the total consideration in respect of the residential properties concerned.

27. For any instrument executed on or after 12 April 2017 for the acquisition of more than 1 residential property, unless specifically exempted or otherwise provided in the Ordinance, AVD at Part 1 of Scale 1 rate is applicable, even if the purchaser or transferee is a HKPR acting on his or her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition of the properties concerned.

28. If a single instrument involves both residential and non-residential properties which are inseparable for sale and purchase, the Department will regard them as a residential property for AVD purposes. In determining whether residential and non-residential properties under a single instrument are separable for sale and purchase, the Collector may take into account various documents, including approved building plan, deed of mutual covenant, occupation permit and any other document that the Collector considers relevant. For instance, if the relevant deed of mutual covenant specifies that the residential and non-residential properties have taken certain undivided shares in common (i.e. the residential and non-residential properties concerned do not have their respective undivided shares), the properties concerned will be regarded as inseparable for sale and purchase.

29. If the properties concerned are separable for sale and purchase, the Collector will regard the properties as separate and distinct and apply the respective definitions of residential property and non-residential property as provided under the Ordinance to determine the nature of the individual properties and AVD will be charged on the basis of their respective considerations. However, the applicable AVD rates shall be determined by reference to the total consideration of the entire instrument.

Scenario 7

Mr A entered into an ASP on 1 January 2018 to acquire a residential property and a car parking space at a price of \$15,000,000. The residential property and car parking space are inseparable for sale and purchase. Mr A was a HKPR acting on his own behalf in acquiring the properties. He owned two other car parking spaces but no residential property in Hong Kong on the date of acquisition.

AVD payable

The properties concerned will be regarded as a residential property.

Mr A's ownership of two other car parking spaces does not affect the amount of AVD payable. The applicable duty rates are determined by reference to the total consideration of \$15,000,000. The ASP is chargeable with AVD at Scale 2 rates. The amount of AVD payable is \$562,500 ($\$15,000,000 \times 3.75\%$).

Scenario 8

Mr A entered into an ASP on 1 January 2018 to acquire a residential property and 2 car parking spaces at a price of \$15,000,000. The respective values of the residential property and the 2 car parking spaces are \$13,000,000 and \$2,000,000. The residential property and the 2 car parking spaces can be sold separately. Mr A was a HKPR acting on his own behalf in acquiring the properties and did not own any other residential property in Hong Kong on the date of acquisition.

AVD payable

The residential property and the 2 car parking spaces will be regarded as separate and distinct matters. Scale 2 rates will apply to the acquisition of the residential property whereas Part 2 of Scale 1 rates will apply to the acquisition of the 2 car parking spaces. The applicable duty rates are determined by reference to the total consideration of \$15,000,000. The total amount of stamp duty payable on the chargeable agreement for sale is \$637,500 which is computed as follows:

- (a) AVD payable on the residential unit: $\$13,000,000 \times 3.75\% = \$487,500$
- (b) AVD payable on the car parking spaces: $\$2,000,000 \times 7.5\% = \$150,000$

Scenario 9

Same as Scenario 8 except that Mr A is not a HKPR.

AVD payable

Part 1 of Scale 1 rate will apply to the acquisition of the residential property whereas Part 2 of Scale 1 rates will apply to the acquisition of the 2 car parking spaces. The applicable duty rates are determined by reference to the total consideration of \$15,000,000.

The total amount of stamp duty payable on the chargeable agreement for sale is \$2,100,000 which is computed as follows:

(a) AVD payable on the residential unit: $\$13,000,000 \times 15\% = \$1,950,000$

(b) AVD payable on the car parking spaces: $\$2,000,000 \times 7.5\% = \$150,000$

30. For an instrument which is chargeable with AVD partly at Part 2 of Scale 1 rates and partly at Scale 2 rates as in Scenario 8, the stamping of it must be made by way of adjudication through conventional stamping. The duty payer is advised to state the respective amounts of consideration of the residential property and the non-residential property in the chargeable instrument and/or the stamping application. If the respective considerations for the residential property and the non-residential property are not separately shown, the chargeable instrument will be treated as an instrument of residential property first and the Collector will accept payment of AVD at Scale 2 rates when receiving the instruments for adjudication, but will, based on the valuation of the Rating and Valuation Department (“RVD”), demand further AVD payable, if warranted, on the instrument.

31. For an instrument which is chargeable with AVD partly at Part 1 of Scale 1 rate and partly at Part 2 of Scale 1 rates as in Scenario 9, the stamping of the instrument concerned must also be made by way of conventional stamping under adjudication. If the respective considerations for the residential property and the non-residential property are not separately shown, the chargeable instrument will be treated as an instrument of residential property first and AVD computed at Part 1 of Scale 1 rate has to be paid upfront when submitting the instrument for adjudication. The Collector will, based on the valuation of the RVD, repay the excessive stamp duty in respect of the acquisition of the non-residential property.

Single residential property

32. The Ordinance has not exhaustively defined the term “single residential property”. However, section 29A(1), as amended by the 2018 (No. 2) Amendment Ordinance, provides that a single residential property includes:

- (a) a unit and a roof situated in the same building;
- (b) a unit and an adjacent flat roof situated in the same building;
- (c) a unit and an adjacent garden; and
- (d) a unit that became a single unit following the demolition of the walls or the floor, or any part of the walls or the floor, separating two units as shown by—
 - (i) a building plan and a letter issued by the Building Authority acknowledging receipt of a certificate of completion of the building works relating to the demolition as required under the Building (Administration) Regulations (Cap. 123 sub. leg. A); or
 - (ii) a plan signed by an authorized person after the completion of the building works relating to the demolition.

The terms “authorized person”, “Building Authority” and “building plan” are also defined in section 29A(1) of the Ordinance.

33. In determining whether the property transacted under the instrument constitutes a single residential property, the Collector will take into account all relevant facts and circumstances at the time of execution of the instrument. Specifically, section 29A(1A) provides that the Collector may have regard to any of the following documents in respect of the residential property or the building of which the residential property forms part:

- (a) the building plans, or plans signed by an authorized person;
- (b) the deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap. 344);
- (c) the occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123);

- (d) any other instrument that the Collector considers relevant.

The following examples illustrate how the issue of single residential property is determined:

Scenario 10

The purchaser entered into a PASP to purchase two adjoining residential units. At that time, the partition wall dividing the two units had been demolished by the vendor.

