

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

運輸及房屋局

香港九龍何文田佛光街
33號



Transport and Housing Bureau

33 Fat Kwong Street, Ho Man Tin,
Kowloon, Hong Kong

本局檔號 Our Ref. HD(CR) 1/42/213
來函檔號 Your Ref. CB1/BC/7/09

電話 Tel No. 2761 5094
圖文傳真 Fax No. 2761 7444

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Ms Becky Yu
Clerk to Bills Committee
Bills Committee on the
Stamp Duty (Amendment) Bill 2010
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong
(Fax: 2869 6794)

Dear Ms Yu,

**The Stamp Duty (Amendment) Bill 2010 Bills Committee
Meeting held on 26 May 2010**

I refer to your letter of 26 May 2010. The following is the consolidated reply from the Transport and Housing Bureau, the Financial Services and Treasury Bureau, and the Inland Revenue Department (IRD).

IRD's work on tax assessment on property transactions, collection of tax and combating tax evasion

Stamp duty is one of the transaction costs of property transaction. According to the Stamp Duty Ordinance (Cap. 117), no instrument chargeable with stamp duty shall be acted upon, filed or registered unless it is duly stamped. Normally, purchasers' solicitors will pass the duly stamped instruments to the Land Registry for registration to safeguard the interest of their clients. Therefore, under normal circumstances, stamp duty on instruments of transfer of property ownership is secured. IRD will upload the particulars of property transactions onto

its computer system when the relevant instruments effecting the property transfers are submitted to IRD for stamping.

Regarding the collection of tax on the profits arising from property speculation, IRD has in place clear procedures for identifying and processing suspected property speculation cases.

For limited companies with existing profits tax files, profits from activities arising from property transactions should be recorded in their books of audited accounts. IRD will, in accordance with the established rules and procedures, assess if such property transactions are in the nature of trade and should be subject to tax. In examining the tax returns of limited companies, IRD's assessors will ensure that profits derived from property speculation will be taken into account on tax assessment. Please refer to the section on "Opening of tax files" below for statistics relating to limited companies which are mainly engaged in the businesses of property speculation, real estate development and property investment and have existing tax files.

As for other cases (i.e. cases other than those which have existing profit tax files), IRD will select those which meet the pre-set selection criteria of its computer programme for detailed examination. At present, the selection criteria include whether the cases involve "confirmor", whether the property is sold at a profit (after deducting expenses) within a short period of time after purchase, and whether the same person or company has multiple property transactions within a certain period of time. IRD will closely monitor the property market situation and modes of transactions, and will adjust the selection criteria from time to time.

Individuals engaging in property speculation may not take the initiative to report their property transactions even though some of them may have already opened other tax files. Therefore, IRD's computer program will also select cases of individuals meeting the selection criteria for examination.

The selected cases will be examined in detail by IRD's officers. For cases which may be subject to tax, IRD will issue tax returns or questionnaires to the vendors to ascertain the purpose of acquiring the properties, how the purchases are financed, the reasons for disposing of the properties, and details of the expenditures incurred in the property transactions etc. If necessary, IRD may ask for further information from the vendor and other relevant parties to verify the facts. If IRD's assessor is of the view that the purchase and sale of a property is in the nature of

trade, tax assessment will be issued to the vendor. Vendors who disagree with the tax assessment may raise objections with IRD.

In the past, IRD had not compiled breakdown in terms of the modes of transactions and the follow up actions on cases selected by the computer programme which were suspected to involve property speculation. But in view of Members' request, IRD has specifically dug out those suspected property speculation cases by individuals involving "confirmor" for the financial year 2007-08, and has looked at the follow up actions taken. In 2007-08, excluding cases with existing tax files, IRD's computer program identified 19 000 suspected cases of property speculations, 11 600 of them were cases which the vendors were individuals. 6 700 cases out of these cases required follow-up actions after initial processing by IRD's officers, and 4 600 of them were cases which the vendors were individuals. As at May 2010, 2 600 tax assessments were issued to the 4 600 cases, of which 1 600 cases were considered to be not taxable and the remaining 400 cases were still being processed.

