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Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010

Background brief prepared for the meeting on 17 December 2010

Purpose

This paper gives a summary of discussion by the Panel on Financial Affairs (FA Panel) and the Panel on Housing (Housing Panel) regarding the proposal to introduce a special stamp duty on residential properties to curb speculation.

Background

2. The increased global liquidity, very low interest rate environment and keen competition in the mortgage market have fuelled the surge in property prices. To curb speculation, the Administration has implemented a number of measures, inter alia, increasing the rate of stamp duty payable in relation to transactions of immovable property valued more than $20 million from 3.75% to 4.25%, and disallowing deferment of payment of stamp duty chargeable on an agreement for sale made in respect of residential property valued more than $20 million. While these measures are taking effect, the private residential property market is still volatile owing to extraordinary external factors.

3. According to the Administration, the exuberant state of the property market has spread to the mass market. The recent property boom is fuelled by a heavy element of speculative activities, as suggested by the 32% surge in the number of "resale within 24 months" in the first nine months of 2010, as compared with the same period in 2009. Of these, the number of "resale within 12 months" has surged by an even more rapid 114%, indicating a shift in speculative activities to a shorter horizon. Moreover, there is a higher incidence of short-term resale in the lower end market, with 84% being

transactions below $3 million in the first half of 2010. The situation is further aggravated following the announcement of the launching of the second round of "quantitative easing" by the US Federal Reserve in November 2010, as more funds are expected to flow to the emerging markets, in particular Hong Kong given its strong economic fundamentals and absence of capital control.

4. Taking into account these developments, the Administration considers it necessary to introduce further measures targeting at speculators, including special stamp duty on the sale of residential properties within 24 months after acquisition, to curb speculation, reduce the risk of the development of property bubble and ensure the healthy and stable operation of the property market.

The Bill

5. The Stamp Duty (Amendment) (No. 2) Bill 2010 was introduced into the Legislative Council on 8 December 2010. The Bill seeks to amend the Stamp Duty Ordinance (Cap. 117) to –

(a) impose a special stamp duty (SSD) chargeable with an agreement for sale or a conveyance on sale of any residential property acquired on or after 20 November 2010 if the property has been acquired by the vendor under the agreement or the transferor under the conveyance for 24 months or less at the following regressive rates –

(i) 15% if the property has been held for six months or less;

(ii) 10% if the property has been held for more than six months but for 12 months or less; and

(iii) 5% if the property has been held for more than 12 months but for 24 months or less;

(b) cancel the existing arrangements for deferral of payment of stamp duty chargeable with certain agreements for sale of residential property.

Previous discussion by Panels

6. The FA Panel and Housing Panel were briefed on the two proposals pertaining to the Bill at the joint meeting held on 22 November 2010. Apart

from the new measures relating to stamp duty, members noted that the Hong Kong Monetary Authority had also introduced prudential supervisory measures requiring the banks to implement the following measures to strengthen the risk management in residential mortgage lending business –

(a) lowering the maximum loan-to-value (LTV) ratio for residential properties with a value at $12 million or above from 60% to 50%;

(b) lowering the maximum LTV ratio for residential properties with a value at or above $8 million and below $12 million from 70% to 60%, but the maximum loan amount would be capped at $6 million;

(c) maintaining the maximum LTV ratio for residential properties with a value below $8 million at 70%, but the maximum loan amount would be capped at $4.8 million; and

(d) lowering the maximum LTV ratio for all non-owner-occupied residential properties, properties held by a company and industrial and commercial properties to 50%, regardless of the property values.

7. The two Panels generally welcomed the proposed measures, particularly SSD. Some members however considered the arrangement for SSD to take effect on 20 November 2010, immediately upon the Administration's announcement of the measure but prior to enactment of the relevant Bill, not desirable as this would disrupt normal conveyancing procedures and might create lots of abortive efforts in the event that the Bill was not passed or substantially amended. Besides, investors could circumvent SSD through the transfer of ownership in shell companies to effect property transactions. The proposal to hold both the seller and the buyer jointly and severally liable for the SSD was also unfair to the buyer. In this connection, consideration should be given to specifying in the Bill that only the seller would be liable to pay SSD. As SSD would only apply to residential properties, they were worried that this would have the effect of intensifying speculative activities in other sectors, such as commercial properties and taxi and minibus operating licences, given the prevailing economic environment with abundant liquidity and ultra-low interest rates. The implementation of SSD in turn would drive the costs of various goods and services up and fuel inflation.

8. Some members considered that special arrangements should be made for those bona fide home buyers who had committed to purchasing a residential property prior to the Administration's announcement of the proposals and

thereafter faced difficulty in securing sufficient mortgage loans to complete the transactions. Exemption from SSD or some flexible arrangements should be allowed for property owners who needed to sell their properties to meet emergency situations or were forced to do so for certain reasons within 24 months after acquisition. The Administration should clarify whether SSD would apply to properties sold under a compulsory sale order granted by the Lands Tribunal under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545). To sustain a healthy and stable property market, the Administration should formulate longer term strategies and support measures on other fronts, such as maintaining steady and sufficient land supply and provision of subsidized housing for first time home buyers.

Relevant paper

Legislative Council Brief issued by the Transport and Housing Bureau on 1 December 2010
http://www.legco.gov.hk/yr10-11/english/bills/brief/b17_brf.pdf

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