

立法會
Legislative Council

LC Paper No. CB(1) 2538/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/09/2

Bills Committee on Stamp Duty (Amendment) Bill 2010

**Minutes of fourth meeting
held on Tuesday, 15 June 2010, at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
- Members absent** : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Wing-tat
Hon WONG Kwok-kin, BBS
Hon CHIM Pui-chung
Hon Paul TSE Wai-chun
- Public officers attending** : Transport and Housing Bureau

Mr Eugene FUNG
Principal Assistant Secretary for Transport and Housing
(Housing)(Private Housing)

Miss Alice YEUNG
Senior Administrative Officer (Private Housing)
- Financial Services and the Treasury Bureau

Ms Shirley KWAN
Principal Assistant Secretary for Financial Services and
the Treasury (Treasury) (Revenue)

Inland Revenue Department

Mrs Brenda LEE
Assistant Commissioner 3

Ms Mary WONG
Senior Assessor

Department of Justice

Mr Sunny CHAN
Senior Assistant Law Draftsman

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Mary TANG
Senior Council Secretary (1)2

I. Confirmation of minutes

(LC Paper No. CB(1) 2243/09-10 — Minutes of the meeting held on
26 May 2010)

The minutes of the meeting held on 26 May 2010 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 2246/09-10(01) — Draft Committee Stage
amendments proposed by
Hon James TO (English version
only))

2. The Bills Committee deliberated (Index of proceedings attached in **Annex**).

3. The Bills Committee examined the Committee Stage amendments (CSAs) proposed by Mr James TO. The Administration was requested to comment on the proposed CSAs, particularly on the technicality of the amendments and whether these were within the scope of the Bill.

(Post-meeting note: The Administration's comments on the CSAs proposed by Mr TO was circulated to members vide LC Paper No. CB(1) 2325/09-10 on 22 June 2010.)

4. Members noted that a report on the deliberations of the Bills Committee would be submitted for consideration by the House Committee at its meeting on 25 June 2010, supporting the resumption of Second Reading debate on the Bill at the Council meeting on 14 July 2010.

III. Any other business

5. There being no other business, the meeting ended at 11:30 am.

Council Business Division 1
Legislative Council Secretariat
13 July 2010

**Bills Committee on
Stamp Duty (Amendment) Bill 2010**

**Proceedings of the fourth meeting
on Tuesday, 15 June 2010, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000319 - 000359	Chairman	The minutes of the meeting held on 26 May 2010 (LC Paper No. CB(1) 2243/09-10) were confirmed.	
<i>Agenda Item II – Meeting with the Administration</i>			
000400 - 000700	Chairman Mr James TO Administration	<p>Mr James TO's explanation on the draft Committee Stage amendments (CSAs) to be moved by Mr LEE Wing-tat (LC Paper No. CB(1) 2246/09-10(01) -</p> <p>(a) an additional stamp duty at X% (initially to be set at 2%) would apply to chargeable agreements under section 29C(3)(b); and</p> <p>(b) each sub-sale agreement in section 29C(4)(a) would be chargeable with an additional stamp duty at X%.</p> <p>The proposed additional stamp duty aimed to increase the transaction cost for confirmor sales and deter property speculation.</p>	
000701 - 001847	Administration Mr James TO	<p>Administration's response -</p> <p>(a) more time was required to examine the technicality of the proposed CSAs, and to seek legal advice on whether the proposed CSAs were within the scope of the Bill;</p> <p>(b) at a glance, the proposal to impose an additional stamp duty on sub-sale through confirmor might change the current assessment mechanism and related procedures on stamp duty. It might also deviate from the simple tax regime in Hong Kong. Besides, sub-sale through confirmor was only one type of speculative activities;</p>	