If at the time of entering into the PASP, a plan had been signed by an authorized person after the completion of the building works relating to the demolition, the two residential units will be regarded as a single residential property.

Scenario 11

After acquiring two adjacent uncompleted units from the developer, the purchaser requests the developer not to construct the partition wall between the two units.

If at the time when the two units are acquired, the building plan shows that they are separate units, the properties will be regarded as two residential properties notwithstanding that no partition wall would be built subsequent to the acquisition.

Scenario 12

The purchaser acquired two vertically adjoining units as a duplex.

If at the time of acquisition, the two vertically adjoining units have already become a single unit (e.g. there is an internal staircase between the upper and lower floors) through building works and it is properly reflected in an approved plan or other relevant documents, the two adjoining units will be regarded as a single residential property.

Nomination

34. Unless specifically excluded, a nomination made or a direction given by a purchaser of an immovable property to another person to take up an assignment of the property is an agreement for sale under the definition of “agreement for sale” in section 29A(1) of the Ordinance. In so far as head 1(1A) in the First Schedule to the Ordinance is concerned, a nomination or direction is excluded from the definition of “agreement for sale” and thus not chargeable with AVD if the relevant property is a residential property and it is shown to the satisfaction of the Collector that:

- (a) it is made or given in favour of one, or more than one, person (whether or not also in favour of the purchaser);
- (b) on the date of the nomination or direction that person, or each of those persons, is closely related to the purchaser, or to each of the purchasers and where there is more than one person, those persons are also closely related;
- (c) that person, or each of those persons, is acting on his or her own behalf; and
- (d) that person, or each of those persons, is not a beneficial owner of any other residential property in Hong Kong.

[Section 29AB(1) and (2)]

The Department’s interpretation on the meaning of closely related person is set out in SOIPN No. 1 (Revised).

Estate

35. A transfer of an immovable property under an estate of a deceased person to the beneficiaries of the estate pursuant to a will or in accordance with the law of intestacy or by the right of survivorship is not chargeable with stamp duty. However, if the beneficiaries of the estate deviate from the will or the law of intestacy and agree among themselves to redistribute their entitlements to the property, the excess distribution over the original entitlement will be subject to AVD as deed of gift at Scale 1 rates or Scale 2 rates, as the case may be.

INSTRUMENT FOR EXCHANGE OF IMMOVABLE PROPERTY

36. If under an agreement for exchange or deed of exchange, an immovable property is exchanged for another immovable property and any consideration is paid or given, or agreed to be paid or given, for equality, the instrument will be chargeable with AVD calculated by reference to the “equality money”. Where the stated “equality money” under an exchange is less than the difference in the market values of the properties concerned, AVD will be charged on the difference. [Sections 27 and 29F of the Ordinance]

Exchange of residential properties

37. Where the properties concerned are residential properties, an instrument that effects or provides for the exchange of the residential properties will be chargeable with AVD at Scale 2 rates if on the date of the instrument:

- (a) each party to the instrument is a HKPR acting on his or her own behalf and is not a beneficial owner of any other residential property in Hong Kong; or
- (b) all parties to the instrument are closely related persons and each of them is acting on his or her own behalf.

[Sections 29AP and 29BH]

Scenario 13

Mr X owned a residential property A and Mr Y owned a residential property B. On 30 September 2013, they executed an agreement for exchange whereby property A was exchanged for property B and Mr X paid an “equality money” of \$1M to Mr Y. On the date of the agreement, Mr X did not own any other residential property in Hong Kong other than property A and Mr Y did not own any other residential property in Hong Kong other than property B. Mr X and Mr Y are HKPRs but are not close relatives. Both of them were acting on their own behalf in the exchange transaction.

AVD payable

Scale 2 rates will apply. The AVD will be calculated by reference to the “equality money” paid for the exchange. As the “equality money” does not exceed \$2 million, the AVD payable is \$100.

Scenario 14

Mr X, owned a residential property A and Mr Y owned a residential property B. On 30 September 2017, they executed an agreement for exchange whereby property A was exchanged for property B and Mr X paid an “equality money” of \$1M to Mr Y. Other than property A, Mr X also owned another residential property in Hong Kong on the date of exchange. Mr X and Mr Y are HKPRs but are not close relatives. Both of them were acting on their own behalf in the exchange transaction.

AVD payable

Since Mr X owned other residential property in Hong Kong on the date of exchange, Part 1 of Scale 1 rate will apply. The AVD will be calculated by reference to the “equality money” paid for the exchange. The AVD payable is \$150,000 (\$1M x 15%).

Scenario 15

Mr X, a non-HKPR, owned a residential property A and Mr Y, a HKPR, owned a residential property B. On 30 September 2017, they executed an agreement for exchange whereby property A was exchanged for property B and Mr X paid an “equality money” of \$1M to Mr Y. On the date of the agreement, Mr X did not own any other residential property in Hong Kong other than property A and Mr Y did not own any other residential property in Hong Kong other than property B. Mr X and Mr Y are not close relatives.

AVD payable

Since Mr X is a non-HKPR, Part 1 of Scale 1 rate will apply. AVD will be calculated by reference to the “equality money” paid for the exchange. The AVD payable is \$150,000 (\$1M x 15%). For the purposes of BSD, Mr X will be regarded as the purchaser under the agreement for exchange as he paid the “equality money”. BSD of \$150,000 (\$1M x 15%) will be payable on the agreement for exchange.

Exchange of residential property for non-residential property

38. For an instrument that effects or provides for the exchange of a residential property for a non-residential property, the person to whom the residential property is transferred is treated as the transferee or purchaser and the person from whom the residential property is transferred is treated as the transferor or vendor. AVD will be charged at Scale 2 rates if the “equality money” is paid by the transferee or purchaser who is a HKPR acting on his or her own behalf and is not a beneficial owner of any other residential property in Hong Kong on the date of exchange. Alternatively, Scale 2 rates will also apply if the “equality money” is paid by the transferee or purchaser and the transferee or purchaser is closely related to the transferor or vendor and the transferee or purchaser is acting on his or her own behalf in the exchange. [Sections 29AO and 29BG]

39. If the transferee or purchaser who pays the “equality money” is neither a HKPR nor a close relative with the transferor or vendor, AVD will be charged at the rate under Part 1 of Scale 1. On the other hand, if the “equality money” is paid by the transferor or vendor to whom the non-residential is transferred, AVD will be charged at the rates under Part 2 of Scale 1.

