

Amendments to the Stamp Duty Ordinance to curb speculation in residential properties

INTRODUCTION

At the meeting of the Executive Council on 19 November 2010, the Council ADVISED and the Chief Executive ORDERED that approval be given to amend the Stamp Duty Ordinance (Cap. 117)(“the Ordinance”) to implement the following proposals to curb speculation in residential properties –

- (a) introducing, on top of the current ad valorem property transaction stamp duty, a Special Stamp Duty (“SSD”) on residential properties of all values at the point of resale if the properties are acquired on or after 20 November 2010 and resold within 24 months after acquisition. The SSD payable will be calculated based on the stated consideration for the transaction or the market value of the property as assessed by the Collector of Stamp Revenue (i.e. the Commissioner of Inland Revenue), whichever is the higher, at the following regressive rates for different holding periods –
 - (i) 15% if the property has been held for six months or less;
 - (ii) 10% if the property has been held for more than six months but for 12 months or less; and
 - (iii) 5% if the property has been held for more than 12 months but for 24 months or less;
- (b) disallowing deferred payment of the current ad valorem property transaction stamp duty for all residential property transactions valued at \$20 million or below.

THE PROPOSALS

Introduction of the SSD

2. Currently, ad valorem stamp duty is levied on property transactions, for which both the buyer and the seller of a property are held

jointly and severally liable. The existing stamp duty rates are set out at **Annex**. We propose to introduce, on top of the current ad valorem stamp duty, a new SSD at the rates as shown in paragraph 1 (a) above on the transfer of ownership of residential properties of all values at the point of resale if the properties are acquired on or after 20 November 2010 and are resold in any manner including confirmor transactions, subject to the exemptions mentioned in paragraph 4, within 24 months after acquisition. Subject to the interim arrangement as mentioned in paragraph 6 below, the SSD is payable within 30 days of the signing of the Agreement for Sale and Purchase (“ASP”)/Assignment.

3. We propose that both the seller and the buyer, be it an individual or a company (listed or unlisted, and wherever incorporated), will be held jointly and severally liable for the SSD. Whereas in some jurisdictions such additional stamp duty is levied on the seller, we believe our proposal is more appropriate as this will allow the Inland Revenue Department (“IRD”) to collect the SSD from the buyer in the event that the seller cannot be traced, which is in line with the current law. This could help discourage manipulated transactions as the buyer will also be held liable when the seller has vanished.

4. We propose to grant exemptions to the following, namely nomination of a close relative (i.e., spouse, parent and child) to take up the assignment of the property and resale or transfer of the property to close relatives, transfers between associated companies, transfers of the properties of deceased persons by will or by law to the beneficiaries, sale of properties due to bankruptcy/involuntary winding up, and sale of properties to the Government. For the purpose of counting the holding period, we also propose to provide a concession by treating the date of acquisition of a residential property by a deceased person as the date on which the beneficiary or executor acquired interest in the property. Under the existing Ordinance, exemption for stamp duty is granted to certain transfers to the Government, transfers between associated companies, passing of properties of a deceased person by will or by law to beneficiaries and nomination of close relatives to take up the assignment.

5. To deter non-compliance, we propose to extend the existing statutory sanctions under the Ordinance to cover the SSD. In other words, any person who fails to pay the SSD by the deadline for payment

shall be liable to penalties up to 10 times the amount of the SSD payable and any unpaid the SSD shall become a civil debt due to the Collector of Stamp Revenue. Evasion of the SSD by fraudulent practices shall be a criminal offence, same as for normal stamp duty under the existing Ordinance.

6. We propose that this measure takes immediate effect on 20 November 2010 so that all residential properties acquired on or after 20 November 2010 will be caught and SSD-chargeable if the residential properties are resold within 24 months. Before the coming into effect of the new law, the IRD will record all the residential property transactions between 20 November 2010 and the date of coming into effect of the new law to identify the cases liable for the SSD. Demand notes on the SSD will then be issued after the new legislation is enacted. We will draw the attention of the public, the Estate Agents Authority, the Law Society of Hong Kong, the Real Estate Developers Association of Hong Kong, and the major estate agency associations to the aforementioned arrangement.

7. The IRD has all along been monitoring property transactions so that for transactions that amount to a trading venture, the IRD will levy profits tax on the persons or companies concerned for profits arising from such transactions. The IRD will continue to do so.

No Deferred Payment of Stamp Duty

8. We have already disallowed deferred payment of stamp duty for residential property transactions valued more than \$20 million with effect from 1 April 2010. To reduce the liquidity of speculators, we propose to disallow deferred payment of stamp duty for all residential property transactions. This means that the stamp duty has to be paid within 30 days after the signing of the ASP, and will no longer be allowed to be paid at the later of three years after the signing of the ASP or until the completion of assignment of the property transaction (whichever is the earlier).

9. This proposal, however, can only be implemented after the coming into effect of the new law. In the meantime, the IRD will continue to allow and approve applications for deferring stamp duty payment on agreements made in accordance with the prevailing legislation until the new law comes into effect.

OTHER RELATED NEW MEASURES

10. The Hong Kong Monetary Authority will continue to closely monitor the market situation, and will make adjustments to the risk management guidelines for banks.

11. The objective of these measures is to curb speculation, send a clear signal to anyone minded to make quick profits through speculating in our property market that they will have to reckon with these measures and the other possible measures that we will adopt as and when necessary. With diminished prospect for quick profits from speculating in Hong Kong properties, there will be less speculation by anyone, whether individuals, HK companies or foreign companies.

Transport and Housing Bureau
19 November 2010

Existing Ad Valorem Stamp Duty Rates for Property Transactions

Consideration	Stamp Duty Rates
Not more than \$2 million	\$100
More than \$2 million but not exceeding \$3 million	1.5%
More than \$3 million but not exceeding \$4 million	2.25%
More than \$4 million but not exceeding \$6 million	3%
More than \$6 million but not exceeding \$20 million	3.75%
More than \$20 million	4.25%