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		<p>(c) the two measures in the Bill were part and parcel of the package of measures to enhance the stability of the property market on the one hand and to strike a proper balance between protecting the interest of genuine buyers and curbing property speculation on the other;</p> <p>(d) Inland Revenue Department had clear procedures to identify and process suspected property speculation cases. It would consider all relevant facts of the case to determine whether the transaction should be treated as a business, and whether the vendor had to pay tax for the profits earned; and</p> <p>(e) consideration would be given to introducing additional measures, including prohibition of sub-sale through confirmor, to curb speculation if the two measures in the Bill were proved to be ineffective.</p> <p>Mr James TO's views -</p> <p>(a) failed to see how sub-sale through confirmor could be prohibited;</p> <p>(b) profits tax was not an effective tool to curb property speculation as speculators could evade profits tax through various measures; and</p> <p>(c) the proposed CSAs, which aimed at increasing the transaction cost of sub-sale through confirmor, were more target-specific in curbing property speculation than the two measures in the Bill.</p>	
001848 - 002159	Ms Audrey EU Chairman Mr James TO	<p>Ms Audrey EU's enquiries -</p> <p>(a) whether the "agreement" in the proposed CSAs to section 29C(3)(b) referred to "another chargeable agreement" or the "first-mentioned agreement" under section 29C(3)(b); and</p>	

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		<p>(b) the feasibility of including a proviso in the proposed CSAs to exempt payment of additional stamp duty for cases of transfer of properties to related persons before completion of assignment.</p> <p>Mr James TO's reply -</p> <p>(a) would clarify the scope of "agreement" in the proposed CSAs to section 29C(3)(b); and</p> <p>(b) need to carefully consider the proposed exemption for transfer of properties to related persons.</p>	
002200 - 002454	<p>Mr WONG Ting-kwong Chairman Mr James TO</p>	<p>Mr WONG Ting-kwong's views -</p> <p>(a) need to consider the effect of the proposed CSAs on transfer of properties through probate;</p> <p>(b) did not support prohibiting sub-sale through confirmor, but would support stepping up efforts to recover profits tax from sub-sale; and</p> <p>(c) the proposed CSAs would unduly affect the property market and complicate the tax system in Hong Kong.</p> <p>Mr James TO's reply that the proposed CSAs would not affect transfer of properties through probate which was subject to separate legal procedures.</p>	
002455 - 003003	<p>Ms Miriam LAU Chairman Mr James TO</p>	<p>Ms Miriam LAU's enquiries and concerns -</p> <p>(a) the part of the draft CSAs to section 29C(3)(b) regarding "the agreement in subsection(3)(b) is chargeable with an additional stamp duty in a sum of X% of the stamp duty chargeable by reference to the consideration of the agreement" was unclear on whether X% referred to percentage of stamp duty or consideration of the agreement;</p>	

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		<p>(b) the additional stamp duty on all sub-sales through confirmor might not be fair for those which were non-speculative in nature. For example, a buyer might have to re-sell the property at a loss before completion of assignment if he/she failed to secure bank mortgage; and</p> <p>(c) apart from sub-sale through confirmor, property speculators had other means to evade stamp duty, such as purchase of properties through transfer of shares of companies. It might be more effective to introduce measures to combat tax evasion through such transfers.</p> <p>Mr James TO's reply -</p> <p>(a) X% would apply to consideration of the agreement;</p> <p>(b) the policy intent to increase the rate of stamp duty of all transactions valued more than \$20 million under the Bill was unfair as there was no evidence to suggest that speculative activities were more rampant at the higher end of the market; and</p> <p>(c) the proposed CSAs were better in that these were targeting at sub-sales through confirmor, most of which involved speculative activities.</p>	
003004 - 003214	Mr WONG Ting-kwong	<p>Mr WONG Ting-kwong's views -</p> <p>(a) the application of a higher rate of stamp duty for transactions of properties at the higher end of the market was considered justified; and</p> <p>(b) sub-sales through confirmor were legal commercial activities and should not be penalized. There was however a need to recover profits tax from these activities.</p>	