Scenario 16

Mr X, a HKPR, owned a non-residential property A and Mr Y, a HKPR, owned a residential property B. On 30 September 2017, they executed an agreement for exchange whereby property A was exchanged for property B and Mr X paid an “equality money” of \$1M to Mr Y. On the date of the agreement, Mr X did not own any other residential property in Hong Kong and he was acting on his own behalf in the exchange transaction.

AVD payable

Mr X will be treated as the purchaser since the residential property B was transferred to him. Since Mr X paid the “equality money” and he was a HKPR acting on his own behalf and was not a beneficial owner of any other residential property in Hong Kong on the date of exchange, the AVD payable will be computed at Scale 2 rates. As the “equality money” does not exceed \$2 million, the amount of AVD payable is \$100.

Scenario 17

Same as Scenario 16 above, but the equality money of \$1M was paid by Mr Y.

AVD payable

Since the equality money was not paid by the purchaser of a residential property, the AVD will be computed at Part 2 of Scale 1 rates. The AVD payable is \$15,000 (\$1M x 1.5%).

CIRCUMSTANCES UNDER WHICH AVD IS NOT CHARGEABLE OR SCALE 2 RATES APPLY

Hong Kong permanent residents

40. Before 12 April 2017, an agreement for sale or a conveyance on sale of a residential property is chargeable with AVD at Scale 2 rates if it is shown to the satisfaction of the Collector that on the date of acquisition of the residential property:

- (a) the purchaser or transferee or each of the purchasers or transferees is a HKPR acquiring the property on his or her own behalf, that is, the person is both the legal and beneficial owner; and
- (b) the purchaser or transferee or each of the purchasers or transferees is not a beneficial owner of any other residential property in Hong Kong.

[Sections 29AJ and 29BB]

If a HKPR purchaser or transferee acquires from the other co-owner the partial ownership of the residential property jointly owned by them, provided that the transferee or purchaser is acting on his or her own behalf and not a beneficial owner of any other residential property (apart from the property concerned) in Hong Kong, the relevant transaction will be chargeable with AVD at Scale 2 rates, irrespective of whether or not the concerned parties are closely related.

41. With effect from 12 April 2017, the charging of AVD at Scale 2 rates for cases described in paragraph 40 above is limited to acquisition of a single residential property (see the background at paragraph 4 above).

42. To establish that the conditions referred to in paragraph 40 are satisfied, the purchaser or transferee is required to submit an original statutory declaration as specified by the Collector stating that (a) he or she is a HKPR; (b) he or she acquired the property on his or her own behalf; and (c) he or she was not a beneficial owner of any other residential property in Hong Kong on the date of acquisition of the residential property. The Stamp Office will verify the content of a declaration made by a purchaser or transferee and ascertain whether he or she is a beneficial owner of any other residential property in Hong Kong. A purchaser or transferee shall make the statutory declaration based on the facts that he or she truly believes.

43. If the circumstances warrant, the Collector may require the purchaser or transferee to provide further evidence, such as the source of funds for payment of consideration, to substantiate that he or she acquires the property on his or her own behalf. In an acquisition of a residential property which involves provision of funds by persons other than the purchaser or transferee, resulting or constructive trust may be created. Such contribution may either be provided by way of a gift, a loan or an entrustment. The purchaser or transferee (who is in full cognizance of the facts and circumstances surrounding the contribution) is in the best position to determine the nature of such contribution and to state whether he or she acts on his or her own behalf in the acquisition. Where the purpose of the contribution is not clearly communicated by the contributor to the purchaser or transferee, the purchaser or transferee is advised to ascertain from or establish the nature of such contribution with the contributor before execution of the declaration.

44. The Collector accepts that for some cases (including the case where the person executing the instrument is in fact a resulting or constructive trustee), the chargeability of an instrument to AVD may not be apparent or readily ascertainable when the instrument is submitted for stamping. When the applicant makes the statutory declaration in support of his or her claim for charging of AVD at Scale 2 rates, he or she should note:

- (a) stamp duty liability in respect of an instrument has to be determined based on the circumstances existing on the date of the instrument; and
- (b) the statutory declaration must be made in respect of facts he or she honestly believes to be true at the time of such declaration.

45. The Collector may recover any shortfall of duty if it subsequently comes to light that the relevant conditions of charging AVD at Scale 2 rates were not met on the date of the instrument.

Purchase of residential property together with 1 car parking space

46. An agreement for sale or a conveyance on sale by which a HKPR acquires residential property together with a car parking space is chargeable to AVD at Scale 2 rates if the HKPR is acting on his or her own behalf in acquiring the properties concerned and on the date of acquisition, he or she is neither a beneficial owner of any other residential property nor a beneficial owner of any other car parking space in Hong Kong. It should be noted that with effect from 12 April 2017, this exemption arrangement is only applicable where the residential property concerned is a single residential property. [Sections 29AK and 29BC]

47. The Scale 2 rates are only applicable to HKPR acquiring residential property together with 1 car parking space. In this regard, “car parking space” is defined as a car parking space permitted for the parking of 1 motor vehicle. A car parking space is permitted for the parking of 1 motor vehicle unless any of the following instruments provides that the car parking space may be used, at any time during the term of the Government lease or during the term of the Government lease that has been agreed for in respect of the parking space (as is appropriate), for the parking of more than 1 motor vehicle:

- (a) a Government lease or an agreement for a Government lease;
- (b) a deed of mutual covenant, within the meaning of section 2 of the Building Management Ordinance (Cap 344);
- (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap 123); or
- (d) any other instrument which the Collector is satisfied effectively restricts the permitted user of the parking space.

48. If a single instrument involves more than 1 car parking space, all of which are separable from the residential property purchased under the same instrument, all the car parking spaces will be chargeable with AVD at Part 2 of

Scale 1 rates. The following examples illustrate the circumstances under which Scale 2 rates are applicable for acquisition of a car parking space:

Scenario 18

Mr A entered into an ASP on 1 January 2018 to acquire a single residential property and a car parking space at the respective prices of \$5,000,000 and \$1,000,000. Mr A was a HKPR acting on his own behalf in acquiring the properties and did not own any other residential property or car parking space in Hong Kong on the date of acquisition.

