



Hong Kong Tax News

Further Measures on Ad Valorem Stamp Duty to Address the Overheated Property Market

The Financial Secretary announced on 22 February 2013, a few days before the Budget Speech, that the Government would amend the Stamp Duty Ordinance to adjust the ad valorem stamp duty (AVD) rates and to advance the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement for sale. This is the Government's 3rd series of measures after the introduction of Special Stamp Duty in November 2010 and Buyer's Stamp Duty in October 2012 to address the overheated property market.

Any residential property (with exceptions as detailed below) and all non-residential property acquired on or after 23 February 2013 will be subject to the following new rates of AVD upon the enactment of the relevant legislation:

Consideration or value of the property (whichever is the higher)	New AVD rate	Consideration or value of the property (whichever is the higher)	Old AVD rate
Up to HK\$2,000,000	1.50%	Up to HK\$2,000,000	HK\$100
HK\$2,000,001 to HK\$2,176,470	HK\$30,000 + 20% of the excess over HK\$2,000,000	HK\$2,000,001 to HK\$2,351,760	HK\$100 + 10% of excess over \$2,000,000
HK\$2,176,471 to HK\$3,000,000	3.00%	HK\$2,351,761 to HK\$3,000,000	1.50%
HK\$3,000,001 to HK\$3,290,330	HK\$90,000 + 20% of the excess over HK\$3,000,000	HK\$3,000,001 to HK\$3,290,320	HK\$45,000 + 10% of excess over HK\$3,000,000
HK\$3,290,331 to HK\$4,000,000	4.50%	HK\$3,290,321 to HK\$4,000,000	2.25%
HK\$4,000,001 to HK\$4,428,580	HK\$180,000 + 20% of the excess over HK\$4,000,000	HK\$4,000,001 to HK\$4,428,570	HK\$90,000 + 10% of excess over HK\$4,000,000

HK\$4,428,581 to HK\$6,000,000	6.00%	HK\$4,428,571 to HK\$6,000,000	3.00%
HK\$6,000,001 to HK\$6,720,000	HK\$360,000 + 20% of the excess over HK\$6,000,000	HK\$6,000,001 to HK\$6,720,000	HK\$180,000 + 10% of excess over HK\$6,000,000
HK\$6,720,001 to HK\$20,000,000	7.50%	HK\$6,720,001 to HK\$20,000,000	3.75%
HK\$20,000,001 to HK\$21,739,130	HK\$1,500,000 + 20% of the excess over HK\$20,000,000	HK\$20,000,001 to HK\$21,739,120	HK\$750,000 + 10% of excess over HK\$20,000,000
HK\$21,739,131 and above	8.50%	HK\$21,739,121 and above	4.25%

The key features of the proposed measures are highlighted below:

- The new AVD is payable on an agreement for sale for the acquisition of any residential property or non-residential property if the agreement is executed on or after 23 February 2013. This applies to a Provisional Agreement for Sale and Purchase (PASP) entered into on or after 23 February 2013.
- The new AVD will not be applicable under the following major circumstances:
 - ✓ Acquisition of a residential property by a Hong Kong Permanent Resident* (HKPR) who does not own any other residential property in Hong Kong at the time of acquisition;
 - ✓ Acquisition of a residential property by two or more HKPRs jointly as co-owners or joint owners and each of them* does not own any other residential property in Hong Kong at the time of acquisition;
 - ✓ Acquisition of a residential property by a HKPR jointly as a co-owner or joint owner with a close relative or close relatives (i.e. spouse, parents, children, brother and sisters) who is / are not HKPR and each of the purchasers* does not own any other residential property in Hong Kong at the time of acquisition;
 - ✓ Acquisition or transfer of residential properties 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 the acquisition or transfer;
 - ✓ Acquisition or transfer of a property by or to a body corporate from an associated body corporate;
 - ✓ Acquisition of a residential or non-residential property (including bare sites) for the purpose of redevelopment.

* Each of the purchasers is acting on his/her own behalf

The above are selected circumstances only. For details of all the exempted circumstances, please refer to the FAQs in the [Inland Revenue Department's website](#).

