

LEGISLATIVE COUNCIL BRIEF

Stamp Duty Ordinance
(Chapter 117)

STAMP DUTY (AMENDMENT) BILL 2010

INTRODUCTION

At the meeting of the Executive Council on 24 February 2010, the Council ADVISED and the Chief Executive ORDERED that the Stamp Duty (Amendment) Bill 2010 (the Amendment Bill) (at **Annex**) be introduced into the Legislative Council. The Amendment Bill aims to implement the proposals in the 2010-11 Budget to increase the stamp duty rate for property transactions valued more than \$20 million to 4.25%, and disallow deferred payment of stamp duty for those transactions.

JUSTIFICATIONS

2. At present, in the light of the abundant liquidity in the global financial markets, the inflow of money which has fuelled the prices of high value flats, the very low-interest rate environment and the keen competition in the mortgage market, there is a potential risk of a property bubble. It is the policy objective of the Government to ensure a healthy and stable development of the property market. The Financial Secretary proposed in the Budget measures to increase the transaction cost of property speculation, with a view to reducing the risk of a property bubble.

3. Considering that there is a higher potential risk of speculative activities for flats with a transacted value above \$20 million, and making reference to the Hong Kong Monetary Authority's guidelines to banks in October 2009 to reduce the loan-to-value ratio from 70% to 60% for residential properties valued at \$20 million or more, the Government considers it appropriate to increase the stamp duty rate for property

transactions valued more than \$20 million from 3.75% to 4.25% and to disallow deferred payment of stamp duty for those transactions¹.

4. The aforementioned two tax measures will increase the cost to speculators on high value properties. There were about 2 000 residential transactions with consideration above \$20 million from November 2008 to October 2009, which accounted for about 1.5 % of the annual property transactions. The vast majority of home buyers will not be affected by the two measures.

5. After consultation with the Executive Council on 24 February 2010, the Chief Executive made the Public Revenue Protection Order 2010 (PRPO) to allow the two measures to come into effect on 1 April 2010. This proposed effective day is consistent with past practice, and has struck a balance between revenue protection and the need for the market to clear existing transactions. The PRPO will have a four-month temporary effect after coming into force, and will lapse on 1 August 2010. Therefore, the Amendment Bill has to be passed before that date.

OTHER OPTIONS

6. We need to amend the Stamp Duty Ordinance to implement the proposals relating to stamp duty in the 2010-11 Budget. There are no other options.

THE BILL

7. The provisions of the Amendment Bill are as follows –

- (a) **Clause 2** provides that the Bill is deemed to have come into operation on 1 April 2010.

¹ Since 1 April 1999, buyers of residential properties may apply to the Inland Revenue Department to defer the payment of stamp duty to within 30 days of the execution of an Assignment or within three years after the Agreement for Sale and Purchase (ASP) is executed (whichever is earlier). However, if the buyer sells the property before the Assignment, the stamp duty must be paid within seven days after the sale. If the buyer cancels the ASP (excluding cancellation arising from selling the property), the stamp duty will no longer be payable. Under the new arrangements, deferred payment of stamp duty will not be applicable to residential properties valued over \$20 million.

- (b) **Clause 3** amends section 29C of the Stamp Duty Ordinance so that deferred payment of stamp duty chargeable on an agreement for sale made in respect of residential property does not apply to an agreement for sale the consideration for which exceeds \$20 million.
- (c) **Clause 4** amends the First Schedule to the Stamp Duty Ordinance to increase the stamp duty payable in respect of a conveyance on sale or an agreement for sale of immovable property if the consideration involved exceeds \$20 million.

LEGISLATIVE TIMETABLE

8. The legislative timetable will be as follows –

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| Publication in the Gazette | 23 April 2010 |
| First Reading and commencement of Second Reading debate | 5 May 2010 |
| Resumption of Second Reading debate, committee stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSALS

9. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. The proposals will not affect the binding effect of the existing provisions of the Stamp Duty Ordinance and its subsidiary legislation.

10. The proposed increase of stamp duty rate for property transactions valued more than \$20 million is estimated to bring about additional revenue of around \$459 million in 2010-11. The proposal to disallow deferred payment of stamp duty for residential property

transactions valued more than \$20 million will be revenue-neutral. The above two proposals do not have staffing, productivity, sustainability and environmental implications.