AVD payable

The ASP will be chargeable with AVD at Scale 2 rates. The applicable duty rates are determined by reference to the total consideration of \$6,000,000. The total amount of AVD payable is \$180,000 ($\$6,000,000 \times 3\%$).

Scenario 19

Mr A entered into an ASP on 1 January 2018 to acquire a single residential property and a car parking space, both of which are separable from each other, at the respective prices of \$5,000,000 and \$1,000,000. Mr A was a HKPR acting on his own behalf in acquiring the properties and did not own any other residential property but owned another car parking space in Hong Kong on the date of acquisition.

AVD payable

The acquisition of the residential property and the car parking space will be regarded as separate and distinct matters. Scale 2 rates will apply to the acquisition of the residential property whereas Part 2 of Scale 1 rates will apply to the acquisition of the car parking space. The applicable duty rates are determined by reference to the total consideration of \$6,000,000. The total amount of AVD payable on the chargeable agreement for sale is \$210,000 which is computed as follows:

- (a) AVD payable on the residential property: $\$5,000,000 \times 3\% = \$150,000$
- (b) AVD payable on the car parking space: $\$1,000,000 \times 6\% = \$60,000$.

Residential property transactions involving close relatives

49. Paragraphs 50 to 55 below set out the circumstances in which residential property transactions involving close relatives will not be chargeable to AVD or AVD at Scale 2 rates will apply.

Joint acquisition

50. Where a HKPR acquires a residential property (which has to be a single residential property with effect from 12 April 2017) jointly with a close relative and each of the purchasers is acting on his or her own behalf and not a beneficial owner of any other residential property in Hong Kong on the date of acquisition, the relevant chargeable instrument is chargeable with AVD at Scale 2 rates. If there are more than 2 purchasers or transferees, all the purchasers or transferees must be closely related. [Sections 29AJ(3) and 29BB(3)]

Scenario 20

Mr A (a HKPR) and his wife, Ms B (a non-HKPR), entered into an ASP to acquire a single residential property on 1 January 2018. Each of them was acting on his or her own behalf in acquiring the residential property and was not a beneficial owner of any other residential property in Hong Kong on the date of acquisition.

The ASP is chargeable with AVD at Scale 2 rates.

Scenario 21

Mr A (a HKPR), his wife, Ms B (a non-HKPR), and his mother, Ms C (a HKPR), entered into an ASP to acquire a single residential property on 1 January 2018. Each of them was acting on his or her own behalf in acquiring the residential property and was not a beneficial owner of any other residential property in Hong Kong on the date of acquisition.

As Ms B and Ms C are not close relatives, the ASP is chargeable with AVD at Part 1 of Scale 1 rate. Since Ms B is a non-HKPR, the ASP is also chargeable with BSD.

Sale or transfer between close relatives

51. Where a residential property is sold or transferred by a person to his or her close relative who is acting on his or her own behalf, irrespective of whether or not they are HKPRs or beneficial owners of any other residential property in Hong Kong on the date of sale or transfer, the relevant chargeable instrument is chargeable with AVD at Scale 2 rates. Where there is more than one purchaser or transferee in an agreement for sale or a conveyance on sale, all the purchasers or the transferees must be close relatives.

Scenario 22

Mr A transfers his residential property to his wife, Ms B on 1 January 2018. Ms B is a non-HKPR acting on her own behalf and owns another residential property in Hong Kong on the date of transfer.

The instrument effecting the transfer of the residential property is chargeable with AVD at Scale 2 rates.

Scenario 23

Same as Scenario 22, but Mr A transfers the property to Ms B and his mother, Ms C.

As Ms B and Ms C are not close relatives, the instrument effecting the transfer of the residential property is chargeable with AVD at Part 1 of Scale 1 rate. Since Ms B is a non-HKPR, the instrument is also chargeable with BSD.

Scenario 24

Same as Scenario 22, but the property being transferred is a non-residential property.

The instrument effecting the transfer of the non-residential property is chargeable with AVD at Part 2 of Scale 1 rates. The Scale 2 rates are not applicable to the transfer of non-residential property even if the transfer is between close relatives.

Nomination

52. Where a person nominates a close relative who is a beneficial owner

of other residential property in Hong Kong to take up an assignment of a residential property and the nominee is acting on his or her own behalf, the instrument is subject to AVD at Scale 2 rates. If there is more than one nominee, all the nominees must be close relatives.

Scenario 25

Mr A entered into a PASP to acquire a residential property on 1 January 2018. On 10 January 2018, he made a nomination to nominate his wife, Ms B, to take up the assignment of the property. Ms B was acting on her own behalf in the nomination and she owned a residential property in Hong Kong on the date of nomination.

The nomination is chargeable with AVD at Scale 2 rates.

Scenario 26

Same as Scenario 25, but Ms B is not a close relative of Mr A.

The nomination is chargeable with AVD at Part 1 of Scale 1 rate as Ms B owned other residential property in Hong Kong on the date of nomination.

53. If the close relative is not a beneficial owner of any other residential property in Hong Kong, the nomination is not an “agreement for sale” (see paragraph 34 above).

Scenario 27

Same as Scenario 25, but Ms B did not own any other residential property in Hong Kong on the date of nomination.

The nomination is not an agreement for sale and thus is not chargeable with any AVD.

Series of instruments with a common purchaser

54. Where another person is added as one of the purchasers in the agreement for sale or conveyance on sale after the original purchaser signed a provisional agreement for sale, or a person who was one of the purchasers in a provisional agreement for sale is no longer included as a purchaser in the

agreement for sale or conveyance on sale, the agreement for sale or conveyance on sale, which consists of the new purchaser or the remaining purchasers, as the case may be, is not chargeable with AVD if on the date of the instrument concerned:

- (a) all of the new purchaser(s) and the original purchaser(s) or the withdrawn person(s) and the remaining original purchaser(s) are closely related;
- (b) each of them is acting on his or her own behalf; and
- (c) each of them is not a beneficial owner of any other residential property in Hong Kong.

[Section 29D(6)(c)(ii) and (7) and note 5 to head 1(1A) in the First Schedule]

However, if one of the new or remaining purchasers is a beneficial owner of any other residential property in Hong Kong, the agreement for sale or conveyance on sale concerned is chargeable to AVD at Scale 2 rates.

