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The Hon Starry Lee Wai-king,
Chairman,
Bills Committee on Stamp Duty (Amendment) Bill 2013,
Legislative Council,
Hong Kong SAR Government

Dear Hon Starry Lee,

Submission on the Stamp Duty (Amendment) Bill 2013

We refer to two main proposals of the captioned bill. The first one is to double the ad valorem stamp duty (AVD) rates on transactions for residential and non-residential properties. The second is to advance the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement for sale.

According to paragraph 5 of the Legislative Council Brief for the bill prepared by the Financial Services and the Treasury Bureau in April 2013, the justifications for the introduction of the bill are to further manage the demand for residential properties and combat short-term resale activities in respect of non-residential properties. The aim of the bill is to help narrow the supply-demand gap and hence contribute to the stable development of our property market.

Notwithstanding the stated aim of managing or suppressing the demand for residential properties, we welcome the provision contained in the bill that the doubling of the AVD will not apply to a Hong Kong permanent resident purchasing their first residential property in Hong Kong (provided that the necessary conditions are met). This is on the basis that the policy of encouraging home ownership should override the policy of suppressing the demand for residential properties.

However, the Institute has reservation on whether the government should suppress the demand for non-residential properties, be it investment or speculative, considering that Hong Kong is a free market economy capable of finding its own balance. This is particularly the case as the government has not provided enough figures or evidence in the Legislative Council Brief that there is a supply-demand gap in respect of non-residential properties in Hong Kong, or the market cannot itself find its own balance. Nor, if such a gap exists, is the extent of its impact on the livelihood of Hong Kong people that justifies this drastic proposal being applicable to non-residential properties.

In any case, given the stated aim of doubling the AVD rates for non-residential property transactions being “combating short-term resale activities”, we submit that this proposed measure should not apply to persons who make long-term investment in non-residential properties, e.g. for letting or self-use purposes. Otherwise, the increase in stamp duty will represent a great additional cost to these persons, mostly businesses at a time when rental costs in Hong Kong are already among the most expensive in the world.

The Institute therefore proposes that persons who make long-term investment in non-residential properties should be exempt from the double AVD rates, i.e. only subject to the existing applicable rates. In this regard, we suggest that a person holding a non-residential property for more than three years should be regarded as being a long-term investor rather than a speculator. This is in line with the fact that the Special Stamp Duty is only applicable to a holding period for residential properties of three years or less.

In order to be entitled to our above proposed exemption, we consider that it would be sufficient to only require a purchaser to make a statutory declaration that the acquisition of a non-residential property is not for resale purpose, specifying the intended use to which the property will be put. Such person will also be statutorily required to inform the Stamp Duty Office of their chargeability to the double AVD retrospectively if, for whatever reasons (subject perhaps only to certain statutory exceptions, e.g., a group relief transfer), their holding period for the non-residential property turns out to be less than three years. We consider that these measures would be enough to deter abuse of the proposed exemption mechanism. This is on the basis that any subsequent sale of the non-residential property will in any case come to the attention of the Stamp Duty Office, which is in itself a deterrence of non-compliance and a mechanism for enforcement.

As regards advancing charging AVD on non-residential property transactions from the conveyance on sale to the agreement for sale, we consider that it is acceptable. This is on the basis that while not adding any significant costs to persons who acquire a non-residential property for long-term investment purposes, it would add significant costs to persons who make confirm or quick short-term resale of such properties.

If you would like us to elaborate on any of the above points, please do not hesitate to contact us.

Yours faithfully,



Patrick Kwong
Co-chairman
Taxation Policy Subcommittee