11. We expect that the above two measures will make speculators more cautious when speculating in properties. This will be conducive to the healthy and stable development of the property market.

PUBLIC CONSULTATION

12. Owing to the confidentiality of the Budget, formal consultation specifically on the above proposals was not done before the Budget announcement. However, we have formulated the proposals after taking into account views from legislators and other parties during the Budget consultation process.

PUBLICITY

13. A press release on the Amendment Bill will be issued on 21 April 2010.

ENQUIRIES

14. Enquiries on this Brief should be directed to Mr Eugene Fung, Principal Assistant Secretary for Transport and Housing (Private Housing) at 2761 5094.

Transport and Housing Bureau
21 April 2010

A BILL

To

Amend the Stamp Duty Ordinance to give effect to 2 proposals in the Budget introduced by the Government for the 2010-2011 financial year.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Stamp Duty (Amendment) Ordinance 2010.

2. Commencement

This Ordinance is deemed to have come into operation on 1 April 2010.

3. Chargeable agreements for sale

(1) Section 29C(12)(a) of the Stamp Duty Ordinance (Cap. 117) is amended by repealing “and”.

(2) Section 29C(12)(b)(ii)(B) is amended by repealing the full stop and substituting “; and”.

(3) Section 29C(12) is amended by adding –

“(c) the amount or value of the consideration for the agreement does not exceed \$20,000,000.”.

(4) Section 29C(13)(a) is amended by repealing “where the requirement set out in subsection (12)(b) is satisfied, the Collector shall” and substituting “if the requirements set out in subsection (12)(b) and (c) are satisfied, the Collector must”.

(5) Section 29C(13)(b) is amended by repealing “where the requirement set out in subsection (12)(b) is not satisfied, the Collector shall” and substituting “if the requirements set out in subsection (12)(b) and (c) are not satisfied, the Collector must”.

4. First Schedule amended

(1) The First Schedule is amended by repealing head 1(1)(i) and substituting –

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| <p>“(i) where the amount or value of the consideration exceeds \$6,720,000 but does not exceed \$20,000,000 and the instrument is certified in accordance with section 29 at \$20,000,000</p> | <p>(i) 3.75% of the amount or value of the consideration</p> |
| <p>(j) where the amount or value of the consideration exceeds \$20,000,000 but does not exceed \$21,739,120 and the instrument is certified in accordance with section 29 at \$21,739,120</p> | <p>(j) \$750,000 plus 10% of the amount by which the amount or value of the consideration exceeds \$20,000,000</p> |
| <p>(k) in any other case</p> | <p>(k) 4.25% of the amount or value of the consideration”.</p> |

(2) The First Schedule is amended, in head 1(1), in Note 1, by repealing “(h)” and substituting “(j)”.

(3) The First Schedule is amended, in head 1(1), in Note 1, by repealing “(i)” and substituting “(k)”.

(4) The First Schedule is amended by repealing head 1(1A)(i) and substituting –

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| <p>“(i) where the amount or value of the consideration exceeds \$6,720,000 but does not exceed \$20,000,000 and the instrument is certified in accordance with section 29G at \$20,000,000</p> | <p>(i) 3.75% of the amount or value of the consideration</p> |
| <p>(j) where the amount or value of the consideration exceeds \$20,000,000 but does not exceed \$21,739,120 and the instrument is certified in accordance with section 29G at \$21,739,120</p> | <p>(j) \$750,000 plus 10% of the amount by which the amount or value of the consideration exceeds \$20,000,000</p> |
| <p>(k) in any other case</p> | <p>(k) 4.25% of the amount or value of the consideration”.</p> |

Explanatory Memorandum

The object of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) (“the Ordinance”) to give effect to 2 proposals in the 2010-2011 Budget.

2. Clause 3 amends section 29C(12) of the Ordinance so that section 29C(11) of the Ordinance, which provides for the deferred payment of stamp duty chargeable on an agreement for sale made in respect of residential property, does

not apply to an agreement for sale the consideration for which exceeds \$20 million.

3. Clause 4 amends the Schedule to the Ordinance to increase the stamp duty payable in respect of a conveyance on sale or an agreement for sale of immovable property if the instrument involves a consideration exceeding \$20 million.