

**President's ruling on Committee stage amendments to
the Stamp Duty (Amendment) Bill 2010
proposed by Hon James TO**

Hon James TO has given notice to move Committee stage amendments ("CSAs") to the Stamp Duty (Amendment) Bill 2010 ("the Bill") if the motion for the Second Reading of the Bill is agreed to at the meeting of the Legislative Council ("LegCo") of 14 July 2010. Before considering the admissibility of the CSAs under the Rules of Procedure, I invited the Administration to comment on the CSAs and Mr TO to offer his response to the comments. I have also sought the advice of Counsel to the Legislature.

Relevant rule of the Rules of Procedure

2. In commenting on Mr TO's CSAs, the Administration has referred to Rule 57(4)(a) of the Rules of Procedure, which provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

The Bill

3. According to the long title of the Bill, the purpose of the Bill is to amend the Stamp Duty Ordinance (Cap. 117) ("SDO") to give effect to two proposals in the Budget introduced by the Government for the 2010-11 financial year. In the first paragraph of the LegCo Brief, the Bill is described as one that 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 transactions¹.

Hon James TO's CSAs

4. Counsel to the Legislature advises me that Mr TO's CSAs seek to amend SDO to the effect that an additional stamp duty in the sum of 2% (in addition to 4.25% proposed by the Bill) of the amount or value of the consideration for a chargeable agreement, or a further chargeable agreement, for a sub-sale of a property exceeding \$20 million must be payable by the vendor in respect of a sub-sale of the property before a conveyance on sale of the property is made. The vendor in such sub-sales is commonly known as a confirmor; a term which does not appear in SDO.

¹ Paragraph 29 of the 2010-11 Budget.

The Administration's views

5. The Administration submits that Mr TO's CSAs do not fall within the scope of the Bill since the CSAs seek to introduce an entirely new type of stamp duty for a specific type of transactions, rather than a revision of the rates of the existing stamp duty, and that the CSAs are not related to giving effect to the two specific proposals as stipulated in the 2010-11 Budget. As such, the Administration considers that the CSAs are not relevant to the subject matter of the Bill and are contrary to Rule 57(4)(a) of the Rules of Procedure.

Hon James TO's views

6. Mr TO submits that the ultimate intention of introducing the Bill is to combat property speculation by increasing its transaction cost. To narrowly interpret that the main object of the Bill is merely to give effect to the two specific proposals in the 2010-11 Budget is a complete disregard of the policy intention and ultimate objective behind the proposed amendments made in the Bill to SDO. Mr TO further submits that his CSAs aim "to increase the transaction cost of sub-sale (confirmor sale) by imposing additional stamp duty". They are not outside the scope of the Bill and hence not contrary to Rule 57(4)(a) of the Rules of Procedure.

7. Mr TO does not agree to the Administration's view that his CSAs seek to introduce an additional and new type of stamp duty. He argues that the effect of his CSAs is "to increase the value or amount of the existing stamp duty which a confirmor is bound to pay in a confirmor sale regardless of my proposed CSAs". His CSAs "only seek to increase the amount or value of the levy without narrowing or widening the scope of the levy upon confirmor sale", and "can only be viewed as a revision of the rates of the existing stamp duty".

My opinion

8. The Administration argues that Mr TO's CSAs are outside the scope of the Bill as the purpose of the Bill is to give effect to two specific proposals in the 2010-11 Budget, i.e. the rate of stamp duty on transactions of properties valued more than \$20 million be increased from 3.75% to 4.25% and deferred payment of stamp duty on such transactions will be disallowed. Counsel to the Legislature advises me that if one adopts this line of argument, then any CSAs which seek to effect any change to the two specific proposals in the 2010-11 Budget will be outside the scope of the Bill. In his view, although references to the Budget in the long title and LegCo Brief are useful for identifying the proposals as part of the Budget being proposed for the 2010-11 financial year, they should not have the effect of confining the scope of the Bill to proposals made in the Budget with the effect of not allowing admission of

proposed CSAs which are relevant to the subject matter of the Bill under the usual principles.