Scenario 28

By a PASP dated 1 January 2018, Mr A acquired a residential property. Before the completion of the transaction, his wife, Ms B, was added as one of the transferees in the conveyance on sale. Ms B owned another residential property in Hong Kong on the date of conveyance.

The conveyance on sale is chargeable with AVD at Scale 2 rates based on the total consideration or value of the property, whichever is the higher, less 1/2 of the AVD representing the property interest Mr A acquired under the PASP.

Scenario 29

Same as Scenario 28 but both Mr A and Ms B did not own any other residential property in Hong Kong on the date of conveyance.

Provided that the agreement for sale has been duly stamped, the conveyance on sale is not chargeable with AVD but only a fixed duty of \$100.

Scenario 30

By a PASP dated 1 January 2018, Mr A acquired a residential property. Before the completion of the transaction, his wife, Ms B, and his mother, Ms C, were added as the transferees in the conveyance on sale. Each of Ms B and Ms C is a HKKP acting on her own behalf and did not own any residential property in Hong Kong on the date of conveyance.

Although Mr A and Ms B, and Mr A and Ms C are close relatives, Ms B and Ms C are not close relatives. The conveyance on sale will be chargeable with AVD at Scale 2 rates based on the total consideration or value of the property, whichever is the higher, less 1/3 of the AVD representing the property interest Mr A acquired under the PASP.

Scenario 31

By a PASP dated 1 January 2018, Mr A, Ms B (Mr A's wife) and Ms C (Mr A's mother) acquired a residential property. Each of them is a HKPR acting on his or her own behalf and did not own any other residential property in Hong Kong on the date of acquisition of the residential property. In the conveyance on sale, Mr A was named as the sole transferee.

Although Mr A and Ms B, and Mr A and Ms C are close relatives, Ms B and Ms C are not close relatives. The conveyance on sale will be chargeable with AVD at Scale 2 rates based on the total consideration or value of the property, whichever is the higher, less 1/3 of the AVD representing the property interest Mr A acquired under the PASP.

Scenario 32

By a PASP dated 1 January 2018, Mr A, Ms B (Mr A's wife) and Ms C (Mr A's mother) acquired a residential property. Mr A owned another residential property in Hong Kong on the date of acquisition

of the property. In the conveyance on sale, only Mr A and Ms B were named as the transferees.

Since Ms B and Ms C are not close relatives and Mr A owned another residential property in Hong Kong on the date of acquisition, AVD on the conveyance on sale will be computed at Part 1 of Scale 1 rate based on the total consideration or value of the property, whichever is the higher, less 2/3 of the AVD representing the property interest Mr A and Ms B acquired under the PASP.

55. In making a claim that the relevant instrument is not chargeable with AVD or chargeable with AVD at Scale 2 rates on the ground of “close relatives”, the purchasers or transferees have to submit (a) documentary evidence to prove the relationship among the relevant parties; and (b) original statutory declaration (in a form specified by the Collector) by each of the purchasers or transferees declaring that he or she acquired the property on his or her own behalf and was not a beneficial owner of any another residential property in Hong Kong on the date of acquisition of the residential property (if applicable).

Replacement property

56. An instrument is chargeable with AVD at Scale 2 rates if it is shown to the satisfaction of the Collector that the purchaser or transferee was acting on his or her own behalf and the property (“replacement property”) was acquired by the purchaser or transferee to replace another property (“original property”) that was owned by the purchaser or transferee alone or jointly with any other person(s) and the original property has been:

- (a) acquired by the Urban Renewal Authority;
- (b) resumed under an order made under section 3 of the Lands Resumption Ordinance (Cap 124) or purchased under section 4A of that Ordinance;
- (c) sold pursuant to an order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545);

- (d) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap 276);
- (e) resumed under an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap 370);
- (f) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap 519);
- (g) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap 130); or
- (h) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap 446).

[Sections 29AM and 29BE]

57. If the original property was jointly owned by two or more persons, each of them may acquire a replacement property alone or jointly with the other joint owner(s) or any other person(s) and apply for charging the agreement for sale or conveyance on sale with AVD at Scale 2 rates. However, it should be noted that where the replacement property is a residential property acquired by an owner of the original property jointly with a non-HKPR who is not one of the joint owners of the original property and they are not close relatives, the chargeable agreement for sale or conveyance on sale will be chargeable with BSD.

58. There is no restriction on the size and value of the replacement property or the time interval within which the purchase of replacement property has to be made. However, the date of disposal of the original property must be earlier than the date of acquisition of the replacement property. Moreover, the original property and the replacement property are required to be both residential properties, or both non-residential properties.

59. If the original property includes a residential unit and a car parking space which are separable for sale and purchase, the transaction will be regarded as involving two properties; if the affected owner acquires a

residential unit and a car parking space as replacement property, that transaction will also be regarded as involving two properties and both can be eligible for charging AVD at Scale 2 rates. If the original property includes only one residential unit, while the replacement property includes inseparable residential unit and car parking space, the instrument for acquisition of the replacement residential unit and car parking space may also be chargeable with AVD at Scale 2 rates. However, if the replacement property includes a residential unit and a car parking space which are separate and distinct, the newly acquired residential unit will be chargeable with AVD at Scale 2 rates while the car parking space will be chargeable with AVD at the rates under Part 2 of Scale 1 unless it qualifies for the exemption mentioned in paragraphs 46 and 47 above. The applicable rates for both shall be determined by reference to the total consideration of the whole transaction.

60. In making a claim for charging AVD at Scale 2 rates on the ground of replacement property, the purchaser or transferee has to submit original statutory declaration declaring that he or she acquires the property on his or her own behalf.

Court order

61. An agreement for sale or conveyance on sale of residential property or non-residential property is charged with AVD at Scale 2 rates if it is shown to the satisfaction of the Collector that the instrument is made pursuant to a decree or order of any court [sections 29AN(a) and 29BF]. Scale 2 rates also apply in case the conveyance is a decree or order of any court by which the immovable property concerned is transferred to or vested in the transferee [section 29AN(b)], which includes a foreclosure order obtained by a mortgagee whether or not the mortgagee falls under the definition of a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap 112) (“IRO”). For this purpose, “court” means any court of the Hong Kong Special Administrative Region of competent jurisdiction.

