Stamp Duty (Amendment) Bill 2013

The Government's response to the new draft Committee Stage Amendment proposed by the Hon Kenneth LEUNG

This paper sets out the Government's response to the new draft Committee Stage Amendment ("CSA") proposed by the Hon Kenneth LEUNG (*LC Paper No. CB(1)1545/13-14(02)*) which supersedes his earlier CSA proposed on the same subject (*LC Paper No. CB(1)1496/13-14(02)*).

New CSA

2. The CSA proposed by the Hon Kenneth LEUNG seeks to provide a refund mechanism for a Hong Kong incorporated company or a Hong Kong permanent resident ("HKPR") for acquisition of non-residential properties. According to the newly-revised proposal, the definitions of trade and business are extended to cover a business carried on by any charitable institution or trust of a public character which has been exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) but exclude the letting or sub-letting to any person of any premises or portion thereof, and the sub-letting of any premises or portion of any premises held under a lease or tenancy. The "relevant period" condition for the refund of stamp duty is changed from not less than 2 years from the date of acquiring the non-residential property to not less than 3 years (i.e. the relevant period as stated in the CSA).

Government's response

3. The Government reiterates its disagreement to the concerned CSA with the following main considerations –

(a) The proposed refund arrangement in effect exempts all Hong Kong incorporated companies or HKPRs (including charitable bodies) from payment of doubled ad valorem stamp duty for acquisition of non-residential properties, which is inconsistent with the Government's policy objective in implementing the relevant demand-side management measures;

(b) The property market remains unstable. The concerned CSA will disseminate to the market a message that the non-residential properties concerned will "defrost" upon expiration of the specified period, thus stimulating market demand for non-residential properties and affecting the effectiveness of the measures. Also, any person can by way of transfer of shares in companies acquire indirectly the beneficial interest in the non-residential property owned by the company and get refund upon expiration of the relevant period, thus undermining the effectiveness of the measures;

(c) As pointed out repeatedly in earlier responses, we could hardly determine whether the non-residential property concerned is actually used for the purpose of certain trade, profession or business and even for the purpose of any adventure and concern in the nature of trade as defined by the CSA. It will be even more difficult to determine if a Hong Kong company or HKPR has continuously used the non-residential property concerned solely for the purpose of carrying on the trade, profession or business in Hong Kong. The prevailing stamp duty regime merely charges stamp duty on the basis of instrument effecting transfer of properties in accordance with their nature, irrespective of their actual usage by the buyers within a few years after acquisition. It will not be in line with the principle of proportionality in handling the problem if we were to change the stamp duty regime by introducing the determination of property usage for the purpose of the measures introduced in exceptional circumstances; and

(d) In 2013 alone, there were over 10 000 transactions of non-residential properties. The Stamp Office needs to deploy additional staff and resources to process and verify each and every refund application. In terms of administration, this will entail substantial financial implications to the Stamp Office.

4. We have set out in detail our response to the original CSA proposed by the Hon Kenneth LEUNG and the CSA proposed by the Hon James TO dealing with exemption for charitable bodies (*LC Paper No. CB(1)1517/13-14(06)*). The relevant considerations set out therein remain applicable to the new CSA proposed by the Hon Kenneth LEUNG.

Financial Services and the Treasury Bureau
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