

立法會
Legislative Council

LC Paper No. LS14/10-11

**Paper for the House Committee Meeting
on 10 December 2010**

**Legal Service Division Report on
Stamp Duty (Amendment) (No. 2) Bill 2010**

I. SUMMARY

- 1. Objects of the Bill** To amend the Stamp Duty Ordinance (Cap. 117) (SDO) to impose a special stamp duty (SSD) on transactions of residential property acquired on or after 20 November 2010 and resold within 24 months after acquisition and to cancel the existing arrangements under SDO for deferral of payment of stamp duty.
- 2. Comments** The Bill seeks to amend SDO to –

 - (a) impose SSD on transactions of residential property acquired on or after 20 November 2010 and resold within 24 months after acquisition at the regressive rates from 15% to 5% for different holding periods; and
 - (b) cancel the existing arrangements under SDO for deferral of payment of stamp duty chargeable on an agreement for sale of residential property, the amount or value of the consideration for which does not exceed \$20,000,000.
- 3. Public Consultation** No public consultation has been conducted.
- 4. Consultation with LegCo Panel** The Panel on Housing and the Panel on Financial Affairs were briefed on the proposals pertaining to the Bill at their joint meeting on 22 November 2010. Members in general welcomed the proposals but expressed certain concerns and views.
- 5. Conclusion** Members may wish to set up a Bills Committee in view of Members' concerns and views.

II. REPORT

Objects of the Bill

To amend the Stamp Duty Ordinance (Cap. 117) (SDO) to impose a special stamp duty on certain transactions of residential property if those transactions occur within 24 months after the property has been acquired, and to cancel the existing arrangements under SDO for the deferral of payment of stamp duty chargeable on certain agreements for sale of residential property.

LegCo Brief Reference

2. HD(CR)5/50/1/177 issued by the Transport and Housing Bureau on 1 December 2010.

Date of First Reading

3. 8 December 2010.

Comments

4. On 19 November 2010, the Financial Secretary announced stamp duty related proposals. According to the Administration, the objective of the proposals is to curb short-term speculative activities in the local residential property market. The Bill was introduced to give effect to such proposals.

Special Stamp Duty (SSD)

5. In addition to the current ad valorem property transaction stamp duty under SDO, the Bill seeks to impose SSD on residential properties of all values at the point of resale if the properties are acquired on or after 20 November 2010 and resold within 24 months after acquisition as follows –

	Holding periods of properties	SSD payable¹
1.	Six months or less	15%
2.	More than six months to 12 months or less	10%
3.	More than 12 months to 24 months or less	5%

¹ The SSD payable will be calculated according to the stated consideration for the transaction or the market value of the property as assessed by the Collector of Stamp Revenue (i.e. the Commissioner of Inland Revenue), whichever is the higher.

6. If only part of the residential property is acquired, the proposed sections 29CA(3) and 29DA(3) provide that SSD is chargeable only by reference to that part.

Time of Acquisition and Disposal for the imposition of SSD

7. Under the proposed sections 29CA(4) and 29DA(7), a person acquires any residential property when equitable ownership or legal ownership of the property is passed to the person (whichever occurs first).

8. Under the proposed sections 29CA(6) and 29DA(9), a person disposes of any residential property when equitable ownership or legal ownership of the property passes from the person to another person (whichever occurs first).

Persons liable to pay SSD

9. The proposed head 1(1AA) and (1B) of the First Schedule provides that all parties to the instruments chargeable with SSD i.e. conveyance on sale and agreement for sale (SSD Chargeable Instruments) and all other persons executing SSD Chargeable Instruments are liable to pay SSD. This is the same as that in relation to the existing stamp duty under SDO.

Time for payment of SSD

10. The proposed head 1(1AA) and (1B) of the First Schedule requires that SSD Chargeable Instruments be stamped, and hence SSD be payable, at the same time as that in relation to the existing stamp duty i.e. in general, within 30 days of execution of SSD Chargeable Instruments.