Mortgaged property

62. A conveyance on sale is chargeable with AVD at Scale 2 rates if it is shown to the satisfaction of the Collector that under the conveyance, a mortgaged property is transferred to or vested in its mortgagee that is a financial

institution within the meaning of section 2 of the IRO, or by a receiver appointed by the mortgagee [section 29AN(c)]. A financial institution within the meaning of section 2 of the IRO is, amongst others, an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap 155) (“BO”). Under section 2 of the BO, “authorized institution” means “a bank”, “a restricted licence bank” (“RLB”) or “a deposit-taking company”. A bank and an RLB mean a company which holds a valid banking licence and restricted banking licence granted under section 16 of the BO respectively. An authorized institution can be incorporated in or outside Hong Kong. Pursuant to the Hong Kong Monetary Authority’s Guide to Authorization, an overseas applicant seeking a banking licence or a restricted licence bank presence in Hong Kong can enter in the form of a branch or a locally incorporated subsidiary. An overseas bank which is authorized to carry on banking business or business of taking deposits in Hong Kong shall fall within the definition of “authorized institution” under the BO and therefore a “financial institution” under the IRO.

Mentally incapacitated person and minor

63. If it is shown to the satisfaction of the Collector that a party to an agreement for sale or conveyance on sale is acting as a trustee or guardian for another person who is a HKPR and is a mentally incapacitated person or minor, the Collector must, in determining the amount of AVD payable, treat the other person as a party to the instrument in place of the trustee or guardian [section 29AH]. Hence, if a residential property is acquired by a trustee or guardian on behalf of a HKPR mentally incapacitated person or a HKPR minor who is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition of the property, the Collector will treat the mentally incapacitated person or minor as the purchaser or transferee in place of the trustee or guardian. The instrument for acquiring the residential property will be chargeable with AVD at Scale 2 rates. As a corollary, the Collector will treat a HKPR mentally incapacitated person or a HKPR minor as a vendor or transferor in place of the trustee or guardian if the trustee or guardian is acting for the mentally incapacitated person or minor in the transaction.

64. “Mentally incapacitated person” means a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap 136) and is, because of his or her mental state, incapable of

managing and administering his or her property and affairs. The Collector will require the claimant to submit documentary evidence such as a copy of court order or guardianship order made pursuant to the Mental Health Ordinance to prove that the beneficiary is incapable, by reason of mental incapacity, of managing and administering his property and affairs.

65. For “trustee” and “guardian”, the Collector will adopt the ordinary meaning and accepts “trustee” as one who stands in a fiduciary or confidential relation to another, especially one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary and “guardian” as one who has the legal authority and duty to care for another person or property, especially because of the other’s infancy, incapacity, or disability.

66. Where a purchaser or transferee claims to be a trustee acting on behalf of a HKPR who is a mentally incapacitated person, he or she is required to provide documentary evidence such as a valid and legally binding trust instrument to support the claim. Depending on the circumstances, the Collector may request the claimant to produce further evidence (such as source of funds to acquire the property). In the case of guardianship, the Collector may require documentary evidence (such as the guardianship order granted by court or the Guardianship Board) from the claimant to prove that he or she has the legal authority to act as the guardian of the mentally incapacitated person.

67. When the purchaser or transferee acting for the HKPR minor applies for charging AVD at Scale 2 rates, he or she should provide relevant documentary evidence, which includes proof of his or her capacity as a trustee or guardian such as the birth certificate, an instrument to appoint a guardian pursuant to the Guardianship of Minors Ordinance (Cap 13) and a valid and legally binding trust instrument. The Collector will examine the documents provided by the purchaser or transferee and, depending on the circumstances, seek for further evidence (such as source of funds to acquire the property) in order to determine the duty payable.

68. When the purchaser or transferee acting for the HKPR minor or HKPR mentally incapacitated person applies for charging AVD at Scale 2 rates, he or she should also provide a statutory declaration made by the parent or guardian of the minor or mentally incapacitated person to confirm that the

minor or mentally incapacitated person is a HKPR and not a beneficial owner of any other residential property in Hong Kong.

Tenants Purchase Scheme

69. A person who acquires a residential property under the Tenants Purchase Scheme of the Housing Authority is subject to AVD at Scales 2 rates if it is shown to the satisfaction of the Collector that on the date of acquisition of the property:

- (a) the purchaser or transferee, or each of the purchasers or transferees, under the agreement for sale or the conveyance on sale is a tenant or an authorized occupant of the Housing Authority in respect of the property;
- (b) he or she is acting on his or her own behalf in acquiring the property; and
- (c) he or she is not a beneficial owner of any other residential property in Hong Kong.

[Section 29AS]

However, it should be noted that where the property is acquired by a non-HKPR or a HKPR jointly with a non-HKPR and they are not close relatives, the conveyance on sale will be chargeable with BSD.

Lease

70. Certain leases and leases related instruments, which are chargeable with AVD in accordance with head 1(1) and 1(1A) of the First Schedule to the Ordinance before 23 February 2013, shall continue to be chargeable with AVD at Scale 2 rates on or after 23 February 2013. Scale 2 rates will apply:

- (a) where the consideration or part of the consideration of a lease consists of an upfront payment (i.e. head 1(2)(a) in the First Schedule);

- (b) where a transfer or surrender of lease is involved and the lease should be stamped in accordance with head 1(2) in the First Schedule; and
- (c) where the Collector is of the opinion that the consideration of the lease shall not be deemed to be valuable consideration by reason of the inadequacy of the sum paid as consideration or other circumstances.

[Notes 1B, 1C and 1 of head 1(1) and 1A of head (1A) in the First Schedule]

PARTIAL REFUND OF AVD

Refund for redevelopment

71. Unless specifically exempted or otherwise provided, AVD at Scale 1 rates is payable on an instrument for acquisition of an immovable property for redevelopment. A person who has paid AVD at Scale 1 rates in respect of an instrument effecting the acquisition of the immovable property for redevelopment may apply for partial refund of the AVD payment, that is, the difference between the AVD paid and the AVD computed at Scale 2 rates, if the specified conditions are met. The refund mechanism applies to both residential properties and non-residential properties acquired for redevelopment, and is premised on two major principles, that is, the developer concerned has obtained ownership of the entire lot to be redeveloped and there is proof that the developer concerned will use the site for redevelopment purpose. [Section 29DE(3)]

72. Upon application, the Collector may make partial refund of the AVD paid by the applicant for acquisition of an immovable property which consisted, or formed part, of a lot (“the lot”) and the applicant alone or jointly with an associated body corporate became the owner of the lot and the conditions specified in paragraph 73 below are satisfied. In some cases, the lot (wholly or partly and whether or not together with any other lot) may be surrendered to the Government, acquired by the Government under section 4A of the Lands Resumption Ordinance (Cap 124) or resumed by the Government under an

order made under section 3 of that Ordinance and the owner be granted a new lot (“the new lot”) for redevelopment. The applicant can still claim for partial refund of the AVD paid if the conditions specified in paragraph 73 below are satisfied.