9. I accept Counsel's advice that if this part of the Administration's argument is accepted, then any CSAs which do not coincide with the two specific proposals in the 2010-11 Budget will be outside the scope of the Bill. Such a situation cannot be right because there would virtually be no room for any amendment to the Bill, be it from the Government or from Members. My view is that although the purpose of the Bill is to give effect to two proposals in the 2010-11 Budget, the scope of the Bill is such that I will admit proposed CSAs to the Bill as long as they comply with the requirements of Rule 57(4)(a) of the Rules of Procedure, i.e. an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates. I took the same approach when I allowed the CSAs proposed by the Secretary for Financial Services and the Treasury ("SFST") to the Inland Revenue (Amendment) Bill 2009. The purpose of that Bill, as stated in its long title, was to "amend the Inland Revenue Ordinance to give effect to the proposals to reduce the amounts of salaries tax and tax under personal assessment payable for the year of assessment 2008/09 made in the Budget introduced by the Government for the 2009-2010 financial year". In paragraph 127 of the 2009-10 Budget, the Financial Secretary ("FS") proposed a one-off 50% reduction of salaries tax and tax under personal assessment, subject to a ceiling of \$6,000. Clause 3 of that Bill sought to give effect to that proposal. Subsequently on 26 May 2009, FS announced a fresh package of relief measures, including a proposal to increase the rate of the said reduction to 100% and to raise the reduction ceiling to \$8,000. CSAs were moved by SFST at the LegCo meeting of 24 June 2009 to clause 3 of that Bill to implement the relief measures.

10. The Administration asserts that Mr TO's CSAs seek to introduce an additional and new type of stamp duty for a specific type of transactions. I have asked the Clerk to LegCo to invite the Administration to explain the basis of its assertion. The explanation provided by the Administration is that "stamp duty is an ad valorem duty, i.e. the amount of stamp duty payable is based on the consideration of the transactions", but under Mr TO's CSAs, "apart from paying the ad valorem stamp duty, a vendor selling a property through 'confirmor' 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 timing of the transaction". The Administration argues that the proposal is therefore a new element to the current stamp duty assessment mechanism, and is beyond a revision to the stamp duty rate for transactions over \$20 million.

11. Counsel advises me that under section 29C(2) of SDO, an agreement for sale of immovable property is chargeable with stamp duty by reference to the consideration for the agreement. The rate of such stamp duty is specified

in head 1(1A) in the First Schedule to SDO. By virtue of section 29C(3) and (4)(a) of SDO, stamp duty is also payable in respect of an agreement, or a further agreement, for a sub-sale of immovable property before a conveyance on sale of the property is made. Counsel points out that Mr TO's CSAs seek to provide that where there is a chargeable agreement, or a further chargeable agreement, for a sub-sale and where the amount or value of the consideration for the said agreement exceeds \$20 million, that chargeable agreement or further chargeable agreement would be subject to a higher rate of stamp duty, i.e. an additional stamp duty of 2% over the rate specified in head 1(1A) in the First Schedule to SDO (the current specified rate of 3.75% is proposed to be increased to 4.25% by the Bill).

12. Mr TO's CSAs seek to increase the rate of the stamp duty payable in respect of a sub-sale of property by a purchaser-turned-vendor (i.e. a confirmor) before a conveyance of the property is made. As stamp duty is already payable in respect of a chargeable agreement, or a further chargeable agreement, for a sub-sale of immovable property before a conveyance of the property is made, I do not consider that the CSAs have the effect of altering the ad valorem nature of stamp duty collected under SDO. I consider the CSAs relate to the details of the proposed amendment to SDO to the extent that they concern the rate of stamp duty payable in respect of a sub-sale which takes place before conveyance of the relevant property is made and as evidenced by the relevant instruments concerned. I therefore consider the CSAs relevant to the subject matter of the Bill.

Ruling

13. Having considered the Administration's views, Hon James TO's response and the advice of Counsel to the Legislature, I rule that the CSAs proposed by Mr TO are admissible under Rule 57(4)(a) of the Rules of Procedure.

(Jasper TSANG Yok-sing)
President
Legislative Council

12 July 2010