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003215 - 003513	Ms Miriam LAU Mr James TO	<p>Ms Miriam LAU's views -</p> <p>(a) the proposals to increase the rate of stamp duty for property transactions valued more than \$20 million, and to disallow the deferment of payment of stamp duty on these transactions were originally put forward by Members belonging to the Liberal Party. The objective of these proposals was to encourage buyers to keep these properties for self-occupation rather than speculation;</p> <p>(b) the threshold was set at properties valued more than \$20 million because buyers of these properties should be able to afford the additional stamp duty; and</p> <p>(c) the imposition of an additional stamp duty on sub-sales of properties valued more than \$20 million through confirmor under the proposed CSAs might have the negative effect of driving speculation to properties valued less than \$20 million.</p> <p>Mr James TO's response that the proposed CSAs were more target specific measures, and should be more effective than the Bill in curbing property speculation.</p>	
003514 - 003800	Mr WONG Ting-kwong Chairman	<p>Mr WONG Ting-kwong's views -</p> <p>(a) agreed to the need to curb speculation at the higher end of the property market to prevent the spread of such activities to the middle to lower end of the market;</p> <p>(b) buyers of properties at the higher end of the market should be able to afford the higher stamp duty; and</p> <p>(c) the proposed additional X% stamp duty on sub-sales of properties valued more than \$20 million through confirmor under the</p>	

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		<p>proposed CSAs would drive speculation to properties valued less than \$20 million.</p>	
003801 - 004424	<p>Mr Abraham SHEK Mr James TO</p>	<p>Mr Abraham SHEK's views and concerns -</p> <p>(a) most of the tax measures were targeting at the middle-class;</p> <p>(b) the two measures in the Bill would impose additional financial burden on the middle-class upon purchase of their homes, the value of which might easily exceed \$20 million for a three-bedroom apartment of over 1 000 square feet in a good location;</p> <p>(c) the proposed CSAs to impose an additional X% stamp duty on sub-sale through confirmor was unfair as there were already tax measures to deal with speculative activities;</p> <p>(d) the Administration should ensure a sufficient supply of flats in order to curb property speculation; and</p> <p>(e) would support the Bill but not the proposed CSAs.</p> <p>Mr James TO's response that the measures in the Bill would affect genuine home buyers, but the proposed CSAs would only affect sub-sale through confirmors.</p>	
004425 - 004602	<p>Ms Miriam LAU</p>	<p>Ms Miriam LAU's concerns -</p> <p>(a) the proposed CSAs might drive speculation to properties valued less than \$20 million;</p> <p>(b) speculators could evade the additional stamp duty under the proposed CSAs by re-selling the properties through nomination/transfer of shares of property holding companies rather than a chargeable agreement by confirmor;</p>	

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		<p>(c) the proposed CSAs should cover other types of speculative activities (not just sub-sale through confirmor) if these were meant to curb property speculation;</p> <p>(d) the proposed CSAs would also complicate the stamp duty collection mechanism; and</p> <p>(e) would not support the proposed CSAs.</p>	
004603 - 005159	Mr Abraham SHEK Mr James TO Ms Miriam LAU	<p>Mr Abraham SHEK's views -</p> <p>(a) the proposed CSAs might fall outside the scope of the Bill;</p> <p>(b) need to strike a balance between protecting the interest of home buyers and curbing speculation; and</p> <p>(c) the threshold at property transactions valued more than \$20 million was arbitrarily set because there was no evidence to suggest that speculative activities were more rampant at this price range.</p> <p>Mr James TO's remark that the threshold of the proposed CSAs to impose an additional stamp duty on sub-sales of properties valued more than \$20 million through confirmor was in line with that under the Bill. He would personally prefer to extend the additional stamp duty to sub-sales of properties at all price ranges through confirmors.</p>	
005200 - 005521	Chairman Administration Mr WONG Ting-kwong ALA4	Discussion on the legislative timetable	The Administration was requested to comment on the proposed CSAs, particularly on the technicality of the amendments and whether these were within the scope of the Bill.

Time marker	Speaker	Subject(s)	Action required
005522 - 005530	Chairman	Closing remarks	

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