

立法會

Legislative Council

LC Paper No. LS60/09-10

Paper for the House Committee Meeting on 7 May 2010

Legal Service Division Report on Stamp Duty (Amendment) Bill 2010

I. SUMMARY

1. **Objects of the Bill** To amend the Stamp Duty Ordinance (Cap. 117) (SDO) to give effect to two proposals relating to stamp duty on transactions of properties valued more than \$20,000,000 as set out in the 2010-2011 Budget Speech.
2. **Comments**
 - (a) The Bill seeks to amend SDO to disallow deferment of payment of stamp duty chargeable on an agreement for sale made in respect of residential property, and to increase the rate of stamp duty payable in relation to transactions of immovable property valued more than \$20,000,000 from 3.75 per cent to 4.25 per cent; and
 - (b) The policy reason for the above proposals is to increase the transaction cost of property speculation with appropriate tax measures so as to reduce the risk of creating a property bubble.
3. **Public Consultation** According to paragraph 12 of the LegCo Brief, owing to the confidentiality of the Budget, formal consultation specifically on the above proposals was not done before the Budget announcement. However, the Administration has formulated the proposals after taking into account views from legislators and other parties during the Budget consultation process.
4. **Consultation with LegCo Panel** At the briefing by the Financial Secretary and the Secretary for Financial Services and the Treasury on the Budget for the Finance Committee on 25 February 2010, some members queried the rationale for targeting at transactions of properties valued more than \$20,000,000 in proposing the increase in the rate of stamp duty and the disallowance of deferment of payment of stamp duty.
5. **Conclusion** Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

II. REPORT

Objects of the Bill

To amend the Stamp Duty Ordinance (Cap. 117) (SDO) to give effect to two proposals relating to stamp duty on transactions of properties valued more than \$20,000,000 as set out in the 2010-2011 Budget Speech.

LegCo Brief

2. Members may refer to the LegCo Brief issued by the Transport and Housing Bureau dated 21 April 2010 (File Ref: HD(CR)42/213) for further information.

Date of First Reading

3. 5 May 2010.

Comments

4. In paragraph 29 of the Budget Speech delivered on 24 February 2010, the Financial Secretary (FS) proposed to increase the transaction cost of property speculation with appropriate tax measures so as to reduce the risk of creating a property bubble. FS proposed that with effect from 1 April this year the rate of stamp duty on transactions of properties valued more than \$20,000,000 be increased from 3.75 per cent to 4.25 per cent, and buyers will no longer be allowed to defer payment of stamp duty on such transactions.

5. The Bill was introduced to give effect to the above proposals by amending -

- (a) section 29C(12) and (13) of SDO so that section 29C(11) of SDO, 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 \$20,000,000 (clause 3); and
- (b) the First Schedule to SDO 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 \$20,000,000, from 3.75 per cent to-

- (i) \$750,000 plus 10 per cent of the amount by which the amount or value of the consideration exceeds \$20,000,000, 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 of SDO at \$21,739,120¹; or
- (ii) 4.25 per cent in any other case (clause 4).

6. Members may recall that the content of the Bill was published in the Public Revenue Protection Order 2010 (L.N. 18 of 2010) (the 2010 Order) gazetted on 26 February 2010. The 2010 Order is a temporary measure taken under the Public Revenue Protection Ordinance (Cap. 120), to give effect to the two proposals as set out in paragraph 29 of the 2010-2011 Budget Speech. Under section 5 of the Public Revenue Protection Ordinance, the Order shall come into force immediately upon signing by the Chief Executive, unless some other time be specified in the Order for the coming into force of the Order, and it shall expire and cease to be in force –

- (a) upon the notification in the Gazette of the rejection by LegCo of the bill in respect of which the Order was made; or
- (b) upon the notification in the Gazette of the withdrawal of the bill or the Order; or
- (c) upon the bill, with or without modification, becoming law in the ordinary manner; or
- (d) upon the expiration of 4 months from the day on which the Order came into force,

whichever event first happens.

7. The House Committee considered the 2010 Order at its meeting on 5 March 2010. Members did not raise any queries on the 2010 Order.

8. Under the existing section 29C(13) of SDO, if the requirements specified in section 29C(12) are satisfied the Collector of Stamp Revenue (the Collector) "shall", upon application, endorse the chargeable agreement for sale, or issue a stamp certificate in respect of the agreement, to the effect that payment of stamp duty will be deferred in respect of that agreement. Where the requirements set out in section 29C(12) are not satisfied, the Collector "shall" issue a notice in writing of the decision, and the reasons for the decision to the person making the application for deferred payment of stamp duty.

¹ Section 29 of SDO provides that a certified conveyance on sale at a particular amount means that such conveyance on sale contains a statement certifying that the transaction effected by the instrument does not form part of a larger transaction or series of transactions in respect of which the amount or value, or aggregate amount or value, of the consideration exceeds that amount.

9. In amending section 29C(13) of the SDO, the Bill proposes to replace "shall" with "must". The Administration has not proposed in the Bill to make similar amendments to other subsections of section 29C in which "shall" is used. The effect is that there would be intermixing of the use of "must" and "shall" within the same section. The Legal Service Division has requested the Administration to consider synchronizing the use of the two terms in the same section. The Administration has given its reply, the gist of which is set out below-

- (a) The Administration explained that in an information paper tabled at the meeting of the Administration of Justice and Legal Services Panel (AJLS Panel) on 15 December 2009 (LC Paper No. CB(2)512/09-10(04))(the Information Paper), the Law Drafting Division (LDD) advised the AJLS Panel that "must" will be used to impose an obligation in place of "shall" in the drafting of all new legislation. LDD is of the view that the use of "must" in this context will not lead to any interpretation problem. The new style is also adopted when amending existing legislation;
- (b) Section 29C of SDO is a long section consisting of more than 10 subsections and "shall" appears in most of the subsections. In order not to distract attention from the objective of the Bill, the Administration does not intend to amend in this exercise the provisions of section 29C of the SDO containing "shall" if they are not related to the Budget measures; and
- (c) The Budget measures covered by the Bill are being implemented by virtue of the 2010 Order. The timely enactment of the Bill is important for the smooth continuation of the Budget measures because the 2010 Order will lapse on 1 August 2010. On the other hand, the replacement of "shall" in other provisions by other appropriate wording is not necessarily a straightforward exercise.

10. While it is desirable that there is consistency in the use of "shall" or "must" in different subsections within the same section, we agree that as far as the proposed amendments to section 29C(13) of SDO is concerned the use of "must" to replace "shall" should not lead to interpretation problems as the section relates to the Collector's obligations in considering applications for deferred payment of stamp duty chargeable under section 29C.

Commencement

11. The Stamp Duty (Amendment) Ordinance, upon its enactment, is deemed to come into operation on 1 April 2010.

Public Consultation

12. According to paragraph 12 of the LegCo Brief, owing to the confidentiality of the Budget, formal consultation specifically on the above proposals was not done before the Budget announcement. However, the Administration has formulated the proposals after taking into account views from legislators and other parties during the Budget consultation process.

Consultation with LegCo Panel

13. The policy aspects of the Bill have not been referred to the Financial Affairs Panel for discussion.

14. At the briefing by the FS and the Secretary for Financial Services and the Treasury on the Budget for the Finance Committee on 25 February 2010, some members queried the rationale for targeting at transactions of properties valued more than \$20,000,000 in proposing the increase in the rate of stamp duty and the disallowance of deferment of payment of stamp duty.

Conclusion

15. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

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