All along, IRD has been actively tracking and taking follow-up actions on property speculation cases, including cases involving shares transfer of "property holding companies", to ensure that profits derived from property speculation are duly taxed. When stamping the transfer of shares in private companies, IRD's Stamp Office will refer suspected shares transfer cases of "property holding companies" to the Assessing Unit for review. Please refer to the section on "Property transactions through transfer of shares of companies" below for statistics on the speculation of properties through transfer of shares.

Opening of tax files

In general, IRD compiles statistics on tax assessment cases on the basis of the nature of the major businesses declared by the taxpayers. According to the existing categorisation, businesses engaging in property speculation and other businesses engaging mainly in real estate development and property investment are grouped under the same business category. In 2007-08, IRD issued 25 000 tax assessments to limited companies which had existing tax files and were categorized as businesses engaging in property speculation, real estate development and property investment as declared.

Given that limited companies in any trade or profession may engage in property transactions and that if they have other major businesses (e.g. importer and exporter, retailer, manufacturer), they will be categorized

according to their major businesses in tax assessment and will not be included in the aforementioned statistics. IRD is therefore unable to provide the relevant tax assessment statistics on limited companies of which property trading is not their major businesses but are engaged in property speculation. It is therefore also not possible for IRD to provide the total number of limited companies or individuals which are involved in speculation of properties. It will take up substantial time and manpower for IRD to check all the relevant files on all types of limited companies one by one manually to gather the information.

Notwithstanding that IRD does not keep statistics on limited companies of which property trading is not their major businesses but are engaged in property speculation, the incomes and expenditures on such activities are recorded in the books of audited accounts of limited companies. For businesses with existing profits tax files, IRD will, in accordance with the established rules and procedures, assess if such property speculation is in the nature of trade and should be subject to tax.

Property transactions through transfer of shares of companies

In the past, IRD had not collected information specifically on the sale and purchase of properties through shares transfer. Starting from April 2010, the Stamp Office has compiled statistics on those suspected speculation cases in the form of shares transfer of “property holding companies” and which the Stamp Office has referred to the Assessing Unit for follow-up actions. In April 2010, there were 15 such cases, which accounted for less than 0.1% of the total number of property transactions (around 15 000 cases) in the same period.

Introducing an additional stamp duty on the sellers of subsale through “confirmor”

All along, the amount of ad valorem stamp duty on property transactions is based on the consideration. The law stipulates that the seller and the purchaser of a property are both, and respectively, legally liable to pay the stamp duty. However, the stamp duty is in general paid by the purchaser as mutually agreed. If a “confirmor” or a vendor selling a property within a specified period is required to pay an additional amount of stamp duty, the issue of whether the additional stamp duty should be charged will depend on the types of vendor or the length of possessing the property. The proposal will change the current stamp duty assessment mechanism and the related procedures. Substantial amendments to the Stamp Duty Ordinance will be required.

In reality, the vendor may transfer the liability on the additional stamp duty to the purchaser, thereby defeating the objective of introducing the additional stamp duty on speculators. The proposal is unfair to those who have genuine needs to sell their properties within the specified period of time, and will cause additional hardship to those in financial difficulties. In fact, not all property transactions generate profits. Those gaining profits from property speculation are already subject to profits tax. The additional stamp duty will be considered as a kind of double taxation.

Common types of speculative activities

Some Members requested the Administration to briefly describe the most common types of property speculation. As far as we know, subsale of a flat through “confirmor” is a relatively common type of speculation. “Confirmors” in general refer to property buyers who have resold the relevant properties before assignments are completed. Other possible means include a buyer cancelling a transaction with the developer and nominating another buyer to purchase his flat.

When a buyer cancels a transaction with the developer and nominates another buyer to purchase his flat, the original buyer will also have to pay the stamp duty under the Stamp Duty Ordinance. In order to protect their interests, developers will normally require the speculator to pay the stamp duty before executing the change in the names on the instruments of transfer of property ownership. As mentioned above, regardless of the modes of transactions, IRD will issue tax assessments to vendors on property transactions which IRD considers to be in the nature of trade.

Yours sincerely,

(Eugene Fung)
for Secretary for Transport and Housing

c.c.

SFST (Attn: Ms Shirley Kwan) (Fax: 2530 5921)
CIR (Attn: Mrs Brenda Lee) (Fax: 2877 1260)
S for J (Attn: Mr Sunny Chan) (Fax: 2845 2215)