11. Under clause 1(2) of the Bill, the provisions in relation to SSD are deemed to have come into operation on 20 November 2010. Under proposed section 68, if the time for stamping of SSD Chargeable Instruments falls before the day on which the Bill is gazetted after enactment, the time for stamping is to be replaced by a period of 30 days commencing immediately after that day.

Exemptions from the imposition of SSD

12. The Bill seeks to grant the following exemptions –

- (a) nomination of a close relative (i.e., spouse, parent and child) to take up the assignment of a property under a sale and purchase agreement (not chargeable under SDO) and sale or transfer of a property to close relatives (proposed sections 29CA(7) and 29DA(10));

- (b) sale or transfer of a property of deceased persons by will or by law to beneficiaries (not chargeable under SDO), but if a beneficiary subsequently sells the property, under proposed sections 29CA(5) and 29DA(8), for the purpose of counting the holding period, the date of acquisition of the property by a deceased person is treated as the date on which the beneficiary or executor acquired interest in the property;
- (c) sale or transfer of a property due to bankruptcy or involuntary winding up (proposed sections 29CA(8) and 29DA(11));
- (d) sale or transfer of a property between associated companies (existing exemption under sections 29H(3) and 45 of SDO; clauses 11 and 12 of the Bill); and
- (e) sale or transfer of a property to the Government of the Hong Kong Special Administrative Region or an incorporated public officer² (existing exemption under sections 29H(1) and 39(b) of SDO).

Cancellation of deferral of payment of stamp duty

13. Section 29C(11) to (13) is proposed to be repealed so that the existing arrangements under SDO for deferral of payment of stamp duty chargeable on an agreement for sale of residential property, the amount or value of the consideration for which does not exceed \$20,000,000 would be cancelled.

14. As deferral of payment of stamp duty for residential property transactions valued more than \$20,000,000 has already been disallowed with effect from 1 April 2010, the cancellation of deferral of payment of stamp duty as proposed in the Bill would mean that stamp duty (including the proposed SSD) for all residential property transactions regardless of values will have to be paid generally within 30 days of execution of chargeable instruments (including SSD Chargeable Instruments)³.

15. Under clause 1(3) of the Bill, the provisions in relation to such cancellation would come into operation on the day on which the Bill is gazetted after enactment.

² Under section 38 of SDO, "incorporated public officer" means any of the following –

- (a) The Financial Secretary Incorporated (Cap. 1015);
- (b) Permanent Secretary for Education Incorporated (Cap. 1098);
- (c) The Director of Social Welfare Incorporated (Cap. 1096);
- (d) The Secretary for Home Affairs Incorporated (Cap. 1044).

³ Generally speaking, most chargeable instruments must be stamped within 30 days of execution except, for example, an agreement for sale of residential property which can be extended where the first agreement is replaced within 14 days by a subsequent agreement between the same parties and on the same terms. (*Halsbury's Laws of Hong Kong, vol.24 (2009 reissue), at para. 370.358*)

Public Consultation

16. No public consultation has been conducted.

Consultation with LegCo Panel

17. The Panel on Housing and the Panel on Financial Affairs were briefed on the proposals pertaining to the Bill at their joint meeting on 22 November 2010. Members in general welcomed the proposals, but expressed concerns on the following matters -

- (a) the arrangement for SSD to take effect prior to the enactment of the relevant legislation;
- (b) the effectiveness of SSD measure in curbing speculative property dealings effected through the transfer of shares in shell companies;
- (c) the appropriateness of holding both the seller and the buyer jointly and severally liable for SSD;
- (d) the effect of the proposed measures on the speculative activities in non-residential property markets and other economic sectors;
- (e) the effect of the proposed measures on genuine home buyers;
- (f) the scope of exemptions from SSD; and
- (g) longer term strategies and support measures to sustain a healthy and stable property market.

Conclusion

18. Members may wish to set up a Bills Committee in view of Members' concerns and views.

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