73. The conditions required for the partial refund of AVD mentioned in paragraph 72 above are that the applicant alone or jointly with the associated body corporate:

- (a) has obtained from the Building Authority under the Buildings Ordinance (Cap 123), the consent to commence any foundation work for the lot or the new lot (whether or not together with any other lot); or
- (b) has-
 - (i) demolished all buildings (if any) existing on the lot or the new lot, other than a building the demolition of which is prohibited under any Ordinance; and
 - (ii) obtained the approval of the Building Authority in respect of the general building plan for the building works to be carried out on the lot or the new lot (whether or not together with any other lot).

74. In relation to a lot that has been divided into undivided shares, a person does not become the owner of the lot until the person is the legal owner of all the undivided shares in the lot. “Lot” has the meaning given by section 2(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545) which:

- (a) means-
 - (i) any piece or parcel of ground the subject of a Government lease;
 - (ii) a section which by virtue of section 8(3) or 27(2) of the Government Rent and Premium (Apportionment) Ordinance (Cap 125) is deemed to be a lot for the purposes of that Ordinance;

(b) includes a section and subsection of a lot.

75. If the property was subsequently transferred by a person (which is a body corporate) to an associated body corporate, the latter may also, subject to the conditions set out in paragraphs 72 and 73 above, apply for a partial refund of AVD paid by the former. On the other hand, if the developer acquires immovable properties for redevelopment from a third party vendor, the developer cannot claim partial refund of AVD paid by the vendor in the acquisition of the properties concerned. That said, the developer can still apply for partial refund of AVD it has paid for acquiring the immovable properties being redeveloped in accordance with the mechanism explained above.

76. In respect of immovable properties separately acquired by different companies for joint development, the companies, being the joint owners of the lot, may respectively claim for partial refund of AVD they separately paid at the times they acquired the various immovable properties if the conditions specified in paragraphs 72 and 73 above are met.

77. The refund mechanism does not cover acquisition of an immovable property for refurbishment or renovation. Where a non-HKPR or a HKPR who is a beneficial owner of other residential property in Hong Kong acquires a residential property and then carries out renovation or refurbishment works, the agreement for sale or the conveyance on sale will be chargeable with AVD at the rate under Part 1 of Scale 1. Likewise, where a person acquires a non-residential property and then carries out renovation or refurbishment works, the agreement for sale or the conveyance on sale will also be chargeable with AVD at the rates under Part 2 of Scale 1.

Refund for change of residential property

78. Section 29DF of the Ordinance provides a refund mechanism for HKPRs who change their only residential property. In particular, a HKPR who is acting on his or her own behalf in acquiring a residential property (and a car parking space, if applicable) (“the subject property”) to replace his or her only residential property (and a car parking space, if applicable) (“the previously owned property”) can apply for partial refund of AVD paid. The HKPR will be subject to AVD at Scale 1 rates when acquiring the subject property, but he or she may seek a partial refund of AVD paid when proof is

available to show that the previously owned property has been disposed of by an agreement for sale or conveyance on sale within the specified period. Where the subject property is acquired before 5 November 2016, the specified period is six months from the date of assignment of the subject property. The specified period is 12 months from the date of assignment of the subject property if it is acquired on or after 5 November 2016. It should be noted that where at the time of acquisition of the subject property, the purchaser owned more than one property, he or she will not be entitled to a partial refund (see *Ho Kwok Tai v. Collector of Stamp Revenue* [2016] 5 HKLRD 713).

79. The application for partial refund has to be made to the Collector not later than two months after the date of the conveyance on sale of the previously owned property or not later than two years after the date of the agreement for sale or conveyance on sale of the subject property on which AVD at Scale 1 rates had been paid, whichever is the later.

Scenario 33

Mr A is a HKPR. He owned a residential property X, being his only residential property in Hong Kong. On 1 July 2014, he entered into a PASP to acquire a residential property Y. On 2 September 2014, he entered into another PASP to dispose of property X. Property Y was assigned to Mr A on 5 September 2014. AVD at Scale 1 rates had been paid for acquisition of property Y.

The specified period ended on 5 March 2015 (6 months after property Y was assigned to him). Since property X was disposed of before the expiration of the specified period, Mr A is entitled to claim a partial refund.

Scenario 34

Mr A and Ms B are both HKPRs. They jointly owned a residential property X, being their only residential property in Hong Kong. On 1 July 2014, Mr A entered into a PASP to acquire a residential property Y. On 2 August 2014, Ms B entered into a PASP to acquire a residential property Z. On 2 September 2014, Mr A and Ms B entered into a PASP to dispose of property X. AVD at Scale 1 rates had been paid for acquisitions of property Y and property Z. Property Y and property Z were assigned to Mr A and Ms B on 30 September 2014 and 3 November 2014 respectively.

For Mr A, the specified period ended on 30 March 2015, i.e., six months after the date property Y was assigned to him. For Ms B, the specified period ended on 3 May 2015, i.e., six months after the date property Z was assigned to her. Since property X was disposed of before the expiration of the specified periods, Mr A and Ms B are entitled to claim a partial refund in respect of the respective residential properties acquired by them.

Scenario 35

Mr A is a HKPR. On 1 December 2016, he entered into a PASP to acquire a residential property Y. At that time, Mr A only owned another residential property X. Property Y was assigned to Mr A on 1 January 2017. On 15 August 2017, Mr A entered into a PASP to dispose of property X.

The specified period ended on 1 January 2018 (i.e., 12 months after property Y was assigned to Mr A). Since property X was disposed of within the specified period, Mr A is entitled to claim a partial refund.

Scenario 36

Mr A and Ms B are both HKPRs. On 1 July 2014, they entered into a PASP to acquire a residential property X jointly. On the date of acquisition of property X, Mr A already owned a residential property Y and Ms B already owned another residential property Z. On 2 August 2014, Mr A entered into a PASP to dispose of property Y and on 30 September 2014, Ms B entered into a PASP to dispose of property Z. AVD at Scale 1 rates has been paid for acquisition of property X.