- Here are some selected circumstances addressed in the FAQs:
 - ❖ If a HKPR has disposed of all his existing residential properties before acquiring a new one, the old AVD rates will apply to the acquisition. However, if the HKPR fails to complete any of the disposal transactions (i.e. where the agreement for sale is cancelled, annulled or rescinded or is otherwise not performed), the difference between the old and new AVD rates on the newly acquired property will be recouped.
 - ❖ Regarding the change of residential property case where a HKPR who is acquiring a residential Property A while seeking to dispose of another one, Property B (his only other residential property), he will be subject to the new AVD as usual in the first instance, but he may seek a refund of the stamp duty paid in excess of that computed under the old rates upon proof that Property B has been disposed of within six months from the date when he executed the agreement to acquire Property A. The disposal of Property B must have been completed before a refund could be claimed.
 - ❖ If a residential property is jointly acquired by more than one person and any of the purchasers (no matter the joint owner is a close relative or not) already owned a residential property in Hong Kong at the time of acquisition, the new AVD will be payable on the entire stated consideration or full value of the property, whichever is the higher, regardless of the respective share of interest of the purchasers in the property acquired.
 - ❖ If a HKPR who does not own any residential property in Hong Kong entered into a PASP to purchase a residential property on or after 23 February 2013, and his spouse's name was later added as one of the purchasers in the agreement for sale and purchase (ASP), the PASP will be chargeable to AVD at the old rates as usual. If his spouse already owned a residential property in Hong Kong, upon adding the spouse's name, the ASP will be charged with another AVD also at the old rates, which is computed by reference to half (representing the share of the interest of the spouse in the property) of the stated consideration or value of the property, whichever is the higher. If his spouse did not own any residential property in Hong Kong when her name was added in the ASP, no extra stamp duty liability will be incurred.
 - ❖ Where a HKPR, who does not own any other residential property in Hong Kong, executes one agreement to acquire several residential property units in one single transaction, all the property units comprised in that instrument will be charged at

the old rates.

- ❖ Where a HKPR, who does not own any other residential property in Hong Kong, executes several agreements to buy several residential properties on the same day, the agreement which was executed first at a point in time on that day will be charged at the old rates, whereas all the other agreements will be charged at the new rates.
- For the purposes of the new AVD, a person "owns" a residential property if he is the beneficial owner of such property, or any share or interest thereof. Therefore, a person "owns" a residential property even if (1) he jointly owns the property with another person, or is a co-owner thereof; or (2) his residential property is held in the name of a trustee; or (3) he has signed a binding agreement for sale or purchase of that property (being regarded as a beneficial owner).
- If a limited company, regardless of the residency status of its shareholders and directors, acquires a residential property or non-residential property on or after 23 February 2013, the new AVD will apply unless the transaction is specifically exempted from the new AVD.
- Both the buyer and seller will be jointly and severally liable to pay the new AVD which is in line with the existing regime. Therefore, where the parties to a residential property transaction wish to claim that the new AVD does not apply, the seller should understand that he runs the risk of having to pay for any under-paid AVD and penalty should it turn out that the buyer is not eligible for the lower AVD rates.
- Even if the property prices have plummeted when the amendment bill is enacted, the parties cannot pay the new AVD based on the lowered market price or seek a refund of the AVD already paid.

Here are the transitional arrangements before the proposed legislation is enacted:

- Residential properties chargeable with the new AVD: stamped by reference to the old rates first; the additional AVD (representing the difference between the old rates and the new rates) will have to be paid within 30 days commencing immediately after the date of gazettal of the amendment ordinance;
- Non-residential properties chargeable with the new AVD: stamp duty based on the old rates will be payable on the conveyances on sale within 30 days after the date on which the conveyances are executed. The additional AVD (representing the difference between the old rates and the new rates) will have to be paid within 30 days commencing immediately after the date of gazettal of the amendment ordinance.

Details of the above proposed measures can be found on the [Inland Revenue](#)

Department's website. It is expected that the amendment bill will be drafted and debated in the Legislative Council shortly. They will come into force after the enactment of the law.

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