Since Mr A and Ms B owned more than 1 residential property in Hong Kong on the date of acquisition of property X, they are not entitled to claim a partial refund in respect of property X.

80. The refund mechanism mentioned in paragraph 78 above is also applicable to those who dispose of their original property by way of a conveyance on sale (including a deed of gift), provided that they fulfill the requirements so specified in the provision to dispose of their original residential property and apply to the Collector for refund.

81. There are cases where a person owns adjoining residential flats. Whether the adjoining flats should be counted as 1 property or more than 1 property may be at issue. If the residential flats are separable for sale and purchase, the relevant person is considered as owner of more than 1 residential property in Hong Kong, the refund arrangement is not applicable. On the other hand, if the adjoining residential flats are not distinct properties and cannot be purchased and sold separately, the property concerned will be regarded as 1 residential property and the refund arrangement is applicable. The table in **Appendix** summarizes the circumstances under which a HKPR acting on his or her own behalf in acquiring a new property can apply for a partial refund of AVD paid if the original property has been disposed of within six months or 12 months, as the case may be, after the date of the conveyance on sale of the property.

EXEMPTION

Gift to charitable institution

82. A conveyance to effect a gift of immovable property to a charitable institution or trust of a public character is exempted from AVD in accordance with section 44 of the Ordinance if the charitable institution or trust of a public character is exempted from tax under section 88 of the IRO.

Associated bodies corporate

83. If it is shown to the satisfaction of the Collector that a chargeable agreement for sale or conveyance on sale is executed to transfer immovable property from one associated body corporate (within the meaning of section 45(2) of the Ordinance) to another associated body corporate, the agreement for sale or the conveyance on sale is exempted from AVD in accordance with section 45 of the Ordinance.

FURTHER STAMP DUTY ON FAILURE TO COMPLETE DISPOSAL OF RESIDENTIAL PROPERTY

84. Where a person entered into an agreement for sale to dispose of his

or her only residential property and then signed another agreement for sale or conveyance on sale to acquire a residential property (“the second property”), and AVD at Scale 2 rates was paid on the relevant instrument in respect of acquisition of the second property on the ground, among others, that he or she was not a beneficial owner of any other residential property in Hong Kong on the date of acquisition of the second property, if the agreement for sale in respect of the disposal of the previously owned property is cancelled, annulled or rescinded or is otherwise not performed and the stamp duty paid on the agreement is refunded under section 29C(5B) of the Ordinance, the person is liable civilly to the Collector for the payment of a specified amount (that is, the difference between the AVD paid and the AVD calculated at Scale 1 rates), within 30 days after the date the refund is made. [Section 29DG]

85. If the specified amount is not paid by the due date, the person is further liable to pay to the Collector interest on the specified amount at the rate of 4 cents per \$100 or part of \$100 per day for the period beginning on the expiration of 1 month from the expiration of the time for stamping the relevant instrument, and ending on the date of payment of the specified amount. However, the Collector may remit the whole or any part of any additional stamp duty taking into account the circumstances of each case.

LIABLE PERSON

86. Generally, all parties to a chargeable agreement for sale or conveyance on sale and any person who uses the instrument shall be liable or jointly and severally liable, as the case may be, civilly to the Collector for the payment of the AVD. However, an estate agent signing a provisional agreement for sale and purchase in the capacity of a witness will not be regarded as a liable person. If AVD had been charged at Scale 2 rates on an agreement for sale or conveyance on sale of residential property (whether or not together with a car parking space) based on the transferee or purchaser’s declaration and it was subsequently found that the declaration of the transferee or purchaser is not correct, only the transferee or purchaser under the instrument is liable civilly to the Collector for the payment of the specified amount, that is, the difference between the AVD paid and AVD computed at Scale 1 rates. [Section 29DH]

TIME FOR PAYMENT

87. In general, the time for stamping an agreement for sale or a conveyance on sale with AVD is 30 days after the date on which the agreement is made or the conveyance is executed. Nevertheless, sections 72 and 73 of the Ordinance provide that if the time for stamping any chargeable instrument with any additional stamp duty (that is, the difference between the AVD computed at Scale 2 rates or Part 2 of Scale 1 rates, as the case may be and that computed under Part 1 of Scale 1) begins before the days on which the respective Amendment Ordinances are published in the Gazette, the time for stamping the additional stamp duty is to be replaced by a period of 30 days commencing immediately after those days.

ADMISSIBILITY OF INSTRUMENT

88. By virtue of section 15 of the Ordinance, instruments not duly stamped are generally not admissible in proceedings other than criminal proceedings and civil proceedings initiated by the Collector to recover stamp duty and penalty. In order not to jeopardize the right of a party to present the relevant documentation in court proceedings under the circumstances mentioned in paragraph 86, an instrument may be received in evidence in civil proceedings before a court even if it is not duly stamped with AVD if the instrument is produced in evidence by a person who is not the purchaser or transferee under the instrument.

FAQs

89. The Department has prepared FAQs in its web site (www.ird.gov.hk) to provide answers to common questions encountered.

Circumstances under which a HKPR who changes his or her only residential property can apply for partial refund of AVD paid

	Scenario	Original Property	New Property	Whether refund is available
1.	To acquire residential property by a single instrument	(a) One residential property	One residential property	Refund is available (for the newly-acquired residential property)
		(b) One residential property together with one car parking space	One residential property	Refund is available (for the newly-acquired residential property)
2.	To acquire residential property together with car parking space by a single instrument	(a) One residential property	One residential property together with one car parking space	Refund is available (for the newly-acquired residential property together with one car parking space)
		(b) One residential property	One residential property together with two car parking spaces	Refund is available (for the newly-acquired residential property) Refund is not available for the two car parking spaces
		(c) One residential property together with one car parking space	One residential property together with one car parking space	Refund is available (for the newly-acquired residential property together with one car parking space) [Remarks: The original residential property and car parking space must be disposed of by a single instrument]
		(d) One residential property together with one car parking space	One residential property together with two car parking spaces	Refund is available (for the newly-acquired residential property) Refund is not available for the two car parking spaces
		(e) One residential property together with two car parking spaces	One residential property together with one car parking space	Refund is available (for the newly-acquired residential property) Refund is not available for the car parking space